

CONTENTS

Preface xxv

1 INTRODUCTION TO CONSTITUTIONAL CRIMINAL PROCEDURE 1

Learning Objectives 1

Historical Antecedents of the U.S. Constitution 3

English Documents 3

Early Documents Guiding the North American English Colonies 3

Oppression by Parliament 4

The First Continental Congress 4

The Second Continental Congress 4

The Declaration of Independence 5

The Articles of Confederation 5

The Convention of Delegates 5

The U.S. Constitution 6

The Bill of Rights 8

The First Amendment 9

The Second Amendment 10

The Fourth Amendment 10

The Fifth Amendment 11

The Sixth Amendment 11

The Seventh, Ninth, and Tenth Amendments 11

The Eighth Amendment 11

The Fourteenth Amendment 11

Constitutional Interpretation 12

Methods of Constitutional Interpretation 12

Penumbra of Rights 14

Balancing Interests 15

Strict Scrutiny 15

You Be the Judge 15

Law and the Criminal Justice System 16

- Procedural and Substantive Law 16
 - Procedural Law* 16
 - Substantive Law* 17
- Due Process and Crime Control Models 18
- Precedent and Stare Decisis 19

How the U.S. Courts Work 20

- Adversarial System 20
- Structure of the Appellate Court System 21
- Structure of the Supreme Court 23
- How the Supreme Court Works* 24**
 - You Be the Judge* 24**
 - You Be the Judge* 25**

Appeals 26

- You Be the Judge* 29**

The Supreme Court 29

- Supreme Court Jurisdiction 29
- Eras of the Supreme Court 31
- Court Decisions 31
 - Retroactivity* 33
 - Habeas Corpus Petitions* 33

Special Constitutional Concerns 34

- Judicial Restraint and Judicial Activism 34
- Wrongful Convictions 35
- Juvenile Offenders 36

Questions to Consider 38

Key Terms 39

Key Court Cases 41

2**THE FOURTH AMENDMENT: THE BASICS OF SEARCH AND SEIZURE 43**

Learning Objectives 43

History of the Amendment 45**The Protections and Principles of the Fourth Amendment 46**

- Reasonableness 46
- Persons, Houses, Papers, and Effects 47
 - Persons* 47

Houses 48
Papers 49
Effects 49

Procedure for Obtaining a Warrant 49

Technology 54

Right to Privacy 55

What Is a Search? 57

Searches Outside the United States 57
United States v. Montoya de Hernandez 57
When Does a Search Occur? 59
“False Friends” and Electronic Transmission of Information 61

***You Be the Judge* 63**

Nonsearches 63

Open Fields 63
Curtilage 67
GPS 68
Abandonment 68
California v. Greenwood 70
Items Held Out to the Public 71

Administrative Searches 73

Administrative Searches of Homes 73
Administrative Searches of Closely Regulated Industries 74
Administrative Searches of Ordinary Businesses 75
Fire Inspection Searches 75
Searches of Public School Students 76
Drug Testing 76
Immigration Searches 79
DNA Collection 79

Other Special Searches 80

Other Violation of Privacy Rights in the Workplace 82

Use of Enhancement Devices 83

***You Be the Judge* 84**

What Is a Seizure? 85

When Is Property Seized? 86
Seizure of a Person 87
Seizure While in Motion 87
When Does a Stop or Seizure Take Place? 88
Florida v. Bostick 88

***You Be the Judge* 90**

Investigatory Stops 91**Citizen's Arrest 94****Vigilante Justice 95***Questions to Consider 96**Key Terms 97**Key Court Cases 98***3****SEARCHES AND ARRESTS WITH A WARRANT
AND PROBABLE CAUSE 101***Learning Objectives 101***The Warrant Requirement 101****What Constitutes Probable Cause? 103**

Direct and Hearsay Information 106

Does Probable Cause Exist Forever? 108

You Be the Judge 109

Oral Affidavits of Probable Cause 110

Hearsay Information 111

The Basis of Knowledge Prong 111

The Veracity Prong 112

Direct Evidence of Probable Cause 114

Furtive Conduct 114

You Be the Judge 115

Prior Criminal Record and Association with Other Known Criminals 116

Answers That Seem Illogical 116

Physical Evidence 117

Trained Dog Sniffs 118

Corroboration of Evidence 118**The Totality of the Circumstances Test 119***Illinois v. Gates 119***The Warrant 121**

