



Deadly Force in Defense of Others

An Interview with James D. "Mitch" Vilos

Interview by Gila Hayes

Scarcely a week goes by without a caller asking if the Network will pay their legal expenses if they use a gun to defend someone else. "We will if your actions are legal," we respond. "Of course, my shooting would be legal," comes the indignant retort. "I would only use my gun if I thought someone was about to be killed!" Unfortunately, life is rarely that simple, although these calls do underscore that many harbor mistaken beliefs about use of force in defense of others. With that in mind, we began an exploration of the principles behind use of force in defense of others and found, to no great surprise, that the laws addressing defense of third persons vary considerably from one state to the next.

Fortunately, I knew exactly whom to ask for more education on the topic. Network Affiliated Attorney James D. "Mitch" Vilos and his son Evan Vilos wrote the first edition of *Self-Defense Laws of All 50 States* nearly ten years ago, releasing a new edition in 2013 and thereafter updating it as needed on their website mitchvilos.com. Mitch Vilos agreed to speak with us about self-defense law applying to defense of others. We switch now to our Q&A format to share Vilos' comments on this subject.

eJournal: Thank you for helping us understand how armed citizens can comply with the law and still, if the necessity exists, step in to keep another from being killed or crippled. There are some pretty big legal risks in misunderstanding state laws about self defense, so I'm looking forward to learning from you about how to stay legal. To start off, what is the right terminology?

Vilos: In our book, we just call it "Defense of a Third Person." You come upon two people who you think are in a fight and one of them has a knife and you think he is going to stab the other person, so you draw a gun and shoot the one with the knife. The question is, did you shoot the right guy? Well, different states have different rules!

Let's say the guy with the knife was simply defending himself from a much stronger robber, so you shot the good guy. In some states you are held to a strict

liability standard, so you could be criminally liable. If the person being assaulted did not have justification—from our example if he is the robber he wouldn't have justification to defend himself against the person with the knife who was the innocent party—then you would not be justified, either. In other states, you are only held to the reasonable person standard—the same that you would be held to if you were being attacked by someone with a knife. You have got to know the law of the state!

eJournal: That word "reasonable" echoes throughout these state laws over and over again, but I worry that reasonableness is in the eye of the beholder. Who can really tell us what that means?

Vilos: Well, that is the problem! In the eighth chapter of our book, we write that home defense, defense against an armed robbery and defense against a mass shooting are the three fact patterns that are seldom prosecuted. Everything else gets kind of tricky. In some jurisdictions, there is a presumption of innocence and reasonableness in defending your business. In other jurisdictions, that is limited to your home; in some jurisdictions, there is the issue of how close to your home do you need to be?

For example, UT has a self-defense law that says if you are in your home and somebody breaks in or sneaks in

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you don't have to identify a weapon, you only need to have a reasonable belief that they are going to assault you and, omitting other facts, of course, that gives you the right to use deadly force against that person; it is a lower threshold in the home. So, then the question becomes, well, what if he is on your porch? In your drive way? "Reasonableness" is very tricky.

The only solution we have ever been able to come up with is to write this 500-page book as a reference manual so if you are traveling, you not only know if your concealed weapon permit is recognized by the state that you are traveling in but what are the specific requirements of that state's self-defense law. How is it different from your state? Most people never look that up!

eJournal: Here's another area of concern: what does the armed citizen truly know about the person they propose to use deadly force to defend? Using CT as an example, the state law requires a reasonable perception of immediate danger, then additionally piles on many, many restrictions. You have to be where you have a right to be, can't be the initial aggressor or willing participant in mutual combat, and more. In the same sentence the law states the allowances for personal defense and defense of others as identical. If we defend a stranger, how can we know they comply with all those restrictions?

Vilos: The state says that you step into the shoes of the person that's being attacked, but I don't know that there is any way that you can know if he has the right to use deadly force. A very blatant example would be a guy robbing a convenience store with a shotgun. If the clerk should draw a gun, the robber knows he does not have the right to use deadly force against the clerk; he has got to retreat, drop the gun or surrender. He cannot say, "The clerk was about to use deadly force against me, so I shot him or her."

Well, if you go into the store and you see someone pointing a shotgun at the clerk, you should know that person is not justified in using deadly force against the clerk. But what if the clerk is not behind the counter? What if both the clerk and the robber are dressed similarly? What if one of them has a knife and one of them has a gun?

You might just kill the clerk and save the robber. In the states that you are held to the knowledge of the person that you're defending, you would be criminally and civilly

liable for shooting the clerk instead of the robber. Maybe there is just no way for you to know who's who if the clerk is not behind the counter and they are both dressed in a similar fashion.

I tell you, if you are defending a third person, it makes it very, very dangerous if you don't know what that state's law is regarding defense of third persons. Once you step away from the three types of incidents that are not typically prosecuted, you are taking a chance by using deadly force against anyone, so you really need to mind your Ps and Qs before you use deadly force.

eJournal: What are some of the other restrictions present in one state that might not be common knowledge for someone from another state?

