



Armed Citizens' Legal Defense Network, LLC

eJournal

Our Twenty-sixth Issue — March, 2010 — Now In Our Third Year

Next Phase of Network Member Protections Launched



by Marty Hayes

Have you ever heard the phrase “boots on the ground?” Its current, popular meaning is in the military sense, that being that we have soldiers with their “boots on the ground,” physically present in whatever location to which reference is made. In many cases, the force that shows up first is a token force, but even so, just a few soldiers arriving with “boots on the ground” can have a calming effect on the situation, and in most applications, those first soldiers in country give a SITREP (military slang for “situation report”) back to their commanders. So, what does this have to do with the Network?

Well, with the beginning of our third year of operation, we now move into another distinct phase of post self-defense incident management services for members. With this article, we are announcing institution of our own version of *Boots on The Ground*.

It has long been my goal to have our own team of experts, standing ready for dispatch to anywhere in the country to help our members and their families handle the aftermath of a self-defense shooting. We now have close to \$40,000 sitting in the legal defense fund (administered by the Armed Citizens' Legal Defense Foundation). Recently the Foundation's leadership voted to commit funds to *Boots on The Ground* giving us the ability to

respond immediately to a request for help by a member after a self-defense incident. Here is what the program will look like. Since it is only available to members, I'll address the following directly to Network members.

Upon receipt of a phone call from you, a family member or your attorney, Network President Marty Hayes (or his designee) will fly to your location (in the United States, of course) and begin the process of setting up the best possible legal defense for your legitimate act of self defense.

Upon arrival, we will assess the needs of our member, and assist within our abilities, and the law, to assure that everything is being

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Ayoob's Perspective on the Criminal Justice System

An Interview by Gila Hayes

A few weeks ago, we had the chance to speak with Foundation Advisory Board member Massad Ayoob, seeking his perspective from 30-plus years spent working as a cop, expert witness and self-defense trainer, asking how he sees the criminal justice system treating armed citizens who use their guns in self defense. Let's switch now to the interview format, to preserve the tone of Ayoob's delivery.

eJournal: How long have you worked in the criminal justice system?

Ayoob: I've worked as an arresting officer since about 1972 and as an

expert witness since 1979 and as a police prosecutor.

eJournal: What's the last one?

Ayoob: New Hampshire is one of the few remaining states that have the police prosecutor system. It allows misdemeanors and violations to be prosecuted by a person who is not a member of the bar. A police prosecutor is an officer who has been selected by the department, put through a special training course at the police academy, and then basi-

cally thrown into the pit with the real lawyers.

eJournal: In the early 1970s, you brought concepts like the reasonable

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done to help that member with the aftermath of the incident. This includes, but is not limited to the following –

- Meeting with the member's pre-selected attorney and advancing a fee-deposit of up to \$5,000 on behalf of the member to make sure the lawyer has the resources to give the case top priority for the next 72 hours. This includes making sure the attorney has the investigators to follow up with witnesses at his or her disposal.
- If the member does not yet have a pre-selected attorney at his disposal, we will help him or her locate a pro-gun attorney who will represent them, and we will advance that attorney a fee deposit (as above), or if circumstances require, we may even bring in a Network Affiliated Attorney who is experienced and trained in self-defense cases, to work with the local attorney on behalf of the member.
- If the member is in jail, we will work with the member or his family to coordinate bail, in order to get the member out of jail so he or she can re-join his family. (There are no guarantees we will be successful, but we will do what we can within the bounds of our resources).

The above information outlines our new *Boots on the Ground* program, in order to assist our membership even further. We hope to accomplish several things with this new program.

First and foremost, we believe these new provisions will help alleviate the problem of a member who has not secured the services of a local attorney, or who is traveling in a state where his permit is recognized but he has no attorney. In that instance, we will arrive (hopefully within 24 hours) and assist in finding an attorney for the member, so he doesn't have to look in the yellow pages and pick the nicest looking face.

Secondly, we want to make sure ALL the different elements of a successful defense – attorney, investigation, free from jail – are put in place.



Third, having Network boots on the ground should provide a calming influence for our member's family, so they have someone to explain the process to them, letting them know that what they are feeling is normal and to be expected.

Lastly, we expect this effort to positively influence the ultimate outcome of any criminal or civil legal proceedings, because when the prosecution or plaintiff's attorney sees that the member has strong legal representation and a team of experts behind him, they will be forced to weigh the decision to go forward with court proceedings against the possible failure of that prosecution.

Additional Considerations

Implementing this new phase in Network member benefits in no way changes our commitment to make sure we do NOT aid and assist murderers. We made that pledge at the outset. So if, after looking at a member's case, we believe a murder or other criminal act has been committed, then the Network will walk away from the case without support. If a member cannot accept this variable, I would respectfully suggest dropping out of the Network and we will offer to refund their membership fee because that pledge is integral to our commitment to operate with integrity, credibility and respect.

In closing, a *Boots on the Ground* response from the Network is reserved for serious incidents of shots fired in self-defense from which possible felony charges are pending for murder, manslaughter or assault. It is not for misdemeanor brandishing or simple assault cases. That doesn't mean we won't help out in those cases, but members must understand that at this time, our limited resources must be reserved to assist members in the most serious of incidents.

To learn more about this new benefit, log in and visit the member's section of our web page, where a more detailed explanation on how to request this benefit is found. These details are in the password-protected members-only section because they include directions about contacting the Network after a shooting and other information reserved for members only.

I will offer additional thoughts and details about this exciting development in my President's Message in this edition of the journal.

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man standard, the doctrine of competing harms, ability, opportunity and jeopardy, and more out of the courtroom, out of law school and out of the police academy and began teaching that and more to armed citizens. Do you think much has changed in those foundational blocks of your instruction from those early days? How do you keep it fresh?

Ayoob: I wouldn't say I keep it fresh, except that for a lot of people it is new. Deadly force law is one of the most mature bodies of law and very little of it has changed. But it didn't originate with me! I just brought it to an audience that desperately needed to see it and hadn't seen it yet.

As a young guy carrying a gun, I realized how serious it was and I started reading up and I found tons of stuff on HOW to do it and virtually nothing on WHEN to do it. That's what sent me on the odyssey into the law libraries and talking to the judges and trial lawyers. I found out that there's a lot of stuff going on here that we hadn't been told and a whole lot of advice that's given over the cracker barrel at the gun shop that is 180-degrees off, you know, the drag him inside and put the kitchen knife in his hand, that kind of thing.

eJournal: If you had to work that hard to find information, you must have realized that there was an overwhelming need among gun owners for it, too.

Ayoob: I remember thinking, "Someone needs to write a book about this, and when I grow up if somebody hasn't, I will," and when I was grown, nobody had, so I did.

eJournal: And that was In The Gravest Extreme. When did that come out?

Ayoob: It was serialized in 1979 in *GUNS Magazine* and it came out in book form in 1980.

eJournal: In your 35 years as a trainer, have you seen changes in the skill levels of armed citizens?

Ayoob: Overall the skill level has risen hugely. Whereas 35 years ago, only a select handful of folks were able to shoot disciplines like ISPC, today we have nationwide IPSC/USPSA and IDPA, all in essence to some degree replicated gun fighting. The shooting is much faster and the accuracy standards are higher. Does that apply to everyone? No! There are still people out there carrying guns they have never fired. But by and large, over the years I've seen a better level of understanding of manual of arms, of firearms safety, of the responsibilities that come with the gun, and better marksmanship.

eJournal: What has made the difference?

