South Carolina Law Review

Volume 17 | Issue 4 Article 11

1964

BOOK REVIEWS

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ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY. By Wayne R. LaFave. The Report of the American Bar Foundation's Survey of the Administration of Criminal Justice in the United States. Frank J. Remington, Editor. (Little, Brown and Company, 1965. Pp. 540. $10.00.)

This book is the first in a series of five projected volumes which will cover the major stages in the administration of criminal justice from the time a crime is committed until the offender is finally released from parole supervision. The other volumes will deal with detection of crime, prosecution, adjudication, and sentencing. The scope of the series and the treatment given the topic of arrest in the first volume clearly indicate that this will be an indispensable set of books for both the student and the practitioner of the processes of administering criminal justice.

In a thoughtful article on the needed directions for criminal justice research, Professor Frank Remington pointed out that the chief concern of legal scholarship over the past fifty years has been with the problems which appellate courts have dealt with,[1] and textbooks on the subject have tended to be simply compilations of appellate court opinions. For the past two or three decades, however, there has been an increasing interest in the legislative function of defining and setting out the penalties for criminal conduct, with a number of states adopting substantially revised criminal codes.

As Remington suggested, while these two areas of research are of obvious importance, the picture is incomplete unless attention is given to a third aspect of the criminal law—the processes and the criteria employed in administering the legislative policies. There have been several crime surveys in the past, such as Criminal Justice in Cleveland,[2] the Missouri Crime Survey,[3] the Illinois Crime Survey,[4] and the Wickersham Study,[5] but these seem to have been oriented from the start in the direction of locating documentation for presumed deficiencies in the administration of criminal justice. The best known of the Wickersham

1. Remington, *Criminal Justice Research,* 51 J. CRIM. L., C. & P.S. 7, 8 (1960).
2. *Criminal Justice in Cleveland* (The Cleveland Foundation, 1922).
3. *The Missouri Crime Survey* (The Macmillan Company, 1933).
4. *The Illinois Crime Survey* (The Blakely Printing Company, 1929).
5. *Reports of the National Commission on Law Enforcement* (United States Government Printing Office, 1931).

Reports, for example—Report No. 11, "Lawlessness in Law Enforcement"—indicates by its title the thrust of the researchers' interest. Although the report was made in 1931 and was reputedly based primarily upon appellate decisions and newspaper accounts, it is cited even today in appellate court opinions dealing with problems of police abuses. If one is searching for instances of brutality in police behavior, he can find them. He can also find illustrations of gross inefficiency or spectacular breakdowns in law enforcement. These are matters of concern, of course, and remedial measures should be undertaken. But such studies do not, and have not, shed much light on the over-all patterns of administering criminal justice.

To attempt to fill this gap, the American Bar Foundation in 1956 undertook a pilot study of criminal justice administration in selected cities in Kansas, Michigan, and Wisconsin. Field studies were made by experts in criminal law and administration with the full cooperation of the police involved. The studies lasted for nearly a year and a half, and the material obtained from the more than 2,000 field reports was summarized in a seven volume, mimeographed *Pilot Project Report* in 1957. The pilot project staff simply tried to determine where and how the critical decisions were made in the process of administering criminal justice, without making value judgments as to whether the criteria used and the practices followed were desirable or undesirable. The staff recognized that value positions tend to dictate the kind of data gathered and that advocacy by means of research tends to divert attention from many important issues which should be considered. The resulting *Report* represents an invaluable collection of raw data on the administration of justice in large cities in three states. It is unfortunate that this *Report* has not been published in its entirety and made available for general circulation, because it is a model of objective reporting.

In lieu of such publication, the American Bar Foundation has begun the publication of this five-volume series which will draw heavily from the data collected in the *Report* but will add to it analysis, commentary, and critique. In his book *Arrest*, Professor LaFave, a member of the project staff for the American Bar Foundation study, has taken the basic information on arrest practices from the Pilot Project Report, combined with it the applicable legislation and judicial decisions from the three states of Kansas, Michigan, and Wisconsin, compared these with the relevant federal requirements and United States Supreme Court

decisions, and, finally, has incorporated in liberal footnote references the views and comments regarding the various arrest practices from the more important books and articles on the subject. It is a mine of illustrative material, case citations, and bibliographic references. The most important function served by this volume, however, is to make the reader aware of the very complex nature of the police function and the difficult socio-political decisions which must be made in the proper implementation of law enforcement policy. As the editor points out in the foreword, the jobs of the policeman and the fireman are often compared as though there is little difference in the level of performance required. A reading of *Arrest* should convince the reader that the police function is much more akin to the work of an important administrative agency.

