

Lessons from the Case of Kyle Rittenhouse - Part 2

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

By this time, you are well-aware that Kyle Rittenhouse was acquitted at trial of all charges levied against him. Before we get into the details of lessons learned, I want to clarify something from last month's [eJournal](#). I alluded to, in passing, that the Rittenhouse defense team would need to prove their case by a reasonable doubt. Because of publication deadlines and my rush to get information to the members, I hastily overlooked the need to explain this issue. Allow me to clarify.

The burden of proof is beyond a reasonable doubt; this burden falls on the prosecutor. He must prove his case by that standard. In a case of affirmative defense of self defense, however, the defense has the burden of production and should produce some type of evidence, at some level above zero, to show self defense. The old standard was the defense must prove self defense by a preponderance of the evidence. This is no longer the case as the last holdout state, Ohio, changed its statute. This went away March 19, 2019 and is now the standard in all 50 states. You may still see preponderance of the evidence used in a self-defense immunity hearing. If immunity is not granted, then the case can go to trial. If immunity is granted, case over.

This would be a good time to explain these burdens. Burden of proof is on the prosecution to prove the charges against the defendant at trial, beyond a reasonable doubt. Beyond a reasonable doubt is a high standard. Although most legal scholars are hesitant to place a threshold number on the standard, many agree it is somewhere north of 90%. However, the defendant, in any criminal case, may sit mute and not offer any evidence or testimony, relying solely on the lack of ability of the prosecution to prove the charges against them (at least they hope so). Although the defense does not have to offer anything, typically the burden of production falls on the defense. In other words, the defense has the burden to produce some minimal amount of evidence, to the trier of fact, to dispute the prosecution's charges.

We received plenty of emails and inquiries into the actual trial process of *State of Wisconsin vs. Kyle H. Rittenhouse*. Members wanted to know why the defense team wasn't objecting more often. It's called trial tactics. I've watched plenty of trials where I sit and scream internally, "Objection!" But let's parse this a little more. If the defense counsel objects to everything they can, it can paint them as abusive, overly interruptive, and generally in a negative light to the jury. Juries don't like that.

They want to hear the facts without interruption and make their decision. However, the defense should object when the prosecution goes awry. Additionally, the defense must object at certain times to get their objection on the record in case they need to appeal; it preserves the issue. So, trial attorneys object when needed, object when required, but many times they won't object if opposing counsel is making their case for them, as we saw multiple times in *Rittenhouse*.

The first lesson we learn from this case is to make sound decisions regarding events and situations in which we choose to involve ourselves. I have been to protests and marches in both Detroit and Chicago. I chose to be there because of the historical aspect of the protest. I have attended these events as an observer, not an active participant. When Tucker Carlson interviewed Kyle Rittenhouse, Kyle stated he had permission to watch one of the auto stores to prevent looting. I've also worked in the armed security industry. Never was there a time I showed up with a team without proper pre-planning that was done a day or so before the security event. To show up to a racially-charged protest that has national significance, without proper planning, surveillance, experience and training is never a good thing. Stay away from people with a mob mentality. I'll leave it right there.

Next, don't bring a skateboard to a gunfight. I don't say this sarcastically; I say it with all sincerity. Making a conscious decision to involve yourself in a deadly force situation, or really, in any level of force situation, be sure to have the adequate tools to defend yourself. This is one element in the mob mentality that happens when groups of people believe they are invincible and believe they can get their whacks in and then move out of the situation without suffering harm. Please don't be that person. Be a good witness. Call 911. Run away. In our concealed carry classes, we should be taught to move to cover and avoid making ourselves a static target. If I see the other person has a gun, I don't purposely move into the fray thinking I'll hit him with my club and get away without being shot. That is stupidity. I realize that sometimes we could be placed in a situation where we only have what we can use in our immediate environment to defend ourselves. In those situations, too, we need to be thinking about getting out of harm's way, not running into it.

