



## Non-Emergency Police Contact An Interview with Massad Ayoob

Interview by Gila Hayes

*Comments from members frequently drive the focus of our Network journal. Throughout our 11 years of operation, questions and concerns have often been raised about armed citizens' contact with law enforcement not only after self defense but under the most benign of circumstances, while driving, walking or in other facets of daily life.*

*These questions make it clear that law abiding citizens are afraid of losing their gun rights through charges they obstructed law enforcement, resisted arrest, or committed other offenses stemming from hostile contact with police. With Network benefits reserved for the monumental expenses to fight the legal aftermath of use of force in self defense, paying to defend against charges resulting from arguing with patrol officers is outside the scope of the Network's help. As with so many armed lifestyle challenges, the manner in which the armed citizen comports him- or herself is the key to avoiding trouble.*

*In our member education lectures, Network Advisor Massad Ayoob teaches post-self defense interactions with law enforcement. We recommend periodic reviews of Ayoob's Five Point Checklist and other teachings (members will log in and stream this instruction at <https://armedcitizensnetwork.org/immediate-aftermath> while non-members can get a preview at <https://armedcitizensnetwork.org/preview-handling-the-aftermath-of-a-self-defense-shooting>). With critical incident concerns so ably addressed, our topic today turns to the fear and antipathy sometimes expressed by law abiding citizens toward law enforcement. What can members do to keep these routine contacts with police on a positive footing?*

*Preeminent instructor Massad Ayoob agreed to answer these and other questions, and we switch now to our Q&A format to preserve the flavor of the conversation.*

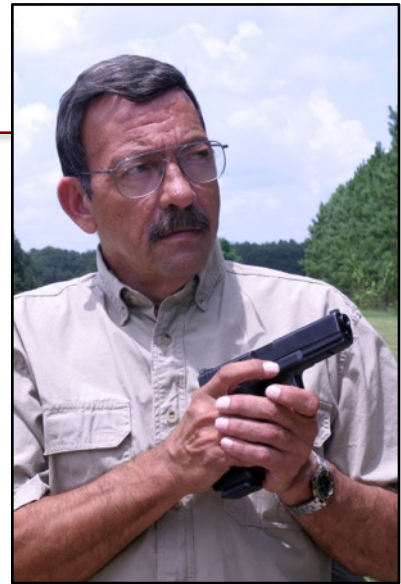
**eJournal:** I become concerned when members express frightened and hostile opinions about police. I'm afraid

the attitudes expressed by some will create disaster during a simple traffic stop or other contact that could have been settled in a business-like way. While I can't change policing as a whole, I would like to brainstorm strategies to keep our people safe during routine contact with law enforcement. Mas, your careers have given you a unique perspective from which to advise us on these concerns.

**Ayoob:** I've been on both sides of it: I was an armed citizen before I became a cop; I've been an armed citizen since my retirement from the police department in 2017. When I was in my teens, if somebody had asked me what are the worst possible jobs you could ever have, never having actually done either job and having only seen the jobs from one perspective, my answer would have been a toss-up between being a teacher and being a cop. If you are a teacher you have to do the same thing over and over again and it is going to be boring as hell and half of the people you have to deal with will hate you because you have control over them and if you are a cop, everybody will hate you. Once I grew up, I ended up being both teacher and cop. If you haven't done the other person's job, you need to back off a little bit from theorizing what their job might be like and how you would do it until you've been a little bit closer to it and seen what that job entails and gotten a little empathy for the person doing that job.

**eJournal:** You've divided your life's work between working as a part-time yet fully-sworn police officer, teaching both police and private citizens, and giving expert witness testimony in the courts. I've often wondered why you didn't work full-time in law enforcement.

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**Ayoob:** There was so much else I wanted to do. I wanted to teach; I wanted to write. If I was a full-time cop, I would have been lucky to get a week off a year to take training outside the department. If I was on my own, I could take as much training as I wanted, siphon it to others who needed it but weren't budgeted to get it and still patrol whenever I wanted.

**eJournal:** We in the private sector have certainly benefitted from that choice because you've put a lot of effort into helping your students understand policing. That relates to our topic today—what do citizens inadvertently do and say during relatively benign contact with police that creates concern and even fear for officer safety? Can you help us understand how contacts that should have been routine sometimes turn antagonist, hostile and dangerous?

**Ayoob:** One of the things I learned early on was from the late Col. Paul Doyon, who at that time was Superintendent of the New Hampshire State Police. He said, the job is not guns and clubs, in fact, the job is people. My first night on the job, my field training officer said, "There's one thing to remember out here: don't be an ass." That is taught in the police academies. Every one of America's 800,000 cops has probably been told, "Don't be an ass," so now we just have to get to the other 320 million people in this country and tell them the same thing.

**eJournal:** Well, you're right, it takes two to fight! Additionally, we know the tenor of our interactions mirrors the attitudes we exhibit. However, we can't ignore the problem of fearful, defensive citizens. Most often, if armed citizens are unexpectedly thrust into contact with police it is while driving. We're pulled over because a headlight is out or we're speeding. In our discomfort, what do we inadvertently do and say that raises officer safety concerns?

**Ayoob:** Let's start at the beginning. As soon as you see those lights in the rearview mirror start pulling over. Start complying. I've experienced it; any cop who has been on the road for a while has experienced it: You turn on the lights and you know the guy has seen you. When you look at us in your rearview mirror, in the car behind you we are looking directly into the eyes of your reflected image. We know you saw us, but you keep going.

When you finally pull over and I ask you, "Why didn't you pull over when I first put on the lights?" it is always the

same answer: "I thought you were trying to pull over the guy in front of me." [chuckling] What people have to remember is that if we wanted to pull over the guy in front of you, we would have pulled up behind him and turned on the lights!

When you don't immediately respond, the officer has to assume you are deciding whether you are going to fight or whether you are going to run, either of which endangers him and the public and he goes to a very Day-Glo shade of Condition Orange. So immediately pull over. If you are in heavy traffic, turn on your turn signal, tap your brake lights and make it clear that you are complying.

Once you pull over, put the car in park, turn off the ignition, and if it is nighttime, turn on the interior lights. You do that for a number of reasons. First, it lets the officer see what's going on inside the car so that reaching for your registration isn't going to be mistaken for reaching for a gun. The light tells the cop that there is nothing in that car that you're afraid for him to see.

