Armed Citizens' Legal Defense Network, Inc.

Defending Against 1st Degree Murder Charges

An Interview with attorney Edward Levy

Interview by Gila Hayes

Financial demands on the Legal Defense Fund were moderate in 2020. We drew on the Fund three times during the year, but its most serious use was in mid-August of 2020, when a member shot and killed a man in defense an intimate partner in her apartment.

As members know, we go to any extreme necessary to protect member privacy, to the extent that many of the member-involved cases for which the legal defense is paid from the Legal Defense Fund are only mentioned in the briefest of outlines. We are driven to make sure that any mention given a member's use of force never starts the ball rolling for a civil lawsuit or gets criminal charges refiled.

Because the member we assisted in August did not have an attorney, his initial call launched, amongst other steps, an all-out drive to engage one of the Network affiliated attorneys in his area. Because it was Friday afternoon at the height of vacation season, several of the affiliated attorneys we contacted told us they were out of state. After a flurry of calls, Network President Marty Hayes spoke with attorney Edward Levy of Denver, CO, who agreed to go to the jail and meet with the member.

A week and a half later, the member was released following an interview with District Attorney investigators, in which our member and our affiliated attorney clarified the facts of the case. In the words of the district attorney's order to release the member, "After further investigation and review there are insufficient grounds for the issuance of a criminal complaint against the defendant at this time."

What did attorney Edward Levy do to bring about that favorable result? Members will be interested in a conversation we recently had with Levy in which we explored that question, so we switch now to our familiar Q & A format.

eJournal: We were grateful when you agreed to go check in with our member at the jail, and we were relieved later when, you told us that you would be happy to represent our Network member. Could you tell us what you found initially?

Levy: Most people in Colorado tend to be held on the highest possible charge. So, when I found out that they had charged the member with first-degree murder, my suspicion was that they were still investigating the case and they wanted to make

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Network Legal Defense Fund Growth in 2020

With the violent riots, civil unrest, public dissatisfaction, social hostility that characterized the year 2020, you might think that calls from Network members needing help funding legal representation after self defense would have increased. To the contrary, numbers of member-involved incidents remained about the same, entailing funding requested and provided to defend a defensive display of a firearm, a gun drawn in preparation to fend off a charging dog that subsequently was not needed, and one fatality shooting. Several other incidents occurred and members called and discussed their legal representation needs with Network President Marty Hayes, but did not result in legal problems for the members.

When a Network member uses force in legitimate self defense, the Network pays attorneys, experts, private investigators and any other legal defense expenses to be sure that the member is not convicted of a crime, and that civil litigation seeking damages does not prevail. The case of the member involved in the fatality shooting illustrates the value of immediate funding to get a skilled attorney on the case, determining and identifying the facts that show the justification for the use of force and bringing that truth to the attention of prosecutors and district attorneys to influence charging decisions, while concurrently amassing the facts of the case to defend the use of force at trial, if necessary. The work of a Colorado attorney on our member's behalf is reviewed in the above article, also serves to illustrate how the Legal Defense Fund is used.

Growing a Stronger Legal Defense Fund

The Network's Legal Defense Fund grows with each renewal of membership and each new member who joins. During 2020, membership renewal rates remained very strong and new member enrollment enjoyed a moderate uptick, resulting in growth of the Legal Defense Fund to a balance just slightly over $2.5 million. While the Network almost certainly could have capitalized on the fear and panic created by riots in most of America's

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sure that he wasn't going to get bond. That turned out to be true.

After Marty called me, I was at the jail within four to five hours. By that time, the member had been transferred to the detention center jail where I met with him. I was only six or seven hours behind the detectives in terms of investigating the case. Our speed was the biggest and best thing that we did.

eJournal: Is that unusually fast for an attorney who is retained to represent someone facing serious charges?

Levy: It was unusually fast, and that speed was what won the case. Usually, you are at least two or three days behind. The person gets arrested, then they're calling friends and family asking them to find an attorney, but during that same time, the police are working the case and getting things together so that they can go to court.

