

**WANT TO GO TO JAIL AND LOSE YOUR FIREARM RIGHTS?
FOLLOW JOE BIDEN’S SELF-DEFENSE “TIPS”**
By Matthew D. Cubeiro

During ABC’s townhall on October 15, former Vice President and current presidential candidate Joe Biden stated police should be trained to de-escalate deadly encounters. By way of example, he argued that instead of shooting to kill, police should instead first shoot a person in the leg.¹ Biden then suggested agencies need more background checks to ensure police pass certain psychological tests.

Biden is not only wrong, but following his advice is dangerous, likely to land you in jail, and could result in the loss of one’s firearm rights for life.

This isn’t the first time Biden has offered the wisdom of his nearly 5 decades of Washington experience. While serving as Vice President in 2013, Biden was asked if a ban on certain firearms would result in law-abiding citizens being unable to defend themselves. In response, Biden stated that if you want to protect yourself, get a double-barreled shotgun and if there is ever a problem simply “fire two blasts” in the air.² That same year, he was also interviewed by Field & Stream, and was quoted as saying if “you want to keep someone away from your house, just fire the shotgun through the door.”³

Such statements have resulted in some dubbing Biden “Shotgun Joe.” His statements show a complete and utter lack of understanding of self-defense, yet to the uninformed he appears reasonable. It is probably why the moderators of ABC’s townhall didn’t question Biden further—they too are equally clueless.

The laws of self-defense vary across state lines, but all are based in traditional English common law doctrines dating back centuries. In California, there are three required elements to a successful self-defense claim: 1) A reasonable belief of imminent danger of being killed or suffering great bodily injury; 2) A reasonable belief that the immediate use of deadly force was necessary; and, 3) The use of no more force than reasonably necessary to defend against the danger.⁴ Failing to meet any one could land you in jail.

Consider the case of Dr. James Simon, who in 2014 faced criminal charges after shooting a man that followed him into his home after a road rage incident. Dr. Simon, prior to shooting the man,

¹ A video clip from ABC’s townhall of these statements can be viewed online at <https://twitter.com/Breaking911/status/1316911646854553601>.

² A recording of this interview is available online at <https://www.youtube.com/watch?v=-aFyefQsOyo>.

³ Anthony Licata, *The F&S Gun Rights Interviews: Joe Biden, Vice President of the United States*, <https://www.fieldandstream.com/articles/guns/2013/02/gun-control-joe-biden-interview/> (Feb. 25, 2013).

⁴ See CALCRIM 505. While these elements may differ for other states, they are often similar given their common heritage.

fired a warning shot as the man approached. Although all charges against Dr. Simon were ultimately dismissed, a grand jury nevertheless indicted him of assault with a deadly weapon and negligent discharge of a firearm.⁵

But why was Dr. Simon indicted? Especially after a judge previously ruled Dr. Simon acted in self-defense following initial charges of attempted voluntary manslaughter and assault with a firearm?

The answer likely rests with the warning shot fired by Dr. Simon. By firing a warning shot, Dr. Simon displayed and discharged a firearm for the express purpose of warning his attacker, as opposed to stopping an imminent threat of death or great bodily injury as required under California's self-defense laws. This subtle but important distinction is what likely led to a grand jury returning an indictment against Dr. Simon.

Do not misinterpret this analysis as a rebuke Dr. Simon's actions. Indeed, he acted reasonably under the circumstances and the dismissal of the charges against him was just. But he was likely forced to spend thousands of dollars in legal fees and had his life turned upside down for months while the case made its way through the court process. All because he was apparently ignorant of the law and followed the advice of a sitting Vice President.

Shotgun Joe's other advice fares no better. As illustrated by Eugene Volokh, shots fired by law enforcement often miss their intended target 50-75% of the time.⁶ Considering most officer's are trained to aim center mass of their target, requiring them to shoot would-be assailants in the leg (a much smaller and more difficult target to hit) only serves to increase the percentage of misses—saying nothing of the potential danger to innocent bystanders in the line of fire.

From a legal standpoint, intentionally shooting a would-be attacker in the leg suffers the same problem as firing a warning shot. Indeed, it could even be argued that doing so suggests deadly force was entirely unnecessary. A law enforcement officer or law-abiding gun owner doing so would likely face criminal charges as a result. And if convicted, one could potentially lose their firearm rights for life.

As Supreme Court Justice Clarence Thomas wrote, “[f]or those of us who work in marbled halls, guarded constantly by a vigilant and dedicated police force, the guarantees of the Second Amendment might seem antiquated and superfluous.” Shotgun Joe has clearly spent too much time in these marbled halls.

⁵ Henry K. Lee, *Doctor Accused Anew in Corte Madera Road-Rage Shooting*, San Francisco Gate, <https://www.sfgate.com/crime/article/Doctor-accused-anew-in-Corte-Madera-road-rage-6047657.php> (Jan. 29, 2015); *See also* Dan Noyes, *I-Team: Charges Dropped Against Doctor in Road Rage Shooting*, ABC 7 News, <https://abc7news.com/road-rage-incident-i-team-marin-doctor-dr-james-simon/795759/> (June 19, 2015).

⁶ Eugene Volokh, *When There's an Unarmed Person Coming at Them With a Knife or Something, You Shoot Them in the Leg: Advice from Vice-President Biden*, The Volokh Conspiracy, <https://reason.com/2020/06/02/when-theres-an-unarmed-person-coming-at-them-with-a-knife-or-something-you-shoot-them-in-the-leg/> (June 2, 2020).