



## Defending Legal Rights Early in the Process An Interview with Attorney Jason Short

Interview by Gila Hayes

*The importance of getting an attorney working on your behalf quickly after use of force in self defense seems like a no-brainer, but a surprising number of people wait until their court date looms. Then they get scared. Usually when that kind of information comes over my desk, it is from a non-member who is hoping we will champion his or her cause. As often as not, the matter entailed physical force, not firearms, and the armed citizen thought, "It wasn't a shooting so no big deal." To the contrary, it is a big deal!*

*About a month ago, I was chatting with our affiliated attorney Jason Short in Portland, OR. He and an associate had recently represented a man who had displayed a firearm to prevent being assaulted. He was arrested for disturbing the peace and hired Short's firm. Upon entering the courtroom with his attorney, the man was directed to stand easy for a moment or two while the lawyer went forward to confer with others. Moments later, the lawyer returned and told him, "Let's go. It's all taken care of."*

*To a layperson, the result seems almost magical, while to the attorney and his staff, it resulted from early morning meetings, and rapid efforts behind the scenes to gather up all the facts, liaise with the prosecutor and implement a host of other preventive measures. As Short described how much good he can do before arraignment, I was reminded how important it is to engage legal counsel as early as possible after using force in self defense. I'd like to share our discussion about the powerful affect an attorney can have on a self-defense case before it ever gets in front of a judge.*

**eJournal:** You've mentioned that you've been a part of the arraignment process from the position of prosecuting attorney as well as that of the attorney defending the person being accused. How has that come about?

**Short:** I grew up with guns and because we lived out in the county, I was fortunate to have a shooting range in the back yard of my house. My dad was a very avid gun collector and many of my weekends as a child were spent at gun shows when other kids were doing other stuff. I have been familiar with guns since I was a little kid.



I graduated from Sprague High School in WA and attended Utah State University where I majored in economics with a minor in political science. I graduated from Willamette Law School in Salem, OR in 2000. In my third year at law school, I was clerking as a certified law clerk and upon graduation was hired by Bob Herman in the District Attorney's office in Washington County, OR. I was there for eight years as a prosecutor. I did a lot of work on firearms cases because everyone learned pretty quickly that I was familiar with firearms and that I knew the difference between single action and double action, or centerfire and rim fire. I knew the lingo.

In 2008, I left the DA's office to open my own law firm. We started the website <http://oregongunrights.com> and began getting the word out that I specialized in firearms cases and defended people who were charged with crimes involving firearms and helped people restore their rights to possess and purchase firearms. Sometimes those rights had been lost due to a felony conviction or sometimes due to a mental health diagnosis.

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My work is twofold. I defend a lot of people charged with crimes involving firearms and I help people get their gun rights restored.

**eJournal:** Ironically, failing to get good legal representation soon after an incident can result in losing one's gun rights. People do fail to take small legal problems seriously and those can balloon into bigger legal issues, when your efforts prior to arraignment could have kept the client out of court altogether. We get calls from non-members asking for help mere days before trial! Does that mean the people actually go to their arraignments alone—without an attorney?

**Short:** Yes, it probably does. In my opinion, there's no reason somebody should show up at an arraignment without an attorney unless they just can't afford it. Then they have no choice but to apply for a court appointed lawyer at the arraignment.

Most of the time, our clients have resources or they are members of supportive organizations like the Network. If they've been arrested, they are able to post bail and are released from custody. That means there's going to be at least a week or two before they have to show up for court. If you've posted bail and gotten out, there should be plenty of time to call an attorney. There should be plenty of time to have met with and retained that attorney, and to have that attorney prepared to appear with you before the court.

Even more importantly, if you hire that attorney well in advance of the arraignment, that attorney can meet with the prosecutor before a charging decision is made. If your attorney contacts the prosecutor shortly after your arrest, it is possible the prosecutor has not had an opportunity to take a look at the case yet. That is good.

It can take a few days for the police reports to get gathered, printed and sent to the DA's office and they have to put it into file and put it on the DA's desk. Then, most likely the prosecutor is going to be in trial or busy so they're not going to look at that case file for a few days. Sometimes they won't get the chance to look at that file until a day or two before the arraignment.

As the attorney, that gives me a chance to reach out to the deputy DA and say, "Hey, I represent Mr. Jones. Can we sit down and talk? I'd like to tell you why I think the guy should not be charged, and why I think it is a good self-defense case."

**eJournal:** Now, I expect you put in quite a bit of work before reaching out to the deputy DA. Let's say you have a client who acted in self defense. What do you need to do prior to presenting your arguments in hopes of convincing the deputy DA not to charge an innocent person?

