

Avoiding Attacks While Driving An Interview with Marcus Wynne

Interview by Gila Hayes

Defunding police and refusal to prosecute has removed impediments to crimes like carjacking. A common concern expressed by members is what to do if targeted for crime when driving to work, to medical appointments or the grocery store. That's why I recently read and reread a blog post showing an extraordinary video of a South African armed guard in an armored vehicle defending against mobile attackers with decisiveness, aggression and driving skill. The blog, which I read regularly, is written by neuroscience and training researcher Marcus Wynne, who several months earlier also caught my attention with a great post about key skills he had distilled into hands-on training for an associate's wife and daughter living in a large city where carjacking has become common.

Both posts provided a valuable distillation of real defensive driving skills for dangerous environments, so I gathered up my courage and asked Wynne if he would talk with us about detecting threats while driving, learning high threat driving skills (this part of our discussion may surprise you), and honing alertness to recognize danger far enough ahead to avoid it. His résumé is extensive and readers can check it out at <https://marcuswynne.com/consultant/>. I started my chat with Wynne by asking about experience that prepared him to deter threats while in a vehicle.

Wynne: My experience relevant to a discussion of protection driving starts with military service in South Korea. I'd been levied from the 82nd Airborne and was invited to volunteer for a unit that provided close protection for diplomats and general officers in the Korean Demilitarized Zone. I protected field grade officers and diplomats from the multi-national United Nations Command, Military Armistice Commission from a variety of threats which included assassination, bombings and kidnapping.

After active duty, I did private sector high threat protection operations primarily as a singleton. My government and military contacts helped me get started. I attended the first CQB Services (Hereford) training course in the US, which brought the SAS VIP Protection Course to the US. I trained and worked with the CQB cadre as a student, training coordinator, and instructor for various USGOV and USMIL high threat protection training courses. Driving and counter-ambush driving were part of the protection curriculum. We also taught close quarter battle, hostage rescue, and other skill sets to the same audience.

I continued working private sector and part-time with CQB Services. I was recruited into the Federal Air Marshal Program

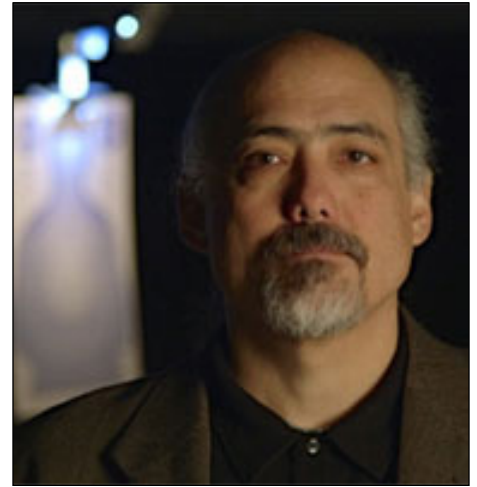
right after the bombing of Pan Am 103 by FAM instructors attending the CQB Hostage Rescue Training Course. During the war (1989-93), we worked with a lot of USGOV agencies and forward deployed military assets. I had occasional call to exercise high threat driving skills overseas during that time.

After the war I went into the private sector again as a researcher, consultant and training designer specializing in high-stress training. Among notable achievements at that time was introducing the OODA loop concept to law enforcement training, advising the NASA Astronaut Program on training and selection, and initiating work with a wide variety of Tier One units and government agencies on how to implement cutting edge neuroscience into training (more details on my website).

I get asked, often, how a guy with no Ph.D. ends up working with the top military neuroscience researchers in the world. My response is that I stay in my lane. I'm a generalist. I read through the research and figure out how to apply it in training. That's in large part a gift honed by specific training and research.

As a researcher, my focus in plowing through neuroscience research is to find APPLICATION. During one of my presentations at the Defense Advanced Research Projects Administration (DARPA) the Program Manager for Accelerated Learning said, "You can read through stacks of complex research, find the critical insights, and figure out how to make that work in the real world. We have lots of brilliant researchers. What we don't have is people who can quickly and easily bridge the gap between lab findings and make it work in the field for the SME (Subject Matter Experts). You make research WORK in the field."

I've had the pleasure of seeing many of the concepts I introduced in the 1980s and '90s take hold as common/best practice. My work has been adopted at the national level in Israel, South Africa, Norway, Sweden, and in various units involved in counter-terror domestically and abroad.



[Continued next page]

Probably the biggest piece of my background that's germane to our discussion about driving? I've done the work in the field under heavy threat, and I've researched it, and I've developed it into methods that have been taken on whole by the top practitioners in the field.

eJournal: In working to apply these specialized skills to daily safety of our members, knowing that they won't have the privilege of taking in-person training with you, let me ask where does the ordinary citizen learn to recognize and avoid threats like carjackers or violent protests on the streets that, frankly, are starting to look more like Belfast during the Troubles than Seattle, Boston, or Minneapolis?

Wynne: First, I am working on ways to make that training accessible via Zoom. I work really hard to simplify things. Only two things about driving for civilians matter. Basic driving skills—what you get in high school—and situational awareness focused on recognizing the specific threat germane to carjacking, etc., and having a simple experience avoiding it. Period. That's borne out by field experience, AAR analysis, and research.

My friend and mentor Ed Lovette, whom you've previously interviewed, was the leader in the tactical industry who formalized study and evaluation of after-action reports. He found after studying some thousands of incidents involving personnel who'd been through advanced driving that essentially none of the skills they'd been taught were utilized. What was actually used in terms of driving skills were driving forward, driving around, backing up and turning around. The key element was their situational awareness – their ability to see the attempt unfolding while they were driving.

Situational awareness is everything. In my old neighborhood in Minneapolis, we went from one of the most crime-free areas in the Twin Cities to having over 50 armed carjackings in a month, with the targets being single women or women with children. That's almost two car jackings a day in an eight-block radius. When I was in South Africa working with Counter Car-Jacking and Car Theft Teams – [chuckling] there is nothing quite like rolling down the highway in a modified BMW at 160 mph, leaning out the window with an FN – that was very nearly the ratio of carjackings and thefts they had, though the level of violence was significantly higher.

eJournal: Using carjacking as an example – the attacker must make contact with you to hurt you, so I want early detection. You mentioned after action report analysis, but we're literally trying to create a non-event through our awareness.

