

## Family Concerns During and After Self Defense *An Interview with Doris, Mike and Alex Ooley*

Interview by Gila Hayes

*When armed citizens discuss training, two philosophies emerge: one is the alpha family member training to be the sole protector of the family. The other is collaboratively working to create an all-family safety team with vital roles filled by parents, spouses, children and anyone else sharing the home.*

*Some months ago, this journal published an Attorney Question of the Month column about statements made to investigators by witnesses, including family members. Commentary contributed to that discussion by attorneys Mike and Alex Ooley alerted me that as armed citizens, firearms instructors and lawyers, the Ooley family has worked through the issues, decisions and preparation needed by many young armed families. I asked if they would chat with me about how families can better prepare for family safety and to weather the legal aftermath if a family member uses force in self defense. I was very pleased when they agreed.*

*Mike and Alex Ooley are attorneys practicing law in southern Indiana. Doris Ooley, a former Army Captain and bank officer, along with her husband Mike and sons Alex and Ryan, teaches firearms skills and safety through the O2 Gun Group. The Ooleys are graduates of Massad Ayoob Group courses.*

*I thoroughly enjoyed their discussion of both the legal and practical reasons for including spouses and children in defense preparations, and I know members will benefit from sitting in on our visit, too, so we switch now to Q & A with Doris, Mike and Alex.*

**eJournal:** Having family members present could greatly complicate a self-defense incident—but then again, if



**L-R: Ryan, Alex, Mike and Doris Ooley share their experiences as an armed citizen family that trains together to address dangers both during and after an incident.**

prepared, the whole family can pull together to keep one another safer. How might that work?

**Mike:** I certainly do think that in the heat of a self-defense encounter, the whole family can help. First of all, they can help you de-escalate a situation. They can help you if the situation moves into actual, physical self-defense. They can help identify cover, concealment, escape routes and other threats. They can provide communication to you regarding other threats and exits. There are a lot of other things they can do to enhance your response.

The two most important things in a self-defense situation are communicating and moving. The more the family members know, the more they can help us in any particular situation.

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**eJournal:** Family dynamics can be interesting. Much rides on trusting your family's independent decisions and assessments. We are not necessarily talking about one strong alpha leader giving orders that everyone else obeys.

**Mike:** The more the folks in that family unit have overlapping abilities, the better off that family is going to be. You may be injured. You may be disabled in some way, so you need somebody else to pick up the pieces and be able to perform whatever tasks are necessary in that situation. All that planning could also turn out to be crucial if we have a house fire, or if there is a tornado or a hurricane or a wildfire. If we can think through many of these situations in advance, it will enable us to provide an enhanced response should a crisis arise.

**Alex:** No two threats or encounters are ever going to be the same, so we don't know who will be the first person to engage the threat be that verbally, or otherwise. Two family members may be coming to the scene at different points in time, so communication and overlapping skills are important.

**Mike:** Depending on the age of the children or other family members, I think you are going to have to evaluate their level of ability and competency. What your family can do will depend a great deal on their capabilities and training.

We don't want to be rigid in how we address threats. We need people to be able to solve problems. I will attribute this to Tiger McKee whom I think is the first person I heard say something to the effect that, "A self-defense gun fight is really problem-solving at high speeds." Whether an individual or a family group, we need to have a great deal of flexibility to be able to solve problems.

I think in our family, Doris has better de-escalation skills than I do. She is so much better at talking to people and bringing them down from a high level of stress than I am. I have to recognize that and let her use those skills.

**Doris:** When we talked about having confidence in other family members, a big part of that comes from training together. Training together is how you know what their level of competence is and when you train together, you can improve where there are weaknesses. You need to have conversations ahead of time, recognizing those things in each other.

Families need to agree to pay attention when one member says, "I think we need to step back and take a deep breath. Let's not let things get out of hand."

Another concern would be if a family member just freaks out. They may not be able to handle stress at all, so they just scream. It is important to know the tendencies of your family members ahead of time.

**Alex:** This is a situation for which scenario-based training can be important. Working through scenarios with family members lets you figure out what each other's skills are and how you might work as a team.

You can sit down and just watch a video of an incident, and then talk about how your family might work through that situation. That can go a long way, but also go beyond family discussions, actually do the training with Airsoft® guns or dummy guns. A huge component of training is communication and learning how to work together. Doing that kind of practice is highly effective.

**Mike:** I can't tell you how much peace of mind it gives me to be around Doris and Alex and our other son, Ryan, who is not here with us right now. That is because all of us have had similar training. We have all gone through Massad Ayoob's 40-hour course, and Alex and I took Massad's Use of Deadly Force Instructor Course, where we met Network President Marty Hayes. It is so reassuring to know that Doris and my sons have that same depth of knowledge that was imparted as a result of completing that course. If you are ever in a self-defense situation, that knowledge really can lower the level of anxiety.

**eJournal:** Families can often avoid dangerous situations by trusting each other's threat identification. If anyone in the family says, "This situation might turn violent, we need to get out of here!" your shared training eliminates any hesitation or dispute and everyone simply picks up and leaves before anything bad can happen.

**Alex:** The more training you have about the legal ramifications of these sorts of incidents, the more you realize how important de-escalation is. De-escalation, along with identification of pre-incident indicators are very important skills.

**eJournal:** Ironically, in training, students often want to get right to fighting and are bored or disinterested in the so-called "soft skills" like avoidance or talking your way out of trouble.

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**Alex:** That is probably the most important component! The way to win a self-defense encounter is to avoid it. There really is no “win” other than avoidance. Survival is important, but there will be legal implications after you have survived.

**Mike:** Avoidance is the only way to win. We should remember that the actual discharge of a firearm is very rare in a self-defense situation. Depending upon which statistics you give the most credence, there may be up to two and half million defensive gun uses every year in this country. Many of those are situations in which the gun is not discharged. Sometimes someone simply exposes a firearm in a holster and that ends the situation.

**Alex:** You can never fathom every possible scenario. We all have certain habits, and certain places that we go in which we might need to be more prepared, but more often there are too many variables in life for us to have practiced every scenario. Training through many different scenarios is important because it teaches you to adapt and how to work together.

**Mike:** I hesitate to say this because I realize we aren't talking about a military setting, but first, no battle plan survives contact with the enemy. Although I don't know to whom to attribute that quote, it is true for self defense. Secondly, also from the military context, you have to understand the commander's intent. When you are working with family members, they have to understand the basic concepts, and know that there are rules that apply. We don't have to have the rules written out on an index card, but we do have to understand certain concepts.

