Armed Citizens' Legal Defense Network, Inc.

13 Years and Growing:

A Member Support Organization Matures

by Gila Hayes

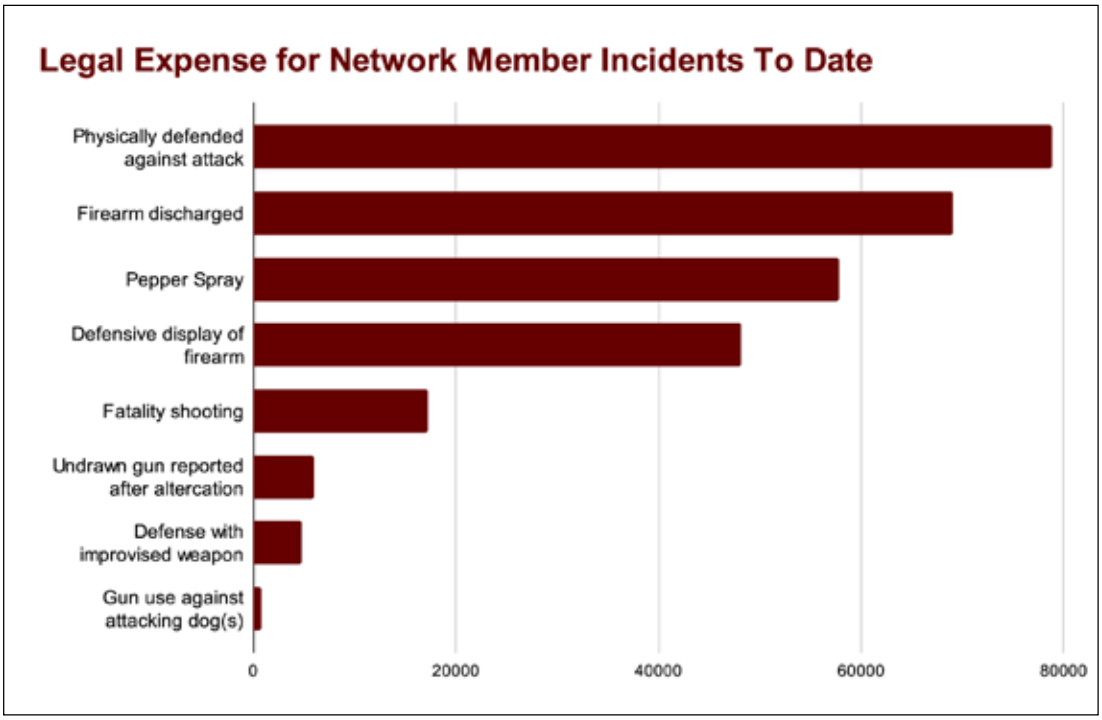
As the Network starts its 14th year of service, we move forward in the company of over 19,000 members, many of whom have been part our big Network family for many years. We close out 2021 with over $3 million in the Legal Defense Fund, having paid legal defense expenses on behalf of 29 members, and had a hand in educating thousands more. With growth inevitably comes change, so a reminder of the mission we first undertook in 2008, and the extent to which our bold plans from that beginning have expanded, matured and grown may prove useful to members. How did we reach January 1, 2022, and what lies ahead in this new year?

A Mission Defined by Need

No Arbitrary Limits

We frequently converse with callers who want definite dollar limits on specific types of post-self-defense incident legal work. "What is the dollar limit on criminal defense?" is a common question, as only one example. The Network's assistance to members who have defended themselves and their families is not restricted by arbitrary limits, nor is it rationed out for one facet of legal defense but not another. Frankly, it asks too much of uncertain fate to pre-determine what the circumstances of an attack requiring use of force in self defense might involve! In the same way, the legal aftermath of one individual who takes action in self defense will differ radically from the legal assistance needed by another – even one who makes similar self-defense choices – but in a different locale, for example. Instead, the Network fully funds lawyers, investigators, experts, pays court costs and assists with bail as needed by members and dictated by the unique needs the individual faces.

The chart to the right illustrates the range of expenses for legal representation we have paid on behalf of members over the years.



Rapid Response

We strive to get an attorney on the job and representing a member who has used force in self defense as quickly as possible, having experienced success in preventing authorities from filing charges by making sure the member's part of the story is factored in to the charging decision. A well-connected attorney, sharing the true facts of the situation the member faced when they used force, can get charges dropped, too.

If any of our member-involved cases proved the value of getting an attorney working on a member's case ASAP, it was probably the story told at https://armedcitizensnetwork.org/defending-against-first-degree-murder-charges , although the advantage of early legal representation holds true all across the range of member experiences. Most of our members have contacted us as soon as they were free to telephone; only a few have waited until served a summons, having erroneously concluded that the conflict was resolved bloodlessly, and so was not serious enough to get an attorney involved. In the latter, it is inevitably more difficult to derail the prosecutor's drive to convict the member. Timeliness matters!

I've long said the Network's proof of concept is in the past 13 years' experience. With only three member-involved cases in 2021 – three defensive displays of firearms without

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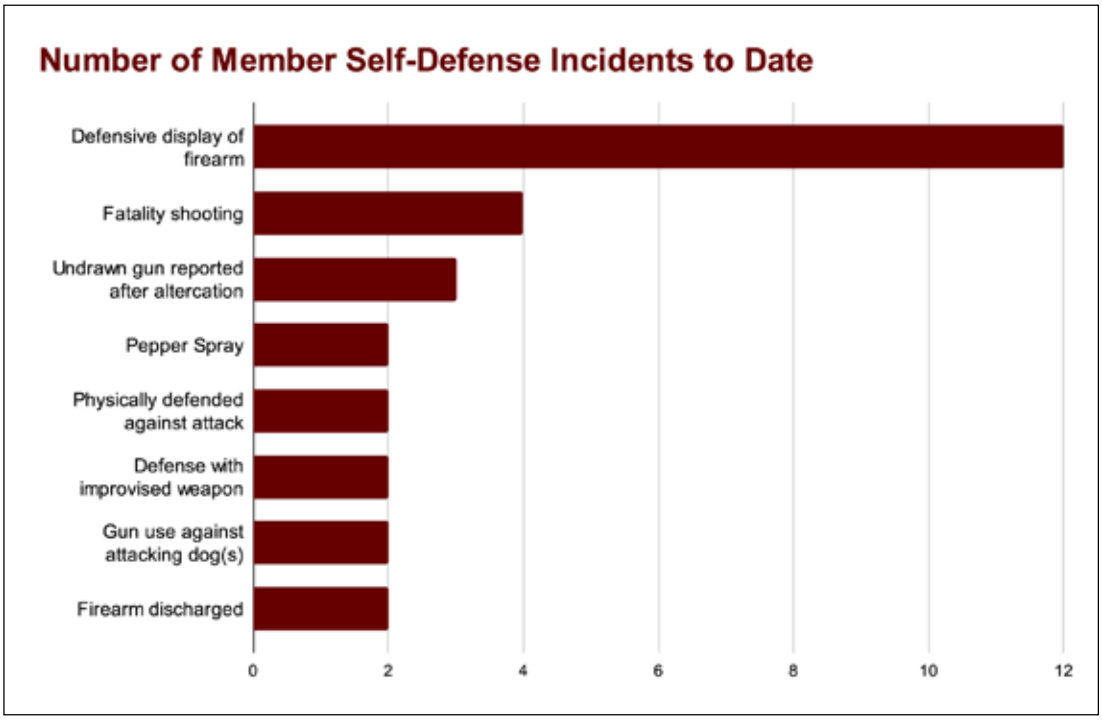
shots fired – members and non-members alike will benefit from going back into our archives and reviewing the busier years, as outlined at https://armedcitizensnetwork.org/a-decade-of-assistance with the 2020 update given at https://armedcitizensnetwork.org/membership-and-defense-fund-growth .



