

LegallySpeaking



Considerations

*By Karen L. MacNutt,
Contributing Editor*

“So, why do you want to carry a gun? You want to kill someone?”

“No,” I told the reporter, “it is because I do not want to be a victim.”

If you are thinking about carrying a gun for self-defense, you may have read or taken courses on handgun tactics. There are, however, other things you must think about such as the moral and legal implications of carrying a gun.

No sane person wants to kill anyone. If you use a gun for self-defense, your object is to stop someone from attacking you or some other person. You apply the amount of force needed to achieve that objective. You must then stop, no matter how angry you might be. Getting even is not legal. In the course of stopping an attack,

you may very well kill or cripple your attacker even though that might not have been your intent. Long before any confrontation takes place, you must think about that possibility. If you are not mentally prepared to use the force needed to stop an attack, you should not carry a gun for defense because you might hesitate at the wrong moment.

If you use a gun for self-defense, no matter what the circumstances, you could find yourself facing criminal charges or being sued by your attacker or his or her family.

The burden of proof, that is, the degree to which a jury must be convinced of a fact, is different in civil cases (a private suit for money) and criminal cases (the government putting you in jail.) In a criminal case, the government must convince the jury “beyond a reasonable doubt” that you were wrong in using the amount of force you used. In a civil case, the plaintiff’s (the person who attacked you) lawyer only has to prove that it was “more likely than not” that you were in the wrong. A finding of “not guilty” in a criminal case is not a finding of innocence. It is a finding that the government did not prove its case. A person might be found “not guilty” in a criminal case but still have a large money judgment entered against him or her in a civil case.

Most insurance policies will not cover you if you commit an

intentional, wrongful act. Thus, if you were hunting and accidentally shot a fellow hunter who was wearing one of those cute hats with fake antlers, your home owner’s policy might cover you because the shooting was accidental. This would be so even if you were charged criminally for reckless conduct. On the other hand, if you go after your neighbor with a baseball bat because he made lewd comments about you, chances are your insurance policy will not cover you. You should check the exclusions of your homeowner’s or apartment dweller’s liability policy to see what, if anything, might be covered if you use a weapon against someone else.

In many states, a homeowner can protect his or her primary residence by declaring a “homestead” on the property. The “homestead” is a statutory provision that exempts up to a specific sum of value in your home from being taken for debt that arises after the filing of the homestead.

An asset protection method available to married couples is owning property as “tenants by the entirety.” This is a joint form of ownership that is only recognized between married couples. It holds that the debts of one spouse are not chargeable against the other. The spouse who dies first has no property interest in the property because the law automatically passes ownership to the surviving spouse. Thus, the debts of the first person to be deceased, die with that person. Unlike a pure joint ownership in which creditors

can force a sale, a creditor can not force the sale of property held as “tenants by the entirety” unless the owners have given the creditor a mortgage secured by the property.

Owning property using the “life estate” format can also be a protection from creditors. “Life estates” are often used by older people to avoid having their property go through probate court on death. It may also be appropriate if one of the owners is more likely to be sued than the other. In this form of ownership, the title to the property is divided. One person has the right to use the property for his or her life and the other has the right of possession after the death of the first. Creditors do not go after the “life tenant” because the interest of the life tenant is too speculative to be marketable. Although the “remainder man” (the person who gets the property after the death of the life tenant) has a defined interest, unless the life tenant is close to death, the remainder man’s interest has limited commercial value. The life tenant has the right to say who can live in the property during his or her life. Both parties have to sign a deed to sell the property.

Lawyers sometimes suggest that people put their property into a trust to protect it from creditors. Trusts are valuable tools to manage property that would otherwise have multiple owners, to act in place of a will, or to preserve assets. To be a protection against creditors, however, the property in a trust has to be out of the control of the person to be protected. In most cases, it must be in an un-

amendable, irrevocable trust. This is a major way to protect assets when people are concerned with nursing home costs but it is generally unattractive to younger families. Most people do not want to give up control over their assets to preserve their assets.

