

THE BILL OF RIGHTS

BILL OF RIGHTS

- First 10 Amendments to the Constitution
- Protects individual liberties
- Strongly influenced by George Mason, who wrote the Virginia Declaration of Rights

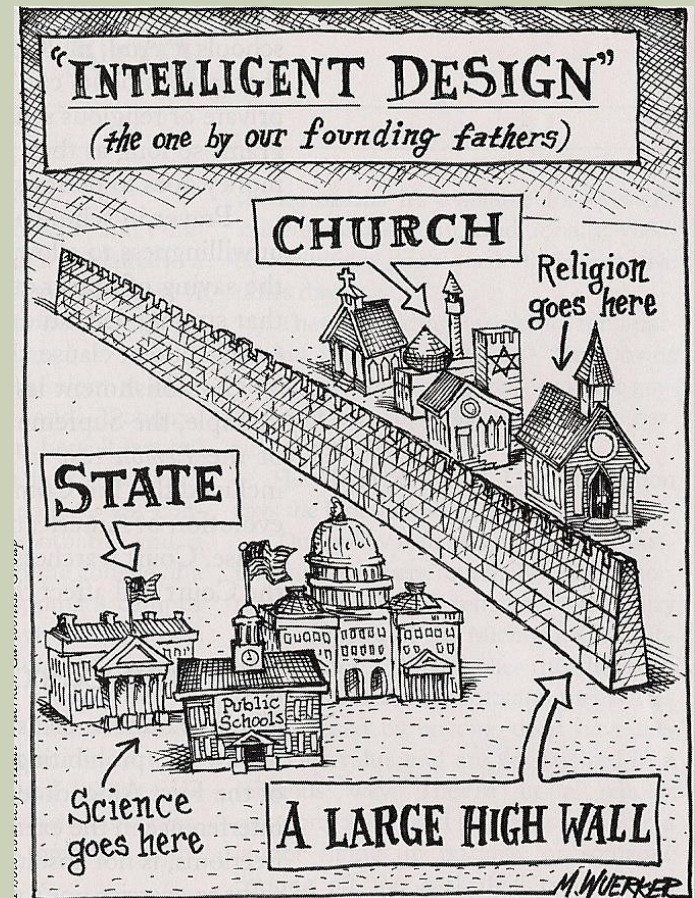


AMENDMENT I

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
- Do you know the 1st Amendment- Jimmy Kimmel

FREEDOM OF RELIGION: THE ESTABLISHMENT CLAUSE

- “Congress shall make no law respecting an establishment of religion”
 - No official state church/religion or favoritism
 - “wall of separation” between church and state-Thomas Jefferson



LANDMARK CASES: ESTABLISHMENT CLAUSE

- W. Va. Bd of Education v. Barnette (1943)
- Does a W. Va. Statute requiring all public school students to recite the Pledge of Allegiance violate the Estab Clause?
- Yes. Cannot legislate patriotism!



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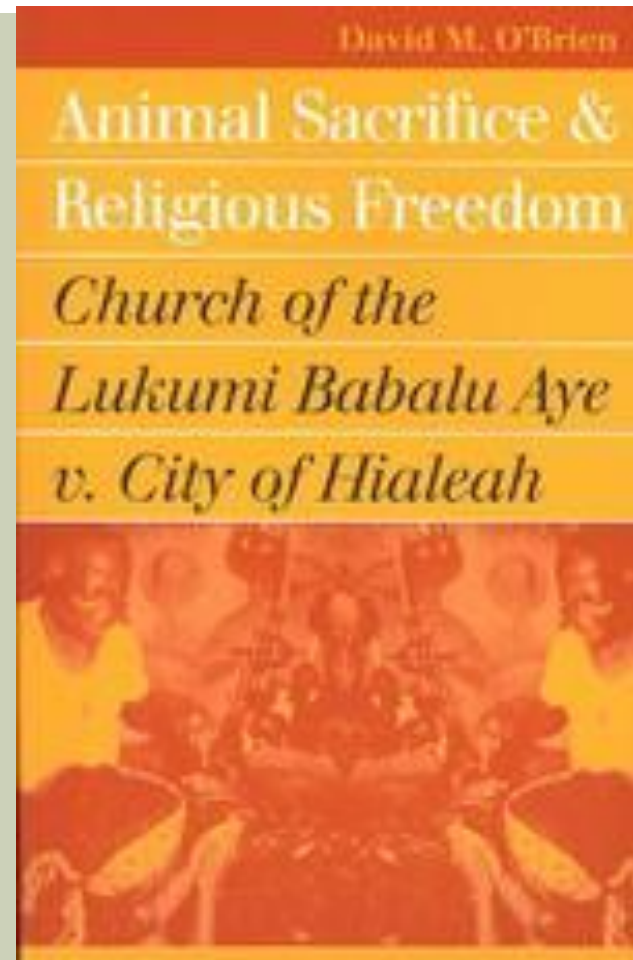
ENGEL V. VITALE (1962)