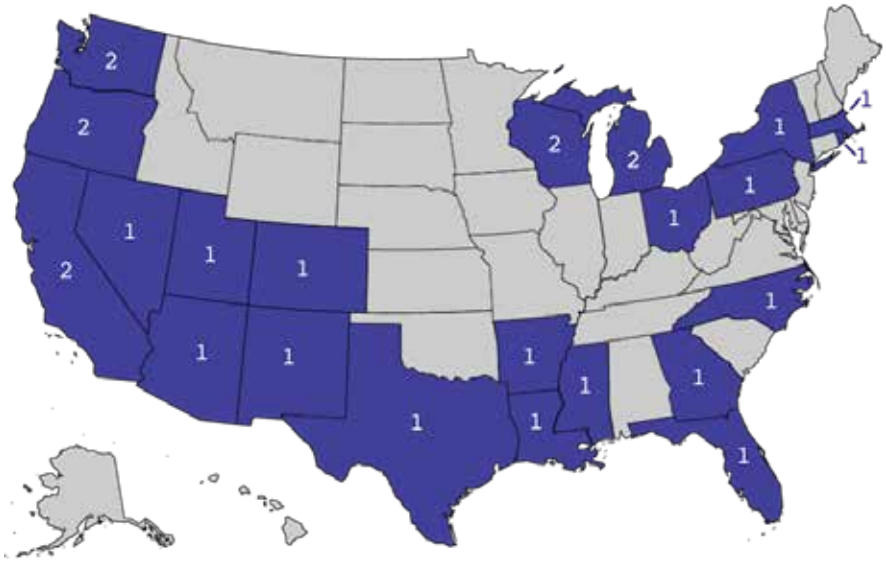
What's Excluded?

Members and non-members alike sometimes lose sight of the differences between the Network and our competitors' insurance products that involve limits and exclusions. Sometimes people reach inaccurate conclusions if they compare policies and contracts from competitors to supportive membership in the Network. To fully fund a member's legal defense after self defense, we ask only that the use of force was in legitimate self defense and by means legal in the jurisdiction in which it occurred. We are frequently asked if Network assistance is limited to shootings or to firearms use, and, of course, the answer is no – we'll help members defend self-defense use of any legal weapon or of physical force or improvised weapons. We have paid attorneys to represent several members who've used pepper spray and early on, it was our privilege to assist a member who created distance between himself and an aggressor with a golf club.

The above chart, outlining the variety and frequency of various force option members have used in self defense since we opened the Network in 2008 and had our first member-involved incident in 2009, is often of great interest to readers.

All Across our Great Nation

The Network has members in all 50 states and the U.S. Territories. Although currently prohibited from recruiting *new* Network members from Washington state only (our legal battle continues during our plea for judicial review), we continue to serve our existing members in WA as well as assisting Network members across all of the rest of the nation. The below map illustrates the geographical breakdown of member incidents by state.



Even long-time Network members sometimes forget that as a national organization, the Network is there to assist members as they travel. Of course, our traveling members do need to be alert to differences in use of force law and firearms restrictions from state to state, since the Network would soon cease to exist if we were to pay for defense of violations of statutory law. With resources like https://handgunlaw.us/ it is well within the ability of armed citizens to know the law that is in force in the cities and states that they plan to visit. The maxim attributed to Thomas Jefferson, "Ignorance of the law is no excuse in any country. If it were, the laws would lose their effect, because it can always be pretended," remains as true today as was when America's Founding Fathers were setting our new nation on its path to greatness. While Jefferson could not have envisioned the massive number of laws on the books today, America is still at the "ballot box" stage of the fight, not armed revolt (the bullet box

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stage) over laws and governance. To pay legal expenses of one violating the law – either through ignorance or willful disregard – would quickly render the Network unable to fulfill its mission, the legal defense of lawful self defense.

No matter how plaintively, aggressively and repeatedly members and non-members ask why we can't offer funding for legal defense of illegal concealed carry or in a few highly restrictive states, illegal possession of certain weapons those states have outlawed, doing so would literally encourage people to violate the law and leave the Network unable to fulfill the goal for which it was founded.

The mission of the Network is providing members with funding to assure no member ever stands alone before the law after legal use of force in self defense.

Member Education

One need only read the Internet news feeds or watch the evening news to see examples of people who inadvertently committed crimes by not knowing the restrictions placed on their activities by the law. Often, a simple violation mushrooms into additional crimes when citizens do not understand how or choose to interact unproductively with authorities after the deed is done. Whether a simple speeding infraction after changes to the posted speed limit on a familiar street, violating the game laws or running afoul of ecology restrictions, it can be challenging to get a handle on which laws regulate our behavior, to say nothing of aftermath management – explaining lawful but widely misunderstood actions.

We consider our member education mission one of our most important efforts! An educated membership is less likely to suffer mistakes of judgment because members have studied and thought through defensive use of force issues, considering what is allowed, along with acknowledging the legal, ethical and societal results of using force against a fellow human being and related realities of self defense – which often contradict the "white knight riding to the rescue" fantasies some entertain when they get their first gun. Our full lecture library is provided to each new member; updates and additions are streamed at https://armedcitizensnetwork.org/members/lectures-on-video .

For armed citizens – members or not – the Network's website encourages in-depth study of use of force and legal aftermath issues. We host a library of educational videos provided by our non-profit Educational Foundation at https://armedcitizenstv.org while reserving the Network's core educational series for members. Even the preview of our member education set (https://armedcitizensnetwork.org/learn/member-education-commitment) offers gems of information. Members, we urge you to share the links to our educational message with your family, friends and associates. We also make our monthly online journal publicly available at https://armedcitizensnetwork.org/our-journal/ .

One Affordable Dues Rate

Over the years, the Network has maintained a lean operational budget with an eye toward keeping membership dues affordable for people from all socio-economic strata. We have no upcharges for additional areas of assistance or as is common with competitors, we don't charge more for legal help outside your residential state, nor do we charge higher fees for the top tier dollar amounts or withhold premier-level assistance unless you pay more. All Network members are eligible for the same assistance after self defense and instead of just buying insurance, members often express their satisfaction in belonging to something bigger than themselves. Many comment on their hope to never need Network assistance but add that they are proud to have had a hand in alleviating the hardships of their fellow members who did.

Decisions About How to Best Help

Do you remember the old joke about the guy who wanted to help in the worst possible way, and he did, in the worst way? Sentence structure matters – and so does the structure of an organization founded to educate and support armed citizens. It will be useful to talk a little about why the Network is set up as a membership organization instead of selling insurance or prepaid legal services.

Prior to the Network's introduction in 2008, our President Marty Hayes operated and taught at The Firearms Academy of Seattle, Inc. and eventually committed four years to studying for his law degree. Although few Academy students faced the necessity of explaining their self-defense choices to police, prosecutors and courts, talking with students and responding to concerns and questions they voiced showed that the legal aftermath of self defense was a huge area of concern for armed citizens—even in the kinder and gentler first decade of the new millennium. At that time, only a prepaid legal service contract and a traditional insurance policy were offered to help armed citizens with the legal aftermath of use of force in self defense.

Why not just buy into a prepaid legal services plan and let the plan lawyers worry about the legal issues? For one thing, the prepaid plan would assign an attorney, not pay the lawyer of the client's choice. Hayes knew from his work as an expert witness in firearms and use of force cases that not all lawyers can bring the same skill level or dedication to their work. This was a no-starter because some attorneys are burdened with unrealistically heavy caseloads and juggle client needs with only the "pot boiling over on the stove" receiving attention; some are just starting their careers and are defending their first few clients with little to no experience; some are robustly backed up by a hard-charging staff while others work solo, handling everything from court filings, to trials, to putting the bills in envelopes and taking them to the post office. He was chilled by the requirement to accept representation by an

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assigned attorney hired and supervised by a case manager, which is standard procedure for prepaid legal services.

