Armed Citizens' Legal Defense Network, Inc.

The Evolving Law: *Perspectives on Supreme Court Cases with Attorney Menashe Sasson*

Interview by Gila Hayes

The Network is blessed to be associated with attorneys who genuinely care about liberty and that passion is reflected in our most popular monthly column, the Attorney Question of the Month. Since affiliating with us in 2013, once or twice a year, Dallas, TX attorney Menashe Sasson contributes to the column, and when that happens, anyone who loves to learn, puts on their reading glasses, grabs a pen and note pad and settles in to study, because his contributions are supported with detailed citations and explanations of the law or laws bearing on the topic under discussion. His commentaries expose us as laypersons to the language of the law and what it means. Maybe that's not too surprising because Mr. Sasson was a police officer and major crimes detective for 12 years before attending law school. Before that, he served in the U.S. military, and he is an NRA-certified pistol, concealed carry, and rifle instructor and range safety officer.

A lot of Mr. Sasson's cases concern folks who have background issues that prevent them from passing a 4473 gun purchase background check. That's pertinent because it is not unusual for callers to the Network to say they'd like to become armed citizens, but they're prohibited from possessing firearms. While our work on behalf of members is 100% focused on the legal defense of use of force in self defense and doesn't entail restoration of rights or getting permits to carry, the questions arise so that it is well worthwhile to ask him how Supreme Court decisions build on previous cases, and how some create openings for additional litigation. Let's switch now to our Q & A format and learn from Attorney Menashe Sasson in his own words. For members preferring video, we've posted a longer, informal discussion at https://www.youtube.com/watch?v=68S-Dp6d3CzA .

eJournal: Thank you for sharing your knowledge with us today. What should we know about you besides the fact that reading this doesn't create an attorney-client relationship?

Sasson: I want to emphasize this is for educational purposes. I can't give legal advice to anybody because this is just really not an appropriate forum for that, but we do encourage learning.

Today, I want to start out talking about several different cases and how they fit together and show the progression of the law. A lot of non-lawyers, laypeople if you will, hear that the Supreme Court decided X or that the Supreme Court decided Y, and for them that's the end of it. In reality, the law is not just one discrete case; it's reading cases together, seeing the development, seeing how they work together, and sometimes how they do not work together. That is where I'd like to start today.

eJournal: In preparing for this interview, you used the term "a trilogy" to describe a series of Second Amendment cases the Supreme Court decided. I thought that was a good term. Now you mention their interaction and connection. Let's just jump right into learning about those interactions.

Sasson: The trilogy that we talked about is made up of cases with which everybody who is reading this is probably familiar. Those are the *Heller* decision, the *McDonald* decision, and now most recently the *Bruen* case. *[Editor's note: Text of the cases mentioned are provided at https://armedcitizensnetwork.org/perspectives-on-supreme-court-cases/court-decisions .]*

Rewinding all the way back to 2008 and the *Heller* decision, Dick Heller was a guy who lives in Washington, D.C., a place where a lot of us probably wouldn't want to live. He was a special police officer there at the time. He figured, "Well, I carry a gun at work, why can't I have one at home?" He and some other folks filed a lawsuit raising the issue of whether the District of Columbia's prohibition on possession of firearms, even in the home, was constitutional under the Second Amendment.

The bigger question, however, really was whether the Second Amendment protects an individual right of people like you and me or does it protect a collective right, the right of the militia, the rights of the states, since the Second Amendment talks about a well-regulated militia.

The main holding in *Heller* was that the Second Amendment protects an individual right. That's huge. If the court had held differently, and said the right was collective and for the militia, then essentially that would have been a collective right of the state and not an individual right. That would have opened the door to nonstop gun control and eventual abolition of gun rights as we know them.

That the Second Amendment protects an individual – not collective – right was *Heller's* main holding.

The Second Amendment, however, actually protects two rights. The right to keep arms and the right to bear arms. They're

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different. That's the good news. Here is the perhaps not-so-good news from *Heller:* the Court said that its "opinion should not be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." That's negative because the sensitive places can be a big deal. The good news, though, is that the court made another comment that opens the door to litigate these.

The Court relied on a case from many years ago that challenged the National Firearms Act. In it a guy got arrested with a sawed-off shotgun. That case essentially held that the NFA prohibitions on short-barreled shotguns and machine guns are constitutional. The case is *United States v. Miller,* 307 U.S. 174 (1939) and it is decades old, almost a century old.

There are two problems with that holding. One: it was many years before *Heller* and the courts weren't looking at the possession of firearms in general as an individual right. Second, and perhaps more importantly: the court in that opinion said that the reason for its ruling was the absence of evidence tending to show that possession of a short-barreled shotgun was not consistent with the history and traditions. That was the support for the *Miller* court's opinion way back then.

If I argued this case today, my argument would be that even though this case held that short-barreled shotguns could be prohibited by the NFA, that's no longer true because, one, *Heller* recognized that this is an individual constitutional right, not a collective right, and two, the court in the sawed-off shotgun case which held that the NFA was constitutional did so because there was an absence of evidence, not because the evidence supports the holding.

The next case in our trilogy was *McDonald,* which was factually indistinguishable from *Heller* from a perspective of the relevant facts of the case. McDonald, unlike Heller, was not a police officer and didn't live in D.C., but he lived in Chicago and, like Heller, McDonald was a law-abiding citizen. Chicago, like DC, had an ordinance that prohibited the possession of firearms without a permit even in residences. Like DC, through the use of bureaucratic red tape, Chicago made it effectively impossible to get a permit. From that legal perspective, *Heller* and *McDonald* are indistinguishable.

You might ask why did McDonald need to sue? If the Second Amendment protects an individual right in DC, well, surely it also does so in Chicago. It should, but prior to 1865 when the Civil War ended and before the Reconstruction Amendments – the 13th, 14th, and 15th Amendments to the Constitution – were passed, the Bill of Rights, including the Second Amendment, applied only to the federal government. States were free to violate it with impunity. The 14th Amendment, passed in 1865, was incorporated by the Bill of Rights and made it applicable to the states. Prior to that, the FBI would need a search warrant to search your home, but the Chicago police would not. Before 1865, a warrantless search by the Chicago police was not unconstitutional. That's the issue.

If Heller had lived anywhere but a federal enclave, we wouldn't need *McDonald* to fill in the gap.

Interestingly, the Reconstruction Amendments were needed right after the Civil War because the Southern Democrats were passing Jim Crow laws and many of those laws disarmed black people. To try to assure that the laws and the Constitution applied to everybody, one of the provisions of the 14th Amendment is that blacks get the same rights as everybody else.

