



## The Value of Training

by Marty Hayes, J.D.

It is my belief and opinion that most of our members are reasonably well trained beyond the information they receive through the Network's educational DVDs. That's because each month the majority of new members signing up indicate that they heard about the Network from one of our Network Affiliated Instructors, which means they likely heard about us while they were participating in a class. These students are exactly the type of members we want in the Network: well trained, law abiding citizens.

We do not aggressively advertise the Network. Beyond the fact that we would have to raise membership dues if we spent a boatload of money on promotions, we believe Network participation is something special. The Network needs to be comprised of well-trained, lawfully armed citizens who take their personal security and responsibility as an armed citizen very seriously. With that in mind, this article is geared more towards the non-Network member who occasionally reads this journal, and perhaps has been thinking about joining the Network.

If you are intelligent, well read, and already a good pistol, rifle or shotgun marksman, why do we recommend you take training? First and foremost, good training in gun safety, marksmanship and legal issues is the pathway to the "not guilty" verdict we want to hear at the end of a month long court case. Here is how it works.

### Training the Reasonable Person

In every state in the land the jury will judge your self-defense actions against the standard of the reasonable person. What would a reasonable person, knowing what you knew at the time, have done under the same or similar circumstances? The jury will receive jury instructions from the court, but when it is decision time, when that juror votes "guilty" or "not guilty," they will be asking themselves, "Would I have done the same thing, in his or her shoes?"

Of course, the jurors weren't in your shoes, and they likely didn't have a level of training and expertise that you do, so giving them that level of training,

communicated through your defense attorney will be YOUR job. "Huh?" you say. Yep, it is your job. You see, the issue goes to YOUR mindset at the time you pointed that gun at the criminal suspects and perhaps pulled the trigger. The jury has a right to see the incident through your eyes, but it is YOUR responsibility to make sure what they envision is accurate. You accomplish this through the admission of evidence of your training, and not just a list of classes you attended. You introduce the actual training document or video into court and if the judge has previously ruled that the jury can see that document or video, then the jurors read it or view it.

The judge has great latitude as to what evidence is admissible, and admissibility of evidence is rarely overturned on appeal. The appellate courts routinely write that they believe the court (the judge) knows best as far as the admissibility of evidence. The rule of admission of evidence basically states that all "relevant" evidence is admissible, unless it is either unreliable or excessively prejudicial.

If the judge believes that you actually did not know the training material and it was NOT part of your mindset, or that the training material or video is "overly prejudicial" then he or she will not let your attorney discuss it. A real life example is seen in Larry Hickey's trial, discussed at <http://www.armedcitizensnetwork.org/images/stories/Hickey%20Booklet.pdf>. Before the incident, Larry had studied a dashcam video of a Texas law enforcement officer being overpowered and killed with his own weapon.

Larry testified that he thought about that footage while he was being attacked, but the judge, The Honorable Teresa Godoy of the Pima County Superior court, would not let the video be played in court because she said it was overly prejudicial. Of course, defense attorney Matthew Messmer objected to the disqualification of this video. If Larry had been convicted, Godoy's ruling would have been a very valid point of appeal.

Court admissibility is the primary reason the Network's educational DVDs tend to be rather bland, without a lot of flash and special effects. We don't want the recorded

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lectures to be ruled overly prejudicial if the question of their court admissibility ever arises for a member.

How does getting the DVDs into evidence work? Let's say that you, a member of the Network, become the victim of road rage. Perhaps the assailants followed you to the Wal-Mart parking lot, and when you parked your car, they jumped out of theirs and surrounded you. In our fourth DVD, *Recognizing and Responding to Pre-Attack Indicators*, you learned from Marc MacYoung that this is a classic pre-attack maneuver. Your decision to draw your firearm and display it to short-circuit what you perceived as an impending attack, despite the fact that they never exhibited any overt intention to harm you, can likely be justified given Marc's lecture.

In order for *Recognizing and Responding to Pre-Attack Indicators* to be introduced in court, you must be able to positively state that you knew its lessons ahead of time and you learned them on the DVD. At this point, the DVD would be introduced to the jury, the judge having previously ruled on its admissibility. The jury can be shown the part of the DVD pertinent to your situation, and then the jury will be able to decide if they, knowing what YOU knew at the time, would have drawn the gun and told the multiple assailants to back away.

Because other pre-attack indicators go along with the flanking maneuver, including verbal threats, physical gestures and more, perhaps the entire video would be played in court, and your attorney could direct further exploration of parts that applied to your particular incident.

## How Training Can Hurt In Court

Because it is likely that all your training will be inspected, dissected and re-arranged by the prosecution to make you look like a cold-hearted killer, you need to take a hard look at the type of training you've received. In the Larry Hickey trial, which I mentioned earlier, Pima County Deputy Prosecutor Daniel Nicolini tried to do just that, highlighting spetsnaz sniper training and advanced combat skills training Larry had taken as an indication that he was a trained, gun-nut killer, when he said—

"Larry Hickey is a gun nut. By that I mean he like[s] guns, he likes to own guns, he likes to shoot guns, he likes to carry guns, every day if he could. Can't do it on the job, but any other time, carrying that gun, riding the bike around the neighborhood, carries the gun, and he likes to go to take gun classes, hundreds of hours of gun classes. Tactical pistol, tactical rifle, tactical shotgun, tactical

submachine, spetsnaz sniper course. He likes to hang out with other guys who like guns. That's okay, but what you have seen here, what is clear here, he has gone to...trainers like Mr. Yeager, who is with us today, James Yeager, who I am sure has given a lot of excellent instruction in gun use and gun safety, to a lot of people, but when you consider the many courses he taught Larry, he has fostered and promoted and fed a paranoid attitude about the world.

"Larry has been taught...to develop a fighting mindset that he is being attacked by people who are out to kill him.

"He has been taught that anything worth shooting is worth shooting twice. He has been shown this Constable Lunsford video, where a cop confronting criminals with drugs is overwhelmed, and extrapolates that to a conclusion where he is arguing with his neighbors and saying that his response is reasonable.

"He has been taught to be decisive, aggressive, ruthless, and to use surprise when he is in a confrontational situation.

"He has been taught to carry a gun, and he has been taught in these courses, be polite, be professional, but have a plan to kill everyone that you meet. So is it any wonder on the evening of November 17th, when he was confronted in an argument with his neighbors, which turned into a physical confrontation, that his response from this mindset of his, fighting mindset that he has been taught, is pull a gun and shoot those neighbors? But you have to evaluate this case not by what was going on in his paranoid mind, but what a reasonable person would believe and do, and shooting those neighbors was in no way reasonable or justified. This is not a case of self-defense, this is not a case of defending a third person, even if you accept his version of how it went down."

To counter Nicolini's theories, the defense brought in two of Larry's instructors and both testified in court. One was Brian Kowalski, a sergeant with the Tucson Police Department, the very same police department that had investigated the incident. Sgt. Kowalski, who now works as a firearms instructor for Network affiliated school Gator Farm Tactical (<http://gatorfarmtactical.com/>), was the instructor who taught Larry's concealed pistol

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certification course, in which he discussed the use of force. The fact that a member of the Tucson Police Department testified on Larry's behalf went a long way to mitigate Nicolini's theory that Larry was a gun nut.

In the same case, the defense called James Yeager, the CEO of Tactical Response, also a Network affiliated school (<http://www.tacticalresponse.com/>). James taught several of Larry's advanced training courses and Larry also worked for him occasionally as an adjunct instructor.

Tactical Response is considered one of the leading schools to develop the combat mindset in people who previously had not considered an armed lifestyle. To do this, James speaks frankly about killing people, both in lecture and throughout his training materials. Nicolini tried to use this against Larry, but to James' credit, he successfully deflected these harsh characterizations and he connected well with the jury. James was formerly a Chief of Police, who was trained and experienced in giving trial testimony.

If you take advanced handgun training, make sure your instructors are willing to testify in court on your behalf, to explain what they taught and why they taught you what they did. This concern is NOT an excuse to skip training! It is, rather, a full disclosure of the importance of legitimate, serious self-defense preparation undertaken prior to needing to act in self defense.

## Professionals Train; You Should, Too!

Consider any profession that is held in high regard by the general public: medicine, the law, accounting and even law enforcement. All demand that in order to work in these professions, people undergo both initial training and continuing education. While armed citizens carrying guns in public for self defense are not required to participate in yearly training, if you have done so anyway, it certainly is a strong argument in court to prove that by committing your own time and spending your own money to continue to train, you take your responsibilities to society as seriously as other professionals. It's also a good reason to participate in IPSC and IDPA competitive shooting as a way to keep your skills sharp. The better the shooter, the less likely that shooter is going to endanger innocent bystanders, the argument goes. I agree with that argument.

