

From a man who teaches  
them to cops, you can  
learn here . . . .

# THE EIGHT DANGEROUS MYTHS OF SELF-DEFENSE

by MASSAD AYOOB

**W**HEN PEOPLE feel a compelling need to know something and those in position to give the information don't want to share it, people turn to back alley myths and bad things will typically result. Until 1981, only cops were teaching judicious use of deadly force, and if you weren't a policeman yourself, you'd be told, "Sorry, but that's privileged information. Just use common sense and don't shoot anybody and you'll be all right."

In that informational vacuum, inevitably, half-truths and outright myths flourished. Let's look at some of those old saws, and get them out of your system before they get you into trouble.

**Myth #1:** "You can shoot any trespasser you find in your home." This weird distortion of the English common law doctrine that "a man's home is his castle" has been unwittingly reinforced by some of the well-intentioned pro-gunners who've pushed through bills like the "castle law" in Massachusetts. Intended to ratify the civilian's right to use deadly force to protect himself and his family from danger without having to retreat in his home, these laws have often been

misread and construed as a license to kill any outsider found within the walls. In fact, every such law I've ever seen states clearly that the homeowner may shoot *only if he reasonably perceives danger* at the hands of an intruder he has confronted.

In Pennsylvania, one of the first subsequent householders to shoot an intruder had misread that state's then-new "castle law." He shot a fleeing teenage burglar in the back and he went to prison for it.

I've had two situations where I've drawn guns on people who had illegally entered my domicile and was very glad I did not fire. In the September, 1981 incident, the two intruders I placed at gunpoint (and "dog-point") turned out to be two bozos from the gas company who thought the basement door had been left open for them. In February, '85, I was asleep in a midwestern motel room when the sound of a key slipping into my door lock snapped me awake. I looked over, saw the door shoved suddenly open and reacted. I rolled out of bed, scooped up the Colt autoloader from the floor, and covered the two people in the doorway with the command, "Don't move!"

They turned out to be a nice young couple from Missouri who had been given a key to the room by a dimwitted clerk who thought I'd checked out. Technically, they were illegal intruders into my domicile, but had I shot them on those grounds alone, I would now be singing jailhouse blues instead of writing this article.

**Myth #2:** "If you shoot an intruder who turned out not to have a weapon, stick a kitchen knife in his hands and be sure to drag the body inside the house before you call the police." This has to be the most common of the armed defense myths, and may well be the most dangerous.

Why did you shoot him? Because he placed you in what a reasonable and prudent man would consider to be immediate and otherwise unavoidable danger of death or grave bodily harm. Your altering of the evidence will be seen by judge and jury as proof that you're lying about the circumstances of the situation, and what was originally a justifiable homicide has now become a charge of murder that will probably stick.

