

# Avoiding legal traps

By Massad Ayob



Dave Duffy wrote recently on the plight of Brad Metcalf. There are several lessons to be learned.

Metcalf represented himself, pro se, in court. This is almost never a wise thing. There's a reason an old saying has lasted so long: "The man who represents himself in court has a fool for an attorney." (Of course, a friend of mine who happens to be an attorney adds, "Yes, but he also has a friend for a lawyer.") From my point of view, I don't need a friend in court...I need a lawyer, and a damn good one, especially if I'm the one who stands accused.

Example: A denial of some of Metcalf's pro se motions by Chief Judge Richard Enslen ended with the statement, "Defendants are warned that motions of the kind that they have been filing are likely to jeopardize their legal interests and that they should consult with counsel before filing additional motions." This is what folks where I come from call "a clue."

Know the law, and stay within it. Yeah, I know, that's right up there with "stay out of trouble" and "just say no." The fact is, though, that sometimes things really are that simple.

Example: a sweet young wife and mom in Connecticut decides to go with her sister to an amusement park in New Jersey, and take their kids for a day of fun. Her kids aren't going to be bastards in New Jersey; that state recognizes her Connecticut marriage license. She won't get pulled over for driving without a license, either; the Garden State also recognizes the operator's license issued by the Nutmeg State's Department of Motor Vehicles.

Unfortunately, she does not realize that New Jersey will not recognize her Connecticut license to carry a concealed weapon, and she is carrying her five-shot Smith & Wesson .38 Chief Special revolver. As she is ushering the children through the metal detector at the gate of the park, the metal detector goes off. She explains that it's probably just her gun. Panic ensues. Arrest follows.



Hollow points in a 5-shot S&W .38 Special like this one cost one lady \$1,000 each in fines in New Jersey.

Charged with the felony of illegally carrying a loaded, concealed handgun, she is facing serious hard time and a profound change in her quality of life. Fortunately, she comes before a sympathetic judge who understands what happened. He places her case on file, essentially meaning that if she stays clean for a while (as, of course, she will) the case will "disappear" and it will be as if nothing had ever happened.

Unfortunately, there is an ancillary charge. Had the hapless defendant read New Jersey gun laws before packing a piece there, she would also know that, alone among the fifty states, New Jersey forbids anyone but currently serving police officers from carrying hollow point ammunition in their gun

in public. This goes for those who have New Jersey concealed carry permits, and for retired cops, as well.

That good judge told the defendant kindly that he wished he could do something about that, but the way he saw the law, he had no choice but to fine her for the infraction of carrying the illegal ammunition. The fine was to the tune of one thousand dollars per cartridge. Later, when she told me that she had been fined five grand, I could only reply, "Darlin', just be glad you weren't carrying your sixteen-shot Glock."

Know thy turf. What is legal where you live, and has become second nature to you at home, may not be approved by law where you travel. For instance, it would be most unwise to bring high capacity ammunition magazines into jurisdictions where they are banned. Some states have their own "assault weapon" laws that limit you to 10-round mags. Some states, counties, and cities have banned certain firearms as "assault rifles;" it would be most unwise of you to bring your AR15 and a dozen 30-round magazines to a rifle match in such a jurisdiction.

Memorize these email addresses: [www.handgunlaw.us](http://www.handgunlaw.us) and [www.packing.org](http://www.packing.org). Either of these sites should be able to help you find which states will recognize your concealed carry permit, and what unusual laws might be in effect there.

Remember that it's not just about handguns. Some rural folks in states such as Florida have gotten so comfortable with being allowed to have a loaded rifle or shotgun in their vehicle without a permit, that they don't realize that most states do not have such provisions. I currently spend a lot of time in the Sunshine State, but when I'm driving interstate, I make sure to take the Springfield Armory M1A rifle out of the SUV and the Remington 12-gauge pump out of the trunk of the sedan.

## **Beware the snitch**

Having carried a badge for well over three decades, I've learned to appreciate snitches. They're tools of the trade. Rightly or wrongly, there's truth to another old saying: "Caesar loves the betrayal, but despises the betrayer."