Illustrative of a seldom-treated area of police discretion is the matter of the policeman's decision not to arrest even though a violation of the criminal law occurs in his presence. Full enforcement has so generally been assumed to be the proper policy that only recently has attention been given to whether a policy of selective enforcement can be theoretically or legally supportable. The author argues persuasively that full enforcement is not only impossible to achieve, but may also actually be undesirable when analyzed carefully. He devotes more than a hundred pages to the subject of purposeful nonenforcement, discussing the various justifications for the policy and also the problem of how to control improper exercise of police discretion.

The most serious criticism of the treatment in *Arrest* is that the organization of the material sometimes leads to confusion. In large part the difficulty is inherent in trying to focus attention singly on a given decision-making problem when at the periphery are a number of other related but slightly different problems. Nonetheless, it seems that a tighter and more sequential organization of the material could have been achieved and that it would have led to a clearer understanding of both the decision-making stages and the problems at each stage. It would be helpful, for example, to give the reader a good general treatment of the law of arrest at the outset. Yet this is largely divided into three parts, and is covered in Chapters 1, 11, and 12. And Chapter 10, entitled "Delay in Making an Arrest," discusses the law and practice of using force in a manner much more clearly relevant to the general law of arrest rather than as reasons for delay in making the arrest.

Despite the occasional confusion engendered by the organization, the student of criminal justice administration will find that this book will open up fascinating avenues of inquiry and speculation. Almost every page illustrates a situation which either raises a question about the propriety of a particular practice or suggests a rationale for some substantial revision relative to arrest and detention.

To give a few illustrations of intriguing police practices:

No. 1: "Officers were following an automobile driven by a man suspected of being a narcotics pusher. Lacking evidence for arrest on this charge, they continued to follow the automobile until the driver committed a minor traffic violation. They stopped the car, arrested the driver, searched the car and found narcotics, and then took the driver to the station."[6]

No. 2: "In Detroit, intoxicated persons who are arrested but released without charge after they become sober are called 'golden rule drunks.' Although this procedure finds explicit recognition in the Detroit Police Manual, no criteria for deciding whom to treat as a 'golden rule drunk' are set forth."[7]

No. 3: "Officers responded to a wife's complaint of an assault by her husband. The disturbance had subsided by the time they arrived at the home of the couple. [Thus it was a misdemeanor not committed in the officers' presence, and a warrant would have been necessary to make an arrest.] The wife showed her bruises to the police, but the husband, who appeared to be intoxicated, had little to say. One of the officers suggested to the husband that because it was a warm night the matter could be discussed further outside the house. The husband followed the officer out to the sidewalk, where he was promptly arrested for public intoxication."[8]

Regarding suggested changes in traditional attitudes on the law of arrest and detention, the book should stimulate controversy in a number of areas. On the matter of detention, for example, a traditional approach is to try to establish a maximum time limit between arrest and charging or setting bail. The police practices and objectives indicate that the purpose of the arrest may be a factor which should be considered in deciding this issue. Prostitutes may be arrested in order to subject them to a medical examination. Drunks may be arrested to prevent them from hurt-

6. REMINGTON, ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY 187 (1965).
7. *Id.* at 440-41.
8. *Id.* at 29.

ing themselves. A suspect in a murder case may be arrested for vagrancy to keep him in custody while the investigation of the murder is under way. It is not suggested that these are the *only* factors which should be considered, but the information regarding police practices should point up the fact that the answers to questions concerning appropriate periods of detention cannot be based simply on the availability of a magistrate. In another area it is suggested that the requirement of "probable cause" supporting arrest should be reexamined in the light of the police officer's peculiar expertise. "There is merit in acknowledging that police may develop in the identification of certain kinds of criminal behavior a competence which will result in their having grounds for arrest in some situations in which the layman would lack adequate grounds."[9]

The police feel that there is a wide discrepancy between what the public expects and what the law permits the police to do. The practices illustrated in *Arrest* appear to suggest strongly that in many cases where the courts indicate disapproval of police procedures, alternative and less open methods are substituted to accomplish the purposes which the police feel the public expects them to accomplish. If the courts make evidentiary requirements for conviction for prostitution too difficult, the police may resort to arrest for harassment and then release the prostitutes after medical examinations. If gambling convictions are similarly restricted, the result may be "tip-over" raids in which all gambling paraphernalia are confiscated but no arrests are made. The lesson is clearly pointed up that legislatures and courts must take into account the potential police responses to their rule changes lest the result be a less desirable and less visible practice.[10]

It is through studies such as this that the public, the courts, and the legislatures can be made better acquainted with the critical problems in the administration of criminal justice. And the greater knowledge should lead to better accommodation of the various and often conflicting pressures in this vital area.

