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# Constitutional Law and the Criminal Justice System

Second Edition

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**Karen M. Hess, PhD**

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**WADSWORTH**



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## Foreword

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**Jim Ramstad, Minnesota, 3<sup>rd</sup> District  
U.S. House of Representatives**

More than two centuries ago, our nation's brilliant and visionary founders wrote a truly remarkable document which has withstood the test of time and flourished as an example for new democracies around the world—our Constitution. All Americans should be very proud of our nation's steadfast approach to upholding the guiding principles as written in the Constitution.

Today our 200-plus-year-old Constitution is just as relevant as it was in 1787. The new, second edition of *Constitutional Law and the Criminal Justice System* does a masterful job of explaining why. As this tremendous resource clearly shows, we must give great credit to the visionaries who drafted our Constitution. While you can read the Constitution in a matter of minutes, you will not appreciate its wonders until you examine each word, phrase and clause. That's what *Constitutional Law and the Criminal Justice System* accomplishes so well. One person's interpretation of the Constitution will differ greatly from another's. So, too, does one generation's interpretation differ from another's. That is why the study of constitutional law is a never-ending process. The America of the 21<sup>st</sup> century differs markedly from that of 1787. The challenges America faces today simply didn't exist in earlier times. And the challenges of change are occurring at a faster and faster rate and affecting more and more people because of technology.

As a Member of Congress and former constitutional law professor at American University, I am a firm believer in our Constitution and how it has worked to help all people receive fair and just treatment. I am filled with wonder at how our Constitution still applies so effectively to Americans' lives today.

I highly commend J. Scott Harr and Kären M. Hess for writing this second edition of *Constitutional Law and the Criminal Justice System*. This outstanding text on constitutional law will greatly expand readers' appreciation for our Constitution's amazing durability. The authors have done all Americans a tremendous public service.

**William Finney****St. Paul (Minnesota) Chief of Police**

The authors of this text have accomplished something that was heretofore difficult to achieve: combining the philosophy of a complicated subject with its practical application. The U.S. Constitution, as important as it is to every citizen—especially those employed in the criminal justice system—is not easy to fully grasp. The mountains of case law arising from efforts to interpret the Constitution’s “true meaning” are evidence to this. It can be even more challenging for those working in the field to apply it properly, often with only a split-second to evaluate the circumstances and react.

Young police officers may think that comprehension of the U.S. Constitution is beyond them because they are not lawyers. Others might think the odds are against their being immersed in an action or incident that could evolve to the level of review by the U.S. Supreme Court. They would be wrong on both counts. Criminal justice professionals are expected to know the law and to apply it, as the very next call could result in a pivotal case before the Court. This is part of the excitement and responsibility of our profession.

Professor Harr and Dr. Hess have succeeded at presenting this lofty subject in an understandable, hands-on manner that would, frankly, benefit every American to review. It is apparent they have lived, worked and taught what they write about. Criminal justice professionals, whether newly hired or seasoned cops, correctional officers, probation officers or employed in any other area of our criminal justice system, will particularly benefit from the subject matter of this book and the masterful way it is presented.

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## Preface

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Constitutional law—no other subject affects our daily lives as does the Constitution of the United States. Each of us can go about our lives in a fairly predictable, safe way because of the guarantees and freedoms assured by our Constitution. Within the Constitution lies our guarantee of personal freedom. And yet how many Americans, those who are protected by this document every moment of their lives, know much about it? Most have never read it. Few have studied it. Even fewer take the time to contemplate the implications of this incredible document . . . one many have died for, while others continue to risk their lives to be able to live under. Dare we say most Americans take their Constitution for granted.

What we, the authors of this text, have had personally reinforced as we have written this book is how wonderfully “simply complex” the U.S. Constitution is. It is brief and to the point, but serves as the cornerstone of the most fair and workable legal system to ever exist in any culture. Perhaps more emphasis should be made on the study of the Constitution by young people. It is something we are all affected by, so everyone should know about it. We expect people who are going to drive on public roads to have a driver’s license that shows they know the rules of the road, but few people understand the rules our country has established that we are expected to abide by. Whether taking the course this text is being used for was voluntary or otherwise, you have a unique opportunity that will make you a more informed American.

When you walk into any law library, the sheer volume of material is overwhelming. Yet to remain law, every one of these books must balance ever so delicately on that one other, much smaller, document—the U.S. Constitution. This is a heavy burden for the Constitution to bear, yet it has done so admirably for over two centuries. And all you have to do to see that it continues to do so is to maintain an awareness of current events. The American living law changes before your very eyes. Changing your focus from the comics and sports section to the national, and even local, sections of the newspaper proves the law changes with societal norms.

Perhaps it is the very essence of the Constitution that makes it such a difficult, yet fascinating, work to study. When the document was drafted in 1787, it was never meant to be an all-inclusive compendium of legal answers. It was intended as a basic framework within which all other law must remain. It is such a powerful document that any laws people try to impose on it that do not meet its tenets are simply void. Period. However, the difficulty faced by Rosa Parks and other American heroes who have stood up for their constitutional rights remind us that the process is not quite that easy.

