



## Knife Legal Defense Issues Deserve Study

*Interview by Gila Hayes*

Many armed citizens carry pocketknives for utility use as well as for last-resort defense if unable to use their gun. Others carry pocketknives at times when carrying a gun is illegal or otherwise prohibited. Like a firearm carried for self defense, a knife's effectiveness and legal defensibility is in direct proportion to the knowledge and education of the citizen employing it. Just as a leading concern at the Network is assuring that members understand the imperative for articulating the whys and hows of using a firearm for self defense, we also strive to educate about problems that attach to using knives in self defense.

Our journal first introduced this topic in December of 2008, in a lengthy interview with knife and self defense expert Marc MacYoung, who is also the featured speaker lecturing on pre-attack indicators on one of the educational DVD lectures sent to all Network members. We want to continue to expand member knowledge about issues bearing on defending oneself with a knife, and much of this issue of the journal is dedicated to knife concerns.

A few weeks ago, we spoke at length with Spokane County (WA) Public Defender Investigator Troy Bunke, who gave us a great overview and introduction to the topic. During his 20-year career, Bunke has had the challenge of investigating problem cases, identifying exculpatory evidence and helping Public Defender attorneys understand the issues involved. He explains, "The way I look at it, my job as an investigator is to catalog the good, the bad and the ugly, to get to the evidence that we are looking for."

In addition to his professional expertise, Bunke is an avid student of self defense and has trained extensively with Massad Ayoob, and specifically sought out knife training from Eric Remmen, George Williams, and Insights Training Center, along with his own research into both the laws and any literature on the topic. Still, he explains that he wishes for better resources, noting, "Even in textbooks published on self defense and use of force there are very few that I've ever read that are knife related.

That has made it generally a hard topic to learn about."

Bunke made many interesting observations both about investigating knives used in self defense, pitfalls he has identified and how Network members might avoid them. Let's go now to our interview with Mr. Bunke.

*eJournal:* When you investigate a crime in which a knife was used, how often is its use self defense?

*Bunke:* Since I work for the Public Defender, I will never see any case the state has ruled self defense, either through law enforcement's initial investigation or the prosecutor's office deciding not to charge that case. The cases that I generally see are the ones that are not "clean." Typically, I think, most Network members' situation would be considered clean: they would not be under the influence of drugs or alcohol or would have no prior convictions, would not have harassment issues, and so most of their cases would never make it to me. Once a case has made it to my desk, there is generally something wrong with the case. I do not get clean cases. I do not get cases that are simple and easy to figure out.

The cases that I get have been charged at a felony level, whether those are assault, manslaughter or murder. When we have a knife injury that has produced any significant damage—and the prosecutors will say that almost any knife injury produces significant damage—we are looking at minimum charges of assault or some form of criminal homicide if a death is involved and someone is easily looking at 10 to 20 years in prison for a single significant knife injury.

When I see knife cases, more times than not, the charge is first-degree assault because of the kinds of injuries that have been produced on the victims. I would guess that of the number of homicides that I've worked, maybe as high as ten percent were knife cases. In my twenty years, I've worked about 90 homicides, and at least ten of those were knife-involved.

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*eJournal:* How many did you come to believe were acts of self defense?

*Bunke:* About a third. In the cases I have worked in the past, the knife has been used as a defensive tool against either other knives or force of numbers. A basic scenario would see a guy at a party who meets up with four or five guys and it goes south and the four or five guys are coming at him and he is scared. He has one tool available. Of course, that's a pocketknife and that is what he uses. The disparity of force defense makes sense in these cases with knives, and that is what I see a lot of.

In a lot of the assault cases, it has been knife against knife, in that two guys get drunk or two guys get angry at each other and they pull out knives and they participate in mutual combat with knives. The "winner" of that fight on the street becomes the loser and finds himself going to court. Someone has to be the victim and someone has to be the defendant, so the guy with the least number of injuries ends up getting to be the defendant and the guy with the most injuries ends up getting to be the victim.

*eJournal:* When a skilled investigator examines evidence from a case in which a knife was used, can that investigator determine from the wounds and other evidence whether the knife was being used in defense, or if it was used to make an aggressive attack –what one might describe as a "first-strike?"

