



## Training Despite Challenges

### *An Interview with Massad Ayoob*

*Interview by  
Gila Hayes*

*After we publish  
an interview or  
column advising  
members to  
participate in  
on-going  
documented  
training as  
preparation to  
weather the  
legal aftermath*

*of self defense, members often express genuine concern because they do not believe they can complete firearms courses due to age, physical infirmity or disability and the severe budgetary constraints that too often attends the limited income available to a disabled citizen.*

*In light of the many years Massad Ayoob has taught firearms and self defense, I turned to him with the concerns expressed by these members and we recorded this short interview to share Massad's suggestions and recommendations in his own words.*

**eJournal:** As Network members are well aware, we put a high value on documented training for armed citizens who may at some point have to use force in self defense. Every time the training topic comes up, we get feedback from people for whom completing a standard two- or four-day defensive handgun class is all but impossible. We aren't talking about the guy who qualified for his carry license permit class and thought that was enough; we're talking about age, chronic illness or a permanent physical impairment. These same men and women need the gun for self defense and find it frustrating to be advised to participate in training they feel is beyond their physical ability.

I've wanted for some time to discuss the problems these members face with an expert trainer, and Massad, with

46 years' experience teaching self-defense firearms use, you've taught many people with serious disabilities and seen these good people come to class, learn, succeed and take away the knowledge and experience one of your courses imparts.

**Ayoob:** Yes, we pride ourselves on being able to adapt our techniques for the physically-challenged student. As you know, we have taught a number of folks in wheelchairs, one-armed people, one-legged people and people with pretty severe arthritis. What we do is kind of like an injured person driving a car: we adapt the techniques and we adapt the machinery.

**eJournal:** The students you mentioned must have extraordinary will to prevail! It seems a cruel challenge that the armed citizens who may have the most physical or economic difficulty pursuing armed defense training are often the ones most vulnerable to victimization and thus need these skills more than the able bodied.

**Ayoob:** By definition, I only get as students the ones who are committed enough that they do come to class and they do overcome their endurance issues, etc. Having said that, they tend to be extremely dedicated students. One of my wheelchair-bound students has multiple times been top shot in class against the able-bodied students. My students tend to be kind of self-selecting. I don't get the defeatist ones that by definition have given up. So, I may not be the best guy to answer your questions.

**eJournal:** Well, yes and no. You have guided many able bodied and physically challenged students past the mental blocks that keep people out of training. What's your response if a prospective firearms student asks, "I don't have much stamina any more. How can I get through sufficient training to be competent under stress?"

**Ayoob:** I would say, do it slowly and do it incrementally. If at all possible, see if you can find a trainer who will

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work with you a couple of hours at a time. Look for someone in your area so you won't have to be paying travel expenses to get to class. Train with them for just an hour or two at a time.

So much of this is the cognitive side; obviously, the only stamina required is being able to pay attention. For the physical side, simply take more breaks and be sure to stay hydrated.

Instructors, if you have the physically-weakened person, give them a gun that is easier to run. What you will have is someone, perhaps in a wheel chair or a multiple amputee, who by the very fact that they are up and functioning in society has already displayed the determination to overcome physical challenge and to be able to defend themselves.

**eJournal:** When you've taught folks with serious mobility issues, what have you modified to accommodate these limits?

**Ayoob:** A lot of instructors don't care for the Weaver stance and consider it obsolete, but its advantage, because of the bent elbows with the isometrics of the gun hand pushing forward and the support hand pulling back, is that recoil is absorbed between the gun and the torso as opposed to using the whole body weight behind the extended arms. It is really the one technique that works that way.

A lot of times your wheelchair-bound student may be paralyzed from the chest down or may not have legs to apply the downward pressure to the footrest that would allow them to bring the shoulders forward. If he came significantly forward in the wheelchair, he could literally fall out. The classic Weaver stance allows him to much more comfortably shoot with the shoulders back and it gives him an option he would not have otherwise.

**eJournal:** For years you've taught that instructors should not get invested in a single stance because although one person can do it, there may very well be others who cannot. A student using a wheelchair, walker or a cane for balance has their hands occupied which may interfere with using the gun. What do you teach them?

**Ayoob:** First, for the student with the cane or the walker, we would be giving a lot more emphasis to one-handed shooting because one hand is going to be stabilizing

them most of the time as they bob, duck or weave or do whatever they have got to do.

However, we have X number of students who have arthritis or bursitis issues who cannot lock out their arm in the one-handed stance. I teach them what I used to call the Kenpo punch in StressFire. The elbow is bent, pointing straight down and the arm pushes forward and tensions against the gun. The easiest way to describe it is that you have some guy by the throat and you are trying to hold him up against the wall. That creates kind of a one-handed Weaver effect. The coiling of the bent arm pushing forward snaps the gun back on target much, much quicker.

**eJournal:** A strong, able-bodied person might not think about the increase in confidence felt by a person who had lost their legs or an eye or developed a bad tremor and concluded they could not use a gun in self defense.

**Ayoob:** For the one-eyed shooter, it is simply the same correction that we teach any cross-dominant shooter: but it's adapted accordingly.

The palsied shooter, we've found that if they have any hand strength at all, if they crush down with maximum grip like that Spaz Out drill that you've seen me do any one of a thousand times with LFI/MAG students.

**eJournal:** Oh, yes, and as odd as it feels to go ahead and press the trigger while intentionally trembling the hand and arm causing the sights to wobble all over the place, it does work as you describe.

