The Unmeritorious Prosecution of George Zimmerman

Analysis by Marty Hayes, J.D.

Note: We deviate from the format of our normal lead article to give Network President Marty Hayes, J.D. the leeway to analyze the recent criminal prosecution of George Zimmerman, as viewed through Hayes' experience as a former police officer, expert witness and self-defense instructor. The reader will recognize that Hayes' opinion permeates this article, as removing his observations would reduce the lessons armed citizens should learn from this incident. —Editor

As I absorb the details of the jury trial and acquittal of George Zimmerman, several issues are foremost in my mind. These I would like to share with our members, and unless a new Federal charge is brought against Zimmerman (which I doubt) or a civil suit against him from Trayvon Martin's estate (more likely), this will conclude our discussion of the Zimmerman case. Additionally, this review of the case is drawn from the court proceedings and other evidence that may not have made it into court.

Pre-Confrontation

Most trial watchers and the media have finally acknowledged that Zimmerman did not ignore or disregard the dispatcher's orders not to follow Trayvon Martin. Media commentators and other ignorant individuals persist in calling Zimmerman a "night watchman," though. This is pure, unadulterated crap. The term "night watchman" conjures up images of a guy walking around at night, flashlight in one hand and billy club in the other, keeping an eye on things. This was not George Zimmerman, nor does it describe the role Block Watch plays in our neighborhoods.

Recently the media-driven narrative has shifted from asking, "Why did Zimmerman follow Martin?" to "Why didn't Zimmerman confront Martin, identify himself as a Block Watch representative, and question Martin's actions?" This is not the role of the Block Watch program, either. The purpose of neighborhood watch is to observe and report suspicious activity and be a good partner to law enforcement.

The Retreat at Twin Lakes neighborhood in Sanford, Florida had been beleaguered by burglaries and at least one home invasion robbery. In response to these crimes, the neighborhood invited the Sanford Police to help them form a Block Watch program. Zimmerman was later appointed by his neighbors to act as Block Watch captain, also referred to as a Block Watch contact. This took place several months before the incident we're discussing, and during the time leading up to February 26, 2012 Zimmerman had called the police non-emergency line at least five times to report suspicious persons, in addition to the call he made to the non-emergency line the night of the shooting, which we have all heard.

Many, many people have called George Zimmerman an idiot for getting out of his car. I fully disagree. He was perhaps guilty of being naïve and uneducated about carrying a gun for self defense (so much for the efficacy of mandatory training for obtaining a concealed carry license), but I cannot see a single thing he did wrong. Let me repeat. HE DID NOTHING WRONG! Are we becoming such a nation of wimps, that a full-grown man cannot even keep an eye on a suspicious person in his neighborhood? He was part of the neighborhood watch program, for God's sake! Frankly, I think I would like George as a neighbor. He seems like a stand-up guy. For those who ask why he got out of his car to keep an eye on a suspicious character in his neighborhood, I say, "grow a set."

As we know, Zimmerman got out of his car to keep an eye on Martin after Martin circled Zimmerman's car, all the while having his hand in his waistband, according to Zimmerman. After Martin started running from Zimmerman, Zimmerman apparently tried to keep an eye on him but lost him in the darkness. (Remember, Martin was wearing dark clothing). The dispatcher, hearing the wind blow against the phone and Zimmerman breathing heavily, realized that Zimmerman was on the move and asked, "Are you following him?" He then told Zimmerman, "You don't need to do that," so Zimmerman turned back towards his vehicle.

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Zimmerman didn't know his exact location, unable to see any street signs or house numbers, so he told the dispatcher to have the arriving cops call him and they would then rendezvous. With that call disconnected, the next several minutes went undocumented, except for Zimmerman's statement after the shooting. We do know, though, that Martin did not go back to his father's home (which was only a hundred yards or so away) but instead, hung around in the dark, talking on his phone to Rachel Jeantel.

The Confrontation

According to Jeantel, she listened to some of the initial discussion between Zimmerman and Martin, then heard a noise that sounded like a thud, and what she calls the sound of "wet grass." She also relates hearing Martin tell Zimmerman to "get off, get off." I do not find this credible because it is at odds with any other information from any of the eyewitnesses, nor is there any forensic evidence that Zimmerman was on top of Martin at any time. Zimmerman had grass on his back, but Martin did not. Martin had wet knees, but Zimmerman did not. Zimmerman had injuries to his face, but Martin did not. Martin had bruising to at least one hand (his left) but there was no bruising on Zimmerman's hands. Two bleeding lacerations on the back of Zimmerman's head coincide with his report that his head was being beat against the concrete sidewalk, and of course, Zimmerman's nose was broken. It seems more likely that what Jeantel heard was Zimmerman telling Martin to "get off, get off" right before the beating and screaming started. Indeed, the best eyewitness, John Good, testified that he saw Martin on top of Zimmerman throwing punches down on Zimmerman.

The screaming lasted about 30 seconds. The Martin family identified Martin's voice as the one heard screaming when a neighbor called 911, and the Zimmerman family identified Zimmerman as the man screaming for help, as did others. Jeantel identified the voice as Martin's. What was supposedly being done to Martin to make him scream for help for 30 seconds? Perhaps it was when Zimmerman attacked Martin's fists with his head. Commentators made much about why the screaming stopped immediately after the gunshot. Well, gee, maybe it was because Martin stopped hitting Zimmerman.

Without question, Zimmerman shot Martin after being beaten. There is no evidence that Martin suffered any wounds except for the gunshot that killed him. The evidence, as brought forth by expert witness and pathologist Dr. Vincent Di Maio conclusively showed that Martin's hoodie sweatshirt was in contact with the muzzle of the Kel-Tec 9mm, but that the muzzle of the gun was a few inches away from Martin's chest when the shot was fired. This can lead to only one conclusion: that Martin was above Zimmerman when the shot was fired. This is the narrative the jury heard, one born out by the facts, and often in Zimmerman's own words from earlier recordings. This goes against the whole prosecution narrative that Zimmerman pursued Martin and when he caught up to him, he shot him in cold blood. The prosecution narrative was chock full of lies, deceit and emotion. One only had to watch the prosecution's opening or closing arguments to see that the prosecution did not have the facts on their side.

