

Defending Self-Defense Cases

The background of the slide features a faint, stylized image of a pair of scales of justice. The scales are positioned behind the text, with the central pillar and the two pans visible. The lighting is soft, creating a subtle gradient across the scales.

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Meet Your Presenter

- **Trial Lawyer**
Criminal Law
Defense of Gun
Owners,
Gun Dealers
& Gun
Manufacturers

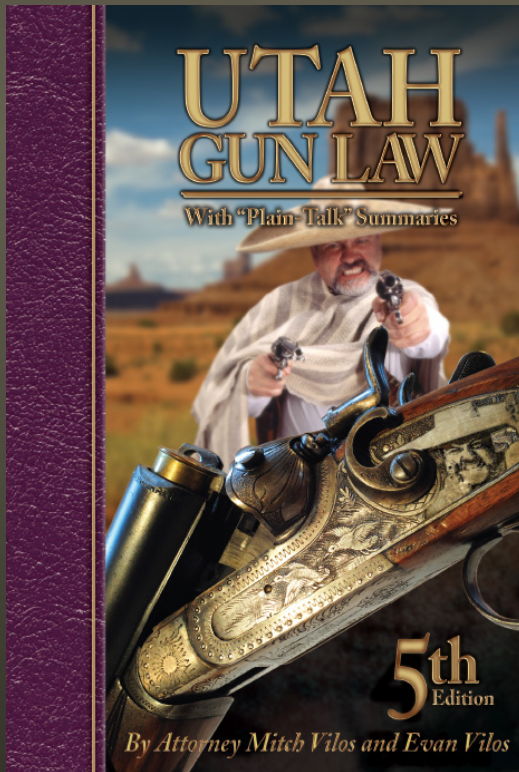


State of Utah v. “SuperDell” “Brandishing Case”

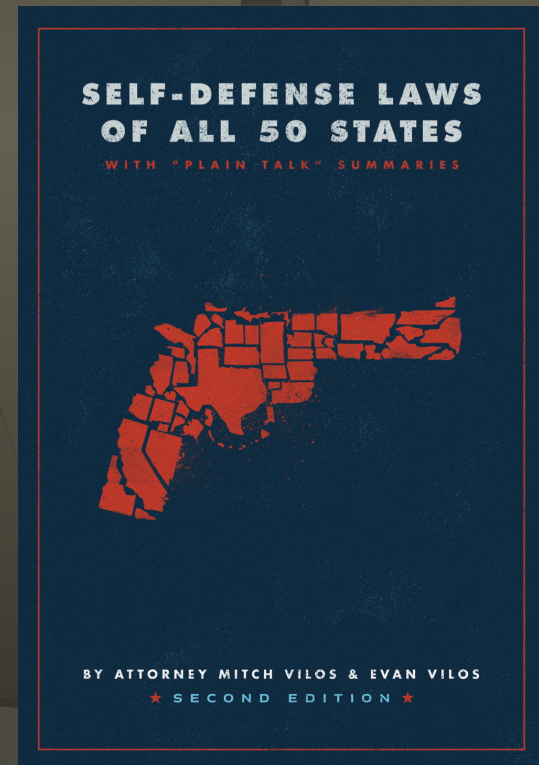


Author

- Utah Gun Law 5th ed.

