

THIS IS REQUIRED READING AND CONTAINS TESTABLE MATERIAL

PREAMBLE

We the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Amendment 1

"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 grievance."

Neither federal (nor state and local governments) may eliminate a citizen's right to:

- hold or practice religious beliefs
- speak freely
- transmit or receive free media communications
- assemble peaceably
- formally ask the government to correct a wrong

Amendment 2

"A well-regulated militia being necessary to the security of a free state, the right to the people to keep and bear arms shall not be infringed."

In the context of being prepared to serve temporarily in national or state emergencies, a citizen may:

- keep weapons
- carry weapons

Amendment 3

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner prescribed by law."

The enforced lodging of soldiers in private homes is:

forbidden in peacetime without owner's permission
permitted in wartime in accordance with established law

Amendment 4

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

No one may conduct an unreasonable search or seizure of a citizen's:

person
house
papers
effects

Right to Due Process

The rights of due process describe legal procedures to which a citizen is entitled through provisions of the Constitution and its Amendments. These procedures are identified in Article 1, Section 9, clauses 2 and 3 of the Constitution and in Amendments 4 through 8.

* Article 1, Section 9, Clause 2.

"The privilege of the writ of habeas corpus shall not be suspended, unless...rebellion or invasion..."

The citizen is protected from imprisonment without a formal trial except during an invasion or rebellion.

* Article 1, Section 9, Clause 3.

"No bill of attainder or ex post facto law shall be passed."

Citizens are protected from:

laws pronouncing a specific person guilty of an alleged crime (usually treason) without a regular court trial, sentencing him to death, and seizing his estate (bills of attainder)

punishment for actions that are later made illegal (ex post

facto laws)

Amendment 4

"... 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."

Warrants must be supported by:

reasonable facts to justify the action requested specific
identification of
places to be searched as well as persons or things to be
seized.

Amendment 5

"No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury,...nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb; nor shall he 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."

When accused of a crime, a citizen is entitled to:

a written notice of the charges against him
freedom from being prosecuted a second time for the
same crime
freedom from acknowledging facts which may establish
his guilt
be processed through a system of justice in accordance
with
established rule, principles, and jurisdiction
reasonable reimbursement for any property seized for
public use.

Amendment 6

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...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 defense."

Accused citizens are entitled to:

a formal trial free from unreasonable delay
a trial open to public view
an unbiased jury
knowledge of the accusation against him
cross-examine witnesses
obtain witnesses by requiring their presence in court the
advice and
representation of an attorney in court.

Amendment 7

"In suits at common law...the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined...than according to the rules of common law."

In a civil suit a citizen is entitled to have:

a jury
the rules of common law applied during appeals

Amendment 8

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted."

A citizen is entitled to reasonable:

bail
fine
punishment

General Citizen Rights

The rights of citizens are expressed in the privileges of the people and in the limitations on governmental actions which apply to rights generally, as stated in Amendments 9, 10, and 14.

Amendment 9

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Rights not identified in the Constitution belong to the citizen.

Amendment 10

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Powers not identified by the Constitution belong to the states or to the people.

Amendment 14

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of the law, nor deny to any person within its jurisdiction the equal protection of the laws."

Citizens of each state are also citizens of the United States. State governments (as well as the Federal government) must respect the Constitutional rights of United States citizens.

1. The new U.S. Constitution.

A. When did it begin? On September 17, 1787.
When a convention of delegates from all the thirteen states - except Rhode Island - proposed a new Constitution to the Continental Congress and the States for ratification.

B. What caused this new Constitution?
The colonists rebelled because the English king refused to all of them their historic rights as free English citizens.

Americans, before the Revolution, believed that the law was superior to any government, even the king.

2. The First Continental Congress.

A. A meeting held in September, 1774.
Delegates from 12 colonies met in the First Continental Congress.

B. What was the purpose of the First Continental Congress?
• To petition England for their rights:
• Right to "life, liberty and property."

