

Will It Hurt Me in Court?

Weapons Issues and the Fears of the Legally Armed Citizen

by Glenn Meyer

In 1995, Dr. Suzanna Gratia-Hupp testified that her inability to legally carry a handgun prevented her from stopping a 1991 Killen, Texas restaurant massacre. Dr. Gratia-Hupp had a 38 SPL Smith handgun in her car and pointed that out to legislators after the murders shook the state of Texas. Her testimony was crucial to passing the Texas concealed carry law. Sharon Jo Ramboz's use of an AR-15 assault rifle to defend her home was not compelling in the 1995 Congressional hearings leading to the Assault Weapons Ban (Homsher, 2001). Did the AR-15 make her less persuasive?

Firearms are ubiquitous in American society. Roughly one in every two households may possess at least one gun and studies indicate that citizens use privately owned firearms in defensive situations much more often than once believed (Kleck, 1997). There has been intensive criminological research on civilian self-defense usage of firearms (Kleck, 1991, 1997). Called a defensive gun usage (DGU), the number of such incidents is arguably in the order of one to two million a year. Legislation allowing the carrying of firearms is now quite common with a large majority of states (40 at the time of writing) issuing easy to obtain permits or licenses for the concealed carry of handguns. Some states issuing these instruments also require instructions for these civilians on the laws, ethics and consequences of using deadly force. Following the November 2008 Presidential election there has been a buying binge of firearms and ammunition. Many have underappreciated the change in American gun culture which, traditionally, has been oriented towards hunters and sportsman. Today, a somewhat separate and large culture of defensive gun users has developed (Wyant & Taylor, 2005).

Predictably, the defensive gun culture is concerned with the legal ramifications of gun usage. Popular gun magazines are full of legal cautions by their columnists such as Massad Ayoob and with tales of defensive usage such as the American Rifleman's Armed Citizen column. Understanding these ramifications is important to gun users and legal professionals for a variety of reasons, and understanding how defensive gun usage affects others' views of gun users is equally important.

There has been a small but coherent set of studies relating to the psychological factors of firearms usage and influence on social cognition. A firearm's appearance can have a powerful psychological impact on decision-making and memory. Eyewitnesses to a crime may focus on the gun to the detriment of recalling other details (weapons focus effect - Kramer, Buckhout, & Eugenio, 1990; Pickel, 1998; Steblay, 1992). Firearms also can prime aggressive ideation and reactions (weapons effect). The mere presence of a weapon may cause folks to act more aggressively to others (Anderson, Benjamin & Bartholow, 1998; Berkowitz, 1993; Berkowitz and LePage, 1967).

Weapons-related Factors and Gender Can Influence Jury Decisions

Researchers have concluded weapons presence can influence legal proceedings through jurors' evaluation of motives (Berkowitz & LePage, 1967). Dienstbier, Roesch, Mizumoto, Hemenover, Lott, and Carlo (1998) found with increased weapon salience, due to more direct exposure, mock jurors attributed more guilt and assigned longer sentences to the gun user - in that case an armed burglar. Females gave longer sentences and were more affected by weapons exposure.

Branscombe, Crosby, and Weir (1993) conducted mock trial research involving a homeowner who shot a burglar, and found incompetent male shooters and competent female shooters were dealt with more harshly

than the reverse pairing. The interaction seemed due to whether or not homeowners breached stereotypical standards (males being competent shooters and females incompetent). Shooters who violated gender roles were perceived more negatively for their use of a firearm than those who did not breach normal gender roles.

Can the appearance and characteristics of a firearm influence a jury decision? Legal scholars have suggested that appearance of excessive force in a self-defense situation (i.e. the martial arts) can affect tort liability (Whitaker, 1995-1996) and that might apply to firearms. Certainly, there is ongoing discussion of banning so-called 'assault weapons' even though past legislative endeavors seem to have no effect on crime rate indices (Koper & Roth, 2001).



Weapons appearance has been discussed in criminal cases. In a recent Court TV televised trial (Florida v. Roten, 2000), the defendant was accused of a hate crime shooting. Roten used a modified SKS (an older Soviet pattern 7.62 mm semiautomatic military rifle) with accessories that might make the rifle appear fiercer than some. A commentator asked why anyone would need such a weapon.

