THE ENFORCEMENT OF THE ILLINOIS FELONY MARIJUANA LAW IN GEORGIA*

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I. INTRODUCTION

We know that values are not static, and that what people label deviant is accordingly subject to change. We know much less, however, about the effects a change in values has on laws which were previously established to deal with the deviant. More particularly, how do officials charged with the enforcement of those laws react? The controversy over marijuana laws presents such an example of law and changing values interacting.[1]

Skolnick[2] has noted that the police often find themselves facing a conflict between two sets of rules they are charged to follow. On the one hand the officer is to follow the rule of law as set forth by the courts and legislature. Thus, when making an arrest an officer is to respect the rights of the individual as articulated by the Constitution and as interpreted by the Supreme Court.[3] On the other hand, the policeman is expected by his superiors to do his job efficiently—*i.e.*, deter crimes and solve crimes already committed. Skolnick summarizes this conflict in the policeman's role as:

> The police in democratic society are required to maintain order and to do so under the rule of law. As functionaries charged with maintaining order, they are part of the bureaucracy. The ideology of democratic bureaucracy emphasizes initiative rather than disciplined adherence to rules and regulations. By contrast, the rule of law emphasizes the rights of individual citizens and constraints upon the initiative of legal officials. This tension between the operational consequences of ideas of order, efficiency, and initiative, on the one hand, and legality, on the other, constitutes the principal problem of police as a democratic legal organization.[4]

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* Supported by a grant from the Russell Sage Program in Law and the Social Sciences at Northwestern University School of Law, with research assistance by Charles Pesek.

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1. *Cf.* A. LINDESMITH, THE ADDICT AND THE LAW 226-27 (1965).

2. J. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY (1966) [hereinafter cited as SKOLNICK].

3. *Cf.* Miranda v. Illinois, 384 U.S. 436 (1966).

4. SKOLNICK 6.

Because there are generally no checks upon police action with respect to victimless crimes, their discretion is broadest here.[5] There is only the word of the suspect as to the policeman's behavior, and no injured party is involved with an interest that police action lead to a conviction by a court.

In victimless crimes such as drug possession the initiative is on the officer to discover the offense. Consequently, when confronted with what they believe are victimless crimes, the police are motivated by at least two possible objectives to conduct a search of the suspect when there are no legal grounds for doing so. First, there is the desire of an officer to satisfy himself of the suspect's guilt—one of the policeman's duties is to solve crimes and it is important that he knows when he has solved one. Secondly, the police might want to conduct an illegal search in the interest of self-protection.

If such is the case, and the police are motivated to make searches and arrests because of the individual initiative Skolnick speaks of, there should be a significant discrepancy between the number of arrests and rate of convictions for victimless crimes such as marijuana possession. Also, the pattern of arrests might be influenced by such secondary cues as race and geographic location of the suspect at the time of arrest.

This study looks at the enforcement of the Illinois marijuana law by the police and court having jurisdiction over the City of Chicago. Data was collected in two separate surveys during the summer of 1969, one of the Chicago Police and the other of the Circuit Court of Cook County Criminal Division's Narcotics Court. It should be noted that the purpose of this study was not to follow the same individuals as they move through the Chicago enforcement system. Rather, the purpose here was to see how the system charged with the enforcement of the marijuana law deals with the violator, and what effect the conflict between law and order has on the enforcers.

At the time of this study, possession of marijuana was punishable as a felony, the penalty for the first offense being a fine of not more than $5,000 and imprisonment in the penitentiary for a period of not less than 2 or more than 10 years.[6] On July 24, 1969, shortly after this study was completed, Illinois enacted an amendment to its Uniform Narcotics Drug Act which makes it only a misdemeanor, punishable by not more

5. E. SCHUR, CRIMES WITHOUT VICTIMS: DEVIANT BEHAVIOR AND PUBLIC POLICY 169 (1965) [hereinafter cited as SCHUR]. "Victimless crimes . . . refers essentially to the willing exchange, among adults, of strongly demanded but legally proscribed goods or services. . . ."

6. ILL. REV. STAT. ch. 38, § 22-40 (Smith-Hurd 1970).

than one year imprisonment or a fine not to exceed $1,500 for the first possession offense if less than 2.5 grams of marijuana are involved.[7]

While Illinois law enforcement officials are bound to enforce the laws of the state uniformly and totally,[8] there is evidence that the basic proscriptive value assumptions underlying the marijuana law are being seriously undermined.[9] Furthermore, the law enforcement apparatus is being heavily taxed in terms of personnel, funds, and time by other societal demands (*i.e.*, rising rates of violent crimes, increasing civil disobedience, riots, etc.). The decisions as to how the marijuana law is to be enforced are premised on the realization that it is not possible to enforce the law against all violators.[10] Thus, selective enforcement of the marijuana law results from conscious decisions by enforcement officials not to invoke the criminal process against certain classes of violators.

II. THE POLICE—AN OVERVIEW

In Chicago, as in most metropolitan police departments, there is a special unit for the enforcement of narcotics laws. The narcotics section is part of the Vice Control Division and has city-wide jurisdiction. It is a relatively autonomous unit, and the section's detectives are not uniformed officers. Teams of these detectives are assigned to cover target areas where a high incidence of drug traffic is known to occur, and as a result these officers become well acquainted with the area they are responsible for.

Informants are a basic method used by the section detectives in their efforts to enforce the narcotics laws. The manner in which informers are acquired can be broadly categorized as:

1. Target area contacts
2. Arrestees
3. Professionals
4. Single incident informers.

Contacts are the most frequent, and generally most fruitful, source of

7. ILL. REV. STAT. ch. 38, § 22-40(5) (Smith-Hurd supp. 1971).

8. ILL. REV. STAT. ch. 125, § 82 (Smith-Hurd 1970).

9. A Gallup poll conducted October 3-6, 1969, found that age was the key factor in the attitudes toward marijuana use—the younger ages being more permissive toward the use of the drug. If all age groups, including teenagers, are taken into account, then an estimated total of 10,000,000 Americans have tried marijuana. And an additional 5,000,000 adults say they would try a marijuana cigaret if it were offered to them. Chicago Sun-Times, October 26, 1969, at 22, col. 1.

10. Note, *Marijuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County*, 15 U.C.L.A. L. REV. 1499, 1539-40 (1968).

information. A good deal of the time an officer spends in his area is devoted to locating, interrogating and following up the leads the contacts give him. It is largely to cultivate these contacts that the teams are assigned to work in a given area known to have a high incidence of drug trafficking.

