



The Anatomy of a Self-Defense Shooting, Pt. 3 **Interview with Spencer Newcomer and Christopher Ferro, Esq.**

by Marty Hayes

A note to readers: In our January and February 2019 editions of this online journal, we told the story of Spencer Newcomer who after months of harassment by several neighbors was threatened with death by one during a confrontation. Although Newcomer was holding him at gunpoint, his neighbor reached into his pocket and began to pull out what Newcomer believed was a gun, so he fired four times, believing the man was about to kill him, as he had stated he would. Newcomer was charged with first- and third-degree murder and voluntary manslaughter.

In the first two installments we detailed those events, the shooting and the trial. If you missed those installments, please return to [this link](#) to read what led to Newcomer's arrest. Picking up where we left off in [February](#), our interviewer, Network President Marty Hayes, asks defense attorney Chris Ferro about closing arguments.

Hayes: We've discussed the whole trial up to your summation and jury deliberations. What were you thinking when you did your summation?

Ferro: At that point, I felt like the case had gone about as well as it could go. I had confidence that we had accomplished what we wanted to accomplish in this case. The case summation was really just a matter of trying to tie all the puzzle pieces together to make sure the jury understood why each piece of the puzzle was important.

We laid out the inconsistencies from the eyewitnesses. We took some time to show how science can't be wrong, but in many respects, people can. A bullet in the back doesn't lie. But people, unfortunately, do get confused. I think that was a powerful way of doing things.

I highlighted the expert testimony. We spent a good deal of time explaining why our experts were correct and how everything we presented did nothing but support and corroborate the sequence of events that Spencer had

told from day one. He essentially said, "This is what happened to me. I shot in self defense." Everything we showed the jury supported that. Quite frankly, most of what the Commonwealth presented supported what Spencer had said.

I did another thing in this closing that I very rarely have done before or since. We had the opportunity to do something that was so unique and so powerful: this case just screamed out for it. The big question in this case asked, "What was Wintermyer reaching for at the moment Spencer had to make his split-second decision to shoot or not shoot?"

Obviously, hindsight tells us it was a cell phone. The Commonwealth argued that Spencer was never in danger. It was only a cell phone. They argued that nobody would mistake a cell phone for a gun and do what he did, so we had to show how compressed the time was in which he had to make that decision. I thought long and hard about it and I ended up using a movie screen in the courtroom, which we had utilized for our expert testimony and whenever we put up photographs. I had that movie screen up during my closing.

I talked to the jury about Spencer Newcomer having a second to make a decision; he had one second to make a decision. If he was wrong, he was a dead man. If he was right, he acted in self defense. I asked them to consider that second of his life and everything leading up to it.

I talked about the harassment, the bullying, the signs in the deceased's yard, everything that person had done before that day to put Spencer in fear. I told them, "In that one second, you have got to decide if it was a phone or if it was a gun. What decision would you make?"

Then I said, "Now, you're in a courtroom. No harm's going to come to you, but I want to ask you what decision you would make under this circumstance?"

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Earlier, I had my private investigator take a series of photographs in which he wore the same type of shorts that the decedent was wearing, and in the photographs, he had a black cell phone in an OtterBox case. The photographs showed him take a phone part way out of his pocket.

I had my paralegal put the photograph on the screen for a split second. We put it on the screen, counted to one, and we took the photograph right off. I asked the jury, "At this point in time, are you willing to bet your life that was a phone, or was that a gun, or do you not know?"

I've looked at it myself, and there's no way you can ever tell in a second what that person is holding in their hand. You cannot tell whether it's a gun or a cell phone. I saw that jury's eyes light up. I saw them nod in agreement. At that moment, they got it. There was no way that they would bet 100 percent. They wouldn't bet their life. They wouldn't bet their children's lives on whether that was a gun or cell phone. It really hammered home the point that this was a split-second decision.

In hindsight, Spencer was wrong. He thought it was a gun, but the case was not about being wrong. It was about being reasonable. You've got a second to make a reasonable decision. You've got to act quickly, because this is not a situation where you can stop and ask, "Let me examine the gun; let me look at it; let me figure out whether it's loaded."

Hayes: Wintermyer had told Spencer that he would kill him.

Ferro: If you second guess in a deadly force situation, you're dead. Spencer reacted reasonably and the jury got that. It was one of the more powerful things I've ever done in a closing.

Hayes: Kind of a gutsy move, but it worked.

Ferro: It was, because it was contingent upon a number of things working correctly. It came off without a hitch. I could have talked about that point for an hour, but one second of just seeing it and having it sink in, that really paid dividends for us.

Hayes: So, the trial wrapped up on a Friday and then went to the jury. What were your thoughts, Spencer, while waiting for the jury?

Newcomer: It was very stressful. You're sitting there and your life is in these people's hands. There's no other way to put it. I'm either going to get to hug my family again or I'm not. That's what it comes down to.

Looking back, when your life is on the line, it's hard to be confident. That's just the way it is. When your life is on the line, you don't take anything for granted. I was just waiting and hoping for the best.

I was somewhat confident that it was going to go our way. Nobody wants to gamble with their life, so it was definitely stressful. Until you hear those words, not guilty, not guilty, not guilty, you don't get to take a breath.

Hayes: Chris, how about you?

Ferro: I felt the same things. I mean, obviously, my level of stress was different from Spencer's, but I will tell you, if you're looking for a stress-free life, don't be a trial lawyer, because waiting for verdicts literally takes days and weeks off the end of your life.

I felt the anxiety of thinking what could I have done differently, what should I have done differently? I had certainly developed a bond with Spencer over the nine or 10 months. I believed in his innocence. I enjoyed his family. I thought they were just tremendous people.