- Trial by jury.
 - Peaceably assemble.
 - Consideration of their grievances.
 - And, for other rights they had been denied.
- C. The First Continental Congress and its "list of rights" were ignored by England. Soon afterward, fighting broke out at Lexington and Concord.
3. The "Mecklenburg Resolves" of May 1775.
- A. What were the "Mecklenburg Resolves?"
In May, 1775 citizens in Mecklenburg County, North Carolina, declared the laws of Parliament to be null and void.
- B. The citizens instituted their own form of local government.
4. The Declaration of Independence.
- A. In June 1776, a resolution was introduced in the Continental Congress, and a month later, on July 4, 1776, the Thirteen Colonies declared themselves free and independent of England.
- B. The Declaration of Independence was truly revolutionary.

The colonists listed a large number of abuses they had suffered at the hands of the English government.

And they justified their independence in these famous words:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain Inalienable Rights that among these are Life, Liberty, and the pursuit of Happiness."

Source: The Preamble to the U.S. Constitution.

5. The Articles of Confederation of 1778.
- A. The newly independent states joined in a united government. The Articles of Confederation was our nation's first Constitution.
- But, the Articles of Confederation did not provide for a working, efficient government.
- No authority to levy taxes or to regulate foreign or interstate commerce.
- B. Work on a compromise Constitution - 1787.

A convention of delegates, meeting in Philadelphia - realized that a new system of government was necessary.

A compromise Constitution was agreed upon.

Delaware was the first state to accept the new Constitution, ratifying it on December 7, 1787.

- C. Not all states were pleased with the new Constitution. A major argument was the absence of Bill of Rights to protect citizens from abuses by the new central government.

6. The Bill of Rights.

- A. On September 25, 1789 Congress proposed the first Ten Amendments to the U.S. Constitution -- the Bill of Rights. Ratification of the Constitution, with the Bill of Rights attached, was completed on December 15, 1791.

- B. Protections of the Bill of Rights.

Since 1791, the Bill of Rights has served as our nation's testimony to its belief in:

- The basic and inalienable rights of the people.
- And, in the limitations on the power of government.

Note: The U.S. Constitution, with its Bill of Rights, protects that great body of liberties that belong to every citizen.

IMPORTANT CASES WITH WHICH TO BE FAMILIAR - TESTABLE

Tennessee v. Garner, 471 U.S. 1, 7, 85 L.Ed.2d 1, 7, 105 S.Ct. 1694

In 1985, the Supreme Court considered the question of whether or not the use of deadly force is actually a seizure under the Fourth Amendment, and thus to be judged by that section's reasonableness standard. Finding in the affirmative, the court stated:

Whenever an officer restrains the freedom of a person to walk away, he has seized that person...there can be no question that application of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.

Extending the Garner analysis further, in 1989, the Supreme Court stated:

Today we make explicit what was implicit in Garner's analysis and hold that all claims that law enforcement officers have used excessive force--deadly or not--in the course of an arrest, investigatory stop or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its "reasonableness" standard,...

Thus, the ultimate test to be applied to a claim of excessive force is whether or not the force used was reasonable under all the circumstances known to the officer at the time he acted.

That question is not the complete analysis, however, as there must first be a seizure under the Fourth Amendment. The test to be applied to make that determination is three-fold and requires finding a (1) governmental interest; (2) termination of freedom of movement; (3) through means intentionally applied.

[From: THE POLICE CHIEF, FEBRUARY 1992]

Further Analysis of Garner:

Because the Garner case on deadly force based the constitutional violation upon the Fourth Amendment's right to be free from unreasonable seizure rather than a due process violation under the Fifth and Fourteenth Amendments, more litigation on excessive force can be expected.

Under this reasoning the use of any significant degree of excessive force in effecting an otherwise constitutional arrest may constitute an unreasonable seizure.

Whether a particular seizure is constitutionally unreasonable depends upon factual circumstances.

To determine the question requires that the court "balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the governmental interests alleged to justify the intrusion." (Garner)

The use of Fourth Amendment deprivation could allow even minor cases into federal court under 1983 where those have been denied or diverted to state courts before.

