



# THINGS EVERY RESPONSIBLE GUN OWNER OUGHT TO KNOW

*BY ATTORNEY MARC J. VICTOR*



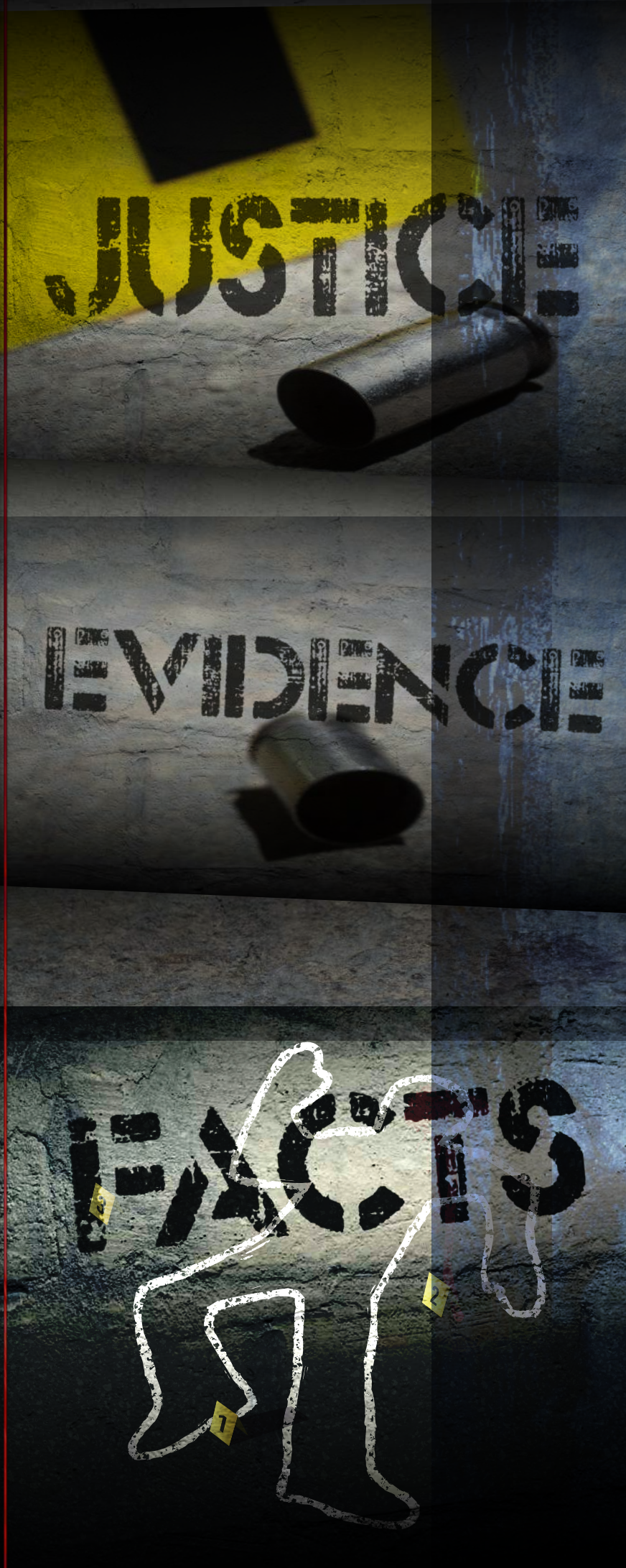


# 5

## Things Every Responsible Gun Owner Ought to Know

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**A**s a criminal defense attorney, I have been representing people charged with gun related criminal offenses for over twenty-five years.

During that time, I have been lead-counsel in several hundred gun related criminal offenses including 1st-degree murder, drive-by shootings, aggravated assault, disorderly conduct, unlawful discharge and many more serious felony level offenses. I have represented people in countless misconduct with weapons and prohibited possessor criminal charges as well. In short, I have represented more people than I could possibly count in serious gun related criminal cases in both state and federal courts. There are few ways a person can get into big trouble more quickly than to misuse a firearm.

The decision to keep and bear arms is a serious one. It is also a decision that necessarily comes with great responsibility. All gun owners are required to know and follow the law. As you have heard many times, ignorance of the law is no excuse. Especially in cases involving firearms, you would be well served to study the law, and to think about its application before carrying, or even owning, a firearm.

This short guide is no substitute for studying the law regarding firearms and self-defense. Reading this guide will not teach you everything you need to know about carrying or using a firearm; far from it. I recommend that all gun owners take an initial comprehensive gun safety class as well as a refresher class on a regular basis from a qualified instructor. Carrying a firearm is a huge responsibility. There is no room for error. I have seen many lives changed forever based on an erroneous split-second decision or an honest mistake. This guide is written to offer you some information based on my many years of personal experience representing people charged with gun related crimes. You are not likely to get this information in most firearms classes. If after reading it you become extremely conservative about pulling out your firearm, I have accomplished my purpose. As I often say at the countless legal seminars I have presented at,

**"Don't be an idiot with a gun!"**

I urge you to be a responsible gun owner and to think carefully before you act. Your very freedom could well depend on it.



1.



**DO NOT**  
**MAKE ANY STATEMENTS**  
**AFTER A SHOOTING**





**M**any people have an urge to explain what happened to the police. Don't! I wish I could simply ask you to just trust me on this and accept what I'm telling you. Despite what the media likes to report, I realize many shootings are actually justified. I realize many police officers are good people trying to do the right thing. This does not change my mind about remaining silent. That said, if you are anything like me, you need more information. I get it.