Because this happened on a Friday, the member was not going to see a judge until Monday anyway. The police had all that time to work the case while the defendant would usually be scrambling for an attorney. Here, my investigation was only a few hours behind them over the weekend. That was dramatic in terms of impacting the outcome.

I had a leg up on the case, being local, being there quickly and getting the client's story about what happened. I was able to go meet with the member and understand the case through how he related the events. Because I am local, I am familiar with the apartment complex where the shooting occurred and that gave me an idea of the people that were involved. That allowed me to control the narrative.

I realized quickly that I had more information about what had occurred in the incident than the police did. That is because the witness had some concerns about personal liability, either criminal or civil, and immediately shut her mouth. The member did the right thing, too. He exercised his constitutional rights. He asked for an attorney and didn't say anything. That was huge in terms of how I proceeded in the case.

When I got the police's probable cause statement before the first hearing, I was able to take what I knew plus what the police were willing to tell me in that statement and figure out exactly what had happened. More importantly, it confirmed what the client had told me. We were able to drive the narrative, since the investigators at the District Attorney's Office and the police department didn't know what happened in the incident.

eJournal: What was the nature of the hearing you mentioned?

Levy: It's just an initial appearance, where the defendant is advised that he is being held on a first-degree murder charge, that the charges haven't formally been filed yet, and that no bond had been set. Usually, it is a bond appearance where the judge would tell him, you can post a $50,000 bond and get out, but because it was a first-degree murder charge, there was no bond available.

They had assigned it to a district court judge based on the seriousness of the case, so the hearing was very formal and had to cover all the bases; the hearing had to dot the i's and cross the t's. They had assigned a public defender to the case because they didn't know that I had entered my appearance, and I was able to get all the information that the D.A. had given the public defender.

eJournal: You said the probable cause statement you got before that hearing matched what you had been told by our member. Is that unusual?

Levy: I would say that it is unusual most of the time. People try to put a different spin on things. A lot of time, people who have a bad conscience, if you will, black out just as a protective device and they won't relate things or on the second or so meeting with their attorney they will start trying to sugar-coat what they did, instead of getting down to the meat of the issue.

Here, the member was very honest and forthright and frank. I spent a considerable amount of time with him over that Friday and Saturday getting ready.

eJournal: We appreciated you working over the weekend! After Monday's hearing, though, the authorities continued to keep our member in custody. What happened?

Levy: The District Attorney's office asked for more time to make a charging decision. Normally, they would overcharge right off the bat and then later reduce the charges, but because they really didn't have any information, they asked for more time. Normally, they would get the time. They could tell the judge they wanted to hold the defendant for another 48 hours beyond the initial time, and those requests are routinely granted, especially in major felony cases.

I established some credibility with the District Attorney and really let them know that we were in for the long run when I said, "I'm not going to contest that. You go ahead and take the extra days and make sure you are making the right decision about this case." I think that helped dramatically. They realized that we would be reasonable; we hadn't gone to Def Con 1 and fueled the missiles.

eJournal: The downside is that with no option for bail, our member remained incarcerated. Under the circumstances, if you had pushed for a speedier charging decision, would he have remained in jail, anyway? In your work to keep our member attuned to the progress of the case, how tough was it to tell him he was not going home right away?

Levy: He was onboard with that. He had gotten the whole jailhouse story, "You're going to be in here for a year before you go to trial; you're not going to get bond; you are facing really serious charges." I think the guards had him prepared for the long haul.

eJournal: To continue exploring the legal process – you finished

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the initial appearance and unfortunately our member went back to the jail. What did you need to accomplish next?

Levy: Now I reached out to the District Attorney and I tried to get an idea about what they thought the case was and where they thought their strength was. They had approached us to see whether or not we would be willing to let their investigator interrogate the member.

