



Armed Citizens' Legal Defense Network, LLC

eJournal

Our Eighteenth Issue — July, 2009 — Now In Our Second Year

Courtroom Defenses for the Innocent

by Gila Hayes

In June, Massad Ayoob spent ten days teaching at our other business, the Firearms Academy of Seattle. Toward the end of his stay, we sat down and I had the chance to ask this unparalleled expert to share some of his knowledge with Network members. To preserve some of the flow of Ayoob's conversation, we'll switch now to Q&A style.

eJournal: Sometimes people have trouble recognizing as innocent someone who's been involved in a shooting. Why does the legal system prosecute self-defense cases?

Ayoob: It is more societal and sociological, than it is the legal system. We've grown up in what I still believe

is the best legal system that has ever existed. That said, anyone who works in the system—and I've worked in it for more than 3½ decades—will tell you that it is not perfect.

You'll have X number of failures in anything. If we're talking college grades, if your score is 98% out of 100% on a tough exam, you'll probably get an "A." If our criminal justice system is getting 97-98%, unfortunately, now we're looking at the 2-3% that fall through the gaps. And when you multiply 2-3% by the volume of actions

that take place just in the criminal courts, before we start talking about civil lawsuits, well, that adds up to a hell of a lot of wrongfully accused people.

eJournal: I think Network members have joined our effort because they worry about defending themselves from the legal system, just as they've worried about being assaulted.

Ayoob: The people who belong to the Network realize that, "OK, when I walk out tomorrow it's not going to be 50% of the world trying to attack me.

But I'd kind of like to be prepared." That's why they carry a gun, and that's why they keep one at home.

But the "afterwards step"—going

in to court—is something most decent people are unprepared for. They've never been there and they never imagine themselves being there. They live in a world where the criminal justice system by and large lives up to its name and delivers justice.

What we're talking about here is the very rare aberration, just as certainly as

having to use a gun to shoot another human being in self defense is an aberration. Most of us are going to go through our lives without having to kill somebody; most of those who do have to kill someone in self defense, will be ruled justifiable, and after that, at least the criminal side—if not the plaintiff's side—will be over.

But every now and then, the aberration occurs. There is the false testimony by the surviving perpetrator and his partner. There are the witnesses who can misperceive what happened, who can confabulate what

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Massad Ayoob

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happened, who literally do not know what happened in front of them because they not only were not looking and therefore did not see, but had they been looking, would not have recognized what they saw in terms of the subtle cues and indications of danger.

eJournal: Now, if that happens, we'll need an attorney. I've heard you speak about criminal defense attorneys who have never handled the defense of an innocent person. In a nutshell, how do those defenses differ? What should an attorney do for a truly innocent person?

Ayoob: For most criminal defense attorneys, the overwhelming majority of their practice is people who are guilty as charged or guilty of a lesser or included offense. They get very, very little experience defending the wrongfully accused innocent.

You and I saw this classically last week in the LFI I we taught. We had two very highly experienced criminal defense attorneys in the class. One had been in practice for as long as I've been in the criminal justice system. I asked him, in front of the class, how many innocent people, truly innocent people, do you believe you've defended? He said he could count them on the fingers of one hand.

The other had been doing it for 26 years and he said three or four. I've spoken to attorneys who've retired after long, successful careers in criminal defense, and I asked them, "How many truly innocent people have you defended?" and they've answered, "None."

eJournal: And you believe that's common?

Ayoob: Oh, it's extremely common!

eJournal: Last week, those attorneys came to LFI to learn from you. Without that training, what does the average attorney do to prepare for the defense of an innocent person?

Ayoob: What anyone does—what they are trained and habituated to do. A classic example of this is the videotape you see going all over the Internet with the law professor talking for half an hour about why you should never say anything to the police. And he gives this case, and that case, and yet another case and more: this guy opened

his mouth, and he said too much, and he wound up being convicted.

If you'll actually listen, you'll find that all but one of those cases were guilty men who thought they could outsmart experienced investigators and interrogators, who were "hung by the tongue," as I like to say, and it literally carried them into prison.

The one exception was a mentally disturbed individual, shall we say, who said he signed the confession in hopes of smoking out the real criminal. And the lesson I take from that, Gila, is that if you are guilty you should shut up; if you are mentally ill, you should shut up and not say a goddamned thing.

But now, let's look at the reality of it: the advice to shut up comes from attorneys who are defending men that they know, number one, lie to everybody, and may well have lied to them. You were there when I asked the two attorneys in our LFI I class, "How many times have you been lied to by your clients?" and they both burst out laughing, and, of course, both have long since lost count.

Anything that a guilty man says is either going to be inculpatory and guarantee his conviction and defeat the purpose of the criminal defense attorney, or it will be perjury and if endorsed by the attorney could theoretically have him disbarred and convicted of the felony of subornation of perjury. So obviously, they learn to tell their clients, "Shut up, Shut Up, SHUT UP! You're a guilty son of a bitch, you can't talk your way out of it." And that's the story. [Sighs]

With the innocent, it is entirely different. The truth is what sets you free. The truth is not going to change. We need to get that truth out immediately, so those who might accuse us will know that from the beginning we never changed our story. If we don't do that at the beginning, it looks consciously or subconsciously, like what we're saying is some bullshit that our defense lawyer and his hired gun expert witnesses came up with to bamboozle the jury.

eJournal: But there are limits...

Ayoob: Certainly, we should not spill our guts at the scene. The involved victim of the near-death experience will experience distorted perceptions: you'll not be able to keep count of your shots, and the attacker may appear to be closer and larger than he was. Answers to questions like, "Exactly what words did he say before you shot him?"

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Exactly how many shots did you fire? Exactly how far was he in feet and inches and how many centimeters long was his knife?" will invariably be wrong. To people who've never been in that situation, it will look as if you are lying or exaggerating.

