

Legally Speaking



The Race

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A race has a beginning and an end. For the grueling 26 mile long Boston Marathon, bragging rights go to everyone who is able to finish. It is a harmless, apolitical, local pastime that has become an international event. Runners and onlookers come from all over the world. Thousands come to encourage strangers to just complete the race in the best time they can.

Boston is an old city by North American standards. It is a city of neighborhoods filled with wooden three-family homes separated by only a driveway. People sit out on their porches in the summer and help their neighbors shovel snow in the winter. Someone is always collecting or giving money for some local charity. Boston is passionate about its sports teams.

It plays hardball politics. It is a town where people go swimming in the harbor on January 1st even if they have to cut a hole in the ice. Boston is my hometown. It is where everyone is Irish on St. Patrick's Day and a lover of classical music with the Boston Pops on July 4th.

Thousands watch the re-enactment of the Battle of Lexington at 5 AM on Patriots Day and then watch the Marathon. Patriots' Day is a Massachusetts holiday commemorating the start of the American Revolution at the battles of Concord and Lexington.

This year's Patriots' Day ended in blood when two bombs exploded without warning in the sea of spectators watching the Boston Marathon. Boston was upset, angry, but not cowered.

The injuries were horrific. People literally had their legs blown off. The first explosion near the finish line caused people to move away, towards the killing zone of the second explosion. The death count would have been higher except that, while some ran away from the explosions, many people ran towards them to frantically help the injured. Police, National Guardsmen, runners, race officials and just plain people began a new race. It was a race of wheel chairs and gurneys to get the injured to the medical tents that had been set up for the Marathon runners. From there, ambulances raced to Boston's world class hospitals where surgical teams raced to save lives.

The killings at Newtown were

pushed out of the news. For almost six months the anti-gun forces had shamelessly milked that tragedy for all it was worth. Their anger at being upstaged by a terrorist bombing in Boston was palpable. When they lost the vote in the Senate for stricter gun laws, they became positively strident. They will, however, be back.

Their frustration at being pushed out of the news by a homemade bomb built from Internet instructions is understandable. The "assault weapon" used to attack Boston was a kitchen pressure cooker.

For months, gun owners argued that if someone wanted to kill lots of people, he or she did not need a gun. There are an infinite number of ways that hate can be turned into violence against others. The enemy is hate, not guns. Three people were killed and over 260 were injured in the initial attack in Boston. One police officer was killed following the attack and a second was seriously injured. Many of the injured in Boston were children. Some families had multiple members lose limbs to traumatic amputations. Thousands who were not directly hurt, were caught up in the event.

High capacity magazines and assault weapons did play a role in the Boston bombing. Boston's streets were filled with men in black jump suits carrying rifles with 30 round magazines. They were everywhere: at the crime site, at the court house, at the hotels. All those guns that we were told were not good for anything, were the self-defense tool of choice for public safety officials who were on

the hunt for the bombers.

The community came together to find those responsible. The thousands of people lining the route of the Marathon had taken thousands of pictures. The police patched those snapshots together to create a montage that identified the two suspects who were brothers.

The older brother, we were told, was killed in a running gun battle in which the suspects hurled home made bombs at police. There was a massive gun fight in the heart of a congested neighborhood. The noise of the fight, which was recorded by a number of people, sounded like the commencement of the rapid fire stage at the National Matches. We are told that over 250 rounds were discharged. By the sound of the shots, mostly .223, the police did the bulk of the shooting. During this gun fight, a police officer was seriously wounded. As it turned out, the two suspects had only one handgun, between the two of them, a Ruger 9MM. That gun was recovered at the scene of the first "gun fight." We were told it could not be traced because the numbers had been filed off. The brothers are alleged to have murdered a police officer earlier in the evening in an attempt to get a second gun but could not figure out how to get it out of its holster.

The younger brother was cornered after being spotted by a member of the public. A second "gun battle" occurred which was caught on home video. It shows what appears to be a large number of rapid flashes from one spot in an area occupied by the police suggesting the police used a machine gun. The suspect who was known to be injured when

located, was unarmed and was forced to surrender to police.

The older brother, a resident alien, is said to have a history of selling marijuana. The younger brother, who became a citizen in 2011, was in college. He supposedly had a history of using drugs. The bombing of the Marathon was clearly a violation of the state law of murder in the first degree. It was also called an act of terrorism by the federal government and thus a violation of federal law. Under federal law, the attorney general could ask for the death penalty. The term "terrorist," however, has a ring of excitement that the two criminals who committed cold blooded murder should not be given. They are criminals plain and simple.

Terrorism is a political tool used to discredit the sitting government, to topple the government, or to force changes in the government. To some extent, the "terrorist" act in Boston was successful. Authorities closed down much of the metropolitan Boston area for a day and a large section of the core city for almost a week. Authorities also instituted a door to door

search of an entire neighborhood without any warrants or any reason to think the suspects were in any particular house.

As soon as the surviving suspect was captured, some people urged that he be treated as an "enemy combatant" and not be given the rights we accord to criminals under the Constitution. Such action would be a clear victory for terrorists as it would signal a retreat from our core values. It would be a sign that we lack faith in our system of laws. It would mark us as hypocrites.