Those drafting the Constitution had a timeless vision. They knew society would change, as would its needs. They realized they could never foresee all the

issues their country would confront (and what issues there are!). But what the framers of our Constitution successfully accomplished was to develop the charters that established our uniquely *American* legal system. The basic organizational structure is created so no one person, royalty or dictator, shall ever have total rule, and so that a handful of precious basic rights are assured. *This* is what the U.S. Constitution is about. It is really quite simple.

So why does a course in constitutional law strike fear into the hearts of students everywhere? The answer is because anything that has worked so well for so many, for so long, *must* have some built-in complexity. And it does—*interpretation*. Just saying “interpretation” makes it all sound simple. It is not. Many different things affect interpretation of the Constitution: the time, societal norms and politics. Let there be no mistake: constitutional interpretation is political. This is why a very powerful act any president wants to have is the chance to carry out is to appoint justices to the U.S. Supreme Court. This text addresses the awesome power the Court has in being the final arbiter of which laws are constitutional and which are not. In this role, the Supreme Court becomes the ultimate maker of law.

In the famous case of *Marbury v. Madison* (1803) the Court considered whether it had the authority to review laws passed by the Congress—and the Court declared that it did. Some argue that by so doing, the U.S. Supreme Court has become the de facto ultimate lawmaking body in our country. So it becomes very important to political leaders to have justices on that bench whose ideologies are in accord with theirs. Politics does play a very real part in interpreting laws.

The Constitution works because those who wrote it more than 200 years ago provided only basic tenets, leaving the challenge of interpreting them as they relate to *current* issues. For example, free speech issues are decidedly different today than two centuries ago—but the basic idea remains. The First and Fourth Amendments still guide government investigations, but such matters as the use of very sophisticated electronic eavesdropping and computer equipment now become an issue.

So it is how people *interpret* the Constitution that can cause confusion. For all who are certain how the Constitution should be read (in their favor, of course), others are just as sure it should be interpreted differently. And today’s issues of abortion, gun control and the environment *beg* for interpretation, flip-flopping back and forth, up and down, through our legal system, always searching for a final interpretation. Most often, the U.S. Supreme Court, as the final arbiter of law, tells us what the interpretation is—until the Court makes a change itself. Or until another case with a slightly different twist than previous cases is decided differently.

Little wonder that when you begin your study of constitutional law frustration looms. “It just does not make sense,” you say. But wait. The Constitution does make sense. What is confusing are the interpretations and arguments people develop to try and make the Constitution work for them. It is more accurate to say it is the people who are confusing, and confused, rather than the document itself. Sometimes, with enough effort, persistence and good legal argument, a decision is reached, and thus law is made that does not always seem to make sense. But when you return to the basic tenets of the Constitution itself, recalling the purpose for which it was drafted, the very sensible basics are there.



It is not the intent of this text to argue positions, advocate legal philosophy or take political positions. We have received lengthy letters from political groups attempting to persuade us to take positions on issues. We don't. As students of the Constitution and as educators, we want to help you develop a working knowledge of the document. From there you can take it where you wish. It is your right and duty to make informed decisions of your own.

Don't get frustrated. If something does not seem to make sense, stop and reexamine it from a different perspective. This is how people successfully argue their points. Do not take everything at face value, and do not take it too seriously. Work with it, think about it, challenge yourself. Develop your understanding of the Constitution a bit at a time. It is far too large a pool of knowledge to leap into without learning the basics first. Ease into it. To do so any other way will result in unnecessary frustration. Soon enough you will find yourself immersed in the subject and as fascinated with it as others are.

This text is unlike most traditional legal works and was prepared this way intentionally. Our teaching experience and feedback from students and educators alike gave us the resounding message that there was a desire for something other than a traditional casebook approach to learning "con law." While there is certainly a place for traditional texts, people with whom we consulted wanted a text that fell between basic civics books and law school-level casebooks. Our text was written in response to what many told us they wanted. It is different, however, and this paradigm shift has not been embraced by the entire academic community. But for those who want an easy, painless journey through the fascinating study of American constitutional law, this text was written for you.

This approach to the study of constitutional law was welcomed by a reviewer of the manuscript who wrote:

To clarify my attitude about this text I am going to start off this review with a point from my past. Some years ago I was in the midst of a civil trial in Denver. During a break I went down to the courthouse law library to check on a point of law. While standing in all my pin-striped splendor reading a casebook, a young, obviously poor woman, dragging a small child, approached me. She asked, "Are you a lawyer?" I responded, "Yes." She then asked, "Can you show me the book that has my rights in it?" I looked around at all the thousands of books in the rather large library and had an awakening. I realized that I could not even begin to explain where to look. I gave her some vague advice about legal aid and hurried from the room. Within a year I quit my city job and started the road to finding how I could teach the law to other-than-driven law students and those who were already sure they knew it. I wish at the time there had been a book like *Constitutional Law and the Criminal Justice System* to refer to that woman.

