



Seriousness of Empty-Hand Attacks

An Interview with Robert A. Margulies, MD

Interview by Gila Hayes

Who better than a recently retired emergency room physician to teach about the seriousness of severe injury or death from ostensibly unarmed attackers? Recently, I had a long talk about injuries sustained in empty-hand attacks with Robert A. Margulies,

MD, MPH, FACPM, FACEP (L), FACFE (L) who combines 50 years as a physician in emergency medicine, certification as an aircraft accident investigator, and a depth of experience from his first career in the Medical Corps of the US Navy where he doctored in austere environments and earned "dolphins and wings," submarine warfare and senior parachutist and flight surgeon insignia. He headed several air medical programs after retiring from the Navy and continued his work in emergency medicine, while also making time for volunteer policing, teaching self defense and survival classes and practicing martial arts.

Over the years, I've referred people asking questions about head injury lethality to Dr. Margulies' interview archive in our [December 2015 journal](#). The dangers, however, go beyond brain injury. Increases in violent crime and large-scale release of violent offenders to America's streets, suggest continued if not greater risk from empty-hand attack. Unfortunately, there's a lot of misinformation about the seriousness of bodily harm an aggressor can cause with empty hands. Let's switch now to Q & A and get a reality check from Dr. Margulies.

eJournal: Sometimes the news suggests that there's little to fear from "just a beating," and pundits rail against police when a violent aggressor is shot. The outcry makes people question whether a deadly force response is ever appropriate against physical attack because, having no first-hand experience with purely physical violence, many fail to grasp its risks.

Dr. Margulies: I do not think that people understand the dangers of the open hand. According to national statistics from 2021, more people died from hands and feet – and that includes boots, of course – than from all the rifles combined. Our "devastating" MSRs (modern sporting rifles) and hunting rifles and .22s were used to kill fewer people than hands and feet. (See <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/expanded-homicide-data-table-8.xls>) That does not include the falls that come from things like the knockout and pushover games.

There are some other interesting statistics. The Northeast and the West have a higher percentage of people who die as a result of hands and feet than the Midwest and the South. 5.9 and 6.0% of homicides are by hands and feet in the Northeast and in the West. The highest is the 6.0 in the West. Blunt-object weapons – hammers, golf clubs, two by fours, tire irons, fire extinguishers – are not included in the 5.9 and 6.0% of homicides by hands and feet! It is really a pretty phenomenal number because even more people die from those injuries. Now, that statistic does not include handguns. In criminal homicide, handguns are still far and away the most reported means.

eJournal: Still, we focus on handguns and ignore the danger to personal survival from empty hands.

Dr. Margulies: The risk of death or permanent disability or disfigurement is really quite high when you think about all the ways that it can happen. Let's start with something simple: a finger in the eye.

eJournal: That's one I hadn't considered. Can that result in blindness?

Dr. Margulies: Yes, if you are caught by surprise or temporarily disabled and somebody pokes you in the eye, you can be permanently disabled. In martial arts, we learn to make people move their heads because it takes their eyes off the target. It is a simple thing. Have somebody stand in front of you and rapidly, and without warning, just bring your hand up towards their face [*mimes pulling his head back abruptly*]. It is a natural reaction. They can't see you and you are now at liberty to do whatever you want. How much worse is it if somebody punches you in the eye?

The open hand slap to the side of the head, to the ear, can, first of all, if it is done properly, rupture the eardrum which causes immediate nausea. Frequently, it causes vomiting and that leaves you pretty defenseless. If it is done properly, an open hand slap to the side of the head also transmits that force to the balance organ, which is the inner ear, and not very far in, but if you rattle the balance organ, people become unstable.

eJournal: That's an openhanded strike, but how often have we heard, "It was not a fisted blow, only an open hand slap?" Most people have the mistaken idea that a slap is an insult, not an attack.

Dr. Margulies: If someone knows what they are doing, they can inflict devastating damage with an open hand. Literally. It depends on where you strike somebody. A strike to the neck?

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That can crush the larynx. There are major blood vessels on both sides of the neck, and from a martial arts perspective, there are well known pressure points which can have a devastating effect. We learn these things, but we do not practice because they can be fatal, instantly.

Any blow to the head – it does not have to get to the ear – just any blow to the head, or rapid turning of the head, stimulates the balance organs, changes the eye position, and in many cases, is stunning depending on how strongly it was delivered. How long? 2 to 3 seconds. How much damage you can do in 2 to 3 seconds?

When we did the 2015 interview, we talked about the knockout game. Remember, it is not just the initial blow that does the damage. When the skull hits the concrete, the brain keeps moving. Well, the same thing occurs when you slap the head. The head turns, the brain starts to spin, and then the brain doesn't stop until it hits the other side. If that is done fast enough, the injury is the same. It may not be as extensive as when the brain smashes into the skull from a 6-foot fall. While 6 or 8 inches is proportionally less, it is still damaging.

eJournal: As bad as traumatic brain injury is, what about blows that shatter bone? I knew an officer who changed careers after suffering an orbital fracture during a fight with a suspect. What other injuries result from blows to the head?

Dr. Margulies: When the nose gets hit, three things happen. The eyes close, the eyes begin to tear, and the head moves back. A blow to the nose by a martial artist can be fatal because you can literally push the bone up into the brain. I am not sure that most of our teen-aged thugs know that, but that does not mean that it cannot happen accidentally.

