



Lessons in Civil Liability

An Interview with Emanuel Kapelsohn



Interview by Gila Hayes

When armed citizens worry about the legal aftermath of self defense, the fears expressed about defending against a civil lawsuit run as deep as concerns about fighting criminal charges. For many Network members the processes of civil litigation are bewildering, so the possibility of being acquitted in criminal court only to be sued civilly looms large in members' worries.

Recently, we had the opportunity to ask Network Advisory Board member Emanuel Kapelsohn, whose experience as an attorney spans 35+ years, to educate us about being sued for damages after use of force in self defense. How does civil procedure differ from criminal defense? What are the timelines? Can a normal citizen, perhaps a retired guy of limited means, survive being sued by the family of a violent assailant? We switch now to a question and answer format to preserve the clarity of Kapelsohn's explanations.

eJournal: In your experience what's the likelihood of a justifiable use of force incident resulting in a civil lawsuit?

Kapelsohn: The likelihood of a civil suit against an individual for use of force depends not only on what occurred, but also on what that individual has in the way of assets. The more you have in the way of assets, the more likely it is that someone will come after you civilly.

If we're talking about someone we lawyers would call "judgment proof," meaning they can't pay a financial judgment because they are just a regular working guy or gal and they get a paycheck and most of it goes to pay the rent or their car payments and their groceries and their utilities and they don't have a huge amount of money in the bank, and let's say they also don't have insurance that would cover the situation, then it is relatively unlikely that they would be sued civilly because there is no pot of gold at the end of the rainbow.

Or if the lawyer takes a look and they find out that a guy who hit you in your car is an uninsured motorist and driving without a license and driving an unregistered vehicle because it's falling apart and probably wouldn't pass inspection, the lawyer is going to say, "Sorry, there are lots of others who may be interested in your case, but I'm not. I could get a judgment for a million dollars in your favor, but judgments are not self-executing." That means that if you get a judgment for a million dollars, it doesn't somehow wind up in currency in a package on your doorstep the next day. You have to go after someone and try to collect that money. That may mean you have to locate their assets and chase after them, which is phase two.

When you have a car accident or a slip and fall or a medical malpractice, one of the first things done by a good civil attorney, who is typically going to take that kind of case on a contingent fee basis, is an assets search to find out if the defendant lives in a nice home that he owns free and clear, has a high-paying job, he and his wife each have late-model cars and a boat and a vacation place on the lake and likely have homeowners insurance that may or may not cover it or an umbrella policy that may or may not cover it.

People should understand that in general, their homeowners' insurance policies cover them for negligence and not for intentional wrongful acts. If you are handling your gun and you accidentally discharge it and hit someone, your homeowners insurance may cover that.

If you intentionally shoot an intruder in your home or intentionally shoot someone in the mall parking lot, likely your homeowners insurance doesn't cover that. As a

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general principle of law and as a matter of public policy, you cannot obtain insurance for a criminal act you commit. You can't take out insurance so that when you murder your spouse, the insurance will cover your legal fees. You can't do that.

The various legal providers who offer money to help defend you in criminal prosecutions today work either under one system or another: either they say, we will cover a certain portion of your legal fees, but only if you're found to be not guilty of this crime, and then we will reimburse you. So you need to have the money in the first place for a very expensive process that may go on for two or three years. Other providers set that money up in a trust or have some other set up so they can legally maintain that it is not insurance, it is some different kind of payment, so they may succeed that way.

This is why Armed Citizens' Legal Defense Network is so important. It is a vehicle that first of all, provides you with lots of good education and lots of good advice in newsletters and training videos and so forth, to help you to avoid those pitfalls in the first place. That's the best strategy! Then, if all the best efforts of the organization and your own best efforts and good judgment and common sense and good training have failed to keep you out of that pitfall, this is an organization that starts by paying your retainer for a lawyer, perhaps helps you find a good lawyer, and then as the case goes forward, may pay more depending on the nature of the case.

eJournal: How does a justifiable self-defense incident devolve from defending yourself against criminal charges and then, to address our concern today, into a civil lawsuit for damages?

Kapelsohn: I just finished working on a case for a legally-armed gun owner who didn't shoot anybody, but he drew his gun and pointed it at somebody who was acting bizarrely and in a threatening manner. He accused my client of stalking him, although my client didn't know him from a hole in the wall. This guy was yelling things like, "Why are you stalking me, why are you following me?"

My client was sitting in his parked vehicle with his elderly mother, waiting to meet someone. He called back, "I don't know who you are, I don't know who you think I am, but I am not following you." The next thing, this guy yells, "[vulgarity] I am going to kill you," and started toward my client. Before this, he had been handling some dark

object that could have been a handgun and pointing it in different directions from behind cover of a gas pump, and then put this object into his right front pants pocket. It turns out, that is exactly where my client carried his own legally licensed handgun, so my client was very aware that you could have a gun in that spot.

When this guy said, "I am going to kill you," and started toward him, at that point my client finally stepped out of his vehicle. He could not get his elderly and very infirm mother to safety so he stepped out, drew his gun and pointed at the guy and said, "Get back! Get away from me." My client also happened to be a retired police officer with a concealed carry permit, so he clearly had no criminal record. He is a law abiding, upstanding person. The person he pointed the gun at turned out to have a lengthy criminal record.

My client called 9-1-1 when the person finally went away, but so did this other individual. I'm quite sure that the other individual called 9-1-1 hoping to go on record as being the "victim," so he wouldn't get in trouble, because he has a lengthy criminal record and doesn't want to go back to jail again.

Well, the police got there and for one reason or another, did what I would call "arresting the wrong person." They arrested my client. We went through a lengthy criminal process, which is an outrage, because it cost my client a small fortune (he was not an Armed Citizens' Network member, although he found me through the Network). One of the great fears he has is that even though the criminal phase is finally over, this person could sue him civilly.

My client was charged for pointing a gun at someone. He was charged with about six different things, including aggravated assault (we didn't think it legally constituted an aggravated assault—which is a felony), simple assault (pointing the gun at the person), terroristic threats (the supposed victim claims that our retired police officer said, "I'll blow your head off"), and reckless endangerment (pointing a gun toward innocent people).

Basically our client was charged with five or six different crimes. Some of them could constitute civil wrongs as well as criminal offenses. Our client was very concerned that depending on how things went in his criminal case, he could wind up convicted of a felony, sentenced to a

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prison term, and could in addition be sued civilly by the man who threatened him and his mother.

eJournal: I always thought of reckless endangerment as being a criminal charge. Can it evolve into a claim for damages in civil court?

Kapelsohn: It might be phrased differently, "He put me in fear of being harmed" or, "He put me in fear that my wife and children who were standing next to me might be harmed."

eJournal: And you can ask for monetary damages for that?

Kapelsohn: Absolutely.

eJournal: And what, exactly, would be the complaint?

