UNIVERSITY OF CALIFORNIA, SANTA CRUZ

A Contribution to the Understanding of the Social Construction of Law in Marijuana DUI Cases

A dissertation submitted in partial satisfaction of the requirements for the

degree of DOCTOR OF PHILOSOPHY in

SOCIOLOGY

by

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California's citizen led initiative to legalize recreational marijuana use created a new area for law enforcement to exercise discretionary authority. Unlike alcohol DUI's—where breathalyzers measure B.A.C. (blood alcohol content) and determine impairment *per se* —California courts currently rely heavily on officer testimony to prosecute people in DUID (driving under the influence of drugs) cases. Acting as street-level bureaucrats, police must translate California's new marijuana policy into practical rules on the ground.

Using ethnographic methods, primarily participant observation and interviews, I interrogate a topic central to today's zeitgeist, the public's concern over police discretion. Specifically, officer behavior and their policing approaches in presently in potential marijuana DUI cases. Understanding how police, in the absence of valid tests and procedures, mobilize the law serves to obtain at the ground level of analysis how police exercise discretion, what presently passes as constituting the body (*corpus delicti*) of a "normal" marijuana DUI offense, and why the present tendency is the current outcome. As well, beat officers serve as a comparative axis at the floor level of analysis from which to study how the law is socially constructed.

This investigation contributes to the social construction of law and contributes to the public understanding of the law, both in marijuana DUI's and in police discretion. With the normalization of marijuana use in Santa Cruz County, and in

relation to the real concerns of inhabitants, there is a collective tendency for police to approach marijuana DUI's as not "real crime."

Acknowledgements

I cannot repay the people I am most indebted to and most thankful for their counsel and mentorship, except by continuing to pay it forward. There is first and foremost my Professor, Craig Reinarman, who taught me what it takes and means to be a mentor to scholars. I have been aided by many during my intellectual journey, but none showed me like Craig the many shapes, approaches, and purposes mentoring someone takes. In a world where labor extraction is par for the course, I am in the enterprise of education thanks to Craig's mentorship. Graduate school, but more importantly becoming mentally and intellectually mature, is not for the faint of heart. Yet Craig provided a forward motivation in the genuine sense that enlarged and deepened my sense of understanding and learning. In that process, my perception of what mentorship, learning, and education has deepened immensely.

There is also my Professor, Hiroshi Fukurai, who is a supreme example of how one should carry and fulfill their commitment and dedication to scholarship, mentorship, and the education of people. Hiroshi's aid and guidance was vital in navigating both my pedagogical role as an educator and a scholar through the dissertation process and the many hurdles along the way. I still recall leaving his office telling him I did not know how to read legal texts, his simple reply, "I learned. You will learn." His earnest guidance forced me to rethink my potential, but also that of my students, as well as to be keenly aware of respecting our abilities to learn, develop, and adapt new knowledge and skills necessary for a life commitment to scholarship and education. I was also fortunate to have been his teaching assistant for

several years and witness firsthand the high standard Hiroshi holds with the same level of respect, care, attention to detail, dedication, and patience towards undergraduates, graduate students, staff, as well as new or established academics. To be a beneficiary of that is to understand the gold standard for which we should all strive for as academics and educators, which I will do my best to maintain.

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their homes, again, that really did help a lot. And I will always be grateful for the waves, coffee shops, and jiu-jitsu in Santa Cruz.

Introduction

In the 21st century, police officers and their discretion continue to take a center stage in our zeitgeist. In response to the killing of Michael Brown in 2014, and the subsequent rebellion and social discontent, then President Barack Obama created the President's Task Force on 21st Century Policing. In 2015, it released its final report calling for, among other things, more data on police activities. However, President Obama expressed frustration with the snail pace police reform was happening, "change has been too slow and we have to have a great sense of urgency about this."[i]

At the same time, across the nation marijuana reform legislation (legalization, decriminalization, or medicalization efforts) continued to be passed by legislatures and voter initiatives. This wave of legalization has provided researchers and policy analysts the opportunity to study marijuana related topics.[ii]

The intersection of police discretion, marijuana, and the real consequences of drug policy have been studied before. When the New York Mollen Commission found in 1994 that New York Police Department (NYPD) officers routinely engaged in overtime schemes to increase their wages–often using small drug possession arrests such as marijuana possession— it was a surprise to many, but not the people caught up in these plots. Levine and Siegel (2015) found that even though marijuana possession (of less than one ounce) was not a crime in the state of New York, NYPD arrested, prosecuted, and jailed more people for that crime than any other crime. They also found young black and Latino men have largely shouldered the burden of these

malfeasant practices known to officers in New York as getting, "collars for dollars" (Levine and Siegel 2015).[iii]

Retired Major Neill Franklin, who served 34 years on the Maryland State Police, executive director of LEAP (Law Enforcement Action Partnership) said,

> One of the requirements for completing a federal grant application for funds to combat drugs was showing how many drug arrests we made. The thinking was that the more drug arrests you have, the more significant your drug problem. If you have a significant drug problem, the federal government will give you more funds. So what did we do? We had our officers go out and make as many drug arrests as they could. Where did we do that? We did that in communities of color. Yes, it was that easy.[iv]

However, the preliminary data I collected germinated different results. Police officers I observed and spoke with for this research did not perceive or operate as if marijuana related detentions and/or arrests were advantageous either financially or otherwise. Instead, I observed them turn a blind eye to marijuana DUI's and learned of the myriad of reasons why it was a case often constructed by police: "it wasn't worth the squeeze", "the paperwork sucks", it is "a lot of work for just a misdemeanor", and others.

I situate marijuana DUI's as a topic of police discretion and the social construction of law. I study policing practices, perspectives, and behaviors but also how the law was being mobilized by law enforcement in these cases. By "mobilized", I mean as understood by Donald Black's (1970) theory on that singular dimension of social control, the process by which a legal system acquires its cases. I utilize this concept to understand the legal control system via individual police discretion and

their policing of impaired driving laws, specifically driving under the influence (DUI) related to marijuana use in a new context—that of legalized marijuana.

My research site differs from much of the scholarship on policing, which has been done in largely urban settings— and in the context of mass incarceration, the drug war, and policies such as "stop and frisk". My research takes place in the Monterey Peninsula, and focuses on officers in Santa Cruz County, a small city county with a mixture of rural and urban sprawl and variation in the social, economic, and political standing of its inhabitants.

In chapter one, I outline how my line of questioning began with claims made about an impending epidemic of marijuana DUI's (that would supposedly and inevitably materialize if marijuana became legalized). I shift to situate this issue of marijuana DUI's within the subject of police discretion by analyzing existing local and state data and review the structural realities in which the law is being mobilized on the ground by beat cops.

In chapter two, I first outline the three literatures I draw from that assist in interrogating this claim making and the social construction of law. I review literature from Sociology and other social sciences that inform on the law, police, and discretion. Additionally, of interest here is the mechanism by which police are directed/enticed to "see" more or less of a particular crime, what Donald Black calls "the mobilization of law". For that reason, I review recent scholarship on policing models and the organization/institution of the police.

In chapter three I go over the methodology used in this research: ethnography, participant observation and semi-structured interviews. I take a symbolic interactionist dramaturgical perspective, and I use front and backstage participant observation to understand beat officer discretion in these cases and what socio-legally constitutes a marijuana DUI to officers. "Thick description" was necessary to be able to systematically analyze data using a grounded theory approach. I compared qualitative findings from police interviews with those of other street level bureaucrats and civilians encountered by police in this specific type of case. The ideas and perceptions found in police interviews speak to the engagement of asymmetrical relations of power in police interactions, the motive and narratives in these engagements, and their outcomes.

In chapter four, drawing from more than eighty hours of ride alongs around the Monterey Peninsula—mostly in Santa Cruz County and overlapping its jurisdictions— beat officers serve as a comparative axis at the ground floor level of analysis from which to study the social construction of law. Accounting for all elements that impact police discretion in each agency is unfeasible and beyond the scope of this chapter. I point out elements and "signposts" that have bearing on the discretion of officers in relation to detecting and testing for potential marijuana DUI's. What is excavated from the working lives of police is the many ways individual beat officer discretion is conditioned and layered by police institutional needs and their needs of other police. But also, the ways individual officer discretion is condition is shaped by police culture, and understanding how culture shapes the

conditioning of officer discretion illuminates the finding that marijuana DUI's are of low value to many cops, and do not fit within what officers think of as "real crime".[v]

This directly connects to chapter five. A central question of this research is, what constituted a marijuana DUI? What are the statutory requirements, the *corpus delicti*, of impaired drugged driving when marijuana is the substance? This chapter is about police reactions to the over-discretion they have in encounters with civilians who are, who may be, or who officers suspect are impaired from marijuana use. I analyze officer responses to questions from the guiding questionnaire that focus on field sobriety tests and investigatory procedures in traffic stops. I focus on traffic stops and beat officers on patrol, a common type of encounter between police and civil society where police have specialized training to detect for impaired drivers. The tool user (the officers), their tools (tests and procedures), and their training (standard field sobriety tests (SFST), advanced roadside impaired driving enforcement (ARIDE), drug recognition expert (DRE) used to detect impaired driving are utilized as a heuristic to examine the strategies of action officers tend to follow in encounters with people that may be potential marijuana DUI cases.

In chapter six I present narratives from civilians encountered by police, and other streel-level bureaucrats, whom citizens must potentially interact with in the criminal justice system. These people serve as a resource for sociological analysis on policing practices. Not only can they speak to the kinds of actions, remarks, practices, and behaviors police perform in carrying their duties— and contradict, confirm, or elucidate policing practices by comparing them to the officer's interviewed here —

they also are part of what produces what eventually is understood as a "marijuana DUI" by the officer, and possibly other street level bureaucrats (public defendants, prosecutors, judges, bailiff's, clerks, etc.).

Chapter seven is where I discuss how this research contributes to the study of the social construction of law regarding the mobilization of law. I tease out how this investigation contributes to the social construction of law, specifically the absence of its mobilization and the style of social control occurring presently in potential marijuana DUI cases where I did this investigation. I conclude this chapter by detailing how my project aimed at contributing to recent research on drug policy.

I then have a concluding chapter that summarizes this work, and where I expand on the shortcoming and limitations of this research. I also provide guidance and possible solutions for future researchers doing similar work.

Chapter One: The DUI Crisis That Was Not

When marijuana legalization in Californian was under debate in 2016 Lauren Michaels, the legislative affairs manager for the California Police Chiefs Association said, "The whole business model behind Prop 64 is that marijuana profits will increase with increased sales and use, so we're going to have more people over 21 using marijuana, which means more people under the influence of cannabis being on the roads."

The thinking of some interest groups prior to Californian's passing of Proposition 64 in 2016 was that marijuana legalization would create an epidemic of marijuana related DUI's.[vi] The logic of this constituency was as follows: if marijuana is legalized, *ceteris paribus* there will be a dramatic increase of impaired driving offenses leading to more traffic accidents, fatalities, and dangerous roads.

The vanguard of this opposition at that time, law enforcement and their representatives, said marijuana legalization would mean a threat to road safety. Half of the money raised to oppose the ballot measure came from police and prison guard groups.[vii] LA County Sherriff Jim McDonnell predicted October 2016 marijuana legalization, "will be eye opening for a lot of people. The public's perception is that weed is innocuous, that this is something they did 40 years ago and it is no big deal," but "today's marijuana is not yesterday's marijuana" referring to the increased potency over the years.[viii]

Similarly, John Lovell, longtime leading lobbyist in Sacramento for law enforcement (the California Narcotics Officers Association, the California

Correctional Supervisors Organization, the California Police Chiefs Association, the Association of Los Angeles Deputy Sheriffs) went on record to say he "believes Prop. 64 will produce new victims: casualties of impaired driving, minors enticed by cannabis advertising, and just about anyone who gets in the way of a booming industry."[ix]

Kern County District Attorney Lisa Green wrote in September of 2016,

> "Just this past June 24-year-old Rodolfo Contreras was convicted of second-degree murder for driving with marijuana in his system and hitting the vehicle driven by David Aggio, a retired parole agent. This was the first marijuana-only homicide conviction in Kern County…This tragic case demonstrates that being under the influence of marijuana and driving a motor vehicle has severe consequences not only for the unsuspecting victim, but for the driver as well. Mr. Contreras is now serving a life sentence in state prison due to smoking marijuana, getting behind the wheel of his car and killing someone."[x]

Seven years after California passed Proposition 64 in 2016**,** has there been a dramatic increase in the number of marijuana DUI's? Has Proposition 64 materialized into the social problem some claimed it would? This claim making by interest groups was the initial inquiry through which I explored this topic.

In this chapter, I review analyze existing local and state data that help situate this issue of marijuana DUI's within the subject of police discretion. This chapter provides two key pieces of information regarding the search for a clear view into the claim made by law enforcement interest groups that marijuana legalization would produce an epidemic of impaired drivers. One, the existing and available data does not lend itself to the claim made of an epidemic of marijuana impaired drivers. This claim could be considered elements of a "yet successful" but not yet unsuccessful

moral panic surrounding marijuana legalization. Two, this line of exploratory research and the dearth in data, dearth in data collecting capacities and dearth in education of regarding marijuana's effects and detecting methods pushed my sociological gaze towards interrogating the social construction of law at the ground level.

Local Data

I started locally, in Santa Cruz, trying to get a glimpse of this supposed wave of incoming danger. Santa Cruz is an ideal location to study marijuana impaired driving and police discretion in marijuana DUI cases. It is one of few places in the world to have a history, culture, and industry related to marijuana use. Santa Cruz also has a history of medical marijuana activism influential in the US and abroad since at least the 1950's and early 1960's when beatniks and the Counterculture sowed their roots in the Santa Cruz area.[xi] Santa Cruz was also the birthplace of the Wo/Man's Alliance for Medical Marijuana (WAMM), a fountain of political activism founded by Valerie Corral and her husband Michael Corrall. They were the first patients in California to challenge the existing law against using marijuana medicinally.[xii]

There are ten marijuana dispensaries in Santa Cruz County (and counting). The County is also home to UC Santa Cruz, with 20,000-students who live in, or commute to, Santa Cruz. If we were going to see an increase of impaired drivers, would we not see it where there is a history of use, an abundance of availability, and a willing and readily participating youth demographic?

I learned data on marijuana DUI's in California is not presently available and will not be until at least 2026.[xiii] This was best explained by California Highway Patrol (CHP) officer D.P. He explained when someone is arrested for driving under the influence they are cited for California CV (code violation) 23152. If suspected of driving under the influence of alcohol, you are charged with subsection (a). If suspected of driving under *anything else other than alcohol* (my italicization) you are cited for subsection (f). If suspected of driving under the influence of alcohol and drugs (prescription or illicit) you are cited for subsection (g). The California Vehicle Code 23152 states:

> "a. It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.
> f. It is unlawful for a person who is under the influence of any drug to drive a vehicle.
> g. It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle."

Officer D.P. said probably a lobbyist was needed to ask that the categorization of marijuana DUI arrests be separated from other drug DUI's. He correctly foreshadowed what occurred the following year, 2019, when then 49th state assembly district Representative Ed Chau of the San Gabriel Valley called for this specific change in the California legal code. The classification of a marijuana DUI will be added to the vehicle code in 2022, and data on marijuana DUI's will begin being collected in 2024, reporting beginning in 2026.

M.M., the director of Substance Use Disorder Services (SUDS)—located within Santa Cruz's Office of Traffic Safety (OTS)— told me when I visited their offices, "The numbers you are looking for don't exist."[xiv] She and one of her workers

explained marijuana DUI's were not counted separately from other drug DUI's (refereed to legally as DUID's—driving under the influence of drugs) because there was no category in police forms, so analytics could not be generated (as officer D.P. explained).

SUDS has self-reported data at the County level on people driving impaired from drinking and smoking marijuana simultaneously, referred to as poly drug use or colloquially as "getting cross-faded" because intoxicant effects are enhanced when mixed. SUDS drew respondents from DUI classes for their "Last Place of Drink" study. When respondents were asked if they had consumed marijuana prior to driving, one in ten respondents said they had consumed marijuana with alcohol prior to driving.[xv] My thinking was, "If data on this specific offense in this jurisdiction is not available, what existing proxy variable data might give insight into how marijuana legalization has impacted road safety?"

Proxy Data

The absence of evidence is not evidence of absence of a phenomenon. From proxy variables we can infer some understanding in the place of explanatory variables that cannot be measured or observed.[xvi] In this subsection I go over general trends of proxy variable data— DUI rates, marijuana related crimes—both locally and regionally for the state of California. I found no evidence of a possible dramatic increase in marijuana DUI's looking at marijuana related arrests in the city of Santa Cruz, at DUI arrest rates in the County, and looking at other counties. It must be said our current measurements are imprecise, their validity and reliability are questionable.

Yet they are our best data presently. However, the proxy data does not lend itself to the assertion that legalization would translate into an epidemic of impaired drivers as forwarded by law enforcement representatives and lobbyists.

The California Center for Rural Policy (2021) at CSU Humboldt looked at the historical impact poverty and the criminalization of marijuana had on the community of Sana Cruz.[xvii] In looking at all marijuana related arrests for the years 2000-2018, they found the frequency of marijuana related arrests made in the city of Santa Cruz dropped between 2010-2015, before legalization. The figure below visualizes the breakdown: 45% of the 3,996-marijuana related arrests were from 2000-2005, 41% of the 3,996-marijuana related arrest were from 2006-2010, and the remaining 14% from 2011-2018.

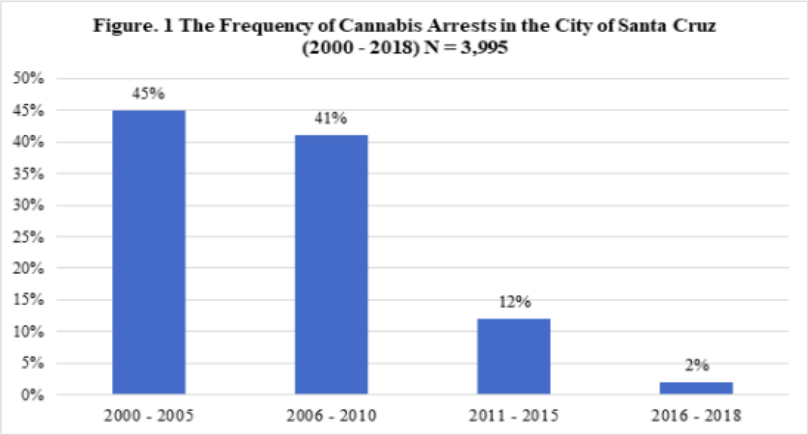

Figure One: Frequency of Cannabis Arrest in the City of Santa Cruz (2000-2018) from a draft of a report from the California Center for Rural Policy at CSU Humboldt (2021)

What percentage of marijuana related arrests were marijuana DUI's? It cannot be known. Nonetheless, the drop in all marijuana related arrests and its timing raises questions: What accounts for this drop? Why is there a decrease of arrests? By the

year 2000, Proposition 215 had permitted for four years permitted the medical use of marijuana. Is this the result of particularly deft marijuana users? Or base of well-educated users regarding the law? The result of liberal small town police politics?

The writers of the report compared rates of arrests in the city of Santa Cruz to average rates of arrests in other cities in California and found Santa Cruz had, "a significantly higher number of cannabis sales and possession arrests per capita than the State of California between 2000-2010." (Pg.29) The figure below shows people in Santa Cruz were arrested more frequently for marijauna offenses, at least until 2011, when there is a drop off.

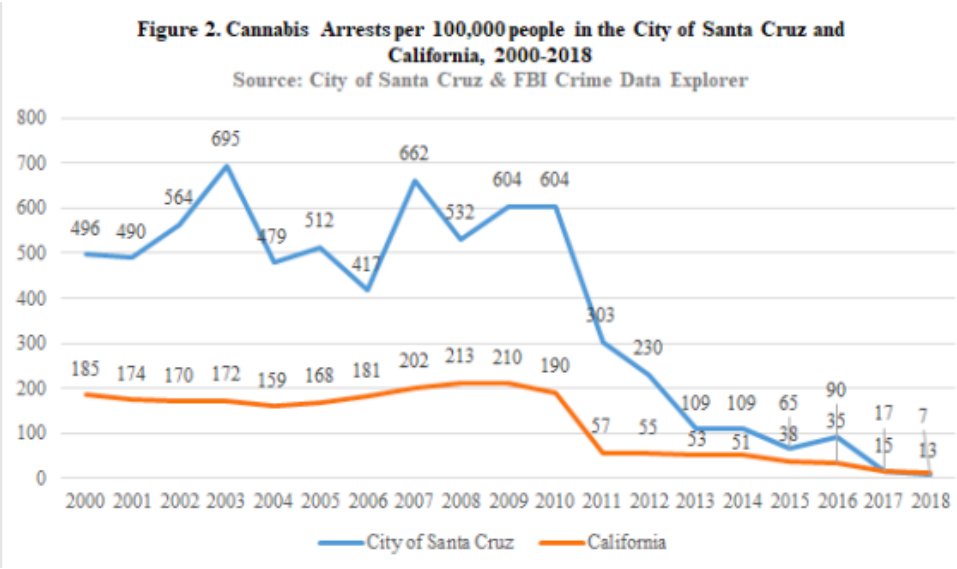

Figure Two: Cannabis Arrest Per 100,000 in the City of Santa Cruz and state of California (2000-2018) from a Draft of a Report from the California Center for Rural Policy at CSU Humboldt (2021)

This might make sense to those who learned the history of Santa Cruz residents political activism around marijuana use. But local government policy on the

matter does not seem to affect sales and possession arrests. Arrest rates were not affected by telling police officers to deprioritize marijuana related offenses. The report states, “The passage of Measure K, which made cannabis arrests the lowest law enforcement priority in 2006, appears to have done little to affect this phenomenon, until 2011, when arrests dropped by 50%.”(Pg.29) Thus, Measure K had no effect on police officer detection, capturing, and processing of marijuana related offenses. And it also does not lend itself to the idea forwarded that marijuana leagalziation would make roads more dangerous.

CA & Other Legalizing State Proxy Data: CO, WA, OR

I first begin with California and them move onto Colorado, Washington, and Oregon (other large states with years of legalized recreational marijuana). Data from the California Department of Justice (2021) showed a decrease of 7.1% in all adult felony DUI arrests from 2016-2021 (Pg.31) and a decrease of 16.3% in the number of all adult misdemeanor DUI arrests (Pg.35).[xviii] If we look at county level data from the latest California DMV Report on their DUI Data Management System (2020) pictured below, they document the number DUI arrests per year.

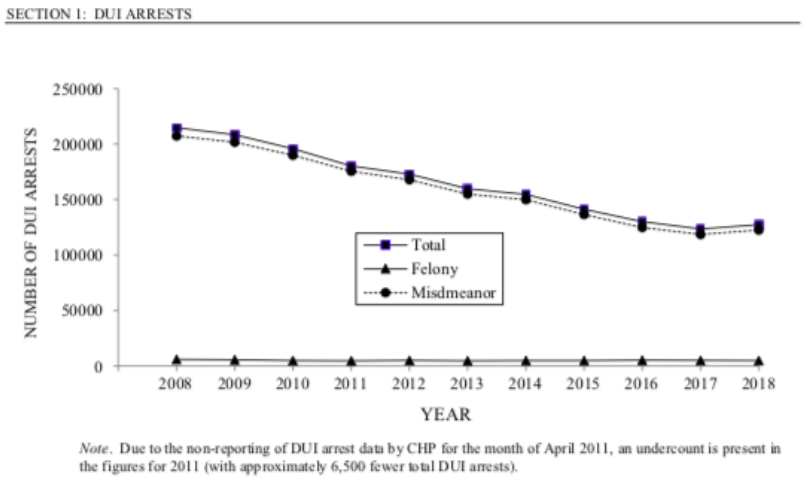

Figure 2. DUI arrests, 2008-2018.

Figure Three: Number of Annual DUI Arrests (2008-218) from the Annual Report of the California DUI Management Information System: Annual Report to the Legislature of the State of California (2020)

What the figure shows is a broad trend of falling DUI arrests in California since 2008. Neither the Department of Justice nor the DMV's data support the claim of legalization resulting in an epidemic of marijuana related DUI's. And yet, the still opaque view from local and state data pushed me to examine jurisdictions outside the state where recreational marijuana was legalized. Insights can be gleamed from other state legalization efforts and proxy data they present to gain an understanding of the impact recreational marijuana may have had (or is having) on roads safety through proxy data.

Colorado

Colorado is currently the only state with data on marijuana only DUI's. Colorado's Division of Criminal Justice and Office of Research and Statistics produced a report on the impacts of Amendment 64 (their version of California's

proposition 64), which found that in Colorado since legalization (2014), "The number of DUI summons issued by the Colorado State Patrol in which marijuana-alone or marijuana-in-combination was recorded increased by 120% between 2014 (n=684) and 2020 (n=1,508)." (Pg.2)[xix] A sizable increase.

Although summons for marijuana DUI cases increased, the Colorado Division of Criminal Justice also found "The prevalence of marijuana alone increased from 6.3% in 2014 to 8.7% in 2020. The percentage of marijuana polydrug (marijuana and alcohol or marijuana and other drugs) as the perceived impairing substance increased from 5.7% of all DUIs in 2014 to 22.7% in 2020." (Pg.2). This data signals marijuana is part of a larger trend of people driving with a variety of impairing substance, not the main variable impinging on driving safety, but certainly one producing the documentation of traffic offenses. Nonetheless, Colorado is the first state that documented a sizable increase— at least in summons—of marijuana only DUI's.

However, Colorado shares California's declining number of marijuana related arrests leading up to legalization and afterwards. The 2021 Colorado report found,

> "The total number of marijuana arrests decreased by 68% between 2012 and 2019, from 13,225 to 4,290. Marijuana possession arrests, which make up the majority of all marijuana arrests, were cut in half (-71%). Marijuana sales arrests decreased by 56%. Arrests for marijuana production increased slightly (+3%). Marijuana arrests that were unspecified, meaning the specific reason for the arrest was not noted by law enforcement, went down by 45%." (Pg.1)

Combined with the increase of poly drug use, this could suggest law enforcement substituted one type of marijuana arrest for another that was harder to justify after legalization.

Another source of data from Colorado is marijuana presence in the blood of individuals in collisions. This is important because collisions are an indicator of dangerousness, which is what the creation of traffic offenses seek to mitigate. Again Colorado is the only state with data. The latest report from Colorado's Division of Criminal Justice (2022) shows of all the drugs used alone or in combination while driving, marijuana only drivers were the least often involved in crashes. The figure below drawn from that report illustrates this point.

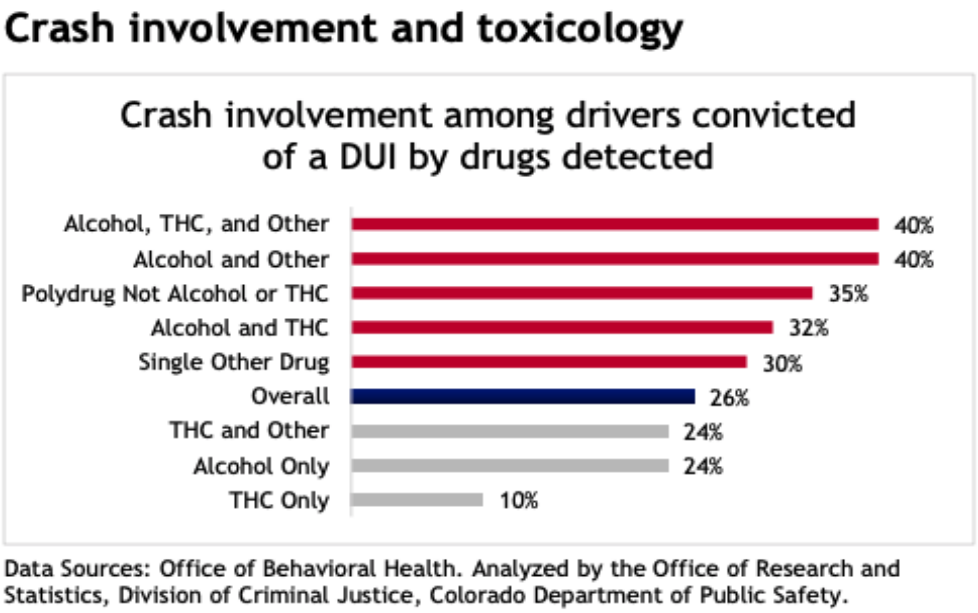

Figure Four: Crash Involvement Among Drivers Convicted of a DUI by Drugs Detected from the Colorado Division of Criminal Justice: Department of Public Safety Office of Research and Statistics' Report "Impacts of Marijuana Legalization in Colorado: A Report Pursuant to C.R.S. 24-33.4-516" (2021)

This interesting finding buried in the report that speaks to the limiting impact marijuana use by itself may be having on the roads.[xx] And more importantly, with respect to my research, they do not support the narrative forwarded by law

enforcement representatives and lobbyists that marijuana legalization would lead to many deaths and victims of epidemic of impaired driving on the road.

Washington

Even in a state where there was an increase, Washington, the cases of fatalities do not lend themselves to the view of an epidemic of impaired driving. Washington and California currently do not collect data on specific marijuana DUI arrest or conviction rates. However, the Washington State Commission (their designated highway safety office) collects data on alcohol and drug positive drivers involved in fatal crashes.[xxi] The graph below shows that the number of fatal collisions for the years 2017-2021 that include all drivers (both the one responsible for the incident and other drivers) who tested positive for a substance (alcohol and/or drugs: heroin, marijuana, PCP, etc.) has increased.

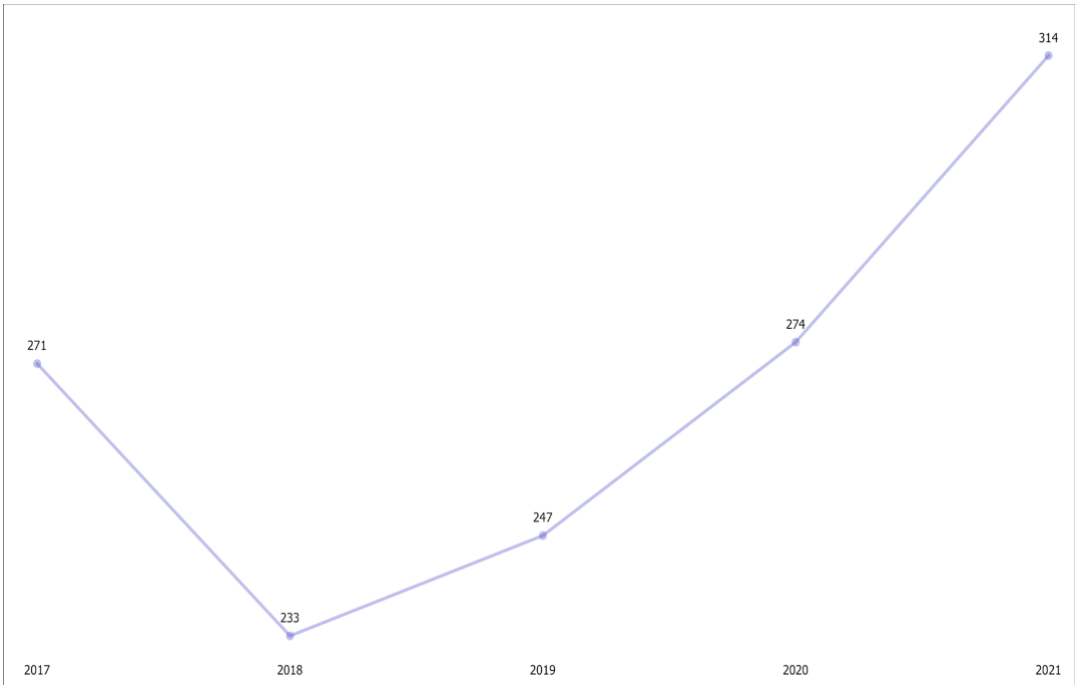

Figure Five: Drivers Involved in Fatal Crashes by Year (2017-2021) that Tested Alcohol or Drug-Positive from the Washington Traffic Safety Commission Coded Fatal Crash (CFC) Files[1]

This upward trend after a bottom in 2018 began well after legalization (2012). Although these figures are indicators of law enforcement policies and practices, not necessarily of misuse of driving privileges, one hypothesis could be that this rise in fatal collisions is a proxy indicator of marijuana's impact on collisions in the state.

Using the Washington State Commission portal, I filtered out all drivers in fatal collisions who did not test positive for marijuana so only drivers who tested positive for only marijuana remain, revealing the numbers of drivers involved in fatal collisions with only marijuana in their blood.

[1] Washington Traffic Safety Commission's Coded Fatal Crash (CFC) Files. Source: https://wtsc.wa.gov/research-data/impairment/

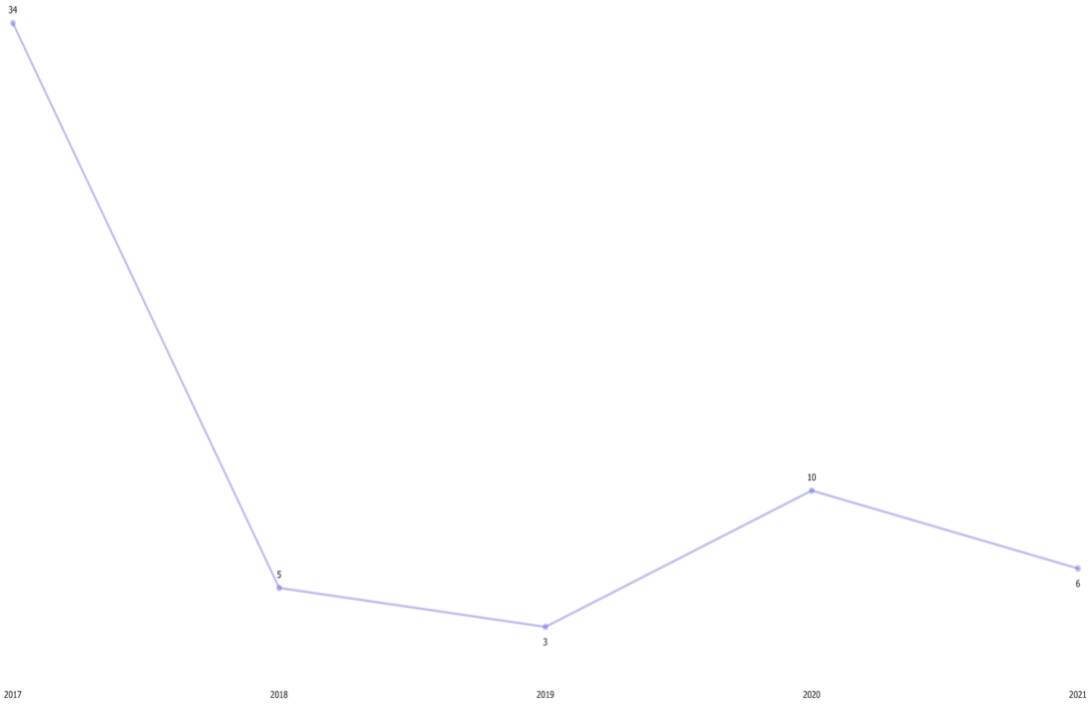

Figure Six: Drivers Involved in Fatal Crashes by Year (2017-2021) that Tested Positive for Marijuana Only from the Washington Traffic Safety Commission Coded Fatal Crash (CFC) Files[2]

The above graph shows there is a small rise in 2020 and slight drop from that 2020 rise in 2021—well after legalization. Thus, Washington state marijuana legalization in 2012 did not appear to be associated with a significant increase in collisions. And, if we filter out all cases where drivers in fatal collision only tested positive for alcohol and/or marijuana, it also does not lend itself to the claim made that marijuana legalization would lead to a wave of impaired drivers.

[2] Washington Traffic Safety Commission's Coded Fatal Crash (CFC) Files. Source: https://wtsc.wa.gov/research-data/impairment/

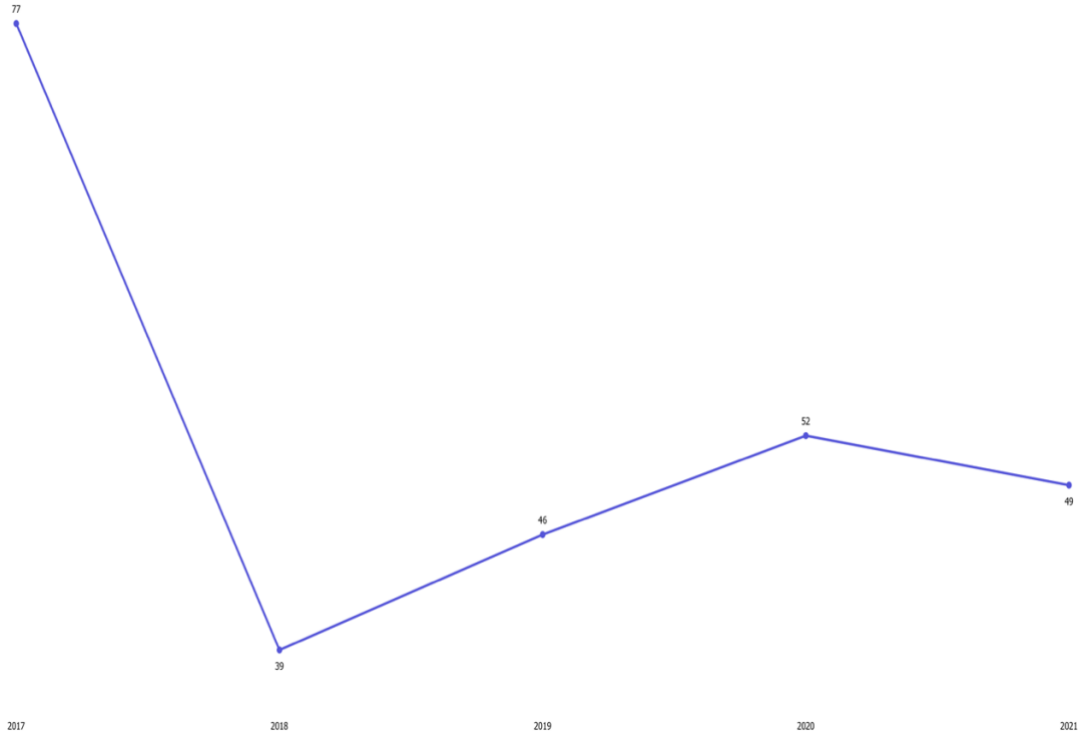

Figure Seven: Drivers Involved in Fatal Crashes by Year (2017-2021) that Tested Positive for Marijuana Only or Alcohol and Marijuana from the Washington Traffic Safety Commission Coded Fatal Crash (CFC) Files[3]

The graph above shows a dramatic drop in 2018 in the number of drivers in crashes that tested positive for marijuana only or alcohol and marijuana. Then, a slight increase until 2020, afterwards there is a slight drop. Not a lot can be deduced from this data to gain understanding of the impact of marijuana on road safety, but what can be observed in the state of Washington is that the epidemic of marijuana DUI's did not materialize in Washington after recreational marijuana was legalized.