You *do* need to establish at the scene that you were the intended victim; he was the perpetrator. You need to establish at the scene that *you* are the complainant and *he* is the perpetrator and suspect. You need to point out the evidence before it disappears. Spent cases get picked up in shoe treads, and I've seen them literally blown away in the wind. You need to point out the witnesses. You tell the truth of what happened before they decide, "We don't want to get involved," and walk away. And then, you need the self-discipline to say, "Officer, you know how serious this is, you'll have my full cooperation, after I've spoken with counsel." And stick to that.

eJournal: And this happens between you and the responding officers, because your attorney can't roll in with a blue light on top of his or her car and be there right after the shooting?

Ayoob: Marty Hayes and I just spent an hour this week trying to do damage control for a case I can't discuss in detail because its not yet been adjudicated. But essentially, the guy who fired was very well trained in *how* to shoot but had less than I would have liked him to have in how to justify *why* he shot. He did what he was told, he said, "I'm not saying anything until my attorney gets here."

Well, lies were being told by three different participants, who were the perpetrators, if you accept the defense theory of the case. The witnesses, the ear witnesses who heard shouts and gunfire, are basically fungible. The key evidence that could have been locked in at the scene has disappeared, things that should have been tested that could have determined distance and threat level have not been tested and it's a coin toss whether we will ever be able to now.

It is much easier for the defense attorney and us, if the defendant says, "The evidence is here," and thus that evidence is preserved. "The witnesses are there," and now those witness statement are locked in, it's not something they can begin to confabulate a year later, or maybe someone just didn't want to be involved, and a year later they



read in the newspaper or on the Internet, "Man Convicted," and they go, "Oh, man, I SAW that thing. The guy was coming at him with a knife and they arrested HIM? Geez!" Well, it's a little late for that!

eJournal: What is the likelihood of a mere mortal like myself or another Network member having the presence of mind after a life-threatening incident to say enough but not too much?

Ayoob: It would be about the same as ordinary mortals who have the presence of mind to shoot the bad guy enough but not too much, which we know happens virtually every day in America.

It still appalls me that instructors can get away with insulting the intelligence of their students! They're saying, "I know how to teach you to shoot. So when you leave here, you'll be able to win a battle to the death with a professional, violent criminal, but of course, at that moment, your brains will turn to instant shit, and you'll be unable to articulate why you did what you did." [Laughs bitterly]

"Uh, Mr. Instructor, could this be because you never worked that side of it? Maybe you never thought this might happen. Maybe to you this was all like a video game with live bullets?"

Come on! Let's get real. If you've ever been in a fight to the death, you *know* the fight in court is going to come in some degree or another. Do not deny it. Face it as surely as you face the decision to arm yourself and protect your family. Commit yourself to being prepared to deal with the aftermath.

eJournal: So the armed citizen gets through the initial police response; now their lawyer is present. How do they keep that lawyer on the right track? What can they do if their lawyer goes off point, maybe they want to plead out, for example?

Ayoob: First, if the guy says, "Plead to something," when you've done nothing wrong, fire him now! He does not understand how to defend innocent people; that is the strategy of the guilty man's lawyer. My experience has been that a guilty man's lawyer who gives you a guilty man's defense, will get you a guilty man's verdict.

When in doubt, call the Network. We'll find someone for you.

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eJournal: So don't try to salvage that lawyer?

Ayoob: You've done the right thing! Don't plead because the guy tells you to plead because it is going to be easier for him and cheaper for you! Is it going to be cheaper for you to be a convicted felon for the rest of your life, unable to protect your family, unable to get the kinds of jobs to earn the living that you might have earned otherwise? That does not strike me as victory. It's the kind of thing that people do when they're terrified of things they don't understand and they are, in essence, being blackmailed by the other side's threats.

eJournal: If the lawyer doesn't exactly understand how to defend the innocent client, how can you, the self-defense expert, help?

Ayoob: A good attorney has worked in enough different areas to know that he's not an expert in any one discipline. But if he's got the right expert, and that expert has done a great many of those kinds of cases, the attorney asks him, "OK, in all the cases you did, what was the most successful strategy, tell me why, tell me how I can use that here."

eJournal: And those strategies are?

Ayoob: We will establish that you (the defendant) knew certain things that the average layperson on the jury does not know, or for that matter, the average law school graduate who has a job in the prosecutor's office and ramrods this thing through the grand jury, does not know.

Because the standard is, "What would a reasonable and prudent person have done in the same situation knowing what the defendant knew?" we will educate the jury so they understand why you recognized danger cues that the average layperson would not. We'll explain why it would not be reasonable or prudent for you to try to kick the knife out of the hand of the man who was lunging at you and your spouse.

We can do reaction, time and motion demonstrations that no material witness can.

eJournal: What's the difference between the expert



and the lay witness? Is there greater latitude?

Ayoob: Oh, hugely! The expert, once retained as such, has access to all the discovery materials, all the reports. We can interview witnesses so long as those witnesses are agreeable to it. We can literally do a full second-stage homicide investigation, and find things that might have been missed in the beginning.

If the attorney is getting his money's worth, he's using the expert to educate him on how to cross examine other witnesses, how to structure his defense, and establish—it is called "to lay the foundation"—to show the jury, "Here's what my client really did. Here's how we'll prove this is what he really did. And here's how we'll show that what he did was the right thing to do."

eJournal: It sounds like you can also coach the attorney about conducting the trial?

Ayoob: The same kind of coaching that Marty Hayes (Network President) and I give attorneys when we do CLE classes (continuing legal education). We explain problems with what they learned in the seminars and law school, that as a defense attorney you should withhold your opening statement until after the State has closed its case. That advice comes from the fact that 97% of your clients are guilty and a huge percentage of those 97% are lying to you. If they disprove one promise you make at the beginning of the trial when you don't know what the State really has, you'll never win and you'll be professionally humiliated.

eJournal: What do you advise?

