

Reaching Young Armed Citizens An Interview with Attorney Alex Ooley

This month we share a conversation with Network Affiliated Attorney Alex Ooley and discuss his thoughts on reaching younger armed citizens with coaching and education about living armed safely and responsibly in today's world. For members who prefer streaming video, enjoy our more casual video version at <https://www.youtube.com/watch?v=3fOy-F3AvDh8>.



rights” and arguing constitutional issues, reminds me that you host a great podcast I listen to, one that digs deep into issues affecting armed citizens and particularly Network members. Tell us a little bit about your podcasting.

Ooley: I started podcasting as a guest when I connected with Paul Lathrop in the ACLDN booth at the 2019 NRA Annual Meeting in Indi-

eJournal: Alex, thank you for meeting with me. Members, this is Alex Ooley. He's an attorney in Indiana – what part of Indiana?

Ooley: Southern Indiana, basically south of Indianapolis but closer to Louisville, Kentucky. Culturally, Southern Indiana is more like Kentucky than the rest of Indiana, so I feel pretty connected to Kentucky, but Indiana is a great state.

eJournal: You're almost a southern boy, a lawyer, and I think you've mentioned in the past you're an outdoorsman, too. Tell us a little bit about your law practice; help us get to know you a little bit.

Ooley: My father was a first-generation attorney and I followed in his footsteps. I became an attorney in 2017, so I've been practicing for about seven years now. I started out primarily in civil practice, doing civil defense work, but I was more interested in the criminal defense world and started doing criminal cases in 2018, a year after I started practicing.

eJournal: What was that colorful comparison you made to civil work before we started the video?

Ooley: I was doing civil defense work and I worked primarily for insurance companies. It was a lot of paper pushing. I compared it to working on a factory floor; like putting together widgets. It was just not interesting to me. There are lots of people who do civil defense and make a good living doing it, but it was not for me.

I was definitely more of the mind that I wanted to protect people's individual rights in court and there are more opportunities in the criminal context to argue about the constitution, to argue about individual liberty and rights.

eJournal: Your point about “defending people's constitutional

rights” and arguing constitutional issues, reminds me that you host a great podcast I listen to, one that digs deep into issues affecting armed citizens and particularly Network members. Tell us a little bit about your podcasting.

eJournal: I'm pleased that we might have networked that connection.

Ooley: I became a regular guest on his podcast because he knew me from interviewing me in the ACLDN booth. I became a regular guest with Paul for a while. I love talking about firearms-related issues, but I care more broadly about freedom, not just firearms.

eJournal: How did that focus lead you to start *The Forge of Freedom*?

Ooley: I decided I was going to start my own podcast called *The Forge of Freedom* and talk about freedom more broadly than guns. That includes constitutional issues; that includes the law; that includes foundational principles about why we believe in freedom and why we should fight for individual rights and individual liberty.

eJournal: I've watched a number of your programs that addressed other topics beyond the right to keep and bear arms. I was stunned when you did what I considered a courageous [show on jury nullification](#). For a practicing lawyer, speaking publicly to that topic is not without some risk. Don't judges hate jury nullification?

Ooley: Judges, prosecutors, and legislators don't look fondly on jury nullification, but we put the jury on a pedestal. The jury is a hallmark of our legal system. That's the one thing that distinguishes our system from legal systems worldwide, yet we don't want to tell the jury about the power that they really have. The jury has the power to nullify, if the jury believes that

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the law or the facts in the law lead to an unjust result. Juries – and people at large, because it’s supposed to be a jury of our peers – should know the power that they have if they’re going to serve on a jury.

eJournal: While *The Forge of Freedom* podcast addresses many subjects, it is only one example of your work. In addition to meeting you as a podcast host, we should meet Alex the gun owner and Alex the educator, too. Your family has been involved in firearm safety and personal safety education for how long?

Ooley: Over a decade now. Actually, my parents started our classes. They have some property in Florida, where unlike Indiana, you’re required to go through some training before you can obtain a license to carry a firearm in Florida. They had a difficult time finding what they considered to be quality education or training. My experience has been that it’s more difficult in states that require training because people just sort of flood the market to make money from that process.

We had taken some classes with the late Tiger McKee who ran Shootrite in Alabama; we took some classes with Massad Ayoob, and we took some classes with Gunsite. As we really started training, we were getting the confidence that we believe an instructor should have, but then we also got our NRA certification to teach basic pistol courses so that we can give certificates from a reputable organization. The NRA’s Training Division has always been reputable because training has been the NRA’s primary focus since they were founded.

One thing people don’t know about the NRA is that the association was founded as a training organization and training has been a focus of their mission since the beginning. After the Civil War there were some captains who were not satisfied with the marksmanship of their soldiers. They founded the NRA for the purpose of improving marksmanship among the general population and the NRA has carried on that mission ever since.

eJournal: What an appropriate observation, considering that we’re videoing at the National Rifle Association Annual Meeting! I think we get lost in the politicking and forget the history and why the NRA was founded. So, you and your folks got your instructor certifications, and you started teaching...

Ooley: We started teaching in Indiana. I wasn’t sure what to expect when we started out. As I said, Indiana does not have a training requirement. It’s nice because you get to teach people who really want the training. They’re not there just to get a license or just to get a certificate, so the quality of the students, the interest of the students, was really top-notch. That was a blessing.

eJournal: You reached committed people who wanted to know what you knew.

Ooley: They wanted to be responsible armed citizens which is what we want for every gun owner.

eJournal: One of the things that I value about knowing you is you’re in a completely different age cohort than I am. It’s awfully easy for people my age to address problems by saying, “We’ve always done it this way. This has worked. This has been successful,” but then we wonder why our younger students aren’t learning. Why aren’t they coming to classes? That raises a bigger question that, I think, should start with an exploration of the defense priorities of the younger generation.

I think we should be concerned about our millennials. This age group has got their careers started so have some income, but it takes a commitment to budget for classes. I sometimes wonder how people are affording to take classes right now. I also suspect that there are demographic factors that may make us less effective than we would like to be because we don’t even know what you need to know!

Ooley: There’s a messaging issue that needs to be sorted out that I haven’t yet exactly figured out myself. Part of it is that the younger generation, and my generation included, hasn’t been brought up with a sense that they personally need to take responsibility for their own life and the life of the people that they love and, if they have children, raise.