As an initial matter, keep in mind that you have a

**5TH AMENDMENT**

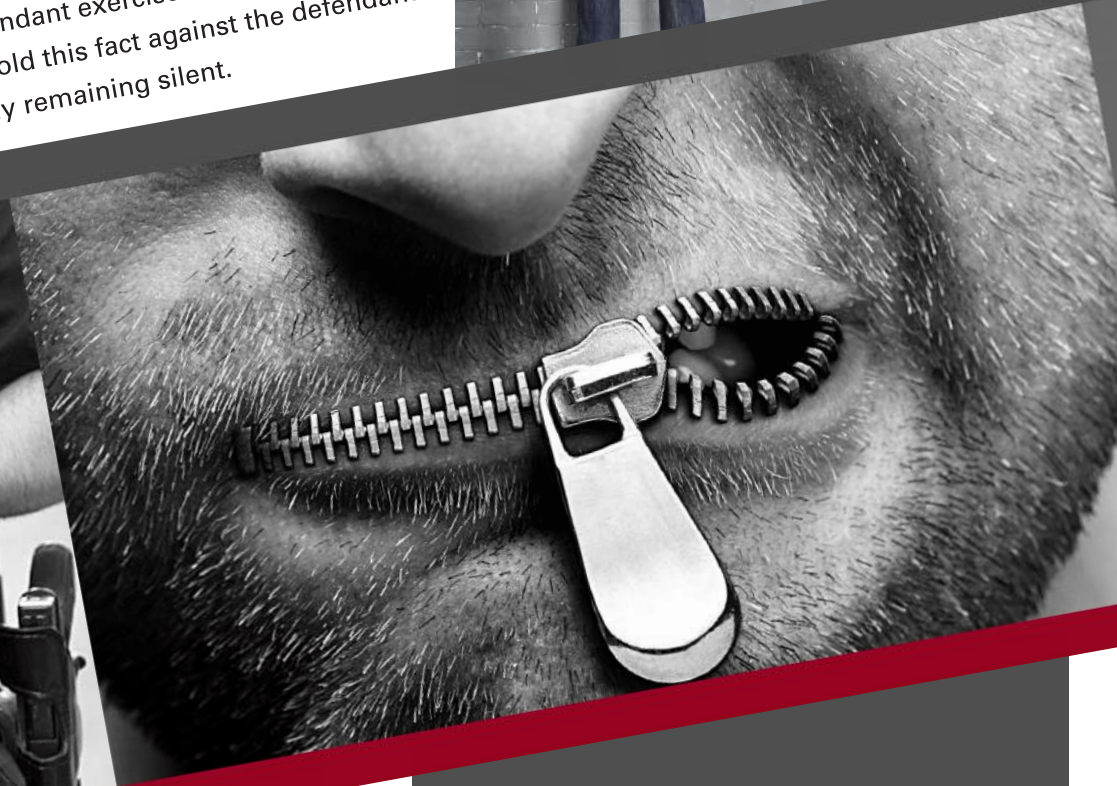
Constitutional right to  
**remain silent.**

No further explanation or justification is necessary to invoke it. The framers of our Constitution fought for that right. They wanted to preserve it for you so you could use it. You shouldn't just give it away. However, I know from experience some people talk to the police because they believe exercising their right to remain silent will be used against them. In the non-justice system world, I understand that simply remaining silent can be used against the person who is reasonably expected to explain what happened. This is not how things work in the justice system.



# DO NOT MAKE ANY STATEMENTS AFTER A SHOOTING.

The general rule in the justice system is that invoking your right to remain silent cannot be used against you. Remaining silent is not a reason to be arrested or to be charged with a crime. Indeed, at a jury trial, the fact that a defendant exercised his or her right to remain silent at the scene is not generally admissible. Said another way, the jury does not get to hear anything about a defendant exercising his or her right to remain silent. Generally speaking, if a prosecution witness or the prosecutor erroneously comments on a defendant's exercise of his or her right to remain silent, a mistrial results. Even at a trial, if a defendant exercises his or her right not to testify, the jury is instructed not to hold this fact against the defendant. In short, there is no downside to simply remaining silent.



There are other valid reasons to remain silent. I have had several occasions to meet with and talk to people immediately after a shooting. This is a horrible time to offer a detailed, accurate and complete statement of what just occurred. The chances are high that any statement you make will not be complete. You are likely to recall details later upon further reflection. Later additions or modifications to any initial statement are likely to be treated by the prosecutor as convenient fabrications. Problems with accurate communication are common under the best of circumstances. These are close to the worst of circumstances.

Whatever statement you would offer is likely to be meticulously picked apart over many months by skilled prosecutors, detectives, and forensic experts and used against you many months later.

The midst of an adrenaline filled shock is the worst time to offer an accurate and complete statement about what just happened.

## **Don't even think about offering a statement at this point!**

Even imagining you could offer an accurate and complete statement about the shooting that just occurred, exactly what you say, or even the way you say it, may limit available legal theories for the defense. Said another way, there can be several possible and varied legal justifications for brandishing or discharging a weapon. Once you offer a detailed statement, the defense is likely locked into or out of a particular legal theory when others may have been available.

For example, the Hawai'i Penal Code, HI Rev Stat § 703-305, specifically offers a justification for using deadly physical force that may indeed apply, but simply saying, "I was in fear for my life" could render this section more difficult, or even impossible, to successfully invoke.



Moreover, Hawai'i's more generalized "Choice of Evils" defense codified at HI Rev Stat § 703-302 could be rendered inapplicable based on specific statements identifying an incompatible motivation.

