



The Psychology of Detering Attackers—Part I

An Interview with William Aprill

Interview by Gila Hayes

Self defense aims to stop victimization before an attack can start. Although widely endorsed, little training is given in verbal deflection, de-escalation and deterrence. Mental health clinician and self-defense instructor William Aprill of New Orleans, LA, has contributed much to our understanding of avoiding and interrupting violence and he provides a bridge between armed citizens and mental health professionals, two communities that often fail to recognize the value of the other.

Aprill describes himself as having a foot in both worlds, commenting, “Both think that their side of the fence is terribly important, and they both overestimate their ability to opt out of the effects of the other. I can’t tell you how many times I have worked with mental health professionals, even those who work with violent offenders, who don’t really think anything bad, particularly violence, is ever going to happen to them. That just strikes me as bizarre. At the same time, I run into armed citizens who don’t really think that mental health is ever going to really impact their world one way or another. They think that they’re squared away on the gun and on the self defense side of things and that is all they really need to think about,” he told me recently.

Aprill worked in law enforcement as a local sheriff’s deputy as well as a Special Deputy US Marshal in the Eastern District of Louisiana before completing graduate, post-graduate and fellowship training in mental health. He has over 20 years experience as a licensed professional across the spectrum of care, from institutional management and program development to long-term individual therapy; from addictive disorders to his current private practice focus on post-traumatic stress and depth psychology.

I first heard Aprill speak at a Rangemaster Tactical Conference. His knowledge and very diverse experience yield instruction that is extremely applicable to situations Network members may face. First, Aprill is an insatiable learner, and starting from his first private sector training

with Massad Ayoob decades ago under the Lethal Force Institute curriculum, he has continued training across a wide spectrum of defensive skills to this day. As a result, his advice blends



psychology and good self-defense tactics so that as a student, his lectures always provided immediately applicable skills and strategies.

Good fortune gave me the opportunity to ask Aprill why armed citizens need to be concerned with the mental state of attackers and questions about the practical application of techniques to manage the behavior of others who may pose us a danger. We switch now to question-and-answer format so readers can learn from William Aprill in his own words.

eJournal: As an armed citizen, I am conflicted about investing much time to learn about the role mental illness plays in the risks that caused most of us to go armed in the first place. Why does understanding mental illness make a difference to practitioners of self defense?

Aprill: Most important, understanding mental illness lets you go backwards. The diagnosis of the person who is presenting a violent threat doesn’t really make a difference where the rubber meets the road—or perhaps I should say where the tire iron meets the head—but understanding mental health disorders helps you understand criminal assault paradigms and that lets you move backwards in time because it gives you the chance to see what the assault will be like and to start taking action beforehand to defuse it, defeat it and avoid

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it. That is unbelievably important because every fight that I don't have to have, I win.

Let's be very honest about the fact that the tire iron coming towards the head is the smallest minority of events that is going to happen. A much more common, but dangerous spectrum of events is what we call managing unknown contacts. That is Craig Douglas' term and the name of one of his classes.

It is really important to be able to manage people's behavior especially if it overlaps into the pool of people who might be subject to a mental disorder that could be dispositive of their behavior and that makes it more dangerous for us. That is incredibly important in winnowing down who I have to be worried about and manage effectively and who I can manage interactively.

eJournal: Still, my concern is whether I know enough to predict impending physical attack without living in fear, but also avoiding blissful ignorance. Where is the middle ground?

Aprill: Actually, our detection skills are one of our strengths. Although we are not a very impressive animal, one of the reasons that we rule the planet is because we are good at a very rarified set of skills that is incredibly useful: behavior prediction and threat detection. We are extraordinarily good at threat detection, primarily based on our understanding of the human face. Animals fight with their face; their face is a weapon. Claws hold on so animals can fight with their face. Because the face is a weapon, it gets an incredible amount of attention.

We are biased to see faces everywhere. That is why clouds look like faces, right? We are biased to recognize people that we've seen before with really high level of accuracy. Even babies can follow the changes in their mothers' facial expressions. We are biased to see deeply into faces, and facial micro expressions tell us a lot.

We are quite good at not getting bitten by strange dogs. We have learned a funny little subroutine where you enter a dog's space carefully and judge its reaction. It becomes clear as day whether you can pet this dog or not. If I was to say, tell me the things that made you not pet that dog, perhaps you could identify them: his ears were flat, his eyes were wide, he seemed to be panting a little bit so I avoided petting him, but most of the time, we reach a global decision: "If I pet that dog, he will snap at me." We are good at reading these subtle signs.