Data from other sources, such as self-reported data, provides more visibility, but not clarity. In a Washington study from the Center for Health and Safety Culture

[3] Washington Traffic Safety Commission's Coded Fatal Crash (CFC) Files. Source: https://wtsc.wa.gov/research-data/impairment/

(2018), they investigated how often people chose to smoke and drive (labeled as driving under the influence of cannabis and alcohol (DUICA)). The figure below breaks down the percentage of respondents and their self-reported getting behind the wheel of a vehicle after consuming marijuana and alcohol.

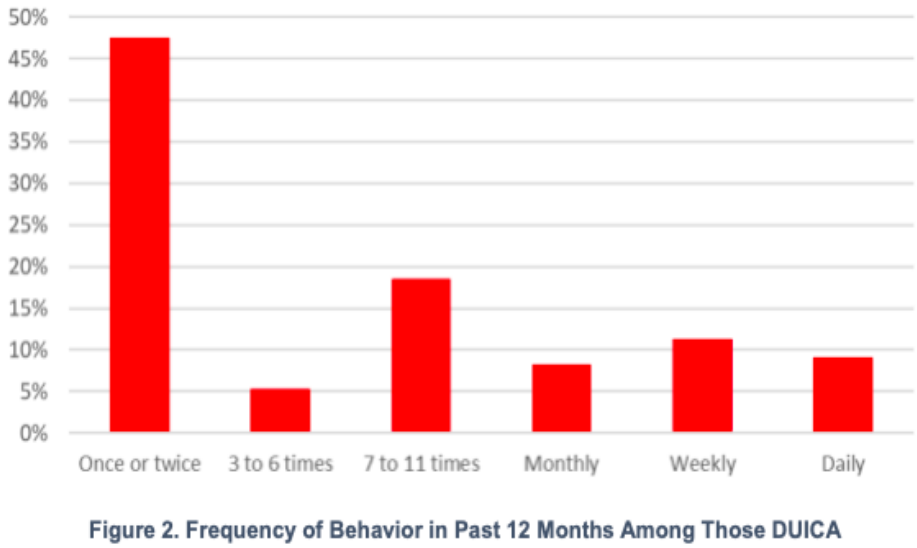

Figure 2. Frequency of Behavior in Past 12 Months Among Those DUICA

Figure Eight: Self-reported Washington Respondents Who Reported Driving Under the Influence of Cannabis and Alcohol (DUICA) from the Center for Health and Safety Culture (2018)

The investigators from the Center for Health and Safety Culture (2018) found, "cannabis use is significantly higher among respondents with 42% reporting consuming (and driving) in the past 12 months (compared to 20% in the 2015-2016 National Survey on Drug Use and Health)."[xxii] However, two years later a 2020 Washington Traffic Safety Commission study found the percentage of people self-reporting that they engage in this specific risky behavior to be decreasing. The figure below taken from their study illustrates part of their findings that although the percentage of respondents that reported using in the past thirty days increased since

2014, the percentage of those that said "yes" to driving in the last three hours after consuming marijuana decreased before and since legalization.[xxiii]

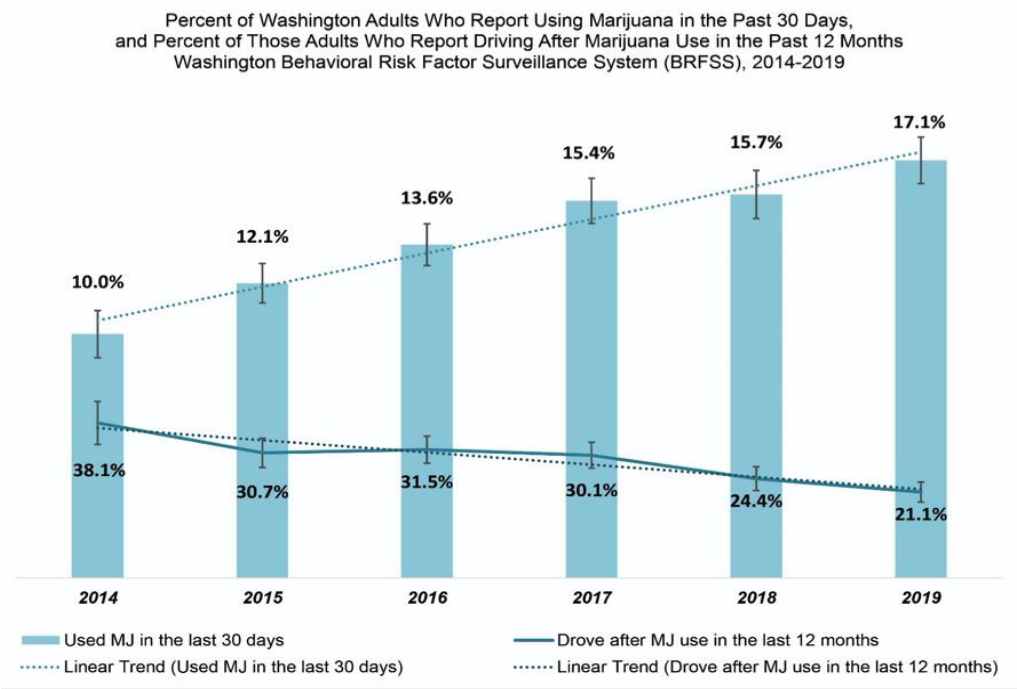

Figure Nine: Percent of Washington Adults Who Reported Using Marijuana in the Past Thirty Days, and Percent of Those Adults who Reported Driving After Marijuana Use in the Past Twelve Months, from the Washington Traffic Safety Commission Center for Health and Safety Culture's "Driving Under the Influence of Cannabis and Alcohol: Key Findings Report Survey" (2018)

There are problems with the different sample sizes, purpose and scopes of surveys, and time of interest (2018 vs 2020), so it is not prudent to make assumptions and generalizations. However, for my research purposes this data along with the available Washington State data do not lend themselves to the assertion or claim that an epidemic of marijuana impaired drivers would materialize with recreational marijuana legalization.

Oregon

Oregonians voted to legalize recreational marijuana in 2014, two years after Colorado and Washington. They do not have data on marijuana-only DUI's. Oregon is an interesting case in that in the state there is an increase in impaired driving overall, an increase in marijuana detected in drivers' blood, but a decrease in single vehicle collisions. Their *Oregon Impaired Driving Strategic Plan* (2021) stated,

> "Oregon has seen a sharp increase in drug impaired fatalities since the legalization of recreational marijuana in 2015. There were 56 drug-only fatalities in 2015, which more than doubled in 2018 at 125 fatalities. There were 32 fatal crashes that included a combination of alcohol and drugs in 2015, and that number has more than tripled in 2019 at 108.…While alcohol impairment accounts for a large majority of the DUI arrests in Oregon, drug use and drugs used in combination with alcohol are representing an increase percentage of all impaired fatalities—36% in 2015, up to 73% in 2019."[xxiv] (Pg.15)

The Oregon Governor's Advisory Committee observed an overall increase in impairment by looking at THC positive samples from substance detected in urine and blood samples of suspected drugged impaired drivers. From 2020 to 2021, there was an increase of 8.88% in fatal crashes for the state of Oregon— from 394 to 429 (Pg.5).[xxv] The Committee wrote,

> "Toxicology data from the Oregon State Police Crime Laboratory for 2019 showed that 9-carboxy-tetrahydrocannabinol (THC) was the most frequently detected impairing substance detected in urine and blood samples of suspected drugged impaired drivers (61.3%). THC was detected more frequently than methamphetamine (35.6%). THC also remained as the most commonly detected impairing substance in poly-drug DUI-Drug cases investigated by Oregon's drug recognition experts (DREs)."

So, there is an increase of marijuana being detected in the blood of suspected DUI drivers. One could certainly attribute this to the global pandemic and the

auxiliary social problems it created a by-product of which is regrettably more drinking.[xxvi] But there was significantly less driving during the pandemic.

Oregon citizenry legalized marijuana in 2016, and we do see an increase in impaired driving since then, in cases where only drugs are involved, in cases where only alcohol is present, and in cases where alcohol is combined with other drugs. Below is the graph from the *Oregon Traffic Safety Performance Plan* (2021) (Pg.78).

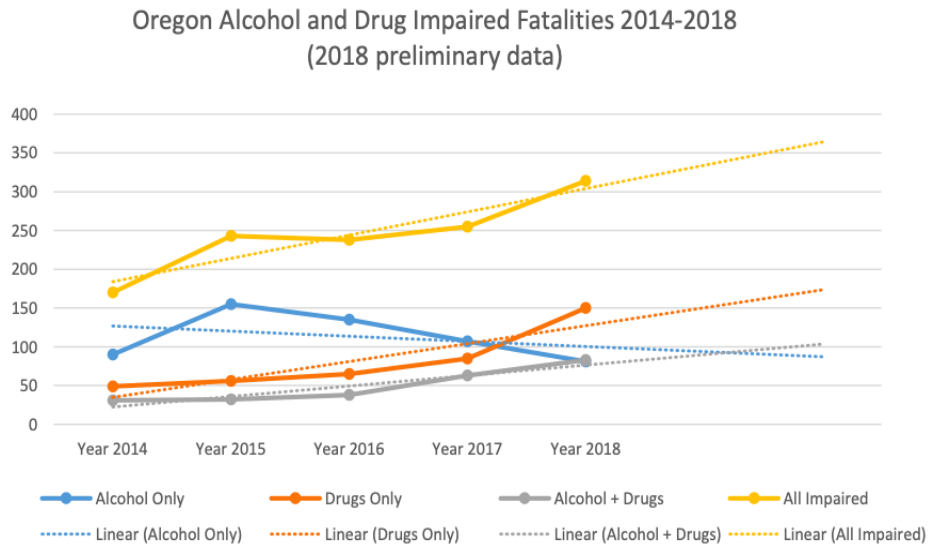

Figure Ten: Oregon Alcohol and Drug Impaired Fatalities (2014-2018) from the Oregon Traffic Safety Performance Plan (2021)

But regarding specifically marijuana, the Oregon *Impaired Driving Strategic Plan* (2021) states,

> "Historical data specific to marijuana-impaired driving is in short supply, although data collected by the Oregon State Police showed a sharp increase (163%) of marijuana-involved DUI's in the first six months following legalization. There was also a 111% increase in DUI's in the same period where marijuana was shown to be a contributing factor, indicating other impairing substances were also being used."[xxvii]

The situation in Oregon will prove to be an interesting case of impaired driving because the people of Oregon decided to decriminalize all other drug use. The *Oregon Impaired Driving Strategic Plan* (2021) states,

> "In 2020, Oregon voters decriminalized all drugs for user quantity possession, including heroin, cocaine, methamphetamine, MDMA, fentanyl, and LSD. Possession is now a Class E violation with a penalty to be not more than $100, and which can be waived with proof of a telephonic risk assessment for substance abuse. No further punitive action may be taken against the violator for non-compliance, and there are no provisions for addressing youth use. Voters also legalized psilocybin, otherwise known as psychedelic mushrooms, for therapeutic use. There are significant concerns about these actions contributing to the growing increase of drug impaired driving and the resulting fatalities."[xxviii]

In other words, the decriminalization of all other drugs is complicating the picture for police on patrol. Below is the total number of collisions for the state from 2011 to 2020. Although fatal crashes have increased, there are at least 10,000 less crashes in 2020 than 2011. In other words, an increase of collisions each year between 2011-2014, fewer in 2013, an increase again in 2015 and 2016, and then a drop 2017. This was followed by a larger drop in 2018 that maintains throughout 2019, and then another large drop in 2020.[xxix]

CDS330 3/8/2022 OREGON DEPARTMENT OF TRANSPORTATION - POLICY, DATA AND ANALYSIS DIVISION PAGE: 1
TRANSPORTATION DATA SECTION - CRASH ANALYSIS AND REPORTING UNIT
COUNT OF CRASHES BY INJURY SEVERITY BY YEAR

Statewide Motor Vehicle Traffic Crashes
2011-2020

YEAR	TOTAL CRASHES	FATAL (K) CRASHES	SUSPECTED SERIOUS INJURY (A) CRASHES	SUSPECTED MINOR INJURY (B) CRASHES	POSSIBLE INJURY (C) CRASHES	PROPERTY DAMAGE ONLY (O) CRASHES
2011	49,049	310	1,337	7,097	15,452	24,853
2012	49,798	306	1,382	7,196	15,878	25,036
2013	49,494	292	1,232	6,842	14,900	26,228
2014	51,244	321	1,265	7,101	15,841	26,716
2015	55,156	410	1,512	7,926	19,283	26,025
2016	60,048	448	1,652	8,239	20,392	29,317
2017	57,726	403	1,513	7,889	18,995	28,926
2018	50,150	446	1,516	7,792	18,419	21,977
2019	50,128	456	1,667	7,326	18,039	22,640
2020	38,141	460	1,370	6,072	11,902	18,337
TOTAL	510,934	3,852	14,446	73,480	169,101	250,055

Disclaimer: A higher number of crashes may be reported as of 2011 compared to prior years. This does not necessarily reflect an increase in annual crashes. The higher numbers may result, in part, from a change to an internal departmental process that allows the Crash Analysis and Reporting Unit to add previously unavailable, non-fatal crash reports to the annual data file. Please be aware of this change when comparing pre-2011 crash statistics. For other important disclaimers regarding the use and interpretation of ODOT crash data, please visit ODOT's Crash Statistics and Reports web page, and click "Crash Data Disclaimers" , located under the Additional Links section.

Figure Eleven: Statewide Motor Vehicle Traffic Crashes (2011-2020) from the Oregon Department of Transportation: Crash Statistics and Report (2023)[4]

The sharp drop in 2020 from the report is suspicious and raises the question as to what may impinge statistics in any given year. It has been noted by the CA DMV system that the collection of this data often faces problems.[xxx]

To conclude and summarize this section, what is drawn is that the relatively little data on marijuana DUI's but larger body of proxy data (fatal collisions with marijuana positive drivers, marijuana specific positive DUI's or poly DUI's, self-reported data on driving habits, and marijuana related offenses) provides a mixed and cloudy view of marijuana's impact on road safety. It does, however, not lend to the

[4] Oregon Department of Transportation: Crash Statistics and Reports https://www.oregon.gov/odot/Data/Pages/Crash.aspx

claim made by law enforcement representatives and lobbyists that marijuana legalization would lead to an epidemic of victims of marijuana impaired drivers. The opaque view did pull me to interrogate data collection methods and the classification process of marijuana DUI's by law enforcement agencies and their officers.

Analysis: Measuring Problems

Many of the hurdles facing scholars, officials, law enforcement, and policy experts engaging with the topic of marijuana impaired driving through these state reports and other public and private research are rooted in two different but interconnected measuring problems. On the one hand, there are data collection problems due to the per se standard states are deciding to use as a metric for impairment and law enforcement standard field sobriety tests. On the other hand, many of those data collection problems ensure that the dark figure of crime, occurrences that by some criteria are called crime yet are not registered in the statistics (Biderman and Reiss 1967), remain unknown. This is important because while the questions posed by different state agencies crowd around how best to test or how to bolster existing programs (i.e., law enforcement DRE programs and testing methods). No one has asked, what must state agencies change about how they approach the development of data collection methods to gain an understanding of impact marijuana legalization had or is having on road safety? Furthermore, how effective are current tests and do they meet the Frye standard? [xxxi]

I go over in tandem how the dark figure of crime and the data collection problem rooted in the per se standard impinge the data generating process by police

agencies and the researchers view of marijuana DUI's impact on traffic safety. I do this in tandem because, in practice, the data collection process and the problem of what constitutes impairment (the *per se* problem) are dependent on each other. Like the aperture of a camera that determines how much light passes through the lens of a camera, the standard at which states determine impairment (like in *per se* states) determines what is and what is not a marijuana DUI offense, and this alters what constitutes and what does not constitute a marijuana DUI in their official statistics.

Biderman and Reiss (1967) final note on exploring the dark figure of crime are to remind the reader,

> "Any set of crime statistics, including those of the survey, involves some evaluative, institutional processing of people's reports. Concepts, definitions, quantitative models, and theories must be adjusted to the fact that the data are not some objectively observable universe of "criminal acts," but rather those events defined captured, and processed as such by some institutional mechanism." (Pg.15)

This is important to mention for this research topic because the 2017 National Highway and Traffic Safety Administration's (NHTSA) report to congress on marijuana-impaired driving concluded THC blood tests were not meaningful for determining impairment in driving situations.[xxxii] According to former head of cannabinoid-related research projects at the National Institute of Drug Abuse (NIDA), Marilyn Huestis (2018), "Currently, science does not support the development of cannabinoid limits per se because of the many factors influencing concentration–effect relationships."[xxxiii] Nonetheless, NHTSA recommended law enforcement continue to increase the use of legally established procedures to detect levels of impairment, such as expanding Drug Recognition Expert (DRE) training.[xxxiv]

But as more states legalize recreational and medical marijuana, they are also enacting statutory changes establishing *per se* standards for THC and other cannabinoid metabolites. Though states may be generating data, it does not signify that it translates into actual impaired drivers.

Most states that legalized marijuana use .05 nanograms (of THC) per milliliter of blood to measure what constitutes a marijuana impairment in DUI's. As more states legalize recreational and medical marijuana, they are also enacting statutory changes establishing *per se* standards for THC and other cannabinoid metabolites. *Per se* standards in relation to marijuana impaired driving refers to the specific nanograms (of THC) per milliliter of blood to measure what constitutes impairment in it of itself as decided by the state or federal jurisdiction.

This has an obfuscating effect in what we can understand of this alleged epidemic that has yet to materialize as it over reports and renders unclear what we can gather from existing data because section (f) in the category of impaired driving, what in the California vehicle code is understood as a DUID (driving under the influence of drugs), refers to all drugs, not just marijuana. As observable in the preceding section reviewing available state data and proxy data.

And Colorado users know this.[xxxv] In the 2020 Colorado Department of Transportation report, the task force was aware studies had been done showing a problem linking THC blood results with marijuana impairment.[xxxvi] An article cited in the report by Karschner et al. (2009) found chronic marijuana users had measurable

concentrations of THC in their blood system during a seven-day abstinence period.[xxxvii] One subject had 3.0 ng (or six times the legal limit) after seven days of observed abstinence. Simply put, both Colorado and Washington are drawing their standardization of impairment from tests that can state you are impaired even if you have not consumed in a week.

In Colorado, the per se limit has become problematic for law enforcement as they have been unable to get many convictions.[xxxviii] Assemblyman Hugh Mckean (R-Loveland) said, "The five-nanogram limit for marijuana has just never been well proven…The issue is one where our police officers are doing their jobs, the DA's are doing their jobs and yet they don't get convictions because there's not good science behind it."[xxxix]

Other states and their constituents are taking notice. New York is one of the latest states to legalize marijuana.[xl] Police there are concerned "There's currently no definite test to tell a level of intoxication of a person and it makes it difficult for officers trying to enforce the law and keeping the road safe," says Mount Pleasant Police Chief Paul Oliva, "It would definitely be helpful if there were some sort of scientific method or field test on the road that an officer would be able to use."[xli]

In Nevada, Assemblyman Steve Yeager, said the legislation is looking to remove *per se* limits for marijuana metabolites in a person's blood. He presented the bill (AB400), which would remove per se limits.[xlii] His co-presenter, the deputy director of marijuana legalization advocacy group NORML, Paul Armentano, couched these laws as remnants of the moralistic drug war: "These limits have

nothing to do with either science accurately determining impairment or promoting public safety," but rather, "These arbitrary limits were enacted at a time when Nevada imposed blanket prohibition on the possession and use of cannabis for any purpose. This is not the case any longer. Hasn't been for some time."

Mark A. R. Kleiman, a New York University professor specializing in issues involving drugs and criminal policy said, "A law against driving with THC in your bloodstream is not a law you can know you are obeying except by never smoking marijuana or never driving".[xliii] The first two states to legalize marijuana in 2012, Colorado and Washington, both implemented .05 nanogram *per se* limits. Washington's Traffic Safety research Director Staci Hoff agrees with Armenta (2013), "(The *per se* blood limit) wasn't backed by scientific theories then, and it's not backed by scientific theories now."[xliv]

Another research hurdle that is rooted in measuring problems are the very sources (the studies and the kinds of studies) from which states, researchers, and law enforcement are drawing from, and how meaning is generated from these studies that translates into theories and actionable knowledge that can be useful for developing sound policy. Andrea Roth (2015) wrote a piece on the history behind drunk driving jurisprudence that reminds jurists the only valid scientific framework for criminalizing chemical impairment remains the country's first traffic czar, Willian Haddon Jr.'s, pioneering development of his "jurisprudence of dangerousness". It is worthwhile to quote her at length, she writes,

> "Zero-tolerance laws targeting drivers with any illegal drugs in their systems, currently justified under a "jurisprudence of prohibition" based on the

> blameworthiness of the drug itself, are no longer a good fit due to legalization. What lawmakers have forgotten, and what legal scholars have largely neglected, is the buried and colorful history of drunk driving's jurisprudence of dangerousness and the scientific framework for proving the link between specific BACs and crash risk established by the country's first "traffic czar, " William Haddon Jr. Under this framework—which focuses first and foremost on fatal single car crashes and case-control studies with a randomly selected control group—the illegitimacy of the new wave of DUI laws is painfully obvious."

Heeding the advice of Roth to emphasize single case fatalities and specific case studies for the construction of a jurisprudence of dangerousness that is fitting for marijuana impairment is a key piece for states seeking sound public policy and law enforcement seeking sound traffic policy.

Currently, collectively state commissions and task forces drew me to the idea that I needed to focus on field sobriety testing, their procedures, and those responsible for administering these tests, law enforcement officers. But they do no question how the data they are collecting could limited, nor do they question the police data collection and evaluation methods. Though they do concede certain limitations.

For example, Oregon's 2021 *Oregon Impaired Driving Strategic Plan*, "Marijuana impairment is very different from alcohol impairment and much more complex. Unlike alcohol impairment, there is no scientifically conclusive threshold that consistently indicates marijuana impairment from person to person" and, "Marijuana impairment in Oregon is currently determined by establishing the presence of the substance in the driver, and by identifying impairment through the SFST's and/or the determinations made by a DRE."

Michigan legalized marijuana in 2018 but does not have data on marijuana DUI's. Michigan's *Report from the Impaired Driving Commission* (2019) found there to be no scientifically supported threshold of THC that would be indicative of impairment because there is poor correlation between driving impairment and the blood levels of THC. Because of these findings, their Impaired Driving Commission recommended: the use of a roadside sobriety tests to determine whether a driver is impaired, more research, education for law enforcement and prosecutors, and public education of the effects of marijuana on driving. However, they also recommended the DRE program expand.[xlv]

No state recommends an analysis or review of the current tests used to determine impairment, or analysis of the efficacy or validity of officer training.[xlvi] California's Task Force concluded, "Drugs affect people differently depending on many variables, a per se limit for drugs, other than ethanol, should not be enacted at this time as current scientific research does not support it. However, the state should continue to advance research in this area, to include methods of evaluating impairment."

The report ultimately recommends the state double down on its DRE program and blood results,

> "Although some states have proposed or introduced *per se* levels for drug impairment, such levels are not yet supported by existing scientific research. Notwithstanding, continued evaluations of such levels are recommended to better understand how drugs impair a person's ability to safely operate a motor vehicle." (Pg.34).[xlvii]

Colorado's report for 2020, the best visible view of what is currently understood to be a marijuana DUI—using current tests— concedes that,

> "the measurement of available data elements can be affected by the very context of marijuana legalization. For example, the decreasing social stigma regarding marijuana use could lead individuals to be more likely to report use on surveys and also to health workers in emergency departments and poison control centers, making marijuana use appear to increase when perhaps it has not. Additionally, law enforcement officials and prosecuting attorneys continue to struggle with enforcement of the complex and sometimes conflicting marijuana laws that remain. Finally, the lack of comparable Federal data across many metrics makes it difficult to compare changes in Colorado to other jurisdictions which may have not legalized marijuana. In sum, then, the lack of pre-commercialization data, the decreasing social stigma, and challenges to law enforcement combine to make it difficult to translate these preliminary findings into definitive statements of outcomes." (Pg.1)

Any serious solution to the question of establishing valuable and sound testing of marijuana-impaired drivers will have to contend with two fundamental problems with our current approach to marijuana-impaired drivers across the United States.

First, at the heart of the matter is the standard field sobriety test (SFST), the official testing method developed by the International Association of Chiefs of Police (IACP) and the National Highway Traffic Safety Administration (NHTSA). The second is that neither law enforcement drug experts nor any field sobriety test meets the Frye standard regarding marijuana impairment. But that standard cannot be found as the *per se* standard and the dark figure of crime are drawn from provenly unreliable tests. Until that is met, there is nothing available for police officers to use that is scientifically and legally valid.

Conclusion: Towards the Social Construction of Law

In this chapter, I provided two key pieces of information regarding the search for a clear view into the claim made that marijuana legalization would produce an epidemic of marijuana impaired drivers. One, the existing and available data does not lend itself to the claim made of an epidemic of marijuana impaired drivers.

Two, this line of exploratory research and the dearth in data, dearth in data collecting capacities and dearth in education of regarding marijuana's effects and detecting methods pushed my sociological gaze towards interrogating the social construction of law at the ground level. Explained in the penultimate section, issues with the reporting of offenses and generating of crime statistics led to the need to understand the aspects of police officers discretion covered in chapters four and five.

California's legalization of recreational marijuana in 2016 has created a new area for the exercise of discretionary authority by law enforcement because the State and the courts must now depend upon the discretion of officers to determine impairment in marijuana DUI cases. Unlike alcohol DUI's—where breathalyzers measure B.A.C. (blood alcohol content) and determine impairment *per se* — California courts currently rely heavily on officer testimony to prosecute people in DUID cases. Nor can THC levels be measured as easily for marijuana consumption as for alcohol.[xlviii] Acting as street-level bureaucrats, police translate California's new marijuana policy into practical rules on the ground (Lipsky 1970). However, the lack of police training and evidence-based statutes for marijuana DUI's has left officers asking themselves, "Is this person high?" and "How high is too high?"[xlix]

Chapter Two: Literature Review

In this chapter I draw on three groupings of literatures to help me address the project's central questions. My first guiding research question was seeking to interrogate the claim made by law enforcement lobby representatives that legalizing recreational marijuana would produce an epidemic of marijuana DUI's. The second central question was how are police using discretion in marijuana DUI cases and what is the *corpus delicti*? And third, what can be learned from how beat officers are mobilizing the law to understand how the law is being socially constructed?

In this chapter I first go over the major works on moral panics, define moral panics and components of moral panics, examples related to drugs, specifically marijuana. I explain its utility for making sense of aspects found in society before, during, and after legalization and how this assisted in situating the issue of marijuana DUI's as a problem of police discretion and the social construction of law. I then turn to scholarship on the police and policing, both the history of our modern-day policing institutions and the culture of police. Lastly, I go over social construction of law that was vital in helping research police discretion in marijuana impaired driving cases.

Moral Panics, Drug Scares, and Marijuana

Scholarship on moral panics help make sense of certain social phenomenon, the various actors involved, their roles, and for this research, how drugs like marijuana intersect with police and the criminal justice system. I draw from deviance studies, symbolic interactionists, the social learning perspective, and scholars studying moral panics.

It must be noted that scholars studying moral panics are not homogenous; there are differences in their focus (object of interest), scope, and aim— but they share a common terrain of inquiry. The practice of social learning is implicit in labeling theory but is not the main focus of labeling theory. Deviance scholars like Becker and Lemert are more interested in the inherent contradictions created by the labeling of people deviant, the creation of more deviance. As well, labeling theory precedes scholarship on "moral panics" and "drug scares" but together these strands more fully explain the various interconnected relations between the deviant individual and the social structure regulating social drug use; the social learning of drug use and labeling, and the push and pull between the minority drug using group and dominant social forces.

Kai T. Erickson's *Wayward Puritans* (2004[1966]) is a historical case study of the New England colony that showed how the criminalization of certain people served to maintain the social group's identity and values. It is foundational to the sociology of deviance as he illustrated how New England settlers stigmatized offenders, especially as criminals, and used this label as a social regulating force used to separate unwanted people.[1] Drawing from the Antinomian controversy of 1636, the Quaker persecution of the late 1650's, and the witchcraft hysteria in 1692, Erickson argued deviance served to indicate to members the social parameters of what was acceptable and unacceptable. He understood deviance as "conduct which the people of a group consider so dangerous or embarrassing or irritating that they bring special sanctions to bear against the persons who exhibit it." (Pg.6).

In *Folk Devils and Moral Panics* (1972) Stanley Cohen found the UK media manufactured a "moral panic", a term he coined to link the amplification process of labeling by media and social control agents—schools, police, and courts. Cohen studied the role social institutions played in the criminalization of 1960's British rockers and mods. Specifically, Cohen focused on how the media cultivated the perception of these youth movements as deviant and criminal. Cohen's work bridged the study of deviance and subcultures. His study found the British popular imagination, fueled by the media's account of adolescent subcultures, interpreted, and reacted punitively using police to the emergence of "rockers" and "mods".

A few examples of moral panics in these cases are alcohol prohibition (Orkent 2010), LSD in the 1960's (Goode 2006), and crack cocaine in the 1980's (Reinarman and Levine 1997). Americans have been susceptible to these "moral panics" because they are advantageous to certain interest groups (politicians, police agencies, civil institutions, etc.) and the response to drug use are contingent on who is "the problem". For example, John Ehrlichman, Assistant to the President for Domestic Affairs under President Richard Nixon commented,

> "You want to know what this [war on drugs] was really all about? The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."[li]

A great example of a "moral panic" is that of the English "mugging" phenomenon. In *Policing the Crisis* Hall et al. (1978) found how England's indignation at petty robbery was based on xenophobic sentiment towards the Black and Asian immigrants, where the media, police, and the public artificially produced a crime phenomenon.[lii] This study was particularly exemplary because it showed how crime rose, but only after it was created by the media's portrayal of immigrants, particularly black immigrants, as "muggers" by playing on people's nativist and economic insecurity as well as racial tension.

In conjunction with these concepts, Becker (1997[1963]) coined a useful concept for understanding these drug scares, "moral entrepreneur", which he used to refer to individuals who use their position of power or responsibility to garner support for their own moral stance. Moral entrepreneurs are crucial for the development of moral panics. An example is Harry J. Anslinger, as the first head of the Federal Narcotic Bureau (now the DEA) fought tooth and nail any person who went against his assertion that marijuana was an addictive and socially corruptive substance (Vuolo, Kadowaki, & Kelly 2017).

These moral panics, when related to drugs, are called "drug scares". Studying drug scares has helped scholars analyze the underlying moral concerns of drug prohibition and the stereotyping of drug users along race and class lines (Roberts and Chen 2013). Reinarman and Levine (1989) call drug scares—another form of moral panic because they are ideologically constructed to create a scapegoat, such as drugs and their users. In studying the social construction of drunk driving through the rise

of MADD (Mothers Against Drunk Drivers), Reinarman (1988) points to an important aspect of moral panics. He says the case of MADD raises the issue of viability of claims made by "social movement organizations", "the viability of a claim that a problem exists depends upon the interaction of at least two factors— the credibility of the claim-makers and the historical context in which such claims become utterable and resonate with the dominant discourse" (Pg.97). This was something that I thought of as I went from various agencies in different settings of locations, different meetings at the local NGO's, or local and state meetings—such as the Headquarters of the CHP. How claims were being made by different groups.

Americans have been susceptible to these "moral panics" because they are advantageous to certain interest groups (politicians, police and civil institutions) and the response to drug use are contingent on who is "the problem".[liii] Reinarman (1994) says that these scares contain seven common factors: they have a kernel of truth; the media sensationalizes episodes and fuels indignation; there are politico-moral entrepreneurs to drum up outrage; there are interest groups with a stake in the issue; the drug use is connected to a historical conflict or context; there is a link to a population already deemed a "dangerous class"; and drug use is used as a scapegoat for social problem.

California's early history illustrates the sociopolitical context and punitive direction of drug policy in the U.S as well as speaks to how racist ideas concerning marijuana in the past have echoed into the present. Marijuana was first introduced in the US as an experimental crop within the Spanish mission system in what is now the

American Southwest. The crops failed, along with the mission system a few years later, when Mexico declared independence in 1820. Marijuana in Mexico went into relative obscurity during this time but in the U.S. another marijuana strain, cannabis indica, was available at local pharmacies (or through mail order).[liv]

In the mid 19th century marijuana was not a popular vice nor seen as one, and a rising Temperance movement that sought to rein in the use of narcotics originally paid no attention to marijuana (known to Americans as cannabis indica) at this time. Historian David Musto explains that at the beginning of the 20th century marijuana got caught up in America's cyclical history of intolerance towards intoxication and xenophobia.[lv] Early 20th century prohibition, still rooted in religious puritanism, but also xenophobia and nativism, and its linking to marijuana impacted our understanding and interaction with its use.

In their acclaimed book *The Marihuana Conviction*, Bonnie and Whitebread (1974) found marijuana prohibition in the 1930's was passed based on unscientific evidence. They state that from the 1900-1930's, what they considered the local phase of marijuana experimentation and prohibition, places like San Francisco, El Paso, and New Orleans were developing local views and policies regarding marijuana.

However, California's prohibition was not driven by the "reefer madness" propaganda that produced the Marihuana Tax Act of 1937. Rather, it was an early bureaucratic preemptive response to a present negligible problem that may be a cause for concern later down the road (Gierninger 1990).[lvi] Nonetheless, the history of moral panics and the history of marijuana on the continent illustrates the

sociopolitical context and punitive direction of drug policy in the U.S and speaks to how racist ideas concerning marijuana in the past echo into the present. Furthermore, they also help assess and qualify the claims made by law enforcement representatives, what could be considered a "moral panic".

Officer Discretion & Police Encounters

Another trunk of literature I drew from focused on police discretion and police encounters with civilians. The following literature was useful for thinking the second central question of this thesis, how are police using their discretion in marijuana DUI cases and what is the *corpus delicti*?

Police utilize discretion to decide when to enforce the law. And if police enforced every law transgression they saw, officers would not be able to walk more than ten minutes before needing to make a stop or write an infraction. A lot of the pioneering work on police discretion was done in the late sixties and early seventies (Wilson 1968; Davis 1969; Bittner 1970; Goldstein 1977; Manning 1977; Muir 1977; Black 1980; Brown 1981).

Research on officer discretion is part of a rich tradition of scholarship done with particular populations like juveniles (Piliavin and Briar 1964), in certain spaces such as skid row (Bittner 1967), and under specific certain circumstances such as in domestic abuse disputes (Erez 2009). Nickels (2005) and Beckett (2016) have noted how central police discretion has become to scholars studying criminal justice issues in general.[lvii]

Early scholarship on police discretion looked at how law was understood as a resource by police officers. Bittner (1967) described how police officers do not particularly enforce the law on skid row but rather use the potential enforcement of law as a resource to solve pressing problems so as to keep the peace on the streets (Bittner 1967:710). Bittner (1973) also claimed police work and the police are "nothing else than a mechanism for the distribution of situationally justified force in society." (34) He argued this is a better definition of the police because it aligns better with the expectations and demands made of the police. To Bittner, labeling the police as mostly a crime fighting force conceals the daily duties and demands imposed on police officers (social work, education, psychiatry, human relations, and so on) (Pg.38).

Other early scholarship focused on police behavior that outlined the basic elements of this field of study. Skolnick and Woodworth (1967) studied the procedures and enforcement of statutory rape (a difficult crime to uncover and with few complainants). In doing so, they find that sharpening the capacity to discover the crime will increase the total potential to develop a standard form of social control.[lviii] Similarly, in my research, police behavior and the perspective of officers towards the offense *as well as* the procedures involved in marijuana DUI's—for different reasons—made the detecting and documenting of marijuana DUI's rare.

Sykes and Clarke (1975) studied the deference in police-citizen behaviors and hoped to explain police behavior based on sociological (normative) and interpersonal constructs using statistical analysis of participant observation.[lix] They posited that

typical encounters between police and citizens are governed by an asymmetrical deference based on normative and interpersonal constructs (race, class, age, gender). This was useful for navigating the field as a researcher but also for testing these specific constructs' limitations, contradictions, and explainability of certain encounters between police and citizenry I observed or was a part of.

Peter Manning (1978) suggests because the "social anchorage" of organizational activities (authority building and judgment/critique) means police work is essentially situationally justified action.[lx] This proved invaluable when making sense of contradictory experiences or similar experiences on the field with officers. The focus on how police integrate as an organization—how officers share assumptions and "commonsense" of police work such as occupational culture— was invaluable when seeking to understand their sense making of places, persons, or situations they were called to.

Reiss (1971) in *The Police and the Public* asserted policing is hinged on the attitude and orientation of the public towards police, at least today. He stated that the interaction between citizens and police, specifically the compliance and cooperation of the public, is what gives legitimacy to police and permits police work to function properly. I agree with Reiss in his assertion that policing hinges on the attitude and orientation of the public towards police. But to understand police behaviors, and the discretional place and space these take place within, both structural influences and personal influences, are important for understand behaviors of police (Lipsky 1970).

Moving from foundational texts to more contemporary work that had bearing on this research, I looked at research on discretion and police encounters. I drew on Mastrofski's (2004) definition of discretion. He defined it as "the leeway that officers enjoy in selecting from more than one choice in carrying out their work" (101). It is a broad enough definition to encompass the domain of this interaction between officers and citizens. Mastrofski critiqued studies on discretion for having underdeveloped theories, weak research designs, insufficient generalizability of findings, and, in particular, the inattention by scholars to the kinds of police discretion that matter to policy makers, law practitioners, and the public.

M. Davis (1996) looked at discretion and posited there are five types of discretion: discretion as judgment (such as a matter of opinion); discretion as decision (a choice they make); discretion as discernment (good judgement, for example when they put handcuffs on someone because they believe they are dangerous); discretion as liberty (when they give permission to choose among range of options); and discretion as license (when they privilege/pardon in spite of rules but serves purpose).[lxi]

Recent scholarship on police discretion has helped scholars understand various aspects of officers use of their discretion. Alpert et al. (2004) sought to study how officers form suspicion prior to making contact. Drawing from one hundred thirty-two ride-alongs with officers, field observers would record officer activity and their reasoning for basing suspicion. Findings were coded according to the following

categories: (1) appearance, (2) behavior, (3) time and place, and (4) information. They found,

> "The main reason for forming suspicion was the behavior of the suspect(s). In the overwhelming majority of cases (66%), the officer told the observer that the behavior of the suspect(s) was the primary reason for forming suspicion. An analysis of observer descriptions of behavior revealed that the most likely behavioral reasons for forming suspicion of an individual/vehicle were traffic violations (e.g., running a red light, driving with expired plates), avoiding officers (e.g., turning around and walking the other way, hiding face), and looking nervous in the presence of the officer." (Pg.4)

Nowachi & Spencer (2019) found social context as well as police organizational variables (the racial composition of force) affect police discretion and enforcement outcomes. They write, "Although officer discretion is often attributed to individual officers, it is important to understand that discretion is filtered through the context of the police agency where the officer is employed, as well as the setting in which the police work is done."[lxii] Both Alpert et al. (2004) and Nowachi, & Spencer (2019) showed me how fibrous and conditioned individual discretion was by written and clearly outlined organizational constraints, but also the temporal affective behavioral responses by civilians.

