



The Expert Witness at Work

by Tim Priebe, Esq.

A number of years ago, I was listening to a gun related podcast and Marty Hayes was the program's guest discussing the Armed Citizens' Legal Defense Network (ACLDN). During the segment, Mr. Hayes stated that if any attorneys were interested in joining the ACLDN as affiliated attorneys, they should contact him. After doing some research on the ACLDN, I really liked what I saw so I applied and was accepted as a Network Affiliated Attorney.

After joining the Network, I, like other members, received the initial set of DVDs. After reviewing all of the material, I was really impressed by the quality of information. I am also a NRA certified instructor and teach a number of NRA classes. I have also created a class called, *Legal Tactics*. In this class, I teach my students about Federal and State gun-related laws and what to do both legally and tactically should they have to use force to defend themselves or someone else. In both classes, I push the ACLDN as a necessary requirement if someone is going to own and/or carry any type of firearm.

Network President as Expert Witness

Recently, Adam Schultz, an attorney friend of mine in Pueblo, Colorado and an ACLDN Affiliated Attorney, contacted me regarding a murder case of which he was part. He informed me that the legal team was having Mr. Hayes testify as an expert in the case and wanted to see if I was interested in seeing him testify. Given my years with ACLDN and wanting to personally meet Mr. Hayes, I cleared my calendar to see him testify.

The case involved a 30-year old Daniel Baker, who had his concealed handgun permit, whose friend asked him to help a woman move out of a home she shared with her 29-year old boyfriend. Mr. Baker later told investigators that his friend was afraid of the boyfriend because of the problems they were having.

Around 11:45 p.m. that night, the boyfriend and two other male companions arrived at the house while Baker was assisting the woman in moving out. From there, a fight broke out between the three men and Baker. Baker was punched and kicked in the head during the fight. The fight then continued down a hallway. Baker attempted to escape but the fight continued in the living room of the home. It was then that Baker pulled his .40 caliber Springfield pistol and started to shoot.

In the end, Baker fired a total of eight times with five out of eight striking Baker's attackers. One person died of his wounds at the scene and the other two suffered gunshot wounds but did live. Baker then went outside, locked the slide on his pistol in the open position, left the pistol by the front door and called 911. He then flagged down the police as they arrived. He was arrested shortly after their arrival and taken to jail. Eventually, he was charged with two sets of duplicative charges. Each set of charges alleged one count of first-degree murder and two charges of attempted murder.

So that you understand, should you find yourself charged with first-degree murder, you will most likely not have bail made available to you. This means that you will stay in jail until your trial. In this case, the defendant was in jail from April of 2012 until July of 2013 when his trial finally started. While the trial was proceeding, the defendant remained in jail.

It is important to note that Baker was not a member of the ACLDN at the time of the shooting. Given this, ACLDN did not provide Baker with the benefits that members are allowed if needed. One of Baker's attorneys originally called Massad Ayoob to determine if he could testify in the trial. As Mr. Hayes would later tell me, Mr. Ayoob took the phone call while driving. Determining that he could not testify given his trial schedule, he stated that the man he would recommend was Marty Hayes. The attorney then asked if he knew the contact information for Mr. Hayes. Mr. Ayoob stated he did but it was easier if he just passed his phone to

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Mr. Hayes as they were traveling together when the call came in. Given the facts of the case, Mr. Hayes agreed to testify as an expert.

The Role of the Expert

Why are experts important in self-defense related cases? Experts are used at trial when their testimony can explain issues that may be helpful to the jury in rendering their decision. Unfortunately, a lot of jury members receive their "knowledge" about guns from the entertainment world of movies and television. They believe all of the misconceptions about guns, gun handling and gunfights that are out there. For example, they believe that a person should shoot a gun out of the bad guys' hands instead of shooting them personally. If you are on trial for your life, you do not want your jury to make their decision based on what happened on the last episode of *Law and Order*.

With the right expert, that person can explain to a jury how guns actually work and what really occurs in a gunfight and why a person's actions were reasonable given the circumstances. In this case, I think the prosecution could have used some education in gun-related training. While Baker was testifying, the prosecutor actually asked Baker if he fired a warning shot before shooting the attackers. As we all know, for a number of reasons, we do not fire warning shots. If the situation calls for defending yourself or another party from an immediate and deadly attack, you shoot until the threat is no longer a threat, with no warning shots.

During the defense's case, Mr. Hayes was called as a potential expert. In order for the court to deem Mr. Hayes an expert, Mr. Schultz solicited questions regarding Mr. Hayes' past experiences and education. It became clear that he was more than qualified to be considered an expert at this trial. As is the case, the prosecution had their chance to attempt to discredit him as an expert but could not. In the end, the Judge found him credible as an expert.

Mr. Hayes then proceeded to testify as to the evidence that was presented to him by Mr. Schultz. He testified on how the theory of Disparity of Force applied in this case. In a nutshell, that theory applies when, given the particular situation, a person is at an overwhelming disadvantage in an effort to protect themselves against an immediate and serious bodily injury and therefore able to defend themselves with force. Mr. Hayes testified that the evidence showed that there were three men attacking the lone defendant while he was attempting to

escape and that the injuries Baker sustained were serious enough to warrant lethal self defense.

With the assistance of Mr. Schultz, Mr. Hayes was then asked a series of questions that showed how the shots could have been fired during the fight. This then led to the jury being able to see Mr. Hayes, while utilizing a training "dummy" gun, use a doorway in the courtroom to explain the defendant's position during the shooting. This process really helped the jury "see" what did happen that night and was good use of the courtroom facilities for the purpose presenting testimony.

Network Mission Clarified

After more testimony, the Judge called for the lunch recess. It was then that I introduced myself to Mr. Hayes. While we had communicated via email before this, I had not personally met him. We proceeded to leave the courthouse and found a local restaurant at which to have lunch. Given that he was still under oath, we did not discuss the case. Instead I used the time to find out more about Mr. Hayes, his wife, Gila, and ACLDN. My first impression of Mr. Hayes was that he was the same guy he is on the ACLDN DVDs. By that I mean he did not present himself as one person on the DVDs and yet another while in person. He had this same persona while testifying on the stand. He came across as a solid, knowledgeable person who was qualified to testify about self-defense related issues. I think this helped Baker's case because the jury related to Mr. Hayes as a "normal guy" who was qualified to be an expert.

