



Top Three Errors Armed Citizens Make in Self Defense

An Interview with Marty Hayes, J.D.

by Gila Hayes

Marty Hayes brings 30 years of expert witness work to his role as Network President. In those years, he has worked on cases needing an expert to untangle facts that could exonerate the client or explain the evidence so a jury can understand what happened. Through his work, Hayes has observed the criminal justice system—prosecutors, attorneys, juries and judges, as well as the defendants and the actions that landed them in court. In an effort to help Network members avoid some of the difficulty that befell those men and women, we've asked Marty to synopsise the most prominent lessons he's learned that can keep armed citizens out of court.

eJournal: As you think about clients you've helped defend, can you identify the leading issues that make gun owners harder to defend in courts?

Hayes: A lot of times I get consulted on cases where the person is drunk, and I am not just talking about having had a beer or two, I am talking about getting hammered. They are carrying a gun and their drunkenness leads to poor decision making which leads to them committing a crime. For example, I just turned down a case that started when three people went out drinking. Two of them lived in the house where the shooting occurred. They invited the third to continue drinking with them in their home after the bar closed.

Now, at that point, nobody had any weapons on them and everything was good. The lady went to bed and the two guys stayed up for a while longer. An altercation ensued. There was some pushing and some shoving and a punch or two and the defendant in the case decided he was going to go get his shotgun. He went and got his shotgun and he came back down and for whatever reason, he shot their visitor dead.

Now, he claims it is self defense. He claimed that he was afraid for his life and the guy had an object in his hand that he thought was a gun so he shot him. Well, if he hadn't have been drunk, I am positive that this would

not have taken place. That is the number one problem that I see, and I see it a lot. I get a lot of cases where the individual had been drinking.

eJournal: Have you had cases where you thought what the armed citizen did would have been considered lawful without the complication of his or her intoxication?

Hayes: First, you have got to understand: Cops hate drunks! They deal with drunks all the time so if the cops show up on the scene and somebody has been drinking, even if everything he did was acceptable, there is a huge aspersion cast upon that individual. He is going to have to be injured or there are going to have to be witnesses to show that he had no other choice, because the cops are going to think that he is lying, because drunks lie all the time. That is a problem!

eJournal: What about once the case passes from the hands of the police? A district attorney or prosecutor has to make a charging decision, presumably based on the evidence.

Hayes: The prosecutor is going to take the word of the cops, and if the cops believe there is probable cause to arrest, based upon the injury or death of the "victim," the prosecutor is going to go with it.

While there may have been a self-defense claim made at the time of arrest or the attorney claims a few days later, "Hey, my client was acting in self defense," I can see the cops rolling their eyes and the prosecutor rolling his/her eyes and saying, "Oh, yeah, right." A lot of criminals claim self defense because there is no other possible thing to claim, even when it is not self defense.

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It is like the drinking case I talked about first: the guy is claiming self defense, but as I told the attorney, there is nothing there I can work with. I have no doubt the guy is going to be convicted of second-degree murder if not first-degree murder.

eJournal: But how much is too much? Drivers are subject to gradations of drunkenness that determine if a crime is charged. Are there similarities when an impaired person uses deadly force?

Hayes: Well, you've got to draw the line between being drunk and having had a drink or two. It is a lot easier to justify a drink or two. A lot of it depends on how the armed citizen reacts after the incident in the interactions with police.

An individual who has had some alcohol and has used a gun for self defense does not always get convicted. It is a lot like that idea of driving a car after you've had a drink or two. If a cop smells alcohol on you, the cop is going to ask you about it and if the smell is strong enough, the cop is going to yank you out of the car and have you do a field sobriety test or a portable Breathalyzer®. If you haven't had a lot to drink, then there is not going to be a problem. I think the same holds true for the armed citizen. I am not saying you can't have a drink or two with a gun on your hip, but I think that the armed citizen would be very, very wise to take the same approach that they would in driving: don't drink more while armed than you would if you were going to be driving a car.

eJournal: Some state laws, MI, NV, LA come to mind as just a few, make it illegal for you to carry your gun once your intoxication level exceeds a certain limit.

Hayes: Many concealed carry laws contain provisions written into the statutes that you can't be intoxicated or drinking and carrying a gun. I do not have a problem with those statutes. I pretty much hate all gun laws except those prohibiting violent felons from possessing guns, but the fact of the matter is I cannot see a real downside to laws against carrying a gun while drunk.

eJournal: I'm not sure if this is hypothetical or if you have a case on point, but that comment makes me wonder about the armed citizen who goes home and only then imbibes. Someone breaks in and the homeowner goes to where they store the guns and they shoot a home invader. Is that just as messy as a shooting in a bar parking lot?

Hayes: I do have a case on point. Several years ago a student of the Firearms Academy of Seattle had been living at his parents' home. They had a barbecue going on and the student had two or three drinks. He still had his pistol on him. Believe it or not, a couple of magazine salesmen showed up and started to convince the parents that they needed to buy their magazine subscriptions.

The son felt like his parents were being taken advantage of and he confronted the magazine salesmen at gunpoint. I don't think he pointed the gun at anybody, but he did brandish the gun because they were being belligerent. He convinced them to leave. Of course the magazine salesmen called the police. The police show up and they arrest the son and they confiscated his gun.

