



## SECTION 2

# The Bill of Rights

## Introduction

Thomas Jefferson said, "A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference." The Bill of Rights is the name given to the first 10 amendments to the U.S. Constitution. Many of the states that ratified the Constitution also demanded that it be amended to include a Bill of Rights. The Bill of Rights guarantees the protection of key individual rights. It also recognizes that the American people have rights beyond those explicitly described in the Bill of Rights.

## Demand for an Amended Constitution

The Constitution produced at the Philadelphia convention in 1787 did not please all the delegates. Several delegates refused to sign the Constitution because it failed to include a bill of rights. Their objections were debated when the states decided whether to ratify the Constitution.

Federalist supporters of the Constitution had resisted including a bill of rights. They argued that a bill of rights was unnecessary for several reasons:

- Under the new form of government in the United States, the people held the power. They did not have to protect rights from a power that they themselves held.
- A bill of rights could be dangerous. Listing certain rights in the Constitution might suggest that other rights did not deserve the same degree of protection.
- Bills of rights did not offer much protection. James Madison described bills of rights in state constitutions as "parchment barriers" that were often ignored.

Despite Federalist objections to a bill of rights, more than half of the states that ratified the Constitution recommended that it be amended to include one. Shortly after Congress assembled in 1789, work began on the list of amendments that would become the Bill of Rights.

### Did You KNOW?

Congress originally submitted twelve amendments to the states for ratification. The states ratified ten of these twelve, which became the Bill of Rights. One of the two amendments that were not ratified, dealing with the pay of representatives and senators, was eventually ratified in 1992 and became the Twenty-seventh Amendment!

# The Bill of Rights

James Madison had at first opposed adding a bill of rights to the Constitution. But he wrote the 12 amendments that Congress submitted to the states for ratification. The states ratified only 10 of the 12 amendments. These 10 amendments became known as the Bill of Rights.

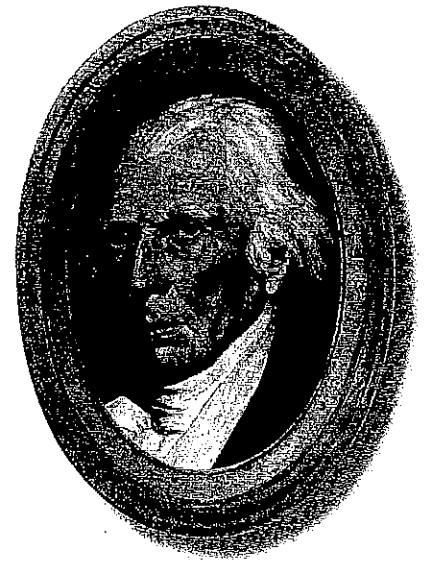
The Bill of Rights protects six categories of rights:

- Rights of religion and expression (First Amendment)
- Right to bear arms (Second Amendment)
- Right to be secure in one's person and home (Third and Fourth Amendments)
- Right to private property (Fifth Amendment)
- Rights to a fair trial (Fifth, Sixth, Seventh, and Eighth Amendments)
- Additional rights held by the people and the states (Ninth and Tenth Amendments)

## Rights of Religion and Expression— The First Amendment

The first two clauses of the First Amendment protect religious freedoms. The **establishment clause** provides that "Congress shall make no law respecting an establishment of religion." This means that Congress is not able to name a national religion.

The second clause protecting religious freedom is the **free exercise clause**. This clause prohibits Congress from making any law interfering with an individual's free exercise of his or her religious beliefs. This means that every individual is free to hold and practice religious beliefs as he or she sees fit.



✦ James Madison drafted the amendments that became the Bill of Rights, although he was initially opposed to the idea of adding them to the Constitution.



✦ The First Amendment protects religious freedom. It prohibits Congress from both choosing a national religion and telling a person what religious beliefs he or she must hold.

### AN ESTABLISHED RELIGION

The Church of England is the national religion of England. Earlier in English history, members of **nonconforming religions** were punished for their beliefs. Nonconforming religions were those that differed from the beliefs of the Church of England. Many American colonists were members of nonconforming religions. The First Amendment's establishment clause ensured that no religious belief would prevail over others through government support.