For years, I had sold my students on becoming members of the ACLDN for a number of reasons. One of the most important benefits of becoming a member of ACLDN is the initial payment to an attorney should a member be charged in a self-defense related shooting. I find this very important as it allows the attorney to begin working right away on the case. It allows them to start investigating what happened, what your defenses are and talking to the district attorney about the case. This initial work lays the foundation for how the rest of the case will proceed.

However, somehow I had missed a potential second step in the process. What I discovered from Mr. Hayes was that the ACLDN will also pay up to half of the amount in the Legal Defense Fund towards a member's attorney fees. This benefit alone could make the

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difference between a member having to sell their possessions or borrow money from friends and family so they can pay their attorney or having to accept a plea bargain to a charge they did not commit because they could not afford legal representation.

Back to Court

After lunch, we walked back to the court and waited for the trial to resume. Once again on the witness stand, Mr. Hayes continued to testify about the facts surrounding this case. An important issue was raised when Mr. Schultz asked Mr. Hayes about how a person might react in this type of shooting if they had been trained. The prosecution objected because there was no evidence that the defendant had received any formal gun training. The Judge sustained the objection and ruled that the testimony could not be considered.

Why is this important? If you have had formal training or you have watched the DVDs that ACLDN provides, this could become part of your self-defense case. This evidence could be entered into the case to explain why you did what you did and why it should be considered reasonable. Instead of having the evidence show that you shot the bad guy for some reason that the prosecution decides, you could have the DVDs played in your trial. As you know, the information on the DVDs would then educate the jury why what you did was legal and reasonable. As you learned from the DVDs, so could jury members. That information could go a long way in a self-defense trial.

As an example, I recently heard Mr. Ayoob explain on a podcast why he and his girlfriend have an AR-15 rifle with a collapsible stock as their home defense rifle. After explaining a number of points as to why, I could see a jury member listening and deciding why it is reasonable to do so. That is so, even if the jury member thought the infamous "black rifle" was an "instrument of war" before hearing the explanation.

Back at the trial, the questioning and cross-examination ended and Mr. Hayes was done testifying. All in all, I thought that Mr. Hayes did an outstanding job in making

the jury understand what had occurred that night and why the self-defense defense should apply to Baker.

A Hung Jury

After three weeks of trial and over thirty hours of jury deliberations, the jury acquitted Baker on the four counts of attempted murder charges. Unfortunately, they were hung on the question of the first-degree murder charge. This meant that the jury could not decide whether Baker was innocent or guilty on those charges. This also meant that Baker had to face the possibility of a brand new trial on the first-degree murder charges should the prosecutor decide to charge him again.

It turned out that the prosecution did decide to charge him again on the first-degree murder charges. The court had ordered the new trial to begin August 6, 2013. However, the case resolved itself after Baker and the prosecution agreed on a plea bargain to a lesser charge. This saved Baker from further incarceration and legal expenses. I believe that the prosecution did not want to face a second acquittal given the legal team and their expert, Marty Hayes.

After this experience, I am more confident in my decision to sell my students on the benefits of the ACLDN. While hopefully never having to use it, ACLDN members should know they have excellent resources available to them should they find themselves involved in a self-defense related event.

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Please enjoy the next article.]*

We extend a warm "Thank You" to Attorney Priebe for taking the time to observe the trial in Pueblo, CO and to get to know our Network President personally. When Priebe offered to write about his observations, we gratefully accepted, interested in details an observer from outside the case might bring out, as well as understanding the value of educating readers about what an expert witness can do to help the defense team.

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President's Message Another Mass Killing

by Marty Hayes

As I write this today, the news channels are reporting another mass murderer using a firearm, and killing 12 people on the Navy Yard in Washington D.C. It is a

Gun Free Zone if there ever was one. A few common threads seem to permeate these incidents, including an individual who is considered to be "a loner" who has some history of mental or emotional issues, and who, of course, perpetrates his crime within a population of unarmed "victims" who by virtue of law or policy, are forbidden to have defensive weapons. This train of thought brings me to the theme of this commentary.

As the events and reports unfolded today, I posted a comment on Facebook suggesting that no one who was killed was forced to work in that Gun Free Zone. An hour later, after some introspective thought, I took the comment down, as it was kind of insensitive and one never knows who will read a *Facebook* post. But I thought about the problem of Gun Free Zones, and what we as a society should do about the problem. I don't have all the answers to this societal dilemma, but may I be so bold as to make a few suggestions?

First, don't voluntarily go to places where you and your gun are not *by law* allowed to be. I know, that's easier said than done with our mobile society, but with prior planning, this is not necessarily unworkable. With the ability to get concealed carry permits from a large number of states, a diligent individual can legally carry concealed in a majority of the States of the Union. Now, having said this, I know it is much easier out West than back East. But, is your life worth voluntarily remaining where you are inhibited from protecting yourself? I would not live in a place where I could not carry legally.

Secondly, don't voluntarily work in a place that doesn't respect you enough to allow you to defend yourself. I live in an area of the country where a HUGE percent of the population work at good paying jobs in Gun Free Zones. Two of my area's large employers, Boeing and

Microsoft, restrict the ability of their workers to carry or possess guns at work. These employers pay very well, and so many people that I know will put their paycheck before their ability to defend themselves. On the other hand, I also know of at least one former student of mine, who worked at Microsoft years ago, who simply ignored their company policy. I don't think she was ever disciplined for that breach of policy. She chose the ability to defend herself over the right to work at Microsoft.

But, I am not suggesting violating the law or violating an employer's policy. Instead, I am suggesting trying to change the policy or law. Recently, one of my staff instructors at the Firearms Academy of Seattle ran up against an employer's policy against guns on the workplace property. Fortunately, he was a member of a trade union where he worked, and I told him to make it a union issue. The union started discussing the policy with the leaders at the work place and a logical resolution was reached.

