

# Bulletin

What Are Your Rights?

## Speaking Your Mind With the First Amendment

by Roberta K. Glassner, Esq.

**I**f you've ever had a civics class, you probably know that the government and laws of this country were established by the U.S. Constitution. But not every law is contained in the body of the Constitution itself.

Many of the laws we consider our **constitutional rights** are found in the first 10 amendments to the Constitution, known as the Bill of Rights. These rights were added to the U.S. Constitution on Dec. 15, 1791.

Some people consider the First Amendment of the Bill of Rights to be the most important. This amendment guarantees every American three freedoms that are essential to **democracy**.

Under the First Amendment, you are guaranteed freedom of religion, freedom of speech and of the press, and freedom to attend public meetings and **petition** your government—to tell it of

changes you would like to see in the law. Simply put, the First Amendment protects your right to worship freely, to speak, read and write freely and to meet freely.

### Freedom of religion

Can your public school enforce a policy requiring each school day to begin with a prayer? The First Amendment says it cannot because the Bill of Rights guarantees the right of everyone in your school to worship as he or she chooses—or not to worship at all. A prayer that is compelled in public school, however simple, may not reflect the religious beliefs of every student. And for those who choose not to follow any faith, that prayer would not reflect their choice at all.

### Speak up

One of the great things about living in the United States is your right to free speech. Let's say you are a

## Do We Have a Right to Bear Arms?

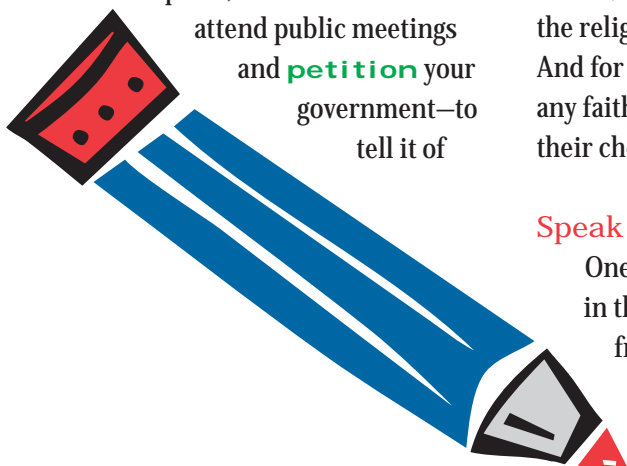
by Barbara Sheehan

The Second Amendment to the U.S. Constitution protects every U.S. citizen's "right to bear arms." Or does it? This question remains in debate as modern-day concerns about violence in our society intensify.

What does the Second Amendment say?

Specifically, the Second Amendment states: "A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Does this mean that every private U.S. citizen should be entitled to keep and bear a gun? Or should only those who are acting in some kind of organized "militia," such as the police or government-sanctioned armed forces, be entitled to carry weapons? To make a determination on this issue one



continued on page 2

continued on page 4

## Amendments That Never Came Close

One of the great features of the U.S. Constitution is its flexibility. At the time of its ratification, the population of the United States was around four million. Today our population exceeds 270 million. Since its adoption, the U.S. Constitution has only changed 27 times. That is an amazing fact considering the changes in technology, infrastructure, population, etc. in this country in more than 200 years. The framers of the Constitution gave it that flexibility because they realized that no document could cover all of the changes that would take place in the world.

There have been close to 10,000 amendments proposed in Congress since 1789, and only a fraction of a percentage of those receive enough support to actually go through the constitutional ratification process.

The success rate of an amendment to become part of the U.S. Constitution is less than one percent. Following are just some of the proposed amendments to the U.S. Constitution that never left the halls of Congress:

- 1876:** An attempt to abolish the United States Senate.
- 1876:** The forbidding of religious leaders from occupying a governmental office or receiving federal funding.
- 1878:** An executive council of three should replace the office of president.
- 1893:** Renaming this nation the “United States of the Earth.”
- 1893:** Abolishing the United States Army and Navy.
- 1894:** Acknowledging that the Constitution recognize God and Jesus Christ as the supreme authorities in human affairs.
- 1912:** Making marriage between races illegal.
- 1914:** Finding divorce to be illegal.
- 1916:** All acts of war should be put to a national vote. Anyone voting yes has to register as a volunteer for service in the United States Army.
- 1933:** An attempt to limit personal wealth to \$1 million.
- 1938:** The forbidding of drunkenness in the United States and all of its territories.
- 1947:** The income tax maximum for an individual should not exceed 25 percent.
- 1948:** The right of citizens to segregate themselves from others.
- 1971:** American citizens should have the alienable right to an environment free of pollution.

Source: [www.unitedstates-on-line.com](http://www.unitedstates-on-line.com)

## First Amendment *continued from page 1*

*Star Wars* fan who went to see *The Phantom Menace* and thought it was awful. The First Amendment gives you the right to express your opinion to anyone who will listen. And if your school has a newspaper, you can write a review of the movie and say exactly what you thought of it. Your friends may disagree with you, but it's their constitutional right of free speech to express their opinions too.

Other examples of free speech would be if your parents buy a car and it keeps breaking down, they can tell everyone they know what a “lemon” that car is. If you think the president of the United States is a great president, you can express that view freely and openly. If you think he's not great at all and think someone else would do a better job, you can say so just as freely.

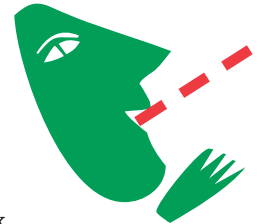
The First Amendment guarantees that you cannot be stopped from saying what you think—not by the producers of *Star Wars*, not by the manufacturer of your parent's car and not by the president or the government. The First Amendment also guarantees your right to express your opinion without speaking. Free speech includes wearing a button, carrying a sign, putting a bumper sticker on your car or wearing a T-shirt with a message on it.

### Can I say anything?

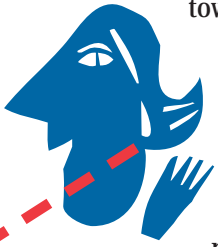
So, does that mean that anyone can say anything at any time? Are there ever limits to your right to free speech under the Bill of Rights?

The answer is yes, because no right is absolute. You are expected to exercise your right to free speech like every other right you enjoy—in a reasonable way at the right time and in the right place. Your right to free speech does not permit you to stand up in the middle of class, interrupt a lesson and just speak out anytime you have something important to say. You may be in the right place, but it would not be the right time and it certainly would not be reasonable or fair to your classmates or your teacher.

And no one can yell “FIRE!” in a public place when there is no fire so that it causes people to run for the exits in panic. The U.S. Supreme Court has held that any form of speech designed to cause harm to other people is not entitled to protection by the First



Amendment. Speech that tries to stir up people to become violent toward others is not protected. Speech that tries to get people to damage the property of others is also not protected.



### Stop the presses

The First Amendment not only protects your right to express your own ideas and opinions, it also protects your right to read and hear the ideas and opinions of others. That right is called freedom of the press and it applies to books, newspapers, magazines, radio and television.

Under freedom of the press, a publisher can print a book that claims aliens from other planets live among us. A newspaper can print editorials stating opinions about anything and

everything. Magazines can print articles about the lives of famous people. And radio and television can broadcast stories about any event they find interesting or important in this country or in other countries around the world. Whether anyone agrees with the ideas presented in these books, newspapers, magazines or broadcasts is up to each individual, but the First Amendment protects the right for these ideas to be presented.

### Petitioning your government

What about the First Amendment's right to petition? Let's say you are a member of your school's soccer team. There is only one field at your school and that is where the football team practices and holds its games.

Under the First Amendment's right to petition, you and your teammates can write to your county park and recreation department and ask for a playing field

in your town park. If you are assigned a field to play on, you have successfully petitioned a government office.

But what if you are told that no field is available? Then you have the right to go further and send a letter, or a petition, to your county freeholder. If you are told again that no field is available, you can go on to appeal to your district assemblyperson and your senator. Under the First Amendment, you have the right to petition all these people to try to get your government to respond to your need for a soccer field.

Think for a minute about the First Amendment and try to imagine what it would be like if you did not have the constitutional rights it protects. Are there any rights you would like to see expanded? Do you think any should be limited? ★

*Roberta K. Glassner is an attorney in New Jersey.*

## Crossword Puzzle #1

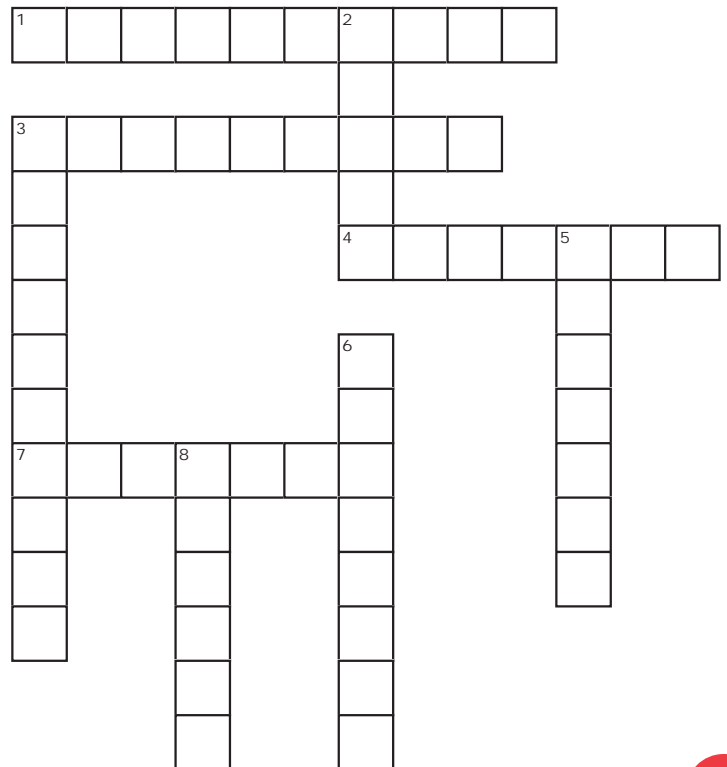
see solution on page 13

### ACROSS

- 1 legal proceedings, such as a trial, which enforce and protect our rights. (two words)
- 3 in a trial, the person who is accused of a crime.
- 4 a body of citizens, enrolled for discipline as a military force, but not engaged in actual military service except in emergencies.
- 7 a case before a court.

