Armed Citizens' Legal Defense Network, Inc.
eJournal
Our Forty-fifth Issue — October 2011 — Now in Our Fourth Year

Defenses Against Unarmed Aggressors

The case of the Giants' fan attacked in April at Dodger Stadium or the 2008 incident in Minnesota where a man was attacked by eight youths after they tried to molest his daughter left a lot of folks wondering just how far they should let unarmed assailants go before resorting to deadly force to stop the danger. At the same time, though, they worry that they may go to jail for using a gun against unarmed assailants.

Massad Ayoob

Seeking information to resolve these concerns, I asked Network Advisory Board member and long-time instructor Massad Ayoob to talk with us about the doctrine of disparity of force. Let's switch to the interview format now to preserve the accuracy of Ayoob's observations.

eJournal: *First, please help us with the terminology. Can you give us a good working definition of disparity of force and its role in justifying using deadly force in self defense?*

Ayoob: The use of deadly physical force is only allowed in a situation of immediate, otherwise unavoidable danger of death or grave bodily harm to oneself or other innocent people. That situation is determined by three criteria, which have to be simultaneously present. Ability: the opponents possess the power to kill or cripple; Opportunity: they're capable of immediately employing it and third, Jeopardy: their actions and/or words indicate to a reasonable and prudent person that their manifest intent is to kill or to cripple.

Disparity of force is one of the elements that can create the "Ability" prong of the three-pronged test of Ability, Opportunity, and Jeopardy. Disparity of force means the opponent or opponents are not armed with a weapon per se but something about their capability in the assault makes it so likely that the defender will be killed or crippled that it is the equivalent of them having a deadly weapon and it warrants the defender's recourse to a per se weapon such as a firearm.

That capability can take many forms—huge physical disparity in size and strength that favors the attacker or high skill in unarmed combat known or obviously inferred from his actions or words. It could be you are physically helpless or you are down on the ground where you can't roll with the punch, kick or blow and the other person is freestanding and has complete mobility. It could be the able-bodied attacking the handicapped even if the handicap has taken place in the course of the assault.

It could be what we are talking about here: force of numbers, one of the most common manifestations of disparity of force. There could be two or more attackers who can outflank and distract. You can only exert force in one direction, but they can exert force in two and essentially become more than the sum of their parts.

eJournal: *Can you tell us about cases in which a finding of not guilty largely hinged on the concept of disparity of force?*

Ayoob: The last disparity of force case that I went to court with was last month. It was one woman against two men, but one of the men hung back.

Continued on page 2

LINKS TO CONTENTS

Continued from page 1

The single male who attacked her was much larger, was known to her to be trained in hand-to-hand combat in Special Forces and had violently assaulted her previously. She had seen him beat up at least one male opponent in the past. He had punched her violently in the head and knocked her down, kicked her very hard in the leg, then stepped away from her. She drew her weapon in case he came back again. When he turned and appeared to be about to attack, she fired the shot that killed him.

She was tried for manslaughter. I explained to the jury that the elements of disparity of force included 1) his much greater size and strength; 2) he's male, she's female. That's partly the cultural predispositioning of men toward physical aggression and women not so much. It is also generally understood that body structure being what it is, the female will have no more than 2/3 the upper body strength of a male of the same size and weight.

3) She had already been beaten. That would compromise a) her ability to fight back, b) her ability to flee and c) her ability to evade his attack. She's down on the ground, and therefore can't roll with the punch, and has a very limited ability to slip a punch or evade a blow. He is freestanding and has already proven he is perfectly willing to inflict blows that could cause death or grave bodily harm.

4) He is known to her, as I said, to have been trained by Special Forces. She had zero hand-to-hand training.

The jury agreed. They were out for an hour, including a long smoking break, I was told, and came back with an acquittal on all counts.

eJournal: *Can you give us examples from court cases involving able-bodied men who were attacked?*

Ayoob: That goes way back. If you read *Warren on Homicide*, which is essentially the King James Bible of homicide law, it makes it clear that since you can only defend yourself in one direction, two or more assailants are so likely to kill or cripple that it becomes deadly force. It is well established in the case law. It is well established anecdotally. Any sensei in the dojo will tell you that is the case, and anyone that actually knows deadly force law will tell you the same thing.

eJournal: *Despite authoritative sources recognizing disparity of force, I worry we may get a jury or a judge at a bench trial that says the assailants didn't have guns, so you shouldn't have used a gun. What keeps people from understanding that the unarmed assailants' power derives from numbers?*

Ayoob: First, if the prosecution agreed (since both sides have to agree), I'd be inclined to go to a bench trial. The old conventional wisdom of the attorneys is true: If it is a question of fact, you want a jury, but if it is a question of law, you want a judge. This becomes a question of law.

The layperson is influenced by watching a lifetime of TV where Bruce Lee lays out 20 people in the Hong Kong alley, or the Lone Ranger is attacked by three people who apparently wait in a row to take him on one at a time, and he knocks them out with one clean, right cross to the jaw.

The judge simply looks at the law, looks at the case law, and in essence says, "Dudes, disparity of force. Two on one is cheating; likely to kill the guy. Three on one is more cheating and brutal and more likely to kill the guy. Not guilty."

eJournal: *Now, if you end up in front of a jury with a disparity of force case, what explanations can be proffered to help those laypersons understand that the Lone Ranger is fiction and has nothing to do with real life?*

Continued on page 3

Continued from page 2

Ayoob: That's one place where the expert witnesses come in. The attorney can't argue anything that is not in evidence. The explanation of that cultural bias can come in through an expert witness. The explanation and demonstration of angles of attack can come in through the expert witness.

Any training the individual has had can come through his instructors as material witnesses. Their testimony establishes his mindset, which the defense is absolutely allowed to explore and establish.

Pay attention to news reports of lone victims assailed by two or three and ask, "What would have been an appropriate defensive response?"

The ultimate question that goes to the jury is, "What would a reasonable and prudent person have done in the exact situation, knowing what the defendant knew?" We are allowed to explore, therefore, what the defendant knew. Why did he do what he did? The instructor's testimony establishes what he was taught to do.