Bad things can happen when we are dealing with blows to the small, thin bones of the sinuses and the nose, because the lower portion of the skull above the nose behind the forehead [indicates brow ridge] is a fragile area. It is called cribriform plate because it is perforated. It is very thin, and it is perforated because that is where the nerves from the nose go. That is why it is so easy, if one knows what one is doing, to push that bone right up into the brain. That's the brain on the other side of the cribriform plate!

Draw a line between your ears and see where it goes. [Demonstrates drawing index fingers forward from ears to under eyes across the bridge of the nose.] Think about anything on that line, front and back. On the back, the spinal cord exits the skull on that line. A sudden movement can jar the base of the brain which has the breathing and circulatory centers.

In mixed martial arts and in cage fighting there are rules. You cannot hit anybody in the back of the neck just like you can't strike somebody in the eyes or kick someone in the testicles. There are no referees and rules on the street.

eJournal: Vulnerability in the back of the head and the back of the neck reminds me of recently talking with a man who suffered several surprise attacks from behind. He couldn't see them coming, so could not deflect or get out of the way. Your explanation about the vulnerability of spinal cord, nerves, and more below the occipital ridge, shows how serious those assaults were.

Dr. Margulies: Put your finger on the nuchal ridge and then run your finger down until you feel a little bump. That bump is the spine of the first cervical vertebrae and where is it? It is right on that line I had you draw, so I am more worried about the area on the line.

eJournal: At the risk of saying, "But wait there's more!" we should explore the risks of strangulation or of being choked.

Dr. Margulies: Aside from stunning somebody and probably putting them on the ground, a blow to the carotids has two implications.

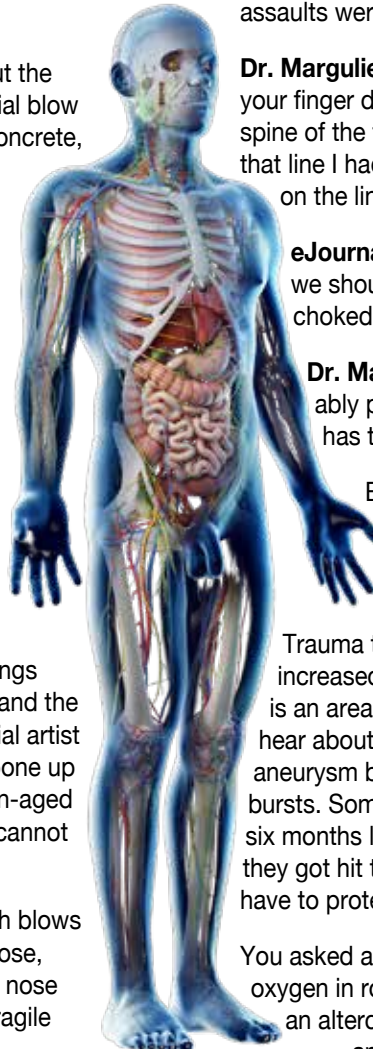
Because there are pressure points along with the carotid artery that will literally collapse the nervous system, what if a blow to the carotids puts you on the ground and somebody kicks you?

Trauma to the carotid artery is also associated with an increased incidence of carotid aneurysms. An aneurysm is an area of the artery that is weakened and expands. We hear about aortic aneurysms a lot. People die because the aneurysm bursts. Well, you don't do well if the carotid artery bursts. Somebody who gets struck in the carotid artery, may, six months later, literally fall over dead, and we later learn that they got hit there six months, a year or two years earlier. We have to protect these areas.

You asked about strangulation. Normally, the brain runs out of oxygen in roughly 20 seconds, but if choking occurs during an altercation, you have 4 to 6 seconds because during an altercation, there is already increased blood flow and increased consumption of oxygen. The brain is working harder; it consumes oxygen during physical activity as well as mental activity. Choking shuts off blood flow up and blood flow down. Oxygen is consumed. The brain does not have storage of oxygen like in the muscle cells, so without oxygen, brain cells start dying.

Some of this has never been tested. There have not been functional MRIs done while someone is being choked to see what the brain is actually doing. What we know of these time frames is by inference, from what we see in martial arts, combat and

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police work. The shorter 4 to 6 second times are an inferential number based on observations, and statements by people who a) have had it done to them, and b) who learn how to do it properly and recognize that the individual has gone limp.

Air chokes or strangulation occurs when breathing is restricted, as seems to have been the case in the George Floyd situation; but can occur in many mechanisms.

eJournal: There are ways to get out of choke holds that use leverage, not size or strength, but that's a lesson for a physical skills class. Moving down to bigger targets, what concerns exist if we're hit in the torso?

Dr. Margulies: Here's one: A punch to the chest. The youngest one I ever had was a 12-year-old girl who ended up in the ICU from a punch to the chest by another 12-year-old girl on the basketball court. It caused a cardiac contusion, bruising of the heart muscle, and she had a heart attack. We still don't know what happened to Damar Hamlin, the football player. My personal opinion? His collapse fits a guy who gets hit by a knee to the chest. If you take a knee to the chest, how long do you have? Well, you have 8 to 20 seconds because although your heart has stopped, your brain is still dealing with oxygen that is already there. You stand up and then your brain runs out of oxygen, and you fall over. Is that what happened to Hamlin? I don't know. Is it plausible? Yes, it's definitely plausible.

Take a kick or blow to the front, and there is risk to the heart. If it is down a little lower, we have spleen and liver and, in the back, we have the kidneys. The kidneys are right at the level of the lower ribs which are, effectively, unsupported. A properly placed smack to the 12th rib can dislocate it and cut a kidney.

