

Training for the Armed Citizen – Part 3

Legal Training for the Armed Citizen

by Marty Hayes, J.D.

I started down the path of the armed citizen back in the 1980s after working for several years as a police officer. When I left law enforcement, for a few years I did not carry regularly, the gun being associated with police work in my mind. Nonetheless, when I needed to settle on a long-range career plan, I ended up going into private firearms instruction, having heard of companies like Gunsite, Lethal Force Institute, Defense Training International and others.

A new indoor gun range was opening in my area of metropolitan Seattle, and I figured why not give this a try? After all, I was a certified police firearms instructor already and a top-level competitor in NRA PPC. At the same time, I came to realize that regardless of whether or not I was in law enforcement, I should be carrying a gun full-time. When I got the teaching job, I needed to start planning a class curriculum, and told myself that I would not teach people how to kill, unless I also taught them when and when it was not legal to kill.

The only literature I could find on the subject came in the form of a little paperback book entitled *In the Gravest Extreme*, writ-

ten by Massad Ayoob, a name I had followed from the popular gun magazines. The day I bought that book, I started reading it and didn't quit until I had read it all. Combining what Ayoob had written and what I had learned from my police academy days, I put together an hour-long lecture teaching the justifying factors of ability, opportunity and jeopardy and jumped into teaching feet first. Back then, the purpose of deadly force training was to make sure the students understood when it was lawful and probably more importantly, when it was unlawful to kill someone. Today, the circumstances have changed somewhat.

Not only do you need to educate yourself as to when you are allowed and when you must not use force in self-defense, you also need to be able to discuss your legal training and show that you were following your training, if needed, in a court of law. There is an old saying in police training circles: "If it isn't documented, it didn't happen." That is true because judges have great latitude over what evidence they allow into court. If the judge thinks that perhaps you and your attorney got together and concocted a story claiming you knew the law before you used deadly force, then the judge could disallow any testimony relating to what you say you knew before the incident. If you

Marty and Massad co teach a segment of a Use of Deadly Force Instructor class taught in Washington State a few years ago.



Photo courtesy of Massad Ayoob Group.

can show through documentation that you had been presented certain materials during training and that you understood the material, then any decision by the judge to disallow that testimony would be subject to being overturned by an appellate court. One of my favorite sayings regarding this comes from Washington State Supreme Court case *State v. Janes*, 121 Wn.2d 220 (1993) 850 P.2d 495:

"The longstanding rule in this jurisdiction is that evidence of self defense must be assessed from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees."

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There are similar rulings in all the other states, too.

This means that the defense (representing you) gets to tell the jury what you (as the defendant) knew prior to the incident, if that knowledge is both relevant to the case and is reliable. When discussing use of force training, that means it must be documentable.

So, how does someone who is not a lawyer get legal training? Well, first, being a member of the Network, you have access to many hours of legal training and that training is documentable. The Network provides all members with nine educational video lectures streamed at <https://armedcitizensnetwork.org/members/lectures-on-video> and Massad Ayoob's book *Deadly Force: Understanding Your Right to Self Defense*.

I hope you won't stop your legal training there. In your self-defense trial, wouldn't it be nice to have a member of the local police department come to your trial and testify about what he or she taught you regarding lawful use of force? That is exactly what happened during [Larry Hickey's first trial](#), where Sgt. Brian Kowalski, who was Larry's CCW instructor, testified on Larry's behalf.

When you are choosing instructors, make sure the instructor knows that you would like to have the option of calling them as a material witness to testify to your training. If they balk at the suggestion, find another instructor.

Now, there's more than just legal/bookwork training to consider. Recognizing and responding to pre-attack indicators is one subject which I believe is critical for the armed citizen to study and understand. I am talking about the physical and/or verbal cues which would lead a reasonable and prudent person to believe that an attack was imminent. During my police days, I was once investigated for excessive use of force, and it was because of my documentable training in pre-attack indicators, the local prosecutor said, in effect, "Nothing to see here, move on." I am heartened to see many, many good trainers in the country realizing the necessity of this training and offering it, along with books and videos that are also being produced. You Tube is a great resource for some of this information. When you watch a video or read a book, take a few notes and document what you learned.

Additionally, it is critical that the armed citizen participate in decision-making scenario training. Back in the 1970s, the Federal District Court case *Popow v. City of Margate*, 476 F.Supp. 1237 (1979) was decided. One of the lines of that opinion read:

"The only continuing training was shooting instruction approximately every six months at a range in Atlantic County. However, there was no instruction on shooting at a moving target, night shooting, or shooting in residential areas ... Furthermore, the officers viewed no films or participated in any simulations designed to teach them how the state law, city regulations or policies on shooting applied in practice."

That case centered on the question of whether the City of Margate was negligent in failing to train their officers since there was no documentation that Margate did any training other than shoot at stationary targets. Sadly, this is still state of the art in many police departments, but you do not have the constraints of police agencies and their training policies. I first participated in decision-making scenario drills through John Farnam's excellent training back in the early 1990s. I immediately incorporated decision-making training scenarios into my courses and continued to teach decision making until last year when I retired from teaching.

The legal and ethical principles driving your decisions in a self-defense situation are expertly taught by Network Advisory Board Member Massad Ayoob in his *Armed Citizens' Rules of Engagement* training course around the country. Check his website <https://massadayoobgroup.com/mag-20-classroom/> for locations and dates. While you're on his website, also check into the *Use of Deadly Force Instructor*, which I'd like to talk about for a minute.

