

For years the meaning of the Second Amendment drew little attention from American courts. In 1939, the Supreme Court agreed with the collective right position when it decided a case that upheld the right of the federal government to require the registration of firearms.⁸⁰ By not incorporating the amendment, however, the Court left the states with a great deal of authority to restrict or protect gun ownership. In recent years, states have tended to protect the rights of gun ownership: forty-four state constitutions now include language that recognizes the right to keep and bear arms.

Then in 2008, the Court dramatically changed the meaning of the amendment with its decision in *District of Columbia v. Heller*. Heller, an armed security guard, sued the District after it rejected his application to keep a handgun at home for protection. His application violated a strict 1976 DC ordinance that banned the private ownership of all handguns. Rifles and shotguns were allowed if they were kept disassembled or in a trigger lock or some similar device. By a 5 to 4 majority, the Court ruled that the Second Amendment confers an individual right for citizens to keep and bear arms to protect themselves.⁸¹ The Court's decision has spurred a great deal of controversy as well as questions about its policy implications. The Court expanded its earlier decision in 2010 by ruling that an individual's right to bear arms applies also to state and local gun control laws (*McDonald v. Chicago*). The opinion emphasized, however, that the Court was not saying that the Second Amendment provided a right to "carry any weapon whatsoever in any manner whatsoever and for whatever purpose."

In January 2011, in Tucson, Arizona, a disturbed young man with a Glock semiautomatic pistol gravely wounded Representative Gabrielle Giffords (D-AZ) and then turned to fire upon the crowd attending her outdoor political event. By the time he was subdued, six people were dead and many others were wounded. Despite the shock that ran through the nation, the incident failed to provoke a meaningful conversation about gun violence in the United States. The nation was again shocked in December 2012 when a lone gunman entered an elementary school in Newtown, Connecticut, and shot to death twenty-six persons, including twenty children between the ages of five and ten. Lobbying by the victims' parents in 2013 was unable to bring about any legislative changes by Congress despite a rash of other school and workplace shootings. Similar reactions of grief but no political action occurred after mass shootings at Columbine High School, an army base at Fort Hood in Texas, a church in Charleston, South Carolina, a community college in Oregon, and all too many other acts of violence around the country. The nation's largest mass shooting in Orlando did lead to Senate votes on gun sale restrictions in 2016 but they were unsuccessful. Democrats in the House staged a sit-in to bring attention to the gun issue but the result once again was no meaningful change.

RIGHTS OF THE ACCUSED

The early Americans showed their unhappiness with the British criminal justice system by devoting four of the first eight amendments almost exclusively to rights granted to accused persons.⁸² Remembering the treatment of colonial leaders by their British rulers, the Framers of the Bill of Rights were determined to provide procedural guarantees throughout the criminal justice system to ensure fairness and justice for the accused. Such protections are embodied in the Fourth, Fifth, Sixth, and Eighth Amendments.

Recent history has shown that not all accused persons are afforded the constitutional protections of the Bill of Rights that are discussed here. Chapter 12 details how President George W. Bush used presidential emergency powers after the attack of September 11, 2001, to curtail the rights of persons suspected of being enemy combatants in a war of terrorism against the United States. Detainees at the Guantanamo Bay prison were not allowed to know the charges against them, to have access to attorneys, to have evidence presented that was not hearsay or the fruits of coercion, nor to have access to federal courts to challenge their detention. Such rules were not only controversial but led many to become concerned about the preservation of civil liberties in the United States. In *Boumediene v. Bush* (2008), the Supreme Court continued to reject most of these procedures, writing that the Constitution was meant to survive in extraordinary times, and therefore, detainees have a right of habeas corpus in federal courts unless Congress explicitly exercises its constitutional authority to suspend the right.