



Meet Your Legal Defense Team

by Marty D. Hayes, J.D.

Let's for a moment suspend the present reality in which you are sitting at your computer, warm and safe from harm, reading this month's edition of the Network *eJournal*. Instead, imagine that you're in an alternate reality in which you have just been arrested for the murder of your neighbor after a violent, life-threatening (at least from your view point) altercation. You perceived that your life was in danger, but when the police show up, they immediately Mirandize you, put you in handcuffs and stuff you in the back of the patrol car.

To further set the stage, the altercation with your neighbor was loud, laced with obscenities, and drew the attention of your neighbors who watched from their porches or front windows, seeing different bits and pieces of the action. All heard your gunshots and saw your neighbor fall to the ground. Several called 9-1-1 and before you can call them yourself, the police began to arrive. If you are a member of the Armed Citizens' Legal Defense Network and you are the defender in the above story, here is what you can expect from us as we, the Network, help you assemble your legal defense team.



The First Team Member

The first member of your legal team is your significant other. "Huh?" you ask. You thought I would say your attorney, didn't you? Actually, this most important team member doesn't have to be a spouse, but instead can be a family member or perhaps even a close friend. But that person must stand ready to be your means of communication to the outside world as you sit in jail awaiting the bail hearing. Make sure the person you have tapped for that role knows how to contact your attorney if you cannot reach him or her, and make sure they have or can gain access to your funding resources

to arrange for bail and if you are not a Network member, pay your attorney. Depending on circumstances and if you are a Network member, a call to the Network may be appropriate, too.

The second person on your legal defense team is your primary attorney. This is a person with whom you have already conversed, with whom you perhaps met and had lunch, or maybe you and the attorney even shoot together at your local gun club. This attorney needs to be well-versed in handling the immediate aftermath of a shooting, and most importantly, needs to have a private investigator ready to start talking with the witnesses, a necessity about which we will give more detail later.

Your primary attorney will be the one who meets you at the police station, or at the jail if the police have arrested you, or possibly at the shooting scene (although I think that would be rare). Your primary attorney should also be the one who calls the Network, explains the incident to me or another Network leader to give us an idea of your legal defense's

immediate funding needs. In a shooting case, we automatically send the attorney a deposit against fees of \$10,000, while in non-shooting cases, we confer with the attorney to decide how much the initial representation should cost and send that amount.

If you are arrested and jailed, your primary attorney will be the one who goes with you to represent you at your first court appearance to argue the issue of release pending trial. One compelling reason for getting to know your attorney beforehand is so the attorney can say to the judge, "I have known my client for a number of years, and know him/her to be a good husband/wife/ father/ mother." The attorney's job at that moment is to plead your case for release on personal recognizance, so you don't have to spend your hard-earned money on bail.

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Alternatively, if you are charged with a crime that usually results in bail, this argument may lead the judge to set a lower bail. In any event, it is ALWAYS better to have established a relationship with your primary attorney beforehand.

Depending on the nature of the case, your primary attorney may be your only attorney. In other cases, additional legal support may be required. For our hypothetical case, we would also want a heavy-hitter trial attorney. If your primary attorney has handled murder cases before, completely understands self-defense law and knows how to present your case to the jury, you are ahead of the game. But in my experience, most attorneys will not have this experience, so at the Network, we are prepared to bring in outside counsel for you, if needed.

Recently, we had a famous self-defense trial attorney retire from full-time practice. He had been a member of the Network for several years before his retirement. When I asked him if he would be willing to remain available to join a team of trial attorneys for a member, he enthusiastically agreed. We also have a Midwest attorney in whom I have complete confidence to handle a self-defense case, I know a couple of WA state attorneys who also meet these standards, and I am sure there are many more among our Network Affiliated Attorneys. Let me add that if YOU are an attorney who has handled self-defense cases and murder cases and have a better-than-average grasp of self-defense law, please email me at mhayes@armedcitizensnetwork.org and have me add you to my list of heavy hitters on whom we could call to assist local counsel at trial. We will be very pleased to identify additional talent.

As our hypothetical defendant, you now have a double attorney team, but the legal team is far from being complete! Remember that private investigator? Yep, he or she will be part of the team, and a very important part, at that. The investigator serves two important purposes. One is to interview witnesses, hopefully recording those interviews, but if nothing else, the investigator can make a valuable contribution by documenting what your neighbors saw. With any luck, the witnesses' viewpoints will jibe with yours and they will become a witness for the defense.

A neighbor may end up being a witness for the prosecution, though, and if that comes about, your investigator may become a rebuttal witness for the

defense. Your investigator may be called to "rebut" the testimony of the witness, if he or she told your investigator a different story than that given on the witness stand. Depending on the jurisdiction, the investigator may be sitting at the defense table throughout the whole trial, just like the lead detective does for the police. This is especially valuable if there are a lot of witnesses involved, because the investigator can help evaluate the veracity of the witnesses' testimony. Unfortunately, I too often see the investigator sequestered (not allowed to observe), so his or her contributions in the courtroom may be limited. Such is the unfairness of the judicial system, but that is fodder for another article.

The next part of the legal team is the paralegal or legal assistant. A vital part of the team (usually one for each attorney), the legal assistant or paralegal helps the trial attorney track all of the small pieces of the defense. Additionally, they usually communicate with the defense witnesses, to make sure they get to court on time but not ahead of time. They are also often times tasked with staying up half the night doing legal research for the next day of court, especially when a previously unknown legal issue presents itself. If you watched the Zimmerman trial, you saw the legal assistants at work many times during trial.

The January and February 2014 editions of this online journal led with articles about jury selection by Dr. Wendy Saxon. Having studied her writing, I am convinced that you will want a jury consultant on your case, too. Having the right jury is vitally important. I would not want to defend murder, manslaughter or aggravated assault charges in front of a jury made up of people who could not identify with me or who were hostile to the concept of armed self defense. Although a jury consultant cannot guarantee that you get a fair and impartial jury, their knowledge can make it more likely.

Do You Need an Expert?

