

Making Statements

An Interview with Marty Hayes, J.D.

Interview by Gila Hayes

The deluge of videos, blogs, articles and commentary spread across the Internet parroting advice for criminals arrested by police raises questions when members contrast Internet advice against the Network's instructional video [Handling the Immediate Aftermath of a Self-Defense Shooting](https://armedcitizensnetwork.org/immediate-aftermath) (<https://armedcitizensnetwork.org/immediate-aftermath>). Perceptive students of post-incident survival not only ask why our material differs, but, knowing that ultimately decisions about self defense and its aftermath rest with the individual, also seek help to better understand the terminology, ask questions about giving statements and how their words could be used by both the defense and the prosecution, and at the root of the question, strive to better understand why one who has used force in self defense would give a statement. These concerns take us beyond shooting incidents into the far more common defensive display of a firearm, use of non-gun force options in self defense and the broader perspective which citizens who train for self defense seek.

In answer to member questions, Network President Marty Hayes gives his views on the controversial subject of post-incident statements. We switch now to our Q & A style for members who prefer the written format; for those preferring video, click the picture to browse to <https://youtu.be/vW2nh0AJw2E> for a less structured conversation with Marty on this subject.

eJournal: Considering the constitutional right against self-incrimination, why would a survivor of a violent encounter choose to make a statement to police about actions he or she took in self defense?

Hayes: First, let me make it perfectly clear that I am not giving any legal advice. While I have a law degree, I'm not an attorney so I am not giving legal advice. This article is me, Marty Hayes, telling people what I would do under certain circumstances and explaining a little bit about the law based upon my about 40 years working within the criminal justice system. I've been a police officer, a firearms instructor and work as an expert. I pursued a legal education to better give expert testimony in court and I interact with attorneys regularly.

That's where I'm coming from. Today, I'm going to basically be giving the logical citizen's viewpoint on why we would give a statement to police.

eJournal: Why would we?



Hayes: The police are going to get a call that violence has occurred. Maybe somebody beat somebody over the head with a baseball bat, somebody stabbed somebody or shot and killed somebody. The police are called, and it might even be you making the call – we'll talk more about that later – but when police show up, they want to investigate what happened. For police to do the best investigation possible, they need to know what happened at the scene. Notice that I didn't call it a crime scene. Your actions, assuming lawful self defense, are not a crime.

Police are investigating the crime that the perpetrator was doing to you. They need information. They need to know what happened. Wouldn't it be nice if for every situation anyone ever got involved with, a witness there could relate to police what they saw, what happened and what they heard? The good news is there is a witness there and that is you.

I have been teaching the following concept for at least 25 years if not more. Be a good witness. The police need witnesses to be able to figure out what happened. You need to be a good witness. That is why you might choose to make a statement to the police.

eJournal: Before we go further, let's tie down some of our terminology. Much of this derives from questions that members phone in and email about things on which they feel some confusion. Let's just spend a little bit of time on terminology and let's start with what constitutes giving a statement. How broadly do we define "a statement?"

Hayes: A statement is any words that come out of your mouth or any physical gestures that would communicate to the receiver of the statement what you are intending.

eJournal: Breaking that down a little bit more, there may be different points in a post-incident timeline at which you might
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be expected to make a statement, at which a good witness, a good citizen might be expected to speak. Responding officers may expect you to make a statement to them; when meeting with investigators – with your lawyer present, of course – you’re going to be making a statement; there may be a walk-through of the scene; there may be a chance or informal meeting with a detective who asks, “Hey, I just wanted to ask you one last thing...” and are you now making a statement to a detective...

Hayes: What would you like to know, Lieutenant?

eJournal: Are you making a statement under all of those different circumstances?

Hayes: Yep. Anytime you talk about something, you’re making a statement. I just made a statement!

eJournal: Is it admissible?

Hayes: That depends on whether or not you wanted to prove that I made that particular statement.

eJournal: Are there any statements that a person who defends themselves might make to police that are inadmissible at trial?

Hayes: Yes, any statements made pursuant to police questioning after they have read you your *Miranda* rights and you have agreed not to talk to the police, then if they ask, “One more thing” and you answer, knowing full well that the police have Mirandized you and you have refused to talk or invoked your right not to be incriminated by your own speech, then those would be inadmissible. Additionally, hearsay statements are inadmissible.

eJournal: What is hearsay?

Hayes: Let us consult *Black’s Law Dictionary* for that specific definition. “Traditionally, testimony that is given by a witness who relates not what he or she knows personally but what others have said and that is therefore dependent on the credibility of someone other than the witness. Such testimony is generally inadmissible under the Rules of Evidence.” That’s what hearsay is.

eJournal: Are there any circumstances under which hearsay would be admissible at trial?

