

Defending Against First Degree Murder Charges

An Interview with Attorney Edward Levy

Interview by Gila Hayes

This time of year we routinely share reports with members about the Network's efforts in the year just past. Financial demands on the Legal Defense Fund were moderate in 2020. We drew on the Fund three times during the year, but its most serious use was in mid-August of 2020, when a member shot and killed a man in defense of an intimate partner in her apartment.

As members know, we go to any extreme necessary to protect member privacy, so many of the member-involved cases for which the legal defense is paid from the Legal Defense Fund are only mentioned in the briefest of outlines. We are driven to make sure that any mention given a member's use of force never starts the ball rolling for a civil lawsuit or gets criminal charges refiled. Thus, our report focuses on the legal battle as seen through the eyes of the attorney working the case.

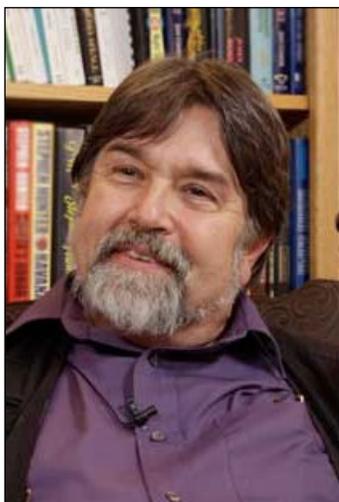
Because the member we assisted in August did not have an attorney, his initial call launched, amongst other steps, an all-out drive to engage one of the Network affiliated attorneys in his area. His call came in on Friday afternoon at the height of vacation season, so several of the affiliated attorneys we contacted told us they were out of state. After a flurry of calls, Network President Marty Hayes spoke with attorney Edward Levy of Denver, CO, who agreed to go meet with the member.

A week and a half later, the member was released following an interview with District Attorney investigators, in which our member and our affiliated attorney clarified the facts of the case. In the words of the district attorney's order to release the member, "After further investigation and review there are insufficient grounds for the issuance of a criminal complaint against the defendant at this time."

What did attorney Edward Levy do to bring about that favorable result? Members will be interested in a conversation we recently had with Levy in which we explored that question.

eJournal: We were grateful when you agreed to go check in with our member at the jail, and we were relieved later when you told us that you would be happy to represent our Network member. Could you tell us what you found initially?

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Rallies, Protests and Riots – Part 1

An Interview with Marc MacYoung

Interview by Gila Hayes

Throughout the summer and now moving toward Inauguration Day and other potential flashpoints, Network members are increasingly concerned about mob violence coming into their neighborhoods and work locations. Most have never had to deal with multiple attackers to say nothing of

mobs. Violence dynamics expert Marc MacYoung has both an experiential understanding about riots (from being an L.A. resident during the 1992 riots) and the ability to teach about it through his work as an expert witness distilling research into explanations about violent group behavior for defense attorneys, juries and judges.

I spoke with MacYoung recently, wanting to understand more about indications that crowds are becoming violent and how to avoid getting caught up in it. He explained much about the current situation and suggested options for escaping a riot-torn area.

We share the conversation here so our members can develop survival strategies to avoid getting caught up in the violence. Let's switch now to Q & A to learn from MacYoung in his own words.

eJournal: The news is full of reports of rallies, marches, demonstrations, protests—some are even specifically reported as peaceful protests but still have the predictable ending, riots—if I am using the term "riot" correctly. Let's start by defining the terms. Why is accurate terminology important?

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January 2021

Levy: Most people in Colorado tend to be held on the highest possible charge. So, when I found out that they had charged the member with first-degree murder, my suspicion was that they were still investigating the case and they wanted to make sure that he wasn't going to get bond. That turned out to be true.

After Marty called me, I was at the jail within four to five hours. By that time, the member had been transferred to the detention center jail where I met with him. I was only six or seven hours behind the detectives in terms of investigating the case. Our speed was the biggest and best thing that we did.

eJournal: Is that unusually fast for an attorney who is retained to represent someone facing serious charges?

Levy: It was unusually fast, and that speed was what won the case. Usually, you are at least two or three days behind. The person gets arrested, then they're calling friends and family asking them to find an attorney, but during that same time, the police are working the case and getting things together so that they can go to court.

Because this happened on a Friday, the member was not going to see a judge until Monday anyway. The police had all that time to work the case while the defendant would usually be scrambling for an attorney. Here, my investigation was only a few hours behind them over the weekend. That was dramatic in terms of impacting the outcome.

I had a leg up on the case, being local, being there quickly and getting the client's story about what happened. I was able to go meet with the member and understand the case through how he related the events. Because I am local, I am familiar with the apartment complex where the shooting occurred and that gave me an idea of the people that were involved. That allowed me to control the narrative.

I realized quickly that I had more information about what had occurred in the incident than the police did. That is because the witness had some concerns about personal liability, either criminal or civil, and immediately shut her mouth. The member did the right thing, too. He exercised his constitutional rights. He asked for an attorney and didn't say anything. That was huge in terms of how I proceeded in the case.

When I got the police's probable cause statement before the first hearing, I was able to take what I knew plus what the police were willing to tell me in that statement and figure out exactly what had happened. More importantly, it confirmed what the client had told me. We were able to drive the narrative, since the investigators at the District Attorney's Office and the police department didn't know what happened in the incident.

eJournal: What was the nature of the hearing you mentioned?

Levy: It's just an initial appearance, where the defendant is advised that he is being held on a first-degree murder charge,

that the charges haven't formally been filed yet, and that no bond had been set. Usually, it is a bond appearance where the judge would tell him, you can post a \$50,000 bond and get out, but because it was a first-degree murder charge, there was no bond available.

They had assigned it to a district court judge based on the seriousness of the case, so the hearing was very formal and had to cover all the bases; the hearing had to dot the i's and cross the t's. They had assigned a public defender to the case because they didn't know that I had entered my appearance, and I was able to get all the information that the D.A. had given the public defender.

eJournal: You said the probable cause statement you got before that hearing matched what you had been told by our member. Is that unusual?

Levy: I would say that it is unusual most of the time. People try to put a different spin on things. A lot of time, people who have a bad conscience, if you will, black out just as a protective device and they won't relate things or on the second or so meeting with their attorney they will start trying to sugar-coat what they did, instead of getting down to the meat of the issue.

Here, the member was very honest and forthright and frank. I spent a considerable amount of time with him over that Friday and Saturday getting ready.

eJournal: We appreciated you working over the weekend! After Monday's hearing, though, the authorities continued to keep our member in custody. What happened?

Levy: The District Attorney's office asked for more time to make a charging decision. Normally, they would overcharge right off the bat and then later reduce the charges, but because they really didn't have any information, they asked for more time. Normally, they would get the time. They could tell the judge they wanted to hold the defendant for another 48 hours beyond the initial time, and those requests are routinely granted, especially in major felony cases.

I established some credibility with the District Attorney and really let them know that we were in for the long run when I said, "I'm not going to contest that. You go ahead and take the extra days and make sure you are making the right decision about this case." I think that helped dramatically. They realized that we would be reasonable; we hadn't gone to Def Con 1 and fueled the missiles.

eJournal: The downside is that with no option for bail, our member remained incarcerated. Under the circumstances, if you had pushed for a speedier charging decision, would he have remained in jail, anyway? In your work to keep our member attuned to the progress of the case, how tough was it to tell him he was not going home right away?

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Levy: He was on-board with that. He had gotten the whole jailhouse story, “You’re going to be in here for a year before you go to trial; you’re not going to get bond; you are facing really serious charges.” I think the guards had him prepared for the long haul.

eJournal: To continue exploring the legal process – you finished the initial appearance and unfortunately our member went back to the jail. What did you need to accomplish next?

Levy: Now I reached out to the District Attorney and I tried to get an idea about what they thought the case was and where they thought their strength was. They had approached us to see whether or not we would be willing to let their investigator interrogate the member.

I pondered that, and it literally kept me up one entire night. Based on the investigation and background work I had already done over the weekend and my understanding of the case, I believed that we could control the narrative. I confirmed that the other witness had lawyered up and hadn’t talked to the police, so I didn’t think the investigation revealed what happened in the incident. We would be able to go ahead and say, “Here is what happened.”

That was a very tough decision! Marty had given me the phone number for Mas Ayoob and so I gave Mas a call and I said, “Hey, here is what I am thinking. Here is the initial evidence that we have. What do you think about talking to the district attorney ahead of the charging decision?”

Mas was pretty forthright. He said, “You know, there are a lot of risks in that but there is also some benefit. If you think that you can persuade them, if nothing else, you might get a better charge and then you will be able to post bond.”

Then I went and talked with the member. He was on-board. In fact, one of his statements in the police report was that he wanted to tell “his side of the story” from the beginning and I think that is why the D.A. approached me.

We spent probably four to six hours prepping the member for what would be the interview of his lifetime. We were able to anticipate questions that the detective and the D.A. would ask, and I was able to focus the member on the legally relevant parts that would matter to the police and to the District Attorney’s office. That interview was what cracked the case.

I contacted the District Attorney and we all met in the jail on Tuesday night for about a three hour interview, which obviously was recorded and on the record. I knew I could be playing a video of it to a jury. I was able to bring out all of the elements of the self-defense claim and had the opportunity to ask the member questions. For example, the member drew a diagram of the apartment and it differed from what I had previously seen, so I said, “No, we’re not going to use this.” Then the police drew a diagram, and I looked at it and said, “Close enough” and we used their diagram.

By being there during the interview, I was able to essentially guide the member and when the detective tried to joke or lighten the atmosphere, I was able to keep the interview serious enough and relate what happened.

eJournal: Were they playing tricky interview games trying to elicit inculpatory statements from our member, statements on record that could have been inaccurate due, simply, to human error?

