

Becoming an Expert Witness

by Marty D. Hayes, J.D.

Recently, I received the following e-mail:

Good day. I read an article written by Mr. Hayes titled 'Call the Experts' in Gun Digest. He encouraged people to inquire about becoming a court recognized expert in self-defense cases. Will you please forward my inquiry to him as to how best to proceed on this matter? Thank you for your consideration.

*Respectfully,
[Name Withheld For Privacy]*

I responded that it was a great question, requiring an answer that is way too extensive for e-mail. I promised to instead write an article for the Network *eJournal*, as others might be interested, too.

I first learned about testifying in court as an expert witness back in 1990, when I attended Massad Ayoob's Lethal Force Institute. During the classroom presentation, he spoke about several instances where he testified in court and saved the bacon for the armed citizen or police officer. I remember thinking, I would really like to help people who are wrongfully accused of a crime after an act of self defense.

It turns out there were not that many cases in the greater Seattle area, and besides, I was spending all my time trying to develop my shooting instruction business, so I didn't get my first case until 1992. One day, I got a call from the Seattle Public Defender's Office. The attorney, who found me in the Yellow Pages, asked if I could help figure out the firearms evidence in a case. I told her I could try, and so she sent me the discovery, which included the police reports, autopsy report, shooting incident photos and the defendant's statement to police.

The defendant, a young teenager, told the police that while watching TV, he was fiddling around with a Smith and Wesson Model 37 revolver that his mother had bought because she worked nights and didn't want him and his sister at home without some sort of protection. His sister walked in front of the TV, the gun went off, and his older sister was shot. She died. The police arrested him for first degree manslaughter.

There were two pieces of evidence that tended to support his story. The first was a jagged wound on the side of his left thumb, and the second was light primer strikes on a couple of the unfired .38 caliber cartridges. Due to the primer strikes, I figured that he was cocking the gun and letting the hammer off,

and a couple times the hammer slipped and hit the primer, but not hard enough to fire it. This would tend to support that he was just fiddling around with the gun.

As far as the jagged cut on his thumb, the only thing I could figure was that he was loosely holding the gun, and the gun had been cocked and the hammer slipped, discharging a round at the same time the sister walked in front of the TV. But how could I establish evidence to support my conclusions?

It so happened that I owned a Smith & Wesson Model 37, so off I went to the range with a box of .38s, the revolver and a pair of leather gloves, to attempt to re-create the shooting mishap. I sat on the ground with the gun in my lap and fiddled with the gun (always pointed in a safe direction). I could cause the light primer strikes by cocking the gun with my finger on the trigger and releasing the hammer by pulling the trigger. The gun would not fire but would result in firing pin strikes on the primers. So much for the first mystery.

With gloves on, I then did the same thing, holding the gun loosely and cocking the gun fully, and letting the hammer fall with my finger on the trigger. The result? The gun, a lightweight snub-nosed revolver, recoiled so violently that the sharp edge of the hammer caused a mark on the leather glove, the same spot as the wound on the defendant. Mystery #2 solved.

When it was time to testify in court, I had a secret weapon: a video tape of the re-creation. The judge saw the video, listened to my explanation, and the defense rested its case. The result? In less than 15 minutes the kid was found not guilty, with the judge explaining that the event was likely an accident, thus there was no criminal intent. Ever since that case, I try to video all the testing I do for cases.

After the Smith & Wesson Model 37 case, I became the go-to guy for the Seattle public defender's office when they had cases in which they did not understand the firearms or ballistic issues. I took pretty much all of the cases they asked me to,



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not because they involved self defense, but because the court needs to understand the firearms/ballistic evidence. Furthermore, in the event the defendant is being overcharged (for example, murder instead of manslaughter) I feel compelled to make sure the correct charges stick. In many cases, the murder charge may be replaced with manslaughter and a plea deal struck.

You are likely wondering why I would work on cases where the defendant was clearly guilty of a crime. It is because the defendants were not guilty of the crimes with which they were charged, and I abhor the practice of prosecutors overcharging. Taking those cases also gave me experience so when I did have a case where the defendant was truly innocent, I could do a better job as an expert. The Model 37 case illustrates the type of case where a gun-savvy individual, such as an instructor or someone who works in the firearms industry, could become an expert witness for court.

There are other areas of expertise outside of "firearms expert" to explore, but before we do that, let's take a quick look at why an individual can give expert testimony in a criminal or civil case. The Federal Rules of Evidence include specifics about testimony by experts. See https://www.law.cornell.edu/rules/fre/rule_702 .

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Most, if not all of the states, follow the Federal Rules of Evidence. This opens the door for a firearms instructor to come into court and

give testimony. There are restrictions, typically defined by case law in each jurisdiction. If you are interested, delve into the case law of your state to look at the individual issues you may face. Now, let's get back to the individual areas of expertise about which you may find yourself testifying in court.

Being a Ballistics Expert

Firearms instructors are typically experts in ballistics, especially if they are reloaders. A case may have a need for a ballistics expert, as was true in the following:

One case involved a drive-by shooting. The defendant shot back against the guys on the street who were shooting at him. The defendant was shooting a Beretta 9mm, and the deceased, one of the guys on the street, died from a 9mm gunshot wound to the back.