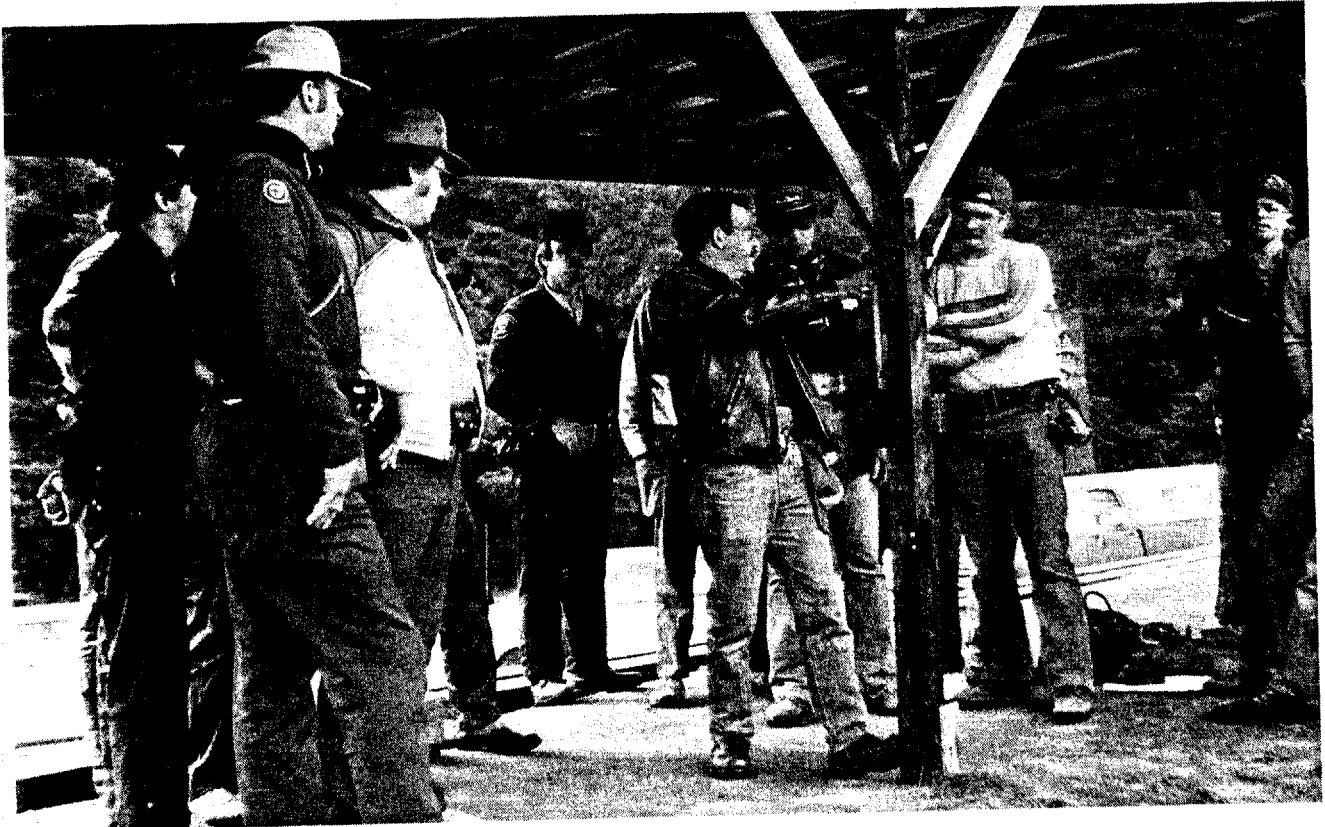
And, you *will* be found out. Do you know the fingerprint pattern consis-

tent with a man who had picked up a knife before being shot, as opposed to a fingerprint pattern consistent with a man having a knife put in his hand *after* being shot? The detectives know. They'll also find out if you moved the body through microscopic fiber evidence, and traces of blood you thought you'd wiped up, and now, having lied to police, you are the little boy that cried wolf. The jury will no longer believe you when you say you had to

And, frankly, if you can look down at a wounded man who has thrown his gun away and is begging for his life and say, "Sorry, but I'm going to shoot you in the head to silence you and keep you from suing me," you *belong* in a cage.

**Myth #4:** "After you've shot down the mugger, look both ways for witnesses and if you don't see any, leave. That way, you save all the legal hassle." Folks, the prisons are full of peo-

ple the Magliato case in New York, the defendant was a businessman who shot and killed a vicious junkie who attacked him on the street with a club. The shooting itself was justified; I testified on the stand that I would have shot him down myself; but when the junkie fell, Magliato panicked and fled, and hid out for a few days before he came to his senses and turned himself in. Even one of the best trial lawyers in New York couldn't overcome



In the state of Washington, Ayoob taught law officers advanced tactical know-how on the range and advanced legal awareness in the classroom. Photo by Rich Mootham, Kelso, WA police dept.

shoot. You can discuss the injustice of it all with the other inmates in the prison exercise yard.

**Myth #3:** "If you shoot a bad guy, make sure he's dead, or the resultant lawsuits will ruin you." It's true that in California, for instance, a man you've wounded can sue you for punitive damages in addition to real damages, while the estate of a dead man cannot. Consider, however, that in three out of four shootings by trained police, the wounded suspect survives. Consider, too, that once the man you've wounded has given up the fight, you're guilty of murder if you finish him off with a *coup de grace*. The investigators will be able to determine if this was the case by bullet track angles and other evidence.

In short, if you try to follow that advice, you'll probably end up in prison.

ple who looked both ways for witnesses and didn't see them until they appeared in court to testify against them.

Never forget that in the mind of judge and jury, *flight equals guilt!* In

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the jury's innate belief that only a guilty man flees the scene of his actions. They found him guilty of murder.

The irony is that virtually everyone involved with the case agrees that if Magliato had simply stayed at the scene, handed his Detective Special and his carry permit to the first responding officer, and said, "He said he was going to kill me, and he was coming toward me with a deadly weapon, and I shot him," the grand jury would almost certainly have returned a "no true bill," in effect finding him innocent by reason of justifiability.

