



Defense Against Mobs

An Interview with Massad Ayob

Interview by Gila Hayes

eJournal: Thank you, Mas, for agreeing to talk to us about surviving mob violence. It is a timely topic on which our readers have many questions. May we start by defining our terminology? What are the different meanings of the terms “rioters,” “a mob” or “political protesters?”

Ayob: The terms, unfortunately, mean different things to different people, Gila. If you look at the dictionary, a mob is a crowd of people, usually a relatively large crowd, especially one that is disorderly and intent on causing trouble or violence. Now, just within that definition you will see the term stretched here and there. Let's say a rock star is being mobbed by his adoring fans and autograph seekers. It's a mob of screaming fans, they appear to be disorderly, but there is no collective intent to harm. So, I am not sure that “mob,” as we use the word today, would apply to that correctly.

Rioters are people causing tumultuous damage often accompanied by arson and looting, which is large scale theft.

Finally, we have the protesters. In the ideal situation, protesters have gotten a license from the police department to march, the streets will be closed off for them, and they calmly do their march, maybe chanting slogans, and that would be the extent of it.

Going back into the 18th century, it has been understood that as the law applies, a mob, essentially, is an organism all moving in the same direction with the same unlawful purpose, with a homicidal intent and usually, to some degree, a specific target. It has been said that just as every member of the mob shares the criminal and civil responsibility for damage caused by the mob, they also share the responsibility for the fear they have created in the victim who opens fire. Therefore, if you aimed at Rioter A but you hit Rioter B, too bad, a target is a target, and they started the fight, and they lost.

The mob violence once was essentially geared to what since the 19th century has been called a lynch mob. What we are seeing here today is a different pattern of encounter.

Let's go back in history to January 14, 1881. Everybody who has seen cowboy movies and read history has a picture in their mind of Wyatt Earp standing in front of the jail with a sawed-off shotgun holding off a mob that wants to lynch a prisoner. That actually happened in 1881. There were primarily four lawmen: Wyatt Earp, his brother Virgil, County Sheriff Johnny Behan and Ben Sippy, who was the town Marshal.

The man they were protecting was named Michael O'Rourke who, I believe, at the time, they were actually holding in a local saloon. He had shot and killed a very popular mining engineer in Tombstone, AZ, which was a mining town and the other miners were absolutely furious, so they worked up a lynch mob.

The lawmen stood off the mob, I believe that no one was shot although there may or may not have been warning shots. They made it clear, “We know you are going to murder this man, but we have a duty to bring him to justice and let the courts do their job. If you try to get past us and take him, we will kill you.” The mob realized, “They're not kidding!” and turned around and left.

Continuing into the 20th century, probably one of the most famous of the Texas Rangers is Frank Hamer. It is an interesting irony, because Hamer killed a great many people in gun fights in the course of his career, and a great many were Hispanic because so much of his work

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was along the Mexican border. There are people who call him a racist simply because he shot someone of a different color. It is a proven, documented fact that many times Frank Hamer stood alone against lynch mobs and protected black men that the white mobs, infiltrated with KKK, wanted to take out and hang. I don't recall that he ever had to shoot any of those, but had he done so, his actions would have been justifiable.

Probably the classic case of an armed citizen defending against a mob goes back to 1925 and the then-famous case of Dr. Ossian Sweet. He was an African American physician in the city of Detroit, which was very, very segregated at the time. He moved into a nice, upscale home in what previously was an all-white neighborhood and a whole lot of the white folks—remember this time was a peak of KKK influence—decided that they wanted him out of there.

On a day when he had 10 members of his family and friends inside his home, they surrounded his house, screaming all sorts of epithets, and finally started throwing rocks through the windows. Shots were fired from inside the house, killing one member of the white mob and wounding another. Everyone who was in the Sweet household at the time was arrested and charged with murder. In the first trial, they were all tried together, and the jury hung. So, there was a second trial and they apparently decided if we can't get them all together, we will get them one at a time.

The first trial was that of Ossian Sweet's younger brother, Henry, and the NAACP hired Clarence Darrow to defend him. Darrow gave an absolutely brilliant argument on the sanctity of the home, the right to protect the home and the principle of the Castle Doctrine. The all-white jury acquitted and at that point, I think the prosecutor saw the handwriting on the wall and dropped the rest of the cases.

Now, what you had in every one of those cases is the rule that a member of the mob shares the responsibility and therefore all share in the general jeopardy from the fear created in people who defend themselves against the mob. All of the members of the mob were there for a single, dedicated purpose of harming and killing certain people. That is the kind of lynch mob for which the rule was geared.

If you fast-forward to the latter 20th century, the classic example is the so-called Rooftop Koreans. In 1992, the

Rodney King riots in Los Angeles left 50-some dead: the death toll would later rise to 63 as some of the more severely injured people died. It caused over \$1 billion in property damage. Thousands of people were injured, some of whom would never be made whole.

It was the acquittal of the four officers who arrested King that really triggered the riots, but something else was also going on. In a neighborhood known as Koreatown, a female Korean shop owner named Soon Ja Du had shot and killed a 15-year-old black girl named Latasha Harlins. She accused Miss Harlins of shoplifting and the young girl threw a drink in her face and was shot in the back of the head by the store owner. The African American community was, understandably, infuriated when the store owner was convicted of voluntary manslaughter but sentenced to probation with fines and community service. As a result, the Koreatown area was pretty hard-hit during the riots.

The Koreans armed themselves. They claimed there was absolutely no police presence. The police had withdrawn and were not responding to 9-1-1 calls. The Koreans staged on the rooftops where they had a decent field of fire and they made it clear, "The city is burning. You are not going to burn this community. We will shoot you."

eJournal: Were there many actual shootings?

Ayoob: Well, there history diverges. I cannot find any documented cases; there were, certainly, warning shots. Of course, none of us here recommend warning shots. To answer your question, I cannot find any documented cases where it was confirmed that they had shot anyone.

eJournal: Well, with no police response, there would be no post shooting investigations. Who is to say who caused the death of whom?

Ayoob: There are stories and rumors that a bunch of the dead were killed by armed citizens, including the so-called Rooftop Koreans. People were on their own! They were on their own in a dystopian situation through no fault of their own. As of 2017, a follow-up investigation in the Los Angeles Times reported that no one knows who killed 23 of the slain.

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That set a paradigm and we have seen after Hurricane Andrew in Florida and after Hurricane Katrina: when there was looting and there were armed people present protecting the stores, those stores were not looted; those stores were not burned.

We saw it in 2014 with the riots in Ferguson, Missouri. Very seldom did they actually have to shoot those people. The understanding was, well, yes, someone might call standing in front of your store with an AR 15 “going armed to the terror of the public,” but there was no alternative. The police had been called back on the orders of the city fathers. Left on their own, the people in Ferguson did what they had to do. Off the top of my head, I cannot think of any cases where the prosecutor was stupid enough to prosecute the people who used guns to protect.

eJournal: Six years later, has the landscape of the criminal justice system changed?

Ayoob: In the recent rash of riots, at least one store owner in the Midwest has been arrested for shooting and killing a man whose body was outside the pawnshop when the police got there. Whether he was shot outside the building or inside the store then staggered outside to die, I do not know and I have not seen any public determination at this time. The pawnshop owner claimed self defense and they arrested him on the charge of murder, last I knew.