Wynne: As you mentioned earlier, as an experiment, I took two completely non-tactical lifestyle-oriented people and in two hours took them to a level where I could comfortably (as a seasoned practitioner and former instructor of the specific skill set) assert that they were operating at roughly the 80% of what a fully trained/experienced protection driver would exercise in a high threat environment. And we did it in a high threat environ-

ment, and one driver dealt with a close evaluation by probable carjackers while we were training.

We did that by changing how their brain processes and sorts information in real time.

eJournal: How did you alter brain processes? Many won't know what threat looks and sounds like until the attacker drops the guise under which he approached and the violence begins.

Wynne: In detecting threats, you need to know what threat LOOKS and SOUNDS like. All the classroom PowerPoint, lecture, and secondhand video tapes fall to a distant third when compared to the training value of a role-played scenario in the real-world environment. All my training courses are 90-95% experiential. I rarely lecture, and my favorite phrase is "Less talk, more walk. Get it done."

So, sitting in a real car, and having people walk up or run up on your car teaches you very rapidly and in the way most useful to your brain under stress what threat LOOKS and SOUNDS like. Set up a learning environment where you walk through a single-person-on-foot carjacking, to a small team of foot-mobile carjackers, then a vehicle-mounted team of carjackers. Let the student experience how important mirror positioning is, how simple scanning and eye position on the windshield is and do it in real time.

This is an important element of neural-based training design for people to learn skills they have to use under stress. Instructors who utilize the lecture, demonstrate, practice model work off the assumption that lecture and demonstration create an effective cognitive map of using that skill under stress. Obviously, it works – to some extent with some people. Our research and approach create a cognitive map of using the process through experience first, and then plugging in the intellectual understanding after people have an experience. Ride the bike first, then lecture about biking skills.

For specifics on what to look at in the context of driving skills, you need to adjust your mirrors so as to eliminate blind spots on your flanks (or get stick on micro-mirrors to enhance your side mirrors) adjust your rear-view mirror to enable the broadest rear perspective, and most important, shift your range of focus on the windshield to the upper third of the windshield. Most people look at the bottom third of the windshield (like at the plates of the car in front) or middle third (one maybe two cars ahead). When you shift your vision to the upper third, it positions your eyes to see farther down the road (like a block or blocks) and it positions your head so as to enable better peripheral vision as well. The technique of scanning is to maintain a regular scan at all times in the vehicle – right, center (rear), left back to center, right, center (rear), left. After a while that becomes automated and it's effortless to know at all times what's a block or so ahead of you, what vehicles are beside you or behind you, or when in a city and slowing who's around your vehicle when you slow to a halt and so on.

[Continued next page]

eJournal: The video you posted on your website of the attack against the South African armored car at <https://marcuswynne.com/superior-performance-under-life-threat-ening-stress-aka-grace-under-fire/> has got to be the most dynamic demonstration of using mirrors while driving I've ever seen. When we're positioning mirrors and scanning them and scanning forward through the windshield, what sections of the landscape around us are we checking?

Wynne: The goal is to automate your scan using properly positioned mirrors and to see as far, wide and deep as you can. Once you consciously practice this – in traffic – you'll find you're already doing most of it. Then you add conscious attention to expanding/extending that visual scan, and you'll see all that's relevant. You should be able to easily scan a block forward and back and maintain constant awareness of what's beside you as you drive.

eJournal: How much detail does even a moderately aware person miss during their daily commute? With training and practice, how much can ordinary folks' brains take in and act upon?

Wynne: I'm going to indulge my neuroscience nerd for a minute and introduce some concepts woven into all my training. Your sensory channels (we're primarily concerned with visual and auditory at this point, but they also include taste, smell, kinesthetic feeling, somatic marking, etc.) pick up EVERYTHING – to the tune of approximately 14 million bits of data per second. Your conscious mind can process in a range of 5 to 11 bits per second. Those are the parts you CONSCIOUSLY attend to.

So, what does that tell us? That filters exist. Where does all that data go? It gets sorted and prioritized according to pre-conscious filters that are formed by your genetics, life experience and specialized training. The data is sorted and prioritized according to those filters. The process looks something like this: sensory data - preconscious filters - pattern recognition/creation - narrative recognition/creation - automation (modifying preconscious filters - pushing up what's necessary in real time to keep the organism safe).

So, rather than nerding out on details of how much the brain can take in and act upon, I focus on the fact that learning and training takes place in the sensory process, therefore you can train yourself to recognize potential threats and you can modify, through training, your perceptual process so that you can enable a very high baseline state of situational awareness.

You can change your brain and enhance your cognitive processes involved in recognizing and avoiding threat.

For situational awareness, the relevant piece is by turning conscious attention to the pieces of your habitual (automated) scanning process, you can improve it, which creates measurable changes in the efficiency of your visual processing. So, you're changing your filters to take in and process more

information – and then you automate that process. And it's way faster to do it in real time while driving than it is to lecture about it.

eJournal: One of your blog posts mentioned seeing a method called "commentary driving" you first saw used by operators who'd worked in Belfast. What's a commentary drive and why do officers use it?

Wynne: Commentary driving is a useful technique both for police work and for Joe-Civilian. In the context of preparing for driving with a self-protection mindset, it's useful first as a training tool and then as a subconscious program installed in the driver. Essentially, it's just "stream of awareness/consciousness" about what you see going on around you while engaged in driving. It's useful in training the brain to pay more attention to the details that flood your brain while you're driving.

I was first introduced to it as a surveillance technique for singletons working in a wired (hidden microphone) car with a radio transmitter as a way of communicating in real time with other members of the team, operations center, and QRF (quick reaction force).

I began to use it to model the thought process of maintaining situational awareness. An example would be, "I'm driving south on Nicollet, slowing as I see a yellow light ahead, I'm maintaining a full vehicle length behind the car in front of me. I've scanned ahead, right, left and behind looking for target indicators which in this neighborhood may include lingering individuals in close proximity to the intersection, or vehicles that will pull up and block me. I'm examining the vehicles within three cars of me for indicators like multiple passengers, doors opening, and movement concurrent with my slowing down to stop. At the stop, I maintain situational awareness by scanning all my mirrors which I have previously adjusted to eliminate blind spots..." and so on.

eJournal: So that is focused on awareness while in the car. Are we starting the commentary drive as we fire up the engine?