For example, Massad Ayoob has taught us that there are certain things you may wish to tell police, like establishing the active dynamic showing that you were the victim, pointing out witnesses and evidence and indicating your intent to cooperate fully after speaking to your attorney. Those are the sorts of rules everybody in the family has to know.

**eJournal:** How do parents determine how much of their adult defense training to share with their youngsters? What is age-appropriate?

**Doris:** For very young children, the understanding needs to be that if Daddy says, “Do X,” you need to do it. As a child, you must understand what you need to do,

whether that is to be quiet, to stay close, or whatever it is you are told to do. Even young children need to understand that. In the same way, younger children need to know where the safe room is, and what to do if someone is trying to break into the house.

**Mike:** Children can understand what cover is. If you are in public, like at a mall, I should think a 10- or 12-year-old and maybe younger than that should understand cover. Children need to know where to go to get help. If mom or dad is disabled, where do you go or who do you call to get help? Families really need to learn essential skills, based upon the age and maturity level of the child or children in the family.

**eJournal:** Perhaps we underestimate the abilities and maturity of children. These days, it seems like everyone wants subservient little lambs when we should probably be raising lion cubs instead.

**Mike:** We teach a five- or six-hour legal class, and I have been impressed how quickly 15- to 17-year-olds can process, understand and absorb legal concepts. That being said, I would expect that a 10- or 12-year-old should know where the first aid kit is and be able to run and get a tourniquet for mom or dad if needed.

**Alex:** Let's go back to the earlier question about at what point to start incorporating children into the training for a self-defense scenario. I think that you can start incorporating children into scenario training very early, but it may not be scenarios about self defense per se but the same sorts of concepts apply to when you are responding to a fire in the home, or a medical emergency. I think training in those concepts sets children up to be responsible members of the family when there is a self-defense scenario later on.

**eJournal:** If various family members are trained to call for help, guide EMTs to the wounded or meet responding law enforcement, I wonder how much children and spouses should communicate with responders—be that patrol officers or just concerned neighbors. Everyone who comes on the scene will inevitably seek information. You mentioned earlier that following rules as though reading what to do off an index card isn't very practical. Without pre-scripted statements, what can family communicate that does not create legal issues?

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**Mike:** Our family has trained and talked about it and we go back to Massad Ayoob and his three rings of safety. The first ring is the message. That message essentially is, "I had to protect myself. We need police and emergency medical aid here."

The next ring is the welcoming committee. For instance, if that is Doris because we all understand that she is the person who can de-escalate and bring everyone's blood pressure down, she needs to get our message out to the police and disseminate information about who are the actors on the scene.

Massad teaches that the third ring of safety is you. You need to have a calm demeanor, be nonthreatening when police come in, and not make any sudden movements.

**Alex:** Let's go back to the 9-1-1 call. I think it is important for everyone in the family to understand that they want to say enough to establish what has happened, but say it generically, and without giving too much detail about aspects like time and distance that we know will be distorted if you are under high stress.

Instead, they need to state the active dynamic that I was attacked, or my dad was attacked, and that you used force in self defense. Give the location. Identify who is the bad person and who is the good person and that he will be wearing a gray shirt and standing by a white truck, because police arriving on the scene do not know what they will be addressing when they get there.

I think it is important for everyone in the family to understand that there are important things they need to convey both on the 9-1-1 call and if they are participating in the welcoming committee when police arrive.

**eJournal:** This question is complicated if the person calling 9-1-1 is a teen or a terrified spouse. After you have given the necessary information to the 9-1-1 dispatcher, do you stay on the line as requested and let the dispatcher quiz you, or do you disconnect the call?

**Mike:** I think that ideally you keep 9-1-1 on the line, but that you refuse to give any details, beyond the initial information that you gave them so they could respond to the scene.

**eJournal:** What would you say to avoid being further queried while remaining connected?

**Alex:** I would say, "I am going to keep you on the line and I will let you know if there are additional threats or information that will be useful for the responding officers. I am not going to hang up, but I cannot provide any more information until police get here."

**Mike:** We have debated about what the appropriate response is with respect to the dispatcher on the 9-1-1 call. If you are going to leave the line open, I think you have got to stress to the dispatcher that you have got to pay attention and safely attend to the situation that you are in, so you are not going to be able to answer questions right now.

You could ask, "Please let me know when law enforcement is on the scene, and then we can talk about, for instance, what door they are coming in, so I am ready for their entry." I think we have got to leave the lines of communication open so there is not a tragic accident when law enforcement arrives on the scene. That can happen, unfortunately.

Most importantly, though, I believe I would stress to the dispatcher that I cannot answer questions because I have to focus all of my attention on the scenario that is right in front of me at this moment.

**eJournal:** While discussing the aftermath of a shooting, a home invasion survivor once told me that investigators questioned his minor children without his knowledge or consent. He was distressed, not because of anything the children said or might have said, but he worried it caused the children additional emotional trauma.

From the viewpoint of parental rights, can a parent invoke the right to silence or ask for a delay before questioning on behalf of their minor child? I doubt those youngsters knew they could decline to answer questions within mere hours of the incident. Should family members' training include how to give witness statements to investigators?

**Mike:** My answer depends upon the age of the children, but I really believe it would be inappropriate for police to question the children, provided they had the opportunity to ask one of the parents for permission first. I don't know what happened, but from a legal perspective, that is troubling to me.

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**eJournal:** What if a child tells investigators factually incorrect details in the aftermath of deadly force? Should children not give witness statements?

**Alex:** That is a tough question, and one that the three of us talked about at length while preparing for this interview. Is the alternative telling your children not to talk to police? That is certainly advice we don't want to give!

**Mike:** That could lead to paranoia. What if the child needs help because they're lost?

**Alex:** A point that Massad has made in every class I have been in is, CYA—can you articulate? So, if a child gives inaccurate information, yes, you could be charged or arrested, but being able to articulate why you did what you did will ultimately affect the prosecution of your case, and whether you will be found guilty.

**Mike:** The police generally do a wonderful job, but if police questioned or inappropriately interrogated a minor, I think evidentiary rules may give some relief in whether those statements would be admissible or not. That is going to depend on the circumstances and that is going to depend on the jurisdiction.