**Ayoob:** If you can hold the sight picture and roll the trigger back, even if the gun is quivering on the target the shot is going to hit the target. The gun may be quivering, but the target will not know nor will it care whether the launcher was quivering before the bullet took flight.

**eJournal:** I am also wondering if you teach that their use of force choices may differ from an able-bodied person's allowable options?

**Ayoob:** On the deadly force side of it, we emphasize and teach this to all of our students: the handicapped attacked by the able-bodied is absolutely a disparity of force issue and any violent physical assault on them, even by an unarmed, able-bodied aggressor, can be treated as a deadly force situation because they're so

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much more likely to be killed or crippled and so much less likely to be able to fend them off. In many cases, they can't run; they are not physically strong enough to overpower the guy, certainly the wheelchair-bound person or the person using a walker or cane will not have the range of movement to effectively break a lot of the holds that you or I would be able to break standing up.

**eJournal:** Without saying "giving permission," I'd observe that you are helping students understand that they don't have to be beaten severely before they introduce deadly force.

**Ayoob:** Yes, it is not me giving them permission; it is me informing them of the law and the caselaw that is giving them permission.

**eJournal:** Have you provided expert testimony on the disparity of force issue for physically disabled people?

**Ayoob:** I'm not recalling any one particular case, although it did come up years ago in the *Florida v Mary Hopkin* trial because the assailant was a 245-pound physically healthy and very violent male and the victim was a 63-year old female with acute arthritis. We won the acquittal on the killing there.

I have also testified in the Colorado gun case that the magazine limits have a powerful disparitive effect on the physically handicapped because the arthritic person will be much slower to reload, the mobility challenged person is not going to be able to duck to cover to reload and the person in a wheelchair won't be able to carry spare magazines behind the hip on the belt as you or I would because there is always the possibility of it being compressed against the skin and causing damage because they cannot feel it happening. You and I have the total circumference of that waist to carry gear on; they only have 180 degrees and a lot of that is going to be tied up with phones, possibly with various medical devices, this kind of pump or that kind of bag, for instance. I have testified that the magazine bans have a disparitive effect on the physically handicapped. My testimony and report on that is at [ColoradoGunCase.org](http://ColoradoGunCase.org).

**eJournal:** This does bring up the question of gun selection for people of reduced physical ability. If strength is limited, do you have guns you prefer that may be easier to work the action, load, and shoot? Got any favorites?

**Ayoob:** Many years ago, when Beretta was still making the Model 86, a single stack .380 with the tip up barrel, I bought one as a hedge against the day when I get too crippled up to run a slide. Unfortunately, I don't think they are still manufacturing that model of gun anymore. Fortunately, now we have a new generation of guns made expressly for easier slide retraction. The Smith M&P EZ model .380; we had before that Ruger's LCP .380. Some have advertised the Walther CCP for a super easy slide rack, which I didn't really find to be the case, but then I might just have not been able to feel the difference since I can still run standard guns. Certainly, the 9mm 1911 is a given because they can use the heel of the hand to cock the hammer and relieve the mainspring pressure against the slide and now they just have the very light 9mm recoil spring to work against.

**eJournal:** I'm hearing a list of various autoloaders. Is the double action revolver more difficult and thus not such a good choice if we've lost some dexterity and strength?

**Ayoob:** No, I don't think so. The revolver will be much simpler to load and unload for administrative handling. I am still one of those old guys who believes that particularly for the non-dedicated person who is going to spend very little time on the gun, the double action only revolver is a safer gun for them. The big problem pulling the double action trigger comes if you have crippled, arthritic or damaged fingers. The Ruger LCR line has proven to be a very easy trigger to run; I've seen a whole lot of people who pick up that above other brands and say, "Oh, my, I'm taking this – the Ruger trigger is much easier," yet in the double action only version it could never be called a hair trigger gun. That can be very helpful for the arthritic, too.

You'll hear people say, "get a regular double action revolver, you can always cock the hammer so it will be easy to shoot," but those people forget that if they have arthritic hands, it is going to be difficult for them to cock the hammer, particularly for a one-handed shot. If they have nerve damage, arthritis, or weakness, if they have cocked the gun and then haven't needed to fire the shot, as is quite common, how are they going to safely uncock it?

**eJournal:** That is hard enough for any of us! Off the shooting range, lowering the cocked hammer over live ammunition takes on a whole new level of seriousness.

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**Ayoob:** The Ruger LCR and also the new Colt Cobra seem to have the very easy trigger pull and the double action only Kimber has been a big success, too.

**eJournal:** Any special concerns for safe gun handling or manual of arms for one of reduced strength of dexterity?

**Ayoob:** Yes, the person with the trembly fingers by definition does not want a gun with a very short, very light trigger pull. That is the person for whom I would recommend a gun in double action with some length to the trigger pull. If the hand trembles uncontrollably, it is going to be even more important to keep the finger outside the trigger guard until the act of intentionally firing the weapon and getting it out of the trigger guard at the very instant they stop firing the weapon.

**eJournal:** That is pretty much the same safety concerns applicable to the rest of us.

**Ayoob:** Well, we have to remember that epinephrine, when fight or flight hits, generates tremor and all of us could all of a sudden have a palsied trigger finger.

**eJournal:** Oh, boy, isn't that the truth! All those recommendations make training more accessible. Training has value beyond simple proficiency, too. Could you give us a refresher on why one who gets a gun for self defense needs also to take training and document his or her education?