What we are seeing that is different in the current 2020 situation is most aptly described by a friend of mine who is a very street-wise police supervisor in a major, high crime city. He said the difference this time is that the mob is not working with one mind, one purpose and one target. What we have is the Antifa types and the opportunistic looters basically seeding themselves in among those I would call the legitimate protesters—the people who are there in good conscience and good faith, to cause no physical harm to anyone and to voice what they believe is a very important concern.

My friend said the crowd today is not a mob; the crowd today is an ocean in which the predators swim, hide and are essentially effecting camouflage. They emerge out of the ocean to set fires to buildings, to violently assault people, and then to melt back into the protection of the crowd. They are using the crowd in the same way that Saddam Hussein used human shields: taking women and children and settling them in camps surrounding all

the military bases during the Iraq war when he was afraid the Americans would obliterate his military bases.

That changes things entirely in the 2020 riot situations. If you look at some of the discussion among the more militant people on certain forums and social media, you’ll find things like, “I will load my .308 with military ball so I can shoot through bad guys and get three of them with one shot.” One guy said he was going to load hard-cast hunting bullets in a .44 Magnum so he could get three rioters with one.

You just want to slap those idiots in the head, because you do not know who is behind the guy who is attacking you. Maybe—and we have seen this happen—it is a legitimate protester trying to grab and pull him off of you and saying, “This is not what we are about!” Do you want to kill that person with an over penetrative bullet?

Everyone cites the Reginald Denny beating. Without question, if Reginald Denny had a gun, he would have had a right to kill all four of those evil bastards that stomped him. One literally crushed his skull with a cinder block. His skull was in fragments; he had profound brain damage. He had to rehabilitate for years to learn to walk and talk again and is still to this day somewhat impaired from that horrible beating. None of the four actually served more than four years in prison. If Reginald Denny had had a gun, he would have been absolutely justified under every principle of the law to shoot and kill all four of them.

eJournal: What if he misses and shoots someone standing nearby videotaping or just trying to get out of the area?

Ayoob: Well, here comes the problem. Reginald Denny has been the first to publicly thank the people who rescued him—all of whom were good, black people from that community who were horrified to see what was happening. So, now, you have been hit in the head and stunned. The guys attacking you happen to be black, and now you are surrounded by black folks. What if you shoot one of your own rescuers?

In Seattle, recently, you saw video of the courageous African American security guard who disarmed an AR 15 from the rioters who had taken it from a trashed, abandoned police car.

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eJournal: If you were there, would you think he was an immediate threat to you?

Ayobb: You don't know who's who! You are going to have to be really careful. Do not be thinking that this is the amorphous mob that the lynch mob laws were talking about.

What you have got here are sharks that swam out of the ocean and there might be a little wave of good-faith protesters coming out of that ocean trying to pull the sharks off of you. You don't know for sure. Target selection and target determination are going to be absolutely critical.

I see people that are saying, "Oh boy! I am going to start carrying my Krinkov 7.62x39 with my [gestures] wink, nudge wrist brace and that will be my car gun." Well, son, you fire that inside the car with the windows up without any hearing protection, I guarantee you will suffer some degree of permanent hearing damage. If you are using military ball ammo, you're going to kill at least two people and maybe three if you have a crowd behind.

eJournal: What are likely criminal charges for harming the people behind your intended target?

Ayobb: We all know that the single most common physiological altered perception that we are aware of is auditory exclusion—we don't hear what other people are yelling because we are so focused on the threat. That is going to be increased profoundly by deafness—maybe temporary but probably permanent—from firing a high-powered weapon inside a closed vehicle, shooting from the inside of the car out. You cannot hear that the person behind them is screaming, "What are you doing? Get away from that car! You are making us all look bad!" You wound up killing that person, too. You previously posted on the Internet, "Boy, oh boy! Now I can get two or three with one shot." If you did not care who was behind them and particularly if somebody's iPhone shows the person behind them, the term for that in law is depraved indifference for human life.

eJournal: We are talking about murder.

Ayobb: We are, or at least manslaughter. A whole lot of people have not thought past playing Call of Duty or the next season of Walking Dead. Your other problem is getting caught in traffic because people are blocking the

highways, if you do have to abandon the vehicle what are you going to do with the AR 15, what are you going to do with the Krinkov? People seeing you will think, "Oh my, there is a crazy man with a machine gun!" The cops might shoot you; an armed Antifa might say, "Here's my chance!" and shoot you; maybe three football players who are present as protesters might jump you for the gun.

I would suggest staying with handguns. Just because vehicles might be involved, don't look at it like a state trooper or FBI agent who is highly likely to have to fire deep penetrating bullets into an automobile. I would be looking at a crowd scenario from just the opposite angle and if I thought I had to go into a place like that during such a time, my 9mm load would not be 147 grain subsonic or the 124 grain +P bonded Gold Dot that I'm carrying today. I would probably be going with a 115 grain +P+ going at 1300 feet per second. With the 115, we're looking at a wound track that is only about 10 inches long but very wide which is consistent with quicker debilitation. When you are in a crowd situation, you do not have a safe backstop, only the body of the offender. You have got to bear that in mind.

eJournal: The experience of shooting in a moving, jostling crowd is so far beyond the training and preparation of most, as to create a real disconnect between actual marksmanship ability and the realistic defensive shooting within the setting we are discussing. I have to ask, if you decided to draw and introduce a gun into arm's reach of a hostile, milling throng, what would you do? Draw to a retention position? A protected gun position? Low ready?

Ayobb: Well, I would not draw to Position Sul, because it traps both of my hands at the centerline. Drawing to retention would be better. If I don't immediately intend to shoot, hand on the holstered gun with the other hand free to block and parry, I think, would be better yet.

eJournal: So, you don't necessarily want that gun out until you have identified a threat you think you will have to shoot?

Ayobb: Well, remember that other people do not know who we are. Let's say there are two or three well-intentioned protesters who came to march because they believed everything BLM said, and they want to do good. They're well-intentioned, good human beings, but

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each of them is the size of a pro-football linebacker. They hear from behind them the scream, "He has got a gun!" They see you struggling with people who a few minutes ago were walking with them, who now are obviously in fear of you. You are going to have them on top of you because they will come to the conclusion that you are the fascist that Antifa warned them about or you are like the crazy, white racist who drove into a crowd of people in Charlottesville, VA, killing one and sending 19 more to the hospital. There is a whole lot of potential there for mistaken identity.

eJournal: What is your opinion about resorting to alternate weapons—perhaps pepper spray, batons where they're legal, knives? In other words, in very crowded situations with large numbers of people, is the gun our best defense?

Ayoob: Certainly pepper spray. A baton big enough to fight with is hard to conceal. In some states, Florida for example, it is not a license to carry a handgun, it is a license to carry a weapon. There, you are allowed to carry concealed nunchaku, you are allowed to conceal a telescoping baton of the ASP type. Ask yourself, though, how much good is that going to do? Are you any good with that? Are you trained in it? How many people do you think you can fend off with it at once if three of them are jumping you and trying to get it away from you? A knife is not going to work too terribly well against a whole lot of folks, either. You might get two or three, but someone is going to come up on the sidewalk behind you with a brick and hit you in the head. With a gun, one of two things will happen. Either they will all flee at the sight of the gun or the sound of the shot, or they will try to be heroes and converge on you.

eJournal: How has shooting violent protesters worked out in the courts?

