

Chapter 2

The Forensic Accounting Legal Environment

Teaching Notes

This chapter presents the opportunity for students to get their first view of the “forensic” side of forensic accounting. Suggested points to stress:

- **General**

- Chapter 1 should have developed the students’ enthusiasm for forensic accounting. In that chapter they learned that forensic accountants need specialized skills and knowledge. The logical place to begin with specialized knowledge is the legal system, since, as students learned, “forensic” refers to legal matters.
- This chapter focuses on criminal versus civil procedures, though both are discussed in parallel. This is because business schools routinely offer business law courses, which covers civil procedures. It’s also the authors’ experience that the criminal side of the law tends to generate more enthusiasm in accounting students, much because of their experience with television shows and movies.
- Finally, many courses in law devote little or no attention to trial procedures and rules of evidence. But such information is critical to forensic accountants who are likely to gather evidence for trials, and possibly serve as expert consultants and witnesses for trials.
- Students can be motivated by explaining to them how expert witnesses can garner thousands of dollars for a brief amount of court testimony as an expert witness. Of course, accountants have to establish themselves as experts and develop their experience and training, but the place to begin is in understanding how the legal processes work.

- **Learning Objectives**

- LO1: Explain the sources of U.S. law.
 - The procedures relating to arrests (e.g., Miranda rights), investigations (e.g., search warrants), and trials (e.g.) are shaped by the Bill of Rights
- LO2: Explain the basic structure of the U.S. court systems.
 - Forensic accountants need to be able to work with attorneys, and to communicate well with them they need to have some basic understanding of the court systems.
 - Forensic accountants don’t need to be attorneys, but they do need to have a basic understanding of the law.

- LO3: Understand the general issues relating to investigations.
 - The section covers basic concepts (such as the fraud triangle and chain of custody) that are developed more in later chapters.
- LO4: Describe arrest and pretrial procedures.
 - Before students read this chapter, ask them how they define “being arrested.” Many will not realize that no arrest really takes place unless there is a formal booking process. Some might also be surprised to learn that one can be charged with a crime (by an indictment or citation) without first being arrested.
- LO5: Explain basic criminal trial procedures.
 - The discussion on the rules of evidence is especially relevant to later chapters. The discussion explains how the expert witness is given a privileged position in court by being exempted from the personal knowledge rule.
- LO6: Describe and contrast and compare various common law financial crimes.
 - Before beginning this chapter, ask students to define embezzlement. Then ask them if the secretary for a finance manager commits embezzlement when she secretly uses her boss’s password to send her checks in the mail. She covers up the fraud by using the same account to add false supporting details for the payment transactions. This isn’t embezzlement because the secretary never has legal custody of the funds she steals. The main point is that students will typically not know the difference between larceny, embezzlement, and, perhaps, robbery.
 - Many students will be surprised with the degree of criminal liability that can derive from participating in a conspiracy.
- LO7: Explain various major federal criminal statutes relating to financial crimes.

Review Questions

1. The usual penalty in a civil case is:
 - a. Monetary damages.
 - b. Imprisonment.
 - c. Equitable relief.
 - d. Any of the above.
 - e. Only a and c.

Correct. In civil cases, courts routinely award monetary damages or equitable relief. Imprisonment applies to criminal cases.

2. The burden of proof in a criminal case is:

a. Beyond a reasonable doubt.

Correct. For civil cases the burden of proof is the preponderance of the evidence.

b. The preponderance of the evidence.

c. More than 50 percent of the evidence.

d. 100 percent assurance.

e. Probable cause.

f. All of the above.

3. Which of the following is/are a source of law in the United States?

a. Case law.

b. Constitutional law.

c. Administrative law.

d. Statutory law.

e. a, b, and d only.

f. All of the above.

Correct.

4. The first 10 amendments to the U.S. Constitution are commonly referred to as:

a. The Privileges and Immunities clauses.

b. The Bill of Rights.

Correct. The Bill of Rights provides many of the rights applicable to criminal proceedings.

c. The enabling clauses.

d. The Declaration of Independence.