### DOWN

- 2 a demand in court for something (i.e., money) that the plaintiff believes is owed him or her.
- 3 (in terms of gun ownership) the lack of legal capability to perform an act (i.e., persons under age, insane persons and convicted criminals are all under a legal disability).
- 5 to give evidence under oath as a witness.
- 6 a formal written document outlining a request made to a higher authority such as a government official.
- 8 process of looking for something.



## The Right to Bear Arms *continued from page 1*

might consider what was happening in our country in 1791, when the Second Amendment was ratified as part of the Bill of Rights.

At that time, our nation had only recently won its independence from the British in the American Revolution, and George Washington was just two years into his term as the first president of the United States. A formal “police force,” as we know it today, did not exist and much of the structure of our government was just being established. In sharp contrast with today, the “arms” in question at that time were muskets, not machine guns, and weapons were largely reserved for hunters or soldiers in battle.

### What would our forefathers say today?

The debate over the meaning of the Second Amendment continues to this

day. **Lobbyists** for gun control argue that the Second Amendment was not intended to guarantee private citizens the absolute right to own guns, and they argue that the government has the power to regulate the sale and ownership of firearms. Gun lobbyists, on the other hand, such as the National Rifle Association (NRA), point to the words of the Second Amendment and strongly defend an individual’s “right to keep and bear arms.”

### What does the Court say?

To date, the U.S. Supreme Court has not clearly defined which of these arguments is correct, and the intent of the Second Amendment remains a subject of great debate. There are, however, a number of federal and state laws governing the issue of gun control.

According to New Jersey Assistant Attorney General Carol Henderson, a

person who wants to buy a gun in New Jersey must be an adult, must apply to his or her local police department for a firearms purchaser identification card and must pass a fingerprint check. Once the ID card is obtained, a person must wait seven days before buying a gun.

To obtain a firearms purchaser ID card, a person must be of good character and good repute, Henderson said. This is defined in terms of “disabilities.” For example, a person who has been convicted of a crime, or who has a domestic order against him or her prohibiting gun ownership, is considered to have a **disability** and is not eligible to purchase a gun. Other disabilities include being drug dependent, an abuser of alcohol or confined to a hospital, institution or sanitarium for a mental problem. Also, a person with a physical defect or disease that would make it unsafe

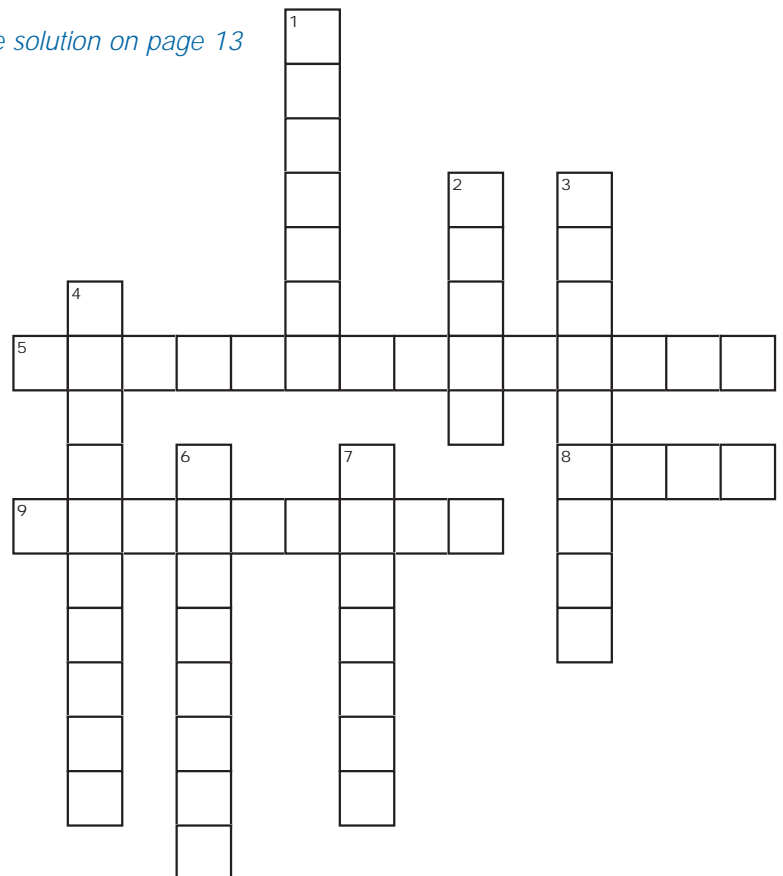
## Crossword Puzzle #2 *see solution on page 13*

### ACROSS

- 5 to be tried in a court of law twice for the same offense. (two words)
- 8 a civil wrong or injury for which the injured party is entitled to compensation.
- 9 a government run by the people through elected representatives.

### DOWN

- 1 the process of taking something that has been found.
- 2 a person under 18 years of age.
- 3 to remain objective and treat all others fairly.
- 4 to offset an error or wrong committed, most often in the form of money.
- 6 a person whose business is to gain the passage or defeat of bills pending before a legislative body.
- 7 a written document from a judge authorizing anything from a search to an arrest to the obligation to pay a fine.



for him or her to have a gun is considered disabled and is not allowed to purchase a gun, she said.

Henderson noted that exceptions in some of the above cases may be made if the gun applicant has a certificate from a medical doctor or psychiatrist stating that he or she no longer suffers from the disability.

### What are the laws for minors?

In accordance with New Jersey law, minors, or individuals under age 18, may not own, carry or use firearms except under specific circumstances.

For example, a minor may hunt with a firearm only if he or she is under the direct supervision of the person who has a firearms purchaser ID for the gun, and only if the minor has passed a special hunter's exam. Also, minors may use firearms for target shooting only if the shooting takes place at a range that is approved by the town where the range is located, and only if there is competent adult supervision.

### How should guns be transported?

Just as there are specific laws for purchasing guns, there are also set regulations for transporting firearms, Henderson noted. For example, most individuals who use their firearms for such purposes as hunting and target shooting must keep their guns in a locked case in the locked trunk of their car, and may only transport their guns to and from their intended destination.

People who wish to have more extensive "carrying" rights must apply to their local police chief for a permit to carry a gun. If approved by the police chief, the Superior Court of New Jersey in the county where the applicant lives

must then approve the application. The court may grant a **permit to carry** at all times, which is highly unusual, or a limited permit to carry.

Permits to carry are very restrictive, Henderson said. For example, applicants must meet the requirements for purchasing a gun and must also show a justifiable need to carry a gun, such as for their job. An example of this might be an employee of an armored car company.

### What is the Brady Bill?

In addition to state laws, there are also federal laws governing gun control. One of the most widely known among these is the Brady Bill, named after former White House press secretary James Brady, who was shot and seriously injured during a 1981 assassination attempt on President Ronald Reagan.

While laws in New Jersey require a seven-day waiting period, the Brady Bill gives law enforcement officials in other states that do not have similar gun control laws, five working days to run a background check on prospective handgun buyers. These federal and state laws are intended to stop the sale of guns to felons and those who otherwise are not qualified to own guns.

### The debate continues

As violence continues to plague our society, the topic of gun control remains a serious local and national concern. Legislators, politicians and others continue to debate the range of the Second Amendment as they draft laws that strike a balance between a person's "right to bear arms" and public safety. ★

## Constitutional Trivia

- **The U.S. Constitution was drafted in 1787 at the Constitutional Convention, which met at the Statehouse in Philadelphia in May 1787.**
- **There were 55 delegates to the Convention. The last delegate arrived on August 6, 1787.**
- **Twelve of the 13 states were represented by delegates. Rhode Island did not send delegates to the Convention.**
- **Although George Washington was the President of the Constitutional Convention (not yet president of the United States), James Madison is called the "Father of the Constitution."**
- **The U.S. Constitution needed to be ratified by 2/3 of the states (nine states) in order to become law.**
- **New Jersey was the third state to ratify the U.S. Constitution on December 18, 1787. The ninth state to ratify the Constitution, making it law, was New Hampshire on June 21, 1788.**
- **Not all states had ratified the Constitution by April 30, 1789, when George Washington became the first president of the United States. The last state to ratify the Constitution was Rhode Island on May 29, 1790.**
- **The structure of the Constitution has not changed since it was written in 1787.**
- **Amendments have provided the flexibility necessary to meet changing circumstances in society.**
- **Nineteen of the members who were chosen to represent their states at the Constitutional Convention never attended a meeting.**

Source: [www.bensguide.gov](http://www.bensguide.gov)

# Fourth Amendment and Your Right to Privacy

by Roberta K. Glassner, Esq.

**T**he Fourth Amendment to the U.S. Constitution protects a right that is an important part of your life today—your right against unreasonable searches and seizures. If this amendment had never been passed, your life today would be very different. Without a law to protect your rights, you would be subject to searches of your belongings anytime law enforcement or the government wished.

## Your right to privacy

In plain language, the Fourth Amendment protects you from law enforcement entering your home uninvited. In most instances, no persons can enter your home unless you let them in or they have an order from the court, called a **search warrant**. Your personal possessions are protected in the same way. In most cases, no one can touch, search or take anything that belongs to you without your permission or a court order.

In legal language, the Fourth Amendment protects your right against “unreasonable searches and seizures.” A **search**, of course, is the process of looking for something. **Seizure** is the process of taking something that has been found. But the word **unreasonable** is a little more complicated to pin down. It could be that what is perfectly reasonable to you appears completely unreasonable to someone else and vice versa.

When it comes to the Constitution, we often look to our courts to tell us the meaning of terms that can be interpreted differently by

different people. How do our courts define “unreasonable” and “reasonable” when it comes to a search or seizure of your private property?

## Is that reasonable?

Let’s say you have signed up for an overnight school trip to go camping. The teachers will be the chaperones—no parents on this one. Of course, your mom does sign a permission form for you to go on the trip. The form states that the overnight bags you and your friends bring will be opened and checked before anyone can get on the school bus.

You, as a sharp legal eagle who knows your constitutional law, object to having

your bag searched. “The Fourth Amendment protects me against unreasonable searches and seizures,” you boldly protest from the bus steps. “I haven’t done anything wrong. I think this search of my bag is unreasonable,” you contend.

## Under all the circumstances

OK. We’re back again to what is reasonable and unreasonable, aren’t we? Only now you have to add something new to the question of “reasonableness”—and that term is **under all circumstances**. Our courts say that the legality of a search of a student or his or her belongings by a teacher depends on the reasonableness, under all circumstances, of the search.