The Prosecution

I watched about two-thirds of the trial and recognized a desperate attempt by the State of Florida to convince six jurors that George Zimmerman criminally used deadly force against Trayvon Martin. Because the facts were not on the prosecution's side, they needed to twist the facts, and bring up witnesses who either lied or massaged their testimony to lend credence to the narrative that Zimmerman hunted down and executed Martin.

I was reminded of Massad Ayoob's theory that juries are not comprised of twelve people too stupid to get out of jury duty, but rather are made up of twelve separate and functioning bullshit detectors. Though numbering only six in the Sanford, FL courtroom, those jurors saw through the web of lies and emotion to understand the facts as they truly were. I have often seen the same dynamic played out in other cases when other juries saw through the prosecutions' lies and deceit.

I was enthralled watching defense attorneys Mark O'Mara and Don West tear apart the prosecution's case point by point. A lot of commentary by the talking heads wondered if the defense needed to put on a case at all, seeming to believe that the prosecution failed to prove the elements of second-degree murder. Of course, O'Mara and West understood that the judge in this case could likely give a manslaughter instruction, too, and thus they did need to put on a defense. And so they did.

The defense introduced solid witnesses, like the Federal Air Marshal who was Zimmerman's friend. They brought in expert testimony by Dr. Vincent Di Maio, who taught the jury about the facts of the altercation.

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And then there were Zimmerman's own words, clearly heard, presented courtesy of the state of Florida, although Zimmerman himself did not testify in his own trial. In an attempt to prove that Zimmerman was criminally liable for the death of Martin, the state chose to play for the jury the police recording made the night of the incident, then played the recording of the next day's scene walk through with Zimmerman and Detective Serino, and then, to top it all off, they played Sean Hannity's interview with George Zimmerman. The State hoped to highlight some minor inconsistencies in these various statements to prove that Zimmerman was being deceitful and thus was guilty of murder.

We here at the Network have long understood and promoted the argument that one should not give detailed statements to the police immediately after the incident. In this case, it worked out in favor of Zimmerman, but this is the exception that proves the rule. I am really fascinated that these statements were theoretically not admissible in court because they are considered hearsay statements. The defense could have objected to bringing the videotapes into the trial.

What would have been the likely outcome? Without the video statements, the jury would not have known the story as told by George Zimmerman. As a result, he would probably have needed to take the stand in his defense, so the jury could understand his side of the story. But, if Zimmerman had testified, the State would have been able to present the video tapes as an exception to the hearsay rule, stating that the video tapes were rebuttal evidence to Zimmerman's courtroom testimony. Or, perhaps the tapes would have been admitted over objection anyway, as they could have been offered as exception to the hearsay rule by virtue of being statements against interest. Were they really statements against interest? I am not sure, but given the nature of Judge Debra Nelson and her obvious bias against the defense, I suspect she likely would have allowed them in. In any event, the tapes were golden for Zimmerman, because it allowed him the luxury of not needing to testify, but yet to have his story told in his own words, without being cross-examined.

The Verdict

As we all know, the jury deliberated for about 16 hours and came back with a verdict of not guilty. I am frankly amazed that this jury seemed to be unaffected by what they heard about the case ahead of time. I believe they would have convicted Zimmerman of either manslaughter or murder if given half a chance, supported by at least a few facts to bolster the prosecutor's theory of the case. One juror has publicly stated that she wanted to convict George Zimmerman but because of strict reading of the law, she had to vote for acquittal.

What might have been the outcome if the State could have shown even a hint of malice? For example, what if there had been evidence that Zimmerman had a history of racism, if he had tweeted or otherwise left a digital trail of racist comments? At that point, the prosecution would have had their hook, and likely convicted Zimmerman of murder.

Lessons Learned

So, what lessons can members of the Armed Citizens' Legal Defense Network take away from this case?

We can start by understanding that there are many people in this country who hate armed citizens. They hate everything we stand for. They will jump on any excuse to eliminate our ability to own and use guns in self defense. Attacking the armed citizen as the State of Florida attacked George Zimmerman is just one example. I saw it several years ago in Arizona in the Larry Hickey case, and I saw it again earlier this year in Pennsylvania, in political prosecutions of innocent men who did nothing more than defend themselves in a reasonable belief they were in danger of dying or suffering great bodily injury. And of course, the prosecution of George Zimmerman was political.

It is not the way it should be, but it is reality. Accept this reality and take legitimate steps to counter it. "What steps," you ask?

Well, first we can live our lives squeaky clean, free of any hint of racism, gender bashing, or any other type of activity that could be brought up in court to show hatred against any group of persons. Face it, if you are a white male and in self defense kill someone who is a member of a minority class typically protected by the liberal left, AND you live in a jurisdiction that has an anti-gun prosecutor, your case of self defense will very likely become headline news, if not nationally, at least locally. It is my understanding that early on in the Zimmerman case, the Martin family hired a public relations firm to bombard the news media with pro-Trayvon information and anti-Zimmerman information.

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Once Jesse Jackson, Al Sharpton and others got involved, the script had been written.

If YOU are the next George Zimmerman, and there are hints of racism or other prejudice in your history, then you might not come out of the trial as well as Zimmerman did. Besides, clearing your head of prejudicial thoughts is good for the soul.

Secondly, you need to make sure your training resumé is current and up to date. When was the last time you took a class from a well-respected firearms instructor, one who understands the legal system and who would be an asset to you in court?

First, we go to class to learn how to shoot and to learn the legal issues surrounding use of deadly force in self defense. But, are we going back to train once a year or so? If you don't keep training, you will lose a step or two. Plus, it would be handy to have your latest instructor on the witness stand to explain how your actions were consistent with the information he taught you in that class last year. Zimmerman could have used that kind of material witness.

Having had recent and current training in deadly force law might just keep you out of court. It did just that for a student of mine several years ago. The quick story is that a student had pulled a gun and threated a couple others who were threatening him with pool cues. Later, when the student was charged with assault, his training records from my shooting school went a long way towards convincing the prosecutor that a plea bargain was a better option than prosecution. I was prepared to testify on his behalf and the prosecutor knew this. I saw the same outcome for another student of mine a couple years later. Of course, the Network DVDs are a big help, but there is nothing like a local, upstanding citizen on the stand looking their neighbors (the jury) in the eye and telling them what they need to hear.