Laws and policies are just words on paper and they are subject to change. I would respectfully suggest that those who work at places that restrict self-defense choices band together with like-minded people and attempt to get the policies changed. If you have access to a labor union, that is a good place to start because the union can represent the whole body of workers and no one will be singled out for retribution. Another possible solution is to hire an attorney to speak on your behalf. The attorney can contact the boss, explain how clients he represents are concerned about workplace mass shootings, and discuss ways to get the policy changed so that employees can discreetly carry concealed.

About Starbucks and "Open Carry"

Another "ripped from the headlines" story is the recent report that Starbucks has finally gotten its fill of open carry advocates making the Starbucks coffee shops a battle ground for the pro-gun v. anti-gun fight. Starbucks' President Howard Schultz issued a press release asking

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people to discontinue carrying guns openly in their stores. If you follow the news you'll know that over the past year the open carry wing of the gun-owning community has made it a point to pick Starbucks as a rallying spot, because Starbucks refused to prohibit openly carrying guns wherever local laws allow the practice. I, for one, am a staunch advocate of concealed carry and, in addition, a staunch opponent of the practice of open carry, unless no other legal option exists. I can count on one hand the number of times in my life I have openly carried in public, and I have been carrying a gun for a long, long time.

There are two primary reasons why I believe open carry is a BAD idea. The first reason is that the practice gives away a tactical advantage in an altercation. I would like the option of going about my business without being identified as having a gun. If a violent altercation comes my way, I have options as to how to handle it. Surprise is one of the greatest tactics one can use in a fight. I don't want to give that advantage away.

The second reason is that I don't like to draw attention to myself. If I have an exposed gun on my hip, it is like having a glowing neon sign on my back saying "LOOK AT ME." There have been a few cases in the news lately about people who have been openly carrying a pistol being disarmed. Just today, I read a story about someone being robbed who was openly carrying. Put yourself in the place of an armed robber. If you start a robbery and discover that one of your targeted victims is in fact armed, what are you going to do?

Now, in a few locations, open carry is a commonplace occurrence. On a recent teaching trip to Arizona, I decided to open carry to dinner one night, with my host, who was also openly carrying his pistol. I suspect I was just about the only person in the restaurant who was aware of the Smith and Wesson Model 13 on my hip. I was watching for reactions of others around me, but I didn't see any. By contrast, if the whole class would have come in for dinner with AR-15s slung across their shoulders that would have been an entirely different matter. I suspect police might have been called.

I will let you in on a little secret. I get nervous around people who I don't know when they are openly carrying guns. Why? Because I know how stupid some people can be, and it heightens my awareness. In this day and age of mass shootings, if I saw a person walking down the street with an AR-15, I would likely call the police

myself. When these open carry zealots do exactly that, they are only making matters worse for the gun culture. I cringe when I see the gun rallies at our state capitol, which always seem to include the bubbas with their shotguns and rifles slung over their shoulders. If you want to make a real statement, perhaps you should wear a 1776 period costume and carry a replica muzzleloader. The point would be better made. Better yet, how about just donating a hundred bucks to the NRA-ILA or Second Amendment Foundation? At least there, you will know some good came of your activism.

Actions have consequences. The open carry crowd, by turning Starbucks into a battleground in the gun wars, has done the rest of us a disservice. The open carry crowd owes the rest of us an apology. I will wait for it with some degree of skepticism that it will ever come.

Another Hung Jury

Over the last three years, I have worked as an expert/consultant on eight separate self-defense cases. An amazing statistic has surfaced from those trials. Six out of eight—a full three quarters—of those trials have ended in hung juries. Mistrials were declared because the jury could not come to a unanimous verdict. In most, if not all of the cases that ended in mistrials, the jury vote was largely in favor of the defendant, but one or more holdouts simply would not come to grips with the right of armed self defense.

Interestingly, ALL of these jury trials involved an armed defender against unarmed but physically aggressive combatants. In five of these hung jury trials, one of the combatants died and in all of the cases, the defender used a gun. I believe self-defense trials involve a dynamic that is largely unseen in other trials: the societal conflict between pro-gun and anti-gun beliefs. This schism is carrying over into juries, and often the anti-gun side is simply unwilling to acquit, despite the evidence of justifiable homicide.

Over the next year, I am going to be researching and otherwise taking a very hard look at this phenomenon, and perhaps come up with some ways attorneys and experts can help mitigate this factor. I have already started by having some conversations with an expert in trial strategy who is a paid jury consultant. She has

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recently joined the Network, and has agreed to share her thoughts on the subject with our members in a future edition of this journal.

Network Affiliated Gun Shop or Affiliated Instructor?

If your membership in the Network is the result of participation in our affiliate program, then this message is for you. Recently, we have started taking a hard look at the affiliated members, to evaluate who is actually performing some service to the Network. We at the Network give complimentary memberships to gun shop owners/managers and to firearms instructors who actively promote the Network. Each month dozens of new members join the Network because of these promotional activities by our friends and affiliates.

Unfortunately, some affiliates have not requested booklets or other promotional material since we first affiliated with them, some as far back as 2010. Yes, we do keep track. We have been contacting these apparently inactive affiliates to see if there is a problem and to try to help them get on the right track or convert their membership to a paid status.

We don't want to lose any active Network members, but the bottom line is that if you are an affiliate to whom we

extend a complimentary membership, but you've not been promoting the Network to your customers and students, we will be dropping you from the membership roles. We will take the money we save and use it to support the other members who are working hard to grow the Network. If you haven't been telling students and customers about the Network, please contact Brady Wright (email brady@armedcitizensnetwork.org or phone him directly at 360-623-0626) to re-establish a dialog with us and get some more Network materials.

Legal Defense Fund Update

In closing, I am pleased to announce that our Legal Defense Fund has exceeded \$300,000. I like it when we reach large figure milestones like this one. Of course, the growth of the Legal Defense Fund is only accomplished through new membership purchases and membership renewals, combined with the contributions our corporate sponsors give us through product and services we auction as fund raisers. We are well on our way to the half a million dollar goal I set for the Network when we first started not so long ago in 2008. I am looking forward to that day.

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Please enjoy the next article.]*

Exchanges with Network Members

Light Trigger Controversy

Very interesting piece on triggers in the September journal. One point I would like to make is that having a trigger with a very short reset travel can be as problematic just as much as a light trigger can, though light AND short is a recipe for real problems. I like a five pound 1911 trigger and wouldn't carry one with less than four. I have shot some very nice Les Baer pistols that have essentially no travel for the reset and they make me really nervous. I've seen shooters double with them in matches. I have also seen them double in Ransom rests.

