The Sixth Amendment to the United States Constitution deserves a book devoted to those key provisions that impact mightily on defendants in criminal prosecutions.¹ This was the conclusion of the ABA board members and editors who approached the four of us to write this book. We come from different backgrounds (private practice of law, former prosecutors, academics, jurists) and from different parts of the nation. The four of us, however, were in agreement that such a book was necessary and could provide a genuine service to judges, academics, and lawyers working in the field. In the almost two years needed to complete the first edition of this work, we became increasingly convinced of the value of our project as we explored the wide range of essential criminal justice topics that fall within the scope of the Sixth Amendment:

The Right to a Speedy Trial requires the practitioner to look at history—both colonial and English—to comprehend the significance and evolution of this right throughout our time as an independent nation. To fully understand the scope and application of the speedy trial right, one must also examine the overlapping state and federal statutory schemes, the reach of the constitutional provision, and the state and federal rules of criminal procedure. The United States Supreme Court has weighed in on the defendant’s right to a speedy trial in a number of major decisions, including the leading case of Barker v. Wingo. While the justices have focused primarily on the language and meaning of the Sixth Amendment, analyses from other courts include consideration of the Due Process Clause as well as a number of statutes of limitation.

¹ A book about the Sixth Amendment will almost immediately conjure up visions of the right to counsel, and Gideon v. Wainwright. Quite properly so, as the counsel right is a vital component of the amendment and has occupied lawyers and judges for over five decades. As any criminal justice professional knows, however, it is not the only essential protection provided to the accused by the Sixth Amendment. The right to counsel has such a rich and complex history that it merits its own book and, therefore, this book does not include Gideon and the right to counsel.
The Right to a Public Trial occupies a central role in our longstanding effort to ensure fairness in the criminal justice system and the process of charging and trying a criminal defendant. If the government wishes to convict any citizen of a crime, it must do so in the open, allowing all to view the process of the prosecution. Yet, for much of our history it was not clear who held this right. Did it belong to the public, to the media, or to the accused? Chapter 2 of the book answers those questions. It also addresses the complicated issues surrounding the closure of trial proceedings and the related determination of which rules govern the closure of pretrial proceedings.

The Right to a Jury Trial has significant historical roots both in our country and in England. We have always viewed the right to be tried before one’s peers as essential to our system of criminal justice. Still, numerous questions have arisen as to the application of this right. The distinction between petty and nonpetty offenses remains important today, as do issues surrounding the deadlocked jury, the size and composition of juries, and the application of the right to nontraditional criminal matters such as juvenile proceedings and deportation actions. Apprendi v. New Jersey and its successor decisions have recognized the right in new areas, such as sentencing. In the context of jury composition, the Supreme Court’s Batson decision has led to a wealth of litigation designed to eliminate the use of peremptory challenges for forbidden, discriminatory purposes.

The Place of Prosecution provision is the only section specifically mentioned twice in the Constitution. On its face, the right might seem fairly obvious. The defendant can only be tried where she lives, or where she committed her offense. In practice, however, the problems created by this provision—and their myriad solutions—are far from obvious. A variety of issues may arise when the government seeks to establish venue, or when the defendant attempts to change venue. The Supreme Court has also decided a number of important cases involving change of venue claims based on undue pretrial publicity including the famous decision in Sheppard v. Maxwell. Practice matters that complicate the constitutional analysis include the application of the Federal Rules of Criminal Procedure, waiver by the defendant, and determinations involving multiple jurisdiction crimes.

The Right to Be Informed of the Nature and Cause of the Accusations encompasses a range of significant and complex practical and constitutional concerns. The prosecutor must initially determine which accusatory instrument is required and appropriate. Does he
move forward with an indictment, an information, or a complaint? Especially in state prosecutions, the answer may not be obvious, as numerous state statutes and state constitutional provisions may be applicable. Serious questions also can be raised with the involvement of the grand jury. Moreover, numerous practice issues are implicated including waiver of rights, sufficiency of the indictment, claims of duplicity or multiplicity, and requests for bills of particulars.

The Confrontation Clause has been an important component of criminal trials throughout our legal history, but the United States Supreme Court paid little attention to it until fairly recently. Over the past five decades, the Court has incorporated the right against the states, emphasized the importance of effective cross-examination by the accused, and explored the complexities of multi-defendant trials and co-defendant confessions. However, only very recently have the justices focused on the language and history of the provision to determine the admissibility of out-of-court statements made by prosecution-sponsored witnesses including expert and child witnesses or the forfeiture of the right. The Confrontation Clause has been the most robust area of new Sixth Amendment jurisprudence. Recent developments articulated by the Court in *Williams v. Illinois*, *Bullcoming v. New Mexico*, *Michigan v. Bryant*, *Giles v. California*, *Melendez-Diaz v. Massachusetts*, *Davis v. Washington*, *Crawford v. Washington*, and *Ohio v. Clark* are all discussed in depth.

The Compulsory Process Clause guarantees the defendant’s right to obtain witnesses on his behalf. The history of compulsory process reveals a dramatic shift in the way this provision has been viewed over the centuries, resulting in far greater protections for the accused. Still, the most important action of the Supreme Court remains the decisive opinion written 200 years ago by Chief Justice John Marshall in the prosecution of Aaron Burr. Modern disputes generally focus on interference with the right by the prosecution, the application of the right as to confidential informants, and the role of use immunity.