Third, I've read many comments in the gun forums (and one nationally recognized trainer) saying it is a waste of time, or that it is even silly, to focus on the lessons we can glean from the

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way the trial played-out in Kenosha. I believe what we can learn is an important aspect of the entire event. Realize that if you are involved in a self-defense incident, you will be scrutinized to no end by family, media, outsiders, organized anti-gun groups, neighbors, etc. Perhaps you won't be scrutinized at the national and international level Kyle Rittenhouse was, but you will suffer the damage emotionally, physically, and mentally. It's a proven fact in post self-defense incidents. Many books have been written about this aspect of how the body reacts to post-traumatic events. Massed Ayoob stresses this area of self defense in his classes. The Network has [member-accessible videos](#) that discuss this same topic. Once a person survives an attack and successfully defends themselves against their assailant, only then does the journey through the mire of emotional and physical stress play out. In the Tucker Carlson interview of Rittenhouse, Kyle seemed very put together and succinct in most of his answers. However, his journey has only begun. This is something he will never forget, and the aftermath of stressors will follow him the rest of his life.

Additionally, be prepared for the government to come after you in ways you've never imagined. The role of the prosecution in any criminal case is not to get a conviction; it is to seek justice. Granted, getting a conviction against a serial sex offender may very well be justice. But attempting to try a case because of political motivations or pressure because you don't agree with the defendant's actions is certainly not silly. Expect the government to go after you with the vitriol with which they went after Kyle.

Folks, some will miss the point here. I speak with people every day who truly think self defense is the in-the-moment act of

surviving. Imminent survival is only one part of the equation, although granted it's the most important. However, pre-survival is going to the range, training, role-playing, visualization, and training in medical skills, to name a few. Consider post-survival skills and their role. The pre-survival training in medical skills might come in handy if you are injured and need to apply those skills for yourself or a loved one. I routinely carry a small med kit and have it with me or can access it within a few seconds. It contains what I need to increase survivability in case I am shot or stabbed. It is for me, although I can use it for my partner if needed. I would suggest you do the same.

Post-survival skills may also be needed months and even years after the incident. PTSD, emotional, psychological, and physical issues may continue for years. They not only affect the survivor but also their spouse, children, friendships, and other relationships. Learn from the Rittenhouse case; prepare pre- and post-self-defense incident. The effects of the 3-second self-defense incident will last a lifetime.

There are so many more things we can learn from *Rittenhouse*. These are but a few that come to mind. Please keep your emails coming and watch for more content in the form of video blogs on the Network website. Be safe!



Art Joslin, J.D., D.M.A. is the Network's new Legal Issues Editor. Contact him with your questions and comments at ajoslin@armedcitizensnetwork.org.



President's Message

by Marty Hayes, J.D.

Each month or so, we get word that one of our Armed Citizens' Legal Defense Network members has passed away. Usually, word comes from the late member's spouse, but sometimes from other family members. Well, this month we here at the Network are grieving that our

Advisory Board member Jim Fleming passed away after being sick with COVID-19. This just happened a couple of days ago, so we have not had time to really process what his loss means, but we wanted to make sure our members got the sad news. We will have more to say next month. For now, we feel terribly sorry for what his wife, Lynne, is going through.

Last Word on Kyle Rittenhouse

I have followed the Rittenhouse case since its inception, with the intent of summarizing it like I did with the George Zimmerman case (<https://armedcitizensnetwork.org/our-journal/archived-journals/292-august-2013>). This time, though, I was relieved of this duty by the addition of Art Joslin to the staff of the Armed Citizens' Legal Defense Network. When Art agreed to write about the details of the case for the *eJournal* it gave me license to give my opinion regarding this incident, without the need for lengthy discussions of the fine details. So, here goes...