Jenness and Grattet (2005) found police discretion is also collective and has contextual dimensions. The authors state that an organizational "perviousness", defined as certain important organizational characteristics and environmental conditions, hold as organizational-level discretion predictors in police agencies policy adaptability in California (Jenness & Grattet 2005).[lxiii]

In closing this subsection, scholarship on police discretion shows how the behavior of suspects, the context of encounters, and the organization of police

agencies and beats impact police discretion. It is these aspects of police work in marijuana DUI's that assisted in learning how and why local police socially constructed the law in the very way they did, and in raising further hypothesis generating questions.

I now focus on police encounters, paying close attention to police perspectives, the decision-making process, and outcomes in encounters. The perspectives of officers, and the narratives they forward of these perspectives, are important because officers shape how the law is understood and enforced. Elaine Campbell (2004) teaches us that police narrativity,

> "needs to be regarded as a medium which not only anchors the relationship between the authors (arresting officers) and readers (decision makers, senior police officers, Crown prosecutors, court practitioners)…Police narratives do not merely report what the police do—they also mark out and patrol boundaries of acceptable and plausible policing practice."(Pg.703)

Campbell also says of arrests,

> "… these descriptors mark distinctions between the demeanor and disposition of 'victims' and 'offenders' at the incident scene; but, over a series of cases, such expressions become routinized and constitute a rich and recognizable lexicon of signification of 'rough' and 'respectable' populations." (Pg.705). And, their lexicon, "The invocation of such graphic language not only narrows the distance between the readers and the narrative event…." (Pg. 706).

I drew from officer narratives, in cases where stops were marijuana related encounters, to bring the lived experience of police as close to the reader as possible.

Research on police perspective and marijuana DUI encounters is being germinated presently. One of the few works that shed light on the perspective of Washington State police on the legalization of marijuana was done by Storh et al.

(2020). Drawing from nine focus groups and forty-eight officers, authors found police are not supportive of re-criminalization but were concerned over youth access and prosecutorial reluctance to charge. The authors suggested the concerns of those charged with implementing legalization—the police—might help inform policy about real and perceived pitfalls.

Scholars have found Erving Goffman's framework useful to studying their decision-making process. Quinton (2020) explored how police officers establish order during interactions in England with offenders who are stopped regularly. In the U.S., Forrest Stuart (2016) used Goffman's frame analysis to examine how street-level criminalization transforms the cultural contexts of poor urban communities. Stuart looked to catalog the strategies skid row residents used to avoiding police contact, which he called "cop wisdom". Some methods he discusses are showing signs of innocence and sobriety (such as standing up straight and having your hands out) and practicing informal social control (he calls this 'cooling off the block' and is referring to self-informal social control of the area of residents by telling people to not make too much noise or act in a manner that would attract attention. As part of learning to conduct research, I sought police officers narratives and observations of their practices to learn their sort of "street wisdom". And, as the research progressed, it was important to learn of police officers' institutional cultural and wisdom as well for making sense of the social construction of law by the different law enforcement agencies I observed.

How police discretion is conditioned by other broader structural forces at play is also important for looking at discretion. In Illinois, Nowacki & Spencer (2019) found social context as well as police organizational variables (the racial composition of force) effect police enforcement outcomes. The authors noted that, "Although officer discretion is often attributed to individual officers, it is important to understand that discretion is filtered through the context of the police agency where the officer is employed, as well as the setting in which the police work is done."[lxiv] In this research, the same was observed. Individual officer desires and wants were subsumed to the objectives and necessities of the shift they were on, the commanders intent of the policing organization, and the needs of other officers in the field.

Scholars have also continued to observe racial disparities in arrests and enforcement (Geller & Fagan 2011; Levine & Peterson 2008) noted how "proactive" policing is a recycling of what used to be overt racial surveillance in the past (Fagan et al. 2016); and how police often serve as the main representatives of the government that comes into contact with citizenry (Soss and Weaver 2017). Novak and Chamlin (2012) looked at how the racial compositions of residents in particular officer's beats impacted the social control of Kansas City, Missouri citizens. Their study found the higher percentage of black residents, the higher the rate of searches of those stops. Though race was not the topic of research, these works pointed to the need to at least be aware of the trends in police agencies, and keep in mind why and how such trends are reproduced.

Rios' (2020) conducted a study on policing practices in Oakland with at risk youth populations. His research revealed "contextual and situational contradictions between modern police attempts to establish legitimacy and the hegemonic practice of investigatory stops". The strategies of action I observed of officers in my study hinged on the similar contextual and situation factors though only two were Latin youth.[lxv]

The culture of police in this research is important because it also influences officer behavior. Ann Swidler (1986) studied culture, she wrote, "culture influences actions, not by providing the ultimate values towards which actions is oriented, but by shaping a repertoire or 'tool kit' of habits, skills, and styles from which people construct 'strategies of action" (Pg.273). Swidler (1986) called these "strategies of action" found at the heart of the enterprise of policing.[lxvi] Police culture is a mixture of both formal and informal elements of police culture (Kingshott 2004). Her work was key for me to imagine how police understood and utilize all their physical material tools, all their immaterial verbal (suggestive or coercive) tools, as well as the institutional, cultural, and personal refinement of these repertoire skills that comprised their "toolkits" while on the beat.

Sierra-Arévalo's (2021) recent study on police culture and street level practices of officers, which draws from ethnographic fieldwork in three agencies in three distinct states, alleges to "show that the cultural frame of the danger imperative—the perceptual preoccupation with violence and the provision of officer safety—shapes officer behavior intended to ensure survival on the street" (95) and

"allows us to see that some supposedly safety-enhancing police behaviors endangers both the public *and* the police" (95) and "that even seemingly mundane officer behaviors shaped by danger have grave consequences for police and the public they serve." (Pg.96).[lxvii]

Lande and Mangels' (2017) piece "The Value of the Arrest: The Symbolic Economy of Policing" was another piece I drew inspiration from. Their study into the social meaning arrests hold for police officers on patrol culturally and institutionally. As they claim,

> "Arrests are given and taken; they are exchanged *among* patrol deputies…we argue that the transaction in arrests is an ongoing exchange that facilitates the creation and recreation of social bonds, and operates as a stake and a weapon in struggles for organizational recognition and inclusion." (Pg.74)

Their look at the symbolic economy of police arrests contributes to our understanding of police agencies' operationalization. For this research, their work helped me further explore the ways the bureaucratic processes, such as arrests, produce symbolic meaning such as prestige.[lxviii]

Research on police encounters, especially ones focusing on arrest and the cultural and symbolic meaning of policing, helped me see how the variation of the collective social construction of law by officers in possible marijuana DUI cases I learned of, or observed, were shaped by the local policing organization policy and procedures, the perspective of officers, and thus shaped what could or would form part of the *corpus delicti* of a marijuana DUI following recreational marijuana legalization.

On the Social Construction of Law

My understanding of law enforcement is guided by Donald Black's (2010[1976)] social constructionist theory on the variation of law. Black argued that law and its application are not uniformly dispensed, that the social stratification, morphology, culture, organization, and social control of social life predicted the quantitative variation of law and its style.[lxix] For example, Black would conclude that a society stratified by wealth would more readily jail a poor man over a rich man for the same transgression.

Black defined law as governmental social control and attempts to show in "The Mobilization of Law" in (Manning 1978, Pg.167) that "whether or not the state selects the legal case it handles makes a critical difference in the character of law as a social control system." (Pg.169). His concern was how law was set into motion. He finds the mobilization of law, like every legal process, reflects and perpetuates systems of social stratification.[lxx] Much of the literature cited here, in drug scares (Hall et al. 1978; Reinarman and Levine 1989), or more recent studies of discretion, such as how the law and its construction is shaped by context and setting of police work (Nowachi & Spencer 2019) and the police agency (Jenness and Grattet 2005), touch on this subject of how cases are selected or not through the mobilization of law. My research looks at how this is done through observation beat officers decision making process but also their responses to questions about handling of marijuana DUI cases as well as civilians encountered by police, and other workers of the criminal justice system.

David Sudnow's, "*Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*" (1965) served as a good example from which to draw lessons at a ground level of analysis. Sudnow (1965) was interested in the question, "what of import for the sociological analysis of legal administration can be learned by describing the actual way the penal code is employed in the daily activities of legal representation?" (Pg.256)[lxxi] This was a great piece to draw from as understanding how marijuana DUI offenses are rendered legible, or how they are socially and legally constructed by the police officers, but also lawyers, judges, and other workers in the criminal justice system was key to learning what encounters to the police I spoke with could and would be categorized as marijuana DUI's and which not.

Sudnow defined these kind of activities, "normal crimes", "those occurrences whose typical features, e.g., the ways they usually occur and the characteristics of persons who commit them (as well as typical victims and typical scenes), are known and attended to by the public defender." His piece guided my work to constantly question what are the "typically-situationally-included" offenses Sudnow (1965) refers to when it comes to marijuana DUI?

I sought to answer the above question by asking police, as well as observing, what typically situated offenses police do they render legible on patrol? I also ask people who are caught up in these encounters with police about their experience. Additionally, I ask participants of these cases, other street level bureaucrats, lawyers, a bailiff, a judge, and the like. As actors within the criminal justice system, they are

best suited for defining and categorizing social life into various types and degrees of crime.

In sociology of law, the term "law in action" refers to how law is applied in society. Scholars can seek to understand the outcomes of any policy by examining the "law in action" because the "variations in laws, how they are enforced, and the penalties imposed together determine the policy and the public's understanding of the policy" (MacCoun 1993). In this way, this research examining the social construction of law through the case recreationally legalized marijuana legalization in one county may generate key questions and data to build towards sound and reasonable theory and policy soon.

Because this research in large part looks at police practices prior to any legal or scientific guidance for how to define, capture, or process a particular encounter as a marijuana DUI, I am looking at what Verma (2015) defines as the *law-before*— "past organizational practices and power arrangements that precede law-on-the books and shape present day implementation." (Pg.874) Verma's interest in using the law-as before as a heuristic, drawing from organizational documents following AB109's enactment, to understand how actors shape meaning of law in local settings was vital to seeing the variations of law mobilized across agencies as part of a much larger institutional and social network of workers within the criminal justice system.

Conclusion

In this chapter I reviewed three groupings of literature, each of which my dissertation draws on. My research seeks to make contributions in the three areas I

discussed: moral panics, police discretion, and the social construction of law. This research began with the claim made that a marijuana epidemic would materialize has yet to materialize and thus I situate this work in the literature of moral panics. While rumblings of marijuana hysteria are present still today, the viability of that claim and the historical context (Reinarman 1988) do not lend themselves to the formation of a drug scare presently. This is not to say the potential is not here, though that would be another investigation.

Chapter Three: Methodology

In this chapter, I present an overview of my methods and data. I describe the research sites, my role as researcher, and the settings in which the research was conducted. I then go over primary research participants: law enforcement, other street level bureaucrats such as lawyers, bailiffs, judges, as well as civilians. I detail who they are, how they were recruited, why they were chosen, and how many people took part in the research. I then move to talk about my research methods: ethnography rooted in grounded theory, primarily participant observation and interviews using a guiding questionnaire I developed. This leads to a section on data sources, methods of analysis, and a conclusion.

Research Sites and Setting

A few observations and pieces of information originally made Santa Cruz a reasonable setting. I knew this region was a place that had a history of medical and recreational marijuana activism as well as a history of illicit and now licit production. With a population of 275,897 and 607 square miles of territory, Santa Cruz County is a large and diverse municipality hugging the central pacific coast. The area is home to growers that cultivate marijuana strains that have become cannabis cup winners.[lxxii]

As well, living in Santa Cruz County for five years, I had seen people sharing marijuana in the open at the beach, in town, at public parks, on campus. Thus, I assumed police officers would detect and arrest more marijuana impaired drivers because of its greater likelihood for being misused: large university town (i.e., a lot of young people), a mature cannabis market, and a history of permissive use. I also held

the assumption respondents would be abound and officers would have developed the institutional knowledge to encounter and apprehend these specific types of impaired drivers because of the larger probability of someone committing said offense.

The Santa Cruz Mountains are Santa Cruz County's northern border— and is a natural divider from San Jose and the rest of the bay area—and its southern point is the city of Watsonville that sits at the entrance of the fertile Salinas Valley an agricultural region made famous in John Steinbeck's works. The main centers of inhabitants are Santa Cruz, Aptos, Capitola, and Soquel; the mountainous rural areas of Bonny Doon, Scotts Valley, and the San Lorenzo Valley River; Watsonville and Coralitos.

The small town of Scotts Valley, with a population of about 11,000 people, sits just a few miles north of Santa Cruz proper. Likewise, the Scotts Valley Police is small; usually always have four to six officers on duty and their jurisdiction covers only a three-mile strip of road as well as part of Highway 17.[lxxiii] The small jurisdiction makes it so police patrols center around a small area of commercial centers and stores. Because of their small jurisdiction, as well as the rough and thick mountainous terrain they also often support Sherriff and CHP officers conducting stops and sweeps along Highway 17.

East of the city of Santa Cruz is Capitola, another small city with a population of 9,000. It has several residential areas, a community college, and is home to the only mall in Santa Cruz County. Capitola has a history of coastal tourism as evident by its cottages lining its beach center. In my ride alongs of this area I did not observe

many calls, mostly domestic calls, vehicle infractions, and cautionary stops or commercial checks. Other officers labeled Capitola as a "sleepy beach town" and "mellower place to work". The perspective must be taken with a grain of salt as I learned of at least two homicides while conducting research there.

Watsonville is a largely agricultural and Latino community, with many Southern Mexico and Central American immigrants. Their police force reflects its inhabitant demographics, as many of the officers are of Mexican descent. Watsonville PD focuses on crimes of the poor: with more gang violence and its ancillary problems: battery, weapons charges, resisting arrest, etc. It also has one of the highest pedestrian traffic accidents, so traffic issues such as DUI's are firmly in the purview of this police department.[lxxiv]

Salinas is a working-class city with a population of 1563,000 inhabitants. Its police focus on larger city concerns: larceny, motor vehicle theft, assault, etc. Thus, the police department was larger, and feels and operates like most Americans imagine police work looks like: non aggravated assaults, issues related to homelessness, some gang activity, and theft, domestic fights, and one or two murders a month.[lxxv] Interactions here were more impersonal among residents and officers. I observed a car accident, a car pursuit, a larger quantity of homelessness concentration (skid row-Chinatown), clear gang affiliations (Norteños), and more people of Mexican descent— Latinos make up 79% of the population.[lxxvi] However, besides a few, not all pursuits were fast paced. There were also a lot of slow burner nights (patrolling endlessly, waiting at the hospital, dealing with petty arguments, etc.).

I also visited other police departments when the opportunity presented itself. I went once to the Hayward Police department for a ride along. I went once to the California Highway Patrol in Aptos and thrice at their headquarters in Sacramento for task force meetings. And once to the Coronado Police Department in San Diego County for a ride along during preliminary research.

Police agency ride along programs served as the main settings to conduct participant observation of local police. I rode for eighty hours with police officers (mostly in Santa Cruz County) and obtained eighteen officers from eight agencies (again mostly in Santa Cruz County). These ride along were organized with the front office and each agency permitted me different number of ride alongs: Santa Cruz (4), Scotts Valley (1), Watsonville (4), Capitola (3), Salinas (4), Hayward (1), Coronado (1).

Ride alongs were approximately four hours, though duration changed depending on police activities. One ride along was thirty minutes (Salinas) because the officer said there was going to be a retaliatory shooting for a homicide that had just occurred. He told me it was best if I came back another night. Another went over four hours because we were waiting for a forklift (in Hayward).

I went on ride alongs in all three of the common shift times for police: first shift (day shift), second shift (swing shift), and third shift (night shift). The times are adjustable, and not all agencies follow this, such as Santa Cruz that only has two shifts due to resource restraints. But within the three common shift schemes, I went on eight ride alongs in the morning shift, three in the swing shift, and seven in the

night shift. I also attempted to go on ride alongs during all the days (specifically the weekends). I went on five ride alongs on Mondays, two on Tuesdays, three on Wednesdays, none on Thursdays, six times on Friday, and no times on Saturday and Sunday.

Role of Researcher

My role as a researcher in this project meant I had duties and responsibilities to conduct sound research that included writing notes, being thorough with leads, constant reflection. An aspect of this was constant reflexivity to objectivity and honesty. I tried to analyze and process data without misrepresentations, recognizing all accounts have some level of bias or limited perspective. This process of properly documenting and analyzing observations of social life was only possible in conjunction with an openness towards respondents about the purpose and objective the research.

Another part of my role as researcher was establishing and maintaining an appropriate amount of trust and respect with respondents and people in the field. I treated everyone as honorable men and women regardless of their disposition or standing in life. In sum, ethical treatment of people was important. I gave all respondents *nom de guerre's* and used those names for their acronyms used in this work. I also altered certain descriptors of individuals, and at times changed detail to maintain privacy and anonymity of people. The exception were the chiefs of police and agency representatives as they could be easily identified or communicated in a public capacity.

Research Participants

To obtain respondents who had been arrested or encountered by police for marijuana DUI's I drew from the university, tourist areas, marijuana dispensaries, tourist locations, and word of mouth. I fielded eight possible respondents and obtained consent from five: a Latina woman from Scotts Valley, a Latino student in Santa Cruz, a White couple in Bonny Doon, and a Santa Cruz local. They were all in police encounters where they were suspected of being high. In the case of the White couple in Bonny Doon, they were in fact simultaneously driving and getting high.

At the university I reached out in person or writing to ten professors asking if I could make a quick announcement at the beginning of class to invite students to participate in my study. This was a verbal announcement, and I would leave my email written down so that they could write back. I began with large sociology lectures and of colleagues I knew in other departments. I then emailed professors or lectures in the UCSC catalog. Four professors responses permitted me to make an announcement (all in the social sciences). I obtained one respondent.[lxxvii]

I spent fifteen hours a week at tourist areas in Santa Cruz because of a shuttle service job. Through this enterprise I had access to an endless stream of potential respondents at the wharf, at the boardwalk, downtown, and anywhere in between. Often, it was patrons who would initiate a conversation about drugs or alcohol.[lxxviii] I would use small talk—their questioning of what I was doing in Santa Cruz— which became the springboard from which to introduce my research on marijuana DUI's and police discretion in Santa Cruz. I obtained one respondent.

I went to all dispensaries in Santa Cruz County (twelve) that were open from 2018-2022. I would ask if I could make an announcement at their workplace meetings inviting them to participate in my study, or if I could leave an announcement for them to make on my behalf at their briefings or meetings. I obtained two respondents— a couple.

The courthouse was a potential source for civilians, officers, and other workers of the criminal justice system. I found three lawyers, one bailiff, and one judge in Santa Cruz County willing to be interviewed. Two interviews with the lawyers were over the phone, one at their office. The interview with the judge was done in his chambers and the interview with the bailiff was done at the Salinas Courthouse. I attended three court sessions, two in Santa Cruz and one in Monterey County. Overall, professionals provided perspectives that elucidate the general path of marijuana DUI's in the criminal justice system. By this I mean at other points in the sociolegal lives of the cases in the criminal justice, arraignment, preliminary hearings, trial, and sentencing.

To familiarize myself with law enforcement in the area I spoke with local PD, Sherriff, and CHP officers at public outreach events and the unsanctioned 4-20 event at UCSC. I also went on ride alongs with Drug Recognition Experts (DRE's) from the Hayward and Coronado Police Departments to familiarize myself with patrolling. I consulted with two retired police chiefs, one from Coronado and another from Colorado Springs, who shared their perspective as higher-ranking officers.

To recruit officers, I mailed letters to the chiefs of police at local police stations: Santa Cruz, Capitola, Scotts Valley, and Watsonville. In the letter I provided agencies with my personal contact information and asked if I may interview their officers regarding marijuana DUI detection practices. If interested, they could contact me, and I would schedule interviews through their ride along programs. Officers were notified by their agency, and I introduced the project to them from the same information I presented in the letter to their chief. I explained the respondents their role, my role as a researcher, and the procedures I took to ensure their confidentiality.[lxxix]

A good portion (half), but not the majority of police I saw, were white males in their early 30's to mid 50's. There are programs to employ more women and people of color and I met Latino and black officers as well. This was true when speaking with officers that patrol more working-class communities like Watsonville and Salinas.

Research Methods

The research I did for this project was done from 2018-2022, a majority done from 2019 to the end of 2021. To prepare for this investigation I conducted significant preliminary research for a year and a half.[lxxx] I used snowball sampling to obtain as many differing perspectives from officers as possible. This technique was more useful compared to other sampling methods because I did not begin this project with a hypothesis but aimed to discover what people think, how they act, and why, in social settings (Schutt 2011).

I used ethnographic methods rooted in grounded theory, specifically interviews and participant observation, along with field data. Grounded theory was a good fit for marijuana DUI's and police discretion for two reasons. First, the objective of analytic induction is not to find causal explanations and the focus is on the process of data collection to build theory (Aldiabat & Navenec 2011) and it fit well since I did not enter the field with an already prepared hypothesis, intending to confirm its validity. My line of questioning began by situating my research in the social construction of law framework, interrogating claim making of a supposed marijuana epidemic. Preliminarily research, and the negative cases that emerged in the field, forced me to shift my sociological gaze towards interrogating the ways in which the law was being mobilized in action on the ground by officers on the beat.

Second, grounded theory data collection and analysis—the confronting of emerging ideas and concepts with negative cases— helped assess the variations of cases that emerged from police accounts.[lxxxi] I compared officer statements with what I witnessed and heard in police investigations and field patrol from participant observations using grounded theory (Glaser and Strauss 1999[1967]). The use of grounded theory assisted in sorting narratives presented to me by officers in the field and encounters I observed in the course of work shift. Specifically, adjust and refine my line of questioning for the following ride along.

Ethnography has proven to be an invaluable method for sociologists learning about the lives of people: in poverty and under racial oppression (Du Bois 1899), in dance halls (Becker 1963), in working class youth (Willis 1977), and living and

working on the street in New York (Duneier 2000). Ethnography has been useful for studying law enforcement. For example, for seeing: how people learn to become police officers (Moskos 2008), how policing encroachment onto school campuses criminalize youth (Rios 2011), and how policing is conducted along the U.S. Mexico border (Andreas 2009).

I used ethnography, specifically participant observation, and semi-structured interviews to obtain police officers' other street level bureaucrats narratives and perspectives. The advantage of using ethnographic methods and conducting participant observation is that the researcher can study the field through the senses (primarily visual and audible) contextual aspects of interactions or statements, such as: tone, body language, order and timing of events, emphasis on action or statements (through speech, pattern of logic presented, lack of comment, etc.).

Participant observation was useful because I could obtain a perspective that was just off center of officer experience. Only sitting in the patrol car, hearing the radio calls come, or in seeing a cop grimace when they touched someone covered in body fluids, or try to talk to a distressed adult, could I begin to understand their sense making, and thus how the law is mobilized, via learning how officers exercise their discretion. Seeing police interact with other officers on patrol was key to learning how police operate and organize themselves. In this way, the straining nature of police work—slow paced work punctured by high paced activities— also vicariously affected me. From the consequences of poor sleep due to staying up to fatigue from

adrenaline dumps, I vicariously was affected by being around police work and taught me about police work intimately.

I interviewed police, who deal with marijuana DUI's on the road; civilians, who have been in these types of legal encounters and traffic stops; and other street level bureaucrat workers of the criminal justice system who see these cases at: arrest, court arraignment, trial, conviction, etc. I did not record the interviews during ride alongs because it is not allowed. I also was concerned audio recording would prevent officers from being candid regarding their jobs and the performing of their duties. Regardless, interviews provided a wealth of knowledge of police understanding of marijuana-impaired driving, officer current best practices for determining impairment in marijuana DUI cases, and how they observe, identify, and articulate signs of impairment at the ground level of analysis and how local agencies define, document, and capture marijuana DUI cases.

Interviews with civilians were done in public places of their choosing, usually a coffee shop or diner type of restaurant (though one was done over the phone and one at a bar). This to facilitate their ability to make it to the interview but also make them feel comfortable. I did not audio record these interviews to keep a methodological continuity as I did not record officers This also served to make them feel comfortable speaking.

Other people I interviewed: public health officials, dispensary workers, one cancer research doctor, educators, and owners in marijuana businesses, sometimes these were planned, others occurred on the spot where I met people. Respondents

came to me at my places of work (or I found through word of mouth) because I was living, working, and researching in what largely comprised my field site—Santa Cruz County.[lxxxii] Aside from potentially obtaining respondents, I believed obtaining their perspectives was important for learning how constituent groups and other bureaucrats (in NGO's, city, or business) are understanding and experiencing the rolling out of the legalization of recreational marijuana use.

The Guiding Questionnaire

The guiding questionnaire was created as a response to the dynamic multitasking nature of police work: communicating with other law enforcement officers (LEO's) during patrol or dispatch, even if on break; driving; speaking with the community; assessing possible threats, dealing with a tool or technological malfunction of their equipment, etc.[lxxxiii] The list of questions is found in Appendix A.

Of sociological import for me in developing the guiding questionnaire was the scaffolding police use in legally and socially constructing a marijuana DUI. By scaffolding I mean the process through which people integrate (or assimilate) new information into *their* existing knowledge structures. With a list of questions that had an order and purpose, using their terminology and lexicon, conversations were more robust. I could return to questions not answered if there was an interruption or could circle back if the conversation was drifting.

Interviews under these conditions provided a wealth of knowledge of police understanding of marijuana-impaired driving and their current best practices for determining impairment in these cases. And the role certain indicators or behavioral

aspects of civilians (suspects) played in officer discretion, proved invaluable for understanding their sense-making, what led to police tendencies to follow a particular path of investigation.

The questionnaire is the combining of two different sets of question. One set of questions I developed in preliminary research on topics related to marijuana use, police policy, and their field sobriety tests. I also drew from officers, the public, students, and research colleagues I spoke with. I merged those questions with another set of questions with alterations from the most currently publicly available law enforcement training course for detecting impaired driving, the 2018 "Driving While Impaired (DWI) Detection and Standardized Field Sobriety Test (SFST) Refresher Instructor Manual Guide".[lxxxiv]

The first quarter of the guiding questionnaire are introductory questions about the officers background and how they got into policing. This was done to ease their nervousness and gain an understanding of the individual behind the badge. I did my best to use open-ended questions, allowing for interviewees to "answer questions in their own words" (Schutt 2011:304). This ethnographic interview approach allows sociologists to understand the social roots of problems and opens the possibility for providing a way of analyzing them (Becker et al. 2004).

The second and third portion of the guiding questionnaire are ones altered from the 2018 "Driving While Impaired (DWI) Detection and Standardized Field Sobriety Test (SFST) Refresher Instructor Manual Guide". This manual is approved by the International Association of Chiefs of Police, NHTSA, and all police officers

must periodically take this course. I copy pasted the questions posed to them in refresher courses but tailored them to specifically refer to marijuana.

For example, question ten of my guiding questionnaire is taken from Pg.60 of the 2018 manual mentioned above. The manual tells instructors to,

> "Ask participants to suggest typical things that an officer might hear during the interview that would be describable clues or evidence of alcohol and/or other drug influence. After most major sound clues have been suggested, display next slide. What do you hear?"

In my questionnaire I made this question ten and posed it as such, *"What are some useful interviewing techniques to gauge the sobriety of an individual when first making contact with them? How do they apply to marijuana-impaired drivers?"*

When an officer sees someone they suspect to be impaired (of anything), they have a procedure for approaching and determining the impairment of people. Any DUI investigation or traffic stop encounter has the potential to have four phases in an encounter with a civilian (i.e., potential suspect): vehicle in motion, personal contact, sobriety assessment, arrest. The aspects of this police work that interested me were the first three of the four phases of field sobriety tests and how they are best practiced by police in Santa Cruz County.

The last quarter are collections of question from other police officers, students, researchers, or the public that had bearing on the issue of either police discretion or marijuana related topics. Another question I obtained from my first ride along in Santa Cruz. K.D., a retiring officer from the Santa Cruz Police Department (SCPD). A middle-aged white man in his fifty's, K.D. had a flattop haircut, clear square glasses, and bushy white moustache. When I first told him about my interest in

marijuana DUI's K.D. slid this look of boredom from his phone to me. We were parked and he was taking notes. He told me that some officers' focus on certain kinds of crimes, that he was not really interested in marijuana or marijuana stops, "I don't care about weed or any of that", "I want to get you to the hospital as fast as possible".[lxxxv]

I took this interesting exchange and decided to pose this question to all respondents, I phrased it as such: *I understood every officer gravitates or has preferences to the kinds of crimes they deal with, I then asked, "Do marijuana crimes interest you? What kind of crimes or problems do you prefer to deal with?"*[lxxxvi] In Sum, the guiding questionnaire assisted in conducting the best research possible given the complicated nature of police work.

Data Sources & Methods of Analysis

I use data from participant observation and interviews as primary sources. I draw from narratives of civilians, police officers, lawyers, and others in the criminal justice system. Narratives and observations of police-citizen encounters served as examples of legal encounters. Observation of beat officer patrolling, courthouse proceedings, and sobriety check points served to obtain more tactile data, such as timing of actions or responses, smells, and other sensory information.

I also used legal documents shared with me or freely available online. I gathered data sets, court cases, government reports, policy briefs, as well as presentations, and news stories. If useful and pertinent they are presented in text or in a footnote.

Dramaturgy

I take a symbolic interactionist dramaturgical perspective. I use front and backstage participant observation to understand beat officer discretion in marijuana DUI cases and what sociolegally constitutes a marijuana DUI to officers. Goffman theorized how people make sense of experience, how people organize what is occurring in front of them. He said that he wrote about the ways in which people come to determine their answers to the question, "What is going on here?" (Goffman, 1974, Pg.8). His writings were particularly useful for making sense how marijuana DUI's play into beat officer's jobs. Faced with scant evidence of a public health crisis developing, and finding officers readily admitting they do not pay attention to marijuana DUI's, I also found myself asking, "What is going on here?"

In page one of *Frame Analysis* Goffman wrote, "All the world is not a stage", but I choose this analytical framework because it was fitting from the dramatrugical perspective police officers held of their work. I asked one officer from Santa Cruz,

> F.Y.—leaving Janus of Santa Cruz (our local substance use disorder treatment center)— "*Why do you stay on the force*?" An Asian American officer with a standard marine flattop and round tactical prescription glasses, he said,
> F.Y.: You know, I heard an officer online or on TV talk about why he practices this profession, and it always stuck with me. He said, 'Policing is like working the back of the theater', everyone is there for the show and see's the show. But they don't see what it takes to make the show happen.

Then he pointed at the downtown, the tops of the buildings, the trees downtown, and the river,

> F.Y.: I like to know how the theater functions and want to see it function.

Scholars have found Goffman's framework useful to explore how police officers establish order during interactions in England (Quinton 2020) (Norris 1989). Goffman's concepts of deference and demeanor help tease out how these systems of behavior, or "rules of conduct" as Goffman put it, play out in interactions (1956:473). This is especially useful for looking at law enforcement. For example, in the preceding literature chapter I mentioned how in the U.S., Forrest Stuart (2016) used Gofman's frame analysis to examine how street-level criminalization transforms the cultural contexts of poor urban communities.[lxxxvii]

I use the term "legal encounters" to refer to encounters as understood by Goffman in *The Presentation of Self in Everyday Life* (1959).[lxxxviii] Goffman (1959) says,

> Interaction (that is, face to face interaction), may be roughly defined as the reciprocal influence of upon one another's actions when in one another's immediate physical presence. An "interaction" may be defined as all the interactions which occurs throughout any one occasion when a given set of individuals are in one another's continuous presence; the term "an encounter" would do us well. (Pg.16)

I use the term legal encounter to refer to all the interactions that occur between the officer and respondent throughout their police encounter and investigation. It is fitting as the phrase "to encounter" is present in police training literature and not a stretch in vernacular.

In a later article on neglected situations, Gofman elaborated on an important aspect I explore, talking. He says talk,

> "is socially organized, not merely in terms of who speaks to whom in what language, but as a little system of mutually ratified and ritually governed face-

> to-face- action, a social encounter. Once a state of talk has been ratified, cues must be available for requesting the floor and giving it up, for informing the speaker as to the stability of the focus of attention he is receiving. Intimate collaboration must be sustained to ensure that one turn to talking neither overlaps the previous one too much, nor wants for inoffensive conversation supply, for someone's turn must always and exclusively be in progress." (Goffman 1964: 136)[lxxxix]

This dramaturgical classification allows one to differentiate and separate the experiences of civilians with police, with their lawyers and the county's prosecutors, or other legal workers into pieces of a larger collection of encounters that make up a marijuana DUI.

In the long periods of time where I waited for possible marijuana related encounters, I began to build a body of knowledge slowly and inductively on the subtle but important actions (understood to Goffman as "task-embedded sign vehicles"), gestures, speech, acts, images, words, and the avoidance of these "sign vehicles" performed or made visible by police work.[xc]

Observing police was time spent learning about police work as a craft and as a culture: officers showed each other and me with their words and actions: how police go about performing certain duties (vehicle stops, civilian contacts, report writing), what their relation to the public is like, and what is valued in police work. Ann Swidler (1986) said, "culture influences actions, not by providing the ultimate values towards which actions is oriented, but by shaping a repertoire or 'tool kit' of habits, skills, and styles from which people construct 'strategies of action" (Pg.273). The culture of police is both the lubricant of the institution and vessel of what underlying

assumptions or behaviors the members of that organization have internalized as acceptable and others as unacceptable.[xci]

Police showed me their strategy of action "toolkits" using stories, analogies, even symbols, for how they police, I term them, "policing signposts". I refer to them as "signposts" because none are infallible rules, or tenets, that could not be subverted, bent, broken, or dismissed. Instead, they serve to orient the general paths of importance to police in their investigations and encounters with people. These "signposts" serve as both a guide for how to conduct oneself in the field and as a measurement from which the officer can gauge their own policing.

These policing signposts point to officer strategies of action at the heart of the enterprise of policing. Part of studying the social construction of law in marijuana DUI's and police discretion. I was also then studying sense making of police officers. The concept of sense making from organization theory can help us understand the institutionally diffused decision-making procedures of law enforcement agents.

As it relates to police stops, Weick, Sutclifffe, & Obstfeld (2005) state, "Sensemaking is not about truth and getting it right, Instead, it is about continued redrafting of an emerging story so that it becomes more comprehensive, incorporates more of the observed data, and is more resilient in the face of criticism" (Pg. 415). Weick, Sutclifffe, & Obstfeld (2005) conclude saying, "To deal with ambiguity, interdependent people search for meaning, settle for plausibility, and move on", and sense making provides:

> (1) a micro-mechanism that produces macro-change over time";(2) a reminder that action is always just a tiny bit ahead of cognition, meaning that we act our

> way into belated understanding;(3) explication of precision activities; (4) description of one means by which agency alters institutions and environments(enactment);(5) opportunities to incorporate meaning and mind into organizational theory;(6) counterpoint to the sharp split between thinking and action that often gets invoked in explanation of organizational life (e.g. planners versus doers); (7) background for an attention-based view of the firm; (8) a balance between prospect in the form of anticipation and retrospect in the form of resilience; (9) reinterpretation of breakdowns as occasions for learning rather than as threats to efficiency; and (10) grounds to treat plausibility, incrementalism, improvisation, and bounded rationality as sufficient to guide goal-directed behavior. (Pg.415).

Their understanding of sense making is congruent with my observations of its role in individual police action, behavior, demeanor, and discretion.

Coding and Analysis

I transcribed longhand notes taken during interviews directly after the interview. Geertz (1973) wrote, "ethnography is thick description" (Pg.314), and in analyzing data from interviews and participant observations I returned to Geertz piece for guidance on how to pick up on the "multiplicity of complex conceptual structures, many of them superimposed upon or knotted into one another, which are at once strange, irregular, and inexplicit, and which he must contrive somehow first to grasp and then to render." (Pg.314).

For example, I learned police, like other groups of people, they speak from personal and gut feeling and use stories to make their point. In these discussions, sometimes their stories did not connect to the question explicitly and I had to draw out the responses further. In analyzing their responses, comments, accounts, and narratives I would try to ask myself, "what was their intention in sending the message? What was that message? And was it received?"[xciixciii]

I wrote conceptual and theoretical memos during the ride alongs (if possible), afterwards during coding, and while analyzing the data. I later applied focus coding, where recurrent responses, themes, or patterns identified in coding or memo writings were found. For example, I began by grouping officer narratives or responses to certain questions around four specific topics: work/ labor, marijuana/ use, field sobriety tests, and social construction. This was not fruitful for deepening understanding of the social construction of law, police discretion, or marijuana DUI's but did lay out avenues to explore other topics.

I used local concepts and *in vivo* codes to guide the creation of future core and peripheral categories.[xciv] Goffman in *Frame* defines the category as the "principles of organization, which govern events—at least social ones—and our objective involvement in them" (Goffman: 1974, Pg.10-11). The analysis in *Frame* is fitting as I ultimately wanted "to try and isolate some of the basic frameworks of understanding available in our society for making sense out of frames of events and to analyze the special vulnerabilities to which these frames of reference are subject." (Pg.10).

These *in vivo* codes allowed for institutional knowledge passed on but not written down to be cataloged. In frame analysis Goffman called "keys", "The set of conventions by which a given activity, one already meaningful in terms of some primary framework, is transformed into something patterned on this activity but seen by the participants to be something quite else." (Pg.43-44).[xcv] Grouping officer narratives and responses to develop analytical themes and categories based on

phrases, or *in vivo* codes, and other symbols or cultural artifacts were mosaic like views into police discretion.

I did not make a guiding questionnaire for civilians because I did not want to influence their responses. Additionally, coding was not fruitful for obtaining more granular understanding of marijuana DUI's within the criminal justice system. One reason for this was that there simply were not enough respondents to draw and observe patterns or themes in the progression or outcome of the encounters. Another reason is the sample size of civilians was too small (five) to draw from and I had already spent considerable resources, time, and energy searching for respondents.

I would look for patterns when coding interviews of police, both similarities and differences on approaches, tests used, results, outcomes of encounters, etc. One way I coded officer responses to the guiding questionnaire questions was based on agency and level of training. I made summaries of officer responses for each of the questions, highlighting common phrases, terms, and narratives. Coding, especially negative cases, helped develop the kind of categories, with the fitting characteristics, that gave sense (from the perspective, statement, and behavior I observed) to the officers on the beat.

Conclusion

Here, I presented an overview of my dissertations methods and data. First, I described the research sites and the settings of the interviews. I went over research participants: who they are, why they were researched, and how many people took part in the research. I detailed my research methods: grounded theory and ethnography,

primarily participant observation and interviews. I then went over the guiding questionnaire, then my data sources and methods of analysis.

