

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES M. MALONEY,

Plaintiff,

- against -

**Declaration of
James M. Maloney**

CV 03-786 (ADS) (MLO)

ELIOT SPITZER, in his official capacity as
Attorney General of the State of New York, and his
successors,

Defendants.

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Plaintiff, James M. Maloney, in support of his Rule 56 motion for summary judgment, declares and affirms under penalty of perjury as follows:

1. I hereby reaffirm, *with the exception set forth in paragraph 3 below*, all statements of fact made in my Verified Complaint dated February 18, 2003, a true copy of which is attached hereto as **Exhibit 1**.

2. A true copy of the Answer in this action is attached hereto as **Exhibit 2**.

3. Subsequent to the filing and service of my Verified Complaint, it has come to my attention that one state in addition to New York (California) has prosecuted simple possession of nunchaku within a home. Paragraph 24 of my Verified Complaint reads as follows:

24. Upon information and belief, no State in the United States, other than New York, has ever defined and prosecuted as a crime the simple possession of nunchaku within one's own home.

I have subsequently learned that the foregoing is incorrect. I first learned of California's having prosecuted in-home possession of nunchaku while doing on-line research in July 2003. Specifically, I found an appellate opinion that indicated that a juvenile had been prosecuted when nunchaku were found by police in his bedroom, and that the conviction had been upheld on appeal. On or about July 25, 2003, I provided Dorothy Oehler Nese, Esq., Assistant Attorney General, with a writeup of that information, a true copy of which is attached hereto as **Exhibit 3**. Subsequently, I have learned of an additional California prosecution, which I

shall detail here because it describes a prosecution and conviction that would also be possible under the challenged New York statute. Specifically, on July 18, 2004, I received a telephone call from a gentleman named Harold Vaughn, who currently resides in San Jose, California, although he is domiciled in Virginia. I have spoken with Mr. Vaughn subsequently, up to and including August 7, 2004. Upon information and belief, Mr. Vaughn has been a martial artist for over 30 years, was the Virginia director of the U.S. National Karate Association, and currently resides in California because he completed a J.D. program there earlier this year and, before his recent conviction, was preparing for the California bar exam, which he has subsequently postponed for obvious reasons. Upon information and belief, in early 2004, police who had legally entered Mr. Vaughn's residence saw a nunchaku on display on the wall with his martial arts certificates and found other nunchaku in his home pursuant to a consent search. Upon information and belief, the State of California subsequently charged Mr. Vaughn with six counts of violation of California Penal Code § 12020, a misdemeanor, for his possession of the nunchaku in his home. Upon information and belief, on July 19, 2004, Mr. Vaughn, threatened with prosecution for six misdemeanor counts with consecutive sentencing leading to six years of incarceration, represented by Deputy Public Defender Alfred Spielmann, Esq. of the Santa Clara County Office of the Public Defender, pled "no contest" to a single count of violation of Penal Code § 12020 in Department 50 of the California Superior Court, Santa Clara County (Stafford, J.), Case No. CC00452996.

4. I am aware of no jurisdiction in the United States other than New York and California that has ever defined or prosecuted simple possession of nunchaku in one's home as a crime.

5. Attached hereto as **Exhibit 4** is a true copy of a press release from the Office of the Attorney General dated October 17, 2002 ("Press Release"), as faxed to me by the Office of the Attorney General on March 2, 2004, and referenced in ¶6 of my **Rule 56.1 Statement dated May 11, 2004**, submitted herewith. In its second paragraph (first page following fax cover sheet), the Press Release refers to "illegal weapons" including "chuka sticks." In its fifth paragraph, the Press Release quotes the Attorney General as saying that such weapons "have no place . . . in our homes." On its second page, in bullet points, the Press Release notes that the terms of settlement between an out-of-state martial-arts equipment supplier and the Attorney General included the requirements that the company provide the Attorney General with a list of New York customers who had purchased "illegal" weapons from the company and that the company deliver written notice to their New York customers advising them to surrender their "illegal" weapons to law enforcement agencies. On its second page, in the second paragraph below the bullet points, the Press Release notes that a similar settlement was reached with another martial-arts equipment supplier in 2000.

6. Based on the foregoing, it is respectfully submitted that the Attorney General has taken meaningful and effective steps toward applying the challenged statutes so as to prevent New Yorkers from possessing nunchaku in their homes, and accordingly is a proper defendant in this action for declaratory judgment.

7. Attached hereto as **Exhibit 5** is a true copy of a 1974 article, “Oriental Philosophy, Martial Arts and Class Struggle,” from a scholarly journal entitled *Social Praxis*, which was referenced in ¶7 of my **Rule 56.1 Statement dated May 11, 2004**, submitted herewith.

8. Attached hereto as **Exhibit 6** are true copies of pages 62 through 64 of a book entitled, *The Complete Martial Arts*, authored by Paul Crompton (1989) and published by McGraw-Hill Publishing Company. Pages 62 through 64 begin the chapter on “Ryukyu Kobujutsu,” which is one of the terms for the branch of karate or martial arts that involves ancient Okinawan weaponry. Upon information and belief, the term *kobujutsu* is used interchangeably with the term *kobudo*.

9. The foregoing materials indicate that the nunchaku, like the other weapons of Ryukyu Kobujutsu or Kobudo, was adapted for use as a weapon by the People of Okinawa during the early Seventeenth Century. As noted in Exhibit 5 at page 139, “Karate developed into its own after the conquest of Okinawa in the early seventeenth century by the Satsuma clan of Kyushu [Japan], which again banned all weapons but its own and brutally suppressed the population. A people’s revolutionary movement organized clandestinely, and its activities centered around the development of karate for peasant self-defense against the imperial dictatorship.” As noted in Exhibit 6 at page 63, “The conquest of Okinawa was carried out by the Satsuma clan of southern Japan. . . . As soon as Okinawa had been conquered, the Japanese leader Iehisa Shimazu decreed that the possession or carrying of weapons was forbidden. . . . The Okinawans also began to train with the improvised weapons that they made from farming implements.” Accordingly, it is respectfully submitted that the nunchaku had already been used as an “arm” or weapon for the common defense, by the citizens’ militias of Okinawa, well before the dates of the ratification of the United States Constitution and of the first ten amendments thereto. Cf. Verified Complaint (Exhibit 1) at ¶¶ 18-19.

10. Upon information and belief, the New York legislature first banned the possession of nunchaku or “chuka sticks” effective September 1, 1974. See Chapter 179 of the Laws of New York 1974 (Session Laws).

11. On August 5, 2004, I obtained a microfiche of the “Governor’s Bill Jacket” for Chapter 179 of the Laws of New York 1974 at the library of the Supreme Court, Nassau County, and made true copies of documents included therein, which are introduced below.

12. Attached hereto as **Exhibit 7** are true copies of the following documents included in the “Governor’s Bill Jacket” for Chapter 179 of the Laws of New York 1974:

- (a) a letter dated April 2, 1974, from Assemblyman Richard Ross (one of the sponsors of Assembly Bill 8667-A, the bill that was eventually signed into law banning the nunchaku in New York) to Michael Whiteman, Counsel to Governor Wilson, urging approval of the bill and stating: “The chuka stick is an instrument that may be purchased or easily assembled from two pieces of wood and a piece of thong, cord or chain. With a minimum amount of practice, this instrument may be effectively used as a garrote, bludgeon, thrusting or striking device. The chuka stick is designed primarily as a weapon and has no purpose other than to maim or, in some instances, kill.”;
- (b) a similar letter dated May 7, 1974, from the District Attorney of the County of New York, stating that “there is no known use for chuka sticks other than as a weapon.”;
- (c) a similar letter dated April 1, 1974, from the District Attorney of Dutchess County, stating: “There is no conceivable innocent used [sic] for this device and, accordingly, there can be no possible invasion of anyone’s right to use it innocently.”;
- (d) a similar letter dated March 28, 1974, from the Mayor of the City of New York, stating: “This instrument may be purchased or easily assembled from two pieces of wood and a piece of thong, cord or chain. With a minimum amount of practice it may be effectively used as a garrote, bludgeon, thrusting or striking device. The chuka stick is designed primarily as a weapon and has no purpose other than to maim or, in some instances, kill [*cf.* subparagraph (a), *supra*].”; and
- (e) a similar letter dated April 1, 1974, from the District Attorneys Association of the State of New York, stating: “As a result of the recent popularity of ‘Kung Fu’ movies and shows, various circles of the state’s youth are using such weapons. The chuka stick can kill, and is rightly added to the list of weapons prohibited by section 265.00 of the Penal Law.”

13. In addition to the above, numerous documents found in the “Governor’s Bill Jacket” for Chapter 179 of the Laws of New York 1974, including letters from police departments, urged the Governor to sign the bill banning possession of nunchaku into law, all on the putative basis that the nunchaku or “chuka stick” had no legitimate purpose.

14. Upon information and belief, the New York legislature acted to ban the nunchaku shortly after it became widely known due to the release of the martial-arts film *Enter the Dragon*, starring the late Bruce Lee, in 1973, followed by other martial-arts films. See Crompton, *The Complete Martial Arts*, at 63 (Exhibit 6) (“Audiences were inspired by *Enter the Dragon*’s] dynamic triumph of good over evil, and the nunchaku became all the rage for several years.”); ¶ 12(e), *supra*, and portion of Exhibit 7 referenced therein (“As a result of the recent popularity of ‘Kung Fu’ movies and shows, various circles of the state’s youth are using such weapons.”).

15. Attached hereto as **Exhibit 8** is a true copy of a document included in the “Governor’s Bill Jacket” for Chapter 179 of the Laws of New York 1974 entitled “MEMORANDUM FOR THE GOVERNOR Re: Assembly 8667-A.” The document analyzes the bill that was eventually signed into law banning the nunchaku in New York, and is signed by then-Attorney General Louis J. Lefkowitz. The memorandum concludes: “I find no legal objection to this bill.”

16. Attached hereto as **Exhibit 9** is a true copy of a document included in the “Governor’s Bill Jacket” for Chapter 179 of the Laws of New York 1974 consisting of a memorandum dated April 4, 1974, from Archibald R. Murray of the State of New York Executive Department’s Division of Criminal Justice Services. The document analyzes the bill that was eventually signed into law banning the nunchaku in New York, and comments: “Even if the chuka stick is being employed with significant frequency as a weapon in the commission of violent crimes, its inclusion in the per se category is of doubtful wisdom and questionable legality.” The memorandum goes on to note that nunchaku have uses in karate and other martial-arts training, and states: “In view of the current interest and participation in these activities by many members of the public, it appears unreasonable -- and perhaps even unconstitutional -- to prohibit those who have a legitimate reason for possessing chuka sticks from doing so.” The memorandum then proposes less objectionable alternative legislative solutions and notes that a prior version of the bill followed one such alternative course, that of including an intent element to make nunchaku possession unlawful.

17. Attached hereto as **Exhibit 10** is a true copy of a document included in the “Governor’s Bill Jacket” for Chapter 179 of the Laws of New York 1974 consisting of a cover letter dated May 3, 1974, and a “Report No. 184” dated April 29, 1974, both submitted by the New York County Lawyers’ Association in recommendation that the Governor veto Assembly Bill 8667-A, the bill that was eventually signed into law banning the nunchaku in New York. Report No. 184 noted that the bill would make “mere possession (even absent criminal intent) a criminal offense” and that “a more narrowly drawn statute can be fashioned” to achieve legislature’s desire “to prohibit the use of nunchakus in criminal conduct[.]”