When the officer comes up, make sure your hands are visible. Roll down the window before he gets to you and unless there's howling, horizontal rain, roll down both windows. This comes to mind because we just had a series of Illinois State Troopers killed on the highways. A lot of officers today will approach from the right side of the vehicle for their own personal safety.

The officer will ask for license, registration and proof of insurance. You want to have those where you can reach them without exposing a firearm. You would not believe how many people will leave a pistol laying on top of their automobile registration in the glove box! Don't do that! You know what reaching in that direction is going to look like and you know how the officer is going to react.

In a right-handed world, most of us carry on the strong side hip. That means if you're reaching for a wallet, even if it is on the left side, you have to unbuckle the seat belt to get to it. That means the hand is going to be near the gun. At that point, I would say, "Certainly, officer, however, I have a license to carry. I do have it on, and to reach my wallet, I am going to have to unbuckle my seat belt which is on my right hip, where my pistol is holstered."

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Do not say, "I have a gun." That is a threatening statement. If you say that, you are going to find out that the officer has one, too, and you are very likely going to see it from the front.

Move slowly. Remove the wallet carefully and have the driver's license positioned where you don't have to fumble for it. Particularly in the dark, be aware that if field training work is being done, the new officer will likely be on the other side of the car. Don't make any movements or try to conceal anything, because that could look to either officer like you are reaching for a gun.

Be polite to the officer. The officer will probably ask you a question like, "Do you know why I've stopped you?" Generally, that is an attitude test. If your answer is, "No, I don't," the bullshit alert starts to go off. By the time we're pulled over, most of us know pretty damn well why we've been pulled over.

Now, the other thing we have to remember is that we may not know why we've been pulled over and that creates a higher risk. The classic example is the Philando Castile incident in Minnesota. What Castile did not know in the moments before he was shot to death was that one of the reasons he was being pulled over was that he and his vehicle resembled the description of a suspect in an armed robbery.

That is why the dashcam recordings of that incident showed a second officer who would not routinely be there for a tail light out, the initial stated reason for the stop. The officer had broadcast that this vehicle fit the description of one they were looking for in an armed robbery, and that was why the second officer was present. That's why when it became apparent that Castile was reaching for a pistol, the officer shot him so quickly.

**eJournal:** The videos show verbal interaction, with Castile saying he has a firearm and the officer saying to leave it where it is. Absent the unknown factors that made him continue to pull his gun from his pocket, I think for our readership, we have more concern about getting out our license, registration and proof of insurance without creating alarm. Should we already have those in hand as the officer approaches?

**Ayoob:** Don't start reaching for your license and other papers while you are pulling over and the officer is still in

the car behind you. From his perspective, if he sees someone reaching down into the glove box or reaching down to the hip or into a pocket, it looks like either there's somebody reaching for a weapon or trying to hide contraband.

Make sure when you open your purse there is not a .45 sitting on top if you are going to have to withdraw your wallet. If reaching for your wallet is going to reveal a pistol or magazine pouch, you want to tell the officer beforehand, "I'm licensed to carry; I do have it on." You've eliminated that scary "G" word. There are police departments where the command to shoot on the firing range during qualifications is when the range instructor cries, "Gun!"

If you've got that nervous young rookie cop on the other side, he can't see into the car in the dark. With the traffic noise and everything else, he can't hear all the words that are passing between you and the officer at the driver's side window. If he hears, "[Babble, babble] Gun," his gun is going to come out.

When the officer is approaching the car, I want the inside light to be on and I want my hands to be on the steering wheel at about eleven and one o'clock where he can see I'm not hiding anything, not holding a weapon and not offering any threat to him. Going from there, be polite, be quiet. The old saying is true: The side of the road is not the place to argue your traffic ticket. The right place would be in court.

**eJournal:** When we say, "I need to get my wallet out of my pants pocket, but I have a license to carry and the pistol is on my right hip, what would you like me to do?" in my limited experience the officer is likely to ask to take possession of the gun throughout the duration of the stop. That is a huge concern for armed citizens. How can we make that part of the interaction safer and less contentious?

**Ayoob:** First, do not argue with the officer. For many years, cops have had the absolute right under the *Terry* decision [see *Terry v. Ohio*] allowing police to search anything that's within your reach and secure any weapons within your reach, your license to carry notwithstanding.

I am not going to be taking the gun out. If the officer was novice enough to say, "Take the gun out and hand it to

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me," I would not do so, the reason being that if there is a rookie cop in the dark on the other side of the car that can't hear him ask me to do that, it is going to look to him like I am pulling a gun on his superior officer and he is going to shoot me before I give the gun up.

I would say, "Certainly, officer. I don't want it to look to anyone going by like I'm pulling a gun on a policeman. It is in a holster on my right hip (or wherever it is). Tell me what you would like me to do." Throughout that I would want my hands motionless on the steering wheel in plain sight. The officer will probably tell you to step out of the vehicle, pat you down, remove the gun. Bear in mind, a whole lot of cops don't have any experience with firearms except their own issue pistol and a long gun. It might not be the best time to be carrying a cocked and locked 1911 with a two-pound trigger that would be dangerous for someone who is unfamiliar with it to fumble.

If you have any complaints, save it for a judge. Do not argue with the policeman over a gun.

**eJournal:** What're the pros and cons of not mentioning the gun unless you're asked to get out of the car? Do you think we should notify even when it is not required?

**Ayoob:** That's entirely up to you. Some states require that you notify the officers if you are carrying. Some states do not. All my career, I was in a state where they were not required to notify, so if someone told me they had a gun on, my hackles would go up a little bit and I might think, "OK, this guy's so invested in his gun, that it is the first thing he talks about," and while it wouldn't cause me to change my approach, it would make me much more cautious and much more suspicious. That's why I'd go with, "Officer, I'm licensed to carry and I do have it on. Tell me what you'd like me to do."

Follow the officer's commands. If the officer is alarmed by you having the gun—and some of them are because you'll get the occasional cop who never saw a gun until he got to the academy—if he orders you to prone out in the rain or the snow, go ahead and do it. We'll sort it out later in court.

**eJournal:** If asked to get out of the car how fast should you move? Will slow, deliberate actions be misinterpreted as noncompliant? Does too fast or slow create concern in the officer?