I know martial artists who can crack ribs with their open hand – no weapon. Once bone breaks it has sharp edges and depending on where it is, can puncture a lung and cause a pneumothorax. A pneumothorax, in and of itself is uncomfortable, but if we are young and healthy, we can breathe just fine on one lung – for a while. It is still a serious injury. On the other hand, if it becomes a tension pneumothorax, it can be rapidly fatal.

A tension pneumothorax occurs when the air can get in, but it can't get out. You get what we call a flap valve. You breathe in, the air comes in; you breathe out, the air can't get out. Every time you breathe in, you are increasing the air pressure and it starts to push the heart to the other side. You can actually see the trachea being displaced but it is not the airway that gets shut off. The displacement kinks the blood vessels and shuts off blood flow.

eJournal: Before mentioning damage to lungs from ribs, you talked about laceration of spleen, kidneys, or the liver. How much time is there to get medical help?

Dr. Margulies: It depends on what part is injured. Liver, spleen, and kidneys will all bleed internally, the question is whether it actually involves a major artery. If the injury involves a major ar-

tery, it is very rapid. I had a colleague who was doing a lockout from a submarine with a SEAL team. After about 70 minutes in the water, he came back in and started feeling something was wrong. He took his pulse. He was tachycardic: his heart rate was too fast. He had bumped his left side on the hatch getting out of the submarine and the blunt force injury lacerated his spleen. He put two IVs into himself, called for an air lift, and had his spleen removed in the military hospital in Seoul, South Korea.

eJournal: How quickly might he have died if he had ignored that he did not feel right?

Dr. Margulies: About four hours later he would have been dead. My young doctor friend was very fortunate. His injury was to the lower part of the spleen, and it did not involve a major branch of the splenic artery. Had it been a major branch, he would not have survived an air evac.

Are these dangerous? Yes, they are. The question becomes, how dangerous? They are more often longer-term problems, meaning hours, not minutes. They are not fight stoppers. We have cases of people who have been shot in the liver and continue to fight.

There is that infamous case of a patrol officer who was shot in the back with a 7.62 x 39 at about 60 yards. He felt it hit his soft body armor, but he solved the problem, then when everybody else arrived, he said, "I'm fine; I will go to the hospital later." He refused to allow himself to be stripped and examined although he'd been in a gun fight. About 20 minutes later, everybody is getting ready to go back to their cars, and he falls over dead. That is really a tragic case. He did not want to admit that he could have been hurt. That happened because of the adrenaline.

eJournal: Even though that was a penetrating injury it gives an especially important lesson about blunt force injuries that can be fatal several hours after they happen. Like the officer, the temptation is to say, "I am unharmed; there are no marks on me. I do not need to be checked out by a doctor." Get medical attention after a fight! Let's see, we were at the spleen, liver, and kidneys. What other vulnerabilities to blunt force do we need to acknowledge?

Dr. Margulies: As we move down the body, sticking with the torso, I want to make it clear that there's still a whole lot to be aware of. A punch to the abdomen, whether delivered intentionally or accidentally, will cause you distress. It is going to make you unable to immediately defend yourself. That's why, if it ever happens in the ring, the ref stops the fight immediately. Out there, there is no ref. On the same line, is the spine. Somebody who hits you or elbows or knees you on the spine can cause significant damage. There are lots of strong ligaments that hold us up. The ligaments don't give. If you get a blow that rips a ligament, the entire spine is now unstable. If the cord is cut, you may be paralyzed.

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Moving down the body, we get to the genitals, it does not take much for people to understand that a kick is going to cause some problems. That is not the end of the story, though, somebody who kicks you in the knee and dislocates your kneecap, is going to put you on the ground and that is not a good place. If somebody stomps on your foot – think about what happens if you stub your toe and take that up a magnitude – it is very, very disconcerting.

What about the arm? It is easy to dislocate the elbow if somebody catches your arm while you're trying to defend yourself. Dislocating the shoulder is a little more difficult, but it happens. Injury to the elbow, to the wrist, fingers breaking, these are things that are not uncommon in the emergency department. It is unusual if you *don't* see boxer's fractures – injury to the fifth metacarpal – one every Friday night, two on Saturday and two on Sunday! The point is it is not hard for a boxer's fracture to happen. Even if you are defending yourself, if you hit wrong, you can disable yourself.

There are little things that are not taught in Phys Ed that people should be taught about stabilizing joints or how to take a fall. This is not martial arts! This is just how to safely go to the ground, just how to deal with some of the day-to-day occurrences. You stumble and you put your hand out to catch yourself on a wall. Do you know how to minimize damage to your joints?

I am not talking about martial arts; a physical therapist could teach things like balance exercises. We are willing to spend so much money on our cars, we are willing to spend lots of money on our houses, we spend lots of money on our guns and ammunition, but what about us? The house, the car, the guns are not worth anything if we cannot use them.

eJournal: Several times, you've referenced the abilities of a skilled martial artist, but what about risks from empty hand attack by an emaciated, drug-addicted gang member? To inflict the kinds of injuries we have talked about today, what kind of physical size, strength or prowess is required? Can a small assailant do the same?

Dr. Margulies: Yes. It has more to do with angles and force than it has to do with size. Now, can force be correlated to size? Sure. Your 250-pound lineman can certainly push harder than your 105-pound 5' 1" tall female. On the other hand, that 5' 1" tall female has smaller knuckles, so that whatever force she generates is more pounds per square inch. If he generates 150 pounds over 1 1/4 inch and she generates 50 pounds over half an inch, she can bust your rib.