We really need to emphasize personal responsibility and the message that, while police often do a great job, they can’t be everywhere all the time, so you are your own first responder. A lot of people spread that message effectively, but at the same time I think that it’s tough to reach that younger audience. A lot of times, you’re not going to reach them through long-form video; it may be through short form video.

eJournal: It raises questions about communication styles and how we format classes, but first, I wonder if we need a PR firm to market the benefits of personal responsibility? If somebody else always carries the water and you drink it, what’s in it for you to carry water?

Ooley: I think that’s a vicious spiral we need to get out of. We need to encourage people to get out of that cycle and to take responsibility for themselves and their loved ones.

eJournal: You and your brother were the sons of military officers. I expect that there were demands made in your family that weren’t made in some other families. Maybe because of my age and being raised in a ranching family I had work as a child and felt good about doing it. I’m looking for the hook. How do we convince the millennial that taking responsibility is rewarding? Scare tactics aren’t convincing. “You’re going to die if you don’t do this” is not a very good hook.

Ooley: This is a timely conversation. I’ve been watching David Yamane’s presentation; he gave a free class here at the NRA Annual Meeting. He’s the author of the book *Gun Curious* and blogs at *Gun Culture 2.0*. He teaches university students. He takes them to the range to give them a taste of what it’s like to be a gun owner, what it’s like to have a firearm.

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I think that if people get a sense for what personal responsibility is, it empowers them. I think that they need to get that experience. If they're not getting the experience of responsibility at home when they're being raised, as gun owners we need to be more evangelical and invite people to the range.

eJournal: Invite them to come to training even if intro classes are offered a discounted rate because I think once they get a taste of what it's like to have personal responsibility, there's no looking back.

Ooley: That's true whether it's gun ownership or maybe raising a family or growing your own garden. It's really empowering.

eJournal: I like how the experiential aspect can be as simple as what Dr. Yamane does when he takes students to the range and lets them behave safely with firearms. He let them feel it, instead of reading or hearing a lecture about the value of personal responsibility.

In addition to the psychological or mental side, do you think that there are differences in the threats we face at different stages in our lives? I'm sure you are out in public a lot more than I am, for example, just because we are at different stages in our lives, but for what dangers do you and your generation need to prepare? Is it different than the generation Marty and I are from, or from your dad and mom's age group? Do you see differences in the threats?

Ooley: I think it is obvious that society is changing. While there has always been violence in the world – terrible violence – now it's sometimes difficult to distinguish between who is the good guy and who is the bad guy. You've talked about this at the Network a number of times before in the context of a riot. I mean, riots seem to be everywhere these days! You see them left and right on the news. I think you need to be prepared to avoid those situations if you can, but also prepared by knowing what your responsibilities are to protect yourself, and not only physically, but legally. I think that's a context that really didn't exist or wasn't as prevalent 20-30 years ago.

eJournal: You're right, so not only is the degree of exposure greater for you, but the risk is also different. How interesting that you mentioned the legal concerns and even just being unable to distinguish the good guys from the bad guys. Is there more ambiguity for people? No one's sure! There's even the push back from your own age group that may make you out to be the bad guy if you take a stand, let alone, if you use force in self defense! How do you deal with that?

Ooley: The cultural environment is much different. You have to be worried about what the jury of your peers is going to think even if you do act completely justifiably. The view of guns by and large is not as favorable in some environments these days.

eJournal: Is that especially true for your younger age group? Is it worse?

Ooley: Not in Southern Indiana, but it is in downtown Indianapolis and Marion County, Indiana. There, I think, the view of guns is much less favorable.

eJournal: Knowing about that ambiguity, you would even wonder what are the witness statements going to be like? So, reaching younger people continues to be a PR problem. Returning to the way we teach, when you spoke of long form or short form video, I thought of Greg Ellifritz's blog. He mentioned in one [Weekend Knowledge Dump](#) that the attention span was greatly decreased. How are you structuring classes if you're teaching your age group or maybe Gen Z students? How would you structure your presentation? Are we losing them with our hour and a half video on use of deadly force in self defense?

Ooley: There's got to be an effective way to funnel people to that long-form content because I don't think you can convey an effective message in 30 seconds or 60 seconds. I think you have to be able to utilize short-form content to set the hook, to funnel them to the longer form content. That's the model that has to be used to reach the people who have the shorter attention span.

eJournal: We need professional communicators – like you – to show us how to do that. I agree, even if we're teaching gun safety, although this applies much, much more if we're teaching legal aftermath, the KISS principle does not work. As Massad Ayoob taught us many, many years ago: It's not simple and we're not stupid. We've got folks who are used to getting everything they needed to know in six short bullet points, right? and I just don't know how to get past that!

Ooley: This is something else I've been thinking a lot about with *The Forge of Freedom* podcast. I went to a government school, a public school, but we've all been conditioned to hear information, regurgitate it, and not engage in critical thinking at all. Maybe we need to somehow capture that sort of conditioning for the beginning part of the funnel. You see lots of social media that starts by asking, "What do you think about this issue?" and gives you options. When we do that, we're eliciting engagement and then you get them to think more critically about the issues after you get that initial engagement.

eJournal: This is worth following up because I think losing our listeners' attention is a real issue. At in-person gun classes, it's pretty easy to engage with the students even if you have to ask, "Hey, second guy in the back row, what do you do about X?" right? He's pretty much on the spot; he's going to answer you. At the same time, we've seen also quite a turn toward virtual learning. Because the Network serves a national membership, a lot of our material has to be delivered virtually. *The Forge of Freedom* is delivered virtually, too.

I don't know where post-COVID public education is going to take us – maybe into more remote classrooms and virtual learning – but you're right the school system is where people are programmed and conditioned to take in material. We had

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better figure that out because when you're my age, I want you to be the person here in this chair or whatever is the equivalent, getting the message to the millennials, Gen Z people and to the Gen Alpha to come next. We'll follow up and keep exploring your thinking in that regard.

