

## Back to Basics: Disparity of Force

### *An Interview with Massad Ayoob*

by Gila Hayes

**eJournal:** Whether you are reading a book, listening to a lecture or standing around the range discussing recent crime reports, you will quickly run into the term “disparity of force.” It is important to define the words we use and the context in which the definition is applicable. In the legal context, what is the meaning of “disparity of force?”

**Ayoob:** It’s an important piece of the puzzle and to understand it you must know what the whole puzzle is supposed to look like in the end. When you open a jigsaw puzzle and none of the pieces look like they will fit, the first thing you need to ask is, “What this thing is supposed to look like at the end?”

What this puzzle looks like at the end is what justifies the use of deadly force, which is that degree of force a reasonable person would consider capable of, or likely to, cause death or grave bodily harm. The only justifying circumstances are immediate, otherwise unavoidable danger of death or grave bodily harm to oneself or another innocent party one has the right to protect.

Death, of course, is obvious. Grave bodily harm is generally defined as a crippling injury, a severe injury, a permanent injury. In some states that can mean a broken bone. In one state, there is case law that said a broken tooth was serious bodily harm. But generally, grave bodily harm is crippling or horribly disfiguring injury. That is the universal standard.

I have found the best way to get this across to many people is to picture a table that is set on three legs. The top of the table is that situation that justifies deadly force: immediate, otherwise unavoidable deadly danger. The three legs that hold it up – and all must be simultaneously present – are the criteria that create this circumstance. Different people use different names, but generically, most commonly are called ability, opportunity, and jeopardy.

#### ***Ability***

Ability means the opponent has the power to kill or cripple.

#### ***Opportunity***

Opportunity means they are capable of immediately employing it. There are no great obstacles between the assailant and you. The assailant can kill you very quickly with whatever they have. A guy with a knife three steps away from you certainly

has opportunity. A man 100 yards away who is waving a knife and screaming that he is going to stab you is certainly threatening homicide, is threatening deadly force, he does have a deadly weapon, but within what the courts call the totality of the circumstances, he can’t immediately employ it because the opportunity is not there at that great distance therefore the three-legged table in our metaphor would not be fully supported.



#### ***Jeopardy***

The third element is jeopardy, sometimes incorrectly, improperly called intent. If we teach people the other guy must have the intent to cripple, then if the student has used deadly force in self defense, they are asked, “Did you know his intent?”

“Yes, he was going to kill me.”

“So, you are telling this jury you have the power to read minds?” That can impair credibility!

The proper term is “manifest intent” meaning intent manifested by words or in actions that any reasonable and prudent person would construe as a threat to kill or to cripple the innocent party in question.

Let’s go back to the element of ability, which some people call means. Where disparity of force is an issue, the most obvious element of ability, or means, is a deadly weapon, per se: a gun, a knife, a club – something of that nature.

The ostensibly unarmed attacker has ability if within the totality of circumstances his force to yours is so superior, is so likely to result in you being killed or crippled, that it becomes the equivalent of a deadly weapon. The certainty of damage therefore warrants your resort to a per se weapon – in this case your defensive firearm – to stop the attack.

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Disparity of force can take any number of forms: the most obvious is force of numbers, a gang of assailants or just two. It could be, again obviously, a much larger, stronger person; interestingly not necessarily a younger person. While often you will find that with a younger attacker and an older victim, disparity of force exists, it is not the age that's doing it; it is the common disabilities that come with age.

Let's say we have a 130-pound anorexic junkie and the person he's attacking is in their mid 70s and has had heart surgery. When I use this example in classes, my students say, "Oh, well, that's not disparity of force!" The guy with the history of heart problems could be a more vulnerable victim, but in this case, the man I've just described is Arnold Schwarzenegger.

Arnold Schwarzenegger at 75 having recovered from his heart surgery, is going to be a very formidable opponent for the 130-pound junkie and shooting the junkie because he was afraid of being beaten in a fist fight would be a tough sell to a jury.

Disparity of force could be the handicapped attacked by the able-bodied, even if the handicap has taken place during the assault. Let's say that you are attacked by a person of similar size and apparent abilities, but she starts the fight with a kick that breaks your kneecap. It is going to be all you can do to stay on your feet, let alone launch punches with body weight behind them, effectively block and evade, or throw a kick.

Another element of disparity of force is position of disadvantage. Maybe my student is 6' 2" 220 pounds and a body builder, but they are seat belted into their car and in the road rage incident the attacker is punching them through the open window. That seat belt is going to act like an accomplice that is pinning your arms and holding you in place. You will not be able to get body weight behind a counter-punch, you certainly will not be able to kick, and you would be virtually unable to slip or evade a punch. That was the classic element in the George Zimmerman/Trayvon Martin trial when the evidence showed that Zimmerman had, in fact, been down on his back, with a taller man smashing his head into the pavement.

Another element in disparity of force could be that the opponent has a known or obviously recognizable high-level skill in unarmed combat. You know he is a black belt. You know he was trained to kill with his hands in Special Forces and now he has turned bad. Maybe you have no idea who he is, but you just saw him kick a 6' 2" 220-pound guy through a plate glass window while you were close enough to know that the guy you're dealing with is not an average Joe.