**Ayoob:** First, the better trained you are, the less likely you are to make a mistake and the more competent you are going to be. For this discussion, the operative term here is documented training. Now more than ever gun owners are under attack. The latest theme of anti-gunners is "every criminal was a good guy with a gun until he wasn't." It is critical to be able to show a jury of 12 non-gun owners that you were competent, that you knew when to use the gun, and to have an impartial third party to come in as a material witness to testify, "Look, I trained this person, here is what I trained them to do, here is why I trained them to do it, and here is why what I trained them to do is best practices."

Basically, the documentation of that, the reiteration of that by one or more instructors makes it irrefutable to the jury that, whatever else was going on, this person knew when to do it, when not to do it. Then when they hear the judge's instructions to the jury on what constitutes justifiable use of deadly force, the jury is going to say, "Hey, wait a minute—I'm having de ja vu! I've heard this

before! I heard from the defendant that these are the standards that she used and I heard it from her instructors who documented to us these are the standards they trained her to use. Duh! She did the right thing."

**eJournal:** Thinking back on your career, and without violating confidentiality, have there been times in your career where you have been on the witness stand giving that testimony on behalf of your students?

**Ayoob:** I have, and if you want an authoritative resource, read the article by Lisa Steele from about ten or 11 years ago in the journal of the National Association of Criminal Defense Lawyers, the Champion, on defending the self-defense case (reprinted at <http://aware.org/legal-articles/8-content/73-defending-the-self-defense-case-by-lisa-j-steele>). To quote, "Ideally, the client will also have some formal training in the use of deadly force which will allow the client's teacher to testify about the client's training in order to show that the client's actions were subjectively reasonable. If the client has not had any formal training, counsel may still seek an expert to testify about use of force issues. However, the attorney may encounter difficulty showing that the expert's opinion is relevant if it was not the basis for the client's subjective decision. The attorney could offer expert testimony to show that the client's actions were objectively reasonable."

**eJournal:** That's very useful as it helps us understand a popular theme by naysayers that suggests your training may be inadmissible or that your lawyer might not want to introduce testimony about your training.

**Ayoob:** Well, why wouldn't your lawyer want it to come in unless you had violated the training? In a recent case, *PA v. Torres*, they kept out the testimony of the chief instructor of his department because that particular instructor was not the one who had instructed that officer. I thought it was poor application of legal doctrine myself, but if they had brought that officer's instructor out of retirement, I cannot imagine what grounds that judge would have had for keeping him out. The judge said, "This guy did not train this officer; therefore, I won't allow him to testify on this topic," which I think in and of itself is an incorrect decision because that man would have been speaking on behalf of the training bureau of a very large agency and he was the logical person to do it.

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**eJournal:** OK, that is one example of training not being admitted as evidence. Then again, a person's instructor may be unavailable, deceased or otherwise not able to testify. It is good to remind readers that Mas has taught us for years to protect course notes, completion certificates and other training documentation. Still, others remain adamant that training can't be introduced as evidence without risking addressing the "ultimate issue" of right or wrong. What's up there?

**Ayoob:** The point I would want my attorney making would counter the other side saying your training shows you were planning this killing; that you went to "death school" to learn to be an assassin. In the opening statement, I would want my attorney to say, "Ladies and gentlemen of the jury, the prosecution is going to try to tell you that my client was irresponsible with his firearm. We'll bring in testimony to show you that my client was in the 1% of the millions of people who legally carry concealed handguns in public in this country, who took the responsibility that he paid money and took time out of his life to get trained to a higher than minimum-required standard in how to fulfill that responsibility. He is the last guy that would have done anything irresponsible with it."

**eJournal:** The attorney is setting the stage to question the prosecution's claim that the armed citizen was the bad guy in the situation, the one that broke the law.

**Ayoob:** Oh, absolutely. The big threat of the defense is going to be the exact same defense we use for police: This individual did what he or she was trained to do and what they were trained to do is the best practices for dealing with the life-threatening crisis that we will show you that the defendant was facing at the time he or she pulled the trigger.

**eJournal:** As I hear it, the thing that drives our attorney friends to distraction is suggestions that by introducing training, we are going to show the jury what the defendant was thinking at the time of the incident. Of course, the attorneys are right, you can't state an opinion on guilt or innocence.

**Ayoob:** We cannot say what the defendant did or why she did something. Only she can testify to that. What we can testify to is what we trained her to do under certain circumstances, why those are the training standards and why it is done that way. "Here's why when the other guy goes for a gun, you don't wait to see the gun because if you wait, you will see what comes out of it. He's made

the first move and your only chance to catch up was to draw and fire right now," and that sort of thing.

**eJournal:** A subtle difference, but one that allows the instructor to teach the jury.

**Ayoob:** Educating the jury is the key. You cannot tell them, "She did the right thing" because that is the ultimate issue of guilt or innocence and that is the province of the jury. We cannot invade the province of the jury. What we can do is give the jury the tools to determine what was or was not justified and that is the purpose of the expert and also the material witness. The expert is the outside expert on the topic and the material witness is the actual witness who said, "Yeah, I trained this person to do this."

Look at the Zimmerman case—probably the best-known recent self-defense case—they brought in an expert witness who I thought did a very good job, but the real right-cross to the face of that unmeritorious prosecution was the material testimony of Zimmerman's friend, an Air Marshal who had taken him out shooting and taught him, "Look, here is how we do it; here is when to draw; and here is when to fire." His testimony was extremely powerful for the defense.