**Ayoob:** If the officer tells you to step out of the car, perform any movement slowly and smoothly. Now, if you are asked to step out of the vehicle, maybe like Mr. Castile, it's because you fit the description of someone who has done a bad thing and you are about to be searched. Maybe you were a little bit careless and the officer thinks he has probable cause to check if you were driving while inebriated and you are probably going to be doing a field sobriety test.

Many officers still use the Rohmberg test which includes leaning the head back and arms going out to the side and touching your nose with your eyes closed. It's not going to end well if your arms go out to the side, your coat opens, and the gun becomes visible. If you have not already advised the officer that you are legal to carry, if asked to step out of the car, at that point, you should say, "Certainly officer, however, I'm licensed to carry. I do have it on my right hip, shoulder holster under my left arm—where ever it is—tell me what you want me to do." Then slowly and carefully follow those commands.

If there are two officers and one of them says, "Get down," and the other one says, "Don't move!" obey the one who says don't move. When they stop screaming at you, say, "Officer, which of you should I obey? Which of you is in charge? Sir, tell me what you want me to do." Do it calmly, don't scream, control the F-bombs. Remember, you certainly are being recorded. Even with the dashcams today, if the lights are on and the camera is recording, the officer's microphone is going to pick up all the words. If you are talking to him, you are talking to his microphone.

**eJournal:** Controlling the angry language means we can't let ourselves get emotional. We learn and practice strategies and verbal intervention for other dangerous situations—do we need to practice for contact with law enforcement?

**Ayoob:** Absolutely. Just as with any form of human contact, if you haven't planned for it beforehand, if you haven't visualized yourself doing it beforehand, you are not going to be as ready as you should be when you have to do it on short notice. That conflict can be dialog or that conflict can be combat.

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**eJournal:** We get so focused on the possibility of a critical incident that we forget to prepare for the smaller challenges in life.

**Ayoob:** Remember, that what may start as a non-critical incident can turn bad. How many street assaults began simply with pan handling?

**eJournal:** Both concerns make us think about how we react when we are in an uncomfortable or unfamiliar situation. Fear or worry makes some verbally aggressive.

**Ayoob:** One thing that gun folks have to keep in mind is something that I tell students in class. I say, "The reason you are in this class instead of someplace having fun is that you are an alpha male or female. You are one whose instinct is to protect others; you are used to being in charge of things. You have to understand that there will be times when you will not be the alpha. When you're in court, you are not the player.

When you are in a roadside dialogue with a police officer who pulled you over, you are not the alpha, the officer is the one with the authority that makes them the alpha and you have to accept that. Understand that it is not you against him. This simply is the way our society is structured to work; compliance is expected of you as a member of society.

**eJournal:** These days people are hyperaware of personal space and feelings and aggressively defend personal rights. I submit that contact with law enforcement can become very dangerous for an easily offended person. I'm not suggesting that overreaching authority go unchecked, but as you stressed earlier, the safe place to pursue correction or amends isn't in the dark by the side of the road. I'm appalled that we need training in how to behave, but I think we do.

**Ayoob:** A big part of the problem has been the way the media has portrayed things. Historically, police have been acculturated not to discuss our cases in the press; we will wait for court. So, somebody writes a letter to their favorite columnist or their ombudsman at the local paper and they say, "The cops treated me like I was the second coming of Bonnie and Clyde just because I am a citizen exercising my Second Amendment rights."

The cops, of course, historically have said, "I can't discuss this. It will all come out in court." Then, when it

comes out in court that, in fact, the officer acted correctly, if that appears in the paper at all, it is on page 33. This has left the public reading that newspaper with the idea that the officers really do distrust armed citizens.

A good example is the case of Philando Castile that we mentioned earlier. Jeronimo Yanez—the officer who shot Castile—was acquitted. I'd add that the acquittal came about largely because of the expert testimony of my fellow Network Advisory Board member Emanuel Kapelsohn.

The general public had the perception that Castile was reaching for his wallet to take out his concealed carry permit and the cop panicked and shot him. The officer described how, at first Castile didn't say, "I have a permit to carry" but rather he said, "I have a firearm," and the officer said, "Just don't take it out." Then you hear on the dashcam, "Don't take it out. Don't take it out!" followed by the volley of shots fired by the officer.

Castile was carrying a full sized 9mm in a pocket. It was a Diamondback FS that is about the size of a Glock 17. The officer stated that Castile started to pull it out of his pocket while he was telling him not to and that was why he opened fire. The general public still doesn't realize that; they still think the cop panicked while Castile was reaching for his wallet.

It is a documented fact that Mr. Castile's wallet was in his other pocket and it was bright-colored and striped and would never have been mistaken for a firearm. While Philando's girlfriend who was in the car said he was reaching for his wallet to show them his permit, that is not the case and is not borne out by the evidence. You've got who-knows-how-many people who think the officer shot him for trying to comply with the law and show his pistol permit.

**eJournal:** I didn't expect the Castile case to come up in this interview, but it raises questions about verbal communication with police. At the opposite extreme, we hear people wanting to invoke their right to silence during any and all contact with law enforcement. Their plan is to hand over their ID and other papers but refuse to answer questions. Are you hearing these kinds of fears and ideas from students?

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**Ayoob:** Yes, and so something I teach in my classes is how to handle a routine traffic stop. I think the public has been propagandized, so if you don't know people who are cops or you've never been to one of the civilian police academies, or never been on a ride-along to see what they do, you don't realize just how many hostile people officers have to deal with out there.

Don't be saying stupid stuff like, "I don't have to identify myself for you. I am a sovereign citizen, blah blah blah..." The cop has heard it all, and the cop is the one who has the law on his side.

**eJournal:** What is the minimum the citizen is required to provide when asked by police who they are and where they're coming from or going to?

**Ayoob:** In most jurisdictions the absolute minimum requirement is your identification, the registration for your vehicle and in some states, it is mandatory to give your proof of automobile insurance. If he asks where you've been, you do have the right to remain silent but then ask yourself, "Why?" What do you gain from doing that? If you are coming from work, let the officer know, "I'm coming from work and I'm going home."

Today, in my case, I am in Baton Rouge, LA many miles from home and if I am asked what I am doing here, I will say, "I'm in Baton Rouge to teach a class," because I have nothing to hide and no reason to debate.

