



The case of **Mapp v. Ohio** (1961) established the **exclusionary rule** – *a rule that evidence obtained without a warrant is inadmissible in court.*

While looking for a bombing suspect, police searched the home of Dollree Mapp without a warrant and found books, pictures, and photos in violation of Ohio's anti-obscenity law. The court threw out her conviction as the evidence was inadmissible because there was no search warrant.

The summary of the case is at <https://www.oyez.org/cases/1960/236>

Later, in 1989, the Court ruled that the Fourth Amendment rules are not absolute. The Court upheld the conviction of a suspected drug dealer whose carry-on luggage was searched without a warrant based on his behavior (he paid cash for his ticket, checked no bags and appeared nervous). The Court ruled that the DEA agents had reasonable suspicion of criminal activity to search his luggage.

Following the attacks on September 11, Congress passed the **USA PATRIOT Act**, giving the government broad authority to collect citizens' data in bulk and monitor both phone and email communications. The Act also allows the government to collect a person's financial information such as credit card reports and bank statements. Several cases were brought against the government including violations of the First and Fourth Amendments.

In 2015, Congress replaced the Patriot Act with the **USA Freedom Act**. The law now limits the bulk collection of communications data but does allow for the collection of data on individuals suspected of terrorism and other crimes.

Other issues included restrictions on using thermal imaging used to detect cultivation of marijuana from a person's home, the use of cellphone data without a warrant in the case of **Riley v. California** in 2014, and the fact that a government needs a warrant to access a person's cell phone location in the case of **Carpenter v. United States** in 2018.

The government's actions question the balance between the need for public safety from terrorism and other crimes and the privacy rights of individuals against the collection of their personal information.

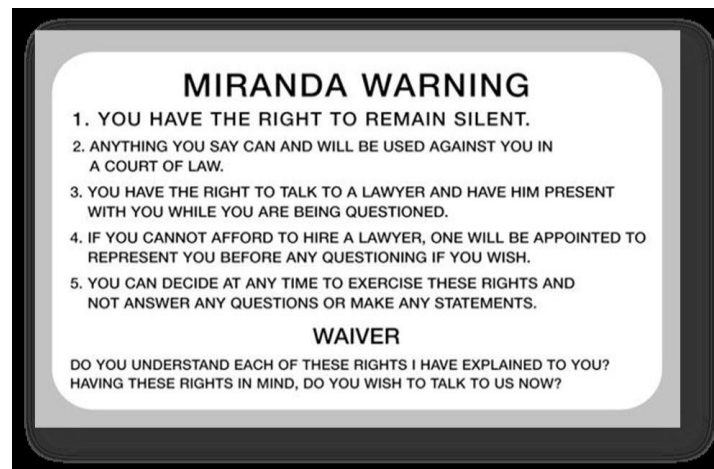
## The Fifth Amendment: The Grand Jury, Double Jeopardy, and Self-Incrimination

The Fifth Amendment guarantees procedural due process for criminal defendants in federal cases. People suspected of committing serious crimes must have an indictment handed down by a **grand jury** – *a group of citizens who, based on evidence presented to them, decide whether to formally charge someone accused of a crime*. A grand jury is different to a jury trial, which decides if a person is guilty or not.

The Fifth Amendment also prohibits **double jeopardy** – *which is when a person cannot be acquitted of a crime then convicted of the same crime in the same jurisdiction*. However, a person can be acquitted for an offence in a state court and then tried and convicted for the same crime in a federal court under federal charges.

The monumental case of ***Miranda v. Arizona*** (1966) was about the rights of criminal defendants. Ernesto Miranda was convicted of kidnapping and rape, partly based on evidence that the police obtained when they interrogated him without an attorney present. During the questioning he signed a confession. His case was overturned because he was never read his rights.

Police officers now, because of this case, have to read a person their Miranda Rights.



A summary of the *Miranda v. Arizona* case can be found at:

<https://www.oyez.org/cases/1965/759>

## The Sixth Amendment: Trials, Juries, and Attorneys

The Bill of Rights guarantees defendants the right to a speedy trial, the trial to be in front of an impartial jury, and the right to have an attorney present at the trial. It also states that a person has the right to a court-appointed attorney if that person cannot afford to hire their own attorney.

By 1963 the Supreme Court had extended the rights to a court-appointed attorney to cover state criminal cases.

In the case of ***Gideon v. Wainwright*** (1963), a Florida trial court denied the request of Clarence Earl Gideon to have a lawyer assigned to his case. Because of no lawyer, Gideon tried to defend himself. He was convicted, and he appealed to the Supreme Court arguing that the trial court violated his Sixth Amendment rights.

<b>Facts</b>	Gideon was charged with robbery and his request to have a lawyer appointed to him was denied. He was convicted.
<b>Issue</b>	Did the Sixth Amendment, through the due process clause of the Fourteenth Amendment, require a right to an attorney provided by the state for indigent felony defendants?
<b>Decision and Holding</b>	Gideon won. The Sixth Amendment requires that the government provide attorneys for felony defendants who cannot afford one.
<b>Reasoning</b>	The purpose of the Sixth Amendment is to safeguard a fair trial. A trial cannot be fair if a person who cannot afford an attorney must face legally trained prosecutors without one.

12 years ago, on the anniversary of the Gideon case, CBS News this morning interviewed Clarence Gideon and the link to the interview on YouTube can be found at:

[https://youtu.be/nrcTqx3t8Gg?si=bX\\_33OjwU6kJkh4h](https://youtu.be/nrcTqx3t8Gg?si=bX_33OjwU6kJkh4h)

More recently, in ***Wiggins v. Smith*** from 2003, the Court strengthened the right to an attorney to make sure that defendants receive “effective” legal representation and not just legal representation.