Ayoob: I tell them to make their opening statement at the beginning of trial. Using the unnamed case that Marty and I consulted on this week as an example, I would really like for opening statement to show the defense's side, so they have something to compare it to when the three who

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attacked the defendant tell their story. The jury's bullshit alerts will be far more finely tuned. I want the jury to think, "Whoa! Whoa! Whoa! How does that square with the other side of this? There're two sides to this story!"

And we have nothing to lose, because we are not going to change our story based on what the prosecution says. We're going to be telling the truth. We've got nothing to lose, everything to gain. I absolutely believe that the defense should put its opening statement out at the very beginning of the trial for the jury to see.

eJournal: What kinds of things do you do once the trial is underway?

Ayoob: If some new evidence comes in, which is most unlikely in a self defense shooting, I am able to advise the attorney, "OK, here's how you would attack it. Ask him if A, how could B have happened?"

eJournal: And you also get up on the stand and give testimony. To what does the expert testify?

Ayoob: We cannot tell the jury what happened. We can tell the jury, "Here is how the certain disciplines are taught and understood. Here are the rules of engagement, the standards of the profession, of the trade, the business," what ever is under discussion.

We can't go back in a time machine and say, "Hey, here's what happened." We can say, "This evidence is consistent with theory A; we can say this evidence is not consistent with theory A; or we can say this evidence is such that theory A is physically impossible." That's all we can do and it needs to be laid out in front of the jury from the beginning.

eJournal: I've always wondered about that phrase, "Our theory of the case is..." Are you telling me that the defense can't say, "John did this on Wednesday..." that it is not that cut and dried?

Ayoob: We'll show that John did this, we'll show that John did that; we'll show how the prosecution has misunderstood what John did; we'll show why the prosecution's



theory that John did not have to do this is wrong. We'll educate you to the level that John knew and you'll see why John recognized a danger cue that the witnesses did not. Nine out of ten witnesses say the man didn't raise the knife when John was yelling drop the knife. Well, we'll be able to show why nine out of ten witnesses were probably looking at John, not the guy with the knife. We'll be able to show that probably nine out of ten of those witnesses probably did not catch the subtle drop of the shoulder and setting of the flexing knee that telegraphed the knife lunge that John had been trained to recognize in time to save his life that they didn't recognize because they had no idea what it was; it was as foreign to them as a foreign language that they did not understand and which they did not look for because they were looking at John.

eJournal: And that is the power of what you go into court and do...

Ayoob: It is the power of what all of us do together as the defense team. The defense attorney is the one who will cross examine each witness and be able to say, "Look, you don't have to believe this witness has malice in her heart and is lying; you simply have to believe this witness could not have seen what she says she saw. You have to believe that this witness did not recognize what was there because she didn't know how to look for it, and we'll show you why."


eJournal: So you get through the trial; do you, as the expert, sometimes play a role during appeals? How does that work?

Ayoob: Yeah, I am brought in occasionally on a post conviction relief, and usually it's to explain why—quite frankly, in my experience, it has been to explain why defense counsel in the first trial was incompetent. We had one where one of the key issues was that defense counsel

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was incompetent because he did not bring in expert testimony that would have refuted the prosecution's case. We won a new trial for a man who had been convicted of murder in the first degree.

Hopefully when he gets his new trial, I will be on board to explain it to the trial jury and we'll rectify the injustice. But, he has been in prison for three years. That's how long these things take. His conviction has been reversed. He was still arrested for murder, with a one million dollar bond he cannot afford to pay. The reversal doesn't mean, "OK, everything's alright now!" It means, "Yeah, you've lost a significant percentage of your life, but we may be able to get some of it back."

To give an analogy, Gila, if we were on the Internet and I said, "Hey, this thing about knowing combat shooting, that's bullshit. I was in a gunfight; I didn't know combat shooting and I missed the other guy and he shot me; I wasn't able to work for three years; they had to replace my hip and it really hurts all the time, but I survived. So you don't need no combat shooting."

You'd laugh me off the Internet! And yet, some one will say, "Well, so and so got convicted, but a few years later he won his appeal and soon he'll get a new trial, so what went before doesn't matter.

It [legal preparation] is the same exact thing. People do not think ahead because they haven't been in that situation; they haven't seen anyone go through that terrible suffering. They don't know how important this is.

eJournal: In summation, in your 35 years of doing this you've probably got a case or two that gives you the most satisfaction. If you had to pick one, which would it be?

Ayoob: Not one, not one. Roy Black was kind enough in his book, *Black's Law*, to credit me with having won the Hicks case for him. Stephen Hicks had essentially tried to get the gun out of the hand of the girlfriend who was attempting suicide and the gun went off in the struggle. He tried to get her to a hospital. She died and he panicked; did all the stuff some bozos on the Internet will say; you know, plant the body somewhere and lie about it. They were trying him for premeditated murder with a death jury.

I was called by Mark Seiden, his attorney—I'd worked with Mark on several murder and manslaughter cases that we won. And I said, "Mark, for Christ's sake, I mean, this guy sounds guilty to me. You know better than to call me with this."

And he says, "Mas, trust me, look at the discovery." The discovery is the pre-trial evidence. I looked at it, and I said, "Holy Shit." By the evidence, the kid was telling the truth.

I mean, this was an ordinary kid, of average IQ, who owned one firearm that he didn't really know how to operate. When he realized the girlfriend was getting suicidal, he tried to unload it. There was one cartridge stuck in the chamber of the revolver that he could not get out because he did not know there was such a thing as an ejector rod. So he wrapped up the gun and buried it in his bureau. And he gets home and finds the girl has the gun in her hand.

They analyzed the evidence. It was *absolutely* in many subtle ways consistent with his account; this kid could not possibly have faked it. It was totally inconsistent with the State's theory of the case and I made that point in court. To make a long story short, it's *Florida v. Stephen Hicks*. It's in Roy's book, *Black's Law*. Because that was a death penalty case and we literally saved the kid from death, I was pretty proud of it.