Additionally, a failure to immediately verbalize an honest but reasonably mistaken belief of fact as part of an initial statement could render the protections afforded throughout Hawai'i's Criminal Code more difficult to utilize. The case is often analyzed not

As a final point here, I note that whenever my clients point out an erroneous statement contained in a police report, that statement is never helpful to the defense. It seems to me that police officers never incorrectly include statements in police reports that are actually helpful to the defendant. The way to avoid this problem is to simply remain silent.



based on the actual facts, but rather on what the defendant reasonably believed about those facts at the relevant time. All of these sections can be utilized even if the defendant mentions the facts that support them for the first time at trial.

Another way offering even a detailed, complete and accurate statement can hurt your case, is by trusting the officer to memorialize your statement accurately. Many officers do not record initial statements at the scene. They scribble notes down to be incorporated into a formal written police report at a later time. I would not want to trust my freedom to the accuracy of even an officer acting in good faith. Honest mistakes occur.

I have personally represented clients in serious gun related felony criminal matters where police officers have erroneously written allegedly verbatim statements supposedly uttered by my client at the scene. In cases where a contemporaneous recording was also made, I have been able to prove that the allegedly verbatim statement attributed to my client by the officer in the police report was actually totally wrong. I have represented people in many other cases where my clients have adamantly denied making the statements reflected in the police report. When it is your word against the police officer, you will likely lose.

Ok, I'll say it. Some cops lie. It shouldn't be a surprise to anyone that there are good and bad people in all groups. I also know there are some police officers who believe only sworn police officers ought to have guns. I have personally spoken to some of these officers. Unless you personally know the police officer offering to take your statement, you have no idea who you are dealing with. Considering you may have decades of prison time hanging in the balance based on what other people believe occurred immediately before your shooting, I recommend you be safe and assume the worst. You probably know nothing about the officer attempting to persuade you to give a statement. I suggest you bite your tongue if necessary.

## **Keep your mouth shut.**

Regarding police officers, my experience has been that most of them understand and respect the rights of people to remain silent. I have personally represented police officers on many occasions in both internal affairs matters as well as against criminal charges. Most of the police officers I have discussed this issue with would themselves choose to remain silent after any shooting. Indeed, this is what they are taught. I know police officers who teach their kids not to talk to the police. Indeed, many police officers have admitted this to me. Even the police officers know not to talk to the police. I hope I have convinced you not to offer any statement after a shooting.



# Although I hope I have convinced you not to offer a statement, I know better.

I have had countless repeat clients talk to the police even after I have personally advised them not to do so beforehand. Some people like to talk to the police. It may have something to do with the training officers receive to elicit statements from people they investigate. It may also be our old fashioned but erroneous notions that all police officers are good people trying to do the right thing. I also suspect some people hope to talk the police officer out of possible charges or even an arrest. In shooting cases, it is the prosecutor who generally decides whether to bring charges. None of these reasons are valid reasons to talk to the police, and I reject them all. Nobody has the power to make you talk.

I know that, despite my best efforts, some people will still talk to the police. If you are one of these people, I have a good option for you. I have authored a statement for you to read to the police anytime you determine you cannot resist the urge to talk to the police. For your convenience, this statement is also on the back of my business card. The statement is as follows:

I refuse to consent to any search whatsoever. As such, I do not consent to a search of my premises, my person, my immediate location or any vehicle or effects. I hereby exercise my rights as enumerated by the Fourth, Fifth, Sixth, Ninth, and Fourteenth Amendments to the United States Constitution and Article I of the Hawai'i Constitution. I demand to have my Attorney present prior to and throughout any questioning at all. Additionally, I request to call my Attorney right now for a private legal consultation.

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It is important to note that reading this statement will not prevent an officer from arresting you or a prosecutor from charging you with a crime. The decision to arrest or to charge is supposed to be based solely on the evidence and reasonable inferences from that evidence. However, reading this statement to an officer, at least, memorializes what you actually said to the officer.

If you ever forget my advice to remain silent, the police officer will likely remind you about my advice. In the justice system, we refer to this reminder as the Miranda warnings.

**Keep in mind that the officer is only required to inform you of the Miranda warnings in the event two things are occurring at the same time:**

- 1. You are either under arrest or the officer has probable cause to arrest you.**
- 2. You are being interrogated.**

## FOUR GENERAL PARTS TO MIRANDA WARNINGS

- 1. You have the right to remain silent;**
- 2. Anything you say will be used against you in court;**
- 3. You have the right to an attorney; and**
- 4. If you can't afford an attorney, one will be provided to you for free.**

If a police officer ever conveys these warnings to you, this should serve as a reminder to keep your mouth shut. In such an event, you are likely under arrest or will be very soon. Said another way, the officer has already determined that probable cause exists to believe you committed a crime. You are not likely to convince the officer otherwise in any event.



**As you know, there are exceptions to every rule.**  
**Even my rule not to make any statements has exceptions.**

## Exception 1

If you have been involved in a shooting, someone should call 911. My preference is that you get someone other than yourself to immediately call 911 and convey a few simple things:

1. There has been a shooting;
2. Please send an ambulance;
3. The address is....;
4. Goodbye. (Hang up)

If you can't find someone else to immediately call 911, you should do it yourself before making any other calls; even to your lawyer. Incidentally, remember that any competent lawyer is going to advise you not to make any statements. This advice shouldn't come as a surprise to you. After 911 has been called, you should immediately prepare for the arrival of the police. At this point, your immediate plan should be not to get shot by the police. I strongly suggest you secure your weapon before the police arrive and make sure nothing you do could possibly be construed as a threat to the police. Make sure the officers can clearly see your empty hands.