Levy: Oh, no, no. I mean that there were standard interrogation techniques in their questions. The idea is that the interviewer, the detective, can put the defendant at ease, so he might spontaneously say something or not be as guarded in what he is saying or kind of try to please someone who is friendly and just chatting instead of having a deadly serious conversation about what happened.

For example, I was able to have the member explain things, and if he started to get off topic, I was able to say, “Look, we are just talking about the facts; this is like Dragnet, just the facts. That man over there, that is the detective that is going to ask you questions about what you heard, what you saw and things of that nature. You can answer all of those honestly and forthrightly. At certain times, he is going to ask you what you were thinking.” That was my code word, because we were talking about intent. I told the member, “At those time, go ahead and let him know what you were thinking, but other than that, just stick to the facts.” The member got with that pretty quickly.

One of the questions that I asked that was designed for the jury was, “At that point in time, when [name of the guy that was shot] moved from Point A to Point B, did you think that the gunfight was over?” Of course, the member said, “No.” I knew if I was taking it to trial, I would be telling the jury about the gun fight and how the gun fight occurred in two stages. The shooting really wasn’t a separate incident, it was a continuation and I really wanted to get that out early so that the District Attorney, too, would realize that I had a really good self-defense claim.

eJournal: There will always be questions about whether the shooter had lower force options to stop the attack, whether he went too far, and all the many other “what if’s” that always come up when an attacker is killed.

Levy: Right. District attorneys might say that the first shot might have been self defense, maybe even the second, but by the time he got to five or six, a new intent formed. In a tenth of a second, we go from defending ourselves to making sure that the other guy gets killed – to the intent to murder. Attorneys are good at that kind of thing.

eJournal: Did they try that tactic to get statements they could paint as a confession then employ that to indict our member?

Levy: Not with me there, no. They did in their initial fact inves-

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tigation. They were trying to make sure that they understood what had happened; they wanted to make sure that what the member was telling them really did match their understanding of the scene and what they knew about what had happened.

They had a text message that the witness had sent that I got from the probable cause statement and they wanted to try to explore that. The concern about the text was that there might have been a conspiracy between the member and the witness. I had to debunk that right off the bat.

eJournal: Is it unusual for a defense attorney to participate that actively – not just telling their client what not to answer, but actually raising subjects that needed to be discussed?

Levy: Well, usually the interrogation is over by the time I get hired! Usually, the police arrest the poor guy, and he blathers for three hours and then they take him over to the jail, they write up a probable cause statement and their case is done. They have made their case.

Usually, any statements that my clients give are what we in the legal business call confessions, so it is already a done deal. It is unusual to be there in the investigative stage and that is why our speed in this case was so important.

eJournal: Did the District Attorney ever actually formally charge our member with first degree murder?

Levy: No, the member was booked on first degree murder. If we had not talked to the District Attorney's office, they would have charged him with first degree murder later. When they asked me for the extension of time – which they would have gotten anyway – my consent to that said, "We are trying to be reasonable." Once we did the interview, they said, "We're not sure. Can we have yet another extension?" and that is when I knew the case was over.

When they couldn't get the other witness to roll over or talk and they decided they didn't have enough evidence to charge the witness, the case against the member fell apart because of the strong self-defense claim.

eJournal: When you laid out all the facts in the interview with the District Attorney, was there nothing to support their suspicion about a prior agreement to collude and kill a man?

Levy: No, but when I first heard the story, I thought, "Oh, my goodness, I think our client is in serious trouble." Then when I saw the witness' text message, I said, "Oh, we are really in trouble!" After the interview, I met with the District Attorney and the detective, my first question was, "Are you going to charge the other person?" and they said, "We're looking at it, but we are not sure yet." If they had charged the witness, we would probably still be defending the case.

After they did an investigation of our story, they were willing to go with self defense. When they figured out that they didn't have enough evidence against the witness, and our story

was solid in terms of the affirmative defense, they decided to fold their camp and let our member go. I would say 90-95% of our version of the events matched the District Attorney's understanding of events. It was close enough that I'm sure they wouldn't have been able to convince a jury it was not self defense.

eJournal: How long was it before our member was set free?

Levy: After the interview, the member was out within two days. They took another day to make their decision. We had another court appearance and the paperwork to the jail took more time than anything else.

eJournal: One fear members identify is being incarcerated during the time needed to show the criminal justice system their innocence, like our member was. Most people find that possibility horrifying.

Levy: I don't know anyone who has ever said that they had a good time in jail, but when I look at this case, what the member did was absolutely right. If he had tried to explain things at the scene, it would have given the other witness the chance to torpedo his story and invent a bunch of lies. By staying silent, even though he ended up going into custody, I was able to control the narrative and get ahead of the case.

eJournal: This story's repeating themes have been truth and speed. Could we have been even faster? Suppose for a moment that a client knew you in advance, shot an attacker in self defense, and called you to come to where they were with the responding officers. Would there be a productive role for you at the scene? Would you even be allowed to talk with the client?

Levy: If that had happened here, I would have told the client to stay quiet and I would let them take him off to jail. There is nothing that I can do right at that point. The member was arrested by street cops; he didn't see investigators and detectives until he was at the police station. There really isn't anything I could do because they are in the middle of an investigation. If the client says, "I want to remain silent; I want my attorney present during any questioning," that is just as good as me being there. If the client tells every cop, every paramedic, everybody who shows up at the scene, chances are of the five, six or eight people who are there responding to the shooting, one of them is going to be honest enough to tell the court, that is what he said.

eJournal: If you were on the scene, would you be sidelined; would you be frozen out of the proceedings?

Levy: There is nothing I can do while they are investigating. I have a right to be with the client assuming that they would put him in custody. If he is not in custody, I am just standing next to him anyway. There is not much I can do. I am totally reactive until they start actually making charging documents and take him off to custody.

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eJournal: A number of years ago, a member shot a man who broke through his home's front door with the whole family inside. We had an amazing affiliated attorney in that city, and a few hours after we hired him, we saw news footage of him speaking to news cameras from the member's front lawn, essentially telling the press to pound sand. It raises the question what, if any, interference or influence did the news media have in your case last summer?

Levy: We only got one line in the local paper. It didn't seem to be a high profile case. I think a lot of that had to do with the nature of the man who was shot, in that he was part of the recreational pharmaceutical industry and I think also a lot of it had to do with the apartment complex. While it is not a high crime area, it is also not exactly low crime, either. The police are familiar with it and there are a lot of police contacts at that apartment complex.

eJournal: After our member was freed, the temptation would be to heave a sigh of relief and conclude, "It is over," but I have to ask, is it really over?

Levy: Well, no. There were never any charges filed so there wasn't any dismissal, even without prejudice. There is no statute of limitations on murder. The other issue is civil, and so Marty told me, "Don't relax. You might have a civil case coming," and he was right, there could have been trouble from the deceased's family, or from the other person involved, either of whom might decide to file a case or seek recompense. We had to maintain vigilance.

I hired an investigator to check out the background of the witness and the deceased and to maintain liaison with the police department to see what they were doing with the investigation. For a month or two afterwards we continued to monitor the case until we knew that the District Attorney had totally dropped it and the police were no longer investigating.

eJournal: You mentioned that without dismissal of formal charges there's no judicial order that prevents filing murder charges later. How long might the member remain under the uncertainty of having to answer to murder charges?

Levy: In that homicide is a major felony, first degree murder is a lifetime issue. As a practical matter, I would say about two years is the time to be concerned. Here, I think that the risk was that the other witness would change her mind, would decide to concoct a story claiming to accept responsibility for a conspiracy to kill an ex-boyfriend. That could have caused us a lot of problems. It was unpredictable, although she had lawyered up and been concerned about that from day one. We also did not know if there was going to be a civil lawsuit, so the idea was to keep a lid on everything and not publicize or discuss anything, waiting for the statute of limitations to run out, which is two years in our state.

eJournal: Additionally, I've seen situations befall other members who used fairly minimal force in self defense, in which

they've lost employment, promotions or new jobs, to say nothing of a number of other personal problems not related to the criminal justice system.

Levy: In the past, I have suggested to people that they go see therapists and consult with professional career advisors. Some jobs are impacted by the mere fact that there was an arrest and that needs to be disclosed. When you start discussing homicide charges, you might as well be swimming with a great white shark. These are impacts that come at the end of every shooting. Here, all charges were dismissed after a full and complete investigation. That is all the member will need to say to an employer.

eJournal: Now that a few months have passed, what are your impressions of the whole situation?

Levy: The big issue was the speed, and the way I was able to talk with the member and let him know what he was facing and what was going on. I think the member was very glad he had the Network behind him and was able to call on that resource. He knew that he was not alone. Apparently, he did have some concerns, because my website is minimal; it is not some big, sexy website, but now he is happy with the results. With any client, I have to make sure that we are compatible – that I am acceptable to the client, and that the client is acceptable to me.

Finances are usually a big issue. Because of Network membership, that issue was never on the table; finances were not an issue for him. A lot of times attorneys have to make decisions relating to finances and business, as opposed to doing the right thing. Here, I did not have that dilemma. I could evaluate his claims without worrying about whether or not he could afford the defense.

Even then, when I talked with Marty, I had to say, "Here is what I think we have; here is the work that I see our defense will entail," and Marty said, "It is a colorable defense. We're good with that. Go for it." So, I said, "Well, yeah, I can certainly make this defense work," and that was after meeting with the client literally only one time for a couple of hours.

eJournal: At any time did Marty express concern over how much you were spending in defense of this member? Did he ever imply that you might be bumping up against a limit and you needed to close it out quickly? Did, for example, you worry if there were funds to pay the cost of putting your private investigator to work or for the hours you put in over that first weekend?

Levy: No, there was nothing like that at all. Marty expressed to me the idea of unlimited resources and that was good to hear. I think some attorneys might have thought, "Let's milk this and take it to trial," but I did the right thing for the client. I got him out as quickly as I could. But back to your question, no, I never had any concern about adequacy of resources, or that I could not go hire experts, or do what I needed to do.