Wynne: Driving safety starts before you leave the house. Pre-launch is triggering a pre-visualized sequence of events and working a checklist.

- You're driving. Where?
- What's your purpose?
- Do you drive the route regularly?
- What do you know about any existing or emergent threats along the route?
- What is your general threat assessment (woman with a stalker, or a dude with a stalker, traveling at night, enemies, etc.)?
- What is the time of day?

[Continued next page]

- Have you had any events?
- Do you have a cell phone with you? Is it charged? Do you have a charger in the car?

All that should run through your head BEFORE you pick up your car keys. You need to switch on BEFORE you leave your safe space (house). That's where guided commentary comes in useful for training.

When I trained the women I mentioned earlier, we started in the house with the initial intention to drive someplace. I talked them through that sequence, and their situational awareness kicked up via questions like:

- Is there anyone outside your door?
- Anyone near your car?
- As you approach your car, can you see all around the car?
- Is there anyone lurking around? Walk around your vehicle.
- Anybody hiding behind it or in the back seat?

Keep scanning when you unlock the car and get in, THEN LOCK THE DOORS. Then start the vehicle and check your mirrors all around before you pull out, and so on.

eJournal: Oh, good point—awareness increases before entering transition zones—not just when the car's moving.

Wynne: Transition zones include:

- Leaving your house to approach your vehicle.
- Getting into your vehicle.
- Departing in your vehicle.
- Driving en route anywhere your progress is impeded, slowed, or blocked.
- Approaching your destination and selecting your parking spot.
- Getting out of your vehicle.
- Moving from your vehicle to another safe zone (store, work, etc.).

We could list a million potential hazards but here's the thing: with tuned up and educated situational awareness and coaching on what YOUR internal danger cues are, you'll be looking and listening and feeling for what is out of place for you in that context. That can include people lurking around, or people or vehicles moving with you, etc.

eJournal: When you see, hear or feel any of those cues, what's the best response?

Wynne: In terms of countering, there is way too much emphasis on a laundry list of "see this, do that." What WORKS in the real world, especially for people who are NOT tactical professionals, is to keep it simple: If something trips your trained (via experience, not lecture) attention, keep moving or if where you are is secure, stay and seek help/assistance.

Laundry lists of "see this do that" make instructors feel good but doesn't translate to quality usable material when the student is under stress/threat out on the bricks. This has been rigorously researched by Ed Lovette and practically applied in very high-risk applications. What works the vast majority of times is a simple driving skill set the drivers already have, and situational awareness which translates to better visual driving skills. You see it further away, and you avoid it.

eJournal: In the context of in-vehicle safety, how different should our behavior be if we carry a gun or if we do not?

Wynne: For a civilian who's routinely armed, I strongly believe that there should be no difference in how they apply defensive driving skills. While driving or in the vehicle, nothing should change to how they handle impending threat unless they are stopped and are unable to drive forward, around, or back up from the problem.

Being armed extends your options. For a civilian, however, there MAY be a tendency to jump to the gun progression instead of sticking to the vehicle progression, which is stay in your car, and drive away. The only time I think a gun may be relevant for a civilian is in the transition zones getting in or out of the vehicle, or if one is completely stopped and the vehicle is unable to move, and one is forced to debus (get out of) the car – and that's when you're no longer driving.

eJournal: I've seen some wild-n-crazy drills around shooting from moving vehicles. For a Network member who is consistently armed, how high of a priority does having skills and training to shoot from a vehicle deserve?

Wynne: For a civilian, no priority at all. It's edu-train-ment to steal Pat Rogers's phrase. I've done the courses in hostile environments and I've shot rifles and handguns out of moving vehicles. It's not a skill set one will learn and retain under stress from a course unless it's reinforced in one's work/professional environment. It goes against the principle of the civilian defender – break contact, violently if necessary, notify the proper authorities. We're not cops or special operators or undercover singletons. I'd rather see somebody take a safe driving course (not a tactical driving, though those are way fun).

eJournal: What considerations apply to shooting from a stationary vehicle?

Wynne: For civilians, most are completely unaware of the physiological impact of firing a handgun from inside a vehicle through window glass without eye or ear protection. If one was

[Continued next page]

forced to actually fire from within a stationary vehicle (and in my belief and experience, you have to have massive fail on situational awareness and basic driving skills to get to that point) one would need to be aware of the impact of unprotected ears/eyes (sound, glass fragmentation) non-optimal position (seated or getting out), dealing with restraints like seat belts or people blocking your doors or coming through your windows and windshield, etc.

There are plenty of people out there who are willing to train people in the various aspects of fighting from inside the car – I don't do that. When I train civilians, I work on the 80% that will most likely work for them with a minimal of training and maximal stress – so I focus on the basic driving skills coupled with situational awareness and specific training experiences that focus the brain on the most probable threats they may encounter.

eJournal: It is frustrating knowing that we'll likely never be in the same place at the same time for a training session. I would recommend, though, that members read about the Minneapolis ladies you trained at <https://marcuswynne.com/baby-driver-counter-carjacking-and-critical-path-design/>. It is a great synopsis and I've read it several times. Because you make it freely available, we don't need to repeat it here. There is so much we can learn about how not to be the victim of an attack while in our cars. What key points do we need to keep in mind as we close this conversation?

Wynne: 1) Read your news and get a Twitter feed to get real time updates on crime reports.

2) Practice situational awareness and notice what has changed in your neighborhood.

3) Modify your daily travel routes to minimize exposure and risk.

4) Be prepared to take evasive action to avoid riots and mobs.

5) Have a plan to deal with that.

When you see trouble, drive away. Forward, backward, left, or right. No fancy driving moves. Keep the vehicle moving and at stops make sure you have enough room to drive away.

When in doubt, drive away and communicate.

Keep it simple. Instructors in the tactical field tend to over-complicate things. Stick to what people will actually USE under stress. If you have basic driving skills, that covers the technical skills. The place to focus is on your situation awareness in the context of driving. As noted earlier, I am actively experimenting with a Zoom project that will bring the expertise of my Tier One instructors and myself in a format to deliver some of this material in a useful fashion.

