

Guns and the Law

Guns and the Law

Cases, Problems, and Explanation

Andrew Jay McClurg

PROFESSOR AND HERFF CHAIR OF EXCELLENCE IN LAW
THE UNIVERSITY OF MEMPHIS CECIL C. HUMPHREYS SCHOOL OF LAW

Brannon P. Denning

ASSOCIATE DEAN AND PROFESSOR OF LAW
CUMBERLAND SCHOOL OF LAW, SAMFORD UNIVERSITY



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In Memory of Our Fathers

Donald Wayne McClurg

P. Wayne Denning

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Preface

This book offers a *balanced* presentation of gun law and policy. McClurg adheres to a pro-reasonable regulation stance,* while Denning is a supporter of gun rights. Our different points of view on firearms and firearms policy helped ensure that both sides of the issues are fairly presented, a balance often lacking in this highly charged area.

Our goal in the following pages is not just to teach the “law of guns” in the United States, but to challenge your interpretations and assumptions about it. The gun debate is in desperate need of informed discourse. It sounds harsh, but the reality is that most people speaking on gun issues don’t know what they’re talking about. Many opinions people hear about guns or gun laws, whether from politicians or “experts” on television, are at best misleading and often flatly false. This is true on both sides of the debate.

We attempted to construct a book that—through cases and statutes, problems, explanation, and questions—accomplishes the following: (1) conveys a thorough understanding of the relevant law (e.g., constitutional rights, federal and state gun laws, gun laws in other countries, and relevant tort and criminal law); (2) requires readers on both sides of the gun debate to confront and respond to opposing arguments *on the merits* (rather than relying only on emotions or personal wishes); (3) provides a framework for considering not only the many outstanding legal and social questions surrounding gun law and policy, but possible answers and solutions to them; and (4) more than anything, stimulates honest, hearty debate about issues that affect all of us.

A few notes:

While casebooks are generally intended for law school use, we intentionally wrote this book to be accessible not only to law students, but students without a background in the law. We accomplished this (hopefully) by including extensive explanation both preceding and following each issue raised. Most of the meat of the book is found in the “Questions and Explanation” that follow each case.

We included quite a bit of data even though we are all too aware that data changes year-to-year. Including data is particularly problematic in casebooks, which are intended to have a long shelf life. Nevertheless, relevant statistics are important to

* We avoid the term “gun control” in this book. It is a loaded (no pun intended), biased term that evokes images of “gun prohibition” in the minds of many. Other dangerous products are regulated by the government, but we don’t speak in terms of, for example, “automobile control” or “pharmaceutical control.”

enable readers to grasp the significance (or, in some cases, relative insignificance) of the issues being discussed. Most people lack knowledge about even the most basic statistics in the gun debate, such as the number of annual gun deaths by homicide, suicide, or accident. While dramatic changes in figures can occur in a given year, most relevant gun statistics remain relatively stable over a period of years.

The legal landscape in the area of gun rights and gun regulation is vibrant to say the least. That we were able to fill a casebook almost entirely with cases decided in the past few years is a testament to that. Writing this book involved a lot of *rewriting*. Changes in state statutory law and new judicial interpretations of the Second Amendment seemed to occur weekly. An avalanche of lawsuits challenging state and federal gun laws began shortly after the U.S. Supreme Court's landmark decisions *District of Columbia v. Heller* (2008) and *McDonald v. City of Chicago* (2010). For the first time in our nation's history, those cases, respectively, recognized a Second Amendment individual right to possess a gun and applied that right to the states. (Previous Supreme Court cases had held that the Second Amendment regulates only actions of the federal government.)

Changes continue apace. Some of the judicial opinions in this book may be overturned by the time you read this. Similarly, states continue to adopt new laws either expanding (in most cases) or restricting gun rights.

A significant style choice we made in editing the judicial opinions in this book was to omit most case and other citations within them without so indicating, as by, for example, inserting "(citation omitted)." We did this to unclutter and improve the readability of the text. When we did leave in citations, we kept them complete. We also omitted nearly all footnotes in judicial opinions and law review article excerpts without indication. All other omissions are denoted by either ellipses (for deletions within a sentence or where we tied two consecutive sentences together) or asterisks where one or more complete sentences or paragraphs were omitted.

Another style choice was to use mostly male pronouns, rather than switch back and forth between male and female pronouns or attempt to use gender-neutral pronouns. Rather than advance the cause of equality, the latter choices would be misleading. Men commit the vast majority of violence in America, including 90% of homicides.

We hope you enjoy reading and learning from this book and welcome any and all feedback.

Andrew Jay McClurg
Brannon P. Denning