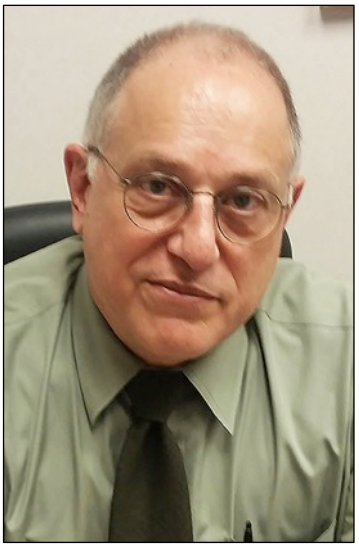
Fact-based Decision Making

An Interview with Attorney Peter Georgiades



Interview by Gila Hayes

Pennsylvania attorney Peter Georgiades was one of the earliest attorneys to join forces with the Network, and has proven himself a staunch supporter, being available to Network members as their go-to attorney after self defense, and contributing regularly to our monthly Attorney Question of the Month column. In discussing a recent question column, Mr. Georgiades expressed concern about the scare tactics used in defensive firearms training, and elsewhere, to convince students that any defensive gun use results in criminal prosecution. That is not true, he emphasized, and said he believes indoctrination of that sort creates hesitation and an attitude of helplessness. "Almost no firearms training with which I am familiar addresses the decision-making process in a manner I find to be consistent with the law and the practicalities of proving a case. Many do not address the issue at all."

Mr. Georgiades told us if armed citizens are taught to base use of force decisions on what is reasonable under the factual circumstances, as opposed to "tactically expedient or politically fashionable," their training would do them a "great service by making people understand the gravity of the decision, while maximizing the chances they will make a good decision." Good defense decisions require the armed citizen to "scrub away all of one's socio-political prejudices, theories and beliefs, replacing those with analysis of specific facts," he added.

It was apparent that this attorney has put considerable study into the issue of use of force decision making, and that piqued our interest. He agreed to explore this issue with us, and we are very pleased to share the resultant conversation with Network members.

eJournal: You've raised several very interesting topics of discussion around the false expectation that using a gun in self defense is sure to end in being prosecuted for a crime. How should armed citizens be taught good use of force decision making? What skills are needed?

Georgiades: Distinguishing articulable facts from impressions and personal prejudices is the skill. This requires one to remain calm, which is certainly not easy. But observation skills and the ability to remain calm can both be enhanced through training, particularly force-on-force training, carried out in real time.

I don't like it when trainers pronounce that one will not have time for thinking before shooting. Although one can rarely deliberate over the options, one can rather reflexively assess a situation and take appropriate action. Firearms trainers implicitly recognize this ability to assess a situation very quickly.

For example, we train people to "make distance" in some circumstances, and "close" in other circumstances. Students are also routinely advised to seek cover, or move laterally. So how do we expect them to know which to do? Obviously, it is not a blind guess. Rather, we expect them to consider their situation and act accordingly, notwithstanding the fact there is a lot going on and very little time. In other words, we recognize people do have the ability to assess situations very quickly, even reflexively, if they stay calm and know what to look for.

In fact, the decision to draw, aim and fire a weapon follows some conscious recognition of threatening circumstances. If there is literally no time at all to perceive one's circumstances and react, there will be no time to defend at all.

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Of course, if one panics, they cannot think. Practice making decisions on short notice and under stress minimizes the chances one will panic. Just as you have to practice getting the pistol on target and practice sight alignment and trigger press, making decisions has to be practiced.

After basic firearms training, people who's training has moved up through shoot house simulators to force on force will tell you that when they did their first simulator it was a mess. They made mistakes and their hearts pounded, but after a dozen times through the simulator it became fairly mundane.

Then when they added force on force training, the training became much more challenging again. In one's first force on force exercises, one becomes more excited and more agitated, and makes mistakes. You do that for a while, and you get better.

What makes people think it takes any less practice to evaluate circumstances and make a decision while under pressure, under a compressed time frame, than it does to make a difficult shot under pressure? These are both skills that can be learned and practiced. Some will be better at either or both skills than others, but everyone will benefit from training and preparation.

eJournal: How can we learn to make self-defense decisions based on analysis of facts?

Georgiades: First, one has to recognize their judgment, their perception, and even their physical responses, are influenced by their preconceived notions. Then one has to train oneself to distinguish hard facts from assumptions and illusions, and disregard all but the hard facts.

Preconceived notions are an enemy of this process. For example, we have all heard about people who have been shot, but not seriously injured, falling down because they "believe" that is what happens when one is shot.

Any instructor who has run simulation training using "realistic" paper targets or live actors in force-on-force training will tell you that if the antagonist (the potential target) in an ambiguous situation responds to a command or a question with profanity, a poorly trained individual will open fire four times out of five, without more actual information being made available. Then they would get to explain to the deceased victim's attorney, in front of a judge and jury, why they thought being rude was grounds to kill somebody.

People almost routinely make presumptions about the severity of the threat that a potential adversary presents based upon the antagonist's race, how they are dressed, whether they are clean or dirty, or the language they use. But these are only very weak indications of a person's intentions, if they are indications at all.

eJournal: What are the facts that need to be present in order to justify a self-defense response?

Georgiades: Most educated gun owners understand the basic requirements are that one reasonably believes that the use of deadly force is immediately necessary to prevent serious bodily injury or death to another human being. Today we are talking about being able to support one's belief these conditions were met by reference to things we saw or heard or knew at the moment we decided deadly force was necessary, so that no prosecution follows a shooting. Examples of things one can observe and articulate in support of their decision to shoot include:

- Can you see they are armed, do they claim to be armed, or do you have other reason to believe they are armed (such as someone trustworthy telling you they are armed)?
- Have they uttered threats?
- Are they close to you or far away?
- Are there obstacles between you and them that would prevent them from easily reaching you to do you harm?
- Are they in the company of anybody who has actually threatened you or actually assaulted you?
- Are their hands visible or concealed?
- Are they moving toward you or away from you?
- Are they large and powerful looking, or small and weak looking?
- Do you have a clear and safe pathway out of the situation?

