

Legally Speaking



Age Appropriate

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Contributing Editor

January saw the close of a tragic story. Former Chief of Police Edward Fleury was found not guilty of manslaughter in the accidental death of 8-year-old Christopher Bizilj at a machine gun exhibition held in Westfield, Massachusetts, in 2008.

Fleury, chief of police of the town of Pelham at the time, was the show's promoter. Billed as a family event, people, including children, were allowed to fire machine guns under the supervision of range personnel. 8-year-old Christopher and his 11-year-old brother had come with their father. The 11-year-old was allowed to fire, without incident, a full-sized Uzi. After the gun jammed several times, the 11-year-old finished using the Micro-Uzi.

Then it was Christopher's turn. He also fired the Micro-Uzi. In a freak accident, the boy lost control of the gun when it recoiled. He was killed by a single shot to the head. It was a major news story at the time.

Chief Fleury, as the show's organizer, was charged with providing a machine gun to a minor and manslaughter (the wrongful, but unintentional death caused by carelessness). The owner of the machine gun was also charged with providing a machine gun to a minor. That the promoter of an event can be charged with manslaughter if there is a preventable death by someone attending, is established law. The owners of the Coconut Grove, a Boston night club where hundreds were killed in a 1940s fire, as well the owners of the Station Night Club which burned with great loss of life more recently, were convicted of manslaughter because they used flammable decorations and had inadequate exits. If you are running an event for the public, you must make it as safe as possible.

After several postponements, the criminal case against Fleury went to trial in January of 2011. The lawyers argued over whether or not the jury should see a home video of the actual shooting. The judge allowed the video into evidence. It was a hard thing to watch. In the end, however, the jury found Fleury not guilty on all counts. Because of that, the charges against the owner of the gun were to be dropped.

The event scarred everyone associated with it. Chief Fleury re-

signed as chief well before the trial. The parents of Christopher divorced. Everyone who was there or who saw the video was shocked. The Westfield Gun Club and a number of others named in a civil action settled out of court for \$700,000. The death prompted the state legislature to consider prohibiting anyone under 21 from even touching a machine gun. Considering the state was deploying 19-year-old National Guardsmen to Afghanistan, the legislation was not well thought out although it gathered considerable political steam.

The prosecution of those who ran a range as a result of a death on the range had enormous possible consequences for all gunowners as did the prosecution of those who loaned their guns for the purpose of the demonstrations. The district attorney's argument was that allowing someone to use your gun, even if it were under direct supervision, was the same as transferring the gun to a prohibited person. If that position were upheld, then there would be no way to train a new shooter. In Massachusetts you need a license to possess a gun and you need to be trained to obtain a license.

The testimony that came out of the trial was instructional. It reminded us that age, maturity, being responsible, being knowledgeable and being experienced are not always the same thing.

The child, Christopher, may have been a very responsible and careful child. He lacked sufficient knowledge and experience with guns to understand what he was getting into. The smaller the gun, the larger the recoil. A person with greater maturity might have asked the range officer to load a single round first so that he could see how much recoil would result. Had the

gun been larger, had the barrel been longer, the barrel probably would have come back and hit Christopher in the face but he probably would not have shot himself. Even that could have been dangerous as the bullet could have gone wild. When Christopher started to lose control of the gun, he probably squeezed harder to hold onto it. That of course would have caused the next round—the fatal round—to go off.

It is a good lesson to remember. Don't give someone with unknown shooting skills a fully loaded clip or cylinder for their first try. See if they can hold onto the gun when it goes off. The problem is not just with children. Some years ago, I was watching army waist gunners qualify on a .30 Cal., belt fed, air frame mounted machine guns from the deck of a military helicopter. The aircraft was sitting on the ground with the engine running. A few seconds into the qualification, the trigger jammed on "fire." The soldier panicked, let go of the gun and jumped out of the aircraft. The machine gun snaked around like an out of control garden hose on steroids spewing live rounds in all directions. Most everyone ran for cover except the crew chief. He grabbed the ammunition belt and twisted it. The gun jammed. The firing stopped. Knowing what to do, having the experience to do it, and having the maturity under stress to do the right thing at the right time is important. The army achieves this, not by keeping its soldiers ignorant, but by repetitive training.

