



# eJournal

of the Armed Citizens' Legal Defense Network, LLC

The Sixth Issue in our Inaugural Year — July, 2008

## We Knew It All Along, Justice Scalia

by Marty Hayes, J.D.

***“There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.”***

Those are not my words, although they certainly could have been. They are the words of Justice Antonin Scalia, writing for the majority in the recent Heller decision, issued June 26<sup>th</sup>, 2008. It is not the norm that the lead story for the ACLDN **eJournal** should be an opinion piece, but given this decision’s implications to the mission of the Network, it seems appropriate. And, given the fact that I recently finished a rigorous legal writing and analysis class where we had to read between the lines in interpreting decisions such as this, I thought the readers might enjoy hearing the spin of a recent law school grad.

For my commentary on this decision, I want to quote some text from the majority opinion (shown here in italics), and then give some commentary, much as one would do in a legal brief, although this will certainly not be as formal.

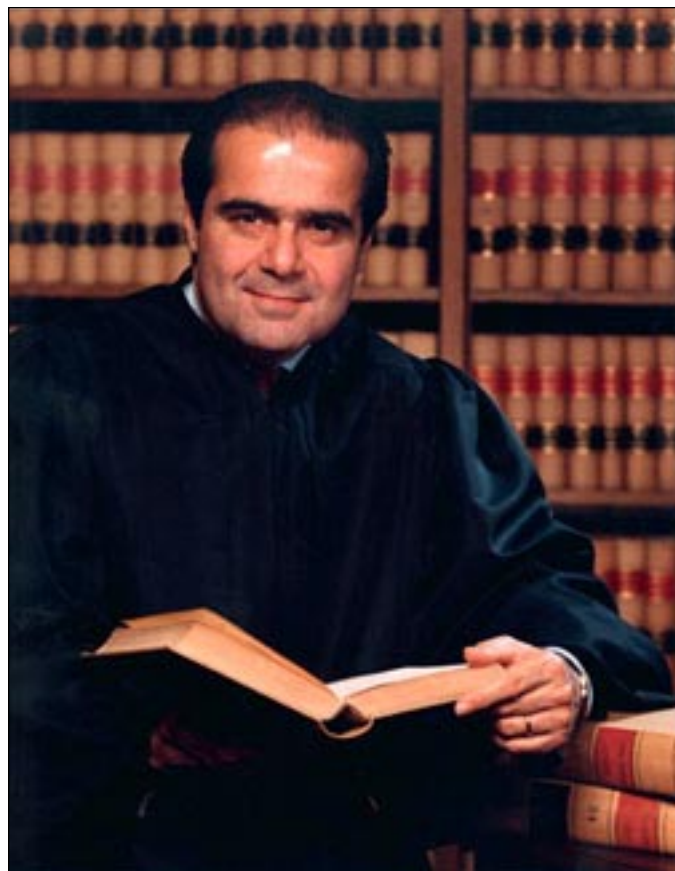
First, the opinion seems like a validation of what we in the gun rights fight have asked for decades: how can the phrase “the people” refer to an individual right in several of the other amendments to the United States Constitution, but not to the Second Amendment? Obviously, it can’t.

I am buoyed by the clear and concise language Justice Scalia used in his opinion, to make sure this issue is settled once and for all. Of course, nothing in constitutional law is ever settled with 100% finality, but despite the 5-4 split of the court, I believe the holding should stand at least for the lifetimes of all reading this today.

In his remarks, Justice Scalia said:

*Of course the right was not unlimited, just as the First Amendment’s right of free speech was not, see, e.g., United States v. Williams, 553 U. S. \_\_\_ (2008). Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as*

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Supreme Court Justice Antonin Scalia

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we do not read the First Amendment to protect the right of citizens to speak for any purpose.

Okay, here Scalia is walking that fine line, allowing for reasonable restrictions on the right to keep and bear arms. He understands that in our society, there are times where it might be reasonable to put some restrictions on this constitutional right. In fact, later in the opinion, he writes:

*Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. See, e.g., Sheldon, in 5 Blume 346; Rawle 123; Pomeroy 152–153; Abbott 333. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. See, e.g., State v. Chandler, 5 La. Ann., at 489–490; Nunn v. State, 1 Ga., at 251; see generally 2 Kent \*340, n. 2; The American Students' Blackstone 84, n.11 (G. Chase ed. 1884). Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on long standing prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.*

### **Historical Viewpoint**

The above citations to different court cases and treatises are from the 1800's, which Scalia apparently included to be true to his originalist roots. An originalist, in his mind, is one who interprets the Constitution as he believes its framers intended. He is strongly opposed to the concept of the United States Constitution being a "living document."

Scalia then went on to say:



**Could the Supreme Court's decision prove instrumental in protecting the rights of .50 caliber rifle enthusiasts?**

*We also recognize another important limitation on the right to keep and carry arms. Miller said, as we have explained, that the sorts of weapons protected were those "in common use at the time." 307 U. S., at 179. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of "dangerous and unusual weapons." (citations omitted by author)...It may be objected that if weapons that are most useful in military service—M-16 rifles and the like—may be banned, then the Second Amendment right is completely detached from the prefatory clause. But as we have said, the conception of the militia at the time of the Second Amendment's ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty. It may well be true today that a militia, to be as effective as militias in the 18th century, would require sophisticated arms that are highly unusual in society at large. Indeed, it may be true that no amount of small arms could be useful against modern-day bombers and tanks. But the fact that modern developments have limited the degree of fit between the prefatory clause and the protected right cannot change our interpretation of the right.*

### **An Individual's Right**

I like what I am reading here. Justice Scalia seems to be saying that he believes (as does the majority of the court), that the framers of the Constitution meant that an individual citizen of the United States possesses the right to keep and bear the type of arms in common use at the time, regardless of whether or not they might be effective against superior weapons. For example, while an M-4 rifle might not be effective against a nuclear bomb, because

the M-4 is the type of rifle commonly used by the military at this time, its possession by U.S. citizens should be allowed. Do you see the rationale of this conclusion?

