

Making Statements Part II An Interview with Marty Hayes, J.D.

This is part two of our interview with Network President Marty Hayes in which he answers member questions about making statements to police. Due to the length of our Q & A session, we broke this interview into two installments. If you missed Part One last month, please browse to <https://armedcitizensnetwork.org/making-statements> where we define terms, ask him about admissibility, and end with a discussion about calling 9-1-1. We move now to the arrival of law enforcement resulting from the call to 9-1-1 and continue to explore making statements. As we did last month, for those preferring video, we offer the option of the less formal video discussion at https://www.youtube.com/watch?v=LAq16Dpf_U or for those preferring the more tightly-edited version, continue reading for a more concise written format.



eJournal: If you had called 9-1-1 after self defense, how would you establish that you were the good citizen who called it in; you were the person who called and asked for help? How do you establish that? What do you say when the police arrive on the scene?

Hayes: I would have my hands in plain view, and I would say, "Officer, I'm the one who called," and that's all I would say. Let them take it from there. After asking your name, they would probably say something like, "Well, what happened?"

eJournal: What are you going to say?

Hayes: I'm going to explain what happened, not in great, excruciating detail but I am going to tell them why I felt the need to pull my gun. "The man was threatening me. He was threatening other people. He had a knife, he said that he had a knife; he said that he had a gun." I would be explaining to them why I felt the need to pull my gun.

Now, I can hear in the background all the attorneys: "Oh my God, he's saying that he would tell the police what happened!" Well, I'm going to be a good witness. I'm not going to get into excruciating detail about what I did, so I would not say, "Well, based on my training and experience I probably took 1.65 seconds to sweep my jacket back and draw my pistol and point it. My finger was off the trigger, officer, and my thumb safety was still on." I wouldn't say that.

eJournal: How much can a person realistically communicate to a first responder who's got a lot of things to deal with? Compare that against how much detail is too much, to where really,

they're just going to shut you up and put you in the back of the car while they finish figuring out what happened.

Hayes: I'm not going to go into much detail at all as far as what I did. I will give as much detail as I'm sure of about what the other person was doing and then I would politely say, "Officer, if you're investigating me for a crime, I would like to talk with you but only after my attorney is present."

eJournal: You would make that statement before feeling like you were under arrest, before being Mirandized?

Hayes: You're not always going to get a responding officer or two, a crime scene technician or shooting incident reconstructionist. You may get the one-man police department who is a reserve officer with 160 hours of training, who has never investigated a crime in his or her life. That might be the sophistication of the police response you get.

How that is going to be handled is going to be different than if you were in a larger municipality with a dozen cops that could respond and investigate and take statements, and has experienced detectives. You're going to need to kind of wing it. You're going to have to figure out who are these people and what do they want from me?

eJournal: There is no way to set hard-and-fast rules. It has to be more nuanced. What is my situation? Am I talking to a fish and game officer? Am I talking to an experienced metropolitan police officer who gets gun calls every day? My question to you then becomes, how does that influence how I speak to them?

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Hayes: Well, if you have that minimal police response person, they're probably not going to make an arrest unless they're absolutely clear that you committed a crime and that's why being a good witness will help your fate that night. They'll probably say, "Listen, I've got to run this by the prosecutor," and make sure that they've got a good location for you so they can recontact you and go from there. But if it's a medium to larger-sized police department you may be arrested and put into custody or maybe not even arrested as much as detained and put into custody.

It'll probably be something along the lines of, "Hey, George, would you like to come down to the police station to give a statement?" and then "Well, we've got to cuff you for our safety," and so you end up being frisked, searched, all weapons taken and cuffed in the back of the police car. You may not be arrested at that point – even though you look a lot like you're arrested – but you're just being detained for questioning. So, you show up at the police station, they will probably take the cuffs off you and sit you down in an interrogation room. They'll call it an interview room, but it's really, in fact, an interrogation room.

eJournal: I'm feeling pretty arrested at that point.

Hayes: Yes.

eJournal: But no one's Mirandized me yet. How does this guide my decision to ask for counsel – or give a minimal statement about why I did what I did?

Hayes: If I have been placed in handcuffs and transported to the interrogation chambers, I'm not going to say another word. I'm going to invoke my right to have an attorney present before any questioning.

eJournal: So, not being free to leave is kind of a bright line decision point for you?

Hayes: Actually, the bright line is the handcuffs. If I've been handcuffed, they don't get anything more from me unless it's vital for me to prove my innocence later on. Something like that might be, "Officers, don't forget to look under the bushes where he threw the knife."

eJournal: I'm remembering an incident that we wrote about in a three-part series some years back where a man was threatened by and shot and killed his neighbor. He was put in the back of the police car under fairly bad conditions for a long time before they transported him. If you're eager to get your basic statement out, at that point are you going to try to spill that to anybody who comes to ask, "Hey, do you need a bottle of water? Are you okay?"