We worked very hard to get that case dismissed. We did get a deferred prosecution in WA State where the prosecutor offered, "OK, if you stay clean for the next year, we will drop any charges and you can move on with your life." I thought that was a pretty good resolution.

Really, the number one problem I see is alcohol and firearms.

eJournal: What is second most common?

Hayes: Lying to the police, whether intentionally telling a lie, stretching the truth a little bit or just simply being inaccurate. The last one comes from telling the cops too much, from sitting down to a formal interview, giving a taped statement, without a lawyer. You are crazy if you do it.

Or maybe you embellish just a little bit and then all of a sudden a witness shows up and says that you weren't punched three times, just shoved once. After that, you are a liar and the train starts going down the railroad tracks headed for prosecution and conviction ultimately.

eJournal: Have you worked on cases where you knew the client flat-out lied to the cops? What does the defense team do in that situation?

Hayes: The defense attorney tries to plea bargain. The attorney would say to the prosecutor, "OK, we know that we have a strong case here, but we also acknowledge that the individual lied."

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eJournal: Have you advised on such a case?

Hayes: A case out of Colorado that I worked on comes to mind. The man had justifiably shot three individuals. He was being attacked inside a home where he had a right to be and he shot three people.

Everything was OK right up to the point that he answered a question by saying that no, he does not take drugs. A blood test was done for some reason and the guy turns up having used cocaine within a few hours of this incident. The guy was a recreational cocaine user, but there was no reason to believe that what he did was affected by it.

I did not see anything in the case that showed me that the guy was impaired, but he had to take the stand and he had to discuss it or he was not going to get off at all well. The jury heard that he lied about it. Half of the jury would have acquitted him, but half of the jury chose not to believe a lot of what he said because he lied about the drugs.

This case ended in a hung jury. Of course, there was not any more money for another fight. The prosecutor offered him an unspecified felony, credit for time served and he took it so he didn't risk going to prison. He had already been in jail for about a year.

So, lying to the police is an issue, but also there's what you say in any statements to police after you have had your Miranda warnings read to you. That can go against you a lot of times. The police are not your friends.

eJournal: That's one reason the Network puts such emphasis on getting funding to attorneys to represent members as quickly as possible after the incident.

Hayes: But there's also the issue of how to initially show the police that you were the victim of a crime. That is the great paradox of what we do. We don't want to be discussing the incident with the police but the police have to know the criminal act the person was doing that caused you to shoot him, brandish your gun, or whatever you had to do to stop the criminal act. With a lot of good luck, there will be two or three witnesses that can say what happened without you having to give any statements to responding officers.

eJournal: The things you say in the 9-1-1 call also need to match up with what you say later.

Hayes: But you do have to call 9-1-1 if you are the only one around and you can't call and just say, "I'm at 123 ABC Drive, send the police" and hang up. That's going to sound pretty stupid playing in front of a jury. You have to tell the police that you were the victim of a crime, but you don't give them anything to hang you with.

The jurors are responsible citizens of the community and they are going to judge you by the standard of what they would do under the same circumstances. You know that they would call the police and let them know what is going on. They would be a good witness. That gets back to the first problem: you are a heck of a lot better witness if you have not been drinking.

That pretty much wraps up the second biggest problem I see: lying to the police or giving details to the police when there really is no need to.

eJournal: I'm glad you brought out the aspect of initially giving way too much detail, because when you mentioned lying to police originally, I just couldn't get my mind around why anyone would do that, knowing how the investigation's going to turn up discrepancies. My goodness! How many times will you have to tell the story you exaggerated or fabricated? How do you think you can maintain the integrity of that fabrication under repeated questioning?

Hayes: People don't understand that a good shooting incident reconstructionist can do a pretty good job of figuring out what happened, assuming there is sufficient physical evidence, bullet trajectories, blood spatter, stippling, ejection pattern of shell casings. You take all that and you can piece together what happened and you can certainly say, "Well, what the guy is saying did not happen."

eJournal: Have you been the expert on cases where the physical evidence did not match up with the accused's statements?

Hayes: Yeah, a lot of times. A lot of times when I get called in on a case it is because the defense needs to reconstruct the shooting incident. I am working on one right now, so I can't give the details, but we went to the shooting scene and we discovered evidence that the police had overlooked. I collected that evidence months after the incident because I knew what to look for and where it would likely be.

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eJournal: What is the third most common reason armed citizens end up in court with cases that are hard to win?

Hayes: Excessive use of force. There are two issues here. The first is when someone pulls a gun too soon. I see a lot of cases where because someone was afraid, they pull and point the gun at the person or persons who are causing the fear. But, they cannot articulate exactly why they felt fearful, nor can they articulate the immediate threat to them. They just yank that Roscoe out and start waving it around. There are laws against such behavior and if you do that in public you will likely get arrested and prosecuted for aggravated assault. Most of the time, these people have no training to revert back to under the circumstances, or if in a state where they must get training to get a carry permit, that training is inadequate. The more good training one has, the more confident they should be in their ability to handle a confrontation, and the less likely they pull the gun too soon.

eJournal: So, what is the second issue?