Vilos: In some states, Oklahoma is a good example, they name the third parties that you can defend, and if they are not one of those people, technically and theoretically, they could hold you responsible. In one case that we wrote about, the guy defended his brother and a brother is not one of the persons listed in the state statute as one of the third parties that you can defend with justification. They held the man that defended his brother guilty of manslaughter or murder. There are a lot of hidden legal traps hidden in the law of self-defense and you don't want to be the test case.

eJournal: Is there any flexibility in laws that specify only particular relations whom you may defend? Is there any "wiggle room?"

Vilos: The wiggle room would be in the common law.

eJournal: Is that what we also hear called case law?

Vilos: Yes, I don't know how the common citizen even knows what the case law is! That is one of the things we tried to do with our book, for jurisdictions like Washington D.C. where they have no self-defense statute, it is all case law, so how do you even know, without reading our book, what the rules are for self defense?

eJournal: So, if we study both, but the case law disagrees with the statutory law, which one is in effect?

Vilos: Whatever the courts use. For example, in our book we have a warning under California, not to rely on their self-defense law which looks like it was written

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back in the 1800s. What the judges have created as jury instructions is what really applies when you're charged with a crime, when self defense really is a legitimate defense.

eJournal: Where do you find the jury instructions applicable to one state or another?

Vilos: Sometimes, they are located on a website, like California's. Incidentally, they are subject to change although the self-defense laws don't change as readily as, for example, the concealed carry laws or other gun laws. That has been the benefit of our book and then when they do change, we update the book on our website. We ask citizens and gun owners in different states to let us know about legislation they hear of that has passed or if there are new jury instructions sometimes we get notice from attorneys in other states.

Sometimes those jury instructions are in law books or form books that are housed in some library at some state's university; it is just hard to know where to look for them. We did the work so readers could know if their state has self-defense jury instructions that conflict with their state's actual statute. It was a lot of work!

I have to laugh, because we thought writing this book was going to be easy, we thought we'd just read each state's self-defense laws and reduce them to plain English at about an eighth-grade level. We found out that states like California have a statute that even they don't use, so we had to research all the jury instructions for all of the states.

eJournal: In the interest of learning from the mistakes of others, I think we are all interested in how normally law-abiding people run afoul of the law. As a defense attorney what are some of the mistakes you would warn us against?

Vilos: We discuss what we call "Thumbs-Down Factors" in chapter seven of our book. The more of those thumbs-down factors you have in your incident, the more likely you are to be arrested, prosecuted or convicted. For example, if somebody assaults you without a weapon, you draw a weapon, you shoot him in the back multiple times and you are drunk, or if it was a drug deal gone bad, each one is a thumbs-down factor and they compound!

eJournal: Well, several of those factors won't come into play in a Network member's situation, however, we do

need to deal with the reasonableness standard if a court is going to understand using a gun to stop an unarmed assailant from killing a third person, for example. We have to justify our own conclusions—we were defending a woman, we were defending a smaller person against a really huge man. But will the law find our prejudices reasonable?

Vilos: Well, reasonable people can have different opinions. If it is arguable that you did in fact act in lawful self defense—depending on just how the facts come out and if you were defending an innocent person—we want to encourage people to defend innocent persons. We don't want it to be like New York City in 1964 where 38 neighbors watched while Kitty Genovese was knifed and left to die. No one got involved! No one even called the police! Do we want that kind of society?

eJournal: It is interesting you should mention public policy. It was a theme I encountered in the research I did for this interview. A report on various states' laws about defense of third persons suggested that in developing the various laws, legislators acknowledged that people should care enough to step up and fight to protect innocent people from harm.

Vilos: Yes, we certainly should encourage that. Look at what is going on with police shootings: officers are prosecuted and sued after coming upon the scene of a person who is reported as having a firearm and the person points that apparent firearm at the police officer. It turns out the person had a toy or a BB gun. The police officer acts in a split second because he has always been taught that action beats reaction and he knows that he has a split second to make a decision about whether or not to shoot. He is going to resolve all issues in favor of his own safety. This then becomes jelled in the minds of potential jurors in a case where an armed citizen was defending him- or herself.

We ought to be able to resolve issues in favor of our own safety! The risk of dying should lie with the person who was acting unlawfully not with the innocent police officer or the innocent civilian. We need to weigh this better. Prosecutors need to be involved in this, too, and they need to cut these prosecutions off. If it appears to them that there had to be a split-second decision, the risk of dying should be on the unlawful aggressor. You should have fewer and fewer prosecutions; you should have fewer and fewer civil law suits. But that does not seem to be the way it is going.

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eJournal: No one, police or private citizen, is gifted with omniscience when forced to make a life or death decision in, as you say, a split second. Will the trier of fact deem the decision reasonable? On today's topic, we're considering killing without having seen the initial attack—a decision that's made with limited information.

Vilos: Think about it: If you come upon a fight and both people are armed, most states have a law that in mutual combat, both are guilty. Whoever lives through it gets convicted of murder. Neither has the right to self defense. So, you come along and end up shooting somebody; that's a no-win situation.

eJournal: If an armed citizen stumbles upon a confusing and complex fight and makes the wrong decision and shoots the one appearing to be winning, is he going to prison?