It becomes an issue in so many cases! In just the past 12 months we have seen two very high-profile, nationally televised murder trials in which disparity of force was an issue. *Wisconsin*

*v Kyle Rittenhouse* and *Florida v Curtis Reeves* which was wrongly called the popcorn shooting in the theater. In both cases, the argument was made by opposing counsel that it's never self defense to shoot an unarmed man.

Now, these are attorneys. These are practicing attorneys. These are veteran criminal attorneys who work in the criminal justice system and have for many, many years. It is entirely possible that they actually do not understand disparity of force.

Network president Marty Hayes and I have both been expert witnesses, Marty for 30-some years and me for 40-some. We each interact with a great number of attorneys. When we are not down to business, and we are having dinner or a drink with them after the trial, we like to pick their brains.

The question both of us often ask is, "How much deadly force training did you get in law school?" The average runs no more than three hours. Several of them have said, "I don't remember any." About the only time we get anybody who got more than three hours in three years, it is somebody who was assigned a moot court case and the defendant happened to be claiming self defense.

Marty and I did one case in Tucson that you wrote up at [https://armedcitizensnetwork.org/images/stories/Hickey\\_Booklet.pdf](https://armedcitizensnetwork.org/images/stories/Hickey_Booklet.pdf). One of those trials ended in a hung jury. We found out later that an attorney that was on the jury had told the other jurors, "I am a lawyer. I know all about this. There is no such thing as disparity of force. You can never shoot an unarmed person." He said this about a man who was violently attacked by three people, all of them larger than he, and was about to lose consciousness when he opened fire and righteously defended himself. He ultimately won his freedom, but it was a long ordeal.

Basically, the jury pool – the jury pool being the general public – has been taught the same thing. They think that if you shoot an unarmed man, it can't possibly be self defense. It is an unfair advantage; it's got to be criminal somehow. We really need to educate the public on that!

I write a series in *American Handgunner* magazine called *Ayoob Files* which describes some such cases. In fact, there is a disparity of force element case in the current issue. (<https://americanhandgunner.com/our-experts/ayooob-files-going-for-a-gun-the-jarrett-jones-case/>) For several decades I have written the *Self Defense and the Law* column for *Combat Handguns* magazine. Somebody needs to put this stuff in *Reader's Digest* so the general public – not just the people who read gun magazines – can grasp it! This is a classic example of people not knowing what they don't know. It is woven into the warp and woof of American law in all 50 states.

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You should be able to get a disparity of force instruction if your attorney is smart enough to ask the judge for it. If this is something that eludes attorneys, where do you think that leaves the average citizen?

Remember that all 19,500 Network members are not only law-abiding armed American citizens; each one is a member of the jury pool. There is an excellent chance that any Network member might be summoned for jury duty tomorrow and face a case like this. It is absolutely critical for them to know these elements, because there is a very good chance that the defense attorneys are going to be so clueless that they don't bring it up. You can be damned sure plaintiff's counsel in a civil case and the prosecutor in a criminal case are not going to bring it up.

**eJournal:** What are the chances of getting a disparity of force jury instruction?

**Ayoob:** You have a good chance if you have properly argued, if your attorney has quoted caselaw, if there already is a recommended jury instruction on disparity of force, within your state jury instructions.

**eJournal:** Is that common in most states?

**Ayoob:** Yes, you will have either disparity of force or some description which, without using those terms, encompasses it. You will almost certainly have some case law. If you don't have it in your state, have your attorney check at the higher levels, at the findings of the appellate courts. If you're in Washington state, for example, a state supreme court decision, from an East Coast state, doesn't bind a Washington judge, but it can always be offered as persuasive argument for such an instruction.

Another persuasive element is a classic text, *Warren on Homicide*, that's not widely known amongst laypersons. Lawyers who try a lot of homicide cases consider *Warren on Homicide* to be the Bible of homicide law. *Warren on Homicide* makes it abundantly clear what disparity of force can be and why it should be considered an element of the ability factor.

**eJournal:** At the Network, we work hard to avoid members having to go to trial, but as in the Tucson case you mentioned, the overwhelming prejudice goes against an armed person who needed to shoot an unarmed person. That case was doomed to need a trial to resolve concerns about why the armed citizen resorted to deadly force against three unarmed attackers. That somewhat pessimistic observation brings me to several questions.

First, how can armed citizens explain the reality of physical attack to prosecutors or district attorneys in hopes of derailing

them from filing charges, or if it goes to trial how can one have provided clear statements starting with initial interviews with law enforcement that explain the necessity of shooting someone who was not carrying a gun?

