Cultural Bias in the American Legal System

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OPERATING ELEMENTS OF THE IUS

Generally, studies in legal anthropology have tended to focus on the codes, written or unwritten, by which behavior is regulated in human societies and on the regularized processes by which conflicts are resolved in accordance with these codes. Thus, in considering a cross-cultural operational definition of law, Nader (1965: 6) notes that all societies have rules governing behavior, some preferential and some prescribed.

There is, however, no lack of recognition that law, as a cultural institution in the Malinowskian sense, involves far more than behavioral codes and conflict resolution processes. Pospisil, for example, lists four attributes of law as authority, obligation, intention of universal application, and sanction (1967: 27). Nader finds that law may perform more than one function in any particular society and suggests that four sets of functions are those in the processes of adjudication, punishment, prevention, and maintenance of order (1965: 18). Hoebel (1968a) holds that law, as a specialized machinery of social control, involves a complex of certain kinds of human behavior.

Despite what seems to be general agreement among anthropologists concerning the systemic nature of law as a cultural institution having a complexity of functions, the relationship between elements of the system and their functions remains unclear. If a system is considered a cluster of elements associated in covarying relationships and forming a unitary whole within a given spatial and temporal field, identification of these elements and description of their characteristics and dynamics should contribute to a better understanding of the function of the whole. As a step in this direction, this paper examines two interacting elements of the American legal system. From this examination, it is hoped some clarification may be achieved as to the relationship between the two and the contribution they make to the functions of the system as a whole.

Specifically, the elements to be examined herein are those involved in the operational aspects of law, or *ius,* as distinguished from the abstract rule of law, or *lex* (Pospisil, 1968: 220). Thus while public statutes, codes, and ordinances comprise the *leges* of the American legal system, the ius of the system consists of the combined processes of adjudication (trial, decision, and punishment) and of enforcement (prevention of infringement, apprehension of infringers).

Adjudication is accomplished by the courts under direction of the judiciary, and enforcement by the police, to whom is reserved the privilege of applying the force that Hoebel (1968b: 27) considers the official element in law. However, since all enforcement must be in accordance with the decisions of the judiciary in their interpretation of the leges, it is to this group that we must look to establish the principles governing the functions of the entire system.

As a universal cultural institution, law may be considered as having the broad manifest function of maintaining social control by providing regularized procedures for conflict resolution. Within the broad framework of this manifest function, a wide variety of choices exists as to the ideal principles that may be emphasized either in formulation of the rules governing conflict resolution (leges) or in their procedural administration (ius). This range of choices may include such principles as reason, fairness, justice, individual freedom, equality, kinship, collective security, male superiority, physical or mental prowess, or any others compatible with the ethos of the society. While several such ideal principles may be incorporated into the legal system of any society, there appears to be a tendency to select one particular principle for emphasis over the others in the ius aspect of the system. The American legal system in which litigants contend against each other in court as adversaries provides a case in point. In the trial process, the validity of the litigants' positions, as indicated by whatever evidence may be introduced, is ideally determined on the basis of the law as written in accordance with applicable precedents. This concept of the trial function rests on two premises: first, that any lex is equally applicable to, understood and concurred in by all within its spatial field; and second, that its temporal field is capable of infinite forward extension, and that it is just as pertinent to situations at any time subsequent to its enactment as it was to situations in the cultural past of its enactment.

These two premises–the first involving cultural homogeneity and the second, cultural stasis–will, if reflected in the ius, result in the system as a whole functioning to ensure maintenance of the existing sociocultural order. The premises will also result in a consequent built-in bias,[1] in the operating agencies of the ius against departures from the cultural ideal of the spatial and temporal fields. Testing of this hypothesis will be accom-

plished by ethnographic examination of the two cultures of the ius–the police, and the criminal court.

THE POLICE CULTURE

Although police and police agencies have been the subject of many psychological and sociological studies, the usual emphasis has been on the personality of the individual police officer or on criminological or organizational aspects of police agencies. A notable exception is Skolnick's study (1966), based on personal observation of police operations, in which he demonstrated that the disparity between operational expediency and the technical requirements of legality constituted a serious problem for police agencies in a democratic society (Skolnick, 1966: 6).

The police, however, are more than a group of individuals organized into a bureaucratic, paramilitary structure to perform a technical mission. Entry requirements, training, on- and off-duty behavioral standards, and operational exigencies and goals combine to produce a homogeneity of attitudes, values, and life ways such that members of police forces constitute a distinct subculture within their societies. While an understanding of the police role in society, police operations, and police organization can be achieved by the methods of other disciplines, the ethnographic approach of the cultural anthropologist is essential to an understanding of the police culture and the manner in which the attitudes and values of that culture influence the police as an operating agency of the ius.

Data-gathering on which this examination of the police culture is based took place over a period of nine years, from 1959 to the present, during which I served as an active reserve officer in two police agencies. Four years of this service were with a municipal police department in Coast County, one of the nine counties comprising the San Francisco Bay region; the last five years were with the sheriff's department of that county.[2]

The Research Area

Coast County is, as are all other counties in the greater Bay region (except metropolitan San Francisco), a combination of industrial, commercial, urban and suburban residential, and rural agricultural areas. Of the estimated population of 575,000, almost 85% resides within 18 incorporated municipalities covering about 140 of the county's total area of 556 square miles. Approximately 10% of the county's population resides in unincorporated residential communities, and the remainder in the rural areas.

Prior to World War II, the municipalities of the county were largely "bedroom" suburbs of San Francisco, populated by the affluent upper-middle class, a sprinkling of the very wealthy with large estates, and a fairly small, well-rooted group of the lower-middle class, which provided essential services to the commuters and the wealthy. Since World War II, the westward population shift and industrial and commercial development have changed the entire character of the county. A tremendous increase in the commuting affluent has resulted in scores of vast, new middle- and upper-middle-class subdivisions, but this has been paralleled by an influx of equal magnitude of lower and lower-middle class attracted by the employment opportunities offered by a burgeoning industry. Residentially, the latter tend to concentrate in the older portions of the municipalities that were inhabited in the prewar era by the noncommuting lower-middle class, in some low-cost subdivisions and in apartment complexes. In each municipality, small Negro, Latin, and other ethnic concentrations have formed, and a large, unincorporated residential area in the southeastern portion of the county has, over the years, become an almost totally black community. Nonetheless, from the standpoint of modal income, Coast County is one of the most affluent in the state.

As officeholders in an affluent, rapidly developing, and changing area with a relatively heterogeneous population, most Coast County public officials take pride in what they consider to be their broad-minded, progressive approach to human relations problems. Since the police generally reflect the prevailing attitudes of their communities (Johnson, 1964: 439), the law enforcement agencies of the county pride themselves on their own "enlightened" approach to performance of their mission.

Concurrent with construction of the new residential subdivisions and industrial complexes, each of the 16 municipalities in the eastern half of the county has extended its borders by annexation, so that one merges into the other from north to south. Municipal boundaries are generally streets, with one side in one jurisdiction and one side in another. Often, these streets meander away from the actual boundary, so that at one point the entire street may be within one municipal jurisdiction, while at another point, within another, and at a third, within the unincorporated area of the county. Because all of the municipalities extend over large geographical areas, all beats are covered by vehicular patrols.

The large beat areas, meandering boundaries, and the excellent road net within the county constitute an operational problem that has been met by a mutual assistance agreement among the 20 law enforcement agencies (18 municipal departments, the sheriff's department, and the California Highway Patrol) functioning within the county. The mutual assistance agreement not only welds the 20 law enforcement agencies within the county

into a single operational force, but also engenders a spirit of camaraderie among all of the approximately 650 regular state, county, and municipal police officers and the almost 400 county and municipal reserve officers. In addition to the continuous, on-duty formal interaction, a great deal of informal interaction takes place both on and off duty.