18. Attached hereto as **Exhibit 11** is a true copy of an article entitled “From Civilian Tool to Military Weapon,” by Scott Wasser, as printed from the on-line edition of *Reserve and National Guard Magazine*, <http://www.reserve-nationalguard.com/general/civiliantool.html>, on July 22, 2004. The article is referenced at page 18 of the memorandum of law submitted herewith.

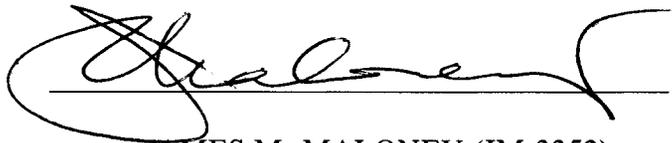
19. Attached hereto as **Exhibit 12** is a true copy of a commercial web page, as printed on July 22, 2004, from <http://www.orcuttopn.com/about.htm>, which indicates that “over 200 law enforcement agencies across the United States have field tested and adopted [a nunchaku designed for police use] as their primary control device.” The web page points out that an advantage of the nunchaku is that it is “non-lethal.” *Cf.* Verified Complaint (Exhibit 1) at ¶ 20 (“The nunchaku, unlike most other weapons, including firearms, knives, swords and all other penetrating weapons, is capable of being used in a restrained manner such that an opponent may be subdued without resorting to the use of deadly physical force.”). The nunchaku, while as capable of deadly force as any other blunt instrument, may be effectively used to subdue an opponent, even an opponent armed with a knife or other lethal weapon, without resorting to the use of deadly force, by striking at the hand holding the weapon, the knees, etc.. As such, the nunchaku, in contrast to a long gun such as a shotgun or even a knife (both of which may be legally possessed in one’s home for self-defense consistently with the laws of the State of New York), is a weapon that may be used for home defense against an intruder in a merciful manner that does not require the use or threat of deadly force. Further, a nunchaku, in contrast to a firearm or even a knife, is not likely to cause serious accidental self-injury in the hands of a child. *Cf.* Verified Complaint (Exhibit 1) at ¶¶ 20-22. Upon information and belief, nunchaku have had military application and were used by Navy SEALs during the Vietnam War. *See, e.g.,* Massad Ayoob, *The Truth About Self-Protection* 300 (1983).

20. The use of nunchaku in the martial arts is often a form of performance akin to and indeed not readily distinguishable from dance. In my own training, I have practiced many movements with the nunchaku that are of little or no utility in a combat situation but which are nonetheless visually interesting (e.g., twirling and juggling). Upon information and belief, this use of nunchaku as a tool of expression through movement is not unusual, and there is at least one website of which I am aware that includes such visual displays of nunchaku use in creative fashion (<http://www.jugglingwithatwist.com>). I have also taken photographs of myself using nunchaku and had intended to make a video displaying various techniques that I have practiced. I am prevented from engaging in this expressive conduct in the State of New York because merely possessing nunchaku in my home may subject me to criminal prosecution.

21. I respectfully disagree with the statements of Assemblyman Richard Ross, the sponsor of the bill to ban the nunchaku in New York, and of New York City's Mayor Beame (*see supra* ¶ 10 at subparagraphs (a) and (d), respectively), to the effect that the nunchaku "is designed primarily as a weapon and has no purpose other than to maim or, in some instances, kill." Based upon my knowledge and experience, including but not limited to my experience as a martial artist, Naval Reserve officer, and paramedic, I know that the nunchaku has legitimate uses not only as a physical training device for the development of strength, speed, manual dexterity, coordination, and concentration, but also as a legitimate and merciful weapon for home defense that allows one to subdue an intruder, even one armed with a knife, *without* maiming or killing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 8, 2004
Port Washington, New York

A handwritten signature in black ink, appearing to read "James M. Maloney", is written over a horizontal line. The signature is fluid and cursive.

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Plaintiff *pro se*
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(516) 767-1395

TO: Dorothy Oehler Nese, Esq.
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200 Old Country Road, Suite 460
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④ ST

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Plaintiff *pro se*
33 Bayview Avenue
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Telephone: (516) 767-1395

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JAMES M. MALONEY,

Plaintiff,

- against -

ELIOT SPITZER, in his official capacity as Attorney
General of the State of New York, and
DENIS DILLON, in his official capacity as District
Attorney of the County of Nassau, and their successors,

Defendants.

CV CIVIL COMPLAINT
03 786
Case No.

SPATI, J.
ORENSTEIN, M.J.
Date filed:

~~_____~~, 2003

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James M. Maloney, an attorney at law admitted to practice before this Honorable Court, proceeding *pro se*, as and for his complaint against the above-named defendants in their official capacity, hereby affirms under penalty of perjury as follows:

PARTIES

1. At the commencement of this action and at all times hereinafter mentioned, Plaintiff was and is a natural person, a citizen of the United States, and a resident of the State of New York, of the County of Nassau, and of this District.

2. At the commencement of this action and at all times hereinafter mentioned, Defendant ELIOT SPITZER was a natural person and was the Attorney General of the State of New York, with offices within this District located at Mineola and Hauppauge, and Defendant DENIS DILLON was a natural person and was the District Attorney of the County of Nassau (hereinafter, the "District Attorney"), with offices within this District located at Mineola.

JURISDICTION AND VENUE

3. This action arises under the Constitution of the United States. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and has the power to render declaratory judgment, the only relief sought herein, pursuant to the provisions of 28 U.S.C. § 2201.

4. Venue is properly placed in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1391(b).

GENERAL BACKGROUND

5. On or about August 24, 2000, Plaintiff possessed in his home one or more martial arts devices known as nunchaku or "chuka sticks," consisting of foot-long wooden sticks connected by a cord, the possession of which is defined as a crime by sections 265.00 *et seq.* of the Penal Law of the State of New York, as more fully appears herein.

6. On or about August 24, 2000, The People of the State of New York charged Plaintiff with one count of criminal possession of a weapon in the fourth degree, a Class A misdemeanor defined at section 265.01 of the Penal Law of the State of New York, based on Plaintiff's possession within his home of a nunchaku that was seized by Nassau County Police while Plaintiff was absent from his home.

7. The aforementioned criminal charge for possession of a nunchaku was based solely on allegations of simple possession of said nunchaku in Plaintiff's home, and was not supported by any allegations that Plaintiff had: (a) used said nunchaku in the commission of a crime; (b) carried the nunchaku in public; or (c) engaged in any other improper or prohibited conduct in connection with said nunchaku except for such simple possession within his home, nor is any such conduct an element of the defined crime.

8. The aforementioned criminal charge for possession of a nunchaku remained pending against Plaintiff for a period of approximately 29 months, until it was eventually dismissed on

or about January 28, 2003.

9. Upon information and belief, said dismissal was not based on any explicit or implicit recognition by the District Attorney that said statutes, as applied against Plaintiff and defining as a crime the simple possession of nunchaku within one's home, are or were unconstitutional.

PLAINTIFF'S BACKGROUND AND STANDING TO SUE

10. Plaintiff has been a student of the martial arts since approximately 1975, when he began studying Uechi-Ryu, an Okinawan style of karate, under the tutelage of Vincent Pillari in Fort Lee, New Jersey. Plaintiff has subsequently studied various styles of martial arts, including other Okinawan styles of karate, the Ving Tsun or "Wing Chun" style of kung fu, and aikido. Drawing from these and other influences, Plaintiff formulated his own martial arts style, known as Shafan Ha-Lavan, beginning in 1998. Shafan Ha-Lavan incorporates the use of the nunchaku as an integral and essential part of its training and technique.

11. Since 1975, Plaintiff has trained in a peaceful manner with the nunchaku, and has acquired numerous nunchaku, which are or were his personal property.

12. Plaintiff has never used a nunchaku to inflict harm or physical injury on another human being or on an animal, and has used nunchaku only for socially acceptable purposes within the context of martial arts, and to develop physical dexterity and coordination.

13. Plaintiff first became interested in the nunchaku, and began training with it in 1975, in part because the weapon is particularly effective in defense against an assailant armed with a knife or other sharp instrument, and in part because Plaintiff's father, John Maloney, had been fatally stabbed in 1964, when Plaintiff was five years old.

14. Since 1980, Plaintiff has served honorably as, and remains, a commissioned officer in the U.S. Naval Reserve. From 1986 to 1995, he served as a paramedic in New York City's 911 Emergency Medical Services system, and observed numerous instances of serious injury

or fatality due to wounds inflicted by assailants armed with knives and other sharp instruments.

15. Plaintiff has ties to and roots in the State of New York (including being licensed to practice law in all of the State's courts and in four federal courts sitting therein, consisting of two District Courts, the Court of Appeals for the Second Circuit, and the Court of International Trade) and cannot conveniently relocate, nor does he wish to do so.

16. Because Plaintiff was charged with a Class A misdemeanor for the simple possession of a nunchaku in his own home, and for more than two years lived under the constant threat of being imprisoned for up to one year in punishment therefor, Plaintiff must reasonably either: (1) forgo possession of any nunchaku within his own home; (2) move from the State; or (3) risk being the target of another prosecution for disobeying the same law.

17. Plaintiff accordingly has standing to seek declaratory judgment on the question of the constitutionality of those New York statutes that criminalize the simple possession of nunchaku within one's home, as those statutes have been applied to prosecute Plaintiff.

THE NUNCHAKU AND ITS REGULATION BY VARIOUS GOVERNMENTS

18. Upon information and belief, the nunchaku was originally an agricultural implement used for threshing rice, and was developed centuries ago for use as a weapon on the island of Okinawa after invading oppressive governments attempted to disarm the people there.

19. Upon information and belief, the nunchaku had already been used as an "arm" or weapon for the common defense, by the citizens' militias of Okinawa, well before the dates of the ratification of the United States Constitution and of the first ten amendments thereto.

20. The nunchaku, unlike most other weapons, including firearms, knives, swords and all other penetrating weapons, is capable of being used in a restrained manner such that an opponent may be subdued without resorting to the use of deadly physical force.

21. The nunchaku, in comparison with most other arms, including firearms, is

relatively safe and innocuous, such that a child or other person untrained in the weapon's proper use would be unable to inflict serious injury upon him- or herself, either accidentally or intentionally.

22. Accordingly, nunchaku kept in the home, even if not secured in a locked compartment, are far less likely to be associated with serious injury or fatality than are most other weapons or even common household objects such as kitchen knives and scissors.

23. Upon information and belief, the States of Connecticut, Massachusetts and Pennsylvania all have enacted statutes defining as a crime the possession of nunchaku in certain places, such as in a vehicle (Connecticut General Statutes § 29-38), on one's person in public areas (Massachusetts General Laws, Chapter 269, § 10), or on school grounds (Pennsylvania Statutes § 13-1317.2(g)).

24. Upon information and belief, no State in the United States, other than New York, has ever defined and prosecuted as a crime the simple possession of nunchaku within one's own home.

25. New York Penal Law § 265.00 (14) (one of two subsections so numbered) defines a "chuka stick" (i.e., nunchaku) in substantial part as follows: "any device designed primarily as a weapon, consisting of two or more lengths of a rigid material joined together by a thong, rope or chain in such a manner as to allow free movement of a portion of the device while held in the hand and capable of being rotated in such a manner as to inflict serious injury upon a person by striking . . ."