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eJournal: How did the flow of evidence about the case work? If, for example, Marty or Massad needed enough detail to identify use of force genuinely needed in defense of innocent life, could you share everything with them? Did you have to restrict, sort through, or cherry pick which of the case materials you allowed them to see?

Levy: No, I did not at all. Marty asked for my frank assessment of the case and I gave it to him. Massad provided more general guidance, and in case we needed more, he explained how hiring him as an expert would work.

When I was a public defender, even in a capital case, there was a lot of discussion about how much of our resources we could use on a case. How many attorneys do you put on the case? Even in the public defender's office, there are questions about resource allocation. We had to ask, is there money to handle this case and is the value of the case worth what we were putting into it? I mean, if the guy is going to lose, and it is a long, guilty plea, we might as well do the guilty plea quickly at the lowest possible cost. Here, I really felt that Marty and everyone was on board with doing what it took to help out the member.

eJournal: Yes, from my viewpoint – and I believe I can speak for our vice president and our advisory board, too – in saying that is entirely accurate. The enthusiasm with which you shouldered the case came as a huge relief and we truly appreciate everything you did. You had served as a Network affiliated attorney since 2014, but due to the low number of member-involved cases, we had never had to call on you before, yet there you were that Friday afternoon, available to help. Furthermore, at no point during those initial days did we feel that you were rolling your eyes thinking, “Oh, just another criminal.” You seemed to be as determined as we were to show that the use of deadly force was justifiable.

Levy: Personally, I appreciated the way we were able to do this, just on a handshake. I was able to tell the Network, “Here is what I see. I've got this,” and boom, Marty was saying, “Go do what you have to do. Here is the money, go hire investigators and go defend the case.” That made the Network easy to work with. A lot of times in capital cases, I am asked to prove my experience and show that I have the resources to do the case. Also, a lot of the homicide cases I see are dead-bang losers, but this one is one where we really had a good self-defense case.

eJournal: It has been especially interesting to hear your general characterizations about our member's quickness to grasp what he was up against and how his truthfulness let you commit to the strategies you pursued – like deciding to let the District Attorney hold their interrogation.

Levy: The member had a credible, believable story which turned out to be true.

eJournal: You've mentioned his truthfulness several times. Does a lawyer feel differently when truthfulness and the facts of the case indicate an innocent person?

Levy: Absolutely! I have done thousands of criminal cases, and I think I could maybe count five who I thought were truly innocent and wrongfully accused in the first place and this was one of the five.

The answer to your question all goes to the amount of work you put into a case and the amount of belief you have in the client. For example, if you have a sex offender case, and you know what the outcome will be no matter what you do, you don't necessarily work as hard because you are not as emotionally involved and trying to correct the injustice. Here, there was an injustice that needed correcting and the right thing to do was to get the member out as quickly as possible with the charges dropped, as opposed to thinking, “Oh, let's go get a trial victory because we asserted an affirmative defense.”

eJournal: I think your experience with our member last summer reflects the bigger truth about our members that is illustrated by the low number of times members have used force in self defense. Of the 26 times we've paid attorneys and experts to protect our members' rights after self defense, all were resolved to the member's satisfaction without going to trial.

Maybe I shouldn't even put that into words, because it is very much a sword of Damocles hanging over my head! Of course, the future almost certainly holds a complex self-defense incident involving a member in a politically-hostile location that will indeed have to be defended court. Justice will require the decision of a judge and jury. That hasn't yet happened in 12 years, though, which does speak volumes about our well-trained, conservative, careful Network members.

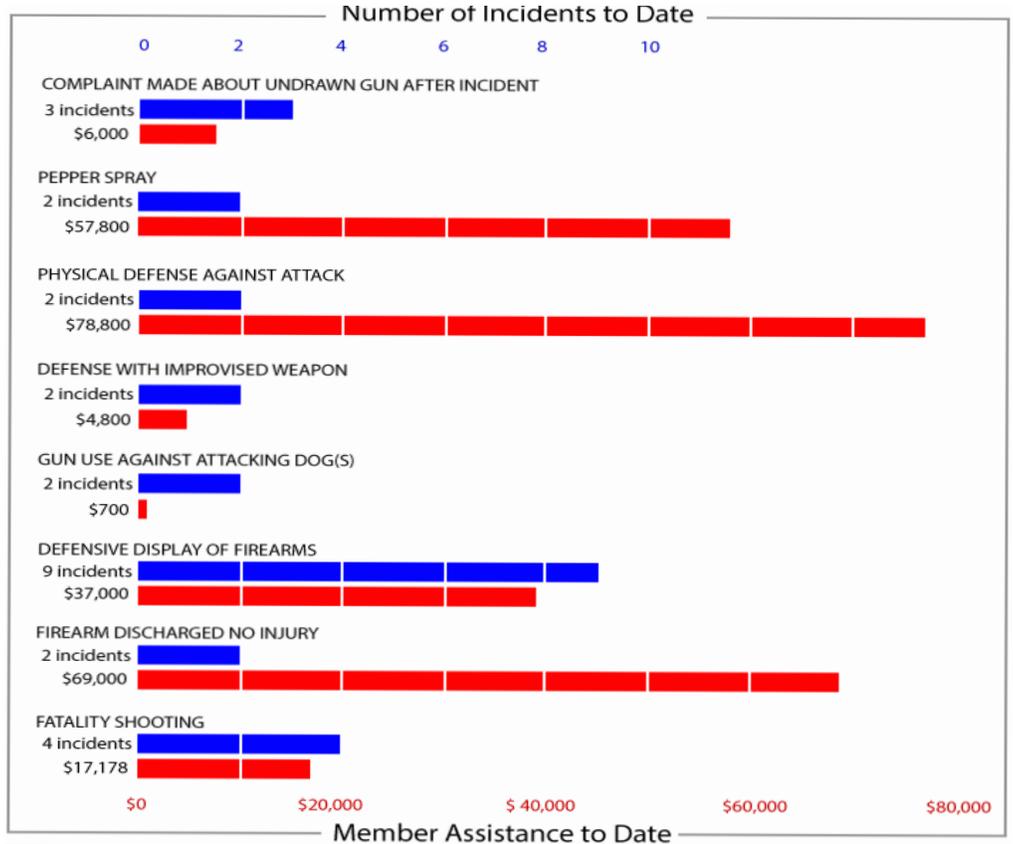
For now, your experience with a member truthfully stating the facts of a justifiable use of force incident allowing you to bring your legal defense skills into play and accomplish a good outcome mirrors the approximately two dozen other situations involving members. Thank you for being there for all of us.

Learn more about Edward Levy at his website <http://atlaslawpc.com> and if you should happen to run into this affiliated attorney at a pro-gun event, please be sure to thank him for his efforts on our behalf.

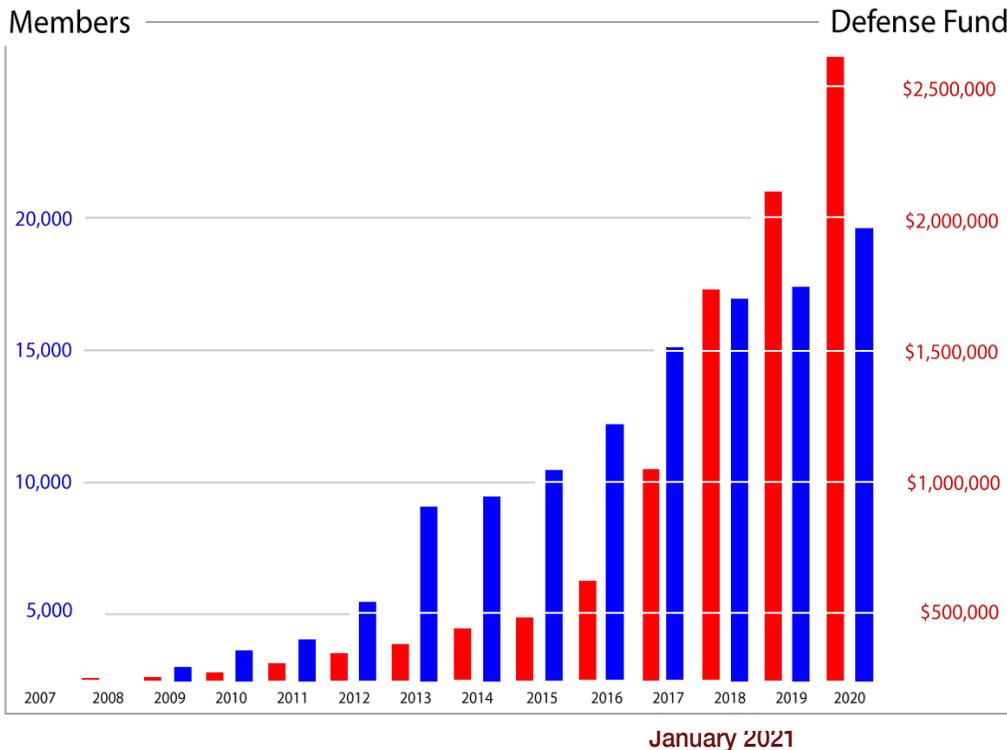
2020 Network Membership and Legal Defense Fund Growth

With the violent riots, civil unrest, public dissatisfaction, social hostility that characterized the year 2020, you might think that calls from Network members requesting funding for legal representation after self defense would have increased. To the contrary, frequency of members' self defense incidents remained about the same. Three cases in 2020 entailed funding requested and provided for legal defense after a defensive display of a firearm, a gun drawn in preparation to fend off a charging dog and one fatality shooting. Several other incidents occurred and members called and discussed their legal representation needs with Network President Marty Hayes, but these situations did not result in legal problems for the members so no attorney fees were needed.

