



TRAFFIC LAW NEWSLETTER March, 2007

THE U.S. CONSTITUTION:

THE BASICS

Last month I told you that I wanted to concentrate on the U.S. Constitution for this year's newsletter. I do not profess to be an expert on Constitutional law.



I do believe that we should all have some knowledge of the Constitution, since it is the foundation of our republic. So let's get started. First, some facts:

The U.S. was originally governed by the Articles of Confederation, written in 1777, adopted by the 13 states in 1781.

Written in 1787, the Constitution was signed on September 17th. But it wasn't until 1788 that it was ratified by the necessary nine states.

The U.S. Constitution was prepared in secret, behind locked doors that were guarded by sentries.

Some of the original framers and many delegates in the state ratifying conventions were very troubled that the original Constitution lacked a description of individual rights. In 1791, Americans added a list of rights to the Constitution. The first ten amendments became known as The Bill of Rights

Of the written national constitutions, the U.S. Constitution is the oldest and shortest.

More than 11,000 amendments have been introduced in Congress. Thirty three have gone to the states to be ratified and twenty seven have received the necessary approval from the states to actually become amendments to the Constitution.

Much of the information in this and future newsletters will be derived from the Cato Institute and from the Constitution Center. The first part of the Constitution is the "PREAMBLE":

"We the people, in order to form a more perfect Union, establish justice, insure Domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution."

All power comes from the people. The power given to the government, however, is strictly limited. The very first sentence, after the Preamble, implies as much, "All legislative powers herein granted shall be vested in a Congress.

You have to remember that before the Constitution, the Founding Fathers wrote the Declaration of Independence. That document states that all men were created equal, and that they were endowed by their Creator with certain rights, the right to Life, Liberty, and the Pursuit of Happiness; thus, no one has rights superior to anyone (continued....)

THE U.S. CONSTITUTION: The Basics (continued)

else. Plus, these rights are natural rights, we are born with these rights, they are not given to us by government. The Founding Fathers believed we institute government only to help us stay secure in the right to life, liberty, and pursuit of happiness.

So, the first lesson is that We, the people, are naturally born with rights to life, liberty, and pursuit to happiness, and we consent to give government authority to help us secure those rights. That consent can be taken from government at any time.

SEPARATION OF POWERS:

Anchored by the first three articles of the Constitution, Congress (legislative), the presidency (executive) and the judiciary (judicial) make up our three branches of government.

By distributing the essential business of government among three separate but interdependent branches, the Constitutional Framers ensured that the principal powers of the government, legislative, executive and judicial, were not concentrated in the hands of any single branch. Allocating governmental authority among three separate branches also prevented the formation of too strong a national government capable of overpowering the individual state governments. The Separation of Powers, by which the executive, legislative, and judicial branches are to be independent and not infringe upon each other's rights and duties, is one of the basic doctrines in the US Constitution.

Nevertheless, governmental powers and responsibilities intentionally overlap. For example, congressional authority to enact laws can be checked by an executive veto, which in turn can be overridden by a two-thirds majority vote in both houses; the President serves as commander-in-chief, but only the Congress has the authority to raise and support an army, and to declare war; the President has the power to appoint all federal judges, ambassadors, and other high government officials, but all appointments must be affirmed by the Senate; and the Supreme Court has final authority to strike down both legislative and presidential acts as unconstitutional. This balancing of power is intended to ensure that no one branch grows too powerful and dominates the national government. (From the Constitutional Center Web site)

The second lesson is: The framers intentionally wanted to limit the power of government, and therefore established a checks and balances approach which keeps any one branch of government from becoming too powerful.

Next month we'll explore the Rule of Law and Federalism.

2007 marks my 11th year of primarily representing defendants accused of serious traffic violations. As the penalties become harsher, the need for an experienced, aggressive attorney becomes more necessary. All of my cases remain by referral only. Thanks so much for those referrals.

NEW DUI LAW PROPOSED

As I told you in the last newsletter, the Georgia Legislature is currently looking at a revised new DUI law, which would stiffen penalties for even first lifetime DUIs and make a 3rd lifetime DUI a felony. As of March 19 the bill has received a favorable status from the judicial subcommittee. In addition to making a 3rd DUI a felony, the new law mandates an interlock ignition device on the car for 120 days even on a first lifetime DUI, and begins minimum sentencing of 96 hours on a 2nd lifetime (instead of the current 5 year look back); So, IF this bill passes, the stakes become very high (and maybe they should be high) for those accused of DUI.



MY 4 SIMPLE RULES IF YOU ARE STOPPED BY POLICE

1. DON'T ADMIT DRINKING (OR ANYTHING ELSE)
2. DON'T DO ANYTHING ON SIDE OF ROAD
3. DO TAKE BREATH TEST IF YOU'VE REALLY HAD 2 DRINKS
4. DON'T TAKE TEST IF MORE THAN 2 DRINKS*



* Refusing to take the State test (at jail or hospital) could result in losing your license for a full year; the only way of getting the license back earlier is to win the DUI; on the other hand, if the officer does not try to suspend the license because of a refusal, the State does not have a blood alcohol level to use against you!

MY 1 SIMPLE RULE FOR PARENTS OF CHILDREN UNDER AGE 21

If your child gets a traffic ticket, regardless of how minor you may think it is, **DO NOT PAY TICKET WITHOUT CALLING ME!!!**

WHAT DO I DO IF STOPPED BY THE POLICE??

For the answer, [see my page on "your legal rights"](#) and [print out a copy](#) to keep in your car!



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Practice dedicated exclusively to defense of those accused of
DUI, serious traffic offenses, and drug offenses.
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