The defendant knew what the layperson did not: he physically would be unable to protect himself or somebody else from this many people at once or this many blows from an enraged mob. Once you are down on the ground where your body can no longer roll with the punch, a kick that might have bruised an organ on a freestanding man now becomes a crushing stomp that ruptures that organ as it is crushed between the heel and the hard ground beneath.

eJournal: *It seems so self-evident when you explain it. What aspects of disparity of force do you think are most often misunderstood?*

Ayoob: A crowd attack. The big phenomenon now being the flash mobs, the question is going to become: "Did you see it coming? Were you able to avoid it?" For example, we are standing here, probably 75 yards from the door of a Starbuck's. Suddenly a bunch of similar-looking late teens flood in and we see them all rushing out with bottles of frappuccino and bags of Starbuck's coffee. [laughing] Yeah, we have reason to believe we may be witnessing one of those Tweet-coordinated flash mob attacks. We are also some 70 yards away. If we go rushing toward them as the lone vigilantes, demanding, "You! Put that back!" we are intruding into the situation and are in essence losing our mantle of innocence.

If, however, the teens come in our direction but we cannot articulate that they are pointing their fingers at us or that we recognize what you and I were taught to recognize as target glance or target stare, we have not been expressly targeted. We are standing next to a rather powerful automobile to which you have the keys. Why don't we simply drive away, walk away or simply step off the line of attack?

Let's say the third person with us has the keys and we've been locked out of the car. We see fingers pointing and hear shouts, "Let's get those expletives-deleted," then we really don't have any place to run. It is clear to any reasonable and prudent person that we have now been targeted by the mob. At that point, I think the guns would probably come out and the verbal command would be made. If the assault continued it would absolutely be deadly force and deadly force in return on our part would be warranted. Even in the so-called retreat states, retreat is never demanded unless it can be accomplished in complete safety to oneself and others.

eJournal: *Are there other complications?*

Ayoob: Historically, a lot of these situations tend to be cross-racial. The single most famous such case on point is ***Michigan vs. Dr. Ossian Sweet***. Essentially, this was a case in the time of de facto segregation in Michigan. A large crowd of white people who resented a black physician moving in to their neighborhood surrounded, threatened and apparently started to storm the Sweet house, throwing rocks through the windows. Fearing death, the Sweet family opened fire from inside, death resulting. The

Continued on page 4

Continued from page 3

first murder trial ended in a hung jury and the second in an acquittal but it literally took Clarence Darrow to win this guy an acquittal.

Today, the phenomenon we're seeing is primarily black teens and many of them apparently targeting white victims. So you get the racial hatred that remains in this country, you get the accusation that you had racial hatred that led you to pull the trigger whatever color you happen to be.

The original flash mob was an exuberant fun thing where a bunch of kids get together and they are singing and dancing together in tandem like a Hollywood musical come to life. And then someone corrupts that with felonies and now the whole flash mob term has been utterly changed and corrupted. You will face the argument that they would not have had in the Ossian Sweet trial: "How did you know that these were not a bunch of teenagers deciding to dance and sing in the streets, and you with your insane racial hatred panicked and opened fire?"

eJournal: *Dr. Sweet's story underscores that this kind of danger has long existed, probably as long as human beings have been gathering in groups. You've given us an interesting perspective from a 1920s case compared to the modern example you used. Still, it seems both can be defended from the same principle–disparity of force.*

Ayoob: It is a very mature concept in law. We've not yet seen a flash mob case per se go to trial. When it does, in essence it is not going to be about flash mobs. It is going to be about a gang attacking a lone victim. It is going to be about being able to show that you were not the one that provoked the gang.

It is apparent that you are going to have to show that you are the innocent victim, that you did not misread the situation and panic, that it was in fact unavoidable and was not something that you sought out.

eJournal: *Some teach that people instinctively recognize when an attack is sufficiently serious to warrant using a deadly force and so the complex issues we've discussed here are better sorted out by the lawyers. Your reaction?*

Ayoob: Remember that the attorney can only argue facts and testimony in evidence. The question is, "What was in your mind? What was your intent? Why did you do what you did?" Only you can answer that. Your attorney can't say, "Just as my client somehow knew he was in danger, I somehow know why he did it, so take my word for it." They would be laughed out of court and there would be a mistrial.

eJournal: *So you are telling me that we must make that judgment call based on training not on fear?*

Ayoob: Based on what you knew. Maybe it was your training; maybe it was what you picked up on your own. There are a whole lot of people who can't afford to travel to the kind of training that your school and mine offer but can learn a great deal through their public library at no charge at all.

eJournal: *Simply being frightened – may I use the term bare fear – is not enough to justify use of the gun?*

Ayoob: Bare fear is the law's term for naked, indefensible panic. It is never a defense. What is required in every case is what the law calls reasonable fear: apprehension of extreme danger that any reasonable, prudent person would have felt in the exact same circumstances. You must be able to articulate that.

eJournal: *Thank you for sharing this information with us. As always after an interview with you, we are better prepared. I, for one, appreciate all the education you've given us armed citizens for all these years.*

President's Message

Marty Hayes

Recently, a Network member asked why we were not offering to come to the defense of members who were arrested for illegal gun possession crimes. He meant crimes like carrying a gun concealed without a permit and possessing a gun in a "gun free zone." I explained that following the law of your local jurisdiction was not that difficult, unless of course, you lived in a jurisdiction which did not allow concealed carry and you insisted on breaking the law by carrying concealed. I went on to add that we are people of free will and we can choose to live where we want to live. If an individual does not accept the regulations of a particular area, he should move. As callous as that sounds, I still feel that way.

To explain why I feel that offering to assist illegal acts of gun possession is VERY BAD, for a moment let's take the opposing view. For the sake of argument, let's imagine that the Network announced that the Second Amendment to the Constitution overrules any local gun ordinance, so we proclaim that we will defend any member charged with violating a gun law, regardless of whether or not an act of self defense was involved. Knowing that millions of Americans live in jurisdictions that severely restrict gun possession, we would recruit members based on the promise to fight for them if they are arrested and prosecuted for a statutory violation. Upon hearing this, thousands of people who live in ultra-restrictive communities, would flock to the Network to get this protection against their big, bad government. If we implemented this policy, we would enable thousands of people to carry guns in violation of the law, because they would believe that by providing legal help if they ran into trouble, the Network could protect them from punishment for committing a gun crime.