Ayoob: Competitive shooting and I think the spread of the gun magazines. In 1950 there was one gun magazine in America, *American Rifleman*, and you had to belong to the National Rifle Association to get a copy. If you were lucky, there might be one article on handguns in it, and it might or might not have one article on self defense in the course of one year.

Today, we have whole sections of the magazine rack that are firearms magazines and of course we have the rise of the Internet and the different gun forums. We have the availability of mail order gun DVDs, none of which existed when I was a kid starting out. It exposes the new shooter earlier to a much

higher quantity of available knowledge. I can't say it has influenced every person who owns a gun, but overall it has improved the quality of firearms handling and skill nationwide.

eJournal: Does society demand a higher skill level from armed citizens these days?

Ayoob: As more and more states came on line with concealed carry permits, especially shall issue carry permits, what got those passed was the requirement of some degree of training and competence. The average is probably something close to eight hours, and that is certainly

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Ayoob shoots his Glock 22 in competition.

Photo courtesy Gail Pepin

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way better than it was when I started seriously getting into this in 1960.

eJournal: *I've always had mixed feelings about mandated training. What's your opinion?*

Ayoob: I would not mandate training, because the people who need this most are the elderly on fixed incomes and the disabled on limited incomes and the people in the highest crime areas who tend to have the lowest incomes. They are not going to be able to spend a couple of thousand dollars and travel to come to me or go to Gunsite.

If you are going to have a standard, make it competency based, instead of training based. If you're going to have a written exam, make it so someone who had to drop out of high school in the tenth grade to feed their family is going to pass without having to take a law school course to understand the terminology so long as they know the underlying principles. Give them a firearms safety check up. Can they safely manipulate the weapon that they wish to carry? If you're going to do a shooting test, it should not be a 50-yard PPC; you should not demand a 10 second el Presidente. Make it something that an 80 year old arthritic woman who inherited a gate loading six shot revolver can pass, because she's the one who's going to need it the most.

eJournal: *Since you've observed, taught about and participated in the criminal justice system for three decades, I'd like your thoughts on its evolution. There is little doubt that American society has changed a lot in 20 or 30 years; has the criminal justice system changed to reflect society's current values?*

Ayoob: Basically, I'm not sure how much the system reflects the values of society because the system is built on the laws of society. You will find, certainly, in terms of jury pool bias, for example, that you can expect a liberal jury in a liberal area, a conservative jury in a conservative area, but in the end, I think way, way too much emphasis is put on jury pool bias. It has been my experience all these

years that the jury, for the most part, actually does try to be the clean slate that they are supposed to be. For the most part, they do try to fairly weigh the facts that are in front of them. They have a good deal of ego invested in the fact that they are generally the first to find out the details of both sides of the story.

By and large each case is a law unto itself. I've seen acquittals on self-defense shootings in the liberal anti-gun bastions like Maryland, for example, and I have seen cases brought that never should have been brought in so-called gun friendly states such as Texas, Florida or Arizona.

It depends on who are the players. Are there powerful forces at work? Is there an elected official in the prosecutor's chair that is going to say, "I'm getting real heavy heat from a certain block of one-issue voters on something here and I may need to placate them." Most prosecutors, thank God, don't fall victim to that, but prosecutors like everyone else are human.

eJournal: *Sometimes we think the prosecutor is the problem, yet you suggest it is pressures from their constituency. When the citizen is arrested, charged and tried for defending him or herself, does that mean our society questions his or her right to defend against threatened death or crippling injury?*

Ayoob: First, when this happens, often times the citizen will have innocently made a stupid mistake. For example, you and Marty [Hayes, Network President] and I have all warned people about the backyard advice of, "Don't say anything to the police." Well, let's say there's been a shooting. There's a corpse laying in the street and here's the guy literally holding the smoking gun, and they ask, "Buddy, what happened?" and he says, "I ain't telling ya nothing,"

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which may not be his exact words but that is how they are interpreted.

From the beginning only one side of the story starts coming out. And meanwhile, the dead bad guy's accomplice says, "We were minding our own business, and suddenly this crazy guy comes up and starts waving around a gun!" Often there are wrongful accusations by an accomplice who thinks he is in trouble. When only one side of a story is told, that is all the system has to go on. And now this will become a job for a jury to sort out.

Sometimes it was the innocently mistaken citizen who just didn't know how things worked who got *himself* in trouble. I've also seen the person that's panicked and they leave the scene. Hell, I've seen ones that threw the damned guns away.

The system is geared on the assumption that it is going to be an impartial jury that decides the credibility of the witnesses, not the police. Now, if the police find overwhelming evidence on our side, we're golden, assuming that everything does run fairly. But what you'll see occasionally is like one case in Arizona where the shooter was a young black male legally carrying a gun. He was harassed by a bunch of rich, white college-age kids one of whom was the black sheep son of a powerful white judge. He violently attacked the kid with a bottle in what was obviously a racially motivated attack. He ended up having to shoot the guy in self defense.

He got rail-roaded big time and wound up being convicted. I was contacted afterwards for the appeal. I said if you get a new trial, I would be happy to speak for him at no charge. The kid wound up getting out on time served after several years, and he did not pursue the appeal. I thought that was a terrible miscarriage of justice! I would like to believe that if someone in my business had been there to speak for this kid at trial, the jury, twelve people who didn't have the bias toward the rich, powerful family of the deceased, might have handled things differently.

eJournal: *You work all across the United States, and the examples you've cited today have ranged from one coast to the other. How extreme are regional differences*

when justifiable shootings are tried in the courts?

Ayoob: It really doesn't vary, Gila, though I think that is a common misconception. You may think because it is more difficult to own a gun, or get a permit to carry in California or New York than it might be in Arizona, Florida or Washington, then you might think that somehow the moods of the courts will be more hostile. I've got to tell you, I'm really not seeing that.

eJournal: *I've heard – especially about the East coast states – that if you are in a shooting, it is all but guaranteed that you will end up in criminal court. Is that just hyperbole?*

Ayoob: I think that is a misconception and I think they are transposing the mood of the Courtroom with the mood of the State House.



The courtroom is supposed to be about a fair and even-handed application of the law, Ayoob stresses.

I've seen clear cut self-defense cases turn into witch hunts in supposedly conservative communities, and I've seen cases in California where it was like, "OK, you shot him. Hell, it looks like a clean shoot to us, we're not wasting the county's buck to try you." I'm honestly not seeing it as much of a regional thing.

You *will* see the occasional judge who makes it very clear that he is prejudiced against people who carry guns, just as you will see the occasional physician who tries to make it a public health issue and asks you when you are in the exam room, "Do you have guns in the home?" But I honestly don't see that as a regional issue. By and large, judges are the umpires who enforce the law and by and large they do their jobs very well. There will be the occasional bad doctor or bad cop, and certainly there is the occasional judge who lets his personal prejudices get in the way of impartial justice.

In essence, the courtroom is not supposed to be about public perception, it is supposed to be about a fair and even-handed application of the law. It is just way more complicated than seeing it as a mirror of societal moods.

eJournal: *You said it is SUPPOSED to be even handed. Has that been the reality in your experience?*

Ayoob: Most of the time it is. I see very few bad judges. The bad judges just don't stay in office that long,

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particularly in the jurisdictions where judges are elected. Yes, there IS the occasional bad judge and there is the occasional bad jury. Frankly, because there are twelve of them in there, you are less likely to get a bad jury than a bad judge.