Hayes: The second issue is when they actually start firing the gun. Many people fire way too many shots, for a number of reasons. When that occurs, the individual starts reacting to being shot, they twist, turn and fall down. And, they are reacting to the first couple of shots, but it is shot number three or four that end up hitting him in the side or back. Were all those shots necessary? That's unknown, but if the person had taken the time to actually aim the first one or two shots, instead of pointing the gun and yanking on the trigger, they might have just seen the person change their behavior and stop the attack. Shots in the back will very likely result in prosecution.

eJournal: Well, many drills and exercises literally train us for speed shooting. That is the part of most school standards.

Hayes: Yes, and I pull my hair out when I hear garbage like, "You have to get your shot to shot times down to two-tenth of a second splits." Give me a break! This isn't a darned IPSC match, you know, and you are not Rob Leatham. You don't need sub-point-two-second splits. Every time you pull the trigger, it needs to be a purposeful act, not an ingrained habit.

eJournal: That's worth the price of admission. Please say that again.

Hayes: Every time you pull the trigger, it needs to be a purposeful act, not an ingrained habit. Let me explain what I'm talking about. For many, many decades it was in vogue to teach, "If you have to shoot once, you have to shoot twice," and the term "double tap" came about, and the term "controlled pair" came about, and the term "hammer" came about, as a result. That's all good, and in fact there had been a whole shooting sport centered around two shots fired at each target. The general sport of practical shooting is that way and the individual disciplines of USPSA and IDPA shooting pretty much center around requiring two hits on each target all the time.

Well, I tell you, I run an IDPA club and most of the time in a given match, we have specified perhaps one shot required or maybe two shots or three shots, but we never have a match where it is always two shots required. Having said that, when I put a stage out where we are requiring three shots, so many times, I see people fire two and start to move to the next target, then they think, "Oh, yeah, I had to shoot a third time so they come back and shoot a third time. Or if only one shot is fired, they go ahead and fire two and sometimes they even pick up a time penalty because you are only supposed to shoot one shot. It has become an ingrained habit, when it really should not be.

Part of the problem—and I am going to get all kinds of hate mail on this but I don't care—is that the people are shooting 9mms and because of their ease of being able to shoot that gun, they are going to shoot it a half a dozen times. I have personally gone away from using a 9mm. At one point I carried one on duty as a cop, but then the .40 caliber came out and I started carrying a .40 and recently, I switched over to a 10mm because if I have to shoot someone, I want to purposefully shoot him once maybe twice in the center of the chest or head and stop shooting. Here's the deal—if two shots didn't work, then three shots probably aren't going to work, either. I will go ahead and stop and I am training myself to do that all the time. So, one shot, maybe two, but they are going to have to be purposeful acts.

eJournal: You've said a lot about the excessive force problem being linked to a high number of shots. I wonder if the problem doesn't sometimes start before that, where you certainly have an assaultive individual, but will the trier of fact think that shooting was necessary? Have you been part of trial teams where

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shots were fired when perhaps brandishing was appropriate, but not shooting?

Hayes: Great question and I'll get to it but before addressing that, I'd like to go back to firing too many shots. In the Colorado case I talked about earlier, there were three individuals involved in his beating. They had him on the ground and they were kicking his head before he was able to get to his gun and start shooting. He fired eight shots in just a brief period of time, maybe three or four seconds, and I believe he fired eight shots and he hit four times, the details are a little fuzzy after all this time, and it was very interesting. The prosecutor, in the middle of their case, when they realized that they are not going to be able to get him for attempted murder or murder, switched to the concept of manslaughter, saying that he was reckless in firing so many shots so fast because 50% of them missed. Well, that argument didn't work out too good and didn't do them any good.

Another case I worked on—I'm not going to say there were too many shots fired—but four shots were fired and four shots hit and the last shot hit the guy in the back and then he fell down and he died. If the individual had fired three, there was probably a pretty good chance he would not have been prosecuted. The D.A. saw that shot in the back and he said, "There is no way we are going to let our citizens be shot in the back and not have the shooter prosecuted!"

eJournal: So as not to lose our earlier question, is it time to return to whether shooting was the right response?

Hayes: I can't think of any cases that fall into that category.

eJournal: Is that because your expertise is more focused on guns and shooting, instead of physical force?

Hayes: Yes, I think so.

eJournal: Well, that wraps up the top three. Briefly, what other factors get people in trouble after self defense gun use?

Hayes: Failure to document training or not being trained to begin with. Here's the deal: the jury gets to view the

evidence that is presented through the eyes of the defendant, but the defendant has to be able to explain to the jury what he or she was feeling, seeing and perceiving. If they don't have specific training to rely on to be able to say, "Because of this training I perceived this was about to occur," if they just say, "I had a bad feeling," that is not going to be enough.

The foundational work is the concept of pre-attack indicators. Members of the Network have all had training on pre-attack indicators in the video with Marc MacYoung. This is why we felt that training program was so important for every member to view, and why we put it out so early on in our educational lecture series. Of course, the knife defense, the Tueller drill concept is an important part of it, too, if you are dealing with a contact weapon. The ability to articulate why that individual was a documentable threat to you is huge. You have got to be able to explain to the jury and fall back on your training to let the jury know why you felt that your life was in danger or about to be placed in danger.

eJournal: Anything else?

Hayes: Yeah. Don't be a jerk.

eJournal: Words to live by!