Couple live-fire training with decision-making training through force-on-force exercises, and you will be able to make a very good argument in court if the necessity arises, that your level of training is similar to the local

cops who protect the same community from which the members of the jury hail.

## Practical Concerns

Shifting emphasis from the legal to the practical, we need to ask just how good of a shot are you? If a loved one has been grabbed by an armed robber who decided to hit the store at the exact time you were at the check out stand, or if you are the last line of defense between a cowering group of church patrons facing an armed terrorist killing infidels in the name of Allah, could you reasonably interdict the attacker?

In attempting to interdict an attacker, will you be cool, calm and collected, and purposely line up your sights and squeeze the shot to hit the brain or high torso? It is quite a feat of marksmanship. Are you up for that challenge? After all, isn't the reason we carry guns in the first place to be able to stop criminals from killing us or others?

One of the reasons I like practical shooting competition is that matches give me a chance to practice these skills, and to do it under stress. In about three months, I will be competing against a hundred or more other folks, many the cream of the crop in the tactical training world, in a three to four stage match at the Range•Master Tactical Conference in Memphis, TN. I will be attempting to solve the problems laid out before me both efficiently and BETTER than the other competitors. I doubt I will win the match, but I will give it a serious try, as will everyone else participating.

In the end, I will have another experience of shooting my pistol under a high degree of stress. The more you do a high stress activity in training, the less likely it is that you will be too adversely affected by the stress of the real thing. Of even greater benefit, I will be forced into making decisions while under the effects of stress, just like I might in a real-world incident. If my actions in a real world incident are called into question in a court of law, I can speak from experience that I had first been trained in how to make these split-second decisions, then I undertook practice as often as I could. I can testify to undertaking the VERY SAME type of training and the practice that courts have deemed it necessary for law enforcement officers complete. I believe this type of training may someday become required for all armed citizens, at least within the context of surviving a civil court action for negligence.

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## Competence Equates to Confidence

The aspect of training that I want to discuss next is difficult to quantify, but the outcome is still very real. A person who exudes an aura of confidence, is less likely to be attacked to begin with. As a rookie police officer, I was told that if you dressed sharply (well groomed, in a clean uniform and with your duty belt sorted out), you would be better respected and find the criminal element more likely to avoid a physical confrontation. I believe this to be absolutely true, and so it saddens me to see the relaxation of standards of police appearance. Dirty, rumpled jump suits and sloppy nylon duty gear has worked against the officer in many cases, I believe.

But, how does this affect the average armed citizen? The same results enjoyed by the squared-away, professional-looking cop extend to armed citizens who carefully guard their appearance. If a "competent armed citizen" was listed in the dictionary, would a picture of you make an apt illustration?

What would that picture look like? A person who looks respectable. You want your courtroom appearance to match your police mug shot. Clean clothing, and no cute t-shirts with funny sayings like "If you die, we split your gear." Non-gunny clothing seems the best choice to me.



There is more to this issue than just the clothing you wear or your grooming habits. It is also important that you do not look the part of a willing victim. We have all heard the reports of the little old lady being mugged, who turns the tables, draws her pistol and shoots the attacker. Why did the mugger choose the little old lady, not a former NFL linebacker? Of course, the answer is he thought the older woman was the easy mark and the linebacker was a tough opponent. While few can resemble the linebacker, we can all work to not look like easy prey.

We convey messages through body language, as two studies in recent decades have pointed out. The first study, conducted in 1981 by Betty Grayson and Morris Stein had prison inmates who were serving time for violent crime rate the perceived vulnerability of people shown on videotape without a soundtrack. (See Grayson, B. and Stein, M. I. (1981), *Attracting Assault: Victims' Nonverbal Cues*. Journal of Communication, 31: 68–75. doi: 10.1111/j.1460-2466.1981.tb01206.x)

The study showed that criminals employ a victim selection process, even if based on a mere moment's observation. The ones who displayed a non-verbal persona of confidence were likely not to be selected as the focus of a criminal's intent, whereas those who did not project confidence were more likely be selected. These conclusions were confirmed in 2009 when a similar study was conducted with 47 inmates in a maximum security penitentiary in Ontario, Canada. (Wheeler, Book, & Costello, 2009)

If you are carrying a gun, you SHOULD be alert at all times, especially in public. If you are well trained and someone approaches you, knowing you have options unarmed individuals do not have helps you remain composed and ready to counter violence. We cannot quantify the number of people who are not attacked because of being armed, but can logically draw the

connection between being armed, trained and confident with not having to use deadly force in self defense to resolve or avoid attack.

The power of prevention is likely the single most important reason to seek out competent and extensive training, then once trained, continue to take classes.

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## How the Armed Citizens' Network Works for its Members

by Gila Hayes

Now and then I jokingly comment that Network President Marty Hayes started a new growth industry in 2008 when he introduced the Armed Citizens' Legal Defense Network, Inc. and with it, an organization through which armed citizen members can afford legal representation as quickly as possible after self defense.

Until the Network's introduction, post-incident protections primarily took the form of insurance policies that upon acquittal compensated the insured for his or her legal fees up to the limits of the policy and provided a modest liability payout. These protections are good as far as they go, but the difficulty of paying out of one's own pocket for a top-notch team of trial attorneys, expert witnesses and support personnel has too often exceeded what the common man or woman could scrape up, even after taking out a second mortgage, liquidating their investments and maxing out their credit.

Since insurance is structured to repay expenses after suffering an accident or unavoidable misfortune, it is not particularly well suited to providing immediate assistance for expenses like attorney fees to defend your intentional act of self defense. Further, being drawn from a large corporation's pockets, not those of a family of like-minded armed citizens, there is little to motivate the insurer to pull out all the stops to be sure the armed citizen is acquitted. Is the payout just another business transaction, just another claim? When coming from a multi-million dollar enterprise, realistically how can the policy holder's needs be treated as anything else?

With these concerns foremost in mind, we structured the Armed Citizens' Legal Defense Network as an association of armed citizens who are determined that at least within our family of Network members, no one of "our own" would have to stand alone when defending their self-defense actions to the criminal justice system. Instead, a member who uses force in justifiable defense has the backing of the entire Network membership through its Legal Defense Fund to stop unmeritorious charges that their self-defense actions were a crime or failing that vigorously defend in court the member's actions.

This support starts as soon as the Network receives word that a member has been involved in a self-defense incident. This notification is best made as quickly as possible by a family member or trusted associate, since we can then share a frank discussion of the facts as known without concern that the member who acted in self defense will divulge details better protected by attorney-client privilege, which, since the Network is not the member's law firm, does not exist between us and our members.

### Our Track Record

During our five years of existence, the Network has paid initial fee deposits to the attorneys of six Network members. Only twice have family members or trusted associates placed the call to the Network for help. Network President Marty Hayes spoke personally with the other four, avoiding details of the incident while obtaining the name and contact information of the member's attorney, or guiding the member in obtaining an attorney to whom the Network can send the initial attorney fees. These fee deposits have varied in proportion to the seriousness of charges the member faced, from less than \$2,000 up to \$10,000.

The Network's greatest concern after a member's self-defense incident is making sure that an attorney is engaged to represent the member. If you are the next unfortunate Network member who must act in self defense, please have a family member or close friend call the Network on your behalf with the details of your situation as soon as it is reasonably possible so we can make sure the money gets to your attorney to represent you during the inevitable questioning and other problems that follow self defense.

While the Network does not act as the member's attorney nor do we assign attorneys to members, we do strongly encourage each member to get to know an attorney before needing one. (For suggestions on how to forge a relationship with an attorney, see <http://www.armedcitizensnetwork.org/finding-an-attorney> and <http://www.armedcitizensnetwork.org/finding-the-right-attorney>.)

On the back of Network membership cards, members find blanks in which an indelible marker can be used to write their attorney's name and contact information. Also

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printed there is the Network's phone numbers for office hours and after-hours contact. A double-sided sheet of instructions for obtaining Network assistance is also sent with each membership card, and should be put in a secure place where it can be used by a family member or trusted associate who may need to inform us of your needs if you are in police custody. It would make sense to write your attorney's name and number on this sheet of paper for your family's convenience, as well.