26. New York Penal Law §§ 265.01 and 265.02 define the possession of a "chuka stick" (i.e., nunchaku) as a Class A misdemeanor and as a Class D felony, respectively, and make no exception from criminal liability for the simple possession of a nunchaku or "chuka stick" within one's own home. As alleged in paragraphs 6 through 8, *supra*, the District Attorney interpreted § 265.01 as reaching such simple possession in prosecuting Plaintiff.

FIRST CAUSE OF ACTION

27. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs 1 through 26 as if fully set forth herein.

28. New York Penal Law §§ 265.00 through 265.02, to the extent that said statutes criminalize the simple possession of nunchaku within one's home, unjustly restrain and deprive Plaintiff and other residents of New York from pursuing and obtaining happiness and safety.

SECOND CAUSE OF ACTION

29. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs 1 through 28 as if fully set forth herein.

30. New York Penal Law §§ 265.00 through 265.02, to the extent that said statutes criminalize the practice and display of nunchaku-based martial arts, violate the provisions of the First Amendment of the Constitution of the United States.

THIRD CAUSE OF ACTION

31. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs 1 through 30 as if fully set forth herein.

32. New York Penal Law §§ 265.00 through 265.02, to the extent that said statutes criminalize the simple possession of nunchaku within one's home, violate the provisions of the Second Amendment of the Constitution of the United States.

FOURTH CAUSE OF ACTION

33. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs 1 through 32 as if fully set forth herein.

34. New York Penal Law §§ 265.00 through 265.02, to the extent that said statutes criminalize the simple possession of nunchaku within one's home and thereby constitute a regulatory taking of private property without just compensation, violate the provisions of the Fifth Amendment of the Constitution of the United States.

FIFTH CAUSE OF ACTION

35. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs 1 through 34 as if fully set forth herein.

36. New York Penal Law §§ 265.00 through 265.02, to the extent that said statutes, together with provisions in Article 70 of the Penal Law, permit or require the imposition of unduly harsh penalties for the simple possession of nunchaku within one's home, violate the provisions of the Eighth Amendment of the Constitution of the United States.

SIXTH CAUSE OF ACTION

37. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs 1 through 36 as if fully set forth herein.

38. New York Penal Law §§ 265.00 through 265.02, to the extent that said statutes criminalize the simple possession of nunchaku within one's home and the peaceful use of such nunchaku therein, violate the provisions of the Ninth Amendment of the Constitution of the United States.

SEVENTH CAUSE OF ACTION

39. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs 1 through 38 as if fully set forth herein.

40. New York Penal Law §§ 265.00 through 265.02, to the extent that said statutes criminalize the simple possession of nunchaku within one's home, violate the provisions of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

EIGHTH CAUSE OF ACTION

41. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs 1 through 40 as if fully set forth herein.

42. New York Penal Law §§ 265.00 through 265.02, to the extent that said statutes criminalize the simple possession of nunchaku within one's home and do so without a rational

basis for furthering any legitimate state interest, violate the provisions of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

NINTH CAUSE OF ACTION

43. Plaintiff repeats and realleges each and every allegation set forth in the foregoing paragraphs 1 through 42 as if fully set forth herein.

44. New York Penal Law §§ 265.00 through 265.02, to the extent that said statutes criminalize the simple possession of nunchaku within one's home, violate the provisions of the Privileges and Immunities Clause of the Fourteenth Amendment of the Constitution of the United States.

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) assume jurisdiction over this action; and
- (2) declare that those portions of sections 265.00 through 265.02 of the New York Penal Law that define and punish as a crime the simple possession of nunchaku within one's home are unconstitutional and of no force and effect.

Plaintiff additionally prays for such other, further, and different relief as this Court may deem just and proper.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements of fact are true and correct to the best of my knowledge.

Dated: Port Washington, New York
February 18, 2003



JAMES M. MALONEY (JM-3352)
Plaintiff *pro se*
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JAMES M. MALONEY,

Plaintiff,

-against-

ANSWER

CV 03-786

ELIOT SPITZER, in his official
capacity as Attorney General of
the State of New York, and
DENIS DILLON, in his official
capacity as District Attorney of
the County of Nassau, and their
successors,

(Spatt, J.)
(Orenstein, M.)

Defendants.

-----X

Defendant ELIOT SPITZER, in his official capacity as
Attorney General of the State of New York ("The Attorney
General"), by Assistant Attorney General DOROTHY OEHLER NESE, of
counsel, hereby interposes the following Answer to the Complaint,
respectfully alleging as follows:

1. The Attorney General denies the truth of each and
every allegation set forth in paragraphs numbered "3", "4", "28",
"30", "32", "34", "36", "38", "40", "42" and "44"; furthermore,
to the extent that the allegations contained in those paragraphs
refers to statutes, rules, laws and/or regulations, The Attorney
General respectfully refers to the Court all questions and
interpretations of the relevant statutes, rules, laws and/or
regulations cited therein.

2. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs numbered "1", "10", "11", "12", "13", "14", "15", "17", "18", "19", "20", "21", "22" and "24".

3. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs numbered "5", "23", and "25"; furthermore, to the extent that the allegations contained in those paragraphs refer to statutes, rules, laws and/or regulations, The Attorney General respectfully refers to the Court all questions and interpretations of the relevant statutes, rules, laws and/or regulations cited therein.

4. The Attorney General denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs numbered "6", "7", "8", "9", "16" and "26"; furthermore, to the extent that the allegations contained in those paragraphs refer to statutes, rules, laws and/or regulations, The Attorney General respectfully refers to the Court all questions and interpretations of the relevant statutes, rules, laws and/or regulations cited therein; moreover, to the extent that the allegations contained in those paragraphs purport to characterize the contents of documents, The

Attorney General denies such characterizations as an oversimplification of the contents of such documents and respectfully refers the Court to the documents themselves, as the best evidence of their content.

5. The Attorney General repeats, reiterates and realleges each and every response to the allegations contained in the paragraphs of the complaint inferentially referred to in paragraphs numbered "27", "29", "31", "33", "35", "37", "39", "41" and "43", as if more fully set forth herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

17. The complaint fails to state any colorable constitutional or statutory claims nor any claims upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

24. The Attorney General has not violated any rights, privileges or immunities secured to Plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has The Attorney General violated any act of Congress providing for the protection of civil rights. No statement, regulation or policy officially adopted or promulgated by The Attorney General or otherwise ratified by The Attorney General authorized a deprivation of Plaintiff's constitutional rights.

25. Any actions of The Attorney General complained of herein were in all respects reasonable, proper, lawful, constitutional and an appropriate exercise of discretion.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

32. If Plaintiff sustained any damages or injuries, such damages or injuries were caused, in whole or in part, by the Plaintiff, or by others acting on his behalf or at his behest.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

33. If, in fact, Plaintiff has been damaged, said damages were caused in whole or in part by his failure to take action to mitigate such damages, or by the failure of others acting on his behalf or at his behest.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

36. All or many of Plaintiff's claims are barred by the statute of limitations.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

37. Plaintiff has failed to allege facts sufficient to entitle him to declaratory relief.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

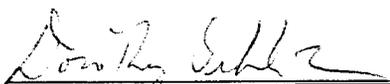
11. This Court does not have jurisdiction over the subject matter of the within action.

WHEREFORE, The Attorney General respectfully requests that judgment be entered dismissing the complaint with costs,

disbursements and an award of reasonable attorneys fees in favor of The Attorney General and against Plaintiff, and granting such other and further relief as this Court may deem just and proper.

Dated: Mineola, New York
May 21, 2003

ELIOT SPITZER
Attorney General of
the State of New York

By:  (DON 9327)
DOROTHY OEHLER NESE
Assistant Attorney General
Of Counsel
200 Old Country Road, Suite 460
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(516) 248-3302

In re DAVID L.

I have found one California case in which simple possession in the home was prosecuted. The only information I have at present is from an unreported opinion of the Court of Appeal, Sixth District, California, dated Oct. 15, 2002, which has the Westlaw citation 2002 WL 31315856. The case involved a juvenile and is entitled, *In re DAVID L.* Some of its holdings may have been overturned on appeal. According to the unreported opinion, the facts are as follows: on February 2, 2001, the San Jose Police Department received a call regarding a threat at the home of a juvenile named David. In response, two police officers went to David's house, spoke to him and his sister, and conducted a search. In David's bedroom the officers found "several BB guns and knives, nunchaku, a wooden stick with the pointed ends of 16 nails protruding from it," and other items that may have been weapons. The nunchaku was found on David's bed. The California Superior Court, Santa Cruz County, found that David had illegally possessed a nunchaku. He appealed. The Court of Appeal, Elia, J., held that sufficient evidence supported the finding that the juvenile had illegally possessed nunchaku. The California Penal Code, section 12020, states: "(a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison: (1) Manufactures or ... possesses any ... nunchaku." There is an exception. Section 12020(b)(3) states: "Subdivision (a) does not apply to any of the following: ... The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense." The Appeals Court refused to find this exception applicable in the home, writing: "Under the clear language of the statute the exception only applies to the possession of nunchaku 'on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.' Since appellant possessed the nunchaku at his home we fail to see how this exception applies to appellant." As noted above, there may be subsequent history on this case (i.e., review and possible reversal by a higher appellate court). In any event, I stand corrected: New York is not the only state that has ever defined and prosecuted simple possession of nunchaku in the home as a crime. California also has done so, and, like New York, threatens to imprison a person for one year for such possession.

James M. Maloney

July 25, 2003

516-767-1326

**OFFICE OF NEW YORK STATE
ATTORNEY GENERAL
ELIOT SPITZER**

PRESS OFFICE

PHONE: 518-473-5525

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TO: Jim Mahoney

FROM: Marc Violette

NUMBER OF PAGES TO FOLLOW: 2

COMMENTS

As requested.

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New York, NY 10271 Albany, NY 12224

News from Attorney General

Eliot Spitzer

Contact: Marc Violette
518-473-5525

For immediate release:
October 17, 2002

N.Y. SETTLES CASE WITH GEORGIA ON-LINE WEAPONS RETAILER

Action Bars Shipments of Stun Guns, Black Jacks and Kung Fu Throwing Stars

State Attorney General Eliot Spitzer today announced that a Georgia mail order company has agreed to stop sales and shipments of illegal weapons to New York consumers. In addition, the company will pay New York \$200,000 in penalties and costs for its violation of state laws prohibiting the sale of such weapons.

Illegal weapons sold by the company to customers in New York include electronic stun guns, gravity knives, cane swords, blackjacks, chuka sticks, slingshots and Kung Fu throwing stars. More than 4,500 such weapons were sold to New York customers over the past two years.

New York consumers who purchased illegal weapons from the company will be notified that they must turn any such weapons in to law enforcement agencies.

Spitzer made the announcement as he convened the annual state conference of Neighborhood Watch organizations and law enforcement officials at the state Capitol in Albany. Neighborhood Watch groups are dedicated to improving public safety in their communities.

"New Yorkers are properly concerned about their safety," said Spitzer. "Weapons like these, some of them easily concealed, others disguised as harmless objects, have no place on our streets or in our homes. Today's action should serve as fair notice to any other companies selling illegal weapons to New Yorkers to immediately bring their business practices in line with state law."

