

## A Decade of Assistance to Network Members

by Gila Hayes

English dramatist John Fletcher, echoing the Biblical admonition in Matthew 7:20, succinctly observed, "Deeds not words shall speak me." Distilled into aphorisms like "Actions speak louder than words," this motto has guided substantial change for good when men and women stopped talking and started doing the right thing. That timeless truth is also useful when deciding between two options. When potential members ask, "What makes you better than your competitors?" I often respond, "Instead of listening to a bunch of words, I'd urge you to look at what we have done for our members."

Because Network members do a great job of avoiding dangers, we often go through an entire year with only one or two members needing assistance after self defense. That has let us build up the Legal Defense Fund to over two million dollars because we have not needed to draw on it very often. In the same vein, one year's history cannot illustrate the full spectrum of Network assistance to members after self defense. Since a snapshot of a single year's history cannot tell the whole story, I would like to offer a review of the past decade. Since opening the Network in 2008, we have paid attorneys to represent 23 members who have used force in self defense with the first member-involved case coming in February of 2011. The Network provided funding to spearhead the legal services needed for a professional legal defense. In addition to attorney fees, we've paid for investigators, expert witnesses and court costs after the member defended himself or his family (I use the male pronoun because to date, none of our female members have had to defend themselves).

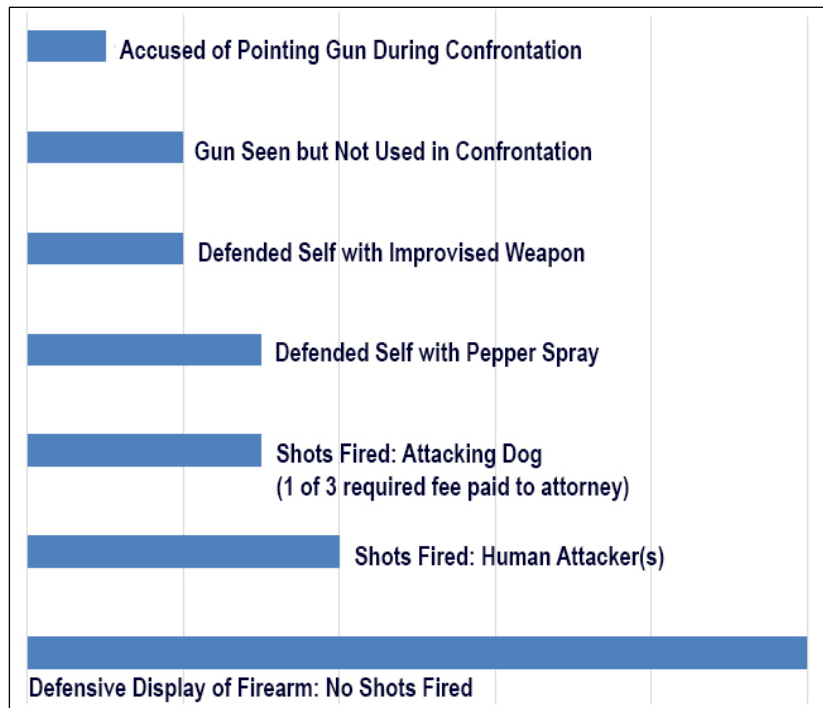
Each self-defense situation differs hugely from cases funded previously or afterwards. As armed citizens, we prepare for the unknown and the

undesired as best we can, but these efforts are hampered because no one can foresee exactly what may happen. Being unable to do anything but study what has happened to others certainly complicates preparation to weather the aftermath of self defense. This "unknowable" factor also makes it hard to predict the amount of one's post-incident legal defense costs. Thus, unlike most of our competitors, the Network does not offer varying membership levels and dues rates for which a member would receive a lower or higher amount of assistance. After all, how can a member predict what he or she will face? All Network members are treated equally, with full funding for their legal defense paid to the attorney of the member's choice after legitimate self defense.

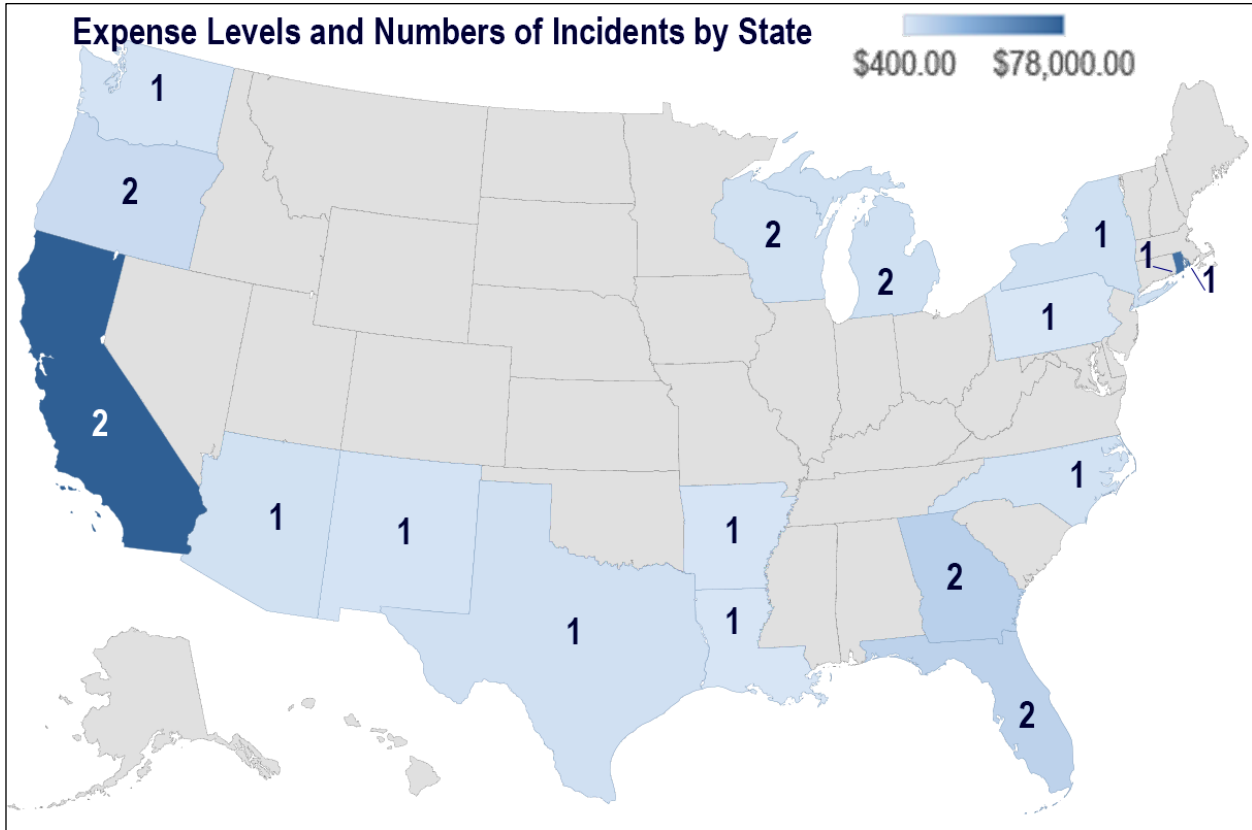
Still, it is interesting to ponder the considerable variations in how much force is needed to resolve different threats. Compared to the finality of a self-defense shooting, defense with pepper spray, an