**Ayoob:** Let's assume, first, that we have an honest prosecutor doing his job, and not one of the unfortunately increasing numbers of prosecutors whom certain billionaires with agendas have funded with giant amounts of money to get them elected and to push the agendas of those particular billionaires. If a prosecutor is looking to make an example of someone for gun control, we may not be able to dissuade them, but in my opinion, the vast majority of prosecutors are honest. If your defense attorney calls the prosecutor and says, "Look, my client and I would like to come in and sit down and talk with you and your investigator. Of course, we will both record the whole thing." That is so unusual that you're going to get a double take, and the curiosity it creates is so strong that you will get a response of, "Yes, come on in." If they say "No," that tells you that they have already made up their mind and there is going to be a show trial.

It will be a surprise when you go in and you sit down and say, "Here is what we've got," because so many criminal defense lawyers who spend their careers defending guilty men find one of their best strategies is "hide the ball" to save your best game for trial. Because that is the usual thing guilty men's lawyers defending guilty men do, when a lawyer that is respected by honest prosecutors comes in and says, "Mr. Prosecutor, here's what we have. Here's what we've done. We have no ball to hide. This is going to be our defense and nothing that the state puts forward is going to change that." Very often what we hear is, "Thank you for bringing that to our attention. We had not seen that side of it." Often the matter is resolved there, and the case is dropped.

It's not been too long ago that the Network had a very similar situation in Colorado. Doing exactly that saved a Network member the months and sometimes years that it takes to await trial. Our members need to understand that this is not a one-hour episode of *Perry Mason*. In April I had a case involving a shooting that took place in 2016. The officer was cleared by his department. He was cleared by his state's department of law enforcement. He was cleared by the prosecutor's investigation and was cleared by a grand jury. Then in 2019, he was indicted by what I consider to be a self-styled social justice warrior from the Department of Justice in a federal case. If convicted, he was looking at 20 years "hard," based on the federal sentencing guidelines.

The indictment came down in 2019. The officer, of course,

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had to leave law enforcement. The trial did not take place until March-April of 2022. We won the case. The officer has since been reinstated but he had literally a half decade with the Sword of Damocles hanging over his head. It is virtually unknown to the public how many of these cases we win if, at the beginning, we can get in and let the other side realize the shooting was justifiable.

You have some idea what my caseload is. I have gone into a courtroom I think, twice this year to testify at trial and fortunately, we won both of those.

**eJournal:** Are you able to get dismissals, too?

**Ayoob:** We regularly get dismissals or plea bargain offers. Sometimes the prosecutor's office needs a plea bargain to save face, and that is as far as they will go. We have had two in the last few months where the attorneys and me were convinced we were most likely going to win at trial. When I say most likely, virtually everybody in the business pegs it at about 10% that the most ironclad defense can fail. There is going to be some surprise witness, a believable liar on the other side, or maybe one time out of 10 a juror with an agenda sneaks onto the jury, where even the best defense might end up with a conviction.

The individual who has been under this ordeal, realizes they are paying \$500 an hour to their attorney—and many cost more; there are many attorneys that charge \$1000 an hour—and this is going to be hundreds of hours, they see themselves as bankrupting their family, and, in desperation, they take the plea. One of those cases was a homicide and the plea was no time served and a period of probation. This man had six children, and in his mind, he simply could not take the risk of abandoning his wife to raise the children alone with only one income.

I had been looking forward to going to trial. We had an excellent defense attorney, John Colley from Tennessee, and I was looking forward to working with him again. The client made the decision to plead, and John and I can both understand why he did. I think it is a damn shame he was ever charged to begin with. Getting back to what we were talking about, a huge amount of the time we can kill these cases without the person having to go to trial. The strategy is to get the truth across to honest prosecutors.

**eJournal:** When disparity of force is the key, what does the expert identify then tell the attorney, "You need to make the prosecutor aware of this!" What are the elements you identify and explain so that authorities don't think the client cold-bloodedly murdered an unarmed man?

**Ayoob:** Explain to the prosecutor that you will be bringing in expert witnesses. I would suggest bringing in material witnesses, too. Most states have a boxing commission; bring in someone

from the boxing commission to ask, "Mr. Commissioner, given the size and particularly the weights of these two people, this would have been a light heavyweight fighting a fly weight. Sir, would you ever allow that?"

"Absolutely not! It would be forbidden."

"Why?"

"Because the fly weight would be so likely to be killed or crippled."

"Thank you, Mr. Commissioner. No further questions."

When you think about it, disparity of force becomes common sense, but most people have not thought about it. A smart prosecutor who has done a lot of trials knows that jurors respond to common sense. Their common sense is what they bring to the court room so you definitely play toward the common sense that the violation of fairness is "large" attacking "small," not the small person in desperation using a gun so they can come home to their family on their feet instead of in a box.

**eJournal:** When we think of disparity of force, we tend to think about large against small, able-bodied against disabled, but there is one more element that we haven't mentioned. In today's world, I wonder if we have dropped one we used to teach...

**Ayoob:** Male versus female...

**eJournal:** Yes, a male attacking a female. Has the paradigm changed so gender is no longer a factor? After all, we have women wrestlers, we have people born male who become female, and so many other variations that I wonder if that element is obsolete.