Today's announcement affects the sale and shipment of weapons from Bud-K Worldwide, Inc. (Bud-K), a martial arts weapons supplier with a retail store, warehouse, mail order and website sales operation in Moultrie, Georgia. The company's website is www.budkww.com

Between September 1999 and May 2002, Bud-K sold approximately \$1 million-worth of products to customers in New York through its mail order and website operations. Over \$100,000 of that total consisted of illegal weapons.

-more-

TOTAL P.03

-2-

Bud-K did not sell firearms – such as handguns and rifles – to customers in New York.

Under terms of the settlement, Bud-K will:

- Publish prominent notices in its catalog and on its website specifying which products are illegal to possess in New York;
- Establish procedures to prevent it from selling and shipping illegal weapons to New York customers;
- Provide the Attorney General's office by Oct. 31, 2002 with a list of New York customers who purchased illegal weapons from the company;
- Deliver a written notice by Nov. 30, 2002 to all its New York customers who purchased illegal weapons from the company advising them to surrender those illegal weapons to law enforcement agencies; and,
- Pay New York \$198,000 in penalties and \$2,000 for the costs of the investigation.

The Attorney General's office began an investigation into Bud-K in October 2001 in response to a consumer who walked into the Attorney General's Rochester regional office with the company's catalog and asked if the weapons offered for sale were legal. A review of the catalog revealed that many of the products offered for sale by Bud-K were classified as illegal weapons in New York.

In April 2000, the Attorney General's office reached a similar resolution with Family Defense Products of Ocala, Florida for selling and shipping illegal weapons to customers in New York.

The Bud-K investigation was led by Assistant Attorney General Benjamin Bruce of the Attorney General's Rochester Regional Office with the assistance of Investigators Christopher Holland and Gordon Stewart.

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Social Praxis
Volume 2 (1974), p. 135

ORIENTAL PHILOSOPHY, MARTIAL ARTS
AND CLASS STRUGGLE

Stephen Halbrook

Tuskegee Institute

Summary

Chinese wu shu or kung-fu, Okinawan karate, Japanese bujutsu and similar Oriental martial arts were historically related to traditional philosophical theories and based on class struggles. While the ruling elites monopolized the developed military technology along with the means of production, the exploited classes were forced to devise highly technical though technologically undeveloped methods of self-defense involving use of the bare hands and feet or primitive agricultural implements. Anti-imperialist and anti-landlord movements of peasants as well as the doctrine of physical culture associated with Taoist and Ch'an (or Zen) sages were the leading motive forces which prompted the evolution of the most sophisticated empty-handed martial arts of the Orient. While utilized for politico-military aims by both revolutionaries and reactionaries, martial arts such as karate were more important for the former because of their necessary reliance on unconventional warfare. Finally, a common element of philosophies as diverse in some respects as Maoism and Bushido held that following the martial tao becomes an end in itself as a method of unifying the mind and body.

Just as philosophies and ideologies are mental phenomena rooted in concrete class interests, skill (or lack of skill) in martial arts may be explained causally as physical phenomena inexorably related to the class origins of the practitioners concerned. While every social order is characterized by a specific martial culture which is deeply influenced by its level of technological development, China, Okinawa, Japan, and

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other Oriental societies have been historically unique in terms of their unification of philosophy and martial praxis, both of which have originated and developed under the auspices of classes struggling for economic and political power. Some of these classes may be defined in terms of their direct relation to the means of production, namely, the landlords and peasantry, while other classes, particularly soldiers, brigands and sages, were neither owners of means of production nor workers and hence exhibited divided class loyalties.

If the definition of the Oriental martial arts is restricted to those training methods and fighting styles which employed empty-hand techniques or techniques with the sword, staff, sickle and other weapons in general use before the introduction of industrial technology and the widespread use of firearms, then the problem remains to distinguish the individual national arts in terms of their class functions and with reference to the military technology available to each class. This explains why it would be an oversimplification to refer simply to the Chinese *wu shu* (martial arts), for historically different Chinese social classes have evolved different *wu shu*. The soldier class, which in times of stability acted as the agent of repression of the landlord dictatorship, adopted martial arts appropriate to the relatively developed iron weaponry which the state monopolized, namely, the finest swords, spears, and bows and arrows. The peasants developed martial arts based on the empty hand as well as those appropriate to tools which could be adapted to usage in combat but which were normally employed to till the soil, though in times of rebellion they captured strictly military implements from their class enemies. The Ch'an and Taoist sages associated with the Shaolin Monastery are said to have restricted their martial training primarily to empty-hand and staff techniques for ethical reasons, and this restriction prompted a highly technical development of weaponless forms. It is likely that the brigands, lumpen elements from all the above classes, combined a varied array of warrior, peasant and monk styles and weapons.

Philosophy, the martial arts and class struggle are closely integrated in the dialectical transformations characteristic of each epoch of Chinese history. At an early stage the state monopolized the iron foundries and arsenals, enabling it simultaneously to monopolize developed weaponry and thereby military, political and economic power. Peasant rebellions and anti-imperialist struggles periodically threatened and sometimes destroyed the state monopoly of violence. Systems of hand-

to-hand combat were developed by sages and peasants who rejected technologically developed weapons as contrary to *Tao* or as impossible to obtain for material reasons. While the function of the more conservative philosophies (particularly Confucianism) was to provide ideological support for the ruling class, Ch'an and Taoist sages, who practiced *wu shu* as a form of active meditation to complement the passive seated meditation of *ts'och'an*, formed class alliances with revolutionary peasants, teaching the oppressed skills in weaponless combat. It is said that Bodai Daruma, the twenty-eighth Buddhist patriarch in India and the first patriarch of the Ch'an school in China, and his disciples created the first patriarch of the Ch'an school in China, and his disciples created *kung-fu*, but this assertion might well contain myth. The possibility exists that some of the specific styles of *kung-fu* were formed by peasant warriors or bandits and that the myth was created to lend an air of the mysterious to the styles.

Taoism was closely related to the development of Chinese martial philosophies and arts. In addition to deploring the oppression of the exploited by those in authority, Lao Tzu taught that the weak overcome the strong, a notion which was applied both to fighting techniques and to the class struggles of the peasants against the landlords. In fact, the application by Lao Tzu of quietism to military strategy parallels elements of modern guerrilla strategy in its stress on fluidity, spontaneity, surprise and perseverance. In a later development, the concept of *T'ai-chi* (Great Ultimate) was applied by the Confucian-Taoist San-Feng to form a martial exercise called *T'ai-chi ch'üan*. *Ch'üan* referred to concentration of both mind and fist. The exercises of this system are practiced by masses of Chinese today.

The soft *T'ai-chi* style represented the ultimate of the Internal System of *kung-fu*, while the harder styles forming the External System were more closely associated with the Ch'an ascetics, who adapted *kung-fu* to the needs of peasant revolutionaries. *Shaolin-szu kung-fu* was employed for self-defense by peasant secret societies which revolted against the Yuan, Ming, and Ch'ing dynasties, which employed swords and pikes. While the underground peasant societies had technicians who instructed the oppressed in the use of the spear, sword and staff, the insurgents were especially forced to develop a technologically undeveloped though technically complex mode of combat in the class struggle, i. e., techniques with the hands and feet as the primary weapons.

Kung-fu was important in the T'aping Revolt and particularly in

the Boxer Rebellion, which was led by the *I-Ho-Ch'üan* (Righteous and Harmonious Fists). After resistance by anti-imperialist martial forces, Germany gained the aid of the United States, England and France to crush the Boxer guerrillas, who to their detriment took some of the subjectivist notions of Taoism to promise immunity from bullets. The Boxers did not realize that they could be shot down in the same manner as the tiger, ape, leopard, snake and praying mantis, the movements of which they emulated.

The modern and successful expression of Chinese peasant and anti-imperialist philosophy and praxis is related to the thought of Mao Tse-tung, and indeed contemporary Maoists see *wu shu* as a great cultural heritage evolved in the course of productive labor, self-defence and physical training. Today the broad masses of China practice techniques and forms with the empty hand, sword, spear and stick. Chinese women continue to participate actively in the martial arts. *Wing Chun kung-fu* was founded by Yim Wing Chun, a female ascetic associated with the *Shaolin-szu*. Not only were traditional martial arts used in all stages of the Chinese revolution, it is known that Mao was aware of martial arts philosophies before he became aware of Western socialism. An ardent physical culturist, Mao at a young age administered to himself the training which helped him endure hardships like the Long March.

Mao's first important writing, 'A study of physical culture', published in *Hsin ch'ing-nien* in 1917, revealed a comprehensive of theory and praxis based on traditional Chinese martial and dialectical thought. Mao listed swordplay, archery, bushido, judo and similar martial arts as methods of physical education which were necessary to develop virtue and knowledge. Physiologically, purely conceptualist methods of education ruin the body, while education in both the literary and martial arts promotes morality and a strong body. With a principal aim of anti-imperialist military heroism and the development of courage, dauntlessness and perseverance, physical education enhances knowledge, harmonizes the sentiments and strengthens the will. The dialectical unity of the mind and body follows from the reliance of reflection on the brain and of empirical knowledge on the five senses. Furthermore, physical education is a requisite for bodily obedience to mental decisions. Realization of social progress, in particular the defeat of imperialism, demands not only correct ideas but also physical strength. This is why Mao concluded with the sages that human development meant civilizing the mind while making the body savage.

Karate-jutsu and *karate-do* (the Way of the empty hand) developed in Okinawa as the essence of a martial consciousness and physical culture which could be described as a revolutionary peasant theory and praxis. *Kara* or empty referred not only to the weaponless hand but also to the empty mind, a Zen concept meaning a mind not only empty of evil but also empty as such. A mind devoid of all thought is said to be in a Zen state of *mu* (nothingness). Modern philosophers of karate tend to see Zen and karate as equivalent in the sense that Zen methods are necessary for mastery of karate and that karate itself is a Zen discipline. Despite twentieth-century emphasis on Zen in karate, karate itself developed due to more mundane purposes as a mode of thought and action of a peasantry beset by landlord and imperialist exploitation.

Private ownership of arms, including swords and other items of personal equipment, was outlawed in Okinawa in the fifteenth century by King Hashi, who established his control over the Ryukyu Islands. The king's agents stored all weapons except for their own in a government center. Monopolization of the means of violence better enabled the landlord class to monopolize the means of production, and the only weapons available to the peasants in this class war were their empty hands and traditional farm implements. Karate developed into its own after the conquest of Okinawa in the early seventeenth century by the Satsuma clan of Kyushu, which again banned all weapons but its own and brutally suppressed the population. A people's revolutionary movement organized clandestinely, and its activities centered around the development of karate for peasant self-defence against the imperial dictatorship. While technologically primitive, the lethal art was technically complex, and underground training of the oppressed continued for centuries. Karate was not demonstrated publicly in Okinawa until 1903.

Karate was a natural response of disarmed and hence exploited people against the superior weapons technology of landlord and colonial interests, and it is hardly surprising that similar philosophies of combat were spontaneously developed by other peoples oppressed or enslaved by elitist and colonialist dictatorships. For instance, *pentjak-silat* was developed by the Indonesian national liberation movement against Dutch colonialism, and *capoeira* was developed by slave rebels in Brazil. Still, exploitation alone may not be necessary to develop a martial culture based on technologically undeveloped means, for lack of modern technology is an important variable which may be added to other vari-

ables, such as a cultural mystique of violence or the use of hallucinogenic drugs to induce psychic frenzy (e.g., the Yunomamö or the Yagui), to encourage a martial culture even where no direct exploitation exists.

