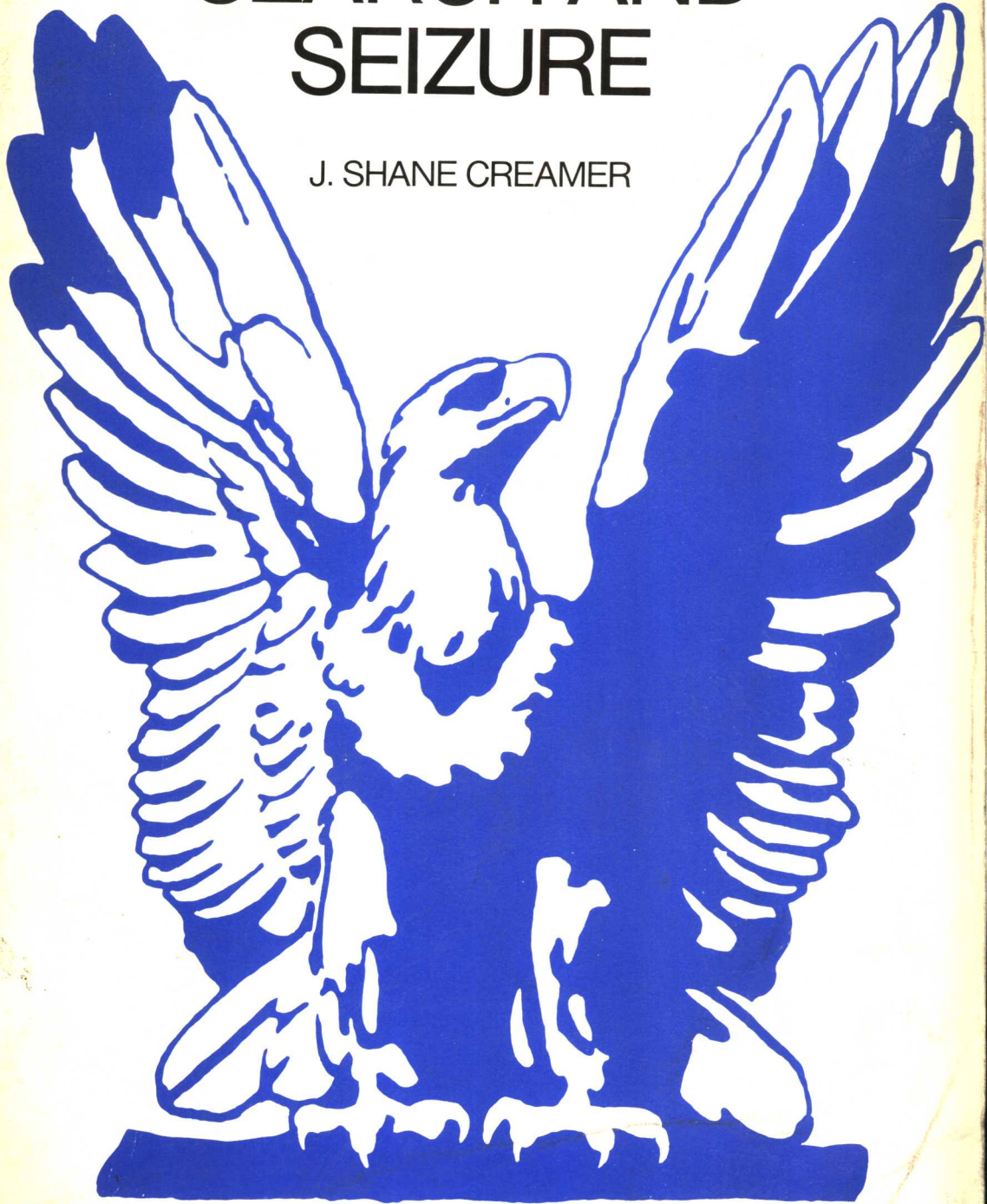


# THE LAW OF ARREST, SEARCH AND SEIZURE

J. SHANE CREAMER



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# Foreword

The business of policing a nation is only now emerging as a true profession. Any profession has trouble enough with the inner pangs of growth and maturation; the police are facing these problems in the midst of social revolutions that have been sweeping through America for the past forty years. Caught in the turbulence of the times, the police are overwhelmed by seemingly insurmountable complexities and a multiplicity of conflicting roles.