- “Almighty God, we acknowledge our dependence on thee & beg thy blessings upon us, our teachers & our country.”
- Does a NY state law requiring a state-written prayer to be recited by school children violate the Estab Clause?

- YES!!... = approval of religion

CHURCH OF LUKUMI BABALU AYE V. HIALEAH (1993)

- Does a city ordinance making it a crime to kill animals in a ritual or ceremony violate the Estab Clause?
- YES!! Ordinance targeted the religious group



SANTA FE ISD V. DOE (2000)



- Does a school board policy allowing for student-led, student-initiated prayer at football games using the public address system violate the Estab Clause?
- YES!! Govt property, govt-sponsored event; perceived AND actual endorsement

THE FREE EXERCISE CLAUSE

- “Congress shall make no lawprohibiting the free exercise thereof”
 - Belief vs. Practice!!!
 - The court may not declare a belief to be false, but may determine whether the person is sincere in that belief.
 - The state may regulate and even ban actions or practices that grow out of religious beliefs

JACOBSON V MASS (1905)

- Does a law requiring a vaccination for public school attendance violate the Free Exercise Clause if it goes against a religious belief not to accept conventional medical practices?

- No!!

WISCONSIN V. YODER (1972)



- Does a state compulsory attendance law for public school children violate the FE Clause if Amish parents take their children out of school after the 8th grade?

- YES!!

OREGON EMPLOYMENT DIVISION V. SMITH (1990)

- Does a law prohibiting the use of peyote violate the FE Clause if Native Americans use it during a religious ceremony?
- NO!! Can't break the law, even for religious purposes



SOME QUESTIONS ANSWERED...

Your belief says:

1. You must have more than 1 wife
2. You must not fight
3. You must pledge allegiance only to God
4. You must not have blood transfusions

Do you have the right?

1. No
2. Yes, “conscientious objections”
3. Yes, compulsory flag salute unconstitutional
4. Yes, unless minor

SOME QUESTIONS ANSWERED...

Your belief says:

5. You must not be immunized
6. You must handle poisonous snakes in a religious ceremony
7. You must not work on your Sabbath
8. Your children cannot go to public school

Do you have the right?

5. No, public safety
6. No
7. Yes
8. Yes, if religious beliefs infringed

SOME QUESTIONS ANSWERED...

Your belief says:

9. You must use an illegal drug in ceremonies

10. You must sacrifice animals

Do you have the right?

9. No, *Oregon v. Smith*

10. Yes, if well established (*Church of Lukumi v Hialeah*)

FREEDOM OF SPEECH

- No prior restraint
 - Govt can't limit words/ideas before they are expressed
- *Exceptions: National Security*
- Schenck v. US (1919)
 - Socialist encouraged resistance to draft in WWI
 - Posed "clear & present danger" b/c impeding war effort

MORE EXCEPTIONS... SCHOOL SETTING!

■ Bethel v. Fraser (1986)

- Obscene high school speech not protected
- Disrupted learning environment



Matthew Fraser stands in front of Bethel High School, which suspended him for his sexually suggestive nomination speech for a fellow student in 1983. The Court found that the school acted within its powers to discipline Fraser because he gave his saucy speech at a school-sponsored event.

