Introduction

The Bill of Rights—the first 10 Amendments to the U.S. Constitution—was ratified on December 15, 1791. Although these rights were adopted almost 225 years ago, they still play an important part in our daily lives as citizens or residents of the United States. For example, when interacting with the police, these amendments define what our rights and responsibilities are.

Almost everyone will have an interaction with the police at some point in their lives during which an officer suspects that they might have committed a crime. This encounter may be as minor as a police officer stopping a car for speeding or for a defective tail light, or it may be for something far more serious. Regardless, it is important for people to understand the basic protections that are afforded to them by the U.S. Constitution and the Bill of Rights. It is also important to understand that federal and state rights may differ—states may provide people with additional protections in their state constitution or their state statutes—and protections may vary from state to state. Today we are going to talk about the basic protections that all people have in every state, but as I just said, it is important to bear in mind that states often provide people with more protections in the state constitutions and state statutes.

Before we launch into our discussion of constitutional rights and responsibilities, I want to make one important point. If, or rather I should say when, you interact with the police, it is important to be respectful, to not be verbally or physically combative, and to not attempt to flee. Obviously, being respectful to the police is a societal expectation. However, from a pragmatic standpoint, if you are later found to be delinquent by a court, your behavior may impact the judge’s sentencing decision, as the officer’s comments about the arrest process are often given weight in the sentencing decision. In addition to a potentially lengthier sentence, physically combative behavior or flight will most likely result in further charges which can complicate resolving the underlying case.

Let’s now turn our attention to some of your constitutional rights and responsibilities. First, we will discuss certain rights that are afforded you as U.S. citizens or residents, specifically those rights provided for in the First, Fourth, Fifth, and Sixth Amendments, looking at what those rights are and certain limitations to those rights. Then, we will turn our attention to one of the many responsibilities demanded of you as citizens—jury duty—and consider some of the restrictions that are placed on jurors.
First Amendment

Language of the 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.”

The First Amendment has a number of rights contained within it, including Freedom of Religion, Freedom of Speech and Freedom of the Press. However, we are only going to talk about one of them, Freedom of Speech. Your right to Free Speech is not unlimited; there are times and places in which it may be restricted. To better explain what I mean, we are going to look at how the courts determine restrictions on First Amendment rights and then we are going to talk about two cases in which the U.S. Supreme Court has restricted the right to Free Speech.

Courts rely on a standard test in which they analyze time, place, and manner to determine restrictions on First Amendment rights in traditional public fora. This standard was established by the United States Supreme Court in *Ward v. Rock Against Racism* in the year 1989. In that case, the Court established a three factor test that must be satisfied when the government attempts to restrict the time, place, and manner for exercise of free speech and assembly in a public space. A restriction must “be 1) justified without reference to the content of the regulated speech, 2) narrowly tailored to serve a significant governmental interest, and 3) leave open ample alternative channels for communication of the information.” [Source: COMMENT: "The Constitutional Infringement Zone": Protest Pens and Demonstration Zones at the 2004 National Political Conventions, 66 La. L. Rev. 189, 195.]

The following two cases illustrate how the Court balances an individual’s right to free speech against a countervailing interest in restricting that speech. Both of these cases take place within a school setting.

*Morse v. Frederick*, 551 U.S. 393 (2007)

**Facts:** At a school-sanctioned and school-supervised event, Joseph Frederick, a student at Juneau Douglas High School in Juneau, Alaska displayed a banner which read, “BONG HiTS 4 JESUS.” The principal of the school, Principal Morse, saw the banner and directed Frederick to take it down. When Frederick refused, Principal Morse confiscated the banner and later suspended him. The school superintendent upheld the suspension, explaining, inter alia, that Frederick was disciplined because his banner appeared to advocate illegal drug use in violation of school policy. The school board upheld the suspension as well. Frederick filed a civil rights lawsuit under 42 U.S.C. §1983, alleging that the school board and Morse had violated his First Amendment rights.

**Decision:** Because schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use, the school officials in this case did not violate the First Amendment by confiscating the pro-drug banner and suspending Frederick. The Supreme Court noted that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” However, they stated that “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.” The case implies, but does not state, that if Frederick had displayed the same sign in a non-school setting, the
Supreme Court would have likely found that his First Amendment right to free speech protected his right to display it.