Arrestees provide a somewhat less fruitful source of information. If an arrestee agrees to provide information, an informal agreement is worked out with the State's Attorney to have the informant "S.O.L.ed" (strike on leave to reinstate) at his preliminary hearing. This is effective with hard drug users, but several officials interviewed indicated that arrestee informants among marijuana users are considerably less cooperative than in the hard drug cases. One narcotics officer suggested that marijuana users tend to have a stronger feeling of obligation toward the group with whom they indulge in its use than do other drug users.

Professional informers are of two general types: "mercenary" and "addict". The mercenary gives information for monetary consideration; usually he is paid for each successful arrest his information leads to. The addict trades information for the favor of not being bothered by the police while he continues to indulge in his drug habit. This type of informant is generally limited to heroin addicts, and was quite prevelant during the 1950's. Narcotics detectives consider the latter their least profitable informant because generally there is an informal arrangement between a group of addicts that while one has enough drugs to continue his habit he will turn in others who can no longer support theirs. Later the addicts he turns in will reciprocate when they can afford their habit and he can not.

Finally, there are the single incident informers. Most of these are not addicts or associated with drugs. A relative or friend might inform in an effort to "help" the drug user, as in the case of a grandmother who informed on her grandson for using LSD. Similarly, an antagonist of the offender might complain after a chance observation.

Closely related to informants are the "plants" and undercover agents. Plants are non-police personnel who participate in a drug incident to assist police in the apprehension. A policeman acting in the capacity of an undercover agent might also be used to infiltrate a drug situation. These two techniques are generally aimed at making controlled sales of drugs to apprehend drug distributors; seldom are they used against the simple user.

A good deal of the narcotics section's time is spent building up cases for the arrests they make. One detective said that the people they arrest

have probably been using drugs for about two years before they are finally picked up. While two years was only conjecture on the detective's part, the important point is that the narcotics section makes the bulk of its arrests only after some form of investigation has been made.

In sharp contrast to the methods employed by the narcotics section are the arrest techniques of other police units which find occasion to enforce narcotics laws. Generally, these units come into contact with offenders through patrols, while investigating other crimes, or in answering complaints. Because these units are charged with enforcing the other parts of the criminal code they employ no conscious, systematic investigation in the apprehension of narcotics violators. Typically, the stopping of a motorist for a traffic violation, complaint of a loud party or frisk of an apprehended criminal may give rise to narcotics being found.

Undoubtedly, many drug offenses encountered by these units are lost as a result of "station adjustments". A station adjustment is the decision of a police officer not to report the offense. One official explained that the burglary and homicide details are probably the worst offenders, the reason being that they do not want their cases in Narcotics Court, but prefer to see them brought into Felony Court. At the other extreme another informant said:

> Traffic stops for marijuana, in my opinion, are usually always bad. The tactical squad usually makes the stop, and they say if the driver didn't use his turn signal for a right turn it is a traffic violation, and if a guy makes a turn with a turn signal then you know something is wrong—so stop him and justify it later.

III. POLICE SURVEY

A. Methods

Data on the Chicago Police Department was collected from two basic sources: (1) a random sample of the arrest records from March 12, 1969, to July 12, 1969, and (2) interviews with officers and detectives. Admittance to the files of the Vice Control Division was obtained by writing to the director of the narcotics section, Sergeant John Flynn. However, access to this information was apparently attributable only to the good graces of the Sergeant. Shortly after this study was completed a new director was appointed, and a request to regain access to the files was denied.

A random sample was obtained by sampling every 7th offender's file

from the daily record of narcotics offenses maintained by the Vice Control Division's narcotics section. The time period was chosen so that it might roughly parallel the time of the court survey, but because of uncontrollable circumstances the time period of the court sample had to be altered. Nevertheless, the time period of the court sample, while somewhat reduced, is included within the time covered by the police survey. From a total of 1,929 arrests made during the survey period, a random sample of 289 arrests were obtained. Data was collected on each arrest as to: sex, age, race, home address, address of arrest, arresting unit, offense charged and whether arrested alone or with a group.

The daily record provided a source of data for all reported narcotics arrests made in the city by the Chicago Police Department. Narcotics enforcement by federal and state agencies is not reported. Data was obtained on both marijuana and other drug offenses under the sampling technique employed.

There are two factors qualifying any statistical inference derived from this data. First, arresting officers might not report all narcotics violations encountered in the execution of their official duties. Second, like any statistical sample, this data is subject to a certain margin of error when used to represent a precise statistical inference about all narcotics arrests.

In addition to the collection of data from records, a number of the officers and detectives of the narcotics section were interviewed. The interviews were conducted in the offices of the Vice Control Division, and were of the open-ended question form.

B. Comparison of General Arrest Profiles, 1951-52 v. 1969

In 1951-52 the composite description of the narcotics offender in Chicago was a Negro male between 20 and 26 years of age, a heroin user, at least half of whom had records of prior arrests.[11] Today such a composite description has undergone some significant changes. Males still strongly dominate, comprising 249 out of the 289 offenders sampled, or 86%, while females make up only 14%. A breakdown along racial lines still shows Negros most prevalent with 62%, while 89 white offenders make up 31% of the sample. Puerto Ricans accounted for 6%, and other groups totaled only 1%.

While sex and racial factors remain similar, the age factor has significantly changed from 1950. The largest single age category is the

11. M. McCormick, The Narcotics Addict 13 (1952) [hereinafter cited as McCormick].

over-30, with 32% of the sample. A shift has taken place in the composite toward older offenders than those revealed by the 1951-52 study. The most frequent drug used has also changed from heroin to marijuana. While the number of arrests for offenses other than narcotics were not obtained, and therefore a valid comparison with the 1951-52 study is not possible, it should be noted that 32% of the sample had prior narcotics records in Chicago.

The most noticeable change between 1951-52 and 1969 is the difference in offenses charged. In the early 1950's, ". . .in terms of formal charges, 528 persons, or approximately 75%, were arrested for violation of the City Code 193.1.13 (disorderly conduct)."[12] The remaining 25% were arrested on other charges including 117 of the 707 offenders who were charged with violations of the state law relative to possession and sale of narcotics in effect at that time.[13] In 1969, less than 2% of the charges were for violation of the City Code "disorderly conduct" ordinance, 193.1, while over 97% were charged with violations of the state's narcotic laws.

C. Offenders and Arresting Units

Data confirms what narcotics section officers readily admit, the majority of drug arrests are made by other units. Only 25%, 70 persons, of the sample were arrested by the narcotics section. When the total arrest figure is broken down by the offenses charged, marijuana violators are found to be the most prevelant with 54%. A further breakdown of the marijuana arrests shows the narcotics section made 19% of these arrests.