I am a student of human nature (career cop, with a degree in psychology). I am very familiar with the term "enabler." For those of you who are not, here is the Merriam-Webster definition of enabler: "One that enables another to achieve an end; especially: one who enables another to persist in self-destructive behavior (as substance abuse) by providing excuses or by making it possible to avoid the consequences of such behavior."

Now, I understand that I'm stretching the definition of "enabler" somewhat, but I think it fits pretty aptly. If we, the Armed Citizens' Legal Defense Network, Inc., publically stated (and promoted while seeking new members) that we would defend you if you chose to violate your local gun laws, wouldn't that fit the definition of enabling? Would people start carrying in violation of their local laws because protections from Network membership would let them avoid the consequences? I believe a lot of people would. In my opinion that is unconscionable. A full exploration of the legal process explains why.

If you are arrested and prosecuted for a gun crime, is the legal battle over at the end of the trial? If acquitted, yes, but if found guilty, no, it is not over, unless you are willing to take the punishment for your illegal act.

Now, let's follow a simple gun law violation to its logical conclusion The first step is your arrest. Outside of illegal carry, you may not have been doing a damn thing wrong. Perhaps your car matches the description of a car recently used in an armed robbery and local police make a felony car stop. You will be ordered out of your car, put prone on the ground, handcuffed and searched. Only after that, will you have the chance to explain to the police that you are not the guy they are looking for.

Had you not been carrying a gun illegally, you would be free to go home to enjoy the rest of your life as a free man without conviction for a gun crime. However, because the police had a legitimate right to make a felony car stop and to legally search you, they arrested and successfully prosecuted you and now you are convicted of a gun law violation. Depending on the jurisdiction and how seriously

Continued on page 6

Continued from page 5

they view illegal gun possession, you could end up as a convicted felon, never able to legally own a gun again.

But what about that legal defense you were promised? Listen to me here. No attorney, no matter how good he or she is, will be able to successfully defend the above set of circumstances.

Can we invoke the Second Amendment? Doesn't it trump a local gun ordinance? Perhaps but that is not the question in your first trial. The question is whether or not you violated a gun law.

If found guilty–and given the above set of facts you surely would be–you would appeal the guilty verdict on Constitutional grounds. Let's say that occurs. If you lose the appeal, you don't necessarily get another try. Your state's Supreme Court could turn it down, effectively saying that they don't want to deal with the issue or they might rule that the lower court properly decided the case.

In order to keep going, you would need to bring the claim to the Federal Courts, which you likely could do on a civil rights violation. At that point, the legal process starts over again. If you take it to the United States Supreme Court (USSC), following several years during which you are a prohibited person and after spending over a million dollars in legal fees, your case may be heard.

Are you going to win that appeal in the USSC? What will the make up of the court be in five to ten years? Will *Heller* or its brother, *McDonald v. City of Chicago*, still be valid law, or will they have been overturned by then? And, even if *Heller* and *McDonald* are valid law, what about the wording of *Heller*, which implies that reasonable restrictions on your Second Amendment rights are allowable? Will your case be the case which sets back Second Amendment rights, forcing the USSC to decide if a local jurisdiction had the right to disallow your carrying a handgun concealed?

I certainly wish the United States Supreme Court decision in *Heller* had gone further in affirming Dick Heller's constitutional right to own a gun in Washington, D.C., but the Justices were not asked to do so because the issue in *Heller* was not carrying a gun illegally, but rather owning and keeping one loaded in the home for self defense.

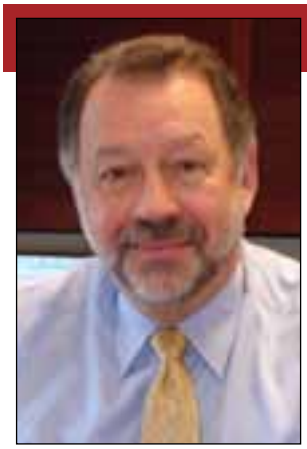
You want to know what achieving that landmark win for armed Americans cost? So do I, but the attorneys have not been paid yet as far as I know. The request for attorney's fees was 3.1 million dollars. That's right, 3.1 million dollars.

In order to prove Dick Heller's constitutional rights were violated because of a local statute that was in violation of the Second Amendment, it legitimately cost millions of dollars. And Dick Heller still cannot legally carry a gun, just own one in his home for self defense.

I know one thing: The Network doesn't have millions of dollars to fight a Second Amendment fight, and if we were to say that we would defend you for breaking a gun law, we would in essence be promising that level of financial assistance. Our only choices are to either be able to fund a multi-million dollar legal effort or be willing to throw you, our member, under the bus when it is time to appeal if we don't have several million dollars available for the case.

The Armed Citizen's Legal Defense Network, Inc. was formed to help lawfully armed citizens who are being prosecuted after a legitimate act of self defense. We hold strong in that mission statement and you can be assured that if the time ever comes where you, our member, needs assistance after an act of legitimate self defense, we will be there to assist you to the best of our abilities.

Vice President's Message



J. Vincent Shuck

Being Prepared

Last month was National Emergency Preparedness Month. A month devoted to this topic shouldn't be too surprising to us since we have just about everything known to man declared as a commemorative month. But, being prepared is a serious topic and I'm offering a few ideas for your consideration.

This is not a column about the best fire starter ever invented, how many extra batteries to have on hand or which signaling mirror to place in your kit. It's not about how to ride out the ultimate apocalypse, although that offers food for thought. Instead, this is about thinking ahead and being ready for a disaster.

History demonstrates the need to be ready for a disaster. Practically every inch of the country offers a chance to experience one or more disaster at any given time. To name a few: hurricane, wildfire, volcanic eruption, tornado, flood, landslide, winter storm, heat wave, earthquake and tsunami. If Mother Nature doesn't offer enough to worry about, add in terrorist attacks, contagious disease outbreaks, and civil unrest as potential qualifiers for a worst-case scenario. Look over the news during the past few months or consider some of the recent international events and you will see that chances are you can be exposed to possible danger. Short of an outbreak of war on the U.S. shores, which is pretty unlikely, I'd say we are vulnerable to just about everything Mother Nature or man has to offer.

Each of us may have exposure to different potential disasters, but we all share the same universal life needs when it comes to survival - water, food and shelter. These are good things to have on hand or available when needed.

Water is at the top of most preparedness lists. Even when we experience a power outage for just a few hours, it can be hard to envision the time when water could be in short supply over a longer period. But, you've probably seen the TV news reports of pre-disaster coverage and how quickly the local bottled water supply is gone.