And one last skill that gets overlooked: the ability to drive forward slowly. Why slowly? When people get surrounded by rioters/protesters/mobs attacking the vehicle, the panic reaction is to stomp on the gas and start running over people. While there is a time and place for that, especially in the US right now where those incidents will be live-streamed in real time, the ability to stay cool and continue to move forward slowly at 5-10 mph enables you to use the mass of the vehicle to push forward, allows people in front plenty of space/time to get out of the way and any video would show that you didn't use the car as a weapon to run over protesters. The reason we stop is we don't want to hurt people who are trying to hurt us. By having the tool, to be used at the appropriate time, of driving slowly around or forward through a non-compliant crowd, you retain the option to accelerate, go around, etc. to get away. And you still retain the ability to hit the gas if you have people breaking windows.

Driving slowly adds a step in your ladder of escalation with the vehicle as a weapon, which is articulable and demonstrable with outside video.

eJournal: This is a refreshing change from the usual "how to" articles we all read! Thank you for directing our concerns to what really matters and how we can change habits that put us into harm's way.



President's Message

Making the Decision to Fund an Act of Self Defense

by Marty Hayes, J.D.

Occasionally we receive a question from a member or prospective member regarding what parameters we use to provide funds for legal representation after an act of self defense. Typically, we have answered the question directly, but I figured it was time to make a separate feature article about the issue, so we can simply send people the link and they can read and understand why we require information establishing your use of force was a legitimate act of self defense.

The question often comes up when prospective members are comparing our assistance to others in the industry. I think one reason we receive these questions is that we have always, up-front explained this part of our membership agreement to our prospective members, while other companies do not.

What other companies typically say is that they will pay for expenses for cases of "self defense," but without the explanation that they will need details of the incident to be convinced that there is a reasonable case to be made for self defense. If you have one of these other policies, read the fine print very carefully, and if you're confused by the language of the contract, ask questions.

With the above in mind, just how does the Network make the decision to fund after being convinced that the act by the member was a legitimate act of self defense?

First, we routinely receive a phone call, either at our office during regular business hours or on the "Boots on the Ground Phone" if coming during non-business hours. For those not familiar with the "Boots on the Ground Phone" reference, it is my personal cell phone, where I either answer directly or if I cannot get to the phone while it is ringing, will call back as quickly as possible. During normal business hours, of course, we take the call at the office number.

If the Member is in Custody

In either event, the first question asked is, "Are you incarcerated?" If so, I explain that we do not want to discuss the incident beyond asking if this was a self-defense incident. The exception to this is if the jail personnel allows you to use your personal cell phone, which was the situation in our last member-involved shooting. At this point, what you need is use of a non-recorded phone to call and/or arrange for legal representation. This is one of the reasons it is vital that you find a local

attorney and get his or her phone number, so you could make such a call. In the majority of the Network's cases, however, our members have not had an attorney pre-selected, so I get to work helping the member find an attorney.

Once the Network locates an attorney who is able to immediately start work on your case, we hire them to do a cursory investigation of the incident. These efforts include talking to the member and to the police and possibly sending an investigator out to gather information. During this phase, I will get information from the attorney which leads me to believe the situation was a legitimate act of self defense. With that hurdle being cleared, the member will become the client of the attorney. The attorney will have the member sign a representation agreement.

This way of doing business protects our member's rights regarding self-incrimination. You see, a statement made against a person's self-interest made to a third person is admissible evidence in court, as an exception to the hearsay rule. Typically, the court will not allow a witness to tell in open court what the person said to a third person, because that evidence is deemed unreliable. However, if a person makes a statement that would likely lead to a conviction, the courts have decided that statement would be admissible, because for a person to make a statement against their own interests, the belief is that it likely would be truthful.

Okay, that covers what would happen if the member has been arrested and is being held in jail.

Arrested, but Not in Custody

Several times a member has been involved in an incident and they have invoked Massad Ayoob's 5-point checklist as to what to tell the police after a shooting. To remind the readers, it is as follows:

1. Establish the active dynamic, by telling police what the person was doing at the time you shot him. Meaning, "he was going to rape me" in the case of an attempted rape.
2. Advise the police you will sign the complaint. While in many states this advice would hold true, other states do not have this process. They will take a statement from you verbally, and at that time you explain you will be happy to go to court and be a witness if necessary. Do not sign any witness statements before you get representation from an attorney.
3. Point out evidence. While the scene is being investigated, make sure the police see and record any evidence which establishes that you were the victim of the crime. If, for example, the medical first responders kicked shell casings around, the police should know that. If you saw witnesses take any evidence from the scene (like a knife that was used in a robbery attempt), make sure police know that.

[Continued next page]

4. Point out witnesses. While folks like to stick around and watch what happens, at some point bystanders may decide to leave (for whatever reason). If you know that someone saw what happened, make sure the police know who was present during the incident.
5. Ask for representation before going further. You have been a good witness as is expected from responsible members of society, but before you commit to written or video statements, you must make sure you have legal counsel.

NOTE: For a full description of Ayoob's Five point checklist, see <https://dailycaller.com/2017/03/20/massad-ayoob-5-things-to-know-after-a-defensive-shooting/>

At some point following your first interaction with police, you should be able to contact your attorney. If you have pre-selected your attorney, great. If not, then phone the Network and we get to work finding an attorney for you. We will access our list of Network Affiliated attorneys, and if we don't find one that way, I will consult the attorney resource of the National Association of Criminal Defense Lawyers, of which I am a member. This work will be done initially by phone because the major driving force is to accomplish connecting our member with an attorney with all possible speed. We want an attorney for you as fast as possible.

The need to hire an attorney on behalf of a member returns us to the original question – what facts do I need to know before I can pay an attorney to represent you? Before we agree to assist a member, I will want to know some facts about the incident. I will want to make sure the member was not the initial aggressor. Even if you were legitimately in fear for your life, if you started the altercation, you will not be able to claim self defense at trial. I will also want to know what caused you to fear for your life (basically what you would or should have told the police when following Ayoob's five point check list).

That is the only information I will want to know. The reason I do not want to get involved with knowing additional facts about the case, is that by hearing your statements about the incident, I become a possible witness if you told me things that would likely result in your conviction in court. We, of course,

exercise all caution to avoid this, so by telling me only the basic elements of what happened – elements you will likely need to tell the jury anyway to establish your innocence – the peril of you telling me what happened is vastly over-shadowed by the benefit of making sure you have good legal representation, which requires gathering only the limited information we've discussed here.

By following these guidelines, I am able to ensure that Network resources (the Legal Defense Fund) aren't spent defending persons who were not involved in legitimate self defense.