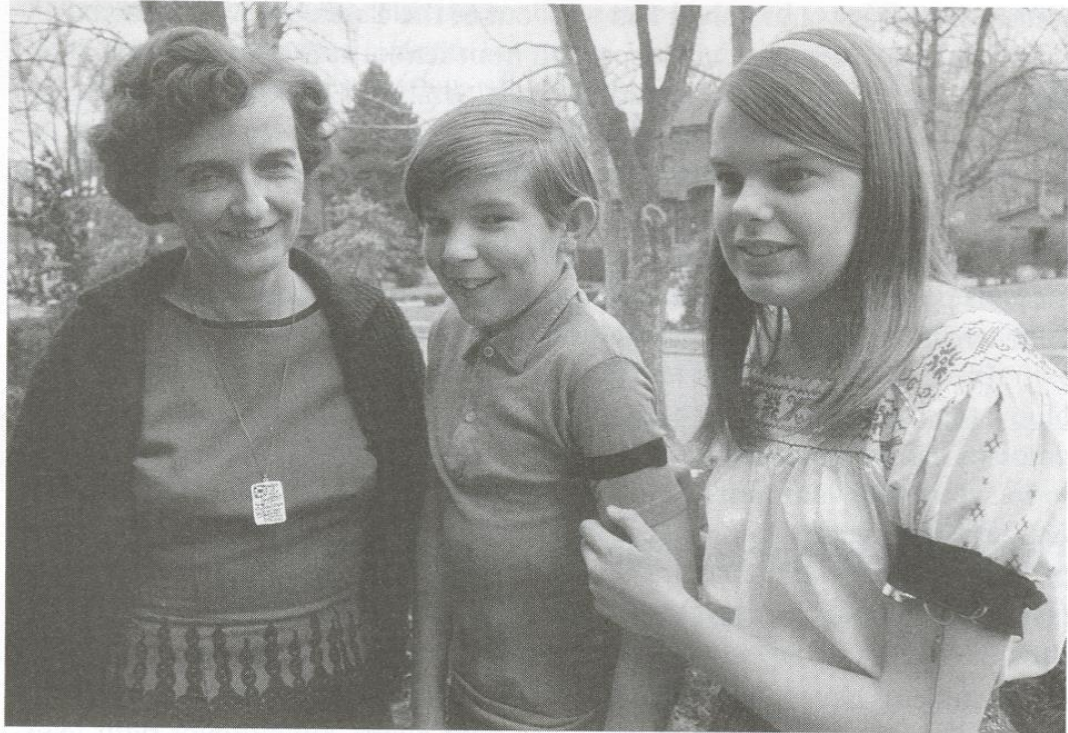
■ Hazelwood v. Kuhlmeier (1988)

- Not censorship b/c school-sponsored publication, paid for with tax \$, NOT a public forum

-2007 Su Ct case: “Bong Hits 4 Jesus” – protected speech??

SYMBOLIC SPEECH CASES

- Tinker v. Des Moines (1969)
 - Black armbands = Vietnam protest
 - Estab'd “symbolic speech”



Mary Beth Tinker, here with her mother, Lorena, and younger brother Paul, protested the Vietnam War in 1965 with her brother John by wearing black armbands to school. After they were suspended by school authorities, the Supreme Court held that public school students have First Amendment rights of political expression that were violated in their case.