**Short:** Without talking about any specifics, in general here's what happens. Typically, someone will come into the office. They've been arrested, they probably have been booked at the jail, and they have what's called a release agreement. Their court date is probably about two weeks out.

I have them gather character letters from individuals who have known them for a long time and can talk about their character for peacefulness, their character for trustworthiness—basically I want to paint a picture like they are a Boy Scout so those letters are going to talk about how they are trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful—all the ideals from the Boy Scout law.

I like to have them send me their curriculum vitae or résumé so I can gather information about their educational background and work history. I want to paint a picture for the prosecutor showing a productive member of society, a person who is married and has a family, not a gangster or a punk.

I also want to get a lot of details and facts about the case. It helps me prepare when I know the full story so I can explain why their self-defense claim works or why I might have to say it doesn't work. Clients need to be very open and honest in telling me what happened. The worst thing they can do is lie to me. I need to know exactly what transpired, because if I'm told a different story than what is contained in the police reports or what the eyewitnesses saw that will look bad when I talk to the prosecutor. Those are just a few of the things that we would do in preparation for meeting with the prosecutor. I use these details and facts to give the prosecutor a full picture instead of the one-sided view that they might get from the police reports.

**eJournal:** Have you found prosecutors receptive to listening to your viewpoint if you approach them before they've had time to form an opinion about a case?

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**Short:** It is hit and miss—some prosecutors are much better about it than others. Some are pretty open to talking and some are very difficult to get ahold of. Sometimes I will send emails if I can't get a face-to-face meeting. At least then I know I'm getting them all of the information, and I think that does have an impact. Really, overall, it works pretty well.

**eJournal:** Citizens are rightly frightened of the power the prosecutor has in charging someone with a crime. If their attorney can short-circuit a one-sided decision, that would be very good indeed.

**Short:** Our law firm and the Oregon Criminal Defense Lawyers Association were instrumental in passing a bill the governor signed into law about three years ago saying that if the grand jury is going to be convened and if the prosecutor is going to present evidence before a grand jury, then an attorney has a right to request that their client be allowed to testify in front of that grand jury, too. Otherwise, the prosecutor is in complete control of the grand jury process.

The prosecutor decides what evidence will be presented, and I have no say in that. However, under this new law, if I say, "I would like to have my client testify before the grand jury," then they have to honor that request. I have done that several times in self-defense cases, and I think our law firm has done that more times than anyone else in Oregon.

Now, I am not allowed to be present when my client testifies in front of the grand jury, but if it is a good self-defense case, I want them to hear about it. Let's say in a road rage incident, a guy came out of his car toward my client with a tire iron and my client pulled a gun. Well, I don't necessarily trust the alleged victim to tell the grand jury the truth. He might say that my client Mr. Jones got out of his car already pointing a gun at him. The prosecutor may not go into much detail, so then you have jurors thinking, "Wow, Mr. Jones really overreacted."

You need to give the whole picture and that means Mr. Jones could testify, "This guy tried to run me off the road. Then when he got out of his car, he grabbed the tire iron, so when he was coming at me, I pulled my gun out." Well, then you have the grand jury thinking "Oh, he never mentioned grabbing the tire iron."

Now that they've seen the whole story, they're going to return what is called a No True Bill, and they are not going to indict Mr. Jones for unlawful use of a weapon or for menacing. Because now they have the full picture, we've saved everyone a ton of money by not going further. We are done; the whole case is dismissed at that point.

**eJournal:** That was an educational example. I was focused on your efforts prior to arraignment when a DA has to decide if it's appropriate to charge someone with a crime and hadn't considered how you guide your client's interaction with a grand jury. Now that you've brought it up, can you help us understand where a grand jury fits into the process of being charged with the crime?

**Short:** Sure. Basically, there are two ways someone is charged with felony, but it always starts with an arraignment. Everybody has an arraignment first, and that's where the DA or the prosecutor is charging that person with the felony. Think as that first arraignment as temporary, because as a society, we don't want to give the prosecutor so much power when it comes to felonies without some oversight, so we have the grand jury process or preliminary hearings before a judge.

In Oregon, we mostly use grand juries. We do some preliminary hearings, but in California, for example, almost every case is done by preliminary hearing. That means that evidence is presented to a judge in a preliminary hearing, witnesses are called and testify, and then that judge will decide whether to bind over that defendant based on the evidence.

The judge will hear evidence from witnesses, and maybe that will be, "Well, these three hooligans broke into my home. The police were called and they pulled them over as they were leaving the house with all the stolen goods in their car." So, the homeowner would testify, the cops would testify, and then the judge would say, "I find that there is sufficient evidence that these three guys committed burglary," and that would be a preliminary hearing.

