CAUGHT IN THE CON-GAME: THE YOUNG, WHITE DRUG USER'S CONTACT WITH THE LEGAL SYSTEM

CLINTON R. SANDERS

Department of Sociology, Temple University

This paper[1] examines a controversial area of legal activity—the enforcement of drug laws. It focuses on the experiences of the young, white drug user for whom arrest and processing for drug law violations commonly represent the first serious involvement with the legal system.

It is within the interactions and institutional experience of legal processing that the young drug user alters, reconstructs or solidifies a meaning structure which defines and justifies his behavior (Blumer, 1969). This shaping of definitions and perceptions takes place primarily within a particular institutional setting—narcotics court. The purpose of the court (as it is perceived by the regular actors within the court setting) is to publicly identify the "deviant"[2] thereby setting an example for potential or undetected lawbreakers and to punish the perpetrators of deviance in order to deter them from engaging in further deviant activity (cf., Schwartz and Skolnick, 1962:133).

Following a brief discussion of the research methods employed, perceptions of young drug users who have had no direct contact with the enforcement system are presented. User attitudes toward the legal system (especially as it relates to drug use) and views of narcotics enforcement activity are emphasized. After establishing this perceptual base-line, major aspects of the arrested drug user's contact with the enforcement process will be described in some detail. This description focuses on the user's interactions with narcotics officers and regular defense

---

1. The "con-game" of the title refers to Blumberg's (1967a) outstanding article on informal court relationships.
2. The labeling perspective of deviance is employed throughout this paper. As Becker (1963:9) states:

   (S)ocial groups create deviance by making rules whose infraction constitutes deviance, and by applying those rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an "offender." The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

lawyers and the user's experiences and feelings during various significant stages of the litigation process.[3]

One routinized extra-legal transaction (the "payoff"), impelled by the production demands of the overcrowded court system (Blumberg, 1967b) and the desire of some participants to reap economic rewards, is described at length. Rather than being an attempt at exposé, this transaction is presented because it illustrates a major weakness of the current enforcement system and because the arrestee's knowledge of this and other "backstage" transactions (Goffman, 1959) has significant impact upon his perceptions of the drug enforcement process.

The paper concludes with a discussion of the impact of the enforcement experience upon the perceptions and projected deviant future of the young, white, recreational drug user.

METHOD

The data upon which this discussion is based were collected between 1967 and 1970. The first section on user perceptions of drug laws, drug use and enforcement activity presents information culled from forty lengthy, semi-structured interviews with recreational drug users on a large, midwestern university campus (see Schaps and Sanders, 1970). These interviewees had no direct confrontational experience with drug enforcement personnel.

The second section of the discussion on user perceptions is based upon data collected in 1970 during nine months of field research conducted primarily in and around the major narcotics court servicing a large midwestern city.

The business of the court was to hold preliminary hearings on all cases in which the arrestee was apprehended by a narcotics officer or cases in which illegal drugs were recovered by the arresting officer(s).[4] Upon completion of the preliminary hearing,

3. For the purpose of this discussion I have chosen not to include an extensive discussion of the activities of various significant actors within the court setting (bailiffs, clerks, the judge, district attornies, etc.). This is not to be construed as an indication that these actors are unimportant. Indeed, they are central figures in the court interaction and are generally aware of the nature of the informal procedures whereby case outcomes are negotiated. The discussion focuses on enforcement personnel and regular defense lawyers because they are the official representatives with whom apprehended users have the most intensive, private and ongoing contact. The other court personnel have impact upon the user's experience primarily as they play out their roles in open court and thereby shape the character of the court interaction. Extensive discussions of the activities of these other court personnel may be found in Sanders (1972).

4. The preliminary hearing is the central site of the legal handling of narcotics violations. As Los Angeles prosecutor Michael Metzger states (Pileggi, 1971):

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

all felony cases in which probable cause was found were assigned to the grand jury. If the case involved a misdemeanor, the defendant could request a bench trial before the presiding judge of the narcotics court. In other words, the court was the initial step in the judicial screening process. It was there that a decision was made as to whether the arrest was valid and legal and whether there was sufficient evidence to pursue the matter further (cf. McIntyre, 1968).

When I entered the court early in 1970, between 150 and 200 cases were being handled in each daily session. Of these cases between twenty and thirty percent involved young, white recreational drug users. During the period of research both the number of cases dealt with per day and the percentage of cases which involved young white defendants increased dramatically. As the field work phase of the research was concluding in mid-summer (before the court was divided due to the increased volume of cases) the daily case load averaged about 300 per day with calls of 400 or more not uncommon. According to tabulations which I conducted at random periods late in the research, between forty and fifty percent of the cases involved young white arrestees. The majority of these cases concerned violations of the laws prohibiting the possession of marihuana, psychedelics and dangerous drugs.

Participant observation[5] and field interviewing were the primary research approaches employed. In addition to the numerous informal interview-conversations conducted with the various participants in the court setting, I collected lengthy, semi-structured interviews with 12 narcotics officers and with 6 of the 12 lawyers who regularly handled cases in the court in which the research took place. In order to supplement the court data, I observed narcotics enforcers as they interacted with arrestees and each other in the squad room of the Central Vice Control Division (VCD). I spent a considerable amount of time observing lawyer/client interactions in the halls of the court building and in the offices of those regular defense lawyers with whom I had developed rapport.

> Drug cases are not won or lost before juries, but at the preliminary hearings—where the drugs seized by the police, the warrants they used to seize them and the manner in which the arrests were carried out are all questioned by the defense.