**eJournal:** That's an example we can all look up and study to reinforce why, without regard for physical ability or disability, we need training from people like you who can provide that testimony. Let me shift gears a little. In your opinion, if an elderly or infirm or disabled person has to use a gun in self defense, do you think police and prosecutors might hold that person to a more forgiving standard than would be required of an able-bodied person?

**Ayoob:** I don't see it so much as out of sympathy for someone being physically challenged. We all have to remember that the great majority of prosecutors and investigators are not out to hang somebody for using force in self defense. They know a self-defense case when they see it and hopefully they realize, "This person had no other choice; there was no other way they could defend themselves."

**eJournal:** That's a valuable reminder, because we get so frightened about an anti-gun government "out to get" armed citizens.

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**Ayoob:** We have to remember that after an intense class, people think, "Oh, wow, everyone is going to try to shoot me, and when I come out of here it is going to look like *Westworld* or an episode of *The Walking Dead*. We have all got to remember, no, we are training for an aberrant circumstance that could happen but we hope never will. The same holds true for unmeritorious prosecution. The great majority of self-defense shootings at least in the criminal justice sector are seen as such, recognized as such and treated as such.

**eJournal:** Good point. Getting back to our topic of self-defense training for disabled people, I've not been entirely sure what questions needed to be asked. Is there anything else we should explore?

**Ayoob:** There is one other thing that I train to the physically handicapped students and not to the able-bodied. If they have a bullying situation or a road rage situation or something building up into a physical attack they need to yell, "Do not assault me. I have a physical condition. If you hit me, I could die." Now every witness has heard that; the assailant has just heard that. Does this not establish an intent to kill or to cripple?

**eJournal:** You're helping manage the aggression, possibly without going to guns.

**Ayoob:** Yes, and Plan A is that hopefully the guy realizes, "Oh, if I hit this guy, and he dies, I go to jail," to hopefully stop the whole thing. Second, if he does

continue the violent assault, you have given fair warning. If the other guy hit you in the head, broke the eggshell skull they talk about in law school and you die, he might later say, "I only meant to hit him not to kill him," if the intended victim has just said, "Sir, if you strike me, I could die," and the guy tries to hit him anyway, ipso facto, you have now manifested an intent to kill or cripple. In making that utterance you've also informed every witness, well, every honest witness anyway, and it makes it that much easier to establish it for the jury.

**eJournal:** It becomes part of the incident report and witness statements and that's more convincing than just your word against the assailant's or his friends'. Mas, I sure do appreciate your help and suggestions in this discussion about documented training in spite of serious physical difficulties. This is an article I've wanted to develop for several years, if nothing else than to encourage everyone to be creative and find ways to add certificates of training and notes from training to their personal files. Thank you for being part of this, and for being such a stalwart part of the Network.

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*Learn more about Massad Ayoob's classes at <http://massadayoobgroup.com>. In addition, read his blog at <http://backwoodshome.com/blogs/MassadAyoob/>.*

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## President's Message

by Marty Hayes, J.D.

We have a couple of things to discuss this month. First, a big thank you to retiring Network Affiliated Attorney Royce Ferguson, from Everett, WA. He wrote to me the

other day and said that he was cutting criminal defense out of his practice, as it takes too much time and he wants to retire! (I know the feeling). I have known Royce for close to 30 years, and he has been my go-to guy in the Seattle area all that time. He was one of our first Network Affiliated Attorneys and is one of the two attorneys discussing defending a self-defense case on our third Network DVD.

People like to speak harshly of attorneys in general, but Royce has always been a stellar member of the bar, willing to help people regardless of the financial reward.

I worked with him on several cases, even those outside my legal expertise. In one example, he hired me to be a motorcycle accident expert, simply because of my decades-long experience in riding motorcycles. A person can serve as an expert due to his training, education or experience in a field. In this case, I remember recreating a ride his client took, by taping a flip video recorder to my helmet to document the riding conditions on the street where his client was injured while riding a motorcycle. I did the ride, wrote a report and the case settled, hopefully for much more money than would have been offered without my involvement.

A second case I worked on for Royce was the time I was first accepted by the court as a blood stain pattern expert. The facts of the case were pretty weak. The defense theory was that the deceased reached out to

take an AK-47 out of the arms of the shooter and the rifle went off and killed the deceased as he was grabbing it. I would have turned down the case, except the back spray from the head wound really did support that theory.

I took the case to explain just that one aspect of the evidence, but because I had never testified as a blood stain pattern expert, I was raked over the coals during expert qualifications. I was finally accepted when the judge said to the prosecuting attorney, "Counselor, due to the low threshold the State of Washington places on expert witness testimony, I will approve Mr. Hayes as a defense expert, but I will give you great leeway when you question him on cross-examination." And she did, by the way, but I was accepted and have since testified in several more court cases as a blood stain pattern expert.

I did get my revenge on Royce, though, when I roped him in to assist in getting a determination of a suicide overturned and re-classified as a murder. Author Ann Rule wrote a book about the case, *In the Still of the Night*. (See <https://www.amazon.com/Still-Night-Strange-Reynolds-Unceasing/dp/1416544615>) Royce was the attorney throughout a judicial review, a

coroner's inquest and an appeal to the Washington Court of Appeals. Get the book and read it, if you like real crime stories.

Anyway, this is just a note of thanks to my friend Royce Ferguson, for being a part of the Network for the past 10 years.

Also on my mind today is a kind of nasty message from a fella checking out the Network. He had written to one of our Advisory Board members, questioning whether

or not the Network REALLY has the money it says it has in the Legal Defense Fund, and whether or not we have REALLY helped out people after an incident. I guess he wanted the Advisory Board to demand an audit of the Legal Defense Fund.