Boots on the Ground

In the event you or the Network cannot find an attorney who you are comfortable representing you (remember you hire the attorney, the Network just pays the bill), I will get on an airplane or drive to your location and begin the process of finding counsel or I will send a designated representative to help. We have not had to do this yet, as our resources have been able to lead us to good legal representation for our members.

Role of the Advisory Board

We have several of the top experts in the country on our Advisory Board (see <https://armedcitizensnetwork.org/defense-fund/advisory-board>). While our Advisory Board helps grow the Network through their association with us, occasionally they will serve as a sounding board for cases where I am not comfortable making the funding decision alone. When that situation presents itself, I will run the case by one or two members to get their input and on one occasion, we ran it by the entire board. That's the exception, though, not the rule: when the decision to fund is made, I am the person ultimately responsible for that decision.

Conclusion

I sincerely hope this article serves as a complete explanation as to how we make the decision to fund the legal defense of a member-involved self-defense incident. While it sounds somewhat convoluted, in reality it works well and we fulfill our commitment to our members, while ensuring we are not funding criminal acts of assault or murder.



Attorney Question of the Month

After reading our May interview with Attorney Jim Fleming, members have been asking questions about stand your ground and duty to retreat laws in their own states. As a result, we reached out to our affiliated attorneys seeking their thoughts on their state's stand your ground or duty to retreat statutes and case law. We asked--

Do your state's laws give immunity from prosecution and/or lawsuit if one's actions are found to have been reasonable and necessary by reason of self defense? What is the court process to access those protections?

If your state does not have a stand your ground law, what can the citizen who uses force in self defense do to avoid prosecution, or avoid conviction, or a lawsuit seeking damages?

Emanuel Kapelsohn, Esq.

Lesavoy Butz & Seitz LLC

7535 Windsor Drive #200 Allentown, PA 18195

610-530-2700 - Home office 484-504-1345

<http://www.lesavoybutz.com/>

The Commonwealth of Pennsylvania, where I live, has both a "Stand Your Ground" statute and a "Castle Doctrine" statute. While I inform those who attend my classes that these statutes exist, I teach them, regardless of the state in which I am teaching, my own rule that I strongly recommend they follow. This is because, in my experience, (1) an individual cannot know what state he or she will be in when the need to make a stressful, split-second deadly force decision arises; (2) the retreat statutes of many states, including Pennsylvania's, have too many complex exceptions, ones that attorneys and judges often take hours, days and weeks arguing over; (3) the individual cannot possibly know and apply the retreat statutes of every state he or she might be in when the need for self-defense arises; (4) the nuances of any state's retreat statute can change at any moment, with any new court decision or legislative act; and (5) regardless of the words of the statute, juries often do what they think is reasonable and just in the individual case.

Accordingly, my rule is simple, and is unchanging from state to state or day to day: "In any situation, anywhere, in which you believe you can retreat with safety to yourself and all innocent others, RETREAT rather than using deadly force."

The use of deadly force is a grave, life-changing event, likely to have extreme consequences – legal, financial, emotional, societal and other. The only time one should use deadly force

is when there is no other reasonable alternative. Anyone who thinks otherwise is ignorant or foolish. In the movie *Conager*, actor Sam Elliott, who plays the old, flea-bitten cowboy Conager, responds to his friend who asks Conager why he didn't just shoot a younger, stronger cowboy who was viciously beating Conager to a pulp in a barroom brawl, "Any man who kills another when he can do otherwise is crazy – just plumb crazy."

That being said, the reader should understand that when I say one should always retreat rather than using deadly force when one believes he "can retreat with safety to himself and all innocent others," I'm not saying one should necessarily retreat when doing so will allow one's attacker to reach a position of advantage, or gain access to a weapon, or move to a location where the attacker will be able to place innocent others in jeopardy. A home invader moving down the hall toward your child's bedroom probably needs to be shot, even if he is moving away from you at the time. But the armed citizen, alone in a parking lot, who "stands his ground," in apparent exercise of his state's statutory right, and shoots a man armed with a knife instead of simply stepping inside and closing the door of a nearby building, or getting into his car, locking the door and driving away, is in my view a fool who is likely to pay an extreme price for his avoidable use of deadly force.

John I. Harris III

Schulman, LeRoy & Bennett PC

3310 West End Avenue, Suite 460, Nashville, Tennessee 37203

615-244 6670 Ext. 111

<http://www.johniharris.com>

<http://www.slblawfirm.com>

Tennessee may be thought of by some as the "patron state of shooting stuff" (the movie *Shooter*) but its laws are far from being gun owner friendly. Indeed, one major project of the state's primary lobbying organization, the Tennessee Firearms Association (<https://www.tennesseefirearms.com>) is to improve Tennessee laws for gun owners and those who resort to justifiable self defense. A major change in Tennessee's self defense and immunity protections was enacted in 2021 and while it is a substantial improvement on the prior law, it still leaves more work to be done.

In 2021, the Legislature enacted House Bill 0025 which makes important changes to the state's civil immunity laws for those who resort to justifiable self defense. The new law will do a few things. First, it prohibits the filing of a civil action for damages in a situation that involves a justifiable use of defensive force. If a civil action is filed before any possible criminal investigation is concluded, this new law will require that the trial judge in the civil action stay the proceedings until the criminal investigation

[Continued next page]

June 2021

or case is concluded. The purpose of this stay is to protect the individual who resorted to force in self defense from having to be distracted with the costs and expense of a civil case while dealing with the criminal proceedings. In addition, if the individual who uses justifiable self defense wants a preliminary ruling on the civil immunity issue they can request it and it is handled on an expedited basis. In that hearing, the individual who claims self defense must present sufficient admissible evidence to “fairly raise the issue” of whether this was self defense. If the “court finds that the permissible use of force has been fairly raised, a presumption of immunity is created and the burden of proof shifts to the plaintiff to demonstrate that civil liability is not barred by this section.” If the court finds that civil immunity exists, the court shall order the plaintiff to pay the defendant’s legal expenses related to the civil immunity proceedings.