The essence of karate may be found in the following activities: *dojo* rituals and *zazen*; individual techniques, including *tsuki* (punches), *uchi* (strikes), *uke* (blocks), *geri* (kicks), and *dachi* (stances); breathing and vocal techniques, including *nogare* and *kiai*; *kata* or training in prearranged form; *kumite* or sparring; and *tameshi-wari* or trial of strength, which includes application of active Zen meditation to break hard objects. The Okinawan peasants also mastered *kobu-jutsu*, including the *bo* (staff), *sai* (trident truncheon), *kama* (sickle), and *nunchaku* (flail), harmless-looking farm implements which the peasants quickly converted into means of self-defense against the technologically sophisticated weaponry of the ruling class.

Technology, class war and the martial arts are related in the sense that imperialists, militarists and other reactionary social elements might well have employed empty-handed techniques in specific instances, yet as the major appropriators of the economic surplus, which was made possible by their monopoly of the means of production and of official or state violence, ruling classes generally employ technologically advanced weaponry rather than karate or other primitive and personalized methods of force. Similarly, the low subsistence level of the oppressed classes and nations prevented their employment of any but the least materially costly methods of self-defense and resistance. Not only were exploited serfs prevented from obtaining expensive weaponry due to their poverty, but also the legal prohibition of ownership of arms by oppressed (and hence potentially rebellious) peasants served to disarm the population of even the most primitive implements of combat. The vanguard of the revolutionary masses was forced to organize clandestinely and to develop highly technical modes of empty-handed training. While the technologically advanced warfare waged by the ruling class often triumphed against the *karateka*, the existence of the minimal standard of the empty hand served to alleviate some portion of the repressive measures executed by the reactionaries.

Karate has acquired special significance in modern science of war and in contemporary political struggles in the West. Karate in the broadest physical sense has been claimed as or shown to be a method of combat of organizations representing all conceivable points on the

North American political spectrum, including the police, the armed forces of the state, the Black Muslims, the Jewish Defense League, the Minute Men, the Black Panther Party and the Weathermen. Internationally, both reactionaries and revolutionaries aspire to the employment of karate or *taekwon* in warfare, from the U.S. Special Forces and the South Korean police to the Viet Cong and the guerrillas of Mexico. This phenomenon is unsurprising with the consideration that hand-to-hand combat is older than the bow and arrow, not to mention the gun or nuclear warhead, and thus that karate in the broadest sense is the least technologically, though not necessarily the least technically, developed instrument of physical attack or defense, whether employed by police, criminals, political groups or private citizens. If war is the highest form of politics, as Clausewitz maintained, and if hand-to-hand combat is the lowest form of war, then in its broadest possible sense karate is the lowest form of the highest form of politics. Nonetheless, karate may be more specifically defined in the classical sense of the system of exercises for the mind and body which developed from the Chinese Chan art of *kung-fu*, the outlook and mode of class war of the Okinawan peasantry, and the philosophy and praxis of the Japanese *samurai*.

In Japan the fusion of philosophy and martial culture was exemplified in *Bushido* (the Way of the Warrior). Japanese *jujutsu*, *judo*, *kendo* and *arjido* are parts of *budo* (martial ways) or *bujutsu* (martial arts), which were developments of *Bushido*. The *bushi* (aristocratic warriors) studied philosophy to form character and to analyze military and political problems. Even the *samurai* (guards from all social classes) were philosophers, for their swords were not to kill but to promote peace and justice. Class war within the warrior class was intensified when the *nobushi* (lumpen field warriors) and *ji-samurai* (conscripted peasants) waged insurrections and won battles with firearms instead of swords, threatening the *bushi* monopoly of violence. Though less religious and less gallant than European Chivalry, *Bushido* stressed feudal values like obedience, loyalty and self-sacrifice as well as potentially revolutionary values such as courage, justice and self-reliance.

The philosophical origins of *Bushido* may be found in Shintoism, Confucianism and Zen Buddhism. The animism of Shintoism was expressed politically in its stress on patriotism and militarism in the worship of swords. The conservatism of Confucianism was reflected in the doctrine of the ethical bonds of master and servant. A more progressive

source of *Bushido* was Zen, which was selected for its emphasis on mental training and resolute action. At times the *samurai* viewed Shintoism as too primitive, Confucianism as too formal and traditional Buddhism as too sentimental. As in China, in Japan the founders and organizers of Zen philosophies and sects were often accomplished martial artists. The martial art was the physical expression of Zen philosophy.

The epistemology of the *bushi* was expressed in his saying that to know is to act. This abolition of conceptualist dualism rejects formalism and forgets the past, at times acting in a destructive and revolutionary manner. *Satori* was achieved through technical skill and through spiritual alertness following concentration of physical and psychic powers in the *Dojo* (place of enlightenment). Training in a martial art as a method of knowing Zen philosophy was superior to purely intellectual studies, for the conceptual approach allowed time for idle thought. In battle the Zen *bushi* transcended the duality of subject and object through immediate and unconscious action and reaction. Fluidity, mobility and spontaneity characterized the movements of the advanced martial artist, whose concentration on breathing removed environmental disharmonies. The mind was said to achieve the state of *shūnyatā* or emptiness, which meant that the mind was devoid of all thoughts which might inhibit action. The mind of the warrior was like a serene moon reflected in a flowing river. The empty mind meant a nervous system free of conflict between the cerebral cortex and the brainstem, allowing information to travel through the brain and central nervous system with maximum accuracy and speed.

Breaking through the ordinary level of consciousness, the martial artist achieved a state of *muṣtin* (unconsciousness) which abolished all dualities of self and weapon, subject and object, actor and action, good and evil and thought and deed. The level of spontaneity of one with empty mind depended on his technical skill, i.e., his mastery of biological and mechanical laws of motion and the development of his kinesthetic sense. With an empty mind, the body blended into the universe, especially the immediate environment, and the ground, opponent and other surroundings were dealt with unconsciously.

Purging the mind of all thoughts, emotions and interferences implied a characteristic Buddhist conception of death, for the empty mind was indifferent to life and death. The Zen philosophy of death also tended to encourage *ai-uchi* (mutual striking down) and *seppuku* or *hara-ki*

(cutting the stomach for purposes of honorable suicide). One was supposed to strike when his enemy showed an opening, which occurred when the opponent's mind stopped at a point and lost concentration. Achieving *fudo-shin* (immovable mind) in the center of chaos and movement, the Zen *bushi* was thought to have transcended all dualities, including thought and action, life and death, and being and non-being.

It is characteristic of the Oriental martial arts that certain metaphysical concepts were directly applied to methods of training and fighting techniques. Despite the ideological and mystical elements of metaphysics in general and of Zen in particular, the modes of concentration of Zen in the broadest sense may be beneficially applied for progress in the martial arts by members of any social class or political tendency. As Daisetz Suzuki once suggested, Zen training in swordplay and its practical application may be adopted by the fascist, communist, anarchist or democrat.

Résumé

Wu shu ou *kung-fu* chinois, *karate* d'Okinawa, *bujiutsu* japonais et autres arts martiaux d'Extrême-Orient du même type furent historiquement reliés à des théories philosophiques traditionnelles et insérés dans les luttes de classe. Tandis que les élites au pouvoir monopolisaient la technologie militaire développée en même temps que les moyens de production, les classes exploitées étaient forcées d'inventer des méthodes d'auto-défense d'une haute technicité quoique d'une technologie faiblement développée, nécessitant l'usage des mains et des pieds nus ou d'ustensiles agricoles primitifs. Les mouvements paysans contre l'impérialisme et les propriétaires fonciers aussi bien que la doctrine de culture physique associée à la sagesse taoïste et Ch'an (Zen) furent les forces motrices principales qui suscitérent l'évolution des arts martiaux à mains nues les plus sophistiqués de l'Orient. Bien qu'utilisés à des fins politico-militaires aussi bien par les révolutionnaires que par les réactionnaires, des arts martiaux comme le *karate* furent plus importants pour les premiers en raison de leur confiance nécessaire en des méthodes de guerre non-conventionnelles. Enfin, des philosophies aussi diverses à certains égards que le Maoïsme et le Bushido ont pour élément commun de considérer que l'exercice du *tao* martial devient une fin en soi comme méthode d'unification de l'esprit et du corps.

RYUKYU KOBUJUTSU



The weapons of Okinawa comprise a formidable arsenal. Instead of beating their swords into ploughshares, the Okinawans, conquered and disarmed by the Japanese in 1609, turned their farming implements into weapons. The best known of these is the nunchaku, made famous by the ubiquitous Bruce Lee in his film *Enter the Dragon*. It consists of two octagonal pieces of wood connected by a doubled cord, and is said to have been developed from a rice or corn flail. The most distinguishing feature of such an implement is that it can deliver a powerful blow without its impact being felt by the user, since the cord cuts off the force from his hand without diminishing it.

Also well known in the West today, to all those who watch American police movies, is the tonfa. This came from the handle of the millstone used for husking rice. It is a heavy piece of wood, a little longer than a man's forearm, with a handle at one end at right angles to the main section. Police forces around the world, but particularly in the United States, have adopted a modified version of this weapon and have their own 'peace keeping' methods of using it. It is worn in a special holster at the hip.

The sai is a kind of fork-dagger. The handle and blade are made of one piece of metal, the blade being round or octagonal in section. Two distinctive prongs curve outwards from either side of the

blade. The kama is a sickle with a long, straight handle and curved blade. In addition to these rural adaptations there is the paddle, the steel knuckle-duster, the 2-metre staff, the short-handled spear reminiscent of the Zulu assegai and the beautiful tortoiseshell shield.

The conquest of Okinawa was carried out by the Satsuma clan of southern Japan. Defeated in the great civil war of 1600 by the Tokugawa clan, they were sent to Okinawa to keep them out of trouble at home, where they endlessly plotted to overthrow the government. The inhabitants of the 1,125-kilometre island chain which is Okinawa, south of Japan and east of China, had refused to supply the Japanese with goods needed for their unsuccessful invasion of China in 1592, and the punishment was long overdue. As soon as Okinawa had been conquered, the Japanese leader Iehisa Shimazu decreed that the possession or carrying of weapons was forbidden. The reaction of the Okinawans was to develop fighting methods which did not involve the use of weapons. Imported at different times from China and Southeast Asia, these methods evolved into several indigenous systems known collectively as 'te' or

hand, the forerunner of kara-te, meaning 'empty hand'. The Okinawans also began to train with the improvised weapons that they made from farming implements. Again they were influenced at first by Chinese and Southeast Asian 'models', but with characteristic resourcefulness soon adapted these models to their own requirements and temperament. Over the succeeding centuries the use of these weapons and of 'te' was improved and modified, different schools emerged, and as interest in karate grew in the West, so did the desire to become proficient in the art of the Okinawan weapons.

