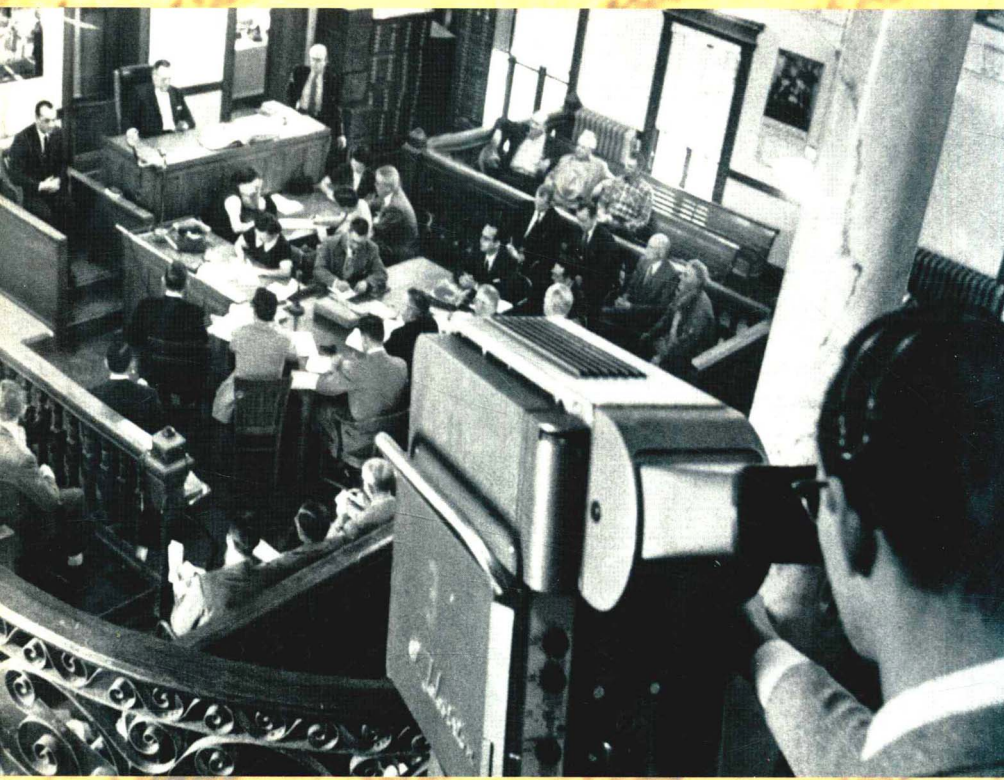
The Bill of Rights



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Edited by David L. Hebert

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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

process of incorporation laid the legal foundation for the civil rights movement—most specifically the 1954 *Brown v. Board of Education* ruling that put an end to legalized segregation.

As these examples reveal, the Bill of Rights is not static. It truly is a living document that is constantly being reinterpreted and redefined. The Bill of Rights series captures this vital aspect of one of America's most cherished founding texts. Each volume in the series focuses on one particular right protected in the Bill of Rights. Through the use of primary and secondary sources, the right's evolution is traced from colonial times to the present. Primary sources include landmark Supreme Court rulings, speeches by prominent experts, and editorials. Secondary sources include historical analyses, law journal articles, book excerpts, and magazine articles. Each book also includes several features to facilitate research, including a bibliography, an annotated table of contents, an annotated list of relevant Supreme Court cases, an introduction, and an index. These elements help to make the Bill of Rights series a fascinating and useful tool for examining the fundamental liberties of American democracy.