5. Becker and Geer (1957: 28) define participant observation as

> that method in which the observer participates in the daily life of the people under study, either openly in the role of researcher or covertly in some disguised role, observing things that happen, listening to what is said, and questioning people, over some length of time.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

The material on user perceptions during and following the legal experience is based on numerous field conversations with young defendants in and around the court setting and five lengthy (two to four hour) interviews with users who had been arrested and processed for possession of illegal drugs. All formal interviews were tape-recorded with the interviewee's consent.[6]

USER PERCEPTIONS PRIOR TO ENFORCEMENT CONTACT

The primary danger seen in the recreational use of drugs by user interviewees who had not been arrested for drug violations was that it could potentially involve the user with the legal system. While, in general, the legal system was seen as necessary for social control, the laws which regulated drug use were perceived as draconian, hypocritical and largely unenforceable. Drug use was a private matter in which the hand of law had no place. Further, the users emphasized the hypocrisy of a legal system which proscribes the use of certain drugs and allows the use of other substances (especially alcohol) which, though traditionally accepted, are more physically harmful.

Many of the interviewees expressed a strong dissatisfaction with the general state of the society and its institutions. The students' definitions of their deviant recreational activity were related to their views of society and the patterns of drug use which they had developed. While both the moderate user and the more heavily drug-involved individual presented critiques of the society, the latter evidenced a far deeper discontent and had decided, at least for a while, to withdraw any faith in and allegiance to what was seen as an oppressive culture. The less drug-involved user saw his occasional drug activity as possible within the framework of the larger society if basic precautions were taken. The light user, less involved in drug use and the drug subculture, rarely questioned the legitimacy of the *total* body

6. The reader may note a problem due to the fact that it was impossible to obtain a one-to-one matching of those interviewees with no apprehension experience to those who were arrested and brought before the court. However, three individuals interviewed in the course of the university study had been arrested and gave detailed accounts of their experiences with the drug enforcement system. In addition, two of the forty unapprehended users in the university sample were arrested and brought to court during the observation stage of the research. These individuals also provided lengthy accounts of their experiences and perceptions. While total matching of all pre and post arrest subjects was impossible due to the realities of the research situation, those who were interviewed both before and after legal involvement clearly evidenced the apprehension effects discussed in this paper.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

of law despite his disagreements with and occasional behavioral disavowal of the drug laws (Schaps and Sanders, 1970: 137-143).

Carey (1968:50) views the sense of disillusionment expressed by the moderate and heavy users as a necessary factor in the initial decision to use illegal drugs. It is difficult, on the basis of the research reported here, to draw this conclusion. It seems more probable that the disaffection with the society and the act of drug use proceed in a parallel rather than sequential fashion. That is, dissatisfaction is more of a "neutralization technique" used to assuage the guilt of deviance through a derogation of the source of the deviant label, rather than a necessary percursor of the initial drug experience.

User Perceptions of Enforcers The police officer's occupational choice was commonly seen by users with no arrest experience as indicative of his personal characteristics. Rarely in conversations about the police did a user-respondent characterize the policeman as an individual to whom the occupation presented the most realistic and accessible means of social advancement. Most users with no first-hand confrontation experience described the officer as a power-hungry, violent, rigid, conventional, unimaginative and intolerant of cultural difference. The following statement by an occasional user illustrates this view.

> Most cops are into their jobs, really into them. They get to strut around and their job gives them immediate power in all situations. I think in this society something has to be wrong with the guy who wants to walk around all day and carry a gun. He has this gun and he's trained to use it, he's trained to kill. Anybody who would take a job where there is the possibility that he may kill someone at any time has to have a lot of problems. Their whole world is centered around violence.

Most often the young drug users perceived the enforcer as a person who—because of class background and propaganda—defined his involvement as a cultural battle. To many of the users, the enforcer's activity was not solely anti-drug; it also opposed the new life-style and values developing in the youth community. From this perspective the users viewed themselves as "status criminals"—prosecuted for what they *were* rather than for what they had done (Blumberg, 1967b: xxii-xxiii; Oliver, 1969:232).

A corollary motivational model employed by the users was the "excitement model." Enforcers were often described as "getting their rocks off" busting drug users. Enforcement of the drug proscriptions was seen as an area relatively free of dangerous confrontation and one in which the officers could reap all the exciting benefits of planning, preparing for and performing a raid while running little risk of physical harm.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

Another more charitable and realistic model was used by the interviewees to explain the officer's activity. Some users expressed the view that the police were also victims, in that their involvement in the enforcement bureaucracy forced them into certain patterns of behavior. Further, their oppression by the occupational hierarchy was seen as forcing the officers to redefine their oppressive behavior as meaningful, effective and moral.

MAJOR ENFORCEMENT INTERACTIONS AND EXPERIENCES

Narcotics Officer/User Interaction The most common experiences which brought young users up against the legal system were "traffic stops" (in which officers halted the arrestee's automobile for some real or imagined traffic violation and discovered illegal drugs in the course of the subsequent investigation) or raids on living quarters supported by search warrants based on information provided by an "anonymous informant of proven reliability." Although the activity of the enforcers was generally congruent with the "bust lore" circulating in the drug subculture, interviewees commonly expressed shock at the behavior of the officers during the initial enforcement contact. One user described her arrest:

> I was really incensed by the behavior of the cops. They came storming into the house where we were sitting around watching the tube and they just came in like the SS and just tore the place up. First they sat around for a while and kept us in the living room and went into the kitchen and poked around and smoked a cigarette and then they searched the apartment. They did have a legitimate signed warrant. They only found a little pot but they took a lot of pills—aspirin, some birth control pills, the usual things you find in someone's apartment. When we left and went down to the station the apartment was in pretty good condition, but when we were released and went back to the apartment the whole thing was in a shambles. There were dirty clothing strewn around. It was obvious that someone had lived in the apartment—that the cops had stayed there wating for someone else to arrive. Of course, no one else did. They had eaten up the food and used the dishes and cooked and just fucked up everything and there was nothing we could do. When we got down to the police station the first thing the cops did was work on us. They separated us and said, "Do you want your husband to get off? If you do you can talk." We didn't really have much to say. I guess we were really pretty naive and didn't really think about being caught as a reality—until we got caught.

