

THE JUDICIOUS USE OF MARTIAL FORCE

Maintaining the Mantle of Innocence

INTRODUCTION:

One day, while visiting my parents, we had a run in with a neighbor. The neighbor was an elderly gentleman, who lived across the street from my parents. He liked to walk his dog through my mother's yard, where his dog would leave a large steaming pile, and they would go home. That particular day, my mother decided she had had enough and called him out. He decided to come through their gate to the back porch to "kick her ass." I stepped in between, he grabbed my shirt and I froze.

At the time, I was studying to take the bar exam and my mind started racing through all of legal problems I would face if I in fact beat this old man up. I froze with the thoughts of being arrested, of wondering what the legal consequences would be if I hit him, and of how the police would respond. Would they see him as the victim? Fortunately, with the help of my father, we were able to get the guy out of our yard and another neighbor, hearing the commotion intervened and took him home. We were smart enough to call the police, but not smart enough to push for charges. He continued to leer at my mother as he walked down the street with his dog until he moved away a couple of years later. The lessons from that day continue to haunt me.

I had never experienced being frozen before. I had always known that human beings had a fight or flight response. I just did not understand the implications of the freeze response. I froze because I did not know my rights. The police officer that responded said we had the right to use force to defend ourselves on our property. But, I suspect had he arrived to find a bloody elderly man lying prone on my parents' porch he might not have reacted in quite the same way.

I started studying martial arts to learn "self-defense." I had already trained to use a firearm and studied the law as it related to firearms. When I started to study martial arts though, the concept of self-defense became much more real and more palpable. Suddenly, I had the skills to use my body as a weapon. Yet, I still didn't understand what that meant.

Through my training, I began meeting other people with the same problem I had. They were well trained in self-defense, but they were terrified of the legal consequences of using that training. The misconceptions and misunderstandings are everywhere. And, I saw people training to do things that would land them in jail if used on the street. I do not mean learning some amazing technique, but rather, training to leave the scene or placing a knife in the hands of the attacker you just debilitated.

Knowing I was a lawyer and litigator, I was often asked about self-defense after class. I realized through these discussions that many of classmates were so worried about the legal consequences of using their training in self-defense that they would likely freeze if faced with a situation where they would be required to use force. Most of this fear came from not knowing the basics of self-defense law and the basics of the legal system.

I have learned that training in the martial arts changes you. It changes you physically and mentally. I have developed balance, coordination body awareness, and a host of other benefits from my practice. It has also changed the way I perceive those around me, and has given me a greater feeling of confidence that I can survive to fight another day. The martial arts has also changed me in the eyes of the law, by giving me actual training in the use of my body as a self-defense weapon. How this impacts your ability to justify the use of self-defense is a difficult question to answer.

What makes these questions difficult to answer and is always a struggle is because the law is not black and white. Sure, statutes may read as bright line rules, but all of these rules are applied to specific situations. They get applied in courtrooms by judges hearing arguments from attorneys regarding cases that have unique facts. After years of courtroom battles, I have seen what I thought were rules entrenched in black letter law be ignored. Thus, we face the frustration of the grey-area, where hard line rules are tough to give. Therefore, as the subject of martial arts training and self-defense law is discussed, bear in mind that each factual scenario is unique and quite often it is the factual scenario as believed by the judge or jury that determines the outcome.

CHAPTER 1: Trained Force

The use of martial arts for self-defense is the use of trained force to protect you from a physical and violent attack/assault. The law looks at the use of “trained force” when you find yourself facing assault charges for repelling an attack. Therefore, not only must the martial artist train in his or her art, but the martial artist must also understand how the law views that training when used on the streets.

Throughout, I use the term “martial force” in an attempt to distinguish between the use of trained and skilled force, versus the use of force by a non-trained person. The term “martial force” is not intended to be used as a distinct legal term, but to be used for our purposes herein: to distinguish the use of that force which is trained and skilled. When trained and skilled force is used, the “force” itself changes. It is directed and controlled in a certain manner for a certain purpose. For example, there are various chokeholds some designed to kill and others designed to subdue. Your use of choke holds will come under greater scrutiny if you are trained and in case of a court action, experts will need to be hired to discuss the type of choke hold and its lethality, and your training in the use of chokeholds.

These are all vitally important topics for the person seeking proficiency in self-defense or a martial art. The skilled and proficient use of tactics may save your life or the life of another, may prevent a crime, and may land you in a jail cell. Your actions may have both criminal consequences and civil consequences, where you are sued for injuring or killing someone. Real street self-defense is not a game. You should not have any allusions that you will be a Kung Fu hero in some backwater bar.

There are also many martial arts instructors who are skilled in the arts of inflicting pain and defeating an attacker or an opponent. They teach their students to be aggressive, to not hold back, and to make sure that the attacker cannot get up to attack you again. They may teach their students that action beats reaction 100% of the time, so you should strike first, fast and hard. There is nothing wrong with this type

of instruction, especially when many students cringe at the thought of using any violence and would freeze if attacked. This type of instruction if not tempered, may have a kill or injure someone in a street fight. An investigation by a civil lawyer into the school will uncover the teacher's instruction, may find YouTube videos demonstrating techniques or teachings. Other students will proudly declare what they have learned, and a jury (although rarely) may declare how much money the school has to fork out in the wrongful death lawsuit. Or, worse yet, a jury may declare that you are guilty of a crime for which you should serve time in prison.

There is also a very difficult dichotomy faced by martial arts instructors. They must train you to be able to perform the moves of the martial art and they must train you on some level to be violent. If you are passive and end up in a violent situation, you need to be able to pull out of yourself an ability to act and to engage in violence. If you cannot do this, or if your training has not taught you to do this, then you do not stand a chance in a real confrontation. Therefore, in my opinion, a good instructor must teach you to engage in violence in a society that hates violence. With that, you must also take charge to learn that although you have an ability to engage in violence, you must also have the ability to engage in self-control—physical and emotional. If you let your anger and emotions get out of control, you face finding yourself arrested and imprisoned.

I have also seen instructors post YouTube videos and offer classroom instruction about interacting with the police and the criminal justice system that ranged from suggesting the student lie to the opposite end of the spectrum, where the instructor explained to a student that they were obligated to explain to an investigating police officer what they did and why they did it. Later, we will see why this instruction is not only wrong, but is likely to end up with the student getting arrested and convicted.

Make no mistake, that your choice to learn self-defense has changed your use of force in the eyes of the law. I will attempt to explain this later. But for now, understand that that your training becomes part of your knowledge. It is what you "know." And what you know, impacts whether or not the actions you take are "reasonable". Whether or not a jury determines that your actions are "reasonable" will determine whether or not you are found guilty of a crime.

In many ways, the use of a firearm in terms of self-defense is a much more black and white scenario. The use of a firearm, the mere drawing of the firearm and brandishing of the weapon is considered the use of deadly force. Therefore, it must be done in the face of a narrow set of circumstances. However, those circumstances and when the use of a firearm is justifiable can be a complicated subject. But, the use of martial force is much less black and white, as the use of martial force can range from a simple block of a punch, to a hold, to a chokehold, and to deadly force or force that causes grave bodily harm. It becomes more complicated because the definition of "reasonable force" is based upon the definition of the reasonable person, knowing what that person knows before and during the incident. If you are a highly trained martial artist, then what is reasonable for you is by default different, then if you are an untrained person. In short, your training, like it or not, will play a role in any self-defense situation. Experts for the prosecution and your defense will scrutinize it. You must, therefore, train for not only the fight but for the consequences thereafter.

It is absolutely vital to understand that each state and locality is different. Each place has different laws, beliefs, and attitudes about self-defense. Remember, in every instance of self-defense there is a different factual scenario present. There are no formulas to follow. This book will, however, teach you many of the issues you need to understand and give basic tools you can use to help successfully defend yourself in a courtroom after you have defended yourself on the street. This book should also scare you a little bit as you face the reality of criminal charges and other consequences for physical confrontation. During the confrontation you face the risk of injury, sometimes even death, then after that you face the risk of the loss of your freedom and potential financial ruin.

This book is written for civilians. It is not written for law enforcement officers. There is a great distinction between law enforcement officers and civilians. Law enforcement officers are trained to get involved in trouble, to arrest, and to do the job that citizens pay them to do—fight crime. Civilians do not have those same powers and obligations. I try my best to avoid using tactical terms associated with police training.

So, this book is geared to the average person with some or maybe a lot of martial arts training, so that you are armed with the knowledge you need not only to defend yourself on the street, but to also defend yourself in the courtroom. Hopefully, the contents of this book will be debated, disagreed with and agreed with. Every self-defense scenario is ultimately a fact specific thing and each person will have a different experience and take on this information. Having a working knowledge of this information, however, regardless of your opinion will give you a tremendous advantage over the person who does not have it.

This book is written from a legalistic standpoint. Police and prosecutors have a level of discretion in charging someone with a crime. Judges also have discretion in determining what and who will be convicted of a crime. This discretion is absolutely necessary in a world where each situation is different. Therefore, I have heard anecdotes about knife fights in back alleys and everyone running away and the police never being involved. No one went to jail. I have heard anecdotes about bar fights, everyone scatters, and the police are never called. These stories should not form an individual's understanding of the law and self-defense, but should be used as examples of the wide range of consequences that can occur as a result of a fight.

To further complicate matters, nearly everyone has a smart phone that can also act as a camera and HD video camera. You are now likely to have the confrontation recorded, and possibly put on YouTube for the world to see. This video may help or convict you. That will depend on how you appear in the video. Notice, that I did not say “that will depend on what happened”, because the video only shows what was recorded and not necessarily what happened. Either way, if things end up in a courtroom, a story will be told.

CHAPTER 2: The Story

Human beings are first and foremost story-telling machines. We have all learned in basic grammar school the tradition of storytelling that runs across cultures and across time. People make everything into a narrative, with a plot, a hero, and a villain. It is human nature, and we cannot help it. It is one of

the things that makes us human. So, it should come as no surprise that every legal action, criminal or civil, is also a story. Trial lawyers through witnesses, evidence, and expert testimony tell the story. Every action you take will become part of that story. Even actions that seem irrelevant, minor, or that you don't even realize you did. Unless you understand that every trial, every interaction, will eventually be made by the human brain into a story, you are and will be at a terrible disadvantage, because the investigators, investigating your self-defense will be looking to recreate "the story" of what happened. They will be interviewing witnesses who will have created their own story about what happened. And, they will have prosecutors telling the jury the state's version of what happened.

A trial is a battle of stories: the plaintiff's story and the defendant's story. You need to be able to arm your defense with your story. Your story, first and foremost, must be true and believable. One lie, anywhere or anytime, and your story will be regarded as fiction and tossed aside: once a liar, always a liar, and a jury will convict you in a heartbeat. Your story is the only weapon you have in a courtroom to defend against a prosecution's story. If you do not understand this, you have no hope of winning.

To illustrate this point, remember the story of Goldilocks and the Three Bears. We remember the story as Goldilocks being a young, innocent little girl cold and lost in the woods, who comes across the Three Bears' house. She sees that it is warm, goes in, eats Baby Bear's porridge and passes out on his bed. Telling the story from Goldilocks' perspective does not lead you to believe she is a criminal who broke into the Bears' house and stole their food.

Imagine the story from the Bears' perspective. They come home after a nice morning out, to find that their house has been burglarized, Baby Bear's food eaten, and this trespasser is still in their house sleeping in Baby Bear's bed. She is thin, her hair is a mess, and her eyes are red (from sleep). Looks like a junky that crashed the wrong house. The Bears call the police, the police come and arrest Goldilocks and she is charged with burglary.

In one version of the story, you may have sympathy for the starving girl just looking for warmth and shelter. In the other version of the story you think she is a drug-addled prostitute who needs to be locked away. The point is simply this: The story can be told from more than one perspective, and depending on which perspective the jury believes will make the difference in the final verdict. Either your story, as told to the jury through your attorney and the witnesses win or the prosecutor's story told through the state's attorney and witnesses win.

In some cases the story gets told first by the news media, whose goal is to attract ratings. It is usually breaking news when someone breaks into a house and is blown away by the homeowner. News vans park outside trying to get a scoop on what happened. There is no story etched into the public mind more than George Zimmerman's shooting of Trayvon Martin. If you want to understand how a story is told in a courtroom and how that story will impact your self-defense case, go online and start watching the YouTube videos of the trial. Understand that you may end up in that situation and that you may have to tell your story while the public holds its judgment of your actions. If you have to use force to defend yourself it is highly unlikely that you will get to choose your attacker or the scenario.

The testimony of George Zimmerman's martial arts instructor, Adam Pollock makes this case right on point to this subject. He taught mixed martial arts at his Kokopelli's Gym in Florida. During his testimony, he described what MMA was to the jury and the different attributes of MMA. He went on to explain that George Zimmerman was actually not well trained and was not a good fighter. Imagine your instructor and classmates having to testify on your behalf? What would they say? Are there any videos of your training? What would they show?

So, let's cast the scene of your self-defense scenario.

Imagine you are on the street and someone is trying to rob you. They pull a knife and you, after years of martial arts training, swiftly disarm them, break their arm, and send them hurtling to the ground in a thump. Miraculously, you are not injured or cut (this is truly the work of fiction). You saw the knife coming at you and you acted accordingly. Now, the guy is on the ground writhing in pain with you standing victoriously over the top of him. Your adrenaline is racing and your heart is pounding. You saw what you saw and acted as you were trained to act.

