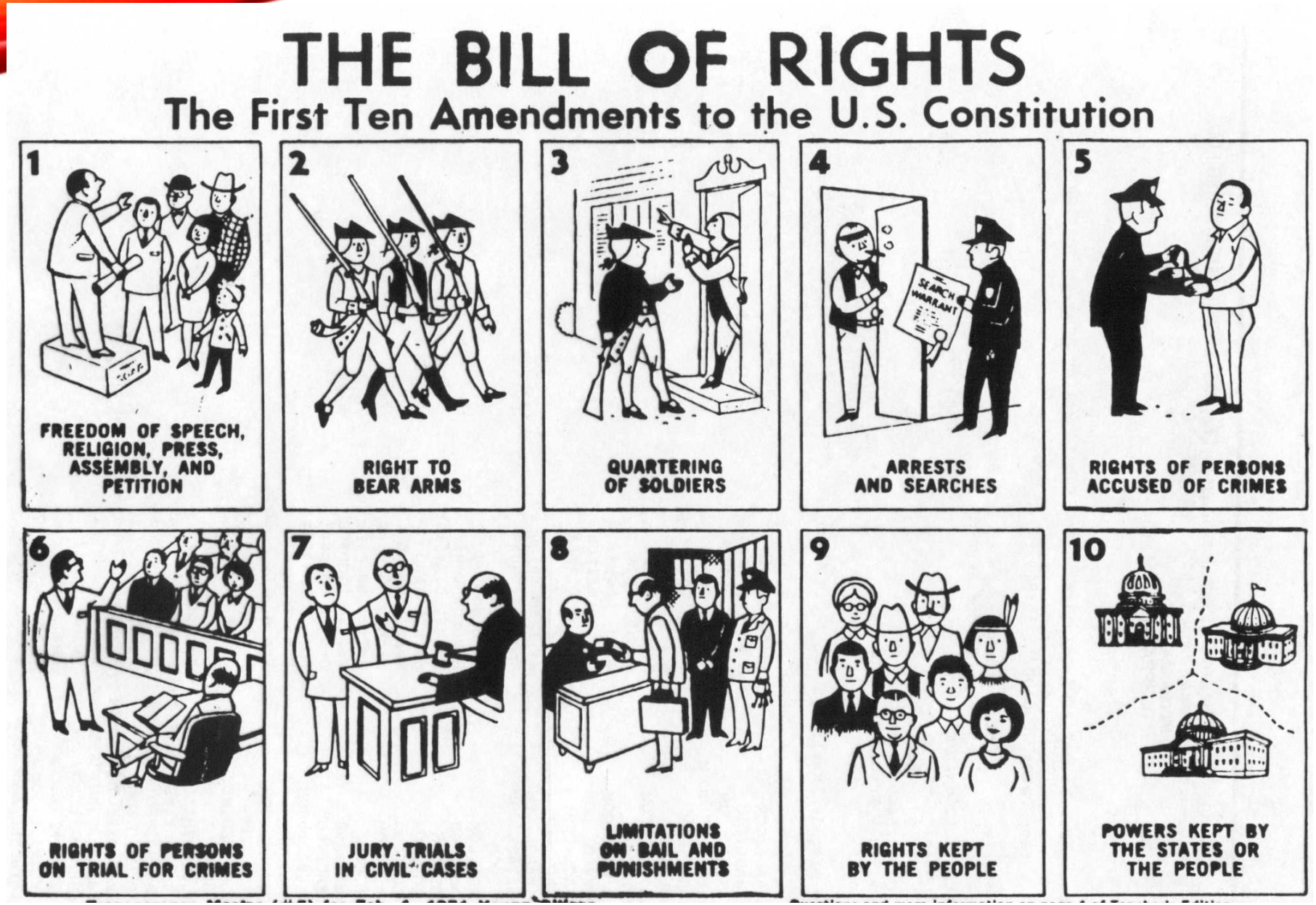
THE BILL OF RIGHTS

The Interactive Constitution!



THE BILL OF RIGHTS: IT'S ROOTS

- **MAGNA CARTA 1215 ENGLAND**
  - PROTECTED SUBJECT AGAINST ABUSE BY THE KING
  - REQUIRED LEGAL PROCEEDINGS TO BE DONE ACCORDING TO THE "LAW OF THE LAND" (DUE PROCESS).

- **PETITION OF RIGHT 1628**
  - CONDEMNED UNLAWFUL IMPRISONMENT
  - NO TAXATION WITHOUT CONSENT OF PARLIAMENT

- **BILL OF RIGHTS 1689**
  - BANNED EXCESSIVE FINES AND BAIL
  - BANNED CRUEL AND UNUSUAL PUNISHMENT

- **IN THE COLONIES**
  - 1606 CHARTER FOR VIRGINIA
    - DUPLICATED PRIVILEGES GRANTED IN ENGLAND
    - RESOLUTIONS ADOPTED FROM THE IMPOSITION OF THE STAMP ACT OF 1765 UNTIL THE REVOLUTION.

THE CONSTITUTIONAL CONVENTION 1787

- DESIRE FOR A BILL OF RIGHTS EARLY ON
  - GEORGE MASON “WISHED THE PLAN HAD BEEN PREFACED BY A BILL OF RIGHTS.”
  - ELBRIDGE GERRY PROPOSED A COMMITTEE TO PREPARE A BILL OF RIGHTS.
    - ***REJECTED BY THE DELEGATES OUTRIGHT***.
      - DIDN’T THINK IT WOULD BE NECESSARY
      - FEDERAL GOVERNMENT WOULD BE LIMITED TO ENUMERATED POWERS.
    - JAMES MADISON WAS CONCERNED ABOUT BARRIERS TO THE MAJORITY FELT THERE WAS ANOTHER WAY:
      - SEPARATION OF POWERS
      - CHECKS AND BALANCES
- OPPONENTS (ANTI-FEDERALISTS) ARGUED FOR A BILL OF RIGHTS
  - MADISON PLEDGED TO ADD THE AMENDMENTS **IF THE CONSTITUTION WAS RATIFIED FIRST.**
    - THIS CONVINCED THE DIVIDED STATES
      - NEW YORK
      - VIRGINIA

JAMES MADISON DRAFTED THE BILL OF RIGHTS

FIRST CONGESS

- REVIEWED PROPOSALS MADE IN THEIR RATIFYING CONVENTIONS
  - INITIALLY WROTE TWELVE AMENDMENTS
- PUSHED THROUGH THE HOUSE WITH DIFFICULTY
  - THEY DIDN'T CARE
  - ANTI-FEDERALISTS WANTED ANOTHER CONVENTION
  - DIDN'T ACCEPT THE CONFERENCE ON A BILL OF RIGHTS UNTIL 1789
- SIX MONTHS LATER SUBMITTED TO THE STATES FOR APPROVAL
  - NINE RATIFIED BUT NEEDED ELEVEN FOR AN AMENDMENT TO BECOME PART OF THE CONSTITUTION
  - VIRGINIA WAS #11 IN 1791
  - ONLY TEN OF THE TWELVE WERE APPROVED
    - NUMBER OF REPRESENTATIVES
    - COMPENSATION FOR CONGRESS

NOT!!

(FINALLY RATIFIED IN 1992)

1ST AMENDMENT

FIRST AMENDMENT

“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. “

ESTABLISHMENT CLAUSE

- THE LEMON “TEST” AND THE ESTABLISHMENT CLAUSE

- THREE FACTORS TO DETERMINE IF GOVERNMENT IS IN VIOLATION
  - LAWS MUST HAVE A SECULAR (NOT RELIGIOUS) PURPOSE
  - THE EFFECT OF THE LAW CAN NEITHER ADVANCE OR INHIBIT RELIGION
  - NOT CAUSE AN EXCESSIVE ENTANGLEMENT WITH RELIGION
    - *Lemon v. Kurtzman* (1971)
  - COURTS CRITIZE IT, BUT NO ONE HAS OVERTURNED IT.
    - ADOPTED OTHER TESTS TO REPLACE IT.

CASES INVOLVING RELIGIOUS FREEDOM

- MONETARY ($$$) AID TO RELIGIOUS EDUCATION AND ACTIVITIES CONDUCTED BY RELIGIOUS INSTITUTIONS.(REMAIN NEUTRAL)
  - SUPPORT TO SCHOOLS
  - SUPPORT FOR WELFARE ACTIVITIES

- GOVERNMENT-SPONSORED PRAYER
  - CONGRESS STARTS EACH SESSION WITH A PRAYER (HISTORIC PRECEDENCE).
  - NOT SUPPORTED IN PUBLIC SCHOOLS, INCLUDING FOOTBALL GAMES!