Any time you give somebody their life back, any time you give somebody their future back, any time you give somebody back the estate they built for their family from some rapacious lawyer, some lying dirt bag who didn't appreciate being shot while he was trying to rape them, anytime you can do that, that feels good. So your question is kind of like asking which of your kids do you love the most. Gila, I'm goddamned proud of every one!

eJournal: Rightly so! And we are so very fortunate to have you working on these kinds of things, Mas.

Ayoob: Well, we're fortunate to have you and Marty, too, with all the work you are doing for the Network, and it is something that has been long overdue and God bless you for it.

eJournal: Thank you, Mas.

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Marty Hayes

President's Message

New Network Member Benefit

It is with great excitement that I announce a great new benefit for Network members. It is an initial \$5,000 legal fee deposit immediately paid to the member's attorney of choice, to represent them after they have been involved in a self-defense incident. This money should be earmarked for initial representation when interacting with police after the incident, and also used to initiate an investigation by the attorney's private investigator.

Why is this critical? It is extremely important that the attorney you choose to represent you after an incident has his private investigator canvass the neighborhood where the incident took place, to get witness statements on record before police have a chance to contact these witnesses themselves. We don't want the police to massage the memory of the incident for the witness. Trust me, this happens more times than we would like to think. Even if no one knows anything, we want that documented as well, so someone doesn't all of a sudden come forward with eye-witness testimony. This, too, happens all too frequently.

The initial \$5,000 legal fee deposit submitted on your behalf should supply representation through a grand jury proceeding, or if you don't live in a grand jury state, then it provides your representation through the prosecutor's charging decision.

This benefit becomes available after a member has been involved in a self-defense incident where the police are called, a report is made and whether or not anyone is arrested, charges could be pending. At that point, the member should contact their attorney. A Network Affiliated Attorney will have been educated about this benefit beforehand, so it should not be a foreign concept to them. If the lawyer is not one of the Network Affiliated Attorneys, then the member will have to explain this benefit, and ask them to contact us. Once the attorney informs us of the member's situation, we will send out a check Next Day Air, made out to your attorney on your behalf, for use at his and your discretion.

When the case is done, we will expect whatever

unused money to be returned to the Foundation, so it can be used for the next member who needs it. This \$5,000 fee deposit is separate from any grants for long-term assistance with legal defense the Foundation may disburse if a member is charged with a crime or sued after defending themselves. If that occurs, we would expect the member to apply for a grant from the Foundation for additional help with the cost of their legal defense.

The History

Interestingly, this was my original plan about three years ago, when I started thinking about forming the Armed Citizens' Legal Defense Network. I wanted a plan under which people would not be caught flat-footed financially and need to pawn their gun collection to afford an attorney to help represent them during the initial stages of an investigation. As the idea of the Network grew and was refined, I kept this idea in the back of my brain, until the time came when the Network and Foundation had enough money to offer it. The Foundation has over \$20,500 in the legal defense fund, and so far we have had no requests for assistance from Network members, so we decided to add this on top of the benefits already offered.

3-year Membership Program

We have also added a new membership option, a discounted 3-year membership term. The advantages of this program include the convenience of not worrying about renewal for three years, a small savings (\$75 per year instead of \$85 per year) and probably the best feature of the new program: as we have new educational DVDs available, they will be shipped immediately to you, instead of waiting for your yearly renewal. There is now an option on the on-line shopping cart for this, or you can call the office to renew over the phone, or mail in your renewal with a note).

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4th DVD Due Out in a Month

Final edits on the fourth educational DVD, entitled *Recognizing and Responding to Pre-Attack Indicators*, have been completed, and it has now been sent to the replicators, where the process takes about a month. Members who have already renewed can start looking in the mailbox next month. We thank you for your support!

On a personal note, after reviewing and editing this DVD, I think we are getting better at producing these! This is our best effort so far, with video and audio quality being better than the past ones. We even have a little action in this one! The main presenter on the DVD, Marc Mac-Young did a great job, and it is apparent he is experienced in doing these sorts of things. We know you will like it, and find the information in the presentation educational and valuable.

In addition to the DVD, we will also be sending each renewing member one of our cool, new hats, perfect for wearing at the gun-range or other pro-gun activities. When people ask about your hat, the embroidered Network logo makes a good discussion starter. In the same package, we will also include a few brochures to hand out to your shooting friends, with a request for you to help recruit new members. The Network currently has 1,200 members, and if each member recruited one additional member within the next 6 months, we would grow beyond 2,000 members by 2010! With 2,000 members, we would have \$50,000 in our legal defense fund, and be well on our way to our goal of 10,000 members and a half a million bucks in the fund. Of course, the latter goal is fungible, based on the necessity to use the fund for our member's defense, but we will work toward that goal all the same.

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Update on Attorneys

We are slowly building the attorney referral list, and for those of you who have requested our assistance in locating a local attorney, I have not forgotten those requests, and will start anew working on them. We have been swamped here in the office working on day-to-day activities and promoting the Network, but I see some clear skies ahead to work on this issue. But, the good news is that we continue to add attorneys, and we now have 29 attorneys listed, covering 21 states. If you haven't checked the list lately, I would suggest you do so.

Harold Fish Gets a New Trial!

In our April Edition of the E-journal <http://www.armedcitizensnetwork.org/Network%204-2009.pdf>, I discussed the Arizona incident where a retired school teacher, Harold Fish, was arrested, jailed, tried and convicted for what appeared on the surface to be a very legitimate case of self-defense, and in that message, I opined that his conviction would be overturned on appeal. I am happy to report just that has occurred, and he is now entitled to a new trial.

Read about it at http://www.azdailysun.com/articles/2009/07/01/news/20090701_front_199119.txt

While that news is exciting, what is sad is that as of this writing, Harold Fish is still in prison, with his release being held up on procedural protocol, primarily to see if the Coconino Arizona county prosecutor will appeal this decision to the Arizona Supreme Court. We wish Mr. Fish well, and will follow the developments in this case closely, and report any substantive developments.