Many people believe that certain types of guns are "good for only one thing - to kill" (Kleck, 1997, p. 16). Self-defense writers discuss in the popular gun press whether an aggressive looking weapon can influence your trial with articles such as "Firepower: how much is too much?" (Ayoob, 2000) and commented on how juries can be influenced by media impressions of assault rifles (Rauch, 2004). Owners of such weapons are portrayed as deranged and militarized appearing weapons are demonized. Even in the overall gun culture there can be a dichotomy of views. Bartholow, et al (2005) found that hunters had negative views about assault weapons as compared to guns primarily designed for sport. A gun writer - Jim Zumbo unleashed a firestorm on himself when as a hunter he denounced assault rifles and later had to recant (Zumbo, 2007).

A weapon's appearance can also be a concern to police. There has been significant debate over whether military style weapons are appropriate for civilian law enforcement (for example: Associated Press, 2002). Assault weapons' paramilitary appearance can color the public's attitude towards their usage. Clearly, some believe the decision to use a certain weapon type may be an indicator that a user's mindset is more aggressive than simple self-defense.

However, whether such factors actually influence jurors' perceptions of civilian and police gun users is an empirical question. We tested this in our article that recently appeared in the *Journal of Applied Social Psychology* (Meyer, Banos, Gerondale, Kiriazes, Lakin, & Rinker, 2009). We explored the influence of various types of weapons on simulated juror decisions. Are defendants judged more harshly if they use a more fearsome seeming weapon? It would be a likely prediction. We also varied the gender of the mock jurors and the shooter. We would expect that women may give harsher sentences but that might interact with defendant gender. Last, we tested weapons effects with civilians and police officers. The latter are more familiar with the use of deadly force.

An Empirical Study of Weapons Effects

We conducted three experiments on whether the type of weapons used in a home defense scenario would influence a jury. All used the same classic defensive gun use conundrum that is ubiquitous in firearms training and similar to that used by Branscombe, et al, (1993) and Dienstbier, et al. (1998). Mock juror participants were presented with detailed written descriptions of a burglary scenario including defensive gun usage. The written presentations were created with the input of legal and law enforcement professionals to

ensure that the arguments were valid and are comparable to other jury simulation methodologies (Bornstein, 1999; Roesch, Hart & Ogloff, 1999).

First, the written presentation described the incident in factual terms: A homeowner hears a sound at night, downstairs, and investigates. The homeowner comes to the foot of the stairs and is armed. A burglar is discovered in the act of stealing a VCR. The homeowner challenges the burglar by pointing the firearm at him and ordering him, "Don't Move". The burglar responds with a curse and a threat to kill the homeowner. The burglar does not have a visible weapon. The homeowner then shoots the burglar twice, killing him. After the shooting, the homeowner calls 911 immediately and informs the police of the actions of the burglar described above.



The scenario is ambiguous in regards to the need of the homeowner to shoot. While laws may vary state to state (Kleck, 1991, 1997), in many this would be a defensible shooting if the homeowner saw the threat as credible. However, the homeowner did have the burglar at a disadvantage and another jurisdiction might indict and try the homeowner. The scenarios also contained additional factual descriptions of the firearm, the layout of the home, the fatal injuries and other details.

Second, mock jurors read the prosecution's and the defendant's portrayal of the incident. The prosecution emphasized that there was no need to engage or shoot the burglar and there was the possibility of retreat. The District Attorney brought the charges of Second Degree Murder with a possible penalty of up to a 25 year sentence against the defendant and argued he was never truly in danger of grievous bodily harm, could have retreated, or at least waited before firing the weapon.

The defense emphasized that the homeowner feared for his life or felt in danger of grievous bodily harm and did not have the duty to retreat. When the burglar turned, he feared that this younger man might rush him. The distance of 15 feet could be closed in a second's time. Thus, the defendant felt there was sufficient disparity of force (difference in physical abilities) that if the burglar could quickly put him at risk of significant harm. The defendant was also operating under the "Castle Doctrine": A person's home is his or her castle and one does not have to retreat in one's own home nor should one be compelled to hide if one suspects an intruder is present.

The studies incorporated six different weapons used by the homeowner. Images and descriptions are presented in Figure 1.

Figure 1. Firearms used in the studies and their characteristics. Not to scale. From Meyer et al - *Journal of Applied Social Psychology*, 2009.