These are not presumptions or assumptions, they are factual observations. There are either good, objective reasons to believe an antagonist is armed or there are not. The antagonist is either close to you or far away. They are either approaching you or they are not. It

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matters very little, if at all, if they learned to speak English after coming to this country or they disrespected you.

Distinguishing fact from presumption is a skill. We can train to this skill.

Most firearms trainers start with the presumption one is being threatened, and then instruct as to the fastest way to disable one's attacker. This is understandable, for once the decision to use deadly force is made one would be foolish to use half-measures. But in real life we cannot simply presume a mortal threat exists. The law demands that one's belief be reasonable under the circumstances, and "circumstances" is just another word for "facts." If one can articulate facts that justified a shooting, prosecution is not inevitable, or even likely.

eJournal: How can "reasonable" be defined to fit the many varying circumstances under which people use force in self defense?

Georgiades: There is no set definition; it will vary from case-to-case. But in every case the belief that deadly force is necessary must be based upon articulable facts, not bromides.

For example, reciting that one would "rather be judged by twelve than carried by six" is snappy, but it suffers from the illogic of a false choice. Being judged by twelve or carried by six are not your only choices: one can have good reason to use deadly force, and never be judged ***or*** carried. Only if one screws up the decision-making process will they be judged by twelve, and it is not fun.

eJournal: That is a great amount of wisdom in a few brief words! Acknowledging that a large array of choices exists between being killed and killing another person to avoid that fate, how are decisions like using command voice, non-deadly physical force or perhaps pepper spray judged by the "reasonableness" standard? Can any of those options also have adverse legal consequences?

Georgiades: It is hard for me to imagine that one would ever be faulted, in the eyes of the law, for employing measures short of the use of deadly force. I suppose your question is whether such non-lethal measures are ***required*** in order to stay out of legal trouble. The answer is "it depends."

Whenever one is trying to predict whether a particular course of conduct will be regarded after-the-fact as lawful or unlawful, the prediction, from a lawyer's perspective, will always depend upon what the facts are in any given situation. From the perspective of one confronting a sudden emergency, however, that prediction is greatly complicated because one will virtually never know all of the relevant facts. All one generally knows is what they can see and hear, maybe augmented with some additional information they happen to know about their antagonist (for example, that he is a neighborhood bully, or that he has been telling people he intends to hurt you). One cannot know there is a hidden confederate off to one side, that the gun is not actually loaded, or that one's antagonist has mistaken one for someone else. One can only be charged with making a reasonable decision based upon what is evident, taking into consideration the lack of time for deliberate reflection, and the prospect of dire consequences if one fails to act, and fear.

So, if there was plenty of time to issue a warning, and giving a warning would not increase the danger to oneself, it may well be the failure to warn would be used against the defensive shooter in a legal context. Conversely, I cannot see how giving a warning would be used against a defensive shooter in a legal context, but issuing warnings presents some serious tactical issues.

Similarly, if one is threatened by another who can easily be overpowered without resorting to deadly force, it presents a serious legal problem. But how does one make that decision, in the heat of the moment? Is the antagonist an eight year old neighbor boy with a softball bat, or an eight year old neighbor boy with a revolver? What is one's own physical capability? All of these facts figure into a decision made in a matter of seconds, and analyzed for months after-the-fact.

Initially, some official will decide if you were reasonable in your belief that the use of deadly force, and not some lesser level of force, was necessary to avoid being seriously injured or killed. If one's attorney (not you, at the scene) can point out a number of factual observations one made that gave rise to a plainly reasonable belief there was an immediate threat of serious bodily injury or death, and that deadly force was immediately necessary to avoid that outcome, it will likely end the inquiry without further proceedings.

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Only if that official decides one's professed belief was not reasonable will the matter be tested before twelve jurors (or a judge if you waive a jury trial).

The reasonableness of one's belief is supposed to be based upon the information one had available at the time one made the decision. The good news is we are not charged with knowledge of all the facts in the world, and one is not going to be held to the same standard as one who had the opportunity for long reflection. Keeping these ideas straight in the minds of the fact finders is part of the lawyer's job.

eJournal: An excuse sometimes offered after using force without justification is that there was "no time to think" so a frightened person resorted to lethal force immediately. How do you balance the need for immediate action against the need to choose a reasonable response to the threat?

Georgiades: How does one know there is a need for immediate action if they have not assessed their situation? Assessment necessarily involves observation and the processing of information. All I am talking about is getting better at making the assessment.

Of course, not everyone can look and assess effectively at speed. One who is not used to the process and who is surprised will likely either stand there and die or make a very bad decision, resulting in potential legal action. Observation skills and reflex must be trained in. And among the things people should train to recognize are facts that indicate a threat, facts that indicate there is no real threat, and signs that one can escape the situation altogether. It is not impossible; at least most of the time. Lots of people have done it.

Here's an example I use when I teach. Let's say I see a bad car accident in which somebody has suffered life-threatening injuries, and I get there at the same time as an experienced EMT. I'm not likely to know what to do, and therefore more likely to dither. But the training of the EMT, who is no less fearful for the accident victim, will prompt him to get right to work. Knowing what to do shortcuts the decision making, and going to work gives your mind something more constructive to focus upon than fear.

Someone who is used to being grabbed because of their training in sports, judo, or wrestling, for example, is much less likely to panic or freeze when they are grabbed. Because of my judo background, if someone grabs me, I will more likely go to work than freeze. Once I have gained control of the situation, I can assess what I need to do next. What can I do? Mostly likely release and flee! But whatever I do, I will later be able to ***explain*** what it is that caused me to do what I did.

I am trained to resort to different options based mostly upon what I see and feel, even without deliberation. One doesn't have time to deliberate. But if one has been grabbed hundreds of times in practice, one is more likely to make a good decision and do what one has been trained to do, and not get excited.

eJournal: Perhaps you would allow me one, final "what if." An aggressor makes convincing verbal threats and has an object hidden in his hand. If his actions and words together indicate intent to kill or cripple, does the reasonableness standard require us to wait until seeing a gun or at close quarters, a knife? How does one explain the reasonableness of shooting before use of a weapon against you is underway?