–Thomas, FL

Thank you so much for the in-depth information on defensive handgun modifications! I know it's been covered before but this was much more specific and in depth and really helped cut through the fog of what should and should not be done with our defensive handguns. I thoroughly enjoyed the inputs from the experts and since I've been a student of most of them, all the advice carries a lot of weight in my decision making process. As always this newsletter was extremely informative and should go a long way to help us all arm ourselves with the best knowledge available.

Thanks for your work in clarifying my question, this one really knocked it out of the park for me and I'm happily renewing my membership next month!

–Charles, SC

I have just finished reading *Gun Modifications, Light Triggers and Reloaded Ammunition* by Marty Hayes. I have carried a Wilson CQB compact for quite a while now. Wilson's standard trigger pull is 3.5 to 3.75 pounds. As I read the article it would behoove me to get it modified to 4.5 to 5 pounds. Since the lighter trigger pull is the "stock" or standard for Wilson, I would expect that getting it to be somewhat harder to pull before it breaks would tend to be to my benefit in the case of my having to defend myself in court for a self defense incident. I understand that a DA can twist facts in any way they may choose to get a conviction. Now, the article has also made me quite paranoid. I have four mods to my weapon. 1) third party beveled mag extension; 2) extended slide release; 3) Wilson, low thumb safety and,

4) slim grips. I guess, all added up, it looks like I am looking at a real problem if it comes to a trial. I have put back on the grips that came with it even though I don't like the rather gaudy Wilson medallion in the middle of them and really prefer the slim grips. All of these modifications are to make the operation of the pistol more comfortable, is it your recommendation that I switch back to all standard parts?

–Sean, TX

In response–

Modifying grips, extending safeties, mag releases and mag wells are all explainable, and if you were ever on the stand, you would need to be able to calmly and rationally explain why you modified your gun. If you don't feel comfortable with life in prison on the line doing battle with an experienced DA over these modifications you made to your gun (I carry a modified Glock with grip, sights, extended slide release and mag release all done to the Glock), then perhaps you need to rethink opening the door for the prosecution. Sure, we can have an expert like Massad Ayoob explain why people do these modifications, but I believe you should also be ready to explain them, in the event the judge denies the expert witness testimony. I am committed to explaining this to the jury, so it is not a big deal to me.

Regarding the light trigger though, a DA might be able to have a "hair trigger" argument stick if he was trying to prove you shot the individual not on purpose, but negligently and unintentionally. That is my issue with the <4 pound trigger. The bottom line is that we are all adults and can make our own choices. As long as your shooting was reasonably justified, we will defend you in court. It will just be harder if doors are opened that didn't need to be opened. If I inherited a Wilson Combat CQB, I would send it back to Wilson for a heavier trigger, perhaps 4.5 pounds.

–Marty Hayes

Gun Docket Proposal

A (Republican) Missouri State Senator Eric Schmitt recently attempted to introduce a Senate Bill that would "create a special Armed Offender Docket for the

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prosecution of certain weapon offenses. Select judges, chosen by the circuit court of St. Louis, would have exclusively dealt with cases involving weapons. This docket would have given the court the tools it needs to consistently dispose of gun-related offenses in our area." He ran out of time and SB448 was not introduced.

My initial reaction was that this would be a good thing, getting criminals committing crimes with guns off of the streets faster. I believe that the NRA is advocating something similar. However on further reflection, I can see this having a large negative effect in a law abiding armed citizen self-defense shooting. If this Armed Offender Docket were populated by rabidly anti-gun judges, and vindictive prosecutors, this could be a very bad thing to be caught up in if one were NOT a criminal,

but charged with a crime anyway. Here is more info on the subject—
http://www.stltoday.com/news/local/crime-and-courts/st-louis-judges-won-t-set-up-dedicated-gun-court/article_e1630f8d-33ac-5479-a67c-12145b7e7ae0.html

—George, Missouri

In response—

My personal prejudice parallels your conclusion. We have to take extreme care that in our so-called "war on drugs," "war on crime," "war on terrorism" (pick a cause...) we do not sacrifice elemental personal freedoms. The truth is that you just can't legislate risk out of this world, but it is awfully easy to lose sight of that!

—Gila Hayes

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Attorney Question Of The Month

This month's Attorney Question of the Month is a continuation of a question we started last month. This line of inquiry, posed by Network President Marty Hayes, asked—

For the most part, jury selection is glossed over in law school (or not discussed at all), even though the jury is the trier of fact. With this in mind, this is a two-part question. First, as the attorney handling a self-defense shooting, what type of people would you want on a jury? Next, what steps can the armed citizen take ahead of time to ensure that they do not alienate a jury?

Our affiliated attorneys' responses follow—

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Voir Dire is the term used for jury selection in the United States. In Latin, it means, "to tell the truth" and in French, it means "to see and to say."

I practice law in the Midwest. In Kansas, they call it Voir "Deer." In Missouri, they call it Voir "Dire." And in Oklahoma, they call it "pickin' a jury." This portion of the trial is not taught very well at the law school level, in my opinion.

The reason is that there is no practical way for law schools to muster actual prospective jurors to come down and be experimental subjects for law students. Voir Dire is the most difficult portion of the trial, because the attorney does not know in advance the responses that will be given by the panel. While most folks think jury selection is engineered to pick the twelve most competent people to try the case, this is not actually true or practical.

There is no way to get the exact twelve jurors you want to try your case. The actual goal of the exercise is to eliminate for cause and with peremptory challenges all jurors the attorney feels will NOT be fair to his/her client.

I think it is every bit as important to discuss the types of the individuals I would not want on a self-defense trial jury, as well as to discuss the types of jurors I would want to try the case. To wrongly leave a prejudiced or biased juror on the panel is creating a time bomb for your client and is malpractice, in my humble opinion.

Typically in a case of this nature, I would welcome NRA members, individuals who own firearms for protection, victims of violent crime or their family members, practical shooting enthusiasts, handgun owners and small business owners.

Beyond this generalization, I would want to prepare many questions to ask the venire panel to gauge their responses in determining whether they seem to be for or against my client's position.