Ooley: I'm trying to figure this out myself and I'm asking what is the most effective way to reach people? I think that the Network has a great message about responsible gun ownership, which is what we want all gun owners to be, and so I think it's important to spread that message.

eJournal: An example I used when asking you to speak with me on this topic bears relating for our readers and listeners. About a year ago, I was part of a group conversation in which a gentleman – a very good man who would be considered Gen X – dissented when another praised the work of Lieutenant Colonel Dave Grossman. My Gen X friend said, "People my age grew up playing video games and we didn't all turn into mass murderers." Kind of a throwing-out-the-baby-with-the-bath-water thing happened when my friend debunked the work of one very influential voice on whom many of us have relied for decades. If nothing else, it showed me that sometimes what I think is the most righteous thing in the world can be a real turn off to other people. That brought me up short, I must admit. The conversation really brought me up short.

Ooley: I have some thoughts on it because I really enjoy hearing Lieutenant Colonel Dave Grossman speak. I think his books *On Combat* and *On Killing* are amazing. He's really an impressive person. I think his point about video games is well taken, but this generational point that you're making highlights the discrepancy that we're trying to resolve.

The older generation assumes that the younger generation has already been taught a certain set of values and character and a certain way of living. I think that that's why the Gen X person you talked to thinks, "Hey, we played video games and none of us turned out to be mass murderers." They were raised with a certain set of values and a certain moral foundation.

They're not understanding that we have more broken families, and fewer people who believe in a Higher Being whether that's Christian beliefs, God or whatever, you know? I think that people often lack a moral compass. We need to take that into account when we're trying to communicate with the younger generation, as well. Maybe they don't have the same set of values that we assume that they should have.

eJournal: Do you see in your own age cohort that the values that have led you to become the successful young father and attorney that you are, that those values aren't present in the people that you went to college with? Are they floundering a little?

Ooley: I think so, and it primarily stems from a lack of a classical education. You know, it used to be that people would study not only the Bible, but they would also study classics from Greek literature, poetry, and things like that. You can learn

so much from the classics about what it means to be a good human being.

I think that's missing today and so a lot of the younger generation are trying to figure it out, but don't have the guiding compass that some of the older generations had. I think that's why something like video games may have a greater effect on that generation than it did on the older generation. That's just my hypothesis. I'm not a psychologist. I was a philosophy major, and I have a law degree, so I have no expertise in psychology.

eJournal: We're all trying to feel our way through this; we're trying to work our way through the smoke. I do think having these kinds of discussions better prepares us to connect with younger people. I really respect the young man that you've grown into, and yours is the kind of success we'd like to see in the generations coming up behind us. Thank you for being part of the Network. Thank you for being an inspiration to us. As you figure these things out, I hope you'll get in touch with me. I want to know the answers.

Ooley: It's a group project; let's help each other out.

eJournal: It took a lot of us to get us to this point; no single guy's going to fix the problems. Any final takeaways you'd like members to think about?

Ooley: ACLDN has been in the business for a while. There have been lots of competitors crop up in those years and there's been a lot of discussion online about which one's better and which one's worse. I will just tell readers and viewers that I've been a member of ACLDN for quite a while. I'm an affiliated attorney so I do have some relationship with the Network, but Network membership is meant for people who want to be those responsibly armed citizens we've been talking about. Network President Marty Hayes has said so many times that we don't want to have members who engage in criminal activity.

We provide educational content, whether that's through the Network journal or the videos and the literature that you get when you sign up for the membership, or the journal's attorney question of the month, because we want to encourage people to learn as much as they can, so that they can act responsibly. Then, if they are faced with that deadly threat, they can act justifiably. I think the Network does a great job doing that. I definitely think that people should consider joining for that reason.

eJournal: Thank you, that means a lot. We're in this together!

*About Alex Ooley: A Network affiliated attorney since the spring of 2017, Alex is a passionate advocate for liberty and the Second Amendment, who has helped numerous clients protect and restore their gun rights. He represents the accused in a wide range of cases, including self-defense and gun-related cases. He and his father operate Ooley Law (<https://ooleylaw.com/>) in Borden, Indiana. Alex is the creator and host of *The Forge of Freedom* podcast (<https://forgeoffreedom.com/>) and is a certified firearms instructor.*



President's Message

A Handshake Deal

*by Marty Hayes, J.D., President,
Armed Citizens' Legal Defense
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I don't remember when our society moved away from trusting a handshake. I do remember being told while growing up that a man's word is his bond, and if one made

a deal with another and they shook hands on it, it was as good as any written contract. Concurrently, when one person makes a promise to another, then that person lives up to the promise, period. Of course, that also means one should not make promises they cannot keep.

This must sound quaint to those born less than 50 years ago. Recently, the veracity of my word (the promises the Network makes to its members) has come into question. This disturbs me. The first major issue was the fight with the WA Insurance Commissioner (OIC). You see, from the onset, the OIC did not accept our word as truth, and argued just that to the courts. The courts also did not accept that the Network's promise to only pay expenses for someone after a self-defense incident is reliable, when judges' questions seemed to imply that we were shysters, and because we did not have a written contract, we would not keep our promises to members.

Additionally, an internet promotional video by a lawyer selling retainers (which at least one state insurance regulator has called insurance) argues that since we do not have a signed, written contract, we will somehow weasel out on our promises to members.

Responding to his allegations and those of the OIC, I felt compelled to give a little insight into my thinking and why we do not have members sign contracts and why we are not allied with any insurance company.

When we started the Network in 2008, we openly explained that the money we could spend on any given case would not exceed half of the total of the Legal Defense Fund. Fund balances were and still are stated publicly in our online journals and on our website. For example, in December of 2010, with just a little under three years elapsed since founding, our journal announced a Legal Defense Fund of \$85,000 serving 2,250 members, most of whom were our students and professional, industry contacts. Five years later, my 2015 wrap up publicized a \$600,000+ Fund balance and in May of 2017, we heralded the Fund breaking the \$1,000,000 mark.

As we grew membership and the balance of the Legal Defense Fund, reserving half of the Fund became less of an issue, and

about five years ago, we dropped language stating that we would reserve one-half of the Legal Defense Fund, replacing it with a promise to simply cover your legal costs after self defense. In reality, we had already fully paid member legal expenses after self defense, for all of the member cases arising between 2008-2020 anyway; we had never had to implement the half-fund limit. By the time we stopped stating the one-half Fund limit, the Legal Defense Fund had over three million dollars, and now we have over four million dollars in the Legal Defense Fund and expect to keep it at that balance.