Georgiades: The "what if" game is a good exercise, in that it causes us to think out problems in advance of facing any real danger, and deliberately draw lines and make decisions about what we are prepared to do, outside the context of a sudden emergency. But the "what if" game should not be used to give one answers to questions which will necessarily depend upon more facts and circumstances than one can cram into a "what if" scenario.

The answer to this particular question depends upon whether one ***always*** has to ***see*** a weapon to reasonably believe one is present. The answer, of course, is "no." I can imagine a lot of scenarios where a reasonable person would be convinced a weapon is present without actually seeing one. Examples of objective facts that would lead one to reasonably conclude the antagonist has a weapon would be:

- He claims he has a weapon;
- He displayed a weapon a few minutes ago, and now he refuses to show you his hands;
- You know he usually carries a weapon from prior association with this person;
- You have received credible reports of someone in the area carrying a weapon;
- One hears the metallic click of a pistol being cocked.

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Obviously, it is easier to justify one's conclusion if one actually sees a weapon. But being able to articulate other facts sufficient to lead to a reasonable conclusion one's antagonist was armed should also work, even if it ultimately turns out that belief was mistaken and he was not actually armed.

eJournal: I'd like to wrap up this discussion by returning to an idea that you originally expressed. Why is using fear tactics about inevitable prosecution a bad thing when training people to use lethal force in self defense?

Georgiades: Once one has good reason to believe they must shoot, then they should not hesitate because they fear potential legal consequences. Telling people they will necessarily be criminally prosecuted and sued civilly if they are forced to defend their lives introduces more irrelevant considerations into the already difficult decision of whether to use force to defend oneself.

It is also inaccurate. It is essentially a declaration either that people are incompetent to make a good decision, or that our legal system is innately unjust and illogical. Neither is necessarily true. But even it were so, if one is thinking about legal consequences in the face of a deadly threat, they are focused on the wrong thing. They should be thinking about more important things: like how to get out of the situation, whether they are actually in mortal danger, or the tactical issues presented in the situation.

I will add that nobody, not even the most experienced attorney, is in any position to do a legal analysis while their life is in danger. One will never know enough facts, or have enough time, to make a legal judgment. One must train to focus on the existence and the severity of the threat, and how to deal with it if necessary. The best anyone can do is to act in good faith, and reasonably, given what they actually know in the moment.

eJournal: From the beginning of our discussion, I have thought you had a roadmap for training better self-defense practitioners. Much of what is trained focuses on being better shooters. What is your vision?

Georgiades: After teaching the basics of marksmanship, training should always be carried out in the context of making a good decision. One should understand what constitutes justification, and what does not, and how that can be shown.

"Situational awareness" means being aware of what is going on around you, and includes the ability to sort out the relevant from the irrelevant in terms of one's personal safety. If one can do that, articulate what they saw and heard to lead them to conclude it was necessary to use deadly force, and make prudent and reasonable decisions based upon that information, they have done all any human being can do to avoid legal trouble in the wake of a defensive shooting.

I wish there was a simple resolution of the conflict between the legal (and, to some, moral) requirement of due restraint and the tactical desirability of shooting first and asking questions later. There is not. I believe one can and should train to take quick and deliberate action, without training oneself to shoot faster than one can process information and think. I think it is a mistake to train for speed at the expense of awareness.

eJournal: Thank you for sharing your experiences and knowledge with the Network and its members. We've valued your contributions to this journal's Attorney Question of the Month for years. It truly is a pleasure to talk one-on-one with you to learn more from you.

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Peter Georgiades is a trial attorney licensed to practice in Arizona, Pennsylvania and Washington, D.C. He regularly lectures on legal aspects of civilian self-defense, and he has authored a number of articles about firearms tactics and technique. He has attained a third-degree black belt in judo, earning medals in state and national competitions. He is the Executive Director of the Firearms Instruction, Research and Education (F.I.R.E.) Institute, a non-profit organization dedicated to the promotion of firearms training and education. To learn more about Mr. Georgiades and his work, see http://www.pnglaw.us, and see http://www.fireinstitute.org/index.html for training opportunities through F.I.R.E.

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President's Message

by Marty Hayes, J.D.

I am pleased to report that currently, we have no members facing criminal charges for acts of self defense. This past month the two cases for which we were funding the defense were dismissed.

In the first–a case where a member was being assaulted and successfully used pepper spray to stop the attack–the member was arrested and charged with a felony crime. This was in a liberal Eastern seaboard state, where apparently the private citizen has no right to protect himself. In total, the Network paid $50,000 for the attorney to go to court several times, go to the scene, hire a private investigator to research the background of the individual who assaulted our member, and to hire an expert witness to explain to the court why the use of pepper spray was reasonable under the circumstances. After seeing the defense that our member was able to put up, the state decided to dismiss the charges. Avoidance of trial with charges dismissed is the ultimate win.

In the second incident, a member displayed a handgun in the face of presently threatened unlawful force. This was in a liberal-leaning state out West. The Network paid for an attorney to represent our member. After looking at the case, the prosecutor decided not to continue with the prosecution and dismissed the charges without prejudice. That legal term means the state can reinstate the charges if they desire, up to the limits of the statute of limitation. In this situation, it means the case is not 100% over for our member, although the likelihood of the charges being reinstated is extremely slim.

I find it interesting that the first case I mentioned, for which we paid legal expenses of $50,000, wasn't a firearm-related self-defense case. When we formed the Network in 2008, our funding was primarily to defend after the use of deadly force with a firearm. However, the majority of times our member DID NOT use a firearm, but instead another self-defense tool, or even a make-shift tool. We quickly decided to make no distinction between whether a gun was used or not, and instead look at the individual case and determine if there is a cognizable claim of self defense.

I explain this as a way to help differentiate the Network from some of the other legal assistance programs. Many of the programs only help after an act of self-defense with a firearm, so that would leave out more than half of our incidents. Be VERY CAREFUL reading the fine print/details of whatever program you settle on.

Working With Other Companies?