Questions I would ask would include:

Have any of you had to defend yourself against threats of violence?

Have any of you witnessed a crime of violence?

Have any of you lost a loved one due to the wrongful acts of a criminal?

How many of you have felt it necessary to purchase a firearm to protect yourselves or your family at home or in the workplace?

How many of you have learned about the allegations against my client through television, radio, newspapers, social media, the Internet or any other source? Based on what you have initially heard about this case, have you made up your mind as to my client's guilt or innocence?

Have you formed or expressed an opinion about my client's guilt or innocence based on what you have heard?

What opinions have you formed or expressed?

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If I were able to provide you evidence that your opinion is wrong, would you have an open mind and be willing to presume my client innocent until proven guilty by the State or Government beyond any reasonable doubt?

Have any of you been in fear of death or serious physical harm by an armed individual?

The law in this state allows citizens to use deadly force against an aggressor when he/she believes it is reasonably necessary to protect him/herself from imminent bodily harm or serious physical injury. Do any of you disagree with the law? Would any of you be unwilling to follow the law?

The law in our state is clear that my client cannot be convicted in a case of this nature unless all twelve of you unanimously believe beyond a reasonable doubt that my client did not act in self defense, as we just discussed. Are there any of you who, for any reason, could not follow the most important rule of law that will govern this case?"

I do not want to appropriate undue space in your publication from other attorneys' valuable contributions on this subject. I would ask several pages worth of questions along these lines. The point of this exercise is to identify jurors who are biased against my client and ask the type of questions that would lead to either them being stricken from the panel for cause due to their bias in the case or to justify a peremptory challenge so there would be no surprise later.

An experienced trial attorney knows that the theory of the case must be carefully woven through the art of persuasion from the jury selection process through closing argument.

Within the bounds of the law, the attorney should educate the jury in voir dire about the alleged facts involving the case. It is essential to find out what the jurors know and believe about the case before it starts. It is imperative to educate the jurors about the particular self-defense law that is applicable in the state in which the case is tried.

It is essential to weed out prospective jurors that typically would not be fair to a defendant who used deadly force with a firearm. Such individuals would ordinarily include individuals who have strong beliefs in favor of gun control, individuals who believe, for moral or religious reasons, that the use of deadly force is

inappropriate and not allowable under any circumstance, individuals who, for religious or personal reasons, cannot judge their fellow man in a jury trial setting, and including, but not limited to, individuals who may express a bias or prejudice toward the client due to his/her race, gender, age occupation, etc.

With regard to Marty's second question, an armed citizen can take several measures in advance of his/her jury trial so as not to alienate members of his/her potential jury pool.

Beyond the initial brief statement to the police that one was involved in a self-defense shooting against an initial aggressor, no elaborate details should be given, as they will be released to the press by the police department or misconstrued by an investigative reporter.

A potential defendant should always dress appropriately for court, even in initial and preliminary matters. Unusual hairdos, facial hair and facial piercings, etc. should be avoided and one's best appearance must be presented to the public at all times.

The defendant should make no comment to the media at any time prior to the trial of his/her case. Any media statements should be made through counsel, who should be retained immediately after such an incident.

The defendant in a criminal case should avoid social media or any postings of any kind, including text messages, throughout the pendency of his/her case.

The defendant in a criminal case should also conduct him/herself as if he/she were being watched. Investigative reporters, curiosity seekers and busybodies may be photographing or videoing his/her every move in certain settings such as the grocery store, taverns or shooting ranges and use the footage against the client. The bigger the media exposure in the case, the more difficult this becomes. At all times, the approach to the public in cases of this nature must be one of concern. A defendant in this situation should not discuss the facts of this case with anyone other than his/her attorney so that sensitive information is not leaked to the wrong source. When entering and leaving a courthouse, one must conduct oneself as if he/she is being watched by a prospective juror. All courthouses have windows. All jurors park in various parking garages at the courthouse. You never know when you are going to run into a potential juror. Therefore, the attitude one

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must always sell in a case of this nature is quiet concern. Jubilant laughter, cigarette smoking, gum chewing, high-fiving friends or relatives and things of that nature are offensive and should not be practiced.

The bottom line in these types of cases is, your life is on the line! Any jury trial is experimental surgery. The client does not want to say or do anything that may jeopardize his/her position in the community that would affect his/her right to receive a fair and impartial jury trial. A competent attorney will guide you through the dos and don'ts in all these stages that are peculiar to your jurisdiction.

What might be appropriate behavior in front of a Los Angeles or Hollywood jury may not do very well in a conservative Midwestern location. I hope this brief response may be of some help on this most important topic.

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1. Professionals...preferably people who have started their own businesses;
2. Go thru EVERY Amendment to our Constitution...inquire if the potential jurors agree with ALL of them.

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This is a difficult question because no two cases are the same. Additionally, the question itself is problematic because not everyone always agrees that any particular case is a "self-defense" shooting case. Just because you believe a case to be a "self-defense" shooting case does not mean the prosecutor will agree. Indeed, this is a disputed matter in every case of this sort that goes to trial.

The reasons supporting the defense position and underlying the claim of self defense will determine what type of people will be sought by the defense for the jury. For example, if the self-defense claim is based on a technical point of law, rule followers, clear thinkers and

people likely to feel duty bound by their oaths to follow the law may be the best choices.

On the other hand, if the facts require a stretch of the law to reach self defense, and the defendant is sympathetic, people who are likely to be swayed by their emotion or those more inclined to "do the right thing" rather than strictly follow the letter of the law may be the best choices.

A good lawyer does not employ a set strategy for all cases of any type.

When I speak to groups of armed citizens, I always advise them not to act like a "yahoo." What I mean by this is to act responsibly at all times rather than someone eager for an opportunity to pull out their weapon. Always remember, self defense generally boils down to "reasonableness." If your conduct is in line with what a reasonable community member would do in the same circumstances, you will likely be safe. If you are inclined to act unreasonably, you ought to reconsider whether you should be carrying a firearm in the first place.

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Actually, you begin with a false premise. Jury selection is covered specifically in courses in the third year at many law schools, particularly those which offer clinical programs that allow law students to represent litigants in court (under supervision). As with many upper level elective courses, jury selection would only be covered for those law students who elect courses in trial practice.