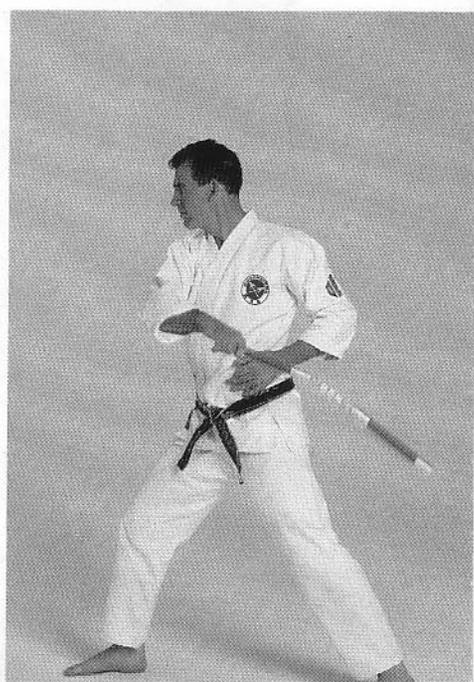
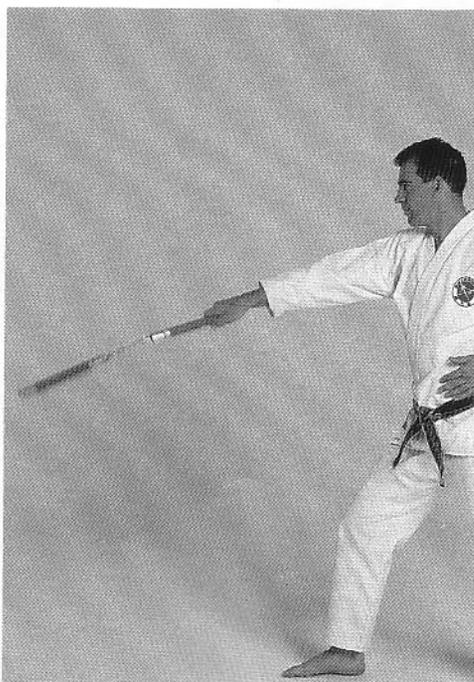
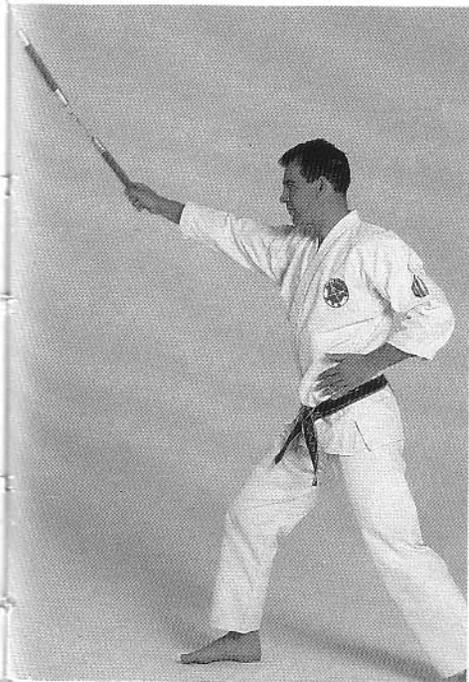
NUNCHAKU

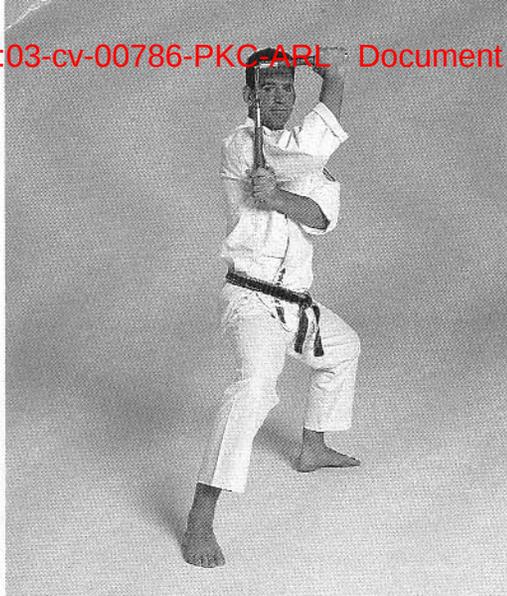
Only one man stood between the luckless prisoners and death – Bruce Lee. Armed with his specially made nunchaku, cooing like a malevolent banshee, seeing everything but focusing on nothing, the hero of *Enter the Dragon* zapped the villains with equally dispassionate blows, sometimes felling two of them at a time. Audiences were inspired by this dynamic triumph of good over evil, and the nunchaku became all the rage for several years. Some American states and several European countries banned its manufacture, sale and use, overlooking the fact that the more you try to suppress something the more attractive it becomes. Western experts in nunchaku use bemoaned the fact that the weapon was acquiring a bad name with the police and juvenile courts.

Today, the hue and cry and the craze for nunchaku have died down. The essential weapon, without the sensationalism, has taken its place once more solely as part of the Ryukyu kobujutsu armoury. Ryukyu, meaning 'a rope in the offspring', is the native name for Okinawa, while kobujutsu or kobudo refers to weapons used for combat, 'ko'

Opposite page: a student demonstrates a typical posture using the Okinawan paddle or eiku. This little-known weapon has given rise to few techniques but is very effective.

Below: the power and momentum of the nunchaku or rice flail is clearly shown as the student swings the weapon overhead, then round in a circle, finally catching it again. It is now under control and ready to be used once more.





meaning ancient and 'bu' meaning war. The distinction between 'do' and 'jutsu' forms is explained in the section on aikido (see page 24). As in *escrima* (see page 150), the weapon use in kobujutsu parallels the empty-hand techniques, and several of the Okinawan weapons have equivalents elsewhere. For example, there are numerous Chinese versions of the nunchaku, one of which is the three-sectional staff used in *wushu* of China (see page 132).

Within the Okinawan martial arts systems different versions exist, one of the most popular being the Ryukyu kobujutsu of Shinken Taira, illustrated here. Earlier this century Shinken Taira took his system to Japan and bequeathed it to the present grandmaster, Inoue Motokatsu. One of the chief European exponents of this system is Julian Mead, resident in England.

According to Inoue, Shinken Taira was 'probably the greatest weapons genius of his time'. A man of unbelievable strength and will, at the age of 73 he would regularly travel from Okinawa to Japan carrying 20 long staffs, ten *sai* and a rucksack, for the sake of transmitting his art. Inoue himself is scarcely less formidable. There is hardly any Japanese martial art which he has not studied to a high degree of proficiency. Coming from a noble Japanese family, his first teacher was the fourteenth grandmaster of the Koga Ninja Ryu, Seiko Fujita, who also acted as bodyguard to Inoue's father. Amid the wealth of martial arts that he studied, the heir of Shinken Taira has preserved the kobujutsu system intact.

The nunchaku, sometimes tipped with metal, is primarily a striking weapon. The spectacular movements of Bruce Lee and the modified form of modern nunchaku combat have no place in what is principally a down-to-earth, practical system of fighting. The nunchaku can be used at long, medium and close range, and is sometimes swung in a figure of eight when advancing to attack. It can also be used for blocking and trapping the hands of an adversary. As it is a jutsu form, it cannot be used in any realistically simulated combat competition

as the risks are too great.

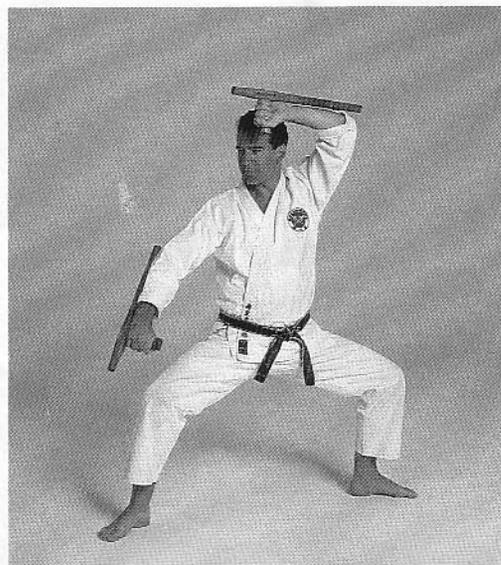
One of the biggest difficulties for the faint-hearted in learning this weapon's use is that the beginner usually hits himself several times before acquiring proficiency. To soften this process one can buy various foam-covered and even hollow plastic nunchaku. As one of the dictums of kobujutsu is 'learn from your bruises', it would be better to keep such items away from the training dojo as they would probably be frowned on by most sensei or teachers.

In the Ryukyu kobujutsu grading syllabus the nunchaku is not introduced until the fourth grade or second kyu level. (Kyu refers to beginner grades leading up to the black belt standard. First kyu is the highest beginners grade, and fifth kyu the lowest.) As with all Japanese bujutsu styles, the weapons of Okinawa have kata or pre-arranged sequences of movement which the student learns progressively.

TONFA

The millstone used for grinding on all Okinawan farms had a handle inserted into it which, when removed from the millstone, became a dangerous weapon. This tonfa or tui-fa is generally used in pairs – one in each hand – for simultaneous attack with both weapons or simultaneous defence and attack. The tonfa has not gained anything like the popularity of the nunchaku, but herein lies a distinction between the enthusiast and the dedicated student. The latter is not swept up by the excitement surrounding such personalities as Bruce Lee or one of his successors in the 1980s, Jackie Chan, but is interested in studying and preserving the complete system. To that end he endeavours to give as much time to one weapon as he does to another, even though he may have a marked preference.

The tonfa can be used in training against the other weapons of the system as well as against the sword, jo or staff and so forth. It is customary for kobujutsu students to study karate at the same time,



APR 3 REC'D



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

RICHARD C. ROSS
ASSEMBLYMAN 88TH DISTRICT
10 FISKE PLACE
MOUNT VERNON, NEW YORK 10550
(914) 666-6600

April 2, 1974

Hon. Michael Whiteman
Executive Chambers
Albany, New York: 12224

Re: A-8667-A

Dear Mr. Whiteman:

This will acknowledge receipt of your request for my comments and recommendations concerning my abovenumbered bill now before the Governor for executive action.

Currently, the law prohibits the possession of a billy, blackjack, bludgeon, metal knuckles, sandbag, sandclub or slungshot. Any person who has in his possession one of these devices is guilty of a class A misdemeanor and is guilty of a class D felony if he has previously been convicted of any crime. The law does not specifically prohibit the possession of a device known as a "chuka stick" which in the past few years has been appearing throughout communities within the State. The chuka stick is an instrument that may be purchased or easily assembled from two pieces of wood and a piece of thong, cord or chain. With a minimum amount of practice, this instrument may be effectively used as a garrote, bludgeon, thrusting or striking device. The chuka stick is designed primarily as a weapon and has no purpose other than to maim or, in some instances, kill. Unfortunately, there has been disagreement among prosecutors as to the criminal liability attendant to the possession of the chuka stick. The proposed legislation to control the possession and use, as well as the manufacture and transport of chuka sticks would insure uniformity of prosecution which currently varies from county to county within the state of New York.

The said bill was amended to conform to the needs and demands of various municipalities and organizations seeking to include chuka sticks within the definition of dangerous weapons. It has the support of the city of New York and all police associations throughout the state.

Favorable action by the Governor is respectfully requested.