Hayes: When the police show up, they don't know what is going on. If you cop an attitude with the police because of some stupid stuff you've been reading on the Internet about how all cops are out to hang you. If you cop an attitude, it is not going to go well for you. You need to be Mr. Politeness or Ms. Politeness after an incident. You need to be saying, "Yes, sir," or "Yes, ma'am, I'm sorry, I want to cooperate fully just as soon as I have counsel here." Don't be a jerk! Yes, the quote that an armed society is a polite society are words to live by and you need to hold up your end of the bargain and be polite!

eJournal: That makes a great closing thought. We do need to be unerringly polite and maybe that will prevent even needing to act in self defense.

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President's Message

Openness

by Marty Hayes, J.D.

In a world in which businesses keep secrets from customers and competitors alike for fear something damaging will get out, it looks to me like most everyone in the fledgling “after self-

defense assistance” field is running scared and keeping secrets. That is, with the exception of the Armed Citizen's Legal Defense Network, Inc.

Let me explain. Currently there are about seven to eight serious players in the game. And as time goes on, we learn about problems these players are keeping secret from their customers. For example, a class action lawsuit has been filed against one prepaid legal scheme by several of their customers. You should be able to find this with some creative Internet research. It will be interesting to see how it plays out.

Just recently, members and customers of another program received cancellation notices from the underwriter of the insurance component of that plan. In fact, one of the biggest faults with insurance programs is the manner in which they are set up. You see, all the companies who are selling self-defense insurance also rely upon a separate and independent company to underwrite the program. That separate and independent company can cease to underwrite the program, subject to its agreement with the person or entity selling the insurance.

I bet you didn't know that, and I bet you never saw that underlying contract in writing before you paid your money. I am referring to the contract signed between the insurance seller and the underwriter, not the policy you receive as the insured. The contract between the insurance seller and the underwriter is secret. It is not open to inspection by the members or customers. Why not? Because the customer would realize just how fragile the whole system is, and the fact that your insurance coverage can “go away” at a moment's notice. The customer has no control over it.

Now another player in the “after self-defense assistance” field is being investigated by a state insurance commissioner for violation of insurance law. Bet you won't see that on their website.

It is hard to discuss secrets and lies without confronting the issues of puffery and broken promises. Given the fact that I pretty much ideated the concept of after self-defense assistance that paid as the money was needed (instead of insurance reimbursement) I have been privy to watching the players come and go over the last nine years. I've seen most of them make absurd promises about the services they are offering and I've watched them subsequently modify the services they offer.

Recently, I was shown a claim by one of the companies that went something like this: “You can shoot someone on Saturday, and we will have you back to work Monday!” Really? Is your program so powerful that you can get a judge to open his or her courtroom for a bail hearing on Sunday? And you have so much influence that you can guarantee that judge will grant the bail request? I know of one state where you will not be granted bail if you have been charged with first degree murder!

At times I think I have become involved in the used car business! Unfortunately, the very sales tactics used by the successful used car salesmen work, and the “after self-defense assistance” industry has tapped into these sales techniques.

One issue above all others really gripes me: The subtle, misleading advertising. You are promised XXX million dollars coverage, but the company hides the fine print. No, \$1,125,000,000 dollars coverage doesn't mean you will be able to mount a million dollar defense. The company will spend up to \$125k for your legal defense, including up to \$25,000 bail. The other million dollars, however, is only paid to a successful plaintiff who sues you AND you win in court.

Another claims, “We have your back” in order to sell a \$1.5 million dollar insurance policy. You have to read the fine print to realize that that \$0 will be made available up front for attorney fees at the time you actually need the

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funding. That insurance plan will pay 20% of your policy limit up front for ancillary fees, like bail and experts, but without an attorney, you will not need it.

Read the fine print folks. Don't end up like Martin Zale, who had one of these "insurance plans" that did not pay for an attorney up front. See this brief video at <https://video.search.yahoo.com/search/video?fr=yfp-t-s&p=martin+zale+murder#id=2&vid=7158eb7e94367dd804db3b1ac38a3626&action=click>

Without spending hours scouring the Internet, how does the armed citizen avoid that fate? Ask, "Does the company share their track record?" If I wanted to buy into one of these plans, I would want to find out how the plan was working for those who joined.

Recently one company was proudly touting an acquittal in a murder prosecution. They should be rightfully proud of that accomplishment. Where are the track records for the others? The Network has had 15 members involved in self defense incidents. None have gone to trial. The majority of the cases were never prosecuted or were dismissed before trial, and in a couple, the members took plea bargains as opposed to facing trial.

We have yet to have a member sued. In a perfect world, that record will remain intact, but you never know. If the member is sued, the Network will participate in the legal

defense assuming, of course, that the use of force was reasonable and justified. Have any of the "self-defense insurance" companies settled any lawsuits against their customers? Until that happens, how do you know they are any good? I have State Farm Insurance for all of my motor vehicles. State Farm costs more than some other insurance companies, but I am willing to pay a little extra because they have proven to me they will pay off when the need arises.

Lastly, if you're buying "self-defense insurance" you have to wonder, how solvent is the company? Can you call up the CEO and have a discussion with him regarding the dollars and cents? You can at the Network. But there is no need to call, really, because we print the information up front, by publically stating how much money the Legal Defense Fund has.