A lot of informants do what they do because we have something on them. They feel a need to keep the information coming. (Imagine that!) Some of them are not above creating artificial criminals if they can't find real ones to satisfy our continuing hunger for new criminals to arrest.

Look back at the whole Ruby Ridge nightmare. It began when an insistent snitch convinced Randy Weaver to saw off a shotgun for him.

Can that happen to you? It can happen to anyone. Let me tell you a brief, true story.

Back in the mid-1970s, I was a young patrolman and shot on my department's pistol team. We had the state champion team, and my partner Rich Brown was the individual state champ, and our chief of police agreed to a request by a sportsman's organization that Rich and I should man a booth at a local outdoor sports exhibition, focusing on gun safety. We had a backstop set up where adults and kids alike could fire plastic bullets at targets from service revolvers, under rigid supervision of course, and we also had a display of law enforcement weaponry. Naturally, there was a banner there from our department, and Rich and I were in uniform.



Winchester .45 hollow points proved particularly accurate at 25 yards with this Dave Lauck custom pistol, but that ammo is illegal to carry on one's person in New Jersey, though it's legal for target shooting and home or store defense there.

Up walked a sleazy-looking guy in his thirties with a nasal voice who asked, "Got any machine guns?" I was starting to explain why none were on display when he moved closer to me and said, in a conspiratorial voice, "No, I mean, do you have any machine guns?" A little questioning on my part elicited the fact that he was looking to purchase illegal fully automatic weapons.

Keeping the sense of humor under control is something I've always had to work on when performing police duties. (It's essential equipment, to keep you sane. The time would come later when a drunk approached me, where I stood in full uniform, and asked, "Are you a cop?" I couldn't resist. I replied deadpan, "No, I'm with The Village People.")

And this time, I almost whispered, "Jeez, I've got a consignment of illegal Sten guns out in the back of the patrol car, that the IRA didn't come up with the money to pay for. You want 'em?" But, somehow, I managed to refrain. Instead, we had a little tete-a-tete and I copied down his ID.

A bit of judicious inquiry brought to light the fact that this bozo was a regular informant for BATF, the Federal Bureau of Alcohol, Tobacco, and Firearms. He had been caught doing something dirty, and had been setting people up as an informant to keep his own fat butt out of the Federal pen. And he had been so desperate, he had just proposed a profoundly illegal act to two police officers in full uniform.

Dumber than baby rocks? You bet. But what's dumber are people like Randy Weaver who go ahead and take the money for what they know is an illegal act.

Don't fall for it. The day may come when people offer to sell you fun toys that are illegal as hell, at bargain basement prices. For God's sake, don't fall for it. It's not entrapment if you were willing to do it, understand?

If you have an auto sear in the home (a device that converts a legal semi-automatic rifle into a rigidly controlled and specially licensed fully automatic one), and a rifle it will fit, you're toast. If you brew your own beer for your own consumption at home, you're not a bootlegger, and BATF can't arrest you for anything. But if you saw off a shotgun or rifle for your own use, you're bought and paid for. Don't be a schmuck.

## **Don't run your mouth**

Big talk, some folks believe, is proof that testosterone may be a substance of abuse. Folks who shoot their mouth off and swear they'll do big, scary things can actually be convincing enough to look big and scary. This calls in those authorities who are in charge of protecting the rest of society from big, scary things. It really shouldn't be that hard to understand.

How much was this a factor in the whole militia investigation that sucked Brad Metcalf into the meat-grinding end of the justice machine? Dave Duffy has spent more time studying his case than I, and I refer you to him for his analysis. I think you'll find Dave agrees that running one's mouth can have deleterious consequences.

## **"Birds of a feather"**

A huge part of Brad Metcalf's legal nightmare was the conspiracy element. Now, if you hang out with folks who do bad things, or talk as if they're planning to do bad things, but you don't have any intention of doing bad things yourself, does that mean you're not guilty of conspiracy? In ethics class, yes. In court, as Metcalf found out, not necessarily.