The bulk of persons arrested on marijuana charges by units other than the narcotics section, 76%, are non-whites, while only one-third of the marijuana offenders arrested by the narcotics section are non-white. The narcotics section makes fewer arrests, but it concentrates on white offenders. The other units arrest more violators, most of whom are non-white. Thus whites tend to be the objects of the narcotics section's systematic enforcement efforts, while non-whites are generally the objects of the other units' random enforcement. Such a pattern does not appear in any of the other categories of narcotics violators.

Of these non-marijuana drug arrests, Chicago police units other than the narcotics section made 73% of the 123 arrests. For these other

12. *Id.* 15.
13. *Id.* 16.

narcotics violations the narcotics section follows a similar pattern of arrests, non-whites are the major target of the section's efforts.

The significance of the marijuana arrest pattern begins to emerge when the differences in the methods of enforcement of the two types of police units are recalled. Narcotics detectives and court officials interviewed agree that most narcotics arrests made by non-narcotics officers are "bad" and will not result in convictions. The impact of this is as Goldstein has observed, ". . .The precinct officer's lack of interest in carefully developing a narcotics case for prosecution often amounts in effect to a police decision not to enforce but rather to harass."[14]

D. Drug Used (by offense charged)

1. Negro and Puerto Rican Females

In the 1951-52 study, 528 of the 707 narcotics offenders sampled, or claimed to use marijuana.[15] In 1969, marijuana represented over 55% of the 289 drug offenses charged. The only sex-race categories where marijuana did not represent the majority of drug violations are the female Negroes and Puerto Ricans. A breakdown of female Negro violators shows only one-sixth of the narcotics offenses were marijuana. Eleven of the 15 Negro women charged with narcotics offenses other than marijuana, over 73%, were 30 years of age or older. Heroin was the most prevalent drug used, comprising 60% of the non-marijuana narcotic offenses. Nine of the 15 Negro women, the same as the rate of heroin, had prior records of narcotics arrests. The older age shift, prevelance of heroin and rate of prior records suggests that most of the women in this category are probably addicts of the early 50's type described by McCormick, rather than drug experimeters. Marijuana appears strikingly absent from this group, and when it is used it appears to be by older age groups. Young non-white females do not appear to be involved in the use of marijuana as are young non-white males and white youths.

2. Negro Males

Negro males were the largest single group of drug offenders identified. Marijuana was the most prevalent drug used, accounting for 57% of the

14. Goldstein, *Police Discretion Not to Invoke the Criminal Process*, 69 YALE L.J. 564 (1960). Goldstein defines "harassment" as: ". . . the imposition by the police, acting under color of law, of sanctions prior to conviction as a means of ultimate punishment, rather than as a device for the invocation of criminal proceedings." *Id.* 580.

15. MCCORMICK 13.

152 drug offenses charged. As with Negro females, heroin was the most frequent hard drug offense charged comprising 45% of the 64 offenses in this category. Over 60% of the hard drug violators had records, and slightly less than 60% were over 30 years of age. Thus, as with the Negro females, a large number of the hard drug users are apparently left over from the 1950's when heroin was the popular drug.

Negro male marijuana offenders are almost 80% without previous narcotics arrest records, and just over 56% are under 24 years old. While the majority of Negro male marijuana users are under 24 years of age, it should be noted that the rate of marijuana use among the four age groups is almost uniformily distributed. This relatively even age distribution pattern evidences the acceptance and use of marijuana by this group over a long period of time. For Negro males, marijuana use is a multi-generational mode of behavior; by contrast the incidence of hard drug use is directly correlated with an increase in age.

3. Puerto Rican Males

Puerto Rican males comprise a relatively small portion of the total sample, 17 offenders, and among them marijuana was the most prevalent drug, accounting for 60% of the arrests. Of the marijuana arrests, two-thirds had no prior record of narcotics violations, and among the hard drug offenders only one had a record. The age of these offenders is evenly distributed among the four age categories.

4. White Males

Marijuana use among white males is primarily a youthful phenomenon. In contrast with the male Negro age distribution pattern, this reflects the relatively recent introduction into this group of marijuana use. Just over 81% of the white males arrested for marijuana were under 24 years of age, and approximately 84% of them had no prior record of narcotics arrests. Of the total narcotics arrests recorded, marijuana was the most frequent with 38 of the 65 arrests, or 58%.

The pattern of non-marijuana drug arrests in this group is distinct from the previous groups discussed as to the type of drug most frequently used, and the rate of prior narcotics arrests. Over 71% were charged with possession of LSD and stimulants-depressants, while heroin accounted for only slightly over 10% of the hard drug arrests. Approximately 68% had no prior record of a narcotics arrest. Thus, white male hard drug arrests generally do not conform to those of the 1950's variety as do Negro male and female arrests. This would seem to

suggest that the hard drug users in this group are largely young experimenters.

5. White Females

The arrest pattern of this group closely parallels that of the white males. Marijuana is the most frequent offense charged, making up 72% of the total white female arrests. Of these marijuana offenders, 92% were under 24 years of age and 85% had no previous record of narcotics arrests.

Hard drugs play a relatively minor role in the white female pattern. Four of the five white females charged with hard drug offenses were for LSD and stimulants-depressants, no heroin arrests were made. Of the five hard drug arrests four were between 20-24 years of age, and none had a prior record of narcotics arrests. As with the white males, this group appears to be largely young experimenters rather than the type of addict described in 1951-52.

E. Non-Narcotics Charges

In the 1951-52 study, 528 of the 707 narcotics offenders sampled, or approximately 75%, were arrested on charges of disorderly conduct as defined in the Chicago City Code 193.1. The remaining 25% were charged with violation of the state narcotics laws.[16] In 1969, just over 3% of the total narcotics arrest sampled were charged with violating City Code 193.1, or City Code 192.1 (patron of a disorderly house).

Chicago Police use of 193.1 has radically changed during the 17 year interim between the two studies. The most prevalent charge for narcotics violations in the early 1950's has been relegated to the function of giving an offender a final warning before narcotics charges are pressed. As one narcotics section detective explained:

> We make raids at parties and on narcotics flats. Usually we find a couple of users we know real well. Then there are usually a bunch of kids in the place. Well, we send the kids home. I keep my own file with the kids names—nothing goes on any official record.
>
> Well, after a couple of busts you start to see the same kids again. I mean you try to give them a break but some of them are just already gone. So we bring them in on a 193.1 to get them in the official files and scare them. If we see the kid in a bust after that it's all over, he gets booked on a narcotics charge.