Very truly yours,

Richard C. Ross

Chap. 179

A 8667

MAY 10 RECD



DISTRICT ATTORNEY
OF THE
COUNTY OF NEW YORK
155 LEONARD STREET
NEW YORK, N. Y. 10013
RECTOR 2-7300

RICHARD H. KUH
District Attorney

ADDRESS ANSWER TO THE DISTRICT ATTORNEY.
ATTENTION OF THE CLERK OF THIS LETTER AND
REFER TO NUMBER _____

May 7, 1974

Honorable Michael Whiteman
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: Assembly No. 8667
AN ACT to amend the penal law, in relation
to chuka sticks

Dear Mr. Whiteman:

This is in reply to your request for comment and recommendation concerning the above legislation.

APPROVAL IS RECOMMENDED. This office has taken the position that chuka sticks are not presently per se weapons under §265.05 of the Penal Law. Assembly Bill No. 8667 would place chuka sticks in the category of per se weapons.

Chuka sticks are appropriately placed in that category because there is no known use for chuka sticks other than as a weapon. Secondly, the weapon can easily be lethal.

Sincerely,

David S. Morgan

David S. Morgan
First Assistant District Attorney

A. 8667-A



APR 4 RECD

THE DISTRICT ATTORNEY OF DUTCHESS COUNTY
COURTHOUSE
POUGHKEEPSIE, N. Y. 12601
(914) 485-9880

ALBERT M. ROSENBLATT
DISTRICT ATTORNEY

April 1, 1974

Hon. Michael Whiteman
Executive Chamber
State Capitol
Albany, New York 12224

Gentlemen:

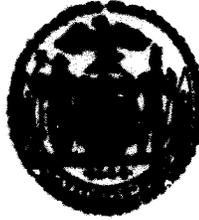
I have been asked by the Bar Association to comment on Assembly 8667-A, a bill which amends Penal Law Section 265.00 to define a "chuka stick". It appears that weapons of this kind are used in the same criminal manner and with a frequency that now approximates other per se contraband weapons set forth in Subdivision 3 of Penal Law Section 265.05. There is no conceivable innocent use for this device and, accordingly, there can be no possible invasion of anyone's right to use it innocently. For that reason I feel that the legislation is salutary and recommend its approval.

Very truly yours,

ALBERT M. ROSENBLATT
District Attorney

AMR/tp

A 8667A



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

March 28, 1974

A#8667-A - by Mr. Ross, et al

AN ACT To amend the penal law, in relation
to chuka sticks

APPROVAL RECOMMENDED

MAR 28 REC'D

Honorable Malcolm Wilson
Governor of the State of New York
Albany, New York

Dear Governor Wilson:

The above bill is before you for executive action.

This bill would amend the Penal Law to include chuka sticks among these specific weapons which are prohibited for any person to possess, manufacture or transport.

Currently, the law prohibits the possession of a billy, blackjack, bludgeon, metal knuckles, sandbag, sandclub or slingshot. Possession of one of these devices is a class A misdemeanor or a class D felony if the defendant had previously been convicted of any crime. However, the law does not specifically prohibit the possession of a device known as a "chuka stick" which in the past few years has been appearing throughout communities within the State. This instrument may be purchased or easily assembled from two pieces of wood and a piece of thong, cord or chain. With a minimum amount of practice it may be effectively used as a garrote, bludgeon, thrusting or striking device. The chuka stick is designed primarily as a weapon and has no purpose other than to maim or, in some instances, kill.

Unfortunately, there has been disagreement among prosecutors as to the criminal liability attendant to the possession of the chuka stick. This bill to control the possession and use, as well as the

Honorable Malcolm Wilson

March 28, 1974

Page 2

manufacture and transport of chuka sticks would insure uniformity of prosecution which currently varies from county to county within the State of New York.

This bill is part of the 1974 legislative program of the City of New York and I urge that you approve it.

Very truly yours,

ABRAHAM D. BEAME, Mayor

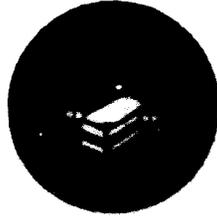
By  Stanley M. Fischer
Legislative Representative

A 8667 A

DISTRICT ATTORNEYS ASSOCIATION
STATE OF NEW YORK

EXECUTIVE DIRECTOR
RICHARD L. FRIEDMAN
270 Broadway—2nd Floor
New York, N. Y. 10007
(212) 466-2620

OFFICE
CARL A. VERBANI
Westchester County
Court House
White Plains, N. Y. 10601
(914) 761-1144



APR 4 REC'D

April 1, 1974

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CON. G. CHOLAKIS
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LEO F. HAYES
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Kings

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Court House
White Plains, N. Y. 10601

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Honorable Michael Whiteman
Executive Chamber
State Capitol
Albany, New York 12224

Re: 8667-A

Dear Mr. Whiteman:

The District Attorneys Association of the State of New York approves of the above bill, which defines a "chuka stick" and makes possession of one a class A misdemeanor or, in certain circumstances, a class D felony.

As a result of the recent popularity of "Kung Fu" movies and shows, various circles of the state's youth are using such weapons. The chuka stick can kill, and is rightly added to the list of weapons prohibited by section 265.00 of the Penal Law.

Yours truly,

B. Anthony Morosco
S C U

B. Anthony Morosco
Legislative Secretary

BAM:pag

8667-A



APR 8 REC'D

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

MEMORANDUM FOR THE GOVERNOR

Re: Assembly 8667-A

Penal Law, section 265.05, subdivision 9, lists weapons, dangerous instruments and appliances, the possession of which with intent to use unlawfully, constitutes (1) a Class A misdemeanor or (2) a Class D felony if the possessor has previously been convicted of any crime.

The purpose of this bill would be to amend Penal Law, section 265.05, subdivision 9, by adding the "Chuka stick" to the class of weapons listed under that section. Additionally, Penal Law, section 265.10, subdivisions 1 and 2 which pertain to the manufacture and transportation of prohibited instruments, respectively, would also be amended by adding the "Chuka stick". Penal Law, section 265.16, subdivision 3, which relates to the presence of prohibited items (e.g., weapons, dangerous instruments and appliances) in an automobile, would also be amended adding the "Chuka stick" to its provisions.

This act would take effect on the first day of September next succeeding the date on which it shall have become law. A definition of "Chuka stick" would be added by this bill to Penal Law, section 265.00, subdivision 14. A portion of the definition of a "Chuka stick" states that it is a device "* * * consisting of two or more lengths of rigid material joined together with a thong, rope or chain * * *". This phrase could possibly be construed to include some harmless items such as a child's jump rope or skip rope. However, an additional phrase in the definition would require that it be a "* * * device designed primarily as a weapon * * *". This phrase would appear to avoid any confusion in the definition with items not intended to fall within the act's purview.

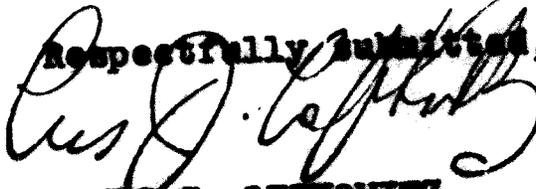
This bill would place controls on the use of an instrument, "i.e., the Chuka stick" which has apparently been widely used by muggers and street gangs and has been the cause of many serious injuries.

Re: Assembly 8667-A
Page 2

A similar bill was introduced during the 1973 Legislative Session but it did not come out of the Codes Committee during the 1973 Session.

I find no legal objection to this bill.

Dated: April 8, 1974

Respectfully Submitted,

LOUIS J. LEPKOWITZ
Attorney General

A 8667-A

Memorandum APR 9 REC'D



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF CRIMINAL JUSTICE SERVICES

April 4, 1974

TO: Michael Whiteman

FROM: Archibald R. Murray *ARM*

RE: A. 8667-A

Purpose

To amend a number of sections in Article 265 of the Penal Law to penalize the possession of, manufacture or dealing in "chuka sticks."

Discussion

This bill proposes to outlaw the possession, manufacture or shipment of "chuka sticks," as that device is defined in bill section 1. By placing the basic prohibition in Penal Law section 265.05(3), the possession of chuka sticks is made per se criminal, i.e., no mens rea is required and the crime, therefore, is one of absolute liability. Even if the chuka stick is being employed with significant frequency as a weapon in the commission of violent crimes, its inclusion in the per se category is of doubtful wisdom and questionable legality.

It is our understanding that chuka sticks are also used in karate and other "martial arts" training. In view of the current interest and participation in these activities by many members of the public, it appears unreasonable -- and perhaps even unconstitutional -- to prohibit those who have a legitimate reason for possessing chuka sticks from doing so. There are alternative ways in which the problem can be handled. If it is desired to keep chuka sticks in the per se prohibited class, an exception could be drafted for those who possess them for lawful martial arts training. Such a course is employed for switchblade and gravity knives, which are also prohibited in this same subdivision (P.L. sec. 265.05[3]). In their case, section 265.20(5) permits their possession for hunting or fishing by a person who has a hunting or fishing license.

A second, and more appropriate, alternative would be to treat chuka sticks under Penal Law section 265.05(9) where, to constitute the crime, possession must be coupled with "an intent to use the same unlawfully against another." This would put chuka sticks in the same category as other objects which are potential weapons but which also have legitimate uses, such as knives and razors.

page 2

It should be noted that the first version of this bill (A. 8667) in fact pursued precisely this latter course.

A technical -- probably typographical -- error appears on page 1, line 4. The word "designated" probably should read "designed."

Recommendation

In view of the foregoing, we cannot recommend approval of this bill in its present form.

Chip 179

A 8667 A B C

PRESIDENT HENRY N. EBB, III	
VICE PRESIDENTS WILBUR H. FRIEDMAN LAWRENCE X. CUBACK ANDREW Y. ROGERS	
SECRETARY THOMAS KEOGH	EXECUTIVE DIRECTOR JULIUS ROLNITZKY
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	LIBRARIAN FREDERIC S. BAUM

MAY 7 RECD



14 VESBY STREET - FACING ST. PAUL'S
NEW YORK, N. Y. 10007

CORTLANDT 7-6646

For further information
please communicate with:
Gregory J. Perrin, Esq.
225 Broadway, R-2515
New York, N. Y. 10007
349-1390

May 3, 1974

Hon. Malcolm Wilson
Executive Chamber
Albany, N. Y. 12224

My dear Sir:

The Committee on the Criminal Court of the New York
County Lawyers' Association has disapproved the
following bill and believes that it should not become
law:

A. 8359-A
A. 8667-A

A copy of a report recommending disapproval is enclosed.

Very truly yours,

BENJAMIN LEVINE

Chairman, Committee on State Legislation

INTRODUCED BY ASSEMBLYMAN MANNIX
INTRODUCED BY SENATORS PISANI, ACKERSON, GORDON,
FLYNN, KNORR
INTRODUCED BY ASSEMBLYMAN ROSS; Multi-sponsored by:
ASSEMBLYMEN BROWN, HURLEY, LEVY, LOPRESTO, MANNIX,
SUCHIN, VOLKER, ABRAMSON
INTRODUCED BY SENATORS BARCLAY, PADAVAN

April 29, 1974

Report No. 184

A. 8359-A
Same as S. 7685
A. 8667-A
Same as S. 9034

NEW YORK COUNTY LAWYERS' ASSOCIATION
14 Vesey Street - New York 10007

Report of Committee on the Criminal Court on Assembly Bill 8359-A
same as Senate Bill 7685, Assembly Bill 8667-A same as Senate Bill
9034, which seek to amend Sections 265.00, 265.05, 265.10, 265.15
of the Penal Law with regard to the possession of certain weapons.