**Facts:** After a high school principal removed two pages containing articles, among others, on teenage pregnancy and the impact of divorce on students, from a newspaper produced as part of a high school journalism class, the student staff filed suit claiming violation of their First Amendment rights. The principal defended his action on the grounds that he was protecting the privacy of the pregnant students described, protecting younger students from inappropriate references to sexual activity and birth control, and protecting the school from a potential libel action.

**Decision:** The Supreme Court held that the principal acted reasonably and did not violate the students' First Amendment rights. A school need not tolerate student speech, the Court declared, "that is inconsistent with its 'basic educational mission,' even though the government could not censor similar speech outside the school." In addition, the Court found the newspaper was part of the regular journalism curriculum and subject to extensive control by a faculty member. The school, thus, did not create a public forum for the expression of ideas, but instead maintained the newspaper "as supervised learning experience for journalism students." The Court concluded that "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns." The Court strongly suggested that supervised student activities that "may fairly be characterized as part of the school curriculum," including school-sponsored publications and theatrical productions, were subject to the authority of educators. The Court cautioned, however, that this authority does not justify an educator's attempt "to silence a student's personal expression that happens to occur on the school premises."

**Fourth Amendment**

**Language of the Amendment:**

“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.”

The Fourth Amendment prohibits unreasonable searches by the police or other state actors. Police generally are required to get a search warrant before conducting a search and must demonstrate “probable cause” to believe that conducting the search will yield evidence of criminal activity. However, there are situations when the police can conduct searches without a warrant, including when the officer's safety is in danger or when there is reason to believe that the evidence will be lost if they wait to get a search warrant. The Fourth Amendment applies to police, people acting on behalf of the police and many government employees.

**Facts:** A teacher at a New Jersey high school discovered a 14-year-old freshman and her companion smoking cigarettes in a school bathroom, which was a violation of a school rule. The teacher took them to the Principal's office, where they met with and were questioned by the Assistant Vice Principal. The 14-year-old denied that she had been smoking and claimed that she did not smoke at all; the Assistant Vice Principal demanded to see her purse. When the Vice Principal opened the purse, he found a pack of cigarettes and also noticed a package of cigarette rolling papers that are commonly associated with the use of marihuana. He then proceeded to search the purse thoroughly and found some marihuana, a pipe, plastic bags, a fairly substantial amount of money, an index card containing a list of students who owed the girl money, and two letters that implicated her in marihuana dealing. The State brought charges against the student, and she was found to be delinquent.

**Decision:** This case went all the way to the Supreme Court which upheld the search. The Court reasoned that the Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials—not just to those searches carried out by law enforcement officers—but also recognized that students have legitimate expectations of privacy and that they do not necessarily waive all rights to privacy by bringing certain items with them onto school grounds. But striking the balance between students' legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Under the above standard, the search in this case was not unreasonable for Fourth Amendment purposes.


**Facts:** Savana Redding, an eighth grader at Safford Middle School, in Arizona, was strip-searched by school officials after they received a tip from another student that Ms. Redding might have ibuprofen on her person in violation of school policy. Based on this suspicion, school officials first searched Ms. Redding's belongings; then, believing that "students ... hid contraband in or under their clothing," had her strip to her underwear, "pull her bra out and to the side and shake it," and "pull out the elastic on her underpants" to see what might fall out. The officials did not find any contraband on Ms. Redding's person, and they did not contact Ms. Redding's parents at any point during the investigation. Ms. Redding subsequently filed suit against the school district and the school officials responsible for the search.

**Decision:** In a 7-2 ruling, the U.S. Supreme Court held that a strip search of a middle schooler violated the Fourth Amendment where the school lacked reasons to suspect either that the drugs the girl allegedly had in her possession (Ibuprofen) presented a danger or that they were concealed in her underwear. Justice Souter noted that a school search “will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” Ultimately, “the intrusiveness of the strip search here cannot be seen as justifiably related to the circumstances.”
Fifth Amendment

Language of the Amendment:

"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."