- ACCOMMODATIONS FOR RELIGIOUS DISSENTERS FROM APPLICABLE LAWS
  - AMISH
  - CONSCIENTIOUS OBJECTORS

- GOVERNMENT OWNED OR SPONSORED RELIGIOUS SYMBOLS
  - NATIONAL CEMETERIES
  - TEN COMMANDMENTS ON OR IN GOVERNMENT BUILDINGS

FREE EXERCISE CLAUSE

- PEOPLE CAME TO THE COLONIES TO ESCAPE RELIGIOUS PERSECUTION

- DESIGNED TO PROTECT ACTIONS AND BELIEFS
  - MUST BE CONNECTED TO RELIGION
  - DOES NOT PROTECT CONDUCT WHEN IN VIOLATION OF THE LAWS (POLYGAMY)
    - ASSAULT ON MORMONS WAS VICIOUS UNTIL THE CHURCH AGREED TO STOP.
      - VOTING RIGHTS TAKEN AWAY
      - CHURCH LEADERS JAILED
      - CONGRESS DISOLVED THE CHURCH
  - QUESTIONS OVER A VARIETY OF ISSUES RANGING FROM WORK REQUIREMENTS TO MILITARY UNIFORM WEAR AND DIETARY NEEDS IN PRISON.
- RELIGIOUS FREEDOM RESTORATION ACT 1993

FREEDOM OF SPEECH AND PRESS

- PROTECTS SPEAKERS AGAINST ALL GOVERNMENT AGENCIES
- DOES NOT PROTECT AGAINST PRIVATE INDIVIDUALS OR EMPLOYERS.

- INCLUDES TALKING, WRITING, PRINTING, INTERNET, SYMBOLIC EXPRESSION (FLAG BURNING, ARMBANDS, BURNING CROSSES, ETC)
- SITUATIONS WHERE GOVERNMENT CAN RESTRICT SPEECH:
  - DEFAMATION: FALSE STATEMENTS AGAINST SOMEONE.
  - THREATS THAT ARE REAL.
  - “FIGHTING WORDS” THAT LEAD TO VIOLENCE
    - NOT POLITICAL STATEMENTS
  - OBSENITY
  - CHILD PORNOGRAPHY
  - COMMERCIAL ADVERTISING THAT IS MISLEADING

OTHER CASES WHERE GOVERNMENT CAN RESTRICT SPEECH

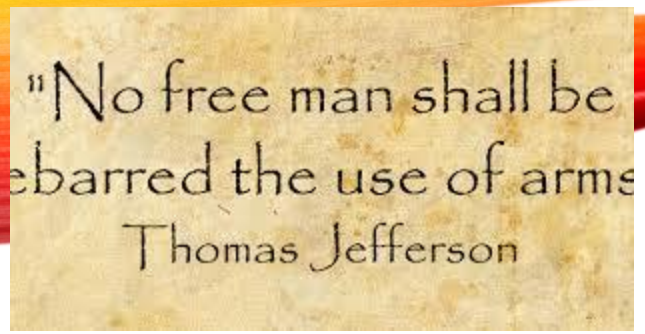
- WHERE SPEECH IS INCOMPATIBLE WITH THEIR JOB
  - GOVERNMENT EMPLOYEES DISCLOSING CLASSIFIED INFORMATION
  - TEACHERS ENCOURAGING STUDENTS TO DO ILLEGAL ACTS.

- CONTENT-NEUTRAL RESTRICTIONS
  - NOISE
  - BLOCKING TRAFFIC
  - DISTRACTING ROAD SIGNS

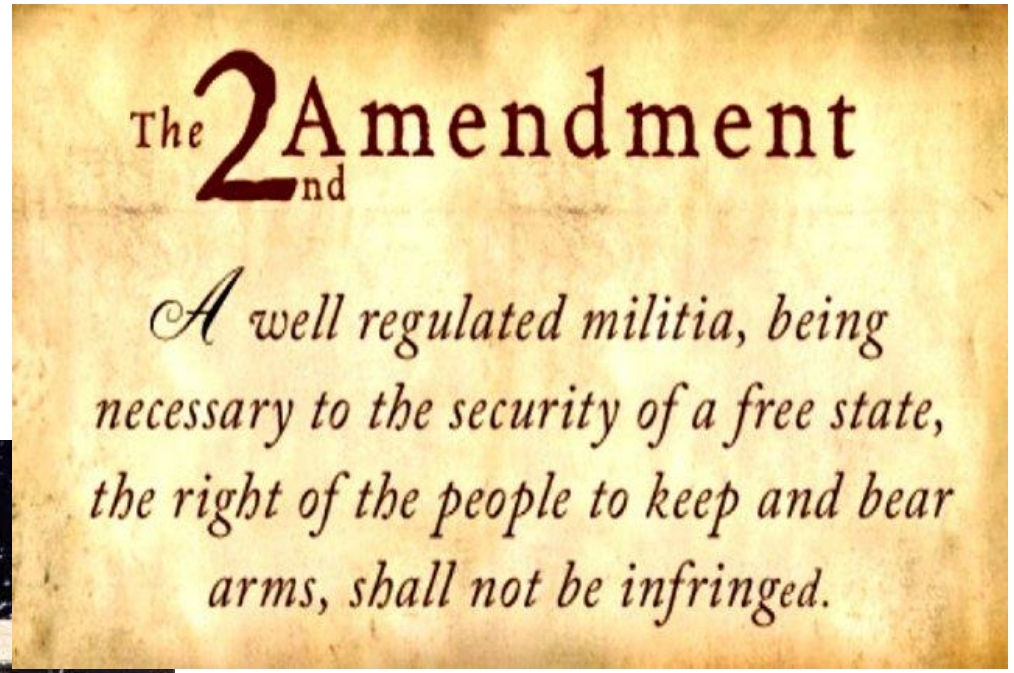
RIGHT TO ASSEMBLE AND PETITION

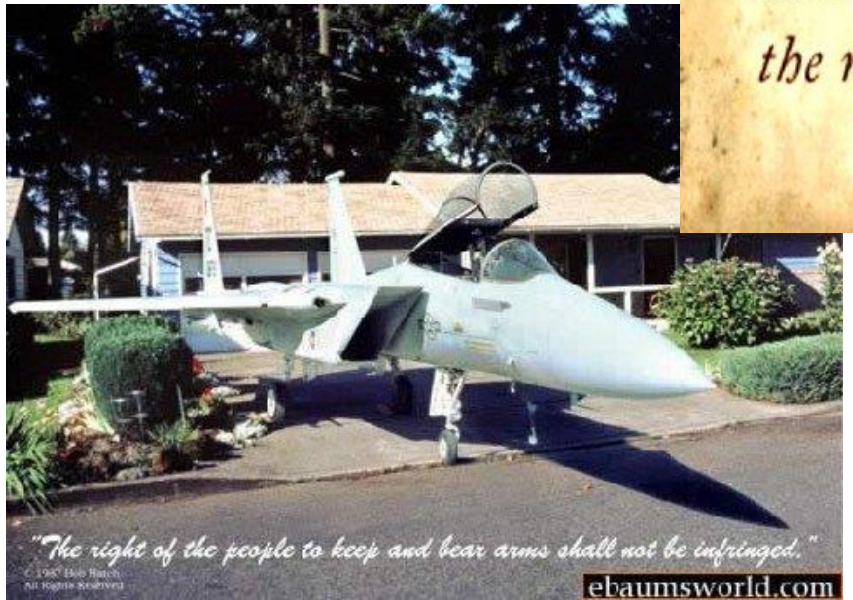
- ASSEMBLY REQUIRES MORE THAN ONE PERSON
  - RIGHT OF ASSOCIATION.
  - OFTEN NON-VERBAL
  - PEOPLE HOLD EQUITY OVER THE ASSEMBLY
  - EMERGED ONE OF THE FOUR FREEDOMS DURING WWII
    - CONTRARY TO SUPPORT TO THE WAR: NEGLECTED.