We have written the text to make the learning as enjoyable and productive as possible. It was written with you, the student, in mind. We have developed a natural progression to help you build your knowledge. Even the layout was done in a way that will make the learning less tedious. You will notice lots of white space to make the reading easier, with enough space to make notes or references as you proceed. Plain language is preferred to legalese. The traditional casebook approach to teaching constitutional law has been abandoned here because it is simply too difficult a way to learn legal basics. Some in academia believe constitutional law must

be taught from casebooks. We take issue with that philosophy. While that approach might work well in law schools, it is our experience that the textbook approach works best for undergraduate students and those in police academies or in training facilities. Court opinions are important, and you will have opportunities in this text to learn how to read them and, in fact, read and brief some.

Finally, be aware that mastering the basic concepts of constitutional law is only the beginning. American law is unique in that it can, and does, change to meet the changing needs of the society it serves. A part of the knowledge you will acquire is how to keep current with this changing, constantly evolving area of law.

We are excited for you as you begin this educational journey. American constitutional law is not a stagnant, boring subject. It is a vital, stimulating topic that is arguably the duty of every American to know . . . and to appreciate.

The authors would like to thank the reviewers of this text for their insightful comments and suggestions: Mitch Chamlin, University of Cincinnati; Bill Kitchens, University of Louisiana–Monroe; Wayne Logan, SUNY–Albany; Milo Miller, Southeast Missouri State; John Wyant, Illinois Central College; Caryl Lynn Segal, University of Texas–Arlington; Gene Straughan, Lewis Clark State College.

Thank you to Nancy Bode, assistant professor at Metropolitan State University, School of Law Enforcement, Criminal Justice and Public Safety, for her assistance in researching changes for this edition. A special thank you to Christine Hess Orthmann for proofreading and indexing and for preparing the Instructor's Manual.

Scott would like to acknowledge more individuals than can be listed. Every student he has taught has taught him even more. Everyone he has worked with has also taught him. And as is always the case, thank you to Henry Wroblewski, his mentor, to whom Scott remains committed to return the favor bestowed upon him by doing the same for others.

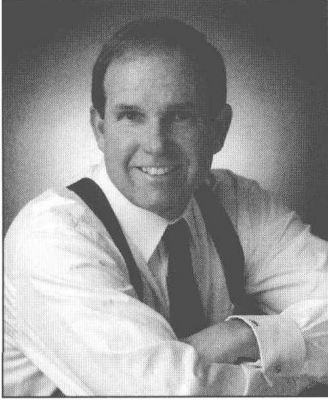
Finally, Scott has a special thank you for his dearest wife, Diane Lacy Harr, daughter Kelsey and son Ricky with whom he has always shared his dreams. And from Kären, a special thank you to husband and best friend Sheldon, and to Christine and Tim—a family whose support and encouragement has been invaluable.

J. Scott Harr  
Kären M. Hess

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## About the Authors

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J. Scott Harr's interest in the law spans over 25 years from varied perspectives. He has been employed as a social worker in youth diversion programs, has proudly served as a police officer for three Twin Cities metropolitan communities and as public safety director of one of these. He has taught classes in all areas of the law for the past 15 years. While attending William Mitchell College of Law in St. Paul, Minnesota, he received the Warren E. Burger Award. He also attended Emmanuel College, Cambridge University (England). Harr has worked as a staff investigator for a preeminent Twin Cities law firm and is a member of the U.S. Supreme Court bar. As such, Harr is among attorneys permitted to practice before the Supreme Court. He is a licensed attorney, police officer and private investigator. He founded Scott Harr Legal Investigations, which has been in business for 15 years. In addition to this text, he has coauthored and contributed to numerous other titles. He is presently employed as resident faculty at Metropolitan State University, School of Law Enforcement, Criminal Justice and Public Safety in Saint Paul, Minnesota, and also teaches at Normandale Community College in Bloomington, Minnesota.



Kären M. Hess holds a PhD in English and in instructional design from the University of Minnesota and a PhD in criminal justice from Pacific Western University. Other Wadsworth Thomson Learning texts Dr. Hess has coauthored are *Criminal Investigation* (Sixth Edition), *Criminal Procedure, Corrections in the 21<sup>st</sup> Century: A Practical Approach*, *Introduction to Law Enforcement and Criminal Justice* (Sixth Edition), *Introduction to Private Security* (Fifth Edition), *Juvenile Justice* (Third Edition), *Management and Supervision in Law Enforcement* (Third Edition), *The Police and the Community: Strategies for the 21<sup>st</sup> Century* (Third Edition), *Police Operations* and *Seeking Employment in Criminal Justice and Related Fields* (Third Edition).

She is a member of the Academy of Criminal Justice Sciences, the American Association of University Women, the American Correctional Association, the American Society for Industrial Security, the American Society for Law Enforcement Trainers, the American Society of Criminologists, the Association for Supervision and Curriculum, the International Association of Chiefs of Police, the Minnesota Association of Chiefs of Police, the National Institute of Justice, the Police Executive Research Forum and the Text and Academic Authors Association, which has just named Dr. Hess to their Council of Fellows.

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