Arguing the Sufficiency of a Search Warrant 121

You Be the Judge 121

Who May Issue a Warrant 122

Specificity of the Warrant 123

You Be the Judge 123*Place to Be Searched 123*

<i>Items to Be Seized</i>	124
You Be the Judge	126
<i>Person to Be Arrested</i>	127
Anticipatory Search Warrants	127
Challenging a Search Warrant	128
Execution of a Warrant	131
<i>Timing and Manner of Execution</i>	132
<i>The Knock and Announce Rule</i>	133
<i>Hudson v. Michigan</i>	135
<i>No-Knock Warrants</i>	136
Shooting of Breonna Taylor	137
You Be the Judge	137
<i>Limitations on the Search of Persons Found on the Premises When a Search Warrant Is Executed</i>	138
Destruction of Property	139
Return of Seized Items	140
Wiretap Applications	140
<i>Stored Communications Act</i>	144
You Be the Judge	144
National Security Electronic Surveillance	144
The USA Patriot Act	146
Other Considerations Regarding the War on Terrorism	147
<i>Questions to Consider</i>	150
<i>Key Terms</i>	152
<i>Key Court Cases</i>	153

4 SEARCHES AND ARRESTS WITHOUT A WARRANT 155

<i>Learning Objectives</i>	155
Search Incident to a Lawful Arrest	155
Hot Pursuit	160
You Be the Judge	162
<i>Cupp v. Murphy</i>	163
Police-Created Exigencies	165
You Be the Judge	165
Consent Searches	166
You Be the Judge	168
Scope of Consent	169
Third-Party Consent	170

<i>You Be the Judge</i>	173
Warrantless Searches	174
Inventory Searches	174
Searches of Prisoners	174
Stop and Frisk	175
<i>Terry v. Ohio</i>	175
<i>The Stop-Question-and-Frisk Program of the New York City Police Department</i>	180
Breath and Blood Tests Incident to Arrest	181
Plain View	182
<i>The Inadvertency Controversy</i>	184
<i>Plain Feel, Hear, and Smell</i>	185
Scope of a Warrantless Search	187
Warrantless Cell Phone Searches	188
<i>The 2015 San Bernardino Attack</i>	189
Detention of Other People During a Lawful Search	189
<i>You Be the Judge</i>	189
Requiring a Person to Go to a Police Station	190
Automobile Searches	192
The Automobile Exception	192
Probable Cause to Search a Vehicle Must Be Present, Even Without a Warrant	196
Search of a Vehicle Without a Warrant Is as Broad as If a Warrant Had Been Obtained	197
<i>California v. Acevedo</i>	198
Administrative Automobile Stops	199
Law Enforcement Use of Vehicle Tracking Devices	201
Belief That a Vehicle Is Contraband	204
Concerns About Discrimination and “Profiling”	204
Scope of the Search	208
The Arrest	209
Arrest Without a Warrant	209
Protective Sweep	211
Use of Force in Making Arrests	211
<i>Tennessee v. Garner</i>	212
Misdemeanor Arrests Without a Warrant	214
Right of an Arrestee to Appear Before a Magistrate	214
<i>Questions to Consider</i>	215
<i>Key Terms</i>	216
<i>Key Court Cases</i>	217

5

THE EXCLUSIONARY RULE AND OTHER REMEDIES TO DETER POLICE WRONGDOING 219*Learning Objectives* 219**History and Development of the Exclusionary Rule 220**

Alternatives to the Exclusionary Rule 221

Option One: Punishing the Law Enforcement Officer 221*Option Two: Filing a Civil Lawsuit Against the Law Enforcement Officer or Law Enforcement Agency* 221*Option Three: Excluding the Evidence from Court* 222

History of the Rule in Federal Court 223

***You Be the Judge* 224**

Application of the Rule to the States 225

Mapp v. Ohio 225**Reasons for the Rule 226****The Exclusionary Rule in Court 227**