For those of you who are castigating Rittenhouse for his actions, I believe you are being a little harsh. Maybe even a lot harsh. Sure, we can sit in our easy chairs and pontificate on Facebook about the fact that he shouldn't have been there, but if not Rittenhouse, then whom? Surely not the police, they were not allowed to protect the property in question; nor the small number of National Guard troops mobilized. The biggest problem I saw, was there were far too few other men and women who were willing to take a stand and not allow the destruction of their community. What would have been the outcome of the evening if there had been hundreds of visibly armed citizens standing watch outside businesses, putting out fires and in essence, saying "get off my lawn?"

Perhaps it is time for armed citizens to form "militias" for this exact purpose. A militia leader, who initiates a phone tree of a hundred or so other militia members could rally a force of armed citizens within a couple of hours, especially if the majority of militia members were tuned into what was going around them. Where I live (unincorporated Lewis County, WA), there are approximately 25 law enforcement officers on duty at any given time, employed by the county, state, local cities and towns.

Certainly 25 officers are not nearly enough personnel to quell a riot the size of what occurred in Kenosha, Wisconsin.

If anyone reading this thinks this is a pretty good idea, may I respectfully suggest you do a bit of homework before you take ANY steps towards this. First, you must act within the law, at all times. This means understanding what your local and state statutes and state case law says about forming a militia. When I arrived in Lewis County almost 30 years ago, there was an old boy I would see on occasion who carried a 1911 in a military flap holster, wearing OD green fatigues with a patch on the shoulder which read, "Lewis County Militia." I thought to myself that I moved to the kind of place I would likely fit in. This same individual would likely have not escaped the attention of local police authorities had he exhibited the same appearance in downtown Seattle or Portland. In addition to researching statutory law and case law about militias, I would also attempt to meet with your local county prosecuting attorney and see if he or she would be willing to outline their probable response if an incident like the Rittenhouse case occurred in your jurisdiction.

Please understand that I am not suggesting this course of action for anyone, but instead just exercising my First Amendment rights of free speech and the discussion of ideas. I am NOT calling for the formation of organized militias, but instead, just discussing the topic, okay?

Now, getting back to the Rittenhouse case specifically – what caused this incident? First, the news media pushed the agenda that the shooting of Jacob Blake was racially motivated, which set off a cascading series of riots in the Midwest. On the second night of unrest (fueled by the absence of law enforcement to quell the riots), the Rittenhouse incident occurred in conjunction with additional rioting. Within a few hours, Rittenhouse had turned himself in and had been arrested for murder, due to the fact that two were dead by his hands. That was enough for the local county district attorney Michael Graveley to begin the prosecution. While writing this, I looked up the Kenosha County District Attorney on the Internet and found this gem describing what they are supposed to be doing.

MISSION STATEMENT / OVERVIEW

The primary mission of the Kenosha County District Attorney's Office is to uphold the rule of law, vigorously prosecute criminals and seek justice for victims of crime. The District Attorney is a constitutional officer, elected by the people of Kenosha County to a four-year term of office. The duties and responsibilities of the District Attorney are more particularly set forth in Section 978.05, Wis. Stats. It is important to keep in mind that the District Attorney is the gatekeeper to the criminal justice system.

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As such, his job is not merely to obtain convictions but to seek justice.

What is extremely interesting to me, is that throughout this whole affair, I never heard Graveley's name mentioned once, not even by FOX News. I wonder why, since it was ultimately his responsibility to prosecute or to decide not to prosecute. People are blaming the two attorneys who handled the trial for missteps and bugging up the prosecution, but in reality, it is the elected prosecutor, Michael Graveley who was responsible for this mess. It is too bad he is not receiving the publicity he deserves.

What Did Rittenhouse Do Wrong?

In my opinion, it is not what Rittenhouse did wrong, it is what he didn't do right. About a year ago, I filmed a couple of videos and put them up on our Armed Citizens' TV page explaining how to defend against someone threatening you with pepper spray. Although this topic is different from the facts of the Rittenhouse case, I'd like to draw your attention to a segment of the video which demonstrates the different types of pepper sprays available. See [Legal Concepts: Defending Against a Pepper Spray Attack Part 2](#) - YouTube .