Would an insurance policy be a better option? Although today there are hybrid programs with certain amounts of upfront funding which sprang up later to compete with the Network's offer, in the early 2000s, insurance policies available required their policy holder to first attain a not guilty plea, then present expenses for reimbursement. Pleading guilty to a lesser charge invalidated coverage, and policies left necessary facets of defending self-defense cases up to their client to pay or go without.

Today's hybrids, involving insurance regulations as they do, can require repayment of legal defense expenses paid on behalf of a policyholder who is found guilty. This is only one example of the enormous difficulties of trying to apply insurance to the self-defense aftermath that continue to this day. As a result, the Network has not followed the pack into the morass of reselling specialized insurance policies for legal defense after self defense. There is no insurance component to Network assistance to members who have defended themselves or their loved ones.

A New Approach

The Network was created to meet the needs its founders believed they would want if they had used force in self defense. Having identified the necessity to select, hire, fire and guide one's own attorney and have the final say over one's own legal defense after self defense, there seemed little reason to try to create a national prepaid legal services offering, so that model was swept off the planning table. Also nixed was the idea of finding an underwriter and an insurance policy we could sell. First, the expense–which would have to be covered by membership fees–was unattractive, but as we delved deeper into the problem, unfavorable compromises required to accommodate an insurance underwriter and their myriad exclusions, soured further exploration into offering insurance for post-self-defense legal needs. In time, the heavy hand of government regulation and bureaucratic interference would eventually reveal one of the biggest disadvantages to copying the insurance model, but that came a decade after those early, formative days.

We needed a new way to give armed citizens the peace of mind that they'd be backed by a host of other armed citizens if fighting charges of murder, manslaughter or assault after legal, justifiable self defense. With concern over one small individual with limited financial resources standing alone against unmeritorious prosecution by a powerful government arose the parallel desire to make sure that fate didn't befall other armed citizens, either, leading to a call for like-minded men and women who might wish to join together to look out for one another.

A supportive membership organization, a big family of like-minded people, met that description and from that ideal, the Network emerged in January of 2008, just in time to go to the big Shooting, Hunting and Outdoors Trade Show to introduce the movers and shakers in the world of the gun to our new association.

Starting a supportive membership organization from scratch proved an interesting challenge. Expenses were covered by the investment of our three founders, Marty Hayes, Vincent Shuck and Gila Hayes. Soon we were buoyed by endorsements of prominent firearms instructors and other forward-thinking leaders from the fields of firearms and self defense. From that beginning, modest income from membership dues germinated and grew into what today is a $3,000,000-plus Legal Defense Fund earmarked for the legal defense of Network members.

Naturally, competitors quickly grasped the value of a new approach, although interestingly, all launched variations on the insurance or prepaid legal model or hybrids of the two. When we introduce armed citizens to the Network's supportive family, our new acquaintances wonder whether to become customers of a competitors' program, and inevitably ask about coverage limits, policy exclusions, whether the "plan" provides for legal needs following self defense outside one's home state.

These and similar questions, although not applicable to Network assistance, are understandable because folks tend to see new ideas through the lens of things they've already experienced. For those who understand the inadequacy of insurance limitations or prepaid legal plan restrictions to the legal aftermath of using force in self defense, the Network makes a lot of sense. Perhaps this is the reason a lot of our Network members have turned out to be men and women who compare their experiences with faith-based groups or fraternal organizations, and thus, they came into the Network already understanding the power of thousands of like-minded men and women standing together and saying, "Do not harm my brother or sister!"

Network members are also understandably proud to be associated with our Advisory Board members Massad Ayoob, John Farnam, Emanuel Kapelsohn, Dennis Tueller and Tom Givens, along with founders Marty Hayes and Vincent Shuck. Of course, members and potential members, in addition to recognizing the expertise and time-in-service these leaders have selflessly given the world of the armed citizen, value their opinion about the Network's mission. In a world where salesmanship all too often takes precedence over customer service, the Network does what it says it will do – and has done that many times over. In the end, we prove our worth through the work we do on behalf of members.

We welcome questions from members and non-members alike. Call us at 360-978-5200 or send your question by email at info@armedcitizensnetwork.org .

Holding Parents Responsible

by Art Joslin, J.D., D.M.A.

On November 30, 2021, 15-year old Ethan Crumbley walked into Oxford High School and began his shooting spree. Four children died while seven were wounded, including one teacher.

Oxford High School is in Oakland County, MI and is located northeast of Detroit. At the Network, we've received member emails asking how a prosecutor can hold parents responsible with criminal charges for the actions of their minor children. In this edition of the *eJournal*, I will address the process by which this can happen.

First, let's look at some historical information that will give us a better idea of where our current laws came from. Parental responsibility laws are well-over 100 years old. In fact, one of the first times parental responsibility is proposed was in the year 1690 when John Locke published his *Second Treatise of Civil Government.* Locke wrote, in part, "… all parents were, by the law of nature, under an obligation to preserve, nourish, and educate the children they had begotten…This is that which puts the authority into the parents' hands to govern the minority of their children." Notice the year – 1690, 97 years before our own Constitution was ratified. Researching the time of Locke, this idea of a right and obligation of parental responsibility in the upbringing of children was a part of common law at the time.

In 1925, the United States Supreme Court, in *Pierce v Society of Sisters,* 268 US 510 (1925), upheld the right of parents to decide the mode of education for their minor children. Essentially, the Court held that although a state (OR, in this case) has the authority to ensure children are educated, parents have the liberty to decide the manner in which their children are educated. The Court stated "Under the doctrine of *Meyer v. Nebraska,* 262 U. S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control: as often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." The Court seems to agree with Locke.

Then in 1972, WI brought criminal charges against parents who refused to send their minor children to public school based on their conservative Amish religious beliefs under the protection of the First Amendment. The Court in *Wisconsin v Yoder,* 406 U.S. 205 (1972), held "[the] individual's interests in the free exercise of religion under the First Amendment outweighed the State's interests in compelling school attendance beyond the eighth grade." Unfortunately, however, parental rights are being trampled on as new laws are enacted while community and societal activism increases, especially in our public schools.

All 50 states have laws in place to hold parents responsible for their minor child's action to some degree. These Parental Responsibility Laws have been expanded to include the more specific Child-Access Prevention (CAP) laws. CAP laws allow prosecutors to levy charges against parents, or any adult, who intentionally or even carelessly allow children access to firearms unsupervised. The general purpose of CAP laws, according to the state legislatures who enact them, is to prevent unintentional shootings, suicides, especially with minor children, and generally decrease gun-crime rates by making the access and/or theft of firearms much more difficult.

My research found 29 states plus the District of Columbia have CAP laws in place as of January 1, 2020. In researching further, few of these jurisdictions have CAP laws that are similar to each other. For example, MA imposes criminal liability if a firearm is not securely locked and imposes this liability even if a minor child "might" have access. The statute (Mass. Gen. Laws Ch. 140, § 131L) imposes a penalty of up to 1-1/2 years in prison plus fines. Other states, like MI, don't have specific laws on the books pertaining to safe storage but have laws that address firearm negligence and responsible use. A few jurisdictions hold the adult criminally liable even when they should have reasonably known access is "likely" (CA, MN, NY, and DC).

Overshadowing the CAP laws are states that have defined a "minor" child as it pertains to these laws. For example, in 16 states and the District of Columbia, a minor is under 18. TX defines a minor as under age 17. FL, HI, MD, NH, NJ, and RI define a minor as under the age of 16, while IL, IA, VA, and WI define a minor as under age 14. Keep in mind these definitions of a minor are for these specific CAP laws.