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**Member-involved self-defense incidents span a variety of types of situations grouped into general categories on the below graph.**



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improvised weapon, or bare hands can seem insignificant, especially to one trained in the use of deadly force for self defense. Sometimes minor blows are exchanged and matters seem to be settled after tempers cool off. The incidents seem to be not nearly as serious as defense involving guns would be, but the legal aftermath can still be very serious, requiring the services of a skilled attorney to reach a good resolution. Unfortunately, armed citizens sometimes fail to call police or seek an attorney’s advice after self defense that does not include firearms.

A parallel mistake is the expectation that it will cost less to mount a vigorous legal defense of non-gun defenses than to defend a man or woman who has had to shoot an assailant in self defense. That has not, in our experience, proven true. For example, a member in a rabidly anti-gun state became entangled in a minor parking lot confrontation that escalated to blows. The matter was resolved as quickly as it flared up and neither man chose to call to report the incident to police. The aggressor sustained a very minor injury—too slight to require medical treatment—but upon his return home, his wife insisted that he call police and “seek justice” by framing his injury as the result of an assault against him. Our member faced third degree assault charges and

suspension of his gun rights, even though guns were never any part of the complaint.

His story underscores the seriousness of any use of force in today’s political environment. In an earlier era—a time that valued greater personal independence—self defense with pepper spray, empty hands or an improvised weapon might have ended with a surprised attacker shaking off the unexpected reaction to their aggression and slinking away. Today, knowing full-well that any use of force is scrutinized by the legal system, an embarrassed criminal—or his family and associates—is all too likely to grab a phone and call 9-1-1 and spin lies about being unlawfully attacked. How better to save face than to rain down third-party retribution on an innocent person who unexpectedly gained an upper hand over illegal and violent aggression?

After a minor, no-injury fracas from which all walked away a little wiser, the armed citizen has much to lose and really needs to call 9-1-1 and report any use of force. We live in the age of cell phone video in which amateur footage of fights makes popular viewing on social media and the news. Defending yourself even

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with empty hands is no longer the non-event it once was for school children exchanging blows with the school bully. Today's criminals are adept at manipulating the system and quick to do just that to get revenge on the person who justifiably protected themselves. This has been true when several of our members received Network funding for attorney expenses after self defense without firearms.

### Defense Without Firearms

As with minor fisticuffs, it is all too easy for armed citizens to view pepper spray as such a minor deterrent that they do not expect legal repercussions in the aftermath. Pepper spray saved a Network member during a choking attack a few years ago but our member was subsequently charged with assault and battery. The aggressor who was choking our member was taken to the emergency room after he complained of extreme physical discomfort from the pepper spray and as a result the police and prosecutor in a large northern metropolis went all-in to try to convict our member.

In the winter of 2017, we paid a Network Affiliated Attorney to fight that unmeritorious prosecution. She engaged investigators and experts to prove the truth about the attack against our member, but according to the attorney, the prosecutor's office had too much ego on the line to back down. Only after long months of hearings leading up to trial, did a judge successfully encourage the prosecutor to drop the charges because the State's key witness, the man who had choked our member, could not testify truthfully. The attorney's bill came in at just below \$60,000. If you missed our report on that case in 2018's April and May journals, you can read the entire story at <https://armedcitizensnetwork.org/defending-pepper-spray-use> and

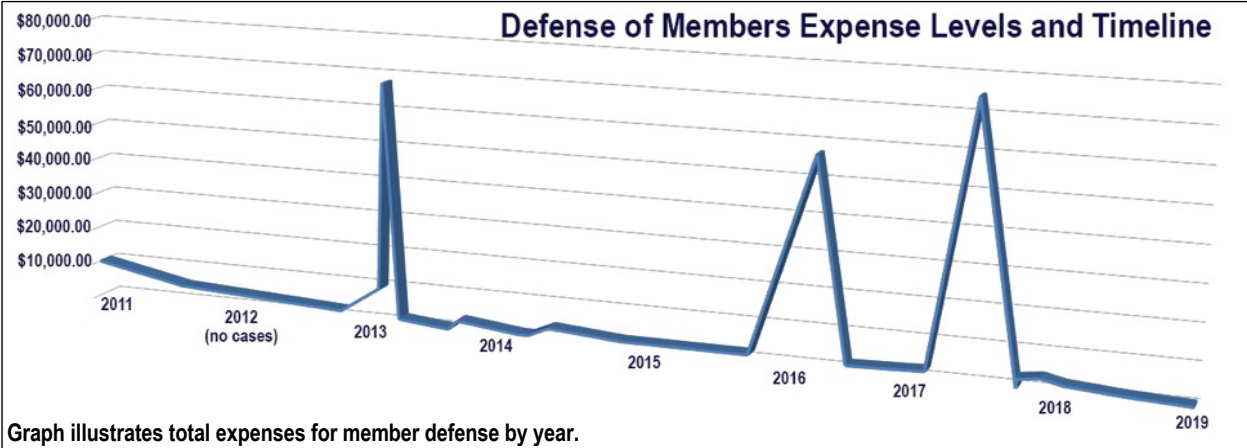
<https://armedcitizensnetwork.org/defending-pepper-spray-use-2>.

