

Weighing Non-Gun Self Defense Options *Ungunned but not Unarmed*

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

This month, I'd like to discuss a topic I have given lectures on for several years. What do you carry for self-protection? If you can't carry a gun in a specific situation, what do you do? I've heard many, many times over the years, especially from students, that they carry a gun and they're sure they will be ready when they need it. That is very optimistic. What if you can't get to your gun when you need it? What if you must enter a building unarmed (church, school, etc.) for just a few moments? Do you ever run up to the ATM for just a few minutes and leave your gun in the center console of your vehicle? If you do have it on you, what if you turn around and suddenly are pinned against the cash machine by a knife-wielding thug? Your gun is pinned, too, and can't be accessed any time soon. How do you fight your attacker?

We normally train with firearms in an environment of a square range, three to seven yards from the target, on even ground, and in nice, sunny weather. Three yards can be close quarters, but that gap can close very quickly, bringing an attacker into extreme close quarters. Rarely do we train where the attacker is twelve inches from us or even closer. So, what other weapons can you possibly use instead of a gun in close quarters or where you're prohibited from carrying a gun? I've listed a few options below in no particular order. Certainly, there may be other options, but these are at the top of my list of alternatives to firearms.

Pepper Spray

Pepper spray is a highly effective irritant that is made from capsaicinoids found in certain hot peppers. Oleoresin capsicum (OC) is the active ingredient that gives pepper spray its heat. Heat is measured by an index called Scoville heat units (SHU). For example, Tabasco® sauce has a SHU rating of 2,500 - 5,000. Pepper spray has a rating of 2 million - 3 million...quite a difference!

Pepper spray is considered an inflammatory agent and causes eye watering and burning, resulting in temporary loss of vision, coughing, runny nose and difficulty breathing. Where it contacts skin, a burning sensation occurs. Inhaled into the respiratory system, it causes throat irritation and burning with every breath.

Pepper spray can be problematic when deployed improperly. Blowback to the user and over-spray can contaminate you or innocent by-standers. I've been over-sprayed with pepper

spray simply because I was standing in the wrong place. One small whiff can set the pain in motion and effects can last up to 30 minutes or longer.

Pepper spray is a close quarters weapon but can be used effectively out to about fifteen feet. Imagine you're not carrying a gun (for whatever reason) and wrestling on the ground with the perpetrator. A free hand could possibly reach your pepper spray and discharge it effectively into the attacker's face. The drawback, as I mentioned, is the back spray you might experience, in only slightly less intensity than your attacker experiences. I think this is a good argument for pulling pepper spray as early in the fight as possible when you're still on your feet and can still move dynamically away from the area into which you discharge it.

Depending on the delivery method, pepper spray really can be a multi-distance tool, delivering the pain for out to 12 to 15 feet. Most manufacturers make different patterns of spray such as stream, cone-shaped fog or mist, foam, or gel, each of which has advantages and disadvantages depending on whether you are outdoors, or inside or crowded into close proximity to others. Stream delivery gives a directed stream that is best used to cover a greater distance. Foam is good at close quarters and can be directed into the mouth, eyes and nasal passages of

an attacker with less likelihood that innocents will be affected. In addition to also limiting the risk of cross-contamination, a unique ability of gel is that it sticks to any surface like the face, causing the attacker to rub their eyes, mouth and nose inadvertently spreading the gel across other areas for increased exposure. The cone-shape fog or mist delivery method covers a wider area with a fine mist and can spray out to about 6 feet, including soaking door entrances and exits. Pepper spray in a fog or mist is also more likely to affect people who are wearing glasses, brimmed caps, or other facial protection.

One final caveat: just like a gun, your container of pepper spray must be readily accessible. Most females I know carry pepper spray in their purse, buried deep into the nexus, where it usually takes days to find.



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Electro-Muscular-Disruption

An electro-muscular-disruption device, most commonly exemplified by a TASER®, has two barbed prongs that when fired transmit a high-voltage, low-amperage signal through thin wires, into the prongs and into the assailant's body causing temporary muscle contraction. The idea behind the civilian TASER® is to pull the trigger, hit the intended target, set the device on the ground and run to safety during the 30-second jolt. Police TASER®s are compliance tools. They give a 5-second jolt to help police bring a fighting suspect into compliance, while the civilian model is meant to give you time to run and seek help.

In order for a TASER® to be effective, both prongs must make contact with the assailant. Therein lies one major issue; the prongs must make full contact to be effective. A single prong making contact has zero effect on the assailant so a missed shot would require a reload but there is a very small chance the reload will be fast enough. The TASER® cartridge is not reusable but it is replaceable. Recently, TASER® introduced two-shot models that mirror law enforcement models' 5-second incapacitation cycle. TASER®s can be employed out to 12 to 15 feet and can be carried on the right or left side in a special holster and drawn like a gun.

Kubotans

Introduced in the late 1960s, the Kubotan, which was developed by Grand Master Takayuki Kubota, attaches to the keyring and can be used on pressure points, joint locks, or as a small impact weapon. Attached to key rings, it allows the keys to be used as a flail for self defense when swung in a circular manner. Some states consider a Kubotan an offensive weapon and it may be illegal to carry or possess, an important distinction that's determined by your jurisdiction.

Early on, the Kubotan was popularized when female officers of LAPD were trained to use it to restrain unruly suspects. Monadnock Lifetime Products, a police and security equipment company, licensed a version called the Persuader™ and made it part of their defensive tactics training. A number of knockoffs

have evolved, some changing the original grooved 5 1/2 by 5/8-inch hard plastic flat-ended design; these are often called self-defense key chains or mini batons.

