

Winter 1966

Arrest: The Decision to Take a Suspect Into Custody, by Wayne La Fave

Donald L.A. Kerson
Member, California Bar

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

Recommended Citation

Kerson, Donald L.A. (1966) "Arrest: The Decision to Take a Suspect Into Custody, by Wayne La Fave," *Indiana Law Journal*: Vol. 41 : Iss. 2 , Article 7.

Available at: <https://www.repository.law.indiana.edu/ilj/vol41/iss2/7>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

BOOK REVIEWS

ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY. By Wayne La Fave. Boston: Little Brown & Company. 1965. Pp. xxxiv, 540. \$10.00.

The number of arrests in the United States each year is staggering. During 1964, law enforcement agencies made over four and a half million arrests—roughly one every six seconds.¹ To our society simply in terms of man-hours and dollars, the arrest process is an important social phenomenon deserving concentrated analysis. It is equally important to the individual for whom arrest means bail and lawyers and the stigma attached to a police record.

With the obvious importance of the arrest procedure both to the individual and society it is surprising that until the publication of *Arrest* there has been a marked paucity of empirical studies in this area. Based on extensive field investigations which were conducted in 1956 and 1957 in Michigan, Kansas, and Wisconsin,² this book is the first of a series dealing with the administration of the criminal law to be published by the American Bar Association.³ It is neither a treatise on the law of arrest nor a statistical abstract of arrest procedure; rather, it is a distillation of the issues, practices, and policies underlying the arrest process.

Professor La Fave's study is divided into five major parts entitled, "The Decision To Seek And To Issue An Arrest Warrant," "The Decision Not To Invoke The Criminal Process," "The Decision Whether To Take Immediate Custody," "The Decision To Arrest For Purposes Of Prosecution," and, "The Decision To Arrest For Purposes Other Than Prosecution."

The chapter on the use of arrest warrants forcefully illustrates the hiatus between theory and practice. Arrests are usually made without a warrant, and if a warrant is sought, the magistrate rubber stamps the decision of the police and the public prosecutor.⁴ The beneficial results

1. Department of Justice, F.B.I., Uniform Crime Reports, 1964, pp. 106-107. The author assumes no responsibility for the accuracy of the F.B.I. statistics. See, Sellin, *Crime and Delinquency in the United States*, 339 ANNALS 11 (1962).

2. LA FAVE, *ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY* ix-xiii (1965).

3. The other volumes in preparation are, McINTYRE, TIFFANY & ROTENBERG, *DETECTION OF CRIME*; NEWMAN, *ADJUDICATION*; DAWSON & BULL, *SENTENCING*; MILLER, *PROSECUTION*.

4. LA FAVE, *op. cit. supra* note 2, at 34-36, 51.

of judicial participation in the police decision to search or arrest apparently exist only in appellate decisions.

In "The Decision Whether To Take Immediate Custody," Professor La Fave writes, "the police ordinarily view arrest as the only way in which the [criminal] process is invoked, and they are seldom instructed to the contrary."⁵ The summons, or citation, which is widely used in foreign countries, here has been relegated to minor traffic offenses. The indignities, embarrassment, and expense, both to the suspect and the state, of an arrest with its resultant complaint, booking, confinement, and bail, could at least partially be alleviated by acceptance of the summons procedure. "That a person may be arrested only upon probable cause is no justification if he need not have been arrested at all."⁶ The compelling conclusion from this study is that the use of arrest alternatives has been largely ignored in America.⁷

Arrests for non-prosecution purposes constitute the largest percentage of arrests in this country and chiefly concern the chronic drunk and the ambulatory prostitute. The former is confined over night while he "sleeps it off," and the latter is often arrested only for purposes of examination by the local health department.⁸ This section of *Arrest* is an excellent brief on the failure and inability of the criminal law to cope with these social and economic problems.

In "The Decision To Arrest For Purposes Of Prosecution," a dual function of arrest is discussed. On one hand, some arrests are made on evidence sufficient to charge the suspect and hold him for trial; but on the other, many arrests "are made on evidence which the police believe to be adequate to justify a lawful arrest but insufficient for charging. In these cases further investigation, usually by interrogation, is needed before the prosecutor will charge the suspect."⁹

This section of *Arrest* "raises one of the most vital questions in current criminal justice administration: whether the system ought to be so structured as to make it proper to take custody of a suspect under circumstances in which further investigation must take place before a decision can be made to charge or to release the suspect."¹⁰

In these chapters, La Fave documents the prevailing police belief that individual liberties must succumb to police convenience in the battle

5. *Id.* at 170.

6. Robinson, *Alternatives to Arrest of Lesser Offenses*, 11 CRIME & DELIN. Q. 8, 9 (1965).

7. See Hall, *Police and Law In A Democratic Society*, 28 IND. L.J. 133, 159 (1953).

8. LA FAVE, *op. cit.* *supra* note 2, at 438-90.

9. *Id.* at 227.

10. *Id.* at 228.

against crime. Group arrests for a crime committed by one person,¹¹ vagrancy arrests to investigate a more serious charge,¹² delayed booking,¹³ prolonged in-custody interrogation,¹⁴ and arrests knowingly made without probable cause are only a few of the various infringement on the individual's right to be free from restraint which are made in the name of necessity.

This section is one of the major contributions of *Arrest* and is certain to be cited by the next court which adopts the *McNabb-Mallory* rule. Nonetheless, it is here that a serious shortcoming of this book is revealed—namely, the necessary time gap between legal field study and its publication. The field work for this volume was done over eight years ago, well before the recent Supreme Court decisions on criminal procedure. To some extent La Fave suggests the impact of cases such as *Mapp*¹⁵ and *Wong Sun*¹⁶ on arrest practice, but unfortunately *Escobedo v. Illinois*¹⁷ was too recent to receive more than the briefest attention.

This minor criticism is not intended to and should not detract from the importance of this study. *Arrest* is well written, painstakingly annotated with references to the law and literature current at the time of its publication, and is based on what may be the most exhaustive field study that has been done in this country on this aspect of the administration of criminal justice.

DONALD L. A. KERSON †

LAW AND POLITICS IN THE SUPREME COURT. By Martin Shapiro. New York: The Free Press of Glencoe. 1964. Pp. 364. \$6.95.

Students of Supreme Court decisions often ponder over the following type of questions: Are Supreme Court Justices, in arriving at their deci-

11. *Id.* at 260.

12. *Id.* at 302. In the May 29, 1962, issue of U.S. NEWS & WORLD REPORTS, at page 51, Chief Thomas Cahill of the San Francisco Police is quoted as saying, "The crime rate here went up 17 percent last year. This is partly because of stricter interpretation of the laws, and the new decisions on search and seizure and arrest. Individuals who were subjected to vagrancy arrest or to being questioned now feel more secure. There was a time when those suspicious individuals were locked up for vagrancy. Now you have to have something definite on them."

13. LA FAVE, *op. cit.* *supra* note 2, at 381.

14. *Id.* at 300-318.

15. *Mapp v. Ohio*, 367 U.S. 644 (1961).

16. *Wong Sun v. United States*, 371 U.S. 471 (1963).

17. 378 U.S. 478 (1964).

† Member, California Bar.