Additional language from the opinion further bolsters our optimism.

*"We turn finally to the law at issue here. As we have said,*

*Continued next page*



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the law totally bans handgun possession in the home. It also requires that any lawful firearm in the home be disassembled or bound by a trigger lock at all times, rendering it inoperable. As the quotations earlier in this opinion demonstrate, the inherent right of self-defense has been central to the Second Amendment right.

That's right, Justice Scalia, the Second Amendment ain't about duck hunting. Is it no wonder that unsuccessful politicians like Gore and Kerry donned hunting clothing and shotguns in order to pose as hunters, because they believed the majority of gun owners were hunters? Thank you, Justice Scalia, for pointing this out. This has got to be driving the anti-gunners nutso. I also like what he says next:

*The handgun ban amounts to a prohibition of an entire class of "arms" that is overwhelmingly chosen by American society for that lawful purpose. The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute. Under any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home "the most preferred firearm in the nation to 'keep' and use for protection of one's home and family," would fail constitutional muster. Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban. And some of those few have been struck down. In Nunn v. State, the Georgia Supreme Court struck down a prohibition on carrying pistols openly (even though it upheld a prohibition on carrying concealed weapons). See 1 Ga., at 251. In Andrews v. State, the Tennessee Supreme Court likewise held that a statute that forbade openly carrying a pistol "publicly or privately, without regard to time or place, or circumstances," 50 Tenn., at 187, violated the state constitutional provision (which the court equated with the Second Amendment). That was so even though the statute*



*The United States Supreme Court produced a 5-4 vote in favor of individual gun rights in the Heller case.*

*did not restrict the carrying of long guns. Ibid. See also State v. Reid, 1 Ala. 612, 616-617 (1840) ("A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to render them wholly useless for the purpose of defense, would be clearly unconstitutional").*

### **Weighing the Decision's Influence**


So, what's next? I believe a reasonable argument that one's right to protect the family outside the home with a lawfully carried handgun should also be sacrosanct, and prohibiting such "bearing" of arms would also fail "constitutional muster."

But, in addition to reading and interpreting Justice Scalia's words, I think the opinion seems to state that the court believes a ban on carrying concealed weapons is valid, but a ban on carrying unconcealed weapons would be considered unconstitutional. When an opinion cites a lower court ruling like it did here, it basically says it believes that the cited opinion is correct, and they are using the wisdom of the lower court to make a case for what they are ruling in the present. When he cited *Nunn v. State* and *Andrews v. State*, Scalia was in essence saying the court agrees with the finding in these prior decisions. I can see the "open carry" movement in the U.S. gaining

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a huge boost from this ruling. Does it mean though, that a Washington D.C citizen can carry a weapon openly in D.C.? I am not willing to go that far, but I am willing to ask the question. The opinion then further clarifies and states the concept that the D.C. handgun ban, and all bans such as that (Chicago comes immediately to mind) are unconstitutional and invalid (see below).

### **“Quintessential Self-Defense Weapon”**

*It is no answer to say, as petitioners do, that it is permissible to ban the possession of handguns so long as the possession of other firearms (i.e., long guns) is allowed. It is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon. There are many reasons that a citizen may prefer a handgun for home defense: It is easier to store in a location that is readily accessible in an emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upperbody strength to lift and aim a long gun; it can be pointed at a burglar with one hand while the other hand dials the police. Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.*

And lastly, the court also strikes a blow against any trigger lock laws, by stating:

*In sum, we hold that the District’s ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense. Assuming that Heller is not disqualified from the*

*exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home.*

So, where does this opinion leave us? Well, for one thing, understand that historically the USSC has always ruled narrowly, as it did here. In this context, ruling narrowly means that they only decided that Dick Heller has an individual right to have an handgun, and that it is unlawful for Washington D.C. to deny him that right. They also ruled that the provision of D.C.’s law requiring shotguns and rifles to be unloaded and inoperable was illegal.

Legal analysis of this also shows that any other governing body which disallows handguns in the home and requires rifles and shotguns to be locked up is acting unconstitutionally. They left open for consideration though, any other gun laws and restrictions that a government may come up with. Still, the language written certainly gives some guidance as to how they would rule in the future.

Because the question presented didn’t deal with carrying firearms openly for self-defense, that issue hasn’t been settled. We can only hope though, that when the Court ruled that the individual had the right to “keep” arms, they also meant that citizens have the right to “bear” arms.

In fact, I find it a little ironic that this may just force those states which do not issue concealed carry licenses, to get on board and finally pass concealed carry laws, as the Supreme Court seems to intimate that while a state can restrict concealed carry, it cannot restrict openly carrying firearms. We will see.

It is a good day in America.

*For a PDF of the full text of the decision go to <http://www.armedcitizensnetwork.org/Heller.pdf>*

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# Own The Night

*by Andy Stanford*

Water is wet. Rocks are hard. Night follows day. Because, on average, half of each 24 hour period is one of relative darkness, a good flashlight is one tool that is guaranteed to be useful in the context of self-defense, and a myriad of more mundane applications, as well.

Even when the sun is shining brightly, situations inevitably arise that would benefit from the application of a bright light. Many people spend much of their waking hours indoors, shutting out the sun to one degree or another. Dimly lit environs often impair vision significantly, necessitating artificial illumination to get the job done.

## **Human Factors 101**

As a species, we have evolved (or, if you prefer, have been intelligently designed) to take in the majority of data used in decision making through our eyes. Since lawful self-defense depends largely on good choices, any degradation in vision can have life altering consequences, in terms of both physical survival and legal aftermath.