What Tennessee law does not do and must be amended to address is the burdens on the state in the criminal proceedings to rule out self defense before bringing criminal charges. In Tennessee in the criminal context the issue of self defense is an affirmative defense to be raised at trial. While the law enforcement and prosecuting attorneys can evaluate it long before trial, and should, there is no law that requires that analysis prior to presenting the case to the jury. There is also no law in Tennessee which affirmatively requires law enforcement or the district attorney to seek out, develop and preserve evidence supporting a self-defense theory (which they frequently do in officer-involved shootings). Tennessee law needs to be improved in this area and that is a topic that the Tennessee Firearms Association and its legal/legislative advisors have been working on for several years.

Separate from the issue of immunity from civil or criminal prosecution, the question arises of what can a citizen do to minimize risks. That full discussion is beyond the scope of this brief overview but there are steps to be taken. These steps include:

- Get regular and professional classroom and range training on civilian use of force because that training and evidence of that training could be important considerations for a jury as well as being an important factor in helping you to recognize and avoid situations that might progress to a self-defense event;
- Get “stress training” where your judgment and shooting skills are tested under high-stress environments such as low light, obstacles, rain, etc.;
- Be selective and cautious about what types of firearms, ammunition and carry systems you use for every day carry since these factors may be important to jurors who are not comfortable with the civilian’s right to carry and use deadly force under certain circumstances;

- Be very selective about who you use as an instructor because these are the individuals that may be called as expert witnesses in later trials;
- Develop with the assistance of an attorney an asset protection plan for the laws in your state which will help, if possible, shelter your assets from execution in the event of a judgment;
- Develop a plan to be able to fund the legal expenses involved in defending a criminal investigation, a criminal trial and/or a civil trial if necessary;
- Make sure you have audio and video recording capacities on your cell phone and that you know how to use them;
- Get training and instruction on how to respond in the event of a shooting if you are the one that calls 911 services and how to deal with officers on the scene – if nothing else remember to keep your mouth shut until you talk with your attorney; and
- Get a will and have an estate plan just in case you don’t survive the event.

Finally, develop a relationship in advance with an attorney who is skilled in these areas and who knows well the self-defense laws in your jurisdiction.

Join and support the in-state associations that dedicate resources on improving state laws that impact your daily life and the laws related to self-defense. Don’t rely on the national groups to be experts on the laws in each state – they often are not.

Alex M. Ooley and E. Michael Ooley

Ooley Law, LLC

P.O. Box 70, Borden, Indiana 47106

812-967-4939

<https://www.ooleylaw.com>

In addition to potential criminal liability for the use of force, there is also the potential for civil liability. However, in 2019, Indiana passed House Enrolled Act 1284 which provides immunity from civil suits to people who have used justifiable force in self-defense. This bill has been codified as Indiana Code § 34-30-31-1.

Before Indiana Code § 34-30-31-1 went into effect, individuals could be successful in their assertion of self-defense under criminal statutory standards but still face civil liability under civil statutory standards. Thus, individuals could be free from jail time/criminal liability but could be liable for paying the family or the criminal who was shot during the use of force encounter. Thus, the passing of this act now allows for protection from

[Continued next page]

both criminal and civil liability when using justifiable force in self-defense.

The law also provides for the possibility of early dismissal of a civil lawsuit based upon the creation of a rebuttable presumption that use of force is justified if a defendant was not prosecuted for the use of force. Additionally, the new law requires a court to award reasonable attorney's fees and costs to a defendant when the justified use of force immunity is successfully raised in a civil case. Hopefully, this law will end instances where criminals or their families sue victims of crime when the victim lawfully defends the innocent.

If you are interested in the history of this legislation, it stems from an incident out of Ohio County, Indiana, where Kystie Phillips heroically shot a man attacking an Indiana conservation officer. The Dearborn-Ohio County Prosecutor declined to criminally charge Phillips because Phillips had lawfully acted in defense of a third person. Nonetheless, Phillips was sued by the family of the man shot. Because of this case, House Enrolled Act 1284 was proposed and eventually passed into law, and the lawsuit against Kystie Phillips was dismissed.

John R. Monroe

John Monroe Law, PC

156 Robert Jones Road, Dawsonville, GA 30534

678-362-7650

<http://johnmonroelaw.com>

In my state (Georgia), there is both civil and criminal immunity for someone who validly uses self defense. How it is raised varies by whether it is a civil case or a criminal case. In a criminal case, the defendant can file a motion for immunity after he is indicted. He is entitled to a hearing on the motion before he is tried. If the court finds he validly used self defense, he is immune from prosecution and cannot be tried, so the case is dismissed. The burden is on the defendant to prove he validly used self defense. Even if he loses the motion, though, he is still able to claim self defense at trial (so he gets a second chance). At trial, the burden is on the state to prove beyond a reasonable doubt that he did not validly use self defense.

In a civil case, the defendant can raise immunity from civil liability the same as any other defense. That means it likely would be resolved in a motion to dismiss or a motion for summary judgment (and before trial).

We extend a hearty "Thank you!" to our affiliated attorneys who contributed comments about this topic. Reader, please return next month when we discuss a new question with our affiliated attorneys.

Book Review

Concepts of Nonlethal Force

Understanding Force from Shouting to Shooting

By Charles "Sid" Heal

Lantern Publishing & Media

<https://lanternpm.org/shop/concepts-of-nonlethal-force-understanding-force-from-shouting-to-shooting-by-charles-sid-heal/>

October 2020, Kindle Edition

Reviewed by Gila Hayes

Early last month, a Portland, OR man was hospitalized after an Antifa mob beat him severely. I was disturbed when a news report noted that he got out of his vehicle and threatened the armed mob with a pepper ball device, despite legally having two firearms in his vehicle. The guns were subsequently stolen by the mob. The report brought home to me how many force options are available. Add to that, the nearly impossibly complicated challenge of deciding, while terrified, what level of force is warranted. I wondered if the victim in this situation had too many options and not enough knowledge about mob violence. Reading the story made me think about how little many people know about the effectiveness of nonlethal force options. Some weeks earlier, I had scanned a CA law enforcement retiree's book about nonlethal force. The Portland story motivated me to pick it back up and read the entire volume.

Concepts of Nonlethal Force is something of a textbook about nonlethal force options used by police and the military. Many pages are a little technical, despite author "Sid" Heal's concerted effort to put his extensive experience and knowledge into layperson's language.