I found it kind of ironic that Otis McDonald, a Black man, lived in the South as a child, but after military service, he moved to the North, to Chicago, perhaps still trying to get away from the Jim Crow laws. I'd like to share a short clip of Otis McDonald himself, telling his story. *[Editor's Note: For readers without access to video, the video shows him making this statement.]*

> *"I'm Otis McDonald and I'm 77 years old. I was in the armed forces in Germany for two years nine months and 21 days. When the situation in my neighborhood got a little a little hairier than I could live with, I knew then that something had to be done.*
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> *"Even though I knew I was going to be denied, it was still devastating: to live where I live and be surrounded by what I was surrounded by and seeing every day on the news what's happening to elderly people my age, to go down there and then they say, 'No, you can't have a handgun.' I just wanted to protect myself and my family and my property.*
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> *"Most of the politicians that are trying to deny me the right to protect myself have armed guards 24/7, so that tells me that they could care less about me and that's hypocritical."*

eJournal: I can't imagine anybody more in need of guns for self defense than that gentleman. What happened?

Sasson: First, some background: after the 14th Amendment was enacted, there was not a wholesale incorporation and application of the Bill of Rights to the states. Incorporation was piecemeal. There were cases addressing the First Amendment, the Fourth and Fifth Amendments and so on. Thus, we needed *McDonald,* the case addressing the Second Amendment, to be litigated in the courts and especially in the Supreme Court.

We needed a nationwide rule saying that yes, the Second Amendment applies to the states just like the First Amendment applies to the states, just like the Fourth, and Fifth. In *McDonald,* the holding was that, yes, the Second Amendment

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applies to Chicago, Illinois, and every other state, including Hawaii, where we're just recently having some litigation on the Second Amendment. Hawaii thinks that their opinion carries more weight than the U.S. Supreme Court's opinion, but that's another case.

eJournal: It is. Considering how this evolved, I must ask, while the *McDonald* holding solved some issues, did it also leave open some doors for continued restrictions?

Sasson: Yes, it did. All that *Heller* and *McDonald* addressed is whether, under the Second Amendment, a person may lawfully possess a firearm in their home. Neither said anything about carrying firearms in public. Remember, a few minutes ago we talked about the Second Amendment protecting two rights? One, the right to keep arms, and two, the right to bear arms.

Heller and *McDonald* addressed the right to keep arms. Now, we come to *Bruen,* which addressed the right to bear arms.

Before we dive headlong into *Bruen,* remember that back in the day, most states did not allow open carry or unlicensed carry.

In modern history, a person had to have a license issued by the government – the proverbial permission slip – in order to carry a firearm in public. Two types of licenses have evolved over time.

One is what we call "Shall-Issue," and one is what we call "May-Issue." Shall-Issue is pretty much what it says. If a person's not a criminal, felon, or prohibited by law, the government must issue the license after the person jumps through the hoops of applying and paying the fee. Sometimes there's a shooting test or a test of knowledge of state laws, but once a person satisfies all the objective criteria, in a Shall-Issue state the government has no choice but to issue the license.

In a May-Issue state, all the same criteria must be met as in Shall-Issue states, plus an additional criterion: some government bureaucrat must conclude that the applicant has shown, "Good Cause" or some analogous language. Illinois, California, New York, and Hawaii were May-Issue states. An applicant had to show good cause. Well, that's where *New York State Rifle and Pistol Association versus Bruen* came in.

Bruen said the 14th Amendment applied the Second Amendment to the states in the context of carrying firearms just like it did in *McDonald* in the context of owning or possessing firearms. Not just one portion of the Second Amendment, but the whole Second Amendment is incorporated and applies to the states.

Now, a question that is just beginning to be litigated, is whether a state has to allow all kinds of public carry, or if they just have to allow one kind of public carry.

eJournal: And what kind would that be?

Sasson: Well, that's the state's choice. So far – and this may change over time with more litigation – the cases essentially say that on the most restrictive level, if the state issues a license and allows licensed carry after going through the Shall-Issue process, then it doesn't have to allow open carry, for example, or it doesn't have to allow what what's called constitutional carry or usually more accurately, permitless carry. Constitutional carry and permitless carry mean different things even though people use the terms interchangeably.

The bottom line from the *Bruen* perspective is that if the state says, for example, we're going to allow permitted carry, then we can outlaw open carry, permitless carry, and the like. Of course, states can go beyond that and allow all kinds of carry, but we're talking about the less than cooperative states here.

eJournal: Returning to that open door for restrictions previous cases didn't completely close, the big fallout of *Bruen* has been the sensitive places. How is that even passing muster?

Sasson: That's the proverbial exception swallowing the rule. That's the litigation we're going to be facing. *Bruen* also set out a test to determine how lower courts can determine whether a challenged regulation is constitutional. Essentially, that test asks, does the regulation implicate a Second Amendment interest? If it does, it's presumptively unconstitutional and the state has the burden of showing that there is a history and tradition of this type of regulation.

We have different laws that might be held unconstitutional under the *Bruen* test. Let's start with federal law. The first one is prior felonies. There are now more federal felonies than there have ever been before in history; just about everything is criminalized. From a perspective of firearms rights, the Gun Control Act of 1968 makes no distinction between violent felonies and nonviolent felonies.

Now, in the wake of *Heller, McDonald,* and *Bruen* I think a very good case can be made for change. I had a client a while back, a nice man who unfortunately had a run-in with the IRS and was convicted of a felony related to filing tax returns, or more accurately, not filing them. He's now a prohibited person, but there was no violence involved. He has been an upstanding citizen the rest of his life. He works, pays his taxes, the whole nine yards. He slipped one time. It was nonviolent, and that took away his Second Amendment rights.

There are a lot of people in his position that made a nonviolent mistake that doomed their Second Amendment rights for life. I'll take it a bit further. This is not the law, just my personal opinion, but a lot of us think if you get in trouble with the law, and you do your time, it should be done. You should be back to being a citizen. Why should someone who has a criminal conviction be stigmatized for life? Have they not paid their debts to society?

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Back to our topic, there's no reason that makes any sense for prohibiting non-violent felons from possessing guns.

Another area where we see all kinds of mischief is on mental health issues. For example, veterans who seek help from the VA after coming back from a war zone may have trouble sleeping and take medicine for a little while, get reported to the federal government and they can't pass a 4473 check anymore.

We want to keep firearms out of the possession of people that actually have mental issues, but we especially don't want to stigmatize somebody who's served their country and had a little PTSD and now they're fine. That needs some tweaking and some refinement.