Right to Remain Silent


Facts: Thompkins, after being advised of his Miranda rights, was questioned by a detective and another officer about a shooting in which one victim died. At no point during the interrogation did Thompkins say that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney. Thompkins was largely silent during the 3-hour interrogation, but near the end of the questioning, he answered “yes” when asked if he prayed to God to forgive him for the shooting. Thompkins later tried to suppress his statements during trial, claiming that he had invoked his Fifth Amendment right to remain silent, that he had not waived that right, and that his inculpatory statements were involuntary.

Decision: The Supreme Court said that Thompkins’ silence during the interrogation did not invoke his right to remain silent. A suspect’s Miranda right to counsel must be invoked “unambiguously.” If the accused makes an “ambiguous or equivocal” statement or no statement, the police are not required to end the interrogation, or ask questions to clarify the accused’s intent. Therefore, the trial court was not required to suppress Thompkins statement.

Miranda Warnings

“You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you. Do you understand the rights I have just read to you? With these rights in mind, do you wish to speak to me?”

Miranda warnings must be given prior to a custodial interrogation. Now what does that mean? Interrogation just means the person is subject to questioning, and custodial means that the person is in the custody of the police and that a reasonable person in that situation would believe that they are not free to leave.

**Facts:** School officials were called via radio by a school bus driver indicating that there was a problem on the bus. When the bus arrived at East Lake High School, school officials and the school resource officer were waiting. Two school officials approached the four problem students in the back of the bus while the SRO waited in the front. The school officials smelled alcohol on the foursome and ordered them to the principal’s office. The assistant principal took the students into the office one at a time and interviewed them while the SRO waited outside with the other students. While waiting, the SRO posed some general questions to D.J., who he knew, and D.J. answered the questions in general terms. Once D.J. was brought to the assistant principal’s office and questioned, he admitted drinking alcohol. D.J. later argued that his statements should be suppressed as custodial interrogation without proper *Miranda* warnings.

**Decision:** In rejecting D.J.’s argument, the court asserted: “Here, although D.J. was detained by the assistant principal about the disturbance on the bus, D.J. was not in police custody to a degree associated with formal arrest. There is also no evidence that Officer Chapin detained D.J. or conducted a custodial interview. According to the undisputed findings, Assistant Principal Ellis and Associate Principal Patterson told D.J. and three other students to get off the school bus after learning about a fight and smoking on the bus, and after smelling alcohol as they approached the four students. Ellis, Patterson, and Officer Chapin then walked with the four students to the waiting room of the principal's office. While Assistant Principal Ellis questioned the first student, Officer Chapin waited with D.J. and the two other students... Assistant Principal Ellis interviewed D.J. alone, outside the presence of Officer Chapin, to determine what happened during the incident on the school bus and whether there were violations of the school rules. As the assistant principal, Ellis has a duty to maintain order and discipline at the school and enforce the school rules. D.J. cites no authority holding a school official, under these circumstances, must advise a student of their *Miranda* rights before questioning about suspected violations of school rules or policies.”


**Facts:** Shortly after a taxicab driver, who had been robbed by a man wielding a sawed-off shotgun, identified a picture of Innis as that of his assailant, a Providence, RI, patrolman spotted Innis, who was unarmed, on the street, arrested him, and advised him of his rights under *Miranda v. Arizona.* When other police officers arrived at the arrest scene, Innis was twice again advised of his *Miranda* rights, and he stated that he understood his rights and wanted to speak with a lawyer. Innis was then placed in a police car to be driven to the central station in the company of three officers, who were instructed not to question Innis or intimidate him in any way. While en route to the station, two of the officers engaged in a conversation between themselves concerning the missing shotgun. One of the officers stated that there were "a lot of handicapped children running around in this area" because a school for such children was located nearby, and "God forbid one of them might find a weapon with shells and they might hurt themselves." Innis interrupted the conversation, stating that the officers should turn the car around so he could show them where the gun was located. Upon returning to the scene of the arrest where a search for the shotgun was in progress, Innis was again advised of his *Miranda* rights, replied that he understood those rights, but said that he "wanted to get the gun out of the way because of the kids in the area in the school," and then led the police to the shotgun.
**Decision:** The Supreme Court held that the conversation was not an interrogation, and therefore Innis’s Fifth Amendment rights were not violated. Interrogations should only encompass conduct that police should know would elicit a response—here they had no reason to believe that their conversation would cause Innis to speak to them and lead them to the location of the gun.