When the police arrive, you expect them to arrest the guy who pulled the knife. The police pull you aside. You tell them triumphantly that the guy pulled a knife and you and all of your martial arts training kicked his ass! Now, what you are not hearing is the story as it is told from the witness, who never saw the knife. No, they only saw the part where your assailant screamed as you broke his arm. They heard the scream and then noticed that something was going on. According to that witness, you grabbed the guy's arm and broke it. They thought you were robbing him. The witness cannot believe that you just took that poor guy's arm and broke it. They never saw the knife. The guy who attacked you denied having the knife, or said he pulled the knife in a desperate and failed attempt to stop you from breaking his arm.

Yes, the knife! Where is it? Did you keep track of it? Because no one can find it and the guy with the broken arm is saying you did it when he asked you for directions and if you could spare a dollar for the bus. Or, what if they do find the knife and the guy claims he pulled it after you broke his arm. Now how does the story look: you broke his arm and he pulled a knife in defense? Now, the police have the story from the witness who only saw you break his arm, never saw the knife, and you have just confessed that you are trained in the ways of the martial arts and that you used that training and "kicked his ass." To make matters worse someone took a cell phone video of the event just as you broke the guys arm, missing the entire beginning of the confrontation.

Oh yeah, don't forget that you drive a large truck with knobbed tires, a bumper sticker that says *TAP OUT* and another one that says, "Never Mind the Dog, Beware the Owner" all punctuated by a giant pair of testicles hanging off of the trailer hitch and a shirt with a skull on it touting your support for "kicking ass." And, your Facebook page is full of posts about martial arts, guns, and violence.

You are charged with felony assault, arrested, and taken for a ride in the back of the police car. The other guy is taken to the hospital, where he is cared for and released. Now, you face the hard reality that the eyewitness testimony will trump yours, if your lawyer wants to allow you to testify. You will also face the hard reality of facing real criminal and civil consequences for your actions.

The prosecutor may argue that you had a love affair with “being tough” and that you thought you were Rambo, bullying indigent people on the street asking for bus money. It’s all there: your bumper stickers, your testicles on the truck, your Facebook page and your years of martial arts training, which all points to you being violent and well trained for violence. It all makes sense and is believable. The fact is you have been training for this very moment for years. Your classmates and instructors will be interviewed, experts will discuss your training and technique and why the technique you used was specifically designed to break the guys arm. Experts will testify that you could have used a myriad of locks or holds that would not break the arm, but you chose differently. You are now facing a felony and the lifetime consequences that follow it.

Don’t think this is realistic? The case law is replete with these types of stories. Consider the following case from Washington State as the Court of Appeals tells it:

Around 9:00am on September 11, 2005, Mr. Woods was walking to a senior center for breakfast. As he approached the center, Richard Probert was parking his truck in front of the center. Mr. Woods walked up to Mr. Probert’s truck intending to ask for some money he had given to Mr. Probert the night before. As Mr. Woods approached the driver’s side of the truck, Mr. Probert ordered him to get away from his truck. Mr. Woods refused to back away and continued to confront Mr. Probert about the money.

At this point, Mr. Woods’ and Mr. Probert’s stories differ. According to Mr. Woods, Mr. Probert reached for a hammer under the driver’s seat, and hit Mr. Woods on the hand with it. Mr. Woods retaliated by jabbing him with a knife. Mr. Woods was later treated for a hand wound.

Mr. Probert testified that when he opened the door to his truck, Mr. Woods came running up, yelling “where’s my shit?” According to Mr. Probert, Mr. woods was angry because he had failed to return his microwave. Mr. Probert testified that Mr. Woods was carrying a knife, and refused to put it down. Simply to frighten Mr. Woods, Mr. Probert picked up a hammer from under his seat, and placed it on the passenger seat. Undaunted, Mr. Woods stabbed Mr. Probert in the shoulder, resulting in a wound that required three stiches. Mr. Probert denied threatening or assaulting Mr. Woods.

The Court now goes on to talk about what the witnesses saw, and what they could see:

Two witnesses saw the confrontation, but neither was able to see inside the cab of the truck. Timothy Leu witnessed the altercation from his third-floor apartment above the street where Mr. Probert’s truck was parked. He testified that he saw a male with a knife arguing with someone inside a pickup truck. He then witnessed the person outside the truck make a “stabbing motion” into the vehicle. Mr. Leu admitted that he was not able to see inside the truck, could not see the driver, and could not provide a complete description of the assailant.

Sterley Palmer told a slightly different version of events. Mr. Palmer testified that he was waiting outside the senior center for breakfast when he saw Mr. Woods standing on the sidewalk near the edge of the street. He saw Mr. Probert advance toward Mr. Woods and

watched Mr. Woods back up. Mr. Probert then walked around to the driver's side of his truck and opened the door. When asked to characterize Mr. Woods' demeanor, he answered: "He was definitely in a—what I would call a defensive/offensive pose, ready to either back away or attack."

Next, Mr. Palmer saw Mr. Probert enter his truck and Mr. Woods "raising his hand and bringing it forward."

Mr. Palmer heard a yell, and then saw Mr. Probert chasing Mr. Woods with a three- or four-pound hammer. Like Mr. Leu, Mr. Palmer could not see inside the truck and therefore did not witness the circumstances of the assault.

Here is the kicker: "As a result of this incident, the State charged Mr. Woods with one count of third degree assault while armed with a deadly weapon." *State v. Woods*, 138 Wn. App. 191 (Wash. App. Div. 3 2007). He was convicted, despite having raised the issue of self-defense. He was convicted despite the fact that *none* of the witnesses saw what happened inside the truck. He was convicted despite testifying that he was struck first with the hammer (a deadly weapon) and used his knife in self-defense.

You can see from the above example that the story the witnesses told the police led to the charging of Mr. Woods—the guy with the knife. Yet, we don't know if Mr. Woods was being attacked by Probert with the hammer and used the knife to defend himself. The most chilling part of this case is the testimony of Mr. Palmer, stating about Mr. Woods: "He was definitely in a—what I would call a defensive/offensive pose, ready to either back away or attack." What trained martial artist wouldn't be in such a position or pose? Witnesses are very rarely trained martial artists, but will testify as to your aggressive looking stance or demeanor.

So, we see from this example that any action you take in self-defense is going to be scrutinized by the witnesses who saw it happen first, and those witnesses are going to tell their perceptions to the 911 operator and the police, who will in turn, determine who should be charged with a crime. Don't count on the police believing your valiant story over the other guys because he is the "bad guy." They don't know that. The police deal with bad people all the time who claim self-defense. They are there to determine for themselves who the bad guy is, who should be charged, and then let the prosecution try the case. You may both be charged with assault.

You will notice that the "truth" is not the issue here. Everyone is telling the truth. They are telling the truth about what they witnessed. The problem is, what they witnessed doesn't tell the "whole truth" because they don't know it. And, you can bet, that the person who attacks you isn't interested in telling an objective and truthful statement of the story. To make matters worse, if there is a cell phone video of the event, you can bet that the video will be used as absolute proof of what happened. After all, video does not lie.

You will also notice that even if you can articulate to the cops why you believed you were in danger of physical harm, if that story does not jive with the witnesses around you, you are likely not going to be

believed. And, if your story does not add up to the witnesses you will be perceived as a liar and tried as such.

The point of this is to give you tools beyond combat tactics, and to start you thinking about a confrontation with another as involving more than you and the perpetrator(s), but also including the witnesses who are watching, filming, judging, and remembering their version of what happened. Each of these parties will end up interacting with the police investigating the incident and the rest of the legal system thereafter. You must be aware of who all of the stakeholders are in the process from the witnesses, the police, the attorneys, judges, and all of the administrative personnel in between. It is a sad trade off to successfully defend yourself, only to be charged with assault or some other worse offense. Your demeanor, actions, appearance, and reactions are going to make all of the difference in the world in how the stakeholders in this process view and treat you.

This all culminates in a presentation to either a judge or jury, who will learn the story through the witnesses, testimony and evidence. They will judge who is telling the truth and who is not. They will watch the videos and listen to the police testimony about the investigation into what happened. And, based on all of this, they will determine your fate.

CHAPTER 3:

Whether or not you will get charged with a crime, arrested, tried and convicted is going to depend on your credibility. As we discussed, your self-defense scenario will become a story. In order for you to maintain credibility in your story, your appearance, demeanor, and actions will be central to whether or not you are ultimately charged with a crime.

You must be the victim!

Every story needs its characters, and you must play the role of the victim. No, I don't mean the role of the hapless victim, where you do something stupid that leads you into trouble. Even though you may be as tough and as well trained as Bruce Lee, you are still playing the role of the victim. You did not choose the confrontation. You were forced to use violence to combat the perceived threat of violence against you. The other person forced you to take violent action to protect yourself from their violence. At its core, self-defense is the use of violence to prevent harm or violence to you or someone else. It is not antagonizing another to bring harm or violence against you. It is not being tough. It is not getting into a shouting match that escalates to the level of violence, either. It is not gloating and being proud that you just beat someone up. It is being an innocent victim who is forced to use violence to protect against a violent act.

Now, this is where your demeanor and your mouth play a crucial role. You may have the best martial arts techniques mastered, but if you cannot master your own stupid mouth, then you are going to have a problem. To be a victim and to be perceived as a victim, you must act like a victim. A victim does not go around talking "smack" and egging another person on. The Internet is chalk full of videos where two stupid teenage boys egg each other on into a nasty fight, while a crowd cheers them on. At any point, in most of these videos, one just has to walk away and there would be no fight. If you can walk away, then

do so. Why risk your life, safety, financial stability, and freedom? Getting into a verbal confrontation and allowing your testosterone to take over will almost certainly make you look like a perpetrator, and will prevent you from claiming that the other guy started it and you are just a victim. The key here is to do your best to avoid conflict. Most people in their lifetimes will not have to read beyond these words, as they will never have a physical conflict. Is there any doubt that George Zimmerman's life was ruined, even though he was acquitted?

Remember, there is no martial artist fast enough or strong enough to stop or evade a well-aimed bullet. There are, however, plenty of idiots stupid enough to shoot you. Understand that street fighting is not a game and is not the point of this book. This book is about "self-defense." If you engage another person in a verbal pissing match prior to the altercation, it becomes more difficult to later claim, "He attacked me and I feared for my life." It isn't going to make sense, and no one is going to believe it. As such, your story is not going to hold up, because you will no longer be able to be the victim with any credibility.

I have been in the situation where someone has made comments to my wife that I didn't appreciate. We left. There was no fight and no confrontation. My wife was happy and I did not have to play the role of street fighter. As another bonus, we did not have to call the police and no one was injured. That is the ultimate scenario. Some testosterone-controlled males may object to this response, but that is going to be their problem. It is not your job to police the streets, leave that to the police. It is your job to keep you and your family safe, and doing so may require you to walk or even run away from confrontation. As my father explained to me when I was a child, "The best way to learn self-defense is to participate in track and field."

There are times, however, when you cannot avoid physical confrontation, and these are the events that we train for and hope that our training serves us. There is one event in my life where I was forced into a physical confrontation. An older neighbor to my parents, who liked to walk his dog through their yard to leaving a huge pile of stinking dung, got in a confrontation with my mom over the dog's excrement left in the yard. To our surprise, he showed up at the back door and was physically threatening to attack my mother and my stepfather. I stepped in the middle and he proceeded to try to kick "my ass through my shoulders." At the time, I was preparing to take the bar exam and was so paranoid that I may not be able to take the examination if I kicked this old man's ass that I froze. He grabbed my shirt and tried to pull me out of the back yard to the street, where he was no longer on my parent's property. I stopped him, got an arm lock and pushed him out the gate into the street. We ended up in a verbal match (where, admittedly I started to lose it), when a neighbor came out, broke it up and took him home. He was trying, and almost succeeded, in getting me out into the street where he could make me attack him.

During this brief period, I told my mother and my wife to call the police, which they did. The police showed up, saw his dirty handprints on my stretched-out shirt, and went over to talk to him. He tried to blow it off as though he was a weak elderly man. His big mistake was he was stinking of alcohol and when the police asked him if he had been drinking he denied it. He lied. We made the mistake of not forcing the issue with the police and no charges were filed. He continued to harass the family by staring into their yard for months, until he and his wife finally moved.

The lesson I learned is that if someone assaults you, you should always push the police to have him or her arrested charged and booked. Remember; if you are the victim then act like it! This is very important, because it will establish your rights in regard to that person later. Sometimes people just don't give up or go away. Should they choose to continue the confrontation later, then there is a record with the prosecutor's office of the previous incident, making your story believable. This is especially important if are assaulted by a bully-neighbor or someone you know or interact with frequently. If that person has a criminal record of attacking you, then your ability to defend yourself against that person increases dramatically. I cannot stress this enough as a vital lesson of my own past mistakes.

Because my stepfather and I were men, we did not take these simple actions. If we were women, it would have been different, as women tend to understand that they need help and the system is good at guiding them to it. We, however, did not and it is the one thing I regret about the confrontation. For years following that incident, the neighbor would walk down the street staring at my parents' house daily and he slowly strutted by. Since we had not asserted our rights as victims, we were unable to do anything about it.

Assert your rights as the victim when and where you can. Otherwise, later on down the road, you may very well face the question of why you did not assert your rights then, if you felt so threatened. Those who use the criminal justice system appropriately will have an advantage over those who don't. Creating a record that can be used in future situations will enhance your ability to defend yourself in the future, if you have an ongoing conflict with a neighbor or someone else. This includes filing in court for anti-harassment and restraining orders. Once you have that in your hand, you will have a record of the perceived threat and have a reason to call the police should that person attempt to contact you.

