

# SPARTACUS

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"And when the last law was down, and the Devil turned round on you — where would you hide, the laws all being flat? This country's planted thick with laws from coast to coast — man's laws, not God's — and if you cut them down — d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the

Devil benefit of law, for my own safety's sake." — *Sir Thomas More, in A Man for All Seasons*

The USA is all but unique among nations in that it is founded upon a principle. Most countries developed or evolved from tribes or conquests; we came forth from an idea: *all men are equal and are endowed with inalienable rights*. Because we earned our independence by throwing off the authority of a despot, one of the manifestations of that principle — which we've never achieved, but never stopped trying to achieve — is the duty of the government to prove the guilt of an accused beyond a reasonable doubt, as understood by a neutral jury. That's a high standard, and if the government doesn't meet that standard, the defendant walks. That's due process. That's the American social contract.

In the middle weeks of this month, November 2021, our society has been shown prime examples of due process at work. One of the trials, of Kyle the killer kid of Kenosha, ended with self-destructive hysteria, as my fellow liberals condemned the trial that acquitted him as racist, the judge that presided as prejudiced, the law that ruled his case antiquated (many, including Stephen Colbert, advocating changing the law of self-defense: a deadly and perilous path to follow). As has been pointed out by cooler heads, for example in Jesse Singal's article below, Kyle Rittenhouse's lawyers presented a good self-defense case, its assertions backed up by video. Rittenhouse popped three men. The first guy definitely attacked Rittenhouse first, the second whanged him with a skateboard, the survivor pointed a gun at him. The kid, they maintained, was in clear, understandable fear for his life.



The state did a sad job in trying to counter that defense. (According to Rittenhouse's counsel, that was what may have irritated the judge – not a pro-defendant bias.) The prosecution did very little with the fact that the stupid kid illegally toted a military weapon to a street demonstration, simply tossing forth the fact as if its point was self-evident. The state, in other words, botched their case, and so the defendant walked – to the fury of partisans who craved a politically pleasing conviction. They maintained that those who held with the demanding requirements of due process *must have been* in sympathy with Rittenhouse's adolescent politics; upon them – *us*, actually – they dumped accusations of the antithesis of due process, fascism. That is an intolerable libel. Seek ye the appropriate paragraph below for my response, but first, Singal's article.

### **The Rittenhouse Verdict Shouldn't Have Been a Surprise**

**-- Jesse Singal (from Persuasion)**

*Kyle Rittenhouse is no hero. But the failure of the media helps explain why so many people expected him to be convicted.*

A lot of people are surprised that Kyle Rittenhouse, the young man who shot three people in Kenosha, Wisconsin last year, killing two of them, was just found not guilty on all charges, including on two counts of homicide. The furious responses are already pouring in: just minutes after the verdict came down, "MURDERER," "WhitePrivilege," and "Amerikkka" began trending on Twitter. MSNBC quickly published a piece titled "Kyle Rittenhouse trial was designed to protect white conservatives who kill." A number of very high-profile figures, ranging from New York mayor Bill de Blasio to Wajahat Ali of *The Daily Beast* expressed similar sentiments immediately after the verdict on Twitter.

To these observers, Rittenhouse's acquittal on all charges confirms what they already knew about our justice system: It is a grotesque machine that will forever forgive white supremacist violence. From their perspective, Rittenhouse clearly killed two people illegally, and it's baffling that he got away with it.

But for those who have watched this case closely since that terrible night in Kenosha, this isn't a surprising result. The large amount of video footage available since almost the very start of this controversy revealed that Rittenhouse *always* had at least a decent self-defense claim, and potentially quite a strong one. The fact that so many people were so confused about the facts of this case—not only on the self-defense question but on basic matters like whether the people he shot were black or white, whether he took his rifle "across state lines," and whether he had preexisting family or social ties to Kenosha—suggests that, despite all the understandable talk of the right's "fake news" problem, partisan news coverage and punditry on the left is becoming a serious problem in its own right.

Rittenhouse says he decided to take part in helping to protect and clean up Kenosha after watching the wave of destruction that hit the city following the police shooting of a black man named Jacob Blake. Videos of him at various points during his day there showed he helped clean graffiti off of a school, interacted with protesters peacefully and asked them if they needed medical assistance (he apparently had some rudimentary first-aid training as a lifeguard but, contrary to what he told someone filming him at one point, was not an EMT), and took part in guarding various businesses—all while toting an AR-15-style rifle.