When a Network member uses force in legitimate self defense, the Network pays attorneys, experts, private investigators and other related legal defense expenses to defend against criminal charges or civil litigation seeking damages. The case of the member involved in the fatality shooting illustrates the value of immediate funding to



get a skilled attorney on the case quickly, determining and identifying the facts that show the justification for the use of force and bringing that truth to the attention of prosecutors and district attorneys to influence charging decisions, while concurrently amassing the evidence needed



to defend the use of force at trial, if necessary. The work of a Colorado attorney on our member's behalf, reviewed in the foregoing article, illustrates that vital mission.

In January of 2020, we published an extensive history of Network member cases, so we won't reiterate the details of the past decade's work on behalf of members; we encourage you to browse over to <https://armedcitizensnetwork.org/a-decade-of-assistance> for the full article if you haven't read that report. The adjacent charts give a snapshot of the data. One shows the range of expenses between 2008 and the end of 2020; another compares membership growth with the expansion of the

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Legal Defense Fund; and the other graphic illustrates the geographical distribution of cases.

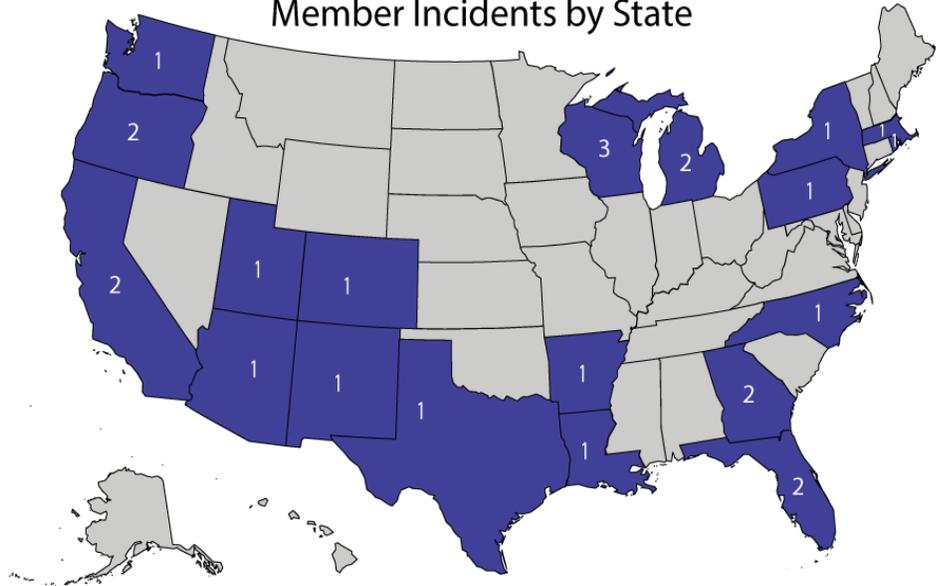
Growing a Stronger Network

The Network’s Legal Defense Fund grows with each renewal of membership and each new member who joins. During 2020, membership renewal rates remained very strong and new member enrollment enjoyed a moderate uptick, resulting in growth of the Legal Defense Fund to a balance just slightly over \$2.6 million. While the Network almost certainly could have capitalized on the fear and panic created by riots in most of America’s big cities, we did not deviate from our time-proven strategy of recruiting new members who are studious, preparation-minded armed citizens, not panicked people who hope that spending money can take the place of personal preparation.

The Network focuses a considerable percentage of our outreach on providing educational resources for serious armed citizens. We affiliate with firearms instructors who share the Network’s ethos of personal responsibility, strong prior preparation and active avoiding and defusing threats with their students. Politics created a surge of new gun owners who attended Network affiliated instructors’ classes. Many of our new members told us they had taken training and realized the concomitant need to address the legal component of using force in self defense. Our educational component, combined with the mutually-supportive nature of membership in the Network family, appealed to these preparation-minded men and women.

We were pleased to add their strength to the numbers of like-minded people already involved in the Network. We started 2020 with 17,500 faithful members; we concluded the year with membership numbers slightly exceeding 19,000. We value the conservative, responsible way in which each member—new and long-established—conduct their lives. We are truly a big family of like-minded men and women.

Member Incidents by State



MacYoung Interview – Continued from Page 1

MacYoung: For the most part, rallies and protests are permitted, and by that, I mean, they actually got permits from the city to hold a rally or a march. One thing I love about living in this country is that the government will help you protest. You get your paperwork in, and they will assign you a route, they will set up barriers, they will divert traffic. You've got the police helping, redirecting traffic, keeping the impact down as much as possible, although that's less for the protesters than it is for everybody else.

In layman's terms, a rally is a gathering that is "for" something. A protest is a bunch of people getting together and saying they are "against" something. A march is often in tandem with either a protest or a rally and people walk a predetermined route to where they listen to their speakers and have their rally. All of this is legal if you do the paperwork, and that is basically just so you don't cause traffic jams. It gives people warning. If your business is on a route, they will tell you, "There is going to be a march on this day." So, it really is civilized; it really is cooperative. "Yay us!" for having that.

The reasons it is important to understand the differences is because an event will go through the phases the terms describe. You may also have outside influences coming in and really messing things up. A term that I really dislike has become popular. That term is "counter protest." Now, I am a writer, so I am very sensitive to words. "Counter protest" both legitimizes and delegitimizes at the same time

eJournal: How so?

MacYoung: If I am holding a rally and I have all of my permits, calling people who show up en masse to disrupt "counter protesters makes them sound legitimate. If you think about it, taking this further, calling it a counter protest also implies that the first group is also protesting. With a linguistic sleight of hand, when the "counter protesters show up, all of a sudden it makes "protesters" of the people at the rally, against whom the other people are protesting. If you can identify the people who have the permits to hold the rally, then you can see who else showed up just to disrupt.

Counter protesters tend to be mobs and they show up to disrupt other programs. The best example is a hot button, but if you talk about the Unite the Right rally at Charlottesville, North Carolina, they had, I believe, no more than 300 people. I am doing this from memory, so I am not sure of the numbers, but it has been estimated that upwards of 30,000 "counter protesters" showed up without permits. The first group had a permit and had their little march and their rally. Then the mob showed up.

There is another distinction that is very important. A protest or

rally is set for a specific period of time. You have the permits to hold a protest or rally in a particular park from a specific time to a specific time. Afterwards, as people disperse, they may then begin rioting.

Now, to define a riot: Once it has been declared that a group has become unruly and destructive, it is called a riot. It is not just a group that is setting things on fire and throwing things. When the police announce that this is an illegal gathering that is a step in the direction toward declaring a riot. Have you ever heard the term "reading the riot act?" There is a formal declaration, an announcement, and it is a step in the process to authorize the police to use force.

Police will announce to people that it has been declared an illegal gathering and that they are ordered to leave. They will make the announcement for 15 or 20 minutes and what they're doing is establishing an ongoing pattern of non-compliance. When all the people standing there have heard the announcement that this has been declared a riot, they are now officially and knowingly disobeying lawful orders to disperse. Rocks may have been flying prior to this, but now is when you get the teargas flying.

eJournal: In light of the many permitted rallies, I have got to wonder how so many transform from speeches, banners, and chanted slogans into wholesale destruction and head bashing?

MacYoung: I know of several real ugly situations that started in the day as happy-happy, joyous, legal, well-behaved protests or rallies, and then later, as the day advanced, a different crew came in and started whipping up the crowd. Basically, all the nice people went home, and they were replaced by the trouble-makers. I call that shift change.

eJournal: Are there hints, clues and indicators we should detect to tell us that the tenor of the gathering has changed?

MacYoung: I know of one gathering where there was a rally and during the day high school students were talking about the issues and what needed to be done, and then later in the day the representatives of another group showed up and began threatening people in the area. When the reporters were at that event it was a happy-happy, warm, joyous, fluffy time. When the camera crews went home, the shift change happened.

eJournal: It is interesting that once the media leaves, the opposing force is free to create havoc.

MacYoung: Yes, isn't that funny? And that never gets reported. The CNN report says that the event was "mostly peaceful" – during the day it was peaceful. The media shenanigan is when they report the whole thing from daytime to late at night as all the same event. You get the reports of mostly peaceful protests, because the cameras left before the second shift arrived.

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eJournal: Is shift change linked to sunset?

MacYoung: It depends, but it is important for you to understand that if a permitted rally is happening in a park, and the protesters show up to protest what is being said at the rally, then a lot of the daytime violence will happen after the rally is over. The rally is breaking up and people are trying to go home or could just be walking down the street near a park where a rally was held. The protesters are running around and picking off people who attended the rally that they caught alone or in small numbers or just attacking people. You need to understand that they are hunting people.

You have no doubt heard about all the arrests at the Proud Boys rallies. It is not the Proud Boys getting arrested; it is not the rally attendees getting arrested; it is the protesters who were roving around rampaging in the streets being arrested. They are the ones who are clashing with anybody who is there. Basically, they are just looking for a fight. A lot of times they end up clashing with the police. When the media reports that many arrests were made at a right wing rally, most of the people getting arrested are various and sundry people who are out to just cause a fuss.

eJournal: Are some just bored people who enjoy brawling, for whom a rally is a spontaneous opportunity? On the other hand, we are told that organizations recruit and bring in protesters to speak against the ideology espoused at rallies.

MacYoung: Hang on! This is a cesspool that gets really deep. Yes, there are people who hear about a rally, and just show up because, "Hey, it is a chance to beat somebody up." Yes, that does exist.

Having said that, there really is a very large degree of coordination among opposition groups like sending out messages through social media, email chains, etc. They'll call people from multiple states to come in and protest. I have seen photos and videos of pallets of broken bricks being delivered downtown. This is coordinated action. It is coordinated action when fireworks that are legal in other states are being brought in en masse and distributed at these mostly peaceful protests. The little birdies who tell me things that never reach the news tell me they know there is coordinated action, but they just do not know who is doing it.

The groups organizing the protesters are going out of their way to recruit from the mentally ill and the criminals. They are using them as cannon fodder and are getting them and arming them and sending them out. Mao Zedong who made a comment that, "The guerrilla must move amongst the people as a fish swims in the sea."

