

Practicing Awareness An Interview with Claude Werner

Rarely does life-threatening danger just come "out of the blue." More often, simple problems escalate into dangers. Approaches by panhandlers and other unknown people may or may not herald violence, so the benefits of observing possible threats and staying out of range cannot be overstated.

With over half a million people considered homeless today, most Network members have had the experience of being surprised by a panhandler and wondered afterwards how they got that close without being noticed and what to do if the stranger had been physically aggressive or violent. A few months ago, the Tactical Professor, Claude Werner, blogged about a benign encounter of this nature and the lessons learned (<https://tacticalprofessor.wordpress.com/2017/09/21/keep-your-tape-loops-short/>). His comments were a good tune-up and I was very pleased when he agreed to answer additional questions about being aware and avoiding panhandlers and other loiterers. We switch now to our Q&A format so readers can enjoy this chat with Claude, too.

eJournal: I regularly read your Tactical Professor blog because it so often addresses personal safety issues for ordinary people. I was reminded again of how well you teach awareness when you recently blogged about stopping a panhandler from entering your personal space. Through specific situations, you teach your readers about alertness, a topic the review of which will benefit everyone. May we start by defining our nomenclature? Is situational awareness a concept that's no longer valid?

Werner: Our industry for some reason doesn't like the term, but situational awareness is a broad term that is used in the aviation industry, in the maritime industry, in firefighting and even in surgical procedures. When we have this broad consensus that situational awareness is a perfectly acceptable term, there's no reason we shouldn't use it.

eJournal: Some have decried the idea that we "manually" change our level of alert based on the situation. What say you?

Werner: Think of a jet aircraft.

During take off, they call the cockpit a quiet zone. In other words, anything that is not essential to operating the aircraft is simply not done. Comair flight number 5191 crashed in KY about 12 years ago after they turned on to the wrong runway. It was too short and they crashed. One of the reasons the FAA cited for the crash was because the crew was talking about things that didn't relate to flying; it is on tape. 49 of 50 people on board flight 5191 were killed; the copilot was the only one who was not killed.

There is not supposed to be any casual conversation in the cockpit during take off. When a plane is taking off or it is landing, the crew is very alert and very focused on its tasks. When they get to altitude, they put on the autopilot and they drink coffee and relax and do things that don't require a high level of attention. That is a very clear example of how it is perfectly common to ramp up and scale down our attention based on the level of detail required.

In his Sunday night lecture at the elite Rogers Shooting School, Bill Rogers cites something we have all done. We are driving along and not quite paying attention to what we are doing, but because we are experienced drivers, we are paying enough attention to be reasonably safe. Then a little bit of rain hits the windshield or we see brake lights starting to appear

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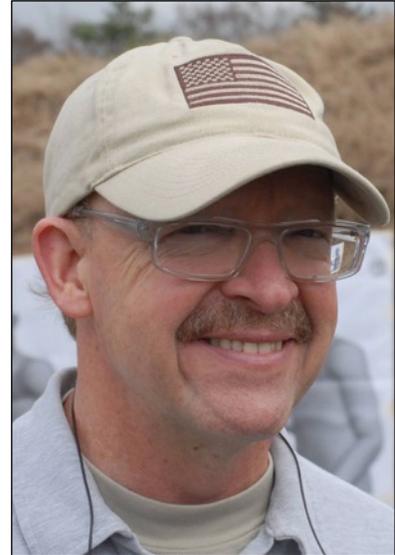


PHOTO BY TAMARA KEEL

ahead. At that point, we say, "Well, maybe I need to tune up my game a little bit here, turn on the windshield wipers and pay a little more attention to what I am doing." It is the same concept. Something has triggered us to make us realize, "Well, maybe I need to keep my awareness up."

eJournal: Can we apply those examples to avoiding violent crime? In daily life, what are we scanning for?

Werner: There is a military concept called Areas of Interest versus Areas of Influence that is part of the process of Intelligence Preparation of the Battlespace. An area of influence is the area around you that you can directly act on with your organic resources. We as private citizens have our own areas of influence. How far away can we be heard or how far can we shoot or deploy other weapons, if we need to? For instance, a pistol has a longer range than a can of pepper spray. That is our area of influence.

On the other hand, we have an area of interest that extends as far as we can see but it isn't just what we can see. When I drive to the store, before parking I drive around the parking lot; I do not go to the closest open spot nearest the door. I'm looking around, asking, "OK, what is going on?"

When we have our focus outward, we may see something in our area of interest. The criminal's area of influence is generally very similar to our own, so if he is in our area of interest but not in our area of influence, the same probably applies in reverse. To the extent that we stay out of his area of influence, we have a relative degree of safety.

eJournal: Self-defense firearms training sometimes includes having the students perform a visual scan. It is common to see heads whip around so quickly that how much information is actually being taken in is questionable. How do we avoid that bad habit?

Werner: In most cases, people *are* just going through the motions. One solution is the game that smart cops used to play, where, for instance, they would go into a doctor's office, walk in, sign in, make their appointment, sit down and immediately close their eyes and describe in their head every single person in the room.

eJournal: A version of Kim's game?

Werner: Yes, just for practice because these things are just habits from practice. So when you get in the habit of looking for things, you look for things unconsciously. When you step out of the door of the Publix and you look around, you are not just bobbing your head around. You look and go, "Hey! Who's that jamoke over there?"

eJournal: You are looking for specifics. Your observation habits are more than a Kim's game, where we might describe a shopper with cart, a woman with a cane, a man walking with a toddler, a driver in a pickup waiting for parking. Is that more or less general than what you are talking about?

Werner: It is both. There are things that I am looking for in specific. Then there is a more generalized level of alertness that I will go back to that asks, "What does not fit in this picture?" One of these four things does not belong here. What is it? Well, people in parking lots tend to be moving. When somebody is not moving, just hanging around, that is a little unusual. There may be reasons: it is not always nefarious, in fact it probably is not. Someone who is not moving is more likely to be nefarious than somebody pushing a cart full of groceries back to their car.

eJournal: What's the leading reason people miss what is happening in their area of interest?