*Bunke:* You know, I am not sure that is at all possible. It would be like trying to differentiate if a specific gunshot wound was defensive or aggressive in nature. How do you do that? That is so challenging!

The knife injuries that can be defensive are some of the injuries that are found on the victim's hands and wrists, but that also crosses over to the suspect's hands as well. If the suspect or defendant is using the knife, and his hand slips from the handle to the blade during a stabbing motion, across the four fingers of the hand holding the knife he will often have a cut or cuts resembling a defensive knife wound that could happen if someone grabbed the blade to try to get the knife away. Until you get the rest of the picture from the autopsy report—all the photographs, all the medical records, and witness statements—you don't have the perspective to put the puzzle together, so at the beginning of an investigation those cuts are just injuries.

To get back to your question about identifying defensive use of a knife, that is SO challenging! I don't know anybody who can do that. Even then, until you put information in context, how do you start defining it?

None of these events happen in a static environment, without motion. Knife injuries can happen in 360 degrees around the body. Everybody's moving around and sidestepping, so the bodies are never flat and still like they are in the autopsy room. Until you get the injuries recorded and you get some witness statements telling what they were doing whether it was fighting or struggling or wrestling, whether they fell to the ground and rolled around, maybe one guy's hand was around behind the other person's back, only then can you put it in context. At that point, you may think, "These wounds happened at this time, these other injuries happened at this time," but really, unless it is on video, (which is entirely possible these days) it is initially still a crapshoot.

*eJournal:* If you can't rely on the biological evidence to tell the story, it seems that the witness statements must carry incredible weight.

*Bunke:* Yes, very much so. The biological evidence or the science will tell you what injuries took place, where the injuries are located, and as the case progresses and the science is worked through, if you happen to find the knife in question and the blood on it is tested for DNA, then you can say this is the knife that caused these injuries to this person.

And at that point, you may wonder if such a small knife could have caused such a large wound, and common sense might seem to say that should not be. Intellectually you might ask yourself, "How can this two-inch blade make this huge stab wound?"

With knife wound dynamics the biggest issue is getting through the skin. The skin is so elastic that it seems to be the hardest organ to penetrate. Once you break the skin, the amount of force required to make large stab wounds may not be as much as you think it is. The body and organs can be damaged, they just get injured once the skin is broken. You can get a wound of a hellacious depth that does not match the size of the knife in question. This is not even considering the kinds of clothing that people are wearing or what the materials are made from.

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That is something that we have to consider when investigating crimes. You can have this huge stab wound, but the knife may not be that large. Or we can have this very lengthy incised slash wound made by a huge knife that got no depth because of the way it was handled and the way the bodies moved during the struggle. Maybe somebody sucked their stomach in as someone tried to stab them. The knife came around in a roundhouse and they sucked in their stomach but still you have this hellacious slash wound that is only an inch deep, but is also eight inches long! Or it can go the other way.

And that is why it is so difficult, so hard to label certain injuries and certain knives and trying to match them because people forget the human dynamic and reality that the person is not laying there on the morgue slab when the slash or stab happened. Everybody was moving; everybody had time and space issues that we have to take into account.

All these other factors are unknown until you start getting witness statements—especially the statements of the people involved. That is always interesting because, of course, there are two survivors in an assault case, so there will be two versions that you can bet will be opposite.

You will have a defendant's version and you will have a victim's version. You will have an aggressor's version. Of the victim and the defendant, which was the aggressor? Taking that into account, you then have to try to figure out how the statements and physical evidence fit together.

If it is a homicide case, you may have one person's version to analyze, one person's version out of which to try to make sense. The dead guy is only going to talk as much as the science allows. You are not going to have another verbal story of what happened unless there are witnesses. The dead person is only going to tell us as much as what his body will tell: what the actual wounds, what the actual injuries tell us. He is not going to be able to give us a verbal story of what took place.

*eJournal:* That puts a lot of reliance on correctly interpreting the scientific evidence, especially if it is not the same as what other witnesses report.

*Bunke:* Also, the persons involved often are the worst reporters, because of all the physio-psychological effects including tunnel vision, auditory exclusion, distortions in perception of time, or what ever else it may

be. We are taking the best witness to the event, who we know is the worst reporter of the event, and trying to extrapolate from their recollections what took place.