The real limitation on behavior prediction and threat detection is that we ignore them or more accurately, hear them and dismiss them. I hate expressions like "picked up on that feeling," "heard that little voice," or "women's intuition." I hate those sayings because there's nothing mystical about this. Behavior prediction and threat detection are evolutionarily-gained skills that got us to the top of the food chain and keep us there.

eJournal: Why do you think we dismiss internal warnings?

Aprill: Sometimes we hear it, and we dismiss it. We wish that it was not happening, so we act as if it was not happening. There is some pretty impressive magical thinking going on if you think, "If I just act normal, maybe they will act normal, too."

To put it crudely, you have got a new, evolved brain and you have got an old brain that works with your oldest learned skills. The old brain is heavily conservative. Its only interest is to be safe. It might be overly protective sometimes. The message it sends out is, "I don't know about this dog," but then your new brain kicks in and says, "But my buddy Ralph has a dog just like that," or "But I love Rottweilers." The new brain and the old brain are in tension.

The new brain will pose a counter argument that seems more compelling. The new brain is ultimately stronger, but the old brain is faster. The old brain will always get the feeling of concern faster. It says, "Oh, I am not sure that I would do that," but the new brain is a compelling advocate. Think of the new brain as a compelling, young lawyer, and it can argue you down until you say, "Well, OK, it does seem like a friendly dog after all" and that is when you make a mistake.

The arguments posed in this dynamic tension start with, "But..." When people tell stories about grotesque victimization, the stories start with "but." "There was something about that guy that made me nervous when he showed up right at closing, but he wanted to buy a new car." "I just didn't trust something about that woman, but she's a friend of so and so." The "but" allows us to overwrite what we already know.

eJournal: The old brain doesn't give any rationale. It only says, "NO!" and we want to know why.

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Aprill: The oldest, most basic trigger mechanisms are the equivalent of a football referee throwing a flag. You don't know what the penalty is, but something is wrong. It tends to send a global warning that's blunt, "I don't like this" or, "This isn't right, or, "This isn't safe." That is why you can walk into a room and know something is wrong before you know what is wrong.

eJournal: It is so hard to back out of that room without first ascertaining the "what." We want reasons.

Aprill: That is a demand imposed by our newer, "smarter" sensibilities: we want a good reason. If we don't see a good reason for the fear then we think we don't have to act on it. In most cases, we would be better off hearing and accepting it as something real. Does it really cost you to find out what it is?

It is a little bit like sitting in your house and smelling smoke, but saying, "I do not see any flames so there can't be a fire." Like with a fire, the earlier attention is paid to the warning signs, the more options you have. We did not get to the top of the food chain by noticing things that do not exist. Whether or not it is dangerous is a secondary concern. Usually, you don't have to be concerned about whether or not it is real. It is.

eJournal: When we talk about warning signs, we generally recognize that we can't judge based on appearance so reliable threat detection must analyze behavior instead. If we propose to avoid fights, it would be helpful to know what we are looking for before it starts.

Aprill: Appearances are a pretty tricky metric to begin with. It is interesting because we are in the middle of the COVID-19 lockdown and appearances really are a problem. People are wearing masks all the time, but it's no different in winter when people's faces are concealed. We are not looking at appearance; we are not looking at demographics; what we are looking at is behavior and demeanor.

Behavior is obviously the things you see; demeanor is the feeling that is transmitted. Someone can have a hostile demeanor while they're standing perfectly still. They may not be doing anything, but there is something about them, right? Behavior and demeanor are far more important than appearance.

Recognize that if a presumptive threat is detected by your very ancient early detection system, you might not

even consciously see the action. Your subconscious is processing something that you have taken in visually that didn't yet rise to the level of your consciousness. Something can catch your eye and be processed as a threat before you are consciously aware of it. That is good—that is one reason we rule the planet.

You asked about the level where something has reached our conscious awareness. We see that guy and feel the warning bells going off. Well, what was he doing that set off the warning?

I first want to know if his behavior and demeanor are naturalistic. Is it appropriate for where he is and what he's doing? Think about the rule of opposites. Somebody doing the exact opposite of what would be appropriate in a space should get your attention: someone standing when everyone else is walking; someone walking when everyone else is standing. Someone heading to the right when everyone else is heading to the left.