This is something you can avoid by preparing your emergency supply in advance. To do so, keep a supply handy, either on the shelf or in storage tanks. If you are worried about above-ground storage and how this might attract attention, consider underground tanks. Tanks of various sizes are available, just dig a hole, install and then fill it.

Food can be stored without refrigeration just the same. There are companies out there that sell emergency food supplies in long-term storage containers. Get some.

Depending on the circumstances, one of the initial questions we need to address when a disaster strikes is, evacuate or stay? We are not always in charge of this decision. If it's a flood or a wildfire, just two examples, Mother Nature may dictate. Other catastrophes can offer us some

Continued on page 8

Continued from page 7

choices, but we should be ready for both. Deciding to "hunker-down" can be a good idea as long as the impending disaster is not about to over take you. But remember, you could become the target, literally, of neighbors who smell your dinner cooking over the fire pit or in your solar oven. Hungry people can become aggressive. Think about your need to defend your family from looters and others who may have more wants than just your fresh biscuits.

As you prepare, don't forget that the consequences of a disaster can be felt for months. I know people in Alabama who experienced the rash of tornadoes this summer and were well prepared to support themselves, for the first three days. Then, they exhausted their generator fuel and had to endure a five-hour round trip to find fuel. Fortunately the roads were passable and all was well, but it took them almost two weeks to regain utility service.

You can find many good resources and websites to help with your checklist and emergency preparation plans. ***FEMA*** and the ***Red Cross*** are good places to start. Keep looking and searching until you believe you have the background to address a major disaster near your home.

But enough on the justification of getting prepared; either you are moved to prepare for a disaster or you're not. If you believe you should prepare, here are a few ideas to consider:

- Water – at least one gallon per person per day for at least seven days
- Food – non-perishable packaged or canned with the ability to prepare meals without utilities
- Family plan – if separated, a possible situation if you have teenagers or family members who work in different locations, have at least one local and an out-of-state contact to reach to accept situational reports
- First Aid Kit – cuts and scratch repair material plus the more serious injury treatment products, like IBDs
- Prescription medications and extra glasses
- Toiletries and moisture wipes
- Clothing – at least one change, rain gear and sturdy shoes
- Flashlights and extra batteries
- Radio – battery and hand crank operated
- Cash – ATM machines and credit card processing terminals at stores could be down for days, even weeks
- Important documents – at least copies of insurance, medical, bank and family records in a water proof container
- Pet care items – our pets are part of the family, don't forget to prepare for their care and recognize they may not be allowed in community shelters
- Maps – if your primary evacuation route is impassable, you may need to find alternatives

We can handle the emergencies that come our way, if we are prepared. I'm always evaluating my stash and backup plans and adding items as I recognize the need. I encourage you to do the same.

Begin somewhere – prepare for three days, then add to your supplies in order to deal with longer emergencies. Collect the needed stuff in stealth mode; there's no need to advertise your preparation efforts with your neighbors or with everyone at the local bar.

We are survivors by nature, but it may take a little preparation and thoughtfulness to accomplish this over a long term. Don't be caught short.

The Right Attorney for the Job

Attorney James Fleming

*Editor's Note: In August, I enjoyed the opportunity to spend time with Network Advisory Board Member James Fleming (see his bio **here**). One evening over dinner, I asked him about a persistent inquiry I receive from Network members and potential members alike: if some Network Affiliated Attorneys don't boast of a long history of winning self-defense litigation, why does the Network list them as resources for Network members?*

Knowing Jim could give a good explanation of the various roles attorneys play at different stages in the time line that follows self-defense actions – from police questioning up through trial – I asked him for a reality check on the commonly expressed wish among armed citizens to find an experienced attorney who would represent them from beginning to end.

His answer was so comprehensive and educational that I asked him to write it down and we share it here with our readers.

You have raised some good questions, Gila. Let me see if I can answer them.

First let's deal with the popular misconception that attorneys, in order to be "good" must have been featured on television news programs and they must have handled "high profile" cases. This is interesting, because people seldom demand the same level of notoriety from their physicians, dentists, CPAs or other professionals. But the simple truth is that out of the thousands of well-qualified, experienced and talented attorneys practicing in the United States at any given time, only a small percentage of them are going to end up handling a case during their careers that will generate the type of media attention that people often mistakenly attempt to equate with "competence."

Of course, there are attorneys who will seek the camera or the printed page, in an attempt to play to the misconception. That does not mean that they are more skilled, experienced or talented than other attorneys, it simply means that they have learned how to stay in the public eye. Many skilled, smart and courageous attorneys toil quietly, and effectively, studiously avoiding the camera lens or the reporter's microphone.

The same is true of the infamous "won-lost record." Attorneys are often asked to recite this number, as though it was a baseball player's batting statistics. Any good trial attorney knows that such a statistic is meaningless. All of us have won cases we should have lost, lost cases we should have won, and very few serious trial attorneys keep track of such empty statistics. It is about as useful as asking an attorney who has been in practice for over twenty years what his class rank was in law school. Even if he/she remembers, it simply has no relevance in determining the skills, talents and abilities that attorney has acquired over the intervening years of their practice.

During the course of my career as a law enforcement officer and later as an attorney with over twenty-seven years of practice in the State and Federal courts, it has become my opinion that if an attorney can quote you his/her won-lost

Continued on page 10

Continued from page 9

record, and also their law school class rank, you probably might want to think twice about employing that attorney in the first place. But hey, that's just me.

The attorney's reputation in the legal community, the community at large and your own perception of that attorney after meeting the attorney face to face, are much more useful in helping you decide if this is a professional that you can work with easily and put your complete trust in when it matters most.

Fleming delivers a spirited classroom presentation.

At the same time, the members must understand that the defense of a self-defense case requires a sub-set of special skills and knowledge unique in the practice of criminal defense. The criminal defense attorney working in this area of practice has been specially trained to understand the impact of psychology, physiology, ballistics, forensics and many other scientific fields on the self-defense case. He/she is knowledgeable of firearms, ammunition, and other weapons, as well as the laws that govern their possession and use. This attorney is experienced in working with the experts who will investigate the facts of the case, the artifacts, physical evidence, statements, and scientific test results, and who will ultimately present a theory of defense to the attorney, who will then assume responsibility for the presentation of that case to the finder of fact (typically a jury).