Off-duty interaction consists of social events sponsored by a county-wide police officers' association, the marksmanship contests sponsored by a police revolver club, and informal and unstructured recreational activities, such as hunting and fishing excursions, dancing, and simple family visiting. Informal on-duty interaction usually consists of units from neighboring jurisdictions meeting for short gossip sessions while on patrol or taking a coffee break together at a drive-in convenient to both beats. While on-duty interactions of members of municipal departments are limited to officers of their own and adjacent jurisdictions, highway patrolmen and sheriff's deputies have a wide range for on-duty interaction since each of their beats borders on several municipal jurisdictions.

Recruitment into the Police Culture

All Coast County law enforcement agencies adhere to rather strict standards in personnel recruitment. Aside from the minimum age of 21 years, height, weight, and physical agility requirements, applicants must have had two years of college work or their equivalent and be American citizens. Those who achieve acceptable grades in a written civil service examination undergo an FBI background investigation, a psychiatric evaluation, and then go before a selection board of senior police officers and citizens.

Results of the FBI background investigation are considered in the psychiatric evaluation, which usually eliminates individuals with a record of driving offenses (particularly speeding, and reckless or drunken driving), juvenile offenses, indications of alcoholism, drug use or other evidence of emotional instability, sadistic tendencies, and those who view themselves as heroic adventure-seekers. Because large numbers of applicants are screened out in the psychiatric evaluation, approval of the remainder by the selection board is largely a matter of form.

Observation indicates that recruitment of personnel into Coast County law enforcement agencies is primarily from the lower-middle and upper-lower classes on Warner's fivefold scale (1949: 70).[3] Successful middle-class applicants are generally from "police families"; i.e., young men who are emulating their father's or an elder brother's careers, or young men who aspired to a profession but were unable to complete their training. Many would-be lawyers, for example, may be found in the Coast County police

ranks. Successful applicants from the upper-lower-class group are generally young men who have achieved apprentice-skilled, journeyman or semi-skilled artisan status but who have aspirations of upward mobility, and young men who have completed a satisfactory military service experience but without acquiring a readily marketable civilian skill. To both of the latter types, a law enforcement career offers a salary in the white-collar bracket (entry level ranges from about $8,000 to $10,000 per year), status, stability, security, and possibility of advancement.

Applicants for appointment as regular deputies in the sheriff's department are required to provide the selection board with a written statement of their reasons for desiring a career in law enforcement. Chi-square analysis of the reasons stated in 101 applications submitted over a period of two calendar years shows significantly high frequencies of men motivated by career advantages and opportunity for public service.[4] It is even more significant that all of the applicants during this period whose stated reasons indicated a desire for adventure or to fight crime were rejected.

While most recruits into law enforcement in Coast County are unmarried at the time of entry, they usually marry soon after appointment, before completion of the two-year probationary period. All agencies require that appointees establish permanent residence within or near the jurisdictional boundaries of their departments.

The requirements and selection procedures for entry and the potential benefits of a law enforcement career in Coast County thus combine to encourage recruitment of men who are fairly homogeneous as to acceptance of and respect for authority and emotional stability, and as to their approval of the existing sociocultural order of American society. All, regardless of ethnic origin, have a personal stake in the preservation and maintenance of the latter, either because of what they consider to be their middle-class status or because of their upward mobility to such status.

Concerning ethnic origin, it should be noted that about 95% of all police personnel in the county, both regular and reserve, are whites of European descent. Of the remainder, about 2% are Latin-American, 1% Oriental, and 2% Negro. In all jurisdictions, the Negro officers are comparatively recent appointees, procured through a deliberate but not too successful campaign to encourage Negro applicants. The acceptance and treatment of the ethnic minority officer by his peers and the public will be considered later.

Police Enculturation

Since all officers undergo similar experiences in training and on duty, the enculturational aspects thereof must be considered. The police officer's duties are considered as falling into five broad, related categories: (1)

preservation of the public peace; (2) protection of life and property; (3) prevention of crime; (4) enforcement of the law; and (5) arresting offenders and recovering property (Clift 1956: 18).

Regardless of whether training is accomplished in a police academy, through community college police science courses or on an in-service basis within a department, trainees are impressed with the fact that successful accomplishment of each category of police duty requires suspicion, caution, and technical accuracy. Officers must be suspicious of any act, individual, event, or situation that appears to be extraordinary or unusual. They must be cautious, because precipitate action may result in injury or death to innocent citizens or to the officer himself. Regardless of what type of incident is involved, the officer's handling thereof must be technically accurate and within the letter of the law, since a failure in this regard can not only be the basis for the case being thrown out of court, but also for a lawsuit against the officer and his department.

Accordingly, the officer on beat patrol is continually looking for what he considers to be unusual. The incongruous association of a poorly dressed man in an exclusive, expensive residential area at night or loitering in a shopping center after hours may indicate a prowler intent on burglary. A driver's failure to dim his lights for oncoming traffic may be due to reflexes slowed by alcohol. A car parked in a lonely, isolated area may indicate strippers at work or a kidnap-rape. The adult loitering in the vicinity of a playground may be a child molester. A group of people congregating may mean a fight, or someone suffering a heart attack. The hitchhiker may be an escaped convict or a hoodlum planning to strong-arm the driver who picks him up.

Everything unusual requires cautious investigation. The poorly dressed man in the exclusive residential area at night may be an innocent householder out for a breath of air, and the loiterer in the shopping center, a store manager checking a window display—or either may be a nervous felon, before or after the act, who will respond to the officer's approach with a shot from a gun concealed in a jacket pocket. The driver who failed to dim his lights may have had his mind on business or family affairs—or may have had a gun or knife held at his neck by a wanted felon crouched in the rear of the car. The car in the isolated area may be innocently parked and unoccupied, or the driver may have stopped for a few minutes' sleep. The adult at the playground may be a parent waiting to escort his child home. The group of people may be congregating around a transistor radio, listening to a sports broadcast, and the hitchhiker may be a newly discharged soldier on his way home trying to save money.

Throughout their training and in daily briefings, officers are continually reminded of the consequences of incautious actions. Thus a sheriff's depart-

ment training bulletin warns that in 35 cases in which officers were shot in connection with vehicle stops, the greatest number occurred after the stop and approach, while the officer was interrogating the driver. The bulletin recommends protective measures.[5]

Because every act of a policeman, regardless of how inconsequential, can be the basis for two legal actions—one in which he is complainant and one in which he is defendant—technical accuracy in action and in reporting action is essential. Every minute of the officer's time must be accounted for during his eight hours of beat patrol, every official contact with citizens covered and tied to a specific time and place, and every assignment, investigation, citation, and arrest must be recorded and substantiated. This is accomplished by submission of a daily report covering, in chronological order, the entire period of his duty tour. A myriad of special report forms—crime, accident, juvenile, animal bite, field interrogation, stolen property, missing persons, vehicle impound, evidence, arrest, discharge of weapon, and many others—must be prepared and submitted according to the events and cases handled during the patrol.

Every report submitted by the officer becomes an official public document. Not only are decisions as to whether or not to prosecute based on the reports, but reports may also be admitted in court as evidence. A misplaced comma, a misspelled word, a time discrepancy, an ambiguously worded sentence or one with grammatical errors can materially affect the outcome of any case in court, so that the officer's career is, in a sense, at stake with every report he submits.

An officer's efficiency is judged not by the number of citations he issues or arrests he makes, but by the manner in which he handles incidents and assignments and by the validity of his citations and arrests. Thus citizens' complaints regarding the officer's handling of incidents or a high number of citations or arrests that fail to meet the test of challenge in court can easily result in a probationary officer's dismissal.