Instructor-level training in use of force for self defense is another great option for armed citizens. In the mid '90s, Massad Ayoob and I developed an instructor training program designed to address the deficit of training in the legalities of using force in self defense. To this day, we continue teaching together once or twice a year, offering the Massad Ayoob Group's *Deadly Force Instructor* training at selected locations around the country. It is hard to imagine a stronger defense than being able to show the jury that the person being prosecuted is an expert in the discipline. Being an instructor is considered by most courts as meeting the definition of an expert. *Use of Deadly Force Instructor* courses are listed on the Massad Ayoob Group's website, and I know of two that are scheduled in 2022, one in Michigan and one in Pennsylvania.

Lastly, colleague Andrew Branca's *Law of Self-Defense* has been doing some excellent work through Internet class offerings and an occasional seminar. Andrew has both user courses and now also offers instructor courses in a convenient Internet-based format. I have taken the user course he routinely gives at the Rangemaster Tactical Conference, and one day I expect I will likely take the instructor training, as well. These are the only two instructor training courses that I can recommend at this time, and I warn you to be very careful as to whom you take training from, since your instructor may become a critical part of your defense team if you ever have to defend yourself in court.

This wraps up the series on training for armed citizens. I hope you enjoyed it and that you will look into following the suggestions I've presented.

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Getting New Armed Citizens Started Right

An Interview with John Farnam

Interview by Gila Hayes

There's no disputing that the unrest of the past several years has resulted in a lot of new gun owners. While the mainstream media and occupants of academia's ivory towers issue dire warnings of death and destruction and wring their hands over why Americans of all walks would want to own guns, armed citizens quietly welcome their new compatriots and reach out to share skills and experiences to help these newest members of our community. Perhaps new gun owners feel safer asking friends or family for advice, coaching, and mentoring as they enter the world of the armed citizen because often it is friends and family members to whom they turn for advice, guidance and answers to the many perplexing questions they encounter as they began to carry guns for self defense.

What should be the focus of our support and advice? I had the opportunity to pose that question to internationally-known and loved firearms instructor John Farnam, who with his wife, Vicki Farnam, has been introducing students to the armed lifestyle for over 40 years. When John visited not long ago, we had the chance one evening after his class to talk about the needs of these new armed citizens. We share that conversation here in question-and-answer format.

eJournal: New gun owners, of whom there are many, frequently ask for coaching from gun-owning friends and relatives. As a result, non-instructors often serve as first contact for men and women who are new to guns and self defense. What should be the focus of the non-instructor when approached with this challenge?

Farnam: That is a big question to answer. Let me tell you what we are seeing: there are a lot of new gun owners. Retailers are telling us that people they have never seen before are coming into their shops. In addition to being new to the gun shop, many of these people have recently been on the anti-gun side and many of them are wallowing in hypocrisy. They have said to themselves, "I would never have a gun! I would never want to do anything like that!" They have told people that they do not like guns, and now they are buying one. I have seen this!

Retailers are also telling me that people are conflicted. They are struggling to admit that they have been wrong all this time. That is pretty tough, but, of course, there is some crime situation that compels them to realize that the argument about guns is much more than just interesting conversation. This is real. So, they run out and they buy guns. One symptom we are seeing now is a rash of UDs – unintentional discharges.

eJournal: I suppose the likelihood of misfortune increases if you try to use a tool for which you have received little to no training.



Farnam: You know, the majority of guns that are being bought won't be used and will probably spend the next 20 years in the box that they came in. People buy them, remain conflicted, and think, "I will just put it in this drawer until I can get to it later." Well, later never comes and the gun never has a chance of doing anybody any good. After the person dies, their children will open the drawer and say to each other, "Oh! Did you know Dad had this?" That is going to be the fate of a lot of the guns sold.

A few people – the minority – may get past the conflict and say, "You know what? I need to go to a course." If we can get them into a competent training course, now we can guide them through their conflict. I have had students like this, and I tell them, "Yes, I have heard this all before and what you are going through is fine. It is perfectly normal."

eJournal: Do they need to hear those reassurances from you?

Farnam: Yes, they do. They need to know that what they are thinking is OK. They need to know that they are not odd, that they are perfectly normal, that they are now among people who also are finally realizing there are several things they thought were true that are not. Many are facing the question of, "How can I admit that I was wrong?" Well, I guess if you can't admit you were wrong, you will never learn anything, will you?

eJournal: Sometimes the new gun owner is a senior citizen with 40 or 45 years of endorsing an anti-gun agenda; facing such a big change could be really difficult.

Farnam: Yes! I do not want to get involved in the political side of this. I tell my students when they come to a course, "You did not come here to get a political lecture from me. I have opinions, to be sure, but I did not come here to lecture you on politics. We are here to learn a couple of things."

Number one: We need to learn how to operate a machine. Now, if you can operate a toaster, then you can operate any gun that I know of. You have to learn a set of psycho motor skills, but secondly, you also have to learn a philosophical overlay that makes it all make sense.

eJournal: What do you mean when you say "philosophical?"

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Farnam: The skillful shooter who is hopelessly indecisive will be no better off than a flattened squirrel on the street who couldn't make a decision. All their skills will amount to nothing and will not do anybody any good. So, yes, we can teach you how to run a machine, but then we are also going to have to teach you how what we know as the criminal justice system is likely to work and the type of things you should expect.

This is part of the process that we call inoculation. I would like to inoculate you, to acquaint you with all of the bad things that are going to come your way, so that when they happen it is not so scary because you are not getting blindsided. You have been told what to expect. You think, "Yeah, Farnam told me this might happen." It is not quite so scary; it is not quite so hard to deal with.

Then we have to teach about lifestyle changes that are going to be to your advantage when you want to be one of us and have guns for defensive purposes – what we call serious purposes – and go armed, as we all do. It seems pretty normal for us, but I know it is a new concept for a lot of people.

Our good colleague and friend, Andrew Branca, has helped us think about this with what he calls the five elements that justify use of deadly force in self defense. While I thank Andrew, I shamelessly teach my students about his five pillars because I think it is a good way for you to think about it. The five pillars are –

- innocence,
- imminence,
- proportionality,
- reasonableness,
- and the fifth, avoidance, which in my opinion is the most important.

