

Legally Speaking



Self-Defense

*By Karen L. MacNutt,
Contributing Editor*

The use of force against another without some type of legal justification is a crime. Disliking a person, disagreeing with them, or being insulted is not a justification for using force. Defending yourself or another from an attack, however, might be a legal justification. The justified use of force against an attacker to protect yourself from harm is called “self defense.” Self-defense is a basic human right held by all free people.

Someone who, without justification, initiates the use of force against another is called the “aggressor.” What “justifies” someone initiating the use of force so that they are not an aggressor? The most common reason would be someone acting under government authority such as a policeman making an arrest. The person being arrested has the duty

to submit to lawful authority. He does not have a right of self-defense under most circumstances.

The person against whom unlawful force is directed, is called the victim. The victim has the right of self-defense; that is the right to use force to “fight back.”

Generally the person who throws the first punch, or first attempts the use of force, is the aggressor. For example:

1. Mary is walking down the street. Joe walks up to her and punches her. Joe is the aggressor, Mary is the victim. Joe used violence first.

2. Mary is walking down the street. Joe walks up to her and calls Mary bad names. He says he is going to post her picture on the Internet with unflattering statements. Mary slaps Joe. Mary is the aggressor. Although Joe was obnoxious, he offered no physical violence to Mary. Joe’s provocative acts may help to reduce Mary’s punishment for violating the law, but they do not justify Mary’s use of force.

3. Mary is walking down the street. Joe walks up to her and punches her. Mary knocks Joe to the ground and continues to beat him. Mary is still the victim. Joe pleads with her to stop and offers Mary no further resistance. Mary continues to beat Joe. Mary may be using excessive force if a court finds that Joe had stopped his assault and was no longer a threat to Mary. Mary’s continued beating of Joe may not be protected as self-defense. If Joe tries to run off and Mary chases after him, then Mary becomes the aggressor.

4. Joe’s five-year-old child slaps Mary on the arm. Mary hits him with a baseball bat. The amount of force used by Mary was both inappropriate and excessive given the circumstances. Mary’s use of force is not legally justified.

5. Mary is walking down the street. A stranger runs towards her screaming something.

Can Mary use force against the stranger? It depends. The stranger may be asking for help or trying to warn Mary of some danger. His comments may be directed at another party. His actions are not clear enough for Mary to use force.

If someone makes a clear verbal threat of a current intent to cause bodily harm to the victim and combines that with an act which would cause a reasonable person to believe the aggressor has the means to carry out the threat and an immediate intent to carry out the threat, then the victim may have the right to use force in self-defense before he or she is actually physically attacked.

6. Mary is walking down the street. Joe, her obnoxious ex-boyfriend, is on the other side of the street. He yells to her shaking his fist, “You **@^!. Some day, Pow, right in the kisser!” He then walks away. Joe may be guilty of harassment, or stalking depending on the circumstances, but Mary does not have the right to use force against him. There was no movement toward Mary. Joe was too far away to be able to hit her with his fist and, the comment, “someday” is not an expression of a current intent.

7. Mary is walking down the street. On the other side of the street is a stranger with a golf club who yells out, “Give me your money or I will hit you with the

club.” This is an attempted armed robbery. Mary does not yet have the right to use force because the stranger has not moved towards her and is too far away to be able to carry out his threat.

8. In response to the stranger’s demand, Mary pretends she does not see or hear him. He yells out, “What are you deaf?? Give me your money.” Mary keeps walking away. The stranger starts to walk toward Mary but is not yet close enough to carry out his threat. Does Mary have the right of self-defense? It depends.

In some states a victim is required to retreat from a confrontation if he or she can do so safely before using force in self-defense. The key words are, “If he or she can do so safely.”

Other states do not require the potential victim to retreat before he or she may use force in self-defense. The division between states that have a duty to retreat and those that do not, sometimes called “stand your ground,” has been around for a long while. In many areas “stand your ground” is not a statute but is part of the “common law.” Common law consists of ancient principles of English law, often the customary law in a community, as understood and described by judges.

There is a lot of misunderstanding about the “stand your ground” concept. It does not allow you to chase after someone you feel is a threat. It simply states that if you have been threatened, you do not have to leave the area before you can use force to defend yourself. It does not allow for a “preemptive” strike nor does it permit force to be used in a punitive fashion or to justify a “citizen’s” arrest.

In example 8, whether Mary would be justified in the use of

force depends upon the law in the state in which the incident occurs. In duty-to-retreat states, Mary would be expected to attempt to leave the area if she could do so safely. It is never safe to move from a populated, or well lit area, into a dark and deserted area. Some factors to be considered are: how close is Mary to a place of refuge such as her car or a building where she could lock out the aggressor or get help? How fast is her assailant closing the distance between him and Mary? How mobile or healthy is Mary? Who might be available to help Mary? If Mary is next to the police station, she should go in and ask for help. If she is in the middle of the Appalachian Trail all by herself, there probably is no place to retreat to.

How close may the stranger come to Mary before she is

justified in using force? That is a question for the jury. Each case is different. If she acts when he is too far away, she risks losing her claim of self-defense. If she waits until he is too close, she may not be able to defend herself successfully.

Deadly force is that amount of force which is apt to cause death or serious bodily injury. A deadly weapon is any object which, if used against another, could cause death or serious bodily injury. Generally you may not use a deadly weapon to defend yourself unless you are defending yourself from the use of, or the threat to use, deadly force against you. Although we tend to think of guns and knives as deadly weapons, golf clubs, rocks, bottles,

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cars, and an unlimited number of every day objects can be used as a deadly weapon. A person's hands are generally not considered "deadly weapons." A person can, however, with their hands alone, inflict deadly force upon another. For example, someone who tries to strangle another, or pounds someone's head against the ground, is using deadly force but not a deadly weapon.