## The Network is Not a Law Firm

It is not unusual for prospective members to call and ask us for details about cases we've "won" for members. Beyond stating the number of members provided with the deposits against attorney fees, no further details are divulged to protect the privacy of members served. We remind everyone that the Network is not a law firm, nor are we attorneys, and so we do not provide legal advice or "win" court cases.

Instead, our mission is building up and maintaining the funding to send promptly to the member's attorney so he or she has immediately at hand the resources to defend the member to the fullest extent, showing the prosecutor or district attorney that there is no "win" for them in bringing charges against our member. This representation is a task for which an attorney from your own locale is best suited, not someone practicing law in another state. Besides, separation between your legal counsel and the membership organization providing your preparatory use of force education and post incident financial support is not a bad idea. Much of our early intervention is quickly putting funds into the attorney's trust account so there is no question that they'll be paid for their services. The attorney need not stint on hours invested in defending the member because every hour worked guarantees money coming into the firm that was not already in their bank account. Bear in mind, also, that the member has the final say on whom they choose as their attorney. This is not a prepaid legal plan where an attorney is assigned.

## After The \$10,000 Is Used Up

To date, the Network has not been called upon to help a member defray legal defense costs beyond those paid by the initial deposit against attorney fees. It is only a matter of time, though, before a Network member has to defend in court the actions they took to save themselves or their loved ones from injury or death from violent attack. The Network's Legal Defense Fund is up to the

challenge. In addition, the decision on what is needed to put on a winning defense is made by the top self-defense experts serving on our Advisory Board, and finally, the Network's affiliated attorneys are also ready and waiting, should they be needed.

Not only is it inevitable that one of our Network family will be the target of crime, that likelihood increases as the numbers of Network members grow. At this writing, we are nearly 8,000 members strong. Two years ago, we had 4,500 members. It is easy to recognize that more members will need assistance in the years to come simply because there are more members in the Network every year.

We know that the need for support beyond the initial attorney fee deposit is going to arise and we are ready to provide it. See our Vice President's column in this edition of the journal for a good review of the growth of the Legal Defense Fund. In addition to the funding he outlines, the Legal Defense Fund also flourishes with each generous contribution made by a Network member, usually at the time they pay their membership renewal dues. Every dollar helps, and often members opt to add a \$25, \$50 or \$100 contribution to further bolster the Fund. Thank you, members, for looking out for one another so well by building up the Legal Defense Fund!

## Role of the Advisory Board in Grants of Additional Financial Help

Granting further assistance beyond the deposits against attorney fees paid from the Legal Defense Fund is one of the unique, and thus sometimes poorly understood, aspects of Network membership benefits. Every month or so, I get into a spirited discussion with a potential new member who is worried by or even offended by the Network Advisory Board's discretionary role in granting additional funding. Some callers are so suspicious that we will look for reasons to deny grant requests, that despite acknowledging that we must make sure funds are spent only to defend use of force that was legal and justifiable, they still complain about the Board's oversight of Fund disbursements. They want a promise of \$100,000, \$250,000 or \$500,000 to put on their court case, demanding a set dollar amount they can expect.

Here's the problem: Payouts of predetermined dollar limits are the bread and butter of insurance, but insurance cannot give you that money while you are putting on your court case. Insurance has to wait for a

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judge or jury to give the nod of approval through an acquittal on charges before the insurer will reimburse your legal expenses.

The Network Advisory Board's oversight of grants of additional funding serves a function similar to the court's, assuring members that their Fund is not being used to defend actions that cannot be justified by the usual standard of immediate and unavoidable danger of death or grave bodily injury to the innocent. That is the standard to which a judge or jury will hold the defendant; that is the standard for receiving defense case funding from the Network's Legal Defense Fund.

Grant approval from the Advisory Board won't involve presenting a complicated application or passionately persuading the Board of the righteousness of their actions, but the member and his or her attorney WILL need to reveal the facts of the case to the Advisory Board. Possessed of that information, the Advisory Board can assure the rest of the Network membership of the legitimate use of the Legal Defense Fund. Even if we did not believe it necessary to provide this assurance to other Network members, the member facing prosecution or civil suit has considerable reason to WANT the Advisory Board aware of the facts of their case.

The Advisory Board consists of six of our nation's most respected and sought after experts on use of force in self defense. These are professionals to whom countless police officers and armed citizens have turned for self-defense training and for expert witness services. With these luminaries aware of the situation the member faced when he or she acted in self defense, vital case advice can be extended. Offered may be a suggestion about expert testimony that would convincingly explain the necessity of self defense to a judge or jury or perhaps the recommendation to add to the trial team an attorney with whom an Advisory Board member has successfully worked on cases with similar issues, as well as identifying other professional services that increase the chance of prevailing in court. Why a member or a prospective member would balk at receiving these services from the professionals on our Advisory Board baffles me!

The Legal Defense Fund is the Network members' Defense Fund, not the private piggy bank of a faceless VP or soulless corporation. The Legal Defense Fund is a separate account reserved exclusively for the legal defense of Network members. With a Fund that exists to fulfill that mission, why would the Network's Advisory Board want to deny a member's request for financial

assistance to win their fight against malicious prosecution or civil law suit after acting in justifiable self defense?

Still, nothing proves the truth like real-life experience, so I am sure that after a Network member endures the ordeal of defending an unmeritorious murder or manslaughter charge in the courts, and once this has been accomplished with the aid of Legal Defense Fund support to a trial team that proves the member's innocence and the justifiability of their self-defense actions, it will be a lot easier to demonstrate the valued role the Advisory Board plays in distributing additional grants of financial assistance to Network members.

Until that day, we strive to explain the grant concept as clearly as possible, acknowledging that members do have to trust the collective good judgment of Advisory Board members Massad Ayoob, John Farnam, James Fleming, Tom Givens, Emanuel Kapelsohn and Dennis Tueller, along with Network representation by Marty Hayes and Vincent Shuck. This is a blue ribbon panel of the leaders in self-defense education and expert witness testimony services. For biographical information about each advisory board member, see <http://armedcitizensnetwork.org/defense-fund/advisory-board>

Fortunately, for now, the Advisory Board is somewhat underworked like the Maytag washer repairman of old TV commercial fame. Beyond weighing in occasionally on the Network's long-term success strategies, the Advisory Board members are rarely called upon to share their considerable experience. They volunteer their time and knowledge for the betterment of the Network, so we're all happy that these generous men remain a relatively untapped resource, reserved until the day when their talents are severely needed to protect the legal rights of a Network member.

## Why So Few Cases?

The educational package that is part of Network membership is without doubt partly responsible for the low incidence of member cases. Network members have a high degree of knowledge and training about justifiable use of force in self defense, interacting with authorities after a use of force incident, understanding how attorneys defend self defense, articulating why self-defense actions were necessary, understanding the physiological and psychological phenomena occurring during and after a critical incident and more.

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These topics and others are taught in the Network's series of eight educational DVDs sent to every new member, and this monthly online journal provides monthly outreach to keep members up to date on related issues, as well as legal trends and even personal safety concerns of which we believe members need to be aware. In this online eJournal, too, our affiliated attorneys provide commentary on a number of questions about interacting with the courts after self defense in the *Attorney Question of the Month* column, which I see as a tremendous resource for members who otherwise would rarely converse with or have questions answered by attorneys.

More immediate or current issues are also discussed on the Network's Facebook page at <https://www.facebook.com/groups/221594457860509/> with the moderator keeping the group focused on legal issues surrounding use of force in self defense, not political diatribes or other off topic reposts.

In addition, Network members are the cream of armed citizenry, with many of our members learning about and deciding to join our organization upon the recommendation of their armed defense instructors, who include a number of nationally prominent firearms trainers speaking out for Network membership to their students and clientele. The members who come into the Network this way have a far stronger understanding of justifiable use of force and aftermath realities than the average gun owner who gets most of his or her information from the Internet or at the gun show.

The Pew Research Center has estimated that there are between 270-310 million firearms, owned by about 37% of the American population. Sometimes members scold us for not having attained membership numbers in the

range of 50,000, which still is a tiny fraction of the total estimated numbers of American gun owners. Here's the reality: The Network and its members are much better off growing conservatively by attracting well-trained members who understand the gravity of using force in self defense and avoiding the guys and gals who got a gun and are sure they inherently know all there is to know about its use.