At the time we reserved one half of the Fund, we were aware that several insurance-based companies who were competing for the same clients, were offering set amounts of a quarter of a million or more. That was some years ago; I pay little attention to the other companies anymore, so can't say what they are offering today. I do know that we have plenty of money to back up our promises to our members.

Value of a Promise

The foundational question, of course, is how good is that promise? A promise is only as good as the person or people making it. When I first started the Network 16 years ago, I was fairly well known in the training industry, but not so much in the legal arena. I had worked as an expert witness for armed citizens who were wrongfully charged with crimes involving firearms. I had what I felt was a good command of the legal issues surrounding self defense, having taught for Massad Ayoob with his companies the Lethal Force Institute and Massad Ayoob Group since 1990.

At about the same time, in the early '90s, I started working as an expert witness in court cases involving firearms use, and use of force in self defense. Then, in 2003, I decided to go to law school, which I attended part-time while running The Firearms Academy of Seattle. Upon graduation in 2007, we started putting together the pieces which would eventually make up the Network, and in January 2008, the Network was formed.

I felt at that time, that we had made a strong, positive start, but I wanted to do more. I wanted to make sure that the people behind the Network were so well-thought-of in the industry that it would be ludicrous to question the promises made to members. So, I asked several of my friends and colleagues in the training industry to join us and be part of an advisory board, to be able to review self-defense cases and to lend their credibility and reputation to the cause. This is how we brought Massad Ayoob, John Farnam, Tom Givens and Dennis Tueller on board, and later attorney and expert witness Emanuel Kapelsohn, gun rights attorney Marie D'Amico, and trainer Karl Rehn.

Interestingly, while other companies have what I would call celebrity endorsers who get paid to endorse the company, none

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of our Advisory Board members receive any compensation for being a member of our board. They lend their knowledge, expertise, and reputation to the Network because they believe in the mission of the Network and trust us not to let them down.

Do a web search for “complaints about Armed Citizens Legal Defense Network.” Wouldn’t you expect to find some reference to instances where the Network broke their promise(s) to members? Well, as of this writing, I could find no such references. Try it with some of the other companies and see what you get.

There are also several websites dedicated to reviews about businesses, Yelp and Better Business Bureau. Below are links to the pages from these websites dedicated to the Network.

Our Better Business Bureau (BBB) rating is A+ and unlike several competitors, the only things listed are positive ratings, without any need to have settled customer complaints over the past 16 years because there have been none. <https://www.bbb.org/us/wa/centralia/profile/support-groups/armed-citizens-legal-defense-network-inc-1296-22506307/customer-reviews>

A notorious site for complaints has no user comments about us at all: <https://www.yelp.com/biz/armed-citizens-legal-defense-network-onalaska>

The bottom line? I have worked for 16 years to make sure the Network and how we do business is above reproach. When someone speaks ill of the Network by spewing false information, intimating we will not do what we say, I take it personally. That’s just the way I am.

When a Contract is Formed

We have been criticized for not having a written contract. But that doesn’t mean a contract is not formed. A contract is formed when a person –

- 1) makes an offer (goods or service) and
- 2) that offer is accepted, and
- 3) consideration is then performed. That consideration can (and most always is a payment of money) or it could be some other type of consideration.

For example, you drive through McDonald’s, pull up to the reader board and start reading the menu. (That is the OFFER). Then, you order your Big Mac and fries. (That is the ACCEPTANCE of the offer.) At this point, however, a legal contract has not yet been formed. You then pull up to window and pay the

money (CONSIDERATION). Now you have a legally-binding contract, and if you don’t get your meal, you could sue.

With the Network, what we tell people on our website is the OFFER. When you hit “Join the Network” you are accepting the offer of what we say we will do for members. When you pay for the membership, that is the CONSIDERATION, and we have a legally-binding contract. So, what does the Network say it will do?

First, we say we will send you educational materials.

Second, we say we will pay your legal expenses (explained on the website) after a legitimate act of self defense. Whatever it takes, we will pick up the cost.

Because we include the words “legal act of self defense,” we qualify our offer to make sure we are not funding defense of criminal acts.

The use of force against another person, whether it is physical non-deadly or deadly force, means you have committed a criminal act. It is only considered a non-criminal act when you have a reasonable explanation for your use of force. This is why you and your attorney need to tell us (in non-specific terms) what your reason was for using force.

Our willingness to pay for your legal defense comes with one big disclosure, that being, we reserve the right NOT to pay your legal expenses. For any reason. We need to include that disclosure to make the legitimate case for not being insurance. Stop and consider the consequences if we arbitrarily declined assistance for any of our members.

I knew when I started the Network, we needed to be sure that if we declined assistance, it had better be for a good reason. That is because in this day and age of social media, we would very quickly lose the majority of our members if we broke our promises to them. That is why we bend over backwards to assist our members, but only after determining the instance was a legitimate act of self defense.

When people criticize us for this, and intimate that we might not pay for the legal expenses in a lawful self-defense incident, I counter with “Show me!” One would think that after 16 years, if we were screwing people over, we would have heard about it.

Next month I will discuss the specifics of our assistance to members.



Attorney Question of the Month

As the result of the proliferation of video-capable smart phones almost all armed citizens are, if they choose, able to record video or still photographs of a scene and people present during an incident in which they defended themselves. Ability, however, is not the same as advisable! We asked our affiliated attorneys this question –

In your state is it legal to record another person without first obtaining their consent?

How do you suggest armed citizens undertake preserving images that might exonerate them balanced against the risk of appearing ghoulish after a self-defense shooting?

A good number of our affiliated attorneys responded –

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In the State of Maryland it is illegal to record audio without both parties' consent. Consent can be both explicit and implied. Implied consent could come in the form of an audio or visual announcement that audio is being recorded. Audio without such consent is barred for use in court and could subject the recording party to Maryland's wiretap laws.

Visual images are generally allowed under Maryland law. Both for personal and in court use as long as it is not recorded with prurient intent – essentially nefarious sexual purposes.

If a camera, or in modern society a cell phone with audio recording capabilities, is obviously displayed to the aggressor in Maryland it is unlikely that the court will find the recording party violated Maryland's two party consent requirement because it was apparent, and obviously known by the aggressor, that they were being recorded.