In Oregon, almost all "person crimes" are handled through the grand jury process not through preliminary hearings. It is similar, but instead of just one judge, seven people on the grand jury would hear the testimony. It is a very similar process.

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The prosecutor calls the witnesses to testify in front of the grand jury. After the evidence has been presented, the grand jury would then meet alone and deliberate. Generally, the prosecutor has recommended, "I believe based on the evidence that you've heard that these are the crimes with which the person should be charged." The grand jury would come to an opinion of what crime they think the facts support, and if they return an indictment, the grand jury foreperson would sign it.

Then, at the next arraignment, that person will be arraigned on another charging instrument and that would be an indictment. So that first charging instrument was just a temporary one. We allow prosecutors to charge people with felonies but only for a short time because we want the checks and balances of a grand jury.

**eJournal:** That explanation makes me wish more states made regular use of grand juries. I think it is unfortunate that many states don't convene grand juries very often. It takes away the chance that a person could tell their side of a self-defense incident to people just like them.

**Short:** In self-defense cases, it is good to put that human element in the picture. Because it is very rare that a suspect or defendant appears before a grand jury, they are not used to seeing the people that they are indicting. It is very powerful if you can put your client in the room with the grand jury because now they are staring down at the person they are about to indict. If the person is well-prepared, well-groomed, nicely dressed, is articulate, and can say, "I did not commit a crime. I was in fear for my life," I believe the grand jury, just like a normal jury in a trial, could say, "No, we don't think this person committed a crime."

**eJournal:** If the indictment is done by preliminary hearing before a judge, does the defendant have the same opportunity to describe what happened?

**Short:** Most attorneys are going to advise their clients not to testify in a preliminary hearing. To do so is very rare.

**eJournal:** Does the client attend if he or she does not speak?

**Short:** Yes, the client would definitely be there.

**eJournal:** Oh, boy—that worries me! Doesn't their silence raise a subliminal question in the judge's mind, "Why doesn't this person defend their actions?"

**Short:** Yes, from a strategy standpoint, if you have a really good and defensible case, an attorney might want to have the client testify at a preliminary hearing before a judge. The judge might be convinced that there is not enough evidence, but the problem is that the judge only has to find that it is more likely than not that there is sufficient evidence to bind over on the charges. The standard is more like probable cause. The prosecutor does not have to prove beyond a reasonable doubt at the preliminary hearing stage. It is a really low standard. I do not know that I would want to waste my defense at a preliminary hearing, but in Oregon, we just don't have preliminary hearings on person crimes.

**eJournal:** In that, I think you are fortunate. Switching topics a bit, I'd like to ask about the more common problem of using mere physical force and failing to consider the legal consequences. Imagine a minor dustup, two guys posture, exchange blows, separate, and our guy thinks it's over—and sometimes it is, but sometimes a police detective telephones or drops by to ask questions. Is that situation too minor for an attorney to get involved?

**Short:** No, I don't think so.

**eJournal:** [laughing] Yeah, that question was kind of a set up, but seriously, to protect his legal rights, and more importantly his rights as a gun owner, what should our guy do?

**Short:** As you alluded, the problem is that you cannot know when a mountain will come from a molehill. What seemed like a molehill, very well could stay a molehill, but I have had too many cases where the police cited my client for menacing, but the DA disagreed and charged it as assault in the fourth degree or initially you think, "Oh, it's a harassment charge," and then, all of a sudden, it is assault four. That's why I would not underestimate the possibility of something becoming more serious. With the exception of a speeding ticket or a traffic infraction, if you're getting handcuffs put on you, then you absolutely need an attorney. There's no question about it.

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**eJournal:** From your professional viewpoint, is it the arrest that increases the seriousness so engaging an attorney is mandatory? Does the arrest lead you to jump in, get a private investigator working on it, talk to the DA about the client's side of story, and so on?

**Short:** Exactly. I am rarely going to be able to do anything unless that person has been arrested. When that's happened, we need to do everything that we possibly can to try to convince the prosecutor that they shouldn't charge it.

**eJournal:** For ordinary, law abiding citizens, the problem seems to be not knowing when use of force is serious enough to merit hiring an attorney. The suspect believes that the police investigation will show that what he did was okay, but the next thing you know, he's being arraigned on assault charges. I mean, no one wants to be the wimpy kid who whines to the authorities about every little scuffle, so people tell their story and trust police and prosecutors to handle it sensibly. Should we, instead, get an attorney involved if we're questioned as part of an investigation?