Vilos: Well, it depends on what the state case law says—it is usually case law—about what his actions make him ultimately responsible for. If he is held to the standard of knowing exactly what the person he is defending knew, with no reasonable way of really accomplishing that because he came upon the scene later on, it is more likely that he is going to be convicted. There is some injustice built right into that statute. That is a minority view, however. Most states simply require you to act reasonably, which is hard to define, but at least you get to act like a reasonable person and if you do, you are not guilty.

In a minority of the states, you are supposed to divine what the person you are defending actually knew. There is no way to do that! If you are convicted, sometimes the judges take into account that the law itself is somewhat unjust and if you are a law-abiding citizen and you have a clean criminal record, that is going to weigh in your favor during the sentencing. The bench is the failsafe, hopefully, in some of those cases. You see that occasionally: the judge says, "Hey, the law is strict. I have to impose a sentence, but if I have discretion I am going to make the sentence light because the law itself is probably overly strict."

eJournal: At the risk of going off-topic here, does that make you a friend or a foe of strict sentencing guidelines?

Vilos: Well, it makes us a foe of those because they are overly broad generally and they do entrap people who are acting in self defense like that woman in Florida who

shot into the wall to warn her abusive husband to stay away from her. They sentenced her to 20 years for aggravated assault. Finally, that case was overturned and I think she may have gotten a pardon or something. A pardon is always a possibility, too.

A lot of criminal defense attorneys underutilize pardons. I am using the pardon more and more as the laws become crazier and crazier, especially in the domestic violence arena. In our state, there are some really crazy applications of the domestic violence misdemeanor that could disarm you for life. Sometimes a pardon is the only avenue to reverse the injustice. I find that a pardon is a last-ditch attempt to make a wrong right. The good thing about a pardon, at least in Utah, it is not just a one-time shot. If they don't grant you a pardon this year, you can come back in maybe five years and ask again and maybe they will grant it then.

eJournal: I never thought much about pardons and hadn't considered that the defense attorney would seek that mitigation instead of the defendant or their family or a high-profile person making a last-ditch try for justice. I'd not considered that an attorney could use it to keep fighting for his or her client.

Vilos: It has gotten to the point now days where it is so easy to be arrested as a gun owner just because you are a good enough citizen to carry a firearm for defense the way our Founding Fathers intended.

eJournal: Invoking good citizenship, using deadly force on behalf of others to stop a mass shooter before dozens are killed would seem about the best example imaginable. You mentioned mass shootings in passing as one of the few defensive gun uses that would not end in arrest, prosecution and punishment. Could you talk a little about the differences between defense of perhaps only one stranger compared to stopping a shooter intent on killing as many as he can before he is stopped?

Vilos: We are horrified that mass shootings occur! It is so terrible that most people would never imagine doing anything like that! If you were defending against something that horrible, generally speaking, you are probably not going to be prosecuted as long as you don't close your eyes and pull out a Glock 18 (a full-auto pistol). If you are just trying to survive along with all the other intended victims, that is just not going to be prosecuted as readily. People will look at that person as a hero.

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Look at that church shooting in Texas. The armed citizen across the street hears the shooting, comes out, sees the guy getting ready to leave and shoots him before he gets in his car. You know, we warn people not to shoot at fleeing felons. I don't know if he was actually a fleeing felon or still shooting at people, let's suppose that armed citizen shot at a fleeing felon, yet everyone is considering him a hero not a bad guy because it was a mass shooting.

The guy he shot was leaving with his firearms after having shot up a church. What was to keep him from going to another church and shooting more people, or going to a shopping mall where there were a lot more people? I think the armed citizen who shot him was clearly justified in using deadly force with an AR-15.

eJournal: Of course, that occurred in Texas, not in Delaware or Maryland. The state's gun rights climate influences arrests and prosecutions, too.

Vilos: True. Here's something that might interest you. Utah teachers have been armed since 1997 as an exception to the Gun Free School Zone Act. Any school employee that has a concealed weapon permit can carry a concealed weapon into a school zone. There is an exception to the federal act if the state allows it and our state does. We have not had one fatality, we have not had one student injured as the result of the Utah legislature's policy of arming school employees who have concealed weapons permits.

Everywhere else in the country, on average, the number of fatalities in Gun Free School Zones have tripled per decade. In the past 21 years, Utah has had a very good result compared to the rest of the nation when it comes to the decision whether or not to have armed school workers. It has been very successful here. It is ironic that the activists out of Florida where those kids were essentially victims of a gun free zone are showing up here in Utah telling us what we need to do. We have already done it! We did it in 1997.

eJournal: Echoing an earlier theme, is it good public policy to have adults who have been vetted through the concealed carry licensing procedure able to wield deadly force in defense of students and other teachers? If we answer that question by saying, "Yes, it works," then we have to ask, why wouldn't that philosophy apply under other circumstances? In your state, arming teachers is a successful and accepted example of what Utah society is happy to let armed citizens undertake in defense of

the innocent in a specific situation—at school. The bigger question is, does society want one person stepping in to defend another person from intended harm?

Vilos: I am telling people in the legislature that we need to change the dialog from trying to divine who is going to be the next mass shooter because that doesn't work. Move away from gun bans and worrying about mentally ill persons—only a small percentage of mentally ill persons "go postal." You are trampling on civil rights!