The versatility of the Kubotan is in its ease of carry and use as a weapon anywhere a finger can go and the ability for a trained user to apply varying levels of force with it, as appropriate. Its non-threatening appearance is another benefit that makes it easy to carry in your hand, waistband or pocket where it is quickly accessible.

Hand to Hand

Hand to hand combat is something everyone should know. Whether you master a few simple techniques or make it a life-long study, empty hand defense skills will serve you well.

I'm not talking about martial arts. Martial arts take years to perfect, and most aren't the most effective against an attacker in close quarters. This is not to say that martial arts can't be effective (as well as giving many other benefits), but I'd humbly submit that close quarters fighting requires close quarters techniques. Basic Krav Maga (krav mah gah) will teach you street fighting because that's where you'll be fighting for your life.

Krav Maga began in the early 1970s and was originally taught to Israeli special forces. It has developed over the years until today it is in use by U.S. Armed Forces and police world-wide. To get started, you don't need any fighting experience and students of any size, strength, or physical condition can train. I teach it and I've had students as young as 10 and as seasoned as 79 in my classes.

Krav is technique based, not strength based. Even though it doesn't require very much strength, it does require a fairly solid technique to be effective. It can be a very violent defense and used to attack or it can be "softer" where its techniques can be used to hold a suspect until police arrive. I've personally had experiences when I was a bouncer where I had to use Krav to stop a fight or throw someone out of the bar who wanted to fight me. I've used it also to take a suspect into custody.

Hand to hand skill is such an invaluable tool in the toolbox.

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Gunless but Not Unarmed

In closing, there are many self-defense options one can use without a gun present. However, let's not overlook some other common tools you can use. Your belt can be used as a flail, a chair can be used to block a knife attack, a broken bottle can be used as an edged weapon. You may have to fight your way to your gun. If threatened by someone with a gun, I might use a gun disarming technique and take the suspect's gun if I can't get to my gun in time.

Make sure you have been trained before attempting any of these defenses. Not only does effectiveness rely on proper technique, a class by a certified instructor can also alert you to laws and restrictions of which you must be aware. If you travel, you will need to research legality of self-defense tools where you intend to visit and restrictions applicable to taking your defense tools on-board your mode of transportation. Many states and municipalities have laws regulating possession and use of TASER®s, pepper spray and mini batons.

Written in law in all 50 states are provisions allowing less than lethal self-defense methods to be used against both non-lethal and lethal force. Even when using less-than-lethal force, one will be held to standards that parallel to those governing use of deadly force. For example, lawful use of either deadly force or less than lethal methods generally require you to be in place in which you have a legal right to be; generally you cannot be committing a crime; and you need to have an honest and reasonable belief that deadly (or non-deadly) force is necessary.

You may use proportional non-lethal force to stop someone who is using non-lethal force up through lethal force but not the other way around. Know the laws in effect where you are!

One final comment: I want to thank those of you who responded to my previous *eJournal* article *How to Spoil Your Self-Defense Case*. There were great suggestions and comments and I'll incorporate them in future articles.

About the author: The Network's Director of Legal Services, Art Joslin, J.D., D.M.A., has worked as security and close protection specialist in the security and legal services industry. He is skilled in verbal judo, firearms, close protection, executive protection, armed security work, and has been a bar bouncer. His experience includes working crowd control, venue security, and working across the force continuum has nurtured a strong ability to rapidly de-escalate situations. He has provided executive protection, both armed and unarmed, for high and medium risk talent escort, and been a high risk armed escort and driver for the jewelry trade. He is a fourth level black belt in Commando Krav Maga with 35 years' experience and training in Hapkido and Brazilian Jui Jitsu. He is a graduate of Force Science Institute, Massad Ayoob's Use of Deadly Force Instructor class, and is certified as a TASER® International instructor, in addition to his firearms instructor and police certifications. He welcomes your questions and comments at ajoslin@armedcitizensnetwork.org.





President's Message

Round Three

by Marty Hayes, J.D.

The next phase of the *Armed Citizen's Legal Defense Network, Inc. v. Washington State Office of Insurance Commissioner* is now fully underway. Our appeal of Lewis County Superior Court Judge James Lawler's May 2022 ruling

will be heard in the Washington State Court of Appeals, Division Two sometime later this year or early next year. Until then, initial briefing, response briefing, response briefing to the response briefing and one last round of response briefing will be taking place. At issue will be the trial court judge's ruling that what the Network was doing was selling insurance without a certificate of authority. Our defense is that enrolling people in the Network was only allowing them to join an organization that supplies educational benefits for the armed citizen to best be prepared to make decisions regarding armed self defense, and in the event that the member chooses to use force in self defense, the Network would, upon request, likely fund the legal defense of the member. Funding this defense was never guaranteed, but instead rests solely in the hands of Network leadership, after a review of the particulars by at least one, if not all of the Advisory Board (<https://armedcitizensnetwork.org/defensefund/advisory-board>).

The legal issue is the definition of insurance. The Office of Insurance Commissioner (OIC) made the argument, and the trial judge agreed, that a use of force act is a contingent act, responding to the acts of the aggressor. The Network argues that because the use of force is an intentional act, it cannot be contingent upon the aggressor, because what is missing from the OIC argument is the subjective belief of the defender. That cannot be a "determinable contingency" as what the defender believed at the time is not determinable from one instance to the next. There are other issues, too, and if you want to explore these, go back and log in to the members-only section and read the briefing (<https://armedcitizensnetwork.org/members/resources>) and previous president's messages.

