

The Role of the Expert Witness

An Interview with Emanuel Kapelsohn

Interview by Gila Hayes

Network members and potential members often ask if they join, won't that mean they can have our Advisory Board on their trial team as expert witnesses. We have to answer that it is a little more complicated than that.

Giving testimony in court may or may not be allowed due to various factors. In addition to 30+ years practicing law and 36 years as a defensive firearms trainer, Network Advisory Board member Emanuel Kapelsohn has frequently given expert testimony about use of force and firearms issues. He well knows the challenges faced by an expert witness.

Let's switch now to our Q & A format and ask him to educate us about the role of the expert in trial law.

eJournal: Thank you for agreeing to teach us about expert witnesses. What makes an expert?

Kapelsohn: Under either federal law or state law, an expert witness is someone who is qualified by virtue of their training, experience or their education to offer opinions in court about things that lay witnesses would not be permitted to offer opinions on. Those things we call expert opinions. So an expert witness doesn't necessarily have to have a university degree; they don't necessarily have to have a certificate that says they are trained in a specific thing.

The example I often give is about Joe Shmorph, who has been a ditch digger all of his life and he is an expert on ditch digging. He only got to eighth grade in school, but he has dug ditches with a pick and shovel, he has dug ditches with a Ditch Witch, and he has dug ditches with backhoes. He has been a foreman in charge of a crew of eight guys digging ditches. He has dug ditches that have to be supported by ditching boxes that support the sidewalls of the ditch. He has dug ditches in sand and loam and in clay, and he's dug ditches where you have to blast out the rock for the ditches. He is a ditch expert.

Now, in order for someone to testify as an expert in court, the court has to agree that that person is an expert. The court is the gatekeeper of that kind of testimony. When the court agrees that you are an expert, it is called "qualifying" you. The court has to qualify you as an expert.

In this case, Joe Shmorph is put on the stand by the party that wants him to testify as an expert and that party will ask him all kinds of questions about his experiences, about his lifetime of ditch digging, and about all the kinds of ditches he has dug with all the kinds of equipment and all the stuff he knows.

It does not matter at all if Joe Shmorph has never testified in court before. It is not necessary because everybody is an expert for the first time sometime or other. It is a help if he has; it helps if we can say, "Judge, Mr. Shmorph has testified and been qualified as an expert before the Federal District Court in Omaha..." and then the judge knows he is not going out on a limb.

After the lawyer who is the proponent of Mr. Shmorph's testimony gets done asking him those questions, the judge will ask the opposing attorney if he wants to *voir dire* the expert. That is the opponent's chance to ask Mr. Shmorph questions to get at whether he really is an expert or not, if he has a personal interest in this case, how much he is being paid for his testimony, and things of that sort.

Sometimes the other side knows that Mr. Shmorph is going to be qualified by the court. Clearly, he is an expert: if there is anyone in the world who knows about

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digging ditches, it is Mr. Shmorph. Then the opposing attorney may interrupt, "Your Honor, this is not necessary. We are willing to stipulate that Mr. Shmorph is an expert on ditch digging." You never want to agree to that!

The jury needs to hear all of what Mr. Shmorph has done, digging ditches his whole life. That is because Mr. Shmorph is going to give opinions in this case and the other side is certainly going to bring in experts who will give opposing opinions. You want the jury to be able to make their own determination. Do they believe Mr. Shmorph or do they believe this guy with the university degree in engineering who's never actually dug a ditch in his life but who has written three textbooks about construction and landfill and so forth? Who is the jury going to believe? I want the jury to hear everything Mr. Shmorph has done.

When the judge has qualified Mr. Shmorph as an expert, Mr. Shmorph is then permitted to give opinions on certain subjects. A normal person can't give an opinion. If you were an eyewitness to an accident, and were asked, "Do you think this guy was driving too fast? Do you think he was driving recklessly?" you are not going to be able to give that opinion! It is for the jury to decide if that was reckless or not. Whether or not he was driving too fast is for radar to determine or for an experienced police officer to say, "Based on my training and years of experience, I can tell you that guy was going more than 70 miles an hour," or for someone to say "I followed him in my police car, and at 70 miles an hour he was outdistancing me, so I know..." It is not for you to say, "I think he was going too fast."

There are certain things that a court will typically let a lay witness—meaning an eyewitness—give opinions about: whether someone appeared to be intoxicated, whether someone appeared to be angry, whether someone was happy because they were smiling and laughing and jumping up and down, because those are things we all make judgments about in our every day life.

Other than that, witnesses are allowed to testify to things they know for a fact. They are fact witnesses: something they said, something they heard, something they touched, something they did or saw someone else do. That is what they are allowed to testify about—facts. You have to be an expert to give an opinion.

eJournal: Aren't there also limits or restrictions on opinions to which an expert can testify at trial?

Kapelsohn: Courts are increasingly on guard against letting experts testify about what we call "junk science." There are a number of federal court cases talking about the kind of scrutiny judges should exercise in deciding whether to let an expert testify about a certain subject or not.

One leading case is called *Daubert*¹ and often in advance of trial the two opposing attorneys and the judge will have a Daubert hearing about the expert's proposed testimony. The judge will hear the qualification questions and the judge will hear the *voir dire* from the opposing attorney and then the judge will hear the kind of expert testimony that the lawyer intends to bring out through this expert.

A judge might ask if what the expert is going to testify about is something that has been professionally accepted in his field of expertise. For example, can we talk about the actual stopping power of certain ammunition? Can we talk about the fact that after being shot many people don't stop immediately but are still capable of fighting, running or driving a car? That may be allowed if the expert is someone who has many years of experience studying that, or personal experience with it, or as a police trainer.

But if the expert is going to testify about the "hydrostatic shock" effect of a certain caliber of ammunition, what scientific basis is there for showing that that effect exists at all, let alone with this kind of ammunition? Or to show that shooting someone with buckshot produces "sensory overload" because the person is hit in several parts in their body at the same time and "it is more than their nervous system can handle?" This is stuff we read about in gun magazines all the time, but if you try to find any kind of scientific basis for it, often we can't come up with any. Some gun writer's imagination created that idea and he thought, "It sounds good," but the judge may say, "Well, I don't see any scientific basis for it."