Chapter Four: The Crafting of Beat Officer Discretion

Beat officers serve as a comparative axis at the floor level of analysis from which to study how the law is socially constructed. The jurisdiction and discretion of police officers seem boundless, but they are anything but. In fact, whether police will be attentive, inattentive, or "disattentive" to a particular offense being committed in their presence (or even on their beat) depends on a series of ever turning and always emerging contingencies, conditions, and exigencies.

My goal in this chapter is to explore the discretion of officers in relation to detecting and testing for potential marijuana DUI's. The purpose is to explore beat officer mobilization of the law in these cases, or put another way, ask how are street-level bureaucrats translating marijuana policy on the ground?

In this way, I study the political economy of officer discretion, what can be thought of as their "attention economy".[xcvi] I use this term to refer to the value of attention an officer may or may not be attentive to a particular event, encounter, or service call. I outline aspects of policing valued by officers, such as "staying open" and "getting a good arrest" that have value within the attention economy of police officers on patrol. I first show how this was learned through officers learning of police safety and then discuss marijuana DUI's place within the attention economy of beat officers.

What is excavated from the working lives of police is the many ways individual beat officer discretion is conditioned and layered by the needs of the institutional they work for as well as the needs of other police on patrol. But also, the

way individual officer discretion is shaped by police culture. Understanding how culture shapes the conditioning of officer discretion partially explains why marijuana DUI's are of low value to cops, do not carry value in police work, their attention economy, and partly explains why police disattend to these offenses.[xcvii]

I use the term legal "disattention" to refer to the central discretionary practice of police *modus operandi* exercised when avoiding a particular transgression (or possible transgression) of the law. I drew this concept from the term "disattend" from Erving Goffman's *Behavior in Public Places* (1963), specifically a discussion of the term "away" referring to how one allows their attention to drift from someone or something that has their attention.[xcviii] For example, this can happen when someone is speaking to another person at a park about something boring, and they look over at the birds or people around the area as their attention drifts.

Goffman provides an anecdote of being a participant observer in a mental ward,

> "In these contexts the participant-observer can soon learn to *disattend* (my emphasis) to incontinence and hallucinations occurring eighteen inches away. Perhaps these facts can help one understand the classic back-ward phenomenon of the patient who is sufficiently "present" to ask courteously for a cigarette but who is sufficiently preoccupied to let the cigarette burn short enough to char his finger." (Pg.71-72)

Beat officers through the course of their shift must practice legal "disattention" if they want to comply with demands of police work. It is this process of legal "disattention" in police work in relation to marijuana DUI's that I am concerned with. This is not to be confused with "civil inattention", the process whereby strangers who are in proximity demonstrate that they are aware of one another, without imposing on each

other— thereby recognizing the claims of others to a public space and their own personal boundaries. [xcix]

I gathered *in vivo* codes officers used in conversation or explained through the course of ride alongs to map how police themselves understand and consider language as forming a part of the discretionary aspects of their work (Manning 2017). I focused on aspects that related to impaired driving, traffic stops, and marijuana impairment or encounters where marijuana was, or potentially was, present. Officer accounts of events, their narratives, and *in vivo* codes helped build basic themes, what I call "policing signposts", which provided police knowledge that is both institutional as well as cultural knowledge.

What I label "policing signposts" point to what Ann Swidler (1986) called "strategies of action" found at the heart of the policing enterprise. She writes of this term,

> "The term "strategy" is not used here in the conventional sense of a plan consciously devised to attain a goal. It is, rather, a general way of organizing action (depending upon a network of kin and friends, for example, or relying on selling one's skills in a market) that might allow one to reach several different life goals. Strategies of action incorporate, and thus depend on, habits, mood, sensibilities, and views of the world (Geertz, 1973a). People do not build lines of action from scratch, choosing actions one at a time as efficient means to given ends. Instead, they construct chains of action beginning with at least some prefabricated links. Culture influences action through the shape and organization of those links, not by determining the ends to which they are put. Our Alternative model also rests on the fact that all real cultures contain diverse, often conflicting, symbols, rituals, stories, and guides to action" (Pg.277).

Collecting officer narratives through *in vivo* codes and observing officers in action and inquiring of their practices and experiences built up several policing "signposts".

Using stories, analogies, even symbols through policing signposts revealed to me officers "toolkit" of means, and how these chains of action formed and how they used these to build into "strategies of action" that fit and make sense to the style of policing done here.[c]

Signposts serve to orient the general paths of importance to police in their investigations and encounters with people. These signposts serve as a reference point in policing, both for how to conduct oneself in the field and as a measurement from which the officer can gauge their own policing behaviors. These policing signposts allowed me to outline a sometimes implicit and other times explicit "frame" of signposts from which to understand local police behavior and discretion, and to make sense of officer's disattention to marijuana DUI's.

Breaking Down Patrol

Police work is teamwork, and individual officer discretion is conditioned on patrol by the resources and local demands for police intervention. Policing efforts are first and foremost conditioned by the available resources, the organization capacities, and the needs of the agency and their workers. As Santa Cruz PD Chief Escalante told us in a police citizens academy class, "Santa Cruz is a small city with big city problems. We have ninety-four total sworn officers, including myself, J.C. (Lt. of operations), and J.B. (Lt. of administration) at the moment." But the real total number of officers who could be "in the field" was eighty-nine.

The chief explained eight were injured; three were field-training officers, sixteen were in the academy; five were doing light duty (because of retirement, post-

partum, etc.); and the actual total number officers disposable to the chief was fifty-seven.

He told us the low staffing, "It changed how we had to do things." Specifically, it altered the structure of their organization. Santa Cruz PD is supposed to have five beats: Eastside, Westside, Midtown, Downtown, and Central Beat (pictured below) and have four Lieutenants running operations. These Lieutenants communicate with J.G. and have their Sergeants and beat officers in the field.

Figure Twelve: Image of the Five Patrol Beats in the City of Santa Cruz from the Santa Cruz Police Department Annual Report (2015)[ci]

But as Chief Escalantes explained, because of the low number of officers, they have three beats. The revealing limited capacity of resources for policing in relation to the needs and terms of workers outlines the players at play, and the field of

contestation the policing enterprise is made up of. Officers are street level bureaucrats, representative agents of the state, but they are also workers, part of an organization, with institutional and collective(union) power.

Part of the short-staffing, or limited number of officers in the five beats, involved the fact that in the policing enterprise, the Chief must mediate between the workers' needs and demands, his officers, and the demands and needs of the city or. This mediation to meet the policing demands and needs of the city or municipality must be negotiated with the police union. We see this allocation in the shift selection.

Officers are supposed to work ten-hour shifts, but they are working twelve-hour shifts: 6AM-6PM, swing shift, and 6PM-6AM (graveyard shift) because of the low number of officers. Officers with seniority select their shifts first, and officers then pick according to availability. The Chief said he cannot run his workers to the ground, and there is the police union, which he told the class, "To run this organization, I have to have a good relationship with those guys."

The issue of extended resources also means more tired officers, less attentive, and surely less agreeable. This is on top of the particular wear of the profession. In the case of law enforcement, it is the "jading" of their perspective with time. P.M. of Scotts Valley PD said now that he was an officer, he sees that, "the job jades you, you think differently about people" I asked him,

> Q: How so?
> P.M.: Sometimes I gotta build rapport with people I want to see euthanized. Like there was this one house I went to where a child was handcuffed to a bed for misbehaving, and he had cigarette burns on him. I had to get that guy to speak with me. We have to find commonality with these people. If they like the 49ers or whatever, and I like the 49ers, then that's somewhere to start.[cii]

Resource and employee constraints affect policing capacity and quality, which in Chief Escalantes own words, “is complicated”. Police culture, the institution of policing (the agencies), and individual discretion of officers inform one another, in constant conversation, to produce the services rendered in the day-to-day operations of each shift.

The Salinas Police department was also short-staffed. This became clear in my ride along with officers in the area. The Salinas Police Association (SPOA) passed a no confidence vote in their police chief because their salaries were cut and there was not enough hiring of new – and in the eyes of officers – needed men.[ciii] Salinas PD has one hundred and forty-three sworn officers for a population of 163,542 civilians.[civ] Their chief retired in 2021 and was replaced with Police Chief Robert Filice.

When I visited the Scotts Valley Police Department, it was experiencing staffing issues though it was also observing a dramatic increase in calls.[cv] I was informed of similar experiencing of staffing concerns in Capitola and Watsonville. Watsonville’s 2021 report also revealed a slight drop in violent crime (2%) and property crime (8.2%).[cvi] The purpose here is to illustrate how the structuring and organizing of beat patrols impacts how an agency may call on their officers to mobilize the law in one part of their mission and commitment to public safety. This structural conditioning then, is a factor that conditions individual officer discretion and how they will exercise it in any encounter.

Safety & Policing Signposts

Policing can be a dangerous profession, though it is not the most dangerous profession. The U.S. Bureau of Labor Statistics Census of Fatal Occupational Injuries for 2020 cites transportation workers such as motor vehicle operators and air transportation workers account for nearly half of all occupation related fatalities.[cvii] Researchers have found that policing today is much safer than fifty years ago (White et al. 2019). In fact, currently the biggest killer of police officers is COVID-19 and other job-related illnesses. This is followed by officer-involved shootings, then automobile accidents.[cviii]

Regardless, personal safety weighs heavily on the minds of officers, even for small town cops entering situations of any sort. Safety plays such a large role that it dominates the mind of officers as they police, and ultimately has a sizable influence on their discretion. As I got back into a squad car after taking part in my first high speed pursuit, the ride along officer I was with pointed at a button on his dash, and told me, "You see this button here? If I hit this button, it will tell all officers in my agency to come to me, right now. If we get into trouble, you push this button."[cix]

Self-preservation is a central component to understanding officer discretion. It is a primary element that conditions the behaviors of police, and their willingness and the manner in which they exercise discretion. Thus, where the lines are drawn about what matters and what does not on the beat and in the policing enterprise is in the praxis of police officers practicing safety. The experience of regularly deciding what this term means to officers, not just the agency or union, happens on the beat.

Safety in this way is one of the most visible areas of contestation and collaboration in the policing enterprise. This is because, even though police manuals and officer trainers have many terms and concepts to provide guidance for how to understand, interpret, and then adhere to police policy, officers themselves interpret and reconceptualize what is useful and discard what is not. Below I provide examples of how discretion is conditioned by the institution and culture of policing when thinking of safety.

Police culture here also provides officers with an overall narrative, role, and context to operationalize the strategies of action learned in training. For example, a field training officer explained how he communicates to recruits about how to think of exercising their discretion, "I tell all the young guys, if you wanna get into fights, you can, but you won't last long." We had just spoken about how injuries end the careers of officers. So, with this quick story he would state two factors about police work: physical force was allowed to be used, but it comes at a cost. In the next two examples, what is observable is how each officer rationalizes institutional guidance of use of force with *in vivo* codes or analogies of possible cases where force may have to be exercised.

The first officer I ever went on a ride along with, W.H., used the *in vivo* code "scales of violence".[cx] Leaving the station to go on patrol, W.H. asked if I had seen their "gear" before. I said no, and he took me to the back of his vehicle to show me his equipment. He gave a brief overview of the tools on his belt and his reasoning for having all of it. He said he uses an "escalating logic of violence" when engaging with

a suspect. I asked, “What is that?” He pulled out his Taser and gave me an example. He said,

> “If I am trying to stop you I need more than what you have, so I will meet your violence, with more, but only as needed. Let’s say someone approaches me with a knife; I wanna live (and he touched his gun holster) so I’m going to use this.”

With Santa CruzPD officer M.E., he said the standard “philosophy” officers are taught is to use their force on a “continuum: A) face, B) words, C) hands D) restraint/detain, E) pepper spray/Taser, F) firearm”.[cxi] He said written Santa Cruz PD policy is to “use that force which is objectively reasonable under the totality of the circumstances”.[cxii] But M.E. does not think of it that way,

> M.E.: I look at it more like an elevator. When you get on an elevator you simply go where you need to go, if you need to get off on the third floor you press that button. Same with policing.

He gave a couple of quick examples, the first one being someone who was agitated but not holding a weapon. M.E. said that in such a case, he would not use a Taser or gun but would speak to them. Then, he gave an example of someone with a knife. This is a situation in which, according to his logic, he will be forced to pull out and potentially use his gun.

A traffic stop is a typical encounter where one can observe the impact safety has on a police officer’s frame of perspective. The following example, drawn from my third ride along in Santa Cruz, aids in teasing out how safety impacts officer willingness to follow orders and how their discretion is conditioned by their objective to stay safe. Officer J.B. told me about a time he was sent up Highway 9 to check up on campers illegally parked for several days.

> J.B.: They sent me to check out these campers, but when I got there, there were a bunch of them, almost twenty. I can't do anything about that. Way up there? Alone?

J.B. said he was not going to talk to the campers unless the backup was there. He waited for someone to back him up; no one did, so he left. I was surprised when he described the campers as "rugged" and "kinda mean", and said, "I'm not going into that to get myself killed".[cxiii] J.B. was a large man— tall, easily six foot three, of Pacific Islander descent, with a sparse mustache and broader shoulders than the driver seat of the car of his Ford Explorer. For me, this was a learning moment as I suspected someone armed and presenting as large and strong would not be afraid, even if they were trained or didn't take into account safety concerns.[cxiv]

Here, I would like to draw attention to a crucial aspect of policing signposts related to the educating of officers. Memorials of police, accounts, and narration of their deaths are another sort of signpost (either visible, tactile, or audible) and educational tool used to give to other police officers a message. Officers are reminded and taught of the dangers of police work, either through memorials outside stations, remembrance days, specific cases, and stories told amongst each other. These are cultural and institutional informing symbols that are meant to have an impact on their behaviors, attitudes, and approaches to the work they do and how they do said work.

These signposts are affective registers linked to police discretion. For officers like J.B., the deaths of police in duty inform how he decides the best measures of policing while on duty: how to escalate or deescalate situations and the amount of force that is warranted given the stories of previous officers deaths in mind. Police

deaths, in other words, serve as both a forewarning and a form of knowledge. The rituals of narrating their deaths become important to how to carry their duties. The stories and reminders of their deaths provide concrete examples of why discretion is so important to officers. It informs and influences their behavior at work and "on the streets".

Police concern over safety impacts whether a situation is worthy of investigation (if this is even an option), and if it is, it also impacts how they might devise approaching a situation. G.G., the old veteran from Santa Cruz PD, for example, shared with me how concern over personal safety guides his approach towards an unfavorable situation, especially if he is not given much information about a case, which according to him happens regularly.[cxv]

Recalling a situation that happened a while ago, G.G. pointed at an alleyway and a secluded parking lot around us. It was dark, quiet, and the alleyway was built in such a way that it made it almost impossible to get away from a possible attack. He described the tactics he would take in a hypothetical situation while we passed a popular Hawaiian bar and grill. While pointing at the alley just past the Hawaiian bar and grill, G.G. shared his thoughts and approach:

> G.G.: If I had to walk down there, especially at night, I wouldn't park right there (pointing in front of the alley), but off to the side where (pointing around the corner) I can see what I'm getting into.
> Q: I've seen those tactics used in videos that break down police encounters.
> G.G.: What if I run into King Kong?

G.G.'s concern over safety is evident in conversation. His concern over his well-being informs his approach toward a potential situation that may require him to step

out of a vehicle in this area. These protective measures aid in building a preemptive approach towards discretion where the worst is imagined in such scenarios. “King Kong” is used symbolically to signal a potential threat to his well-being and safety. It stands for a person that might overpower officers. Perhaps imagining this scenario in his head, G.G. drifted away and became silent, focusing on nothing, so I interjected, “And what if he has friends?” he nodded to concur.

In an exchange, C.G. from Salinas PD, cut me off mid-question when I tried asking in his squad car, “*What circumstances may prevent you from making the (traffic) stop?*” C.G. shook his head and interrupted, “No. Never. Action beats reaction.” C.G.’s response illustrates how preemptive acts are in the minds of officers when making stops. His response also illustrates how preventive actions, veiled under the premise of personal safety or safety for those being restrained or detained, trumps waiting to be attacked.

Rather than answer the question, he questioned the premise of the question: “That’s why we ask people to sit down on the curb. For our safety.” He explained that police carry a lot of weight and are top heavy because of their toolbelt; from a practical standpoint, it will be harder to catch someone if they run. C.G. said, “We carry a lot of weight, and if someone tries something (to run away) or goes to reach for something, we can react. If you sit someone down, you can react quickly (from an advantaged position).” To him, there are no circumstances that would prevent him from stopping someone so long as he could take the precautions necessary – as they understand them – for police safety. A traffic stop I observed from the passenger’s

seat of a ride along, where an officer called for backup in Salinas, California in August 2019, helps illustrate how police restraint is worn down by noncompliance to safety procedures (and general disrespect) in encounters on patrol.

I was with a rookie who was patrolling downtown when he was called to back up a sergeant and another rookie— a young Black female officer— making a traffic stop. They stopped two women that appeared affiliated with the Norteños gang because they were both wearing red from head to toe. They also had a particular vernacular, mannerisms, and chola aesthetics.[cxvi]

The women were out at night and headed home. When my ride along officer arrived, the officers who were on the scene (a male sergeant and female rookie) approached the driver and passenger windows, asked them to step outside, patted them both down, but handcuffed the passenger because she was intoxicated and noncompliant. They then sat them both on the curb.

The passenger kept barking insults at the officers, calling the sergeant "white ass fuck" and the female officer a "(n-word) bitch cop", and variations of those names. For the first couple of minutes the officers did not appear to take offense. In these drunken tirades, with hands tied behind her back, she would plop over. When the female officer would try to help her up, she would jerk away and say, "don't touch me" or "leave me alone". Finally, the officer said, "Fine, just don't get up." She kept telling the officers to let the driver go and to put everything on her because she was going to jail anyway—this was true, she had a warrant for her arrest.[cxvii]

The reason why they kept asking her to stay seated was because of a concern for their own safety. At the end of my ride along I learned that the encounter with the two women ended in the arrest and release of the driver and the arrest and detainment of the passenger who had a warrant and who was combative with the police officers.[cxviii]

Before moving on, I want to give an example of what was portrayed as a "marijuana stop"— a non-threatening stop— but where tactical movements were made during the investigation. This illustrates an example of what practicing safety looks like in a traffic stop. I interpreted these tactical moves as preemptive measures officers undertake to ensure their safety during a stop when an officer is aggressively attentive. In this case, it was because he was interacting with someone on probation or parole, or what an officer called "diminished fourth amendment rights,"[cxix] the constitutional right that protects people from unreasonable searches and seizures. The following snippet is taken from my field notes of a ride along with Watsonville PD officer X.T. on his patrol one morning when he made a sudden encounter:

> "*…As we passed motorcycle cops or other officers he would wave. He also waved at people who would wave back. My ride along officer said he had been born and raised in Watsonville so it seems likely he knew many of these people from his personal life. Within forty-five minutes of patrolling, we saw a man in a black Impala make a right on a large boulevard. When my ride along officer saw him he said, "hold on, this is a marijuana stop". He whipped the car around, dismissing the red light (we were at an intersection stop) and began to follow the Impala. The driver was a thin Mexican man of light tan complexion with sunglasses in a heavily tinted car. He began to call out the license plate numbers to dispatch and we followed him as he made a left turn near a shopping center. I felt my blood begin to pulse and thought, "what if this guy has a gun", he seemed like a guy who would have a gun. He had that cholo demeanor I have seen from my childhood: car seat leaned back, black tinted*

> *glasses, short-almost shaved head. So there were conflicting thoughts in my head but I was not thinking totally rationally at this moment in time.*
>
> *The officer put the lights up and the man pulled into the shopping center and stopped right after he entered. The officer quickly took off his seatbelt before stopping. He said, "wait inside the car" and walked behind our car and walked quickly over from my side to the Impala. He peered through the back and side windows contorting his body to hide behind the metal parts of the car with his hand on his holster. He talked to the man and I could not tell what was going on in the car because of the tint but he provided his license and registration. My ride along officer spoke for a few seconds with the man and then walked back to speak with his backup officer. I heard over the dispatch saying he was on probation, but he let him go and did nothing else. As my officer got in the car I asked him, "Were you in the military?" He said no, that it is important that he get home safe.*

I asked him if he had been in the military because his movements appeared tactical, and his policing was aggressively attentive. I also asked him, why did he pull this driver over? The officer told me it was a marijuana stop, but the way he approached the vehicle hiding his body from the driver and walking around from the passenger's side was notable to me. If this was a standard traffic stop it would make sense if he walked around the car on a busy road, but the stop was done in a parking lot.

In this example, the rules of conduct between the individual and officer were established prior to this encounter. The officer knew the individual from previous interactions—the man had a record and was on parole. The officer knows that this individual's fourth Amendment rights for protection against unreasonable search and seizure were waived due to his being on probation, and thus that the man would have to comply with his requests.[cxx] In other words, there was an asymmetry of power relations à la Sykes & Clarke (1975)[cxxi]; the officer had the upper hand in the situation.

What I cannot know for certain but suspect, is that when X.T. said, “this is a marijuana stop”, this was done for two reasons. One having to do with me — a researcher present in his car interested in marijuana DUI’s— and the other—having to do with how he could rationalize to me his sudden movement in terms that were socially legible and legally permissible for him.

I believe he saw this person making a right-hand turn. Having known the individual from experience and possible encounters in his capacity as an officer, X.T. knew this man was on probation and has diminished fourth Amendment rights—so the officer does not need reasonable suspicion to make a stop.

He did not have to work hard to legally stop the man and gambled on the likelihood that there was marijuana or *something else* (other drugs, guns, or incriminating evidence) present. He could have said, “I smelled something back there” after the fact, and that would have been sufficient for the courts to decide that the stop was legal. However, there was nothing but questionable window tint on the car.

In these narrations by police and my observations of police practices, it is clear that self-preservation is the basis of police discretion. But what is also observable is how police institutional needs are rearticulated and redefined by officers on the issue of safety. While additional factors that condition police “strategies of action” are observable, to rationalize this orientation and quickly operationalize themselves, police drew from parables, symbols, phrases, or other social artifacts. We saw this in the case of Santa Cruz Chief of Police organizing his beat patrols

(weighing between the police needs of the city and the police union), how officer's formulate their discretion when thinking of their safety and use of force, and also with G.G.'s symbolic use of "King Kong". The constellation of perspectives by officers in various agencies germinates a homogenous orientation towards the issue of safety that blunts institutional power.

And Marijuana DUI's? On "Real Crime" and its Value

Marijuana DUI's are a rare occurrence. In the eighty hours of ride along time I went on with eighteen officers in eight agencies— most in Santa Cruz County— I observed one field sobriety test potentially related to marijuana impairment, but the person tested was released. During this time, I also witnessed the administering of two field sobriety tests that led to arrest, though these cases were alcohol related.

Officers stated marijuana was not something to pay attention to. Despite the wide varieties of police station sizes, jurisdiction, and main crime focus—for example, Watsonville and Salinas have more on gang activity whereas Capitola and Scotts Valley focused on calls of service—there was consensus that police did not like marijuana DUI's. The question was why?

For beat officers, marijuana is only tangentially important to policing. A fundamental social and legal fact about police work and policing is that rule breaking is occurring at any given time by most people in some form. It is not murder, or larceny, or robbery. But one may not come to a complete stop at a stop sign, or may be talking/texting while driving, or transgress any number of infractions we might be unaware of. This social fact that most people are transgressing some law or ordinance

gives officers a tremendous amount of latitude in their exercising of their discretion and the strategies of actions they utilize when mobilizing the law.

Officer T.P. from Salinas, with whom I went on two ride alongs with, explained the broadness of this discretion when asked about his approach to traffic stops,

> Q: What can be drawn from an individual's driving that may lead you to suspect they are impaired due from marijuana use?
> T.P.: It is hard to tell.
> Q. Are there circumstances that would prevent you from making a traffic stop? If so, what are they?
> T.P.: It depends on the significance of the stop; everyone is in violation of something because the vehicle codebook is millions of pages long.

In another example, a person at a police citizens class I attended at the Santa Cruz PD station asked our presenters what the focus of police in Santa Cruz was. Officer M.E. replied, "Our priorities are crimes against people. If you just got your catalytic converter stolen, I am sorry but I got bigger things to deal with".[cxxii]

Officer narratives and my observation of police patrolling demonstrates how their view of what constitutes "real crime" is a narrow conceptualization of crime. What officers consider "real crime", are crimes committed to people, particularly crimes against women, the elderly, or children. Women, children, and elderly have currency in this attention economy. Marijuana does not. This is the rough rubric that explains what constitutes real crime that requires an officer's attention. One of the few detectives I rode with explained to me his affinity for catching predators. C.G. from Salinas PD said he "liked catching murderers" and "evil". He had worked in the Salinas PD Narcotics division for several years. While patrolling near a gated

community, and one of the only times I saw him aminated was when he began talking about a serial rapist he helped apprehend.

> C.G.: This guy was sick! And we got him. I mean props to the ladies (it was women lab techs) who worked in the lab.

A single semen had connected him to the victim's underwear. To make his point he said,

> C.G.: There's this quote about there being no greater hunt than (the hunt for) man. And once you hunt man, like, that's it.

He was trying to quote Hemingway, whose quote, is "There is no hunting like the hunting of man, and those who have hunted armed men long enough and liked it, never care for anything else thereafter".[cxxiii]

What I can tease out here from participant observation and interviews with police is what conditions police said would make them more attentive to marijuana DUI's (or marijuana in general) on patrol. In officer narratives and my observations, when the following contingencies emerge— when marijuana presence was related to the selling and distribution of drugs, when youth were present, or if a particular encounter led to the arrest for a bigger crime— then police would become attentive.

During one of my first ride alongs with the Santa Cruz PD, the officer summed up his thoughts on why marijuana DUI's were unattractive to police by posing rhetorical question, "Is the juice worth the squeeze?" He explained,

> It's (marijuana DUI's) not a huge priority, Santa Cruz (police department) is short staffed, and you may not want to get involved for several reasons. For starters, you don't want to screw over your partner that might need backup if you're focused for hours dealing with a DUI. That's one reason my wife doesn't make plans with me after a shift.

The meaning behind the officer's rhetorical question “Is the juice worth the squeeze?” illustrates that marijuana use is not worth police/officers’ time, energy, or attention. Like other officers I spoke with, T.T. said they were busy with other matters such as public petty crimes: drug use, theft, breaking and entering, etc. Police frame their dislike of impaired driving cases as conditioned by on-the-ground police work demands (calls, particular focuses on certain crimes, etc.), and agency resource constraints. Marijuana impairment was the least of their worries.

> T.T.: Another reason is that because Santa Cruz has a large homeless population, we (police) deal with a lot of homeless issues, like loitering, theft — stuff like that.

T.T. succinctly summed up what other officers expressed and what I observed — police were not interested in arresting for marijuana use or marijuana DUI’s for any number of reasons, that are to them more serious and require their attention. In my ride along with the Hayward PD, my ride along officer did not even get out of his car to tell two men smoking on marijuana on the top of a parking structure, “Both of you, put that out and get out of here, I don’t want to see you when I come back” before driving off to meet another officer at an empty parking lot—a common meeting point for police. But it all boiled down to it being a crime outside of what to beat officers constituted “real crime”, which led me to examine what constitutes “real crime” to police officers, and how it is related to police officers attention economy.

The examples below illustrate how what police consider “real crime” comes to inform their attention economy that justifies their disattention to marijuana related offenses. I then turn to see how this was done in checkpoints and conclude by looking

at other coins of the realm in policing—what is valuable in the attention economy of the police.

In Salinas, leaving a collision scene, Salinas PD officer C.G. pointed to some students parked in a mid-nineties Ford Explorer getting high,

> C.G.: Hey look, that would be a good case for your study.
> Q: What?
> C.G.: Those guys back there were smoking weed (he said smiling and pointing back behind us).

I interpreted C.G.'s comment as a way to dismiss marijuana use as a joke. He did not consider this offense a "real crime" and these offenders "real criminals" because he had to go to the hospital to see a "real" victim in a "real" incident worth their time—a traffic accident. One of the first questions I always asked officers I went on ride alongs with was, *"How much is marijuana impairment a priority in your department? Has legalization drawn resources from other activities? If so, to what extent?"*

Eight out of the fifteen officers that answered the question, said marijuana impairment was not a priority—slightly more than half.[cxxiv] The other seven had a variety of answers that focused on topical issues as it concerned officers affecting their ability to perform their duties and responsibilities. Four said that it was important, three did not respond, and one said it depended on the shift. Those that said it was important stated,

Officer	Agency	Comment
G.C.	Salinas PD	Very important, in order to prevent safety and collisions.
O.L.	Watsonville PD	It is (a priority).

T.T.	Santa Cruz PD	It depends on the shift. Nights and weekends, nights and weekends.
X.T.	Watsonville PD	Definitely a priority. We now have discretion to cite or not.

T.T. was the only Drug Recognition Expert (DRE) officer who said marijuana DUI's were a priority. Again, DRE are officers trained specifically to go handle impaired driving cases, and DRE's are called to back up DUI cases, assist, or take over the investigation of the arresting officer.[cxxv] It is noteworthy and significant that four of the five DRE officers I spoke with said that marijuana DUI's were not a priority. If any officers were going to know if marijuana impairment was a priority in their departments, it would be them.

But most officers said marijuana was not a police priority, and I learned beat officers had an affinity for crimes related to drugs, but not necessarily marijuana. For police, the "juice" worth squeezing in marijuana DUI's was present if the marijuana DUI led to greater crime, or if police officers suspected investigating would lead to greater crime, such as drug distribution or a weapon.

I posed the following question to officers, *"I understand every officer gravitates or has preferences to the kind of crimes they deal with. Do marijuana related crimes interest you? What kind of crimes (or problems) do you prefer to help with?"* Some of their responses were as followed:

Officer	Agency	Comment
P.M.	Scotts Valley PD	I enjoy narcotic investigations.
C.G.	Salinas PD	Not marijuana per se, but DUI's yes.

Z.C.	Capitola PD	Gang issues… I am going to answer to the best of my ability, but marijuana is the least of my worries
S.A.	Capitola PD	Not so much.

These officers noted different crimes they were interested in relation to narcotics, but marijuana did seem to be a priority for them. For example, P.M. noted while I was with him on patrol parked at the sole shopping center in Scotts Valley that he was interested in narcotics investigations. He told me of a narcotic case he had stumbled upon at this very parking lot, involving a man with meth, guns, and a machine to make credit cards in his car. When talking to another officer, Z.C., who noted that he was interested in gang issues but "marijuana is the least of my worries". Z.C. was excited to go into a drug task force involving various agencies.

For two officers, J.B. of Santa Cruz and X.T. of Watsonville, marijuana DUI's did not interest them unless it was related to the selling to minors or minors themselves selling. For example, J.B. stated that he was interested in marijuana DUI cases "With youth, yes. Otherwise, not really". X.T. stated that, "If it is related to youth, yes, otherwise no. I'm into gangs, drugs, stuff like that— marijuana is part of that". He explained the nuance of his thinking:

> X.T.: If I find Junior and he's got less than 28.5g on them I would usually not take him in. But if he has the same quantity in smaller packaging, like baggies, and there was a scale, then I would take him because that is possession with intent to distribute (a felony) and paraphernalia. Anyone high on whatever is an issue and does draw resources. Legalization made it less "extra" because now we get to decide whether to give a citation or not. I usually don't unless they don't get with the program. I take the opportunity to teach people that their marijuana needs to be sealed.
> Q: Wow, that's interesting that part of the job is to educate people. Chief N. at UCSC told me the same thing, that education is part of police work.

X.T.: Yes

His yes was an emphatically confident and affirming yes, closer to "of course". But most officers did not care; five officers passed on the question, and one said he was "indifferent". One last thing that X.T. shows also is the value (and possible affinity) of a felonious offense and organized crime. This sensibility to valuing felonies as well as the fundamental importance of personal safety were also one of the few shared by all officers.

Staying Open

Santa Cruz Chief of Police Escalante's breakdown of his agency is useful as it provides a view of individual officers as a resource gives a sense of how constraints are understood, laid onto officers, and managed by the institution from the top of the chain of command, and what they do to adjust and triage resources (officers). This becomes tangible to beat officers and their need to "stay open" on the beat. Even if a department is not short staffed, this practice of "staying open" is something beat officers practice in tandem with disattention that is valued by police. Staying open meant retaining as much of the attention of individual officers, the most valuable resource of the police agency, as a means of distributing their manpower.

The best explanation given to me was from a rookie, C.D. He explained to me how and why police stay open because he himself was still learning. While on patrol he told me twenty-five police officers were on duty that night, and twenty were "on a call" i.e., busy. He started telling me how they organize themselves on patrol, how

they pick which crimes to go to, and explained Salinas was short-staffed and they had to be selective of which calls to take. He showed me his computer,

> C.D.: There are calls I could go to, but I have to stay available to be a presence.[cxxvi] There are all these crimes going on right now.

There were a lot, he scrolled through many calls, and each incident had a code on the left side of all the calls: N1, N2, N3, etc. written on a ledger. He went on as he scrolled,

> C.D.: The calls are broken down in terms of level of importance to respond. See this? And this?

He pointed at the numbers and letters combinations. They were either shaded or not, determining whether an officer was on that particular incident. C.D. said that N1 meant imminent danger, such as an active shooter. He pointed to a call of domestic violence, "that is N2". This problem of insufficient resources and manpower was not only in Salinas. The larger police agencies I visited multiple times—Watsonville, Santa Cruz, and Salinas—had this concern as well.

If we take this constraint of ability to take on calls in mind, it makes sense why – when I rode with my first couple of ride alongs – officers in Santa Cruz did not perceive marijuana DUI's as an issue worth their time. They are working longer shifts with no end in sight which strains their ability to practice safe policing. Staying open is currency in their profession, and provides them with total discretion regarding what to attend and disattend to.[cxxvii] Recall how T.T. framed police aversion to marijuana DUI's in the introduction as something that was low on their priority list considering

all the calls they received and agency resource constraints, a common theme found in police narratives.

F.Y. spoke more explicitly from the position of a DRE than T.T.'s perspective from police officers in general,

> F.Y.: I don't get paid extra for this.[cxxviii]
> Q: Really?
> F.Y.: Yea, I do it because I want to be a well-rounded cop, but I don't go out looking for DUI's…A lot of officers hate DUI's.

We were at a stoplight, and he turned the computer screen in his car to show me a list of calls he had to go to. He pointed to a few on the screen, and then he scrolled down the screen, there was a long list of calls.

> F.Y.: See all these?
> Q: Yea.
> F.Y.: As the day goes on, there are more and more calls, right now it's 9:00 AM and if I take a DUI I can't respond to any of them.

Returning to Salinas, C.D., who was teaching me about patrolling and why he had to stay open "to back up other officers", pointed to one call that said N3 and told me this was a welfare call we were supposed to make earlier but did not. He said, "I don't have the time"[cxxix] because we had to "be a presence". This indicated to me that a priority for police was to be seen as a deterrent for speedy divers as well as a symbol and signal to the public they are there to protect them.

But from our seats, all I saw was a wide Salinas road, empty of cars, and silent. He kept educating me while we began patrolling again. C.D. said that every call was different but "the process is the same". For example, he said when you call a vehicle into dispatch to learn if the person has warrants or, if you want to know more

about the person connected to the car you say the license plate, the make and model of the car. You cannot say it another way, this is how dispatching inputs into the computer. C.D. told me, “You can say it another way, but they (the dispatchers) will not like it, and their way streamlines the process. We have to be ‘in sync.’”

As he was telling me that he had to stay open— in case someone needed backup— a black tinted SUV passed us, speeding down the boulevard driving the opposite direction. This became an example of how police applied their individual discretion. C.D. whipped the car around and sped up to catch the driver. As we caught up, and drove close behind, the driver slowed down. C.D. said, “First I’m going to run his tags”. The tags came back clean and registered in another town.

In the time it took to catch up to him, and run the numbers, we were reaching the city limits of Salinas towards the city of Monterey on Blanco Road. At the limit of his jurisdiction, my ride along officer listed out loud the reasons we were not going to encounter this person, “If we pulled this guy over here it would take time to get backup.” C.D. said this with hesitation, sucking his lips, and speaking slowly, “It’s not the crime of the century (pause)… and he got the point”.

This is an example of what I considered legal disattention, arguably an aggressive disattention that signifies to the driver, “Rather than pull you over, slow down, or I will pull you over.” But nonetheless it is disattending to a transgression of the law. In C.D.'s non-encounter, there were several reasons he decided not to stop the individual. First was his distance from his other officers, which meant to him he was less safe; there was my presence, a civilian who could be a liability; there was

himself, an officer still a rookie, and his assignment—patrolling downtown and staying open. In other words, it was not advantageous for the officer in terms of their personal safety (and mine as well), in terms of an arrest he could say it was not worth the resources (time and men) drawn to cite someone for speeding, and possible window tint violation.

Then, there was the precarious legal standing in this case. The tags were clean. Yes, the man had tint on his window (an offense in California), so he could have pulled him over. But factoring in the liabilities, his capabilities, and his current task, it would have been a disadvantageous encounter in terms of safety, he also was ordered to stay open, despite having legal ground to contact the civilian and against the needs and directives of the department and beat officers on patrol. The crime was not that important given the circumstances and conditions of the patrol beat, like he said, "It's not the crime of the century."

Getting a "Good Arrest"

Another aspect of policing that has value to police is getting "a good arrest". A beat officer on patrol may deal with a host of situations and encounters on any shift: traffic accidents, property theft, assault, etc. There are various ways they can approach a situation. But when is the right time to be attentive and intercede? Detailing what the threshold is for police is not a fruitful exercise as it depends on the particularities of each event and crime in question, or as police would tell me regularly, "the totality of the circumstances". What does help is exploring the *in vivo*

codes of police officers to render visible police officer signposts surrounding their discretion in policing practices, like in getting a "good arrest".

The officer that expressed this best was a ride along officer in Hayward. I was encouraged by a retired police chief from Colorado, S.A., to ride with an agency that was accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA).[cxxx] "He said, "A police agency that is CALEA certified is considered the gold standard for policing". The closest one was Hayward.

It was a wet morning, at times it drizzled, the clouds everywhere were thick. I arrived at the Hayward PD station before dawn, it was raining. I met my ride along officer at 6AM, and by 7AM we had drunk coffee at a Starbucks and were on patrol. Around 8AM my ride along officer, A.D., and I were parked on a hill observing people slow down, but not stop, at a stop sign. It was a residential area, early in the morning, and people were driving kids to school. A lot of the traffic was women and children.

At the stop, most went straight up or down, with the option to turn left as you are coming up or right as you come down into a residential street. We were parked several yards into the residential street, behind another Ford Explorer facing the park where the intersection was located.

A.D. was trying to get a stop. This was the second location he had tried. The other was a stop sign behind a convenience store several miles away. This time we were behind another car, but just at the right angle where the officer's vehicle camera could record the intersection. He wanted to be able to get a good angle so that if they

refuted the ticket, he could say it was recorded. We saw so many people not stop at the stop sign that I would look over at him as if to say, “that one?” He just kept looking. At one point, I said “How about that one?” “No” He replied. “You gotta catch one *really* doing it.”