So, the attorney that members have identified as their "first responder," the one who comes in response to their initial request for representation in the immediate aftermath of a self-defense encounter, may or may not be the attorney who ultimately takes their case to trial. That first responder may have the knowledge, experience and skills necessary to take the case through to trial. Or, alternatively, that attorney might feel more comfortable handing the case off to an attorney much more well versed in the special procedures and disciplines required by the self-defense case.

As an illustration, consider a case occurring in the mid-1970s in Texas. A doctor, summoned by his son late at night to an upstairs window, observed an individual removing something from under the hood of his car. Seeking only to frighten the thief away, the doctor fired a round from a .22 rifle at the ground near the thief's feet. For whatever reason, the round instead struck the young thief in the head, killing him instantly. The doctor was charged initially with a criminal homicide. However, his defense attorney invoked a law found in the Texas statutes that protected a homeowner from criminal liability in such cases. The criminal charge was dismissed. However, the family of the deceased also brought a civil action, seeking damages for the negligent actions of the doctor that caused the death of their young relative.

Continued on page 11

Continued from page 10

The original criminal defense attorney declined to handle the case since he was primarily a criminal defense attorney, not a civil trial attorney. Another attorney, an experienced civil litigator, handled that case and at the same time tendered notice of the civil claim to the doctor's homeowner's insurance carrier. The insurance company brought in their own lawyers to work on the defense of the case and at the same time brought a declaratory judgment action, seeking to have the court declare that the insurer had no duty to insure the doctor against claims arising from such an intentional act.

It would be common in such circumstances for seven or eight different attorneys to have been involved in representing the doctor before the matter was concluded. And each team would have a distinctly different agenda.

If your first responder does hand off the case, it may well be that they hand it off to an attorney who [at the Network's behest] comes in from out of state, using a procedure known as *pro hac vice.*

Pro hac vice is a Latin phrase, used in the law to describe a procedure where an attorney not licensed to practice in a particular state, petitions to be admitted to practice under the supervision of an attorney who is licensed in the state. The attorney is admitted for the limited purpose of providing representation for a client in a single case, operating under the supervision of the attorney who agrees to be responsible for the out of state attorney's actions and conduct. So, it would be very common for the "first responder" attorney to call upon the expertise of an experienced self-defense attorney from another jurisdiction to either assume primary control of the case, or to work hand in hand with the local attorney to represent the client.

I hope this discussion sheds some light on these questions for the members. The best advice I can offer is to find an attorney with a solid reputation for skill, knowledge, diligence and honesty and spend time discussing the situation with them to gain an understanding of what you can expect from them, and what they will be expected to do for you.

Closing editorial note: *First, a big thank you to Attorney James Fleming for his insights into various aspects of legal representation. Interestingly, Jim started with the Network as an affiliated attorney for our Minnesota members. Later, he agreed to serve on our advisory board, and has now become pivotal to development of a Continuing Legal Education program (slated to launch in 2012) through which we will provide training for attorneys in the subject matter he identified earlier as important to the lawyer who will defend use of deadly force cases.*

Now, a brief explanation for members regarding the affiliated attorney lists: The Network develops affiliations with attorneys as a way to help Network members find gun-friendly lawyers with whom they can comfortably consult. The choice of the attorney is ultimately the member's decision, and no member is ever "assigned" an attorney, as many members ask, nor is using the services of an affiliated attorney a requirement for receiving the deposit against attorney fees after a self-defense incident. The affiliated attorney list is merely offered as a starting place to help our members who are having trouble locating a gun-friendly attorney. It is up to the individual member to be sure they are comfortable with the attorney that they choose.

The role of the affiliated attorney is to attend to the member's needs during the days and weeks immediately following a self-defense shooting, including being present during questioning, arranging an independent investigation of the incident and keeping the Network informed of the member's needs. As described above, if the case goes to trial, the Network can work with the member to assemble a defense team to achieve the best outcome.

Affiliated Attorney Question of the Month

Thanks to the generous help of our Network Affiliated Attorneys, in this column we introduce our members to our affiliated attorneys while demystifying aspects of the legal system for our readers.

A Network affiliated attorney posed the following question about managing publicity after a self-defense shooting, seeking responses from the other affiliates. It was an interesting line of inquiry, so we share it here:

How would you respond to requests for interviews with the shooter or with you as their attorney? How do you manage questions from reporters during a trial?

What do you do if newspaper or TV reports are inaccurate or slant their coverage against your client? Have you any particular concerns about commentary posted on the Internet by bloggers?

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I have been asked to share my thoughts regarding whether or not an attorney should present his/her client for a media statement in cases where deadly force was used when self-defense is an apparent defense.

I have practiced law for over thirty-one years. I began my career as a State and Federal prosecutor. I have handled many, many homicides for the prosecution and the defense.

My strong opinion is that, in general, it would border on malpractice to present a client to the media for a statement during the early stages of the case.

To do so could have many possible downsides. First of all, it could upset the deceased's family and make the client a target for revenge. The comments could be taken out of context and twisted by the media and the client could be vilified in his own community. A public statement will also lock the client into a permanent position that could be used against him at trial. One of the most difficult things for a prosecutor to do is cross-examine a criminal defendant cold at trial. Allowing a client to make a public statement makes the prosecutor's job easier in cases of this nature.

Inflammatory statements could create more pressure on the prosecutor to file a case that might otherwise have been left alone as a justifiable homicide.

Last year, I was fortunate enough to negotiate two dismissals in two different states for clients that were under investigation for homicide resulting from the use of a firearm in self-defense situations. There was great media interest in each case and television reporters were knocking on our clients' doors. In one case, there was an attorney with an agenda for the deceased's family trying to get prosecutors to file a case, as well as to get the deceased's family to file a civil case against the client.

We took the high road and made no public comment and the appropriate ruling was made in each case that a justifiable homicide had occurred.

I have seen media hungry attorneys take the opposite tack and create a lot of hostility in the civilian community, law enforcement community and prosecutor's office against their clients.

On the wrong occasion, this type of approach could result in charges being filed that might otherwise not have been. Also, if a prosecutor is considering lesser charges, such as manslaughter, the wrong comment might give

Continued on page 13

Continued from page 12

them reasons to upgrade the charges to a more serious murder charge. The prosecution may also use these statements as justification for a change of venue, which could take the client into a more unfriendly county for trial.