Ayoob: Here in WA, you saw the Hokoana trial. Mr. Hokoana was at a protest and some of the Antifa appeared to him to be roughing up people who he perceived as innocent. He wound up pepper spraying some of them, and at that point the big, buff, Antifa guy came at him. His wife perceived that man to be armed with a knife with which he was about to stab Hokoana. She drew her pistol and fired one shot, hitting the guy in the abdomen. He doubled over and she and her husband ran away.

I think his initial use of the pepper spray probably would have been justifiable, and I'll tell you, being a little more familiar with that case than most, there is reason to believe she is telling the truth. If she is telling the truth, if she had shot that guy, stood her ground and stepped on the knife that he dropped before anybody could remove it from the scene, she would have had a much better argument for self defense than she did.

It was a five-week trial that cost a great deal of money and ended in a hung jury after the majority of the jury had wanted to convict. Mr. Hokoana had posted on social media that he was ready to "crack heads," and said, "I am going to go full melee," at a politically-charged event where I know there is going to be a demonstration, where I know Antifa are going to be and there is a real good chance that there is going to be violence, "I am going to go full melee."

Someone asked him on social media if he was going to carry a gun and he said, "No, but my wife's going to carry hers." They went to a university setting that they knew is a gun free zone, intentionally breaking the law going there with a gun. I think she would have had a strong doctrine of competing harms argument except if you know there is going to be violence and you have an option, why did you go?

eJournal: It appears that by posting your intent to crack skulls and going, you agree to fight.

Ayoob: The Statute of Winchester about mutual combat from the middle of the last millennium, had the *homicide se defendo* principle. Part of that was, "Look, we are fed up with the flower of our young men from the dukes and the counts down to the poorest of the peasantry killing each other over arguments about bullshit pride. If two of you go out to fight, one of you will not get a pat on the back and the other a hole in the ground. The horizontal one will go to the hospital or the grave and the vertical one goes to jail."

eJournal: Yes, you are both responsible.

Ayoob: When you agreed to fight, your mutual combat voids the mantle of innocence. It shreds the mantle of innocence.

eJournal: Was Ms. Hokoana, deciding to go despite knowing about the plans to fight, innocent?

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Ayoob: Well, her argument could have been, “My husband wanted to go, so I figured I had better go to protect him.” I think if she had made that argument, that would have been understood under the doctrine of competing harms, the doctrine of necessity, the doctrine of two evils. It did not come across that way to the jury. The jurors said afterwards, we simply did not find her testimony credible. That was made worse because the couple fled after the shooting so you had the “flight equals guilt” thing going.

Tremendous social pressure had been applied. Right now, the Antifa and BLM and such are favored by politicians and most of the media. If it looks like you went there to fight these poor, downtrodden people, you’ll be cast as the bad guy.

You cannot expect to get too much sympathy and you cannot expect to get too many of your friends and like-minded people on the jury.

eJournal: I would like to ask about fleeing from ongoing danger after a shooting. I could understand feeling so alone and threatened by large numbers of violent protesters converging on the person who shot their comrade that running away to a safer location could look like a pretty good option. If you shoot to defend against attack by a member of a mob and decide to retreat to a safe place, how do you defuse the “flight equals guilt” perception you identified as part of the reason the woman in your real-life example was unable to convince a jury of her innocence?

Ayoob: Gila, I don’t know of a really good answer for that. If they had picked up the knife they said the Antifa guy dropped, someone who just heard the shot might see that just in time to conclude that they were planting a “drop knife” on an unarmed man. They’d be running with a knife in hand, and they’d be obscuring fingerprints and DNA evidence. Would they have time to pull out their smart phone and take a picture of the dropped knife? Probably not. You would have to assess the crowd. If they’re backing off, stand your ground and straddle the attacker’s dropped weapon.

Are there other people there who are on your side? In another case where a young man shot a protester-turned-rioter who was chasing him and trying to smash him in the head with a skateboard, a group of conservative sympathizers surrounded the shooter and protected him from the downed man’s compatriots until

the police could get there to take control of the scene. Will that be possible in something like this that one of your readers could get caught up in? We just don’t know.

eJournal: What is the likely outcome for some poor, unfortunate person, maybe a businessman who is just walking home from work, not realizing what is building up around him, who just gets caught up in a riot and becomes a target for the violent members of the mob? Can he shoot to avoid having his head bashed in?

Ayoob: If it came upon you that quickly, you still have your innocence maintained. You are the victim, caught up in the maelstrom by fate. What I would suggest, though, if you are walking to work you would kind of notice, “Uh oh, something is kind of happening up ahead.” Now would be a really good time to go into some place that is safe, make some phone calls to get help and to find out what is happening, and stay there where it is safe.

If you are driving, there is an app called Waze which, so long as it knows where you are going, warns and alerts you to traffic jams and other problems ahead. If the streets are blocked by protesters, rioters, or just by construction workers, you are hopefully going to know in time to avoid it.

eJournal: What if bad luck strikes, your smart phone is dead so your app doesn’t help, or you can’t exit the freeway in time? Is it enough just to have a gun in the car? Just last week I corresponded with a man who drives over a bridge going to his office, and because he is going to work, has his gun in his briefcase. How he carries was not the focus of his question, but it made me wonder how well he would be able to take care of himself in a riot. What say you? Gun on body? Gun in bag?

Ayoob: Gun on body! If it is in the bag it is going to be much slower to get out. If you have to step out of the vehicle, you can’t reach the gun when you need it, and if you are separated from the vehicle, which is probably now unlocked with an open door, someone else is going to get it.

eJournal: The idea of getting out of the car at all is kind of chilling, but I’m not sure the popular suggestion to

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drive through a mass of protesters is going to work out well, either.

Ayoob: If you are in a car, I have a couple of suggestions. In every case we have seen of someone driving out of it, we are seeing again and again people being charged for doing so, even though the people were blocking them illegally and they had very articulatable reason to believe they might be dragged out of that car and beaten if they didn't. There is one thing none of them did, and I hope all of our members and readers get this: if you have got to drive out of a mob *turn on your damned flashers and lay on your damned horn!* These are universal signals of emergency traffic coming through and let that be seen on all of those dozens of iPhone videos: you were in emergency mode, trying to get out of the way, telling people, "Get out of the way, I am afraid."

eJournal: What speed? Just chugging through at five miles an hour or moving more quickly?

Ayoob: You have got to remember that different vehicles have different safety devices. Some airbags will only trigger with an impact of 14 miles an hour; some will trigger lighter. This brings us to the interesting case in Michigan of the lady in a parking lot dispute that was started by the other people. She got out of the car finally and pulled a gun, so everybody was saying, "Well, gee, why couldn't she just back out and drive away?"

One, the primary assailant was at the back of the car pounding on it. Two, I spoke with John Correia who told me he had spoken with those folks (video posted at https://www.youtube.com/watch?v=8lym8ilWzcs&feature=emb_title) and she said they had what she called the nanny program on in the car. If the car senses a human being behind it, it will stop and you cannot override it. Apparently, that is what happened in that situation.

eJournal: Does a violent protester breaking a car's side window or windshield pose such a threat to the car's occupants as to justify use of deadly force to stop him or her?