So let’s return to your camping trip, and, this time think about the search of your overnight bag in terms of all the circumstances surrounding the search. It is important for you to know that your school has been taking students on camping trips for the past 15 years. And on some of those 15 earlier trips, teachers found dangerous things in overnight bags—from drugs and liquor to sports knives, sling shots, homemade rockets and fireworks.

You know that school administrators and teachers have a duty to protect students in classrooms and on school grounds from the misbehavior of other students. But in maintaining order, your teachers also have a duty to respect their students’ constitutional rights. That comes down to a delicate balancing act between your Fourth Amendment right to privacy and your school’s need to maintain discipline and provide you with a safe environment.

Your teacher’s duty to protect you and the other students on your camping trip is no different than it is in school. At both times,



## No Room at the Inn

you are away from home and your teachers have the same responsibility for your safety and well being. So whether a teacher or principal conducts a search of you or your property in school or on the steps of a camp bus, the court applies the same standard.

### Warrantless searches

The law recognizes two kinds of searches,



warrantless searches and those with a search warrant. For teachers and principals who usually have to act on the spot to protect students, as long as a reasonable suspicion exists, a warrantless search is permitted.

On the other hand, police must have a search warrant most of the time before they can conduct a search. A **warrant** is a document a police officer obtains from a judge who is convinced that a law has been broken based on the evidence presented.

That evidence, known as **probable cause**, has to be solid enough to justify the police entering a property and conducting a search.

Think of all the things in your life that you consider to be private or your very own property. Some of you may carry book bags, some carry gym bags. Some of you wear a purse on your shoulder, others keep a wallet in your pocket. Your locker has its own combination, known only to you. Do you think a teacher or administrator ever has the right to search any of these things while you are in school? Based on what you have read here, your answer should

be yes, when the grounds for the search are reasonable, under all circumstances. ★

The Fourth Amendment gives you rights that are very much part of your everyday life today. The Third Amendment, on the other hand, protects you against a practice you may not even know took place. Back before and during the Revolutionary War, the government could force the colonists to “quarter” soldiers in their homes—which meant giving them meals and a place to sleep, whether or not they had extra food or space. As you can imagine, people were less than overjoyed with the government’s “open house” policy.

In response to the protests of the citizens of the new United States, the government passed the Third Amendment to the Constitution and put an end once and for all to the practice of “quartering” troops in private homes.

— Roberta K. Glassner, Esq.

## A Burning Question: Protect the Flag or the U.S. Constitution?

by Roberta K. Glassner, Esq. and Jodi L. Miller

**O**ld Glory, the Stars and Stripes—the American flag has many names and some groups think burning it should be a crime.

Others see the burning of our flag as a right protected under the First Amendment to the U.S. Constitution.

The United States Congress is again considering a proposal to amend the U.S. Constitution giving “Congress the power to prohibit the physical **desecration** of the flag of the United States.” This measure was introduced and approved in the U.S. House of Representatives in 1995, 1997, 1999, 2001, 2003 and most recently, on June 22, 2005, the measure passed in the House by a vote of 286-130. The proposal now goes to the U.S. Senate. While the House has

always approved the amendment by an overwhelming majority, the U.S. Senate has not. The last time this amendment was considered by the Senate was in 2000, when the measure fell short of the two-thirds majority needed by four votes.

### Who sparked this controversy?

Two rulings by the U.S. Supreme Court set the path of the Flag Protection Amendment in motion. In 1984, a

continued on page 16

# The Truth About Taking the Fifth

by Roberta K. Glassner, Esq.

**H**ow many times, on television and in movies, have you heard someone answer a question by saying, “I take the Fifth?”

What does “taking the Fifth” mean and who really has the right to take it?

The famous “Fifth” is number five among the first 10 amendments to the U.S. Constitution, known as the Bill of Rights.

When your mother asks if you have cleaned your room, you might reply with “I take the Fifth.” While you can refuse to answer a question by “taking the Fifth,” the only people who have the constitutionally protected right to plead the Fifth Amendment are those suspected of committing a crime. The Fifth Amendment is designed specifically to protect accused persons from giving evidence, or **testifying**, against themselves, also known as **self-incrimination**.

An important thing to remember about the Fifth Amendment’s protection is that no one can conclude that taking the Fifth is in any way an admission of guilt. The only conclusion that can be drawn is that the person is exercising the absolute right under the Constitution not to testify against himself or herself.

## What is double jeopardy?

The Fifth Amendment gives much more protection to persons accused of a crime than just the right against self-incrimination. It also protects them against **double jeopardy**, which means being tried in the same court twice for the same offense. In

other words, if someone is tried in court for a crime and is found not guilty by a jury, he or she can never be tried again for that same crime.

## What is a Miranda Warning?

Before a person accused of a crime can be questioned by a police officer, the person must be told he or she has certain rights under the Fifth Amendment. Those rights are contained in what is known as the **Miranda Warning**.



Almost 40 years ago, Ernesto Miranda was suspected of kidnapping and arrested in his home. Ernesto was taken to a closed room in a local police station and questioned by two police officers.

Two hours after the officers took Ernesto into the closed room, they came out with a confession signed by him. Ernesto Miranda was tried for the crime and, based on his confession, found guilty and sentenced to more than 20 years in prison. The case was

appealed and ultimately heard by the U.S. Supreme Court.

The Supreme Court ruled that Ernesto Miranda’s confession could not be used to convict him because he had not been told of his constitutional rights under the Fifth Amendment. As a result, he was set free. With the Miranda case, the Court changed forever how police handle criminal suspects. The Court ruled that a confession or anything an accused person may tell the police cannot be used against him or her unless the suspect is first told of his or her Fifth Amendment rights against self-incrimination. Those rights came to be known as the Miranda warning, after Ernesto Miranda.

An accused person being held in custody must be told before being questioned by an officer: (1) that he or she has a right to remain silent; (2) that any statement he or she does make may be used as evidence against him or her; (3) that he or she has a right to the presence of an attorney; and (4) that if he or she cannot afford an attorney, one will be appointed for him or her before any questioning, if he or she wishes.

## What about minors?

Our courts have ruled that the Fifth Amendment gives even greater protection to a **minor**—anyone under 18 years of age. A police officer must not only tell a minor being questioned in custody about his or her Miranda rights, the officer must also tell the minor’s parents. Our courts also require that whenever possible, minors should be questioned with a parent present.

# Independence Word Search

L E T F R E E D O M M E R I Y N G S C K  
V V V T E U M E H I C C N T T S B T T F  
S B W Q X L A T M N D M I K R O S R N N  
O T U A S B P K E I Q N S W E T C I I J  
R A A H X D Y D D X O V E W B R D P S X  
L U B T I E N U W I Q H M V I X I E G X  
B C L A E E A M T P X N A O L K T S Q T  
W J W A P M M U F L A G W G D F G Y H X  
E I S E S Y T E F T E W N A X E C J W O  
Z L D T S I B T V W V D B K W A E G K J  
G N A T T L Z R W C A M W F N T G R W M  
I R I S G X T Y P O R K P Q M H I L F K  
S E N W I Q P P O V O D Z R Y R M X K B  
G O E H C R P W Y O X G F T S W I Q J E  
C B W I N J T H F R W F B P W Y R Q K O  
J E L T Z C N X A S N Q F L W G H K J D  
S L V E U Q J B J K X C L A W F J N V E  
P A T R I O T I S M C O O R U C H W K R  
B I I P R B O S T H G I R S I M Q W Z Q  
A J V B B Q F Y N O L O C V F V R J G K

Find the words below. The words may be found across, up, down, backwards or diagonally.

BLUE  
COLONY  
CONSTITUTION  
EQUAL  
FLAG  
FREEDOM  
INDEPENDENCE  
LIBERTY  
PATRIOTISM  
RED  
RIGHTS  
STARS  
STATE  
STRIPES  
WHITE

## The Grand Jury

Did you know that persons accused of a crime cannot be brought to trial unless a **grand jury** finds there is enough evidence against them to prove that the charge is justified? Under the Fifth Amendment, it is up to a grand jury to decide if the evidence before it is strong enough for the person to face the charges. No matter how strong a prosecutor believes his or her case may be, if the grand jury is not convinced by the evidence presented to it, the

government must let the accused person go free.

The grand jury has nothing to do with the actual trial. Its only task is to decide whether the government has proven that a trial should take place. If the person is made to stand trial, he or she is still presumed innocent until proven guilty.

### What is due process?

The Fifth Amendment states “No person shall be deprived of life, liberty

or property without **due process** of law.” Due process guarantees many important rights to accused persons, including being told of what they are being accused, the right to be present at their own trial and the right to a fair, impartial judge.

Under our Constitution, the rights of everyone are protected—innocent or guilty, young or old, powerful or ordinary citizen. The Fifth Amendment is one more guarantee of that protection. ★

# Bill of Rights: The Rest of the Story

by Roberta K. Glassner, Esq.

**T**his article will focus on the last five amendments to the U.S. Constitution. By now you should be familiar with the first five amendments. Here's a quick review:

- **First Amendment**—guarantees your constitutionally protected rights of freedom of religion, freedom of speech and freedom of the press.
- **Second Amendment**—concerns the right of Americans “to keep and bear arms.”
- **Third Amendment**—deals with the obligation of giving rooms and meals to soldiers in private homes.
- **Fourth Amendment**—focuses on a right very important to you today—your right to privacy—and protects you against “unreasonable searches and seizures.”
- **Fifth Amendment**—gives protection to anyone charged with a crime by the state and establishes the right of each person to be presumed innocent of a crime unless and until proven guilty. This amendment also guarantees that no one accused of a crime can be forced to testify against himself or herself, and that no one can be placed in “double jeopardy” — which means to be tried twice for the same crime.

## Protecting the rights of the accused

The next three amendments in the Bill of Rights—the Sixth, Seventh and Eighth Amendments—also protect the rights of persons accused of a criminal act. The **Sixth Amendment** guarantees the right to a speedy trial. Think how

unfair it would be for an innocent person to sit in a jail cell for years waiting for his or her day in court.

The Sixth Amendment also gives the accused person—the **defendant**—the right to a trial by an **impartial** jury. If you were called for jury duty and you knew the defendant, the judge or any of



the lawyers, or had some involvement in the case, you would not be allowed to sit on the jury. If you had read about the case in the newspapers or heard about it on television and had made up your mind about the defendant's guilt or innocence, you would also not be allowed to sit on the jury because you would not be impartial.

Because of the Sixth Amendment, every person accused of a crime has the right to be represented by a lawyer at his

or her trial. If the accused person cannot afford to hire a lawyer, the government must appoint one to represent the defendant at no charge.