With that said, I have been pretty impressed with 15- and 16-year-olds. I think you do need to start at some point introducing your children to the fact that immediately after an incident their memory is not going to be as good as it is going to be after they have had two or three sleep cycles. They need some time to decompress so they can give a more accurate statement down the road.

**eJournal:** If younger children gave statements that badly confused the facts surrounding a shooting, might a court acknowledge that young witnesses may not be competent to understand what has happened, even if they were eyewitnesses?

**Alex:** I think it goes simply to the weight of the evidence. If admissible, the jury may just not give that evidence much weight. I think there are arguments to be made about admissibility, but that is just a tough situation.

**Mike:** We need to make sure our children understand that we are interested in getting to the truth, but that the mechanism to get to the truth is not necessarily to immediately start talking endlessly.

**eJournal:** Unfortunately, for the children and any other witnesses, there exists a further necessity of not blathering about a family member's use of force, not to police and not to people outside the immediate family, clergy, mental health professionals, or the family lawyer. But here's the problem: social interaction is important and youths, it seems, are really defined by their social circle. Now, imagine the parent is telling teens not to talk about what they are going through? Really?

**Mike:** I am not, by any stretch of the imagination, a mental health professional. I am an attorney. The thing you have to understand is that if you have any doubt about whether it's alright to talk about something, you shouldn't talk about it. There may be people that you can speak to where privilege protects them—like a pastor, a counselor and folks like that—where whatever you say maybe protected, depending on the state you live in.

**Doris:** I think it is important that they understand that even if they have a best friend to whom they tell everything, they cannot talk to that best friend about a self-defense encounter. A best friend may not understand the circumstances, they may not understand why you did what you did, and although I am not the attorney in the house, if friends were questioned, they would have to tell what you said to them. It would not be privileged information.

**Mike:** We have got to ingrain in our children that prudence and keeping quiet when there is any question is the best thing to do. Much like family finances, there are things you just don't talk about.

**eJournal:** How does privileged communication work if a family member says something injudicious to EMTs or in the hospital emergency room?

**Mike:** That is a concern we really preach about in the class we teach. It is amazing what gets put into medical records. People really believe that what is in medical records is the truth, despite the fact that medical records are sometimes just plain wrong. Doctors, nurse practitioners and nurses are very busy. They may think they heard something that was not really said, or they write something down in error. You need to be very, very careful with what you say to EMTs or folks in the emergency room. Depending on the state, you would

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have very significant concerns about admissibility. Be very, very concerned that medical records will be admissible. Assume the worst and hope for the best.

**eJournal:** If the circumstances surrounding the self-defense situation are unclear, investigators are likely to come back to interview anyone who may have insights into what happened. So, let's say a latch key kid gets home before the parents. Should we worry the child might be grilled by police or a private investigator? How can parents protect their children?

**Alex:** I think the best thing to do would be to ask a judge for a protective order and to make a ruling about what investigators can and cannot discuss. If a child can accurately remember the events that occurred, then they may be a competent witness. There may be circumstances where children may be too immature, and so it would probably be best to have a hearing about the issue. I think that would be the appropriate avenue to explore.

**eJournal:** If an armed citizen is arrested, it sure would help to have made prior arrangements for whom takes over communications on behalf of the one in custody. Your mom? Your dad? Your wife? Who takes the lead on trying to get bail? Who reaches out to arrange for legal representation? For that matter, who handles the day-to-day problems of making sure the bills get paid and that the family's needs are taken care of?

**Mike:** Do you have a power of attorney? That one thing is applicable to a self-defense scenario and also to a medical situation—if someone has a heart attack, or a stroke. I have been practicing law since 1993, and it is amazing to me how often families put off asking for a power of attorney until it is too late.

The same thing is applicable if, heaven forbid, you are arrested after a self-defense encounter. You are not going to be able to do a lot of things for yourself if you are in jail. A family member—or someone you designate—needs to have a power of attorney. That is incredibly important after a self-defense scenario, and it is important for a lot of other unfortunate situations in life.

**Alex:** It is also important to think about who you will be able to talk to while you are in jail. Even if you get charged with a misdemeanor or low level felony like criminal recklessness with a firearm, it may be a few days until they can have an initial hearing for bail, so it is

important to have your affairs in order, and to have someone who can take care of things for you if you cannot.

You need someone who knows what bills to pay and who they need to talk to. For example, someone will need to call your employer. You should have those things figured out with that person ahead of time. You need to be prepared for those different scenarios.

**eJournal:** What happens to dependent children if a single parent of young children is in police custody? Would child protective services scoop up the kids and put them in foster care? Are there better alternatives?

**Mike:** It is possible the children might go to child protective services, but we want to do everything possible to be sure that doesn't happen. The last thing I want is the government stepping in to take care of my kids. If there is no immediate family to look after the children, hopefully there is a friend or maybe a church member who can do it. I hope if there is some kind of trauma in our lives, that there is a person out there whom we trust and respect to nurture and take care of our kids.

**Alex:** In Indiana, typically in a situation where you do not have someone you trust to take care of your children, a judge will try to place the children with the closest relatives, but that does not always happen. Chances are, if you don't have a trusted person to take your children, you may not have a close relative that is nearby either, so that might be a case in which the Department of Child Services would take custody of the children.

**eJournal:** If you preferred, as Mike suggested, to entrust your children to a church member or friend with whom you shared no blood relation, are there legally binding documents parents should create to indicate whom they want taking care of their children?

**Mike:** From the viewpoint of estate planning, the answer is yes, those would be the same people that you would want to be your children's guardian, but that would only apply if you had passed away. Absent that, no, I am not aware of any legal mechanism, except you really should make that power of attorney and it might make sense that the person to whom you give the power of attorney should also be asked to take care of your kids, as well.

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Do anything you can to make it known if there is a particular individual you want to take care of your kids. If evidence could be produced to show a judge what you wanted, I think that your attorney would like to have that.

**eJournal:** This topic is so big that I feel like I am swimming in the middle of the ocean. Maybe that is one reason people do a poor job of planning, even failing to establish powers of attorney. It's an awful lot to understand. As we close, I'd like to poll each one of you to ask what aspect of this you would like Network members to take to heart.