Because we had called 911 first, we were the de-facto victims, and the neighbor was the de-facto perpetrator. We had acted like victims would act. We called for help from the police. Later, we will discuss the impact of calling 911 and making a recorded statement to the police that may be used against you in the court of law. But for now, it is critical to understand that since our actions were consistent with those of a victim, we had instant credibility with the responding officers. In conversation with the officers, who expressed their views, it became clear that had we would likely have been okay had we punched or inflicted some injury to the neighbor as he was on our property committing a "malicious trespass." Once in the street, he was no longer trespassing. Had I punched him while he was in the street, I would have been arrested and charged. But, because we had not done that the neighbor did not have the opportunity to sue anyone for damages. We had successfully defended ourselves and no one was hurt. This may not have been the black letter law, but the attitudes of your local police department will go a long way toward determining how self-defense is treated.

To this day I wonder why I did not elbow the old man in the face or take him down. The want-to-be tough-guy in me laments at the fact that I froze in the face of his attack. In the future, my reaction will be different, but back then; it turned out to be perfect. The neighbor was not armed and could not reasonably be perceived as posing a deadly threat or a threat of grave bodily harm. So, had anyone shot him they would have gone to jail, and I would guess that things would have come out differently had his teeth been knocked in and his arm broken. He was elderly, and it is my guess that the police would have

taken a more sympathetic approach to him had they found him unconscious and bleeding profusely on our back porch.

The point of the story is not to discuss how to handle a situation. Every situation is different. The point is to explain that if you act like a victim you will be perceived as one, which will give you a huge advantage in not being charged with any crime. Also, since many physical confrontations are going to involve neighbors or people you know, it will establish your role as the victim/non-aggressor later, should another scuffle occur. Yes, it is true, that a restraining order is a piece of paper that will not stop the other person should he/she choose to violate it. The order does, however, give you ammunition later on down the road to give you credibility in a courtroom.

CHAPTER 4: WITNESSES

Ultimately, the people that will play the most crucial role in telling your story are the witnesses. Their testimony will either save you or damn you. That's it. And how you interact with and appear to the witnesses will determine if they view you as the victim or the aggressor. This will determine the story that they tell the police, the prosecutor, and maybe ultimately the judge or jury. It is important to remember that stress impacts a witness's perceptions.

Not only is the physical confrontation going to be stressful for you, but it is also going to be stressful to the people who witness what happened. Therefore, their perception of the situation is not necessarily going to match yours, and they will be judging you based upon their initial impressions of you. Those initial impressions are going to be based upon your demeanor, appearance, and action. So, if your shirt says, "I Smash People" then you are going to be seen differently than if your shirt said, "Peace." If you were swearing loudly at the other person during the confrontation, the witnesses may see you as the aggressor. If you appear to be an MMA fighter then that too will play a role in their conclusions of what happened.

Furthermore, the chances are pretty good that the witnesses to what happened are not going to be trained police and martial artists. Rather, they are going to be average people, with an untrained view of physical violence. They have not been in your classes and through the same training you have had, and consequently, will also likely view the world and the event very differently. Although, our society loves violent action movies, our society is really scared of violence. Watching a local news broadcast about bullying in school, an "expert", gave the following advice: "Tell your kids not to fight back." They should "report" the bullying. What happened to the days when the poor bullied child, who was then a hero because he beat the bully? What happened to the days when children could defend themselves on the playground? These kids are going to grow up to be adults and will be the same people witnessing you beating some mugger. They will also be the people serving on the jury charged with judging you. What will they see? Will they see you "defending" yourself, or will they see you acting violently.

Credibility is all you have. So be Credible. Once it's gone you can never get it back.

Credibility is whether or not you are believable: to the police, the witnesses and even to the jury. Sadly, you must understand that people have prejudices and stereotypes. They can't help it they are human.

You must, however, be aware of this fact because it will nail you. A six-foot two hundred –fifty pound male with a shaved head is going to be perceived differently than a five-foot-two-inch tall 100-pound woman. Both can be either a perpetrator or a victim, but when the six-foot tall behemoth beats the hell out of the 100 pound woman, he is going to have an uphill battle, even if she was pulling a knife on him planning to kill him for his wallet. People are going to see the behemoth as the aggressor and the woman as the victim as part of their natural initial reaction. To overcome these sorts of knee jerk judgments is a monumental if not impossible task.

Sadly, this holds true for race, dress and outward appearance. Stereotypes and racism are a sad part of our existence. Compound this with bagging low riding pants, tattoo's and gang colors and you have a whole other image. Likewise, if you are a truck driving redneck with a bumper sticker that says, "Never Mind the Dog, Beware the Owner" then you have a whole other set of stereotypes to overcome. You are in control of your outward appearance and how people, including the police, initially perceive you. These are the people that are going to be the witnesses giving testimony to the police, prosecutor, and jury about the actions you took. Looking like a killer will not serve you, when the witnesses turn around and see you beating on someone.

You ultimately are the only one who can choose how you are dressed and what your appearance says, but you should be aware that those potential witnesses are going to be judging you based on the way you dress and your outward appearance. If you dress like a hood, you will be perceived as one.

This is one subject in our society where women have a huge advantage. Thanks in large part to media and shows played on Lifetime Television for Women, where a woman is shown as the victim of male aggression, women have a huge advantage when it comes to exercising the right the of self-defense. If you are a male, who is being attacked be a female, then you have a tougher time proving you are the innocent party. If you are a woman defending yourself against a man, then the threat of harm to you will be seen differently. As a woman, you will more likely be seen as the victim when defending yourself against a man and it is far less likely that you will face criminal or civil consequences. This is not to say that you have carte blanche license to kick ass, it is to say that your "mantle of innocence" is a lot easier to maintain.

Tell the Truth, Do Not Lie!

In a Court or in an investigation, once you lie you are always a liar. If you tell one lie, it will haunt you throughout the entirety of your defense, either criminal or civil. Even little white lies can get blown out of proportion. Furthermore, if you lie to the police you are committing a criminal act. Remember, the police can lie to you but you cannot lie to them. Once you lie, you are a dirty rotten liar. All of your credibility is gone. We will go into how to protect your rights when dealing with the police, but for now you must understand that any lie by you will be used against you—again and again.

Somewhere in Detroit, a young white punk in a store confronted a medium built African-American man. Trying to get past him, the African-American gentleman asked the kid to move, who said, "F ___, you Ni--!" Then the kid tried to mug him there in the store. Being trained in the Filipino Martial Arts, the African-American man instinctively did an eye jab that accidentally plucked the punk's eye out. The

punk was under 18. Based upon the horrific injury to the punk, losing his eye, the police arrested the African-American man.

Given the nature of the event, the African-American man was charged with First Degree Aggravated Assault and faced a sentence of 25 years in prison, even though it was not his fault. Part of the problem was the fact that he had martial arts training and was viewed as having the skill to control himself. Fortunately for him, he had a fair and understanding judge who, after hearing his story, dismissed the charges. Will you be so lucky?

The point of the story above is to demonstrate how tenuous your ability to maintain your status of a victim may be. Your training can cause you to react and cause severe physical injury on the attacker. By the time the police arrive, they see the guy whose eyeball was removed as the victim. The guy in the above example was only one hammer of the gavel away from a long prison sentence.

Avoid it!

Avoiding any violent situation is better than not. Looking for a fight is going to get you into trouble, hurt, and maybe killed. It is simply not worth getting into a street brawl because you think the moves you learned in last night's class were cool. If you want to use those moves, get into a tournament or martial arts competition. Remember, that the consequences of a bad move in the streets can and will be life changing for not only you, but for those who you love and count on you. Be smart.

It can be as simple as seeing trouble two blocks up and crossing the street. It can be as simple as walking away from a confrontation. Be smart; don't turn your back, in case the other person chases after you. If they do want to push the fight even though you have attempted to walk away, then your credibility as the victim has shot up. When the witnesses tell the police that you tried to walk away and the other guy would not let you, then you are going to be seen as the victim.

Remember that you are not anonymous on the street. Today's technology allows for almost anything to be video recorded from a cell phone. Those videos are going to end up in the authorities' hands, perhaps going as far as Facebook or YouTube. There you are on video pummeling someone. There is no longer any ability to get into a brawl and leave without being detected--especially if there is any sort of crowd nearby. We see a constant barrage of videos showing the police beating someone often time the videos role and do not show the entire context of the situation. You can go online right now and find fight after fight that was recorded and now is featured in a YouTube video. If someone gets hurt and decides to pursue remedies against you, they will likely now have a video backing them up. If that video shows you aggressively attacking the other person, no matter what you say, you are going to lose.

Win the battle and don't lose the war.

It makes no sense to win a fight if it means you are going to lose your freedom, a large portion of money, and perhaps your livelihood and right to keep and bear arms. You can be the best martial artist in your region, win lots of fights, but lose one court battle and your life will be forever changed. Understanding self-defense law, basic legal procedure, and the laws in your area are what will help

protect you against losing the court battle. Understanding your interactions with the witnesses will help you tell your story, with credibility.

CHAPTER 3: INTERACTING WITH WITNESSES

Witnesses will tell the story of what they saw. Unless you find yourself getting mugged in a dark alley without anyone else around, you may have witnesses, who can either help or hurt you. You must remember that these are the people that have no stake in the outcome of the police investigation. These are also the people who can call 911 to get help there. Your interaction with the witnesses can be a make it or brake it moment and you certainly don't want to leave the witnesses believing that you are the bad guy. You want them thinking that you are the victim. If they tell the police that you are the victim, it is likely that there will be no criminal or for that matter civil consequences.

Unfortunately, study after study has shown that eyewitness testimony is inherently unreliable. Yet despite the decades of research showing this, countless people sit in a jail cell based on the testimony of eyewitnesses. There is something inherently credible about a witness telling their story about what happened. There is an assumption that the witness is not lying because they have no interest in the outcome of the event and because they saw it. Police rely on eyewitness statements and interviews, prosecutors rely on them, and so do juries. This is a fact of life, and your defense may also rely on them.

Self-defense situations can develop very quickly. Witnesses are not likely to notice what is going on from the very beginning, will have different angles from which to view the incident, and may have testimony that conflicts from your version of the facts. On the other hand, witnesses will notice an escalating conflict. Unfortunately, witnesses will likely be given a high degree of credibility from the police, prosecutors, and the jury, so much so that a jury may believe you are lying because your testimony conflicts with the witnesses' version of the facts. Witnesses are going to be operating on post-event information or a bad recollection of the events. All of these factors mean that you must be aware of what the witnesses perceive as you also try to defend yourself.

Remember that people in general pay little attention to their surroundings. They will likely not notice your confrontation until something draws their attention to it. This presents a serious dilemma for the person trained in physical self-defense, because by the time many people will notice that something is going on, you will likely have already reacted. The witnesses will see your attack, and will probably not see your assailant's attack. At that moment, their brains begin to process what is going on. In an instance, their minds will make judgments, albeit false ones, about the situation. They may go through the flight or fight response and then determine if you are the bad guy or the good guy. First impressions are lasting impressions, and you will find yourself being judged by those split second automatic decisions. No matter what you do, you are communicating to the witnesses.

The tactical use of your voice is as important as the tactical use of your martial arts training. First and foremost, what you say and yell, the witnesses will likely remember and will also draw the witnesses' attention to what is going on. If someone is coming at you and you yell, "STOP!" It is more likely that someone will look your way before the confrontation ensues, and will be assuming that the person who

yelled “Stop” is not the aggressor. You can also yell, “Stop attacking me!” Or, “Drop your weapon!” Again, the witnesses will hear this and know that your attacker has a weapon. If you yell, “Someone call the police!” They will know that you are the victim and that you are the one who wants the police there. Yelling and drawing attention to the incident may be enough to stop the attacker, mugger, or robber in his tracks. If you yell “Fire” you will draw attention to you. It is important to communicate to those around you that you are getting attacked. This is in the case where you haven’t already been involved in a prolonged profanity exchange with the other person.

If, however, you calmly get your attacker in an arm bar and he starts screaming, then the first thing that the witnesses perceive is you holding someone in an arm bar inflicting pain upon them. This may put you at a disadvantage when the police arrive. Refer to the example above, where the witness saw Mr. Woods in a “ready position.” That wasn’t very helpful to his case, and was probably the reason why he was eventually convicted. So, if you are in this situation, again, ask the witnesses to “call the police.” Either way, you must use verbal communication in conjunction with physical force.

Imagine from the case above if Mr. Woods had screamed out for the witnesses to hear, “Drop your weapon!” Now, someone may have testified that Mr. Woods screamed “Drop your weapon!” and then made a move to defend himself against the impending hammer attack. Nothing like that happened, so Mr. Woods went to jail.

Yes, there is the potential that the witnesses may call 911 and report that you are the one who is the attacker. That is always the risk anyway, and it beats your assailant calling 911 and saying you are the attacker. It is also preferable to have a witness call 911 over yourself, because the witness’s statements to the 911 operator may be excluded as hearsay by a court. It is better than you calling 911 and saying something that may hurt your case later on.

Do not turn to the witnesses after the event and say something like, “Didn’t you see the knife?” Or, “Didn’t you see that guy attacking me?” Any attempt at manipulating what the witnesses saw will backfire and will surely make you look like a liar. Remember the rule, once a liar always a liar. Do not lose credibility with the witnesses. They will turn on you on a dime and you will be stuck trying to explain your case to your lawyer.

The witnesses will also be stressed and experiencing a rush of adrenaline after witnessing the event. They too will not be thinking or articulating things clearly. That is why it is critical that you interact with them in a manner that shows you to be the victim, because their perception of what happened is going to be told to the police and maybe later a jury. Read the first chapter again. Understand why your appearance and interaction with people is critical?

I have seen some instruction where there is an indication that you can defend yourself and casually walk away as if no one will notice or know who you are. I have heard this repeated in anecdotal stories where the person fled the scene and nothing happened. This is a huge mistake, because you will look like you are the one fleeing the scene. The automatic question will be, “Why did you run?” You will automatically be considered the one who was the perpetrator. If you have left your attacker injured, then you may have some duty to render assistance to that person. For example, if you break someone’s

leg with a kick to the knee and leave them in the street without calling for assistance, you will not look like an innocent victim, and if that person dies because you did not call an ambulance, you may face greater penalties. Again, your actions must be consistent with those of an innocent victim forced into circumstances. Report the incident. If it is dangerous for you to remain on the scene, then move to another location that is safe and await the police arrival. Do not act like a fugitive. It won't serve you.