In a different pepper spray incident, after being trapped in his car by a large, angry man, a member holstered his gun—which he believed his aggressor had not seen—and grabbed a can of pepper spray in case the other man's aggression ramped up again into actual violence. (Read the story at <https://armedcitizensnetwork.org/network-track-record>.) That member was arrested, and we paid his attorney to make sure key evidence was presented to the district attorney. As a result, our member was not charged with a crime.

More recently, a member who earns his living driving a truck was threatened by a much younger, larger trucker. Choosing to deter the aggressor with pepper spray resulted in charges by that Midwestern city in which this occurred against both men and we paid an attorney to defend our member's interests. In another member involved case, a business owner was threatened and so he brandished but did not discharge a can of pepper spray as a deterrent against escalation by an aggressive trespasser. Our member's belt holstered handgun was never drawn, but momentarily came uncovered during the effort to eject the man. Our member believed the situation was harmlessly resolved until the city served him notice that he was being investigated. We paid a Network affiliated attorney in that Southern city to intervene on his behalf and that lawyer eliminated the danger of charges against our member.

Pepper spray is a useful defensive option but it is still a weapon that must be treated as such, both in terms of training and legal aftermath. We applaud members for having and using what Network Advisory Board member Massad Ayoob has called "layered defenses" to stop assaults before situations turn deadly.

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The Network has always provided assistance to members who resort to lower degrees of force to stop an attacker because as these cases prove, the legal entanglements that ensue do require an attorney's intervention to prevent what seems minor from ballooning into a major loss of rights. In two of the pepper spray cases, members also lost employment in the aftermath, further underscoring that in today's society armed citizens don't have the option to consider even a relatively minor use of force inconsequential.

In many of these situations, members had access to firearms, but appropriately employed non-lethal force to stop the attack. In several instances, members have faced legal consequences after self defense when, as in the case of the member who threatened an aggressive vagrant in his place of business with pepper spray, the fact that the member was armed although he did not display the gun at all, increased the severity of the situation. In addition, two members have faced legal complications when, although not resorting to the gun they carried, they defended themselves through other means only to have the aggressors lie about being threatened at gunpoint.

One case took place in the South when a member removed and secured his firearm in his vehicle in compliance with the 9-1-1 dispatcher's instructions while waiting for police to resolve a road rage incident; in another, a man who had faced multiple aggressors told responding police that he carried but had not displayed a firearm. When police took custody of the gun during the police contact (a common "officer safety" precaution), one of the bad guys saw the pistol and spun a lie that included a description of the handgun he saw police securing during contact with our member. This occurred in the upper Midwest, and the Network paid an attorney to resolve the legal woes that resulted.

Two Network members have defended themselves with improvised weapons. In one situation a hammer was brandished and in the other, a retiree used a golf club to create distance between himself and an attacker. We funded the attorney of each member's choice. One incident took place in the Southwest; the other was in the upper Midwest, so one cannot blame anti-self-defense attitudes common to the extraordinarily restrictive North East or West Coast states.

## Defensive Display of a Firearm

The greatest number of defensive gun uses by Network members has not involved shooting. That parallels

national statistics researched by John Lott, Jr. at <https://crimeresearch.org> and data reported in his numerous books, articles and interviews. Eight times in the last ten years, Network members have drawn handguns to stop an attacker. Defensive display was sufficient to stop the danger and no shots were fired.

We saw this first during the early months of 2011, when a member's dad called to ask our help after his son had been jailed in a large Southern city. Our member had drawn his pistol to defend himself against multiple aggressors with whom he initially came in contact because they were trespassing in his apartment building.

Most of these incidents have arisen in public places—in one, a member and his wife were threatened in a parking lot; another member was pursued down a city street by an angry motorist. Another time, a disabled veteran was threatened by several young men at a public venue. Another member went to the defense of his fiancée's mom who was threatened by a neighbor after a minor fender-bender outside their home in a Southwestern state. Our member held his gun at his side pointed at the ground, but the neighbor alleged that he pointed it at him and police arrested our member.

A surprising number of conflicts arise in neighborhoods over dogs! Regular readers will remember the story we told over several editions of this journal at the beginning of last year about a PA man attacked by his neighbor in the street outside his home. While he was not our member at the time of the incident so not eligible for help from our Legal Defense Fund, our Network President Marty Hayes was on the defense team and wanted members to learn from the many lessons that case offered. The attacker alleged that the man's dogs were defecating in his yard and stated he would kill the dogs and harm the man's girlfriend in an ongoing campaign of harassment.

Years earlier, we had paid an attorney to get a member out of jail and defend him against a complaint that he pointed his gun at neighbors who confronted him about his dog's droppings on their side of a shared property line. The member was a disabled veteran, who was knocked to the ground by several members of the neighbor's family during the confrontation.

A few years later, a member in a large PA city shot an attacking dog in a no-shooting zone and called to ask us  
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what he should do to protect himself legally; we paid an attorney to consult with him so he had a strategy if the situation boiled up into something bigger. It did not. Often when members have questions about engaging an attorney's services after a use of force incident, they call Network President Marty Hayes for the benefit of his perspective and he is happy to help them gauge the situation and understand their options so they can make better post-incident choices.