We deeply appreciate our Network members' studious and serious approach to use of force in self defense, whether that is accomplished with firearms, other defense methods, or improvised weapons. When questions or comments come in about the eight educational DVDs each new member receives, I often express gratitude to that member for watching and re-watching those lectures to firm up in their minds the principles taught.

The Armed Citizens' Legal Defense Network is a unique organization, and we treasure the members who have joined the Network and shown their solidarity in supporting one another to avoid prosecution after self defense, or put on a decisive legal fight, should a member face prosecution or civil law suit.

If you are a member, thank you for making the Network the success story that it is. If you have been sitting on the sidelines, reading the Network's Facebook page, or following our educational online journal, please do not delay longer, join the Network so if you are targeted for violent crime and subsequently defend yourself or your family, we can be in your corner helping with the legal defense.

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## President's Message

by Marty Hayes, J.D.

I received the following email shortly after our last issue of the *eJournal* was released. Because it raised interesting questions, I wanted to share it and the answers with you. Eric from New York asked:

*"Several recent articles in the member's journal have discussed the importance of maintaining a 'low profile' regarding anything (t-shirts, bumper stickers, social media posts) an aggressive DA might use to portray you as some kind of dangerous gun nut. I agree with all of these suggestions, however, if one maintains that same train of thought, it begs one additional question: Will this same aggressive DA wave my Armed Citizens' Legal Defense Network membership card to the jury, and ask aloud, 'Why did this individual, each year for X number of years, feel it necessary to renew membership in an organization dedicated to discussing his legal defense after a shooting? Has he been planning/anticipating this shooting all this time?'"*

*I wonder if they would use the very name of your organization as a tool to attack a defendant's motives and mindset prior to the self defense shooting? Would we, perhaps, be better served by renaming our organization to a less suggestive name, such as "Sport Shooting Legal Information Center," or something similarly bland and non-suggestive?"*

### My answer:

Those are a couple of great questions, Eric. Let's take them in order.

Yes, I believe a prosecutor could attempt to use membership in the Network against you. In fact, in several of my recent expert witness cases, the prosecutor attempted to use my role as President of the Network to discredit me, since these cases involved self-defense claims.

Collectively, the questioning went something like this. "Isn't it true, Mr. Hayes, that you are just a paid expert

for self-defense cases? That you testify to try to stop ANY prosecution against ANY armed citizen?"

My collective answer for this kind of question has usually been something like this, "While it is true that I do serve as an expert witness in trials for armed citizens, it is ONLY when I feel the person is being wrongfully prosecuted."

At this point, typically the prosecuting attorney objects, and usually the objection is overruled because the prosecuting attorney "opened the door," to this type explanation. Furthermore, since the prosecution attempted to discredit the witness (in this case, me), the defense attorney then gets to explore the nature of the Armed Citizens' Legal Defense Network with me on re-cross, and a full explanation of the Network and why it exists is given in court.

As far as the individual who is a member going to court, your membership will be out in the open anyway, because of the training materials we introduce. We turn the whole issue into a positive for the member, by telling the jury that the member's concern over being wrongfully prosecuted was certainly validated in this instance.

As to your second question regarding a more benign name for the Network, it has always been my belief that the name of a business or organization should include in it, exactly what the business or organization does. Hence, the name Armed Citizens' Legal Defense Network. I do not believe the firearms industry is actually doing armed citizens a favor when they equate "sport shooting" with self-defense firearms and their use. After all, owning a gun for "sport shooting" is not covered in the Second Amendment. But, the fact that you asked the question means you are thinking of the issues, which is a good thing. Thanks for the questions.

## A Couple of Teasers

We recently received an article for publication, too late for this edition, written by Dr. Wendy Saxon, a jury consultant based in California. She recently joined the Network as a member, as you may remember from my mention of her a couple months ago. Dr. Saxon's article

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is fantastic, in my opinion, and deserves its rightful place as a lead article. You can look forward to reading the article next month. Don't miss it, as it gives an insight into the trial process that few of us get to see. Having this level of education sets us apart from the ever-growing field of after-incident legal protection businesses. As the Carly Simon song states, "Nobody does it better."

The second "tease" is a doozy and it is something that we, the founders of the Network, have been working on for a couple of years now. This new idea that we came up with will be ground-breaking in its scope and breadth, and we will be devoting a full measure of our time and energy to making it succeed. What is it? You will have to wait until next month to find out!

## Copiers Now Being Copied!

Our Vice President, Vincent Shuck, shared with me an email he received from Alan Gottlieb, President of the Second Amendment Foundation, regarding another "insurance backed" membership organization which purports to reimburse you for legal expenses as you incur them. I am not sure how that works, since by definition, a reimbursement occurs AFTER you pay the cost up front. Perhaps they are not choosing their words correctly. I suspect they will find out their plan isn't as foolproof as they believe. And I find it ironic, that this new company is basically copying the "insurance backed" plan offered by USCCA. Well, bless their hearts!

Why do I bring this up? Because, in his message Alan Gottlieb makes the following claims:

*"You may know of legal defense associations, pre-paid legal plans and membership associations that provide coverage.*

*But there's something you may not know: those companies pay benefits only upon acquittal. That means you incur the astronomical costs of defending yourself before they lift a finger!"*

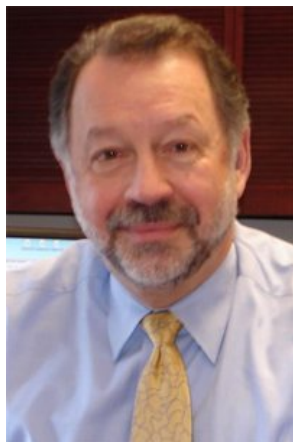
I just wanted all our members to know that Alan must not be referring to the Network in his message, because we provide the financial assistance up front, starting by paying a deposit against attorney fees to your lawyer. Nothing we do is based on receiving an acquittal.

Of course, all insurance is underwritten. What happens to the members of such an organization if the insurance underwriter decides to back out? Insurance is cancelled all the time. Before I would sign up for any insurance coverage, I would ask that question.

I am disappointed in the Second Amendment Foundation joining forces with this brand new start-up company, when they could have sought out an alliance with the Network, a proven company with an "A" rating from the Better Business Bureau. And that "A" rating doesn't result from BBB membership/accreditation because we haven't heretofore applied for it. That means we haven't given the BBB a dime, and they still like us.

We will likely seek Better Business Bureau accreditation soon, as the market place is starting to get crowded and consumers need measurable, outside evaluations to help them choose the best organization for their needs. In fact, the BBB is a good place to start one's research on the different businesses and organizations that offer services similar to ours. When one checks out the Armed Citizens' Legal Defense Network, Inc. they will find that we have had NO complaints since we started in 2008, and as we enter our sixth year, we will do all in our power to continue with that record of accomplishment.

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



## Vice President's Message

### Successful Auction Year

by Vincent Shuck

The Network just concluded its annual auction run of donated items of goods and services of interest to the legally armed citizen.

Thanks to our corporate donations and to our winning bidders, we had a record-setting year. The number of items offered and the income from the auctions exceeded all previous years. As you probably know, 100% of the auction income goes directly to the Network's Legal Defense Fund.

As a reminder, the purpose of the Legal Defense Fund is to provide legal defense support to Network members when these lawfully armed citizens face prosecution or civil lawsuit after exercising their right to self defense. The Fund is drawn from an allocation of 25% of all Network membership dues and 100% of all corporate sponsorship contributions. Fee deposits from the Fund are paid by the Network to the member's attorney if the member has been involved in a self-defense incident. The deposit gets the legal defense immediately underway, with representation during questioning, and arranging for an independent investigation of the incident. Of course, Network members are eligible for additional grants of financial assistance from the Legal Defense Fund if they face unmeritorious prosecution or civil action after a self-defense incident.

This record auction year was due in large part to our corporate sponsors who go out of their way to support the Network. The companies that donated items this year, including many repeat donors, consisted of:

- CorBon
- Crimson Trace
- Galco
- Robar Companies, and
- Safe Direction/Ravelin Group

On behalf of the entire Network membership, we extend our thanks to these corporations and to those corporations who have supported the Network in past

auction years. Not too surprisingly, many of our winning bidders this year were Network members. They obtained a desired item or service and helped support an important element of the Network's structure. Everyone should look forward to next year's auctions and join the bidding activity.

Moving on, you and your family probably just completed Thanksgiving and are entering the Christmas holiday season. This time of year offers a chance to reflect and to give thanks.