**Ayoob:** Not really. I should have mentioned it earlier. Male versus female generally is a disparity of force element, but not always. It is well understood that the male, on average, is larger and stronger than the female of the species. He tends to have greater upper body strength, and tends, culturally, to be disposed more toward violent sports such as tackle football, for example, things of that nature. We are a society where little boys grow up being told, "You punch that Bluto, Jr. bully right in the mouth, kid! Don't take no crap! Be a man! Stand up, by golly!" His sister is taught, "Now, dear, no one likes a pushy little bitch."

That said, you could have the rare exception when the male is 5' 4" and 130 pounds and the female has just retired from WWE professional wrestling, and she is 6' 2" and 280 and could lift him and throw him across the street.

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**eJournal:** People have asked, “What if I am attacked by a transgender person, or someone who presents as a woman but is actually a man? What am I legally allowed to do in that kind of a situation?” I think armed citizens are struggling to balance changes in our culture against the structure of our laws and legal traditions. Their questions are not frivolous.

**Ayoob:** I have trained several transgender students. They, very much like the gay community, are at risk of being bashed by homophobes and transphobes. You have got to look at what side they are on! If it was a 6’ 2” 220-pound male that was transitioned, they would have to say, “Look, the whole reason I transitioned is because I have always considered myself a woman. I have always hated fighting. I never learned to fight. I have been taking hormone therapy that has greatly reduced my physical strength.”

If the 130-pound male whom we hypothesized earlier is attacked by a violent, large female, their answer would be, “I was attacked by a large, violent person who outweighed me and was trying to kill me. You can take your gender preferences, your gender phobia and your gender biases elsewhere! A big person, big enough to kill me, was attacking me and I stopped them the only way I could. I did not factor in whether they were male, female, transgender or cisgender.”

**eJournal:** That is very useful. You remove appearance from the decision about what to do in self defense.

**Ayoob:** Now, there is one other thing we have not discussed that will round out this topic. We should consider the person with what some call the “silent disease.” This is a person who is fragile, but you cannot see it when you look at them. We have one student who has had to undergo severe, major neurosurgery and has a large chunk of his skull missing on the left side of his forehead.

A blow that would make your eyes sting could kill him. In classes, we even put him on the far left of the firing line, so he is away from flying brass. To look at him, with the scars on his forehead, he looks like a big old, beat-up bar fighter. He looks intimidating as hell. If I were him and someone were coming up to me with a fist cocked saying, “I will knock your block off,” I would have my gun out and if he continued toward me, I would pull the trigger.

Just this past year, we had a case for a man who had a disease that’s like hemophilia. The guy was a bleeder. A much larger, stronger, younger man was coming at him was yelling that he was going to break his face. He shot him. We went through a 776.032 hearing (Florida Statute 776 Chapter 032 pertaining to Stand Your Ground) and his attorney Art Hernandez did an excellent job and got him cleared, but he had spent a significant amount of time in jail awaiting that hearing. The pandemic,

of course, has made the delays much, much worse.

I teach it like this: let’s say, you have a bad heart. A punch to the sternum that would knock the breath out of me, is going to kill you. If anybody is in a situation like that, if someone is trying to start a fight with them, I tell them to yell as loudly as they can, “Sir, I have a medical condition. If you hit me, I could die.” Tell him and the witnesses that this is not a TV fist fight where somebody punches somebody in the nose and says, “Now I have satisfied my honor and shall walk away.” This is a deadly force situation. If the man continues the attack, he has expressed an obvious willingness to cause death or grave bodily harm and we have greatly solidified the jeopardy element.

**eJournal:** Our Network membership demographic tends toward people of mature years. As you said earlier, with age often comes injury, illness, or other disabilities. That makes disparity of force a subject that we must understand. Talking to you has reminded me of a great interview Dr. Robert Margulies gave at <https://armedcitizensnetwork.org/december-2015-blunt-force-trauma-lethality>. When I was interviewing him, he said, “You can’t afford to risk a blow to the head; you are too old.” He explained how coup and contrecoup injury is more severe for an older person. That is only one element of this big, complex subject we’ve covered today. Can you synopsize? Is there a CliffsNotes® closing about disparity of force?

**Ayoob:** I think we’ve about covered it. Sadly, so much deadly force law does not lend itself to CliffsNotes® because complicated issues do not come with simple answers.

**eJournal:** [chuckling] Maybe that is why our journal interviews tend to run so long! I certainly appreciate your patience and all the questions you’ve answered so we understand deadly force law better.

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*Network Advisory Board member Massad Ayoob is author of [Deadly Force: Understanding Your Right to Self Defense](#) which is distributed in our new member education package that’s sent to all new Network members. He has additionally authored several dozen books and hundreds of articles on firearms, self defense and related topics. Of these, Massad has authored multiple editions of Gun Digest’s [Book of Concealed Carry](#) and [Gun Digest Book of Combat Handgunnery](#).*

*Since 1979, he has received judicial recognition as an expert witness for the courts in weapons and shooting cases, and was a fully sworn and empowered, part-time police officer for over forty years at ranks from patrolman through captain. He serves as president of the [Second Amendment Foundation](#). Ayoob founded the [Lethal Force Institute](#) in 1981 and now teaches through [Massad Ayoob Group](#) of which he is the director. Learn more at <https://massadayoobgroup.com> or read his blog at <https://backwoodshome.com/blogs/MassadAyoob/>.*

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## President's Message

by Marty Hayes, J.D.