I'm relatively small. I'm 5' 9", about 160 pounds, so the people I work out with are all bigger than me. I learned that I can't take that first punch; I have got to get inside. When I get inside, I can do damage with knees and elbows and fists in close. That is on people wearing pads of course, I am not hurting anybody – but that is how we train. The 6' 3" guy with 8 inches more reach, can stand off and pick me off. I can't let that happen. I have to

get inside. People have to know what their limits are. I am too old to get on the ground and roll around anymore and I don't want to. I try to keep my awareness level really high, so I don't have to.

eJournal: There's another danger from physical attacks. Everyone uses the phrase that they were fearful of losing their lives, but have we weighed the long-term implications of permanent disability? How do you get along if you can't take care of yourself any longer? You spoke of the danger of abdominal injury. If an organ is irreparably damaged, do we ever regain our health after that?

Dr. Margulies: The law says justification for self defense is fear of death or permanent disfigurement or disability. How happy would you be if instead of your knee being temporarily dislocated, all of your ligaments were shattered? Maybe it can be repaired, maybe you will have a permanent limp, maybe you will always have a stiff leg or an artificial leg. It changes your life. Can other injuries kill you or cause you permanent disability? Absolutely. Cardiac injuries, spine injuries, liver injuries – no question. If you lose your liver, you're dead, so you will need an artificial liver or a liver transplant. You can live without a spleen. A kidney? You've got two; you can give one up, but you only have one brain.

We have to protect our brains. The most devastating injury is an injury to the head. Unquestionably. When I teach survival, I ask people what is your most important survival tool? They whip out their lighters and their knives, but no, this is it [*pointing at his forehead*]. The brain is what we have to protect because the brain is the only thing that separates us from the Void. We don't have the claws of the tiger, we don't have the fangs of the wolf, we don't have the hide of the elk. They live differently than we do, but we can live in all of their environments because of our brain.

eJournal: When we talk about defense against physical attack, our minds race forward to countervailing force, be that defensive tactics or firearms. You mentioned awareness when you commented that sparring practice taught you to act quickly to avoid taking the first hit. We, too, need ways to be faster to react to avoid threatened danger. When we come back next month, I would like to apply what you've taught us about the risks of blunt force trauma from empty or open hands, so we don't miss how many solutions precede a decision to use deadly force.

Dr. Margulies is a valued friend and wonderful resource. In the interest of not missing any of the useful information he shared, we will break his interview into a two-part series, with next month's installment focusing on behavioral solutions to the dangers he has identified this month. If you are in Eastern Washington, consider reaching out to him for training at International Emergency Consultants. For individual training, contact him at ramargdr@i-e-c.org.



President's Message

by Marty Hayes, J.D.

For the last two months, in this column I have asked if there are any benefits you, our members, would like to see added to the Network. I received 30 responses to the question, and I thought I would take this opportunity to discuss them here.

First, most people were very pleased with the Network and benefits we offer. A few people mentioned my discussion about the possibility of raising dues, which has not been done since 2015, and most who discussed the question of dues said they felt a dues increase was not out of line. That is good, because it will be happening soon; we will announce it next month. We will give you plenty of time to renew at the current rates.

The single most requested additional benefit was not a new one, but something members wanted more of: training videos. I will tell you that will be happening, and in fact it should have been in place already, had we not suffered a major setback which has delayed the production of more video content. One new training benefit we have in process and hope to release soon is establishment of a certification course based on our existing educational package. Work has started on that project and its completion is next up on my agenda.

One member asked for some type of civil liability insurance, like that which is offered by other businesses. I understand the attractiveness of insurance, but there are many problems which, in my opinion, prevent insurance from being a viable alternative for the Network. Those problems involve too much information to share here, but I will explain my thoughts more thoroughly in the future.

One comment was to offer to fund legal defense following acts of lawful self defense by underage kids in member/parents' homes. I have no problem with this, and frankly, I had already decided that if a member's child used force in self defense in the home, we would treat that act as if the member him- or herself did it. In the 14 years we have been in business, we have had no such instances, so I don't think it is a big issue. One problem is that kids are unlikely to take the time to watch and study the educational package. Parents, are you willing to chaperone your children while they watch the videos?

The subject of an annual conference for members came up, but that is a ton of work and our staff is already running close to max. We have tossed around the idea in the past, but always came to the conclusion that the juice was not worth the squeeze.

A couple of comments explored the Network hosting a traveling legal seminar for members and prospective new members. We have also kicked around this idea from time to time, but we have always had to acknowledge that the best training in this regard is already being offered by Mas Ayoob through his [Massad Ayoob Group](#) business. Instead of encroaching into Massad's business, we encourage members to seek out his training.

A new member wanted the Network to expand the assistance to acts of self defense not including firearms, and to render that assistance before they were charged with a crime. Good news! That is what we already do! In fact, the minute we find out the member was involved in an act of self defense, we will start working with the member to get legal representation. It works! In the 29 member-involved cases where we assisted members after an act of self defense, many were not charged with a crime at all; other times charges were dropped, and a couple accepted favorable plea bargains. None have gone to trial.