We tell the policeman to be a soldier in the war on crime, a diplomat spreading peace and order among man, a social worker helping to mend the nation's injustices and a bridge between the world of the established and the world of the deprived. We tell the policeman to understand and make adjustments for the culture of the poor and the disadvantaged; but in many instances we pay him a salary that places him and his family in the economic ranks of the poor and we deny him the same rights of protest. He works nights one week, days the next. If tired and afraid, he is strictly accountable as a man who is not tired and afraid. If frustrated, he is not to react; if cursed, he is only to smile. He makes an arrest in two minutes and spends three hours typing his own offense reports. He is forced to spend hour upon hour in crowded, dirty, undignified courtrooms, waiting for the two-minute "trial" process. He is told to enforce the gambling laws and he watches the politicians collect contributions from the gamblers. He must arrest chronic alcoholics as criminals and carefully overlook the politically protected afterhours bars. A free cup of coffee is police corruption; the wining and dining of public officials by private contractors is acceptable practice.

Policemen, more than those in any other profession, know the hypocrisy and failures of the political process, the devastating gap between the ideals and the achievements of social justice. The policeman's office is the street. Armed with a nightstick, a revolver and perhaps canisters of disabling gas, he is sent into society's nights of despair and asked to make friends, prevent crime, keep the peace and apprehend all criminals. Man's weaknesses and society's injustices are the doorsteps of the policeman's beat. Somehow, he is to walk among them in strict adherence to the dignity and majesty of the law. The policeman must bring to his task what he cannot see elsewhere in society. This book was written to help him do that.

It is a tragedy of our times that the phrase "law and order" has become to many the antithesis of justice. If a constitution truly expresses the ideals and aspirations of a nation, the police should want to adhere to

its mandates and the people should demand that adherence. For the policeman, there can be no civil disobedience to the Constitution as interpreted by the Supreme Court of the United States. Unfortunately, the complexities of the crime crisis are beclouded by the simplistic and inaccurate notion that recent Court decisions have handcuffed the police and caused increases in the crime rate. Many policemen who berate the Supreme Court have little knowledge of what the decisions actually hold and why such a holding was deemed necessary. Basic misconceptions about the use of police authority are vividly illustrated in the common police complaint that they must utilize Marquis of Queensbury rules against a criminal who gouges, bites, kicks, and scratches. Policemen have expressed to me with great emotion their firm belief that no innocent man ever objected to a short detention on the street for questioning or a car stop accompanied by a superficial search of the automobile. Indeed, some police officials believe that innocent citizens welcome these and other intrusions upon privacy as an indication that the police are doing their job in preventing and controlling crime. The "us vs. them" dichotomy in police thinking about the Supreme Court is reflected in the repeated lament that if only one more Justice had been on "our side," this 5-4 decision or that 5-4 decision would have gone "our way." Belligerence towards the courts breeds a deep frustration and gives birth in alleys, streets, and houses to illegal control procedures and other short-cuts that never receive public or judicial review.

Mr. Creamer's book takes us along the path from police complaints to police compliance. As a former prosecutor and teacher of criminal law and procedure at the Philadelphia Police Academy, the author commands great respect in the police world and appreciates the needs therein. He has written a commonsense exposition of what the revolution in criminal procedure means to the practitioner. Any policeman who reads and studies these pages should become not only a more effective law enforcement officer but also a man who understands as never before the meaning of justice and the bases for our constitutional guarantees. Mr. Creamer explains the historical background of these guarantees and tells in readable form why they must be applied ever so strictly and ever so broadly in today's mass society. I would even venture to guess that after studying the contents of this volume, most policemen will understand, as Justice Cardozo did not, why the criminal must go free because the constable has blundered.