In reflecting on the Network's soon-to-be-completed 6th year, I first focus on our members. Thank you for being involved, for your trust and for your support. We are nearing the 8,000 members achievement mark and look forward to another successful recruitment year in 2014.

Although there were four occasions this year, the need for our ability to come to our members' aid after a self-defense incident has been limited. Something is working to keep this number low and I believe it is due in large part to the general capability and competence of our members. That, coupled with our excellent educational DVDs and eJournal content, has provided our members with important details about what it takes to avoid trouble. We will continue our educational efforts next year, but please continue your own life-long learning, both on the range and in the personal review of our educational materials.

As we transition from the season of thanks to the gift giving season, I hope you have safe travels, a chance to see others open gifts from under the tree, and an opportunity to celebrate whatever you wish to commemorate. As I have mentioned in previous year-end columns, if you are looking for holiday gift suggestions, allow me to remind you about these, as suggested by novelist Oren Arnold:

***"To your enemy, forgiveness. To an opponent, tolerance. To a friend, heart. To a customer, service. To all, charity. To every child, a good example. To you, respect."***

To our members and other Network supporters, thank you for helping us achieve another great year.

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

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## Member Questions and Comments

### Calling From Jail

I made contact with a local attorney and have his phone number in my cell phone directory. This brings up a question. Sad to say, I have never been arrested. Therefore, my jail experience is non-existent. Would I have access to my cell phone to make my "one call?"

From watching TV, I would guess not but I don't know for sure. If not, I would also conjecture that I probably wouldn't be able to retrieve his business card from my wallet? What to do? I guess, memorize his name?

—Hank in FL

#### We respond—

While it is true you will be separated from your wallet and/or cell phone upon arrest, at booking in the jail, it is reasonable to assume that you will have access to the attorney's phone number in that wallet or cell phone. But the safe bet is to also have educated a "trusted other" to whom you have given that number, and have them make the call for you.

—Marty Hayes

### Warning Against Gun Joke Signs

The article by Mr. Ayoob about firearm shirts, signs and stickers was spot on good advice. It addressed the exact concerns I had written to you about.

As a follow up, just being a member of an organization like ours, or even having an attorney on retainer, could be used against us in court. I look at it like having a fire extinguisher in my home doesn't make me a future arsonist. Keep up the outstanding work and I pray I never need your help.

—Michael in FL

I just read the article from Mas Ayoob about funny pro gun signs. I was looking for a recommendation whether we should put away or get rid of those signs. I have many signs, however I keep them in my garage where I do my reloading. Would it be a good idea not to display them?

—Henry in NY

#### We respond—

Over the years, I've been given a few of those funny signs as gifts, too. Like Mas and his vicious dog signs, I

get rid of them as soon as I can. I don't want them on our premises to be discovered. I don't want them in the garage or loading room, or anywhere that a search warrant is likely to be executed.

That's our viewpoint—we simply find it best to eliminate unnecessary things a prosecutor may use to confuse a judge or jury. As Massad Ayoob explained in the discussion about gun books and magazines, there will be plenty of gun-centric material in most of our homes. We can explain the legitimate, educational and informational materials. We can probably explain posters with the language of the 2nd Amendment and patriotic messages. We will have a much harder time explaining aggressive slogans that joke about hurting or killing people.

The individual Network member has to make his or her own decision, of course. Articles like this one from Massad are intended to help you be aware of problem areas before trouble strikes.

—Gila Hayes

### Audio Recording a Shooting Scene

There have been a lot of YouTube videos showing encounters with police officers during traffic stops, etc. I think that this has been determined to be legal to do (even though it may bother the officer a bit).

I have seen posts suggesting that a person involved in a self-defense shooting try to record on video with his or her cellphone whatever evidence there may be at the scene (like shell casings, where the knife was tossed, etc.). This is fine, but there is only your word to go on in many cases as to what led up to the shooting. Time dilation, tunnel vision, and other factors lead to inaccurate memory of the incident.

Of course you can't run around with a video recorder running 24/7 so I was thinking about other ways to record, say the last few hours of audio on a continual basis. I've found a device that does just that. It is a battery powered continuous loop pocket audio recorder. If an attack was to occur, an audio record of it would be caught on the recording loop and then you could stop the recorder and the event could be captured for later review to (hopefully) help you defend yourself against a murder charge.

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Does anyone know of the legality of this? If you can record video of an officer performing his duty and if public places are by definition in the public domain, is there some problem from recording in this manner? You are not storing or archiving anything, except the last few minutes of a crisis situation.

–Paul in CA

**We respond–**

This is a great question, and one that we addressed in several *Attorney Question of the Month* columns a while back. There are some legal implications of unannounced recording, so when you have a little time, you should review the attorney question columns in our journal at [http://www.armedcitizensnetwork.org/images/stories/Network\\_2011-3.pdf](http://www.armedcitizensnetwork.org/images/stories/Network_2011-3.pdf)  
[http://www.armedcitizensnetwork.org/images/stories/journal/Network\\_2011-4.pdf](http://www.armedcitizensnetwork.org/images/stories/journal/Network_2011-4.pdf)

[http://www.armedcitizensnetwork.org/images/stories/journal/Network\\_2011-5.pdf](http://www.armedcitizensnetwork.org/images/stories/journal/Network_2011-5.pdf)  
[http://www.armedcitizensnetwork.org/images/stories/journal/Network\\_2011-6.pdf](http://www.armedcitizensnetwork.org/images/stories/journal/Network_2011-6.pdf)

–Gila Hayes

## Likes Author of DVD Reviewed

[Rory Miller] puts into words what so many people come to know after a lot of experience, most of it bad. We are so lucky to have Rory. How many times have we said to ourselves, “If I only knew then, what I know now?”

These have been tough years in our county, and the tough parts are far from finished, but a lot of good people are building a solid foundation in print—you all included, of course!—for all those who are coming after.

–Fran in NC

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





## Attorney Question Of The Month

This month's topic comes from an Affiliated Attorney who asked the other Affiliates the following series of related questions—

*Would you allow a client who used deadly force in self defense to be administered a polygraph, voice stress analysis, hypnosis, eye examination, blood analysis and/or psychiatric evaluation. When and why?*

*Would you allow the client to perform a test of shooting or weapon manipulation skill? Are the results of such evaluations presented to the grand jury or admissible at trial in your jurisdiction? Do prosecutors use them in making charging decisions? If you do this kind of testing on your own are the results discoverable by the state in a criminal case? In a civil liability trial?*

We were very interested in the questions our Affiliated Attorney from FL outlined, and even more interested with the answers sent in by other Affiliated Attorneys. We think you will find their responses instructive, too.

### Royce Ferguson

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That's a complicated question with a lot of variables. But, here's an approach that I will generally use—

(1) there's all the evidence in the world, some reliable and some not so reliable; and  
(2) there's the limited amount of evidence that might get into the courtroom and into the sight and ears of jurors, all of which is supposed to be reliable. That is—

(1) All worldly evidence can be used to try to influence a prosecutor's decision whether to file or not, whose decision can be based in part on this type of evidence, which may never see the inside of a courtroom. If the evidence is not so reliable, the prosecutor will let you know, but that does not mean the prosecutor will ignore it. This type of evidence includes the polygraph, voice stress analysis, hypnosis, eye examination and usually a psychiatric evaluation.

The reliability of this out-of-court evidence usually depends upon how the evidence is gathered—(a) is it

simply a self-interested person trying to advance a theory through *self-reporting*, such as he can or can't read an eye chart clearly, he did or didn't drink too much, he is or is not hearing voices, his memory was or was not recalled through hypnosis, he does or does not have enough strength in his left hand to pull a trigger, etc.; or, (b) is it merely *the opinion of a person who wasn't there*, such as an expert, saying that another can or can't see, another was or wasn't trying to deceive when answering certain questions, another was or wasn't hallucinating at the time, etc.?

Regardless if it will ever see the inside of a courtroom, this type of evidence can generally be safely pushed upon a prosecutor as part of settlement (plea) negotiations under Evidence Rule 410, and thus not be later used against the client. If it might help, I suggest using it for this purpose.

(2) Evidence that makes it past the threshold of the courtroom door and might reach the eyes and ears of a jury is supposed to be the most reliable evidence available as to whether or not something in the past happened. Most of the evidence in the world never makes it this far, and what evidence does get this far depends upon who wants it—the party who wants the jury to hear the remaining evidence will argue that it is *very reliable*, and the party who doesn't want the jury to even know about it will argue that, while it generally may be reliable, it is *not reliable this time* for any number of reasons (e.g., the chain of custody was bungled). Blood and ballistic evidence fits this type of evidence, as does most physical evidence.