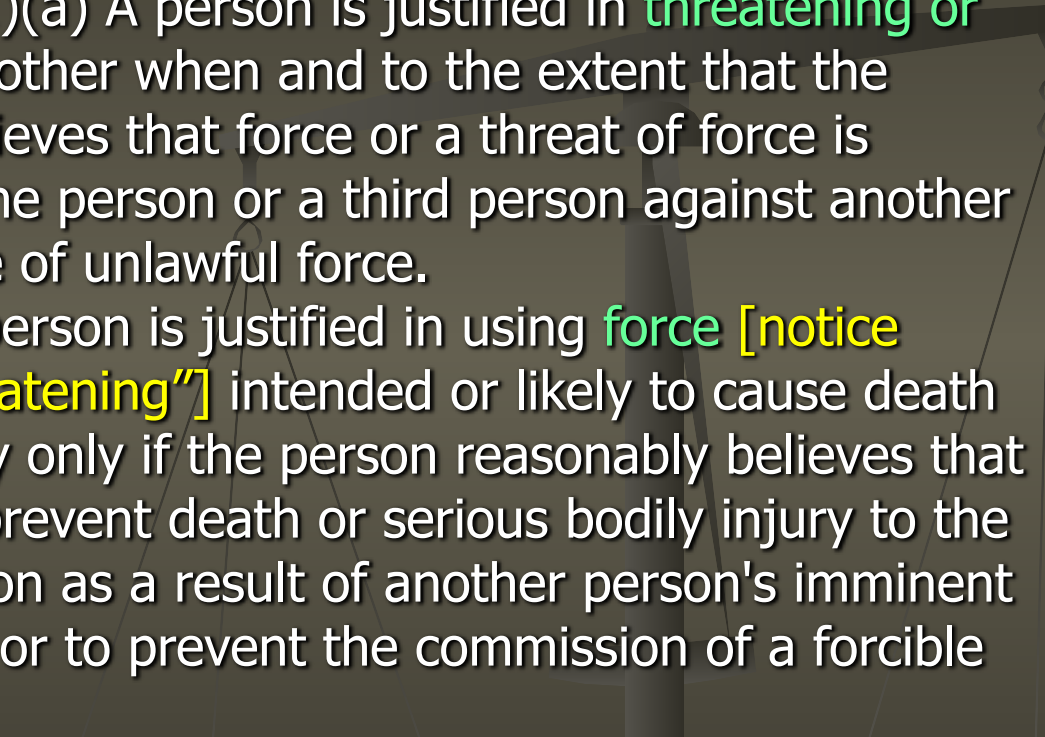


- **Self-Defense Laws of All 50 States, 2nd ed.**



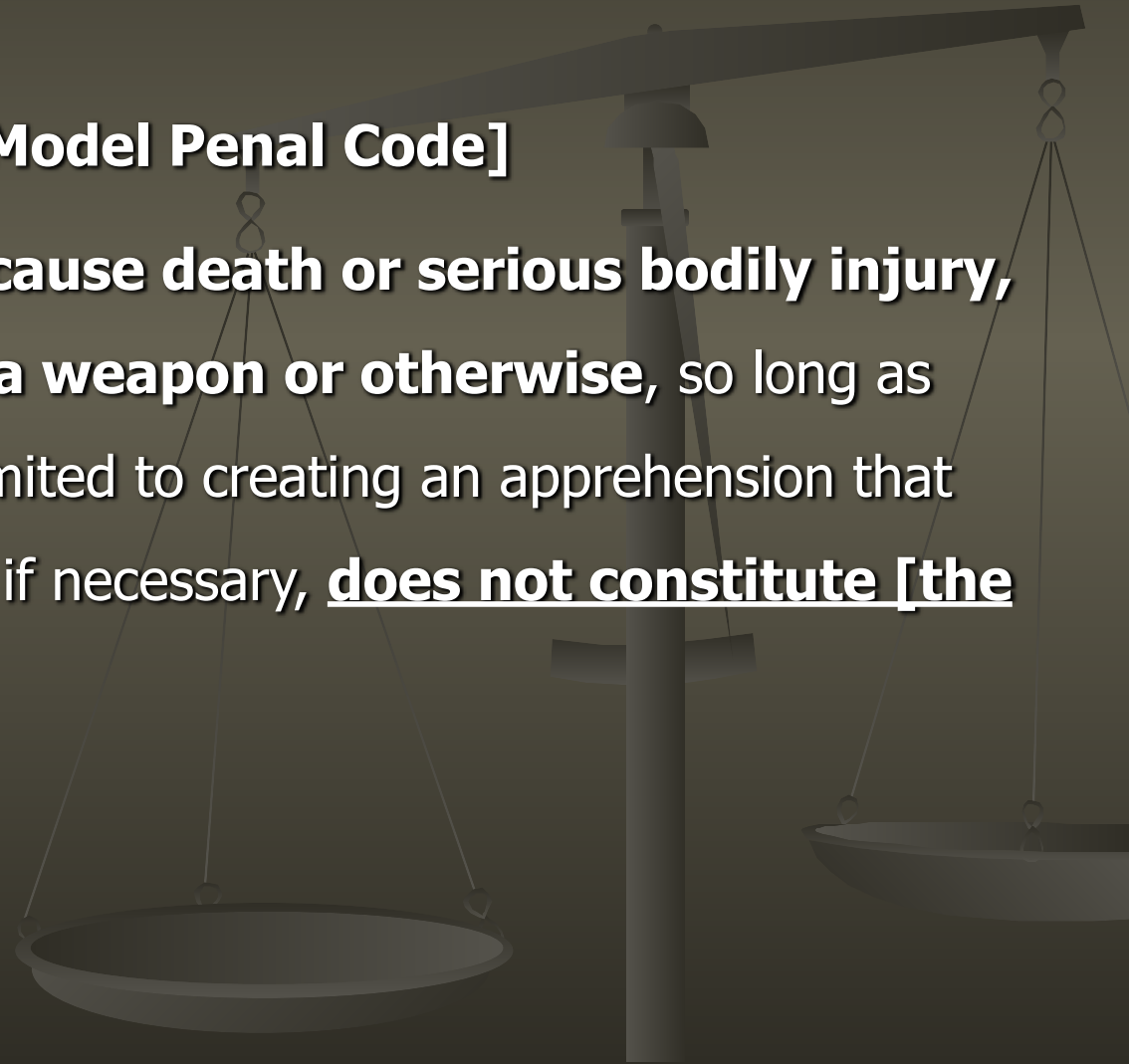
Defense of Self & Others

76-2-402

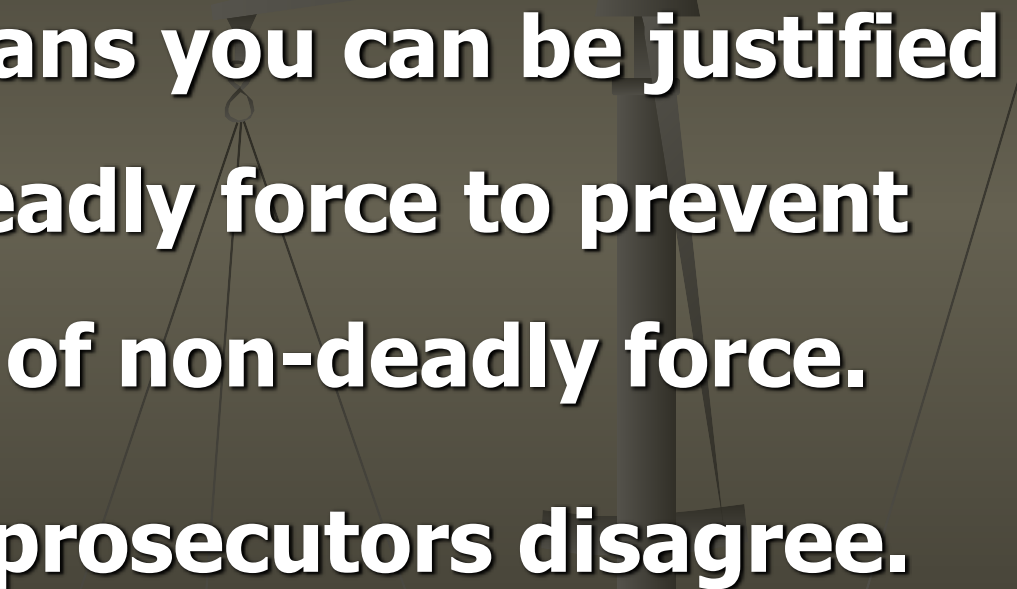
- **[Non-Deadly Force]** (1)(a) A person is justified in **threatening or using force** against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force.
 - **[Deadly Force]** (b) A person is justified in using **force [notice absence of word "threatening"]** intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony.
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Defense of Self & Others

- § 3.11. Definitions. [Model Penal Code]
- (2) **A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute [the use of] deadly force.**



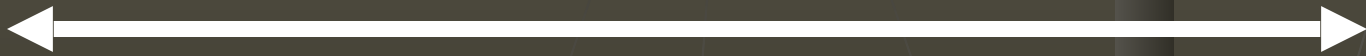
Defense of Self & Others

- **To me this means you can be justified threatening deadly force to prevent the illegal use of non-deadly force.**
 - **Most police & prosecutors disagree.**
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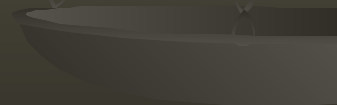
Defense of Self & Others

- “Stand your Ground” (No duty to retreat); IOW Utah is a “self-help” state; object if prosecutor asks “why didn’t you just call 911?”
- R657-63-3. Defense From Wild Animals - Applies to protection of people and domestic animals. No duty to retreat, but a duty to avoid the danger may be considered.
- Tactic – Tueller Drill – for police –
 - Any assailant with an edged weapon or blunt object is a deadly threat within 21 feet can be an imminent threat of death or serious bodily injury.