A number of interviewees were disturbed by the brusque business-like manner of the arresting officers. They felt that they were treated as aspects of a job rather than as individuals with individual problems, concerns and responsibilities.

> They (the arresting officers) didn't treat us too bad. They were just professional, like they were doing a job. But I don't think

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

people ought to be treated like they are just someone's job. One of the cops just squatted on the floor instead of sitting on the furniture because he knew how we felt about him.

Not all of the described arrest encounters were this conflict-free. The confrontational activity of the enforcers which most incensed the interviewees arrested in raids was the destruction of personal property. In the course of searching for drugs, the officers seemed to have little care for the possessions of the suspected users and the order of the premises being searched. The users viewed the destruction as unnecessary and indicative of the personal and cultural antagonism of the enforcers.

> These nine cops busted into our place. I mean, like they didn't really treat us badly—like beat us or anything—but they really tore the place up. They really enjoyed it, laughing and showing things to each other. Like they didn't really have to do that. We showed them where the stuff was but they kept pulling all the books down and dumping out drawers. Really heavy bastards.

In most of the reported incidents, there was little bodily violence initiated by the police. This often puzzled the users who expected violence on the basis of the folk-lore of the using community and the various mass media portrayals of the police. Much to the surprise of the confronted users, they often encountered a kind of patronizing friendliness on the part of the officers. In the stressful context of arrest and processing, users were aware that apprehension might lead to serious detrimental effects on their futures. Since the users had a generally unfavorable view of the narcotics officer, based largely on the picture painted by the youth culture and mass media, the show of friendliness on the part of the officers was commonly defined by confronted users as disgusting hypocrisy rather than honest concern.

At the same time, the officers attempt to present the counter-image of amiability and concern with stopping a behavior which they see as having harmful effects on the individual and society.

The show of friendliness by the enforcers is functional for the efficient conduct of their business. First, the officers attempt, through their seeming cordiality, to create an atmosphere in which the possibility of having trouble with the arrestees is minimized. Second (and most important), by developing a friendly relationship with a user and presenting himself as someone who is honestly concerned with the individual's problems, the officer maximizes his chances of getting from the defendant information which may be useful in making other cases and lead to other arrests. The officer knows from experience that, even if the arrestee will not overtly agree to inform in exchange for

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

leniency, the relaxed atmosphere of friendly concern takes the user off guard and raises the chances of his naively allowing interesting information to slip out (Harney and Cross, 1960).

While the officers were seen as constrained by their own socialization and the requirements of the job, the experience of confrontation commonly supported and accentuated many of the perceptions of police immorality which were previously held. The experience of witnessing the distorted testimony of the police officer before the bench, the fact that many of the arrests were unwarranted and illegal, and the realization that the search was conducted on the basis of an extremely flimsy search warrant, confirmed the young arrestee's perceptions of the general immoral character of the police.

In short, the various patterns of interaction which enforcers defined as functionally necessary for the most efficient and effective fulfillment of their job requirements came to be seen by defendants as yet another indication of the injustice of the drug law enforcement system.

Post-Arrest Experience: The Lock-Up For each of the interviewed defendants the experience in the detention cell where arrestees awaited the setting of bond was particularly stressful. Feelings of powerlessness were emphasized, as illustrated in the following statement by a particularly articulate respondent.

> Everyone was treated like animals. Constantly in the process you were shoved, you were told to shut up, you know, like you never walked fast enough. "Move, move." All this kind of stuff. They would never talk to you but just talk at you all the time. You really felt like an animal. What I found one of the most horrible things is that the policeman had *total* control over you for those twelve hours and he could do anything he wanted and there was nobody to watch and see that what he did was right or wrong. If it was wrong, well, the only way you could get redress was to go through some court action two years from then.

The lock-up experience was commonly defined as an integral part of the punishment process. The period of pre-hearing detention provided an opportunity for enforcement personnel to have a direct hand in the administration of sanctions.

> Like when I was inside [the lockup], I said to this other guy, "They should make policemen go through a night of this. They should put fifty policemen in this room for three hours, just so they could get the feeling of what it is like." The other guy said—which is probably true—"Man, they know what it is like. The judge has been back here, he knows what it is like. It's their way. They want you in there for that many hours. They want to show you that even if they can't convict you on something, even if you get out of it, at least they got you and put you through some real shit." It was true what he said.