## Exception 2

Routine traffic stops. Although this guide is specifically geared to gun-related matters, the advice to remain silent generally applies to all police investigations of any type. However, if you want to try to talk your way out of a speeding ticket, then you can opt to simply ignore my rule to remain silent. Although I recommend you cheerfully accept your ticket and move on with your life a tad bit less wealthy, feel free to respectfully interact with the officer at the side of the road with the purpose of trying to avoid the ticket and obtain a warning instead. As a tip for this strategy, I have found that most officers really appreciate honesty and remorse after a traffic stop. Although admitting you were speeding will likely foil your slim chances of beating the ticket in court, it may just earn you a written warning with an old-style peace officer. That said, I don't offer any guarantees on this strategy, and I stand by my general advice to remain silent and move on with your life even during a routine traffic stop.

## Exception 3

After a detailed consultation with an experienced attorney. Even in a gun related case, it may ultimately be in your best interest to make a formal statement. However, this can only be determined after spending some quality time with an experienced criminal defense attorney who fully understands the facts and circumstances of the situation. I have on occasion, even in gun cases, issued formal statements either to the prosecutor or to be released publicly that have greatly benefited my client.

For example, my client Dr. Peter Steinmetz, who specifically authorized me to discuss his case publicly, was arrested after peacefully carrying his AR-15 rifle into the unsecured portion of Sky Harbor Airport in Phoenix. It was his careful rotation of the weapon in order to allow him to sit that ultimately

caused his arrest. His case garnered national media attention. As he was facing two counts of felony disorderly conduct with mandatory prison, we strategically called a press conference at which he offered a formal statement about the incident. Countless television, radio, and print media outlets crowded into my law firm to broadcast the statement. We ultimately convinced the prosecutor not to proceed with the case. Additionally, I actually got his AR-15 returned to him. It was a complete and total victory; as well as the right result.

Admittedly, issuing a public statement in a gun related case with pending felony criminal charges is rare indeed. However, skilled and experienced criminal defense lawyers tailor their actions to the unique specifics of the case.

## Exception 4

Hawai'i law requires a person who is detained for a violation of the traffic code to provide their name and address, and proof thereof, to the police officer upon request. See, HI Rev Stat § 291C-172. I don't view this section as a big deal; especially given that an arrestee can be forced into being fingerprinted for identification. It is hard for me to think of a circumstance where simply accurately stating your name could be detrimental to your interests.

All cases are different. Although I offer general advice in this guide, there is no substitute for immediately consulting an experienced criminal defense attorney any time the state threatens to put you in a cage.



# 2 UNDERSTANDING SELF-DEFENSE



**On the other hand, if the jury determines what you did was “unreasonable” under the circumstances you will likely immediately be carted away to live, possibly for many years, in a cage somewhere.**

Getting people to initially understand that it all boils down to what random people in the community determine to be “reasonable” or “unreasonable” is the main point I like to communicate.

In the cases where I generally offer a prediction, I always explain that their community has already predetermined some conclusions about “reasonableness” which are helpful to know in advance.

For example, in Hawai’i, we have already determined that the threat against which you seek to use force to defend must be **“immediately necessary.”** Hawai’i has predetermined that using force against a non-immediately necessary threat is unreasonable.

A jury will be instructed about this predetermination of reasonableness. Hawai’i has also predetermined that using force to defend against mere words alone is unreasonable. Also, using deadly force to protect property is unreasonable. There are many other predetermined rules too. Knowing them in advance is especially helpful given that the judge will instruct the jury about these predetermined decisions about reasonableness.

It shouldn’t come as a surprise to you that people often disagree about what is “reasonable.” Many people believe it is reasonable for the government to entirely ban all gun ownership; even from responsible, peaceful, competent adults. I am of the firm opinion that you should do your best to entirely avoid a situation where your very freedom depends on judgments about “reasonableness” of randomly selected people; especially after hearing skilled attorneys argue both sides to them. Be very conservative when thinking about pulling out your gun.

Generally speaking, self-defense is all about one word - **“reasonableness.”** Whenever I give a talk about the legal rights and responsibilities of gun owners, people inevitably want to ask me my opinions about the applicability of self-defense as a legal justification for various hypothetical situations. Often, the questions start with some version of the following, “So, I’m in my house sleeping. It’s the middle of the night, and I’m awakened by a suspicious noise. I wake up and grab my gun as a precaution. I see a stranger in my family room doing something. He turns to face me. Then, etc., etc., etc.” The question always concludes with,

**“So can I shoot him?”**

This is how I hear these questions, “Marc, I would like you to predict for me with certainty what a random group of strangers in my community, who we know very little about, will think is reasonable under all the facts and circumstances I’m about to lay out for you.” In some very clear cases, I’m able to offer a prediction.

However, before I answer the hypothetical question, I like to explain that if the random group of strangers called the “jury” determines what you did was “reasonable” under the circumstances, you get to exit the courtroom and buy your criminal defense lawyer a nice dinner somewhere to celebrate.



# 3 LAWYERS ARGUE ABOUT THE FACTS

Good lawyers always have long detailed initial meetings with their clients to understand the **facts** of what occurred. However, good lawyers also know from experience that the client's version of the **facts** is just that; the client's version of the **facts**. In almost all criminal cases, there are other different or even competing versions of the **facts**. It is always the case that there exists a truth about what actually occurred. However, it is obtaining that truth, and getting other people to accept that truth, that is often the problem. Sometimes people have different perceptions about what occurred. Also, some people lie about what happened.

For example, it is often the case that physical force or deadly physical force is used to defend against the coordinated and threatening efforts of a group of people. In these cases, there are always at least two vastly different versions of events. Usually, there are several different versions of events. I routinely tell my clients not to be surprised when the person identified as the "victim" and all his or her friends have coordinated their versions of events to support an allegation of criminal conduct by my client. My clients are not usually surprised by this rather obvious prediction.



