

There are a lot of points to consider for justifiable self-defense. Being well informed can keep you alive and out of prison.



USE OF FORCE AND SELF-DEFENSE

BY FRANCIS M. DUFFY

Most jurisdictions recognize the right of an individual to defend life—in principle. The legal concept of “burden of proof” requires a defendant (the one who acted in self-defense) to produce evidence that his or her actions were justifiable.

The prosecution has to persuade the judge or jury that the defendant did not act in self-defense, or otherwise violated the law. In other words, if you use lethal force to protect your life you have the burden of production, while the prosecution has the burden of persuasion.

A further consideration is that most self-defense laws require people to use the minimum amount of force necessary to stop a threatening person. Not only is the “minimum necessary” a legal requirement, but it is also held to be a moral obligation. However, if the threatening person has the intent, opportunity, and means to use lethal force against you then you have a legal and moral right to use lethal force in self-defense...in principle.

CONSIDERATIONS

Lethal force is often defined as the use of force likely to cause serious bodily injury or death to another person. Further, the use of lethal force is commonly intended to be judged against what a reasonable person would do under similar circumstances. The key legal term in that definition is “reasonable person.” In other words, would a reasonable person facing a similar situation take the same action you did to protect your life or the life of your loved ones?

Another key self-defense legal principle is “justification.” In other words, you must have clear justification for using lethal force when facing an imminent threat to your life or the lives of your loved ones. The key legal term

for determining if you were justified is “imminent threat.” An imminent threat is one that is happening right now, in the moment, not later.

It is important to know that under many circumstances, and in many states, using lethal force to protect property is illegal. You often cannot legally shoot someone coming into your house and stealing your television for that reason alone. This legal principle has upset some people attending Spartan firearms training courses. They cannot understand why they cannot shoot someone who is in their house stealing from them. J. Fleming put it this way:

The decision to use lethal force to protect personal property involves the question