Werner: If, because of circumstances, we position ourselves where we can't be situationally aware, we are setting ourselves up for failure. By good positioning, we're trying to stack the deck in our favor and with a little bit of luck, we won't even have the interview. The experience with the panhandler that I wrote about at <https://tacticalprofessor.wordpress.com> was an interview. If there had been some way for me to avoid the interview completely, that would have been the best solution of all.

Now, I have certain options that other people might not. I have a weapon in hand as soon as I am in a transitional space—the space between the cashier and my car. I always walk around with pepper spray in my hand. With a cone type of pepper spray dispenser, you can just wave it in the air and create a wall of unpleasant chemical people have to walk through to get to you.

Instead of the panhandler coming toward me, let's say it was two guys who, although not obviously armed, looked pretty bad. If I said, "Hey, stop, don't come any

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closer," but they kept coming, I would create a wall of pepper spray, let them go through it while I back off. In that example, they are at the far end of my area of influence. They might actually be in my area of interest, but then they have to enter the area I've now left—formerly my area of influence.

eJournal: You've taught *eJournal* readers in the past about the importance of positioning and I'd like to direct readers to an earlier interview you gave <https://www.armedcitizensnetwork.org/our-journal/313-august-2014> since it plays a big part in observing and avoiding potential dangers. How does that advice dovetail with awareness?

Werner: I think of situational awareness and positioning as the flip sides of a coin. We position ourselves so we can be aware. It is a loop. As a result of our awareness we may move to another position to enhance our safety.

Access is corollary to positioning. In the military sense, we refer to defense condition changing based on the situation. Our physical readiness posture adjusts to accommodate our interpretation of possible attacks. Here's an example: as a positioning thing, I'm notorious for parking with my driver's door next to the cart corrals so that no one can pull up next to me. It is an old habit of mine that I've had for a long time. Once, I came out of a store and there was a guy standing right at end of the cart corral next to my car. Well, this was just odd! I looked at him, and asked, "Just hanging around?" and he said, "Yes, I'm waiting for somebody." So I thought, "That's fine," because I always have my pepper spray in my hand when I walk out.

I'd already ramped up my ability to deploy, so if he had done something, I would have hosed him with pepper spray right away. He didn't do anything, so I just opened my door, got in my car, quickly locked the doors, started the car and drove away.

The way I had positioned myself facilitated awareness. In the military there is a concept called points of likely cover. Where can somebody hide? If I was right next to another car, it would be easy for somebody to establish what I call a rise from the ground ambush, where they're ducked down below a car.

That actually happened to a friend of mine. He always checked around his car before climbing in. Once, he walked around and from 30 feet away saw two guys hiding on the right side, so he called, "Get out of there"

and they ran off. In most cases, when criminals realize the jig is up, then they are just going to go look for somebody else.

eJournal: Your friend's practice of checking around his car raises a question. Is a safety check of that kind something we just do out in public or do we also check in the drive or garage at home before getting in a car?

Werner: No, it is a habit; we do it every time. Awareness is not an isolated concept; rather we make it part of a set of procedures or habits. A very simple example: how many times do you see people talking on their cell phones while they are at the cashier at the grocery store? Let's say that person pays in cash. Is it possible for them to talk on the phone and watch the cashier count out their change correctly? My guess is, probably not.

After getting their change, they'll continue talking on their cell phone, get in their car, turn the car on, back out of their parking spot and never miss a word! I've seen two low-speed crashes that way, because they couldn't see and weren't aware.

Think about this: We are always aware of something. It is simply a question of our focus. Are we externally aware, or are we internally aware—thinking about what is going on inside our head? It is not that we aren't aware; it is a question of what we are aware of. The conversation we are having? Our worries about what is going on with our children? Can I pay my mortgage? Or does that guy out there look kind of goofy, and do I want to avoid him in the first place?

eJournal: How do you cope with several things simultaneously vying for your attention? What is your strategy while you have to split your attention to deal with the task of paying or getting in the car?

Werner: There are some things you just cannot do and one is splitting your attention. A couple of years ago, a lady was in the parking lot of an upscale Target in a relatively decent neighborhood at about 9:30 in the morning on a nice, clear day. She parked very close to the entrance, and was taking a child out of a car seat when a guy came up and ambushed her.

Witnesses later said he had been scanning the parking lot but at the time, they didn't know what he was looking for. He saw this woman drive up and choose one of the

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spots reserved for mothers with babies – that's a watering hole! When he saw her get out and unbuckle the child from the car seat, which is quite an involved process, he jumped. As I recall, she got the child out, but the guy pushed her down on the ground, got her keys, and off he went!

eJournal: Moms still have to get babies out of car seats, so what's the answer?

Werner: The problem is one of task fixation. There are logical stopping points in everything that we do, if we think about them. For instance, when I come out of the store, I stop for a minute. In the military, when patrolling, we called it a security halt. When you're going out on patrol and you leave the wire outside an encampment (I cannot say how it is for urban operations because my time was in the jungle), you got just a little ways out, and then you stopped and you conditioned your eyes and your ears to the sights and the sounds of the battlefield.

Well, that is what I do now when I walk out of the store. I stop just outside the door and I put my sunglasses on. While I am putting my sunglasses on, I am looking around to see, as one of my friends says, "What is wrong in my right world?"

If there is a person standing around close to my vehicle, I might elect to just stand there and do something like clean my sunglasses while I see what is the deal. If this person continues to just stand around then I start to make choices about what I want to do. That stop allows me to say, "What choice do I want to make here?" Do I want to go out to the car but continue to keep an eye on him? Am I going to have my weapon in hand? I will.

