

## judicious use of deadly force



When would the use of deadly force by a private citizen against another human be considered judicious, sensible, prudent, cautious, careful, justified, or well thought out? How can a private citizen be authorized to kill another human under his or her own summary judgment? The very simple answer is that deadly force is recognized as a last resort for when you need to use it to save your life. Here we are referring to the "doctrine of competing harms" and the "doctrine of necessity." Put very simply, you are allowed to break the law (in this instance: kill), in the rare circumstances where following the law (i.e. not killing) would cause more injury to you or other innocent humans than would breaking it. In reality, the answer is not so simple. Any time you

even draw your gun, you are walking on thin ice. If you are going to keep or carry a gun for self-defense, in addition to being well trained in marksmanship and tactics, you should be well educated about the circumstances under which the use of deadly force is warranted legally and morally, so that you can be judicious. If you own or carry a gun, you must be judicious.



There is probably no one who has contributed more to our understanding of the conditions under which the defensive use of deadly force is ethically, morally, and legally justified than has Massad Ayoob. Ayoob is a prolific firearms writer, book author, master firearms instructor, legal expert, and the founder and director of the Lethal Force Institute ([www.ayoob.com](http://www.ayoob.com)). In this month's column, we will examine some of the important points taught in Ayoob's instructional DVD: *Judicious Use of Deadly Force*. This DVD is an ideal companion to Ayoob's authoritative textbook on the subject: *In the Gravest Extreme*. I consider this DVD to be essential study material or every citizen who keeps or carries a loaded gun. I have also been fortunate to train with

Massad Ayoob, taking his Lethal Force Institute I and II courses and I consider him to be one of the best master instructors with whom I have ever studied.

Let us begin with some definitions. Deadly or lethal force is that degree of force that a reasonable person would consider capable of causing death or grave bodily harm (i.e., crippling injury). Those of us who carry a concealed handgun carry with us the power to use deadly force. This is a tremendous power. With such power, as Ayoob points out, there comes a tremendous amount of responsibility and thus, a higher standard of care. This higher standard of care demands that the armed citizen, senior or otherwise, exercise good judgment and appropriate restraint.



Good judgment includes always effectively concealing your firearm and retaining it. It entails properly securing your firearm at all times so that your weapon does not fall into unauthorized hands. Good judgment means avoiding situations that you know beforehand could turn ugly. It means you never provoke a confrontation when you are armed and that you leave the scene of a potentially escalating confrontation if you can.

Appropriate restraint means exercising appropriate self control and self discipline in confrontational situations because you are armed and you carry the power to use deadly force. It means using your head and not overreacting.

Let's examine what Ayoob teaches about the circumstances that justify the use of deadly force:

As civilians our only obligation and right is to keep ourselves and our families from being unlawfully injured or killed. We may only use equal force in response to the application of force against us. If we are not innocent of provoking a confrontation, or we are not being immediately threatened with deadly force, we cannot use deadly force in response. This is unlike the obligation of a sworn police officer who may use necessary force to fulfill his or her duties, such as seeking out and arresting malefactors.

Ayoob teaches a formula for determining the circumstances under which we would be justified in employing deadly force. The formula is both simple and yet complex. Deadly force is justified when you are confronted with "an immediate and otherwise unavoidable danger of death or grave bodily harm" to either yourself or other innocents, whose innocence and situation you are totally certain about. You can't intervene with deadly force in a situation you come upon without knowing what's really happening. Don't make assumptions based on what seems to be happening. The danger must be clear and present, immediate and unavoidable. This formula is based on English Common Law and Dutch/Roman Law, and it applies in all fifty states. It is determined by three criteria which can be remembered by the acronym A.O.J. Think "Administration Of Justice". The situation must meet all three criteria.

**A = Ability.** The person deemed to be a threat must possess the ability or power to kill or maim.

**O = Opportunity.** The person deemed to be a threat must be capable of immediately employing his power to kill or maim.

**J = Jeopardy.** This means that the person deemed to be a threat must be acting in such a manner that a reasonable and prudent person would conclude beyond doubt that his intent is to kill or cripple.

All of the above are judged by the doctrine of the "reasonable man". That is, what would a reasonable and prudent person have done in that situation knowing what the defendant knew at the time? After the fact information is inadmissible into the equation. Your defense of self-defense is affirmative if you knew all of the above at the time you employed deadly force.

Now, with that said, I would add a fourth criterion to Ayoob's three. That is the criterion of preclusion. What this means is that you must have done everything within your power to have avoided having to use deadly force in the first place, without placing yourself or other innocents in jeopardy.

Let us now look at some caveats that Ayoob goes into in detail in his DVD and in his Lethal Force Institute training. I've already mentioned my fourth criterion of preclusion. This criterion does not contradict the "Castle Doctrine," or your right to stand your ground and defend yourself in any place

where you have a right to be. Ayoob gives the following general rule in the DVD: If you have warning that a situation is likely to turn bad, you should not venture knowingly into it. For example, if someone says that if you show your face at a particular place (a bar, a street corner, a class, etc.) they will kill you, don't go there! If you do go there, and then you are forced to use deadly force in self-defense, and you kill the guy, you may be found culpable. We don't live in the Wild West although there may be some who beg to differ.