Up to this point, we have been ably represented by attorney Spencer Freeman, a solo practitioner with offices located in Tacoma, WA. Through a fortuitous set of circumstances, I recently had occasion to meet Edward Wenger, an appellate attorney who is a partner in a Washington D.C. firm, who, along with several others in the firm, specialize in appellate law. After I discussed our case with him, he agreed to take a look at the

issues, saying that if he felt we had a viable appeal, he would assist us with that appeal. That process commenced a couple of weeks ago. We are pleased to announce that our legal team just grew by two additional attorneys, both with a great deal of appellate experience. If you want to know more about this firm <https://holtzmanvogel.com/about/> and the two attorneys, Edward M. Wenger <https://holtzmanvogel.com/people/ed-wenger/> and Dennis W. Polio <https://holtzmanvogel.com/people/dennis-w-polio/> browse to the links provided.

Even with the addition of the new firm and attorneys, Spencer Freeman <https://callkimandspencer.com/about-us/spencer-d-freeman/> will continue to be lead counsel for our fight. We will be moving forward with a team we are convinced will give us the best shot (pun intended) to prevail in our fight.

Why Are We Fighting this Hard?

There are many reasons for continuing this fight, and I will attempt to explain. First off, we believe we are right, and we are willing to spend the resources to prove it. I have spent my entire life living with a firmly entrenched principle that if a person is right, they should not give in just because it might be easier to fold. One such example was my work on the Ronda Reynolds murder case, in which both my county coroner and county sheriff concluded that a young local woman had committed suicide. After taking a look at the evidence in the case, I said, "There is NO WAY she committed suicide!" That case is detailed in the late Ann Rule's true crime book, *In the Still of the Night*, available on Amazon, or for synopsis of the case, you can read <https://www.chronline.com/stories/ronda-reynolds-death-a-homicide.155585>.

My involvement in the Reynolds case resulted in leaving my chosen profession of law enforcement, because there was no way I could continue to work in my local community after taking this public stand against the Lewis County Coroner and Sheriff. Leaving law enforcement led directly to the creation of the Network, so it was not all bad. Since I had some free time on my hands, I decided to pursue law school, and within three years I had formed the basic framework of the Network. When I graduated, I could have become an attorney, but I was convinced to give the idea of the Network an honest try. That was in 2007, and a year later, we had formed the Network and we were off and running.

Aside from my personal convictions, though, there is a pragmatic side to staying in this fight. If we were to give in and agree we were selling insurance, what would the other states in which we serve members have to say? We were not first nor were we the only entities the WA OIC went after. They also set their sights on the NRA, USCCA, US Law Shield, CCW Safe,

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and Firearms Legal Protection and each of these companies was fined. While each had the right to appeal, none did. Some others stopped selling in Washington state when they saw what happened to the NRA and thus avoided further litigation.

I have stated all along that what I wanted out of this litigation was to make case law stating that what we do at the Network is not an insurance product. It is taking longer and is more costly than expected, but we are in it for the long haul. One thing the whole team here at the Network and I really appreciate is the financial support in contributions to the legal fight. Members and non-members have been very generous, giving us over \$20,000 for the fight. I wonder if we could use that fact in court? After all, who donates money to their insurance company?

Okay, you are now up to date on the fight. I will report back when we have a court date, which will be sometime down the line.

All is Quiet!

It has been over a year since we had a member involved in a self-defense situation which resulted in a request for assistance. Of course, this is great as it helps build the Legal Defense Fund to higher and higher levels. The Fund's balance is currently over \$3.5 million, and at this rate, we should hit \$4 million within a year. I get questioned all the time from people who worry whether that money is enough. After all, both the Rittenhouse and Zimmerman legal defenses ran into the millions of dollars. What is not spoken of is the fact that both cases were high profile, heavily publicized in news media like FOX News and CNN, where the defense teams raised a considerable amount of the defense costs through pleas for support. I personally donated to Zimmerman, and by the time I had enough details to be comfortable donating to Rittenhouse, it looked like he had sufficient cash to handle the defense. If one of our members became the next cause celeb for the anti-gunners, I can envision doing a public awareness campaign to help raise money, too. I do not fear the high-profile cases.

Take Note, Instructors

Are you an instructor and have you been wanting to get certified to teach the principles of use of deadly force in self defense, or as an individual, do you simply want the best education you can receive in deadly force training? If so, you will be interested to know that Network Advisory Board Member Massad Ayoob is holding a rare *Deadly Force Instructor Course* in Pennsylvania in November. This course is only open to people who are currently firearms instructors or who

are members of the Network. Please see the following link for more information <https://massadayoobgroup.com/event/deadly-force-instructor-class/>.

Do You Really Need Liability Insurance?

One of the things some of the other companies do is scare people into signing up for their insurance plans, convincing them that they need liability protection against lawsuits. I have never believed that lawsuit protection was worth the money paid out for the premiums. Some of the other companies' fee structures start at several hundred dollars for a year's coverage. None of our members have been sued after using force, although we stand ready to assist with the legal defense of a civil suit just as we do for a criminal defense. Although I'm frequently asked, I do not have a recommendation of any of the companies which offer this coverage, as I frankly do not trust any of them to be around years down the line or to follow through on their promises.