Tueller Drill – 30 Feet to be safe for Concealed Carry

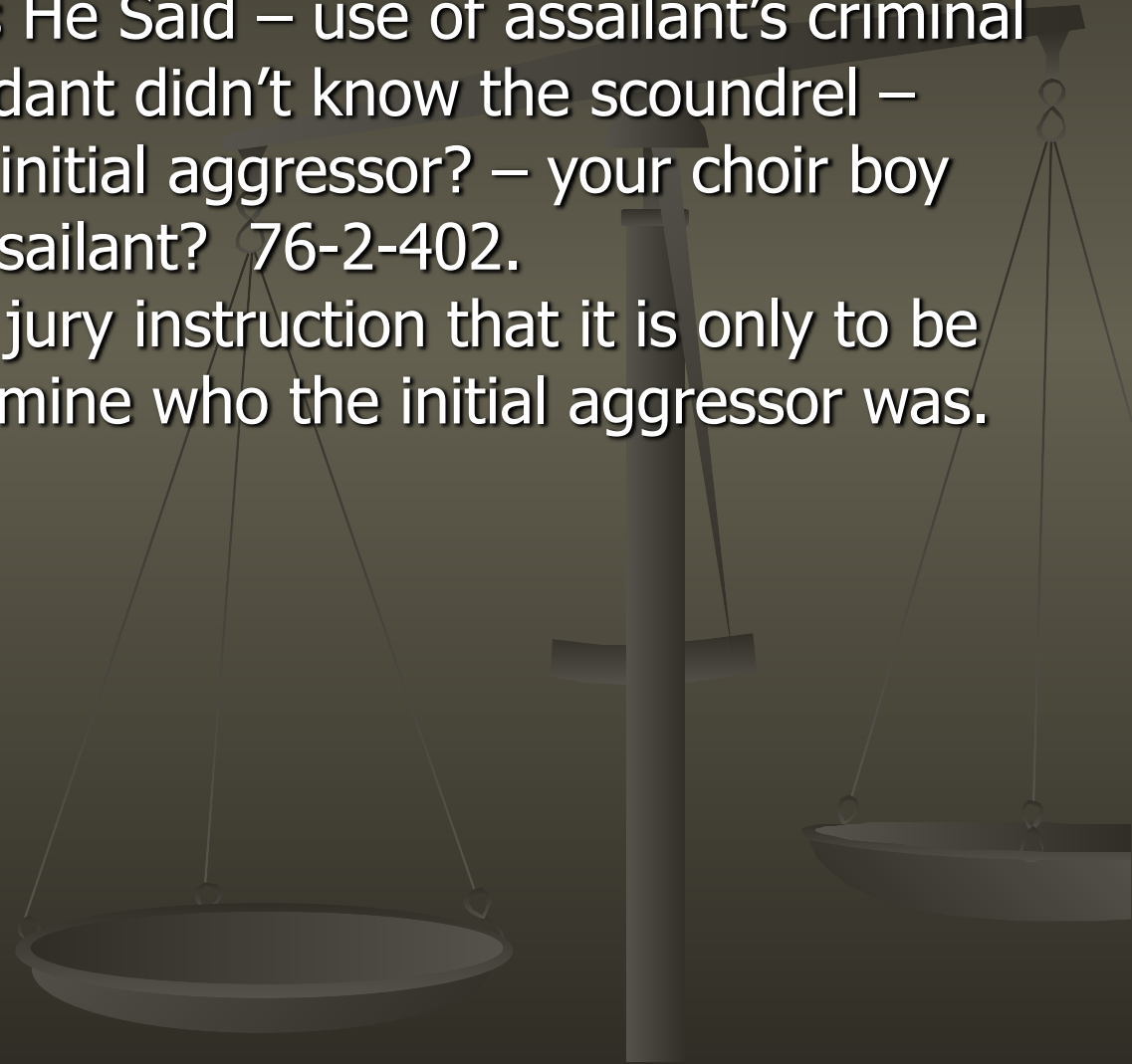


21 ft.



When No Independent Eye Witnesses to Incident

- Tactic – He said vs He Said – use of assailant’s criminal hx – even if defendant didn’t know the scoundrel – who is most likely initial aggressor? – your choir boy client or gansta assailant? 76-2-402.
- Requires a special jury instruction that it is only to be used to help determine who the initial aggressor was.

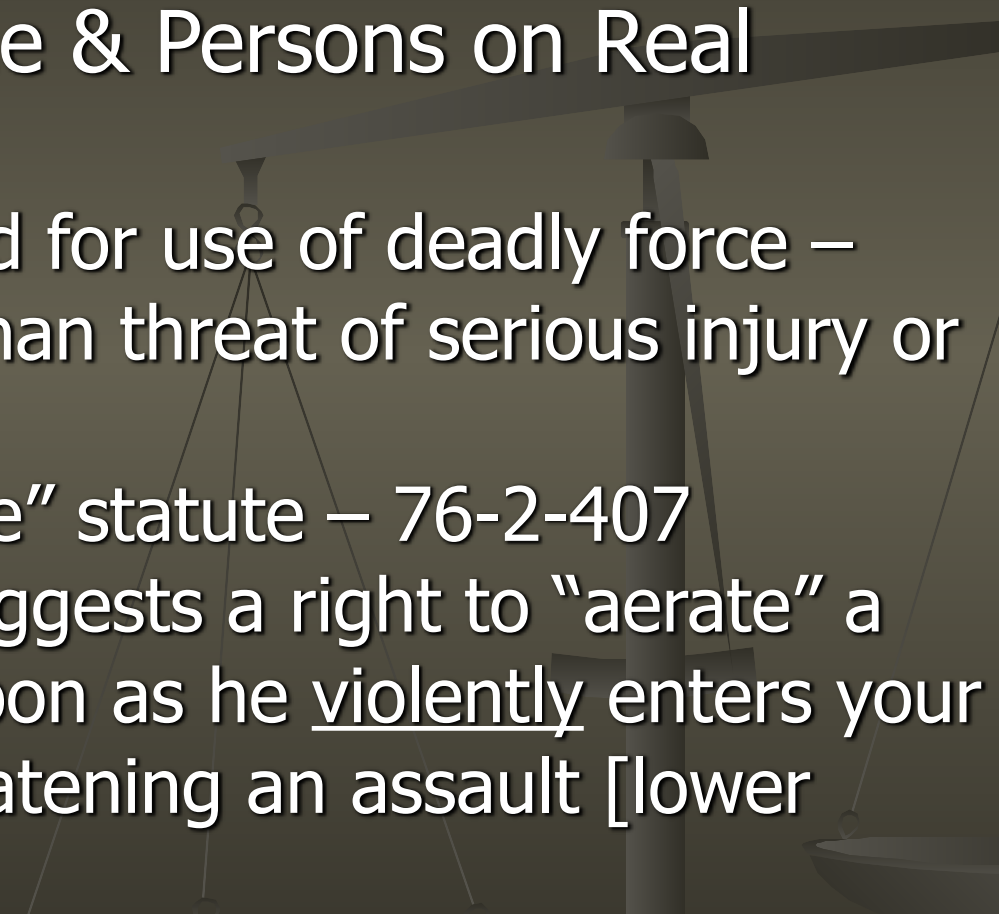


When No Independent Eye Witnesses to Incident

JURY INSTRUCTION # (Initial Aggressor)