If I was a woman, I might go back into the store and say, "Hey, can I get one of the baggers to push my cart out?" I wouldn't even have to say there's some sketchy character out there, just say, "I've decided it would be nice if I had one of the baggers to push my cart out to my car with me," or something like that. There is no grocery store that will say no to that customer service request.

How long does it take, first to stop talking on the cell phone, and second of all to actually look around? Ten seconds? If your life is so busy that you can't spare ten seconds for your own safety, you need to declutter your life or something.

eJournal: I'm interested in the way you selected options from a pre-determined menu of choices once you spot a person who puts you on guard. Please tell us more about setting up this menu of choices.

Werner: A misunderstanding of John Boyd's concepts is the idea that decisions are made in the moment. That is very rarely true! Unfortunately Boyd's work has been overshadowed by everyone's preoccupation with the OODA loop. People who say Boyd's work is about decision-making have not read his first work, the Aerial Attack Study.

Up until 1959, when Boyd wrote his Aerial Attack Study, many thought flying airplanes in combat was a seat of the pants thing. The brilliance of John Boyd's work is in showing that using the F-100 Super Sabre and its weapons, 20 mm cannons and Sidewinder missiles, there was a discrete number of possibilities for both attack and defense. There were four possible attack patterns at that time for an F-100 against Russian bombers entering U.S. airspace. Learning what those possibilities were and how your weapons fit in, dictated a fighter pilot's response to every situation.

Nearly 60 years later, the Aerial Attack Study is still considered the manual of fighter combat. That study says that in the moment, what we have is choices, not decisions. If we've thought about things ahead of time, the decisions should already be made. In the moment, we just pick from a menu of options, we make a choice, but we are not deciding.

eJournal: The distinction between decisions and choices seems pretty subtle. What's the difference?

Werner: Let's talk about a restaurant menu. A person has already decided whether they are a vegetarian or a carnivore. Some people decide not to eat meat, so when they pick up a menu right off the bat anything that contains meat is off their menu choices. That leaves three or four choices. All they're doing is saying, that choice looks good, so I'll have that.

They are not deciding. They are choosing. I think we instructors are not yet effectively communicating that terminology to our students.

eJournal: Can you apply decisions and choices to your example of a guy loitering near your car in the parking lot?

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Werner: Applying this to the parking lot example: I already have decided what my choices are—

- I could just go to my car anyway;
- I could walk around him;
- I could go back into the store and ask for some help.

In that moment, I might say, "It is raining right now, and I really do not want to have to deal with him and these groceries. I am going to go back in to the store." At another time, I might say, "Today is nice and sunny and it's easy to keep an eye on him, plus I only have one bag of groceries, so I'm just going to go out to the car. If something untoward happens, I have my one word sentence, 'NO!' and if it progresses past that, well, then my pepper spray will be a spicy treat for him."

eJournal: Deciding you will act and creating menus beforehand eliminates the common excuse that people get tired of always having to be focused on avoiding hazards.

Werner: Once again, we are always "on." It is just a question of what are we focused on. Are we on an internal conversation in our head or on our external environment. The hard part of it is the decision-making, which if we've made the decision ahead of time, then we have taken out the hard part and the exhaustion.

eJournal: This sounds parallel to Jeff Cooper's teachings about the mental trigger: if that person does X, my response is Y. Is the decision that precedes the menu choices along the same lines?

Werner: It is, although Cooper's codes are poorly understood. Let's just reiterate that Cooper's codes really are not about awareness. On YouTube there's a 25-minute lecture that Cooper himself filmed, and in it he says, the codes are not about awareness, they are about your mental state in preparation to take life.

Those are corollary and that is another set of decisions that should already be made. They do influence what we do. If we see a person just standing around smoking and not doing anything or if it's two guys who appear to be having an amiable conversation in the parking lot, we are going to be in a little different Cooper state than if we can't see a person's hands or if they have something in hand that could be used for a weapon. I need to be ready to give this guy a spicy treat or maybe shoot him or maybe not. Maybe I will just keep an eye on him and make that choice a little later on as things develop.

eJournal: What's important is that you can react quickly because you've thoroughly thought out which situations cause you to start drawing options from which menu.

Werner: I was talking to a friend just this morning about the difference between the fight at three feet and in and the fight at three feet and out. To master the fight at three feet in, you had better be in pretty good physical condition and have some physical skills or you are probably going to lose. That is just the way it is. It requires a lot of training and a lot of ongoing practice. We need to recognize the fact that our area of influence is a lot further than three feet in and we need to have our triggers set a lot further out.

eJournal: Aversion to conflict makes us let situations get out of hand that might have been stopped early by a firm "No!" Sometimes it goes so far that shooting is all that's left on the menu. Too often, folks don't recognize that they've been targeted before the criminal is too close. What's the trick to seeing the situation early enough to avert it?

Werner: It is not a trick; it is practice. That is all it is. It is simply practice. People need to practice being rude. Sometimes you have to switch. You were a nice person one second ago. Now, you have to be rude and say no. You don't have to be mean about it but you do have to be firm and say no.

I didn't even realize I did this until it was pointed out to me during a brief conversation a while back, but when I'm in the grocery store my choices are, "No, I don't want that," or "No, not that steak." Am I mad at the steak when I say "No, not the steak; I want the pork chop?"

eJournal: [laughing] You are practicing decisiveness in a mundane area of life. You aren't worried you might choose wrong, you are just making a choice and acting on it without waffling.

Werner: That is a way to practice keeping our emotions under control while we are setting our boundaries. Then when someone asks, "Can you help me, blah, blah, blah?" I have practice saying, "No." Just no; that's all. I practice saying no on a regular basis.

We need practice to recognize our boundaries, and I mean that in a very physical way. Put a tape measure on the ground and learn to recognize what somebody looks like at 10 feet, at 12 feet, at three feet and at 25

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feet. Or if you want, you can do it by a car length: a car is about 20 feet long. Practice to recognize what a person looks like, physically in size, at that distance and understand that is one of your boundaries.