Hayes: Probably not. You've got to understand something. When you choose to put a deadly weapon on your body in our society, then you've taken on a broader responsibility than just the average person who doesn't have a gun with them. Basically, that responsibility is to be able to explain to the investigators why you had to use force against this person. If you're not willing to take on that responsibility, then I would respectfully suggest you leave the gun in your bedroom drawer, because you're basically assuming the role that police have usually been asked to provide in our society. You've decided that you're willing to take a gun out and shoot somebody under certain circumstances and you better be able and ready to at least explain in basic details why you did that.

eJournal: Still, common advice states that you'll be so discombobulated that you won't be capable of making a cogent statement or not capable of stopping talking once you start. That's actually kind of insulting when you consider that armed citizens undergo stress inoculation training that...

Hayes: Some of them do.

eJournal: Well, maybe this goes to who should carry in public or who shouldn't, but I do take umbrage with that blanket statement that you were in compliance with the law and social standards as to when to use force and when not to, but suddenly the incident's over and you're not competent to decide what to say, what's too much, what's too little? That's troubling to me.

Hayes: If you believe you are one of these people, then I would strongly recommend you go through some training that addresses this particular situation. Many years ago, when I ran the Firearms Academy of Seattle, one of our instructors was a lady named Kathy Jackson. After being involved in one of our higher-level classes where we put a person in a simulated deadly force incident and we started questioning them. They didn't do a very good job of answering the questions. Kathy said, "Why don't we include this in our training? What to do. What to say. How to act." I said, "Brilliant!" The very next time we taught that class we had a segment of the class addressing what to say. It was amazing how much better the responses from the students got after this chunk of education. Sure, they still made a few little mistakes, but they did much better. This is the type of training that a person needs to find or needs to put themselves through: training how to handle the aftermath of a deadly force incident.

eJournal: Not only the specific instruction, but role-play as well, so that they get some experience making those decisions on the fly perhaps making those decisions under stress with others yelling and hollering. I can't say enough for how that built

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up student confidence and how much that parked responses in the backs of their minds in case they ever needed them.

In your law enforcement and expert witness experience, how common it is for suspects to just keep talking after it's clear they're under arrest?

Hayes: Well, that's what the police want to happen. Think of George Zimmerman. He kept talking and talking and talking and talking and talking and then the next day he talked some more. He even got in the police car and drove to the scene, and he walked the detectives through the whole situation. The good news is George was absolutely 100% justified in doing what he did, and he had witnesses to back up his claims. They weren't watching; they were what we call ear witnesses. After that, the police failed to prosecute him and then for political reasons the State came after him and decided to indict him and prosecute him for murder. Then all of this came out in trial.

Normally, when a person uses force in self defense, they have just taken hold of a ticket to the witness box and they're going to have to tell the jury why they felt their life was in danger. The good news is they videotaped George telling the investigators why his life was in danger and they also had photographic evidence of the wound on the back of his head where Trayvon Martin smashed it into the concrete.

Typically, when I see people incriminating themselves, they're doing it at the behest of investigating officers – detectives. The detectives are trying to twist his words around a little bit and get him to make statements that the jury might believe are incriminating.

eJournal: From what you're saying, that would happen in the interview room, I think. What about during transport? Is it pretty common for officers to keep picking away at the suspect while they're taking them to the police substation or down to the jail?

Hayes: I have not seen that as being common. It might happen but it's never written up in the reports because the officers know that they're wrong, but it might give them a little bit of information to pursue at some point during the investigation.

eJournal: So, note to self: if you're in the back of a police car being transported, remain silent.

Hayes: Yeah.

eJournal: This is not a question so much about giving a statement, but based on member questions, its a topic I would like you to address, if you would, please. If one receives medical aid or is even taken to the hospital after a fight – what are your thoughts about admissibility of what you might tell the EMTs or the hospital staff?

Hayes: Well, it's all admissible. There may be a hearsay situation but that could probably be overcome by the excited utterance rule or statement against interest. I would not be telling the EMTs in the back of the ambulance or the emergency room docs or the nurses anything about the case other than, "It hurts right here."

eJournal: We've explored this topic in response to member questions, many of which were stirred up by Internet videos with titles like *Don't Talk to the Police*, but I'm remembering one member in particular who had been told that exculpatory statements that he made either before or after receiving the Miranda warning would be considered hearsay and thus inadmissible in his defense. Do you have any thoughts on that?

Hayes: So, the member was convinced that even if he told the police the truth, those statements would be kept out because they're hearsay?

eJournal: I believe that he felt the prosecution could use those statements, but his defense couldn't state, "Well, George told the police that night that the man had come at him with a knife," that his defense attorney wouldn't be allowed to say that. I just don't understand how this great vast body of misinformation gets going out there.