Standing to Assert the Rule 227

Co-Conspirator Standing 229

Government Action 231

***You Be the Judge* 232**

Presenting Exclusionary Rule Issues 233

Scope of the Exclusionary Rule 234

Wong Sun v. United States 235**Exceptions to the Exclusionary Rule 236**

Inevitable Discovery Rule 236

Independent Source Doctrine 238

The Attenuation Doctrine 241

Act of Free Will 241

Circumstances That “Shock the Conscience” 242

You Be the Judge* 243*The Exclusionary Rule in Noncriminal Proceedings 244**

Use of Unconstitutionally Obtained Evidence for Purposes of Impeachment 245

Other Impeachment Proceedings 247

Postconviction and Noncriminal Proceedings 247

Identification and Witness Statement Exceptions 248

Good Faith Exception 248

Herring v. United States 252

Illegality in the Manner of Entering 254

The Harmless Error Rule 255

***You Be the Judge* 257**

Other Remedies Against the Violation of Defendants' Rights 257

Section 1983 of the Federal Code—Civil Rights Act 257

***The Tracy Thurman Story* 258**

Injunctions 259

Other Possible Lawsuits 259

Administrative Sanctions 260

Effects of the Exclusionary Rule 260

Does the Exclusionary Rule Deter Officers? 260

***You Be the Judge* 264**

Questions to Consider 265

Key Terms 266

Key Court Cases 267

6

THE FIFTH AMENDMENT 269

Learning Objectives 269

Due Process 269

The Government's Obligation to Provide the Defendant with Notice of Charges 271

The Government's Obligation to Disclose Information to the Defendant 272

***You Be the Judge* 272**

Brady v. Maryland 273

***Types of Evidence That Must Be Disclosed Under Brady* 275**

Informants 276

Self-Incrimination 278

***Examples of Real Evidence That Can Be Compelled from a Defendant* 279**

Interrogations and Confessions 280

Confessions 280

Coerced Confessions Are Not Admissible in Court 281

Voluntariness of a Confession 283

Interrogations 284

Threats and Promises 284

Length of Interrogation, Trickery, and Deception 285

Police Deception 287

***You Be the Judge* 288**

Other Factors Relating to Voluntariness 289
Colorado v. Connelly 289

Massiah v. United States 291

***Differences Between the Safeguards Provided Under Miranda and Massiah* 292**

Police Procedures and the Fifth Amendment 292

Police Actions and Suspects' Rights 294

***You Be the Judge* 295**

Effect of Violating a Suspect's Right Against Self-Incrimination 295

***Factors to Determine Whether an Identification Procedure Is Suggestive* 296**

Suggestiveness in Identification Procedures 296

***You Be the Judge* 297**

Miranda Rights 299

***The Miranda Rights* 300**

Basis of the Miranda Rights 301

Malloy v. Hogan 303

Miranda v. Arizona 303

***The Facts of the Four Cases* 306**

The Privileges 306

When Can the Miranda Rights Be Invoked? 308

Custodial Interrogation 310

Custody 310

***You Be the Judge* 311**

Interrogation 312

Brewer v. Williams 312

Traffic Stops 314

Waiver of Rights 316

Berghuis v. Thompkins 317

Exceptions to Miranda 318

Booking Questions 318

Public Safety Exception 318

Undercover Interrogation 320

The Current State of Miranda Rights 321

Grand Jury Indictment 324

Double Jeopardy 326

The Blockburger Rule 329

Blockburger v. United States 329

Acquittal 330

***You Be the Judge* 331**

- Civil Cases 332
- You Be the Judge* 333**
- Appeal by Defendant 334
- Dual Sovereignty 336
- The Beltway Sniper Attacks* 336**

- Questions to Consider* 337
- Key Terms* 338
- Key Court Cases* 339

7

THE SIXTH AND EIGHTH AMENDMENTS 341

- Learning Objectives* 341

Right to Counsel 341

- Right to an Attorney at Trial 345
 - Nichols v. United States* 347
- Right to an Attorney Before and After Trial 348
- Right to an Attorney in Pretrial and Posttrial Proceedings at the Trial Court Level 349
- Due Process Issues at Pretrial Identification Procedures 350
 - Manson v. Braithwaite* 351
- Right to an Attorney at Pretrial Identification Procedures 353
- In-Court Identifications 354
 - Moore v. Illinois* 354
- Right to an Attorney at Other Pretrial Procedures 355
- You Be the Judge* 356**
- Right to an Attorney at Sentencing 357
- Right to an Attorney During Revocation Proceedings 357
- Right to an Attorney on Appeal 358
 - Douglas v. California* 359
- Defendant's Waiver of Right to Counsel 361