Students need to understand that when they are in a place or involved in an activity that most people would regard as stupid or sleazy and if something terrible happens, they shouldn't expect sympathy from a jury. You shouldn't expect much sympathy from a judge or from investigators. They are all going to say, "You know what? Smart people don't go to places like that. When you went there, what did you think would happen?" This is why I think that of all of the five pillars I mentioned, avoidance is the most important. That is what we emphasize.

Of course, not all bad things are avoidable, but most are. Our students have got to be compelled to look at their life and say, "What can I do? How can I tweak this a little bit to make a lethal encounter less likely?" You can't make a lethal encounter impossible, but you certainly can make it less likely.

We want you to say, "I need to look at the places I go, at the people I associate with, at the kinds of activities I am involved in and see if I need to make changes." Making changes is a big problem for most of us because it involves admitting that we are not perfect and admitting that we need to abandon some ways of thinking and we need to take on new ones. But we call that growth, don't we? We call that growing up.

eJournal: Difficult as it can be, we all need growth.

Farnam: A lot of what I am teaching today, I did not teach as recently as last week. I have been compelled to adopt new ways. The way we were doing this was, well, "wrong" is probably not the right word, what we were doing was not wrong, but now it is obsolete. It is out of date; now there is a better way. I did not invent it, but you know what? I have got to adopt it.

That is how our art grows. Growth involves us worrying a lot less about our personal egos and a lot more about advancing the art and a lot more about the welfare of our students. I teach with a lot of associate instructors who are instructors in their own right. Sometimes a student says, "He told me to do it this way and you told me to do it that way." I regard that as healthy. This art is developing and evolving. We have not reached the pinnacle of perfection yet.

Well, our students have the same issues. Our students need to understand that learning this art, or any other art, is admitting to yourself that you have been wrong or admitting to yourself that there are things that you should know that you don't know.

The religious term is "repentance." Regret is an emotion as common as it is worthless. When things go wrong, don't we all regret it? Too often, though, we don't change anything. That ensures that it will happen again! How dumb is that? If you say, "I regret that," it tells me nothing. If you want to learn, you are going to have to repent. That implies changing direction. That implies looking into a mirror and saying, "You know what? I am going in the wrong direction. I need to change."

That's tough. That's tough, especially for people with big egos but changing direction may save your life. If you come to a course, you are going to have a lot of opportunities to repent. You have heard me say to my students, "Basically, you are here to fail. You are here to fail because when you fail, that is when you learn." What do we learn from success? Very little is ever learned from success. We learn from failure!

I think it is important for students to fail because then they are confronted with it and have to say, "Do you know what? When I keep doing it this way, I am going to continue to fail." As the expression goes, when you keep doing what you're doing, you are going to keep getting what you are getting. When you do not like it, you are going to have to change.

We are here as instructors to guide you. If we say, "Here is the direction in which you need to go," then you need to go there. You are the one who needs to look in the mirror and say, "Yep! I am going the wrong way. I need to change. I need to repent." Use whatever word you want to use. Just as I don't deliver political lectures in my classes, I don't deliver religious lectures.

The goal of the instructor and the student is always the same: the improvement of the student. We have to do whatever we have to do so that the students can improve. Often times, the

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student is not going to like it; often times it is going to be bitter medicine. I tell students in advance, "You are not going to have fun. This is not going to be enjoyable. This is not going to be entertaining. It is going to be work. It is going to be drudgery. It is going to be frustration and failure over and over again. Then you might learn something."

eJournal: That's also a warning to folks who are approached by a friend, loved one, or valued associate who wants coaching in how to be, as you expressed it, "one of us." The hard lessons required may be better administered – not by a close friend, family member or coworker – but by professional instructors, like you and Vicki.

Farnam: *[grins as he interjects]* ... or go to any of my very competent colleagues. I am not going to name names because there are so many that I am sure to forget someone, but there are many instructors. As you know, I am in my 70s now, so I represent an aging generation. I enjoy what I am doing, and I am reasonably healthy, so I want to keep doing this for as long as I can, but there are limits.

In another decade I will be ancient history and, I am sure, a fading memory. In the time I have that God has seen fit to give me, I want to influence the next generation of instructors. I want to pass onto them what I have stolen from all of the wonderful instructors before me. Our new generation of instructors will develop new techniques that I never even thought about. That is how the art will be advanced. We can take some comfort that, in the time we have been here, we have advanced it and we have influenced some people. What better thing is there than that?

eJournal: When did you start teaching?

Farnam: When I was a young Marine officer in the 1960s [laughs] A.D. That is when I realized that was what I really liked to do. It has been close to 60 years.

eJournal: Then you got out of the service and entered policing...

Farnam: Yes, and I was just as frustrated there because the training was poor. We were not taking advantage of the lessons learned and I got this nutty idea that I could do a better job than the people who were doing it. I started teaching and, of course, I nearly starved to death.

That was over a half a century ago and I have been doing it ever since. As you can probably tell I would make a poor employee, so I have to be independent. I have been an independent consultant my entire adult life. I have been a soldier. I have been and still am a police officer. Teaching and influencing the next generation of both students and instructors is where the real joy in my life comes from. Our students say that I am more of an evangelist than a teacher.

Now and then I consult with attorneys on legal matters, and I

get involved in cases. I am often asked, "How much of this do you do?" and I answer, "As little as possible! I hope this does not hurt your feelings counselor, but I would rather work with students than lawyers."

I do find it good to get involved in cases because that enhances my experience. I can see firsthand how things work. I don't enjoy some of the things I do as much as I enjoy others, but I know there are some things I need to do to expand my résumé and my experiences.

eJournal: Well, that is true for all of us, so there's another Farnam lesson – do some things you don't particularly like. Learn new things for yourself.