In a low light emergency, you often must accomplish numerous tasks that will require additional light. Safely navigating an escape route in the dark comes immediately to mind, as does locating, identifying, and successfully engaging a human threat to your safety, with either lethal force or some lesser level of response.

When the lights go out, eyesight falters, and even fully dark adapted vision in full moonlight provides a best-case acuity that is only slightly better than legally blind. Positive threat identification therefore becomes highly problematical, with potentially tragic consequences.

In any event, it takes approximately 20 minutes for your eyes to adjust to that level of darkness. Hence the logical solution to an immediate threat in low light will generally involve some sort of illumination tool.

## **Avoidance, Deterrence and De-escalation**

Naturally, every sane person would prefer to preclude any sort of potential or manifest violent confrontation altogether. It is here that a flashlight can really shine, pun intended. Indeed, with a reliable light as your constant companion, you significantly reduce the probability of a dicey situation arising at all.



***A good light gives the homeowner the ability to positively identify that at which he points his gun.***

For starters, with a light in hand, you will appear as something other than prey. As the Thunder Ranch advertisement copy notes, "If you look like food, you will be eaten." Nothing screams "cop" like the beam of a high-intensity flashlight piercing the darkness. Flash your light about randomly when traversing that dark parking lot in the evening and you become indigestible to most criminals.

Should a stranger attempt to approach, you can modulate your use of the light as appropriate. As an initial response to an unknown contact, illuminate the person's body with the light, paying particular attention to their hands. (John Farnam's standard query of "Can I help you, sir?" may make sense here.) If the situation escalates, you can shift the beam to their eyes and issue a loud verbal command such as "BACK OFF!"

Of course, a bright light in the eyes is not particularly pleasant, and therefore this technique should not be used

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indiscriminately. It should be reserved for those scenarios that truly warrant an aggressive riposte.

I should note here that a light in hand has utility even outdoors in daylight. An unidentified metallic object carried in your hand will deter most street people: they want to avoid injury or death as much as you do and hence are very attuned to potential threats. And flashing your light at an opponent in the daytime can result in a mental interrupt as he ponders the non-sequitur of a low light tool used in broad daylight ("Huh?"), creating a window for effectively initiating action such as fleeing or fighting.

### Lights and Use of Force

Once a low light situation degrades to the point that physical force is required, a light can maximize your chances of success. As noted above, a bright light shone directly into the eyes provides both physical impairment and a psychological distraction. It will hence leverage the use of a lethal or less-than-lethal tool, including empty hand strikes.

With a firearm, a bright light will assist greatly in positive threat identification. Some type of illumination tool should be considered a mandatory adjunct to any pistol, rifle, or shotgun. Statistically speaking, most self-defense shootings occur in low light, and a gun used under these conditions can constitute a literal shot in the dark, with the attendant risk of shooting the wrong person.

In addition to its utility as an IFF ("identification, friend or foe") device, a light can contribute greatly to your ability to make accurate, fight stopping hits with your firearm. Likewise, sufficient illumination will reduce the likelihood of missing your adversary completely, thus reducing the probability of stray rounds hitting a bystander.

Post fight, adequate illumination will be necessary in a low light confrontation to assess that the confrontation is actually over. It will also be useful in scanning for additional threats, locating any family members and/or teammates, finding positions of cover and concealment, identifying avenues of escape, and signaling to responding authorities. When all is said and done, the bottom line is this: your illumination tools are as critical to responsible and effective self defense as your force options.



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### The Illumination Toolbox

To maximize your capability, you should purchase a suitable battery of high quality lights that addresses likely and foreseeable contingencies. Law enforcement officers will need, at a minimum, a primary light, a backup light, and ideally a light on each issued firearm. Analogously, the private citizen should have a light in each vehicle, several around the home, one or more everyday carry lights, and one on each defensive handgun and shoulder weapon.

Current LED technology facilitates the design and manufacture of lights that are smaller, brighter, run longer and are more reliable than those available just a few years ago. For instance, the classic [SureFire](#) 6P incandescent light had a body diameter of 1 inch, a light output of 60 lumens, and a nominal runtime of 1 hour on two SF123A lithium batteries.

That company's new [L1 Lumamax LED light](#) is approximately half the size, runs for either 16 hours at 10 lumens, or 2.5 hours at 80 lumens, all on just one 123A cell. The L1 also features a pocket clip that secures it for convenient every day carry plus an included lanyard. With such small, powerful lights, it makes more sense than ever to don your light every time you leave home.

Likewise, you will always shoot better with an illumination tool ergonomically mounted directly to your defensive firearms. Given the life-and-death nature of the topic at hand, such equipment is always money well spent. I am particularly fond of the SureFire X300 WeaponLight, which can be configured to a variety of self-defense firearms, and SureFire's various M-16/M-4/AR-15 light systems.

Tactically correct employment of the tools in question is beyond the scope of this article, but needless to say you should train and practice regularly with any device you intend to use in a life-threatening emergency. In the meantime, always remember the Cinderella rule: nothing good happens after midnight. Stay as safe as your circumstances allow.

*Andy Stanford is the Director of [Options for Personal Security](#), a self-defense and tactical training company, and the developer and lead instructor for SureFire's low light specialist program. He is the author of scores of magazine articles and three books including [Fight at Night: Tools, Techniques, Tactics, and Training for Combat in Low Light and Darkness](#).*

## President's Message

### What is a Reasonable Restriction?

In the wake of the Heller decision, one must ask, "What is a reasonable restriction?" The court mentioned restricting concealed carry and guns on school grounds, which, of course, doesn't make a lot of sense considering concealed carry is legal in the majority of states. Rest assured, the next great fight over gun control will be fought in a multitude of courts across the land.