*eJournal:* Does the investigator go into the interview knowing that the witnesses' recollections are going to be diminished by distortions in perceptions?

*Bunke:* For me, that is very much so. Often times our attorneys don't quite understand that. They, along with some law enforcement officers and prosecutors, often have a misconception that what they're being told by the client, by the defendant, by the victim is what actually happened and that their memory is going to be intact and accurate.

Often times, an important part of my job is educating the attorneys that the participant may not be the best reporter of the event. You need to hold back a little while and wait for the lab reports to come in, for the autopsy reports to come in, and for evidence to be collected, then look at what we have in evidence and then take the client's story and ask, "What parts fit?" If it fits well, then it all makes sense, but if the client tells us he remembers making only three stab wounds and that is it, but the body has got twelve or fifteen, we have a problem somewhere along the way and that has got to be figured out and explained.

I think my role as an investigator is to always question everything as I work through a case. The work may last for a week or for months, and as the pieces are presented to me, I can start putting the puzzle together and try to make the pieces fit together. I personally believe that it would be professionally wrong to take a statement from somebody up front as the gospel truth. I just do not and can not do that.

*eJournal:* Let's say that a Network member used a knife in self defense and was physically and mentally able to function afterward. What precautions do you recommend to that member about their statement to police?

*Bunke:* On a scene where blood is spilled when a knife is used, one of the biggest things law enforcement will need to know—hopefully sooner rather than later—is where this conflict took place and where it started. With knife injuries, absent a rather large injury, most of the stab wounds and most of the slash wounds may not bleed a lot. The human body is so resilient, it amazes

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me to this day! You will have a person who will eventually die of the knife wounds, but the amount of travel between where the knife wound took place and where they are eventually found, may be blocks. They may be found literally BLOCKS away and the body may not bleed a lot between Point A and Point B.

You can have a lot of internal bleeding, with very little blood trail in many, many cases. There are cases of people coming down apartment staircases and crossing city blocks before they sit down and later expire, and they expire because they have bled out internally. But by then they have covered three or four flights of stairs in the apartment complex and crossed the block.

A lot of folks who are stabbed, do not know they were stabbed. They thought they were punched multiple times, and the punches hurt really bad, but they do not realize they were stabbed until they reach down, touch, and look at it and say, "Oh! I must have been stabbed." That could have happened seconds ago, or minutes ago, or yards ago in travel time.

For Network members, it is important to be able to report WHERE the aggressive action took place, because potentially, the crime scene has just multiplied itself exponentially. With what you might think would be a stabbing in one room in an apartment complex, the crime scene may not be only that room, it may be the whole building or half a city block because they've traveled.

That is where blood spatter comes in, time of travel, blood drops, directionality, length of travel and how far they traveled. If they have a knife injury where there is significant blood loss being able to trail them, so to speak, is much easier because there is more physical evidence to look at, but that is not always the case. I've seen it where there was very little blood loss from the injury. It is just phenomenal what people can survive and the kind of motion they can do whether that is aggressive motion, defensive motion or even just leaving the area.

People may get to talking to the police later on, and say, "Well, this did not happen here. This started over at Joe's place," and Joe's place is four blocks over. At first it seems like someone is lying, like someone is making this stuff up. How could this be? But in reality, an injured person can do huge amounts of traveling. Even though the body is going to expire at some point, it is capable of a huge amount of action and behavior before it stops.

*eJournal:* You've described an inauspicious combination of eventual lethality and short term failure to stop. First, it's a concern from the viewpoint of surviving and next the lethality factor almost guarantees that we are going to land in court afterwards. Is there a solution?

*Bunke:* You have to come at this as a training issue. With firearms training, we teach to shoot until the threat stops, and that makes sense. For somebody who can shoot fast and really accurately, that may be a couple of magazines-full in a short amount of time until a threat no longer exists.

In the knife world, that could be a whole lot of cuts until you have caused enough damage for that person to no longer be a threat. As they get more cuts, as they get numerous stab wounds or slash wounds or injuries, the higher the number, then that is going to be an issue for cops to look at, for attorneys to look at, for juries to look at. Law enforcement has seen homicides with multiple knife injuries. Now, if we have trained somebody to use a knife to cut until the threat no longer exists or they can stop the threat, we may have just produced a number of knife injuries for which the first explanation is going to be, "This has got to be a homicide!"