Human psychology tells us that yet another old saying is true: "Birds of a feather flock together." If you hang out with scumbags, don't be surprised if other folks assume you're a scumbag, too. If you hang out with people who threaten to do bad things, don't be surprised if other folks conclude that you endorse those bad things, at the very least, or are even planning to join those people in doing those bad things. Soon, the People In Charge of Dealing With Those Who Do Bad Things will come into it. What do you expect their conclusion will be about your involvement?

At this time, there is a very real (and, just in my opinion, a very frightening) chance that Hillary Clinton may become the next President of the United States. Throughout the land, you'll be able to hear Angry White Males utter words like, "Somebody oughta pop her one!"

Now, words like that tend to be overheard and reported, bringing in the Secret Service. The investigators will soon know who else was present when such a statement was made. Could an aggressive prosecutor who wanted to make a name for himself make life unpleasant for those who listened to such things and voiced no disagreement? Well, can you spell c-o-n-s-p-i-r-a-c-y?



This 20-round magazine of .308 Winchester (7.62mm NATO) ammunition for author's HK91 rifle is illegal in Hawaii; Cook County, Illinois; and some other jurisdictions.

If someone voiced such feelings in my presence, my reply (loud enough for anyone listening to the conversation to hear) would be, "Don't even joke about something like that!" It ain't political correctness. It's just common sense.

## What is a machine gun?

Let me quote from a 2005 publication, number 5300.4 to be specific, published by the U.S. Government's Bureau of Alcohol, Tobacco, Firearms, and Explosives in 2005. "ATF has encountered various AR-15 type assault rifles such as those manufactured by Colt, E.A. Company, SGW, Sendra, and others, which have been assembled with fire control components designed for use in M16 machine guns. The vast majority of these rifles which have been assembled with an M16 bolt carrier, hammer, trigger, disconnecter, and selector will fire automatically merely by manipulation of the selector or removal of the disconnecter. Many of these rifles using less than the 5 M16 parts listed above also will shoot automatically by manipulation of the selector or removal of the disconnecter.

"Any weapon which shoots automatically more than 1 shot without manual reloading, by a single function of the trigger, is a machine gun as defined in 26 U.S.C. 5845(b), the National Firearms Act (NFA). The definition of a machine gun also includes any combination of parts from which a machine gun may be assembled, if such parts are in possession or under the control of a person."

Read the above carefully. A key issue in Metcalf's case was that while he had most of the parts for a .30 caliber machine gun, he was missing the right side-plate for the receiver that would properly hold them together in sustained fire. Thinking mechanically, he apparently became convinced that he did not have the necessary parts to make the gun work PROPERLY and therefore was not in violation.

This has continued through his appeal, some elements of which lean on the fact that after a very few shots, a .30-cal. “buzz gun” without the missing part in place would likely stop operating, or even come apart.

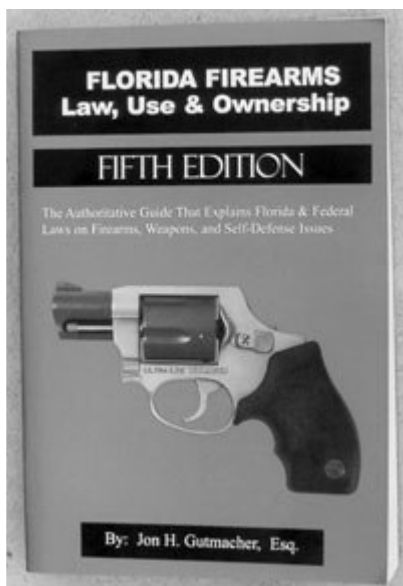
This seems to be absolutely true, in the mechanical sense. However, the prosecutors had him in the legal sense. If the parts he had were capable of sustaining fully automatic fire for as little as two shots — and an ATF expert testified that they were — that sufficed as proof of breaking the law. Legal thinking is not always the same as mechanical thinking.

