

CONSTITUTIONAL CRIMINAL PROCEDURE: FROM INVESTIGATION TO TRIAL

Fourth Edition

Phillip E. Johnson
Morgan Cloud

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CONSTITUTIONAL CRIMINAL PROCEDURE: FROM INVESTIGATION TO TRIAL

Fourth Edition

By

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610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-328-9352

Printed in the United States of America

ISBN 0-314-25660-1



TEXT IS PRINTED ON 10% POST
CONSUMER RECYCLED PAPER



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To my mother, Marjorie Cloud

M.C.

*

Preface

Although the Fourth Edition of this book is in many ways an entirely new volume, it embodies many of the aspirations of the previous editions. This book is designed to provide teachers and students with a sophisticated presentation of fundamental issues in constitutional criminal procedure in a succinct and efficient text. It is structured to permit the reader to learn the rules currently governing each topic of constitutional law, but also to supply the historical and jurisprudential contexts which produced current doctrine. Students should finish their criminal procedure course with a deep understanding of constitutional law as it works in the context of the criminal justice system.

The Fourth Edition has been designed intentionally to provide comprehensive coverage of fundamental topics of constitutional criminal procedure—including judicial review, federalism, the exclusionary rule, due process of law, search and seizure, interrogation and confession, the right to counsel, identification procedures, pretrial detention, grand jury proceedings, and the impact of the contemporary “war on terror” upon these topics—in approximately 750 pages. To accomplish these goals, the book emphasizes the judicial decisions which have produced the fundamental theories in each of these areas of law. Excerpts from scholarly writings and the authors’ commentaries and notes are used sparingly to provide students necessary guidance. As a result, the book avoids a problem that plagues many law school casebooks—the accretion of textual materials that become so voluminous that they obstruct the professors’ efforts to teach and the students’ efforts to learn.

To permit comprehensive but concise coverage, cases have been edited rigorously to provide students with the materials they need, but no more. Most citations and footnotes have been eliminated. These condensed opinions are edited for effective teaching and learning, not for use as sources to be cited in other legal materials. On the other hand, the factual background of individual cases are often presented in detail, because the facts are frequently critical for our understanding of judicial opinions. Where the original opinion’s recitation of the facts is unnecessarily lengthy, a more succinct summary of the facts is provided in brackets.

Constitutional criminal procedure should be one of the most engaging and interesting of law school courses. Nowhere in the law are the fundamental conflicts between the need for social order and the desire for individual liberty presented with such clarity and power. Our hope is that those using the Fourth Edition will find, as we have, that this is one of the most challenging, provocative, and exciting courses in the law school curriculum.

MORGAN CLOUD

Emory University
Atlanta, Georgia

*

v

Selected Constitutional Amendments

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

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.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

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

Amendment IX

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

* * *

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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Fourth Edition

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