As of this writing, Legal Defense Fund balance is \$1,175,000 and change. With no cases pending and with both new memberships and renewals flowing strongly, that number will continue growing very nicely in the foreseeable future.

Have a happy and joyful holiday season, Network members!

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Attorney Question of the Month

This month, we conclude a topic of discussion that we started several months ago with our affiliated attorneys when we asked—

Suppose that a member keeps an extensive collection of legal rifles, shotguns and handguns locked in a safe, and uses his or her carry gun in justifiable self defense.

Can the gun collection be discussed in a trial to suggest to a jury that the armed citizen is a blood-thirsty monster, not a good member of the community?

How would a prosecutor or plaintiff's attorney introduce that line of reasoning? If defending the member, how would you counter the accusation if it arose?

Our affiliated attorneys have provided a lot of great intel on this topic. If you missed the foregoing months, you'll also want to read the responses at <https://armedcitizensnetwork.org/october-2017-attorney-question> and <https://armedcitizensnetwork.org/november-2017-attorney-question> then pick up the discussion with the responses below.

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The fact pattern states that the member uses his or her firearm in “justifiable self defense,” but I must assume that the member is being civilly or criminally prosecuted for the effects of this use.

Therefore, this is primarily an evidence issue, and evidence rules differ from state to state. Does the evidence of other firearms meet the threshold relevance requirement? Even if relevant, is it unduly prejudicial? Can character evidence be admitted by the plaintiff's attorney or prosecutor if the character issue is not raised by the defendant first?

If defending the member, my objective would be to prevent the evidence from being admitted based purely on the evidence rules and precedents.

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The obvious first question is: how does anyone know you have a firearm collection? If the incident occurs somewhere other than within the residence, or even in the residence at a distance from the safe, probable cause to search will be questionable. A motion to suppress would be appropriate to raise the issue. “Not talking” before consulting with counsel is a good way to keep from sharing irrelevant information. Generally, you will want to avoid an entire collection admitted into evidence. Firearms are likely to be damaged or lost, and might be difficult to get back even if you win.

Important point—the collection MIGHT provide evidence of the plaintiff's motive. In short, it might provide both an explanation for why an intruder was entering or attempting to enter the house, and what the consequences MIGHT be if he was not stopped. Bad guys often steal guns.

The usual way to keep irrelevant information out of a jury's ken is a “motion in limine,” forbidding mention of or even reference to the firearm collection. The basis would be Rule 403—evidence whose probative value is outweighed by the prospect of “unfair prejudice.”

Voir dire of the jury should be conducted with questions designed to keep out, or at least expose, jurors with a belief that possession of firearms equals propensity for violence. If not removed for cause, those jurors would be the subject of peremptory challenge.

Of course, the existence of a collection is probably relevant in a burglary case. The value also might be. The way it became known outside the household also

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might be. The specific firearms would probably be irrelevant, unless the defense somehow "opened the door."

Note that many firearm dealers, especially Class III dealers, are felt by most jurisdictions to have a reason to carry a firearm. A business inventory, once again, might provide evidence more useful to the defense than the prosecution.

At the end of the trial, the judge might give you an instruction as to "propensity for violence," and that a firearms collection alone is not that.

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In response to your recent question, absolutely a member's gun collection and love of guns in general would be used against him by a prosecutor or plaintiff's attorney. In fact, membership in this very organization would likely be brought up. A skilled prosecutor or civil plaintiff's attorney would simply ask the accused on the stand about it. I can envision a line of questioning as follows:

Prosecutor: "Mr./Mrs. Armed Citizen, isn't it true that you have a vast gun collection?"

Mr./Mrs. Armed Citizen: "Yes, I believe in the Second Amendment."

Prosecutor: "Isn't it also true you're a member of the Armed Citizen Legal Defense Network?"

Mr./Mrs. Armed Citizen: "Yes, I believe in being educated about the Second and Sixth Amendment."

Here's where counsel for Mr./Mrs. Armed Citizen can be critical. When called to the scene on a recent home-invader incident I asked my client about his experience with guns. I learned that he kept a blog about self defense. We immediately shut this down so that the press could not get it (part of a good defense is managing the press surrounding your client).

Had the case gone to trial (client was no-billed by the grand jury) we would have spent hours preparing for his testimony. I would have asked him about his gun collection and membership in ACLDN before the state could. I would have him explain his thoughts behind gun ownership and why he is a member in such a way as to

sound like an educated and rational person who simply collects guns and puts an emphasis on self defense. I would also question the various police officers involved about their guns (in my experience, most police officers are gun aficionados). When picking a jury I would also ask the panel about their experience with guns and groups like ACLDN. I tried a manslaughter case a couple months ago with great self-defense issues and tried to get as many CHL holders on the jury as I could.

As an aside, someone I know has a very strange gun collection. He likes to collect guns used by Nazis in WWII. He also had thousands of rounds of ammunition. I mean THOUSANDS; as in, if the world goes down the toilet, I'm going to his house. When asked about it he has very simple explanations. He's simply a WWII buff and collects all WWII memorabilia. Apparently, the Nazi guns he collects are very rare and worth a lot of money. As for the ammo, he stumbled across an estate sale where the family was selling the deceased's ammo for literally pennies a round. It was too good to pass up.