A question that comes up often is how the Network would work with other programs if the person had more than one post-incident support program, like purchasing an insurance policy or joining as any of the several programs similar to the Network, or subscribing to a pre-paid legal services plan.

First, let's compare the Network to insurance. The insurance models typically are a reimbursement scheme for the criminal defense, and the insurance company provides the civil litigation defense for a civil tort claim against you. When a Network member has a criminal defense case, if more money is needed after the initial retainer of up to $25,000 is used up, then we pay what is needed to complete the legal defense of a legitimate self-defense claim. This typically entails considerably more money, and our payment is conditioned upon being reimbursed by the member if they are reimbursed from an insurance company for the legal expenses that the Network paid.

This particular situation has not come up yet, but I can envision a time when it might. At that time, I would discuss the matter with the insurance company, and we would draw up an agreement to allow for this. Additionally, if the member was sued and had insurance to cover that lawsuit, the insurance company would very likely want to control the defense of that suit. They would hire the legal team, since they would be the ones who would be out the money if the client lost the civil suit. If the member also has insurance, I do not envision the Network being involved in the civil suit defense at all, except, perhaps, to hire an attorney to represent the member's interests over those of the insurance company.

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Now, in the event the member does not have insurance, then rest assured the Network would participate fully in paying for the legal defense of that civil suit, subject to the practical limit of no more than one-half of the Legal Defense Fund used for any one member's case. So far, none of our members have faced a civil suit.

If the Network member has also joined a pre-paid legal services plan in addition to the Network, the waters of how the two would work together become murky. Some plans say they will pay for the entire legal defense up front, and others say they will pick up attorneys fees only. Instead of discussing a bunch of hypotheticals, I will just state that the Network would discuss the best way to proceed, giving priority to the member's interests, and come to a logical conclusion as how to assist, perhaps through provision of experts or other services. From my study of the companies currently offering the pre-paid legal plans, most are run by reasonable people and we would likely come to a mutually agreeable working arrangement.

I cannot predict that, though, with insurance companies. Most insurance companies (at least the ones with which I am familiar), have the best interest of the insurance company at heart, not their clients.

Other Legal Issues?

I'd like to clarify another point about Network membership benefits: With what other kinds of legal challenges would we help the member? Specifically, I am referring to administrative legal issues following an acquittal or dismissal of charges. These include getting the member's gun back, getting a concealed weapons permit reinstated and a myriad of other possible legal issues that are separate from the criminal defense.

We recently discussed this amongst the leadership of the Network, and have settled on a bright line rule. Our involvement funding the member's legal defense ends when the criminal or civil case is over. For criminal defense, that means the dismissal, acquittal, plea bargain or guilty verdict. It is my understanding that if a person is found guilty at a criminal trial, they have a right to appeal, and that appeal is either privately funded, or funded by the state. If not funded by the state, the Network would examine the trial record to see if there was a good basis for appeal, and if so, we would fund the appeal. By necessity, that decision would have to be made on a case by case basis, since it only makes sense to draw on the Legal Defense Fund where appealable issues exist and not waste it tilting at windmills just to make a point.

Now, back to issues of administrative law: many times a person's concealed weapons permit is revoked by the issuing jurisdiction after an arrest. The license revocation continues until the charges are dropped or an acquittal is obtained. The person must ask for the permit back, and that may require a lot of administrative work by an attorney. Having spoken about the expense this entails with attorneys who've done this kind of work for non-Network members, we have concluded that it is in the best interests of all of our members if we reserve the Legal Defense Fund for the actual legal defense and not for administrative procedures. Having said that, if Network members reading this feel strongly on this topic, I urge you to drop me a note at Mhayes@armedcitizensnetwork.org to share your thoughts about how to do the most good with the Legal Defense Fund.

Now, I have not yet addressed the issue of an appeal if a civil lawsuit judgment goes against a member. First, bear in mind that while the Network pays for the trial defense against a civil lawsuit seeking damages, our membership benefits have never included funds to pay off a judgment ordering that damages be paid. A civil case is all about money, and to appeal a civil case would likely use up a considerable amount of our Legal Defense Fund. We believe we can provide the best service to Network members as a whole by reserving the Fund for criminal and/or civil trial representation. As the Fund continues to grow, decisions to fund a civil appeal may become easier to make. But for now, we cannot promise to fund an appeal of a member's civil trial outcome.

I hope this discussion helps clarify any questions members might have had on use of the Legal Defense Fund. As always, I am available to discuss this or any other questions with members, either by phone or e-mail.

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Attorney Question of the Month

This month, we start a new topic of discussion with our affiliated attorneys. We asked–

> Suppose that a member keeps an extensive collection of legal rifles, shotguns and handguns locked in a safe, and uses his or her carry gun in justifiable self defense. Can the gun collection be discussed in a trial to suggest to a jury that the armed citizen is a blood thirsty monster, not a good member of the community? How would a prosecutor or plaintiff's attorney introduce that line of reasoning? If defending the member, how would you counter the accusation if it arose?

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There are a great number of things that get tossed around as fodder for introduction at trial primarily by people without a basic understanding, or familiarity, with the Rules of Evidence. To be admissible, evidence under the Rule (generally identified as 401) must first be relevant. This means that a fact is only relevant if it helps to prove a fact issue at trial. It is evidence that bears directly upon the fact in issue and tends to prove the fact alleged.

If the issue is whether the actor used deadly force justifiably under the laws of a specific jurisdiction, whether he/she has one gun, or enough to equip the 2nd Marine Division is not in issue. Typically, law enforcement agents will obtain an order to confiscate the firearms of the charged citizen "for public safety." So, an experienced trial attorney will, prior to trial, file a motion known as a Motion in Limine to prevent a prosecutor or plaintiff's attorney from attempting something that bush league. When granted, an order issues from the court, preventing the prosecutor, or plaintiff's attorney from mentioning the defendant's other firearms, or attempting in any way to suggest that ownership of other firearms has any bearing upon the issue in question.

The common law of all states that I know of have decisions also preventing the prosecutor/plaintiff's attorney from "disparaging" the defendant, and his/her attorney. Making such an accusation or insinuation would be that type of disparagement. Judges know that allowing such conduct is grounds for reversal on appeal. Judges are willing to accept reversal for genuine errors of judgment. They really hate being reversed over stupid mistakes or ignoring settled law.

