

## Surviving an Active Shooter *An Interview with Michael Janich*

*Interview by Gila Hayes*

**eJournal:** Several months ago, I read with interest an article from your Martial Blade Concepts Distance Learning Program (<http://www.martialbladeconcepts.com/training/mbc-distance-learning-program>) in which you addressed survival tactics for one caught up in a mass murder attempt. So much is written on the topic that I wonder, has the frequency of this kind of violence really increased or is the media hyper-focused on what they like to call gun violence?

**Janich:** I think it is both, but it is a real and increasing problem. You can look at the statistics and trends to figure out what is a plausible threat and how to be realistic in preparing for that threat. In 2014, the FBI did a study of 160 active shooter incidents (see <https://www.fbi.gov/about-us/office-of-partner-engagement/active-shooter-incidents/a-study-of-active-shooter-incidents-in-the-u.s.-2000-2013>). They found that from 2000 to 2013, the average was 11.4 incidents per year, almost one per month, but that is over that entire 13-year period. When you look at the first seven years, 2000 to 2007, it was 6.4 per year. When you look at the last seven years, there were 16.4 a year. It is becoming a much more substantial and more common problem.

It snowballs when the media gives it coverage, people who might be inclined to do this kind of thing, seeking some kind of attention, say, "Hey, this is an opportunity for me," but it is not just Columbine and Sandy Hook. Now it is also ISIS. Now we have a much more tangible threat: the lone wolf threat. This is not a figment of our imagination. Incidents like the attacks in Paris are not isolated. This really is a trend.

**eJournal:** What does the FBI study consider an active shooter incident?

**Janich:** The study says 40% of the 160 incidents fell within the parameters of the Federal definition of a mass killing, which is three or more people killed in a single

incident. If it is three or more people, at that point they consider it an active shooter.

**eJournal:** How likely is it that we'll be caught up in an active shooter incident?

**Janich:** I think it is like anything else: you can look at the statistics, and say, "Statistically, it probably is not going to happen to me." Statistically, you are probably not going to be present when somebody has a heart attack. Statistically, you are probably not going to be present when a fire starts. Does that mean that you do not take a CPR class? Does that mean that you don't learn how to work a fire extinguisher? Does it mean that you do not pay attention to where the fire exits are? If you choose not to, then you are willfully reducing your chances of survival.

**eJournal:** Do you have any sense of how often an armed citizen stops the shooter before lives are lost?

**Janich:** The FBI study quantified 21 of the 160 incidents—13.1 percent—that ended after unarmed citizens successfully restrained the shooter. Off-duty officers assisted in two incidents, but in five of the 160 incidents, the shooting ended after armed, non-law enforcement personnel exchanged fire with the shooter. So it has happened: armed citizens have stepped up and stopped it.

**eJournal:** As shooters, we wonder how much to specialize our training and practice toward a skill focused on one potential danger like an active shooter incident.

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**Janich:** As an armed citizen, you need to be primarily concerned with personal defense. The primary difference in specialization would be the distance at which you would take a shot. If you are targeted as the victim of a violent crime, it is not going to be somebody with a bolt-action rifle from 100 yards spotlighting you like you were a deer. It is going to be up close. Your shooting skills are not going to be challenged from a marksmanship viewpoint. It is going to be a problem of combatives: How do I keep from getting my head beaten in? How can I keep from getting stabbed? Or if it happens to be a firearm-related incident, how do I keep from getting shot while I am bringing my gun into play and solving that problem?

With an active shooter incident, typically, the distances are going to be longer, so the primary thing you need to figure out is the limits of your shooting skill. If you are too far away, move closer if you want to take the shot with a greater degree of certainty, then work within the limits of your known skill set.

Look at things in context. If I am being attacked, what am I justified in doing in self-defense? One of the things that the Network does exceedingly well is taking things out of just the realm of, "Hey, let's do some shooting," and putting it not only into the gun fighting context, but into the legitimate, justifiable self-defense context.

Now, put it into an active shooter context and offensive action is justified. When an armed citizen looks at an active shooter targeting innocent people, there is really very little question that you'd be allowed to intervene. Intervening, from a legal stand point? No big deal.

It is a different mindset when all of your training is geared toward, this guy is attacking me and I'm defending myself, compared to, "Have I got a clean shot? I am going to proactively assassinate somebody to keep him from shooting somebody else." Once they are in danger, some people feel completely justified, but if what they see is somebody shooting somebody else, and they've got a clean shot from an oblique angle, can they take that shot, and say, "I am going to kill another person for the greater good?" From a mindset standpoint, it is definitely a paradigm shift.

**eJournal:** What influences when we should hunker down and try not to become a target, when we should run, and when we should engage?

**Janich:** I think that is very situational. Let's say that you are a teacher working in a school and because of state

laws and everything else, the system works against you in the sense that you cannot be legally armed while you are performing your profession. Put yourself in that context. You can't take on the sheep dog role in its fullest potential; you can't draw a firearm and return fire.

That doesn't mean you can't still be a sheep dog. You have to look at what resources you have and ask, if this happens, contextually, what can I realistically work with? How do I maximize survival and take responsibility for a classroom full of kids? It doesn't have to be black or white, asking do I hunker down and hope for the best? Instead, ask, "What kinds of actions can I take?"

There are a lot of actions you can take to make hunkering down a lot more effective. First, you have to look at what resources you have. I think the teacher, duty bound to work in a non-permissive environment, is a good example. So, what does a teacher do?

The naysayers are vehemently anti-gun and say they don't want to know anything about guns. Well, that's stupid; you need to understand the threat that you are up against. That would be like saying, I don't want to know about heart attacks, but I want to learn CPR. Well, you have to understand the problem first.

Look at your classroom environment and ask what constitutes cover. Ballistically, what will stop a rifle round? How big is the cover? How many kids can you get behind it? What angles of fire are available if we are behind that cover? You begin war-gaming the entire situation.

Let's say you have two entrances to the room and a cement wall in between the front door and the back door. That constitutes very good concealment at least and pretty good cover. If it is cinder block, it should at least stop handgun rounds. Then you say, "If I could just secure these two doors so someone could not gain entrance to the room, what are the available fields of fire? If we were to hunker down on that wall, could a shooter get an angle on us to be able to target any of us?"