Another member asked us to raise the payout for bail assistance, above and beyond the previously offered \$25,000. That has already been done. A couple of years ago we removed any discussion of dollar amounts for bail and legal fees, as the Legal Defense Fund has grown to the point where we could handle pretty much any request. One problem members need to understand is if a high bail amount (such as a million-dollar bail) is required, most bail bondsmen will also require sufficient collateral to be pledged to cover the bond if you fail to show up for your court date. State laws regarding bail bonds have become a patchwork across the nation, too. These are factors causing us to take bail assistance requests on a case-by-case basis.

Other requests were for arranging discounts for the purchase of gun safes and firearms theft insurance, along with discounts to pay for training by other businesses.

The subject of attorneys also came up, with one member wanting quicker response when calling a Network Affiliated Attorney to introduce oneself (not after self defense – if unable to reach your attorney immediately in an emergency, members need to call me). Another wanted the Network to assign an attorney to a member. There are two problems with this, one being we don't run the attorney's business for them, and really cannot dictate how they do things. The other problem is that it has always been my belief the member should be responsible for hiring their own attorney. We can recommend attorneys in most areas, but it is always up to the member to choose their attorney. What we have now is the best system we could come up with, and in fact the attorney question is the one we have spent the most time on here at the Network. We are not

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resting on our laurels with what we have and continue to pursue additional options to improve this aspect of the Network.

We have always said we cannot assist members if they are carrying a gun illegally, and that is still our policy. To advertise that compliance with the law didn't matter to us would be akin to promoting violation of the law. That would open us to a whole, additional legal quagmire. That doesn't preclude us from deciding on a case-by-case basis whether we should step in and assist a member who was involved in a legitimate act of self defense even though the member had violated a carry law provision. Interestingly, the direction the USSC is going might just make the question moot if the Justices were to eventually eliminate state carry restrictions altogether. For now, our policy will remain unchanged.

Speaking of statutory violations of gun laws, another member wanted us to extend benefits for those being questioned by

BATFE regarding the building/finishing of 80% guns. That is a non-starter for us; if you don't want the Federal Government to be questioning you, don't open the door for them. We will continue to focus our resources on defending against unmeritorious prosecution and lawsuits following acts of self defense, not on regulatory law.

Lastly, a member wanted a proprietary Internet forum where Network members could talk to each other if they wished. If someone wanted to set this up and monitor it so nothing was said that could be used against a member, we might talk about it. We already have a Facebook page (<https://www.facebook.com/groups/221594457860509>), but not everyone approves of Facebook, and it gets little discussion among members.

Thank you, members, for contributing your ideas. Remember, you can always reach me through our Ask A Question form at <https://armedcitizensnetwork.org/contact>.



Attorney Question of the Month

This month we asked our Network Affiliated Attorneys an open-ended question, inviting them to tell us a bit about defending clients who had used force in self defense. To guide the discussion, we asked whether the case went to trial or if the matter was resolved without a trial and how that came about. Additionally, we asked-

What factors in the situation made defending the use of force difficult and what elements turned out to be your strongest arguments supporting a claim of self defense?

The responses we've received to date follow, and we hope for additional reports from our affiliated attorneys.

Terry A. Nelson

Nelson & Lawless, Law Offices
43537 Ridge Park Dr, Temecula, CA 92590
714-960-7584
lawyer@surfcity.net

My example is of a recent client charged with a crime for defending himself with a weapon other than a gun. He was a 20s-something young man in his front yard, leaving the house with his girlfriend, when her angry and hostile ex drove up, exited his car with a pool cue in hand, sought to attack the girl friend and when deflected, attacked my client "before he knew what was going on," as the saying goes, actually injuring and bloodying my client. My client was able to fend off more blows, gained control of the pool cue and attempted to use it to defend himself from further continuing attack, but never struck the original attacker with it.

Unfortunately, my client did manage to hit the attacker's car and damaged it. The client was arrested and charged with vandalism, which as pled carried significant jail time if convicted. The attacker was charged with assault with a deadly weapon. Police apparently choose to let the district attorney sort it out and decide whom to pursue more vigorously.

My client had legal defense insurance coverage. He contacted me for help after checking my profile and picture on line. My request for the client's coverage from his insurance carrier required more discussion regarding the circumstances than a straight-forward attack and defense with a gun case. We had to demonstrate that the deadly weapon used against my client in the assault was the same deadly weapon he used in self defense. The issue was whether once the pool cue was taken from the attacker, was there still an imminent threat to my client. Also, was the damage to the vehicle a consequence of my client's self defense actions. Good questions. It was resolved

by agreeing that the question and the defense claim was an issue for the jury, and the client should not be denied coverage by the carrier usurping the jury's role.

Settlement vs. Trial

Once the client was arraigned and proceeded toward a preliminary hearing, then a felony panel district attorney was assigned, to either settle or take the case to trial. Prior to that assignment, the general courtroom district attorneys at the required trial settlement conferences could not be convinced or persuaded to either dismiss the case in the interests of justice, or offer a reasonable plea deal. My client was willing to plead to some minor misdemeanor, with no jail time, in order to avoid trial and the risk of conviction, but no such offer was forthcoming at that time.

As experienced criminal defense attorneys know, juries are frequently unpredictable despite the best analysis and voir dire examination, and can not be trusted to understand the case or do the right thing, even in the best prepared and defensible cases. An ethical attorney thoroughly explains that risk before he allows the client to dictate the case be tried to prove his innocence, as some want to do. The client in this case did understand and agree to seek settlement. As the defense attorney being paid by his insurance carrier, it would be in my financial interest to take the case to trial, without argument, when demanded by the client, but it would not be in the client's best interests.

The strongest argument for defense - Innocence.