"The case was not about being wrong. The case was about being reasonable."
-Attorney Chris Ferro

I felt a horrible burden to create this verdict. Waiting for a verdict is the longest four or five hours you'll ever have. I can only imagine what Spencer was thinking about, locked in a cage, waiting for the same result. It's difficult.

But like a lot of things, the level of pain and the anxiety that goes into waiting for that moment makes the victory even more sweet. The most magic words you can hear are not guilty.

Hayes: Spencer, so you heard the verdict, not guilty. You were able to hug your family and walk out the door, right?

Newcomer: No, I was not allowed to hug my family. I was not allowed to walk out the door. I was put back into handcuffs and leg irons and taken down to central booking. I sat there for a half hour to 45 minutes, then was driven back to York County Prison. I had to put my

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prison-issued orange jumpsuit back on and go down to my cell, clean out my cell and then come back and wait for them to process my release. Then I finally got to leave.

It took about two to two and a half hours, which was fast. I had supporters in the prison. Some of the staff told me that they knew I shouldn't be there. They helped make the process go faster. But, no, it wasn't like the movies. I couldn't hug my family and walk down the steps and all of that.

Hayes: Chris, can you tell us why they would treat an innocent man this way? Is this an anomaly in Pennsylvania or what?

Ferro: I don't know if it's an anomaly in Pennsylvania, or whether it's just York County. But obviously, once a prisoner, you remain a prisoner until discharged. Unfortunately, he had to be taken back and then released from the York County Prison for good. Is there a sense of injustice associated with that? Probably, but certainly, it's the way in which they go about it procedurally here in York.

Hayes: That's really quite amazing to me.

Ferro: It takes away some of the joy of the initial moment, but understand that he waited nine months, and realize that he's maybe got another hour, that makes it a little more palatable at that point in time.

Hayes: OK. I wish we could say that this whole episode was over. But I know it's not. Spencer, we've talked about the aftermath. Can you tell our members what you've gone through since?

Newcomer: Well, after the verdict, if you think you're just going to walk out the door and then go back to your life, that's not the way it happens. People looked at me differently; they acted differently towards me. Some people I knew before won't talk to me now. Sometimes people come up and ask me improper things.

Sometimes they know, sometimes they don't know and they don't understand. Other people have stepped up and showed great support for me.

Physically, I've had some issues. Mentally, I've had some issues with having a lot of nightmares; with not being able to sleep and then wanting to sleep all day. I'd heard the story about Brian Wilson staying in his

bedroom for three years. I never understood how it was possible. I understand it now. It took me a good nine months to even just want to go out of the house—not that I didn't go out of the house for those nine months, but I had to work at it. I did not have the joy in activities that I had once had. *[Editor's note: Wilson, famous as the Beach Boys songwriter, suffered from agoraphobia.]*

You have to become adjusted to these things as a new norm. You are "that guy." I've had people come up and once they realized who I am they literally say, "Oh, you're that guy." I'm not known any more for raising tens of thousands of dollars for charity through Corvette clubs. I'm not known for being one of the first green builders in York County. No, I'm known for this and unless I come up with a cure for cancer, this is what I'm going to be known for.

There is help out there; this is not a bottomless pit. Help is available. Sometimes it takes time for medication and therapy to work, but fortunately, I have found what I needed in those and I am progressing. At the end of the day, every day I have is much better than the alternative. At least I can be with my family and enjoy my freedom.

Hayes: Thank you, Spencer, for really opening up your soul to share what happened and how you're doing now.

Newcomer: Sure, anytime.

Hayes: And thank you, Chris, for talking to us about how you defended this case.

Ferro: Thank you.

Editor's Note: In February of 2019, Marty Hayes checked back in with Spencer Newcomer, knowing that members, who have expressed concern over what happened to him, would want to know how he was doing. He explains, "I returned to this interview several years after recording it when I felt confident that publishing these details could do no harm to Spencer. I spoke with him recently about the direction his life has taken in the past seven years, so let's fast-forward to 2019 and inquire into how he is doing."

Hayes: When we taped the first interview some years ago, you talked about some physiological and

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psychological problems, including some depression that you had dealt with. Can you update us as to whether you are coming out of it? How are you doing?

Newcomer: The mental part has improved somewhat. I guess I am better equipped to deal with it now. For example, I know to avoid large crowds because crowds cause me anxiety. So, I know to avoid those now.

The nightmares and night terrors are not so frequent and they changed. At the beginning, a lot of the anxiety and the nightmares came from the actual shooting itself. Now, they're more or less about the aftermath, being in prison, things like that cause me the greatest anxiety in the nightmares. It is not as bad as it was, but it is something that is always going to be there. It is something that I've had to learn to deal with and to cope with.

Hayes: I want to clarify one thing for readers: when you say "prison," you're referring to the York County Prison – what would be considered the county jail in the rest of the free world. Pennsylvania has this anomaly in that they call the county jail a prison, when in reality, you were never convicted and thus not in prison as some might mistakenly conclude.

Newcomer: Correct. It was the county jail; I don't know why it says York County Prison on the front of it, but no, I was not in the state prison.

Hayes: How is your physical health?

Newcomer: I just had my seventh surgery, so that has been an ongoing chore. I have not been able to lose the weight I gained while I was in the jail, because I've been laid up from the surgeries. I can't do the things I used to do for fun. I used to like to golf, but after all the back and neck surgeries, that is not possible. I used to like to go bowling; that's not possible after rotator cuff surgery. I liked to go hiking in the mountains, but I can't hike for any distance anymore.

There's no use crying about it; I can't do anything about it except do what the doctors tell me and try and make the best of the situation.

Hayes: You indicated to me in earlier conversations that you have moved to North Carolina. How did that come about? What happened to your house in York?