Carrying in Houses of Worship

I received an e-mail today from a New York member, who asked if the newly enacted New York laws making many common areas, including houses of worship, off limits to concealed carry would prevent the Network from assisting a member who carried in violation of this new law, and was involved in an incident. I don't have an across-the-board answer to answer his question yet. It is our policy to not promote carrying concealed weapons in places where doing so is illegal, and in order to not promote that crime, as a default position, we will not draw on the Legal Defense Fund to pay for the defense of a member who is also arrested for that statutory violation. Understand, however, that this does not prevent us from raising funds directly from our members to help defray a member's legal defense costs. We certainly can do that without tapping the Legal Defense Fund and outside of restraints on its use.

One additional piece of advice, specifically about houses of worship: Perhaps it is time to have a heart-to-heart talk with your pastor, priest or rabbi, to see how you will be treated if you take action to defend them and the congregation. Support for your actions from the house of worship would go far towards gaining approval from the law enforcement agency and prosecutor's office. In all the recent instances in which parishioners stopped active shooters, the armed citizens have been treated extremely well, and were, in fact, treated as heroes should be treated. I wish we could say, "Sure, we would be there for you," but if you are breaking the law, we can't. I will say you are not alone. This is the best we can do.



Attorney Question of the Month

The past two editions of this column focused on alternatives to going to trial. The options vary a lot from state to state, and our affiliated attorneys were very generous, weighing in with many, many responses. We wrap up that question this month. If you missed the previous installments, please browse to <https://armedcitizensnetwork.org/our-journal/2022-journals> and read the July and August commentaries, in addition to our affiliated attorneys' final responses to these questions:

Does your state offer the option of deferred prosecution or deferred judgment/sentencing?

How does it work? Does the person plead guilty or are charges filed only if they fail to meet the agreement's conditions? Does the person report to a probation officer? Is the person's record cleared after an agreed-upon time without any further incidents (of specific concern to Network members, are gun rights restored)?

To what offenses are deferral options limited? If a Network member turned to you for representation after defensive display of a firearm in self defense, under what conditions might you consider seeking deferral?

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1. Most State of Georgia prosecutors offer diversion programs in some cases and under certain circumstances. Diversion means they are diverting the case from prosecution. Once you complete the terms of the diversion agreement, the case is dismissed and in some cases the arrest is restricted from your record.

2. If you are accepted into the diversion program, you will report to a diversion program coordinator who oversees the progress and ultimately will submit a *nolle prosequi*, a Latin term which directly translates to "not to wish to prosecute," once all conditions are met. In Georgia, you do not plead guilty to get into the program. With a successful completion and the entry of a *nolle prosequi*, the client will avoid being a convicted felon; thus, saving their civil liberties such as right to vote and the right to bear arms.

3. The diversion program is offered on a case-by-case basis.

Almost any charge can be considered for diversion depending upon the facts and circumstances leading to the allegations.

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In Washington state, there is no deferred prosecution or sentencing for felony crimes. Individual prosecutor's offices could offer such a thing, but would rarely do so for a felony involving a firearm. Deferred sentences and deferred prosecution are available for gross misdemeanors and misdemeanors in the district and municipal courts, but there is, in reality, virtually no advantage to a deferred sentence and deferred prosecutions are used almost exclusively for DUI offenses, although it would apply to any gross misdemeanor or misdemeanor crime that involves the use of alcohol. A deferred prosecution is only available to those suffering from alcoholism and it would be a very rare situation where one was granted for a crime involving a firearm.

I say that a deferred sentence is in reality virtually worthless because the conviction stays on the person's record despite the apparent idea that it would come off the record if the person successfully completed his or her sentence. The only way to remove a conviction from a record in Washington is to petition the court to vacate it. Many crimes can be vacated, some cannot. However, under the right circumstances and in the right jurisdiction, an individual county's prosecutor might see fit to offer an informal deferral, which is an outcome not contemplated by statute. For that offer, a person would need to have no prior record and the crime not be particularly violent or harmful, but I've never seen one for a use of firearms case.

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The State of Illinois offers a form of delayed prosecution called court supervision. Under the terms of the court supervision, the defendant pleads guilty to a charge and generally pays a fine. The defendant has a term of court supervision where they do not have to report for probation, but during this time they must not be charged with any additional offenses. If the defendant is charged with a new offense, then the delayed prosecution terms of the court supervision are applied to the defendant. This usually involves jail time, an additional fine, and some form of probation.

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Most court supervision fines are offered during the plea negotiation process with the state attorney's office and are generally only applicable for very minor charges, Misdemeanors or less. If there is not a strong defense for the defendant, then this is a beneficial option to choose, rather than going to trial on the matter.

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New York does not offer deferred prosecution per se.

We have Adjudgments in Contemplation of Dismissal (ACD), which is a type of plea. Stay out of trouble for six months to a year and the case gets dismissed.

We also have conditional pleas, or repleaders, i.e. you plead guilty to one count, do something (counseling, etc.) and then get to plead to a lower charge after successful completion. This is the model used in the problem-solving courts, e.g. drug court or veteran's court.

These are both options for members who might be referred for self-defense issues, as these approaches can avoid the stress, time, and cost of a trial if successful.

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Does your state offer the option of deferred prosecution or deferred judgment/sentencing?

Yes it does.