Hayes: Yes, there are a lot of exceptions to the hearsay rule. An excited utterance is an exception to the hearsay rule. During a situation if there’s a lot of excitement and you uttered something that another person overheard, they could likely testify in court to what you said.

eJournal: They would be saying that what I said was credible, so it’s okay for them to tell the judge and jury? Is that how it works?

Hayes: Yes, because it falls back on the idea that someone who is in an excited state isn’t going to be purposefully lying and the whole reason for the hearsay rule is to allow only credible testimony in court.

eJournal: Does that make the presumption that I’m not going to have the mental wherewithal in the heat of the moment to create an excuse?

Hayes: Correct.

eJournal: Okay, how does this relate to – or does it relate to – another term that we run up against: “a statement against interest?”

Hayes: Another of the exceptions to the hearsay rule are statements against interest. Let’s say that you’re an armed robber and you left the store with a bag full of money and you got into a car and took off and showed the bag of money to the driver and said, “Look how much money we got!” Well, if the police want the driver to be able to testify to that utterance, then they would have to reasonably show that was a statement against interest. The driver could then testify to that.

I’ve been consulted on a number of self-defense cases, and I have yet to run in to any time when hearsay was a big point of that case.

eJournal: Okay, let’s move on the direct statements that one might give. Consulting on self-defense cases, have you seen challenges to the credibility of what a defendant said to the extent that a jury was not allowed to hear their statement?

Hayes: No, I have not. The defense attorney is going to make a case for the jury why the defendant is credible when they say that their life was in danger. That’s where a lot of the BS that you hear on the Internet comes into play. If you have seen a video 100,000 times that says, “Don’t talk to the police. Just simply state, ‘I was in fear for my life. I was in fear for my life.’” Then the statement, “I was in fear for my life” lacks a little bit of credibility.

eJournal: Well, it’s parroted from something you were told would work, not authentically your own thoughts.

Hayes: On the other hand, if the defendant, the armed citizen, says, “He was going to shoot me! I drew and shot him first,” then that’s a little bit better than just saying, “I was in fear for my life,” especially if the guy does have a gun lying on the ground. Investigators can say, “Okay, well, that’s probably pretty truthful.” It’s better when you’ve got a witness there that says, “Yep, that’s what I saw,” and so there’s more evidence to back up your statement.

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eJournal: Let's switch our focus to situations where we might apply what we've talked about. There's a lot of talk about what to do when police arrive, but there has to be a call to 9-1-1 to get them coming. Can we accept that if one calls 9-1-1, the things told to the dispatcher may be admitted as evidence at trial?

Hayes: I have yet to see a case where the 9-1-1 transcripts were kept out. The reason an experienced defense attorney would keep them out would be because they're damning to their defense. At that point, the prosecution would say, "Uh, Your Honor, that's an exception to the, A) excited utterance rule and, B) it's a statement against interest." The judge would say, "Objection overruled," and the 9-1-1 transcripts would be allowed.

eJournal: Accepting that a jury will likely hear your call to 9-1-1, if it was you how would you manage the call? What would you do?

Hayes: It just depends on the situation. Narrow it down for me.

eJournal: Are you going to call 9-1-1 yourself? Are you possibly going to have someone else make the call?

Hayes: If I do not believe there is any other way to get the police coming, then I'm going to make the call. If there are witnesses, I would say, "Mr. Witness, call the police and tell them what happened here. Send an ambulance, the guy is injured."

eJournal: If there is nobody but you and the assailant, what are you going to tell dispatch?

Hayes: I would give them my name, the location, and assuming it's a shooting call, let's say an armed robbery that I interrupted, I would tell them there was an armed robbery at the 7-11 store on Second and Vine. There is a man, the robber, who has been shot and we need police and ambulance here.

eJournal: I have listened to 9-1-1 recordings, and it seemed to me that – with no disrespect to our emergency services people who do a tough job – the dispatcher pretty much interrogated the guy who called to ask for police help. How would you react if aggressively questioned by dispatch?

Hayes: I would say, "I can't talk right now, I have to contain the scene."

eJournal: And if questions continued?

Hayes: I would hang up.

eJournal: That is counter to much of the advice that we're given to remain on the line to be alerted when officers arrive, or if other aspects of the situation change. That aggressor may

still be a threat to you. I don't think you need to be talking to dispatch under circumstances like that, but more critically, I think you don't need to be giving a lot of details to the dispatcher, so it can be a challenge to shut that down without creating hostility.

Hayes: It's just going to be situational. You'll have to do what you think you should be doing at the time. You can see how much of a problem the 9-1-1 recording became for George Zimmerman. His call to 9-1-1 really became a focal point of his trial. He stayed on the line with the dispatcher and talked about the guy that he thought was breaking into the residences and how he was following them and then talked about stopping following him and then how he was being followed.