Recently, I spent a long week at [Gunsite Academy](#), taking an advanced performance handgun course, and competed in the [Gunsite Alumni Shoot](#). In 2018, I managed to shoot a great match, coming in third overall, and this was my first time back to shoot the match since. Accordingly, I was

expecting another high finish, but sadly, that did not materialize for me this year. In fact, I shot the worst match I have ever shot, placing about 60th place, (out of 250). So, what happened between 2018 and 2022? Well, time is what happened.

You see, in the last four years, I basically quit shooting. At least handguns. This occurred because of several factors. The first was that I transitioned myself out of teaching, and it was my protocol when teaching to demonstrate the drills for the students, which resulted in me getting some good practice every weekend. But, in order to transition the academy into being run by others, I needed to back away from the teaching. Additionally, I quit shooting IDPA primarily because IDPA evolved into a track meet occasionally interrupted by a little shooting. As I have gotten older and slower, I just lost interest.

Then, the inevitable happened. Time caught up with me and my body, and I developed a severe neck issue, resulting in invasive neck surgery. The surgery occurred about a year ago and just within the last couple of months, I have been feeling good enough to spend a week standing and shooting. In addition to the past year of recovery time, I was laid up for seven months with the medical issue before surgery, so I did no shooting then, either. In

fact, the most strenuous thing I did during that time was work the remote for the TV.

When discussing shooting with students and others, I have always said that shooting skills deteriorate with nonuse, and so you need to train regularly. I am thankful that I have recovered sufficiently to be able to do things physically again, like fish, ride motorcycles, work on the tractor and shoot. The week-long class I took before the match was certainly some help, as I was able to recognize the fact that my skills had deteriorated to the extent that I could not physically shoot as fast as the other students. By the end of the week, I was holding my own, but was not at the top of the class by any means.

So, for a guy who has been competing at the upper echelon of the shooting sports when I competed, I now face a decision. Do I dedicate myself to a practice regimen and build my shooting skills back up, or do I adjust my expectations and then train towards meeting those? For example, in the advanced shooting class, we were expected to draw and fire a head shot in one second or less. Most of the class was doing it most of the time, but a few of the others and I just could only do it once in a while. Is a one-second head shot really necessary for self defense? Probably not. So, what is necessary?

That is the great question that defensive handgunning instructors have been asking for years. Is speed, accuracy, tactics or compromised shooting positions more necessary? The answer is yes to all those factors, not just speed. Then the question becomes, in what proportions? At what performance level? I will ponder these questions for a while, and perhaps come up with a training regimen that I can use for myself. If I can come up with something workable, I will share. In the meantime, did I mention I had a dream recently that I had started to compete in NRA Bullseye shooting, using .22 pistols? I would consider it, if not for my shoulder. (Heavy sigh).



Click the image to view a short video clip in which you will hear two signals, the start signal and immediately afterwards, a second beep. That was only one second, and the goal was to dryfire a headshot before the second beep. As you can see, while my form is pretty good, my speed was lacking. This was recorded day two; by the end of day five, I was faster.

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## Attorney Question of the Month

The September edition of our online journal featured an article discussing intermediate self defense options carried in addition to a gun or when not carrying a gun. State laws can impose restrictions on possession or use of pepper spray, TASER®s, force multipliers like Kubotans and even hand-to-hand defensive tactics, but those laws vary from state to state.

With many Network members already carrying pepper spray and other non-gun defense options, we started discussion of the below questions with our Affiliated Attorneys in last month's edition of this online journal. This month we wrap up this discussion of laws affecting private citizens in various locales who employ alternative defense options.

We asked our Affiliated Attorneys these questions—

***Do the laws in your state restrict carrying non-gun self-defense devices like pepper spray, TASER®s or Kubotans?***

***What laws affect the private citizen who stops an attacker by using a TASER®, pepper spray or Kubotan?***

***What violations might a member be charged with if authorities don't believe the intermediate weapon was used lawfully?***

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There are very few published criminal cases with non-lethal or intermediate defense weapons from which to give a concrete answer. However, in Alabama we also have one of the most expansive self-defense statutes in the country. In Alabama, the self-defense statute reads in part:

“(a) A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose.”

So, each situation is an analysis of the facts on a case by case basis. I would say that a Kubotan and perhaps a TASER® would

be considered a dangerous instrument in Alabama. This means that if the force is not deemed justified by law enforcement, an individual who uses one of these weapons would be subject to a felony charge of at least assault in the second degree, which is a class C felony.

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California does not consider pepper spray to be a “dangerous weapon,” but an effective self-defense tool, and therefore allows private citizens to legally purchase, carry, and use pepper spray for personal protection and self defense, without any state or federal permit.

