**Chapter 8 The Constitution, the Three Components of Madisonian Democracy, and Criminal Justice**

**Chapter Objectives**

While studying this chapter, the student will learn to:

1. Explore the interrelationship of the Constitution and criminal justice.

2. Obtain an understanding of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments within the context of criminal justice.

**Constitutional Connector**

The goal of this chapter is to view the three components of Madisonian democracy covered in the first seven chapters within the context of the criminal justice system. Because the Constitution gave increased power to the federal government, the threat against individual liberties also in-creased. This increase in the power of the federal government caused many to call for a Bill of Rights to restrain this new and powerful federal government. The Bill of Rights and specifically Amend-ments Four, Five, Six, and Eight are at the heart of the study of criminal justice. Before covering the rights enumerated in the Bill of Rights (component III of Madisonian democracy), this chapter will cover component I, creation and then separation of powers into three branches of government; and component II, federalism—the further separation of power into a federal government and the governments of the states.

**CHAPTER OUTLINE**

The Constitution and Criminal Justice

The Presumption of Innocence and Guilt beyond a Reasonable Doubt

Criminal Justice and Separation of Powers

Criminal Justice and Federalism

Fourth Amendment

What Is Not Covered under the Fourth Amendment

Warrants

Exclusionary Rule

Seizure of Person (Arrest)

Probable Cause

Exceptions to the Search Warrant Requirement

Search and Bodily Invasions

Students and Public Employees

Fourth Amendment Electronic Surveillance

Fifth Amendment

Miranda Warnings

Issues of Immunity at Trial

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Sixth Amendment

Sixth Amendment Right to a Lawyer

Sixth Amendment Right to Effective Assistance of Counsel

Sixth Amendment Identification Procedures—Lineups, Showups, Photo Identification

Sixth Amendment Right to a Jury Trial

Sixth Amendment Right to a Speedy Trial

The Sixth Amendment and the Confrontation of Witnesses

Sixth Amendment and Right to a Public Trial

The Eighth Amendment

Cruel and Unusual Punishment—Death Penalty

Cruel and Unusual Punishment—Non-Death-Penalty Cases

Appeals and Habeas Corpus

Supreme Court Opinions

Hamdi v. Rumsfeld

Kyllo v. United States

STUDY TIPS

1. As you read through this chapter keep in mind how important the study of the Constitution is to a professional in the field of criminal justice. This is so because the Supreme Court interprets the Constitution and in doing so lays down principles that must be followed by everyone. Miranda warnings are a good example of this. Also, the Supreme Court establishes the rules of search and seizure under the Fourth Amendment. The rights of the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments are at the core of the study of criminal justice.

2. Realize that the Supreme Court enforces the rights of the Fourth, Fifth, Sixth, and Fourteenth Amendments through the Exclusionary Rule. If law enforcement officials violate the rights of an individual, a court may exclude the illegally obtained evidence from the trial. That excluded evidence can be in the form of statements or physical evidence such as a gun or drugs.

3. When evidence is excluded, the search for the truth at trial is limited in order to promote other values that are embodied in the amendments. Those values and rights include the right to be free of illegal searches and seizures, the right not to incriminate oneself, and the right to a lawyer. Even if the Exclusionary Rule is violated the evidence may still be used to impeach the defendant at trial.

4. Read the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments and differentiate which rights come from which amendments.

5. See Exhibit 8-1, “Criminal Justice and Separation of Powers.” Note the workings of separation of powers (component I of Madisonian democracy). The president, congress, and courts each have a vital role. At the state level, power is separated among the governor, state legislature, and state court system.

6. Study the recent cases on separation of powers and the war on terrorism and review Exhibit 8-2.

7. Note that federalism, component II of Madisonian democracy, plays a role in criminal justice. Congress must not invade the powers of the states when it passes criminal law. Most criminal laws are state laws. In addition, states are free to add more rights than the federal Constitution requires.

8. Remember that most of the rights of the Bill of Rights have been incorporated and apply to the states as well as the federal government.

9. Take note of when the Fourth Amendment comes into play and note the exceptions to the search warrant requirements. See Exhibit 8-3.

10. Read the Fifth Amendment and take note of when the Fifth Amendment can and cannot be invoked. See Exhibit 8-4. Do the same with the Sixth Amendment and see Exhibit 8-5.

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11. Note the many other rights that are included in the Sixth Amendment.

12. The Eighth Amendment prohibits cruel and unusual punishment but the death penalty is not per se unconstitutional. For the death penalty to be constitutional the trial must be separated into a guilt phase and a penalty phase where evidence of aggravating circumstances and mitigating circumstances can be admitted.

**EXERCISES**

1. The Fourth Amendment establishes a requirement that search warrants are required for police to conduct a search. State the exceptions to the search warrant requirement. Why were these exceptions established?

2. Miranda warnings are required when the police have a suspect in custody. State the Miranda warnings and explain why they were established by the Supreme Court.

**INTERNET EXERCISES**

1. Go to http://thomas.loc.gov/. Click on “107 Congress.” Click on “Bill Status and Summary” and put in the search “USA Patriot Act.” Click on “HR 2975.” Scroll down to “Text of Legislation” and click. Click on the third version. This is the Patriot Act. Hit the Back button twice and click on “CRS Summary.” This explains the changes made by the Patriot Act, including changes to the Foreign Intelligence Surveillance Act.

2. The Patriot Act made changes to the Foreign Intelligence Surveillance Act (FISA), which was passed in 1978. To see a summary of the FISA, go to http://thomas.loc.gov/. Go to the “95th Congress.” Click on “Public Laws.” Put in as a search “95-511.” Click on “S-1566.” Scroll down to “Summary.” This is a summary of the FISA as passed in 1978. The Patriot Act made changes to FISA.

**QUIZ**

**TRUE OR FALSE**

1. The Supreme Court plays no role in the area of criminal justice.

2. The Exclusionary Rule requires the exclusion of evidence if that evidence was obtained in violation of a defendant’s constitutional rights.

3. Issues of separation of powers and federalism are important elements in criminal justice.

4. States can afford more but not less rights than the Constitution requires.

5. A reasonable expectation of privacy is required to trigger the protections of the Fourth Amendment.

6. A search warrant is always required for a search to be legal.

7. The Fifth Amendment right not to incriminate oneself cannot be invoked when a person is interrogated by police.

8. Miranda warnings are required by the Constitution.

9. The Sixth Amendment right to a lawyer is triggered when a person is questioned by the police.

10. The Eighth Amendment prohibits cruel and unusual punishment.

**ANSWER KEY**

1. False

2. True

3. True

4. True

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5. True

6. False

7. False

8. True

9. False

10. True