Another aspect of hearings about whether a certain opinion will be admissible or not is whether it has been published in articles that are peer reviewed: reviewed by other experts in the field who agree that it has sound methodology to it. If I am going to do a certain kind of timing of someone's reaction time or ability to fire

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¹ See *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993)

multiple shots in a certain time frame, I am going to come in and say, "Here is how I am doing it. I am using this kind of electronic timer and I am timing it this way, and this has been used in these scientific studies," and so forth. That may make it in, but ultimately, it is up to the judge.

I testified in a case in federal court in Oregon where a federal judge said she wouldn't allow my testimony about the amount of time it takes to disengage the safety and fire a shot from an AR-15 rifle, or the possible shot to shot times to be admitted because they were timed with an electronic timer. I was saying to myself, "Well, if she doesn't like it because it was timed with an electronic timer, how would she want it to be timed? With a sundial? With a stopwatch which is much less accurate and involves much more human error than something that hears the shots through a microphone and records them electronically?"

Now, that same judge also would not let the rifle come into court: the rifle that was the basis for why the police officer shot and killed this person. She wouldn't let the jury see how the safety was clicked on and off and how the trigger was pulled. I think she just was gun phobic. Luckily, she was willing to allow a blue gun, an exactly molded plastic copy of an AR-15 rifle, into court. I was at least allowed to move it quickly and point it at the jury and show them how quickly it could have been pointed at the officer involved, but she would not let the actual rifle be shown to the jury.

These things are often a matter of an individual judge's determination. You might succeed in getting it overturned on appeal, but that takes years and dollars to do.

eJournal: While the Network can fund appeals for members, we would certainly prefer to avoid that necessity by funding the best possible team to defend in the initial trial. Does a defense attorney generally recognize aspects of the case that require expert witnesses testimony, and then does he or she know how to find good experts and use them effectively?

Kapelsohn: That is a real rough question and an important question! I've worked in cases where the expert on the other side from me was someone I could walk all over because they really didn't have much expertise. Their credentials weren't very good; their knowledge base wasn't very good and they put out theories that were not supportable.

The opposing expert that the plaintiff brought in on the Oregon case I just mentioned was an example. That case involved an officer responding to a domestic, who wound up shooting and killing the husband who reached down and came up with an AR-15 rifle. The officer was yelling, "Drop it! Drop it!" and the husband wouldn't. The officer tried to wrestle it away from him, to tase the husband and eventually had to shoot the husband. (The plaintiff is the estate, the widow of the slain husband who was divorcing him and had said he was a creep. Now that he was dead, he was the finest husband and father in the world and he was on the road to straightening himself out. She was in the process of moving out and taking the child with her. That was what prompted this event.)

In that case, the opposing expert said that once the officer had his gun out and pointed at the husband who was holding an AR-15 in his hands, that the officer had no reason to shoot the husband. He said the officer completely overreacted because once he had his handgun pointed at this man, he had "The drop on him." I have not heard that in 30 years! He said, "He had the drop on him: the crown jewel of police tactics." That was so absurd, I'll say it again, "The crown jewel of police tactics."

There is a lawyer that hired that expert, and because it was a civil suit, millions and millions of dollars depended on it. There was an expert who came in and proposed a theory that was absolute malarkey! We all can prove that action is faster than reaction, and that by the time the officer could put his finger on the trigger and pull it, the husband could have pointed the AR-15 and fired it. I made a video showing that. The judge was willing to let the jury see that video.

Now, in a case for an Armed Citizens' Legal Defense Network member, someone's freedom could depend on it. Whether someone goes to jail or not, whether someone is convicted of murder and executed or not, might depend on how good an expert your attorney picks.

There are situations where the attorney does not think or even know he needs an expert. I have had defendants contact me and say, "I'm on trial here in IA or KS or wherever it is and my attorney says I don't need an expert. He says he's been in practice for 25 years and he has never used an expert." I'll listen and then I'll say,

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"How is he going to prove this, this and the other thing without an expert?" and they'll say, "Well, I don't know."

I'll say, "I am happy to talk to your attorney if you want me to. I'm not trying for the job, I have lots of work, but if he does not think he needs an expert on that subject, I'd like to talk to him because I think he really should reconsider that issue."

This is critical! Our members have to know that they may very well need one or more experts to help prove their case. A good lawyer needs other people on his team to do the job.

eJournal: Do attorneys often resist the advice and services of experts?

Kapelsohn: Sometimes they do. Close to where I live in PA, a security officer who was a night club bouncer working at the door deciding who to let in and who not to let in, got involved in a confrontation with someone whom the officer believed was reaching under his jacket for a weapon. There was some basis for his belief. The person he shot and killed was a rapper who had made rap songs talking about killing the police, and on this occasion he had used very volatile language.

I saw in the newspapers that the security officer had shot and killed this man after they were involved in an argument and struggle with each other. About a year later, I read a newspaper article about how this case had been on trial for a week and in a day was going to go to the jury.

The article talked about how a major piece of evidence used in prosecuting the security officer for murder was that the officer said, "I shot him when he was facing me," and the shot went into the suspect's side, not the front. I tried to get the lawyer on the phone and I called the employer of the security officer. I finally got the lawyer on the phone and said, "This is an area of expert testimony. There are articles called things like, *Why Is The Suspect Shot in the Back?* There are timing tests for how fast a person can rotate vs. the amount of time it takes someone to react and pull the trigger.

"Have you used an expert witness?" I asked the lawyer. He said, "Oh, no, I didn't think I needed one and I don't think my client could afford one anyway."

I said, "He's looking at life in prison for this. From what I read in the paper, it sounds like this was a key issue."

"Well, it's too late now, anyhow," he said. "The case is going to the jury tomorrow morning."

Here someone's life and freedom depended on this issue and maybe if the lawyer had called me or another expert, one of us would have said, "I know your client doesn't have much money; I'll agree to do it for less," or maybe the client's family would have come up with the money.

The point is the lawyer put on a defense that might not have been as strong as it could have been. It is very important to get a lawyer who understands that he may need experts in certain areas and he may need more than one expert.

eJournal: I've been saying for years that with the growth of the Network's Legal Defense Fund, we are positioned to pay several attorneys to defend a member, and that could include a specialist to work with the local lawyer, something you spoke of in an earlier [interview](#). The second attorney would be hired because of experience defending parallel cases, and now your comments show that he or she might know the right experts to address aspects needing expert testimony.