How does it work? Does the person plead guilty or are charges filed only if they fail to meet the agreement's conditions? Does the person report to a probation officer? Is the person's record cleared after an agreed-up time without any further incidents (of specific concern to Network members, are gun rights restored)?

Sometimes before the charges are filed, a "diversion agreement" can be entered into without any sort of plea. If they follow the rules of the agreement, then charges are never filed against the defendant. If they fail to follow those rules, then charges are subsequently filed and prosecuted.

Sometimes after charges are filed, a "diversion agreement"

can be entered into without any sort of plea. Under those circumstances, the case is dismissed without prejudice, and will remain that way as long as the defendant complies with the terms and conditions of the deal.

Under both "diversion agreement" options, sometimes there is a probation officer (usually in drug cases); other times there are not.

In neither "diversion agreement" option does the defendant plead guilty.

In neither "diversion agreement" are people's gun rights affected.

More often than either of the "diversion agreement" options, "pleas in abeyance" are routinely used to do "deferred judgment/sentencing" and are quite popular. Even though they don't involve a "conviction," these do impact gun rights still depending on the charge. Once the PIA is successfully completed, the case is dismissed and the gun rights are restored.

An expungement procedure needs to occur to completely clear their record, however, and that is a separate process.

To what offenses are deferral options limited? If a Network member turned to you for representation after defensive display of a firearm in self defense, under what conditions might you consider seeking deferral?

A wide range. Usually not in sex crimes, child abuse or domestic violence offenses.

I would only explore a deferral if my client specifically instructed me to. Usually, I press hard on self defense and obtain dismissals.

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Does your state offer the option of deferred prosecution or deferred judgment/sentencing?

Yes, if the case does not proceed to trial, a defendant is eligible to be placed on deferred adjudication.

How does it work? Does the person plead guilty or are charges filed only if they fail to meet the agreement's conditions? Does the person report to a probation officer? Is the person's record cleared after an agreed-up time without any further incidents (of
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specific concern to Network members, are gun rights restored)?

A person pleads guilty or no contest. The deferred adjudication can be part of a plea agreement or, if the parties are unable to reach such an agreement, the defendant can ask the judge to place him on deferred adjudication. Usually there will be a period during which the person will report to a probation officer. Assuming the person completes the probation period, the case will not reflect a conviction. Nevertheless, the offense can still be found on a person's record unless they seek an Order of Nondisclosure. A person who successfully completes the period of probation will also be able to possess a firearm. Be aware, however, that, if the person was placed on deferred adjudication for an offense involving family violence, they would NOT be eligible for an Order of Nondisclosure and they would be PROHIBITED from possessing a firearm even if they successfully complete the probation period.

To what offenses are deferral options limited? If a Network member turned to you for representation after defensive display of a firearm in self defense, under what conditions might you consider seeking deferral?

Assuming that there are no suppression issues and the person does not want to pursue a trial and the district attorney can not be persuaded to dismiss the charges, deferred probation would always be the next best option and it would definitely be pursued.

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Q: Does your state offer the option of deferred prosecution or deferred judgment/sentencing?

A: YES. For most cases, the prosecution, victim, defendant and judge have to agree to a delayed sentence. Some exceptions may apply.

Q: Does the person plead guilty or are charges filed only if they fail to meet the agreement's conditions?

A: For the most part, the defendant will plead guilty to the charge agreed upon by the defense and prosecutor which may or may not be the original charge. The judge will not enter the guilty plea onto the defendant's record, but "takes it under advisement" or "delays it until the end of the probationary period." If the defendant doesn't hold up their end of the bargain, (violates terms of probation) then a guilty plea can be entered on their record.

A tool to protect the defendant from agreeing to pleading guilty in the hopes of a judge accepting the parties' delayed sentence agreement is something called a Killebrew plea or an agreement under Killebrew. This comes from the case *People v Killebrew*, 416 Mich 189, 330 NW2d 834 (1982). This plea is essentially a bargaining tool for sentencing. The parties may request terms under a Killebrew plea be entered into and the recommended terms of the sentence be placed on the record for evaluation.

Ultimately, a judge has the discretion to refuse to take the plea based on the terms of the agreement. A judge can also accept the plea on the condition that at the time of sentencing the judge will evaluate whether the sentencing agreement results in an appropriate sentence. This type of bargaining is viewed as contractual in nature and both parties have a right to have the plea set aside if the court goes outside the terms of the original agreement. MCR 6.310(B)(2)(a).

Q: Does the person report to a probation officer?

A: Depends on the charges and the terms of probation imposed by the judge. I have had clients with probation officers and non-reporting probation with no officers. With non-reporting probation, the court will set a court hearing date that the defendant will check in usually at the end of the probationary period.

Q: Is the person's record cleared after an agreed-up time without any further incidents (of specific concern to Network members, are gun rights restored)?

A: After a conviction that is entered onto a defendant's record the gun rights restoration process is a complex one here in Michigan. The path depends on a lot of variables. The law that prevents a convicted felon from possessing a firearm in the state of Michigan is MCL 750.224f which in sum, states that a person convicted of a felony shall not possess a firearm.

But, what if, from the start of the case, the conviction was plead under a deferral statute such as MCL 333.7411 or MCL 769.4A or MCL 762.11 "HYTA"?

Well, under MCL 333.7411 the law states that a discharge and dismissal is without adjudication of guilt and DOES NOT constitute a conviction for the purposes of deferred sentencing or any disqualification imposed by law. Likewise under MCL 762.11 or "HYTA" if a citizen were to complete a sentence under the terms imposed by HYTA, the law does not consider the completion as a judgment of conviction against that citizen.