Hayes: If the statements are documented in police reports or video or whatever then they'll come in. If they're not documented, then they probably won't come in.

eJournal: A concurrent concern is how much of police reports these days is coming off vest cameras or dashboard cameras versus the old-fashioned way when you were in uniform of going back and writing up a report that night. One seems like it would be a lot more credible than the other.

Hayes: Well, typically what happens now is the officers go back, review the video and then write up the report based on refreshing of their memory by watching the video.

eJournal: Then the prosecutor has to make charging decisions based on that information.

Hayes: Understand something: I had been a cop for about 30 plus years until I retired about two decades ago, but police are mostly good people who want to do a good job and who are honest. They're not the people that you typically hear about when an armed citizen is being prosecuted and the political machine decides that they want to come after armed citizens. They pick and choose who they want to use for investigators based upon how quickly that investigator wants to move up the chain to become a lieutenant or a deputy chief.

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I'm working a case right now where we've got a couple detectives that have gone way out of bounds as far as what is good, honest behavior. It's sickening to me to see this and in fact I've taken the case pro bono which I don't do often but it's such a travesty that I'll go down and I'll testify, and I'll explain why the police are making stuff up; why it's wrong. Frankly, it will never go to court but if it does, I'll be there.

eJournal: We err by thinking the expert only gets called in to testify. The expert gets called in to guide the case, and as you said that often actually keeps it out of court. What else do you think members need to know about making statements to police?

Hayes: We need to talk about when not to give a statement. We really haven't talked about that. Don't do it under the following circumstances. If you have been handcuffed and you're isolated either in the back of the car or later in the interrogation room, do not talk to the police. They have focused in on you as a suspect in a crime. Do not give a formal statement to the police without your lawyer – and when I say “formal,” I'm talking about a written statement or a videoed statement or even audio statement. Don't do it, because they want to try to prove that you committed a crime.

eJournal: How does what you just described differ from giving bare details to a responding officer on the scene?

Hayes: Well, I think it's a difference of you going home that night after a legitimate act of self defense or being prosecuted.

eJournal: Okay, so in the situation that you just spelled out, you're sequestered, you're arrested or at least detained such that you're not free to leave. You're in the interrogation room or you're being interrogated.

Hayes: It's likely you've been read your Miranda Rights, which is a clue.

eJournal: Your behavior under those conditions appears to me to be radically different than what you suggested in part one of this two-part series, where you spoke about giving bare details to a responding officer on the scene. What's the difference between sharing the information – the limited information – in that setting versus sharing that information in the circumstances that you've just spelled out of being sequestered, of being arrested, of being in an interrogation room.

Hayes: Assuming that you did share with the officers, to begin with, what that suspect was doing that caused you to fear for your life and then if the officers didn't believe you or maybe his gang banger buddies were bitching in their ear, “That's all BS, man! He didn't do that, he didn't even have a gun on him,”

because one of his buddies took it away. If that's the case, then you may be arrested and that starts the interrogation. I would invoke Massad's words here and say, “Officer, I wish to cooperate 100%, but only after I've spoken with counsel.”

eJournal: At that point, sometimes we get impatient. What if it takes a long time to get your lawyer there with you? Are you going to be willing to sit in jail waiting?

Hayes: Yes. It's the role you have volunteered for when you decided to carry a gun in public. Furthermore, if you decided to use that gun in self defense, you're volunteering to be handcuffed, stuffed in a car, taken down to the police station, put in a room, strip searched, and wear an orange jumpsuit. Yes, you're volunteering to do that.

I will sit there until my attorney can get there. I don't have an attorney in my hip pocket, you know, and I do quite a bit of traveling. It may take a day or two or three to get an attorney there, so I'll just keep my mouth shut...

eJournal: Including not talking to the other people in the holding cell with you.

Hayes: Yes.

eJournal: Serious stuff! Anything further?

Hayes: Yes. When watching YouTube if you come across an attorney that gives a diatribe about don't ever talk to the police, realize that when you're involved in a self-defense incident and don't talk to the police, you are inviting arrest. The attorney isn't the one that's going to go to jail; it's you. The attorney isn't going to miss work; the attorney is actually going to get more work. I'm not saying not to say, “I want to talk to my lawyer,” but there's a flip side to that: when you say that, you're going to very likely be arrested and so you need to prepare yourself to be going to jail.

On the other hand, if you follow my line of thinking and you let the police know what the person was doing that caused you to act in self defense, then perhaps, just maybe they'll go down that road in their investigation a little bit and you won't be arrested that night and you can get together with your attorney the following day and arrange to go talk with the detectives and give a full complete statement at that point.