I would encourage a party who thinks a recording would assist in their defense to record – I have never seen someone be penalized for recording a dangerous situation – and in today's world I believe the courts are more open minded about what people expect to be recorded. It is not uncommon for cameras to record our every move and often Ring cameras and the like collect audio, as well. So I would not expect someone in Maryland, recording in good faith, to have to fear the law as much as their aggressor.

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Home security video recording has become increasingly affordable and accessible. Costco, Home Depot, and similar vendors, including online options such as Amazon, offer easily installed in and out of home video surveillance. For the righteous shooter in a self-defense scenario, these "pictures" paint a thousand words of exoneration for you. The cost of these security videos are a small fraction of your attorney fees to defend you.

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Florida is a one-party consent state generally, but case law has modified that to a large extent. Courts have recognized a general right to record interactions with law enforcement, but that has not prevented some illegal prosecutions or threat of prosecutions for recording law enforcement over the telephone. Things that happen in public, however, can be recorded if you can see them in a public place.

I would advise against any recording of a conversation with another private person or persons where you do not have everyone's consent. That said, if a conflict begins to occur, and you make clear that the interaction is being recorded, it would be helpful in any future prosecution because the other individual would have no reasonable expectation of privacy in the conversation if it continued. There is at least one case where an individual recorded himself being murdered by a criminal in his own office. The court found that the criminal had no reasonable expectation of privacy while committing a criminal act, therefore the recording was not illegal and could be admitted as evidence in his prosecution. *State v. Inciarrano*, 473 So.2d 1272 (Fla. 1985).

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In New York, only one party must consent to recording a conversation. If you are the person recording the conversation, then you are the consenting party. However, a New Yorker must be very careful if they record parties that are located outside

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New York, because those other jurisdictions may have different laws.

After a shooting incident, if you are still ambulatory and the perp is not, the very first thing to do is call the police, and then cover the injured person with some kind of cloth to keep them warm. Only after doing those two things would you consider doing anything else.

It definitely could seem ghoulish taking pictures or videos after a shooting, but from a defense perspective it might be useful if elements of the scene are in danger of changing significantly (e.g., crowds are trampling on evidence). Also, if you believe that there is some risk that the police will be very biased in their description of the scene, then taking pictures might be good insurance.

If pictures are taken, probably it is best to have someone else do that job, if possible. If you had a companion with you at the time of the shooting, let them take the pictures. As a defense lawyer, I would rather that my client play only the role of compassionate victim, and not the dual roles of victim and crime scene photographer.

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That's a good question. In both North and South Carolina, only one party needs to consent to a recorded conversation and photo/video recording (in public) is generally allowed. So if the person is berating you verbally or acting aggressively, and you're in a public space or on your private property, go ahead and record.

The prohibition on the use of photographs or other media applies in commercial contexts (e.g. right of publicity), not judicial contexts like using photographs or videos in a criminal trial. So, the short answer for Carolinians is: Yes, you can take that photo or video before, during, or after a self-defense incident if you're in public or participating in the conversation.

Whether someone should do that, on the other hand, depends on what the photo or video proves (or purports to prove) and what it could be argued to alternatively prove. If the recording clearly illustrates the other person was the aggressor or instigator (both states are "Stand Your Ground" jurisdictions) then I'd say by all means, video it.

The State could easily argue that certain photos/video recordings show a state of coldness and calculation that does not beget an innocent person defending himself/herself and claim-

ing to have been the innocent party to the altercation. Since self defense is an affirmative defense, it's best to paint yourself in the most favorable light possible so anything that looks like or could be misinterpreted as you being the aggressor, instigator, etc. should be avoided, as should actually being the instigator or aggressor.

In general, I'd say pre-incident photos or videos to show who the aggressor was are generally better, as they can show the events precipitating the self-defense incident, and those shouldn't be disclosed to the police because then they'd have reason to search your phone.

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California's recording laws are a bit nuanced. It is a two-party consent state for recordings of private interactions where there is a reasonable expectation of privacy, such as office meetings and phone calls. However, there is no reasonable expectation of privacy when you are in a public place. So, anyone can video and/or audio record a public place, like a sidewalk or restaurant, without consent.

As far as preserving images, it would be ideal if someone other than the client/defendant captured and preserved the images. We don't want to be put in a position where we have to put the defendant on the witness stand to authenticate images or recordings. They should be produced to counsel as early in the case as possible, so that we can make informed decisions about how and whether to reveal them to prosecutors, and how we might want to use them.

By the way, I won the first CCW denial appeal in LA County last week. Here's my blog post about it: <https://www.donhammondlaw.com/blog/los-angeles-county-ccw-application-appeal-win-ccw-denial-appeal/> .

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There is a difference between recording a private conversation and a public event that is open to observation. Weighing the liability of recording versus the risk of spoliation of evidence, the test favors preserving evidence. A perfect example is the Trump

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documents case. The FBI created a crime scene and used it as evidence which has now compromised the entire case.

While it may seem ghoulish to take photos of the crime scene in today's environment that is not as relevant as 20 years ago. Finally, it must be considered that a proper foundation of evidence is important. It would be best to have a person uninterested in the cases take the pictures rather than the defendant. Finally, Trump's lawyer illegally recorded Trump, and so did the GA secretary of state, George Raffensburger, and nothing happened to them. It is a rarely charged crime.

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In your state is it legal to record another person without first obtaining their consent?

Yes, Utah is a one-party state.

How do you suggest armed citizens undertake preserving images that might exonerate them balanced against the risk of appearing ghoulish after a self-defense shooting?

The former always outweighs the latter. First and foremost, you need to be present to protect your family and property. You cannot do that when you are behind bars.

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The answer to this month's question varies widely depending upon which state the parties are in and where the recording is made. Be certain you understand your state's laws on this before recording someone without their knowledge. In Maryland, for instance, failure to understand this issue can really "Tripp you up." (https://en.wikipedia.org/wiki/Linda_Tripp) See what I did there? Dad jokes—gotta love 'em.