Another caveat has to do with how you size up the criterion of ability. Here we are talking about the concepts of power and disparity of force. Clearly, a person with a gun or a knife, and the ability to use it, has the power to kill or cripple you. However, you can't shoot that person unless he has the immediate opportunity to use that ability on you, and he acts in such a manner that leads you to reasonably conclude you are in immediate jeopardy. What about if the threat does not have a gun, or a knife, or a bludgeon? There are several other factors that would fulfill the ability criterion:

One factor is force of numbers. Two or more threatening persons, even without identifiably deadly weapons, against you alone, would constitute a disparity of force. If they attack you and act in such a manner as to lead you to believe that, unless you do something, they are going to kill or cripple you, you are on solid legal ground. Against a group of attackers, each member of the group shares the same responsibility for the fear the group creates in the intended victim, and also shares the danger from the intended victim's lawful response.

A second factor is the able bodied against the disabled. So, if you are old and frail, or physically challenged, and you are viciously attacked by a younger, more able bodied man (and the criteria of opportunity and jeopardy are in play), you are on solid legal ground.

A third factor is greater physical size and strength. If you are attacked by King Kong Bundy, you are on solid legal ground in using a force multiplier (a weapon) to avoid being killed or crippled.

A fourth factor is training or reputation. Is the attacker or threat a person known to you to be highly trained in the destructive (martial) arts? For this criterion to be considered a valid, affirmative defense for the defensive use of deadly force, you must have known about it before you resorted to using deadly force. It is not valid if you didn't know it at the time, but learned that it was so after the fact. You will be judged based solely on what you knew at the time!

A fifth factor is male versus female. Our society assumes that females are more vulnerable and that there is a cultural predisposition for males to be more inclined than females to violent physical aggression. So, if you are female, and you are being attacked by a lone male, and the other criteria of opportunity and jeopardy are in play, you are on solid legal ground in terms of using deadly force if you have no other viable choice to avoid being killed or crippled. This would also include self-defense against rape.

Rape is violence.

No one submits to rape unless the aggressor says submit or else get murdered or crippled or maimed! Ayoob's DVD notes that criminal justice statistics show that 79% of rapists are unarmed, but nevertheless, there is a disparity of force present--they are armed with ferocious aggression, greater size or physical strength, or strength of numbers, as in a gang rape situation. It also notes that 14% of rapists are armed with contact weapons (e.g., an edged weapon, a bludgeon, etc.), and only 7% of rapists tend to be armed with a gun.

The knife or edged weapon is a lethal threat.

Now let us briefly address the issue of being threatened by someone who has a knife. Clearly, a knife or edged weapon is a contact weapon, as opposed to a firearm which is a remote control weapon. So, a man one hundred feet across a busy street who yells and threatens to kill you with a knife is not an immediate threat. You can't shoot him! However, that same man brandishing a firearm is an immediate threat if, by his actions, he places you in imminent jeopardy.

The knife issue merits a closer look. Here, opportunity is of special importance. The opportunity factor is a component of two things: distance and obstacles. It may not be part of the common knowledge, but a man with a knife or club twenty-one or fewer feet away from you, has the ability and opportunity to place you in imminent jeopardy. Thanks to the pioneering work in the 1980s of Dennis Tueller, a since-retired Salt Lake City Police Dept. Lieutenant and Gunsite instructor, we now know that it takes around 1.5 seconds for a person with a knife to close a gap of twenty-one feet and be on top of you! For the average trained person who is carrying a concealed handgun, it will take more than 1.5 seconds to draw from concealment, fire, and hit the target at seven yards. So, a person who is threatening you with a knife at twenty-one feet is placing you in imminent jeopardy. The original Tueller study was published in 1983 in SWAT Magazine in an article entitled, "How Close Is Too Close?"

Well, there you have it. This has been a summary of the highlights of what Massad Ayoob goes through in his DVD, and his DVD contains but a small part of what he goes through in his actual courses. I strongly recommend that, at a minimum, you get the DVD and read Ayoob's book: In the Gravest Extreme: The Role of the Firearm in Personal Protection.

As I stated earlier, Ayoob emphasizes that with power comes responsibility, and with more power comes more responsibility and a higher standard of care. So, if you own a gun for self-defense, and especially if you carry, you had better be prepared to exercise a higher standard of care. In addition to being capable of making a bullet fly true, you had better know when you have the right to do so, and when you do not.

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## References

Massad F. Ayoob (1990). Judicious Use of Deadly Force. The DVD. Concord, NH: Police Bookshelf. ([www.ayoob.com](http://www.ayoob.com)).

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