5. Direct appeals of U.S. district court cases are heard by the:

a. U.S. Supreme Court.

The Supreme Court hears very few cases relative to the total number of cases.

b. State Supreme Court.

Appeals of federal courts are not heard in state courts.

c. U.S. district court of appeals.

Correct. This is the best answer. The U.S. district court of appeals is also called the U.S. circuit court of appeals.

d. Original trial judge.

e. All of the above.

6. Which of the following has the discretion to bring charges against a suspect?

- a. Judge.
- b. Prosecutor.
- c. Defense attorney.
- d. Grand jury.
- e. Either b or d.

Correct. Grand juries also have broad investigative powers and can keep their proceedings secret. In federal courts, grand jury indictments are required for felonies. In state courts, prosecutors can typically bring indictments for felonies without the use of grand juries.

- f. None of the above.

7. Which of the following elements must be present in a criminal matter?

- a. Intent.

In some cases, a willful disregard for the consequences of one's actions may yield a crime. For example, injuries stemming from reckless driving generally lead to criminal liability.

- b. Premeditation.

Second-degree murder is murder without premeditation.

- c. Guilty act.
- d. Damages.

Correct. Although damages tend to exist, at least theoretically, in many crimes, it is the act itself along with one's state of mind that generally defines a crime. For example, it is generally illegal to conspire to commit a crime, and the mere act of conspiring creates a criminal offense even if the actual crime is never committed.

- e. All of the above.
- f. a and c.

Correct.

8. Which of the following does not occur at an arraignment?

- a. Bail is set.
- b. Defendant enters a plea.
- c. Prosecutor presents the defendant a written list of the charges being brought.
- d. Pretrial motions are heard.

Correct. Arraignments typically take only a few minutes, even with arguments over bail.

- e. Defendant may request a court-appointed lawyer.

9. What is name of the process by which the judge could rule out certain evidence?

- a. Voir dire.

Voir dire is the process of questioning prospective jurors.

- b. Motion in limine.

Correct. Such motions are typically heard at the very beginning of the trial process and before witnesses are called.

- c. Double jeopardy.
- d. Exclusionary process.
- e. Prima facie process.

10. Which of the following is/are an exception to the hearsay rule?

- a. Dying declaration.
- b. State of mind.
- c. Business and governmental records.
- d. Excited utterance.
- e. Prior inconsistent statements.
- f. All of the above.

Correct.

11. Identify the communication(s) not privileged.

- a. Doctor patient.
- b. Spouse spouse.
- c. Teacher student.
- d. Clergy congregant.
- e. Attorney client.
- f. All of the above.

Correct. In some cases, laws may permit the privilege to be abandoned in favor of the public good or in cases where important evidence can not be obtained in any other way.

12. The crime of intentionally and permanently converting another's property to one's own use is:

- a. Burglary.
- b. Embezzlement.

With embezzlement it is typically illegal to temporarily convert another's property to one's own use. Also, with embezzlement, the property must first be entrusted to the person committing the crime.

- c. Larceny.

Correct. When there is intent to only convert the property temporarily, a different crime may arise. For example, borrowing a car without permission generally leads to the crime of joy riding and not larceny.

- d. Robbery.
- e. Fraud.
- f. Extortion.

13. The crime of using the threat of force to gain some benefit from a victim is:

- a. Robbery.

Correct. Robbery requires the threat of force to be in the presence of the victim.

- b. Extortion.

Correct. Extortion involves the threat of future force.

- c. Larceny.
- d. Embezzlement.
- e. Fraud.
- f. Aiding and abetting.

True/ False

Please revise any false statement to make it true.

14. In a criminal investigation, the prosecutor represents the interest of the defrauded party.

False. In a criminal investigation, the prosecutor represents “the people”

15. In a criminal case, there is no constitutional right to a jury trial.

False. The sixth amendment provides the right to a jury in a criminal matter.

16. A state constitution may not override the U.S. Constitution.

True. The US Constitution is the supreme law. State constitutions may provide additional protections, but may not restrict the US Constitution.

17. A U.S. district court is considered a trial court.

True.