The next cluster of rights in the First Amendment address freedom of expression. Two of these, defined in the **freedom of speech** and **freedom of the press** clauses, protect the rights of individuals and the media to express their beliefs free of government restraints. The Supreme Court has interpreted these clauses very broadly but has allowed some restrictions. For example, government can restrict:

- The **time, place, and manner** of certain forms of speech. For example, a city could decide that a sound truck blasting political messages at high volumes could not drive through a residential neighborhood late at night.
- Speech that is **harmful to children**. For example, the government can require that television programs with mature content be broadcast only after a certain time.
- Speech that presents a **clear and present danger** of immediate harm to others. No one, for example, has a right to scream "Fire!" in a crowded theater when there is no fire.
- **Obscene speech**. Obscene speech is vulgar or sexually explicit speech that deeply offends the standards of a community and has no political or artistic value.

The remaining rights protected by the First Amendment are those of **assembly and petition**. The right to assembly means that people can peacefully come together in protest of a government policy. It also means that people have a right to form associations based on common interests or beliefs, such as political parties, labor unions, or community service organizations. The right to petition the government means that individuals can seek change by going directly to the government. Filing a lawsuit to protest a government action is a good example of the right to petition.

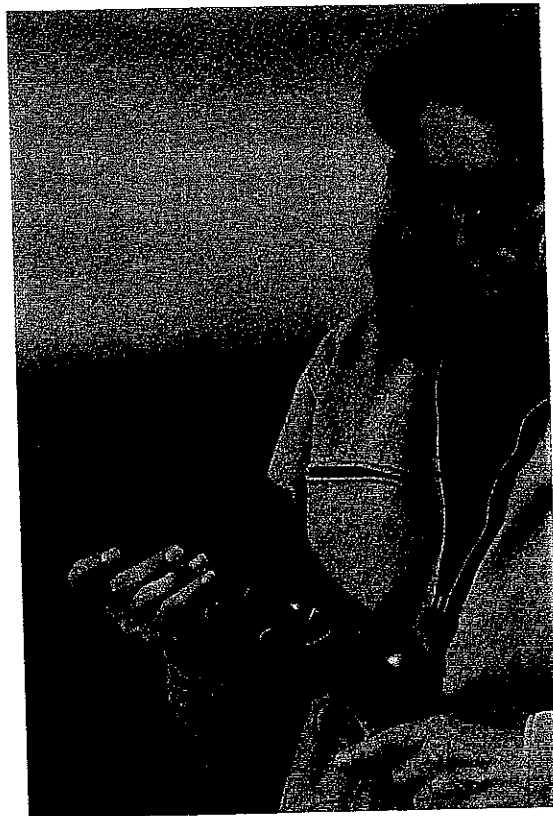
- ◆ This civil rights march in 1963 was part of the movement that sought to guarantee that every person's Constitutional rights were guaranteed and protected by the government.



## Right to Bear Arms—The Second Amendment

The Second Amendment provides that “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.” The idea of citizens bearing arms to protect their freedoms stretched back into English history. Moreover, the United States had won the Revolutionary War with the help of **militia** made up of armed citizens. Militia are “citizen-soldiers” who can be called upon for military service in times of emergency.

Today there is disagreement over the Second Amendment right to bear arms. Some say that the right is limited to citizens who bear arms to serve in a state-organized militia. Others argue that it is an individual right to bear arms that the government cannot restrict. The Supreme Court has not made a clear ruling on the Second Amendment’s meaning. However, the government has placed some restrictions on gun ownership. For example, federal law requires background checks of people who purchase firearms to make sure they do not have a previous criminal record.



## Right to Be Secure in One’s Person and Home—The Third and Fourth Amendments

The Third and Fourth Amendments protect our rights to be secure in our persons and homes. The Third Amendment, prohibiting the **quartering of troops**, may seem irrelevant to us today. But it was a major concern for people in the eighteenth century. Quartering of troops is the requirement that private individuals give soldiers lodging at the individuals’ own expense.

The Fourth Amendment also provides that no person, residence, private papers, or other private property (called “effects” in the amendment) can be searched without a proper warrant. A **search warrant** is an order, usually issued by a judge, which allows government authorities to search for and seize certain items. These can include

- Items that might be evidence in a criminal case, such as a murder weapon.
- Goods that have been criminally obtained, such as stolen property.
- Items that it is against the law to possess, such as illegal drugs.

The government might also seek a search warrant if it believes a criminal suspect is hiding in a particular place.