Part of what I learned about policing and being a good beat cop was the importance of getting solid evidence. Not simply obtaining irrefutable evidence, but what he meant by “really doing it” was that the evidence would be so overwhelming that the person could not contest it, or at least would not because of the costs (time missing work and family, etc.) or futility in contesting the charges. Thus, another signpost that guides officer discretion is when there is an encounter, it is important to secure as much evidence, in all the ways possible. In this specific case, observing the offense and having documented proof (video).

But the drivers were all doing it; everyone was breaking the law, every four seconds when they performed a so-called “California rolling stop” past the stop sign. The person the officer eventually chose was one who would probably not contest him. This man had several infractions and did not have a good grasp of the English language. So, there is a malleability to police discretion getting a good arrest can also illuminate into. Let me explain.

Police, because they deal with a wide spectrum of people, must decide to be stringent or loose in their interpretation of the law in a case-by-case situation. Policing in practice is practicing disattention to the constant law breaking occurring around them. to at times back up others, and in others like this one, simply threaten

because they feel their efforts will do nothing to change the situation. If they are more stringent, officers apply a harder application of the law— understood as sticking to the "black letter of the law". This term, "black letter of the law" refers to laws whose scope and limits have been extensively established, and thus understood by legal practitioners, scholars, and students to be considered well understood.[cxxxi]

An example from Salinas of an officer's interpretation of what following a more "black letter law" meant, was from my second ride along with T.P.. This officer had just pulled over what looked like two agricultural workers (the car was dusty, the people had worn down clothes, and did not speak much English). When he returned from the window of this red Honda Civic, he was animated and his face visibly frustrated. I asked,

Q: What's up with those guys?

He shook his head, rolled his eyes, and said,

T.P.: They don't know anything, no one knows anything.

He complained to me that the car did not belong to them, but to the sister of one of the gentlemen being pulled over, and he did not know where her paperwork was or that the car had a headlight out.

T.P.: They are just lying to me, whatever.

He went on his computer and then went back to give them a ticket for expired tags and the headlight that was out. When he came back, as he sat in the patrol car I asked him,

Q: What do you do when you have people lying to you, I mean when you are trying to understand the situation, and people lie to you?

He stopped shuffling in his seat, looked at me, and said with a smile,

T.P.: You give them full service.

"Full service" is how T.P. refers to following a more "black letter of the law", the strictest interpretation. In the first ride along he said he had a lot of latitude in policing when it came to having the legal right to come into an encounter and possibly arrest someone because of an infraction or crime they committed. He said he took this very seriously. And in the second one, in a totally different time and setting, in the midst of a call, he explained his in vivo code "full service".

I also heard this in vivo "full service" in Santa Cruz from a field-training officer. Responding to the question, "how do you know when to pull someone out of their vehicle?" posed by a community member partaking in a citizens academy course The officer said, "When I feel it is appropriate, doing this job enough years you pay attention to details and get a sense of what may happen and where things are going". He followed that up by saying, "If you're on probation, you're gonna get all your stipulations looked into. Full Service". When he said that phrase, I raised my hand and asked, "What is full service?" He responded, "Full service has many meanings.", "If it is a high-speed pursuit (and you are caught), you're going to jail". He pointed back behind him using his head towards the simulated traffic stop we had just witnessed where officers had just pretended to beat up one their own who was playing the role of a combative suspect in a traffic stop. He said, "He just got full service with a smile."[cxxxii]

This snippet of social and legal life also illustrates the malleability of what is and what is not worth their time, and their reaction. The type of traffic encounter from Salinas with the possible agriculture workers does not fit into what other officers considered "real crime", but neither did the traffic stop in Hayward. Where and when an officer decides to intervene and encounter someone, it must be said, is also contingent on the place and space where that person is and what they are or are not doing.

Returning to the topic of getting a good arrest, one way to think of doing a good police work would be completing a "slam-dunk case". In a "slam-dunk case" there is no contestation to them and their investigation. If this were a case of auto theft, a slam-dunk case would be one where he either had video (evidence of the crime and who committed it and how) of the act or admission of guilt. Slam-dunk cases to officers mean less than expected expenditure of their "attention economy". The officer would have to do less investigatory work to obtain evidence, apprehend the suspect, bring them into the station, and write a report that will be (ideally) filed in a speedily manner in the court, with a result of a conviction.

However, even if one does everything correctly, officers may still find their cases with a "no file" because the DA does not pick up the case or the presiding judge decides to dismiss it.[cxxxiii] Santa Cruz PD officer, M.E. said this about the difficulty of getting good arrests, "Cases are not always what you want them to be. We just had this case dismissed where we pulled over a car with known gang members. Two of the passengers were on parole, and sure enough they had some guns inside." He said

they were originally pulled over for having too dark of a tint, but when they saw who was in the car, they pulled the men out and searched the vehicle.

The passangers were arrested and charged with violating parole and being in possession of firearms. M.E. said, the judge threw out the case, but did not return the weapons. I asked the officer, "Did you ask the judge what happened?" M.E. said, "We can't ask that, we have to live with the rulings and decisions judges make".[cxxxiv] For that very reason, M.E. from the Santa Cruz PD said police must do a good job investigating and collecting evidence at crime scenes.

In the case of A.D. in Hayward stopping people performing "California rolling stops" he had irrefutable evidence, and to be able present it to the person and tell him, "I had you on film." I did not hear him say this but observed them, their movements, and the course of the conversation from the squad car. I saw how the officer was very loose in his demeanor, hands on the hips, nothing at all like how X.T. and others approached cars at times. He did not get too close inside the car, only touched it and crouched down to look inside it in the beginning.

The signpost of "getting a good arrest" explored through learning how to obtain the necessary evidence to do so, serves as an example to support the emerging theme that part of what is worth an officer's attention to an encounter is when there is strong evidence of an offense, and they will be able to have the case prosecuted. Though it is not necessary to have strong evidence to intervene in a scene or to take up a call for service, officers are trained to arrest, and part of arresting someone is making sure you have sufficient evidence. However, exploring this sign post also

shows how malleable the definition of what a "good arrest" is or can be. Officers can be as stringent or as loose, sometimes depending on if people are honest with them (though they are not bound legally to the same standard). This rough sketch is to lay out aspects of police work officers value and are attentive to, not to exhaust this one dynamic dimension of police work.

Analysis & Discussion

Beat officers serve as a comparative axis at the floor level of analysis from which to study how the law is socially constructed. What was excavated was the many ways individual beat officer discretion and their sense making is conditioned and layered by institutional demands and the police work culture. The attention economy of police is formally drawn from the institution whereas the work culture of police officers are another, informal, chain of command both collaborating and competing in the policing enterprise.

The structuring of police work in this area: a difficulty or unwillingness (to deal with staffing and hiring), the organizing of beats, the importance of self-preservation and balancing with the need to get good arrests, stay open, and adhere to the institutional and collective group of workers produces a particular culture around policing where the value of attention becomes more valuable as officers must triage a larger number of calls. Police culture via collective and individual officer behavior is both reacting to the work environment but is also imposing onto the institution it serves its terms and conditions by how they police. I focus on how the expression of individual officers.

In a profession where the coin of the realm is *attention* and this is balanced between the needs of society and the ability to back up other officers, it is hard for police officers to decide what course of action to take under a host of situation. And when they have not had training to deal with marijuana cases, it makes sense to them to disattend to cases and encounters that the only offense may be only impaired driving from marijuana use. The work culture of police is an element that conditions beat officer discretion and is part of the processes of sense-making through which police work is filtered. It also strains the overall attention economy in the minds of the individual officer, the work culture, and the police agency as a whole.

In practice, it becomes difficult to distinguish between the culture of police (their rules, customs, and values) and the requirements and demands placed on beat officers as law enforcement agents. Though the culture is distinct, David Wellman painted a similar picture of the wrestling of the longshore enterprise in *The Union Makes Us Strong: Radical Unionism on the San Francisco Waterfront.* He described how culture plays an integral part in the principles by which both employees adhere to for collective solidarity and operationalization of their craft.[cxxxv] He wrote that one way is through subversive principles that suggest to him, "that the ILWU has fashioned ways for living at the point of production that challenge management's rule over the workplace" (Wellman 1995; Pg.305). In the case of police officers, what is revealed in this section is how fundamental the relationship between work culture and the institution (agency) in the enterprise of policing are bound together by competing

interests of a limited number of resources. But this competition is also layered at the individual, interpersonal, and organizational level of interpretation.

Although this sense-making is in the service of an institution, the ideology of police culture anchors officers and their actions socially and epistemologically to the institution that produces the sorts of tendencies officers develop and the ones that do not. Ideology serves as a way for them to make sense of their role in the institution and society.

What is interesting about this ideology is that it confirms their perspective but also limits their worldview where they are anything but the solution. This is akin to Paul Willis (1977) concepts of penetrations and limitations from *Learning to Labor*.[cxxxvi] His interest in working class culture pushed him to,

> "…interrogate the cultural for what unspoken assumptions lie behind it. What are the grounds that make this attitude sensible? What is the context which makes that action reasonable? What is being expressed through what kind of displacement or projection in such and such an object, artifact, or symbolic complex? It is through such questions that it is possible to build up a construction of the rational impulse towards penetration of its context and conditions of the counter-school culture."(Pg.125)

Though he was interested in the working lives of working-class adolescents as they entered the labor force, in my study, I also sought to push below the surface level rationale sense making. For example, when I was with F.Y. and T.T., the busy DRE officers in Santa Cruz, I first learned what F.I.F.O. or "fuck it, fight on" meant. This is a mental resolution these officers tell themselves or each other when they are in a position where they are unable to assist other officer(s) in a call or help a civilian.[cxxxvii] In this way, these officers inform how police think about their work

conditions, what they can do to change them, and what they cannot do. Culture pulls officer's attention economy towards workers needs rather than the institution and bureaucracy they work for.

This is a crude but telling indicator of how officers rationalized their thinking and action through institutional logic. Even one of the most visible symbols, that of the **"**thin blue line", limits their perspective and serves as an affective register, with its own form of knowledge (visible) and forewarning. Vance D. Keyes, a Black scholar on police and a former police officer wrote of the thin blue line,

> "It is at once symbolic of the police role to distinguish the law abider from the law breaker and represents the separation of the police from society. The line represents the tenuous position that police hold in maintaining stability and it is fluid. Lawbreakers are at times law abiders and vice versa. A person can move between roles, but does not occupy both roles at once. At times both law abiders and breakers are in conflict with the police…The more universally accepted notion as expressed in the master narrative, however, references the thin blue line as the police control mechanism for deviant/illegal behavior."(Keyes Pg.3-4)[cxxxviii]

And like all cultures, there are strains, bonds, rules, in essence a shape, Keyes writes,

> "Different race police officers share occupational bonds, but these ties can be strained when racial issues arise. This representation (the thin blue line) illustrates that occupational culture is a thin, but unifying element in spite of racial tension. This relationship is said to be static because removal from the police service changes the relationship." (Pg.4)

His assessment is spot on. Though the police officers I spoke to came from different backgrounds and education levels, they funneled their actions and behaviors through symbols and their occupational cultural ideology.

In practice, the needs of the agency, the officer's ability to intercede, and a host of other factors are readily filtered. Understanding how culture and the

institution together shape and condition officer discretion partially helps understand why police would legally disattend to marijuana DUI's. The collection of these signposts from officer *in vivo* codes served as a sort of frame or roadmap, reference points and rough measurements in a matrix, for how to police that helps officer orient themselves and their ability to exercise their discretion. The low value to police within their attention economy and the low worth of the crime institutionally because it is not considered "real crime" provides some visualization of how individual officers organize their work lives and capacity to mobilize the law in an encounter.

Conclusion

My goal in this chapter was to explore the discretion of officers in relation to detecting and testing for potential marijuana DUI's. The purpose was to explore beat officer mobilization of the law in these cases—how are street-level bureaucrats translating marijuana policy on the ground? I What is excavated from the working lives of police is the many ways individual beat officer discretion is conditioned and layered by the needs of the institutional they work for as well as the needs of other police on patrol. But also, the way individual officer discretion is shaped by police culture.

Understanding how culture shapes the conditioning of officer discretion partially explains why marijuana DUI's are of low value to cops, do not carry value in police work, their attention economy, and partly explains why police disattend to these offenses. Collecting officer narratives through *in vivo* codes and observing

officers in action and inquiring of their practices and experiences built up several policing "signposts". Using stories, analogies, even symbols through policing signposts revealed to me officers "toolkit" of means, and how these chains of action formed and how they used these to build into "strategies of action" that fit and make sense to the style of policing done here.

Signposts serve to orient the general paths of importance to police in their investigations and encounters with people. These signposts serve as a reference point in policing, both for how to conduct oneself in the field and as a measurement from which the officer can gauge their own policing behaviors. These policing signposts allowed me to outline a sometimes implicit and other times explicit "frame" of signposts from which to understand local police behavior and discretion, and to make sense of officer's disattention to marijuana DUI's.

One thing these narratives forwarded by officers and my participant observation with beat police officers do not lend themselves to the claims made by law enforcement representatives prior to prop 64 about an impending epidemic of marijuana DUI's that would materialize if recreational marijuana became legalized.

While the topic of marijuana DUI's appears benign in comparison to other concerns regarding police agencies— such as a civil rights investigation into unconstitutional policing in the Riverside County Sheriff's Department,[cxxxix] a tradition of violence in LA sheriff gangs[cxl] and evidence of gang activity in Iron County Sheriff in Utah,[cxli] or the issue of sex crimes committed by police

officers[cxliicxliii]— that meaning-making being done through ideology in law enforcement is one that should be further studied.

A deeper interrogation of how this discretion is would have to look at various dimensions of law practicing in each jurisdiction, from jurisdiction (local, state, federal agency) and their laws, their agency mandate, the local political leanings, the resources and their work environment. A critical study would also have to take stock of the symbols and ideas that resonate with the police officers, as well as learning the political sensibilities of communities with power in each jurisdiction.

Chapter Five: Police on Marijuana DUI's: "It's as clear as mud."

At the end of *The Mismeasure of Crime*, Mosher et al. (2002) concluded that scholars who use crime data to link theory, policy, and data measurement must ask themselves, "Are the instruments used "good enough" for the specific questions being asked?" In chapter one, it was made clear that the instruments scholars, law enforcement, researchers, and policy makers utilize are not "good enough" presently to find trends of marijuana impaired driving. But what can the users (police officers) of the detection instruments and on the ground training (field sobriety tests and procedures) teach us about how the law is mobilized constructed by police agencies and mobilized by their officers? Furthermore, what do street level bureaucrats' handling of these encounters inform us about the ways marijuana impaired driving cases are being defined, captured, and processed by local police agencies—in other words, can the instruments be made "good enough"?

In this chapter, the tool user (the officers), their tools (field sobriety tests and procedures), and their training (SFST, ARIDE, DRE training), used to detect impaired driving are utilized as a heuristic to examine the strategies of action officers tend to follow in encounters with people that may be potential marijuana DUI cases. Understanding the social construction of law through the beat officer perspectives of police work is key: they are the ones who are taught the training and entrusted with the responsibility of defining, capturing, and processing crime on the street.

I analyze officer responses to questions from the guiding questionnaire (Appendix A) I developed. I focus on beat officers experiences in traffic stops, a

common type of encounter between police and civil society where police have specialized training to detect for impaired drivers.[cxliv] The main finding of this chapter is constructed from two facts of police work revealed through participant observation and interviews with beat officers regarding their practices.

One, officers strategies of action were reactions to the over discretion and amplified discretionary powers police hold currently after recreational marijuana was legalized. This is evident in the reasoning and underlying force that pushes officer investigations. Two, there is no fail-safe way to determine someone is impaired from marijuana use and there is no consensus among officers. These show how and why tendencies of officers lean towards practicing "non-squeezable" strategies of action with respect to marijuana DUI's.

What is learned is that for police functioning as street-level bureaucrats there is no existing typology that fits within Sudnow's (1965) definition of what a "normal" marijuana DUI could be. Officer responses and narratives also demonstrate there is no clear pattern of facts and circumstances, *the corpus delicti* of a crime, of what these officers understand to be a common marijuana DUI.

Police Strategies of Action

At heart in police officers' investigations are what Ann Swidler (1986) called "strategies of action", those courses of action that determine an individual's goal and purpose. Swidler said, "culture influences actions, not by providing the ultimate values towards which action is oriented, but by shaping a repertoire or 'tool kit' of habits, skills, and styles from which people construct 'strategies of action'" (1986,

273). Swidler's work, though not specifically about police culture but culture broadly, is relevant in the case of police traffic stops because officer manners and customs are learned both through the institution and work culture whether on the job or off.[cxlv]

The two strategies of action I describe, a "squeezable" and "non-squeezable" strategy of action, I drew from a Santa Cruz PD officer's rhetorical question from chapter four.[cxlvi] Though they may apply to other sorts of offenses, I examine them only in relation to possible marijuana DUI encounters and cases only.

Dominant- "Non-squeezable"

Police I spoke with tended to approach most cases where marijuana was present, whether its present or past use had been observed (through smell or visible paraphernalia) or they suspected this may have been the main or substantive impairing factor using a "non-squeezable" strategy of action. An example of this from field research was the case of Salinas PD officer C.G. who pointed out some students parked in a mid-nineties Ford Explorer getting high.[cxlvii]

Another good example of a "non-squeezable" strategy of action was an encounter a woman shared with me that she had with an officer in a traffic stop. She was pulled over while she had a marijuana water pipe (bong) in the passenger's seat. The officer approached from the driver's window and asked her routine questions ("where are you going? Do you know how fast you were going? License and registration"). The woman informed me that the officer asked about the bong, looked at the bong, and asked her if she was high (she admitted she was). He let her go with

a warning. In part, what makes this a non-squeezable encounter and stop is the officer's selective attention to licit and illicit variables in an encounter.

This useful practice of how officers legally disattend to certain offenses and crimes was elaborated in the preceding chapter on disattention. In the case of marijuana, police officers are not on the lookout for these particular offenses, and when they encounter them, not a lot of effort is put into trying to build a case around marijuana impairment.

Non dominant- "Squeezable"

The "squeezable" strategy of action approach refers to a tendency in which officers are particularly attentive to detail in a particular encounter. This was harder to pin down as I only observed a handful of encounters. But also, the fact that what determines what is "squeezable" is conditioned by other police work related contingencies.

Marijuana's value (or utility) for police traffic stops was explained to me as such: the smell or presence of marijuana (or paraphernalia) may be used by police as a wedge to enter people's vehicles. This gives officers an opportunity to search "for something" to build a case around. Such "things" could be weapons, stolen goods, other drugs (heroin, cocaine, ecstasy) or paraphernalia related to distribution (bags, scales, etc.).

This was the ideal scenario regularly presented to me by police. If marijuana was found, it could lead to more and greater criminal offenses. As P.M. of Scotts Valley told me, police may use marijuana and its smell or other indicators of use to

“get a foot in the door” of peoples vehicles because (describing people), “they’re careless”, and have marijuana crumbs out or pipes and that allows them to search the rest of your car for other things they can charge you with, such as gun possession, distribution, intent to sell, etc.

In essence, marijuana serves as a steppingstone (or gateway) for these officers to get around needing a warrant to search their vehicle. Or as one public defendant put it to me, it is easier for police to infringe on people’s fourth amendment because people are either uninformed or misinformed. The point here is to state that when officers think marijuana can be used as a link to greater crimes, it is still useful as a tool when individuals do not understand the law.

And lastly, an encounter where an officer may take a “squeezable” strategy of action is dependent on the officer themselves, again like in their disattending to non-squeezable encounters. How they receive and interpret the responses of others (and the space and place and the people in them) is a key variable in this equation. The examples in the preceding chapter on officers providing “full service” to uncompliant civilians could be considered squeezable.

Fact One of On the Ground Police Work

I begin with the first phase of police investigatory traffic stops, “vehicle in motion”, where police are observant for “initial cues” of a possible DUI. A DUI is not presumed in phase one but DUI’s (or “driving while impaired”, DWI) from traffic stops account for six percent of all California traffic stops, and it is something officers are specifically trained to encounter.

I asked officers *what typical cues in motion might first draw your attention to a vehicle you suspect may be driven by an impaired individual?* (Q#7) Thirteen officers responded to this question, ten of the thirteen mentioned vehicle code violations. The most common vehicle code violations were weaving or swerving; nine of the officers stated these were cues that drew their attention to vehicles. The second most common vehicle code violation was a person's speed: officers either mentioned slow driving (five) or fast driving (four). There was a tie between marijuana odor (three) and lack of lights (three) for the third most reason stated by officers (only lack of lights is a vehicle code violation). Below are some responses:

Officer	Agency	Comment
S.A. (DRE)	Capitola	Lane weaving, speed reaction is slow
T.T. (DRE)	Santa Cruz	Any vehicle code breaking—it's difficult to tell, could be anything
X.X.	Watsonville	Traffic accident, swerving, speeding
B.M. (DRE)	CHP	BMW 3 Series
T.P. (DRE)	Salinas	Swerving, stops too much, fluctuation in speed—all indicators of texting and driving (too)

Three officers couched their statements by stating explicitly it was the "totality of circumstances" or a synonymous phrase such as "a combination of everything" and "multiple errors together" that determined their reaction to impaired drivers. Below are their responses.

Officer	Agency	Comment

X.T.	Watsonville	Smell, eyes, a combination of everything—their demeanor
Z.C.	Capitola	No light+ Location +time +direction they are coming from
P.M.	Scotts Valley	Multiple errors together: failure to maintain lane, erratic breaking or speeding, smoke coming from window

In phase one, officers were unsure of how to detect marijuana-impaired driving or whether any particular case could or could not pertain to marijuana impaired driving. Two other officers said: "it is difficult to tell, it could be anything" (T.T.), "sometimes (it is) only noticeable till you get to the car" (R.R.). The responses I received were in line with the findings of a study on police officers' decision-making by Alpert et al. (2004).[cxlviii]

The first on the ground fact of police work I found impacted discretion in marijuana DUI stops or encounters is officer uncertainty. What understanding inductively grew from officer accounts of encounters, my observation of their decision-making process, is that the tension between the limited knowledge they have regarding marijuana impairment and the ample legal discretion officers have in their shifts is what pushes their tendency to take on their chosen strategies of action in the investigation. Officer's uncertainty for choosing either a "squeezable" or "non-squeezable" strategy of action were all reactions to problems of uncertainty. Uncertainty in their observations and uncertainty in their training.

The legalization of recreational marijuana without providing police officers with scientifically tested and legally backed procedures and tests amplified police officers discretionary powers. The collapse of the structure in responsibility and directive between the state bureaucracy and legal institutions (state governing agencies and law enforcement) funnels power down to the situation/contextual social and legal order. In other words, that void in guidance for how to deal with marijuana impaired driving between policy makers and law enforcement gave officers greater space to exercise their discretion in cases that where marijuana is present and or suspected to be a substance that impaired the driver.

One of the best places this is observable is in this tendency to categorize marijuana DUI encounters (and all clues, signs, and evidence included) as "non squeezable" and follow said strategy of action. This is revealed by hedged responses to Question #8, *"What can be drawn from an individual's driving that may lead you to suspect they are impaired from marijuana use?"* Nine officers gave a broad array of answers, ranging from: "it's hard to tell" to "it depends". Their responses, specifically the use of the term "the totality of the circumstances," compelled me to presume officers could not tell a person was impaired specifically of marijuana while driving, as the only instance an officer was certain a person's driving offense was marijuana-related in phase one was an encounter where marijuana smoke was "billowing from the car".[cxlix] The way officers contextualized their strategies of actions using the phrase "totality of the circumstances" signified to me a feeling or

hunch, an emerging affective response to the scenario(s) present and possible rather than a calculus with distinct weighted variables.

This collective uncertainty can be further teased out by looking beyond the officer and looking at officer training. In the picture below, former DRE trainer and LA Sheriff's deputy N.M., was explaining the limits of police drug detection training. “Cops are good at telling what will come up in chemical sample, but what are they not good at?” He said regarding (medical) marijuana, “Police are trained to ask, they are not trained to do anything about it”. What N.M. said suggests police do not have any clear strategies of action or best practices in dealing with marijuana impairment.

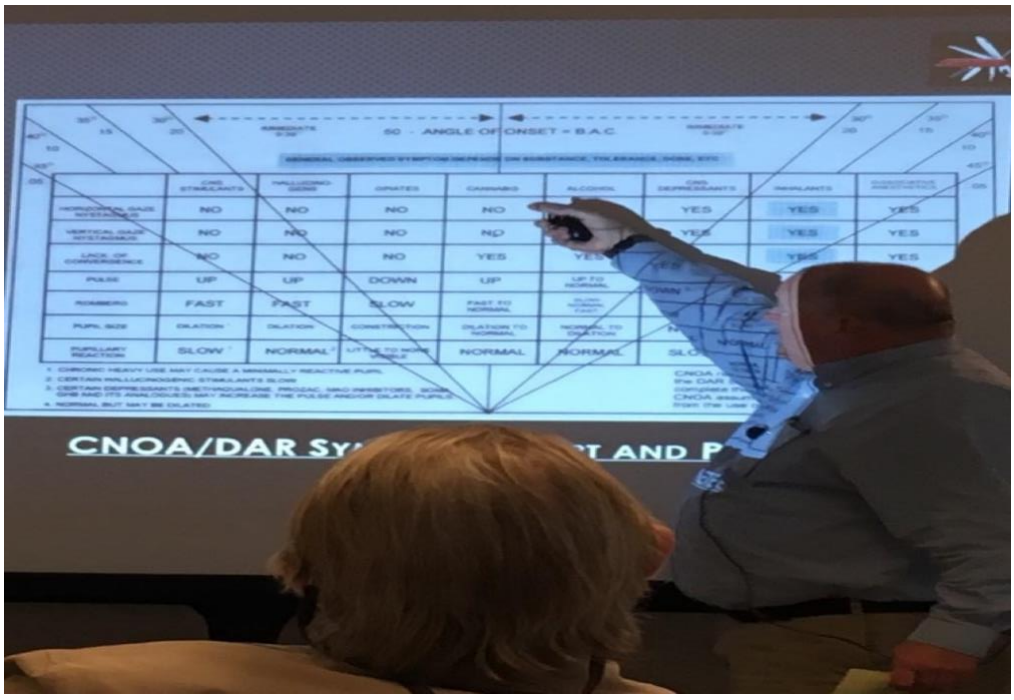

Figure Thirteen: Photo Taken by Mario J. Avalos at the California NORML Legal Seminar of N.M Explaining Law Enforcement Procedures (February 9,2019)

He went on, pointed to a slide showing the CNOA/DAR card for a roomful of lawyers, saying,

> "Here's the California narcotics officers association card, it's all based on the DRE protocols, but these are the signs and symptoms of marijuana use. So, there is no horizontal, no vertical nystagmus, which usually kicks in high alcohol, pulse might be up."

He then turned to the audience and asked, "What else causes your pulse to go up?"

Audience responds:

> "Cops"
> "Gun!"

N.M. then replied:

> "A guy with a gun (laughter). There is absolutely nothing here that says anything about impairment, so it's kinda (repeats once more) fun to see, but this what they're teaching at the lower level and of course it goes way up."[cl]

Now that he is an expert witness for defendants in these cases, N.M. said:

> "I go to court, I talk about these tests, how the test are done, (I have) a lot of insights into that, and my ultimate goal, but I can't say to the jury, is to go 'Oh let's try these things in the jury room', which is always nice because nobody can pass them (the SFST's) in the jury room and then they go, 'This is crap.'"

Here, N.M. is questioning officers understanding of DRE procedure, the applicability and validity of these tests, and fundamental aspects of the DRE program he taught other police.

The lack of valid training and officer uncertainty is clear in how they responded when asked about instances they were unsure of what they should do with a case,

> R.R. of Watsonville: If you can't tell, you gotta let em go.

T.P. of Salinas: If you pass, you pass, and you can go home. If you fail, go to jail.
X.X. of Watsonville: If there is a chance they are telling the truth, I will let them go. I got a master's in people lying to me.

When I asked X.X. to give me a moment to write that down, he continued by adding:

X.X. of Watsonville: If you are lying to me, why would I give you a break?

From simple decision making (R.R.), to situational (X.X.), and to more direct responses (T.P.) as to how they would handle their amplified discretionary powers, each officer fell along a spectrum of legal discretion for how they mobilized the law without any consensus building around a particular decision. However, how this impacted discretion in marijuana DUI stops or encounters is that officers' uncertainty in an encounter over a person's sobriety and the efficacy of their tools and training to work fed to their tendency to disattend and their tendency to see this as a non-squeezable encounter.

Fact Two of On the Ground Police Work

The second fact of police work that impacts officer discretion and their tendency to approach an encounter with a squeezable or non-squeezable strategy of action in possible marijuana DUI's or encounters is that there is no sure-fire way to tell someone is impaired from marijuana. Officer approaches for testing marijuana are not uniform. There is no consensus among officers, and it is not obvious why by looking at the ground floor of analysis.

I examine officer assessment of their interviewing techniques, field sobriety tests, and my documentation of participant observations of officer encounters. This absence of consensus in officer practices also shows how these *in vivo* codes, rules of

thumb, and narratives of encounters contributed to officers' over-discretion and tendency to choose a "non-squeezable" strategy of action over a "squeezable" strategy of action.

This lack of uniformity in police responses towards approaches to marijuana DUI's was revealed again in officer responses to questions regarding the second phase of a traffic stop, "personal contact"— when the driver's vehicle and patrol vehicle come to complete stop. This phase involves all conversation between officer and driver prior to the driver's exit from the vehicle (Pg.56).[cli] Officers evaluate you, the scene and environment encountered, using their senses: sight, sound, smell, and even touch.[clii] The reason officers are instructed to do this in relation to impaired driving is because they can use their senses to smell, hear, and see clues, indicators of use, and evidence of the use of an impairing substance.

To illuminate what interviewing strategies officers found useful and effective for assessing the sobriety of people, I asked police officers, *"What are some useful interviewing techniques to gauge the sobriety of an individual when first making contact with them? How do they apply to marijuana-impaired drivers?"* (Q#10) I followed this up by asking, "*When making this initial contact with an individual at a traffic stop:*

> *What observations suggest impairment?* (Q#11)
> *What sounds suggest impairment?* (Q#12)
> *What smells suggest impairment?*" (Q#13)

Of the fifteen officers that responded to question #10, twelve responded with a variety of answers. Officers stated they used multi-tasking, either through compound or loaded questions, and quick logic. Below are some responses:

Officer	Agency	Comment
P.M.	Scotts Valley	Ask compound questions, (such as) "May I have your driver's license and does the address match your current address?"
S.N.	Capitola	Testing their multi-tasking abilities, giving them questions and commands
Z.C.	Capitola	Ask them, "Have you smoked?"
J.B.	Santa Cruz	I will get sobriety through talking (and pulled out DAR card)
S.A. (DRE)	Capitola	Their ability or inability to answer questions, disheveled appearance, slow talking and driving

Their remarks (save for Z.C. comments) are standard operating procedure and part of the refresher course material.[cliii] P.M. of Scotts Valley says he asks compound questions because people who are impaired (from any substance) will have delayed response times, and he pays attention not to the response, but to the quickness and ease with which people respond.[cliv] He also said asking compound questions that, if drunk, would be difficult to respond to in an orderly fashion. Or, asking a question

and giving a command such as, “where are you coming from and could you give me your license” (without asking for the registration).

From the view of the officers, catching people in a lie or having an engaging conversation where many “sign vehicles” are being passed back and forth is one form police try to evaluate people's sobriety. A part of the interviewing techniques was asking loaded questions—questions that assumed use and thus situate the conversation already as one where the civilian is impaired.

Officers said their reasoning for using these specific interviewing techniques was that sober people would be able to keep up with a police officer’s line of questioning and logic. These officers’ thinking around a person’s responses is as follows: a person who had not drunk alcohol would quickly correct the officer and say they are sober or simply have not been drinking. If someone had been drinking, whether they wanted to lie to the officer or not (some do), they would likely say they are sober. If someone was impaired (or felt impaired), they would be slower to respond.[clv]

T.T. of Santa Cruz said, “Questions that assume they’ve been drinking, because sober people would say they hadn’t drank.” But he had also said, “Questions don’t help, but indicators do.” Thus, it was not just the verbatim response to questioning, but the timing of these responses that mattered to officers. In other words, with this comment T.T was saying the questions opened the space for the officers to take stock of the manner, tone, and timing of people’s responses.

The aggregate responses I collected through accounts, narratives, and participant observations of police officer patrols suggested the behavior of civilians, their reactions and responses, as well as how reactions and responses are transmitted and received by the officer, is pronounced and important in the encounter. Phase two is where this key variable/element in officers' investigations as to whether to take a "squeezable" or "non-squeezable" strategy of action in the encounter is found. This includes their deference to the officer but also the success with which this is done. This again speaks to the dramaturgical perspective taken by officers.

Four officers stated they follow the California Narcotics Officer Association (CNOA) Drug Abuse Recognition (DAR) form (pictured below). The card is a template of different tests for drugs, and it states how an impaired person under the influence of that respective drug would react according to their tests. It also contains a lot of questions regarding a person's medical history as well as temporal questions that can help orient an officer as to what may be occurring in front of them.

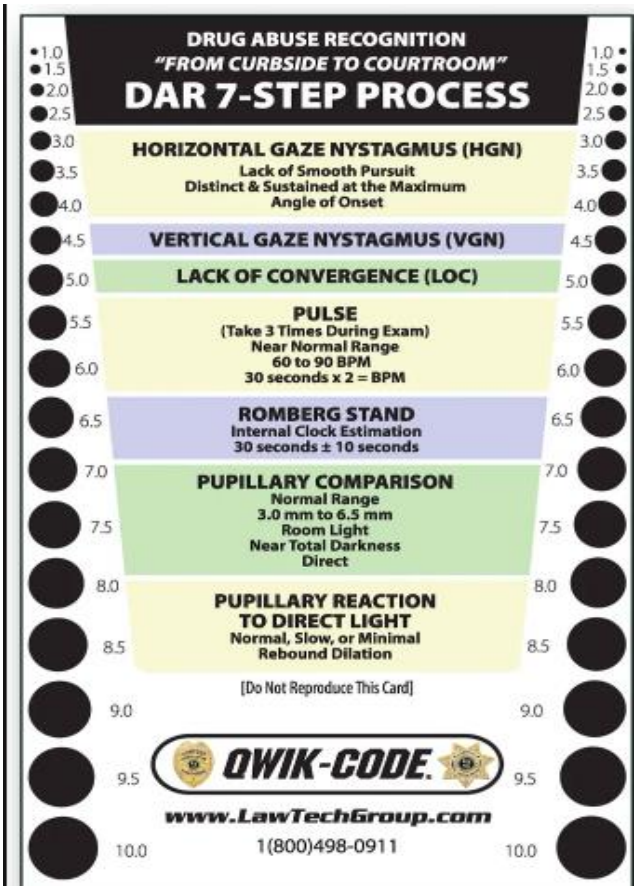

Figure Fourteen: California Narcotics Officer Association (CNOA) Drug Abuse Recognition (DAR) Form Side One

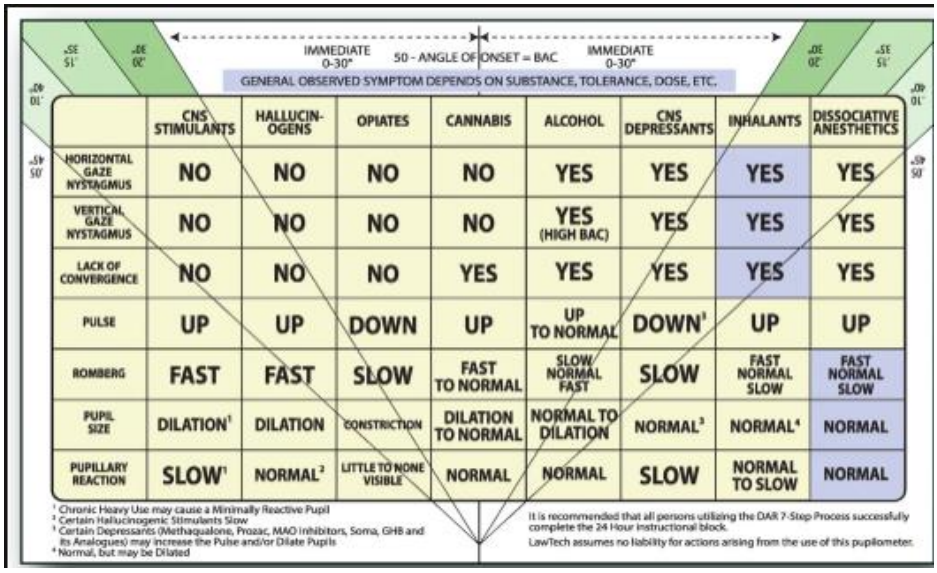

Figure Fifteen: California Narcotics Officer Association (CNOA) Drug Abuse Recognition (DAR) Form Side Two

The CNOA/DAR form is not standard teaching material for cadets in the academy but is accepted by the courts as credible training, and assessments drawing from its use are accepted by courts as evidence.[clvi] This to me showed that police used a myriad of tests and procedures, adding to the confusion of an already uncertain encounter or case.

The lack of consensus is revealed again reading from DRE officer responses to question #10 regarding interview techniques. Their responses did not come to a consensus and did not elicit a pattern. This is an important inconsistency in officer responses because these officers are trained to detect and apprehend individuals under the influence of these substances. Below are the DRE responses.

Officer	Agency	Comment
T.T. (DRE)	Santa Cruz	Question don't help, but indicators do…Questions that assume use, because

		sober people would say they hadn't drunk.
F.Y. (DRE)	Santa Cruz	(Did not respond)
S.A. (DRE)	Capitola	Their ability or inability to answer questions, disheveled appearance, slow talking and driving.
T.P. (DRE)	Salinas	Lethargic speech, slurry speech, if they are slow to answer simple questions.
B.M. (DRE)	CHP	(Did not respond directly but instead said) Odor is best, and the eyes.

Each of the senses at this stage bring into focus aspects of the presence of marijuana, or its use, but not necessarily impairment. When I asked, *"What observations suggest impairment?"* (Q#11) nine out of twelve officers that responded said "eyes". The first officer I talked to about people's eyes was B.M., a California Highway Patrol DRE officer at a checkpoint on the campus of UCSC. He said, "The eyes don't lie" and "eyes are the gateway to the soul". Many used adjectives such as "redness", "glossiness", and "red eyes" to describe the eyes. Other officers said they observed delayed reactions in people, or people were slow to answer questions and say things like, "I dunno". Police also observe your vehicle and its contents (looking for indications of alcohol or drug use: open caps, crumbs of weed, empty alcohol containers, rolling paper, etc.).

When I asked, "*what sounds suggest impairment*?" (Q#12), eight of the eleven officers that responded said "speech" or mentioned part of a person's speech: slow or delayed speech, lethargic, slurry.