Third, inspect your hardware, and make sure it doesn't offend. Would a 75-year-old great grandmother who has never touched a gun in her life be offended by the appearance of your gun?

I once testified in a case in which the defendant had nickel plated his Taurus PT-40, gold plated the trigger and had his name inscribed on the side of the gun. Perhaps that was not the best move. Now, it is all the rage to have cutesy little designs inscribed on the back plate of your carry Glock. I have also seen the skull and cross bones depicted more than once, and the small inscription "smile and wait for the flash" engraved on the exposed barrel crown of your pistol is an invitation to be prosecuted.

Next comes the decades-old advice to never alter your carry gun to reduce trigger pull weight below five pounds or deactivate a safety on the gun. In the 1980s and 1990s, a lot of people pinned the grip safeties on 1911s because their shooting grip would not depress it. Browning put a magazine disconnect safety in the Hi-Power pistol design, but many people remove it.

A long time ago, I bought a Walther PPK from a student who received a gun collection in a divorce. On the Walter's right side grip panel was glued a CIA logo. I have long since parted with the Walther, but kept the "strange ranger" grip as a curiosity, though I would never use it. No wonder my student divorced the guy!

Just last night I reviewed a trial transcript where a state crime lab firearms examiner spent a good 15 minutes on the stand discussing the safety features and trigger weight of a Glock pistol. If she had found any anomalies, then these would have become a large part of the case. As the gun was stock, she was not able to raise any issues. If George Zimmerman's Kel-Tec 9mm had been somehow modified, I can only imagine what would have been said in trial!

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Keep your guns stock, and if you do modify a gun, do it for the right reasons, like a grip reduction to make the gun fit your hand better or install better sights. These upgrades can be explained easily enough, but that is not true for some of the others previously mentioned.

The fourth lesson to be learned also has to do with hardware, but the expendable kind. Ammunition selection is important in a self-defense case. By the close of the year, I will have testified in four cases where the specific ammunition brand was a talking point of the case.

These inquiries delved primarily into gunshot residue and powder stippling (for close range gun shots) and recoil dynamics in two of the four. Without being able to obtain the same type of ammunition for the testing procedures (done by myself in three of the four cases, and done by the crime lab in the fourth case), the facts would not have been as clear for the juries.

In the Zimmerman case, two forensic pathologists opined on gunshot residue and stippling. Much can be determined about distance and orientation by the stippling pattern. That is why the ammunition you use should be easy to obtain, either over the counter or from the manufacturer. It should NOT be a rare, exotic design, but instead a traditional hollow point. And, the icing on the cake would be if it was the same caliber and type as your local police officers carry.

Point number five has to do with choosing attorneys and being able to pay for them. Zimmerman ended up with two fine defense attorneys, both who outclassed the prosecution in a big way. I liked watching O'Mara and West because they complemented each other. While I don't know their background in self-defense law, they seemed pretty up to speed on what they needed to accomplish. Perhaps the seven educational DVDs from the Network that I sent them early on helped in some small way. I was also very interested in watching the fund-raising efforts, as seen at http://www.gzdefensefund.com/donate/index.php/how-has-money-been-spent.

If you don't want to take the time to read through that link's online reporting, understand that according to the Zimmerman fund website, he has raised and spent over $400,000 for his defense, which includes $95,000 for the bail bondsman, money he will not get back.

That is likely a record for a self-defense case, and one that I sincerely hope we never try to break. But, the expenses are now fact, so let's address the issue of legal costs and the Network Legal Defense Fund.

The Network is now closing in on having $300,000 in the fund, and we should be there in another month or two. Obviously, a case like George Zimmerman's would hit our fund hard. Recognizing this, while we watched the fund grow over the past several years, we have put into place procedures to administer the money. The first check point is the Advisory Board, consisting of Massad Ayoob, Dennis Tueller, Tom Givens, John Farnam, James Fleming and Manny Kapelsohn, along with Vincent Shuck and me as ex-officio members. The advisory board will ultimately decide how the fund is disbursed, but having said that, as President of the Network, I would scream very loudly and stomp my feet if they decided to spend over half the fund on any single case.

If Zimmerman had been a Network member, he would likely have received $125,000 at the most. This would have given him a pretty good start, but obviously additional fundraising would have still been needed. That is where the power of the Network could and likely would come into play. There is nothing stopping each and every member of the Armed Citizens' Legal Defense Network (all 7,500 of you, at this writing) from kicking in money for defense of any individual member.

If George had been a member, and we needed to raise additional money, I would have asked the membership to kick in another $50 or so per member. Assuming we all participated, thinking, "There but for the grace of God, go I," we could have raised an additional $350,000 pretty darn quickly. Plus, we would have likely raised additional money from outside Network membership using publicity as the Zimmerman defense team successfully did with www.gzdefensefund.com. So, please understand, folks, that the likelihood of a member needing serious financial assistance and not having it available is fairly remote.

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The power of the Network first and foremost lies in the strength of our members and the ability for us to go directly to the membership for more help, if needed.

Occasionally we receive emails questioning the ethics of our Legal Defense Fund disbursement oversight, implying that it is set up as a means for the advisory board to simply refuse to help any member. It is insulting, but apparently these folks think we intend to keep the money for ourselves. It pains me to even address this issue, as the people we have recruited for the board are the highest caliber of people I know. When they are called to make Legal Defense Fund decisions, I have full trust that they will do their job correctly and efficiently and with the utmost integrity. Since up to now, members have only needed us to pay deposits against attorney fees, we have yet to need to go to the Advisory Board with a funding request, but I suspect that day is coming. Finally, although the Legal Defense Fund is technically a financial asset of the Network (since it allows us to provide the financial assistance part of the member benefits), we view the fund as a separate asset kept in separate bank accounts, not a cash cow for the Network.

Watching the Zimmerman case has brought up a plethora of attorney selection questions and requests for related advice.