In short, the key is to get ahead of the questions. Never try to hide what may sound like bad testimony from a client. Keeping it out of the press is one thing, but if they think you are keeping something from them a jury will never believe your client. A skilled defense attorney will have his client speak to these things in advance.

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If the prosecutor wants to paint the defendant as a gun loony, he may start at the time of arrest. Public statements will be released either from the DA or the police indicating that a "cache" or "small arsenal of weapons were confiscated" from the defendant. If there were any ARs or similar guns, read that "military weapons." The intent will be to try and poison the potential jury pool (local community) right from the start. Federal prosecutors have been infamous for doing this.

Regarding the trial, the defense attorney might apply to the court for a pre-trial order. Such an order often is sought to restrict in advance what the prosecutor can do at trial, and sensible arguments can be made for the defendant. However, the purpose for seeking the order here really is not to keep out the evidence of other guns,

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because in the real world of criminal trials that evidence most likely will be admitted. The real purpose behind making the application is to alert the judge to the defendant's concerns, which may make the judge sensitive to the issue and cause him to prevent the prosecutor from going too far afield at trial.

Regarding how the evidence comes in, the prosecutor can use various questions, such as asking the investigating officer, "What did you find when you arrived at the scene?" There really is nothing objectionable about that question, and it permits the prosecution witness to say a whole lot of things, such as: "A weapons safe. We followed normal procedure and vouchered all the weapons."

As for defending against it, this is where the real artistry of the defense lawyer can shine. There are so many angles of attack that they cannot be listed in a brief statement here, but, some areas include introducing evidence about:

- 1) how commonly people collect guns,

- 2) the defendant's personal gun story (began target shooting in the Boy Scouts at age 12 and earned the Rifle Merit Badge, joined the High School rifle team, teaches hunter safety courses, etc.);
- 3) the defendant's military service and training, etc.

Essentially, the defense lawyer will do everything possible to normalize the defendant's image and his ownership of guns. And if the prosecution was obvious in its attempt to make the defendant look like a loony, effective rebuttal by the defense lawyer actually can make the prosecutor look mean and grasping.

Jurors usually react negatively when they see an over-zealous prosecutor obviously trying to smear a defendant; particularly where the defendant does not objectively seem like a bad person.

A big "Thank You!" to our affiliated attorneys for their contributions to this interesting and educational discussion! Please return next month for a new Question of the Month.



News from Our Affiliates

by Josh Amos

Happy December to all of our Armed Citizens' Legal

Defense Network affiliates, members and journal readers. I was given the leeway to do something a little different this month. Since our members are always seeking knowledge about topics of concern to armed citizens, and with Christmas right around the corner, I thought some suggestions on books, videos, and information sources might be timely.

I polled the crew in the our office to ask what books, videos, and online resources armed citizens should read and keep in their research libraries. Here's what earned the top recommendations:

Armed Citizens' Legal Defense Network President Marty Hayes recommends *The Art of Modern Gunfighting: The Art of the Pistol, Vol. 1*. I admit that I wasn't aware of *The Art of Modern Gunfighting* before Marty mentioned it, so I haven't read this one. I will soon remedy that deficiency!

Network operations manager Gila Hayes recommends *Deadly Force: Understanding Your Right to Self Defense* by Massad Ayoob. She commented that this book is so essential that we have made it part of the Armed Citizens' Legal Defense Network education pack sent to all members when they join. While members should already have a copy tucked away in a safe place, with notes from reading it, you might consider getting a copy for your pals. Massad Ayoob is a Network Advisory Board member and anything he writes is worth the time to read and the expense to buy. Find it at <https://www.gundigeststore.com/deadly-force-self-defense>.

Melissa DeYoung who works in the office across from mine recommended *Conflict Communications (ConCom): A New Paradigm in Conscious Communication* by Rory Miller. Miller's material offers brilliant insights how to understand and avoid trouble by understanding different cultures, avoiding misunderstandings, spotting predatory behavior and more. His books and videos are a "must" for your armed citizen library. Learn more about Rory and his work at <http://www.chirontraining.com/>.

Belle McCormack, Firearms Academy Staff Instructor and administrative assistant at the Network, recommends *Warnings Unheeded: Twin Tragedies at Fairchild Air Force Base* by Andy Brown, the Air Force police officer who stopped the mass shooter on Fairchild AFB in 1994. In *Warnings Unheeded*, Andy painstakingly details all the events that lead up to that horrific event as well as the aftermath. Andy details so many lessons that it is hard to synopsize them all. I believe Andy's study is a lesser known gem that belongs on the bookshelf of any serious armed citizen.

For my part, let me recommend two websites that are well worth reading and bookmarking for regular study. Marc "Animal" MacYoung's website <http://www.nononsenseselfdefense.com> is a combination of library and encyclopedia. Bookmark it, read, and reread it. Marc's writings on violence, crime, and human behaviors are prolific. Yes, he used to be a criminal; he is not overly proud of it. Yes, he can be wordy, but he will give you valuable, new ways to solve problems.