Most experienced trial attorneys have also had some hotshot try to slip something by such as that type of suggestion or veiled accusation. That leaves defense counsel absolutely free to embarrass the offender in front of the jury by explaining what they did and why. A skilled trial attorney can fillet an offender like a fresh caught bass. And a trial judge with much experience will often sit back and enjoy the show.

Trials are much like theater. Everyone knows their roles, their lines, their actions well in advance of trial day. Most trial attorneys have waged war in the courtroom with their adversaries many times before. You know who and what you are going to be dealing with. There are, if the case is prepared properly very, very few surprises.

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The answer is that such "evidence" would be absolutely inadmissible. Since I mostly practice in Illinois I will refer to the Illinois Rules of Evidence. These rules are practically identical to the Federal Rules of Evidence, so they are practically the same in every jurisdiction. Rules of Evidence 401, 402 and 403 are applicable here. These rules state:

Ill. R. Evid 401 - Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.

Ill. R. Evid. 402- All relevant evidence is admissible, except as otherwise provided by law. Evidence which is not relevant is not admissible.

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Ill. R. Evid. 403 - Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

The issue in a self-defense case is legal justification, meaning was the person using deadly force required to use that force because he, or someone else who is not an aggressor, was in imminent danger of being killed or suffering serious bodily harm at the hands of the person against who deadly force is used. It is obvious that ownership of a large number of guns will not make any fact regarding imminent danger of being killed or suffering serious bodily harm more or less probable. Therefore, it is inadmissible.

A question before the judge or jury may be who was the aggressor. In other words, the state is claiming that the person who shot the other person was actually an aggressor rather than being a person who was in fear of being killed or seriously harmed. In such a case there is a possibility (a small possibility, but still a possibility) that a judge could find that evidence that a person who owns a large number of guns could make it more probable that they were an aggressor. In such a case then Rule of Evidence 403 comes into play to keep the evidence out. Rule 403 states that even evidence that is relevant is excluded from admission if its probative value is weak, and it will cause great prejudice to the defendant. In the case of a person who owns a large number of guns, which is a constitutionally-protected right, the ownership of those guns is very weak evidence of owner being an aggressor, but the possibility that such evidence would prejudice a jury is high. Therefore, under Rule of Evidence 403 the evidence of ownership of a large number of guns would be inadmissible.

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Whether or not it would be introduced would depend on the specific state's rules of evidence and the judge at trial. The argument before trial would be that the collection is irrelevant and may tend to confuse the jury. It makes the shooter look bad without actually proving the specific circumstances of the shooting. I think that to introduce it, the prosecution or plaintiff would have to show considerable evidence of the shooter's prior behavior with regard to guns. It would, I think, be a tough argument.

If it did come up at trial, I would argue that my client understood weapons and their proper use. This may be helpful if the guns were locked up properly. It indicates an awareness of safety and may make the jury consider the shooter as a good person who acted justifiably.

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In some circumstances the gun collection may be introduced into evidence. The key consideration is what facts, what circumstances, make the collection relevant? More precisely, what is it relevant to prove?

The answer, of course, depends on the issues raised in the trial. A citizen who uses his gun at 2:00 A.M. against an intruder with a baseball bat who is invading his bedroom is in a lot different evidentiary posture than a citizen who goes over to the neighbor's house to complain about a loud party and ends up shooting the threatening, but unarmed, drunk who has been dating the citizen's recent ex-girlfriend.

As with all evidence, the circumstance of the collection can be a two-edged sword. I like to turn all circumstances to my client's advantage. For example, if the prosecution is suggesting a careless or hasty use of the firearm, I, myself, might bring up the number of, and my client's experience with, the guns in the safe. The fact that they are locked in the safe suggests responsible ownership. The number of them suggests long familiarity. The number also suggests significant personal investment in their use and safe handling.

Coupled with my client's training, practice, instruction, and law-abiding interest, all of these factors tend to show a person who neither uses a firearm in an unfamiliar panic, nor is likely to carelessly have an accidental discharge. If they are in the safe because he is a family man and is concerned about the children, all the better. It gives me a hook to talk about how he is teaching the kids safe gun handling. Get some family

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bonding before the jury. Responsible ownership is always a good thing to show.

The fact of the collection is also an opportunity for my client to discuss his lawful sporting and training activities. Nothing demystifies firearms to the novice juror more than a discussion of what actually happens at a range, or the ancillary wilderness pleasures of the hunt, or the family pleasure and memories when birding while using Grandpa's favorite old shotgun. If he has the CCW because of threats or a prior incident, I can bring in that incident to distinguish how the carry weapon means something different to him than the guns in the safe.

There are very few jurisdictions where the simple fact of lawful gun ownership is prejudicial. It would take an unusual jury, probably only to be found in rather insular urban areas, to find this prejudicial. This problem is most likely to arise in a situation where someone from a city such as mine, Bakersfield, travels to some radically different urban area, such as Oakland or downtown LA, and gets into a self-defense situation. I do not see it coming into play during the prosecution's case in chief; it would probably be excluded as prejudicial character evidence, and thus ruled inadmissible. Should the client testify, or put his character, knowledge, or firearms proficiency in issue, then you have a different situation. If that were the case and the judge ruled that the evidence was coming in, I would bring it out myself while examining the client and then call supporting witnesses in order to defuse the issue.

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This type of argument, if used by a prosecutor, would be inflammatory and not likely be permitted by the judge. But, I suppose a prosecutor could tone down the verbiage and potentially try to use the argument to negate the defendant's affirmative defense (self defense, justifiable homicide).

Ultimately, the judge is the gatekeeper of what evidence gets admitted and what evidence gets suppressed (in this case, photos of my client's gun collection). The judge is also the gatekeeper of what arguments are permitted (in this case, that my client's gun collection is evidence of a propensity for violence).