Newcomer: I lost everything. I lost my ability to pay my rent, I lost my vehicles, everything of value that I owned, I lost waiting for my hearing on disability. My only option was to move in down here with family. There were other considerations—having a fresh start, being in a place where people don't know me is a definite plus. I wish that would have been more on my terms, rather than being forced to move, but fortunately, I have family that helped and continue to help me throughout this whole process.

Probably the biggest thing that your readers need to know is that you are going to need a support system throughout the mental, physical and financial survival. If I had been a single guy with no family around, no girlfriend or anyone else with me, I do not know how I could have survived—literally or figuratively. Your family and your friends are a tremendous asset. You are going to need help to get through something like this. There are no two ways around it.

To answer your question, I moved down here to North Carolina out of necessity.

Hayes: The good news is that you are spending some time with your mom and that is important. You mentioned disability. Without going into details, it is my understanding that during the physical arrest, you suffered a rotator cuff injury, spinal injury and a neck injury. Once you were released, those injuries prevented you from being able to work. You've had multiple surgeries, but there wasn't an attorney that would take your civil case on contingency because there was no video evidence to prove that you were injured during your arrest.

Newcomer: I don't like to talk about it because it sounds like sour grapes. The first surgery I had when I got out was on my neck. The neurosurgeon told me that usually he sits down with the patient and discusses options but he said, you don't have any options. Either you have surgery or you're going to be paralyzed. Your disks are bulging and calcifying into your spinal cord. I was already seeing symptoms of it. If I was holding a cup of coffee, my hand would suddenly just drop it; I was losing the dexterity in my fingers—I couldn't pick up a pen off the table; I couldn't get my arms above my shoulders. Six of my seven surgeries have been for ruptured disks.

Some of my disability was also from anxiety, so it was mental, too. At least initially, being around people and

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having the responsibility of a job would have been nigh on to impossible. The disability was a combination of physical and mental factors.

Hayes: So, you haven't been able to work since the incident. How long has that been?

Newcomer: It will be seven years this June. That raises another issue. Whenever I am physically and mentally able to go back to work, I am going to have to explain to a prospective employer what this gap is on my work record. Just saying that I was on disability is not going to be enough.

Even if I had not had to go on disability afterwards, I would have to explain the nine months or so that I was detained awaiting trial to a prospective employer. That is going to be an awkward conversation. People are going to have to keep that in mind; hopefully they have an employer that sticks with them so they won't have to deal with that.

Hayes: That really is compelling; it leaves me at a loss for comment.

I want to wrap up this final installment with a discussion about raising some money to pay off your legal expenses. Since you were not a Network member at the time of the shooting, you and your family have had to deal with all those expenses yourselves. I recently talked with Chris Ferro and he mentioned to me that there was about \$8,000 owing. I have started a Go Fund Me: <https://www.gofundme.com/help-spencer-newcomer> that I will administer through the Network. If we can raise \$8,000 we would like to be able to clear the bill up for you.

Newcomer: I would appreciate that! That is something that weighs on my mind. Obviously, Chris did a great job. I don't like having outstanding debts. If I could have paid this off myself, I would have. I wasn't a rich man before this, I wasn't poor but I sold everything of value that I had. I sold my Corvette. I sold my gun collection. My dad's firearms and the first deer rifle that my dad bought me was sold, along with pretty much anything of value that I had. It all had to go to pay for my defense.

People need to realize that if you don't have \$100,000 lying around, on top of everything else that is going on, adding that financial burden to your anxiety, well, let's just say it is one more thing that you don't need.

Hayes: Let's see if some of our members will respond – some have already, so I'm optimistic. We would like to help clean this up for you.

Let's wrap this story up for now. We wish you the very best. Let's stay in touch.

Newcomer: I appreciate everything you've done for me, Marty. Not long ago, I got a letter the Network forwarded to me with a check from a member who wanted to help with the legal bill. I hope to be able to get down to my bank in Wilmington, and then I will forward that to Chris. I appreciate that donation and everything else you've done for me.

It is my hope that by telling my story, I can help Network members avoid some of the pitfalls—or at least be better prepared to deal with them. If I can do that, it is a plus. Every bad situation presents an opportunity. I hope the bad situation I went through presents an opportunity for other folks to learn and get better idea of the big picture.

I think what the Network does with dealing with the aftermath is great. There is a lot of information out there about what do up to the time the gun goes off. There is not a lot about what happens after that. I think it is great that the Network shines a spotlight on what happens afterwards. It isn't like in the movies where you go about your day and life returns to normal; it is far from that. I think it is good that from reading your articles people have a better idea about what's involved.

Hayes: Well, thank you. It has been an interesting subject for us to delve into. The Network is now in its 11th year and just keeps growing. I am glad that you are now part of the Network. I thank you for telling us about your experiences.

Editor's note: This concludes our series. For members interested in greater detail about the trial, the full transcript is available for Network members at <https://armedcitizensnetwork.org/en/members/resources> (member log in required).

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Please enjoy the next article.]*



President's Message

by Marty Hayes, J.D.

Are you a compassionate gun owner? I hope so, as compassion for our fellow humans is one of the traits which sets us apart from the dregs of

society—murderers, rapists, burglars, robbers and the like. Additionally, in our society humans also tend to band together, depending on a myriad of likes, needs and interests. One of those areas of interest is guns. A subset of guns is armed self defense. In fact, the existence of the Network and the way our 17,000+ members have banded together is a clear example of this societal phenomenon.

So, what does this have to do with the Network?

If you have been paying attention to this *eJournal* for the past three months, you have read the first-hand account from both the armed citizen and his attorney, describing how one of our fellow gun owners **who did absolutely nothing wrong**, was arrested, jailed and prosecuted for the crime of murder.

As the installments of this story have related, I worked as an expert on Spencer Newcomer's defense, and I will tell you that I have **never** worked on a case which was so clearly a case of malicious prosecution of a totally innocent individual. That type of case is the reason I came up with the idea of the Network, and why we have since poured our hearts, souls and life's work into the Network, making sure it grows into a positive force in people's lives.