Now that we have a general understanding of how these laws work, let's take a look at a few specific cases and then turn to the Oxford, MI school shooting

In May 2012, a Marysville, WA police officer was charged with second-degree manslaughter in the shooting death of his 7-year-old daughter when her younger brother had access to an unsecured gun in the family vehicle. Derek Carlile and his wife left their four children, ages 1-7, in the family van while they made a quick stop on the way to a wedding. Their 3-year-old son accessed the gun and shot and killed his 7-year-old sister.

Carlile was dismissed from his job for negligent actions but was reinstated after a jury was unable to reach a verdict in his criminal trial. The prosecutor said Carlile "[F]ailed to heed or

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be aware of a substantial risk that death would occur when he placed and left his loaded, unsecured revolver in an enclosed van with four children inside."

A central FL father was arrested and charged with negligent manslaughter and unsafe storage of a firearm when his 2-year-old was able to access an unsecured and loaded firearm from a backpack and fire a fatal shot at his mother while she was on a work Zoom conference call. On October 8, 2021, charges were levied against the father, Veondre Avery, the gun owner, and filed with the Seminole County, FL clerk's office. No word yet as to a trial date.

In Shelby County, AL, a 3-year-old found an off-duty police officer's handgun and fatally shot his 6-year-old sister. The prosecutor stated they found no criminal negligence and did not expect to bring charges against the gun owner.

These are examples of how different jurisdictions treat these incidents and the vast differences in laws from state to state.

Michigan does not have any laws that specifically address the storage of firearms. Statutes in MI address acts of negligence, endangering a child or contributing to the delinquency of a minor and other related crimes.

So how can the prosecutor in Oakland County, MI charge the parents of 15-year-old Ethan Crumbley with two counts each of manslaughter for the acts of the minor child? We go back to the aforementioned CAP laws, and Parental Responsibility laws.

Parents are responsible for the actions of their minor children. Parents have rights and responsibilities in the raising of their children, feeding them, educating them and even making sure they are properly clothed (I won't discuss my childhood and those awful white patent leather shoes).

Prosecutors will bring criminal charges against a person or persons for a variety of reasons. Sometimes they overcharge knowing some charges will be dropped during a plea agreement. This is used as a negotiating tool. Other times they bring only those charges they can prove and have at least some modicum of evidence to prove the charges. And yet, as we saw in the Rittenhouse trial, prosecutors can push the lines of professional ethics and bring charges that are politically motivated.

Karen McDonald, Oakland County, MI prosecutor stated, "I want to be really clear that these charges are intended to hold the individuals who contributed to this tragedy accountable." That is the key in this case: did the parents materially contribute to their son carrying out this crime? She says yes; defense attorneys for the Crumbleys say no.

In MI, involuntary manslaughter is a felony that carries a maximum 15-year state prison sentence. MI recognizes two types of manslaughter, voluntary and involuntary. Voluntary manslaughter is charged when a person commits a murder of passion. The typical law school example is when a person comes home to find their significant other in bed with another person and kills one or both in outrage. Involuntary manslaughter is usually charged when the killing is unintentional and without malice (intent to kill).

A person is guilty of involuntary manslaughter when a prosecutor can prove these elements beyond a reasonable doubt:

- First, that the individual caused the death of the victim, that is, that the victim died as a result of the individual's act.
- Second, in doing the act that caused the victim's death, the individual acted in a grossly negligent manner OR in doing the act that caused the victim's death, the individual intended to injure the victim. For example, an individual who commits assault and battery with the intent to inflict injury but instead causes an unintended death, then this amounts to, at least, involuntary manslaughter.
- Third, that the individual caused the death without lawful excuse or justification.

Looking at the first element, the prosecutor may fail in proving the element of causing the death of the victim. The parents did not cause the death of the victim; at least not directly. However, in element two, can the prosecutor prove the parents acted in a grossly negligent manner (a duty must exist to prove gross negligence and a parent has a duty to their children)? Keep in mind, to bring a conviction for any criminal act, each and every element must be proven, by the prosecutor, beyond a reasonable doubt.

This is a tragic event. Children have lost their lives; parents have lost children: siblings have lost siblings. It is heart-wrenching to imagine the pain and suffering of the loss of a child. Certainly, Ethan Crumbley should be held accountable to the fullest extent of the law, but will McDonald be able to prove all elements in this case against the parents? Unfortunately, this is also a politically-charged case with national and international attention. A 100 million-dollar civil suit has already been filed against Oxford Public Schools by none other than famed attorney Geoffrey Fieger (think Dr. Jack Kevorkian).

In an on-going case like this one, we only really have speculation and press releases. The facts will come out as evidence is collected, interviews and statements are taken, and hearings play out. Remember, Prosecutor McDonald would most likely commit political suicide if these charges are pled down; she is an elected official. MI Attorney General Dana Nessel has stated her office will conduct a review of the case even though Oxford Schools has refused any assistance from the AG's office stating they want a third-party review. Nessel says they will review it anyway. She, too, is elected.

As to my opinion? My thoughts are the involuntary manslaughter charges will either go away and be pled down or a jury will not convict on involuntary manslaughter and bring back a verdict on a charge of gross negligence or some other charge(s). I may be wrong; I've been wrong before. Let's watch this play out and learn together.

Questions or comments? Contact the author at ajoslin@armedcitizensnetwork.org.

President's Message

by Marty Hayes, J.D.

Occasionally I get challenged by our members on things I write in the *eJournal*. After last month's *President's Message* where I discussed the actions of Kyle Rittenhouse and the situation in Kenosha, I received one such email. Typically, I respond to them personally, but this one raised several points which I felt needed addressing. Besides, I recognize that if one person is thinking something, others are likely too. So, here is the email as written to me, from a member named "Wayne."

Marty,

While you certainly have the right to your opinion, your comments in your "Last Word" made me, a member, seriously question your judgment, both as a citizen and as a custodian for the Network's funds. Your expressing the opinion in the Network's newsletter, because of your position, regardless of disclaimers, implied endorsement by the network with possible financial support for vigilante action.

Aside from the above, I guess I have a legal question. I have read (and can't remember exactly where) that only two states of the 50 allow for the use of deadly force in defense of property. In the other 48 deadly force is only allowed in the event of a deadly threat or the threat of serious injury to oneself or to others. A call for vigilantes, which is what you made, is (I think) a call to felonious action by people who, like Rittenhouse, have no idea what they're doing. And the more vigilantes, the more bodies that are likely to stack up, and the stronger the attacks on the 2nd Amendment, just like with school, church, mall, and concert shootings.

And the LAST thing this country needs are more militias. Your area may be different, which I doubt, but in my area "militia" is simply another word for white trash - a replacement home for people who would otherwise join the KKK. They are precisely the people who wail the loudest about how oppressed they are because they have to fill out a form to buy a 50 cal. sniper rifle and play Russian roulette with the lives and health of themselves, their families, their friends, coworkers, and casual contacts, etc. in the midst of an epidemic, but are the first to trample on the rights of their neighbors. Militias bill themselves as defenders of freedom, but are in fact a growing threat to our democracy. Living in uncomfortable proximity to militia members and businesses that cater to them, and knowing the lack of quality leadership, is why I now carry a gun.

If people want to be "warriors" and police officers, then encourage them to enlist or to volunteer as reserve officers in their local police force and get training. But please don't encourage ignorant, untrained people to get in the middle of chaotic events for which they are unprepared and where they are likely to cause more harm than good.

Wayne has conveniently structured his e-mail into four distinct paragraphs, so I will respond to each.

Paragraph one alluded to the actions in Kenosha as "vigilante" actions. It strikes me that he did not watch the trial or somehow missed the fact that a jury of 12 Kenosha residents decided that Rittenhouse's actions were in fact not vigilante actions, but instead the actions of a reasonable and prudent 17-year-old. As in the prosecution of George Zimmerman, I am sure the jurors looked for every conceivable way to convict Mr. Rittenhouse, if for no other reason than fear of ramping up another round of rioting, but the prosecution was so feeble and the defense so strong, that could not happen.