These are things that automatically deserve your attention, not necessarily because it translates into a threat; but it translates into something that is out of the ordinary. That is the first, grossest characterization that we have got to get to: Something about this isn't the same.

What is that person's projected relationship to you? It is not natural for us to stare at strangers and that applies to a stranger's attention. A stranger's fixed attention on me feels like the sun and I need to notice someone noticing me, paying attention to me.

That is the second level of the filter: is that person at all interested in me? If they are not, then it is pretty easy to ignore people who are ignoring me.

The third level of filtering is vectoring. Is that person moving in a direction that makes them relevant to me? Someone who looks at me for an extended period of time, but who is walking away at a normal clip, well, maybe they just liked my tie. The combination of things narrows down our interest.

I call it a "fail over." Presented with a test, is that person's behavior unusual? If it is, he has "failed over" to the next level of testing. Enough "fail overs" mean you now have a situation that you get to do something about.

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eJournal: Ah, the decisions! Now you have identified the hard part.

Aprill: Not necessarily! Decisions are easier than you think! Let me rephrase that. I don't mean it is simple, I mean it is largely automated. We would like for people to be responsible for their own safety, and so you can't exclusively count on the automation.

Recognize that parts of our minds and brains think modern people have moved beyond violence. Well, we haven't! The world is still a dangerous place. Dangerous things do still happen.

We also have to unlearn the habits of ignoring and overlooking the automation. We want to leverage our automated abilities to make a very quick transition from the automated to our motivated functions—the things that we can choose to do. We want to have a good, robust set of things that we know how to do once triggered by the old brain system that we don't control but are just lucky enough to have been given.

eJournal: What, if any, concerns over the actor's mental state, do we weigh at this point?

Aprill: As I said, this person got my attention somehow, and that was through an unconscious process. Now I ask, is it typical? Is it suitable? Does it seem to fit where it is? Those questions are much more important.

eJournal: We're taught if we recognize a predator's steps in setting us up, we may be able to derail the attack by communicating we know what they are up to. In your work with violent offenders, do you believe that is realistic?

Aprill: Yes, but it hinges on one thing: the less in contact with reality someone is, the less well that will work. We don't really have much access to what runs folks that are sometimes called "other directed," meaning that they are being driven by something internal, by their own mental state. Maybe their perception is that the gods or the aliens are speaking to them and guiding their behavior. Other folks are more rational. Now, that doesn't mean that they are normal and nice and logical, but rational means they are driven by inputs from the world, so we have more influence.

A street-level offender is not looking for a fight. No street level offender ever said, "Who is the toughest person in this room? Let me try and rob that person." "Who is the most likely armed citizen in this room? Let me try to start a gunfight." In the famous words of Claude Werner, the bad guy is there for a shooting, not a shootout. Well,

when they look around the room, they are looking for a suitable target.

If you're looking for the bellhop in a hotel, you look for the guy with the hat and the jacket—that is how you know he's a bellhop. When someone's looking for a suitable target, they find other signs. Our job is to communicate the signs that we are not suitable. You would be surprised how quickly you can get deselected.

It is not a matter of scaring anyone off. I think that is very important. The notion that you will scare off street criminals by looking like a bad ass is really kind of silly and is really more about the ego.

Your goal is to look unsuitable. The street criminal's job is to look for a suitable target, something that will yield what they want with a minimum amount of effort. They do not have time to sort. They have to look at us and know whether we will be a good target or not. They need to do what they are going to do or move on very quickly.

eJournal: How do we communicate that we are unsuitable?

Aprill: Well, I hate to define things in the negative, but if you look at the things that make someone an obvious victim—they are pretty obvious [laughs]. One of the most egregious is spending too much time locked inside yourself. What I mean by that is people who do not seem to be in the world as they move through it. People who are unaware of their environment, just walking through. You can tell because they are usually trying to multitask. They need to walk from point A to point B, but they are also going to have some lunch on the fly, and talk on the phone, and look up something on their Palm Pilot. That detachment from the world is the first thing that stands out.