Attorney Marc J. Victor

When I start talking to the prosecutor in a criminal case, I always advocate for the best result for my client. This advocating normally focuses on my client's version of the facts. However, prosecutors routinely disagree with the facts as I present them. They almost always focus on the facts as related by the person identified as the "victim" or people associated with and friendly to the victim. As is always the case, the differing versions of the facts always lead to vastly different potential results for my client.

We lawyers almost never argue about the law. If we have a disagreement about how the law applies, we can generally figure it out with a bit of legal research.

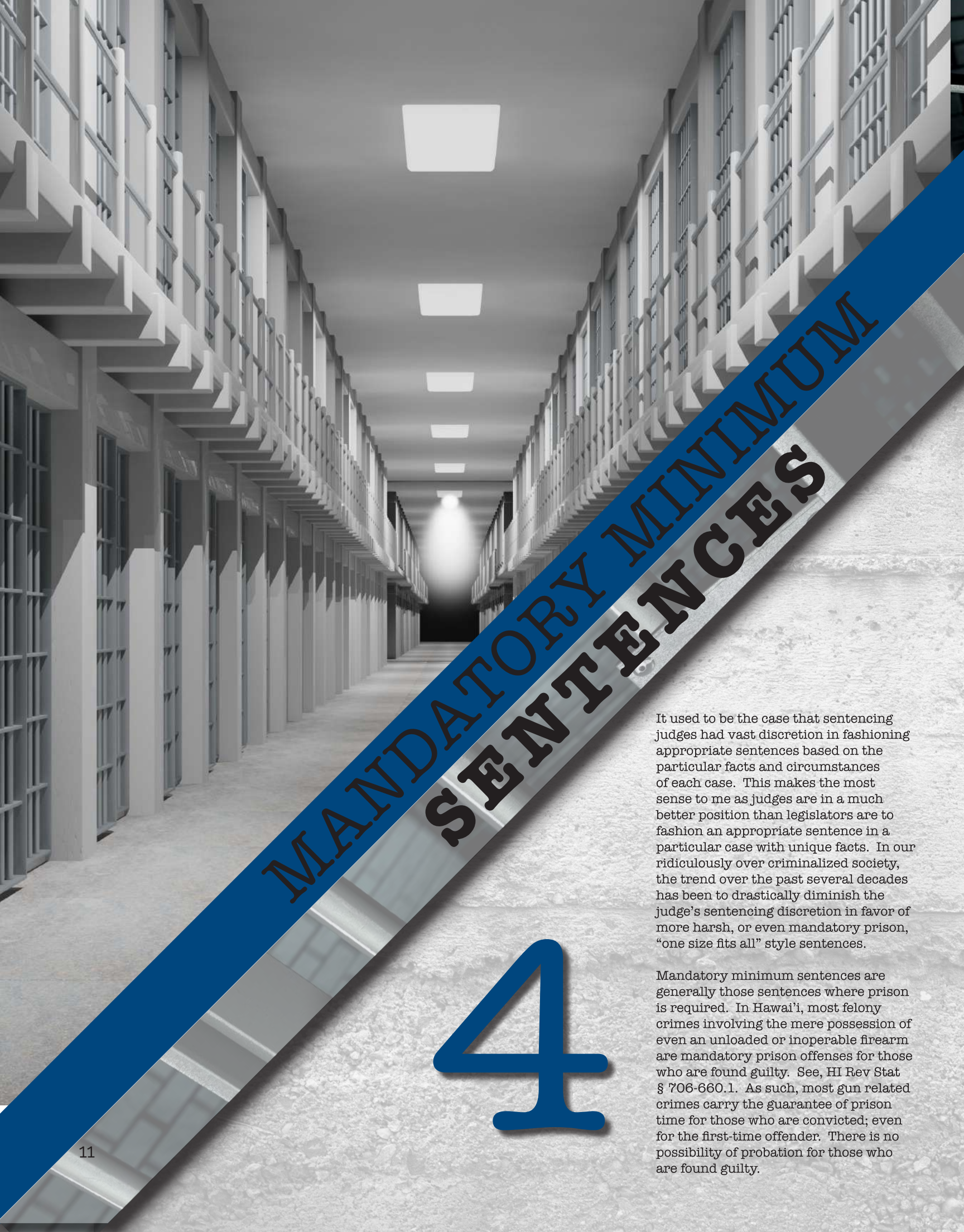
Although you may invest lots of time learning about and studying the law, it is the facts we generally argue about; not the law. Indeed, this is the purpose of the jury. It is the jury that is charged with getting to the bottom of the facts of what occurred. They are given the law by the judge.

I often advise clients that their case isn't about what actually happened. Their case is about what people will say happened as well as the physical evidence and reasonable inferences from that evidence. In many cases, the physical evidence does not resolve small but important or even conclusive details about what actually happened. It isn't enough to act consistently with the law. To be safe from prosecution, the evidence of what actually happened must also be clear to a police officer or a prosecutor. Remember, there is no doubt that innocent people actually get convicted in our justice system.

In a dispute over the facts, most, if not all, prosecutors will afford the least credibility to the defendant. Remember, it is the defendant in a criminal case who usually has the most to lose and therefore the most invested in a particular version of events. As I stated previously, the person with the shiny badge is usually afforded the most credibility by the prosecutor and the jury. The "victim" of the alleged crime is usually the next most credible to these people.

Whenever you think about pulling out your firearm, you need to consider both whether what you are doing will be considered reasonable by a random group of strangers as well as the real possibility that radically different versions of events may be presented to the police, the prosecutor and ultimately your jury. In keeping with the theme of this guide, these reasons cut strongly in favor of being very conservative about pulling out your firearm.