Defense Lawyer/User-Client Interaction The defendant's

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

contact with the lawyer who regularly (and often, exclusively) handled drug cases was another experience which had significant impact upon the user's perceptions of the legal process. Interviewees who had retained the services of regular "dope lawyers" commonly viewed their advocates as necessary, though exploitative, routes to potential freedom.[7]

The task of the defense lawyer in the first interview with the client is three-fold. First, he/she must convince the defendant of the gravity of the case and the difficulty which the preparation of an adequate defense entails. One lawyer cynically described the typical initial interview as follows:

> There is a practice among lawyers when a person comes in with a drug case; criminal lawyers have to sell the gravity of the charges to the defendant in case he doesn't already know. The ordinary interview in a lawyer's office is liable to go something like this: "Well, Johnny, these are serious charges. Let me read the statute to you. 'Anybody convicted of the above offense can be sentenced to the ________ Penitentiary for anywhere from two to ten years.' *Two to ten years*, that's pretty serious. Did you tell your folks about this? Now listen, I just think we can beat this if I sit down and really put some time into this case. How much have you got? Well, I'll tell you what my fees are. It is set at $500. Now, you don't have to have all that by tomorrow, but I want it before I go into court the first time. I'll go in and get a continuance and by the time we go in again we'll have the money. Right? Nice seeing you, I'll see you in court." What goes on in the lawyer's mind when he sees the case is, "Well, this one is no problem at all. How to get the money out of him is the problem."

Thus, the lawyer emphasizes the seriousness of the situation in order to convince the client that the lawyer's professional expertise is essential for the successful outcome of the case.

Secondly, the lawyer attempts to sell his/her own qualifications. The client may be told that the attorney has handled this

---

7. These perceptions are clearly seen in the following excerpt from a long informative article in the city's major underground newspaper.

> The narc that busts you "recommends" a certain lawyer, maybe even gives you his card. (If the narc doesn't, the clerks or bailiffs will). This "Hip" lawyer will assure you he can get you off for $700 (the going rate is from $500 to $800). You pay the $700, the lawyer takes $500 and the narc gets $200. The narc knows that the "reliability" of a warrant is weighed on the manner of his testimony. So he can testify in a way that either the case will be discharged or bound over to the Grand Jury . . .
>
> Public defenders usually don't have enough time to properly prepare the case . . . so the "hip" lawyer has a free hand. Some play a game that is so bold that it is sickening. It is played on cases too weak to be indicted. The lawyer will tell the client to bring large amounts of money in his pocket and goes to the judge's chambers behind the bench . . . pays the clerk $5 to call his case in 20 minutes . . . the case is called . . . testimony is heard and case is discharged. You're supposed to be happy, even amazed by his skill, free to go and recommend him to your friends who are no doubt getting busted.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

type of case many times before, that he/she is on close terms with the arresting officers or the prosecutor, that there may be some loop-holes in the case which can be discovered through careful investigation. The lawyer makes it very clear to the client that he/she is indispensable because of secret knowledge and close relationships with individuals in positions of power. Rarely, if ever, is any overt mention made of the pay-off or other backstage defense tactics. In one client interview the lawyer, after hearing the basic facts of the case, stated:

> I'm going to tell you the truth. We have some serious problems here. But I think we can beat it. It's not a sure thing but I know ________ and ________ (arresting afficers) pretty well and some of the district attorneys down there went to school with me at ________.

Another lawyer described the way in which he sold his competence to the client:

> I try to take as professional an attitude as possible. They start to tell me about the offense and after a few minutes I'll ask them who arrested them. Normally speaking I'll know the arresting officer. If the officer is in VCD I'm sure to know him. The kid will often be very surprised that I'll know who the cop is. And then they'll start telling me about the warrant. I'll start telling them exactly what the warrant says. By this point I've established myself as someone who knows about the drug business.

Thirdly, the lawyer must assure the payment of his fee. In the interviews I observed, as much time was spent discussing the fee, how and when it was to be paid and in signing over bail bond receipts to the lawyer as was spent discussing the facts of the case. As Blumberg (1967a:19-21) observes, the lawyer clearly conveys to the client that a vigorous defense is contingent upon the prompt payment of the fee. If, on the first court appearance, the defendant has failed to come up with the money, the lawyer will commonly request a continuance rather than handle a case on credit.

Prior to the appearance in court, the lawyer would often coach the client on the fine points of impression-management before the bench. It was clearly conveyed to the defendant that the court was a stage and a successful outcome was facilitated by the presentation of the role of a wrongly accused "normal." A client was advised to dress well, get his hair cut, and not to call attention to himself by his appearance or conduct before the judge. Here, for example, are the instructions given two young defendants by their lawyer:

> Look, I want you both to get your hair cut and the next time I want you to have your shoes shined and wear straight clothes—no bells—and bring your mothers. I want you to look like you're going to Sunday school.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

Through his interaction with the lawyer the user learns a valuable lesson about the legal process. Rather than case outcomes being determined solely by the facts, they are contingent upon money, personal contacts and impression management before the bench.

THE COURT EXPERIENCE

The court in which the research was conducted reflected little of the dark panelled decorum of a *Perry Mason* set. At the end of a corridor spotted with coffee stains and cigarette burns was a door emblazoned with peeling gold letters. It opened into the rear of the court—a massive room filled with dark rows of scarred pews. Calendars advertising local machine politicians presented the only relief from the drab institutional grey of the walls. Some fifteen feet in front of the first row of pews (reserved for police officers) was a raised plywood desk behind which sat the judge and his clerk.

The activity within the courtroom was a constant distraction. Officers, lawyers and defendants were continually entering and leaving. The front of the court was commonly crowded (despite half-hearted attempts by the bailiffs to clear the area) with lawyers, officers and defendants attempting to get information about the cases which concerned them. The adjective most used by the regular personnel to describe the court seemed appropriate. It was a "circus." When the noise level reached such a pitch that the judge or the prosecutor had trouble hearing, he signaled to a bailiff who pounded lustily on the nearest table and shouted for order. Sometimes this was effective.

