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CONSTITUTIONAL

LAW AND THE CRIMINAL

JUSTICE SYSTEM ^{5E}

Fifth Edition

Constitutional Law and the Criminal Justice System

J. Scott Harr, JD

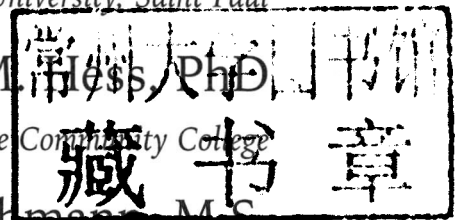
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Constitutional Law and the Criminal Justice System, Fifth Edition

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Characteristics of Presidential Appointees to the United States Supreme Court by Presidential Administration, 1930–2011

<i>Presidential Administration and Justice</i>	<i>Political Party</i>	<i>Home State</i>	<i>Years on Court</i>	<i>Age at Nomination</i>	<i>Number of Years of Previous Judicial Experience</i>
Hoover appointees					
Charles E. Hughes	Republican	New York	1930–1941	67	0
Owens J. Roberts	Republican	Pennsylvania	1930–1945	55	0
Benjamin N. Cardozo	Democrat	New York	1932–1938 ^a	61	18
F. Roosevelt appointees					
Hugo L. Black	Democrat	Alabama	1937–1971 ^a	51	1.5
Stanley F. Reed	Democrat	Kentucky	1938–1957	53	0
Felix Frankfurter	Independent	Massachusetts	1939–1962	56	0
William O. Douglas	Democrat	Connecticut	1939–1975	40	0
Frank Murphy	Democrat	Michigan	1940–1949 ^a	49	7
James F. Byrnes	Democrat	South Carolina	1941–1942	62	0
Harlan Fiske Stone	Republican	New York	1941–1946 ^a	68	0 ^b
Robert H. Jackson	Democrat	New York	1941–1954 ^a	49	0
Wiley B. Rutledge	Democrat	Iowa	1943–1949 ^a	48	4
Truman appointees					
Harold H. Burton	Republican	Ohio	1945–1958	57	0
Fred M. Vinson	Democrat	Kentucky	1946–1953 ^a	56	5
Tom C. Clark	Democrat	Texas	1949–1967	49	0
Sherman Minton	Democrat	Indiana	1949–1956	58	8
Eisenhower appointees					
Earl Warren	Republican	California	1953–1969	62	0
John M. Harlan	Republican	New York	1955–1971	55	1
William J. Brennan	Democrat	New Jersey	1956–1990	50	7
Charles E. Whittaker	Republican	Missouri	1957–1962	56	3
Potter Stewart	Republican	Ohio	1958–1981	43	4
Kennedy appointees					
Byron R. White	Democrat	Colorado	1962–1993	44	0
Arthur J. Goldberg	Democrat	Illinois	1962–1965	54	0

(Continued)

<i>Presidential Administration and Justice</i>	<i>Political Party</i>	<i>Home State</i>	<i>Years on Court</i>	<i>Age at Nomination</i>	<i>Number of Years of Previous Judicial Experience</i>
Johnson appointees					
Abe Fortas	Democrat	Tennessee	1965–1969	55	0
Thurgood Marshall	Democrat	New York	1967–1991	59	4
Nixon appointees					
Warren E. Burger	Republican	Minnesota	1969–1986	61	13
Harry A. Blackmun	Republican	Minnesota	1970–1994	61	11
Lewis F. Powell Jr.	Democrat	Virginia	1971–1987	64	0
William H. Rehnquist	Republican	Arizona	1971–1986	47	0
Ford appointee					
John Paul Stevens	Republican	Illinois	1976–2010	55	5
Reagan appointees					
Sandra Day O'Connor	Republican	Arizona	1981–2006	51	6.5
Antonin Scalia	Republican	Illinois	1986–present	50	4
Anthony Kennedy	Republican	California	1988–present	51	12
George H.W. Bush appointees					
David H. Souter	Republican	New Hampshire	1990–2009	50	13
Clarence Thomas	Republican	Georgia	1991–present	43	1
Clinton appointees					
Ruth Bader Ginsburg	Democrat	New York	1993–present	60	13
Stephen G. Breyer	Democrat	Massachusetts	1994–present	56	14
George W. Bush appointees					
John Roberts ^c	Republican	New York	2005–present	50	2
Samuel Alito	Republican	New Jersey	2006–present	56	16
Obama appointees					
Sonia Sotomayor	Independent	New York	2009–present	55	17
Elena Kagan	Democrat	New York	2010–present	50	0

^aDied in office.