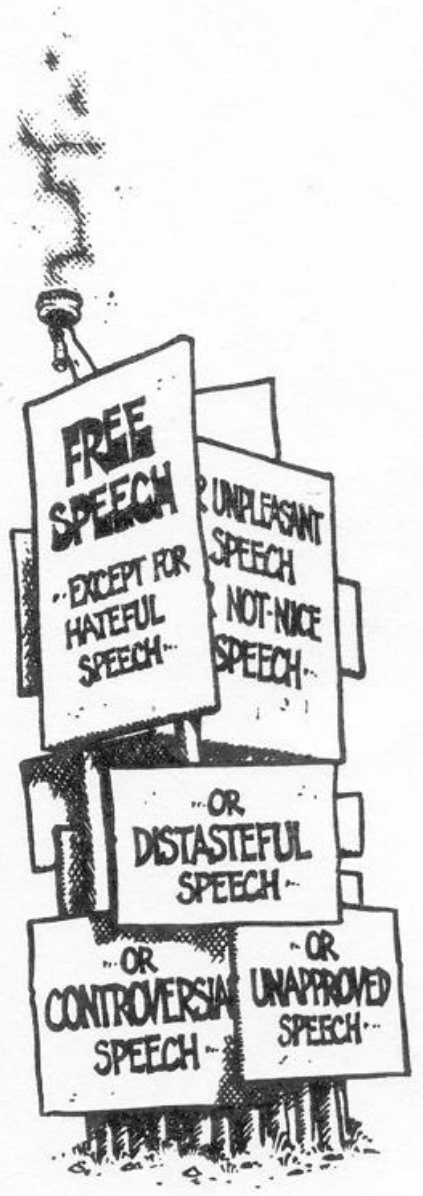
■ Texas v. Johnson (1989)

- Flag burning OK 5-4
- Distinctive political nature of speech



2006... 7th grade SS teacher in Kentucky burned flag in class; told kids to ask their parents what they thought and write a position paper; he was “reassigned to non-instructional duties” for jeopardizing fire safety

BEN SARGENT
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DEFAMATORY SPEECH IS NOT PROTECTED

- Slander (spoken) and libel (written)
 - False & malicious words against another that adversely affects their reputation
 - Does NOT include the truth or something said w/consent
 - Public figures are different... NY Times v. Sullivan (1964)...must show clear & convincing evidence of malice, knowledge that the statement is false, w/reckless disregard for the truth

AMENDMENT 2

- A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.
- Protects right to bear arms.
 - Does it mean that you can only carry arms if you are in the militia?
 - Can guns only be used for national defense, or does that mean self-defense?

AMENDMENT 3

- No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT 4

- “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

BASICS ABOUT THE 4TH

- Applies to searches conducted by government and government agents, not to private citizens (silver platter doctrine)
- Property must be abandoned voluntarily if searched
- Curtilage v. “open fields”
- Only in areas where a “reasonable expectation of privacy” can be shown
 - Areas of a public store-no
 - School locker-no
 - Police need probable cause = reasonable grounds to believe someone guilty of a crime

GOVERNMENT

- Please have out your Bill of Rights notes and turn to the 4th Amendment
- Which case applied the exclusionary rule to the states?
- Your quiz will be the last 25 minutes of class, please be ready.

- Mapp v. Ohio (1961)
 - Applied to states as well as federal
 - Warrant was not for what was found!
 - =THE EXCLUSIONARY RULE-Prevents illegally seized evidence from being introduced in court.





I don't care
that your conviction
was overturned. Up here,
we don't follow the
Exclusionary Rule.



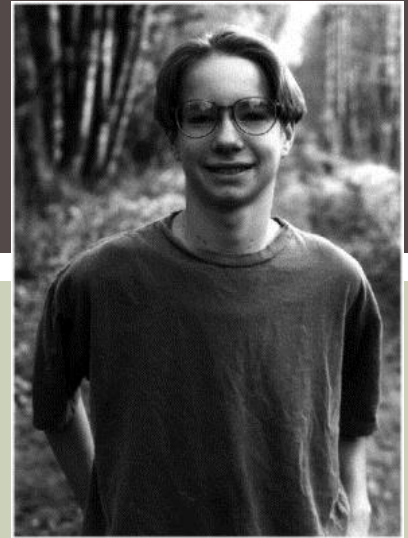
EXCEPTIONS TO 4TH AMENDMENT

- Good faith exception/clerical errors
- Plain view
- Incident to valid arrest
- Motor vehicle search for contraband
- Consent search
- Border/airport
- Hot pursuit
- Emergency situation
- Stop & frisk rule