Evidence that is being offered to the court and jury as reliable could become admissible for all purposes, criminal and civil, usually as an admission of a party opponent under Evidence Rule 801 (d) (1). But, a party would not be pushing it upon the court and jury unless he believed it was important.

In deciding whether or not to submit to such tests, it helps to know how the client would likely perform and what the results are likely to be. For example, this may require taking a private polygraph examination and looking at the results before offering to submit to a police examination. A poor preliminary performance could be

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kept confidential as “work product” shielded by the attorney-client privilege. By comparison, a good performance may be published to the world (except in court to a jury). If the client or attorney releases information without condition, assume it may show up just about anywhere—criminal or civil.

Washington State rarely uses the grand jury for the issuance of indictments, but utilizes the prosecutor's complaint to formally charge. Yet, common sense tells me that no prosecutor will be presenting exculpatory evidence to a grand jury, as defendants don't have any influence or input except through testimony. So, my guess is that a grand jury would never know the client passed the polygraph, voice-stress test, eye examination or other worldly test.

**Kevin L. Jamison**

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In Missouri polygraphs cannot even be mentioned in court. The results are inadmissible. I have had a couple of clients who passed the polygraph and the police used that as a reason to close the case. I have had a couple of clients who thought they could beat the box, and were indicted.

**Warren Stephens**

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*A Network Affiliated Attorney has asked you to comment on whether, when and why you would allow a client who used deadly force in self defense to be administered a polygraph, voice stress analysis, hypnosis, eye examination, blood analysis and/or psychiatric evaluation.*

The first set of questions really depends on the facts of the case and the particular client. Generally, I would counsel against the client taking a polygraph. The question presumes that the client admits to being involved in a shooting and that the perpetrator is dead. That being said, it is reasonable to assume that there

are certain facts that the prosecutor is looking to resolve. What were the specific facts of the claimed self-defense use of deadly force? Was the client actually in fear for his life? Where were the parties in relation to one another at the time of the shooting? Was any of the evidence touched or moved before the arrival of the police?

If the client were to take a polygraph, any responses that were considered to be deceptive could be taken by the prosecutor as tantamount to a confession and cause him to further explore the subject of the specific question. While the polygraph is not allowed into evidence, if there are deceptive responses, federal authorities could potentially charge the client with a violation of the federal false statement act.

There are instances where an attorney might want the client to undergo a private polygraph in an attempt to convince a prosecutor to drop the charges. If a private polygraph were to be considered, it should be performed by a highly respected individual, preferably by one the prosecutor might use. On balance, however, I would counsel against it.

These same principles would apply to a voice stress test. There is really no upside.

I would also counsel against submitting my client to hypnosis. You have absolutely no idea what the client is going to say. Additionally, if the hypnosis covers an area of potential testimony to be given at trial, the client will not be able to testify to that subject matter. Hypnosis is not likely to convince the prosecutor to drop the charges, so there is really no advantage to allowing it.

An eye exam would be prescribed for an issue of whether the client could really see, or not see versus what he claims to have seen or not seen. I would counsel against allowing the prosecutor to do such an exam. If the prosecutor is adamant on the issue, he can attempt to get a warrant.

The same counsel would be given to the client regarding a blood analysis. If the prosecutor has reason to believe that the client was under the influence of alcohol or drugs, then he can attempt to get a warrant.

With respect to a psychiatric exam, I would counsel - absolutely not. If the client were to claim incapacity or some relevant psychiatric condition, which is not

*Continued next page...*



something you would want to do in a case involving the use of a firearm, the use of such a defense would require retaining an expert for testimony, and the prosecutor would be allowed to have the client undergo an exam by a doctor of the prosecutor's choosing.

*Would you allow the client to perform a test of shooting or weapon manipulation skill?*

I would counsel against such a performance. The reason being that I do not see any benefit to the client. The results would not sway a prosecutor. If the client was not adept at using a firearm, the argument would be that the client had no business owning or using a firearm in the first place. If the client was quite skilled in the handling and use of a firearm, the argument would be that the client was a gun nut just looking for an opportunity to exercise his skills in a real life situation.

*Are the results of such evaluations presented to the grand jury or admissible at trial in your jurisdiction?*

A polygraph would not be admissible at trial. However, the polygraph results can be used by the prosecutor in a grand jury proceeding. The prosecutor can use just about anything he wants in a grand jury proceeding.

Tests such as eye exams and blood tests could be admissible by the prosecution at trial if the warrants for obtaining them were proper, and the subject matter is relevant to the issues.

*Do prosecutors use them in making charging decisions?*

This is dependent upon the facts and circumstances of the particular case, the prosecutor on the file, the State's Attorney, and the general public's view on a citizen's ownership and use of firearms. If the polygraph addresses a vital issue that the prosecutor knows would be extremely difficult to prove at trial, it may affect the prosecutor's decision whether to proceed.

*If you do this kind of testing on your own are the results discoverable in a criminal case? In a civil liability trial?*

In this context, there is no difference whether the case is criminal or civil. Any testing the defense attorney engages in is privileged and not discoverable. However, if the defense attorney intends to use the results at trial, then it is discoverable. Such testing is almost always required to be presented by expert testimony, and the prosecutor or the plaintiff's attorney is entitled to counter the evidence with its own testing and experts.

These questions underline a lesson I learned (the hard way) early in my legal career: If there is not a very good reason for doing something during pretrial preparation, and especially in trial, don't do it! Even a well thought out plan of action can go awry. But proceeding on a hope and a dream can have very dire consequences.

**Mark A. Alexander**

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These are fact driven questions and I presume you are asking the question assuming I am acting as a criminal defense attorney (I only handle civil matters). Notwithstanding, the short answer is "yes," given the right facts.

Polygraphs are case specific. Recently a criminal defense attorney allowed his client to submit to a polygraph and the case was dropped.

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*The Network is very grateful for the participation of our affiliated attorneys and their contributions to these discussions. Check back next month for the conclusion of this discussion about testing.*

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

## Book Review

### Oregon Concealed

By Don W. Leach

ISBN: 978-0-9818062-0-4

Suggested Retail Price \$15.00

<http://oregonconcealedtraining.com/product/oregon-concealed-book/>

Reviewed by Gila Hayes

Written by a retired attorney,

*Oregon Concealed* is no ordinary state gun law book. In addition to making sure his reader understands laws covering carrying a concealed handgun in Oregon, author Don Leach cements those lessons with true stories from his years practicing law, adding his opinions on the role of intent in commission of a crime, maintaining our rights as Americans while staying out of jail, how Oregon law is applied and sometimes misapplied and a tremendous amount more.

Leach's chapters are presented in a conversational tone, sometimes jumping from one topic to a related topic, much as if you were sitting across the table sharing a pot of coffee with Leach, exploring Oregon law, often learned by hard experience by the author's clients. It's best to learn from another's troubles, and this the reader does from Leach's stories, with names and locales changed to protect people's identity. Reading *Oregon Concealed* is enjoyable, though one has to smile that the idea that Leach's mythical Pandora County is like River City in *The Music Man*, where "ya got trouble...with a capital T." Leach's stories not only clarify the application of Oregon law, but also help the reader remember the lessons. Following the discussion of the law and the stories illustrating its application, the author summarizes the point in a paragraph or two, often spiced by his opinion and leavened with advice on prudent behavior for those who carry firearms.

A number of the clients Leach defended before retiring were good, law-abiding citizens found with loaded guns in their cars and charged with concealed weapons infractions. Sometimes they were returning from the range, hunting, or other lawful pursuits. Because each made an effort to be a good citizen, they had trouble grasping that they were viewed as and treated like criminals by the police and courts. Too often, they made admissions of guilt through their generally helpful



responses and a mistaken belief that law enforcement, district attorneys and other representatives of the criminal justice system were on their side. The author emphasizes how these rationalizations do not comport with the real world, and drives home the point by telling the stories of other unfortunates who lost their gun rights, served jail sentences or community service because of a "mistaken belief that the system was designed to protect him, the good guy."

In addition, *Oregon Concealed* includes lessons about—

- Accessibility to loaded firearms by non licensees in automobiles
- Standard of the reasonable and prudent person and its applications
- Open carry practices
- Defense inside the home and on surrounding properties.