It may be that the wall becomes the best barrier you have. Now securing the doors becomes the issue, so you look at the physical make up of the doors. Do you have a lockable door? Is it something that you can control and lock securely and present a physically impermeable barrier that the shooter can't get through?

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If you can't, how can you create that; what can you do? Let's say you have one of the push style doors with the panic bar across it. Can you take a 2x4 and fashion something with a metal hook so you can drop it down and hook it across the doorway to prevent someone from coming in through the door?

It is all situation-specific, but the question is, is there some way to create a barrier? If the door opens inward, it is as simple as having a hammer and some wooden door wedges with non-skid tape on them. So now, you hear gun shots, you hammer the door wedges under the door, basically wedging the doors closed, and you've also got a hammer as an impact weapon and you have plausible deniability: "Oh, I was hanging pictures in the classroom." A hammer is a tool, but it is also a potent weapon.

For years, I have recommended the dry chemical fire extinguisher. Knowing where the fire extinguishers are gives you access to something that allows you to engage at a distance and take away the threat's vision. Against a shooter, you spray him with the dry chemical fire extinguisher, you blind him and he can't target people effectively. He may still be squeezing the trigger, but not with nearly the degree of accuracy and lethality that he was before. There is nothing wrong with having a dry chemical fire extinguisher of your own in your classroom.

"Hey, why do you have that fire extinguisher?"

"In case there is a fire. I'm sorry – am I being too safe?"  
I'll get over it.

Having a fire extinguisher in your room instead of running into the hallway to grab one means you don't have to expose yourself to gunfire. So it's that simple—have a dry chemical fire extinguisher in the room and have some door wedges and a hammer, depending on how the classroom is set up. There are a lot of things you can do if you just say, "You know what? I am going to prepare. I am going to take this threat seriously and I am going to do things that go beyond whatever I am required to do."

**eJournal:** When people discuss active shooters many say, "I am going to run away," but isn't some advance planning desperately needed, so we don't just run into the open and become the first fatality?

**Janich:** Statistically, the two most common locations for active shooter incidents are, first, some kind of work

place, a commercial institution. The second one is going to be a school. Why? Workplace violence, the whole idea of a disgruntled worker coming back to the workplace and seeking vengeance, is classic. The phrase "going postal," goes back to some of the earlier active shooter incidents, which were actually workplace violence.

Well, second to being at home, the workplace is probably the place where you spend the most time, so you should know it like the back of your hand. You go through the same exact process we just talked about.

If you have your own office, does the door lock? Can you create a physical barrier and how durable is that barrier? What sources of cover, if any, do you have? If you don't have them, can you create them? I think everybody at some point in time, has had a bundle of newspapers that they used as a backstop for a .22 rifle, so the idea is having a filing cabinet that is packed with papers, old phone books or catalogs or anything that is thick, put into the back of the drawers, so now you have got some solid, ballistic cover. You can set up a filing cabinet next to your desk and at least have something that you can hunker down behind.

As far as fleeing, you ask, "From my office, what avenues of escape do I have and very importantly, what sources of cover do I have along the way so I can leapfrog from one to the other?" I don't want to just blindly run, because motion attracts attention and I don't want to become a target. How can I leapfrog from one point to another? What avenues of escape do I have? If the shots are coming from this side of the building how can I run out the other side? If it comes from the opposite side, where do I go?

Look at all those things, and if you don't have any resources inside your office, what about the mop closet down the hallway that has a lockable door? You could look at it with an eye to relative size, but if you had a mop closet with one of those old cast iron sinks in it, something like that is not necessarily bad cover. Even if you were to get part of your body into it, something that would stop bullets is a good thing. If nothing else, if you have an active shooter who is looking to run up a body count, if he comes to a locked door, he is probably just going to move on.

You have to look at your options, and when you run, you have to figure out to where you are going to run. Let's say you decide, I am going to run out of the building.

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If you go out the back door, is there a dumpster area that has a brick wall? Can you leapfrog to that, if that is your next source of cover? Where do you go to actually find safety? OK, great, once you are out, where are you going to go?

And very importantly, before you break cover as you exit the building, make sure there is not a secondary threat. Look for things like trucks. If you think like the terrorist, you think of vehicle IEDs. If you run out and you see a moving truck that wasn't there before, you have to ask is it waiting for everybody to come out and mass in the parking lot and then, God forbid, there's an explosion.

**eJournal:** How often do active shooter attacks include two or more assailants?

**Janich:** Statistically, all but two of the 160 incidents that the FBI studied involved a single shooter, but that study was 2000-2013. Now, look at the Paris attack and the 2008 Mumbai attack. The San Bernardino incident had two shooters that wreaked a lot of havoc.

**eJournal:** As did the two shooters in 2014 in Las Vegas when the armed citizen tried to stop the killings in that Wal-Mart, but was shot and killed by the woman. Understanding how many different settings these incidents have happened in raises concern about situations in which I can't set up the environment to my specifications. When entering an unfamiliar area, I need, at a quick glance, to choose the safest place to sit or stand. Could you address principles of positioning?

**Janich:** We talk about awareness, but there are so many different levels of awareness and so many different things to be aware of. Be aware, but be aware of what? Everyone thinks of awareness as looking for pre-incident indicators, looking at people coming toward me. In this season of *The Best Defense* (<http://outdoorchannel.com/the-best-defense>), one of the episodes focuses on pre-incident indicators. We look at the things that happen before somebody attacks, but even before we do that, we talk about positioning. It is never going to be perfect! You always get the hard-core guys who say, "Well, I have to have my back to the wall."

**eJournal:** Sometimes hard core goes too far and all you think about is the threat and seeing it before it gets you. That gets old fast, especially for those associated with you.

**Janich:** A lot of people will train to keep themselves safe and they will also train to protect their family. Well,

the less extreme you are in what you do, the more your family will see what you do as normal, and they will follow suit. So instead of saying, "We can't sit at this table if I can't have my back against the wall!" you say, "Can we sit at the table with the great view? I want to enjoy the view and I like people-watching."