If your attorney tells you that you don't need any experts for the case, you might want to re-think your choice of attorneys. Now, why would I say that? Because in most cases, there are technical aspects of the case that regular lay witnesses are not competent to testify about, but which need to be explained to the jury. You can rest assured that the prosecution will introduce experts. They will have the forensic pathologist who conducted the

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autopsy. They will have the detectives, many of whom will have been trained sufficiently to qualify as an expert in a specific field, and will then be allowed to testify as such. Consequently, in order to even the playing field, you will likely need one or more experts on your side.

In the hypothetical self-defense shooting scenario we outlined at this article's start, you need a forensic pathologist to review the government's forensic pathologist's autopsy report and photographs. His or her first job is to verify that the investigation and testing were done correctly by the medical examiner or coroner's office. In modern day practice, a forensic pathologist for a large medical examiner's office may be called upon to do several autopsies a day. Under those circumstances, details can be missed or evidence incorrectly identified.

To the busy pathologist, the deceased is just another death by gunshot, of which he or she has seen thousands over the years, while to you, the physical evidence contained by the deceased's body might just be your key to an acquittal. A good example is found in one case I worked on in which the deceased displayed a dual pattern of fixed lividity, meaning she was moved once and placed in a different position some six to eight hours after her death. The forensic pathologist never made any mention of this in his autopsy report, but it was a critical aspect of the case. That is only one example showing why you need your own forensic pathologist on a serious self-defense case. Ultimately, he or she may not be called by the defense to testify, but it is better to have a forensic pathologist and not need their testimony, than the reverse.

Another expert you will likely need is one who can reconstruct a shooting scene. This person needs to be well versed in firearms and ballistics, both from an academic viewpoint as well as an experiential one. The Federal Rules of Evidence discuss allowing experts to testify as follows:

RULE 702. TESTIMONY BY EXPERT WITNESSES

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

I cannot recall how many times I have reviewed police reports and discovered that the cops misinterpreted the evidence. I personally work on several shooting scene reconstructions per year. I am brought on to the case to provide this expertise because more often than not, the police investigation was either substandard or skewed to validate an early theory. I provided expert witness services in one case in which the police investigation was so poorly done that no measurements were taken of the scene, no sketch made of the scene, no video taken of the scene, and the investigation was documented only by a few unidentified photographs. To complicate matters, the person who was shot lived and told a completely different story than that of the defendant.

Oh, how nice a professional investigation would have been! In addition, I think back to a case I worked on in which multiple individuals were shot. The shooting scene was at least photographed extensively (although no photo log was made) and it was at least videotaped (although amateurishly done), however the investigation was conducted with only one idea in mind: to convict the shooter of murder. It fell to me to point out the biased investigation to the jury and allow for an alternate theory of self defense. We ended up with a hung jury on this legitimate self-defense case, and the defendant was offered a plea bargain for a deferred prosecution for a very low level felony, which he accepted to avoid facing trial again. Statistically, re-trials end in convictions, because the second time around, the prosecutor knows and prepares to counter the exact evidence the defense will raise. Knowing that, I believed the plea to the low level felony was a pretty decent outcome.

In addition to the shooting scene reconstructionist, there is a valued role for the true firearms/ballistic expert, who may be needed to explain issues relating to the gun itself and any firearms-related evidence such as gunshot stippling, gunshot residue, bullet trajectories and more. Additionally, our hypothetical case needs an expert who can explain the dynamics of violent encounters.

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His or her testimony will explain how quickly a person can turn, how quickly shots can be fired, the lag time between deciding to fire and firing the shot and the inability of a person to “call back the shot” once that fire stimulus has been activated. For more information on these topics, you owe it to yourself to visit the Force Science Research website at www.forcescience.org and read the published articles associated with the page.

Another expert who might prove valuable is a psychologist or expert in a related science who specializes in memory distortions, witness dynamics and other physio-psychological phenomena occurring during shooting incidents. This person can explain to the jury why the witness testifying against you can honestly be mistaken as to what happened, or he or she can explain why you are absolutely telling the truth although your memory of the incident doesn't jibe with statements from the other witnesses or the physical evidence.

Finally, since this was a shooting case, it is likely that the investigation will turn up blood evidence and you will need a bloodstain pattern expert to explain this aspect. It is not unusual for experts to be cross trained in several of these fields and able to testify to many different aspects of the case, but it is usually better to have separate experts to call, instead of relying on only one person to provide expert testimony on a variety of topics.

Closing Thoughts

In the hypothetical story we told, you faced the necessity of shooting someone without overwhelming evidence to show your justification. In a situation like that, you will likely need a full legal team working hard to prove your innocence. The good news for Network members? The team is ready and standing by to help you if you need us.

*[End of article.
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President's Message

by Marty Hayes, J.D.

As I write this month's President's Message, I am preparing to fly off to Waco, TX to participate as a presenter in the *2nd Annual A Girl and A Gun Conference*

<http://www.agirlandagunclub.com/conference>.

What a thrill it will be for me to be amongst 300 or so armed ladies. (Get your mind out of the gutter, boys, that is not what I meant!) For me, my journey in the defensive shooting/training world started back in 1988, teaching women's only firearms classes at an indoor range in the greater Seattle area. This was back in a time when it was virtually unheard of for women to actually carry guns on a daily basis, but the movement had started. During this time, Paxton Quigley had come out with her ground-breaking book *Armed and Female*, and *Women & Guns*, the first magazine dedicated to armed women, was started by Sonny Jones. It is still published by the Second Amendment Foundation. Smith & Wesson was waking and warming up to the women's movement in the gun world by introducing a line of firearms meant especially for women, the Ladysmith.

I had no experience teaching women how to shoot. My previous experience as a firearms instructor had been in law enforcement circles, and women cops were very rare back then. I was a little taken aback when I found out that most of the women in these classes had been victims of sexual assault, either as a child or later in life as an adult. After this realization, I concluded that the concept of men teaching women (especially previous victims of sexual assault) how to shoot was a poor substitute for women teaching women how to shoot. But, there were virtually no female firearms instructors in the country back then, so it was a while before women started assuming the natural role of teaching their own peer group. Since then, through my training company, The Firearms Academy of Seattle, Inc., I have certified five female instructors, all of whom are still active in the industry. In fact, three of them will be teaching their own blocks of instruction at the conference. How cool is that?