That risk analysis discussion with the trial district attorney involved the fact that my client was a young service veteran with no criminal record, standing on his own property, defending himself from a violent, unprovoked attack, versus the attacker, who we learned through discovery was a repeat offender of violence and theft crimes, and was out on bail at the time of the incident and had failure to appear warrants outstanding. By the time of our plea discussion, he was serving time on one or more prior charges. Sometimes facts DO matter. With that evidence, we obtained a plea bargain in line with our original request for a minor non-violent offense similar to disturbing the peace. The peace was in fact disturbed by the fight. That conviction will be the subject of a motion for expungement of conviction, which in CA is almost always granted on minor crimes, misdemeanors, and even many felonies.

The moral of the story, the take away should be: avoid if at all possible situations where violence can occur. Withdraw when possible. Even in the best factual case, self-defense explanations and claims can not be guaranteed to succeed in avoiding arrest, or getting charges dismissed once filed. If you carry a firearm, or any recognizable weapon for defense use, think seriously about obtaining legal defense protection for yourself, otherwise you risk financial ruin when involved in legal disputes, whether criminal or civil.

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Laura A. Fine

Law Office of Laura A. Fine, P.C.
PO Box 1240, Veneta, OR 97487
541-341-4542
<https://www.laurafine.com>

My client was walking his dogs on the wide shoulder of a country road. A large truck coming towards him left the road and headed straight at him on the shoulder. My client had a concealed weapons permit and a handgun in a holster under his coat. He immediately pulled the gun and pointed at the truck which was coming perilously close. The truck stopped and three angry young men got out, circled my client and yelled at him.

The police arrived and arrested my client for pointing a firearm at another. I obtained my client's release from jail, conducted investigation into the backgrounds of the three men, provided the information to the prosecutor and all charges were dismissed against my client.

Michael Whisonant, Jr.

Jaffe, Hanle, Whisonant & Knight, P.C.
The Alexander House
2320 Arlington Ave. S., Birmingham, AL 35205
205-930-9800
<https://www.rjaffelaw.com>

I had a client that was able to hire me with the help of the Armed Citizens' Legal Defense Network for a simple assault (misdemeanor) case. He was already charged with the crime and had bonded out by the time I got involved.

The key to many self-defense cases including this one was a quality investigation done with the help of a private investigator. At my coordination the private investigator was able to inter-

view witnesses, get witness statements, review phone records, help us obtain banking records and more.

Law enforcement usually takes very little interest in misdemeanor cases and they had placed their entire trust in the word of the complainant. With a thorough investigation we were able to convince the District Attorney to dismiss all charges against my client.

Randy L. Robinson

Attorney at Law
P. O. Box 682, Augusta, ME 04332
207-653-6749
attorneyrobinson922@gmail.com

I had an interesting case involving a man, a Vietnam vet and part-time gun salesman, who has a testy relationship with the state and local police. A few years ago, a fuel delivery driver came onto his property and my client's dog sniffed him. The man kicked him, then did it again. The dog got angry and charged and the driver choked the Jack Russell terrier.

My client interceded and HE got attacked. After landing a punch, he saw the guy take off – and try to hit the dog with his truck on the way. Anyway, my client was somehow charged with assault, turned down the plea deal, and we took the case to trial.

I argued self defense at the trial, because he only hit the driver after being attacked. The judge declined to rule on the issue of self defense, but did find him not guilty based on defense to chattels – he was defending his dog. Odd case.

Thank you, affiliated attorneys, for sharing your experience and knowledge. Members, please return next month when we hope to have more responses to this question. If not, we'll have a new question for our affiliated attorneys for you to read about.

Book Review

Unarmed and Dangerous

Jon Shane and Zoë Swenson

74 pgs., Paperback \$17.95; eBook \$13.77

ISBN-13: 978-0367471385

Reviewed by Gila Hayes

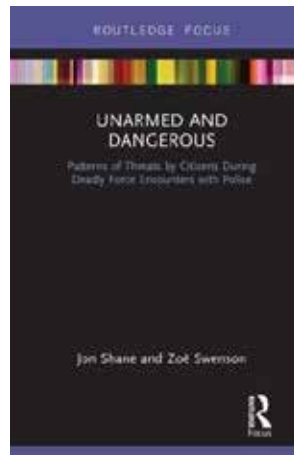
There is a noteworthy absence of books, articles and scholarly studies about using deadly force to stop empty handed attacks. While recognizing similarities and differences between police and private citizens' use of force allowances, I turned to this study of police use of force against "unarmed" offenders. *Unarmed and Dangerous* was introduced as intending, "to dispel the myth that unarmed offenders are not dangerous," so I paid the fairly steep price for its 74 pages.

Co-authors Swenson and Shane observe that police are required "to act quickly and decisively to resolve conflict," without time to ascertain the full extent of an "offender's skill, ability, or intent when a threat materializes." Public opinion will later draw conclusions based on a broader array of facts while the courts judge actions taken on what is known at the time. The US Constitution and case law requires that use of force be proportional and immediately necessary. When an officer is "forced to make split-second decisions about the type and amount of force necessary in a given situation," complications can include the way humans perceive danger based on proximity and familiarity that might come from training or from experience. Additionally, as recognized in case law (*Graham v. Connor* 1989) offensive action is faster than defensive reaction, adding urgency to act preemptively before being shot, stabbed or struck.