Kapelsohn: It has many times happened to me that a lawyer will call and say, "We need an expert on subject A," and I say, "Tell me what your case is about, what happened?" They will give me a quick run down on the case, and I'll say, "Who is covering subjects B, C and D?" That is why they call us experts. We may know what the lawyer needs, when the lawyer doesn't realize he or she needs it.

They may think they need an expert on defense against knives, when they may also need an expert on why this homeowner needed to shoot the person six times before the person fell down, or a shooting scene reconstruction expert to show the angles of the shots and show that maybe they were all fired while the person was still up and coming toward the homeowner instead of when the person was already lying on the ground. The lawyer may say, "I never thought about that," and I'll say, "Once I start getting into the case file, I may tell you four or five other things that you never thought about."

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There are cases where I'm working as a use of force expert or a shooting scene reconstruction expert or a ballistics expert and I will say to the lawyer, "By the way, there is very, very interesting and potentially very important blood evidence in this case. You need a blood spatter expert. I'm not one, but here are some guys you should call and hire one of them to come look at this evidence," or someone may need DNA evidence or a fingerprint person or a psychologist.

Sometimes, I've gotten into situations where it is the eleventh hour, maybe it is the night before I am going to testify or maybe two days before, and a lawyer who is not very good will call me and say, "Oh, by the way, I want you to look back at some crime scene photos of the blood spatter." I'd say, "Well, I can do that, but why?"

"Well, I'd like you to testify..." they say. I say, "Whoa, whoa, whoa! I never told you I'm a blood spatter expert. I'm not! I know a lot about blood spatter because I've been working in this field for 35 years. I've been at a lot of crime scenes; I've looked at a lot of evidence; I've looked at a lot of autopsies; I've looked at a lot of crime scene photos. But I don't hold myself out as a blood spatter expert. I don't have the specialized training to be able to testify to that subject, although I may know something about it."

There are deadlines by which the court wants lawyers to announce what experts they are going to use. The other side has a right to know the experts you are going to be using, typically to have a report from the experts so they know what the experts are going to say so they can prepare for it with their own witnesses. So a lawyer may say, "Well, it is too late for me to get a blood spatter expert; I'm past the deadline to announce who my experts are." It's too bad the lawyer missed his deadline, but that still doesn't make me a blood spatter expert!

An expert hired early in the case may be able to educate and inform the attorney to the fact that he needs other experts as well. Not just one. And often experts are not cheap. I do a number of cases on a reduced rate for public defenders offices and so forth, but I can only do a few a year that way, because I am supporting a family in part on that work, and partly on my income from training people to use guns, or as a consultant, so I can't afford to work on a charitable basis too often. In general, experts are expensive and may have to be a major part of the case budget.

Editor's note: This marks an approximate halfway point in a lengthy discussion about expert witness work. With Kapelsohn just starting to discuss the timelines in preparing for trial, it is a good place to take a break. We encourage readers to return next month for the conclusion of this informative interview.

Attorney and Network Advisory Board member Emanuel Kapelsohn practices trial law in addition to his work as a firearms consultant/expert and author. He holds degrees from Yale University (with honors) and Harvard Law School, and has, since 1980, instructed thousands of police and security officers, federal agents, military personnel and private citizens throughout the U.S. and abroad. He consults and provides expert testimony in both civil and criminal cases involving firearms and use of force and has testified in state and federal courts, and by invitation before both houses of Congress. Learn more about him at <http://www.peregrinecorporation.com> and <http://www.lesavoybutz.com/emanuel-kapelsohn/>.

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President's Message

by Marty Hayes, J.D.

Once again, I start a monthly column while sitting in an airport waiting to return home from the excellent Rangemaster Tactical Conference. It is held yearly in late winter/early spring, and each year I

look forward to escaping the rain and cold of the Pacific Northwest to dry out a little and see how the rest of the world lives, while re-connecting with old friends and making new ones. In 2008, I introduced the Network to the gun world at the Rangemaster Conference. Since then, I try to return each year to update the growing number of members who attend the Tactical Conference. This year's conference was unique, with four Network advisory board members attending and instructing at the event, along with me.



Massad Ayoob and I taught a course on how the firearms instructor can serve the legal community as an expert witness, John Farnam taught a section on gun accidents and how to prevent them, Manny Kapelsohn (seen above shooting the strong hand only portion of the match) taught a use of force class and Tom Givens taught a couple of classes, along with hosting the event.

This year's conference was particularly interesting to me. I got to attend a bunch of training classes that piqued my curiosity. I took a class with Karl Rehn, owner of KR Training, in the Austin, TX area. Karl is an old

friend and an excellent instructor. People who live within a day's drive of Austin really should take a class from Karl. His website is <http://www.krtraining.com>.

New to the Tactical Conference was famed police trainer Kevin Davis, author of the 2015 book, *Citizens' Guide to Armed Defense*, published by Gun Digest Books and the 2012 publication *Use of Force Investigations: A Manual for Law Enforcement*. (See our earlier interview with Davis at <https://armedcitizensnetwork.org/mistaken-identity>.) He gave a very well thought out presentation on training to win gunfights, in which, as a trainer myself, I am always interested.

I was able to shoot John Hearne's class on basic defensive handgunning. Now, I probably took the spot of

someone who needed the training more, but I took away some tips and it gave me a good warm-up for the skills match, which I shot directly afterwards. I didn't embarrass myself in the match, coming in fourteenth place out of over 200 shooters. When I

was a younger man, I would routinely be in the top five or so, but that was about 15 years ago. Funny thing is that I think I shoot just as good, but I certainly move slower, especially when going kneeling on concrete.

Next year, I will bring kneepads, but, having said that, the competition is getting stronger. I need to up my game.



Perhaps of greatest interest was a four-hour block of instruction I took from Spencer Keepers, inventor of the "Keeper" Inside the Waistband Appendix Carry holster.