Please do not fret that you do not have Mark O'Mara's card in your wallet. Remember that for the first couple of months after the shooting, Zimmerman either had no attorney or had another attorney involved in the case. It is perfectly acceptable and commonplace to switch attorneys early in a case as Zimmerman did. If a member ended up embroiled in such a high profile case, the Network would likely take the steps to recruit a "dream team" including lawyers who've successfully defended similar cases, even if it means bringing them in from out of state, if necessary.

Conclusion

The astute reader will have, by now, realized that the lessons we took away from the Zimmerman case by and large centered on the normal issues in any self-defense case. We have discussed most of these issues before and it is not lost on me, that despite the extreme notoriety and public discussion about race and self defense, when it all came down to it, George Zimmerman's case was just another self-defense case. Except for the publicity, it was no different than most any other self-defense case out there.

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Please enjoy the next article.]*

President's Message

by Marty Hayes, J.D.

This column will be short this month, primarily because I wrote such a long lead article. Besides, I am leaving soon to testify in my third homicide case this year and have some work to do before I go. Still, I just wanted to announce our eighth DVD, *Legal Considerations of the Use of Non-Lethal Defensive Force,* which discusses the issues surrounding using force, but not deadly force, in self defense.

If one of our members is going to be involved in a self-defense incident, it is more likely that the incident will involve a display of a firearm and either an implied threat or an overt threat of use of force to stop the incident. I had been wanting to address these issues for our members for some time now, and I think the new DVD, which should be arriving in your mail box this month, will do this nicely.

The program was actually filmed last summer in cooperation with Network Affiliated Instructor Rob Pincus and the Personal Defense Network series of DVDs he puts out through one of his companies. Last summer when Rob was here training at my firearms training school, he asked if I wanted to try a joint venture on this topic, and I said, "Sure," because of my conviction that this is a topic we need to be teaching.

While I have the lead on the DVD, I am joined by Rob and a colleague of his, retired police Sgt. Kerry Tanner, who I think did a real nice job explaining how law enforcement will look at a display of a firearm in self defense or the offer to use force at the point of a gun. One thing that is really nice about the DVD is the production quality. It was nice to work with a professional film and editing crew. We will endeavor to make the quality of our next DVD as good quality as this one. In any event, I hope you enjoy it and find the material useful.

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Attorney Question Of The Month

For the past several months, we've asked our affiliated attorneys a question about warrantless searches, receiving so many responses that only this month do we wrap up answers to this question:

Following the house-to-house searches law enforcement conducted after the Boston Marathon attack, a lot of Network members emailed to ask if they could deny police entry into a home or vehicle under emergency conditions. Absent a search warrant, do citizens have a right to deny law enforcement entry into their home? How do you recommend that the average armed citizen invoke their rights if they wish to prevent a warrantless search of their premises?

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As the Grateful Dead said "… if you got a warrant, I guess you're gonna come in…" Absent that thought, the short answer is yes, citizens generally have a right to deny law enforcement entry into their home. It is long settled under both Federal and Maryland law that physical entry of the home is "the chief evil against which the wording of the Fourth Amendment is directed" *(Riddick v. New York, 445 U.S. 573);* and that a warrantless entry is presumptively unreasonable. In Maryland there are exigent circumstances where the police can enter your home without a warrant: hot pursuit of a felon, a crime being committed in the view of the officer, imminent destruction of evidence, or the reasonable belief that an occupant is seriously injured or in danger of imminent serious injury.

Of course, no matter what the circumstances are if you invite the police in–either explicitly or implicitly–they are allowed to enter. For that reason I would advise people to politely ask the police through a barely cracked door or (even better) a side window if they have a warrant. If they do not, tell them to leave and shut the door/window. The police are either going to come in or follow the law and go away.

In our state while there is a long recognized common law right to resist an illegal arrest with non-deadly force there is no corresponding ability to legally resist an unlawful intrusion into your home so at that point if they do decide to make entry any legal remedy you have will be through the court system. I would also suggest that you have someone prepared to photograph/record the incident, but do it in a careful manner so that no one can misinterpret the object you are holding. Lastly I would advise that you have this discussion with all members of the household so that they know what to do in the unlikely event that this happens. If one household member gives consent then the police will have a "good faith" basis for warrantless entry no matter what other occupants may say.

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As an attorney who has been in private practice since 1999 and who represents firearms owners in both criminal and civil actions, as well as a former municipal police officer who has personally participated in serving numerous search warrants as well as having been involved in many more warrantless searches, I hope to offer both a practical and legal perspective to these questions.

As an initial matter, whether citizens have the right to deny law enforcement entry to their homes, probably is not the question citizens should be asking themselves when police arrive at their doorstep.

Under certain circumstances, known in legal terms as "exigent circumstances," it is lawful for police to conduct searches without a warrant. However, the exigent

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circumstances exception to the requirement for a warrant is just that: an exception. Courts should narrowly construe exceptions to legal rules – including the exigent circumstances exception.

Cases in which police believe exigent circumstances exist always, by definition, involve some sort of perceived emergency. That is the purpose of the exception to the constitutional rule, which (in most cases) requires a warrant. When police believe – correctly or otherwise – that an emergency exists, they sometimes will not ask permission before conducting a search. This type of search is typically conducted at gunpoint, with police giving orders, and without any prior discussion. In this situation, the best – and indeed only practical – response is full, timely, and complete compliance with police orders. The civil courts are well-equipped to hear and decide, after-the-fact, the constitutionality of police conduct. Assuming full, complete, and timely compliance with the unconstitutional orders of police, the armed citizen, although perhaps a little roughed-up, should still be able to enjoy the proceeds of what probably will be a fairly large out-of-court settlement or jury verdict. Anything less than full, complete, and timely compliance may, on the other hand, result in tragedy.

Alternatively, there are situations where police will ask permission to search before commencing a warrantless search. In these cases, the armed citizen (whose firearms should be safely stored and out-of-sight before the conversation with police begins) should simply ask: "Do you have a warrant?" If police are unable to produce a copy of the warrant, the citizen should politely tell the officers that the citizen does not consent to a search. The citizen should then ask the officers to depart.

Sometimes, the officers may suggest, or even explicitly state, that a judge will sign a warrant. If this tactic is used the citizen should politely reply: "When you can show me a valid warrant, I will cooperate in allowing you to do what a court has authorized you to do."