Three open doorways in the front of the court led, respectively, into the lockup, a small waiting room reserved for police officers, and the judge's chambers. The chambers were usually crowded with lawyers and police officers awaiting the calling of their cases. The interaction in this backstage area was predominantly cordial and informal.

For the most part, preliminary hearings and bench trials were conducted with little overt regard for the serious nature of the proceedings. It was not uncommon for the Assistant District Attorney (positioned in front and to the left of the bench) to snack, daydream or engage in whispered conversation with police officers while the defendant or his lawyer presented their version of the arrest. I was particularly struck by this lack of seriousness when I first entered the field. I quote from early field notes:

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

> As I enter the court, a hearing concerning the selling of cough medicine and pills to a police officer without a script is in process. The casual way in which the Assistant States Attorney acts while the defendant's lawyer cross examines the officer is interesting. He sits on the window sill behind him seeming to pay little attention to the proceedings, occasionally whispering with the officer's partner and laughing quietly. He is eating peanuts from a cellophane packet, pouring the nuts into his mouth and sipping from a paper cup.

In his discussion of public sanctioning of deviants Matza (1969:163) maintains that the law must be applied with ceremonial seriousness if it is to be defined as legitimate. He states:

> A main purpose of the entire display of authority is to convince the apprehended subject of the gravity of what he has done—to restore the unity of meaning that Hobbes correctly saw as basic to the kind of order imposed by Leviathan. In that *unity of meaning,* it is not enough that the subject concur in assessing his behavior as wrong; equally important is an attitude of gravity. The authoritative display aims at the creation of an attitude of gravity toward what he had done—within the deviant subject. . . . In shocked discovery, the subject now concretely understands that there are serious people who really go around building their lives around his activities—stopping him, correcting him, devoted to him.

This condition of symbolic gravity was noticably absent from the court. The striking contrast between the informal, joking interactions among regular court participants and the seriousness of the matters being dealt with was readily apparent to the young defendants. This perceived disjunction between the idealized courtroom atmosphere and the actual experience was used by numerous arrestees as grounds for de-legitimating the court and its activities. On the basis of their observations of the friendly cameraderie displayed by the regular court participants and their awareness of the "backstage" negotiations which commonly took place, defendants concluded that they were victims of a legal congame (Blumberg, 1967a:30).

A "Realistic Point of Law": The Pay-off A common transaction which many of the interviewed defendants perceived as being at the heart of the legal con-game was the pay-off whereby the defense lawyer and the arresting officer informally negotiated the outcome of a case.[8] While most regular lawyers and officers took care to conceal from defendants the full extent of the collusion between lawyers and enforcers, interviewees were generally aware that extra-legal transactions were very common. One young arrestee with whom I talked while he was being, as he put it, "bought off" by his lawyer stated:

---

8. There are few explicit discussions of the payoff in the criminology and criminal justice literature. See Lindesmith (1967:58-61), McKittrick (1957) and Sutherland (1937:217-223).

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

> Here is a situation where everybody gets something except the defendant. The judge does his number—sits up there and gets paid for playing God. The cops get their rake-off and the lawyers get their cut. The only one who loses is the defendant.

A cautionary word is in order at this point. The payoff is commonly a factor in the outcomes of cases which involve young, white users and awareness of the transaction has significant impact upon the various actors' perceptions of the legal system. However, I do not mean to imply in the following that all regular lawyers or police officers participate in the transaction. I was often impressed by the idealistic and sincere refusals to enter into the payoff which were expressed by some of the lawyers and an occasional police officer. The system described is common and important, but participation in it is not a *necessary* requirement for filling the lawyer or enforcer roles.

The data upon which I base the conclusion that the payoff is a routinized transaction in narcotics court (especially at the preliminary hearing stage) is convincing. On three separate occasions I observed money being given to an officer by a regular lawyer soon after the case in which they were both involved was dismissed (these incidents involved three different officers and two lawyers). On one occasion I interviewed the recipient. Three lawyers (none of whom were observed passing money) admitted to involvement in the payoff as a routine aspect of their jobs and detailed the procedures.

The pay-off transaction is supported by a number of factors. Enforcer interviewees often stressed the long hours and low salaries which police work entailed. They also expressed dissatisfaction with the lack of public support for diligent enforcement of the drug laws. This perceived lack of support was exemplified by the leniency of the courts vis-à-vis the "obviously" guilty arrestee. These commonly shared perceptions in conjunction with the efficiency/production requirements of the court—the ever-present pressure to decrease the massive backlog of cases—provided fertile ground for the development and maintenance of the extra-legal transaction described below. My observations and interviews, when combined with the findings of a growing number of investigations of police corruption (e.g., the Knapp Commission, 1972; the 1973 investigation of the Chicago Police; the Pennsylvania Crime Commission, 1974), present persuasive evidence that the fix is a routine transaction rather than the aberrant behavior of a few "rotten apples."

Soon after an officer makes an arrest he is required to fill out an arrest report—a spotty account of the facts of the arrest—

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

and a longer case report which provides somewhat more detail. In order to facilitate the "cutting loose" of an arrestee whose lawyer will cooperate with the payoff, the arresting officer will commonly omit from the reports a number of important details. At the time of the officer's testimony at the preliminary hearing he can fill in the gaps in one way if he and the defense lawyer have made an agreement and in another if no understanding has been reached. An experienced lawyer explained:

> If the police officer is smart he'll put on his case report, "Pursuant to search warrant, searched apartment where I found marihuana. I took into custody Mr. X who was present in the apartment." Even though he knows more and could elaborate he leaves it open like that. If he wants to bury him he might testify something like, "I talked to the landlord and he said that Mr. X had rented the apartment and I found marihuana strewn all over." So what you do is go to the police officer and ask him what happened—although it probably didn't happen the way he will tell you. So what you do is simply drop some money for the officer to testify, "No, I didn't ask the landlord if he was the tenant. No, I didn't see his name on the mailbox. The marihuana was found in a closed container in the living room and Mr. X was asleep in the bedroom." Things like that.