Will You Help Spencer?

In the foregoing pages, the last installment of the three-part series about Spencer's defense discusses the life-altering effects (both psychological and physical) of the aftermath of the ordeal he went through. "There but for the grace of God go I" is the phrase that comes to mind.

Spencer was not a wealthy individual when this occurred, but I estimate he had a lifestyle much like that of the average Network member. He was a Corvette collector, shooter and gun owner. He owned his own house, had a loving family (who came to his aid as much as they could) and was in a relationship with a supportive and loving lady. Unfortunately, he was not a member of the Armed Citizens' Legal Defense Network. All that, except for his loving family, has changed for Spencer. As a result, this *President's Message* is a plea for Network members to help out a fellow gun owner.

Can you spare \$10 or \$20 dollars to show that we Network members care about our fellow armed citizens? We have started <https://www.gofundme.com/help-spencer-newcomer> through which our members can demonstrate their compassion. We are not asking for a large cash donation, just a few bucks to help out a brother of the gun who could use a little assistance. Our first goal is to raise \$8,000 to pay off Spencer's attorney, Chris Ferro, who knowing just how innocent Spencer was, allowed him to rack up a legal bill that is beyond his means to pay. I have been to Mr. Ferro's law office, and it is not the palatial digs that many attorneys have. Instead, Mr. Ferro's office is a rather modest affair, and I am sure that he could make good use of the balance owing on Spencer's bill. We'd like to facilitate that effort and have already privately contributed.

I dream big, so secondly, I would like to also raise some funds to help Spencer get through what I hope may be his last surgery. How much? I have no idea, as that goal will be up to Network members. If only 1,000 members (remember there are 17,000 of us) drop him a \$20 bill, we can raise \$20 grand. That seems like a good goal, but there is no reason we could not also exceed that goal. We will keep the GoFundMe page open for three months, so readers who are short on cash themselves can save a bit and hit it in a month or two.

If and when you donate, please leave a note for Spencer, so he can see just how much his story has resonated with you, and how much you appreciate his openness and what he has shared. Thank you in advance for your support and compassion for Spencer.

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Please enjoy the next article.]*

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Attorney Question of the Month

Recently a Network member asked about our affiliated attorneys' thoughts on under what circumstances they might choose to try a self-defense case before a jury or under what circumstances they might prefer to seek a bench trial. Here is what we asked—

What circumstances if any might lead you to ask for a bench trial to have a judge make a finding about criminal charges stemming from use of force in self defense, as opposed to trying the case before a jury? What rationale drives your preference for a jury trial or for a bench trial?

So many of our affiliated attorneys responded that we ran the first half of their commentaries in the February edition of this journal and conclude the discussion here with the second half.

Gary True

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A bench trial is preferred if the facts favor the defendant and the jury pool may be prejudiced against the defendant, or guns generally (if the defendant used a firearm), and the prosecutor may therefore be able to obtain a conviction based in part on emotions. This is especially true if the judge is viewed as being fair and impartial, or conservative. A good example is the bench trial of former St. Louis police officer Jason Stockley. I was not involved in that case, but the judge's lengthy opinion indicated there was insufficient evidence to find guilt beyond a reasonable doubt, which is apparently the reason the previous City Attorney (chief prosecutor) choose not to bring Stockley to trial after the incident occurred in 2011. A St. Louis jury might have believed the evidence was sufficient, as indicated by the protests and vandalism that occurred after the not guilty verdict was issued in 2017.

Conversely, if the defendant's case is weak when applying the evidence to the law, a jury trial will be favored, especially if the jury may for some reason be sympathetic to the defendant or the defendant's

situation, or if the judge is known to have an anti-gun bias (if the defendant used a firearm) or for some other reason tend to view the defendant unfavorably or favor the victim.

The defendant has a constitutional right to a jury trial, but not to elect a bench trial. Some jurisdictions require the prosecutor or the judge, or both, to agree to a bench trial, which, if the prosecutor agrees, allows the prosecution to evaluate the same factors and effectively require a jury trial if the prosecutor believes it will be more likely to obtain a conviction from a jury. Missouri requires approval by the judge for a bench trial. In Illinois, the defendant may obtain a bench trial by waiving his or her right to a jury trial before a jury is impaneled.

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As a NYC resident living behind the Tofu Curtain, the attitudes and cultural biases of the jurisdiction come to mind. Around here many in the jury pool think that all gun owners belong in straight jackets and that most young criminals are poor, misunderstood children. Unfortunately, we often find that many of our judges are cut from the same cloth with the addition of self-righteous, arrogant attitudes. However, if you're a white person (particularly a man) who kills a young minority person you may be better off with a judge.

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In Oregon it is always the client's decision to decide whether a judge or jury decides the facts of a case. I prefer a jury and I typically advise a client to let our system of justice work through a jury. Juries generally do a great job sifting through the information and determining how to apply the facts to the law. Juries generally take their responsibilities very seriously and

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want to do the right thing. Sometimes a jury will be impaneled and answer questions that are clearly improper for your client. If the jury appears to be biased on a self-defense or use-of-force case sometimes it can be advantageous to waive jury and let the judge decide. This is an option of last resort, and not one that should be used lightly. This would only (in my opinion) be used in rare circumstances where the jury's statements are very detrimental to your client.

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This is perhaps the largest mouthful of a legal question that you've asked. The answer is not an easy one. The original standard of the ancient jury was a group of citizens, knowledgeable in the affairs of the community who decided on questions based on what they knew or were able to find. Times have changed markedly. Now, a juror with personal knowledge or a known disposition toward a subject is considered tainted or biased. Add to the mix that the district attorney is thought to represent the people. They generally enjoy a leg-up in the eyes of the trier of fact. Judges have backgrounds. Here in California, a very large share of the judges have mostly criminal law experience. Nonetheless, self-defense cases are out-of-the-ordinary. We are typically not dealing with a meth-addict who kills a homeowner during a burglary. We tend to blindly opt in favor of juries; they are most like us. That is not always the best approach. As lawyers, we take a long look at our client, the judge and the jury pools. Most importantly, we consider the facts of the case.