If the officers will not take "no" for an answer and persist in their attempts to obtain "consent," then ask: "Will I be arrested if I do not consent to a search?" If the answer is "no," the citizen should repeat the previous request that the officers depart.

The police now have two options: they can leave (and perhaps try to obtain a warrant) or they can search without a warrant. If the police decide to search without a warrant, do not resist. If the search is unconstitutional, a lawsuit can be filed to redress the illegality.

Although it is not likely that a citizen will have advance knowledge or warning of an impending request by police for permission to search, if it is possible to safely record (audio only or audio and video) the interaction between the citizen and police, such evidence is often very helpful when deciding whether to file a lawsuit or on what terms to settle a lawsuit.

Regardless of what one's rights may be or may not be, the first consideration should always be safety.

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In California I would advise my client to NOT permit entry without a search warrant. If law enforcement force their way in and find anything to use against my client, I would make a motion to suppress the evidence.

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As a general rule, law enforcement authorities need a search warrant to enter the home of a citizen. However, the courts have ruled that there are several exceptions to the warrant requirement.

One of these exceptions is the doctrine of exigent circumstances. While the term "exigent circumstances" may seem complex, it is nothing more than a recognition that certain emergency situations allow for a warrantless entry of a home by law enforcement officials. The Supreme Court has outlined that "warrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona, 437 U.S. 385, 393-94 (U.S. 1978).*

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Specifically, the Supreme Court has recognized that "[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." *Id. at 392.*

A few of the specific instances that the court has recognized as "exigent circumstances" include entering to fight a fire, entering in hot pursuit of a fleeing criminal, entry made due to a report that violence may occur at a school, entry to prevent the imminent destruction of evidence, and entry to render aid to an injured person.

While a specific case involving a house-to-house search for a terrorist suspect has not yet made its way through the courts, the courts have implied that such a situation would likely rise to the level of an "exigent circumstance." For example, in a case holding that the Fourth Amendment prohibits roadblocks for drug interdiction purposes, the court indicated in dicta that "the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route." *City of Indianapolis v. Edmond, 531 U.S. 32, 44 (U.S. 2000).*

In processing the exigent circumstances calculus, it is also important to remember that the reasonableness of an officer's decision "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Connor, 490 U.S. 386, 396 (U.S. 1989).* The courts take into account that "police officers are often forced to make split-second judgments–in circumstances that are tense, uncertain, and rapidly evolving. . ." *Id.*

It is never a good idea to attempt to invoke one's rights against a warrantless search through the use of force or threatened use of force. Be very wary of the misinformation that proliferates the Internet regarding this topic, particularly where the Internet sources claim that the use of force to invoke one's rights will be well received by the courts.

Instead, a citizen who wishes to invoke his or her rights should do so by firmly and politely telling the officers that they do not consent to any searches, and that while there will be no physical resistance, any cooperation that occurs should be considered to be coerced and under duress. If you have the means to have a witness (electronic or otherwise) record the incident, make sure to do so. Do not make any statements or attempt to argue with the officers. Rather, observe everything that you can. Make detailed notes and document everything that you can see and hear with the utmost detail. This would include the statements that you hear from the officers, the number of officers that you see at the scene, their manner of dress, the weapons that they are carrying, their mannerisms, whether or not you are physically restrained, the absence or presence of any paperwork and other similar information.

After the law enforcement officers leave, you should contact an attorney to seek additional advice. Remember that if there is a violation of your rights, the proper place to obtain vindication is through the judicial system, not through making a hasty and ill-informed decision in the midst of a high-stress situation.

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It has been said (albeit, centuries ago in England), "The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail–its roof may shake–the wind may blow through it–the storm may enter–the rain may enter–but the King of England cannot enter." On other words, our home is our castle. This philosophy has been adopted into our United States' Constitution, and consequently the starting point for any search of one's home is that absent a warrant, no search can be conducted. If the police ask for permission to search, the answer can and should be a resounding "no."

There are certain narrow exceptions to the search warrant requirement, however. Hot pursuit of a fleeing suspect, consent and bona fide emergencies are examples of these. When the police conduct a search under one of these exceptions they are not likely to ask for permission. The best practice for someone who is the subject of such a search is to be clear to the police that they are not consenting to the search, but that they will also not physically resist or otherwise obstruct the search.

Trying to physically prevent the police from conducting a search it is clear they intend to conduct is always a

Continued next page...

losing proposition, even when the search is later deemed to have been unlawful.

It should go without saying that you ought to immediately contact a qualified criminal defense lawyer if you find yourself the subject of any police search.

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Absent a search warrant, citizens do have a right to deny law enforcement entry into their homes. A citizen is guaranteed, through the United States Constitution and the Constitutions of the States, freedom from unwarranted searches and seizures.

If a citizen consents to allow law enforcement into their home or onto their premises, that is a different matter.

A person may insist law enforcement produce a valid warrant to search before admitting officers into their home. The most obvious exception would be if law enforcement is in pursuit, chasing a fleeing suspect and see the suspect enter a residence. The officer may, under certain circumstances, enter the premises to apprehend the fleeing suspect, but once apprehended that would not necessarily give rise to a search of the premises.

If a police officer would request entry into your home for any purpose, you may deny that entry. If an officer wishes to speak with you, you may speak with them or not as you choose. The only time you must permit an officer into your home without your consent is if the officer has either a search warrant for the premises, or an arrest warrant for someone within the premises.

If you do not wish to consent to a warrantless search, or consent to allow officers into your home, be polite and inform them that you do not wish to speak with them, nor will you consent to their entry into your home without a valid warrant.

Do not attempt to prevent officers' entry if they possess a valid search warrant. Contact an attorney at the earliest opportunity.

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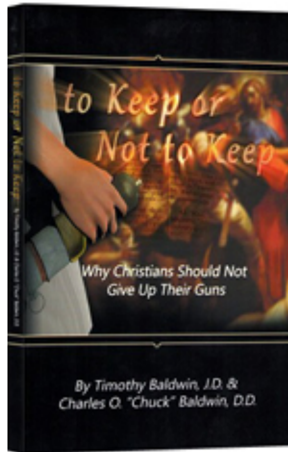
The Network extends a big "Thank you!" to our Affiliated Attorneys for this illuminating discussion about laws governing house-to-house searches. Check back next month for a new question with answers from our Affiliated Attorneys.