Marty Hayes, J.D. is president and a founder of Armed Citizens' Legal Defense Network. He brings 30 years experience as a professional firearms instructor, 30 years of law enforcement association and his knowledge of the legal profession both as an expert witness and his legal education to the leadership of the Network.



President's Message

by Marty Hayes, J.D.

I wish a happy holiday season to all our members. I am writing this a couple of days after Thanksgiving while sitting in a campground in my RV.

Last week I was at Gunsite Academy where I attended the excellent revolver training event, the Pat

Rogers Memorial Revolver Roundup. The Roundup was held the weekend before Thanksgiving, so while in AZ, I can visit my 90-year-old mother for the holiday. I will go to Phoenix on Monday to meet with an attorney, then I'll head home.

While taking a little personal time, I am still on the job. A few days ago, we had a Network member involved in a self-defense homicide, and my personal time stopped for a couple hours until we got it sorted out. Here is how that went.

On Tuesday afternoon, I received a call from the Network home office on our Boots on the Ground emergency response phone, telling me we had a member involved shooting. Our member's daughter had called us after the member told her to contact us to arrange for an attorney to represent him. The daughter was a huge help, both calming her father and relaying information to us about the incident (which will remain confidential at this point).

Fortunately, the shooting occurred in a metropolitan city in which we have several Network Affiliated Attorneys. Which one to choose? In a perfect world, the member would have already consulted the list, and selected one. Well, this is not a perfect world, and since the member was detained by police, I could not speak to him. I received guidance from the daughter, and with help from the Network team, I learned that one of the attorneys had provided a personal cell phone number for me to use in just such emergencies. Gila forwarded his number to my phone, and I called the attorney. Fortune was shining down on the member because the attorney was available to talk to me. We discussed the incident, and I asked him if he could help. He enthusiastically responded in the affirmative, and so I gave him the daughter's phone number.

It was going well so far. The daughter was still at the scene with her father, so she was able to hook up the attorney and the lead investigator by phone. Within half an hour, I received a text from the attorney telling me no charges would be forthcoming at this time. An hour or so later I got a call from the member, who confirmed he had not been arrested, although we agreed to talk more when he got official word that no charges would be brought. Talk about a perfect resolution!

In a month or two, after it is official that our member is not going to be prosecuted, we will have the attorney work to get the member's gun back to him, as we have done in similar instances. I do not anticipate publishing detailed reports about the incident, because there is always the threat of a civil suit, and we would not want to do anything to hurt our member's chances in a civil suit. I did think you would share my pleasure in seeing the Network serve this member exactly as it was designed to do.



The Pat Rogers Memorial Revolver Roundup is a yearly gathering of many of the top revolver instructors and about a hundred or so students, and for three days much learning occurs. Next month I will give a complete report, but for now, will leave you with this picture. In it, instructor Caleb Giddings, who was on *Top Gun* and is now the head of marketing for Taurus Firearms, is demonstrating a drill for the students. I have known Caleb for over 10 years, and am impressed by his growth as an instructor.



Attorney Question of the Month

After the 2020 death of Ahmaud Arbery, state laws allowing citizen's arrest were reconsidered. This leads members to question what to do if they stop a crime. For this edition of our *Attorney Question of the Month* column, we asked our Network Affiliated Attorneys the following question:

In your state, may an armed citizen arrest a violent attacker at gunpoint and detain him or her until law enforcement arrives? Is this allowed for crimes that are not violent?

If the crime occurred inside one's home, are allowances to use deadly force to effect a citizen's arrest broader than out in public?

What do armed citizens in your state need to know about citizen's arrest?

Our Affiliated Attorneys' responses follow:

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In Maryland, a citizen may use a "citizen's arrest" as long as its use does not constitute a breach of the public peace.

Use of force in Maryland is determined using the self-defense standard of using no more force than is reasonably necessary, but is complicated by the fact that deadly force can only be "used" after attempting to retreat unless an avenue of retreat is unknown to the user, the user is the victim of a robbery or the user is using the force within their own home. The determination of whether the force is reasonable will be made by the fact finder, either the judge or jury, at trial and not likely through a pre-trial motion. The more force used, i.e. pointing versus discharging, will play a big factor in the determination as to whether the force was unreasonable.

So, for example, a woman hears a window break in her home and catches a man inside her apartment and detains him at gunpoint until the police arrive – likely a good detention.

Whereas a woman hears a window break in her home and catches a man inside who attempts to flee so she shoots him – very likely a bad detention.

Ultimately, these examples show the conundrum most homeowners face using firearms to defend their homes in Maryland, since most burglars are going to try to flee and it's likely unlawful to actually shoot them or at them – so you can use the weapon to encourage a person to stick around and get arrested or they just run and face a much lower chance of apprehension. Most criminals go with the second option.