In a Western state, a member shot at a large, aggressive dog owned by occupants of a known "drug house" in his neighborhood. We offered the local affiliated attorney a fee for a short consultation but when the member called and told her what had happened, she declined payment. This busy criminal defense attorney gave the member the time he needed to talk out his situation but said there wasn't much an attorney could do at the moment and she said that she was happy to talk to our member to relieve his anxiety.

This kind of generosity has benefitted Network members several times over the past decade, although realistically, we've been ready to write a check because when consulting with an attorney, we expect to pay for their expertise. These attorneys' sympathy toward their fellow armed citizens has been truly touching.

## Shots Fired

The situation was much graver in a Southern state many years ago when a member discharged his weapon during a violent home invasion. He was shot and hospitalized and hired a local attorney of his acquaintance to protect his legal rights. No charges were filed. The Network was happy to pay that attorney's bill and, impressed with his responsiveness to our member, we tried to recruit the lawyer as an affiliated attorney. He turned out to be a retired attorney who agreed to help our member in his hour of need but didn't want to do that kind of work regularly. Our member recovered and has gone on with his life, much to our relief.

Only three times in the past decade have Network members faced such danger that they shot and killed aggressors. The seriousness and long-lasting after-effects of having to choose between the life of a violent attacker and yours or that of your family is very private and in defiance of many, many requests for these kinds of stories, we will never hound survivor members to tell us their story for publication.

The only exception is a member who told his story to a national magazine columnist as well as on his personal blog and then spoke candidly with us, telling the story that comprises the second half of the article at <https://armedcitizensnetwork.org/network-track-record>. As further precaution against inadvertently suggesting a path to a big civil liability award for survivors, that report relies heavily on an interview with the Network affiliated attorney who represented that member. In other words, although we've paid legal expenses on behalf of three Network family members who have had to kill attackers, it is not an experience about which we'd rush to publish an article on the Internet.

Our silence on these cases confounds many, some of whom have exclaimed, "If I can't ask how you did with members you represented [a factual error in itself, as we pay member's legal teams, not represent them], how can I believe you're any good?" While I'm not going to turn an inquisitive public loose on a survivor/member, the fact is that the only way to know how the Network treats its family members is in the Network's history of assisting these members. After the member who was injured and survived the violent home invasion was released from the hospital, he penned a note of gratitude—

*"I was recently involved in a self-defense shooting. I thank God for leading me to your website and I thank Him for you and your team.*

*The educational videos were the most helpful; especially the part that discussed the aftereffects and the emotional roller coaster my family and I would have to deal with. I was so relieved to hear your voice on the other end of the phone telling me that you were going to do all that your brochure had promised.*

*Even though I was attacked on my own property and was the only one with a gunshot wound, the police roped off my property and my truck for three days calling it a crime scene, which hindered my transportation and work.*

*Up until yesterday rumors were out that the police intended to charge me with aggravated assault, which had me slightly concerned until they returned my weapon and holster to me yesterday afternoon. Thank you so much for all that you do."*

We believe our member said all that needs to be said.





## President's Message

by Marty Hayes, J.D

### Is Your Membership About to Expire?

Imagine being involved in a self-defense altercation, and after the incident is over, you call the Network for

assistance and find that your membership is expired. This happened a few weeks ago, when a member from Chicago called me after an incident and upon pulling up his membership records, we found that his membership had been expired for six months. The good news is that he actually didn't need our financial assistance. The incident only involved him drawing the gun, and with all permits in place, the cops were understanding of his actions and reasons for what he did. He was not cited or prosecuted. But yikes! He certainly could have been.

It would really have sucked to have to tell him that he was no longer a member and thus not entitled to any member benefits. On the other hand, we send out multiple notices letting members know their memberships are about to expire or have expired, and inviting their return to membership, so we would have found that denial necessary and I wouldn't have necessarily felt guilty, just sad.

Do you know when your membership expires? If you don't, please take your card out of your wallet and check that expiration date. Even if your membership expiration date is several months away, you can renew early, and we will start your additional year when your current one expires. Folks, that call a few nights ago was stressful and we really don't need any more close calls like that.

### More About the Insurance Commissioner

The WA Office of Insurance Commissioner continues to investigate the Network, but it sure seems like the government is dragging its feet. Perhaps it is because they are not sure what to do with us. Early in the process, we put in a public records request covering investigations into other companies, and each month we get several thousand pages of public records supplied to us. So far, the OIC has finished investigations into three

companies, and aside from us, they are investigating two more. Eventually we will get the public information on all the investigations, as by law they must release the information upon request when an investigation is done. With all I have read, including hundreds of cases where tangential issues were involved, I still believe we are on the right side of the issue inasmuch as we are not insurance, and we are resolute in continuing the fight. It is sad that this campaign is really not about the insurance commissioner looking out for the citizens, because no citizen ever complained about us. It is all about politics, and when something is about politics, it tends to get dirty. More on this next month.

### No SHOT Show for Us

In years past, we have occasionally made the trek to Las Vegas to attend the National Shooting Sports Foundation's Shooting Hunting & Outdoor Trade (SHOT) Show but I have decided to not go this year. It seems like we accomplish less and less each time we go, and the cost—even if we do not have a booth—is very high. Sorry, if you were wandering the show floor expecting to catch a glimpse of Gila, Vincent or me, you can set aside that expectation. We do plan on having our booth at the NRA Annual Meeting this coming April in Nashville, TN, so perhaps we will see you there.

### Customer Service is Great at Nighthawk Custom

I broke a barrel bushing on a [Nighthawk Custom](#) handgun about a week ago. It was a totally freak occurrence, but when I called them, they got a return slip for UPS into my hands the same day I called. I wasn't even this gun's first owner, having purchased the gun used on GunBroker.com. I fully expect to have the gun back in my hands within a couple of weeks, with the bushing fixed at no cost. That is great customer service, and as a long time business owner myself, I appreciate good customer service when I am on the consumer end.

### The State of the Network

Normally, I write a lead article in the January newsletter to discuss the state of the Network. This year we focused instead on assistance to members who have used our benefits. That worked for me because frankly there is not a lot to report. Here is the bare-bones report.