As a general rule, I respectfully submit that it is almost always in the client's best interest to refrain from making a public statement for media consumption.

If I find that a newspaper or television station is inaccurate or is slanting its coverage against my client, I will release a press release to all available media outlets, setting the record straight.

I have a good working relationship with anchors on all of the stations in my community, as well as local newspaper writers. They are sensitive to reporting accurate and truthful facts and would gladly correct a mistake that has been made.

Regarding media commentary during a trial, the following has served me well:

I do not take questions from reporters during a trial, as I believe it borders on unethical practice.

A good way to get a judge upset with you is to make a comment that could inflame the jury panel during a trial.

I am frankly too busy worrying about proving the facts important to my client than to discuss the matter with reporters. All I would state to a reporter from any medium is "no comment" during a trial.

Quite often lately with younger clients, I am made aware of Internet postings regarding a particular client or case. I frankly do not read internet blogs, but some of my clients do.

If inaccurate information is being spread throughout the blogging networks, I believe a responsibly written press release, released through the mainstream media, can take care of the general public's wrongful perceptions about a particular case.

However, some bloggers have an agenda that would be against your client under any circumstances and, frankly, they need to be ignored, as there is nothing you can do to change their minds anyway. It is more prudent to spend your valuable and limited resources and time in preparing a defense for your client and not getting distracted by those individuals with wrongful agendas against your client or your case.

These positions in opposition to your client do need to be taken into account when you select the jury during the voir dire process.

I will ask prospective jurors whether or not they have reviewed any pre-trial media coverage of the case, including the Internet, and discuss what the nature of their pre-trial knowledge of the case is. I will also ask them if, based on what they have reviewed in the public domain, they have expressed or formed an opinion about my client's guilt or innocence. That needs to be developed very thoroughly in the jury selection process and all jurors with preconceived notions against your client need to be weeded out and eliminated from the jury panel with challenges for cause to the trial court.

Networking


Brady Wright

As the guy responsible for Special Projects here at the Armed Citizens' Legal Defense Network, Inc. I get to do all kinds of things that put me in direct contact with our affiliated gun stores, ranges and instructors. Most of that involves making sure that they are well supplied with our print materials and booklets, so they can, in turn, provide that information to shooters and those who go forth armed in their daily lives.

I also get to talk with many of those folks and they tell me what they are doing in their businesses and the challenges they face, the people they meet and talk with, and the new products they find. It just made sense to harness all that into an informational column so everyone has access to that information.

So, here are the things that you folks have been talking about for the last couple of weeks—

We got a very interesting email from a news podcaster named Alex Haddox. He does a regular podcast on the web that deals with all things firearms. His show is called *Practical Defense,* and it's a practical approach to staying safe in our increasingly dangerous urban environments. Learn simple strategies and everyday habits from Alex Haddox that will help protect you and your loved ones from harm. Hear interviews with experts on the criminal mind and listen to stories directly from real victims. When you understand what a criminal looks for in a target, you can avoid taking on those characteristics and thus escape selection. Alex's show is to be found at this link ***http://www.alexhaddox.com/podcast***, and I'm happy to say that we are co-promoting each other, so listen in and give Alex some feedback. The show is very well produced, and he has good things to share.

Gabriele Santi runs a well-stocked outfit called the 2nd Amendment Gun Shop, in Santa Ynez, California. I learned that there, as in so many other parts of the country, the demand for hand guns to be used for self-defense is on the rise. Gabriele told us that it will be helpful to offer our booklet to people to make them aware of the serious responsibilities that come with gun ownership. Gabe, we're happy to help out! You can find 2nd Amendment Gun Shop at 3568 Sagunto St, Suite E, in Santa Ynez, or on the web at ***www.2ndAmendmentGunShop.com***

One of our biggest supporters is Steve Eichelberger, who travels around the West on business. Steve wrote: "I'm headed to Central Oregon to present a class with my friends from R.E.A.C.T. Training Systems. I'm taking a handful of the *What Every Gun Owner Needs to Know…* booklet to distribute at the class, and a few extra for R.E.A.C.T. These are guys who should be on the Affiliated Instructor list, and I'll be encouraging them to get in touch with you." Thanks, Steve. Keep the faith out there.

Sometimes you run into old friends, too. Gale Burton is an instructor in the Seattle area who has taught shooting, defensive tactics and concealed carry classes for more than 20 years. I knew Gale when she first started teaching (for Marty Hayes) and I even got to pose for some tactical pictures in one of her books (when I had more hair). Gale is an Affiliated Instructor in the Network, and it was great to reconnect. Gale wrote, "My name is Gale and I have been teaching since 1990. I started teaching originally with Marty and he went South and I stayed North. I am fine for now with both the booklets and the brochures. I will email you when I need more." Gale can be found through her company, BFI World, all over the North King and South Snohomish County area of Washington State or on the web at ***http://myplace.frontier.com/~bfiworld1/index.htm***

Finally, I want to say thanks to the fine folks at ***CCW Breakaways*** and ***Blade-Tech***. Those companies have been including a Network booklet with each of their orders for the last few months, and it speaks very well for them that they are concerned with getting the information out to their clients. I urge you to give them your business, too, since we are all in this together. Both firms make terrific, high-quality products that will serve you well.

That's all for this issue. If you have info to share, or just want to plug your business or classes, email me at ***brady@armedcitizensnetwork.org***. 'Til next time–think first; stay safe!

Book Review

Facing Violence: Preparing for the Unexpected

YMAA Publication Center, Inc.
P O Box 480, Wolfeboro, NH 03894
www.ymaa.com
ISBN 978-1-59439-213-9– 223 pages; $18.95

Reviewed by Gila Hayes

Facing Violence: Preparing for the Unexpected author Rory Miller defines seven concerns he believes bear on acting in self defense. These include the dynamics of violence or how attacks happen, avoidance, counter-ambush, breaking out of shock and surprise, the application of self-defense skills in a fight, and the legal, psychological and medical aftermath. In this book, Miller's second, he explains how one aspect affects the other, believing it "artificial to separate these seven aspects" when training.