Kapelsohn: He would charge something like assault, putting him in fear of his physical safety.

eJournal: I thought an assault charge would be tried in criminal court. What words do lawyers use to describe the parallel complaint in a civil law case for damages? Can a plaintiff enter a charge of assault?

Kapelsohn: Yes, there are a number of common law offenses, dating back to Old England. One common law offense—used in many states—is the crime of battery; another is assault. In some states, those terms are confused or combined in criminal law. In my state, which is PA, battery is actually striking someone; assault is putting someone in fear of being struck. You could point a gun at someone and not shoot them. You have not battered them, but you've assaulted them.

This is a matter of state law so there are 50 variations of this throughout the country, plus the District of Columbia, Puerto Rico, Guam, etc. In many states, there are civil offenses that mirror most of these common law crimes, so you can civilly sue someone for battery.

Let's imagine a hypothetical famous sports figure, someone who's getting a multi-million dollar salary and everyone knows it. Now that person assaults you and batters you in a restaurant; takes offense at something and starts beating you up. Well, that's a crime, but it is also a civil wrong, called a tort. A tort is the general category of civil wrongs that includes things like battery, assault, negligence. That hypothetical football player

may be prosecuted for that crime, but that prosecution doesn't necessarily pay for all of the damages you've suffered, for your pain and suffering. In criminal court they may require him to pay restitution to you for your medical expenses, but that may not cover everything to which you think you are entitled.

So, going back to your first question, knowing that this person has a "deep pocket," that there is potentially a big pot of gold at the end of the rainbow, the person who has been beat up by this football player may very well sue them civilly for assault and battery.

eJournal: Using this example, can you explain the timeline? Do the criminal charges have to be first adjudicated, then a civil suit can be brought?

Kapelsohn: Usually it happens that way, but not always. Somebody might file a civil suit against that football player the next morning. Sometimes you see that in the newspaper, that something has just happened yesterday and the supposed victim's attorney has already filed suit. That can actually beat the criminal charge to the courthouse!

eJournal: But if that's allowed, don't we have concerns about details made public in one trial polluting the other?

Kapelsohn: Rarely do a criminal and a civil case go on simultaneously. In a criminal case, as you know, a defendant does not have to testify and has a Fifth Amendment right to remain silent and make the government prove its case against them. If you had a civil case going on at the same time, the civil attorney for the plaintiff might try to take the defendant's deposition, or submit written interrogatories to the defendant, demanding to have answers to certain questions, and they may be things that the defendant does not want to talk about, certainly not in advance of the criminal trial.

So sometimes you can get a court to agree to delay the civil case discovery until after the criminal case is resolved. Once the criminal case is completely over and resolved beyond any possibility of prosecuting the defendant any further, if there is a civil case going on, you may have to answer the questions, have to give the deposition, have to take the witness stand if you are called to by the plaintiff. If you are not going to testify, it is going to be held against you. A jury is going to hear

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that you are not willing to say anything about what happened.

Many times, you are the only one who was there who can say what happened in your own defense. You are the one that knows that this person came toward you in a dark parking lot with a knife in his hand. If you are not going to say it, and the other person is there saying, "This crazy person drew a gun and shoved it in my face," you have got to counter that somehow.

There can be a whipsawing effect between the schedule of the criminal proceeding and the schedule of the civil one, although usually criminal proceedings happen pretty quickly, due to the defendant's right to a speedy trial.

eJournal: What's the normal course of action when someone goes to an attorney and says, "I've been wronged and I want restitution." If he takes the case, what does that attorney do?

Kapelsohn: The attorney typically writes a complaint and files that complaint with the clerk of court. It is then served on the defendant, in some places by the sheriff's office and in some places by private process servers. That is how you know a lawsuit has been filed against you. The complaint will outline what it is alleged that you did and how the plaintiff alleges he's been harmed by what you did, and the plaintiff will demand money damages and sometimes other things, as well.

eJournal: Does any official have oversight to step in and say, "Plaintiff, that is just plain silly?"

Kapelsohn: No. The legal system, in a sense, has a safety measure for that, but it only works in some very extreme cases. Sometimes the defense lawyer can say that this complaint is legally insufficient on its face, and can move to dismiss the complaint. Usually it is then dismissed, as it is said, "without prejudice," meaning without prejudice for the plaintiff to re-file it against you, to clean up the errors and then file it again.

Sometimes there is a complaint and the defendant's attorney can make a motion for what is called summary judgment. Summary means it is going to happen without a trial needing to take place. The attorney tells the court that what happened is not in dispute. This is a case where both sides agree about what happened. There are no facts in dispute. You see, facts are what juries

determine. Juries determine facts; judges determine the law.

If we have a case where both sides agree on the facts that occurred—agree on what happened and there are no facts left to be determined—then it may be a matter for summary judgment. The court can make a decision on it purely by applying law to the facts that we both agree occurred. That may shortcut things, by eliminating the need for a trial.

Generally cases go further, because lawyers are usually smart enough to engineer their complaints in such a way that we don't have complete agreement and can avoid things like summary judgment or motions to dismiss. The timelines are very variable, depending on the court, the state or the part of the state geographically. It may be that the civil courts in Philadelphia are very jammed up and there are not enough judges and not enough courtrooms to handle all the civil suits there, so if we file a civil case in Philadelphia, it may take two years to come to trial, or sometimes more than that. On the other hand, it may be that we have the same situation, but it happened in rural PA, not in one of the big cities, and that case may come to trial in one year, not two years.

You need to understand: I am working in civil suits now that have been going on for eleven and thirteen years. That's not the normal case against a private individual, usually there are companies involved in cases like that – gun companies, holster makers, police departments – but some of those cases go on and on and on. The legal fees become astronomical.

eJournal: Is there a time limit within which some agreement must be reached before the litigation is dismissed?

Kapelsohn: No, the statute of limitations says you must file the lawsuit within a certain amount of time. For instance, if this is a negligence case, in most states you will have two years to file it. If it is an intentional tort, like the assault we talked about, or battery, most states say you have one year from the event to file your lawsuit. Once you get on the docket (that is, the court's list of cases), unless the court requires it to go faster, in many states, it can go on virtually forever. It depends. A judge may say, I want this case to be wrapped up; this is the schedule of events, so a court may push it along.

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In my own state, which is PA, you can have a civil suit that is in existence for years until one or the other party files a notice of readiness, meaning, "Hey, court, we are ready to go to trial now." The court in some of our counties does not oversee your discovery and your developments in the meantime. If nothing at all has happened in the case in a certain period of time, let's say it has been a year since anything has been filed with the court, the court may send a notice to both sides that it intends to dismiss your case unless there is some activity in it, unless you can explain why it should not be dismissed. Sometimes a court will speed things along like that, and in other states and other courts, the case can go on for years.

eJournal: If you're the defendant's attorney, what facts are you looking for and hoping for to put a civil matter to rest sooner than that?