Also, be aware that if you start getting into a verbal confrontation with someone and you are going tit-for-tat with them, this too will draw the witness's attention. People will look at both of you as the aggressor, because you are, just verbally. This is why it is important to keep your "mantle of innocence" and not get involved with a verbal confrontation. Remain calm, collected, and do not start blaring out a string of shrieking profanity. This will only serve to have people see you as violent and as a perpetrator of violence. Instead, attempt to talk down the situation before it gets out of control, or just walk away if you can.

Remember, that every confrontation you have in the public is likely going to involve witnesses, who will have their own version or story of the facts. If you know this, you can use this to your advantage to protect yourself in a self-defense situation. In a very real sense, you have to defend yourself against their negative perceptions of what happened. These people will be communicating what they saw to the police. They will be calling 911 and making recorded statements. They will make or break your defense so be aware.

The witnesses may also be filming the confrontation. There may be several videos of the same confrontation, and how the video(s) are perceived are going to be critical to your acquittal or conviction. Just take a few moments and search YouTube videos. You will see thousands of examples of videos of violent confrontations and the comments will highlight how differently people can view the same thing.

Mens Rea

"Mens Rea" is a legal term used to describe the mental state a person must be in in order for a criminal act to be intentional. It can refer to your specific intent to break the law or a specific premeditated plan to commit the particular offense. I bring this up here, because this is where the prosecution gets to tell the story of your intent and use all of the things from your image, your actions, and demeanor to prove that your whole intent was to assault or harm the other person.

Your actions before and after the confrontation may become very relevant. The witness and video will show or discuss your demeanor after the confrontation. If you are jumping around like someone who just won a prizefight, you may have a problem. At the same time, if you are acting like someone who was just the victim of a violent act, it may show that you did not have any intention of harming anyone. Did you render aid to your attacker if you injured him? Did you try to flee the scene? All of these things may be used to show the "mens rea" or mental state/intent to commit the crime. In any case, these things all go with the narrative of your story and may either make your story believable or not believable.

CHAPTER 4: INTERACTING WITH THE SYSTEM

The people who are going to make the decisions at the scene that will decide who goes to jail and who will not go to jail will be made by the police. Your first interaction with the police will likely be with the 911 operators. Although they are not part of the police department, when you call 911 your statement is being recorded. It is, therefore, like interacting with the police.

Calling 911: Beware the Traps for the Unwary

When you call 911 you are making a recorded statement to the police that can and will be used against you in a court of law. If you are the one who calls 911, know that you are making a recorded statement that may be used against you in court and which will start the narrative of your story for the police. As the dispatcher will be relaying the facts provided to the responding officers.

Whether or not you call 911 will depend on a host of factors. If you are alone, then you will obviously need to call 911 to report the crime. If there is a crowd, it is likely that someone in the crowd will call 911, but there is no guarantee that they will. The police are going to be responding to an assault, fight or altercation. Either way, they are going to be entering a scene where they know there is violence taking place and where they don't know who is armed and who the aggressors are. If they pull up on the scene, they may be seeing you two going at it. They are instantly going to arrest both of you and then sort out the details later. Do not count on your assailant to tell the truth. He or she does not want to go to jail either, and probably wants you to go to jail in any case.

It is impossible to give any sort of advice or information that is universal. You have the right to remain silent and you have the right not to give self-incriminating evidence. Yet, if you call 911 you are giving a recorded statement to the police. Some experts say you should not be the one to call 911. Others say, with whom I tend to agree, as the question, "What would a victim do?" The best answer I can come up with is, "Call for help." It seems that the best answer is to call 911 and report the incident before the other guy does, as this is probably the best way to assert yourself as the victim. It is also probably not a good idea to say at any time that you are a trained martial artist.

So, remember that when you call 911 you are calling as the victim. The 911 operator is trained to ask you certain questions and to get as much information for the responding officers as possible. In this regard, it is critical that you think ahead of time about this important interaction. You have just been involved in a physical altercation where you believed that your physical safety was in danger. Your adrenaline is likely pumping, you may be winded and may even be injured. You might know who the assailants are, you may not know. They may have fled the scene, or perhaps you fled the scene. There may have been more than one attacker. What did they look like? What were they wearing? Were there any witnesses? This is a harried moment. It is a moment when you are making a recorded statement, and may not have all of your wits about you. This information will be relayed to the responding police officers, who do not know you and only have limited information to go on.

The 911 tape may be played at your trial. It may be used to show that you are a trained cold-blooded macho jerk who beats people up and then cries self-defense. If you are screaming profanities about that "mother fucker" whom you just "kicked the shit out of" because the "asshole thought he could rob you,

but you showed him” “by using your years of martial arts training.” Then you are likely to have a more difficult time being the credible innocent victim.

Take time and think about what to say to the 911 operator. You should report that you have been assaulted. If you are bleeding or think you may be injured then ask for an ambulance as well as the police. Give the location of the event and a brief description of your assailant, which direction he/she went, what he/she was wearing, and if there was more than one person. Then wait for the police to arrive. Do not give any more information than you absolutely have to avoid self-incrimination. Then get off the phone.

Everything in the preceding paragraph is nice on paper, but is going to be a bit more challenging when combined with the excitement and the adrenaline coursing through your body. It is critical that you are aware of the effects of adrenaline on your body, your thought process, and on your ability to communicate with others. Otherwise you are facing the chance that you will say something that will end up hurting your self-defense case.

Furthermore, this also assumes that you have your cell phone on you and that it is working. Obviously, if you do not have your phone, or it is broken, you cannot call. Thus it is a wise idea to have your cell phone with you, fully charged, and on at all times. It is going to be your tool to call for help and communicate with the authorities.

Understanding Your Rights When Dealing with the Police.

First and foremost, it is critical to understand that even though you are an honest and law-abiding citizen, the police may not look at you that way. Communicating with the police is a very tricky sport, at which they are professionals and you are at best, an amateur. The police are trained in ways to get you to talk and to admit to committing a crime. I cannot recommend highly enough that you watch Virginia Beach police officer George Bruch at a college lecture on the subject. <http://tinyurl.com/ykkraf7>. I also recommend reading, After you shoot. “Your gun’s hot. The perp’s not. Now what?” by Alan Korwin. This book takes on directly the victim having to call 911. These will make you understand that the police are there to make an arrest, not figure out who the innocent victim is. You are not smarter than the police. When you interact with them you will be under the influence of adrenaline and stress. You will not be thinking clearly. They, however, will not be under the same stresses and will be thinking perfectly clearly and making initial judgments about you and the incident based upon their observations and experience.

For the remainder of this chapter we are going to assume that you are interacting with the police who are responding to a 911 call either by you or a witness reporting a fight or an assault. This interaction may make or break your defense and likely will determine whether you are arrested and charged. This will determine what consequences you will face as a result of some punk forcing you to commit an act of violence. There are whole books devoted to the subject of dealing with the police, and it is impossible to cover each and every nuanced detail of what to do.

When dealing with the police, you must understand that there is a legal process underlying your interactions with them. The police are responding to a 911 call indicating that an assault has taken place or that an active fight is in progress. Assume they have heard many fraudulent claims of self-defense from other criminals who were trying to avoid being charged with a crime. They will be investigating and possibly talking to witnesses. They will be trying to determine if you are a perpetrator that needs to be arrested or an innocent civilian, who deserves their protection. Innocent civilians should avoid talking to the police in a self-defense scenario. The danger is just too high that you are going to say the wrong thing and be led down the primrose path to prison. But, with this, any rude or disrespectful behavior toward the police will also lead you on the path to prison.

We have all heard the Miranda Rights given out time and again on various cop shows, but not very many people understand those rights specifically, or why those rights are vital to the defense of your claim. Unfortunately, much of this, in my opinion, comes from a barrage of misinformation and misunderstanding about the American legal system and the realities of how the justice system works. I have often heard police officers lament about the state of the justice system for those without money, who cannot afford a decent lawyer. Even the police understand that the system works better with those who can pay for justice than those who cannot. And, even the police understand the problems that injustice creates in our communities. The Miranda Warnings are required to be given for a reason and are not just a clichéd procedure that the police must follow. So, listen to them.

We live with an adversarial legal system. This means, that the police and prosecutor's are the adversaries of the defense. So, the prosecution and the defense are essentially in a fight, where the outcome is determined by a decision maker—a judge or a jury. Thus, each side is seeking a win and fighting it out. The courtroom has rules that must be followed and the hope is that through a tough prosecution and defense, the truth will reveal itself and justice will be done. Therefore, when you are dealing with the "legal system" in general, you are dealing with an adversary.

Many people are raised with the notion that if you tell the truth to the police then you will be fine. We all know, however, that the truth can be twisted and have more than one version. There will be many versions of what happened—yours, the other guy, the surveillance camera, the cell phone video, the Facebook posts and the witnesses. These are not going to all match, and it is doubtful that the other guy is going to confess that he attacked you and you skillfully and honorably defended yourself. People often try to "talk" their way out of trouble or try to explain to the police what happened. There is nothing you can say to the police that can help you in a courtroom.

The reason for this lies in the Rules of Evidence that guides our courts' ability to consider certain types of evidence and exclude other evidence. Once you understand these rules, you will understand why it is that there is **nothing** that you can say to the police that can help you in a court of law. Now, don't confuse this with, "there is nothing you can say to the police that can help you." Notice the subtle distinctions here, which are going to be critical, as your potential prosecution becomes an issue.

You will not be given the Miranda Rights until you are taken into custody—arrested. You can waive your rights prior to being given the Miranda Rights by simply making statements and answering questions or

giving the police permission to search your car or person. If you are near your car, the police will likely ask you for permission to search your car. If you give them permission to search the car, they can tear through it and use anything they find in the car against you. Will you remember what you have in your car at the exact moment? No. Will you remember that you may have knives, martial arts supplies, magazines on self-defense, or other stuff that might show your interest in violence? It is critical that you intelligently interact the police. Do not give the police any permission to search anything. This will give you a fighting chance in court should they search anyway. If you waive your rights, you can never get them back.

Understand that the police do not have to necessarily mind your rights, either. Should the police violate your rights, your remedy lies in a court room, with a judge whose decision is going to be unpredictable and who may or may not be sympathetic to your lawyer's arguments. Your remedy will be the exclusion of evidence or testimony against you. That's it. It will require arguments by your lawyer to make the prosecutor believe that he or she has a weak case not worth trying. The police can push you and push you and push you. They can lie to you, but you cannot lie to them. I am not saying that the police are bad people. Rather, they have a job to do and that job is to make arrests, gather evidence, and get convictions. It is not to find evidence designed to protect you or to determine that you are an honest law abiding citizens. They have to deal with people every day who claim self-defense, who were in fact not acting in self-defense. So, naturally they are going to be a bit skeptical. Likewise they are looking for victims and acting like Dirty Harry isn't going to cut it. Re-read the section on credibility.

"You have the right to remain silent." This is the first commandment of the Miranda Warnings. It may be the most important. The right to remain silent is embedded in the 5th Amendment to the US Constitution, which in short says you don't have to testify against yourself. But, the "right to remain silent" means that you do not have to assist the police in their investigation of you. Why would you? Every day, people open their mouths thinking they are smarter than the investigating officer, and every day they get charged and convicted on what they say. There are many reasons why you NEED to remain silent, and I do not pretend to cover them all here.

Remaining silent is a surprisingly difficult thing to do when you are in a stressful situation and you are dealing with people well trained and experienced in getting people to talk. Its natural to want to defend and explain yourself. Make no mistake that they want you to talk, and your urge to be polite in the conversation will push you to want to be part of the conversation. The police want to have a conversation with you. They want you to think that you are their friend. The police will make promises that if you cooperate they will help you with the prosecution. After all, if you don't help them, they can't help you. The reality is they can't really help you anyway. The prosecutors are in charge of the prosecutions—not the police. Again, as stated before, the police can lie to you, but you cannot lie to them.

Expect to hear comments like, "He must have something to hide, since he's not cooperating with us." Or, "If he were innocent he would cooperate with us." These comments can and will make you feel insecure. You may also get the "good cop" "bad cop" routine where one is nice and the other is threatening and aggressive. You have to ignore these things as best you can and just hold your ground.

Sadly, you had to hold your ground with your attacker and now you have to hold your ground with the police. This is not easy to do, especially since you have probably been taught to trust the police. Remember, they are searching for criminals, and they are trying to get criminals off of the street. When all you have is a hammer, everything looks like a nail—likewise you may look like a criminal.

The information presented to the jury in a trial will not be exactly the information available about the incident, and the Court's record may not include every bit of information about what actually happened. Whether information is admitted into the record and presented to the jury is governed by the Rules of Evidence, which have been honed over hundreds of years, to prevent bad information from being used to prove a case. The Rules of Evidence apply to both criminal cases and civil cases. Under the Rules of Evidence, Hearsay Evidence is generally not admissible. Hearsay is a statement, other than one made by the person testifying, while that person is testifying, offered in evidence to prove the truth of the matters asserted. That is, any comment made by someone else is hearsay evidence. So, you cannot testify about what you heard someone else say. Now, there are a bunch of exceptions to the hearsay rule, but if the statement does not meet an exception, it will not be admitted as evidence.

This rule is why there is nothing you can say to the police that can help in court. Here is an example to assist in understanding this notion.

You tell Officer Smith, "I was afraid for my life, and I did my best not to hurt the guy."