Let me explain how I believe the fight will go. Where a state has preempted gun control laws (meaning local municipalities cannot pass more restrictive gun laws than the state has passed), the fight will be held in the state legislatures. Given the fact that the overwhelming majority of Americans do not want gun control laws, I don't expect this fight to be long or bloody. Actually, I expect a lot of state legislators to run away from gun control bills, suddenly needing to go get a haircut or other excuse to miss the vote. On the other hand, at this time, it might just make sense for state gun lobbies to push hard to expand the right to concealed carry and pursue loosening other gun laws in restrictive states. Momentum is a wonderful thing.

But the real knock-down drag-out fights will occur in Superior Courts in places like Chicago, San Francisco, New York and other urban, liberal areas where people do not have the protection of a state preemption, and where urban politicians want to restrict the right to own or carry guns. I expect to see laws passed which on the face allow a citizen the right to possess a handgun at home for protection, but restrict the right to carry it anywhere outside the home. In fact, these cities already have those laws, and I fully expect court challenges to the right to carry a handgun for self-defense. When the Supreme Court affirmed the right to "KEEP and BEAR arms," how could it possibly be argued that one has a right to keep a gun at home, but not bear arms walking to the corner grocer?

I find it a little disappointing that the Supremes decided to limit their ruling in Heller so narrowly. It would have been very nice to see them address some of these concerns. But controversy brings court challenges, and of course, they must feed the court system by setting up a situation



**Marty Hayes**

where millions of dollars will be spent trying to find the answer to our question: "What is a reasonable restriction?" You see, even Supreme Court justices are still, when it is all said and done, lawyers, and lawyers above all else, look out for their own.

This is the way I see it: gun owners and gun rights activists like us have two choices. We can play defense but with our superior team, knowing that it isn't much fun to play defense, and the other side will inevitably score some points. Alternatively, we can play offense, where the real action is.

I propose we take the fight to the courts and legislatures first. We dangle the carrot of a "reasonable restriction" out for the politicians to go for, knowing that we are winning more than we are losing. A perfect example of this concept is the concealed carry laws in the State of Washington. We have had one of the most liberal concealed carry laws in existence for many, many years. Anyone can get a permit as long as they are legally allowed to possess firearms to begin with, and are a United States citizen. Even out of state residents can get permits here. But, as I understand it, we made what I believe was a sensible trade off years ago when this law was passed, by also outlawing fully automatic weapons. One must be a dealer in class-3 weapons to possess fully automatic weapons in Washington. Now, I enjoy a full blast of machine gun fire as much as the next person, but I personally would gladly swap that experience for the right to carry a gun for self-protection every day of my life. This is what I mean when I say we need to go on the offensive. What can we do, as gun owners in our own community, to enhance our own position, while giving those on the other side something about which to feel good, too? I am not recommending anything in particular, but instead just floating an idea for further consideration.

Have a great 4<sup>th</sup> of July holiday, and when celebrating this 4<sup>th</sup>, raise a mug of beer or whatever is your favorite 4<sup>th</sup> of July beverage and toast the good work of Justices Scalia, Alito, Thomas, Kennedy, and Chief Justice Roberts. I believe there is reason to be hopeful.

### Letters to the Editor

**We want to hear from you!** Please send your letters with questions and comments to [editor@armedcitizensnetwork.com](mailto:editor@armedcitizensnetwork.com).

Be sure to include your full name, town and state of residence. Though it will not be published, we also require an E-mail address that won't end up in your Spam folder, or a daytime telephone number for verification of your letter prior to publication.

Letters may be edited for brevity or clarity.

## The Bible and Self Defense

*In last month's Network eJournal (click link to view), this series discussed some of the rationale behind personal and church security. As the series continues this month, the author delves more deeply into the Biblical foundation of defense.*

*by Dr. Richard Seim*

In order to gain a balanced view of what the Bible says about self defense, let's look at both the Old and New Testaments. Some might suggest that the Old Testament is no longer relevant. Jesus Christ made it clear that it is, indeed, relevant, "Do not think that I came to abolish the Law or the Prophets; I did not come to abolish but to fulfill. For truly I say to you, until heaven and earth pass away, not the smallest letter or stroke shall pass from the Law until all is accomplished" (Matthew 5:17-18 NASB). The phrase "the Law or the Prophets" refers to the entire Old Testament.

In the Bible there is a marked difference between murder and using lethal force for self defense or for the defense of others. Both the Old and New Testaments teach that murder is wrong. Most people are familiar with the Ten Commandments. Commandment number six, in the version I use, the New American Standard Bible (NASB), says, "You shall not murder." (Exodus 20:13). This version makes this verse easier to immediately understand than does the old and yet very good King James Version (KJV) which says, "Thou shalt not kill."

The proper meaning of this one word is critical to our discussion. For if the word really means "do not ever kill under any circumstances," then it impacts the direction of our conclusions.

The reason the NASB translators opted for "murder" instead of "kill" is because that is what the word means.

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Originally, the Old Testament was written in the Hebrew language. According to the book *Exodus: Saved for God's Glory*, "The Hebrew language has at least eight different words for killing."<sup>1</sup> One of the most respected Biblical Hebrew lexicons (similar to a dictionary) is called Brown, Driver, and Briggs (BDB). Their basic meaning for the word in the sixth commandment is, "murder, slay."

Commenting on this verse in the year 1706 is Matthew Henry, "It does not forbid killing in lawful war, or in our own necessary defense, nor the magistrate's putting offenders to death, for those things tend to the preserving of life..."<sup>2</sup> More modern commentators agree, "...What the sixth commandment forbids is the unjust taking of a legally innocent life. It applies to 'murder in cold blood'... God's people have always recognized that there are some situations where taking a life is not only permitted but actually warranted."<sup>3</sup>

Although this article is not specifically dealing with the death penalty and the government, it does come into play if we want to understand the sixth commandment. In the New Testament, Romans 13 says, "For rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? ... But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath on the one who practices evil." (Romans 13:3a, 4 NASB). "The sword" is an instrument of death, not a spanking paddle! So, even in the New Testament one of the responsibilities of the government, "the sword" (capital punishment), is clearly maintained.