Specifically, I think a good boundary distance for people to recognize is eight feet because that is the maximum range for most pepper spray. If you are going to get your pepper spray into operation, eight feet is the place to do it, because you either have a stream that actually has a range of eight feet or you have a cone which will create that wall that is about two or three feet wide from about four feet out to about eight feet. So if people recognize physically what those boundaries are, then they know, that is the trigger.

People need to practice distances. It is not a trick, it is just practice and practice establishes correct habits.

eJournal: Your focus is more on proxemics than recognizing ruses criminals use to close the distance. Put another way, anyone within that area of influence has the possibility of turning into a problem.

Werner: Yes! I don't really care what the person's deal is; I just don't like people in my space. I admit it! I just don't want them there. I will cross into the next row in a parking lot to go around people because I want two cars between me and them, unless a person has a reason to be in my space.

eJournal: Well, that removes concerns about making an inaccurate assessment—either missing the indicators that the person has bad intentions or reacting incorrectly to an innocent person. In your response pattern, it matters not. All we ask is, are they too close?

Werner: I can't judge someone's intent anyway. I can look at their appearance and statistically, I can say, well, the chances that some older gentleman in a business suit is going to attack me is much less than a young guy who is not well-dressed. My risk analysis of those two circumstances is different, but I don't really care one way or another. If I don't let either into my space then neither can hurt me. The older guy could be a con artist, but let me tell you, if I let some old guy con me out of a hundred bucks, I'd be really unhappy about that!

eJournal: It seems to me we've been discussing awareness on two levels—the generalized “what does not fit in this picture?” and then a more informed kind that recognizes harbingers of violence. Are these the same or does the latter call for more study and analysis of criminal behavior?

Werner: Yes, but I don't expect everyone to understand that, and frankly, I don't know that it is that important to everyone. For example, a little thing of mine is armored trucks. I don't go into a store if I see an armored truck outside because armored truck robberies almost always start with gunfire.

We had one close to my old place in Atlanta. Right off the bat, the first thing they did was kill the guard. Well, I don't want to be around that. When I drive in, if there is an armored truck, I will sit in my car for five minutes and wait for them to go because they are rarely there very long and once they go, then I can go in.

Choosing to walk in the other lane to walk around a person just standing around does not require any specialized level of attention, just understanding basic principles of how close are you and can this person easily get into my space or am I going to put them into my space if I walk past them. I am not going to do that. I am going to go down the next lane and walk around them. By walking down the next lane I am going to avoid it entirely. That is what I want.

eJournal: Thank you for this thought-provoking discussion. You've given us a lot of great ideas to practice and I appreciate learning from you.

Claude Werner is a retired Army captain, with 10 years service in special operations. His background combines extensive work in the military, self-defense training, and white-collar financial services communities. This eclectic experience base gives him a view of self defense equipment and techniques that is more attuned to the needs of people with median lifestyles than some segments of the industry. Enjoy his informative blog at <https://tacticalprofessor.wordpress.com>.

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President's Message

by Marty Hayes, J.D.

This month's message morphed into the guest editorial in this edition of the eJournal and that was a pretty heavy piece to write. So, let's have some fun here, okay?

First, as we all know, shooting guns is fun. So, if you haven't had any fun lately, go do some shooting. A good place to start would be going to an IDPA match. In fact, if you want to come visit the Pacific Northwest, my school is hosting the [2018 Washington State IDPA Championship](#) scheduled for August 11-12. If you are an IDPA member with a current classification, come join us. In fact, the Network is the match sponsor.

If you are not a competition junkie like I am, how about some serious training? I would recommend attending the RangeMaster Tactical Conference in March in Little Rock, AR, but the event is full, with a waiting list. You can still attend RangeMaster Tactical Conference if you travel to the Pacific Northwest, because the Firearms Academy of Seattle will host a [RangeMaster Regional Tactical Conference](#) July 27-29, 2018 and there is still room in this one. At \$389, RangeMaster Tactical Conferences are one of the very best values for the training dollar, and I am honored to host many of the instructors.

Okay, so you are not that much into shooting, but you are active in the gun rights movement. If that is the case, remember that the NRA Annual Meeting is right around the corner May 4-6, and the Network will again have its' double booth at the 2018 meeting. Late Saturday afternoon, we'll host a gathering of the Network clan at booth 7855 with snacks and beverages and our advisory board members John Farnam, Massad Ayoob, James Fleming in attendance, along with Vincent Shuck and myself. We are very much looking forward to this year's meeting.

Since we are talking about the NRA Annual Meeting, you may ask what has happened to Network membership since the NRA introduced CarryGuard? Well, we have increased our numbers over 15%. In practical terms, that means another quarter million



dollars in the Legal Defense Fund! Those numbers are fun to talk about.

I also recently finished up an expert witness case I was privileged to work on for the [Second Amendment Foundation](#). Among many use of force cases, this counts as the first real gun-rights case I have done, except for my own when I joined SAF in a suit against my own WA Attorney General. That suit didn't prevail, but that doesn't mean we didn't try. Alan Gottlieb and his team from the [Second Amendment Foundation](#) are doing some great work challenging bad laws in court.

Have you ever been to [Gunsite Academy](#)? I have reported here about my last two excursions, and this year I am planning to attend multiple courses. One reason, it is FUN, but also, as an instructor, I can never learn enough. I go to classes for two reasons, other than the fun part. The first reason I go to Gunsite is to keep my skills sharp. As I age, my own skills deteriorate, along with my vision. There's not much I can do about the vision loss, which means to compensate I need to keep the other skills up to speed. I cannot do this by watching YouTube videos. I have to train.