Kapeloohn: Of course, it depends on what the case is, but in a use of force, I'm going to look for some justification for what you did. Imagine a gun-related case. It is going to be either a claim that I used force against you—either fired or pointed my gun at you, or unjustifiably threatened you in some way. My defense to that will be, it was justifiable self defense, whether I actually fired or not. Maybe I justifiably pointed a gun in self defense.

The other kind of case may be a negligence sort of case where I have accidentally discharged my gun; maybe the bullet ricocheted off the floor of the store and hit an innocent person, that kind of thing.

eJournal: Or to imagine something slightly different, you may have been acting in justifiable self defense, fired, and the bullet over penetrated and hit an innocent bystander. Now what?

Kapeloohn: That could be. Some of the things we call horror stories, are unfortunately sometimes real. It could be we are involved in an armed robbery in progress, we draw our gun, and we don't shoot, but the armed robber shoots. One of his bullets hits the lady in aisle three who is picking up breakfast cereal for the family. She sues us, saying, "If you hadn't drawn your gun, this robber would have taken the money and left the grocery store like most robbers do. You are the one who provoked a gun fight here in the grocery store. But for what you did, that robber would not have fired and hit me."

eJournal: And that is not too far fetched?!

Kapeloohn: Not at all, that is not too far fetched.

eJournal: But what about standards of proof? We're aware of the fairly stringent standards to which a criminal accusation is held. Isn't it less of a challenge in civil court?

Kapeloohn: It is a whole lot less for civil! The Constitutional standard in a criminal case is that the government has to prove its case "beyond a reasonable doubt." Beyond a reasonable doubt does not mean 100% certainty, but it's very close to that. Criminal defense attorneys always try to create a reasonable doubt that they can argue to the jurors: "Well, this witness testifies this; this one says this and so it may not have been my client who did this."

On the other hand, unless there is an unusual statute involved that specifies a certain burden or standard of proof, in most civil cases you only have to prove your case by a preponderance of the evidence. That means 51%.

If Mr. A and Mrs. B sue each other, if the jury decides that it likes Mr. A's argument, and thinks there is a 53% chance that he is the one telling the truth, compared to a 47% chance Mrs. B is truthful, Mr. A wins. Which way does the scale tip? 51% gets it. That's a very, very relaxed standard. That is why you can have a civil suit even after a criminal prosecution where the person is acquitted.

Take the O.J. [Simpson] case as an example, where O.J. was acquitted because the government couldn't prove beyond a reasonable doubt that he committed the murder of which he was accused. Then there is a civil suit, and the plaintiff doesn't have to prove it beyond a reasonable doubt, they only need to convince the jurors by a preponderance of the evidence—51% worth—that O.J. did it. The civil jury found O.J. liable, even though the criminal jury acquitted him. Someone may come after you civilly and be able to convince a jury that you are in the wrong. They just have to do a slightly better job of convincing the jury than your side did.

eJournal: Comparing civil cases and criminal defenses, in the latter, the considerable resources of the

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government are arrayed against the little guy. Is the playing field a little more even in a civil complaint?

Kapelsohn: No! The lawyers who handle these cases—whether it is a car accident, a medical malpractice, a slip and fall—are typically handling these cases on what is called a contingency fee basis, meaning the client does not have to pay them anything. They get their payment as a percentage of what they succeed in recovering, either by a jury verdict or by an agreed settlement. The contingencies will typically range anywhere from 30% to 40%, sometimes a little less or more, but that's the normal range. It is common that contingent fee attorneys will make a deal with the client saying that the attorney gets one third of anything that they collect prior to trial, like a settlement, but if they have to go to trial they get 40% instead because they will need to put in more work.

This is a system that unfortunately, has good and bad to it. The good is, when a person gets hit by a car and doesn't have the money to hire an attorney, an attorney will show up and say, "I'll take your case on a contingency." That is the good part: people of little means still get legal representation.

The bad part is that it encourages frivolous lawsuits; it encourages lawyers to go after people for things where it would be a different story if the plaintiff actually had to shell out some money to pursue the case. The British system is quite different! As I understand the legal system in England, if you sue someone for this injury and you lose, you have to pay their legal fees. You have to pay the defendant's legal fees because you put them to the expense. That discourages cases that aren't really valid and shouldn't be brought.

eJournal: You spoke earlier of pre-trial settlements. Does a judge oversee that process?

Kapelsohn: Not always, in fact, that is fairly rare.

eJournal: So this happens between the lawyers?

Kapelsohn: The case may be going along, and maybe we've gotten through some stages of discovery where each side has taken depositions of the other. A deposition is question and answer under oath in front of a court reporter, but not in court. It is like courtroom testimony, in the sense that both clients and their lawyers and a court reporter will be there. Maybe a witness or a police officer will be there. You will be

taking that person's testimony under oath. It lets us know ahead of time what their testimony is going to be when we get to court. It nails down their testimony. It can be used to show that they have changed their testimony later on in court.

Through the discovery process of taking depositions and of sharing documents from each side, you may get medical records, you may get police reports, you may get witness statements or statements that someone made to their insurance carrier. You get all kinds of information.

In our kind of situation, the plaintiff may get all the information about what kind of training with guns the defendant had, what kinds of guns he owns, what gun magazines he subscribes to, what books he's read, how many years he's been using a gun, in what other states does he have concealed carry permits, is he a hunter, is he an NRA member, all those things. Once all that comes out for both sides, the attorneys have a better idea of how this case is likely to go at trial.

There may be expert witnesses for both sides, maybe an expert who says, "This was a justifiable use of a gun and here is why, and here is how we teach people in concealed carry classes." Maybe there's an expert for the other side who says, "This was not justifiable and here's why." Their depositions will be taken and they will have to submit expert reports, and so forth.

By the time that process is part way along or all the way along and we have not yet gotten to trial, both sides may have a better idea of how they think the percentages are stacking up. Is the handwriting on the wall that we are likely to lose this case big-time, or do we think we have a strong case? That typically leads to discussions between the attorneys, sometimes with insurance carriers involved, or others, and someone saying, "I know in my complaint we demanded seven million dollars in damages; we are willing to settle this for a mere 3.5 million." And the other side may be saying, "Well, we are glad you came down from seven million to 3.5 million. We will raise our offer of settlement from \$40,000 to \$50,000," because they are thinking that they can win at trial, or because they just don't have a lot more money to offer.

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When settlements take place, sometimes a judge will get involved in a settlement conference, but usually that will only happen if it is a jury trial because the judge does not want to get involved as a mediator between the parties, if he is going to then be the one making a decision about who is liable and who pays money.

eJournal: I wonder if it is better to rely on a judge at a bench trial to make a favorable decision or if you prefer to put the question in front of a jury.