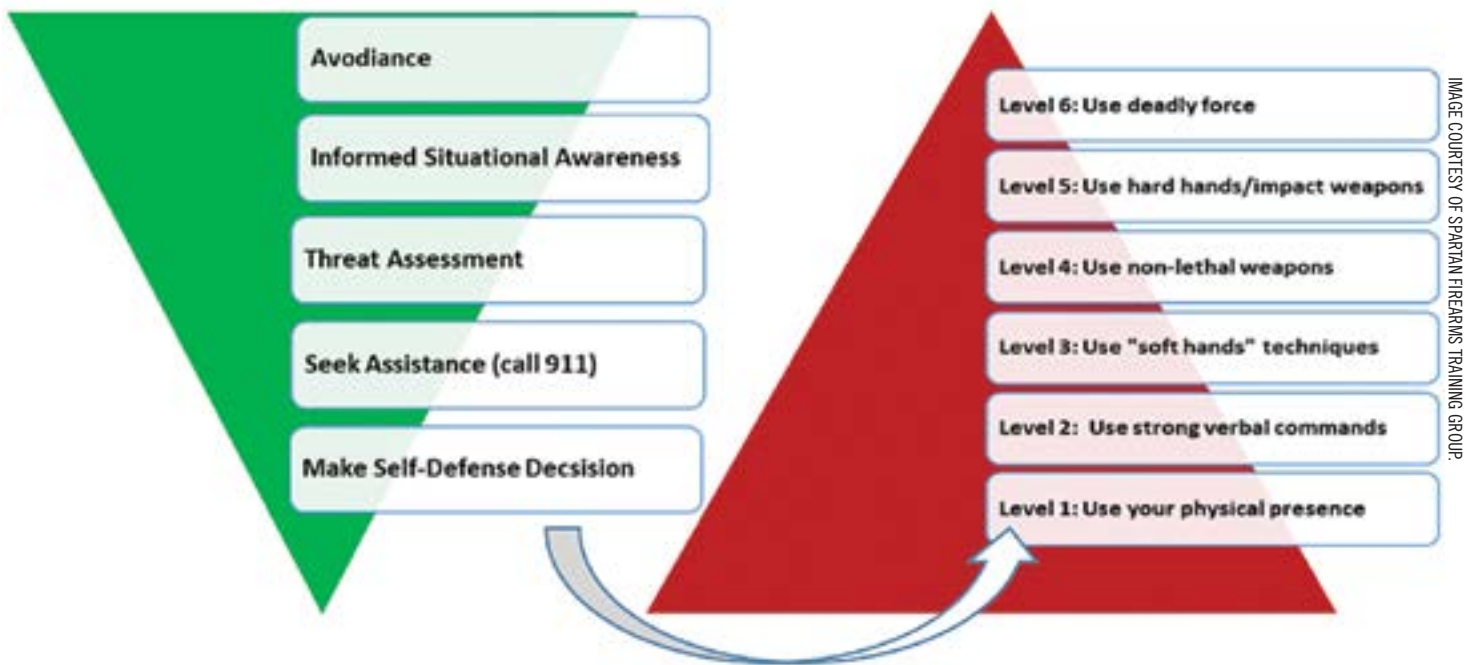


FIGURE 1. DECISION-MAKING FRAMEWORK FOR THE USE OF FORCE

of whether lethal force “may” be used, but equally important, whether it “should” be used. One is clearly a legal question. The other is a moral question and, perhaps more importantly, a practical question, one that you should not be in a hurry to answer.¹

Another legal issue that people face after using lethal force to stop a threat to their lives is that in many states self-defense cases are adjudicated on the basis of common law rather than by statutory law. Statutory law can provide specific legal guidance while common law may be more open to interpretation.

EVALUATING JUSTIFIABLE SELF-DEFENSE

Self-defense laws vary by state. As an example, in Maryland, the following five elements of justifiable use of lethal force apply:² (Washington, DC, uses similar criteria.)

1. Innocence—you cannot be the aggressor.
2. Imminence—you must believe the threat is going to happen right now.
3. Reasonableness—you must be facing a disparity of force (for example, big vs. small, male vs. female, old vs. young, and so on).
4. Avoidance—you must retreat as long as it is safe to do so (you do not need to retreat inside your house)

5. Proportionality—you may only use enough force to stop the threat (in other words if one shot stops a threatening person you cannot shoot him two more times for the hell of it).

SELF-DEFENSE DECISION-MAKING

In most jurisdictions, the use of lethal force is justified only under conditions of extreme necessity as a last resort when all lesser means have failed or cannot reasonably be employed. What are the “lesser means”?

At Spartan Firearms Training Group, we teach our concealed carry students about firearm laws governing the use of lethal force in Maryland, Utah, and Washington, D.C. and we created the graphic shown in Figure 1 to illustrate a process for making self-defense decisions and using “lesser means” to avoid using lethal force; knowing that lethal force still might be required to defend your life or the lives of your loved ones.

Figure 1 presents tactics to avoid potentially dangerous situations and use of force options before you actually have to use lethal force. The figure presents a continuum with two parts. Part 1, on the left, presents a decision-making framework for paying attention to your environment to avoid dangerous people and situations. Part 2, on the right, displays a use of force continuum with options

that can be used to de-escalate a dangerous confrontation that have the potential to the use of lethal force.

PART 1: DECISION-MAKING FRAMEWORK

Avoidance: avoid places, situations, and people that are potentially dangerous. Don’t go someplace with a gun that you wouldn’t go without one.

Informed Situational Awareness: Pay attention to your environment. Know what is normal for your environment so you can identify what or who stands out as diverting from the normal.³

Threat Assessment: Assess potential threats using Cooper’s Color Code and Boyd’s OODA loop (as well as where your opponent(s) are within those processes) described in previous Tactics and Preparedness articles.

Seek Assistance: Call 911 or alert passers-by. Let people know you need help. If you call 911, at a minimum tell them where you are at.

Make A Self-Defense Decision: In the self-defense world there is a saying “When seconds matter, the police are only minutes away.” Even if you call 911 help won’t arrive in seconds so you need to make a decision about escaping and/or the use of force. Remember, you have a legal and moral responsi-

bility to use the least amount of force to stop a threatening person while being willing and able to use lethal force to protect your life or the lives of your loved ones.

PART 2: USE OF FORCE CONTINUUM

Level 1: Use your physical presence. If you can look stronger, bigger and more threatening, that might dissuade a potential attacker from harming you.