If he would have just said, "Hey, I'm the block watch captain here. There's suspicious activity. There's a man who is looking like he's going to break into houses. Please send the police," and gave a description of himself so they wouldn't think that he's the one breaking into the houses. If he had left it at that, if he would have said, "No, I've got to go," the police would have shown up and he wouldn't have been accused of stalking this young child who had a bag of Skittles.

eJournal: One of the bad things to evolve from all the "Don't talk to the police" video and articles manifests in something I hear fairly often. A surprising number of people say, "Why would I even call 9-1-1?" That bears discussion. Generally, we're not talking about a shooting where the evidence is going to be incontrovertible, but let's say that you drew a gun in defensive display, it worked as the statistics say that it often does, and you were able to defuse the situation and get yourself to safety. That's the scenario when I hear people asking, "Why the heck would I call 9-1-1 and say what I had done?" Your thoughts?

Hayes: Understand that if you use force or threaten to use force against someone, you have committed a crime. If you want to turn the narrative away from you committing a crime, then you need to tell the police what the other person was doing – what criminal act he or she was doing that caused you to need to defend yourself. It's a matter of turning the narrative away from you. Every time you use force, whether it's pointing a gun at somebody, whether it's shooting somebody, whether it's grabbing them and taking them to the ground, absent justification, that's a crime. You need to be setting up your justification.

I will admit that if I'm out hiking in the woods and I come across some homeless dude who gets out of his tent and comes and confronts me, I might simply say, "Sir, I don't have anything for you. Back away," after which if he didn't back away, that gives me more information to believe that maybe there's something

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more serious going on here. At that point, I may put my hand on the gun and say, "Sir, I said back away," and if he says, "Oh, dude, I'm sorry, I misunderstood," and he goes back in his tent, and I hike away, I might not call the police under those circumstances. It's going to be situational.

When I get back from my backpacking trip, I might call the police, and say, "Listen, I need to report an incident that occurred while I was out on Trail 51 in the Gifford Pinchot National Forest, hiking up to the mountain lake where I like to fish. I was accosted by a guy who was living in a tent. I told him to back away, but he wouldn't. I told him to back away again. I communicated to him by virtue of my hand under my jacket that he needed to back away, at which point he backed away and we were done. I just want to let you know there's somebody up there doing this," and give his description.

The police probably aren't going to go running up the pathway in Gifford Pinchot National Forest and confronting the guy. They're just going to write a quick line in the dispatch log and move on. At least you've communicated to the police what happened and if at some point in the future he ends up getting shot or he ends up attacking someone, then there's a little piece of information that might be important in a court case.

eJournal: That example was set in a very remote location. It seems more likely that one may be required to work late and be accosted going to their car in the parking lot or trying to get to public transit. Your hand goes to your holstered gun, and you order the aggressor to move away. If they approach, that escalates to defensive display of a firearm. After you get away, do you call 9-1-1? If you've been indoctrinated not to talk to the police, what is the downside of not reporting the incident?

Hayes: I am reminded of an incident where you ended up with a panhandler at a gas station. What did you do?

eJournal: I yelled my head off.

Hayes: Did you show him a gun?

eJournal: No, I did not, because I was never that close to him. He responded to my verbal commands and staggered off in another direction.

Hayes: If he hadn't stopped – if he had kept coming at you – would you have displayed a firearm?

eJournal: I would have moved behind the car and had a hand on the gun. If I'd drawn the gun, yes, I would have called 9-1-1. There were a lot of other people around that night, and I didn't need someone reporting a situation they did not understand.

Hayes: Exactly. Someone calls in, "There's this lady at the gas station waving a gun round." It is all situational.

eJournal: And yet, I still hear people saying, "I do not know why I would call police and report on myself and tell them what I did." First, am I reporting the panhandler's aggression or am I calling to report my actions? What am I calling to report?

Hayes: It's going to be filtered by your common sense. Is there someone else around that might have seen what happened and might they have thought that I was out of line when I pulled my gun? If that's the case, they may call 9-1-1. "There's a crazy lady out here waving a gun around and this was what her car looked like. In fact, I've got a license plate number." Within a few minutes you're pulled over and arrested for making terrorist threats.

That brings Paul Lathrop to mind. If you remember, in 2016, Paul was a truck driver who was accosted by another truck driver who thought that a student driver in his truck did a poor job of parking when he stopped to get fuel. Paul said something to the effect of, "I've got a gun," trying to stop the other driver from getting at his student in the cab. (*Hear the story in Paul's own words at <https://www.handgunworld.com/episode-381-falsely-charged-paul-lathrop-speaks-publicly-for-the-first-time/> .*) Eventually, Paul drove away, but then the other driver reported that Paul waved a gun at him. Well, Paul didn't wave a gun at him, but he was pulled over 20 miles down the road, arrested and spent six months fighting this until the prosecution dropped the case.

eJournal: I'm glad you brought up that case because we've talked about different degrees of force, raising the question, "What's serious enough to report?" Charges of making terroristic threats seem to arise more and more frequently after defensive display of a firearm. That story guides when you might want to call in and establish a record – even if you've just given verbal commands.