Now days, there are women teaching all over the country, and while men still dominate the upper

echelons of firearms training, the female instructors are starting to get noticed in a big way there, too. *A Girl and a Gun* is a nationwide membership organization with local chapters all across the country. If you are one of our lady members, check them out, and if there is not a chapter in your area, consider joining or starting one up! I will report back next month to let you know how the conference went. I'll have a few pictures, too!

New Book on Self Defense Due Soon

Friend and author Marc MacYoung, whom you saw on the Network's member education DVD *Recognizing and Responding to Pre-Attack Indicators*, will have a new book out soon, called *In the Name of Self-Defense*. He has been working on this book his whole life and I have a pre-publication copy to review for him. It is a very thorough treatment of the topic of violence and self defense. It will be my in-flight reading material and I hope to get through it during the next couple of weeks.

Lead Article's Backstory

The article, *Meet Your Legal Defense Team* was ideated after I heard about yet another self-defense aftermath legal provider coming into the market place. I have lost count of how many there are now out there, but it must be over a dozen. I wonder how many of them even have a clue as to what is needed in a self-defense case? I suspect that at least some of the pre-paid legal schemes do have a clue, since attorneys typically run them, but I see them advertising that they will cover the legal fees only. If you are a part of a pre-paid legal plan, take a look at what is NOT covered by going back through the lead article and seeing how many on that team are actually not attorneys. From what I have seen of pre-paid legal plans, they only cover attorneys' fees. You will have to pay for the experts, investigators and other parts of your legal defense.

Then there are the "insurance-backed" membership organizations, as well as the pure "insurance" plans, where if you are involved in a self-defense incident and are prosecuted or sued, you will have to carry the burden of hiring (and funding) your own legal team and then ask for those costs to be reimbursed afterwards if you get an acquittal.

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Please understand that there are three possible outcomes to any trial: a "guilty verdict," a "not-guilty verdict," and a "no-verdict." You get the "no-verdict" result if the judge declares a mistrial and you have to do it all over again, complete with a second round of legal costs. In the last few years, I have worked on four separate cases that resulted in hung juries: the "no-verdict" outcome. Sure, it's better than being found guilty, but now the prosecution knows your defense and chances are better they will win at the second trial.

None of the insurance companies have even discussed what they will or will not do for their policy-holder in the event of a hung jury. The insurance company can refuse to pay if they don't think the outcome is covered by the policy. You would have to sue them to try to get your money. Lastly, we have to face the obvious fact that the insurance company can decide to cease underwriting the self-defense policies anytime they want!

The third tier of legal aftermath providers are the ones purporting to be able to find you an attorney all across the nation after the self-defense incident occurs. Now, I know these companies do not have a staff of attorneys nationwide, but instead will likely rely upon their membership in the National Association of Criminal Defense Lawyers and their list of attorneys, and make some phone calls until they find an attorney to take your

case. No vetting as to their knowledge of self-defense law or defending a self-defense case. Heck, a lot of NACDL members are very anti-gun (I know, I am an associate member). While they have some very good attorneys in their ranks, and even some great attorneys, you really have no clue at 3:00 a.m. in the county lock-up as to whom you are going to get.

If it seems like I spend a lot of time discussing this topic, it is because I do spend a lot of time discussing this topic. For most people reading this, membership in the Armed Citizens' Legal Defense Network, Inc. is a tiny aspect of their daily lives. But for me, it is my life's work! I am fixated on making the Network the best it can be. There is never a day that goes by when I am not thinking on how to make the Network better. Even when I am out hunting, riding a motorcycle across the fruited plain, on the golf course or in the boat, the Boots on the Ground (<http://www.armedcitizensnetwork.org/boots-on-the-ground>) phone is with me, and a hundred little details about the Network cross my mind each day. That this is not a complaint, simply the reality that I voluntarily undertake at this time in my life. I wouldn't have it any other way.

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



Vice President's Message

NRA Meeting Time

by Vincent Shuck

We are looking forward to the 2014 NRA Annual Meeting that will be held in Indianapolis, IN later this month.

The meeting will be conducted at the Indiana Convention Center in downtown Indianapolis, April 25 - 27. First, I have something to divulge about Indianapolis.

It's my birth city and the hospital still has a plaque hanging on its lobby wall commemorating this detail (just kidding). But, I did grow up in Southern Indiana and thus share a few of the Midwestern attributes that some people like. The city is the state capital and plays host to numerous conventions and sporting events. If you are into racing, it has the Indianapolis 500 (Indy Racing League and the largest single-day sporting event in the world), the Brickyard 400 (NASCAR) and the NHRA U.S. Nationals (drag racing). If that is not enough, Forbes ranks the city as one of the best downtowns in America, with many hotels, restaurants and museum options.



We will be there with our expanded Network presence and the booth will include some special events that may appeal to you. In addition to our effort to meet and greet our current members, we will be sharing Network information with the thousands of NRA members attending the convention and giving these nonmembers a chance to join. As a special motive to visit with us, we will have five nationally-known firearm and self-defense

authors signing their most recent publications at assigned times during the exhibit hall hours on Friday, Saturday and Sunday. We are pleased to announce that Massad Ayoob, Brian Ciyou, Grant Cunningham, Gila Hayes, and Kathy Jackson, will participate and bring their special penmanship talents to the booth for your review and interaction.