Now, in trial, your lawyer asks Officer Smith, "What did my client say to you when you first approached him?"

The prosecutor stands up and screams, "Objection! Hearsay."

The judge would not let Officer Smith testify as to the comments you made to him because that is hearsay evidence and is not admissible. So, nothing you say to the police can *help* you in a courtroom. The *Miranda* Warning states that everything you say and do can be used against you in a Court of Law. It says nothing about what you say or do that can help you. There is plenty that you can say or do, especially when under the pressure and adrenaline that can and will hurt your case.

Understand that the more you talk, the more you are going to trigger Officer Smith to conduct his investigation. Officer Smith is not going to sit there and idly believe your story. He is going to start asking you a line of questions designed to get you to convict yourself. You are under stress from the fight, and now you are going to face questioning about what happened. If you tell Officer Smith, "I thought I was in imminent danger of being injured." He is going to start asking questions like, "Why?" Now you are stuck having to answer those questions. Remain silent and use the magic words that will stop him from questioning you: Officer, I will be more than happy to cooperate once I have had an opportunity to speak with my lawyer.". Anything you say that is against your interest, whether you know it or not, is going to be admitted as evidence against you.

“Anything you say and do can and will be used against you in a Court of law.” One of the exceptions to the hearsay rule is a statement made against interest. The following comes from Evidence Rule 804(b)(3):

Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. In a criminal case, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Under this rule, anything you say to the police that is incriminating can be brought in as evidence for a jury to hear. So, imagine you have just kicked the crap out of some perpetrator who pulled a knife on you and have your adrenaline pumping through your system. Officer Smith arrives on the scene, and there you are standing over the body of the knocked out perpetrator, who is bleeding from his nose.

After talking with Officer Smith, who builds a rapport with you and makes you think that he too is an understanding martial artist, you state, “Yah, I saw the knife. It was small. To tell you the truth, it didn’t scare me, and I disarmed the guy almost immediately. But, I was pissed, so I gave him a roundhouse kick to the head and stomped on his face when he hit the ground. I just wanted to teach him a lesson.” You then brag about your martial arts training some more as you and Officer Smith discuss it. Officer Smith tells you about his martial arts training and suddenly you are demonstrating for him.

Officer Smith kindly takes notes, and then applies handcuffs to your wrist. You just confessed that you kicked the crap out of someone and weren’t at all afraid and in fact had disarmed the guy and continued to attack him after you had removed the threat. You also told Officer Smith that you had extensive self-defense training, and had been trained to handle just such a scenario. You also told Officer Smith that you had every intention of inflicting great bodily harm and that for a split second you planned it out. You also told Officer Smith that you stomped on the guy with your shoe-covered foot, which may be considered assault with a deadly weapon or attempted murder. Officer Smith will be allowed to testify to everything you said, and you are likely going to jail for a while based on the fact that your mouth was out of control.

Or, if it is not considered a Statement Against Interest, then we can use another hearsay exception, the Excited Utterance, where under great stress you make a statement against your interest. The point is not to make you an expert on the law concerning Hearsay Evidence and the exceptions, but to get you to think about these rules and how they apply so you have a fighting chance in Court. Go to a online or to a law library and look up books on evidence to learn more. For now, understand that these rules impact what can and cannot be used as evidence that could either help or harm you. It is that evidence that will be presented to the jury, who will decide if in fact you acted in self-defense or should be a convicted criminal and sentenced to years in prison.

By the way, if you call 911, it is also considered hearsay. However, if you call 911 and confess, it is going to be played on tape as a statement against interest or an excited utterance for the jury to hear you confess. In a stressful situation, you are not going to remember the finer points of evidence law. So, practice your right to remain silent. Shut up! This is a task easier said than done.

Remember that when the police show up to the scene of an “assault” they are going to be looking for the easiest way to solve the crime. This means that when they show up they are going to be looking for simple indicators to determine who the victim is and who the aggressor is. This can include assuming that the most injured party is the victim or that the person who called 911 is the victim. You cannot count on the police to do a thorough investigation seeking to show you as innocent. This is not reality. The reality is if you are a highly trained martial artist the police are likely to see you as the aggressor and the more injured party as the victim.

The police will be investigating to find and prove that a crime was committed. They will have other calls to deal with. If they are worth their salt, they will engage in the following course of conduct:

- 1) They will interview all witnesses to confirm no circumstance justified the use of force;
- 2) If you do not exercise your right to remain silent and ask for an attorney, they will interview you (the defendant) about the “crime” and learn why you committed it, not merely the fact you committed it;
- 3) They will document and photograph any injuries (or lack thereof) to you or your associates;
- 4) They will document and photograph the crime scene with an eye to obtaining evidence to use at trial that can be used to defeat your claim of self-defense;
- 5) If you are arrested, they will record any calls you make at the jail for any statements that are contrary to a claim of self-defense or if you even fail to attribute your actions to an act of self-defense.
- 6) They will keep any recordings of any 911 calls;
- 7) They will find out if you and the “victim” know each other and will investigate your history;
and
- 8) Will investigate your history, finding out what training and experience you have, if you have any other “self-defense” claims, etc....

The police are not arriving to investigate to be your friend. They are going to use all lawful and legitimate means and sometimes-illegitimate means to investigate and convict you. The sooner that the prosecutor knows you are planning on pursuing a self-defense defense to the charges against you, the sooner the prosecutor can begin plotting the defeat of the defense.

You have a Right to An Attorney. If you cannot afford an attorney, one will be appointed for you.

This phrase is critical to understanding how to protect your rights and to have a successful self-defense case and getting the police questioning to stop. Use this term wisely as it will help you stop the wheels of justice from steamrolling you. If the police take you into custody, there are some key words that you need to memorize and be prepared to use. These words, more than any other, are critical to your defense and to legally surviving the altercation you have just been involved in. Those words go like this, "Officer, I will be more than happy to cooperate, but I need to talk with my attorney first. Thank you." Do not equivocate. Do not answer any questions without a lawyer. Once you have invoked your right to an attorney, the questioning is supposed to stop.

Attorneys are terrified of advising people exactly what to say to the police beyond demanding to speak to an attorney because it is so easy for clients to say the wrong thing that gets them into trouble. Again, this book is not legal advice and you should consult with a local attorney.

The point of the statement you make to the police is to say as little as possible, while remaining polite and having the aura of cooperation. Be polite and nice to the officers and show that you are scared and remorseful—the victim. They are there doing their job. If you are rude or indignant they will see you as the perpetrator. Then, you must assert your right to an attorney in order to stop the questioning. Remember, the police are trained professionals. On the other hand your adrenaline is pumping, you have just survived an attack, and your mind will not be fully processing each and every detail.

However, as we discussed above, the questioning does not necessarily stop. There is nothing guaranteeing that the police aren't going to start using tactics to try to intimidate or harass you into talking. Don't expect them to write in their notes that you asked for a lawyer and they continued to question. Just smile and then, just reuse that line following each and every question asked of you.

You can waive your rights in a heartbeat by saying or doing the wrong thing. Don't try to outsmart them. The police are trained professionals at this, who do it every day for a living. You are an amateur at best. There are experienced lawyers who say stupid stuff that get them convicted. Just reiterate your desire to exercise your right to an attorney. You cannot waive on this and must not be equivocal. Stand your ground and ignore the Mutt and Jeff routine that the interrogating officers are about to unleash. Ask to speak with an attorney.

Finally, do not plead the Fifth to the police. Pleading the Fifth occurs when you are asked questions under oath and being questioned. When you are talking to the cops, it is true you cannot lie to them, but you are not yet under oath. Yes, the Fifth Amendment is supposed to be your protection from incriminating yourself, but to those who hear you plead the Fifth, it will form an impression in their mind as to who you are. Just ask for your lawyer and exercise your right to remain silent. That's it. Keep it simple. The Fifth Amendment means that you do not have to testify against yourself during trial or testify to something that will be self-incriminating. This is why your lawyer will have a choice to make as to whether you should testify or not. If you are going to testify, you are going to be cross-examined by an experienced prosecutor, who is skilled at the art of cross-examination and who, after five minutes, will have your words working against you.

You must also consider an additional piece of unpleasant business if you are arrested following a self-defense incident. That is the problem of the “jailhouse confession.” It is not unheard of that some crook in your holding cell will say that he heard you confess for a lighter sentence. It is unknown how common this is, but you don’t want to find out. If you are arrested and held in the jail, ask to be placed alone and by yourself. Tell them you are scared or are not feeling well. Do not talk with anyone if you can avoid it. Further, remember that when you make your phone call you will be recorded and that statement will be used against you. Only call someone to have them call your lawyer. You have no idea the ways that the phone calls can be used against you. If you sound “too comfortable” or “non-remorseful” you can have problems. Don’t give the prosecution any ammo to use at your trial. They will kill your freedom with it.

Make plans ahead of time. From jail, you will not have the contacts from your cell phone. You better have memorized some phone numbers. Make sure you can call someone, who can call your lawyer for you if you have one. Your calls are going to be recorded and used against you, so only use the phone with extreme caution. Should your call indicate anything other than you are a victim, the prosecution will try to use it against you.

It is also important to get an idea of which lawyer you should retain to represent you in a self-defense situation. Most lawyers are not criminal defense lawyers, and most criminal defense lawyers are not the one you want. Most criminal defense lawyers represent criminals—you are innocent. It is worth considering spending a little money ahead of time to sit down and talk with a criminal lawyer about your local self-defense laws and find out who is considered to be a better lawyer to talk to in your area. At least you will have a connection to a lawyer that will help you if you do need him/her to go to bat for you in the Court.

Do some research as to who may be one of the better self-defense lawyers around the area. They should have plenty of experience trying criminal cases. Spend some time and money to consult one. Meet with an attorney ahead of time and ask them for an hour to answer some questions regarding self-defense laws in your area and the general attitude of the police, courts and prosecutors regarding self-defense. This may cost a couple of hundred dollars, but you will have an attorney, who knows you and whom you know will be there if you need him to be.

Further, now that you have established a relationship with an attorney, you will have a better shot at having a relative contact him or her and getting that attorney to assist you right away. In my own personal experience, I know that when I know the client it makes representing them easier on a new issue. In the same way, developing a relationship with a competent attorney can benefit you tremendously. You will have that contact, which will serve you better than a cold call made out of a phone book.

Depending on the nature of the altercation, you may be facing felony charges. Most criminal defense lawyers ask for an upfront non-refundable retainer. For felonies, these range from \$5,000 to \$100,000 depending on the facts and circumstances of the case, and whether or not it is going to go to trial. Also, be aware that many criminal defense lawyers love to get that initial up front payment and then push for

a plea deal. The less time spent on the case means the more dollars per hour earned. Many lawyers just don't like going to trial and will do whatever it takes to avoid it. Other lawyers live to go to trial. This has the potential of making all the difference in the outcome of your case. What's the point of being innocent or having a just self-defense case if your lawyer wants you to plea to a lesser crime after 20 minutes of work on your case. This is what really separates the quality of lawyers. Make sure you know who in your area is willing to go all the way and represent you with great zeal.

If you cannot afford an attorney, one will be appointed for you.

I have heard people say bad things about their public defenders, including calling them "public pretenders." These lawyers are some of the most experienced criminal lawyers in existence. If you cannot afford an attorney then exercise your rights to get one appointed as soon as possible. A public defender cannot protect your rights if you waive them. So, do not destroy your case then get mad because your public defender could not win your case. They like to win cases to and their ability to do so starts with you.

The Miranda Rights are more than just a clichéd script read by police officers to people arrested on cops. They are a warning to you that these rights are critical to your remaining a free person without a criminal record. The consequences of a conviction can be dire. If you are convicted of a felony, you may lose your right to own firearms, it may impact your ability to get certain jobs, you may lose your right to vote, you may lose your ability to travel to foreign countries, you may have a harder time getting housing and the impact of that conviction will last for years. This does not even mention the financial consequences. Understand and protect these rights at all cost. They are there to protect you. Do you understand your rights?

CHAPTER 5: INTERVIEWING AND HIRING A LAWYER

The next person you should call after calling 911 is your lawyer, or call a trusted friend to call your lawyer. (Do not confess to your friend. Only ask them to call your lawyer and have your lawyer contact you. Do not tell your friend what happened. They may become a witness for the prosecution.) The term "your lawyer" implies that you have already retained a lawyer or know a lawyer who can help you. At this point, the lawyer is your best chance of protecting your rights and avoiding a conviction; therefore, you want a lawyer involved as soon as possible.

Your conversations with your lawyer are going to be protected by the "attorney-client" privilege, so anything you say to your lawyer is not discoverable to the other side. You can tell your lawyer in confidence what happened. The two of you can then begin to create a formula for your defense. However, if you do not have a relationship with an attorney prior to a self-defense incident, then it will be more challenging to get help when you need it.

Many lawyers do not charge for consultations or charge a small rate for a consultation. It is worth your time and energy to research and find the lawyers in your community who can handle a self-defense case, who have some understanding of the use of martial arts, and who have experience handling criminal cases. Not all criminal defense lawyers are created equally. Some prefer to mill criminal cases,

meaning that they turn as many as they can pushing their clients to plea deals. There is nothing wrong with this in the context of most crimes, where people are criminals. However, you are not a criminal and you should not be treated like a criminal by your lawyer.

When you interview your potential lawyer, get a feel for the laws in your area and find out if the lawyer knows the general approach to self-defense by the local prosecutors and law enforcement. Further, the lawyer should be able to answer basic questions regarding the self-defense laws in your area, including what you can or cannot carry for a defensive weapon. You will also want to know that this attorney has access to private investigators who will do their own investigation of what happened, including taking witness statements, and gathering other evidence that may help you in your defense.