Farnam: I tell my students you need to listen to me, of course, but I also need you to start forming your own opinions. Get your hands on different weapons so when someone asks you, "What do you think of this pistol, or that one?" you won't say, "Well, Farnam says..." No! I want to know what you say! I might have started you out, but I don't want to over-influence you because I might be wrong. Maybe I don't like a gun for the wrong reasons and maybe you will be the one to discover the real benefit of a piece of equipment that I don't like.

I like to get as many experiences as I can. Some are more enjoyable than others, some are painful. I certainly have not won every case that I have been involved in. The lessons may be pleasant or bitter, but they are still lessons which I can share with my students, which is the very definition of education. Education is learning from other people's mistakes.

We have made all of these mistakes. You do not have to make them. We have made all of these mistakes! We've learned. Now you can get out there and make your own mistakes.

eJournal: Both education and experiences of trial and error await today's wave of new gun owners. Inevitably, mistakes will be made. Hopefully, we can provide enough guidance that they will be small, survivable mistakes, not fatal errors.

Farnam: Listen, life is tough. Frankly, right now I am not very optimistic about the future. I don't think anything is going to get much better for a while, which means we're going to have to be able to look after our own best interests. That may mean not being able to rely so much on societal forces to protect us. As you mentioned, many will fail that test. They will die in amazement. They will die with, "This is so unfair!" on their lips. Whether or not it is fair won't matter; they will be dead anyway.

eJournal: As hard as it is to watch, reality dictates that we cannot save every life. Some people will fall victim to bad choices or bad people. We hope to save our loved ones.

Farnam: Maybe we can save a few. Maybe we can introduce a few to the true way. I realize those will be in the minority, but that is the joy in what we do. You know, I said on the matter of

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avoidance that you have to look at the people you associate with, the places you go, and stuff like that. I don't mean to say you should spend your whole day sitting alone in your room. I want to experience every good thing this life has to offer. I want adventure; I want accomplishment. I want to fall in love. I want to have a family; I want to have children; I want to have grandchildren.

There is no risk-free version of any of that. Risk attaches to everything. The alternative is not to accomplish anything. When we talk about risk avoidance or risk management, we have to do that within the context of what we want to accomplish in this life. I intend to go places and do things and influence people. None of that is risk-free.

In our business, especially in regard to guns we can distinguish what we refer to as normal risk which attaches to everything, and we can distinguish foolish risk or suicidal risk as doing dumb things with guns or dumb things with cars or dumb things with motorcycles. People get hurt all the time doing dumb things in this high-speed world of ours. I don't know – I don't feel very sorry for them. What did they think was going to happen? That is easy for me to say, as I am sitting here at my age, having been through that. When I was a teenager, I was just as dumb. How I lived through it is a mystery! Now, I tell my students, "I don't want you to act my age; I want you to act in a way to where you can get to my age."

eJournal: John, I think if you keep spreading the light and showing us how through your actions and life choices, perhaps we can do just that. I sometimes think when younger friends or family members come to me for guidance that if I could channel John and Vicki Farnam, I could help them a lot more and if I could get them to one of your courses or classes taught by your associates some of the life-changing lessons could be

taught with greater effectiveness. There truly is much more to getting the new gun owner off to the right start than going out plinking with friends or relatives.

Farnam: I tell my students right at the beginning, my goal in this course is that we all die of old age...

eJournal: ...and you, John, please keep in mind that none of us are old enough to go yet! We still need your influence and guidance.

Farnam: Maybe tomorrow, but today I have things I need to accomplish.

eJournal: That's right! Thank you for taking the time to share your knowledge and experience with us today, and for all the mentoring and redirections you've courageously given to so many of us these many years past.

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About John Farnam: From the Network's first months of existence in 2008, we were fortunate to be enjoying John's guidance on our Advisory Board. He is president of Defensive Training International and has personally trained thousands of federal, state and local law enforcement personnel, as well as non-police, in the serious use of firearms. In addition, he has authored four books The Farnam Method of Defensive Hand-gunning, The Farnam Method of Defensive Shotgun and Rifle Shooting, The Street Smart Gun Book, and Guns & Warriors – DTI Quips Volume 1.

John and Vicki's teaching schedule is listed at <https://defensive-training.com/schedule/>. Reader, if you are able to attend one of those classes, don't hesitate, take a class with the Farnams!



President's Message

by Marty Hayes, J.D.

As I write this column, it has been exactly two years since the Network received a cease-and-desist letter from the Washington State Office of Insurance (OIC) Commissioner Mike Kreidler ordering us to quit conducting the "business of insurance" in Washington State.

At that time, we either could have ignored the order because we were not conducting the business of insurance in Washington State, or we could comply and appeal the order. Out of an abundance of caution, we chose to do the latter, and stopped selling new memberships in WA. We immediately appealed the order.

Two years of legal wrangling have passed. First, we needed to fight the order by appealing to the OIC itself. That was a joke, because it was the OIC that decided we were selling insurance in the first place, but in order to get our argument in front of a real judge, not a "presiding officer" who gets her paychecks signed by the insurance commissioner, we had to go through this process.

That took the better part of the first year, and when it was finally adjudicated, we were able to file a request for a judicial review in superior court. At that point, Washington's anti-gun Office of the Attorney General took over the legal representation for the Insurance Commissioner. Ever since it has been "slow-rolled" through the court process, with many additional hearings and delays. It has now been two years, and soon we will have finally been able to make our case to the court in Lewis County, where we filed the action.

Our petition is available to the public through the Lewis County Superior Court, so our attorney Spencer Freeman and I felt it would be appropriate to share that document with our members. I provided a link to it in our April email notice to members and in case you missed that email, it is <https://armedcitizens-network.org/members/resources>. Please note that member log in will be required to access the PDFs.