If the lawyer and officer have not dealt with each other previously, both face the problem of finding out if the other is agreeable to the fix transaction; that is, whether the other party is "safe." Once the openness to the fix is determined the first careful contact is made. A lawyer learns about the arresting officer's disposition toward the payoff from a variety of sources—court personnel, other lawyers, or fellow police officers. An attorney who regularly participated in the traditional payoff transaction described how these initial definitions of the officers are constructed.

> You usually find out if the officer is on the take by word of mouth. Attorneys who have dealt with them before let you know. So if you get an officer you just find out what his district is and who his commanding officer is. If you know an officer in that district who is on the take you just contact him and say, "What do you think about so-and-so, you think he'll take?" Or the first time you go up to Narcotics Court the police officer is there and either before or after you get a continuance you talk to him, you feel him out. If he seems OK you just say, "What are the chances of working out some kind of arrangement where you would testify blah-blah-blah? It will be worth your while, I'm getting a nice fee." No money is being passed, just statements are being made. He says OK and you never give the money in front. You always give it after the case. You get the money in front from a client and you pay it out after the case.

A police officer who does not know whether the defense lawyer participates in the fix will usually allow the lawyer to initiate the transaction. It is a different matter if the police officer can acquire information from others with whom the lawyer has

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

close relationships or if he has dealt with the lawyer on previous cases. An experienced lawyer stated:

> The fix is very simple to set up. You go to the cop and say, "Let's talk business." Matter of fact, it works simpler than that. The cop comes up to you and tries to put the arm on you. A cop will not go up to a lawyer he doesn't know. He will wait for a lawyer he doesn't know to approach him. But if the cop knows you, before you can even get your foot in the courtroom he has you out buying him a cup of coffee.

The fee charged by lawyers to handle a drug case depends upon the category it falls into—street stop, traffic stop, and search warrant cases being the basic types. In addition to the type of arrest, the status of the arresting officer affects the price of the payoff. An arrest by a patrolman entails less expense for the defendant than one performed by a District or VCD narcotics officer. When a transaction is made with a beat officer in a street stop, the fee charged by the lawyer varies from two to three hundred dollars with the arresting officer usually receiving about fifty dollars for his services. One interviewed lawyer recounted the negotiations with a patrolman on a street stop.

> The first time we went to court one of the cops got sick and wasn't there. He had the police report so the case was continued. I talked to the guy's partner who said that the guy was chicken shit and didn't want to come down because he knew it was a bad bust. The cop said, "I'm telling you right out that it was a bad bust, but if we wanted to we could beat it. If we wanted we could put your client through some bad changes." I said, "Yeah, I know." "________ (another regular defense lawyer) says you're with his office." I said, "Right. How about half a C." He says, "Beautiful." So we went to trial the next time. I know ________ who is the states attorney. He helped me out one time when I was in some trouble. I told him I had this case and I told him why. I told him that if I win this case there are other busts of friends of his and I was going to get the business. I told him that the cop seemed to be OK. The cop was really nice after I told him he could have half a C. He was a young cop moonlighting at ________ and he had too many kids and it was rough for him financially. I didn't tell ________ (states attorney) about any payoff of anything. I just said I'd like to win the case. I told him about the case and he said, "I know you wouldn't give me any bull shit. I'll see what I can do." So he read the police report and said, "Oh yeah." I made a motion to suppress and ________ (states attorney) asked the cop if there was any reason to search the defendant. The cop mumbled something about how he just looked suspicious. OK, discharged. I don't like to pass money around in the courtroom so I told the police officer to come see me on Saturday. Saturday he came into the office and I gave him the $50 and a bunch of my cards. Since then I got two referrals from that police officer and three referrals from the guy that was busted.

The arresting officer usually must fulfill his end of the bargain before he receives remuneration. This fulfillment of the bargain—testimony before the judge—can be a complex balancing act. He must cut the defendant loose by building a legal loophole into his report-completing testimony, yet he must do

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

it in such a way that the "mistake" appears to be honest, understandable and preferably due to overzealous attention to duty rather than ineptitude. He is aided by the fact that very often cases are heard a period of months after the actual arrest. This allows the officer to "forget" some of the important details of the case without losing too much face. The fault is attributed to the slowness of the legal machine.

The most apparent outcome of the payoff is that the lawyer and arresting officers reap monetary profit and the defendant "beats the rap." The effect of the transaction on the definitions of the legal system and the subsequent legitimation of that system by all participants is more far-reaching. One lawyer commented:

> I think everybody in the game gets screwed. People other than the defendant get screwed because of the effect on their minds. The defendant goes in there and he knows there has been a payoff—you never tell your client why you need so much money, but he knows. Of course that doesn't help his respect for American justice. I think there are a lot of mental changes for the people involved in this bribery thing. It's a weight on their conscience. These police officers who take bribes and wear the American flag on their uniforms—they don't have the right to wear the flag on their bodies if they are taking bread.