In my practice, I see people all the time who have a temporary mental problem. Commonly, the police take them into custody, put them in what's typically a 72-hour hold to be evaluated, and then they're released. They are fine; there is no problem. They have not been committed by a judge; there was no involuntary commitment. The initial 72 hours was involuntary, but the law says that a 72-hour evaluation period is not considered an involuntary commitment. They shouldn't lose their rights over that, however, they're being reported to the FBI. They are effectively losing their rights when they shouldn't lose their rights.

eJournal: No wonder people don't seek help when they begin to manifest those problems, because who would want that hung on them?

Sasson: On a national scale, the stigma of mental health problems is quite onerous.

Another problem is reporting dispositions of criminal cases by the states. Let's say someone's arrested and charged with a particular crime. Either they plead it down to a conviction that would not make them a prohibited person, even though the original arrest and charge was for an offense that would make them a prohibited person if convicted.

We see the arrest reported, but the disposition never gets reported to the FBI. They're considered prohibited persons until people like me go in and straighten things out. Even though court clerks are required by law to submit the dispositions, there's a breakdown in the system and it doesn't always happen.

eJournal: If you litigate, are you suing the state to report that outcome?

Sasson: Well, see, here's the problem. State laws typically require reporting – Texas does – and that's reporting of not just arrests, but also of convictions. If you plead it down, that's supposed to be reported, too. But there's a disconnect. I've got a case right now where my client, and his now ex-wife agreed to a mutual restraining order in a divorce in another state. The restraining order wasn't because anything bad happened; it was just a mutual agreement in the process of their divorce.

Because the divorce occurred somewhere outside of Texas, my client went back into court through his out-of-state lawyer and got that restraining order rescinded but now it is still showing up when he goes to buy a gun. The reporting agency, in this case not the court, but the police department, where the order was recorded and put into the federal database has just not done anything to pull it out of the database. It has not yet been corrected on his federal record. We see all kinds of little problems like this.

eJournal: In addition, criminal convictions related to domestic violence have caused problems for years, and that got worse after the Lautenberg Amendment was applied retroactively to misdemeanor DV sentences. We need honest consideration of the prohibitions that society and the courts deem appropriate or inappropriate. What's the current situation?

Sasson: Domestic violence litigation is a hornet's nest, including that in the Supreme Court. Most recently, there was a case called *U.S. v Rahimi.* Essentially, he got arrested for having a firearm while under a domestic violence restraining order. Rahimi challenged that on Second Amendment grounds, but the court said, sorry, if you have a domestic violence restraining order, you can't have guns. The dissent in *Rahimi* pointed out that the majority's holding is not historically consistent. To get to their decision in *Rahimi,* the Supreme Court had to violate its own rule that it set down in *Bruen.*

Yes, in the *Rahimi* case, the TRO, the restraining order prohibition, certainly implicates the Second Amendment. That's the first prong of the *Bruen* test, but the test's second prong – having a historical precedent for the restriction – wasn't there. The majority in *Rahimi* danced around that and the dissent called them out on it.

Rahimi is a very good example of how bad facts make bad law, because the judges just didn't want to go down in history as voting to allow people with domestic violence restraining orders to have guns. That just is bad press, and so that's how *Rahimi* came about.

On a different, probably more pernicious note, there was a case back from 2009 called *U.S. v Hayes,* and *[grinning]* I think nothing to do with you or Marty, right?

eJournal: *[laughing]* Not me.

Sasson: *Hayes* is a very interesting case, and it's one that I think was wrongly decided and ripe for reconsideration. In 1994, a guy by the name of Randy Hayes was convicted in West Virginia of a misdemeanor crime of battery. The West Virginia battery statute is what we call a generic battery statute:

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it doesn't require proof of the existence of a domestic relationship with the victim for the state to obtain a conviction. It's just a battery, so committing a battery under this statute in West Virginia was no different whether you hit your wife or whether you hit the guy across the street during an argument. It's just a generic battery case. We see this all the time: people are charged with offenses that would be a domestic violence offense if they're convicted but then they plea-bargain it down to something that would not be a domestic violence offense and plead guilty to that, although that wasn't true in Hayes' case.

Fast forward in Randy Hayes' case. He was convicted in 1994. Two years later in 1996, the Gun Control Act was amended to insert domestic violence convictions in addition to felony convictions. To any felony conviction, they added any misdemeanor crime of domestic violence. The term "misdemeanor crime of domestic violence" is a term of art that only lawyers can twist to mean what they say it means.

To recap, in 1994, Hayes gets convicted of misdemeanor battery. Two years later, in 1996, Congress adds people with domestic violence convictions to the list of prohibited persons.

Fast forward again to 2004 – some 10 years after his battery conviction. The police go to Hayes' home on a 911 call of domestic violence, and during that encounter, the police said, "May we search your house?" and Mr. Hayes says, "Yes, you may." Maybe not the first mistake he made, but that's certainly a big mistake. Hayes consented, and lo and behold, the police find a gun. Now, these are local cops, but somehow this makes its way over to the U.S. Attorney's office and the federal prosecutors charged him with being a prohibited person in possession of a gun. That is a ten-year federal felony, unlike the misdemeanor crime of domestic violence which would only be a one-year max sentence.

Hayes appealed his conviction all the way up to the U.S. Supreme Court. His issue was that the West Virginia statute just says that battery is an unlawful or offensive touching of one person by another. In the West Virginia statute, there's no element that the victim has to be in a domestic relationship with the defendant. Therefore, Mr. Hayes says, I was not convicted of a misdemeanor crime of domestic violence; I was convicted of a misdemeanor crime of generic battery.

You know what the Supreme Court said? The U.S. Supreme Court said, not so fast; it said that any generic battery conviction will suffice as a misdemeanor crime of domestic violence as long as we can look behind the curtain at some point down the road and see whether the victim was in a domestic relationship with the defendant.

We see this all the time in my practice. People call my law firm and say, "I'm having a hard time getting my Texas license to carry (*e.g.,* CCW) because 20 years ago, me and the Mrs. had a little spat and I had this little conviction." It turns out that not only are they ineligible for a carry license, they're also prohibited under federal law from possessing firearms for the rest of their lives. It doesn't matter that they're still married to the same spouse 20 years later and never had any other problems.

The Supreme Court dissent in *Hayes* said:

> It cannot fairly be said here that the text of the statute "clearly warrants" the counterintuitive conclusion that a "crime of domestic violence" need not have domestic violence as an element. That leaves the majority's argument about legislative history and statutory purpose. This is not the "rare" case in which such grounds provide "fair warning" especially given that there is nothing wrong with the conduct punished, possessing a firearm, if the prior misdemeanor is not covered by the statute. An individual should not go to jail for failing to conduct a 50-state survey or comb through obscure legislative history. Ten years in jail is too much to hinge on the will-of-the-wisp of statutory meaning pursued by the majority.

eJournal: I found the dissent interesting because it was authored by Chief Justice Roberts, who isn't always popular with strict constitutionalists. It was interesting to read his words parsing the holding of the majority. Now, the question is where did we go after *Hayes?* Has there been any evolution to recover from that holding?