2006 SC ruling... police have to have consent of BOTH residents to search a home

– 2007 question... does ramming a fleeing/speeding car violate unreasonable “seizure”?? (*Scott v. Harris*)

SCHOOL SETTINGS



■ NJ v. TLO (1985)

- Lesser requirement for schools = “reasonable suspicion” that school rules being broken
- NOT probable cause

■ Vernonia v. Acton (1995)

- Random drug testing of student athletes ok

■ Board of Education of Pottawatomie v. Earls (2002)

- Drug testing for all extracurriculars OK
- Serves school district’s purposes

USA PATRIOT ACT

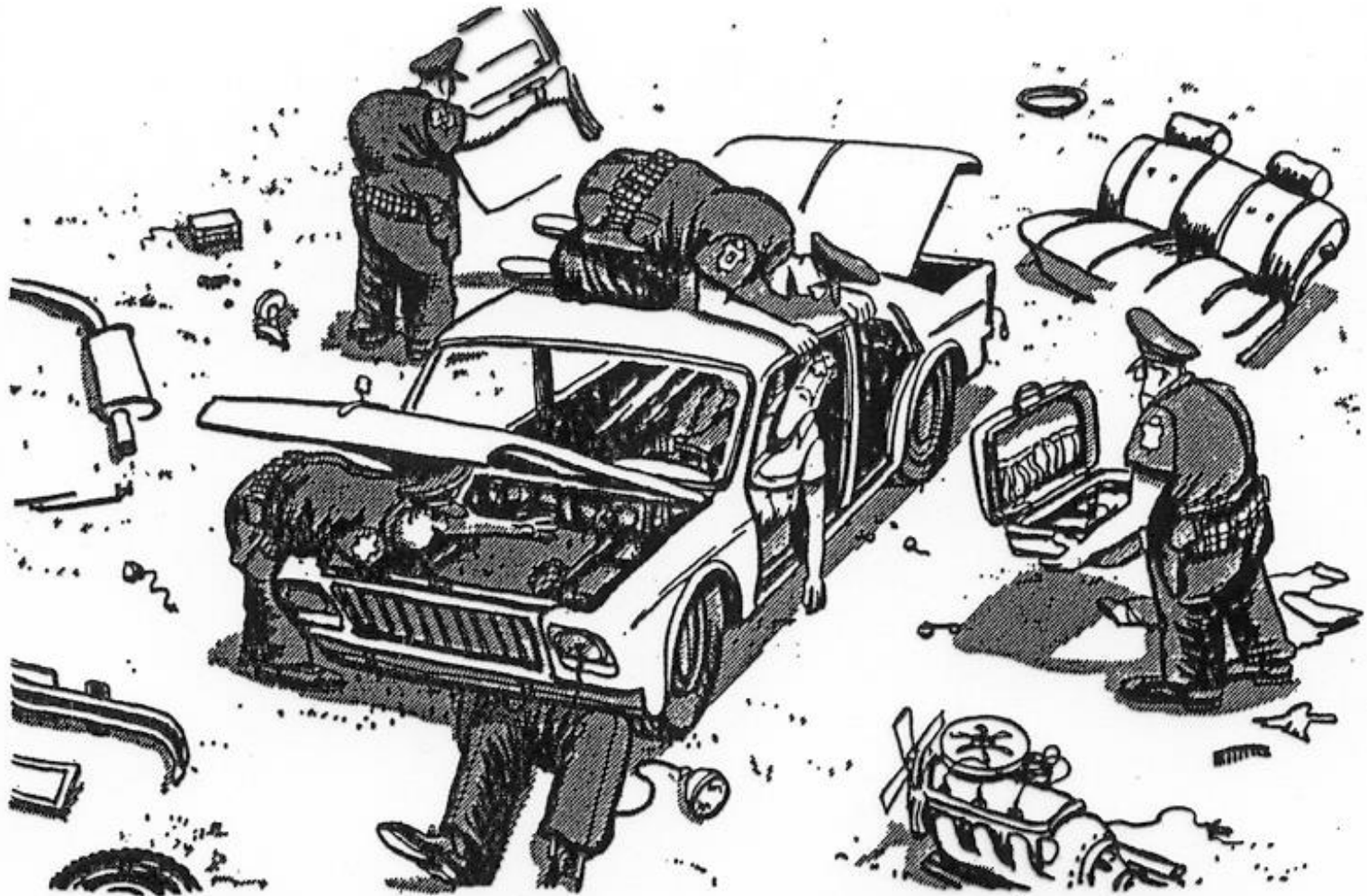
- Govt. has broad powers for wiretapping, surveillance, and investigation of terrorism suspects
- NSA (National Security Agency) domestic spying without warrants