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9. *Id.* at 512.

10. See generally Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543-94 (1960).

THE ADDICT AND THE LAW. By Alfred R. Lindesmith. (Indiana University Press, 1965. Pp. 337. $6.50.)

The role of society in relation to personal morality has been undergoing considerable review during the postwar years. The most difficult problems arise where offensive behavior results from heroin, morphine or alcohol addiction, sexual deviation, or compulsive excesses, such as over-smoking or over-eating. Society treats these disorders in varying ways. The approach to drug addiction has been generally to prohibit improper use through the criminal laws. In recent years penalties for narcotic violations have been considerably increased and today improper use of narcotics ranks as one of the most serious crimes in the United States. Among the behavioral disorders, the severity of the punishment for acts resulting from drug addiction is singular.[1]

Dr. Lindesmith's book is a serious challenge to the technique of legal prohibition as a means of controlling the misuse of drugs. He does not claim total objectivity, rather he advocates a persuasive and convincing point of view.[2] He is in sharp disagreement, both practically and philosophically, with present attempts to deal with drug addiction.

On the practical side, Dr. Lindesmith argues that legal prohibition is ineffectual. Law enforcement does not ordinarily reach the real culprits—the higher-ups who make the big money from illicit drug traffic. "With statistical information as bad as it is, the arrest and incarceration of addicts makes it possible for police officials to create the public illusion that the drug traffic is being severely dealt with, whereas, as a matter of fact,

1. Dr. Lindesmith provided the following penalties to the Narcotic Drug Control Act of 1956:

First possession offense	2 to 10 years with probation and parole permitted.
Second possession or first selling offense	Mandatory 5 to 20 years with probation and parole excluded.
Third possession or second selling and subsequent offenses	Mandatory 10 to 40 years with probation and parole excluded.
Sale of heroin to a person under 18 by one over 18	10 years to life with no probation or parole, or death if recommended by a jury.

LINDESMITH, THE ADDICT AND THE LAW 26 (1965).

2. *Id.* at xiii; for other views see ANSLINGER AND TOMPKINS, THE TRAFFIC IN NARCOTICS (1953); AUSUBEL, DRUG ADDICTION (1958); BROWN, THE ENIGMA OF DRUG ADDICTION (1961); CHEIN, THE ROAD TO H: NARCOTICS, DELINQUENCY AND SOCIAL POLICY (1964); ELDRIDGE, NARCOTICS AND THE LAW (1962); KOLB, DRUG ADDICTION: A MEDICAL PROBLEM (1962); SCHUR, CRIME WITHOUT VICTIMS (1965).

it is primarily the victims of the traffic and the small fry who suffer the major punishment."[3] Thus, while the major profits are made by one set of persons, the major risks are taken by others. "While present police tactics are filling jails and prisons with relative minor narcotic offenders, the illicit traffic shows no signs of drying up and is, in fact, probably more profitable than ever for the higher-ups."[4]

The exclusion of the possibility of probation and parole for most narcotic offenses has greatly limited the capacity of the judiciary and prison administration to attempt individual rehabilitation. While the judge's discretion was restricted by the Narcotics Control Act of 1956, the discretion of the police and prosecution was enlarged. "The latter . . . under the system of mandatory penalties now in effect, can reduce charges, place on probation or simply not prosecute at all, thus taking over from the judges the effective power to fix sentences."[5]

Serious custodial problems result from such a penalty policy. The past decade witnessed a sharp increase in the serving of sentences for federal narcotic violations.[6] The addict is likely to have little hope when he compares himself with rapists, murderers, and other types of criminals who are eligible for parole. It is little wonder that over ninety-seven per cent of the federal wardens oppose such a penalty policy.[7]

The Federal Bureau of Narcotics combats the argument that present efforts are ineffectual with a barrage of statistics reflecting a decrease in the number of addicts in the United States. The author spends considerable time in exposing these statistics as being result-oriented and false.[8] The paucity of research in the narcotics field suggests that any conclusions about the number of active addicts would be based upon the most tenuous data. Certainly Dr. Lindesmith illustrates that the Bureau's claims about the effectiveness of their program has been greatly overstated.[9]

In addition to the direct ineffectiveness of a program, it may have collateral consequences which are further injurious to the