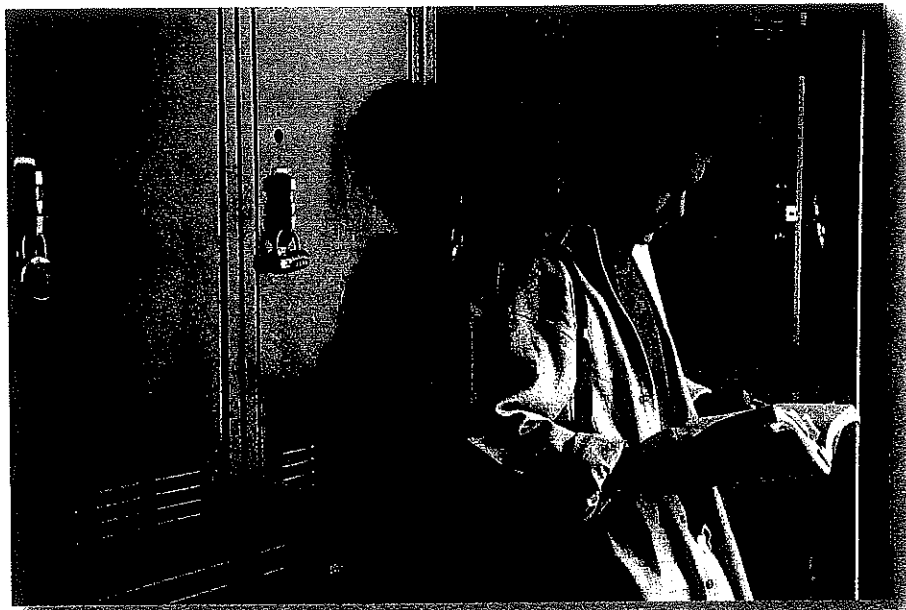
The Fourth Amendment requires that the government demonstrate **probable cause** in order to get a search warrant. This means that the government must show it has good reason to believe that a search will uncover evidence of a crime. The Fourth Amendment also requires that the warrant be backed by an **oath or affirmation**. Someone must swear that the government is acting in good faith in requesting the warrant. Finally, the warrant must specify the place where the search is to be conducted and the person or items that the government intends to seize.

◆ The Second Amendment protects a person’s right “to keep and bear arms.” The limits of that right are not clearly defined.

- ✦ The Fourth Amendment's protection against random government searches depends in part on your expectation of privacy. This expectation is less at school than at home.

### ★ ★ ★ ★ ★ OBJECTIONS TO THIS CONSTITUTION OF GOVERNMENT

George Mason, author of the Virginia Declaration of Rights, was one of the delegates who refused to sign the Constitution. He wrote a pamphlet called "Objections to This Constitution of Government" that began, "There is no Declaration of Rights." This pamphlet circulated throughout the states as they debated ratifying the Constitution.



The Fourth Amendment clearly protects us against random government searches of our persons and homes. But how far do its protections go? Can a school official, for example, search your locker without a search warrant? Often, the answer is yes. The first question a court would ask is whether you have an **expectation of privacy** in using the school locker. Your school probably has a policy that states that lockers are school property over which the school has control. In this case, your expectation of privacy would be very low.

### Right to Private Property—The Fifth Amendment

The Fifth Amendment's **takings clause** provides that private property shall not "be taken for public use without just compensation." Imagine, for example, that the government decides to build a new highway that will run right through your home. The government does have the power, called **eminent domain**, to take private property for public use. It cannot do so, however, without paying the property owner **just compensation**. If, for example, your family's home would have been worth \$150,000 before the government announced its highway plans, you should be entitled to this amount as just compensation from the government.

More difficult questions arise when the government does not so clearly take private property. Imagine that the government decides to build a new airport a few miles from your house. You can now hear the noise of aircraft taking off and landing over your neighborhood. Your property has remained intact and you have not been forced to leave it. But because of the increased noise in your neighborhood, people might be willing to pay less to buy homes in the area. Your property has probably lost some value because of the new airport. But is this a loss that should be compensated if you are able to use the property in much the same way as you did before the airport was built? How exactly should that loss be valued? Such questions have made the takings clause a subject of lively debate in the courts.

