

# Legally Speaking



## Musings on Self-Defense

By Karen L. MacNutt,  
Contributing Editor

One of my constant frustrations about writing for W&G is the two months delay between the time articles are written and when they are published. It is hard to address issues of current interest if you know that the story will be old news by the time the reader sees it. Although you may have seen crocuses blooming in your yard when you pulled this edition of W&G out of your mail box, I was eating left over Thanksgiving turkey and reading the holiday edition of *Gun Week* (gunweek.com) when I sat down to write my article. *Gun Week's* Christmas gift suggestions were of particular interest. There was a picture of a bayonet for my North American Arms .22 revolver. "What a neat idea," I thought look-

ing at the ridiculous picture of the tiny gun with a bayonet and laser sight attached. With those attachments, a shoulder holster was definitely out of the question.

At one time, the North American Arms revolver was my favorite carry gun. It fit into my skirt or jacket pocket without creating an unsightly bulge. Sometimes I carried it in a small knife case. People often mistook it for a pager. I remember being at a political function when a gentleman (I use the term loosely) who had a little too much to drink placed his hand . . . well . . . on the pocket that held the gun. I never saw anyone leave a party so fast.

I became disenchanted with my little revolver many years ago. It was December. At that time my office was in the heart of Boston's shopping and financial district. The stores were filled with Christmas shoppers. Office workers on their lunch hour jammed the sandwich shops. The bells of Park Street Church were chiming Christmas carols. It did not seem like a time or place that offered any threat. When I entered the elevator on the 8th floor, there was only one other person on it. As we traveled between floors, he threatened me with the largest razor I had ever seen. The mind is a strange thing. He was doing his best to scare me. All I did was smile and carry on a pleasant conversation. He thought I was crazy or stupid, or both. He could not deal with the fact I was not afraid of him. He could not seem to make me understand that

he was threatening me.

I kept thinking:

"He'll laugh at my little revolver. I need something bigger. I'm going to have to kill this guy. When the police will come, I'll have a lot of paperwork to fill out. That will take up the rest of the day. I'll fall behind on my work. I'll not get those letters out on time. I'm too busy for this. . . . As soon as he moves forward, I'll body check him against the wall and then draw my gun. Damn. . . . I don't have time for this. I've got too much work to do. I've got to get those letters mailed. . . ."

It was totally irrational to worry about the letters; but, that is all I could think about. Having to take time from my busy work day made me angry.

Things were not going as my attacker expected. When the elevator reached the first floor, he lost his nerve and walked away yelling back at me, "You're crazy. . . . you're crazy. . . ."

He was right of course. I was crazy to carry anything as small as the .22 cal. North American Arms revolver. For the next several months I brought my 1911 .45 ACP to work. It made an unseemly bump in my ensemble, but it gave me a great feeling of security. By spring, I had settled into a 5-shot .38. If the job was not completed with the first round, it was unlikely there would be time for a second.

With more women carrying guns for defense, there are a number of practical things you need to consider before you move from using



a handgun for sport, to using it for defense. First, do not carry a gun unless you are totally familiar with it and can fire it accurately under stressful conditions. Join a pistol team. Engage in competitive target shooting. It is the easiest way to learn to shoot under stress. Practicing at a range is not enough. You have to be able to shoot accurately when your heart is pounding, your hands are sweating, your mind is racing, and your eye...your eye can never...never...leave the focus of your attention.

Second, your mind has to be prepared. Are you willing to shoot someone, perhaps kill someone, to protect your own life? If the answer to that is "no," then do not carry a gun for defense because when the time comes, you will hesitate. You can not think in terms, "I'll aim for his foot," or some other extremity. You will not have time to do that. You will have to aim for center of mass and let whatever the consequences will be, happen.

Third, you must be thoroughly familiar with the gun you are carrying. You must be able to use it strictly by feel under the most stressful conditions. It needs to be simple to work. It need to be in some location where you can get at it quickly, without giving your attacker enough time to react. It needs to be at least .38 caliber. Choose a gun, not because it is easy to carry, but because you can control it and it will do the job.