What you are more likely to get is the prosecutor who has seen only one side of the story and decides you are a Rambo who is a danger to society. They may actually believe they are doing the right thing trying to nail you. Basically, our job is to go in there and show the twelve people on the jury what the prosecutor didn't hear, what the prosecutor didn't know and why the prosecutor is wrong.

eJournal: *Shifting gears to laws about self defense, can you cast some light on the Castle Doctrine and Stand Your Ground laws since they have been in the public eye so much in recent years?*

Ayoob: First it is essentially incorrect to refer to the Stand Your Ground law as a Castle Doctrine as so many people do. The Castle Doctrine terminology comes from the Old English common law that held that the citizen's home is his castle and attacked there he need not retreat. And that exists in every state in the land and has for a very long time.

What was different, and remains different in some states such as New York, for example, was that in some states if you were attacked in public, you were expected, indeed required by the law, to retreat. In other states, the law said you could stand your ground and meet force with force if you were attacked in any place you had the right to be.

It was really a non-issue. In the actual wording of the doctrine, it says you are expected to retreat only if you can do so in complete safety to yourself and others. If you cannot retreat in complete safety to yourself and others, retreat is not demanded, even under the old standard. Can any of us think of a situation where we would *not* shoot the guy in a retreat state, but *would* shoot him in a stand your ground state? If we were able to avoid the conflict in complete safety to ourselves and others, we would have!

In essence, the repeal of the retreat requirement has been a tremendous moral victory for our side. It saves an argument in court, instead of having to establish in front of

a jury that you couldn't retreat, it gives the judge grounds to say, "As I look at this motion to dismiss, the law itself says he doesn't have to retreat. Prima facie you have no case, therefore, I dismiss," and that has been good.

But it is not the absolute bulletproof shield that some people think it is! There was recently an acquittal in the Tampa Bay area of a man who shot a guy in 2008. The defendant was a guy with a heart condition who was attacked by a really savage drunk who'd just beaten and knocked a woman to the ground in front of him. The defendant said, "Get back! I have a gun; I'll use it." The guy lunges at him and punches him viciously in the head. The defendant staggers back with the punch, draws his gun, shoots and the guy is dead on the ground.

That is in March 2008. Not until the latter days of January, 2010 did he go in front of a jury and after about three hours of deliberation they acquitted on all counts. In Florida, it is unknown to get bail on a murder charge. This man spent nearly two years of his life in jail, waiting for his day in court! In that particular case, the Stand Your Ground law, which was in effect at the time of the shooting, simply didn't do any good. The prosecutor and I guess the trial judge just could not get past the fact that an armed man shot an unarmed man.

Sometimes it works and sometimes it doesn't. Many of these laws – including the one in Florida – have protection for the defendant, that if it is adjudicated in court that you fired in self defense, you are immune to civil law suits. People say, "Way cool for us, we don't have to worry about getting sued."

They have not read the fine print of the law. If the prosecutor simply declines to prosecute, that is NOT a finding of self defense, so you're right back to where you were before the law, and they can sue you.

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If it is built into the law that if the other side has an argument of malice or of negligence, or there is any element of proof that they can cite in their case, whether lying testimony of the accomplice of the criminal you had to shoot or whatever, most judges are going to see that as an issue for a jury and you still go through the horrendous \$50,000 – or what ever legal fees cost – case. So these laws are not the bulletproof shield that some on our side want them to be.

eJournal: *Sounds like we over-simplify and try to make Stand Your Ground legislation into a silver bullet.*

Ayoob: Well, it is an inherently complicated issue. Law is inherently complicated; life and death are inherently complicated and cannot be successfully oversimplified.

eJournal: *We're coming to the end of our time, but before we quit, I wanted to ask a question I've been hearing a lot. You recently reorganized your business life, resigning from Lethal Force Institute and launching the Massad Ayoob Group. Can we expect training with a similar mix of law and practical shooting from your new classes? What stays the same, what changes?*

Ayoob: The law remains the same, so the core advice remains the same. As for the class material, I'll probably put in updated visual aids, like PowerPoint, more audio-visual, plus I'll put in some updated cases.

eJournal: *Well, Mas, there is no question in my mind that all of the folks you've educated over the years are a tremendous positive force. We wish you all the best with the Massad Ayoob Group, as you begin doing this under a different name.*

Ayoob: Because this type of training has not been widely available, it is my hope that this will double the availability, with Lethal Force Institute teaching in one set of venues, Massad Ayoob Group in another. I don't care

whom they get it from. It ain't about the singer; it is about the song. This knowledge needs to be disseminated and one guy can't do it all by himself.

eJournal: *For a long time there has existed a substantial library of your lectures on CD and DVD. Do you think you'll revise any of those?*

Ayoob: The core videos are still valid, and it is not be-

cause I was such a visionary, but because I was speaking to that very mature body of law that has changed so little. I may update some of my classroom lecture material to touch on some of the new Stand Your Ground laws, and better explain that they haven't changed as much as we think they have changed, but that's all.

eJournal: *Your career has been two-pronged – split between working as an expert witness and teaching your StressFire shooting techniques to armed citizens and law enforcement. Do you place equal import on both shooting skills and legal preparation?*

Ayoob: Obviously, you have to survive the fight before you have to worry about surviving in court! That said, what a lot of people don't realize, and what our own statistics show us, is that we are hugely more likely to have to draw the gun and take somebody at gun point, at which time, in the 90th percentile in these cases, the threat ends. We haven't had to kill anybody, but now we've drawn a gun in public perhaps in the dark or in front of witnesses who didn't know who was who or what was going on. And now, without a shot being fired, the gun has saved our life, but we might still find ourselves going into the open mouth of the criminal justice machine on a charge of aggravated assault, assault with a deadly weapon or something of that nature. So, yes, that absolutely is something for which we need to prepare. As surely as we need to know how to use the gun, how to hit with it effectively and not hurt an innocent bystander, we need to know how to handle the aftermath.

For more information about classes and training by Massad Ayoob go to www.massadayoobgroup.com. Ayoob serves on the Armed Citizens' Legal Defense Foundation's Advisory Board and is elemental to the Network's newest effort, continuing legal education programs for attorneys.

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Marty Hayes

President's Message

Why We Added Boots on the Ground

By now, you likely have read the cover article regarding our new *Boots On The Ground* (BOTG) program, designed to help protect a Network member's legal rights immediately after a shooting incident. This new program is so important

that I wanted to take another attempt at explaining its provisions, and to answer questions that people might have. I would also encourage you to email your questions to Editor@armedcitizensnetwork.org so they can be addressed in the next edition of the *eJournal*.

First off, please understand that this new program doesn't replace the \$5,000 fee retainer member benefit, but only enhances it. If your incident is one that likely does not warrant physical presence by Network personnel, and you are only requesting financial assistance, then we would simply provide that fee retainer.

By the way, I was recently questioned as to whether the \$5,000 deposit against fees constitutes insurance. Let me take this opportunity to put that question to rest once and for all. An insurance policy insures the individual against acts outside his or her control. The use of a firearm for self defense is a voluntary act, not an occurrence outside of one's control. You see, an insurance policy would pay off dependant on what is called a "contingent occurrence," and the operative word is "contingent."