- PETITION
  - BEEN IGNORED IN THE PAST.
  - "GAG RULES" IMPOSED TO LIMIT IN THE 1840S.
    - JOHN QUINCY ADAMS AFTER LOSING RE-ELECTION ENTERED THE HOUSE OF REPRESENTATIVES
  - REDUCED TO A FORMALITY BY STATE AND FEDERAL GOVERNMENT
    - LEGISLATORS CAN MAKE CHALLENGES TO RE-ELECTION IMPOSSIBLE



2ND AMENDMENT





ARGUMENTS FOR AND AGAINST

- EARLY AMERICANS FELT THAT GOVERNMENT WOULD USE SOLDIERS TO OPPRESS THE PEOPLE.
  - LIMIT GOVERNMENT'S ABILITY TO RAISE ARMIES TO FIGHT FOREIGN AGGRESSION.
  - USE ORDINARY CIVILIANS (MILITIA) WITH THEIR OWN WEAPONS TO RESPOND TO EMERGENCIES.

- WARS DON'T FOLLOW RULES FOR STARTING CAN'T RELY ON THE MILITIA
  - NATIONAL DEFENSE REQUIRES A STANDING ARMY
  - THE MILITIA NEEDS TO BE REGULATED
- POWER SHIFT FROM STATE TO FEDERAL GOVERNMENT CONCERNED ANTI-FEDERALISTS
  - HOW WOULD THE STATES DEFEND THEMSELVES?
- FEDERALISTS THOUGHT THE ARGUMENT WAS OVERBLOWN
  - THE PEOPLE WERE ARMED
  - MILITARY CAN'T SUBDUE

SHARED ASSUMPTION BY BOTH SIDES

- FEDERAL GOVERNMENT HAD THE BULK OF LEGAL AUTHORITY OVER THE ARMY AND MILITIA.
- FEDERAL GOVERNMENT SHOULD NOT HAVE ANY AUTHORITY TO DISARM ITS CITIZENS.
- BUT!
  - COULD AN ARMED POPULACE DETER FEDERAL OPPRRESSION?

ACCEPTANCE OF THE AMENDMENT

- ANTI-FEDERALIST AND FEDERALISTS AGREED ON ONE MAJOR POINT

FEDERAL GOVERNMENT SHOULD NOT HAVE THE POWER TO INFRINGE ON THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS

LIKENED THIS TO PROHIBITING THE FEDERAL GOVERNMENT FROM CURTAILING FREEDOM OF SPEECH OR THE FREE EXERCISE OF RELIGION.

THE AMENDMENT AND TODAY'S WORLD

- HOME GROWN AND STATE MILITIAS ARE NO MORE
  - INCORPORATED INTO THE FEDERAL MILITARY IN THE EARLY 20TH CENTURY.

- MILITARY IS MORE POWERFUL THAN IT WAS
  - WEAPONRY HAS CHANGED
- FEDERAL TYRANNY CANNOT BE COUNTERED WITH A CITIZEN UPRISING
- PEOPLE TRUST THE MILITARY TO DO THE RIGHT THING
- CIVILIAN WEAPONRY NO LONGER APPROPRIATE FOR MILITARY PURPOSES
  - USED FOR HOME DEFENSE
  - HUNTING
  - RANGE SHOOTING

CHANGES IN LAW

- GUN LAWS ARE EXTENSIVE AND, SOMETIMES, CONTROVERSIAL
- SECOND AMENDMENT ORIGINALLY ONLY APPLIED TO THE FEDERAL GOVERNMENT
  - STATES COULD REGULATE WEAPONS AS THEY SAW NECESSARY
- FOURTEENTH AMENDMENT (PRIVILEGES OR IMMUNITIES CLAUSE) ATTEMPTED TO CHANGE THIS
  - DESIGNED TO PROTECT THE RIGHTS OF INDIVIDUALS FROM STATE ACTION ON WEAPONS
  - REJECTED BY THE SUPREME COURT

- IN 2008, SUPREME COURT INVALIDATED LAWS THAT FORBID WEAPONS IN DC
  - OWNERSHIP IS A PRIVATE RIGHT
  - NOTHING TO DO WITH STATE MILITIAS..

CONFLICT OF INTERESTS

- THOSE WHO DISAGREED WITH THE SUPREME COURT
  - SAW THE AMENDMENT AS A RIGHT OF THE PEOPLE TO MAINTAIN A MILITIA
  - GOVERNMENTT SHOULD HAVE AUTHORITY TO BAN HANDGUNS IN HIGH CRIME AREAS

- 2010 SUPREME COURT RULES AGAIN ON HANDGUN BANS, THIS TIME IN CHICAGO
  - USED THE FOURTEENTH AMENDMENT'S PRIVILEGES OR IMMUNITIES CLAUSE.
  - FOURTEENTH AMENDMENT PROTECTS CITIZENS FROM STATE INFRINGEMNT OF RIGHTS JUST AS SECOND AMENDMENT PROTECTS FROM FEDERAL INFRINGEMENT.

- GOVERNMENT CANNOT BAN THE POSSESSION OF HANDGUNS IN HOMES

WHEN THE GOVERNMENT IS AUTHORIZED TO BAN WEAPONS

- GOVERNMENT **CAN** LAWFULLY BAN POSSESSION
  - BY METALLY ILL
  - BY FELONS
  - IN SENSITIVE AREAS: SCHOOLS AND GOVERNMENT BUILDINGS
- GOVERNMENT **CAN** PASS LAWS
  - RESTRICTING COMMERCIAL SALES
  - CONCEALED CARRY
  - WEAPONS NOT NORMALLY USED BY LAW ABIDING CITIZENS
    - MACHINEGUNS
    - BAZOOKAS
    - FIGHTER JETS

THERE ARE STILL QUESTIONS ABOUT CARRYING WEAPONS IN PUBLIC

FOURTEENTH AMENDMENT CLAUSE AT ISSUE

‘No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States”

3RD AMENDMENT

PARTICULARS ABOUT THE AMENDMENT

- BASED IN THE ENGLISH DISTRUST OF STANDING ARMIES
- SAME ATTITUDE WHEN THE QUARTERING ACT WAS IMPLEMENTED IN THE COLONIES (1765)
- SUPREME COURT HAS NEVER HEARD A CASE.

- MODERN IMPLICATIONS
  - RIGHT TO PRIVACY IN OWN HOME
  - EMPHASIZES THE IMPORTANCE OF CIVILIAN CONTROL OVER THE MILITARY
  - ISSUES OF EMINENT DOMAIN
  - MILITARIZATION OF THE POLICE

4TH AMENDMENT

WHAT IT SAYS

“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.”

WHAT IT MEANS

- YOU ARE PROTECTED AGAINST **UNREASONABLE** SEARCHES AND SEIZURES BY EITHER STATE OR FEDERAL LAW ENFORCEMENT.

- REASONABLE SEARCH AND SEIZURES ARE PERMITTED.
  - PROBABLE CAUSE EXISTS THAT EVIDENCE WILL BE FOUND THAT SHOWS YOU COMMITTED A CRIME.
  - A WARRANT IS ISSUED BY A JUDGE TO CONDUCT THE SEARCH.
  - CIRCUMSTANCES MAY JUSTIFY A SEARCH WITHOUT A WARRANT.

- THE AMENDMENT IS ALL ABOUT PRIVACY

WHEN YOU ARE **NOT** PROTECTED

- ONLY APPLIES IF YOU HAVE A “LEGITIMATE EXPECTATION OF PRIVACY”
  - PLACE
  - THING

- TWO-PART TEST TO DETERMINE THIS LEGITIMACY
  - WAS A DEGREE OF PRIVACY EXPECTED BY THE PERSON INVOLVED?
  - IS THE EXPECTATION REASONABLE ACCORDING TO THE NORMS OF SOCIETY?

EXAMPLE 1: YOU EXPECT NOT TO BE SPIED UPON WHEN USING A PUBLIC RESTROOM

- IF POLICE INSTALL A HIDDEN CAMERA, IT IS AN UNREASONBLE SEARCH

EXAMPLE 2: YOU ARE STOPPED FOR A TRAFFIC VIOLATION AND THE OFFICER SEES A WEAPON ON THE PASSENGER SEAT.

- NO REASONABLE EXPECTATION OF PRIVACY WHEN WEAPON IS IN PLAIN VIEW.

WHAT ABOUT PRIVATE SECURITY FOLKS?