These requirements for suspicion, caution, and technical accuracy in on-duty behavior extend into the officer's personal life as well. In Coast County, as in most of the United States, law enforcement officers are considered as always on duty and required to carry an off-duty gun and handcuffs at all times. Any unseemly public behavior, particularly that involving abuse of authority or unjustified display or use of the off-duty gun, is sure to become the subject of an official investigation and result in reprimand, suspension, or dismissal.[6] Excessive indebtedness or marital infidelity can become the subject of official action. Even the behavior of members of his family, particularly his wife and children, may redound to his discredit.

The Police Value System

The congruence of several factors thus tends to produce a homogeneity of values and attitudinal characteristics among law enforcement officers. These factors (i.e., the type of individual attracted to law enforcement as a career, selection procedures, enculturation into the police culture, and the personal life style of the officer) engender an operating value system that can most readily be explained by using the model suggested by DuBois (1955). In this model, the basic value premises of any culture are considered as resting upon that culture's cognitive view of its environment, man's relationship to that environment and to other men. These premises then yield focal values or generalized behavioral directives, around each of which specific values or behavioral directives are clustered.

To the police culture, the environment is American society as presently structured. The cognitive view of this environment is positive, since entry into law enforcement work in itself constitutes commitment to the present structure of American society. This commitment is intensified by the officer's own self-concept, in which he is not only part of the official structure of that society but the visible representative to the public of its sovereign authority. Man's relationship to that environment is viewed as reciprocally supportive, so that the individual is obliged to contribute to the maintenance of the society and is in return entitled to the protection thereof. Man's relationships to other men must thus be in accordance with the prescriptions and proscriptions, or laws, of the society.

From these cognitive views, it is possible to postulate four premises on which the value system of the police culture is based. These are:

(1) American society, as presently structured, is good and should be preserved.

(2) The well-being of American society is dependent upon the security of the lives and property of its citizenry.

(3) Crime, i.e., violations of law that threaten the lives and property of the citizenry, is in and of itself bad. This is analogous to the assumption of medical practitioners that health is good, illness bad.

(4) Public peace, order and regularity are requisite to the maintenance of American society. In consequence, individuals, situations, or events that are an actual or potential threat to public peace, order, and regularity are bad.

From these basic premises, five focal values may be drawn. These focal values are:

(1) The institutions of American society must be respected and preserved. This includes the symbols of those institutions, such as the national flag.

(2) Human life generally, and the lives of Americans in particular, must be respected and preserved.

(3) Property, both public and private, must be respected and preserved.

(4) Authority must be respected and preserved.

(5) Order must be respected and preserved.

Clustering around each of these focal values are a variety of subsidiary, specific values. The subsidiary values, however, are recognized only to the extent that they do not conflict with the focal values and the basic premises underlying them. Thus individual freedom is an important subsidiary value and positively viewed so long as it does not encroach upon any of the focal values.

The police value system thus recognizes the right of the individual to live as he pleases just so long as the exercise of this right does not interfere with the integrity of American institutions, human life, property, authority, and order. Draft card burning, flag desecration, reckless driving, murder, theft, malicious mischief, extortion, sharp business practices, child neglect, overt homosexuality, and resisting arrest are all acts of individual freedom, but are negatively viewed as encroaching on the focal values. Related to the value of individual freedom is the concept of individual responsibility, so that welfare dependence, except when justified by age or physical condition, is also negatively viewed.

This police value system gives rise to a set of attitudinal characteristics that are reflected in police operations and thus incorporated into the ius. Behavior that transgresses upon the focal values of the police culture most often involves the unusual, i.e., some departures from the predictable range of behavior shared by the majority of the members of the American cultural system. Departures from this range of behavior are, in the officer's experience, associated with departures from the American cultural ideal and are thus an attribute of the culturally different. In consequence, the culturally different represent a threat to the existing sociocultural order and, by extension, to the person of the officer as well. The degree to which any individual is perceived as culturally different by the officer is the degree to which such an individual is considered a threat. Perceived cultural difference is thus the effective determinant of the degree of suspicion and caution the officer will exert in dealing with any given subject.

Perception of Cultural Difference

Perception of cultural difference by the police officer is both ethnocentric and stereotypical. The officer, having internalized the motivations and goals of middle-class America and incorporated the value profile of

middle-class America as subsidiary to his focal values, measures cultural difference against the yardstick of this internalized cultural ideal. This measurement begins with the externals of physical appearance, dress, bearing, and speech and then proceeds to a determination, based on behavior, of adherence to or deviation from the focal and subsidiary values of the police culture.

Any member of an ethnic minority may be perceived, initially, as culturally different on the basis of physical appearance, such as skin color, alone. If, however, the subject's dress, bearing, and speech are in general conformance with the middle-class American norm for the circumstances, the perception is revised to one more nearly approaching cultural similarity than cultural difference. Another revision of the perception takes place as the subject's behavior is considered. If the behavior indicates transgression of any of the police culture's focal values, the perception of cultural differences immediately grows stronger. The officer's ultimate action in any given situation will, if all other factors are neutral, be governed primarily by this perception of cultural similarity or difference.

The handling of routine vehicular stops by Coast County deputy sheriffs provides an illustration. The sheriff's department does not maintain a specialized traffic detail. Patrol deputies carry vehicle code citation books, but handle vehicular offenses only as a part of and incident to their general patrol mission. In contrast to municipal traffic details and the state highway patrol, they make no special effort to detect vehicle code violations. At the same time, when flagrant or serious violations of the vehicle code are involved, patrol deputies are obligated to act. Since most vehicle code violations are classed as misdemeanors, in which the officer may, but is not required to, make an arrest, the actions available to the officer include simple warning, issuance of a citation, or arrest and jailing of the subject. As a matter of policy, the sheriff's department does not encourage prolific issuance of citations since this practice could, in contested cases, require court appearances of deputies to the detriment of the beat patrol mission or overtime budget of the department.

While sheriff's deputies are thus somewhat reluctant to issue vehicle code citations or make vehicle code arrests, they will do so when other correctional measures are ineffective or inappropriate. Beat patrol deputies have thus developed what they refer to as the "attitude test." In applying the attitude test, the deputy explains the violation to the driver, the degree to which the violation constitutes a threat to lives and property of the driver, passengers, other motorists or pedestrians, and the fact that the violation is ground for citation or arrest. If, during this explanation, the driver appears properly impressed, the deputy will further explain that he is loathe to issue a citation and burden the driver with a fine or court

appearance, and will then suggest corrective measures. These may range from a promise not to do it again, in the case of speeding, to parking and locking the car and radioing for a taxi in the case of inebriation.[7]

The driver who, after the usual protestations of innocence, evidences recognition and appreciation of the focal values of the police culture and agrees to the corrective measures suggested by the deputy is considered as having passed the attitude test and is released with a warning not to repeat the violation. Failure to pass the attitude test, i.e., evidence of rejection of the police culture's focal values of respect for life, property, authority, and order, invariably results in issuance of a citation and, in extreme cases, arrest and jailing.

Observation of deputies' behavior in administering the attitude test provided illustration of the manner in which cultural difference was perceived and the influence of this perception on deputies' attitudes. When physical appearance and dress of the subject indicated conformity to middle-class standards, suspicion decreased. However, if the subject's responses failed to indicate recognition and appreciation of the police culture's focal values, suspicion increased, attaining a peak if belligerence (failure to respect authority) or bribery (failure to respect an institution of American society) were involved. Similarly, if physical appearance and dress indicated nonconformity to middle-class standards, such as the long hair and exotic garb of the hippie, the African styles of the black nationalist, or the slick hair and "sharp" apparel of the Chicano, suspicion would be high initially, then decrease or increase according to evidence of recognition or rejection of the police culture's focal values.[8]

The propensity for police suspicion to increase according to ethnocentric perception of cultural difference is reinforced by stereotypes. As James (1961: 731-34) has noted, stereotypes are not always made up out of whole cloth as the products of imagination and bigotry but do have some, though often far-fetched, empirical referents. The empirical referents of police stereotypes of the culturally different are, to them, hard, statistical facts. The FBI's *Uniform Crime Reports for the United States* (1966) shows disproportionately large numbers of arrest of Negroes and Indians for certain types of offenses (see Table 1); the California Bureau of Criminal Statistics calls attention to high proportions of convictions of Mexican-Americans and Negroes for three types of offenses;[9] as insurance rates indicate, persons under 25 years of age are disproportionately involved in vehicular offenses. Also, most law enforcement agencies maintain geographical offense-incidence maps which usually show a higher incidence of offenses in areas of predominantly Negro or Latin occupancy. These stereotypes are reflected in the increased suspicion with which the police regard the culturally different and are usually reciprocated by an

equal degree of suspicion and distrust on the part of the culturally different, based on their own stereotype (for which some empirical referents do exist) of the police as bigoted bullies.