Marty Hayes (left) and Paul Lathrop (right) broadcast from the Network exhibit at the 2019 NRA Annual Meeting where we hosted Paul's Polite Society podcast in our booth.

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Hayes: The fact of the matter is that Paul didn't call in. He thinks, "Oh, man, that was weird," and he gets in his truck and drives away. Well, if he would have called in and said, "Listen, I was just accosted by this guy at the Flying J. I just wanted you to know about it in case something happens to somebody else." I think he would have never been arrested, because now you'd have Paul saying one thing, being the complainant, and then the other guy calling in about it. While Paul might have been arrested, they certainly wouldn't have pursued it as hard because he had made a statement. They'd have two pieces of evidence: his statement and the other guy's statement.

eJournal: Acknowledging that each circumstance is different, that's a lesson that can help members decide when they'd call 9-1-1. Should we discuss anything further bearing on the 9-1-1 call?

Hayes: Let's put that all in the context of what would a good witness do under those circumstances? Would a good witness have called the police? Was it serious enough to get the police involved? You need to be a good witness because you are perhaps the only person that witnessed this situation.

eJournal: We weigh the pluses and the minuses, not wanting to be one who eagerly reports others' bad behavior. If we see two people fighting in the street, I think we ask ourselves, "Gee, should I call 9-1-1 or should I just drive past?" Many are not certain when we should call it in or drive on.

Hayes: I think most people now would turn around, get their cell phone out and record the fight without calling 9-1-1.

eJournal: *[Laughing]* This is a good place for us to take a half-time break and come back next month to talk about managing statements given to police that come because you or another person called 9-1-1 for help.

Marty Hayes, J.D. is president and a founder of Armed Citizens' Legal Defense Network. He brings 30 years experience as a professional firearms instructor, 30 years of law enforcement association and his knowledge of the legal profession both as an expert witness and his legal education to the leadership of the Network.



President's Message

by Marty Hayes, J.D.

What did you do on October 13, the announced "Global Day of Jihad?" (For those of you out of the know, that was the announced day when America was to be attacked by all the terrorists who have come illegally over the border.) Did you decide it might be a good idea to put a gun on that day? Or did you

grab a second magazine, or slip a J-frame revolver into your pocket as a back-up? Did you decide to open the safe and grab an AR, load it, and keep it within reach in the house just in case? All would be prudent moves in my opinion, but they should not have been necessary.

You see, a well-prepared individual should have already been ready to handle whatever came to you. On December 2nd, 2015, two committed Jihadists attacked their co-workers at a Christmas party in San Bernardino, CA. That was the day I committed to do two things. The first was to start teaching courses entitled *Active Shooter Interdiction* at my school, The Firearms Academy of Seattle. While I have since sold the school, I know they carry on teaching the same curriculum under the new owners (see <https://firearmsacademy.com/handgun/active-shooter-interdiction>).

The second commitment was to carry a full-size pistol 24/7/365. You see, I had fallen into the trap of carrying a 5-shot revolver in my pocket a lot of the time. After the 2015 attack, and I asked myself, "Is that enough gun to stop a couple of committed terrorists?" My honest answer to myself did not please me. So, the J-frame revolver became my back-up gun, and I started carrying a full-sized 1911, in either .45 ACP or 10mm. Recently, I have donned my Smith and Wesson Mod 13 3", loaded with full-house .357s, all capable of center hits on a man-sized target at 50+ yards.

In a perfect world, we would spend our lives in free societies where gun possession and carrying guns are not criminal acts. Unfortunately, that is not reality. This leads us to a quandary. Do we remain capable of stopping a criminal attack or terrorist attack or do we acquiesce to the unconstitutional (more on this later) politically inspired *malum prohibitum* statutes? Well, I can't answer that for you, because every one of us has a multitude of competing issues to weigh.

If you are discovered carrying a concealed handgun in a sensitive place, do you have the finances to fight that legal battle? Can you afford the days off work if you end up convicted and

sentenced to jail? Will you even have a job when the ordeal is over? It is also very likely you'll lose your concealed weapons permit. Will you always be looking over your shoulder when out in public when you are carrying?

These are real world problems. Contrast these problems with the unlikely (but never zero) risk of REALLY needing a concealed weapon at any given time, having been singled out for violent crime, or even being caught up in an active shooter event or the very unlikely chance of being in the wrong place at the wrong time, being present during a terrorist attack.