It's a lower key way to approach things, but then when you see something, you say, "Hey, um, look at that guy over there. That doesn't look quite right. It is really hot outside and he is wearing an overcoat. That is kind of strange. It makes me feel uncomfortable." You look at things like that and you point things out and you get your family's head in the game, but you do it in a way that is not alarmist and they see it and they say, "Cool, Dad is not so weird after all."

If you're sitting in the middle of a crowd, you have a 360-degree area of responsibility, a lot to keep your eye on, but you also have unlimited avenues of escape. So you look at the positives and the negatives, you say, "OK, if I put my back against the wall, now I have cut my area of responsibility in half: it is 180-degrees, and I still have good avenues of escape. Now, if I put myself in a corner, it is 90 degrees, so I have less to pay attention to, but I don't have that much option about how to escape." So it is a trade off.

Say you are going into a restaurant and they ask, "Where would you want to sit?" and you pick a corner, but you don't paint yourself in. Ask for a corner, but one near the exit or near the kitchen. A lot of people forget that the kitchen is always an exit, too, because they have to have a rear exit to take deliveries and dump the garbage outside. A lot of people don't want to sit near the kitchen, but knowing where it is or positioning yourself close enough to it, you may limit your area of responsibility that you have to pay attention to, but you've also got an avenue of escape.

It is one of those aspects of awareness you want to think about and have general concepts you try to work with. If you can't be in that perfect position, look for reflective surfaces. If I sit facing a mirror, then I have a rear view mirror to look behind me. If it's dark outside and I have a window, it is still very reflective, so I can see what's going on behind me if somebody's approaching. Just do whatever you can to keep your head in the game.

**eJournal:** These are great suggestions because they show exactly how to make safer choices while honing the habit of being aware.

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**Janich:** Keeping your head in the game takes hard work. A lot of people say, "Condition Yellow? I don't really know what it is!" An analogy I use is if you're driving and it is five o'clock in the morning and nobody is on the road, no big deal. Now put yourself in the middle of Manhattan, not necessarily at rush hour, but a lot more people around, and not people who are necessarily the most cordial drivers, so if you're driving, you really have got to have your antennae up, pay attention to what's going on, and if you're going to change lanes, check your mirrors, and use all of your resources. You are not paranoid, not freaking out, but you definitely have your head in the game.

Most people can relate to that and know they just need to maintain that awareness. Everyone drifts off every once in a while, but just like as we are talking here, I need to think, "OK, cool, let me just put my head up, scan a little bit." If nothing else, just loosen up your neck and scan around you.

**eJournal:** That's different than constantly searching the crowd, which makes enjoying a conversation together difficult. I'd hate to live in such a state of worry that having a cup of coffee with a friend out in public had to be an exercise in threat detection.

**Janich:** It's a scary world, but you don't want to fall into paranoia of "Oh, my God! Everyone's going to die!" No, that's not going to happen. You look at it as, "Statistically, it is probably not going to happen to me, but if it does I want to be smart enough to have skills and resources that I can trust to maximize my chances of survival."

It is like in self defense, "What would a reasonable person do?" Well, be reasonable. You aren't trying to get a concealed carry permit to carry a machine gun. You're not going over board, you're saying, "OK, I want to be

reasonable and look at what threats I might actually have to face and what can I do on a regular basis that becomes a comfortable part of my lifestyle, that is not overboard, that's not unreasonable, but that gives me resources that the average person might not have."

**eJournal:** And reasonable includes some preparations like carrying a gun, having alternative weapons and skills to use them, and even knowing what improvised weapons you could put to best use in an emergency. You have so much good information on that subject that we are going to break this interview here and come back with questions about improvised weapons use next month.

Thank you for sharing your thoughts about this timely topic with us. I look forward to exploring more of these topics with you next month.

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#### **Training with Michael Janich**

*Michael, through his company Martial Blade Concepts, holds seminars across the country. To find out about these seminars, please consult his website, <http://www.martialbladeconcepts.com/training/michael-janich-seminar-schedule>. The Firearms Academy of Seattle, Inc. is hosting Michael for a special two-day training course at its' facility, located between Portland OR and Seattle, WA. For more information about that class, scheduled for the first weekend in June, see <http://firearmsacademy.com/guest-instructors/112-martial-blade-concepts-critical-skills-of-self-defense-with-knives>.*



## President's Message

by Marty Hayes, J.D.

The silly season is upon us...and we are set to endure another nine months of presidential politics. I am not sure I can make it! I may need to disconnect from the grid for a while. I consider myself an

educated, intelligent man, and it disgusts me to see the negative advertising going on. Candidates, just tell me who you are and how you plan to run the country. Is that too much to ask?

### Rangemaster Tactical Conference

I look forward to seeing many of you at Tom Givens' annual conference of trainers and serious students of the gun in a couple of weeks. Members who have been with us since the beginning will remember that the first public announcement of the formation of the Network was made at the 2008 Rangemaster Tactical Conference. Here is a link to that account (<http://www.armedcitizensnetwork.org/images/stories/journal/2008/3-08eJournal.pdf>).

At this year's conference, I am teaching a segment on emergency disarms (how to take guns away from people who are sticking them in your face). While we will concentrate on countering the individual assailant, we will also explore options for immediate action against long-guns and active shooter/terror incidents. I am thinking we need to record some of our work on camera and get the information out to our Network members who aren't at the Tactical Conference. If you are there, though, come train with me!

### The Network Keeps Growing

At the end of each month we check our status to see how we are doing. Each month we have more members than the previous month. With this growth in membership, everything else at the Network grows too—like the Legal Defense Fund, now approaching \$700,000. But the negative is that our workload in the office also grows. So, if you try to reach us by phone, and get forwarded to voice mail, it is because all phone lines are

tied up at the moment you are calling. Please leave a message with a phone number so we can call back. We will get back to you in a timely manner.

Our business model consists of giving personal service to our members, and while answering the phone personally is considered old fashioned, that is the way I have always conducted business. It is a fine line between hiring and training people, or putting that money back into the business (and Legal Defense Fund). So, if you call during business hours and Gila, Melissa or I don't answer the telephone personally and immediately, it is because of the increased volume of calls, and the fact that we are talking with another member. Leave a name and phone number, and we will get back to you.