TABLE 1

ARRESTS BY RACE IN THE U.S. FOR SELECTED OFFENSES (1966)[a]

Offense	*Total*	*ARRESTS* *Caucasian*	*Negro*	*Indian*	*Other*
Murder (nonnegligent manslaughter	7,114	2,911 (41%)	4,068 (57%)	66 (1%)	69 (1%)
Forcible rape	10,235	5,249 (51%)	4,806 (47%)	68 (1%)	112 (1%)
Aggravated assault	75,040	37,060 (49%)	36,723 (49%)	650 (1%)	607 (1%)
Robbery	40,671	16,505 (40%)	23,451 (58%)	336 (1%)	379 (1%)
Weapons (carrying, etc.)	54,591	25,648 (47%)	28,092 (51%)	258	593 (1%)
Prostitution (commercialized vice)	29,661	11,751 (40%)	17,487 (59%)	156	264 (1%)
Gambling	80,483	18,815 (23%)	57,734 (72%)	23	3,911 (5%)
Drunkenness	1,465,295	1,059,254 (72%)	320,305 (22%)	77,203 (5%)	8,533 (1%)

SOURCE: Uniform Crime Reports for the United States, 1966, Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C.

[a] Racial breakdown of U.S. population, as of July 1, 1967, was estimated in the U.S. Department of Commerce *Current Population Report,* Series p-25, No. 385, 14 February 1968, as follows: Caucasian, 175,055,000 (88%); Negro, 21,983,000 (11%); other, 2,079,000 (1%). No current figures are available for the Indian population. Census figures for 1960, however, showed an Indian population in the continental United States of 545,000, or 0.3% of the total population for that year.

The effect of this reciprocal stereotyping on police relations with culturally different minorities is obvious. A culturally different minority, convinced that their vocabulary, values, and behavior will be misunderstood and misinterpreted by the police, shuns contact with them. Officers investigating cases within minority communities thus come up against a solid wall of silence and noncooperation, increasing suspicion and intensifying distrust of the minority on the part of the officers. The mutual distrust becomes

cumulatively self-reinforcing, so that ultimately the officers and the minority regard each other as enemies. The disastrous turmoil in the United States today is probably as much or more a consequence of these impersonal cultural factors of ethnocentrism and stereotyping as it is of the manifest ill-will of one group toward another.[10]

The Ethnic Minority Officer

This description of the police culture would not be complete without consideration of the officer who is himself a member of an ethnic minority. Observational experience indicates that, as a result of selection procedures, upward social mobility, the enculturative aspects of police training, and internalization of the police culture's value system, such officers identify more with the police culture than with their original ethnic minority culture. At the same time, the position of the ethnic minority officer within the police culture is in some respects marginal.

While the ethnic minority officer is generally a full participant in both formal and informal on-duty interaction, including squadroom kidding and horseplay, his participation in off-duty interaction is limited primarily to the marksmanship contests of the revolver club. Although he may maintain nominal membership in the police officers' association, he does not, as a rule, participate in the social events that the association sponsors, nor in the unstructured informal activities.[11] Despite this marginality in the police culture, or perhaps because of it, the ethnic minority officer tends to overconform by measuring cultural differences on an even stricter middle-class standard than his nonminority colleagues, and to subscribe with at least equal force to their stereotypes.

In consequence, the ethnic minority officer often displays a greater degree of suspicion of the culturally different, particularly members of his own ethnic group, than the nonminority officer. Whereas the suspicion of the nonminority officer is reciprocated by a culturally different minority so that he is regarded as an enemy, the greater suspicion of the ethnic minority officer is reciprocated to a greater degree by his own ethnic group, so that he is not only considered an enemy but also a traitor. This often impairs his effectiveness in dealing with members of his own group. In the sheriff's department, black deputies themselves express preference for assignments to patrol beats that do not include the black community.

Built-in Bias in the Police Culture

The foregoing evidence indicates that the recruitment, enculturational, and value aspects of the police culture encourage its members to regard the culturally different with suspicion. In any encounter, the degree of sus-

picion will parallel the officer's perception of degree of cultural difference. Perception of cultural difference by the officer is ethnocentric, so that the greater the degree of the subject's departure from the officer's conception of the middle-class American ideal, the greater his suspicion of the subject.[12] This suspicion is reinforced by stereotypes based on criminal statistics that indicate disproportionate incidence of certain offenses among various cultural minorities.

The police's propensity to regard the culturally different with suspicion fosters sharper and increased surveillance of cultural minorities and minority communities. Police stereotyping of cultural minorities not only increases the suspicion and surveillance, but also serves as a self-fulfilling prophecy (Merton, 1957: 421-423). Thus when police note, in statistical reports, that the arrest incidence of Indians for offenses involving drunkenness is several times that for the United States as a whole (Stewart, 1964; Swett, 1965), they are more prone to look for evidence of drunkenness in cases involving Indians and to see sufficient evidence to warrant arrest.

For the same reasons that the police culture fosters suspicion of the culturally different, so does it foster suspicion of innovative behavior. Innovative behavior is, to the police, both strange and unusual, since it has no precedent within their experience, and thus there is no sound basis either for determination of its legality or illegality under the ius or its acceptability or nonacceptability to the ideal of the police culture's spatial and temporal fields.

An illustration of police suspicion of innovative behavior in Coast County occurred when a group of nudists rented a small strip of beach for nude weekend sunbathing. Although secluded, the beach was visible from a large hill 300 yards away and within the borders of a state park beach. The patrol deputies' first inclination was to arrest the entire group for indecent exposure, but a quick check of the penal code showed the inadvisability of this action since the nudists were on legally occupied private land, visible from a public area only at a considerable distance and after expenditure of the effort required to climb the hill in the state park beach.

After consulting by radio with the patrol sergeant and lieutenant, the deputies decided to take no action. The basis of this decision was their judgment that nude sunbathing, on legally occupied private property in a rather secluded area was: first, not specifically proscribed by the ius; and second, not unacceptable to the cultural ideal of their spatial and temporal fields, since no citizen had come forward to file a formal complaint.

As the enforcement arm of the ius, then, the police are, by reason of their cultural characteristics, automatically biased against the culturally different and against cultural change. To understand the effect of this bias on the American legal system, however, requires examination of the other

arm of the ius, the criminal court, and the manner in which the two interact within their spatial and temporal fields.

THE CULTURE OF THE CRIMINAL COURT

For the purpose of this study, a criminal court is considered to be one in which misdemeanor or felony cases are tried or reviewed, so that no distinction need be made among the various levels of the judiciary. Although both professionals (judge, prosecutor, defense counsel) and nonprofessionals (jury, defendant, witnesses) participate in the courtroom trial process, the cultural characteristics of the court are in the main established by the professionals, though influenced to some degree by the nonprofessionals.

Regardless of their origins, members of the legal profession as a group must by reason of their professional status be considered part of the upper-middle-class stratum of American society.[13] As such, they have an even greater personal stake than the police in the preservation and maintenance of the existing sociocultural order.