Additional advice recommends obtaining a license to carry that enjoys recognition or reciprocity from a number of states. Leach believes carrying your handgun on your person, not stowed in the car, when traveling by automobile the best option, and has the stories to support his advice. Additional cases illustrate the value of "Don't ask; don't show; don't tell" when you are carrying a concealed handgun.

Leach offers intriguing commentary on—

- His conviction that a national concealed carry permit would infringe on states' rights to self-governance
- Comments about judicial incompetence
- The intrusion of administrative law upon legislation and Constitutional rights and a lot more.

Leach writes several key chapters on justifying use of force in self defense, richly illustrated by cases and commentary. While teaching fundamentals in which our self-defense rights are grounded, he highlights the difference between the circumstances in which the armed citizen makes self-defense choices under the pressure of imminent death or serious injury compared to the court's days, weeks and even months reviewing the facts before rendering judgment.

"Far too often a judge or jury with a huge amount of information we did not have at the time we were making

*Continued next page...*

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the decision will decide whether our decision was 'reasonable,'" he writes, adding later, "...The decision the citizen has to make in the briefest moment in time will most probably be tested against the reasonably prudent person standard...That decision will be scrutinized by others with the time to inquire fully and make their own independent decision of whether we really were authorized to use deadly force against the unlawful physical force being used against us."

I wholeheartedly recommend *Oregon Concealed* to Network members who vacation or hunt in Oregon, and

certainly those living in Oregon and surrounding states. It teaches the law in much greater depth than you can receive in a class, and does so with stories and examples that make the lessons memorable.

Order it at amazon.com or through <http://oregonconcealedtraining.com/product/oregon-concealed-book/> where you can have your book signed by the author if you wish.

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



## Networking

by Brady Wright

This month I've started to hear from many of our Affiliates who are using that dreaded word again. You know the one: snow.

It's getting harder and harder each year to avoid Christmas decorations until Thanksgiving is

actually OVER. This month has been a challenge for me to find places to go where people still LIKE Halloween and turkey day, but I succeeded by spending time hanging out at one of the newest gun shops and indoor ranges in my neck of the woods. The West Coast Armory North location, in Everett, WA has been freshly redone inside from top to bottom and almost sparkles. They are doing something that is becoming more popular lately, for multi-use facilities: they are aggressively courting new clients by direct advertising, broadcast and social media and cross-promoting like all get out! Their classrooms and varied offerings are real well done and Jim Hickey is the lead instructor. Take a look at their Facebook page and you'll see what a good job of promotion looks like. We're glad to have them as Network members.



seminar. He was on the radio promoting it in the local market there and if you go to the station webpage you may be able to hear the interview in their archives. Look for Kate Krueger's Talking Guns 1100 AM show at <http://kktgradio.com> led by the owner of one of our affiliated gun shops, Derby Guns.

You can also check out Jon's operation, Phoenix Firearms Training at [www.phoenixfirearmstraining.com](http://www.phoenixfirearmstraining.com) or call him direct for class schedules at 602-908-3676. Jon is a NRA certified Instructor.

There is a lot of action in the Colorado area lately, with all the concealed carry changes going on. If you are near Colorado Springs, you cannot go wrong checking into Kenaz Tactical Group which provides firearm training courses including Colorado Concealed permit course, basic to advanced defensive pistol courses, tactical carbine courses and NRA shooting courses in the Colorado Springs area.

Kenaz is a veteran-owned business catering to shooters of all levels and they have classes that will enhance your ability to put rounds on target. Robert Butler (pictured to the left) is the owner and lead instructor.

He offers NRA Basic Pistol, NRA Personal Protection inside and outside the home, defensive shooting courses, and a variety of firearm related courses and events. If you do not see a course date or class available, check the upcoming schedules. Private shooting classes are also available. For class information and schedules, call 719-321-3256 or email [rbutler@ktgfirearms.com](mailto:rbutler@ktgfirearms.com).

Our East Coast member, Phil Smith, sends greetings from the backwoods of Hanover, PA. He just moved into a new (old) house and it provided an opportunity to meet the local contractors and talk about the Network. One of them showed up with his NRA hat and that prompted questions about his firearms passion. It turns out he sold his handguns because his new wife did not like them and he only hunts now. Phil did what he always does; he discussed the Network with the contractor and asked if he knew anyone who does carry to pass along the Network business card and the booklet. He quickly stated many of the guys he works with on his day job do carry and he would pass them along. It's always fun to hear about Phil's exploits.

Next month's column will have something holiday related, I promise!

As always, if you have news to share, just call or email [brady@armedcitizensnetwork.org](mailto: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!

I got the word from Jon Abel, a Network Affiliated Instructor in Phoenix, that Lt. Col. David Grossman is coming to Phoenix December 14th for an all-day

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

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## Editor's Notebook

### Brain Control

by Gila Hayes

A key to justifying use of force in self defense is identifying and articulating the facts that demonstrate that lives were truly at risk and defense responses were

reasonable. Marc MacYoung excels at identifying and defining the variations of social and asocial violence, teaching how to prevent or counter both, and how to do so within the law. Last spring I got to participate in a two-day knife class he taught. As is always the experience when Marc is in the room, the discussion ran at a lightening pace, with about ten hours worth of knowledge packed into each one-hour segment.

Marc's instruction is critically important because if your use of force is identified as mutual combat, the justifiability of what you say you did in self defense is lost. MacYoung's lessons warn against being drawn in to unnecessary use of force that is not justifiable as self defense.

To set the context for a useful delineation of some of MacYoung's key lessons, it helps to read his *Conflict Communications* blog and become familiar with his explanation about the jobs done by various parts of the human brain that are active when we're calm and reasonable, when we are terrified, or when we are angry and combative. As armed citizens, our areas of concern include surviving predatory violence, but we may very well have to fend off someone who feels we've challenged his social standing or perceived territory, so it is useful to understand how humans react and why. Marc writes a great brief on the topic at <http://www.conflictcommunications.com/monkey-trap.htm> and explains how brain functions result in people playing out very predictable scripts when put into various situations.

In brief, reasoning like deciding to buy a 12 ounce package of food for a buck over 8 ounces for 80 cents occurs in the prefrontal cortex. Emotional reactions are the work of the limbic system, for example, feeling angry upon finding a coworker exiting a car parked in our

assigned spot at work. Jumping out and shoving the coworker would be a response generated by the limbic system, sometimes called the emotional brain, but more colorfully described as the "monkey brain" by MacYoung. Finally, the brain stem, dubbed the reptilian brain, is responsible for reactively ducking or cringing away when surprised by perceived danger. Each brain function is valuable to self defense and survival, but for us what's important is understanding and exerting control over the first two.

### Prepared For The Worst But Ignoring The More Common

Although most armed citizens take training to fend off sociopaths or psychopaths, a lot of the conflict we're drawn into is garden-variety social violence. The skills we've honed to defend against asocial victimization by predators fails badly in the social violence arena. Thus, sensible defense training and practice include being able to recognize various criminal approaches and identify what is wanted and what type of violence is being employed to fill that desire. Simply put, MacYoung defines, "If you are talking about winning, you are talking about social violence. If you can 'put it in a wheelbarrow,' it is resource predation." If the violence itself is the goal, you face a process predator. "If the instructions include humiliation, you can be sure you are dealing with process predation," he adds.

"Very seldom does something come out of nowhere," MacYoung asserted. Most violence starts with an interview, as the criminal assesses you and sets up the distraction. "The set up can be slow, but the attack will be fast" he warned. "The interview is how the guy double checks. If he sees something he thinks may hurt him, he can still veer off so he doesn't get wounded. In the real world, how long does a wounded predator last?"

"Dangerous people have rules and they follow them very strictly," MacYoung noted. "If you do not follow the polite social script, you give him reasons to go off." He cited *Code of the Street* by sociologist Elijah Anderson, theorizing that middle class citizens "don't know how to behave, and so are injured in muggings. They won't give up their possessions without a territory fight, so they get hurt in resource predation." This may not be a palatable message, but it comes from the voice of experience.

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Easier to practice is MacYoung's hearty and repeated recommendation of the sincere apology if you've inadvertently violated another's territory or challenged his status. "'I'm sorry' has got amazing tactical abilities," he grinned, adding, "Is your life worth NOT saying, 'I'm sorry?'" A sincere and honest apology is like a good faith withdrawal from an argument in that it has to be sincere and honest, he added and we'll share more of his ideas on that subject a bit later.