The other thing mentioned in paragraph one was the question of whether I was a good custodian of the Network's three million plus Legal Defense Fund. In a case such as Rittenhouse's, the facts as we knew them at the time certainly would have been collected and taken before the Advisory Board, who, together would have made the decision to either fund or pass on funding. While my correspondent may not trust my mental faculties, let's keep in mind that, as I wrote in December, the Advisory Board would be weighing in on the decision, too.

Paragraph two discusses the defense of property, and whether it is illegal in most states, suggesting that what I wrote called for ignorant and untrained people to commit felonies. Okay, let's parse that one out. First off, "defense of property" is legal in all 50 states. One may use force, up to but NOT including deadly force, to prevent property crimes, as long as the amount of force used is reasonable. The vast majority of defensive displays of firearms (using force), is to prevent theft or other damage to property. The confusion occurs when a person uses deadly force (like firing into a fleeing motor vehicle after a burglary) to stop a property theft. That is NOT likely to be viewed favorably by the courts. But having a gun visible to prevent property theft or vandalism is not illegal, at least in most jurisdictions.

One summer, when I was in my early 20's, I had been hired by a security company in downtown Seattle to guard the front of a retail establishment. My 8-hour shift saw me showing up at 7:00 p.m. and standing outside the big picture glass windows (which had previously been broken in a rash of smash and grab burglaries). I was in uniform, of course, with the biggest revolver I had (a Smith and Wesson N-frame Model 25) strapped to my hip. Have you ever seen armed security in shopping malls or seen the armed guards guarding armored cars? The guns are not there to prevent theft or robbery (although that is a side benefit); the guns are there to protect the guards against violent

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assault if a robbery turns into a deadly force event. Just like the Kyle Rittenhouse case. To summarize this point: Do not use deadly force to stop the property crime, but to defend yourself against illegal deadly force against you.

The third paragraph discusses militias and their place in our society. First off, the word militia refers to the same group of people of whom the founding fathers wrote in the Second Amendment and the USSC alluded to in its 2008 Heller Decision (see https://www.supremecourt.gov/opinions/07pdf/07-290.pdf). Wayne's home state requires a training course to obtain a concealed carry license, and I presume that most people who are "militia members" are licensed to conceal a weapon so are not untrained, but of course, training can always be better. There's not much I can say that will help his situation with the locals.

Lastly, we publish the *eJournal* for our members, who are the responsible armed citizens of our society, and who receive education in the use of force in self defense. While the online journal can be viewed by non-members, I sincerely doubt if many "ignorant" or "untrained" people follow our writings, but if they do, they will likely elevate themselves from the ranks of the ignorant and untrained quickly.

Thank you, Wayne, for writing in and giving me a forum to discuss these issues on this snowy winter day. We hope you will stay with the Network, but when your membership expires, if you want to join another of the more-expensive, less-educationally minded programs which are out there, we will understand. The Network is not for everyone, and we lose people occasionally due to differences in our opinions.

Another Trial; Another Email

Gila asked me to answer Eric's email from a couple of days ago, in which he asked about the Kim Potter trial in Minneapolis, MN. Here is his note:

> *I am profoundly disappointed by the conviction of officer Kim Potter, and I'd love to hear from some of our legal experts. My own take was that without having thoroughly rehearsed a situation in our mind, any of us could have made such a tragic mistake: and her immediate inconsolable grief adds to her credibility. How many times have we seen a shortstop get his glove on a line drive with a back hand dive? Yet we see pitchers risk their career by grabbing a hit back to the mound with their bare hand. The prosecutor was allowed to ridicule her confusion, but I'm not aware of the defense bringing in any high profile witness to support the plausibility of her claim.*
>
> *Besides that, Daunte Wright was a convicted felon being arrested on a weapons charge, who bolted for his car when he learned that the police knew of that charge and were about to arrest him for it. The officer who reached into the car to stop Mr. Wright from leaving placed himself in a very dangerous situation in hopes of avoiding a pursuit in a metropolitan area, which could have endangered innocent civilians. Had the situation not been clouded by officer Potter's confusion, would she not have been justified in shooting in order to protect a fellow officer from being maimed or killed? I don't know whether that point was raised; but I never heard it mentioned on the news, and I certainly never heard of a high-profile expert witness addressing that point in her favor.*
>
> *Was this a legitimate trial, with competent defense, or are police the new candidates for "lynching?"*

I offer Eric the following discussion:

I, too, am disappointed in the jury verdict in that trial. I must confess, though, I did not watch most of the trial; I guess I figured it was a no-brainer for the criminal trial. Anytime a mistake like this is made, an in-depth look into the training of the officer is in order. Did she ignore her training and why? Or was the department lax in training her? I suspect the latter. She and the department will now be raked over the coals in civil court, but I do not expect it to go to court. The case will be settled by the insurance of the city.

In any prosecution of a member for a crime, the member MUST get the training he or she has in front of the jury for them to consider. IF that training shows the member followed the training, then it is that training that will carry the weight with the jury. I would recommend everyone keep up on studying the material we send with membership and take training every year at least from a local trainer, who can come to court and, as a member of the local population, tell the jury why he/she trained you, and how you followed that training. I know it went a long way towards Larry Hickey's eventual acquittal (see https://armedcitizensnetwork.org/images/stories/Hickey_Booklet.pdf) to have a local police sergeant come to court and testify on Larry's behalf.

As far as the "modern day lynching" (to quote Clarence Thomas), I fear you may be right.

News on the Insurance Commission Fight

I will close this month with a report that we still are not much closer to a resolution. The courts work extremely slowly, especially in the middle of a pandemic. I recently reviewed all the discovery the state supplied in the case (about 2500 pages), and I was reminded of how many of you wrote in to express your displeasure. I felt bad it didn't immediately bring about a good result. Upon review though, I found a few more tidbits that we can use in court proceedings, so the two days I spent reviewing the file was not wasted. As soon as we have something concrete that we can share, we will.

Remembering Jim Fleming

by Gila Hayes

The Network, its leadership and its members suffered a blow at the end of November when we lost attorney and Advisory Board member Jim Fleming. He had been sick for some weeks before we learned on Nov. 27th of his passing. Still, word of his death hit me hard; we had last heard that his condition was slowly improving. Traditionally, a death is marked by an obituary with detailed dates and lists naming the bereaved family left behind. Well, Jim was never afraid to buck tradition and he asked that no funeral services, eulogies or obituaries mark his passing.

One of the Jim's remarkable characteristics was the many kinds of people he connected with, contributed to and enriched. I doubt that I am alone in thinking of Jim with a fond smile and resolve to keep striving to accomplish the goals we shared with him. We connected with Jim just a little over a year after the Network's introduction. He and his wife ran a private law practice and he defended clients on behalf of the Minnesota Public Defender's office, as well. He also found time to work as an expert witness, teach firearms classes and write about self defense and the law. After his retirement last year – having invested over 30 years of his life to providing representation for his clients – he told me that he was thoroughly enjoying doing more work as a use of force expert in self-defense cases.

Jim came on-board with the Network in 2009 and in 2011, he accepted our invitation to take a position on our Advisory Board. We were, by that time, running a monthly Attorney Question of the Month in our online journal, and Jim was a generous contributor, weighing in with reality checks and opinions drawn from his many years practicing law and his work as a law enforcement officer before becoming a lawyer. He also contributed a large number of interviews on legal topics on which Network members need a clear understanding.

Talking with Jim was always enjoyable because of the enthusiasm with which he loved to set the record straight with historical facts, citing science to debunk popular myths going around, and occasionally leavening the conversation with amusing flashbacks to his first career as a police officer in Nebraska. He had a great vocabulary that made visiting with him, attending a lecture he gave, and reading his articles and books a joy.