The second reason is to learn new information, along with watching different teaching styles. This year, along with competing in the [Gunsite Alumni Shoot](#), I plan on taking both the 499 course and Instructor Development. I'll enjoy the 499 to keep the skills sharp and learn more tactics from their great cadre of instructors. I am taking the Instructor Development course to learn the material presented, to add to the knowledge and skill in my instructor role. It is Gunsite's first Instructor Development course and I have also convinced several of the my Firearms Academy staff Instructors to take the course with me. It should be a good bonding time, and we all look forward to learning more about how to teach, including teaching the Gunsite doctrine. I might even stay for a week-long precision rifle course, but we will have to wait on that decision until time gets closer.

That will wrap up my President's Message for this month. Great things are happening with the Network, and I am please to still be the head of it.

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Attorney Question of the Month

This month we started a new discussion with our Network affiliated attorneys when we asked:

Can a person who shoots in self defense be held criminally or civilly liable for injuries to an innocent third person, in spite of being justified in the use of deadly force against the attacker?

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In the States of Kansas and Missouri where I practice, the answer would be a resounding yes, in certain circumstances.

A self-defense situation does not give an individual the right to disregard the rights of other innocent victims in the vicinity of the wrongdoer.

Many rules of firearm safety include the rule "Always be sure of your target and what's beyond it." If an individual using deadly force in a legally verifiable case of self defense is negligent in how that force is applied and shoots an innocent bystander who was not a threat to the individual claiming self defense, then the individual could be sued for damages by the injured party or the family of the deceased party, in the event of a death.

If criminal negligence were used by the defending party, that individual could face criminal sanctions as well, depending on the facts of the case, perhaps for criminally negligent assault, battery or manslaughter if someone is killed.

I have seen very good firearms instructors tell their students that they are legally responsible for every bullet they fire and that extreme caution should be used when using a firearm in self defense especially when there are innocent individuals nearby.

I believe this issue relates back to the importance of training necessary to seek qualified instruction for proficiency and good judgment with a firearm, and in selecting the correct firearm for self defense in the environment in which one lives.

For instance, it would not seem to be a safe decision for an individual living in a multi-dwelling apartment building to use a high powered rifle for self defense due to the risks of over-penetration of the target and nearby walls with innocent individuals certain to be nearby.

Shooting towards a threatening individual who is surrounded by a backdrop of innocent individuals could also cause undue risks to those spectators.

Extreme caution should always be used when considering the use of deadly force.

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Before tackling this particular question, this might be a great time to point out one of the most difficult and pervading problems with the legal system in general: the almost complete inability to give an accurate answer to such a simple question. There are very few "black and white" answers truly available in the legal arena. If the question begins "Can a..." the answer is probably going to be "yep." "Can a bullet hit the moon?" "Yep." The actual and better answer is almost always "it depends." The answer will usually depend upon dozens of factors, but it will always depend on the perspective and inclination of the investigating officer(s) and the assigned prosecutor.

Here, the short answer is "yes." As in most cases, the better, and more illustrative, answer is, "it depends." Did the shooter, held to be in reasonable fear of imminent risk to human life (and thereby justified in responding with deadly force) then proceed to act recklessly? The difference between negligence and recklessness is about a year of law school, but it boils down to "recklessness is REALLY, REALLY negligent negligence." Spraying 32 rounds "north" towards the advancing armed mugger with your MAC 10 when the mugger is standing in front of a school bus is reckless. Firing three shots, two of which go a foot wide and hit a shopper across the street may be just negligent. It's a judgment call on the part of the aforementioned officials.

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If the shooting is deemed “reckless,” a manslaughter (or similar) charge is highly likely. Even mere negligence here can lead to charges (in Arizona, Negligent Homicide—a Class 4 Felony, punishable by a presumptive prison term of 2.5-6 years).

In short, just like Slim Pickens riding that nuke to the ground slapping his hat in glee in *Dr. Strangelove*, remember there is a lawyer riding each bullet that leaves the barrel of your gun. Practice a lot with good training to reinforce good habits rather than bad, and THINK, as much as possible, before you shoot.

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An innocent bystander would most definitely at a minimum bring a lawsuit for negligent firing/aiming of the gun. There are numerous issues to be considered. For example, it is clear that the gun was fired with intent but the round did not hit the intended target. The analysis to determine negligence: defendant owed a duty of care to the plaintiff; defendant breached that duty; plaintiff was harmed; defendant’s breach was a substantial factor in causing the plaintiff’s harm. To determine if defendant breached the duty you would use the Rowland factors:

1. The foreseeability of harm to the plaintiff;
2. The degree of certainty that the plaintiff suffered injury;
3. The closeness of the connection between the defendant’s conduct and the plaintiff’s injury;
4. The moral blame attached to the defendant’s conduct;
5. The policy of preventing future harm;
6. The extent of the burden to the defendant;
7. The consequences to the community of imposing a duty to exercise care with resulting liability for breach; and
8. The availability, cost, and prevalence of insurance for the risk involved.

The standard test and the level of proof would be “preponderance of evidence.” This is often explained by saying if you put a feather on the scales of justice that slight bit of proof is enough to prove liability.

So if the plaintiff can, in the slightest, prove the above, he collects. The reality is you better have insurance, because a jury will find the shooter negligent and have

to pay for the damages, including pain and suffering. This is regardless if your shooting was justified.

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Under Maine law, a person justifiably using deadly force may be criminally liable if he/she recklessly causes, or causes risk of harm, to innocent third persons. See title 17-A MRSA section 101:

“3. Conduct that is justifiable under this chapter constitutes a defense to any crime; except that, if a person is justified in using force against another, but the person recklessly injures or creates a risk of injury to 3rd persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness.”

There are, however, some “weasel words” regarding the definition of “recklessness” which probably mitigate the otherwise awful prospect of going to jail for successfully defending a schoolyard full of kids from the active shooter in their midst.

“For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person’s conduct and the circumstances known to the person, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.”

In the case of an active shooter, at least one Deputy AG has said he believes it would exempt one who attempted to take such a person out. It would be more problematic in the case of the seven or so other situations where deadly force might be justified.