I pondered that, and it literally kept me up one entire night. Based on the investigation and background work I had already done over the weekend and my understanding of the case, I believed that we could control the narrative. I confirmed that the other witness had lawyered up and hadn't talked to the police, so I didn't think the investigation revealed what happened in the incident. We would be able to go ahead and say, here is what happened.

That was a very tough decision! Marty had given me the phone number for Mas Ayoob and so I gave Mas a call and I said, "Hey, here is what I am thinking; here is the initial evidence that we have. What do you think about talking to the district attorney ahead of the charging decision?"

Mas was pretty forthright. He said, "You know, there are a lot of risks in that but there is also some benefit. If you think that you can persuade them, if nothing else, you might get a better charge and then you will be able to post bond."

Then I went and talked with the member. He was onboard. In fact, one of his statements in the police report was that he wanted to tell "his side of the story" from the beginning and I think that is why the D.A. approached me.

We spent probably four to six hours prepping the member for what would be the interview of his lifetime. We were able to anticipate questions that the detective and the D.A. would ask, and I was able to focus the member on the legally relevant parts that would matter to the police and to the District Attorney's office. That interview was what cracked the case.

I contacted the District Attorney and we all met in the jail on Tuesday night for about a three hour interview, which obviously was recorded and on the record. I knew I could be playing a video of it to a jury. I was able to bring out all of the elements of the self-defense claim and had the opportunity to ask the member questions. For example, the member drew a diagram of the apartment and it differed from what I had previously seen, and I said, "No, we're not going to use this." Then the police drew a diagram, and I looked at it and said, "Close enough" and we used their diagram.

By being there during the interview, I was able to essentially guide the member and when the detective tried to joke or lighten the atmosphere, I was able to keep the interview serious enough and relate what happened.

eJournal: Were they playing tricky interview games trying to elicit inculpatory statements from our member, statements on record that could have been inaccurate due, simply, to human error?

Levy: Oh, no, no. I mean that there were standard interrogation techniques in their questions. The idea is that the interviewer, the detective, can put the defendant at ease, so he might spontaneously say something or not be as guarded in what he is saying or kind of try to please someone who is friendly and just chatting instead of having a deadly serious conversation about what happened.

For example, I was able to have the member explain things, and if he started to get off topic, I was able to say, "Look, we are just talking about the facts; this is like Dragnet, just the facts. That man over there, that is the detective that is going to ask you questions about what you heard, what you saw and things of that nature. You can answer all of those honestly and forthrightly. At certain times, he is going to ask you what you were thinking." That was my code word, because we were talking about intent. I told the member, "At those time, go ahead and let him know what you were thinking, but other than that, just stick to the facts." The member got with that pretty quickly.

One of the questions that I asked that was designed for the jury was, "At that point in time, when [name of the guy that was shot] moved from Point A to Point B, did you think that the gunfight was over?" Of course, the member said, "No." I knew if I was taking it to trial, I would be telling the jury about the gun fight and how the gun fight occurred in two stages. The shooting really wasn't a separate incident, it was a continuation and I really wanted to get that out early so that the District Attorney, too, would realize that I had a really good self-defense claim.

eJournal: There will always be questions about whether the shooter had lower force options to stop the attack, whether he went too far, and all the many other "what if's" that always come up an attacker is killed.

Levy: Right. District attorneys might say is that the first shot might have been self defense, maybe even the second, but by the time he got to five or six, a new intent formed. In a tenth of a second, we go from defending ourselves to making sure that other guy gets killed – to the intent to murder. Attorneys are good at that kind of thing.

eJournal: Did you feel that the authorities played sneaky games to elicit a confession or misstatements that could be used to indict our member?

Levy: Not with me there, no. They did in their initial fact investigation. They were trying to make sure that they understood what had happened; they wanted to make sure that what the member was telling them really did match their understanding of the scene and what they knew about what had happened.

They had a text message that the witness had sent that I got from the probable cause statement and they wanted to try to

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explore that. The concern about the text was that there might have been a conspiracy between the member and the witness. I had to debunk that right off the bat.

eJournal: Is it unusual for a defense attorney to participate that actively – not just telling their client what not to answer, but actually raising subjects that needed to be discussed?