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Attorney Royce Ferguson of Everett, WA

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Well, fella, let me put it this way: We here at the Network operate on mutual trust. We trust the members to act in good faith in self defense after educating themselves through our educational package. And our members trust us to be there for them after an incident, as we have been for 17 members since opening the Network in 2008. If someone wants more assurances than that, we would politely suggest he or she buy an insurance policy from another post-incident competitor that will likely not do any good, but at least they will have a lot of legal fine print to read.

We have repeatedly and at length discussed our efforts on behalf of members in many publicly available *eJournal* articles. Follow these links to check out the Network's service to members over the years—I warn you, there are quite a few. Here, in chronological order, are some past announcements and reports about Legal Defense Fund use that our readers might want to browse.

[http://www.armedcitizensnetwork.org/images/stories/journal/Network\\_2011-4.pdf](http://www.armedcitizensnetwork.org/images/stories/journal/Network_2011-4.pdf)

Pages 6 to 9 of

[https://www.armedcitizensnetwork.org/images/stories/Network\\_2012-1.pdf](https://www.armedcitizensnetwork.org/images/stories/Network_2012-1.pdf)

<https://armedcitizensnetwork.org/our-journal/archived-journals/286-may-2013?start=8>

<https://armedcitizensnetwork.org/our-journal/300-december-2013?start=5>

<https://armedcitizensnetwork.org/our-journal/archived-journals/303-february-2014?start=4>

<http://armedcitizensnetwork.org/archives/311-june-2014?limitstart=0>

<https://armedcitizensnetwork.org/our-journal/319-december-2014-network-journal?start=4>

<https://armedcitizensnetwork.org/index.php/network-s-year-in-review>

<https://armedcitizensnetwork.org/index.php/january-2015-network-journal/321-president-s-message>

<https://armedcitizensnetwork.org/state-of-the-network>

<https://armedcitizensnetwork.org/may-2015-presidents-message>

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<https://armedcitizensnetwork.org/1-million-legal-defense-fund>

<https://armedcitizensnetwork.org/october-2017-presidents-message>

<https://armedcitizensnetwork.org/2018-state-of-the-network>

<https://armedcitizensnetwork.org/defending-pepper-spray-use> and

<https://armedcitizensnetwork.org/defending-pepper-spray-use-2>

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## Attorney Question of the Month

This month's question comes from a Network member who is also a firearms instructor. He asked--

**If a Network member is accompanied by a friend or family member at the time of an armed self-defense incident, is it preferable that the 9-1-1 call be made by the associate? Why or why not? What information should the associate provide to the police dispatchers?**

**Marc S. Russo**

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I would say by the friend or family member--as long as one trusts them, and they specify to responding police that the good guy is armed. That way the good guy can focus on the immediate threat.

**Bruce Gordon**

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Easy, the person who shot (or both or all of them) should call, or have the person making the call state it is being made for all the people there. Do not call them shooters, etc. They are victims, but start off calling them people. That should be sufficient. They need to follow the usual script we have gone over in many of these questions.

"Why" is so that they appear to be secure in the knowledge that they did the right thing.

Do not give every bit of information but give enough to stabilize the situation and preserve evidence, especially that which corroborates your story.

Remember half of the thing here is how the issues appear. Making the call, especially if you start off asking for an ambulance, is important. This does not mean give up your rights, the 5th amendment right against self incrimination was hard fought for in the constitutional convention, do not give it up!

**John R. Monroe**

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It always would be preferable for the 911 call not to be made by the member (assuming the member is the person who used a firearm). There are several reasons for this:

1. Assuming the member later becomes a criminal defendant or civil defendant (or both), the 911 recording of the member would be admissible in court as "an admission of a party opponent." So, whatever the person said in the heat of the moment, which is likely to be adrenaline-fueled, will be usable in court. On the other hand, if a third party makes the 911 call, the recording may be excludable from evidence as hearsay. There are other possible ways the recording could be admitted into evidence, but that is beyond the scope of this response.
2. If the caller is a third party, he or she may be somewhat less excited, and therefore provide a more unemotional report.
3. The member should use the time between the incident and the arrival of the police to get composed and prepare for the upcoming confrontation with police. It also would be a good time to call the Network to discuss the need for counsel, and the member cannot be on two calls at once. The 911 operator would want to keep the member on the phone for a while, perhaps until the police arrived. The effect would be to prevent the possibility of making any other calls.
4. If the third-party caller is the spouse of the member, that would be ideal, in many jurisdictions, including mine (Georgia), there are two privileges that could apply (the spousal privilege and the spousal communication privilege). These might prevent the 911 call from being used as evidence and prevent the spouse from having to testify, too.

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If a third party makes the call, he or she should only report sufficient facts to communicate the need for emergency response, the nature of the emergency, and whether there is still an active situation. E.g., "There has been a shooting. There are [X number of people] with gunshot wounds. There [is or is not] a continuing shooting threat [and if there is, provide a physical description of the threat, and last known location]. Send police [and ambulance(s)]."

The dispatcher probably will ask what happened. There is no need to get into additional details. The dispatcher is not writing a police report. He or she is not writing a report at all. The police are going to ask what happened when they get there, so whatever is told to the dispatcher is not going to have any relevance, unless of course it is more incriminating than what is later told to the police or testified to in court.

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Yes, it would be preferable to have the friend or family member make the 911 call for assistance.

First, the Network member has just been involved in what we could assume is a very stressful incident and may have shot or killed an assailant, so let's give him or her a chance to calm down and get the blood pressure back to a reasonable level.