16. *Id.* 16.

One explanation for this decline in disorderly conduct charges may be the new disorderly ordinance, enacted to replace the one in effect in 1951-52 after it was declared unconstitutional in *Landry v. Daley*.[17] The case arose out of a 1967 civil rights demonstration in Chicago for which some of the plaintiffs faced criminal prosecution before the Chicago Municipal Court under 193.1. In its opinion the court said, "This ordinance has to be one of the most charming grabbags of criminal prohibitions ever assembled."[18]

The former ordinance provided that "All persons who are known to be narcotics addicts . . . who are found . . . loitering about any . . . public place, and who are unable to give a reasonable excuse for being so found . . ." were guilty of disorderly conduct. The ordinance provided police with an easy and effective method of clearing the streets of narcotics violators. The violator did not need to be under the influence or in possession of narcotics. Besides loitering without being able to give a reasonable excuse, all that was required was that the individual be a "known" addict. The ordinance provided that such "knowledge" could be established "either by their confession or otherwise." Thus, the problem of evidence obtained in an illegal search of the person who was shaken down before being arrested was avoided. No evidence of narcotics possession was required!

The new 193 ordinance requires that the offender "appears in any public place manifestly under the influence of . . . narcotics or other drugs, not therapeutically administered, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity. . . ." Besides increasing the burden of proof, this new ordinance raises problems of enforcement in so far as it may be invalidated by *People v. Davis*.[19] That case held provisions of the Illinois Uniform Narcotic Drug Act invalid to the extent that they make it a criminal offense to be under the influence of narcotic drugs.[20] To avoid the *People v. Davis* problem the ordinance must be narrowly construed, and cannot be applied in the broad manner its predecessor was. Where an officer might have employed the old 193 ordinance, he is now faced with the alternative of arresting a person on a narcotics charge that probably will not stand up in court, or letting him remain on the loose.

17. 280 F. Supp. 968 (1968).
18. *Id.* at 969.
19. 27 Ill. 2d 57, 188 N.E.2d 225 (1963).
20. This decision was based on the ruling in Robinson v. California, 370 U.S. 660 (1962).

The police interviewed expressed concern over the problems posed by arrests made as a result of street stops. One officer said:

> Most of the time you're driving around and you see a guy acting strange or ducking into a doorway or throwing something away—so you stop him. Well, if you search him and find he has got something (narcotics) you know they are probably going to throw the case out of court because of the search.
>
> Some of the guys in the tactical squad have tried getting around the problem by just reaching into the guy's pocket and dropping the stuff on the ground. Then they say "Oops, you dropped it!" The courts are wise to that, but it shows you what a problem it is.

Given the police recognition of these problems, such an arrest may be an act of harassment rather than law enforcement. As Goldstein points out, ". . . the characteristics of harassment are efforts to annoy certain 'offenders' both by temporarily detaining or arresting them without any intention to seek prosecution. . . ."[21]

F. The Geography of Arrests

The geographic distribution of narcotics arrests is not uniform throughout the city, rather a clustered pattern prevails, leaving large sections of Chicago void of any narcotics arrests.[22] At least two alternative explanations can account for this cluster pattern of arrests. It might simply be because narcotics violators are limited to specific areas, or the enforcement of narcotics laws might be more vigoriously pursued in some areas of the city than in others. The increased use of drugs by white youths, a proposition every person interviewed agreed to, seems to cast serious doubts on the validity of the former explanation.

No distinct pattern of arrests for marijuana offenses appears separate from that of other narcotics arrests, rather the general geographical pattern is one of decreasing incidents as one moves from the downtown area toward the suburbs. The suburban fringes of the city show little evidence of narcotics enforcement.[23] The Near-North downtown area, West side extending along Monroe Street to the city limits and South side west of the Chicago Skyway account for the bulk of arrests made. The reasons for the increased rates of offenses on the South and West sides can probably be attributed to the industrial and commercial

21. Goldstein, *Police Discretion Not to Invoke the Criminal Process*, 69 YALE L.J. 564, 580 (1960).

22. *See* map *infra*.

23. The two exceptions to this pattern being the predominately black West and South sides.

subcenters of the central city these communities represent, and to their being the population centers of the black community in Chicago.[24]

To attempt to gain further insight into the geographical distribution of arrests, the racial make-up of the four 1960 census tracts with high arrest rates were compared with four with no arrests. None of the four tracts which had no offenders contained over 1% non-white population.[25] Of the four tracts with high arrest rates, two were predominately white and two predominately non-white.[26] Because of the date of the census data, conclusions drawn from this comparison must necessarily be of a general nature. One point does emerge fairly clearly however, narcotics arrests tend to occur in central city areas with a significant non-white population, while more suburban areas with little or no non-white population show a marked absence of narcotics arrests.

The geographic dispersion of narcotics offenses generally follows the pattern of the index offenses as reported by the F.B.I.[27] The rates being highest in the central city district and decreasing in proportion with the distance traveled from it. This pattern of decreasing offenses radiating out from the central city area appears to be a long established one. A study conducted in 1931 by the Institute of Juvenile Research in Chicago summarized the pattern of delinquency in the city at that time as:

1.) Juvenile delinquents are not distributed uniformly over the City of

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24. Schur notes:

> Recent studies in New York, Chicago, Detroit, and other large cities show a persistent and clear relationship between ecological structure and the distribution of known addicts. Addiction is invariably found to be concentrated in those areas of the city that are most dilapidated and overcrowded, inhabited by persons of low socioeconomic and minority-group status, and characterized by higher rates of other types of social pathology.

SCHUR 127.

25. *See* U.S. DEPARTMENT OF COMMERCE, U.S. CENSUS OF POPULATION AND HOUSING: CENSUS TRACTS CHICAGO ILLINOIS (1960). Boundaries of the four tracts are:

Tract 138: Howard-Touhy-Ozark-Harlem Streets
Tract 165: Chicago River-Lawrence-Pulaski-Central Park Streets
Tract 711: 115th-123rd-Ashland-Halsted Streets
Tract 834: 63rd-65th-Central-Cicero Streets.

26. *Id.* Boundaries of the four tracts are:

Tract 129: Wells-Dearborn-Division-Chicago Streets
Tract 135: Wells-Dearborn-Chicago Streets-Chicago River
Tract 383: Eisenhower Exp. Way-Warren-Western-Oakley Streets
Tract 585: South Parkway-St. Lawrence-43rd-47th Streets.

27. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 25-26 (1967). Index crimes against the person: aggravated assault, robbery, forcible rape, willful homicide. Index crimes against property: burglary, motor vehicle theft, grand larceny.