That analogy is not only useful for training terrorists, but it goes a long way helping you understand what kind of forces are at play. The people — both at the rally and those protesting

it — create the crowd that is the cover for looking to riot. They are the sea. You have large numbers of people who are not going to be violent, but you also have people who intend to be violent, who came prepared to be violent, and more importantly, came equipped to be violent.

Realize that these violent types are working in concert, if not outright coordination. That means you are acting as a single individual. I don't care if you were a Marine! I read a report about a guy who decided because he was a Marine, he would go to the protest and he would be safe, and it went very badly for him. Understand that this is not a situation that you want to face. You don't want to have to make a last stand! That is the point at which we reached the understanding that we really like the idea of a battling retreat.

It is very important that you understand that the most dangerous time is after the rally, after the speeches are done, when the crowd begins to disperse. Whether it is the protesters who are pouncing on the people who have attended the rally, or it is the people who attended the protest who have decided, "Sure, the official event is over, but now we are going to go out and cause havoc."

Now you have roaming packs of people who are for lack of a better description, are taking over an area. They are prowling and hunting. If these guys come together, this can turn into a riot, destruction of property and attacking people.

eJournal: People get scared thinking about huge crowds screaming and yelling, so your description of smaller packs bent on causing injury or death deserves our attention. Is there a cumulative effect that encourages violence when lots of people have come together?

MacYoung: Yes, you could have one or two or you could have 1,000 people with 100 people in among them who are attacking. To explain this, I need to psychobabble for a minute.

There is a thing called deindividuation. Because we human beings are social primates there is a switch inside our heads to go from acting as individuals to acting as part of a group. In other words, flip the switch and we are no longer individuals; we are the mob. That is a really big mental shift that Jordan Peterson said, "Remember, when you are dealing with a mob, you are not dealing with individuals. You are dealing with an idea that has people in its possession." You cannot reason with them.

It is really terrifying to see the switch get flipped. To complicate it, we do not know how many people it will take to flip that switch for any particular person. Some people just need the idea that others would support them before they can flip the switch. You may have someone who is backing up his buddy or he is with a small circle of friends for whom it could take 10 people to flip the switch. For someone else, it could take 100

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people, for another it could take 1,000 people before they'd flip the switch. There is no hard and fast number for when a switch may be flipped.

Next, you don't know whether they will act or whether they will just stand there and cheer what is being done. Approval can spur on the few to attack harder, but also at the same time, these people are providing cover. Basically, when you are dealing with a mob, there are going to be a few people who are very, very violent but they are going to have a lot of support, and that support can extend into hitting you while your back is turned. You may be facing one guy, and someone else comes up and smashes a bottle over your head. It is a very complex and fluid situation.

eJournal: The challenge of predicting when a situation may become violent is greatly complicated by the question of how to identify a violent protester over a simple rally attendee. More and more, I think we're simply becoming unwilling to be part of any large crowd and getting out quickly if caught in a crowd.

MacYoung: Right, and most don't have little signs on them that say, "Hi, I am the extremist!" versus, "Hi, I am the moderate guy." Besides, there can only be so many hands on the rope during a lynching...

eJournal: ...but whether there are 10 or 100 in the crowd, somebody still ends up dead ...

MacYoung: ...and there can be a large crowd cheering on the hands that are on the rope. How do you defend yourself in a mob situation? Have you seen wolves surrounding an animal? They do not attack the pointy end. One will lunge forward and nip then another will lunge forward and bite. As the defender turns to face the new attack, yet another one attacks.

Defending yourself in a mob situation, it is not defense against just a single mob action, it is against a series of attacks by different individuals. So, the guy you may be looking at is not doing anything, but when you turn away, he is the one who throws a rock at you. It is a very fluid and dangerous situation that you, as an individual, are going to have a very hard time handling, because if one guy attacks and is backpedaling when you shoot him, that is not going to go over well.

It is just a horrible mess, but before you go down that road, understand that there are signs and, in my book, *Multiple Attackers*, I give lists of indicators that the troublemakers have shown up – certain behavioral changes, clothing changes, and equipment. You will see people acting in a coordinated manner, and that is where you begin to get into bigger issues.

There is drone footage of an attack on police in Chicago that shows the coordinated movement of the crowd. The marchers were going down the road, and all of a sudden, they made a unified turn at a signal. Guys who had been riding around on

their bicycles suddenly lined up to keep the police away from the crowd. They held their bikes as a shield wall to interfere with police intervention.

Something else you have to watch for is people showing up with backpacks and umbrellas. They hold the umbrellas up so the drones cannot see what they are doing. In the Chicago footage, the umbrellas went up, people changed into feature-disguising clothes and when they came out from under the umbrellas, they were armed with rocks, bottles, and projectiles. You take a bottle of water and you freeze it. Is that in case you get thirsty or is that a projectile?

eJournal: In some areas, carrying umbrellas and backpacks is very common! I doubt you will know if the frozen bottle was to drink or throw until it knocks you out. We need to figure this out before it goes that far!

MacYoung: First things first: If you get notice that things are happening down at a certain place, like there is going to be a march on this date or a protest at this place, do not go down there. Avoid it! That is the starting point.

If you are there and an impromptu protest happens consider closing down your business and leaving. If you have an appointment and you see this happening, make a phone call and say, "Hey, I am not going to make it; this protest is happening." You turn down the street and you see a bunch of people walking in the middle of the street carrying signs and yelling and screaming, do an illegal U turn, leave! Do not drive into a crowd! Do not think they will get out of the way. Leave!

All of this comes BEFORE you get to the battling retreat. If you get caught in a situation, handle first things first! Move away from the windows! I do not know why but it seems like people in Starbucks love to "prairie dog," and they stand right by the windows watching, as if to say, "Oh, look, there is a protest here," and then they complain when they get covered in broken glass. Move away from the window.

Understand that for a lot of these guys, it is not necessarily about looting. It is now about destruction. There are looting groups out there, make no mistake, but a lot of times what you will see are guys who will suddenly gear up – and by that, I mean put on safety equipment like gloves, facial coverings and safety glasses to protect themselves because when you smash windows, glass flies. As an aside, if you look over and see a guy with facial covering and he is carrying a medic's bag, it is time to go, too.

Basically, look and see what direction the crowd is moving in and move in the opposite direction. Lateral movement away from crowds is always a good idea. You may have to take a roundabout way. Instead of trying to circle back to where your car is, call somebody who can come and get you. You can

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come back and get your car later. When you are talking about roving wolf packs, really, is it worth going back into that to get your car?

eJournal: We sometimes fail to have an array of alternatives and that is the great value of what you are doing for us: you make us stop and think, "Who could I call? Where could I go? What options other than returning to the dangerous area can I use to get away?" If we have not planned and created alternatives in advance, when we are frightened, we are not likely to think creatively and may erroneously think we can't get away without our car.

MacYoung: Or what about people you could call and ask if you could spend the night?

eJournal: Yes, that is a whole different level of help, and another thing we might not have considered or tried to have pre-arranged. The one guy I know who slowly and deliberately drove through a crowd of protesters did so because he was trapped with no way to turn around and he was trying to get home from work at night. Considering options for hunkering down instead of going home is another preparatory mental step.

MacYoung: If you have to barricade yourself inside, do it! Really, how much time are they going to spend trying to get through a securely locked door?

eJournal: Probably not much.

MacYoung: If you are facing groups and one guy is charging you, if you pull a gun you will face brandishing charges. People expect bad guys, or rioters, to run away if they pull a gun. Well, in numbers the bad guys are way less likely to run away. Even if you pull a gun on these guys, they will still be there, they will still be a threat and you will still be in danger.

Now is not the time to stand your ground but turning around and running is not going to work so well, either. If you back away, expect them to follow you. That is the reality of the situation. The question is can you back away far enough that they lose interest and go somewhere else?

eJournal: Are individuals specifically being targeted? Will running away trigger predatory instincts to chase that which runs? Is this specifically about hurting you, or is it a broader, wilder joy humans take in doing violence? We need to understand what drives the behavior.

MacYoung: You just opened a big, but very important can of worms that people have a very hard time understanding. Let me point out that rioting is fun. Destroying stuff is fun and yes, violence is fun, too, especially if you can do it safely.

eJournal: And the mob gave that person that feeling of safety.

MacYoung: Yes, the mob gives you that protection, but the mob also gives you that feeling that it is OK.

eJournal: What is our best strategy for facing someone indulging in violence who was emboldened by the mob?

MacYoung: If you are facing someone and you fall apart and you are screaming and yelling, you are going to get some guys who will be screaming and yelling back. Instead, you can do an organized withdrawal. I mean not waving my gun around. Drawing my gun has stalled their charge but it hasn't stopped it completely. If I wave my gun around that is going to get me in trouble. If I aim a gun at somebody and he stops, I am showing good discipline by not shooting him. So, I lower my gun, and I began to back away. I do not put my gun away.

As I am backing away, I am doing everything in my power to communicate that I am leaving, to express that I do not want any trouble. I can explain that; I can defend this action, especially if I'm trying to withdraw. You can guarantee that this is going to be filmed! Withdrawing from the situation and doing everything you can do that will let you articulate your actions in trying to avoid violence when faced by multiple attackers is going to help.

eJournal: This may relate to something you've mentioned but we haven't really specifically discussed yet and that is territorialism. Do the people threatening you view you as an intruder, as someone who does not belong in an area they have claimed?

MacYoung: Oh, yeah, they do consider this their turf. I mean, how many young Republicans do you see in Portland, OR? Honestly, the protesters consider it to be their turf. Literally, this is the sunset laws revisited: "Republican, do not let the sun go down on you inside the town limits." Territorialism is a very, very important thing to consider. At this moment in time, public space, where you think you have a right to go, has been claimed by the protesters. This is like a gang war; this is gang territory.

eJournal: But there you are! Perhaps you were operating your business, or you had work at a job that's inside this territory. So once again, you need to get yourself out of there as safely as you can.