**Doris:** You have got to realize that conversations about these issues have got to take place now! Right now! There is no one pointing a gun at us, and there is no one threatening us, the house is not burning down at this moment, so now is the time to have planning conversations. Too many times, we only address problems when we are facing a problem. We fail to plan ahead.

**Mike:** We need to be aware of what happens to people who are in the local news and talk with our families about what we would do to react more effectively to the scenarios we read about. The real win would be if we discussed how to avoid them, but families also need to plan how to react to certain situations. The things we need to plan for may be a self-defense scenario, a medical emergency, an automobile accident, whatever it is, we need to discuss with our family how we would handle it.

We need to realistically evaluate the strengths and weaknesses of the persons composing our families. Which family member has which skills? How will we use those to handle different situations? If we have talked about things we have read in the news, then if we face a similar situation, we will be better equipped to react.

**Alex:** There may be people who are unwilling to talk about emergencies and these sorts of things. I am fortunate that does not apply to my family, but some people have family members who are unwilling to talk about these sorts of things, and who have little interest in these issues. I think it is important when introducing these topics to take a soft approach with people who are

less interested and less educated. You might say, "Did you hear about this scenario? What do you think about it? How would you respond to it?" First, people need to educate themselves and then learn and understand that there are good ways and bad ways to introduce these topics to other people.

**Doris:** Your spouse or your child may or may not be interested in going to spend a whole week with Massad Ayoob...

**Mike:** ...or they may not be able to afford to do it...

**Alex:** ...exactly, but there is a vast amount of educational resources available and we can take advantage of the many other educational resources besides weeklong courses that cost thousands of dollars.

**Mike:** Sure, it would be best if everyone could take a week and go for a defensive handgun class with instructors like Massad or Marty, but not everyone can do that. People can get started and get training with local instructors when they can, even if it is just for a day, or an afternoon.

**Alex:** Inside most families are people who think they know things they do not know. The more good training you have, the more you realize what you do not know. As we were preparing for this interview, we learned things we did not know and we talked through some things we had not talked through before. The more training you have, the more you learn what you do not know, and then the better able you are to communicate with your family.

**eJournal:** With summer coming, hopefully there will be plenty of opportunities for families to go take training together. I'll close with this hint: in the Midwest, you couldn't do much better than to commit some time to getting to know Mike, Doris, Alex and Ryan Ooley. Check out <https://www.o2gungroup.com>. If you're too far away, don't let that stop you. Check our Network affiliated instructor [listings](#) or ask around your community, find a respected training organization, and get your family training together.



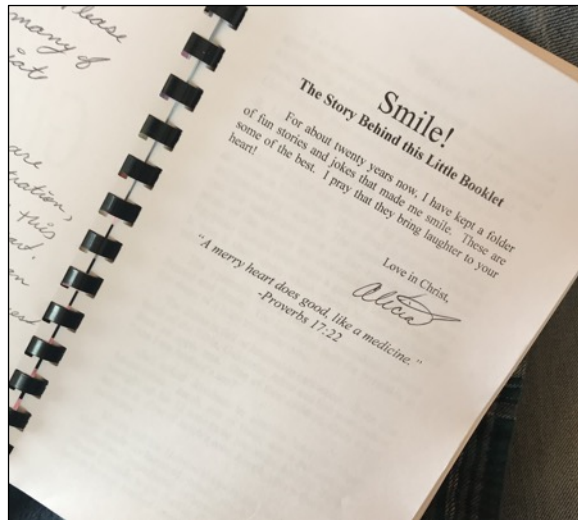
## President's Message

by Marty Hayes, J.D

I hope you all are doing well, and if not well, at least okay. Here at the Network we are getting by with all our staff working from home. If you need to contact Gila or me, best way is by e-mail, as the main phone

line is answered by William from his kitchen table. We hope to bring everyone back to the home office later in May and get things back to normal.

In the midst of all this doom and gloom, we here at the Network received a nice little pick-me-up (and before you get the wrong idea, I am not talking about day-drinking)! Yesterday a member sent us a little gift with her membership renewal, in the form of a joke book. (see photo).



Along with the book, came a note:

*"Dear Marty and Gila:  
Thank you for caring enough to create and continue the ACLDN. I am sure that, sometimes, it is a sacrifice on your part. Please know that there are many of us who greatly appreciate your generosity!"*

*On the days when you are bumping up against frustration, or just plain tired, perhaps this will bring a smile to your heart. And please know, that you can always text me a prayer request – with something specific or no details at all – and I will stop and pray for you. Thanks for being there.*

*Alicia"*

If that doesn't bring a warm feeling to your heart, I don't know what will. I know both Gila and I appreciate those kind words. Thank you, Alicia.

## News About the Fight with the WA Insurance Commissioner

There is no new news, we are just waiting for the slow state bureaucracy to ramp up for the legal battle. We are chomping at the bit to bring our legal "A" game to the state, and while we would prefer to have the case dismissed, we are also looking forward to establishing some valuable case law in this important and new area of the law.

There are basically two issues that need to be settled.

One is not our issue, but it is the matter that started this whole fight long before the insurance commissioner got around to looking at us and it remains unresolved. Is it against "public policy" to insure a lawfully armed citizen against the loss of money IF the armed citizen was found to be culpable in tort for battery, assault or wrongful death?

This is the issue which started the anti-gun politicians' movement to attack the NRA and their ill-fated Carry Guard insurance program, and it is an interesting question. *Should one be able to buy insurance to*

*protect him- or herself from committing a tort when ostensibly using force in self defense?* That is the first part of the question.

The second part of the question that should be asked is this: *If you were the person harmed, wouldn't it be nice to be able to collect from an insurance company to help make you whole if, in fact, the armed citizen did screw up?* Of course, there are no absolutes, and just because one is found not guilty of a crime doesn't mean a civil jury would not find against that person in a civil suit. Of the six organizations which have been investigated by the WA Insurance Commissioner, the Network is the only company that does not, and never has offered this type of insurance. I have written about this issue before at <https://armedcitizensnetwork.org/learn/support-plan-comparison>.

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The next question that should be addressed, asks, “What is wrong with having a membership in an organization that will provide a legal defense for you, if you are prosecuted or sued after an act of self defense?” This is what the Network does, and to some extent, although through other means, it is similar to what the other five banned organizations also offered. It is interesting to note, that unlike the other cases the OIC has investigated, when the Office of Insurance Commissioner issued their Cease and Desist Order against the Network, they did NOT state any claim that we were violating public policy by providing for the legal defense, while in all the other cases, the insurance commissioner did make that claim. Perhaps our legal argument to them at least made some difference on that issue. Maybe someday we will find out.