Mr. Metcalf’s situation teaches us all another lesson. When looking at things from a legal perspective, think legally, not mechanically.

It is not about “what I think.” It is not about “what you think.” The question you must ask yourself is, “What are the judge and jury likely to think?”

## Illegal ammo?

Some states (Florida, for example) have laws against armor piercing or exploding handgun ammunition. I was called in years ago as an expert witness for a businessman in Broward County. On the advice of a professional fisherman, he had bought some exploding-bullet .380 rounds for his Beretta pistol, for when he went after sharks. He happened to have those in his gun when the day came that he was attacked by two men, and he had to draw in self-defense.



Check local gun shops for up-to-date compendia of gun laws in your state. Jon Gutmacher’s “Florida Firearms Law, Use & Ownership” is a classic good example.

His attorney, Bruce Lyons, did a brilliant job of defending him on the incident itself. However, between when he had bought the ammunition and when the incident took place, the state of Florida had criminalized exploding bullets. It wasn’t front-page news, and he didn’t know. But — those old sayings keep coming up here — “ignorance of the law is no excuse.” He was determined to be guilty on the charge of use of prohibited ammunition. I recommend that every citizen of Florida read the book “FLORIDA FIREARMS: Law, Use, & Ownership,” now in at least its Fifth Edition because laws change so rapidly. It was written by attorney Jon. H. Gutmacher, ISBN 0-9641958-3-6. Several other states have locally-written and published books about gun laws there; check with your local gun dealer. This stuff is essential to know.

On the federal level, it’s mainly-but-not-exclusively armor-piercing HANDGUN ammo that’s prohibited. Obviously, a bullet from a high-powered bulls-eye target rifle or big game hunting rifle will punch through a ballistic vest that’s only rated to stop a handgun round. However, since it was not expressly designed to be armor-piercing, ammo for your .30-30 hunting rifle is legal to have on hand. (Much legislation has been proposed banning “cop-killer bullets” claimed to be “armor-piercing,” that would

have banned ammunition for the millions of hunting rifles owned in America. The National Rifle Association has fought them, thus far successfully. This is why anti-gun politicians and lobbyists twist the facts and tell you that “NRA doesn’t want to ban armor-piercing cop-killer bullets.”)

Ammo designed expressly to be fired from common handguns and pierce armor includes the KTW,

Arcane, and THV brands. The KTW bullet originally was made of tungsten, which was so much harder than ordnance steel that firing it quickly ruined the rifling in gun barrels. The inventors coated it with Teflon to keep that from happening. The result was that the media erroneously developed the idea that coating a bullet with Teflon somehow made it armor piercing. The Arcane's projectile was made of solid brass or bronze. The THV had a long, narrow tip resembling a little flagpole.

Some armor-piercing rifle ammo is also on the no-no list. This includes U.S. .30 caliber M2AP, which some of your forebears used to shoot through the trunks of palm trees with their M1 Garands, blasting Japanese soldiers out from behind their cover in the Pacific Theater in WWII. There's a lot of it still floating around, once sold dirt cheap as military surplus. It tends to have corrosive priming and can turn the inside of your .30-06's barrel to solid rust if not immediately and thoroughly cleaned, anyway.

7.62X39 ammo for popular SKS rifles and AK47 clones? The U.S. Government recognizes that commonly encountered cheap foreign surplus ammo is often found with either steel jackets or steel cores, and that steel cores are intended to pierce armor but steel jackets are simply a cost-saving measure. An ATF manual says flatly, "Note: Projectiles having a lead core with steel jacket or steel case are not armor piercing."

Gun-related laws in this country are a vast morass, a "crazy quilt." When in doubt, surf to the Bureau's official website, [www.atf.gov](http://www.atf.gov).

You can also phone the ATF with your questions, either the local office (usually in large cities), or the headquarters in Washington, DC. Anyone who's worried about calls being traced and black helicopters and all that, can always call anonymously from a prepaid cell phone.