The only issue we should be deciding is how do we harden the target? We should change the rhetoric from trying to prevent shootings through mental health or anti-bullying or gun bans and gun free zones. None of that has worked. The issue is how can we protect the innocent by hardening the potential target? If the target is a school, how can we make a school more defensible and how can we make the innocents there less vulnerable to attack? That should be the only issue any legislature should be considering. In Utah, we have hardened the schools by allowing school employees with concealed permits to carry handguns.

Now that everyone has demonized guns, people call the police if they even see someone walking around with a gun on their hip. What a waste of police resources! Why not just go to Constitutional Carry where anyone can carry a gun without a permit? That's hardening the target. Now you have more people carrying concealed with and without permits. If somebody tries to attempt a mass shooting, the likelihood is they are going to be stopped a lot quicker in a state like Vermont or Utah where CCW is prevalent, than in a state like Connecticut or Maryland where there are fewer people with concealed permits. Hardening the target should be the goal of every political body.

eJournal: As our time is running short, let me ask in closing, what aspects of defense of others do you find most often trip up well-meaning armed citizens?

Vilos: The most common mistake is the use of a weapon against an assailant that has no weapon.

eJournal: How does the legal defense approach that problem?

Vilos: Well, there are a lot of factors. Was the assailant bigger, stronger, had he made threats in the past, is it male vs. female? There are a lot of different factors that

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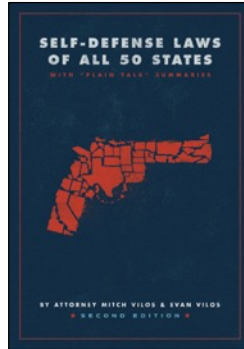
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come into play as to whether or not shooting at somebody who is not armed will prevail ultimately. I'll tell you something that we say right up front in our book, if you use a firearm either to threaten or use a firearm in defense against an assailant who is unarmed, whether there be one or more assailants, you are probably going to be arrested and prosecuted.

Unfortunately, it is getting more and more difficult with prosecutors who seem to just want to punish people with firearms. You not only see that issue with someone who uses a gun against someone who is unarmed but think also about the Trayvon Martin case. They were claiming that Martin was unarmed. He was beating that guy's head against a concrete sidewalk, but they claimed that he was only armed with Skittles® and iced tea! You saw where that case went!

Not only are you more likely to be arrested, prosecuted and convicted if you have used a firearm against somebody who doesn't have any deadly weapon, it also applies to threatening a person who is unarmed. That is where you get into charges like aggravated assault with a deadly weapon. Those are felonies, so that is a really serious mistake that I see all the time in courtrooms. It is one of the most common.

eJournal: Thank you for that warning, and for the other details you've outlined today. Understanding both statutory law plus case law and jury instructions is pretty complex. I hope our readers already own *Self-Defense Laws of All 50 States* (for Kindle, <https://www.amazon.com/Self-Defense-Laws-All-States-2nd-ebook/dp/B00GRXUNJ2/> for paper, <https://mitchvilos.com/products/self-defense-laws-of-all-50-states-2nd-edition>) or go get it now. Readers should also keep in mind that <https://mitchvilos.com/blogs/news/tagged/self-defense-law-updates> is the way this work is kept fresh and current, so don't fail to check it periodically after reading the book. There are only two updates from 2018 and one from 2017, so frankly, this area of the law isn't real fluid. We can and should know the law where we are. *Self-Defense Laws of All 50 States* makes that easier.



Vilos: We use a template that uniformly covers just about every issue that we could think of. What's the law as it relates to the use of non-deadly force? What are the laws that relate to deadly force? What are the exceptions to the law of self defense—if somebody is committing a felony, if they are the initial aggressor or the provocateur, if they were involved in combat by agreement? We cover that for every state in our book. We reduce the blackletter law to plain language, so you can read the blackletter law in the chapter and if you don't understand it, then you can go to the red type right afterwards and we explain it in plain English.

We tried to keep it as uniform as we can, but some state laws were not conducive to that, so we put in subheadings to warn of that. It is pretty well marked, you have a roadmap in our book that makes it easier to follow the logic of each state's self-defense law whether that state's self-defense law is a statute, whether it is just a compilation of cases, or whether those cases have been reduced to jury instructions. And the jury instructions are pretty good, so using

California as an example, we gave the statute, but, we said, don't rely on it. Here are the jury instructions and here is how it works. We put the subheadings in to make it clear whether we were talking about exceptions to the law of self defense, or defense of a third party or civil liability as opposed to criminal responsibility.

eJournal: Well, I for one appreciate all that effort and I also thank you for the time you've spent with us today explaining how the laws vary for use of force in defense of others! I've learned a lot from your book and more from chatting with you today. Thank you for sharing your knowledge with us.

Mitch Vilos has been representing clients for over 35 years, including defending Second Amendment and firearms rights cases, personal injury cases, cases involving gunshot wounds, brain and spinal cord injuries, medical malpractice and more. Learn more about him at <https://firearmslaw.com/practice/biography/> and enjoy reading his blog at <https://mitchvilos.com/blogs/news> where his commentaries are always interesting.

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President's Message

Network Members Training Network Members

by Marty Hayes, J.D.