### The Best TV Show Now Running!

I never thought in my wildest dreams I would end up being a TV star. Of course, I really am not a TV star, but I am getting some camera time for the Network on the Outdoor Channel's original show *The Best Defense*, airing Wednesday nights. This season's episodes will go for a few more weeks, then the whole season will repeat itself. In watching the shows this year, I think this is the best season ever. For those with a critical eye who are watching the show, can you spot the difference on the set between my segment and the other studio segments? Let me know via e-mail ([mhayes@armedcitizensnetwork.org](mailto:mhayes@armedcitizensnetwork.org)) or Facebook.

### Getting Ready for NRA Annual Meeting

Vincent, Gila and I are making our plans for exhibiting at the National Rifle Association Annual Meeting, to be held May 20-22, 2016 in Louisville, KY. Hopefully, while in Louisville, we can run into jillions of Network members there with us in the Kentucky Exposition Center. We will have a new booth this year, so we expect to be easier to spot. Please make it a point to come and say hi, if you are a member, and if you are not, come and sign up for the Network!

That will do it for this month, stay safe.

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Please enjoy the next article.]*

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## Attorney Question of the Month

For the past few months, this column has been dedicated to protecting the armed citizen's rights after self defense. This month we asked our affiliated attorneys about the next step in the timeline—

**Assuming that the defender has just needed to shoot an attacker in self defense, and the attacker is alive and talking, telling his side of the story to police, what are the issues influencing whether or not the armed defender should give a statement to police in order to counter the statement being given by the wounded attacker?**

There were so many answers that we will address this question over the next several months.

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The question seems to assume that the defender and person who has been shot are near enough to each other to hear and interact. If this is the case, then the police have done a bad job of scene management as the parties should be separated.

Whether this is the case or not, I think the basics still apply. Call them Ayoob's Golden Rules or whatever, I would still stick with them. The defender will not be in a position to discuss the details of the shooting right after the event. Keeping one's mouth shut will be that much harder when the guy who has been shot is now on the floor bleeding and pointing his finger and accusations at the defender. This will make most people even more anxious to "explain" themselves. This is especially true if the police are attempting to bait the defender into making a statement. This is not the time to do any explaining!

Let the attacker make all the statements that they want. His/her mouth will be running also and perhaps they will say something that they will regret in the future. Let it happen to them and not to the defender.

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A reasonable approach to the situation presented is very "fact specific" to each individual scenario. This cannot be stressed enough. While I am generally inclined to favor simplicity in situations that are over in seconds but later subject to examination and critique for months or even years, the initial interaction with law enforcement in the hypothetical being discussed can be aided by certain helpful approaches. These approaches will be discussed below.

**How you say it is almost as important as what you say.** I would maintain that in a jurisdiction like the State of Washington, it is critical. Washington prosecuting attorneys charge all felony crimes via the filing of an "Information." It is in the prosecutor's absolute discretion to deal with a given case however they see fit, subject to certain ethical obligations. There is no opportunity for a grand jury to decide that a fellow citizen was just put in an awful situation, and decline to indict (charge) the armed citizen. Empaneling a grand jury for common criminal matters has not been used in Washington for more than 60 years and isn't likely to come back any time soon.

Somewhat related to the grand jury issue is the absence of meaningful preliminary hearings in Washington. In many jurisdictions, if there is not a grand jury involved, there will be a very meaningful hearing at the beginning of the case, where the prosecutor must in essence "prove his case" to a lesser standard than a jury trial but still present evidence, sworn testimony by actual witnesses, etc.

In Washington, probable cause (the level of proof needed to get a case started) is most often established by a sworn statement by the investigating officers. It may contain hearsay, unreasonable conclusions, material omissions of critical facts and other matters of concern. Keep in mind that much of this is normal in the early stages of a criminal investigation, and not likely done for any malicious reasons, but it is all the judge

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gets to see when he makes a finding of probable cause which then enables an accused person's prolonged detention. That's it.

Thus the prosecuting attorney must lean very heavily on the findings and impressions of the investigating law enforcement officers. They will tell the prosecutor their impressions of the armed citizen and how he or she handled themselves and responded. Obviously a certain level of agitation and emotionalism will be expected. How one comports themselves once the scene is secure and some time has passed will be crucial. You want to build and maintain as much good will with the investigators and scene personnel as you can. Depending upon the specifics, overall strategy is greatly aided by letting the authorities know that you are a reasonable and prudent person under all circumstances, even the toughest. I realize that this is asking a lot. It may not be possible if you are wounded or subject to certain emotional issues. But you must do your best!

If you call 911, mention that you have been assaulted. Mention that medical aid is needed. If you were assaulted by more than one assailant and only one is down, let the dispatcher know this and be as helpful as possible in identifying them.

Once you interact with law enforcement, let your demeanor and deeds silently witness as to your helpfulness and credibility. Do not be belligerent, dismissive or short with the investigators. You are a law-abiding citizen. Act like one, not a "Moop." Let them know that you had no choice in the matter, you feared for your life and well-being and say no more (at that time). If you have any type of medical condition that may be exacerbated by the encounter, let law enforcement know (in general terms) and that you need a moment to rest, gather your thoughts, etc. In this scenario, letting the officers know that your lawyer could advise your medical treatment provider of the situation and help address the situation immediately might be the best cause of action.

If law enforcement want you to speak with them, or want you to sign a waiver to speak with them, approach it using the same principles discussed above. Let them know that you plan on cooperating fully and providing a statement, but you take it seriously, and to do it right you need your attorney to assist you. If the attacker is still nearby, even if they are on a stretcher, let the investigators know that you still fear what they are capable of, and would like to be somewhere other than in their immediate vicinity.

If you are arrested and taken into custody, even after doing your best to show your reasonableness, say nothing more. Certainly don't talk about your case to anyone else at the jail/detention center, including other inmates. Cooperate politely with the booking process, providing your personal data, address, etc. Do not speak about the incident, no matter how innocuous the question sounds. Just be polite and answer innocuously like "I'm doing the best I can," or something similar. You will likely be subject to audio and video recording the entire time you are in custody, except when speaking to your attorney. Always keep that in mind.

It is best if you have already interviewed qualified local defense attorneys, and have "all hours" contact information for them.