Additionally under MCL 762.14, a citizen who is released from the status of youthful trainee under MCL 333.7411 shall not suffer the loss of right or privilege following the completion of

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such program. The law reads in part,

“An assignment of an individual to the status of youthful trainee as provided in this chapter is not a conviction for a crime and, except as provided in subsection (3), the individual assigned to the status of youthful trainee shall not suffer a civil disability or loss of right or privilege following his or her release from that status because of his or her assignment as a youthful trainee.”

In other words, MCL 762.14 is saying a citizen who completes the terms under MCL 333.7411 cannot be stripped of a right or privilege for being sentenced to complete the terms under 7411.

Similarly MCL 769.4A states that “[u]pon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section must be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime...”

By Caselaw

If a Michigan resident has been convicted of a felony, the Concealed Pistol Licensing Act (CPLA) will disqualify a resident from applying for a concealed pistol license (CPL) here in the state of Michigan. However, the court has ruled a citizen who has successfully completed probation under MCL 333.7411 shall not be considered convicted as a felony under the CPLA. See *Carr v. Midland CPL Bd*, (2003)

In Conclusion

If a citizen has been arrested for a crime and the court used a deferral statute to delay the sentence, there is an argument to be made that a felony conviction has not occurred by law and that firearms rights may not have been stripped away from the citizen.

Thank you, affiliated attorneys, for sharing your experience and knowledge about deferrals. Members, please return next month for a new question and more interesting commentary from our affiliated attorneys on a new topic.

Book Review

We'll Be Back:

The Fall and Rise of America

By Kurt Schlichter

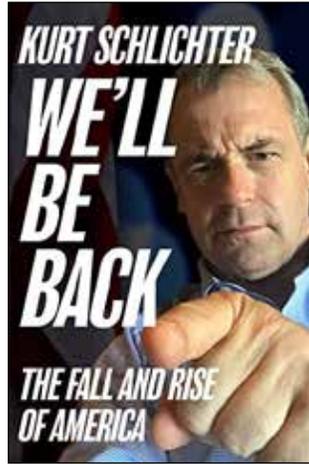
Published by Regnery, July 2022

303 pages, hardbound \$25.32;

eBook \$14.99

ISBN: 978-1-68451-330-7

Reviewed by Gila Hayes



With the primary elections stirring up all manner of hate and discontent, I sought a book to help get me through the long, fractious months leading up to the general election. Will freedom-lovers regain a little clout in congress? What will happen at the state level? Will it make enough difference to salvage or even perhaps regain some of the liberties we have lost? On a whim, I decided to buy *We'll Be Back*, released in July by retired Army infantry colonel, Los Angeles trial lawyer, columnist and fiction author Kurt Schlichter. Although I follow his columns on *Townhall* (<https://townhall.com/columnists/kurtschlichter/>), I read neither dystopian nor action thriller fiction so I had not yet read any of his books. I was surprised to find some optimism in a book that suggested mostly pessimism.

As the title suggests, Schlichter explores the path for a return to national strength and prosperity. He does not promote armed revolt and emphasizes the high, irretrievable costs of civil war. Instead, he suggests through possible scenarios and comparisons to the fallen Roman and Weimar republics how our future could play out. He observes that America's founding fathers were inspired by Rome's "Republic based on the notion that a polity was to be governed by citizens within a procedural framework that protected individual rights," and saw, perhaps, in the evolution of Rome a mirror image of "a nation of sturdy farmers, obsessed with honor, unbelievably stubborn and tough, creative but also willing to learn from others."

Unfortunately, Rome's success led to its disintegration, he warns, noting, "prosperity changed Rome forever...and within a few decades the republican virtues that had sustained Rome's rise were being discarded with astonishing regularity." Whether the year is 300 A.D. or 2022, change is unavoidable and Schlichter writes, "We need to understand that America will fall, in the sense that at some point—and it may not be in our lifetimes—it will morph into something different." He adds later, "It is cold comfort to observe that even as bad as things are, America has not quite yet hit bottom; the left is fully prepared to hit bottom and then keep digging."

Do not underestimate the hatred the left harbors for individual success, he later explains. "If you are prosperous, the

left cannot buy you, and if you are free, you will not choose subservience." The left thrives on misery because "through the struggle it accumulates and exercises power," so sees no upside to individual prosperity. Not that the leftist elite suffers; deprivation is for the masses. The result? A lot of normal people are furious about the lies and corruption, unavailability of basic supplies, job losses to overseas labor, and looting, burning and rioting that reveals the incompetence of "our ruling caste."

Don't read *We'll Be Back* expecting a screed against liberals and Democrats. Schlichter has plenty of harsh words for both political parties for mismanaging the war in the middle east, disastrous foreign policy decisions, economic incompetence, and for intentionally inflaming hatred between people of differing beliefs. He defines the opposing ideologies: "Unlike the left, we do not seek to remake society into something new, but rather something old and proven by time. The Constitution, and all it entails, is the key."

Nonetheless, both parties have contributed to the massive administrative state that, Schlichter observes, runs on "a wink and a nod of support from the political branches that are happy to let faceless bureaucrats take the heat for the inevitable screw-ups of governing." Still, the left seeks more "power via the force of government" and subverts the Constitution's limits on government. If they prevail, he writes, we'll lose the Republic and end up ruled by "the new elite" bent on "crushing and looting internal dissenters."