As it was, the FBI questioned the suspect without reading him his "Miranda rights," that is without advising him that he did not have to speak with authorities. It was done, supposedly, to determine if there were any other conspirators or bombs in the community under an emergency public safety exception to the requirement. The problem is that as soon as suspect number two was caught, law enforcement all went home graphically demonstrating their belief the emergency was over. The questioning lasted 16 hours, long after any reasonable fear of other



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conspirators or acts of violence had ended. By engaging in that questioning without reading the suspect his Miranda rights, federal authorities have jeopardized the prosecution of the suspect and tainted any further investigation.

One of the most disturbing aspects of the Boston bombing is that it highlighted the great lack of knowledge in the United States of the political philosophy underlying the American Revolution and our current form of government. That ignorance includes both Republicans and Democrats holding high office.

People kept saying that the suspect in this case, or different people in other cases, were not entitled to rights created by the Constitution because they are not citizens, they are outside of the country, or because of the nature of the act they are accused of having committed.

If we can not teach our own political philosophy to those who inhabit our corner of North America, we will cease to exist.

The right to vote is a mark of citizenship created by the Constitution for federal elections. That right was originally reserved for landowners who were thought to be the only people with sufficient interest in good government to be entrusted with the right. Likewise the right to run for federal political office was a right connected with citizenship created by the Constitution.

The rights set forth in the Bill of Rights, however, were not created by the Constitution. They existed before the Constitution was written. Initially they were not even a part of the Constitution because the authors of the Constitution

saw those rights as basic human rights to which all persons were entitled. Having just fought a Revolution for those rights, they could not envision anyone turning their back on them. The First Amendment does not give us the right of free speech. It prohibits the government from interfering with that pre-existing right. The Second Amendment does not give us the right to keep and bear arms which is the right of self-defense. It prohibits the government from infringing on that right. The right to be free from government intruding on your privacy whenever it feels like it, the right to not have "confessions" beat out of you, the right to be told what your crime is and be able to face your accuser to defend yourself, the right to not be held in some jail indefinitely without being brought to trial, the right to a fair trial to determine if you are really guilty; these are some of the rights secured by the Bill of Rights. These rights are the fundamental freedoms necessary to the concept of ordered liberty. These rights, as explained in the Declaration of Independence, are given to us by our "Creator," that is, God. They were not given to us by any government. What a government gives, it has the right to take away. Governments have the raw power to violate rights, but such actions are against the natural law of God. Law and power are not synonymous. Thus, kings and presidents and governments can be said to violate the law.

When someone claims that people who are not U.S. Citizens, are not entitled to the civil liberty protections of the Bill of Rights because non-citizens are not protected by the rights given

to us by the Constitution, they endanger everyone's rights. They deny that the source of the rights is a higher authority than any man made political entity. Those rights are basic human rights and are not dependent upon citizenship. We had those rights before the Constitution was written.

There is always an excuse to deny someone we do not like the rights all people should have. But it is a slippery slope. It was just this tendency that made many of our founding fathers insist that the basic rights of all people placed in writing and attached to the Constitution so that no claim of government convenience could be used to destroy those rights.

Our last two Presidents have claimed the right to hold people indefinitely, without trial, because they say the people are terrorists. Our present President claims the right to take the life of an American citizen abroad without a trial because the President claims the person is a danger. It makes no difference where people are. It is a violation of basic human rights to kill someone or to incarcerate someone indefinitely without ever requiring the government to prove that person has actually done something wrong.

A soldier taken in combat during a war can be held as a prisoner of war until the end of hostilities. He/she has a status as a POW and is entitled by that status to certain rights under international law. Shooting at, or trying to blow up, another soldier is not an act of terrorism. It is an act of war. Blowing up a market filled with civilians is an act of terrorism which is a violation of the laws of war. It is a crime and the person, soldier or civilian, who commits such an

act can, and should, be tried as a criminal. The purpose of the trial, and all of the basic civil rights we attach to trials, is to determine if you have the right person. If a person is found guilty after a fair trial, then the punishment, up to and including the death penalty, should fit the crime. For the President to declare someone to be a terrorist does not make it so.

The one exception to the requirement that there be a trial before government can kill someone, is the claim of self-defense. Self-defense can be against criminals who are individuals or against other governments. Thus, even a government can violate the law if it wages wars of aggression, such as when Saddam Hussain invaded Kuwait. Wars are only justified as an act of self-defense. Not every act of violence, no matter how heinous, is an "act of war." Many are simply crimes.

We are a nation of laws. We need to show the world that we believe in our laws and our dedication to civil rights. It is what makes us different from other nations. We need to show the world we will not turn our back on the hundreds of years it took to develop those civil right just because there are bad people in the world. There have always been bad people in the world.

It is important to put the accused Boston bomber on trial. It is important that it be in the regular civilian courts and that he be accorded every right that an accused is entitled to. It is important to do so publicly to show the world that we believe in the strength of our own legal system.

(To be continued)

4th Edition of the Blue Book Offers Many Valuable Features

*By Joseph P. Tartaro,
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This important reference guide for people who buy, sell, study and collect arms has been around and in wide use for years now, and each new edition has offered even more value and information. The Thirty-Fourth Edition is no exception.

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