If you walk down a busy city street you will pass dozens of people that you could just walk up and kiss on the forehead before they even noticed you were in their physical space. For a violent criminal actor that is a free pass. It is not at all hard to pay attention to what you are doing and frankly, I think it is a good thing to turn off the phone, put it in your pocket. Switch to an earbud if you absolutely have to be talking! Actually, take part in what you are doing. If you are walking down the street, look around. Maybe there will be cake! So that is the first, baseline stuff that people can do. It doesn't cost

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anything, and it actually has a real effect. If you have a choice of victims, would you choose someone who

knows you're there or someone who does not? Who is the best victim?

eJournal: That baseline is great because it does not require specialized skills or equipment. We can teach it to our kids; we can teach it to our grandmas. How good is that?

Aprill: If people just took an interest in what they're doing, they would be safer. If you are walking down the street, pay attention to walking down the street. To put a finer point on it, the most powerful self-defense intervention people can make—and they'd never have to spend a penny on it—is this: never make a meaningless transition from space to space again. Look into a space before you walk into it. Before you get in your car, look inside. Before you walk out your front door, look out a window. All these things cost nothing!

I personally know someone who was murdered on her own front porch by her husband with an ax. It is such a grotesque example that it sounds like it is made up, but it is true. If she had looked out her front window and seen her estranged husband standing on the porch with an ax, I'll bet you anything she wouldn't have opened the door. That is the cost that can be exacted by just not knowing what you are walking into.

Stop making meaningless transitions from space to space to space—that is all I ask.

eJournal: Let's take a break here because your instruction so far has raised a lot more questions I'd like to discuss in depth with you. A big challenge when publishing online about complex topics is losing readers before we've covered all the important elements in what you have to share with us, so I would like to continue this discussion in the July edition of this journal.

Readers, there is a lot more to learn from William Aprill, and in fact, he teaches a class entitled "Unthinkable" that covers a lot more about the topics we have only been able to introduce here. Please return next month for the second half of this interview when we discuss breaking off contact with those who would like to set us up to be victims of a crime. He has great, down-to-earth steps that will prove helpful to all of us.

While you wait for next month to roll around, don't miss the "ripped from the headlines" lessons Aprill offers in the blog section at <https://aprillriskconsulting.com/arc-the-blog/> or Instagram: @aprillriskconsulting and don't miss his Facebook page's regular "They Are Not You" clips at <https://www.facebook.com/aprillriskconsulting/>.



President's Message

by Marty Hayes, J.D

First off, please hear me when I tell you that I can both sympathize and empathize with all those Network members who have been financially impacted by the

government response to the COVID-19 pandemic. While we here at the Network have weathered the storm pretty well and have been able to resume office functions with fairly restrictive procedures in place, we are doing okay.

Revenue/renewals have been down, but we have a good reserve financially, and will come through this just fine.

I am not a big conspiracy theorist when it comes to what is actually happening behind the scenes, but I can't help but wonder if this was handled correctly by our state and federal governments. There is simply too much conflicting information to make sense of it all. For example, even the question of whether a person should wear a mask in public has logical-sounding theories on both sides of the question. The best I can do at this time is to process all the different bits of information and hope someday to come to a conclusion.

I happen to live in one of the most restrictive states when it comes to the state government responses to the virus, and I, for one, am really tired of it. I drive downtown and see the "non-essential" business shuttered with empty parking lots and wonder how many are not going to make it back. The arbitrary nature of who is "essential" and who is not is mind boggling. A lawyer's office is essential, but I talk to lawyers who say they are twiddling their thumbs, because the courts are shut down. This comes at a time when there are threats of arresting and jailing people who violate their state's lockdown orders and operate their businesses, while at the same time the state releases inmates so they don't catch COVID-19. It is mind boggling.

Hopefully by next month, most of this insanity will have passed and we will have returned to normalcy, but somehow, I think we are going to have to live with it a

little longer. Again, I feel for those Network members who have suffered hardships because of this.

Watch What You Say and Do...

Recently, I heard about one of our competitors telling their customers that after a self-defense incident, they should text a message to them to start their version of assistance. What the heck? Getting on your phone and texting anything after an incident is precisely the opposite of what you want to do. Every keystroke you make on your phone lives in perpetuity, and if there is even a hint of impropriety in your defensive shooting, then that phone of yours will be confiscated and searched for incriminating evidence.

What incriminating evidence can live in your phone? Oh, how about mindset evidence to show "premeditation" that would change a second-degree murder charge to a first degree murder charge. A prosecutor who has an anti-gun/anti-self-defense political agenda (they do exist) could make it look like you were planning to kill someone. DO NOT text anyone after an incident. You should be using the phone as a phone, with an intent to verbally "talk" to someone who is either legal counsel or can arrange legal counsel.