In a civil case, the so-called “emergency doctrine” would likely apply. One could be liable if the jury, taking into account the exigencies of the situation, still believed that the actor failed to exercise ordinary care (the justification provisions of the code are not necessarily equivalent to civil justification).

A big “Thank You!” to our affiliated attorneys for their contributions to this interesting and educational discussion. Please return next month when we conclude this question with the second half of our affiliated attorneys’ responses to this question.

March 2018



News from Our Affiliates

by Josh Amos

March has arrived and like other spring things, the Armed Citizens' Legal Defense Network is growing.

First, let me get a little business out of the way to help us and our affiliated instructors ease into spring. Last year, with a focus on getting ahead of the pressures of the summer training season, I tried some new procedures for getting needed booklets and coupons out to our affiliated instructors and gun shop owners. Solving affiliates' summer booklet supply issues early worked so well last spring, that I am going to do more of the same this time around.

If you are a Network affiliate I will be reaching out to you over the next 30 to 60 days to check in to see how your coupon is working and how many booklets you need to introduce your students and customers to the Network through out the summer. I have a lot of great affiliates to talk to, so if you need booklets, brochures or if you need us to reissue your coupon right away, don't wait for me to call; please call me at 360-978-5200 or email me at josh@armedcitizensnetwork.org.

In this month's affiliate spotlight, I'd like to start by telling you a little about our affiliated instructor, Coralie Carrier at Southwestern Academy of Firearms Instruction in Las Cruces, NM (<http://www.safeinlc.com>). Coralie teaches monthly New Mexico CCW classes at the American Legion Hall and she has a full 2018 schedule already! Her classes cover New Mexico self defense and gun law, understanding responsible, legal and ethical use and ownership of guns for self defense, mental preparation, awareness and its critical role in concealed carry, avoiding criminal attack, controlling a violent confrontation, dispute resolution without violence and safe gun storage and gun safety for folks with children. That just scratches the surface, so if you're looking for concealed carry license classes, contact Coralie Carrier at [Southwestern Academy of Firearms Instruction!](http://www.southwesternacademyoffirearms.com)

My next shout out goes to Mike, Steve, Robert and the rest of the staff at Red Dot Arms in Lake Villa, Illinois (<http://www.reddotarms.com>). Red Dot is a "multi faceted" destination range with a gun shop selling new and used rifles, shotguns and pistols as well as

accessories, plus they have a gunsmith on site and a gun rental counter at the range.

Red Dot also has an impressive line up of training at their home facility in Lake Villa, IL and at satellite training facilities across the states of Illinois and Wisconsin. Red Dot has classes to assist you in whatever tool you use or skill set you want to improve, including multi-state CCW license training, first aid, knife, pistol, shotgun, rifle, gun maintenance, ammunition reloading and you can schedule time with a private instructor, participate in a group class or take instruction from a guest instructor like Steve Tarani.

Every time I call, email or otherwise contact Red Dot, the folks are top notch. If you are in Illinois or Wisconsin, please consider making the trip to Red Dot Arms and getting to know these great Network affiliates.

Since we are already geographically in the upper Midwest, I want to mention Frank Le Fevre at Saginaw Firearms in Saginaw, MN (<http://www.saginawfirearms.com/home.html>). Frank is a long-time supporter of the Armed Citizens' Legal Defense Network and an accomplished firearms safety trainer. Although he has been involved with shooting and firearms for 45 years, this dedicated instructor is passionate about getting beginners off to a good start, be they young people, senior citizens or disabled shooters and whether their interest is shooting for sport or for self defense. He's logged over 3,000 hours of instruction, according to his instructor bio on his website.

Although one of Frank's earlier hobbies included exhibition shooting with pistols and rifles, western style quick draw and other feats of marksmanship, today his interests primarily lie in combat style bulls eye, target shooting and self defense use of the pistol. If you are in Minnesota you should get to know Frank and let him know that you are a Network member, too.

As the Network grows, the opportunities to train with and buy from fellow Network members increases. See <https://www.armedcitizensnetwork.org/our-affiliates/map> and enter your location in the search field in the upper right quadrant of the page for lists of affiliated instructors and affiliated gun shops within a 200-mile radius of the location you enter.

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

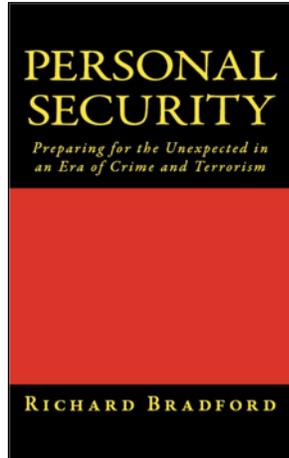
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Book Review

Personal Security: Preparing for the Unexpected in an Era of Crime and Terrorism

by Richard N. Bradford
CreateSpace, November 24, 2017
180 pages, 6 x 9 softbound, \$9.95 at
<https://www.amazon.com>
ISBN-10: 1976324718

Reviewed by Gila Hayes



Responses to danger must be intuitive, Bradford continues, adding that intuition draws on experience to recognize patterns that suggest what is about to happen. Intuitive reactions require “a small fraction of the time it would take to consciously analyze a situation,” he explains. The analysis should occur in advance, he details, including considering your situation from an attacker’s perspective, focusing on the most likely scenarios, visualizing, keeping options open, and he offers a number of other principles, including relying on gross motor skills, not declaring a situation safe too soon, and more.

Several months ago, [Ed Lovette](#), author of *Defensive Living* and *Snubby Revolver*, recommended a new book written by an associate with whom he worked while in government employ. I respect Ed enormously, so bookmarked it for reading when I had an open weekend. Since detecting imminent attack and sidestepping it altogether is so preferable to fighting, I wanted to learn danger detection from Ed’s former colleague, much as I had been privileged to learn from Ed several decades ago in an all-too-brief class that left the student wishing for more.