However, to be legal for private citizens, the device cannot contain more than 2.5 ounces of pepper spray, and discharge [“shoot”] in aerosol form only, and the container must include a disclosure label with shelf-life date [they do age and deteriorate], usage instructions and first-aid instructions.

Several major reputable brands make palm-size containers around or under \$10, some with marking dye included. Check your normal shopping websites.

Despite much “common wisdom” and misinformation to the contrary, California allows private citizens to legally purchase, carry and use TASER®s which “shoot” electrode wires 3-5 yards or more, and stun guns that are contact discharge devices [not my first choice for defense against someone attacking with a knife or gun]. Minors under the age of 16 must have parents’ consent.

However there are important restrictions to know. Purchase, use and possession are prohibited to essentially the same categories of people who are prohibited from possession of firearms, such as felony convictions, psychiatric commitment, adjudicated “incompetents,” have a Domestic Violence Restraining Order, habitual drug user, etc.

In addition, there are locations where possessing a TASER® or stun gun is prohibited, similar to firearms, such as secured airport areas, harbor passenger terminals, or port facilities, schools, local and state government buildings, courts, and jails, among others. Check your local laws before making any assumptions.

Unfortunately, CA makes it illegal for citizens other than police to possess any of a variety of devices in the category of a

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“baton,” which can be described as a “striking weapon,” such as a billyclub, blackjack, sandbag, sand club, sap, or slungshot. The consensus of opinion is that a normal-sized Kubotan falls into that category, but so does a baseball bat behind the driver’s seat unless on the way to or from a game with other gear demonstrating non-criminal intent.

The answer to a previous question explained that both pepper spray and TASER®s/stun guns, but not Kubotans, were legal to buy, carry and use in California as self-defense tools, subject to “justifiable use of force in self defense or defense of others” rules, the same as with firearms.

Interesting side note available as a legal defense in court, when used in justifiable self defense, any weapon available and appropriate can be used, from sticks and stones to even “illegal” weapons, such a Kubotans, or firearms “illegally”

carried concealed by a “prohibited” person. The need for self defense to save lives overrides the “prohibition,” otherwise the law would leave such people “defenseless.” Just don’t count on easily winning that argument in court, it will be a challenge. The user would have to defend charges related to the “carry-ing” illegally, but not the justifiable use once established.

If not legally justified in the eyes of police, DA and court, then the use of the weapon could be considered and charged as “assault with a dangerous weapon” or whatever injuries the “now victim” suffers.

As always, know the rules and follow them to avoid legal problems, and avoid such confrontations if at all possible.

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*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.*



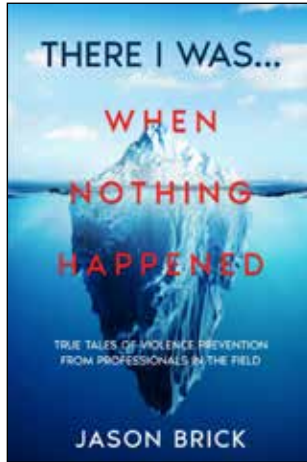
## Book Review

### *There I Was...*

#### **When Nothing Happened: True Tales of Real Self Defense From Professionals in the Field**

Independently published Sept. 2022  
Paperback, 6x9, 320 pages \$24.98  
ISBN: 979-8847706292  
eBook \$9.99 ASIN: B0BB8XPRFY

Reviewed by Gila Hayes



In the book I review this month, Jason Brick brings together a large collection of essays by prominent instructors and use of force professionals that illustrates the art of threat detection and skillful de-escalation. The stories in *There I Was* often start with the authors embroiled in potentially explosive situations. While everyone agrees that avoiding danger entirely is preferred, there's much to be learned from experiences in which skilled men and women defused brewing hostility. The anthology's contributors all could win fights decisively but write convincingly about choosing other options.

Introducing *There I Was*, Brick wryly observes, "In my experience just about every story that ends with '...and then I whipped his ass' starts with somebody ruining an evening out and screwing up a perfectly good de-escalation plan. The stories in this book tell about times that tough men and women, most of whom work professionally around violence, avoided that story." He identifies four key factors –

- Preparation – Choose safe locations and know your companions' propensity to fight or to de-escalate.
- Awareness – "Keeping a careful eye out for change can be the best indicator of when things are about to go sideways."
- De-escalation – This approach starts earlier than one might think. Compliment, engage in conversation and maybe buy a drink for potential aggressor before he decides to fight. "Sometimes you can make them laugh and become buddies. Other times it just takes a sincere apology."
- Evasion – "If you can't talk somebody into not harming you, it's time to get out of there at speed. This can be as simple as turning tail and outrunning the bad guy, or it can be complex with distractions and obstacles. Evasion might not feel great, but successful escape is 100% more effective for preventing violence and injury than staying to fight."

