Contents

Preface		xvi
1	US Constitution	1
	Learning Objectives	1
	Introduction	1
	The Constitution	2
	Federal Jurisdiction	3
	Supreme Law of the Land	3
	Why a Supreme Court?	4
	An Unwritten Constitution	4
	Impact on Criminal Justice	4
	Original Constitution	5
	Bill of Rights	5
	Application of the Bill of Rights to State and Local Prosecutions	6
	First Amendment	6
	Second Amendment	7
	Third Amendment	7
	Fourth Amendment	8
	Fifth Amendment	8
	Sixth Amendment	. 9
	Seventh Amendment	9
	Eighth Amendment	10
	Ninth Amendment	11
	Tenth Amendment	11
	Rights That Have Not Been Incorporated	11
	Overview of the Judiciary	12
	Jurisdiction	12
	State or Federal Issue	14
	Appellate Courts	15
*	Article III Federal Courts	15
	Organization of Federal Courts	17
	Supreme Court Procedures	19

viii CONTENTS

	US Supreme Court Justices	20
	Required Supreme Court Justice Qualifications	21
	Politicization of the US Supreme Court	21
	Shadow Docket	22
	Summary	23
	Practicum	24
	Questions in Review	24
	References Cited	25
	Cases Cited	25
2	Concept of Due Process	27
	Learning Objectives	27
	Introduction	27
	Defining Due Process	28
	History of Due Process Clause	29
	Fourteenth Amendment	29
	Application of the Bill of Rights to the States	30
	First Amendment	35
	Fourth Amendment	35
	Fifth Amendment	35
	Sixth Amendment	35
	Eighth Amendment	35
	Due Process Beyond the Bill of Rights	36
	Procedural Due Process	38
	Substantive Due Process	38
	Police Power	38
	Vagueness	39
	Equal Protection of the Law	40
	Summary	41
	Practicum	42
	Questions in Review	42
	References	42
	Publications Cited	42
	Cases Cited	42
3	Fourth Amendment	44
	Learning Objectives	44
	History	44
	Overview of the Amendment	45
	What Constitutes a Search?	46
	Reasonable Expectation of Privacy	47
	Plain View	48
	Government Intrusion	49
	Protected Areas	50

		CONTENTS
Probable C	lause	51
	ative Searches	52
Warrants		52
	iency of the Affidavit	53
-	kes in the Place to Be Searched	53
	Informants to Establish Probable Cause	54
Arrests		57
	of a Person for Only a Fineable Offense	59
	iscious Driver's DNA	60
	g DNA of an Arrested Person	60
	Cases on Fourth Amendment Issues	61
Summary		65
Practicum		66
Questions	in Review	66
References		67
	cations Cited	67
Cases	Cited	67
Fourth A	amendment Issues	68
Learning C	Objectives	68
Introduction	on	68
Searches V	Vithout Warrants	68
With	Probable Cause	69
Proba	ble Cause Not Needed	70
Search	nes of Probationers and Parolees	71
Autor	nobile Exception	72
No Reason	able Expectation of Privacy Situations	73
Conse	ent Searches	73
Open	Fields	74
Plain View		75
Abandone	d Property	77
Communi	y Caretaking Rule	. 78
Aerial Obs	ervations	78
Student Se	arches	80
Arrests Wi	thout Warrants	81
Selected C	ourt Cases on Arrests	82
Terry Stop	S	82
Traffic Stop	os	85
Scope of th	ne Search	86
What Con	stitutes a Seizure	87
Wiretaps		89
Cellular Te	lephones	91
Warre	ant Requirements for Cell Phone Data	91
Search	n of Cell Phones	91

	Summary	93
	Practicum	94
	Questions in Review	94
	References	94
	Publications Cited	94
	Cases Cited	95
5	Exclusionary Rule	97
	Learning Objectives	97
	Introduction	97
	Mapp v. Ohio	98
	Brief History of the Rule	99
	Standing to Object	100
	Fruit of the Poisonous Tree	101
	Exceptions to the Rule	102
	Good Faith Exception	102
	Purged Taint	103
	Independent Source	104
	Inevitable Discovery	104
	Impeachment of Defendant	105
	Noncriminal Trial Proceedings	105
	Civil Tax Proceedings	105
	Quasi-Criminal Proceedings	106
	Deportation Hearings	106
	Probation Revocation Hearings	106
	Situations in Which the Rule Has Not Been Applied	107
	Violation of the Knock-and-Announce Requirement	107
	Searches Based on Erroneous Information	107
	Exclusionary Rule and the Fifth Amendment	108
	Exclusionary Rule and the Sixth Amendment	109
	Significant Cases	109
	Summary	112
	Practicum	112
	Questions in Review	113
	References	113
	Cases Cited	113
6	Fifth Amendment Issues	115
	Learning Objectives	115
	Introduction	115
	Grand Jury	116
	Infamous Crimes	116
	Discrimination in Selection of Grand Jury Members	116
	Evidence	116
	Sufficiency of an Indictment	117