**Short:** I think it depends on the seriousness of the criminal investigation. If someone is made aware that they are being investigated for a crime, I think it is important to hire a lawyer. Let's say that you had an incident involving road rage. You displayed a firearm because you felt that your life is in danger, but you're not arrested so you go on home. You get a phone call from a number with caller ID blocked, so you don't recognize the number, and on voice mail you hear, "Hi, this is Detective Jones, I'd like to speak to Mary about an incident on I-5." When that happens, you know darn well that they're looking at doing a criminal investigation, so the person who gets that call should call an attorney right away.

**eJournal:** What if I simply picked up the phone and then didn't know how to stop the interview for fear of automatically being viewed as guilty. I call you for help—now what?

**Short:** Oh, no! Please tell me you didn't answer questions.

**eJournal:** Maybe I'm one of those people who trust that if they do the right thing, it will all turn out okay. Can you mitigate the mistake?

**Short:** Yes, I can. What is going to happen is the police will take your statements, put them in a report, and then send the report to the prosecutor. That is the point at which I can minimize the effects of your statements. I'll need to ask, "What did you say to the police?" because I am not privy to those reports until after a charging decision. Before I can get those reports, I need to know as much as you can remember about what you said. I can use that information to say, "Look, this was the perspective this person was coming from when he said this, so what he meant was..."

If you've answered an investigator's questions, all is not lost. Ultimately, it would be better if you said something like, "Officer Smith, I would love to talk to you. I really want to. I can't wait to talk to you, but just to be safe I want to exercise my constitutional rights—and I am sure you can respect that—of having my attorney with me when I talk to you. I am not hiding anything, I just want to make sure that I have all of my T's crossed and all of my ducks in a row. That's why I'd like to have an attorney present with me when I tell you my side of the story." The police will respect that. I have represented several police officers over the years, and I tell you, the vast majority of them invoke their right to remain silent right away. They know.

**eJournal:** That's a good point and you've given us a lot of other good details today, too. Your explanations of the procedures will help our members if they have to decide if an incident they got embroiled in is serious enough to need an attorney's services.

**Short:** The bottom line people need to understand is if you've been arrested or you think you might be arrested, you should call an attorney right away.

**eJournal:** Thank you for helping us understand that, as well as explaining the process from arrest to arraignment and how an attorney may be able to interrupt charges that we would otherwise have to fight at trial.

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*We are grateful for Jason Short's long-time affiliation with the Network. Learn more about his work at <https://www.oregongunrights.com/Attorneys/Jason-Short/>.*

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## President's Message

### Setting the Record Straight

by Marty Hayes, J.D.

I received a message from a member a couple days after my June President's Message, in which I discussed recent

developments at the National Rifle Association. Our member wrote:

"I am disappointed Marty continues to vilify the NRA due to monetary reasoning. Further, to not support membership takes a narrow view. If some resources are redirected within for carry insurance, then so be it. Keeping in mind OUR GUN RIGHTS OF TODAY WOULD BE MINISCULE WERE IT NOT FOR THE NRA, while other gun rights organizations, by comparison, whose contribution are laughable; SAF spends more attacking NRA than fighting foes. ACLDN will triumph. To continue to criticize is a narrow view indeed."

In response, I would like to take this time to set the record straight about my feelings towards the NRA. I

**believe every gun-owning American should be a member of the National Rifle Association.**

Here's why: The reason the NRA is such a powerful organization is because of the number of voters its members represent. The NRA's greatest asset is its ability to call the attention of its five million members to firearms-related political issues and to affect political outcomes at election time through the recommendations about whom to vote for the organization provides. Thus, to refuse to renew your membership in the NRA is to cut your nose off to spite your face. A smaller, weaker NRA does our cause no favors.

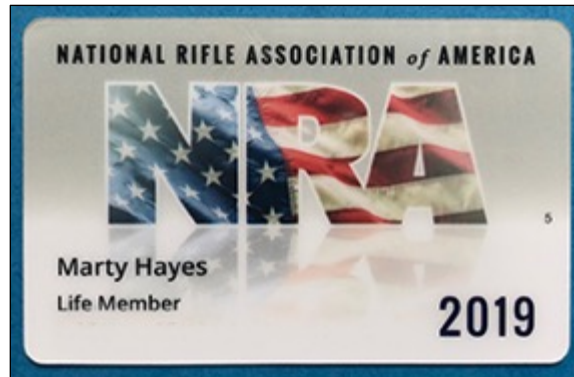
If revelations about the inner workings of the executive board and the upper management of the NRA has, for the present time, made you decided not to donate any

additional money to them until they clean up their act, I understand. In fact, that is the course of action I have taken. Instead of monetary donations to the NRA, look to your local grass roots gun rights group and donate there, or pick another of the good national organizations and give them some help. When the NRA calls for donations, tell them politely "no more money" until the NRA cleans up its act. Ultimately, that's what will cause the NRA to get its act together.