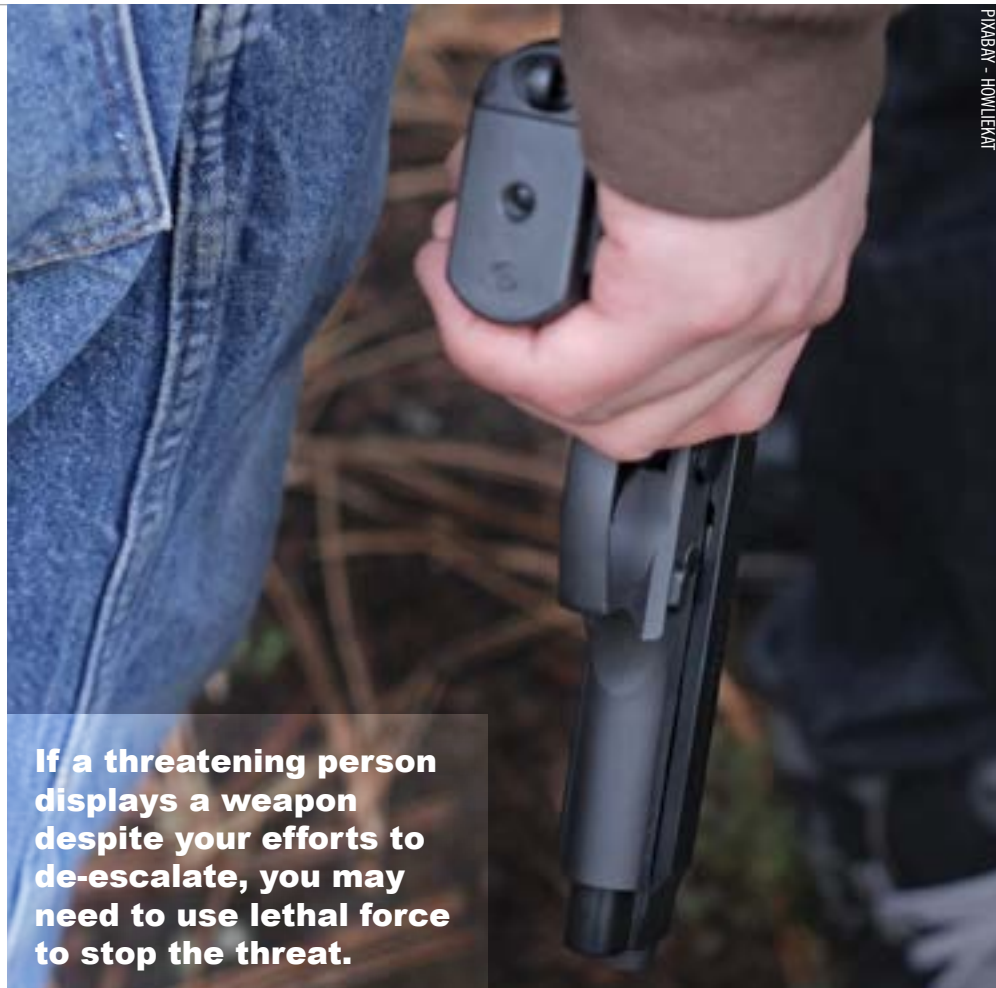
Level 2: Use strong verbal commands: A loud and threatening “Don’t come any closer to me” with an open palm facing forward on an extended arm can stop a potentially threatening person in his or her tracks.

Level 3: Use “soft hand” techniques. These techniques are often used by executive protection specialists to protect their principals from those who want to get close to them. The techniques include sweeping the threatening person off his line of attack, arm drags, or wrist locks.

Level 4: Use non-lethal weapons: Tasers, stun guns, and pepper spray are effective non-lethal weapons if used correctly. Tasers, especially, require training on how to use them effectively. Each non-lethal weapon has its drawbacks (for example, to use a stun gun in self-defense you need to actually touch the attacker which means you have to get close. If the attacker is a skilled fighter he could potentially disarm you quickly and use the stun gun against you.)

