



strategy: check your stance

by Joseph W. Varela

Subtle! Subtle!

They become formless.

Mysterious! Mysterious!

They become soundless.

Sun Tzu'

When the defense lawyer walks into a courtroom, what "stance" should he assume?

Ninjutsu means "the art of stealth." Its practitioners, the *ninja*, were medieval Japanese masters of guerrilla warfare, espionage, assassination, and close combat, both armed and unarmed. The apparently superhuman ability of these black-clad figures to move unseen, appear and vanish at will, penetrate defenses, and confound regular forces made them the stuff of legends then and now.² Although many East Asian schools, such as karate, judo and tai-chi, have become primarily sports and conditioning exercises, *ninjutsu* remains a fighting art, a system of mental and physical training for unconventional conflict. If there is a common theme in all its techniques, the theme is formlessness. As the current grandmaster of *ninjutsu* puts it,

When a man can disguise his true intent, and has the sensitivity to recognize the hidden motives of others, he is capable of becoming a shrewd fighter and a difficult adversary.³

The basic fighting stance for the *ninja* is *shizen no kamae*, the natural posture.⁴ (See Fig. 1) At first glance, it appears to have nothing to do with fighting; certainly it does not resemble the fighting poses that we in the West, at least, associate with Eastern martial arts. It looks for all the world as if the *ninja* is "just standing there."



Fig. 1. *Ninjutsu* adept Harry Ochsenbein demonstrates *shizen no kamae*. (Photo by Author)

But let's examine the natural posture carefully. It has several advantageous characteristics:

1. It is the posture in which a person normally stands or walks. Therefore, it is the posture in which he will find himself⁵ if suddenly attacked or threatened.
2. It does not "channel" his movements. A person in the natural pose is free to advance, retreat, move to either side, squat down, jump up, all with equal ease.
3. It does not "telegraph" to the adversary what he intends to do, or how he intends to accomplish it. A person in the natural posture, viewed from the standpoint of the adversary, might do anything: fight, feint, run away, maneuver, or produce a weapon. All is possible and the adversary cannot adjust his action until he sees what the *ninja* does first.



Fig. 2. Stereotyped fighting stance.
(Photo by Author)

Contrast *shizen no kamae* with the stylized pose seen in Fig. 2. The latter is nearer to the stereotypical image of a “martial arts” fighting stance.

Unlike the natural fighting pose, it gives none of the advantages listed above and indeed implies their opposites. It limits options by channeling movement because from such a position, there are only so many motions that can be made quickly and efficiently. It also indicates which way the ninja intends to go. The adversary now has the advantage of being able to “read” intentions and rely on channeled movements when the fight begins.

A person who begins by prematurely assuming the position in Fig. 2 is already half-defeated.

When you walk into a courtroom, what’s your “stance?”

Do you look like Fig. 1 or Fig. 2?

In oral argument in an appellate court, do you walk in committed to a pre-conceived chain of argument?

Suppose the panel starts firing questions and expresses doubt about some essential link in your chain of reasoning. Your carefully-rehearsed speech goes out the window. What then?

In plea bargaining, do you assume a certain posture which tells the prosecutor too much about what your client would eventually settle for? Even signaling that your client would prefer to plead the case can be detrimental.

The trial starts. Certainly you have a theory of your case, but did you walk into court committed to a script? And what happens if the witnesses, even your own, deviate from your script?

If there is something the defense lawyer can learn from the *ninja*, it is that the lawyer’s mental “stance,” when he walks into court, should be neutral, flexible, and not committed to any particular action. He should mentally emulate the *ninja*’s natural fighting posture, prepared for anything but giving away nothing (Fig. 3).



Fig. 3. What’s Your Stance?
(Photo by Author)

¹*Art of War*, Chapter 6 (c. 500 B.C.) trans. Sonshi.com.

²Peter Lewis, *Art of the Ninja* (1988).

³Soke Masaaki Hatsumi, quoted in Stephen K. Hayes, *The Ninja and Their Secret Fighting Art* (1981).

⁴*Id.*

⁵Or herself—there were female *ninja* known as *kunoichi*.