^bPrior to appointment to associate justice.

^cAppointed Chief Justice in 2006 by George W. Bush.

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Constitutional Law and the Criminal Justice System

About the Authors

This text is dedicated to J. Scott Harr (1953–2008), the original lead author of this text whose 30-year career embodied true commitment to the law and allegiance to the U.S. Constitution. Scott was a recipient of the Warren E. Burger Award, given in honor of the former Chief Justice of the U.S. Supreme Court, and a member of the U.S. Supreme Court bar, placing him among attorneys permitted to practice before the Supreme Court. As a police officer, police chief, attorney and educator in criminal justice, Scott Harr's passion for and belief in the law was inspirational to his students, colleagues and the communities in which he served. He is deeply missed.

Kären M. Hess holds a PhD in English and in instructional design from the University of Minnesota and is a nationally recognized educator. Other Cengage Learning texts Dr. Hess has coauthored are *Criminal Investigation* (Ninth Edition), *Criminal Procedure, Corrections in the 21st Century: A Practical Approach*, *Introduction to Law Enforcement and Criminal Justice* (Tenth Edition), *Introduction to Private Security* (Fifth Edition), *Juvenile Justice* (Fifth Edition), *Management and Supervision in Law Enforcement* (Sixth Edition), *Community Policing: Partnerships for Problem Solving* (Sixth Edition), *Police Operations: Theory and Practice* (Fifth Edition) and *Careers in Criminal Justice and Related Fields: From Internship to Promotion* (Sixth Edition).

Hess 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 Police Executive Research Forum and the Text and Academic Authors Association, which has named Dr. Hess to their Council of Fellows.

Christine Hess Orthmann holds an MS in criminal justice from the University of Cincinnati and has been writing and researching in various aspects of criminal justice for more than 20 years. Orthmann is a coauthor of numerous Cengage texts, including *Community Policing: Partnerships for Problem Solving* (Sixth Edition), *Corrections in the Twenty-First Century: A Practical Approach*, *Criminal Investigation* (Ninth Edition), *Introduction to Law Enforcement and Criminal Justice* (Tenth Edition), *Management and Supervision in Law Enforcement* (Sixth Edition) and *Police Operations: Theory and Practice* (Fifth Edition). She is also a major contributor to *Introduction to Private Security* (Fifth Edition), *Juvenile Justice* (Fifth Edition) and *Careers in Criminal Justice and Related Fields: From Internship to Promotion* (Sixth Edition).

Orthmann is a member of the Academy of Criminal Justice Sciences, the American Society of Criminology, the Text and Academic Authors Association and the National Criminal Justice Honor Society (Alpha Phi Sigma). She also serves as a reserve officer with the Rosemount, Minnesota, Police Department.

Preface

Constitutional Law and the Criminal Justice System was written with the Criminal Justice student in mind. We have developed a natural progression to help students build their knowledge of the Constitution and how it directs law enforcement procedures and practices. Plain language is preferred to legalese. Court opinions are important, and students have opportunities in this text to learn how to read them and, in fact, read and brief some. Mastering the basic concepts of Constitutional law is only the beginning, however; American law is unique in that it can, and does, change to meet the changing needs of the society it serves. Thus an important part of the knowledge students will acquire through this text and course is how to keep current with this exciting and evolving area of law.

Organization of the Text

Section I provides a foundation for understanding constitutional law beginning with an historical overview of how the Constitution came to be (Chapter 1). This is followed by an overview of our country's legal system (Chapter 2) and an examination of the Supreme Court of the United States as the final word on any legal issues (Chapter 3). The section concludes with a description of how to research the law (Chapter 4).

Section II focuses on the guarantees of the Constitution to citizens: their civil rights and civil liberties. The discussion first focuses on equal protection under the law and efforts to balance individual, state and federal rights (Chapter 5). The focus then shifts to the basic freedoms guaranteed by the First Amendment (Chapter 6). This section concludes with a discussion of the gun control controversy arising from the Second Amendment (Chapter 7).