**1. Ruger Mini-14 .223 Caliber Semiauto,
Variable capacity (5 to 30 rounds)**



**2. AR-15 .223 Caliber Semiauto;
Variable Capacity (5 to 30 rounds)**



**3. Winchester 1300 Defender 12 gauge
pump action shotgun (8 rounds)**



**4. Winchester Over/Under 12 gauge
shotgun (2 rounds)**



**Firearms Used
In Scenarios**

**5. Glock 19 9 mm
Semiauto pistol;
10 to 15 rounds**



**6. Smith & Wesson 642
38 SPL Revolver;
5 rounds**



Importantly, folk wisdom may discriminate between good and bad types of guns (Kleck, 1997). Good guns are used for hunting and sport purposes. Bad guns are designed explicitly for inflicting pain and death on others. AR-15s are commonly called assault rifles due to their military ancestry. Their appearance may suggest a sinister purpose (Kleck, 1997, p. 16; Owen, 1996), and some see them without any justifiable civilian purpose and as a societal threat. We hypothesized that the AR-15 would be the most effective firearm in priming negative attributions to the defendant (as per Bartholow et al., 2005).

The other guns were chosen for various characteristics that might mediate their effect on participants. For instance, the Ruger Mini-14 rifle is equivalent in power and lethality to the AR-15 but it is a wooden stocked rifle of a more sporting appearance. It serves as an important comparison to the AR-15. Shotguns were used because they are common in American households and the two handguns were chosen as many people own these type of handguns purely for protection (Kleck, 1991, 1997). For each pair of weapons, one is more likely to be perceived as an aggressive weapon or menacing weapon.

Finally, after the case presentations, participants were asked to render a verdict by assessing guilt and/or assigning a sentence. Mock jurors were drawn from two separate populations: college students at Trinity

University - a liberal arts college in San Antonio, Texas; or community college students at the Alamo Community College, also in San Antonio, Texas. In the first study with Trinity University liberal arts students, the burglar was male and the homeowner was male. We presented the case scenarios and asked mock jurors to recommend sentencing judgments (time periods of incarceration) for the homeowner-defendant based on six different possible guns used in the shooting.

The Effects of Juror Gender and Weapon Type

Women delivered the homeowner defendants higher sentences than men (Male average = 3.9 years and female average = 5.7 years). Importantly the average recommended sentence when the homeowner used the AR-15 weapon was 7.2 years for male subjects and 8.5 for females. This was significantly higher than any of the other gun types. The handguns had the lowest recommended sentences (in the two to four year range).

We replicated the experiment with students from the local community college who were older and had different socio-economic status and life experiences than liberal arts students. We focused on two gun scenarios, the AR-15 and the Ruger Mini-14. Both are equally potent but the latter looks less aggressive to some. We also analyzed judgment of guilt versus innocence. In direct comparison - the AR-15 yielded significantly longer mean recommended sentences in the order of seven to nine years as compared to the Ruger (approximately two and a half years). On the verdict side, the percent of guilty judgments was approximately 65% for the AR-15 vs. 45% for the Ruger.