By way of introduction, Bradford comments that personal security instructors tend to teach what they are best at—shooting or hand-to-hand defenses. Citing crime statistics, he notes, “We believe it is more useful to determine what the threat is likely to be and what skills are necessary to elude that threat.” He adds later, “High speed driving, martial arts, and marksmanship are useful skills—but only after you are aware that there is a threat.”

Bradford draws lessons from statistics that divide human reaction to danger into 10-15% of people responding “calmly and reasonably” due to prior experience and training, another 10-15% panicking or over-reacting and 70-75% under-reacting or freezing, he cites. He notes that any reaction to attack, even if in hindsight it is judged as a wrong response, raises survival odds to 90% or higher. An attack will be chaotic, Bradford warns, and habituated responses, “unthinking and automatic,” are most accessible under stressful conditions. Habits, he adds, result from reminders, routine, reward and repetition and he offers several useful suggestions on how to build the habit of awareness through innocuous cues.

Bradford teaches that it is best to expect attack and determine in advance to counter it. The unsuspecting victim misses warning signs, he adds, then the surprised victim needs too much time to make sense of what he or she sees, formulate a response, then execute the response. “The safer the feeling, the more complacent the attitude, the more shocking and debilitating the effect of sudden surprise,” he accounts. Later, correlating Cooper’s color codes to physiological response as indicated by heart rate, he concludes, “Going from condition white through yellow to orange to red will prepare you for the fight (or flight) of your life. Going directly from condition white to black can leave you a quivering mass of useless flesh.”

Students of personal security may weary of being advised to practice awareness, and he suggests that the difficulty is caused by not being taught of what we should be aware. “Looking is not enough. You must be looking for something. You must have a strategy to determine what you are looking for and a way to turn ‘seeing’ into true awareness,” he stresses. In addition, knowing what is irrelevant allows the mind to deliberately focus on important details like knowing the location of entrances and exits or cover and concealment, to cite examples Bradford gives later in the book.

Numerous studies teach threat indicators but first one must have been sufficiently observant to know what is normal, and then alert to cues to the abnormal, Bradford suggests. And finally, working to become more observant alone is “meaningless if you do not also improve the action or reaction that you take in response

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to your observations. Without preparation you are likely to do little or nothing when faced with a life-threatening attack," he warns.

Bradford's section on how attackers prepare is drawn from protection principles for high-profile targets, and many of the steps are the same for detecting resource predators. Early recognition is critical and while an attack may seem random, there are periods in our daily routines that are more exposed than others, and these we can control. "By analyzing your own routine, it is possible to predict with some degree of accuracy where and when you are most vulnerable to attack. Knowing this, you can determine how you should plan to avoid, or to evade, or where to go after countering such an attack," he advises. Using the daily commute to and from work, he teaches recognizing safe havens and danger areas. By studying the terrain we pass through daily, we are better able to recognize when a threat has moved into what was previously a safe area, he advises.

Confirmation bias can interfere with observational skills, Bradford writes, explaining that humans try to rationalize what is unfamiliar or uncomfortable. Victims facing violence may report they "thought a movie was being made," so did not respond, in other cases, distractions blind the observer to vital details, and Bradford cites studies debunking the concept of multi tasking to explain that we really can't concentrate on two things at one time—we merely switch rapidly from focusing on one thing to another, often missing vital details in our distraction. "Surprise is the criminal and terrorist's most powerful weapon; it is the victim's greatest vulnerability," he stresses.

In just a few pages, Bradford packs a whole laundry list of factors for which the observant person looks. Instead of telling the reader to regularly scan their environment, he recommends patterns and terrain features, stressing, "Do not just move your eyes from side to side. Actually think about what you are seeing." Distractions may tunnel your vision, he warns, then advises ways to escape in the greatest safety, engage help from others,

choose the safest positioning in a room, escape far enough to reach safety, and work through difficult situations like lengthy airplane flights, where it is not possible to remain continuously in condition yellow.

Bradford gives a good briefing on driving, noting that familiarization with locks, door releases, seat belts and other features is critical to not being trapped inside a car, but really, the car's strongest contribution is helping you escape an area quickly. His driving technique review is very good, and although as he humorously notes, most Americans believe they are better drivers than they really are, there's always room to improve. In this useful section, he addresses vehicle performance, staying within the road and your car's limits, understanding how to back out of trouble, and other driving skills beyond what one normally uses.

Personal Security is a short book, and one reason is the absence of the long and detailed stories about attacks so frequently found mixed into self-defense instruction. Bradford believes that citing case studies distracts from "principles that can be applied to the greatest number of probable incidents." He opines that it would be nice to "provide a list of tactics and techniques that could be applied to a wide variety of possible threats," but that would do a disservice to the reader, he believes, because "a tactic applicable in one environment may be disastrous in another." He instead proposes to teach the reader principles that are more generally applicable, and having completed the book, I suggest that he succeeded.

Bradford closes *Personal Security* with advice to refer back to his book from time to time. Practice the skills outlined he advises—especially the observational techniques taught—until awareness is second nature. The best outcome, he encourages, is spotting danger before it becomes life threatening.

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



Guest Editorial

by Marty Hayes,
J.D.

Unless you live on the top of a mountain (or perhaps a similarly situated cave) with no TV, Internet, radio or other means of communication,

then you know that there was another shooting at a school, this time in Parkland, Florida. 17 students and staff were shot and killed, and many more injured. In a rare turn of events, the shooter actually was captured alive.

Florida has the death penalty. It should be instructional to see what the shooter says to try to save his own life. Of course, as a result, the liberal media and politically-active left have been making wave after wave of claims and suggestions, all demanding a ban on high capacity semi-automatic weapons, especially rifles. Let's talk about that.

Simply making a high capacity firearm illegal to possess (contraband) would be a disaster. First, the United States Supreme Court would very likely overturn such an act, because the court in *Heller* discussed the types of firearms that the American people are allowed to own:

"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."