- MORE OF THESE IN THE COUNTRY THAN POLICE.
  - SECURITY GUARDS
  - PRIVATE INVESTIGATORS
- AMENDMENT DOES NOT APPLY TO SEARCHES THEY CONDUCT BECAUSE THEY AREN'T ACTING ON BEHALF OF THE GOVERNMENT.
  - ELMER IS STOPPED BY A MALL SECURITY GUARD. HE CHECKS HIS BACKPACK FOR SUSPECTED SHOPLIFTED ITEMS BUT FINDS ILLEGAL DRUGS!
    - HE CAN DETAIN ELMER AND CALL THE POLICE
    - ILLEGAL DRUGS ARE ADMISSABLE IN COURT.

IF THE SEARCH VIOLATES THE AMENDMENT

- EXCLUSIONARY RULE
  - EVIDENCE FOUND DURING AN UNREASONABLE SEARCH CANNOT BE USED AGAINST THE DEFENDANT..
    - CRIMINAL GOES FREE BECAUSE AN OFFICER SCREWED UP. (AGAINST THE RULE)
    - YOU HAVE TO MAKE SURE POLICE AREN'T CONDUCTING ILLEGAL SEARCHES. (PRO)
  - "POISONOUS FRUIT OF THE TREE"
    - ANY ADDITIONAL EVIDENCE FOUND IN AN ILLEGAL SEARCH IS INADMISSABLE.

EXAMPLE: OFFICER FUDDY ILLEGALLY SEARCHED NORMAN'S HOME AND FOUND A MAP WHERE CONTERFEIT MONEY WAS BURIED. HE THEN FOUND THE MONEY AND ARRESTED NORMAN. THE MAP WAS FOUND DURING AN ILLEGAL SEARCH SO THE MONEY IS THE FRUIT OF AN UNLAWFUL SEARCH

DO CRIMINALS ALWAYS GO FREE?

- DEPENDS ON THE CASE.
  - IF THERE IS OTHER EVIDENCE, OBTAINED LEGALLY, THE CASE CONTINUES
  - ILLEGALLY OBTAINED EVIDENCE MAY BE A FACTOR DURING SENTENCING
    - CIVIL
    - DEPORTATION

  - PROSECUTORS CAN USE TO ATTACK CREDIBILITY OF A DEFENDANT IF HE TESTIFIES DURING THE TRIAL ON HIS BEHALF.

CURRENT DAY ISSUES THAT WE FACE DAILY

- FEDERAL GOVERNMENT BULK COLLECTION OF PHONE AND INTERNET RECORDS.
  - WAR ON TERROR CONCERNS
- STOP AND FRISK
- POLICE-CITIZEN ENCOUNTERS THAT RESULT IN SHOOTINGS BY POLICE.
- AERIAL SURVEILLANCE BY DRONES
- AIRPORT SECURITY

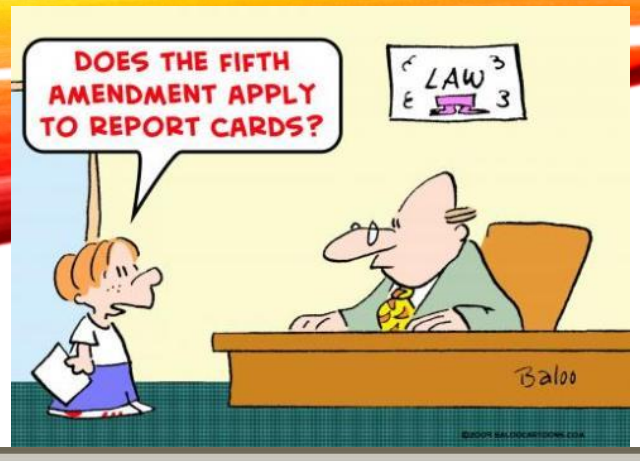
ADVANCES IN TECHNOLOGY KEEP THE 4TH AMENDMENT A CENTRAL FOCUS

CURRENT SUPREME COURT CASE

- WHEN CAN POLICE ENTER SUSPECTS' HOMES?
- LANGE V. CALIFORNIA
  - CAN POLICE ENTER THE GARAGE OF A SUSPECT FOR A MISDEMEANOR CRIME WITHOUT A WARRANT WHILE IN "HOT PURSUIT"?

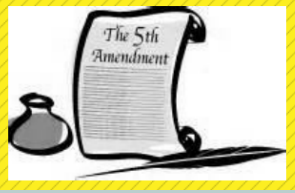
- DEFINITIONS USED IN THE CASE
  - WARRANTLESS ENTRY
    - When a police officer enters a private residence without a warrant
  - HOT PURSUIT
    - If a felony has just occurred and an officer has chased a suspect to a private house, the officer can forcefully enter the house in order to prevent the suspect from escaping or hiding or destroying evidence.
  - EXIGENT CIRCUMSTANCES
    - Exceptions to the general requirement of a warrant under the Fourth Amendment

  - COURT RULING: IF THERE IS TIME TO GET A WARRANT, THEN ONE MUST BE PROCURED. WARRANTLESS ENTRY IS NOT UNIVERSAL THERE ARE EXCEPTIONS
    - PREVENT HARM OR VIOLENCE
    - PREVENT DESTRUCTION OF EVIDENCE
    - PREVENT ESCAPE FROM THE HOME.



5TH AMENDMENT

INDICTMENT OF A GRAND JURY, NO DOUBLE JEPORDY, DUE PROCESS OF LAW, & EMINENT DOMAIN



The 5th Amendment

The **5th Amendment is made up of 5 specific parts containing 6 different clauses, including:**

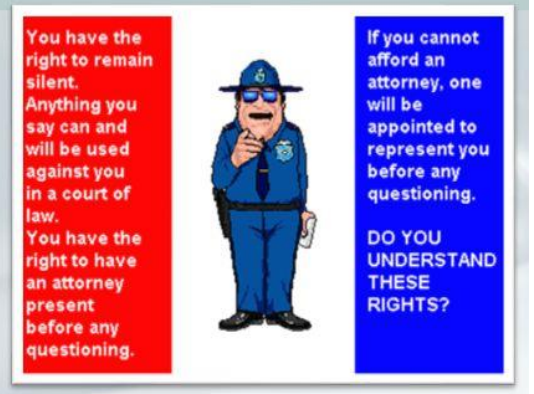
- **The Grand Jury Clause.**
- **The Grand Jury Exception Clause.**
- **The Double Jeopardy Clause.**
- **The Self-Incrimination Clause.**
- **The Due Process Clause.**
- **The Eminent Domain Clause.**

Due Process & The Rights of the Accused

5th Amendment – guarantees a person can't be forced into self-incrimination.

"I plead the 5th!"

Miranda v. Arizona, 1966 established the **Miranda Rule** which states that the police MUST inform the accused person of their rights before questioning.



GRAND JURY CLAUSE

- A GRAND JURY IS A GROUP OF CITIZENS THAT HEARS EVIDENCE FROM THE **PROSECUTORS** TO DECIDE IF A CASE SHOULD GO TO TRIAL.
  - ONLY APPLIES TO FELONY OFFENSES IN FEDERAL COURTS
  - DOES **NOT** APPLY TO STATES
    - CAN HAVE THEIR OWN (1/2 DO)
    - USE PRELIMINARY HEARINGS TO SEE IF THERE IS PROBABLE CAUSE
  - YOU COULD “INDICT A HAM SANDWICH” BECAUSE YOU ONLY HEAR FROM THE PROSECUTOR AND HIS EVIDENCE.
    - IT IS THE PROSECUTOR’S WAY OF DECIDING WHICH EVIDENCE IS USEFUL.

DOUBLE JEOPARDY PROTECTIONS

- STATES CANNOT REPEATEDLY BRING SOMEONE TO TRIAL FOR THE SAME OFFENSE UNTIL THEY WIN!
- IF THERE IS A MISTRIAL (ONE WHERE NO VERDICT WAS DECIDED) AND THE DEFENDANT AGREES TO THE MISTIAL, THEN HE CAN BE RE-TRIED.
- IF THERE IS A HUNG JURY, (ONE WHERE THE JURY COULD NOT DECIDE) THEN THERE CAN BE A RE-TRIAL.