**Myth #5:** "Guns are useless for a woman in rape defense, since most rapists don't have deadly weapons and it's illegal to shoot an unarmed man." It's amazing how often I hear this from feminists; ironically, fear of



Ayoub developed his own awareness of the special new problems of self-defense in courtrooms, on the street, and in the confidence of police executives like Major Winston Dill of the Athens, GA, police department. (Photo courtesy *Police Product News* magazine.)

guns seems to be the last bastion of "Suzy Housewife Mentality" in the feminist movement.

In fact, the three criteria that determine a deadly jeopardy situation that warrants lethal defensive force are *ability*, *opportunity*, and *jeopardy*. *Ability* is the power to kill or cripple; *opportunity* means that the attacker(s) are close enough to use their ability to kill or cripple; and *jeopardy* means they are acting in such a manner that a reasonable and prudent person would assume they were *going* to kill or cripple an innocent individual.

Women more than men can take advantage of a legal concept called "disparity of force." That is, one or more unarmed men far stronger than you in size and strength, or in numbers, are recognized to be so much more capable of killing or maiming you that their greater or combined strength is a "weapon" equal to a gun or knife, a weapon that justifies your own resort to a loaded gun in self-defense.

Ironically, many "macho" men still believe in the philosophy voiced by one of the first jurors in the Inez Garcia trial who, after voting to find her guilty in the shooting death of her rapist, said, "You can't kill someone for trying to give you a good time." Largely as a result of that statement, the guilty verdict was overturned, and Garcia was properly found not

guilty in her second trial.

The justification for using deadly force in self-defense is, "Immediate and otherwise unavoidable danger of death or grave bodily harm." Why did any rape victim in history ever submit to her assailant? Because he made it clear that she was "in immediate and otherwise unavoidable danger of death or grave bodily harm." As one who has taught both self-defense and rape prevention, I find that these concepts mesh rather neatly.

**Myth #6:** "I don't think I could really shoot anybody; I just have this gun to scare burglars away." There is enough truth in this dangerous myth to make it believable to those who do not fully understand the dynamics of violence.

A California study found that in 13 out of 14 incidents where citizens drew guns against criminal suspects, they did not have to shoot their antagonists. A Florida criminologist has done studies that place that figure higher: he found that only once in 34 encounters was the civilian likely to have to blow his attacker away.

Does this mean that you can use the gun merely as a scare tactic? NO! An adult lifetime spent in study of the dynamics of violent encounters has convinced me that *criminals do not fear the gun, they fear the resolute man or woman holding it on them!* A gun they don't believe will be fired at

them is not something they fear, but a man or woman prepared to shoot them to death if they transgress one step further is an occupational hazard that makes criminals shiver.

Thus, ironically, the gun's great power is its deterrent capability as opposed to its ability to kill, but that deterrent power only works in the hands of someone who can project the fact that they *are* prepared to kill, if they must, in self-defense.

**Myth #7:** "The key to armed self-defense is having the right gun. If you've got a largebore revolver/15-shot 9mm/45 automatic (pick one) you'll be almost unbeatable in a gunfight." It's amazing how many gun writers believe that a certain sidearm will be a "magic sword Excalibur" and how many of their readers desperately want to believe it, and insure their invulnerability with the purchase of the "right" gun.

Certainly, the defensive handgun of choice is the most powerful one you can control in rapid "stress shooting." Still, the ability to hit center is far more important than the ability to hit anyplace *hard*. I am helping defend a woman in court who shot her attacker three times with a 22 revolver; he staggered out of her house and collapsed and died within 20 feet. Some 18 months ago, I was retained to defend a police officer who had to shoot a suspect eight times with his Colt 45 auto before the felon stopped trying to kill a second officer with his Llama 32. Many of the 45 hits were peripheral; only when the sergeant steadied

down and shot the felon through the heart did he solve the problem.

In my extensive studies of street gunfights, I've found that the best of the 38 Special +P loads—the all-lead 158-grain semi-wadcutter hollow point known colloquially as the "FBI load"—is roughly the equal in stopping power to 230-grain round nose, jacketed hardball 45 auto ammunition. Of course, the Federal and Super Vel hollow points I carry in my own 45 are proportionally more authoritative, but I'll tell you frankly, the reason I carry a 45 auto is less stopping power than the tactical advantages of the gun (very high hit potential under stress, great likelihood of bullets staying in the offender's body with hollow point loads, and low muzzle flash at night), coupled with the fact that since I was 12 years old I've simply shot the 45 auto better under pressure than any comparable sidearm.