Then darkness fell and things turned catastrophic. The violence appears to have been sparked by Joseph Rosenbaum, a deeply disturbed man with a tragic history who had just been released from a hospital following a suicide attempt, who witnesses said had threatened to kill Rittenhouse earlier in the day, and who could be seen in one video seeking to provoke a group of armed protesters by yelling "Shoot me, n\*gga," repeatedly.

Rittenhouse testified that Rosenbaum ambushed him, and that appears to be borne out by the videos: Rosenbaum chases him a significant distance, and Rittenhouse, now hemmed in by parked cars and lacking an easy escape, only shoots Rosenbaum after he lunges at him.

Most of this was clear from the video that went online shortly after news of the killings went viral, but more recently released drone footage shows those final moments with greater clarity than before: Rosenbaum really was reaching for Rittenhouse or his rifle at the moment he was shot.

The other two men Rittenhouse shot chased him after they and others in the crowd realized he had shot someone. Video shows that Anthony Huber, who was killed, caught up to Rittenhouse and struck him with a skateboard. Gaige Grosskreutz, who survived and testified during the trial, acknowledged in a devastating moment for the prosecution that at the moment Rittenhouse shot him in the arm, he was pointing his own handgun at the teenager.



According to Wisconsin state law, lethal force is only legally permissible if someone “reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.” Even if a defendant provokes a confrontation, they’re still allowed to resort to deadly force if those criteria are met and they have exhausted other reasonable means of escape. Little else matters, really—not the politics of the case, not whether Huber or Grosskreutz thought they were chasing someone who had just killed someone in cold blood (which they may well have been). Many observers, myself included, thought that Rittenhouse couldn’t legally carry the AR-style rifle he used in the shootings. This only would have been a misdemeanor violation anyway, with a maximum sentence of nine months, but it turned out to be a moot point: The judge tossed the charge earlier this week because that law “applies to minors armed with rifles or shotguns only if those weapons are short-barreled,” as *US News* put it.

Whatever one thinks of these laws, they *are* the relevant laws here. And they made for an uphill battle for the prosecution all along, because the videos showed that Rittenhouse was, in fact, threatened by the people he shot. The videos alone didn’t prove that a self-defense claim would definitely prevail, of course, but they did come pretty close to proving that Rittenhouse did not instigate any of the shootings in question.

All of this was right there, on video and in the relevant statutes, for anyone with eyes to see. Why did so many people—including influential people who are paid to get the news right—look away?

**I first wrote about the case in a pair of newsletter posts** not long after it happened. I was astounded at the distance between what was on the video and what news outlets (not to mention the Twitter brigades) were saying. “First he allegedly killed a protester, by shooting him in the head,” was how Tess Owen described the violence in *Vice* on August 27th. Writing in *Slate*, Mark Joseph Stern wrote that Rittenhouse “placed himself at the center of the violence, then escalated it by shooting a man in the head.”

Countless other journalists and online personalities treated the case similarly. Even some elected officials got in on the act. Rittenhouse was quickly and publicly labeled a “white supremacist domestic terrorist” by Rep. Ayanna Pressley on Twitter.

After Rittenhouse was released on \$2 million bail—an amount raised by supporters—Alexandria Ocasio-Cortez weighed in: “Does anyone believe Rittenhouse would be released if he were Muslim & did the same thing in a diff context?” she tweeted. “For people who say ‘systemic racism doesn’t exist,’ this is what it looks like: protection of white supremacy baked deep into our carceral systems.”

The endless invocation of “white supremacy” as an explanatory factor in this controversy was strange, given that all three people Rittenhouse shot were white and given that, contra Pressley’s claim, no evidence ever emerged that he had any connection to white supremacists. Pressley was recently asked (by Fox News, in an admittedly leading email) if she stood by the comments and did not respond. (After the case went viral, Rittenhouse was embraced as a right-wing cause celebre and was photographed with some members of the far-right Proud Boys at a bar, but there’s no evidence he had a prior connection to that or any other radical group.)

Vice and Slate were far from the only outlets that contorted the facts of the case or published truly dishonest analysis. Intercept columnist Natasha Lennard wrote that Rittenhouse “chose to travel to Kenosha, Wisconsin, and hunt down anti-racist protesters with an assault rifle,” an astonishingly misleading description of the actual chain of events.