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First, the Network remains financially strong, with well over two million dollars set aside in our Legal Defense Fund. As I have been learning, that balance is actually pretty important in the fight with the insurance commissioner, because it means that we are “self-funded” and do not have to rely upon any underwriting to meet our promises to members.

As far as I know, we are the only company that provides “after self-defense legal support” that isn’t underwritten by an insurance company. Given the fact that our whole legal argument with the OIC is that we are not insurance, and we have no insurance component to our business model, that fact allows us to clearly and honestly state that we are not soliciting insurance. That’s important, because it defeats the OIC’s claim. I expect to see several other companies either be banned or voluntarily withdraw from Washington and other states because of the fact that their promises to their clients are underwritten by an insurance company.

We have not been doing much advertising of the Network over the last year, primarily because we wanted to stay conservative and retain as much working capital for the legal fight. This conservative approach has resulted in a stagnancy regarding growth of the Network, with membership totals still hovering at about 17,500 members.

Ironically, while I was thinking about advertising expense levels, I received a phone solicitation from an advertising agency which represents one of the largest conservative radio talk shows nationwide. I was told that one of our competitors had failed to renew their contract for advertising on the show, and the ad agency needs to replace their ads with another self-defense aftermath company’s advertising revenue. I had a very interesting

talk with the sales rep, who was a real nice guy, discussing what we would get for the money. Our message would be exposed to millions of listeners, and of course, he said, we would expect to gain thousands of new members almost immediately.

Let’s say he was right. What would happen if we could afford the million dollar price tag for this advertising and set those wheels in motion? To handle the volume of new members he predicted, we would likely need to add somewhere between 20-to-100 new employees, and of course, move to a larger office building. We would have to get even more phone lines to handle the large volume of calls, add computers, and a shipping dock to send out all the new membership packages. You get the idea.

If I were a younger man, I might consider it, but when I started this business a decade ago, it was never my intention to try to serve every American who owns a gun. I just set a goal to provide the best membership for the least amount of money and to do that for a close-knit group of members who understand the legal issues involved in self defense.

We have more than accomplished that goal, and we have done it without going into debt or having a huge overhead. It would be nice to add a few more members, but only those who would truly value what we do. If you know someone who could benefit by being a member of the Network, please take the time and effort to make sure they sign up. You might even buy them a Network membership for a late Christmas present.

I hope you all have a wonderful New Year, and do not need to use the Network benefits, but if you do, we will be here for you.

*January 2020*



## Attorney Question of the Month

This month's question concerns witnesses at the scene of a defense shooting. Police officers involved in shootings are rightly advised to wait for 48 to 72 hours before making a statement to investigators. Should the same 48 to 72 hour principle apply to witnesses closely involved in a defense shooting? We asked our Network Affiliated Attorneys for their thoughts on the following—

**If a Network member uses deadly force in defense in the presence of family, close associates, or in a workplace or church, what concerns would you as the member's attorney have about accuracy of witness statements given by those in close proximity to the incident?**

**If the incident is witnessed by co-workers or church members or others who are present during a defense shooting, would you recommend witnesses request time to gather their wits before giving a witness statement? How can the witnesses be advised of that protection without impeding investigation of the incident?**

**In a related matter, it is well-established that the person using force in self defense should have an attorney present when making a statement. May a spouse or child of a self-defense shooter be attended by legal counsel during questioning?**

In this edition we present the final set of responses. If you missed the previous commentaries, please return to our [November](#) and [December 2019](#) editions to read them.

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The major reason to wait a significant period of time is to recover from emotional trauma and sleep deprivation. If those two things are not present, you may lose exculpatory evidence if you wait.

I have had cases where evidence literally would have disappeared if my client hadn't done a look at the scene afterwards. In one case a crime lab tech's boot was dissolving a note that had been on the door, via the melting snow on said boot.

Regarding other witnesses—beware of saying things that could get you accused of “tampering.” Some kind of script is possibly the best way to go. This stuff isn't easy. My job is made easier by the fact that most of my clients are LEOs. Someone in the private sector won't have that luxury.

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I have a different strategy in a situation like this. Assuming a justified shooting, I believe that the best way forward is for members to have a Network lawyer that they can call to the scene immediately. This contact should be made as soon as the member signs up and has access to the Networks' affiliated attorneys. I recommend that the member have several lawyers to call, in case one is unavailable.

I believe that it is critically important that the member talk to the investigators ASAP, BUT after they speak to the attorney, assuming that the member is not in need of medical or emotional treatment. The reason being is to set the correct tone in the investigation for the reasons underlying this month's questions. We will have little to no control over what witnesses say and when, therefore I would treat it as LE shootings are dealt with here in Phoenix, AZ.

Assuming a justified shooting, the officer involved cooperates with the investigation right away, but AFTER speaking to the union-provided lawyer. In a civilian shooting let's say in a church, it is quite possible that witnesses will see the member shoot a perpetrator, but not realize that the member is the good guy and the perp is a bad guy. If such a scenario arises and the

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member insists on waiting a couple of days to cooperate, there is a good chance the member will be arrested for a serious crime.

In my experience it is easier to give the officers the correct description on the scene—the sooner the cooperation begins the better—and thereby setting the tone of the investigation. Also, by following the local LE routine, it is my estimate that the investigators will more likely treat the Network member the way they would a colleague they are investigating. It is my experience that cooperating with the officers right away will lead them to believe that the cooperator is not the perpetrator in nine out of ten cases. I know many jurisdictions function differently, and that my modus operandi here would not be advisable. But in Arizona, my recommendation would be to cooperate ASAP.

**Jerold E. Levine**

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This is a subject that RKBA lawyers have written about previously, and the main problem faced by ordinary citizens is that their refusal to speak to police immediately can be used against them; regardless that police are treated differently after a shooting and are permitted to gather their wits. Since neither prosecutors or legislators are interested in promoting the idea that ordinary citizens need a wits-gathering period after a self-defense shock, the RKBA bar and other organizations should start raising the issue loudly.

