

The Constitution and Bill of Rights

by Mark K. Vincent



Mark K. Vincent is a 24-year veteran of the U.S. Attorney's Office, District of Utah.

Last summer I had the opportunity to take my family to Independence Hall in Philadelphia, and tour where our country's Constitutional Convention took place. As we listened to our National Park Service tour guide, I was reminded of the events that took place during the summer of 1787.

In the beginning our Constitution contained very few individual rights guarantees. The framers were more focused on establishing an effective federal government. A proposal, by delegate Charles Pinckney of South Carolina, included several rights guarantees; however, those recommendations were rejected. As originally adopted, our Constitution included only a few specific rights guarantees. The framers believed that the Constitution protected liberty primarily through its division of powers that made it difficult for oppressive majorities to form and capture power against minorities. The Constitutional Convention delegates also probably feared that a debate over liberty guarantees might prolong or even threaten passage of our new Constitution.

During the ratification debate, anti-federalists opposed to the Constitution, complained that the new system threatened individual liberties, and suggested that if the delegates had truly cared about protecting these rights, they would have included such provisions. The Constitution's ratification was in serious doubt and as such federalists announced a willingness to take up the matter of a series of amendments, to be called the Bill of Rights. The concession was surely necessary to secure the Constitution's ratification.

In December 1787, Thomas Jefferson, who did not attend the Constitutional Convention, sent a

letter to James Madison and called the omission of a bill of rights a major mistake. Jefferson wrote: "A bill of rights is what the people are entitled to against every government on earth." Madison was doubtful at first, but by the fall of 1788, Madison believed that a declaration of rights should be added to the Constitution. Madison asserted, in an argument borrowed from Jefferson, that a declaration of rights would help install the judiciary as "guardians" of individual rights against the other branches of government.

As history records, in 1789 the First Congress adopted 10 amendments to the Constitution known as the "Bill of Rights" and they were ratified by the states in 1791. Other amendments to the Constitution have followed. Each amendment has been reviewed, interpreted, and refined by the "guardians" of individual rights over the years. We, in the legal profession, are privileged to be a part of that process. It is my hope and prayer that we remember that this is a privilege that we should never take lightly. ☺

A handwritten signature in black ink, appearing to read "Mark K. Vincent". The signature is fluid and cursive.

The Federal Lawyer Correction:

It has come to our attention that the IP Insight column in the June 2016 issue of *The Federal Lawyer* was incorrectly published. The correct version of this column, titled "America's Need for Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters," is reprinted in this issue starting on page 20 and has been updated online (available at www.fedbar.org/IPInsightCorrection.)