The Interaction of Juror Gender, Shooter Gender and Weapon Type

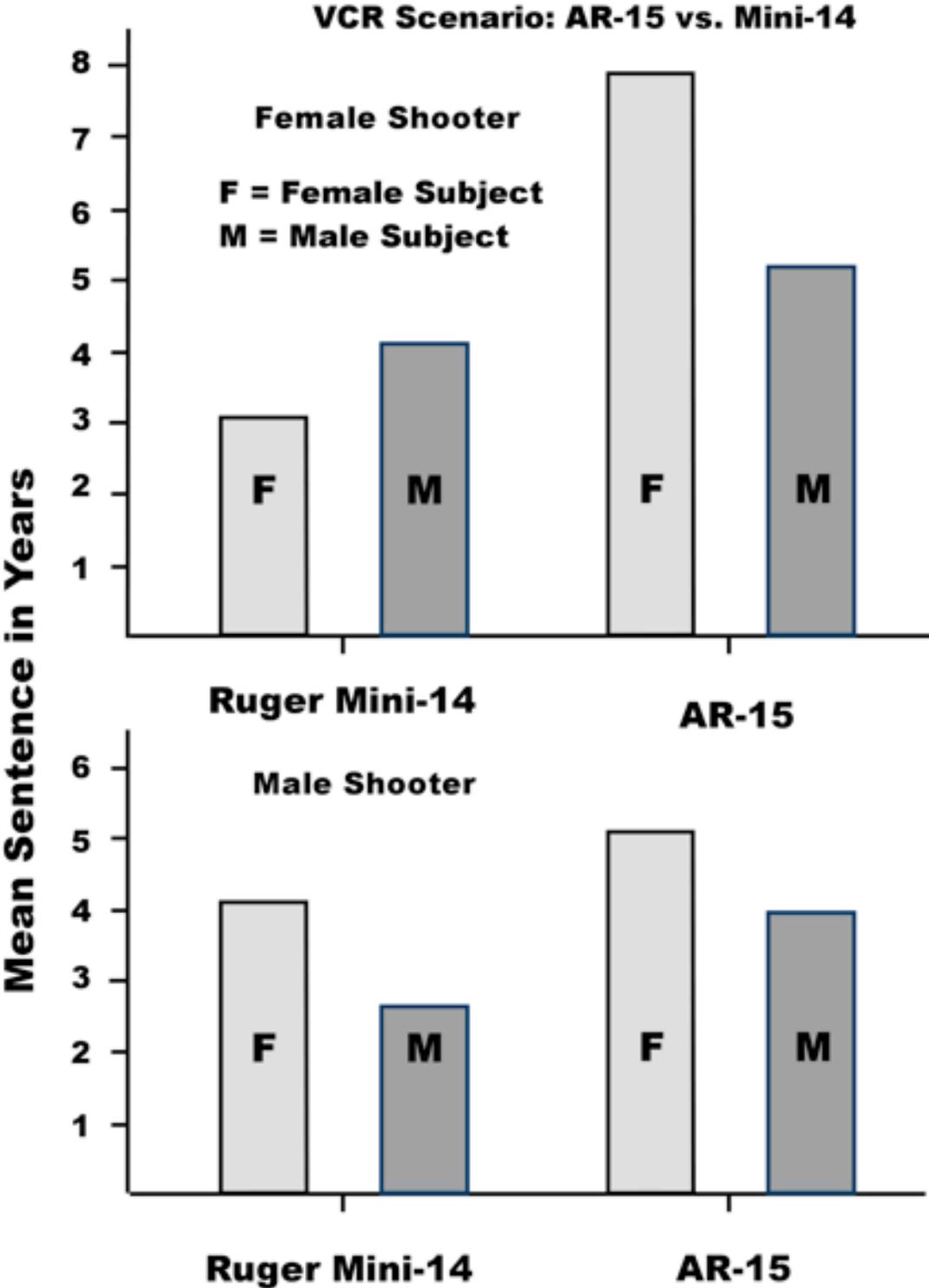
In the third and final experiment of the burglary series we added a female shooter to the mix. Women's armed self-defense has become a focus in the firearms world for marketing purposes. There is also a strong literature on empowering women to defend themselves in the feminist, sociological and psychological literature. Some do not view being a passive victim as an acceptable alternative for women, even though some society values seem to still encourage it (Hollander, 2009). In fact, some frown upon a woman taking a strong position of self-defense. The literature also suggests that gender differences can be potent in firearms based decisions and societal attitudes towards women's use of force (Homsher, 2001; Howes & Stevenson, 1993; McCaughey, 1997; Stange & Oyster, 2000). While unprecedented numbers of women are learning to maim, knock out and shoot men who assault them (McCaughey (1997), not all feminists enthusiastically endorse gun usage. Anderson (2001) argues that teaching women to use guns dis-empowers them. Analyses of popular culture is useful as well. In an analysis of women, guns and film, Dole (2000) states: "Despite widespread support for strong images of women in the media, mainstream film viewers and academic feminists alike have hesitated to celebrate cinematic women with guns, even those who are upholders of law" (p.11).

Thus, we tested the same burglary scenario with a female homeowner/shooter in addition to a male. Based on Branscombe, et al (1993) we expected mock jurors to judge female shooters more harshly. Interactions with weapon type might be expected as using the AR-15 might violate gender stereotype more than the Mini-14.