Sasson: *Hayes* was decided in 2009, so there's an argument to revisit it and try and get it overturned, but there's also a good argument to not overturn it. Good lawyers on both sides could make good arguments. I think that *Hayes* was wrongly decided, but that's just my personal opinion. That and maybe five bucks might buy you cup of coffee.

eJournal: Was it the composition of the Supreme Court in 2009? It's a little more conservative now, but is it enough to make any difference?

Sasson: Well, that's hard to say because if you look at the Court just from the superficial perspective of who appointed the justices, and from that you extrapolate what we might expect from those justices, many times you would be sorely disappointed in the outcome of certain cases. It's hard to say where we're going, but it's a litigator's wonderland. Much is ripe for litigation.

The bad news, of course is that litigation costs money, and to get anything to the Supreme Court costs a whole lot of money. Most don't have the time, money, or inclination to do that. The landscape looks favorable, but there are still a lot of landmines on our path. As we've seen lately, it doesn't matter who you are, you can be pursued almost indefinitely in the courts to get the desired outcome.

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eJournal: Indeed. Moving away from domestic violence, what other reforms could we anticipate? Is there any hope maybe to reform prohibitions following nonviolent felony convictions?

Sasson: It will take legislation to get out of the nonviolent felony conviction prohibition. The Gun Control Act would have to be amended through Congress and signed by the President. Perhaps there is good news on that horizon, but someone needs to coordinate that and get the legislation introduced and get the usual lobbying that takes place on any legislation to support it.

There have been lot of pardons lately, and perhaps some are legitimate. Maybe the people that want to pardon all these folks, would like to nip this whole thing in the bud and change the law so folks are not convicted in the first place. A place to start would be to exempt non-felons from the current law. That has got to start in Congress and ultimately go to the president.

Another reform that could be done quite easily if someone in the right place had the interest in pursuing it, is to reel the FBI back in and get them to do what they're supposed to do – to treat Americans fairly and report things accurately and keep the records properly.

When we contact them about this stuff, the FBI always says, "We're just are a repository of data. If the data is not right, you need to go back to the source and get it corrected and have them send something to us and showing us that what we have is in error, incomplete or whatever."

There's another problem that we see all the time. Someone's arrested for a crime that, were they convicted of it, would make them a prohibited person. For whatever reason, though, they are not convicted of that crime. Either it's a complete acquittal, a dismissal, or they plea bargain it down to a non-gun prohibiting crime. Fast forward, 20, 30, 40 or more years, and they try to buy a gun. They go to a gun store and do the 4473 and check the no responses but their NICS check comes back denied. We look into it and a lot of times we find that the court never reported a disposition, just as we talked about.

There's the twist in this one. The FBI says, "We're just reporting what's been reported to us and if that's not accurate or complete, that's not our fault." We go back to the court that handled the case initially, some 20 or more years ago, and ask to have the disposition reported to their State Department of Justice and then ultimately to the FBI, and the court clerk says, "We'd be glad to do that for you, Counselor, except we destroyed the records 10 years ago. We have nothing to report."

From my perspective, it doesn't matter whether it's the state government or the federal government. Because the government destroyed the records, this person is banned for life from possessing firearms because of an arrest that did not result in a prohibited person outcome. Because the government destroyed the records, now this person is prohibited. Whether through legislation or litigation, that should change. Put the burden on the government to prove a person is a prohibited person if they want to deprive them of their constitutional rights.

The point is not that no one can prove anything. The point is that the government can't carry its burden. The individual shouldn't have any burden at all to prove that they're not prohibited. It's the government that should have to prove that the person is prohibited, and if the government can't prove that, then the person automatically should not be prohibited.

Even if you buy the FBI's argument, "We're just a repository of documents," it should go back to the state, and the state should have to be able to provide documents that show the person is prohibited. The rule should be that unless the government proves it, it doesn't matter whether it's the state government or the federal government. Unless the government proves that a person is prohibited, that person's constitutional rights should not be infringed.

eJournal: You also mentioned ATF reforms when we were planning this article. Are you at all optimistic about reforms to that agency?

Sasson: Today, the most important case that affects the ATF has nothing to do with firearms; it affects fishermen. I'm talking about *Loper Bright Enterprises v. Raimondo,* a case that overturned another Supreme Court case, the *Chevron* case. *Chevron* said that when a regulation that's promulgated by an executive branch agency is challenged by a citizen, unless it's so far out in the left field that nobody's going to believe it, the agency is entitled to deference and the regulation is valid. That became known as "Chevron deference." The holding in *Loper Bright* overturned *Chevron* and effectively says when a person challenges an agency action, the citizen is on equal footing with the agency. Nobody gets a presumption of constitutionality or lawfulness. Prove your case and let the chips fall where they may.

eJournal: This is a personal hot button for me. Plaintiffs don't go to the court to ask what the agency thinks, but to ask what the court thinks.

Sasson: Exactly. This leads into a bigger can of worms. Yes, we might get a lot of ATF regulations fixed, rescinded, or not enacted in the first place, because now the ATF has to be more careful about what it does, but that's not going to fix the bigger problem. The bigger problem is well beyond the scope of firearms. The bigger problem is agencies making and adjudicating laws through their administrative procedures. That whole idea is unconstitutional. It is unconstitutional not because the Supreme Court has said so, but because the text of the constitution says so.

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Administrative agencies are not just making law, they're acting as a judiciary as well. An executive agency – pick your three-letter agency of preference – is not just enforcing the law, which is what the executive branch should be doing; they're making law through their administrative rules in these regulations. If you come under their microscope and allegedly violate one of those rules, before you can go to your federal district court across the street and file a lawsuit, you have to go through their administrative procedures process. You have an administrative judge who works for the executive agency whose regulation you're challenging and who pays their salary, telling you that you're wrong. The fox is guarding hen house, right?

You have to go through this process before you can go across the street to a real court and sue. Administrative tribunals do this all the time. Perhaps the judiciary likes it to some extent because it takes some work off their plate and they don't have to work so hard, but from a constitutional perspective, it just doesn't work.

eJournal: It really makes me wonder how we could get back to what the founders intended for us.

Sasson: That's the question, but the problem is, it didn't take us four years to get here. It's taken us many years to get here. We have a hard row to hoe. Not to get political, but a lot of people are happy about the outcome of the recent election, but as good as that is, it's just barely a starting point. There are lot of things that have to change on a permanent, long-term basis for this election to mean anything.

eJournal: I'm not feeling so optimistic right now.