Contingent means an event that may or may not occur, and its occurrence is likely dependent upon chance. Under all legal theories of which I am aware, self defense is a voluntary act. You can choose to defend yourself or not. No different than buying a health club membership. You can choose to go to the health club and use the swimming pool, or not. But, if you choose to go, you have the right to use the pool under the conditions of the membership agreement. You can choose to defend yourself, and if you do so, you can ask for and receive the membership benefit of the \$5,000 fee retainer and/or the *Boots On The Ground* response. I hope this is clear now.

So, how does this new program work? First off, nothing should change regarding your interaction with witnesses and police following a self-defense shooting. You need to do what you have already decided to do, irrespective of this new program. But, within 24 hours, or perhaps sooner (though not while you're waiting for the police to arrive), call me or better yet, have your attorney call me.

I will list my private cell phone number in the private member section of the web site. When you call, I do **not** want to hear the details of the case, only that you have been involved in a shooting, that the police have come and taken a report, and you are requesting Network assistance for the next day or two. Please understand that you have no attorney-client privilege when talking to me, and that I am not your lawyer. Anything you tell me about the incident could be discussed in open court under any number of exceptions to the hearsay rule. That is why it is better to have your attorney call me.

Now, here is where the *Boots On The Ground* program is a huge new step. If you don't have that attorney yet, I will hop on a plane, fly to your location, and find an attorney to recommend to you, along with giving them a fee retainer for immediate representation if you choose them as your attorney. How great is that? And, if you knew how much I hate flying, you would understand that I have not made this decision lightly! Eventually, I expect to have a half a dozen regional representatives of the Network that could also respond and get there more quickly. It makes no sense for me to fly across the country, when a local guy could drive four hours and be there by your side.

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And, while not feasible at the moment due to lack of resources, eventually I can foresee a time when the Network or Foundation could also assist in securing your freedom through the bail process. That is out in the future at least a couple of years, but it is on my mind. The only thing stopping this now is membership growth, so please spread the word about the Network and actively recruit new members among your gun-owning acquaintances.

Now, on to a couple of other things that have been on my mind.

Internet Forums

I am encouraged to see the discussion of the Armed Citizens' Legal Defense Network on the Internet forums such as DefensiveCarry.com, TheFiringline.com, and TheHighRoad.org. If you participate on these and other such forums, please feel free to post about who we are and what we do. I try to monitor these threads, and many times post to correct inaccuracies, but also lots of time I just monitor them. All I ask is that you are accurate in your information, and it never hurts to give a link to the Network web site when you post.

What Constitutes a Firearm?

A couple of years ago, I participated in a court case, *State of WA v. Gordon Hammock*, here in my home county. I was an expert witness for the defense, and my testimony addressed what constitutes a firearm. The question upon which I opined was: Is a bicycle handlebar stem bolt (about an 8-inch threaded bolt with a ¼ inch hole drilled lengthwise) a firearm? In this case, the defendant's girl friend used this device, along with a .22 long rifle cartridge and a ball peen hammer to fire a slug into the head of the deceased.

The defendant was charged with and convicted of being a felon in possession of a firearm along with murder. When I testified, I said the best one could do was make the argument that the bolt was possibly a barrel of a zip gun, if it was fashioned into such a thing.

But the jury chose to punish the defendant by finding him guilty, and just recently, upon appeal, the Washington State Court of Appeals, Div. II upheld the conviction, stating: "We hold that a hollowed-out bolt, in which a bullet is inserted, when used with a hammer to strike the bullet is

a firearm under former RCW 9.41.010(1) (2001)". I don't have an opinion on the ruling, even though I testified for the defendant in his original case, but if you want to kill a few minutes and read a fascinating case, here is the [link](#).

Okay, that's it for this month, see you in a few short weeks!

Website Update

We're done! After over six months of disruption, hours of grueling, mind-numbing work and sometimes utter despair, the Network is completely moved over to a new, integrated web site on which member log in opens up access to attorney lists, the forum, and member-only information, all on one web site, along with a more smoothly operating online store. The whole thing is now up and running at our traditional URL, www.armedcitizensnetwork.org.

Members gain additional functionality on the new web site, one aspect of which is easily changing your password. On the new web site, you can make password changes by logging in, being redirected to the membership pages, then changing your password under the My Profile link. Also, if you've forgotten your user name or password, using the "Forgot Your Password" link under the front page log in fields sets you up to enter a new password, though that procedure involves several additional steps. Finally, while there is a way to make password changes on the phpBB members forum, please do not use that method, since any changes made there do not flow into to the database governing log in for the rest of the web site.

Members can renew memberships or buy books and receive their 20% discount at the Network Store on the new site. We'll run the old e-commerce site for an additional 30 days, but we expect to shut down www.shoparmedcitizensnetwork.org by the end of March unless we hit some unforeseen snag with the new online store.

In reworking the web site, integrating all the Network's Internet undertakings at one location, we have also invested a lot of effort toward presenting the Network as an informational resource for armed citizens. The web site is now a powerful way to introduce others to the Network, with a lot of information they will enjoy reading, all hopefully leading to a decision to support the Network's mission and prepare themselves against the danger of going to court after a self defense shooting, too. Please share the link www.armedcitizensnetwork.org with your friends.



J. Vincent Shuck

Vice-President's Message

To Intervene, or Not

Seattle had the dubious honor in January of being the setting of an event at a commuter bus station that probably shocked all but the most stoic person. In short, a teenager attacked another teenager while three security guards stood by and did nothing to intervene.

Remarkably, according to company policy, the guards had no authority to do so. According to their contract with the bus company, their job was to “observe and report.”

The video, which is available online if you haven't seen it on the news, shows the girls punching each other and then the one who gained the upper hand after the victim was down, stomps the other's head, rather viciously, several times. Is there any other kind of stomping? The aggressor had at least 10 other colleagues in the area, according to some reports. Three have been caught and charged with robbery because they snatched the dropped purse, iPod and cell phone of the victim and ran from the scene after the attack. The 15-year-old attacker plead not guilty to the charges filed against her.

I'm sure we will hear more about this incident and the backgrounds of those involved, but it made me wonder what I would do if I were on that platform during the attack. We now know the security firm's contract stipulated that they must not get involved, but what is our contract with society to intervene?

In summary, civilians have no obligation to intervene, maybe some common decency, but no requirement. What if you or I were there and legally armed; would that change anything? Was the use of deadly force required or justified? Probably not. But what if you or I physically stepped in and uttered a challenge to stop the mêlée, could our action prompt someone from the group to move in and threaten us? While no weapons were displayed in the video, did anyone involved have something in a pocket that would have been

produced if we jumped in? What if another legally armed citizen drew her/his weapon and approached the scuffle while we tried to resolve the conflict. Can we distinguish the good guys from the bad guys?

Nobody said life would be easy. As responsible citizens, we need to consider the recommendations of the experts – remain aware and alert, use caution and intervene if you know the entire story. If you decide to intervene, remain alert and ready for all possible responses. Of course, all of this happens within a few seconds, which means we must never let our guard down, even for a few seconds.

The Winter Olympics

Probably like many of you, I watched the Winter Olympics held in Vancouver, BC. I get excited with the “Olympic Spirit” while watching and believe these fine-tuned athletes are amazing. Whether it's downhill racing at over 80mph, riding a snowboard over jumps and turns or skating on ice with the agility of a gazelle, the Olympics demonstrate what is meant by, “the best in the world.” I know I won't be getting any Olympic medals in this lifetime, but I can still study those who accomplish this and compare that effort to what I should be doing as a legally armed citizen.

I'm sure we all concede that Olympic athletes practice, practice, practice, obtain instruction, practice, practice, obtain instruction and then practice some more. They act like their performance is important. Maybe there's a lesson here.