The direction in which this stake motivates an individual member of the legal profession may vary, however, according to the role he plays in the courtroom culture. As holders of elective or appointive offices, judges and prosecutors may be motivated to view this stake from the frame of reference of a particular political or ethnic group (Riesman, 1954: 442). Although the defense counsel who aspires to elective or appointive office may also hold this view, he is more of a free agent in that he may or may not espouse any cause, and can view his stake in the preservation and maintenance of the existing sociocultural order more in the light of his own personal inclinations. Thus while a small minority among the free agents of the legal profession may, because of personal conviction, strive for disruption and destruction of the existing sociocultural order rather than its preservation and maintenance, they are considered deviants by their colleagues.

Since the entry requirements into the legal profession include graduation from an accredited school of law and passing of a state bar examination, the professional members of the courtroom culture all undergo a similar enculturational experience regardless of their courtroom role. All thus acquire the same basic skill to manipulate the leges and accordingly influence the ius.

A full appreciation of the influence of the enculturational experience of members of the legal profession and a definitive establishment of their real, as distinguished from ideal, value system would require an extensive ethno-

graphic examination that could best be accomplished by an anthropologist with legal training. However, limited observation of members of the legal profession and their behavior in a variety of professional situations enables some postulates. The particular situations observed included the client-defense counsel relationship during police interrogation of the client; the client-defense counsel relationship in the counsel's office and in the jail consultation room; the prosecutor-witness relationship outside of the courtroom; the judge-defense counsel-prosecutor relationship in consultation in the judge's chambers; and judge-defense counsel-prosecutor behavior in the courtroom during the trial process. Informal conversations with judges, prosecutors and defense counsels provided additional data and insights.

All litigation, as members of the legal profession are prone to remark, is an adversary procedure. In this sense, the criminal trial is analogous to the gladiatorial contest, in which opposing principals may be represented by champions chosen for their skill in the manipulation of arms within the ground rules of the contest field.[14] In the criminal trial, the champions are the prosecutor and defense counsel; the arms they manipulate are the leges and the contest field is the court with the ground rules administered by the judge. This concept of litigation as an adversary procedure is apparent in all professional behavior of members of the legal profession and in their attitudes, and is consequently essential to understanding of the legal profession's value system.

Value System of the Criminal Court Culture

With all of the foregoing in mind, the legal profession's value system may be considered, again in terms of the DuBois model, as having the same first two basic premises as that of the police culture. For the remainder, however, the following are substituted:

(3) The security of the lives and property of the citizenry, the public peace, and order are dependent upon the rule of the law. This requires that all conflict be settled by the adversary procedure of litigation.

(4) No act is in and of itself bad. The sanctioning of any act can only be determined by the adversary procedure of litigation.

Among the focal values that may be drawn from these basic premises are:

(1) Any individual involved in conflict is entitled to the best legal professional representation that he can obtain.

(2) Once committed to representation of an individual involved in conflict, a member of the legal profession is obligated to serve the

interests of that individual only and must not be distracted from this obligation by regard for the interests of any other individual or group.

(3) In serving the interests of the individual he represents, a member of the legal profession is not concerned with absolutes such as guilt or innocence, right or wrong and justice or injustice except as they may redound to the advantage of his client.

(4) In serving the interests of the individual he represents, a member of the legal profession is obligated to exert maximum effort in manipulating the leges and the ground rules of the court to his client's advantage.

As in the case of the police, a variety of subsidiary, specific values cluster around each of the focal values. The subsidiary values are, in the main, those of the upper-middle class, but influenced by such factors as the origin and ideological convictions of the individual. Here, too, it is important to remember that the subsidiary values are recognized only to the extent that they do not conflict with the focal values and the basic premises from which these are drawn.

Since the criminal court is composed of both professionals and nonprofessionals, the effect of the nonprofessionals on the value system of the culture of the criminal court must be considered. While influence of the nonprofessionals on the courtroom culture is largely passive, it is nonetheless real, and ranges in degree of effectiveness from high for the jurors to low for the witnesses and defendant. Cultural characteristics of jurors are thus important.

Jury panels, in the jurisdictions comprising the San Francisco Bay region, are drawn from rolls of registered voters. Ideally this practice should result in any given jury panel containing a list of names representing an ethnic, economic and sociocultural cross-section of the population in the court's jurisdiction. In actuality, this is far from the case.

First, registered voters are either property owners or persons with a high degree of residence stability. Transients, or those whose work involves frequent change of residence, are automatically excluded. Second, ethnic minorities with a low tendency to exercise suffrage, such as Indians, Mexican-Americans and Negroes, are underrepresented on the voter rolls. Third, certain occupational categories are either excluded from jury panels automatically or usually excused from service, such as members of the legal profession, law enforcement officers, holders of elective public office, active medical practitioners, clergymen, and public school teachers.

Because of these factors, the middle-aged to elderly, middle-class, ethnic and cultural majority tend to predominate on any jury panel. This central tendency is intensified if prospective jurors who do not have these char-

acteristics are challenged and excused for cause. The right to exercise a limited number of peremptory challenges by both prosecution and defense further increases the probability of the jury's adhering to this central tendency, since each challenge of a member of an underrepresented group by the prosecution decreases the relative representation of that group on the panel to a greater degree than does challenge of a member of the overrepresented group.[15]

Since the jurors bring into the courtroom culture their own value systems, normal jury selection procedures render the probability high that this will be the value system of the middle-aged, middle-class culture sympathetic to the political and economic power structure of the community. This value system tempers or adulterates to some degree that of the professionals in the courtroom culture, particularly insofar as the absolutes of guilt or innocence, right or wrong, justice or injustice are concerned.

The combination of professional and nonprofessional elements in the courtroom culture materially affects adjudication in that the trial process is conducted in accordance with the value system of the legal profession, but the ultimate verdict, in a jury case, is determined largely in accordance with the value system of the jury. Because the basis for any jury verdict is the evidence adduced in court and the jurors' assessment of the defendant, professional manipulation of the leges within the ground rules of the court may so becloud the issue that the jury is left with no basis for judgment other than their assessment of the defendant.

Lack of Cultural Articulation

When there is a marked cultural difference between the defendant and judge, prosecutor, defense counsel and jurors, there is a consequent lack of articulation in communication and understanding that is often intensified by professional manipulation of the leges. Cultural differences in speech, dress, bearing, and behavior then assume paramount importance, as illustrated in the following two cases:

The People v. Young Beartracks

Young Beartracks was accused of the first-degree murder of Chicago Eddie, which was alleged to have taken place following a poolroom argument. Though Beartracks admitted to shooting and killing Eddie, his plea of not guilty was based on his contention that Eddie was the aggressor and had been about to attack him with a razor. The incident occurred in the unincorporated black community in the southeastern portion of Coast County. Beartracks, Eddie, and all witnesses other than the deputy sheriffs who investigated the case were black. Since the deputies had not witnessed

the shooting or events leading thereto, their testimony was limited to after-the-fact matters.

Cultural processes in the United States have encouraged development in black communities of a unique vocabulary, the meanings of which are not shared by the rest of the English language community. Testimony of witnesses concerning the events leading up to the actual homicide was phrased in this vocabulary. As a consequence, both judge and jury were left completely in the dark on at least one crucial point in this case.

The witnesses' testimony brought out that prior to the actual homicide, the deceased had "put him [the defendant] in the dozens."[16] Effort of defense counsel to procure a clarification of the word "dozens" was objected to by the prosecution on the grounds that the witness was not qualified as an expert in semantics. The objection was sustained by the court, so both judge and jury were denied knowledge of the fact that the homicide was a consequence of an extreme form of verbal aggression initiated by the deceased against the defendant.

The inability of both defense counsel and prosecutor to communicate with the witnesses in terms understandable to the judge and jury further beclouded the issues. Questions put to witnesses were responded to by blank stares, noncommittal monosyllables or completely irrelevant verbiage. Communications were so difficult that during one court recess the prosecutor remarked that it would have been easier to bring out the facts of the case if the witnesses were unable to speak English, so that competent interpreters could have been used.