Let's look at two scenarios:

A homicide occurs after a person wearing shorts and no shirt, sweating profusely is observed breaking into an armed citizen's home. It is the dead of a snowy winter. The suspect will not heed warnings; the suspect will not retreat. The suspect draws a knife as he successfully kicks in the front door. The rest of the family is watching television. The armed citizen doesn't have the time to think. The police reactively take him into custody after he calls to report the death of the intruder. An indictment soon follows. With no previous criminal background and having been fully trained in the legal use of weapons there is simply no question that this is a case for a jury especially since the judge somewhat has a reputation

for making snap decisions. Jury requested, Yes? Not so fast. What if this took place in the suburbs of Big City Massachusetts or Maryland? The jury includes a significant number of persons who are off-put by guns and the people that own them. Why didn't the citizen just call the police when the suspect came on the property?

An off-duty police officer is seated at a Starbuck's when an angry boyfriend starts a loud argument with his significant other. She intervenes to keep the public peace. The boyfriend is not accustomed to firm counseling and escalates the situation. As the boyfriend makes a strong move for his waistband the officer reacts with deadly force. The judges in the county have presided over a growing number of police shootings recently. They are under political pressure to address these matters firmly. The makeup of jurors favors public order. There are many more highly-technical issues to be resolved in a case such as this. The jury might get confused. If the officer were to retreat in her level of force, would the boyfriend still be alive?

In answer to the question, there is no answer without having all of the circumstances to consider. In practice, we preserve the right to jury. We generally believe that given a choice between the two, a jury ought to be more empathetic; a judge more objective. It is never an easy choice. Anybody that makes this legal decision on their own is more likely foolish than informed.

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In Maine, judges are a good bet for "diminished capacity" defenses, that juries seem to be able to see right through. If the defendant is in stark contrast to truly reprehensible "victims" in a self-defense case, we have had some surprising jury verdicts in favor of the defendant. *State v. Sabato Raia* involved a case where three almost unimaginably evil "victims" were shot, almost execution style, outside the home of the defendant, whom they had (in front of witnesses) threatened to kill earlier that night. One was apparently shot through the side of the head as he drove his car away from the scene, with the side window rolled down.

Raia was acquitted. Some of the facts can be reviewed in the reported case of *Royal Ins. Co. v. Pinette*, 2000
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ME 155. That case is also instructive, because it involved the "expected or intended" exception to the duty to defend and indemnify in self-defense shootings.

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I think these preferences may depend on a county bias, or judge bias. Also, certain facts may create a preference to have a judge—facts like a rape in the commission of a murder or bloody photos.

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There is often a bias against people who are not from an area. If I had someone who might be seen as an outsider, I would consider a bench trial. Also, if the facts are very complex—i.e. carrying interstate under a reciprocity agreement in a state or city where licenses are not common I would consider a judge.

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The ultimate decision to select a jury trial versus a bench trial where a judge acts as the fact-finder is one that only the defendant can make, and it should be made carefully, following the advice of your counsel. There are benefits and drawbacks to both a bench and a jury trial, such as, with a jury trial, deliberations can go on for days at a time, with no guarantee of when they will announce, or even come to, a verdict on the case. Whereas, with a bench trial at times the judge will announce his or her verdict that same day or will set a court date for announcement of the verdict, which eliminates the uncertainty in when a defendant would receive his or her verdict.

The decision to choose a bench trial over a jury trial should be made on a case by case basis, even in self-defense cases, not every self-defense case is the same. In my experience, juries often feel protective or

sympathetic with certain victims such as in sex cases or cases where the victim is very young, where a judge is better able to set emotions aside and focus on evaluating the evidence. The likeability of the defendant is also a consideration, if a defendant is not very personable and/or able to communicate effectively, this may turn off various jury members, where a judge is more equipped to look past a defendant's demeanor and focus on the testimony.

If your case involves complex areas of law that may be difficult for a jury to understand and follow, then a bench trial perhaps would be more favorable.

Overall, I have historically preferred to try my cases in front of a jury as a defense attorney. Only one juror is needed to vote "not guilty" to cause a mistrial or a "hung jury" versus in a bench trial where the entire fate of my client is in the hands of a single individual.

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The question regarding whether to waive the right to a jury trial in favor of a bench trial will depend on the facts and circumstances of the particular case—to include the identity of the presiding judge. First, in most self-defense cases, the jury will be the "fact finder" and determine whether you have a valid self-defense claim. The right to a jury trial in a felony case is absolute.

Interestingly, even though you have a right to a jury trial, you do not have a right to a bench trial in a felony case as any waiver of a jury trial will only be effective with the consent of the prosecutor and court. Indiana law is clear that any waiver of a jury trial by you must be fully informed and voluntary. You also have a right to a jury trial in misdemeanor cases, if requested in a timely manner.

In a bench trial, although most of the process will be identical, there are some important distinctions about the conduct of your trial. Here are some potentially important distinctions to consider when contemplating waiver of a jury trial. In a bench trial, there will be no voir dire (questioning of prospective jurors) that might allow you to get a more sensical jury amenable to the notions

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of self defense—as opposed to the potential negative inclination some judges might have to even justified self defense. You will certainly not be allowed to voir dire the judge in a bench trial, but the judge's track history will be your guidepost. You also will not be able to sequester the trial judge if there is significant publicity. Although the majority of judges might be able to filter out media reports as influential sources of information, some may not.