- NO RE-TRIAL IF THE DEFENDANT IS AQUITTED: NOT GUILTY!!!
  - EVEN IF THE JURY WAS BRIBED
  - EVEN IF THERE WAS AN ERROR IN THE RULING
    - IF EVIDENCE WAS SURPRESSED IT CAN BE APPEALED BEFORE THE JURY DECIDES.
- **CAN BE PROSECUTED FOR THE SAME OFFENSE IF:**
  - FEDERAL OFFENSE AND STATE OFFENSE (EACH CAN TRY THE CASE)
  - BY TWO DIFFERENT STATES FOR THE SAME CRIME.
  - IF DEFENDANT TRIES TO PLEA TO A LESSER OFFENSE AT ONE LEVEL TO TRY TO STOP ANOTHER TRIAL AT A DIFFERENT LEVEL
  - CRIMINAL AND CIVIL OFFENSES THAT ARE THE SAME BUT DIFFERENT PUNISHMENTS.

PROTECTION FROM SELF-INCRIMINATION

- CANNOT BE FORCED TO BE A WITNESS AGAINST YOURSELF.
- CANNOT CONSIDER DEFENDANT TO BE GUILTY BECAUSE THEY DIDN'T TESTIFY
- GOVERNMENT AGENCIES CANNOT FIRE EMPLOYEES WHO REFUSE TO TESTIFY IN A COURT CASE.
- IF GRANTED IMMUNITY, STATEMENTS CANNOT BE USED AGAINST A WITNESS FOR ANY PRESENT OR FUTURE PROSECUTION.

- MIRANDA WARNING!!!
  - INDIVIDUAL MUST BE TOLD OF THEIR RIGHTS:
    - REMAIN SILENT
    - STATEMENTS MADE MAY BE USED AGAINST
    - RIGHT TO AN ATTORNEY DURING QUESTIONING AND TRIAL.
  - INVALID IF YOU VOLUNTARILY CONFESS WITHOUT ANY QUESTIONING
- CONFESSIONS AS A RESULT OF BEATINGS ARE NOT ADMISSABLE: DUE PROCESS VIOLATION

DUE PROCESS CLAUSE

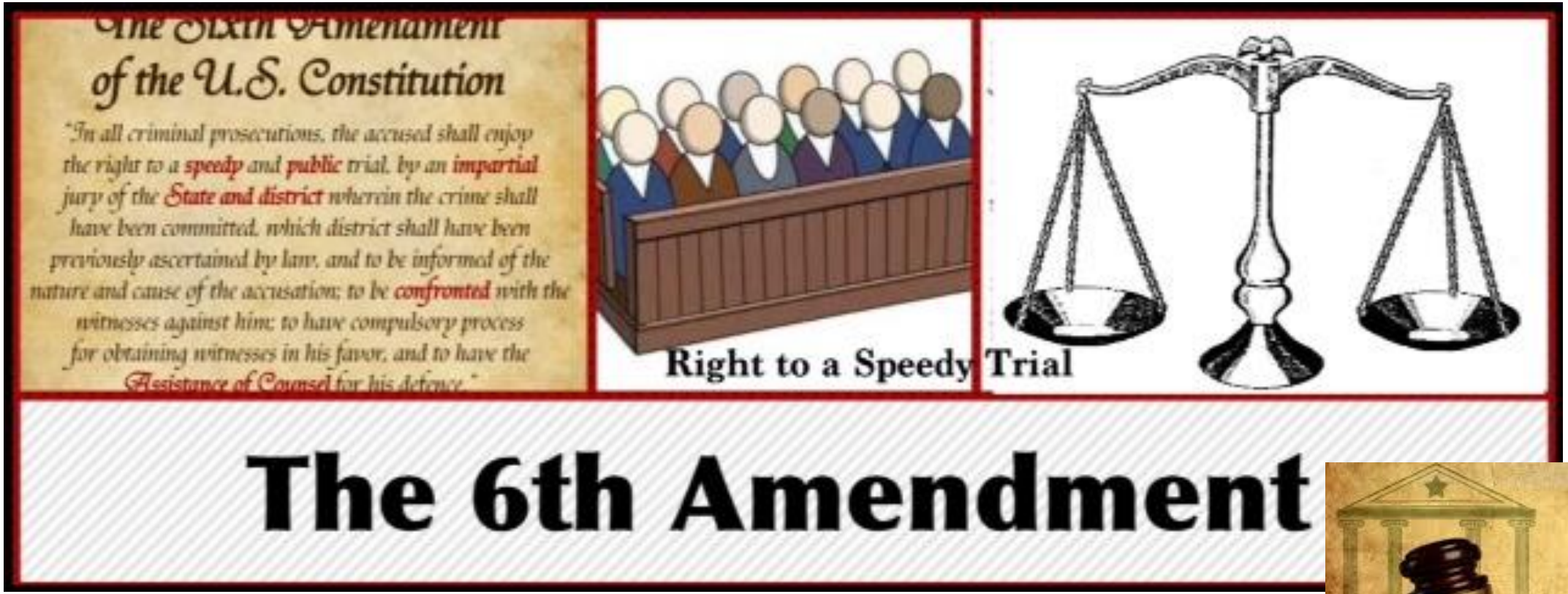
- PROCEDURAL DUE PROCESS
  - FAIRNESS IN THE PROCESS
    - PROSECUTORS FAILING TO PROVIDE EVIDENCE TO THE DEFENDANT: **BAD**
    - JUDGE DOESN'T LIKE THE DEFENDANT OR IS INVOLVED IN A CIVIL CASE. **BAD**
    - FAILURE TO TELL DEFENDANT OF AN ACTION **BAD**
    - FAILURE TO ALLOW THE DEFENDANT TO BE HEARD. **BAD**
    - FAILURE TO GIVE NOTICE ABOUT WHAT THE LAW REQUIRES. **BAD**

- SUBSTANTIVE DUE PROCESS
    - LIMITS ON GOVERNMENT AUTHORITY OVER CITIZENS

TAKINGS CLAUSE

- INTENDED TO UPHOLD THE PRINCIPLE THAT GOVERNMENT CAN'T IMPOSE EXCESSIVE BURDEN ON CITIZENS THAT SHOULD BE SHARED BY ALL.
- .JUST COMPENSATION ($$$) MUST APPLY IF THE GOVERNMENT IS GOING TO TAKE PROPERTY FROM ONE AND GIVE IT TO SOMEONE ELSE.
- APPLIES TO
  - LAND
  - ANIMALS
  - CORPORATE STOCK
  - BANK ACCOUNTS
  - CASH
  - INTELLECTUAL PROPERTY
    - PATENTS
    - TRADE SECRETS
    - INVENTIONS
- DOESN'T APPLY IF THE TAKING IS NOT FOR THE PUBLIC GOOD.
- NO COMPENSATION IF THE PROPERTY IS TAKEN DUE TO HARMFUL ACTIVITIES. (EL CHAPO, MEXICAN DRUG LORD).

6TH AMENDMENT



WHAT DOES IT MEAN?

- DESIGNED TO MAKE CRIMINAL PROCEEDINGS FAIR
- JURIES OF 12 ORDINARY PEOPLE WERE CENTRAL PLAYERS
  - LOCAL CITIZENS
  - KNEW THE DEFENDANT
  - KNEW THE OTHERS INVOLVED
  - KNEW THE DIFFERENT PUNISHMENTS AVAILABLE
  - CHECKED THE GOVERNMENT'S POWER

THE DEFENDANT DESERVES TO KNOW THE RISKS OF PLEADING GUILTY

- APPLIES TO BOTH FEDERAL AND STATE PROSECUTIONS
  - INVESTIGATIONS BY PROFESIONAL AGENCIES
  - PROSECUTORS TRY THE CASES
  - RIGHT TO COUNSEL FOR DEFENDANT
    - IF YOU CAN PAY, YOU GET YOUR OWN
    - YOU CAN DEFEND YOURSELF
    - COURT-APPOINTED LAWYER IF YOU CAN'T PAY
      - HAS TO PROVIDE AN EFFECTIVE DEFENSE

OTHER REQUIREMENTS CONSIDERED

- SPEEDY AND PUBLIC TRIAL
  - CAN'T START IN A TIMELY MANNER: **CASE DISMISSED**

    SPEEDY HAS A LOT OF FLEXIBILITY
    - **SEVERAL YEARS LATER IF THE DEFENSE NEEDS THE TIME**
  - PUBLIC IS A DIFFERENT STORY: CLOSED TO THE PUBLIC IF
    - NATIONAL SECURITY ISSUES
    - PUBLIC SAFETY
    - VICTIM'S PRIVACY INTERESTS.