We have also on our website's member-only Resources web page provided links to the documents discussed in our written brief to the court: the original cease-and-desist letter, and the final decisions by the presiding officer Julia Eisentrout. These are also public documents, so we're not disclosing confidential information. If you're a member having trouble with log in, please call or email and we will get log in working for you.

How did we get to this point? We went through two previous law firms, one local here in Lewis County who dealt with the OIC investigation, another in Seattle advised us on the case as they had been involved with the OIC in many other matters, finally I located a Tacoma, WA attorney, Spencer Freeman, who had challenged the OIC before and won against them. The biggest issue has been that Spencer is a sole practitioner and many times he was tied up on other matters.

So, to augment his fine work, I put on my "Junior Attorney" badge (that's the badge you get when you complete law school but do not take the bar), and for the past two years I have been working on our legal case behind the scenes, doing legal research and working on our legal argument. Having spent all this time, I can distill our legal argument into layman's terms which I think would be useful for Network members. Our argument basically hinges on these four points.

First, here is the definition of insurance in WA State. "Insurance is a contract whereby one undertakes to indemnify another, or pay a specified benefit upon a determinable contingency." Let's study those elements.

1. Contract—In order to meet the definition of insurance, there must be a contract for insurance. Case law indicates a contract is formed when both parties come to a "meeting of the minds" after which consideration (membership dues) is paid, that consideration is accepted, and the terms of the contract are fulfilled. In regular insurance, that would be the signed policy with all that tiny, fine print, but membership in the Network has no policy. We argue that with no policy, no contract, we could not be selling insurance.
2. Indemnification—Insurance policies (which we don't have) state that a person would be indemnified (paid money to cover a loss) if some pre-determined event occurred. The original NRA Carry Guard was this type of policy: they promised to pay you back for all your legal fees if you were acquitted. We do not promise to pay anyone back, for anything, thus no indemnification.
3. Pay a specified amount—We removed all references to paying dollar amounts (like the self-defense insurance companies still do) before we were served with the cease-and-desist order. That change to our website coincided with the Legal Defense Fund having grown to over two-million dollars and now, with the Fund sitting at over three million, there is simply no reason to set an artificial dollar amount on how much money we would pay for your legal defense. Like the fact there is no indemnification, there is also no specified amount.

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4. Determinable Contingency—If we did actually have a contract which promised to either indemnify you or pay you a specified amount, then that would be subject to the occurrence of a determinable contingency. As you will read, if you go through the document I linked, you will find that we argue that self defense has no contingency aspect to it. A contingency hinges on chance, something over which you have no control. An act of self defense is an intentional act, not a contingent act. You would not be indemnified for the cost of your home if you purposefully burned it down, because that would be an intentional act. Deciding to act in self-defense is also an intentional act. One does not have to respond to a provocation.

I could go on and on, but if you want to read more, read the brief. I thought it might be helpful to outline a part of our argument and put in non-attorney language, for those who do not speak legalese.

The hearing in Lewis Count (WA) Superior Court is set for May 13, 2022 and will be open to the public. If any member wants to attend the hearing, either in person or by Zoom, he or she will be allowed to do so.

When that date gets nearer, I will explain in further detail how that will work. I will have more for you next month.



Attorney Question of the Month

For this month's Attorney Question of the Month, our Legal Services Director Art Joslin, who also does

expert witness work, queried our affiliated attorneys about their experiences working with expert witnesses in self defense cases. We asked-

What has been your experience using self defense expert witnesses?

What issues have you found most common in getting an expert admitted?

Our affiliated attorneys shared the following-

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<http://johniharris.com>

I have been involved in several cases, both civil and criminal, where the justifiable use of force was a relevant issue. In each, where I believe that an expert witness would provide strong testimony in support of justifiable use of force, I prefer to take advantage of that opportunity.

For example, in a use of force case that involved a private security officer who resorted to use of force and shot a third party, I was able to work with the professional training instructor who had regularly provided the use of force training for the officer that was involved in the shooting. The instructor could have been called in his capacity simply as a "fact witness" who had provided the training but it was important in that case to go far beyond that testimony and to introduce expert testimony on industry standards regarding standard operating procedures for both private security and law enforcement on how to recognize a developing threat, what to do along the force continuum, and when the threat elevates from the point justifying non-lethal force to the point justifying use of deadly force. I have experienced that this degree of expert testimony from a truly well-qualified expert is an important consideration for the jury to hear. Indeed, it helped in several of my cases that the individual giving such testimony had been a law enforcement officer who had resorted numerous times to use of deadly force and was found each time to have been justified in making that judgment call.

However, use of force experts are not the only category of expert that may be relevant. For example, I have used ballistics experts to talk about the projectile's trajectory. I have used

training experts to discuss safe and responsible training practices, weapon selection, ammo selection and even to address issues pertaining to how the individual holstered or carried the firearm. All of these are just some examples of where expert testimony tends to have more relevance to the jury and is typically seen as more persuasive than the defendant or the accused giving similar or even identical testimony.

There is an additional issue and that relates not to whether to use an expert but which experts to use. Frankly, there are some instructors or potential topical experts who simply are not good choices for expert witness testimony. It may be that they simply are not comfortable speaking in a courtroom. It may be that they are not a personality type that would handle appropriately an aggressive cross examination. It may be that their credentials are too thin in terms of where they got their training, what type of training it was, how diverse their own training has been, and how many third party certifications they hold. It may also be relevant as to whether their own teaching or instruction is limited to civilians or whether it has included law enforcement, private security or military courses. Just having an expert is not enough, it has to be the right expert.