In my home state of Arizona, we follow the "one party rule," which means as long as one party to the conversation consents to the recording, it's legal. In other words—YOU yourself must be part the actual conversation; if so, you are free to record that conversation. You CANNOT record (legally) a conversation in which you are not present. Attorneys in Arizona routinely use such recordings and they are almost always admitted without much kerfuffle at all.

As for recording/photographing evidence at the scene of a shooting incident, one would hope that the authorities would thoroughly document the scene rendering those efforts redundant. Sadly, that would be a foolishly naïve hope to have. Nationwide PD staff shortages (the result of the wonderful "Defund the Police" movement—what a great idea—if an institution is performing below standard, definitely give them LESS money for training/hiring...) affect support staff even more than front line officers. The (poorly trained?) 24-year-old evidence technician present at the scene at 2:30 a.m. will likely not be looking at documenting any specific evidence that helps a self-defense claim, nor will they likely even know/appreciate what that would be. I have worked on cases where spent casing locations were not even photographed or measured by the evidence team — it would have been nice if a friend of my client had done so.

Do not worry about appearing "gruesome"— everything about this is going to be gruesome. The problem is that if YOU take the pictures, you will likely not be allowed to lay the foundation necessary to have them admitted at trial (although they can still be quite useful in securing a dismissal or a decision to not charge in the first place) since you (if it goes that direction) will be the defendant. Have a spouse/friend or, best of all, your attorney's investigator, do the documenting.

Lastly, be aware that this may well be a crime scene, and the responding officers are not going to allow much (if any) access to the scene once they arrive. Do not disturb the scene at all and have your friend work fast — you have only minutes prior to the sirens if shots were fired. Get the recording device to your attorney as soon as possible where a decision can be made as to disclosure/revelation of the evidence. Better to have the evidence and not need it than to need it and not have it.

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



News from our Affiliates

This month's Networking column is addressed specifically to our affiliated instructors, although it affects students and others, as well. In the following conversation, an affiliated attorney who also

teaches classes discusses his concern for firearms instructors, little mom-and-pop gun stores and other small businesses affected by the Corporate Transparency Act. While primarily addressed to small business owners, our visit is also a great way for members to meet Deron Boring who has generously served as an Ohio affiliated attorney for the past 13 years. Watch our video conversation at <https://www.youtube.com/watch?v=UgGqTZ4c3rQ> or meet Deron through the edited transcript below.

eJournal: It's my pleasure today to introduce Deron Boring. He is an attorney in Ohio, and in addition to practicing law, is an acting judge, a firearms instructor and Second Amendment rights activist. Please tell us a little bit about yourself, Deron.

Boring: You're correct, I'm a practicing attorney that every once in a while, fills in for a judge. I jokingly say I'm like a substitute teacher. I get called when a municipal court judge is on vacation or out sick. I also play college professor on the side. I'm a senior adjunct professor teaching in the school of business and in the political science department at a small university. I teach American government, constitutional law, and business law. Truthfully, it was my business law studies that led to my concern about something that doesn't necessarily address the Second Amendment or firearms, but faces instructors, Federal Firearms Licensees (FFLs), and a lot of other people in the industry.

eJournal: A few weeks ago, you asked if I knew about the Corporate Transparency Act. I didn't. I did some reading, and while it's far outside of our usual topics, to this layperson, it raises huge constitutionality issues with warrantless searches and loss of privacy. What is the CTA, and why are we concerned?

Boring: This is a federal act that snuck up on a lot of us. I was working on a business law class that I teach when I wandered onto this and started looking deeper. This is a federal law, passed in 2021 that has been slow rolled by the federal government. It requires small business owners to register ownership interest with the Financial Crimes Enforcement Division of the Department of the Treasury, and if you don't, there are \$10,000-plus penalties and two years in federal prison.

Think about the broad scope of our Network membership. How many are instructors or FFLs that have an LLC or an S corpora-

tion? I'm sounding the alarm with FFLs and firearms instructors, but this is not only a firearms issue; this is not only a Second Amendment issue. It applies to people who mow lawns or paint houses, as much as people who sell guns.

eJournal: Beneficial ownership identification has long been a part of business, usually encountered when establishing business bank accounts. What's different now? Is the law on hold pending appeal or being enforced?

Boring: The law is applicable to everyone except members of the plaintiff, National Small Business United, for whom it is enjoined after a federal district court in Alabama said it is unconstitutional. The court said the federal government has overreached; this is purview of state government, not the federal government. The Department of the Treasury immediately appealed and as of just an hour ago, the oral argument on this was scheduled in the middle of September. We're still quite a way out from this being resolved.



The stated goal is to stop money laundering, shell corporations and tax evasion – things I'd say most of us are okay with. Beneficial ownership information has been collected by financial institutions in the past and that gave some accountability.

What changed – and what makes me incredibly uncomfortable – is warrantless search without probable cause. This is a wide-sweeping net that applies to absolutely anybody that has an LLC or a corporation. It applies to all the firearms instructors I know and small businesses with income under five million dollars a year. What could amount to a paperwork error could equal federal prison time! My other concern is that once the federal government has this information, what happens with it? The statute alone hands us over to the FBI, the ATF, and the IRS; everybody with a "law enforcement purpose" has access. Any nexus to terrorism or the latest national security threat makes this information accessible.

It is a very broad overreach. It impacts anyone who has a small business. This is going to affect almost any instructor I deal with in Northeastern Ohio and a lot of other people in the firearms industry.

eJournal: I read about exemptions, but I couldn't determine which businesses had to file, and which got exemptions. Who gets exemptions?

Boring: The exemption list is comical. Banks, nonprofits, governmental entities, investment brokers, insurance agencies, and utilities are exempt. They're aiming at companies with under 20 employees and under five million in revenue. It is a really unfair poke at mom-and-pop businesses. Like the jokes online, the IRS is perfectly fine with millions being lost overseas somewhere but take \$601 through PayPal and they're coming for you.

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eJournal: I asked earlier why consumers should worry. I'm not in gun stores regularly, but now I wonder, will the little shop I go to be in business next time I go? How would investigations of violations leading to penalties come about? It's so vague, I'm baffled.

Boring: It is as vague and ineffective as the New York SAFE Act. People didn't register in New York. Noncompliance is not found out until something else happens. FFLs are picked on and if they don't dot an I or cross a T, a minor clerical error opens them up to license revocation. If a small gun store doesn't register with the Financial Crimes Bureau, is the ATF going to start cross-checking records? Are they going to knock them out for failure to comply? Enforcement information that I can find at this point is scant to none.

eJournal: We'd prefer to avoid enforcement altogether.