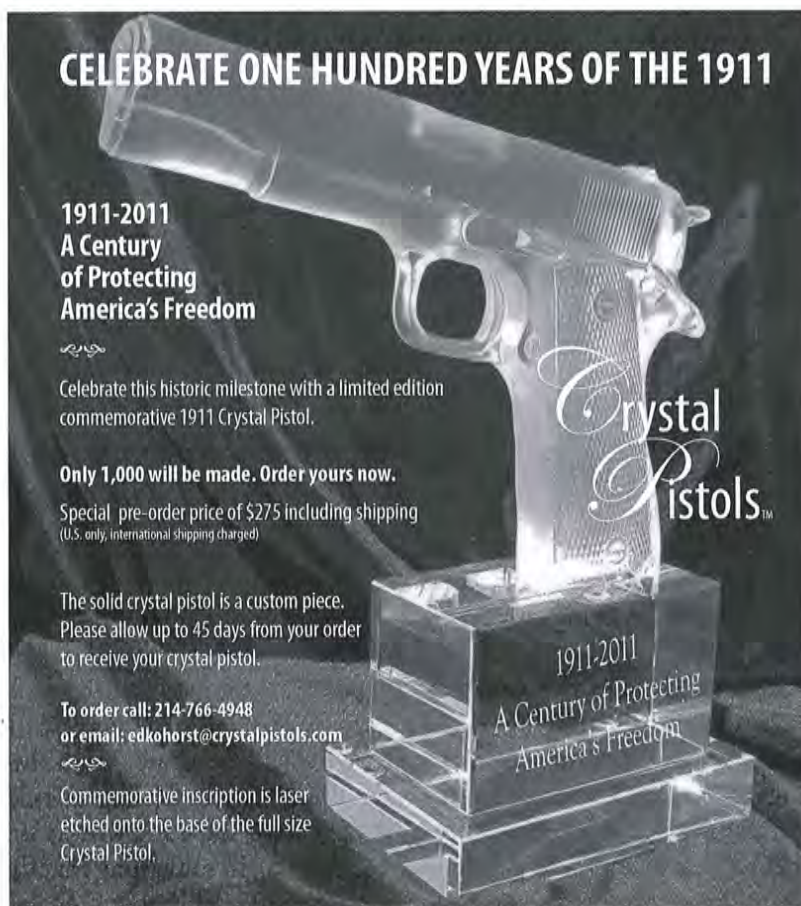
In Christopher's case, the gun was too small for him to control given his size. The smaller the gun, the worse the recoil. It was not his age. It was not his maturity. It was his weight. Not everyone can ride the "Killer Rocket Sled" roller

coaster. You have to be of a certain height. The gun Christopher tried to shoot was not age and/or weight appropriate for him. With many guns still designed for the male shooter, it is a constant problem for smaller women to find equipment that fits right. It is important for proper control, to have proper size. That is not always the smallest gun.

Christopher's father had age and size on his side but not maturity, knowledge or experience. His first responsibility was to ensure the safety of his children. Firing ranges are dangerous places. So, too, are railroad stations, traffic intersections, large crowds, lawn mowers, chain saws, swimming pools and a large number of other things. In this instance, the father took his sons to an event that was interesting, but potentially dangerous. The father was a highly educated doc-

tor but he lacked sufficient knowledge about firearms or experience with the Micro Uzi. He should have taken the advice of those people running the event. The father, however, was older than the person running the range and, according to the range officer, used that factor to get his own way. Against the advice of the range officer, he allowed his 8-year-old son to fire a gun that had too much recoil for the boy. Further, the father needed to keep a close eye on his children at all times. Rather than supervising the firing, the father involved himself with taking pictures, leaving the 8-year-old to manage the gun on his own with disastrous results. The father failed to assume proper responsibility which is a factor of maturity.

The range officer was only 15. He lacked age. He was, however, knowl-



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edgeable and experienced with machine guns. We have every reason to believe he was a responsible young adult and took his duties seriously. He advised Christopher's father that it was not a good idea to let Christopher fire the gun. In the face of an assertive adult who appeared to know what he was doing, the range officer did not have the maturity to stand up to the older man. A more experienced or mature range officer would have either said, "No;" required the boy fire a single test round to make sure the boy could handle the recoil; or, insisted on holding the gun himself while letting the boy pull the trigger. The range officer did not have sufficient experience with people or with being in charge which is altogether different than being experienced in gun handling. When involving gun knowledgeable youth in programs, keep in mind that their experience does not extend to knowing how to deal with people.

Being bullied into doing something unsafe occurs to people of all ages who lack the self-confidence which comes with maturity and experience. Never do anything yourself, or let someone else do something, that your better judgment tells you is unsafe.

There was also testimony that the two Uzis at the range officer's station had been jamming. A mature range officer would have temporarily closed the point to determine the nature of the problem. It is likely the guns were overheating or were fouled from being constantly fired.

Although the District Attorney claimed the Uzi could fire 1,200 rounds per minute, he lacked the knowledge and experience to understand that the theoretical number of rounds a hand-held gun (one without a cooling system) can cycle

bears little relationship to the rounds it can continuously fire without jamming.

Chief Fleury thought he had covered all his bases. He appeared to be a sensitive and responsible person. He had held other shows without trouble. He was the man in charge. Whatever happened was morally his responsibility even though a jury found no criminal negligence. Chief Fleury has to live with Christopher's death for the rest of his life.

In retrospect we can look at this event and come up with all sorts of ways the tragic accident could have been prevented. The truth is, it was not foreseeable. It was not foreseeable by Chief Fleury, Christopher, Christopher's father, the range officer or the club. There was no reason to believe the range was not well run. Although one might question the use of a 15-year-old as a range officer, there are many 15-year-olds engaged in competitive shooting who are more knowledgeable and safer with guns than some police officers who never fire their gun. Should these events be banned? No. They have a better safety record than the nation's amusement parks or swimming pools. Should people who run these types of events rethink their rules? Definitely. Should they give greater attention to having guns both age and body size appropriate. Absolutely. A small woman would have had the same problem that Christopher had.