# MANDATORY MINIMUM SENTENCES

## 4

It used to be the case that sentencing judges had vast discretion in fashioning appropriate sentences based on the particular facts and circumstances of each case. This makes the most sense to me as judges are in a much better position than legislators are to fashion an appropriate sentence in a particular case with unique facts. In our ridiculously over criminalized society, the trend over the past several decades has been to drastically diminish the judge's sentencing discretion in favor of more harsh, or even mandatory prison, "one size fits all" style sentences.

Mandatory minimum sentences are generally those sentences where prison is required. In Hawai'i, most felony crimes involving the mere possession of even an unloaded or inoperable firearm are mandatory prison offenses for those who are found guilty. See, HI Rev Stat § 706-660.1. As such, most gun related crimes carry the guarantee of prison time for those who are convicted; even for the first-time offender. There is no possibility of probation for those who are found guilty.





# Don't Be An Idiot With A Gun!

If you are ever prosecuted for a criminal charge resulting from a gun related incident, the odds are you are not going to trial. Regarding criminal cases generally, the vast majority are resolved with a plea bargain agreement rather than a jury trial. Depending on various factors, most estimates are over 95% of all criminal cases are resolved by plea instead of by jury trial. I strongly suspect the rate of plea-bargaining is even higher in cases involving mandatory minimum prison sentences.

In short, because the risk of rolling the dice at trial is so incredibly high, the overwhelming vast majority of people will opt instead for the relative certainty of a plea bargain agreement. This vast majority of people undoubtedly includes people who may have ultimately been acquitted after a jury trial had they risked it. The bottom line here is that the risk of a long mandatory prison sentence upon a conviction often serves to coerce people out of their right to a jury trial. Prosecutors are well aware of this reality.

I never officially offer any client better than 50% odds at trial. The truth is nobody can accurately predict what a jury will decide. Indeed, different juries sometimes reach different conclusions on the same facts. Trial is always a risk. However, imagine I could accurately offer a 90% chance of an acquittal after trial. In a mandatory prison case, that also means a 10% chance of a long mandatory prison sentence. When faced with a plea bargain offer to plead guilty to a lesser offense and receive a 100% guarantee of probation, I know from experience that most people will accept the plea offer; even with the hypothetical 90% chance of an acquittal at trial. Given this set of circumstances, few people will risk a trial in a gun-related case.

Don't get me wrong. I enjoy trying cases, and it is generally my personal preference to go to trial. However, given that I don't have to personally suffer through the prison time if we lose, it isn't my decision. Some criminal defense attorneys would say that some prosecutors intentionally overcharge cases knowing the risk of trial will simply scare the defendant into accepting a plea offer. I have had many prosecutors cheerfully point out to me that the defendant's risk of a long prison sentence after a trial far exceeds the substantially lower risk contained in the pending plea offer.

It is no secret that people who maintain their actual innocence sometimes plead guilty. Indeed, our United States Supreme Court specifically approved of the concept that there is no constitutional impediment to people who openly maintain their actual innocence from pleading guilty and accepting a plea offer for the purpose of limiting their risk. It happens in our criminal justice system.

If you think you will simply explain this concept to a jury at trial, you would be wrong. The existence of a mandatory prison sentence upon conviction is a fact that is intentionally withheld from the jury at a trial. As an example, a jury may reasonably conclude that a 19-year-old kid with no prior convictions who sold \$10.00 of marijuana (the amount he paid for it) on two occasions to his 19-year-old marijuana-smoking buddy would be looking at probation upon conviction. However, these facts could result in a prison sentence in Hawai'i.

It is my experience that people give more thought to decisions they perceive to be very important than they do to routine less serious decisions. I suspect a jury would be much more concerned, and maybe even pay closer attention to the evidence or more rigidly hold the prosecutor to his or her burden of proof, if they knew the 19-year-old kid was likely to go to prison upon conviction rather than get a slap on the wrist with counseling as they may otherwise reasonably conclude. If you are charged with a gun related crime and plan to go to trial, you need to know the jury won't be told about the likely prison sentence you will suffer if they find you guilty.

Jury nullification was supposed to act as a final check on the government's power. Indeed, I would love to argue, with the right set of facts, that even though the peaceful homeowner was legally not permitted to discharge his or her firearm, the jury ought to acquit in any event as it was a close call and the home invader bad guy shouldn't be considered a victim. I suspect I could have success with that argument in the right case. However, the state of the law is that I am absolutely prohibited from asserting it.

The case for being very conservative about pulling out your firearm is strong. The best way to avoid having to deal with the risk of a mandatory prison sentence is simply being smart enough to avoid doing the types of things which may give rise to criminal charges. Don't be an idiot with a gun!



# 5 WHAT TO THINK ABOUT

## WHEN YOU ARE THINKING ABOUT

*It is a “right now” “right here” type of decision.*

Given that self-defense is all about what’s “**reasonable**,” and that the facts of most criminal cases are almost always hotly contested, and keeping in mind that you will likely be facing a mandatory prison sentence if convicted, avoiding being charged with a gun crime ought to be of the utmost importance to gun owners.

### I’m sure

you can see now why I advise people to be very conservative about pulling out their firearm. That said, there exists extraordinarily rare times when you must.

Of course, my preference is that you call me in advance of pulling out your firearm. I expect I could be very helpful to you in determining whether pulling it out in your particular situation would likely be a violation of the law. I can offer you my best advice if you schedule some time to come into my law office and lay it all out for me in advance. I expect the appointment will likely need to be at least an hour and possibly longer. Even then, I’m likely to offer you an unsatisfying qualified answer to your question based upon some of the reasons I have already written about in this guide.

I would also mention to you that if you have time available to consult with me in advance of a decision to pull out your firearm, you absolutely shouldn’t do it. The nature of an imminent threat is such that you simply don’t have any time available to consult with anyone. It is a “right now” “right here” type of decision. If you are lucky, you may have a few seconds to think about it in advance. Fortunately, I believe you can do it with a simple analysis.