Participants in this study were students in introductory psychology classes. The same materials and procedure were used again in this experiment. Participants were asked to make a guilty/not guilty judgment. Next, participants were asked to assign a sentence assuming the defendant was found guilty, that could range up to 25 years. Except for the mention of the homeowner's gender, no specific points about risk based on being a female were made. Each participant saw only one scenario.

We found the overall effect of gun type was significant. AR-15 shooters were given longer sentences. The most telling finding was that female mock jurors gave female AR-15 shooters the harshest sentences - a mean of approximately eight years as compared to a male average of five and a half years. In comparison, the lowest average recommended sentence was for a male shooting a Ruger Mini - about two and a half years. Thus, gun type and gender could be a potent combination in sentencing. See the summarized data presented in Figure 2.

Figure 2. Mean sentences in Experiment Three: Intruder stealing VCR. From Meyer et al - *Journal of Applied Social Psychology*, 2009.



Our analyses of guilty and non-guilty verdict decisions found that females were more likely to find the defendant guilty (regardless of defendant gender). The other effects didn't reach statistical significance (though some were close) but there was some indication that the AR-15 usage was detrimental to a defendant's chances of acquittal. The female shooter with the AR-15 did receive the highest percent of guilty verdicts (about 75%). The literature (Diamond, 1997) suggests that simulations using dichotomous variables may not be that sensitive, even though yes/no on guilt is of obvious importance in the courtroom.

Police Perceptions of Weapon Types

An intentional but mistaken shooting of civilians by police is traumatic for all involved. The best known case is that of Amadou Diallo who on Feb. 4, 1999 was shot 19 times and killed near his Bronx apartment building when police mistook his wallet for a gun (Cooper, 1999). Police use of assault rifles like the AR-15 is also controversial - and has increased after notorious shoot-outs (like the North Hollywood Shoot-out) and as a response to terrorism and rampage shootings.

So we explored a research scenario in which research participants were law enforcement officers with real world experience using lethal force. We tested a police shooting gone awry. The basic scenario was that an officer arrived at the scene of a convenience store robbery. Three people fled through the front door and the officer shot them in mistake, thinking they were perpetrators. The shots could have been fired from an AR-15 or a Glock (a standard police pistol). The officer was put on trial for aggravated assault. The participants in this study were, in fact, police officers - not college students.

In summary, we found that weapons and gender effects are relevant to police officers as well as civilian mock jurors. The male officers using an AR-15 were sentenced harshly but not as harshly as females using a Glock. Women were also more likely to be viewed as guilty using the Glock. Overall, the results are consistent with gender based expectations. Men should be competent with a rifle but one might not expect women to be. However, they should be competent, at least, with their service side arm. The fact that a female shooter made a shooting mistake with a simple handgun may result in more negative views of that shooter by male police officers.

Conclusions and Practical Applications

Our results pull together various threads in the professional and popular literatures. First, gender is an important factor to perceptions of weapon use. Gender main effects in several of the experiments were significant, with women participants judging shooters more harshly. Gun type is also an important factor. We found some level of risk associated with AR-15 guns in all the experiments that applied to both male and female shooters. The increased risk for civilian women with AR-15s is consistent with previous findings of harsher judgments of women who violate gender-based weapon use stereotypes (Branscombe et al., 1993). Using an AR-15 was likely to be such a violation. McCaughey (1997) in a feminist analysis of women who train in self-defense tactics suggest they are at risk at trial for not seemingly womanly and victim-like. Branscombe and Weir (1992) argued that behavior which does not fit classic schema of the female stereotype will be construed as abnormal. It is then easier to assign alternate outcomes and blame to the supposed victim. In short, shooters using an AR-15 may violate the perceived norms of someone in a defensive mode. Mock jurors may not see an AR-15 as a 'normal' defensive weapon for the typical homeowner. This viewpoint may be even more damaging for women.

The police findings are interesting, and puzzling in part, as there was clearly an effect of the AR-15 for the male officers as defendants in the sentence judgment. Sentences for male officer defendants who used the AR-15 were twice as long as those of male officers who used the Glock 19. However, if anything, the female officer defendants were more harshly evaluated for using the Glock 19, the standard handgun, in both

sentencing and guilt ratings. In many departments, AR-15s are not usually issued. The findings might be a special case of Branscombe et al's (1993) competent shooter effect. Male officers are expected to be more competent than females by many male law enforcement officers. Thus the misuse of a specialized firearm by a male may be seen as more grievous than by a female. Similarly, the handgun usage should reflect at least minimal competence as a basic tool of an officer. The female who cannot show that minimal competence is more harshly treated, especially if she violates a perceived male domain. Unfortunately, we could not gather enough females participants to investigate the effect of participant gender. The data from the male officers are of interest. It is the case that above analysis is speculative in the case of the Glock 19 effect for females.