If you are going to run a live fire event, set up a committee to review safety. Give thought to all possible problems. Try to establish a standard response for the range officers you will be using. Give them the ability to fall back on the "rules" if they have someone who is urging them to do something that they feel uncomfortable about. Make it

clear that the administration will stand behind the decision of the range officer. Make it clear to all the range personnel that it is everyone's direct responsibility to insure safety. Make it clear that their job is to say, "STOP," if something is wrong.

What could the club have done? Anytime anyone is injured on club property, the club is apt to get sued. If a child is run over in the parking lot during an event, if someone falls on the stairs, if someone chokes on a hot dog, the club is apt to get sued. The answer is not to stop holding events.

A club's first line of defense is a good liability policy. Almost more important than the coverage limits, is the fact a liability policy will pay for the lawyer to defend the club from suit. A club could win a suit but go out of business paying the legal fees if it did not have a liability policy.

The club's second line of defense is solid safety rules that are posted and enforced. Warning signs, trained range officers, and safety training all help. People who fail to obey range officers, people who violate safety rules, should lose their range privilege. If the club is going to rent its facilities out for any reason, it needs to make sure that its insurance policy will cover the activity. Some clubs have clubhouses that are suitable for receptions. If alcohol is to be served, make sure that you have an agreement in writing that the person serving the alcohol is licensed to do so and carries dram shop liability insurance. If alcohol is being served, the range should be closed if it is near where the alcohol is being served. No one who has been drinking should be allowed near a live range. If the range is going to be used for some kind of event, a fair, a flea market,

a farmer's market, or the like, where the general public will be invited to attend, the promoter of the event must have liability insurance that covers not only himself, but the club. The promoter needs to sign an indemnity clause saying that if the club is sued, that the promoter will indemnify the club for whatever loss might be sustained.

The club should not get involved in the fine details of an event. If it does so, it might be held to a greater responsibility if something goes wrong. The club should, however, insure that the promoter has thought out, and has a plan, for those things that relate to public safety. It should be sure that the promoter is not violating the club's range and safety rules.

It is important to invite the public to our ranges so that they can understand that our hobby is both safe and fun. More people drown at swimming pools than are hurt in the shooting sports. More young people are killed playing contact sports. More people die in "medical accidents" at hospitals. The shooting sports, although potentially dangerous, through hard work and training, have an excellent safety record.

Over the last twenty years, sporting clubs and gunowners have informally conducted one of the most successful private safety programs in the country's history. With home safety courses, hunter safety courses, gun handling courses, youth programs and public programs, they have cut the accidental death rate with firearms more than in half at the very time gun ownership has been increasing. Education, not keeping people ignorant, promotes safety. Training and familiarization programs must continue. In the end, they save lives.

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CA Court Nullifies Handgun Ammo Registration Law

California gunowners were rejoicing after a Superior Court judge in Fresno ruled on Jan. 18 that the state's prohibition against online sale of handgun ammunition is unconstitutional, and followed up on Jan. 24 with a permanent restraining order preventing the state and its agents from enforcing the provisions of AB962.

The statute was signed into law by former Gov. Arnold Schwarzenegger in 2009 and would have taken effect on Feb. 1 of this year. However, it was challenged by several groups including the California Rifle and Pistol Association (CRPA) and the National Rifle Association.

In a highly unusual move that reflects growing law enforcement opposition to ineffective gun control laws, Tehama County Sheriff Clay Parker was the lead plaintiff in the lawsuit, captioned Parker v. California. Other plaintiffs include the CRPA Foundation, Herb Bauer Sporting Goods, ammunition shipper Able's Ammo, collectible ammunition shipper RTG Sporting Collectibles, and individual Steven Stonecipher.

Almost immediately after the ruling, state Attorney General Kamela Harris said she might appeal.

Judge Jeffrey Hamilton ruled that the statute, requiring that all ammunition sales in the state be face-to-face and that dealers be required to take a fingerprint of the buyer or face a misdemeanor criminal charge, is unconstitutionally vague on its face. By enjoining enforcement of these statutes, mail order ammunition sales to California can continue unabated, and ammunition sales need not be registered under the law. Gunowners would have had to get all of their on-

line ammunition purchases shipped to a licensed dealer to comply with the registration requirement.

The National Shooting Sports Foundation likened the fingerprint requirement to equating law-abiding gunowners with criminals. NSSF considered the ruling a major victory for gunowners.

While the law was aimed ostensibly at handgun ammunition, it would have applied to a much broader variety of ammunition, because some handguns are chambered for rifle cartridges.

The law was championed by state Sen. Kevin De Leon (D-Los Angeles), who argued after the decision that the NRA had gone "judge shopping."

Judge Hamilton's ruling reportedly does not affect municipal ammunition regulations now in effect in Los Angeles, Sacramento and other cities.

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