18. The judge is responsible for deciding which charges are brought against a defendant in a criminal matter.

False. The prosecutor or District Attorney is responsible for determining which charges are brought against a defendant.

19. A search warrant or arrest warrant is always required before arresting a suspect.

False. Sometimes, an office only requires probable cause to search or make an arrest.

20. More than one charge may be brought against a suspect in a certain situation.

True.

21. Suspects are entitled to an attorney before being booked for a crime.

False. There is no right to an attorney until the suspect has been booked.

22. Discovery in a criminal trial usually favors the defense.

True.

23. Hearsay evidence is not allowed at a preliminary hearing.

False. The purpose of a preliminary hearing is to weed out the cases not strong enough for trial, accordingly, the judge will hear all evidence, including hearsay in determining whether a case should be set for trial.

24. The defense is not required to call any witnesses on the defendant's behalf.

True.

25. A jury verdict of not guilty in a criminal case may be appealed by the prosecution.

False. This would subject the defendant to double jeopardy.

26. Generally, an attorney is allowed to ask leading questions of a witness.

False. Generally, leading questions are only allowed on cross-examination.

27. Attorney-client privilege extends to the forensic accountant hired by the attorney.

True.

28. All communication between an attorney and a client are privileged.

False. Information about future crimes is not privileged.

29. Recruiting or hiring someone to commit a crime is called aiding and abetting.

False. This is the crime of solicitation.

30. To be convicted of 18 USC 96 (RICO), at least two federal or state crimes must be committed.

True.

Discussion Questions

31. What does the term full faith and credit mean, as indicated in the Article 4 of the U.S. Constitution?

The *full faith and credit* concept requires that states "recognize" the public acts, records, and judicial proceedings of other states

32. Explain the concept of double jeopardy.

Double jeopardy is the process of being tried for the same crime twice, which is not permitted under the Fifth Amendment of the U.S. Constitution, although individuals may be tried separately in state and federal courts for the same crime. Once the jury is seated in a jury trial or when the first witness takes the stand in a bench trial, the criminal defendant is said to be in jeopardy and after that point, the defendant cannot be retried for the same crime if there is a verdict of not guilty or the judge

33. Explain how the concept of preemption applies when there is a conflict between local laws, state laws, and federal laws.

The general principle of preemption applies to statutory laws: When there is a conflict between federal, state, or local statutes, the statutes of the higher authority preempt those of the lower authority. This prevents states making laws that conflict with U.S. laws. For example, New York could not pass a law that exempts its citizens from paying U.S. income taxes.

34. Discuss how case law evolves. In other words, once a case has been decided, what would be the process for changing the result?

Case law evolves from appellate decisions. When the appellate decisions disagree from one court (or jurisdiction) to the next, the Supreme Court may render a decision that resolves the differences between the lower courts.

35. Who is responsible for enforcing administrative laws?

Enforcement of laws generally falls under the executive branch of government.

36. Explain the jurisdictional limitations of the federal courts.

Federal courts all have limited jurisdiction. The U.S. district courts try only cases that involve criminal or civil federal law. The only exception is “diversity jurisdiction,” which means that these courts have jurisdiction over civil disputes between citizens of different states for amounts more than \$75,000.

37. Discuss the rights, duties, and obligations of a forensic accountant hired to assist in a civil or criminal investigation.

This is a thinking question, since the answer is not explicitly spelled out in the text. Various rights may be applicable in the court systems, such as the general rights of those who participate in trials. Duties and obligations include compliance with applicable laws and regulations, and ethical conduct.

38. What are the elements of the fraud triangle?

Pressure, opportunity, and rationalization.

39. Is a search warrant always required to obtain evidence?

No. Evidence in plain sight may sometimes be seized, evidence can be supplied voluntarily, and subpoenas instead of search warrants are often used.

40. What is the fruit of the poisonous tree doctrine?

Under the fruits of the poisonous tree doctrine, evidence subsequently obtained because of a defective search warrant or improper procedure can be excluded from evidence in court. An exception may exist when the evidence could have or would have been obtained anyway by other means.

