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Arrest: The Decision to Take a Suspect Into Custody. By Wayne R. LaFave.

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ARREST: The Decision To Take a Suspect Into Custody. By WAYNE R. LAFAVE. Boston: Little, Brown and Company. 1965. Pp. xix, 525. $10.00.

Legal scholars are engaged in a number of studies of the federal criminal law with hopes of paving the way for reform where reform is appropriate.

One of these studies led to the publication of this book, the first volume to be published by the American Bar Foundation in its Survey of the Administration of Criminal Justice. Most of the cost of the study was met by grants from the Ford Foundation.

Professor LaFave and his associates have prepared a thorough study of local arrest policies and practices in Michigan, Wisconsin, and Kansas during the years 1956 and 1957. The purpose is "to identify and describe those aspects of arrest practice which seem to us most significant . . ." (p. xix).

In his treatment of the subject of police practices and attitudes the author presents neither an "exposé" nor a "whitewash" (p. xviii). "The objective is not the indictment of police, prosecutors, or courts for their inadequacies, but a sympathetic understanding of the tasks which they face and particularly the problems which develop as they attempt together to maintain an ongoing system of criminal justice administration" (p. 492).

Although the study attempts to avoid value judgments in what is essentially a factual presentation, some definite conclusions are reached. For example, the author is strongly opposed to the "myth" of full enforcement of the criminal law by the police, *i.e.*, the theory under which officers arrest every technical violator in sight, regardless of circumstance, leaving to prosecutors the exercise of discretion in determining which of the probably guilty should not be prosecuted.

The theory of full enforcement is supported by the principle of equal justice for all. However, the author notes that the exercise of arrest discretion by police is a common practice. For example, vagrants (or their modern statutory equivalents) may be ignored or sent on their way unless the police desire to take them into custody for special investigative purposes.

The exercise of discretion may be caused by lack of adequate

police resources, which may result in the arrest of the most flagrant violators while lesser offenders remain unmolested.

Gambling statutes provide a striking example of the exercise of arrest discretion. These laws are usually enacted with the intention of deterring professional gambling. However, as an American Bar Association commission recognized, the drafting of a model anti-gambling statute is not an easy task:

> The Commission has also had great difficulty with this problem of finding a formula which would exclude the social or casual gambler from prosecution and punishment, yet which would not result in opening a large breach in the statute for the benefit of professional gamblers and their patrons. The Commission recognizes that it is unrealistic to promulgate a law literally aimed at making a criminal offense of the friendly election bet, the private, social card game among friends, etc. Nevertheless, it is imperative to confront the professional gambler with a statutory facade that is wholly devoid of loopholes. (P. 89.)

Consequently, observes the author, the law generally prohibits all gambling for money while the police enforce the statute in "professional" cases only.

Professor LaFave notes that police rarely make arrests for the criminal offense of adultery, and he also observes a wide exercise of discretion in the enforcement of traffic laws:

> The use of a warning rather than making an arrest or issuing a ticket is common in cases involving minor traffic offenses. Indeed, the discretion which the officer has the power to exercise in such cases is so well known to the motoring public that an individual motorist is likely to protest if arrested or given a ticket. (P. 104.)

In Wichita, Kansas, things have gone so far that "the officer really has to 'sell' the ticket, sometimes having to talk to the offender for as much as fifteen minutes" (p. 132, n.24).

Lawyers engaged in tort litigation may well ponder over the following:

> In one study it was concluded that in Berkeley, California, three million traffic violations were occurring daily, and that full enforcement would require 14,000 traffic officers. (P. 105, n.11.)

Discretion is found in the treatment of public intoxication. In some areas a drunk will be arrested only when he constitutes a nuisance or a possible danger to himself or others. Upon discovering an inebriate asleep in a vehicle, the officer may hide the ignition key

where he expects the merrymaker to find it only when sufficiently sober to effectively operate the vehicle!

Public intoxication is a subject of particular importance to the police. Federal Bureau of Investigation statistics show that 40.2% of all arrests in the United States in 1957 were for drunkenness and more than half of all arrests were for either drunkenness or disorderly conduct (p. 446, n.32).

Professor LaFave states that many Detroit inebriates are "golden ruled" by the police. A "G.R.D." is one who is taken into custody for his own safety and released the following morning without prosecution. In Detroit during a six-year period the police "golden ruled" about 46,000 times while prosecuting for drunkenness on nearly 58,000 other occasions (p. 441).

The exercise of discretion also appears to be affected by racial considerations. The author states that a violent assault upon a member of one's own racial group is less likely to receive serious treatment by the law if the offender and victim belong to certain racial minorities. Professor LaFave questions "whether it is desirable social policy to hold the minority group to a lesser standard of accountability than the majority group" (pp. 492-93).

There also is a discussion of the policy of arresting for purposes of harassment rather than prosecution, particularly in cases of professional gamblers, prostitutes, transvestites, and illegal liquor peddlers. In one Detroit precinct, for example, the police made 592 arrests for gambling offenses in six months, and only 24 arrest warrants were sought for prosecution (p. 473).

A subject of much recent discussion—the question of police interrogation of suspects in custody—also is discussed by the author, who appears to favor the position that some form of interrogation of suspects in custody is essential (p. 386).

The lawyer may look forward to the publication of the other volumes in the series, which will deal with Detection of Crime, Prosecution, Adjudication, and Sentencing. The first of these undoubtedly will contain a thorough discussion of the impact of the changes in the law of searches and seizures. One hopes that areas of geographical diversification will be studied. The United States offers a fertile field for law enforcement study, with practices varying widely in different regions. Vermont, Georgia, Texas, California, and

Hawaii might be suggested as areas for comparison of police problems, policies, and attitudes. However, even if limited to three Midwestern states, the studies promise a useful contribution.

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