*eJournal:* That explains why it is so difficult to put on a legal defense for self defense with a knife. How do you distinguish between excessive force and just doing what you had to do to stay alive? How can you articulate why you had to inflict so many wounds?

*Bunke:* Get trained by good instructors and be able to articulate the concepts that were taught in that training environment. For an example, "I have been trained that if attacked and my life is in danger, I am to attack the arm holding that weapon until the weapon is dropped. I am trained to attack appendages until the threat ceases to exist." So when we have photographs of a body whose two limbs appear to be shredded, the defender needs to be able to explain that. It is tough to do. It is a quandary that I still think about a lot from a personal perspective.

I was originally trained by Eric Remmen about 20 years ago to attack the appendages, the arms holding the knife, to disarm them, hopefully to stop the fight sooner rather than later. We were really going for peripheral targets. About ten years ago when I trained with George Williams, his training methodology was punch-stab to

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high-priority targets for the maximum amount of damage with the first wound to stop that fight. The high priority targets were the eyes, the neck, the heart, the face and skull. I understand attacking the high priority targets to stop the threat, but at the same time we are very likely going to cause death. We have to decide between the one injury, versus the multiple injuries, which can cause death as well through the body bleeding out.

I do not know of anybody other than maybe Michael Janich in his book *Contemporary Knife Targeting* who even talks about the dynamics of knife injuries, probabilities of injuries to knife targets, what parts of the human body you should go for first in defending yourself to address survivability and stop that threat quickly while producing the least amount of cuts.

*eJournal:* That is a hard puzzle. With firearms, we have always taught that we weren't to attempt to kill, only stop the threat. I think it is asking a lot of a person using a knife in defense to make a reasoned decision about whether the wounds they are inflicting need to discourage continued attack, or if they need to injure a high-value target to stop the attack more quickly. I have deep reservations about being asked to make decisions to use force intended to only deter further attack when we believe we are in a fight for our lives. If the knives come out, are we not in a lethal force confrontation and committed to stopping it as quickly as possible?

*Bunke:* As far as the law looks at it, once you have placed a blade on a body and made a significant cut you are facing a minimum charge of assault and if that injury produces death, you are looking at criminal homicide, so whether that is produced by one cut or by many cuts, I am not so sure it matters, at least in how the case is charged.

I think that I would prefer, from my point of view as a knife-carrying guy as well as an investigator, to make one significant cut and stop the threat. Then when it is done, we are only dealing with the one major injury. If we can articulate our knowledge and training to say that this is why I went this way, granted the end result wasn't good, but like we are trained to shoot to the center of mass when stopping a threat with a handgun, my training with a knife is to stop the life-endangering threat as quickly as possible, to stop this lethal-force confrontation.

*eJournal:* When the investigators are looking at the wounds, is there any attempt to make value judgments about peripheral wounds to extremities versus wounds

inflicted in an obvious attempt to damage major, vital organs?

*Bunke:* As an investigator, I would like to think that it is evaluated. I know because of my background, training and knowledge that I do it that way, but I am not so sure that it is always done that well in law enforcement. Once an injury has taken place whether it is produced with one cut or ten, we still have this level of injury that either killed or severely wounded somebody.

The end result is that this person is either in the morgue or in the hospital.

*eJournal:* You mentioned earlier that it is almost automatic to identify the survivor as the bad guy and the deceased as the victim. Do you see that holding true for people defending themselves using other means—fists, feet or firearms?

*Bunke:* Many times! The only times I do not see that happening is when someone who has had some training and background so they can really articulate why they did what they did: someone who can tell about Ability, Opportunity and Jeopardy, and explain deadly force concepts. When they can tell the investigator those concepts and they can tell it well, they seem to be the ones who are not charged. Armed individuals need to be able to explain the circumstances of the lethal force event, how they responded to it, and most importantly why they did, what they did.

*eJournal:* When and where is that information being articulated? To responding police, police detectives, to the prosecutor prior to a charging decision? When and where is that vital information being transmitted?