## Rights to a Fair Trial— The Fifth, Sixth, Seventh, and Eighth Amendments

Four of the 10 amendments in the Bill of Rights address the individual's right to a fair trial. These amendments give special attention to the rights of individuals accused in a criminal case. The government has great power in a criminal trial. If the accused is found guilty, the government can make him or her pay a fine or serve a prison sentence. In the most serious cases, it can even sentence a convicted criminal to death. The Bill of Rights tries to balance this power by making sure that the accused is guaranteed a fair trial.

**Rights Before Trial** Before a suspect can be brought to trial, the suspect must be **indicted**. An indictment is a formal written accusation of a suspect.

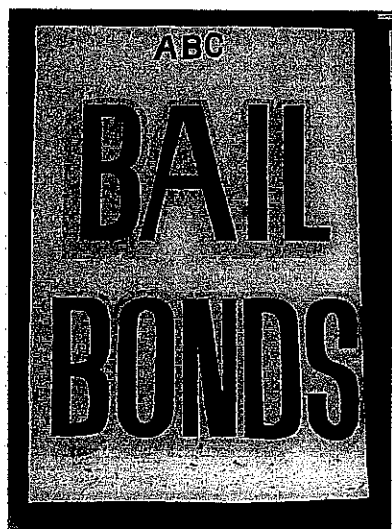
The Fifth Amendment requires that "for a capital, or otherwise infamous crime," the suspect must be indicted by a **grand jury**. Grand juries are panels of citizens who hear charges against a suspect. Unlike a trial jury, a grand jury does not decide on a suspect's guilt or innocence. It simply decides whether there is enough evidence to justify putting a suspect on trial. Grand juries are larger than trial juries, which traditionally have 12 members. Federal law requires at least 16 members on a grand jury. Grand juries also have powers to investigate crimes and can request to examine physical evidence or hear witnesses testify.

The Fifth Amendment's provision for grand jury indictment has been interpreted to mean that suspects are entitled to a grand jury indictment in all federal **felony** cases. Felonies are the most serious crimes and are typically punished by a prison sentence exceeding one year or, in capital cases, by death.

Unlike a trial jury, a grand jury does not decide on a suspect's guilt or innocence. It simply decides whether there is enough evidence to justify putting a suspect on trial. The grand jury's written indictment satisfies the Sixth Amendment's requirement that the suspect "be informed of the nature and cause of the accusation."

Our justice system presumes a criminal suspect is innocent until proven guilty. One way to preserve the suspect's liberty before trial is to allow the suspect to post **bail**. Bail is a sum of money that the suspect deposits with the court as a promise to appear at trial. If the suspect doesn't appear, the bail money is forfeited to the government.

The Eighth Amendment prohibits excessive bail. This means that bail cannot exceed what is necessary to protect the state's legitimate interests in trying the suspect and protecting the community. A suspect can be kept in jail before trial without bail if the court believes releasing the suspect would pose a danger to the community. This might be the case if a suspect is charged with a violent crime.



### JUVENILE JUSTICE RIGHTS

In 1967, the U.S. Supreme Court confirmed that most of the rights to a fair trial protected in the Bill of Rights apply to juveniles as well. In *In re Gault*, the Court said that juveniles have the right to:

- Notice of the charges against them.
- Assistance of a lawyer.
- Confront and question witnesses against them.
- Remain silent (right against self-incrimination).

Because courts keep charges against juveniles confidential, the Supreme Court has not granted juveniles the right to trial by jury.

- ◆ By posting bail, a suspect may remain free until trial.

**Rights at Trial** The Sixth Amendment gives a suspect the right to a **speedy and public trial**. Someone who is in fact innocent will want to clear his or her name as soon as possible. A speedy trial also helps guarantee that facts and events will be fresh in the mind of potential witnesses. Members of the public, including the press, must be able to observe trials. This ensures that the government respects the rights of suspects.

The Sixth Amendment gives suspects the right to **trial by jury**. It requires that the jury be from the state and district in which the crime was committed. This reflects the idea that the jury should speak for the community affected by the crime. The Sixth Amendment also requires that jurors be **impartial**. They must, in other words, be willing to consider evidence for and against the suspect with an open mind.