## Appointed counsel

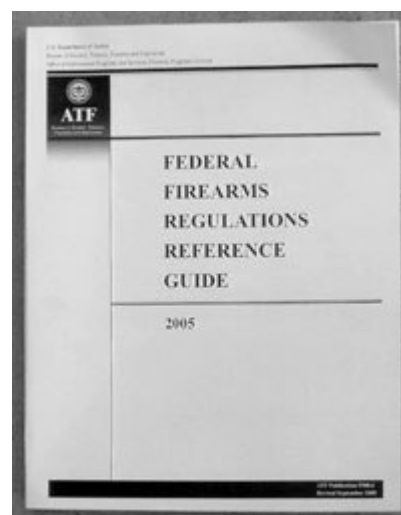
"I'm not worried about getting railroaded into prison," you'll hear. "I'm poor, so they have to give me a free lawyer - bwahahaha!" Not a good plan.

Although I've seen dedicated appointed counsel deliver superb trial advocacy on behalf of wrongly accused clients, I've also seen a lot of court-appointed lawyers who

considered themselves overworked and underpaid, and found the path of least resistance was to tell the client, "Just plead!" Public defenders? I love 'em, and there are some truly fine lawyers among them: the modern legend Roy Black came from their ranks. Still, they're overworked and have limited resources for investigations, hiring of expert witnesses, etc. Dave Duffy didn't want an overworked cardiac surgeon doing his heart bypass operation, and having an overworked public defender handle your defense is not a great idea, either, if you can possibly avoid it. Brad Metcalf chose to represent himself; that's almost always a bad idea.

## About free speech

Free speech isn't necessarily free. It can cost you. I like to look in now and then on this or that electronic gun forum. There's a lot of good stuff there, but you need a REALLY good BS filter to sort the wheat from the chaff. In the past year I saw:



This guide from BATFE is invaluable in terms of keeping out of trouble with the Feds. Always refer to the latest edition; regulations change frequently.

- One young man who stridently insisted that he did in fact “have the right to shout ‘fire’ in a crowded theater,” because “free speech means I can say what I want.” Fortunately, many voices of reason invoked both common sense and the Supreme Court of the United States and told him, “Uh, actually...NO!”
- More than one whose answer to dealing with the aftermath of a self-defense shooting was “Shoot, Shovel, Shut up.” That is, dispose of the corpse and pretend nothing happened. There is no quicker way to turn a “clean shoot” into Manslaughter or even Premeditated Murder. Judges routinely allow the argument that alteration of evidence can be seen as an indication of prior planning of a crime.
- More than one who posted to the effect, “I don’t need a permit to carry a gun. The Second Amendment says I can carry a gun any time, anywhere. I don’t need no stinking permit.” Well, there’s a large body of caselaw that says otherwise. People who think that way will find their next argument being made in the prison showers: “No, Bubba! The Bill of Rights says you and your two 300-pound buddies can’t bend me over like this and make me an unwilling participant in sodomy! Nooo....!”

Last issue Dave Duffy also told you the story of Matt Bandy and some pretty scary stuff about computer security that you REALLY need to know. He and the experts whom he sources know a whole lot more about that than I, but I can add one thing to that discussion: I’m in my 34th year as a sworn police officer, my 19th as a certified “police prosecutor,” and I know for a fact that we DO have the technology to pull things out of your hard drive that you thought were deleted. We DO have the right to ask you, under penalty of perjury, whether you post on any Internet forum, and under what name, and we DO have the power to subpoena any posts via your IP from the Internet hosts, who under law have no choice but to “give you up.” Don’t let the seeming anonymity of the Internet delude you: when things get serious, you won’t be anonymous anymore.

An alternate reality is a lonely place. People who can’t tell the difference between “how they think things should be” and “how things are” have little credibility when push comes to shove, and they have a very bad history insofar as getting themselves and people they love in trouble. This column is about guns, but in the end, it’s about Life, and it’s about that cardinal Backwoods Home virtue, Common Sense.