When asked, "*What smells suggest impairment?*" (Q#13), Fourteen out of fifteen officers said the "smell" or "odor" of marijuana. Five officers specified fresh or burned marijuana, and one said the smell was "on their clothes". The question of smelling fresh marijuana raises the further complicated possibility that a driver may be simply transporting it legally for later personal consumption later.

I added the following question, "*I understand it is the totality of circumstances that establish an individual is impaired. However, of these observations, smells, and sights, which indicators have greater weight in your assessment of a person's sobriety with respect to marijuana?"* (Q#14), to the questionnaire because I wanted to know what aspects of the encounter, or which indicators of use, have more weight on officers' investigation strategies of action and are more convincing to officers that the person in question may be impaired from marijuana use. Officers gave a variety of answers that focused on the eyes and their characteristics (redness, droopiness, glossiness), but there was no consensus among officers, even among the drug recognition experts. Below are some responses.

Officer	Agency	Comment
T.T. (DRE)	Santa Cruz	Admission helps, lack of convergence (eyes), rebound dilation (eyes), their pulse, blood
X.X.	Watsonville	The look they have, droopy eyes and they are slow to answer
Z.C.	Capitola	Combined effort: reaction time, eyes, smell

P.M.	Scotts Valley	Evidence of use, acknowledgement of use, minimizing (use)
B.M. (DRE)	C.H.P.	None, it is the totality of the circumstances, not one act but "the whole picture"
C.G.	Salinas	It's all collective, it's the totality of the circumstances
T.P. (DRE)	Salinas	The eyes, 'eyes don't lie', are what we are taught. Pupils will be dilated or constricted, and they will have lack of convergence.

This theme of uncertainty and lack of consensus is also found in officers' responses to the benefits and efficacy of using their standard field sobriety tests. Phase three is when and where the standard field sobriety tests (SFST's) begin. I asked officers, "*What are the benefits of each of the following tests in determining marijuana impairment?"* (Q#16).

→*Horizontal Gaze Nystagmus*
→*Walk and Turn*
→*One Leg Stand*

Of the three tests police are trained in the academy to preform—Horizontal Gaze Nystagmus, Walk and Turn, One Leg Stand— officers were not confident in either the walk and turn or the one-legged stand tests. Nine of the fifteen officers responded to the question "*what are the benefits of the walk and turn test in*

determining marijuana impairment?", six passed on the question (one had no experience with DUI's). Some of the responses for the walk and turn were the following,

Officer	Agency	Comment
X.T.	Watsonville	Better for alcohol
O.L.	Watsonville	Can see *something* (their emphasis)
S.A. (DRE)	Capitola	Maybe helps indicate balance
Z.C.	Capitola	Least credible (of the three tests)
B.M. (DRE)	C.H.P.	Works for normal users
X.X.	Watsonville	Not really
C.G.	Salinas	Not really

I understood the comments "not really" from X.X. and C.G. to mean, "It is not really beneficial in determining marijuana impairment." J.B. from Santa Cruz said, "It is difficult to tell because people could be good at one or the other (the walk and turn and one-legged stand)"[clvii] One officer, S.N. of Capitola said that the walk and turn was actually good testing marijuana impaired drivers because "if they remember to walk and follow instructions it tests their multitasking."[clviii] But this specific test is designed to test their balance and motor functioning skills, not memory retention. Their responses indicate limited benefits.

Eight officers responded to the question regarding the one-legged stand test. Overall, officers said this test did not have many benefits. Below are their responses.

Officer	Agency	Comment
X.T.	Watsonville	Better of alcohol (said same of walk and turn)[clix]
X.X.	Watsonville	Not really (said same of walk and turn)
B.M. (DRE)	C.H.P.	(It) works but people can compensate
F.Y. (DRE)	Santa Cruz	A good dancer can compensate for this test[clx]
J.B.	Santa Cruz	It is difficult to tell because people could be good at one or the other (the walk and turn and one-legged stand)"[clxi]
O.L.	Watsonville	Marijuana use may help doing this test so probably not.[clxii]
C.Z.	Capitola	It's ok
T.P. (DRE)	Salinas	They can still fail…but it depends how impaired they are.[clxiii]

Nine of the fifteen officers responded to the question of the Horizontal Gaze Nystagmus (HGN) test. The HGN test is the only field sobriety test that evaluates one's eyes for: involuntary jerking as one gazes to the left or right. The criteria differ from phase two's assessment of an eye's visible characteristics—a test not validated (legally or scientifically) for marijuana.

And yet, most officers I spoke to were confident in the HGN test. This again indicated the limited knowledge of officers regarding this topic. I also found this is reinforced by the police's own *in vivo* codes learned from other officers. The first officer I spoke to about the HGN test, DRE officer B.M. of the CHP told me, “The eyes don’t lie”. This phrase, “the eyes don’t lie”, was also said by T.P. of Salinas when responding to which of all the indicators has the greatest weight. It was this *in vivo* code that bonded with officers' observations and the recordings of the HGN test police “hang their hat on”.

And recall officers mentioned in (Q#11) said that in phase two (interview and observation of driver**)** a person’s eyes was one of the main indicators to them that suggested impairment (as well as the smell of marijuana and responses). These in vivo codes diffused through their work culture reinforces and strengthens what officers already think this is a “good” test.

B.M. added that there was this saying, “the eyes are the gateway to the soul…” which to him buttressed his thoughts on how he could obtain the “truth” through someone’s eyes. The conjoining of observations, even if they were not evidence of impairment, with the conjoining of canteen culture *in vivo* codes lend themselves to providing officers with the substantial backing, in their minds, that they are proceeding correctly.

X.X. of Watsonville, when asked which of all the indicators has the greatest weight in their assessment, part of his response was “the look they have”. Another officer, T.P. of Salinas, was so confident in receiving impairment from a modified

version of the HGN test; he sought someone out to show me. One evening I was on a ride along with him while he patrolled Chinatown in Salinas, California, when we happened to be talking about this specific test. He noticed someone coming out of a tent who was "friendlier than others". We drove to the individual as he began walking down the street.[clxiv] He was tall, white, and appeared to be in his late 20's. T.P. hailed him, "hey", asking him if we could borrow him for a minute. T.P. told the man he wanted to run a test and show me (the passenger) something.

The individual had something clutched in his hand— marijuana— and he seemed concerned about what the interaction with the officer would turn into. T.P. asked if he was high and the man nodded his head "yes". T.P. explained the test and that he was not being arrested, the man accepted with a "yea". But both the civilian and myself felt volunteering was not without possible future consequences. T.P. began; he stood in front of the man with his index finger placed directly in front of the man's face. He had his flashlights shining at his finger like in the stock photo below.

Figure Sixteen: Photo of a Police Officer Conducting the HGN Field Sobriety Test taken from google images[clxv]

T.P. ran his index finger left and right in front of the person's nose for about 45 seconds to a minute. Then the officer pulled his finger back towards himself so that the person could visibly see his finger but also the officer's whole hand and forearm. Then, quickly, the officer moved his finger close to the person's nose causing his eyes to cross.

The individual's eyes crossed, but the left pupil flickered back to the center of the eye after crossing. The officer did this test a few more times. He said this flicker would always appear if someone were high and impaired.[clxvi] T.P. said that neither vertical gaze nystagmus nor horizontal gaze nystagmus was shown to be present in marijuana-impaired drivers, but lack of convergence was present.[clxvii] So although he felt the test was useful, he used it not to check the lack of smooth pursuit of the eye (its deviation) but the pupil's jerking or flicker. The real question is, would this occur if someone is not impaired?

This to me backed up what DRE trainer N.M. said about police being able to be good at telling what will come in their tests, but they are not trained to understand what that measurement translates into a driver's experience. N.M said our best guess is "1+1=3". And this is what I was observing in the field. T.P. was confident something would occur, the flicker in the eye (lack of convergence in police training), but he didn't know how that made someone too impaired to operate a vehicle safely.

There was no consensus among officers in general, or among drug trained experts, in the proper technique or efficacy of the tests. Four officers: X.T., S.N., Z.C., B.M., said it was the best of the three tests. Others were more measured. Below are the more measured responses.

Officer	Agency	Comment
X.X.	Watsonville	(The test) can be helpful.
S.A. (DRE)	Capitola	I look for lack of convergence and pupil dilation (sometimes).
T.P. (DRE)	Salinas	(The test is good because) you can't train the eyes
O.L.	Watsonville	(It) works but I do a variation of the traditional.
P.M.	Scotts Valley	They (the tests) are hit and miss. What works is seeing person's vertical gaze nystagmus and the convergence of the eyes. Look at their pulse.

Regarding technique, O.L. of Watsonville said he goes in circles rather than left to right, then pushes the pen towards the person's face. And J.B. of Santa Cruz said, "HGN and VGN are not shown to be seen with marijuana use." Three of the five drug-trained experts, T.T., F.Y., and B.M. were uncertain of the benefits of these tests.

Officer	Agency	Comment
T.T. (DRE)	Santa Cruz	Tolerance helps people beat tests.
B.M. (DRE)	C.H.P.	(HGN was good but) the finger to nose is an excellent one
C.G. (DRE)	Salinas	"Tests are useful for looking at i.e., assessing, bodily physiology of people."

In comparing DRE's and non-DRE officer responses, what is revealed is that the CNOA/DAR card illustrates to officers what is presently legally acceptable or permissible in court. As one officer remarked, when I told him I was going to start asking questions about the SFST, "Let me get my cheat sheet."[clxviii] What this tells me as a researcher is that this is not memorized, or possibly trained. Officers need help conducting the test. My observations in the field backed up this hunch as DRE officers were always called onto the scene when officers suspected the civilian encountered could be impaired. This finding that there is no consensus among them is visible not just by comparing experts and non-experts but also asking about false positives. I always followed officers' responses by asking, "*Have you ever come*

across (or heard of) cases where an individual's SFST test results were false positives? (Meaning people exhibited signs of impairment but were not impaired) What occurred in these cases?" (Q#17). Eleven of the fifteen officers responded to this question. Below are some of the responses.

Officer	Agency	Comment
X.X.	Watsonville	People with medical ailments, like diabetes. Pink eye for weed.
O.L.	Watsonville	sleep deprivation
Z.C.	Capitola	Traumatic brain injuries, eye glassware, insulin issues.
T.T. (DRE)	Santa Cruz	People who are slow or slurry (with their words), diabetics.
F.Y. (DRE)	Santa Cruz	A bad back, (someone can be) just a bad driver, swimming
B.M. (DRE)	C.H.P.	This is why totality of circumstances is important.
J.B.	Santa Cruz	In these cases, there is always something missing.

J.B. of Santa Cruz gave a good account of an encounter that was a false positive. He said he was tailing a man swerving between lanes on the highway late at night whom he suspected was drunk. But when he pulled him over, the man did not smell like alcohol and didn't have a flushed face—two indicators for an officer that someone has drunk alcohol. He was "slopping down on the chair" and was not defensive but was trying to communicate something. He then saw he had a medical

identification bracelet. He said he decided to call the paramedics instead, and "sure enough he needed his medicine".[clxix] He suspected it was a diabetic emergency and the man was driving to get home.

In this case, the officer points to two aspects of their investigation in their decision-making. First, the variables within the scenario that led him to believe someone was impaired did not line up accordingly as expected: "something is missing". What officers meant when they said, "something was missing", they meant the absence of variables *usually* present. But this also meant it was not "normal" because there were both quantitative *and* sequential factors. The quantitative factors refer to the physical indicators most associated with drunkenness, odor, and heat emission (which causes the face to fluster). The sequential factors are the order of arrangement among indicators and how they were received or not received, or better said, the lack of order in an arrangement not received. The officer, J.B., said the gentleman was trying to tell him he was a diabetic. A drunk would be trying to be defensive.

F.Y. of Santa Cruz also said the tests had limited efficacy: "Some people know the tests and get better. But they also help rule out errors." By this he meant the errors an officer can make in suspecting the person is impaired. Another officer in Salinas said something along similar lines regarding the efficacy of the tests but said this helped rule out false positives.

To summarize this section, the lack of consensus amongst officers—even DRE officers— with respect as to how to determine marijuana impairment helps

understand why the police practice of not exercising discretion in possible marijuana DUI's encounters. Officers' responses, as well as what I observed of their policing, and the incoherence of their collective statements in a limited way demonstrated how and why police disattend to possible DUI cases. The subtitle of this chapter, "It's as clear as mud", were the concluding remarks of a Santa Cruz Sherriff's deputy in describing the prospects for simple solutions to the host of problems legalized marijuana poses for police.[clxx] Police officers on the beat are unsure of the solutions. The problem is "beyond their pay scale", as problems with their testing methods and training have already been raised in chapter one.

Analysis & Discussion

I contend individual officer distention practices are responses to over-discretion, amplified discretionary powers, and the absence of uniformity or consensus in procedures and sobriety tests. In this section a few aspects of officer tendencies and strategies of action are elaborated on. First, I review what presently passes for police officers as their best practices and tests for evaluating a person's sobriety. I then also examine the value and significance of police strategies of action in marijuana DUI stops to beat officers drawn from these officers and discuss its importance for sociologists' understanding of the social construction of law.

Learning through participant observation and interviews with beat officers about their investigatory practices and experiences revealed, first, officers strategies of action were reactions to the over discretion and amplified discretionary powers. And second, the lack of consensus and fail-safe test or procedure contributed to, as

well as illustrate how and why, officers tend to legally disattend to encounters (and possible cases) of marijuana DUI's –lean towards practicing a "non-squeezable" strategy of action.

With respect to the three main SFST tests they are taught, officers believed the HGN test was most useful and applicable to marijuana. They were not confident in the walk and turn or the one-leg stand. However, beat officers, even drug recognition experts, were not on the same page regarding the benefits or efficacy of the HGN tests, and had questions about its efficacy.

As well, police overwhelmingly said the eyes (and their redness, droopiness, glossiness, etc.) were good suggestions. A close second was smell. This also makes sense as marijuana generally has a particularly strong smell. If one had smoked while in the car, before driving, or even earlier in the day, there is a chance the smell may stay. But there is a problem with this approach because the smell may also stay if there is fresh marijuana in the car (and even more so if it is strong marijuana), or if you have clothes that were in a room with a smoker.

However, most likely in marijuana DUI encounters, it will be the fact that there is marijuana in the car in an open or loose container, it is on someone's person, or it was recently smoked in the car or elsewhere. Officers said seeing glass pieces, wrappers, grinders, or marijuana itself strongly indicated marijuana presence or use. This piece of information would later be useful for determining and establishing if a person was impaired. Less strong was the visibility of stickers or ash. While ash could

be a strong indicator, it was more difficult to determine it was marijuana, and stickers or other labels only inform if there is an association to marijuana.

Thus, because officers did not hold the tests to be as useful for marijuana as for alcohol, when it came to determining impairment from marijuana use, police relied on a few indicators of use. Instead, officers said the persons communication and behavior, the call and response between the individual and officer, were relied on to determine whether the person was impaired or not.[clxxi] This can be noted in the way they used their interviewing technique to get people to clarify their sobriety status (by for example asking with the assumption that the driver had drunken alcohol).

In this way, officers sought the exchange of as many what Goffman called "sign vehicles" in the encounter (Goffman 1956). For officers, the interaction is the scale upon which all "sign vehicles", indicators of use, cues of motion and other "clues" their officers strategies of action and investigation rests. That interaction, both verbal through talk but also visual and physical exchange of information and signals, is the base of the tension between officers' limited knowable information about any encounter and the uncertainty of their tests and tools at their disposal. It also drives their investigation into one of two strategies of action tendencies.

This can be why, when pressed for a response as to which clue or indicator had the most weight in their assessments some officers stated "a person's eyes", "the look they have", and why a DRE trained officer would buttress by saying, "the eyes are the gateway to the soul…" Police expect to be told the truth, and since they do not trust the efficacy of their tests, they try pry the answer as best they know. The

asymmetrical relation and interactions between police and civilians on the one hand and the system of behavior, or "rules of conduct" that Goffman shows play out in interactions on the other (1956:473) both are used in their interviewing techniques to get a suitable response from human behavior.

The finding suggest police strategies of action are responses to a situation where they have amplified discretionary powers through their over-discretion and the absence of uniformity or consensus by officers to questions of their investigation procedures and field sobriety tests. This helps us further understand how police discretion and their strategies of action (how officers determine impairment in general) are impacted by the lack of clear certainty on how to determine marijuana impairment.

Moving to the issue of the social construction of law, the lack of consensus from tool users (police officers) of the detection instruments to questions regarding their on the ground training (sobriety tests and testing techniques) also informs regarding police agencies inability (or unwillingness or hesitancy) to define, capture, and process these sorts of cases as well as the cumbersome mobilization of law by officers. What is learned is that for police officers functioning as street-level bureaucrats for police agencies there is no existing typology that fits within Sudnow's (1965) definition of what a "normal" marijuana DUI could be.

Speaking with beat officers, I learned several important facts about police understanding of marijuana DUI's and their reasoning for their approach (or lack thereof). None save for two said that marijuana crimes interested them per se. Of the

ten officers that responded, four said that it was important if it was youth using it. Otherwise, officers said that it was "the least of my worries", or simply that they were indifferent.[clxxii] Officer responses and narratives also demonstrate there is no clear pattern of facts and circumstances, *the corpus delicti* of a crime, of what these officers understand to be a common marijuana DUI.

The difficulty of these cases also indicates to me the absence of a typology for this crime, as well as the absence of what a “normal” marijuana DUI is in the lexicon of the people working to sift through the collection of instances, encounters, and behaviors that make up these cases. Police are reliant on tests and procedures that are not able to assist them in conducting their work in good faith. And they are aware of this, even if they do not explicitly state it. However, their tendencies show that they are aware of the situation in which they find themselves. In short, uncertainty shapes how police go about determining impairment.

Conclusion

We cannot ask honestly, what are the best tools and practices for determining impairment on the road without asking who are the users of these tools and how are they using them? The tool as well as the user of the tool are two equally essential components of understanding how procedures are understood and carried out by personnel. This is because the tools used to determine impairment must be tested in accordance with the users who are testing them.

In this chapter, I examined officers, their tools, and their training. I first defined the police investigatory practice of legal disattention and the tendency by

officers to disattending to marijuana DUI encounters. I then went over the two facts of police work that have bearing for interrogating police discretion and the social construction of law in possible marijuana DUI encounters. I then examined the value and significance of police strategies of action in marijuana DUI stops.

What is learned is that as street-level bureaucrats, for police, there is no existing typology that fits within Sudnow's (1965) definition of what a "normal" marijuana DUI could be. Officer responses and narratives demonstrate there is no clear pattern of facts and circumstances, the *corpus delicti*, of what they consider a marijuana DUI. The subtitle of this chapter, "It's as clear as mud", were the concluding remarks of a Santa Cruz Sherriff's deputy in describing the prospects for simple solutions to the host of problems legalized marijuana poses for police.[clxxiii]

Chapter Six: The Other Sides of the Story

In this chapter I present narratives from civilians encountered by police, and other streel-level bureaucrats, whom citizens must interact with in the criminal justice system. These people and their narratives serve as a resource for sociological analysis on the social construction of law of police discretion in marijuana DUI cases. This group can speak to the kinds of actions, remarks, practices, and behaviors police routinely perform. As well, they can contradict, confirm, or elucidate policing practices. Lastly, they also are part of what produces what eventually is understood as a "marijuana DUI" by the officer, and possibly other street level bureaucrats (public defendants, prosecutors, judges, bailiff's, clerks, etc.).

This chapter is broken into two parts. In the first part, I go over narratives I collected from civilians (five) caught in these sorts of encounters and cases. Their accounts support the groundswell of evidence previous chapters present regarding police disattending to marijuana DUI offenses. Additionally, they demonstrate the nuances of officer approaches and their shift during an encounter. The divergence of paths in police investigations in these cases demonstrate there is no clear "normal" marijuana DUI as understood by Sudnow (1965).[clxxiv]

In the second part I look at narratives from other street level bureaucrats that also support the evidence of previous the two chapters that no marijuana DUI epidemic is materializing. Other bureaucrats (lawyers, prosecutors, judges, bailiff's, clerks, etc.) must also define, capture, and process institutionally accounts of people, and their actions, as legally legible offenses with certain types of case. Lawyers must

also translate the potential case: the police report and evidence, into a legally legible case. Judges preside over hearings and oversees the legal process has discretion about what can and cannot be brough forth before the court. Bailiffs are present during court proceedings and provide a good view of the overview of court proceedings.

What emerges from these interviews, observations, and accounts of encounters is a criminal justice system is unable to include into an already backlogged criminal justice system.[clxxv] I was able to interview three lawyers, a judge, and a bailiff on record, and discus with them what happened to these cases. Contrary to all the fears: not much. They disclosed to me how— as people make their way through the criminal justice system— their cases are stripped away i.e., plea bargained, usually knocked down to a wet and reckless or diverted to drug court for settlement.

This chapter is only a snapshot of officers from mostly one County of a larger adjusting criminal system to a new legal landscape and societal rules still forming.[clxxvi] The small number of civilian respondents I collected (5) compared to the avenues and efforts sought to obtain respondents; and the and lack of experience of these cases by these other legal workers I sought became a finding of sorts.

Legal Encounters Part One: Civilian Narratives

Narratives of civilians demonstrate police are not looking specifically for marijuana DUI's, but the smell or presence of marijuana is sufficient for police officers in some cases to become "attentive" based on situational or circumstantial conditions. The low number of respondents and the variety of narratives that all ended

with relatively short legal lives, if at all as cases, raises the question about whether there is even a generalizable approach by police to these cases.

All the encounters began through a traffic stop, either clear or contested by the civilians, and police encountered them their assertion that they broke or violated a moving violation or vehicle code infraction. It is the presence of marijuana—the visibility or smell of pot, or potential indicators of use by the person (slurred speech red eyes, etc.)— and the officer's awareness of its presence, that determine an officer's push to investigate a potential marijuana DUI.

"Have you Heard About the Pot Bros?"

Two respondents were a couple, Spike and Spooner, dispensary workers who were pulled over on their way home one night. The woman, who wanted to be called "Spike", I met at her work at a dispensary in a surrounding town outside of Santa Cruz."[clxxvii] Short, thin, and pale, Spike has colored dreadlocks and hoops piercing her ears, nose, and mouth—like she was part of a biker gang. She said she and her fiancé almost were arrested for smoking a joint heading home from the grocery store. I set up a time to meet her and her fiancé, Spooner.

We met at a bar in Ben Lomond. They had just gotten out of work and wanted to meet at their watering hole. Spooner was kind and happened to be a towering of a man. They first met at the strip club Spike worked at while she went to school. Spooner was a bouncer there, and they fell in love. This is their account of the stop in the Santa Cruz Mountains.

> Spike: Well (puts her hands on the wooden deck table) we were driving home from the store, we had just gone grocery shopping, and had just finished

> smoking a joint (which they lit up leaving the grocery store). And we were driving home, and I made a right-hand turn at this stop sign.
> Spike: … *I* turned right, and that's when he (the officer) flashed his lights. So, I pulled over to the side of the road as soon as I could. Not like, immediately, but as soon as there was space. You know how the roads are up here?
> Q: (I nodded) Like 100 ft?
> Spike: I don't know; a few more seconds after he turned them on.

When the officer caught up, and pulled them over, he approached from the passengers' side, where Spooner was sitting, and asked Spike for her license and registration. Spike said the officer started probing their vehicle with his eyes using his flashlight while she sifted through her purse on her lap.

> Spike: While I was getting my purse, he started shining his light around where I was sitting, the floor, and checking the back of our car. I didn't know what he was looking for but I just quickly said, 'Can you shine that on my lap?'
> Spooner: We didn't know if we had anything (and then he gave a grimaced smile).
> Spike: Yea, and like, I didn't want him to have anything against us, or for him to say, 'Oh you can't have that' or whatever.

It must be noted that throughout the course of this interaction the officer smelled the odor of marijuana in their car. This is safe to assume because they had just smoked in the car before he pulled them over. They admitted to throwing the roach (end of cigarette) out the window shortly before the officer contacted them. I asked them if they smelled it when they were pulled over, and both said, "Yes, definitely— we were both still high". While Spike was fishing for her license and registration in her purse the officer asker her, "When was the last time you smoked marijuana?" Here Spike and Spooner again discussed the details of the police stop, and the line of questioning. Spooner clarified the order of events.

> Spooner: What he said was, 'but on a scale of one to ten how high are you?'

Spike: No, he said, 'On a scale of one to ten how high are you? One being kinda high and ten being the highest you've ever been'
Q: He didn't ask you? (asking Spooner)
Spooner: No (shaking his head)
Spike: No, it's like he wasn't even there (and then she lightly backhands his bicep). But I knew that was a trick question because we had just been practicing what the Pot Bro's say, have you heard of the Pot Bros?
Q: I think so, the guys on tik-tok?
Spike: Yea, I just said what they told me to say to police, 'Sir I am not discussing my day' but not as emphatically because I was scared as shit we were going to go to jail. I said it more meekly.
Q: Right, that makes sense.
Spike: I knew what he's trying to do.
Spooner: He's trying to nail her.
Q: Yeah.

What Spooner means by "nail her" and what Spike believed the officer was "*trying* to do" was have her self-incriminate.[clxxviii]Admitting to use, testing positive for marijuana metabolites in a blood test, and an unfavorable outcome in field sobriety tests could mean strong evidence against someone in court. I learned this from a former police officer and DRE trainer, N.M., who told me providing an officer with a time when you smoked was a legal error because the police can use that as admission of use and as a time stamp for their police report as to when you got high, "Admission of use to officers is HUGE"(his emphasis), "because cops know you will test positive."[clxxix] This insider knowledge he shared with people freely through his involvement in LEAP (Law Enforcement Against Prohibition). As he explained to me, it was not just that you would test positive but that police can, "include that (admission of guilt) and backwards extrapolate" what event occurred to line up with their assessment in their report. It is unlikely Spike knew the officer could do this, but she was intelligent to not give any information.

Returning to Spike and Spooner on the side of the road with the officer,

> Spooner: *And theeen* he said 'yeah yeah no worries'.
> Spike: He said, 'yeah yeah yeah, I just wanna make sure you are not impaired or anything.' I said 'no'. I mean we had just been practicing what we would say to an officer, right? Have you heard about the Pot Bros? (Spike looked over, and again tapped her fiancé's arm with the back of her hand).

Spike said they saw the Pot Bros' videos about how to deal with police and told me knowing their rights and standing their grounds was important to them. It seems these Pot Bro's have quite a following, with over half a million followers on Tik Tok and Instagram, a sizable audience for any social media platform.[clxxx]

> Spike: I know my rights and I'm not gonna make the cops job easier.
> Q: And so what happened next?
> Spooner: He just let us go! He went to his car, and when came back he told us to drive home safe.
> Q: That's it?!
> Spooner: Yea, we just kinda sat there for a second and were like, 'MAN, that was close!'

Another individual, who was arrested for a DUI from marijuana, and the only person who was convicted and allowed me to write about their account on the record I found through my side job transporting people. I took this gentleman—a Santa Cruz native (with flame tattoos on his arms and an iron cross tattoo on his neck) and his girlfriend from a restaurant on the wharf to their parked car. He shared he was arrested for DUI, and was high at the time of his arrest, when I told them what my research was about in Santa Cruz.

> Man: I got a DUI from weed!
> Q: Really?! What happened?
> Man: I was heading home and went over a roundabout, I didn't judge the turn, and then hit a median when I tried to correct back. It was kinda fuzzy (he meant his memory of the event was hazy because he was drunk and high).
> Q: Were you ok?

Man: Yeah, no problem (I looked at his girlfriend and she had rolled her eyes). But a cop saw the whole thing. When they pulled out, the bowl was still smoking.
Q: Damn, what happened?
Man: Well I had been out partyin' and was headed home, and I hit one of those medians. A cop saw the whole thing; he was parked off to the side nearby in a parking lot.
Q: You're obviously ok?
Man: Yeah, I even beat the case!
Q: Really? How? I haven't met anyone that's even been arrested for this.
Man: I just kept pushing back the dates, and eventually the DA reduced it to wet and reckless.
Q: Wow…no way, that doesn't make any sense.
Man: Yea, insane right?

I dropped them at their car and asked if I could contact him sometime to do an interview in person or over the phone. He said "Yea, no worries, why not?" and gave me his email. However, when I emailed him (several times), I received no response.

This was the only encounter resulting in a conviction, though it was reduced to a wet and reckless. He did not beat the case but did receive a big break. This case is an example of the broad variation of outcomes found. The prior example, the couple, they said they were high and had the buzz to prove it. In this case, if the bowl was still smoking. What this means may be lost to those who do not smoke marijuana—it means that he was smoking as he crashed, this is because the fire goes out much quicker than in tobacco. With marijuana the ember goes out, although very dry marijuana may do this.

"Keep your Receipts"

Thus far I have presented respondent narratives whose encounter with police began similar to how police said potential marijuana DUI encounters begin. What is learned is that there is no specific indicator that causes officers to suspect someone is

impaired from marijuana. Only that any number of vehicle infractions or indicators of use, or presence of marijuana (or paraphernalia). However, it is the police officer's awareness of marijuana's presence in an encounter (through smell or visibility) *ipso facto* opens the door to the encounter becoming a possible marijuana DUI. This is an example of how police shift from "not as squeezable" approach to "squeezable" strategy of action during an encounter and an example of officers from being "disattentive" to "attentive".

A case like this is that of Marta, also a dispensary worker. I met Marta at her work and asked her to pass my announcement to her boss in the hopes of obtaining more respondents. She said she had been "pulled over" by the police a few months ago. She gave me her email to set up a meeting at a later time. She is not a frequent user and said she did not get high for pleasure before working at the dispensary. She told me, "I tried it, but it wasn't something I did". Unlike most of the people I met, she did not have an affinity to this substance.

We met around the corner from her work, and sat on some benches in front of a taco truck. In her mid 20's, she is a short Latina with bright almond eyes behind thick black glasses and thicker black bangs. And when she spoke, it was a mixture of a high-pitched squeak with that California valley girl cadence that comes from the throat when people say, "Like, you know?" and "*Totally*".

Like most people I spoke with, our conversation jumped from topic to topic, below are portions of our conversation regarding her encounter with police in the

order in which they occurred. Marta said her encounter happened on the third day of her job as a budtender.

> (Transition from talking about terpenes)
> Q: I don't want to waste your whole break, so how did this happen?
> Marta: Yea, like I told you it was my third day working and they (the dispensary) gave us (employees) samples new vendors brought in, like pre-rolls, edibles, and stuff like that. We try em' and that way we can have an idea of what we are selling. I also got a torch.
> Q: Like Snickers candy but 'bite sized' then?
> Marta: Yea, and I had all this in a white bag on the passenger seat. All the stuff inside was still sealed, by the way. But I didn't have a receipt, because it was sort of swag and not for re-sale. And it wasn't stapled (product is usually stapled upon sale) because it wasn't sold to customers; they gave this to us.

Marta said she was driving her boyfriend's car from the dispensary at the edge of town to the home they share in the Santa Cruz Mountains. She said she was not high, and had not smoked. Her boyfriend's car, a BMW M2, is a rather expensive car and she mentioned he had been pulled over once around their home.[clxxxi]

> Marta: I was going home and I see this other car on the road too, behind me. But whatever, it's someone on the road, you know? And I'm driving but my driveway is coming up—or the dirt path to get home. (To signify her car and direction she raises her hand as if to shake someone's hand and moves it around the table indicating a turn). So I speed up a bit because I know I'm gonna have to slow down soon. And when I do—it all kind happened really fast—but I speed up to make the turn, he flashes his lights and speeds up. And when I make the turn onto the driveway all I see is his car with the lights flash behind me in my rearview mirror. So I stopped when I pulled into the road.

She describes the entrance of the dirt road as flat with wire fencing on both sides, further along there is an incline. She described the officer as: white, about six feet, "skinny", with blue eyes, and "older, like early fifties".

When the officer pulled her over, he told her she had failed to flash her turn signal when entering the private road. Marta continued to talk about the turn signal the officer alleges she did not make:

> Marta: I did (turn my left signal), he maybe didn't see it. And I told him I had, but he didn't believe me.
> Q: Is the driveway on a curvy section of road, or something similar, so he could not have seen it?
> Marta: It's on a turn. But I mean, it was nighttime, so he should've seen it.

She was stopped as she pulled into her road. She explained she was not nervous when she saw his lights because, "I wasn't doing anything wrong, just going home. I wasn't speeding or anything." As in the other case of Spike and Spooner, it was a common moving violation or infraction (no headlights, broken taillight, etc.) that initiates the encounter.

This is in line with, and connects to, officer responses to my question, *what typical cues in motion might first draw your attention to a vehicle you suspect may be driven by an impaired individual?* (#7). By cues in motion, I refer to the driving of an individual the officer is observing. I stated in chapter five that thirteen officers responded to this question by mentioning vehicle code violations explicitly or implicitly in their statements, or by stating specific vehicle code violations, such as, "swerving, speeding", "no lights", "running stops signs…sometimes it's not till you get to the car (that you can tell someone is impaired)". However, they couched their statements by saying the "totality of circumstances" determined their response to impaired drivers. Officers throughout these interviews used the term "totality of circumstances" as a way to contextualize and explain their actions. In this case, it is another failure to signal violation.

> Q: So what happened?
> Marta: He gets out of his car, goes to my passenger side window. So I roll the window down and he asks, 'Do you know why I pulled you over?' and I say, 'No' because I don't know, you know? And while this is going on, I'm totally

> respectful. And he was fine too. He asked to see my license and registration, so I give them to him. When he looks at it, he asked, 'Why does it say Capitola?' I said, 'I used to live in Capitola but now I'm living in Scotts Valley with my boyfriend'. I also told him I was just going home, and that this was my boyfriend's car.

She said the officer saw the white bag sitting on the passenger's seat, and his attention and line of questioned shifted completely from her to the contents of the white bag.

> Marta: As soon as he saw the bag, he just completely changed the subject. He asked what it was, and I told him. He said, 'You know you have this open in your car, you can get a DUI for this.' I started explaining to him I work at X dispensary and that management gave us this to try. That only got him more interested in the bag.
> Q: How so?
> Marta: Well he asked me what was inside. He asked, 'How do I know you didn't eat a gummy or something already?' I told him, 'I could call my work right now and they would say exactly what they gave me' But then he said, 'No because they could just cover for you'. And I didn't have a receipt, because, again, it was given to me from my work. I even showed him my lanyard from work.

In both Marta's as well as of the couple's encounters police began with similar reasoning for contacting the drivers— a simple infraction: either a moving traffic violation or other vehicle code violation (no headlight, side mirrors, etc.). Although in the former example it was obvious to the officer and couple, they had in fact smoked since their car smelled of *smoked* pot, with Marta that was not the case. Nonetheless, the visibility of marijuana in the latter case and the smell of marijuana in the former were sufficient for the officers to interrogate the person.

I suspect here the officer was hopeful to arrest her for intent to sell or distribution. My reason being that officers in chapter four said finding someone with a large quantities or marijuana was an indication to them of someone selling illegally. But more important to the social construction of the law is the officers attention to it

presence, and his changing in strategy during his investigation. Returning to the Marta's encounter, she says that at this point in her encounter she was getting upset because the officer was not letting her go, and he was asking more questions.

> Marta: He started getting nosy and asking, 'How much flower do you have? How much concentrate?'
> Q: Maybe he was trying to arrest you for having too much quantity? Did you have over an ounce?[clxxxii]
> Marta: I dunno know but then he asked, 'Can I search your car?' and that's when I just got uncomfortable because, why? I told him, 'No', 'I don't consent to you searching my car.' He asked, 'why?' And again I said, 'Because I haven't done anything wrong, this is from work, and I'm just going home so I don't consent.'
> Q: And did you get out?
> Marta: Yea but first he went to run my license and tags. So I called my lawyer when he was doing that because I didn't know what to do.
> Q: And what did he say?
> Marta: When I called my lawyer, I told him what I told you, that I just got pulled over and I didn't know what to do, because I didn't know what the deal was.
> Q: What did your lawyer tell you?
> Marta: He told me to hand the phone to the officer so they could talk. So I handed him (the officer) the phone when he came back. I said, 'My lawyer said he wants to talk to you' and gave him the phone.
> Q: What did they talk about?
> Marta: I couldn't hear, he walked away, but when he gave me back my phone my lawyer said to just do what the officer wanted. But he was more relaxed after this for sure. So whatever he said it worked.
> Q: You never asked your lawyer what he said?
> Marta: I didn't think about it in the moment—I didn't care. I just wanted to go home, I mean I was so close (close to her home).
> Marta complied and stepped out of the car to do a field sobriety test, once the officer and her lawyer spoke. However, Marta told me the officer did not actually end up checking the vehicle.
>
> Q: So what happened next?
> Marta: He made me walk in a straight line, and then he did the finger thing with the light.
> Q: The horizontal gaze nystagmus test. How did those go?
> Marta: Good, I mean I wasn't high or drunk so it was whatever.

Q: What else?
Marta: That's it. He let me go.
Q: Really?? What about checking the car? He did not check the car.
Marta: Yea no, he didn't even do that; he just said I was good to go. He didn't ask about the bag anymore or anything, he just let me go.

I ended our interview asking if she had any advice she would like to give others who end up in her predicament. She said, "Keep your receipts!" I said that was sound advice even though it did not help her in her encounter. In general that is a good idea; as is keeping all marijuana related paraphernalia in the trunk. I thanked her for her time and told her I was grateful for her words.

"I Did Smoke, But I Wasn't High"

Another respondent, Julio, was arrested, eventually had his charges dismissed and spoke to me about his encounter with police August of 2020. Julio's case shares two similarities to the other informants already mentioned, the stop began due to a traffic infraction, speeding, which is a moving vehicle violation. Additionally, according to Julio, the officer's behavior, line of questioning, and decision to arrest hinged on his awareness of the presence of marijuana in the car, via his smelling the odor of marijuana. His lawyer, was also present in this telephone conversation as he helped establish contact and facilitated the conversation.

It should be stated now that Julio is an undocumented immigrant studying at UCSC thanks to the Deferred Action for Childhood Arrivals (DACA) policy program. This provides context for understanding his decision-making rationale. The DACA program allows some individuals with unlawful presence in the US after being brought as children to receive renewable deferred action from deportation and

become eligible for employment. To be eligible for this program, recipients cannot have felonies or serious misdemeanors on their records. Julio was acutely aware his residential status, livelihood, and life were on the line. His lawyer took this case pro bono for this very reason.

> Julio: So I was going to go pick up my friend from a party, and I was coming down Mission (headed towards Ocean street), and I see someone is following me, or is behind me. I wasn't really thinking anything of it. But all of a sudden I look up in my review (mirror),and I see the flashing light and I already know who it is, you know, so I just pulled over by that 76 (gas station) right before the freeway.
> Q: I know which one you're talking about. Do you know what time it was?
> Julio: Sometime after midnight?

Julio said when the cop pulled him over he was trying to entrap him.