Meet These Authors!
Apr. 25-27 at the NRA Annual Meeting
in Booth #4262

Friday, Noon to 2 pm—Grant Cunningham
Defensive Revolver Fundamentals

Friday, 2 pm to 4 pm—Massad Ayoob
Gun Safety in the Home

Friday, 4 pm to 6 pm—Kathy Jackson
*The Cornered Cat:
A Women's Guide to Concealed Carry*

Saturday, 10 am to noon—Gila Hayes
Concealed Carry for Women

Saturday, noon to 2 pm—Kathy Jackson

Saturday, 2 pm to 4 pm—Massad Ayoob

Saturday, 4 to 6 pm—Bryan Ciyou
*Gun Laws by State:
Reciprocity & Gun Laws Quick Reference Guide*

Sunday, 10 am to Noon—Bryan Ciyou

But we know you will not spend your entire meeting attendance stint at our booth. Don't worry, there will be 600 other booth choices covering a spectacular display of firearms, knives, and shooting and hunting accessories. You can also see and talk to outfitter companies, gun collector organizations and ATV manufacturers in the 400,000 sq. ft. exhibit hall. Admission is free to NRA members and their families. Not an NRA member or need

to renew your membership? Our Network website offers an easy one-click opportunity to join or renew with the NRA! Please check out <http://membership.nrahq.org/default.asp?campaignid=XR025721>. For more information on the NRA Annual Meeting, pre-registration and assistance with housing or travel, go to www.nraam.org for your meeting attendance needs and questions.

Come join us in Indianapolis at booth #4262 and attend the convention – I am certain you will enjoy it. We sincerely look forward to meeting as many Network members as possible, sharing ideas with you and discussing your Network needs and suggestions.

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

Letters from Members

Bill in AZ wrote–

My point in writing is to commend you for an excellent editorial in the March 2014 *eJournal* on the issue of the much ignored matter of mental health as it relates to firearms usage. Yes, it began as a book review, but you included some of your own thoughts. I believe what you said was spot on and have myself thought the bulk of the effort to stop some of the carnage is misguided.

To begin, I contend that it's simply unrealistic and ineffective to push so hard the various aspects of "gun control." Attempting to control an object that is itself inert until the human equation enters in is, to me, wrongheaded. Why, then, is there not an equivalent demand to outlaw automobiles? After all, 40,000 people a year, give or take, are killed in them each year. I further contend that it's not logical to expect that all firearm-related tragedies can be avoided.

I agree that a far better approach is to try to go at it from the mental health perspective. Again and again, after-the-fact analysis shows the majority of mass shooting events is committed by persons who have never been adjudicated mentally defective and indeed legally possessed the firearms used in the encounter. Some have recently inched toward pushing for better mental health intervention. The biggest problem, and you raised it, among others, is that mental health is not static. Any therapist of account will agree that it's virtually impossible to pre-identify each and every threat.

Yet, there must be a way to do better and still account for individual freedom. Usually, persons who have continual contact with a troubled soul are in the best position to bring attention to the person they are concerned about--parents, relatives, close friends, what's on Facebook, etc. I'm reminded of the brother of the Unabomber who came forward when he recognized familiar phrases in the Unabomber's manifesto. Had he shied away, one shudders to think how many more bombs might have gone off.

Doing this sort of thing takes tremendous courage, for there will likely be serious repercussions if you're right, and if you're wrong. In effect, the person becomes a Whistleblower. Such folks have certain legal protections in the corporate and government arenas, but they usually suffer in a number of ways anyway. What's the practical bottom line? It's having unwavering courage

and a strong desire to do the right thing. I'm neither talking about Big Brother here nor turning us into a nation of spies.

I don't have all the answers; perhaps none of the answers. I'm convinced a serious dialogue needs to start, though, and right away.

Nick in British Columbia wrote–

Mental illness and character unsuitability are the most problematic areas of gun ownership and are never properly dealt with. Even with our licensing and registration and Gt. Britain's even more onerous licensing and registration these issues still cause problems. If we look at the gun incidents that have caused the shooting community (never mind the poor victims) the most harm, they stem from persons with persistent mental or behavioral issues. The same applies in Canada and Gt. Britain; family knew, friends knew but the authorities for various reasons didn't--despite that for us there is supposed to be an investigative vetting process prior to getting licenses.

A Right may (or may not) be granted by God. I will leave that argument to your Supreme Court but not everyone is "equipped" to have a gun (or a car, etc.). You are correct that family and friends should be accountable (if only morally) if they say nothing. We all have a duty to society and a responsibility to our neighbors.

Roy in LA wrote–

I just completed reading the Network *eJournal* for March 2014. Your mention of fixnics.org in your *Editor's Notebook* caused me to recall last week as I was poking around another gun forum, one individual was asking how he could recover his "gun rights" after his felony conviction had been expunged. I would assume (the "need" to recover gun rights) that the conviction is in the NICS database. Apparently it's easy to get IN the database and difficult to get OUT.

I am in no way against NICS, and I believe that we both agree that NICS is not complete (hence fixnics.org). But I believe that one of the "fixes" that should be addressed should also be a process to remove one's information or the publication of that process if it exists. In many cases one is put on just because he/she needed some

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counseling from the Veteran's Administration after a tour of duty in a war zone or for whatever reason. It's my understanding that the VA will readily forward that information to NICS. I believe that any doctor can forward an entry.

I guess what I'm saying is, "Yes, we need NICS." NICS probably does need improvement, but that improvement should include both adding one to NICS as well as a simple (if there is anything simple now-a-days) way for one to expunge his information for NICS (perhaps with or without follow up at some future time).

I am willing to bet that there are a LOT of GOOD people on that list that are being denied their God given right to self defense. I believe its more than "just" a 2A denial, but denial to resources to exercise a primal God given right to defend ones self and family with the tools of the day, be it a rock, a pitchfork, a sword or today, a gun.

Now by gun, I just cannot justify a true, full auto, assault weapon (an 'assault weapon' is not merely semi-auto [that's for the CNNs out there]), although I can see where one could interpret the 2nd Amendment as allowing one to arm himself/herself with "current Military Weapons" as was the requirements in the 1600-1700s.