MacYoung: Before we undertake a battling withdrawal, we need to have considered strategic retreat. I once had a situation where I was carrying a .38 caliber Detective Special. The problem was there were 50 of them; I did not have enough bullets. So, yeah, I went out the window and I took the people I was guarding with me. They went out, I followed, and we withdrew from the area. The people I was guarding were running forward, but I was walking backwards. The other people were looking at me thinking, "Well, should we rush him, or not?" Fortunately,

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they chose not to, but had they, I would have been on my way to Valhalla at the end of that one.

eJournal: Is successful strategic retreat a matter of timing? Did you retreat before the mob became so wrought up that they no longer cared if some of their number got shot? Did you grab the initiative before the madness took over?

MacYoung: One of the things about being part of a mob, is that it is easy to think if someone is going to get hurt, it will be someone else. Did you ever see the movie Tombstone? In one scene, Ike Clanton has got Wyatt Earp's pistol screwed into his forehead. The other guy says, "He's bluffing," and Ike Clanton says, "No, he is not!" Even if you aren't bluffing, a mob may decide it will be someone else's head that gets turned into a canoe, so why not?

About timing, that depends. If you are more scared, that can be a trigger for the mob to charge. If your thought is, "Yes, they may get me in a rush, but I am going to take some of them with me," as you are withdrawing, that tends to act as a deterrent. It may, or may not, be enough of a deterrent, but that is the problem with dealing with violence. There are no ultimate answers.

eJournal: When I ask you if this was a timing issue, I didn't think timing was more about you taking action before you are scared witless, not about getting ahead of the mob's reaction. Put another way, you took action while you were still engaged in strategic reasoning and in control of your emotions. The timing is about taking action while you are in control of yourself.

MacYoung: One of the things Jenna Meek and I talk about in our class *Crime, Conflict, & Interrogation* is the point of no

return in the immediate threat funnel. There comes a point of no return where it is over; you are done. Most people wait until they're way past the point of no return before they think about acting. If you have a developing situation, you have more options early on, but the closer you get to the point of no return the fewer options you have because fewer things work. If you get close to the point of no return, and only then do you start thinking about being strategic, it is too late.

Look at it, assess the situation, and say to yourself, "You know what? Now is the time to leave. It is time to get out of here before this goes sideways."

eJournal: We have only scratched the surface of an exceedingly complex subject, and MacYoung has a lot more strategies and explanations Network members need to hear. Let's pause for now and pick up in next month's journal when we can move into discussions of specific situations like armed mobs marching through neighborhoods, getting caught in a vehicle, rioters harassing diners at restaurants, and more.

Marc MacYoung is an author, lecturer and martial artist. Initially known best for his street-violence survival books, he later went on to write personal safety / self-defense books and make instructional videos. MacYoung is considered to be one of the pioneers of reality-based self-defense. He has studied numerous martial arts since the age of ten and has taught law at law-enforcement agencies and military sites around the world. While you wait for the February completion of this interview, enjoy MacYoung's and Network President Marty Hayes' three-part video Defusing Volatile Encounters at <http://armedcitizenstv.org>.



President's Message

Looking Back

by Marty Hayes, J.D.

The Network is entering its 14th year, and when I think about it, I am literally astonished! First off, where did the time go? Seems like it was yesterday that Vincent, Gila and I sat in the classroom of Firearms Academy of Seattle and ideated

how to form this Network and decide what we needed to do to move forward. It started out as a part-time endeavor that seemed like a good idea at the time. Within a couple of years, we realized that the Network could be so beneficial to so many people, and apparently others realized the same thing, because we began seeing others start competing organizations. That resulted in our upping our game in order to compete in this fledgling industry. Looking back, it all seems like a whirlwind.

We have since grown from 2.5 employees (all owners), to those 2.5 employees and another 4.5 employees, for a total of seven people working for the Network, in one capacity or another. I was 52 years old when we started and seemed like I had a lot of energy to both run the Firearms Academy of Seattle, teach most every weekend, and then work all week on Network issues.

While I proudly take credit for the idea that started the Network and the way the Network and those who sought to emulate it changed post-incident support, I will be the first to give credit where credit is due: the great industry leaders on our advisory board. Massad Ayoob, John Farnam, Tom Givens (all leading self-defense instructors), along with Emanuel

Kapelsohn and James Fleming (both attorneys and experts in the field of use of force in self defense) and the great Dennis Tueller, who pioneered one of the most important legal and tactical concepts in use of force issues, that being knife lethality and the concept that someone with a knife does not need to be within touching distance to be considered a deadly threat. If it were not for these industry greats, I suspect the Network would not have succeeded. They gave us the instant credibility to be accepted by armed citizens, at least with people who

trained and read books and magazines on self-defense issues. We deeply regret and still sorrow that our friend Jim Cirillo, who was an intended Advisory Board member, never had a chance to see the Network bloom and succeed, as he passed before we got the Network off the ground. (We miss you, Jimmy).

Our Record of Supporting Members

When we started this endeavor, I knew that we would not succeed if we did not put in place a public policy check (screening process) before we agreed to help our members after an incident of use of force in self-defense. That screening process basically means that a person, before being granted funds for a legal defense, needs to supply us with sufficient facts to show that they had a legitimate and legal reason for using force in self defense. Furthermore, we needed to make sure that the individual was not committing any criminal act which resulted in them needing to use force. Having said this, the vast majority of members who have asked us for assistance met these criteria and we were glad to help. We detailed these incidents at <https://armedcitizensnetwork.org/a-decade-of-assistance>, and this eJournal's lead article and charts, so there's no need for me to go over them again, except to say that the system works and remains in place. The Network is working as designed.

Looking forward...

What is in the future for the Network? We do not know, except for our firm belief that we will continue to grow and become

stronger, as more and more armed citizens discover the Network and realize that with what we offer for the price, being a member is really a no brainer. We are ready to start to work on the next phase of the Network, converting to being a member-owned Network. Currently, Vincent, Gila and I are the only shareholders, and we would like to change that.

I believe the Network would be stronger as a "member owned" Network, but there are a lot of regulatory issues to overcome before that can become a reality. I also believe that shifting the ownership of the Network to its thousands of members would ensure a long term viability for the Network. After all, I am 65 years old and believe retirement would be kind of fun, but please be assured that I will NOT be putting in my papers until we can assure the Network will continue to thrive. For now, let's put 2020 to bed, and hope for a better 2021.



Left to right: Marty Hayes, Vincent Shuck, Massad Ayoob, Jim Fleming, Tom Givens, Dennis Tueller, Emanuel Kapelsohn and John Farnam.



Vice President's Message Growing the Legal Defense Fund

by J. Vincent Shuck

The Network's Legal Defense Fund has grown this past year, thanks to our members' dues allocation, separate member and non-member donations directed to the Fund

and finally, corporate support. For clarification to our many new members and perhaps as a good reminder to our long-term membership, the Legal Defense Fund was created by the Network to accrue funds to provide financial assistance to a member for legal fees and bail support after a self-defense incident.

Since the Network's inception, we have faithfully put aside a percentage of all dues, all direct donations and all corporate support of services and products that generate income via our auction activities. This combined achievement has prepared us well and, when needed, members have benefited from the Fund.

As we begin this new year, the Fund totals just over \$2.6 million dollars. Last year brought a lot of challenges, but the Network continued its growth. Thank you to all the renewing as well as the new members. We were able to allocate about \$400,000 of the 2020 dues income to the Legal Defense Fund. In addition, direct donations amounted to \$30,000. A special

thanks to individuals who accepted an opportunity to add an extra amount to their renewal dues payments and to families who decided to include the Fund in their annual giving program. Finally, corporate support continued in spite of the pandemic's influence on the business world. The following companies donated a number of items in 2020 for our auctions:

- **Galco Gunleather**
- **Ravelin Group Safety Equipment**
- **Black Hills Ammunition**



The auctions of donated services and items are posted on GunBroker.com. We do not post items every month, but to join in the fun, watch for our posting announcements in the monthly eJournal notice emails. If you are not already a registered bidder on GunBroker, go to <https://www.gunbroker.com/newregistration/signupdetails>. This gives you access to not only the Network's listed item, but any of the items included in the extensive shooting and hunting fields.

I express our sincere appreciation for your individual and corporate support this past year and look forward with you to a bright, productive and successful 2021. Thank you for being such an exceptional member and benefactor of the Network.

Editor's note: Return next month when we share additional news about businesses that distribute the Network's membership sales brochure, and donate to our Armed Citizens' Educational

Foundation, as well as providing complimentary copies of our Foundation's booklet What Every Gun Owner Needs to Know About Self-Defense Law with their clientele. We're all in this together, and we surely do appreciate the contributions made by each of our generous friends.



Attorney Question of the Month

In our December online journal internationally-known author and instructor Massad Ayoob gave an instructional interview about how making an affirmative defense in court to explain why one used force in self defense shifts the burden of proof.

Because courts and laws vary considerably from state to state, we wanted to drill down into this topic further and reached out to our Affiliated Attorneys for assistance. We asked our affiliated attorneys what is involved in arguing self defense to the courts in their state. Their comments to the below question follow:

What is the process in your state for presenting an affirmative defense of use of force in self defense?

What are the potential impediments that may result in a judge denying a self-defense argument?

If denied the ability to argue self defense, what steps would you take to get the best outcome for your client?

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There is no formal notice of intention to present a defense in California. However, Penal code §1054.3 requires a defendant to disclose trial evidence:

(a) The defendant and his or her attorney shall disclose to the prosecuting attorney:

(1) The names and addresses of persons, other than the defendant, he or she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial.

(2) Any real evidence which the defendant intends to offer in evidence at the trial.

This does not apply to "Work Product" of the attorney which is a writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories.

