



# Surviving Aggressive Cross-Examination

## *An Interview with Emanuel Kapelsohn*

by Gila Hayes

*I was intrigued a few weeks ago when I received an email from Network Advisory Board Member Emanuel Kapelsohn, who said that while giving expert witness testimony recently, he had to explain a statement attributed to him in the Network's online journal. The discussion let me explore how he had defused the attorney's attempt to discredit him as well as learn how an experienced witness deals with attacks from opposing counsel. I want to share it with Network members, so let's switch now to our Q&A format and learn from Kapelsohn in his own words.*

**eJournal:** Thank you for sharing your experiences testifying in court. I am looking forward to learning ways to counter information an opposing lawyer may dig up to make us look bad. First, though, tell us a little about your career in the law.

**Kapelsohn:** I started practicing law in 1978 and have practiced law off and on since that time. There was a period when I just did firearms and use of force training and worked in executive protection and as a security director and so forth, but then I returned to practicing law. Most of my law practice has been in commercial litigation cases that have nothing to do with use of force or firearms. A little bit of my law practice is reviewing use of force policies for law enforcement agencies and reviewing product warnings and owner's manuals for manufacturers of law enforcement products: guns, holsters, target systems and so forth.

I'm also on a U.S. Department of Justice list of attorneys who are on call to provide emergency representation to federal agents who have just been involved in shootings, and I've been called on to do that several times. I've also provided similar immediate representation after a shooting to municipal police officers on a few occasions. But, again, 98% of my law practice has nothing to do with firearms or use of force.

**eJournal:** However, we should not overlook all the times you've provided expert testimony at trial. What does that entail?

**Kapelsohn:** I've worked as a defensive firearms instructor providing firearms and tactics instruction not only for law enforcement officers and law enforcement instructors but also for private individuals who own or carry firearms. I've done that all over the country for about 35 years now. For about 30 years I've worked as an expert witness in state and federal court cases involving firearms, self defense, gun accidents, use of force issues, reconstruction of shooting scenes, and also reconstruction of crimes where a knife or impact weapon or some other kind of weapon was used.

My legal training, legal background, and courtroom experience have been very useful, very important, in doing both the instruction and the expert witnessing. Obviously, it gives me a good knowledge of self-defense law and a good knowledge of the law regarding the use of firearms. It also gives me experience with regard to cross-examination and the way that trials work and the way that depositions are taken and all of those things. Also my experience as an instructor helps me explain firearms, tactics and self-defense concepts in a way that jurors can understand. These skills all work together very symbiotically to help me do a good job as a witness.

**eJournal:** You spoke of familiarity with trial procedures. As lay persons, many Network members find the prospect of being called to the witness stand to explain self-defense actions daunting, so we can learn from your experiences. One aspect of testifying is how opposing counsel may try to discredit you. You told me a little about a recent instance in which a state's attorney used material from a Network journal interview to that end! What happened?

**Kapelsohn:** Opposing attorneys often view it as part of their job to try to attack a witness on the other side of the

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case who is damaging their case, who is providing testimony or information that hurts their ability to win, whether it is a civil case or a criminal case. Some lawyers seem to lash out and try to do anything they can to discredit the opposing witness.

That happened to me about two months ago when I testified as a defense witness in a first-degree murder trial in Annapolis, MD. I was working on behalf of Joe Walker, a Hudson County, NJ prosecutor's office investigator—that's a sworn law enforcement officer working as an investigator for the prosecutor. Joe and his family are black. He was off duty, traveling with his wife and three young children in Maryland when they were unwittingly involved in a traffic incident. He crowded another vehicle in making a left hand turn from a red light at an intersection from which there are multiple left turn lanes. He was not familiar with the intersection and he drifted over into the other car's lane and immediately was faced with two men screaming things at him like, "You're f-ing dead, nigger!" It was completely out of the blue! They were screaming these things into his wife's side of the van where she was sitting in the passenger's seat while Joe was driving. He reached across and held out his badge and yelled, "I'm a police officer. Drive on," through the vehicles' open windows.

They yelled back something to the effect that they didn't give a f- who he was, he didn't scare them, and he was f-ing dead. Unbeknownst to him, the two in the other car had just come from several hours of drinking in a bar and were on their way to yet another bar.

Walker tried to accelerate away from them, but with a KIA minivan with his whole family in it, he couldn't accelerate much. They pulled in front of his vehicle and slammed on their brakes in the middle of the highway. He had to slam on his brakes and swerve to avoid hitting them. He tried to accelerate away and tried to fake them out at the last minute to make them think he was taking a highway exit ramp, going one way and they would have to go the other way, but that didn't work.

Next, they forced his vehicle off the road. It was heavy traffic and there were cars behind the other vehicle, so when Joe and his wife caught a glimpse of it going past them up the highway, they thought the incident was over. At that point, having been forced off onto the shoulder, his wife unfastened her seatbelt and started trying to comfort the children and hand them the things that had been in their laps before Joe had to slam on the brakes. Joe got out and walked around to the back of his van to

check his tires, because they'd heard something hit their van. In fact, the two men in the other car had thrown a can of energy drink at his van and dented it, but he did not know that, so he thought he might have a flat tire. He was at the back of the van when all of a sudden his wife yelled, "Joe, they're coming back!"

Joe suddenly saw that these two men had pulled their car off the road about 50 yards further up the highway and were coming back on foot to fight. The driver who was coming straight toward him weighed about 300 pounds and was tattooed with what the medical examiner later testified in court were white supremacist symbols. This was a guy who had been previously convicted of assault and had worked as a bouncer in a bar. He was basically a fighter.