A section entitled *Preparation* includes a professional bouncer's account of recognizing a biker gang's hierarchy and engaging its president to avoid having to physically subdue a gang prospect who's looking for any excuse to fight. In the same section, a corrections officer and his wife, having previously agreed on a strategy if approached by a released prisoner, deflate what could have turned into a shooting by following their plan. A law enforcement team leader writes of how he drew strength from earlier acceptance of his job's dangers, keeping his cool to guide his officers through long hours of controlling a riot.

A student-housing landlord who turned an angry "helicopter mom" into a respectful ally uses the experience to teach active, engaged listening. He calls it "mindful listening," and stresses that it works because "Invariably—even in cases that end in disagreement—I find some way to connect with that person." He adds, "When I'm determined to truly put myself in the other person's place, things go better. For both of us."

Under the subtitle of *Awareness*, a veteran police officer tells of recognizing target glances while two other officers field-interviewed a pedestrian. Slipping up quietly, he took control of the suspect whom he found to be armed. The other officers were stunned. "How did you know he had a gun?" they asked. "I didn't know he had a gun. But I did know by watching his eyes and body language that he was target-glancing your firearm and he was thinking about starting something," explained this chapter's author.

Greg Ellifritz tells of a midnight holdup on a Tanzanian highway by an AK-47-armed policeman. Although he knows his taxi driver has committed no infraction, he offers to pay the "fine" on the spot and is sent safely on his way for approximately 25 cents in US money, while avoiding possible ambush by accomplices.

In the *De-escalation* section, Rory Miller relates an experience from his career in corrections that emphasizes the value of courteous language, even when you may think courtesy is not due to an offender. This is a great example of de-escalation preventing violence by an aggressor who is working himself up to a fight.

That message echoes when *There I Was* emphasizes the value of a sincere apology. Teja VanWicklen illustrates several nonviolent ways to derail hostilities, including the "tactical apology." The following chapter reports a road rage attack that is defused by a gesture of apology. Baffled when another driver chases his work van, a contributor writes, "My apology to de-escalate the driver of the truck was sincere in that I was sorry for triggering him...He wanted something from me and I gave it to him so he'd leave." He compares the attempted ramming to a holdup, "But instead of a wallet, it was an acknowledgment and apology he desperately needed."

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A healthy dose of misdirection can derail a combatant's focus and effectively de-escalate tensions. Marc MacYoung weighs in with a chapter about influencing the behavior of people who are drunk. Since appealing to reason is ineffective with the intoxicated, he outlines cons, cheats, misdirection, sincere apologies even though you've done nothing wrong or acting like the drunk's buddy and ally instead of trying to enforce rules of behavior.

Martial artist and podcaster Jeremy Lesniak writes about his boring, uneventful life. He stresses, "De-escalation is worth the energy. Be it through logic, or humor, or my personal favorite - appearing so unbalanced as to make the aggressor question the ethics of attacking you - there are a variety of strategies at our disposal. Like anything, they are skills to be trained and improved...No one ever truly wins a fight. You may come out with less injury, or even without injury entirely, but in my mind, a fight means failure on both counts."

Nearly every story told demonstrates that escape and evasion are not cowardly. Because many of the storytellers are famous martial artists, a common theme is disappointment expressed by companions who expected them to put on a brilliant display of fighting skill. One complained, "Hey man, what happened to all your Bruce Lee stuff? You didn't do anything!" Teja VanWicklen tells of a woman who was criticized by a co-worker

for, in Rory Miller's words, "not surviving right." The genuinely skilled professionals contributing stories to *There I Was* provide valuable encouragement to anyone who worries that escaping instead of standing and fighting makes them cowardly.

Sometimes a contributor of a story was plagued by self-doubt after getting away. One writer admits, "I felt so much shame and anger. My ego and pride couldn't handle that I didn't do anything heroic. I was supposed to be a martial artist, I was supposed to be the hero, and I did nothing to save the day." He admits that he "beat himself up for years" over the events of a few minutes. Much later, he recognizes the suffering caused by ego and pride. "We have to truly know ourselves and win the war within, before we can choose what to fight for," he urges. His chapter emphasizes the desperate need to teach not so much how to deliver countervailing force, but the many benefits of other survival options. This echoes an earlier comment by Jeremy Lesniak who urged, "Sometimes I wonder if we spend a bit too much time in our training on the physical side of things, and not enough on the emotional side."

A number of people who have influenced me are contributors to *There I Was* and through its pages, I "met" new kindred spirits. Jason Brick's anthology provides desperately needed instruction on a topic that doesn't get nearly enough attention. This anthology of stories of missed opportunities for violence is extraordinarily valuable.



## Editor's Notebook

by Gila Hayes

Isn't it ironic that in my lifetime, most Americans have endured fewer hardships and benefited from having more extensive safety nets than ever before, yet fewer people today have the survival resources to carry them through four to six months of trouble, a precaution

that our parents and grandparents considered just part of responsibly providing for their families. Supplies of water and food, savings, and fall-back provisions for emergency housing, are all topics on which much authoritative instruction is readily available, so today I'm going to ask you to think of a related but different set of concerns.