COMPULSORY PROCESS & CONFRONTATION CLAUSES

- DEFENDANT CAN REQUIRE WITNESSES TO ATTEND
- DEFENDANT CAN REQUIRE WITNESSES TO TESTIFY
- DEFENDANT CAN TESTIFY ON OWN BEHALF IF THEY WISH.
- DEFENDANT CAN BE IN THE COURT ROOM FOR THE ENTIRE TIME (UNLESS HE BEHAVES BADLY).

- WITNESSES MUST TESTIFY UNDER OATH SUBJECT TO CROSS-EXAMINATION.
  - SMALL CHILDREN EXEMPT
  - IN PRESENCE OF THE DEFENDANT
  - CAN’T JUST SUBMIT A STATEMENT

IMPARTIAL JURIES

- APPLIES WHENEVER IMPRISONMENT CAN BE FOR MORE THAN SIX MONTHS.
- APPLIES TO ANY FACT THAT WOULD AFFECT SENTENCING WHEN THERE IS A RANGE. (5-20 YEARS).
- JURY COMES FROM A CROSS-SECTION OF THE COMMUNITY
- CAN BE AS FEW AS SIX MEMBERS (MOST STATES REQUIRE 12).
- JURIES ARE THE FACT-FINDERS, BUT DO IT IN THE DARK.

- PROSECUTION MUST PROVE EVERY ELEMENT OF THE CRIME BEYOND **"REASONABLE DOUBT".**
- VERDICT MUST BE UNANIMOUS
  - LOUISIANA (11-1 IS OK)
  - OREGON (10-2 IS OK)
- SUPREME COURT NEVER ACKNOWLEDGED THAT THE JURY BE ADVISED THEY
  - **CAN ACQUIT REGARDLESS OF THE STRENGTH OF THE CASE.**
  - **CAN RETURN AN ILLOGICAL VERDICT TO AFFECT PUNISHMENT**

7TH AMENDMENT

The 7th Amendment to the Constitution of the United States

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 re-examined in any Court of the United States, than according to the rules of the common law.

ratified in 1789

JURIES ARE RARE FOR CIVIL CASES

- US IS ONLY NATION THAT REQUIRES IT.
- BASED ON ENGLISH INSTITUTIONS
- DEMANDED BY ANTI-FEDERALISTS AS NECESSARY
- REQUIRED ONLY IN FEDERAL COURTS
- SUPREME COURT LEAVES IT TO THE STATES
  - STATES ALLOW IN THEIR CONSTITUTIONS FOR CERTAIN CASES

- TWO CLAUSES TO THE AMENDMENT
  - PRESERVATION CLAUSE
    - TYPES OF CASES REQUIRING A JURY
  - RE-EXAMINATION CLAUSE
    - PREVENTS FEDERAL JUDGES FROM OVERTURNING A JURY DECISION.

WHAT IS COMMON LAW AND HOW TO USE IT?

- LAW DECLARED BY JUDGES VERSUS LAW ENACTED BY LEGISLATURES

- LAW AND PROCEDURE OF THE COURTS THAT USED JURIES

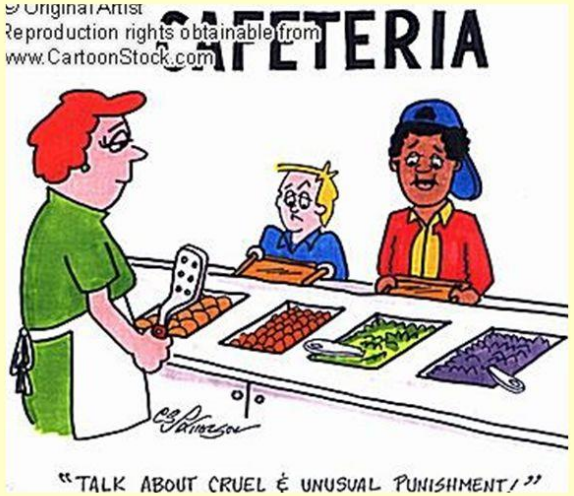
PROBLEM! WHICH COMMON LAW ARE WE GOING TO USE??????????????

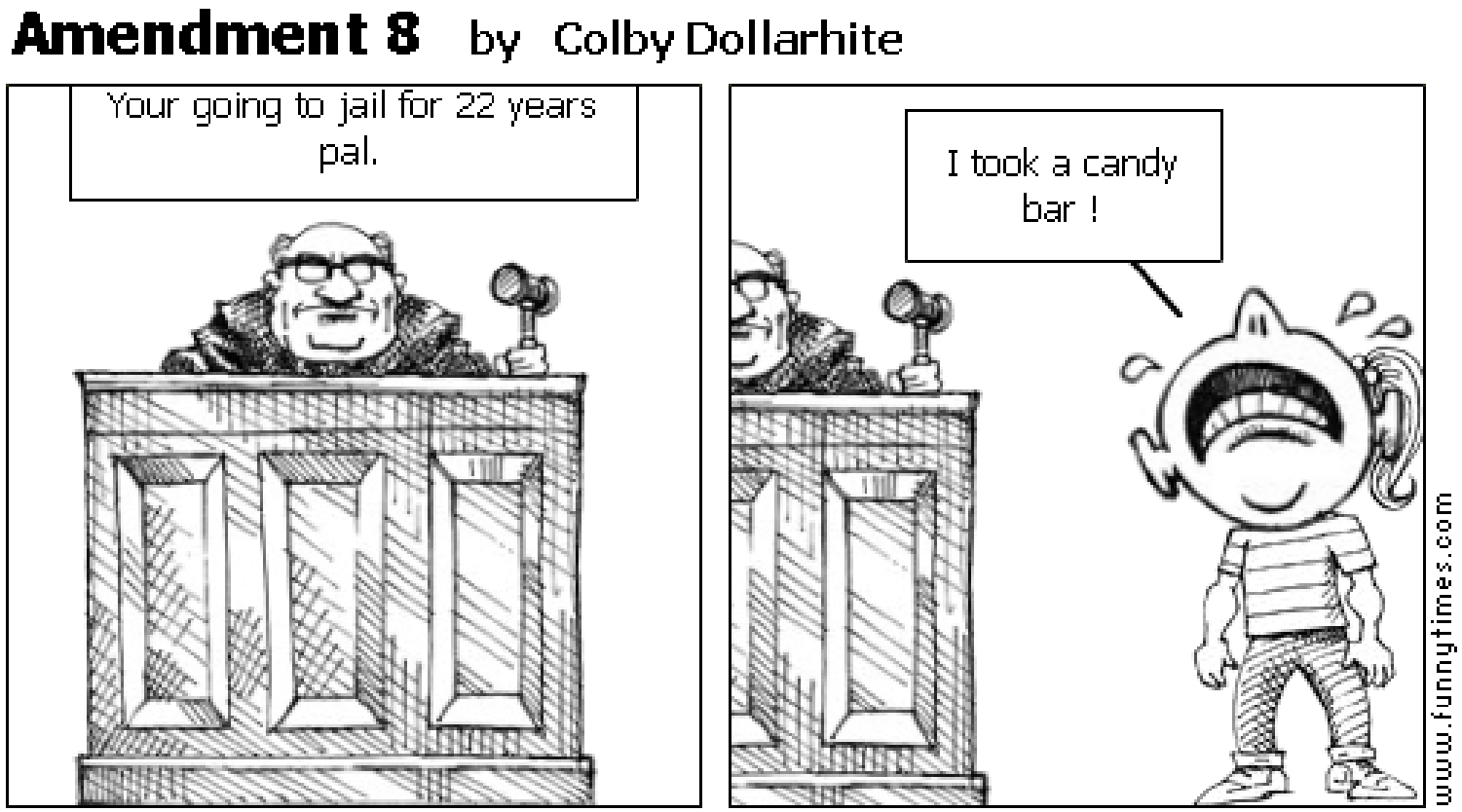
- SOLUTION: USE THE COMMON LAW OF ENGLAND AT THE TIME THE AMENDMENT WAS RATIFIED (1791).
  - KNOWN AS THE HISTORIC TEST
  - PRESERVES THE SUBSTANCE OF THE RIGHT OVER MATTERS OF PROCEDURE.
  - ONLY ADJUSTMENT IS A DECREASE IN JURY SIZE TO SIX.

8TH AMENDMENT

The Bill of Rights

8th Amendment:
Protection from Cruel & Unusual Punishment





WHAT IT SAYS

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

WHAT DOES IT MEAN?