The prosecutor's remark points up the fact that, though all participants in this trial were ostensibly speaking English, they were using two different vocabularies with two different sets of meanings. Witnesses did not understand or share the meanings of the vocabulary used by the professionals in the courtroom culture, and neither these gentlemen nor the jury understood nor shared the meanings of the vocabulary used by the witnesses.

When questioned on the stand, witnesses were faced with responding by silence, by admitting they did not understand the vocabulary words of the question or by guessing (usually wrongly) at the meaning of the question. Either the first or third choice reflected on their credibility, as in the case of the witness who, after denying having had felony and misdemeanor convictions, was asked if he had ever served time in a correctional institution and responded, "No sir, but I was a steward in the merchant marine for twenty years."

This witness' credibility was destroyed when evidence was introduced showing that he had had both misdemeanor and felony convictions and had served time in prison. The witness was not taken aback by this revelation

and admitted readily to the specific convictions and the prison sentence. What was not brought out, however, was that the words "felony," "misdemeanor" and "correctional institution" were unknown and unintelligible to him. His answers to questions using these words were based on a wrong guess as to their meanings.

Following the trial, several members of the jury were asked their opinion of the testimony and how they arrived at a verdict of guilty of murder in the second degree, with a sentence of five years to life. They indicated that the greater portion of the testimony had been incomprehensible to them, and that the witnesses appeared to be either morons who could not understand nor speak plain English or unconscionable liars.[17] For these reasons, their verdict had been based solely on the fact that Young Beartracks had admitted to shooting Chicago Eddie.

Because, in their estimation, Young Beartracks' contention that the shooting had been in self-defense (which if true would have warranted a verdict of not guilty) was neither proven nor disproven, the jury felt that a finding of guilty as charged (murder in the first degree with a mandatory death penalty) would be too harsh. Manipulation of the leges and lack of cultural articulation had precluded an understanding of the case, so that their verdict was a compromise based on standards of their own value system.

The People v. Basher

Basher's trial for assault and battery took place in Hill County, another of the nine counties comprising the San Francisco Bay region. The 18-year-old Basher, black, a high-school dropout and resident of an unincorporated black community, was serving a jail sentence for car theft when he was involved in a brawl with another inmate (also black) and several jail deputies.

As is often the case in a brawl involving several people, the circumstances were unclear. Eyewitness testimony was conflicting. On the witness stand, one deputy sheriff stated that Basher had acted solely to defend his person in the general melee, while another stated that Basher had taken advantage of the brawl to attempt infliction of serious bodily injury. The jury deliberated for a little more than six hours, during the course of which further instructions were requested from the judge, before reaching a verdict of guilty of assault only, a lesser offense, with a sentence of two years. Basher's trial was observed by a researcher, who reported:

> [Basher's] way of life, demeanor, attitudes, manner of speaking, and many other things are different [from those of the jury]. For example, if Basher had had his hair cut shorter, if he would have shaved closer and been aware of the effect of his speech on the jury, he might have gotten off entirely.

> On the stand, Basher slipped into slang and jive talk . . . and had a certain air that could easily be mistaken for arrogance . . . among his own peers this was the natural way. . . . His mannerisms, according to the D.A. bespoke his guilt. [Donald Hill, field notes]

In this case, Basher exemplified in almost every detail the negative stereotype of the antisocial (to the white community) young Negro male. Not only did his hair style, dress, bearing, vocabulary, and pronunciation stress his cultural differences, but his tone and manner of speech were such as to create an impression of hostile belligerence on anyone not familiar with his cultural background. Had he been able to assume the protective camouflage of the jury's culture, i.e., had he had conventional dress, haircut and speech, a quiet, composed manner, and circumspect bearing, the probability, in view of the conflicting evidence, of acquittal or a much lighter sentence would have been high.

Built-in Bias in the Courtroom Culture

The illustrations provided by these two cases are relatively obvious. There are, however, other and more subtle factors that tend to place the culturally different at a disadvantage in the courtroom. Not the least of these are negative stereotypes of cultural minorities. Shepardson (1968), for example, has noted that Indians are considered by the legal professionals to make poor witnesses with little concept of perjury, apt to make a statement in pretrial discussion and then change their testimony completely on the witness stand.

The implications of such an attitude are far-reaching. All legal professionals, whether defending or prosecuting, like to win their cases. Too, all are familiar with criminal statistics. Prosecutors may thus be more willing to prosecute a member of a cultural minority than the actual evidence may warrant, if the offense is one that criminal statistics indicate to be "typical" of that minority. Defense counsel, on the other hand, may be reluctant to take a case in which the client's cultural characteristics constitute a handicap in the cultural environment of the courtroom. If persuaded to take the case, a defense counsel may feel that his client's best interests will be served by an out-of-court deal with the prosecutor to plead guilty to a lesser offense in a nonjury trial, regardless of actual guilt or innocence.[18] Many Indian informants, interviewed while serving jail sentences, claim to have received such advice. The member of a cultural minority, by reason of his lesser access to expert counsel and lesser understanding of the system, is more likely to be intimidated into accepting whatever deal is profferred than the member of the cultural majority.

Examination of the courtroom culture thus indicates that several factors work to the disadvantage of the culturally different in the trial process. These factors are: the value system of the legal profession, the procedures by which juries are selected, the value system of the jurors, the lack of articulation in communication between the culturally different and the professionals and nonprofessionals composing the court, and the negative stereotypes of cultural minorities held by the professionals. To this must be added the lesser, though significant, effect of similar negative stereotypes held by the nonprofessionals. As the adjudication arm of the ius, the courts are by reason of their cultural characteristics automatically biased against the culturally different.

INTERACTION OF POLICE AND COURTROOM CULTURES

The built-in biases against the culturally different in the adjudication and enforcement arms of the ius are mutually reinforcing and thus constitute a pronounced bias in the American legal system as a whole. If this bias were completely unchecked, the legal system would tend to render American society a closed system in a perpetual state of cultural homogeneity and stasis. Such a repression of the dynamic processes of culture would, if not ameliorated, invite violent change threatening the existence of the sociocultural order so that the legal system would be dysfunctional, rather than functional, in this regard.

For the legal system to be functional in ensuring maintenance of the existing sociocultural order, the operating arms of the ius must be subject to other cultural influences that temper their built-in biases. These forces, external to the ius, exist in the spatial and temporal fields in which the ius operates, affecting both arms of the ius and their interaction as well.

Community Influence

The greatest of these forces is the value system of the community. Total, naked coercion is never an efficient or sufficient means of social control. As Johnson (1964: 439) points out, law enforcement in the United States is based on the assumption that the majority of citizens will not only cooperate with enforcement agencies but will also be to a large extent self-policing, so that the effectiveness of the attempt to enforce any law hinges largely on the community itself. The futile attempt to enforce the Volstead Act is a prime example.

Suffrage brings the force of the community value system to bear on the ius through two avenues: legislatively, by change of any lex that contravenes a community value; and administratively, by the control exercised

over the appointment and tenure of nonelected officials of the ius by the elected members of the executive branch of government. As operating arms of the ius, both the courts and the police are sensitive and responsive to these forces. In Coast County, police responsiveness to the value system of the community is illustrated by their handling of two different incipient riot situations.