Other progressive writers expressed outrage that when he took the stand, Rittenhouse began sobbing. Jamil Smith wrote in Vox that “It isn’t simply that a killer cried about his own fear, rather than the lives he took. It represented the exercise of entitlement, the enduring perception of the youth of white men and boys who commit illegal acts.” Of course, the fact that Rittenhouse also cried—and vomited—when he turned himself in to the police suggests that there’s at least a chance he was actually traumatized by what happened. But telling readers about that prior incident would complicate the narrative that he is an embodiment of entitled white evil.

Every step of the way, a subset of journalists and commentators have done everything they could to paint Rittenhouse in as negative a light as possible, even when doing so has involved distortion or selective forgetting. Take the endlessly regurgitated claim that he “crossed state lines” to get to Kenosha. First of all, this is geographically trivial: Rittenhouse lived with his mother in Antioch, Illinois at the time. Antioch borders Wisconsin, meaning that Antioch residents can “cross state lines” to grab a cup of coffee.

Second, the whole point of that language is to make the gun charge sound more serious, to portray Rittenhouse as an outsider seeking carnage, or both—but *all of this* was debunked many months ago. Rittenhouse didn’t bring his rifle across state lines, full-stop. A friend bought it for him and kept it at his (the friend’s) stepfather’s house in Kenosha. And those few journalists who did

deep reporting into the case—Charles Homans of the *New York Times Magazine* (a former colleague of mine at *Washington Monthly*) and Paige Williams of *The New Yorker* both deserve plaudits for their work—quickly established that Rittenhouse had many ties to Kenosha, where he worked as a lifeguard and where his father, grandmother, aunt, uncle and a cousin all lived.



The overall effect of all this bad journalism and irresponsible, inflammatory punditry was the creation of an entirely separate version of events that bore almost no resemblance to what really happened that awful night in Kenosha. It was “fake news” in the same sense

progressives often use that term: the creation of alternate realities as a result of partisan outlets

and journalists more interested in narrative-promotion and ideological point-scoring than in fact-checking.

**Of course, these false and distorted ideas** about the Rittenhouse case didn't emerge fully formed from a vacuum. For a very long time, American authorities at every level really *did* look the other way in the face of vigilante right-wing violence. Reconstruction failed in large part because federal authorities would not protect black Americans from a terrifying onslaught of white violence in the South. And the much more recent racial reckoning that followed George Floyd's murder led many Americans to become more attuned to the possibility of racism lurking within everyday interactions, especially those involving law enforcement.

So it's understandable how, to the casual onlooker, all these viral claims about Rittenhouse being a white supremacist who went out looking for trouble might *feel* true, might *feel* like the sort of thing that could happen in America. Whether we should fit the Rittenhouse case into that preexisting historical mold is a separate question—and all the available evidence suggests it would be foolhardy to do so.

And think about the consequences of all this misunderstanding, of millions of people having false ideas about Kyle Rittenhouse, what he did, and the justice system's treatment of him: It will surely increase the probability of post-trial violence, for one thing, because people will be surprised that such an "obvious" case of murder was acquitted. And even if that outcome is averted, this result will be taken as yet more "proof" that the justice system is beyond redemption. This sense of nihilistic hopelessness, that justice for Jacob Blake would be impossible through judicial channels, is part of the reason Kenosha burned in the first place, and it's terrible to think of the consequences of this belief spreading further.

The misinformation also has a pernicious effect on conservatives. It's been clear to many of them, from early on, that the media wasn't treating this case fairly and that to get a more accurate version of the story, they would have to turn to alternative news sources. Many of those sources are right-wing and not particularly concerned with truthfulness either: they tended to portray Rittenhouse as some sort of bona fide American hero, when we obviously shouldn't be encouraging 17-year-olds to embrace the roles of paramilitary foot soldiers. Continuing to drive conservative Americans away from mainstream outlets will only exacerbate our national divide and all the problems that come from it—from conservative belief in conspiracy theories like QAnon and #StopTheSteal to the increasing distrust, fear, and hatred that Americans have of the other political party.

Even if we can understand where the false narrative about Kyle Rittenhouse came from, we should not excuse this sort of fake news. The mainstream media has a responsibility to report facts honestly, whether or not they line up with preexisting narratives or ideological priors. If they fail to do so, their actions will only drive America further down its present, dangerous path.