The WA Office of Insurance Commissioner’s primary claim against us is that we are selling an insurance product, which we have steadfastly denied from day one by contrasting the Network’s assistance to members against the law that defines insurance. That is why I really get bugged when people talk about us in the terms of “self-defense insurance” and “coverage.” If you want to get on my bad side, just use these terms when communicating with us!

It has basically become my full-time job to do legal research and legal analysis of all the characteristics of the Network that differ from the legal definition of insurance, case law that discusses what constitutes insurance, and the approach the WA OIC took in regulating our competitors, and then sharing that work product with our current law firm. This brings me to the next item, the expense of fighting the insurance commissioner, because in Washington State Law, there is no statutory right for us to recoup these legal fees when **assaulted** by the Insurance Commissioner (I used this term because it is exactly how I feel).

Knowing that this fight is expensive, many Network members from Washington State and even some from outside Washington, have asked us if they can donate money to this fight. I am humbled by these donors and their willingness to join in our fight. It emphasizes that many, many members believe that they are truly part of this organization, and not just a customer.

With this in mind, and because of these requests from members, we set up a link on our website to accept donations at <https://armedcitizensnetwork.org/join/fight->

[against-wa-insurance-commissioner](#). Please understand that I am not asking for financial help. We have set aside money for this fight. We put up the donation link because so many people expressed how much they wanted to help. That expression of solidarity coupled with the very material assistance through the donations is so much appreciated – you cannot know how much it encourages us.

We’ve also appreciated another type of expression of solidarity: hundreds of Network members have written to WA Insurance Commissioner Mike Kreidler to ask him why he is attacking the Network. From what people are telling me, this is the commissioner’s canned response:

*“Dear Mr. (name omitted),  
Thank you for contacting the Washington State Office of the Insurance Commissioner. My understanding is that in exchange for a membership fee, Armed Citizen indemnifies their members against attorney fees, bail bonds, and additional legal expenses when a member uses force in self defense. The Insurance Commissioner found that this membership does constitute insurance. As Armed Citizen is not authorized to sell insurance, they have been asked to stop selling in Washington state.*

*If you wish to purchase an insurance policy specific to firearms, you might consider contacting an independent insurance broker to see if they are able to help you locate coverage.”*

If you are one of the hundreds of members who received this message, you should be angry about the insurance commissioner’s intellectual dishonesty.

In the canned response, the insurance commissioner advises those asking him to reconsider his charges against the Network to ask an independent insurance broker to sell them insurance if they want firearm insurance. I am at a loss to know how they are supposed to do that. I know of no insurance product sold in WA that does what we do, so when the Washington Insurance Commissioner makes the suggestion that if you want to purchase an insurance policy specific to firearms to contact an independent insurance broker, he’s suggesting you do the impossible. Of course, this tips his hand, as he discusses insurance specific to firearms.

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Sure, you can buy a policy specific to firearms, but that is insurance against the theft of the firearm, not to help out after use of any type of force in self defense. It is sad that this elected official cannot simply answer your questions honestly and thoroughly. Enough said about this.

Writing this today reminds me I still have some legal work to do in support of our case. I had better get to it. Please accept my sincere thanks for all of the support and encouragement you have given us, whether it was simply writing us a note, writing to the insurance commissioner or donating money to fight the fight.

## **A Final Announcement**

I just remembered that there is one last thing to discuss this month...I will be working with Massad Ayoob in teaching two *Use of Deadly Force Instructor* courses this

year. This course is excellent for the advanced student, firearms instructor, expert witness or attorney. There are discounts for Network members, too! The first course is July 6 thru 10, in Phoenix. Here is the link:

<https://activeselfprotection.com/shop/use-of-deadly-force-instructor-with-massad-ayoob-and-mag-in-phoenix-az-july-6-10-2020/>.

The second one is late in the year, held at the home of the Network and Firearms Academy of Seattle. See <https://firearmsacademy.com/guest-instructors/deadly-force-instructor-washington> for details.

It looks like both these classes will have sufficient enrollment to be held, so if you have been registered for one of the last couple of years' classes that did not happen, now is your chance.



## Attorney Question of the Month

This month's topic is drawn from a question we are currently being asked by Network members who are concerned, as are so many, with exposure to the coronavirus, we greatly appreciated our affiliated attorneys' comments on the following:

**With the threat of contracting the COVID-19 virus on everybody's minds, members are asking what is the appropriate response to someone threatening them with exposure to COVID-19? May an armed citizen legally use deadly force to stop such a threat?**

The responses were so numerous that we will share the first half of the responses this month and then wrap up the second half of these commentaries in the June edition of this online journal.

### Thomas C. Watts III

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In a word, NO. There are three elements to consider (California):

1. Reasonable belief in IMMINENT death or great bodily harm to self or another
2. Reasonable belief that the immediate use of deadly force was necessary to defend against that danger; and
3. No more force was used than was necessary to counter the danger.

The rule in California is the future harm is not sufficient, no matter how great or how likely the harm is believed to be.

### James B. Fleming

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I would not recommend it. It is simply begging for an expensive defense to an almost inevitable prosecution, and later civil suit. Factors to be endlessly litigated would be—

- A very low mortality rate,
- The physical and medical condition of the shooter,

- The efficacies of the means of exposure
- Ability to retreat (which is gonna come up, even in stand your ground jurisdictions, this is a unique situation not contemplated by that legislation),
- Would this constitute a reasonable perception of imminent death or great bodily harm,
- Would deadly force be deemed to be an objectively reasonable response by a jury,
- And the unanswered question of whether exposure to the virus would be considered assaultive behavior in the jurisdiction in which the shooting takes place.

Being the test case for this is a really, really bad idea.

### Emanuel Kapelsohn, Esq.

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Without giving legal advice, but merely to provide information for the reader's consideration, here in Pennsylvania it's a felony in the 3rd degree if an incarcerated prisoner assaults someone by using bodily fluids infected with a communicable disease, carrying a penalty equal to that of second degree murder, including the possibility of life without parole. With regard to non-prisoners, that is, people on the "outside," in the 1990s there were several convictions for aggravated assault, which is causing or attempting "to cause serious bodily injury ... under circumstances manifesting extreme indifference to the value of human life," by biting or throwing human feces by a defendant who knew he had HIV. I know of no cases yet involving a defendant who knew himself/herself to be COVID-19 positive, but the analogy is obvious.

