

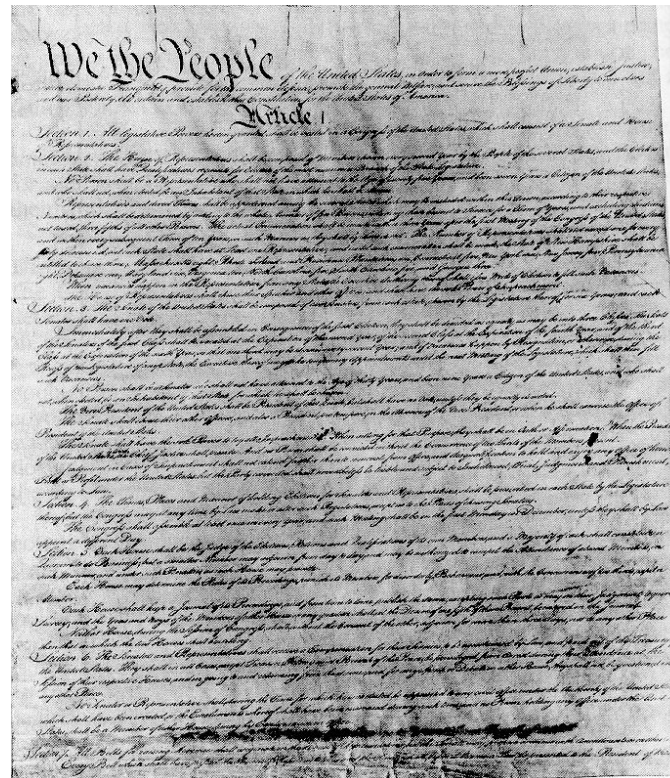
CIVIL LIBERTIES



THE POLITICS OF CIVIL LIBERTIES

Civil liberties: protections the Constitution provides individuals against the abuse of government power

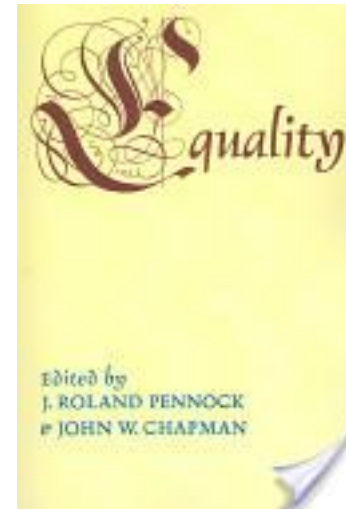
State ratifying constitutions demanded the addition of the Bill of Rights



THE FOURTEENTH AMENDMENT (1868)

Due Process Clause: “*no state* shall deprive any person of life, liberty or property without due process of law.” This clause is the basis of civil liberties cases.

Equal Protection Clause: “*no state* shall deny to any person within its jurisdiction the equal protection of the laws.” This clause is the basis of civil rights cases.



INCORPORATION

1925 (*Gitlow v. New York*): declared federal guarantees of free speech and free press also applied to states.

Fundamental rights in the Bill of Rights apply to actions by the states.

This case begin the process of “selective incorporation.”

THE FIRST AMENDMENT

The First Amendment protects freedom of speech, press, assembly, religion and petition.

Freedom of religion is protected in two clauses

- The Free Exercise Clause
- The Establishment Clause



FREEDOM OF EXPRESSION

As a general rule, the Court does not permit restraint of material prior to publication (Pentagon Papers case).

There are limitations on freedom of expression, including speech that presents “a clear and present danger,” defamation and obscenity.



DEFAMATION

Libel: a written false statement defaming another

Slander: a defamatory oral statement

Public figures must also show the words were written with “actual malice”—with reckless disregard for the truth or with knowledge that the words were false.



OBSCENITY

***Miller v. California (1973)*: judged by “the average person, applying contemporary community standards” to appeal to the “prurient interest” or to depict “in a patently offensive way, sexual conduct specifically defined by applicable state law” and lacking “serious literary, artistic, political, or scientific value”**



SYMBOLIC SPEECH

Some speech can be made illegal, even though it conveys a political message (example: burning a draft card).

However, statutes cannot make certain types of symbolic speech illegal. For example, flag burning is protected speech.



COMMERCIAL SPEECH

Commercial speech, such as advertising, can be restricted; the FTC prohibits false claims.

In *FCC v. Pacifica* (1978) the Court upheld restrictions on foul language over the public airways.



THE FREE EXERCISE CLAUSE

Insures that no law may impose particular burdens on religious institutions.

Prohibits abridgement of the freedom to worship (or not to worship).