Right to Bear Arms by Geraldine Woods:
Page 11: A REQUIREMENT TO BEAR ARMS

"At times in early America, some colonists were required to own firearms. In 1623, the Plymouth colony passed a law stating that 'every freeman or other inhabitant of this colony [must] provide for himself and each under him able to beare armes sufficient musket and other serviceable piece of war.' The Massachusetts Bay Colony lent money to any militiaman who could not afford a gun; the price of the gun had to be repaid as soon as the militiaman was able. In the colony of New York, every man was supposed to 'provide himself, at his own Expense, with a good musket or Firelock, a sufficient Bayonet and Belt, a pouch with...not less than Twenty-Four Cartridges...two spare Flints, a Blanket and Knapsack.' An 18th-century Connecticut regulation stated that all male citizens 'always be provided with and have in continual readiness, a well-fixed firelock...or other good firearms...a good sword, or cutlass...one pound of good powder, four pounds of bullets fit for his gun, and twelve flints.'"

Now that is a LONG way from today's gun control laws/regulations/requirements and limitations. From the

above quote, one could easily justify owning a true assault weapon (fully selectable auto-fire) of modern design. But then one must consider the Government's added tax to own one of these weapons. Well, if you wanted to look at "taxes," what are the license fees required for CCW but another "tax?" Makes one want to dump his tea in the harbor all over again!

Do I NEED to have a weapon? Probably not—I haven't for the past 72 years. Will I EVER need a weapon—I hope not. However, it is still my God-given right to protect myself and my family, and in today's world, I feel that is again necessary, just as in colonial times, to own and carry a weapon and my family feels safer for my doing so.

Mike in PA wrote—

In your March *President's Message* you seem to support nationwide reciprocity. Considering what is going on in Connecticut, I think any nationwide law would play into the hands of the tyrants in Washington, D.C. In your December *eJournal*, you recommended Don Leach's *Oregon Concealed* book. Although living in PA, I thought his book would be useful and it did not disappoint. I tend to agree with Don that nationwide reciprocity would infringe on state's rights to self-governance. Don is a supporter of the NRA but feels they are wrong on this issue.

I fear my government more than my neighbor. I want gun rights to protect myself from government. Nationwide reciprocity could easily lead to confiscation.

Carl in WA wrote—

Oath Keepers have produced a documentary that analyzes the role of We The People and the militia as set forth in the Constitution. The title of the video is *Molon Labe* and is feature length (2 hours). It is especially timely at this moment given the situation in Connecticut. Every gun owner would be well advised to watch the video. Please take time to view it and consider recommending it to all supporters of responsible gun ownership. It can be seen at <http://www.molon.us/movie/> or <http://www.youtube.com/watch?v=ofrhqP7JWaA>

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Please enjoy the next article.]*

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Attorney Question Of The Month

Network President Marty Hayes asked our Affiliated Attorneys a short series of questions about fairness in our criminal justice system. He asked—

1) In your career as a defense attorney, how often have you seen prosecutors engage in misconduct in order to gain an unfair conviction?

2) How often do the judges either look the other way or assist the prosecution?

3) What is the penalty for either of the above?

Our Affiliated Attorneys responded with a variety of very interesting answers. We think you will learn from and enjoy what they told us.

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In my career as a defense attorney here in the Midwest, we rarely see prosecutors engage in professional misconduct in order to gain an unfair advantage. In the past, there have been a very small number of attorneys who have played “hide the ball” with discovery and not provide exculpatory evidence to defense counsel.

This has been dealt with appropriately by the elected prosecuting attorney, as well as the courts themselves. Bad apples usually get weeded out.

In several high profile cases, convictions have been overturned, new trials have been granted and, in some cases, substantial money judgments have been awarded in civil courts. Justice has prevailed, although sometimes at great cost to the defendant.

I am pleased to report that, in our jurisdiction, the judges at the city, state and federal levels vigorously enforce the defendant's right to a fair trial and do not condone foul play by the prosecution.

The penalties or sanctions for withholding discovery or intentional violation of procedural rules by the prosecution may come in several ways.

The defense attorney can ask that the judge to ask the trial court to exclude evidence that has not been disclosed in a timely manner. If the prosecutor asks an inappropriate question of a witness or makes an inappropriate comment during a closing argument, the proper remedy would be to ask the court for a mistrial.

If a prosecutor's misconduct during trial is egregious enough, possible remedies available are the granting of a new trial or the reversing of a conviction.

When defense counsel believes that their opponent has impermissibly crossed the line, they should be prepared to ask for the appropriate sanctions of exclusion of tainted evidence, a mistrial, or the reversal of the conviction. If court orders are intentionally violated, a citation of contempt of court may also be viable against the offending prosecutor.

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1. I rarely see what I would call misconduct. More frequently I see things like rebuttal closings (the last word to which the state is entitled) that suggest “facts” that were not proven.

2. I think most judges are fair, and do not see them assisting the prosecution, especially in major cases. Things like that happen more frequently in minor cases (traffic), where I've seen judges reopen the evidence to let the prosecution prove some aspect of the crime that they forgot to prove. In my view, that's going too far.

3. Not much penalty, because they tend not to cross the line into real misconduct.

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Prior to opening my criminal defense practice in 2002 I was a prosecutor for fifteen years; fourteen of it as elected District Attorney. Having seen the system from both sides, it has been my experience that most prosecutors are very serious about upholding the ethical canon that theirs is to seek justice, not convictions. Obviously the defense bar often has a markedly different concept of what constitutes justice. That point of clash is where the system finds its balance.

That said, lawyers are competitive types and what happens in a courtroom is a form of combat. The adrenalin pumps and in the heat of the moment it can be difficult not to overstep. Most prosecutors that I deal with will acknowledge overreach when it is pointed out to them and back off. Most, not all. The worst of the lot, both prosecutors and defense attorneys, are the "true believers." To be absolutely sure you are right is to be absolutely sure your actions are justified. That is where the ethical breach is most common.