RECOMMENDATION: DISAPPROVAL

Both of these bills seek to add "nunchakus" to the list of
weapons the possession of which is proscribed by Article 265 of the
Penal Law.

Both bills have been amended and recommitted by substitute
bill in Assembly. The amendments, in both cases, removed from the
proposed legislation the presumption, from mere possession, of an
intent to use the proscribed device unlawfully against another. In
place of this presumption, both bills now make unlawful the mere
possession of nunchakus, without regard to the issue of unlawful
intent.

While it is true that nonchakus, chuka sticks and like objects
are capable of use in criminal conduct, it is the sense of this
Committee that they are not properly included in the provisions of
Article 265 of the Penal Law as proposed.

While the possession of these items with demonstrable criminal
intent is a proper subject for legislation, the proposed legislation
goes further, making mere possession (even absent criminal intent)
a criminal offense. If it is the desire of the legislature to
prohibit the use of nunchakus in criminal conduct, a more narrowly
drawn statute can be fashioned to achieve this end.

Respectfully submitted,

COMMITTEE ON THE CRIMINAL COURT

Gregory J. Perrin, Chairman

Report prepared for
the Committee by
MR. ALAIN M. BOURGEOIS



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From Civilian Tool to Military Weapon

By SCOTT WASSER

Editor's note: This is the last in a four-part series that explores the sometimes symbiotic relationship between military and civilian tools and technology. Over the years, tools or technology developed by one sector has been adapted by the other for its own purposes and, in some cases, become even more universal in that sector. The first three articles discussed hybrid powered vehicles, radar, and satellite communications.



Above: A soldier from 3/502nd Infantry Regiment 101st Airborne Division (Air Assault) mans an M249 SAW (Squad Automatic Weapon) at a cordon and search of a gas station in Mosul, Iraq, during Operation Iraqi Freedom, Sept. 2, 2003.

There is a prevailing and indelible image of Operation Desert Storm that was etched in the mind of anyone who witnessed the 24/7 coverage of that conflict provided by the Cable News Network (CNN) over a decade ago. That image, unlike those of previous conflicts whose most unforgettable events were conveyed in still photographs, is a video.

U.S. Army photo by Pvt. Daniel D Meacham.

The video wasn't taken by a television cameraman. It came from a camera lodged in the nose of an American "smart bomb" which gave television viewers in their living rooms and bedrooms a perspective of the conflict as personal as the military personnel who actually fought it. Will anyone who saw it ever forget the "first-person" view — complete with superimposed bullseye — from a smart bomb as it zeroed in and then obliterated its target in a flash of white light?



Spc. Jackson out of the 1/9 Field

If there was any doubt prior to that about how specialized weaponry had become during the second half of the twentieth century, those images erased it. Granted, some of today's warriors still carry knives and other tools of their trade that are useful for purposes other than killing or maiming an enemy, but these are not their primary or even secondary weapons.

"Weaponry has become very much specialized," states Dr. William Atwater, who as director of the U.S. Army Ordnance Museum at Aberdeen (Maryland) Proving Grounds is one of the foremost experts on the subject. "The military has always been interested in maximum firepower, and today every (soldier) can lay down automatic fire.

"And that has nothing to do with how civilians use firearms."

Yet throughout most of mankind's history, according to Atwater, military and civilian development and use of personal weapons went hand-in-hand. Before the advent of firearms, in fact, most personal weapons evolved from ordinary tools and implements.

There probably is no better example of this than the weapons brandished in countless martial arts movies. Bruce Lee, the legendary martial artist and actor, fascinated us by furiously twirling a pair of sticks connected by a tiny chain to create a cinematic windmill of destruction. These "nunchaku," which according to experts can reach 85 mph, are unquestionably a weapon in trained hands. But most laymen don't realize that the nunchaku were not created by Lee, but merely adapted from an ancient Okinawan horse bit or grain flail.

Okinawa, the island off the Japanese mainland, is the home of an entire cache of tools-turned-weapons, nearly all of which have "starred" in martial arts movies. Granted, such movies often also feature the "katana," (commonly called a "Samurai sword"), a purpose-built killing weapon for hundreds of centuries. But they also feature karate or kung-fu practitioners wielding exotic weapons that weren't initially developed as weapons at all.

The "bo," a wooden staff 5-6 feet long, was first used by Okinawans to carry buckets of water, grain or fish on their shoulders. The "sai," which looks like a handheld pitchfork with a protruding center prong, is said to have been developed as a tool for sowing seeds. And the "tonfa," a 15- 17-inch, thick, wooden club with a perpendicular handle protruding 4-5 inches from one end, was the handle of a grinding wheel long before it replaced the nightstick as a weapon for many of today's civilian and military police forces.

Okinawans, history and legend tell us, were forced to turn tools into weapons beginning in the late 15th century. That is when the first king of the then newly unified country banned traditional edge weapons such as metal swords, knives and spears. Some history and martial arts experts say that the king's ban was related more to the scarcity of metal than his desire to keep

Artillery, 3rd Infantry Division stand guard inside their M2 Bradley Fighting Vehicle. He guards the water distribution point in Kandari located near Falluja, Iraq, July 6, 2003. U.S.

Army photo by Spc. Robert Liddy.



Marines of 2d Battalion, 6th Marines, fire a Javelin AntiTank Missile at Blair Airfield, Iraq, May 2, 2003.

U.S. Marine Corps photo by Sgt. Mauricio Campino.



The "bo," is a wooden staff 5-6 feet long that was first used by Okinawans to carry buckets of water, grain or fish on their shoulders. The "sai," which looks like a handheld pitchfork with a protruding center prong, is said to have been developed as a tool for sowing seeds. And the "tonfa," a 15-17-inch thick, wooden club with a perpendicular handle protruding 4-5 inches from one end, was originally a handle of a grinding wheel.

deadly weapons out of the hands of a potentially rebellious civilian population. However, as blurry as the line between history and legend can be, there is little doubt that the latter was the motivation when a powerful Samurai clan reinforced the ban after invading and occupying Okinawa at the turn of the 17th century.

The lack of detailed records makes it difficult to track the precise development of warring personal weapons in earlier times and other parts of the world. Yet weapons expert Atwater is certain that, until very recently, mankind's development of weapons has gone hand-in-hand with its development of tools. As an example, he cites the modern axe or hatchet, a tool that he says can trace its roots to the stones early man used to ward off predators and kill prey.

As time passed, Atwater says, the stone was shaped so that it was longer and pointier on one end. Then it was attached to a stick. That stick was lengthened at some point, making it not only a more effective tool for taking prey, but also for combating other humans. The stone eventually was replaced by a highly sharpened metal blade and other metal shapes more effective than stone against armed and armored foes. Similarly, some of these axes were lengthened and grew fierce points, turning into pole-arms. These weapons could be used at relatively long range to pierce armor and sever limbs or crush bones.

Armor and, eventually, most edge weapons were made obsolete by the invention and adaptation of firearms. It isn't certain where (China or the Middle East) or when (sometime between the early 13th and 14th centuries) the first guns were used, but Atwater says there is little doubt that weapons which used gunpowder to fire a projectile were developed initially for combat.

"You couldn't use a 'hand cannon' to hunt," he said, because it was too big and cumbersome. The hand cannon evolved into the "arquebus," which was more portable but still required a fuse or burning "match" to ignite the black powder that made it fire.

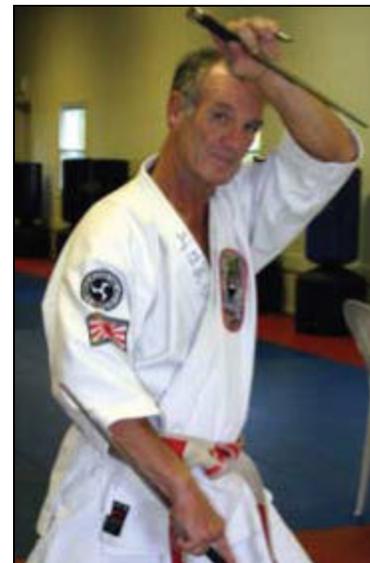
These primitive firearms changed the course of warfare because such weapons could be used by relatively unskilled peasants to defeat highly trained and armored warriors. Yet they were the last personal weapons for many centuries to be adapted by the military before civilians. Weapons that used firing mechanisms such as the "wheel lock," "flintlock," and even "percussion caps" were embraced first by civilians for hunting or dueling before gaining military acceptance.

"In general, the military simply couldn't afford to arm



Sensei Reese Rigby, 8th-degree black belt in Isshinryu Karate, Co-Owner and Chief Instructor, Rigbys (sic) Karate Academy, Dover, Del., demonstrates their use.

Photos by Scott Wasser.



its troops with the latest weapons,” explained Atwater. “By the time the military figured out how to produce a similar weapon cheaply in quantity, a newer and better firing mechanism was usually developed.”

For that reason, even weapons that would have given military forces great superiority over its enemies were not quickly adapted. The revolvers and repeating rifles introduced in the 19th century were being used by settlers and even American Indians before they became military issue. Amazingly, even the Thompson Submachine Gun, developed by the U.S. Army’s chief of small arms ordnance, John Taliaferro Thompson, was embraced by civilian bootleggers long before the American Military.

The “Tommy Gun” was developed too late for World War I, but that conflict did mark the beginning of a distinct divergence of military and civilian personal weapons. The divergence became even more pronounced in World War II, particularly with the introduction by the Nazis of an assault rifle. Today, there are still rare occasions when a particular weapon finds its way into both sectors. The military’s M16, Atwater points out, was adapted from the AR15 varmint rifle. But the military’s needs have become so specific and its thirst for firepower so overwhelming that even its personal weapons have no place in the private sector — at least not in a civilized society that can lie in bed and watch even more potent weapons deliver their deadly payloads.



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About the OPN III



OPN Product Picture

The Orcutt Police Nunchaku (OPN III) is a certified training system developed by Sergeant Kevin Orcutt, master instructor and designer of the Orcutt Police Nunchaku (OPN III), as a non-lethal controlling device for law enforcement / corrections. The OPN program stresses **Control** vs **IMPACT**.** Since 1985, over 200 law enforcement

agencies across the United States have field tested and adopted the OPN as their primary control device. Call for additional information and detailed studies plus our video demonstration tape.

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The OPN is compact and light-weight and can be carried without interference during a variety of activities, including sitting, running, climbing and jumping.
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JAMES M. MALONEY,

Plaintiff,

CV 03-786 (ADS) (MLO)

- against -

ELIOT SPITZER, in his official capacity as
Attorney General of the State of New York, and his
successors,

**AFFIRMATION OF
PERSONAL SERVICE**

Defendants.

-----X

Plaintiff, James M. Maloney, declares and affirms under penalty of perjury as follows:

On the 9th day of August, 2004, I personally served the annexed

Declaration of James M. Maloney

upon the attorney listed below at the reception area of the address listed below by handing a true copy of same to a person of suitable age and discretion authorized to accept such service.

Dorothy Oehler Nese, Esq.
Assistant Attorney General, State of New York
200 Old Country Road, Suite 460
Mineola, NY 11501

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 9th 2004
Port Washington, New York



JAMES M. MALONEY (JM-3352)
Plaintiff *pro se*
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