Lastly, before something like the hypothetical presents itself, examine your life and what you can do to mitigate harm to yourself. Even if it is obvious that you acted reasonably and lawfully, if in the aftermath of the lethal force encounter the investigators see an open alcohol container in your car, or a bag of marijuana on the car seat, your credibility has taken a hit. If the judge wants to release you on your own recognizance, but can't as you have a three year old warrant out for you due to a traffic matter, or unpaid child support, etc. your credibility has likely taken another hit. It may seem unfair, but better to know than not know.

You want the investigators on your case to report to the prosecutor that their bottom line is that you are a decent person who did the best they could in a dreadful situation, that you were appropriately forthright with them, you didn't lie or embellish, didn't resist them, endanger them or make their job tougher in any way and that others involved be they paramedics, jail staff, civilian witnesses on the scene, hospital staff or what have you see it the same way.

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It is my advice to the defender, never speak to the police immediately after the event. If the attacker has survived and is speaking I would advise the police that my client will be happy to make a complete statement regarding the event two or three days after the event, the reason being that for lack of a better term the shooting was a

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“traumatic event.” In such cases people tend to react in two primary ways: one, false bravado, that is they are elated that they have survived the encounter, or two, revulsion and remorse that they have been forced to harm another human being. Either way they tend to make comments that are easily misconstrued and generally end up coming back to bite them.

In addition there is some very credible research that indicates that they will suffer parasympathetic nervous system backlash (my term), a symptom of which is critical incident amnesia. When this occurs, a person will only be able to remember general characteristics of the incident; after they have had one sleep period they will remember 50-90% more detail (correctly) and after two sleep periods they will remember almost everything correctly.

Thus by declining to make a statement until my client has had one or two night's sleep, it allows him to make a more complete and accurate statement, and it avoids having the police or prosecutors trying to impeach him with his previous inaccurate statements, claiming that the defendant was “elated” they had harmed another, therefore it was not self defense, or that the defendant was remorseful and upset and if it had been self defense it would not have bothered them to do whatever was necessary to survive, proclaiming to the jury that the second state is fabricated because “we all know memory is much more accurate at the time.”

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Talking to the cops after you shot someone in lawful self defense; dealing with the bad guy or his friends spinning lies about what happened.

I guess if you don't say anything in this situation you are hoping the police will figure out what happened on their own. That's probably not a good strategy and it sure didn't work in a Florida case where a landlord was cleaning a house after the tenant abandoned the property, leaving a mess.

While the landlord was there, the tenant showed up demanding his security deposit back. The landlord explained why he could not give it to him until all the cleaning was done and he could tally up the expenses. This angered the tenant who went to his vehicle to

retrieve a tire iron. Using the tire iron as a weapon he first went into the bathroom and started bashing the porcelain fixtures to pieces. He then turned the tire iron on the landlord, approaching him in a fast walk and hitting him in the head. In reasonable fear for his life the landlord drew his legally carried .357 magnum revolver (loaded with .38 special ammo) and shot the tenant twice, who proceeded to stagger out the front door and collapsed on the front porch.

The landlord called 911 and requested medical response for the wounded tenant. He also began administering CPR to try to keep him alive until help arrived. When the responding officers arrived they handcuffed the landlord, who had not yet said anything to them. Soon thereafter a detective arrived and the landlord told him he wanted to give a statement. The detective put him in the back seat of a police car and said he'd be back for his statement as soon as he had cleared the crime scene. Sitting there waiting for the detective to come take his statement he recalled being told once never to talk to the police until your lawyer is present. When the detective returned he told the detective he had changed his mind and would have nothing to say.

Meanwhile the tenant's common law wife was spinning a tale to the cops about how they had just come to request the return of their damage deposit and the landlord flew into a rage and shot her husband for no reason. There were other witnesses on the scene: the landlord's girl friend and her 14-year old son. They saw what really happened but were so stressed out and in shock at what they had seen they could barely talk and never said anything to counter what the tenant's common-law wife was saying. The tenant's common law wife continued her hysterical rant. When the landlord decided to clam up the police were left with only one explanation of what had just happened. A hysterical woman telling them how violent the landlord was and how scared she was and how her husband never had a chance to even defend himself must have been powerful.

As a result, the landlord spent 18 months in jail awaiting trial and was very nearly convicted of murder. Were it not for a highly gifted legal defense lawyer and Massad Ayoub who gave expert testimony that helped the jury understand what had really happened, this entirely innocent landlord may have spent the rest of his life in prison. It cannot be over stated what a close call this was. If you didn't know, a life sentence in Florida means life. You will stay in prison until you die. If you should get

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the death penalty, although it may take years, in all likelihood you will be executed. When the detective took the stand the landlord's attorney asked him if he'd ever seen a murderer giving CPR to the person he'd just shot. The detective said, no he hadn't.

There were many things the landlord could have said and done that might have helped him and might have even prevented him from being arrested. First, he could have explained in general terms why he was the victim and the tenant was the aggressor who threatened him. He could have pointed out the obvious that he had been hit with a tire iron just after witnessing the tenant tear apart a bathroom. If the tenant had made verbal threats, which is likely, he could have told the officers what the tenant said and that the threatening words combined with the way he was wielding a tire iron as a deadly weapon made him fear for his life. He could have told them he never drew his firearm until after the tenant had viciously attacked him with a deadly weapon. He could have pointed out the wreckage in the bathroom and told the police that the tenant had done that with the tire iron after being told he wasn't getting his damage deposit back until an accounting of cleaning expenses had been made.

So the lesson from this is, when the scene doesn't tell the real story of what happened, you have to tell that story. But do it in general terms, "I was attacked, I thought I would be killed, I defended myself." Then point out any evidence, especially any weapon used by the attacker. If you were hit or stabbed but it isn't obvious to the police, point out your wounds and how you got them. Point out any witnesses who saw what happened and ask the police not to let them leave without getting their statement.

Categorical fact statements should be avoided. The landlord in this case answered the 911 operator when she asked how long ago it happened by saying, "About five minutes ago." It had actually been less than a minute. The landlord was in time dilation from the stress of being attacked. He should have said, "Just now." Later at trial the prosecutor used his statement to claim that he waited five minutes to call 911 because he was staging the crime scene.