Ayoob: In my opinion, you are justified although that might not be the opinion of the prosecutor. My opinion is based on the reason that they are trying to invade the passenger compartment. Why are they breaking the window? Why do you crack the walnut? You crack it to

get what's inside and consume it. It is not reasonable and prudent to believe anything else.

Many states have passed laws that said the Castle Doctrine that protects you inside your home extends to inside your vehicle. The car is treated like a domicile. Even in states where that is not the black letter law, the situation is clear.

Antifa are now carrying the emergency rescue glass breakers and that brings me to the other safety equipment I am now keeping my car: a pair of safety glasses for every passenger and I keep a pair of active hearing protectors in my vehicle. I know that cops shooting through their windshields in desperate situations do suffer some degree of permanent hearing loss. This, of course, would go to the power of 10 for the people with the short-barreled .223 AR pistols and such.

We have both participated in tactical vehicle penetration tests. You know when you shoot a windshield, some of the glass spall will come toward the direction of the shot, meaning that if you are shooting from the inside shooting out, you are still going to get some of the glass back in your face. That happens so quickly there is not time for the eyelids to blink and block it, and anyway eyelids will not block much.

If the rioters are throwing projectiles—rocks and such—into the car, the spall from the broken glass is going to come into the car. In a worst case scenario, injury from the glass could cause permanent blindness. Usually I don't wear glasses, but you'll notice I have been wearing glasses any time I am in a car. Even before I became a cop, I had seen car crashes where the windshield disintegrated. The theory is that if the windshield disintegrates into tiny pellets, you're less likely to be decapitated by a large shard of glass. But those pellets come flying through the passenger compartment. The eye protection is for the threat from the outside or danger from the inside going out.

eJournal: I have a question. If we have established that breaking windows to reach people in a car's passenger compartment poses a true, immediate danger to life...

Ayoob: In my opinion it does, but that might not be the opinion of the prosecutor who is an elected official. These things are tending to happen in the "Blue" cities that elect the "Blue" officials. If we have a district

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attorney who wants to keep getting his campaign donations for reelection from George Soros like the prosecutor in Saint Louis does, or from Michael Bloomberg, he is not going to see it as they are cracking the walnut to get at the meat inside and devour it, he is going to see it as, "Oh, you killed them for vandalizing your car."

eJournal: If we are blocked in and unable to drive away and rioters are breaking into cars adjacent to ours, at what point do we perceive that threat as extending to the occupants of our car?

Ayoob: Well, when it turns toward you, it is coming to get you. If I see two guys who look a lot alike and one is breaking into the other guy's car, I am not getting involved. I don't know who is who! Most of us would jump to the conclusion that it is a rioter or a carjacker but know this: one thing we may be seeing in these riots, is gangbangers using all the tumult and absence of law enforcement to kill other gang bangers. If they are coming toward me and I am seeing them doing that to others, all the bets are off and I will do what I have to do.

eJournal: So, it becomes a question of "when?" Will you wait until they have begun striking the car?

Ayoob: If they are hitting the car, that may render escape impossible depending on the kinds of weapons they are using. If that is happening, I will engage. I was involved in one case in Florida, not a riot, that involved a group of hostile people who were attacking a young man in his car. One of them allegedly was hitting the vehicle with a baseball bat. The other, with a bare fist, punched through the safety glass of the side window and hit the driver in the head. The driver took his .38, shot him in the chest and killed him. He finally got his car in reverse and got out of there.

He was charged with manslaughter for killing an unarmed man. Our defense team won an acquittal for him on the manslaughter charge, but that case did not have the political overtones. There was no cross racial element and there was no political gain.

eJournal: A question about windows: windows up, windows down, windows open a tiny amount?

Ayoob: I would suggest windows very slightly down. Some people tell me that rolling the window down just an inch will actually give it a greater tensile strength and resistance, but it also lets you better hear what is going on outside. One problem with the windows being rolled up, particularly if you have the radio going, the air conditioning going or in the winter, the heater going, is that you end up in an almost silent bubble.

eJournal: Mas, this is such a big subject! I am worried that I have failed to ask you about important topics. What should be our biggest take away? What would help us be best prepared in this time of increased danger?

Ayoob: Follow the news and follow what is happening. Know what the trends are. Gila, my final advice, and I think the best advice I can find, comes from the poet and humorist Ogden Nash, "When called by a panther, don't 'anther.'"

eJournal: Stay away, run away, don't engage! All good strategies, and seriously, you have outlined a lot of areas of risk that we may not have previously identified, offered options for defense that we might not have considered, and emphasized not answering that panther by not voluntarily going to where protests are under way. Thank you for all of your time and knowledge!

Network Advisory Board member Massad Ayoob is author of *Deadly Force: Understanding Your Right to Self Defense* which is distributed in the member education package for all 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*.

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. Ayoob founded the Lethal Force Institute in 1981 and served as its director until 2009, and now trains through Massad Ayoob Group. Learn more at <https://massadayoobgroup.com> or read his blog at <https://backwoodshome.com/blogs/MassadAyoob/>.

August 2020



President's Message

by Marty Hayes, J.D

I had to double check when I realized I was writing the AUGUST President's Message. It seems like we just started 2020, despite the unpleasantness we all have had to put up with.

Insurance Commissioner Fight

Over a month ago, we gave oral argument in front of a presiding hearing officer, stating the reasons we believe the Washington Office of Insurance Commissioner's Cease and Desist order against the Network was unconstitutionally issued. The hearing officer assigned to our case is an administrative law judge, who, by the way, is an Insurance Commission employee. On July 30th, we received word that this presiding officer ruled against us.

Since we have only just received this ruling, we have not had time to fully study the decision and haven't yet decided if it is better to appeal or simply move on to the next hearing which addresses our primary argument: that the Network's assistance to members does not constitute insurance. That is the main issue in this fight. Those new to this discussion may wish to review <https://armedcitizensnetwork.org/join/fight-against-wa-insurance-commissioner>.

As a result of the presiding officer's most recent ruling, the Network remains unable to accept new membership enrollments from WA residents. That is as far as the restriction goes and, in fact, the original cease and desist order mandated that we were to continue providing assistance to existing members in WA after an act of self defense. As I mentioned in my message last month, we are also allowed to accept membership renewals from existing WA Network members, and at no time was there any restriction against our work with members outside of WA.

As I ponder the latest ruling, I feel that we are in for a long fight. As I have stressed all along, we are willing to engage in this battle and we will do what it takes to win.

Certifying Deadly Force Instructors

As I've mentioned in previous columns, once or twice a year for over a decade I have been assisting Advisory Board Member Massad Ayoob (no stranger to this eJournal—see lead article) in teaching a Use of Deadly Force Instructor class. Earlier this month, we put on this program for 47 students in Phoenix, so the subject is on my mind. Since this has been such a satisfying endeavor, I wanted to talk to you about it this month and explain what Massad and I teach, how and why.

The purpose of the course is to open up the world of deadly force law to instructors who teach good people how to defend themselves. You see, I made a promise to myself back in 1988 (when I first started teaching firearms) that I would not teach someone how to kill, unless I also taught them when (and as importantly) when not to kill. For 33 years I have kept that promise to myself, first calling upon the law enforcement model of teaching deadly force law, then adopting the model taught by what was then Lethal Force Institute. The model I teach today is a hybrid of the Massad Ayoob Group and law school models.