Sasson: I often tell my clients, I'm not here to make you feel good; I'm just here to tell you the truth and to pull the curtain back on what's going on. If more Americans understood their history and their constitution, that could do nothing but help us.

eJournal: Yes, one reason laypersons like me are so overwhelmed by unconstitutional laws is our lack of historical understanding of how all the power brought against us was concentrated in, to use your example, administrative agencies. We laypersons just know we're getting convicted.

Sasson: The government has enormous power. I tell clients all the time, the best course of action is not to fall on your sword. It's usually better to stay under the radar and stay legal, but don't draw attention to yourself. Exercise your rights, but don't draw attention to yourself. Blend in and go about your life.

eJournal: …and maybe not plead without knowing the implications of accepting that plea offer. It may not be in your best interest.

Sasson: Well, nothing against criminal defense lawyers in general – I don't consider myself a criminal defense lawyer, although we do handle some criminal cases – but a lot of times, criminal defense lawyers don't understand or fully appreciate the implications that the outcome of a criminal case can have on a person's gun rights. A very high percentage of criminal cases in the trial courts are handled by public defenders. Those are government lawyers who are paid a government salary and they've got cases upon cases piled upon them and they've got neither the time nor the resources to give any case the attention it really deserves. That's a topic for another day, but that's the sad reality.

eJournal: Add to that a defendant who may not be thinking about the long-term implications or who doesn't understand their constitutional rights. This perspective makes me so much more grateful for the work you do and that people like you exist and are out there fighting for us. Now, I follow your blogging on your website, so in closing, I'd like you to tell us where we can learn more about you and your work.

Sasson: Thanks for asking. We are a Texas law firm, and we do most of our work in Texas and with Texas clients, but we're pleased to announce also that we've now expanded and have a new practice group to reach people nationwide. For our Texas clients, you can reach us at ArmedDefenseLaw.com. There, we can handle anything that arises in Texas, legally speaking.

For clients outside of Texas, our new website is FederalFirearmsLaw.com. This is where we can help people from both Texas and the other 49 states in matters that deal only with federal law. So, if, for example, a person has trouble with passing a NICS check because of a state conviction, we're not dealing with the state conviction itself, because that's already settled. We're dealing with the federal law, relating to how that conviction affects their federal firearms rights, with the FBI and their criminal history reports, that kind of thing. We also work with federal firearms dealers that get audited and so forth, that's federal law. We can now help these clients nationwide. See https://ArmedDefenseLaw.com for Texas, https://FederalFirearmsLaw.com for everybody, and to reach us by telephone, call 972-292-7425.

eJournal: Thank you for all your work, all you do for us, and thank you for helping us understand the law's evolution.

Sasson: Well, thank you and the Network for all that you do in bringing firearms owners together to get information and resources. What you do is very valuable to the firearms community, I believe.

About our speaker: Menashe Sasson has been practicing law since 1999 and is the Managing Attorney of the Texas-based law firm Lapin Law Group. He is licensed to practice in the state courts of Texas and in the District of Columbia and has also been admitted to the Bar of the United States Supreme Court.

President's Message

by Marty Hayes, J.D.

Kayla Giles, the Louisiana mom who shot and killed her estranged husband, was subsequently convicted of second-degree murder and obstructing justice and is currently serving a life sentence plus 30 years for the two crimes, was back in the news the other day, when she appealed her conviction to the Louisiana Supreme Court. If you remember, she was the individual USCCA dropped because their insurance underwriter believed she committed murder, as opposed to a legitimate act of self defense. Over the past year, her case has become "YouTube famous" in part from the Attorneys on Retainer's owner Marc Victor promoting his company by exposing the USCCA's involvement in the case.

I will let you learn all about the case on your own if you wish by searching YouTube for her name, which will lead you to numerous videos on the subject. It is a topic of debate by "GunTubers" (YouTube celebrities who take money from the different companies in the industry to promote their sponsor over the others). The following legal documents are also instructive:

State v. Coutee, 373 So. 3d 486 - La: Court of Appeals, 3rd Circuit 2023 - Google Scholar

Applicant's Brief - Adobe cloud storage

The facet of this case that I want to address with our members is the argument that the State of Louisiana used in the case when they said that because Kayla Giles had–

1) bought a gun for self defense,
2) researched her state laws on use of force in self defense, and
3) bought a self-defense insurance policy,

– all before killing her husband in what she described as self defense, this constituted "pre-meditation" and that she planned to murder her husband.

The issues run deeper, but this facet is what I am most concerned about for our members.

In fact, I had the very same concerns 12 years ago, when we posed the question to our Network Affiliated Attorneys, and they responded in the following editions of the *eJournal.*

https://armedcitizensnetwork.org/our-journal/2012-journals/274-august-2012#Attorney

https://armedcitizensnetwork.org/our-journal/2012-journals/275-september-2012#Attorney

https://armedcitizensnetwork.org/our-journal/2012-journals/276-october-2012#Attorney

While these columns are 12 years old, the attorneys' commentaries are as current as if they had been written today.

In researching the Kayla Giles case, I found no indication that Giles testified in court. Because she did not testify, much of the state's theory of the case was allowed to go unchallenged. Instead, the state was allowed to play an investigative interview of Giles, which did her no favors, and because she did not testify on her own behalf, it probably led to her conviction.

Network members reading this should be prepared to testify at trial, in an attempt to educate the jury about what was going through their mind when they made the decision to shoot (or use any force) in self defense.

They could explain why they bought the gun in the first place, why they conducted research on self-defense law, and why they joined the Network. Of course, our educational package also goes to the mindset of the defendant (a member accused of murder), and I would absolutely be available to testify why I started the Network, if asked.

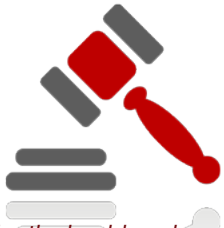
Deadly Force Instructor Class Coming Soon

On April 5th through 9th, Massad Ayoob and I will be teaching a Deadly Force Instructor certification course in San Antonio, TX. If you are an advanced student or instructor who has been saying to yourself that you need to take this class, well, now is the time.

Texas weather in April will be fine, and the host, Eric Lamberson of Sensible Self-Defense, is a Network member and he is experienced in holding classes such as this. For details, see https://sensibleselfdefense.com/register/ols/products/mag-deadly-force-instructor-5-9-april-2025 .

I really enjoy putting on these courses where I can use my three-plus decades of teaching experience, my expert witness experience and put my law degree to use, educating the current generation of handgun instructors in how to address use of deadly force questions that come up in their classes.