If the officer wants to search the car, I will probably say, "Officer, I understand your concerns, but I assure you that there is nothing illegal in the vehicle and it would be a waste of both your time and mine."

If I have time, I might say, "Well, go ahead, officer, just make sure you put everything back where you found it."

If you tell the officer, no, I'm not cooperating, he might just tell you, "Fine. Wait here, sir," and call for a sniffer dog and what would have been ten minutes on the side of the road now turns into more than an hour. To really search a car on a drug interdiction you have to damn well disassemble the vehicle. Essentially, trying assert to your alpha dominance on somebody who has legal authority over you rarely ends well.

Like anything else in life, do a cost/benefit analysis. If you argue with a cop over not having to tell where you're coming from or where you're going, what do you get out

of it? What is the advantage? You are going to be wasting more time. You may put up a You Tube video and a few people who hate cops will cheer for you and a whole bunch of people will say, "Boy, was the guy who did this video an ass."

The cops don't want to manufacture bad guys. Lord knows there are more of the real ones than the cops can handle. At the same time, if you are hostile to the officer, you are arousing the officer's suspicion. The more of that you do, the more probable cause you are creating. The officer does have the right to search you and any part of the vehicle that is within your immediate reach without a warrant, which we don't do 99% of the time.

**eJournal:** People worry about being searched without a valid reason, and I have to wonder how much of the prevention is in our tone of voice and demeanor long before the suspicion that leads to the search arises.

**Ayoob:** Unusual hostility is an aberration of the norm. We now have aberrant behavior plus the firearm and now we are starting to get to where there's probable cause for a warrant. You are not doing yourself a favor at all doing that show-off stuff for the cops.

**eJournal:** It would be a lot better to prevent hostility before it ever approached that level! Let's say that an armed citizen feels the animosity increasing and wants to deescalate. What's the most productive strategy if the goal is to complete the contact quickly and safely, get on down the road and if there's a complaint, take it to the right authority?

**Ayoob:** The easiest way to move it down the road is to look the officer right in the eye, be calm, be friendly, be polite and smile. Voice follows voice; expression follows expression. If the other person is speaking to you snappily, if you speak a little bit more slowly, a little bit more quietly, generally, their speech will slow down, their elevation of voice will drop and probably their blood pressure will go down, too. That tends to calm the situation.

One thing I found over the years, and I hope the other cops don't mind me giving this away, we talked earlier about how you may get the litmus test question, "Mr./Ms. Motorist, do you know why I stopped you?" If the answer is, "Officer, when I saw your lights come on in my rear

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view, I looked down at my speedometer. I had no idea I was going that fast! You got me.” The officer generally will be so refreshed by your honesty that if he or she can possibly do it, they will cut you loose with just a verbal warning. People treat others the way they are treated. Each of us is a reflection of how we are treated or how we perceive ourselves to be perceived by others. I've found generally that being polite, cordial and smiling at the officer simply works wonders.

**eJournal:** When you were on patrol, what situations with good people made you concerned and afterward you would shake your head and say, “Wow, I started to get a little scared there.”

**Ayoob:** People who tend to stammer when you ask them a question; people who won't meet your eyes when you look at them. It's human nature to take that as signs of deception. When your job is to find out who out there is doing bad things, picking up deception signals does make the contact more negative.

If you're buying a gun at the gun show and the guy starts out by telling you, “This particular Glock retails for \$995” when you know damn well it retails for \$400 less than that, your bullshit alert goes off and you mistrust that person. If you start bullshitting or stonewalling the cop, the same effect is going to happen. They will not feel positively toward you and things will start going downhill. They'll wonder, “What else is he lying about? Why does this person feel he needs to lie to a policeman?”

**eJournal:** Earlier you mentioned ride-alongs and citizens' academies. I realize not everyone gets the

chance to participate in a citizen's police academy which can be an enormous commitment of time but for those who may be able, do you think those programs are worthwhile?

**Ayoob:** I think they are very much worthwhile because of the insight they give. You and I know once you have become a teacher you will then become a much better student. Once you know both sides of being a cop, you will then become a much better citizen when interacting with cops.

**eJournal:** Thank you for a great discussion showing us how we may inadvertently cause problems for ourselves during contact with police.

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*Massad Ayoob is author of [Deadly Force: Understanding Your Right to Self Defense](#) which is distributed in the member education package for all Network members. He has additionally authored several dozen books and hundreds of articles on firearms, self defense and related topics. Since 1979, he has received judicial recognition as an expert witness for the courts in weapons and shooting cases, and was a fully sworn and empowered, part time police officer for over forty years at ranks from patrolman through captain. Ayoob founded the Lethal Force Institute in 1981 and served as its director until 2009, and now trains through Massad Ayoob Group. Learn more at <https://massadayoobgroup.com>.*

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## President's Message

### Legal Defense Fund Tops Two Million Dollars

by Marty Hayes, J.D.

Sometimes I really like my job, especially when I get to announce milestones like the one I am about to announce.

Today's announcement is that the Legal Defense Fund is **fully funded**, with the astounding sum of **TWO MILLION DOLLARS!** That is right, "two million" is not a typo.

Thanks to our loyal members who keep renewing like clockwork, and thanks to each member who contributes a little extra to support the Legal Defense Fund when they pay their dues, and thanks to our corporate sponsors who donate goods and services for our auctions to raise additional money for the fund, we have achieved this lofty goal. That means that we are no longer worried about running out of money for our members, and we can concentrate on other worthwhile goals—like building up the fund another half a million dollars or so and using that extra to fund the legal defenses of our members, while keeping the Fund balance well in excess of this two-million-dollar figure.

I think back to a few years after we started the Network and we had only about \$50k in the Fund. About that time, one of the major competitors had just announced their legal insurance plan, and a sycophant of that business was spouting off on an Internet forum that he was

worried about our legal defense fund "tanking" (his words not ours) and how that new business model of using insurance to back their clients was, in his opinion, the only way to go. We answered a lot of questions that internet claim spawned, explaining the Network's Legal Defense Fund growth and its use on behalf of members. Well, several years later, everyone can see that the Network's Fund didn't "tank," a fact of which I was never in doubt. I never doubted that we would succeed and that we would grow the Fund to the two million dollar balance it contains today.