Did you ever wonder how you would perform in a situation where your or another's life is on the line? Isn't that



Seattle recently gained nationwide-notoriety for a public attack in which security guards did not intervene.

a major reason why we train? But how much do we train and practice? Enough to get by, or enough to win the “gold,” should a self defense event present itself in our life? For those of us who are not at the Olympic athlete level or who are not yet perfect, maybe a little more instruction and practice are in order. Where? Check out the affiliated instructor list on the Network's web site – a great place to start. Participate in the classes by these instructors or find your own. Either way, practice like a future Olympian and perform like one if called upon to do so.



Affiliated Attorney Question of the Month

We are delighted that, with the support of our affiliated attorney members, we can continue this column and in so doing, introduce our members to our affiliated attorneys. Our goal with this column is to demystify aspects of the legal system for our readers.

Last month's question was educational for our members, and I surely did appreciate our attorneys' input which gave us all a more balanced view of the criminal justice system.

During that discussion, one of our attorneys posed an excellent question of his own, and it was so thought provoking that I want to use it to get the March column going. He asked--

“What do you do when a judge you're in front of absolutely positively doesn't know the law of self defense in your state?”

Thomas Cena, Jr.

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The question is what defense counsel does if the judge does not understand the defense of self defense.

If an attorney knows in advance regarding the judge's shortcomings, she can file an affidavit of prejudice. In many jurisdictions (e.g. the state of Washington) the defendant may reject one judge from hearing the case. This must be done before the judge in question has made any discretionary ruling in the case. So this must be done early.

In general lawyers are always tasked to “educate” the judge as to what the law is. This is part of the lawyer's job. Judges know this and are receptive to input from the lawyers before them. The defense attorney's job is then to submit strong written authority to law on crucial points of defense to the court. This briefing should call attention to the relevant facts and circumstances of the case to convince the court that the defense is viable. A good judge may well be persuaded by submission of quality material supporting the self defense issue. To clarify, the usual goal is to get the court to allow submission of evidence of the defense to the jury and to permit good and appropriate jury

instructions on self defense.

If the judge just won't listen, the lawyer may try to stay (temporarily interrupt) the proceeding and ask for “discretionary review” of an adverse trial court ruling by the first tier appellate court. This would be a request for an appellate review of a trial court decision, which is not reviewable as a matter of right, because the decision is not a “final” one. In Washington, RAP (rules on appeal) 2.3 allows a party to ask the court of appeals for discretionary review if the superior court has committed an “obvious error” which would render further proceedings useless or if the court committed “probable error” and the result of which is to substantially alter the status quo or limit the freedom of a party to act.

If a review by discretionary review (interlocutory review) can't be accomplished, the defendant's lawyer needs to proceed with the case, but in doing so to put into the court record each and every (descriptive) objection that there is to make. This should be done both by written motions and briefing and also by references to such objections, and the reasons for them, during hearings and at trial. These last will then be in the written verbatim transcripts of these hearings and trial for use before the appellate court. The type of appeal here would be an “appeal of right” which would be filed and developed by the defendant if there is a final adverse decision at the trial court level.

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I refer him to the State of Connecticut Judicial Web site and show him the printout on the jury instructions for self defense.

I also file a brief...which likely involves a lot of cut and paste, and direct cites to the Judicial Web site.

If that doesn't work, I put my objections to the Judge's ruling or jury instructions and file an appeal based on the Judge not following the State's own guidelines published on the Judicial Web site.

Use the resources the judge is most likely to be familiar with - his employer's guidelines.

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In this jurisdiction it is not uncommon for judges to lack information about a specific area of law that the rotational case assignment system requires them to confront in a given case. No judge or attorney knows everything, despite what some of them might think. By way of example, due to the current Governor's judicial selection preferences, a lot of our recent judicial appointments have come from the ranks of criminal prosecutors, and often times they have no familiarity with many areas of civil law because they have had no exposure to these areas of law as attorneys.

If I have a matter going to trial with a judge that I know (or suspect) lacks familiarity with the law controlling the decision in my case, I will try to encourage the judge (at a Pre-Trial Conference) to order both sides to submit a "Memorandum of Points and Authorities" (MP&A) prior to trial, which I then use to set out the law on the important concepts that I want to educate them on, along with citation to the cases, rules or statutes which form the basis for that legal position. No legal argument, just quotation of the law, followed by citation to authority.

I have had very few judges refuse to issue that order, and in that event, I file the Memorandum with the Court Administrator, and serve a copy on opposing counsel anyway. I have had only one judge then later at trial state that my Memorandum was "inappropriate" and that it would not be considered. But she did it on the record and I was able to also place on the record my response, which was that the MP&A was submitted as a courtesy to the court to provide an easy reference to the controlling law of the case and to preserve my record for appeal. Which is another polite way of saying, "Go ahead, do something stupid. Ignore the controlling law and we will get you reversed on appeal." They might hate it, but they won't ignore it after that.

Then during trial, if I have to make an argument based upon points included, I always include reference to the Memorandum, page and paragraph. It makes it pretty hard for them to go rogue if your references and citations

are solid. The law is what it is. The appellate courts can get pretty snotty with a judge who just arbitrarily ignores their precedent.

This MP&A also comes in handy when drafting and presenting jury instructions to the court.

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If it is a case going to trial, I take that into consideration regarding whether I ought to have a bench trial or a jury trial. This also means "researching" the judge on their experience and past rulings. I have never had a judge be insulted when I have politely asked in chambers during pre-trial conferences if they have ever handled a case like the one before us. I also ask other attorneys what their experiences have been with the judge in general and on the specific issue at hand.

If it is a matter of pre trial motions, I politely frame my arguments and research in a way that educates the judge. I call it "spoon feeding" them so that it makes it easy for them to make the right decision. I also try to time my witnesses/evidence/argument so the allowed time runs out before closing so that I can suggest (and be granted) written closing arguments. (I have never been denied such).

After that it is a matter of preserving issues for appeal although that does not always help a lot because many people don't want to spend more money on an appeal.

We appreciate the contributions our affiliated attorneys make to the Network, including their interesting responses to questions posed in this column. These writers and our other Network affiliated attorneys are listed at www.armedcitizensnetwork.org

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Affiliated Instructor Question of the Month

One of the Network's great strengths is its affiliation with firearms instructors. This month, we asked our affiliated instructors to share experiences they have had teaching disabled shooters. We received so many great stories that we'll continue this topic next month.

What is your most memorable experience teaching a student who came to you to learn how to shoot despite physical limitations?

Tom Givens

Rangemaster

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Although I have had a number of physically challenged students over the years, this one is an easy choice for me. I would have to name Joshua Benson as the student who overcame physical hurdles and exemplifies the fighting spirit I would like all my students to have.

Josh started life as a healthy, normal kid. At the age of eight, I believe, he had a horrible reaction to medication, and lost the use of both legs and his right arm (he was right handed). That left him confined to a motorized wheelchair, with only his non-dominant arm working, and it is somewhat damaged.

Josh arrived at Rangemaster for training in his lift-equipped van, and it was obvious from the start that nothing was going to stop this kid. One of the first things we did was find a way for him to wear a handgun safely and discretely in a wheelchair. We started with a fanny pack, and later Josh had crossdraw holsters made for the handguns he settled on for personal defense. He mastered reloading his semi-auto pistol with one hand, racking the slide against the arm of his wheelchair. For faster recovery from an empty gun, he found a place to put a back-up gun, for a "New York reload" a la Jim Cirillo. Once he mastered the pistol, Joshua even took carbine classes, and learned to manipulate the AR-15 well in his lap.