Our findings confirm the general role of gender stereotype in decision-making. Also, weapons priming of negative attributions are extended to specific weapon types. Legal applications are varied. Prosecuting and defense attorneys may want to consider weapons and gender interactions during *voir dire* and trial. Law enforcement officers and homeowners may want to consider the interaction of weapons appearance and legal risk. This is not to say that effective weapons should not be used, but one would be foolish not to have knowledge of potential problems. As Branscombe et al. (1993) points out in response to suggestions that females not use guns, as they may be at an increased risk at trial, a defense attorney should be cognizant of these weapons effects. The defense attorney may then use appropriate arguments and experts to diffuse them. It is important to note that the AR-15 was not specifically discussed as being an assault rifle or in some way unusual but only in technical terms and matched with equally lethal weapons. A law enforcement officer suggested that for the issue of weapons type to be important at trial, an attorney would have to bring it up and a judge might not allow that. However, our studies and earlier studies indicate that the simple presence of the weapon can be influential. Attorneys should be cognizant of the gun presence, gender and gun type effects/gender interactions so as to mount an effective defense for their client.

Dr. Glenn E. Meyer is a Professor of Psychology at Trinity University, located in San Antonio, Texas. His areas of research are cognitive psychology and visual perception. Recently he has focused on the social cognition of aggression as it relates to the legal ramifications of firearms usage and has participated in several high end training events involving critical incidents. You can contact Dr. Meyer at gmeyer@trinity.edu and see more about his research at <http://www.trinity.edu/gmeyer>.

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We asked two experienced trial consultants to respond to Glenn Meyer's article on jurors, gender and guns. Wendy Saxon & Kevin Bouly share their reactions on the following pages.

Response to Juror Perceptions of Guilt and Severity of Sentencing Based on Gender of Juror vs. Shooter By Wendy Saxon

Wendy Saxon, PhD, CT, CTS (drwsaxon@charter.net) is a trial consultant based in Los Angeles County. She has been picking juries since 1977.

Dr. Meyer submits valuable information for those who choose jurors to hear these types of cases. He hypothesized that the AR-15 would be the most effective firearm in priming negative attributions to a defendant. We are not ready for women wielding AR-15 assault rifles and are slightly less accepting of women willing to own, handle, and use any type of assault weapon. Though it makes little sense, women are expected to become proficient with tiny (by comparison) handguns if they want a weapon for home and/or personal protection. These are "competent" female gun handlers and there may be a degree of envy involved in mock jurors' censoring (men because they are not as good and women because the TV cops are so attractive). And in terms of suspicion as to motive, there is indeed a priming effect: why have a weapon whose only purpose is to kill human beings, unless you are itching to do so? And what decent woman would be itching to kill? As Dr. Meyer notes, "Clearly, some believe the decision to use a certain weapon type may be an indicator that a user's mindset is more aggressive than simple self-defense."



Many people opine that assault weapons are "over the top" and unsportsman-like for hunting. In many people's minds, assault weapons are equated with images of slaughter/an uneven "playing field." Perhaps the solution is for women to rely on shotguns, which many male and female jurors, despite their current gun control views, remember fondly from trips to see grandparents. Besides, that "racking" of a pump gun is the nonverbal equivalent of saying, "you have been warned." If a homeowner does find himself/herself charged with second-degree murder, this would be a viable aspect of defending one's actions. There is indeed a large and separate group of emerging gun owners who are concerned with home and personal defense. We may see an increase in these types of cases, with innocents also

being erroneously identified as intruders and harmed or killed. These statistics will be interesting to see in November 2013 at the five year mark, given the astounding increase of sales of guns and ammunition.

Female jurors may differ from male jurors in perceptions of firearm possession and usage, to be sure. Restricting analysis to the deceptively simple case scenario of a person awakening to the presence of a burglar in their home, a female juror may experience more identification with either sex of shooter (based on vulnerability) than a male juror inasmuch as most females do not have combative skills and feel that lethal force is the solution to finding a male intruder in the middle of the night. This is especially true because male burglars will "size up" a woman instinctively as easier to "take down" than another man.