MIRANDA v. ARIZONA (1966)

Miranda was arrested and accused of kidnapping and rape. He was taken to the police station where he was identified by the victim and questioned for two hours by the police. He was not informed of his Constitutional rights, including his right to have an attorney present during

questioning. When the questioning ended, Miranda confessed. The confession was written up and Miranda signed it. A paragraph added to the top of the confession stated that the confession was given voluntarily, without threats, without promise of immunity, and "with full knowledge of my legal rights, understanding that any statement I make may be used against me." The confession was used in the trial in which Miranda was convicted.

In an appeal to the U. S. Supreme Court, Miranda's lawyer claimed that his client had not been told of his right to remain silent nor of his right to an attorney and, therefore, his confession had been obtained illegally.

The State of Arizona argued that Miranda could have asked for a lawyer at any time, that he was aware of his rights, and that he had confessed voluntarily.

The issue before the Supreme Court was whether Miranda's right against self-incrimination and his right to counsel had been violated.

The Supreme Court found in favor of Miranda. They determined that he should have been informed of his right to remain silent and his right to consult a lawyer. The Court also handed down some very strict guidelines for police to follow in making arrests:

A warning must be given to the suspect that he has the right to remain silent and that any statement he does make may be used in evidence against him.

The suspect must be advised that he is entitled to consult a lawyer before he is interrogated and that, if he cannot afford a lawyer, the state will make one available to him before he is questioned.

The privilege against self-incrimination and the right to counsel may be waived if the waiver is made voluntarily and with the knowledge of the consequences. But the heavy burden of proving there is a waiver is on the state.

Even if the suspect has waived his rights, as questioning continues he may withdraw the waiver, and then questioning must stop and can continue only after counsel has been obtained and is present.

The Gault Case*

A Brief Summary

Gerald Gault and another boy were taken into custody on the morning of June 8, 1964, by the Sheriff of Gila County, Arizona. The police were acting on a verbal complaint from a Mrs. Cook, a neighbor of the boys, that she had received a lewd and indecent phone call. Gerald's parents were at work that morning and no notice of the police action was left at their home. Gerald's mother learned of his being taken to the Children's Detention House only after Gerald's

older brother went to look for him at the home of the other boy. At the detention home, the mother and brother were told "why Jerry was there" and that a hearing would be held the next day at three o'clock.

A petition praying for a hearing was filed on June 9 by an Officer Flagg which recited that "said minor is under the age of eighteen years and in need of protection of this Honorable Court (and that) said minor is a delinquent minor." The petition was not served on the Gaults and they first saw it two months later.

On June 9, a hearing was held in the chambers of Juvenile Judge McGhee with Gerald, his mother, his brother, and probation officers present. No record, formal or informal, of this hearing was made.

Gerald was released from the detention home on the 11th of June pending formal hearings. A hearing was then held on a later date.

Mrs. Gault asked that Mrs. Cook be present but was told by the judge that she did not have to be present. At the conclusion of the hearing, Gerald was committed as a juvenile delinquent to the state industrial school for the period of his minority (six years) unless sooner discharged by due process of law.

No appeal is permitted under Arizona law in juvenile cases. Gerald filed a writ of habeas corpus with the Supreme Court of Arizona which was referred to the Superior Court for hearing.

The Superior Court dismissed the habeas corpus petition and Gerald sought review in the Arizona Supreme Court on many due process grounds. The Arizona Supreme Court affirmed the Superior Court's dismissal of the petition. The case was appealed to the United States Supreme Court who found in favor of the Gaults.

[* A. Neigher; "The Gault Decision: Due Process and the Juvenile Courts." Federal Probation, Vol. 31, No. 4, December 1967, pp. 12-16.]

Arizona Supreme Court Issues in the Gault Case

Notice of Charges:

A petition alleging in general terms that the child is neglected, dependent, or delinquent is sufficient notice.

Mrs. Gault knew the exact nature of the charge against Gerald from the day he was taken to the detention home.

The Gaults appeared at the hearings without objection and knew the nature of the charge.