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

Book Review



To Keep or Not to Keep:
Why Christians Should Not Give Up Their Guns

Self published by
Timothy Baldwin, J.D. and
Charles O. Baldwin, D.D.
ISBN 978-0-9888988-0-6
Paperbound, 172 pages
Retail price: $14.95 at
http://keepyourarms.com

Reviewed by Gila Hayes

I like to study familiar arguments reworded by proponents and opponents from various backgrounds. I always learn when familiar concepts are portrayed through different illustrations, different rationales and different verbiage. This was the case recently when a Montana attorney sent me a copy of a newly released book he authored with his father, *To Keep or Not to Keep: Why Christians Should Not Give Up Their Guns.* I appreciated this exploration, because few things disturb the self-defense practitioner more than directives from their church condemning use of force in self defense. Is the church leadership wrong?

Scriptures corroborating the Christian right to self defense go well beyond the oft-quoted words in Luke 22:36, "he that has no sword, let him sell his garment, and buy one," as the authors of this book bear out. The elder of the writing team is a prominent pastor, but the younger is a practicing attorney, and his influence is clearly seen as he presents evidence of self-defense rights using concepts like the burden and standard of proof, natural laws and rights, due process, and doctrines of necessity and proportionality.

To Keep or Not to Keep's footnotes constitute a substantial resource with 38 pages of small type replete with quotations and additional citations pointing the serious reader to further authoritative arguments on the topic. The footnotes help the reader follow the book's thesis and add weight to the authors' views. Both combine to form an unassailable statement that God blesses the defense of innocents, whether accomplished by an individual (Abraham using force to rescue Lot) or by a nation, shown by criticism of Jews who would not fight on the Sabbath to defend innocent citizens against Pompeian raiders who attacked with impunity because they knew of the 4th Commandment.

Continuing the argument, the authors cite Scripture to emphasize the Christian duty to protect the innocent. They explain that if an assailant dies, the person acting to defend innocent life is not culpable for the bloodshed. Preservation of innocent life is paramount, the Baldwins assert, citing verses recognizing the natural right to sustain life, including the right to obtain and eat food and the right to fend off injurious or life-threatening attack.

Scripture admonishing the individual to submit to government can raise questions about opposing gun laws. Should guns be declared illegal, how can one comply with Scripture dictating obedience to government, as per Romans 13:1 or Titus 3:1? "Scriptures support man's right to keep and bear arms; and as such, Christians must not give up necessary and proportional means of self defense," the Baldwins write. They later explain that biblical admonitions to obey government do not apply in cases where a tyrant's laws create injustice, hardship and death. "Man must oppose any law that takes away the natural right and means of self-defense," they assert. A later chapter defines the right to possess battle rifles comparable to those the government employs against the citizen and here they quote the Founding Fathers.

In additional discussion of government restrictions on gun ownership later in the book, the authors argue that if an anti-gun activist truly believes it is wrong to use force in self defense, that same individual must oppose police use of force against criminals and lobby to dissolve national defense armed forces. "The only way government can legitimately bear the sword to punish evil and protect good is because man (each and all) has the inherent right to defend himself. Were God to destroy man's right of self defense, government would have no basis to enforce justice in society on behalf of individuals," the authors emphasize.

This small book's third chapter moves from assertions about self-defense rights to the right to possess deadly weapons. Parts of the first two chapters seemed to wander from the right to be armed, but as the authors further advance the argument, the foundation established in the first two chapters becomes clear.

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Favorite Scriptures cited by those opposed to self defense include Jesus' admonition to rejoice in persecution, turn the other cheek and love your enemy. These the Baldwins compare to the rest of the Bible. The arguments are complex and yet, distilled into principle, remain eminently applicable. In their discourse, the authors emphasize that God abhors evil, including crimes that harm innocents, and that in protecting innocent life, the Christian is allowed to use deadly force in self defense. The reasons given provide biblical support to arguments defending decisions to own guns for self defense.

Examples used in *To Keep or Not to Keep* range from the Old Testament story of the Hebrews' slavery in Egypt to New Testament citations approving use of force in self defense. The Baldwins' comparison of being enslaved to being disarmed is a powerful argument. Passivity as practiced today is compared to the ignorance engrained in the Hebrew slaves who were shocked when Moses killed an Egyptian overseer before the exodus to Canaan. I found the authors' application of the Exodus story fascinating, including explanations that the Israelites were armed when, as a newly free people, they embarked on their journey to the Promised Land.

The Baldwins make a strong summation when they ask, "Who are we as fellow humans to deny the rights of the innocent for the sake of preserving the lusts of evil men?" A woman told by her pastor that she would be wrong to use a gun to prevent injury by rape needs the arguments presented in this book. A soldier or police officer told by a minister that they sin if they shoot in the line of duty need the arguments presented in this book. Finally, anyone who argues for the preservation of the Second Amendment can rally to the call to action in the final chapter, "If Christians see the need for protecting and preserving life against criminal and tyrant, they will also see the importance in not surrendering their right to self defense and thus, their guns…"

To Keep or Not to Keep is sold for $14.95 per copy at http://keepyourarms.com/Order/tabid/638/Default.aspx, and will make a great gift for Christian friends who struggle with the concept of armed self defense, or who find themselves defending their decisions with friends and family.

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

Networking

by Brady Wright

Can you believe that it is already halfway through the year? So many projects are on the fire that it's hard to decide which one to flip over and shake the salt on.

Last month, I mentioned that I was going to El Salvador to do a house-building trip for Habitat for Humanity and that is now history. It was a great experience–right down to the part where I fell through a corrugated tin wall carrying a bag of cement and watched my knee turn into a football. Three days later, we climbed a volcano to 8,000 feet and back. The bruising is nearly gone and I have great pictures.

It's been a huge month for new Network members and there have also been literally dozens of new joiners to our Facebook page, as well. The Network is growing and there are big things on the horizon. Welcome aboard to Canon City Sports Outlet, Bad Moon Shooting, Christopher Day, and a host of others!