"The court finds itself on the horns of a dilemma. On the one hand, wiretap evidence is inadmissible, and on the other hand, I'm dying to hear it."

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“We’ve looked everywhere for your constitutional protection against illegal search and seizure... but we haven’t found any yet!”

By Beattie for The Daytona Beach Morning Journal

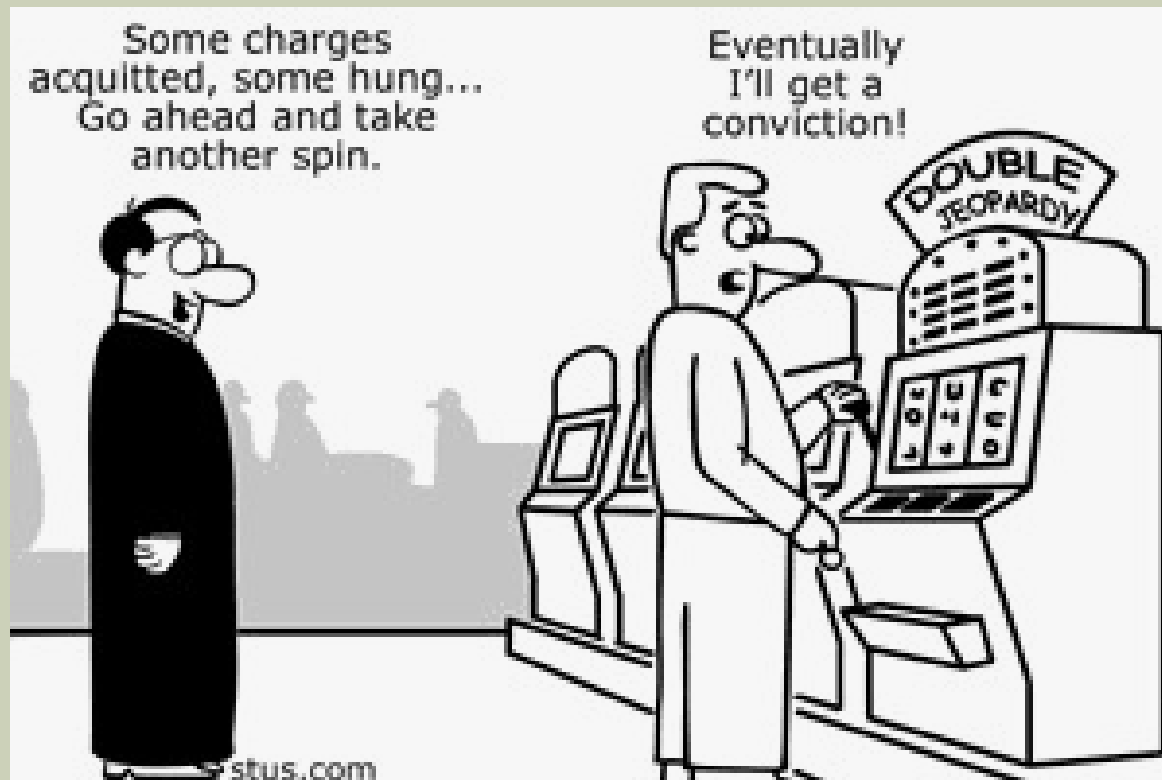
AMENDMENT 5

- “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

JURY BASICS

- Grand Jury-issues indictments (is there enough evidence to warrant a trial-DOES NOT DETERMINE GUILT OR INNOCENCE)
- Petit/Trial Jury-determines guilt or innocence in criminal cases

- Double Jeopardy- You may not be put on trial for the same offense twice.