Another problem I have encountered is not really an expert witness issue but it is a potential client issue. That has to do with individuals who see no value in regularly pursuing or obtaining professional instruction from qualified third party instructors. By qualified I am talking not only about that instructor's own "résumé" of courses or experience that they have taken as a student but also whether that instructor would be a good trial court witness. The simple fact is that there are highly skilled individuals who simply are not "courtroom" quality in terms of their ability to communicate or withstand scrutiny.

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Self-defense expert witnesses can be crucial to your case. The state has the burden of disproving self defense beyond a reasonable doubt, and the self-defense expert can go a long way to making the state's burden nearly impossible to meet. Because the state knows that an expert witness will make their case very difficult, they will often challenge the qualifications of the "expert" and ask the court to prevent the witness from testifying as an expert.

In Indiana, two requirements must be met for a witness to be qualified as an expert. First, the subject matter must be distinctly related to some scientific field, business, or profession beyond the knowledge of the average layperson, and second,

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the witness must be shown to have sufficient skill, knowledge, or experience in that area so that the opinion will aid the trier of fact (typically the jury).

The burden of establishing the qualifications of an expert witness is on the party offering to have the witness' testimony admitted as expert witness testimony, and it is not the burden of the adversary to prove that the witness is not qualified as an expert. Whether a witness called as an expert is qualified to testify as an expert is a question for the court to consider and decide. The court's decision in this regard will not be easy to overturn on appeal, so it is important to make sure your counsel is prepared to offer the expert witness. The court's decision will only be overturned where there is a manifest abuse of discretion.

In order for someone to testify as an expert, the court has to agree that the person is an expert and is qualified to testify as an expert. So, establishing the individual's qualifications will be crucial to getting the expert's testimony in front of the jury. Oftentimes, the judge will hold a hearing either before trial or outside the presence of the jury to make a determination about whether the person being called as an expert has the qualifications to be held out to the jury as an expert. However, to the extent that it is possible, you will want the jury to hear the qualifications of the person testifying as an expert.

There are occasions where the state will know that your self-defense expert witness is undoubtedly an expert. In these instances, the state will not go through the trouble of challenging the qualifications of the expert but may try to stipulate to the expertise of the witness so that the jury does not hear the extent of the expertise. You, on the other hand, may want the jury to hear the expert's qualifications so that the jury can determine how much weight to give to the expert's testimony. The more qualifications and experience the expert has, the more weight the jury is likely to give to the expert's testimony, thereby making the state's case against you even more difficult.

Once the expert is admitted as an expert, your counsel will want to be sure to remain within the bounds of the witness' expertise during questioning. Questions that are asked of the expert beyond the expert's specialized knowledge will be subject to objection and will interrupt the crucial testimony from the expert. So, it is important to maintain focused questioning during the testimony of the expert. Preparing with the expert before trial goes a long way to making this process go smoothly.

In fact, the last time we used an expert at trial, we also had the opportunity to discuss the case with the jury after the verdict. The jury had returned a not guilty verdict, and each of the members of the jury indicated that they had made their

decision about the verdict immediately after hearing from the defense expert. This demonstrates the degree of influence an expert can have on a jury.

Furthermore, an expert can often serve to educate the judge and the prosecutor. You might think that a judge and prosecutor would be well-versed in concepts related to self defense and the use of force. In our experience, prosecutors and judges are often unfamiliar with concepts related to the use of force, and an expert can go a long way to defeating misconceptions commonly held by judges and prosecutors.

The Armed Citizens' Legal Defense Network provides great resources and education from experts, but if you are in need of an expert for your self-defense case, the Network can also serve as a great resource to help you get connected with the right expert for your case.

For additional information on this topic, be sure to check out Gila Hayes' interview with Emanuel Kapelsohn: <https://armed-citizensnetwork.org/the-role-of-the-expert-witness> .

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My experience with self-defense expert witnesses has been frustrating, especially in criminal cases. Many experts say they will not make a decision on whether to testify until after I send them discovery. I can't even use an expert in those circumstances. In my state (Georgia) in a criminal case, the state does not have to provide discovery until 10 days before trial. It's too late 10 days before trial to know if I even have an expert, let alone what his testimony will be. The implication of this approach is that the expert will only testify for the "right" case, which in turn implies that the expert has an agenda. In other disciplines, experts just take the facts supplied and offer professional opinions based on those facts. Taking only the "right" cases means the expert only will testify if he can opine a certain way – the facts have to fit the opinion he wants to give. I can't really use an expert like that.

Getting an expert admitted in Georgia is a simple matter. While the test uses more flowery language, the bottom line is that anyone who knows more about a topic than the average person can get admitted as an expert. I have a friend who once had an elderly, uneducated and untrained woman who had raised several children and grandchildren admitted as an expert in diapers.

Thank you, affiliated attorneys, for sharing your experiences with expert witnesses. Members, please return next month for a new topic of discussion.

April 2022

Book Review

Self-Defense Against A Dog Attack

by Loren W. Christensen

LWC Books, 2012

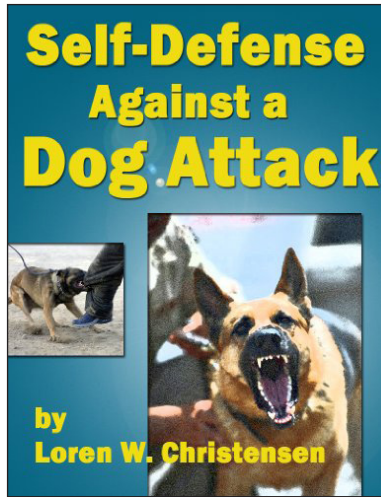
\$4.99 for 112-page eBook at <https://www.amazon.com/Self-Defense-Against-Attack-Loren-Christensen-ebook/dp/B018PUX2DS>

Reviewed by Gila Hayes

My Internet search history must be catching up with me! Dog training and self defense—searched separately—are so frequently in my search parameters that I suppose it is no surprise that a recent Internet search unexpectedly turned up a book about surviving dog attacks. Naturally, I clicked the link which led me to a 2012 book by an author I hadn't read for a while. Over the years, I've appreciated retired law enforcement officer and martial arts author Loren Christensen's ability to brief self-defense practitioners on topics of concern. In 2008, one of our earlier book reviews was his volume on workplace violence, he has a great little volume on school shootings and several times, we've recommended *Deadly Force Encounters*, a book Christensen and Alexis Artwohl co-wrote.