My next recommendation is for Greg Ellifritz's <http://www.activeresponsetraining.net>. This is another site that has a ton of great information. Greg is a sergeant in a Central Ohio police department, a martial artist, accomplished shooter and highly-educated man. He is an avid learner and trainer who always asks "why?" Greg always lays his cards down on the table so you know where he got his information and why he has drawn the conclusions he shares on his website.

A book I've been recommending a lot lately addresses church safety. *What They Don't Tell You About Church Safety* by Bryan Donihue is extremely thought-provoking. We reviewed this book for the June 2016 journal, and I found that its safety lessons apply to fraternal organizations, parent/student organizations and volunteer groups as well as churches. See <https://armedcitizensnetwork.org/june-2016-book-review>

That wraps it up for this month, folks. Thanks for stopping by and spending some time with us. I hope you will consider the work of the authors we recommended. They are good folks who generously share their hard-earned knowledge with readers and hopefully help the rest of us so we won't have to pay the hard dues that they have paid.

[End of article.
Please enjoy the next article.]

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Book Review

Prosilience: Building Your Resilience for a Turbulent World

by Linda L. Hoopes, PhD

ISBN 978-0-9987817-0-9

<https://www.amazon.com/Prosilience-Building-Resilience-Turbulent-World-ebook/dp/B06Y1S84BQ>

Reviewed by Gila Hayes

For the past few months, much of my reading has focused on coping with adversity through resilience, perseverance, courage, mental toughness, mental and emotional stamina. These strengths are applicable to responding to attack and coping with the aftermath. Some of the articles and books I checked out were far too esoteric, and more than once I simply quit reading because the material was inapplicable to daily life. I'd about given up when Claude Werner recommended Linda Hoopes' book *Prosilience: Building Your Resilience for a Turbulent World*. While its focus is not specifically on self defense, its lessons are applicable to facing conflict and danger.

Hoopes introduces her topic by observing, "Resilience is the ability to deal with high levels of challenge while maintaining or regaining high levels of effectiveness and well-being." This, she notes, is of growing importance as the world becomes more complex. "Prosilience," she continues, "involves systematically understanding, evaluating, and strengthening your own responses to adversity so you are better prepared for many different kinds of challenge."

Resolving small challenges uses the same processes needed to cope with "large disruptions," Hoopes explains. Practice undertaking manageable challenges strengthens existing mental pathways and builds new ones, she adds. "Every challenge draws on your physical, mental, emotional, and spiritual energy and can be addressed using a basic set of strategies and 'resilience muscles,'" she writes later.

Hoopes defines life's challenges as gaps between what we want and our current reality. "Resilience is the result of applying a set of tools and skills that help you close these gaps effectively," she defines. Small problems may include rude store clerks or household breakdowns and are useful as "work out" opportunities, she teaches, adding later, "The way you respond to these small

challenges is a good predictor of how you will respond to larger ones."

Big challenges can be broken down into a series of micro-challenges, with a goal of "minimizing harm, making progress toward your goals, and using adversity to help you grow," she explains, encouraging readers to voluntarily undertake difficult challenges in preparation for worse, unavoidable trouble.

When preparing for a new challenge a realistic evaluation of the size of the problem can be made by determining three aspects, which Hoopes defines as—

"Source: Where did it come from?

"Duration: How long will it last?

"Impact: How much energy will it take?"

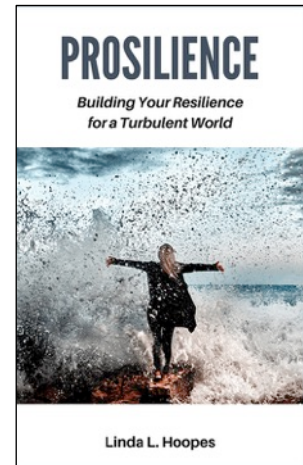
Asking those three questions is useful in prioritizing multiple challenges to best decide where to invest energy and which to address first, as well.

Different challenges require different coping strategies, so Hoopes compares problems over which we have some control to those that are beyond our control. Endurance and courage play different roles depending on the type of challenge, she explains. This was of particular interest from the viewpoint of aggression over which the intended victim has little control.

Hoopes emphasizes the value of proactive prevention, tackling challenges before they have a chance to get bigger. She outlines strategies including—

- Keep your mind on what you are doing in the moment.
- Don't ignore warning signs of disruption ahead: "The information may enable you to avoid or fix a problem, or reduce its impact, but even if it doesn't, it gives you more time to prepare yourself for an effective response and recovery."

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- Know when to quit: "It's important to recognize what economists call 'sunk costs'...resources you have already spent that you won't get back no matter what you do. Try to mentally write those off, and look at the current situation with a fresh set of eyes."
- Anticipate problems and rehearse responses: "This will make it much easier to come up with a good response in the heat of the moment."

There's more and these are only the high points that spoke to me, so readers will want to get *Prosilience* to look for solutions to their own concerns.

Hoopes teaches specific steps to avoid panicked or desperate responses to trouble. These include calming down so you can "operate logically or make meaningful choices about what to do." Stress interrupts rational thought, she explains, suggesting ways to first recognize then counteract sympathetic nervous system activation. She notes, "It takes about 90 seconds for the stress reaction to be triggered, surge throughout the body, and then be completely flushed out of your system. If you notice that you are experiencing high disruption from a short-term stressor, you can increase your ability to make intentional choices by hanging on for 90 seconds to allow the physiological reaction to pass." While that's not applicable to immediate danger, remember that facing non-life threatening stresses provides practice in keeping a clear mind and anticipating dangers that can become critical if ignored.