To find your lawyer, you can look in the phone book and research online, as well as calling local bar associations, with referral services. Another great source of information is the public defender's office, who will know who the best private criminal defense attorneys in the area are, and who is the best at self-defense law. Establishing a relationship with before anything happens is going to give a much stronger ability to defend against any criminal charges that may arise from your actions.

Understanding Bail Bonds

You should also have a discussion with your lawyer about local bail bond companies that can bail you out of jail should the need arise. The bail bonding industry has been equated with Dog the Bounty Hunter, but as in most cases that isn't the normal reality of bail bonding. A bail bondsman is going to be your ticket out of jail by putting up a bail bond. You want to be aware of a good, honest and reputable bail bonding company in your area. Also, these companies, usually located near courthouses, are also good referral sources for a good defense attorney. Like all business people they are in the business to make money, but having their card handy is a good idea to get your but out of jail so you can work and assist with your defense. Getting out of jail will allow you more time to interact with your lawyer and assist with your defense. It will prevent the "jail house" confession from taking place, and depending on the conditions of your release, allow you to continue working to pay for your legal fees. Therefore, being prepared to get out of jail is very important.

Understand that if you are charged with assault, and maybe with using deadly force, you are likely going to be charged with a felony. Hiring an attorney to defend you is going to cost you thousands of dollars up front out of your pocket. It may even cost you tens of thousands of dollars. Be prepared, because you are going to want to spend that money to keep you butt out of prison.

CHAPTER 6: SELF DEFENSE LAW—An Overview

When you claim self-defense, you are admitting to committing what would otherwise be a crime, but for the fact that your actions were allowed because you had a genuine belief that you faced the imminent threat of harm. Once you have admitted you have committed the act and that you did it intentionally, all other defenses go out the window. You are now stuck with, for lack of a better term, self-defense as your only defense. Your ability to use this defense will depend on the law, the witnesses, and the facts

and circumstances surrounding the incident. Having a basic understand of the complex issue of self-defense law will give you a fighting chance.

There is a legal process that occurs in almost all cases and it goes like this: First of all you will be arrested and charged with a crime. That may be some variation of assault or other crime based upon the events that took place. You may be charged after the police have tried to interview you, which will be critical for their evidence gathering. You will then be served or mailed formal papers indicating what charges have been brought against you. The next step is the arraignment, which is your first court appearance. This is where you plead “not-guilty” to the charges. Hopefully you have already retained a lawyer to get you through this process. At your arraignment, bail will be set and if you make bail you will be released. Following that comes the pre-trial process, where evidence and investigations are done by both the prosecution and the defense, motions regarding evidence and other issues are heard, and finally a trial. In most cases, there will not be a trial as a plea bargain may be reached in the pre-trial phase.

You will lay the foundation for your case in the previous chapters. By this time, you have either have a strong defense or you have sealed your fate. This will all be determined in part by your actions, the actions of the investigating police officers, the testimony of witnesses, the actions and background of your assailant, and finally the prosecutor.

The more information you provide to the police, the more information they will have to use against you. If you tell them you have been studying martial arts for 20 years and have the reflexes of a cat and hit like a Mack Truck, you are giving them more information to use against you. Likewise, if you are a martial arts instructor, who has a no mercy approach to martial arts and teaches easy ways to kill and maim quickly, the police are going to find out. They will interview your students and parade them up to testify about your teaching one at a time until your goose is sufficiently cooked.

This information will be gathered and may be used against you in attempting to show that you were trained to go beyond “reasonable force.” This term will be the gravamen of this chapter. Understand that self-defense law goes back to English Common Law and has carried to the United States. It varies from state to state according to what each state requires to prove to offer the defense of self-defense.

Self-defense is a defense that is raised to justify a violent action, and is a defense to a criminal prosecution. It is an affirmative defense, and states vary on who has the burden of proof of proving self-defense. This means that you are admitting to doing a violent act on another human being and then claiming that your act was justified because you believed you faced imminent harm. Every state has its unique approach to the self-defense defense. For example, in Washington State the prosecutor must prove beyond a reasonable doubt that you did not act in self-defense. In other states, the burden is on the defendant to prove self-defense.

Self-defense law is often terribly misunderstood across almost all areas of self-defense training be it firearms training or martial arts training. Having been involved in firearms seminars and defense with a firearm training, the amount of misinformation is dangerously apparent. For example, ever hear that “if you shoot a man on your porch, you should drag him in your house?” That advice will land you in jail for

sure. Unfortunately, this misinformation can cause someone to over-act thinking that they are legally able to do so, and others to under-react out of fear that they will be prosecuted.

In order to successfully claim self-defense, you must maintain your mantle of innocence throughout the entire process. If you are the aggressor, acted violent, engaged in mutual combat, look like you are the perpetrator of violence, or completely overreact to the situation leaving the other person seriously injured, then your claim to self-defense is not going to work. If your story does not add up, you will lose. Once you, your attorney, or your cases loses credibility with the jury it is over.

However, all of this is in light of the axiom that has been repeated again and again: “I would rather be judged by a jury of my peers, than carried by six of my closest friends.” This is not to say you shouldn’t control your actions. This is to say that being a survivor, whether or not you end up with a criminal record, is better than being killed, raped, or severely injured. Understanding your rights and having a basic working knowledge of your local laws regarding self-defense will help give you the confidence to act appropriately as the situation requires. If you under-react and your action is not enough to stop the attack, you may be hurt or killed. If you over-react, you could land in jail. This is not a clear line and will depend largely on the attitudes of the police and the prosecutors in your locality.

Lawful Use of Force:

On this matter, while some aspects of self-defense law are identical, every state and locality has its unique take on it. I have spoken with police in small towns where the prevailing attitude of the police was if you caught someone breaking into your car and beat the tar out of them, they would applaud. I have also met other cops in different departments that would be very upset by that and do not want any form of vigilantly justice in their area. The information given here is largely specific to Washington State, but will likely be similar to most other states. Make sure that you consult with a competent attorney to get more specific information for your state.

Under Federal Law and most state law self-defense or defense of another is also allowed as a defense. Under the Federal Law you must produce sufficient evidence to establish “any foundation” for a self-defense jury instruction. Once you have met your burden, the federal prosecutor must prove beyond a reasonable doubt that you did not act in self-defense. There are three elements under the federal law that allow a person to lawfully act in defense if him or herself:

- 1) You reasonably believe that it is necessary to protect yourself or another against the **immediate** use of unlawful force; and
- 2) You use no more force than appears reasonably necessary under the circumstances; and
- 3) in the event the force you employ is likely to cause death or great bodily harm, you must reasonably believe that the force is being used to prevent death or great bodily harm.¹

See, Ninth Circuit Pattern Instruction 6.7 (2003).

In all cases of “self-defense” we are dealing with the use of “force” in the defense of one’s self, others or property. Remember that the use of force on another human being is usually a criminal act, so self-defense is going to be your defense to committing that act. The following three paragraphs are taken from the Washington State Pattern Jury Instructions and serve as an example of how the jury will be instructed on the laws of self-defense. Since the jury will be judging your actions, it seems best to know by what standards they will be judging you. Read the jury instructions in your state. It will tell you a lot about what you need to know. The Washington Pattern Jury Instructions state as follows:

The use of, attempted use of, or offer to use force upon another person is lawful by a person who **reasonably believes that** he or she is about to be injured, by someone lawfully aiding a person who he/she reasonably believes is about to be injured in preventing or attempting to prevent an offense against the person, and when the force is **not more than is necessary**.

The use of, attempted use of force, or the offer to use force, upon or toward another person is lawful in preventing or attempting to prevent a “malicious trespass or other malicious interference with real or personal property lawfully in that person’s possession, and when **the force is not more than is necessary**.

The person using or offering to use the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration of all of the facts and circumstances known to the person at the time of and prior to the incident.

(See <http://government.westlaw.com/linkedslice/default.asp?SP=WCCJI-1000>, for the Washington State Pattern Jury Instructions).

Notice that you do not have to actually use force, but the mere threat of using force is in itself an act of force that is covered by these rules. Merely threatening someone that you will kick their ass can be enough to get you criminally charged.

So, we are confronted with the phrase “reasonably believes is about to be injured in preventing or attempting to prevent an offense against the person....” You have the right to act in the defense of yourself and in the defense of another, but you must have the “reasonable” belief that you are in danger of being injured or that the other person is in danger of being injured. This means that if you strike first, then you better be able to show through evidence that you reasonably believed you were about to be injured. Remember, this evidence will be the evidence that a Court will admit that the jury will get to hear. This can include eye-witness testimony, but will most likely not include your testimony. This will be your lawyer’s call.

Dirty words or an insult does not mean that you suddenly face imminent danger. Even if someone calls your spouse or significant other a bunch of dirty obscene names and insults does not allow you to use force. You must have a threat of potential or actual physical injury.

“Necessary” in self-defense terms means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to affect the lawful purpose intended. The “lawful purpose” intended is self-defense, not kicking in the other guys face because you are angry. Necessary force is that force with is necessary to stop the attack or the threat of injury to you or someone else. It is a fine line that if crossed can have serious consequences. Therefore, the right of self-defense only allows you to use force that is “necessary”.

Also pay attention to the fact that we are dealing with a reasonable person “taking into consideration all of the facts and circumstances known to the person (you) at the time of and **prior to** the incident.” This makes your martial arts training relevant, which can both harm and help your case. For example, if you are being attacked by a thug throwing roundhouse punches at you and you are highly trained at defending that type of attack, then the threat level that the attack poses to you is not the same for the average Joe. It is not certain how a jury would come down on this or how a prosecutor would. What is certain is that your training makes it almost impossible to argue that you reasonably believed the attack was “life threatening” or even threatened to inflict “grave bodily harm.” Unless of course, you can show that your training taught you that the attack could be life threatening and could inflict grave bodily harm.

Remember, in your state the term reasonable may be used differently. It may refer to a third party, and what that party would believe to be a reasonable belief. There are similarities and very subtle and unique differences in each state’s laws. Get to know your state’s laws, because it is those little differences that make all the difference in your defense.

If you are trained in knife combat and you know from your training that an attacker can travel 21 feet in the time it takes you to draw, aim and fire a gun, and you know that a knife is a very lethal weapon, then your training can help to show that you had a reasonable belief that the knife attack was deadly force. You also know that if you do not react fast and appropriately the knife is going to cause grave bodily harm, and maybe kill you.

This information from your training can play out in your defense. It is not unimaginable that your instructor could testify to what he teaches students about tactics, threats and other harms. This is assuming that he doesn’t teach you to be a violent killer. Putting that aside, your teacher could testify, based on their knowledge, that you were trained that a knife is a deadly weapon and that if you do not react someone with a knife will kill you. This will help to explain to a jury what you “reasonably” believed during the confrontation.

So, the standard by which you will be judged is the “reasonable and prudent person... taking into consideration of all of the facts and circumstances known to the person at the time of and prior to the incident.” This is considered an objective standard and is used in every jurisdiction. Your ability to offer testimony from others (maybe not you because your attorney may choose not to have you testify) is one of the ways you can show all of the facts and circumstances known to you at the time of and prior to the incident. Prior to the incident, you had training and that training is part of the facts and circumstances

you are facing. Wouldn't it be helpful if your instructor had written materials he handed out that could be produced at your trial?

Thus, it becomes complicated when we start combining these standards. We have a definition of the term "necessary" but what the heck does that mean? You are in the middle of a street confrontation, and have training wherein you learned how to stop an attack and render the other person unable to attack or follow you. So, you are on the street and you get confronted by a young stupid teenage punk, who thinks he is going to strong arm you. He throws a right hook, you react, and the kid is on the ground. We are assuming that you are trained in martial arts, so it would be unreasonable to believe that you can use deadly force against this assailant. Although you do not know whether or not your attacker has the ability to use deadly force, remember that your size, image, and training are going to become factors when a jury attempts to pass judgment on your actions.

The following case example, also taken from Washington illustrates what can happen if you decide to get involved in a confrontation between other people not involving you :

On June 27, 2007, Peterson was celebrating at a bar in the Little Creek Casino in Mason County. Over the course of the evening, he became drunk and the bartender cut him off from further service of alcohol.

Peterson walked up to the bar to get a glass of water. A friend tapped him on the back, and Peterson followed her, knocking over a chair as he moved to the opposite end of the bar. Sean McFadden, a friend of Marohl's, stopped Peterson to complain that the chair had almost hit McFadden's wife and to ask Peterson to be more careful. Peterson put his arm around McFadden and started to apologize. McFadden attempted to remove Peterson's arm several times, but Peterson kept his arm around McFadden.

Observing Peterson and McFadden, Marohl, a mixed martial arts fighter, got up from his table and stepped between the two men. Marohl took Peterson's arm and pushed it back. Marohl then placed his arm around Peterson's neck in a choke hold and started to walk Peterson toward the door.

The State introduced surveillance tape footage of the incident at trial, but witness testimony conflicted. Jesse Kollman, a friend of Peterson's, testified Peterson waved his arms in the air in a "defensive move" to get Marohl "Off his back." Kollman testified Peterson lost consciousness, and Marohl, "drove" or "rode" Peterson into the ground. Another witness testified Marohl placed an arm around Peterson's neck to restrain and walk him out of the bar. Defense witnesses testified Peterson tripped and Marohl tried to keep him upright. In light of Marohl's mixed martial arts training, both sides presented expert testimony evaluating the type of choke hold he place don Peterson and whether Marohl choked Peterson to restrain him or to render him unconscious.

Both men fell to the floor. Either the choke hold or the impact with the ground rendered Peterson unconscious for a couple of minutes. The impact with the casino floor caused

Peterson to suffer bruises and scrapes on his face, and his prosthetic arm broke off above the elbow joint. Marohl got to his feet and walked away but then returned to try to help Peterson off the ground.

The State charged Marohl with second degree assault or, in the alternative third degree assault.