Judges in Wisconsin are elected and their behavior on the bench is influenced by the degree to which they are politically inclined. Those who are more politically minded often gravitate to the "friend of the cops" mode for the perceived political gain. Some have just been on the bench so long they have concluded, "If you've seen one guilty party, you've seen 'em all." Even the most conscientious of judges are stuck with the fact that the legislature and appellate courts seem to have drifted toward the position that "too many of these creeps are getting off because of that constitution thingy." I think most of the judges I am in front of try hard to be fair, but objectivity comes hard when you get to grade your own papers. Most will stem real prosecutorial misconduct if you raise the alarm. No judge wants to try a case twice.

Most correction for overreach comes in the form of admonishment before the jury. No lawyer wants that embarrassment and the loss of momentum it entails. Egregious instances can go before the Office of Lawyer Regulation. Frankly, it needs to get pretty bad before anyone starts down that road. Paybacks are a.... well you know.

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In answer to your questions this month, I was not going to answer as I have never seen this happen in the six years I have been practicing law. However, it occurred to me that "never" is an answer in itself. I don't doubt it happens, but I have no personal knowledge of an example.

As for the penalties, among other things they can include suspension, disbarment or even incarceration in some states for a prosecutor, and removal from the bench for judges who are aware of such behavior and overlook it or actively participate.

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Prosecutors are entirely subject to the same biases and motivations as anyone else. Particularly the younger and less experienced prosecutors are susceptible to the pressure to win at all costs. Prosecutors have to win; if they charge a case, they are expected to win it. But they can't win every case, so it is tempting to cheat. I have seen it happen many, many times in my 25 year career.

I would say most of them try to be ethical, but they are human. A few of them care about nothing but winning at all costs; the ends justify the means. And this varies from jurisdiction to jurisdiction, as well. There is no penalty for prosecutorial misconduct in the vast majority of cases, because it has to be proved and it has to be shown to be prejudicial to the defendant's right to a fair trial. So even where misconduct is clear, there may be no remedy.

Many judges are ex-prosecutors or otherwise are inclined to support the prosecution or law enforcement. A judge is ethically required to be neutral, objective and impartial, but they are also human and a few of them don't try to hide their partiality. I have heard at least four judges state that they believed that their job is

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community safety – that means they start each and every criminal case with a bias against the person accused of endangering community safety. Instead of starting with the constitutional presumption of innocence, these judges start with a presumption of guilt. A presumption of guilt makes it much easier for them to repeatedly rule against the defendant and in favor of the state, and some judges do that as a matter of habit. A relatively few judges are so biased that they must be removed from every criminal case, or every criminal case of a particular kind.

It baffles me how judges cannot see their own bias and recognize the wrongness of it; it baffles me even more why any judge would be biased. Judicial bias threatens individual freedom like little else can. The judge is the person who must honor our constitution and the judge bears the responsibility of providing a fair trial to every person; not just those in the judge's social circles.

There are only two requirements to be a judge in this state: (1) the person must be admitted to the bar, and (2) the person must get elected or appointed. Most judges are elected; a few in the smaller municipal courts are appointed by the mayor or city council. So, many judges forget their duty of impartiality and only consider the reality: the persons who gave them the office must be kept happy if they want to keep the job. This is entirely realistic; in fact, federal judges are appointed for life to avoid this very type of pressure. On the other hand, appointment for life makes it very difficult to remove a judge. There appears to be no perfect solution.

That being said, there are some very good judges in this state who are objective, neutral, impartial and able to ignore tremendous political pressures. But think about this: how many people do you personally know with these qualities: courage, honesty, integrity, exceptional intelligence and objectivity? Many people today scoff at these values as outdated; it is frightening how many people today from all walks hold that it is OK to lie to obtain what you want, or demand that someone else take care of you. Judges are not kings and queens (a quote attributed to Jefferson: "The monarchists will hide in the judiciary"), yet some of them act like it. There is no special judicial school that instills a judge with wisdom or courage.

At present in this state, a judge cannot be sued for actions taken within his or her duties as a judge, with only a very, very narrow exception. Thus, there is little that can be done with a bad judge, other than the ballot box, and it is very difficult to get the voters to understand this.

The answer to the question how often judges look the other way or assist the prosecution: it depends entirely on the judge and the jurisdiction.

A big "Thank you!" to all the Network Affiliated Attorneys who responded to this question! We will wrap up the rest of the responses in the May edition of this journal. We deeply appreciate the contributions all of our Affiliated Attorneys make to this column, as well as their other services to Network members.

DVD Review

Make Ready with Massad Ayoob: Ayoob on Concealed Carry

Produced by Panteao Productions LLC, 701 Gervais St., Ste. 150-193, Columbia, SC 29201 800-381-9752

<http://panteaoproductions.com/>

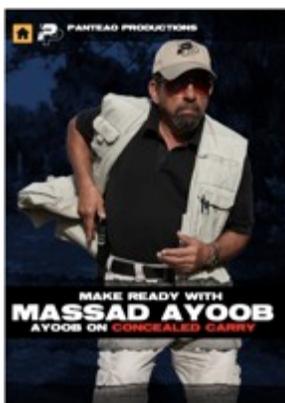
110 Minutes— MSRP \$44.95

Reviewed by Gila Hayes

The DVD we review for this edition starts with a personal introduction by Network Advisory Board member Massad Ayoob, explaining his depth of experience as an armed citizen, firearms trainer and expert witness. It started early for him: Ayoob was raised in an immigrant family where both his grandfather and father had used guns to stop murderous attackers and the responsibility to help protect the family business was passed on to him when he was a teen. He explains, “I grew up in a time and a place where it was expected that a young man when he was 14 would get his hunting license and be trusted alone in the woods with a gun; that when he was 16 he would get a license to drive an automobile in public and that when he was 21 he would get his permit to carry a concealed weapon in public.”

While much has changed since those days, the responsibility of being armed in public has not diminished. In this program on DVD, Ayoob outlines the many duties, both legal and ethical, that accompany carrying guns for defense. Concurrently, he stresses, only the gun's power allows the citizen to fulfill the responsibility to protect self and family in an increasingly violent society. This is a brief segment, presented with all due gravity, but Ayoob quickly moves on to what he calls the “nuts and bolts” of concealed carry. He reprises the demonstration of large numbers of concealed handguns originally performed by Chic Gaylord and later by John Bianchi, introducing this entertaining segment by quipping, “If you're going to tell me on a warm day, 'it's too inconvenient to carry a gun' to protect your family, let's see if that argument carries after the next few minutes.”