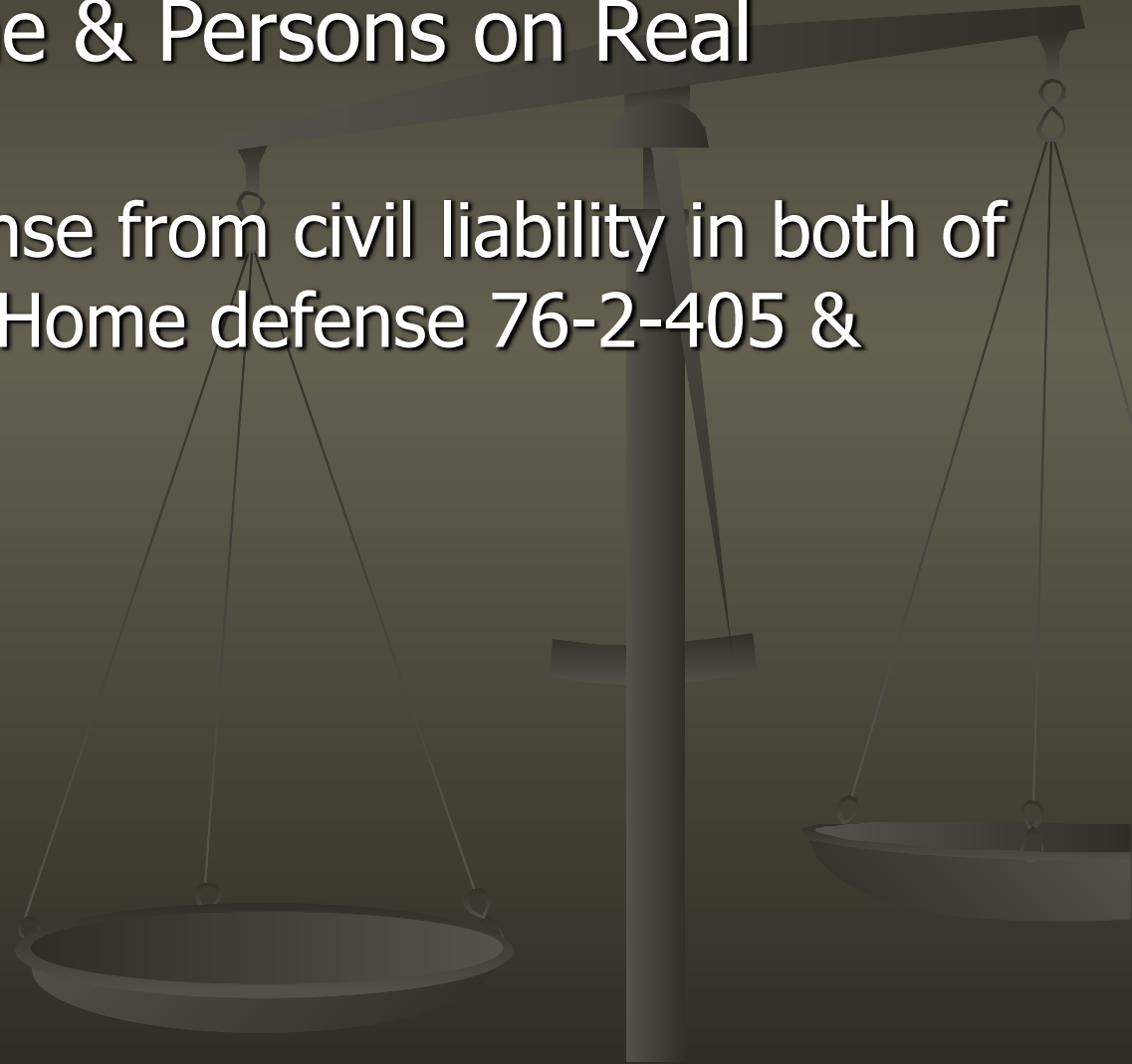
In this matter, the Court received evidence regarding prior acts of [the alleged victim]. The Court also received evidence that the Defendant was not aware of these acts at the time of this incident. Consequently, you are instructed not to consider these acts regarding the issue of Defendant's reasonableness but the acts may be considered regarding the issue of who was the aggressor in this matter.

Home Defense & “Curtilage”