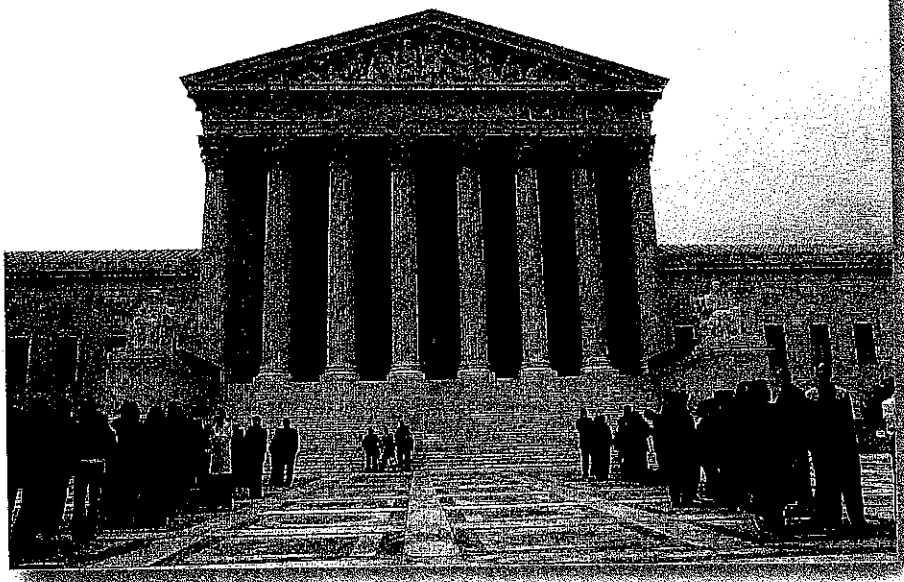
Additional Sixth Amendment rights include:

- The right to be represented by a lawyer. The Supreme Court has held that this right also applies to suspects who cannot afford a lawyer. These individuals are provided with a lawyer at government expense.
- The right to confront **adverse witnesses**. Adverse witnesses are witnesses who testify against the suspect. This right gives the suspect a chance to hear what the adverse witnesses say and to ask questions of the witnesses.
- The right to **compulsory process** for making a witness appear at court. Compulsory process means that the suspect can ask the court to order a witness to appear at trial. This order is called a **subpoena**. If the witness refuses to appear, the court can punish him or her for disobeying the subpoena with a fine or imprisonment.

Finally, the Fifth Amendment provides that no one “shall be compelled in any criminal case to be a witness against himself.” This is called the right against **self-incrimination**. It means that the suspect cannot be forced to testify about his or her alleged involvement in the crime.

✦ The right to a trial by an impartial jury in a criminal case is protected by the Sixth Amendment.





◆ People line up outside the Supreme Court to hear arguments in a 2004 death penalty case.

**Rights after Trial** At the end of a criminal trial, the jury delivers its verdict of guilty or innocent. If the jury decides the suspect is innocent, the suspect can never again be tried for the same offense. This is because the Fifth Amendment guarantees the right against **double jeopardy**. Double jeopardy means being put on trial more than once for the same crime. The right is based on the idea that the government, with all of its powers, should only be given one chance to try an individual for a criminal offense.

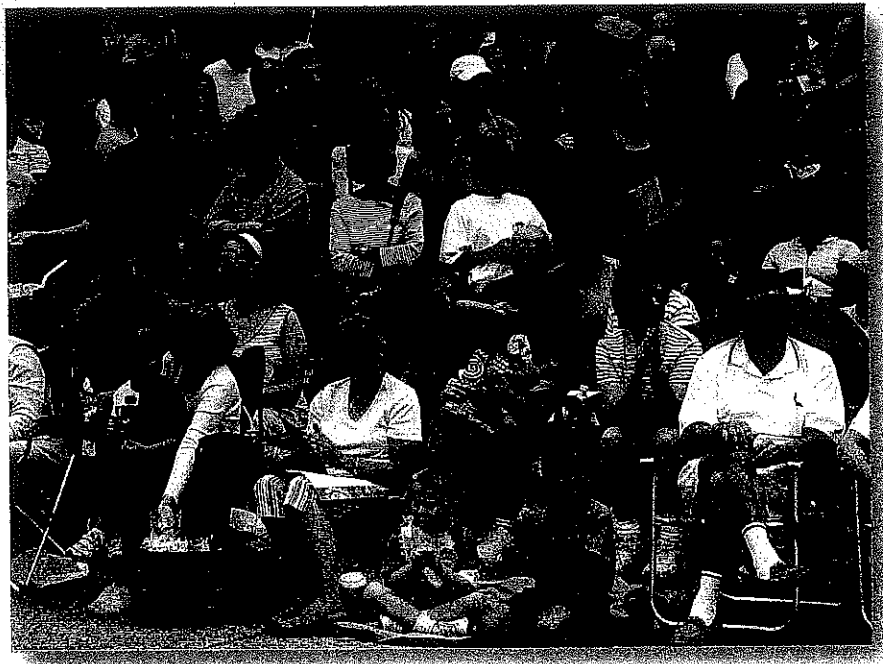
If, on the other hand, the jury finds the suspect guilty of the crime, the Eighth Amendment provides that the suspect cannot suffer **cruel and unusual punishments**. The meaning of cruel and unusual punishment has changed over time. Today some argue that the death penalty is a cruel and unusual punishment. The Supreme Court has not accepted this argument. It has, however, decided that arbitrary or racially biased uses of the death penalty can violate the Eighth Amendment.