For people of my generation, this precaution makes sense, but with increasingly frequency I interact with younger folks who abhor the idea of having to use the phone for its intended purpose—to converse. They would rather spend a half an hour texting back and forth to someone, than spend the five minutes it would take to settle the same issue with a quick phone call.

In this same theme, I got a text the other day from a member wanting me to text him back, supplying my e-mail address so he could e-mail me from his phone. Ahhh, no. There are several reasons I oppose plans to make text or email contact after a self-defense incident, many of which I won't go into here, but the biggest reason is that you could lose your phone (or have it confiscated by the police after an incident) and your entire life is cracked opened like a ripe melon for all to

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see. So, if you need to contact me after an incident, call me. Don't text me or e-mail me. Call me. Just because you have a piece of technology, you don't have to use it.

Update on the Network v. WA Insurance Commissioner

Actually, there is no news I can report at this time. The wheels of justice move very slowly, and behind the scenes we are making progress towards a resolution of the insurance commissioner's claim against us, but for now, all I can say is that we are very positive that we will see a successful resolution to the issue. I am anxious to be able to report good news, perhaps next month. I do thank those of you who have donated over \$7,000 towards the fight. It is a big help knowing that you are behind us and our fight, too.

As we are now moving toward the end of our first complimentary 90-day extension of membership to Washington members from whom we may not accept financial transactions, we expect to begin getting more and more calls and emails from worried members. While we can't give complimentary extensions indefinitely, we positively do plan to continue to do so for the next few months until we have prevailed in either our request for a stay of the insurance commissioner's cease and desist order or gotten this restriction overthrown completely.

If you are a Washingtonian whose membership is currently being extended, please pay extra attention to your mailbox and email inbox for our announcement that we are again allowed to accept dues from Washingtonians, at which time the comp will expire and your renewal will be billed in the usual fashion.



Attorney Question of the Month

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

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

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Given the statutory framework, it is questionable whether or not such a threat could ever reasonably constitute a threat of serious bodily injury or a forcible felony for which lethal force is a reasonable response.

The relevant statutes to consider are:

1. Indiana Code 35-41-3-2 which permits the use of lethal force to prevent serious bodily injury or the commission of a forcible felony;
2. IC 35-31.5-2-138 which defines a forcible felony as a felony which involves the use or threat of force against a human being or in which there is imminent danger of bodily injury to a human being. (Note that this statute does not use the term "serious bodily injury," a heightened injury level); and
3. IC 35-42-2-1 which describes when battery by bodily waste may or may not constitute a felony. In Indiana, battery, save for the modifying circumstances in this statute, is by itself a misdemeanor if the victim is not hurt or suffers only minor pain.

The short answer is, it is going to depend on a number of circumstances, but, in general, some definitive guidance can be made. If the act is merely threatened, and the person making the threat has no reasonable means of carrying out the threat, for example threatening to spit on you from 30 feet away or on the other side of a door, it would be unreasonable to use

any force. If the person in fact spits on you, it will, in most circumstances, only be a misdemeanor offense, for which lethal force is not a reasonable response. You may or may not fall within the matrix of persons which turn the battery into a felony as described here:

<https://codes.findlaw.com/in/title-35-criminal-law-and-procedure/in-code-sect-35-42-2-1.html>, but if you are a public safety official acting in their official capacity, or if you are acting to protect a child under 14 from the actions of an adult, then, in those limited circumstances, the battery would, with certainty, constitute a forcible felony for which IC 35-41-3-2 permits the REASONABLE use of lethal force.

That is not to say "go ahead and shoot" if someone threatens to or is about to spit on your kid, however. You have to be able to reasonably articulate that lethal force was the only way of preventing the act, and that's likely to be a tough sell.

So, in general, while the legal answer is "it depends," the legal advice is: That's probably a very bad idea. If you think you've been exposed, seek immediate medical attention and report the incident to law enforcement.

Jonathan Rapel

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The short answer to this question is no, and here is why. The law in California does allow for the use of deadly force in the defense of oneself and/or the defense of another. However, this legal defense to homicide (or attempted homicide in the event the perpetrator is injured and not killed) is not an absolute right and must be justified. How does the law determine the taking of a person's life (i.e. the use of deadly force) to be justified? The answer is heavily dependent on the facts and circumstances surrounding the deadly encounter but can be broken down into general rules that an armed individual can use as a guide if and when the use of deadly force is permissible.