If the discussion of the Giles appeal earlier in this column made you think about having to testify in court on your own behalf after a shooting incident, and if that prospect scares the daylights out of you, we will be addressing testifying in court in the class, and with any luck, we will be able to make a Network educational video out of the lecture.



Attorney Question of the Month

Our Florida Affiliated Attorney Steven M. Harris suggested that our online journal's Attorney Question of the Month should explore various states' statutes, caselaw and jury instructions about duty to retreat, noting that he was appalled by MN Supreme Court's decision in State v. Blevins, No. A22-0432 (Sup. Ct. Minnesota, July 31, 2024) which, in part held, "In Minnesota, a person does not have an inherent right to stand their ground, and the public policy interests underlying the judicially created duty to retreat when reasonably possible include avoiding potentially deadly confrontations.") See https://caselaw.findlaw.com/court/mn-supreme-court/116439787.html.

Harris asked:

Does a statute or caselaw in your state impose some generalized duty to avoid a dangerous person, place, or situation (as part of a duty to retreat or otherwise) before non-deadly or deadly force may be justifiable? How is that requirement worded?

What jury instructions are usually given in your state to address whether there is or is not a duty to retreat?

We'll start this column with Attorney Harris' input and follow up with comments from our other Affiliated Attorneys.

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Florida has "Standard Jury Instructions" adopted by a committee appointed by the Florida Supreme Court. They appear on the website of The Florida Bar. Judges rarely vary those instructions despite the fact that they are not presumed correct or reviewed by the Florida Supreme Court. Unfortunately, defense lawyers seldom propose more than small changes to the standard language. I know of several instances where standard instruction language is insufficient or incorrect. I recently wrote an article explaining that for Florida's justifiable homicide statute, see at p.4 here: https://www.8jcba.org/resources/Documents/Jan%202025%20Newsletter.pdf .

When a defendant has no duty to retreat before threatening or using deadly force, that will be given as an instruction without explanation. When the duty to retreat is disputed (e.g., because the State alleges the defendant was engaged in a criminal activity or was not in a place he or she had the right to be) the jury will be instructed on that, including something like this (bolding supplied): *The duty to retreat means the defendant had the legal obligation to use every reasonable means to **avoid any danger before using deadly force.** The law does not require the defendant to retreat if she was placed in imminent danger of death or great bodily harm and it would have increased her own danger to retreat, or if retreat would have been futile. If (defendant) had a duty to retreat and if she could have safely retreated, but did not do so, then you should find her use of deadly force was not justifiable.*

Notice the first sentence contains no temporal context. Hence, I argue it should not be given. There is no Florida caselaw which imposes a generalized duty to "avoid any danger." There is however caselaw which recognizes the contrary, for example, that a person may lawfully go outside armed to confront a potentially dangerous trespasser. Correctly stated, the duty to retreat (or not) and avoid the danger arises only when the imminent threat presents, and just before the force decision is made.

If a defendant has provoked as an initial aggressor by unlawful force, then and only then is there a duty by statute [§ 776.041(2)(a), Fla. Stat.] to exhaust "every reasonable means to escape **such danger** other than the use or threatened use of force which is likely to cause death or great bodily harm to the assailant." (Bolding supplied).

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In Georgia, there is both statutory and common law providing that a person has no duty to retreat and may stand his or her ground. Georgia statutes have provided for over 100 years that a person who is not the aggressor need not retreat and may stand his ground against an attack in a place where he has a right to be. Moreover, the Georgia Supreme Court has ruled that that was the common law in England that was adopted by Georgia as a colony.

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I was trial and appellate counsel for defendant in Earl v. State, 111 Nev. 1304 (Nev. 1995). I was denied my jury instructions regarding the "No duty to retreat rule" in Nevada. Case reversed on appeal.

[Continued next page]

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In short, Texas has no such requirement. So long as a person is in a place they have a legal right to be then their right of self defense is not conditioned on any variety of a duty to retreat.

It's theoretically possible that could be a fact question at trial. If, for example, there was a question about whether or not the defendant was trespassing at the time force was used. I've never seen that come up, so I'd have to craft a custom charge question if that situation arose.

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This is Attorney Donald J. Green in Las Vegas, Nevada.

1. NEVADA: Does a statute or case law in your state impose some generalized duty to avoid a dangerous person, place, or situation (as part of a duty to retreat or otherwise) before non-deadly or deadly force may be justifiable? How is that requirement worded?

ANSWER: IF YOU ARE NOT THE PRIMARY AGGRESSOR. There is no duty to retreat in Nevada so long as you are in a place, such as stand your ground where you are legally authorized to be. You may defend yourself in the presence of imminent death or great bodily injury in your presence, not across town where you drive to where your son might be located where he is getting beat up by gang members.

ANSWER: IF YOU ARE THE PRIMARY AGGRESSOR. In Nevada, if you are the primary aggressor, then, you must honestly and reasonably try to disengage and then, after trying to disengage, that is, somewhat of a retreat, if the original victim continues the aggression against you, you may use appropriate force to address the threat.

2.NEVADA: What jury instructions are usually given in your state to address whether there is or is not a duty to retreat?

ANSWER: Jury instructions in Nevada can be tailored to the information stated above.

COMMENT: STAND YOUR GROUND: Nevada recognizes an inherent right to stand your ground.

CASTLE DOCTRINE: Nevada recognizes the castle doctrine and it applies to when you are in a vehicle, again, so long as you are faced with imminent great bodily injury or death.

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Utah's self-defense instruction explaining that there is "no duty to retreat:"

CR533 Defense of Self or Other - No Duty to Retreat.

A defendant does not have a duty to retreat from another person's use or threatened use of unlawful force before using force to defend [himself/herself] or a third party as long as the defendant is in a place where [he/she] has lawfully entered or remained.

However, if the defendant was the aggressor or was engaged in combat by agreement, the defendant must withdraw from the encounter and effectively communicate to the other person [his/her] intent to do so. If the other person nevertheless continues or threatens to continue the use of unlawful force, the defendant no longer has the duty to retreat.

References:

Utah Code sect. 76-2-402(4)

Here is Utah's Self-Defense Statute, one of the strongest in the nation (notice the forcible felony clause):

Title 76 Utah Criminal Code

Chapter 2 Principles of Criminal Responsibility

Part 4 Justification Excluding Criminal Responsibility

Section 402 Force in defense of person -- Forcible felony defined. (Effective 5/4/2022)

76-2-402. Force in defense of person -- Forcible felony defined.

(1) As used in this section:

(a) "Forcible felony" means aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Chapter 5, Offenses Against the Individual, and arson, robbery, and burglary as defined in Chapter 6, Offenses Against Property.