The chapters on arrest, search, and seizure in the first section of the book bring together the general knowledge that any policeman must have. The remainder of the book, with its individual explanations of recent Supreme Court decisions, offers specific descriptions not only of the facts and holdings of the cases but also of their practical implications as the policeman does his job on the street. Prosecutors as well will obtain invaluable assistance from this section of the book.

It is a generally unrecognized fact that a policeman must know the

dictates of criminal procedure better than the prosecutor and the judge. The policeman carries no law books and cannot retreat to the law library. There are no short recesses and continuances in the street. He must react immediately and instinctively in many situations. In these times, evidence is suppressed not because of police action deliberately undertaken to flout the Court's mandates; lack of knowledge, carelessness, and a dearth of policy guidelines and supervision are more often the cause of improper actions. I hope that a book such as this will impress upon police administrators and upon district attorneys the need for carefully developed and fully implemented policy pronouncements in all areas of criminal procedure. Continuous training and guidance will improve the policeman's general attitude towards his work and help him understand and cope with the law's requirements. Inasmuch as most police action involves citizen contact that is not oriented towards prosecution, this training and guidance is the only truly effective source of constant, universal legality in police action. The exclusionary rule just cannot reach the millions of police-citizen encounters undertaken in the peacekeeping and crime-prevention roles of the police.

In 1931, the National Commission on Law Observance and Enforcement stated: "Respect for law, which is the fundamental prerequisite of law observance, hardly can be expected of people in general if the officers charged with enforcement of the law do not set the example of obedience to its precepts."

Knowledge is the first step towards such obedience. That is why this book is so important.

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# Preface

*... Officials of the criminal justice system itself must stop operating, as all too many do, by traditions or by rote. They must reexamine what they do. They must be honest about the system's shortcomings with the public and with themselves. They must be willing ... to make advances.*

PRESIDENT'S CRIME COMMISSION

For more than 15 years, I have had the pleasure of working side by side with federal, state, and local law enforcement officers. During that time I have grown to respect the competence, resourcefulness, and enthusiasm of these dedicated officers.

In this same period, there has been a legal explosion detonated by the Supreme Court of the United States that has virtually turned law enforcement upside down and inside out. Confusion about the Supreme Court's decisions since 1960 has abounded.

The confusion I have seen led me to write this book. I have spent a great deal of time both inside and outside courtrooms untangling the surface confusion created by these decisions. In attempting to solve the legal problems of the prosecution, I have, I hope, gained a practical understanding of the effect these Supreme Court decisions have had on law enforcement.

Contrary to the beliefs of the false prophets who have flourished with the confusion, these Supreme Court decisions are not death blows to law enforcement. They do not handcuff police.

Contrary to popular belief, these decisions are not conflicting or confusing. Even in the transition from the Warren Court to the Burger Court, the basic constitutional principles enunciated by the Warren Court remain. The purpose of these constitutional rulings has been to protect individual rights without sacrificing public safety. On the whole, these decisions have achieved that goal.

For this third edition, I have updated and rewritten the first section of the book and added several important case commentaries on recent Supreme Court decisions of relevance to law enforcement. In many instances, these decisions have developed and clarified the central issues of earlier cases.

An officer who knows about these decisions will be a better officer—a professional officer. He will, in the long run, be more skilled in combating crime and better equipped to offer compassionate help to people who need it.

Criminal justice in the United States desperately needs to advance to meet the complex problems of the 20th century. Law enforcement officers must lead that advance. "One man," as President Kennedy once said, "can make a difference and every man should try."

For law enforcement, the advance toward better justice must begin with greater knowledge of the law. This book is dedicated to assisting that advance.

J. S. C.



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