He explores the various checks and balances implemented by the founding fathers, noting that a certain amount of injustice is just part of life, so the question must be not whether a single individual's rights were trampled, but the scale of the injustice. Even the worst outrages in our past didn't "justify armed insurrection against the government of the United States," he writes. "The reason is that these violations of basic human rights could still be, and eventually were, addressed by the processes within the Constitution. You don't fight when you can fix it some other way."

He writes later that before armed revolt, "there has to be a point when someone decides that he has nothing to lose...that your life as you knew it is essentially over the second you pull a trigger...if you pull the trigger at a fed and it does not turn into a successful revolution, you are done. Your life is over. You are going to jail forever; at best, you will be hunted forever. The second you take up arms, everything changes and your life is never going to be the same," he writes, adding, "This is a good thing. We want to discourage this in all but the direst situations. It sets the bar appropriately high for the shot heard 'round the country."

Having dismissed armed revolution as a fruitful option, Schlichter imagines how a negotiated separation into two

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nations might play out. An informal separation is already underway with conservatives moving out of liberal states; why not get a divorce? he asks. Approach with caution, he continues, citing the Balkans as a caution. “Yugoslavia’s breakup devolved into a massive civil war...If we wished to divorce, we should carefully review how they broke up Josip Tito’s territory and then do the opposite.”

He believes the breakup of the Czech Republic and Slovakia in the early 1990s better illustrates “successful,” meaning bloodless. I raised a skeptical eyebrow, wondering if the strategy scales up to so land-rich a nation as America. Schlichter further ponders how to divide the United States, acknowledging that our liberal bastions are not contiguous. Every “red” state has “blue” enclaves. Do you eject those of different political bent? We condemned “ethnic cleansing” in the Balkans, so “In all likelihood, a national divorce simply is not going to happen, unless the violence threshold has already been crossed, in which case all bets are off,” he admits.

Is there a solution within our existing political structure?

Schlichter discusses possible outcomes if the 2024 presidential election puts a truly conservative Republican in the White House. Expect the left to sponsor violent protests and riots to test the mettle of the president to prove whether he, like Lincoln standing firm during the dark times of the Civil War, will enforce the Constitution. A truly conservative president will tread the fine line between “playing hardball” without “willful rejection of the checks and balances that the Constitution envisions,” as he struggles to get the nation back on track.

Schlichter outlines international troubles looming on America’s horizon as military effectiveness declines and we rack up ever more debt to China, to name only two big dangers. While war with China would extract a high cost in lives lost, Schlichter believes we are more likely to borrow-and-spend America into obscurity. He suggests our nation could fade or crumble as apathy builds, we abjure aggression, risk-taking and sacrifice independence, church attendance drops, we view the national debt as something for later generations to deal with, we burn

through trillions with impunity but have little to no infrastructure improvement to show for it, and we keep on paying people not to work. He warns, “The multiple trends that lead to slow decline—economic malaise, cultural exhaustion, and the infusion of outsiders—are not unusual or unprecedented. Rome finally fell—the big fall, with the subsequent Dark Ages—after these trends had gone on for hundreds of years.”

What would it take to turn the nation around? “To recreate a vibrant civilization and snap out of decline, you would need a societal purpose. How would that get turned around? Perhaps it could be, but it would take a grassroots movement, like a Great Awakening, because it could certainly never be imposed from on high by the current elite.” Schlichter continues a bit later, “We need a new kind of conservative Republican, one unafraid to exercise power, one not restrained by arbitrary conceptions of what a conservative Republican can do, but still aware that to rebuild America for the long term we cannot succumb to the expedient of true authoritarianism in the short term.”

The book’s closing chapters read like a recruiting document to “hire” a new president who isn’t afraid to destroy the old, worn-out institutions, is immune to the lies and mis-characterizations sure to be spouted and who comes into office with their own strong network so the presidential appointments aren’t just handed out to establishment favorites, a mistake Schlichter says plagued Donald Trump. That all, of course, also depends on our willingness to address election fraud, a fight we failed despite ample evidence in 2020.

Overall, *We’ll be Back* turned out to be optimistic, but tempered by a strong dose of reality. Schlichter writes, “I believe America will rise again, albeit with scars. What has happened in the last three decades will leave a mark. All the norms that were shattered cannot be pieced back together again so easily. The rules we thought we had agreed upon about personal freedom, property rights, and the relation of government to citizens have been rewritten for short-term convenience. They will not go back to what they were.”



Editor's Notebook

What We're Doing to Make Our Communities Better

by Gila Hayes

Regular readers may recall that several months ago, I invited Network members to share a little about what they and their associates do to expose the public to gun safety and to teach by example the responsible behavior required of armed citizens. Members in MN and NC contributed. Let's start with the following from a MN member:

"I obtained my first CCW permit about a dozen years ago. What I learned after the completion of that course (from what I today consider to be a marginal training organization) was that I was not prepared to carry. I did not, and allowed my (MN) permit to expire after 5 years. About 7 years later, I came to a point in my life that I had the time to reconsider carrying a handgun again.

"This time, I carefully selected a training organization (Tactical Advantage in Waite Park, MN). This class, like the first one, impressed upon me the gravity of carrying. However, my instructor, Jason Falconer, provided far more information on how to continue the training after the CCW class. I will let you and our Network family know that he spoke highly of the Network, the need to have a membership of this type, and to become informed of the services I may need to have in the event of an altercation — before anything happens. He told me about education — such as all the videos from the Network and documenting what I read. He stressed additional training and constant practice, both live fire and dry fire.