California law allows for the use of deadly force in the defense of an individual when the person using the deadly force reasonably believes that they or someone

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else are in imminent danger of being killed or will suffer great bodily injury. Additionally, the person defending themselves or another person must have reasonably believed at the time that the immediate use of deadly force was necessary to defend against the perceived threat. And the final element of the defense is a person cannot use any more force than reasonably necessary to defend against the danger.

Let's take this one step at a time. The individual exhibiting the force must have believed there was imminent danger of death or great bodily injury to himself or someone else. Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. Imminent, like many other legal terms, is defined by courts not dictionaries. For example, in *People v. Aris* the jury requested clarification of the term imminent. In response, the trial court instructed "imminent peril, means that the peril must have existed or appeared to the defendant to have existed at the very time the fatal shot was fired. In other words, the peril must appear to the defendant as immediate and present and not prospective or even in the near future. An imminent peril is one that, from appearances, must be instantly dealt with" (People v. Aris (1989) 215 Cal.App.3d 1178, 1187 [264 Cal.Rptr. 167]).

It is clear from similar court rulings that the use of deadly force is only legally justifiable when the threat of death or serious injury is exhibited by the perpetrator in the form of an assault, battery, robbery, or other objectively obvious threat of physical harm. The threat of suffering grave illness, or even death, from a contagion such as COVID-19 would probably not constitute an immediate threat which would justify the use of deadly force.

The next prong that must be satisfied for the defense is the reasonable belief that the immediate use of deadly force was necessary to defend against the danger. This is fancy way of saying that the person who pulled the trigger felt like they needed to do so in order to prevent death or serious injury to themselves or to another person. The reasonableness of the use of deadly force must be evaluated from both a subjective and objective view. It may not be subjectively unreasonable for a person, especially someone who is in the "at-risk" group, or who has a family member who is susceptible to the disease and likely to suffer life threatening complications, to feel that a diagnosis of COVID-19 may in fact be a death sentence. However, the analysis for reasonableness does not end here.

The objective reasonableness of the use of force also must be determined in order for the deadly force to be justified. A finder of fact, most often times a jury, must consider what a reasonable person in a similar situation with similar knowledge would have believed at the time. Would a reasonable person feel like contracting the COVID-19 virus might lead to imminent death or serious injury? Statistics available at this early stage of the pandemic suggest that the mortality rate is still quite low, somewhere less than 5%. Of course, the mortality rate could be significantly higher if you are immunocompromised and/or over the age of 65. It may be a tough sell for a defense attorney to convince a jury that a reasonable person would feel contracting the coronavirus would be a life-threatening event when statistics show that the virus is not deadly in most cases.

The final prong of the self-defense doctrine is that the use of force used was no more than reasonably necessary to defend against the danger. California law does not require you to retreat from the threat of physical harm, what is commonly referred to as the stand your ground doctrine. However, the use of force must always be a reasonable response to the perceived threat. In other words, could an alternative use of force have been used to defeat the threat of harm. The use of deadly force should always be the choice of last resort when confronting a threat of physical violence, whether it's a bad guy wielding a deadly weapon or in this case a virus.

Keith H. Rutman, Esq.

Attorney at Law

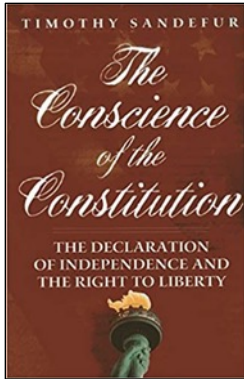
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Generally speaking, you cannot use deadly force to respond to a less-proportionate threat. Absent knowledge that the "cougher" has tested positive for COVID-19, shooting such a person would expose you to manslaughter or murder charges. If you have to go out of your home, a mask is better protection than a gun in this circumstance.

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
The Conscience of the Constitution:
The Declaration of Independence and the Right to Liberty
 By Timothy Sandefur
 Cato Institute; 2013
 ISBN-13: 978-1939709691
 \$9.95 paper back; \$1.95 eBook, 200 pages
Reviewed by Gila Hayes

We know our nation's Constitution and can quote long passages that prohibit government from infringing on our beloved liberties, but have we invested much thought to its foundations? The book I read this month defined how our Declaration of Independence, which predated the US Constitution by a decade, set the standard our nation's leaders carried forward while adapting from the Articles of Confederation to the Constitution, then detailed in the Bill of Rights, and finally either upheld or eroded by subsequent Supreme Court decisions.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness...when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security."