Level 5: Use hard hands/impact weapons: Impact weapons include baseball bats, batons, kubatons, or large hand-held flashlights ... anything you can use to strike the assailant. “Hard hands” means physical hand-to-hand combat. We tell our wear and carry students that they will not learn how to fight when they are in a fight. They must learn to fight before they get into a fight, so, we advise our wear and carry students to train in a fighting system that has a track record of success if they have the time, financial resources and physical ability; for example, Brazilian Jiu Jitsu, Muay Thai, boxing or wrestling are all combat-proven martial arts.

Level 6: Use lethal force. If the threatening person continues to escalate the attack and starts to display a weapon in spite of your efforts to de-escalate you may need to use lethal force rapidly to stop the attack. As mentioned earlier, you have a moral and legal obligation to de-escalate a dangerous situation without using lethal force, but you may justifiably use



If a threatening person displays a weapon despite your efforts to de-escalate, you may need to use lethal force to stop the threat.

lethal force if all else fails and if you are innocent, if the danger to your life was imminent, if your use of force was reasonable given the circumstances, if you used just enough force to stop the threat, and if you made efforts to de-escalate.

It is important to recognize that you may not have the time to think through the use of force options shown in Figure 1 when faced with an imminent lethal force threat. It is to your benefit to imagine different situations that you might find yourself in and to visualize responding using the framework described above. Mental rehearsals will help you act with lightning speed to move from level 1 straight to the appropriate use of force level within the continuum, possibly even straight to lethal force.

When faced with a lethal threat you cannot say “stop let me get my pepper spray” and expect to survive. However, if actions at one of the levels below level 6 could have stopped the threatening person, but you used lethal force instead, you will likely face serious legal consequences.

REHEARSALS

To think and react appropriately and effi-

ciently using the decision-making framework shown in Figure 1 you must mentally rehearse your possible reactions to various dangerous situations. You must also develop and maintain competent shooting and gun handling skills (including drawing from concealment if you are a CCW holder) using dry-fire and live-fire drills. Special operations teams do this in advance of any operation they are required to carry out. They know that well-made plans quickly fall apart in the heat of action so they need to have “what the hell do we do now” options available in the form of immediate action drills. They also go to a range to hone their shooting skills and to confirm their weapons and gear are functioning properly.

We also talk to our wear and carry students about the importance of practicing safe and effective shooting techniques. Gun handling and marksmanship skills must be practiced safely, effectively, and consistently. When skills are practiced the myelin that coats neural pathways in the brain thickens.⁶ As the neural pathways thicken, skills can be performed more efficiently. There is one caveat, however. If you practice skills incorrectly you become more proficient using the incorrect skills.

CONCLUSION

I am not a lawyer. The information in this article is not legal advice. Check your state's laws for justified self-defense using lethal force by contacting your state's Attorney General's office and consulting with a good criminal defense lawyer. State laws are subject to change when legislatures come into session, through court rulings, ballot initiatives, and other means. Laws vary significantly and it is important to see how they are being enforced in your community presently. Different prosecutors, judges and juries prosecute, interpret and adjudicate differently.

I believe you have a moral and legal obligation to use the least amount of force needed to stop an attack on you or your family. A decision-making framework and a use of force continuum were presented to help you envision different courses of action before you are faced with a lethal force threat and the legal aftermath. As you mentally rehearse your options and practice clean firearms skills your neural pathways thicken and this decreases ultimate reaction times. You have to prepare to have skill with a firearm, and you have to

prepare to know, not guess, at the nuances of law in your jurisdiction.

While it is important to recognize the value of training, you must also be aware of the limitations of the training you have experienced.⁷ For example: many range sessions are on a flat environment with tightly defined parameters. You may reliably be the first to move, the first to shoot, or the only one to shoot. In a self-defense situation the complexities of the environment and adversary action add a great many variables to be accounted for. You will likely be reacting rather than initiating.

Finally, be realistic in your assessment of your shooting and gun handling skill levels. Be aware of who you are, not who you think you are. Take your training seriously. Train often, train effectively and train with precision because, as they say, you will most often fall to the level of your training, not rise to the level of your expectations. ✓

BIO

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Recognize the limitations of your training. You will be reacting instead of initiating, in a complex situation in an uncontrolled environment.