First, as the attorney handling a self-defense shooting, what type of people would you want on a jury?

That would depend upon whom my client is, who got shot, and under what circumstances. Factors such as age, race, home-town, and socioeconomic status always matter. So do the facts of the case. For example: if the facts involved the accidental shooting of a bystander child standing in his front yard, I would want to avoid young mothers on the jury, but if the facts involved my client shooting someone who appeared to be menacing

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a pre-school, young mothers might not be such a bad idea.

Next, what steps can the armed citizen take ahead of time to ensure that they do not alienate a jury?

This is a very important question. One should always strive to project restraint, maturity and respect for seriousness of the use of deadly force. Conversely, there are many things one should avoid in their present lives to avoid alienating a hypothetical jury somewhere in their future. I will give three:

(1) One should never festoon himself, his home, his web page or Facebook page or his personal equipment with bellicose, macho phrases, pictures or symbols designed to portray himself as some sort of menacing warrior/killer/tough-guy. For example: A big picture of a revolver, viewed from the business end, with the legend "WE DON'T DIAL 911" or "WE DON'T GIVE WARNING SHOTS" would make very inconvenient exhibits in a prosecution where one is accused of shooting an intruder without sufficient cause. It is unwise for one to advertise his lack of maturity, aggressive nature or lack of respect for legal means of dealing with intruders or aggressors.

(2) Do not take training from any school or individual instructor who markets its or their programs with pugnacious or combative public statements. For example: I have seen a school that sought to distinguish itself from schools that offered "shooting vacations" by advertising "WE TEACH PEOPLE TO KILL PEOPLE." Every person trained under that banner can expect to have it draped around their neck in any future prosecution involving accusations of excessive or unnecessary use of force. While your lawyer endeavors to make the jury believe you used only that force immediately necessary to stop a threat, with somebody's

death being an unfortunate but unavoidable consequence, your former instructor is proclaiming you were taught the objective was to kill. Just like the warrior/killer/tough-guy T-shirts and bumper stickers, this is very dumb. Select those instructors you would want appearing in court as witnesses on your behalf, not people your lawyer will have to try and explain away.

(3) Imagine an exhibit sticker on every post you make to any gun board, every tweet and every comment on "the wall." Those posts are forever.

If you spend your life making menacing statements, trying to convince the world you are deadly and ready to kill anyone who crosses you, someone is liable to believe it.

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I would want people who had been victims of a crime or related to someone who was a crime victim, gun owners who had purchased a weapon, hunters and people who agree with the Zimmerman verdict. I would keep off anyone who has a sociology degree or works for any agency that provides welfare or assistance programs as they tend to be pacifists.

We extend a hearty "Thank you!" to our Network Affiliated Attorneys for participating in this interesting discussion. We will wrap it up next month, so don't miss the final installment of this Question of the Month.

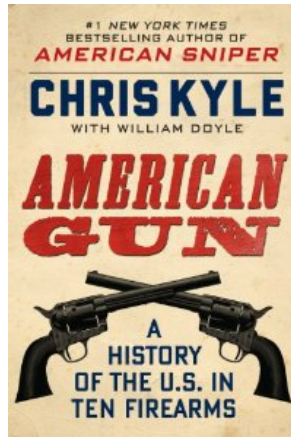
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Please enjoy the next article.]*

Book Review

American Gun

by Chris Kyle
Hardcover,
302 pages
HarperCollins, June 2013
ISBN-13: 9780062242716

*Reviewed by Network
member George Prudden*



Imagine that you could sit down and chat with an expert in firearms with a vast knowledge in U.S. military history and discuss the impact of a number of firearms and battles in U.S. history. This is the flavor of *American Gun, A History of America in 10 Firearms* by the late Chris Kyle, a soldier and an experienced tactician.

Chris Kyle was a Navy SEAL with over 160 confirmed kills. After a distinguished military career he entered into the private sector; he decided to write about the impact of his personal selection of important guns on American history.

Unlike many works on the history of firearms, the focus of *American Gun* is not only the function of the gun, but its effect on military tactics and how those changes and the users changed the course of battles and, thus, history.

Kyle admits from the outset that this is HIS list. Others may differ in their opinion on the value of one gun over another, and may have issues with a gun that was included or guns they might want included.

The presentation is much more conversational than the usual dissertation on chamber pressures and foot-pounds, which, honestly, often puts me to sleep. Instead, these details are presented through the eye of history. Let me give the reader an example—

American Gun starts with Timothy Murphy, a sharpshooter in the Revolutionary War climbing a tree with his Kentucky Rifle to take a shot at a General Simon Fraser of the British Army. Using Murphy as an example of the Colonists' tactics, Kyle discusses the formal "set piece" approach to warfare that the British used, in which it just wasn't "proper" to target the

officers. In fact, the Colonists' tactics, in general, were just not proper, gentlemanly warfare. We would call it guerrilla warfare today.

Kyle's description of the Kentucky Rifle helps us to understand its advantages and disadvantages in warfare. It was accurate, but being a flintlock, reload times could be measured in minutes rather than seconds. When you pulled the trigger, you were greeted with a flash from the flash pan, a small puff of smoke followed by a nearly-blinding smoke cloud once the black powder in the main load finally went off. Imagine trying to focus on shot placement when you can't even see the target until the smoke clears after your shot!

We learn about not only the advantage in accuracy that the rifling gave the American long arms over the British unrifled muskets, but about how that changed American tactics on the battlefield. The British would line up their troops in long rows and fire coordinated shots through their muskets at the opposing troops. Though an individual musket was not particularly accurate, the commanders relied on a curtain of lead from the row of shooters to either do physical damage through bullet strikes or psychological damage through an early form of "shock and awe." The Americans, though many were armed with muskets, also had the advantage of the long rifle, which could provide aimed, directed shots at single targets. British tactics relied on the officer ranks to direct the troops and firing line. Individual soldiers were discouraged from acting singly; they acted in groups.

Those pesky Americans used some of the British tactics, but also had the sharpshooters who would provide the carefully aimed shots, often aimed at the British officer who was directing the troops. Very unsportsmanlike. Not proper Cricket at all.