Another reason to speak only in generalities after a stressful event is that in addition to all the usual physiological effects of tachypsychia, tunnel vision, auditory exclusion, loss of fine motor skills, there is also something I call "Critical Incident Temporary Amnesia." I've seen people who after a minor fender bender have trouble recalling their own phone number or remembering where they keep their registration and proof of insurance.

This is all caused by the stress hormone cortisol, which is released along with adrenaline. While the adrenaline dissipates rather quickly the cortisol remains for hours and interferes with our ability to remain calm and collected. Attempting to give fine details of what just happened is almost guaranteed you'll get it wrong in some way.

Once you've explained what happened in general terms and how you reasonably feared for your life, tell the police you want to cooperate fully as soon as you've had a chance to confer with your legal counsel. That's when you can go into more detail so long as you don't attempt to give answers that require you to assume something that might not be completely true. Always remember that any mistake you make in the details of what happened will hurt you. In officer-involved shootings cops may get the benefit of the doubt when they get something slightly wrong, but citizens seldom do.

Every specific fact detail you give the cops, the exact time, distance or other precise details will be checked and if found to differ from what you said the police may conclude you're lying. That's why you should initially tell the story only in general terms. Wait for a lawyer to help you before you start nailing down all the specific facts, preferably about 24 hours later after you've had a chance to calm down.

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*A big "Thank you!" to all of the Network Affiliated Attorneys who responded to this question. Please return next month for the rest of the commentary we received about this topic.*

## Seminar Review

### The Law of Self Defense By Andrew Branca

Reviewed by Gila Hayes

Last month, I attended a seminar that I've wanted for a long time. After an unsuccessful effort to attend one last fall, I kept my calendar clear for February the 13th and with several close buddies, left home before the sun rose to drive to Portland, OR to attend Andrew Branca's *Law of Self Defense* seminar. It was worth the wait!



Nearly two decades earlier, I'd learned a lot from Branca's book of *The Law of Self Defense*. After its second edition was published in 2013, he began traveling the nation teaching the application of the book's principles to the various states' laws. It seems like a daunting undertaking, but as class started Branca told us that about 80% of self-defense law "is standard, but it is the 20% that will make the difference between you defending yourself and committing a crime."

Branca explained the rules of self defense as defined by Oregon and Washington statutory law, plus the court decisions comprising case law and self-defense jury instructions from each state's courts. The seminar's goal is "minimizing your legal vulnerability," not to figure out how to "game the system," he emphasized.

Humorously illustrating sources of "bad self-defense law" information that influence wrong decisions, Branca explained that reading statutory law is insufficient. "Statutes should best be understood as the legislature's intent; what they would like to see happen," he explained, adding, "It is not unusual for the court to apply the statute differently than a plain English reading might suggest, so it is very dangerous to rely simply on reading of the statute. I suggest you don't really know what that statute means in the real world without studying the case law. Until the laws are interpreted and applied by courts to real people, they don't mean anything," he added, remarking, "You have to be prepared for what the authorities CAN do to you, not what they may do."

Laws regulating self defense are also clarified by state jury instructions, and defending your actions is further influenced by factors like standards of evidence, who is required to produce that evidence, and criminal court

procedures, as well. Branca supported this detailed instruction with both WA and OR case law, showing what the prosecution is required to produce to support charges and what the defendant must show to prove self defense. It's too detailed for inclusion in this review, and besides, it varies a little from one state to the next, but suffice it to say, he thoroughly proved the absurdity of the claim, if it's a "good shoot," there's nothing to worry about. Almost all claims of self defense the criminal justice system sees come from criminals trying to escape liability and they fail on the burden of production, he explained. "Without enough evidence, the jury will never hear the words 'self defense' in the trial," he warned.

Instead of getting buried in such confusing details, Branca clarifies what you must prove by distilling five key components of a successful self-defense argument, or as he terms it, "narrative." A prosecutor, deciding whether or not to charge you with a crime, is trying to compose a "story of guilt" that contains more building blocks than your narrative of innocence. "Remember," he stressed, "if even one of these is disproven beyond a reasonable doubt, your claim of self defense collapses." If you've read Branca's book, or earlier interviews with us in this journal

(<http://armedcitizensnetwork.org/lessons-in-the-law-of-self-defense>), you already know those five elements. The seminar put considerable emphasis on them, too, with students calling out the five elements on cue:

- Innocence
- Imminence
- Proportionality
- Avoidance
- Reasonableness

Analyzing the key element of innocence, Branca cited state law requiring that the person claiming self defense must not have been the "aggressor or provoker" of the fight. Willing participants in mutual combat can regain innocence if they clearly withdraw. "Communicate loudly, 'I don't want to fight any more,' and create evidence of genuine and good faith withdrawal," taking care to show clearly that you are not re-engaging, he advised. He told of a client, accosted by a stranger who thought he was someone else. Unfortunately, after breaking off contact, the client needed to walk in the same direction as the aggressor and it was misinterpreted as re-starting the fight.

Next, Branca outlined, the threat must be imminent. Self-defense actions must not come too soon, but

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avoiding harm necessitates not acting too late. The question will be: was there an imminent threat? He cited Massad Ayoob's classic instruction on Ability, Opportunity and Jeopardy, calling it a valuable cognitive and tactical tool for quickly assessing the situation and later articulating your reasonable perception of imminent threat. These principles were studied through considerations including distance and obstacles, display of a weapon to deter further aggression and justification for threatening deadly force.

Intensity of the violence and its duration are factors in determining the proportionality of your defensive response, Branca continued, as are disparity of size and physical ability to fight back. In addition, although statutory law may state that deadly force is allowed to stop the commission of a felony, now that many minor crimes are felonies, in reality that is only applicable "when the felony includes a threat against a person," Branca explained.

The principles of imminence and proportionality overlap when a threat is indeed imminent, but has not risen to the level of deadly force. Branca illustrated, "he is angry, approaching and you are just scared." Having a non-deadly force option accommodates proportionate defenses to stop the aggression while remaining legal, he recommended. "Carry at least one tool beyond the gun. You are five times more likely to face simple assault than aggravated assault," he urged, citing FBI statistics.