3. LINDESMITH, THE ADDICT AND THE LAW 42 (1965).
4. *Id.* at 61.
5. *Id.* at 49.
6. *Id.* at 94.
7. *Id.* at 95.
8. *Id.* at 99-124.
9. For the Federal Bureau of Narcotics figures see *id.* at 105, 115.

social good. One example is national prohibition established by the Volstead Act which undoubtedly contributed to gangsterism and alcoholism during the years it was in effect. The author discusses various social problems that are contributed to by the present approach to drug addiction. The lack of reliable research data is, in part, due to the narcotic user being forced underground by severe penalties. Similarly, the lack of alternatives in treatment can be attributed to the restrictions placed on researchers and doctors by the federal law. Prosecution of doctors who prescribe drugs for addicts places them in an uncertain legal status which prescribes meaningful treatment in many situations.

Another by-product is the major contribution to crime the addict makes. He must pay the pusher an illicit and high price for the fix.

> The number of addicts in a community or a nation is not the only or the most important measure of the problem. For example, if in two communities of equal size each with a thousand drug addicts, the addicts in one community are noncriminals medically supplied, while those in the second community are criminals purchasing illicit drugs on an illicit market and committing crimes to get money to buy expensive illicit drugs, the second community has a serious problem and the other a relatively minor one. In most of the countries of the West, except Canada and the United States, addicts are supplied from medical sources, so that, besides being fewer in number they are also less criminal than our own.[10]

Not only must the addict turn to crime to acquire narcotics, the "very facts of illegality and expensiveness give drugs a symbolic significance and attractiveness to some segments of the population which they would not otherwise have. Taking drugs has become for some persons a group way of life, a means of protest, and a way of revolt against accepted values."[11]

A further social harm is the increased police illegality that results from their enforcement efforts. Addicts are relatively unprotected persons. In addition to being totally dependent upon narcotics, they usually have low social standing. These, combined with the severe penalties of the narcotics laws, give the police

10. *Id.* at 125.

11. *Id.* at 283. A similar reaction resulted from the Volstead Act but on a much wider social plane.

enormous leeway in dealing with them. The addict is usually subject to the police officer's whim.[12] Under such circumstances the use of illegal arrest becomes an accepted procedure.[13] In many instances police are involved in looting, or keeping seized drugs which are subsequently used for illicit purposes.[14] Finally, the system of law enforcement, which depends upon law officers' supplying drugs to addicts who inform, places law enforcement in a preferred position over the medical profession in the treatment of drug addiction.

Implicit in the author's arguments is the injustice of the present approach. It is inhumane for society to so severely punish individuals who are more in need of pity and help than condemnation. The basic degradation of the human being is eloquently captured in several of the author's passages:

> The most effective punishment used to induce addicts to talk and to cooperate is, of course, the withdrawal distress. This is frequently supplemented, depending upon the inclinations of the police officer, by all of the usual third-degree tactics. The low social status of the addict and his characteristic lack of means make the use of rough tactics relatively attractive and safe. Even if the user should appear in court with injuries and bruises no one is likely to take his word for it that he was beaten by the police. The ordinary victim of third-degree practices is helpless enough in seeking remedies; the addict is even more so.[15]

> The policy of police harassment of drug users is extremely injurious and demoralizing in its effects upon the addicts. Indeed, it is probably more injurious to the addict's health than is the taking of drugs itself. The policy of repeated arrests with brief periods of detention means that the user suffers deprivation symptoms while he is held and questioned. He earns his release by giving the police information or is routinely released if he cannot be charged with an offense. Since the period of detention is not ordinarily long enough for withdrawal to be complete, there is no expectation that the released addict will abstain from immediate relapse. Repeated partial withdrawals of this sort in police

12. *Id.* at 35-36.
13. *Id.* at 36-38.
14. *Id.* at 58-61.
15. *Id.* at 47-48.

> lockups without medical attention are bound to have devastating effects upon the user's health and morale. The expression, "murder on the installment plan," might be more appropriately applied to this aspect of the present treatment of addicts than to any other.[16]

Several of the author's points are less impressive. For example, he accepts, without discussion, the notion that personal morality should be of no concern to the criminal laws.[17] This may be true or false (perhaps it should depend upon the socially obnoxious acts in question); but such an assumption loads the dice in the author's favor. If he is really serious, he should fully develop his views. The author seemingly rejects the thesis later by proposing close governmental regulation of narcotic use.