“PLEADING THE 5TH”

- You may remain silent, do not have to be a witness against yourself

THE WIZARD OF ID

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■ Miranda v. Arizona
(1966) (5th Amend)

- Accused must be informed of their rights to attorney and to say nothing



MIRANDA RIGHTS

- Must be read by officer upon arrest
- Result of *Miranda v. Arizona* (1966)
- “right to remain silent, may stop answering questions at any time, what you say can be used against you in a court of law, right to have a lawyer present during questioning, if you cannot afford a lawyer the court will provide one for you”



EMINENT DOMAIN

- Government may not take **PROPERTY** without just compensation
- **Kelo v New London**

AMENDMENT 6

- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT 6

- Speedy and public trial
- Impartial jury
- Informed of accusations
- Confront witnesses
- Obtaining witnesses
- Assistance of counsel- *Gideon v. Wainwright* (1963)-Anyone accused of a felony gets an attorney (In 1972, any crime worthy of imprisonment gets an attorney)



I was sentenced to The State Penitentiary by The Circuit Court of Bay County, State of Florida. The present proceeding was commenced on a ~~my~~ petition for a Writ of Habeas Corpus to The Supreme Court of The State of Florida to vacate the sentence, on the grounds that I was made to stand Trial without the aid of counsel, and, at all times of my incarceration. The said Court refused to appoint counsel and therefore deprived me of due process of law, and violate my rights in The Bill of Rights and the constitution of The United States.

~~Clarence Gideon~~
5th day of Jan 1962 Petitioner
~~Lawrence C. Dwyer~~
NOTARY PUBLIC

Notary Public
My Commission Expires 1-1-1962
Bonded by American Surety Co. of N.Y.

Gideon's Letter to the Supreme Court
John F. Davis, Clerk, Supreme Court of the United States

The handwritten letter that Clarence Gideon (insert) sent to the Supreme Court in 1962. The letter led eventually to the *Gideon* decision in which the Court held that states must provide poor defendants with legal counsel (see Chapter 4). Seen by many people at the time as judicial activism, the ruling is now fully accepted.

AMENDMENT 7

- In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.
- Jury trial in civil cases over \$20

AMENDMENT 8

- Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.



CRUEL & UNUSUAL PUNISHMENT/ EXCESSIVE FINES & BAILS (8TH AMENDMENT)

- Gregg v. Georgia
(1976)
 - Death penalty NOT unconst'al, but extreme punishment for an extreme crime

- 1976... no mandatory death penalty
- 2002...no execution of of accused with a low IQ
- 2005... no execution of someone who committed a crime as a minor
- [Death Penalty Information Center](#)



You Are the Judge

The Case of the First Offender

Ronald Harmelin of Detroit was convicted of possessing 672 grams of cocaine (a gram is about one-thirtieth of an ounce). Michigan's mandatory sentencing law required the trial judge to sentence Harmelin, a first-time offender, to life imprisonment without possibility of parole. Harmelin argued that this was cruel and unusual punishment because it was "significantly disproportionate," meaning that, as we might say,

the "punishment did not fit the crime." Harmelin's lawyers argued that many other crimes more serious than cocaine possession would net similar sentences.

You Be the Judge: Was Harmelin's sentence cruel and unusual punishment?

Answer: The Court upheld Harmelin's conviction in *Harmelin v. Michigan* (1991), spending many pages to explain that severe punishments were quite commonplace, especially when the Bill of Rights was written. Severity alone does not qualify a punishment as "cruel and unusual." The severity of punishment was up to the legislature of Michigan, which, the justices observed, knew better than they the conditions on the streets of Detroit.

AMENDMENT 9

- Have more than enumerated rights
- The “penumbra” of multiple rights
- *“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”.*

AMENDMENT 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.