Don't be put off by the loosely fit tac pants and trousers Ayoob uses in the demo. Obviously none of us are going to go around with 51 handguns concealed. Instead,



watch for the various carry locations and think about the clothing you customarily wear. You're nearly certain to find a half-dozen options to consistently go armed. While this classic demonstration always has an element of overstatement, knowing where people can conceal guns is also serious, as Ayoob points out, for anyone who may need to interdict an armed criminal. Just because a gun is not immediately accessible to the malefactor, he may still very likely be armed. Ayoob closes this segment repeating his

message that saying it is too inconvenient to carry even one gun for defense is not a legitimate argument.

The various chapters of this DVD program do a very nice job of mixing action that holds the viewer's interest with very serious discussions that require thoughtful consideration. Following the multiple concealed guns segment, Ayoob discusses the “why” of carrying guns for defense. The criminal may not carry a gun 24-7, he comments, but that luxury is never granted to the citizen, who must prepare to be reactive to his assailant's planned attack. The defender's challenge, then, is carrying a gun that is big enough to stop an assailant in a way that is sufficiently comfortable to carry it all of the time. To this end, Ayoob outlines gear selection, discussing materials and giving top priority to comfort, concealability, ready access and security. Later segments provide very detailed demonstration and analysis of drawing and holstering from both open-fronted and closed garments both two-handed and one-handed.

Before discussing hardware and concealment methods, Ayoob gives a brief primer on justifiable use of deadly force, a synopsis of the subject matter for which he is best known as a leading authority. This segment of the DVD provides an excellent review, and though you may have studied these issues extensively, it is always good to refresh justification for using force in self defense, with particular attention to Ayoob's very concise articulation of these principles. We ourselves may need to invoke these concepts under great stress. Best to know them well.

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Next, Ayoob identifies ten key concerns bearing on concealed carry, and while all serve as lead ins to important concerns for concealment, several of these “bullet points” will ruffle feathers, including Ayoob’s rebuttal of the argument that civil disobedience (e.g. breaking gun laws) is preferable to being unable to defend oneself. This segment will not be easy for all listeners to digest. In it, Ayoob weighs the loss of gun rights from a felony conviction against the oft-expressed platitude that it is better to break the law than be victimized. Carry legally or do not live in or visit places where you cannot legally carry a gun, he urges, proposing, “If watersports were important to you, you’d live somewhere near the water, wouldn’t you? If skiing were important to you, you’d live near the mountains. If protecting yourself and your family is important to you, I guarantee you, you can make your living some place in a free state where they don’t make you a criminal for carrying a gun with good honest purpose.”

Likewise, the topic of open carry that arises several times in this long program is not likely to enjoy universal approbation, as Ayoob expresses his views very directly. Listen with an open mind and while you may not adapt your behavior to comport with his, we all benefit by rethinking why we do what we do. And who knows? By giving Ayoob’s various arguments a fair hearing, we may be able to preemptively avoid mistakes that might cause us considerable difficulty later.

Still, the meat and potatoes of this DVD come in Ayoob’s discussion and demonstration of safely drawing and returning a handgun to a variety of holsters. He also analyzes pros, cons, safety considerations and how best to draw from and holster using—

- Strong side holsters
- Cross-draw holsters
- Belt scabbards
- Inside-the-waistband rigs
- Open topped holsters vs. thumb-break security designs
- Shoulder holsters
- Holsters that remain open with the gun drawn
- Pocket holsters
- Ankle holsters

In addition, he addresses—

- Functionality concerns with holster sweat shields
- Off body carry
- Wardrobe factors
- Positions other than standing upright, including sitting in an automobile
- Arguments for participating in shooting competition.

The video buyer surely does get his or her money’s worth with Panteao Production’s *Ayoob on Concealed Carry!* This is a nearly two-hour presentation, comprised of a broad range of topics, fully demonstrated with handguns of all sizes, and a huge variety of holster options. To the topic, Ayoob brings the experience of evaluating and writing about handguns as a magazine writer since 1971, his career as a firearms expert and instructor, and at the age of 65, a life of experience as an armed citizen. Don’t miss this program!

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



Networking

by Brady Wright

It must be spring because, in addition to the yard now screaming at me to get busy and take care of it, there seems to be many new and upcoming training classes promoted by our members! It also feels like "new gun" time, so I

guess I'll have to try to find some more space in the safe. My wife claims there always seems to be another gun in there she didn't know we had!

If you scroll back to last month's column, you may see that I made a wise crack about getting older. Roy Squyres busted me on it! He wrote, "I'm in the process of reading [last month's column] and I see your statement 'Getting old is cool.' Well, congrats on the age thingy, but I beg to differ on the 'is cool' statement! I just took a break for some hot chocolate with the wife and we were BOTH lamenting the age affliction we are having trouble with. Dude, I'm going on 73 this year and I'd be glad to box up 5 or 10 to send ya if you would like! And I'm not too sure about the 'alternative,' either. I'm thinking 'home,' 'streets of gold and pearly gates,' etc. We prepare for a self-defense incident as in ACLDN membership, training, CCW licensing, books, etc., etc. We should also prepare for the 'alternative,' too." Thanks, Roy, it's a pleasure to hear from you!

One of our newest affiliates is teaching about 75-80 students a month. Following his participation in some classes by our Advisory Board member Massad Ayoob, he got enthusiastic about sharing his skills and hung out his own shingle. Greg Schlueter operates Bravo Options in Gilbert, Arizona. You can reach him and get his class schedule at 130 W Guadalupe Rd., Ste. 2044, Gilbert, AZ 85233 or just give him a call at 480-253-6135.

I need to share this brief story overheard at my local range. One guy was telling another about the latest hot-to-go holster set up and how it NEVER failed. We all know that Mr. Murphy is usually close by and any piece of equipment can fail, so I listened intently as this fellow glowingly described a paddle holster. I politely joined their chat and shared my own paddle holster story.