"There has already been much hyperbole, distortion, and equivocation on the subject of nonlethal force," introduces author Heal. "I have spent all my adult life involved in some facet of conflict resolution, to include being a combatant. Some will believe that this has tainted my perspective. Indeed, it has! It is what has made me that die-hard pragmatist ... I have personally experienced the failures in applying an unrealistic solution to a very real, and often dangerous, problem. To that end, this book is focused on providing practical, but humane force options in an inherently violent and amoral world."

Heal begins by citing the pitched word wars over whether force options from pepper spray to rubber bullets should be termed nonlethal, less lethal, less than lethal, low lethality, minimal force, or any of the other terms used. Heal wonders why, when it is the human user who renders any weapon lethal or nonlethal, a terminology controversy exists. "The intent of the user, not the characteristics of the weapon, is the primary factor for whether a particular weapon should be considered lethal or not," he stresses, adding, "Whereas a lethal weapon primarily attempts to defeat an adversary's ability to resist, a less lethal device attempts to defeat his will to resist." He concludes,



"A lethal weapon is judged on its effectiveness, a nonlethal weapon is judged on both effectiveness and safety."

Nonlethal force shouldn't be thought of as a "safe alternative," despite advertising claims. Heal explains, "Since all uses of force are attempts at changing human behavior, coupled with the fact that the amount and type of force required is never completely apparent or universally applicable, some injury can always be expected." Like police, the armed citizen has to think about employing a nonlethal weapon earlier in an escalating fight before deadly force is the only option to prevent being killed or crippled. Heal notes, "Because nonlethal options require substantially less provocation before engagement, a commander can provide a quicker response and intervene at earlier and less dangerous stages of an escalating situation." Of course, private citizens have to make decisions without relying on a law enforcement command structure, but decisive action is still needed. Heal acknowledges the ambiguity present in violent confrontations, but points out that "the skillful use of nonlethal options can force an adversary to declare intentions," reveal mental illness, deafness or inability to comprehend verbal warnings.

Thinking about the man beaten by the mob, one looks for guidance in when to employ lesser or higher degrees of force. As nonlethal force options multiplied, the decisions that have to be made also increased in number. Heal observes, "The situations in which nonlethal options will provide an advantage are always somewhat unique and unpredictable. Even more critical, they are temporary. Failing to use force decisively and promptly can easily result in escalation," and in another chapter, he comments that, "Waiting for an incontrovertible exhibition of intent is not only accompanied with significant risk, it cedes the initiative to the adversary." Timing is important.

The level of force used has to be, in the words of Rory Miller, "scaled." (See <https://armedcitizensnetwork.org/our-journal/archived-journals/277-november-2012#Review>) "Many situations rapidly escalate from less dangerous circumstances before requiring deadly force to resolve. An individual who is free to employ a variety of options is more likely to be proactive, retain the initiative, and be quicker to recognize situations requiring deadly force than one compelled to examine a situation isolated by either/or parameters," Heal writes.

Heal warns against thinking force options as existing along a linear progression, calling it "a recipe for disaster." He observes, "Where you choose to place a particular force option on a spectrum depends on whether you believe the predominant criterion should be the amount of injury likely to be sustained by an adversary or the amount of defiance anticipated. These are commonly referred to as 'effects-based' and 'behavior-based' rationales." He adds that behavior-based rationales are, in his experience, "much easier to justify, both in the criminal and civil courts, as well as the court of public opinion."

[Continued next page]

June 2021

Still, nonlethal options might fail to stop hostilities or might injure or kill the aggressor. Heal writes that while the effects of pepper spray (OC) or a baton strike are fairly predictable, indirect results like injury from falling are “contextual” and remain the responsibility of the user. For pepper spray, unanticipated effects due to “diseases of the heart and lungs, or intoxication, as with stimulants, such as methamphetamine or cocaine,” have been most prevalent. Heal warns, echoing our affiliated attorney Penny Dean’s discussion of pepper spray use in our [April](#) and [May 2018](#) editions of this journal.

Expect unexpected consequences from any use of force!
“Some of the more belligerent combatants become enraged and will immediately attack, and a lot of the injuries to all parties occur during this period...Conversely, suspects who have anaesthetized themselves with drugs or alcohol may exhibit little or no discomfort. As a general rule, if OC is applied correctly but didn’t work the first time, it won’t work at all...a different force option needs to be quickly applied to avoid a rapid escalation,” he advises.

The news is rife with suggestions that police should not have used nonlethal force in one situation or another, and sometimes the courts agree. Heal explains that what constitutes excessive force is extremely dependent on where an impact device strikes, as well as on age, whether he is healthy or sick, sober or inebriated, calm or agitated, to name only a few factors. Psychological resilience is also unpredictable, he notes.

When the aggressor remains non-compliant, repeated applications of nonlethal force predictably increase the likelihood of injury. “It would seem sensible then, that when force is necessary, it should be applied decisively rather than escalating from milder methods,” Heal writes. “Somewhat ironically, this results in less injury to both suspects and users.”

Pain tolerance is another entirely unpredictable factor. Heal cites analysis by researcher Charles Swett showing that the “portion of the population that is far more resistant to force than the rest of the population...tends to be large, healthy, determined males.” He later adds “the fit, strong, determined, emotionally disturbed, or intoxicated members of the population,” in his experience, require much more force before complying.

Civil law suit is an ever-present risk—as are criminal charges—when any degree of force is used. Heal explains that officers exercising considerable caution to avoid striking where permanent injury may result, still send combative subjects to the hospital, and are more likely to sustain injury themselves, owing to the necessity to get close to the assailant “making us vulnerable to kicks, blows, and thrown objects.” Remember also, as Heal noted earlier in the book, reactions to physical pain are highly subjective. “Pain that would be devastating to one individual may be only mildly irritating to another, especially if they are under the influence of some drugs, are highly emotional, or are mentally distraught.”

With TASER®s somewhat available to private citizens, Heal’s “Electrical Options” chapter will be useful. He observes, “Ironi-

cally, electrical options are some of the most studied and least understood of all nonlethal force options. In the United States, they are also among the most controversial.” Here, Heal gives an excellent layman’s explanation of the science behind how electricity reacts with the human body.

He explains resistance to electrical shock, noting that while dry human skin has some resistance to shock, the muscles and organs underneath have far less. Thus, he explains, a break in the skin can have a major effect. Of course, “Whether the skin is wet — whether the dampness is from rain or sweat, or even moisture in the atmosphere — can affect the severity of an electrical shock. Whether it is injurious or not depends on the amount of electricity, the duration of the exposure, the general health of the person, and even the frequency of the electrical current.”