If physical evidence is sought to be admitted at trial against my client, the prosecutor will provide me with it (e.g., photographs of the gun collection). I would seek to get a pretrial ruling by the judge preventing the prosecutor from using the photos. This could be done either in a formal Motion to Suppress Evidence or through a Motion in Limine which is often done the morning of trial where I ask the judge to order the prosecutor not to bring up a particular issue (i.e., my client's gun collection).

The main argument would be one of relevance – "Evidence which is not relevant is not admissible." Evidence Rule 401. What kind of evidence is relevant? Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evidence Rule 402.

A jury will know through testimony that my client is a gun owner. Unless there is evidence from the scene that points to some violent tendency (which would go to negate our self-defense defense), then there is no "fact of consequence" that needs bolstering by a photo of a gun collection. But let's say there is, like the fact that my client continued to empty the contents of his 15 round magazine into the "victim" after the victim fell to the ground and did not move after the second fired round struck him in the head.

The prosecutor would have to show how guns owned by the defendant and kept elsewhere (locked in a safe), tends to indicate a violent tendency. Just because I have the freedom of speech and I choose to exercise that right doesn't mean that I cuss. And if I cussed today, that doesn't mean that I cussed yesterday, or the day before, or will cuss tomorrow or the next day. And just because I have the right to own firearms and I choose to exercise my right of gun ownership doesn't mean that I am a violent person by nature, and doesn't say anything as to why I own guns. My client's other guns are not relevant.

But even if the judge were to rule that the gun collection was relevant (which I find hard to believe), the follow up arguments is that "Although relevant,

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evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury…" Evidence Rule 403. Put another way, admitting a picture of my client's other guns and allowing the prosecutor to argue that it would indicate a violent tendency on the part of my client "is more prejudicial to my client than probative to any fact of consequence." Because a juror may jump to that illogical conclusion the prosecutor is hoping they'll jump to.

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The answer, unfortunately, is "yes," an aggressive (unscrupulous?) plaintiff's attorney or prosecutor could, indeed, attempt to have the fact that the defendant has an extensive gun collection admitted to show some sort of aggressive bias. They would need to come up with some "straight-faced" argument to support that evidence's admission, and a savvy defense attorney would combat the admission by using the evidentiary argument, pre-trial, that the prejudicial effect of that evidence upon the jury (the real reason the bad guys want it admitted) would outweigh any probative value gained. I would strongly expect that such an argument against admission would win the day.

If not, I would very carefully have my client explain his/her motives for obtaining the collection, including target shooting, competition, hunting, etc., all of which are legal, socially acceptable (at least to the righteous and/or open minded) and not related to committing crimes. If my client is not going to testify, I would likely have my firearms/self-defense expert, who is also likely a firearms collector, address the same concerns as my client's thinly disguised proxy.

I think a good analogy would be to remind the jury that automobiles kill approximately 15 times more people each year than firearms and most wealthy people with large automobile collections are no more likely to commit vehicular manslaughter that those with only one car. I would predict that such an attempt to besmirch my client would result in the prosecutor/plaintiff's attorney looking like the desperate jerk they really are in front of a disapproving jury.

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As a practical matter, I'm not sure how the state would learn of the gun collection. The question says that a carry gun is used in self defense. Because it was a carry gun, I assume that means the gun use was not at home. I'm not sure what the basis would be to obtain a warrant to search the gun user's house. But the question seems to assume that the state did learn of the collection, so let's proceed from there.

The question implies there is some kind of criminal prosecution or civil case resulting from the use of the gun. I don't see how the prosecution/plaintiff would get the gun collection into evidence.

The factual issues at trial would be the events leading up to the incident and the incident itself, with a legal issue of whether the use of the gun was justified. The possession of other guns, not used in the incident, is not probative of any of those issues. That possession would therefore be irrelevant. Moreover, it doesn't really matter whether the gun user is a "good member of the community." The use of the gun was either justified under the circumstances or it was not, and accusations about the character of the gun user also are irrelevant.

Compare this to a person arrested for DUI when there is evidence he drank at home before driving. The extent of the person's liquor collection (i.e., the liquor not consumed) would not be relevant.

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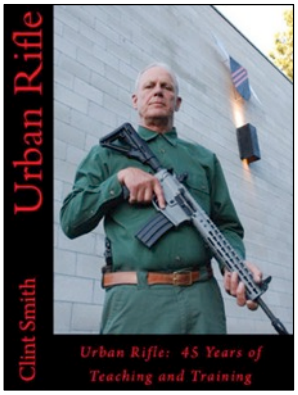
We greatly appreciate our affiliated attorneys' generous participation in this interesting and educational column! Please return next month when we share the rest of our attorneys' responses to this question.

Book Review

Urban Rifle: 45 Years of Teaching and Training

By Clint Smith
Copyright June 23, 2016
138 pages, illustrated, $24.95 at
https://thunderranchinc.com/product/urban-rifle-book/



Reviewed by Gila Hayes

It has been years since I've been able to take a class from Clint Smith, so I was really pleased to discover his book on rifles for defense. Introducing the topic, Smith observes that the convenience of handguns, plus an American history of carrying them, blinds us to their limits. He adds, "If we all truly understood the role of a handgun in the chain of fighting tools we would all be more aware of just how poor a choice it is; hence the rifle." He cites the devastation Platt and Maddox wrecked in Miami in 1986, the Hollywood bank robbery in 1997, and Christopher Dorner's 2013 rampage through Southern CA as illustrations of why a rifle is so desirable when a quick stop to hostilities is required.

The skills of using a rifle in a fight are the same whether the need arises in war, in law enforcement or in a citizen's home, Smith opines. "Some would have you believe there is a different style or technique of using the rifle for each occupation. There is not. A fight is a fight—behind a squad car, a sand dune or inside a doorway in your home. Let there be no misunderstanding, even in today's world with its need to be 'politically correct,' the ultimate goal in a fight is to win." he emphasizes.

To that goal, the rifle brings the advantages of "a distinct increase in power and terminal effectiveness on the target, an increased magazine capacity (to reduce manipulation, not to 'spray' the target), and a longer sight radius for precise aiming," Smith accounts. Its disadvantages are common to all firearms, he continues, citing "the rifle's need for manipulation, reloading, leading with the muzzle in tactical applications and retention." Practice and train so you can "fire from an effective platform, manipulate, load, clear and keep the weapon in service quickly," he advises.