To summarize, the sixth commandment prohibits the unjust taking of a legally innocent life (murder) but does

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not prohibit self defense. As Matthew Henry said above, the purpose of the command is "the preserving of life."

Shortly after the sixth commandment was written a specific law concerning the death of a home invader was given, making the self-defense issue much clearer. "If the thief is caught while breaking in and is struck so that he dies, there will be no bloodguiltiness on his account. But if the sun has risen on him, there will be bloodguiltiness on his account. He shall surely make restitution; if he owns nothing, then he shall be sold for his theft." (Exodus 22:2-3 NASB).

If a home invader broke in at night and the homeowner took the invader's life, he was not guilty of murder—it was a justifiable homicide. Self defense and defense of family is clearly in view here. We understand that this is at night because the next verse says, "But if the sun has risen..."

Is verse three teaching that we cannot defend ourselves against a violent home invader in daylight? No, it does not suggest that! Both verses identify the motive as burglary. Nowhere else in the Bible is robbery considered a capital offense. At night, no one knows the motive. Verse three assumes the daytime burglar is non-violent. Notice the verse also assumes he is caught because the penalty is "He shall surely make restitution" or "he shall be sold for his theft."

Exodus 22:2-3 is a very important passage where self defense is concerned. The intent of the passage is not to just reveal history or tell a great Bible story. It is clearly instructive in nature and therefore written so it can be easily understood by the common person reading to determine the commands and instructions of God. It would be impossible for the sixth commandment (Exodus 20:13) to teach that all killing is wrong, when some fifty verses



later we are given a very clear example of justifiable homicide.

The passage is also very important to the question of church security. When I walk into a church, does that end my responsibility to defend myself and my family? (What about defending others? We will deal with "others" later.)

How about the person that says, "Well, if you have enough faith in God, He will protect you?" Does that statement not apply at home as well as outside the home?

According to the Bible, God has given at least some responsibility to us (enough to justify taking a life if necessary). Exodus 22:2 at the very least infers my responsibility to protect and defend myself and my family. Although it does not immediately deal with outside the home, until and unless the Bible clearly teaches otherwise, we must be prepared to defend ourselves against violent invaders no matter where we are.

*1 Philip Graham Ryken and R. Kent Hughes, Exodus: Saved for God's Glory, Includes Bibliographical References (P. [1165]-1202) and Indexes. (Wheaton, Ill.: Crossway Books, 2005), 616.*

*2 Matthew Henry, Matthew Henry's Commentary on the Whole Bible: Complete and Unabridged in One Volume (Peabody: Hendrickson, 1996, c1991), Ex 20:12.*

*3 Ryken page 616.*

If you enjoyed this column, be sure to read the August **eJournal** for Dr. Seim's next installment.

*About the author:*

*Dr. Richard Seim is senior pastor at the Renton, WA Trinity Baptist Church. In addition to his calling as a Christian pastor, the author teaches NRA gun safety classes, and has graduated from multiple classes taught by the Lethal Force Institute and the Firearms Academy of Seattle, Inc.*

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We'd love to hear from you. E-mail your thoughts to [editor@armedcitizensnetwork.org](mailto:editor@armedcitizensnetwork.org). Letters should be no longer than 300 words, not of a libelous nature and may be edited for length.

## Attorneys Weigh In On Third Network DVD

by Gila Hayes

As we continue to work to educate Network members about the many aspects of self defense, starting with justifiability, tactics, training issues, interacting with law enforcement and the judicial system, the Armed Citizens' Legal Defense Network, LLC is delighted to announce that the third educational DVD included as part of every Network members' benefits package is now at the video editing studio.

"We know that ignorance of how to explain their actions is one of the primary reasons armed citizens get in trouble after defending themselves," explained Network president Marty Hayes. "Sometimes, they hire lawyers who only know how to defend criminals, and that makes things even worse," he added.

That is why even in its nascent stages, the Network has made the development of educational DVDs its highest priority. As this *eJournal* is being produced, the second in the Network's three-DVD lecture series is in transit by the U.S. mail to our members, and the third of the series is being prepared for replication.

The first of the series, which Network members have already received, featured Hayes lecturing on the basics of self-defense law. In the second, Massad Ayoob was the featured guest, as Hayes interviewed this luminary in the self-defense training field. The third program follows a similar interview format, but this one introduces attorneys Royce Ferguson and Robert Zielke, who specialize in criminal law and civil law, respectively.

While we are waiting to see the finished presentation, we thought our members might enjoy an introduction to the participants in the third production. In selecting two attorneys, Hayes specifically chose to interview one with extensive knowledge of civil trial work, paired with an attorney whose career has focused on criminal law.

Addressing criminal law, attorney Royce Ferguson has been defending clients charged with crimes for more than



*Taking a break from filming, we found (L-R) Robert Zielke, Marty Hayes and Royce Ferguson renewing acquaintances and chatting about recent on-goings in the courts.*

30 years. His clientele comes to him with a wide variety of problems, including charges of assault, manslaughter and murder, as well as more mundane legal difficulties. He has tried more than 50 jury trials involving felony assault and homicide, and over 150 other jury trials. He's had a vital interest in firearms and self defense for over 25 years, and has completed a variety of handgun training programs, including Massad Ayoob's LFI I. He is an NRA Benefactor. Royce is the author of the legal reference entitled *Washington Criminal Practice and Procedure*, a two-volume treatise dealing with felony practice in Washington State. It has been cited as authority by the Washington State Supreme Court and Court of Appeals. He was trial

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counsel twice in *State v. Adams*, 31 Wn. App 393, 641 P.2d 1207 (1982), as well as other reported cases.