## The Eighth Amendment: Bail and Punishment

The Eighth Amendment prohibits excessive bail (an amount of money posted as a security to allow a defendant to be freed while awaiting trial), excessive fines, and cruel and unusual punishment.

The 2019 case of ***Timbs v. Indiana*** saw the Supreme Court rule against excessive fines. Timbs was convicted of felony drug dealing, which carried a maximum fine of \$ 10,000.00. The State of Indiana seized Timbs’s Land Rover which was worth over \$ 40,000. The Supreme Court ruled that this was excessive according to the Eighth Amendment and it violated his due process rights of the Fourteenth Amendment.

## **The Death Penalty Debates**

The death penalty is a key issue based on the Eighth Amendment. At the time of the Constitution and the Bill of Rights being written, Capital punishment was used in America.

Proponents say that the death penalty is an effective crime deterrent. Opponents identify the potential for errors in conviction, discriminatory sentencing as well as the lack of evidence that the death penalty does lower crimes.

The case of ***Furman v. Georgia*** in 1972 invalidated the use of the death penalty according to the state laws at the time, finding them arbitrary and discriminatory. Rewritten death penalty statutes were held constitutional in the case of ***Gregg v. Georgia*** in 1976. The Supreme Court has held that the death penalty does not violate the Eighth Amendment's prohibition against cruel and unusual punishment; the Court has imposed restrictions on its imposition. An example being that the death penalty cannot be used on defendants with significant cognitive disabilities and on juveniles.

## **Due Process, the Right to Privacy, and Other Rights**

The word ***privacy*** is not in the Bill of Rights. However, the Supreme Court has affirmed the unenumerated (not specifically listed, counted, or detailed in a document or list) right to privacy and applied it to several areas of people's lives.

### **The Use of Contraceptives**

In ***Griswold v. Connecticut*** (1965), the Supreme Court stated for the first time that the Constitution protects the right of privacy. The court overturned a Connecticut law from 1873 that prohibited the provision of contraceptives and medical advice about contraceptive techniques. Using the wording from the First, Third, Fourth and Ninth Amendments together, the Court ruled that the Bill of Rights, extended to the states from the Fourteenth Amendment, implicitly protects privacy. The Supreme Court ruled that married couples' right to privacy included the use of contraceptives. In 1972, the case of ***Eisenstadt v. Baird*** saw the Court extend this right to unmarried individuals.

### **Sexual Conduct between Consenting Adults.**

In 2003, the case of ***Lawrence v. Texas*** saw the Court strike down a Texas law that made certain sexual acts illegal. The law banned homosexual sexual activity. In its ruling, the Court used the issue of privacy in the Constitution to protect the rights of consenting adults to express their sexuality in private without government interference.

## **Abortion as a Privacy Right**

Opponents believe the practice violates the religious conviction that terminating a pregnancy is murder of the unborn. Those opposed believe that a woman should have the right to choose whether or not to terminate a pregnancy.

In March 1970, Norma McCorvey (using Jane Doe to protect her privacy), filed a lawsuit against the District Attorney of Dallas County, where she lived. Roe was unmarried and pregnant, and she sought a judgement that the Texas criminal abortion statutes were unconstitutional and sought an injunction restraining Texas from enforcing the statutes. The lawsuit asserted that she was unable to get a “legal” abortion in Texas because her life did not appear to be threatened by her pregnancy and that she could not afford to travel to another state to undergo a legal abortion under safe conditions.

A summary of the case including the findings and ruling is at:

<https://www.oyez.org/cases/1971/70-18>

## ***Dobbs v. Jackson Women’s Health Organization* (2022).**

In 2018, Mississippi passed the **Gestational Age Act**, which outlawed almost all abortions, with a few exceptions, after fifteen weeks of gestational age (the number of weeks from the first day of a woman’s last menstrual cycle). Jackson Women’s Health Organization, a licensed abortion facility, challenged the law and requested a temporary restraining order preventing Mississippi from enforcing the law. Jackson Women’s Health Clinic argued that the abortions were protected until the fetus was viable.

A summary of the case including the findings and ruling is at:

<https://www.oyez.org/cases/2021/19-1392>

As the Supreme Court in this case overturned ***Roe v. Wade***, the issue of abortion was now returned to the states. Critics of the ***Dobbs*** decision have expressed concerns that the Supreme Court in the future might overturn other decisions involving the right of privacy, such as those protecting same-sex and interracial marriage.

## The Ninth Amendment: Rights Not Specified

The first Eight Amendments in the Bill of Rights limit the power of the federal government. The last two, Ninth and Tenth, provide for the extension of civil liberties.



The Ninth Amendment covers an issue raised during ratification, that individuals have **enumerated rights**, enumerated meaning specific rights explicitly listed and guaranteed in a legal document. When the Ninth Amendment was ratified it made sure that in the future, governments would not be able to infringe on the fundamental rights and freedoms that were not explicitly mentioned in the Constitution.

The Tenth Amendment is the basis for federalism, reserving some power to the states and to the people.

**Conclusion:** The rules regarding Civil Liberties change over time. Each new generation has their activists and along with new Supreme Court justices, more interest groups and politicians, more focus is now put on the proper boundaries of American rights and freedoms.

It will always be controversial defining and defending civil liberties in the American democracy as it is difficult to balance them against the need for public order and safety.

### *Civil Liberties*

Guaranteed personal freedoms that cannot be taken away