Most instructors get their certificates to teach firearms from the National Rifle Association, an instructor program which does not address teaching deadly force law. They require that a person who teaches an NRA course of instruction bring in a police officer or attorney to teach the deadly force law segment. That makes sense from the viewpoint of the NRA, needing plausible deniability if errant subject matter is taught. However, at the student level, this doesn't work at all well, because cops do not necessarily know the laws regarding use of force in self defense, and unless an attorney specializes in self-defense law, many lawyers do not, either. You see, law schools pretty much ignore self-defense law. My law school experience entailed a total of 90 minutes of self-defense law, and much of that was WRONG!

In 1990, I started teaching with Massad Ayoob, and by the late 90's, he and I decided to start certifying Deadly Force Instructors, so instructors across the nation could receive state of the art training in how to teach deadly force to their students.

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Course Curriculum

The core of the curriculum is based upon Ayoob's 20 hour MAG 20 classroom instruction. Students receive lectures in legal, psychological, physiological and tactical considerations when needing to use force in self defense, along with a look into the aftermath of justifiable use of force. One of the great debates in our field is what to say to the police, if anything, after a use of force incident. Students come to learn why Ayoob gives the advice he does. Network members should refer to Network lecture #2 (for a preview see <https://armedcitizensnetwork.org/preview-handling-the-aftermath-of-a-self-defense-shooting> – members may log in and view the entire presentation in the member-only portion of our website). It is a great lecture.

Additionally, because this is an instructor certification course, students are expected to demonstrate that they can actually teach the discipline, and so a portion of the 40 hours in the classroom is spent in student lectures. Students are assigned a subject to explain to the rest of the class.

Our most recent class was hosted by John Correia and, as I noted earlier, was attended by 47 students. Because of the size of this class, we converted student lectures into group presentations. With a small class, students are given individual assignments. *[Photo, right: Melody Lauer gives a student presentation.]*

Students also get a very keen look into the legal side of self defense, including lectures on how to testify for their students who have been involved in a self-defense incident. We teach how the firearms instructor can be used as an expert witness in self-defense cases in their local area. Believe me, this is a much needed field! Independent,

expert testimony is often required to present to a jury why the armed citizen's self-defense actions were justified. As the numbers of armed citizens grow, there will be more and more justifiable shootings. Currently, most professional expert witnesses are working as many cases as they care to. Our industry needs more competent people to serve as experts for legitimate armed self-defense cases.

On the fourth day of Deadly Force Instructor, we leave the classroom and go to court. Well, not physically, but at least mentally. We turn the classroom into a courtroom and create a one-day trial, putting one of the students on trial for murder after a questionable shooting, complete with many of the students filling the roles of witnesses and defendant. This gives the students a fairly realistic look into what happens in a typical self-defense trial. When the evidence has been presented and the witnesses called, the judge gives the jury instructions and the students who did not testify

become the jury, or if we have a large class, two juries. *[In the photo at the page's bottom, a student jury deliberates].*

If we have attorneys as students, they will typically fill the roles of judge, prosecutor and defense attorney. We had no attorneys in our recent class, so, as we have done before, we asked one of our attorney friends to fill the role of judge, and Mas and I become prosecutor and defense attorney. Attorney Matthew Messmer, with whom

I was acquainted from the 2008-2010 trial of firearms instructor Larry Hickey agreed to help by taking on the role of judge

[Above, left: Messmer, center, Ayoob, right, and I playing our mock trial roles.]

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Most students have not been involved in court cases and they tell us that the mock trial was the most valuable aspect of the class. We believe it gives a good look into the legal system after a self-defense incident, and after all, the final



proceeding in any self-defense shooting is going to be the legal fight afterwards. The mock trial leads up to the final day on which Mas gives the final lectures, we wrap up the student presentations, and in the afternoon, we administer a 50-question test, based on the material covered in all the foregoing classroom time.

Who Attends Deadly Force Instructor?

In every class, there is a mix of experienced, competent instructors, inexperienced instructors and practitioners of armed self defense. Our recent class was weighted heavily towards the experienced instructors, with many current, popular instructors taking the class. It was a privilege and honor to have them in class.

We could not teach these classes without a host facility, and for this large class, we had an excellent one. The Glendale Christian Church made their whole church available for us, including a spacious sanctuary with excellent audio-visual equipment. Pastor Brian Reed, who was also one of the students, was very gracious. It didn't hurt, perhaps, that the church live services were shut down because of the COVID scare, but he couldn't have known that when he scheduled the training event. Thank-you, Pastor Brian, for your generosity.

Our host and class promotor was none other than John Correia, the popular YouTube celebrity who has found a

calling in his Active Self-Protection internet channel. *[Photo, left: John participated as the defendant, shown here testifying during our mock trial exercises while Matthew Messmer, acting as our judge, looks on.]*

John and his staff did a masterful job coordinating and filling the class, resulting in one of the largest Use of Deadly Force Instructor classes Mas and I have ever taught. John used the class as a fund raiser for one of his favorite charities, SWAT ministries, which rescues girls and young women from sex slavery. I was impressed with John's charity, and both Mas and I donated a share of our teaching fee to the worthy mission.

Conclusion

A class like this tends to recharge an instructor's batteries, and I know I came away feeling pretty good about our effort. I cannot say this about all endeavors, obviously.

Use of Deadly Force Instructor class is open to firearms instructors, expert witnesses, and a select few non-industry students like members of the Armed Citizens' Legal Defense Network and former LFI/MAG students. If you fall into one of these categories and would like to attend a Deadly Force Instructor class, we have another session scheduled for November 11-15, 2020 at my home range, The Firearms Academy of Seattle (see <https://firearmsacademy.com/activities/deadly-force-instructor>). We would welcome your attendance. Even if you are not planning to teach or serve as an expert witness, it would not hurt your chances in court if you ever needed to explain to a jury why you did what you did, and why your actions were those of a reasonable person.



Attorney Question of the Month

In this monthly column, we ask our Network affiliated attorneys to contribute commentary on questions and topics about which Network members are asking. In these unsettled times, a goodly number of Network members have asked questions about using deadly force in defense against rioters entering residential neighborhoods, invading or destroying homes. This concern initiated a series of questions to help members better understand their state laws about use of deadly force in defense of themselves, their families and their homes.

State laws vary on where the line is drawn allowing deadly force to stop intruders, so members are concerned about whether intruders may achieve actual entry into the portions of the home occupied by the residents before they can legally use deadly force in defense of themselves and their families while others are asking if they can stand guard with a rifle at their property line and what to do if threatened there.

We asked our affiliated attorneys how they would respond to Network members from their states asking what the law allows against rioters moving through residential neighborhoods and were very appreciative of their responses to the following questions:

If facing home intruders and arsonists moving through neighborhoods, are residents of your state required to wait until the home has been entered or a fire started on it to stop the attackers?

How do your state's laws differ on deadly force used to protect residents compared against preventing an arson of an occupied dwelling? What limits are placed on use of force to prevent other kinds of destruction to the home? What restrictions are in place as regards preventing destruction of attached garages, outbuildings or property like vehicles on the home's lot?