Another factor in a bench trial will be that you will not necessarily be allowed to appear at trial without physical restraints. We hope this would not make a difference, but it may have some bearing on the judge. One other factor to consider is that the prosecutor may not make an opening statement for a bench trial - that may or may not be an advantage for the prosecution. Perhaps the most interesting possibility you relinquish with a bench trial is the possibility of jury nullification.

Indiana has the distinction of being only one of a very few states that have state constitutional provisions that

provide for jury nullification. One case in Indiana explained nullification this way: “the right of the jury to return a verdict of not guilty despite the law and the evidence where a strict application of the law would result in injustice and violate the moral conscience of the community.”

Ultimately, you, with input from your legal team, will have to make a determination whether you want a jury of your peers to resolve factual disputes regarding your self-defense case or if you want a particular judge to consider the evidence and make factual determinations in light of the judge's “common experiences and knowledge acquired during a lifetime.” Obviously, this will be very dependent on the particular judge and the demographics that will supply the jury pool.

A big “Thank You!” to our affiliated attorneys for their comments. Please return next month when we pose a new question to our affiliated attorneys.

Book Review

The Emergency Survival Manual: 294 Life-Saving Skills

By Joseph Pred

<http://josephpred.com/emergency-survival-manual/>

224 pages, illustrated

\$19.40 Paperback or \$3.95 Kindle version

Publisher: Weldon Owen (October 6, 2015)

ISBN-13: 978-1616289546

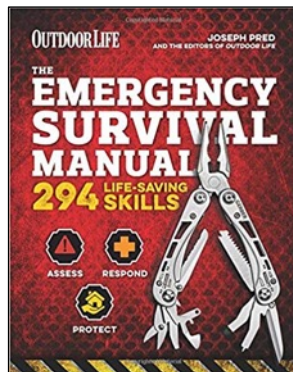
Reviewed by Gila Hayes

Every now and then I enjoy a reminder about skills and equipment – purpose made and improvised – to get through emergencies, natural disasters and accidents. I was scouring the Internet a few months ago when I ran across what could best be called a book of lists – yes, there is some prose, but generally, its mini-chapters briefly highlight the 294 life-saving skills comprising *The Emergency Survival Manual*, published by *Outdoor Life*.

Author Joseph Pred explains that he wrote the manual “for everyday people who want to be more informed and prepared, no matter what life brings.” Skills are the key to managing emergencies instead of being stressed out and overwhelmed by feeling powerless, he writes.

Awareness plays a big role in avoiding risks, as self-defense students know. Avoid being blindsided by paying attention to the unusual, then when something’s not right, consider your options, take action and keep moving, Pred teaches. While most of our members know these and related concepts through the lens of self defense, Pred writes, “The ‘enemy’ could be severe weather, an earthquake, or a bad traffic accident—anything unpredictable that can harm you or hamper your progress. So, create plans, but be open-minded in order to adjust to the changing circumstances. If you are rigid in your approach, your outcomes will be more limited.”

Pred discusses first aid supplies ranging from purpose-made splints, slings, bandages, chest trauma seals, tourniquets and more, followed by an outline of items found in most homes that can be pressed into service if the “real” supplies are not available. While amusing and memorable, the illustrations and lists emphasize that acting promptly is the key. While it is better to have a full kit of supplies, if you don’t, you still must figure out an alternative and use it.



The next section takes on a more serious tone, with advice to first responders and good citizen helpers about the danger of tunnel vision at an emergency scene. “Choosing to step back and maintain your own safety when someone is hurt or in danger is never an easy decision, but if you endanger yourself, then there will be another victim,” Pred notes. Before barging in, he advises, pause in a safe area away from traffic, fire,

or other hazards. Look for dangers from the victim or others. Look up to avoid falling objects. Look around to be sure frightened or injured animals aren’t going to inadvertently become involved. Scan for damaged electrical devices, power lines or cords. Wear protective gear to be sure *you* stay safe. Prepare in advance by learning first aid and CPR at a minimum, and ideally advanced first aid and automated external defibrillator use, he urges. In addition to reviewing basic first aid principles, details are given on how to prepare for medevac, improvising splints and using slings.

I found the section on treating burns interesting, and Pred later addresses smoke inhalation, pointing out that it’s a risk in non-emergency conditions as well as during a house fire or wildfire. He explains what the various colors and numbers mean on the fire diamond symbol, something many wouldn’t know, but useful in calling in an emergency or knowing how to safely approach an accident. At this point in the manual, I realized that although the eBook is on my phone, I also want a paper copy to maximize availability of the reference charts.

The manual details causes, symptoms and preliminary care for heat stroke, chemical burns, exposure to poisons, electrical shock, frost bite and hypothermia. It outlines when to rush to the hospital and when home care will be sufficient. While much of the focus is surviving disasters, routine safety and addressing minor emergencies goes better when we recognize symptoms, treat them promptly and avert complications. “Most emergencies you’ll face in life won’t be large-scale disasters, but that doesn’t mean they’re not serious,” Pred comments.

Since we can’t always choose where we’ll be when trouble strikes, Pred discusses strategies to reduce damage whether at home, work, school or out in public.

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If a civil emergency arises, try to determine three escape routes so if the preferred plan fails, you're ready to switch to another, he writes. He briefly addresses reacting if a problem begins during your commute or while you are on a longer trip. Your ability to cope depends on protecting documents, cash and smart phones from mundane risks like pickpockets, he continues. There's even a section on surviving a sinking ship or an airplane crash. Addressing airplane crashes, Pred writes, "Whenever you fly, wear practical clothing including a top with long sleeves, pants made of natural materials, and sturdy shoes. Proper clothing will help you to evacuate quickly and can protect you from sharp metal or flash burns, or if you have to run over burning jet fuel."