Advance notice of the specific charges as a basis for taking the juvenile into custody and for the hearing is not necessary because the policy of the juvenile law is to hide youthful errors from the full gaze of the public.

Right to Counsel:

Representation of concern for a minor is discretionary with the trial judge.

When Mrs. Gault failed to appear with counsel, it constituted a waiver of the right.

Right to Confrontation:

Sworn testimony must be required of all witnesses including those related to the juvenile court system.

Sworn testimony by the witnesses is sufficient.

Privilege against Self-Incrimination:

Necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination.

The Fifth Amendment provides only that no person "shall be compelled in any criminal case to be a witness against himself" and should therefore not apply through the Fourteenth Amendment to State juvenile proceedings. Juveniles may be placed in adult penal institutions after a finding of delinquency.

The Basis for Appeal:

The appeal by Gault to the U.S. Supreme Court was based on the argument that the Juvenile Code of Arizona is invalid because, contrary to the due process clause of the Fourteenth Amendment, the juvenile is taken from the custody of the parents and committed to a state institution pursuant to proceedings where the juvenile court has virtually unlimited discretion and

in which the following basic rights are denied; (1) notice of the charges, (2) right to counsel, (3) right to confrontation, (4) privilege against self-incrimination, (5) right to a transcript of the proceedings, and (6) right to appellate review.

U.S. Supreme Court Issues in the Gault Case:

Notice of Charges:

Due process was denied because of failure to provide adequate notice.

The initial hearing was in fact a hearing on the merits of the case.

Even if you want to protect the child from the public eye, you must yield to the due process requirement of adequate notice.

Where a youth's freedom and a parent's right to custody are in jeopardy, a hearing may not be held unless the child and his parents are first notified in writing of the specific issues that must be met at that hearing. Such notice must be given at the earliest practical time and sufficiently in advance of the hearing to permit preparation.

Mere knowledge of the kind Mrs. Gault allegedly had, of the charges against Gerald, does not constitute a waiver of the right to adequate notice because of its lack of peculiarity.

Right to Counsel:

Neither probation officer nor judge can adequately represent the child. The juvenile needs the assistance of counsel for the same reasons underlying the inclusion of that right in the Sixth Amendment. When a child stands to be found "delinquent" and subject to loss of liberty, it is comparable to an adult felony prosecution. If the defendant is unable to afford a lawyer, one must be appointed for him.

Notification of the right to counsel plus "specific consideration" of whether to waive the right must precede a valid waiver. Mrs. Gault was not specifically advised of the right and therefore no waiver was made.

Right to Confrontation:

There was no sworn testimony. Mrs. Cook did not appear.

Sworn testimony is not sufficient. In the absence of a valid confession adequate to support the determination of the court, confrontation and sworn testimony by witnesses available for cross-examination is essential for a finding of "delinquency." A juvenile must be afforded the same protection respecting sworn testimony that an adult would receive in a criminal trial.

Privileges against Self-Incrimination:

Any admissions that Gerald made were improperly obtained in violation of the Fifth Amendment's privilege against self-incrimination. It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children.

The privilege against self-incrimination is not based upon the type of proceedings in which it is involved but upon the nature of the statement or admission made and the exposure which it invites. It makes no difference whether juvenile proceedings are deemed civil or criminal. No person shall be "compelled" to be a witness against himself when he is threatened with deprivation of his liberty.

The Fifth Amendment's self-incrimination provision is vitally interwoven with the Sixth Amendment's right-to-counsel provision.

The "admission" or "confession" was obtained in violation of his right to counsel, his right to the presence of his parents, and his right to remain silent.

MONROE v. PAPE 365 U.S. 167 (1961)

FACTS

Six black children and their parents brought a Section 1983 action in federal district court against the city of Chicago and thirteen of its police officers for damages for violation of their rights under the Fourteenth Amendment. They alleged that, without warrant, the police officers broke into their home in the early morning, routed them from bed, made them stand naked in the living room, and ransacked every room, emptying drawers and ripping mattress covers; that the father was taken to the police station and detained on "open" charges for ten hours while he was interrogated about a two-day-old murder; that he was not taken before a magistrate, though one was accessible; that he was subsequently released without criminal charges being filed against him.