The following variables are most likely to be salient when assessing a female juror with this scenario. Where was the juror born and raised? Was she accustomed to firearms in the home and community? Did she handle firearms herself, and if so, by what age, and for what purpose? If she did not handle firearms, was she comfortable with firearms in the home? Are there currently firearms in the home? If so, does she handle and/or has she ever fired them? Does she own any firearms herself? For what purpose? How comfortable is she, handling her firearm(s)? What are her thoughts on the possession of firearms for home and personal protection? Has she ever been the victim of, or witnessed, a violent crime? Is she opposed to civilian possession of firearms? How knowledgeable is she about different types of firearms?

The same questions are pertinent to male jurors, however there is much more at stake with female jurors, as men generally have well-formed thoughts on these issues, and females may never have thought in depth about the possession and use of firearms. Ironically, men may be more accepting of the lethal use of force by females than women, as the average female is more likely to have unrealistic thoughts about using peaceable means to negotiate with intruders and/or perpetrators.

The choice of firearms used by Dr Meyer are excellent. Knowledgeability of firearms goes a long way with either male or female jurors. Best would be the pump action shotgun, as there is no deterrent better than the sound of a shotgun being racked. Moreover, both .223 assault-style weapons are liable to go through walls and harm neighbors. Women are better served by "long" guns in general, as pistols require much more skill and a steady hand. The 9 mm is easier to be accurate with, but there is always the chance of a jam. The .38 is more reliable but harder to be accurate with, due to the barrel length. So a trial lawyer may want to "school" the jurors on the fact that while the .38 is "cuter" the "mean" looking pump action is a much better weapon for both men and women.

In a "bad" police shooting, women will be seen by both males and females as probably over-reacting and misperceiving the nature and extent of a threat in an ambiguous situation. This is because we aren't entirely out of the woods with our stereotype that when something goes horribly wrong, women are less able to think in a cool and rational manner. Police officers themselves often react this way when hearing of either friendly fire or shooting of an innocent bystander during a crime in progress.

In many regions of this country, men and women hunt side by side (witness the LL Bean catalogue) and many web sites market directly to women (witness Kahr Firearms "Thin is Sexy" ad). Both "short" and "long" guns are now being made in "pink" for women. We are witnessing a dramatic upsurge in the number of women recruits to both the military and all arms of law enforcement. Sigourney Weaver started the trend of "Female Warrior" in "Alien" and TV currently has several hit dramas that regularly show women drawing their duty weapons, e.g. Law & Order, NCIS, Saving Grace, Cold Case, Without a Trace. These characters, as well as the females portraying physicians, e.g. HOUSE, Grey's Anatomy, Private Practice, are the role models for today's generation.

The deceptively simple scenario of the home intruder does not factor in the "fight or flight" psycho-physiological responses to the potentially life-threatening event (see *The Stress of Life*, Hans Selye) and the trial lawyer would do well to evaluate carefully the defendant's life history and experiences, and the impact of same on decision-making. Actually, a higher standard should be applied to those with training (such as police and military) as opposed to the average civilian, male or female, who is functioning with great fear. This must be conveyed to jurors through scene re-enactment, experts, and defendant testimony.

Response to Meyer by Kevin Bouilly

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I don't know much about guns. Meyer's articulation of weapons effects in criminal cases confirms a lot of what we know about jurors - both civil and criminal - and how they make decisions. In many respects, it doesn't matter if we're talking about boys, girls, glocks, gray hair or greed - human bias invades and influences juror decisions about victims and their alleged perpetrators as well as civil litigants from corporations to careless drivers. Human as these biases are, they obviously reach far beyond but have specific application in the confines of the courtroom.

So how does Meyers' discussion of weapons and gender effects influence us in practice? First, something tells me gun users are unlikely to stop and think about how potential jurors may perceive their use of a firearm before choosing between two different assault rifles, or reaching for their bedside glock when something goes bump in the night. But, Meyer suggests, "Prosecuting and defense attorneys may want to consider weapons and gender interactions during *voir dire* and trial." And I say, absolutely. And here are a few other ways to apply Meyer's discussion to juror decision-making more broadly.