Several sections address flood survival, including cars and water, getting unstuck from mud, and crossing fast moving water on foot if no other alternative exists. In addition to larger dangers, floods create in-home hazards from the utilities, and while it's best to let professionals shut them off, Pred points out that we have to know the location and basics for dealing with the home's power, gas and water lines. When utilities are disrupted, you'll need toilet alternatives if, as is often advocated, you choose to shelter in place, so sanitary disposal for human waste using five-gallon buckets, trash bags and kitty litter is illustrated.

When power goes out, families have to decide what food is spoiled and what can be saved. When you get it wrong, the resulting sickness can be catastrophic, so Pred gives an extensive list of foods that are dangerous if left at over 40 degrees for a couple of hours, as well as other guidelines for food safety when refrigeration fails.

Pred explains how strong solar flares can disrupt technology-dependent utilities, GPS signals and communications. Maintaining paper maps and navigational ability is important, he writes. Maybe the grid will stay up and you will be able to access your tech solutions, but he adds, redundancy is crucial when you can't.

Pred observes that when facing a natural disaster, the decision to evacuate or remain and weather the trouble

at home "could be the toughest and most important decision you make in the time before, during, or after a disaster." He provides a decision tree to help speed the decision, pointing out that both staying and evacuating entail risks. For those staying at home, the manual has multiple sections on food storage and preparation under adverse conditions. Water purification is covered, including improvised water distillation to remove contaminants and microbes.

If you've been evacuated, hazards may have developed in your home while you were absent, ranging from gas leaks, structural damage, wild animal infestations and more. Pred gives a check list for returning home that he makes available at <http://josephpred.com/emergency-survival-manual/> through a "downloadable forms" link at the very bottom of the webpage.

A recurring theme in the manual is acting now to avoid failing to prepare. At various points, tips on engaging other family members and children in preparation are offered, and at another point, various preparatory tasks are assigned by month.

Pred teaches prioritizing needs at the beginning of a survival situation. First, he writes, decide to survive and attend to first aid. Next, address shelter, fire, communications, water and finally food, in that order. No amount of equipment determines who survives and who does not. Individual resilience combines inner strength, mental toughness, motivation and adaptability, he details.

The Emergency Survival Manual is not an ordinary book with chapters comprised of multi sentence paragraphs of well-crafted prose. The material is in list format, concise and often, motivated to learn more detail, the book sent me off on a tangent to research the sources Pred recommended. The manual is like a map of numerous risks one might face over the course of a long and interesting life, outlined in little briefings that lend themselves to quick review. Many of the sections conclude with checklists, recommended apps, and other resources. I'm glad I bought it.

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



Editorial

Who We Are; What We Do

by Marty Hayes, J.D.

Our team in the office is occasionally surprised when a Network member phones or emails with questions that clearly indicate that despite

having been part of the Network family for a while, they have mistaken ideas about the structure through which the Network supports members after use of force in self defense. Thus, it has been our practice every few years to publish a full description of the Network's history and how it functions on behalf of members in this, the official publication of the Armed Citizens' Legal Defense Network.

We established the Armed Citizens' Legal Defense Network, Inc. as a membership organization to fulfill two core missions: first, to help members in the legal fight after they justifiably use force in self defense by paying for the services of attorneys, expert witnesses, private investigators and other professionals essential to mounting a vigorous legal defense of self defense on behalf of our members. Our second mission is educating our members (and to some extent, the gun-owning public) in the law governing use of force in self defense and how armed citizens can protect against unmeritorious prosecution. Let me explain how we do this.

Helping Members

When a member joins the Network, they become eligible to receive member benefits after a self-defense incident. If a member is involved in self defense, as soon as practical, he or she (either through their attorney, spouse or on their own behalf) calls the Network and speaks with me, conveying only the barest of facts so I am assured the incident was a legitimate act of self defense. Upon understanding that no criminal act occurred, and the occurrence was, indeed, a legitimate use of force in self defense, the Network immediately pays an attorney up to \$25,000 to be sure the member can hire good, competent legal counsel and that the attorney is paid up front.

Each individual situation will be different, so there is no set amount that we automatically pay, but instead, I work with the attorney to make sure we provide a sufficient retainer to handle court appearances, interacting with law enforcement, investigating the incident, dealing with the press and provides other legal services needed for full representation. If the member needs bail money, the Network can assist the member with posting bail, but that is not automatic. (See [this link](#) for a complete explanation.)

The immediate goal of our funding efforts is to work towards getting any charges dropped when the prosecuting attorney reviews all the evidence and becomes convinced a crime has not been committed.

If the charges are not dropped or if a grand jury is convened and issues an indictment, then we once again consult with the member's legal counsel. We ask the attorney to estimate how much money is needed to prepare for and go to trial. When this question is settled, the Network will fund the entire defense, assuming no new evidence has surfaced that invalidates the self-defense claim. Please understand that the Network has no interest in helping criminals; our mission is joining together in support of lawful armed citizens exercising their right to self defense.

Education

The immediate—and frankly one of the strongest—benefits of membership in the Network is the educational package our members receive upon enrollment. This consists of eight educational lectures on DVD and Massad Ayoob's book *Deadly Force: Understanding Your Right to Self Defense*. We strongly encourage our new members to take notes while watching the video lectures and to study Ayoob's book, as well as suggesting that long time members review the member-education materials periodically. By educating themselves on the many different legalities bearing on using force in self defense, our members become better prepared to defend themselves in court after a self-defense incident. This training gives members a realistic idea of what to expect from the criminal justice system after self defense, helps members articulate what was occurring that caused them to reasonably fear for their safety, and helps them show why the force they used was reasonable, necessary and not excessive.

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Each month, for the past 11 years, we have published an online journal which, while written for members, is also available to the general public on our website at [this link](#). The articles, columns and editorials focus on what people need to know about self defense, with a specific focus on self-defense law.