So, doing what the left demands would not be feasible. In addition, there is that pesky Fourth Amendment to consider.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Once again, the constitution sets up a huge roadblock to prevent confiscation of once legally-held firearms, that might be deemed to be contraband if somehow the legality of a ban was upheld. With millions and millions of these types of weapons in the hands of the American people, it would be impossible for law enforcement to develop probable cause for seizing each and every weapon declared contraband. As a result, I cannot foresee a time when those of us who own high capacity semi-automatic weapons would ever have to worry about the knock on the door and the words "we have a warrant."

So, with the above opinion in mind, if gun control advocates have their way, what might be a more likely scenario?

In my opinion, a more likely scenario is reinstatement of the 1994 "Public Safety and Recreational Firearms Use Protection Act" more colloquially known as the Clinton Assault Weapons Ban. It was instituted in 1994 and set to expire in 2004 if congress did not renew it. Proponents postulated that by passing this bill, crime rates would go down, and that its renewal would be a no-brainer. However, there was no decrease in crime and, as a result, the ban was allowed to expire.

We now have a generation that did not live through that fiasco, but I did, and frankly, it had very little effect on what I did, either personally or at my training school, The Firearms Academy of Seattle, Inc. After the ban expired, I did, however, buy up enough magazines and firearms to fill my needs for the rest of my life. If you haven't done that and have the cash, I respectfully suggest you consider that course of action.

[Continued next page...]

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Second, it is comforting to know that nothing the First, our gun industry, which is soft at the moment, could use the business government does will affect me—with the exception of a confiscation scheme which at this time I believe would cause a bloodbath in this country and create a different set of problems.

There are other restrictions that I think might be passed. One possibility is raising the age limit to purchase all firearms to 21 years old. This suggestion has me wondering if that isn't such a bad idea. A 19-year old of today certainly isn't like the 19-year old of yesteryear. At 19, I was going to college, working a part-time job and married, supporting a wife and her son. Today's 19-year olds are eating laundry detergent packets (I still haven't figured out that one). Freddie Blish, owner of Robar Custom Firearms, has suggested raising the age limit with an exception for those enrolled in military service. Serve in the military and the age limit does not apply. Put that way, the age restriction is something I could live with. To further support this idea, under current law, you must be 21 to buy a handgun and that hasn't been a catastrophe.

I think we can also expect some behind the scenes work by the Trump administration to strengthen the National Instant Criminal Background Check System (NICS), or perhaps legislation to try to include some aspect of mental health screening. That is a huge can of worms, and any changes of that kind cannot be made quickly. Still, we need to make sure all reporting by local, state and military courts for those convicted of a disqualifying offense is done.

I implore Network members to look at the long range effects of how President Trump handles this. He may have to give in to some of the above restrictions, if congress pushes them through. Don't throw out the baby with the bath water! We need Trump in office for the next six years, because the United States Supreme Court will be changing. It will either change for the better, or change for the worse. We have several justices currently serving that will likely not be on the Court in six years. Kennedy is 81, Ginsberg is 84 and



Breyer is 79. We need a president like Trump in office to appoint conservative justices that will interpret the Constitution as it was written, not as current Tide pod-eating society wants it. If that means we give a little, then I am okay with that.

Now, onto the problem of school shootings.

What most readers do not realize is that I actually served a short stint as a School Resource Officer. This came about because included in the legislation resulting in the Clinton Assault Weapons Ban, was funding for additional law enforcement, including school resource officers. I took a SRO position and wrote the policies and procedures for security and response to mass calamities for a Western Washington school district. I only mention this to help you understand that perhaps I have a little inside perspective on the issue.

At this time in our history, we have turned our schools in to killing zones, with the exception of schools that are wealthy enough to afford armed security or those enlightened enough to allow teachers and other school personnel to be armed.

After the Sandy Hook school shooting, NRA Executive Vice-President Wayne LaPierre said, "The only thing that stops a bad guy with a gun, is a good guy with a gun." As I wrote in this journal at the time, he was right. Throughout history that has pretty much held true. I could bore you with examples, but you can find those on your own.

How do we get good guys and gals with guns into our schools?

First suggestion: I believe it is incumbent upon the parents of school-aged children to DEMAND adequate security for their kids. School boards are elected officials, who are ultimately responsible for the policies of the schools. They also hold the purse and control the purse strings. Having said that, I don't know of many schools that are rolling in dough, so if parents want increased security, they had better be willing to pay for it. This suggestion would apply for schools that want to hire armed and trained security.

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Second suggestion: Volunteers could step up. This could include either school staff who volunteer to accept the role of protector of the children, or perhaps trained parents and grandparents who will accept that role on a volunteer basis. They would have to be trained and have to continue training, but I don't see that as a hindrance, especially in light of the next suggestion.

Third suggestion: The firearms industry could take it upon itself to help provide security, weaponry and training for volunteer or paid staff at schools. I suggest calling it the American Coalition To Stop School Shootings (ACTSSS). How would this work? Each firearms-related business or organization would contribute 1% of their gross revenues to a tax exempt charitable foundation, the mission of which would be to provide funding to help school districts arm and train volunteers and even to hire paid security. If each large corporation and large gun rights organization would pledge only 1% of their gross receipts, enough money would be raised to accomplish a great effort.

As the president of two successful firearms-related businesses, I would jump at the chance to do this if it would actually do some good and stop school shootings. I think it would. Imagine if every school in the nation was able to provide armed security at school and school functions? I postulate that the number of school shootings would dramatically decrease, and the severity of school shootings would also decrease. That result would only help the overall firearms industry, along with removing political ammunition from those who would like to disarm us.

If anyone reading this suggestion would like to further this idea, please drop an e-mail to mhayes@armedcitizensnetwork.org. I would especially like to hear from people who make their living from the industry. Maybe we can do something with the idea.

*[End of March 2018 eJournal.
Please return for our April 2018 edition.]*

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