I'd like to suggest that we honor Jim's memory as a writer, lecturer and commentator who was passionate about educating his fellow citizens about our history, our country, our laws and our safety by reading his articles and interviews and other contributions in our *eJournal* archives at the below links. I think Jim would be pleased to know his efforts to educate us about the law and self defense continue to provide valuable lessons.

May 2021 – **The Current State of Stand Your Ground Laws**
https://armedcitizensnetwork.org/the-current-state-of-stand-your-ground

Sept. 2020 – **A 2-Part Lesson About Initial Aggressor Issues**
https://armedcitizensnetwork.org/initial-aggressor and https://armedcitizensnetwork.org/intitial-agressor-2

Feb. 2018 – **Introducing Character Evidence in Court**
https://armedcitizensnetwork.org/introducing-character-evidence

June 2017 – **Defending Knife Use**
https://armedcitizensnetwork.org/defending-knife-use

Oct. 2016 – **Defense Against Road Rage**
https://armedcitizensnetwork.org/defense-against-road-rage

Jim's own writing:

2011 **Finding the Right Attorney**
https://armedcitizensnetwork.org/44-our-journal/263-finding-the-right-attorney

Our review of Jim's first book **Aftermath: Lessons in Self-Defense: What to Expect When the Shooting Stops**
https://armedcitizensnetwork.org/attorney-s-book

Our review of Jim's second book **The Second Amendment and the American Gun: Evolution of a Right Under Siege**
https://armedcitizensnetwork.org/august-2016-book-review

The story of Jim's defense of an innocent man, **The Bison King**
https://armedcitizensnetwork.org/44-our-journal/100-wanted-convictions-at-any-price

Video: **Defending a Self-Defense Shooting** https://armedcitizensnetwork.org/preview-defending-a-self-defense-shooting

Attorney Question of the Month

This month our Network President Marty Hayes has asked us to explore legal responsibilities of parents who fail to secure guns which are subsequently used in tragedies like the Oxford High School killings and injuries. Of course, the laws vary a lot from state to state, as does how strictly laws on the books are enforced. With Affiliated Attorneys all across the United States, our Network members will greatly benefit from discussion of how criminal liability is assigned to parents of minors in school shootings.

We asked our affiliated attorneys the following:–

In your jurisdiction, are there specific laws pertaining to keeping firearms secured and out of the reach of unauthorized persons such as a minor child?

Have you witnessed or been a part of any trial, pre-trial, or other hearing where a parent or an adult has been criminally charged for a minor's access to and/or use of a dangerous weapon?

So many attorneys wrote in to share their thoughts that we will run the first half of their responses this month and wrap up this question in our February edition.

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Yes. Oregon law just changed this past September and now requires that firearms in the home not on your person must be secured (either in a dedicated locked room, safe, or with another locking mechanism).

Have you witnessed or been a part of any trial, pre-trial, or other hearing where a parent or an adult has been criminally charged for a minor's access to and/or use of a dangerous weapon?

I have not, but our criminally negligent homicide statute (ORS 163.145) could certainly expose, say, a parent who allowed a minor to obtain an unsecured firearm and commit a crime. Also, with the new safe storage law, gun owners are exposed to liability for stolen firearms if they were unsecured. (Ch. 146, § 2)

(3) If a firearm obtained as a result of an owner or possessor of a firearm violating subsection (1) of this section is used to injure a person or property within two years of the violation, in an action against the owner or possessor to recover damages for the injury, the violation constitutes per se negligence, and the presumption of negligence may not be overcome by a showing that the owner or possessor acted reasonably.

(4) Subsection (3) of this section does not apply if:

(a) The injury results from a lawful act of self-defense or defense of another person; or

(b) The unsecured firearm was obtained by a person as a result of the person entering or remaining unlawfully in a dwelling, as those terms are defined in ORS 164.205.

(5) This section does not apply to a police officer as defined in ORS 181A.355, with respect to a particular firearm, if storage of the firearm is covered by a policy of the law enforcement agency employing the police officer and the firearm is stored in compliance with the policy.

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Utah has enacted specific criminal laws restricting a minor or other authorized persons from possession of a firearm and holding parents and other persons accountable. Utah makes it a crime for parents or guardians to allow a minor to handle a firearm unless there is parental consent and supervision. Utah Code §§ 76-10-509, 76-10-509.4, 76-10-509.5. And even if there is parental consent and supervision, the Utah Legislature has made it still a crime to provide a minor with a firearm if the minor is violent. Utah Code § 76-10-509.6. Moreover, minors under age 18 are categorically prohibited from possessing a handgun, a short-barreled rifle, a short-barreled shotgun, or a fully automatic weapon. In addition, Utah treats the possession of firearms by minors so restrictively that parents have an affirmative duty to remove the firearms from their minors' possession when they are aware that the firearms are possessed unlawfully. Utah Code § 76-10-509.7. See also *Herland v. Izatt,* 2015 UT 30, 345 P.3d 661 (Utah 2015). A person may not sell any firearm to a minor under 18 years of age unless the minor is accompanied by a parent or guardian. The punishments range from a class B misdemeanor to a third degree felony, depending on the offense.

Along with criminal prosecution, the possibility of civil liability exists. In *Herland v. Izatt,* 2015 UT 30, ¶ 24, 345 P.3d 661, 669 (Utah 2015), the leading Utah Supreme Court case on the duty of gun owners, the Utah Supreme Court has held that although the United States Constitution, as well as Utah's Constitution and statutes, clearly protect the right to own firearms, this right is not unrestricted. The Utah Legislature has in multiple ways acted to prevent access to guns by restricted persons, minors, and those who are intoxicated. *Id.* Given the minor burden imposed and the great risk where such weapons are supplied to these groups, the Utah Supreme Court affirms that gun owners "have a duty to exercise reasonable care in supplying their guns to others—such as children and incompetent or impaired individuals—whom they know, or should know, are likely to use the gun in a manner that creates a foreseeable risk of injury to

[Continued next page]

themselves or third parties." *Id.* While the facts of the *Herland v. Izatt* decided by the Utah Supreme Court involved a wrongful death civil suit brought against a gun owner after a social guest found the gun in the gun owner's home and committed suicide, the court's holding extends much broader.

In addition, the Utah Supreme Court has adopted the distinct tort of negligent parental supervision holding a parent liable in a civil action for the torts of his or her minor child. In *Donovan v. Sutton,* 2021 UT 58 (Utah 2021), the Utah Supreme Court recognized that in general, parents are not liable for the torts of their children. But Utah recognizes the tort of negligent parental supervision, in which a parent's failure to adequately supervise and control a child can lead to liability for the parent. Utah adopts the Restatement (Second) of Torts § 316 approach that a parent is under a duty to exercise reasonable care so to control his her minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent: (1) knows or has reason to know that he or she has the ability to control his or her child, and (2) knows or should know of the necessity and opportunity for exercising such control.

Besides parents, other persons or entities can be held liable in a civil case for negligence involving a firearm. In a case similar to the shooting on the film *Rust* involving actor Alec Baldwin, a 15-year-old high school student tragically died in 2008 in a stage production of the musical *Oklahoma!* in St. George, Utah. In *Thayer v. Washington County School District,* 2012 UT 31, 285 P.3d 1142 (Utah 2012), the drama department of the high school used a real gun, loaded with blanks to make sound effects for the school musical. The gun, a Smith & Wesson .38–caliber, six-shot revolver loaded with blanks, was discharged near the student's head and the student died. The parents of the child who died brought a negligence and wrongful death claim against the school district stemming from the conduct of the vice principal and theater instructor who allowed the use of a real gun in the stage production and disregarded safety precautions. In *Thayer v. Washington County School District,* the Utah Supreme Court rejected the school district's asserted defense under the Utah Governmental Immunity Act and held that the suit against the school district could proceed.