Section III describes in depth the constitutional amendment that governs searches and seizures—the Fourth Amendment. It begins with an overview of constitutional searches and seizures as required by the Fourth Amendment (Chapter 8). A detailed look at conducting constitutional seizures is presented next (Chapter 9), followed by an equally detailed look at conducting constitutional searches (Chapter 10).

Section IV examines the three other amendments particularly crucial to those in the criminal justice profession as they apply to citizens' due process rights. The section first discusses due process and obtaining information legally as required by the Fifth Amendment (Chapter 11), followed by citizens' right to counsel and a fair trial as required by the Sixth Amendment (Chapter 12). The section concludes with a discussion of bail, fines and punishment as regulated by the Eighth Amendment (Chapter 13).

The final section of the text provides a discussion of the remaining amendments and how additional amendments might come to be in the future (Chapter 14).

How to Use This Text

Constitutional Law is a carefully structured learning experience. The more actively you participate in it, the greater your learning will be. You will learn and remember more if you first familiarize yourself with the total scope of the subject. Read and think about the table of contents, which provides an outline of the many facets of constitutional law. Then follow these steps for *triple-strength learning* as you study each chapter:

1. Read the objectives at the beginning of the chapter. These are stated as “Do You Know?” questions. Assess your current knowledge of the subject of each question. Examine any preconceptions you may hold. Look at the key terms, and watch for them when they are used.
2. Read the chapter, underlining, highlighting or taking notes—whatever is your preferred study method.
 - a. Pay special attention to all highlighted information:

 - In the supremacy clause, the U.S. Supreme Court declared itself the supreme law of the land.

The key concepts of the text are highlighted in this way and answer the “Do You Know?” questions.
 - b. Pay special attention to all the words in bold print. The key terms of the chapter appear this way the first time they are used.
3. When you have finished reading the chapter, read the summary—your third exposure to the chapter’s key information. Then return to the beginning of the chapter and quiz yourself. Can you answer the “Do You Know?” questions? “Can You Define?” the key terms?
4. Finally, read the Discussion Questions and be prepared to contribute to a class discussion of the ideas presented in the chapter.

By following these steps, you will learn more information, understand it more fully and remember it longer.

A note: The material selected to highlight using the triple-strength learning instructional design includes only the chapter’s key concepts. Although this information is certainly important in that it provides a structural foundation for understanding the topic(s) discussed, you may not simply glance over the “Do You Know?” highlighted boxes and summaries and expect to master the chapter. You are also responsible for reading and understanding the material that surrounds these basics—the “meat” around the bones, so to speak.

New to this Edition

The fifth edition of *Constitutional Law* has been completely updated, with the most recent Supreme Court decisions and references available. Each chapter has been revised and updated as follows:

- **Chapter 1: An Historical Overview** Streamlined discussion and moved content related to federalism to Chapter 14.

- **Chapter 2: An Overview of the U.S. Legal System** Included case examples of standing (*Minnesota v. Carter*, 1998; *Rakas v. Illinois*, 1978) and ripeness (*Goldwater v. Carter*, 1979; *National Park Hospitality Association v. Department of the Interior*, 2003); added *Roper v. Simmons* (2005) in the section on Juvenile Justice System.
- **Chapter 3: The U.S. Supreme Court: The Final Word** The current Supreme Court, with recent addition of Justices Sotomayor and Kagan; two new tables: public opinion of the Supreme Court and public confidence in the Supreme Court; expanded discussion of politics on the bench; enhanced explanation of what it means when the Supreme Court grants certiorari, including the addition of two new cases (*Teague v. Lane*, 1989; *Virginia v. Harris*, 2009).
- **Chapter 4: Researching the Law** Expanded the explanation of why students need to know how to research the law; information about online sources, with a caveat regarding unreliable information on the net; the significance of a legal citation; updated the discussion of dictionaries, including online legal dictionaries; inserted a reminder that case names should always be typed in italics; deleted the Reporter System map and replaced with a sample page from Shepard's; added a Web link: <http://www.supremecourtsus.gov/>; added a legal research problem (boxed feature) examined from start to finish, to illustrate how such a problem may be approached; added new term: *vacate*.
- **Chapter 5: Equal Protection under the Law: Balancing Individual, State and Federal Rights** Expanded the discussion of affirmative action and added reverse discrimination case (*Ricci v. Destefano*, 2009); added a brief explanation of summary judgment; deleted older references and some lower court decisions, replacing with Supreme Court decisions where possible; linked more directly the discussion of selective incorporation (although not merged because of the historical period distinction) with the discussion of *Barron v. Mayor and City Council of Baltimore*; described the change in sentencing for crack versus cocaine; discussed bill requiring collective bargaining for first responders; discussed how new techniques used in criminal justice are raising concerns about individual privacy rights: suspicious activity reports (SARs) and familial DNA testing; added extensive section on the controversial AZ 1070 immigration law and its current status; discussed incorporation of the Second Amendment through *McDonald v. Chicago* (2010); added new boxed feature by contributor Sgt. Jon Kingsbury, JD, called "Constitutional Law in Action" to illustrate how constitutional law comes to life in the daily activities of criminal justice practitioners (multiple scenarios provided in Chapters 5–12); added new "In the News" feature for current events pertaining to constitutional law and the police; added new terms: *disparate impact*, *disparate treatment*, *disparity*, *summary judgment*, *movant*, *SAR* (*suspicious activity report*), *preemption*, 287(g).
- **Chapter 6: The First Amendment: Basic Freedoms** Reminded students that specific crimes arise out of First Amendment issues and protections, such as flag burning, fighting words, hate crime, and so on; expanded the discussions on freedom of speech and the Internet, the history