Drawing on speeches and debates, commentaries, memoirs and other writings by the founders, judges, lawyers, researchers and politicians all across the political spectrum, the book's author Timothy Sandefur defines the relationship between the Declaration of Independence and our constitution and how we have wandered from the founders' vision for America. He explains, "Today, we are prone to read the declaration as political rhetoric or a general pronouncement of aspirations. But it is more: it is a legal document—a part of the nation's organic law and the inspiration for

America's constitution." The declaration is the philosophical statement through which we understand the intentions of the constitution, he stresses.

A common error results when people list the rights due us as citizens, when indeed the intention of both the declaration and the constitution were, in the words of Thomas Jefferson, "unobstructed action according to our will, within the limits drawn around us by the equal rights of others," Sandefur quotes. The declaration's premise is "that no person is fundamentally entitled to rule another," a far broader principle we should embrace and defend, he urges. He exposes big government's power-hungry intentions expressed through ideals like majority rule, legal realism, positivism or state's rights and invests many pages weighing human rights against the idea that government grants certain privileges. It's not casual reading but clarifies why seemingly good concepts like majority rule are dangerous to liberty.

From the declaration, we receive "direction in understanding the limits of government power," that aids in understanding "such broad constitutional phrases as 'privileges or immunities of citizens of the United States' or 'due process of law' or 'equal protection of the laws,'" writes Sandefur. The backdrop of slavery is a canvas on which he illustrates how the 14th Amendment to the Constitution served as a national restatement of "primacy of liberty and the other principles of the Declaration of Independence." He discusses post-14th Amendment US Supreme Court cases and the tension between states' rights issues and the ideal of a single, unified nation.

It is common to think the civil war was all about slavery, but the big question was state's rights, including the question of whether the federal government could dictate who was allowed citizenship or could the states deny citizenship to certain classes? The 14th Amendment, ratified in 1868, gave the power of the constitution to "the principles of paramount national citizenship and federal protection for natural and common law rights, thereby resetting the constitutional priorities in accordance with the Declaration of Independence," Sandefur writes. "Where the declaration announced that people are born free, and can choose to create a government to protect their rights—thereby becoming 'one people'—the new amendment, too, is grounded on a national body politic, which prioritizes individual rights over government power. All Americans are entitled to security for the rights that belong to the citizens of all free governments—and that security is valid against the state governments as well."

[Continued next page]

“The [14th] amendment’s new Privileges or Immunities Clause would provide for ‘protection by the government, the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety’ as well as ‘the personal rights guaranteed and secured by the first eight amendments of the constitution’” Sandefur cites. Following the civil war, “States still retained most of the routine responsibilities of government, including the protection of individual rights. The [14th] amendment simply required states to exercise their power consistently with those rights,” he explains, then details how supreme court rulings since have affected the 14th Amendment, starting with the infamous Slaughter-House ruling and ending with the 2010 *McDonald v. Chicago*.

I have to admit that I struggled to get through *The Conscience of the Constitution*, but I am glad that I did. The more we understand errors of the past like the Slaughter-House ruling, the more we understand what holds the court back from taking cases to limit big government in the present day. Sandefur opines that much of the court’s unwillingness to right the wrongs of Slaughter-House stems from fear of having to address the abuses against liberty the welfare state causes. In this, the court deviates from the principles of the declaration. He then explores the intention of the privileges and immunities clause and dangers of arbitrary enforcement against citizens by government.

Sandefur discusses how due process fails when a law deprives a person of “life, liberty or property,” asserting that, the constitution is a compact with government agreeing to limits on its powers and citizens assenting to be subject to the law. How far reaching are the promises of substantive due process? Some jurists think it only requires that laws provide “some sort of procedure before it takes away a person’s life, liberty, or property, it has met its constitutional obligation,” he observes, asking, Is that sufficient? “The constitution does not require just any process but due process—the people have a right not to be treated arbitrarily by the government,” he stresses.

Abraham Lincoln once famously compared a democracy to a pair of wolves and a lamb voting on whom to eat for dinner, Sandefur introduced early in the book. He builds on that theme throughout *The Conscience of the Constitution*, adding during his discussion of substantive due process, “Since the constitution takes precedence over the will of the majority, it is proper for courts to enforce the constitution—which is the supreme law—even against the majority...The founders were well aware that

in a democracy, the majority can often confuse the genuine social good with its own self-interest, and can exploit and hurt minorities or individuals for this purpose.”