People accuse me of being a pessimist and "over the top" regarding these matters when I discuss innocent people being prosecuted, but I am only telling the truth. Some people just don't want to hear the truth. ●

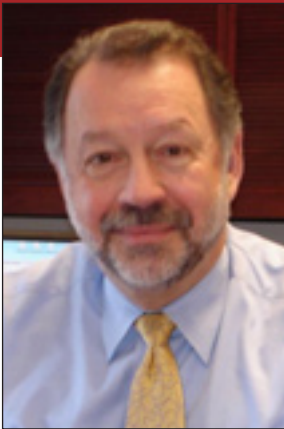
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J. Vincent Shuck

Vice-President's Message

Foundation Update

The Foundation auction continues to move along and we now have two items available for certain with other products, including some hand-guns, still in the works. As a reminder, we intend to auction these donated items on an Internet auction site with the funds going to the Foundation.

Corporate sponsorship continues to develop and two have stepped up to be the first with items for all of us to bid on. Here's what I can tell you at this time.

PistolCam. What the heck is that, you might ask! When Marty and I saw this at the NRA Annual Meeting at a booth near our Network's booth location, the wheels began to turn. Originally designed for law enforcement, the camera attaches to your pistol or rifle rail. The item itself looks somewhat like a light and laser device that we've all probably seen, but also contains a 60 minute video camera. The camera will record events, thus offering video and audio documentation of an incident. Worried about what the witnesses will say? Were you alone and it's your word against his? Click and review the recording and there's the story. Marty is busy conducting a field test after which the item will be available for us to bid on. Get a preview at www.pistolcam.com.

Shoulder Holster. We all know what that is, right? But this one, donated to the Foundation by Galco (www.galcogunleather.com) is super, super special. We will be getting one of only 40 commemorative shoulder rigs produced by the company. It's being designed and crafted by Galco's custom shop as you read this. It's based on their Miami Classic model and will be available in tiger shark skin for a 1911 model handgun. Don't have a 1911? After you see this shoulder rig, you'll want to add one to your gun collection just so you have something to put into

it!! Thanks to Galco for going out of their way to support the Foundation.

Membership renewals are going strong as many of you celebrate your first anniversary with the Network. Have you reviewed the three DVDs? Taken advantage of the discounts from Affiliated Instructors? Saved money in the members-only book store? Those are the primary tangible benefits, but please remember that the Network and Foundation are available to support you AFTER a self-defense incident. How often have you had to use deadly force this past year, you might ask. Probably not at all. But, why do you carry or have a firearm at home? Most likely because you want to protect yourself and your loved ones. Renew your membership when you receive our first renewal notice! Keep the Network's educational efforts available and the Foundation's support behind you.



Don't forget our Club Rebate Program. The Network offers gun clubs or related sporting organizations an opportunity to encourage their members to join the Armed Citizens' Legal Defense Network, LLC. In response to the club's membership recruitment efforts, the Network provides a \$20 rebate to the club for each new member. If you are looking for a method to earn some income for your club and a way to support the Network,

contact me for further details.

Vincent Shuck serves as Network Vice President and is President of the Armed Citizens' Legal Defense Foundation. Contact him at jvshuck@armedcitizensnetwork.org.

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Debbe von Blumenstein

Attorney's Viewpoint: Keeping A Carry License

***When getting a
CHL – plan ahead,
follow procedure, be
respectful.***

***When you have a
CHL – be rational,
prudent and
respectful.***

by Debbe von Blumenstein

When getting a new CHL or a renewal, plan ahead and make sure you follow the county's rules and give yourself enough time to complete the process. It will not do you much good to think you are just going to whip into the Sheriff's department like stopping off at the post office to mail a letter. How you complete the process is under scrutiny, too, and you do not want anyone in the Sheriff's department reporting that you are an inpatient hothead.

Give yourself plenty of time. Follow procedure. Be respectful. Big brother is watching.

The Case of the Renewal Gone Bad – Real Bad

In this case, a CHL holder needs to renew his license. It is 4:45 p.m. as he rushes to the courthouse to get to the sheriff's department in the basement. As he goes through the security checkpoint, he realizes he has a knife on him. Security is polite enough to just advise him to go put it in his car and return. He argues that he's running late, and doesn't have much time to renew his license. He insists that they can take it and store it for him. They instruct him to put it in his car and return. He argues to no avail and finally goes to his car to put his knife there. When he returns to the courthouse, he is arrested.

When he exited, he swung the door open so hard and far that he broke it. The witnesses and video tape support that he broke the door when he left the courthouse. He is charged with criminal mischief. He does not get his CHL renewed.

His defense attorney gets the Deputy District Attorney (DDA) to agree to a plea to the charge, and he will pay restitution and do no more wrong. Although he has no

criminal history, the DDA will not entertain a deferred sentence because they want to prevent him from getting a CHL again since he is now seen as an inpatient hothead – except in not-so-nice terms.

The Lesson: Give yourself plenty of time. Follow procedure. Be respectful.

(If I repeat it more than once – by now, you know it's gotta be important.)

So, before you go to get your CHL or renewal, make sure ahead of time to find out the policy for the county you are in. Many counties will only do the processing (picture and fingerprinting) for CHLs on certain days and at certain times. Find out how your county wants it done and follow their procedures. Remember, your life is under scrutiny when you have a CHL or are attempting to get one. How you present yourself and how you treat the staff will be noted.

Further, at all times you want to appear as and be a responsible, prudent person – a rational person that ought to have the privileges and responsibility that goes with having a CHL. You need to carry a respectful demeanor throughout your life and life style. Don't take a lot of fire-arms training only to flunk the attitude test.