I am writing this before leaving for Indianapolis and the NRA Annual Meeting, so I will cut this message short. I promise you a longer message next month. I expect we will have a lot to talk about then.

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May 2019





## Attorney Question of the Month

Many states are considering or already have “red flag laws” to allow a police agency to confiscate guns from an armed citizen if someone believes they pose a danger and can get a judge to issue an order to remove their firearms.

Network President Marty Hayes, in response to members' questions about extreme risk protection orders (ERPOs) and Red Flag Laws, sought out our affiliated attorneys' opinions on the following questions—

**1. What are a citizen's options when the police knock on the door with a warrant and want to confiscate the citizen's guns?**

**2. Assuming the guns are securely locked in a gun safe, do you advise the citizen to comply and open the safe?**

**3. What consequences do you anticipate would result from refusing to open a safe?**

So many affiliated attorneys responded that we published the first half of their commentaries in April and complete the topic this month.

### **E. Michael & Alex Ooley**

Boehl, Stopher and Graves LLP  
400 Pearl Street, Ste 204, New Albany, IN 47106  
812-948-5053

<https://bsg-law.com/e-michael-ooley/>

Despite the fact that Indiana has a reputation for being a relatively free state, Indiana enacted its “red flag law” in 2005. Our law is codified at I.C. 34-47-14 and is entitled “Proceedings for the Seizure and Retention of a Firearm.” The law is commonly referred to as the “Jake Laird Law” as a result of the tragic death of Indianapolis police officer Jake Laird. Officer Laird was murdered by a man who had previously been detained and hospitalized pursuant to an emergency detention and had a number of firearms removed from his home. However, after the man was released from the hospital, his firearms were returned to him as the police reportedly lacked any legal authority to keep the firearms. The man subsequently murdered Officer Laird, which lead the Indiana Legislature to pass its version of

a “red flag law.” It provides that firearms can be seized from a “dangerous” individual. A person is a “dangerous” individual if the person poses an imminent risk of personal injury to himself or to another individual. Although troubling, the law also indicates that under some circumstances a “dangerous” individual is someone who may present a risk of personal injury in the future. The use of the word “may” and “in the future” seems vague and contemplates deprivation of rights and property based upon some possible future event.

The statute provides that firearms can be seized with a warrant, or in some circumstances, without a warrant. The warrant provision requires the warrant to be issued by a circuit or superior court with jurisdiction and based upon a sworn affidavit from a law enforcement officer that describes why the law enforcement officer believes the subject individual is dangerous and in possession of firearms. Many would argue that sufficient due process is lacking with respect to Indiana's “red flag law,” and we would concur. However, there is a requirement that the court hold a hearing within 14 days from the seizure of firearms. The statute requires notification of the hearing to the individual from whom the firearms were seized and that the court must determine by clear and convincing evidence that it is appropriate to continue to violate the individual's rights and deprive him of his property.

Should you be presented with a warrant at your home that directs law enforcement to seize your firearms, you would have very few legal options, at that juncture, to address the situation. The time to argue the legal merits of a warrant is not at your front door when law enforcement is presenting the warrant. We would suggest that you respectfully request to review the warrant and read it thoroughly to ensure there are no errors in the warrant and to calmly point out obvious discrepancies. For instance, the police have been known to serve warrants at the wrong address. However, under no circumstances would we suggest endangering your safety or the safety of law enforcement as there will be ample time to address your grievances regarding the validity of the warrant and law enforcement conduct in the future.

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If your firearms are securely locked in a gun safe, it would be our suggestion to comply with the terms of the warrant, assuming the terms of the warrant require opening the safe, which will likely be the case. However, please make it very clear that your cooperation should not be construed as consent, but merely compliance with the orders of the court and law enforcement personnel. Police may threaten violence and a further loss of freedom should you not comply with the alleged lawful warrant. Furthermore, although it is unlikely, there could be consequences associated with refusing to open the safe in terms of potential criminal charges such as resisting. As an aside, we are aware of one case in Indiana in which law enforcement took the entire safe to a service station to gain entry. We suspect an acetylene torch was used to obtain brute force access to the contents of the safe.

The statute also provides for the warrantless seizure of a firearm by law enforcement. Arguably, the firearms could be legally seized during the normal course of law enforcement duties if the law enforcement officer could otherwise take the firearms, for instance, probable cause of a crime, voluntary relinquishing the firearm, seeing a firearm in plain view, or the ever-present wild card of "exigent circumstances." Additionally, the police officer would also have to believe the individual to be "dangerous." In such circumstances, the police officer must file, under oath, a written statement with a court indicating the grounds for the belief that the person is dangerous, and then the court will make a determination whether the firearms should continue to be retained. The provision for warrantless confiscation is not intended to provide additional authority to search for weapons or otherwise enter any person's property. In other words, the law does not authorize a law enforcement officer to perform a warrantless search or seizure if a warrant would otherwise be required.

Once again, our statute has been in place since 2005, but with the murders at Parkland High School in February 2018, Indiana Governor Eric Holcomb sent out a letter to the leaders in the Indiana legislature discussing school safety issues in our state. Part of this letter directed the Indiana State Police Superintendent to provide a "red flag" educational curriculum to all law enforcement agencies in Indiana. Thus, the statute has become more prominent in terms of awareness in the law enforcement community. Although Indiana's law does provide for some due process, keep in mind the statute provides for the deprivation of a fundamental

right based upon a subjective evaluation of law enforcement. Citizens can be initially stripped of their rights based upon the allegation that you may commit a crime in the future. You do have a right to a hearing within 14 days, although you and your attorney may want to delay that hearing depending on whether your attorney has sufficient time for preparation to contest the state's actions. Fortunately, at the hearing, you have the right to an attorney, the right to present evidence and witnesses, the right to cross-examine law enforcement, as well as, any witnesses that may have provided information that led to the confiscation - like an ex-spouse or disgruntled employee. Also, at the hearing the judge has to be convinced by "clear and convincing evidence" that the continued deprivation of rights should continue. Unfortunately, even if you are successful at a hearing, there is no provision for you to recoup your attorney fees in fighting the state. Furthermore, there are no penalties for false or unsubstantiated allegations that may have led to the seizure of your firearms.