This past July was unique in the sense that my other business, the Firearms Academy of Seattle, held a series of training courses, taught by many of the top trainers in the country (all Network members) and they taught over 100 Network members in those classes, too! The vision that I had 10 years ago, where we were a group of serious armed citizens banding together to be strong when one of us is selected for prosecution for nothing more than exercising our God-given right to self defense has come to fruition. For my *President's Message* this month, I will tell you how these classes went.

The month started off with legendary trainer Chuck Taylor coming to FAS to teach an Advanced Defensive Handgun course, followed by a one-day Handgun Combat Master Test course.

In the first course were 14 skilled practitioners of the martial art of self defense with firearms, and all of them were Network members. These students were being taught by two other Network members: Chuck Taylor and myself. What a joy it was to be amongst so many squared away men and women.

After class, one student told Chuck, "I have been shooting my whole life and taken a bunch of training, but never have I been pushed so hard." That Network member got his money's worth.



Chuck Taylor teaching the "speed rock" with Scott Cerna (right) while fellow student David Leenhouts (center) looks on.

I had arranged for Chuck to stay and administer his Handgun Combat Master test for the folks that wanted to stay an extra day. For eight more hours, Chuck pushed them even harder, then tested them on what I believe is one of the highest skills testing a serious student of the gun can undergo, Taylor's Handgun Combat Master Certification. The standards are so stringent that only two of the students, Erik Knise and Anthony Zohowaski, passed the test. Interestingly, both are fairly new to the world of the gun, but I also know that each has been training very seriously for the past couple of years.

As a side note, I had taken and passed the Handgun Combat Master test 15 years ago, when I was at my peak in the shooting skills department. I took the test again this year and was pleased to see that my skills have not deteriorated all that much, because I again passed it. Several other students came very close to passing, and with a little more work these folks could do it, too. View the Handgun Combat Master here <http://www.chucktayloramericansmallarmsacademy.com/combmaster.html>.

A week later, I welcomed Massad Ayoob back to The Firearms Academy of Seattle to teach a MAG-40 class <https://massadayoobgroup.com/mag-40/>. Mas is a valued member of our Network Advisory Board, and all six of the assistant instructors

helping him on the range are also Network members. At the start of the class, we counted 22 Network members amongst the 34 students enrolled to study with Mas. By the end of the four-day class, we had increased that total to 25 members!

For those of you who have never trained with Ayoob, you really should. I have been training with him for 29 straight years and am one of the Massad Ayoob Group Senior Instructors. I still learn new stuff every time I'm at a class he teaches.

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Many times, Mas will bring in guest lecturers, local people who have some expertise or experience to share. In this class, we had a truly remarkable guest lecturer, the EMT/pastor, who is also a father and grandfather, who on June 17



Network members with hands raised, attending Tom Givens' class at Rangemaster Tactical Conference NW.

of this year, interdicted a shooter at the Tumwater Wal-Mart store, here in Washington State. You can see his press conference after the event at <http://www.nwnewsnetwork.org/post/i-fired-stop-shooter-pastor-tells-shooting-walmart-gunman>. I purposely leave out his name out of respect for his privacy, at least until the legal issues have totally settled.

One of the remarkable things the pastor said was that he had the ACLDN membership application filled out at home, ready to send in, but hadn't gotten around to it yet! He jokingly asked if membership covered pre-existing conditions. Alas, no, but the good news is that he is not likely facing any legal repercussions. Massad's class was so impressed with his actions and willingness to discuss the incident with them, that they took up a collection and paid his Network membership dues!

Our MAG-40 class ended on Sunday. We had a very welcome day off, then with FAS instructors Belle McCormack and Erik Knise (both Network members), I went into teaching a three-day Active Shooter Interdiction Course. After the MAG-40

crowd, this was a small intimate course, teaching just eleven students total, six of whom were Network members.

Following that course, we dove right into hosting the Northwest Regional Rangemaster Tactical Conference. Of the 100-plus attendees, over half were Network members and of the 14 presenter/instructors at the conference, all but two were Network members. I have reported on previous Rangemaster Tactical Conferences in these pages and this one was no different. Like all the earlier ones I've attended, this Tactical Conference was a great training experience for those fortunate enough to attend. July was an epic month for our school and the Network.

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Attorney Question of the Month

This month's question continued over from last month's journal, and was posed by 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?

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As a general proposition, I would prefer that the 911 call be made by client's associate rather than by my client. Again, as a general proposition, meaning that there may be exceptions, I would typically prefer that my client retain the flexibility to tailor his statements or testimony after he has had a chance to confer with counsel. It is very rare for a prospective defendant to talk himself out of being arrested. It is very common for people to talk themselves into being arrested, and/or for things said to be used against the prospective defendant. Generally speaking, in most situations, a prospective defendant should say very little except that he is choosing not to answer questions until he has had the opportunity to confer with counsel. This should be said politely but the person saying it should persist in saying it when the assertion seems to have been ignored. This situation, an armed self-defense incident, isn't an exception to this.

The person who engaged in armed self-defense should not be surprised to be taken into custody. Accept it as part of the process instead of trying to avoid it. Also assume that any telephone call you make while in custody, even to an attorney, will be recorded. Thus, do not recount the events on the phone to anyone. Ask counsel to come visit you in custody if that is at all possible.