On that video, you will see a "fogger" type of spray demonstrated. I cannot help but believe that when Rittenhouse was being chased by Rosenbaum, if he had simply emptied a fogger canister of spray towards Rosenbaum and continued to run, the spray would have affected Rosenbaum to the extent that shooting would not have been necessary. If he would not have had to shoot Rosenbaum, the other shootings likely would not have been necessary. I would recommend the following product, and while this particular company does not sell direct to the consumer, there are many that do; a simple Google search will find you some. Don't settle for anything different, this is what you want. <https://www.counterassault.com/law-enforcement/oc10-4f-fogger-pepper-defense-3-oz-net-content.html> . To go along with buying the pepper spray, get trained in its use.

The other thing that Rittenhouse did not do right? He did not have the appropriate training to be walking around Kenosha with an AR-15 strapped to his chest. He was 17 years old, without a lot of life experience. The fact that he handled the tactical situation as well as he did was nothing short of miraculous. The legal background that he did not possess is of greatest concern to me.

"But that is why we have lawyers, right?" Well, yes and no. Most criminal defense attorneys are not trained to elicit answers from defendants regarding pre-attack indicators. I am pretty sure Rittenhouse had not educated himself regarding pre-attack indicators, which I believe is the single most

important piece of information a person should possess if going armed. That is why a full-length video lecture on pre-attack indicators is part of our core member education video library. Members, log in and view <https://armedcitizensnetwork.org/pre-attack-indicators> . So, absent a good working knowledge and ability to speak to pre-attack indicators, all Rittenhouse could do was claim his life was in danger. Additionally, his lack of being able to deal with the prosecutors' question of whether or not he had intended to kill the three individuals was the low point of his testimony, I felt. Fortunately, it worked out for him.

Why Isn't Prosecutor Thomas Binger in Jail?

From what I could see, when attorney Binger grabbed the AR-15 and pointed it at the jury, he committed aggravated assault. I believe a mistrial should have been announced by the judge and Binger arrested on the spot. If anyone other than the government employee that Binger is had done that, the response by the court would likely have been different. So much for fair and equal justice.

Would the Network Have Assisted Rittenhouse?

First off, he wasn't old enough to be a member, but if he wanted to sign up at age 18 or older, he would not be turned away. If he had been a member at the time of the incident, we likely would have assisted in his defense once we knew the material facts of the case. We would have helped him find a good self-defense attorney and paid the attorney to investigate and report on the facts. Then, we would have convened the [Advisory Board](#) and had a long discussion. Knowing how stalwart and knowledgeable our advisory board members are about self defense, I suspect the decision would have been to fund the defense. It is my understanding after reading several news accounts (which cannot always be trusted, sadly) that the defense costs were about \$500,000 dollars, give or take a hundred thousand. From what I know about these things, that does not sound unreasonable. I am glad our Legal Defense Fund is fully funded at over \$3 million, and of course, we could handle those legal expenses easily.

Another interesting aspect of this case is the bail money. This article linked here explains the issues centering around bail <https://nypost.com/2021/11/20/rittenhouse-former-lawyers-in-dispute-over-who-gets-2m-bond-money/> . From what I can decipher, after Rittenhouse was arrested, all efforts centered around raising \$2 million dollars for his bail. Having been extradited from IL to WI, the bail was cash only; WI has banned bail bonding. The money came from several different sources, and a couple of attorneys did the fund raising. Now, it appears the attorneys are wanting to keep the money, and not give it

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back to the people who donated it. The Network does not have \$2 million to plop down for bail, but we have 19,500 members who might be persuaded to donate the money, knowing that they WOULD get it back when the case was over. As we have always said, each case is different and would need to be handled differently. Fortunately, a \$2 million bail is so outrageous that it is not a pressing concern, but we want to be prepared to deal with it, if necessary. Unless something else outrageous happens, we will put the Rittenhouse trial to bed now, with the hope that Kyle Rittenhouse survives this next stage of his life.