The **Seventh Amendment** guarantees the right to a jury trial for both persons accused of a crime, and for those involved in certain civil cases as well. A criminal case involves an action committed against the law, such as murder, robbery or assault.

A civil case, on the other hand, involves a non-criminal wrong, called a **tort**, which one person commits against another.

For example, let's say you are a passenger in your mom's car and someone else's car crashes into yours. You and your mom are injured as a result of this crash. Under the law, both you and your mom could bring a **claim** against the driver of the car that struck and injured you. If you did bring a claim against that driver in court by filing a **lawsuit**, you would be involved in a civil case. As the one bringing the claim, you and your mom would be the **plaintiffs** in the case. The other driver would be the defendant.

Under the Seventh Amendment, you would have the right to a trial by a jury. If the jury decides that the other driver was responsible for the accident and for causing you and your mom to be injured, the jury can award money to **compensate** you. This would mean the driver would have to pay you for damages to your car and for your injuries.

Your civil case in New Jersey would be tried before a panel of six jurors, whereas a jury of 12 hears a criminal case. The law requires that a **verdict** in a criminal case must be unanimous—based on agreement by all 12 jurors on the defendant's guilt or

innocence. In a civil case, you need five out of six jurors to agree to decide the case.

Why do you think there are twice as many jurors in a criminal case as in a civil case? And why do you think the verdict must be unanimous? The framers of the U.S. Constitution considered the loss of personal freedom to be precious. Someone found guilty of a crime would be deprived of his or her freedom and sentenced to jail or prison. Therefore, the jury has to be thoroughly convinced “beyond a reasonable doubt” to convict a person of a crime. In a civil case, the standard is decided by a “preponderance of the evidence,” which means the evidence strongly supports one side over the other.

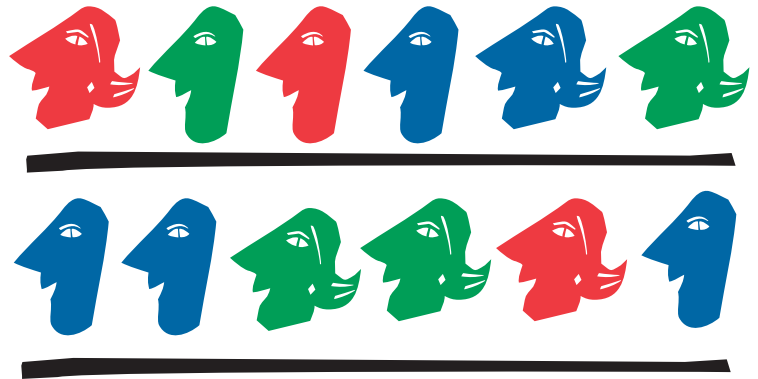
In the early days of this country, before the Seventh Amendment guaranteed a trial by jury, other ways

were devised to prove a person’s innocence or guilt. You may have read about the witch trials in Salem, Massachusetts. There, a person accused of being a witch had her head held under water. If she died of drowning, it was said that proved she was innocent. If she managed to survive somehow, that proved she was guilty of being a witch. You can see that a speedy trial before an impartial jury with an attorney at your side is a little more fair.

The **Eighth Amendment** is also concerned with persons accused of crimes. This amendment guarantees that no one in this country convicted of a crime may be subjected to cruel or unusual punishment.

There are many people who feel the death penalty is a form of cruel and unusual punishment, and this issue continues to be debated in courts throughout the country. In the New Jersey Constitution, however, the death penalty is not considered cruel and unusual punishment in certain circumstances. What do you think?

*continued on page 12*



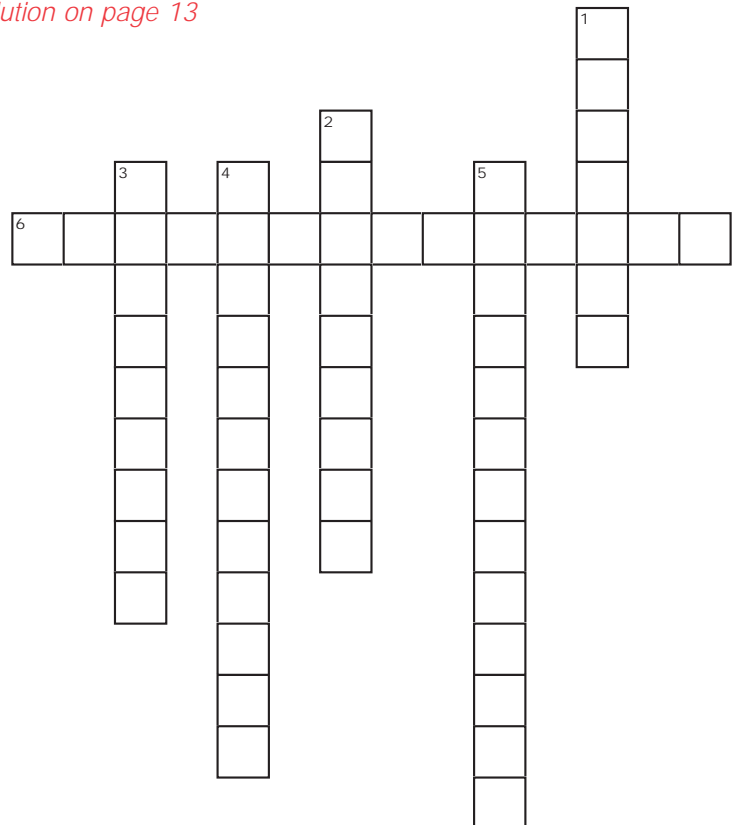
## Crossword Puzzle #3 *see solution on page 13*

### ACROSS

- 6 before interrogation by law enforcement, a person must be warned that he or she has certain rights, including the right to remain silent and the right to an attorney. (two words)

### DOWN

- 1 the outcome of a trial; the decision of a jury.  
 2 person or persons bringing a civil lawsuit against another person or entity.  
 3 a jury consisting of 12 to 23 impartial people who decide if the evidence in a criminal case is strong enough to warrant a trial. This jury does not determine an individual’s guilt or innocence. (two words)  
 4 in terms of search and seizure, the term means to have no grounds to conduct a search.  
 5 a reasonable belief in certain facts. (two words)



# Glossary Word Search

A P F U N T X G G U I O L T V X U T M A  
U J R S W A N H I Z Z A O T Y N A C I L  
D X B V O D H A M Q I R X B R G K I N Q  
D P A B I W C Q D T T I R E D E W D O X  
H S W M C R C W R N Z F A B Y J N R R Y  
B Z E U K L G A C E E S O L C D A E V N  
E T A S N E P M O C O F A T A F N V U D  
L S G D P M A O X N T W E E R U Z I E S  
Y O O F I K A H A K S X M D C O C M J N  
A F B F O Z O B X U R C E S O L S X J N  
G P I B K P L A I N T I F F M P A F Z I  
S C F T Y E G T S E A R C H E E P I S T  
V L P D S I N T R C T N W P D T W T M O  
M M K F V E S R J N Z V H C G I Q Z S P  
I C H Q O T T T A J H A J Z L T S B P O  
U W L T K O B R D Y G F C O X I A L R K  
B Z F M E E R O E D I D O W P O B P Q Z  
D E T J A A P I H S H H Q F M N W O N O  
C X T H W P O U Q R I S L S X Y U R F L  
E A V B J Q S I B J J I H H B A N Z D O

Find the words below. The words may be found across, up, down, backwards or diagonally.

CLAIM  
COMPENSATE  
DEFENDANT  
DEMOCRACY  
IMPARTIAL  
LAWSUIT  
LOBBYIST  
MINOR  
PETITION  
PLAINTIFF  
SEARCH  
SEIZURE  
TESTIFY  
TORT  
UNREASONABLE  
VERDICT  
WARRANT

## The Bill of Rights *continued from page 11*

In the old days in other countries, if you were found guilty of stealing a loaf of bread, you could have your hand cut off. Under the protection of the Eighth Amendment, that could never happen in the United States.

### Numbers nine and ten

The **Ninth Amendment** states that you have other rights that are not set forth in detail in the U.S. Constitution. For example, you have the right to live anywhere you please, even though the U.S. Constitution doesn't say so specifically. You have the right to work

at any job you choose. You can vote for any candidate you prefer—or not vote at all.

The last amendment in the Bill of Rights, the **Tenth Amendment**, gives power to state governments to make all other laws, not in the U.S. Constitution, which the state believes are necessary for life in a democratic nation in that particular state.

### And still counting

Since the Bill of Rights was passed in 1789, 17 more amendments were added to the U.S. Constitution, including those

concerning the abolition of slavery and voting rights for all citizens above the age of 18. Just as additional protections were added to the U.S. Constitution in the 200 years since that historic document was written, it is likely that even more amendments will be added in the years to come.

Can you think of any important rights that are not included in the Bill of Rights or in the other amendments to the U.S. Constitution? Can you think of any other freedoms you believe should be guaranteed and protected by constitutional law? ★

# The Star-Spangled Banner

Written by Francis Scott Key on September 20, 1814, during the War of 1812

Oh, say can you see, by the dawn's early light,  
 What so proudly we hailed at the twilight's last gleaming?  
 Whose broad stripes and bright stars, through  
 the perilous fight,  
 O'er the ramparts we watched, were so gallantly streaming?  
 And the rockets' red glare, the bombs bursting in air,  
 Gave proof through the night that our flag was still there.  
 O say, does that star-spangled banner yet wave  
 O'er the land of the free and the home of the brave?

On the shore, dimly seen through the mists of the deep,  
 Where the foe's haughty host in dread silence reposes,  
 What is that which the breeze, o'er the towering steep,  
 As it fitfully blows, now conceals, now discloses?  
 Now it catches the gleam of the morning's first beam,  
 In full glory reflected now shines on the stream:  
 'Tis the star-spangled banner! O long may it wave  
 O'er the land of the free and the home of the brave.

And where is that band who so vauntingly swore  
 That the havoc of war and the battle's confusion  
 A home and a country should leave us no more?  
 Their blood has wiped out their foul footsteps' pollution.  
 No refuge could save the hireling and slave  
 From the terror of flight, or the gloom of the grave:  
 And the star-spangled banner in triumph doth wave  
 O'er the land of the free and the home of the brave.

Oh! thus be it ever, when freemen shall stand  
 Between their loved homes and the war's desolation!  
 Blest with victory and peace, may the heaven-rescued land  
 Praise the Power that hath made and preserved us a nation.  
 Then conquer we must, for our cause it is just,  
 And this be our motto: "In God is our trust."  
 And the star-spangled banner forever shall wave  
 O'er the land of the free and the home of the brave!