None of these asset protection methods will protect property if the owner has taken out a mortgage or home equity loan on the property, because of the way lenders write up the loan agreements.

Asset protection is often the least of a gunowner’s worries if there has been a shooting. Unless there is insurance, the gunowner will willingly sell everything he or she has to pay legal bills in hopes of staying out of jail or defending against a civil suit.

If you are going to carry a gun for self-defense, invest a little money in speaking to a gun friendly lawyer who is familiar with both the local laws governing gun ownership and rules of self-defense. Read reputable material on these subjects. Both the NRA and the Second Amendment Foundation are reputable sources. Although some non-lawyers are very knowledgeable about gun laws, there are many self appointed experts on the Internet who lack the background to understand the legal meaning and implication of the words they read. They are proud to give legal advice for nothing, but that is exactly what it is worth. Be very careful about people who claim to have found some legal way of avoiding the law. They are usually wrong. Police officers are some of the worst offenders in that area. Even well trained lawyers will differ on the meaning of the law. When dealing with the criminal

law, it pays to stay well way from any gray areas. What a good lawyer will argue to get you out of trouble is not what a good lawyer will tell you to do to stay out of trouble. For the most part, when you read case law, you are reading the arguments of lawyers who are trying to get clients out of trouble. No matter how bright you are, keep in mind that lawyers spend three years of training to learn how to understand the law and the specialized meanings courts give to words. Good lawyers will then spend the rest of their lives studying the law.

If you use a gun for self-defense, you may suddenly find yourself in the spotlight. Your bumper sticker that reads “Shoot Looters,” or “One Shot, One Kill,” or some other “cute” saying, will end up on the front page of the newspapers to show what a violent person you really are. When the police arrest you at the scene with that slogan T shirt, someone will take a picture of it. The prosecutor will want to show that picture to the jury. The slogan may not seem funny to a juror if you have been charged with murder.

All activities have their special “dress.” When on the firing range or at a sporting event, sporting clothes are appropriate. In hunting season in the field, wearing camouflage is acceptable as are bathing suits on the beach or ski masks on ski slopes. Wearing waders while walking through Reno, or a bathing suit on 5th Avenue in New York, or a ski mask in a convenience store, is apt to cause other people to become concerned. There is nothing wrong with a jacket that says, “Springfield Rod and

Gun,” or a baseball hat that says “NRA.” However, when a person is covered with multiple patches and slogans, or looks like they have been living off the land in the woods for the last six months, or dresses in a black jumpsuit, he or she begins to look like an extremist. This is especially so, if the dress is out of place.

Bottom line is that if you are arrested, you do not want to look like a “gun nut.” It does not play well to the jury. You want to look like an average citizen so the jury will empathize with you.

If you are involved in an incident in which you have used, or are accused of using, a gun, say as little as you can to the authorities. If there has been an incident, it needs to be reported. Your failure to report an incident could be taken as a sign of guilt. You must identify yourself and produce your license if it is asked for. If someone has been hurt, medical help needs to be sent for. If someone has run off, they need to be identified. If something has been taken, it needs to be identified. You must tell the police you are willing to cooperate with them; however, you should also tell them that your attorney has told you to never make a statement without the lawyer being present. **DO NOT LIE.** It is much better to say you do not want to make a comment at that time. It is permissible to say, “I want to talk to my lawyer before giving you a statement.” **DO NOT BOAST** about how much you think you know about guns or self-defense. Avoid talking in slogans or acronyms used by gun enthusiasts. Most people are not impressed. Some

will have no idea of what you are talking about. Others will take it as a sign that you are incapable of thinking for yourself. Other than saying you are hurt or need some medical attention or pointing out where evidence might be (he threw the knife in the bushes) or what the other person did (he came at me with a knife), the less you say the better.

Most police officers hear what they want to hear. It is not that they lie, it is just that they tend to think the world consists of two types of people, bad guys and police officers. Since you are not a police officer, you must be a bad guy with a gun.