Along with him was his buddy who was something like 6'2" and weighed over 200 pounds and both were coming back at him. There was not time to get in the van and start it up again and try to pull out into heavy traffic, because these guys were almost up to the van. Joe Walker stuck his head in the window and told his wife, "Quick! Call 9-1-1," and when he pulled his head back out of the window, she said, "Joe, you forgot your badge." He had left his badge on the console after showing it to the others as they drove.

He now positioned himself near the driver's side front corner of his van, displayed his badge and as the men got up to him, which was only a very short moment later, he said, "I told you I'm a police officer. Now, back off." He was met with more obscenities and epithets. He then drew his gun, which he always carried under his shirt, and displayed both his badge and his gun and told them to back off. The driver, the 300 pound one, was still coming straight toward him and the other was flanking him around the side, which made him very nervous.

At that point, he didn't have a choice. He fired a shot at the driver and swung to cover the driver's friend, who didn't advance any further, so Walker didn't fire at him. Then Walker noticed that the driver was starting to charge, so he swung the gun back to him and fired two more shots. The suspect fell 6½ feet in front of the bumper of the van containing Walker's family.

For complex reasons that are currently under investigation, the state's attorney in Maryland found it appropriate to go before a grand jury and have Walker charged with first degree murder under a theory that he had pulled over to the side of the road voluntarily to

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engage in mutual combat with these two other men while his wife and three children were present. It makes no sense to me. I'll cut to the chase and tell you that the jury acquitted him, which was absolutely the right response because it was an act of self defense.

In giving my testimony on behalf of Walker, I was cross examined by the state's attorney, who tried to use against me something I had said in an interview with you, Gila, that was published in a previous journal! It was in response to a question you'd asked about another firearms instructor who used the expression "Always cheat; always win" with regard to what to do in a deadly force confrontation. Let me read my response from the interview (<http://armedcitizensnetwork.org/our-journal/274-august-2012?start=5>):

"Personally, Gila, I've often used the expression, 'If you're not cheating, you're not trying hard enough.'" The state's attorney in Maryland asked, "Mr. Kapelsohn, isn't it true that you said that in a published interview?" I said, "Yes, I have," but you see, Gila, the thing he didn't do was go on to read that I'd also said, "And I make it a point to tell students that they're not supposed to be involved in a 'fair fight,' like at the Olympics. Keep in mind that we're typically talking about defending oneself from an armed criminal: that's a fight you didn't choose, and one you must win in order to survive. Like I tell police recruits, there's no choice about it, you HAVE TO WIN. If the armed citizen's attorney can't make the jury understand this, he's not the guy you should hire as your attorney."

That's the way I said it in my interview with you two years ago. The thing I would like to say now is, attorneys who are attacking witnesses on cross-examination will often take things out of context. The context here, of course, is a life or death confrontation. That's a context where there are no rules. When I perhaps too flippantly used the expression, "If you're not cheating, you're not trying hard enough," if you understand what I said in the context of a life or death confrontation, there are no rules so there's no such thing as cheating. Cheating is breaking an established, agreed-upon set of rules or laws. But in a life or death confrontation with a criminal, there are no rules.

What I'm telling the citizen or police recruit or the in-service police officer is that in an armed confrontation, they have got to take every advantage they can within the bounds of the law. They have got to take every tactical advantage, every possibility of tactical surprise, every advantage of using cover or obstacles, every

advantage their skills or weaponry might give them, in order to prevail in an armed confrontation, which, again, they did not choose. The criminal chose to force them into that, but it is the armed citizen or the police officer that has to survive the confrontation. So, saying, "If you're not cheating, you're not trying hard enough" is just a way of getting the point across that you have got to take every possible advantage that the law permits, but you can't break the law. You're still responsible for following the law, but within those bounds you have got to try to win this confrontation.

Those are some words that I used in an interview with you and they were turned against me. It's hard to know how someone can take something out of context and use it in the future, but maybe this story of what happened to me will be instructive to some of our members who read it.

**eJournal:** What did you do to explain it in that Annapolis courtroom?

**Kapelsohn:** Well, I did my best to explain the context as well as I could. In fact, I actually used the example I'd given you earlier, "It is not supposed to be a fair fight like at the Olympics," it is not supposed to be an even playing field. The criminal didn't give you an even playing field to play on; you're not required to give him an even playing field. You are only required to follow the law.

**eJournal:** Will the opposing lawyer allow you to explain?

**Kapelsohn:** You can try to ask the lawyer who is cross-examining you if you can explain; sometimes they'll let you, and sometimes they won't. If you ask him and he refuses to let you explain, sometimes your own attorney on redirect will give you a chance to explain.

You can try to ask the opposing attorney if you can look at the material from which he is reading. Sometimes they'll let you, and then you can try to read the rest of the context to the jury. Sometimes they won't let you see what they're reading from. If they won't, at least it may give the jury the idea that the lawyer is being unfair to you, because who could possibly remember everything they've ever said, years ago!

I've had opposing attorneys do other things to try to discredit me, too. Often, I've been asked if I'm a gun enthusiast or if I'm an NRA member. One of our

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members might be asked, for instance, if he is a hunter or has ever hunted. Those things could possibly be used to create jury sentiment against him, especially in a part of the country where gun ownership or where hunting are not common.

**eJournal:** How have you turned these attacks into positive contributions to your cases?

**Kapelsohn:** I don't just say, "Yes, I am." I sit up straight and say something like, "Yes, I absolutely am!" I've been asked, "Would you describe yourself as a gun enthusiast?" I've said something like, "I'm a strong believer in the Second Amendment to the Constitution," and sometimes I add, "I think the Supreme Court has been a strong believer, too." You can't deny those kinds of things, and you do not want to look embarrassed by them. You cannot allow yourself to be embarrassed by them in front of the jury.