CONCLUSION: THE EFFECTS OF CURRENT DRUG ENFORCEMENT PATTERNS

Given the interactions, experiences and knowledge of the backstage activities described above, it is not surprising that the ultimate goal of drug enforcement vis-à-vis the individual user—the cessation of involvement with illegal drugs—is *rarely* attained.[9] For the young, white, recreational drug user contact with enforcers, lawyers and the court system reinforces the shared perceptions of enforcement which are an important component of the lore circulating within the drug using subculture (see Simmons, 1964). Enforcement personnel are seen as cynically job-oriented, corrupt and engaged in enforcement activity for financial reward or as a way of legitimately harassing the "deviant" youth culture. Many interviewed arrestees stressed the cultural harassment encountered during the enforcement experience. For example, one longhaired defendant arrested in a traffic stop stated:

9. The most striking and significant effect of the confrontation and processing experience on the attitudes, definitions, and future plans of the youthful drug users was their apparent radicalization (cf., Rosenthal, 1969:268-269; Kaplan, 1970:311-352). Apprehended users voiced radical/political attitudes with far greater frequency than had the interviewees who had not had first hand experience with being busted.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

> One cop said they stopped me because I didn't have a license plate light and the other one said they stopped me to search for weapons. They couldn't get their stories straight. One of them looked in the car and pulled out this joint that I had never seen before and said I was under arrest. They hassled me a lot, like about my hair and the beads I was wearing—called me "sweetie" and things like that. This has really made me paranoid. I wasn't before. I'm going to be careful when I see anyone taller than me with short hair.

The experience of arrest and processing also provided considerable data which the user employed to "fix" a definition of the legal system. The litigation process was seen as fraught with corruption (as exemplified by the pay-off), justice was not dispensed with equality and defendants were essentially powerless to have significant impact on the legal proceedings because of their exclusion from the informal network of relationships which were at the heart of the legal process.

While knowledge of the pay-off transaction was widely shared by interviewed defendants (information on the nature of narcotics court was a central aspect of the lore of the drug subculture and narcotics law enforcement was a common topic in local countercultural journals), this knowledge was not the only factor which caused defendants to define the legal process negatively. In short, the processing experience reinforced previously held perceptions and provided additional deligitimating information.

In none of the interviews conducted with young users who had been arrested for drug violations was there an indication that the confrontation and subsequent processing had achieved the establishment goal of making the user reconsider and totally discontinue his deviant behavior. While a few of the interviewees who had dealt drugs stated that the paranoia of the occupation (due to the increased vulnerability of the activity) had prompted them to moderate or stop altogether their supply involvement, none indicated any intention of discontinuing recreational use of the proscribed substances. In most cases, the users saw their arrest as due to chance, to coercive pressure which had been applied to a weak or vulnerable associate who possessed incriminating knowledge ("Anonymous Informants") or to a stupid inattention to the basic rules of protection (See Dominick, 1970; Margolis and Clorfene, 1969:133-140). Most of these mistakes were seen as avoidable if the proper precautions were taken. Therefore, it was not necessary to give up the valued activity. In short, the majority of the interviewees defined the arrest and court experience as a lesson in the utility of exercising caution.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

While those interviewees with arrest experience did present a radical critique of society and its institutions with greater frequency, this may be due, in part, to the increasing popularization of radical language within the youth culture during the three year course of this investigation. The fact remains, however, that the young arrestees commonly maintained that the apprehension experience *did* impel a significant radical re-evaluation of the society and its legal arm. The observation that radicalism was increasingly in vogue does not mitigate the fact that young apprehended users consistently perceived the arrest experience as a key factor in their radicalization.

Many of the apprehended users presented a societal explanation for their experience. The responsibility for the unjustifiable hassle was placed on the society and the system of law which regulates private acts. The values of the society, the methods used to coerce compliance, the real interests of the people involved in enforcement and the legislative roles—all were called into question on the basis of the encounter with the enforcement and judicial systems.

This redefinition or accentuation of previously held values and perceptions led to a variety of plans for future action. Three interviewees, all of whom had been arrested in search warrant raids, expressed violence alternatives for the future. In their discussions of the projected future they held that the raid scenario of the past would not be played in the same way. Physical violence to those who would encroach on their private actions was expressed as a possibility.

> I'm on supervision now on another drug bust so if I get convicted it could have a lot of effect. For one thing, it will keep me from getting a passport. This really makes you want to leave the country . . . or maybe arm yourself. I have a twelve gauge shotgun by the door and I'm not going to let anybody bust into my place again.

The experience of court and the processing prior to the setting of bond and the preliminary hearing often instilled in the arrestees an identification with other groups that are oppressed by the society. The violent actions of these minority groups were put into a new perspective and seen as understandable and viable. One respondent described his redefinition on the basis of his personal experience with the police as follows.

> The ironic thing is that just the other day I was down at the demonstration at ______ Park [a rock concert had turned violent when the scheduled performers failed to appear] and, like, I was one of the people that was surrounding the cops. There were a lot of black militants there and it was really like standing up to all these black guys and saying, "What the hell? Just don't do it. You're just going to get your heads busted. Why

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

> the hell do you want to do that?" I just couldn't understand why they were being so persistent about it. I really couldn't understand the crowd phenomenon behind it. I was in the bull-pen with all these black guys who you could see were harassed like this every night. They were put through this shit even if they were innocent; even if they were doing nothing but being black and standing around on a street corner. I could really understand at that point one of those guys being out at ____ Park and picking up a brick and saying, "*You goddam mother-fuckers, you been fuckin' me all the time!*" You know, the whole system. . . . You get fucked by the system at all levels. So the white person, he's for peace and he's against the war and it's nothing that has really been personal to him. But these black guys and these bikers and stuff like that who get harassed *all the time* and get put through shit, you can really understand their desire to kill a pig and if not to kill him to at least hit him in the face with a rock—no matter what results it brings. Not realizing more repression or anything like that. It's just an attempt to get even, to get even for being screwed all down the line.