## Brief History of The Star-Spangled Banner

On September 13, 1814, Francis Scott Key visited the British fleet in Chesapeake Bay to secure the release of Dr. William Beans, a friend who had been captured. The release was secured, but Key was detained on a ship overnight during the shelling of Fort McHenry, one of the forts defending Baltimore. In the morning he was so happy to see the American flag still flying over the fort that he began a poem

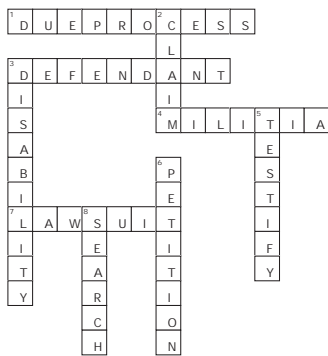
to commemorate the occasion. Titled, "The Star-Spangled Banner," the poem soon attained wide popularity, but was not made America's official National Anthem until 1931.

Above is the complete poem, although the first verse is what is traditionally sung. ★

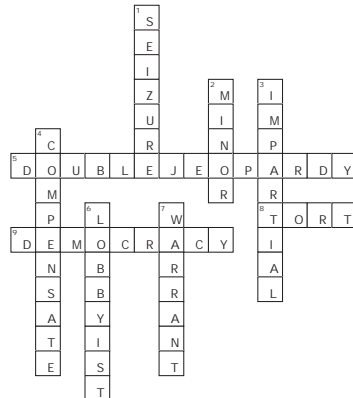
Source: [www.ushistory.org](http://www.ushistory.org)

## Puzzle Solutions

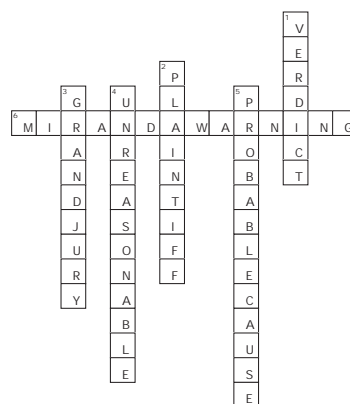
**Puzzle #1** from page 3



**Puzzle #2** from page 4



**Puzzle #3** from page 11



## Word Scramble Answers

from page 16

1. Liberty
2. Freedom
3. Constitution
4. Bill of Rights
5. Stars
6. Amendment
7. United States
8. Colony
9. Patriotism
10. Stripes
11. Independence
12. Flag

## More Constitutional Trivia

- After deciding to write an entirely new Constitution, the delegates meeting in Philadelphia decided to keep the proceedings secret to avoid any outside influence. People were hired to spread dirt outside the Pennsylvania State House on the cobblestone street to “muffle” the sound of the numerous carriages and carts passing by. Armed guards were also hired to protect the secrecy of the meetings.
- Thirty-four of the delegates at the Constitutional Convention were lawyers. The remaining members were soldiers, planters, educators, ministers, physicians, financiers, and merchants. William Few of Georgia was the only member to represent the yeoman farmer class, which comprised the majority of the population of the country.
- James Madison was the only delegate to attend every meeting. He took detailed notes of the various discussions and debates that took place during the convention. He was the last founding father to die at the age of 85 in June 1836. The journal that he kept during the Constitutional Convention was kept secret until after he died. It (along with other papers) was purchased by the government in 1837 at a price of \$30,000 (that would be \$404,828.99 today).
- Of the 42 delegates who attended most of the meetings, 39 actually signed the Constitution. Edmund Randolph and George Mason of Virginia, and Elbridge Gerry of Massachusetts, refused to sign.

Source: [www.ConstitutionFacts.com](http://www.ConstitutionFacts.com)

## Facts About Our Founding Fathers

**W**ho are our “founding fathers?” The founding fathers of our country are those men who made significant intellectual contributions to the U.S. Constitution. Here are a few interesting facts about some of our founding fathers.

**George Washington** was born on February 11, 1732, but in 1751 Great Britain changed from the Julian to the Gregorian calendar. An act of Parliament added 11 days to make the adjustment complete and in 1752 Washington celebrated his birthday on February 22.

Of the “founding fathers” who became president, only **George Washington** did not go to college. **John Adams** graduated from Harvard, **Thomas Jefferson** graduated from the College of William and Mary, and **James Madison** graduated from Princeton University.

**John Adams** was the first president to live in the White House when he came to Washington, D.C. in November of 1800. However, he was only there for four months after losing the election of 1800 to **Thomas Jefferson**.

**George Washington** gave the shortest inauguration speech in American history on March 4, 1793. It was only 133 words long. **William Henry Harrison** gave the longest at 8,443 words on March 4, 1841, on a cold and blustery day in Washington, D.C. He died one month later of a severe cold.

The Marquis de Lafayette thought so much of **George Washington** that he named his son George Washington Lafayette.

**Ulysses S. Grant**, **William Henry Harrison**, **James Monroe** and **Thomas Jefferson** all died broke. Before his death, Jefferson was able to alleviate part of his financial problems by accepting \$25,000 for his books from Congress. Those books were used to begin the Library of Congress. Friends even tried to organize a lottery to sell part of his land to help, but it was not enough.

**Thomas Jefferson's** epitaph reads: “Here was buried Thomas Jefferson, author of the Declaration of Independence, of the statute of Virginia for Religious Freedom, and the father of the University of Virginia.” It did not include “President of the United States.”

**Thomas Jefferson** sometimes spent \$50 a day for groceries because of his lavish entertaining. The wine bill for the eight years he served as president was \$11,000. He was also the first president to grow tomatoes in North America.

The original intent was for **George Washington** to be buried beneath the Rotunda floor under the dome of the Capitol. He died before the Rotunda was finished, and in 1828 the crypt was covered up.

President **George Washington** would bow to guests at presidential receptions to avoid physical contact and the tradition lasted through the presidency of **John Adams**. Washington would rest one hand on a sword and the other holding a hat to avoid the remote possibility of anyone forcing a handshake. **Thomas Jefferson** ended the tradition of “bowing” by shaking hands when greeting people.

**Thomas Jefferson** at 83 years of age felt that he would not live through the summer of 1826, but he hoped to live through July 4th (the 50th anniversary of the Declaration of Independence). Both he and **John Adams** died on July 4, 1826, after long and distinguished careers. They had earlier been friends, then political enemies, and by the end of their lives had maintained a steady correspondence. Adams’ last words were “Thomas Jefferson still survives,” not knowing that Jefferson had expired earlier that day in Virginia. Jefferson’s last words were: “Is it the Fourth? I resign my spirit to God, my daughter, and my country.”

President **James Monroe** also died on July 4th—five years after **Thomas Jefferson** and **John Adams**.

When **George Washington** died on December 12, 1797, his last words were: “I die hard, but I am not afraid to go ... Let me go quietly. I cannot last long ... It is well.”

**Alexander Hamilton** was killed by **Aaron Burr** in a duel in Weehawken, New Jersey, in July 1804. Hamilton’s son, Philip, had died in a duel three years earlier at the same location.

**Benjamin Franklin** died on April 17, 1790. His daughter asked him to change positions on his bed to improve his breathing and his last words were: “A dying man can do nothing easy.”

**Benjamin Franklin** of Pennsylvania was known as the “Sage of the Constitutional Convention.”

**James Madison** of Virginia was responsible for proposing the resolution to create the various Cabinet positions within the Executive Branch of our government and 12 amendments to the Constitution, of which 10 became the Bill of Rights.

Source: [www.ConstitutionFacts.com](http://www.ConstitutionFacts.com)

## Constitutional Word Scramble

Unscramble the words below. The letters in the shaded boxes will spell out the patriotic phrase below.

1. REBTLIY  
● -----

2. ERDFMOE  
-----●-----

3. TOCNITTIOSU  
-----●-----

4. LBLIFOHTGSRI  
-----●-----

5. RSTAS  
-----●-----

6. NNTMAMEDE  
-----●-----●-----

7. DEIUNTESSAT  
-----●-----

8. OLNCYO  
-----●-----

9. TOAMPRIIT  
-----●-----

10. ESPRITP  
-----●-----●-----

11. CENIPNDEENDE  
-----●-----

12. GLFA  
-----●-----

**Patriotic Phrase:**

-----  
-----

see solution on page 13

man named Gregory Lee Johnson marched through the city streets of Dallas during the Republican National Convention as part of a political protest. When the marchers reached the Republican Convention Center, they stopped so that Johnson could set the American flag he was carrying on fire. No one was physically injured, but many of the onlookers were seriously offended by the burning of the flag.

Under Texas law, anyone who desecrated the American flag—whether by burning or any other form of disrespect—committed a criminal act. Johnson was charged with the crime of flag burning and found guilty in a Texas court.

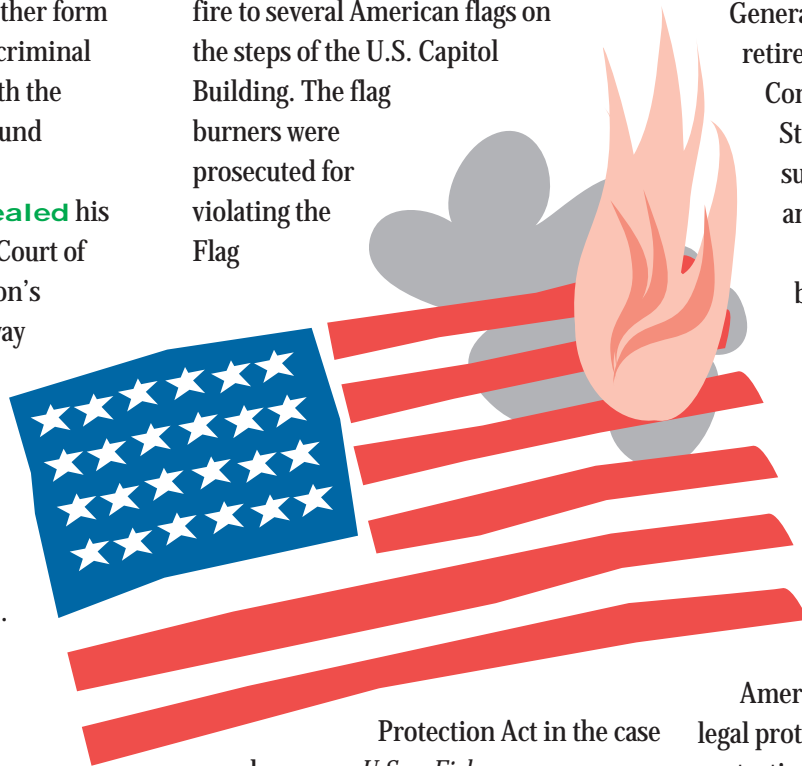
Johnson's lawyer **appealed** his **conviction** to the Texas Court of Appeals, arguing that Johnson's burning of the flag was his way of expressing his opposition to the Republican Party. His lawyer maintained that flag burning is an act of free speech protected by the First Amendment to the U.S. Constitution.