Now, at a recent case, I was asked if I am an NRA-certified instructor, and I said, "Yes, in fact the NRA is probably the largest certifier of police firearms instructors in the United States every year." That at least gives a jury something to think about. They may know about the NRA only as a lobbying organization. They don't realize that the NRA serves a law enforcement training function and a firearms safety training function for hundreds of thousands of people a year. This is something you can add to give the jury the right idea. You just have to hope a jury will be a fair jury and won't be biased against someone just because they own a gun. You are facing a problem, though, if the lawyer will not let you get that out.

**eJournal:** So how *do* you get that information into your testimony? The attorney asking the questions may restrain your responses to just yes and no. What do you do?

**Kapelsohn:** That's a good question. You might be able to get it in just by spitting it all out quickly before he can cut you off. "Yes, I am. I'm certified by the NRA as a police firearms instructor. They're the largest certifying organization for police instructors in the United States."

If you have an idea that the opposing attorney may try to attack that—perhaps, for instance, in a civil case in which they've taken your deposition ahead of time and they've attacked it—you can take the wind out of their sails if you can have your own lawyer on your direct testimony put that in. That, then gives you the opening to explain it, so it no longer becomes a juicy piece of cross-examination

for opposing counsel because you have covered it already and you have covered it in a positive way.

I have used the example of the NRA-certified police firearms instructors, but, of course, the NRA certifies instructors to teach self defense, firearms in the home, defensive firearms use outside the home and safe firearms storage in the home. They teach many, many other topics that apply to ordinary individuals who are not law enforcement, as well.

**eJournal:** While NRA membership is probably a favorite subject to attack, what other aspects of the armed lifestyle might be raised to discredit us?

**Kapelsohn:** It is hard to know what things someone can try to use. I've actually been attacked on cross-examination for putting in my resume that I was an assistant instructor at the police academy, when the director of the academy told the prosecutor over the telephone that he considered me a full instructor, not just an assistant. And I've seen a police officer attacked for carrying the hollowpoint ammunition that was issued to him by his department – described by the prosecutor as "that dum-dum ammunition that was banned by the Geneva Convention." In that case, I was able to undercut the prosecutor's cheap shot by pointing out that it was the same ammunition his own prosecutor's office issued to its own investigators. At the very least, I think our members need to be careful about things they put on social media, on Facebook, t-shirts they wear when they are photographed that may have slogans on them that the other guys at the shooting range think are funny, but may not be funny in court or in the context of a self-defense incident. The same with bumper stickers. Someone may think the bumper sticker that says something like "Insured by Smith & Wesson" is funny but it is hardly funny if you are charged with a crime for defending yourself with a gun. It can easily be misinterpreted.

I've worked in a case where a photograph was taken of all the firearms-related books on a party's bookshelf in their gun room. Think about having to justify to a lay jury the validity, the wholesomeness, of every book title on your bookshelf! That's a perfect example of judging books by their covers, but it lets you know how critical this kind of thing can be. Sometimes just one word or just one photograph can color a jury's idea about someone, about whether they are a good person or a bad person, whether they are a sensible, level-headed

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person or not. All those things are really easily attacked by an opposing attorney. I think our members need to be careful in the way they behave in the world.

**eJournal:** Being human means making mistakes! Someone might have repeated a funny saying, but then they realize the error of their past statements. Can one mitigate mistakes made in the past? If it's raised in court, do we need to admit to being young and foolish before knowing better?

**Kapelsohn:** You really do. Obviously, you can't lie, and you have to say, "Yes, I did say that back then," or "I did wear that t-shirt then," or "I did put that on my Facebook page then. But I took it off four years ago when I realized it could be misinterpreted. I thought it was funny at the time, but I realized it wasn't funny at all because it related to something that was very serious." I think that is the best you can do.

One of the big advantages of the Network is that you do make people understand better the heavy responsibilities and the very significant issues involved with the thought of defending oneself and one's loved ones with armed force. I think a lot of people will have a different view, having been educated by the material you publish, by the material in the videotapes and the material in the journal. That's education!

Long ago, people used the expression, "If it's something you wouldn't say in front of your mother at the family dinner table, then probably you shouldn't say it." That's good advice to the extent that we can follow it.

People today know that many things they do are on camera. There are security cameras in stores and on public streets; everybody has a cell phone that seems to be able to take video footage; police cars have dashcams, and police officers in some cities are starting to wear body cameras. If it is something we wouldn't be willing to have shown on video to the jury in court, we're probably better off not doing or saying it—just like we're better off not wearing that t-shirt, we're better off not putting that posting on Facebook.

Some people might think it is a shame we have to live that way, but in another respect, it is a reasonable standard. The overriding rule is that we should all conduct ourselves in such a way that anything we do or anything we say is not embarrassing to us at a later time.

**eJournal:** It is good to have a high standard we strive to attain. Thank you for defining it so well, and for acquainting us with the realities of giving testimony. You've given us much to think about. Thank you.

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*The Network is fortunate to receive ongoing advice and guidance from Emanuel Kapelsohn, who is a valued member of our Advisory Board. To read more about him, see our announcement at <http://www.armedcitizensnetwork.org/our-journal/278-december-2012> and <http://www.peregrinecorporation.com>.*

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

## Membership Survey Findings

by J. Vincent Shuck, Network Vice-President

This past summer we announced the Network's first membership survey and it remained open to members for approximately one month. I provided a mini-summary in my July column, but we are now ready to provide a more comprehensive executive summary on the results.