Boring: I'm advising all my small business clients, if prior to January 1, 2024, you registered with your state as an LLC or as a corporation, your compliance is not required until January 1, 2025, pending the 11th Circuit Court of Appeals ruling. Remember, at this point, it is stayed only for National Small Business United members; it is not stayed for me and you.

It gets tricky if you have created a business in 2024, you have only 90 days to register from the date of creation. So, for instance, in Ohio, you would file an LLC with the Ohio Secretary of State, then you must register with the federal government within the 90 days from receiving your certificate of operation from the state of Ohio.

I'm advising clients, like it or not, to comply within that 90-day window. I've had two clients decline to set up a business this year until they see what happens. One gentleman, a veteran, will honest-to-goodness keep his business unincorporated – an unprotected sole proprietorship – for a year, because he doesn't want to give his driver's license and other information over to the federal government. I don't know if that's an overreaction.

eJournal: We are always trying to find the right balance. Is this discussion headed toward making myself a tinfoil hat?

Boring: I felt very "tinfoil hat" approaching you with this. I have questioned myself about the tinfoil hat a couple of times. It's such a bizarre overreach that I've literally gone through my address book, my email and my list of clients and have corresponded with every one that has a small business. I've told them that they need to consider compliance. It's problematic and that's why I'm taking the time to signal to organizations like the Network.

I hope organizations like the [National Shooting Sports Foundation](#) (NSSF) have a position about what their members should do, but some people think, "Who cares? This is a corporate

transactional issue. This doesn't affect me," but I think it does. Some people probably think I'm crazy.

eJournal: No, but it does create a really interesting meshing of your law practice and your concern for our individual rights. Why don't you close out by telling us a little bit about the classes you teach and how people can access your services or become your client.

Boring: I really enjoy teaching and I'm trying to do more of it, but truth be told, with my law practice and college professor gig, I don't have much time to do range training so it's mostly classroom, which I love to do. In the firearms world, I primarily teach classes on self defense and self-defense law. While criminal law is not my expertise, I've spent enough time in the legal world that I can fluently explain what your rights are, how to behave, what to look for, and things like that. A couple of years ago I completed the [Deadly Force Instructor Course](#) taught by Massad Ayoob and the late Art Joslin, so I teach a lot of that. You can find my stuff in my meager online presence with my company, which is [1791 Training](#).

eJournal: There're competent instructors to teach trigger pulling but not that many who can teach legal issues, mindset, and how to react to certain situations. That's important because we may not foresee the cascade that a harsh word or a threatening action can create. There is great need for that kind of coaching. We'll put the link to 1791 Training up and encourage members in the Ohio region to take training with you. Any takeaways, any last thoughts?

Boring: I appreciate your time. I chuckled when you asked about conspiracies because even my wife has questioned, "Aren't you making a bigger deal out of this than it is?" I'm not. I'm grateful for the ability to talk about this with Network members.

eJournal: Thank you for thinking of us and our fellow Network members. Keep us in the loop because it will be interesting to see if there's any relief from the 11th Circuit in the fall.

Deron Boring, J.D. is an instructor with 30 years of experience teaching adults and extensive background in leadership training, instructor development, and the law. He serves as an adjunct professor, teaching undergraduate and graduate level law and government courses. He also has 14 years of experience teaching firearms law, self-defense law, firearm safety, home safety, and CCW classes. He is also available to offer legal presentations to local clubs, small groups including churches, realtors' associations, or private classes for your family and friends. Learn about Deron's classes at <https://www.shooting-classes.com/1791-consulting/>. His law practice of nearly 20 years focuses on Ohio self-defense/ccw law, firearms law, and small business/non-profit planning, estate and trust planning, probate, mental health/guardianship, landlord/tenant, and real estate.

Book Review

Four Pillars of Fighting Mindset, Tactics, Skill, Gear

By James Yeager and Paul Markel
[Independently published](#), 289 pages,
paperback \$16.99 or \$6.99 eBook
ISBN 979-8385645008

Reviewed by Gila Hayes

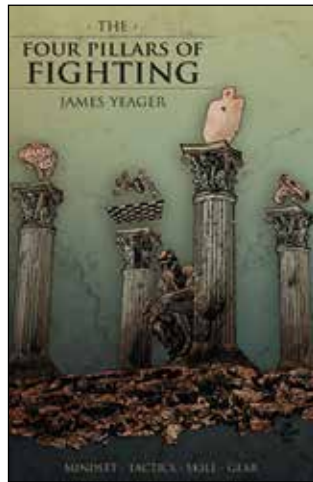
Video dominates instruction and has cut badly into print books despite readers who prefer the written word, which accommodates rereading and reviewing key elements, following citations and other learning methods less well-served by video. Sadly, most of the dominant voices in firearms training are no longer producing books, relying instead on video. Recently, I set aside my reservations about the late James Yeager's videos and learned a lot from his posthumously published book *The Four Pillars of Fighting*, compiled from a manuscript that was in-progress when he died and finalized by Paul Markel.

Markel writes that Yeager deemed the instructional blocks on mindset the most important aspect of his classes, then offers his own notes from Yeager's mindset and post-shooting instruction. Yeager identified three battles: the gun fight, criminal and civil court, and the emotional aftermath, drawing on "interaction with others," and his own experiences. He asked students to neither replace their own opinion with his nor to throw away his input. Put it away for the circumstances to which it applies, he urged. Finally, he stressed, come to grips with the fact that you will someday die. Yeager wrote that he and his school, Tactical Response, exist, "because we want to control how that happens, at least as much of it as we can. We can steer some of our fate in that respect," he observed.

Yeager advocated speaking in plain terms without fear of hurting feelings. Call a silencer a silencer, he advised, that is what the inventor called it, that is the term used on the NFA paperwork, and "suppressor," he asserted, is a made-up term the politically correct employ "to make silencers seem less scary to their liberal masters." Agree or not, it is a taste of classic Yeager. Don't let people belittle your decision to carry a gun for self defense, Yeager also urged. "It's imperative that we understand that we are not the crazy people. Wanting to protect your life is not something that people should make fun of. You should put them in their place when they do that."