*Bunke:* That information is being transmitted prior to the charging decision. Whether it is told to the line officers or the detectives, it is being documented and the prosecutors are reading it in their reports and they are saying, "OK, this seems like self defense." Typically gun people who can articulate well, will make the first phone call to 9-1-1, reporting the crime, and becoming the complainant. If you can be the complainant, you almost automatically become the victim. By default, the person who has not called becomes the suspect, then most likely the defendant.

*eJournal:* You have used the term "articulate" several times and stressed the need to be able to define what

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you did in self defense and why you did it. This is obviously a post-incident protection you believe it is very important for the Network member to be able to do well.

*Bunke:* It is very tough for folks who are not trained to understand articulation. With all of the knowledge and training that we have had, it really does come down to you being able to be your own expert witness. I have had cases go to trial in this jurisdiction where I tried to get Bob Smith (a highly-regarded trainer in the Spokane, WA area) involved as an expert witness and he was not allowed to testify. The person who can best testify is the defendant. They may have to take all the knowledge they have and be their own expert witness; that is the reality. Not everyone can get Ayoob up on the stand to testify for them. The judge may not let that happen.

*eJournal:* We all want to think there will be strong, knowledgeable people who can ride to our rescue and explain things better than we may be able to, but as you note, getting the expert admitted to testify is never assured. We had better get busy now learning how to articulate the facts that need to be brought forward, to be clarified.

*Bunke:* That is exactly right and it fits with the concept of self defense. If you are carrying a gun or a knife to defend yourself, you are saving yourself, not relying on law enforcement to come and rescue you. So why does it not seem logical to think if the case goes to a trial in front of a jury, you are the one that needs to be there to save yourself once again? You may not be able to rely on an expert witness to come in and save you, because you got yourself there when you originally saved yourself. So now it is time to save yourself again, but in a different setting.

*Editor's note:* We appreciated Bunke's thought-provoking discussion. For further study, he recommends the book he mentioned earlier, one that we immediately read and reviewed for this journal, Chris Grosz and Michael Janich's *Contemporary Knife Targeting* by Paladin Press in 2006 as well as several forensics texts. The textbooks include *Forensic Pathology*, 2nd edition by Vincent di Maio and published by CRC Press in 2001, the *Handbook of Forensic Pathology*, 2nd edition, by Richard Froede and published by the College of American Pathologists in 2003, and the *Medicolegal Investigation of Death: Guidelines for the Application of*

*Pathology to Crime Investigation*, 3rd edition (now available in a 4th edition from 2006), by Werner Spitz and published by Charles C. Thomas in 1993. He also recommended the older Paladin Press video entitled *Masters of Defense: An inside Look at the Designs, the Designers, and Their Tactics* in which Massad Ayoob, Michael Janich and a number of other knife experts discuss knife design and use.

Justifiability issues can also be clouded by the name and appearance of a particular model of knife, Bunke added, suggesting that armed citizens gravitate toward mainstream knives like the Spyderco Delica or Endura models or Benchmade's Griptillion folding pocket knife, of which he carries a pair. Defending self defense may require obtaining an exemplar model of the knife used, he added, so a readily-available mainstream knife model has advantages over a rare or out of production knife.

Finally, Bunke stressed, please know the knife laws in effect where you are. Unfortunately, this is extremely challenging owing to the patchwork of laws in force in various municipalities, since knife laws are rarely if ever subject to state preemption, he explained. Still, Bunke stressed, the last thing the survivor of an assault needs muddying the justification for the use of the knife in self defense is the shadow of having committed a knife possession crime. Blade lengths as well as knife features like whether it is a folder, a fixed blade or a balisong or another type of knife will bear on its lawfulness, he added.

Self defense with knives is subject to a number of very worrisome concerns, as Bunke has so ably pointed out. We hope you will continue exploring this subject, through your own research, as well as information in the rest of this journal. In addition, we are working to arrange an interview with preeminent defense knife expert Michael Janich, which we hope to wrap up at the Shooting Hunting and Outdoor Trade (SHOT) Show just a few weeks after this publication's release date. This emphasis should underscore how important we believe it is for armed citizens to fully understand and be able to explain self-defense issues involving any tool carried for self defense, including knives.

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Please enjoy the next article.]

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