: Well, usually the interrogation is over by the time I get hired! Usually, the police arrest the poor guy, and he blathers for three hours and then they take him over to the jail, they write up a probable cause statement and their case is done. They have made their case.

Usually, any statements that my clients give are what we in the legal business call confessions, so it is already a done deal. It is unusual to be there in the investigative stage and that is why our speed in this case was so important.

eJournal: Did the District Attorney ever actually formally charge our member with first degree murder?

Levy: No, the member was booked on first degree murder. If we had not talked to the District Attorney's office, they would have charged him with first degree murder later. When they asked me for the extension of time – which they would have gotten anyway – my consent to that said, "We are trying to be reasonable." Once we did the interview, they said, "We're not sure. Can we have yet another extension?" and that is when I knew the case was over.

When they couldn't get the other witness to roll over or talk and they decided they didn't have enough evidence to charge the witness, the case against the member fell apart because of the strong self-defense claim.

eJournal: When you laid out all the facts in the interview with the District Attorney, was there nothing to support their suspicion about a prior agreement to collude and kill a man?

Levy: No, but when I first heard the story, I thought, "Oh, my goodness, I think our client is in serious trouble." Then when I saw what the witness' text message, I said, "Oh, we are really in trouble!" After the interview, I met with the District Attorney and the detective, my first question was, "Are you going to charge the other person?" and they said, "We're looking at it, but we are not sure yet." If they had charged the witness, we would probably still be funding the case.

After they did an investigation of our story, they were willing to go with self defense. When they figured out that they didn't have enough evidence against the witness, and our story was solid in terms of the affirmative defense, they decided to fold their camp and let our member go. I would say 90-95% of our version of the events matched the District Attorney's understanding of events. It was close enough that I'm sure they wouldn't have been able to convince a jury it was not self defense.

eJournal: How long was it before our member was set free?

Levy: After the interview, the member was out within two days. They took another day to make their decision. We had another court appearance and the paperwork to the jail took more time than anything else.

eJournal: One fear members identify is being incarcerated during the time needed to show the criminal justice system their innocence, like our member was. Most people find that possibility horrifying.

Levy: I don't know anyone who has ever said that they had a good time in jail, but when I look at this case, what the member did was absolutely right. If he had and tried to explain things at the scene, it would have given the other witness the chance to torpedo his story and invent a bunch of lies. By staying silent, even though he ended up going into custody, I was able to control the narrative and get ahead of the case.

eJournal: This story's repeating themes have been truth and speed. Could we have been even faster? Suppose for a moment that a client knew you in advance, shot an attacker in self defense, and called you to come to where they were with the responding officers. Would there be a productive role for you at the scene? Would you even be allowed to talk with the client?

Levy: If that had happened here, I would have told the client to stay quiet and I would let them take him off to jail. There is nothing that I can do right at that point. The member was arrested by street cops; he didn't see investigators and detectives until he was at the police station. There really isn't anything I could do because they are in the middle of an investigation. If the client says, "I want to remain silent; I want my attorney present during any questioning," that is just as good as me being there. If the client tells every cop, every paramedic, everybody who shows up at the scene, chances are of the five, six or eight people who are there responding to the shooting, one of them is going to be honest enough to tell the court, that is what he said.

eJournal: If you were on the scene, would you be sidelined, frozen out of the proceedings?

Levy: There is nothing I can do while they are investigating. I have a right to be with the client assuming that they would put him in custody. If he is not in custody, I am just standing next to him anyway. There is not much I can do. I am totally reactive until they start actually making charging documents and take him off to custody.

eJournal: A number of years ago, a member shot a man who broke through the home's front door with the whole family home. We had an amazing affiliated attorney in that city, and a few hours after we hired him, we saw news footage of him speaking to news cameras from the member's front lawn, essentially telling the press to pound sand. It raises the question what, if any, interference or influence did the news media have in your case last summer?