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I have been a critic of the practice of pointing your gun at or near your private parts—not to mention your femoral artery—when holstering. I came away from Keepers' session with a better understanding of the practice. I cannot say I am ready to convert, but I did learn how to holster without muzzling myself (as demonstrated by Keepers in the photo below). I think there are still some concerns to address and solve with IWB appendix carry before I embrace the concept, though.

Rounding out my personal training at the Tactical Conference were seminars with Andrew Branca from the Law of Self Defense and our own Advisory Board member, Manny Kapelsohn.

This year, the conference moved from Tulsa to Little Rock, AR where it was hosted at the Direct Action Resource Center, a well laid out and excellent facility for this type of event. The Tactical Conference will return there next year, and I believe I will make the trip once again.

Closing Thoughts

Before I write the next installment of this monthly column, we will have attended the NRA annual meeting, this year to be held in Atlanta, GA on April 28-30. Once again, the Network will have a booth, and we will no doubt sign up many new members. But as important as that is, it is equally important that we get a chance to meet and talk with our existing members. It is always fun and rewarding to get to discuss the Network with those who

have trusted us to assist them if necessary after a self-defense incident. Members, we hope to see many of you in Atlanta, but if you are not able to be there, thank you for putting your trust in us. If you do make it to the meeting, please make sure to drop by our booth.

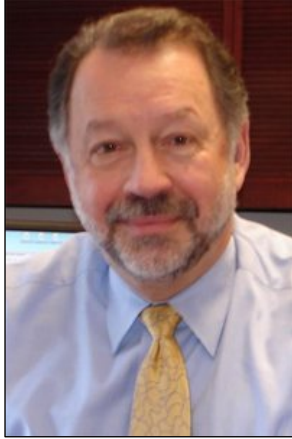


As I do expert witness work around the country in self-defense cases, I am forever amazed at the level of people's incompetence when it comes to understanding self defense, and equally amazed at the poor decisions people make while armed.

I recently finished up such a case, and unfortunately my message regarding the truth of the incident the gentleman faced was lost in the details of the case. (I will not go into specifics, due to a confidentiality agreement). By comparison, it is refreshing to see the competence and good judgment our Network members exhibit when they find it necessary to use force in self defense. While good decisions and competence don't guarantee that members will not be prosecuted, we do see an easier pathway to a legitimate defense, which may include getting the charges dropped or an acquittal if it goes to trial. This is due

in great part to our educational package and the commitment our members make in being well-trained.

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Vice President's Message

146th NRA Annual Meeting – Join Us

by Vincent Shuck

Marty referred to the upcoming NRA annual meeting in this month's President's Column, but consider this your official invitation to join Gila, Marty and me at the NRA Annual Meeting in

Atlanta. The meeting will be conducted at the Georgia World Congress Center, April 28-30, 2017.

like the NRA meeting because we get to greet many of our current members. This is always a highlight of our NRA meeting experience. So, even if you are rushing on your way to see the other 799 exhibitors, at least wave and let us know you are passing by. And, proudly wear your Network hat at the meeting!

Marty, Gila and I will be in the booth on Friday, Saturday and Sunday, unless we are on a temporary mission that takes us to another location, but we will also have Massad Ayoob on Saturday and Sunday offering autograph opportunities. Be sure to stop in and say hello to him.

The city of Atlanta rose from the ashes of the American Civil War to become a national center of commerce. It is known for including the world's busiest airport, home of the 1996 Summer Olympic Games, and the Atlanta Braves, Hawks and Falcons professional teams.



For more information on the NRA meeting, pre-registration and

assistance with housing or travel, visit www.nraam.org. Come join us in Atlanta at booth #2515 – and bring a friend!

While taking in the city sights can be enjoyable, the NRA Annual Meeting itself should keep you and 80,000 other colleagues pretty busy. With almost 800 exhibitors, including the Network, you can spend your time exploring products from every firearm company in the country, book the hunt of a lifetime in the outfitter section, and view priceless collections of firearms in the gun collector area. Educational seminars, special events and celebrity speakers are available to break up your walking time in the exhibit hall. Admission to the NRA meeting is free to NRA members and families.

We will be there in **Booth #2515** ready to welcome new members. But we especially

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Beefing Up Home Security

Massad Ayoob's interview in last month's journal about answering a knock at the door generated quite a lot of discussion. A member from FL requested, "I and perhaps a few other members would appreciate a short list of protective equipment we might consider adding to our residences...motion and photocell driven floodlights, motion activated doorway area video or audio-video recorders, and so on." As if in answer to his request, another member offered us a briefing from his work as a security technician, which we are happy to share.

by Benjamin Jolly

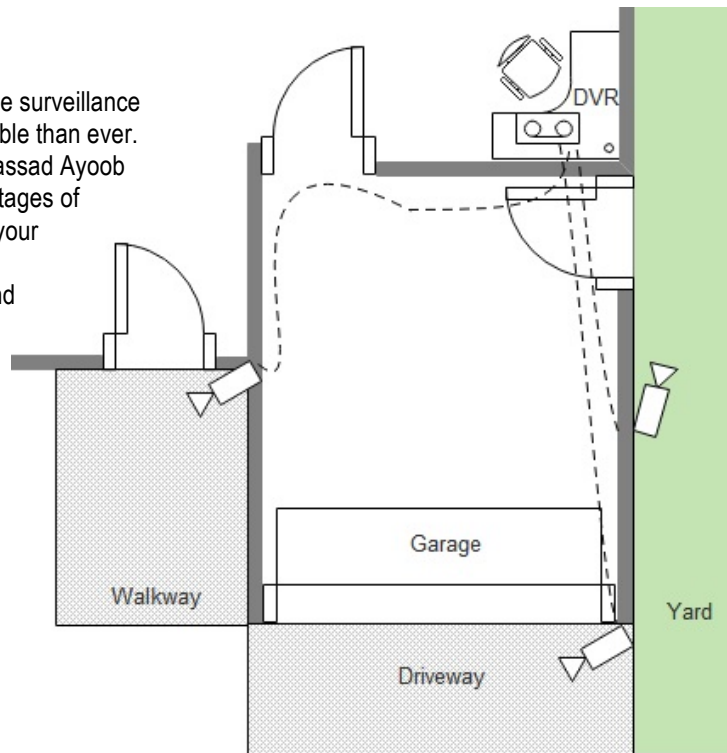
Capable and reliable home surveillance systems are more affordable than ever. Last month's article by Massad Ayoob clearly showed the advantages of having an eye outside of your home. The ring@ video doorbell is inexpensive and can be installed by anybody; I recommend it without reservation.