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In New York State, it is a class A misdemeanor (punishable by up to 1 year in jail), for any person who owns or is custodian of a rifle, shotgun or firearm who resides with an individual who is under 16 years of age; such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm pursuant to a temporary or final extreme risk protection order; or such person knows or has reason to know is prohibited from possessing a rifle, shotgun or firearm based on a conviction for a felony or serious offense, to store or otherwise leave such rifle, shotgun or firearm out of his or her immediate possession or control without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon. (Penal Law Section 265.45).

It is a violation punishable only by a fine of not more than $250 for a person who owns or is custodian of a rifle, shotgun or firearm and knows, or has reason to know, that a person less than 16 years of age is likely to gain access to such rifle, shotgun or firearm to store or otherwise leave such rifle, shotgun or firearm out of his or her immediate possession or control without having first securely locked such rifle, shotgun or firearm in an appropriate safe storage depository or rendered it incapable of being fired by use of a gun locking device appropriate to that weapon. (Penal Law Section 265.50).

In both statutes, exceptions are made for allowing a person less than 16 years of age access to such weapons for purposes of lawful hunting, and for shooting at certain indoor or outdoor shooting ranges.

In my practice, I have not witnessed or been a part of any trial, pre-trial, or other hearing where a parent or an adult has been criminally charged for a minor's access to and/or use of a dangerous weapon.

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My jurisdiction (GA) has no "safe storage" laws. There is a prohibition against a minor possessing a handgun (with certain exceptions), but not against giving a minor access to a handgun.

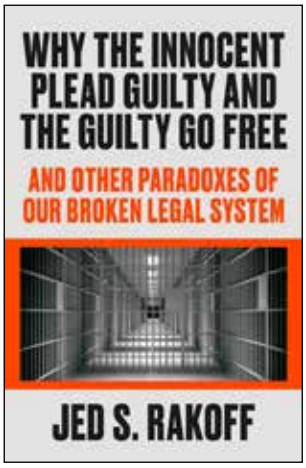
Some local jurisdictions occasionally attempt to enact some kind of safe storage laws, but there is statewide preemption of local regulation of possession of firearms, so such attempts are generally void.

I have represented clients who have left firearms unsecured and who have consequently been charged with something like reckless conduct for doing so. The charges always have been dropped when it becomes clear that a plea agreement is not going to happen.

Thank you, affiliated attorneys, for your comments about this topic. Members, please return next month for the second half of this discussion.

Book Review

Why the Innocent Plead Guilty and the Guilty Go Free:
And Other Paradoxes of Our Broken Legal System



by Judge Jed S. Rakoff
Farrar, Straus and Giroux (Feb. 2021)
Paperback 208 pages $17; eBook, $14
ISBN-13 978-0374289997

Reviewed by Gila Hayes

An Internet search to learn more about what has been called the "trial penalty" led me to a book written by a New York federal district judge, whose résumé also includes work as a prosecutor and a defense attorney. Reading *Why the Innocent Plead Guilty* challenged me to put aside my own beliefs and dig deep for the bigger lessons identified by a judge who has served for a quarter of a century. When we only read books by authors we agree with, it is too easy to echo their opinions and feel smart and righteous. For me, this month's review is practice doing otherwise.

Judge Jed S. Rakoff asks rhetorically how we can believe we have a healthy, working system of justice when American incarceration rates are disproportionately high, anti-terrorism efforts excuse huge constitutional violations, jury trials have "all but been eliminated," and, "Finally, how can we tout our system of civil justice as a remedy for wrongs when the great majority of Americans cannot afford to go to court at all, and are often kept out of court even when they wish to avail themselves of its benefits? In these and other important ways, our system of justice is failing its mission."

Judge Rakoff writes that for fifty years, legislation focused on mandatory minimum sentencing, limiting bail options, and life imprisonment for repeat offenders. He cites academic studies debunking correlation between lower crime rates and higher rates of incarceration. "Why, given the great decline in crime in the last quarter century, have most of the draconian laws that created these harsh norms not been repealed or at least moderated?" he asks. He blames anti-drug and anti-terrorism campaigns, prosecutors who overcharge defendants and slams citizens who vote in tough-on-crime candidates for "being resentful of those who question their motives and dispute their intelligence." I have to admit he accurately captured my reaction! The book challenges the reader to explore if incarceration is the "best response to social misconduct."

After having some trouble swallowing the first chapter, my attitude changed during chapter 2, *Why Innocent People Plead Guilty,* the subject which originally drew me to read the book. The Founding Fathers envisioned impartial jury trials to uncover the truth, shield the citizen against tyranny and do so in a timely manner, Rakoff writes. Conversely, today nearly all criminal charges are "negotiated behind closed doors and with no judicial oversight. The outcome is very largely determined by the prosecutor alone." He blames sentencing guidelines and mandatory minimum sentences for the prominence of plea-bargaining and "the virtual extinction of jury trials in federal criminal cases."

Refuse to plead and you'll face the most severe punishment sentencing guidelines impose, he continues. "Indeed, for several decades now, prosecutors in many jurisdictions have been required by their superiors to charge the defendant with the most serious charges that can be proved—unless, of course, the defendant is willing to enter into a plea bargain." He illustrates, "In the past decade, the average prison sentence for federal narcotics defendants who entered into plea bargains has been around five years, while the average sentence for those few federal narcotics defendants who exercised their right to trial but were found guilty has been in excess of fifteen years—an average 'trial penalty' of ten years in prison."

Defendants who are impoverished, have a criminal history or fear racism to the extent that they "may find it 'rational' to take the plea" upon recognizing that "even if he is innocent, his chances of mounting an effective defense at trial may be modest at best. His experiences with the criminal justice system may also have made him cynical about its objectivity, particularly if he is a person of color," Rakoff opines. Additionally, when denied bail or unable to afford it, the plea bargain can look even more attractive.

Judges, prosecutors, and defense attorneys are supposed to make sure a guilty plea is truthful. Reality is different, Rakoff writes. "In theory, this charade should be exposed at the time the defendant enters his plea, since the judge is supposed to question the defendant about the facts underlying his confession of guilt. But in practice, most judges, happy for their own reasons to avoid a time-consuming trial, will hardly question the defendant beyond the bare bones of his assertion of guilt, relying instead on the prosecutor's statement (untested by any cross-examination) of what the underlying facts are." He explains how *Alford* pleas, rare in federal cases but common in many states, "allow a defendant to enter a guilty plea while factually maintaining his innocence, as part of a 'voluntary' plea bargain designed to avoid the 'risk' of a wrongful conviction at trial."

Why would an innocent person agree to plead guilty? Rakoff compares that choice to false confessions, explaining, "a defendant's decision to plead guilty to a crime he did not commit may represent a rational, if cynical, cost-benefit analysis of his situation, in fact there is some evidence that the pressure of the situation may cause an innocent defendant to make a less-than-rational appraisal of his chances for acquittal and thus decide to plead guilty when he not only is actually innocent but also could be proved so. Research indicates that

[Continued next page]

young, unintelligent, or risk-averse defendants will often provide false confessions just because they cannot take the heat of an interrogation."

A prosecutor may make the State's case look stronger than it really is, Rakoff continues. Mistaken identification, confabulated eyewitness reports, perjured testimony and belief that forensic science is more reliable than it is, all result in innocent people being convicted–or pleading before trial. The defense needs to hire its own experts to challenge the State's experts, which has worked for civil cases, Rakoff explains but "almost never succeeded in criminal cases," where funding is generally quite limited, especially for indigent defendants.

Originally, fields of study like hair analysis, fiber analysis, paint analysis, clothing analysis, firearm analysis, polygraphy, blood-stain analysis, and bite-mark analysis were police investigative tools, but they slipped into criminal court posing as evidence presented by experts who "testified that their conclusions had been reached to 'a reasonable degree of scientific certainty'—a catchphrase that increasingly became the key to the admissibility of their testimony in court" where defense counsel rarely challenges it because their own grasp of science and technology is shaky.