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Levy: We only got one line sentence in the local paper. It didn't seem to be a high profile case. I think a lot of that had to do with the nature of the man who was shot, in that he was part of the recreational pharmaceutical industry and I think also a lot of it had to do with the apartment complex. While it is not a high crime area, it is also not exactly low crime, either. The police are familiar with it and there are a lot of police contacts at that apartment complex.

eJournal: After our member was freed, the temptation would be to heave a sigh of relief and conclude, "It is over," but I have to ask, is it really over?

Levy: Well, no. There were never any charges filed so there wasn't any dismissal, even without prejudice. There is no statute of limitations on murder. The other issue is civil, and so Marty told me, "Don't relax. You might have a civil case coming," and he was right, there could have been trouble from the deceased's family, or from the other person involved, either of whom might decide to file a case or seek recompense. We had to maintain vigilance.

I hired an investigator to check out the background of the witness and the deceased and to maintain liaison with the police department to see what they were doing with the investigation. For a month or two afterwards we continued to monitor the case until we knew that the District Attorney had totally dropped it and the police were no longer investigating.

eJournal: You mentioned that without dismissal of formal charges there's no judicial order that prevents bringing murder charges later. How long might the member remain under the uncertainty of having to answer to murder charges?

Levy: In that homicide is a major felony, first degree murder is a lifetime issue. As a practical matter, I would say about two years is the time to be concerned. Here, I think that the risk was that the other witness would change her mind, would decide to concoct a story and come in to accept responsibility for a conspiracy to kill an ex-boyfriend. That could have caused us a lot of problems. It was unpredictable, although she had lawyered up and been concerned about that from day one. We also did not know if there was going to be a civil lawsuit, so the idea was to keep a lid on everything and not publicize or discuss anything, waiting for the statute of limitations to run out, which is two years in our state.

eJournal: Additionally, I've seen situations befall other members who used fairly minimal force in self defense, in which they've lost employment, promotions or new jobs, to say nothing of a number of other personal problems not related to the criminal justice system.

Levy: In the past, I have suggested to people that they go see therapists and consult with professional career advisors. Some jobs are impacted by the mere fact that there was an arrest and that needs to be disclosed. When you start discussing homicide charges, you might as well be swimming with a great white shark. These are impacts that come at the end of every shooting. Here, all charges were dismissed after a full and complete investigation. That is all the member will need to say to an employer.

eJournal: Now that a few months have passed, what are your impressions of the whole situation?

Levy: The big issue was the speed, and the way I was able to talk with him and let him know what he was facing and what was going on. I think the member was very glad he had the Network behind him and was able to call on that resource. He knew that he was not alone. Apparently, he did have some concerns, because my website is minimal, it is not some big, sexy website, but now he is happy with the results. With any client, I have to make sure that we are compatible – that I am acceptable to the client, and that the client is acceptable to me.

Finances are usually a big issue. Because of Network membership, that issue was never on the table; finances were not an issue for him. A lot of times attorneys have to make decisions relating to finances and business, as opposed to doing the right thing. Here, I did not have that dilemma. I could evaluate his claims without worrying about whether or not he could afford the defense.

Even then, when I talked with Marty, I had to say, "Here is what I think we have; here is the work that I see our defense will entail," and Marty said, "It is a colorable defense. We're good with that. Go for it." So, I said, "Well, yeah, I can certainly make this defense work," and that was after meeting with the client literally only one time for a couple of hours.

eJournal: At any time did Marty express concern over how much you were spending in defense of this member? Did he ever imply that you might bumping up against a limit and you needed to close it out quickly? Did, for example, you worry if there were funds to pay the cost of putting your private investigator to work or for the hours you put in over that first weekend?