Our affiliated attorneys provided so much information that we ran the first half in July and now, we wrap up the rest in August. If you missed the initial answers, please

review and learn from them, too, at <https://armedcitizensnetwork.org/july-2020-attorney-question> along with these explanatory responses.

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When can Utah residents use force in defending their home?

The riots and looting in the wake of the disturbing death of George Floyd in Minneapolis have led many people to ask what rights they have in defending their homes and property. The State of Utah recognizes the strong public policy favoring the right of self defense and the right of persons to protect their homes to preserve peace and good order of society. Certain states use the term "castle doctrine" but Utah does not expressly use the phrase "castle doctrine." Rather, Utah uses the phrase "defense of habitation." The main test is whether the person who uses force "reasonably believes" that the use of force is justified under the circumstances. Actual physical entry into the home by an intruder is not required for a person to use reasonable force in preventing an attack upon the home. Utah Code § 76-2-405 states that persons are justified in using force when they reasonably believe "that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his habitation."

Deadly force or serious bodily injury. Utah Code § 76-2-405 also states that a person is justified in the use of force which is intended or likely to cause death or serious bodily injury only if the use of force involves unlawful entry that is "violent, tumultuous, surreptitious, in stealth, or for purpose of committing a felony."

Rebuttable presumption. Utah creates a presumption that the person using force or deadly force in defense of habitation is "presumed for the purpose of both civil and criminal cases to have acted reasonably and had a

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reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or surreptitiously or by stealth, or for the purpose of committing a felony.” Utah Code § 76-2-405. Once the presumption that a defendant was justified in using deadly force in defense of habitation applies, the State may defeat it by showing that the entry was lawful or not made with force, violence, stealth, or felonious purpose. See *State v. Karr*, 364 P.3d 49, 2015 UT App 287 (Utah Ct. App. 2015).

Broad definition of “home” or “habitation.” The Utah Supreme Court has given a broad definition of what is considered a person’s “home” or “habitation.” The Utah Supreme Court has held that Utah Code § 76-2-405 should be interpreted and applied in the “broad sense” to preserve peace and good order of society. The statute includes not only a person’s actual residence, but also whatever place he or she may be occupying peacefully as a substitute home or habitation, such as a hotel, motel, or even where he is a guest in the home of another. The Utah Supreme Court held, in reversing a man’s conviction for murder in the second degree, that the defense of using force in the protection of one’s habitation was available to the defendant who allegedly used a rifle in protection of his sister’s home which he was occupying as a substitute home or habitation. *State v. Mitcheson*, 560 P.2d 1120 (Utah 1977).

Definition of “reasonable.” What is considered “reasonable” belief in the use of force means objectively and not subjectively reasonable. The Utah Supreme Court reversed the adjudication for a 17-year-old boy for stabbing two individuals who had entered his home and directed the juvenile court to inquire whether the victims’ entry into the juvenile’s home was unlawful and forcible in determining whether the stabbing was justified. *State in Interest of R.J.Z.*, 736 P.2d 235 (Utah 1987). Ultimately, the question of “reasonable belief” is for the jury as the finder of fact to decide.

Perfect self defense and imperfect self defense. Utah recognizes both perfect self defense and imperfect self defense. Self defense is an affirmative defense that justifies “using force against another when and to the extent that the person reasonably believes that force . . . is necessary to defend the person . . . against another person’s imminent use of unlawful force.” Utah Code §

76-2-402. Perfect self defense is a complete justification and bars a conviction. Perfect self defense applies when a defendant reasonably believes that unlawful force against him is imminent and he is legally justified in using force to defend himself. Imperfect self defense is a partial justification. It reduces a murder charge to manslaughter when a defendant reasonably, but mistakenly, believes “that the circumstances provided a legal justification or excuse” for the use of deadly force. The only difference between the two defenses is that a defendant arguing perfect self defense must show that the use of deadly force was legally justifiable under the circumstances. *State v. Silva*, 2019 UT 36, 456 P.3d 718 (Utah 2019).

Use of force in defense of property not involving a person’s home. Along with Utah Code § 76-2-405 which applies to the use of force involving a person’s home or habitation, Utah Code § 76-2-406 applies to the use of force in defense of property that does not involve a person’s home. Utah Code § 76-2-406 provides that a person is justified in using force, other than deadly force, against another when and to the extent that the person “reasonably believes” that force is necessary to prevent or terminate another person’s criminal interference with real property or personal property. Furthermore, Utah Code § 76-2-407 governs the use of deadly force in defense of persons on real property other than his habitation if he “reasonably believes” that the force is necessary to prevent a felony by a trespasser that poses an imminent peril of death or serious bodily injury to a person and that the force is necessary to prevent the commission of that forcible felony.

Civil liability. Besides a criminal prosecution, the possibility exists that individuals injured may bring a civil suit as a tort action against persons who use force in defending their home. Utah Code § 76-2-405, which provides for the presumption in the use of force in the defense of habitation, applies to both civil and criminal cases.

Utah’s stand your ground law. Utah’s “Stand Your Ground” statute and common law decisions reflect a public policy favoring the right of self defense. Utah has been a “Stand Your Ground” state since 1994. Utah Code § 76–2–401 provides “a defense to prosecution for

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any offense” if the defendant acted to protect himself or others from imminent harm. In *Ray v. Wal-Mart Stores, Inc.*, 2015 UT 83, 359 P.3d 614 (Utah 2015), the Utah Supreme Court held that Walmart store employees who were involved in physical confrontations with shoplifting customers and were ultimately fired for violating company policy, requiring employees to disengage and withdraw from potentially violent situations, could sue the store in federal district court for wrongful termination. The Utah Supreme Court held that the policy favoring the right of self defense is a public policy of sufficient clarity and weight to qualify as an exception to the at-will employment doctrine and allow employees to sue for wrongful termination.

Criminal prosecution and the right to a jury trial. In some cases, prosecutors may decide not to charge an individual for using force. For example, in 2015, a Utah County homeowner shot and killed a man who attempted to enter his home. Police said the intruder climbed to a second-floor balcony. The homeowner attempted to speak with the man, who then tried to force his way into the house. The homeowner shot and killed the intruder. Prosecutors decided not to charge the homeowner with any crime. (Associated Press, No charges for Pleasant Grove homeowner who shot, killed intruder, Herald Journal, June 25, 2015) Similarly, in 2018, a Salt Lake County prosecutor said a South Jordan homeowner who shot and killed a woman who broke into his home would not face any criminal charges after police found a knife near the intruder’s body and evidence showed that the intruder threatened the homeowner with the knife before the shooting. (AP State News, No charges filed against Utah homeowner who shot intruder, June 28, 2018.)

If the prosecutor decides to go forward with the case, and the judge decides that sufficient evidence exists after a preliminary hearing to bind the defendant over for trial, the defendant can present evidence of self defense during trial and request a jury instruction. The jury can then decide whether the defendant “reasonably believed” that the force was necessary. Individuals charged with criminal offenses in defending their homes and property should assert their constitutional right to a jury trial and let the jury decide whether the use of force was reasonable under the circumstances.