I will not hesitate to discuss the NRA as it affects the Network. We plan on being able to meet our current members and enroll new members at the NRA Annual Meeting in Nashville next year. Until then, unless something major at the NRA affects the Network directly, I will let this topic go. There is plenty of information about the NRA coming from more informed sources with a broader reach to the masses than I have.

### Training Season in Full Swing

All over the country, firearms classes are full or nearly so, and thousands of people each weekend make the trek to their local, regional or national training school to partake in a professional training course. As you know, the Network offices are located at The Firearms



Academy of Seattle range. In addition to my daily activities at the Network, I keep an eye peeled for any issues that are occurring on the range. Fortunately, I have assembled a staff of administrators and trainers that pretty much handle all the day-to-day range activities, from enrolling folks in classes to teaching on the range. Having this in place allows me to concentrate on Network business. I do still get out on the range occasionally, either for teaching duties or as a student.

You would think that after 35 years as a law enforcement instructor, competitor and civilian sector trainer, I would not feel compelled to do that much shooting and training, but that's not the case.

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Those long years in the firearms business give me perspective, both about the industry and regarding my own shooting skills. As I age, I find my skills trying to degrade. I continue to train to slow down this downhill slide, because I want to stay as skilled as possible for as long as possible. Why?

We face increasingly complex threats every day, threats that require the very best you can muster just to survive. As I write this, the recent murder of Sacramento Police Officer Tara O'Sullivan is foremost in my mind. She was killed while serving an arrest warrant when her killer shot her with a semi-automatic rifle. While she was lying in the backyard of the house where the incident took place, the killer continued to engage officers with the advanced weaponry he possessed.

O'Sullivan's killer is the type of criminal that not only law enforcement faces on a daily basis, but the normal armed citizen faces, too. I want to be as skilled as possible, so I train. This year, I will take what has become my yearly trip to Gunsite Academy for training.

I also compete in IDPA matches regularly, and, of course, I still teach occasionally at The Firearms Academy of Seattle. In my mind, it is simply not sufficient to have a mediocre level of training.

Sure, most incidents involving the average armed citizen can be solved with an average level of skill, but what about that anomaly? I don't play by the averages, a mindset which pushed me to form the Network. The chances are overwhelming that you will not end up having to use a gun in self defense. If you do, there is still a good chance that you will not be prosecuted or sued. I don't think that means I need not have a back-up plan in case I'm the anomaly. We carry guns and we are members of the Network because we recognize that it is the anomaly that is the problem, not the average.

With the need to train in mind, The Firearms Academy of Seattle is hosting Massad Ayoob and there are still some openings in his excellent course MAG-40 (see <https://firearmsacademy.com/guest-instructors/mag-40-armed-citizens-rules-of-engagement-livfire-course-07-18-2019>). Perhaps we will see you there in a few weeks. If not, check <https://massadayoobgroup.com/events/> to see if a class is offered near you.

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## Attorney Question of the Month

Because the Network has a membership benefit of assisting innocent members in obtaining bail bond, members often express a wish to understand how posting bail works in their state. After we thought we had completed the attorney discussion about bail in June, an extensive and educational commentary arrived from our affiliated attorneys in Indiana, so we unexpectedly extend this topic one more month. Here are the questions we asked:

***Is bail bonding allowed in your state?***

***If not, what options exist for a defendant to be released from jail following self defense gun use?***

***Typically, what conditions, restrictions or allowances affect bail if the defendant has used a gun against another human? When you counsel clients and their families, what "reality checks" do you explain to dispel unrealistic expectations?***

**E. Michael Ooley  
Alex Ooley**

Boehl, Stopher & Graves, LLP  
400 Pearl Street, Suite 204, New Albany, IN 47150  
812-948-5053  
[mikeooley@bsg-in.com](mailto:mikeooley@bsg-in.com) - [aooley@bsg-in.com](mailto:aooley@bsg-in.com)

Bail bonding is allowed in Indiana. In fact, for all criminal charges except murder, a person arrested in Indiana has a right to bail. Murder is not bailable if the state proves by a preponderance of the evidence that the proof is evident or the presumption strong. In all other cases, offenses are bailable. Ind. Code § 35-33-8-2.

In many counties in Indiana there is a bail schedule, which is used to establish the standard amount of bail for a particular charge. This bail schedule is determined by the local judges, and the bail schedules varies by county. The bail schedules in Indiana are available online (<https://www.in.gov/ipdc/public/2343.htm>).