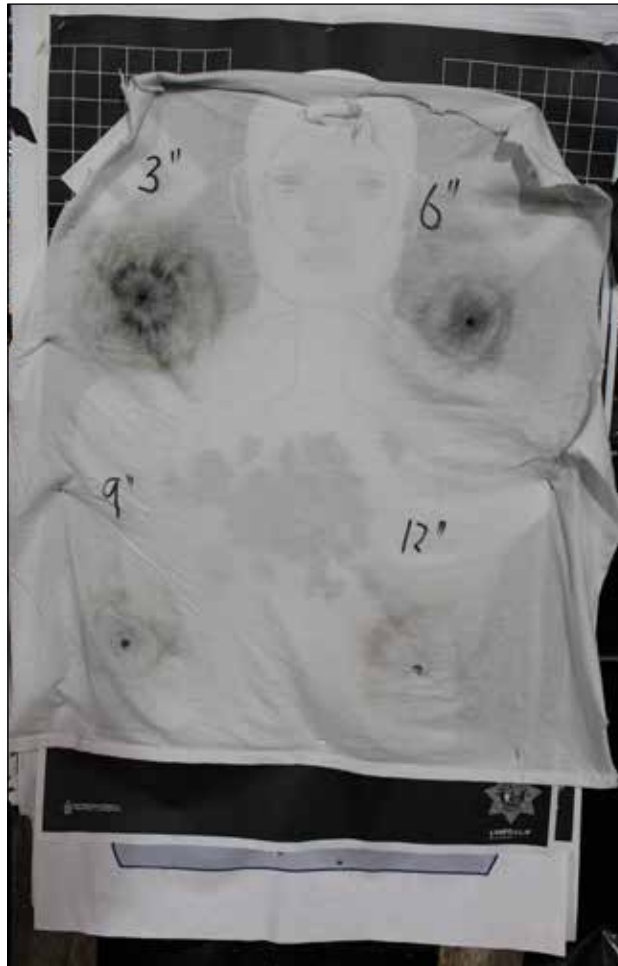
After looking at the evidence, I noted in the crime lab report that the bullet was a 90 grain 9mm. Does that suggest anything to you? It told me that the defendant did not shoot the deceased. Why? Because the 90 grain 9mm is typically loaded in .380 caliber, not 9mm Parabellum. I told the defense attorney to

have the police go out and canvas the area better, looking for a .380. Sure enough, the cops found a Walther .380 under some bushes at the shooting scene. Case dismissed.

Another situation which requires ballistic expertise is determining how close the shooter was to the deceased by conducting stippling testing. The test can be useful if you have observed stippling and have the gun and ammo from the shooting with which to do testing. I have been able to get away with an exemplar firearm, but you will almost certainly need the same type of ammo for the testing. You can refer to textbooks on shooting incident reconstruction (more about this later) to learn how stippling testing is conducted. I have worked on cases where I was tasked to ascertain the positions of the deceased and the shooter, based on the trajectories of the bullets and bullet strikes. This is pretty common.

I have worked on lots of cases where shots were fired at vehicles while moving. In another case, I wrote an

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Gunshot residue and stippling test to determine distance of muzzle to shooting victim.

expert report regarding the killing of a mother cougar, when it was coming at a bear hunter. He fired in self defense, and I was able to show that the wound was consistent with an attacking cougar, not one that was running away. That case was dismissed before trial.

Expertise in “Dynamics of Violent Encounters”

What were the persons involved in the event doing right before, during and after the shooting? This question typically arises in cases where a person was shot in the back, although the shooter claims he only shot while the deceased was facing him. In one such case, the defendant was being threatened and he shot in self defense. One of the bullets struck the deceased in the back, and that was enough for the police and prosecutor to charge the defendant with first degree murder. It fell to me, as the expert, to explain how that could have happened. The whole story can be read in this three-part story in a past edition of this journal starting at <https://armedcitizensnetwork.org/anatomy-of-a-self-defense-shooting>.

I have worked on several other similar cases. This is the field of dynamics of violent encounters, an area of expertise one can read up on and get training in. For more information on becoming an expert in dynamics of violent encounters, see <https://armedcitizensnetwork.org/the-science-of-self-defense>.

Use of Force Expert

Another area of expertise is in use of force. Most of the time, this expert testifies at police excessive force trials, but the field of study is applicable to an armed citizen’s trial, too. The use of force expert cannot testify whether he or she believes the defendant is innocent or guilty, but a skilled attorney can make use of the “hypothetical person” to get the point across to the jury. For more information about this type of expert, see <https://armedcitizensnetwork.org/disparity-of-force>.

That list pretty much sums up the areas where an armed citizen who is qualified as an expert can testify at trial.

In April 2017, the Network did an interview with noted expert Manny

Kapelsohn (also a Network Advisory Board member) regarding the role of expert witnesses. He addressed the subject of how to become an expert so well, that I certainly could not do it better. Read that interview at <https://armedcitizensnetwork.org/the-role-of-the-expert-witness> before you read further in this article. Please also read the second part of the interview with Kapelsohn <https://armedcitizensnetwork.org/the-role-of-the-expert-witness-part-2> then I will pick up the topic from there.