What is Happening in the Alec Baldwin Case?

A month ago, when the case was fresh, we had comments by the District Attorney of Santa Fe, New Mexico, Mary Carmack-Altwies that it is possible that criminal charges could be brought against Baldwin. I had hoped to have some more in-

formation by now, but it appears the investigation is continuing, with no resolution. As far as I know, no additional information has come to light, with the exception that civil suits are being filed against Baldwin and the different producers of the movie. If and when we know more, I will comment.

The Right to Keep and BEAR Arms?

I listened to the entire legal arguments presented to the U.S. Supreme Court in [*New York State Rifle & Pistol Association Inc. v. Bruen*](#) and by my analysis, the court will come down in favor of the petitioners, overturning the “may issue” provision of New York’s concealed carry permit laws, and rule that the state “must issue” the permits. This will be a grand step forward for our right to keep and bear arms. Look forward to the ruling in a few months.



Attorney Question of the Month

In this column, our Network Affiliated Attorneys generously contribute commentary and information from their professional experience to help Network members better understand the myriad legal issues affecting armed citizens and self defense. With members pondering the concerns faced by a defendant in a use of force case through the lens of the Rittenhouse trial, we asked our Affiliated Attorneys whether they included appeals in the scope of their law practice. We asked—

Do you generally do appellate work and if so, what are some of the primary hurdles compared to an affirmative defense of self-defense trial?

How does the time commitment change with appeals work, compared with a jury trial, and how do the costs factor into the process?

Alex M. Ooley and E. Michael Ooley

Ooley Law, LLC
P.O. Box 70, Borden, Indiana 47106
812-567-3848
<https://www.ooleylaw.com>

Our office does appellate work, and as the question implies, the appeals process is quite different from the pre-trial and trial process. Often, trial attorneys do not engage in appellate work because the process is so different. However, as with the selection of a trial attorney, it is important to select an appellate attorney that is knowledgeable with respect to self-defense claims.

Regardless of who is your appellate attorney, one of the primary hurdles on appeal will be the trial court record. Appeals are constrained by the issues and/or objections raised at the trial court level. Therefore, issues for appeal are preserved or lost during the trial process. Many opportunities for appeal may be lost if an issue is not raised or if an objectionable issue is not objected to. Appellate courts will generally not review issues on appeal if the issue was not raised or preserved at the trial court level. The policy, generally, is that you can't raise the issue for the first time on appeal. So, if there is an important issue, make sure it is raised on the record at the trial court level, or the appellate court will not consider the issue on appeal.

This leads to another hurdle on appeal – time and expense. You will likely have to pay an attorney more than \$10,000 for an appeal (probably much more), especially if the appeal is an appeal from a jury trial. An appeal from a jury trial is very

expensive because the attorney will have to obtain and review an enormous written record of any relevant pre-trial and trial proceedings. These transcripts can be thousands of pages. Additionally, appellate counsel will have to spend a great deal of time researching for and preparing a written brief that could take weeks to prepare. Then, once written briefs are submitted, appellate counsel may have to prepare for and engage in oral argument before the appellate court. Oral argument would involve a great deal more time and expense. Finally, if the appeal is denied at the first level of appeal, you may find it necessary to appeal again to a higher level appellate court, which would require more briefing and oral argument. As you can see, this process could involve a great deal of time and expense.

There are other hurdles, of course, but one more I'd like to mention is that the standard to prevail on appeal can be very difficult. Appellate courts are reluctant to overturn things that have been done at the trial court level unless there has been a significant mistake. The standard will vary depending on the nature of the challenge and the degree of the harm created. In any case, the legal hurdle is high when challenging a decision on appeal. At the trial court level, the State has the massive hurdle of disproving self defense beyond a reasonable doubt. On appeal, the burden is reversed. It will be your burden to prove reversible error. That burden is difficult to overcome because appellate courts are reluctant to overturn the decisions of trial court judges, and they are even more reluctant to overturn the decision of a jury.