- Defense of Home & Persons on Real Estate—
 - Lower Threshold for use of deadly force – assault rather than threat of serious injury or death
 - Utah’s “Curtilage” statute – 76-2-407 (untested) – Suggests a right to “aerate” a trespasser as soon as he violently enters your real estate threatening an assault [lower threshold].
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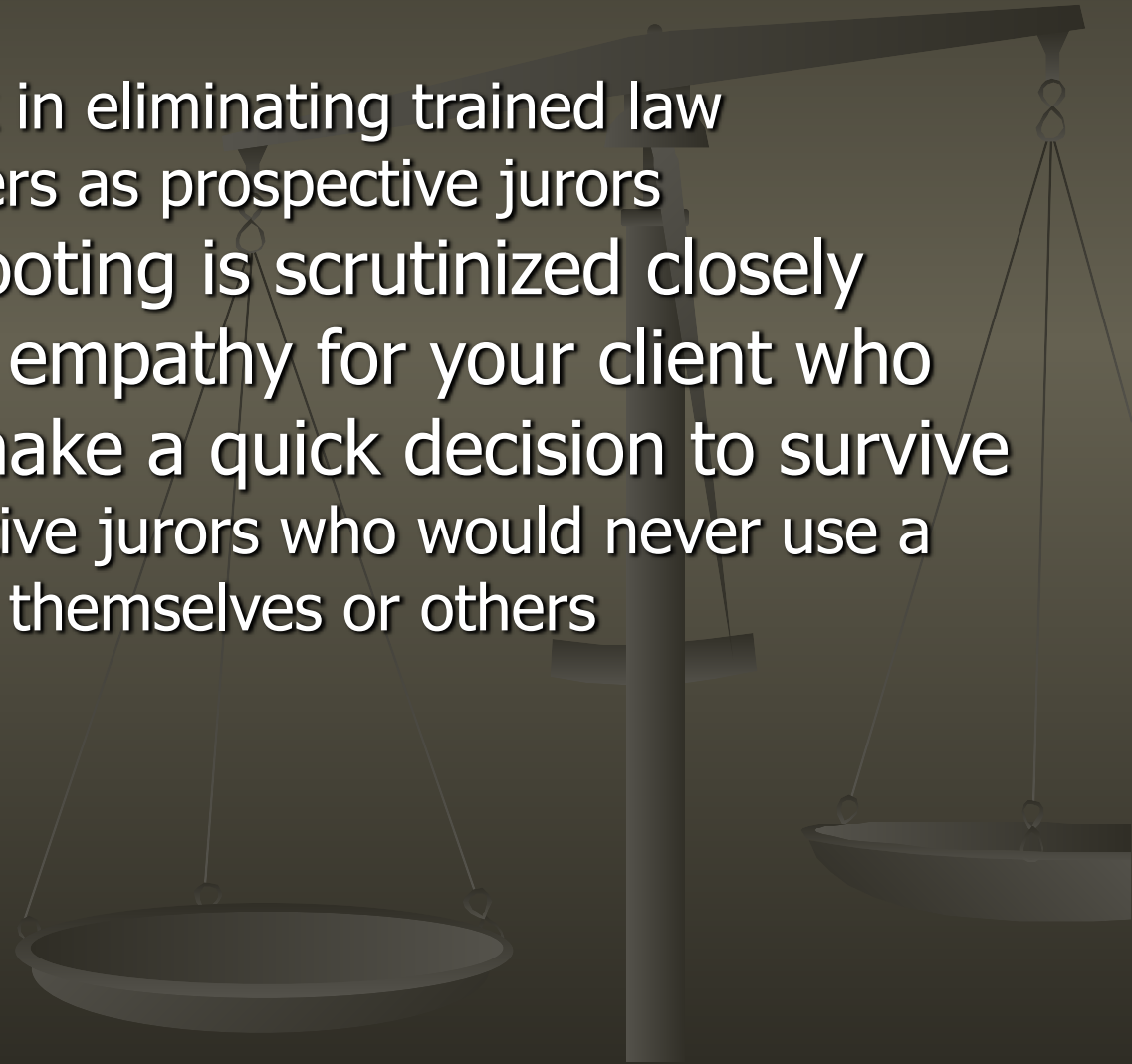
Home Defense & “Curtilage”

- Defense of Home & Persons on Real Estate—
 - Notice the defense from civil liability in both of these statutes (Home defense 76-2-405 & 407)



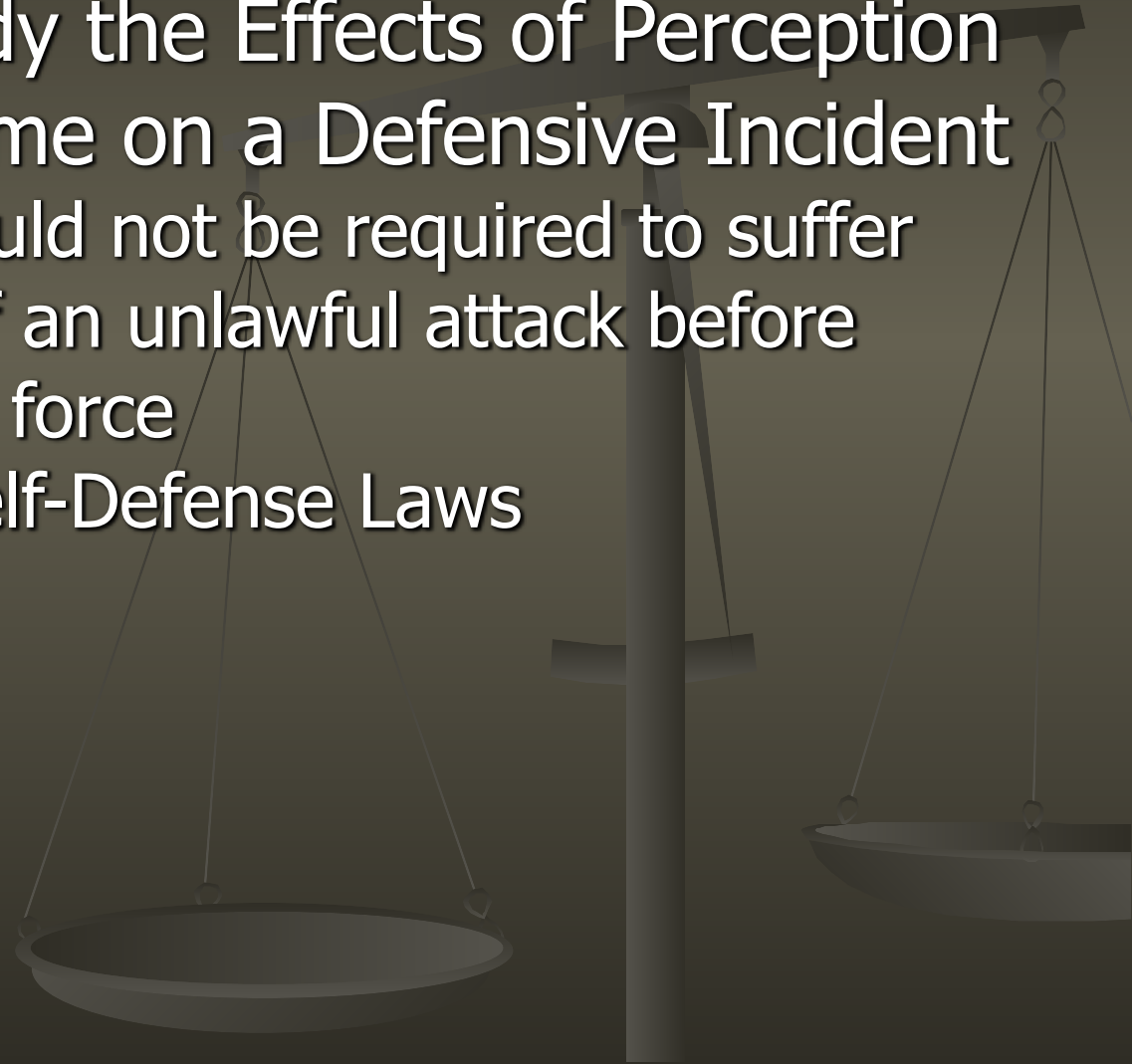
Strategies for Self-Defense Cases

- Voir Dire
 - Don't be too quick in eliminating trained law enforcement officers as prospective jurors
 - Every police shooting is scrutinized closely
 - LEOs may have empathy for your client who was forced to make a quick decision to survive
 - Eliminate prospective jurors who would never use a weapon to defend themselves or others