That being said, any individual faced with an "attacker" who may or may not be COVID-19 positive, or who may or may not actually be suffering visible symptoms – which may, to the layman, be indistinguishable from symptoms of the common cold or flu – needs to use a lot of common sense in evaluating the situation, and in attempting or considering avoidance or de-escalation before resorting to deadly force. It's like the difference between shooting someone in a dark parking lot who is approaching you with an unlabeled jar of liquid held

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menacingly in his hand when there has been a recent rash of attacks in your town where acid has been thrown in people's faces, compared to shooting someone in a restaurant who is approaching you with a glass of liquid in his hand. In either case, you'll need to convince the police, the prosecutor, and/or the jury that, under the totality of the circumstances, it was reasonable for you to fear the liquid in the container was acid, not a harmless beverage. In the restaurant example, you'll likely have a very, very hard time convincing anyone your fear was reasonable, especially if it turns out that the liquid in the glass was Diet Coke. And while a six foot "social distance" may be a good precaution for everyone to follow if possible, you'd better not think you can go around shooting, or even pointing your gun at, anyone who approaches you closer than that!

Finally, I'm discussing Pennsylvania law. Laws of this sort vary from state to state, and can also change in any state, including Pennsylvania, with the next court decision, or by a stroke of the legislature's pen.

**Derek M. Smith**

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Like any use of force, the short answer is "It depends."

Self defense is always dependent on what exactly is being threatened, who is doing the threatening, who is being threatened, and whether another person would view the situation as possibly life threatening if they knew what the shooter knew (or in some states what a reasonable person in the shoes of the shooter knew) about the situation.

First, it should be crystal clear that if someone uses COVID-19 as a justification for self defense, no matter how justified that turns out to be when all is said and done, they should expect to be arrested and incarcerated for a time while this is going to be sorted out since there is no way that, even in the most self-defense friendly jurisdictions, this is going to be something that can be verified by the first responding officers/detectives. This is not like some other self-defense scenarios where if the shooting is clear cut, the officers often will not arrest the shooter at the scene, especially if it's at home. So, the shooter should expect to be incarcerated—almost certainly in jail where, if the

shooter justifiably feared COVID-19, some of the inmates are probably carriers or infected with COVID-19. So, just be prepared accordingly.

This is absolutely one situation where I would recommend anyone in the situation where they fear for their/loved ones lives because of COVID-19, they should just STAY HOME. If you (shooter) are okay with going outside, the threshold you have to meet to justify the use of force is fear of death/serious bodily injury, then you should know well that ANY use of force is going to be judged skeptically, no matter how justified in the end it turned out to be.

**Timothy A. Forshey**

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In this swirling ocean of uncertainty in which we now find ourselves, I feel that it is important that we remember that rules still apply – or at least they are supposed to! At the end of the day, a person's use or threatened use of lethal force will be determined as reasonable or unreasonable by our system – inevitably a jury.

In order for that threat/use of lethal force to be deemed lawful, it must have been in response to an imminent threat to human life. In light of the medical facts that exposure to COVID-19 does not guarantee infection, and that infection does not guarantee illness, and that illness does not guarantee death (in fact, the numbers seem to indicate a very small percentage of fatal infections) I would prognosticate that the threat of or use of lethal force in response to such a threat would most likely be viewed as unreasonable, and therefore illegal.

I would liken the situation to someone swerving their car towards me in fast-moving traffic. Scary? For sure. Potentially dangerous? Certainly. An imminent threat to my life? Unlikely.

It is always wise to remember that, unless you're a sociopath, you never want to shoot anyone. We all know that we may have no choice but to stop someone if we are in imminent fear for a human life, but I do not think this situation qualifies.

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I hope all of our members and their loved ones are safe, passing up on the opportunity to make out with strangers and washing their hands diligently!

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In Maine, the statutory analysis suggests that, unless you are in a very rarified category of “at risk” person, you probably cannot use deadly force to prevent coronavirus exposure.

First, the statutory definition:  
<https://legislature.maine.gov/statutes/17-A/title17-Asec2.html>

5. “Bodily injury” means physical pain, physical illness or any impairment of physical condition.

23. “Serious bodily injury” means a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health.

8. “Deadly force” means physical force that a person uses with the intent of causing, or that a person knows to create a substantial risk of causing, death or serious bodily injury.

Spitting is definitely “physical force,” as is wiping fluids. Breathing probably is. The issues are: “Substantial risk of death,” “substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for recovery of physical health,” and “a person knows to create a substantial risk of causing.”

Our Supreme Judicial Court has found it a jury question whether a “broken nose is “serious bodily injury” in State v. Carmichael, 405 A. 2d 732. Given the statistics regarding the percentage of coronavirus carriers who

are completely asymptomatic, it is in fact difficult to say that coronavirus infection has even a high possibility of causing death or serious bodily injury in the average human.

However, the analysis doesn’t end there. A person is usually justified in shooting an attacker wielding an unloaded, inoperative or realistic look-alike toy firearm. The issue is the “reasonable belief” of the shooter. Given the [press from the CDC](#) and other outlets, it took me a couple of minutes to come up with this quote: “But I would say again that what we know is that this disease can be deadly.”

In Kenya, they are shooting some people for breaking quarantine. Here, they are arresting churchgoers. The headlines shriek about the horrors of coronavirus, and the mounting toll of the dead. Is a belief that the disease is deadly “unreasonable?” Clearly, not if you are elderly or immune compromised. However, if you are one of the lucky “recovered” people (and KNOW it), you are one of those who cannot reasonably fear the coronavirus.

A word about the often ignored piece of this—“reasonably believes it necessary.” If you can roll up a window, drive away or shut a door and frustrate the attack, you fail the second prong. However, this is one “attack” where a much smaller person can make good on his threat, despite taking a savage beating because of size disparity.

Conclusion: In many “model penal code” states, immune compromised and elderly persons likely will be justified, absent a means of safe avoidance of being spit on or sprayed with saliva. “Recovered” people should consider it NOT a threat of deadly force, because they’re safe and they know it. For the rest of us—it depends on what we think we can prove to a jury we “reasonably believed” about the attack.