Speaking in terms of specifically "citizen's arrest," a citizen should keep in mind that a citizen's arrest within the home is unlikely to be a breach of the public peace because obviously it is far less likely the public is around to have their peace breached, but once in public, even within the yard of a home, any place the public can be can constitute the presence of the public. For example, Maryland's appellate courts have held a pretty much empty road was enough to constitute the presence of the public for the purposes of disturbing the peace. Often when the police can't charge anything else, they will opt to charge disturbing the peace because it is so vague and operates as a legal catch-all.

Overall, Maryland has a very convoluted criminal law book and anytime someone in Maryland is using force, of any degree, they should be prepared to defend their actions in the field and again in a courtroom.

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Before I answer these questions, I urge everyone in every case where waiting would not put innocent life in jeopardy to wait, take a position of tactical cover, arm yourself and call 911. Never risk your life over property. Whenever possible, wait for the police to handle the situation.

In your state, may an armed citizen arrest a violent attacker at gunpoint and detain him or her until law enforcement arrives?

"Yes" in Alabama, BUT be certain that if you are not the subject of the attack, that the person you intend to bring into custody is not a private citizen defending him/herself or a plainclothes peace officer attempting to arrest a person you wrongly believe to be a victim. The effects of adrenaline (auditory blockage and tunnel vision) and factors you may know nothing of can lead you to take action that you cannot take back. During my time as a police officer in a Birmingham, Alabama suburb, a husband and wife who both happened to be off-duty police officers were engaged in a domestic dispute on the shoulder of

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Interstate 59. An on-duty plainclothes Jefferson County deputy pulled over to see what was happening. The deputy recognized neither of the officers in the domestic dispute. He was accosted by the male spouse and ended up shooting and killing him during an ensuing struggle.

Another issue to be considered is whether you have the means to restrain the arrested individual(s) until the police can arrive and take charge. Never try to zip tie or handcuff a violent offender by yourself. Even if the subject were to escape, keep your distance. You must never forget that a person interrupted during the commission of a violent crime, is dangerous even if he/she initially appears to comply with your demand to stop the violent act.

Is this allowed for crimes that are not violent?

Yes, BUT one should have confirmed there is a current arrest warrant for the offender (and be able to confirm that the person to be arrested is actually the person named in the warrant), OR the arresting citizen should have seen the offense committed and knows the person to be arrested is, in fact, the perpetrator. Even if the arrested person is not injured, the likelihood of an expensive false arrest lawsuit by a wrongly arrested innocent person is very high. You must never use deadly force to stop an offender who is fleeing or who does not put you or other innocents in a position of imminent serious physical injury or death. In a case of mistaken identity by you, the innocent subject of your arrest has a right to believe he or she is authorized to use deadly force to stop an unwarranted attack or attempted false imprisonment by you. "Whoops, my bad, I'm sorry," has no legal merit.

If the crime occurred inside one's home, are allowances to use deadly force to effect a citizen's arrest broader than out in public?

Yes. Much more latitude is granted in the use of deadly force once a burglar or home invader has actually gained access to the home. Never fire through a door or window unless deadly force is being used against you (shooting through your door at you). From the legal and moral standpoints, the least amount of force necessary to thwart the attack is best. During my time as a peace officer, I saw at least three incidents where drunk or otherwise impaired individuals entered or tried to enter a citizen's home late at night, thinking he was at his own residence. In each case the home-owner called the police and used discretion, but that is not required if an intruder gains entrance to an occupied dwelling (house, apartment, motel room, RV, houseboat, etc.). In every case, if the intruder is not actually attacking you or a member of the household, one must make

every attempt to ensure the person you are about to shoot is "other than friendly." Again, being sorry for shooting one's teen-aged child slipping back into their home after slipping out, will not bring him/her back to life.

What do armed citizens in your state need to know about citizen's arrest?

Generally, a private citizen may arrest for a breach of the peace or for a crime that occurs in his/her presence and offenses for which a warrant has been issued. The caveats above regarding waiting for law enforcement to take a person into custody and ensuring the identity prior to arrest apply in every situation.

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Regarding citizen's arrest in Florida, please see my article on the subject, available online, here, at page 8 <https://www.8jcba.org/resources/Documents/Oct%202020%20Newsletter.pdf> .

There is a pending pretrial self-defense immunity writ appeal in Florida. The opinion will likely shed light on some aspects of the law of citizen's arrest. I expect the opinion will be published in 2023. The case is *Raulerson v. State*, see <https://acis.flcourts.gov/portal/court/b82b30d5-bd3c-46d7-9451-1cb05e470873/case/e5799aba-d2b4-4ca7-958e-e1a78b21ce79> .

I also wrote on citizen's arrest at Modern Service Weapons. See <http://modernserviceweapons.com/?p=18687> .