Once you have been attacked, you may use any amount of reasonable force to defend yourself. You do not have to meet force with equal force. If someone attacks you with a screw driver, or a club, or a knife, or any other deadly weapon or application of deadly force, you may use a gun for self-defense. You do not have to submit to a beating before using force to defend yourself. The question will be, however, was the person really attacking you and was the force being used against you really bad enough for you to take the steps you took?

You may not continue to use force against an aggressor once the encounter has ended or the aggressor is no longer a threat. After you shoot someone and they stop moving, it is not a good idea to reload and keep firing.

If you shoot someone, even if you are legally justified, your life will never be the same. You will spend massive amounts of money trying to prove your actions were justified. Your integrity will be questioned. Some district attorney will call you a vigilante. Some newspaper will call you a racist, or a baby killer. You will not be able to leave your home without

a "journalist" sticking a camera in your face. Your employer will probably fire you and no one will let their children play with yours.

Your absolute best defense is to avoid situations that could lead to a confrontation. Do not socialize with bad-tempered people. Walk away from abusive relationships before they go too far. You cannot reform people. Be careful when you go out at night. Lock the doors of your car. Be alert to what is going on around you. No matter what the law says, always walk away from trouble when you can. Do not argue with people. By all reports, society in the Old West, where everyone carried a gun, was very polite. Drive defensively. Getting angry at bad drivers is not worth the trouble you could get into by venting your true feelings. Learn how not to be a victim.

Many of the bad people of this world are very streetwise. If you display a gun or threaten to use a gun against them, they will run to the police to tell their story first. They will claim to be the victim. You will be the crazy person with the gun. Because you have the gun, the police will arrest you. Because you have the gun, a court will probably find you guilty of assault with a deadly weapon, even if you never pointed it at anyone. Assault, after all, is simply putting someone in fear of an unlawful touching.

When you think about carrying a gun for self-defense, think about the circumstances in which you would be justified in using it. Many situations develop so unexpectedly that there is no time to think, only time to react. Each situation is different. If someone grabs you from behind or charges towards you with ax upraised or is shooting at you, you have to react instantly with as much force as it takes to stop the

attack. Many encounters, however, are not that dramatic or clear.

With the possible exception of a potential animal attack, warning shots should never be fired because: 1. They could hit a bystander and 2. In the time it takes you to recover from the shot, your assailant could be on top of you and 3. You are not justified in threatening force unless you would be justified in using force. Never threaten force if you are not justified, and prepared to use force.

There are times when verbal warnings should be given. In your home, you should try to give three verbal warnings if you have time because: 1. You want to make sure the intruder is not your harmless, inebriated next door neighbor who has entered your home in error or a fireman come to save a life; and 2. The warnings remove all questions in the mind of the jury that you were facing a deadly encounter and that you took all reasonable steps to stop the attack. There have been unfortunate incidents of people being shot who were only looking for help, or who were clearly in the home under a misunderstanding. How rapidly you give the warnings is not as important as your being able to honestly say that the warnings were clear.

Sometimes it is appropriate to give verbal warnings on the street. For example, if someone approaches you and asks for spare change, a match, or the time, you do not know if it is an honest request or an excuse to get close enough to attack you. A request for the time or directions may be totally innocent. If you answer, keep the person at a distance. A request for money is ambiguous. Is the panhandler asking for charity or is this a polite way of

demanding your money as part of an armed robbery? If it is an armed robbery, then the aggressor has already planned his legal defense which will be to say that you were prejudiced against him because he was poor, cross-eyed or whatever the street person can think of.

Do not stop unless you are sure of who you are dealing with. Your first warning should always be a polite brush off. "No thank you" or, "I'll get you on my way back," or "Sorry, I'm late for a meeting" as you walk away. These are all non-confrontational ways of saying, "No." Do not give an answer that will encourage further discussion. If the person approaches you after a brush off, be very careful. Look to see if they have others working with them. Keep walking and do not acknowledge their next comment. Do not run and or show fear. If they continue to follow you, turn abruptly, and say, "Go away.

The answer is no." Be very alert to everything going on around you. At this point the person who is annoying you has done nothing illegal. If you show your gun, they will cause you a lot of trouble. Most panhandlers are harmless. They know how far they can go without getting into trouble. With a firm, "go away," they should back off. Most muggers are looking for an easy mark. If they think you are going to be trouble, they will look for someone else. If after being told to go away, they make any movement, even a shift in body weight, to come closer to you, be very clear. "Stay away. Do not come any closer or I am going to assume you mean me harm." At this point you have warned them three times. Neither your gun nor your strong hand should be visible.

Just as the street smart crooks have their defense planned ahead. So should you. Today, everyone

has a cell phone. Your reaching under your jacket or into your pocket is an ambiguous move.

Never lie to a police officer but do not volunteer unneeded information. In the above scenario, your best next move might be to walk away, call the police, display a weapon or do all of the above. Which is the correct answer? It depends. If you intentionally show a weapon, even if you do not draw it, you could be charged with assault with a deadly weapon because in this example the person annoying you has not violated the law.

If you have good reason to believe your life is in danger, do what you have to do and let the lawyers sort it out later. However, things are not always what they seem. Even in a "stand your ground" state, walk away if you can.

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