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*A big “Thank You!” to our affiliated attorneys for their interesting contributions to this timely discussion. Please return next month when we share the second half of our affiliated attorneys’ commentaries on this topic.*

## Book Review

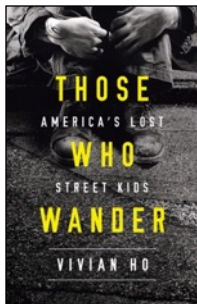
### Those Who Wander: America's Lost Street Kids

By Vivian Ho

Hardcover: 220 pages \$11.99

Publisher: Little A (September 1, 2019)

ISBN-13: 978-1503903739



place? How do we stop them from experiencing the sort of hurt that drives them into the streets, where they will only experience more hurt, and, in turn, hurt others?"

Street kids, she asserts, are humans who deserve compassion, not the systematic blind eye most practice. Ho does not acknowledge the genuine fear many feel when confronted with a stranger frenzied by drug intoxication or mental illness or when held up for money or valuables by an admittedly desperate youth.

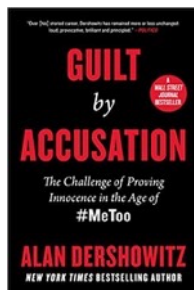
### Guilt by Accusation: The Challenge of Proving Innocence in the Age of #MeToo

By Alan Dershowitz

Hardcover: 168 pages \$19.65

Publisher: Hot Books (November 19, 2019)

ISBN-13: 978-1510757530



While Ho sought causes in *Those Who Wander*, I read it seeking information that might help ordinary working men and women recognize when they're being targeted for violent crimes, when mental instability or drug use makes murder seem like a logical solution to needing a car or other resources, to the youths her compassion embraces.

Reviewed by Gila Hayes

Staying home during the coronavirus problems should have made April a great month for reading, but for me, it was a month full of nearly double hours at work owing to a gubernatorial Stay Home order restricting my staff to their residences. Instead of tackling a new book, I took the opportunity to finish a couple of books I'd started months ago, and while I doubt these works are essential to Network members' educational pursuits, each included different viewpoints that may create interest in subjects on which most already have strong opinions.

To Ho's credit, she does not excuse the crimes of youthful murderers she interviewed and studied. Of one, she writes, "He knew what he was doing, and that is without question, because he had done it time and time before. He spoke of his misdeeds with an air of pride, laughing about crimes and acts of violence as if they were silly party anecdotes. He had trouble piecing together bits of his childhood and remembering the years and months that events took place, but when it came to his exploits, he could recount every detail down to the number of teeth he broke when he punched a man in the face..."

I'll first touch briefly on a book about street kids, because while interesting, and presented from an experiential viewpoint, the social vision endorsed is so radically different than my own that it is hard for me to embrace the definition of the problem and suggested solutions. In *Those Who Wander: America's Lost Street Kids*, Vivian Ho, an award winning journalist becomes deeply involved as she covers the issue of homeless youth.

The journalist acknowledges that she interviewed street kids who had killed with a subconscious wish to hear them express remorse, but that wish went unfulfilled. Instead, one youth explains that he has "been abused by humans my whole life" and as he spoke of killing as if someone else did it, he expressed no empathy for the dead or those mourning them. Indeed, Ho concluded, "remorse, the ability to feel guilt, to take responsibility for your misdeeds" is seen by this population as suicide, a death wish, an impediment in the fight for survival. *Those Who Wander's* conclusions, hiding beneath a veneer of social concern, are chilling.

Ho concedes that "in the months I spent traveling around the country, talking to street kids, former street kids, housing advocates, trauma experts, social workers, and juvenile psychologists, I couldn't come up with one singular clear-cut solution for helping this population and ending youth homelessness.

The other book I finally finished reading this month is a biography about being falsely accused. In *Guilt by Accusation: The Challenge of Proving Innocence in the Age of #MeToo*, prominent law professor and attorney Alan Dershowitz tells how he defended himself against

"Those who work with these kids will tell you it's simple—homeless people need housing. But I'd ask, How do we keep kids from homelessness in the first

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media accusations and federal lawsuit alleging that he sexually abused an underage woman who was trafficked by Jeffrey Epstein.

Epstein's sordid fall entailed more than enough nastiness to slosh over on to all his acquaintances, including the subject of this book, his attorney Alan Dershowitz who was among a list of prominent men Virginia Roberts Guiffre accused of rape and abuse. The claims about Dershowitz were publicized late in 2014, when he was accused of "having sex on seven occasions with an underage female." A federal judge "struck the accusation from the record as irrelevant and impertinent," but the media campaign raged on eagerly fueled by the complainant and her attorneys who envisioned collecting large sums of money from anyone even remotely associated with Epstein.

The details are not the reason I read *Guilt by Association*; I read it, eventually finishing even the end notes, because I was drawn in by Dershowitz's willingness to embrace very non-traditional defense strategies because he knew without a shadow of a doubt that he was defending an innocent person.

"When I take a criminal case, I begin with a presumption of guilt: I assume my client probably did it, though I hope I'm wrong—and sometimes I am." Dershowitz relates. When defending himself, he adds, "I did everything I would never allow any of my own clients to do—because most of my clients have had something to hide."

If there was video of the client being on a different continent to irreproachably prove that they could not do the crime of which they are accused, Dershowitz continues, then "I might well waive his rights and encourage the police to question and search him. I might encourage him to go on TV, assert his innocence, tell his story...After all, if the client is innocent, what does he have to hide? Why have the client look guilty by refusing to answer questions? Well, I was that client. Having nothing to hide, I did what I would never allow a client, of whose innocence I was not absolutely certain, to do. I went on TV, asserted my innocence, provided my evidence, waived the criminal statute of limitations and answered all questions." In a later chapter he discusses his meeting with Federal prosecutors and investigators and his demand that law enforcement investigate him.

Dershowitz details how rules governing defamation allow lawyers to introduce false accusations in court documents. These are viewed by media consumers as more credible because "it has the imprimatur of the courts." He discusses pros and cons of various responses: disputing the information immediately in the media, to respond via court proceedings, or ignoring the lies in hopes that the accusations go away. He opines, "The third option is to ignore or 'no comment' the accusation and hope it goes away. An entirely innocent, falsely accused victim should not be satisfied with the story going away. He should categorically deny and disprove the false accusation."