John R. Monroe

John Monroe Law, PC
156 Robert Jones Road, Dawsonville, GA 30534
678-362-7650
<http://johnmonroelaw.com>

I do a lot of criminal appeals. Popular entertainment media frequently portray criminal trials. Even though they are dramatized, they at least give people an idea of how trials are conducted. Appeals have no drama to them (mostly briefs and sometimes oral argument), so they are rarely portrayed. As a result, people do not have a realistic picture of what appeals are like. Here are a few thoughts on appeals.

An important thing to keep in mind is that the further you go in the criminal process, the less likely you are to go free. If you are arrested, that means the police at least think there is probable cause that you are guilty. If you are actually charged, that means a prosecutor thinks he can prove your guilt to a jury beyond a reasonable doubt. If you can't get the case dismissed on pretrial motions, that means there are no major legal flaws in the prosecutor's case.

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If you get convicted, that means the state has convinced 12 jurors of your guilt beyond a reasonable doubt. You have lost the presumption of innocence and you are now facing a serious uphill climb in getting your conviction reversed. The tables have turned by this point and you are behind the eight ball.

There are some things that can be appealed and some things that can't (at least not often successfully). A lot of people either think an appeal is a "do over," where new evidence is introduced, or an argument over whether the evidence at trial was "good enough" to convict. It is neither. No new evidence can be brought up on appeal. And, because you have lost the presumption of innocence, the test of sufficiency of evidence is the "any evidence" standard. If there was any evidence to support a conviction, it was "good enough." Appellate courts will not second guess whether it was good enough in their eyes. Criminal defendants frequently want to argue, for example, that the state's star witness lied or contradicted himself. That argument is a failure.

If the defense theory at trial was self defense, it is especially hard to overcome a conviction. That is because the conviction means the jury did not believe your actions or beliefs were reasonable. An appellate court is not going to second guess that. Juries get to decide whom to believe and you generally get only one kick at that cat.

Appeals generally take only a fraction of the time that full-blown serious felony trials do, but they still are not cheap.

Kiana Carolyn Garrity

Kiana Carolyn, PLC

121 West Cedar St., Suite 100, Kalamazoo, MI 49007

269-220-5320

kiana@kianacarolynplc.com

Appellate work – particularly on a capital-offense case – is more time consuming than doing the original underlying case. Have you ever been tasked to edit another person's thesis? Unfortunately, I have many times. And unfortunately, 99% of the time it would have been easier to write it from scratch. That is what it is like to do the appellate work of another attorney's trial (Appeal by Right).

First, I have to review all the discovery that was available (or that should have been available) prior to the case going to trial.

Next, I have to see what was missed by the attorney pre-trial (witnesses, expert witnesses, underlying motions etc.). This includes having to request/review all the transcripts of any pre-trial hearing or motion. This also includes any rulings against the defense that were properly preserved.

Then, I have to review the entire transcript of the trial itself looking for each and every mistake that was made; any objection that was missed; every word of the prosecution; and any improper ruling by the court.

Finally, I have to write it (with potential oral argument). It is too time consuming for a busy attorney. And it will cost more than what I charge for an open-murder indictment.

We extend a hearty "Thank you!" to our affiliated attorneys who contributed their knowledge and experience on this topic. For additional educational reading about the important subject of appeals, please refer to our 2018 two-part interview with Attorney Lisa Steele at <https://armedcitizensnetwork.org/appealing-verdicts> and <https://armedcitizensnetwork.org/lessons-about-appealing-verdicts-part-2>.