Kapelsohn: It is going to depend on the nature of the case and the court and the state. In general, the plaintiff has a right to demand a jury trial if he or she wants one. If the plaintiff doesn't demand a jury trial, sometimes the defendant has a right to demand a jury trial.

Sometimes people will prefer a bench trial, meaning a trial just to a judge, especially if it is a case where there's been a lot of adverse publicity and they think it is very unlikely to get a jury that hasn't already heard about this case and made up its minds about this case. They would rather have a judge make the decision. Then you may be rolling the dice about which judge you are going to get. In some states, from the beginning when you file the case, it is assigned to a particular judge. In other states, the judge is not assigned until just before trial, so you could get a judge who really has a problem with guns, self defense with guns, or people carrying guns or you could get the judge who carries a gun him- or herself. It is very much a gamble.

In this discussion, we are looking at it from the defense side of a civil law suit and usually the plaintiff has the option of a jury trial in those cases.

eJournal: Would they choose that option?

Kapelsohn: Usually, yes. They want a jury to sympathize with their point of view. We may believe we were right in defending ourselves, or doing what we did with our gun, and the question is, can we convince a jury of that? That will depend a lot on what part of the country we are. A jury in WY has a very different attitude about guns than a jury in suburban MA.

eJournal: This is very complex. How does the average citizen choose the best attorney to defend them against a civil suit?

Kapelsohn: The lawyer who is the best lawyer to handle your civil case may not be the same as the lawyer who is the best to handle your criminal defense. You need a good civil lawyer. Many lawyers don't do both—they do either civil or criminal defense work.

You need to think about expert witnesses. As you know, I spend a lot of my time working as an expert witness and some of that is in civil cases. Your lawyer in a civil case may never have handled a civil case involving self defense with a firearm before, because it is rare. He may know nothing about guns, and even less about tactics. He may have handled a lot of automobile accident cases or medical malpractice cases, but you may be the first person who has ever come to him and said, "I am being sued civilly by someone I shot or by the estate of someone that I shot."

First of all, if you can, try to find a lawyer who has experience in that field, but the other thing is, your lawyer may or may not know that there are expert witnesses that work in that field, whether that's a shooting scene reconstructionist, or an expert on firearms training for private individuals, or a blood spatter expert or other criminalists who look at anything from fingerprints, to DNA, to fiber analysis—all the same things that police detectives look at. That may be necessary in order to defend you properly, so you have to have a lawyer who is tuned in to those kinds of things.

eJournal: Another possibility is hiring an additional attorney experienced in use of force matters and have him or her team up with your local attorney. While we have not yet needed to do that, it is one of the advantages we can give a member facing trial, owing to the strength of our Legal Defense Fund and the free hand we have as a member benefits organization to tailor the assistance to the needs of each situation.

Kapelsohn: Absolutely. An expression that has been used for years is that a good lawyer knows the law, but a great lawyer knows the judge. So when you are being prosecuted in Sheboygan, where-ever that is, you need a local lawyer from Sheboygan who knows everybody there, knows everybody in the district attorney's office, knows the judges, knows the system, knows the police, knows the locality and the demographics for picking a jury. It may also be that you need somebody from outside Sheboygan to come in who knows self-defense law and has experience in handling cases like yours.

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eJournal: You mentioned at the beginning, the case of your retired police client. Since non-members also read our journal, what if someone can't afford an attorney for civil defense? What can they do?

Kapelsohn: Well, it is very different from a criminal case, since the constitution guarantees you a right to legal representation in a criminal case. That does not hold true in a civil case. Whether or not you can succeed in having an attorney appointed for you by a court or whether there is a legal aid society or a law school clinical program that will provide you an attorney for your civil self-defense case is going to vary tremendously from state to state and city to city. Often, you are going to be out of luck if you can't afford an attorney.

There may be legal aid societies or attorney referral services or systems the court has set up to provide you with an attorney in family law matters, divorce situations involving children, maybe in landlord-tenant matters. You should also check to see if there are law school organizations or clinical programs. When I went to law school, I was part of a prison legal defense project that provided legal representation for free to inmates and that was not just in criminal matters, it was in a variety of other matters. There was a similar clinical program that did landlord-tenant law, there was a similar clinical program that did certain kinds of civil rights law. You may find something like that through your closest law school. Certainly contact your local bar association and

see if they have some kind of attorney referral service, but in general, if you can't afford an attorney to defend you in a civil suit, you are going to be out of luck. That again points out why the Armed Citizens' Legal Defense Network is so very important.

eJournal: It is a sad commentary on society that we have charitable groups to help defend just about everything but use of force in self defense. I guess that reminds armed citizens to be extremely guarded in what we do! You have identified a lot of facts about civil litigation that we need to think about, and as is true of the behind-the-scenes guidance that you give the Network, we are very grateful.

Attorney and Network Advisory Board member Emanuel Kapelsohn practices trial law in addition to his work as a firearms consultant/expert and author. He holds degrees from Yale University (with honors) and Harvard Law School, and has, since 1980, instructed thousands of police and security officers, federal agents, military personnel and private citizens throughout the U.S. and abroad. He both consults and provides expert testimony in both civil and criminal cases involving firearms and use of force and has testified in state and federal courts, and by invitation before both houses of Congress. Learn more about him at <http://www.peregrinecorporation.com> and <http://www.lesavoybutz.com/emanuel-kapelsohn/>.

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President's Message

by Marty Hayes, J.D.

This month, I am going to deviate a little from my usual glib and witty riposte and relate a real-life story that we are only now able to tell, about a humble truck driver, pro-gun advocate and friend of the Network, who has

lived a nightmare since February 2016.

Network member Bob Mayne, produces Handgun World Podcast on which Paul Lathrop first told the story of his ordeal. In the [podcast](#) Paul speaks with Bob and goes into extreme detail about the ordeal he went through, leading up to the ultimate dismissal of the charges in late August. He gives several great, unsolicited testimonials regarding the Armed Citizens' Legal Defense Network. It is worth your time to listen to Paul's interview and through it to better understand the philosophy behind the Network and why we are different from our competitors.

The story begins on a run to the West Coast. While training a new driver, Paul stopped at a truck stop west of Omaha, NE. He was resting in the sleeper, letting the new driver do the fueling. According to the podcast featuring Paul, another truck driver was pulling out, but stopped in front of Paul's truck, blocking him in. The student pulled their truck forward and the other driver began waving at them. The student driver "gave him the #1 salute" and began to try to back their truck up. The other driver bailed out and began running towards Paul's truck, still waving and screaming, "I'm not moving; you're not moving."

Approaching Paul's truck, the other driver grabbed the truck's mirror and attempted to get up into the cab to reach the student driver. At that point, Paul yelled, "Dude, I've got a gun," which stopped the altercation. The other guy went back to his truck. Paul and his driver trainee maneuvered their truck around and drove away, but were stopped 30 minutes later by NE State Patrol and questioned about the incident. They were then escorted back to the other driver's location and

immediately arrested for making terroristic threats and commission of a felony with a firearm by a Sarpy County, NE deputy.