*Jesse Singal is a contributing writer at New York Magazine, the cohost of Blocked and Reported, and the author of The Quick Fix: Why Fad Psychology Can't Cure Our Social Ills. You can read more of his writing, including his initial coverage of the Rittenhouse case, on his newsletter, Singal-Minded.*

GHLIII here again. It's a testament to the despicability of America's right wing that certain of its stalwarts have used Kyle for their own purposes – Tucker Carlson brought him onto his Fox show to praise him, Marjorie Taylor Greene proposed giving him a Congressional medal, all the more absurd since she voted against the same honor for the Capitol police butchered on January 6<sup>th</sup> by the Trumpy mob. Matt Goetz, from whom *maggots* recoil in disgust, wants to hire him as a page. Obviously these hyenas only hope to



capitalize on and weaponize his name. I'm proud that Rittenhouse's lawyer has condemned these shenanigans; he wants Kyle to fade into the mass and try to become a normal man. Rotsa ruck.

Another response to the Rittenhouse verdict has demanded that the law on self-defense be changed. Danger, Will Robinson! I opened this issue with the great speech on this subject from Thomas More in *A Man for All Seasons*. His son-in-law has declared that he would cut down all law to get at the Devil – stating, in other words, that the end justifies the means when you're dealing with evil. More, the patron saint of lawyers, reminds the passionate numbskull that whenever people mess with the law for reasons of public outrage or political expediency, they forget that *the worm will turn*, and those who oppose them will inevitably take power in the future. And if the law is overly malleable, *they'll change the law too*, possibly into something antithetical to free thought. *The passions of the moment are the worst possible reason to change the guiding principles of a society.*

I opined to this effect on Facebook after the verdict, and was – of course – condemned by a woke schmoke as a *Nazi*. I hope *Spartacus* readers will forgive me for reprinting my response. (Michelle is the lady who leveled the charge against me. “Einfaltig” is German for ... well, you look it up.)



- Yes, you got me: I'm a Nazi, who graduated from Berkeley in 1971, was shot at and teargassed at People's Park, who worked for Eugene McCarthy and looked Bobby Kennedy in the face a week before he died, who has voted for one Republican in his entire life (Ivy Baker Priest for California State Treasurer in 1970), who went on the million-strong peace march through SanFran in the early seventies, who personally tried to brace Richard Nixon over the Kent State massacre at the New Orleans airport (he ignored me) and later visited the site (it's small), who never made a dime despite 25 years as an attorney because he worked as a public defender, saving a guilty

black man's life in a death penalty case and freeing another in a tough black-on-white rape trial, and who took his life in his hands by yelling "Sig Heil, you @sshole" at David Duke in New Orleans as he drove past the Klansman's press conference. Yes, indeed, me and Heydrich. You're *einfaltig*, Michelle.

My shrink mentioned that she, too, supported the Rittenhouse decision because Kyle was 17 when he shot those people, his brain not fully developed, and she opposed charging kids as adults. No such issue with the three bohunks from Brunswick (Georgia) who cornered and killed Ahmaud Arbery. They were grown men, and this incident didn't occur within the chaos of an urban riot, but on residential streets.

Quick facts, stolen from Wikipedia: On February 23, 2020, **Ahmaud Marquez Arbery**, a 25-year-old Black man, was murdered in Satilla Shores, a neighborhood near Brunswick in Glynn County, Georgia, United States. Arbery had been pursued by three White residents – Travis McMichael and his father Gregory, who were armed and in one vehicle, and William "Roddie" Bryan, who was in another vehicle and recorded the pursuit and shooting on his cell phone. After Travis exited his vehicle and wielded a shotgun, Travis and Arbery engaged in a physical confrontation, during which Travis shot Arbery. Police interview transcripts detailed that Gregory initiated the chase after seeing Arbery running past his house, suspecting that Arbery had committed burglary or theft in Satilla Shores, but no evidence has emerged of Arbery doing so. According to police testimony, Bryan told police that he saw the chase and joined in independently, but was not sure if Arbery had done anything wrong. Arbery had entered an under-construction house with no doors five times in five months, including once shortly before the shooting. Security camera video from inside the house showed no evidence of theft.

The verdict – Travis McMichael convicted of murder with malice, the others of *felony* murder – brought relief to Arbery’s family, which is good, and publicity to the repulsive Al Sharpton, which isn’t. It also calmed my fellow liberals by distracting them from the Rittenhouse trial. The verdict doesn’t make me entirely happy. The McMichaels got the condemnation they deserved, but Bryan – I’m not so sure. I would have acquitted him of *all* of the worst charges.