Many have written on the mental aspect of self defense, but few come to the topic with the background and credentials that career corrections officer, tactical team instructor and leader Rory Miller brings. "This is a guidebook into something that is a very strange country for most people," he writes, adding, "I am going to introduce you to how the rules change once you step through the looking glass," using Lewis Carroll's book to illustrate the difference between daily routine and a fight for your life.

We often run across books that promise to explain violent crime that turn out to be recitations of human degradation, with little in the way of solutions. Miller shows how our ethics and values color how we fight, as well as how defensive tactics used will influence the legal aftermath. This begins with a thought-provoking section on the legal and ethical considerations involved in using force.

The author brings a different perspective to legal considerations, and I appreciated the review of familiar principles as seen through another mind, stated in new terms, and illustrated by fresh examples. In addressing ethical considerations, Miller points out that while most people believe killing is wrong, there are outcomes that are worse. That blurs the lines between right and wrong for many and may cause fatal hesitation when the fight is on.

Resolve such questions now! "In self defense, clarity adds speed," he notes. The issue also encompasses determining your "capacity" or what you are willing to do in a fight for your life. Address deeply engrained social taboos that create "glitches" or hesitation. "In a sudden attack, you will have little or no time to work out your glitches, your ethical issues, your capacities. Whatever time it takes will cost you in damage. That is why it is imperative to work out all you can well in advance of any attack," Miller advises.

Miller's definition of the various types of conflict is extremely good. He outlines identifying characteristics of violence stemming various motivations, including wrangling for social status, as well as the asocial violence of a predator. Having further categorized predators into subsets, Miller explains, "Different assault dynamics require different ways to evade them." Deescalating different types of threats requires different tactics. Most people only have experience with social conflict, he explains, adding that trying to apply tactics for social conflict to physical violence only fuels a predator's interest.

When an assailant overrides societal taboos against harming another person, he uses something Miller calls "othering," depersonalizing the victim. Alternatively, the victim may be drawn into a confrontation that makes it appear he started it as another way the instigator can rationalize his violence. The author warns against "hooks" by which experienced predators engage their prey in these initial cat-and-mouse steps. Know and focus on your goal in the confrontation, keep a clear mind, do not become angry or respond in-kind, Miller writes. If the goal is to get away unharmed, give the assailant all the face-saving outs he needs, the author advises later in the book. He shares a variety of verbal side steps to derail a predator's game.

Facing Violence includes a great section on avoidance, including instruction on honing instinctive reactions. "Force decisions are made in very little time and often, with very little information," Miller writes, going on to note how much information comes through subconscious or instinctive reaction. "Intuition comes from the things you saw, heard, felt, and smelled that processed too fast for your conscious mind," he explains. He teaches rookie officers to examine hunches, as a way to sharpen not only perception but also to clarify the decisions made from instinctive information. "The ability to clearly explain decisions that were subconscious at the time will profoundly affect the legal consequences," he predicts.

Miller unabashedly endorses running away from danger, explaining the emotional impediments, the physical realities, plus offering suggestions for advance planning and in-the-moment strategies for escape. Avoidance or escape isn't always easy. "It may seem like too much to make quick decisions, and quick decisions are vital in self defense. It is partially a matter of practice and largely a matter

Continued on page 16

Continued from page 15

of taking things that you already knew at a deep level and bringing them to your conscious awareness," he encourages. De-escalation ideas follow.

Offering tactics for "failing" the interviews used during victim selection, Miller outlines verbal and physical tactics predators use to evaluate victims, as well as describing some of his choice rebuffs and their attendant risks. Woven throughout is discussion of physical readiness, fast perception and reaction to physical attack, as well as simple physical strategies to discourage attack. "The goal of deescalating the predator is to make it too much work for him to bother," Miller writes. "To some extent, many victims cooperate with their attackers by playing the social role the predator desires."

About half way through the book, Miller switches focus to physical technique, noting that counter-measures must be fast, simple and reflexive. Readers should study this material with an eye to identifying the most practical defensive methods. Study Miller's theory on USAF Col. John Boyd's Observe-Orient-Decide-Act sequence in which Miller describes jumping immediately from observation into action. See also his description of "batching" stimulus responses. The key is eliminating processing time to think about what is happening and what to do. "In the first quarter-second, a fast committed single-move offense is better protection than trying to divide your mental and physical resources between offense and defense," he advises.

A well-practiced reflexive response also helps cure the freeze that happens when a surprise attack is launched. In the same way, a fast, unexpected counter attack may derail the assailant as he tries to figure out why his time-proven strategy failed. Use the unexpected, surprise, shock, distractions and chaos to untrack the assailant's mind – the fight happens on more levels than the physical, the author reiterates later. This is a topic on which Miller has much to teach and I cannot do it justice in a short review.

Miller has distilled realities present in a fight and these echo through nearly every chapter in the book. One such topic is the freeze response to the unexpected, which he considers all but inevitable. Training that led to a belief that the fight would be different than what is underway can cause a freeze. The cognitive dissonance, he writes, demands explanation and the brain gets hung up trying to figure out the dissimilarity. "Under attack, you will not have either the mind or the body that you have trained. You will have an impaired, partially deaf and blind clumsy beginner who isn't that bright." Later he adds, "Your input process, your senses, change as well. Think about that hard, because if you don't get the information you have trained for you can't make the decisions you have trained for."

A change or unexpected result can get you stuck in a loop, repeating defenses that aren't working. Other distractions include irrelevant, intrusive thoughts, sometimes described as, "my life flashed before my eyes." This, Miller suggests, may actually be a scan of prior experiences in a desperate search for life-saving solutions.

The first step to breaking the freeze is recognition, then initiating action and remaining in motion. Even talking oneself through the steps much as a coach would a trainee may keep you acting, he suggests later. A life habit of not over-analyzing or avoiding unpleasant tasks supports getting into action, he recommends.

However, Miller predicts that after you've broken out of the freeze, "as you make things work, your skills will resurface." Few things work perfectly 100% of the time, though, so practice from positions of disadvantage. Bear in mind, he adds, that when ambushed, there is no time to stretch or warm up or get into your workout clothes.

At the book's end, Miller writes a chapter on aftermath that ties together the legal, physical, mental and social aspects already discussed in *Facing Violence*. His discussion of self image after violence may be his best work yet. A trip "through the looking glass" can irrevocably shatter your self image, he warns, either through believing you have lost the fight, or seeing the physical damage required to prevail.