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In your state, may an armed citizen arrest a violent attacker at gunpoint and detain him or her until law enforcement arrives? Is this allowed for crimes that are not violent?

Yes, in California the armed citizen may do so if they are threatened with great bodily injury or death. You can only use or

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threaten to use deadly force if you or someone else is threatened with great bodily injury or death. You can not use a gun to detain someone breaking into a car, for instance.

If the crime occurred inside one's home, are allowances to use deadly force to effect a citizen's arrest broader than out in public?

Yes. You can use or threaten to use deadly force to effect an arrest in your home for an intruder. If an invited guest creates a situation, then deadly force cannot be used unless the homeowner/dweller is facing great bodily injury or death.

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The analysis would have to be facts that establish a continuing fear of severe bodily harm. I would analogize it to chasing down an assailant if there are factual reasons to do so, for example, to prevent further physical imminent harm, to prevent a hostage taking.

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In your state, may an armed citizen arrest a violent attacker at gunpoint and detain him or her until law enforcement arrives? Is this allowed for crimes that are not violent?

Yes, and must be a felony.

If the crime occurred inside one's home, are allowances to use deadly force to effect a citizen's arrest broader than out in public?

Yes.

What do armed citizens in your state need to know about citizen's arrest?

You have no legal protections so be cautious.

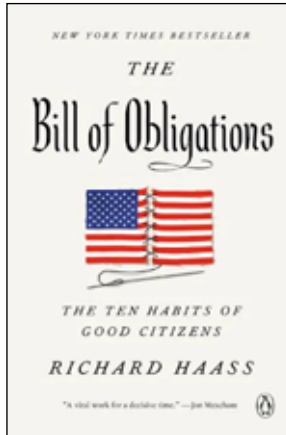
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Thank you, affiliated attorneys, for sharing your experience and knowledge. Members, please return next month when we have a new question for our affiliated attorneys.

Book Review

The Bill of Obligations: The Ten Habits of Good Citizens

By Richard Haass
Penguin Random House
ISBN 9780525560678
[\\$18 paperback; \\$13.99 eBook](#)

Reviewed by Gila Hayes



Will the many rights Americans cherish vanish in coming years as warring political factions put their wishes above what's best for the country? Claims to individual rights range from self defense or free speech to the idea that people have a right to be given a minimum income. How did people come to focus on rights to the exclusion of performing duties to the system assuring the rights? Some of the answers are in *The Bill of Obligations* by Richard Haass, which a long-time member recommended.

Long a critic of trying to guide other nations when our own is deeply divided, Haass writes that Americans “focus almost exclusively on perceived rights and [the country] is breaking down as a result.” He suggests a series of obligations he wishes Americans would adopt. He writes, “A democracy that concerns itself only with protecting and advancing individual rights will find itself in jeopardy, as rights will come into conflict with one another.” Instead, he asks readers to stop demanding “rights” and shoulder the obligations falling to every citizen.

Haass acknowledges that democracies suffer from disinterested citizens, failure to understand complex issues and the danger of super-majority oppression of the smaller voting blocs. Our founding fathers feared the new government becoming tyrannical, leading, he believes, to the Bill of Rights, which contains much balancing language. For example, the First Amendment’s protection against imposition of a state religion concurrently assures free exercise of one’s chosen religion (or none, if the citizen prefers). But what is required to be sure the rights endure? In his view, citizens have to invest in the nation or rights will be lost. Max Arzt said, “It is not enough to talk about human rights without emphasizing human duties,” Haass quotes, adding that Arzt believed that rights without duties leads to lawlessness; duties without rights leads to slavery.

Haass prefers the idea of obligations and writes, “Obligations are different from requirements. Americans are required to observe the law, pay taxes, serve on juries, and respond to a military draft if there is one. There is no wiggle room. Failure to meet requirements can result in a penalty, be it a fine, imprisonment, or both. Obligations are different, involving not what

citizens must do but what they should do.” He champions ten obligations.

Obligation 1. Be informed.

Learn to recognize “facts, misstatements, opinions, predictions, and recommendations. Facts are assertions that can be demonstrated to be so, measured, and proved.” Misstatements cannot be proven and there is no such thing as “alternative facts,” despite popular usage of the term, he states. Still, reliable facts are essential. Debate about issues is only effective when “based on a common set of facts,” he writes, recommending a reading list that includes the classics, biographies, famous speeches and for current events, he advises, do not fail to compare information from several sources and avoid emotional or sensational “news” websites.

Obligation 2. Get Involved.

“In a representative democracy, elected and appointed officials wield a great deal of power, but the point is that this power is derived from those who elect them and give them the power to act,” Haass writes. Voting encourages study into issues and makes the citizen a stakeholder in the process of government.