Lawyers have a standard by which we are to avoid even the "appearance of impropriety" and this means even if we're not doing wrong but it could be interpreted that way, we need to avoid that act or activity. This is a good standard for someone with a CHL. Hold yourself to a higher standard and you are less likely to get into trouble. And remember, anything you say in haste, flippantly or in bad form may come back to haunt you.

I don't believe you ought to be so politically correct that you jettison your sense of humor, but do be aware of the type of jokes you tell. Do you tell jokes that are disparaging to one particular ethnic or cultural group? Well, let's say later you are in a self-defense incident and the person you are defending against is of this group... your self defense looks more like a premeditated bad act.

Do you have bumper stickers on your car? I know one person (who has since eradicated this from her vehicle) whose bumper sticker announced that she was a firearm

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owner with PMS. I once had a bumper sticker that my own attorney expressed gratitude that I had gotten rid of when I sold my car. What did it say? "So many pedestrians, so little time." Funny, but what do you think would have made the front pages of the paper if I had hit someone with my car even accidentally. Do you think my claim of having an accident would have been believed if there was one?

Do you blog? Do you have a social network account? All of these will come into question if you are involved in a legal situation. In Oregon, we have a father and son accused of bombing a Woodburn bank, killing two officers and maiming another. As soon as the suspect's names were announced, the son's Facebook account came under public scrutiny.

If you blog on a media site, you may think you are anonymous under your blogger name. But don't forget courts and attorneys have subpoena power and your name and your blogs are all open to review. I cringe each time I read a blog where someone announces they have a CHL (Ahem! It is called "concealed" for a reason!) and then proclaim in response to some reported crime: "Well, I would have just shot them" or "Let's take them all out and shoot them." If anyone blogs something like that and then claim self-defense if they are in a shooting, this will come out and their argument of self defense is out of the picture since a case for premeditation could be made.

A good exercise is to Google yourself. You might want to know what is already publicly out and about on you. You might want to Google yourself every so often to check on this.

There have also been cases of cyber-bullying where someone posts something false about someone to get back at them. Such people can be prosecuted, but it not easy to get the police and prosecutor's office involved especially if you cannot show actual damage/injury or if the perpetrator is sufficiently hidden. Remember, if it is out in the public domain, folks are likely to believe it is true.

I am the last person to say to live your life in a box. After all I do stand up comedy (public jokes), my current bumper stickers say: "My Cat is Smarter Than Your Honor Student" and "Spay and Neuter your Pets ... and your Strange Friends and Family." I have a Facebook account and I do blog—my name is panthercat—but I am aware of

the messages I send out. You ought to be, too.

I believe Billy Joel once sang: "Get it right the first time, is the main thing, get it right the next time, is not the same thing." Realize that when we send our messages out, especially in our newfangled cyber world, it may not be possible to take back what we communicate.

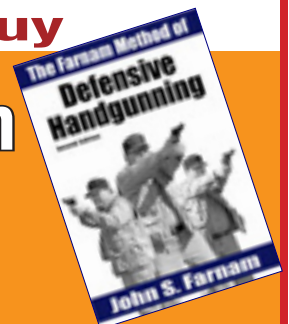
Finally, my brother once gave me some good advice that I believe applies here. If deciding whether you want to do or say something, ask yourself: Would I want this to be published on the front page of tomorrow's newspaper for all to read? That is a good litmus test.

The Lesson: As a CHL holder or CHL applicant, what you do or say can affect you now and in the future, possibly with some big consequences. Avoid even the appearance of impropriety. When you communicate, be aware of what you are saying with an awareness that consistently asks, "Do I want this to come back to me?" ●

About the author: Network Affiliated Attorney Debbe von Blumenstein, J.D., is a trial attorney who has practiced in courtrooms throughout Oregon since 1997 covering twelve different counties and a multitude of municipalities. Her practice has an emphasis in self defense cases and weapon charges. She is a graduate of the Lethal Force Institute and other defense training local to her area. She has also been a legal instructor for the Oregon Police Corps, a paramilitary law enforcement academy in Portland, Oregon, and helps present the moot court segment of the Lethal Force Institute's Use of Deadly Force Instructor program. Outside of her law practice, Ms. von Blumenstein has created and presented workshops and seminars throughout the United States, including "Legal Lessons 101: Knowing Your Rights—Learning From the Mistakes of Others." For more about Ms. von Blumenstein, visit <http://www.debbenvonblumenstein.com/>

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Book Review

Black's Law **A Criminal Lawyer Reveals His** **Defense Strategies in Four** **Cliffhanger Cases**

By Roy Black
A Touchstone Book,
Rockefeller Center,
1230 Avenue of America, New York, NY 10020
ISBN 0-684-86306-5

Reviewed by Gila Hayes

Black's Law is a ten-year old book, but remains, in my judgment, the classic by which citizens who will not necessarily ever work in the criminal justice system can catch a taste of what really goes on behind a high-profile trial. I read it first a number of years ago, and after my interview with Massad Ayoob recently, pulled it off the bookshelf and enjoyed another read.

In the introduction, we learn that Black began his practice of the law with the public defender in Miami, FL, working in a maelstrom of non-stop cases that consumed Black with a workload from which many would flee. He describes the Miami justice system as "a monster conveyor belt capable of speeding each defendant to the state penitentiary at the lowest possible cost per unit," adding, "It was a pleasure to derail that factory machinery by throwing a constitutional monkey wrench into its gears."

But, as the author points out in the next page, constitutional rights don't "self-execute," and are only empowered "if you have a lawyer to enforce them." He contends, "Lawyers are the ones who transform abstract rights into reality."

As we've pondered in previous book reviews, we feel put off by the crimes of the defendant, despite our fascination with the principles applied to their legal defense. In his introduction, author Black acknowledges the distaste many of his readers feel for the "man in the defendant's chair," for whom the author feels deep human empathy.