A TASER®, Heal writes, uses “electrical shock that is of a frequency and current designed to ‘tetanize’ the voluntary muscles, especially the arms and legs, but without causing lasting harm. This means that the muscles involuntarily contract and spasm, and the greater the muscle mass involved, the greater the effects.” While pain is a byproduct, he explains, it is not the intent of the device.

I was interested to read Heal’s chapter on what he calls “biological options.” He cites domestication of horses and dogs to participate in war early in humanity’s history, commenting that it should come as no surprise that both provide a nonlethal force option today. Dogs, he continues, are “one of safest and most effective” nonlethal options available. Of all the force options Heal discusses, highly-trained dogs are the only one that can be called back when circumstances change.

Heal discusses a number of force options that are in their infancy, but may grow into useful and effective defenses in years to come, and later states, “We are now entering an era that history will someday recognize as the dawn of viable nonlethal force options.”

Concepts of Nonlethal Force closes with a synopsis of the value of force options in law-enforcement and his words are equally applicable to the private citizen. Critics do not understand use of force, he notes, “Physical confrontations are not pretty. They do not look like the fight scenes on television. They more often resemble vicious dogfights rather than boxing or wrestling matches...The force used must be decisive in nature because there is little or no time to evaluate each application to determine its effectiveness.”

Adding to the book’s value for research, the final pages include a 10 page glossary, 50 pages of footnotes citing authoritative articles and a detailed index that helped me review specific subjects in the book about which I wanted refreshers. *Concepts of Nonlethal Force* is a book I will return to time and again as a reference work and I appreciate the work author “Sid” Heal put into “plain-speaking” the truth about nonlethal force options.



Editor's Notebook

Summer of Hate

by Gila Hayes

The riots are only going to become more sizable and frequent as weather warms. Greg Ellifritz at Active Response Training gives frank words of advice and wisdom in his article at <https://activeresponsetraining.net/a-car-gun-for-riot-defense>.

He notes, "I think our problem as a species is that our monkey minds tell us to 'do something' in the face of a perceived future threat. Until we 'do something' we have mental unease. The 'doing' we actually need involves staying away from riots and protests. It involves quiet discussions with folks in and outside your social circle who want to make the world a better place. The answer isn't showing up at the protest with a pistol-gripped shotgun," he writes. As you prepare for the increased violence this summer, please read Greg's experience-informed advice. In addition to Michael Bane's explanation of the current situation at <https://www.michaelbane.tv/the-very-real-danger-of-politically-sanctioned-violence/49985/> I think that, while you may not like their conclusions, their summations will inform your decision-making this summer, and very possibly keep you alive.

Old Business

Readers might note the above thoughts are an expansion on my May commentary. I got several interesting responses to that column, and I'd like to share a couple of them with you.

"Your editorial struck a nerve, and I agree with most of your points of view. As a more-or-less contemporary in age, over the years I've come to believe that many if not most of the U.S. population has lost the ability to think independently, preferring to believe what they read and/or see on TV and/or the Internet without giving it the 'test of reasonableness' that you and I learned early on to apply. Although retired for the last couple of years, it was common during my last employment to hear many of the younger people at the firm discussing their opinions of recent events in a manner that made me think to myself 'do you really believe that?'"

"Gone is the time that we could shrug off an unintentional insult, now many prefer to take it personally and 'get back'. If the subject is race-related, we gather our 'clan' and purposely respond violently. Yes, there are dishonest law enforcement officers, but I believe that the great majority are people like you and me who are dedicated to doing their jobs properly. Yes there are dishonest politicians but I believe that most try hard to do what's best for their constituency."

"Perhaps the thing I miss the most is the sense that we're all working together for the common good as well as our own betterment, which requires a certain amount of respect for others,

even if we don't agree with them on some topics. When you and I grew up trust was almost a given. Not so in today's world. There are many times when I'm glad that I'm 73 and not 33.

"On the other hand, the sun is out again today, the deer are grazing close to the house, and my niece in-law and her husband just left after giving me another helping hand for a few hours."

-Larry in WA

A friend of many years who is also a Network member wrote:

"I wonder if the columnist in Psychology Today, given how she characterizes people who are concerned about where we are headed, might assess them differently had she been privileged to live through, for example, Mao's Cultural Revolution ... which seems to have many similarities to what is increasingly going on in our lovely country today. Another experience that might have illuminated her thinking would have been to spend a year as a resident of say Dresden while the Soviets still ruled. In both these instances one's fellow man proved in all too many cases to be a complete ass, and in both cases supplies were short as they usually are under fascist regimes."

"My second ex-wife's grandparents left Germany and Czechoslovakia in the '20s to make new lives in Argentina. Were they neurotic conspiracy theorists? I think not. I believe they were realists, realized they were in Dodge, and chose to spend the rest of their lives more productively and pleasantly than they would had they remained in their front seats for the war and for what led up to it."

"Here's something heartwarming. I took John Farnam's instructor class in February, and one of the attendees was a lovely 16-year old girl from Denver who teaches high school boys to shoot. Her dad came with her as chaperone. Excellent people, good minds, outstanding attitudes. She fills me with confidence about our possible future just as does a girl who also just turned 16 this spring named Alma Deutscher, Brit living with her family in Vienna. She has been composing and playing wonderful music for most of her life ... a full opera at 12, piano and violin concerto she first performed publicly in Vienna a couple years ago, playing the solo part in both, and both on the same day, plus a lot more. Look her up. Before one performance in Carnegie Hall she delivers a nice li'l speech about the critics who said she was wrong and should be writing ugly music."

Greg in WY

Greg and Larry nailed it! There may be a lot of ugliness, but it shouldn't eclipse the things that make us happy. Listen to Alma Deutscher's words at <https://www.almadeutscher.com/carnegie> and I think you'll agree with Greg – her existence is good reason for confidence in the future.

Another member suggested a new biography for me to read and I'll have a pleasant change in direction for next month's book review. Thank you to everyone who emailed. Hearing your ideas and experiences clarifies my own thinking.

June 2021

About the Network's Online Journal

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

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

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

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

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

Marty Hayes, President

J. Vincent Shuck, Vice President

Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

Please write to us at info@armedcitizensnetwork.org or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.