> Julio: When he got to my window he said he smelled marijuana.
> Q: Did he say this automatically or wait to say this?
> Julio: I think he said 'good evening, do you know why I pulled you over?' first and then just said just he smelled weed.
> Julio: I told him I hadn't smoked, and that, you know, I was sober. But he kept asking why my eyes were red, why I was responding "lethargically". I said I had been sleeping, which I was, and that I got called to pick up my friend who *was* (his emphasis) drunk. But he didn't believe me.
> Q: Was he pressuring you?
> Julio: He was trying to say that I was high, but I wasn't.
> Julio: I did smoke, but I wasn't high. I'd smoked earlier in the day, I don't know what time, but the sun was still out.
> Q: What did you smoke? And, how much?
> Julio: I'm not sure, it's just some weed my friend bought from the dispensary. It was alright, nothing crazy (i.e., very potent/strong).

This portion of the conversation digressed a bit to talk about methods of smoking. His lawyer interjected only sparingly but said here, "Seems like you guys know what you are talking about." When I asked Julio about why the officer said he smelled marijuana, he responded:

> Julio: I don't know, I probably still smelled like it from the house.

Q: Do you usually have your house closed up? I mean this could be part of the reason he still smelled it on you.
Julio: I mean we usually don't have the windows open, and I didn't go anywhere after I smoked so maybe he smelled that.

Regardless of whether Julio was or was not high, Julio's account shares similarities with the statements police made to me in chapter five regarding what officers consider indicators of impairment: the smell of marijuana, the visibility of red eyes, specific use of "lethargic" word. In that case study I noted how, of the eleven officers that responded to the question, "*what sounds suggest impairment*?"(#12), most of the eleven officers that responded said speech or mentioned part of a person's speech: slow or delayed speech, lethargic, slurry. Julio didn't have an answer for his slurred speech, not that there is anything with speaking with a drawl or being lethargic.

Julio: I was talking normally. I might 've been driving a bit fast, but I wasn't high. I mean I don't know what to tell you.
Q: Then what (happened)?
Julio: He said to get out of the car, and I asked, 'Sir, have I done something wrong?'
Q: He just said get out of the car?
Julio: He said something like, 'I'm gonna have to ask you to step out of the car', but he wasn't really asking.
Q: All right, and did he make you do some field sobriety tests?
Julio: Yeah, so we went back and forth for a little bit but then I just got out because I didn't know what he would do if I didn't. And I was good (i.e., sober) so I just got out. I mean, if I wouldn't have gotten out, I knew he was gonna take me to jail.
Q: And so what happened?
Julio: I do the tests. I walk in a straight line, I raise my foot, all that was great, and then he does the finger test where he puts his finger in front of my eye and moves. He also had me blow into the Breathalyzer— the whole thing, and of course I'm good so I don't feel like have anything to worry about.
Q: Which one did you do first?

> Julio: I think we first did the one where you have one foot out first. But all that was good, I passed everything, you know? I'm thinking, 'He's got to let me go, right?'
> Q: Yea, then what, how does he get to arrest you?
> Julio: So after we do all that, he just says, 'I'm not sure you are good to drive.' Or like, 'You know, I'm not too sure you're good to drive' something like that. But I told him I wasn't high, and hadn't been drinking. I mean I passed everything. I didn't get it.
> I kept telling him I was fine, you know, that there must be some mistake, but I mean what am I gonna do, you know? Get more charges for resisting?

Julio's need to stay in good legal standing and keep his temporary residency surely shaped his decision-making, compliance to the officers' commands, and deferment to the officers' authority. His encounter seems as an example of being "aggressive" attentive where the officer saw the encounter as "squeezable".

Julio's encounter also shares two more facts with the other encounters; first, there was no conviction. He was arrested, but his charges were dismissed. His lawyer informed me via email. What is learned from these encounters, as was drawn from the officers narratives in chapter five, that in the course of an officers' investigation and interactions with people, there are no "normal" paths and outcomes in the detecting, investigating, or arresting process. Spooner and Spike admitted to getting high while driving but were let go without doing any field sobriety tests. Marta had to call her lawyer to avoid possible arrest. Only Julio was arrested and charged with DUI—luckily had a lawyer defend his case pro bono.

Thus, what is visible in this section is the passing by of potential cases that would form part of the evidence for the assertion of an epidemic of marijuana impaired drivers. The accounts from law enforcement in previous chapters and civilians here begins to raise the question about whether there is even a generalizable

approach by police to these cases (but also questions the utility and efficacy of said tests). But more so to my focus on police discretion and the social construction of law, it points to the weakness with which the law is socially constructed. The narratives of civilians instead provide evidence for the claim made here that these specific offenses, a DUI offense due to marijuana consumption, have relatively short legal lives.

What I mean by this is that they are not these cases occupy only very little space within the attention political economy of police officers. This is due to the many organizational, institutional, work, personal, and cultural reasons presented by officers. The low number of respondents, the scant experience street level bureaucrats had in these cases, and the variation of officers investigation approaches and paths indicates the epidemic of marijuana DUI's that we were told was going to materialize, not materialize.[clxxxiii] This also helps answer the question that there is no "normal" marijuana DUI offense in the minds and experiences of both police but also other bureaucrats that must deal with these cases in the criminal justice system.

This weakness on the social construction of law is further teased out in the next section where the scant experience street level bureaucrats had in these cases. The picture street level bureaucrats illustrate is one of a criminal justice system, and its workers, seeking to quickly resolve cases that are legally cumbersome and illegible for all the parties involved. Or, in other cases, simply dismissing the charges. The narratives forwarded are congruent to the comments made by officers regarding the disattention paid to marijuana DUI's.

The picture street level bureaucrats illustrate is one of a criminal justice system, and its workers, seeking to quickly resolve cases that are legally cumbersome and illegible for all the parties involved. Or, in other cases, simply dismissing the charges. The narratives forwarded are congruent to the comments made by officers regarding the disattention paid to marijuana DUI's.

Five street level bureaucrats had experience with marijuana DUI cases and were willing to be interviewed: three lawyers, one bailiff and one judge agreed to be interviewed on the record. I supplemented this with three court proceeding observations of drug court or misdemeanor court (twice in Santa Cruz and once in Salinas). The lawyers claim there is an unwillingness of DA(district attorney) offices to prosecute and that juries are sympathetic to marijuana cases because of the legal marijuana history and culture here.[clxxxiv] They disclosed how— as people make their way through the criminal justice system— their cases are stripped away, usually knocked down to a wet and reckless or diverted to drug court for settlement.

Three Lawyers and a Juror

One of the first lawyers I spoke to, N.P., told me May of 2019, "You know, I've only ever had two or three marijuana DUI's, and that was in the eighties." She was straight forward no-nonsense approach, "I don't know how you are going to do this, it's like asking the hospital if they could find all the people who had marijuana in their system but not ask whether if they were at the hospital *because* (her emphasis)

of the pot, or if they just had it in their system— it's like looking for a needle in haystack".[clxxxv]

The other lawyer, private attorney, B.R., was the first person to say to me, "Juries in Santa Cruz County are not willing to convict people with marijuana related charges, and so the district attorney's offices do not like to take these cases often."[clxxxvi] I was in his office, wrote the quote down but did not follow it up because I was searching for respondents, as well as statistics, so at that time did not think much of it. However, I later realized how vital his point was.

L.H., a Santa Cruz teacher told me in 2020 she had just served as a juror in a marijuana DUI case.[clxxxvii] I asked her about it.

> L.H.: We decided to find him not guilty.
> Q: Why?
> L.H.: The prosecutor had brought in this hot shot witness expert from Southern California, and he just rubbed us the wrong way.
> Q: Really? Why?
> L.H.: Well, he came in and just talked down to us as if we were stupid and didn't know what pot was.

When I asked if she thought the defendant had smoked and was high, she said, "Who knows? They (the DA office and their expert witness) made it seem he was out of his mind." Her perspective and use of the term "pot" clearly signaled to me that she felt the experts were condescending and did not think the juries would have experience with marijuana or know of it.

J.T., a public defender who had also worked in King County and Monterey County, was much more elaborate in his response on the topic of marijuana DUI's.

> J.T.: The DA doesn't understand marijuana DUI's. They just want to prosecute people that have THC in the blood, or remnants of it.

He said in these cases the DA usually pleads down the cases to a “wet and reckless”, and these are good options for both the defense and the DA’s office.

> J.T.: They (the DA’s office) only prosecute when the DUI is comical in nature.
> Q: How so?
> J.T.: Well, there was the case of this woman who got a marijuana DUI parked in front of an officer’s house?
> Q: What? When?
> J.T.: I don’t remember exactly when but she was banging on their door, telling them to get out. She had too many edibles, and when she was arrested and blood was drawn, she had a lot of THC present in her system.
> Q: Interesting.
> J.T.: Yea, but anything short of that is hard to sell to twelve people in Santa Cruz.

This anecdote it is worth mentioning because it is an indication of the high level of exaggeration—almost a caricature— that a lawyer in the county believes needs to be presented for the law to be applied in this specific crime. As well, it speaks to the need for officers police reports and DA’s case to make “sense” to jurors in the end.

That story reminded me of a response by an office who showed frustration because his cases were not being picked up by the district attorney’s office— one case a marijuana DUI. I asked this officer, “*What is the most cumbersome part of dealing with marijuana DUI cases?* (#21). He said,

> P.M.: That it’s time consuming, also the paperwork, and the lack of evidence for impairment that make the DA’s gun shy about prosecuting.
> Q: What do you mean? Why wouldn’t they pick up these cases?
> P.M.: Like, there was this one case I was telling you about (earlier). I had pulled this guy over, and he had smoke coming out of the car (it was a pickup truck with a shell), and it’s obvious he’s high. I’m in my car and I smell it; I *see* it (the smoke).

After filling the case, he checked on it later, and found the DA office in Santa Cruz dismissed the case. I picked up on his frustration when he spoke, "I just want to know—I want them to tell us— what do I have to do, or provide, to get my cases picked up." It was nighttime, and I felt this young officer sensed we were talking about something he would not share usually because he closed the topic by saying, "because, you know, it seems like the smoking pipe is not a smoking gun". I dropped the subject by saying, "That's good! Let me write that one down." to save as much as I could from that exchange.[clxxxviii]

This officer's case and J.T.'s anecdotal story are part of the chorus of narratives that point to more contradiction in outcomes. In J.T.'s anecdote, the woman was charged with marijuana DUI even though she was not driving at the time. However, in the officer's account, his case was not even picked up despite having "dead bang' evidence—smelling, seeing, and being present in the act of smoking. J.T. went on to say what his record in the courtroom,

> J.T.: In my two years working in Santa Cruz all of my cases with marijuana DUI's charges were hung juries, and I lost only one.

At least, the act, behaviors, and violations of people on the road are not easily translatable into a strong case for district attorney's and juries in Santa Cruz to prosecute. Is this a question of local politics? J.T. seems to think so.

> J.T.: Let me tell you something, I was (a public defendant) in Kern County three years, Monterey County three years, and now Santa Cruz two years—and every county is different. Monterey County and Kern County are very conservative…Like, for example, there was this one judge in Monterey County who would go to these city council meetings and stand in front of everyone, and you know, is up there clutching her pearls talking about the

> problems with marijuana and saying how marijuana is a gateway drug and—(pause) What is her name? Let me look this up.

I heard typing and he quickly said,

> J.T.: Julie Kovar! That's her name, and so if you have these people making the decisions … it means the local culture (of the County) is really important, because this is where are they drawing their jury pools from, the lawyers from, and where the judges and DA's run for positions.
> Q: I see
> J.T.: These marijuana cases depend on the people, the jury themselves, and who they (the DA and the lawyers) think they could get in there (in the jury seat).

I told him I had tried to speak to the local DA a few times, through written letters. "And they didn't want to talk to you?", he said. I told him, "I got no response." However, J.T. told me that what usually happened in these marijuana DUI cases is that they compromise. J.T. called this, "A diet DUI." He was really excited to explain this concept to me, I heard background movement from the phone, like he was sitting up or getting into place.

> J.T.: Ok, so you wanna know why I call it a diet DUI?
> Me: Definitely.
> J.T.: I call it a diet DUI because it's essentially the same crime of a DUI, but doesn't have the mandatory stipulations of a DUI.

These stipulations for a DUI include: three years probation, six month drivers license suspension, and legal fees and community hours. A wet and reckless may include shorter probation, financial or legal penalties, but does not trigger the same consequences a DUI conviction does: an automatic license suspension, (which risks possible termination by employer for example, truck drivers).

> J.T.: "Section A of that vehicle code is what I call a "diet DUI", because it's the section most people are charged with."

J.T. told me the reason police to charge you with section a of vehicle code 23152 rather than section b is because it is easier to prove. Section a state, “it is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle” whereas section B states “it is unlawful for a person who has a 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.” Officers choose to charge people with vehicle code 23152(b) because they do not need to prove you were above .08. In cases where marijuana may be suspected is involved, the use of section b is an acknowledgement of use of some substance without having to prove a certain level of impairment—because they are unable to.

This suggested to me prosecutors do not seek DUI charges for people in marijuana DUI cases in Santa Cruz and instead seek reduced charges or dismissal unless they have solid evidence.[clxxxix] Part of the reason is that courts are overburdened (or understaffed) and under resourced. A report by the American Bar Association (2023) found 98% of criminal cases at federal courts end in plea bargaining, “In this sense, plea bargaining is not so much providing a benefit as it is a safety valve for quotidian injustice.”[cxc]

I tried to speak with the DA’s office, but they did not return my emails or letters. I did manage to speak to one assistant district attorney (ADA) through a police citizens academy course where they presented on the trial process. Because she had mentioned in her presentation the limited resources they received from the County, I asked how then they “pick which fruit to squeeze” when triaging resources J.H. told us, “ the squeeze you’re thinking about comes from…if a complaint gets filed, then

the qualities and quantities of the evidence, and if it is put in front of 12 people from Santa Cruz County..” were the basics she laid out. I followed up by asking how different things have changed since legalization. She responded indirectly, “The landscape of the criminal justice system is fundamentally different from ten years ago. Things changed so much since I became a prosecutor. We are day to day. The laws change (and puts hands in prayer) and we just try to find out how to (manage)”.[cxci]

The change in the legal landscape was also felt by the officers themselves. M.E said, “Times are different, in the 90’s and even early 2000’s if you called saying someone’s going to kill themselves, we would go in there and save the *crap out of them* (his emphasis).” In this comment, he was saying it was not uncommon for police to kill the people attempting to commit suicide. This topic was raised when someone asked about a specific case recently where this happened.

What appears visible is the possibility that the legal territory is not favorable for district attorney’s and is favorable for defendants because of an educated jury sample on the uses and effects of marijuana. That so many asked if I had spoken the DA’s office, and their lack of communication, means more data is necessary as to what the local jurisdictions strategize to handle these cases.

Other Street Level Bureaucrats in the Criminal Justice System

The only judge I managed to interview told me he did not preside over marijuana DUI’s, “I can’t even think of the last marijuana DUI case I have had”. Judge Bank’s comment was another statement from a bureaucrat of the infrequency

with which marijuana DUI cases reached them. He said I should observe some case proceedings. It was now 2021, and pandemic restrictions were loosening. I called the courthouses in Santa Cruz and Santa Clara to ask if they were holding court proceedings in person, they were not, at least not their drug courts. I had gone to court proceedings at the Santa Cruz County courthouse prior to the pandemic but did not learn much from those observations. The first time I went the cases were postponed. The second time, I only observed battery and assault cases, and all defendants had come from county jail.

Judge Bank and I talked for a few more minutes but he did not have much time for me. One of the last questions I asked him was,

Q: What are the normal outcomes of these marijuana DUI cases?

He sat up and said,

> Judge Banks: You want something more concrete. I think you are looking for something that is not there.[cxcii]

By this point in my research his comment signified to me that the absence of these cases in the criminal justice system—at least at the County level—indicated that the epidemic of marijuana DUI's never materialized.

The only courthouse that could potentially have marijuana DUI's at that time, the spring of 2021, was the Monterey Drug Court session that is held the first Wednesday of every month in Salinas. The bailiff of the drug court, a Latino sheriffs officer named Bert, was helpful in explaining the utility of the drug court for the criminal justice system. As he explains it, "The judge, the district attorney's office, the clerks, and the public defender's office all are inside (inside the courtroom we

spoke in) in order to try to expedite these cases and streamline them so that they can save resources for other cases where they know there will be some contestation, like in felony cases." So, from his perspective, they hope to resolve these issues so that they (these cases) do not reach trial. However, the logic of drug courts is to serve a therapeutic avenue for people's problems.

Why is it important these cases are settled? Like the police triage crime, these street level bureaucrats— the clerk's judges, the lawyers on both sides, and everyone else involved— must come into accord to deliberate (usually in person). As well, the defendants, witnesses (such as police), all must be brought in. This all takes resources each bureaucrat is seeking to conserve for other cases.

For DUI's and other drug related crimes some Counties, like Santa Cruz and Monterey County, have special programs in place where first time DUI offenders (if they are charged with a misdemeanor DUI) are released to a relative that very night rather than be arrested. When they must attend court, they attend a court session that will resolve the charges. In Santa Cruz, this is called the Deferred Drug Judgment Program, is $705, and eligibility is determined by the district attorney.[cxciii] In Monterey County the program is called Drug Treatment Court and has its own criteria determined by the District Attorney's office in conjunction with the Probation Department.[cxciv] For officers, drug court saves them time presenting themselves in court. Part of this program allows officers to release first time offenders (if it is a misdemeanor) to a family member. This saves officers the time it takes to book and

processing people, who may or may not be belligerent or upset at their current circumstances.[cxcv]

In Salinas Bert told me that, "Most people come here and it is for the best, they catch a break. Except that kid that we saw." There was a young man with an alcohol DUI—155 pounds, is about 5'4' with short black hair. He had a white shirt with silver streaks that had a shiny design, blue jeans, and tan shoes—he was a day laborer and that is what he considered formal dress. Bert told me after the court session, "He got the book thrown at him." It turns out he had been four times over the legal limit.[cxcvi] "But usually", Bert continued, "either we never see you again, or we will see someone here several times."

The last two conversations with law practitioners, Judge Banks and a bailiff in Monterey County, indicated to me that more education of law enforcement is also necessary. With Judge Banks, I mentioned to him that part of what I had found in this study was the dearth of our understanding of the endocannabinoid system, and went ahead to explain to him the endocannabinoid system. It struck me odd that I, a graduate student, was educating a judge on marijuana impartment, seemed inappropriate. I imagined he would receive legal journals and newsletter that would have already covered this topic, not a granular level but suffice to make decision in the courtroom.

To me, it spoke volumes as far as how much work must be done to educate the general population and practitioners of law. That few know about how marijuana enters and interacts with the body is an indication that legal experts cannot make

informed decisions in cases where marijuana plays a role, specifically marijuana DUI's.

However, Judge Banks taught me marijuana DUI's could be a complicated matter for the court—both the science and legal components. For example, when I spoke to him about the concern of defendants 4th amendment right, I told him, "I have been speaking to police and lawyers, lawyers and some have voiced a concern about the fourth amendment rights of their clients." I added that, to me, "there seems to be a tough middle road we could approach but there is a lot of subjectivity because the science is still being worked on." He nodded in agreement and said, "Just think about the charges that can be given to someone in possession of marijuana: possession of an illicit substance, there is intention to sell, paraphernalia charges, etc. It speaks to the complexity and subjectiveness of marijuana DUI charges and all drug charges at all."

Conclusion: No Normal Marijuana DUI?

In this chapter I presented narratives from civilians encountered by police, and other streel-level bureaucrats, whom citizens must interact with in the criminal justice system. The picture that emerges from this collection of narratives is a criminal justice system unable to render legible these encounters as marijuana DUI's. What is revealed is only a snapshot of an adjusting criminal system, the people who get tangled into its businesses/services with its workers, and the societal responses to a new legal landscape.

This chapter does not serve to contribute to the assertion that the epidemic of "stoned driving" law enforcement and other constituents warned us of has yet to

materialize. Instead, the low number of respondents, the scant experience street level bureaucrats in these cases, not enough patterns emerge in all these people's narratives so that we can say, "A normal marijuana DUI looks like this". In the first part, the lack of uniformity of experiences by civilians with police in possible marijuana DUI cases, raises the question about police ability to perform the bureaucratic task of detecting, evaluating, and processing these possible offenses. This was important for my focus on police discretion and the social construction of law as it points to the weakness with which the law is socially constructed. And in the second portion, this weakness was further explored primarily through the scant experience street level bureaucrats (one judge, lawyers, and a bailiff) had participating of overseeing in marijuana DUI cases.

Chapter Seven: On the Social Construction of Law

Marijuana continues to be in a cultural and legal limbo (Reinarman 2011) and this investigation permitted to study the processes by which our institutions, namely police agencies, seek to meet the intent of their purpose or service in the absence of rules and guidelines for how to go about doing that. In this chapter I discuss how this research contributes to the study of the social construction of law regarding the mobilization of law. I first lay out the three main research questions that were interrogated through grounded theory. I tease out how this investigation contributes to the social construction of law, specifically the absence of its mobilization and the style of social control occurring presently in potential marijuana DUI cases where I did this investigation. I do so by first going over the individual police officers and their amplified powers of discretion and how that impacts their attention economy and thus the social construction of law. I then bring into the conversation other street level bureaucrats and the institutions they work for to further tease out how the absence of mobilization of law by street level bureaucrats. I conclude by contextualizing this topic of the social construction of law in marijuana DUI cases in the broader concerns of the criminal justice system. I conclude this chapter by detailing how my project aimed at contributing to recent research on drug policy.

The three main questions this research centered on were: one) was the any validity to the claim made that legalizing recreational marijuana would lead to an epidemic of impaired driving? Two) what is the *corpus delicti* of what constitutes a

"normal" marijuana DUI? And three), covered here, how does this research contribute to the social construction of law.

A Conciliatory Construction of Law

The absence of the mobilization of law (Black calls it "desuetude") in marijuana DUI encounters shows variation in the mobilization of the law.[cxcvii] Black (2010 [1976]) says on the limits of the legal availability to mobilize law,

> "Another force that sometimes interferes with the operation of a reactive legal process is a countervailing normative system. Informal norms among some pockets of the citizenry prohibit citizens from mobilizing the official control system. Generally, it seems that people are discouraged from mobilizing social control systems against their status equal…Automobilization norms seem to be particularly strong among the rank and file whenever there is a fairly clean split in the authority structure of a social system." (Pg.55)

Given the evidence presented in the preceding chapters, I contend that the law mobilized by police in Santa Cruz County operates the way it does at least amongst the officers spoken to is that this is a form of social control that has a conciliatory style of policing.[cxcviii] Though Black2010 [1976]) does not define this conciliatory style, whom he cites in the footnotes (Gibbs 1963) defines conciliatory as "therapeutic". But that article was on African laws in that study they are looking at informal legal dispute-settlement procedures.

The tendencies of officers to disattend to marijuana DUI's are part of a broader network of law practitioners in the criminal justice system who were told by the citizenry through Measure K, which made cannabis arrests the lowest law enforcement priority in 2006, to focus on other crimes. But more deeply, the people who passed this are the very same who are in the jury selection pools and in jury box.

Thus, the constituents of the county themselves control and hindered legally and socially from many directions the likelihood of this being an offense. And it is not clear by looking at any one part of the criminal justice where these encounters are translated into criminal cases. Not by observing data, which is not collected yet, and for which we do not yet have an established criteria for impairment if we did. Not by speaking to police officers, even those (DRE officers) trained for these specific impaired driving cases. And not by speaking to civilians and other law practitioners (lawyers, bailiffs, judgers, etc.) that would interact with these cases.

In Santa Cruz, there is a collective tendency for the normalization of marijuana even in encounters where it was known by the officer and civilians that they were impaired (as told to me by Spike and Spooner) However, this conciliatory style of social control, and its malleability, is discarded once there is bodily injury or harm. One of the few exceptions, Mark Mendoza Zambrano, 20-year-old Santa Cruz native prosecuted for his role in the death of 43-year-old Allison Endert. Mr Zambrano reportedly, "drove straight over the curb near Nott Avenue and struck both Edert and her then 15-year-old daughter, who were returning on foot from nearby Seabright State Beach" Mendoza pleaded no contest to gross vehicular manslaughter while intoxicated and DUI causing injury.[cxcix] So unless someone dies or crashes and is found injured, the law is not mobilized.

However, unless there is bodily injury or the police officers can socially construct a case that is so egregious or clear that juries will have to do nothing but

determine a guilty verdict, then officers will exercise their discretion. This is evident in the attention economy of officers.

Police Discretion and the Attention Economy

That police officers are reluctant to mobilize the law in potential marijuana DUI cases, and their practice of legally "disattending" to said offenses, illustrates a complex but firm headwind for police in many of the steps they must take to define, capture, and process cases. On ride alongs with police, sometimes there were calls we responded to, sometimes I was taken on what I felt were police tours of their bad and good parts of town: "this our version of skid row", "this is downtown", "this is where people shoot up" and so forth. But there was no pattern; rhyme or reason to how these ride alongs went. Sometimes it was boring. Other times, it was chaotic. What was constant in these ride alongs was the tendency to not mobilize the law, for a host of reasons from all social actors, where marijuana use, or impaired driving were the case.

Something that must be recognized of how individual officers are mobilizing the law and how that looks like in the broader social construction of law in any jurisdiction, for example Santa Cruz County, is that this is a situation that is not created or desired by law enforcement. As X.T. from Watsonville stated in our ride along, "Legalization made it less "extra" because now we get to decide whether to give a citation or not". Officers were placed into this position of responsibility without any training. The legalization of recreational marijuana without providing police officers with scientifically tested and legally backed procedures and tests

amplified police officers discretionary powers. The collapse of the structure in responsibility and directive between the state bureaucracy and legal institutions (state governing agencies and law enforcement) funnels power down to the situation/contextual social and legal order. In other words, that void in guidance for how to deal with marijuana impaired driving between policy makers and law enforcement gave officers greater space to exercise their discretion in cases that where marijuana is present and or suspected to be a substance that impaired the driver.

Officer responses, and their own imposition of their will onto the situation, are to not dispense with their most valuable commodity in their enterprise, their attention. But this is not simply a rejection of the institutional requirements and agency's mandate to traffic safety but more so to loyalty and requirement of the collective officers on patrol that the coin of the realm, their collective capacity to attend to any call, is not squandered. Again here, safety, and self-preservation, condition and limit officer's ability to exercise their discretion.

Other Street Level Bureaucrats & the Mobilization of Law

What was more difficult to understand, because of the dearth of cases and encounters, was the precise ways that encounters that police officers were confident were cases of marijuana DUI did not result in a prosecutable offense. While it is a well-established fact that plea bargaining is a way for the courts to deal with many cases. More difficult is learning and gaining an understanding of what the DA officer considers a "worthy" case. Though outside the purview of this research, a dimension

that would be invaluable in learning how communication between law enforcement and DA officers establish their communication as to what constitutes and a "good case" because as one officer had told me, "…it seems like the smoking pipe is not a smoking gun".

Another dimension of street level bureaucrats is the local politics. In Santa Cruz, there is a current of opposition to the criminalization of marijuana related offenses, and there are diversion programs as well. In drawing perspectives from law practitioners inside as well as outside Santa Cruz County brought to the forefront the importance of local politics and the impact it plays in the decision makers (both the judges and DA's) who are elected to be the decision makers as to which cases they will take to court (the DA's) and what will occur in the courtroom (the judges overseeing these cases).

While marijuana DUI's may not be a major issue (in relation to child malnutrition and poverty, domestic violence, or homelessness) in Santa Cruz County, where its inhabitants are citizens who have a history of political activism and work or participate in the marijuana economy, what about Orange County? Or San Bernadino County? What are the cultural sensibilities of the people who end up in the jury box there? Or of law practitioners, those wearing badges, robes, or wearing ties? These are questions for another more detailed study on this topic.

Contribution to Drug Policy

Data on marijuana is inconclusive, but existing data from early state adopters in chapter one did not lend itself to any claim that an epidemic would materialize.

Investigating on the ground, what is learned is the many ways individual beat officer discretion is conditioned and layered by institutional needs, cultural values, and self-preservation. Their culture, anchored to the institutional demands and necessities of the police agencies also provide some explanatory power for beat officer tendencies to disattend. Police culture partially explains why marijuana DUI's have no currency to police officers and why they are more likely to "disattend" to these offenses.

Conducting participant observation of police best practices and experiences lays out the *corpus delicti* of what constitutes a "normal" marijuana DUI. Officers I interacted with tend to rely on the presence of marijuana (or paraphernalia) in conjunction with the behavioral and call and response interaction, or dance", with the civilian to determine impairment potential marijuana DUI's—not the field sobriety tests.

This research also contributes to scholarship on drug policy, specifically drugged driving scholarship. Marijuana decriminalization and legalization have already stimulated literature in several areas related to cannabis use: its development as a consumer market and labor sector (Barry & Glantz 2016; August 2012); its current and potential environmental impacts (Mallery 2011; Morrison 1997, 2002; Jenner 2011); its potential medical utility (Reinarman et al. 2011; Walsh et al. 2013); its impact on public health (Wilkins et al. 2015); and its effects on complex cognitive performances (Hart et al. 2001), namely driving (Laberge & Ward 2004).

This investigation also contributes to a growing literature of marijuana policy (Pacula et al. 2005; MacCoun and Reuter 2001), on the importance of regulating

edibles (Barius et al 2016), the mixing of marijuana edibles and alcohol (Krauss et at 2017), and the specific issue of the intensity of edibles (Cavazos-Rehg 2017).[cc]

In this period of marijuana legalization there is wrestling, and contestation over may aspects of marijuana. For example, in industry: the genetics of certain strains, use of certain trademarks (ex. purple haze), serving sizes, etc. But also, even the name. At one NGO meeting where the term "cannabis" and "marijuana" were being debated, Valerie Corral loudly interjected, "Well I've been calling it pot this whole time, and I'm gonna keep calling it pot." The exchange and the instability of nomenclature found throughout the literatures I read, jurisdictions I entered, and the perspectives of the people I encountered.

This investigation gives a mezzo level snapshot of the inability in the institutional process of law enforcement agencies difficulty in defining, capturing, and processing social life by some institutional mechanism (Biderman and Reiss 1967). Each actor for their own, yet interconnected reasoning, pushes marijuana related behaviors out of the criminal justice, or ignores the offenses. It is an image where marijuana DUI's have no currency to police officers and their 'attention economy" as street level bureaucrats. A reactive system that cannot spare the resources, and the resources (police officers themselves) do not tend to invest their attention into such offenses.

Conclusion

One of the things that becomes apparent after having conducted this research for several years is that policing marijuana related crimes is changing. There is a

normalization of marijuana occurring in different fields and spaces of life. But this normalization is not clean, and far from complete.

Justice Clearance Thomas's wrote in a recent dissenting opinion of a case the Supreme Court declined to hear of a Colorado medical marijuana dispensary denied federal tax breaks,

> Suffice to say, the Federal Government's current approach to marijuana bears little resemblance to the watertight national prohibition that a closely divided Court found necessary to justify the Government 's blanket prohibition in Raich. If the Government is now content to allow States to act "as laboratories" "'and try novel social and economic experiments, Raich, 545 U. S., at 42 (O'Con- nor, J., dissenting), then it might no longer have authority to intrude on "[t]he States' core police powers . . . to define criminal law and to protect the health, safety, and welfare of their citizens." Ibid. A prohibition on intrastate use or cultivation of marijuana may no longer be necessary or proper to support the Federal Government's piecemeal approach.[cci]

How long the federal government waits to step in will impact how both states move forward with many aspects related to recreational marijuana, impaired driving rules or guidelines being one of many (such as banking, oversight, etc.) as well as how beat officers will think of and have the discretion to exercise their discretion in cases where marijuana is a possible impairing substanc.

What emerges from these interviews, observations, and accounts of police and citizen encounters related to marijuana DUI's is the absence of an epidemic of marijuana impaired drivers that never materialized. But also, a criminal justice system as a system of social control unable to render legible new social realities. Some of these new realities are observable and well documented, such as the decrease in marijuana related offenses locally in Santa Cruz since citizens voted to legalize recreational marijuana. Even though officers are just the ground level, speaking with

citizens and other workers of the criminal justice system, shows the reluctance by police to mobilize the law in these cases.[ccii] But it also illustrates the limits of focusing on one actor part of a broader play.

Conclusion

Contrary to popular belief marijuana is not indigenous to the Americas. Europeans first brought marijuana to the American continent. The Portuguese and Spanish brought marijuana for shipbuilding to their respective colonies in the Americas throughout Latin American and the Caribbean. The British brought marijuana to the original thirteen colonies.[cciii] However, the practice of smoking marijuana was not common because the hemp plants brought to the British colonies had little tetrahydrocannabinol (THC)— the primary compound that produces the psychoactive effects, relaxation and euphoria, as well as other desired effects people seek out.

But it is not just this history that most people are unaware of— purposefully.[cciv] At the end of this investigation, I was struck by the fact that near the end a good portion of what I was doing was explaining to people the endocannabinoid system and the limits of our current understanding of impairment.[ccv] While there is much still to be left to learn about police and police discretion it is important that there begin to be a groundswell of education coming from the state regarding marijuana education.

As people clamor for business licenses, big business is standing on the sidelines, waiting for federal legalization. If we wish for this substance not to become Malboro cigarettes, there must be a strong push to have a measured approach to legalization. Though on the edges of this research, it is a place where people can become educated and empowered while we stay in a state of legal limbo. In the remaining pages I wish to summarize my work, provide some shortcomings of the

study, and possible solutions for anyone seeking to reproduce or further this field of inquiry.

California's citizen led initiative to legalize recreational marijuana use created a new area for law enforcement to exercise discretionary authority. Unlike alcohol DUI's—where breathalyzers measure B.A.C. (blood alcohol content) and determine impairment *per se* —California courts currently rely heavily on officer testimony to prosecute people in DUID (driving under the influence of drugs) cases. Acting as street-level bureaucrats, police must translate California's new marijuana policy into practical rules on the ground.

This project began questioning claims made by law enforcement and their representatives about an impending epidemic of marijuana DUI's (that would supposedly and inevitably materialize if marijuana became legalized). Through this inductive research it became necessary to situate this issue of marijuana DUI's within the subject of police discretion as data emerged. Though grounded theory was a strength of this research, and essential to excavating institutional and cultural knowledge of individual officers, it also proved to be a limitation.

There were many places where extensive research was done that did not contribute to the immediate research on the social construction of law in marijuana DUI cases, but which permitted me to understand the cutting edge of research and social control—

by attending state task for meeting at the California Highway Patrol headquarters in Sacramento. Or, by understanding and participating local efforts to confront impaired

driving—by assisting in the formation of public service announcement marketing campaign. While this time researching was invaluable for understanding the interconnectedness of markets (and business), law enforcement, and interest groups, it drew a lot of resources.

More specifically with respect to the conducting of research, I would have my questions about marijuana and policing written through the vernacular and the lexicon of law enforcement. Additionally, I would ask police to provide questions I should ask officers sooner than I did. To This took a considerable amount of time to figure out inductively and looking back on the research process, I would "read the room" better, as one officer put the way one learns to read their audience they are speaking to. The learning curve for acquiring the cultural knowledge of law enforcement made it so that early time in the field did not germinate as nuanced and rich data. I suggest anyone seeking to research with this specific population to spend time with law enforcement through their outreach programs (courses and meet ups).

Understanding how police, in the absence of valid tests and procedures, mobilize the law served to obtain at the ground level of analysis how police exercise discretion, what presently passes as constituting the body (*corpus delicti*) of a "normal" marijuana DUI offense, and why the present tendency is the current outcome. However, using ethnographic methods, primarily participant observation and interviews, in high paced work environments with workers who are suspicious of outsiders was complicated.

The amalgamation of methodological problems from the straightforward, such as gaining trust, to more nuanced problems, such as being denied access to an agency, office, or officer, made researching the various fountains of information cumbersome. At times, I was only permitted to be with an agency once until the following month. Other times, availability to conduct research was squeezed into a short period of time that was not fruitful for drawing the variety of research time I required.

A solution for a lot of these problems was to, when possible, contact a lieutenant or the highest ranked officer. As a quasi- militaristic organization, beat officers were more accommodating and attentive if they knew that I was invited to go on ride alongs from a high-ranking officer in another agency or their agency. Though this was not the case every time, it became a good practice and rule of thumb for me to follow.

Other scholars in this terrain of inquiry would do good to look at dimensions of the mobilization of law I was unable to. For example, another more radical investigation would be to look at the benefits and costs of following the LAPD's lead in making this a call of service that unarmed responders will handle.[ccvi] This would provide individuals who are lawfully consuming marijuana not to be arrested and potentially prosecuted for offenses officers are unable to determine.[ccvii] Though progress is being made by researchers, policymakers, and law enforcement, stopgap solutions like these are only beginning to appear and they would go a long way to work with the needs and desires of both law enforcement and other law practioners in the criminal justice system to capture, document, and process the cases appropriately.

Presently, there is avoidance unless the offense is so egregious that there is a bodily injury or large property damage.

Though I understood the difficulty and limitations of this research prior to embarking on the project, without researchers risking the time and life to engage and reach out and into law enforcement, many of the other much more serious issues of our time (police misconduct individual or structurally). Without seeking to understand the claim made that marijuana legalization would lead to an epidemic of impaired driving, the political economy of individual officers and how that is conditions their ability to exercise their discretion would not have revealed the collective tendency for police to approach marijuana DUI's as not "real crime."

Only by allowing the data sources and participants to inform as Goffman asks, "What is going on here?" and saturate ones analysis, do the contradictions and similarities in narratives taken and snippets of social life observed come to fold together to make sense of a social epidemic that never materialized. What these pages hold is a picture of how one area, a very liberal one, is attempting to deal with the incorporation of marijuana and marijuana use in real time. What began as exploratory research into claim making, transformed into an interrogation of the legal life of an offense that will not be recorded till 2024. What can be seen, however, is that the tendency to not mobilize law is not solely in the hands of individual police officers discretion. As it stands now, the state of play is open for all.

Appendix: Guiding Questionnaire

1.How did you get into law enforcement?

2. What was your view of police work before and after you joined the force?

3. How much is marijuana impairment a priority in your department? Has legalization drawn resources from other activities? If so, to what extent?

4. I understand every officer gravitates or has preferences to the kind of crimes they deal with, do marijuana related crimes interest you? What kind of crimes (or problems) do you prefer to help with?

5. Since legalization has there been a change in policy towards marijuana related crimes in your department?

6. Would you be willing to participate in a pilot program that pays you a stipend through your salary package for being a drug recognition expert (DRE) trained officer?

Vehicle in Motion (phase I)

7. What typical cues in motion might first draw your attention to a vehicle you suspect may be driven by a marijuana-impaired individual?

8. What can be drawn from an individual's driving that may lead you to suspect they are impaired from marijuana use?

9. Are there circumstances that would prevent you from making a traffic stop? If so, what are they?

Personal Contact (phase II): Smell, Sight, and Hearing

10. What are some useful interviewing techniques to gauge the sobriety of an individual when first making contact with them? How do they apply to marijuana-impaired drivers?