**Marc S. Russo**

25 Plaza Street West #1-K, Brooklyn NY 11238  
718-638-5452  
[mordvin9@gmail.com](mailto:mordvin9@gmail.com)

My advice is to make sure that all guns in the safe be legally owned so that the owner can comply without legal jeopardy. If they are not legal the owner should remain absolutely silent and not assist them. If the warrant doesn't specifically allow forcing open the safe they may have to get another one. There is nothing else to do if they have an official warrant allowing entry and search, not just simple surrender, except perhaps to "go on record" that he is not consenting to the search.

**John William Boelke**

Boelke Law, PA  
3495 Maebert Rd., Mims, FL 32754-4946  
321-427-1271  
<http://boelkelaw.com/>

Any court order must be complied with or the citizen risks arrest and contempt charges. There will be a hearing in which the citizen can plead for the return of the guns.

Whether a safe should be opened depends on the warrant and its wording.

*[Continued next page]*

If it says "all guns on the premises" then I would recommend compliance. If it is specific "45 caliber semiautomatic model 1911 Colt" only then they have no obligation but to provide the one gun.

In any case, legal advice should be sought ASAP.

**John Monroe**

John Monroe Law, PC  
9640 Coleman Road, Roswell, GA 30075  
678-362-7650  
[jrm@johnmonroelaw.com](mailto:jrm@johnmonroelaw.com)

*1. What are a citizen's options when the police knock on the door with a warrant and want to confiscate the citizen's guns?*

There is virtually nothing you can do about police at your door with a warrant. Regardless of the legalities of the issuance of the warrant or the service of the warrant, anything but acquiescence will almost certainly result in further difficulties for you, possibly including physical harm and incarceration. You simply cannot talk the police out of executing a warrant.

*2. Assuming the guns are securely locked in a gun safe, do you advise the citizen to comply and open the safe?*

Yes.

*3. What consequences do you anticipate would result from refusing to open a safe?*

If you do not open the safe, the police will break into it, leaving you with a ruined safe. The place to fight all this is in the courts, not standing next to your locked safe.

**John Chapman**

Kelly & Chapman  
P.O. Box 168, Portland, ME 04112  
207-780-6500  
[thejohnwchapman@msn.com](mailto:thejohnwchapman@msn.com)

I would advise everyone to step outside the home. Hands up and open. Do not resist. Tell them you would like to have an attorney present prior to any questioning. Do not consent to any searches.

You run the risk of the safe being forcibly opened, possibly ruining the safe, possibly damaging any firearms in the safe.

What is at issue is the differential between the POSSIBLE additional damage to the home, safe or guns and the possible incrimination or attribution of consent. If one wants to engage in some testimonial waiver, one could have the combination to the safe written down some retrievable place and hand them the slip of paper. That action, however, puts one in constructive possession of the firearms. Possession of firearms by a prohibited person is a crime. Are you one? The pointed question is are you alleged to be one?

Stick to your non-consent, no resistance, keep calm (not angry) and hands in the open.

**Wyatt A. Brochu, Esq.**

Ruggiero Brochu & Petrarca  
20 Centerville Road, Warwick, RI 02886  
<http://www.rubroc.com/>

In Rhode Island the Emergency Risk Protection Order is applied for by the police department and if issued is accompanied by a search warrant in order for the police to search for and to seize any alleged firearms. As an officer of the court, the "attorney's advice" must adhere to the rule of law and not be biased; therefore, the advice is from that perspective, without regards to how one may personally view the judicial process for issuance of ERPOs; therefore, the options in giving legal advice are somewhat limited.

*1. What are a citizen's options when the police knock on the door with a warrant and want to confiscate the citizen's guns?*

If the police are at your door with a search warrant it is advised the citizen not take any action to stop the police from executing the search warrant. The police will control the scene. The citizen can confirm the existence of the search warrant and that it applies to the citizen and his / her property.

*2. Assuming the guns are securely locked in a gun safe, do you advise the citizen to comply and open the safe? What consequences do you anticipate would result from refusing to open a safe?*

The citizen must ask themselves what is to be gained and lost by refusing to open the safe for the police? In discussing this issue with a few local police departments, if the citizen refuses to open the safe, the

*[Continued next page]*

police will open the safe by any necessary means to secure the firearms in accordance with the ERPO and search warrant, whether that occurs at the citizen's property or at the police station after the safe is removed from the property. We are assuming the police 'know' the firearms are in the safe; if the police do not then they likely will seize the safe and apply for a second search warrant to gain forcible entry to open the safe -- If the police do not find the firearms they are expecting to find elsewhere in the citizen's house, that fact likely will be sufficient probable cause for the second search warrant to forcibly open the safe.

In evaluating whether to cooperate with the police, the citizen should keep in mind what contents are in the safe other than firearms, such as personal items, electronic files and documents, jewelry, financial statements, tax returns, etc. and does the citizen want the police to have possession of those items, as the entire safe may be seized by the police, and the resulting damage to the safe and its contents from any forcible entry by the police.

The police should not charge the citizen with obstruction if he / she refuses to open the safe as the search warrant does not require the target to assist the police with the search; however, that opinion does not ensure the police will not arrest the target and charge him / her with obstruction.

The legal advice is premised that the citizens will always have his / her 'day in court' where he / she can argue the ERPO process and that the firearms should be returned. As an attorney the advice is for the citizen to bring the fight to court, do not fight the police during the execution of the search warrant.

Additionally, I recommend, just as a matter of practice, that citizens have documented and stored (not with the firearms) identifying information and photographs of the firearms. This is usually done from the perspective of theft. Moreover, if the police do seize firearms, I recommend the citizen ask the police to document and photograph the firearms before they are removed from the property. This may not always be done, especially

photographs, depending on the policies and training in the department; but will be a benefit to the citizen to show if any of the firearms were damaged while in police custody.

**Jerold E. Levine**

5 Sunrise Plaza, Ste. 102, Valley Stream, NY 11580  
212-482-8830

<http://www.thegunlawyer.net>

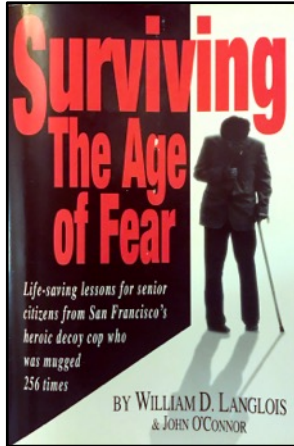
The failure to allow police to act under a warrant, or to interfere with such action, is illegal. The real question is whether to comply with a warrantless "request," which is the most common situation. An example is a traffic stop where the police officer says, "Sir, would you open the trunk?" Most people hear that as a command, but really it is a request, and it does not have to be honored. But, what to do: anger the policeman, or open the trunk?