As for what information the associate should provide: his location; his identity; whether anyone needs medical assistance or the number of people who need assistance; and then to ask the dispatcher what she

needs to know...i.e. to offer to answer questions. Following that, the caller should ask if there is anything the dispatcher wants him to do.

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The member who acted in self defense may be the best person to make the call, but only if he or she can convey the necessary information without babbling on too long or conveying inaccurate information.

A friend or family member may be as stressed, or more so, than the member who responded to the attack. A friend or family member is likely to be less well trained than the member and more likely to say something that, while innocent and well-intended, may put the defender in a bad light with the police, prosecutor, judge, or jury. Of course, every situation is different and if a friend or family member is more composed and understands what to say, he or she might be the better choice to call 911.

A goal of the call, in addition to obtaining assistance from law enforcement and medical attention (if needed) is to be listed as the victim, or complainant on the initial police reports, which may avoid a criminal charge, although nothing on the call will overcome bad facts. In addition, if the member is charged, the stress of the event will be conveyed in the caller's voice on the 911 recording in a way that cannot be replicated later, which, if the court allows it to be admitted to evidence, may be convincing and paint a good picture for a jury.

Regardless of who makes the call, the information to be conveyed to the 911 operator will likely include:

1. The caller's name and location.
2. A request for police and, if anyone, including the attacker, is injured, an ambulance.

A brief description of the event, emphasizing "he tried to kill us," "I thought we were going to die," "we were attacked by a man with a gun [knife, etc.]," or

[Continued next page]

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3. something else that is accurate and conveys the reason for responding with deadly force or whatever level force was used in defense.
4. If applicable, a description of any attackers who left the scene, their direction of travel, a description of their vehicle, and anything else that will assist law enforcement locate them.
5. Perhaps a description of the caller and friends and family members at the scene, including a physical description and clothing.
6. A valid reason to end the call, such as I need to assist my family, attend to an injury, etc., along with the ability to hang up and not answer the return call from the 911 operator.

Andrew Branca, Massad Ayoob, and others have provided good information about handing a 911 call by saying enough without saying too much, as well as dealing with responding officers. I recommend their books to members, who may also want their family members to read them. The member might be injured and not be able to call 911.

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It would be my preference that my client have no direct contact with law enforcement after a shooting. If an error is made in reporting an incident, it may be later labelled a lie or an effort to cover up some action by the defensive shooter by some overly aggressive "anti-gun" investigator, District Attorney. If there is another person to report the use of force, I'd recommend that the other person do so.

Further, if there is a downed assailant or others offering threats, it is better from a tactical standpoint for the shooter to stay engaged with the threat until the police arrive.

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I think it is better to have the associate call 911 for several reasons:

1. By the associate calling the shooter has not produced any evidence that could be used against him/her.
2. The fact that the shooter has not documented any facts allows him to gather himself, maybe even call his attorney, and then make a statement to law enforcement.
3. Subtle facts that the shooter may not realize in the heat of the moment may be overlooked but can be documented once law enforcement arrives all the while the defense lawyer could be contacted or even in route to the scene.
4. Any mistakes made by the associate during the call can't be used against the shooter.
5. While some instructors insist the shooter call, as a lawyer I would prefer my client not say anything to anyone until counsel is advised/present.

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I always like to be able to stand up in court and ask the jury, "Why would my client call 911 if he was the guilty party?" Sometimes this is not possible. Sometimes the person who has the gun has to use the gun and the other person needs to use the cell phone. Division of labor.

There is always the danger that under stress the shooter may blurt out incriminating. Anything said to 911 is a voluntary statement and can be used against the caller.

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This is more a practical question than a legal one. Who calls 911 will be governed by the particular circumstances of the case, with the primary consideration being the safety of you and your loved ones. The educational materials provided through the Network cover what to do in this crucial period after a self-defense incident. I refer the reader to those valuable materials.

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Ideally, the person calling 911 will use language that establishes the theme of the case as one of self defense (or defense of others). If the threat of harm is over, the caller should describe the actions of the perpetrator rather than the defender. For example, instead of, "my husband shot a man..." start with, " a man tried to rob us..."

Describing the actions of the perpetrator that precipitated the self-defense action early in the 911 call is more likely to set the narrative in favor of the defender.

The DA in my jurisdiction will almost always consider the 911 recording, if there is one, with other evidence when deciding whether to file a case.

It is easier said than done in the heat of the moment, but a loved one having the presence of mind to set the narrative in favor of the defender is a good way to reduce the chances that a case will be filed after a self-defense incident.

A big "Thank You!" to our affiliated attorneys for their contributions to this interesting and educational discussion. Please return next month when we have a new topic of discussion to take up with our affiliated attorneys.