In his spare time Royce rides his '97 HD Softail and



**Royce Ferguson**

plays trumpet in his jazz quintet around the Seattle area. He has three adult children, one of whom is serving in the U.S. Army in Iraq.

During breaks taken in the course of a long afternoon of filming, we asked these lawyers a little more

about their thoughts on topics relating to armed citizens and how they can avoid legal difficulties relating to defense of themselves or their families.

**EJournal:** Royce, its been good spending the afternoon with you and learning from you. I'm wondering what is the most frequent or repeated reason that you see causing clients to need your services after a self-defense situation?

**Royce Ferguson:** "They need my services because they didn't do their home work before the shooting. So many people are naïve. They say, 'the guy was violating my rights or taking my property or assaulted me.' I think people naïvely think they are justified in using any degree of force. They haven't learned the continuum of force. If they have some basic knowledge of that, they might realize, 'Maybe I shouldn't be pulling my firearm.' That's one.

"And second, I think people make a mistake with a warning shot. I see people who do a warning shot and I don't think they realize that it is lethal force. That so-called warning shot can turn into a first-degree assault with a deadly weapon charge. I think if they did their homework and realized that using a gun is the last resort, they probably wouldn't need a lawyer at least fifty percent of the time!"

Attorney Robert Zielke, who in the presentation speaks to civil trial procedures, is an experienced trial lawyer with multiple cases of recovered damages in excess of one million dollars. He was appointed to serve as Judge Pro Tem and as an arbitrator, and in addition, the Courts



**Editor and videographer  
Janet Turner.**

frequently appoint him to serve as a Settlement Guardian ad Litem. In private life, Robert is an avid shooter, enjoying both pistol and shotgun shooting. Other activities, beyond family life, find him teaching children at his church, serving on the police citizen's advisory council, and involved with organizations that help disadvantaged people including cerebral palsy sufferers and battered women.

**EJournal:** Robert, as an attorney what are some of the pointers you would give our members as they prepare themselves to survive a lethal confrontation in both the incident and in court?

**Robert Zielke:** "One thing that I like to teach people is the 'safety lifestyle.' We carry a firearm, we carry knives, and we carry other devices to cut a path of safety until the professionals arrive. That is part of a safety lifestyle. That's why I recommend to everyone that they carry a first aid kit; it's why they should have a fire extinguisher in their home; and it's why they should have smoke detectors and back up smoke detectors, in their home, so they have a safety lifestyle. Incorporate this lifestyle not only in the area of self defense and personal protection, but extend it to when you're on the road, into your home and into your own family so that you also live that safety lifestyle for the protection of your loved ones outside of self defense."



**Robert Zielke**

As the program videotaped with the help of attorneys Ferguson and Zielke goes through the editing process, we at the Network are eager to get their knowledge into the hands of our members. The topics surrounding use of deadly force in self defense, getting through the aftermath of a shooting, and the potential challenge of dealing with the courts after defending oneself are extensive. Though we have summarized as best we could in the three-DVD set, there remains even more for Network members to master.

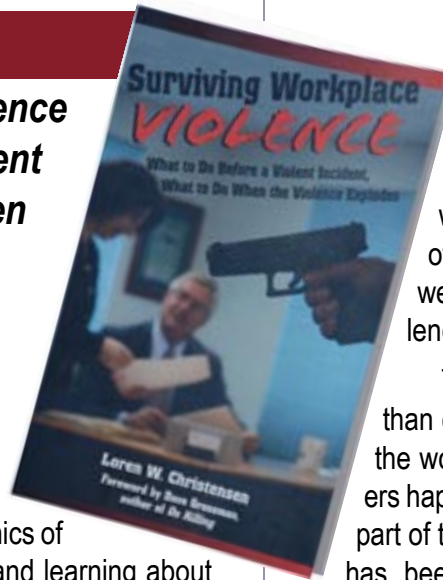
As members view the educational DVDs, we hope they will use the Network's member's-only forum as a resource for asking and answering questions that a serious study of this topic is sure to raise. The Network has much growth ahead, and much of it is in developing resources and contacts to help our members deal with these issues.



## Book Review

### ***Surviving Workplace Violence What to Do Before a Violent Incident, What to Do When the Violence Explodes***

by Loren Christensen;  
foreword by Dave Grossman  
205 pages, softbound  
ISBN 978-1-58160-465-8    \$15.00



Armed citizens who study use of force in self defense, delving into the ethics of self defense, its societal implications, and learning about the aftermath, quickly conclude that they will do whatever it takes to avoid a confrontation unless no reasonable alternative exists. Thus, along with training in how to shoot, when to shoot, and other defense tactics, avoiding danger takes center stage in many of our preparations. This mindset gives us a keen interest in how crimes of violence occur, how to detect them in the making, and how to avoid being victimized.

The book we review this month is of particular value in avoiding victimization in an environment in which we spend large portions of our waking hours – the workplace.

And talk about timely! Though the book was written several years ago, the topic comes to the forefront frequently. Just last month, a workplace shooting in Kentucky was reported thus: “The employee, a press operator, began arguing with a supervisor and was escorted from the building, company CEO Bud Philbrook told The Associated Press. As the employee was leaving, he took out a gun, shot the supervisor, then charged back into a break room and shot several employees. Then he returned to the floor and shot another employee before killing himself, Philbrook said.

“It’s just total shock. It’s something you read about in the paper what happened at one of our facilities,” Philbrook said.”

The kind of complacency expressed by the CEO gets people killed! [Surviving Workplace Violence](#) is full of tips and tactics, mostly for employees, on dealing with that kind of short-sightedness, working both within the business structure and making plans for personal survival, should that effort fail.

In the foreword, Dave Grossman, famous for his work teaching about human reactions to use of deadly force, writes that American workers are more likely to be killed or injured by violence than by fire. A look around the workplace shows fire suppression systems and other emergency provisions in place. Shouldn’t we work as hard to protect ourselves from violence at work, he queries.