I found that I needed a bit of determination to get through *Facing Violence.* In tying the seven critical aspects together, Miller's chapters sometimes seem to jump around and sometimes I thought I'd read the information before when the page was actually discussing the next aspect of the topic and how it ties together. The knowledge and advice, however, make working through *Facing Violence* well worth the effort. Get it. Read it. Learn from it.

Editor's Notebook


Gila Hayes

If you own a gun and especially if you carry a gun in public for self defense, you need to know the laws that govern gun possession, carrying a gun in public, and using a gun for self defense. Sounds pretty straight forward on the face of it, but you'd be surprised how many people say they're confused about what is legal or what is unlawful in their own home area, let alone if they travel to other localities.

We all know that ignorance is not a valid excuse for breaking a law. Why, then, do gun owners worry that they may not be in compliance with gun laws but fail to do the work to ascertain what exactly the law requires?

I was stung a few weeks ago when a retired New York City lawman with whom I was speaking voiced the prejudice among working police officers that armed citizens are poorly informed about the laws and the use of the gun in self defense. I had a hard time relating, having worked for many years training private citizens at my other job. This regular association with armed citizens whose yearly time commitment to shooting and tactical training of hundreds of hours far exceeds the limited range and qualification time most police officers receive. Recognizing that it's hard to see beyond one's own little world, after that discussion I wondered just how many armed citizens have purchased a gun and carry it occasionally, with no more training than their state's concealed carry licensing course. Perhaps the truth lies somewhere between my experience and the retired officer's concern!

Which brings us back to knowing the law. While Federal laws impact some day-to-day defense concerns (restrictions on certain firearms, for example), the state laws usually have more effect on armed citizens. Fortunately, you can locate the laws with a Google search using the state's name plus the words "gun laws" or to be more specific "gun possession," "concealed weapon," or if you also carry a knife, "knife law," "blade length law;" you get the idea. Usually the state in question has its own website and you can read the laws exactly as they are written. Several websites bring state-by-state information together in one place, including ***http://www.nraila.org/gunlaws/*** and ***www.handgunlaw.us*** and you can use them either for summaries of the law or to locate the specific law citations for your own research into the laws where you are, as well as areas into which you will travel.

Don't like to use the Internet? Buy a book! A few months ago, we reviewed attorney Mitch Vilos' big gun law book, *Self-Defense Laws of all 50 States*. Attorney Vilos' book makes acquiring knowledge about state gun laws easier then it ever has been. See ***http://www.firearms-law.com/index.html*** or if you're a Network member, buy it at a discount at the Network's ***online store***. In addition, Bloomfield Press publishes a number of plain-language gun law books applicable to different states. See ***http://www.gunlaws.com/books2.htm***. They also carry David Wong's *The Traveler's Knife and Gun Law Book*, which we've reviewed in this journal some months ago.

We live in the Age of Information. You CAN find and figure out the gun laws. It just takes a commitment to do the right thing. You may learn that something you like or something you want to do is disallowed – like carrying your handgun onto school grounds or in a bar. Please do not mistake wishful thinking with changing or invalidating restrictive laws! As the saying goes, if you can't do the time or pay the fine, don't do the crime. If you can't live with the law, either get to work to change the law or change your behavior to conform to the law.

Armed Citizens' Legal Defense Network, Inc.

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The **Armed Citizens' Legal Defense Network, Inc.** receives its direction from these corporate officers:
Marty Hayes, President
J. Vincent Shuck, Vice President
Gila Hayes, Operations Manager

We welcome your questions and comments about the Network. Please write to us at info@armedcitizensnetwork.org.

Armed Citizens' Legal Defense Network, Inc.

How to join

Print this application form and FAX it to 1-360-978-6102 (if you are using a VISA/MC), or mail it to P.O. Box 400, Onalaska, WA, 98570 with your check for the membership option(s) on the application below. If you have any questions, please call 360-978-5200.

When your application is accepted, you will receive three DVDs concerning the lawful use of deadly force for self defense (Multi-year memberships receive additional DVDs, plus receive new DVDs as soon as they are produced). With membership purchase, you will become immediately eligible to have any future case of self-defense reviewed by one of our Network experts at no charge, and the deposit against paid to your attorney and grants of financial assistance for any litigated self-defense cases initiated after membership application (please read http://www.armedcitizensnetwork.org). You will also receive a membership card, and a user name and password for the member's Internet forum and other areas of the Network web site restricted to members only, as well as your coupon code for the 20% discount at the Network's on-line book and DVD store.

We look forward to your participation in the Network as part of a family of armed citizens who passionately care about the right to armed self defense, and want to protect themselves from the legal nightmare that sometimes accompanies a lawful act of self defense.

APPLICATION FOR INDIVIDUAL MEMBERSHIP

Full Name _____

Mailing Address _____

City _____

State _____ Zip _____

Phone _____-_____-_____

E-mail _____

How did you hear about the Network? _____

_____

APPLICANT'S STATEMENT:

With my signature, I hereby attest that under the laws of the United States of America, I am not legally prohibited from possessing firearms, that I am 18 years of age or older, and that I legally reside in the United States. I understand that any grant of benefits is limited to lawful acts of self defense with no additional criminal charges (unlawful possession of concealed handgun, for example) associated with the incident.

_____
Applicant's Signature

_____
Please Print Name

_____
(1) Additional Household Member Applicant's Signature

_____
Please Print Name

_____
(2) Additional Household Member Applicant's Signature

_____
Please Print Name

- - - - MEMBERSHIP FEES - - - -

❑ $85.00 Individual Membership
❑ $225.00 3-Year Individual Membership
❑ $650.00 10-Year Individual Membership
❑ $50 Each Additional Household Resident per year

Name(s) _____

_____

❑ Charge my card ❑ Check enclosed

CREDIT CARD CHARGE AUTHORIZATION

I, _____ hereby
(Clearly print name as it appears on credit card)
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on my VISA or MasterCard (circle one)

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Account Number

Expiration Date _____/_____

CVV Code _____ 3 digits on back of card

Full billing address for credit card account:

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(Street Address or Box Number)

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(City)

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(State and Zip Code)

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(Signature authorizing charge)

Please mail to the Armed Citizens' Legal Defense Network, Inc., P O Box 400, Onalaska, WA 98570 or fax to 360-978-6102.

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