I dislike the charge of *felony murder* on principle. Felony murder states that a codefendant in a case can be hit with a full murder charge even if he had no thought of committing the crime. I believe that unfair. *Intent* should make all the difference when serious crime is involved. I well remember a case in Louisiana where a perfectly decent black kid accepted a ride from some other guys in his neighborhood, then shared their life terms when one committed drive-by shooting. Murder was the furthest thing from his mind, just as there was no proof that the McMichaels’ neighbor, “Robbie” Bryan, had any intention of causing Arbery harm. His involvement, to me, was just too attenuated when compared to the McMichaels’. The difference in degree is just too great. I hope the judge cuts him whatever slack there is to be cut.

One absolute truth: watching the trials made one thing clear: *I miss court*. Talking to my wife’s speech classes about legal argument and working on my public defender book are all well and good, but I want back in those trenches. That’s Atticus Finch on my first page, as portrayed by Gregory Peck – another Berkeley boy – in, of course, *To Kill a Mockingbird*. I like to think that he too would give the Devil his due ... due process, that is, while fighting everything the Devil stands for.

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Since I would rather not acknowledge the 5-6 New Orleans Saints (four losses in a row! *Gawd!*) I must mention other diversions. At the theatre, the extraordinary *Last Night in Soho*, a fine and original psychofantasy featuring Thomasin McKenzie, a villainous(!) Matt Smith, the spookily beautiful Anya Taylor-Joy (watch her dance!) and, alas, the last performance of Diana Rigg – so effective I didn’t recognize her. No spoilers; it’s a mystery, a time travel story (such as I’ve never seen), a coming-of-age fable – excellent stuff.



On streaming, the grim Aussie revenge and renewal saga *The Nightengale* resonates far after its last shot. This film dominated the Australian film awards for its year and the *Game of Thrones* actress Aisling Franciosi dominates the film. Feminist critics have rightly honored for its courage. The subtext is racial (aboriginal) and national and racial pride – hearing Franciosi say “Eire go brach!” is almost enough to make me wish I was Irish. Warning: the film is violent and disturbing to the point of pain. Worth it, but that warning is sincere.

Speaking of violent, in my last *Spartacus* I mentioned that the first episode of the *The Squid Game* – to move, at *last*, into the science fiction genre – put me off with the callousness of its brutality. I swore off the brutal Korean fantasy. Afterwards, I recovered my equilibrium and binged. *Squid Game* remained violent, maddeningly suspenseful and upsetting – and won me over. Ripe surprises await those who choose to become similarly involved.

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In genre matters, I cast my Hugo ballot, and have never voted “No Award” so often. Mostly I was acknowledging my unfamiliarity with the nominees – and indeed, I knew very few – but in the case of Natalie Luhrs’ obscene rant against George RR Martin’s MCing of last year’s awards, I’ve seldom felt

greater pleasure to mark “No Award” above a candidate. That nomination is, like Jeanette Ng’s rant against John W. Campbell, a disgrace to science fiction fandom.

I assume the crazed schedule COVID forced upon this Worldcon and its awards is now corrected. So I call for suggestions for the 2022 Hugos. Soon be time to fill out *that* ballot.

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On the day after Thanksgiving, we close.

With her sisters (1) stuck in North Carolina and (2) hosting a get-together for “orphan” friends, as Peggy Ranson used to call those of us without family on holiday, Rosy had only her father and her ball-&-chain to take care of. A delicious dinner for us all – in fact, three delicious dinners for us all, she made so much. Those sauteed ‘shrooms, made according to her sister-in-law’s recipe – add them to my list of what New Orleans’ Underground Gourmet called “a Platonic dish.” SLOBBER GOBBLE EAT EAT \*BURRRP\*

With a more crowded table, father-in-law Joe – in keeping with the holiday – asks everyone to reveal something for which they are grateful. No such ritual in 2021, but easy enough for me. I’m grateful for Rosy, for Joe’s generosity, for our Ginger – holding on fine as she approaches 16 – for the writing bug I caught again this year, for fandom, distant though the pandemic has made it. We haven’t seen each other much in the past two years, peeps, but I got to tell you: it’s good to know you’re there.



"We don't have to win, we just have to tie this up in court until the end of November."