Fourth, you must be absolutely sure you have no alternative but to use force to defend yourself. Justified or not, if you shoot someone, your life will change forever. You will need a good lawyer. Good lawyers are expensive. Your picture will probably be in the papers. Some people will call you a hero. Others will call you detestable things. You

may run into a left leaning assistant district attorney who wants to make an example of you to discourage "vigilante" actions by other citizens. The family of the person you shot will come forward. They will say your attacker was a nice, but misunderstood person. That he was especially nice when he was taking his meds. Then they will sue you. Your homeowner's insurance may not cover you if the company says your act was intentional and therefore excluded from the policy. Even if you win, you could end up spending all of your savings on legal bills.

None of this, however, can influence you at the moment you make the decision to use deadly force. Your focus must be on assessing the situation at hand.

With that in mind, it is a good idea to review the rules on the use of deadly force.

In all cases, avoiding a situation is 100% better than "dealing" with a situation as it happens. Don't argue with people. Walk away from trouble when you can. Let irrational people think they have won the argument. Never get out of your car to argue with people about some rude driving behavior. Smile and wave at people you cut off in traffic as if they had given you permission to go first. Be careful in parking lots, on dark streets and other places muggers might lurk. Be aware of your surroundings. Never threaten anyone unless the law would justify your actually using the amount of force you have offered to use. Street wise people are quick to run to the police. They will tell police that you threatened them with a gun. They know the officer will most likely arrest you for the crime of assault with a deadly weapon which will give the bad people a chance to walk away.

A "deadly weapon" is something capable of causing death or serious bodily injury. A gun is a deadly weapon; but so is a knife, a club, a bottle or even a shoe. "Deadly force" is that amount of force which is likely to cause death or serious bodily injury. "Assault" is the crime of putting someone in fear of an unjustified touching. A "battery" is an unjustified touching. If you walk up to a stranger and say, "I'm going to hug you!" and they do not want you to hug them but you walk towards them with open arms with the apparent intent to hug, that is an assault. If you complete the hug, that is a battery. An assault and battery does not have to be violent or intended to cause harm. It only has to be unwanted.

If you engage in a threatening act or statement with a deadly weapon, that is assault with a deadly weapon, a serious crime in most states. If you point a gun at someone without justification, even if you do not shoot, that is a serious crime. If you point something that looks like a gun, even if it is incapable of firing, that is the same crime because the person you pointed it at thought you had a deadly weapon.

The law is less clear when someone becomes aware that you are carrying a gun but the gun never leaves its holster. Anti-gun people sometimes try to claim that just by seeing someone with a gun, they have been put in fear and thus "assaulted." They will do this even though the gunowner did nothing to encourage that fear. Although most courts are not sympathetic to such arguments, police will sometimes file charges against the

**Legally Speaking**  
**Continued on Page 54**



## Holster Purses Continued From Page 35

able for an average or above woman, but was a little big for petite Barb and me. Robin loved the interior of this purse, and the way it felt when she carried it. I loved the color the leather, and the fact that this bag looks completely different from all other purses. Perhaps it is the beautiful soft lines, rather than the harder edges that many other purses have that kept us looking at this one.

If you want a very modern, high end bag that you can carry in company with other designer bags, if you want to ask for a special present for a birthday or anniversary, or if you just want to treat yourself to the best, these bags might go on your wish list. The Glacier is \$359, other of Kate's bags range from \$259. Their website is [designerconcealedcarry.com](http://designerconcealedcarry.com)

In conclusion, there are hundreds of bags to choose from, in a wide range of styles, prices, and features. Most manufacturers have a return policy that insures you won't be stuck with a bag you hate, but ask before you buy. Also ask whether they have a holster for the purse you are considering that will fit your gun properly. The holster should cover the trigger guard completely, while allowing you to get a firing grip on the gun before drawing it.

It is worth a little time and effort to find the perfect holster bag, or bags for you, so that you can always have your gun in a safe, accessible place wherever and whenever you go. If you don't love the purse as a purse, you will find reasons not to carry it, and your gun might be at home when you need it. But if you do love your purse, it helps make security a pleasure.

**W&G**

## Legally Speaking Continued from Page 47

gunowner.

If you tactically allow a potential assailant to know you are armed with the thought of discouraging an attack, as long as you do not combine such actions with a verbal threat, your actions are legally ambiguous. Whether or not the police bring charges against you will depend upon the totality of the circumstances including the politics of the officials you have to deal with. What you say or don't say to your attacker will be important. If the police feel you have over reacted, if they feel you escalated the situation, you will be arrested.