Great misunderstanding has arisen around Stand Your Ground laws in recent years, and these take center stage as Branca teaches the principle of avoidance. He cites 34 states with SYG laws; 17 have statutory language that retreat is not required; another 17 have never imposed a legal duty to retreat. 16 states, however, do have a duty to retreat. He cited the OR Supreme Court's 1982 ruling in *State v. Charles* to illustrate the Oregon standard on retreat (do so, unless the threat is immediate). WA case law, in contrast identifies the right to use only the amount of force necessary or reasonable to defend against attack when you are in a place where you have a right to be (*State v. Williams*, WA Ct. App. 1996). He later commented, "I am

a strong proponent of Stand Your Ground as sound public policy, but in reality, whenever it can be done safely, you should retreat, retreat, retreat!"

The final principle is reasonableness, and of all five, it seems the least easily defined. It's subjective, Branca told students, in that you must show a good faith belief you needed to use the force you did to avoid harm. On the other hand, it is objective, because the question will be asked, "Would a reasonable and prudent person assess and respond as you did?" Also affecting this aspect of the self-defense claim are unavoidable mistakes like being threatened with a realistic-looking toy gun. Other factors include specialized knowledge, illustrated by the Tueller principle, for which he displayed a brief video illustrating how distance affects self-defense decisions.

Additional concerns discussed included defense of others, defense of property and dwellings, interaction with 9-1-1 and responding police, and self-defense immunity laws. He wrapped up his presentation by drawing out tactical applications to the principles of law he taught in the foregoing hours. Get good skills training, continue to study self-defense law and weigh the results of use of deadly force in self defense "before you have your finger on the trigger," he urged.

Branca is a skilled public speaker who keeps the student audience engaged with a multi-media presentation, real life examples, question and answer sessions, all the while keeping to a tight schedule and making every minute in the seminar worthwhile. The in-person seminar presentation is hard to beat, but he also has online training at <http://lawofselfdefense.com/online-training/> for CO, FL, NC, OH, OK, OR, TN, TX, VA and WA. Live seminars are listed by state at <http://lawofselfdefense.com/classes-and-events/> and if he doesn't have one scheduled for your state, ask if you can host a seminar. At a minimum, get and read his book, *The Law of Self Defense* <http://lawofselfdefense.com/product/the-law-of-self-defense-2nd-edition/> and add Branca's instruction to the rest of your aftermath protection efforts.

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

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## News from Our Affiliates

*Compiled by Gila Hayes*

I had a nice conversation earlier this month that was remarkably parallel to many of the topics Michael Janich discussed in this month's lead interview. It's funny how sometimes concerns coincide that way.

The subject of campus security arose while I was getting better acquainted with our affiliated instructor in Albuquerque, NM, Dr. Lisa Orick-Martinez. She is NM DPS certified as a concealed carry firearms instructor and has a long list of NRA instructor credentials, including NRA Counselor for the *Refuse To Be A Victim* program. But the title that interested me the most relates to her "day job" as a Communication Studies professor at Central New Mexico College. In addition to teaching communication, Dr. Orick-Martinez serves as the faculty advisor for the college's shooting club, which is the longest continuously chartered student activity in the college's history.

We talked about guns and politics at the college and about campus security (by policy, students and faculty are prohibited from possessing even pepper spray and knives). A while back, the community college campus went on lock down after a bomb threat on a nearby bus. The reason for the lock down was not announced, so the professor had no idea what they were facing, but after securing her classroom full of students, she researched news online and learned about the bus bomb threat. She told me how she and her students propped tables up in front of their classroom's windows, then took cover as far away as possible, hoping to mitigate glass injuries if the bomb went off. While waiting for campus security to give the "all-clear," she was surprised when students and faculty from other classrooms began walking through the hallways at the end of the class period! Although she held her students back inside their classroom, it was surprising that the other professors weren't very well trained in what to do during a threatening incident.

Dr. Orick-Martinez is an asset to the Network and to the Albuquerque shooting community, plus she's a great role model for her students. You can also read more in a nice biographical sketch about her on the National Rifle Association's Women's division website at <http://www.nrawomen.tv/home/document/dr-lisa-m-orick-martinez-handgun-shotgun-rifle>. Email her at

[drorickmartinez@yahoo.com](mailto:drorickmartinez@yahoo.com) or phone 505-450-5472 to learn more about her CCW and NRA classes.

Over in Southern California, our affiliated instructor Riley Schrader is spreading the Network's educational message to his students when he teaches his *Use of Force & Self Defense Laws* class. He reports that his January session was well attended and he has another scheduled in a few days, Sunday, April 10, starting at 9 a.m. at the Angeles Shooting Ranges; advanced reservations are required. He's also available to present this class to small groups or other interested organizations.

Schrader retired from public service after a career in law enforcement that involved actively teaching a variety of firearms skills to patrol and plain clothes officers and upon retirement, he began teaching vital survival skills to the private sector in the greater Los Angeles area of Southern California.

"I enthusiastically endorse the concept of incorporating a wide variety of defensive skills, unarmed as well as armed, in my teaching curriculum to especially include detailed instruction on the legal aspects of using force...any force," he explains. "In addition to private firearms training on handgun, rifle, and shotgun, I conduct regular seminars on the *Use of Force & Self Defense Laws*. From the perspective of a patrol officer who dealt with the physical aftermath of violent events throughout a career, I'm able to provide to my students first-hand experience and knowledge of the first-responding, law enforcement component of handling a violent event. This 'Second Battle' of litigation is arguably just as important as winning the first-tactical-battle. Paraphrasing Mr. Andrew Branca, I provide my students and clients with education, knowledge, and mentoring to help make them just as hard to convict as they are hard to kill.

"My firearms teaching involves a crawl, walk, run principle that is tailored to the client's realistic needs. Most folks in the private sector do not have the duties of firefighters or law enforcement officers. I teach to the specific needs of my clients using proven adult learning methods...no boot camp here. For my regular training clients I add a Phase Training Manual that aids in planning and documenting the training progress. This also serves to document specialized knowledge that may be needed to legally educate a jury in the client's future legal defense. The advance levels of instruction

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involve mental and physical stress to expose and inoculate the client to real world fight or flight stimuli and decision making problems.”

You can learn more about this highly credentialed Network affiliated instructor at his website at <http://www.dfisocal.com> where you'll also find full course descriptions.