I spoke recently with Alex Haddox, our friend who hosts the Practical Defense podcast. Alex wanted to thank me for the introduction and the original link to the Network, which we forged several years ago. He had Network President Marty Hayes as a guest on his podcast and they talked about the Zimmerman case, about which you've already read in this month's *eJournal*. You can hear the complete show, *Zimmerman Lessons Learned* on Alex's website. It posted Sunday, July 21 and has been well received. The official title is *Practical Defense 263 - Zimmerman Lessons Learned with Marty Hayes* http://www.palladium-education.com/podcast. The show was downloaded over 1,700 times in just the first 24 hours. In addition, you can also go to Practical Defenses' dedicated Network podcast page, with all of the Network podcast episodes collected on a single page at http://www.palladium-education.com/acldnpodcast.shtml. Thank you, Alex!

I got a real nice shout out from member Peter Bossley, who said, "I was wondering if we could get 20 or so of your booklets and brochures for an upcoming concealed carry class? … I don't instruct regularly enough to be an instructor on your list, but I'm a Network member myself and believe strongly in your mission. Also, your educational DVDs are outstanding."

Peter is a NRA Certified Instructor in Pistol, Personal Protection Inside the Home, and Home Firearm Safety instruction out of Colorado and his conversation is much like about ten that I hear every month. Folks, PLEASE don't hesitate to call, email or text if you want even a few copies of our booklet or brochure to give to friends. It's good to share and we'll do our best to help you out. The Network is here for ALL of our members.

Dianna Brown, of Heart and Mind Gun, in Grants Pass, OR emailed to say, "Thank you for the shipment of *What Every Gun Owner Needs to Know About Self-Defense Law* booklets. They have been an excellent resource to give to my students. I only have a few left, so I would like to get another shipment of them. Setting up a regular shipment for the booklets would work well for me. I am also sharing them with other instructors in the area, I hand out about 30 per month." That's what I'm talking about!

The "Creative Distributor of the Month" award goes to Gary O'Brien, who is the head honcho at O'Brien Pistol Training, as you might suspect! He said, "Brady, I want to thank you for sending me all those booklets in the past. I live in the East-Bay, near San Francisco. I love your (our, as a member) booklets. I have them posted as handouts at four gun stores, one police supply, one locksmith, one Harley shop, one sports bar, one rifle range, and a hunting and fishing store. I keep replenishing them, as they run out. People love them! So, on that note could you please send me 250 more booklets?"

Happy to do it, Gary. What's the matter? Couldn't you find a knitting club or a reptile zoo to give them to, as well?

As always, if you have news to share, just call me at 360-623-0626 or email brady@armedcitizensnetwork.org. If I receive your information, celebration or brag by the 20th of the month, you have a great chance of getting in the upcoming column.

Stay safe out there!

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

Editor's Notebook

Stories of Two Shootings

by Gila Hayes

On the day the Zimmerman verdict was delivered, I listened to a first-hand report about a different shooting with different results. I would like to share parts of it with Network members because it helps balance out the utter stupidity demonstrated in that Sanford, FL courtroom.

This story begins as our man, Bob, is standing in his Western Washington jewelry shop on a Saturday morning. He'd arrived at work a few minutes late that morning, losing his normal parking place, but by this moment, Bob's back to normal, standing behind the glass counter of his store with a paper document in his hands. He's conversing with a female customer who is standing at the door, preparing to leave. Several employees are also in the store, along with another customer.

The sight of a man rushing into the jewelry store draws Bob's eye, seen only because his car is not parked in its usual place by the window. A hood and a mask conceal the intruder's features and as he comes through the door, he is pointing a .40 caliber Glock at the jeweler. "He was a clear and identifiable threat. There was no question in my mind what was about to happen," Bob relates.

"I'm a jeweler! I don't want to be a guy that has to shoot somebody, but here it is," he remembers. He reacts quickly and as the intruder shoves his way in, Bob's hands go to his holstered Kimber .45, which he presents two handed. Realizing that if he does not shoot, his assailant will, he fires two shots while collapsing to the floor to avoid being shot. He does not remember deciding to take cover, relating that, "It was like the hand of God grabbed my ankles and pulled me down."

One of Bob's bullets strikes the assailant in the clavicle and the next, delivered as the second of a very rapid double-tap, goes into the ceiling, as a result of his fall to the floor. The glass display counter in front of him explodes, though miraculously, glass only lodges in his forehead, missing his eyes entirely.

The entire incident began and ended in less time than it takes to tell about it. Store security video shows the exchange of gunshots in a mere two frames, about an eighth of a second. The .45 "sounded like 'pop, pop,' even with no ear protection," Bob marvels.

To Bob's amazement, the intruder gets up. "I was trained to shoot somebody in the chest twice, and I got two bullets out. And he gets up? That is not supposed to happen! Well, it did. I put one in him and as I was hitting the deck, I put one in the ceiling. It's not pretty but it worked," he continues.

Fortunately, the assailant turns and runs out the door, which is providentially blocked open by the female customer, whom he'd knocked over on his way in. The door opens inward to prevent grab-and-run thefts, but this time, it is a good thing the door is open, because a trapped gunman in the store is the last thing these innocent people need!

As the intruder runs out and past the double pane glass store windows, Bob grabs the counter and pulls himself to his feet on wobbly legs. "I felt blinded by the cover and felt that I had to get back into action," he explains. His pistol muzzle tracks the assailant until he is out of sight.

Bob quickly checks on the store's occupants to be sure no one was hurt, and then goes out to the parking lot, but the hooded man is gone. He was found dead on a public bench in a neighboring community a few hours later and subsequently identified as a career criminal who'd flown in from Los Angeles several days earlier. The man was in his mid-30s with prior crimes of rape and armed robbery, who "nearly ended up being a murderer," Bob muses.

Back in his store, Bob takes over from his employee who has already called 9-1-1. He is surprised at the "calm and peace" he feels. Knowing the police were dispatched, he contacts the police chief, a friend whom he knows from Rotary Club, to tell him not to worry. He closes the store and gets out of sight in his office, but even so, television crews manage to film him later that

Continued next page...

day when he goes to the door to admit a police officer. Still, news spreads quickly, and in the days that follow customers ask, "What happened?" over and over.