State of Washington v. James Michael Marohl No. 83570-5 (En Banc December 30, 2010).

This case shows that time and time again the witness testimony is crucial. In this above case, self-defense was not an issue. There was no defense to the use of force by Marohl, who acted to remove Peterson from the situation. You can see that his mixed martial arts training played a role in his conviction. You can also see that you do not get to use your force when you feel like it. The danger to you or another must be imminent and real.

This takes us into the fact that the amount of force you use “is not more than necessary.” This implies that for self-defense purposes your use of violence has to be proportionate to the threat. Deadly force begets deadly force. That means that if you are facing a threat that is life threatening or can inflict “grave bodily harm”, you can justifiably employ deadly force in your defense. This is the classic conversation in firearms defense circles. Pulling a firearm on someone is considered the use of deadly force on that person. Again, someone tries to mug you, you pull a firearm, you are using deadly force. This is a little clearer than in empty hand combat, where there is not such a clear line on the amount of force being used. Again, this can be used for or against you. If you are highly trained or even somewhat trained, the prosecutor can argue that your hands are really deadly weapons: a bit of a stretch but not outside the realm of possibility. In some instances even a shod foot can be considered a deadly weapon. Just imagine using a pair of heavy boots to stomp on someone’s neck. That is deadly force.

The use of weapons can raise any confrontation to the threat of deadly force. We all know that a knife can be used to stab someone in a vital organ causing them to bleed to death. A baseball bat with the right strike to the head can deliver a deadly blow. Any sort of sharp object can be used to stab and any large blunt object can be used to inflict fatal wounds. A pen, could conceivably be used as a deadly weapon if the person is stabbed in the right location.

Thus, deadly force, the highest level of force itself moves along a continuum that means there is not necessarily a cut and dried rule as to when it is justifiable. Again, we are assuming a street confrontation or a confrontation in a public location. Depending on your state’s laws and rules, it may be justifiable to shoot someone burglarizing your house while you are home and it may be justifiable to use deadly force to stop a violent felony. These rules vary from state to state and must be considered.

The accidental use of deadly force by a martial artist also raises additional legal issues. If you are a trained martial artist then it is assumed that you have experience and training in the techniques you use and are proficient with them and know the consequences of those moves. This is especially true if you are a “black-belt.” This carries the perception that you really know what you are doing.

Many years ago, a high school student was in a confrontation with another student. He was a black belt in a martial art, and served a powerful kick to the other kid's head, which accidentally killed him. He ended up pleading guilty to the crime of negligent homicide and served many years in prison. The court determined that his training gave him the ability to hold back and his training also gave him the knowledge that he knew what he was doing by kicking the other kid to the head. Stories like this are infrequent but surprisingly not all that rare.

There are a myriad of things that can rise to the level of causing grave bodily harm. Surprisingly, however, in Washington State it has been held that, "A bare arm may not be the instrument or thing that elevates an assault charge." However, the assault statute in Washington State does include choking as an event that can cause grave bodily injury.

You must be ever so cautious when using force of any type, as your training is going to be gone over with a fine tooth comb and experts are going to be consulted to explain to the jury why your force was excessive or not excessive. This means that your actions may very well be scrutinized and you are going to have to explain to your attorney exactly what you did.

In order to defend and maintain your innocence you must be able to show that the attacking party, knowing what you knew at the time and before, had the ability to cause grave bodily harm and the opportunity to do so. Ability means that the other person could actually cause grave bodily harm, which could mean that they had a weapon or other means of inflicting the grave bodily harm. Opportunity means that they actually have the opportunity to do so. If you are in your car and drive off, then they don't have the opportunity to inflict grave bodily harm. Or, imagine that they are across the street or behind a barrier preventing them from getting to you. They must have the opportunity to inflict the harm you are defending against.

This gets muddy when we start throwing size and gender in the mix. Imagine a woman attempting to mug you who happens to be a mixed martial arts fighter. She would likely, through her training, have the ability to cause you great bodily harm. But, you have to show that. If she is 5'6" and weighs a 140lbs to your 6'2" 200 pounds that may be hard to do.

The idea of "escalation of force" is comparable to a continuum or a ladder. At the top of the ladder is deadly force and at the bottom is no force. This is the idea that the force you used escalates on an increasing scale. It is a way to help explain the idea of proportional force. Often times, bearing and demeanor may be included in an explanation of use of force. If your bearing and demeanor is such as to prevent violence then you will not have a need to use force.

- The first level would include your voice. That is: Are you engaging in some sort of verbal confrontation or verbal crisis intervention. The study of verbal crisis intervention instructs us that voice leads voice, so someone calling you profane names will only be escalated if you also engage in like behavior. If, however, you use a softer voice and explain that there is no need for that kind of language, you can begin to de-escalate the confrontation. This is important not only for the witnesses to see but also to avoid the confrontation. There is nothing wrong with running away.

If you engage the other person and begin to escalate the process by calling returning the profanities then the conflict begins to escalate. As such, you become part of the problem not the solution, otherwise known as an aggressor.

The next level would engage the use of defensive techniques. Now, depending on what style of martial art you study, blocking a strike may involve a strike. The idea here is that you are protecting yourself from an attack and are in a defensive posture. That is, you are not offensively attacking the other person. Here again, you are defending yourself and blocking a punch or kick may be enough to stop the attack. If the attack stops, then it is over. If the attack continues, then you have continue up the levels of escalating force.

- Grappling and techniques, such as arm bars and submission holds are generally considered less force than strikes. You must keep in mind that choke-holds can be considered deadly force. So, use extreme caution whenever you are employing any sort of choke-hold or neck hold, which can be considered use of deadly force or force that could inflict serious bodily harm. The use of choke holds is going to involve the testimony of competing experts as to whether or not the choke you were trained to in and used is lethal or not. That is going to be seen as more force than a wrist-lock or arm bar. These techniques are generally designed to subdue and restrain an attacker, and should also be very cautiously employed. As a civilian, you do not have the same rights as a police officer when it comes to detaining someone.
- Barehanded strikes are generally considered to be higher up on the escalation of force scale. A punch or strike can inflict injury and can carry with it extreme consequences. Knock out a couple of teeth and you are likely to get sued for the damage. If you are being struck or the other person is attempting to strike you then you may have to employ strikes in order to defend yourself. This can change if you have any strike enhancing mechanisms in your hand. Anything, such as brass knuckles, that would enhance your strike and may make it more lethal.
- Kicks with a “shod foot” (having a shoe or boot on) can be considered deadly force. Courts have made it clear that if you stomp on somebody’s head or neck you are using deadly force. Kicks to the head can also be considered deadly force, especially if you are a trained martial artist with a powerful kick. Also, a kick to the knee can be a disabling blow.
- Less lethal weapons, which are called such because they have killed people, are weapons such as a Taser or pepper spray. These weapons are generally designed to disable the attacker to allow for your escape. Understand that a club or and asp is only a less-lethal weapon in the hands of a police officer trained to use them, but a lethal weapon in the hand of a civilian. Especially if you are trained in using these weapons.
- Defensive deadly force has been discussed above.

There are many books and articles that discuss the above escalation of force in more detail. The idea for our purposes is to understand the continuum of force used and understanding what it means that the force is “not more than necessary.” If someone is attacking you, you have a right to stop that attack. It may involve a kick or a punch. As the threat escalates, the necessary force escalates. When the force de-escalates then the necessary force de-escalates. So, if you disarm and disable your attacker, you

have no right to continue your attack because you are no longer operating in self-defense. If you get into a verbal confrontation and start showing a threatening demeanor towards the other person, then the other guy may start claiming self-defense against you. Now you have a problem, especially if the witnesses are confused as to who is the aggressor.

This brings me to the knife disarming discussions that have plagued martial arts classes I have attended. Imagine a scenario where someone wielding a knife attacks you, and you are able to defend the attack, disarm the person, and end up with the knife. The natural flows that I have practiced then go through a myriad of follow-ups with the knife that will subdue or kill your opponent. But, this raises the question: If you disarm your attacker (remove the deadly weapon from them) is the threat of deadly force also removed? Therefore, making the use of deadly force excessive?

This illustrates the fluid nature of combat and how that can create difficulties when trying to apply the law. Again, each case is unique and will depend on the credibility of your story.

The Prosecution: Crossing the thin grey line.

Self-defense is difficult to define for practical street defense purposes. In order to effectively claim self-defense you are going to have to be the innocent party. Again, if you are an aggressor you don't get to claim self-defense. Engaging in a bar room argument that escalates to a brawl in the parking lot and then claiming self-defense is going to get you thrown in jail. This is why most people will never have to engage in the use of martial force for self-defense, because they could just walk away.

Once the threat to you does no longer exist you must stop. If you continue after the threat has subsided, then you have crossed the line from self-defense to offense. You have become the aggressor, and will likely be charged with a crime. Most fights are going to be seen as just that—fights, with the fighters participating in the mutual confrontation.

I have heard instructors teach that you want to strike so that the attacker cannot come after you. This is good advice. However, if your brain tells you to kick someone when they are on the ground because you do not want them to chase after you, you may be crossing the line. Thus, crossing the line from self-defense to a criminal is not clear. This is why you must be extremely cautious when engaging in the use of martial force for self-defense.

You are required to use no more force than is reasonably necessary. Deadly force must only be used under extreme circumstances, or else you are going to jail for murder or attempted murder or some lesser manslaughter charge. This means you will be in prison for a very long time, you will spend your life savings paying to defend your case, and you may even lose your family in the process. These actions will have consequences and any small mistake in the process can leave you with grave consequences. These actions will also happen in a matter of seconds, so you will not have the time to really think about what happened.

For example, it is difficult to imagine a situation where you can have an attacker in a hold designed to break his neck and have that move be justified as self-defense. If you have the person in the hold in the

first place, then the threat of severe bodily harm or death does not seem imminent. Furthermore, any witnesses will tell the police that you had control of the victim before you broke his neck. You can then scream self-defense all day long, but you are going to be charged and arrested.

When it comes to self-defense, there is no black and white explanation of how far you can go. Hopefully, you are beginning to understand that the entire picture must be in place for self-defense to be claimed in a credible way. You must be the innocent party, as such, you must act as an innocent party acts. If you let your emotions or your mouth get in the way, you are going to have problems. You must only act in accordance with the presented threat, and acting offensively is going to be harder to justify than acting defensively. An offensive action is going to give the other guy the right to claim self-defense as well. You must remember that you are going to be watched, your actions scrutinized and your life changed dramatically after the event.

While I personally know many people who have been in street fights that were created by the exchange of epithets and raging testosterone, these guys were all lucky that they did not end up in jail. You may have already been involved in fights where the police were not called. You may have already been someone who has kicked ass on the streets. Remember, it only takes one error and one set of bad circumstances to forever change your life.

The prosecution is going to seize on every detail available to convict you. The devil is in the details and so is your jail sentence. Just like you have a story about using self-defense, the prosecution will have a story about your aggressive violence and assault on the “victim.”

CHAPTER 7: CIVIL CONSEQUENCES

Besides the criminal consequences, you may also face a civil lawsuit for the harm to someone from your actions taken in self-defense. In criminal court, the prosecutor must prove that you broke the law “beyond a reasonable doubt.” In a civil court, you only have to prove your claims by a “preponderance of the evidence” which means that if the scales of justice tip ever so slightly, you win. Even if you are found not guilty in a criminal proceeding you can still be sued for money damages. Obviously, money damages do not compare to the time lost in a prison sentence. These cases are rarer, but they do happen.

Civil liability means that you can be sued for money damages for any injury and pain and emotional distress caused. So, if you are in a confrontation and injure the other person, you can be sued for money damages against that person. Further, if you are a martial art’s instructor and one of your students goes off and negligently injures someone because of the moves you taught them, then you too (although rarely) may face civil liability for training that person. Civil actions are available for assault and battery, as well as for personal injury and negligence or depending on how extreme—wrongful death. Most if not all liability insurance policies will not cover any intentional act. Therefore, if you are sued for assault or battery, then you are likely going to have to face the legal expenses and judgments yourself, which may land you in bankruptcy court.

In civil court, you can be called to testify about what happened and about what you did, and heaven forbid you having to “plead the Fifth”. You will be asked to testify about your training and experience, and each move that you used in the confrontation will be scrutinized in every detail. So, the submission holds you learned will be discussed by you, experts, and maybe even your instructor.

As an instructor or owner of a school, your school’s curriculum, policies and procedures may be scrutinized. Other students may be questioned about your instruction and your own teaching will be up against expert testimony about whether or not you are a responsible instructor or someone who is training people to be violent thugs on the street.

Every personal injury claim, whether or not that claim is for an intentional or a negligent act has several elements that must be met. First, the plaintiff has to prove that the injury happened, and that the injury proximately caused by some negligent act on behalf of the defendant. The plaintiff must then prove damages that flowed as a result of the injury caused by the defendant. The plaintiff must show that the defendant did something wrong, that is, acted with negligence or violated some law with his actions. The defendant can defend on the basis of self-defense and the jury or judge will get to decide.

There is a discovery phase in which all of the information related to the claims and defenses will be asked for and, depending on the individual facts and circumstances, provided.

Frankly, from the Plaintiff’s attorney’s perspective it is almost impossible to file a personal injury action based upon an intentional act because there will be no insurance coverage. Without insurance coverage, it is almost impossible to have a settlement or judgment paid, when dealing with a private individual with limited means. Yes, these lawsuits do happen, but it is far less likely that we will push a lawsuit to a jury trial if the defendant is only going to bankrupt any civil judgment.

On the other hand, claims against martial arts schools are more attractive because of the possibility that the martial art school will have some form of business insurance, or will be willing to settle a claim. Therefore, while rare, it seems from the Plaintiff’s perspective that a martial art school would be a better target for a lawsuit than an individual—unless that individual had substantial money. The bottom line with civil litigation is usually money.