I was shooting in a class once using my concealment gear, a paddle holster from a major manufacturer. During a draw-and-fire exercise, I hauled out the iron and the paddle came right out of my waistband with the gun still firmly snapped in place! You know that eternal moment where you realize you have failed in epic fashion? I had that moment. What I did was pure reaction: I simply fanned my left hand forward over the strap and flung the holster downrange, then completed the course of fire. My instructor, the man destined to later become our Network President, called a halt and said, "Hmmm. Never saw THAT one before." I was just glad it happened on the range, rather than the street.

I wish I had grabbed my phone camera to record the thoughtful expressions of the two guys at the range, as we continued the conversation. Speaking of interesting discussions, the Network page on Facebook <https://www.facebook.com/groups/221594457860509/> and the Network member-only forum at <http://www.armedcitizensnetwork.org/members/forum> both are heating up. Both contain lots of good discussions and information sharing in both directions.

As most of you know, the Network booklet, *What Every Gun Owner Needs to Know about Self-Defense Law*, has again been reprinted with some minor changes. Providing this booklet under the auspices of the new Armed Citizens' Educational Foundation is the second major change to this publication in its five-year lifespan. The other big change came over a year ago, in January of 2013, when we increased dues to cover the expense of providing our ever-growing, educational eight-DVD set to new members upon enrollment.

Affiliates, please check to see if you have copies of the really, really old version showing the very outdated \$85 per year dues rate instead of the current rate of \$125 for the first year. If you do, please go ahead and destroy the old ones and let me know so I can replace them at no cost. As usual, if you need any materials to give to clients or customers, call or email me at brady@armedcitizensnetwork.org especially if you have news to share, or know of a win we should celebrate.

More to come next month. Stay safe out there!

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

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Editor's Notebook

Unfinished Discussions

by Gila Hayes

Last month, I introduced the topic that fueled most of this month's *Letters from Members* column. I was pleased to

receive your responses, although I really expected more, in light of the January brouhaha in the national news about Obama & Co. working to expand prohibitions on gun ownership based on mental health problems. It is not a new issue, and in fact, if you missed it, you might be interested to browse back to a September opinion piece by attorney Mark O'Mara on the topic at <http://omaralawblog.com/index.php/8-blog/19-the-trouble-with-using-mental-health-as-a-qualification-for-gun-ownership>.

In noting that there is no identifiable link between persons who have been involuntarily committed for mental health treatment and those who committed mass shooting atrocities, O'Mara's column makes one more strong argument that protecting society from murderous notoriety-seekers cannot be successfully accomplished by government.

It underscores that only individual citizens and families can make a real difference in preventing mass murders, and realistically there is little useful intervention government can exert, as I expressed in last month's editorial. If we fail to control what can only be interdicted on an individual, one-on-one level, the backlash of governmental overreaching is inevitable. We're already seeing it in the CT troubles.

Break the Law; Go it Alone

A fractious discussion in which I was involved a few weeks ago leads me to my next line of thought. A while back, I spoke with an affiliated instructor who expressed disappointment that the Network would not draw from the Legal Defense Fund to defend him if he was involved in self defense while carrying a gun illegally (without a state-issued permit).

To tell the truth, it wasn't a very pleasant exchange, with the gentleman exclaiming with asperity, "Then what good is the Network?" Not wanting to leave the discussion on that note, I rhetorically asked, "Do you carry illegally all the time?" certain that was not the case. "Of course I do not," he exclaimed, offended, then added, "Only in states where there is no reciprocal license available."

We both chuckled then, and with the tension broken I went on to explain that the Network's bright-line rule is based upon two concerns. First, we cannot be in the position of encouraging members to brazenly break laws, assured that someone else will foot their legal bill. Second, it is my contention that no matter how good your legal team, it is not reasonable to expect to easily separate the illegal concealed weapon from the facts of justifiable self defense. If it can be done successfully, it will entail additional work on the part of the lawyers involved. I believe using the Network members' Legal Defense Fund to defend the self-defense actions of a member who chose to break the law would unfairly deplete the resources of the Fund, fighting a case that was excessively complicated by the illegal carry issue.

A few days later, I was surprised to find Network Affiliated Attorney and noted legal author Andrew Branca discussing a similar topic in a column he writes for Ammoland.com. Because as an attorney Branca speaks with greater authority on this issue, I hope you will click on the link at the end of this commentary and read everything he wrote on the question.

It was eerie how closely Branca's first paragraph mirrored my earlier discussion. Branca words it thus: "From a classical self-defense perspective, whether the weapon used in self defense is lawfully possessed doesn't really matter... Nevertheless, the use of an unlawfully carried weapon in self defense—indeed, the mere unlawful possession of the weapon—can have profoundly negative effects on your self-defense claim under certain circumstances."

Branca explains that in self-defense cases, the primary witness is likely the one who shot in self defense, so that person's credibility is critical to winning in court. The already prejudiced view jurors in an anti-gun locale may hold against an armed citizen/defendant paints you in

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their minds as a criminal, because in their hearts, these anti-gun jurors are convinced that only criminals and gang bangers carry guns.

In addition, many of the states that have codified the concepts embodied in Stand Your Ground into law specify that in order to invoke SYG you must not have been engaged in any illegal activity. Although that proviso is probably intended to prevent drug dealers from invoking SYG, it also creates a big problem for illegal carry. Branca gives specific citations of a number of state laws to drive home his point.

<http://www.ammoland.com/2014/03/can-use-of-illegally-carried-gun-harm-claim-of-self-defense/#ixzz2vu7bBpJA>. After you read and think about Branca's article, scroll all the way down to the bottom of that linked page for more interesting reading from a number of well-known columnists, including our own Advisory Board member John Farnam and Affiliated Attorney Evan Nappen. Highly credible information on the Internet? Who'd a-think it?

*[End of April 2014 eJournal.
Please return next month for our May 2014 edition.]*

Please read and think about Branca's information at

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