The bad faith failure to exchange evidence may be the basis for an order preventing the presentation of that evidence.

Rob Keating

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In the December 2020 journal Massad Ayoob does an outstanding job of explaining how affirmative defenses can shift the burden of proof in a self defense case. However, it is important to realize that there can be some very technical differences from jurisdiction to jurisdiction and I am glad that the Network reached out to attorneys to talk about how things can vary depending on a State's particular laws.

Probably the biggest difference between what Mr. Ayoob mentioned and the law in Texas is that in Texas, self defense is not an affirmative defense! Self defense is a defense to prosecution.

Texas does have an affirmative defense statute (Section 2.04 of the Texas Penal Code) which works essentially as Mr. Ayoob explained. But Texas also has what is called a "defense to prosecution" (Texas Penal Code section 2.03). Self defense, defense of others, and defense of property in Texas are all defenses to prosecution, not affirmative defenses. And a defense to prosecution works a little bit differently.

With a defense to prosecution, the defendant still bears the burden to produce enough evidence to raise the issue of self defense, but the burden of proof never shifts to the defendant. If the issue of self defense is successfully raised, then the prosecution must prove that the defense does not apply. And they must prove that it doesn't apply beyond a reasonable doubt. Texas case law is clear that if a defense to prosecution is properly raised by the evidence, then the State has the burden to disprove that defense beyond a reasonable doubt.

One tricky issue with self defense in Texas is that it falls under what is known as the "confession and avoidance" doctrine. The catchy way to explain this doctrine is that you have to "admit it to get it." You can't say, "I didn't shoot that guy, but if I did, it was self defense." You have to admit to every element of the offense, including the culpable mental state. That may sound strange if you shoot someone in self defense and end up charged with murder. After all, we are taught to shoot to stop the threat, not to kill someone. But the culpable mental state for murder in Texas includes either "intentionally or knowingly causing the death of an individual" or "intending to cause serious bodily injury and committing an act clearly dangerous to human life that causes the death of the individual." Either of those definitions can fall within legitimate self defense if explained correctly. The key is that you have to produce evidence that shows admission of each element, including the mental state or you risk having the judge deny your request for a self defense instruction to the jury.

[Continued next page]

In my opinion, Texas has very good statutory protection for legitimate uses of defensive force and deadly force. But even with good laws, it is important to understand how those statutes are interpreted by the courts. You won't find the confession and avoidance doctrine in the Texas Penal Code. Noting in the defense to prosecution statute says that you have to admit every element of the offense in order to claim the justification provided. Self defense laws are complicated. And that's why the education provided by the ACLDN is so important for the legally armed citizen.

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In Florida, the defense of justification for using or threatening to use nondeadly or deadly force (in defense of property, self, others, or to prevent the imminent commission of a "forcible felony") is available, and the jury should be instructed properly on it, when there is any evidence of it adduced at trial. The evidentiary burden is slight; the availability of the defense and the giving of related jury instructions do not turn on the quality or quantum of the proof. Of note: The defendant need not testify or put on witnesses for the defense to be allowed. It is common for a Florida appellate opinion to include language to the effect that in giving a requested criminal defense jury instruction, a trial court's discretion is rather narrow as a criminal defendant is entitled to have the jury instructed on his or her theory of defense, if there is "any evidence to support" it. This is so even when the evidence is "weak or flimsy." (A trial judge should not weigh the evidence for the purpose of determining whether justification instructions are appropriate).

The defense is asserted by a request that the trial judge charge the jury with either "Standard" instruction(s) pertaining to the justified use of nondeadly and/or deadly force, or some modified and additional instructions as may be pertinent to the trial record. The "Standard" jury instructions are not presumed to state the law correctly; the defense attorney must request instructions which correctly state the law. The State's burden to disprove the defense remains unaffected; that is, to disprove justification by beyond a reasonable doubt, regardless of what instruction(s) the jury receives.

If there is concern a dispute as to the availability of the defense may arise, it could be addressed pretrial at the trial level and before the appellate court (by writ of prohibition) by making a pretrial motion for an "immunity" hearing under Florida Statute § 776.032(4).

Despite recent appellate case law erroneously suggesting or holding otherwise, the defense of justified use of force is only legally disallowed in a very narrow circumstance; when (under Florida Statute § 776.042(1)) the jury determines the defendant was "attempting to commit, committing, or escaping after the commission of, a forcible felony." Thus, notwithstanding the

caselaw, a defendant who had a duty to retreat imposed upon him/her because of being engaged in criminal activity or being in a place unlawfully, should still be able to fully assert the defense in a pretrial immunity hearing and at trial.

Contrary to popular belief, an "aggressor" who "provoked" the use of force against him/herself in Florida is not barred from asserting the defense of justified use of force; he/she is merely burdened with additional requirements akin to retreat or disengagement. See Florida Statute §§ 776.041(2)(a) and (b)).

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In Arizona, if self defense was raised traditionally the burden shifted to you to prove self defense by a preponderance of the evidence. About a decade or so ago the law changed so now if self defense is raised the burden shifts so the government has to prove beyond a reasonable doubt that it was not self defense.

The best way to raise self defense is to make statements to and show the police what you did at the scene as soon as possible after the event, with the advice and in the presence of your Network lawyer. If done that way I don't see how a judge could properly deny the raising of self defense at trial under any circumstance other than if the facts do not support the self defense claim in any way. You would have a good topic for a special action or a very strong issue on appeal should the raising of self defense be denied at trial. A person guilty of a crime to which there is no defense should of course not admit that to the authorities (with a few exceptions such as duress) because if they do those statements become evidence which can be used against the person at trial.

In a legitimate self defense scenario on the other hand, we want the police to know what you did and why you did it and we want it to come directly from you so that it becomes part of the evidence precisely to prevent you from being incorrectly accused of a crime or somehow be precluded from raising self defense at a later time even if wrongfully charged. (Hopefully, the other evidence gathered will also support your explanations, further boosting your claim.)

When our actions are legal and righteous we have no reason to hide them. That's why it's called an affirmative defense, or as I like to say: "The Hell yes, I did it defense, because if I hadn't I'd be dead or seriously wounded and let me show what, when, where, how and why I had to use force to defend myself."

Because this is a complex topic, the attorneys participating in the discussion provided longer than usual commentaries. We will publish the second half of this discussion in our February 2021 edition. Please come back next month to learn more.

January 2021



Making Introductions

Network members have recently been enjoying the benefits of behind-the-scenes professional assistance when they call for help with website log in problems or to explore why they haven't been getting our monthly member bulk email. In November, the Network availed itself of the outstanding opportunity to

hire an experienced information technology professional.

I'd known John Murray for years, having contracted with him for IT services he performed as a second job. Now, with John's move over to full time employment at the Network, we are taking full advantage of his various skills and so are Network members. It is our pleasure to introduce this newest staff member to our Network family members so that there's a face with the assistance you might call on him to provide.

--Gila Hayes

Hello everyone! I'd like to introduce myself to all in my new role as IT director for the Network. A bit about me: I've been involved with technology since the late 60's, first in audio, transitioning to television broadcast engineering, then computing/networking in the late 80's. I've always felt that tech should be a conduit, not an impediment. The Network's website has been my responsibility since late 2008; its success and shortcomings along the way have been completely my responsibility.

Working with Gila, Marty, Vincent, Josh, Jennie, William and Nancy is a real privilege; dedication to customer service is our top priority. All that being said, I thought I'd answer a few common questions that we get from time to time:

What information does ACLDN store about me?

At this time we store personal member information, including home address, email address, household members, past interactions, notes and member communication preferences in a private database. There is currently no connection between this database and the Network website member logon database. If/when you provide update information via the website, we manually transfer that to our private database. In regard to purchases, understand we DO NOT store financial information – we merely securely forward it to our credit card processor, Authorize.net. That's why you'll receive a notice directly from them when joining/renewing/donating to us.

You obviously maintain a mailing list of all members, how do you manage that?

First off, ALL member information is private! We have NEVER, and additionally NEVER WILL, share this information with ANY third party. For example, after buying a home or car, getting a loan, or insuring your new purchase, you'll no doubt begin receiving numerous solicitations from a variety of services who got your name, phone number and address when you agreed to undergo a credit check. We hate that when it happens to us, and so at the Network, we promise that we will never share our membership lists.

OK, how can I control what and what is not being emailed to me, what are my rights here?

Two-part answer: First off, bulk mail (unsolicited); every mailing we send out has an unsubscribe link at the bottom, clicking this immediately notifies us of your preference. We take this seriously, and will not email you again unless you explicitly contact us and update your preference.

Second part: If you attempt to reset your password, or otherwise contact us one-on-one, such as filling out a form (solicited), you will always get a response from us.

Got it! So can you explain why have I not seen monthly Journal Announcements from you lately?

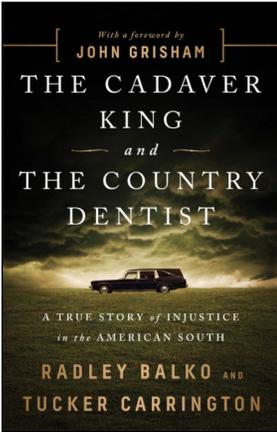
Hope you don't mind another 2 part answer: First, we are very careful about our mailing list, ensuring that all on it actually have valid working addresses - this ensures our reputation with your email provider; our bounce rate (ie: outright rejection by your mail provider) is very near zero, and is generally caused by a full mailbox, or other major individual email account issue.

Secondly, what happens to our message after being accepted depends a lot on you; opening our message (as opposed to just seeing it in your inbox) is important in that this hints your email provider. Consider adding info@armedcitizensnetwork to your address/contacts to help ensure delivery.

I'm very worried about political climate and news/fake news/social networking

So are we! Our purpose is simple, providing our members support after a legitimate act of self defense. To that end, beyond our membership education package, our educational foundation is now providing online well reasoned, topical video content at <https://armedcitizenstv.org>.