Josh wound up taking several pistol courses here, including one of Gabe Suarez's Close Range Gunfighting courses. During the "Tueller Drill," Josh was able to maneuver his speedy wheelchair and evade the charging knife-armed thug, while delivering accurate fire with his

handgun. Impressive!

Perhaps more impressive, Josh took our three-day Firearms Instructor Course, and passed the stringent shooting requirements. One of the courses of fire he was required to pass was the FBI Pistol Qualification Course, at 90 per cent or better. Unable to go kneeling or prone for the 25 yard stage, we allowed him to stay in his wheelchair, but bear in mind that means he fired his 18 rounds at 25 yards, all with his non-dominant hand only, and reloading twice with one hand, while still making the time limits. He was a true inspiration to the other 19 students, who had two good legs and two good arms, and had been bitching about the difficulty of the qualification course. After seeing Josh's performance, there was no further complaining.

I wish all of my students had the will and drive that this young man displays.



Joshua Benson shoots a variety of firearms despite loss of the use of his dominant arm.

Photo courtesy of Oleg Volk

Blaine Nay

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Utah is a "shall issue" state. There is no permit restriction regarding any physical disability.

I had a couple come to me for my concealed firearm course. The wife has been 100% blind from birth.

I confirmed with the State that certifying her for the permit was okay. In fact, I was advised that to deny her the training

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and certification based solely on her handicap would constitute unlawful discrimination. After all, the Constitution guarantees that “the right of the people to keep and bear arms shall not be infringed.”

It was a whole new experience for me to teach certain topics such as the parts of a handgun and ammunition and how they function. White-boards, posters and PowerPoints didn't work. I had to learn how to teach her with her hands rather than with her eyes. But, she has a mind like a steel trap and retained everything perfectly.

Then came the live-fire portion. I set up the usual target at the usual distance. To help her identify the target, I tossed pebbles at the target and she shot at the sound. She only missed a couple of times! The awesome part was that she knew when she missed because she didn't hear the bullet hit the target! How many sighted people do you know who can hear a bullet hit a paper target on a cardboard backer at seven yards – especially while wearing hearing protection? A steel plate, yeah, but paper? I guarantee that lady'll beat almost anyone in the dark. Don't mess with her!

I'm told that at least one state refuses to sign reciprocity with Utah specifically because we give permits to blind people. They need to meet my student.

Gale Burton

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Mr. Roberts called us several years ago just before Christmas, after he experienced an attack outside of a local mall. A group of young men had targeted him as a victim since he had to use arm crutches to help him walk. He had some bags over his wrist and then his crutches wrapped around his forearms. Mr. Roberts walks with great difficulty, but nonetheless had Christmas shopping to do for his loved ones.

Mr. Roberts walked out of the mall, on the upper level, right past a mall security guard that knew the group of young men had been hanging around. He was parked in the handicapped parking spot at the end of the walkway. When he got to his car, the group approached him and threw him back against his car. He was scared for his life and told them to just take the packages, and to please

leave him alone.

The group was more interested in instilling humiliation and fear. They continued to yell and push him along the body of the car, as he struggled to stay upright with his crutches. Mr. Roberts kept saying, “Take the packages and please just leave me alone.” He tried to lift his crutch to try and back away the young man closest to him, but he couldn't get it between them because he was too close. One of the young men pulled a knife out, which scared him even more. They said to him at one point, “We are going to kill you old man!” He was sure that he was going to be seriously hurt or killed.

Finally the young men moved on, as a car just happened to drive by. Mr. Roberts got into his car and locked the doors as quickly as he could. He was so scared he didn't know exactly what to do at this point. He wasn't sure if he should call the police, or just go home.

The most frustrating thing to Mr. Roberts was that the security guard watched the incident from the safety of the mall doors, never coming out to help, or call for police assistance. Mr. Roberts said, “I thought that was what they were paid to do, to help protect people from just this kind of activity!”

Mr. Roberts called us the next day and asked if it was, “even possible to learn how to shoot a gun,” when he had such problems walking. He came to us, and we were able to teach him how to shoot, and to have the confidence that he could defend himself, should something like this ever happen again.

We were very happy to have been able to help this man feel more secure, protected, and to be able to continue on with his daily activities with such a severe handicap.

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Continued from page 14

Dan Rose

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A few years ago, I was contracted to design and instruct several low light tactical pistol courses for a local training company. One day, the owners of the company received a unique request from a local college. They wanted us to provide a firearms familiarization course for a group of college interns. The session was to include a “show and tell” of a variety of firearms, a basic firearms safety lecture and a live fire familiarization. The live fire was simply to allow them to fire a few rounds for the experience.

A few weeks prior to the class the owner contacted me in a panic. After taking some deep breaths, he advised me that we had a problem with the class and that he was unsure what to do. He stated that one of the college students who signed up for the class had a disability and added that the student demanded to be part of the class. The owner's concerns ranged from the Americans with Disabilities Act to any liability associated with a possible accident. I advised him that it was a non-issue and that we could accommodate anyone as long as they agreed to move at my “zone of comfort” and accept my physical assistance based on the existing disability. That is when he told me the student was completely blind. Most would certainly be concerned after hearing this but since I grew up with a blind relative, I had first hand experience on some of the many unique attributes that are generally associated with this disability.

My personal experience was that the blind were attentive to detail, followed instruction very well and their dexterity was superior to anyone who had full vision. A few things immediately came to mind. Always thinking like an instructor, my first thought was that although the student would completely rely on me for solid sight alignment and sight picture, he would likely grasp the aspects of proper trigger control easily. Second, I simply couldn't wait for the challenge and looked forward to giving this kid a chance of a lifetime.

The morning portion of the course went as planned with the company owner nervously standing by as we headed to the range. In his defense, this was a group of college students who had never fired a weapon or had any training. Each student came to the firing line one-on-one.

Keeping things as simple as possible, once on line, they were handed a loaded weapon and fired a few rounds under my direct supervision. Not wanting the blind student to feel singled out, he was invited to the line in the middle of the group. After brief instruction and in a physically collaborative effort, three rounds were fired, all hitting the target. His fellow students applauded with encouragement. We walked down line and he felt the holes in the target. His expression was priceless and the company owner was now beginning to relax.

The first time the students came to the line they fired a .22 pistol. The second time they would have the chance to shoot my Sig Elite .40 caliber tactical pistol. This time however, I advised them that we were to have a little fun competition. Whoever had the tightest three round group would be rewarded with a 30 round magazine to be fired with my HK MP5SD. Their eyes lit up and the competition commenced. After reviewing the groups, a winner was declared. To the relief of the owner it was not the blind student. Whether it was an act of class, camaraderie or compassion the winner made a wonderful gesture and demanded that his blind classmate be the shooter of the MP5. The owner nearly fainted when I agreed. We loaded two full magazines and both the winner and the blind student had an opportunity to shoot the MP5.

To this day, I wonder how long it would have taken for the blind student to learn how to snap off 1, 2 or 3 round bursts on command with MP5 in full auto! Thanks for allowing me to revisit this wonderful experience from so many angles!

We appreciate the many contributions made by our affiliated instructors of which these shared experiences are only one part. We hope this column helps you feel you know more about our affiliated instructors. To learn more about our affiliates, please visit www.armedcitizensnetwork.org.

