

# Unit 4

## Civil Liberties: Safeguarding the Individual

### Learning Objectives

After completing this session, you will be able to:

- Emphasize the role that the concept of liberty plays in American government.
- Illustrate the Bill of Rights in action.
- Evaluate the myth of absolute liberty.
- Describe the modern tests of the limits of free press.
- Show how liberties can conflict with one another.

### Topic Overview

This unit explores the concept of **civil liberties** in American life, distinguishing civil liberties from **civil rights** and illuminating some of the problems encountered in protecting civil liberties. As the unit points out, most of us have a conception of the Bill of Rights as a list of absolutes, but this has never been the case. At some point, as our courts have often recognized, the exercise of civil liberties conflicts with other values that we also hold dear. The result is that we have frequently balanced liberty against order. The unit also demonstrates what happens when civil liberties collide.

The first 10 amendments to the U.S. Constitution are collectively known as the **Bill of Rights**. The First Amendment contains several important rights that guarantee a person's basic civil liberties including freedom of speech, freedom of the press, freedom of association, and freedom to practice one's own religion. Our civil liberties are protected against government restriction and the interference of others, but they are not absolute. That's because our rights often collide, and thus must be balanced against each other in ways that promote the public good for all citizens. Americans have never fully agreed on where the balance should be struck in all cases.

In specifying what the government cannot do, the Bill of Rights is an important source of our civil liberties that cannot be taken away even when popular majorities at the local, state, or national level vote to restrict them. Some protections provided by the Bill of Rights, such as the Fourth Amendment's protection against unreasonable search and seizure, are written in vague terms that often require judicial interpretation.

## Topic Overview, cont'd.

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The First Amendment to the Constitution contains several prohibitions against national government power. It states that Congress cannot:

- Restrict freedom of speech, the press, or the right of people to peaceably assemble and to petition the government for a redress of grievances.
- Restrict an individual or group's free exercise of religion.
- Promote any religion.

While the First Amendment has been a bulwark against overbearing government throughout American history, courts have interpreted the scope and substance of First Amendment liberties differently. Originally written during a time when there were no telephones, radio, television, or computers, the exact meanings of the free speech and press guarantees in the First Amendment have necessarily been redefined and reinterpreted ever since.

The courts have never considered the rights enshrined in the First Amendment, or in the entire Bill of Rights, to be absolute. Instead, when one right clashes with another, as when a person's freedom of speech right clashes with another person's right to privacy, the courts must balance the conflicting rights and consider where one right should give way to the other. For example, most people would agree that a person's right to shout "fire!" in a crowded theatre (or "bomb!" on a passenger jet for that matter) is negated by the larger public value of keeping people safe from being trampled to death.

In weighing competing values such as free speech and public safety, the courts have developed a series of tests to help them find the right balance that is in keeping with prior court decisions. The **clear and present danger** test, for example, says that government may restrict speech to prevent grave and immediate dangers. Courts later added the **bad tendency** test, which says that speech that poses an indirect and future danger may still be restricted. In some cases, the courts have denied the media's right to report facts (e.g., the names of criminal defendants or their victims) if such reporting clashes with other protected rights, such as a defendant's right to a fair trial.

The Fourth through Sixth Amendments to the Constitution protect Americans from governmental intrusions such as unreasonable searches and seizures, and include procedural due process guarantees for people accused of crimes. In applying the Fourth Amendment in specific cases, courts have grappled with the question of what constitutes "reasonable" versus "unreasonable" searches. Mitigating factors might include whether police or other government personnel had a lawful search warrant, whether there was "probable cause" to indicate that a crime had likely been committed, and whether the search takes place in a person's home, on their person, or at some other place such as work or school. In 1989, the Supreme Court held that law enforcement employees and others in occupations with heightened safety concerns could be subjected to drug tests without a search warrant. However, a later court held that some drug testing programs go too far when it struck down a Georgia statute requiring all political candidates to take a drug test.

The Sixth Amendment guarantees, among other things, that criminal defendants have the "right to a speedy and public trial, by an impartial jury," although the exact meaning of "speedy," "public," and "impartial" has evolved over two centuries of case law. In many criminal cases the trial judge must rule on specific legal questions involving things like what information is open to the media, the rules governing jury selection, evidence that can or cannot be admitted, and specific sentencing guidelines. Parties to a case who feel they were treated unfairly during the trial process may try to appeal their case to a higher court. It is the job of the appeals courts and sometimes the U.S. Supreme Court to interpret and apply the Constitution to that particular case, and ultimately to determine if someone's basic rights have been violated.

## Pre-Viewing Activity and Discussion (30 minutes)

Before viewing the video, discuss the following questions:

- What would the nation look like if there had never been a Bill of Rights?
- What, if any, limits should be placed on individual liberty?
- How did Thoreau believe that most men serve the state?
- What are the implications of applying the bad tendency test as opposed to the clear and present danger test in judging free speech and press disputes?
- What should constitute an unreasonable search and seizure?
- What should be done when two guaranteed liberties collide?
- Should liberties not mentioned in the Bill of Rights (e.g., privacy) be protected by courts?

## Watch the Video (30 minutes) and Discuss (30 minutes)

The video includes three segments. If you are watching on a videocassette, watch each segment and then pause to discuss it, using the questions below. If you are watching a real-time broadcast on the Annenberg/CPB Channel, watch the complete video and then discuss.