Second, if the assailant has surrendered or been wounded, the member should be concerned about whether the assailant may continue to pose a threat, so keeping an eye and a gun on the bad guy are important enough that someone else should make the 911 call.

Third, since we have no idea what facts are in play, we also have no idea whether the member faces any kind of legal jeopardy as a consequence of the self-defense event. That means the member should avoid saying anything that will be recorded while adrenaline levels are peaking because resulting statements could potentially be used as evidence if a prosecuting authority decides to pursue some kind of charges.

The friend or family member should advise the 911 dispatcher something like, "There's been a shooting. My uncle had to defend himself against a guy who was

attacking him" and say that the police are needed along with an ambulance if anyone is injured.

Each event has its own facts, and this answer doesn't cover every situation as you can imagine.

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An individual who has been the victim of a crime that resulted in the use of deadly force should to the extent possible not be the one who makes the call to 911 or emergency services if there is someone else, a witness, who can make that call.

One of the reasons that the person who was directly involved in the use of deadly force should not make the call or even talk to officers at the scene if someone else can is that in Tennessee and many other states the act of using deadly force is on the first order a potential criminal act—an assault or perhaps a homicide. The law classifies an act of "self-defense" at least in Tennessee as a justification or necessity but it is still classified as an excuse or a defense to a possible criminal charge. Cases are tried frequently on the issue of whether the actions in fact met the definition of a "self-defense" and in some cases they do not.

For example, there is a reported case in Tennessee where an individual was attacked and responded with deadly force by shooting the attacker. The facts were generally that the "victim" shot the initial attacker several times. The court determined that it was not self-defense based largely on the statements and testimony of the victim – now defendant, now felon. Generally, the testimony was that the victim shot the attacker three times. The court and the appellate court concluded that the first two shots were justified self-defense but that the third shot was not justified self defense because the victim stated that at that point the attacker was on the ground and no longer presented a threat yet he shot anyhow. That third shot based on the "victim's" own statements formed the basis for a felony criminal conviction.

Another reason that a victim should not talk to the 911 or police immediately following a shooting—if possible—is that it is likely that the victim and even the associated

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witnesses will be under an unusual amount of stress, excitement, adrenaline, unrealized shock and perhaps confusion. The victim might require immediate medical care or treatment—even if it is for nothing more than anxiety, chest pains or a “racing heart.”

Refuse to talk about what had happened. Instead, ask or have someone ask for medical care and assessment of the victim at a hospital if there is any reason to feel that this intervention is needed. Even if it's not obviously needed, perhaps it is good to ask for that assessment and treatment anyway because often even in car wrecks people do not realize for a couple of days that they were injured.

Avoiding talking with witnesses and officials immediately following such a traumatic event will allow things to calm down, facts and memories to become clearer and for a careful review or debriefing of the circumstances with a personal attorney which conversation will be protected.

Even if you are the friendly witness, the call to 911 and the discussions with law enforcement need to be limited to calling for emergency medical help, identifying the location and describing the parties involved and relaying any obvious medical needs such as a knife wound or gunshot injury. Don't be a chatter box and don't try to persuade 911, the responding officers, the detectives or anyone else that this was necessary or justified at that point in time. The officials will interview everyone and if not at that time then later when things are calming down.

So, the 911 call perhaps should be nothing more than:

“My name is \_\_\_\_\_. I am at the corner of 1st Street and Main. I am a \_\_\_\_\_ male, six feet tall and wearing a Tennessee Titans jersey. I was attacked/I just witnessed an attack. The attacker is/was a \_\_\_\_\_ male/female and is still present/left the scene and dress in jeans and a red shirt. We need an ambulance.”

Hang up unless the attack is still occurring. You have no obligation or duty to answer any questions or provide other information. The purpose of the 911 call and talking to officers on the scene is to get help and avoid more injury—not to try the case.

It might actually be a good idea if you are legally carrying a gun or knife that you have a card with a simple prepared script in your wallet that you can follow so you know what information to provide and when to stop.

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I do not think this is an easy question. There is no clear answer, without assuming a lot of variables.

The short answer: it depends lots on the capabilities and inclination of the accompanying person. My eldest daughter would speculate openly and orally about everything from the Loch Ness Monster to divine intervention in the event. My youngest could be trusted to give only name, name of those at the scene, location and number of injured persons, if any.

Obviously, “they” aren't “you,” and thus what they say aren't obviously admissions -- unless they can:

- be considered your co-conspirator;
- or your agent;
- and their observations might be “excited utterances,” which they wouldn't be with some distance from the event;
- In some jurisdictions, your attempt to direct what they say to law enforcement might be “obstruction of justice” or “tampering” by YOU!

If you are both “involved,” it might be bad for them, good for you to make the call. If you are in no shape to make the call, they should probably make it. If you are BADLY injured, or someone needs to chase the bad guy and only you know the details, you should probably speak to dispatch.

This subject is worthy of a round-table discussion and a decision tree.

*A big "Thank You!" to our affiliated attorneys for their contributions to this interesting and educational discussion. Next month we continue with the answers to this question submitted by our affiliated attorneys.*

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## Book Review

### FBI Miami Firefight: Five Minutes that Changed the Bureau

By Edmundo and Elizabeth Mireles  
ISBN 9780999510308

\$14.99 at

<https://edmireles.com/product/five-minutes-that-changed-the-bureau/>



Matix drove April 11th, and Mireles explains other details that guided the investigation, as well.