Some conflicts between religious freedom and public policy are difficult to settle.



THE ESTABLISHMENT CLAUSE

Government involvement in religious activities is constitutional if it meets the following test (*Lemon v. Kurtzman*, 1971):

- Secular purpose
- Primary effect neither advances nor inhibits religion
- No excessive government entanglement with religion



© Original Artist
Reproduction rights obtainable from
www.CartoonStock.com

RIGHTS OF DEFENDANTS

The Fourth Amendment protects against unreasonable searches and seizures and requires search warrants.

The Fifth Amendment protects against self-incrimination.

The Sixth Amendment says the accused has a right to counsel.

The Eighth Amendment prohibits excessive bail and cruel and unusual punishment.

EXCLUSIONARY RULE

Exclusionary rule (*Mapp v. Ohio*, 1961): evidence gathered in violation of the Constitution cannot be used in a trial.

The exclusionary rule stems from the Fourth Amendment (freedom from unreasonable searches and seizures) and the Fifth Amendment (protection against self incrimination).

11/22/2006 01:00 NO. 194 502

POLICE DEPARTMENT
CITY OF PHOENIX, ARIZONA
SEARCH WARRANT
COUNTY OF MARICOPA, STATE OF ARIZONA

DR: 2006-62243993

WARRANT NO.
SW 2006-004692

TO ANY PEACE OFFICER IN THE STATE OF ARIZONA:

Proof by affidavit having been made this day to me by Officer Kurt Sipmann #7535.

I am satisfied that there is probable cause to believe that

[x] on person(s) of Suspect #1 Webster, Alan Neil B/M, DOB 11/28/1950, black hair, brown eyes, 6'0", 185 lbs., Suspect #2 Webster, Nita M W/F, DOB 10/08/1965, brown hair, brown eyes, 5'05", 120 lbs. and Suspect #3 Campbell, Joseph L. B/M, DOB 04/13/59, black hair, brown eyes, 6'02", 300 lbs.

[x] on the premises described as 2501 E. Van Buren Street, The Flamingo Inn, #219. This being a multi unit motel complex constructed of stucco painted yellow with red trim. Apartment #219 is located in the south east corner of the building. The motel door faces west and is red in color with the number "219" on the door.

in the City of Phoenix, County of Maricopa, State of Arizona, there is now being possessed or concealed certain property, persons or things described as:

Drug Paraphernalia;

A usable amount of crack cocaine, a narcotic drug;

Firearms;

Indicia of occupancy, residency, and/or ownership of the premises described above, including, but not limited to utility, telephone bills, and canceled mail;

SEARCH AND SEIZURE

A properly obtained search warrant is an order from a judge authorizing the search of a place and describing what is to be searched and seized.

A judge can issue only if there is probable cause

What can the police search, incident to a lawful arrest?

- The individual being arrested
- Things in plain view
- Things or places under the immediate control of the individual

CONFESSIONS AND SELF INCRIMINATION

***Miranda* case: confessions are presumed to be involuntary and cannot be used in court unless the suspect is fully informed of his or her rights**

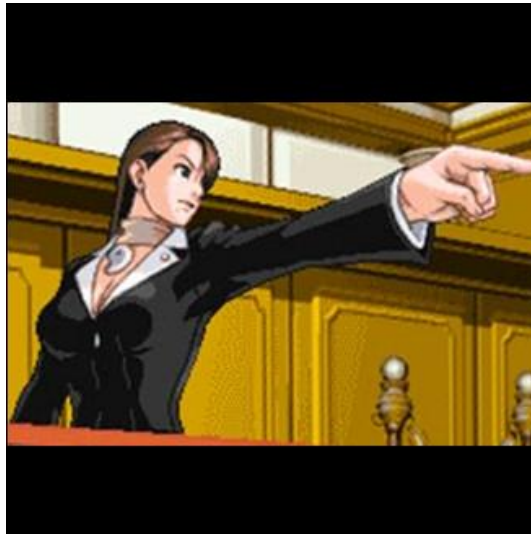
***Miranda* rights apply once a suspect is in custody.**



THE RIGHT TO COUNSEL

The Sixth Amendment provides the accused with a right to have the assistance of counsel for his defense.

Gideon v. Wainwright (1963) says that the state must provide an attorney in felony cases if the accused cannot afford one. This was an unfunded mandate.



THE DEATH PENALTY

***Furman v. Georgia* (1972):** the death penalty, was applied in a freakish and random fashion and was, in this particular case, unconstitutional.

States rewrote their death penalty statutes to include aggravating and mitigating factors

***Gregg v. Georgia* (1976):** the death penalty is an expression of society's outrage.