Book Review

Handgun Combatives

By Dave Spaulding

2nd Edition, 2020

978-1-60885-024-2

Soft-cover, 6 x 9, 234 pages

\$ 23.95 at [Looseleaf Law Publications](#)

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

Handgun Combatives is Dave Spaulding's twenty-two-chapter text that serves as the basis of his Handgun Combatives courses in pistolcraft. I chose his book as my first book review for the Network since I recently attended Dave's Kinetic Pistol course in Texas earlier this year.

Handgun Combatives encompasses the author's 40-plus years of training, teaching and being an active participant in everything pistolcraft. He begins his second edition with the most important, but often overlooked, topic of how to develop the combat mindset. He opens the chapter with this, "For as long as I have been studying combative skills, it has always been understood that the mind is the ultimate weapon." This idea is prevalent in his teaching as well. The take-away in this chapter, at least for me, is the idea of adopting a lifestyle of the combative mindset because, as Dave points out, it occurs before, during, and after the self-defense incident.

There are so many more lessons to be learned from chapter one but I'd have to write a hundred pages to cover it all. Dave brings to light much of what other authors and trainers have already stated but he does so with a unique and fresh application. Well worth the read.

Spaulding continues with such important chapter topics as mental imagery to a successful outcome through personal fitness for combatives. One of the highlights of *Handgun Combatives* is Dave's ability to apply his 28 years in law en-



forcement to skills that many instructors only know about but haven't actually experienced. Whether you agree with his thoughts on the low-ready position or his ideas on close-quarters combat, Dave backs up his writings with his experience.

It has long been known that high-performance athletes use mental imagery as a strategy for winning. Applying this to the self-defense incident, a defender can certainly "pre-program" the defensive outcome. Seeing mental pictures of a scenario play out in the mind allows you to experience each moment in time even though it hasn't yet happened in real life. Elite teams use mental imagery and visualization and it's not that hard to develop as part of your self-defense plan. Dave refers to NLP, or neuro-linguistic programming, as the more technical name for visualization. He concludes with how NLP and Colonel

John Boyd's OODA loop intersect with each other. Of course, this short review doesn't do the section on this topic justice, but I can only say, "Get the book."

Other chapters of the book deal with selecting the carry handgun, grip, and shot placement; all topics that we've read over and over again. However, don't be too quick to minimize the content of these chapters by their topic. Dave brings personal insight and experience to these otherwise remedial topics and gives the reader a few things most instructors overlook. "If there are rules, it's a sport, not a fight. In a fight, if you are not cheating, you are not trying hard enough to win!" Dave writes.

Additional chapters on holster skills, drawing techniques, concealment, tactical considerations, night work, and extreme close-quarter shooting round out this valuable text. One thing I noticed about attending Dave's Kinetic Pistol class is that he doesn't teach anything into which he hasn't placed research, planning, and great thought. There is no BS factor here.

Overall, I thought *Handgun Combatives* an excellent read and would highly recommend that it sits in the library of the top twenty self-defense books that any serious practitioner owns.



Editor's Notebook

by Gila Hayes

As gun folk pilloried Kenosha, WI prosecutor Thomas Binger for pointing Kyle Rittenhouse's rifle around the courtroom, we were accorded an opportunity for personal evaluation, to ask what unsafe gun handling or procedures have we let slip in to our own habits.

Few will dispute that Binger, already held in poor regard, earned further contempt by putting his finger on the trigger and gratuitously pointing the evidence rifle around the courtroom. So much of the wild rhetoric spouted during the trial had little relationship to reality, making it impossible to guess what the prosecutor hoped to achieve when he picked up the rifle.

I'm a little less obsessed than most with his carelessness. In the final analysis why another person does something matters very little. You control only your own actions and reactions and your ability to provide good reasons for what you do ... which takes me back to the cries of outrage about Binger's gun handling that almost drowned out more important questions.