Strategies – Self-Defense

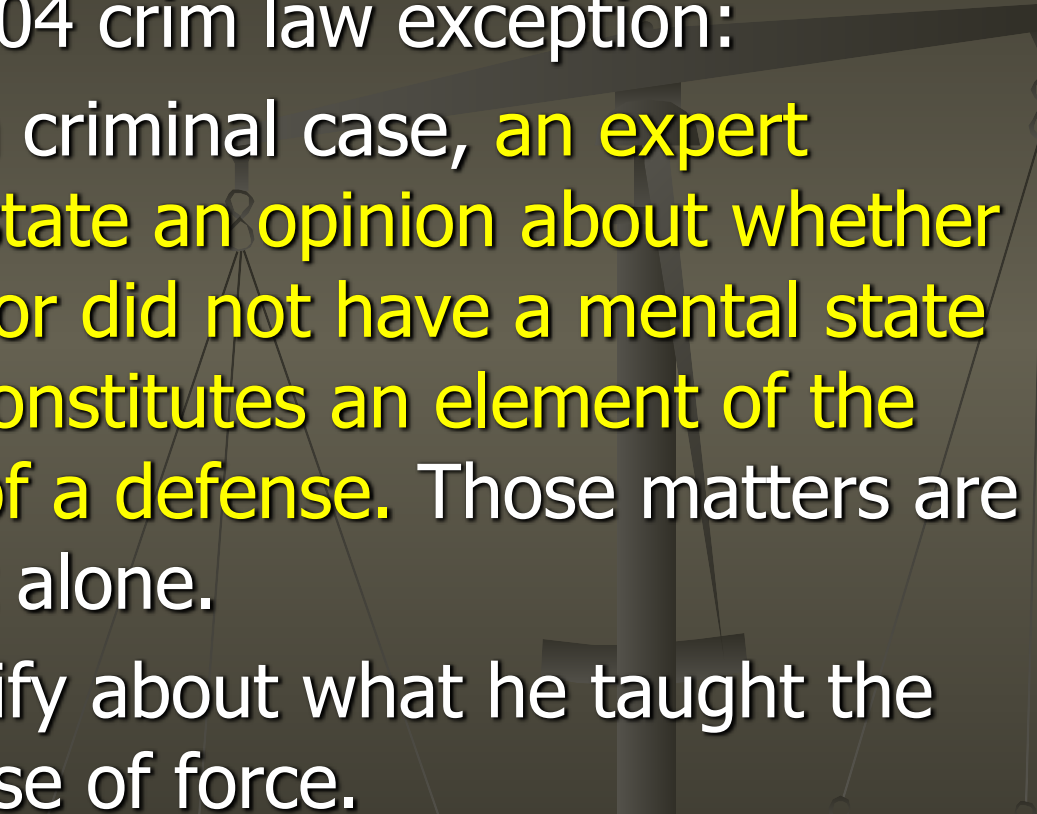
- Thoroughly Study the Effects of Perception and Reaction Time on a Defensive Incident
 - A Defender should not be required to suffer the first blow of an unlawful attack before using defensive force
 - Mother of All Self-Defense Laws



Strategies – Self-Defense

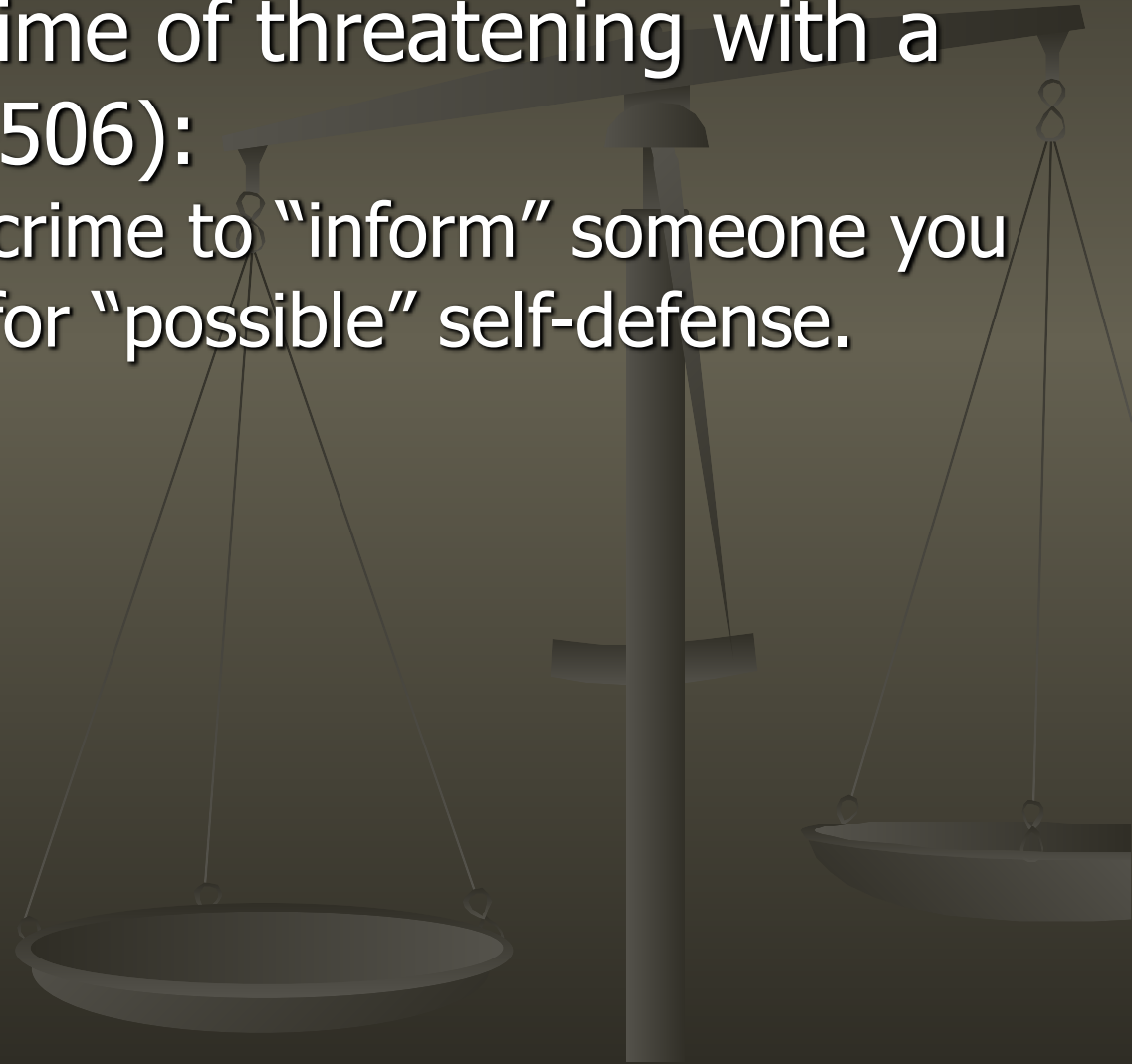
- Take a defensive handgun course with the firearm used in the crime
 - Force on force training – Simunition
 - Put yourself under the same disadvantages your client was under – same holster – same concealment garments
 - If your client has had firearms training, find out what he was taught about self-defense
 - His instructor may be able to explain, as an expert witness, why your client did what he did