### 1. First Amendment Rights Are Not Absolute

Like most high schools, Middlesex High in Saluda, Virginia, has its own student-run school newspaper, *The Big Blue Review*. The paper's student editors decided to run several stories on Valentine's Day about sex education that included information about venereal diseases and so-called "safe sex" practices. Carl McWhorter, faculty advisor for the newspaper, supported the student editors, but Middlesex High's principal objected to the content in the articles and decided to suspend distribution of the Valentine's Day edition of the paper. Although the students consulted attorneys from a legal defense center, the issue was resolved without going to court. The experience seems to have taught both sides how difficult it is to balance conflicting interests.

### Discussion Questions

- Should the press be allowed to publish *anything*?
- If there are limits on publication, can they be defined prior to publication?
- Should student publications be treated differently than privately held media outlets?
- Do school administrators have special responsibilities to censor student produced publications?

### 2. The Fourth Amendment and Student Drug Tests: The Case of Lindsay Earls

Extracurricular activities such as sports, marching bands, choirs, and quiz bowls, have long been a basic part of high school. In recent years, out of concern for the continued drug use among some teens, school administrators across the country have implemented random drug testing programs for students involved in school sports and other activities. Several court cases challenging these testing programs have required the courts to grapple with the Fourth Amendment's protections against unreasonable searches. Usually the issue involves conflicts between students' rights to privacy and the schools' obligation to ensure their safety and well being. In a closely watched 1995 decision, the U.S. Supreme Court ruled that random drug tests for student athletes were reasonable because team players already had a lower expectation of privacy and because of the extra danger of physical exertion while under the influence of drugs. But the question of whether schools can require drug tests for students in non-sports programs remained unsettled until 2002.

## Watch the Video and Discuss, cont'd.

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### Discussion Questions

- What constitutes an unreasonable search?
- Is mandatory drug testing an invasion of privacy?
- Should all students be required to submit to drug tests?
- Should faculty and administrators be required to submit to drug tests?

### 3. When Rights Collide: The Free Press Versus the Fair Trial

The Sixth Amendment guarantees criminal defendants a right to a fair trial, but the First Amendment guarantees the media the right to cover criminal trials as well. This potential conflict between two rights arose in the Sam Sheppard murder trial and subsequent appeal. On the morning of July 4, 1954, Marilyn Reese Sheppard was murdered. Her husband, Dr. Sam Sheppard, was initially questioned by the police and released. But after several stories in the local newspapers criticized the police for letting Sheppard go, he was put on trial for the murder of his wife. The trial was a media spectacle that included biased press coverage against Sheppard and improper police statements calling Sheppard a “barefaced liar.” Sheppard was convicted of second-degree murder and sentenced to life in prison. Was press coverage so obtrusive as to deny Sheppard his Sixth Amendment right to a fair trial? This famous case (still famous as the inspiration for the television show and movie, *The Fugitive*), struggled to balance these competing rights.

### Discussion Questions

- Did Dr. Sheppard receive a fair trial?
- In the current media age, with its all-news channels, can any high-profile defendant receive a fair trial?
- What measures can be taken to guarantee high-profile defendants a fair trial?

## Post-Viewing Activity and Discussion (30 minutes)

### 1. What Other Constitutional Rights Do You (Or Should You) Have? (15 minutes)

The Ninth Amendment states: “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” What other rights or liberties that are not articulated in the Constitution should we enjoy? For example, should the right to privacy, which the Supreme Court affirmed in *Roe v. Wade* (1973), be guaranteed through constitutional amendment? Other possible rights might include a right to education, a right to health care, or even a right to have fun as an extension of the unalienable right to the “pursuit of happiness” that is asserted in the Declaration of Independence. Discuss what other rights might be covered by the Ninth Amendment.

### 2. Why Worry About Civil Liberties If You Don't Have Anything To Hide? (15 minutes)

Some people express the attitude that says: “I don't mind drug searches in school, or sobriety checkpoints, because I don't have anything to hide.” Do you agree with this statement? Use the readings to discuss where various political thinkers might have stood on this issue. Also consider what might be the value to society if more people held that view. What might be the value to society if more people questioned that view? Do the terms of this debate change when the U.S. is in a wartime situation against a foreign power, or in a domestic situation such as the “war on drugs?” Why or why not?

## Homework

Read the following Readings from Unit 5 to prepare for next week's session.

- Introduction—Civil Rights: Demanding Equality
- Tocqueville, *Democracy in America: "The Idea of Rights in the United States"*
- DuBois, *The Souls of Black Folk*
- Douglass, *Narrative of the Life of Frederick Douglass, An American Slave*
- Gilman, *Women and Economics*

Read next week's Topic Overview.

**Critical Thinking Activity:** Go to the course Web site and try the Critical Thinking Activity for Unit 4. This is a good activity to use with your students, too.

[www.learner.org/channel/courses/democracy](http://www.learner.org/channel/courses/democracy)

## Classroom Activities

You may want to have your students do the post-viewing activities: *What Other Constitutional Rights Do You (Or Should You) Have?* and *Why Worry About Civil Liberties If You Don't Have Anything To Hide?* They are provided for you as blackline masters in the Appendix.

## Web-Based Resources

[www.aclu.org/](http://www.aclu.org/)—The Web site of **the American Civil Liberties Union** contains extensive updates on issues affecting Americans' civil liberties including curbs on liberties during wartime, drug policies, free speech, and privacy and technology. Content is frequently updated to allow visitors to track legislative and judicial action in key issue areas.

[www.cato.org/current/civil-liberties/](http://www.cato.org/current/civil-liberties/)—**The CATO Institute's** links to various articles, forums, congressional testimony, and radio and television specials on the topic of civil liberties.