Paul was booked into jail and called to tell his wife, Susan, that he was in jail, arrested for a felony and would not even see a judge for a bail hearing for four days. Susan went right to work, contacting friends and listeners to Paul's *Polite Society Podcast* to let them know what had happened. Many contributed to a defense fund to help with bail and legal expenses.

Many of Paul's friends are Network members. One was deeply concerned by his plight, called us and purchased memberships on behalf of Paul and Susan. We made sure the donor understood that because Paul was not a member of the Network at the time of the incident, the Network could not help fund his defense. Our member replied that he understood and still wanted to gift the couple with a Network membership so they would have access to non-monetary membership benefits like the affiliated attorney lists and our educational lectures. Interestingly, not long thereafter another Network member called and wanted to make the same gift. We told him another had already done it.

Naturally, we wanted to help Paul, too, without violating our policy of reserving the Legal Defense Fund for members, so I posted a report of his incident on our Network Facebook page, and many of our Network members subsequently contributed to Paul's defense fund, raising enough money to pay the \$2,500 bail to get Paul out of jail and hire an attorney. I contacted Susan by phone the same day and explained the situation to her, but offered to assist in any way I could. I was able to help her get in touch with Network Affiliated Attorney James Davis in Omaha, NE, whom Paul subsequently hired. He comments, "The Network has offered tremendous help throughout...They were the ones that helped me when they didn't have to."

Now, continuing with the story, according to records of the initial court hearing, the arresting deputy told the court that the driver who instigated the incident told the

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deputy that Paul got out of the truck cab waving a revolver and threatening to kill the other driver. It was this deputy's testimony that got Paul arrested.

Paul comments that from mid-February up through dismissal of charges in August, his incident-related expenses have exceeded "tens of thousands of dollars," adding, "If I had been a member of ACLDN [the Network] I wouldn't be out a penny...Do you have a balance in your checking account so you can write a check right now for \$12,500?" he asks rhetorically.

While I really appreciate Paul's endorsements, the real reason I wrote about this incident and provided the link to the story, told in first person, is that this is the type of situation that any armed citizen can face at any time, even if they do everything right. This example is the reason that I formed the Armed Citizens' Legal Defense Network back in 2008. It is worth the time to listen to the podcast at <http://www.handgunworld.com/episode-381-falsely-charged-paul-lathrop-speaks-publicly-for-the-first-time/>. Paul has some insightful comments as to what he could have done differently after the initial altercation.

It is also worth noting that this is the type of incident in which Network members routinely find themselves. Of the 13 cases in which the Network has helped members, only one involved the Network member shooting an individual. The remainder were cases where either the member defended himself with something other than a gun, or made threats at gunpoint. These types of cases are MUCH more difficult to defend, because usually there are differing stories being told to the police. In many instances, the individual had every right to draw the gun and threaten its use if the agitators didn't stop, but the stories told to the police make them think the defender was the criminal.

If you are not a member and want to avoid a situation like Paul's, please join the Network now.

Membership and Legal Defense Fund Grows

Network membership is now well over 11,000 members and at the current growth rate, will hit 12,000 by the end of the year. In addition, despite the Legal Defense Fund taking a \$50,000 hit this spring and summer to pay a member's legal fees, we are back up to over \$800,000 in the Legal Defense Fund.

I like to keep the membership informed of the status of the Fund, as the one biggest concern potential members voice is the fluidity of the Legal Defense Fund. They wonder if there will be money there if and when they need it. As you either know or should know, there are NO GUARANTEES of any certain amount of money the Network will pay to defend a member, but with that, there are no limits either, EXCEPT that we have committed that we will not spend over half of the Fund for any individual member.

I can still remember reaching the milestones of \$50k, \$100k, \$250k and \$500k. I look forward to the next milestone, that being ONE MILLION DOLLARS available for our members. The frustrating thing is that we could be there tomorrow if each member simply convinced one of their friends to join the Network or if they bought a membership for a friend or family member. Think about it, okay?

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



Attorney Question of the Month

This month's Attorney Question of the Month comes from a Network member who is an attorney practicing civil law with a background in insurance. As a state-approved instructor for the TX license to carry, he asked us a very interesting question, which we quickly passed up to our affiliated attorneys. Their comments will run in the next several issues of this journal. Our member asked—

If a gun owner carries a handgun into a prohibited area (designated by statute or signage) and is involved in a self-defense shooting, would the fact the gun owner violated the law by carrying the gun into a prohibited area be admissible as to the mens rea of the shooter?

For example, a gun owner in Texas (with a license to carry and carrying a concealed firearm) knowingly passes a clearly displayed sign prohibiting guns, which meets the statutory requirements. At this point, the gun owner has committed a Class C misdemeanor.

Now suppose that same gun owner uses the gun in self defense. Is the fact the gun owner violated the armed trespass law admissible to the finder of fact in determining an element to murder or manslaughter?

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Mens rea today is a concept largely talked about in legal texts and seldom discussed in courtrooms. It focuses on the mental state of the accused, and its definition and scope will vary depending entirely upon the elements of the crime charged.

Capital murder requires evidence of malice aforethought, or in modern terms, premeditation. By the time you drift down to manslaughter that mental state might be articulated as reckless disregard. You did not intend to harm the victim, but you disregarded a clearly evident

risk that they might be harmed by your actions. How would evidence that the accused had committed a misdemeanor crime of carrying a firearm into a gun free zone be relevant to the question of whether the elements of the charged crime have been proven? Might depend upon a number of intangibles.

In MN for example, if I carry a firearm into an area posted as a "No guns allowed" zone, I commit no crime, unless the person controlling that area, such as a home owner, or business person requests that I leave or disarm.

So, I'm at Fuddruckers, which is posted "No guns allowed" and I am carrying a pistol. Freddie the Felon storms in shooting into the ceiling and wildly pointing his gun at people, including my wife. I pull my own gun and shoot Freddie in the head, cancelling his ticket forever. No charges for having the gun.

But, did I hold a reasonable apprehension of immediate death or great bodily harm to myself, or my wife? If so, was it reasonable for me to use deadly force? If so, was it reasonable for me to blow a hole in Freddie's skull? Those are the only relevant questions and evidence that I disobeyed a "NO guns" sign is irrelevant to the inquiry. In those jurisdictions where carrying into a posted GFZ is a crime, is that crime an element of the crime charged against me for the same shooting of Freddie? Very doubtful. Therefore, again, is it relevant? Will the prosecutor want to get it in? Of course. Will the judge allow it? Who knows? Might it prejudice the jury? Of course, that is why the prosecutor wants it in, and why the defense attorney wants it kept out.