We also help educate the gun-owning public by supplying printed copies of our booklet *What Every Gun Owner Needs to Know about Self-Defense Law* available by PDF [here](#). Printed copies of this booklet are supplied at no cost to firearms training schools, attorneys and gun shops, and they pass the publication out free of charge to their customers. This effort is conducted through the Network's sister organization, the [Armed Citizens' Educational Foundation](#), a non-profit charitable foundation under IRS 501 (c) (3).

History of the Network

I first conceptualized the idea of the Network between 2003 and 2007, while going to law school. As graduation neared, I decided that instead of taking the bar and becoming an attorney, I would instead form a membership organization to protect the legal rights of its members after a self-defense incident. I enlisted the aid and support of my wife, Gila Hayes (who serves the Network as chief operations officer), and Vincent Shuck, a 30-year association management professional, who serves as Vice-President of the Network and President of the Armed Citizens' Educational Foundation. I'd gotten to know Vincent when he was a student in my classes at my other business, The Firearms Academy of Seattle, Inc.

We started the Network and serve as its officers. We are joined by an Advisory Board consisting of many of the top names in the industry. Currently serving on the Advisory Board are Massad Ayoob, John Farnam, Tom Givens, Dennis Tueller and attorneys James Fleming and Emanuel Kapelsohn.

Who Comprises the Network?

The Network is currently made up of over 17,000 armed citizens who have become part of the Network for peace of mind as they go about their daily lives as armed citizens. They are fathers, mothers, clergy, attorneys, firearms instructors, law enforcement officers, students, physicians and come from many other walks of life, all

representative of the average American gun owner. These men and women understand that unmeritorious prosecution for lawful acts of self defense happens to people just like them. They want to know they have the resources for a legal defense team to fight such a prosecution.

Who is the Network? In a nutshell, we are 17,000+ individuals who have banded together for the peace of mind that comes from knowing that if one of us is wrongfully prosecuted or sued, the Network will step in and assist.

How is it Funded?

When we started the Network in 2008, we choose to establish a separate Legal Defense Fund from a portion of the members' dues. At first, we set aside 20% of all dues, but before too long we raised that to 25%, and watched the Legal Defense Fund grow. It was slow at first, but so was the frequency of member-involved use of force incidents. Over our 11-year history, the Legal Defense Fund has grown to over 1.7 million dollars. We have tapped into the Fund to assist 21 of our members after self defense.

What We are Not

First off, we are NOT INSURANCE! There is no insurance component in our member benefits, and we have never been accused of violating the law by selling insurance without the permission of one state insurance commissioner or another.

Nor are we a PRE-PAID LEGAL service plan. We do not have any attorneys on staff or under contract to assign to handle your case. You see, we insist that each member retain complete control of his or her legal defense, including hiring and, if necessary, even firing their attorney. We are the funding mechanism for the legal defense and that is the extent of our involvement into ongoing member cases. We do have affiliated attorneys in each state that are willing to go to bat for our members—a facet of the Network we developed to help members meet and work with gun-friendly attorneys—but the member chooses whom they hire as their attorney and is not limited to our affiliates.

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No Scare Tactics or Puffery

In our advertising and outreach to potential members, we do not make outlandish claims, or frighten worried armed citizens into joining. We don't give away guns or ammo or trot out other enticements to lure new members into signing up. Our Internet presence is very conservative, not dominated by pop-ups and videos brow-beating non-members into joining. You see, here at the Network we choose to associate with like-minded folks: people who do their own research and who are not swayed by fancy advertising or gloom-and-doom prophecies predicting an awful fallout if you need to use force in self defense. We know that you are intelligent enough to understand the issues and make informed choices.

Training is the Key

Early on, we recruited hundreds of self-defense firearms instructors to help spread the word about the Network. I have also run a successful firearms training business for 30 years, so have many friends in the firearms industry. It was natural to reach out to them, first to ask what they thought about the concept of the Network, then to invite them to participate in our organization. Soon, we formed a unique facet of the Network, our Affiliated Instructors.

These dedicated men and women remain our best new member recruiters. Thanks to their outreach, Network members are the cream of the crop: serious, dedicated, trained gun owners. Our Foundation provides copies of *What Every Gun Owner Needs to Know About Self-Defense Law* for instructors to hand out to their students free of charge and we often grant permissions for use of member-education video lectures in classes, all to encourage our affiliated instructors to introduce their students to the long-term benefits of being a Network member – assistance with legal expenses after self defense, ongoing education, and peace of mind.

The Bottom Line

For several years, I attempted to publish a comparison between the Network and the competitors, but what they offer has changed so often and is frequently obscured behind outlandish advertising claims that I have decided recently that I can no longer make a real comparison.

Each competing company in this post-self-defense support industry has different pricing, and many have changed their scope of services several times over. Over eleven years, we have only had two price increases—the first came at the end of 2013 when new member dues increased along with the size of the member education package and the second increase was at the end of 2015. We successfully manage the business of the Network through fiscally conservative management and hard work, striving to keep the member dues at a very affordable price. In fact, many competing companies charge up to \$500 per year or higher, while our highest fees are only \$135 for the first year of membership and \$95 per year for renewals. That is by far the lowest in the industry, and we give discounts for multi-year enrollment, making the cost even lower.

As we continue our day-to-day efforts on behalf of Network members, we are grateful to all our members who share our values, and who help us make the Network the vital, growing force for good that I envisioned fifteen years ago. We welcome new members from amongst armed citizens who share our vision of educated and trained armed citizens standing together to prevent unmeritorious legal action after self defense. Thank you for reading my explanation of who the Network is and what it does. I welcome your questions or comments, so contact me at mhayes@armedcitizensnetwork.org.

*[End of March 2019 Journal.
Please next month for our April edition.]*

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.

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 or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.



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