CONTENTS

About the Authors xi
Acknowledgments xiii
Preface xv

CHAPTER 1

The Right to a Speedy Trial 1

I. Historical Basis 1

II. Constitutional Speedy Trial Issues 2
   A. Delay in Charging or Arresting the Defendant 2
   B. Postcharge or Postarrest Delay 6
   C. Delay in Sentencing 8
   D. Delay in Appeals 9
   E. Sanctions for a Constitutional Violation of the Speedy Trial Right 9

III. Dismissals Pursuant to Federal Rule of Criminal Procedure 48 11
   A. History of Rule 11
   B. Dismissal under Federal Rule of Criminal Procedure 48(b) 11

IV. Federal Speedy Trial Act 12
   A. General Time Limitations 13
   B. Exceptions and Tolling Provisions 14
   C. Sanctions for Violating the Statute 18

V. State Speedy Trial Provisions 20
   A. State Constitutional Provisions 21
   B. State Speedy Trial Statutes 23

VI. Speedy Trial Requirements in the Interstate Agreement on Detainers 25
   A. Introduction 25
   B. Provision for Speedy Trial on Request of the Prosecutor 26
   C. Provisions for Speedy Trial on Notice by Prisoner 27
   D. Sanctions 27
CHAPTER 2
The Right to a Public Trial .................................................. 29
  I. Historical Origin of the Right ......................................... 29
  II. Whose Right Is It? ...................................................... 31
      A. Right of the Accused .............................................. 31
      B. Right of the Public under the First Amendment .......... 32
      C. Incorporation of the Sixth Amendment
          Public Trial Right .............................................. 32
  III. Interests Served by the Public Trial Right ..................... 33
  IV. When May a Trial Be Closed? ....................................... 34
      A. Overriding Interest That Is Likely to Be Prejudiced .... 35
      B. Closure Must Be No Broader Than Necessary ............ 36
      C. Trial Court Must Consider Reasonable Alternatives .... 37
      D. Findings Adequate to Support the Closure ............... 38
  V. Partial Closures ....................................................... 38
  VI. Application to Different Phases of the Proceedings .......... 39
  VII. Assertion of the Right ............................................. 42
  VIII. Remedy for a Violation ........................................... 42
  IX. Trivial or De Minimis Closures ................................... 43
 X. Public Trial Implications for Cooperating Defendants ....... 43

CHAPTER 3
The Right to a Jury Trial .................................................. 47
  I. Historical Basis and Constitutional Language .................. 47
      A. Development in England ......................................... 47
      B. American Colonial Experience ................................. 48
  II. Petty versus Nonpetty Offenses ................................... 50
      A. Background ...................................................... 50
      B. Unresolved Applications ....................................... 51
  III. Application of the Right ........................................... 53
      A. Contempt Actions ............................................... 53
      B. Juvenile Proceedings ........................................... 53
      C. Deportation Matters ............................................ 54
      D. Sentencing ...................................................... 54
  IV. Size of Juries in Criminal Cases ................................. 56
      A. Historical Basis for Twelve Jurors ......................... 56
      B. Fewer Than Twelve Jurors ..................................... 57
      C. Federal Juries .................................................. 58
      D. State Juries .................................................... 59
C. Multiple Defendant Crimes ........................................ 114
D. Failure to Act Crimes .................................................. 114
E. Accessories .............................................................. 115
F. Crimes Furthered through Electronics ............................. 115
G. Crimes Furthered through the United States Mail ............. 116

CHAPTER 5
The Right to Be Informed of the Nature and Cause of the Accusations ................................................................. 117

I. When an Indictment or Information Is Required in Federal Prosecutions .............................................................. 117
   A. Definitions ............................................................. 117
   B. The Indictment ......................................................... 118
   C. Waiver ................................................................. 119
   D. The Information ..................................................... 120

II. When an Indictment Is Required in State Prosecutions .......... 120
   A. Generally ........................................................... 120
   B. Indictment ............................................................ 120
   C. Waiver of the Indictment ........................................... 121
   D. States That Use an Information .................................. 121

III. Grand Juries .............................................................. 121
   A. Historical Basis ...................................................... 121
   B. Composition and Selection ....................................... 122
   C. The Process ........................................................ 123
   D. The Critique ........................................................ 124

IV. The Preliminary Hearing ................................................ 125
V. Waiver of the Indictment Requirement ............................... 128
   A. Federal ............................................................... 128
   B. States ................................................................. 129

VI. Challenging the Sufficiency of the Indictment .................... 129

VII. Claims of Duplicity and Multiplicity ............................... 131
    A. Duplicity ........................................................... 131
    B. Multiplicity ........................................................ 133

VIII. Bill of Particulars ..................................................... 134
IX. Secret Indictments ....................................................... 136

CHAPTER 6
The Confrontation Clause .................................................. 139

I. The History of Confrontation ........................................... 139
II. The Supreme Court’s Early Confrontation Jurisprudence . . 141
   A. Confrontation Defined ........................................ 141
   B. Incorporation to the States ................................. 143
III. The Right to Confrontation, 1968 to 2004 .................. 143
   A. Defining the Scope of Confrontation ....................... 143
   B. Limiting the Scope of Confrontation ....................... 147
   C. Special Confrontation Cases: Statements
      from (Alleged) Child Victims ............................... 148
IV. The Revitalized Confrontation Clause:  
    Crawford v. Washington ..................................... 151
   A. The Facts .................................................. 151
   B. Ohio v. Roberts (Partially) Overruled ..................... 151
   C. A New Focus on the Text and History
      of the Confrontation Clause ............................... 152
   D. The Advent of the “Testimonial Statement” ................. 154
V. The Right to Confrontation from 2004 to Present: 
    Applying Crawford in the Federal and State Courts ......... 155
   A. A New Focus on the Primary Purpose of the
      Interrogation and the Ongoing Emergency
      Exception ..................................................... 155
   B. Defining the Primary Purpose of the Interrogation and
      the Ongoing Emergency Exception ........................ 156
   C. The Growing Importance of the Formality
      of the Statement and Interrogation ....................... 160
   D. Reliability Redux .............................................. 162
   E. Evolution of the Primary Purpose Test and
      the Ongoing Emergency Requirement ...................... 164
VI. Forfeiture of the Right to Confrontation .................... 169
VII. The Right to Confront Expert Witnesses ..................... 171
    A. Recognizing the Right to Confront Experts ............... 171
    B. Defining the Right to Confront Experts .................... 172
    C. New Cases and Statutes That May Limit
       the Right to Confront Experts ............................ 174
VIII. The Right to Confront Witness Who Made
      Specific Types of Statements ................................ 178
    A. Official Records ............................................ 178
    B. Nonhearsay Statements ...................................... 184
    C. Statements to Nonofficials .................................. 188
IX. The Right to Confrontation in Nontrial Proceedings ......... 189
X. Confrontation and Codefendant Confessions .................. 191
CHAPTER 7

The Compulsory Process Clause

I. Historical Foundations of the Compulsory Process Clause

A. Development of the Compulsory Process in England

B. Development of Compulsory Process during the American Colonial and Revolutionary Periods

C. Compulsory Process as a Constitutional Right

II. Compulsory Process and the Supreme Court

A. The Treason Trial of Aaron Burr

B. Incorporation of the Right to Compulsory Process to the States

C. Defining the Scope of the Right to Compulsory Process

D. Limiting the Right to Compulsory Process

E. Interference with the Right to Compulsory Process

Table of Cases

Index