It should become one of our regular talking points that a person involved in a self-defense shooting ought not immediately give a detailed statement, because the statement easily can be unreliable. There is good research work that has been done on this point, specifically, that while mild stress sharpens memory, significant stress impairs it. This demonstrates that the traditional concept—the closer in time to the incident, the more accurate the memory—often is false.

As lawyers, we are in the perfect position to start this public discussion, and to start giving legal cover to citizens who choose not to speak to police immediately after a powerful emotional shock. And in that discussion, it is essential that we obtain the support of mental health

professionals and others who can verify the truth behind our advice.

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Your Question of the Month is actually two parts concerning the accuracy of eyewitnesses and the right to representation during questioning. According to Psychology Research (<https://psychology.iresearchnet.com/social-psychology/social-cognition/eyewitness-testimony-accuracy/>):

“Every year in North America at least 75,000 people are identified from police lineups and subsequently prosecuted. There are hundreds of documented cases in which mistaken eyewitness identification has led to false imprisonment. Although it is impossible to know how often eyewitnesses make mistakes, it is known that mistakes are made. For example, of approximately 8,000 sexual assault cases in which DNA was tested by the U.S. Federal Bureau of Investigation, the suspect was exonerated approximately 25% of the time. In most of those cases, eyewitness identification was the primary way in which suspects were identified. Furthermore, of 140 cases in which people have been falsely imprisoned and subsequently exonerated, more than 80% involved mistaken eyewitness identification.”

This means that at any given scene at least one in four witness statements (again “at least” is the operative term here with as much as four of five potentially) will be incorrect and could potentially result in a wrongful conviction. As a shooter it is well established that the trauma and stress of firing at and/or hitting an intruder or attacker will cause distortion and mistaken perception as well as faulty memory. The sudden flow of adrenalin causes an enormous change in the body that will affect all of the senses. This stress factor diminishes with removal from the scene and the passage of time. However, as stressful and traumatic as this is on the shooter it is equally as stressful and traumatic on a witness. Yet police insist on getting statements while the

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event is still “fresh” in the minds of anyone who was at the event.

No different than the shooter, the witness will also be subject to the same distortion and mistakes during the immediate aftermath, resulting in statements taken at that time that are highly suspect. Therefore, if I can recommend anything to someone caught in the aftermath of a shooting it would be to take some time before saying anything to recover from the shock, gather their thoughts and really consider what they saw in a calmer environment.

This leads to the second part of legal representation during questioning, whether shooter or witness. The law is very clear that once you are a suspect you must be read your Miranda rights which say, “everything you say can and will be used against you in a court of law.” Again, the operative term is “can and will” because that is what will happen. As a witness making a statement you are initially not considered a suspect so no rights will be read, you are merely aiding in an investigation. But if any statement you make reveals any wrongdoing then your statement will be referred for prosecution.

Bottom line is to always have an attorney present when talking to the police, their job is to close a case and they will document everything you say for later use. Later use does NOT mean the police can come to court and testify on your behalf; they are specifically prohibited from any testimony during prosecution other than what is uncovered during their investigation.

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We have significant concerns regarding the accuracy of witness statements provided immediately by witnesses in close proximity to a self-defense encounter involving deadly force. One must assume that witnesses near a deadly force encounter may have reactions to the deadly force incident much like an individual who actually was compelled to use deadly force. Unless a witness has experienced extensive stress inoculation, the witness is likely to react to the “fight or flight”

circumstance of a deadly encounter in physiological and psychological ways that can create inaccurate perceptions of an occurrence. This reaction to a high stress encounter takes the form of an “adrenaline dump” that can include associated symptoms such as auditory exclusion, tunnel vision, heightened visual clarity, a sense that time is in slow motion or even happening faster than normal. Perhaps more importantly, a witness may experience memory distortion that would involve remembering things out of sequence, or even innocently reconstruct an event with things that did not happen.

These are only some of the possible reactions to a fight or flight encounter a witness might experience. These natural reactions are understandable and innocent in nature, but they could produce factually inaccurate statements that could be used against an innocent person who was compelled to use deadly force in a defensive encounter. These are also all reactions that support the conclusion that eyewitness testimony is not necessarily reliable evidence. It also explains why it is not a good idea to immediately discuss such things as distances, number of shots, and timing.

To combat the potential reactions that a witness may have to a “fight or flight” encounter, it would be advisable to take some time to gather his or her wits. This could take the form of undergoing at least one sleep cycle before giving a statement. Preferably, wait 48 to 72 hours before giving a statement. It also might be a good idea for the witness to write down his or her memory of the event on paper for an attorney that is representing the witness. This will protect the document under attorney client privilege and allow the attorney to help the witness separate fact from assumption.

There is no question that an attorney for the witness can be present for any statement the witness gives to law enforcement. Generally, no statement has to be given to law enforcement at all, and there should be no issue with having counsel present when a statement is given.

With respect to conveying the fact that a witness can and should take time to gather their wits before giving a statement, it would be best to educate and train spouses, family members and close associates regarding what to expect and how to react to a deadly force encounter well in advance of any potential encounter. In other words, now would be a good time to

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have that conversation—not after an encounter has occurred. It would be concerning to wait until after the self-defense encounter to communicate to a witness that they should not give a full statement until some time has passed. This approach has the risk of producing allegations of improper conduct that could be used against you by the police or prosecutor despite honest intentions.

Although the likelihood of a deadly force encounter is very low, the magnitude of harm, in terms of legal jeopardy is so great that we want to be prepared. That preparation includes understanding the immediate aftermath of a deadly force encounter and how to react so that an accurate history of the event can be documented and innocent defenders remain free. That

preparation is appropriate for the responsible armed citizen, and his or her spouse and family members. In an ideal world, the witnesses should all be prepared to point out evidence and witnesses that might otherwise disappear and could provide exculpatory evidence. A discussion of the types of information an ideal witness should be prepared to provide would take up too much room for this article. We would suggest referring to the ACLDN videos you were provided when you joined the Network regarding issues related to the aftermath of a self-defense encounter.