Dissecting various elements of the constitution brings Sandefur back to that theme time and time again. In an informative chapter exploring judicial activism, he cites Alexander Hamilton, noting, “The constitution... embodies the genuine will of the people, whereas a statute only embodies the will of a particular legislative majority at a particular time.” Sandefur asserts that much of today’s case law stems from “Progressive political theory that prioritizes some rights over others, usually based on whether they are seen as promoting collective ends or only individual goals. This scheme has often been criticized by lawyers, law professors, and even federal judges, but it remains the framework within which constitutional cases are decided today.”

What about bureaucratic rule making? Sandefur states, “Rules and regulations that affect the rights of ordinary Americans are not laws written by elected lawmakers but regulations imposed by unelected administrative agencies that wield broad authority to interpret their own commissions” that wield nearly limitless power. “These bureaus are not accountable to the voting public in any realistic sense; they are generally beyond the control even of an affected citizen’s elected representatives. Yet courts review their actions with a lenient, deferential attitude,” he writes.

If you find you get bogged down over the more detailed elements of *The Conscience of the Constitution*, take a break and skip to the conclusion. In reviewing the final chapter, I found much that led me back to study the material of the earlier chapters. The conclusion also contains Sandefur’s call to action: “Today, more and more Americans are realizing the dangers of expanding the scope of government and are protesting the continued calls for bailouts, handouts, entitlement programs, and restrictions on freedom, privacy, property rights, and other aspects of liberty. The time has come for the legal community to pay heed. The time has come to reject the notion that people have the right to control each other’s lives and to take the fruits of their labor. The time has come to secure the blessings of liberty for ourselves and our posterity.” Better understanding the constitution and declaration’s foundational principles are, in my opinion, well worth the time required to read and think about Sandefur’s arguments and conclusions.



Editor's Notebook

by Gila Hayes

I'm always surprised when members respond to one of my editorial rants, especially when I'm simply expressing my frustration with those who

ignore the seriousness of going armed. Last month when I opined that questions about shooting to stop intentional exposure to the coronavirus were terribly short sighted, I was surprised to receive several opinions in response.

An attorney friend from Pennsylvania was first to express his parallel thoughts, explaining that he didn't think the attorney question of the month about shooting to stop intentional exposure was sufficiently realistic to merit submitting a response.

Basic social skills and training in "less-than-deadly force options" is the better choice if faced with a threat of intentional infection, he stressed. Get some different kinds of training other than the gun, he suggested, because while, in his words, "'What can I do?' is a very good question. 'Can I shoot?' is just crazy."

Another member, Illinois concealed carry instructor Bruce Edensen (<https://triggerwise.blogspot.com>), took the non-lethal response idea in a different direction:

"I'm writing as a hopefully-helpful follow-up to the May journal in connection with coronavirus-related threats and responses. Especially in the wake of COVID-19, I

have been recommending to clients, friends, and family that they routinely carry a small but powerful "tactical" flashlight as a potent, legal, nonlethal, self-defense device. Such products can project blinding light (>1000 lumens), especially in strobe mode. Even in daylight they're very likely to temporarily blind, mentally disorient, and thwart an assault from at least 15 feet away, allowing the user sufficient time to evade/escape the assailant(s). The blinding effect is even likely to repel persons under the influence of drugs or alcohol, the violently mentally-impaired, and vicious dogs.

"Many of the flashlights are compact and lightweight; easily carried in one hand, a pocket or purse. The maximum brightness/strobe mode offers the best self-defense capacity. But with other illumination settings the flashlights have myriad useful capabilities. To the best of my knowledge they're completely legal in most jurisdictions, including in government buildings, on public transportation, airplane carry-on, etc. Even for a concealed carry licensee or other gun owner, the flashlights are an excellent nonlethal supplement or deadly weapon substitute. They offer greater utility—and probably defensive effectiveness—compared to most pepper sprays. I strongly encourage people to learn the flashlight's features and operation, always carry it when away from home, and keep it on a nightstand when in bed."

He concluded by suggesting the Olight M2R Pro and expressing his hope that adding flashlights to the discussion would be helpful.

The ideas these gentlemen added underscore the truth that self defense encompasses a very wide spectrum of defensive strategies that begin far, far in advance of the point at which introducing deadly force should even be considered.

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