of religious conflict in the United States and the growing need for tolerance post-9/11 (constitutionally protected rights), right to photograph and the effect of media coverage on criminal investigations; added a brief explanation of how *rational basis* differs from *strict scrutiny*; and added two “Constitutional Law in Action” scenarios. Also added discussions of several cases: *Van Orden v. Perry* (2005), 10 commandments in public parks; *Garcetti v. Ceballos* (2006), government employees and freedom of speech; *Fogel v. Collins* (2008), political rhetoric protected; *Christian Legal Society v. Martinez* (2010), right of a college with an “open door” policy to exclude a student group; *United States v. Stevens* (2010), unconstitutional abridgment of the First Amendment right to freedom of speech; *Holder v. Humanitarian Law Project* (2010), freedom of speech versus national security.

- **Chapter 7: The Second Amendment: The Gun Control Controversy** Provided more information on the gun control debate; included mention of the Columbine and Virginia Tech shootings; added material on concealed weapons, castle laws, *District of Columbia v. Heller* (2008) and *McDonald v. Chicago* (2010); added new terms: *prefatory clause*, *operative clause*, *commerce clause*, *straw purchase*; added “In the News” boxed features and two “Constitutional Law in Action” scenarios.
- **Chapter 8: The Fourth Amendment: An Overview of Constitutional Searches and Seizures** Added examples of “inevitable discovery,” “good faith,” and “harmless error”; added discussion of new cases: *Herring v. United States* (2009), which extended the exclusionary rule; *Virginia v. Moore* (2008) and *Atwater v. City of Lago Vista* (2001), showing how the Fourth Amendment “trumps” state laws; added “In the News” and “Constitutional Law in Action” scenarios.
- **Chapter 9: Conducting Constitutional Seizures** Added reference to the “continuum of contacts”; reorganized cases regarding checkpoints into chronological order (all are still good law); differentiated “hot pursuit” from “fresh pursuit” and a “high speed chase”; updated use of force section with information on TASERS and other less-lethal weapons; added discussion of new cases: *Bryan v. McPherson* (2009), Ninth Circuit decision on use of TASERS; community caretaking doctrine and Fourth Amendment implications; *Arizona v. Johnson* (2009), search incident to an arrest; *Brendlin v. California* (2007), all occupants of a vehicle, including passengers, can challenge the constitutionality of a traffic stop; and *Scott v. Harris* (2007), officers can put fleeing motorists at risk if they are endangering the lives of police and innocent bystander; added discussion of the Gates-Crowley encounter as example of escalating events resulting in an arrest and “In the News” and “Constitutional Law in Action” scenarios.
- **Chapter 10: Conducting Constitutional Searches** Clarified discussion of inventory searches to make it fit within “search” discussion and to address reviewer concern that such searches were not true Fourth Amendment searches; added discussion of cases: *United States v. Giberson* (2008), contraband, search of things not specified in warrant; *United States v. Davis* (2009), “abandoned” DNA and privacy rights; *United States v. Payton* (2009), searching computers; *Illinois v. Rodriguez* (1990), apparent authority to give