On Friday, April 11th fourteen agents dispersed in eleven vehicles, surveilling banks along a five-mile corridor of South Dixie Highway. They dressed casually, but carried in their vehicles heavier armor, long-barreled guns, raid jackets, back up guns and other equipment.

In the decades since the FBI's April 11, 1986 shoot out with two heavily armed robbers in Miami, FL, many have forgotten the deaths of that day and the heroism of FBI Agent Edmundo Mireles. These lessons should not be lost. At the 2018 NRA Annual Meeting, friends mentioned reading advance copies of a book on the shootout by Mireles himself. A Google search turned up the retired agent's book, modestly self-published, and I ordered it immediately.

*FBI Miami Firefight: Five Minutes that Changed the Bureau* is an autobiography unlike the many outside analyses published about this incident over the years. What, I wondered, would be the perceptions of the agent who, despite a head wound and a disabling gunshot injury to his left arm, continued to shoot until the robbers, Platt and Matix, were themselves dead. And what drove the man who continued to fight to save his fellow agents long after he was seriously wounded?

After serving as a U.S. Marine, Ed Mireles joined the FBI, transferring to the Miami field office in 1985. His description of the team he joined gives faces to what has previously been only names cited in analyses of the fight. Mireles recalls, "The squad had some of the most talented and experienced agents in the office. It was the hardest working, most ruthless group of guys you can pack into a room...I would come to respect, fear, and love those guys like brothers." Readers "meet" the agents who died in the shootout Jerry Dove and Ben Grogan, as well as those who survived, Gordon McNeill, John "Jake" Hanlon, Richard Manauzzi, Gilbert Orrantia, Ron Risner, and others.

A series of armored car robberies kept the agents busy from October of 1985 through the spring of 1986. Mireles details the increasingly brutal robberies and the FBI's investigation, including the description an attempted murder victim gave of two men who took his car and left him for dead. This identified the car Platt and

Mireles and Jake Hanlon, his partner that morning, got coffee then parked where they had a good view. Mireles planned to put on his raid jacket and load his shotgun after drinking his coffee, he relates. At 9:30 a.m., Platt and Matix, drove their stolen car past a bank, catching the eye of agents Jerry Dove and Ben Grogan who followed it but waited to see the license plate before radioing their teammates. As soon as they did, the other agents sped toward their location. With his partner driving, Mireles loaded his shotgun while helping navigate.

Mireles writes, "The 'fight or flight' response was kicking in. My mind was racing. Time seemed to have slowed down." He describes mentally rehearsing what to do, commenting, "There were so many possible scenarios with so many possible outcomes that it was almost impossible to formulate a plan. This entire process took about a second," but seemed much longer. He made a plan to use his shotgun from cover but acknowledged that the bad guys could "veto" his strategy.

Mireles tells how the agents followed the robbers' car onto a side road and boxed it in while the lead agent delayed until marked law enforcement vehicles arrived. Agents saw into the car where the occupants were loading guns, but radio problems kept the warning from going out. These details rarely make it into incident analyses and in telling the story, Mireles fills in much of the "why" behind the tragedy.

As Mireles' partner drove along the stolen car's left side, Mireles came face to face with Matix, driving the other car. Experiencing time, distance and auditory distortion, Mireles tried to wrestle the shotgun up to shoot him but there was not time. He recounts, "Manauzzi [in the car behind] saw the passenger, Platt, raising a long-barreled weapon and aiming it in the direction of Jake and me. I never saw this because I was so focused on the driver."

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Manauzzi rammed the suspects who veered left while the car Mireles was in swerved right and crashed. Across the street, agents trapped the criminals' car.

Bailing out of their car, Mireles and Hanlon approached at a run. Grogan, Dove and McNeill were behind their cars shooting and Mireles ran toward McNeill to reach cover close enough for the shotgun to be effective. Armed with a rifle, Platt shot Manauzzi, Mireles and then McNeill, who continued firing and hit Matix in the head and neck, disorienting but not disabling him. Also shot, Mireles fell but began to regain consciousness. His left arm was ruined; his right still gripped his shotgun. Arterial blood spurting from his left temple.

Agent Jerry Dove shot Platt as he climbed out the window of his blocked door. The shot severed his brachial artery and collapsed his lung but Platt still fought. "The ferocity and determination with which Platt and Matix continued to fight would be a wakeup call for all law enforcement," Mireles writes, revealing what they learned about the killers' background and training.

Mireles lay on the ground as shock set in as darkness began to close at the edges of his vision. He had to act and so he pulled himself along the ground toward the rear of McNeill's car. "I had to keep on moving, stay focused on the gun fire and on the task at hand," he writes. Mireles realized he could prop the shotgun on the car's bumper to aim it at Platt and Matix who had gotten into the front seat of Grogan's car. He fired, cycled the pump action shotgun by clamping the buttstock between

his legs, sliding his right hand up and racking the action one-handed. This he laboriously did over and over. Platt staggered out and shot toward Mireles before lurching back to Grogan's car. Nearly unconscious, Mireles drew his revolver and struggled to his feet. He describes concentrating on his sight picture despite extreme tunnel vision. Other agents saw Platt aim a revolver, too, but Mireles could not. He neither felt nor heard the recoil and noise of his shots, but he aimed, fired and killed Platt and Matix.

Agents Jerry Dove and Ben Grogan were dead, but Mireles and the other agents eventually recovered. Much scrutiny followed the shoot out and Mireles candidly addresses the most common criticisms. He relates with equal forthrightness the psychological and physiological phenomena that he experienced. A review cannot even begin to do justice to his story, so let me just give a profound recommendation that anyone who carries a gun needs to read *FBI Miami Firefight*.