CHAPTER 8: Domestic Violence

The subject of domestic violence is an extremely sensitive issue. When talking about domestic violence it is usually thought of as a poor battered woman with an abusive husband or boyfriend. And, sadly this is usually the case. So, you must be wondering why is it being raised as a subject in this book, and what the heck does self-defense and martial arts have to do with domestic violence? The issue of domestic violence has many traps for the unwary and if you are not careful, an argument with someone you live with can quickly escalate out of control. Your training may become an issue and you may find yourself being unfairly prosecuted or having a restraining order issued against you. Understanding the law and your rights will help protect you.

Many people believe that domestic violence occurs between a male and a female, who are in a romantic relationship. Domestic violence is usually considered as “violence against women.” This is an inaccurate belief and is not legal reality. Washington State Law, RCW 10.99.030 defines domestic violence as follows:

(3) “Family or household members” means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(5) “Domestic violence” includes but is not limited to any of the following crimes when committed by one family or household member against another:

- (a) Assault in the first degree;
- (b) Assault in the second degree;
- (c) Assault in the fourth degree;
- (d) Drive-by shooting;
- (f) Reckless endangerment;
- (g) Coercion;
- (f) Reckless endangerment;
- (g) Coercion;
- (h) Burglary in the first degree;
- (i) Burglary in the second degree;
- (j) Criminal Trespass in the first degree;
- (k) Criminal trespass in the second degree;
- (l) Malicious mischief in the first degree;
- (m) Malicious mischief in the second degree;
- (n) Malicious mischief in the third degree;
- (o) Kidnapping in the first degree;

(p) Kidnapping in the second degree;

(q) Unlawful Imprisonment;

And the list goes on. The point here is that you are more likely to get into a dispute with a family member or roommate than with a stranger on the street. It is not a rare occurrence that a husband and wife get into arguments. Use your temper and assault somebody, and you are going to jail. Likewise, if you and your roommate, ex-girlfriend/boyfriend, or someone else that meets the definition end up in an altercation, now you are not only trying to defend yourself on the action, but you have the additional dilemma of dealing with the domestic violence charge.

Domestic violence usually requires a strong legal response. Go to any courthouse in the country and find the “Domestic Violence Restraining Order” calendar or courtroom and listen to the stories. It can be fascinating to watch, because you will find that domestic violence occurs or is claimed by people of all walks of life, appearance, sex, sexual preference and gender. You may also be treated to seeing some guy saunter into the courtroom in a shirt that says, “Kill the Bitch.” (Yes, someone has actually worn that shirt to a domestic violence hearing where he was being accused of violence.) The main allegation required to obtain a restraining order by someone for domestic violence is fear of harm, or actual harm. There must be an actual threat of harm present, but often that is based upon the word of the petitioner seeking the domestic violence restraining order.

Having a restraining order entered against you is no small thing. Yes, it means that you cannot go within a certain distance of that person, their home, children or place of work. It can also rise to an order where you are directed to turn over any firearms that you have in your possession.

Keep in mind the idea of the narrative that we discussed before. If you have a legitimate fear that someone you live with is going to be violent towards you (or a neighbor, etc...) then you have the right to seek and obtain a restraining order. These come in several forms and do not always require domestic violence. For example, you can obtain an order restraining a violent neighbor from your property or a certain distance from you. The point here is that if you have a legitimate and ongoing problem with someone, a restraining order can serve to protect you in any confrontation you have with that person. People say, “well, it is just a piece of paper.” Yes that is true, but your ability to claim self-defense and a reasonable belief that someone is going to harm is bolstered if that other person is violating a restraining order. This shows in a legal pleading (a written record) that you believe this person is going to be violent towards you. It shows legitimate fear and threat of harm. So, if you have a legitimate reason to get a restraining order, why wouldn't you?

Now, if you are a male facing a violent confrontation with a female, you are not going to stand a chance in the Court of law. You will be arrested. Our society teaches and believes that violence by men against women, no matter what the circumstances, is wrong, abusive, unjustified, and the male should be punished. This has changed somewhat, but still seems to be the general rule. The following true story gives you an idea of how far this can go:

Boyfriend was attempting to break up with his girlfriend, and when he told her, she went crazy. They were in their house and she came after him with a butcher knife. She stabbed him twice in the chest, leaving wounds that penetrated the skin and stopped in the muscle tissue. He pushed her, she fell back over the coffee table, hit her head and was left unconscious. He called 911. She was conscious by the time the police and an ambulance arrived. Despite these facts, she claimed she was the victim and the boyfriend was arrested, charged with assault and domestic violence.

So, be aware that if you are a male and your female companion starts to get violent, you need to be extra aware of the fact that your narrative better be darn near perfect. Seeking a restraining order before she gets a chance to is one way that you can protect yourself, as you will be establishing that you believe her to be violent. If she has threatened violence toward you, it is a way to make a record and garner some legal protection. Now remember, once a restraining order is in place, you cannot see, communicate or interact with that person. It spells the end of the relationship, so don't go seeking a restraining order just to go back to her house because she drunk dialed and is "ready to go." But, also be aware that domestic violence goes beyond boyfriend/girlfriend.

There are numerous instances where the police have charged roommates with domestic violence for getting into a fight. This includes two males and even former roommates. If you get into a fight with a stepfather or someone else you live with, you risk being charged with domestic violence. Understanding the domestic violence system in your local jurisdiction is helpful especially if you do face confrontations with those you live with.

Now, if you get into a fight with a roommate or someone else who fits the description above, and you are a trained martial artist, then you face the additional fact that you are more dangerous. Understand, the fact that you are a trained fighter, a martial artist, is going to come in for the jury to hear. And, as such, you will face the increased likelihood that you are going to be seen as a violent person. Therefore, avoid any physical conflict that can be construed as domestic violence, as the chances of getting arrested are much higher, and your defense is much more difficult.

So, domestic violence is likely to become an issue in a self-defense case. Your appearance and demeanor will be amplified and anyone living with you is likely to know whether or not you have martial arts training. This makes it an almost certainty that your training will be an issue in a domestic violence setting.

CHAPTER 9: Weapons

There are as many different types of martial arts weapons as there are martial arts. You can buy anything from a "tactical pen" for stabbing, knives, nun chucks, sticks, swords, throwing stars, staffs, canes and many other implements for fighting. There are many lawyers who have had clients end up in their offices, who unknowingly carried an illegal weapon on the streets of a city and just happened to get caught accidentally. For example, in the City of Seattle it is illegal to: Sell, manufacture, purchase, possess or carry any blackjack, sand-club, metal knuckles, switchblade knife, chako stick, or throwing star. *Seattle Municipal Code 12.14.080.*

State, county, and city law can all vary when it comes to the carrying of various weapons and what is allowed and what is not allowed. Some of the biggest confusion is regarding the carrying of knives. For example, some states and cities regulate the length of the blade of the knife that you can carry, whether the knife must be a “fixed blade”, a folding blade, self-opening, and assisted opening. Each and every local jurisdiction can be different in regards to the types of knives you can carry and to add to the confusion, the definition of the length of the blade can vary.

What is critical to understand are the definitions of these items. For example, the City of Seattle defines a switch blade knife as follows:

"Switchblade knife" means any knife having a blade that opens automatically by hand pressure applied to a button, spring mechanism, or other device, or a blade that opens, falls or is ejected into position by force of gravity or by an outward, downward, or centrifugal thrust or movement.

This means that if you have a folding knife that is loose and that can open up with the force of gravity or a thrust, then that knife is considered a “switchblade knife” in the City of Seattle. Remember, your local city is likely very different.

And, to make matters worse, the City of Seattle defines a “dangerous knife” as any knife that is fixed blade or is a folding knife with a blade longer than 3 and ½ inches. Therefore, you cannot carry, with some minor and narrow exceptions, any knife that has a fixed blade or that has a blade length greater than 3 and ½ inches. This means the total blade length, not just the cutting surface. This also means that you can be carrying a legal knife on one side of the street and have that same knife be illegal on the other side of the street.

So, each city determines what you can and cannot carry and has exceptions to those rules. For example, the City of Seattle allows for the carrying of certain weapons if you are on your way to a martial arts class or to a demonstration. The catch is you must be on your way to or from. It is not uncommon to have your bag of gear in the car all the time. This is basic information that most people do not know and do not understand. Understand that your state law is not going to match up with each city. In some areas, it is easy to walk from city to city without realizing it. On one intersection the law may be different than across the street because of the city boundaries.

Here is a catch. If you use a knife in self-defense and you are justified in doing so, you can still be charged with the possession of a dangerous weapon if that knife is too long or is considered a dangerous weapon under your local law. So, you are going to have a self-defense action and then you are going to be charged with a misdemeanor or greater.

Use of a Weapon.

We have already discussed the fact that a weapon can be considered deadly force if used. A knife is going to likely be considered deadly force. An expanding tactical baton, unless used by a police officer, is going to be considered the use of deadly force. A baseball bat is the same thing. The bottom line, is

that the use of a weapon in a self-defense scenario must be in proportion to the threat. So, if you use a knife to intimidate a homeless person asking aggressively for money, you are going to get into trouble. The use of any weapon changes the self-defense scenario into a much more serious event.

Lets look at an example law. Again, I turn to the City of Seattle, which defines the crime of Unlawful Use of a Weapon to Intimidate Another as follows:

A person is guilty of unlawful use of weapons to intimidate another if he or she carries, exhibits, displays or draws a dangerous knife, any knife with a blade that is open for use or a deadly weapon other than a firearm in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another person or warrants alarm for the safety of other persons.

SMC 12A.14.075. In other words, if you use your knife to ward off an attacker and another person sees you pulling the knife on that person, you can be charged with the above crime. Of, if you are just messing around with your knife in public, you can be charged with the above crime. Thus, weapons are easy to get dinged for. The consequences of which can impact you for the rest of your life.

Of course the same can be said for all other types of weapons. Understanding that a standard cane is something that is not generally considered a weapon until it is used in combat. Then, again, you come back to the self-defense reasonableness standard. Was your force reasonable? Is the use of a cane deadly force? Maybe, but this depends on facts.

The bottom line is that you must use extreme control when using a weapon to defend yourself. Understand that this immediately escalates the violence to a new level once you use a weapon besides your hands. While a weapon may turn the tide on the confrontation, it can also turn the tide in your prosecution. This is why it is critical to understand your local laws defining what you can and cannot use as a weapon.

CHAPTER 10: VIOLENCE AND THE LOSS OF REASON

In every case that I have tried, it was impossible to keep out the prejudices of the people serving on the jury, or for that matter acting as judges. Their experience and beliefs entered into their view of the world. And, quite often that view did not follow the law or match my particular view or that of my client.

There seems to be a movement in the United States that says, "all violence is bad." This kind of thinking of course, does not give room for the use of violence to stop a crime or to defend oneself. News stories abound about bullying and talking head experts teaching parents that the best way to deal with a bully is to tell the authorities. I have seen stories of kids getting kicked out of schools for drawing a picture of a gun or using their fingers as guns as they pretend to shoot each other. On the other hand, the news is full of stories about the "knock-out game" where groups of teenagers try to see if they can knock some random person out with one punch. It seems that the media promote the idea of "it's a dangerous world" and you better tell the authorities.

There are also debates raging regarding the right of people to use self-defense. So-called "stand your ground" laws have come under attack, with reports of people using this law as a way to legally kill other

people. This debate was no clearer than in the national press coverage of the Trayvon Martin and George Zimmerman tragedy. “Stand your ground” was not even an issue in that case.

I encourage you to go to YouTube and watch the clips of the testimony. Watch how the case unfolded and how the witnesses told the stories of what happened. What you will find is that the story that unfolded in the courtroom was not the same story that unfolded in the national media coverage of it.

The debate rages on and on. In Seattle, the Seattle Police Department was just recently chastised by the federal government for its use of force and is now facing huge and sweeping reforms. YouTube is replete with videos of police officers doing traffic stops, and is filled with edited videos portraying the police as a violent and brutish class of people. Lawsuits abound over the use of pepper spray, Tasers, and physical restraint. Yes, many of these suits are justified and the abuse of power by police departments needs to be checked and appropriately punished.

The broader question that arises is how do the attitudes in communities about their police officer’s using force translate to attitudes about citizens defending themselves on the streets. Do the people in your community view someone who trains as a martial artist as someone who is bent on using violence no matter what? Do the people in your community view martial artists as people who can stop a knife-wielding attacker with a wristlock or some magical move? In other words, if I get in a fight on the street does my community view me as the bad guy?

The reality we are presented with is one where there is a debate in our society over your right to use violence to defend yourself. A growing percentage of people like to watch violence in movies and on television, but condemn any use of violence in real life. They do not understand self-defense. They do not understand that in order to prevent or stop violence from occurring to you, you need to use violence back. They do not understand the concept of training to be violent. These people include police officers, prosecutors, and members of the jury.

More and more it is becoming important to keep these ideas in mind in your everyday practice and in your life. Will you look credible if you are forced into a situation where you have to engage the use of martial force to protect yourself? It is a sad state of affairs that we as a society are reaching the point where we are debating whether or not someone can defend himself or herself, as people ask, “Why didn’t he just walk away?” Or, “What was he doing there in the first place?”

Of course, those bent on doing you harm do not care about the consequences. Those things do not matter to them. Otherwise they would not be doing what they are doing. They care about survival and nothing more. So, sadly, you have to be prepared to physically defend yourself and at the same time you have to be prepared to put yourself in the best situation possible to survive the courtroom assault after the physical one. The question eventually becomes, “Does your story add up?”

ⁱ See Ninth Circuit Pattern Instruction 6.7 (2003)