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Network's New York State Rep Visits

The Network's New York State Representative, Phil Smith, was in our area last month, and we jumped at the opportunity for some "face-time" with the man who has been, without question, the Network's most productive volunteer representative. Smith's business entails extensive travel, and when he has completed the day's meetings, he is prone to seek out the gun stores in the area in which he finds himself.

In addition to just admiring the firearms on display, Smith asks the shop's personnel if they are aware of the Armed Citizens' Legal Defense Network, offering a few of the Network brochures if they express interest. If that overture is positively received, he asks if a larger supply of the brochures might be distributed to the gun shop's patrons after he is gone. If the response again is positive, he collects the owner or manager's name and address and sends it along to the Network, and we make sure that additional brochures are sent to that gun shop to keep supplies fresh.

In the year and a half that Smith has been a Network member, we've come to anticipate his e-mail reports about gun shop visits, since they often contain colorful details about the store, its personnel and the area in which he is working that week. Of course, on a more serious note, we deeply appreciate the introductions he has made on behalf of the Network, creating a face-to-face contact with gun store owners, managers and clerks we would never otherwise have the chance to meet.

Smith's volunteer efforts mesh seamlessly with a new promotional effort on which the Network is just embarking that entails a targeted mailing offering gun shops on a list of Federal Firearms Licensees an informational booklet written by the Network about deadly force and self de-

fense that gun shops can give customers who buy a gun. The booklet makes a nice little gift the gun store can use in their efforts to create customers who feel they received extra value for their expenditure. Since it contains detailed information about which many gun owners – new and old – have often wondered, the booklet is more likely to be kept than a brochure, which may be lost, tossed out or forgotten.

The growth of the Network depends on reaching out to individual gun owners who take seriously their responsibility to use force in defense ethically and legally. There is no shortage of that kind of gun owner – we need only make them aware of the Network and its membership services. Smith embarked early in his membership – and early in the Network's

history – on a habit of volunteering to distribute Network brochures in the gun shops he visited. His efforts, and those of other State Representatives like him, deserve the gratitude of each individual Network member, because the larger Network membership grows, the greater our ability to contribute to the defense of members facing legal challenges to their self defense actions. ●

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L-R: Network President Marty Hayes, Operations Manager Gila Hayes, New York State Network Representative Phil Smith, and Vice President Vincent Shuck.

DVD Review

Lectures by Massad Ayoob

Reviewed by Gila Hayes

As noted in this journal's lead interview with Massad Ayoob, this well known figure in the arena of firearms training and armed self defense has, in addition to his many books and magazine articles, produced a number of instructional lectures on DVD. The Network bookstore stocks many of Ayoob's DVDs, making it difficult to select only a couple for this month's review.

In making that decision, I asked, "Which facets of Ayoob's teachings are so unique that one rarely receives parallel instruction in other training venues?" While Ayoob is renown for his StressFire shooting techniques, it is more often his instruction about when to shoot and what to expect after a shooting about which students remark.

Logistics determine, of course, that not every gun owner will be able to attend a class instructed by Massad Ayoob. Recordings of his lectures, including *Judicious Use of Deadly Force*, *Post Shooting Trauma* and *Physio-Psychological Aspect of Violent Encounters* afford exposure to class components that seem to mean the most to his students. Beyond critical education for gun owners who have not yet been exposed to these topics, the recorded lectures provide a good review, as well, and I set aside the time required to view these three DVDs in that spirit. Although the lectures are long and detailed, let's look at a few of the high points in the next several pages.

It seemed only right to begin my review of Ayoob's lectures with his foundational lecture *Judicious Use of Deadly Force*. In this nearly two-hour lecture, recorded at a class taught on August 6th, 1990, Ayoob explains how the armed citizen justifies using deadly force in defense of themselves or other innocents.

In the lecture's early minutes, definitions are given, laying a good foundation for understanding the wide swath of actions encompassed within deadly force's definition, as well as identifying elements of the crimes of justifiable homicide, excusable homicide, murder and manslaughter. Ayoob emphasizes the gravity of introducing a firearm into interpersonal conflict, noting, "Any time you draw a gun, you're walking on ice. What we're going to try to do here is teach you to walk where the ice is thick."



Continued reminders of the armed citizen's responsibilities come throughout the presentation, and at one point, Ayoob declares, "You possess a power that does not exist in this country in the highest arms of the judiciary, in the highest arms of the practice of medicine or of the church. You possess the power upon your own summary command and judgment without review to take the life of another citizen if these certain circumstances exist that create justifiable homicide," comparing medical decisions to withdraw life support and death penalty appeals, with the armed citizens' lawful decision to take life in defense of their own. That power brings with it a commensurate responsibility, he stresses.

Differences between state laws are among the most challenging aspects of teaching when it is legal to defend oneself. In Ayoob's signature mix of legal terminology and layman's language, he weaves a set of guidelines to cover gun owners all across the nation. Principles outlined include circumstances that must be present if a self-defense shooting is to be deemed justifiable, drawing on law, police work, and citing cases in which self-defense acts resulted in criminal or civil court cases.

Additional details include the principle that action beats reaction and how the courts view defense inside your home, plus the doctrine of competing harms or the doctrine of necessity, and how to communicate these and other principles from the lecture to a jury. Among the most valuable aspect of this segment is Ayoob's explanation of the affirmative defense, the legal argument the self-defense shooter presents, asserting that they indeed did use deadly force, but were justified to do so. A legal argument of this sort is extremely powerful, he explains, but is also a demanding one for several reasons, which he defines in detail.

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When interviewing Ayoob for this journal's lead story, I asked him if he had plans to produce another DVD of this kind. He explained that the laws really haven't changed, so the only additions he could make would be examples from more recent court cases. This brief review of *Judicious Use of Deadly Force* leaves out many of the critical points made, so I can only urge anyone who possesses firearms to get it, watch it, and learn from it.

Aftermath

The next DVD I selected as "unique to Ayoob" material was his lecture entitled *Post Shooting Trauma*. This approximately 70 minute lecture is certainly Ayoob's most grim, but has the potential to save the viewer considerable heartache, by not only shattering the attraction to the "warrior prince" mentality, but by underscoring why the individual forced to shoot in self defense would avoid that course of action unless death or crippling injury were the only alternatives! A record of having viewed, taken notes, and internalized the messages of this lecture can only underscore the gun owner's commitment to only use a firearm as a tool of last resort.

Introducing the topic, Ayoob explains that of his lectures, this subject is the most controversial. Some deny that post-shooting trauma exists, others mistake it for post-traumatic stress disorder, and others attribute it to causes from which it does not really arise. "Guilt, I'm absolutely convinced, is not the operational dynamic in most post shooting trauma," he stresses. Instead, the effects suffered by those who have used guns to prevent or survive violent criminal attack, stem from society's reaction to killing. "If the rest of society said, 'way to go...' would you suffer?" he asks. "No," he answers, noting that humans form a self-image from the views and opinions of others, so suffer terribly when wrongfully judged.

We lack room to outline many symptoms Ayoob teaches are common to violence survivors, but note that his explanations are detailed and well illustrated. Some effects are 100% predictable, he states, taking care to note when others are less likely. The reason to understand these reactions, he explains, is prior knowledge's inoculating effect for the survivor who finds him or herself thrown into the maelstrom that follows using force in self defense. Beset by the insomnia, depression, social ostracism and other effects likely to follow a shooting, the survivor desperately needs facts to which they can cling, facts from which they

can conclude that others have trod this path and come through the experience, sometimes stronger.