"My life over these past two years now has a regimen of regular range practice (every week or two, 75-100 rounds) with dynamic targets, various holds (both, strong, weak hand); becoming authorized to practice drawing at the indoor range; dry firing with various techniques; annual review of Network videos and accompanying documentation after watching each video; following various social media sites; attending all the continuing education classes at Tactical Advantage; having a relationship with the range owners that allows me to ask questions constantly; basic relationship with local law enforcement and politicians; having an attorney's card in my wallet before I need him.

"But to the question you asked in the newsletter, about how can I influence the next handgun owner in my life? The first thing I try to do is take them to Tactical Advantage, where they get a chance in an hour to 1) watch a safety video; 2) meet some of the best people in the business that can mentor them,

too; 3) get a chance to fire a gun in a controlled environment that almost always captures their interest; and 4) make myself available to them to become part of the community at the level to which they want to take themselves.

"I demonstrate to them by always carrying responsibly, even when traveling out of state, asking them to the range with me when I go, sharing my literature, and talking about it in our conversations as a natural topic to discuss.

"As I close, I will share that this year I was fortunate to spend a few days in Antietam and Gettysburg, which gave me an overwhelming appreciation for the valiant soldiers of the Civil War, I am reading The New Breed about the Korean War, and over the past two years took online courses on the Constitution from Hillsdale College, the latter making me realize how ignorant I have been about our nation's founders and its charter. I used to be the one that talked about "my constitutional rights" and suddenly found out that I didn't even know what those rights — and responsibilities — were. All this has blended together to hopefully make me a more responsible American."

As a fellow Hillsdale College fan, I appreciated this member's steady pursuit of further knowledge. He's right – talking about infringements on our rights does little good if we ourselves lack a solid foundational understanding of the Constitution of the United States. If you've not yet accessed the great wealth of knowledge at Hillsdale College (<https://online.hillsdale.edu/landing/constitution-101>) and may I add that there is also a treasure trove of reading material freely provided by the Heritage Foundation (<https://heritage.org>). These are two of my favorite conservative online study resources.

Another member, a North Carolinian, has a long history of contributing at his local range. He is doing his part! Here is what he reported:

"I have been certified as an NRA RSO for about 30 years. I work at various gun club events to help ensure safety of participants and spectators, and I also work as an instructor and RSO for various NRA training courses we teach at the club. I have been instructing CCH classes in NC since our CCH law was passed in 1995/96 and after getting both NRA Pistol Instructor and NC DOJ CCH Instructor certifications. These CCH classes have been for my gun club, for organized classes outside the gun club, and for private clients.

"I also am employed part time as an RSO and instructor for the commercial shooting range where I have worked for the last three years. The RSO work involves being in the range bays and monitoring safety practices of the shooters and also includes instructing new shooters in basic safety practices and gun

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handling. It has been quite eye opening to interact with so many people who have never handled a gun before! At the range, I also instruct CCH classes and our defensive pistol series, AR15 rifles, and other topics.”

In response to my question about public outreach and safety education at members’ local ranges, he wrote:

“My range doesn’t have a separate program for public outreach per se, although we do run a lot of radio ads and other marketing programs that are geared at least in part toward new shooters. Attracting new shooters has not been a problem the last two years – they are omnipresent at our range! When a person comes into our store and range, our customer service team (who greets all customers right inside the door) will ascertain if the customer is a new visitor and also if they are a new shooter. Both have to sign a liability waiver and view a safety video produced by National Shooting Sports Foundation (<https://www.nssf.org/safety/firearms-safety-videos/>). If they are new shooters, that fact is announced to our range counter staff, who then pass along that information to our RSO team along with the lane number of that new shooter. An RSO will then spend 10-15 minutes making sure the shooter knows the rules of firearms safety, the basic operation of the gun they are using, and at least the bare minimum of marksmanship fundamentals. The RSOs in the bay then monitor those customers carefully to make sure they have absorbed the lessons. We also make sure they know the avenues we offer for further instruction in terms of classes and private instruction sessions.

“The gun club I belong to sponsors many activities, such as NRA Women on Target, junior rifle clinics, junior shotgun clinics,

etc. Our club’s CCH class is also a good one for new shooters, since we offer a two day class for that where the first day is the NRA Basic Pistol class (teaches them to shoot) and the second day is the CCH portion (teaches them the legal aspects of self defense). Most commercial businesses can’t offer that type of class in a cost-effective manner for the students.”

When asked about outreach to young shooters, he explained:

“Our range also offers specific basic handgun classes for junior shooters and for women. Both demographics are critical to the future of our sport and Second Amendment activities. The range has a women’s group that caters to both new and experienced women shooters and offers not only women’s only classes but also drill sessions and social activities. It is a very successful program with over 400 members now.”

To many shooting enthusiasts, working at the range sounds like a dream job, and it is rewarding and goodness knows new shooters need a friendly mentor for their first visit, but as our member observes, it can also be a revelation about how little today’s run-of-the-mill American knows about gun safety.

We can change that, but only through friendly and firm mentorship by safe, experienced shooters for those who may be on the fence about whether the words “responsible” and “gun ownership” even belong in the same sentence.

There’s no doubt that we have our work cut out for us! Fortunately, as ably demonstrated by just two of our 19,500-strong Network family, there are many, many Americans who every day demonstrate this high degree of responsibility by living example.

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