Mireles' story was not over when he retired from the FBI in 2004. His website <https://edmireles.com/bio/> notes that he worked as a contractor during the Iraq war. I hope Mireles continues to write, including the book promised on his website about his work as an undercover narcotics agent later in his FBI career. For now, *FBI Miami Firefight* is in print, and it is highly recommended.

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



## News from our Affiliates

by Josh Amos

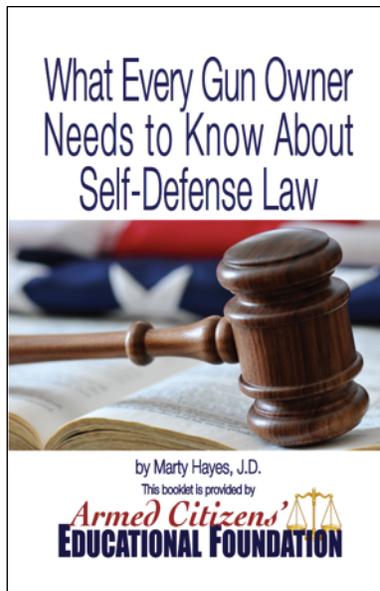
Hello everyone! It has been awhile since I have checked in with you. The Armed Citizens' Legal Defense Network is growing steadily and that is due in large part to our Network affiliates' efforts.

### Affiliate Instructors and Gun Stores

Our Network affiliates are doing a great job of telling armed citizens about the Network and giving out our Foundation's booklet *What Every Gun Owner Needs to Know About Self-Defense Law* to students and customers. Furthermore, our affiliates are also doing a great job of reaching the people who share the Armed Citizens' Legal Defense Network's core values of –

- 1) Responsibility
- 2) Education and
- 3) Quality training.

Just this month we have three new affiliated instructors, so please join me in welcoming Roger Judd at [Concealed AZ](#) in Mesa, AZ; Darrell Clay at [Cherub Security & Firearms Training LLC](#), in Belden, MS and Brian Foster at [AR Handgun Training](#) in Little Rock, AR. Check out their affiliate listings on our website and then if you are nearby, please stop in and welcome them to the Network!



## More Lawyers

In addition to new Affiliated Instructors, we have continued to expand our affiliations with attorneys. This month's Affiliated Attorneys were recruited from Oroville, California and in Louisville, Kentucky. The previous month, we added an Affiliated Attorney in Redwood Valley, California. One of the foundational premises of the Armed Citizens' Legal Defense Network is that we will never tell you which attorney you have to use in the legal aftermath of self defense, so if you as a member,

find a great criminal defense attorney who hasn't heard about the Network, we encourage you to tell them about us and tell us about them. If they are willing, we will be glad to give them complimentary membership and bring them into the Network family as an Affiliated Attorney.

Before I close this article out, let me add that with the training season hitting its full swing across the country, I would like to remind our affiliates that anytime you need more booklets to give out to your customers and students, just send me an email: [Josh@armedcitizensnetwork.org](mailto:Josh@armedcitizensnetwork.org) or call us 360-978-5200.

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

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## Editor's Notebook

### Self-Identification

by Gila Hayes

There have been a lot of jokes made over the past few years about people feeling a strong identification with one ethnic group or gender.

Frankly, some of the jokes were quite humorous in expressing how an individual's choice of identification was allowed to eclipse the reality of actual gender, race or—as the jokes took on a life of their own—alternative species. It has made me think about how people like to describe themselves through nicknames, nom de guerres, handles, pseudonyms and digital identities. I was reminded of this train of thought recently when a member asked what was allowable for usernames for member log in to the Network website and I responded with a little humor that anything decent was OK, but that I'd rather not ask the ladies in the office to enter obscene or scatological references as usernames. We shared a good laugh and that was the end of it.

I was thinking about that conversation later and began pondering assumed identities that show up in email addresses and online nicknames. I'm not a big fan of "Killer," "Assassin," "Hit Man," "Slayer," "Executioner" or "Desperado" coupled with a picture of a scope reticle superimposed over a human head or a bloody knife for an icon. We're the victims of an entertainment industry that, for decades, has been hard at work creating entertainment that apparently aims to create sympathy

for murderers, rapists, sadistic abusers and people who commit offenses against their fellow human beings. And we've all fallen for it. Some of us have fallen worse than others because we are repeating the ideas and images taught us by TV, movies and books.

Reacting to our ever-decreasing personal freedoms, too many armed citizens go over the top and much like adolescents, act out through what seems a harmless, humorous identification with Tarantino-type movie characters portraying conscienceless killers, names that echo some other evil fictional personage or monikers that sound like they ought to be names used by players of violent games like Grand Theft Auto or Resident Evil. That's not the way I want the world to view me as an example of an American armed citizen.

I'm reminded of the response to "It is all just harmless fun," that counters, "Until it isn't." Applied to digital identities assumed by real-life armed citizens, I guess it's all fun until we find it is all but impossible to convince fellow citizens that owning guns for personal defense is a fundamental human right, not a harbinger of violence not yet enacted.

The next time you need to make up a handle for a new email or an electronic user account think about how you want to be identified. If you wouldn't testify in court that it fairly represented the man or woman you are, don't write it down in the username field.

*[End of July 2018 eJournal.  
Please return for our August 2018 edition.]*

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## About the Network's Online Journal

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

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

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

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Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

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



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