### Details

Although we had 8,027 members at the time, the 6,543 members with a valid email address were invited to participate in the confidential, online survey. There was a 13.8% response rate representing 907 members. The responses represented a nice cross-section of the membership with 24.9% being a Network member for less than one year, 49% being a member for 1-3 years and 23.9% for 4-6 years. Most (78.2%) of the membership responses came from those who are 51 years of age or older, with only 4% under 35 and 16.7% between 36 and 50.

When asked why they joined the Network, 81% noted the Legal Defense Fund and post-incident support. The second most frequent reason was the attorney network (40%) and the third reason was the Advisory Board members (25%). Tied for fourth was the experience of the leadership and the reasonable annual dues (13%).

Over half (57%) admitted that they had not yet established a relationship with an attorney that they could call upon after a self-defense incident. Most of the respondents (82.9%) have not purchased an item from the book & DVD store located on the Network website.

We asked the members to delve into potential new or expanded activities and two items virtually tied for the top honor. A testing or certification program on self-defense issues and the production of DVDs on self-defense topics came in at 26% and 24%, respectively. You Tube or similar educational production activity was third at 19%. Other listed options, including a national meeting, certification of

firearm instructors, and a website forum were all in single digit favorability.

Topic and article suggestions for the Network's monthly *eJournal* essentially covered what is included today with the biggest support (88.2%) for legal questions, self-defense tactics discussion (80.2%), then interviews with instructors and other experts (69.5%). The only new topic was the review of training programs and classes (62.4%).

### Analysis and Discussion

What did we learn?

First, our membership growth has expanded exponentially over the past few years with almost half (49%) of the members having a tenure of less than three years with the Network. Of course, the Network itself is only six years old. A large majority (78%) of the members are 51 or older. These findings demonstrate both the newness of the Network and the general age of the self-defense population. While even college students are fighting for the right to carry on campus, where this is usually prohibited, most of the population that the Network sees at meetings, such as the NRA Annual Meeting and the industry trade show, appear to have at least some grey hair. This also comports with gun magazine reader surveys that show over 40% of their readers are age 55+.

Not surprisingly, the largest majority (81%) joined because of the Network's excellent post incident support and the availability of the Legal Defense Fund. Frankly, when it comes down to dealing with the aftermath of a self-defense incident, members agree that it's terrific to have our system in place. The second highest reason for joining (40%) is the affiliate attorney network. Who wouldn't want a competent attorney to deal with a member's self-defense incident? Our attorney members have expressed interest in joining the Network and have confirmed their pro-gun positions and their understanding of self-defense law. Each has been given Network membership and provided with the educational DVD component provided to members.

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As readers of the monthly *eJournal* know, our affiliate attorneys contribute on a regular basis to our *Attorney Question of the Month* section. The third most valuable reason for joining (25%) was the essence of our Advisory Board. No other post incident group or organization can claim such an outstanding array of renowned authorities on the topic of self defense. Reasonable annual costs and the experience of the Network leadership (13%) tied for the fourth most important reason for joining. Numerous citations about joining were augmented as important reasons thanks to the recommendations of instructors and friends and the availability of the educational DVDs.

Not everyone responding admitted to having an attorney to call upon after a self-defense incident. This represents an opportunity for the Network to not only expand the number of attorneys but to reiterate steps for members to take on their own to find a potential attorney to represent them. Admittedly, some of the newer members, as many as 25% of the respondents, may be diligently working on this Network recommendation. We will do what we can to enrich our members' efforts with this important step.

When the members responded about new or expanded programs, not everyone agreed, but two options essentially tied for first place at 25%. They were the production of DVDs on self-defense issues and the development of a testing program allowing members to become certified on self-defense issues. Of course, we currently produce a DVD each year as part of the Network's educational component. This effort separates us from other post incident groups as none has the breadth and depth of our knowledge presented via the Network's eight educational DVDs provided to new members. The testing program is a little more complicated to develop as it would need to be established with testing consultant advice. The concept would be to enhance the member's ability to defend his or her self-defense action based on previously verified knowledge, similar to our recommendation to view and note your viewing cycles on the Network DVDs. This action permits the introduction of your expertise and understanding of self-defense issues. The credentialing process would

expand the nature of this testimony. Lastly, the third most popular new activity recommendation (19%) was the development of a You Tube or similar educational channel.

The final survey question related to the topics or articles most would like to see in the monthly *eJournal*. The legal questions were far and away the most liked topic at 88% with self-defense tactic discussions a close second (80%). Interviews came in third at 70%.

Finally, numerous annotations were volunteered by members to those questions that allowed write-in comments. It was nice to have members simply say, "thanks for being there for us." It was also refreshing to have many members offer a bit of caution, exclaiming that we should not try to become all things to all people. This was reinforced by members who believed we should continue doing what we do best inasmuch as the members are pleased with what we do and who we are. However, there was a lot of grumbling about the survey requirement to assign a ranking to every possible response choice, whether you wanted to or not. We will address this before conducting future surveys. Please be assured that each comment has been reviewed several times and will become a part of our planning record.

## Conclusion

This first-ever membership survey was designed to solicit member input on several important issues, especially on the nature of the Network and its future. Thanks to everyone who completed the survey, we have a good snap shot of your views and firmly believe the survey was a success. We sincerely extend our appreciation for your survey time and input and grant you that the Network's strong and decisive leadership will continue to listen to and support the Network membership.

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Please enjoy the next article.]*





## President's Message

by Marty Hayes, J.D.