I was only about a quarter of the way into *The Four Pillars of Fighting*, when I gratefully realized that while I've previously studied many of the topics in classes and books, I was engrossed in Yeager and Markel's viewpoints on well-accepted principles and enjoying their everyday-language explanations.

Yeager gave examples of critical incident realities like time-



space distortion, memory losses, detachment, sensory anomalies affecting vision, hearing or sense of smell, and other effects of adrenaline and the near-death experience. Gentle-persons may take exception to some of the language used, and I urge readers to push through. Plain-talk descriptions of physiological and psychological reactions to the stress of near-death dangers are instructive. Subjects presented in academic and scientific terminology, are easier to accept as proven and real. The same material, when presented in simple words and stories of those who experienced life-threatening dangers, helps us accept that sensory distortions may also happen to us.

Yeager's instruction on mindset drew on and, in my opinion, modernized Col. Jeff Cooper's classic, *Principles of Personal Defense*. Alertness is the foundation, which Yeager taught through a discussion of the best use of available time, observing that armed citizens focus on taking guns, rifles, ammo, armor with them in case they are attacked, but "What you can't take is more time. It is your most precious commodity in a gunfight. It is imperative that you have your head up and you see the bad guy from as far away as you can see him."

Of the principle of decisiveness, Yeager wrote that too often people talk themselves out of taking action. "Whatever your first thought is, do that. If your first thought is, 'Bolt!' then bolt. While you're bolting, consider what other options you have. Don't flinch ... then talk yourself out of it."

Teaching the principle of aggressiveness, Yeager warned, "if you wait for absolute confirmation that you are under attack, it means you must sustain damage." The principle of speed is related, and Yeager urged, "Don't wait." On coolness, he explained that panic is contagious and interferes with clear communication. Be ruthless, Yeager continued, commenting that "good guys" are often held back by mistaken ideas about fair play. The final principle is surprise. Do the unexpected, he wrote, even if it is only a side-step to draw your own gun and use the time the assailant needs to reorient to defend yourself.

To Cooper's principles, Yeager added acknowledgment of fear. "Only fools are fearless. There is nothing wrong with being afraid. Being afraid is a normal, natural, human reaction and there is nothing unmanly about it. Focus on victory. Think about winning. Think about not only surviving (surviving could mean you have tubes hooked up to you) but think about winning. Focus on the mechanics of getting the job done," and let fear motivate you to action, he taught. Fear doesn't really make your life flash before your eyes, he continued. Fear brings to mind your regrets and your responsibilities. He urged his students to resolve as many regrets as possible, and thus reduce the mental "clutter" regrets cause.

The Four Pillars of Fighting is a bounty of solid education compiled from Yeager's written work, articles, blog posts, and student notes, and it too extensive to fully cover in a book review. This is solid material, hard-earned through Yeager and Markel's personal experiences, addressing mindset and character, self-defense tactics, firearm skills, and gear.

July 2024



Editor's Notebook

Thoughts on Independence Day

by Gila Hayes

A few days after we release the 198th edition of our monthly online members' journal, the United States of America observes its 248th anniversary of declaring that we "are, and of right

ought to be Free and Independent States," not colonies under British rule. The work we've done during the Network's 198 months is a tiny fraction of the human experience played out on American soil and on the foreign battlefields where Americans fought to make our people safe and free for nearly two and a half centuries.

In a few days, 4th of July parties, parades, picnics and politicking will be in full swing. While I insist on recognizing Independence Day, more Americans call it the 4th of July, a trend indicative of how few will stop to ponder why they have the day off work, or consider the reason there is a parade, or acknowledge the sacrifices of those who fought for our freedom. Fifty-six Americans, in a bold act of treason (a capital crime, read, punishable by death), defied Britain and signed the Declaration of Independence. A few were nearly senior citizens (especially at a time when a 70-year-old had exceeded the average lifespan by double!), but many were between 30 and 40 years old. Not all lived to see Americans undertake self-rule, dying during the Revolutionary War, while others were captured and tortured, or lost sons to the war, families were broken apart, health destroyed and some later died penniless despite having been quite wealthy when they signed the Declaration.

Today's Americans have descended from tougher stock than the litany of complaints we hear and read about in 2024 suggests. The cost of living, election fraud, unrewarding job prospects, declining health care systems, and deteriorating infrastructure are leading complaints. We've lost sight of how our ancestors declared independence, broke free of a greedy, tax-happy king, and undertook the daunting challenge of organizing a government led by the governed themselves. Now, to echo the words attributed to Benjamin Franklin, the question is whether or not we can keep our freedom.

Lawmaking

With a little flurry of opinions emerging from the US Supreme Court over the past few weeks, I've been pleased when several examples of administrative over reach were corrected when the majority of the Justices called out attempts by regulatory agencies to make law by imposing rules independent of legislation passed by Congress. With many friends celebrating defeats of regulations created and imposed by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), I share their sense of satisfaction while also wondering if our elected representatives in the House and Senate have gotten the message that they are supposed to be the law-makers.

I heard that concern voiced by Wall Street Journal editorialists several months ago when the Court considered a case that could strike down *Chevron* deference, and again over the past few days in response to the USSC majority opinion striking down the bump stock ban and echoed by several gun rights bloggers yet again when a TX Federal district court vacated the pistol brace ban. Gun bloggers are split on whether the BATFE will appeal the TX decision. It is hard for me to see why the agency would not.

Ironically, if legislation had come before the House and Senate proposing to turn bumpstock or pistol brace owners who failed to surrender their gun accessories into felons, the tide of public opinion might have swept the restrictions into law and possibly made the prohibition much harder to overturn. Instead, in the aftermath of the "hurry up and do something" opportunism that inevitably follows mass murder atrocities committed with a firearm, the only study into whether there was any substantive benefit to then-President Trump's bump stock ban and later to President Biden's pistol brace ban was at best window dressing and at worst, measured consideration was nonexistent. That's what happens when presidents side-step Congress, and try to legislate from the Executive Branch.

Thank God there remains enough independence in the United States Supreme Court to stand up to these violations of the separation of powers so fundamental to our system of government.

About the Network's Online Journal

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

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

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

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