The Texas Court of Appeals agreed. It held that although flag burning is not actually speech, it is a form of expression and, as such, has the same First Amendment protection as the spoken word. The Court of Appeals found the Texas law criminalizing desecration of the American flag unconstitutional and Johnson's conviction was **reversed**. The State of Texas took the case to the U.S. Supreme Court. In *Texas v. Johnson*, the Court **upheld** the decision made by the Texas Court of Appeals, holding that flag burning was a form of expression and that free expression may not be

prohibited on the basis that it is offensive or disrespectful.

### Congress reacts

After the *Johnson* case was decided, the U.S. Congress reacted by passing the Flag Protection Act in 1989. The Act criminalized the conduct of anyone who “knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon” a United States flag. Shortly after the Congressional Act was passed, another protest group set fire to several American flags on the steps of the U.S. Capitol Building. The flag burners were prosecuted for violating the Flag



Protection Act in the case known as *U.S. v. Eichman*.

Like Johnson's case before it, the U.S. Supreme Court heard the *Eichman* case in 1990 with essentially the same result. The Court ruled that the Flag Protection Act was unconstitutional and **dismissed** the charges against the flag burners. Again, the Court held that under First Amendment protection of free speech, the government may not prohibit the verbal or nonverbal expression of an idea merely because society finds the idea offensive or disagreeable, even where our flag is concerned.

### Taking sides

Leading the fight for the proposed Flag Protection Amendment is the Citizens Flag Alliance, a nonprofit, **nonpartisan** organization whose only purpose is to see the passage of this amendment. On the other side of the issue is the People for the American Way, a 20-year-old nonprofit organization that advocates to protect or restore the civil liberties of American citizens.

In its literature, the Citizens Flag Alliance cites a letter to Congress that General H. Norman Schwarzkopf, the retired general who rose to fame as Commander of Operation Desert Storm in 1991, wrote giving his support to the proposed amendment.

“[The flag] represents our basic commitment to each other and to our country. Legally sanctioned flag desecration can only serve to further undermine this national unity and identity that must be preserved,” Gen. Schwarzkopf wrote. “I am proud to lend my voice to those of a vast majority of

Americans who support returning legal protections for the flag. The flag protection constitutional amendment is the only means of returning to the people the right to protect their flag.”

In its corner, the People for the American Way cite a letter that Gen. Colin L. Powell, former Secretary of State to President George Bush, wrote to Congress in 2000.

“We are rightfully outraged when anyone attacks or desecrates our flag. Few Americans do such things and when they do they are subject to the rightful condemnation of their fellow citizens. They may be destroying a piece of cloth, but they do no damage to our system of freedom, which tolerates such

desecration... I would not amend the great shield of democracy to hammer a few **miscreants**. The flag will still be flying proudly long after they have slunk away," Gen. Powell wrote.

### Free speech or criminal act?

One of the key issues in the Flag Protection Amendment debate is whether or not the burning of a flag can be considered free speech and, therefore, would be protected under the First Amendment. Constitutional law attorney Gerard L. DelTufo Jr. of Matawan contends that a statement does not need to be verbal.

"You can speak without saying a word," DelTufo said. "The burning of a flag is a statement. You are saying that you are very upset with your country."

On the other hand, while DelTufo believes that burning a flag is free speech, he acknowledges that because the flag is considered a sacred symbol, someone could argue that burning it could have the effect of starting a riot. Freedom of speech, he says, is qualified as a right as long as it does not cause a danger to the public, which the government has a duty to protect.

Congressman Randy "Duke" Cunningham of California, who is one of the sponsors of the Flag Protection Amendment in the House, disagrees with the free speech argument and told *The Seattle-Post Intelligencer*, "There are 10,000 ways you can express yourself. You don't need to desecrate the flag."

### Is an amendment needed?

*The Seattle-Post Intelligencer* reports that 80 percent of Americans are supportive of the proposed Flag Protection Amendment and all 50 states have some sort of law penalizing flag desecration. According to New Jersey Assistant Attorney General

The *Bill of Rights Bulletin* is published by the New Jersey State Bar Foundation and is made possible through funding from the IOLTA Fund of the Bar of New Jersey. For more information about the Foundation or to order any of our publications, visit our Web site at [www.njsbf.org](http://www.njsbf.org) or call 1-800 FREE LAW.

Boris Moczula, in New Jersey the burning of the American flag could be prosecuted under the law prohibiting the desecration of venerated or respected objects. This crime would be considered a disorderly persons offense and carry a penalty of up to six months in prison and up to a \$1,000 fine. Moczula noted that commentators have stated, "penalizing the desecration of symbols in certain cases may raise constitutional issues."

Even the Citizens Flag Alliance acknowledges on its Web site that to prosecute flag desecration cases is unconstitutional as a result of the U.S. Supreme Court rulings, which is why the organization is pursuing a constitutional amendment. It also concedes that flag burning is not a widespread problem in our society but takes the position that "if you are going to desecrate our flag, you shouldn't be able to do it with **impunity**."

### Congressional testimony

The Senate Judiciary Committee held a hearing in March 2004 to consider the Flag Protection Amendment. Gary May, a Vietnam War veteran, is one of many who testified during the hearings.

"Preservation of the freedom of **dissent**—even if it means using revered icons of this democracy—is what helps me understand losing my legs," May told the committee. "Free expression, especially the right to dissent with the policies of the government, is one important element—if not the cornerstone—of the democracy that

has greatly enhanced our country's stability, prosperity and strength," he said.

As evidenced by the opposing views of Generals Schwarzkopf and Powell, support for the amendment from veterans groups and those currently serving in the military has been mixed. Some, like May, are opposed while others passionately offer their support for the amendment. One such supporter, Major General Patrick Brady, testified before the House Judiciary Subcommittee on the Constitution in 2003. He told the committee that he worries about what the act of flag burning teaches.

"Burning the flag is wrong, but what it teaches is worse," General Brady testified. "It teaches that the outrageous conduct of a minority is more important than the will of the majority. It teaches that our laws need not reflect our values and it teaches disrespect for the values embedded in our Constitution as embodied by our flag."

DelTufo thinks that by denying people the right to speak, however distasteful that speech may be, it gives those people undue attention.

"You have to let evil people speak because if you don't, you give them life," DelTufo said. "Good will always conquer evil and the majority of the people will always make up their own minds and come to the right conclusion," he said. ★

# Pledging Allegiance: One Nation Under...What?

by Roberta K. Glassner, Esq. and Jodi L. Miller

**I**n the summer of 2002, a California court declared that the Pledge of Allegiance, which has begun every school day in this country for close to half a century, was unconstitutional. This decision by the Ninth Circuit Court of Appeals stirred up a storm of anger and protest that still rages today.

## The origin of the Pledge

The original Pledge of Allegiance, written in 1892 by former Baptist minister Francis Bellamy, made no reference to God. Bellamy wrote the Pledge for this country's celebration of the 400th anniversary of Columbus' discovery of America. The Pledge of Allegiance was designed to be a patriotic oath commemorating, in Bellamy's words, "our national history... the Declaration of Independence... the Constitution... and the meaning of the Civil War..."

On Flag Day, June 14, 1954, which was at the height of the Cold War, the U.S. Congress added the phrase "under God" to distinguish the U.S. from what it called "godless Communism." At the time, some Americans opposed this newest addition, believing that it unnecessarily and unconstitutionally introduced religious belief into a purely patriotic expression.

## Where the controversy began

Dr. Michael Newdow, an **atheist** and the father of a second-grader in a California public school, did not want his daughter reciting the Pledge of Allegiance with the words "under God" in it. He filed a **lawsuit** against the state of California on the grounds that "under God" represents the government's

endorsement of religious belief and has no place in public school. In his claim, Dr. Newdow asserted that his daughter is injured when forced to listen to her teacher lead a pledge that declares the existence of God when her father believes He does not exist.

In a 2-1 decision, a three-judge panel of the Ninth Circuit Court of Appeals determined that when the phrase "under God" is recited in a public school, it is a violation of the separation of church and state guaranteed by the establishment clause of the First Amendment to the U.S.

Constitution. The establishment clause says, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof..."

Judge Alfred Goodwin of the Ninth Circuit Court of Appeals wrote in his **opinion**, "The establishment clause guarantees, at a minimum, that government may not **coerce** anyone

to support or participate in religion or its exercise or otherwise act in a way which establishes a state religion or religious faith, or tends to do so."

After the ruling became the shot heard round the world, Attorney General John Ashcroft asked for a review of the case by the entire 11-judge panel of the Ninth Circuit Court of Appeals. The court refused to reconsider the ruling but did amend its decision. Stopping short of calling the "under God" phrase unconstitutional, the amended decision applied only to public schools, would allow the voluntary recitation of the phrase and would also allow recitation of the pledge in other official settings.

## Taking it to the Supreme Court

The case eventually made its way to the U.S. Supreme Court, where Dr. Newdow, who also holds a law degree, argued his case himself. Solicitor General Theodore B. Olson defended the constitutionality of the Pledge of Allegiance.

During oral arguments before the justices of the Supreme Court, it was suggested to Dr. Newdow that the "under God" phrase had over the years attained a civic, broader meaning and included virtually everyone.

"I don't think I can include "under God" to mean "no God," Dr. Newdow answered. "I deny the existence of God and government needs to stay out of this business altogether."

Solicitor General Olson argued the "under God" phrase in the Pledge did not rise to the level of religious expression and indicated that the Ninth Circuit Court misunderstood the Pledge of Allegiance. He went on to say that the phrase is a "civic and ceremonial acknowledgement of the indisputable historical fact that caused the



framers of our Constitution and the signers of the Declaration of Independence to say that they had the right to revolt and start a new country.” Olson claimed that the framers believed that God gave them that “inalienable right.”

Dr. Newdow brought the argument back to his daughter saying, “As her father, I have a right to know that when she goes into the public schools she’s not going to be told every morning to stand up, put her hand over her heart, and say your father is wrong, which is what she’s told.”