This might, or might not, be the situation faced with a warrantless request to surrender weapons or open a safe. If a "red flag" law does not specifically direct a citizen to comply, is there legal jeopardy in non-compliance? The courts will decide, and the answer depends on whether courts will allow this type of warrantless seizure of property. In the meantime, it should be assumed that a refusal to comply likely will be charged as interference or obstruction.

A further complicating factor is gun licensing. In New York, we have no licensing of rifles and shotguns generally, though in a few places they are licensed. But all handguns are licensed, and it is a violation of local licensing rules to refuse compliance with any police order regarding guns. A refusal almost certainly will result in license revocation.

*A big "Thank You!" to our affiliated attorneys for their comments. Please return next month when we pose a new question to our affiliated attorneys*

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



## Book Review

### Surviving The Age of Fear

By William D. Langlois  
Published Sept. 1, 1993  
by WRS Group, Inc.  
246 pages, paperback  
ISBN: 978-1567960136

Reviewed by Gila Hayes

Last month's lead interview with [Ed Lovette](#)

included an excellent suggested reading list. One, *Surviving The Age of Fear*, was a book I'd read many years ago but was no longer on my bookshelves. Long out of print, copies still exist, although often priced prohibitively. I was very fortunate to find an affordable used copy online, but knowing readers may not have the same luck, I would like to share some notes from my rereading of a great story that contains many lessons.

The autobiography is written by William D. Langlois (1934-2001), a San Francisco, CA police officer famed for his undercover work posing as a fragile old man to catch violent robbers. As Lovette indicated in last month's *eJournal*, Langlois' exploration of what attracts criminals makes this story highly instructive. Even police officers rarely get to "watch a felony from the moment the idea pops into the head of the perpetrator to the instant it is actually committed," Langlois wrote, but that experience taught the decoys and back up officers what factors balanced the risk-reward equation in a violent criminal's mind.

The story takes place in the late 1980s and details three taskforces the San Francisco Police Department fielded to catch the men and women mugging the elderly. Criminals today may set the stage differently, but human unawareness remains unchanged, as does the way predators terrorize the frail. In *Surviving The Age of Fear*, security gates, doors and locks posed little impediment to those victimizing the elderly on Langlois' beat. Attackers sometimes gained access and were waiting inside or pushed past the elderly as they unlocked a security gate or door. Actions play a bigger role than gates, fences or locks, so I began jotting down some notes to identify patterns in these crimes.

In one episode, the female decoy officer portrayed an elderly lady going out for groceries and going home to

her apartment. Upon returning, she sat down on the front porch steps to rifle through her purse as if searching for her keys. "Within minutes a 16-year-old male broke away from the crowd on the street and began watching her from a few feet away. When Leanna got up to open the security gate to the apartment building, the suspect followed, holding the gate open and slipping inside" where he mugged her, Langlois wrote.

The decoy officers tried a variety of costumes, make-up and accessories, but posture and mobility proved more important than white hair or wrinkles. Langlois would wear a built-up orthopedic shoe to create a bad limp or went for a walk outside wearing a single bedroom slipper. While walking through parks and other public areas, he could "feel the heat of inspection and I sensed that I had attracted the attention," he wrote. A fellow robbery abatement team member commented that the criminals expected impaired hearing and vision in an 80-year-old man so while Langlois was alert to unusual interest, he was "careful not to put the guy off by glancing his way."

Langlois identified and mimicked behavior to suggest he would be easy to rob. "I learned to look down, to keep my eyes on the ground, because most prospective victims are reluctant to make eye contact with their persecutors. In the urban landscape, the predators are the ones who have their heads up looking around."

Another member of the robbery abatement team described seeing elderly citizens carrying their groceries home, "Trying to make it past these groups of young guys who stood on streets or in doorways and sized them up as they went by. Sometimes it was just a glance, a change of pace, but you knew what they were up to. These old folks...had pretty much given up hope. They were walking along with tunnel vision most of the time, thinking that if they kept their heads down and their eyes away from people, the bad guys would not see them and they would be able to make it home that day, wrapped in their own protective bubble, with their money or their groceries. It was disturbing to me to see this, because, of course, simply ignoring the threat was not enough to make it go away."

*Surviving The Age of Fear* also gives insights into how predatory criminals hunt. I was surprised how many worked in teams, sometimes hooking up spontaneously

[Continued next page]

before following Langlois back to the apartment from which decoy operations were run. One might trail him, while another went ahead. The one in the lead might stop to tie his shoe while assessing the victim. Relating one such incident, Langlois explained, "I crossed the street, moving away...forcing them to maneuver. Again, one of them ran ahead. He was hanging around, probably so he could pull me down behind two parked cars." Eventually, the team would bracket the elderly man Langlois portrayed to herd him into a secluded location or rush him as he unlocked his door.

The criminals made a surprising amount of pre-attack contact to assess their victim's level of awareness, including chatting with him or walking very close alongside. Langlois suggested they were assuring themselves the attack would prevail. As we've been taught by other experts, the predators are experts at their "jobs" and can be quite skilled. The 256 muggings Langlois endured demonstrated varying degrees of skill.

The robbery abatement team was eager to catch one violent mugger who hurt his victims so severely that several died and many were seriously injured. The team dubbed him "Whispers" because survivors reported that right before restraining and then attacking them, he quietly reassured them and urged them to be quiet.

Langlois wrote about arresting "Whispers" and his discussion of the robber's skill is educational. He wrote that he passed a neatly dressed young man on the street. "When he glanced my way, I heard his intake of breath and his tennis shoes scrape on the sidewalk as he changed his course." Langlois knew he had been targeted, but the robber concealed his intent so well that the backup team discounted him as a threat. When the man began to parallel Langlois from the other side of the street, they changed their minds, realizing that the suspect was very skilled.