I want you to imagine that if you decide to pull out your firearm, you will certainly be prosecuted for a serious felony gun crime. To truly understand this possibility, you must have already been arrested, charged and prosecuted for such a crime. Given that, if you have already been through such an ordeal, the odds are that you are now a prohibited possessor and can’t possess firearms in any event. For those of you who haven’t been through such an ordeal, I recommend you actually spend some time thinking about and actually visualizing what it would be like to be prosecuted for a serious gun crime.





# PULLING IT OUT

**It usually starts with the arrest.** The police will arrive and “escort you to the ground.” I know it sounds good, but trust me on this one, you won’t enjoy being escorted to the ground by the officer. Imagine the officer has already firmly concluded you are guilty of a serious gun crime. You will be treated accordingly as your new bracelets are harshly installed on your wrists. Hopefully, you will remember my advice and resist the strong urge to tell your version of events to the officer.

**After a miserable ride to the horribly overcrowded jail,** you are booked in as the newest member of the highest incarcerated population on Earth. You should expect the judge, who has already read the officer’s version of the case, the same officer who just cuffed and stuffed you, will set a very high bond to be posted in exchange for your release. You may even be subjected to a cash only bond; making it much more difficult to actually post the bond and thereby secure your release. You will soon learn who your real friends are as they hopefully scramble to secure your release as well as a good criminal defense attorney.

**Although you are assured you are absolutely presumed innocent,** you truly aren’t feeling it as you choke down the disgusting slop served to you for dinner with your new friends at the jail. Even if you can secure your release from jail, you recall points #2, #3, and #4 above as a lawyer explains the serious felony charges now brought against you. Although I will be happy to zealously defend you against the criminal charges, I try not to work for free. In any event, any payment to any private lawyer is more than you wanted to spend.

**After possibly a year of misery,** constantly wondering whether your life is ruined, you will face the difficult choices described above in the section on mandatory minimum sentences. Expect to be charged with a crime carrying a long mandatory prison sentence.

Although you will feel strongly you withdrew your firearm consistently with the law, odds are you will eventually accept a plea offer; even if your lawyer enthusiastically wants to try the case before a jury. You won’t likely accept the substantial risks associated with a trial when you are offered the certainty of a much more lenient plea bargain. As a final parting gift resulting from your unplanned interaction with the state, you are now a prohibited possessor; probably forever. I realize I have intentionally presented, far from a worst case, but a very bad scenario for you to consider. Be advised, this general example is not far-fetched at all. It happens all the time. My example is common.

However, I also acknowledge that not all firearm brandishings or discharges are prosecuted. Indeed, not all people who pull out their firearm are even arrested. In my experience, I have witnessed good judgment by both the police and prosecutors. Sometimes, they are able to quickly sort out the good guys from the bad guys.

**That said, I want you to envision my exact example when you are thinking about pulling it out.**

If you are not willing to endure the rigors of being prosecuted as I have described it, my opinion is that the situation you face is not serious enough to warrant pulling out your firearm. Said another way, if what is about to imminently happen if you fail to pull out your firearm is worse than being prosecuted as I have described it, then I advise you to pull it out and act defensively. However, if being prosecuted as I have described it is worse than what happens if you fail to pull it out, I advise you not to pull it out.





# WHAT TO THINK ABOUT

## Marc J. Victor *Analysis*

I will offer you some examples of the “Marc J. Victor Analysis” applied to some real life situations:

### EXAMPLE 1

If you fail to pull out your firearm right now, you are likely going to be dead. It seems to me that being dead is worse than being prosecuted. Therefore, I advise pulling out your firearm.

### EXAMPLE 2

If you fail to pull out your firearm right now, someone you love, or like a lot, will likely be dead. Again, I’d prefer to be prosecuted, so I advise pulling out the firearm


### EXAMPLE 3

If you fail to pull out your firearm right now, you will likely be punched in the face. Although this is a tad bit more difficult, I’d prefer to be punched in the face rather than be prosecuted, so I advise not pulling out the firearm.

### EXAMPLE 4

If you fail to pull out your firearm right now, you are certainly going to be disrespected. It is important to note that this particular example is actually from a potential client who came to my law firm to consult with me about his aggravated assault felony criminal charge. He was facing a mandatory minimum sentence of 5-15 years in prison. When I asked him why he pulled his firearm out, he informed me he was disrespected by another person. I don’t know about you, but I’d strongly prefer to be horribly disrespected on a regular basis than to be prosecuted. As such, I advise not pulling out the firearm in response to or even to prevent being disrespected. **Dumb!**





**I believe** you can honestly and effectively perform the “Marc J. Victor Analysis” in a few seconds if you simply invest a little time **thinking** about being prosecuted as I have described it. I do not apologize for offering very conservative advice about pulling out your firearm.

**It is important** to note that the law may actually allow you to pull out your firearm for situations far less serious than I recommend. That notwithstanding, I firmly stand by my advice.

**THERE IS ALWAYS A RISK OF BEING PROSECUTED WHEN YOU PULL OUT YOUR FIREARM.** Ignoring that risk and assuming a police officer or a prosecutor will conclude your conduct fits nicely into a statute permitting you to use your firearm in the way the witnesses say you did, is foolish. Assuming the giant risk of being prosecuted only makes sense if what is going to happen otherwise is worse than being prosecuted. These circumstances are extremely rare. Just because the law may technically allow you to pull your firearm out doesn’t mean you should.