In his closing statement, Dr. Newdow spoke of the principle of separation of church and state. “I’m hoping this Court will uphold this principle so that we can finally go back and have every American want to stand up, face the flag, place their hand over their heart and pledge to one nation, indivisible, not divided by religion, with liberty and justice for all.”

### What the Supreme Court said

In considering the case, the justices questioned Dr. Newdow about whether he had legal standing to bring the lawsuit. A parent does have the right to bring a lawsuit on behalf of his or her child; however, Dr. Newdow, who never married his daughter’s mother, does not have legal custody of the child. In addition, the child’s mother told the Court that her daughter does not have a problem with reciting the “under God” phrase in the Pledge and indicated that she is raising her daughter with a religious upbringing.

The Court ultimately decided that Dr. Newdow did not have sufficient legal standing to bring the lawsuit. As a result, the Court dismissed the case without an official ruling of whether the Pledge of Allegiance, as written now, is constitutional or not. Because a court does not have **jurisdiction** in a case where the **plaintiff** lacks legal standing, the decision of the Ninth Circuit Court of Appeals is also invalid.

While all eight justices (one justice had recused or disqualified himself from the case) voted to **reverse** the Ninth Circuit’s decision, three of the justices said they would have allowed Dr. Newdow to sue on his daughter’s behalf but would have ruled against him and upheld the Pledge of Allegiance as written.

“Reciting the Pledge, or listening to others recite it, is a patriotic exercise, not a religious one,” Chief Justice William Rehnquist said. “Participants promise **fidelity** to our flag and our nation, not to any particular God, faith or church,” he said. Justices Sandra Day O’Connor and Clarence Thomas agreed with him.

After the Court’s ruling, Dr. Newdow told CNN, “This issue is not about whether or not people are forced to say anything. The issue is whether or not government is taking a position,” he contended. “The establishment clause, unlike any other clause in the Bill of Rights, talks only about government. Government is not allowed to take a position with regard to religion.”

### A country divided

The constitutionality of the Pledge of Allegiance sparked a national debate. The attorneys general of all 50 states, the National School Boards Association and the National Education Association all submitted **briefs** to the Court in support of the Pledge as written. The Christian Legal Society, comprised of

## Pledge of Allegiance Timeline

*I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.*

**1892** Francis Bellamy, a former Baptist minister, wrote the Pledge of Allegiance for the nation’s 400th celebration of Christopher Columbus’ discovery of America. The Pledge was published in *Youth’s Companion*, a popular family magazine, and reprinted on leaflets distributed to schools. On Columbus Day 1892, the pledge was recited in classrooms throughout the country for the first time: “I pledge allegiance to my flag and the Republic for which it stands, one nation indivisible, with liberty and justice for all.”

**1924** Congress changes “my flag” to “the flag of the United States of America.”

**1943** The U.S. Supreme Court rules that school children cannot be forced to recite the Pledge. In the case of *West Virginia Board of Education v. Barnette*, the Supreme Court held that a law requiring school children to salute the flag and say the Pledge was unconstitutional.

**1954** An Act of Congress creates a new law adding “under God” to the Pledge of Allegiance. President Dwight D. Eisenhower, who wants to establish a contrast between religiously faithful America and godless communism, directs the addition.

**2002** California’s Ninth Circuit Court of Appeals rules the recitation in public schools of the phrase “under God” in the Pledge is in violation of the First Amendment of the Constitution requiring separation of church and state.

Source: *The Associated Press*

*continued on page 23*

# More Than 200 Years—Only 27 Amendments

by Roberta K. Glassner, Esq.

**T**wo proposed amendments to the U.S. Constitution have recently been debated in Congress. One is the Flag Desecration Amendment and the other would limit marriage in all states to a relationship between a man and a woman. While many amendments to our federal Constitution have been proposed over the years, few get very far in the lengthy process of changing it.

To understand the process of amending the U.S. Constitution, we need to go back to 1786, when 55 representatives from the 13 colonies met in the stifling heat of a Philadelphia summer to hammer out what would eventually be the original U.S. Constitution. At the end of 127 days of impassioned debate, the framers succeeded in crafting an instrument “to secure the blessings of liberty to ourselves and our posterity.” The original Constitution, which would contain seven articles, was adopted by the states on March 4, 1789.

In more than 200 years the document has changed very little. It is the oldest written constitution in the world still in effect today and has been the model of democracy for many other nations. Establishing the supreme law of our complex nation, the U.S. Constitution gives power and authority to our national and state governments, while at the same time vigorously protects each of us, as individual citizens, from the power of those governments.

Credit must be given to the genius of those who wrote the U.S. Constitution. The framers’ intent was to create a Constitution not only for their time, but for future generations as well. They

designed it not as a set of rules cast in stone, but as a vital, enduring foundation for an active democracy.

## When it’s time to change

Within two years of writing the Constitution, one of the first acts its authors engaged in was to amend it. The framers had given themselves the power of amendment in Article V so that, if necessary, the Constitution could “keep pace with the times,” according to one of the original drafters, Thomas Jefferson. The framers deliberately did not make the process easy. They recognized that stability is essential in government and the stability of the Constitution on which that government is based is most essential of all. Therefore, they decided that if the written foundation of our government is to be amended, it must be on a truly important issue and must be with the consent of a super majority (three-quarters) of the states.

A constitutional amendment is born in either the House of Representatives or the Senate of the U.S. Congress. In every session of Congress, hundreds of amendments are proposed, but few ever get out of committee and even fewer are ever **ratified**.

If a proposed amendment does succeed in reaching the full House or

Senate, it is put to a vote. In those rare instances where it receives a two-thirds majority vote in both houses of Congress, the proposed amendment must then be submitted to every state for a vote. To be ratified, it must receive an affirmative vote of the legislatures of three-quarters of the states. The states have seven years to ratify or defeat the amendment, once Congress has approved it.

In this way, the final decision of whether or not to amend the Constitution ultimately is made by the American public. The president of the United States has no role in the amendment process. While he is free to express his position, the president cannot veto a ratified amendment.

Although the people do not vote directly on an amendment, their will is expressed by the vote of the state legislators they elect to represent them. Today, 38 states must vote in favor of a constitutional amendment to constitute a super majority. Failure to win the vote in 13 states defeats an amendment’s passage. Without this 38-state super majority within seven years, the proposed amendment becomes just one of the more than 10,000 other failed amendment proposals.

## State vs. federal government

Although the framers intended the U.S. Constitution to establish the supreme law of the land, they also recognized the need to create a balance between the power of the federal government and the rights of the individual states to govern themselves. What is good for someone living in the state of New Jersey, for example, may not be relevant to someone living in Idaho.

To create this balance, under the 10th Amendment, every state has its own constitution and its own laws that govern the lives of its citizens in matters such as

education, law enforcement, taxes and public health. The only limitation upon the states is that their constitutions and laws may not conflict with the guaranteed rights of the U.S. Constitution.

### Amending New Jersey's Constitution

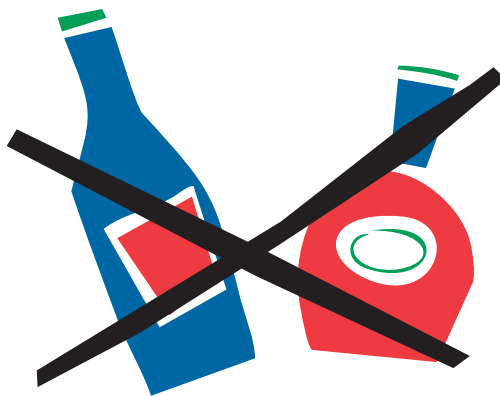
As the U.S. Constitution may be amended, so may changes be made to a state constitution. For more than 10 years, New Jersey's legislators have debated amending the state constitution to deal with property taxes.

Many New Jersey lawmakers, both Republican and Democrat, are now calling for a constitutional convention to deal with the issue. If the convention takes place, it will be the fifth in the state's 200-year history. The last constitutional convention in New Jersey was held in 1966 to reorganize the state's voting districts.

The process of amending New Jersey's Constitution is a lot simpler than amending the U.S. Constitution. One possible method is to submit an amendment proposed by the state Legislature to a direct vote by the public as a public question in the November election. Another is to submit the proposal to members of a constitutional convention for approval.

### One repealed amendment

In the 213 years between 1791 and 2004, a total of 27 amendments to the original U.S. Constitution have been ratified by Congress, including the first 10, known as the Bill of Rights. The distinguishing feature of 26 of the 27 amendments to the U.S. Constitution is that they all gave greater freedom to or expanded the rights of American citizens. Only one amendment took away a right.



The 18th Amendment of 1919 brought **Prohibition** to the U.S., making it illegal to sell, buy or drink any kind of alcoholic beverage in this country. Fourteen years after this amendment went into effect, Congress passed the 21st Amendment repealing Prohibition.

### Could this be number 28?

Not all failed amendments slip away quietly. A proposed amendment defeated in one session of Congress may very well be brought up in another session. Consider the story behind the Equal Rights Amendment, which was proposed and defeated in every session of Congress from 1923 to 1972.

In 1920, Alice Paul, a leader in the women's rights movement, had just succeeded in winning women the right to vote with the passage of the 19th Amendment. Paul then turned her energy to the fight for a constitutional amendment that would guarantee "equal justice under the law" for women in the workplace and in all aspects of life.

According to the National Council of Women's Organizations, who led the drive for ratification, the Equal Rights Amendment "would give equal legal status to women for the first time in our country's history" and "would raise the standard for

sex discrimination claims in the courts," such as claims for equal pay for equal work.

In 1972, both houses of Congress finally passed the Equal Rights Amendment and sent it to the states for ratification. In anticipation of a difficult passage, Congress extended the seven-year time limit for the ERA's approval by the states to 10 years.

There were difficulties indeed. By 1982, at the end of the 10-year period, only 35 states had ratified the amendment—three states short. Congress then voted to remove the deadline for state ratification entirely.

The 15 states in which the amendment has not been ratified are Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah and Virginia. If, and when, any three of these states ratifies the Equal Rights Amendment, it could become the 28th Amendment to the U.S. Constitution.

As for the amendment to define marriage, in July 2004, that measure failed in the U.S. Senate by a vote of 48-50. The proposal needed 60 votes to move forward. In October 2004, the proposal was defeated in the House 227-186, well short of a two-thirds majority. ★



# Treason: A Country's Ultimate Betrayal

by Roberta K. Glassner, Esq.