The first incipient riot situation occurred in the unincorporated black community in the southeastern portion of the county. The situation was sparked by the arrest of a young black woman for drunkenness and shoplifting on complaint of the Chinese proprietor of a food store. By the time the two sheriff's deputies had their prisoner in the car, a large, belligerent crowd of teenagers and young adults had gathered and massed around the car, preventing its movement. The deputies radioed a Code 30[19] and remained "buttoned up" in the car. Within five minutes, over twenty units from the highway patrol, municipal departments and the sheriff's department were on the scene and functioning under command of the sheriff's patrol sergeant. The sergeant quickly deployed his force of about 45 men and two dogs in a wedge formation, with strict instructions that no weapons but nightsticks be displayed, and, as the wedge advanced slowly to the blockaded car, urged the crowd members by bull horn to "keep their cool" and disperse. Although a few rocks and bottles were thrown at the police wedge from the rear of the crowd, these were ineffective. The crowd fell back before the advancing wedge, and the car, the imprisoned deputies, and their prisoner were able to proceed to headquarters, where the prisoner was jailed. The situation was controlled without firing a shot, with no physical contact between police and the crowd, with no arrests other than that of the alleged drunken shoplifter, and with no damage other than dents and broken windows in one sheriff's department car.

This incident, however, took place in the temporal field of 1967, with general public awareness and approval of the civil rights movement, and awareness and sympathy for the problem of the de facto segregated, black communities. The very limited use of force to control the situation without resorting to mass arrest was in accord with the public values of this temporal field. Had the incident occurred in the temporal field of a decade ago, the police action would most likely have involved actual physical contact with the crowd and mass arrests. Similarly, the spatial field in which the incident occurred, Coast County, is one in which overt racism is negatively valued. Had the spatial field been a county of the deep South or the suburban Midwest, the police action would have reflected other values.

The second incipient riot situation occurred in Beach City, an affluent, middle-class, residential suburb in the northwestern portion of the county.

Teenagers suffering from summer vacation boredom were loitering in a shopping center during the early evening hours, impeding and annoying shoppers. Acting on complaint of the merchants, the municipal police ordered the young people to disperse. Jeering, shoving, and a broken shopwindow resulted, and the teenage mob, now grown to about 300, forced the officers back to their cars, where a Code 30 was put on the air. As police reinforcements arrived, the youthful mob withdrew, many taking to cars to "hot rod" through the area, others making small, swift sorties with rocks and firebombs against stores on the periphery of the shopping center. The chief of the Beach City police ordered a curfew, and some fifty municipal, highway patrol, and sheriff's units with more than a hundred officers took over three hours to restore order, using nightsticks and chemical Mace. More than forty arrests were effected.

In this incident, the malefactors were all Caucasian young people from resident, medium-income families, seeking excitement on a summer night. No social issues were involved, either directly or by implication, and attacks were primarily against property, i.e., stores in the shopping center, rather than against persons of shoppers, firemen or police. The value system of the spatial and temporal fields of Coast County required that police action to protect property and restore order be such as to apprehend the offenders without endangering their lives, since they were children of taxpaying citizens of the county. Many arrests were thus effected, but in doing so, police were limited to use of nonlethal weapons. Had the incident been occasioned by an outlaw motorcycle gang from outside the county, the value system of the spatial and temporal fields, as evidenced by frequent community newspaper editorials urging strong measures in dealing with such groups, would have condoned use of riot guns in controlling the situation.

These two incidents serve to illustrate the extent to which police actions, in any given situation, will reflect values currently prevailing in the community despite the value system of the police culture. As realists, the police are fully aware of current community values and the inadvisability of actions in accord with their own value system but contrary to that of the spatial and temporal fields in which they must operate.

The Changing Ius

Just as police actions are influenced by the currently prevailing value system of the community, so too are those of the professionals who compose the court. This influence becomes a serious consideration in prosecutors' decisions as to what does or does not constitute adequate evidence and decisions as to severity of sanctions. An excellent example is

provided by the current attitude of Coast County prosecutors and judges regarding possession of marijuana (recently changed from a mandatory felony under the state health and safety code to an optional misdemeanor for first offenders) and dangerous drugs (a misdemeanor).

As recently as four years ago, any case of possession, whether in quantities indicating individual use only or quantities indicating sale, was invariably brought to court by prosecutors, regardless of the status of the subject. Judges raised few, if any, technical bars to introduction of evidence, and sanctions were relatively severe. Over time, however, the community attitude concerning marijuana and many of the pharmaceuticals classed as dangerous drugs has changed. Use of these proscribed items has proliferated, as indicated by a daily newspaper's recent claim that 85% of the high school students in better residential areas of Coast County indulge in their use, many with tacit parental approval; in one such area, parents refer to the high school with semi-joking pride as "Marijuana High."

During the last two years, the changing public attitude and increasing use of these proscribed items has been paralleled by a change in the actions of the courts on such cases. At first, sanctions imposed for possession tended more to the minimum than the maximum, as had previously been the case. Later, as possession cases proliferated, judges acceded to more technical bars raised by defense counsels to introduction of evidence of possession, resulting in not-guilty verdicts. This caused a change in policy of the county prosecutor's office, so that prosecutors now refuse to take cases to court involving possession of quantities indicating individual use only.

This change in policy and action of the adjudication arm of the ius has occasioned a consequent change in the policy and action of the police, as the enforcement arm. As realists, the police understand that arrest is a useless procedure if the subject must be released without prosecution. As a matter of practical policy, law enforcement officers of Coast County now generally refrain from making arrests in marijuana and dangerous drug cases, unless the amount involved indicates possession for sale or the case involves some other offense on which the adjudication arm of the ius is more likely to act.

This example not only serves to illustrate the responsiveness of the adjudication arm to the currently prevailing values of its spatial and temporal fields, but also the manner in which the adjudication and enforcement arms interact to effect practical changes in the substantive body of the ius itself. It is through this continuous interaction of the two operating arms of the ius, both responsive to the currently prevailing values of their spatial and temporal fields, that a determination is made as to which abstract rules of the leges are to be enforced and remain in the substantive

body of the ius. Rules of the leges that are not enforced are for all practical purposes eliminated from the substantive body of the ius, as is the case with "blue laws" in much of the United States. Bohannon (1965: 37) has noted that law is always "out of phase" with society. It is this responsiveness of the ius to change that prevents the legal system as a whole from becoming so far out of phase with society as to render it dysfunctional in regulating behavior and resolving conflict.

CONCLUSIONS

This examination of the two operating elements of the American ius, the police and the courts, indicates that each has certain marked cultural characteristics. In each of these elements, the congruence of these characteristics exerts such an influence on their operations as to constitute a built-in bias against the culturally different, and thus reflects the premises of cultural homogeneity and stasis.

This built-in bias in the ius, however, is tempered by its responsiveness to the cultural influence of the spatial and temporal fields in which it operates. As a result of this responsiveness, the resistance of the ius to departures from the ideal is mitigated by its continuous adaptations to the reality of this field. The fact that the ius is capable of adapting and does adapt to reality by changing more readily than the relatively inflexible leges prevents the legal system as a whole from becoming dysfunctional, and thus contributes to the system's function of ensuring maintenance of the existing sociocultural order.

The capability of the ius to change more readily than the leges also suggests an additional hypothesis to be investigated by further study, i.e., that the discrepancy between the ius and the leges in any society will parallel that between the real and the ideal in the value system of the society. Further, the police and the courts are not the only elements that form the unitary whole of the American legal system. Anthropological study of these other elements, such as the institutions of bail, probation, correction, and parole is also necessary. A determination of the cultural characteristics of these institutions and the manner in which these characteristics affect their operations will provide further clarification of the relationships among elements of the system and their contributions to its overall functions.

NOTES

1. The term "bias" is used herein to imply a proclivity, bent or leaning in a certain general direction, with less harsher connotations than the rigid, unreasoning, preformed judgments that are implied by the term "prejudice."