American tactics functionally relied on two relatively new concepts in warfare, the "sniper" and guerrilla tactics.

To many British officers, deliberately aiming at them rather than firing generally at the mass of men on the front line was akin to a war crime. The upper class that filled the officer ranks had never heard of such behavior before and they were astounded. To them it seemed repulsive, and very un-European.

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It seems that Abraham Lincoln enjoyed firearms, also. The Lincoln White House had a shooting range ... well, it had an area that was available for shooting. Lincoln had served in the military during the Black Hawk War and understood that not only was accuracy important, but the speed of reloading made a big difference, too. Apparently he often did his own testing of firearms in an effort to help decide what would be the best for the troops.

In the scene to which *American Gun* takes us, Lincoln is testing a Henry Repeater. After seeing that he could shoot multiple shots from the gun and reload it in a relatively short time, he went to test a modified Springfield musket, called a Marsh Rifle after its designer, Samuel Marsh. His trip to the range was interrupted by a couple of soldiers who rushed over to stop the shooting because of a Presidential Order which prohibited shooting in the capital city.

Through the war, Lincoln made recommendations to his War Department about various firearms that he thought would improve the situation on the ground, just to get rebuffed by the bureaucracy. How things have changed!

Did the final adoption of repeating rifles change the outcome of the war? Many think so. Would the war have ended sooner had the repeaters been ordered and put into the inventory sooner? Perhaps. Hypotheticals are easy and fun to contemplate, but the outcome of history is a bit more difficult to change.

The ten guns that *American Gun* highlights in order are:

The American Long Gun (Also called the "Kentucky" Long Rifle)
Spencer Repeater

Colt Single-Action Army
Winchester 1873 Rifle
Springfield Model 1903 Rifle
Colt M1911 Pistol
Thompson Submachine Gun
M1A Garand
.38 Police Special Revolver
M16 Rifle

However, there are more than ten firearms discussed in *American Gun*. In his details about firearms and technology leading up to the development of one of the guns on the list, the author discusses many other guns. Rather than a book about ten guns, it is really a *tour de force* about firearms and the role—good and bad—they have played in American history.

American Gun has a Foreword and an Afterword by Kyle's widow, Taya. We learn that the concept of the book and much of the research was done prior to Kyle's murder. It was completed after his death.

If you have read Kyle's first book, the autobiographical *American Sniper*, it is easy to notice the difference in tone and content. The autobiography is a fascinating and sometimes crude first-person description of his life, focusing on his time in the war zone. In contrast, *American Gun* has much more of a conversational tone.

Should one be looking for a historical work with facts and figures on specific guns, *American Gun* isn't the best choice. However, if the goal is to appreciate one person's understanding of the role firearms have played in our history, *American Gun* should be satisfying.

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



Networking

by Brady Wright

Another month has gone screaming past and the state of the Network and our Affiliates is as strong as ever. Without further introduction this month, let's get right to the news.

On September 14, 2013, during the National Rifle

Association's Board of Directors fall session meeting held in Arlington, VA, one of our Network Affiliated Instructors, Brian C. Smith, accepted the 2012 Public Service Award on behalf of the Metropolitan Police Self-Defense Institute. The M.P.S.D.I. was being recognized for the initiation of the public service program where several law enforcement firearms instructors volunteered their time to teach police officers' and firefighters' wives, mothers, and daughters how to safely handle and shoot the handguns in their homes for self-protection. The course is titled *Basic Handgun Fundamentals for Police/Fire Wives*. Upon successful completion of this eight-hour course, the ladies are presented their NRA Basic Pistol course certification.

The program began in 2010 and it is estimated to have trained about 400 women to this date. Smith noted it was truly an honor to have the opportunity to sit in the NRA board meeting and witness the struggles, diligence and commitment the NRA has set forth to protect our Second Amendment right to own and bear arms. My hat is off to the ladies and gentlemen on the board, and to our member, Brian, for a job well done!

I got a note from several folks about this next topic; among them was this from Larry Pyzik. As you may know, Illinois has finally passed legislation for concealed carry licensing.

A few days ago, some information was posted pertaining to applications for people who possess specified training and want to be a certified trainer by the ISP (Illinois State Police). A syllabus of subject matter apparently has been assembled (although I did not find it). Next, 16 hours of classes will be required and taught by these

civilian certified trainers. Once a citizen completes the 16 hours of class to include a range component, completes an on-line email CCW application that will be posted in January 2014, a 60 to 90 day period will be necessary to process the CCW (April 2014).

As I understand it, these certified trainers, whose names will be listed on the ISP website, are expected to train 10,000 to 50,000 citizens over the next year or so. It is estimated that 150,000 citizens will apply for concealed carry licensing in the next few years. Thanks to Larry for mentioning this development.

Alex Haddox, Network Affiliated Instructor and host of the popular podcast *Practical Defense*, is up to more good things. His company, Palladium Education is planning to open two more facilities next year: one in Fresno and one in San Diego. If you want to find out about Palladium's class offerings and Alex's podcast, you can look for Alex Haddox at Palladium Education, Inc. <http://www.palladium-education.com> or email him at alex@palladium-education.com.

I often get emails or *Facebook* posts from members who want to tell me about various websites and chat rooms that focus on guns, concealed carry, tactical training and all manner of other things that are Second Amendment related. In many cases, I already follow these sites but often, I am pointed toward new places to look and learn. One such conversation led me to GunToters.com, which is run by one of our own Network members, Robert Harvey. It is a robust website with lots of information and an active cadre of posters, many of whom are also Network members. Check it out, if you find a moment or two, at <http://guntoters.com>. Let me add, "Real nice job, Robert!"

As always, if you need Network booklets or brochures or have news to share, just call 360-623-0626 or email me at brady@armedcitizensnetwork.org. If I receive your information, celebration or brag by the 20th of the month, you have a great chance of being mentioned in the upcoming column.

Stay safe out there!

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

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Editor's Notebook

by Gila Hayes

"Remove the word 'if' from your vocabulary and replace it with 'when,'" John Farnam (Defense Training International) urged students in a recent handgun class I was privileged to attend.