"It has become increasingly apparent that...most of these techniques are unscientific, involve a great deal of disguised guesswork, and too frequently result in false convictions... Of the more than 2,400 proven false convictions since 1989 recorded by the National Registry of Exonerations, nearly 600, or 25 percent, involved false or misleading forensic evidence," Rakoff writes. He goes on to discuss standards judges apply to determine admissibility, and the evolution from *Frye v. United States,* "that, to be admissible, the expert's opinions had to be 'deduced from a well-recognized scientific principle or discovery'" to *Daubert v. Merrell Dow Pharmaceuticals Inc.* (1993), which asked judges to "examine whether the methodology it reflected not only was generally accepted but also had been subject to scientific testing, had been peer-reviewed in respected scientific journals, and had a known and low error rate" when deciding about admissibility.

I was disappointed not to learn more about plea bargaining, false confessions, deferred prosecution, and evidence tampering instead of the problems Rakoff discussed of Department of Justice ineptitude and racism. On the positive side, I thoroughly enjoyed the historical perspective Rakoff offered. He writes with great concern about the US Supreme Court's history of deference to the executive branch of government, noting, "the Founding Fathers designed the Constitution in such a way that a wholly independent judiciary could, without fear or favor, enforce it, primarily against the legislature, but even against the president of the United States. It would be a tragedy if this constitutional design continued to be unrealized." Much as I enjoyed his forays into history, I was happy when Rakoff returned to the current state of affairs in Chapter 13 where he writes, "Over the past few decades, ordinary U.S. citizens have increasingly been denied effective access to their courts." He blames a number of reasons–

- Expense
- Only the likely high-dollar cases are taken on contingency
- Declining membership in unions that provide their members with free legal representation
- Mandatory arbitration and growth in consumer and employment contracts not to sue a vendor or employer
- Judicial hostility to class action lawsuits
- Regulatory agencies assuming judicial powers and responsibilities
- Threat of "trial penalty" for refusing to accept plea offers.

Americans are taught and still believe they are entitled to their day in court, but in reality, few disputes are decided by judges and even fewer by juries, Rakoff asserts. A steady flow of complaints about "overburdened courts with overcrowded dockets" perpetuates that misapprehension, he adds. "Whereas in 1938 about 19 percent of all federal civil cases went to trial, by 1962 that rate had declined to 11.5 percent and by 2015 it had declined to an abysmal 1.1 percent." He adds, "Some of the remaining 99 percent of cases are resolved by pretrial motions, in the majority of cases the parties simply settle without any judge or jury reaching a decision on the merits."

Rakoff closes *Why the Innocent Plead Guilty* with an attempt at optimism, acknowledging that the "very substantial problems our judicial system currently faces" can and should be addressed by judges and legislators, and that change starts at the ballot box. "U.S. voters are not only among the most educated in the world but also among the most open to new ideas. So, even though I conclude that our legal system is in bad need of fixing, I remain cautiously optimistic that my fellow Americans will rise to the challenge," he urges in conclusion. A lot of what Judge Rakoff opined was out of sync with my viewpoints, but I heartily agree with his closing.

Editor's Notebook

by Gila Hayes

Let me start my comments this month with a heart-felt thank you to all of our Network members who have joined, renewed and are going forward, bravely facing the new year with us. We advance into 2022 with confidence and courage, in no small part because you accompany us. When a Network member is selected as a criminal's would-be victim, and instead of being injured or killed uses force in self defense, he or she faces scrutiny from the criminal justice system– potentially a second victimization. In the aftermath, the balance of power between this citizen and the government is a lot more equal than it was before he or she became part of our big Network family. For the member, resources available far exceed what just one individual, their family and friends can scrape up to fight prosecution or a lawsuit seeking damages. Now the strength of thousands of like-minded men and women bolsters both the resolve and the resources of the intended victim.

Armed citizens support one another in various ways – not only in the aftermath of self defense, although the importance of standing together then is at an all-time high. Adopting the armed life style contains a number of risks that have little to do with being charged with a crime after use of force, but everything to do with habituating safety procedures, deciding who should know – and who does not need to know – you carry a gun, how to navigate everything from public restrooms to dressing around the gun while in the workplace to what's allowed and disallowed on public transportation.

Folks who have carried guns for decades have forgotten the multitude of puzzles faced by the new gun owner. There seem to be two extremes (with a lot of behaviors between the two opposites, too). At one extreme, we have all met the obsessive compulsive who worries endlessly about whether they should carry a round in the chamber, whether the terminal ballistics from 165 grain hollow points are more effective than 230 grain hollow-points or obsess over the effect of barrel length on bullet performance. No minutiae is too trivial for these ceaseless thinkers!

At the other extreme you'll encounter people who are frighteningly casual. Their gun has been in their car's glove box ever since they bought it and a box of "bullets." It is growing a colorful patina of rust but they consider themselves armed and ready for danger. In other examples, their gun is buried deep in a handbag or brief case. At home, it is in the night stand drawer or jammed between the couch cushions. Those conditions don't afflict just newbies – some multi-generation gun owners learned careless gun practices from parents and if it was good enough for dear ol' Dad, who was never harmed by his casual attitude toward being a gun owner, it is good enough for his heirs. Until it isn't.

As Legal Issues Editor Art Joslin pointed out earlier in this edition of the *eJournal,* society expects armed citizens to secure their firearms. Beyond the possible access to guns by children in their own homes or homes they visit, risks arise when guns are left unsecured in cars or in a handbag resting in a shopping cart while the shopper runs down the aisle to pick up a forgotten food item. I'm not a fan of off-body carry for that reason, but that is my personal bug bear.

The famous pronouncement attributed (perhaps in satire, not reality) to Queen Victoria, "we are not amused" fell from my lips when I read the Reuters report that instances of guns detected in carry on bags at security check points was nearly a third higher than previous years. The news brief was complete with the opinion of a high-up TSA honcho that the increase in people carrying firearms had resulted in more people forgetting about guns in their checked luggage. Who knows? He might be right, and if he is, we have a serious task ahead – making sure new gun owners and seasoned gun owners who are new to carrying in public understand and adopt a lifestyle of responsibility and safety with their guns.

Last month, we talked about checking our own behavior as regards the safe storage and safe muzzle direction aspects of gun safety. The entirety of armed citizenry gets a black eye when one irresponsible person breaks the safety rules. Without becoming busybodies, I believe we must lead by example, offer help and coaching where it is welcome and actively work to develop openings with new armed citizens to encourage safety and responsibility. Blogs like Massad Ayoob's and John Farnam's and Kathy Jackson's older but golden articles at Cornered Cat are all great starting places and those three only scratch the surface of sharable links to help newcomers to going armed get off to a solid start.

It takes a light, deft touch to influence people outside our immediate families – heck sometimes even inside the family it is nigh on to impossible to ask for change without inciting rebellion! A good New Year's resolution would be creatively and kindly reaching out to new armed citizens with ways to be more responsible. Let's give it a try!

About the Network's Online Journal

The ***eJournal*** of the Armed Citizens' Legal Defense Network, Inc. is published monthly on the Network's website at https:// armedcitizensnetwork.org/our-journal.

Do not mistake information presented in this online publication for legal advice; it is not. The Network strives to assure that information published in this journal is both accurate and useful. Reader, it is your responsibility to consult your own attorney to receive professional assurance that this information and your interpretation or understanding of it is accurate, complete and appropriate with respect to your particular situation.

In addition, material presented in our opinion columns is entirely the opinion of the bylined author and is intended to provoke thought and discussion among readers.

To submit letters and comments about content in the eJournal, please contact editor Gila Hayes by e-mail sent to editor@armedcitizensnetwork.org.

The Armed Citizens' Legal Defense Network, Inc. receives its direction from these corporate officers:

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Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

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