	CONTENTS
Double Jeopardy	117
Application of Prohibition	117
Separate Sovereigns	118
Collateral Estoppel	118
Self-Incrimination	119
Coverage of the Privilege	120
Establishing Voluntariness of Statement	121
Miranda Warning	122
The Warning	123
In-Custody Requirement	123
What Constitutes Interrogation?	127
When Must Interrogation Stop?	127
Exceptions to the Rule	128
Public Safety Exception	128
Where Vienna Convention Was Violated	128
Statements Made During Medical Treatment	129
Undercover Agents	129
Deportation Proceedings	129
Initial Inquiry and Booking	130
Failure to Advise Defendant of Other	
Suspected Crimes	131
Fruit of the Poisonous Tree	131
Involuntary Confessions	132
Commenting on Defendant's Silence	132
Invocating the Right to Be Silent	133
Summary	134
Practicum	135
Questions in Review	135
References	136
Cases Cited	136
Sixth Amendment Issues	139
Learning Objectives	139
Introduction	139
Speedy Trial	140
Constitutional Right	140
Statutory Right	141
Public Trial	141
Right to Jury Trial	144
Impartial Jury	145
Unanimous Findings by Jury	146
Pretrial Publicity	146
Voir Dire	147
Selection of Jurors	147
Juror's Attitude Toward Death Penalty	148
Number of Jurors	149

	Judge Commenting on Evidence	149
	Judicial Instructions	149
	Questioning	150
	Urging Jury to Reach a Verdict	150
	Penalty for Exercising Right to Jury Trial	150
	Judicial District in Which the Crime Was Committed	151
	Informed of the Nature and Cause of the Accusation	151
	Right to Confront Witnesses	152
	Compulsory Process for Obtaining Witnesses	152
	Assistance of Counsel	153
	Right to Appointed Counsel	153
	Effective Assistance of Counsel	154
	Duty to Present Mitigation Evidence	155
	Establishing Prejudice	155
	Right to Represent Self	156
	Standard of Competence Required for Self-Representation	157
	When the Right to Appointed Counsel Attaches	158
	Right to Counsel on Appeal for Indigent Defendants	158
	Defendant's Right to Be Represented by the Counsel of Choice	158
	Guilty Pleas	159
	Significant Cases	160
	Summary	162
	Practicum	164
	Questions in Review	164
	References	164
	Cases Cited	164
8	Eighth Amendment Issues	168
	Learning Objectives	168
	Introduction	168
	Death Penalty as Cruel and Unusual	169
	Is the Death Penalty Cruel and Unusual?	170
	Does the Public Have the Right to Hear the Sounds of Executions?	171
	Right to Have a Spiritual Advisor at Execution	171
	Executing the Intellectually Disabled	171
	History of Death Penalty's Methods of Execution	173
	Chemical Injection	175
	Death Penalty for Crimes Other Than Murder	175
	Noncapital Punishments	176
	Robinson v. California	176
	Life Sentences for Juveniles	179
	Other Cruel and Unusual Punishments	179
	Prison and Jail Conditions	181
	Prison Conditions	181
	Jail Conditions	182

		CONTENTS
	Sentences as Cruel and Unusual	183
	Bail	184
	Protective Custody Awaiting Trial	185
	Should Illegal Immigrants Be Allowed Bail?	186
	Overcrowded Prisons	186
	Significant Decisions	190
	Summary	191
	Practicum	192
	Questions in Review	192
	References	192
	Publications Cited	192
Ķī.	Cases Cited	193
9	First Amendment Issues	195
	Learning Objectives	195
	Introduction	195
	Religious Issues	196
	Freedom of the Press	198
	Prior Restraints on Publications	198
	Distribution of Publications	199
	Right to Assemble and Free Speech	199
	Petitions to the Government	201
	Right of Privacy	201
	Obscenity	203
	Students and the First Amendment	205
	Freedom of Expression in Schools	205
	School Assignments	205
	Public Funding of Education	205
	Use of School Property	205
	School Prayers	206
	Prisoners and the First Amendment	206
	Regulation of Incoming Publications	206
	Prisoner's Mail	207
	Right of Association	208
	Significant Cases	208
	Summary	210
	Practicum	211
	Questions in Review	212
	References	212
	Publications Cited	212
	Cases Cited	212
	Civil Liability	214
	Learning Objectives	214
	Introduction	214

xiii

xiv CONTENTS

	Federal Civil Rights	214
	42 US Code § 1983: Civil Action for Deprivation of Rights	215
	Under Color of Law	216
	Excessive Force Used in an Arrest	216
	Use of Deadly Force	217
	Private Correctional Officers	217
	False Arrest Statute of Limitations	217
	Abusive Interrogations	218
	Violations of Constitutional Rights in a Foreign Country	219
	General Rules of Liability	219
	Liability of Federal Agents Under 42 USC § 1983	219
	Officer's Duty to Arrest	220
	Liability for Failure to Train Police Officers	221
	Immunity	222
	Prosecutors	225
	Retaliatory Arrest Claim	229
	Summary	229
	Practicum	230
	Questions in Review	230
	References	231
	Publication Cited	231
	Cases Cited	231
11	Writ of Habeas Corpus	232
	Learning Objectives	232
	Introduction	232
	US Courts	234
	Requirements for Writ	235
	Alaska v. Wright	235
	Great Writ	236
	Boumediene v. Bush	236
	Subsequent Proceedings	242
	Procedure for Obtaining Writ	242
	Harmless Error Standard	243
	Summary	243
	Practicum	244
	Questions in Review	244
	References	244
	Publications Cited	244
	Cases Cited	245
12	Epilogue	246
	Learning Objectives	246
	Politicization of the Supreme Court	246

		CONTENTS	×
			à,
	Issues Before the Supreme Court	247	
	History	247	
	Size of the Supreme Court	248	
	Warren Court	250	
	Roberts Court	250	
	Roberts Court and the Fourth Amendment	251	
	Summary	253	
	Questions in Review	253	
	References	254	
	Publication Cited	254	
	Cases Cited	254	
Class			
Glossary		255	
Appendix A: U.S. Constitution		261	
Appendix B: Search Warrant		277	
Appendix C: Form for Writ of Habeas Corpus		279	
Index		289	