The Supreme Court in *N.Y.S.R.P.A. v. Bruen* (<https://supreme.justia.com/cases/federal/us/597/20-843/#tab-opinion-4600260>) and *D.C. v. Heller* (<https://supreme.justia.com/cases/federal/us/554/570/#tab-opinion-1962737>) raises some serious questions about the constitutionality of such *malum prohibitum* laws such as blanket laws outlawing concealed carry. I have included these links instead of writing an analysis of what these rulings mean.

What does this mean for Network members?

Since our inception in 2008, we have said if a member was carrying the gun illegally or was prohibited from possessing firearms, we could not extend Network benefits if the member was involved in a self-defense incident. We have recently relaxed that policy and have removed all language from our website and other communications related to illegally carrying a gun and being involved in a self-defense incident. (We have kept in place the prohibited person language). To clarify, the Network will not withhold assistance with the legal aftermath of a self-defense incident if you were also cited for a violation of a gun-free zone, but we will not assist a member who is solely charged with a statutory violation of a gun law. If we did this, we could be accused of enabling people to violate the law. In addition, a caveat. Be sure you know the seriousness of any statutory violation you might encounter. A felony violation would be possibly life altering.

Why the change in policy? First, *Bruen*, the latest concealed carry ruling by the USSC states:

Held: New York's proper-cause requirement violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense. Pp. 2125-2156.

This ruling will be the basis for all challenges to restrictive concealed carry laws for the foreseeable future.

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The second reason for our change in policy is to counter Hamas' stated threat to bring terrorist attacks to the American homeland. I am reminded of the saying attributed to Japanese Admiral Isoroku Yamamoto: "You cannot invade the mainland United States. There would be a rifle behind every blade of grass." While that quote is unsubstantiated, it certainly would have been true. An armed America is critical for avoiding war in our homeland.

Consider now the current situation: politicians passing unconstitutional laws that create "safe zones" for terrorists.

In Israel, the music festival where so many were killed by para-gliding, AK-47 wielding terrorists was a "safe zone" where possession of guns was not allowed. It is not lost on me that the "no guns" policy in Israel was eased in light of the attack <https://reason.com/2023/10/13/israel-eases-guns-restrictions-amidst-security-failures/>.

By writing these words, please understand that I am not suggesting you start violating the law. What I am saying is the Network will not refuse to assist a Network member after an act of self defense if they do decide to carry a gun for self defense in contravention of their local gun restrictions.



Attorney Question of the Month

Network members often ask what restrictions apply if they use force in defense of third parties. Generally, the scenario they suggest is seeing a fight out in public and, fearing death or serious injury to the victim, they may decide to intervene. Fortunately, we knew just whom to ask! This month, we asked our Affiliated Attorneys about their state's laws bearing on defense of others.

Does your state have statutes or caselaw which distinguish the defense of another person from defense of oneself or close family?

Appropriately, the attorney who proposed the question gives the first answer.

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Under Florida law (Fla. Stat. § 776.012), justification for force threatened or used in self defense and defense of “another” are treated similarly. Both for non-deadly and deadly force. There is no limitation to just family members. That is contrasted with defense of another’s property which by statute is limited (for non-deadly force) to property of a “member of immediate family or household or of a person whose property he or she has a legal duty to protect.” Fla. Stat. § 776.031(1).

There are however some interesting considerations. First is whether there should ever be a duty to retreat imposed on a person threatening or using force in lawful defense of another. One appellate judge has observed that would gut the defense of justification in such cases. *Fletcher v. State*, 273 So.3d 1187 (Fla. 1st DCA 2019). Also, Florida’s statute on unlawful firearm display (Fla. Stat. § 790.10) contains language making it inapplicable to “necessary self defense.” There is no settled caselaw that includes defense of another. Finally, the Florida statute on unlawful discharge of a firearm (Fla. Stat. § 790.15) uses different language; it provides it does not apply to a person “defending life or property.” Hence, the exception does apply to defense of another, and to defense of animals, as well.

As is the case in almost all states now, defense of another un-

der Florida law can be justifiable by the reasonable belief of the defender; the right of the person defended to lawfully threaten or use defensive force isn’t relevant. This is because the “alter ego” doctrine has not existed in Florida since 1890. See *Grant v. State*, 266 So.3d 203 (Fla. 4th DCA 2019), and *Montanez v. State*, 24 So.3d 799 (Fla. 2d DCA 2010).

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Defense of self or another from unlawful force is similar for each. The standard is “reasonable belief.” The “no deadly force if safe retreat” and provocation limits are similar. See 17-A MRSA 108.

