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WHEN A PHARMACIST KILLS

States that encourage citizens to use lethal force shouldn't be surprised when they stretch the limits



By Julius (Jay) Wachtel. There's no disputing these facts. On May 19 three robbers pulled up to an Oklahoma City drug store. As the driver waited in the car the others donned masks and stormed inside. One waived a gun. Three employees were present. Two fled out the back while the third, pharmacist Jerome Ersland, 57, took cover. He pulled a pistol from his pocket and fired, striking the unarmed robber, Antwun Parker, 16, in the head. Parker's companion fled. Ersland gave chase but soon gave up and returned to the store. Retrieving another gun from a drawer, he walked to where the wounded youth lay and shot him five times point-blank in the stomach.

It was these rounds that proved the druggist's undoing. "Here's the ironic part," said D.A. David Prater, explaining why he charged Ersland with first-degree murder. "If the first shot had been fatal, we wouldn't be here."

Concerns about violent crime and NRA-fed outrage about citizens who have been sued and prosecuted for shooting criminals have led dozens of States to enact so-called "Castle" and "stand your ground" laws. They usually include three key provisions:

- Citizens may use deadly force to repel a forcible entry or to prevent an assault or other personal crime against themselves or another person (this is the "castle" component)

- Retreat is not required even if possible (this is the “stand your ground” component)
- Rules apply to any place of residence or business (some extend to vehicles and the outdoors)

The newest castle law, in [Montana](#), was signed by Governor Brian Schweitzer (D) earlier this month. In addition to the usual provisions there are special goodies for the “pry it from my cold dead fingers” crowd. Anyone who can lawfully possess guns may carry them openly. The more bashful are guaranteed CCW permits. What’s more, a [companion measure](#) declares that all guns and gun accessories, including silencers, that are made in Montana and stay in Montana are exempt from Federal regulation. Take that, ATF!

Back to the “OK” State. Its long-standing [castle law](#) now applies everywhere, including the great outdoors. Even better, should a law-abiding person happen to be in a structure, tent or a vehicle when accosted, responding with lethal force is presumed reasonable unless there is proof beyond a reasonable doubt to the contrary.

If the D.A. really intends to prosecute the pharmacist he faces a considerable challenge. Jurors will have to stand in the defendant’s shoes, absorb all that took place, then find unanimously and to a near-certainty that what he did was beyond the pale. Now, anyone who’s even vaguely familiar with policing knows that trained and experienced officers often misperceive threats when under stress, occasionally with tragic consequences. If that’s so, what can one realistically expect of an ordinary citizen?

That’s exactly what Ersland and his lawyer (and yes, maybe the prosecutor) are counting on. An older man who’s hobbling around after surgery gets robbed at gunpoint -- and fights back! If the pharmacist sticks to the story that the youth was trying to get up it may be impossible to get unanimous agreement that what he did amounts to murder.

On November 14, 2007, Texas retiree [Joe Horn](#), 61, noticed two men break into a neighbor’s home. He dialed 911 and was told that officers were on the way. Instead of remaining in his home, as the dispatcher instructed, Horn got his shotgun and confronted the suspects as they left. When they failed to heed his command to stop he shot them dead. After a great deal of controversy a [grand jury](#) declined to indict. To his credit, Horn expressed remorse. “I would never advocate anyone doing what I did,” he said. “We are not geared for that.”

No, we’re not. And it’s impossible to recall a bullet.

As for Oklahoma, the story is turning curiozier and curiozier. Not only did the D.A. agree to the druggist's [release on bail](#), an unusual privilege for someone charged with first-degree murder, but he vigorously *contested* the judge's order barring the defendant's access to firearms. Whatever may have happened in the pharmacy, the prosecutor argued, Ersland is legally entitled to have a gun to defend himself and others. Why, he wouldn't even be in court had the robbery not occurred!

"Then why did you charge him, Mr. Prater?" the exasperated judge asked.

Technically, the prosecutor may be right. Oklahoma's gun laws, which score two points out of 100 in the [Brady Campaign's gun-control scale](#), are extremely permissive ([Montana](#) earns a whopping eight points; [Texas](#), nine.) When States nostalgically revert to the hang-'em high rules of the wild West, letting citizens carry guns at will and leaving it to them to figure out when to squeeze the trigger, it's no surprise that occasionally something will happen that looks like an execution. And if the dead person is demonstrably a bad guy, where's the harm? After all, there's always enough slack in the system (wink, wink) to assure that the consequences to the good guy, if any, are minor.

You think *you're* confused?