How to Get Started

You are likely wondering how to break into the field of expert witnessing, and what is required if you do get a case. First, if you are a firearms instructor, you might simply get a call out of the blue based on your business, and you take it from there, but that is probably not the quickest way to get started. One thing you can do is advertise with your local bar association, or separately to the local criminal defense bar. Get some phone numbers, make a few phone calls, and talk with the receptionists, explaining that you want to start serving as an expert

witness, and you would like to advertise your services. If this sounds daunting, you are probably not a good candidate for this field, because there is a huge amount of stress when testifying in court, knowing that someone’s freedom rests upon how you do. If you can’t handle the stress of a few cold calls, then you will likely fall apart under cross examination.

You can also follow criminal cases in the newspaper or on-line news service, and if a case strikes you as one where you might be able to help out, call the attorney the news source identifies. Offer to take a look at the discovery for no fee. There is nothing for him to lose and all you will lose is a little time. Let him know you want to break into the field and need some experience. You might even volunteer to work on the case for free, just to get the experience. (I did this in the Ronda Reynolds case, discussed later).



Forensic mannequin with trajectory rods showing three shots from the front, one from the back.

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Another thing you will need is a Curriculum Vitae. Huh? A CV is a fancy way of saying "résumé," but make it clear you are not looking for a job. Instead, the CV is a one to several page document that outlines your qualifications for the court. Remember the requirement to be accepted by the court as an expert? This is where you tell the court, and the attorneys involved in the case, who you are and what experience, education, and training qualifies you as an expert. Now, whatever you do, do not embellish on this CV. Don't round up dates or exaggerate a qualification. If this is a high-profile case, with lots of money on the line (remember George Zimmerman?) the other side might just send a squad of investigators out to check out every detail on that CV, intent upon discrediting you on the witness stand.

The Nuts and Bolts

If you take a case, you will be required to do the following: First, do a complete review of discovery (the evidence of the case). Even if you are being asked only about a specific aspect of the case, you want to be able to testify that you reviewed ALL of the discovery. If not, you can be strongly criticized during your testimony. I take a notepad (or my computer) and make a note of every document I review, all the pictures I see, and every interview I listen to.

I also use this document to keep track of the time I spend, since you will generally charge by the hour. Alternatively, the attorney may ask you to take the case on a flat fee, paid up-front. If you accept this, do yourself a favor and don't cash the check until you are through reviewing the discovery. You may find out the case is nothing with which you want to be associated.

After reviewing discovery, you will want to discuss the case with the attorney. Do this in person or over the phone, not over e-mail. E-mail is discoverable, especially in civil cases. At this time, depending on what your review indicates, the decision is made if you are going to continue working on the case. If I am dismissed from the case or decide to withdraw, I will send the uncashed check back to the attorney, but that is just the way I operate. The few hours I spent are not that important to me, I certainly learned something new, and the money isn't that critical to my survival. Your situation may be different, so make sure the attorney understands that you are billing for review of all the discovery, even if you do not work further on the case.

Speaking of Billing...

There are several ways to get paid. One is the flat fee, which we have already discussed. The other is a retainer, and you work and bill against a retainer that is based on an estimate of how many hours you expect to spend. I usually do this, taking a retainer up to being finished with my report, and if it goes to court, then I bill for the time for court.

The last method is usually reserved by public defender cases, in which you are going to be paid by the county or state. If this is the case, you bill after the court case is resolved, be that by plea or a trial. You will want to get an authorization for the payment from the judge (the attorney you are working for handles this). After getting this authorization signed, you are free to work on the case with an assurance you will get paid, up to the limit imposed by the judge. This can be revised upward, if necessary. One other thing, some attorneys will take a short cut and just have the client pay you directly instead of depositing the client's money into their trust fund and then writing you a check out of the trust fund. Don't fall for it. Accepting money directly from the client opens you up to the court room attack, "Isn't it true, Mr. Hayes, that the defendant is paying you to testify for him here today?"

The Expert Report

Now, you will need to write a report for the attorney for whom you are working. This report can become evidence for the jury to review (along with your CV). Make sure everything is grammatically correct, along with spelling and sentence construction. This can take several hours.

At this point, you will be waiting to see if the case goes to trial. In my experience, about two-thirds of the time the case is resolved and that ends your involvement, but you are not loafing during this time. You will want to write out questions you want the attorney to ask you in court to qualify as an expert. I do this every time because I want the attorney to ask me the right questions. Every time I have done this, I've been accepted as an expert, but in some cases where I did not do this, I was denied being able to testify. Not being allowed to testify hurts the pride, but the blame is on the attorney, not you.

I also draw up my direct testimony questions and give this to the attorney before trial. Most times the attorney will be grateful for this help, and I tell them that they are free to use the questions or not, but if they don't and your client loses, it's not my fault.

I started this procedure after I was hired on a felon in possession of a firearm case. The defendant had slipped a .22 caliber cartridge in the hole in a bicycle handlebar stem bolt which acted as a chamber and barrel. The state declared the bicycle stem bolt and hammer a firearm. I had no affection for the defendant, but it was the legal precedent of calling a bicycle part a gun that made me decide to take the case. The attorney did a dismal direct examination of me, and after the case was over and his client lost, the attorney blamed the loss on my lack of succinct testimony. After that experience, I always draw up direct examination questions.