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The questions this month raise a number of interesting issues, and it is impossible to cover all of the specific factual scenarios that could be associated with the general situation described. Before addressing the law in Indiana, we would reiterate the wisdom expressed by Gila Hayes a couple of months ago in the June issue in which she indicated that self-defense encompasses defensive strategies that begin far in advance of the point where deadly force should be considered. We would also remind everyone that every scenario will involve distinct facts, and the question of self defense is ultimately, in many cases, a question of fact to be determined by a jury. However, the jury will be informed of the law via jury instructions and the factual determination made by the jury will be made in the context of the applicable law.

An important law that will likely be applicable in Indiana is our general self-defense statute at IC 35-41-3-2 that provides, in part, that . . . (c) A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person: (1) is justified in using deadly force; and (2) does not have a duty to retreat; if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony . . .

Please note that the statute contemplates instances in which one might be justified in using “reasonable force,” but not necessarily deadly force. Deadly force will not be justified or characterized as reasonable force unless the person reasonably believes that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. One could write a book regarding the definition of “reasonably believes” and we will not go there in the limited space we have here. However, we would refer you to your attorney and Masaad Ayoob’s book *Deadly Force* as well as the ACLD Network videos that members are provided for further study.

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You will no doubt be curious about the term “forcible felony,” which can serve as an element for the justified use of deadly force. That term is defined in our statutes at IC 35-31.5-2-138 as a felony that involves the use or threat of force against a human being, or in which there is imminent danger of bodily injury to a human being. We believe this would clearly include murder, rape and arson of an occupied building. One other point to keep in mind is that there are some situations that would preclude applicability of our self-defense statute. For instance, the threat must be imminent, you cannot be the initial aggressor, and your commission of a crime cannot be the cause of the confrontation with the other party.

With respect to the defense of property, Indiana’s “Castle Doctrine” is at IC 35-41-3-2(d), which indicates that a person is justified in using reasonable force, including deadly force, against any other person; and does not have a duty to retreat; if the person reasonably believes that the force is necessary to prevent or terminate the other person’s unlawful entry of or attack on the person’s dwelling, curtilage, or occupied motor vehicle. Once again, this statute is difficult to address comprehensively in a limited way. However, please note that it is limited to your dwelling (not a separate business location), occupied motor vehicle, and “curtilage.” You will no doubt ask what “curtilage” means. It is difficult to say with certainty under Indiana law. This may not help much, but according to Indiana pattern jury instructions, the term “curtilage” means the land, not necessarily fenced or enclosed, adjoining the dwelling house including buildings used in the conduct of family affairs and domestic purposes. In determining whether an area or building is within the “curtilage” of a dwelling house, two (2) factors are of principle importance: 1) its proximity to the dwelling, and 2) its use in connection with the dwelling for the purpose of conducting family affairs and domestic purposes.

With respect to property that is not your dwelling, your occupied motor vehicle, or your “curtilage,” IC 35-41-3-2(e) indicates a person is justified in using reasonable force against any other person if the person reasonably believes that the force is necessary to immediately prevent or terminate the other person’s trespass on or criminal interference with property lawfully in the person’s possession, lawfully in possession of a member of the person’s immediate family, or belonging

to a person whose property the person has authority to protect. Please note IC 35-41-3-2(e) does not provide for the use of deadly force to protect any property that is not your dwelling, curtilage or occupied motor vehicle. We get some startled and disgruntled responses in our legal class to this concept, but we do not make the law, we are just the messenger.

There is one other point we would like to make as you consider potential defenses to looting and the protection of your property. Although Indiana does not have a “brandishing statute” per se as many states do, we do have a statute that makes pointing a firearm a crime if a person knowingly or intentionally points a firearm at another person (it is a misdemeanor if the gun is unloaded and a felony if the gun is loaded). Think about that the next time you go to a gun show or public range. Anyway, case law in Indiana also indicates that pointing a firearm creates a risk of serious bodily injury, and is construed as the use of deadly force. Hence, one should conclude that the pointing of a firearm is only justified if the use of deadly force is justified. Please consider this as you contemplate and visualize defensive strategies far in advance of the point where deadly force should be considered. In other words, your gun handling skills are critical in addition to a myriad of other skills.

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In light of the chaotic nature of the world of late, I have been inundated with these types of questions from clients, students and acquaintances. It seems everyone is looking for an easy, simple response, as if there is some brightly lit “on/off” switch in the body of self-defense law. Actually, there kinda is—but it’s always subject to interpretation: are you reasonably in fear of an imminent loss of human life? If yes, do what you need to do to save that (those) life (lives). Even if the answer is “yes,” however, STILL use whatever precious seconds you can spare to ask yourself if there is some OTHER way to end that threat short of the use of lethal force and follow that course. If so (my personal favorite, the so-called “Nike Defense,” often works quite well), employ that (those) option(s) before you reach for your gun.

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If facing home intruders/arsonists roving through your neighborhood, the legal threshold (interpreted by a prosecutor/judge/ jury) for being reasonably in fear for human life will very likely be lowered. My dear, sainted father told me twice per year, when actually taking my long suffering mom out for a hamburger (either her or the Marine Corps birthday), "...if you have to shoot someone, be sure to drag the body up onto the porch before you call the Sheriff."

I guess he wanted me to go to prison instead of college (cheaper, but not as much fun, I'd imagine). The old man was wrong (NOT something I could say if he was still around—THAT would place ME in fear for my life). Just because someone has not yet entered your home does not preclude you from being in reasonable fear for human life. Rifles can easily kill you inside of your home when used from outside of your home. So, as with our concern here, can Molotov cocktails. That said, retiring to your improvised rooftop sniper's nest with your pre-determined DOPE on neighborhood landmarks is not a good idea. You have now shifted from self DEFENSE to OFFENSE. Not likely to be legal.

Simply put, no, you do not have to wait for them to gain entry or light the match in order to be in fear for human life. In the face of a mob, it is likely even more deference will be given to your decision. As one of my heroes, Oliver Wendell Holmes said in *Brown vs. United States*, "[D]etached reflection cannot be demanded in the presence of an uplifted knife." I'd imagine he'd say the same about rifles and firebombs. That said, the Court of Public Opinion these days seems to be an even harsher judge than most actual judges. A Mas Ayoob statement is almost always the best last word—make sure your use of lethal force is used only "in the gravest extreme."

Question 2: In Arizona, we have an actual statute (A.R.S. Section 13-411, nicknamed by many, the "Vigilante Statute") which absolutely states that one is justified in using deadly force to stop arson of an occupied structure (defined in A.R.S. Section 13-1704).

A review of that defining statute for arson will reveal that arson of an occupied structure, or the contents thereof, suffice. So—if, at a party at my home, I inadvertently walk in on a pyromaniac guest in my guest bathroom who is lighting flaming balls of my toilet paper from the candle on the back of my lavatory, and flushing away the resulting ash, it is apparently legal for me to shoot him/her. The moral of the story: don't trust these statutes to keep/get you out of trouble. Don't view them as some kind of hunting license. Always fall back on the tried and true: are you reasonably in fear for a human life?

As for the second part of the question, about property in general, the line is quite clear in Arizona—lethal force can NEVER be used to defend property alone. Curtilage (out buildings, garages, etc.) buildings, unless specifically occupied, are still property only. In the face of a crazed mob of arsonists, it may be difficult to determine whether the object of the mob's focus is occupied. Interestingly, in Arizona, the THREATENED use of lethal force is legal to protect mere property from theft/destruction. Legal, but really, really stupid. I for one, am not willing to kill or die for anything I can replace with the insurance payment, and by threatening to use lethal force when I know I can't be justified in USING it, I may well escalate the situation to where it then becomes an otherwise avoidable lethal force situation. I would hope (and would argue at trial) that perfect decision making here is difficult if not impossible (see the Holmes quote above). That said, know that your judgment will ALWAYS be scrutinized and questioned, especially if there is a political agenda driving that scrutiny.

