

## Legal Advice on Deadly Force

From a non-lawyer so take it for what it's worth.

So what do you do if you are caught up in a deadly force scenario? Let me state again. I am not a lawyer. But, I have been on the witness stand for the Los Angeles Prosecuting Attorney Office.

The first thing that I want to tell you is this. Hold up your hand and say right now, out loud. I will not lie. Now repeat it. I will not lie. If you do not want to go to prison for something you needed to do, do not exaggerate, do not stretch the truth and do not lie, even once. Leave that to your attorney (no offense).

The aftermath of a violent act, a deadly act, is like a play. There are villains, there are bad guys, there are heroes and there are extras on the set. In fact, you may even really be on film. You never know. Play your part well and you'll get the Oscar, play it bad and you'll get free room and board for life.

So let's start a sequence and go through it step by step. Because it's easier to relate to, we're going to use a violent armed robbery as the subject of this discussion.

You are alone on the street walking home from Monday night football with your buddies. You have a legal license to carry a gun. By the way, you better be able to prove you have had proper training and your license better be current and 100% legal at all times.

As you are walking along the sidewalk to your car, (in condition white) down the street, about a block away you look up and see some road crew guys working under construction lights when suddenly, out of nowhere, something hits you on the side of the head. There is an explosion of white light and you stagger, your knees buckle momentarily as you turn and you can barely hear, "Give me your f\*cking money!"

All you see in front of you is a silhouette and the glint of a gun. "I said, give me your f\*cking money! And your wallet! Hurry up motherf\*cker or I'll blow your f\*ckin head off!" You reach for your wallet and you fumble it as you hand it over and it falls to the ground. "Stupid Mother F\*cker!" And he fires off a round at you. It strikes the car beside you as you recoil then reach for your weapon. Boom! Boom! And the silhouette falls to the ground silent; his gun clatters across the ground into the bushes.

So here we go; If you are safe, do not flee the scene. If you have a cell phone, call 911 to report the incident. Call it in immediately. Don't wait. All you need to do is say there's been a shooting and give the location if you can. The construction crew down the street has already called it in. But you better too. You don't want to be on record calling it in 45 minutes later. Stay put. Do not tamper with the scene or the evidence. Do not move the weapon closer to the body. Forget everything you've ever heard from all the bullsh\*t advisors you've ever heard, i.e. putting the gun in his hand, hitting yourself to show he attacked you, yelling "don't kill me", dragging someone back into your house, and believe me when I tell you this, rearranging any evidence at all, is not the thing to do.

You hear the police sirens getting closer. Put your gun down on the ground. Put yourself in plain view. Don't be moving around when the units roll up. And for God's sake have your hands in plain view. Do not run toward the officers as they arrive. Let them come to you. Follow their commands; remember they know nothing about what just happened except that there was a shooting. For all they know you may be the bad guy and you don't want to get shot too.

Now comes a very important part. You may be handcuffed. You may be arrested. If you are arrested be assured that you will be bonded out after a few hours, so don't panic. It is just the way it is until things get sorted out. This is one of the most important things to keep in mind. From the moment that the Police arrive on the scene consider that anything and everything you say will have a direct effect on the outcome of the situation you are now faced with. You are being interviewed (questioned) from the moment they arrive.

If you are arrested, you will hear the following;

#### Miranda Rights

1. You have the right to remain silent.
2. Anything you say can be used against you in a court of law.
3. You have the right to an attorney now and during further questioning.
4. If you cannot afford an attorney, one will be appointed to you free of charge.

You must request an attorney before you answer any question-at all. Everyone always wants to get the story out of what just happened. It was a huge, traumatic event and you want to tell someone about it. It's just human nature. Don't do it!

You must request an attorney and have him present before you answer any questions.

“Officer, I need an attorney before I answer any questions.”

Remember the Miranda Rights. You are being placed under arrest and anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford one, one will be appointed for you.

You are not presumed guilty by requesting an attorney. And look carefully at Miranda.

It says, “...will be used against you, not for you in a court of law.”

A very famous attorney once told me. “For God’s sake keep your mouth shut. You can think about it like this. Every word that comes out of your mouth is a \$1000 bill floating away. Because that is what it is going to cost you for me to undo every one of those words.”

From this point forward it is not going to be an easy journey. There will be a criminal investigation. The DA may file a case against you or he may not. There may also be a follow on civil case by the bad guy’s family, and this whole mess may take years to get through. But, in the worst of times to follow, know that if you were justified and you

kept your wits about you, that you will prevail and that justice will be served. What happens after the incident will be a roller coaster ride of elation and despair but you've still get to maintain the spirit of a warrior to see you through. It will not let you down.

Copyright 2010 Ernest R. Emerson