Since publicizing the recent *Network v. The World* article on our website, I have received many good and kind comments from members, and we have gained several new members who were

researching the issue and read the article. I would like to ask you all a favor. How about posting the link <http://armedcitizensnetwork.org/buyersguide> to the article on your social media outlets? Unless of course, you are keeping your gun ownership and membership to the Network a secret from folks who might not understand. If you are, I completely understand.

### Comments about the Network Survey

While our Vice-President, Vincent Shuck, covered the results of the survey nicely in his article, I just wanted to take a minute to add my thanks to all those who participated in it. It is nice to see that you all believe we are on the right track. One thing that I took away from it was that a self-defense legal certification test that members could voluntarily take is something that many members would like. I agree, and it will be a topic of discussion at our annual Advisory Board meeting in January, at the SHOT Show.

### Court Proofing Self Defense at 2015 RangeMaster Tactical Conference

At last years A Girl and A Gun conference, I put on a presentation called *Court Proofing Self Defense*. The two-hour presentation takes the student through a litany of bullet points (pun intended), that are what I believe people should do, and what they should not do to survive what Jeff Cooper aptly named "problem two."

I will be offering the presentation again at the upcoming RangeMaster Tactical Conference.

For those who have never attended, the Tactical Conference is a simply awesome event each year, for which Tom Givens (one of our Network Advisory Board members) brings together about 20 of his closest friends and colleagues from the training business and each presents classroom and range training. The attendees get to pick and choose what classes interest them, and participate in a fun tactical shooting match, too, if they so choose. If you want more information, see this link: <http://www.rangemaster.com/tactical-conference/2015-conference-conference/>

### Michael Bloomberg, et al. v. Washington State Gun Owners

Here in Washington state, we are fighting a very real and concerted effort to infringe on our right to keep and bear arms, in the form of Initiative 594, a poorly worded background check and registration scheme designed to limit the commerce in small arms. If it passes, all transfers (either sale, loan, trade or gift) will have to go through a licensed dealer. While in the big picture, I am not opposed to background checks, this measure is so poorly written that it will be held up in court for years, and completely unenforceable.

If this passes here, expect to see something similar come to your state. Billionaire Michael Bloomberg is backing the effort, as is Microsoft founder Bill Gates, and others. Also, elected Prosecutor Dan Satterberg, from King County is backing the initiative. I'm very disappointed to see Satterberg sucking up to the liberals in King County.

I am giving a couple of talks in the coming weeks to political groups regarding the issues, and since I haven't worked out my outline yet, I had better get at it.

*[End of column.  
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## Attorney Question Of The Month

This month we asked our affiliated attorneys a somewhat hypothetical question about lawsuits and insurance. That one product invites the other action is an idea we hear now and then. We thought it was time to go to the litigators and find out if it is true. We asked—  
*It has been said that insurance invites lawsuits. Do you believe this is true? Have you any direct experience showing whether or not those with insurance are more likely to be sued for damages?*

So many affiliated attorneys responded—with answers that were all over the board and some in such length—that this will be our attorney topic next month, too. Here's the first volley of responses—

**Kenneth D. Willis**

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Even assuming the answer is yes, I'd turn the question around and ask it this way: Will not having insurance ever mean you won't be sued? I don't think you'll ever talk a plaintiff's lawyer out of suing you for what he or she thinks is a valid claim just because you don't have insurance unless you are so obviously poor enough to be judgment proof. For someone with substantial assets they want to keep, it would never be rational not to carry insurance solely to make it less likely they will be sued. Even if your gun and the money you saved by not buying insurance are your only assets, there is a lawyer somewhere willing to sue you for his one-third of it.

**Jacques Mann, Esq.**

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I was an in-house insurance defense litigation attorney for 13½ years, the last eight years of which I was also a coverage attorney. Yes, the presence of insurance coverage and the amount of coverage for a claim is a factor in whether one gets sued for damages.

No one sues an uninsured person who owns a modest, nice home and a basic auto and no or only a modest portfolio of stocks and bonds and who has a modest to

middle class earning capacity because collection will be an issue despite the fact that claims for willful and malicious injury by the debtor to another entity or to the property of another entity within the meaning of 11 U.S.C. § 523(a)(6) are NOT dischargeable in bankruptcy.

The presence of assets of substantial worth or high insurance coverage with or without an umbrella policy makes one a target for a lawsuit, especially wrongful death claims, which I have defended.

**John R. Monroe**

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I don't think most potential plaintiffs are likely to know if a potential defendant has insurance in most scenarios (auto accidents being a notable exception, because insurance information commonly is exchanged and included on police reports). In the case of a defensive use of a weapon, such information would not be readily known to the other party.

A person with obvious financial means (e.g., someone shot while breaking into a fancy house) might be expected to have applicable insurance, because he has more assets to protect, but that would only be speculation.

**Stephen T. Sherer**

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Interesting question.

An argument can certainly be made for the supposition that insurance encourages lawsuits. When an insurance company is involved, plaintiffs' attorneys know there is a pot of money from which recovery can be had. This doesn't recognize the fact that intentional torts, such as shooting someone who is knocking at your front door, are generally not covered by homeowners' insurance policies.

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If an attorney is not aware of any insurance available to pay a judgment, then the only reason to sue is if you believe the party you are suing has assets that can be attached by a judgment against them. This usually involves an asset search, which can be a somewhat expensive proposition in itself. To the extent you own nothing but a house with a mortgage, a car and modest balances in financial accounts, many attorneys evaluating the utility of a lawsuit will decide the risk of obtaining a worthless judgment is too great to expend the time and money necessary to obtain the judgment.

That's my judgment, anyway.

**M. Reed Martz**

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Yes, I believe the availability of insurance—if known to the opposing party—invites lawsuits.