Obligation 3. Stay Open to Compromise

Compromise is not a dirty word. In fact, it was “at the heart of the process that led to the Constitution” and the Bill of Rights, and can bring rabidly opposed parties to accept an alternative. Haass observes that the Cuban missile crisis was resolved by a compromise through which Khrushchev withdrew the missiles from Cuba, but only when Kennedy agreed not to invade Cuba and, Haass writes, promised to take medium range missiles, capable of reaching the Soviet Union, out of Turkey.

“A basic rule of thumb is to hold fast on matters of fundamental principle,” he writes. Compromise uses the pros and cons of the agreement, and that’s often preferable to an ideal that is utterly impossible to reach.

Obligation 4. Remain Civil

“Learn how to disagree without being disagreeable,” Haass writes. “Deal with issues and arguments on their merits,” not what you suspect motivates them. Don’t make disagreements personal; don’t attack the other’s intelligence or character. Ask how they came to adopt the opposing belief. The goal is not to “demolish the other side” or humiliate the other. Be willing to change opinions if new evidence surfaces that alters the facts.

Supreme Court Justice Antonin Scalia said, “I attack ideas. I don’t attack people.” Haass holds up Scalia’s personal friendship with Ruth Bader Ginsburg as “a model we would all do well to emulate.”

[Continued next page]

Obligation 5. Reject Violence

Interestingly, Haass starts this chapter by recognizing the legitimate use of force in self defense. However, violence has no place in pursuit of political goals, he continues. “Gaining power through violence robs those involved of any legitimacy.” He suggests readers look to “Henry David Thoreau, a mid-nineteenth century New England thinker who refused to pay taxes as a protest against slavery and the war with Mexico. Thoreau was prepared to go to prison for his stance and did.”

Obligation 6. Value Norms

Haass defines norms as “the unwritten traditions, rules, customs, conventions, codes of conduct, and practices that reduce friction and brittleness in a society.” A system of laws alone is not enough. He explains, “no society of any sort, much less a democratic one, can endure amid widespread lawlessness. Order is a necessary prerequisite for everything we value, from the personal to the professional and from the mundane to the profound.”

Obligation 7. Promote the Common Good

Spoiler alert: Haass legitimizes wealth redistribution as part of his equality ideal. While that doesn’t take the good away from other ideals, the “how” on Obligation 7 is unlikely to resonate with conservatives. Haass quotes Martin Luther King’s Letter from a Birmingham Jail which makes, in King’s own words, “a strong case that the obligation to care for others, be it for their sake or our own, is critical for a democratic society.” It pains me to point out that Haass also parrots opinions about the safety and effectiveness of masks and vaccinations during the pandemic, diminishing, for me, the value of the rest of the book.

Obligation 8. Respect Government Service

“What began as opposition to strong government and big government has morphed into outright hostility of government and rejection of its legitimacy and authority,” Haass writes. He believes democracy’s tools of a free press, Congressional hearings, whistle blowers, the criminal justice system, and the remedy of impeachment all remain viable. “History demonstrates the capacity for uncovering mistakes, introducing reform, and voting out of power those who have failed to use it well or honestly.” Several years of community service by young Americans would break many out of the prejudiced, narrow views children learn from family, especially as society has become more segmented, he recommends. Grants or loans for higher education or forgiving individual student debt, could incentivize obligatory community service, he suggests.

Obligation 9. Support the Teaching of Civics

“We are failing to fulfill the obligation to pass down the essentials of what it means to be an American and citizen of the

United States of America,” Haass observes. He highlights the Jewish Passover tradition during which parents teach their children specific details of their history, inspiring Haass to call for the return of civics to school curriculums so students learn about the three federal branches of government, and state and local government, how each operates, and the ideas fundamental to understanding American democracy: “representative versus direct democracy, republics, checks and balances, federalism, parties, impeachment, filibusters, gerrymandering, and so on.”

Obligation 10. Put Country First

Can the genie of self-involvement be stuffed back in the bottle? Haass writes that his first nine obligations will only be adopted if citizens “put the country and American democracy before party and person.” It must be voluntary, not motivated because it benefits you.

“Virtue or character cannot be mandated or legislated. It can be encouraged on the basis that it is right and moral and ethical. But it can also be encouraged on practical cost-benefit, or instrumental, grounds, in that over time individuals and groups will be better off if they go about their lives keeping in mind broader and longer-term considerations.”

Additionally, political parties would have to stop retaliatory politicking in favor of national interests, and when one’s political party is not in power, hold the majority to account and constructively offer policy alternatives that assure the country’s future.

It falls to voters to enforce responsibility in their representatives. “Political leaders disinclined to put country and American democracy before party or self will be persuaded to change their ways and do what is in the best interest of American democracy only if voters and funders reward those who act in a manner consistent with democracy and penalize those who do not. Politicians may not always be responsible, but they are almost always responsive.”