1) Violating juror expectations can be an excellent persuasive tool.

Under the surface or out in the open, juror expectations are always operating and influencing information processing and decision-making. Meyer writes, "Branscombe and Weir (1992) argued that behavior which does not fit classic schema of the female stereotype will be construed as abnormal. It is then easier to assign alternate outcomes and blame to the supposed victim"

Sure, violated juror expectation can result in negative responses to the violator. And when you're talking weapons effects, as Meyer notes, "This viewpoint may be even more damaging for women." However, juror expectations can work in your favor. A surprising or even shocking message from a trial attorney or witness can violate jurors' expectations in a positive way and result in greater credibility and persuasive power. Embracing obvious case challenges and juror "givens" is often the best way to pique juror interest and take a position of strength in spite of your perceived weaknesses. Jurors are often positively surprised by candor and openness, whose positive effects can outweigh the negative effect of any supposed admissions.

2) Jurors often make the most out of what you discuss the least.

Meyer writes, "A law enforcement officer suggested that for the issue of weapons type to be important at trial, an attorney would have to bring it up and a judge might not allow that. However, our studies and earlier studies indicate that the simple presence of the weapon can be influential."



In most instances, a simple revelation of the facts without any TV drama or unnecessary histrionics gives jurors exactly what they need to decide on their own what is important (e.g. a victim's weapon type, that an employee's pattern of past behavior is critical to his termination, that a corporation's consistent push to exceed government standards is relevant to its safety performance, etc.). Most soft pedal issues are predictable, and mock jury research is a great way to help identify how to handle them with greater confidence and give jurors exactly what they need to absorb your trial message.

3) Black sheep judge black sheep most harshly.

Others have written more authoritatively on juror gender and black sheep effects in both civil and criminal cases, but Meyer's article is a good reminder that juror dynamics can be nuanced and counterintuitive. We know jurors often judge most harshly others who are most like themselves and it can be a fine line between finding a juror who is sympathetic and a juror is dangerously critical. Taken generally, the fact that females judge most harshly other females who violated norms (by using an assault rifle) is not surprising. Expect exactly that phenomenon across many types of litigation and across many case specific circumstances.

Glenn Meyer responds to Wendy Saxon & Kevin Bouilly

I would like to thank Drs. Saxon and Bouilly for their kind comments. Picking a firearm for self-defense is a complicated issue due to the legal and technical ramifications. Appropriate training is recommended most highly. It is particularly important for women as they can get a great deal of 'male' oriented puffery when they engage the issue. Shotguns are fine guns but may be difficult for the untrained to use. It is true that Kleck found that most defensive gun usages are deterrent but what if deterrence doesn't work? In any case, the gold standard as a reference for women choosing firearms (and controlling for male exuberance) is <http://www.corneredcat.com> by Kathy Jackson. Ms. Jackson is a recognized expert, magazine editor and author in the self-defense domain.

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On civility, racial slurs, graphic pictures & anthropomorphism

Recent days have been filled with news about (very public) rude and/or disrespectful behavior from athletes, celebrities, and politicians. Pundits and pollsters are telling us what it means about our society and about the deepening political divisions in our country. Media outlets are covering the frenzy intently and 'civility' is being talked about as a behavior sorely lacking in our society today. It does make us stop and think about how each of us is responsible for our own behavior and for treating each other with respect.

Our goal with *The Jury Expert* is not only to help you increase your trial skills but also to offer information that helps you pause and ponder from time to time. This issue features diverse and provocative pieces that we hope will make you stop and think about hate crimes, racial slurs, graphic injury photographs, and assault weapons as self-defense tools.

In addition, we have terrific pieces on the contribution of the mediator to the negotiation process; how to identify leaders in the jury pool; the benefits of humanizing complex evidence through anthropomorphism in technical presentations; considering the need for alternative cause strategies in product liability litigation; and a primer of sorts, disguised as our September 2009 Favorite Thing.

Read us cover to cover (or web page to web page)! Tell your friends and colleagues about us. Help *The Jury Expert* travel to offices in venues where we've never been before. And, as always, if you have topics you'd like addressed in upcoming issues, let me know.

--- *Rita R. Handrich, Ph.D.*



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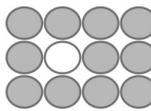
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