A person arrested can often post bail based on the bond schedule either through the sheriff or the court clerk's office before his or her initial hearing in court has even occurred. This is possible when the court sets the bond

with a finding of probable cause. However, sometimes the court will set the amount of bail at the initial hearing. As provided by statute (Ind. Code § 35-33-7-4 and § 35-33-7-1), an arrested person must be taken "promptly" before a court for an initial hearing, but the term "promptly" is not defined in the statutory provisions and there is no certainty concerning the meaning of the term. In *May v. State*, for example, the members of the Indiana Supreme Court were sharply divided concerning the application of these statutory provisions to the defendant's detention before his first court appearance. Ultimately, the court held that a nearly 10-day detention before the initial hearing was okay where probable cause had already been found by the judge. *May v. State*, 502 N.E.2d 96, 101 (Ind. 1986). If probable cause has not been found by a judge, the initial hearing must take place within 72 hours of the arrest.

If a person is arrested while on probation, Indiana law allows the person to be held for up to fifteen (15) days without bail (often referred to as a "15-day hold") to allow time for a probation violation to be considered. Once the 15 days is over the court must set bail on the new case, although if a probation violation is filed, Indiana law allows a person to be held without bail on that violation.

The Indiana Constitution provides that excessive bail shall not be required. In general, bail may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the safety of another individual or the community. However, the defendant's inability to procure the amount necessary to make bond does not necessarily render the amount of bail excessive.

In addition to the standard bond schedule, a court will look at several factors in determining the amount of bail including the seriousness of the charges and factors which could make the defendant a flight risk. Specifically, Ind. Code § 35-33-8-4 lists factors judges should consider when determining the amount of bail:

- The length and character of the defendant's residence in the community;
- The defendant's employment status and history and the defendant's ability to give bail;

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- The defendant's family ties and relationships;
- The defendant's character, reputation, habits, and mental condition;
- The defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring the defendant to trial;
- The defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;
- The nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance;
- The source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance;
- That the defendant is a foreign national who is unlawfully present in the United States under federal immigration law; and
- Any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the court to bring the defendant to trial.

If the court determines that an arrested person is of minimal risk, the court may release him on his "own recognizance," sometimes referred to as being "OR." This means the person is released on his promise to return as ordered, without requiring him to post a bond.

In addition to a bond, the court can also place other restrictions on the defendant as a condition of pretrial release "to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety." Ind. Code § 35-33-8-3.2.

The determination of imposing a particular condition of bail in a particular case is within the trial court's discretion and is reviewable only for an abuse of that discretion. If a condition of bail involves Second Amendment rights, the determination of what is reasonable under the bail statute must factor in those rights. The reasonableness of a condition of bail necessarily depends upon the relationship of the condition to the crime or crimes with which the defendant is charged and to the defendant's background, including his or her prior criminal conduct. *Steiner v. State*, 763 N.E.2d 1024 (Ind. Ct. App. 2002). These conditions may include restrictions such as a no-contact order, home detention pending trial, or restrictions on the possession of a firearm.

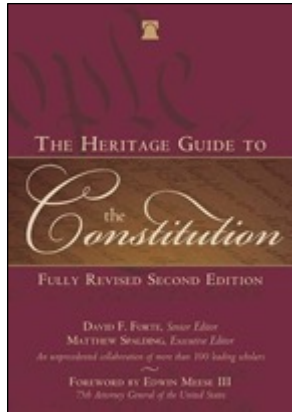
It's important for clients to understand that, if they are arrested, there is a potentially long waiting period before they are processed in the jail and scheduled for an initial hearing. If bond is already set and someone is able/willing to post that for you, you may be released before your initial hearing is scheduled. However, if bond is not yet set or no one has posted bond before the initial hearing, you may still be in custody when you are brought before a judge.

The expense of posting a bond can be substantial, and this expense may make it hard to afford a competent attorney. It's also important to understand that the bond amount is not always returned in its entirety. There is always some risk with going to trial, and if someone is not completely innocent, it may be beneficial to enter into a plea agreement, which often entails forgoing some or all of the bond money that was posted.

If you were justified in the use of force and are completely innocent, the cost of getting out of jail and hiring an attorney will be substantial nonetheless—likely tens of thousands of dollars just to get started. That's why organizations like the Armed Citizens' Legal Defense Network are so valuable. If you are required to use force, and you are justified in doing so, the Network can help you by providing for many of these costs up front.

