

November 4, 2003

Mike McGrath  
Attorney General  
State of Montana

EXHIBIT 2  
DATE 2/17/05  
HB 693

Dear Mike,

Thank you very much for your October 16th hard copy reply to my email asking you to help remedy what appears to be a trend in Montana by law enforcement and prosecutors to criminalize people using firearms to defend themselves.

I wish to pursue this discussion, but first allow me to clarify a couple of points.

The instances coming to my attention which suggest this trend seem not to be originating from situations handled by sheriffs departments, but, rather, they seem to be arising out of situations dealt with by city police departments.

Also, this emerging problem seems to be more of a cultural issue among law enforcement and prosecutors, rather than some obvious deficit in the laws. Thus, correction does not lend itself so neatly to a legislative solution.

Addressing this problem legislatively would be like application of gun control laws. Gun control laws are designed to curtail the conduct of a very few criminals, but have no effect on them and only affect the majority of good people who don't break the laws. Similarly, tighter laws to restrain conduct by law enforcement and prosecutors would have little effect upon those few who may be abusing discretion and common sense.

Allow me to offer an admittedly extreme example of the sort of law enforcement conduct that we hope to preclude in Montana by being proactive. Recently, and in another state, a nine year old boy was threatened with lethal force (a police officer point a loaded gun at him), arrested, handcuffed, and charged with juvenile delinquency for displaying a toy gun in public. His mother was charged with obstructing justice for objecting to the arrest.

You might respond that a trial jury will probably exonerate the mother and child. But, at what cost?

I agree with you in spades that juries are important - beyond important - and that Montana juries generally do a good job of exonerating mischarged people. However, reliance only on juries, and not on culturally-appropriate discretion by police and prosecutors, is a formula for disaster. I know of more than one family that has been ruined financially because of the costs of defense against criminal charges that were ultimately rejected by a jury. The logical extension of exclusive reliance on jury acquittal would be to simply charge every citizen with some sort of crime and let the juries sort out the actual wrongdoers. Obviously, this would be bad "justice". While criminal trial juries are absolutely critical to our justice process, they are not the best solution for the problem at hand.

Because the problem (i.e., police and prosecutors who seem to be growing more inclined to "throw the book" at someone using a firearm for self defense) appears to be more of a cultural problem among police and prosecutors, I am reluctant to seek a legislative solution. A legislative solution is very possible, but it would necessarily limit police and prosecutor discretion for all those who are not using poor judgment about what situations to charge and prosecute.

So, I am searching for proactive solutions that are less problematic for law enforcement than just changing the laws. How can the seeming poor judgment exercised by a few police and prosecutors be remedied without penalizing all other police and prosecutors?

The idea about reproducing the law enforcement advisory the South Carolina Attorney General did was only one idea. If you are unable to do that here, I understand.

Then, the question remains, what can and will you do to address this apparently growing issue in Montana.

Thanks for your consideration.

Sincerely,

Gary Marbut, president  
Montana Shooting Sports Association