Network members, support these affiliates and all the others linked at <http://armedcitizensnetwork.org/affiliates> because they help the Network grow by giving clients a copy of a Network brochure or our Foundation's educational booklet *What Every Gun Owner Needs to*

*Know About Self Defense Law* while explaining the value of Network membership for armed citizens.

Affiliates, please notify me about programs, classes, open houses and other events you have scheduled in April, May and June so we can encourage members to attend. In addition, if you are getting toward the bottom of your box of our booklets or brochures, email me at [ghayes@armedcitizensnetwork.org](mailto:ghayes@armedcitizensnetwork.org) or call 360-978-5200 so we can support your efforts to tell your clients about the value of Network membership.

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





## Editor's Notebook

by Gila Hayes

Sometimes questions from folks who are interested in Network membership benefits start such an interesting discussion that it is useful to share it with readers of this journal.

Earlier this month a non-member emailed to ask, "If I remember correctly, the website states that benefits aren't available if there are any other criminal weapons charges in addition to the underlying charge related to the self-defense claim. [It reads] 'I understand that any grant of benefits is limited to lawful acts of self defense with no additional criminal charges (unlawful possession of concealed handgun, for example) associated with the incident.'

"If that is true, an over zealous, gun despising prosecutor could strip a member of their benefits by including a secondary weapons possession charge in addition to the underlying assault/homicide charge. The possession charge would only need to present a question of fact for the jury in order to avoid dismissal.

"Is that correct?"

"If so, members would be rarely able to access benefits for most prosecutions since the prosecutor would most likely include an unlawful weapons possession charge in addition to the underlying assault/homicide." –Brian C.

Good question, right? Is the Network set up to weasel out of requests to support members after self defense? I answered–

No, sir, while a prosecutor may "load up" the charges, it is not unduly difficult for the member's attorney to show the Network leadership and advisory board which charges are spurious and which, if any, result from a genuine violation of the law.

Timing also bears on the answer to your question: there are several stages during which the Network pays legal expenses on behalf of a member. The first funding is paid to the member's attorney ASAP after use of force in self defense. At that point on the time line, the prosecutor has in all likelihood not even made a charging decision, but we are in communication with the

member's attorney to determine what charges are likely so we can send that attorney a deposit against attorney fees of up to \$10,000 to advise the member during questioning, keep the media at bay, when possible work with the prosecutor or district attorney to show why the member's actions were justifiable self defense and done legally, and if it seems wise, pay a private investigator to go out to the scene of the attack against our member to tie down what really happened. That is the initial stage.

If criminal charges are filed, then the member and his or her attorney bring the discovery (facts of the case) back to the Network and our advisory board, where once again, we work with the member's attorney to determine what is needed to put on a vigorous defense of the member's self defense use of force. Those expenses, in addition to the attorney's bills, will almost certainly include paying an expert witness to a) help the attorney understand key points in crafting the member's defense and b) testify at trial to help the jury understand the necessity of the member's use of force. If needed, the Network could also fund the involvement of a second attorney, one with experience defending cases in which parallel issues were argued. Funding decisions at this point on the time line may arise as much as six, eight, twelve months after the actual incident, and as the case works its way toward trial. Furthermore, it is conceivable that additional funding requests could be brought to us for consideration before the case is tried. So long as the facts continue to support a story of a Network member legally using force in self defense, we continue to extend assistance–up to half of the balance in the Network's Legal Defense Fund–to defray these legal expenses.

A third possible funding request could arise if a civil complaint for damages is made, and a fourth, even, if an appeal of an unjust decision was needed.

In funding a member's legal defense, we must determine that the use of force was undertaken in self defense and that it was accomplished in compliance with the law. For example, defending yourself using a gun that is illegal in your jurisdiction or carrying a concealed handgun in a state for which you do not have the concealed weapon permit are violations of the law that will greatly complicate the defense claim (running up the attorney's bills and making a good outcome in court much more difficult to attain), so the Network

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would need to deny requests to pay legal expenses from an armed citizen who behaved as if he/she was above the law.

*Think this through! If the Network paid the expenses of defending violations of the law, we would literally be encouraging people to break the law. In some circumstances that is called suborning (defined as "incite to commit a crime or an evil deed") and that can be a crime in and of its self. Obviously, if the Network wants to continue in operation to support our members after use of force in self defense, as we have been privileged to do in 12 instances over the past nine years, we must avoid committing that violation.*

With a deep sigh, I signed off at that point, and wondered as the week went by whether my correspondent had been more interested in an argument than in Network membership protections, as I did not ever hear from him again. That's too bad, because the Network is specifically formed on a business model that lets us extend the most support right away and at the time when it is needed, so it is disturbing to be accused of putting impediments in the way of helping members after self defense.

We currently have twelve case files tucked away in a secured file drawer with the details of payments to members' attorneys, along with a rudimentary outline of what happened to the member. We have not exploited those members to "prove" to people like my correspondent that the Network is quick to pay attorney fees on behalf of the member who uses force in self defense.

One case is still in litigation, so utter silence is the watchword in that situation. Of the other eleven, the temptation to chase the member down and get their story has never appealed to me, nor have I been willing to countenance, as one correspondent repeatedly demanded, sharing with callers names and contact information for members who had received Network membership benefits. In the members receiving support, I see a man or woman who faced death or serious physical injury at the hands of a furious assailant. Far be it from me to scratch the scab off healing wounds to make more membership sales! To do so opens up the risk of publicizing incomplete or inaccurate remembrances, offering facts or even stating suppositions all of which might be resurrected in a civil law suit for damages, or if the prosecutor or district attorney had originally decided not to charge the member with crime, now reads statements attributed to the member and decides there is still time to pursue an indictment or starts looking for a loophole through which the time lines for filing charges can be set aside. At a minimum, publicly revealing those details could affect access to employment and create other quality of life issues. It's just not necessary!

The Network does not serve existing members in order satisfy drooling curiosity seekers; we assist members because that is our mission, and the very reason the Network was created.

The Network is growing strongly under our stewardship, so it appears that our philosophy of putting the needs of each individual member first is working well. We'll continue on this path.

*[End of March 2016 eJournal.  
Please return for our April 2016 edition.]*

## 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](mailto:editor@armedcitizensnetwork.org).

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

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We welcome your questions and comments about the Network.

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