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Supplementing Your Report

In most cases you will likely need to do some testing, either stippling testing, case ejection testing, or some type of ballistic testing. I am firmly convinced that if the testing lends itself to videography, you should record video of the tests. If the testing does not lend itself to video, then by all means photograph the results. Even if the videos or photographs are not used in court, having them will help protect your credibility if you are accused of faking the results. It happens.

Other Cases

I have worked on several cases where the client was the parent or parents of someone who committed suicide or at least that is what the police were claiming. After all, it is much easier to investigate a suicide. In all but one of the cases, the evidence pointed to suicide, granting the parents some closure. One case was an anomaly, both the coroner and sheriff's department were calling the death of Ronda Reynolds a suicide, but the ballistic evidence said otherwise. Eventually, the incumbent coroner lost his job over the case. After both a judicial review of the case in which a jury looked at the evidence presented, and a coroner's inquest, two juries decided she was murdered. The case was the subject of a true crime novel *In The Still of the Night*, written by late true crime author Ann Rule (available on Amazon).

Testifying at Trial

Wear a nice suit. If you don't have one or are not willing to buy one, don't become an expert witness. Clean up before trial. There are many fine firearms instructors who have long, shabby beards and a plethora of tattoos. Obviously, tats can be covered, unless they are on the neck, face, or hands. Tats can turn off members of a jury and that would be bad for your client. You don't need to shave your facial hair, but certainly trim it. If I was hiring an expert, unless the jury was a group of Hells Angels, I would not hire the person if there were visible tattoos.

When testifying, don't simply answer the attorneys' questions, when an explanation is in order. The defense attorney should be wise enough to frame the questions like this, "Mr. Hayes, could you explain to the jury how you came to your ultimate opinion in this case?" This would allow the expert to become a teacher in the eyes of the jury, explaining the scientific processes involved with your analysis, and how you applied this knowledge to form an expert opinion. In police work, cops are taught to address the jury when answering the questions, but it becomes comical when they answer yes or no questions by turning to the jury each time they say "yes" or "no." Make sure this does not hap-

pen, turning you into a bobblehead. If an attorney asks a yes or no question, just answer to the attorney. If they ask "please explain" that is the time to turn to the jury.

Be sure to give the defense attorney time to object to a question before answering. A question may be cause for an objection, and you do not want to be giving the answer while the defense attorney is objecting.

If you don't know, you don't know. Do not be afraid to say you don't know, or if you don't understand the question, don't be afraid to ask for a clarification. The jury probably doesn't understand the question either.

Plain language is best. Speak to the least educated person on the jury, not the most educated. There are times where you must use a technical phrase, but before you do so, or immediately after, explain the technical phrase to the jury using plain language.

Training to Become an Expert

There are many books available to help educate you about serving as an expert witness. Just search the Internet. Start with the term "shooting incident reconstruction," followed up by "crime scene reconstruction." As far as the latter though, avoid using that term when testifying or in your report, because doing so intimates that the client committed a crime. Sure, there was a crime, but the crime was the act the individual who got shot was doing, not what your client did.

You can attend live training to increase your expertise. [Force Science](#) would be a good starting point, along with Deadly Force Instructor from the Massad Ayoob Group, a class I helped design and teach. Learn about it at <https://massadayoobgroup.com/deadly-force-instructor-class/>. The more classes you can take, the better.

Summary

I hope this answers the original question in sufficient detail that the reader can decide if becoming an expert witness is something to consider doing. The world of armed citizenry needs expert witnesses who can go to court and educate the court about what we face when deciding to shoot or not.

Network President Marty Hayes is a familiar voice to most Network members. He brings 30 years experience as a professional firearms instructor, 30 years of law enforcement association and his knowledge of the legal profession both as an expert witness and his legal education to the leadership of the Network. See his bio at <https://armedcitizensnetwork.org/learn/network-leadership> for more details.



President's Message

by Marty Hayes, J.D.

Report from the NRA Annual Meeting

We did not actually attend the NRA members meeting or board of directors meeting, because in the past when I have attended them, I found them to be overly choreographed love fests with no real information presented, and virtually no input from NRA members allowed. So, I will only report from the floor of the exhibit hall.

The 2023 show was smaller than past shows, and a major player in the industry, Smith and Wesson, did not even bother to attend. I would guess only about half the number of members were milling around the floor as we have seen in past shows. Could it be that people are a little disgruntled with NRA leadership? I know I am, but in spite of that, we signed up a lot of new members and got to greet and shake hands with even more of our current members.

I remember back to our first show in Phoenix and shows for the next several years when we were the only self-defense legal business in the exhibit hall. The question was: "What do you do?" Now, the overwhelming question is: "How to you compare with the others?" Sometimes the person asking would name a specific program, but most of the time they were just confused and wanted some clarity.

It is impossible for us to draw an exact comparison, because we do not have up-to-date information about the competitors' programs and haven't seen their contracts with their clients. One interesting comparison has been done by an Arizona attorney Marc Victor, who has taken the time to painstakingly go through each contract and point out the flaws in each. Attorney Victor runs a pre-paid legal service for armed citizens. Since he is a competitor, we will refrain from commenting on his program, but instead point it out so that our members can

decide for themselves if they want to join. His website is <https://attorneysforfreedom.com/videos-blogs/>. If you want to know what he thinks of the competition, you will gain a lot of information by watching his videos.