Book Review

What You Don't Know Can Kill You How Most Self-Defense Training Will Put You into Prison or the Ground

by Marc MacYoung and Jenna Meek

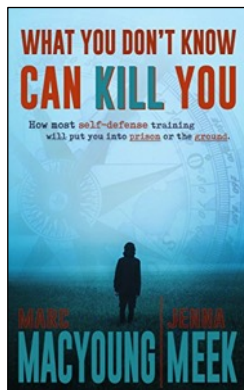
\$17.99 Paperback, 6x9, 199 pages

Carry On Publishing/NNSD. Kindle Edition at

[https://www.amazon.com/What-You-Dont-Know-](https://www.amazon.com/What-You-Dont-Know-Kill-ebook/dp/B07D8GBWF3)

[Kill-ebook/dp/B07D8GBWF3](https://www.amazon.com/What-You-Dont-Know-Kill-ebook/dp/B07D8GBWF3)

ISBN: 978-0692130537



Reviewed by Gila Hayes

This month I read a wide-ranging book written by two self-defense instructors that encourages honest analysis of your self-defense training strengths and weaknesses. In it, authors Marc MacYoung and Jenna Meek start by explaining that much of self-defense training focuses on just one small fraction of self defense—the physical skills. They wrote this book to help readers learn “to mentally shift gears and think of an incident as more than the final physical aspect” and thus avoid danger or be able to justify using force in self defense.

Introducing the topic, the authors assert there are four components to self defense: understanding violence, mental preparation, physical skills and aftermath. They add that each component is “an ocean unto itself.” Most training focuses on a single element “at the expense of other important information.” *What You Don't Know Can Kill You* exposes the reader to how much of what's taught can invalidate a claim of self defense.

Explaining that a lot of how-to instruction is already available, the authors focus this work on “when and how much” a well as aftermath issues. Put aside what you think you know, they request, and consider that a very broad understanding of self defense is preferable to being “trained in depth on very narrow topics,” while erroneously thinking you have mastered the field.

The wide-angle view leads the authors to break self defense down into three stages:

- What happens before the violence
- The physical violence
- What happens afterward

“You don't have to have a master's degree in all of these, but as you'll soon see, a passing knowledge of them will do wonders to keep you out of prison for

defending yourself,” they write, going on to demonstrate why “soundbite” advice on self defense causes such problems.

Explaining the complexity of justifying self defense, the authors explain that “a large number of factors...combine to create results that change—given the presence or absence of others.” All the various factors intermix to necessitate use of force but proving justification requires “being able to convey pre-existing knowledge, objective circumstances and assessment,” they

outline. The totality of the circumstances is very important, they stress.

Self-defense decision-making has to happen quickly, so Meek and MacYoung teach thinking in defensible terms *before* facing physical danger, plus learning how to assess and articulate the justifying factors. Mental maps also help with decision making under stress, they discuss later, but the maps must be accurate.

The authors explain the value of adopting a system for assessing threats, be that Ability, Opportunity and Jeopardy (AOJ), Intent, Means, Opportunity and Preclusion (IMOP) or another model. This serves to—

- Pre-load ability to articulate to police, prosecutors and judges why you used force in self defense
- Give consistency to your explanations
- Identify for triers of fact pre-attack indicators because explaining that you recognized a known physiological “tell” helps counter accusations that you thought you could mindread the attacker's evil intent if you can only say you “knew” he was going to hit you.

They then teach MacYoung's own threat assessment model, using the five stages of violent crime in a lengthy chapter that correlates the five stages to the AOJ and IMOP standards, and those discussions foster a deeper understanding of factors that justify self defense.

Mental maps about likely dangers lead to appropriate training, and in an emergency, queue up quick decisions. The authors warn of risks in adopting unsuitable models intended for police or military or feudal warriors or attempting techniques without adequate expertise or responding without understanding different types of violence and the goal of the offender.

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Criminals follow predictable steps in setting up crimes, Meek and MacYoung continue. Positioning to create traps at choke points, looking around to check for witnesses, adjusting clothes for quick movement, creating excuses to get too close are all preparatory scripts. They discuss detecting and derailing variations on crime scripts and warn about a robber who goes “off script” by not leaving after getting what he demanded.

Instead of teaching “situational awareness,” the authors suggest determining what is “normal,” “abnormal,” and “dangerous.” Most people assess “normal” subconsciously, although sometimes without enough knowledge. “The key is to recognize when something isn’t within normal parameters and pay attention. This buys you time to evaluate, allows for more options, and if necessary increase your safety,” they note.

Meek and MacYoung discuss threat displays, display aggression and pre-attack indicators and define how each differs. Knowing the uses of each helps us 1) Stay out of fights and 2) Stay off a prosecutor’s case load. “Intimidation can be conveyed through facial expression, tone of voice, body posture, word choice, and range and often all of those above.” People who aren’t trying to aggress still display classic threat behavior to emphasize a don’t-mess-with-me message. “It’s conditional, but it’s still threatening,” they explain.

They explain tricks of pre-attack communication, writing, “People who threaten you deliberately try to create the reasonable belief you are in danger. The more aggressive, loud, and closer they get to you the harder they are trying to sell the danger...When you reasonably believe you’re in danger, you’re supposed to cower,” but if you react with physical force, they may deny they threatened violence and may very well try to have you arrested as punishment for not submitting, they advise.

Focus on “facial expression, tone of voice, body posture, word choice, and range” if facing a threat display because these details provide “preliminary information to prepare for an incoming attack,” MacYoung and Meek recommend. Distance, or range, is the true indicator of whether the person can do what he threatens. There is an added value to these chapters. Threat displays are integral to human behavior, but many of us don’t recognize our own non-verbal communications. “Knowing about threat displays keeps you from enacting them and sabotaging yourself when it comes to a self-defense claim,” the authors write.