Having predicted that shooting survivors will experience at least some of the distress he has outlined in the lecture's foregoing hour, Ayoob weighs the alternative – that of falling victim to violent crime: "I would rather be the defendant than Exhibit A and I would rather bear the mark of Cain than the mark of Abel. And the one thing you'll see in victimology is this, symptom for symptom, the victims suffer more than the victors. This is a society of winners, ladies and gentlemen, this is America, winners suffer less than losers," he stresses. "The victor, the person who prevailed, can say to themselves, 'All right, I faced the worst there was but I came through it'...the victim seems to suffer a sense of a loss of their own destiny," he declares.

Post Shooting Trauma despite all of its grimness also clearly defines why armed citizens take on the responsibility of possessing guns for defense of themselves and of their families and this DVD deserves serious study.

Critical Incident Realities

If *Post Shooting Trauma* teaches what to expect after a shooting, *Physio-Psychological Aspect of Violent Encounters* gives a fascinating look into what happens to the human being during a critical incident. In this thought-provoking two-hour lecture, Ayoob explains how perceptions are altered and skewed by the near death experience, and how those inaccuracies can hang you in court when your testimony is at odds with that of witnesses or surveillance records. From distortions caused by body alarm reaction comes advice to avoid giving specifics about time, distance and other details to responding officers. The reasons are explained in an engaging mix of layman's and medical terminology, supported by a number of cases, including that of Luis Alvarez from which much is learned.

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Gila Hayes

Editor's Notebook

Constitutionality of State Laws

What should the American citizen expect from the U.S. Constitution and its amendments? Historically, some have argued that the first ten amendments exist entirely to limit federal government intrusion into citizens' lives. In reality, however, we've often seen the Bill of Rights used to uphold or strike down unconstitutional *state* laws, like the right to a jury trial, for example, as in the 1968 case *Gary Duncan v. State of Louisiana*, to name only one.

With oral arguments for *McDonald v. Chicago* coming up before the Supreme Court of the United States on Tuesday, March 2 (a mere day after release of this journal), the case's discussion on various Internet web site highlights issues it raises that go, in my opinion, considerably beyond the simple question of whether Chicago's gun restrictions are unconstitutional.

If interested, you may want to set aside some time to read this thought-provoking review of the issues on [SCOTUS Blog](#) and be sure to go right to the source, and stay in touch with information from the [Second Amendment Foundation](#) and the lead lawyer in this effort, Alan Gura, on his [blog](#).

Most gun owners were stirred by the acknowledgement of our rights affirmed by the celebrated *Heller* case, which spawned *McDonald* and other cases in lower-level courts that are struggling to repeal restrictions on gun possession and laws that limit access to firearms for self defense, sport shooting and other activities.

Peripherally offset against the backdrop of these successes in the Supreme Court (yes, *Heller* was a big success and getting the Court to hear *McDonald* certainly counts as another success!), are the grass roots efforts of citizens to eliminate the federal government's interference in matters better governed at the local level, or not regulated at all. State sovereignty, preventing nationalization of health care, fiscal responsibility, how border states address immigration issues, challenges to federal regulation of firearms manufactured for use inside a state are only a

few worthy causes citizens are getting behind as fear of an overpowering federal government's intrusive hand rises to near panic levels.

Are appeals to the Supreme Court to overthrow state or city restrictions, in this case on gun possession, at odds with grass-roots efforts by American citizens bent on freeing themselves from an intrusive federal government? Are we working at cross purposes? Talking out of both sides of our mouths? Should the Supreme Court rule against Chicago's rights to regulate guns – essentially the Feds telling Chicago how to govern?

The lawyers in *McDonald* have gone back to the 14th Amendment, sometimes called the most important constitutional change since the Bill of Rights, which reads in part, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

They'll argue about the meaning of—and precedent-setting cases based on portions of—that amendment. Promising equal protection of the law for all, the 14th Amendment

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grew out of post Civil War efforts to enfranchise newly freed slaves, authorizing the federal government to, within limits, override the former slave states' continued oppression. I expect Reconstruction was the hot topic in 1866, and the 14th Amendment – along with the 13th and 15th – were valiant attempts to curb continuing abuses that prevented real emancipation. In part, the 14th Amendment assured the right to possess firearms for defense against reprisals from a narrowly defeated foe, a real fear for freed slaves and Unionists living in former slave states.

Short of dividing the United States, a dreaded outcome many shed blood to prevent, I am sure the so-called Reconstitution Amendments, and their incursion into how states governed, seemed the best solution at the time. Federal controls cemented the Union; to do less would have allowed sections of the nation to continue all but still practice slavery.

Fast forward to 2010. Large picture thinkers need to ask, is it better to use the power of the federal government to correct excessively restrictive state laws, or should these states be reformed by citizens working at the grass-roots level to topple the political machines that put those restrictions in place in the first place? Obviously, the answer is that both approaches are good and necessary courses of action.

We are told that 38 states have communicated to the Supreme Court their support for the plaintiff in *McDonald*. Those are 38 states in which local citizens and grass-roots activists pressured their representatives, state's attorneys and other leaders and got them to issue statements supporting the current gun rights case.

McDonald v. Chicago asks the Supreme Court to require state and local government to abide by constitutional principles when legislation regulates individual freedoms, in this case, the right to own guns. Whether we want a strong federal government or not, its existence is a current-day reality. Work to change its intrusions to our lives certainly begins in our own communities. The citizen who wants more say in government has rarely had as many organized or loosely-structured groups calling for a return to constitutional values as exists today.

There are a lot of ways to make a difference. If we don't work for change, we have little credibility when we complain that we don't like current government! ●

DVD Review—Continued from page 18

Physical responses during a critical incident are identified, along with precognition, visual white-out, excorporation, fugue states, and more, all explained in clear language with good classroom examples and illustrations from real life. For example, discussing the cognitive dissonance common in critical incidents, Ayoob first defines the phenomena as, "Things being remembered or done out of sequence." Small, trivial things loom large in your memory immediately after the incident and more important elements are minimized or forgotten. He cites *Commonwealth of VA vs. Mark Branham* as a horrifying case in which cognitive dissonance tripped up the defendant badly in an awful cascade of events that required three trials to straighten out.

Ayoob gives example after example to underscore that what the self defense shooter perceived can differ radically from a reality revealed by evidence and witnesses. In addition, investigators may grill the shooter until they are tempted to begin filling in the blanks. Ayoob recommends ways to deflect pressures like accusations that you are not cooperating or covering up details.

"Don't make a liar out of yourself! The truth is the only thing on your side. Don't allow yourself to fall into the one area where the whole thing is warping like Alice's looking glass and make statements that will literally be held against you for the rest of your life. When they say any statement you make will be held against you, that's not just pro forma, they mean it. *They mean it!* And the investigator generally is not your friend," he warns.

It is impossible to outline but a tiny fraction of the vital information on this DVD. Knowing that armed self defense will be critically investigated, how can the serious practitioner fail to study what happens during a life-threatening attack and the pitfalls in trying to explain it afterwards?

Drawing Conclusions

What an interesting five or six hours I spent reviewing *Judicious Use of Deadly Force, Post Shooting Trauma* and *Physio-Psychological Aspect of Violent Encounters!* The information Ayoob has recorded here for armed citizens provides an incredible in-depth glimpse into the legal, mental, emotional and physiological elements that come into play when armed citizens use guns for self defense.

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