- BAIL?
  - A GUARANTEE THAT YOU'LL COME BACK FOR THE TRIAL
  - CALCULATE REASONABLY: BASED ON CIRCUMSTANCES
  - CALUCULATE BASED ON PRECEIVED EVIL
    - MURDER V. SHOPLIFTING

- EXCESSIVE FINES?
  - BASED ON DUE PROCESS
    - CANNOT IMPOSE FINES WITHOUT PROVIDING TIME TO RESPOND

CRUEL AND UNUSAL PUNISHMENT

- WHAT DOES IT MEAN?????????
- HOW DO YOU MEASURE IT???????
- IF IT'S CRUEL, DO WE CARE THAT IT IS UNUSUAL???????????
- NOT AN EITHER OR

WE NEED ANSWERS HERE!

- IF YOU DON'T PREVENT IT, NOTHING TO KEEP THE GOVERNMENT FROM USING THE TOOLS OF TORTURE
- PROHIBITS "BARBARIC" METHODS

BUT HOW DO THE COURTS DECIDE ALL THIS?

- WHAT IS THE STANDARD TO BE USED?
  - CURRENT STANDARDS OF DECENCY?
  - JUDGES CAN'T OVERTURN LAWS ENACTED BECAUSE THEY DON'T LIKE THEM.
  - ACCEPTABLE IN 1791—ACCEPTABLE NOW?
- DOES IT PROHIBIT PUNISHMENT DISPROPORTIONATE TO THE CRIME?
  - JUST DISCUSSES BARBARIC METHODS NOT DISPROPORTIONATE
- DOES IT PROHIBIT THE DEATH PENALTY?
  - IT IS MENTIONED IN THE CONSTITUTION SO HOW CAN IT BE UNCONSTITUTIONAL?
- ARE MODERN METHODS OF PUNISHMENT TOO BARBARIC?
  - EXTENDED SOLITARY CONFINEMENT?
  - THREE-DRUG COCKTAILS TO EXECUTE OFFENDERS?
  - ONLY TOO BARBARIC IF ONLY DESIGNED TO INFLICT PAIN FOR PAIN'S SAKE.
- **THERE IS A TEST FOR ALL THIS: ESTABLISHED BY THE SUPREME COURT IN 1972**
  - **PUNISHMENT CAN'T BE DEGRADING**
  - **CAN'T BE ARBITRARY**
  - **REJECTED BY SOCIETY**

WORDSMITHING NEEDED

- **UNUSUAL**
  - MEANT CONTRARY TO LONG ACCEPTED USAGE
  - NEW
  - COMPARED TO LONGSTANDING PRACTICE

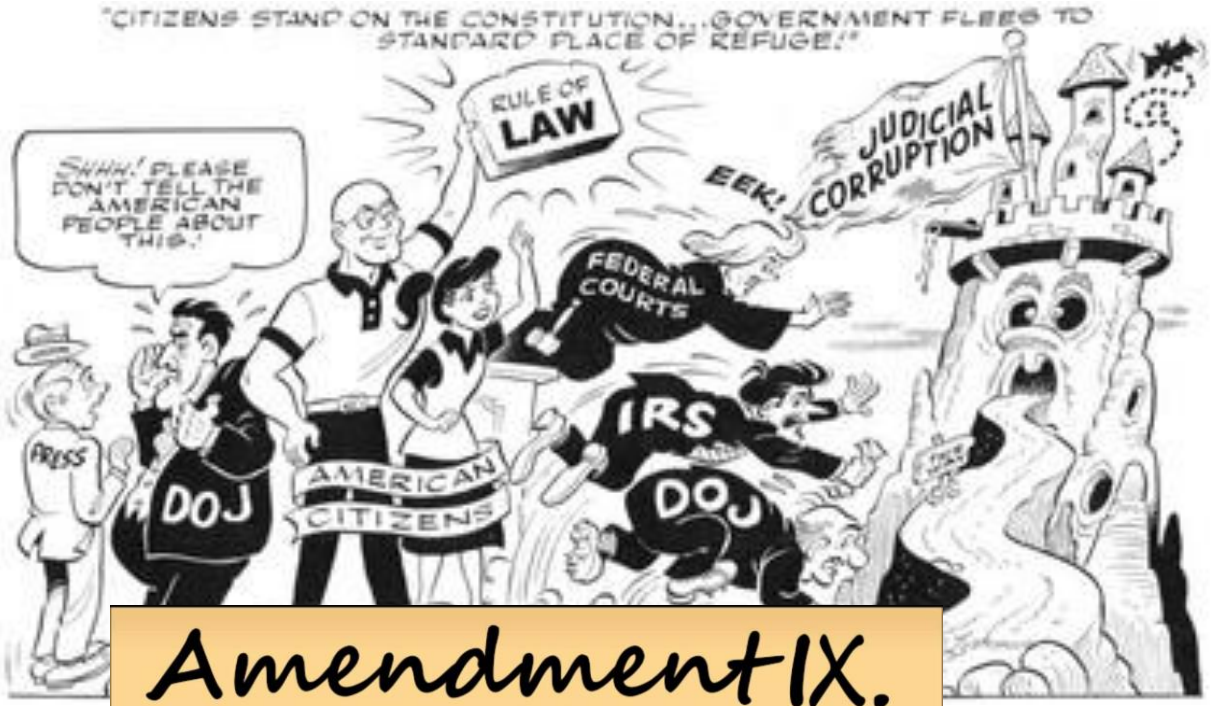
SO, WHAT ARE WE LEFT WITH CONSIDERING CRUEL, UNUSUAL, AND DISPROPORTIONATE

- BENCHMARK FOR CRUEL AND UNUSUAL IS LONGSTANDING PRIOR PRACTICE
- IF IT STOPS BEING USED FOR EXTENDED TIME, IT BECOMES **UNUSUAL.**
- IF A PUNISHMENT IS HARSHER THAN TRADITIONALLY ACCEPTED IT IS **DISPROPORTIONATE**
- PUNISHMENT ACCEPTABLE FOR SOME CRIMES, CRUEL AND UNUSUAL FOR OTHERS.
- DEATH PENALTY IS TRADITIONAL FOR SOME CRIMES; FALLEN OUT OF FAVOR FOR OTHERS
  - MURDER YES
  - HORSE STEALING NO.
- NEW PUNISHMENTS HAVE TO BE REVIEWED BY THE COURTS.
  - LETHAL INJECTION
  - LONG-TERM SOLITARY CONFINEMENT.

9TH AMENDMENT

9th Amendment

- Known as the rights of the people
- All rights not stated in the Constitution and not forbidden by the Constitution belong to the people.
- Known as the "elastic clause"; loose constructionists cite the 9th Amendment for support of rights such as right to privacy



Amendment IX.

The enumeration in the Constitution,
of certain rights, shall not be construed to deny

or disparage others retained by the people.

WHY HAVE IT?

- IF RIGHTS WERE LIMITED TO THOSE LISTED, THEN IT COULD HAPPEN THAT OTHER RIGHTS OVERLOOKED WOULD NOT BE GIVEN TO THE PEOPLE.

- CONTROVERSY OVER THE MEANING: “RIGHTS… RETAINED BY THE PEOPLE”
  - RIGHTS GRANTED BY STATE LAW THAT FEDERAL LAW COULD OVERRIDE
  - RIGHTS THAT ARE LEFT AFTER THE ENUMERATED POWERS ARE EXERCISED
  - “COLLECTIVE RIGHTS”
    - ALTER OR ABOLISH THE GOVERNMENT
  - NATURAL RIGHTS OF THE PEOPLE REFERRED TO IN THE DECLARATION OF INDEPENDENCE.

- FEDERALISM APPROACH
  - NARROW VIEW OF THE ENUMERATED POWERS AND THAT WHICH IS NECESSARY AND PROPER
  - “PRESUMPTION OF LIBERTY” REQUIRES THE STATE TO DEFEND ANY RESTRICTIONS

CONFUSED? ME TOO!

- THE SPECIFIC LISTING OF SOME RIGHTS CANNOT DENY THE EXISTENCE OF OTHERS.

- IT OPENS A CAN OF WORMS BECAUSE IT DOESN'T SPECIFY WHAT UNENUMERATED (OR UNLISTED) RIGHTS EXIST THAT ARE NOT OTHERWISE MENTIONED.
  - IF I SAY YOU CAN DO THESE THINGS AND LIST THEM OUT THEN WHAT IF YOU BRING UP SOMETHING I HAVEN'T LISTED
    - IS IT A RIGHT RETAINED BY YOU?
    - IS IT A RIGHT THAT DOESN'T EXIST?