Do not be misled by "stopping power statistics" formulated on slide rules and ballistic gelatin. In recent months, two reputable gun writers touted the new 32 Magnum as an effective manstopper, and a third wrote that the 10mm (40-caliber) Bren Ten round was the *ultimate* manstopper. This was amusing to those of us aware of the fact that no human being had yet been shot with either round.

It comes back to skill. I recall talking with a seasoned black cop in a major city who had used a single 158-grain round nose 38 slug to kill an

offender armed with a 45 automatic. When I asked if he felt outgunned, he said (really), "My man, shootin' straight with my thirty-eight beats him givin' me jive with his forty-five."

**Myth #8:** "Don't draw a gun unless you're going to pull the trigger." No, little grasshopper, the rule is don't pull the gun unless you're *prepared* to pull the trigger. There is a marked difference.

I've never had to shoot a man, but I've pulled guns on well in excess of twenty violators and made it clear to them (sometimes verbally, sometimes non-verbally) that I would shoot them dead if they did not halt their transgressions. Lawyers tell me that I could have killed maybe four of them right there, without it going any farther. However, you already know about the two gas men and nice couple from Missouri who did something stupid but with no criminal intent, and would have died if I'd been a believer in Myth #8.

To say that you won't draw until it's time to kill is to say that you want an excuse to take a life and aren't willing to draw against danger and pre-empt the other man's potentially lethal movement. In *Florida v. Officer Luis Alvarez*, a manslaughter trial stemming from a video arcade incident where an officer killed an armed suspect and triggered a major riot, the prosecution said that the cop was wrong for shooting the deceased when the latter moved toward the gun the

cop knew he had, and that the officer should have waited to *see* the gun. I testified that if the officer had waited to see the gun, he would have seen what came out of it, and showed the jury how quickly the suspect could have killed the officer and his partner if the cop had not fired when he did. The jury apparently agreed, since they found Officer Alvarez not guilty.

After the trial, I reflected on situations I'd been involved in, and what might have happened if I'd waited to draw the gun until the point where I was *going* to shoot instead of merely prepared to. I would have had to kill the man who was reaching under his arm where he carried his 380 when I outdrew him with my 45 and froze him in mid-reach. I would have had to kill the man who pulled a knife on me on a city street, instead of drawing my 38 when his knife came out and wordlessly convincing him to put his knife away and stop trying to mug tourists from New England.

Like many of the dangerous myths, #8 was formulated by people who had fantasized about killing but had never been in a position to learn the real-life dynamics of "threat management." See Myth #6.

Forget the myths, and seek out the truth. The bottom line is: if you have a gun for self-defense and don't know how or when to use it, what you thought was your salvation may very well get you into more trouble than it gets you out of. ●

## LEARNING WHEN TO USE DEADLY FORCE

Most of those reading this article won't have \$400 tuition and 40 hours to take one of the Lethal Force Institute courses offered around the country. To get a better understanding of when you can and can't resort to the gun, follow this study guide:

**LOCAL LIBRARY:** In the reference section you want to see the RSA (Revised Statutes Annotated) and the Penal Code or Criminal Code of your state. Study anything listed under "Firearms," "Weapons," "Assault," "Homicide," "Justifiable Homicide," and "Use of Force."

**LEGAL LIBRARY:** You'll find a legal library open to the public in the courthouse of any city that's a County Seat. Study anything under the above-listed headings in the CJS, the Corpus Juris Secundum (translated from Latin, "the Body of the Law"). Follow the references you'll find and, with the librarian's help, look up citations for case law (cases where the court has ruled and created a precedent) in situations involving the above subjects. Begin with case law in your own state, and then look up that of oth-

ers; in higher courts, case law doctrine from any state may be used as precedent.

**ATTORNEY CONSULTATION:** After making notes and formulating your questions, seek out one of the most reputable *criminal trial attorneys with experience in deadly force cases* in your state. An hour's consultation will cost you \$50 to \$300, and will be worth it. Be asking about "the mood of the courts" in your jurisdiction. Ask *his* advice on when you can use lethal force in self-defense, and if at all possible, get a signed, written memo from him on this and place it somewhere safe. Something you've done "on advice of legal counsel" is extremely defensible in court, one reason so few lawyers will commit themselves specifically on the subject.

Remember to consult a specialist attorney with deep experience in trying deadly force cases; the subtleties of lethal force law are seldom addressed in law school, and the average attorney knows little more about it than you do, and may have fallen victim to some of the Myths himself.

—Massad Ayoob