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Yes—Arizona has two different statutes, A.R.S. 13-405 (self defense) and A.R.S. 13-406 (defense of a third party), which cover these two different scenarios. They are really both the same, exact concept. “Are you reasonably in fear for the imminent loss of (your/another person’s) life?” If so, lethal force is justified. The incredibly important difference between the two scenarios is that when you are defending yourself, you are far less likely to be mistaken — you were involved since the beginning of the incident. You are also far less likely to be accused of “vigilante-ism” than if you were defending only yourself (lest we forget the recent plight of former Marine Daniel Penny in a New York subway car).

Imagine that you walk around a corner and see a man, in civilian clothes, very graphically (sounds of the blade punching through ribs, steaming arterial blood, etc.) stabbing a young woman kneeling at his feet who is clutching at his pants leg, screaming in agony. You draw, shout a demand to “drop the weapon,” and seeing the attack continue unabated, you fire at the man and stop the attack on the young lady. Both perish from their wounds. Later, following some investigation, it is determined that the man was actually an off-duty cop who had been attacked by a resentful former girlfriend, who had stabbed HIM, six times, with the same knife, before you arrived on scene. Also, just before you showed up, he was able to take

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the knife away from her (after being severely stabbed himself) and was trying to exit the scene for medical assistance when she made a grab for his ankle gun (thus her observed fuss with his pants leg). She was about to get it out of his holster when he was forced to defend himself from his own gun with the only weapon then immediately available to him—the knife, covered in his own blood, that he had just taken away from her. And THEN, you rounded the corner. So much for your provision of assistance to the “fair maiden.” Likely a “reasonable” error, and I would hope that such a reasonable error would be treated as such by our system of jurisprudence. But I wouldn’t bet the house on it.

I think the moral of the story is when you choose to intervene in the plight of another, ask yourself how well you would have understood the end of the movie *The Sixth Sense* if you missed the first hour of the movie.

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In Georgia, it is the exact same statute that covers defense of self and defense of others, so there is no differentiation. That said, I would caution Georgians to consider all the circumstances before getting involved in a third party altercation. Things are not always as they seem. A robbery at a convenience store is probably more cut and dried than a quarrel in a parking lot. For the latter, it may not be obvious who is the aggressor.

If you happen upon a confrontation that already has become physical, you could end up using force (deadly or otherwise) against someone who appeared to be gaining the upper hand (from your perspective) but who was merely defending herself against an attack.

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

Book Review

Emergency Mind: Wiring Your Brain for Performance Under Pressure

By Dan Dworkis, MD PhD FACEP

ISBN-13: 9798746482327

\$9.99 eBook; \$19.99 paperback

Independently published by Sangfroid Press

Reviewed by Gila Hayes

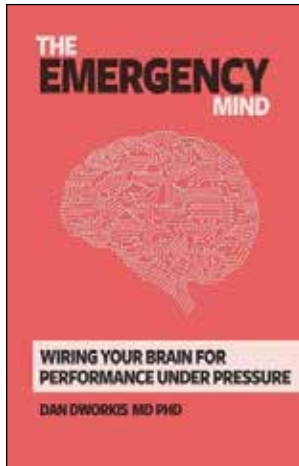
For over a year, my virtual bookshelf has held Daniel Dworkis' 2021 book, *The Emergency Mind*. After last month's lead interview discussed evolving threats, the mental agility required to react and survive and warned about denial, motivated by that discussion, I dug into *The Emergency Mind*. It is a very thought-provoking book that encourages personal evaluation and improvement. I think armed citizenry is, for the most part, blessed with ready access to good instructors who can teach firearms safety and operation, accurate marksmanship, and elementary tactics but rarer is detailed instruction and coaching in functioning effectively under extreme stress.

Authored by an emergency room doctor, *The Emergency Mind* teaches effective decisions and action under tremendous pressure. While Dworkis' illustrations are from the ER, it is easy for the student of self defense to substitute defensive scenarios for the medical emergencies used as illustrations, and family or associates who are present during a self-defense emergency for the ER team to whom the book frequently refers.

"While you cannot control what emergencies come your way, you do control how you prepare; you control what you do now to build your emergency mind and wire your brain to perform under pressure," Dworkis introduces, adding later that "performing under pressure is a set of skills that can be broken down, trained, and put back together again." Role play and visualization are useful for practicing emergency responses. Habituating good responses to daily stress builds habits that kick in under dire circumstances, he writes.

Most if not all emergencies include the factors of uncertainty, high-impact outcomes, and significant pressure. Combined or separate, the three are enough to create paralyzing indecision. Pressure is both internal and external, Dworkis observes. Internally, emotions like doubt and fear can cloud judgment and decrease effectiveness. Dehydration, sleep deprivation or poor nutrition can hurt performance, too. Lighting, temperature, and noise are environmental factors that also "play a role in diverting your attention and increasing your cognitive load," he says.