I do not have any statistical studies but my own experience as a civil defense attorney for over a decade convinces me that as soon as the availability of insurance coverage is known to the opposing party the likelihood of a lawsuit increases substantially. I have had many cases in which my client, the insured, said something to the effect of, "Everything appeared on its way to a resolution until I said I had insurance..." While my experience has not dissuaded me (personally) from obtaining certain types of insurance, it has convinced me that I will not make the availability of that insurance known to another party unless required by the law or circumstances. There is no sense painting a bull's-eye on your back.

## Unfinished Business

In September we asked our affiliated attorneys to share information about the procedures in their community for posting bail after a serious incident, and how that could be accomplished by an individual who does not have family members nearby to act on his or her behalf. After the September journal came out we got one final response that will prove useful to Wisconsin members who may have wondered—

*If a member is involved in a self-defense shooting and is arrested, what should he or she have done in advance to provide access to funds for bond if no family is available to assist? How does the state in which you practice handle bail for murder? For aggravated assault?*

**Mark D. Biller**

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Wisconsin does not have particularized statutes which deal with high level felonies. Rather, the general provisions which apply to all cases are heavily weighted towards reasonable conditions of bond.

Counterposed against a presumption favoring release on bond, the court can consider the need to protect the public from serious bodily injury, prevention of intimidation of witnesses and the degree of violence involved in the offense. Even against this presumption favoring release it has been my experience, both as prosecutor and defense attorney, that when death or grievous bodily injury has come about by violent means the prosecutor's recommendation for cash bond will be high, and the judge will be inclined to take that recommendation seriously.

That said, when I am convinced that my client is foursquare correct in his exercise of his privilege of self defense, I have goals for a bail hearing which run beyond my client's release—although that is the goal of primacy. When my client has been charged in spite of the legitimacy of his exercise of self defense it is likely because the prosecutor has developed his views on violence from the safety and comfort of an armchair before the television, and hopes for a jury which is similarly disposed. The bail hearing is my first opportunity to fire a shot across the prosecutor's bow, and to begin to educate the court (who's view of violence also generally comes from television). It's also my first opportunity to begin educating the media, who are always present at any hearing on a homicide case up here in the sticks. The bail hearing is an excellent opportunity to begin conditioning the court and community.

In Wisconsin the rules of evidence do not strictly apply at bail hearings and I use this to my best advantage.

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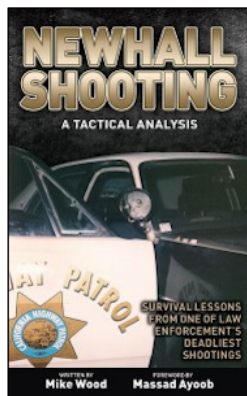
Hearsay is allowable, and learned treatises on the subject of self defense are admissible. At this stage I'm generally not too concerned about revealing my hand to the state, at least in so far as the self-defense aspects of my case are obvious. I do keep a judicious eye on what might be best played as a "hold back" card. Since character of the accused is also at issue in a bail hearing, this is a good opportunity to showcase all of my client's better angles.

The second part of this question involves what should be done in advance of a self-defense shooting to be ready for a bail hearing. Frankly, most of my clients are lucky if they have the funds to afford a lawyer, and much

of my work is by court appointment. Any suggestion of laying up a standing bail fund in lieu of paying the rent would, in these parts, be nothing more than a statement of best intention. I try to school my clients who are interested in self defense in how not to need that bail fund in the first place. To that end, I am quick to recommend Marc MacYoung's excellent work *In the Name of Self-Defense* as required reading.

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*A big "Thank you!" to these Network affiliated attorneys for their helpful responses to this question. Readers, please come back next month for more responses to the interesting insurance question.*



## Book Review

### *Newhall Shooting: A Tactical Analysis*

By Mike Wood  
Gun Digest Books  
ISBN: 978-1-4402-4099-7  
Price: \$27.99  
Paperback: 6 x 9, 252 pages

*Reviewed by Gila Hayes*

Shooting students have long been taught the dangers of habituating range procedures that would surface during a defensive shooting by examples from the deaths of four California Highway Patrol officers at Newhall, CA in 1970. The principles were valid, but were the examples factual? Mike Wood, author of *Newhall Shooting—A Tactical Analysis*, asserts that the facts disprove the myth. Still, to paraphrase, if we don't learn from others' past errors, we may suffer from making them ourselves and this updated study is full of lessons. Writing the book's forward, Network Advisory Board member Massad Ayoob calls *Newhall Shooting* "the best and most comprehensive analysis of the incident yet," noting that it "reminds us that the keys to surviving violent encounters must be in place long before they occur."

What can be learned from a crime that took place over forty years ago? Although the deaths at Newhall were thoroughly investigated in 1970, Wood believes 40 years of survival tactics development clarifies why the officers were overwhelmed. He explains that the April 5, 1970 murders stood for nearly 40 years as the "deadliest law enforcement shooting in history to date." Given the magnitude of the loss, he was determined that the reasons Officers George Alleyn, Walter Frago, Roger Gore and James Pence lost their lives be tapped for lessons that could save others.

The events preceding the Newhall shootings and some of what actually occurred has not been widely discussed. Wood packs a lot of detail into his description of the clash between the four officers and two recently released convicts preparing for an armored car heist for which they had been test firing guns to establish their reliability.

Although they performed the high-risk car stop just as they had been trained, the first two officers on the scene were killed in less than two minutes of stopping their car. After firing their first shots from revolvers, the felons

soon switched to a 12 gauge shotgun with which one officer was killed, while the other convict jammed one 1911-style .45 then grabbed a functioning 1911 to execute the final officer who was reloading.