2. Regular participation in two-man beat patrolling provides an ethnographer with an ideal unstructured depth interview situation. Although there are occasional incidents of intensive activity, more than 90% of the average eight-hour shift is taken up with the dull, boring inactivity of routine patrolling. The continuous, monotonous, low-speed driving in an aimless pattern over the beat generates ennui. Darkness and the confines of the patrol car cause a feeling of isolation that is relieved only by the occasional radio transmissions. The only way for beat partners to combat this boredom and isolation and keep up their observational alertness is to converse with each other. This, coupled with the fact that the very real life dependence of each partner on the other inspires confidences, results in beat partners developing a close relationship, with intimate knowledge of each other's lives, in a short time. Because of the rather high degree of informal interaction and the frequent changes in beats and shifts, the life history, personal characteristics, attitudes, hobbies, financial status, and family problems of every officer, regular or reserve, speedily become common knowledge throughout the force. The author's beat patrolling on a full-time, paid basis during summer months thus facilitated data gathering pertaining to the police culture of Coast County.

3. This is consistent with Niederhoffer's (1967: 36) finding that for the past 15 years the bulk of police candidates in New York City has been from the upper-lower class, with a sprinkling from the lower-middle class. McNamara (1967: 193), however, notes that newly appointed patrolmen in New York tend to be primarily from the lower-middle class. The latter also finds that, in the public view, police work is assigned more prestige in the western regions of the nation than in the eastern (1967: 163).

4. Reasons were grouped into the six general categories of the following table:

Police family	Studied law, like work involving law, etc.	Good career, advancement, retirement, etc.	Like people, help people, serve community, etc.	Adventure, active life, fight crime, etc.	Other reasons
11	14	25	23	20	8

Chi-square = 14.0 $p < .02$

5. The following is an extract from the sheriff's training bulletin:

SHOOTINGS DURING INTERROGATION OF MOTORISTS

A study of 35 shootings which occurred while police officers were attempting to investigate, control or pursue suspects who were in automobiles indicated that contrary to traditional belief the most dangerous time during this police

tactic does not occur while approaching a suspect in a stopped vehicle, but most often occurs after the initial contact. This indicates that after a cautious sensible approach, we are prone to relax our guard and give the suspect the opportunity needed to commit an act of violence.

Percent	Circumstances of Shooting
7	In vehicle pursuit
28	After stopping vehicle, prior to dismounting
22	Dismounting vehicle, approaching suspect up to and including first contact
43	After initial contact, while interrogating, citing, or requesting radio record check

AFTER INITIAL CONTACT, WHILE INTERROGATING, SUMMONSING, OR REQUESTING A RADIO CHECK, REMEMBER THE FOLLOWING:

1. Position yourself so that you are not an easy target. You can be run down if you stand directly in front or in back of the vehicle, or knocked to the ground by an occupant slamming a door against you if you are standing too close to it.

2. Do not reach into the car. Request occupant to hand identification out to you.

3. If a driver drops anything, don't pick it up. This may be a ruse to put you in a vulnerable position.

4. When writing a summons or directions, don't become completely absorbed with writing. Remain aware of the actions of the subject.

The situations wherein the officers know or had reason to believe they were handling felony suspects were rare. Therefore, methods which will not offend the innocent motorist, yet will offer you the maximum protection should be practiced faithfully.

6. Proceedings in two dismissal cases were observed. One involved a probationary officer in a municipal department who was charged with off-duty misconduct, i.e., using his off-duty gun to threaten a rival for a young lady's affections. The other involved a probationary deputy sheriff who was charged with use of dangerous drugs. The latter had previously been the subject of both departmental and grand jury investigations on a charge of using excessive force to subdue a belligerent jail prisoner. The drug use charge was filed about three months after he had been exonerated from the excessive force complaint. Another case was observed in which a veteran officer of a municipal department, though not subjected to formal proceedings, was informed that his resignation would be accepted because of excessive indebtedness and alleged marital misconduct. Since resignation provided a solution to his indebtedness problem (release of retirement fund), the officer took this option.

7. Most motorists are successful in passing the attitude test. Fifty sets of citation blanks are contained in a book. A check of citation book issuance revealed that patrol deputies drew from two to four books per year. One patrol deputy was still using the same book drawn almost two years ago.

8. The sheriff's department stresses maintenance of social distance between deputies and the public. Deputies are required to use conventional titles of respect in addressing adult citizens, and to insist that they be addressed as "deputy" or "officer." This discouragement of familiarity contributes to the effectiveness of the attitude test.

9. The following is an extract from State of California, Bureau of Criminal Statistics (1966): 108.

> As might be expected, the highest proportion of convictions for those persons of Mexican descent occurred in drug law violations. Bookmaking and assault violations were highest for those of Negro descent.

10. Hostility to law enforcement officers within ethnic minority communities is often manifested in the most trivial incidents. On one "graveyard" patrol shift in the unincorporated black community in the southeastern portion of the county, in response to a neighbor's complaint, my partner and I asked a householder to do what he could to control his dog's incessant barking. Despite our polite phrasing of this request, the householder's aversion to police was so obvious that I could almost feel his hatred. This inspired a reciprocal hostility in me that required considerable effort to curb. Had my partner and I indulged our own feelings by relaxing the stiff facade of social distance, the householder would have been provoked to a physical assault, thus providing grounds for a felony arrest.

11. A front-page feature in the *Wall Street Journal,* 4 September 1968, relates the experiences of a Negro police sergeant in Los Angeles who has applied for early retirement. Attitudes of the black community and his and his wife's ostracism from off-duty police social activities were instrumental in his decision.

12. A *Wall Street Journal* editorial, 30 August 1968, in commenting on Chicago police action during the Democratic national convention, remarks: "They [the police] carry into uniform the values and attitudes of their own community, and by and large these are the lower-middle class, red-blooded values most easily offended by the unwashed demonstrator."

13. Mayer (1966: 100) notes that two-thirds of all law students are from professional, proprietorial or managerial families, while Schmidhauser (1961: 59) finds the Supreme Court as representing "the conscience of the American upper middle class . . . conditioned by the conservative impact of legal training and professional legal attitudes and associations."

14. Bohannon (1964: 195) considers gladiatorial contests and ordeals in the same light as courts in regard to defining legal situations.

15. In a controversial Bay region trial of a member of an ethnic minority accused of the murder of a police officer, jury selection took 14 court days. Although at least 40% of the population of the municipality in which the offense occurred was black, the jury panel was drawn from the county roll of registered voters, and consisted of 160 persons, of whom 27 were nonwhite. Of these, 22 were black. After excuses for cause and peremptory challenges, the ethnic composition of the jury and four alternates was one Negro, one Japanese-American, one Latin American and 13 Caucasians of European descent. Occupationally, the jury and alternates were composed of three salespersons, two bankers, one secretary, one bank secretary, one laboratory technician, one surveyor, one aircraft instrument technician, one machinist, one paper company employee, one aircraft catering service employee, and three housewives. Of the latter, one was married to a member of a municipal fire department and one to a forklift driver. The following table shows the disparity between the ethnic composition of the jury panel and the jury (including alternates):

	European-descent Caucasian	*Negro*	*Other*
Panel	83.1%	13.8%	3.1%
Jury and alternates	81.25%	6.25%	12.5%

16. The "dozens," a cultural phenomenon of lower-class urban Negro communities, is a verbal contest in which the participants each try to out-insult the other. There are no limits to the range of insults, so that appearance, food habits, sexual behavior, mental ability, and physical characteristics of the participants, their siblings, parents, and other kin all become the subject of extreme vituperation—the more profane and obscene, the better. The loser in the contest is the one who is either provoked to violence or runs away.

17. Sapir (1921: 4) has termed thought as "silent speech," since thinking is impossible without words in which to conceptualize and frame thoughts. This is borne out by the fact that psychologists now generally recognize the mysterious entity they term "intelligence" as measurable by the extent of an individual's vocabulary. The witnesses appeared unintelligent to the jurors because of their unfamiliarity with the vocabulary of the courtroom, although their own vocabulary was adequate for their normal functioning within their cultural environment.

18. Mayer (1966: 46) estimates that four-fifths of the criminal cases in the United States end as guilty pleas bargained out against reduced sentences or reduced charges.

19. Police radio signal for "Officer needs help—emergency."

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