Use of force decisions hinge on assessment of "the nature and imminence of the threat," determined in real time from statements and actions of the offender. Swenson and Shane cite "hands in pockets or obscured from view, reaching around inside a vehicle or under a seat, agitation or nervousness, inconsistent or conflicting answers to questions, flight from the officer, uncooperativeness, physically charging or running toward the officer, assuming a fighting stance or a firing stance," as factors contributing to a conclusion that attack is imminent.

Although framed in the context of officer-involved shootings, the concerns of armed citizens are mirrored. Public opinion and the media assume that an unarmed person is not dangerous when, "In fact, there is no data to support such a conclusion," the authors write. They cite case law acknowledging that when assessing reasonableness of an officer's actions, courts should consider an assailant's fighting skill, drug or alcohol impairment, and "perceived physical strength."

Those risks are confirmed by the 2015 FBI Uniform Crime Report, *Law Enforcement Officer Killed and Assaulted* (LEOKA),



which reports "79.0% of assaults against officers occurred from 'personal weapons' (i.e., hands, fists, or feet), compared to firearms (4.0%), knives or other cutting instruments (1.8%), and other deadly weapons (15.1%). The same data also show that between 2006 and 2015, officers who sustained an injury from personal weapons steadily increased from 28.4% (2006) to 30.5% (2015)."

Beyond uniform crime reports which are stingy with details, little has been systematically recorded about deaths and injuries from empty-hand assaults. Swenson and Shane cite open source data compiled by the *Washington Post* analyzing police shootings of unarmed subjects between 2015 and 2016, plus two additional databases maintained online by activists concerned about law enforcement. One of the databases they cite is no longer accessible and the other is not sortable, so after reading the first two dozen incidents and finding that most were shot after first shooting at police, I moved on. *Unarmed and Dangerous* acknowledges that relying on crowd-sourced compilations of news reports is doubly unreliable – first, there is no oversight assuring incidents aren't cherry picked and second, accuracy of the news reports is not assured. Law enforcement agencies don't file standardized reports on shootings of unarmed assailants. Of the *Washington Post* reports, the authors note that the majority of the assaults analyzed involved empty hands (which they call physical weapons), accompanied by verbal threats or charging toward officers.

I was more interested in the study's prioritization of risk from unarmed encounters. In the 112 police-involved shootings Swenson and Shane studied, empty-handed struggles with officers led the number of fatality shootings, followed in declining order by charging aggressively toward officers, disarms or attempted disarms and concealing hands when found committing a crime. Fewer were shot after they assumed a fighting stance or mimicked a shooting stance holding phones, pens, and other non-gun objects.

Swenson and Shane stress that the perception the attacker strives to convey through threatening words or mimicking reaching for or using a weapon contributes to reasonable perception that death or serious injury is imminent. "When a person is unarmed, or if a person simulates being armed with a weapon, then something more is generally required to justify an officer's use of force. Ambiguous or equivocal physical gestures that are deliberately combined with threatening words or phrases will likely complete the impression that the person is armed and prepared to use the weapon regardless of whether the person is actually armed," they write.

While I had hoped for less about how the statistics were developed and more detailed reporting about empty-hand attacks stopped by police using deadly force, *Unarmed and Dangerous* did outline when it is legal to use deadly force in response to physical force, and provided a wealth of links to other studies and to case law citations to illuminate factors that justify deadly force.



News from Our Affiliates

by Gila Hayes

NETWORKING

Gun safety, carry licensing and justifiable use of deadly force in self defense are only a few of a large range of topics about which citizens buying guns need instruction and refresher training. Several of our newest Affiliated In-

structors combine these related needs in their services to their student/customers. It is hard to choose just one or two affiliates, but this month, let's pick one from each coast, a Long Island, NY concealed carry instructor and gun store owner, and, from the opposite side of the nation, a California firearms instructor and gun store owner.

In Santa Rosa, CA, Scott Gabaldon leads the family gun store's classes on subjects ranging from handgun safety, concealed carry, home defense and a lot more as described at <https://www.g4firearms.com/g4-firearms-courses/>. Scott draws on training he has taken with our Advisory Board member Massad Ayoob, as he provides expert witness services in court, as well as being certified to teach the MAG-20 live-fire course.

In addition to stocking guns, ammunition, and all the accessories like range bags, eye and ear protection and more, G4 Firearms also has a membership program that gives their customers a discount on classes as well as access to indoor training simulator programs that cover the gamut from basic shooting skills to high-pressure decision-making scenarios. Scott gives students and gun store visitors copies of our Educational Foundation's booklet *What Every Gun Owner Needs to Know About Self-Defense Law*, adding to the knowledge they take away from visiting the Gabaldon family gun shop.

On the opposite coast, New York continues to struggle with the state's over-reaction to the USSC *Bruen* decision, but that hasn't slowed student demand for the training required for concealed carry licensing and license recertification. Our New York affiliates are handing out even more copies of *What Every Gun*

Owner Needs to Know About Self-Defense Law than ever and introducing the Network to lots of great men and women we'd not yet had the privilege of meeting.

On Long Island in the community of Wantagh, NY Jeff Hirschman's students are keeping him busy. Jeff made time to chat with me between classes and serving customers in QC Hunting & Outdoor Sports which shares space with his long time business, QC Scuba. With growing student enrollments, Jeff and his crew maintain two beautifully-outfitted classrooms

to meet the needs of students who come for the state-mandated training applying for and recertifying for concealed carry licenses. Students come to fulfill the training requirement, but they leave with so much more. In Jeff and his team, they find new mentors and through them they learn of more resources.