**S**ince September 11, 2001, the open expression of patriotism in the United States has taken on new energy. The American flag, the symbol of our pride in and love for our country is everywhere.

But not every American shares this pride of country. In the past, a few have betrayed the United States as spies for foreign governments, and some have joined in wars on the side of America's enemies. These acts are considered **treason**.

## What is treason?

Considered the greatest of all offenses against the United States, the U.S. Constitution describes treason as the act of taking up arms against the United States or helping its enemies. It is the only crime identified specifically in the U.S. Constitution.

Under federal law, a person convicted of treason is considered a traitor, and may be punished with a sentence of as little as five years in prison and as severe as death.

Treason is very difficult to prove in a court of law. The founding fathers of our country established the standard for proving the crime of treason high to avoid the abuses of British law, which they left England to escape. Under Article III of the U.S. Constitution, a person can be convicted of treason in the following two ways: (1) on the testimony of two eyewitnesses to the same act, or (2) by a confession from the accused in open court. Because the crime is so difficult to prove, there have been fewer than 40 federal prosecutions for treason in America's history and even fewer convictions. Following are a few interesting cases involving treason.

## Forever a traitor

The most famous treason trial in this country was held in 1807 and involved Aaron Burr after he left office as Vice President of the United States under Thomas Jefferson. Burr and his comrades were accused of conspiring to capitalize on a possible war with Spain by attempting to take possession of what is now the city of New Orleans. Although Burr was **acquitted** of the crime, he was forever regarded as a traitor in the court of public opinion.

## Treason or taxation without representation?

Another well-known treason trial was held in 1794, when several Pennsylvania men took up arms against the government to protest a tax on whiskey. Known in history as the Whiskey Rebellion, the conflict not only protested the whiskey tax, but also brought the issue of states' rights to the forefront and prevented the U.S. from becoming an elitist society.

The people of western Pennsylvania believed that the newly formed U.S. government did not adequately represent them in part because they were so far away from Pennsylvania's "seat of government," separated by a large

mountain range. These settlers were not willing to submit to the principles of a central government steeped in **aristocracy** and many historians credit them with establishing the democratic society we enjoy today.

Two of the rebels involved in the Whiskey Rebellion were convicted of treason, but were later pardoned by President George Washington. The events before and after the Whiskey Rebellion are said to have informally redefined the word treason, allowing for disagreement with the U.S. government without being considered treasonous.

## A poet's act of treason

During times of war, sympathizers are often caught giving "aid and comfort to the enemy." Ezra Pound, the famous poet and a U.S. citizen, was charged with treason after World War II. Pound often praised Benito Mussolini and Adolph Hitler during speeches he gave over Italy's shortwave broadcasts to North America. The poet also spoke openly about his opposition to America's wartime agenda and its political leadership.

Pound never stood trial on the treason charge because a group of psychiatrists declared him insane and, therefore, **incompetent** to stand trial. Instead, he was confined to a governmental hospital for 12 years and released in 1958.

## Tokyo's Rose

The case of "Tokyo Rose" is another famous wartime treason case.

Ikuko Toguri, later dubbed "Tokyo Rose" by U.S. troops in Japan, was a Japanese-American U.S. citizen who found herself stranded in Japan without a passport when Pearl Harbor was attacked and the U.S. entered the war.



In November 1943, she began a career as a broadcaster for Radio Tokyo. Her radio program, the Zero Hour, was designed to lower the morale of U.S. Armed Forces stationed in Japan by making derogatory comments about the families the American soldiers left behind. Among other things, Tokyo Rose would claim that the soldiers' wives were being unfaithful while they were gone. The Zero Hour became part of Japan's psychological warfare against the United States.

After the war, Toguri was charged with treason for "adhering to, and giving aid and comfort to, the Imperial Government of Japan during World War II." Toguri was convicted, and in 1949 she was sentenced to 10 years in prison and fined \$100,000

### Selling secrets

A legendary spy case in the early 1950s involved Julius and Ethel Rosenberg, who were accused of selling the secret of the

atomic bomb to Russia during the Korean War. Although not charged with treason, the Rosenbergs were convicted on the charge of "conspiring to commit **espionage**." Both were sentenced to death and executed in 1953.

In his sentencing speech justifying the death penalty, Federal Judge Irving R. Kaufman said, "I consider your crimes worse than murder... I believe your conduct... has already caused, in my opinion, the communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows how many millions more innocent people may pay the price for your treason."

Although today the Rosenbergs' guilt or innocence is the subject of debate, the case illustrated how seriously the U.S. government and the American people view disloyalty to their country. ★



### Pledging Allegiance *continued from page 19*

lawyers, judges and professors, also submitted a brief supporting the "under God" phrase. The organization stated in its brief that the phrase served as a reminder that "government is not the highest authority in human affairs" and that "inalienable rights come from God."

Jay Sekulow, chief counsel for the American Center for Law and Justice, which advocates for religious rights, told *The New York Times* after the Court's decision came down, "the Court has removed a dark cloud that has been hanging over one of the nation's most important and cherished traditions—the ability of students across the nation to acknowledge the fact that our freedoms in this country come from God, not the government."

A group of 32 Christian and Jewish clergy members submitted a brief in opposition of the Pledge. Their brief states that if schoolchildren are supposed to recite the words, "under God" with no meaning behind the words, then the government essentially "asks millions of children to take the name of the Lord in vain."

In response to the Court's ultimate decision in the case, Rev. Barry Lynn, executive director of Americans United for the Separation of Church and State, expressed his disappointment to *The New York Times* saying, "Students should not feel compelled by school officials to subscribe to a particular religious belief in order to show love of country."

### Where the issue stands

When his case was dismissed in June 2004, Dr. Newdow

vowed to refile and eventually bring the case back to the U.S. Supreme Court. On January 3, 2005, he and eight other plaintiffs filed a lawsuit in a Sacramento federal court. Dr. Newdow will again try the case, representing the eight plaintiffs who are either the children themselves or their custodial parents.

So, does the establishment clause include atheists? Frank Askin, a professor at Rutgers Law School—Newark and director of the Rutgers Constitutional Litigation Clinic, believes it does, saying not only does the establishment clause prohibit government from favoring one religion over another religion, it also prohibits the favoring of religion over non-religion. Askin believes that if the new case reaches the U.S. Supreme Court, the justices will hold the Pledge, as written, to be constitutional.

Hackensack attorney Stephen Latimer, who practices constitutional law, said he thinks the "under God" phrase is unconstitutional because it "chooses a particular form of belief over others" and does not allow for the inclusion of other religions such as Buddhism or Hinduism. Latimer further stated that forcing someone to acknowledge God when he or she does not believe in His existence would be a violation of the establishment clause.

Like Askin, Latimer does not think Dr. Newdow has much of a chance with his new case and believes that if the case is lost in the lower courts, the U.S. Supreme Court will most likely refuse to hear it. If the case is won in the lower courts, however, Latimer thinks the Supreme Court will agree to take the case and rule against Dr. Newdow and the other plaintiffs. ★

# Glossary

**appealed**—when a decision from a lower court is reviewed by a higher court.

**acquitted**—cleared from a charge.

**aristocracy**—a government that is made up of a small privileged class.

**atheist**—a person who does not believe there is a God.

**brief**—a formal, written summary of relevant facts submitted to a court of law in a legal case.

**claim**—a demand in court for something (i.e., money) that the plaintiff believes is owed him or her.

**coerce**—to influence another person's choices in a negative way.

**compensate**—to offset an error or wrong committed, most often in the form of money.

**constitutional rights**—a right guaranteed to U.S. citizens by the U.S. Constitution and state constitutions.

**conviction**—the result of a criminal trial where the accused or defendant is found guilty beyond a reasonable doubt.

**defendant**—in a trial, the person who is accused of a crime.

**democracy**—a government run by the people through elected representatives.

**desecration**—the act of damaging an object for the purpose of getting a reaction.

**disability**—(in terms of gun ownership) the lack of legal capability to perform an act (i.e., persons under age, insane persons and convicted criminals are all under legal disability).

**dismiss**—to terminate an action or lawsuit without further consideration.

**dissent**—to disagree with the majority.

**double jeopardy**—to be tried in a court of law twice for the same offense.

**due process**—legal proceedings, such as a trial, which enforce and protect our rights.

**espionage**—the crime of gathering, transmitting or losing information with regard to the national defense with the intent to use that information to the injury of the United States.

**fidelity**—faithfulness.

**grand jury**—a jury consisting of 12 to 23 impartial people who decide if the evidence in a criminal case is strong enough to warrant a trial. This jury does not determine an individual's guilt or innocence.

**impartial**—to remain objective and treat all others fairly.

**impunity**—freedom from punishment or consequences.

**incompetent**—not legally qualified.

**jurisdiction**—authority to interpret or apply the law.

**lawsuit**—a case before a court.

**lobbyist**—a person whose business is to gain the passage or defeat of bills pending before a legislative body.

**militia**—a body of citizens, enrolled for discipline as a military force, but not engaged in actual military service except in emergencies.

**minor**—a person under 18 years of age.

**Miranda Warning**—before interrogation by law enforcement, a person must be warned that he or she has certain rights including the right to remain silent and the right to an attorney.

**miscreant**—someone who does something evil.

**nonpartisan**—not adhering to any established political group or party.

**opinion**—a document containing the reasons why a decision was rendered.

**permit to carry**—refers to a requirement to have a special permit to carry a gun in public.

**petition**—a formal written document outlining a request made to a higher authority such as a government official.

**plaintiff**—person or persons bringing a civil lawsuit against another person or entity.

**probable cause**—a reasonable belief in certain facts.

**Prohibition**—a decree from the government (in this case) against selling alcohol.

**ratified**—approved or endorsed.

**reverse**—to void or change a decision by a lower court.

**search**—process of looking for something.

**search warrant**—a written order issued by a judge authorizing law enforcement officers to search and seize property that will serve as evidence in a criminal proceeding.

**seizure**—the process of taking something that has been found.

**self-incrimination**—to testify against yourself.

**testify**—to give evidence under oath as a witness.

**tort**—a civil wrong or injury for which the injured party is entitled to compensation.

**treason**—the offense of attempting to overthrow the government.

**under all circumstances**—taking into account all the conditions of a situation.

**unreasonable**—in terms of search and seizure, the term means to have no grounds to conduct a search.

**upheld**—supported; kept the same.

**verdict**—the outcome of a trial; the decision of a jury.

**warrant**—a written document from a judge authorizing anything from a search to an arrest to the obligation to pay a fine.