Not only was the responsibility for the initiation of the drug encounter placed on the society, but also the aspects of the "corrupt" legal procedure were attributed to the corrupt nature of the social system. It was particularly striking to me that, as the field work phase of the research progressed, I encountered more defendants who realized that payoffs and deals were a common way of getting out from under the weight of legal process and who refused to participate in furthering this perceived corruption. While this was certainly a principled attitude, the defendants at the same time realized that, even without the payoff, they had a fair chance of "beating the rap" because of the common ineptitude of the police and their disregard for the civil rights of the arrestees. The difficulty was in getting the judge to see these violations.

An alternative to violence voiced by the young users was to attack the legal and enforcement systems by promoting increased drug use. In this way the chances of enforcement encounters would be lessened. Even if enforcement procedures were made more efficient and more users were arrested and processed, the already burdened legal system would be so overloaded that it could not cope with the increase in cases. As a consequence, legalizing changes would be necessitated.

> I can't change anything there in the court but I'm doing all I can to change things out there on the street. I don't have any power or way to change the laws and shit. The only thing I can do is to spread dope around. They can't put everyone in jail. It's sort of like judo; you just use their own power to fuck them up.

The user's contact with the enforcement system is an important step in his "moral career" (Goffman, 1961: 127-169). Being publicly cast as a deviant requires him to reexamine the pro-

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

scribed activity and to realize that he can no longer "play with" the deviant style (Matza, 1964: 199). He is forced to accept the fact which has become obvious—he is subject to the control of the state and, therefore, certain protective measures are necessary if he is to continue the use of illegal drugs free from further involvement with the enforcement system. The encounter pushes him further onto the polarizing path of "lateral deviance" (Howard, 1969) in which his allegiance to norms and values apart from those espoused by those in positions of power (and codified in the body of law) is strengthened.

REFERENCES

BECKER, Howard S. and Blanche GEER (1957) "Participant Observation and Interviewing: A Comparison," 16 *Human Organization*, 3 (Fall), 28.

——— (1963) *Outsiders: Studies in the Sociology of Deviance*. New York: Free Press.

BLUMBERG, Abraham S. (1967a) "The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession," 1 *Law and Society Review* 15.

——— (1967b) *Criminal Justice*. Chicago: Quadrangle.

BLUMER, Herbert (1969) *Symbolic Interactionism*. Englewood Cliffs, New Jersey: Prentice Hall.

CAREY, James T. (1968) *The College Drug Scene*. Englewood Cliffs, New Jersey: Prentice Hall.

DOMINICK, John (1970) *The Drug Bust*. New York: Light.

GOFFMAN, Erving (1961) *Asylums*. New York: Doubleday and Co.

——— (1959) *The Presentation of Self in Everyday Life*. New York: Anchor.

HARNEY, Malachi and John C. CROSS (1960) *The Informer in Law Enforcement*. Springfield, Illinois: Thomas.

HOWARD, John Robert (1969) "The Flowering of the Hippie Movement," 382 *The Annals* 43.

KAPLAN, John (1970) *Marihuana—The New Prohibition*. New York: World.

LINDESMITH, Alfred (1967) *The Addict and the Law*. New York: Vintage.

McINTYRE, Donald M. (1968) "Judicial Dominance of the Charging Process," 59 *Journal of Criminal Law, Criminology and Police Science* 463.

McKITRICK, Eric L. (1957) "The Study of Corruption," 72 *Political Science Quarterly* 502.

MARGOLIS, Jack and Richard CLORFENE (1969) *A Child's Garden of Grass*. New York: Simon and Schuster.

MATZA, David (1969) *Becoming Deviant*. Englewood Cliffs, New Jersey: Prentice-Hall.

——— (1964) *Delinquency and Drift*. New York: John Wiley.

OLIVER, John W. (1969) "Assessment of Current Legal Practices From the Viewpoint of the Courts," in H.R. Wittenborn *et al.* (eds.) *Drugs and Youth*. Springfield, Illinois: Charles C. Thomas.

PILEGGI, Nicholas (1971) "From D. A. to Dope Lawyer," *New York Times Magazine*, May 16: 34.

ROSENTHAL, Michael P. (1969) "Marihuana: Some Alternatives," in J.R. Wittenborn *et al.* (eds.) *Drugs and Youth*. Springfield, Illinois. Charles C. Thomas, 260.

SANDERS, Clinton R. (1972) "The High and the Mighty: The Middle-Class Drug User and the Legal System," Ph.D. Dissertation, Department of Sociology, Northwestern University.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press

SCHAPS, Eric and Clinton R. SANDERS (1970) "Purposes, Patterns, and Protection in a Campus Drug Using Community," 11 *Journal of Health and Social Behavior* 135.

SIMMONS, J.L. (1964) "On Maintaining Deviant Belief Systems: A Case Study," 11 *Social Problems* 250.

SUTHERLAND, Edwin H. (1937) *The Professional Thief.* Chicago: University of Chicago Press.

SCHWARTZ, Richard D. and Jerome H. SKOLNICK (1962) "Two Studies of Legal Stigma," 10 *Social Problems* 133.

https://doi.org/10.2307/3052975 Published online by Cambridge University Press