I am conflicted about the time I spent reading *The Bill of Obligations* and in all candor, I cannot recommend it. Nonetheless, in its first quarter Haass recommended “the utility of spending some time watching news shows or reading columnists or visiting websites with which you tend to disagree.” I guess I did that beyond all expectations. He hit most of my personal hot buttons and opinions. As a result, often it was hard to buy into the value of replacing the popular idea of “rights” with shouldering our obligations as citizens. It is too bad that the value of the 10 Obligations is, in my opinion, eclipsed by forwarding what he’s been told about issues like the reliability of mainstream news media, his beliefs about COVID-19, election fraud, or climate change. Having admitted all that, I firmly believe adopting the 10 Obligations is essential.



Editor's Notebook

by Gila Hayes

First, a big thank you to a member from Wyoming who after reading the November journal video wrote, "This proud ACLDN member wants to thank you for your recent [Making Statements](#) interview with Marty. So much excellent information there and conveyed in a concise, yet easy-to-understand manner. I especially appreciate yours and Marty's use of examples to make and/or clarify important points. It makes the information very relateable to the ordinary armed citizen who doesn't possess a law degree.

"This relevant subject deserves the time that you two are giving it because of all the misinformation floating around out there. In a word, it is simply 'necessary.' Thank you for recognizing that, and for including the link to the recent video on the same topic."

On Thanksgiving Day at my house, pre-dinner and post-dinner conversation is always interesting. In recent weeks, a couple of shootings have made the news, complete with video. Thanks to the 24/7 news cycle, the discussions that are sure to follow are like the blind men patting down the elephant and erroneously identifying the creature as a rope, a wall, a snake or a tree trunk. Trying to make sense of critical incidents based on news coverage is a lot the same. Whether through malice or simple ignorance, body cam video, home security camera video, or even cell phone video is edited and often loses details that show justification, and even the most fervent self-defense advocate is tempted to say, "Well, I would not have done that," because critical details were cut out by the video editor.

On Thursday, one of my guest's pre-dinner observations were right on point. Many more people have guns today, so we must expect more armed responses to crime, she noted. On Black Friday, *The Reload* (<https://thereload.com/>) reported that this month's "polling from Harvard's Center for American Political Studies (CAPS) and Harris Insights and Analytics...found that 63 percent of voters said they felt the need to have a gun in case of being attacked by criminals. By contrast, just 37 percent said they thought owning a gun was unnecessary."

There are many reasons that gun ownership is increasing. During the decade past, several chief law-enforcement officers have candidly advised their constituency that citizens must be prepared to put up their own line of defense against violent attackers. Citizens who previously would never have allowed guns in their homes are alarmed by evidence that police

protection is an illusion. They've bought guns, but not all, as so aptly described by John Farnam in an interview at <https://armedcitizensnetwork.org/getting-new-armed-citizens-started-right>, understand that a gun, or any tool for that matter, is only as good as the skill, knowledge, and commitment of the user.

You may know one or two such gun owners, whether through conversation while waiting for your shooting lane at the range, as workplace acquaintances, or even members of your own extended family. They need mentors! They need people who can help them avoid the pitfalls common to the untrained, including-

- Failure to secure guns not under their immediate control.
- Fiddling with the gun while its loaded and violating one or several of the Four Universal Rules of Gun Safety.
- Accidents stemming from poorly made holsters, or carrying with no holster at all.
- Walking out and leaving a gun on the tank of a public toilet.
- Embarrassing questions arising when a gun is discovered in a desk drawer at work, or revealed when a shirt or jacket rides up.
- And many more, to which readers can contribute new and unusual twists, I suspect.

Without even accounting the legal liabilities of using a gun in self defense, the pitfalls for an uneducated, untrained gun owner are numerous. If you've carried a gun for any length of time, you have likely come close but saved yourself from some of those problems. The newly minted gun owners you encounter need your mentorship to help them avoid the same problems. If you are not able to be that influential mentor, please introduce those in your sphere of influence to high quality training, and for those you love, a gift certificate to a class at a respected regional firearms school, and maybe even an offer to attend with your friend or relative (shoot weak-handed or shoot the drills with a revolver if you ordinarily carry a semi-auto). It is one of the kindest things you can do and you'll be surprised what you can learn.

While what we do at Armed Citizens' Legal Defense Network will never take the place of in-person gun safety training and marksmanship coaching, a gift membership to the Network can also provide the new gun owner about whom you care with a solid education in use of force issues. In December, we all face the daunting challenge of finding gifts that will be meaningful to relatives who "have everything they want." Give us a call if we can help you give the gift of use of force education and other Network membership benefits to your loved ones.

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.

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