Dog bites deserve serious preventive measures, and before members ask, "Why not just shoot it?" allow me to observe that we also have to be concerned about missing and causing unintended harm to something other than the dog. We have to worry about ricochets off pavement, shooting in a crowded environment and whether or not we can hit a rapidly moving canine attacker that's all tangled up with a family pet, a child or one of our own limbs. We need options in addition to the gun.

Christensen, best known for his martial arts books, has the chops to write this book. He was a dog handler in the Army and has retired after a career in law enforcement. He challenges our preconceived notions about dogs and calls out pet owners' mistaken belief that their pet is domesticated and thus harmless, commenting, "Too many people fail to realize that their pet still has a primeval side, one based on eons of fighting for survival when cave people lived in, well, caves ... This primeval side—unpredictable, savage—always shocks people, though it shouldn't." This is a common blind spot, he continues, warning readers against upbraiding others about their dog's behavior. "It's indeed common for an aggressive dog to reflect its owner's personality. This is important to keep in mind should you want to confront an owner, say, in a park, to complain about his dog running about unleashed." Leaving the vicinity is safer and if worried that others may be endangered, call the authorities, he advises.



Relating vignettes from his experience to illustrate his point, Christensen stresses that no matter how much we love our dogs, they don't lose the "ancient dog ways" and even the nicest pet can get stuck in that primitive instinct under the wrong circumstances. While we may have greater fear of a lone, wandering dog, he observes that over three-quarters of dog bites occur on the owner's property or when the owner is present. Nonetheless, a later section discusses wild dogs, signs of rabies infection in dogs, and the good news about modern rabies treatment if you are bitten.

Christensen writes that dog bites can generally be categorized into what he calls –

- The typewriter bite
- the shake-a-rabbit bite, and
- the pressure bite.

The wounds range from multiple bites delivered in rapid sequence (like an old-fashioned typewriter), to flesh literally torn away, to broken bones and dislocations, he explains. He describes dog postures and behaviors that can suggest the level of threat and readiness to bite, including the canine version of the 1000-yard stare, a fixed gaze off to the side. Is offering a food treat a good strategy? Maybe not! He explains that food aggression can make "offering food to a threatening dog...risky."

Christensen discusses derailing a charging dog attack with command voice, a "deep, commanding" NO! and teaches how to mask your fear through stance, body positioning and vocal tenor. When worried about danger from a nearby dog, blade your posture and take a power stance with knees slightly bent and keep your hands closed, he advises, because fingers have been amputated by dog bites. Don't run or flail your limbs which dogs can perceive as threatening, he continues, and concludes, "If the dog doesn't react to your 'stay,' 'no,' and 'down,' know that you're facing a potentially dangerous animal, one that is definitely unpredictable."

Defensive stances you can assume for stability that the dog won't interpret as challenging are illustrated. If the attack materializes and you have no intervening objects or other escapes, you may survive by employing kicks to specific targets (he acknowledges the very real possibility of bites to the foot or leg), covering up your own vitals, and moving away without being taken to the ground by the dog, all tactics which he illustrates in this book.

Hitting an attacking dog is a dodgy business. Christensen writes, "If the dog has your right arm, hit its throat with your left, or slam your knee into its chest and belly." He introduces

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defensive blows to the dog's body with the reality check that there are no guaranteed techniques or targets that will "work every time." On some breeds, a nose smash or hammer fist to the skull may have some affect but carry the risk that the dog "can snap his head up and grab your fist." Nose, eye and ear gouges, kicks and knee strikes to the dog's chest, and other physical defense against a dog are described and illustrated, along with the author's recommendation to pre-plan safe escapes. "Think about what you're going to do now when you're calm and collected as opposed to trying to think when your heart is hammering in your throat," he urges.

Canine physiology makes favorite martial arts "stuns" and choke holds mostly ineffective on dogs, although Christensen shows the dog-handler's technique of pinching off the trachea below the larynx, but warns against the idea of straddling the dog to control it. Even a foot stomp to the dog's foot, done correctly with power, can create surprise, he illustrates. The book contains a good number of pictures including one showing the bite victim flipping a large German Shepherd that has ahold of the man's forearm. Not able to accomplish that? Children and others can be taught to assume a fetal position, protecting the head and vitals as best as possible, then lie completely still until the dog loses interest in fighting, he adds.

Christensen estimates that if charged by a dog you have about three seconds to protect yourself. Grab something to jam in his face, he suggests, trying to keep the bite off your body, and gives the reality check that being bitten on the arm is preferable to dog bite damage to your face, throat or stomach. "Feed him your arm. If you're fortunate enough to have a few seconds, grab a blanket off the sofa, a bath towel off the rack, or the coat off your back, and wrap your left forearm if you're right-handed, your right forearm if you're left-handed, and feed it to the dog.

Will you feel the pressure or the sharpness of its teeth through these things? Probably. I often felt the pressure through the attack sleeve that was specifically designed to train hard biting dogs," he relates.

Christensen offers a good chapter on pepper spray against dogs with the comment that in his experience it seemed more effective against dogs than against violent people he faced as a law enforcement officer. Situational concerns are also discussed, including-

- Dog avoidance and defenses for bicyclists,
- How to defend another person against attack by dogs
- Teaching children about dog safety and defending children and others, and
- Distracting attacking dogs, along with some ideas about what to do if facing multiple dogs and dog bite treatment wrap up this short but informative book.