In areas where open carry is allowed, some gunowners are engaging in "open carry" protests. If you are going to do that, make sure you know what the law is. Have a lawyer on retainer and have enough money to pay her. Be very polite to those people around you who see that you are carrying a gun openly. The idea is to establish your right to carry openly, not to prove that gunowners are both obnoxious and arrogant. Also, remember there are places where it is illegal to carry even if you have a permit. Those places include all federal property that is posted (such as the post office); most court houses; jails; schools; mental hospitals; many government buildings; and parts of airports.

You can use reasonable force, including deadly force, to protect yourself or another from imminent threat of serious bodily injury or death. In most states you may not use deadly force to prevent the theft or destruction of property. If someone is trying to steal your car, assuming you are not in the car at the time, let them take the car and

call the police. The cost of a new car is less than the cost of a defense attorney. There are limited times when the use of deadly force is justified to protect property. This usually occurs when the destruction of property is apt to result in injury to people. An attempt to set a building on fire, hijack an aircraft or blow up something would be examples.

What is "reasonable" depends upon the situation. In some states, before you can use deadly force, you have a duty to retreat from an attacker but only if you can do so safely. If someone comes after you with a knife and you can get into your car and lock the door before they can reach you, you should do that. On the other hand, you should never retreat from a well traveled area into a remote area.

In most states, you have no duty to retreat in your own home when faced with an intruder. You may have a duty to retreat if your dispute is with another household member.

You should always do your best to avoid a confrontation. In the case of an intruder in your home, I favor retreating within your home just far enough so that there is no question that the person is an intruder. It is axiomatic that you never shoot unless you have a good view of, and are sure of, your target. I also believe that once you have determined that the use of force is justified and you are about to use deadly force, you should give your attacker multiple warnings before you shoot. There may be very little time between the warnings and the shooting, but it is still a good idea.

Although the amount of force you use must be reasonable, it does not have to be equal. If someone comes after you with a club (a dan-



gerous weapon), you may respond with a gun. The law does not require you to take a beating before you can defend yourself. On the other hand, if the attacker is five years old, or the club is made of foam rubber, or the person coming at you is 100 feet away and you can go into your house and shut the door, responding with a gun would not be reasonable.

If you scare off an attacker, do not pursue that person. If they break off contact with you, and you chase after them, the law considers you to be the aggressor.

So when can you use a gun in self defense? When you are sure your life or that of another is in danger of death or serious injury and you have no other reasonable or safe alternative to using force. You should only use that amount of force necessary to stop the attack. Once the aggressor has stopped, you must stop. What is reasonable? That depends. Only you at the time and place of the incident will know. If you truly believe that the actions you take are needed to save a life, then do what you must and let the lawyers sort things out later. I would suggest, however, that if one or two shots puts an attacker on the ground, don't empty the gun into him, reload, and keep shooting. If the aggressor takes one look at the smile on your face and the "hog leg" in your belt and runs away from you, don't shoot him in the back. Things like that are hard to explain to a jury.

A couple of last suggestions. When the police arrive, tell them what they need to know to get medical attention for anyone who is hurt. Tell them that you were sure the other guy was going to kill you. Tell them you are very upset. Tell them that you will co-operate with them fully but you have to

call your lawyer first and will not make a statement without your lawyer being present. Once you have made this statement, **DO NOT TALK TO THE POLICE** about the incident. If you do, you might waive your right to have your lawyer present. Police hear what they want to hear. It is not that they lie, but they, like everyone else, interpret the world according to their life experiences. Too often policemen know only two types of people, policemen and crooks. Remember, people do judge "books by their cover." Dress and look like a respectable citizen. Do not have "cute" gun slogans on your clothes or bumper stickers that talk about killing people. After you have shot someone, such things tend to prejudice the jury.

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### **Making a Difference Continued from Page 44**

politically active and also more readily swayed. Women, whether they are mothers or not, are concerned with the survival of the species. We are quick to sense and react to danger. It is up to those of us who care about Constitutional matters to be sure that women are sensing and reacting properly to perceived dangers.

Women will make gun ownership appear as normal as it is. Women like Amy will swell our ranks simply by choosing to have fun.

And, women like Amy will protect our rights for our posterity. As she describes, "Also, we are so proud to be exercising our 2nd Amendment Right. We beam with pride at the meetings during the reciting of the Pledge of Allegiance. It is the highlight of our day!"

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