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What Little I Know

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WHAT LITTLE I KNOW

Not long ago, I heard a man of my generation reminisce about his high-school days. He mentioned with particular fondness the shotguns racked across the rear windows of the pickups parked in the student lot. Someone else mentioned the shotgun that went with him to college in case a classmate invited him home for a hunt. “Probably get me kicked out today,” he laughed, shaking his head. People nodded. A wife murmured something about no gun violence in the old days, how life was better then, and safer.

I remember those days. I remember the schoolmate who took a shotgun upstairs and killed herself after her boyfriend died in a car crash. And the guy I knew at college who shot himself to death during a semester break. Better? I wondered, sitting at that cheerful cocktail party. Safer?

My mother used to go trapshooting with one of her teenage beaux. My father was a veteran and also—briefly—a constable in our small town, a position that sometimes required him to carry a gun. They sent me to a summer camp that offered target shooting right alongside swimming, archery, field games, campcraft, and art. My father-in-law hunted with bird dogs. My husband grew up shooting quail. And so I brought all of that background to District of Columbia v. Heller,1 which recent events prompted me to revisit this spring.

I still line up behind Heller’s dissenters. But of course I can see that the Second Amendment raises questions that cannot be answered merely by asserting that we know what the men who approved it had in mind. I know too that my answers might be

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wrong. Yet I recall that among the Founders was one, himself no 
“advocate for frequent . . . changes in laws and constitutions,” who encouraged his successors to trim the Constitution as they 
might trim a sail—not to drop canvas, but to work out how it 
might best be adjusted to account for prevailing conditions. “[L]aws and institutions,” he believed, “must go hand in hand 
with the progress of the human mind.” And “as new discoveries 
are made, new truths disclosed, and manners and opinions 
change with the change of circumstances, institutions must 
advance also, and keep pace with the times,” for as he pointed 
out, we ought not to expect a “civilized society to remain ever 
under the regimen of their barbarous ancestors.”

THE ISSUE

We have in this issue the typical mix of appellate topics, each 
a matter of current interest. Mr. Gosney addresses the 
assessment of the criminal defendant’s chances on appeal and 
Mr. Metzler the challenge of the nested quotation in the 
appeal brief and the appellate opinion. Professors Dow and 
Newberry outline the decades-long course of an appeal gone 
badly awry. Professor Entrikin casts a cold eye on intemperate 
language in dissenting opinions, and Ms. McGaughey explains 
the role of the United States Attorney’s office in the government 
appeal. Each is an important contribution to the continuing 
“dialogue about the operation of appellate courts and their 
influence on the development of the law” that we have hosted 
from the start.

NBM
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(reporting Judge Hand’s famous acknowledgement that “[t]he spirit of liberty is the spirit 
which is not too sure that it is right,” and so “seeks to understand the minds of other men 
and women”).

3. Letter from Thomas Jefferson, Pres. of the U.S. (ret.), to Samuel Kercheval (July 
12, 1816), available at https://www.loc.gov/resource/mjlj1.049_0255_0262/ (reproducing 
handwritten original).

4. Id.

5. Id.

6. See, e.g., University of Arkansas at Little Rock William H. Bowen School of Law, 
of-appellate-practice-and-process/.