## Predictable Patterns

Conflict to establish or preserve social rank is used at all levels of social interaction. People use violence to maintain order, to enforce social rules, to punish violation of those rules and to protect territory. What varies, of course, is whether the violence is performed by an official on behalf of the citizenry or whether we threaten it ourselves to attain an immediate result. When someone threatens violence, it may be a script used frequently to achieve a desired result. This is true of social conflict which follows predictable patterns and "comes with instructions" on how to avoid it, MacYoung explained. When someone says, "Shut up or I'll beat you bloody," he is not asking for your comments, despite your instinctive reaction of, "Who are you to tell me what to do?" Failing to stop talking and go away, however, will likely incite punishment for not complying with their scripted instructions, he explained.

Walking away or staying away after someone has triggered a primal response is harder than it sounds, especially without a fair bit of practice disengaging from the games people unconsciously employ to improve, establish or hold their place in the social structure. You may recognize that you're getting pulled into a conflict and withdraw, but you need to make sure you don't toss in that one last comment, or worse, come back to settle the argument! Having the last word is NOT withdrawing; it is keeping the conflict going, MacYoung stressed. Likewise, saying the right words in the wrong tone of voice is a disingenuous play that only prolongs the fight.

"Most people worry that disengaging is dangerous, and they ask, 'What do I do if he follows?'" MacYoung continued. If the threat's instructions were to leave, what does he expect? By leaving, you extend respect and trust—trust that he won't follow you, he posits. But if you get in the last word as you are retreating, you betray what MacYoung called the "trust contract" that you would disengage and leave. "If you mouth off, you have made him a fool, you have demonstrated that you are

not trustworthy," he stresses. Breaking trust will be punished, he predicts.

Use of force decisions have to be supported by realistic assessments of the danger. You are not in a fight for your life, if you just have to get that one last word in so you can save face. "Don't give in to that impulse," MacYoung urged.

Disengagement entails neither assuming a frightened or submissive posture or tossing back a challenging stare, he taught. Likewise, scanning or visual awareness does not have to be so aggressive as to challenge a criminal on his or her home turf. A quick up and down glance, then sliding vision away sideways is neither challenging, nor does it convey nervous fear. However, if you've wandered into an area where you ought not to be, the locals will recognize your uneasiness. It's time to move on. "The best thing to do is just go about your business," MacYoung advised. "Bad guys are also interested in just going about their business. If someone is in your way, say, 'Excuse me, thank you,' and use the social niceties."

## Do Not Rationalize

Humans engage in a lot of rationalization when explaining why they participated in social conflict that turned violent, instead of breaking off and staying away from the person they ended up "having" to fight. Whether it is the drive to be the strongest, or to punish someone for behaving badly ("teach him a lesson he won't forget"), humans seem to be able to always generate excuses to get in the last word. "Legal investigations at higher level of forces will be looking for facts to support that you were part of the creation and escalation of the incident," MacYoung warned. The most important question of your life in any lethal force situation is, "Do you have to engage?" he emphasized.

Unfortunately, when the limbic system is hooked emotionally into mutual social conflict, we go deaf to the instructions our opponent gives on how to avoid the fight; all we hear is the threat. The reason is two-fold: it is human nature to attempt to prevail at status games and secondly, if truly frightened by the violence offered, adrenaline can cancel rational thought, shunting brain processes to primal fight, freeze or flee choices. Indeed, both parties to the conflict are caught in the ritual. "We get so emotionally invested, so caught up in the dance that pulling the knife and saying, 'Get out of here or I am going to kill you,' seems like the most logical thing!" MacYoung exclaimed. "To the guy on

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whom the knife is pulled, saying, 'You don't have the guts,' seems to make sense, too. They're acting like they're stoned, because they're under the influence of the drug adrenaline," he explained.

MacYoung identified key elements to help students recognize when they are caught up in the game. These include—

- "I" and "me" are the terms in which you are thinking and speaking
- Emotions are presented as facts
- You are more judgmental, less flexible, and impatient
- It seems there are no other options beyond fighting
- You seek reasons to dismiss the other person or their opinion. You "other" them as not being part of your social group.

When you identify the logical inconsistencies—the false justifications—you are able to realize that your limbic system is active and directing the show. Though you swear that you are being logical and rational, the "neocortex, the center of rational thought, is dying for lack of blood," MacYoung quipped.

These indicators can help the targeted victim avoid entanglement in the criminal's script and help make genuine efforts to break it off or deescalate. If those efforts fail, your use of force is not only more defensible in the aftermath, but in the moment, defensive responses you implement are strengthened by your full commitment. "If you make the decision and are willing to use lethal force, most of the time you don't have to," MacYoung added.

In the absence of wholehearted commitment to use force to survive attack, hesitations slip in and cost time. MacYoung addressed the danger response of freezing, something that martial artists call "glitches," because the hesitation slows or inhibits proper execution of defensive tactics. Sometimes the hesitation happens when what you think is happening morphs into a different kind of problem that requires reorientation. Other times, a surprise, blitz attack is overwhelming and it takes a micro-moment to recognize, orient upon and respond to the problem.

MacYoung discussed breaking out of the initial freeze response, commenting, "You can break the freeze if you have got something that you KNOW works. I use the term faith. You have to have faith in what you know. You have to be willing to stake your life on this working." He continued, "Even the best training is like building a bridge over an abyss. No matter how long that bridge,

you still have to jump over the abyss. There is that final gap—the bridge cannot go all the way to the other side. I am helping you to build as much of the bridge as possible but at the very end, you have got to be able to make that jump over the gap. To jump over the abyss, you have got to have faith and commitment."

Don't view training as something separate from daily life, then expect to be ready when danger strikes, he continued. Embrace opportunities to operate outside of your familiar environment. "Push yourself to operate in different circumstances outside your comfort zone," he urged. Success, confidence and a high degree of competence in any area of your life bleeds over into trusting your techniques for self protection, he added. Instead of demanding a perfect execution of any defense technique, MacYoung said he's more comfortable taking the advice of Larry the Cable Guy when he says, "Get 'er done!"

## Sensible Preparations

A lot of times when someone pulls a knife, they are making a threat display, not immediately stabbing or slashing. While the justification for using countervailing force exists, the risk of getting badly injured if you participate in the fight is very real, to say nothing of the inevitability of post-incident legal consequences. The key element to getting away uninjured is listening for the criminal's instructions. What are the instructions to avoid getting stabbed? The directions will almost always be given, MacYoung hinted. If a knife threat display is part of a resource predator's efforts, the instructions are simple: "Give me your wallet." Give it to him and he will probably go away, he added.

The steps in executing a robbery, for example, are quite predictable, MacYoung taught. Criminals meter the degree of force they use in relation to the severity of punishment should they be caught. A strong-arm robbery or a robbery by several thugs against a single victim is harder to prove and punished less severely than armed robbery, he continued. If a weapon is used, sentencing increases. If the victim is forced to a different location, the simple and difficult-to-prove robbery becomes a kidnapping and is treated as a more serious offense, he said, adding that these factors are part of the criminal's calculation.

"The robbery script is what keeps him from going to prison for as long. They know not to tell you to move. If they do, they've gone off script, and something is way

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wrong," he emphasized. If moving you to a different location is part of the instructions, he encouraged an immediate, decisive defense, employing whatever degree of force needed to stop the threat immediately and make good your escape. This lesson was just one example of why identifying the type of violence offered is an important step in determining your use of force response.

MacYoung concluded by identifying hurdles we face in getting away from a violent situation as safely as possible. He summarized—

1. Overcome the freeze and be able to act. In short, "Get 'er done!"
2. Stop the threat
3. Be prepared to answer criminal charges
4. Be prepared to face a civil lawsuit

He paused, then said, "I could add a fifth as being psychologically OK with it, with the morality of your choices."

"The four steps build the bridge across the abyss, but eventually you have got to be able to make that final jump," he advised. Control your limbic system and let

survival instincts under the direction of the cerebellum and brain stem take over. Best of all, the lizard brain does not worry about looking good. It doesn't have to stay around to win. Winning is coming home afterward," he concluded.

How many times have you heard someone brag, "I carry a gun so I don't have to back down for anyone!" Armed citizens are as human as anyone else and as such, we're susceptible to the primal urge to jockey for social position just like anyone else, but fighting to save face voids any claim that your self-defense choices were reasonable and necessary and thus do not constitute assault, manslaughter or murder.

Network members must genuinely control these instinctive behaviors to guarantee that we use force only to defend innocent life, and that requires disengaging from conflict even when we want most to hold our ground.

*[End of December 2013 eJournal.  
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