Advisory Board Meets

The NRA convention is where we usually hold our annual Network Advisory Board meeting. This year, I was able to update the board on the legal cases we have defended over the last year (of which there was none!). This zero number speaks volumes for the quality of members we have, in that Network members are well-educated in use of force and largely do not make mistakes that land them in hot water. I take some degree of pride, being the producer of our educational package. It shows that our members are watching and studying.

We discussed the Network dipping into the area of Red Flag Laws and whether or not we should offer to assist, but to a person, no one on the Advisory Board was interested in opening up our benefits to a Red Flag issues. These experts in the field of self defense and self-defense law understand that when a person is served with one of these high risk protection orders, they likely brought the problem on themselves, or at least contributed to the situation.

We also discussed the notion of delving into church security programs. It should be noted at least two of the board members are involved in church security teams, one of whom is contributing an in-depth article for future publication. While my personal feelings are sympathetic towards the churches and what they face, we could not figure out a reasonable program that would fill the needs of the churches, the security team members and the Network. We tabled any action on the topic, instead simply acknowledging that individual church security team members are very welcome to join the Network, and if they were involved in a use of force in defense of self or others while at their church, we would probably assist with the legal aftermath.

That will do it for this month. I hope you enjoy the article on expert witness work I wrote for this month's lead article.



Attorney Question of the Month

Armed citizens commonly believe that if they use force in self defense, they are certain to be sued. That has not proven true in the Network's experience of assisting 29 members who defended themselves and their loved ones since we started the Network in 2008. None have been sued. Nonetheless, fear of a lawsuit is of great concern to most Network members. In this Attorney Question of the Month column, we asked our affiliated attorneys for their opinions and comments on this question:

If a person uses force in self defense, are they likely to be sued for damages? This is a pervasive fear amongst armed citizens many of whom believe that it is a near certainty. What is your opinion?

Have you had a client or clients who were sued after self defense? How did it turn out?

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In Colorado, any person who uses force in defense of a dwelling can be legally immune from prosecution for a crime, as well as for civil damages, if they demonstrate certain factors at a hearing before a judge. C.R.S. section 18-1-704.5(4) states that "any occupant of a dwelling using physical force, including deadly physical force, in accordance with the provisions of subsection (2) of this section shall be immune from any civil liability for injuries or death resulting from the use of such force."

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Of the more than a hundred self-defense cases we have done, we had at least two cases involving a payout where self defense was used in response to the opposing party's actions, and in both we were able to reach a settlement.

We have not had a case where we were retained specifically to defend a tort case for use of force.

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I'm so glad we got around to this question because I think this may correct one of the most subtle and pervasive misunderstandings among the membership. It seems that nearly every student in my CCW class is convinced that even if they are not prosecuted, they will be sued out of existence if they use lethal force. Thankfully, it just ain't so.

Let's get this out of the way early—us lawyers are leaches. Some of us are (hopefully) nicer leaches than others, but we all suck blood from society. Hopefully, we all do some pro bono work, but it can't be our focus if we want to feed our own families. Thus, we won't take cases, or file suits against people, unless we are darned sure we will get paid for the very considerable effort involved. Suits against people who were acting intentionally are known as "intentional tort" suits. They are as rare as hen's teeth—for good reason. Let's delve into it.

Lawyers take on cases like this on what is known as a "contingency fee" basis. The lawyer gets paid a percentage (usually somewhere between 25-40%) of the amount recovered on behalf of the client. In a case filed under a negligence or reckless theory of liability, there will likely be some insurance policy, often homeowner's, renter's or even an auto policy, which will pay in the event of a favorable settlement or judgment. Guaranteed. Lawyers are happy to take on such cases as long as the liability is clear, and the damages warrant the effort involved.

In the event of an intentional tort, however, there will be no insurance coverage to pay the judgment. Nearly every insurance policy written since the revolutionary war has specifically excluded intentional acts from coverage. To cite an example nearly everyone is familiar with, look to the 1997 O.J. Simpson civil verdict, the judgment from which now exceeds \$70 million. Despite the huge verdict, no insurance payments were made to the plaintiffs for the above-referenced reason. That means the only recovery possible would have to be against the defendant's personal assets. A very, very tough nut to crack.

The plaintiffs (the Brown and Goldman families) have received essentially nothing from that highly publicized verdict. Mr. Simpson was, to put it succinctly, filthy rich prior to that verdict. He fully exploited his options regarding shielding of assets, bankruptcy, etc., and the attorneys did not recover enough money, I would bet, to even recover their out-of-pocket expenses spent to present the trial. So, since there is no way to "get blood out of a turnip," why did a brilliant guy like Daniel

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Petrocelli (the Brown's and Goldman's attorney) take on a case with essentially zero chance of recovery? Because we all vividly remember his name and the victory over Simpson nearly 30 years later! Such notoriety and publicity is priceless. That trial was televised live on CNN every day for weeks and was watched by millions of people. Thus, any of our members that are extremely rich and famous and commit the most heinous "crime of the century," with an accompanying unprecedented media frenzy, may, in fact, get sued.