The facts cited in the first three pages are more than enough to convince the reader that violence in the workplace is pervasive. Attacks on and by workers happen so frequently that prevention is considered part of the employer’s responsibility to the worker, and has been for several decades. Workers commonly receive guidelines for reporting threats and sometimes how to de-escalate, but instruction in how to fight back if caught in a workplace attack is virtually non-existent in employee manuals, comments author Loren Christensen. Filling that gap, his book teaches concise strategies for avoiding and surviving violence at work.

Recognizing the kinds of workers or ex-employees that may explode into violence is good information applicable not only to the topic of this book, but to any other interpersonal violence. The author presents good tips that begin with taking the issue to your supervisor, and starting a paper trail to document your warnings. Beyond this, he outlines what to do if the supervisor fails to act; what kinds of information to give if you must call the police during an attack; and options for dealing with a disturbed co-worker. The author talks the reader through several different possible situations, like a threatening phone call from the employee or face-to-face interaction, attempting de-escalation, and Christensen tells the reader how to respond if the worker escalates their verbal onslaught.

The author explores the pros and cons of company policies that make threats or violence a firing offense. On the negative side, he proposes, knowing that a co-worker will certainly lose their job can impede reporting preliminary signs of a worker who may turn violent if left unchecked. The author offers policies using more generalized verbiage that allow the employer to dismiss a threatening worker, but do not inflexibly mandate specific actions.

Still, violence explodes in workplaces regulated by the most detailed and perfect of policies. Individuals need

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strategies for detecting and dealing with disgruntled co-workers. The author profiles both victim and aggressor, as well as giving guidelines to determine when a fellow employee's behavior passes beyond abnormal and into dangerous. The author uses examples you may recognize from the news, embellished with details we probably didn't learn while the incident still received news coverage. Many killers made very explicit threats before they attacked.

Christensen explains that a lot of people ignore odd behavior by a fellow worker out of naiveté, fear, or false optimism. You want to avoid those pitfalls, he urges. In addition to remaining alert to suspect behavior, he recommends advance planning to formulate different responses to varied levels of threat from the coworker in question. A page or two later, he advises planning your defenses "when you're calm and collected," so an effectual response is readily in mind when on the threshold of panic.

One such step is developing a clear mental map of exits, locking doors, improvised weapons, cover and concealment, as Christensen writes "analyze your surroundings as a battleground, a place where you might have to run, hide, even fight for your life." Later in the book, there are several points about improvising every-day equipment as weaponry, and in one place the author quips that with this outlook, it is as if you are working "in an arsenal."

The reader is urged to think about whom among his workplace peers might be a trustworthy ally and confidant, as well as devising strategies for your own survival if it seems none of your coworkers will be able to respond. The common cellular telephone can be a lifesaver if you need to call for help during an attack, and the author advises that you should not be in the workplace without it. Back that up with the ability to give clear directions, using compass points so if you call 911 to report an attack underway, you can direct them to the correct location.

Naturally, we'd like to think that we'd be pillars of strength in an emergency, but in reality, it can be quite a task to prevent panic during a real life-and-death event. Christensen does a good job of conveying the sense of overwhelming confusion one feels during such an emergency, then explains how the elevated heart rate of a stressful survival situation hampers physical coordination, clear strategic thinking, and causes tunnel vision, memory distortion and hyper-vigilance. Perhaps the most valuable information contained in this slim volume comes as Chris-

tensen draws on exercises police and military personnel use to overcome the effects of extreme stress. Learn autogenic breathing and mental imagery as strategic planning in Chapter 3.

Chapter 4 leads with advice about fleeing and hiding that will probably rile the sheepdog in many readers. Whether you run to safety, hunker down and hide, or fight, be sure you get a call out to 911 and do not presume this has already been done. The author, retired after a 29-year law enforcement career, explains how to get the most out of that call.

Readers are told that fighting back is a last resort, but recognizing that fleeing or hiding may not work, Christensen suggests a variety of strategies. They are sorted by the kind of physical threat posed by the attacker, ranging from unarmed, using improvised weapons, armed with a knife, possessing multiple weapons, or carrying a firearm.

The sidebars about the psychology and mental preparation to engage in physical confrontation are well done and valuable. Christensen stresses the necessity of a total commitment to neutralize the threat. He offers perspectives on the mental aspect of the fight, as well as physical techniques for a solo engagement and strategies that a group of workers may undertake. Surviving a gunshot wound is covered, and the author emphasizes that being shot should not be perceived as fatal. "You're going to continue to fight back. Maybe even harder," he coaches.

A variety of last-resort strategies for dealing with a madman with a gun all teach complete commitment to winning the fight, plus specific refinements that offer a better chance of success. Here, the author's background as a high-ranking martial artist and defensive tactics instructor peeks through, and readers may well be compelled to send off for some of the other titles this prolific author has to his credit.

By the end of *Surviving Workplace Violence*, the reader has received a healthy dose of the warrior mindset, and the conclusion is an inspiring call to protect yourself and to take responsibility for your own survival.

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Editor Gila Hayes

## Editor's Notebook

People in our circles are fond of quoting the adage that an armed society is a polite one, and for the most part the axiom is true. When a gun owner makes a misstep and runs afoul of the law, it is educational for all of us to look over what happened and learn a cautionary lesson.

Last fall, a man found himself running late on his way to the range for a Saturday morning class. Pulling into the passing lane of the freeway, he flashed his headlights to clear that lane of cars being driven slower than he felt he needed to drive. Other motorists also alleged that he flashed a searchlight at them.

His rather insistent driving behavior was misinterpreted, and one driver pulled over, believing they were about to have contact with the State Patrol. The hurried young man drove a surplus police vehicle, the same make and color as those driven by most of the patrol, and it was still outfitted with some of the accoutrements of a patrol vehicle, including a spotlight and push bars. Since the owner had worked in private security, his possession of the car was legitimate, though in the moment, misunderstood.