This reload spawned one of the most enduring myths in firearms training: the report that the desperate officer carefully placed his empty brass cases in his pocket. "It is categorically false," Wood emphasizes. Training changes followed that did indeed require ejecting empty cases to the ground, but this didn't result from specific errors made at Newhall, he asserts. The myth and its subsequent training point was not without merit, he comments, although in the interest of accuracy we should acknowledge that Officer Pence did not pocket his spent brass.

What, then, can be blamed for the Newhall deaths? In the wake of the killings, CHP was fast to laude the quality of cadet training and blamed if anything, the men's mistaken belief that nothing bad would happen to them. While CHP had some of the best police training of the day, the officers who died at Newhall entered service toward the end of an expansion that stretched the institution to its limits. Academy graduates vastly exceeded the numbers of experienced Field Training Officers who could help them transition from academics to street work.

Here, Wood draws an important and revealing comparison. The officers who died at Newhall had time in service ranging from 12 to 16 months, he writes. When graduated from training, they were mentored by relatively inexperienced FTOs, one with a year's street experience and another with two years on the job. In contrast, one of the murderers had been committing crimes for 21 years—since he was 13—and had killed at least two men. The other dodged an assault with a deadly weapon charge by joining the military, where he killed a fellow Marine. He later robbed banks, the sentence for which he had completed "less than nine months before the night Officers Gore and Frago pulled him over in Newhall," Wood explains.

At least one of the officers was an accomplished marksman by the standards of their day, but little focus on actually drawing from their duty gear and reloading under fighting conditions, to name only a few issues that today would be considered deficits, combined with

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tactical errors made during the ambush, and these could not be overcome by superb bull's-eye targets turned in during training. Wood describes the firearms training at the CHP academy as "rudimentary and ill suited to prepare them for a real gunfight."

The California Highway Patrol determinedly pursued the image of sharply uniformed, helpful officers, enforcing traffic safety to the exclusion of what he describes as the "grittier law enforcement roles." Supervisors reprimanded officers who put a hand on their gun peremptorily. Shotguns, seen as too aggressive, had been provided for officers only seven years before the Newhall murders and then only one shotgun for about every ten officers. The shotgun actions were sealed so an officer could not chamber a round without breaking the seal and subsequently having to report why. Wood describes a culture in which aggressive responses were unacceptable.

Although he reviews shooting skills and equipment deficiencies like having to reload out of dump pouches, the psychological preparation of the felons to kill compared to the officers' lack of preparation is defined as the deciding factor. Ambushed unexpectedly, the first two officers on the scene were so poorly prepared that they were unable to ever assert control. Plunged into a life and death struggle, the officers fought two hardened killers while concurrently "battling for control of their own bodies," Wood relates sadly.

What effect did the officers' deaths have on policing? Wood asks. CHP quickly changed the way officers conduct high risk car stops, no longer sending an officer forward to the suspects' car, which had become a "killing zone" at Newhall, a change in agency culture resulting in greater latitude in how officers approached suspects, and changes in their field training procedures.

Applicable to private armed citizens, and taught in modern armed defense tactics, is the lesson to use the available time to evaluate the threat, not rush in if backup is available soon enough, and a host of reality-

based live fire training changes, including use of speed loaders instead of dump pouches, better shotgun training, training with duty ammunition and out of daily-use holsters, dumping expended brass cases on the ground, use of realistic targets, weak-hand and one-handed shooting, reloading, night shooting and clearing malfunctions, Wood accounts.

The watershed event of the Newhall shootings, Wood writes, launched the officer survival movement that today continues to fuel law enforcement survival training, and those principles trickle down to private citizens, improving our tactics, too. Officer survival became the topic of many a magazine, journal, book and recorded work. For-profit training facilities sprang up to fill in gaps left by agency training, he notes.

Has it made a difference? Wood cites CHP tactics at the 2010 Oakland shootout, a conflagration lasting 17 minutes in which a shooter fired nearly 200 rounds from rifles, shotguns and handguns yet only two officers were treated for wounds from glass fragments and none were killed. Yes, it is getting better, he concludes. Still, low hit ratios in actual armed encounters suggest that firearms training still has a long way to go, and Wood cites a swing of the politically correct pendulum back toward limiting officer use of force through a variety of regulations. This is a contentious subject owing to the need to protect citizen rights weighed against very real threats to law enforcement.

Performance will probably lag until more realistic training, including simulations that trigger body alarm reactions can be accessed by all officers, Wood suggests, quoting the Red Baron who observed that a fighter pilot's survival chances rose dramatically after he had survived ten aerial battles. Simulation training, more than qualification shoots, is the path to real change and implementing the lessons of the Newhall shooting, Wood concludes.

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



## News from our Affiliates

Compiled by Gila Hayes

While we all miss Brady's efforts in shipping booklets and brochures to Network affiliates, the silver lining is my opportunity to contact hundreds of our affiliated instructors and affiliated gun shop members about distributing the Armed Citizens' Educational Foundation's booklet *What Every Gun Owner Needs to Know About Self-Defense Law*. Corresponding with them is like taking the pulse of armed citizens all across the nation.

Here's just a sampling:

One of our busiest affiliates is Kevin McNair, owner operator of Tactical West in Las Vegas. Just trying to synopsise Kevin's many activities is exhausting! He teaches CCW classes, hits the gun show circuit regularly, is active in Friends of the NRA and other hunting and shooting foundations, teaches Hunter Safety education, and too much more to list, so read all about it at <http://www.tacticalwest.com/instructor.php>.

A warm welcome to our newest affiliated instructor, Stacy Alexander in Walla Walla, WA who is introducing ladies to guns, shooting, competition and self defense. Her business is Savvy Shooters LLC about which you can read at <http://www.savvys shooters.com>.