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*A big "Thank You!" to our affiliated attorneys for their comments. Please return next month when we pose a new question to our affiliated attorneys.*



## Book Review

### The Heritage Guide to the Constitution

Edited by David F. Forte and Matthew Spalding  
 Publisher: Regnery Publishing; Revised edition (September 16, 2014)  
 642 pages

read online at <https://www.heritage.org/constitution>  
 or purchase hard copy at [Amazon.com](https://www.amazon.com) \$29.99

Reviewed by Gila Hayes

Independence Day is almost here and as has been my practice for several years, I looked for a book to read about the principles established by the founding fathers to preserve the freedoms they sought when they left England. I was eyeing *The Heritage Guide to The Constitution*, when I discovered that its contents are available via web browser. [Heritage.org](https://www.heritage.org) suggests a \$100 donation to their 501(c)(3) foundation in exchange for a hard-bound edition of this compendium or the book can also be ordered for \$30-\$37 from [Amazon.com](https://www.amazon.com). I became intrigued by jumping from weblink to weblink to study the Articles and Amendments of the U.S. Constitution then read the essays explaining both the history and application of each element. Since I studied the version published on [heritage.org](https://www.heritage.org), I can't comment on the Kindle or hardcopy versions that are available because I didn't buy them.

There is a lot of study material at [heritage.org/constitution](https://www.heritage.org/constitution)! Even reading a little every night and more on the weekends, I was unable before this journal's deadline to absorb every essay on the site. In time, I intend to read each of the numerous essays that explain the intention and history of the U.S. Constitution.

An example of a topic members may find interesting is Article IV Section 2, Clause 1, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" because of its importance to the Supreme Court case *McDonald v. Chicago* in 2010. An essay written by two law school professors, David F. Forte and Ronald Rotunda, explains that from early times, the English kings would grant "franchises" to

let villages impose their own rules, and this brought about the idea of "immunity" from legal obligations to the crown. The concept of privileges and immunities was carried into the American colonies while under British rule. Immunity might be granted to individuals or to communities, this essay explains. In this way, acknowledgement of individual rights including rights to travel freely or to conduct commerce were carried forward by the founding fathers first through the Articles of Confederation and then in the Constitution's Article IV and, of course, later into the 14th Amendment. (See <https://www.heritage.org/constitution/#!/articles/4/essays/122/privileges-and-immunities-clause>)

Readers wishing to follow this particular study online can next click and read related essays about the 14th Amendment. For example, following the essay on Article IV forward, first to the language of the 14th Amendment and then the nine essays on individual elements in that amendment, the reader accesses several hours of additional academic-level reading.

Here's an example, offered at the risk of failing to acknowledge all the other wonderful educational essays. A reader seeking a clearer understanding of protection against unconstitutional state laws intended by 14th Amendment would click on the essay at <https://www.heritage.org/constitution/#!/amendments/14/essays/168/state-action>. Longer than many of the others, this 2000-word article starts by providing the historical context. The 14th Amendment was proposed and ratified after Congress voted to override President Andrew Johnson's veto of the Civil Rights Act of 1866. The amendment gave "Congress the power to enforce...prohibitions against certain state actions, directed at states and those acting on behalf of states," law professor Patrick J. Kelley explains. This essay, like many of the others, gives much weight to the historical meaning and interpretation of the wording of the amendment, as well as explaining different viewpoints, and citing case law that shows how it has been applied.

A caveat: Although the essays are not dated, discussion of applying the 14th Amendment to state restrictions on gun ownership reveals that this particular essay predates the 2008 *Heller* and 2010 *McDonald* decisions although the *Guide to The Constitution* was originally published in 2005 and the second edition is dated 2014. This leaves me uncertain that updates to this work have kept pace with major Court decisions.

[Continued next page]

I was likewise disappointed to find only one essay on the Second Amendment, while many other topics in *The Heritage Guide to The Constitution* warranted multiple essays to illuminate the various principles behind these restrictions on governmental over reach. I try hard not to study only material that favors a gun-rights viewpoint, but it seemed an odd shortage for a foundation committed to “conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense,” according to the [heritage.org](http://heritage.org) website.

While none of the more recent USSC gun rights cases were discussed, the essay about the prefatory clause to the Second Amendment explains that at the time the amendment was argued and ratified, no one even considered that Americans wouldn't be allowed to own guns capable of defending their communities or backing down a tyrannical government. The most contentious issue of the day, writes essayist Nelson Lund, entailed the power of the federal government. “Implicit in the debate between the Federalists and Anti-Federalists were two shared assumptions: first, that the proposed new constitution gave the federal government almost total legal authority over the army and the militia; and second, that the federal government should not have any authority at all to disarm the citizenry.”