**WHATEVER YOU ARE PROTECTING WITH YOUR FIREARM OUGHT TO BE WORTH BEING PROSECUTED FOR.**



To say I am pro-gun is truly not accurate. I am no more pro-gun than I am pro-hammer. They are both tools. I am pro-peaceful, responsible, competent adult with the option to own and carry guns. I am anti-idiot with guns. If you are short on common sense, you probably aren't someone who ought to have a gun. If you are hot tempered, quick to anger and act impulsively, I suspect you, and everyone else is better off if you don't own a gun. Owning a firearm is a serious undertaking. It comes with great responsibility. If you aren't up to it, don't own a gun as I suspect you are more likely to get in trouble with the gun than you are to actually need it for self-defense. I suggest you perform an honest self-evaluation before owning a firearm.

I have been representing people charged with gun-related felonies for well over twenty-five years. I have noticed some patterns of conduct that seem to emerge regularly in these types of cases. I wanted to leave you with some random tips for preserving your freedom as a peaceful and responsible gun owner.



## RANDOM THOUGHTS

Don't even think about mixing alcohol, marijuana or any other mind-altering drug with guns. If you are carrying your gun, you must be alert and have a clear head at all times. If this advice isn't obvious to you, I suggest you pass on owning a firearm.

Secure your firearm carefully in your home at all times. Do not take any chances an unsupervised minor could get to your gun. You could be charged with the crime of felony child endangerment if you accidentally leave your gun sitting around while kids are present.

People who pull guns out while they are driving down the road usually get charged with felonies. Prosecutors generally don't buy that the other vehicle was trying to run you off the road. If you find yourself involved in a road rage incident with another car, don't pull out your gun. Use your head and find another solution.

I realize there may be actual tactical reasons to the contrary, but I recommend you do not carry your firearm with a round in the chamber. I have represented countless good people on accidental discharge cases. A purely accidental discharge in the city limits will get you prosecuted. You should consider sacrificing whatever tactical advantage exists for not having to chamber a round in exchange for the much lower likelihood of an accidental discharge.

### **Never use more force than is reasonably necessary to repel the threat.**

If merely displaying your firearm will suffice then do not point it. Always seek to use the least amount of force necessary. If a prosecutor sees you as a person just itching to use deadly force, doubts may be resolved against you in charging decisions. I urge you to act like a responsible adult at all times while carrying a firearm. If you plan to goof off, don't bring your gun. Unless you are in your home or at work, Hawai'i law requires you to retreat if you can do so in complete safety prior to using deadly force. Remember, "things" can be replaced. People can't. The good guys don't always win. I strongly advise you to deescalate a situation and even retreat if possible to avoid a conflict.

**No**, you don't get to shoot someone just because that person is trespassing in your home. Although I admit a shooting may be more likely to be justified because it occurs in your home, your actions must still be reasonable under all the circumstances. Although there are indeed times when it is necessary, don't be in a hurry or too enthusiastic about shooting another human being.



# CONCLUSION

As I said at the beginning, I do not intend this guide to act as a substitute for carefully studying the law relating to firearms. However, I do intend this guide to serve as a framework for better understanding the application of those laws in our criminal justice system. I hope you will be conservative about pulling out your firearm, and do so only in extreme and very serious circumstances. You would also be well served to actually become and stay familiar and competent with whatever firearm you choose. Having a firearm is close to worthless unless you can competently use it if necessary.

There are countless people who regularly carry firearms safely and responsibly. Most of them will never have any problems at all relating to those firearms. Carrying a firearm ought to be boring. You should be comfortable with the fact that you will never likely have to pull it out. Like flood insurance, we hope to never need it. However, it is important to have in the event you actually need to use it. If you are carrying a firearm because you want some action, or you are constantly looking for reasons to pull it out, I suspect you will need my services someday. As I previously said, there are few ways to ruin the rest of your life more quickly than by misusing a firearm. I have seen it time and time again. I hope you will learn from the mistakes of others currently sitting in prison serving long sentences. Don't be an idiot with a gun!

# TESTIMONIALS

Marc J Victor saved my career! Without getting too deep into my case I was a Police Officer that was treated pretty unfair by my old Department. I lost my job but Marc fought for me and was able to save my career so I can work for another Police Department. Marc actually calls back himself as busy as he is. You can just tell that this man loves what he does with how passionate he is. If that's not enough his receptionists are very courteous, professional and down to earth. You can tell that they genuinely care for you and your situation. This is just a great team overall. They truly turned my stressful situation into a pleasant experience and if I ever need a lawyer again I will not call anyone else but Marc. - Angel P.

Marc Victor handled my case a few years back and saved my life. He personally took on my case and would NOT take no as an answer. Sending the prosecutor back to the DA no less than 4 times to ask for a better deal. His advice on how to improve my chances of lessening my sentence were instrumental in mitigating my sentence. I owe his man my life and would use him from any legal matter which he or his well qualified team handles. - Austin S.

We used Marc Victor for a criminal matter two years ago. He is aggressive, intelligent and knows his way around a court room! We have nothing but great things to say and recommend him to anyone we come across in need of a great attorney. - Daria O.



This information gets right to the bottom line and lays out critical concepts you need to understand before owning or carrying a firearm. This is not a primer on either the substantive criminal law or the basics of personal self-defense as these areas of knowledge can be and are adequately taught by non-criminal defense attorneys.

The advice and insights offered are based on over a quarter century of representing countless people charged with felony offenses involving firearms in both state and federal courts. Gun owners will be well served to carefully read and think about the issues raised in each of the major five points.

*I promise to represent my clients the way I  
would want to be represented myself.*

*Marc J. Victor*



**THINGS EVERY  
RESPONSIBLE  
GUN OWNER  
OUGHT TO KNOW**

BY ATTORNEY MARC J. VICTOR



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