

The Bill of Rights



THE RIGHT TO A FAIR TRIAL

Edited by Enid W. Langbert, Esq.

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Bruce Glassman, *Vice President*

Bonnie Szumski, *Publisher*

Helen Cothran, *Managing Editor*

Scott Barbour, *Series Editor*

GREENHAVEN PRESS

An imprint of Thomson Gale, a part of The Thomson Corporation

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27500 Drake Rd.

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LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

The right to a fair trial / Enid W. Langbert, book editor.

p. cm. — (Bill of Rights)

Includes bibliographical references and index.

ISBN 0-7377-1939-7 (lib. : alk. paper)

1. Fair trial—United States—History. I. Langbert, Enid W. II. Bill of Rights (San Diego, Calif.)

KF4765.R54 2005

347.73'53—dc22

2004054144



Foreword	9
-----------------	---

Introduction	12
---------------------	----

Chapter 1: The Historic Development of the Right to a Fair Trial

1. The Origins of Trial by Jury	17
--	----

BY WILLIAM FORSYTH

The concept of a fair trial developed from earlier practices such as trial by oath, trial by ordeal, and trial by battle.

2. The Creation of the Sixth Amendment Right to a Fair Trial	27
---	----

BY R. CARTER PITTMAN

The founders conceived of each of the rights protected by the Sixth Amendment as a safeguard against tyranny.

3. The Right to a Speedy Trial Is a Fundamental Right	32
--	----

BY EARL WARREN

In *Klopper v. North Carolina*, the Supreme Court cited a long historical tradition to affirm the right to a speedy trial.

4. The Right to Trial by a Local Jury	37
--	----

BY STEVEN A. ENGEL

The right to a local jury was historically considered more important than the right to an impartial jury. The infringement of this right was one of colonial America's major grievances against England.

5. The Right to Counsel

BY ALFREDO GARCIA

44

The landmark decision *Gideon v. Wainwright* recognized the pervasive importance of the right to counsel in securing the rights of the accused.

Chapter 2: Balancing the Right to a Fair Trial Against the Interests of Society

1. The Public Does Not Have the Right to Attend Criminal Trials

BY POTTER STEWART

51

In *Gannett Co. v. DePasquale*, the Court ruled that, because the right to a public trial is an individual right of the accused, a defendant has the right to waive that right and demand a private trial from which the public and press are barred.

2. Defendants Do Not Have the Right to Private Trials

BY HARRY BLACKMUN

59

In a dissenting opinion in *Gannett*, a Supreme Court justice argues that although the right to a public trial was included in the Sixth Amendment, the framers did not intend to give individuals the right to waive a public trial and demand a private one instead.

3. Local Trials Serve the Interests of the Community

BY STEVEN A. ENGEL

66

The modern trend to move criminal trials away from the location of the crime in the interest of fairness ignores the right of the community to try its transgressors.

4. The Right of the Accused to Confront Witnesses Is Not Absolute

BY SANDRA DAY O'CONNOR

73

In *Maryland v. Craig* (1990), the Court found that the right of defendants to confront the witnesses against them must be weighed against the harm such a confrontation may create for crime victims, especially children who have been molested.

5. The Scope of the Accused's Right to Counsel Has Been Narrowed

BY BENJAMIN F. DIAMOND

79

The Supreme Court has been limiting defendants' right to counsel, granting the police more leeway in investigations and undercutting the attorney-client relationship.

Chapter 3: Recent Controversies Regarding the Right to a Fair Trial

1. Media Coverage Undermines the Fairness of Trials

BY RICHARD K. SHERWIN

85

Television has created a dangerous confusion between reality and fiction by turning trials into popular spectacles.

2. Informed Jurors Can Be Impartial

BY NEWTON N. MINOW

92

It is not necessary—or even possible—to find jurors who are uninformed of the cases they are trying.

3. Terrorism Suspects Should Be Tried by Military Tribunals

BY PETER J. WALLISON

97

Because terrorists are not ordinary criminals, they should be tried in military courts, where the safety of society takes precedence over the protection of individual liberties.

4. Terrorism Suspects Should Not Be Tried by Military Tribunals

BY THE ECONOMIST

100

Rather than military trials, terrorism suspects should be tried in civilian courts in which their basic rights can be guaranteed.

5. Jury Nullification: Democracy in Action or Anarchy?

BY JULIUS J. MARKE

104

The power of the jury to vote its conscience, even when it is against the weight of the evidence, is a strength of the system and not a weakness.

Appendix

The Origins of the American Bill of Rights

109

Supreme Court Cases Involving the Right to a Fair Trial

112

For Further Research

117

Index

120

The Bill of Rights



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Other books in this series:

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109

**Supreme Court Cases Involving the Right
to a Fair Trial**

112

For Further Research

117

Index

120

FOREWORD

"I cannot agree with those who think of the Bill of Rights as an 18th century straightjacket, unsuited for this age. . . . The evils it guards against are not only old, they are with us now, they exist today."

—Hugo Black, associate justice of the
U.S. Supreme Court, 1937–1971

The Bill of Rights codifies the freedoms most essential to American democracy. Freedom of speech, freedom of religion, the right to bear arms, the right to a trial by a jury of one's peers, the right to be free from cruel and unusual punishment—these are just a few of the liberties that the Founding Fathers thought it necessary to spell out in the first ten amendments to the U.S. Constitution.

While the document itself is quite short (consisting of fewer than five hundred words), and while the liberties it protects often seem straightforward, the Bill of Rights has been a source of debate ever since its creation. Throughout American history, the rights the document protects have been tested and reinterpreted. Again and again, individuals perceiving violations of their rights have sought redress in the courts. The courts in turn have struggled to decipher the original intent of the founders as well as the need to accommodate changing societal norms and values.

The ultimate responsibility for addressing these claims has fallen to the U.S. Supreme Court. As the highest court in the nation, it is the Supreme Court's role to interpret the Constitution. The Court has considered numerous cases in which people have accused government of impinging on their rights. In the process, the Court has established a body of case law and precedents that have, in a sense, defined the Bill of Rights. In doing so, the Court has often reversed itself and introduced new ideas and approaches that have altered

the legal meaning of the rights contained in the Bill of Rights. As a general rule, the Court has erred on the side of caution, upholding and expanding the rights of individuals rather than restricting them.

An example of this trend is the definition of cruel and unusual punishment. The Eighth Amendment specifically states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." However, over the years the Court has had to grapple with defining what constitutes "cruel and unusual punishment." In colonial America, punishments for crimes included branding, the lopping off of ears, and whipping. Indeed, these punishments were considered lawful at the time the Bill of Rights was written. Obviously, none of these punishments are legal today. In order to justify outlawing certain types of punishment that are deemed repugnant by the majority of citizens, the Court has ruled that it must consider the prevailing opinion of the masses when making such decisions. In overturning the punishment of a man stripped of his citizenship, the Court stated in 1958 that it must rely on society's "evolving standards of decency" when determining what constitutes cruel and unusual punishment. Thus the definition of cruel and unusual is not frozen to include only the types of punishment that were illegal at the time of the framing of the Bill of Rights; specific modes of punishment can be rejected as society deems them unjust.

Another way that the Courts have interpreted the Bill of Rights to expand individual liberties is through the process of "incorporation." Prior to the passage of the Fourteenth Amendment, the Bill of Rights was thought to prevent only the federal government from infringing on the rights listed in the document. However, the Fourteenth Amendment, which was passed in the wake of the Civil War, includes the words, ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Citing this passage, the Court has ruled that many of the liberties contained in the Bill of Rights apply to state and local governments as well as the federal government. This