Strategies – Self-Defense

- Challenge – URE 704 crim law exception:
 - (b) Exception. In a criminal case, **an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense.** Those matters are for the trier of fact alone.
 - Instructor can testify about what he taught the defendant about use of force.
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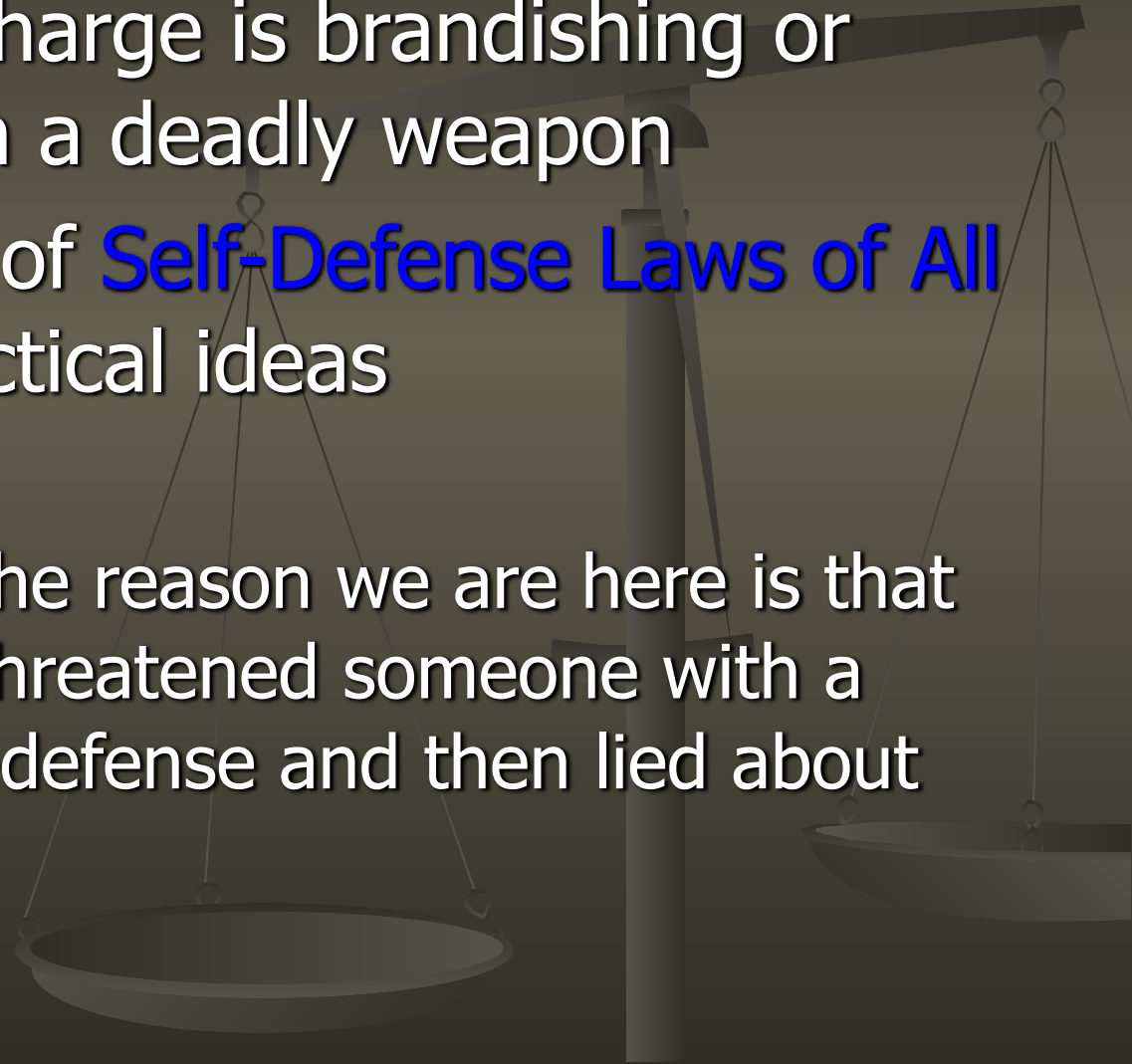
Threatening With A Weapon: aka “Brandishing”

- Exceptions to crime of threatening with a weapon (76-10-506):
 - Tactic — not a crime to “inform” someone you have a firearm for “possible” self-defense.



Strategies – Self-Defense

- Most common charge is brandishing or threatening with a deadly weapon
- See Chapter 12 of [Self-Defense Laws of All 50 States](#) for tactical ideas
- Example:
 - Prosecutor – “The reason we are here is that the defendant threatened someone with a gun, not in self-defense and then lied about it.”



