It Doesn't Have to Make Sense, It's Just the Law:
Brandishing Law

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A Missouri homeowner was arrested after running off a pair of thieves at gunpoint. The thieves went to the sheriff's office to complain of being threatened at gunpoint, with a spurious story to explain their presence at the house. The sheriff bought their story, sweetened as it was by claims that the homeowner was a drug dealer, and raided the home. No drugs were found, but as a consolation prize the citizen was arrested for brandishing a firearm at the thieves. This was the same sheriff's office that declined to stop the thieves on the grounds that the home was inside Kansas City, while K.C. police declined to attend on the grounds that it was *outside* of Kansas City. The jury cut through the jurisdictional squabble and found him not guilty, but poorer after lawyer fees.[1] In most states, it is a felony to exhibit a weapon in an angry or threatening manner. In the rest it is a misdemeanor with very unpleasant consequences. The term may not be specifically defined. It has usually been construed in cases involving threats, either general or specific. To be a crime, a weapon must actually be displayed. Obviously some people have a lower threshold for fear than others.

A Texas man was caught in a traffic jam, and decided to pass the time productively by checking the alignment of his riflescope. Aiming the rifle into Galveston Bay on the first anniversary of the 9-11 attack was not a good idea. He was charged with disorderly conduct by displaying a weapon.[2] This was "only a misdemeanor" but a firearms violation of any kind often affects the right to own guns, and looks terrible on an employment background check, even if it does not result in jail time.

Many people cannot conceive of any reason to have a gun except for mass murder.[3] They react to the presence of a firearm with wildly imaginative thoughts of assault and mayhem; they often share these superstitions with the police. In Missouri's long struggle for a concealed weapons law an anti-gun speaker was in the habit of telling radio audiences that her opponent was "waiving a gun in my face, trying to intimidate me." The hoplophobe's opponent never did have a gun, but she appeared to sincerely believe her

fantasy. News media on the scene never reported this lie. The open carry movement and the insistence of some persons bringing firearms to emotionally charged demonstrations will only provide "corroborative detail intended to give artistic verisimilitude to an otherwise bald and unconvincing narrative" to wild claims of brandishing.[4] When the police respond to "man with a gun" reports and find a man with a gun, they tend to arrest the man and let the judge sort it out. Hysterical hoplophobes go to their legislators and demand hysterical laws designed to solve imaginary problems.

False reports of brandishing result from disappointed criminals, the paranoid, the suspicious, the angry and the anti-gun. It is good to have witnesses to the facts, but sometimes that is not as helpful as it sounds. One defense witness refused to appear in court and promised that if subpoenaed she would lie; the witness was the defendant's sister.[5] Witnesses may not want to get involved, or may want to get involved on the other side. A peculiar loyalty has people come out of the woodwork to declare that the citizen abused a local boy who was "just getting his life together," which appears to be code for a thug perfecting his craft. Actually, the more such persons come out of the woodwork the less likely their stories seem.

It is critical to be the first person to relate events to the police. The first report sets the tone for the case. The stock advice is to remain silent. This is very good advice. However when the psychotic driver complains that he was threatened with a gun for "no reason at all," silence implies consent. It is essential that the citizen report every use of his gun, even if nothing more than displaying the gun for the benefit of threatening psychotics or thugs. This is where a cell phone beats a .45 as a self-defense tool. Nothing beats friendly witnesses, but this is not always possible.

Short of having a camera crew dog one's steps, the only defense is the old saying, "If people speak ill of you, live so that no one will believe them."[6] Reputation is almost never admissible as evidence, but behavior often appears in police reports and colors the treatment of the parties. However, this is not always enough.

One can do everything right, and still be charged with a crime or otherwise abused. A Louisiana court absolved a teacher of brandishing a pistol on school property on the grounds that he was defending himself from a student who was attacking him with a club.[7] The court ruled that the school board could not fire the teacher for exercising his right of self-defense. The plaintiff had been employed in the additional security role required of modern educators when there was an altercation with a 16-year old student. An assistant principal broke up the scuffle, but the student wrapped his belt around his fist and threatened the teacher. Even a leather belt used in this fashion will serve to increase the effect of a blow, and the buckle can be used as a blackjack. The juvenile did not appear satisfied with this armament and left to retrieve a 30-inch 2 x 4 club. Anyone angry enough to leave an encounter, upgrade armament and return is very angry indeed. If the juvenile did not look angry, he made up for appearances by swinging the club at the teacher. The teacher retreated to his car, pursued by the juvenile, and retrieved a pistol. He held the pistol at his side. The assailant considered the pistol and the better part of valor, and fled. Motivated by some bizarre concept of equality, charges of aggravated

assault were filed against both parties. Continuing the moral equivalent of aggressor and victim, both parties were convicted. The teacher appealed, and the Supreme Court of Louisiana ruled that the teacher used justified force. The court further ruled that, "We do not find, from the record, that Landry ever 'brandished' the gun at Jacob [the juvenile] or threatened him with harm, although plaintiff did, of course, make certain that the pistol was visible to the aggressor, Jacob."[8] The school board, determined to ensure that self-defense would not go unpunished, fired the teacher. One board member testified that he did not consider the conduct of Mr. Landry as the kind of conduct he would expect from a schoolteacher. Apparently death would have guaranteed his job. The courts had more sense and restored him to his job working for people who would prefer him to be a victim rather than a survivor.[9]

Self-defense, or technically the defense of justification, is a defense to a charge of brandishing, "If there is substantial evidence in a case involving a charge of exhibiting a dangerous and deadly weapon in a rude, angry and threatening manner that the defendant acted in self-defense, it is incumbent on the trial court to submit an instruction on that defense to the jury…"[10] While deadly force can only be used to meet the threat of deadly force, the threat implied by brandishing is justified by a low level threat. "When a person has reasonable cause to apprehend on the part of another a design to inflict a great personal injury, and there was reasonable cause for him to apprehend immediate danger of such design being accomplished he is justified, and has the right, 'to avert such apprehended design,' and in proper circumstances the right of attack may be essential to the right of self-defense."[11]

Landowners, homeowners, and apartment renters have taken the reasonable precaution of being armed before investigating intruders. Decades of cartoons show Dagwood checking for burglars with a baseball bat. Cases show landowners investigating intruders with the more reasonable precaution of a firearm. So long as the owner does no more than carry the firearm as a precaution, the courts have found the act reasonable.[12]

The cases finding an act to be brandishing have first found the guest of honor to have threatened another person or persons with a weapon, or had uttered threats while holding a weapon. Displaying anger while in possession of a weapon is considered a sufficient substitute for threats. One cannot be found guilty of brandishing a weapon unless one is shown to have been angry or threatening. This is an excellent reason to keep one's temper and mind one's manners.

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Notes

1. Author's case.
2. *The Galveston Daily News* 12 September, 2002.
3. See Jamison *The Law and Manners*, Concealed Carry Magazine July, 2009 at 44.
4. Gilbert and Sullivan *The Mikado*.
5. Author's case. We won anyway.
6. Unknown, but often blamed on Plato.
7. *Landry v Ascension Parish School Board*, 415 S.2d 473 (La. Ct. App. 1st Cir 1982).
8. *State v Landry*, 381 S.2d 462 (La. 1980).
9. *Landry v Ascension*, supra at 477.
10. *State v Ruffin*, 535 S.W.2d 135 (Mo. App St. Louis Dist 1976) at 137.
11. *Riffin* subpra at 137-8 quoting *State v Daugherty*, 196 S.W.2d 627 (Mo. 1946).