41. What is the purpose of discovery?

The general exchange of information and evidence between prosecutors and defendants is called discovery. In the interests of promoting justice, avoiding surprises during trials, and in facilitating the more rapid settlement of cases, prosecutors are typically required to provide the defense copies of the arrest records, search warrants, witness statements, and, in general, access to all evidence in the case. However, local discovery rules vary from one jurisdiction to the next, and in federal courts, prosecutors are not required to supply the defense pretrial statements from government witnesses. In some jurisdictions and circumstances defendants may also have discovery obligations. In civil cases, both the plaintiff and defendant are required to submit to discovery from the opposing side.

42. Why is hearsay allowed in a preliminary hearing?

Preliminary hearings seek to weed out weak cases, and since there is no determination of guilt or innocence, their rules of evidence are much more lax.

43. What is the voir dire process?

In the *voir dire* process, the attorneys or the judge asks potential jurors questions about their attitudes and backgrounds and may automatically exclude some jurors using “peremptory challenges.” Additional jurors may also be excluded if an attorney can show just cause for, say, extreme bias, but judges routinely accept the word of prospective jurors who promise to set aside admitted biases.

44. What options does a defense attorney have to counter the testimony of a witness?

The defense attorney can cross examine the witness and/or call defense witnesses to counter the witness’s testimony.

45. Discuss the importance of jury instructions.

The final part of the jury trial before the case goes to the jury is that the judge gives jury instructions on the legal principles that the jury must apply to the case. The jury instructions are critical because they typically define the elements of the crimes (or civil wrongs) under consideration, reasonable doubt, permissible considerations in evaluating the credibility of the witnesses, and the mechanics of the deliberations.

46. Discuss the rules of evidence.

In criminal trials, the rules of evidence control both the content of the evidence and the manner in which it is presented. In federal and most state courts, the rules of evidence are set forth in statutory codes.

The number one rule relating to evidence is that it can be introduced only if it is shown to be relevant, meaning that the attorney must logically connect it to the questions at hand. However, not all relevant evidence is admitted. For example, judges may exclude relevant evidence that is deemed to be overly prejudicial or inflammatory to the emotions.

A second major rule of evidence, the personal knowledge rule, is that witnesses can testify only to things that they personally know through one or more of their own senses.

The major exception to the personal knowledge rule applies to expert witnesses, who are permitted to draw expert conclusions based on facts admitted into evidence. For example, a handwriting expert could testify that in her opinion, a defendant forged a given document, even though the expert did not personally witness the act of forgery.

A third major rule of evidence content excludes certain written and oral statements made out of court. One type of statement that is excluded is a hearsay statement, which is a witness statement that may be offered into evidence for its own truth.

There are many exceptions to the hearsay rule: dying declarations, excited utterances, defendant admissions, statements that show someone's state of mind, written government and business records, and prior inconsistent statements. Most of these exceptions are fairly self-evident, but the state-of-mind exception deserves some explanation. Any out-of-court statements that indicate a person's emotions, beliefs, or intent generally may be admitted despite the fact that they were made out of court if they are otherwise admissible. For example, the defense could impeach a prosecution eyewitness by introducing another witness who heard the eyewitness speaking angrily and jealously about the defendant one day before the alleged crime took place.

Another important rule of evidence content relates to the chain of custody, which applies to tangible evidence (exhibits) introduced into evidence. The general requirement is that before a tangible exhibit can be introduced, the attorney must show that it is what it is purported to be and that it has not been changed in any material way since the alleged crime was committed.

The rules relating to the manner of witness testimony prohibit the attorney from asking on direct examination leading questions that suggest a particular answer. On the other hand, the attorney may ask leading questions on cross-examination. Some other types of questions are completely forbidden, including those that "badger" the witnesses, questions that assume facts not in evidence, questions that misquote witnesses, and questions that ask the witness to speculate or draw improper conclusions,

47. What element is common to the crimes of solicitation, arson, forgery, and burglary?

These crimes all, like crimes in general, involve intent.