Armed citizens invest considerable time and discretionary income on guns, ammunition, training, shooting sports and practice in the name of preparing to defend against violent crime. That's good! It gets us started thinking right and if you haven't already addressed other vulnerabilities, what better time than now to make sure you and your loved ones have a full range of plans to get through hard times?

An important aspect of responsible citizenry is making sure our families can thrive if we are aren't available to assure their well-being. Have you spoken seriously with those in your home about the circumstances that could lead you to use your gun to defend yourself or them? About their role in surviving an attack in the home or in seeing to the family's security in the aftermath of use of force which you may be involved in away from home? What better time than now to have that discussion?

If you live alone and have no family nearby, have you approached a friend or associate with the offer of standing ready to help him or her if trouble strikes them and ask if they can take on the same responsibility for you?

Reality dictates that not everyone in our close circle will be receptive to discussing post-self-defense concerns, preferring as many in the public do, to cling to the hope that nothing bad will happen. Others may be so interested in self defense that keeping a conversation focused on what to do in the aftermath gets derailed. If you have a receptive audience, the member education video *Handling the Immediate Aftermath of a Self-Defense Shooting* at <https://armedcitizensnetwork.org/immediate-aftermath> is a great start.

In my opinion, also essential to having this conversation is creating a reference document, an "In Case of Emergency" file, that you share with your spouse, your responsible adult offspring, or a close friend with whom you've agreed to a

mutual-assistance plan to make sure that, even though you live alone, neither of you metaphorically drops off the face of the earth if you are unexpectedly hauled off to the emergency room or taken into police custody.

Here's an easy little assignment you can do now to help others help you. Get a file folder or 9x12 envelope and secure it where your family or trusted associate can find and use it if you call and tell them to read it and act on the steps it outlines. Mark the front in big, bold lettering:

### ***In Case of Self-Defense Emergency***

The first page should be a brief, serious personal note that, without any social commentary or any opinion that could be misinterpreted, states:

*I have asked you to obtain legal assistance for me after use of force in self defense. Please do the following on my behalf as quickly as possible:*

*My attorney's name is \_\_\_\_\_ and his/her phone numbers are \_\_\_\_\_ and \_\_\_\_\_. Please contact him/her and explain where I am and that I need legal representation. Please also telephone the Armed Citizens' Legal Defense Network of which I am member # \_\_\_\_\_ and give them my name and the name of my attorney and a brief explanation of my situation.*

As about half of our 29 member-involved self-defense incidents have shown, not everyone pre-selects an attorney. Sometimes members need the Network to help them find an attorney after a self-defense incident and we are happy to do that. If you have not selected an attorney, an alternative paragraph might read:

*I do not have an attorney selected. Please refer to the details on the following page and telephone the Armed Citizens' Legal Defense Network of which I am member # \_\_\_ and give them my name, location and information about whether I am in police custody or am available for contact and if I can be contacted, what is the best phone number on which to reach me since my cell phone may be taken as part of the police investigation. The Network may ask for your contact information and for permission to stay in touch with you as my representative in the short term.*

*Please alert the Network that I need help hiring an attorney. So long as my use of force was self defense, the Network will help connect me with an attorney and pay for the attorney to represent me. Please contact the Network without delay.*

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Next, members, please log in to the Network website and print <https://armedcitizensnetwork.org/boots-on-the-ground>. Call us if you need help with log in so you can access those details. It is a concise but important document. If you have not already printed and put it where those who may assist you after a critical incident can find it, please do that now. Attach a cover page that reads:

***Please read the attached directions and phone numbers through which you can contact the Network during business hours or outside of business hours. This contains confidential information provided to me as a trusted Network member. I ask that you respect that trust and not share it with anyone else.***

Additional emergency provisions you may wish to consider include whether you should give a family member or trusted associate your power of attorney, provide details about bank accounts, life and health insurance and other financial resources, and perhaps even a short list of essential responsibilities

you have shouldered like an elderly relative you check in on each evening, or others to whom you may owe care you will not be able to fulfill while the present circumstances take you out of circulation.

For families, many other issues arise when one member loses the ability to cover their usual duties. A few years ago, a family of attorneys and instructors from Indiana contributed an interview on family concerns after use of force in self defense at <https://armedcitizensnetwork.org/family-concerns-during-and-after-self-defense> that is packed with great ideas to help families work together on safety and survival. I hope you will start now on that *In Case of Self Defense Emergency* file then refer to that link and consider others details you need to add to your preparations so no one suffers unnecessarily.

Please take a few minutes to compile an emergency file folder or envelope. It is a kindness you can easily do for the people who care about you – including us at the Network.



## ***About the Network's Online Journal***

The *eJournal* of the Armed Citizens' Legal Defense Network, Inc. is published monthly on the Network's website at <https://armedcitizensnetwork.org/our-journal>. Content is copyrighted by the Armed Citizens' Legal Defense Network, Inc.

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

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

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

Marty Hayes, President

J. Vincent Shuck, Vice President

Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

Please write to us at [info@armedcitizensnetwork.org](mailto:info@armedcitizensnetwork.org) or PO Box 400, Onalaska, WA 98570 or call us at 888-508-3404.