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Review of Search and Seizure: Constitutional and Common Law

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SEARCH AND SEIZURE. By John W. Hall, Jr. New York: The Lawyers Co-Operative Publishing Co., 1982. pp. XXViii, 768. $67.50.

*Reviewed by Ronald J. Bacigal**

Any new publication on search and seizure law must be measured against Professor LaFave's treatise on the fourth amendment.[1] LaFave's treatise is undoubtedly *the* definitive work in the field,[2] but it does have its practical drawbacks. Both its size and its price may be a bit intimidating to the average practitioner.[3] John Hall's recent book, *Search and Seizure,* does not attempt to compete as a learned treatise on the fourth amendment, but more modestly seeks to present search and seizure law comprehensively[4] but concisely enough to provide a ready working tool for practicing attorneys. Viewed in this light, the book is quite useful.

The format of the book facilitates quick access to brief statements on specific aspects of search and seizure law. A typical chapter in the book begins with a three or four paragraph introduction which identifies the subject matter addressed and notes how the subject matter relates to other chapters. There then follows a section dealing with the development of the law, in which the author briefly summarizes major United States Supreme Court cases. The remainder of a typical chapter consists of short sections in which the author organizes the subject into numerous sub-categories. Many chapters conclude with a short discussion of "practice pointers," which advise defense counsel of possible avenues of attack on the particular type of search under consideration, and advise the prosecution of possible justifications or alternative bases for the search. Several chapters also contain a practical and quite elaborate "checklist" to be used in preparing a motion to suppress.

A valuable reference guide, of course, must be substantively accurate.[5] Mr. Hall performs admirably in summarizing Supreme Court cases and in reporting the directions taken by the lower courts. To qualify as a "ready working tool" a book must not only be accurate, but must also be structured to facilitate quick and easy access. Mr. Hall provides such a struc-

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1. LAFAVE, A TREATISE ON THE FOURTH AMENDMENT (West 1978).

2. For a review of LaFave's treatise, see, Bacigal, Book Review, 12 RUT. L.J. 547 (1981).

3. LaFave's treatise is three volumes and over two thousand pages.

4. There is no coverage of electronic eavesdropping, wiretapping or surveillance.

5. I cannot resist pointing out to Mr. Hall that when he cites my articles, he spells my name correctly in the footnotes but incorrectly in the text.

ture by dividing his subject matter into more than 500 sections, each of which addresses a narrow point of law. A quick glance at the table of contents enables the reader to find the section pertinent to his inquiry. The reader can also make use of a very detailed index which directs him to relevant sections. The book does lack a table of United States Supreme Court cases, although many of the individual chapters begin with a bibliography of major cases.

Mr. Hall's writing style is pleasant, and his candor is quite refreshing. When he feels that the Supreme Court has been inconsistent or less than forthright in its opinions, he clearly says so. The recent case of *United States v. Payner*[6] is characterized as "facially contradictory and impossible to reconcile with the deterrence rationale, yet the majority somehow did it."[7] An author who accurately reports the law and speaks his mind is a pleasant change from attempts at total objectivity, which often make dull reading. There are times, however, when law and personal opinion shade into each other, perhaps leaving the unwary reader confused as to what the court has said and what Mr. Hall has said. Consider this statement: "The court at present is following the balancing approach, and a true balancing approach will of necessity often recognize that certain rights cannot be balanced because the government interest cannot outweigh them."[8] When this reviewer read (and reread) that statement he was unsure whether it was Mr. Hall or the Court that had recognized that there exist "certain rights" which cannot be outweighed. Apparently Mr. Hall contends that this is the Court's position, for he goes on to state that *Smith v. Maryland*[9] "lends significant support to this conclusion."[10] But the significant support Mr. Hall finds in *Smith* is dicta in a footnote.[11] The question of whether certain rights limit the operation of the balancing approach is an interesting but unanswered question in fourth amendment jurisprudence.[12] Perhaps this reviewer has misread Mr. Hall's statements in this area, but they are sufficiently ambiguous to confuse other readers. Such occasional mingling of opinion and reporting does not significantly detract from the book so long as the reader takes care to separate the two.

Overall the book fulfills its goal of being a ready working tool for practicing attorneys. It is well written, contains a wealth of material, and is organized to facilitate easy access to specific subject matters. Mr. Hall's book should be a valuable aid to criminal law practitioners.

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6. 447 U.S. 727 (1980).
7. J. HALL, SEARCH AND SEIZURE 611 (1982).
8. *Id.* at 42.
9. 442 U.S. 735 (1979).
10. *See* HALL, *supra* note 7, at 42.
11. Smith v. Maryland, 442 U.S. 735, 740 n. 5 (1979).
12. *See* Bacigal, *The Fourth Amendment in Flux: The Rise and Fall of Probable Cause*, 1979 U. ILL. L.F. 763, 786.