Some people would like to know a little more about what is going on outside, or to record from multiple areas. A more traditional surveillance system, known as Closed Circuit Television (CCTV), can be used. There are many advantages to a wired CCTV system, better quality and reliability is number one. The biggest disadvantage of a wired CCTV system is retro-fitting it into a finished home. I would like to share some of the things I have learned that make this process much easier.

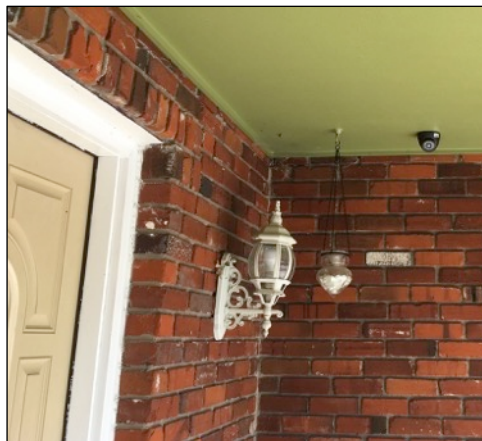
First, select a modern Digital Video Recorder (DVR). A modern DVR should be capable of remote viewing and playback from a smart phone/tablet or a computer. Setting it up online¹ should be a very easy process, the units I sell and install do not require a static IP address. It should also store two or three weeks' worth of High Definition video. HD cameras are a must; they will aid in

getting actionable recordings and provide the best live information. Cameras that have infrared illumination along with a low light mode will provide useful video at night. A properly set up system will produce clear, identifiable images.

Second, use the architecture of your home to your advantage. A ranch style home with an accessible attic is probably the easiest to wire, simply pull the cables from the exterior views through the attic. The cables can



be run down the wall and into the DVR's secure location. Be sure to run a network cable from your router to the DVR, or buy a Wi-Fi capable DVR.¹ If you have a two-story home or a garage, you can run the wires inside the garage as shown in the diagram to obtain at least three camera views. I have used the garage method to save my customers a lot of money; I can install three exterior cameras in under two hours generally, covering their garage/driveway, front door, and side entrance to the yard.



The fourth camera is typically installed inside near the DVR, usually in the mechanical room or to watch a safe.

By carefully mounting cameras, we can avoid "pixel man," the most wanted guy we can't identify in America.

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¹) It probably goes without saying, but if accessible by Internet, the router and other parts of the system need strong usernames and passwords, not just the defaults from the manufacturer. --Editor



The camera in the photo on the previous page is shown mounted around seven to eight feet high, out of reach, but low enough to provide great detail. It is mounted to take best advantage of its wide angle lens, note the front door and the approach to the door shown in the photo above is well covered.

Some other tips:

- Drill through walls carefully. The wiring is typically attached to a stud, so drill in between studs. Consider drilling a small diameter exploratory hole before drilling a large one.
- Make the holes where the camera mounts large enough, 3/4" should allow enough room for the cable connectors to pass back into the wall, and come out when servicing the camera.
- Put the DVR in a cool, well ventilated, and secure location.
- The Network has spoken at length about being on good terms with your neighbors. If a camera is going to surveil part of your neighbor's property, be sure to discuss it with them. Most people are happy to have free security, but others may be uncomfortable with it. Redesign your system to accommodate their concerns.
- If you are uncomfortable doing this type of work, hire your local independent security company. Many will install your equipment for the cost of labor.

Benjamin Jolly is studying for his B.S. in Electrical Engineering at the University of Colorado in Colorado Springs. He works as a security technician and enjoys shooting 3 Gun in his spare time.

Another member writes:

I don't usually comment on stuff, but a comment you made [in the March journal] triggered a response that I thought I would share. You said, "answering an unexpected knock at the door." From my perspective (selfishly perhaps), it's my door and I don't have to answer it if I don't want to. As far as I'm concerned, if someone is standing at my front door uninvited, they are trespassing and will be treated accordingly.

No, I don't live out in the middle of nowhere, I live in a suburban neighborhood surrounded by houses that look just like mine and I get along well with all my neighbors. So if I hear a knock at the door and when I look out of the peephole or out of the window and don't recognize the person, I don't answer the door. I pretend to not be home. If it is a neighbor, relative, mail lady, or friend, then of course I open the door. But if it appears to be a utility worker, UPS man, police, or other supposed trustworthy authority figure, I answer the door armed (concealed, of course).

I am usually armed in the house at all times anyway, so it is second nature to be so. With all the stories lately on the news about UPS delivery pretenders robbing people in their homes, I think it is best to treat everyone as a potential threat. My friends call me paranoid, I say I'm just careful. My friends say what if someone wants to tell you your house is on fire, I say, then they need to call the fire department, yell at me that my house is on fire, or, if my house was on fire, I would already know it.

This is long winded email to what was going to be a short reply. But I think if more people did what I do, there would be fewer home invasion robberies, fewer phone scams, and life would be a little bit better.

I love your monthly newsletter and I am grateful to be a member of the Armed Citizens' Legal Defense Network.

George in Missouri

April 2017



Attorney Question of the Month

This month's Attorney Question of the Month is drawn from a fairly common question that Network members often ask us. Questions about "good Samaritan" duties come up so often that we have asked our Network Affiliated Attorneys the following question to help members better understand where their responsibilities as armed citizens begin and end. We asked—

In your state, does the private armed citizen have any legal obligation to act in a situation where he/she observes and might be able to stop a violent attack against another person? Are you aware of any case in which a citizen has been held liable for injuries or harm to another to whom he or she had no prior obligation, as would be created between doctor and patient, for example.

The question received a good number of responses, some in considerable detail, such that the responses will comprise this column next month, as well. We hope you will enjoy and learn from the first half of the answers from our Affiliated Attorneys.

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Aiding another person that is outside the scope of people you are responsible for is an intensely personal decision. However, knowing the potential consequences before acting is essential when evaluating the risk and making the decision to assist or not.