Preparation reduces pressure, he continues. Pre-learned mental models speed up decision making when limited information



is available. Dworkis explains that the mental models taught in his book require exploration and practice to work for the reader. "Mental models are the conceptual frameworks we all use to explain how parts of reality work. Anytime you extrapolate information from sets of experiences to guide future actions, generate rules for how things are supposed to work, or balance sets of competing principles to fine tune a decision, you are using mental models to explore, map, and predict the world around and within you." He offers five categories of models, all adaptable to self defense, and discusses the path to better performance under great pressure.

How to mitigate stress and apply the correct solution is the focus of a section entitled *Applying Knowledge Under Pressure*. Dworkis contrasts a desperate rush and attempt to overpower obstacles against the finesses of an experienced, calm response in which "the best leaders actively seek out and build moments of calm into even the most chaotic and critical cases. These 'spare moments' allow you the time and space to improve decision making, process new information, and pivot to new directions." He details methods and training to stay composed and put your skills to work in chaotic environments.

The section entitled *Handling Uncertainty and Imperfection* covers making decisions despite information gaps, a source of stress present in daily life as well as life-and-death emergencies. Acknowledge that the situation is "suboptimal" (not horrible or hopeless), he advises, then get to work solving the problem. If there's time, pause momentarily to breath and flush out the physiologic effects of fight or flight. If no time is available, take action using pre-made steps to address the emergency, for example, CPR instruction teaches the ABCs airway, breathing, circulation and while Dworkis' ER examples are considerably more complex, a linear, pre-learned response speeds reacting productively under extreme stress.

Training should include stress. Increasing pressure incrementally can uncover "previously unseen weakness in your understanding or execution of the technique and the opportunity to address it." A good start is visualization practice, he advises. Alternate training between low-stress, calm instruction and drills that include stress like physical or mental exhaustion, noise, or other distractions which can identify needed corrections or unanticipated stumbling blocks. Quantify the results and ask outside observers to give feedback. Afterwards, identify the techniques that you were able to perform even under trying circumstances, then overtrain those skills in simulations of the worst possible environment in which you could be called upon to use the skill, he writes. This section is packed with good instruction, far more than there's room to mention here.

[Continued next page]

No one likes to fail, so the book's *Part II Handling Uncertainty and Imperfection* challenges readers to accept fallibility. Dworkis cites the Japanese philosophy that in the natural world much is imperfect, impermanent and incomplete. In an emergency, holding out for the perfect solution, a permanent correction, or a complete understanding of the situation may be fatal. "Focus on improving your performance and doing the best you can with what you have. You accept uncertainty and change, since they are omnipresent, and you devote yourself to growing with every crisis you encounter," he writes.

Dworkis explores cognitive biases that we employ to quickly – but sometimes erroneously – make decisions under pressure. Recency bias gives more weight to recent events or information that's easiest to recall, or discounting information about which we have no personal experience. Most humans hate uncertainty so it is easy to fall prey to these thinking errors. Anchoring gives undue value to the first fact determined about a situation, making it hard to abandon an initial conclusion even when later details show it incorrect. Confirmation bias causes us to ignore facts that challenge our currently held belief. When the emergency is so physically, mentally, and emotionally challenging, people sometimes take refuge in denial. Fight the habit in day-to-day life by acknowledging and acting to resolve problems as quickly as they arise, he teaches.

Dworkis reminds readers that eliminating uncertainty is unrealistic. Become comfortable with it. Study how you currently react to uncertainty, he writes. Part of the stress is due to our own physical reactions like shallow breathing and tight muscles. "Once you have a solid grasp on how you currently experience and respond to uncertainty, you can start to expand your comfort in its presence. Experiment with different techniques in low stakes situations, like using deep breathing to counter the physical feelings uncertainty may bring when you're opening an email containing a medical test result. Finally, in situations where you know you will face uncertainty...train and overtrain your basic skills to improve your response times."

At the heart of responding effectively in an emergency is the ability to make high- and low-impact decisions under pressure. If time allows, others who are present may have seen something you did not, so Dworkis teaches the humility required to inquire, "What am I missing?" Ask the right kinds of questions. "During an active event, this typically means that your questions should be exclusively present- and future-focused." Ask questions that are focused on the immediate crisis and actions you can take to resolve it.

Related to asking what you missed and changing course is abandoning an initial response that's failing in favor of Plan B. Don't get fixated on what you think is the right course of action, the book advises. Implement backup plans early in Plan A's failure, not after it has failed profoundly. Plan B should be

a "skillful transition," an "alternative path to success." Know what Plan B is before beginning Plan A. Those who "proactively build and train Plan B methods directly into their approach, with systems that are designed to be robust to failure and resistant to error" are more effective during emergencies. He describes "stumble-and-recovery" practice drills that are reminiscent of training using inert ammunition to simulate recovery from equipment failure.