## **Unenumerated Rights and Reserved Powers— The Ninth and Tenth Amendments**

The last two amendments in the Bill of Rights name no specific rights. The rights and powers referred to in these amendments are unenumerated because they are not explicitly named.

The Ninth Amendment provides that “the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” Remember the fear that the Federalists had expressed about the idea of a Bill of Rights? If certain specific rights were granted, did that mean that other rights that were not listed were no longer protected? This amendment speaks to that fear by stating that the people have other rights than those listed in the Bill of Rights. In the last fifty years, the Supreme Court has based several decisions on a **right to privacy** that it has found is implied, but not expressly described, in the Constitution.

- ◆ The Tenth Amendment makes clear that any powers not delegated to the federal government are reserved to the states and, ultimately, to the people.



The Tenth Amendment restates the principle of federalism that governs the relationship between the federal and state governments. It provides that “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.” In other words, the Constitution grants specific and limited powers to the federal government. Additional powers of government not granted to the federal government are reserved to state governments or to the people, who are the ultimate source of government in the United States.

### The Bill of Rights and the Fourteenth Amendment

The rights protected in the Bill of Rights initially protected individuals against the actions of the federal government only. The Fourteenth Amendment, which was ratified in 1868, provides that “no state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.” It also provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” These provisions of the Fourteenth Amendment, called the **privileges and immunities clause** and the **due process clause**, became the basis for a series of Supreme Court decisions over the twentieth century that gradually extended the Bill of Rights to protect individuals against improper actions by state governments as well as the federal government.

Most, but not all, of the rights protected by the Bill of Rights have been extended to the states. For example, the Fifth Amendment right to indictment by a grand jury has not been extended. You will learn more about this process of extending the Bill of Rights to the states, called **incorporation**, in Chapter Four.

**IMPORTANT TERMS***Write Out - Term: definition*

1 Match the terms in the right column with the definitions in the left column.

- |  |                      |
|--|----------------------|
| A. First Amendment provision that prohibits the government from naming a national religion | Militia              |
| B. Being put on trial more than once for the same crime                                    | Eminent domain       |
| C. The government's power to take private property for public use                          | Subpoena             |
| D. A court order used to make a witness appear at a trial                                  | Establishment clause |
| E. Citizen soldiers who can be called on in times of emergency                             | Double jeopardy      |

**REVIEWING FACTS**

Are the following statements true or false?

- 2 Congress submitted 10 amendments to the states for ratification as the Bill of Rights.
- 3 Fourth Amendment protections against search and seizure depend in part on one's expectation of privacy.
- 4 The Supreme Court has ruled that juveniles are entitled to trial by jury.

**REVIEWING MAIN IDEAS**

Use complete sentences to answer the following questions.

- 5 Why do you think the Supreme Court has allowed some restrictions on free speech? What do you think is the purpose of the restrictions it has allowed?
- 6 Why does your expectation of privacy affect whether the government can conduct a search without a search warrant?
- 7 Why is it important that criminal trials be open to the public?

**UNDERSTANDING CONCEPTS**

- 8 The government usually needs a search warrant before it can search you, your house, your personal property, or your private correspondence. In cases where you have a low expectation of privacy, however, the government may not need a search warrant if it suspects illegal activity is going on.

Consider the following examples. Do you think you would have a high or low expectation of privacy in these situations?

- A. You are sitting in a car parked in a public parking lot.
- B. You are inside a tree house in your backyard.
- C. You are sending an e-mail from a computer at your school.