(b) "Forcible felony" includes any other felony offense that involves the use of force or violence against an individual that poses a substantial danger of death or serious bodily injury.

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(c) "Forcible felony" does not include burglary of a vehicle, as defined in Section 76-6-204, unless the vehicle is occupied at the time unlawful entry is made or attempted.

(2) (a) An individual is justified in threatening or using force against another individual when and to the extent that the individual reasonably believes that force or a threat of force is necessary to defend the individual or another individual against the imminent use of unlawful force.

(b) An individual is justified in using force intended or likely to cause death or serious bodily injury only if the individual reasonably believes that force is necessary to prevent death or serious bodily injury to the individual or another individual as a result of imminent use of unlawful force, or to prevent the commission of a forcible felony.

(3) (a) An individual is not justified in using force under the circumstances specified in Subsection (2) if the individual:

(i) initially provokes the use of force against another individual with the intent to use force as an excuse to inflict bodily harm upon the other individual;

(ii) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony, unless the use of force is a reasonable response to factors unrelated to the commission, attempted commission, or fleeing after the commission of that felony; or

(iii) was the aggressor or was engaged in a combat by agreement, unless the individual withdraws from the encounter and effectively communicates to the other individual the intent to withdraw from the encounter and, notwithstanding, the other individual continues or threatens to continue the use of unlawful force.

(b) For purposes of Subsection (3)(a)(iii) the following do not, alone, constitute "combat by agreement":

(i) voluntarily entering into or remaining in an ongoing relationship; or

(ii) entering or remaining in a place where one has a legal right to be.

(4) Except as provided in Subsection (3)(a)(iii):

(a) an individual does not have a duty to retreat from the force or threatened force described in Subsection (2) in a place where that individual has lawfully entered or remained; and

(b) the failure of an individual to retreat under the provisions of Subsection (4)(a) is not a relevant factor in determining whether the individual who used or threatened force acted reasonably.

(5) In determining imminence or reasonableness under Subsection (2), the trier of fact may consider:

(a) the nature of the danger;

(b) the immediacy of the danger;

(c) the probability that the unlawful force would result in death or serious bodily injury;

(d) the other individual's prior violent acts or violent propensities;

(e) any patterns of abuse or violence in the parties' relationship; and

(f) any other relevant factors.

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

Book Review

Battlefield America:

A Citizen's Guide to Surviving the New World

By Brian Maloy
Bean & Binder Publishing (Dec. 2024)
ISBN-13: 979-8991922302
237 pages, softbound, $19.99; eBook $4.99

Reviewed by Gila Hayes

Last month, I was given a book written by a former Chicago police officer. Brian Maloy's first book, *Battlefield America* is a personal and professional exploration into surviving the violence in American cities today. Not surprisingly, some of the pages reflect a decidedly urban-police-centric view. I wondered if we could find common ground.

Our concerns are very parallel, I think; sometimes the way we get there and the way we view the individual involvement is really different, including rights to possess and carry guns. So much of my thinking is influenced by lifelong instructors and their students, that I often struggle with others' views about the level of preparation armed citizens bring to the problem. Moving beyond that disconnect, I appreciated Maloy's exploration of the growing dangers in American society, which he identifies as --

- Active killer attacks and the related mental health crisis,
- Power players' efforts to uproot the foundations of society and create chaos for their own benefit,
- The need for warrior citizens to shoulder the "physical, emotional, and mental effects of lethal engagements,"
- Going armed, and the skills and awareness needed for individuals and groups of people to survive targeted attacks.

When I started reading *Battlefield America,* the New Orleans truck attack had just happened, and it is my opinion that there's more political and terrorist violence looming on the horizon. I was interested in Maloy's suggested solutions, likely more than his exploration of why violence is so much more prevalent today than in previous generations. As he observes, when someone has violently intruded into your home or is committing workplace violence, and pointing a gun at you and others with you, does the reason matter much at that moment?

Budget cuts and demoralized police forces make armed citizens "the new front line of defense," Maloy writes. Even if communities were to stand solidly once again behind law enforcement, he notes that police work remains, "in some respects…a 'Band-Aid' to the hemorrhaging issues that communities endure, but nobody wants to talk about." Armed citizens and law enforcement need to "thoroughly understand the dynamics of neutralizing and surviving a lethal encounter," learn and practice armed defense skills, and understand "the physical, emotional, and mental aspects of conflict during and after the event," he urges.

Maloy believes, "The use of deadly force to preserve life is becoming increasingly accepted and supported by American society. In the past, these opinions were frowned upon, but times are changing, and people are becoming more desperate for action. The rapidly increasing crime rates, the ongoing active killer phenomenon, and the incline in terrorist attacks, domestically, and worldwide, are all affecting the way we live, work, and play." Calling those willing to take action to stop violent attack "warriors," he identifies three truths common to all fighters. He explains, "they are all limited by the confines of their mortality (they can die), their training dictates how effectively they respond, and their mindset, either flies the craft or crashes it."

Extensive training kept current by "religiously practicing a specific motor task which stamps it into our memory," results in ability "to react or perform on autopilot under stress," controlling the emotional, physical, and psychological effects of an acutely high stress incident, he continues. After all, Maloy points out, a really panicked person may be entirely unable to even use their mobile phone and that's a device we all use multiple times per day. "God help the untrained soul who draws on an armed home invader or active killer. The good citizen would be lucky if he managed to pull his weapon out flawlessly and successfully engage his target without proper training," he adds. Take advantage of the tactical firearms training that is widely available, he urges.

Training is only one concern, Maloy continues, adding that physical health is important to projecting strength, confidence, and ability. Mental and emotional resiliency join with stress training to counteract the effects of extreme stress. He shares with readers his fascination with human physiology and the interplay of preparation with the autonomous physical reactions that accompany risk of being killed. He details tactical breathing to mitigate stress effects, lower heart rate, and avoid being overwhelmed by keeping mental function online. He observes, "Minus a few exceptions, we cannot always control the threat, but we can control how we react to the threat when the time comes."

He adds, "Stress inoculation and ingrained memory work together as it helps create a flow state and enhances performance during a lethal engagement." Mastery of the weapon, self-defense tactics and skills, and having practiced performing those skills under stress all contribute. After a stress-laden

[Continued next page]

encounter, the parasympathetic nervous system is in charge of resetting to non-risk mode, and Maloy outlines breath and physical positioning to reduce stress.

Maloy returns to what may be his most valuable contribution to the study of self defense in the final segment of *Battlefield America,* outlining awareness as "understanding the 'natural flow' of your surroundings" to sense "if and when the equilibrium shifts...to understand and process environmental factors in your areas of operation."