Be careful of what you put on the Internet or Facebook or in “the cloud.” You have no right of privacy in electronic communications. One of the first things the authorities may do is to try to get a search warrant for your computer. They will look for anything that could be used to embarrass you in front of the jury. They will twist anything they can.

If you carry a high capacity handgun, someone will claim it is an assault weapon only good for killing people on the battlefield. It is a lot harder for them to make that claim if the gun you carry is the same model carried by your local or state police. Avoid equipment that has a name that could be twisted into sounding like you intended to cause unnecessary injury or you are connected with some gang or extremist group. Your hollow point ammo will be called “dum dums.” Your full-jacketed ammo will be called “cop killers.” Obviously you want something

that works in your gun and has adequate stopping power at close ranges. Wadcutters or semi-wadcutters work well in revolvers but not in semi-automatics. Glazer Safety Slugs sound nice. Using the same ammunition that some police agency uses is always a good fall back. Then there is the “dumb girl” defense (sorry guys this does not work well for you). “Gee, officer, I just used what the man at the counter of the gun store said I should use.” Never be too proud to admit ignorance. More people get in trouble by trying to impress others with their knowledge than by admitting they do not know.

If there is a shooting, do all you can to preserve the evidence. Have a friend go to the location and take as many pictures as possible, noting the lighting, the location of streets, the locations of building and barriers, any marks that might be on the street or buildings, any person who would have been in a position to see what happened. If you have damaged clothes, keep them. If you have bruises, photograph them. If you have any injury, ask to be taken to a hospital to have it documented. You will probably feel light headed so it is not far-fetched to tell the police you do not feel well and would like to get checked out by a doctor. Talk to a lawyer as soon as possible. Do not tell other people about the details of the incident as they can be forced to testify against you. Do not tell your lawyer the details of the incident over a police department or jail house phone. Many of those calls are recorded. Be careful about saying you’re “sorry.” It could be taken

Big Drop in Firearms Line-of-Duty Deaths

By **Dave Workman**,
Contributing Editor

Last year saw an eight percent decline in the number of police officers killed in the line of duty, and that includes a whopping 33% decline in the number of cops who died from gunshot wounds, according to the National Law Enforcement Officers Memorial Fund (NLEOMF), an independent organization that tracks law enforcement fatalities.

Last year, according to preliminary data compiled by

as an admission of wrongdoing. If you are arrested, do not tell your story to other people in the cell with you. Many street wise thugs will “rat” on you to gain points with the police.

Before you carry a gun for self-defense, you need to know more than the tactical applications of gun use. You need to know the law in your area. You need to plan your tactics to stay well within the law. You need to work out all the moral implications. You need to think about what you would do if you were charged with a crime or sued for damages. You must conduct yourself in such a manner that if suddenly the spotlight of media attention were to be focused on you, there would be nothing to cause you embarrassment. All that would be found is a respected member of the community.

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NLEOMF, 33 officers died from firearms-related injuries, down from the 49 who were killed in 2012. The organization said “ambush attacks” were the leading circumstances of those fatal shootings, with seven officers murdered in ambushes.

Significantly, only six of the officers slain last year were killed with rifles of any kind. Two were killed with shotgun blasts. Nineteen were killed with handguns.

The greatest cause of on-the-job fatalities were traffic-related, the organization reported. Last year, 46 officers died in traffic incidents, including 31 killed in crashes, another 11 who were struck and killed outside of their vehicles and four who died in motorcycle crashes.

According to *The Guardian*, last year’s fatalities in law enforcement was at a 54-year low. A total of 111 police officers died in 2013 on the job, the lowest number since 1959, when 110 cops died while on duty.

Another publication, *Shotgun News*, suggested that several factors contributed to the decline in law enforcement deaths including better bullet-resistant protective equipment, better communications, improved training and tactics, better emergency medicine, increased incarceration, changes in demographics in crime-prone age groups and the use of specialized units to handle confrontations with armed suspects.

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