ISSUE

Were the police officers and the city of Chicago liable under Section 1983 for what was done to the plaintiffs? (Yes)

SUPREME COURT DECISION

Police officers acting illegally and outside their scope of authority may be liable under Section 1983 despite the requirement that the officers must have been acting under color of state law. The statutory words "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory" contained in 42 U.S.C. 1983 do not exclude acts of an official or police officer who can show no authority under state law, custom, or usage to do what he or she did or who even violated the state constitution and laws. The city of Chicago, however, was not held liable, because the Court ruled that Congress did not intend to bring municipal corporations within the ambit of Section 1983 (this ruling was later overturned by the Court).

CASE SIGNIFICANCE

This case virtually opened the floodgates of the courts to civil rights (or Section 1983) litigation. Prior to this, it was difficult to hold public officials liable under Section 1983 because of the requirement that they must have acted under color of state law. Most civil liabilities, however, stem from the abuse of power or authority by the police, and such actions were considered outside the color of state law. Monell changed all that. Now police officers can be sued under Section 1983 if what they did arose out of a "misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." An officer who abuses his or her authority can now be sued under Section 1983 as having acted under color of state law. Under Monell, the term "under color of state law" is not synonymous with "acting within the scope of authority." An officer can act outside the scope of authority, or even illegally, and still be sued under Section 1983 as having acted under color of state law.

[from: Civil Liabilities in American Policing: A Text for Law Enforcement Personnel, Rolando V. Del Carmen, p.45., (published by BRADY)]

Duran v. City of Douglas (Arizona)

A person cannot be punished for simply failing to obey the command of an officer if that command violates the federal Constitution. In the same vein, speech is generally protected by the First Amendment--even if it is intended to interfere with the performance of an officer's duty--provided no physical interference results. With that in mind, the arrest of a person who refuses to desist from verbally "chipping" at an officer (even if the chipping is intended to interfere with the officer's duties) is probably a "bad" arrest that will subject the officer and the department to civil liability.

In the case of *Duran v. City of Douglas (Arizona)*, an intoxicated individual directed a series of expletives and obscene hand gestures at a police officer who responded by detaining and arresting the plaintiff and the plaintiff's wife. Plaintiff sued under 42 U.S.C.S.1983.

Cross motions for summary judgment were filed. The officers defended on the grounds that they were qualifiedly immune from suit because they acted in the good faith belief that their actions were reasonable. The district court ruled in favor of plaintiff, and the defendants appealed.

The appellate court held that mere boisterous conduct, although tasteless and crass, was alone insufficient to give a police officer any cause to detain plaintiff. Absent such cause, the stop and detention were illegal and could subject the defendants to liability. Further, the court noted that if the officer intended retaliation for plaintiff's method of expressing his opinion, this was a separate violation of S.1983 and squarely within First Amendment protection.

The court further reasoned that government officials in general--and police officers in particular--may not exercise authority for personal motives (i.e., anger, vengeance, spite, etc.), particularly in response to real or perceived slights to their dignity, and concluded that no matter how peculiar, abrasive, unruly or distasteful a person's conduct may be, it cannot justify a police stop

unless it suggests that some specific crime has been--or is about to be--committed, or that there is imminent danger to persons or property.

Thus, it is clear that mere verbal interference or harassment, without more, cannot justify an arrest or detention for "resisting, delaying or obstructing." However, should the offending party stray beyond the bounds of "innocent" constitutionally protected speech, and thereby violate a statute such as those prescribing peace disturbances by challenging to fight or inciting a riot, or engage in some physical interference with the officer's duties, detention and arrest become appropriate.

Applying the use-of-force principles discussed earlier, any use of force in the situation where the arrester was merely exercising his First Amendment rights would be *per se* unreasonable, excessive and unprivileged under state or federal authority. If the suspect's behavior goes beyond mere speech, the permissible degree of force would be subject to the same reasonableness analysis.

[From: THE POLICE CHIEF, FEBRUARY 1992]