Self-Defense Against A Dog Attack is included in Christensen's two-part *Fighter's Fact Book: Street Fighting Essentials* series at <http://www.lorenchristensen.com/books.html> but the dog attack material is also available as a stand-alone eBook at Amazon which is what led me to it and how I read it.

I have had dogs for most of my life and while I'm careful and guarded around unknown dogs, I am not unusually fearful of them. Christensen's book held my attention, taught me several new responses, and warned of a number of concerns. Our Network President Marty Hayes opines that it is his belief that the only time he would resort to gunfire against a vicious dog would be if the dog had latched on to him already. That leaves a lot of situations that need to be solved without gunfire. Christensen outlines many options that I hadn't thought of before. I'm glad his book popped up unexpectedly in my search results.



Editor's Notebook

by Gila Hayes

Will the third try be the charm? The NRA Annual Meeting has been scheduled for May 27-29, 2022 in Houston, TX, after several attempts to meet during the height of the corona virus pandemic when cancellation indeed seemed a reasonable precaution. Next month, over Memorial Day weekend, the Network hopes to join hundreds of other exhibitors and thousands of visitors gathering in Houston over the holiday.

Mark the date on your calendar and come see us in the exhibit hall if you can. The Network team will be chatting with members and folks who are interested in becoming members in Booth #2331 in the exhibit hall in Houston's George R. Brown Convention Center. The exhibits are open from 9 a.m. to 6 p.m. Friday and Saturday and from 10 to 5 on Sunday.

As we have in years past, we gather our Network Advisory Board of industry leaders in our booth between 5 and 6 p.m. Saturday, May 28th for you to come by and enjoy a visit. If you are in the Houston area over the holiday weekend, we hope you will drop in and chat with us.

We've missed seeing you during the pandemic shut down! Last fall, our exhibit display, fixtures and booth furniture were literally on the road in a semi when the plug was pulled on the NRA's second attempt to hold the 2021 annual meeting. At that point, there remained much contention over the spread of the COVID-19 virus, large gatherings, social distancing, masking, sanitizing, and, as it turned out, we all ended up staying at home in near-quarantine conditions.

It is kind of funny to ponder how health precautions like the containers of hand sanitizer common to public venues, more frequent wipe-downs of surfaces, and all the health and wellness precautions many of us practiced long before the pandemic initially became mandatory and are now expected in public places as we all strive to establish the new "normal." With government mandates relaxing, we look forward to making up for several year's worth of the kind of fellowship and sharing we enjoy at the NRA Annual Meeting.

Meanwhile, when we weren't scurrying around to get our supplies orders in to be sure we were ready to put up our Network exhibit at the end of May, we also had the pleasure of phone visits and email correspondence with many of our Network family members. Some of those contacts have come from our new ad campaign on Gun Talk where we are sponsors of Tom Gresham's popular Sunday radio program. Enjoy Tom's live broadcast every Sunday between 2 and 5 p.m. Eastern. If your Sundays are too full for radio, the weekly shows are archived at

https://guntalk.libsyn.com/index.php?post_category=podcasts where you will find a wealth of information and commentary.

Watching a Brutal Lesson

The Russian invasion of Ukraine is generating a lot of discussion about the role of armed population. It is really too bad Putin didn't have to ask himself whether his forces could defeat thousands of armed Ukrainians shooting from their apartment windows, from their yards, from their alleyways, all determined to kill invading Russian troops. A real life illustration of the likely-fictional World War II quote attributed to Admiral Yamamoto expressing hesitation to invade American soil for fear of "a rifle behind every blade of grass" would have been so much more welcome than the bloodshed of these past few weeks. How I wish the Ukrainians had embraced private gun ownership, marksmanship training, practice and competition 30 years ago when they became independent! They're trying now! Motivation to learn how rifles work and how to shoot is strong, but comes under awful conditions for learning and retention, to say nothing sorely lacking in opportunities for practice to cement the skills. In Ukraine, we see a harsh lesson about the value of a nation populated by experienced marksmen.

I doubt America's anti gun politicians and pundits will acknowledge that lesson. Perhaps it will be persuasive to those who are on the fence, or to moms and dads who might otherwise reject a son or daughter's request to attend a Project Appleseed event to learn rifle marksmanship. Our youngest citizens especially benefit from encouragement to learn to shoot, be that through Appleseed, 4-H, the NRA's many youth and junior shooter programs, National Shooting Sport Foundation programs, Olympic-style USA Shooting or hunter safety programs taught locally. Gun safety, marksmanship, discipline and personal responsibility are all essential to raising good adult citizens.

We're seeing the opposite in the Ukraine where defenseless elderly, young mothers, babies and children were murdered in a theater-turned-bomb-shelter and other public places where they gathered when their homes were destroyed. Instead, it would be awe-inspiring to see invading troops forced back by thousands of courageous citizens shooting from windows, down stairwells and corridors or killing and wounding invading soldiers. The Ukrainians are trying, despite huge disadvantages, including unfamiliarity with small arms due to previous severe restrictions on private ownership of guns.

The common anti-gun response is that a tank or airstrike trumps a rifle, and that is particularly true if a community gathers its vulnerable citizens into convenient target locations. Those poor people! I think I'd rather face the Grim Reaper while fighting back instead of cowering in terrified anticipation. That is not to say armed citizens scattered across their neighborhoods and out in the countryside wouldn't be killed; many would. I have to wonder, though, if the losses would be fewer and perhaps death less horrifying if you weren't one of hundreds cowering together without any option to fight.

About the Network's Online Journal

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

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

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

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

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We welcome your questions and comments about the Network.

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