48. Discuss the consequences of violating the Sarbanes-Oxley Act of 2002.

In effect, SOX's main effect on criminal liability is not to create new crimes but to increase penalties for crimes such as mail and wire fraud, which were increased from 5 to 20 years in prison, for example. The act does, however, establish criminal liability (10 to 20 years in prison) for corporate officers who either fail to certify or improperly certify the financial statements of their companies. The act also makes it a crime (with 5 years in prison) for an independent auditor not to maintain its working papers from an audit for 5 years.

49. Compare and contrast the role of the forensic accountant in the investigation of a civil matter as compared to a criminal matter. Are there any similarities in the nature of the investigations? Are the goals of the investigation the same? Is there any specific training a forensic accountant would need to conduct the different investigations?

The criminal and civil processes are very similar. Criminal cases may need to involve law enforcement, and in criminal cases the discovery rules favor the defendant much more than they do in civil cases.

50. Suppose the laws of a certain state require the use of either a Subchapter S corporation or a limited partnership in operating an accounting practice. What happens if the U.S. Constitution is amended prohibiting accounting firms from operating as limited partnerships? What options would an existing accounting firm have once the constitution is amended? Would the firm be required to change its method of operation?

The U.S. Constitution is the supreme law of the land, and so state laws mandating accounting firms to operate as limited partnerships would become invalid. Also, accounting firms could no longer operate as limited partnerships even if they wanted to. States would likely introduce new laws to cover the situation.

51. Why are the legal standards different for criminal and civil matters? Separately identify the differences between these two types of matters from the perspectives of the defendant and the plaintiff/prosecutor.

The main difference in legal standards involves the burden of proof required by the prosecutor versus the plaintiff. In criminal cases, the prosecutor must prove guilt beyond a reasonable doubt. On the other hand, plaintiffs in civil cases must prove their cases by a preponderance of the evidence.

52. In the investigation of a criminal or civil matter, how does the forensic accountant obtain the necessary information? Discuss the use of all investigative tools, including the subpoena, the grand jury, and the search warrant.

In criminal cases law enforcement may subpoena information when there is probable cause that a crime has been committed. Subpoenas can sometimes take weeks to obtain the desired information and may or may not require a judge's signature, depending on the jurisdiction. Warrants, on the other hand, are normally signed by a judge and permit authorities to immediately seize evidence. Warrants are normally needed to seize evidence contained in a suspect's home.

Grand juries normally have subpoena power, and the power to summon witnesses and compel them to give testimony under oath.

In civil cases, attorneys typically act as officers of the court and issue subpoenas as part of the discovery process.

53. Why is bail required? Are there any mitigating factors that could decrease the amount of bail? Are there any charges for which there is no bail? What protection does a bail bond seller have?

Bail is a “security deposit” aimed at insuring the defendant will appear for trial. Bail bond sellers typically require collateral (such as a home mortgage) to ensure they can collect the full amount of the bail in the event that the defendant does not appear for trial.

Judges consider many factors in setting bail, including the nature of the crime, the strength of the prosecution’s evidence, and the background of the accused. Judges can waive bail for any charges; the amount of bail is typically at the discretion of the judge.

54. Discuss the constitutional right of a defendant to have a jury trial. Are there instances when a defendant would prefer to have a trial by judge? Would the prosecutor have a preference? Discuss the benefits and detriments of both jury and judge trials from each perspective.

Federal judges are appointed for life and relatively immune to political pressure. Therefore in federal cases a defendant might prefer a trial by judge in a case in which it appears likely the jury will be negatively affected by political pressures.

In some cases, judges might be more capable of handling complex technical issues and thus be preferable for this reason.

Jury trials often favor the defendant, especially in criminal cases in which a unanimous verdict is required, because the defense is able to participate in the jury selection process, and it takes only one dissenting vote to prevent a conviction.

55. Which side has the burden of proof in a trial? Are there instances when the burden lies with the opposite party? Are there instances when the burden lies with both parties?

In general the burden of proof lies with the plaintiff or prosecutor. But as a practical matter, the burden can shift to the defense after a prosecutor or plaintiff puts on a case with very strong evidence. When such happens the defendant will likely lose the case unless he presents a case to the jury or judge.