Another topic of perennial interest addresses restrictions on intrusive government searches, whether occurring incident to arrest, or “every search of every person or private area by a public official, whether a police officer, schoolteacher, probation officer, airport security agent, or corner crossing guard,” writes the essayist, Gerard V. Bradley, professor of Law at Notre Dame Law School. Discussion of the Fourth Amendment is split into two parts, the first addressing the historical and philosophical aspects, the second, written by Harvard Law School Professor William J. Stuntz, covers criteria that must be met to obtain a search warrant and when a warrant is required for a search to be legal. It outlines searches that are allowed without warrants, noting that today's Fourth Amendment cases are concerned with warrantless searches whereas a generation ago, “the scope of the warrant requirement was the subject of a great deal of litigation.”

Although not light reading, the essays are written in reasonably plain language that anyone with a sincere desire to learn more about our constitution can understand. My Internet browser has already memorized the path to *The Heritage Guide to The Constitution* and I'll be back on the site to continue learning from the essays published there. I recommend it.

*[End of article.  
Please enjoy the next article.]*



## Editor's Notebook Proselytizing

by Gila Hayes

I think it's natural to want to convert people of different beliefs over to our way of thinking. Through mankind's history conversions have been brought about by force,

have been the result of peer pressure and have been encouraged by loving concern with many variations along that scale. A genuine conversion comes from a deep personal resolve, a decision made to change how one lives. Most other conversions lack the deep conviction that carries the new believer through tough times.

In a perfect world, conversion should only occur when the individual is personally convinced to change their ways, so genuine conversion must be free from other human influence to as great an extent as possible. That is why I believe that no one should be subjected to outside pressure when deciding to own and carry guns for self defense. A decision to go armed should be made only after intensive study and soul searching to balance concerns about taking the life of an attacker against needing to save one's own life or the lives of loved ones.

You're probably asking yourself, "What started that diatribe?" A former member recently emailed the following experience. Despite "being on the fence," he had gone along with getting a gun for self defense and obtained a concealed carry license. Throughout the process of buying his gun and getting his state carry license, he felt hesitant and uncertain.

The man and his wife joined the Network, understanding the need for financial assistance with legal fees after self defense. He studied the entire member education set. As he grasped the seriousness of the aftermath of a self-defense shooting, combined with his other concerns, he decided to stop carrying his gun and, he wrote, take his chances that he won't need a gun for self defense.

The finality of shooting in self defense focused his concerns not on saving his life or his loved ones' lives, but instead on the potential that he could kill someone.

He commented in a post script that he believes that people who carry guns are prepared to end "someone's life either on purpose or by accident if they miss and shoot the wrong person."

I am sad that this manifestly kind-hearted man has chosen to gamble with his life, but having acknowledged the sadness, I also feel relief that he has reached this decision before being thrust into a situation where hesitation to use the deadly force he possessed could create even more dire consequences. He had obtained the power to wield deadly force without the mental preparation to do so. The fears he expressed about killing accidentally spoke to the absence of the dedicated and ongoing skill building and maintenance that is the hallmark of the responsible armed citizen.

I don't know the full story behind his change of heart and it is none of my business so I really don't want to know details. The frankness with which the gentleman described his experience highlights the problem of talking undedicated persons into becoming armed citizens. No one should pressure another person into buying a gun. Please don't do it.

We love opportunities to chat about the fun of shooting sports and the satisfaction of honing shooting skills and completing tough training or competitive challenges. These are personal experiences that may provide a model for another to become a responsible gun owner. While sharing those experiences, let's not forget to also talk about the responsibilities of gun ownership along with the moral and ethical decisions inherent in owning guns for self defense. To promote one without the other does a grave disservice.

Answer questions with candor and honesty from personal perspectives and experiences but keep in mind that your choices may not be the right ones for the person with whom you are chatting. That person's beliefs need to grow and mature before undertaking gun ownership, and like all genuine convictions the choice to own guns must not arise from a sense of not keeping up with one's peers, or fear of disappointing a family member who wants a loved one to go armed, or any other external pressure.

*[End of July 2019 Journal.  
Please return for our August 2019 edition]*

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## About the Network's Online Journal

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In addition, material presented in our opinion columns is entirely the opinion of the bylined author and is intended to provoke thought and discussion among readers.

To submit letters and comments about content in the **eJournal**, please contact editor Gila Hayes by e-mail sent to [editor@armedcitizensnetwork.org](mailto:editor@armedcitizensnetwork.org).

The Armed Citizens' Legal Defense Network, Inc. receives its direction from these corporate officers:

Marty Hayes, President

J. Vincent Shuck, Vice President

Gila Hayes, Operations Manager

We welcome your questions and comments about the Network.

Please write to us at [info@armedcitizensnetwork.org](mailto:info@armedcitizensnetwork.org) or PO Box 400, Onalaska, WA 98570 or call us at 360-978-5200.



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