Effective Assistance of Counsel 362

- The Strickland Test 363
- Attorney Conflict of Interest 364
- You Be the Judge* 365**

The Rights of the Accused at Trial 366

- Right to a Speedy Trial 366

The Right to a Public Trial 368

- Orlando v. Fay* 370
- Right to a Jury Trial 371

Criminal Versus Civil Matters	372
Right to an Impartial Judge and Jury	373
Example: Scandal in Luzerne County, Pennsylvania	374
<i>Batson v. Kentucky</i>	375
You Be the Judge	376
Jury Nullification	377
Right to Confront Witnesses	377
Compulsory Process for Obtaining Witnesses	378
<i>Compulsory Process</i>	378
<i>Disclosure by the Prosecution of Its Witnesses</i>	379
Jerry Sandusky Trial	379
<i>Direct Confrontation of a Witness</i>	380
<i>Right to Cross-Examine Witnesses</i>	381
Right to Bail	381
Basis and History of the Right to Bail	381
Standards for Setting Bail	383
You Be the Judge	384
You Be the Judge	385
<i>Questions to Consider</i>	387
<i>Key Terms</i>	389
<i>Key Court Cases</i>	390

8

**PRETRIAL, TRIAL, AND POSTTRIAL PROCEDURES
AND PROCESS 393**

Learning Objectives 393

Report and Investigation of a Crime 393**Arrest and Search Warrants 396****Pretrial Procedures 397**

Decision to Charge	397
<i>Oyler v. Boles</i>	397
Initial Appearance	398
Pretrial Release	399
Pretrial Incarceration	399
Preliminary Hearing	400
Formal Arraignment	401
Discovery	401
Pretrial Motions	402

Entering a Guilty Plea 404

- Withdrawing a Guilty Plea 406
- Limitations on Entering a Plea 407
- Sentencing Following a Plea 407

The Jury Trial 407

- Jury Selection 408
- Managing the Jury 408

Trial Procedures 409

- Jury Selection Procedures 409
- You Be the Judge* 419**
- Right to Compulsory Process 420
 - Washington v. Texas* 421
- You Be the Judge* 423**

The Trial 424

- Opening Statements 424
- Presentation of Witnesses 425
- Motions by the Defense 426
- Closing Arguments 427
- Jury Deliberations 427

Sentencing 430

- You Be the Judge* 432**

The Eighth Amendment 433

- Cruel and Unusual Punishment 433
- You Be the Judge* 434**
- Capital Punishment 434
 - Coker v. Georgia* 437

Appeals 438

- Questions to Consider* 441
- Key Terms* 442
- Key Court Cases* 446

9**THE FIRST AND SECOND AMENDMENTS:
FREEDOM OF SPEECH, ASSEMBLY, RELIGION,
AND THE RIGHT TO BEAR ARMS 449**

- Learning Objectives* 449

The First Amendment 450

- Freedom of Speech 451

Free Speech for School Students 454

You Be the Judge 455

Vulgar and Crude Speech 455

Hate Speech 456

You Be the Judge 460

Criminalizing Speech Based on Attendant Actions 460

Fighting Words 461

Defamation 463

Public Versus Private Persons 464

Speech Criticizing the Government 466

Public Versus Nonpublic Forums 470

You Be the Judge 471

Flag Desecration 471

Commercial Speech 473

Obscenity and Pornography 474

Pornography and the Internet 477

Child Pornography 477

Search and Seizure of Literary Items 479

Memoirs 479

You Be the Judge 480

Freedom of Conduct and Peaceable Assembly 480

Freedom of Religion 482

The Establishment Clause 482

The Free Exercise Clause 483

The Second Amendment: The Right to Bear Arms 484

Historical Basis of the Second Amendment 485

Possible Interpretations of the Amendment 486

Early Supreme Court Cases 486

District of Columbia v. Heller 488

Guy Montag Doe v. San Francisco Housing Authority 489

McDonald v. Chicago 489

Red Flag Laws 491

You Be the Judge 492

Questions to Consider 492

Key Terms 493

Key Court Cases 494

Glossary 497

Index 507