Commenting that too many rifle classes ignore the distances at which one is most likely to need a rifle, Smith observes, "The overwhelming majority of rifle fights take place at common handgun ranges," zero to 100 yards. Hitting at any distance relies on shooting fundamentals, but people want to get right to the "fast and fancy" training, when instead a thorough mastery of the basics is what is needed, he urges.

The next chapter teaches the elements of "aim, hold and squeeze," followed by efficiently loading, reloading, and clearing stoppages, to which Smith urges the reader to apply the concept of "smooth is fast." The longer taken to do any of those tasks, the longer the shooter is a target. "You're either shooting back with solid hits, or you're a target. It's as simple as that," he stresses.

Smith outlines key elements to accurate rifle shooting and adds breathing, follow through, trigger control, stillness and natural point of aim based on skeletal support for consistency. Firing positions, he explains, reflect the paradox between optimum stance and good cover. He comments, "We know that the shot fired is only as good as the platform it comes from, so the dilemma is how to get the best platform with the least amount of exposure." He illustrates and discusses standing, prone, kneeling, sitting, squatting, as well as positions to defend against gun grabs and moving toward the threat to retrieve an injured person. That's all in Chapter 9 and it is an intensely packed 13 pages.

Practice rifle manipulation from a variety of positions "every time you go to the range," Smith advises, explaining, "people shoot you because they see you. They see you because you let them. Don't let them see you!" Using cover means the rifle may get dirty, "If you get down or use cover, and you should, you subject the rifle to the elements, which can cause stoppages. Dirt and debris may clog up the action," he warns.

In a later chapter about malfunctions, Smith comments, "I am amazed at all of the rifles that I have seen that don't work. It's even more amazing that anyone would own a rifle that doesn't work well and all of the time! I would always take a bolt-action rifle that always worked

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over a semi-automatic that worked sometimes." Failing to clean the gun, using bad magazines or bad ammo, compiling a rifle from parts of other rifles, and mistakes by the operator are common causes. He illustrates clearing failures to fire, double feeds, and throughout keeping the rifle at the shoulder as much as possible, keeping the muzzle between you and the threat.

Smith was among the first big-name firearms instructors to have students moving during shooting drills. "If you watch cop dash cams in gunfights it looks like lots of people move around in gunfights!" he points out. "Learning to shoot and move is not always an easy skill to grasp. It is an acquired skill based on repetition and diligent practice," he urges.

Smith opens a chapter on rifle carry methods with his well-known observation that a sling is to a rifle as a holster is to a handgun. Rifle carry techniques are important, he stresses, because "you will always carry a rifle more than you will shoot it." He illustrates cross body carry, strong side and opposite side carry. He next discusses carrying the unslung rifle when quick use may be required, but is not presently underway. "The position of the muzzle is not based on technique, it is based on environment," he emphasizes.

"Is the muzzle in a place where it can support you in a fight? If you are not in a fight or danger, sling the rifle. If there is a chance there is going to be a fight, or you fear for your safety, then unsling the rifle, put the butt on your shoulder, and keep the muzzle between you and whatever it is you don't like or threatens your safety." He outlines muzzle directions for climbing or descending stairs, rounding corners and more.

When the topic moves to transitioning from rifle to handgun, Smith explains that very close proximity to the threat is key to deciding not to reload, clear a jam or escape instead of drawing a pistol. Sling use leads the chapter that follows, entitled *Support Equipment*, in which he identifies common rifle accessories and his opinion of their value. Bipods, retention straps, ammunition are all discussed with no wasted words, so the reader knows what Smith favors and why.

A chapter on rifle sights and optics includes Smith's use of the larger of the two-aperture Colt-style sights for a wider view of the fight. That preference is even stronger when lighting is limited, he writes later. Of optics, he observes, "The first thing to remember is that scopes do not help you shoot better, they only help you see better," although he acknowledges that both are important. Powered optics, mounts, lasers, flashlights, night sights and even home alterations to improve sight visibility conclude this chapter.

Low light training is essential, too. Smith again stresses in the chapter *Night Firing Techniques,* "Most rifle fights take place inside what could be considered pistol range. Rifle shooters will probably be moving to find cover, out of the line of fire, or to get better target acquisition. Threats may be moving for the same reasons. The fight won't be what you want it to be. It could be dark, quick and ugly," he warns.

He outlines modified sighting methods to accommodate close-in fights in poor lighting, as well as use of lights. Of flashlight use, he warns that painting the threat in light may impede their sight, but certainly not their trigger finger. A similar warning is issued later about muzzle flash. This chapter shows weapon-mounted lights, identifies and illustrates various techniques for using conventional flashlights with rifles, and points out that learning the various options is valuable because use of cover mandates that no single method will work well.

Two chapters cover shooting from behind cover or concealment, followed by a chapter discussing target indicators that draw an assailant's attention. While we're often taught to be aware of threats, this chapter teaches, "The key is your personal awareness of your target indicators that will help reduce your individual projection of these target indicators to your opponent" while applying the same knowledge to gain control over the threat. Be alert to sound, movement, reflection or shine, contrast, outline and smell, he writes. The next chapter outlines use of camouflage, and these practical suggestions are a lot more than face paint or Mossy Oak® or RealTree® shirts and trousers.

As I finished the last pages of *Urban Rifle,* I realized that by necessity too much of my reading lately has been aftermath related. I genuinely enjoyed "renewing acquaintances" with Clint Smith through the written word, and the instruction he provides in Urban Rifle is worth far more than the cost of the book. If you own a rifle, get this book and study it.

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

News from Our Affiliates

by Josh Amos

Hello folks! Well, fall is here and many of us are winding up the summer's training season and catching up on our reading, amongst other things. If you're doing your reading online, you may come across websites, blogs or articles about the Armed Citizens' Legal Defense Network. If the information is incorrect, please let me know, I'll take it from there. We had a situation a few weeks ago when we were alerted to a website that had posted incorrect information about us. However, when we contacted the site owner, he was glad to make the corrective changes and repost for us. That was a big win for everyone! So if you see something that you think is amiss, call me at 360-978-5200 or drop me a line at Josh@armedcitizensnetwork.org with the URL and I will check it out.

