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Book Review [Search and Seizure, A Treatise on the Fourth Amendment]

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BOOK REVIEW

SEARCH AND SEIZURE, A TREATISE ON THE FOURTH AMENDMENT.
By Wayne R. LaFave. St. Paul, Minnesota: West Publishing
Co. 1978. Pp. xli + 2298 in three volumes. Hardbound with
provision for pocket supplements. \$127.50.

*Reviewed by Paul B. Meltzer**

In *Search and Seizure*, Professor Wayne LaFave has written a comprehensive and well-organized three-volume treatise on the fourth amendment that is both useful and scholarly. The author touches upon almost every area where the fourth amendment has been litigated, and dwells on the philosophical issues attending the various rules. In addition to the expected treatment of search warrants, vehicle searches and detention, the treatise includes unexpected subchapters on a variety of matters including expungement of arrest records, injunctions against unlawful searches and arrests by particular police persons, appeal or collateral attack based upon fourth amendment claims and the right to forcibly resist an unlawful arrest.

As a criminal law practitioner, this writer was eager to use LaFave's work as a research tool and, since acquiring the set, has applied it to several interesting search cases. The books were of little immediate value in these instances because, rather than being the sort of resource that is capable of quickly generating points and authorities for a specific motion to suppress, LaFave's treatise provides the reader with a more generalized discussion of the issues. This is true of Professor LaFave's discussion of the rules pertaining to search warrants even though the author devotes approximately one-third of an entire volume to that subject. Moreover, while the treatment of search warrants is very current and even includes a small section on warrants directed at non-suspects such as news gathering organizations, it is not as helpful as Barry Tarlow's monograph on search warrants.¹

Search and Seizure would be particularly helpful to the

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* B.A., 1974, University of California, Berkeley; J.D. Harvard Law School, 1977; Member, State Bar of California. Prior to entering private practice, the author was employed as a Deputy Public Defender for Santa Cruz County, California and as an Assistant Federal Public Defender for the Northern District of California.

1. B. TARLOW, *THE COMPLETE TARLOW ON SEARCH WARRANTS* (1973).

federal court practitioner since the information provided is national in scope and filled with case citations from most of the circuit courts of appeals. In fourth amendment matters that are entirely federal, such as border and airport searches, the LaFave work could be relied upon almost exclusively.

In many other areas as well, the books are surprisingly thorough. For example, a subpart of the chapter on consent explains, in some detail, five different kinds of third-party consent issues emanating from relationships involving real property. This section explores consent by a lessor, a lessee, a cotenant or joint occupant, as well as consents given by guests and hosts.

One important aspect of the work is the inclusion of several subchapters on subjects not comprehensively treated in any other book on the fourth amendment. The discussion of appeal and collateral attack of convictions secured with illegally obtained evidence covers double jeopardy, issues arising out of prosecutors' appeals and the restrictions on habeas corpus following *Stone v. Powell*;² the treatment is much more thorough than that found in Professor Wright's federal courts hornbook³ and is probably the best general treatment of this subject found anywhere.

The author's attention to detail is apparent throughout the three volumes. The previously mentioned subchapter on expungement of records is but one example. There, the author easily could have ended his discussion with a brief treatment of the "pure" fourth amendment cases such as *Sullivan v. Murphy*⁴ where the request for expungement was predicated upon an arrest-without-probable-cause violation. Professor LaFave, however, chose to explore the thorny "penumbra" cases where the fourth amendment is only a part of the cluster of rights that is cryptically called "privacy." The author also takes up the difficult task of articulating, and later justifying, the state's interest in retaining records ensuing from these cases despite the violation.

2. 428 U.S. 465 (1976). The Court held that where a state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the grounds that evidence obtained in an unconstitutional search or seizure was introduced at trial.

Id. at 494-95.

3. C. WRIGHT, LAW OF FEDERAL COURTS § 53 (3d ed. 1976).

4. 478 F.2d 938 (D.C. Cir. 1973).

The work is also very current. For instance, one subchapter on inspection and regulatory search deals with the issues involving fire scenes in the wake of the recent *Michigan v. Tyler*⁵ decision. Although the treatise was published too soon to include *Delaware v. Prouse*⁶ in the subchapter on vehicle use regulations, Professor LaFave does discuss all of the lower court cases and the Supreme Court's standards with regard to license checks and other regulatory stops as enunciated in *Camera v. Municipal Court*.⁷

LaFave is at his very best when discussing the rationales for the various rules that have been formulated to protect fourth amendment rights. Each section of the piece begins with a statement of applicable rule, its rationale and a tracing of the evolution of the rule. A particular standout is the first volume's treatment of the development and current status of the exclusionary rule itself.

It is difficult to determine accurately what the market will be for a three-volume treatise such as *Search and Seizure*. Although most criminal practitioners in California are forced to have *Bell's Compendium*⁸ for their research, the federal practitioner may find that the LaFave work is an essential addition to his or her library. Any criminal lawyer, however, could use this set as a ready-reference to the major federal cases and law review articles in a given area. In summary, *Search and Seizure* represents a major undertaking that has been executed in Professor LaFave's usual scholarly fashion.

5. 436 U.S. 499 (1978).

6. 99 S. Ct. 1391 (1979).

7. 387 U.S. 523 (1967)(housing code provision permitting warrantless inspections violates the fourth amendment).

8. A. BELL, SEARCHES, SEIZURES & BUGGING COMPENDIUM (1979).