If you are in the neighborhood, drop in and get acquainted with Jeff and his crew. QC Hunting & Outdoor Sports is at 3282 Sunrise Highway in Wantagh, and while they don't have website with classes listed, they're active on Facebook or you can go old school and call them and ask about training at 516-826-7222.

With anti-gunners and our government doing everything possible to portray armed citizens as misanthropic, maladjusted lone wolf types, being able to walk into the local gun shop and enjoy conversation and get advice about guns, ammunition and further training is a much-needed boon. From New York to California and the cities and towns in between, our Network Affiliated Instructors provide that kind of mentorship, and serve as resources to which a new or experienced armed citizen can turn with questions or just to share information about a mutual concern. If its been a while since you took a shooting skills refresher course or if your state mandates training before license renewal, think about patronizing the affiliates listed at <https://armedcitizensnetwork.org/our-affiliates/map> and when you can, support the affiliates who are supporting the growth of our big Network family.



Above: Network Advisory Board Member Massad Ayoob and Affiliated Instructor Scott Gabaldon take a break together between drills on the range.

Below: Instructor Jeff Hirschman answers student questions during a concealed carry license class.





Editor's Notebook

by Gila Hayes

I enjoyed several emails with a long-time member last month that had the potential to go off wrong-footed. Instead, it turned into a friendly exchange of information – thanks in large part to that good man's kindness and genuine wish to understand. Now and then, questions are posed with intent to prove an opinion of which the person asking the questions is already firmly convinced and deeply invested. The emails with this member were open minded and honest, which I thoroughly appreciated.

At the heart of our member's first request was the mistaken belief that Armed Citizens' Legal Defense Network, Inc. is structured as a nonprofit, charitable entity. The Network is not a nonprofit. It operates as a for-profit corporation, because, as responsible stewards of the Legal Defense Fund, we know it is essential to reserve Network assistance after lawful self defense for dues-paying members. The Network was founded on investments by Marty Hayes, Vincent Shuck and me, and our operating expenses have never been covered by donations. When members and businesses offer donations, we add those kind gifts to the 25% of member dues that we deposit directly into the Legal Defense Fund, now grown to over \$3,600,000. The Fund is set aside and untouched except to pay for legal defense of members after self defense. A common question is, "Why aren't all my dues put into the Legal Defense Fund? What happens to the other 3/4?" The answer is straightforward: we have to also pay taxes, wages, postage, rent and cover all the other expenses of serving Network members.

Now, in addition to the business of keeping the Network a vital, growing membership organization, we are driven to improve the general public's understanding of justifiable use of force in self defense. As Dr. Margulies expressed in this month's lead interview, there exists a vast misunderstanding of the risk of death or permanent injury from a violent attacker. Few American citizens understand or even seem to care about self defense allowances recognized in U.S. statutory law, case law, and in the very foundations of our criminal justice system going back to the early English common law traditions that influenced America's Founding Fathers' views on the right to self defense.

First-time gun owners rarely have a full grasp of the allowances for and restrictions on use of deadly force in self defense, let alone understanding basic gun safety, and we recognize that is only one facet of the general ignorance about the law, albeit an alarming one. Still, that element alone is quite a Gordian knot. Never shy about taking on big problems, early in the Network's

history, Marty wrote *What Every Gun Owner Needs to Know About Self-Defense Law*, a primer intended to introduce gun owners to the basic elements of self-defense law, while encouraging interest in more in-depth study and teaching about gun owner responsibility.

Since 2009, we have distributed tens of thousands of copies of that little primer. Because that booklet is distributed at no charge to educate the public, in 2013, after applying several years earlier, we received IRS approval for a [501\(c\)\(3\) Educational Foundation](#) to receive donations to cover its printing costs and other expenses of providing use of force education to the public. The Foundation's first mission was providing that booklet to firearms instructors, gun stores, manufacturer/distributors and hundreds of copies are mailed out to individuals requesting them. In 2020, we added publicly available streaming video lectures to reach the population segment that rarely reads but relies instead on video for education and information.

The Foundation's work – shipping booklets and creating and hosting video content – is accomplished through the Network's donation of time and labor. As a result, the Foundation does not have paid staff or salaried directors, although I'm asked with surprising frequency to provide details on Foundation director salaries. We contribute our time to the Foundation because we know we must do all in our power to prevent misuse of firearms and indefensible deadly force decisions. When armed citizens use deadly force without justification or have gun accidents, their mistakes fuel campaigns by freedom-haters who are continuously working to deny us lawful possession of guns for self defense. An accident or unjustified use of deadly force makes a poignant, powerful rallying issue for those who hate and mistrust independent-thinking armed citizens. Freedom-haters will make the most out of every mistake and tragedy. Leading by good, responsible example, providing reliable education and encouraging the public's access to trustworthy resources are essential antidotes. We take doing our part to address those needs seriously and use the Educational Foundation to accomplish that end.

Because Marty, Vincent and I operate both entities – the for-profit Network focused on assistance to members only, and the nonprofit Educational Foundation focused on educating the public about responsible use of force in self defense – confusion is bound to arise about the structure of the Network and its services to members. We work hard to communicate clearly and operate transparently, and when confusion does arise, it often comes about because we're up to our eyeballs in all of the operational tasks and duties and forget that since members aren't involved in the day to day work, they can easily misunderstand which pieces of our mission are funded by the Network and what is accomplished by the Foundation. I was glad our member brought it up.

February 2023

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 <https://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 888-508-3404.