> Chicago but tend to be concentrated in areas adjacent to the central business district and heavy industrial areas.
> 2.) There are wide variations in the rates of delinquents between areas in Chicago.
> 3.) The rates of delinquency tend to vary inversely with the distance from the center of the city.[28]

Two irregularities were found in the distribution of delinquency rates in Chicago, the South and West sides.[29] This pattern of juvenile offenses continues today, with basically the same geographic areas registering high rates of juvenile offenses.[30]

The areas of juvenile offenders correspond closely to the pattern of index offenses, and the distribution of narcotics arrests. Indeed, the conclusions of the 1931 study might well be used to describe the pattern of narcotics arrests in 1969. This would suggest that while groups engaging in criminal activities have changed, the area of enforcement has remained constant.

Narcotics offenders generally are arrested at places other than their homes. Among marijuana offenders, only Negro females showed a higher rate of arrest at home than at a different location. In hard drug arrests, females generally showed a higher rate of arrest at home, while males were more often arrested outside their homes. The non-narcotics arrests were predominatly made at addresses other than the arrestee's home. Of the 289 arrestees in the sample, 69% were arrested alone; but white offenders were as likely to be arrested in a group as alone. Among the white male marijuana offenders, 53% of the 38 were arrested in a group. The greater likelihood of a white offender to be arrested in a group is possibly explained by a pattern of enforcement more likely to involve raids on parties and drug flats by the narcotics section, while non-white violators are more likely to be picked up on the street by precinct units.

Narcotics court Judge Kenneth Wendt has estimated that 90% of all suburban marijuana cases are "adjudicated" in the police station, and a Willimette police official has agreed.[31] The geographic pattern of enforcement in Chicago suggests that such "adjudication" does not stop at the city limits, but manifests itself throughout the suburban parts of the city with enforcement efforts concentrated on the central city areas.

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28. *Id.* 61.
29. *Id.* 69.
30. *Id.*
31. Chicago Today, September 23, 1969, at 39, col. 3.

IV. COURT SURVEY

A. Methods

Data on the Circuit Court of Cook County Criminal Division's Narcotics Court was collected from two basic sources: (1) An observer sat in on the court's proceedings from June 9, 1969 to July 7, 1969, recording each case disposed of by the court, and (2) interviews were conducted with Judge Wendt, the State's Attorneys and various defense attorneys appearing before the court. Only those cases disposed of by the court were recorded by the observer, continuances were not included.[32] Data was collected on each case as to: sex, race, offense, disposition on prosecution, basis of dismissal, disposition on bench trial and sentencing of those found guilty. In this manner 113 cases were recorded, and grouped as marijuana or hard drug cases. The only drug offenses punishable as misdemeanors at the time of this survey were possession of dangerous drugs[33] and violation of the Hypodermic Syringes and Needles Act.[34]

In the Cook County court system any case involving narcotics is brought before the Narcotics Court for a preliminary hearing, and most of the cases are disposed of with a bench trial before the judge. Thus, Narcotics Court provides a central source of data on how the judicial machinery serving Chicago is enforcing the Illinois marijuana law.

There are three factors qualifying any statistical inference derived from this data. First, arresting officers may not report all narcotics violations encountered in the execution of their official duties. Second, the shortness of the sampling period and relatively small size of the sample increases the possible margin of error, and any seasonal changes that may affect the sample throughout the year are necessarily excluded. Third, like any statistical sample, these data are subject to a certain margin of error when used to represent a precise statistical inference about all narcotics arrests.

In addition to the collection of data from case observations, a series of interviews were conducted. The interviewing was conducted in an open-ended form. Judge Wendt was especially helpful in allowing the observer to sit at the bench with him and accompany him into chambers when possible. It was because of Judge Wendt's cooperation that an in-court

32. For a detailed study of the role continuances play in the administration of justice in the Cook County Criminal Courts *see* Banfield & Anderson, *Continuances in the Cook County Criminal Courts*, 35 U. CHI. L. REV. 259 (1968).

33. ILL. REV. STAT. ch. 91½, § 120. 3-2 (Smith-Hurd supp. 1971).

34. ILL. REV. STAT. ch. 38, § 22-53 (Smith-Hurd 1970).

observer was employed rather than extracting data from court records. While fewer cases could be collected in this manner, it provided an opportunity to observe many variables which records would not show.

B. Narcotics Court

Narcotics Court is located in the Cook County Criminal Courts building on the City's Southwest side. The courtroom is located on the ground floor of the building, and at first glance it gives one the impression of being a busy railway depot waiting room rather than a court of law. The judge's bench is in the front right corner of the room, and a podium is set up in front of it for the State's Attorneys. A number of uniformed bailiffs and Cook County Sheriff's deputies mill about the front of the court, while attorneys and police occupy the first three rows of benches waiting for cases to be called. On the rest of the wooden benches sit families, friends, and defendants who are out on bail. For defendants who cannot afford to make bail, there is a small holding cell block off the side of the courtroom. A constant murmur is heard throughout the room. As Judge Wendt officiates he is often interrupted and called into his chambers to speak with an attorney or court official. It is into this court that narcotics defendants are brought, and for most it is here where they will have their day in court.

Judge Wendt has a rule in his court that he will not hear a bench trial for any defendant who has been convicted of more than two felonies, has been involved in a crime of violence, or is having sales charges pressed against him. All of these are removed to the grand jury for indictment proceedings. The docket of the court is a heavy one, and from the time court convenes until it adjourns the courtroom remains full.

C. Disposition of Cases

Charges involving marijuana accounted for 60% of the offenses brought before the court, just over 4% of these were for sales. Heroin was the most frequent hard drug offense, making up 23% of the 113 cases sampled. Fifty-five percent of all cases were disposed of by dismissal, and of the 62 dismissals granted 68% were for marijuana charges. Seventy-one percent of the 28 white marijuana defendants had their charges dismissed, while 56% of the 39 non-white marijuana defendants had charges dismissed against them. Thus, white marijuana defendants showed a slightly higher rate of dismissal than did non-whites. A similar pattern of dismissals appears in the hard drug cases where five of the nine white defendants were dismissed while 41% of the 35 non-white

defendants were dismissed. One-half of all the 62 dismissals granted were on the grounds of suppression of evidence. In the 42 marijuana cases 52% were dismissed as a result of evidence suppression, while of the 20 hard drug cases dismissed 45% were grounded on evidence suppression.