For the rest of us, with no insurance for our intentional acts, and modest assets which do not even require shielding until an actual trial proceeds, we should be just about as worried about being hit by space debris as a civil suit for an intentional use of lethal force.

Take the rare win. Let's worry about braced AR pistols some more instead!

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In Florida, it is not a "near certainty" or even likely that a person who has threatened or used defensive force will become a defendant in a civil action for damages. (An antecedent criminal conviction of the civil defendant may inform a different conclusion).

A statute (Fla. Stat. § 776.032) provides immunity from civil suit for any person who lawfully uses or threatens force as permitted in the defense of self/others (Fla. Stat. § 776.012), in "home protection" (Fla. Stat. § 776.013), or in defense of property (Fla. Stat. § 776.031). Immunity from suit includes suits "by the person, personal representative, or heirs of the person against whom the force was used or threatened." Civil immunity is determined in a proceeding separate from the pretrial immunity determination made in any related criminal case. *Kumar v. Patel*, 227 So.3d 557 (Fla. 2017).

If a court finds a civil defendant immune, the court must "award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred" by the defendant in defense of the civil action. Most plaintiffs and lawyers are probably deterred by the prospect of being found liable for such amounts.

Another statute (Fla. Stat. § 776.085) has been said to provide that "a person may not be held liable for damages for personal injury or the wrongful death of a person who attempted, or who was attempting, to engage in a forcible felony at the time the injuries were sustained." *Professional Roofing and Sales, Inc. v. Flemmings*, 138 So.3d 524 (Fla. 3d DCA 2014). A conviction establishes the defense. Fees, costs, and other compensation are also mandatory in favor of a successful defendant under this provision.

I participated in two cases, and am aware of several others, where a claim was asserted against a force user after the state made a no prosecution decision or dismissed a criminal case without formal filing of any charge. A civil lawsuit was not filed in those cases.

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I have not had any cases involving self defense shootings. I do believe that in New York any such incident would be reviewed by a grand jury and if there is a no bill, that would be a very significant benefit to the individual who was the shooter. If it is the other way around and the shooter is charged criminally, it is likely that there will be a subsequent civil suit assuming death or serious injury and damages.

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I've not had that happen. However, it is a possibility and can't ever be ruled out. My advice is the same as for using deadly force: use it only where someone's life is in immediate danger and there are not other options.

Thank you, affiliated attorneys, for sharing your experience and knowledge. Members, please return next month when we have a new question for our affiliated attorneys.

Video Review

Paul Howe: Combat Mindset

Media Format: DVD (\$9.99) or streaming video (\$1.99-\$15.99)

<https://www.makeready.tv/en/watch/tutorial/details/make-ready-with-paul-howe-combat-mindset/5462>

Reviewed by Gila Hayes

For this month's review, I studied an older video produced by Panteao Productions in 2012 that features Paul Howe. This instructor has been influencing military, police, and armed citizen training for many years. His experience includes 20 years in the U.S. Army, ten of which were in Special Operations, including the Battle of Mogadishu and other combat. He's written several books, and teaches through his company Combat Shooting and Tactics (CSAT <https://www.combatshootingandtactics.com/>).

Peripherally aware of his books and videos, I had not paid his work the attention it deserves until last year when Howe spoke out very publicly about law enforcement response to the Uvalde, TX school shooting. Reminded that I had always intended to study his teachings, I chose his video on combat mindset over his technique and tactical instruction for which he is also known. After all, not everyone can apply written or verbal instruction to physical skills, but every one of us can benefit from an honest evaluation of our mental and emotional readiness to defend ourselves and our loved ones.

Howe starts the video by acknowledging the need to be willing to "take a life to save a life," driven by "a strong belief and desire." Know the reasons that make your survival vital. For example, when he was deployed to Somalia, his need to be a part of his 6-month-old daughter's life was "forefront in my mind during combat operations as a reason to come back." Lest the viewer fail to understand that they may be called upon to defend themselves and others, he emphasizes the existence of evil, adding that it keeps coming back if each generation does not proactively fight it. He uses graphic video of horrific killings to cement that fact in the viewer's mind.

The video excerpts also illustrate the terrible results of passivity. In one clip, close to a dozen victims are face down on the ground but none fight back while one is beheaded, then the rest methodically shot in the back of the head. In another, a chain-saw is used to behead two men sitting against a wall, which Howe identifies as a "cartel on cartel" killing from our southern



border. Are the video excerpts too gruesome to justify their inclusion? There are also excerpts from a docudrama about the murders of the Columbine, CO students. Different people will have different levels of revulsion, and the video clips are preceded by warnings. Howe explains he doesn't use the video for shock value but to emphasize that "there are people out there in this world who will do bad things to you ... [and to] help you understand the savagery that is in this world."

Having established the necessity, Howe defines the combat mindset as a person's ability to go into harm's way against overwhelming odds and focus on a task at hand, to solve one problem at a time. Defining what has to be done to

stop horrific violence using methodical, previously thought-out tactics, he shows that situations where fear would paralyze many can be overcome. There are four elements feeding into a positive combat mindset, he teaches: mental, physical, technical, and tactical. Each is defined in the video's format of short 2-4-minute chapters that move quickly from one facet of the topic to another. He covers a lot of ground. Understand that the video covers much more than I can highlight.