Did any of us ask ourselves, how is my gun safety when no one is watching? A pistol carried daily, a shotgun or rifle kept at hand for nighttime home defense, or an air rifle or a .22 plinker kept ready to dispatch small, destructive pests on the farm all provide opportunities for us to demonstrate that deadly weapons can be kept emergency-ready but secure without injuring or killing our family members, visitors to our homes and people on neighboring properties.

Perhaps more than any other common tool or implement, in order for the firearm to be useful, it must be capable of being employed as a tool of destruction, injury or death. Failing to acknowledge that reality leads to carelessness. Carelessness contributes to irresponsibly unsecured guns being stolen, children or incompetent adults being hurt or killed or inflicting the same fate on others when they get their hands on a gun unsupervised or gun owners themselves suffering injury or death, or inflicting it on others, while unsafely handling their firearms.

Gun folk were fast to cite the Four Universal Rules of Gun Safety when calling out Binger for his demonstration. It is a good start but experience suggests that safe behavior with any tool is much more than adhering to a list of rules. Personal responsibility is a lifestyle and for gun owners that lifestyle starts with acknowledging that firearms are potentially deadly. If not, guns would be useless to stop attacks against innocent people.

As we saw in Rittenhouse's trial, when one person shoots another, defending him- or herself from a violent attacker, many questions, including whether carrying a highly-effective firearm was appropriate, will be asked. Have you noticed that, conversely, when a marauding warlord attacks villagers in a

third-world country or Taliban insurgents rape and kill women and young children, the pundits never agonize over whether the guns carried by the soldiers sent to the rescue are of an excessively large caliber, are loaded with too many cartridges, or can be fired too quickly or effectively? I find that strange.

The news media, politicians and much of the public foolishly ascribe power to inanimate objects as did a Canadian news "analysis" headlined, "I'm scared of the kind of gun Kyle Rittenhouse used. Americans should be, too." In reality, only the person in possession of the gun can cause the result for which the gun is blamed. A human picks up a gun and points it at other people; a human fails to secure a firearm before it is stolen or misused; a human has a finger on the trigger before stumbling or being startled then unintentionally firing a shot, or shooting themselves. Firearms are inanimate and "cause" nothing.

No one is exempt from responsibility to behave safely. If a person doesn't understand the safe use of a power saw or a drip torch, for example, he or she has no business picking one up. The same applies to firearms. There are no "big boy rules" whereby one may suspend responsibility. Just as we condemn Binger for waving a rifle around inside the courtroom, we never, ever get to say, "high-speed operators are allowed to point guns at others because they're so well-trained to keep their finger off the trigger" or whatever is the current variation on that old excuse. There are no gun handling "big boy rules" only safely, responsibly identifying and pointing in a safe direction.

Consciously identify a safe direction before you pick up or draw a gun. First, ask what is on the other side of walls or floors? Use safe backstops during necessary gun handling and don't unnecessarily, casually handle guns – even guns you believe are unloaded. When you do administratively handle your firearms, is your trigger finger indexed up on the frame, well away from the trigger? Indexing your finger up on the frame, far away from the trigger establishes habits on which you base your actions when you are frightened, sick or exhausted. Make absolutely certain that you're not habituating dangerous, careless gun handling.

Stick with me. I'm almost done. The last point I'd like to raise is absent from the Four Universal Rules of Gun Safety, but integral to the responsible lifestyle. When you are not in immediate control of your firearm(s), lock them up. Guns do not belong in your sock drawer, hidden under the couch cushions or stashed under your mattress. If you own guns, you are responsible for keeping them secure when they are out of your immediate control. Take your responsibilities seriously.

It is easy and somehow it is internally rewarding to criticize the foolishness of a despised enemy. We probably won't manage to switch off that aspect of the human condition so let's add something of value to the distaste we feel for the assistant district attorney Binger's unsafe gun handling.

How does your safety and responsibility as a gun owner measure up?

December 2021

About the Network's Online Journal

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

Marty Hayes, President

J. Vincent Shuck, Vice President

Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

Please write to us at info@armedcitizensnetwork.org or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.