A big "Thank You!" to our affiliated attorneys for their very detailed contributions to this interesting discussion. Please return next month when we ask our affiliated attorneys for their thoughts on a new topic.



Editor's Notebook

by Gila Hayes

This month, deeply impressed with the detail Massad Ayoob brought to answering our questions about how members should prepare for and react if despite their best precautions they come in contact with a

violent mob, I decided to run an unusually long lead interview. Even if it takes you, dear reader, several evenings to read and absorb the lengthy article, I hope you will invest the time.

Those who have observed that Massad's knowledge on armed self defense is encyclopedic are not indulging in hyperbole! I learned so much asking him about defense against mobs that I found myself unable to edit the interview for length. This is a topic we truly need to understand, on which we must strategize, and about which we must invest prior thought to determine what responses best serve our safety and that of our families.

Unwilling to cut any of Massad's interview, I instead dropped my monthly book review. Since the book I was reading throughout most of July was not about shooting but had much that was personally valuable to me, let me use this column to reflect on parts of Jason Van Camp's book *Deliberate Discomfort: How U.S. Special Operations Forces Overcome Fear and Dare to Win by Getting Comfortable Being Uncomfortable* that spoke to me.

People crave "certainty and predictability. The world makes more sense to us when we're comfortable. The problem with that is simple: the world doesn't always make sense. The only way we can really make sense of the world is to embrace the chaos and get used to accepting dissonance. If you can get used to this discomfort, you will excel," explains *Deliberate Discomfort's* introductory pages.

The book is a compilation of stories by and about Special Forces officers, detailing pivotal experiences that shaped them as individuals with added commentary written by a variety of experts about applying the lessons to life both inside and outside of the military.

I am generally skeptical of adopting military strategies and mindset for the defense of private citizens—the rules

of engagement are too different. Mental toughness, however, is a study from which people of any walk of life can benefit. Make no mistake, training and exercise for optimum mental strength are just as important as doing so for physical fitness. The book's introduction stated, "Just like physical skills, mental skills such as attention control require intentional and deliberate training through practice and quality repetition over time. In other words, mental skills are learned behaviors.

"If you are to develop any kind of mental strength, you will need to take responsibility for and own your mindscape, no matter what state you find it in.

"Sometimes we can be afraid of what is happening in our own minds. When we observe our mindscape, we can see our personal inaction, negativity, debilitating self-talk, and ineffective focus," writes mental performance trainer Nate Last in his contribution to the book.

What makes you most uncomfortable and stressed out?

Fear of making mistakes or failing? "Remember that failure is fertilizer, and fertilizer is what you need to grow to your full potential," advises one officer. Another soldier discusses his greatest fear—failing his teammates—and tells of the heroic actions that fear drove him to perform. "I turned that fear into fuel. I turned that fear into awareness. I trained my guys harder. I did extra work with them. I let the fear serve as motivation. It drove me to train my team harder, and we became faster, stronger, and better," he writes.

One of the commentators in *Deliberate Discomfort* is a man who turned two failing companies around and credits his successes to a deep desire to achieve, combined with a willingness to take risks and deliberately place himself in uncomfortable situations. He says, "The reason I am successful is that I embraced doing what other people resent or were reluctant to do." Van Camp adds, "Voluntarily putting yourself in an uncomfortable position means that you are willing to achieve."

Do you fear fast-changing, unpredictable circumstances? "When chaos ensues, self-regulation and specifically emotional regulation must prevail... efficiently identify and effectively manage emotional information that will build a foundation to help guide your

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thoughts and behaviors in an effort to influence an optimal outcome,” writes an expert in the study of emotion. A good long discussion follows about building skills and practicing choices about thought patterns, regulating emotional responses and making conscientious decisions that are in alignment with one’s own value system.

Do you avoid stressful situations? Van Camp has a bullet point list of solutions. “There is no way to remove stress from your life, but there are ways to be prepared for it,” he suggests.

- You can’t control everything so focus your time, attention and effort on that which you can control.
- Study, get advice of others, and do homework to know best practices.
- Use imagination “to create vivid, personal, and powerful images of you executing your performance perfectly before it actually happens. See yourself from both the inside, in terms of what you’re thinking and feeling, and what you want that performance to look like from the outside.”
- Embrace fear.
- Set high and hard goals.
- Strengthen your spiritual nature. “Find what feeds your spirit and do it consistently through quality repetition.”
- Find a support structure. “You need someone to ‘have your six’ ... Be around like-minded individuals.”

I think everyone has experienced the impulse to give up! I feel pretty inadequate admitting to things that have made me want to give up at various times in my life, measured against the story of a USMC staff sergeant who disarmed explosive ordnance during several tours in Iraq and Afghanistan and as a result was nearly killed and had to learn to live with permanent disabilities. His comments are inspiring.

“For me, it’s all about having emotional strength,” he writes. “It was my ability to compartmentalize things. To put things in a box and set it over there and focus on what’s in front of me. To not let whatever is in that box affect my mood, the task at hand, or the moment. I had too many people depending on me to be sad. I didn’t

have the time or luxury to worry. Whatever I had gone through, I had survived it, and it couldn’t control me anymore. I find myself using the lessons I learned in combat in my daily life now. Like all of us, I’ve got a hundred things to worry about. All kinds of things bother me. But I make a choice to not let those stressors affect the next thirty minutes of my life. Or hour. Or day.”

Van Camp closes *Deliberate Discomfort* with a challenging chapter on facing adversity head on. He first warns about procrastination, and one commentator illustrates how procrastinating and imagining how bad an uncomfortable situation might be is often much worse than the reality. Van Camp quotes a Green Beret colonel who was influential in his development, “Decide to stop being a perfectionist. ‘Perfect’ is a moving target. You will never complete a task if the standard is perfection.”

Another contributor admits that he nearly failed out of the physical aspects of basic training. “I decided to do something about it. I could only control what I could control, and I could control my effort and myself. I decided to simply outwork everyone...Every time I didn’t think I could go on, I forced my mind to take another step. I just kept telling myself, ‘One more step.’ That was my mind-set. I did this extra physical fitness work for the entirety of basic training.

“I would think ‘Small victories’ and then set out to do things that I wasn’t sure I could do and complete them...I loved pushing myself beyond what I thought my limits might be. I learned that the human body is capable of so much more than we realize. Once you start to feel pain, the mind starts to doubt. I learned that the mind quits long before the body does. Once you push past that weak mind-set, you understand that the body can still operate at a pretty high level under incredible physical stress or neglect. You just have to convince your mind to take the next step. I learned that you are in control of your mind and that making the choice to keep pushing through discomfort is the key to moving beyond your limits.”

Deliberate Discomfort is a great personal-growth book. I came away inspired to continue seeking out uncomfortable situations because the dividends in personal and professional growth are too valuable to sacrifice for comfort. In Van Camp’s words, “Choose the path of most resistance.”



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