Vacation

This past week my bosses decided that they needed a break from me, so they sent me on vacation. I ventured out to Yellowstone National Park and the surrounding areas. Words and even pictures can't adequately describe the scenery at Yellowstone and the Grand Tetons. I cannot recommend visiting there strongly enough. Oh, and if you do go, let me suggest the following travel tip: if you round a bend and meet a buffalo standing in the road, the buffalo has the right of way!

Cody, WY is a destination that you need to visit. Cody is home to the Buffalo Bill museum, which is actually five two-story museums, including the Smithsonian gun museum. The guns and the history there are amazing. I saw Jeremiah Johnson's Hawken gun and Bowie knife, John Browning's BAR prototype and Bob Munden's speed draw rig and revolvers. That was just the start; the list goes on and on.

The final stop in Cody that I think you shouldn't miss is the Cody Firearms Experience and rental range. There, I got to rent and fire an 1863 Gatling gun! This particular gun had been re-barreled in .45 Colt and it purred like a kitten.

And on the topic of gun shops, the Network continues to grow in members and in affiliates. Recently, we started distributing our foundation's booklets *What Every Gun Owner Needs to Know About Self-Defense Law* through new gun shops in OR, PA, CA and NH. Don't forget to check https://armedcitizensnetwork.org/our-affiliates/gun-shop-affiliates to look for affiliated gun shops in your area.

Affiliate Performance

As I wind up this this column I need to touch on a more serious topic for my affiliates, and that is standards for our affiliates. There has been some confusion about what we ask our Network affiliates to do to earn the consideration we extend on affiliate's dues. We work hard to keep it equitable for everyone, asking–

* Affiliate instructors give a copy of our booklet *What Every Gun Owner Needs to Know About Self Defense Law* to each student.
* Affiliate gun shops give a booklet with each gun sale, as well as making the free booklets available to their shoppers who may just be browsing.
* Affiliates are asked to distribute 200 booklets per year.

All we ask is that affiliates give our booklets out, encourage their clients to join the Network and have a basic understanding of how the Network serves members.

Please remember, affiliates, we are here to support you, in the same way that you support us. Just call me if your business hits a rough patch and you need to make arrangements about distribution goals. I bet that with creativity and a willing attitude, together we can come up with a plan that works for all of us. And, as always, if you need more booklets or brochures please phone me at 360-978-5200 or drop me a line at Josh@armedcitizensnetwork.org.

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

Editor's Notebook

by Gila Hayes

It is natural to want the world to conform to our wishes and desires. That innate urge receives excessive encouragement from self-help and personal-growth coaches who urge all and sundry to, "Go out and get what you want. Make it yours. Do not stop until you have what you want." I think the better life skill is found in knowing when that for which we wish is attainable and how to adjust when our wishes can't or won't be granted.

I couldn't stop thinking about the "you should do what I want" attitude during September after exchanging several interesting emails with potential members who were profoundly convinced that the Network should change what it has successfully done for nearly 10 years to become their dream post-self-defense support plan. These exchanges always fascinate me, because by paying attention and suppressing the urge to "shush" a stranger telling you how to run your business, an impractical suggestion can sometimes spark extremely productive secondary lines of thinking.

In one exchange, a revealing choice of words made me ponder how wishes obscure reality. This correspondent started his question about what he perceived as too much money spent on Network operating expenses by writing, "I want to think of this as a club where we all help each other out" adding that if we operated that way, he would join. Sounds great in theory, doesn't it?

Sadly, "wanting" is a lot different than being able to create the alternate reality some desire! Can the wishes of some be imposed against society without causing greater harm than good? In this example, my interlocutor wanted access to higher levels of Network financial assistance without allowing for all the ordinary expenses of operating a business. That would be great, if reality allowed! Realistically, though, after immediately reserving the first 25% of all revenue for the Legal Defense Fund, we siphon off approximately another quarter for taxes, maintain an emergency account as insurance against tough times, pay for advertising so we can grow, buy the member education DVDs and books, pay for postage and delivery and make sure enough remains for payroll so the crew providing assistance and services to our members get paychecks so they keep doing that. I found it kind of fun to imagine the Network as a club where each member pitches in to make sure all the work gets done. Q & A sure does provide good exercise in creative thinking!

In a similar vein, a number of correspondents insist we should be or should restructure as a non-profit entity to take advantage of all the financial advantages charities enjoy. That ideal would only work if we handed out money from the Legal Defense Fund to anyone instead of reserving it for the legal defense of Network members. We only draw on the Fund to pay post-incident legal expenses on behalf of the people who paid the dues and gifted the additional contributions that have built that Fund. If we operated as a non-profit we could not do that. Taken to its logical conclusion, if non-members were given support from the Fund, why should anyone bother to join the Network, pay dues and contribute to the Fund? Why not just come asking for charitable assistance after a self-defense incident?

How does confusing wishes with reality apply on a larger scale? As armed citizens, I am convinced that we must train our minds to accept reality and not dwell too much on what we wish was real. When life, death or liberty is at risk, "should" is an incredibly dangerous word! I've lost count of the times I've heard, "I should be able to go where I want, when I want, without facing danger!" or "I should be able to carry any gun, knife or other weapon I want without legal consequences!" or "I shouldn't need a lawyer after I kill someone who threatens me!" and other such proclamations that are all compelling ideals, but dangerously out of alignment with reality.

What governs real-life outcomes–reality or wishes? We need to know and acknowledge the facts. We need to see beyond "want" and "should" into what truly is. That requires open-minded, agile and reality-based thinking.

Do "wishers" really have options outside of reality? Of course not. Folks, we practice the mental skills to get through emergencies by how we think and react in day-to-day life. Don't let your wishes blind you.

[End of October 2017 eJournal.
Please return for our November 2017 edition.]

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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:
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We welcome your questions and comments about the Network.
Please write to us at info@armedcitizensnetwork.org or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.

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