Unfortunately for the man-in-a-hurry, his behavior coincided with a rather strange, and heavily reported crime. About a week earlier, a corrections officer, driving his personally owned white pickup equipped with blue flashing lights, had stopped and detained a motorist, fostering the belief that he had enforcement powers to which he had no claim. This offender fled and was pursued when a State Patrol trooper pulled up on the scene.

Citizens and law enforcement alike do not respond casually to impersonating police officers. After the corrections officer was caught and charged, the State Patrol made several highly publicized pleas for information relating to the case, attempting to find other citizens who may have been falsely arrested by the corrections officer.

Not a week had passed when the speedy security professional flashed his lights to clear the freeway passing lane, inadvertently creating his own false impression and setting off a storm of phone calls to the real State Patrol.

(Cellular phones: such a mixed blessing!) By the time the State Patrol got him pulled over, the incident attracted attention of many of the area's patrol contingent, who, concerned about the earlier incident, impounded the car, and interrogated the driver, who gave permission for a search of his car.

A quantity of ammunition and firearms contributed to the troopers' concern, though the security guard showed them confirmation of enrollment in a firearms class scheduled for that very day. I was told by a contact at the local sheriff's office that the driver also had in his possession one of the police-style badges sometimes carried by private security officers and by armed citizens. I was not able to verify that as anything more than squad-room gossip, but if it is so, it indubitably fueled the State Patrol's suspicion that they had nabbed a second police impersonator.

The arrest and investigation lasted into the evening, the car was impounded for a few days, and the driver incurred legal costs in a process that lasted for many months, as he and his lawyer strove to discover if the State Patrol intended to charge him with a crime. The last I heard, no charges had been proffered by the patrol, and in the opinion of some, the agency was fortunate that the security guard didn't bring suit for the arrest that stemmed from a

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The eJournal of the Armed Citizens' Legal Defense Network, LLC is published monthly on the Network's web site at <http://www.armedcitizensnetwork.org>.

We are actively soliciting the participation of writers with expertise in self-defense firearms, the legal profession, and the self-defense training field. If you are interested in contributing to the eJournal, please contact editor Gila Hayes by E-mail sent to [editor@armedcitizensnetwork.org](mailto:editor@armedcitizensnetwork.org).

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

Marty Hayes, President  
J. Vincent Shuck, Vice President  
Gila Hayes, Operations Manager

We welcome your questions and comments about the Network. Please write to us at [info@armedcitizensnetwork.org](mailto:info@armedcitizensnetwork.org).



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cascade of erroneous conclusions to which the patrol officers jumped on that Saturday morning.

The lessons in this unpleasant little tale are numerous. The easiest is to take to heart is the observation made so many years ago by Robert A. Heinlein, "An armed society is a polite society. Manners are good when one may have to back up his acts with his life."

Beyond that, though, when one belongs to a misunderstood class, as gun owners so frequently are, a little education goes far to prevent trouble. Did the driver realize that he could decline the State Patrol's request to search his car, compelling the troopers to either arrest him on the strength of the witnesses' accusations, or let him go? Without a clear understanding of the law and our local criminal justice system, it is all but impossible to distinguish that fine line between protecting our rights and obstructing a law enforcement officer's investigation.

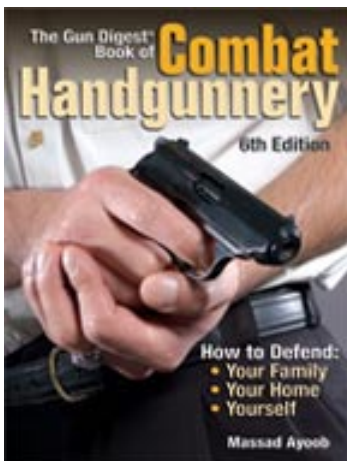
How can one work out these details before nose to nose with the authority of the State Patrol along the side of the road? An initial understanding begins through train-

ing with authorities like Massad Ayoob, John Farnam and others, who give the student a reliable overview of the principles of the laws the armed citizen is likely to encounter. In addition, the armed citizen needs the assistance of a local lawyer who can explain the fine points of local laws and their enforcement, since the variations from region to region, state to state, and sometimes even county to county are considerable.

As the Network continues to grow, we will be able to announce affiliations between the Network and legal professionals who have expressed a willingness to help our members with preparatory work the type of which we've discussed here, as well as providing representation if it is ever needed. Because of the need to affiliate with the attorneys who understand the armed citizens' needs, we believe this the most critical of all our Network membership benefits and so our work on this element of the Network has been the most painstaking. We pledge to continue developing this critical element of the Network. I hope that Network members will also take this part of their preparation seriously, and get the kind of training that will in all likelihood keep them out of trouble in the first place.

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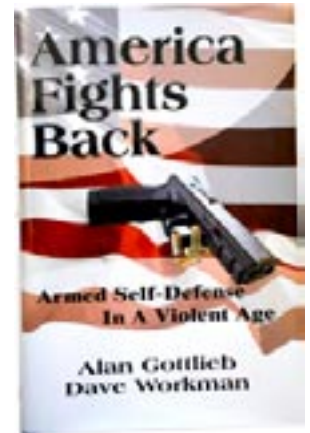
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When your application is accepted, you will receive three DVDs concerning issues in the lawful use of deadly force for self-defense. Additionally, you will become immediately eligible to have any future case of self-defense reviewed by one of our Network experts at no charge, and may apply for a grant of financial assistance for any litigated self-defense cases initiated after membership application (see <http://www.armedcitizensnetwork.com/benefits.html>). You will also receive a membership card with your username and password for the member's Internet forum, as well as your coupon code for the discount at the Network's on-line book and DVD store.

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