One possible explanation for the difference between the rates of dismissal of white and non-white defendants might be the type of counsel representing them. Unfortunately, no statistical data was obtained as to the rates of private and public defense counsel appearing before the court. However, the court observer did record an impression in his notes that white defendants were more likely to be represented by private counsel, while non-whites relied on the public defender.[35] At the time of this study, the Chicago Public Defender's Office had only twenty-seven attorneys on its staff to handle all of the indigent cases in Cook County. The public defender assigned to Narcotics Court commented in an interview that his case load was so heavy he often did not get to review a case until it was actually before the bench![36]

Thirty-five of all the cases were tried by the bench, and 74% of these resulted in findings of guilty. None of the white marijuana defendants were tried before the bench, and of the 13 non-white marijuana defendants given a bench trial, 11 were found guilty. Four white hard drug defendants were given bench trials, and two were found guilty, while thirteen of the 18 non-white hard drug defendants were found guilty after a bench trial. Thus, 86% of all the bench trials involved non-whites, and 74% of them were found guilty. No doubt plea bargaining played a large role in determining the higher number of guilty findings by the court.[37]

White marijuana defendants did not avail themselves of a bench trial,

35. Further evidence of the differences in the handling of public defender client cases is suggested by the University of Chicago Law Review Project on the Administration of Justice in Cook County. *See Editorial Note: The Continuances Project*, 35 U. CHI. L. REV. 256, 257 (1968):

Suspicion of unwarranted differences in treatment is reinforced when both race and economic status are considered. Non-guilty disposition rates for defendant classes are as follows: white defendants—retained counsel—42%; non-white defendants—retained counsel—12%; white defendants—public defender—17%; non-white defendants—public defender—8%.

36. Incidents illustrating the near impossibility of the public defender's position, as a result of the heavy case load he must handle, were observed on several occasions. At one point he found himself representing three separate, and unrelated, cases before the bench at one time. While the State's Attorney began presenting a fourth case, the public defender had to leave the courtroom to make a phone call in an effort to establish that one of the defendant's had a prescription for the drugs found in his possession.

37. For a study of the mechanics and role of plea bargaining, *see* Alschuler, *The Prosecutor's Role in Plea Bargaining*, 36 U. CHI. L. REV. 50 (1968).

but they represent the largest group of defendants bound over to the Grand Jury with five of the 10 cases bound over. Trial tactics probably account for this pattern, the defense attorney feeling he can get the best possible decision for a white marijuana defendant with a jury trial rather than bargaining with the State's Attorney. One white defendant's attorney said he tells his clients to get a shave and haircut, and look as "straight" as they can for the trial. The strategy being that a jury might find it harder to convict a neat clean-cut type, whereas they may be prone to believe that a "hippie" looking character is a deviant and deserves to be punished. Of course, a black defendant cannot so easily divest himself of the characteristic which warrants closer scrutiny by a jury—his blackness.

The quality of counsel is also an important factor in determining whether a defendant decides to go on for a jury trial. As already noted, blacks are more prone to require the services of the public defender, but because of the heavy case load the public defender is not able to devote the time a private attorney might into preparing a jury trial. Also, because of the heavy case load it is desirable for a public defender to clear a case as rapidly as possible; consequently, he is forced to concentrate on the quantity of dispositions rather than the quality of justice.

Defendants who were found guilty after a bench trial seldom went to prison, most were given probation. The prison sentences all involved individuals who could not make bail, so the court credited their time spent in jail awaiting trial to their sentences. Out of the initial 113 persons in the court sample only 26 were found guilty, and of those only five actually went to the penitentiary. None of the marijuana defendants were sentenced to serve prison terms.

One explanation for the low rate of marijuana convictions, just over 16%, was given by a court official who explained that the court is not very concerned with first offense marijuana possession cases—the reason being that the workload of the court is too great for every offender to be fully prosecuted. Consequently, he feels the best course of action is "to scare the hell out of the first offenders while concentrating on the recidivists." This has been formalized in an agreement between the court and the State's Attorneys to drop any marijuana possession case where a first offender not involved in a sale is found in possession of less than 5 grams of marijuana. The result is that few first offenders reach the trial stage. This is supported by statistics kept by the court from February 20, 1967 through July 1, 1969 on the type of drug offenses adjudged guilty

and their sentencing. Of a total of 1284 cases, 1004 were for marijuana possession; and while 1026 offenders were given probation, only 59 served prison sentences.

V. CONCLUSION

Despite the felony sanctions attached to the marijuana law at the time of this study, the law was ineffective in suppressing the drug's use. Narcotics officers readily admitted that complete enforcement of the marijuana law was impossible because of the large number of users, their geographic dispersion and the undesirability of arresting all offenders. Consequently, the police established an informal system of enforcing the law, based on standards they believed to be "fair and reasonable", which concentrated on the more traditional type of user.

However, what might be regarded as "fair and reasonable" for the narcotics officers does not explain the standards applied by the precinct police in deciding whether to make an arrest. The differences in these enforcement patterns would appear to arise from the different standards utilized by the two groups of officers to measure job efficiency. The emphasis in the narcotics section is on making an arrest that will stick, and an arrest is generally made only after an investigation has been carried out. Such an approach to law enforcement emphasizes the legality of the arrest, so as not to lose the work put into building up the case.

On the other hand, the precinct officer tends to be evaluated by keeping his beat free of criminal activities and apprehending criminal suspects he finds within his beat. Little time is available for investigations, and most of their arrests arise out of confrontations with suspects. Consequently, he is forced to rely on inferences of an individual's moral character from his appearance rather than careful fact finding.[38] Precinct officers, then, have little vested interest in whether an arrest is good or bad. Skolnick has observed:

> When the policeman really has probable cause for an arrest, when he is dealing with a suspect, he is more likely to proceed with procedural regularity. When he operates on the basis of mere suspicion, he is more likely to vent his prejudices.[39]

38. Werthman & Pilivin, *Gang Members and the Police*, in THE POLICE: SIX SOCIOLOGICAL ESSAYS 75 (D. Bordua ed. 1967). Werthman and Pilivin found that the police, in order to identify suspicious persons by visual cues, must infer moral character from appearances.

39. J. SKOLNICK, THE POLICE AND THE URBAN GHETTO 7 (1968).

The precinct officer, forced to rely on secondary cues of appearances, is also placed in a position which might lead him to overgeneralize and stereotype:

> . . . some police officers associate the characteristics—age, race, dress—of a few troublemakers in the neighborhood with other persons of similar appearance, and come to treat an even larger class of citizens with hostility, suspicion and sometimes contempt.[40]

Narcotics Court, then, becomes something of a clearing house, attempting to distinguish between good and bad arrests. Thus, like the police, it established its own criteria, quite apart from any prescribed by statute, as to which offenders were to be included in the judicial process. The effect of these departures from the official law was to leave enforcement patterns against the traditional users intact, while largely eliminating the drug experimenters from the enforcement system.