Potential legal pitfalls in this scenario depend on the law of the jurisdiction where the event occurs. For example, in Michigan the legal standard for the justifiable use of lethal force is the same if you are defending yourself or a third person. The key question is whether the use of lethal force is justified.

To be justified in Michigan, the actor must have an honest and reasonable belief that the use of deadly

force is necessary to prevent the imminent death, great bodily harm, or sexual assault to himself or herself or to another individual. MCL § 780.972. If the use of deadly force is not justified, and another person is killed, it is probable that the good Samaritan will be charged with murder, and if convicted, spend the rest of their life in prison.

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In Alabama our self-defense statute provides for the defense of others so, just as in a personal self-defense situation, the defense of another would be protected as long as the defense is on level with the attack. Deadly force can only be used in response to what reasonably appears to be imminent deadly force. Other pitfalls, however, could be civil liability where an assailant may file a civil damages suit against you for having injured him in your defense of the other person. The question will be was the level of force reasonable under the circumstances or was it excessive? I do not believe this would be a very likely win for the assailant but it has certainly happened and win or lose there is still the cost of defending such a case.

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Intervening with a gun as a "good Samaritan" on behalf of a third party – especially a third party not personally known to you – is very risky business. In my classes, including my police classes, I regularly use the example of the good Samaritan who is on his way back to his parked car after dark. Passing an alley, he hears a scuffle, and sees a greasy little guy with a ponytail, tattoos covering all of his exposed skin, and numerous

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body piercings, sticking a gun in the stomach of a middle-aged businessman in suit and tie. The businessman's briefcase is lying on the ground, and the businessman is begging, "Please don't shoot me!" Figuring he can make the shot with his new Trijicon® night sights, the Samaritan draws his gun and double-taps the mugger center mass. Now all that remains is to find out if he in fact killed a mugger, or killed a DEA agent arresting the biggest cocaine dealer on the East Coast! Remember, you can't tell the players without a score card. Unless the "victim" on behalf of whom you're going to intervene is your own loved one, or at least someone you know well, you'd better, at the very least, have seen the entire situation develop, from start to finish, before deciding to use deadly force.

Now let's change the scenario: Instead of a gun, the tattooed little guy is threatening the businessman with a switchblade. You know cops don't make arrests with switchblades, so this must clearly be a situation in which you can intervene with deadly force, right? Well, what if the little guy was a homeless man who lived in the alley, through which the businessman was taking a shortcut. Startled and frightened by the homeless man who asked if he had any spare change, the businessman produced his knife and threatened to stab the panhandler. You had the bad luck to arrive on scene just after the homeless man kicked the knife out of the businessman's hand, and picked it up off the ground in his own self defense.

Are these situations extreme and unlikely? Yes, they are, and so are many, many other instances in which civilians use deadly force. Again, if the person you're about to "rescue" isn't one of your loved ones, or at the very least someone you know well, you may want to consider calling 911 instead of intervening with deadly force. If you feel you absolutely must intervene in some way, consider taking cover, drawing your gun, and issuing a verbal challenge, such as, "Drop the gun or I'll shoot!" (For me, it's "Police, don't move!") If the vagrant yells back, "You drop your gun – I'm a federal agent," you'll be like the little dog that chases the garbage truck down the street. What will he do if he someday catches it?

Many states have "good Samaritan" laws that provide protection from civil liability for individuals who render first aid, CPR, or similar life-saving efforts to accident victims. I know of no states that have similar good Samaritan laws protecting CCW holders who intervene

in crimes in progress. If your state has such a law – seriously – please let us all know about it. Unless you caused the situation that has placed the third party in peril, I know of no state where you, as a civilian, have a legal (as opposed to moral) duty to intervene as a rescuer. As I have often stated in my police training classes, even if you are a police officer, there is little chance you will ever be successfully sued for deciding not to fire, or not to intervene in a crime in progress.

One of the greatest risks the armed citizen takes is that, if he does decide to intervene, he may be held legally liable for the mayhem that ensues, including even the shots the criminal fires at him that go astray and hit innocent bystanders – or even that hit the criminal's intended victim. Imagine trying to intervene in a convenience store robbery, only to have the robber, after you have placed two ultimately fatal shots on his torso, respond with a barrage of wild shots, one of which hits and kills an expectant mother and her unborn child, and another of which hits the store manager, rendering him a quadriplegic for life. In their lawsuits against you, they claim their injuries were caused by your intervention, but for which the robber would, in all likelihood, have taken the \$26.72 in the cash register and fled. You probably won't feel like much of a hero at that point, if you ever did before that. A well-trained plainclothes police officer, placed in the same situation in which you found yourself, might very well decide to let the robber take the money and leave – if that seems likely to happen – rather than provoking a shooting in a crowded store. And all this presumes that none of your own shots go astray. If you think you're far too good a shot to place rounds off target, just consider that about 75% of the shots fired by police fail to hit the suspect. You may believe you're a better shot than the police are – and you may be – but shooting in a stress-charged, split-second incident in which every person present is moving in a different direction is not the same as target shooting at the range.

We can all feel moral and personal outrage at the thought of being robbed, or of having the sanctity of our home violated by a burglar. Some of us may feel a moral obligation to resist criminals, and even more of us a moral obligation to come to the aid of victims of violence in progress. But proceed with great caution, because if anything goes wrong – even something you couldn't easily foresee, let alone prevent – you are likely to be

[Continued next page...]

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sued civilly, and possibly prosecuted criminally. In the past 18 months, I've worked on the defense in two criminal prosecutions, one as an attorney and the other as an expert witness, on behalf of armed citizens who didn't even fire their guns, but only used them to cover threatening individuals at gunpoint. One defendant was a retired police officer, the other a retired federal agent. One was even on his own property when he pointed a gun at two very suspicious intruders. Each "defender" found himself criminally charged with a list of offenses including aggravated assault (a felony carrying a significant prison term), terroristic threats, reckless endangerment, etc. One ultimately plea bargained to a minor offense, while the other was acquitted after a jury trial. Each one spent a small fortune before the ordeal was over.