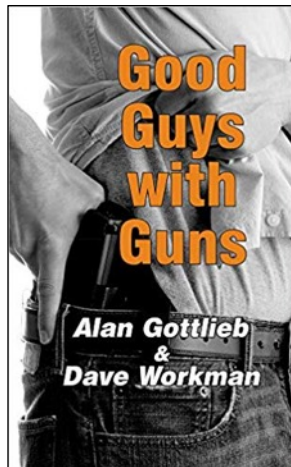
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*A big "Thank You!" to our affiliated attorneys for their very detailed contributions to this interesting discussion. Please return next month when we ask our affiliated attorneys for their thoughts on a new topic.*

## Book Review

### Good Guys with Guns

By Alan Gottlieb and Dave Workman  
 5 x 8 inches Paperback: 176 pages  
 Publisher: Merril Press; December 16, 2019  
 ISBN-13: 978-0936783697  
<https://www.amazon.com/Good-Guys-Guns-Alan-Gottlieb/dp/0936783699>



Just in time for the cold, rainy days of December the Second Amendment Foundation's Merril Press released Alan Gottlieb and Dave Workman's follow-up volume to a book we reviewed some years ago, *America Fights Back: Armed Self-Defense in a Violent Age*. Their latest book, entitled *Good Guys with Guns*, is every bit as good. The authors stress that most armed citizens never "intended to find themselves in the middle of gun battles. They were ordinary people who were suddenly faced with extraordinary circumstances."

The introduction notes that "the right to self-preservation is as clear and sacred today as it has always been," adding a valuable perspective that despite the argument against gun ownership so prevalent on popular media, what we are arguing is not a right granted by the Second Amendment, but rather, that the Second Amendment protects that and a number of other "pre-existing natural and human rights frequently called 'God-given rights' and the oldest of these is the natural right of self-preservation." The Bill of Rights is intended to restrict the government from impinging on natural rights—not to "grant" human rights. Overturning government infringements, once entrenched, is nearly impossible, the authors later warn.

With an estimated 17 million private citizens across 50 states licensed to legally carry concealed weapons, the authors point out that a violent criminal is increasingly likely to come up against a good guy with the gun. That was certainly the case when Alexander C. Tilghman went into Louie's Bar and Grill in Oklahoma City to commit a mass shooting atrocity. Two armed citizens who had never met before ran to their cars, got their guns and stopped Tilghman before he could harm more people.

"There is a lesson in this tale," Gottlieb and Workman state. "If your twisted plan is to open fire in a crowded theater, big box store, restaurant, shopping mall or some other public place, the odds are gradually increasing that

waiting for you in some part in that crowd of would-be victims is someone to stop you."

They synopsise data from the annual FBI uniform crime report indicating that handguns are overwhelmingly the most common firearms used in self defense, more often than shotguns and rifles. The report indicates that between 2012 and 2017 armed private citizens killed more than 1,500 attackers who were committing felonies, the authors cite. Most of the "good guys with guns" avoid notoriety, as did the man who was having his morning coffee at a store he frequents, when a mentally

disturbed man with a history of substance abuse "rushed through the doorway and immediately begin swinging a large hatchet." The coffee-drinking patron carries a pair of .357 revolvers and brought the attack to a swift stop. Had he not been there, the store owner could have been maimed or killed. The incident was cleared quietly by law enforcement and attracted almost no news media coverage.

Gottlieb and Workman dedicate a considerable number of pages to countering spurious gun control arguments, hyperbole, exaggerations and falsehoods. The entertainment news media's suggestion that gun owners talk big but are rarely able to stop crime with the guns they possess receives a thorough debunking as Gottlieb and Workman cite news story after news story about armed citizens defending themselves, stopping intruders that violate their homes, saving neighbors from attack and preserving the lives of members as well as people to whom they are not related and in some instances, had not previously met.

Authorities of every stripe are quick to discourage citizens from taking action on their own, the authors comment, citing a Missouri case in which several armed citizens came to the aid of a law enforcement officer who was attacked by a prisoner during an escape attempt. Law enforcement publicly expressed appreciation for the help, but the spokesman added, "I am not advocating that people feel the need to intervene in a situation at this level." Still, when faced with death or injury to another person, good guys with guns often do intervene. Gottlieb and Workman cite similar stories from AZ, OH, UT, GA, IN and FL in which armed citizens stepped in to save law enforcement lives.

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The authors analyze statistics about private citizens using guns to defend against home invasions, as well as use of guns by store owners and their clients to defend against criminal attack at a place of business. They start this train of thought by citing a study of criminals in prison of whom 40 percent related that they had been dissuaded from initiating a crime because they knew their victims had guns; 69 percent reported “knowing other criminals who had been frightened, shot at or wounded, or captured by an armed citizen/intended victim.”

There is an interesting subsection about armed citizens shooting thieves who are trying to steal their cars. The careful reader will recognize examples in which the thief threatened the car owner and was shot to stop the attack or to prevent injury to small children who are also in the car. Legality is cloudier if shots are fired only to prevent the thief's escape with the vehicle. It is an important distinction, and a factor in defensive gun use in incidents motivated by theft of property but accomplished through threatening death or serious injury. Too often, news reports fail to make the distinction between defending against immediately threatened deadly force and defending mere property.

Chapter 6 ties up a theme the authors have been building up to in preceding chapters—the fact that when armed citizens intervene to stop a crime, their actions are often censured, with suggestions that shooting was unnecessary despite the violence with which the criminal initiated their crime. The term “vigilante” is wholly inappropriate when applied to an armed citizen's intervention, they stress, citing story after story in which the news media, authorities commentating on the events, people involved, and even the families of the criminals are quick to criticize decisions that saved lives from a violent attacker. About the best you can hope for is the descriptor “Good Samaritan,” Gottlieb and Workman state. When a violent criminal is killed, even to stop the most despicable crime, the man or woman who shoots will be asked to show that extraordinary circumstances required an immediate response, with no time to wait for police. Even then, law enforcement authorities will likely take to the airwaves stressing, “This is not something that we condone and we don't ask anyone in the community to do this.”