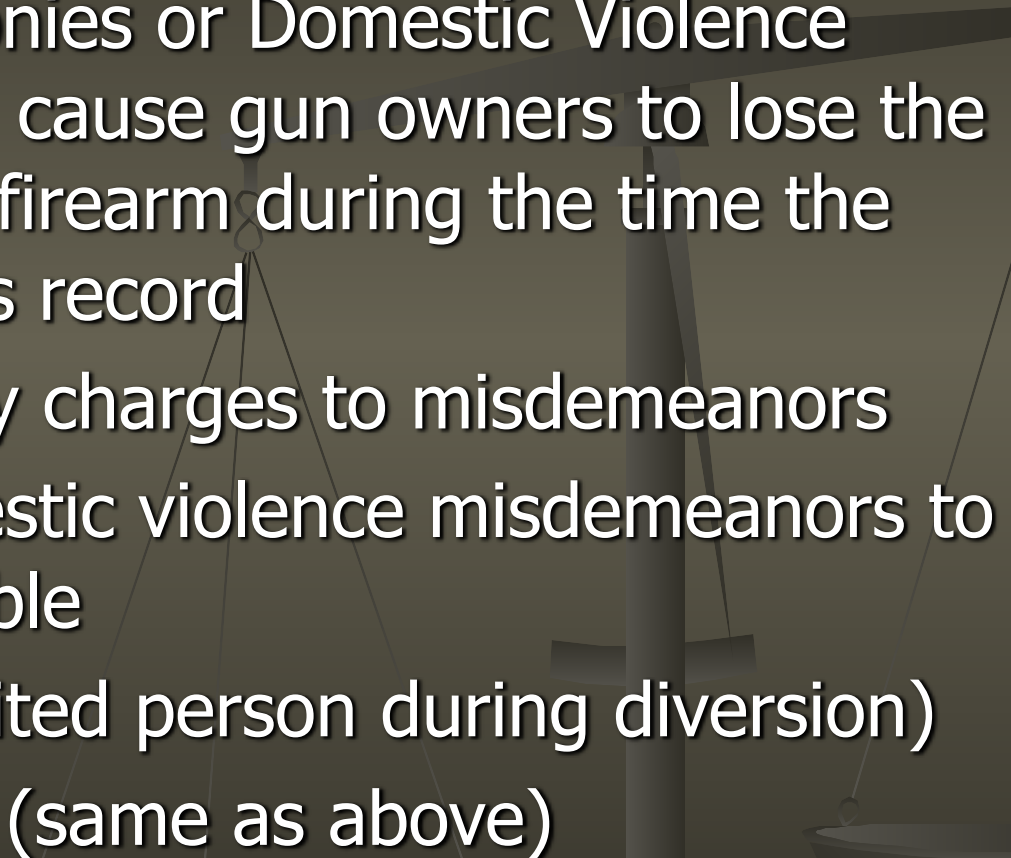
Opening Statement: Take the Offense

- Defense Attorney Retort – “This is NOT a case of threatening with a weapon. It’s a case of a father taking reasonable precautions to defend himself, his child and his property from three angry strangers acting like vigilantes, taking the law into their own hands and threatening with a rock large enough to cause serious injury or kill. The evidence will show that a rock in the hand is more lethal than a gun in the pocket (justifying my client to take his firearm out of concealment as a reasonable precaution). . . .”
- Obviously a well-prepared opening statement and a theme (e.g. Rock in Hand is more Lethal than Gun in Pocket) are keys to winning a self-defense case

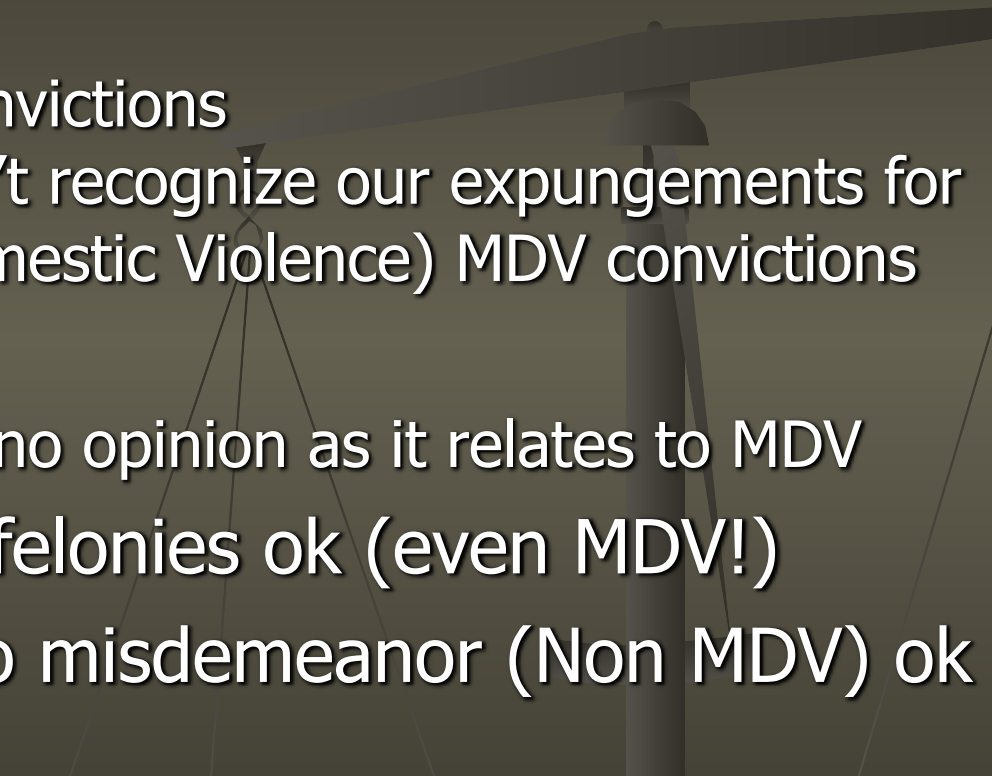
Legal Traps in Plea Bargaining Domestic Violence Self-Defense Cases

- Pleading a client guilty to a crime without informing client of how conviction will affect the client's right to possess firearms under 18 USC 922 (g)
 - Felony (State or Federal)
 - Domestic Violence Misdemeanor 922(g)(9)
 - Some State "safe harbors" not recognized by the federal government because of Supremacy Clause (preemption).
 - Client could later be charged with a Federal Felony

State Plea Bargain Possibilities to Remedy Federal Firearms Prohibitions

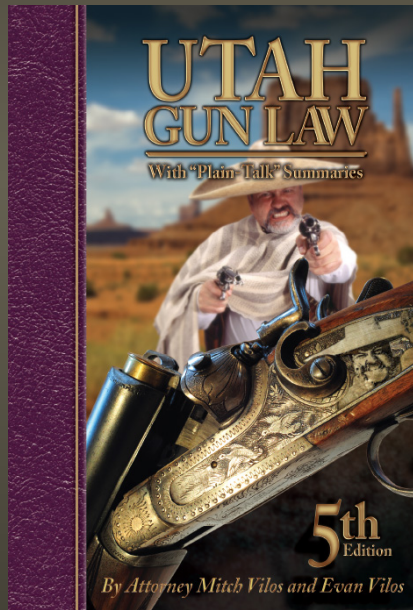
- Pleas to State Felonies or Domestic Violence Misdemeanors will cause gun owners to lose the right to possess a firearm during the time the conviction is on his record
 - Plea bargain felony charges to misdemeanors
 - Plea bargain domestic violence misdemeanors to infractions if possible
 - Diversions (prohibited person during diversion)
 - Pleas in Abeyance (same as above)
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Remedies After Conviction & Potential Problems

- Expungements
 - Too many total convictions
 - ATF says they don't recognize our expungements for (Misdemeanor Domestic Violence) MDV convictions
 - 402 Motions
 - ATF has rendered no opinion as it relates to MDV
 - Expungements of felonies ok (even MDV!)
 - 402 from Felony to misdemeanor (Non MDV) ok as well
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eBooks Available on Amazon \$9.99

- Utah Gun Law 5th Edition



- **Self-Defense Laws of All 50 States**