YOU CANNOT ASSUME THAT IF A RIGHT IS NOT LISTED IT ISN'T PROTECTED

EXAMPLE: GOVERNMENT CAN NOT LIMIT YOUR RIGHT TO FREEDOM TO THINK FOR YOURSELF AND MAKE DECISIONS BOTH GOOD AND BAD.

10TH AMENDMENT

The U.S. Constitution reserves many powers for the states in what Amendment?

Tenth Amendment

Amendment X.

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.

WHAT DOES IT REALLY SAY?

- THE INCLUSION OF A BILL OF RIGHTS DOES NOT CHANGE THE FUNDAMENTALS OF A NATIONAL GOVERNMENT.
  - LIMITED POWERS
  - ENUMERATED POWERS

- QUESTION THEN IS THIS
  - DOES THE EXERCISE OF POWER BY THE FEDERAL GOVERNMENT EXCEED IT'S ENUMERATED POWERS??????????????????????????

BASIC UNDERSTANDING THEN IS THIS:

- LAWS THAT WERE CONSTITUTIONAL BEFORE THE TENTH AMENDMENT WAS RATIFIED CONTINUE TO BE CONSTITUTIONAL.

- BUT, IS THAT POWER CLAIMED BY THE FEDERAL GOVERNMENT ACTUALLY DELEGATED TO IT BY THE CONSTITUTION?
  - THAT QUESTION IS ANSWERED BY EXAMINING THOSE ENUMERATED POWERS.

WHAT THEN IS THE TENTH AMENDMENT FOR?

"TENTH AMENDMENT DOCTRINE"

- ACTION BY THE FEDERAL GOVERNMENT
  - TO REGULATE STATE GOVERNMENTS
  - TELLING STATES WHAT POLICIES THEY MUST ADOPT
  - FORCING STATE OR LOCAL GOVERNMENTS TO IMPLEMENT FEDERAL LAWS
  - PUTTING CONDITIONS ON STATES TO ACCEPT FEDERAL MONEY TO COMPLY WITH FEDERAL MANDATES

JUDICIALLY-ENFORCED LIMITS ON FEDERAL POWER

STILL QUESTIONS ABOUT THIS ONE!

IS IT A SOURCE OF CONSTITUTIONAL PRINCIPLES OR IS IT USED TO INTERPRET GRANTS OF FEDERAL POWER IN SPECIFIC CASES WHERE STATES FEEL THEY ARE WRONGED?

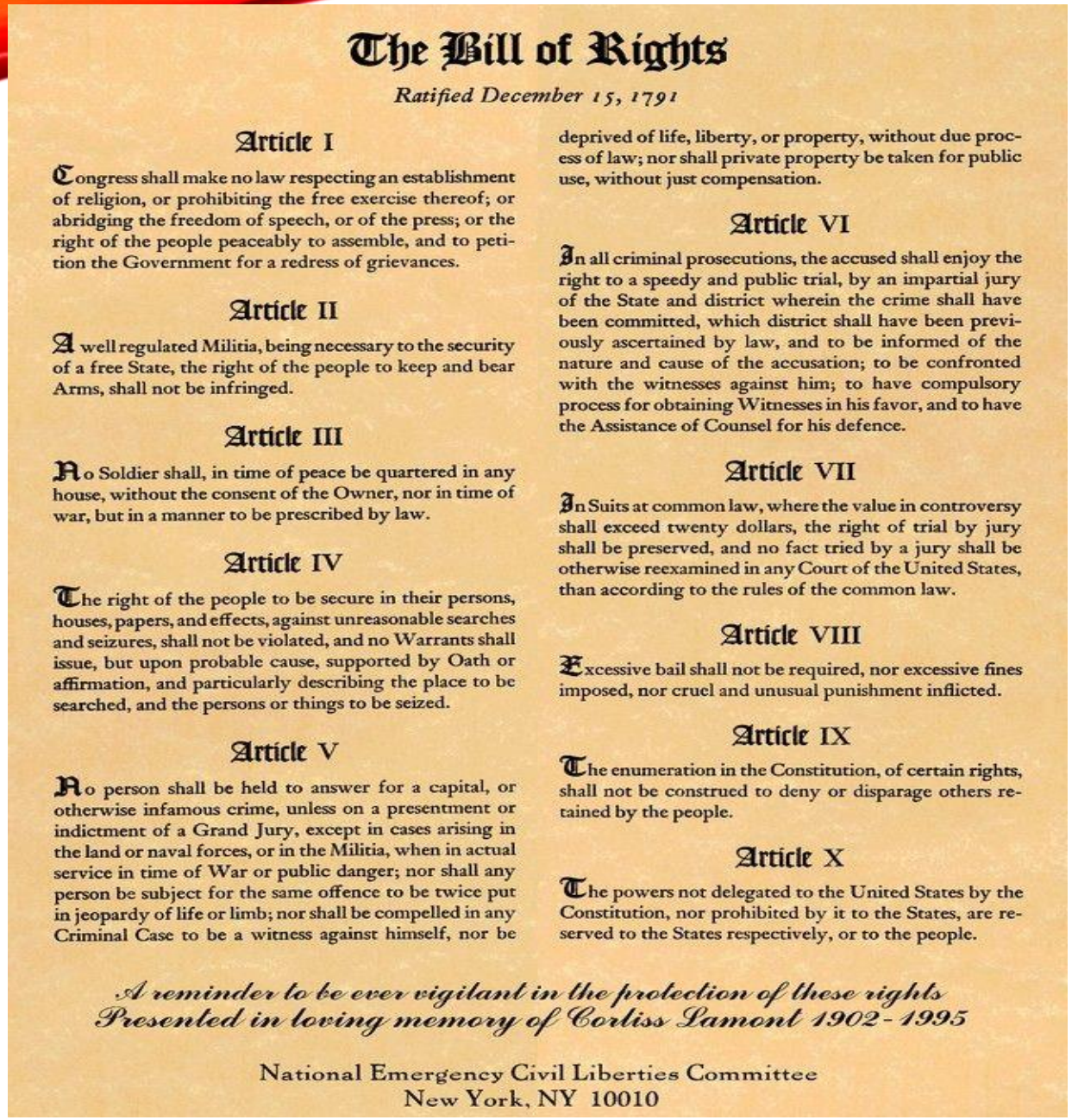
THERE HAVE BEEN NO CASES INVOLVING INDIVIDUALS AGAINST THE EXERCISE OF FEDERAL POWER!

QUICK EXAMPLE

- PRINTZ V. THE UNITED STATES
  - FEDERAL HANDGUN LAWS REQUIRED LOCAL LAW ENFORCEMENT TO PERFORM BACKGROUND CHECKS ON PROSPECTIVE HANDGUN PURCHASERS UNTIL THE ATTORNEY GENRAL COULD COME UP WITH A PROGRAM.
  - TWO LAW ENFORCEMENT OFFICERS SAID IT WAS UNCONSTITUTIONAL
    - IS IT ALLOWABLE UNDER THE “NECESSARY AND PROPER” CLAUSE TO REQUIRE LOCAL LAW ENFORCEMENT TO REGULATE HANDGUN PURCHASES?
  - SUPREME COURT RULED: NO (5-4 DECISION)
    - STATE LEGISLATURES ARE NOT SUBJECT TO FEDERAL DIRECTION
    - NECESSARY AND PROPER DOES NOT EMPOWER IT TO COMPEL ACTION, EVEN TEMPORARILY
    - THE IMPLEMENTING BILL (BRADY BILL) COULD NOT REQUIRE LAW ENFORCEMENT TO ACT
      - ASKED FOR VOLUNTARY ACCEPTANCE
      - CANNOT REQUIRE SOMEONE TO VOLUNTEER!

"Printz v. United States." *Oyez,* www.oyez.org/cases/1996/95-1478. Accessed 11 Mar. 2021.

RE-CAP



The Bill of Rights

Ratified December 15, 1791

Article 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.

Article II

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.

Article III

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.

Article IV

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.

Article V

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 offence 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.

Article VI

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 defence.

Article VII

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.

Article VIII

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

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

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.

A reminder to be ever vigilant in the protection of these rights
Presented in loving memory of Corliss Lamont 1902 - 1995

National Emergency Civil Liberties Committee
New York, NY 10010

DO WE HAVE ANY QUESTIONS?