Bob has made no secret of his participation in firearms training. Some erroneously chide him for missing because they believe the robber would have fallen down and died if hit. After several days, Bob began to decline to discuss the incident, "It gives me the shakes," he explains. "After this happened, I pulled my Facebook account down. I'm like you, I'm a gun nut and I've taken a multitude of classes and I enjoy all of them. Well, that is all going to be public knowledge and used against you," he stresses, citing with distaste a different incident in a neighboring community in which the media pulled family photographs from the survivors' social media for use in their reports. "Facebook is public. I'll say silly things sometimes on Facebook so I've learned to come up with a different name. I can be silly anonymously with my silly friends," he smiles.

As responding police converge on the jewelry store, Bob closes it for the rest of the day to avoid being pressured by reporters. The police interview him and take his gun as evidence, but Bob explains that their questions were only what would be expected: "What did he look like?" "Where did he go?" He received his gun back three months later, and has not had any legal repercussions. The most noticeable post-incident change is an increased vigilance and concern about gang revenge. Customers removing items from backpacks to show a clerk or wearing hooded jackets "just give me the creeps, and this is NOT about Trayvon Martin," he grins ruefully.

Bob benefitted from the support of his local police, having long ago forged a friendly relationship with local law enforcement. "If you are in business, you should know the cops," he urges. "The second officer to arrive was someone I knew. It really feels good to have the cops on your side. They were on my side with the media and made sure I was OK."

The police chaplain offered help and to defuse potential traumatic memories, Bob walked through the shooting scene with his own church pastor, himself a former law enforcement chaplain. In addition, Bob is a devout student of the Bible, crediting God with both his actions during the shooting, and minimal upset afterwards. "I thought there was something wrong with me because I didn't feel real bad. The police say you are going to lose sleep; you're going to have nightmares. Well, I didn't." Though pale from adrenaline after the shooting, he suffered only a headache the following day but did not experience many symptoms common to violence survivors. His employee has told him that she, too, has coped well, he adds.

Pondering his survival, Bob compares the brevity of the robbery with the average time a competent shooter needs to draw and fire two shots. While the decision to shoot was conscious, the steps of doing so were not. "I don't remember how I swept my jacket back, where I took my safety off, the sight alignment, the sight picture, the shot placement. This was at conversational distance. It was point and shoot. Get the bullet out quickly."

"Be fast, and be prepared, but have a trauma kit in case you're not," he says. Bob acknowledges the danger he faced that day and stresses that armed citizens should keep a trauma kit nearby. "We had Band-Aids® in the store! That would not have done a lot of good if I had taken a bullet," he exclaims.

"I've done a lot of practice," he continues. "You know the drills where you have to draw from concealment to the target in a second and a half? I went to the range a couple of weeks after this. With the shot timer, from holster to paper it was 1.6 seconds. It gives me pause to see how fast this scenario plays out. From the time I saw him to the time shots were fired is somewhere around two seconds. That is not a lot of decision time. You've got to know what you are going to do!"

Bob's community was supportive overall, though there is no doubt in my mind that in his time of trouble, Bob reaped the harvest of over two decades of personal investment in his neighborhood, his business district, his church and his personal faith. The security video proving the danger he faced sure didn't hurt, either.

In contrast, many, even some armed citizens, are quick to criticize Zimmerman for coming in contact with Trayvon Martin. "I would never get out of the car," they huff. Well, never is a long time, amigo! We know from trial testimony that Zimmerman was concerned about neighbors who had suffered home break-ins and were understandably fearful. We know that neighbors turned to Zimmerman for help, electing him the head of their Block Watch program, and asking him to help them stay safe. How could Zimmerman fulfill those responsibilities and his own moral bias toward looking out for his neighbors by leaving an unidentified person slowly walking, despite rain and darkness, behind the homes in a secured community, knowing that police would not be able to arrive for a number of minutes?

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What criticisms would have been asserted if the Block Watch captain had spotted and avoided a loiterer minutes before a man invaded a neighbor's home and injured the resident?

Twenty years ago Jeffrey Snyder penned a persuasive essay, *A Nation of Cowards,* for *The Public Interest* journal. It is now publicly available at http://www.rkba.org/comment/cowards.html and if you have not read it, go there now and get a refresher before further criticizing George Zimmerman's decisions the night of Feb. 26, 2012. If Snyder found plenty of irresponsible denigration of the ethos of self protection to criticize in 1993, we can only conclude that the tidal wave of cowardice has grown until it is now coming ashore to destroy the human dignity for which America's Founding Fathers fought.

In many ways, the recent trial in Florida was about much more than George Zimmerman's defense against Trayvon Martin bashing his head against a concrete sidewalk. The entire episode contains a number of points against which we must measure our degree of courage or cowardice. Without levying any judgments against you, let me simply ask you to privately ask yourself: What outcomes might have resulted from a neighbor or several neighbors running out with flashlights to see who was screaming for help behind their homes? It is possible to call 9-1-1 to report a fight while stepping outside to investigate. I'm not suggesting that a smaller female neighbor should have jumped physically into the fracas but I am convinced that we have to ask if Martin's ground-and-pound assault could have been stopped by simple force of numbers convincing Martin that slamming Zimmerman's head repeatedly into the concrete sidewalk in front of witnesses was not going to be accepted in this neighborhood. Since no one came out to be witnesses, Martin felt free to assault the smaller Zimmerman with impunity.

Tactical firearms training often includes advice not to insert oneself into situations in which all the facts and identification of the participants are unknown. No matter how persuasive and authoritative our instructors, I think we have to reserve our own conclusions and apply reason to the situation at hand. There is no single correct solution, despite the frequently quoted Monty Python movie's famous advice, "Run away, run away!" The time may arise when running away creates more harm than running toward the danger. Those times are in all likelihood limited and few, but we short change ourselves and our communities if we adopt an over-simplified sound bite as our universal response to danger to such an extent that we are unprepared to stand up to abuse, assault and murder at the moment when standing strong can make a real difference.

[End of August 2013 eJournal.
Please return next month for our September edition.]

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