Gun free zones, especially schools, attract psychopaths who want to run up a high body count, the authors

continue in the next chapter. The fervor to maintain gun free zones defies logic and common sense, and the ideal of the Gun Free Zone is like an article of faith to its most avid proponents, Gottlieb and Workman suggest. To the contrary, they assert, gun free zones pose an incredible danger and should be eliminated, quoting John Lott, who has said, “Gun free zones are magnets for murderers.” As proof, they cite murders in theaters, malls, medical centers and municipal buildings, all of which were posted No Guns Allowed.

In a chapter about the legal aftermath of a self-defense shooting, the authors begin by noting that “no charges will be filed” are welcome words to the survivor of self defense. After stressing the importance of understanding the many variations on use of force law seen in one state's laws compared against another, they suggest through illustrative stories that armed citizens' defensive gun use falls well inside the legal allowances and the vast majority of the time criminal charges do not result. For further study, Gottlieb and Workman suggest, Google “no charges filed after shooting.” They close this chapter with a shout out for three post-incident support organizations, and the Network appreciates being included in that short list.

A chapter about training quotes both Network Advisory Board and beloved instructor Massad Ayoob about training for responsible armed citizens. Ayoob explains that a key element in his classes meets the need for gun owners to have “a full understanding of the laws that allow them to protect themselves and their loved ones.” Additional rationale for training is offered by Network President Marty Hayes and Gunsite Academy CEO Ken Campbell. Both are quoted about the interaction between skill with weapons and the mental preparedness necessary to employ firearms for self defense. Armed citizens don't undertake training “to learn how to kill...they [do so] to learn how not to be killed, and how to survive an armed encounter,” Hayes told the authors.

Through all 175 pages *Good Guys with Guns* holds true to its title. Although composed many facts that disprove the assertions of gun control advocates, the book's lessons are illustrated by story after story of armed citizens of all ages, races and genders who saved their own lives or the lives of others by fighting back with legally owned firearms, all focused on the reason for the right to armed self defense.





## Editor's Notebook

### Thoughts at Year's End

by Gila Hayes

I was setting up a ten-year renewal for a member who is approaching the end of his current term of membership when I momentarily thought

that 2030 was two decades away not just one.

Mercifully, I avoided inadvertently blurting out, "Isn't 2030 a long way off?" before realizing that in a few days we will be writing 2020 on all of our documents.

A few years from now what do you suppose we will remember most about the years between 2010 and 2020? Perspective that only time can provide mellows out hassles that today seem unbearable. While it's likely that we will forget short term trials and tribulations, I think there will be bigger things from this decade that won't so quickly fade from memory.

On the minus side, I think we will remember losses of freedom when liberty-haters successfully counteracted some of the gun rights victories of the previous two decades. We got off to a great start mid-2010 with the Supreme Court decision in *McDonald v. City of Chicago*, but since then, state after state has passed laws restricting gun rights, so we've taken quite a few hits from the opposition. Whether or not we will ever recover from the exhaustion of moving from one battle to the next, I couldn't say. It is a matter of great concern.

The abject lack of any true authority to which to turn for factual information will be one of this decade's hallmarks, I believe. It's ironic when you consider how much of our disposable income goes to buy tech devices—tablets (remember in April 2010 when we lusted after the first iPad?), smart phones, laptops, and endless bandwidth. With any luck, we've already forgotten Pokémon Go, and the myriad of other wastes of time that passed for entertainment these past ten years.

Frankly, most of what looms large on one's personal landscape doesn't even register with the rest of humanity. Consider something I spend a lot of time doing: I look at the past ten years and count 120 of these journals (or 143 if you count every one since the first, introductory journal in February of 2008). That is over a hundred interviews with a diverse mixture of authorities and resources each representing a person

who generously gave of their time to share their knowledge and experience with Network members.

Ten years ago, we were beginning to envision how our fledgling organization, then 1,500 members strong, could grow to the 17,500 dedicated family members we host today. Ten years ago, we had managed to build up a \$30,000 war chest from which we knew we could make a big dent in a member's legal bills, but I don't think at that point we really foresaw how today, the Network's Legal Defense Fund (now over two million dollars) is positioned to fully fund a member's legal defense after self defense.

We expect commensurate growth in funding ability in the years to come as our Network family matures. We are no longer a startup or an untested idea. We are now an established part of the landscape for well-trained, discerning armed citizens. We're not flashy; we don't seek out the kind of customers who are attracted by glitzy sales pitches and fantastic promises, but we have shown through act and deed that after self defense, a Network member will never face the power of a district attorney or prosecutor alone.

What does the future hold? Well, who can really say? I am pleased to note that we are successfully moving into 2020 without increasing dues. We've raised dues only a few times since 2008, and when it has been necessary, I have ground my teeth knowing that there were members on fixed incomes or facing their own financial challenges who dropped out because they felt they just couldn't come up with an extra ten dollars per year. What a shame! For the time being, we are holding the line on dues, but tuck this away in the back of your mind, as wages, taxes, rent, postage and supplies continue to rise, we'll need at some point to make a modest adjustment to dues, too. Not right now, I am happy to say!

With that, I will wish you each a very Happy New Year. I think I will go look for a book to read to distract me from the past ten years for a while. Unfortunately, I read faster than any of my favorite authors can write, so I will have to hope I've grown so old and absentminded that I can reread the same story over and over. Perhaps I've forgotten some of the plots, so an old favorite or two may still provide some fun characters and skillful wordsmithing. Happy New Year, everyone!

January 2020



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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](mailto:editor@armedcitizensnetwork.org).

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

Marty Hayes, President  
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We welcome your questions and comments about the Network.

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*January 2020*