A few years back I was a guest on a CNN TV show (I'll never do that again, but that's another story!) on the subject of whether one should attempt to intervene against armed criminals. I and the other guest – a recently-retired, high-ranking NYPD officer – were shown several recent videos of attempts by civilians to "fight back" against armed criminals. Some of the attempts were successful, others unsuccessful and with tragic results.

When asked our ultimate opinions on whether one should try to fight back against armed criminals, whether they are attacking you or a third party, the NYPD official and I were of the same mind. If only property is at stake, give it up; fight only when you believe you or someone else you know is innocent is about to be seriously hurt or killed. The way I expressed it was, "I know there's nothing in my wallet, or anyone else's, worth losing my life over. I also hope I never think there's anything in my wallet, or anyone else's, worth taking someone else's life for."

When we add to the taking of a life the possibility that you may also lose your own freedom, livelihood, and life savings, or cause an innocent person to be hurt in the exchange of shots, the act of intervening with deadly force when you aren't absolutely positive that what

you're doing is not only justified, but immediately necessary, is something to which you should give serious thought now, before the situation arises.

Bruce Gordon

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A person going to the defense of another MUST understand they only have the right that person does for defense.

Unless you are very certain of all the circumstances I recommend you call the police and stay out of the incident. Identify yourself to the police as an available aid to them, some police want the help, others do not. DO NOT EXCEED the authority granted you by the police as this can be grounds for other action as well. Further, working within their instructions may act as a defense for you; acting beyond them will almost certainly create problems for you.

A person coming to the aid of another stands only "in their shoes" i.e., they have only the right that the other person did. If the other person started the problem they transfer that to you as their right. If they are defending their property (in Connecticut) you would thus be defending their property and in this state there is no right to defense of property with physical force. Thus you can become the cause of the problem by trying to fix it.

Be careful! I have heard of people actually being sued by someone they helped when they later decide they didn't really want your help.

We extend a big "Thank you!" to all of the Network Affiliated Attorneys who contributed to this interesting discussion. Please return next month when we'll share the second half of the responses our Network Affiliated Attorneys gave this question.

April 2017



Book Review

Live Fire Drill Cards™ and Handgun Training Log

By Steve Barnett
Suggested retail \$59.95 at <https://livefiredrillcards.com>

Reviewed by Gila Hayes

Several months ago, Network member Steve Barnett generously shared several prototype copies of a practice aid he was developing, a binder entitled *Live Fire Drill Cards™ and Handgun Training Log*. The product was so nice that I readily accepted his invitation to use what he had developed and if his *Drill Cards* proved useful, tell our fellow Network members about them. Since then, he has made several upgrades, resulting in a very nice three-ring binder stuffed to the gills with shooting drills focused on honing the various aspects of handgun accuracy. Despite the variety of exercises he has gathered in the *Drill Cards* binder, he continuously returns the user's focus to accuracy throughout his work.

Steve told me, "I have invented a product to help people become better shooters. I did this to help myself but then it just got a life of its own and I realized I wasn't the only person who could benefit." His *Live Fire Drill Cards™ and Handgun Training Log* comes in a nicely outfitted three ring binder measuring 9" x 7" to fit in most range bags. It is filled with stiff tabs separating a permanent training log, check lists of equipment needed in practice sessions, plus a wealth of shooting drills and skill-building exercises on two-sided cards with space to record the user's scores or results.

On the front of each drill card, Burnett listed the equipment needed, target type, information about whether it is suitable for practice at an indoor range, and he even squeezes in lines on which to record details like whether you did the exercise using your standard two-handed grip, one-handed strong hand or one-handed weak hand or with both hands, but fired weak-handed, for example. These details, like the scoring instructions, vary from drill to drill, with the result of creating many

more variations than just the 30 drills provided on the cards. In addition, a small box at the drill card's upper right identifies the skills focus of the exercise.

On the back of each drill card is the description of the stages of fire (most are more complex than a single stage), distances, how to run the drill, par time, and in some cases how to adapt the original for easy use at indoor ranges. Small type at the bottom of the page credits the instructor, expert or other source from which the exercise is derived, and the credits list is very diverse. The drill's stage details are diagramed on the back of the card.

Each card includes a chart on which to record progress and skill development. Understanding that frugal shooters might balk at marking up the cards, Steve has packaged replacement cards with the drill cards priced at five replacements for \$2.45 and the training log cards at 25 for \$4.95. He even offers free downloads of the targets used in the drills on his website, although the targets can be purchased there, too.



I shared the Drill Cards around the office, with a sneaky plan to turn the binders into group practice session fodder, for which they serve admirably.

Now, instead of showing up at the range with your friends and blowing a couple of hours burning up ammo and chatting, an orderly progression through the drill cards or a random draw gives focus and purpose to the session. Steve's handy binder not only includes permanent records, but it is so much more durable and easier to use than the tattered envelope stuffed with drills and qualification tests I've harvested from various instructors over the years and carried in my range bag. That Burnett is more organized than I can ever aspire to be goes without saying!

We are greatly enjoying our copies of the *Live Fire Drill Cards™ and Handgun Training Log*. The investment in this system is \$59.95 for the initial set, and as noted, affordable refill sets are available. Learn more about Steve and order the cards and binder he's developed at <https://livefiredrillcards.com/about/>.

*[End of article.
Please enjoy the next article.]*

April 2017



News from Our Affiliates

Compiled by Josh Amos

It looks like spring is here and winter is finally relaxing its hold on all of us, so it's time to get out and do some shooting! Many of us have reinvigorated training schedules and are getting back out to the range. As training starts back up, our goal this year is to have each affiliate give out 200 of our Foundation's booklets *What Every Gun Owner Needs to Know About Self-Defense Law* to their students.

Affiliates, if 200 hundred students is a hard goal to reach, we encourage you to distribute booklets at ranges, gun shows, matches, gun shops, or any of the many places you meet up with responsible armed citizens. Check your booklet inventory before summer starts! If you need more booklets to give out to your clients, please contact us and we will get you resupplied.

I've had a great month teaming up with a lot of outstanding affiliates from one corner of the nation to the other! Let me introduce you to three standouts:

If you are in Washington State, I recommend our friends at West Coast Armory. They work out of two locations – their range in Bellevue and a gun shop in Issaquah, both east of Seattle.