But does it have anything to do with the state of mind of the accused? Too many intangibles to predict. What if I have no gun, and when Freddie points his pistol at my wife, I suddenly grab a sharp steak knife and ram it through the side of his temple, killing him instantly. I guess the point of all of this is that often times, people want certainty in their dealings with the law and the legal process is not a place where you go to find certainty. So as is often the case, the answer is, "It depends."

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I think the answer to this question requires an "it depends" kind of response. The facts of the situation, the concept of prosecutorial discretion, and the motions made to the trial court in limine are all important factors.

Assume the situation involves the person claiming self defense, who does commit a Class C misdemeanor. If the prosecutor clearly sees that the situation involves the shooter defending herself, she may not charge a homicide at all. The prosecutor may or may not charge the misdemeanor. If the prosecutor sees a homicide, he may well seek to have the jury hear facts regarding the unauthorized possession of the firearm, and may even charge the misdemeanor as a separate count in the information/indictment. If the prosecutor believes the shooter deliberately targeted the person shot (the alleged "bad guy"), she may seek to introduce carrying the gun into the prohibited area as a part of the "mens rea" of the crime to show premeditation.

So it depends on how the situation looks. Then depending on those facts, the defendant may (and in many situations should) ask the trial judge in limine to order the prosecutor to refrain from mentioning the facts, which would constitute only the misdemeanor.

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Assuming the self-defense claim was not accepted by the prosecutor and the person is charged in the shooting and the misdemeanor in the same trial it would be part of the evidence in the case, but I don't think it's relevant to the person's state of mind in the shooting. The defendant could keep it out by pleading guilty to the class C misdemeanor before trial of the shooting case. A prosecutor might then try to get it in as part of the res gestae. I believe most judges would keep it out as not being helpful to the jury's understanding of the context in which the shooting took place.

Even if the defendant testified in the shooting trial it's

only a misdemeanor so could not be used for impeachment purposes.

Change the facts just a little and assume the person whom the defendant claims attacked him was previously known to him and there had been previous arguments between them. That would change everything.

If the person one claims to have shot in self defense happens to be someone they know that alone will likely change the nature of the investigation, and if the detectives find previous disputes between the shooter and the one who was shot it will raise suspicion even more. But it doesn't necessarily mean that it wasn't self defense, just that the detectives will want to look into that aspect a little closer. If they come to believe that the person was willing to ignore the no gun signs because he was intent on settling a score with somebody that happened to be on those premises, then the firearm trespass will indeed be relevant to the mens rea element, or state of mind of the shooter at the time. But it still seems minor and of little importance compared to what the rest of the evidence will likely show if in fact it was not self defense.

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In my state (GA), the carrying in an unauthorized location would not be admissible. In fact, if the person lawfully defended himself, he is immune from prosecution for the illegal carrying. If you do not lawfully use self defense, then you do not have immunity from prosecution for the unlawful carry so the fact that you were carrying illegally could be introduced.

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Perhaps because of how hard it is to get a permit to carry in this state, MD does not have any statute that permits private property owners to bar concealed

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carriers from entry onto their property. MD does have some areas (public schools, governmental buildings, correctional facilities, etc.) that are barred by statute. If you carried in one of these places and had to use your gun in self defense you would almost certainly be charged with wearing, carrying or transporting a handgun illegally (a three year misdemeanor in MD).

Maybe this charge would be relevant to the finder of fact in determining an element to murder or manslaughter if the victim of the shooting was known to the gun owner beforehand. A prosecutor could make an argument that the fact that the gun owner willfully violated the law indicates his shooting of the victim was premeditated.

However, in the larger scheme of things this would be irrelevant. Either the gun owner had the four required

elements of self defense in MD or they did not. The fact that they might have been carrying illegally would not prevent lawful self defense from being a complete defense to murder or manslaughter. What it may do as a practical matter is make the prosecutor less likely to dismiss the case pre-trial as a lawful shoot and make it more likely that the gun owner would have to go the full distance with a jury trial in proving self-defense.

A big "Thank you!" to all of the Network Affiliated Attorneys who responded to this question. Please return next month when we share the rest of our Affiliated Attorneys' comments on this interesting topic.

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

Book Review

Surviving a Mass Killer Rampage: When Seconds Count, Police Are Still Minutes Away

By Chris Bird, Foreword by Massad Ayob

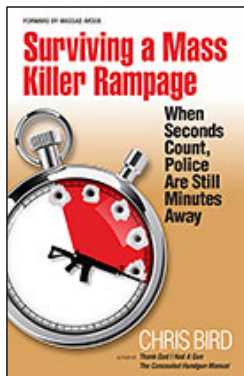
432 pages, paperback

ISBN-13: 978-0983590194

Privateer Publications (August 1, 2016),

\$22.95+\$5 shipping from publisher

\$18.99 eBook from Amazon.com



Reviewed by Gila Hayes

In his latest book firearms author Chris Bird asserts that the term gun free zone is a lie, since “they are only free of law-abiding citizens with guns.” Massad Ayob, writing the foreword, adds that so-called gun free zones are actually hunting preserves for killers where most of the victims can’t fight back. With these unvarnished truths, Bird’s new book *Surviving a Mass Killer Rampage* tackles a concern that even armed citizens fear may cost their lives or the lives of loved ones.

While mass killing rampages have occurred in shopping malls, restaurants, theaters, clubs, churches and other public venues, school shootings are among the most disturbing, owing to the loss of such young lives. Arming educators is of special interest to Chris Bird; this is a subject on which he has written in earlier books, and addresses again in this, his most recent work. *Surviving a Mass Killer Rampage* combines extensively researched post-incident interviews with citizen defenders as well as material from Tactical Defense Institute’s active-killer defense classes, plus other school shooting response programs. He additionally addresses Muslim jihad and mass killings taking place outside of gun free zones. Bird comments that he has little to no interest in the killer’s motivation, and uses instead the journalist’s tried and true method of reporting Who, What, When, Where and How, to teach readers what to watch for and how to react if caught in a mass shooting attack.

Bird debunks the media-fueled myth that having a gun is of little use when a killer attacks a crowd. Effectiveness requires more than just having a gun, however, illustrated by the story of Springfield, OR student Jake Ryker who stopped a school shooter who had killed two and wounded 25. When the killer’s rifle clicked on an empty chamber, the student and his brother recognized their opening, and immobilized him before the killer

could access a pistol or knife or reload with the 50-some rounds of ammunition he was carrying.

Bird reaches back in history with a riveting retelling of the takedown of the Texas University tower shooter, in which a private citizen armed with a rifle accompanied police officer Ramiro Martinez onto the tower’s observation deck where a shotgun-armed Austin police officer joined them a short time later. Martinez later said he did not realize that Alan Crum, the man who went up the tower elevator with him, was not a law

enforcement officer until he asked to be deputized. “I didn’t have a second thought, because we had already passed all those dead and wounded, and he was with me, and he had a rifle. What more could you ask of a man?” Martinez is quoted. Martinez further credited rifle fire from citizens on the ground with restricting the tower shooter’s movement, preventing him from shooting accurately enough to kill many more than the victims he initially hit.