Langlois unlocked and entered the apartment lobby, but unlike other attackers, the man only blocked the door open a fraction of an inch. Langlois stalled outside the apartment, fumbling with his keys until he finally heard the squeak of tennis shoes on the floor behind him. The suspect sat down on a bench in the lobby. Before Langlois finished closing the apartment door, the attacker was behind him, controlling his hands. He murmured reassurances to Langlois, but once the door was closed the suspect violently choked him and grabbed his wallet. The transformation was extreme.

During his arrest, the attacker resumed his genteel, respectful demeanor. "I remembered how he had reacted when he had the old man under his control...I felt if a person had really resisted him he wouldn't stop until they were unconscious or dead," Langlois wrote. "Surviving witnesses had told us this thief would assault and rob his victims and then meticulously clean the victim's apartment, spending hours wiping and dusting everything until no trace of him was left behind." The attacks in which elderly were quietly reassured then robbed stopped after the arrest although they were not able to link the attacker to the previous crimes.

Other muggers surveilled the decoy's activities, identifying where he lived and studying the layout before attacking. Others chatted Langlois up while preparing their attack. One "tried to ingratiate himself with the old man first, saying his name was Bill and that he had just moved into the building. After a few minutes of this he decided the time was right, punched the old guy in the stomach, and reached for his wallet," he wrote.

I was surprised by the distances from which the criminals would follow, hanging back, keeping Langlois in sight, sometimes from far down the block. Only when Langlois came to his building security gate would the criminals approach and separate if working as a team, look around quickly for witnesses, then push close to the decoy to get inside with him.

Those chapters make *Surviving The Age of Fear* a good police story, but also teach details about victim selection, the robbers' hunting methods, and simple reactions that created such concern that most predators broke off and looked for easier victims. The final chapters of the book reflect Langlois' deep concern for the elderly in America. Having outlived family, friends and associates, victims of many crimes he researched were elderly folks who were quite isolated. Many would have not have been harmed, he writes, had they only been walking to the corner grocery with another person.

I enjoyed rereading *Surviving The Age of Fear* and paid attention to descriptions of predators' responses to eye contact and body language. I wish it was still in print and suggest members watch for copies in the used book stores or through online book sellers they patronize.

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



## Editor's Notebook

by Gila Hayes

We start this month's chat with a thank you letter our member Spencer Newcomer just sent us. Spencer writes:

*I would like to take this*

*opportunity to thank you and all of the members of your network for contributing to the go fund me fundraiser you had set up. Paying off my legal bills and helping me get back on my feet was a huge weight off my shoulders.*

*The number of people who donated is a testament to the organization you have created. It also drives home the point that we as gunowners need to stick together and help each other out in these uncertain times. Hopefully my story, which you were an integral part of, will benefit your members and perhaps they can better cope with or avoid altogether some of the issues I faced. I am forever in your debt and look forward to helping your organization and its members any way that I can.*

*Sincerely, Spencer Newcomer*

I think I speak for all of our Network family members when I respond, "Spencer, it truly was our pleasure."

Shifting gears, I'd like to discuss a visit I had with a member a while back about the responsibilities the armed citizen shoulders when introducing deadly force into a situation where the combatants are not people he knows. What assistance, he wondered, could the Network provide to him if he became involved in defending a stranger should he happen upon a fight? I stressed that the Network could not pay legal expenses if the member violates the law and urged him to intervene only when certain of the circumstances—and he agreed it only makes sense to join someone else's fight if defending a loved one or perhaps a small child or if present when a spree killer strikes.

The problems of a "hero" using deadly force to defend strangers are countless and it is easy to unintentionally violate the law, as we discussed with Attorney Mitch Vilos last August (<https://www.armedcitizensnetwork.org/deadly-force-in-defense-of-others>). When I mentioned this as one of the reasons not to use a gun without knowing the law and the facts, our Network member responded that he had personally concluded it was better "to avoid being a

'sheepdog,' and to stay out of it unless it's a loved one or its really clear what's going on."

After hanging up, I started thinking about the evolution of Lt Col Dave Grossman's illustration of sheepdog/guardians protecting their flocks as it has morphed into perceived permission to jump into situations of which we know nothing. A few weeks after that train of thought began chugging through my mind, I stumbled across Varg Freeborn's commentary on what the sheepdog concept has become. I had reviewed *Violence of Mind: Training and Perception for Extreme Violence* in the January edition of this journal, and had returned to reread parts of it.

Freeborn's opinions clarified some of my questions as I wrestled with the over-broad application of the sheepdog concept. In *Violence of the Mind* he writes, "It is very important to clearly identify the objective of your mission. The sheepdog mentality will lull you into believing that it's now your job to fight crime because you carry a gun...[that] implies that your mission is to protect and serve the public, at least that's how I see it interpreted all too often. The problem with this is that it often differs from what your stated mission is (to protect your loved ones and yourself), and also you do not have the legal protections that some law enforcement officer or military personnel have."

He continued, "Every state has very clear self-defense criteria that must be met to claim self-defense in court. Clearly defining your mission is the first step in not violating those rules...You don't know what you don't know. Engaging in other people's fights can lead you into mistakes that you have no way of knowing you will make. Your chances of avoiding this can be greatly increased by simply clarifying your mission and sticking to that mission's objective. If you are a civilian, then be a civilian and protect yourself and your loved ones. If you are a law enforcement officer, then be a LEO. Whatever your role is, you have a serious mission."

Responsible armed citizenship is a lot more than carrying a gun. It requires soul searching to determine what is so important that you would take another's life to protect it. It also requires solid training with role models like Ayoob, Farnam, Fleming, Givens, Kapelsohn and Tueller who serve as our Advisory Board, and a continual self-assessment to balance the power of deadly force with our responsibilities.

*[End of May 2019 Journal.*

*Please return for our June 2019 edition.]*

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## About the Network's Online Journal

The **eJournal** of the Armed Citizens' Legal Defense Network, Inc. is published monthly on the Network's website at <http://www.armedcitizensnetwork.org/our-journal>. Content is copyrighted by the Armed Citizens' Legal Defense Network, Inc.

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

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

The Armed Citizens' Legal Defense Network, Inc. receives its direction from these corporate officers:

Marty Hayes, President

J. Vincent Shuck, Vice President

Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

Please write to us at [info@armedcitizensnetwork.org](mailto:info@armedcitizensnetwork.org) or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.



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