In addition, know your own patterns about anger and adrenaline, reactions to alcohol or other substances, they advise. Adrenalized reactions include hyper focus on the threat and thinking there are no options except to “act or react a certain way.” Size and distance distortions are common, so when adrenalized, the most important question becomes “what is actually happening?”

You can think rationally under adrenaline’s effects but it takes deliberate training and practice, they emphasize. “A quick look and calculation to determine if he’s in attack range brings a different part of your brain back online. Knowing that he’s outside attack range gives you more options...His attempt to re-establish the range is an important danger sign,” and offers a formula for determining who is within attack range, they add.

Appropriate self-defense decisions require knowing how society sometimes misunderstands how much force meets the necessary and reasonable standard. Time required to stop a committed assailant is also often misunderstood, the authors explain. Not only do most state laws view throwing a punch as battery but add an object—be that a self-defense tool or a drink bottle—and the charge jumps to aggravated battery, they state. Conversely, “one of the greatest physical dangers to you is when someone uses a higher level of force and you respond with an insufficient amount of force,” they counter, because repeated blows suggest willing participation in a fight. It is not enough to fear death or injury, they continue. That apprehension must be founded in external facts.

What You Don’t Know Can Kill You addresses two critical elements in claiming self defense. One echoes a topic on which the Network has published much: using force only with genuine justification. The other element deals with peaceful interaction with fellow citizens and in this reviewer’s opinion, that is equally—if not more—important. “The largest component of self-defense is people skills...Criminals and sociopathic monsters are rare, but the world is full of folks who will attack you for pissing them off,” they teach.

I recommend reading *What You Don’t Know Can Kill You* for information about dealing with both, but I believe readers reap the most benefit in smoothing out day-to-day interactions.

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

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Editor's Notebook

Defense of Others

by Gila Hayes

The May 25 intervention of two armed citizens in Oklahoma City after a deranged man shot a woman and children who were at a

restaurant for a birthday party has spawned much discussion. Several months earlier, it seemed like everyone was talking about the Sutherland Springs, TX firearms instructor who shot the man who shot and killed over two dozen worshipers attending the First Baptist Church near his home. While we're amazed that these positive gun uses made the news, we don't find it surprising that American citizens stepped in to prevent the deaths of more innocent church goers or families attending a birthday party.

After gun use in defense of others, armed citizens use these stories as a lens through which to evaluate their own legal, ethical, spiritual and psychological boundaries. Some conclude that their preparation to use deadly force—bluntly defined, their willingness to kill another human being—is reserved for saving their loved ones or themselves from being killed. For others, a sense of responsibility for other human beings leads to assertions that they are willing to kill in defense of others they do not know. We mentally put ourselves in the shoes of another and ask if we would make the same decisions if faced with the same risk, and we ponder the likely outcomes. When accurate information provides a basis for our conclusions, that's good.

One reality check is recognizing what happens after one citizen takes the life of another. A good example is the Oklahoma restaurant shooting. Police, responding to a large, chaotic scene, handcuffed the armed citizen intervenors as well as the attacker who was bleeding out on the ground. The father of one of the victims, not knowing who had injured his child, ran up and verbally assailed the rescuers according to news reports accusing them, "Which one of you did it...You f—ing shot my kid, didn't you!"

That quote administers a particularly educational dose of reality to counter natural tendencies to envision being the righteous knight riding bravely to the rescue of the

innocents who respond with gratitude. Not everyone will be appreciative!

Leading the list of other concerns that armed private citizens who have considered intervention must weigh is the danger attached to drawing a gun in public. Immediately after innocents have been attacked no one knows who or what you are and you have a gun in your hand. What is the likely reaction of others, some of whom may also be armed citizens? What do you look like to responding police?

Just as police may mistakenly think a citizen defending others is the spree killer, not being gifted with omniscience ourselves, if wielding deadly force without having seen the incident from the beginning, we may decide to only shoot if personally threatened unless the facts of the situation are crystal clear. That is the story of the Oklahoma armed citizen who challenged the deranged man and found himself looking down the muzzle of that man's gun. Threatened, he shot him.

Eager to paint all gun use as criminal or irresponsible, gun-haters are quick to suggest that armed citizens callously risk shooting the wrong person. In talking with callers who are concerned about their legal position after defending strangers, exercising great care in correctly identifying the attacker is one concern we at the Network express. It is a legitimate topic of discussion, and sometimes we counter the machismo of a few who haven't stopped to think through the burdens associated with using deadly force. Generally, as further questions clarify the overbroad question, "How about using a gun to defend someone else?" we find their concern focused on preventing harm to fellow church goers, coworkers, other associates or the neighbor's wife and children.

Focusing the discussion specifically better portrays the burden responsible armed citizens shoulder and in discussing ethics governing our use of deadly force, we'll find less resistance if we first, after much soul searching, take care to define when we are willing to kill in defense of innocent life and then include those personal moral restrictions into the discussion when we discuss our gun rights beliefs publicly.

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

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