The police, more especially the precinct officers, construed the felony marijuana law broadly rather than narrowly. Evidence of this was seen in the high rate of dismissals by the Narcotics Court. They applied a standard of enforcement which conformed more closely with their bureaucratic role calling for individual initiative to make arrests and prevent crimes, than with such legal standards as probable cause.[41] This suggests that legislation concerning marijuana should be drafted narrowly, and be specific as to the elements of the crime. In this manner, the discretion given the police by such broad statutes will be limited and controlled by the law makers—and not the bureaucratic demands placed upon the policeman. Such demands are most tangibly manifested by what one officer called "unofficial pick-up quotas" which they are expected to meet by fellow officers as evidence that they have put in the amount of effort expected from them in patrolling their beat.

Such a narrowing of the gap between the law and the enforcement pattern would also serve to eliminate possible sources of disaffection by groups in the society (*i.e.*, blacks and youths) alienated by the gap between the letter and practice of the law. The policeman's role would be freed from some of the tensions created by the conflicting demands of "law" and "order"[42] placed upon him. Lastly, the court's docket would be freed from many of the cases where sufficient legal grounds for prosecuting are lacking, and it would concentrate more of its efforts on the disposition of cases properly before it.

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40. PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA, REPORT 204 (1966).
41. SKOLNICK 6.
42. *Id.*

The data shows that blacks are at a disadvantage throughout the enforcement process—they are more likely to be picked up off the street because of the precinct police's suspicion, to lack the financial resources needed to make bail or retain adequate counsel, and they are more likely to serve a prison sentence upon their conviction. Because the overtaxed enforcement system can not fully enforce the marijuana law, it is generally the blacks who pay the price for these operational consequences by forfeiting some of the basic rights guaranteed the individual citizen in our system of justice.

TABLE 1

POLICE SURVEY PROFILE TOTALS
N=289

RACE	
White	90
Negro	179
Puerto Rican	17
Other	3
SEX	
Male	249
Female	40
AGE	
15-19	62
20-24	87
25-29	49
over 29	91
NARCOTICS RECORD	
Prior Record	93
No Prior Record	196

TABLE 2

POLICE SURVEY: RACE x SEX x OFFENSE CHARGED

	MARIJUANA		HARD DRUG					NON-NARCOTIC	
	Possession	Sale	Heroin	Stimulant Depressant LSD	Dangerous Drug	Needle	Other	193.1	192.1
WHITE									
Male	37	1	3	20	1	3	1	4	1
Female	12	1	—	4	—	1	—	1	—
NEGRO									
Male	90	3	29	16	2	17	—	3	—
Female	3	—	9	3	—	3	—	—	1
PUERTO RICAN									
Male	8	1	2	1	1	2	—	—	—
Female	—	—	2	—	—	—	—	—	—
OTHER									
Male	—	—	3	—	—	—	—	—	—
Female	—	—	—	—	—	—	—	—	—

TABLE 3

POLICE SURVEY: RACE x SEX x DRUG x RECORD
N=289

	MARIJUANA		HARD DRUG		DISORDERLY	
	Record	No Record	Record	No Record	Record	No Record
WHITE						
Male	6	32	9	19	—	5
Female	2	11	—	5	—	1
NEGRO						
Male	19	74	39	25	—	3
Female	1	2	9	6	—	1
PUERTO RICAN						
Male	3	6	1	5	—	—
Female	—	—	2	—	—	—
OTHER						
Male	—	—	2	1	—	—
Female	—	—	—	—	—	—

TABLE 4

POLICE SURVEY: RACE x SEX x AGE x DRUG
N = 289

	15-19			20-24			25-29			Over 30		
	Marij	Other Narc	Non Narc	Marij	Other Narc	Non Narc	Marij	Other Narc	Non Narc	Marij	Other Narc	Non Narc
WHITE												
Male	10	6	4	22	7	—	3	5	—	3	10	1
Female	6	—	1	6	4	—	1	1	—	—	—	—
NEGRO												
Male	26	6	—	26	9	2	21	11	—	20	38	1
Female	—	—	—	1	2	—	—	2	—	2	11	1
PUERTO RICAN												
Male	1	1	—	3	4	—	2	1	—	3	—	—
Female	—	1	—	—	1	—	—	—	—	—	—	—
OTHER												
Male	—	—	—	—	—	—	—	2	—	—	1	—
Female	—	—	—	—	—	—	—	—	—	—	—	—

TABLE 5

POLICE SURVEY: RACE x SEX x DRUG x ARRESTING UNIT
N = 289

	MARIJUANA		HARD DRUG		DISORDERLY	
	VCD	Other	VCD	Other	VCD	Other
WHITE						
Male	14	24	6	22	3	2
Female	6	7	3	2	1	—
NEGRO						
Male	8	85	14	50	2	1
Female	1	2	5	10	1	—
PUERTO RICAN						
Male	1	8	1	5	—	—
Female	—	—	1	1	—	—
OTHER						
Male	—	—	3	—	—	—
Female	—	—	—	—	—	—

TABLE 6

POLICE SURVEY: RACE X SEX X DRUG X ADDRESS OF ARREST & RESIDENCE
N=289

	MARIJUANA		HARD DRUG		DISORDERLY	
	Same	Different	Same	Different	Same	Different
WHITE						
Male	15	23	9	19	2	3
Female	5	8	3	2	1	—
NEGRO						
Male	17	76	19	45	—	3
Female	2	1	8	7	—	1
PUERTO RICAN						
Male	2	7	2	4	—	—
Female	—	—	2	—	—	—
OTHER						
Male	—	—	1	2	—	—
Female	—	—	—	—	—	—

TABLE 7

POLICE SURVEY: RACE X SEX X DRUG X GROUP & SINGLE ARRESTS
N=289

	MARIJUANA		HARD DRUG		DISORDERLY	
	Group	Alone	Group	Alone	Group	Alone
WHITE						
Male	20	18	10	18	5	—
Female	6	7	3	2	—	1
NEGRO						
Male	36	57	19	45	—	3
Female	2	1	8	7	1	—
PUERTO RICAN						
Male	3	6	3	3	—	—
Female	—	—	1	1	—	—
OTHER						
Male	—	—	1	2	—	—
Female	—	—	—	—	—	—