West Coast Armory's range in Bellevue is a 31,000 ft. indoor range, gun rental, pro shop, and shooting simulator. The indoor range bays are clean and feature OSHA/EPA certified air systems, AR500 steel bulletproof partitions for improved safety, and each bay has a wheelchair accessible shooting stall and chairs available for bench-rest shooting. They offer a range rental program that has dozens of pistols, rifles, and shotguns available for rental, and they also have a new simulator that lets you train in a state of the art, first person, and interactive shooter experience.

The trainers at West Coast Armory (Josh, Keith, Gracie, Brett, Steve, and Tyler) are a great bunch of top-notch trainers who are known for being knowledgeable, kind, and willing and able to help their students succeed wherever they are at with their shooting skills.

If you are in Fort Myers, FL, check in with Sara and Jason Ryan at Athena's Armory. They've got the bases

covered with gear and guidance with their firearms training classes and an online store. As certified NRA instructors, the Ryans teach a great line up of core classes: FL Concealed Weapons Permit, handgun fundamentals, handgun selection, private lessons and more. They pay attention to the communication styles and different needs of all their shooters be they men, women, beginner or more advanced. They also have an online store and work hard to review products, books, and equipment that they offer for sale, so that they can share their educated thoughts and opinions with their customers.

If you want great training without a lot of ego in Illinois you need to contact John Boch and his association of trainers at Guns Save Life (GSL). John and his pals at GSL are a dedicated group of firearms instructors from all walks of life who are likewise dedicated to helping armed citizens get quality defense training. John and GSL work to make their training effective and enjoyable for everyday people by teaching and empowering them with the skill sets they need to avoid becoming a statistic. Check them out at <http://gsldefensetraining.com>.

John has been a great Network supporter, telling people in IL about the importance of belonging to the Network and we hope our members support him, too. I was intrigued by his course offerings, and one in particular...Personal Protection for Teens.

OK, I thought, at first glance, "Protection for Teens?" I mean teens? Teenagers? Aren't all teens brain damaged, hormone crazed, lazy, social networking, insolent, walking disaster areas? Maybe they are and maybe they are not very likeable sometimes, but that makes it too easy to write off teenagers. In my opinion, there are some darned good kids out there, despite all the doo dah that comes with teenagers (and I have raised three). In fact, they are our most at risk group of people out there. I recently went to college and finished off some degrees. While I was there I saw first hand what this generation of teens is up against and it is not pretty. So I applaud John Boch and Guns Save Life for caring enough to get off of the sidelines and make a difference through this teen safety program. Bravo!

[End of article.

Please enjoy the next article.]

April 2017



Editor's Notebook

by Gila Hayes

"Words matter." –My mother

"The beginning of wisdom is to call things by their proper name." –Confucius

We founded the Network on a base of serious-minded armed citizens who had studied use of force and post-incident possibilities then choose how they wished to fight political prosecutions and punitive civil law suits that punish the citizen who justifiably fights off a deadly attack. Because the concern addressed by Network membership benefits follows a type of occurrence—self defense, we have from Day One had to spend considerable time and effort to discourage members and non-members alike from calling Network membership benefits "by the wrong name;" from erroneously calling it insurance. We believe members must understand what they receive from membership benefits, and that understanding cannot be achieved by failing to "call things by their proper name."

Day in and day out, I answer questions erroneously couched in terms like insurance, policies, deductibles and all manner of inapplicable terms. Often my first words are, "Please understand that Network membership benefits are in no way related to insurance..." If the exchange is by phone, the caller often retorts, "Well, I knew that! It is just easier to call it insurance because that's what I'm familiar with." I don't get it: Instead of aiding in accurate understanding of Network membership benefits, should we perpetuate confusion by using incorrect terms just because they are comfortable and familiar? I rather think not!

The Network chose to retain 100% control of post-incident assistance to guarantee we were free to act in the member's best interests in the critical time line after the incident when funding is needed to protect the member's legal rights. We did not want to stop to ask if insurance would cover one need or another. End of story... or, it should be, if people would just stop calling Network membership benefits insurance!

The idea that you can call a thing what ever you find familiar and comfortable is, of course, pervasive in our intellectually lazy society. On issues of wider import, it is

becoming increasingly difficult to choose news sources with the faith that you will receive facts that aren't twisted to adhere to one set of ideals or another. The amount of outright lying from the so-called news media is astounding, especially when you consider that freedom of speech is a bedrock value of the American nation that they seem so eager to destroy. The hatred and acting out their lies create is really boiling up!

If you can't get your own way these days, lashing out at people who think or act differently than you do seems to be the norm. Justify your destructiveness by saying you were defending your "rights" from the President and those who support him. Favorite causes range from "taking away women's reproductive rights" to oppressing one ethnic group or another, or if you're just feeling mad, choose what is most precious to you and assert that Trump threatens the reality you wish for. Apparently truth has little role to play, so long as you "feel" it.

We've recently witnessed some astounding examples of acting out in which angry people preemptively attack whomever is most easily within striking range. When in public, dear members, take extra care and keep your alertness at a high level to avoid getting swept into some of the generalized violence thus committed.

Restrictions on guns, knives or any other implement can't stop a person bent on hurting others to make a point. They will use what ever means are at hand, as did the attacker who killed four and injured so many more with a car and knife before he was stopped outside Parliament in London. It's just one more proof that there are plenty of ways to injure and kill if that is your intent.

A columnist at Observer.com recently compared murder rates and weapons restrictions, which despite desperate juggling of numbers don't correlate. You may enjoy perusing it at <http://observer.com/2017/03/donald-trump-gun-control-murder-crime-rate/>. If I had a magic wand, I would eliminate the term "gun violence," and require correct use of words like murder or manslaughter, and self defense instead of "Stand Your Ground" for starters. Too bad, no magic wand! What can we change?

We can resolve to speak plainly and truthfully and, yes, to always "call things by their proper name."

*[End of April 2017 eJournal.
Please return for our May 2017 edition.]*

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About the Network's Online Journal

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In addition, material presented in our opinion columns is entirely the opinion of the bylined author, and is intended to provoke thought and discussion among readers.

To submit letters and comments about content in the **eJournal**, please contact editor Gila Hayes by e-mail sent to editor@armedcitizensnetwork.org.

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