Until it is arrayed against you, the reach and power of the justice system is hard to believe, Black continues. The term "adversarial system" does not even begin to explain the despair the defendant feels at trial. In the four cases the author details, the citizen takes on an all-powerful jus-

tice system that manipulates proceedings, lazy police work, political pressure, media manipulation and bullying prosecutors.

Eleven years after getting his start as a public defender, the author was starting a private practice. Miami exploded into race riots following police officer Luis Alvarez's self defense shooting of 20-year-old Neville Johnson, Jr. at a video arcade. Riots, looting and fires were the backdrop as the media whipped up a frenzy of accusations and promises of justice. Government prepared to sacrifice the officer to quell racial strife that exploded with the Orange Bowl only days away. That officer became the author's client.

With Alvarez and Black excluded from Grand Jury proceedings (grand jury indictments are one-sided affairs, the author informs us), events took a predictable course, and soon, in a well-orchestrated spectacle, the young cop was booked and released on bond.

Black describes the pretrial efforts consuming the 13 months between incident and the trial, then jury selection clouded by fear of additional rioting. Opening arguments contrast a prosecutor's theory and defense's description of actions consuming mere seconds. The author illustrates how direct and cross-examination differs from the TV and movies that unrealistically color the expectations of many. The drama created by both sides, however, is reflected in Black's accounts, including tactics to derail the prosecution's carefully laid plans, impeaching the prosecution's witnesses, and gauging just how much latitude the judge will grant.

As Black details his decisions in the seventh week of trial, we see how grueling the process is compared to the TV programming that most imagine describes courtroom drama. "Being in a trial is like fighting all night in the foxhole and then looking up in the morning and seeing the enemy charging with bayonets. I don't care how tired you are—you're going to keep going," Black illustrates a few pages later. He admits that as the defense began to present its case, his law firm was out of money and had to obtain a loan to continue operations.

In the eighth week of trial, the defense is into its second week of arguments and the judge has just declined to let him show videotape of Massad Ayoob demonstrating how quickly Neville Johnson could have turned and shot

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officer Luis Alvarez and the rookie under his tutelage. Instead, Ayoob is allowed to demonstrate these dynamics in court, and gives an impressive lesson. By contrast, Black describes effectively neutering the State's expert witness, a published university professor.

The claims and counter claims of both sides' closing arguments lead to Black's victory. The predictable rioting nearly eclipsed the private aftermath: One police witness lost his job; the city of Miami settled with the Johnson family for \$1.1 million to avoid civil litigation and more rioting; and defendant Luis Alvarez started a successful security guard company.

The Alvarez case is just one of four stories told in Black's unusually formatted book, where the defendant's name is the title for long sections, unrelieved by subheads or chapter titles. Instead, the author's gift for describing people and scenes, and the passion he shares in his stories carry the reader hungrily through page after page.

In the next case, that of Thomas Knight, we meet the crusaders who struggle to assure that an insane murderer receives a fair trial. Prison conditions exacerbate his insanity, as does cessation of medication for what is probably paranoid schizophrenia. After he kills a guard, Knight is confined to a tiny, unventilated "punishment cell." Were the defendant not already insane, Black suggests, conditions would surely have made him so.

Trying to get the Eleventh Circuit Court of Appeals to reconsider Knight's death penalty became a tightrope, Black writes. "I had to tread carefully because some of the information was more aggravating than mitigating. I was walking a fine line between competing arguments and I hoped it made sense."

The author's description of what has to be the most strenuous oral exam imaginable—a panel of three critical appeals court jurists trying to determine what's right while sorting through a blizzard of information thrown at them by the two opposing sides—shows how hard it is to get justice back on track once it has been derailed.

"The judges' questions continued for thirty minutes after my time was up. Such a long exchange was unusual for the Eleventh Circuit, and it showed that the judges were captivated by the legal dilemma presented by this case. But what did it mean for Thomas Knight?" writes Black, bringing the reader's focus back from the fascinating procedures of an appellate court in action to the human being who is the reason for the case.

Network supporter Massad Ayoob makes another appearance in the next section, entitled simply, "Hicks." It includes many lessons, including the necessity of complete disclosure to your lawyer. This is the case Ayoob cites in his interview in this edition of the **eJournal**, involving Stephen Hicks, a young bartender, unable to find emergency medical care for his girlfriend who died following an accidental shooting. In a panic, he left her body in the car in the parking lot of a bank and called police to report her missing. These early lies required Ayoob and Black's best work to persuade the court that Hicks' eventual statement was, indeed the truth.

Careless police work gave the author a lot of material with which to raise doubt, when the prosecution endorsed the police presumption that Hicks had killed her. In addition to showing how testimony given could not be true, Ayoob's knowledge of Dan Wesson revolvers and the physical dynamics of arming and disarming contributed to the win, Black attributes.

Though the client's panicked actions were irresponsible, Black asserts that they don't merit the prosecution's pursuit of a death penalty. In this case, an aggressive need to chalk up another win drives the prosecution to try to convict a man against whom the evidence is circumstantial at best. "A man's life is on the line, yet no effort is made to see if he is innocent. Why? Because they've already made up their minds he was guilty," accuses Black in his closing statement to the Hicks jury.

Indeed, shoddy police investigations, prosecutorial misconduct, and aggressive anti-crime initiatives that seem not to care who gets caught in the net, only that *someone* be convicted, are the factors that should strike fear into the hearts of law abiding armed citizens. This is the fate of a successful banker who falls into the hands of federal prosecutors in the book's fourth and final case.

The secretiveness of a federal prosecution, as described by the author, sounds a warning that is as applicable today as it was upon the book's publication ten years ago. Indeed, we are now subject to an even less responsible system of federal law enforcement.

Black's Law is much more than an entertaining and dramatic account of lawyer Roy Black's most interesting cases, though it is all that and more. It once again points out how the American criminal justice system can turn its power against the very citizens it exists to protect. Read it; heed its lessons!