In New Mexico, Tom Tomasi gives out our booklet to not only his students, but also to armed citizens he meets at area gun shows. We just sent Tom a case of booklets, so he can continue to share a great informational resource that represents both him and the Network as the go-to source for reliable use of force information.

Moving our attention to Florida, we find Affiliated Instructor James Olsen reaching out to the martial arts community with Krav Maga classes as well as pistol, rifle and shotgun training for shooters of all skill levels in Port St. Lucie. He has a lot of programs going, with details at <http://kravflorida.com/public/port-saint-lucie-firearms-classes/>. He reports that he's giving a copy of our booklet to about 50 students per month.

Up in North Carolina, Mike Faulkenberry is giving our booklets to his concealed carry students at Black Coyote Munitions. Their website has a lot of shooting supplies

for sale, so it is clear Mike does a lot more than teach classes! You'll also be interested to read the historical source of their unique name at <http://www.black-coyote.com/the-black-coyote-story/> and if you are looking for NC certified concealed carry instruction, check out <http://www.black-coyote.com/blog/tag/concealed+carry>.

We have a number of great affiliates in the state of New York including James Emmick who is teaching shooters in large numbers, offering NY pistol permit classes, as well as AZ, UT and FL carry licensing classes plus pepper spray instruction and more. James has a lot going on, so if you're in Western New York, check out <http://ftwny.com/classes-offered/> plus he promotes advanced training with Modern Defensive Training Systems led by Chris Frye. M.D.T.S. is another Network affiliate with a lot going on, so check out <http://www.mdtstraining.com/training-courses/>.

In Indiana, we find Norm Hood of Defensive Solutions LLC sharing skills and knowledge he's accumulated as a career Army officer, followed by six years serving as an Alaska State Trooper plus later government contract security work. Check out his extensive course offerings at <http://www.defensivesolutionsllc.com/courses/>.

This is such a small sampling of news from our affiliates that I wish you could share my email inbox so you could pick up on all the enthusiasm our affiliates generate. Even those who reported that business slowed this summer are looking forward to it picking up in the fall. Some are anticipating the return of shooters to indoor shooting facilities, while others are prepping to fill their final classes before snow flies on their outdoor ranges. As a result, we're shipping a lot of boxes of the Armed Citizens' Educational Foundation's booklet *What Every Gun Owner Needs to Know About Self-Defense Law* to be sure our affiliates can put one in each client's hands.

Please email me at [ghayes@armedcitizensnetwork.org](mailto:ghayes@armedcitizensnetwork.org) or call 360-978-5200 if you need booklets or our tri-fold brochure to give your clientele. Don't forget to tell us how many you need and where to send them.

Thank you, Network friends, for spreading the Network's message at your grassroots level! And members, you should be doing business with the affiliates who are helping grow our Network! Learn more at <http://armedcitizensnetwork.org/affiliates>.

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

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## Editor's Notebook

by Gila Hayes

I was so proud of Jennie Van Tuyt last month that I just have to share her news with our members who may very well know her voice from calling the Network office.

Check out the photo below showing Jennie shooting at the IDPA Nationals in Tulsa, OK last month!



In addition to providing membership services for the Network, Jennie is very active as a facilitator for the national women's shooting organization, A Girl and A Gun (<http://www.agirlandagun.org>). Last summer, the organization made arrangements for 12 of their members who are also active IDPA shooters to participate in the Nationals in their own special squad, and with the coaching of Randi Rogers, who not surprisingly added High Lady in the 2014 National Championship to her impressive list of victories.

Jennie competed in the Enhanced Service Pistol division in Sharpshooter class. She came back with a big grin on her face, reporting that in addition to having a lot of fun, she learned a wealth of competitive shooting strategies.

Now, I know there are those who look down on competitive shooting as a "game," but here's the deal: performing skills under pressure is vital to being able to employ those very skills under conditions of tremendous stress. Being a relatively new shooter of less than a decade's experience and competing at a national championship, is the very definition of pressure! I'm very proud of Jennie for the recognition she received from the

A Girl and A Gun organization, and for shooting with the big boys and girls at a national match.

Sometimes when you call a gun owner support organization, you ask your questions of a call-center employee or a receptionist who, while they may be skilled in taking telephone orders, know absolutely nothing about shooting and self-defense skills. When you call the Network, you are talking to a fellow firearms enthusiast, a gun owner with hundreds of hours of training by the leading self-defense instructors, and someone who shares many of the concerns under which you labor.

### Linked to good performance

"The ACLDN cap was 'promoted' to my main range cap position," writes a member who wears it when he's at New York City's Westside Rifle and Pistol Range. From the target in the photo he sent, we're in good company. Thanks for this example of good use of the Network logo cap, sir.

Sometimes members get the cap in their member package and express concern that it isn't wise to publicly advertise being involved with guns and self-defense preparation. We couldn't agree more! As our member above demonstrates, it is, however, fun to fly the colors once you're at the range, and if your shooting buddies ask what the ball cap with the scales of justice is all about, tell 'em to go online



to <http://www.armedcitizensnetwork.org> and see why you've become part of our member support organization. Tell 'em you're proud that over the past six years your organization has been there to help eight members who defended themselves. Don't forget—we are all in this together!

*[End of October 2014 eJournal.  
Please return for our November 2014 edition.]*

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## About the Network's Online Journal

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

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

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

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

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

Marty Hayes, President

J. Vincent Shuck, Vice President

Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

Please write to us at [info@armedcitizensnetwork.org](mailto:info@armedcitizensnetwork.org) or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.



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