**Sixth Amendment**

**Language of the Amendment:**

“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.”

*In re Gault*, 387 U.S. 1 (1967)

**Facts:** Fifteen-year-old Gerald Francis Gault was taken into custody for allegedly making an obscene phone call. Gault denied making the call, indicated that a friend had done so, and stated that his only connection to the call was to take the phone away from the friend, hang it up and ask him to leave. The police did not leave notice with Gault’s parents, who were at work, when Gault was arrested. After proceedings before a juvenile court judge, Gault was committed to the State Industrial School until he reached the age of 21. During the proceeding, Gault was not provided an attorney, no witnesses were called, and he had no opportunity to cross-examine witnesses and a very limited opportunity to present evidence.

**Decision:** The proceedings of the Juvenile Court failed to comply with the Constitution. The Court held that the proceedings for juveniles had to comply with the requirements of the Fourteenth Amendment. These requirements included adequate notice of charges, notification of both the parents and the child of the juvenile’s right to counsel, opportunity for confrontation and cross-examination at the hearings, and adequate safeguards against self-incrimination. The Court found that the procedures used in Gault's case met none of these requirements.

**Jury Issues**

Approximately 1.5 million people are summoned to jury service in either a state or federal court every year. Here are some basic facts that you should understand about your jury summons and jury service:

- Once you’re 18, you may be summoned for jury service.
- On average, Americans will be summoned several times in their lifetime.
- A jury summons is a court order. If you do not respond to a jury summons, you could be fined or imprisoned.
Many jurisdictions now use a system called One Day/One Trial. Under that system, summoned jurors appear at the court for one day, and if they are not selected for service, they are released. If they are selected for a trial, they will be required to be present until the trial is completed.

Most jury trials last between 1-3 days.

You will be paid for your service, but it won’t be much.

If you have a significant reason why you can’t serve, contact the court. Courts allow for excusals for serious problems or they may defer your service to another date.

Although many people are nervous about the prospect of serving on a jury, the majority of people who do serve as jurors say that it is a rewarding experience.

Jurors that are selected to be on a panel to hear a specific case go through a process called jury selection or *voir dire*. During this process, the trial judge and the attorneys will ask you a number of questions. Although some of the questions may probe into areas of your private life, they are necessary to ensure that a jury is selected that will be fair to both parties. If you are not selected, don’t take that personally.

Before and during your jury service you will receive a number of instructions from the court. It is important that you follow those jury instructions. If you fail to do so, you may put the case you are hearing at risk of a mistrial or of being overturned on appeal. You may also find yourself in trouble with the law. One of the instructions you will receive is to refrain from using the internet or social media to research the case or to communicate about the case prior to the jury reaching a verdict. Following the verdict, you can discuss the case online or in person, and research any aspect of the case that interests you. But, only do so after the verdict has been delivered to the court. The following cases describe the consequences of a juror doing unauthorized internet research:

**Travis Van Vliet**

Travis Van Vliet was summoned for jury service in Palm Beach County Circuit Court (Florida). He realized that he might be asked to serve on the manslaughter trial of billionaire John Goodman. Mr. Vliet allegedly conducted internet research on the case, presumably using a smart phone, after having been instructed not to research anything about the case. The prosecution learned of Mr. Vliet’s research, and he was arrested on the charge of criminal contempt of court and taken to jail.

**State v. Abdi**, 45 A.3d 29 (Vt. 2012)

Facts: The defendant was an immigrant from Somalia who stood accused of sexually assaulting his nine year old niece. “When asked whether any member of the jury had referred to extraneous material during deliberations, [one juror] recalled that, during the second day of deliberations, ‘[o]ne of the jurors told us they [sic] went home and researched about the Somali culture and their religion and bible and all that and he shared some of … his research that he uncovered’ . . . He acknowledged that the juror in question used the ‘information to interpret facts in evidence’ and to ‘build their [sic] position..."
on what they [sic] thought would be the appropriate judgment in this case.’ He inferred that the juror's intent was to use the information to influence others in arriving at a verdict.”

**Decision:** Due to the juror’s improper internet use, the court reversed the conviction and remanded the case for a new trial.