Some pages later, Bird quotes the late Bill Barchers’ study of active killers in which that researcher asserted that of 49 such incidents, nine were resolved by police while the intended victims confronted the shooter and stopped the killing 14 times, with “minimum loss of life.” This Bird contrasts with the common sentiment that citizens should just call 9-1-1 for help, comply with the criminal and not fight back. How many more innocents would have been killed in 1966 if Texans had waited for police to pin down the killer in the university clock tower?

Rallying police is always too slow, Bird shows through reports about school killings at Columbine, CO and on other campuses. One post-Columbine study concluded that mass shootings are likely to be concluded in several minutes, not allowing time for even a single police officer to respond, let alone assemble an entry team. Additionally, research shows that it is likely that the shooter will attack during daylight hours, probably inside a building, will know the area and target specific people initially before the rampage turns indiscriminate. The murderers generally commit suicide, either killing themselves or forcing responders to kill them, it reports.

That research concluded that only onsite personnel are likely to stop the killing expeditiously, and while the researchers called for armed officers at schools, the

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more reasonable option of allowing qualified citizens to carry their self-defense guns was entirely ignored. Next, Bird studies police response at VA Tech in April 2007, in which nearly two dozen were killed and many more injured although police responded about eight minutes after the first 9-1-1 call for help.

With the VA Tech killings, Bird also introduces the question of fleeing or fighting a mass killer. Flight is “a respectable and preferable course of action,” Bird opines, but what, he asks, if you are trapped and escape is not an option? He studies charging into gunfire, trying to hold a door closed, barricading or locking doors, playing dead and later chapters discuss advice to hide under desks. Only two years earlier, he reveals, a concealed carry licensee/student was disciplined for having a gun on the VA Tech campus. Contrast this with the armed, life-saving actions of the Pearl, MS high school assistant principal who stopped a student/killer in 1997, as well as the 2002 armed response of Tracy Bridges who with another armed student subdued a man who shot a student, a professor and the school dean at the Appalachian School of Law.

Where realistic preparations flourish, armed teachers, students, parishioners, and other armed citizens can and do stop killers seeking infamy through mass murder. Such was the effect at the New Life Church in CO where Jeanne Assam engaged an active killer, and in another parish in which the pastor had to shoot a janitor bent on revenge after losing his job.

Bird's analyses are genuine studies, not pro-gun propaganda and when armed defenders run into difficulties, be that through tactical mistakes, inadequate skill or the inevitable confusion at a mass shooting scene, Bird plainly reports what happened. Arguments exist about whether Assam killed the New Life Church shooter or if he committed suicide and Bird draws out lessons about post-incident confusion. Joe Zamudio, running to try to stop the shooter who attacked Gabrielle Giffords, encountered a tremendously confusing scene, with another citizen holding the disarmed attacker's gun and nearly being shot as a result. Bird writes honestly about all of these factors. Still, he asserts that anti-gun hype that armed citizens will harm more innocents is unfounded. This supposition, he notes, “has been used

to disarm ordinary citizens in stores, movie theaters, malls, schools, colleges, and on the street. It hasn't happened, but what has happened is that active killers choose so-called gun free zones, including churches to commit their atrocities.”

Additional chapters in *Surviving a Mass Killer Rampage* discuss threats from radical Islam adherents. These vary from most of the other mass killer incidents in that multiple, coordinated attacks are more common, as illustrated by the attacks in Mumbai, London, Madrid, and, of course, the Sept. 11, 2001 attacks in the U.S., and in France. This organized terrorism is formidable, not only in weaponry—ranging from rifles and handguns to explosives—but perpetrated by teams of assailants sent out to commit dramatic atrocities. Bird also details the San Bernardino, Ft. Hood, and Chattanooga attacks, noting that in all three, the terrorists carried huge quantities of ammunition and multiple firearms.

Bird goes on to cite various terror incidents, and in several, citizens stopped the danger without firearms, as illustrated by the response of the four young American men on the Paris-bound train out of Amsterdam when the train was boarded by a heavily-armed terrorist, whom they physically subdued. Nor do attackers always use guns, as Bird illustrates in writing about the beheading a fired food processing plant employee committed in the name of Allah near Oklahoma City in 2014. He was stopped by a manager with a gun.

Bird has dubbed armed citizens “irregular first responders,” in the war against terror and mass killers. He closes his chapter on terrorism on American soil with a call to be trained in firearms use and where lawful, carry your gun concealed without fail. The armed citizen is the first line of defense, he stresses. *Surviving a Mass Killer Rampage* is an excellent counterpoint to the popular fatalism that only the authorities should use deadly force to counter active killers. In addition to being very informative, *Surviving a Mass Killer Rampage*, like all of Bird's books is a compendium of pertinent stories and it makes enjoyable and educational reading.

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



News from Our Affiliates

Compiled by Josh Amos

August is ending and I want to start my column by complimenting a few affiliates. These are folks that I would like to mention because they are all out there doing good works in their own ways to support armed citizens and we think that is very much worth recognizing.

We received an email from Randall Brooks from Advanced Firearms Training & Consulting in Carson City, NV. Mr. Brooks has been a Network affiliated instructor for years, and he has set the kind of high standard for quality training that we like to see here in the Network.

Here is a picture from Mr. Brooks' classroom. Very clean and very sharp. This is the kind of classroom that attracts the members we want: engaged armed citizens who are responsible, educated and believe in training. I would not hesitate to recommend someone take classes in this setting.



The next affiliated instructor we would like to mention this month is Kevin McNair who owns Tactical West LLC in Las Vegas, NV (lots of good Second Amendment efforts going on in Nevada!). Kevin is a big supporter of the Armed Citizens' Legal Defense Network who has been setting the example of responsible armed citizenship for a long time. Kevin has decades in teaching people gun safety, responsibility, marksmanship, ethical hunting, and conservation...all the things that our affiliates do.

This fall Kevin is promoting the Mule Deer Foundation's 2016 Banquet. Here is the link to the banquet <http://www.muledeervegas.com/2016-banquet.html>. Sounds like a great night out, with great people, and supporting a great cause...makes me want to go to Vegas. I hope some of you can attend, and if you can't, pass the word to your friends.

For our last affiliate high-five, we are going to head east, from Nevada to Ohio to introduce Mark Avery and Jeff Pedro from Sim Trainer Indoor Range and Firearm Training Center in Dayton, OH. Talk about something for every shooter in one facility! There is so much going on here I hope I don't miss something.