To be better prepared, anticipate failure, he advises. Brainstorming with associates and mental rehearsal can pull lessons from recent problems. Start from the end, the imagined failure, and work "backward to figure out how and why things went wrong," he teaches. "Each way that you can visualize failure becomes a chance to design and implement a solution — one that minimizes the probability of the imagined failure becoming reality." Debriefs after a critical incident can show where a poor decision led to a suboptimal outcome.

Dworkis identifies factors leading to poor decisions, including failure to focus on what's important and tunnel vision on one element of a problem to exclusion of other pertinent factors. In a crisis, he writes, limit the decisions you make to only those immediately relevant. "To perform well under pressure, you must be able to identify those decisions that require your immediate attention. But it is equally important to identify your least critical decisions and have the discipline to put those aside."

Dworkis commits many pages to how to apply abstract knowledge to making a decision and taking action. We hear the term "best practice" a lot, but can the human brain faced with life or death choose and perform to that standard? "No matter how 'perfect' a solution to a problem may appear on paper, if it's impossible to implement when and where an emergency is happening, it is not the correct response," he writes. "Unstable situations in which conditions are rapidly changing might be better served by less ideal solutions that can be implemented more quickly and with lower resource cost."

Emergencies also require adapting to rapidly changing needs, so Dworkis recognizes trade-offs between "precision and practicality" allowed by only "a deep knowledge not only of how your craft is supposed to function, but also of the details of your environment and the resources at your disposal at this exact time." That doesn't mean being satisfied with poor results; after resolving the emergency, honest review and detailed study is required to make it work better next time.

Dworkis closes *The Emergency Mind* by urging readers to experiment with the exercises he outlines, the mental models he describes, and the ways to handle emergencies his book presented. His book included many, many important points not mentioned in this review. I found it one of the most useful books I've read this year.



Editor's Notebook

Too Little, Too Late!

by Gila Hayes

After October 7th, Israel's government announced that they're relaxing rules about their citizens going armed. Good as far as it went, however a surprising number of restrictions are still in place.

"According to the ministry's updated conditions, any Israeli citizen interested in obtaining a permit, either for self defense or because they are serving in the IDF, will be entitled to a gun license, provided that they have medical approval, police approval, and passed the exams for carrying private firearms," so reports the National Rifle Association's Institute for Legislative Action.

Turns out the common idea amongst Americans that Israelis go about their daily business armed is not as true as we thought. In March, the BBC reported that "Israeli gun ownership is low at about 2% of the population. It compares to about 30% of the population owning a gun in the US." Israel's government also limited how much ammunition a citizen could possess.

Intermittent terrorist attacks have plagued the Middle East for as long as I can remember. The willful decision to put stumbling blocks in the path of individuals willing to go armed to defend themselves, their children and their neighbors now bears a crushing responsibility for the deaths of many innocent Israelis.

A less publicized lesson emerged from the defense of some of the settlements that also bears noting. The civilian security teams reported that they had been left with only handguns for defense because pilferage of rifles over previous years had prompted the IDF to take back many of the rifles provided to defend against the kind of bloodshed suffered in early October. Left with only pistols, the heroes defending the Israeli settlements show us that a determined defender armed with only a pistol can prevail. While mourning the lives lost, we should be inspired by the fighting spirit of the Israelis, using what they had to stop the Hamas terrorists.

Comments from Members

Last month's [lead article](#) about the dangers of impromptu mob attacks generated comments, including a shout out or two calling for more video interviews plus several emails expressing concern that the appearance of more video in recent journal editions foreshadowed the end of written journal articles, following the example of modern video blogging so common on the Internet these days.

I'd like to reassure both factions. We are working in more video as the opportunities present themselves. At the same time, I do not expect to convert fully to video. That's due largely to the serious nature of the topics we address in this journal.

In closing, I wanted to share a note I got after last month's journal because it offered such good advice from a member who lives in a small West Coast community. He suggested:

I embody many of the "solutions" or habits that are mentioned by Michael Bane, although he did mention a few more that I will be considering. However, he did not mention one thing that I perhaps wrongly do regularly - but it does work for me. My trips almost always get done in the mornings.

I've observed that problems happen much later in the day and often during the evening, so I just don't participate. As an example, I make my Walmart trip around 7:00-7:30 a.m. This has the added benefit of almost never having to listen to crying kids and the items are as fresh as they can be. The same is true for my occasional drives to Home Depot. They each open early, so I am in and out before the troublemakers are awake.

I appreciated our early-rising member's suggestion. We face increasing threats from home-grown hatred and from violence funded and encouraged by nations and sects that despise Americans and all the freedoms we fight to preserve. We have to balance not retreating to our basements afraid to come out against not taking unnecessary or frivolous risks. Our member's suggestion provided a great example.

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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.

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