A second confusing area is the author's discussion of the disease concept. Whether behavioral disorders, such as drug addiction, should be considered a disease is a controversial question. The author correctly concludes that the Supreme Court views the status of drug addiction as a disease.[18] Whether or not the disease concept is embraced, most authorities agree that the addict's use of drugs is an act involving little or no volition. Difficulty arises when someone claims automatic consequences result from a disease classification. For example, the author believes that since drug addiction is an established disease, all supervision and treatment of the problem should be turned over to the medical profession. "It is absurd to call addiction a medical matter and then permit policemen, prosecutors, and legislators to specify how it shall be treated."[19] It is little wonder many resist the disease concept when it contains such implications. In reality, the medical profession has little interest in assuming responsibility for the addict.[20] If the responsibility is turned over to the doctors, there is little likelihood that medical cures or recoveries would result. This does not mean that following Dr. Lindesmith's proposals would be unsound. Such a course may result in many social benefits. However, the change in classification from sin to sickness does not imply who should treat or what mode of treat-

16. *Id.* at 38.

17. *Id.* at 20. For an excellent discussion in favor of this view see HART, LAW, LIBERTY AND MORALITY (1963).

18. See the author's discussion of Robinson v. California, 370 U.S. 660 (1962), and Linder v. United States, 268 U.S. 5 (1925). LINDESMITH, THE ADDICT AND THE LAW 12 (1965).

19. *Id.* at 273.

20. This is recognized by the author, see *id.* at 275-76.

ment should be used. The author suggested one major danger to the disease concept when he noted that compulsory treatment often means imprisonment under a different guise.[21]

The author uses addiction programs from foreign countries to show that social evils are minimized wherever physicians are permitted to supply narcotics to addicts. Prohibition in the United States, Canada, Hong Kong, and more recently, Japan, has created or contributed to a serious illicit drug problem. The author patterns his suggestions for reform on the British system.[22]

> The advantages which seem to follow from the British program are numerous and important. Since the demand for narcotics which maintains the illicit traffic stems from addicts, the profits of that traffic are seriously underminded when addicts are largely removed from the market. Legal accessibility to drugs through physicians makes it possible for the addict to avoid the social disgrace and demoralization associated with criminality. The motivation to commit property crimes to pay high illicit prices is removed. The addict is protected from exploitation by peddlers and police alike. Most important of all, perhaps, is the fact that the addict is accorded a decent right to privacy and does not face the constant prospect of seeing the unhappy details of his habit and personal life published on the front pages of the daily newspapers. From the standpoint of costs, the program is also attractive because it involves little expenditure of public funds and does not require a large bureaucracy or many special public institutions. Unlike the program in the United States, the British program has less tendency to draw all addicts and peddlers together to form a self-perpetuating narcotic subculture.[23]

The major impediment to reform is the Federal Bureau of Narcotics.[24] This is documented by the citation of many reports and instances in which the Bureau fights dissenters from their

21. *Id.* at 290-94. *In re* De La O, 28 Cal. Rep. 489, 378 P.2d 793 (1963) a California statute, resulting from the *Robinson* case, was opposed requiring *compulsory hospitalization* of addicts for a period of five years. It is interesting to note that the maximum sentence under the criminal statute voided by *Robinson* was one year.

22. For a full discussion of the British approach see SCHUR, NARCOTIC ADDICTION IN BRITAIN AND AMERICA (1962).

23. LINDESMITH, *supra* note 18, at 169.

24. *Id.* at 243-68.

views about as vigorously as it fights addiction. If the author is only partially correct, the Narcotics Bureau represents bureaucracy at its worst.

The proposed program is to study foreign programs which are medically oriented and to adapt reforms suitable to American needs.[25] The ultimate goal is to place most addicts into the hands of physicians and out of the ambit of law enforcement. Close governmental supervision is suggested, with the public health department having primary responsibility.[26] The author suggests that the program would be similar to what "is presently being applied in the United States to privileged addicts of the upper social strata."[27] The author cited several instances in which the head of the Narcotics Bureau used a medical approach for influential people.[28]

Whenever something happens which is repulsive or threatening to the general public, there is a strong clamor to "do something about it." Unfortunately, real solutions are not easily forthcoming. The United States has been taught in the past that the obvious reaction—use of the criminal laws—often provides a cure which is worse than the disease. Dr. Lindesmith's book poignantly indicates that the lesson has not been learned. We are repeating that unfortunate experience and in the process creating unnecessary personal tragedy. Our approach to drug addiction illustrates that sometimes "doing something about it" is considerably more harmful than "do nothing at all."

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25. *Id.* at 271.
26. *Id.* at 277-79.
27. *Id.* at 302.
28. *Id.* at 279-83.