TABLE 8

COURT SURVEY PROFILE TOTALS
N = 113

RACE	
White	37
Negro	70
Puerto Rican	6
SEX	
Male	94
Female	19

TABLE 9

COURT SURVEY: RACE x SEX x OFFENSE CHARGED
N = 113

	MARIJUANA		HARD DRUG			
	Possession	Sale	Heroin	Stimulant Depressant LSD	Dangerous Drug	Needle
WHITE						
Male	20	1	4	—	2	—
Female	7	—	—	—	3	—
NEGRO						
Male	31	1	18	1	10	2
Female	3	—	4	—	—	—
PUERTO RICAN						
Male	2	1	—	—	—	1
Female	1	—	1	—	—	—

TABLE 10

COURT SURVEY: RACE X SEX X DRUG X DISPOSITION
N=113

	MARIJUANA					HARD DRUG				
	SOL	Dismiss	Bench Guilty	Trial Not Guilty	Grand Jury	SOL	Dismiss	Bench Guilty	Trial Not Guily	Grand Jury
WHITE										
Male	3	15	—	—	3	—	3	2	1	—
Female	—	5	—	—	2	—	2	—	1	—
NEGRO										
Male	—	18	10	2	2	1	13	11	4	2
Female	1	1	1	—	—	—	1	2	1	—
PUERTO RICAN										
Male	—	2	—	—	1	—	1	—	—	—
Female	—	1	—	—	—	—	—	—	—	1

TABLE 11

COURT SURVEY: RACE X SEX X DRUG X BASIS FOR DISMISSAL
N=62

	MARIJUANA			HARD DRUG		
	Lack of Probable Cause	Evidence Suppressed	Bad Warrant	Lack of Probable Cause	Evidence Suppressed	Bad Warrant
WHITE						
Male	1	7	7	1	1	1
Female	1	1	3	1	1	—
NEGRO						
Male	5	11	2	3	7	3
Female	—	1	—	—	—	1
PUERTO RICAN						
Male	1	1	—	—	—	1
Female	—	1	—	—	—	—

GEOGRAPHY OF ARRESTS

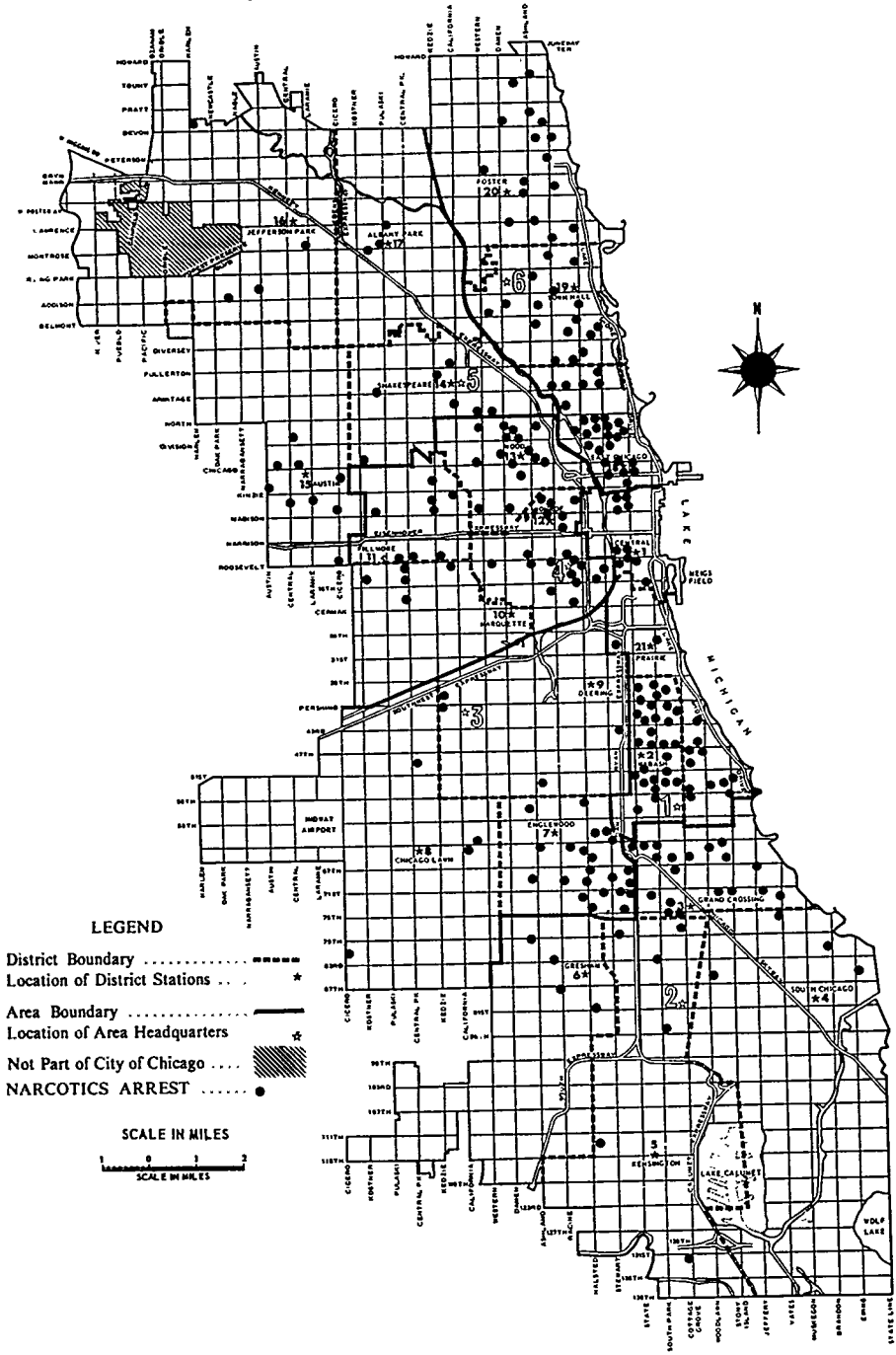

TABLE 12

COURT SURVEY: RACE x SEX x DRUG x SENTENCING OF GUILTY DEFENDANTS
N=26

	MARIJUANA			HARD DRUG			
	Probation	Prison	Probation & Prison	Probation	Prison	Probation & Prison	Rehab.*
WHITE							
Male	—	—	—	1	—	1	—
Female	—	—	—	—	—	—	—
NEGRO							
Male	10	—	—	5	3	2	1
Female	—	—	1	—	2	—	—
PUERTO RICAN							
Male	—	—	—	—	—	—	—
Female	—	—	—	—	—	—	—

*Rehabilitation is available to first offenders convicted of an addictive drug violation.