
CONSTITUTIONAL
LAW *for the*
CRIMINAL JUSTICE
PROFESSIONAL

Carl J. Franklin

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Preface

The criminal justice system, like the society it serves, is more diverse today than at any other time in our country's history. Along with that diversity has come a continuing need to monitor and adjust the rules guiding the justice system and those who participate in it. The issues which arise under the Constitution are often the most divisive and far reaching of all legal questions that arise in the criminal justice system. With the stroke of a pen a single court consisting of only nine Justices can change the way an entire profession — in fact an entire society — treats a person accused of a criminal act.

The most dramatic changes in the system have occurred in the last 40 years. The great pendulum of social justice has swung from one extreme to the other in that time. The powers of the police have expanded and contracted with ever-changing rules of procedure adopted under the auspices of the constitutional amendments. New procedural requirements establish protocol for arrest and detention one year and then are attacked as overly restrictive the next. Keeping up with these changes is imperative if our law enforcement professionals are to be an effective deterrent against crime.

Written for the criminal justice professional, this book is a study of the most dramatic and significant areas in constitutional law. It is designed to be both an educational and reference tool providing a single source of information for professionals at all levels of the system. The concise commentary focuses on the precise issues that most affect today's criminal justice professional. As we move ahead in the twenty-first century it is important for those working in the criminal justice professions to understand and properly apply the fundamental principles of our Constitution.

About the Author

Carl J. Franklin is director of the Administration of Justice Department at Cloud County Community College, Concordia, Kansas. He holds a certificate in Police Science from Oklahoma State University, a Bachelor of Arts degree in Law Enforcement Administration from the University of Oklahoma, and a Juris Doctor degree from the University of Oklahoma College of Law. He also has completed advanced graduate study in criminology and criminal justice administration.

Active in criminal justice since the mid-1970s, Dr. Franklin has worked as a police dispatcher, police officer, detective, field supervisor, prosecutor, and professor. He has more than ten years experience as a police officer, and has worked for the University of Oklahoma Police Department (Norman), the Norman (Oklahoma) Police Department, and the Oklahoma City Police Department.

Dr. Franklin has written extensively on police procedure, constitutional law, police civil liability, and public administration. The author of two other books, he is a frequent contributor to several national journals on law and police procedure. His writing has received national recognition from the Nathan Burkan Writing Competition, the *Computer Law Journal*, and the American Society of Composers, Authors and Publishers.

Dr. Franklin is past recipient of the Presidential Award of Honor from the Oklahoma Reserve Law Officers Association and the Governor's Award for Academic Excellence.

Dedication

for my parents

*To my father, who gave to me a love
of reading and a desire for knowledge.*

The smartest man I know.

To my mother, for her belief and support.

*When I said I can do it,
she said, "Yes, you can."*

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Section One

Introduction to Constitutional Law

1 Why is the Constitution So Important?

I. FOUNDATIONS OF THE TERM “CONSTITUTION”

In today's society, we know the Constitution mandates certain conduct for police officers and criminal justice professionals. It is well established that the Constitution is the Supreme Law of the land, and no other statutory provision or court decision can exceed the power of the Constitution. What few of us stop to think about, however, is just why the Constitution is so important to our society and why it works so well.

To understand the Constitution and its application to a modern society, we must first understand the basics of government and society. From a historical standpoint, there have been governments for as long as there has been a known history. In fact, anthropologists have shown that men lived together in small groups long before recorded history. The earliest forms of government, i.e., the control of individual actions to fill a societal need, presumably developed even before the development of writing.

As our social groups expanded and interaction between groups became more common the complications of governance began to emerge. An evolving society meant that the means of governing must evolve as well. In many respects, the two go hand in hand, and without one you are not likely to have the other. Development of what we know as a constitution was far off, but early history indicates the concept was not unknown.

In its simplest form, the nature of any constitution serves two purposes. First, a constitution establishes a form of government and, where appropriate, dictates the means for change to that government. Second, a constitution sets forth specific rights that are extended to members of the society. This is true in the case of the U.S. Constitution. In the first part of the Constitution, the Articles, we see the establishment of the basic forms of government as well as provisions for operation and change. In the later sections of the document, the Amendments, we see the principles upon which our citizens retain rights against their government.

II. DEVELOPMENT OF THE TERM

In Roman and medieval times the word *constitutio*, of which “constitution” is a transliteration, referred to enactments, decrees, or regulations of a ruler or sovereign. In this sense, the word fits a broader definition in describing government mandates.

In Latin, *constituere* means “to cause to stand” or “to fix, set, or make” a thing. Historians suggest that the term was used to describe the acts of the Roman emperor and implied the idea of limited government insofar as they collectively defined the