Gila Hayes

Editor's Notebook

Family Values

I've lost count of the times I've been asked to address concerns voiced by armed citizens who are the only ones in their family that prepare and practice for self defense. Even our own Network members' forum has started a thread on the topic, and I've agreed to tackle the subject, given adequate time to gather together the research so what I write is more than mere opinion! I'll reserve the topics of psychology, tactics and training for longer articles in future journals. For now, let's expose a more immediate concern, one that armed citizens need to address within their families without delay.

Whether or not we can ever convince oblivious, ambivalent, or gun-hostile family members to share our convictions about self defense, our first concern must be clearly communicating what occurs both during and after use of force. People frequently in your company, and especially those sharing your home, desperately need that information, because while they may not themselves wield a gun if you face attack while together, they are as surely part of the incident as would be a passenger in a car involved in an accident. Their behavior may affect safety and survival in either example.

Besides, what happens to you has acute implications for your spouse, dependents, and your future together. The expense of defending against charges or civil litigation consumes both partner's resources and if things go really badly, an incarcerated spouse leaves a big hole in parenting, long-term financial planning and other lifetime goals. Of course, a dead or crippled family member is the unthinkable alternative.

To say, "My spouse is in charge of the defense stuff," or its counterpart, "I have the guns and training so I will protect both of us," is unrealistic, because if together during an attack, both *will* play a role in a defense emergency and its aftermath—be that a helpful role, or one that is detrimental.

A spouse's panicked and conflicting responses to police questioning can cloud the truth about why deadly

force was used to prevent being killed or crippled. Inaccurate information given by a spouse diminishes their ability to give testimony from the viewpoint of the next-closest witness involved, who can describe for law enforcement, the prosecution, and ultimately a judge and jury the events leading up to and occurring during the incident. That testimony's power is wasted if a frightened, unnerved or confused partner babbles incoherently to investigators, or worse, lies in an attempt to make things look better.

Over the years, I've heard a variety of aftermath strategies for families. Sadly, only a few of them were founded in a realistic assessment of the legal jeopardy incurred through bad decisions of associates during and after a self-defense emergency. At one extreme was instruction to delay calling police after a home defense shooting until everyone in the household could be brought together, calmed down and instructed how to describe the events leading up to the shooting so their stories matched.

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The eJournal of the Armed Citizens' Legal Defense Network, LLC is published monthly on the Network's web site at

<http://www.armedcitizensnetwork.org>.

We are actively soliciting the participation of writers with expertise in self-defense firearms, the legal profession, and the self-defense training field. If you are interested in contributing to the eJournal, please contact editor Gila Hayes by E-mail sent to editor@armedcitizensnetwork.org.

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

Marty Hayes, President

J. Vincent Shuck, Vice President

Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

Please write to us at info@armedcitizensnetwork.org.

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At the other extreme is the suggestion that no one should respond to the questions of first responders for fear of misrepresenting the facts of the case. Neither plan works well in real life and there has to be a better way!

If similar defense training is not a realistic option for both partners, the better educated of the two must share enough of their education to lay the foundation for proper post-incident responses. Network members can use the three educational DVDs as a starting place, introducing the topic by emphasizing that if force is used in defense of the family, their decisions about how and when to fight are founded in long hours of study and soul-searching, not an impulsive, angry or frightened response. Even if the less educated partner chooses a passive role, a mutual understanding of these issues is vital because the incident is not over after the shot is fired. We would be unrealistic if we expected them to remain mute during the aftermath.

Those with whom you share your life, must share your understanding of the “whys” and “whens” of armed self defense. Without that foundation, their ignorance can spawn all kinds of problems, ranging from pressure not to carry a gun, inappropriate or dangerous announcements in public that you have a gun, misunderstanding the level of danger and trying to prevent you from using a gun in self defense or urging you to use your gun when deadly force is not yet warranted, and even telling authorities that you could have run away or talked your way out of a deadly force threat.

If your spouse's comments about crime and self defense sound more like Rosie O'Donnell than John Stossel, you need to ponder the fate of two people sharing a home yet embracing such opposing viewpoints. Sharing a

household successfully entails agreement on some basic life philosophies. Like other hot buttons including recreational drug use, entertainment choices, and finances, defense plans only work if all involved are fundamentally in agreement. Working together is impossible if only half of the team understands the “why” and the “how,” as well as the myriad issues that must be faced after the physical danger has been averted.

Whether or not the people with whom you share your life choose to participate in preparation for self defense or home defense, their future *is* tied up with that of the armed family member and they deserve a stake in protecting that destiny. Broaching the topic of self defense as working together for mutual, long-term benefit promises much better cooperation than approaching the family member from a position of superiority, essentially saying, “I know how to shoot and so here is how it is going to be done.”

Watch the **eJournal** for more on self defense preparations with recalcitrant family members sharing your home. For now, start asking questions about what is important to family members, listening (*really* listening) to their answers and then sharing your knowledge. ●

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How to join

Print this application form and FAX it to 1-360-978-6102 (if you are using a VISA/MC), or mail it to P.O. Box 400, Onalaska, WA, 98570 with your check for \$85 (add \$50 each for additional memberships for others in your household—must reside at same address) or a 3-year membership for \$225. If you have any questions, please call 360-978-5200.

When your application is accepted, you will receive three DVDs concerning the lawful use of deadly force for self-defense. Additionally, you will become immediately eligible to have any future case of self-defense reviewed by one of our Network experts at no charge, and may apply for a grant of financial assistance for any litigated self-defense cases initiated after membership application (please read <http://www.armedcitizensnetwork.org/benefits.html>). You will also receive a membership card with your username and password for the member's Internet forum and other areas of the Network website restricted to members only, as well as your coupon code for the 20% discount at the Network's on-line book and DVD store.

We look forward to your participation in the Network as part of a family of armed citizens who passionately care about the right to armed self-defense, and want to protect themselves from the legal nightmare that sometimes accompanies a lawful act of self-defense.

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How did you hear about the Network? _____

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