Dershowitz compares the accusations against him as "Kafkaesque" commenting that Kafka wrote fiction, but "What I have described is real. It is happening to me right now. And if it can happen to me, it can happen to anyone." He later adds, "Imagine the same thing happening to a person who did not have the resources to fight back."

Although the issues in *Guilt by Accusation* were lies put forward to extort money, I could not help but think of the self-defense court case of the decade, when the State of Florida and the Martin family attacked George Zimmerman's right to defend himself against Trayvon Martin's "ground and pound" assault. Martin's parents settled with the Resort at Twin Lakes homeowners' association insurance company for an undisclosed payment.

Dershowitz's views and manner are polarizing and he admits in his book's early pages that people dislike his politics and his outspoken opinions. Guiffre's lawsuit, he opines, had three purposes against him as a high-profile but unpopular public figure: "First, to defame me and lie about me in the pleadings, on the assumption that these pleadings are protected from defamation lawsuits; second, to punish me economically by requiring me to spend money on legal fees and heightened insurance premiums and to take time from the other work I am doing; third, to try to get me to settle, in the way that Epstein settled his cases, giving the plaintiffs and their lawyers a windfall."

The parallels between Dershowitz' legal problems and prosecutions against one legitimately using force in self defense are hard to miss—gun owners are not popular in America today; the legal system is a very powerful force

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that convinces many defendants to plead guilty; unpopular people are punished by loss of income and damaged reputations and the media and courts are the tool through which it is accomplished. While much of Dershowitz's book focuses on holding reporters and media responsible for spreading known false accusations, I had to wonder if he saw that his ordeal has long been mirrored in the aftermath of armed self defense.

Dershowitz predicts, "If this state of evidence is allowed to become the new basis for determining guilt, then we will surely have moved to an age of guilt by accusation, rather than by proof. The important lesson for all Americans is that if this can happen to me—if I can be falsely accused and have my reputation tarnished by a frame-up plot with no evidentiary support—it could happen to anyone: to you, to your son, to your father, and even to your daughter. I have the resources and the determination to fight back and to clear my name,

though it has cost me a small fortune." His call for change notes, "This is everyone's battle, not just mine. It is a battle for justice for all. It is a struggle against those who bear false witness."

Because it is self-reported, it is difficult to assess the veracity of all of *Guilt by Association's* assertions. Dershowitz's responses to the false charges are so very similar to wishes expressed by defendants who, surprised to be charged with assault, manslaughter or murder after self defense, beg their legal teams to throw out the traditional legal playbook and risk all the things an innocent person wants to do to explain why they did what they believed necessary to avoid being killed or crippled. Held up against that comparison, Dershowitz's book, *Guilt by Association*, is a fascinating view into the American legal system and the art of defending the innocent against false accusations and malicious prosecution.





## Editor's Notebook

### The Wrong Question

by Gila Hayes

Think about how we phrase questions. Often, questions contain the seed (and sometimes the entire root and branch) of the answer

desired or are couched in terms so far from reasonable as to elicit little more than, "No!" as an answer. I'd suggest that it is a lot more productive to pose questions that leave the respondent open to explore his or her knowledge and apply it to the subject under discussion.

Recently, questions on internet discussions about shooting to avoid intentional exposure to coronavirus, a handful of which percolated into Network members' queries, missed the point of self defense entirely. Following reports from Missouri, North Dakota and New Jersey of arrests for intentionally coughing on another person to frighten them about contracting the disease, a variation on the question soon began circulating amongst armed citizens that asked: "Can I shoot to avoid being coughed on or spat upon by someone claiming to be infected with the corona virus?"

My hackles go up anytime a question starts with, "Can I shoot someone if..." As instructors far wiser than I have stressed for decades, if you're exploring when use of deadly force is appropriate, the right question is, "What can I do to avoid having to shoot him or her?"

In today's fear-ridden atmosphere, with the media relentlessly focused on COVID-19, folks are genuinely seeking ways to avoid exposure. Armed citizens are being side-tracked into exploring whether they can use deadly force against the possibility of malicious infection. Unfortunately, considering deadly force as an option interrupted idea sharing for better ways to react while in a public space with a malicious person intent on frightening those around him or her. More productive questions might instead have asked, "What are good, situationally-applicable safeguards and intermediate force options I should keep at hand to prevent someone from intentionally exposing me to the virus?"

If the question starts with, "Can I do it, can I, can I, please?" it ignores the vital skill of avoidance, it blocks our receptiveness to the many, many good options that

exist before shooting becomes justifiable and it obscures the fact that we only shoot if that's the one remaining option to avoid an innocent person's immediate death or crippling injury. When the idea of shooting to stop a threat is the first and foremost option under consideration, we forget the famous and surprisingly effective tactic: "Run away! Run away!" or if your risk profile is so extreme, do not go there at all!

The problem in even considering deadly force as your primary defense against intentional sneezing, coughing or spitting, as this month's attorney commentaries ably explained, is that threat of infection does not rise to an immediate, unavoidable danger of death or grave physical injury, so deadly force isn't a reasonable option. Ask any law enforcement professional about spitters and worse, and you'll be told nasty stories you wish you'd never heard, but you'll also learn that intentionally exposing others to infected bodily fluids is not a new problem; you'll also rather quickly learn that shooting has never been an accepted solution.

There are quite a few better responses. If you're going into populated areas where encountering spitters, intentional sneezers or malicious coughers is a possibility, before leaving home, cover your nose and mouth and pull on a brimmed cap and glasses, don disposable gloves, and wear garments that can go directly into the washing machine on the sanitize cycle if you are coughed on or spat upon.

Instead of thinking first about responding with deadly force if specifically threatened with exposure, make distance (yes, you may have to sacrifice your place in a long queue), get behind an obstacle and order the person to stay back. If you're not sure of someone's intentions or you're worried about being crowded by someone with a bad cough, how about an order masquerading as a polite request along the lines of, "Could you step back, please? I need a little more space here. I'm sure you understand." In wide-open spaces, if verbal commands fail, be prepared to lay down a fog of pepper spray while you sidestep and get away. That just scratches the surface of options, but really, folks, this is the kind of problem solving called for by the situation.

Personal safety, even during a pandemic, depends upon a thousand precautions and safety measures, and in those myriad measures, there is only a very small, miniscule, albeit vital role for your firearms in securing your safety.

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## About the Network's Online Journal

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

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