He notes that awareness comes in variable levels, including instinctively reading the environment and sensing there is a threat. Get to cover, identify exits, use breathing exercises, and slow your heart rate while you get your friends and family to safety and "logically figure out your next course of action," he advises. If you identify a deadly threat, the steps you've already taken to avoid panic aid logical decision-making.

Maloy outlines shootings by private citizens that dominated headlines in 2023 that had many of the elements justifying use of deadly force in self defense but lacked immediate threat. Being "scared to death" or angry over strangers coming up your driveway isn't grounds to kill, he stresses. "I feel it's imperative for armed civilians to be patient, tolerant, responsible and cautious when deploying deadly force," he writes. "We all have baggage. Some of us have tough days or emotional challenges due to life circumstances. When you strap a gun to your side, that baggage needs to be put on the shelf."

Deadly force is allowed when "reasonable and necessary" to save lives or prevent grave injury to oneself or other innocent people. Maloy emphasizes that the allowance is only to stop the threat, and there are no-go elements, like not having provoked the fight. Further, the threat must be imminent, your response must be in proportion to the danger, and reflect the circumstances, for example, defense against an intruder into an occupied home is seen as more needful than stopping a break in at the neighbors when everyone is away.

The final section of *Battlefield America* correlates studies of mass shooting events and recommends steps organizations like churches, schools and hospitals should implement, as well as urging recognition of warning signs by the family and others close to an individual planning or thinking about an attack. "Most targeted attacks could have been prevented if the communications of the attacker were conveyed to the proper authorities," Maloy believes. Addressing behavioral factors plus "threat awareness, site security, and survival or response strategies" are vital. Both merit attention, he writes, and balance is needed; one must not eclipse the other.

Maloy recommends "Avoid, Deny or Defend" as the watchwords for defense against a mass shooting, observing that "hiding and hoping is a death sentence. The bad guy will find you and when he does, he will kill you and those huddled next to you." Any actions taken must be intentional, he continues. Running away makes sense but be smart about it. "Under stress, people tend to frantically leave in the same way they entered," he warns, "usually in droves, which can be deadly." Avoid open spaces like cafeterias, and if possible, halls and bathroom stalls, he specifies, giving a nod to knowing where the exits are – all of them.

He gives advice both for individuals as well as organizations that are responsible for facilities that may be the site of a mass killer attack. Leaders need to give their people training and practice drills, Maloy writes. To reduce panic caused by limited preparation, provide training and drills to let people practice the advice he suggests, including identifying improvised weaponry and familiarity with first aid kits, amongst other things.

Maloy warns that in addition to attacks by Americans, foreign enemies pay attention and note our vulnerability when the news reports deaths, losses and ways in which attacks were accomplished. "Targeted violence is spreading across the globe," he stresses, urging readers to prepare to stop attacks, preemptively through attention to mental health and better child rearing, through preventive strategies and through individual preparation to stop an attacker. In my opinion, this closing is Maloy's strongest section.

Editor's Notebook

Name and Date, Please

by Gila Hayes

Do you take responsibility for your statements? Armed citizens' very legitimate pursuit of robust personal security – coupled with the anonymity available through online media – results, frustratingly, in a lot of "influencers" not taking responsibility for their statements, not separating opinion from fact, and playing free and easy with the truth.

I believe we are accountable for our statements, whether whispered, bellowed or spoken, or if it is written and made public through the many online outlets of blogging, video, newsletters or even in that old fashioned relic of the latter half of the 1900s – the good old Letter to the Editor in the local newspaper. Fast-forward to the year 2025 when the local "paper" probably isn't even ink on paper any longer, since most get their news online. Concurrent with this advance has come an unprecedented opportunity for anyone with an internet connection to toss out an innuendo or two, stir up suspicions and express opinions – sometimes declared to be facts, because, you know, if I "feel" it this strongly, how could it be incorrect? – for the "benefit" of anyone who cares to read or listen.

I could be entirely wrong when I decry anonymous articles and videos! After all, pamphlets written by Thomas Paine as *Common Sense* influenced colonists who may have been undecided about fighting to free America from Great Britain and its dissolute monarch King George. Benjamin Rush is said to have financed its publication – also anonymously. A blog post over at https://constitutioncenter.org amusingly asserts that *"Common Sense* became the first viral mass communications event in America." It only took about three months for Paine's name to surface as author and by then our forebearers were well on the way to war.

Today, the plethora of undocumented information spread online runs rampant through all fields of study. I worry when nameless talking heads and keyboarders claim to have super-special expertise and extra in-depth knowledge on which, presumably, their fans should base life-altering decisions, including, even, the legal aftermath of the use of force in self defense. This afflicts not only the world of the armed citizen, of course. Not long ago, I ran across financial advice that, besides not being attributed, was undated and it eventually came out that the laws of a nation on an entirely different continent controlled the viability of the recommended steps. My goodness, people, do we need to make the internet like third grade? Date your work and make sure your name is on it!

My concern is not so much a matter of truthfulness as one of attribution. Can the reader, watcher or listener check the sources? To varying degrees, human communication always has the potential to be either a lie or badly incorrect. The Bible tells the story of the Serpent saying, "Take a bite of this delicious apple, lady, and it will make you smarter than God!"

Please address that vulnerability by having the courage to back up your statements with your true identity; invite people to check your work. I will happily read, listen to or watch a person with whom I vehemently disagree, because I want learn the basis of their opinions, arguments and beliefs. I'm far less willing to spend my time on material presented by a man or woman who lacks the courage to back it all up with their name.

I was doing some reading about anonymity which led me to an Oct. 2024 Psychology Today column entitled *Moral Courage on Social Media.* The article, penned by a PhD, opined that anonymity serves a greater good in the context of social activism on social media. The author identified "lower personal risk for engaging in actions of moral courage" as a value of anonymous expression, while later acknowledging that, "People with a high sense of moral meaningfulness may engage in actions of moral courage regardless of anonymity." Maybe that sentence sounded good when it was published, but it led me to question why we would have varying kinds of courage. If there is moral courage, conversely is there immoral courage? I digress, but it seems to me that the idea of moral courage is a concept that a few decades ago would have been expressed as the "courage of your convictions."

Standing up for what you believe and recommending a course of action to others, should require only putting into words that which you are willing to put your name behind. From the other side of the problem, if you read, hear or watch advice from an "influencer" who doesn't give their name, why would you base important decisions – like who to rely on for assistance after self defense – on unattributed opinion?

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 https:// armedcitizensnetwork.org/our-journal.

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

Gila Hayes, Chief Operating Officer

We welcome your questions and comments about the Network.

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