Your mental preparation starts by defining what you will use force to fight, and what circumstances will trigger how and when you will take action, a decision that is not uniform from one person to another. The mental trigger must be "worked out before game day," so, for example, when it is time to talk, you talk but if it is time to shoot, you shoot. In addition to live-fire classes, Howe recommends visualization, explaining, "You can go through these scenarios in your mind...Fight the battle in your mind, before you ever get there."

Fear is a "major obstacle" resulting from lack of confidence, or doubt, and not trusting your training. If your training is substandard, correct the deficit, he urges. Replace fear with the ability to take the fight to the assailant. "When you do that, there will not be room for fear in your mind, because you are thinking about positive solutions to the tactical problems that are coming up." Replace negative thoughts like fear of dying with positive solutions to the technical problems, he urges. Achieve the solution step by step, by being deliberate and methodical and with the "tenacity to see it through." Don't quit just because you believe you have solved the problem, he adds later. Move to a stronger, more tactically advantageous position and look for what else needs to be addressed. "Look for work!" is a favorite phrase in the *Combat Mindset* video.

[Continued next page]

Be prepared to be injured, Howe continues, because you can be hurt going into the fight, during the fight or while ending the fight. Acknowledge that you could be injured and carry things like tourniquets and combat gauze. "You are the best first responder for any medical problem you encounter," he states.

You need to learn to keep fighting even if you are injured. Don't stop! In training it is important to keep working through the problem if something goes wrong. Instead of becoming angry, "Develop controlled aggression," Howe teaches. This is no time to ride an emotional roller coaster. A neutral, workman's attitude is most effective in a fight. When things go wrong, sort them out. Make peace with God in advance, then focus on the task at hand. You have got to convince yourself that you are going to survive. He adds later that the mindset must not be passive or neutral or reactive but instead be proactive and aggressive.

The value of physical fitness arises repeatedly, and particularly for private citizens, being fit may make it possible to retreat before fighting is the only option left. He points out the relationship between skill and fitness because you take away more from training when you're not physically exhausted. You need to "Put your focus on the training, instead of your discomfort." Train in various weather conditions, at day or night, in your gear so you know you can "move through obstacles...fight or retreat" with your defense weaponry. He later advocates ten minutes of dry practice several times per week for each system – rifle, pistol or hands and knives. "If you do that several times a week, that will keep your skill set up," he says, and for marksmanship, it assures getting that crucial first-round hit on target.

The best tactics, Howe continues, are a small set of plans that will work across a "whole bunch of situations." His battle plan? The hardest shot to make is on a moving human being, he notes, so if he can make the shot he will, but if not, he will move to cover, "then come out and make the tactical shot." In today's urban environment, knowing how to work around the angles of buildings is critical. He dislikes the quick peak method of searching, an opinion he supports with a video of police officers who were not ready to fight and were shot by a

single aggressor. "If it is worth looking at, it is worth looking at with a gun," he teaches, then plays a video clip of a team using hardcover effectively. Good use of cover gives you more time to think and your assailant less time to think, he states.

The chapter specifically addressing preparation to treat physical injury was already well-set-up by earlier mentions of the importance of carrying tourniquets, combat gauze and other things to preserve life until emergency medical care is available. Howe stresses how quickly blood loss can be fatal, recommending that the viewer practice applying tourniquets with left or right hand, on oneself and practice on another person.

He talks about the realities of injury within a team – for private citizens that translates to family or associates. If the threat is active and harming people, your team needs to stay focused on stopping the attack, so one who cannot proceed, perhaps due to a broken leg or other disability, may be temporarily left behind. For many in the private sector, that is a reality check that may have never factored into self-defense strategies families and other groups have discussed. Each person needs to carry their own supplies and one who can't go forward to solve the problem shoulders their own initial care. Get yourself to a safer position, treat yourself, and "look for work" that you can do, Howe directs, until someone can return and help you. If evacuating a wounded group member for medical treatment, strip them of their weapons and gear so there is nothing that can hurt the medical crew, he teaches.

The *Combat Mindset* video moved so quickly from one element to another that I was a little surprised when Howe started his final summation in which he urges never quitting, practice with "the big four" – rifle, pistol, hands and knives, plus medical. Maintain physical fitness. Keep tactics and techniques simple and be prepared "to kill with ruthless efficiency and do it on demand."

Training enthusiasts will find *Combat Mindset* a good reminder of many fundamental principles; anyone who watches it, regardless of experience, will find it clarifies why fighting evil is necessary.



News from Our Affiliates

by Gila Hayes

It is starting to heat up down in Florida already and with the change in seasons, Jeff and Robyn Street are wrapping up the winter offerings of their popular Scoot and Shoot range sessions.

The Streets' Step by Step Gun Training has been affiliated with the Network for ten years, and in that time their level of outreach has never failed to impress. I think their adaptability and the way they tailor their instruction to the needs of their students plays a big role in their success. The Scoot and Shoot program illustrates what they do so well that I recently called Jeff for an end of season report.

Scoot and Shoot is enjoyable for shooters of all skill levels. When starting a session, Robyn is alert to first-time shooters and can take them aside for introductory instruction in gun safety using blue guns and disassembled firearms. Beginners can borrow loaner guns, UpLULA magazine loaders, and even holsters and magazine pouches to get started right.