56. Why does the hearsay rule exist? When are exceptions to the hearsay rule allowed? Is there any consistency between the rule and exceptions; in other words, can you devise an explanation as to why allowing exceptions to the hearsay rule does not violate the rationale for it?

The hearsay rule exists because the defendant has a right to question those who testify against her. It's impossible to cross examine someone who does not appear in court. There are many exceptions to the hearsay rule: dying declarations, excited utterances, defendant admissions, statements that show someone's state of mind, written government and business records, and prior inconsistent statements.

In general, hearsay exceptions do not prevent a defendant from cross examining hearsay witnesses.

57. Discuss different crimes that have arisen because of the use of computers. Is the common theme of these crimes the use of a computer or the underlying act that is involved? Would any of these crimes still exist if accomplished without the use of a computer?

Technology makes certain crimes easier, especially crimes that involved theft of information. Computer networks, including the Internet, make it possible for hackers and unauthorized users to access centralized database and quickly steal large amounts of information. This in turn can lead to crimes such as identity theft.

Computers also tend to make it more difficult to identify the perpetrators of crimes. Computer hackers leave not fingerprints or blown-off safe doors.

Most computer-related crimes would in fact exist without computers, though many of them would be less prevalent.

58. Review each of the following amendments (the Bill of Rights) to the U.S. Constitution. Evaluate each amendment and explain how its provisions would affect both a prosecutor and a defense attorney.

The Bill of Rights, have an especially important impact on civil and criminal procedures. The Fourth Amendment prevents unreasonable searches, the Fifth Amendment sets the right against double jeopardy (being tried twice for the same crime), the right against-self incrimination (testifying against oneself), and the foundation for due process (the right to be given notices of charges or claims and the opportunity to defend against them). The Sixth Amendment grants the right to a speedy trial, a jury, an attorney in criminal cases, to confront accusers, and to compel witnesses to testify. The Seventh Amendment grants the right to a jury trial in certain civil cases; the Eighth Amendment forbids excessive bail and cruel and unusual punishment; the Ninth Amendment states that the set of citizens' rights can be broader than those elaborated in the Constitution. The Tenth Amendment states that whatever authority is not vested in the federal government rests in the states.

59. Research the fraud triangle. Specifically look for its application to accountants (the AICPA Web site is <http://www.aicpa.org>). Discuss specific steps the forensic accountant could take in each area of the triangle to combat fraud.

Pressure: Run credit checks on prospective employees. Employees with credit problems may be under pressure to steal.

Opportunity: This is the one area in which the business has a good deal of control. Strong internal controls and ethics systems tend to reduce opportunities to defraud the company.

Rationalization: Background checks and personality tests may help to identify some who are at higher risk for defrauding the company. Promoting close relationships between the company and employees can help inspire loyalty to the company.

60. Find examples of each of the following as it pertains to the role of a forensic accountant:
- Statutory law.
 - Administrative law.
 - Constitutional law.
 - Case law.

Statutory law: tax laws (IRS Tax Code), criminal statutes
Administrative law: SEC Regulations
Constitutional law: defendants' rights in criminal cases
Case law: applicable law in civil disputes

61. You are studying for your criminal law final. To help you prepare for your exam, you created flashcards identifying different steps in the criminal process. Arrange the cards so they are in the order in which they occur in the criminal process. Attach a brief explanation of each step. The cards in alphabetical order are:

Appeal
Arraignment
Arrest
Closing argument
Discovery
Opening argument
Plea bargain
Pretrial motion
Search warrant
Bill of Rights

Flash cards reordered:

Bill of Rights—pertains to all phases
Search warrant—incriminating information based on probable cause
Arrest—formal process of taking defendant into custody and booking the defendant
Plea bargain—often takes place before any trial
Arraignment—formal charges read to the defendant, bail set, attorney appointed if needed
Discovery—obtaining information about the prosecutor's case
Pretrial motion—motions to exclude evidence, transfer jurisdiction, reduce bail, and so on
Opening argument—beginning of trial
Closing argument—after witnesses have been called
Appeal—after verdict is rendered

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 offense 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 defense.

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 a jury, shall be otherwise reexamined 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 X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.