Sim Trainer offers classes for beginners, all the way through advanced shooters, with options for ladies and kids. Classes teach concealed carry, rifle, pistol, legal considerations and more. In addition to the kids classes, I really like the "try before you buy" rental range where you can try pistols, rifles, and sight/optic combinations. All of this is in a clean and organized facility with good parking. If I find myself visiting OH, I know where one of my stops will be, and I hope you will, too. Check them out at <http://sim-trainer.com>.

If you would like us to mention something you and your organization is doing to support armed citizens in your area, please drop me a line at Josh@armedcitizensnetwork.org.

This year, the Armed Citizens' Legal Defense Network is enjoying a great year with lots of growth. To that end we want to make sure that all of our affiliates know how much we appreciate the support. We are doing everything we can to set all of us up for a successful year in 2017. Affiliates, I will be in touch with you to see how things are going and what you need, but if you need something or have an idea just call or drop me a line.

In the meantime, I will be sending out updated versions of our Foundation's booklet *What Every Gun Owner Needs to Know About Self Defense Law* so you can keep passing them out in your classes, to your customers, at shoots or wherever armed citizens are. I have begun sending out our new advertisement posters, brochures, and table toppers, featuring industry leaders like Massad Ayoob, Tom Givens, and Dennis Tueller who are all promoting the Armed Citizens' Network. Affiliates, if you want yours sooner, just give me a call at 360-978-5200.

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

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Editor's Notebook

by Gila Hayes

One of the duties I cover for the Network is answering requests from the public for detailed information about Network membership. My email in box occasionally produces some pretty

interesting explorations of how the Network provides assistance to members after self defense.

In mid-August a gentleman emailed asking to see the fine print explaining how the Network decides to pay a member's legal fees after they run afoul of the law. He put it in an interesting way:

"So the Network helps with legal action resulting from self defense, but I'm curious how narrow or broad this is applied. Self defense isn't just shooting someone it's being prepared (carrying for example) and being proactive (brandishing for example). Are possible charges resulting from these things covered?"

He went on to provide examples from his experiences, including arrest after a security guard spotted his firearm while he was involved in an argument in public, an obstruction arrest after addressing a female deputy by a gender-specific epithet, and other situations he cited to show, in his words, that he is not one to "shy away."

He asked if the Network would decline assistance if he is found "technically guilty of a crime that shouldn't be a crime?" He added that jurisdictions in which he lives and to which he frequently goes, mandate knife blade lengths that are shorter than the knife he typically carries. Would the Network pay for a lawyer to get him out of trouble for violation of those statutes?

His closing question was intriguing, and it inspired me to share this exchange in my commentary this month. He wrote that he liked what he had read about the Network, but wanted to know if our assistance to members was more concerned with the "letter" of the law or the "spirit" and were we "Looking to push the law, test cases etc.?"

I spent an unusual amount of time working out the answers, as I had initially been quite worried by some of his examples, and honestly felt considerable concern about encouraging membership. I'll summarize, as some of the questions merely dealt with the Network paying attorney fees for representation after members' non-gun defenses (we do), and criminal history/background affecting eligibility for membership (see our applicant's statement at the bottom of the webpage at <http://armedcitizensnetwork.org/join/purchase-membership> attesting that "I am not legally prohibited from possessing firearms," etc.)

I was most concerned by my correspondent's declaration that he does not "shy away" presumably from conflict, so while trying not to sound preachy, I replied that a common reason a scrappy person's use of force is not actually justifiable self defense is, if through their aggressive nature, they initiated the fight as opposed to being an innocent victim who was endangered by a criminal's aggression. While it is true that one reason armed citizens carry guns is to avoid being victimized by criminals, there is a tremendous difference between shrugging off an insult or non-injurious offense and cowering in fear of serious injury or losing your life. Walk away or decisively disengage, "Sorry! I'm leaving now!" instead of trading words until the argument escalates into a hands-on fight. We prepare and provide for the possible necessity of self defense to avoid being killed or crippled by a violent assailant, not to avoid insult or an apparent loss of face.

Heinlein's oft-quoted comment that an armed society is polite applies only if both sides acknowledge that both can inflict deadly harm on the other. Armed citizens have no business engaging in arguments merely to save face just because they think by carrying a gun they can keep from being shot, stabbed or bludgeoned. It's not even realistic! In the heat of an argument, do you know for sure that the person woofing in your face isn't equally well armed and maybe just a smidgen faster or more accurate? The law certainly does not know, and it is going to bring the power of the criminal justice system to bear against you as it tries to prove whether or not you

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escalated the confrontation and then introduced deadly force into a spat from which you could have simply walked away.

I felt compelled to respond to the question of the Network providing attorney fees to defend members charged with "crimes that shouldn't be crimes" by explaining—

You asked about being charged for violations of blade length laws. For the Network to pay an attorney to defend the member, the member must have been in compliance with the laws of the jurisdiction in which the incident occurs. More importantly, though, please understand that our Network members are law-abiding citizens who join the Network because they fully understand that the criminal justice system all too often mistakes a necessary use of force in self defense for assault, manslaughter or murder. It was to protect our members from these serious miscarriages of justice that the Network was founded. None of our Network members are interested in pushing the law or becoming test cases, etc. That is not why the Network was founded nor is it why we enjoy the strong support of our membership base.

There are so many genuine instances of prosecutors pursuing political agendas, law enforcement viewing any use of force as criminal instead of justifiable use of force in self defense, and too many juries in front of whom law-abiding Americans lack the resources to put expert witnesses on the stand to explain clearly and compellingly why the good man or woman charged with murder or manslaughter had no choice but to use his or her gun in self defense, that the Network must not fritter away its Legal Defense Fund on unjustifiable cases or use of force through illegal means.

Written communication is horribly hampered by the absence of vocal inflections and loss of ability to read body language. It is often impossible to ascertain who is a seeker after truth and who is just pushing to see how you jump! The challenge is not to be overly suspicious when someone confesses to having several misdemeanors on their record, while not throwing open wide the door to someone who is going to behave recklessly hoping we'll pay an attorney to get them out of hot water! Sheesh! I think I need a vacation. Fortunately, I'm heading to Gunsite the last week of this month. Bravo!

*[End of September 2016 eJournal.
Please return for our October 2016 edition.]*

About the Network's Online Journal

The **eJournal** of the Armed Citizens' Legal Defense Network, Inc. is published monthly on the Network's website at <http://www.armedcitizensnetwork.org/our-journal>. Content is copyrighted by the Armed Citizens' Legal Defense Network, Inc.

Do not mistake information presented in this online publication for legal advice; it is not. The Network strives to assure that information published in this journal is both accurate and useful. Reader, it is your responsibility to consult your own attorney to receive professional assurance that this information and your interpretation or understanding of it is accurate, complete and appropriate with respect to your particular situation.

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

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

The Armed Citizens' Legal Defense Network, Inc. receives its direction from these corporate officers:
Marty Hayes, President
J. Vincent Shuck, Vice President
Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.
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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