Levy: No, there was nothing like that at all. Marty expressed to me the idea of unlimited resources and that was good to hear. I think some attorneys might have thought, "Let's milk this and take it to trial," but I did the right thing for the client. I got him out as quickly as I could. But back to your question, no, I never had any concern about adequacy of resources, or that I could not go hire experts, or do what I needed to do.

eJournal: How did the flow of evidence about the case work? If, for example, Marty or Massad needed enough detail to identify use of force genuinely needed in defense of innocent life, could you share everything with them? Did you have to restrict, sort through, or cherry pick which of the case materials you allowed them to see?

Levy: No, I did not at all. Marty asked for my frank assessment of the case and I gave it to him. Massad provided more general guidance, and in case we needed more, he explained how

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hiring him as an expert would work.

When I was a public defender, even in a capital case, there was a lot of discussion about how much of our resources we could use on a case. How many attorneys do you put on the case? Even in the public defender's office, there are questions about resource allocation. We had to ask, is there money to handle this case and is the value of the case worth what we were putting into it? I mean, if the guy is going to lose, and it is a long, guilty plea, we might as well do the guilty plea quickly at the lowest possible cost. Here, I really felt that Marty and everyone was on board with doing what it took to help out the member.

eJournal: Yes, from my viewpoint and I believe I can speak for our vice president and our advisory board, too, in saying that is entirely accurate. The enthusiasm with which you shouldered the case came as a huge relief and we truly appreciate everything you did. You had served as a Network affiliated attorney since 2014, but due to the low number of member-involved cases, we had never had to call on you before, yet there you were that Friday afternoon, available to help. Furthermore, at no point during those initial days did we feel that you were rolling your eyes thinking, oh, just another criminal. You seemed to be as determined as we were to show that the use of deadly force was justifiable.

Levy: Personally, I appreciated the way we were able to do this, just on a handshake. I was able to tell the Network, "Here is what I see. I've got this," and boom, Marty was saying, "Go do what you have to do. Here is the money, go hire investigators and go defend the case." That made the Network easy to work with. A lot of times in capital cases, I am asked to prove my experience and show that I have the resources to do the case. Also, a lot of the homicide cases I get are dead-bang losers, but this one is one where we really had a good self-defense case.

eJournal: It has been especially interesting to hear your general characterizations about our member's quickness to grasp what he was up against and how his truthfulness let you commit to the strategies you pursued – like deciding to let the district attorney hold their interrogation.

Levy: The member had a credible, believable story which turned out to be true.

eJournal: You've mentioned his truthfulness several times. Does a lawyer feel differently when truthfulness and the facts of the case indicate an innocent person?

Levy: Absolutely! I have done thousands of criminal cases, and I think I could maybe count five who I thought were truly innocent and wrongfully accused in the first place and this was one of the five.

The answer to your question all goes to the amount of work you put into a case and the amount of belief you have in the client. For example, if you have a sex offender case, and you know what the outcome will be no matter what you do; you don't necessarily work as hard because you are not as emotionally involved and trying to correct the injustice. Here, there was an injustice that needed correcting and the right thing to do was to get the member out as quickly as possible with the charges dropped, as opposed to thinking, "Oh, let's go get a trial victory because we asserted an affirmative defense."

eJournal: I think your experience with our member last summer reflects the bigger truth about of our members that is illustrated by the low number of times members have used force in self defense. Of the 26 times we've paid attorneys and experts to protect our members' rights after self defense, all were resolved to the member's satisfaction without going to trial.

Maybe I shouldn't even put that into words, because it is very much a sword of Damocles hanging over my head! Of course, the future almost certainly holds a complex self-defense incident involving a member in a politically-hostile location that will indeed have to be defended court. Justice will require the decision of a judge and jury. That hasn't yet happened in 12 years, though, which does speak volumes about our well-trained, conservative, careful Network members.

For now, your experience with a member truthfully stating the facts of a justifiable use of force incident allowing you to bring your legal defense skills into play and accomplish a good outcome is a repeat of about two dozen other situations involving members. Thank you for being there for all of us.

Learn more about Edward Levy at his website http://atlaslawpc.com and if you should happen to run into this affiliated attorney at a pro-gun event, please be sure to thank him for his efforts on our behalf.

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