Instead of saying, "If my gun malfunctions..." we must plan, "When my gun malfunctions, I perform the immediate action clearance drill," he illustrated, injecting the trademark Farnam humor by mocking the oft-heard phrase, "If I die..." He snorts, "We're all going to die!" The class laughs and the point is cemented.

When self defense gun use is acknowledged as only an indefinite possibility, motivation suffers, training and practice are postponed and an excuse is made to leave the gun at home when carrying it is burdensome. To say, "I'll carry a handgun for defense if I need it," lacks both urgency and commitment. To positively state, instead, "I carry a handgun so when danger threatens, I have reasonable defense options," invalidates the many excuses armed citizens make for not being prepared all the time. The latter statement expresses why we consistently carry guns. Farnam has little patience with casual gun hobbyists, reserving his time and energy for committed armed citizens.

If you do not know John Farnam, you owe it to yourself to correct that deficit in your self-defense training! John's instruction has honed thousands of armed citizens' self-defense abilities, both the physical skills and of equal or greater import, mental attitudes about personal safety. John's perspective, having seen technique fads come and go over three decades, vigorously demands self-defense applicability and an affirmative answer to, "Will this work in a fight?" Moving off the line of force while drawing, full 360-degree danger scans after shooting, non-dominant hand and single hand shooting and gun manipulations, gunshot wound treatment and staying in the fight until it is over are all hallmarks of a Farnam defensive firearms class.

Does that sound like a course of study for soldiers and police? No. John has always emphasized that when

danger threatens, you are on your own. Help may arrive eventually, but probably not in time to save your life. You have to be your own rescuer. This principle applies equally to men and women, and I was delighted to look around John's class last weekend and observe that fully one-third of the participants were women, four of whom participated in the advanced range sessions and three going to the beginner's range to get a great start on their defensive mind set and skills building.

John emphasized several times how much he values the participation of women in his classes, noting that the message of the importance of guns for survival and self defense will be carried to the nation far more effectively by women and by minorities who are not traditionally considered gun enthusiasts. "Us old white guys will not be heard," John said bluntly. While I missed sharing the weekend with John's wife, Vicki Farnam, who was teaching at Hillsdale College, it is worth noting that she often co-teaches in these courses, providing valuable woman-to-woman advice for the female students.

Headed back to the range from the bathroom line on the first day of class, I shared an amusing exchange with one of the new female armed citizens in attendance. Fingering the grips of her new pistol in its belt holster, she looked anxiously at the Porta-Potty from which I'd just exited. "How am I supposed to deal with this gun in there?" she asked. I quietly shared a few suggestions and wished I'd brought along a copy of my new book, *Concealed Carry for Women* in which I wrote about some of these puzzling problems. I would have given it to her to reward her courage in facing these and all the other day-to-day problems people new to carrying guns have to solve!

Before moving on to the final topic I need to address this month, I want to make a serious comment. There's no way to say this delicately, so I'll just blurt it out. John's been teaching for a long, long time. He is one of a small number of senior statesmen in our discipline. How much longer will he travel the nation, offering class schedules as full as the one at <http://www.defense-training.com/schedule.html>? I do not know, but I strongly recommend that you take steps now to get some training with him and Defense Training International.

[Continued...]

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Word from our Affiliates

Last month, I sent a letter to Network Affiliated Instructors and Affiliated Gun Shop members from whom we hadn't seen booklet orders recently. While the responses to my letter are still coming in, the mail this week has kept me really busy. I've mailed out thousands of copies of the Network's 24-page booklet, *What Every Gun Owner Needs to Know about Self-Defense Law* through our local Post Office this week alone. I think the Postmaster is starting to cringe when I come in each afternoon.

I've enjoyed the little notes our affiliates have been writing on their response forms. Many admitted that they had planned to ask for more Network booklets but forgot. One gentleman wrote, "Great minds think alike! I was just about to reorder." Another said, "Our gun department is very active despite the ammo and firearm shortages. Looking forward to some more booklets to give our customers and members of gun clubs we belong to." Another wrote a nice explanation of the new Illinois CCW license requirements due to be put into effect in January of 2014. "I believe next year your services could very well be needed in Illinois," he concluded. "I will hand out your booklets to all my customers—gladly." A gun shop affiliated member from Ohio wrote, "I primarily pass out the booklets when I teach my CCW classes. I strongly urge my students to join, as it will help us all. I will be more aggressive in talking to my regular customers at the shop, also. Thank you for your continued support."

Several jotted in complaints that they had requested booklets, but did not receive the shipments. Since we do not charge for the booklets or even for shipping them, we keep costs manageable by using the Post Office's Media Mail rate. Though it reduces the cost of shipping these educational booklets, Media Mail does not have any provision for returns of undeliverable shipments. If for any reason your Post Office is unable to deliver a box of booklets, we at the Network will not be notified. Unless we hear from you, we will not know that you did not receive the booklets you requested.

I understand that you are frustrated when you don't get the materials you requested; I'm not too happy about the wasted booklets and postage, either. Please, though, instead of just writing us off, let us know you didn't get the booklets you need to fulfill your part of the affiliated membership arrangement. We may need a different address or at least to verify the one we used for the missing shipment, but we will ship you another box, because we want you to have the booklets to introduce your clients to the Network.

Now back to the letters I sent to affiliated members last month. Unfortunately, some are coming back unopened and bearing the dreaded yellow "Return to Sender—Unable to Forward" sticker. Either they've gone out of business, moved to a new location, or fallen prey to some other misfortune. I've been able to locate some, but not all, through email. Then again, sometimes even the email bounces back as undeliverable. Sadly, a few of my letters have come back marked "Deceased," or bearing a short note that the affiliate had departed this earth. That is always sad to hear, though I appreciate the effort of the family member who takes the time to notify me.

Holding true to the Network's name and concept of armed citizens networking together for the benefit of all members, I am very pleased with the renewed interest in building Network membership shown by these affiliated instructors and affiliated members from gun shops all across the nation. Thank you to each who took the time to respond.

Network affiliates, if you still have my letter and the blue response envelope sitting unanswered on your desk, please take a moment to respond and let us know if you wish to continue your affiliation with the Network. I appreciate your continued participation, as do other Network members. We're all in this together.

*[End of October 2013 eJournal.
Please return next month for our November edition.]*

About the Network's Online Journal

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

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

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

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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