I hope this helps - and that you will consider me immediately available if you have any issues or questions! During business hours, call and ask for me at 360-978-5200 or email me anytime at jmurray@armedcitizensnetwork.org.



Book Review

The Cadaver King and the Country Dentist

A True Story of Injustice in the American South

by Radley Balko and Tucker Carrington
ISBN-13: 9781610396912
Hardcover \$28
ISBN-13: 9781610396929
eBook \$12.99

<https://www.publicaffairsbooks.com/titles/radley-balko/the-cadaver-king-and-the-country-dentist/9781610396929/>

Reviewed by Gila Hayes

The book I read in December is a report about two men who, co-author investigative journalist Radley Balko writes, “dominated the Mississippi death investigation system for 20 years.” You’ll note the word “report:” the word “story” suggests entertainment, and this book is serious coverage of a very real problem. It is also about two innocent men who were swept up in the 1990s campaigns for law and order, explains the co-author Tucker Carrington, head of the Innocence Project at the University of Mississippi School of Law.

I was interested in the book because the scope is larger than two bit players in the MS criminal justice system and their victims. While the ordeals of the innocent men are the stage for the bigger discussion, this book also spotlights the rush to convict, and how unquestioning adherence to law-and-order policies allows false accusations and convictions, while leaving murderers free to continue victimizing the population.

Although there are long chapters that don’t seem applicable to armed citizens’ concerns about the criminal justice system, *The Cadaver King and the Country Dentist* is a warning about expert witness testimony that should concern us. Juries need subject-matter experts to explain specialized knowledge that is so technical as to be beyond the grasp of most. Before letting expert opinions color a juror’s thinking, though, the court has to decide if a) their expertise is relevant to the issues on which the case turns, and b) if the science backing the expert opinion is reliable.

If an expert is going to explain an area of study, other requirements challenge the underlying science. Has it been tested and how often did the testing yield incorrect findings? Is the science subject to peer review and widely accepted in the scientific community? Was it applied using industry-accepted standards? I found this discussion interesting, not only in the context of the examples the book gives, but also thinking about the need to present expert witness opinions to explain use of force decisions.

The stage setting *The Cadaver King* involves badly flawed death investigations into the abductions and killings of two little girls in Mississippi, and the intransigence of county and state officials who refused to reconsider shoddy investigations and manufactured evidence even when shown the errors. In one case used to illustrate the issues, an initial sweep for suspects actually brought in the man who many long years later confessed to killing both toddlers. An incompetent investigator had already chosen a key suspect, so the killer remained free and did, indeed kill again before being caught and jailed.

After outlining the facts of two wrongful convictions due to unqualified expert opinions given in court by a dentist and physician, the authors outline the history of the position of coroner and its evolution from English tax collector into a patronage position in America in the 1920-30s. It indicts unqualified elected coroners rendering cause of death decisions on unscientific or flimsy evidence, and while the stories are set in a single state, there is little doubt that the problem exists all across the country.

Inexact scientific expertise come in for equal criticism, not only autopsies performed by physicians with no forensics training, but analysis of bite marks, receives particularly harsh treatment. “Bite mark analysis, along with fields like tire tread analysis, ‘tool mark’ matching, blood spatter analysis, and even fingerprint analysis, all belong to a class of forensics called ‘pattern matching,’” they explain. “These fields are problematic because although they’re often presented to juries as scientific, they’re actually entirely subjective. Analysts essentially look at two samples, and determine, using their own judgment, whether or not they’re a ‘match.’ These analysts aren’t subject to peer review or blind testing. There’s no way to calculate error rates.”

By way of comparison, the authors note, “You’ll rarely find two experts who are diametrically opposed about a victim’s blood type or how many DNA markers match the defendant. That’s because those are questions of science. In pattern matching, expert witnesses regularly come to opposing conclusions. Juries are simply asked to side with the analyst they find more convincing.”

If pure science was the only factor involved, we’d be on surer ground. Of course, humans have to apply the science, and when investigating deaths, that starts with law enforcement and coroners or medical examiners. Balko and Carrington explain, “Medical examiners are supposed to be impartial finders of fact. But the incentives built into the system are clear. After a suspicious death, the coroner, district attorney, or police official takes the body to a medical examiner for autopsy. In most cases, they then tell the medical examiner what they thought happened. The medical examiner who returns with opinions that back up their hunch earns favor and gets more referrals. The medical examiner who says, ‘No, that isn’t what happened,’ or – the more likely scenario – ‘There just isn’t enough conclusive evidence for me to say that this is what happened’

[Continued next page]

makes the sheriff's or prosecutor's job more difficult, and perhaps makes them think twice before using the same doctor the next time. There needn't even be any intent to deceive or distort findings. It's human nature..."

As early as 1923 the courts began to weigh the difficulty of determining guilt through scientific analysis of evidence, the authors point out early in the book. The 1923 case *Frye v. United States* entailed the practice of polygraphy. "In considering whether to allow the expert opinion, the court ruled that in order for scientific evidence to be admissible it must have 'gained general acceptance in the particular field in which it belongs.'

"It made judges the gatekeepers of what expertise would be allowed into court. The problem is that judges are trained in legal analysis, not scientific inquiry," the authors explain, noting that, nonetheless, Frye remained the standard through the late 1970s.

Quoting an evidence expert and university professor, the book suggests, "Most of the time when doing one of these analyses, the only thing a judge will ask is, 'Have other courts allowed this?' says Arizona State University law professor and evidence expert Michael Saks. 'If the answer is yes, then they'll figure out a way to let it in. Or they'll decide that if the government is paying a person to do this analysis, it must be legitimate. That's

a far cry from an analysis of its scientific merit. But it doesn't seem to matter.'"

You'd like to think we had better standards today! The authors aren't so sure. "For seventy years after the Frye decision – the case that set the standard for distinguishing good expert testimony from bad – the US Supreme Court steered clear of establishing any rules for the use of science in the courtroom. In 1993, the court finally addressed the issue in a series of rulings known as the Daubert decisions. The main decision came in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*" Here, the Supreme Court "loosened the standard for the admission of scientific and other technical evidence, but also institutionalized the judge's role as the gatekeeper of such evidence." Unfortunately, the authors opine, for that to work, judges would need "some minimum competency in scientific literacy," which, of course, the criminal justice system can't realistically assure.

Although *The Cadaver King and the Country Dentist* concludes with the end of the guilty physician's and dentist's careers and the release of the two innocent men, the reader is left with concerns about errors and prejudices in the criminal justice system that extend far beyond that story. Books that make us question the status quo are good, and while this book is different than our usual review material, I thought it was worth the time it took to read it.



Editor's Notebook

The Times, They Are a'Changing...

...and not necessarily for the better.

I read with consternation reports about the Columbus, Ohio man shot early in December by a sheriff's deputy assigned to a US Marshal's fugitive task force. The story contained a lot

of tragic elements – things that could trip up any one of us. Not surprisingly, those learning points were soon eclipsed by protests about racism, obliterating any chance to honestly consider factors leading up to the death of 23-year old Casey Goodson. Because it has been politicized, it seems unlikely we, the general public, will ever know the truth about the minutes preceding the shooting. Frankly, since we will probably never get the truth, I am more interested in lessons we can gather from what is known.

Initial news reports indicated that Goodson was returning from an appointment with his dentist, but that the pistol he was licensed to carry concealed, had been seen prior to the shooting. Multiple variations of reports of the circumstances surrounding developing concern over “a man with a gun” have been reported and I doubt we'll ever know what initially caught the deputy's eye. With tensions running high, being the subject of a “man with a gun” complaint is, in my opinion, a Very Bad Thing.

An early news report asserted, “Goodson, an Ohio concealed carry permit holder, was legally armed at the time of the shooting, according to the Columbus Division of Police. Goodson was not alleged to have committed any crimes, has no criminal background and was not the target of any investigation, (family attorney Sean) Walton told CNN.

“During the US Marshal's task force operation in Columbus, [sheriff's deputy] Meade reported seeing a man with a gun and

was investigating the situation when there was reportedly a verbal exchange prior to the shooting, the Columbus Division of Police said.”

Openly carrying firearms is viewed by many armed citizens as a way to normalize gun possession in today's hostile, anti-gun political environment. Acknowledging those beliefs, my opinion is sure to rile our hardcore brothers and sisters.

I believe that there is too much hostility, too much potential for misunderstood motives, too many chances that an inadvertent motion may be misinterpreted as drawing a gun or threatening an innocent person with a gun for open carry to be a reasonable practice in the current atmosphere.

Whether or not the current civil unrest will ever calm down remains to be seen. Until it does, I, for one, would not indulge in open carry, and frankly, I'm also taking extra care with concealment to avoid inadvertently flashing a concealed pistol or the outline of a gun under a shirt or jacket.

People are scared and angry. Too many people are actively seeking reasons to be offended so they can justify making a complaint to police about someone they perceive to be of a different belief system, political party, race, or economic group. Do you really want to give these riled up people an excuse to make you the target of their outrage? I know this opinion is unpopular amongst some armed citizens. Still, I do ask you to please at least think long and seriously about whether open carry is in your best interests before you next carry a gun unconcealed.

Why We Do What We Do

A member recently wrote to me, and as part of several topics he and I were discussing he expressed, “This is the world we live in and the system is so large and stacked against the individual that a defense against it must occur from a group of individuals working together.”

It warms my heart when a member understands so clearly why the Network is the power for good for its 19,000+ family members. We all look out for each other.

About the Network's Online Journal

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In addition, material presented in our opinion columns is entirely the opinion of the bylined author and is intended to provoke thought and discussion among readers.

To submit letters and comments about content in the eJournal, please contact editor Gila Hayes by e-mail sent to editor@armedcitizensnetwork.org.

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

Marty Hayes, President

J. Vincent Shuck, Vice President

Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

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