third-party consent to search; *Arizona v. Gant* (2009), restricting warrantless search of automobiles; *Safford Unified School District v. Redding* (2009), strip search by school officials; and *City of Ontario v. Quon* (2010), auditing of officer's electronic communication devices; updated referenced cases involving electronic searches and privacy rights: *United States v. Perrine* (2008), *United States v. Finley* (2007), *Guest v. Leis* (2001), *United States v. Andrus* (2007) and *United States v. Smith* (1998); added discussion of work place searches and warrantless GPS tracking; added new terms—*reasonable expectation of privacy* and *qualified immunity*—and “In the News” and “Constitutional Law in Action” scenarios.

■ **Chapter 11: The Fifth Amendment: Obtaining Information**

Legally Discussed interplay between the Fourth and Fifth Amendments; discussed *Rhode Island v. Innis* (1980), which illustrates the second trigger (interrogation) for *Miranda*; reorganized the *Miranda* section into “right to remain silent” and “right to counsel” cases for more fluidity; moved *Harris v. New York* (1971) discussion from Chapter 12 to here because it is a Fifth Amendment *Miranda* violation case; added new cases: *Berghuis v. Thompson* (2010), waiving *Miranda* rights; *Florida v. Powell* (2010), wording of *Miranda*; and *Maryland v. Shatzer* (2010), 14-day-break rule for *Miranda*; added “Constitutional Law in Action” scenarios.

■ **Chapter 12: The Sixth Amendment: Right to Counsel and a Fair Trial**

Added discussion of new cases: *Snyder v. Louisiana* (2008), jury selection; *Montejo v. Louisiana* (2009), questioning without attorney present (overturned *Michigan v. Jackson*); *Melendez-Diaz v. Massachusetts* (2009), right to confront witnesses, specifically lab analysts; *Briscoe v. Virginia* (2010), right to confront witnesses; and *Kansas v. Ventris* (2009), impeaching defendant's testimony; replaced “functional equivalent” with “deliberate elicitation” because this is the correct legal standard when evaluating incriminating statements under *Massiah v. United States*; added term *offense specific* as a distinguishing feature of the Sixth Amendment right to counsel, in contrast to the Fifth Amendment provision that is not offense specific; expanded information on when the right to counsel applies, the Fifth and Sixth Amendment rights to counsel differentiated and *Blockburger v. United States* (1932), *McNeil v. Wisconsin* (1991), *Texas v. Cobb* (2001) and *Wiggins v. Smith* (2003); added “Constitutional Law in Action” scenarios.

■ **Chapter 13: The Eighth Amendment: Bail, Fines and Punishment**

Updated data on death penalty, adding that two states have eliminated it and the cost of the death penalty; added new cases: *Baze v. Rees* (2008), upholding Kentucky's three-prong protocol for execution by lethal injection; and *Graham v. Florida* (2010), Court's categorical ban on life sentence without parole for juvenile convicted of nonhomicide crimes; updated Table 13.1, Sentencing Options.

■ **Chapter 14: The Remaining Amendments and a Return to the Constitution**

Placed the discussion of federalism in a new location; moved content from earlier chapters to here, including cases that dealt with right to privacy, to tighten up text; added a new case: *McDonald v. Chicago* (2010), which incorporates the Second Amendment.

Exploring Further

The text provides an opportunity for you to apply what you have learned or to go into specific areas in greater depth through discussions and Internet assignments. Complete each of these areas as directed by the text or by your instructor. Be prepared to share your findings with the class.

Good learning!

Ancillaries

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Both authors extend a very special thank you to our contributor, Sgt. Jonathon Kingsbury, JD, whose thorough review of the manuscript and active involvement in the revision process are extremely appreciated. Jon’s professional experience as a police officer and supervisor, coupled with his formal education in the law and his position as an instructor in criminal justice, have brought currency and relevance to this new edition, making it our strongest revision yet. His “Constitutional Law in Action” scenarios—a new feature to this edition—are designed to help students better understand the everyday applications of constitutional law to a police officer’s work environment, further enhancing this text’s “feet on the street” perspective.

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