Jeff explained that some of the participants come from the indoor range where they haven't been able to work from a holster, so when needed, he can take those folks aside and teach safe drawing and holstering procedures. He described dryfire that entails the draw stroke, presentation to target and prepping the trigger but not pulling the trigger completely. "Do you know what you've just learned?" he asks. "Since not all assailants will comply with verbal commands; you may need to draw and start to pull the trigger. If that gains compliance, you won't need to shoot and that is the best outcome," he stresses.

Scoot and Shoot sessions attract an average of 30 participants each time it's offered and are held on

the Naples, FL LouLand Gun Club outdoor range. Robyn is an NRA Training Counselor and has trained and certified the RSO and CRO cadre, who help keep activities safe during these fun range events. It is hard to imagine a better community outreach and if event participants haven't already taken classes or private coaching from the Streets, they're likely to become students and refer their friends to Step by Step Gun Training, too. Jeff comments that their student body is diverse, ranging from little old ladies, active retiree married couples, and people from all walks of life in the custom classes that he does for small groups. He even offers safe dryfire instruction in the privacy of clients' homes.

These two inspirational instructors are meeting Floridians' needs and going where they're needed. Call them for more information at 239-641-6140 or get to know them through their

website at <https://stepbystep-guntraining.com/>.



Above: Robyn's coaching brings a big grin to the face of a Step by Step Scoot and Shoot participant.

Below: Jeff talks through the keys to shooting success before a pair of shooters undertake a live fire drill.



At the opposite corner of our nation, Orville Wright's 1 Stop CCW is filling the need of hundreds of armed citizens for carry license instruction. While much of his schedule is dedicated to serving California CCW applicant and renewal training needs, he also teaches private class sessions, the Utah, Arizona and Florida non-resident carry license programs, and has a special program dedicated to Realtors®, a profession this writer has long thought at very high risk of attack from predators who recognize how vulnerable real estate agents are when they show properties. Kudos to Orville Wright for training them.

Scarcely a week goes by without our Network crew conversing by phone and email with new Network members who tell us that Orville Wright recommended Network membership, then add that they took a very enjoyable class from him. He's a natural salesman, full of enthusiasm for the shooting sports and firearms ownership who brings over 30 years of experience as a professional trainer to his classes and private lessons. Learn more at <https://ccwpermitinstruction.com/instructor/> or call 949-769-9099.



Editor's Notebook

by Gila Hayes

Over half of our crew, four of our seven staff and owners, traveled to Indianapolis in mid April to represent the Network at the NRA annual meeting. We enjoyed our time there, meeting new and long-time Network members, talking extensively about

the Network's efforts and our work to fulfill the mission that no Network member stands alone after legitimate use of force in self defense. It was a great three days. Now that the Network is in its 15th year, it should come as no surprise that a large number of visitors to our exhibit booth were existing members coming by to visit, with their numbers augmented by a handful of lapsed members returning to start their memberships back up. Of course, we met many wonderful new members, as well.

Our Indianapolis new members and the many others who joined in April are reading this online member journal for the first time. By way of explanation, let me observe that we enjoy presenting a variety of educational topics to provide continuing education for both new and long-standing members. Pulling in a good mix of topics to keep our monthly journal interesting is an ongoing challenge. It is effort well-invested, though, serving as one element in our larger education initiative, which also includes for-member-only video lessons and our Educational Foundation's publicly available videos at [Armed Citizens' TV](#).

Our Advisory Board of prominent instructors and attorneys, our Network Affiliated Attorneys, and other trusted instructors and mentors who have shaped our thinking over the years generously contribute interviews and commentary to broaden our perspective and

that of our members. While time consuming, compiling the online journal is one of the most satisfying parts of my efforts to keep the Network strong and vital.

Members tell us that the educational component is the part of Network membership that everyone is happy to receive, while none want to need our assistance after self defense. A favorite joke amongst renewing members is a closing quip that they hope they never have to call. With only 29 member involved



After starting an interview in Indianapolis, Network Advisory Board member Emanuel Kapelsohn wrapped up our work via Zoom, giving extensive details about volunteer church safety teams. I'm excited to share the interview he gave, coming to these pages soon.

cases since the Network was launched in 2008, we are convinced that in addition to providing an enjoyable way to stay in touch with our members, member education goes far toward keeping members out of situations that may end in use of force in self defense.

While we do not shy away from throwing our strength behind a member who needs legal defense, it is very favorable for all of us when, as has been true for

well over the past year, no member involved incidents happen. Education is a big contributing factor.



[L-R] Attorneys Alex Ooley and Mike Ooley answered questions about use of force in defense of animals while we were all together in our booth at the NRA Annual Meeting. Members for whom pets are beloved family members will want to watch for this interview when it is ready for publication. I learned a lot from them and look forward to sharing it with readers.

The Network's time in Indianapolis let us start the work on several informative articles and discussions that we will share with members over the coming months. Watch for a mix of articles addressing legal issues, church safety teams, defending the family pet, home safety, and more. We are very blessed to be associated with experts

and prominent influencers in the self defense field. Stay tuned in the months to come as we share these conversations and interviews.

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:

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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.