Different challenges require different approaches. Some, Hoopes writes, can be "reframed" and she explains, "Although you tend to think you are perceiving reality accurately, you often are not. A layer of perceptions, biases, and stories lies between what is actually happening in the world and the things your brain is reporting to you. If you can understand and minimize these potential distortions of reality, you may find there is less adversity than you thought."

Resilient people "have a high tolerance for ambiguity—the ability to function well in uncertainty—combined with the ability to think of new and unusual ways to approach things. This means that they can come up with lots of options and strategies for solving problems rather than sticking with familiar ways of doing things, seeing the world in 'either/or' terms, looking for quick answers, and finding themselves uncomfortable when they are not able to reach a conclusion."

Under stress many will repeat familiar solutions even after they don't work. How can we learn to think more creatively under stress? Hoopes suggests practicing open mindedness. When presented with a new and different solution, respond, "Yes, and" not "But." Creativity is killed by "the notion that there is only one right answer to a given problem," she urges.

Preparing to handle challenges is elemental to the armed lifestyle. The final third of *Prosilience* opens by suggesting, "Resilience focuses on what you do after you encounter a challenge. *Prosilience* is about how you prepare for the next set of challenges before you encounter them by strengthening each of the building blocks in advance." This section focuses on voluntarily engaging in situations that create "moderate levels of disruption," to build resilience and habituate responses like flexible thinking in response to stressors.

I found so much of value in *Prosilience* that I've ordered several printed copies as gifts for friends. While Hoopes writes as if she is sitting and chatting with the reader, there is no dearth of supportive studies and science behind her recommendations. End notes give page after page of the names and key contributions of a wide variety of researchers, along with citing some of their published work. This will prove helpful in building a "for further study" reading list.

*[End of article.
Please enjoy the next article.]*



Editor's Notebook

by Gila Hayes

As the Network starts the final month of 2017, we do so with a profound sense of gratitude for the friendship, support and loyalty Network members have extended to us this year and all the preceding years. We started 2017 with approximately 12,000 members and a Legal Defense Fund balance exceeding \$900,000. Our track record at that point boasted 13 members who had received assistance from the Fund after self defense. It has been an exciting year, but as it began 11 months ago, we had little hint of what was to come.

In the months following the 2016 wrap up we published at <https://armedcitizensnetwork.org/january-2017-front-page> we faced extremely strong competition, coupled with tremendous Network growth. As we enter the final month of 2017, membership has grown to nearly 15,000 members and as you read earlier in our *President's Message* the Legal Defense Fund is up to \$1,175,000. We'll give you the final tally next month. I'll note now that in 2017 despite paying attorneys, experts and investigators to protect two more members' rights after self defense, the Fund continues to grow as members come together to protect one another.

In addition to allocations from dues, the Legal Defense Fund also grows through the donations from members. Often a renewing member rounds up his or her \$95 renewal to \$100 or a pair of members sharing a household membership round up the \$155 to \$175—or other round figures.

Even after adding a donation, their yearly check or charge authorization to the Network falls way below what competitors charge for access to the same dollar value of post-incident assistance. Our members' generosity means a lot to me, and I send thank you emails that often are answered with a modest, "It wasn't much," or "I wish I could do more." Mirroring the foundational premise of the Network through which all Network members throw our combined strength behind a single member who is wrongfully targeted for prosecution after self defense, these \$5 and \$20 gifts add up to hundreds of dollars a month that pays for the

specialized skill only an experienced attorney can bring to steering the member through the second-most challenging time of his or her life.

In addition to "Round Ups," the Fund grows through deeply appreciated gifts of \$50, \$100, \$500 and more, usually mailed in or quietly transmitted online at <https://armedcitizensnetwork.org/contribute>. I am regularly amazed and touched by the compassion these gifts express for fellow members who have not been as fortunate as the rest of us.

This is one result of your donations:

From February through October, an affiliated attorney waged battle against prosecution of a member who defended himself with pepper spray (we'll speak of this in more detail once the dust kicked up by the criminal justice system settles). The attorney, who has often taken on municipal and state government and won, tackled the task with relish and while preparing to go to trial, strove to convince the government it could not win. As bills rolled in from her investigator, her expert, and for her own many, many hours, she'd send updates, sometimes noting that our account had sufficient money to push the work forward, or asking politely if we could send another five-figure check.

Thanks to her thoroughness and the generosity of Network members that is the topic of this column, we never hesitated to fund those defense expenses. Her bills illustrated the painstaking detail required to defend self defense in a hostile community. While it is expensive, the bills were never frivolous or exorbitant. We knew that we were funding the full-court press of a skilled professional bent on stopping the abuse of our member's rights.

In the end, the government dropped all charges. We wrote the final check in October, happy that our member was not dragged through a trial. We were reminded to be grateful that all of our Network members understand the value of standing together against a powerful government that is generally far better funded than the poor defendant. Thank you, Network members, for sharing this soul-satisfying adventure with us!

*[End of December 2017 eJournal.
Please return for our January 2018 edition.]*

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About the Network's Online Journal

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

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

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