When making this initial contact with an individual at a traffic stop:

11. What observations suggest impairment?
12. What sounds suggest impairment?
13. What smells suggest impairment?

14. I understand it is the totality of circumstances that establish an individual is impaired. However, of these observations, smells, and sights, which indicators have greater weight in your assessment of a person's sobriety with respect to marijuana?

15. Have people admitted to smoking marijuana? If so, what do they usually say?

Pre-Arrest Screening (phase III): *Standardized Field Sobriety Tests (SFST)*

16. What are the benefits of each of the following tests in determining marijuana impairment?

→*Horizontal Gaze Nystagmus*
→*Walk and Turn*
→*One Leg Stand*
→ *Romberg test*

17. Have you come across (or heard of) cases where individuals SFST test results were false positive? (Meaning people exhibited signs of impairment but were not impaired) What occurred in these cases?

Post Arrest: Processing and Trial Issues

18. What is the average time it takes to process a misdemeanor DUI (from first contact to booking)?

19. What is the most cumbersome part of dealing with marijuana DUI cases?

20. How many times have you been to court for marijuana only DUI cases?

21. What about poly DUI cases involving marijuana?

22. What was/were the outcome(s)? Why do you think so?

23. I understand the DA's office is having difficulties prosecuting marijuana DUI's. Do you have any questions or concerns to relay to prosecutors about marijuana DUI's?

Collection of Questions

24. Have you ever been stumped and had to let someone go whom you thought was impaired due to marijuana use?

25. Are there trends or patterns that you cannot prove but are seeing with marijuana-impaired drivers?

26. What are the new methods of marijuana consumption you are more frequently coming into contact with?

27. Do you think regular or non-regular users will be represented more in marijuana DUI's when the data becomes available? Why?

28. Are there distinctions between check points and vehicle stop arrests when detecting for marijuana-impaired users? If so, what are they?

29. What is at stake for police with the legalization of marijuana?

30. What are some myths surrounding marijuana use you believe the wider population must be aware about before starting to use this substance?

31. What tips can you provide other officers in the detecting of marijuana-impaired drivers on the road?

32. Are there things you would like to tell higher-ranking officers regarding dealing with marijuana DUI's that you may be hesitant to voice directly?

33. What, in your opinion, is the number one thing people must learn about marijuana and marijuana use on the road?

34. Why do you stay on the force?

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Zhornitsky S, Pelletier J, Assaf R, Giroux S, Li CR, Potvin S. 2021. "Acute effects of partial CB_1 receptor agonists on cognition - A meta-analysis of human studies" *Prog Neuropsychopharmacology Biol Psychiatry*. Vol. 104, Pg.6.

Zinberg, Norman. 1986. *Drug, Set, and Setting: The Basis for Controlled Intoxicant Use*. 1st Edition. New Haven Conn.: Yale University Press.

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[i] Rhondan, Maya. "Why President Obama's Police Reform Is a Work In Progress" *TIME Magazine*. Published July 8th, 2016. Accessed January 3rd, 2021. https://time.com/4398392/obama-police-reform-report-task-force-on-21st-century-policing/

[ii] Leading up to legalization efforts across the sates, news pundits, politicians, law enforcement, and people of many stripes stated marijuana DUI's would increase. Ranging from "dramatically" to "substantially". See: https://www.mintpressnews.com/cbs-news-caught-blatantly-distorting-cannabis-study-says-legal-pot-doubles-fatal-car-crashes/216347/

[iii] The author asserts, citing data from the New York State Division of Criminal Justice Services (DCJS) and the U.S. census, that NYPD disproportionately targeted young Black and Latino males. In their investigation the authors found from 1986 to 2016 between 76% to 84% of all annual NYPD marijuana arrests were either black or Latino males. For more info see: http://qcpages.qc.cuny.edu/~hlevine/Marijuana_Madness__NYCs_Racist_Marijuana_Arrests

[iv] Lopez, German. 2015. "Those Maps Show the War on Drugs is Mostly Fought in Poor Neighborhoods*" Vox News*. Published April 16, 2015. Retrieved July 22, 2018. Link: https://www.vox.com/2015/4/16/8431283/drug-war-poverty

[v] I drew this from a conversation with a recently retired San Jose and Boston PD officer who said, "We never really cared about pot."…&" Even when I first started out, back when I was a young cop back in Boston if we were to pull in someone for being stoned, the old guys, they'd say, 'Why don't you go catch yourself a real criminal?'" Santa Cruz Roasting Company Notes June 12, 2022

[vi] One group, the Automotive Club of Southern California argued, "These efforts are immediately needed because AAA Foundation for Traffic Safety research shows that legalizing marijuana can have a dramatic impact on impaired driving in a short period," said Kathy Sieck, the Auto Club's senior vice president for public affairs, "The research showed that just one year after Washington state legalized recreational marijuana use, the percentage of drivers in fatal car crashes who had recently used marijuana more than doubled. American Automotive Association "Auto Club: Approval of Prop. 64 Creates Immediate Need to Ramp Up Traffic Safety Efforts" AAA Transport and Traffic Safety News Release
Link: https://news.aaa-calif.com/news/auto-club:-approval-of-prop-64-creates-immediate-need-to-ramp-up-traffic-safety-efforts

[vii] Fang, Lee, 2016, "Police and Prison Guard Groups Fight Marijuana Legalization in California" T*he Intercept*, May 18, 2016, Retrieved June 22, 2019, link: https://theintercept.com/2016/05/18/ca-marijuana-measure/

[viii] Associated Press. 2017. "We are overwhelmed: Some California police fear more crime with marijuana legalization" *Los Angeles Times*, Dec 27, 2017 https://www.latimes.com/local/lanow/la-me-pot-legal-police-20171229-story.html Retrieved June 12th,2020

[ix] Reynolds, Brandon R. "Meet the Main Man Fighting Against California's Prop 64" *Leafly.com* Oct. 26th 2016. https://www.leafly.com/news/politics/john-lovell-against-california-proposition-64#:~:text=That%20would%20be%20John%20Lovell,street%20from%20the%20state%20Capitol. Retrieved August 20th, 2020.

[x] Green, Lisa, "District Attorney Agrees: Vote no on Prop 64" Bakersfield.com. Published Sept. 30, 2016. https://www.bakersfield.com/opinion/district-attorney-agrees-vote-no-on-prop-64/article_6f78ae82-1eab-5305-8ca2-8c3ee8d53c1f.html Retrieved Sept. 3, 2020

[xi] This is according to Ralph. H Abraham (2018), UCSC professor of Mathematics and others in his book *Hip Santa Cruz 2: More First -Person Accounts of the Hip Culture of Santa Cruz California in the 1960's and 1970's* Epigraph Books Rhinebeck, New York.
[xii] Valerie Corral found marijuana treated her convulsions, epilepsy, and migraines produced from a car accident. The story is much more interesting and compelling, as is their role in the history of the medicalization of marijuana. She is an adviser to the National Organization for the Reform of Marijuana Laws (NORML) and narrates her own story on their website, here: https://norml.org/valerie-corral/
[xiii] This is according to two sources. First is the passage of AB397 in the California state assembly that requires, beginning January of 2022, the Annual Reporting of Criminal Conviction Data to the Department of Justice to include driving under the influence of cannabis. The bill's sponsor was Ed Chau from California's 49th district. The second source is the CHP's Impaired Driving Task Force, who was mandated by the passage of Proposition 64 to deal with impaired driving in California.
[xiv] January 2018, Office of Traffic Safety (OTS) notes.
[xv] Brewington, Karena. 2020. "Any is Too Many: Impaired Driving in Santa Cruz County" Capstone and Master's Thesis, California State University, Monterey Bay. Link: https://digitalcommons.csumb.edu/cgi/viewcontent.cgi?article=1972&context=caps_thes_all
[xvi] Montgomery, Mark R et al 1999 "Measuring Living Standards with Proxy Variables" *Demography*, Vol.37, No.2, Pg. 155-174. https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.230.7240&rep=rep1&type=pdf
[xvii] California Center for Rural Policy at Humboldt State University & the City of Santa Cruz. 2021. "The City of Santa Cruz Cannabis Equity Assessment". https://static.business.ca.gov/wp-content/uploads/2022/05/City-of-Santa-Cruz-Equity-Assessment.pdf
[xviii] Criminal Justice Statistics Center. 2021. *Crime in California.* California Department of Justice. Source: https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/Crime%20In%20CA%202021_0.pdf
[xix] Colorado Division of Criminal Justice: Department of Public Safety Office of Research and Statistics. 2021. "Impacts of Marijuana Legalization in Colorado: A Report Pursuant to C.R.S. 24-33.4-516" Published July 2021. Retrieved January 2nd, 2022 Link: https://cdpsdocs.state.co.us/ors/docs/reports/2021-SB13-283_Rpt.pdf
[xx] Colorado Division of Criminal Justice: Department of Public Safety Office of Research and Statistics. July 2021. *Impacts of Marijuana Legalization in Colorado: A Report Pursuant to C.R.S. 24-33.4-516* Link: https://cdpsdocs.state.co.us/ors/docs/reports/2021-SB13-283_Rpt.pdf
[xxi] Through the Washington State Commission's Coded Fatal Crash (CFC) Files outputs of data can be generated (and categories can be filtered out). Data for years prior to 2017 are unavailable as this was the year data collection on the matter began to be inserted into their database. The portal can be found on their website: https://wtsc.wa.gov/research-data/impairment/
[xxii] Center for Health and Safety Culture 2018 "Driving Under the Influence of Cannabis and Alcohol: Key Findings Report 2018 Survey" *Washington Traffic Safety Commission*. Published 2018. Retrieved October 20th, 2020. Link: http://wtsc.wa.gov/wp-content/uploads/2018/12/Driving-Under-the-Influence-of-Cannabis-and-Alcohol-Key-Findings-Report-from-2018-Survey.pdf
[xxiii] Washington Traffic Safety Commission. 2020. "Washington State Traffic Safety Annual Report" Published 2020, Retrieved May 3rd 222. Link: http://wtsc.wa.gov//wp-content/uploads/dlm_uploads/2020/08/FFY2020WashingtonAnnualReport12.17.20.pdf
[xxiv] Oregon Governor's Advisory On Driving Under the Influence of Intoxicants Committee July 2021, "Oregon Impaired Driving Strategy Plan" Link: https://www.oregon.gov/odot/Safety/Documents/GAC_DUII_IDSP_REV_05-18-21.pdf
[xxv] Transportation Safety Office. *Oregon Traffic Safety Performance Plan*. Fiscal Year 2022.Oregon Department of Transportation. https://www.oregon.gov/odot/Safety/Documents/2022PerformancePlan.pdf
[xxvi] Ariadna Capasso, Abbey M. Jones, Shahmir H. Ali, Joshua Foreman, Yesim Tozan, Ralph J. DiClemente. 2021. "Increased alcohol use during the COVID-19 pandemic: The effect of mental

health and age in a cross-sectional sample of social media users in the U.S." *Preventive Medicine*, Vol. 145 https://www.sciencedirect.com/science/article/pii/S0091743521000062

[xxvii] Bottom of Pg. 3. Oregon Governor's Advisory On Driving Under the Influence of Intoxicants Committee July 2021, "Oregon Impaired Driving Strategy Plan" Link: https://www.oregon.gov/odot/Safety/Documents/GAC_DUII_IDSP_REV_05-18-21.pdf

[xxviii] Oregon Governor's Advisory on Driving Under the Influence of Intoxicants Committee July 2021, "Oregon Impaired Driving Strategy Plan" Bottom of Pg.4, Link: https://www.oregon.gov/odot/Safety/Documents/GAC_DUII_IDSP_REV_05-18-21.pdf

[xxix] Below is the link to the report drawn from the Oregon Department of Transportation: Crash Statistics and Report. Link: https://www.oregon.gov/odot/Data/Documents/Crashes_Severity_Year.pdf

[xxx] In California, the DUI management information system (2017) report states DUI arrest data (in general) is subject to reporting errors, incorrect information, non-reporting, in particular, "in cases where a DUI arrest is made in conjunction with, for example, an auto theft arrest, that DUI will not be included in the database. This results in a slight but systematic underreporting of the numbers of DUI arrests annually." (Pg.5) It goes on to say information on DUI conviction rates, "are [also] subject to change since abstracts of conviction can be amended, corrected, or dismissed after the initial abstract of conviction is reported to DMV" (Pg.5). For the full report, it can be found here: https://www.dmv.ca.gov.portal/uploads/2020/05/S5-256.PDF

[xxxi] The Frye standard comes from the court case *Frye v. United States* that ruled expert testimony must be based on scientific methods sufficiently established and accepted by the scientific community. In this case, discussing the admission of systolic blood pressure deception test, the court ruled, "When the question involved does not lie within the range off common experience or common knowledge, but requires special experience or special knowledge, then the opinions of witnesses skilled in that particular science, art, or trade to which the question relates are admissible in evidence." *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)

[xxxii] They state, "Toxicologists are not able to provide expert testimony that a specific amount of THC present in a suspect's blood (or other specimen) is definitively associated with being impaired by marijuana and render the driver unable to drive safely." (Pg.28). Compton, Richard P. 2017. "Marijuana -Impaired Driving—A report to Congress" U.S. Department of Transportation, National Highway Traffic Safety Administration Office of Behavioral Safety Research. Link: https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf

[xxxiii] Huestis, Marilyn A. and Michael L. Smith, (2018) "Cannabinoid Markers in Biological Fluids and Tissues: Revealing Intake" *Trends in Molecular Medicine, Month Year, Vol. xx, No. 1304* https://www.cell.com/pb-assets/journals/trends/molecular-medicine/TRMOME%201304.pdf

[xxxiv] The DRE is an officer trained to detect physical, psychological, and fine-motor function irregularities in people suspected of driving under the influence drugs. This is elaborated in a chapter 5. For further information see California Highway Patrol website; https://www.chp.ca.gov/programs-services/for-law-enforcement/drug-recognition-evaluator-program

[xxxv] A report from the Colorado Department of Transportation (2020) found, "Many cannabis users are highly skeptical of the laws, policies and enforcement regarding driving impaired—and want credible, nuanced information." The report specifically mentioned respondents expressed a desire for more research on detection methods and guidelines for self-assessment of impairment. Colorado Department of Transportation, 2020, "The Cannabis Conversation FY 2020 Report from the Colorado Department of Transportation" For report: https://www.codot.gov/safety/impaired-driving/druggeddriving/assets/2020/cannabis-conversation-report_april-2020.pdf

[xxxvi] For the year 2016 the Colorado Department of Transportation (2020) screened 3,946 blood samples from 27,244 cases filed in court that charged a person with driving under the influence. They found 2,885 cases (or 73.2%) had positive cannabinoid screens and 47.5% had detected delta 9THC at .5 ng/mL or above. All this piece of information tells us is that about ¾ of those screened for DUI had consumed marijuana in the past month.

[xxxvii] The report cites this article on pg.34. The original article is Karschner, Erin L., Eugene W. Schwilke, Ross H. Lowe, W. David Darwin, Harrison G. Pope, Ronald Herning, Jean L. Cadet, and

Marilyn A. Huestis. "Do Δ9-Tetrahydrocannabinol Concentrations Indicate Recent Use in Chronic Cannabis Users?" *Addiction* 104, No. 12 (2009): 2041–48. The report link: https://www.codot.gov/safety/impaired-driving/druggeddriving/assets/2020/cannabis-conversation-report_april-2020.pdf

[xxxviii] The Colorado's Association of Chiefs of Police and the Police Foundation admitted, that the, "lack of clarity in the laws affecting medical and recreation marijuana has created significant challenges for Colorado law enforcement"(13) and concluded in a 2015 report that "until there is more clarification…law enforcement is working at a deficit…and Law enforcement leaders are just beginning to understand the related crime and disorder issues associated with legalized marijuana, and how to reduce them through ordinances, codes, policies, and partnerships" (31). A copy of the report can be found here: https://www.policefoundation.org/publication/colorados-legalization-of-marijuana-and-the-impact-on-public-safety-a-practical-guide-for-law-enforcement2/

[xxxix] Jennifer Kovaleski, 2019, "Bill to Change DUI Marijuana Impairment Laws Postponed, but Sparking Conversation" *Denver 7 News* Published Feb.12th 2019. Retrieved September 19th 2020: https://www.thedenverchannel.com/news/360/bill-to-change-dui-marijuana-impairment-laws-postponed-but-sparking-conversation

[xl] Luis Ferré-Sadurní 2021. "New York Reaches a Deal to Legalize Recreational Marijuana" *NY Times*, Published March 25, 2021. Retrieved March 25,2021. Link: https://www.nytimes.com/2021/03/25/nyregion/ny-legalize-marijuana.html

[xli] News 12 Staff, 2021. "Police chief: Legalization of marijuana concerning when it comes to keeping roadways safe*" News 12 Network* Published Mar 25, 2021, Retrieved March 25, 2021 Link: https://bronx.news12.com/police-chief-legalization-of-marijuana-concerning-when-it-comes-to-keeping-roadways-safe

[xlii] Michelle Rindels, 2021. "Bill Would Overhaul Marijuana DUI law, considered 'Unscientific' Predictor of Whether Driver is Impaired" *The Nevada Independent*, Published March 30,2021. Retrieved March 30, 2021. Link: https://thenevadaindependent.com/article/bill-would-overhaul-marijuana-dui-law-considered-unscientific-predictor-of-whether-driver-is-impaired

[xliii] Lowy, Joan. 2016 "AAA Study: 'No Scientific Basis' for Current DUI Laws on Pot" *Associated Press* Published May 10, 2016. Accessed, Nov. 25th, 2019. Link: https://www.kqed.org/news/10951606/aaa-safety-study-no-scientific-basis-for-current-dui-laws-on-pot

[xliv] KCPQ Fox 13 News, 2017. "'Not backed by science': Washington Still Struggles with Marijuana DUI Limit" Published July 20th, 2017. Retrieved July 20, 2019 https://www.q13fox.com/news/not-backed-by-science-washington-still-struggles-with-marijuana-dui-limit

[xlv] Col. Etue, Kriste Kibbey et al., 2019. "Report from the Impaired Driving Safety Commission" March 2019. Retrieved January, 2020. Link: https://www.michigan.gov/documents/msp/Impaired_Driving_Report_650288_7.pdf

[xlvi] California only requires law enforcement academies to provide eight hours of DUI training. Source: CHP's Report to Legislature Senate Bill No. 94 (January 2021) (Pg.36).

[xlvii] These meetings resulted in the publication of the CHP's Report to Legislature Senate Bill No. 94 (January 2021). It did not address required statutory changes but instead "recommendations will help shape future conversations and help policy makers and other traffic safety stakeholders appropriately focus resources and efforts in order to improve highway safety" (Pg.10). They made several recommendations regarding data, research, toxicology, education, law enforcement, generated from three subcommittee's: best practices; education and prevention; and technology, research and data.

[xlviii] Lyons, Jenna. 2017. "Some States Put a THC Limit on Pot Smoking- Here is Why California Doesn't" *San Francisco Chronicle* https://www.sfchronicle.com/news/article/Some-states-put-a-THC-limit-on-pot-smoking-12465013.php

[xlix] "How High is too High?" is a rhetorical question posed by an officer speaking to me of the difficulty detecting marijuana impairment at a Police community outreach event at UCSC. Notes 10/18/18

[l] One example, the Antinomian controversy, was a way to maintain stability of the local political order. Another example, the Quaker persecutions, was an aggressive xenophobic response to immigration.

Both instances were cases where New England society made clear to everyone, not just the deviants, what common interests and ideas the collective group shared. Through the marking and expulsion of deviants the identity of the group, the interest of the group, and the terms of order were laid bare to everyone.

[li] Newman, Tony & Papa, Anthony. 2016. "Top Adviser to Richard Nixon admitted that 'War on Drugs' Was Policy Tool to go After Anti War Protesters and 'Black People'" *Drug Policy Alliance* Press Release. Link: https://drugpolicy.org/press-release/2016/03/top-adviser-richard-nixon-admitted-war-drugs-was-policy-tool-go-after-anti

[lii] Hall et al. (1978) in *Policing the Crisis* show how England's "mugging" phenomenon of the 1970's was a complex but interconnected social construction by police, the courts, and the press. In the end the authors show that there was no rise in crime, only artificially created by the media's portrayal of black immigrants that played on the social anxieties of the population (nativism, economic insecurity, racial tension).

[liii] One example from Reinarman's (1994) piece is that of heroin and the ban of opium dens. Opium was used in medicine and medicinal ailments in the United States, but it was not until the Chinese brought the practice of smoking opium to San Francisco that it became a problem. It was also forgotten that this practice was violently forced onto the Chinese by the British opium trade.

[liv] Cannabis indica is native to the Indian Subcontinent and sought after as it is known to produce many (THC) crystals that interact with a person's endocannabinoid system and thus produces the pleasurable effects.

[lv] For an example on cocaine see Gootenberg, Paul. 2008. *Andean Cocaine: The Making of a Global Drug*. University of North Carolina Press.

[lvi] The author traces the early history of marijuana in California by comparing and contrasting mentions of marijuana in local newspapers of the time. Gierninger pieces together correspondences between bureaucrats, and overviews legislative proposals of the time with mention of marijuana or other synonyms (loco weed, hasheesh, cannabis sativa, cannabis indica, marihuana, etc). For example, the correspondence between members on California's Board of Pharmacy in Gierninger's (1990) article illustrate how the xenophobic viewpoint towards immigrants affected how they saw immigrants and marijuana. In 1911 one wrote, "Within the last year we in California have been getting a large influx of Hindoos and they have in turn started quite a demand for cannabis indica; they are a very undesirable lot and the habit is growing in California very fast; the fear is now that it is not being confined to the Hindoos alone but that they are initiating our whites into this habit."

[lvii] Becket (2016) has argued that since officer discretion cannot be done away with in the dispensing of law then, "municipalities would be well advised to implement alternatives to the war on drugs and broken windows policing." (Pg.77).

[lviii] Their piece outlines the steps of investigation, the discretion by of police in every step, and finds that a system of rational administration as posited by Weber is not efficient. In their comparison between Westville and Mountain City, Westville is more successful at investigating statutory rape because it taps welfare records.

[lix] They found patterns emerge; cops always defer slightly less to people in general, deference to cops was contingent on factors (generally the less as affluence with lower status defer to police, those with high affluence and status deferred less to police). I observed this in the field.

[lx] The primary way in which organizations and institutions impact police discretion is the "common sense' making of officers.

[lxi] Of interest was his insight that to "standardize" is not simply setting a standard but achieving that standard.

[lxii] The variables they list are: "department size, complexity of the department, and the racial and ethnic makeup of the officers, local crime rates, measures of socio economic status" (Pg.4) see: Nowacki, Jeffrey S., and Tyrell Spencer. 2019. "Police Discretion, Organizational Characteristics, and Traffic Stops: An Analysis of Racial Disparity in Illinois" *International Journal of Police Science & Management*, Vol.21, No.1, Pg. 4–16.

[lxiii] The authors agued "organizational perviousness serves as a central intermediary mechanism through which abstract law is translated into operational policy at the local level of implementation." (893).
[lxiv] Variables authors list are department size, complexity of the department, and he racial and ethnic makeup of the officers, local crime rates, measures of socio economic status" (Pg. 4) Nowacki, Jeffrey S. & Tyrell Spencer. 2019. "Police discretion, organizational characteristics, and traffic stops: An analysis of racial disparity in Illinois" *International Journal of Political Science & Management*. Vol. 1, Pg.4-16.
[lxv] His findings reveal "the limits of community policing and courtesy policing…The contradictory continuum of *mano suave-mano dura* (or soft hand-hard hand) produces an environment in which the practice of trust and relationship-building plays a subordinate role, while stop-and-frisk, surveillance, and information gathering become a dominant outcome." Rios, V. M., Prieto, G., & Ibarra, J. M. (2020). "Mano Suave–Mano Dura: Legitimacy Policing and Latino Stop-and-Frisk". *American Sociological Review*, Vol.85(1), Pg.58–75.
[lxvi] She writes, "The term "strategy" is not used here in the conventional sense of a plan consciously devised to attain a goal. It is, rather, a general way of organizing action (depending upon a network of kin and friends, for example, or relying on selling one's skills in a market) that might allow one to reach several different life goals. Strategies of action incorporate, and thus depend on, habits, mood, sensibilities, and views of the world (Geertz, 1973a). People do not build lines of action from scratch, choosing actions one at a time as efficient means to given ends. Instead, they construct chains of action beginning with at least some prefabricated links. Culture influences action through the shape and organization of those links, not by determining the ends to which they are put. Our Alternative model also rests on the fact that all real cultures contain diverse, often, conflicting, symbols, rituals, stories, and guides to action" (Pg.277).
[lxvii] Sierra-Arévalo, Michael. 2021. "American Policing and the Danger Imperative" *Law and Society Review* Vol. 55 No.1: Pg.70-103
[lxviii] Lande and Mangels (2017) note that prestige is associated with arrests that have elements of danger, that require force or physical coercion (Pg.90). Drugs, particularly in larger quantities, also were another mentioned arrest associated with prestige. I also observed this in the field.
[lxix] By style Black (2010[1976]) meant specifically: penal, compensatory, therapeutic, and conciliatory styles of social control.
[lxx] In this piece he looks at the structure of legal mobilization (proactive/reactive), legal intelligence (the knowledge a system has about law violations in its jurisdiction). The availability of law, the organization of discretion, and legal change. Manning, Peter & John Van Maanen. 1978. *Policing: A View from the Street*. Goodyear Publishing Company Inc.
[lxxi] Sudnow (1965) reasoned that, "the study of the actual use of official classification systems by actually employed administrative personnel regards the penal code as data, to be preserved intact; its use, both in organizing the work of legal representation, accusation, adjudication, and prognostication, and in compiling tallies of legal occurrences, is to be examined as one would examine any social activity." (255).
[lxxii] To win a cannabis cup, a strain must be considered "top shelf", containing within it certain principal qualities sought by consumers. Hugh McCormick, from the local *Good Times Magazine* wrote in October 2019, "The main indicators of top shelf and high-quality flower are smell, feel, look, and flower structure. For smell, the stronger the aroma of flower, the better. For look, a high-end bud will sparkle with a wide array of colors, boasting a surface magically coated with little glistening trichomes—gorgeous little crystal-like structures partly responsible for the plant's effects and flavor. If you carefully squeeze a bud between your fingers and it's slightly spongy or sticky, you've likely found top-shelf stuff. For more on marijuana, see: https://www.santacruz.com/news/high-time-guide-santa-cruz-cannabis-dispensaries.html
[lxxiii] I did not see any encounters or activity there as my ride along officer stayed within the city but was told it is part of their area of patrol.
[lxxiv] https://www.santacruzsentinel.com/2018/04/06/watsonville-pedestrian-injuries-and-deaths-rank-worst-in-state/

[lxxv] Interestingly, the Salinas PD has participated several times in the newer generation of police shows that mimics Cops of the 80's, 90's, and 2000's. Today the show is called Live PD and there are numerous clips online of Salinas officers followed by camera crew. The monthly report for crimes that are recorded by Salinas for the Uniform Crime Report (UCR) Program are published here: https://www.salinaspd.org/statistics/

[lxxvi] Salinas PD report: https://salinaspd.org/wp-content/uploads/2022/03/TAKE3FINAL_Print_2021-Annual-Report.pdf

[lxxvii] This person was not used as their experiences did not fit with the research but at the time I interpreted obtaining one respond due to my failure of not being able to incentivize participation due to lack of funding and working in an environment where students and staff alike were constantly being incentivized with one form or another of "light refreshments".

[lxxviii] I met nurses in the marijuana industry, dispensary owners, growers, lab techs, bud tenders, and the like. Sometimes when they asked about nearby parties, they would ask, "Where is the party *at*?" passing their thumb past their nose to give me a sign than to say flat out, "Do you know where there is cocaine?" At times they would ask me what I was doing afterwards, and if I wanted to, "kick it". I never took any up on their offers. I tried to recruit these people for interviews but had little success. I had conversations with two people; a juror and a man prosecuted for a marijuana DUI but could not secure a follow up interview with either.

[lxxix] No audio, video, or photo recording was done of the officers or the ride along. The names were all changed and *nom de guerres* were given and distinguishing features were altered. I explicitly told officers that they could pass on questions or topics they were uncomfortable or unwilling to respond to. For this reason, for some questions, many officers responded, for others, less so. Another part of this was the conditions under which the questions were asked, conditions of patrol varied greatly, and my clipboard and I were low on the priority of police on patrol. All original fieldnotes were destroyed and all electronic correspondences deleted from email. Additionally, great care was taken to always keep data under lock and key at campus. When individuals were met in public great care was taken not to reveal their role in this study.

[lxxx] In trying to learn the steps that police make in field sobriety tests I came across various PowerPoints, educational videos, and police handouts made available by various agencies: Santa Cruz Police Department, California Highway Patrol, National High Traffic Safety Administration, etc.

[lxxxi] Glaser and Strauss (1999[1967]) utilize negative cases to either seek to minimize the difference among comparison groups or maximize the difference among comparison groups so as to compare them on as many similarities and diversities (Glaser and Strauss 1999[1967]:56)

[lxxxii] One of various examples is a retired police officer that I sparked a conversation over field sobriety tests at a local coffee shop. Santa Cruz Roasting Company Notes June 12, 2022

[lxxxiii] One example, one of my last interviews was interrupted because there was a suspected shooter at a school. As we speeded through neighborhoods (and I heard the brakes clanking) he said, "you can keep asking questions". I said I would wait, knowing the chances of death to police and all pedestrians nearby rose exponentially as we sped with the sirens on to what turned out to be a prank.

[lxxxiv] This manual, the 2018 "Driving While Impaired (DWI) Detection and Standardized Field Sobriety Test (SFST) Refresher Instructor Manual Guide" as I just mentioned is approved by the International Association of Chief's of Police and NHTSA. Also, while most states and the DMV use the term DUI, NHTSA use the term DWI in their material. Terminology aside, they refer to the same act of impaired driving.

[lxxxv] This was the best evidence he could collect to ensure prosecution. This is not true, but it is presumed to be so by some police, and much of the public. Although I have met many people from all walks of life (users and nonusers alike) who have asked me with suspicion in their voice about the validity of blood in correlating with marijuana impairment. Both, it appears to me, understand either from direct experience or secondhand account the complexity of marijuana intoxication and its effect on people.

[lxxxvi] Another example is that of N.M., a former Sheriff and deputy and DRE training officer gave me a good question to pose to officers, *#29, "What is at stake for police with the legalization of marijuana?* It spurred a lot of conversations from respondents.

[lxxxvii] Stuart looked to catalog the strategies skid row residents used to avoiding police contact, he calls it learning "cop wisdom". Some methods he discusses are: showing signs of innocence and sobriety (such as standing up straight and having your hands out) and practicing informal social control (he calls this 'cooling off the block' and is referring to self-informal social control of the area of residents by telling people to not make too much noise or act in a manner that would attract attention. Book; Down and out and Under Arrest: Policing and everyday life in skid row.

[lxxxviii] Goffman, Erving, 1959. *The Presentation of Self in Everyday Life.* Garden City, NY: Doubleday

[lxxxix] Ervin Goffman, 1964. "The Neglected Situation" *American Anthropologist*, Vol. 66, No.6; Part 2. Pg.133-136.

[xc] For example, I asked a high-ranking officer if they had seen changes to marijuana arrests trends since legalization. I drew from his demeanor, gestures, comments, and tone that he was concerned I would use his comments against him in my writings. Here by his demeanor when pressing this question, I mean his outward behavior was mopey (listless and aimless) despite that he was the police chief in the midst of a big operation. His gestures were to kick a small pebble and put his hands in his pockets. And when tone was indifferent. His response was to take a deep breath, slouch his shoulders, and hedge his response by saying his expertise with marijuana was limited to this county. He avoided eye contact by looking towards a rock on the ground,.[xc] By comparing his behavior, demeanor, word, and input on the topics I inquired, I also was able to reflect about my engagement with research subjects as a researcher and noted how this question negatively affected the rest of our interactions. This exchange is from an unsanctioned event, "420", at the University of California, Santa Cruz. Notes 4/20/18

[xci] I thought of this after reading Barry A. Reynolds, MSM Leadership, Management, and Policing, "You can't legislate culture — here's how to really implement change" Published October 7th, 2020. Retrieved June 5, 2020. link: https://www.police1.com/chiefs-sheriffs/articles/you-cant-legislate-culture-heres-how-to-really-implement-change-sFIGUyQmSTPfYcTe/

[xcii] Geertz (1973) says, "The thing to ask is what their (human behavior) import is: what is it, ridicule or challenge, irony or anger, snobbery or pride, that, in their occurrence and through their agency, is getting said." (pg.315). Clifford Geertz. 1973. "Thick Discretion: Toward an Interpretive Theory of Culture" from *The Interpretation of Cultures: Selected Essays.* Basic Books, New York, NY.

[xciii] For example, one of the first calls of service I went to with police was to a motorhome parked near the Safeway. According to the officer the vehicle's owner had been illegally parked for days [a neighbor called because he was defecating in a bucket and throwing out on the sidewalk]. After informing him to move his vehicle, we pulled away and my ride along officer yelled out, out to someone out by name sleeping on the street and asking him "if he was clearing out", the man said "yes". The officer said, "and wake up your buddy too". This was one of many times I wondered if the message, and the manner the message was sent, was received by the civilian. Santa Cruz PD, R.A.#1(A1), 7/8/19, 7:30-11:30AM

[xciv] These terms I draw from chapter III of Glasser and Strauss's (1999[1967]) *The Discovery of Grounded Theory: Strategies for Qualitative Research* and understand them to be sources of knowledge from which other accompanying ideas or subjects can be drawn out.

[xcv] For example, "Pincher by name, pincher by nature" was the phrase spoken in British politics to refer to Chris Pincher when Boris Johnson was Prime Minister in England during the Covid Lockdowns. This referred to the fact that he was observed on CCTV groping his secretary. This joke alluding to the history of sexual misconduct the former deputy chief whip and a Tory MP in England is known for among politicians.

[xcvi] I want to thank my professor Craig Reinarman for providing this coinage of the term to refer to the limited bandwidth of attention officers have over the course of their shift. This idea of bandwidth used to refer to the maximum amount of data transmitted over an internet connection at a given time. Tristan Harris, a former Design Ethicist of Google, raises this issue of the "attention economy" of people in reference to society's social media addiction in the documentary The Social Dilemma (2020). I have also heard this phrase be used anecdotally among Silicon Valley engineers to refer to how much "bandwidth" (attention) they can borrow from another engineer to look at a particular code or data set.

[xcvii] I drew this from a conversation with a recently retired San Jose and Boston PD officer who said, "We never really cared about pot" and, "Even when I first started out, back when I was a young cop

back in Boston, if we were to pull in someone for being stoned, the old guys, they'd say, 'Why don't you go catch yourself a real criminal?'". Santa Cruz Roasting Company Notes June 12, 2022

[xcviii] Goffman says on the term "away": "At such times the individual may demonstrate his absence from the current situation by a preoccupied, faraway look in his eyes, or by a sleeplike stillness of his limbs, or by that special class of side involvements that can be sustained in an utterly "unconscious" abstracted manner—humming, doodling, drumming the fingers on a table, hair twisting, nose picking, scratching. (Incidentally, these fugue-like side involvements, as suggested previously, are also the ones that can convey that the individual has become carried far away by a meditative task he is performing.) In any case, reverie constitutes an eloquent sign of departure from all public concrete matters within the situation." (Pg.70)

[xcix] This is discussed later in chapter six, "Face Engagements", where Goffman outlines the way public order is maintained among strangers, and consequently, makes anonymous life a possibility in the city. For the term "civil inattention" he writes, "What seems to be involved is that one gives to another enough visual notice to demonstrate that one appreciates that the other is present (and that one admits openly to having seen him), while at the next moment withdrawing one's attention from him so as to express that he does not constitute a target of special curiosity or design. In performing this courtesy, the eyes of the looker may pass over the eyes of the other, but no "recognition" is typically allowed. Where the courtesy is performed between two persons passing on the street, civil inattention may take the special form of eyeing the other up to approximately eight feet, during which time sides of the street are apportioned by gesture, and then casting the eyes down as the other passes—a kind of dimming of lights. In any case, we have here what is perhaps the slightest of interpersonal rituals, yet one that constantly regulates the social intercourse of persons in our society." (Pg.83)

[c] Swidler (1968) also states that to her, "strategies are the larger ways of trying to organize a life (trying, for example, to secure position by allying with prestigious families through marriage) within which particular choices make sense, and for which particular, culturally shaped skills and habits (what Bourdieu calls "habitus") are useful." (Pg.276, footnote 9).

[ci] Santa Cruz Police Department (2015). "Annual Report". https://www.cityofsantacruz.com/home/showpublisheddocument/52906/636016010611270000

[cii] Scotts Valley PD, R.A.#1 (D1), 11/4/19, 7:00-11:20 PM

[ciii] For more information, see: Szydlowski, Joe. 2019. "Salinas police union passes vote of no-confidence in chief over staffing issues". *The Californian*, October 2019. https://www.thecalifornian.com/story/news/2019/10/07/salinas-police-union-passes-vote-no-confidence-chief/3900435002/

[civ] More information can be found in their latest annual report: Salinas Police Department. 2021. "Annual Report". https://salinaspd.org/wp-content/uploads/2022/03/TAKE3FINAL_Print_2021-Annual-Report.pdf

[cv] Scotts Valley Police Department Annual end of year Report (2021). Link: https://www.documentcloud.org/documents/22041406-scotts-valley-police-department-annual-report-2021

[cvi] Watsonville Police Department Annual Report (2021). Link: https://www.watsonville.gov/2444/2022-Annual-Report

[cvii] U.S. Bureau of Labor Statistics. 2022. *National Census of Fatal Occupational Labor Injuries in 2021*. Report USDL-22-2309. https://www.bls.gov/news.release/pdf/cfoi.pdf

[cviii] National Law Enforcement Officers Memorial Fund. 2023. *Causes of Law Enforcement Deaths.* March 24, 2023. Retrieved May 3, 2023. https://nleomf.org/memorial/facts-figures/officer-fatality-data/causes-of-law-enforcement-deaths/

[cix] Notes from Salinas PD, R.A.#1 (F1), 10/23/19, 3:00-6:45PM

[cx] I sought to find this term in police manuals but did not locate it.

[cxi] SANTA CRUZ PD Police Citizens Academy "Use of Force and De-Escalation" Notes 5/19/2022

[cxii] A more detailed outline of the philosophy, procedure, and reporting of use of force cases is found in the SANTA CRUZ PD policy manual, found here: Santa Cruz Police Department. 2017. "*Santa Cruz Police Department Policy Manual: Use of Force*". Policy 300. https://www.cityofsantacruz.com/home/showpublisheddocument/74814/637480545292670000

[cxiii] Notes from Santa Cruz PD, R.A. #3 (A3), 10/07/19, 8:00-11:00 AM
[cxiv] The following year I learned a Santa Cruz Sheriff deputy was killed in those mountains and several others injured, when he received a call about a suspicious van near Ben Lomond (where the call said they saw guns and bomb-making devices inside). For more information, see: "Deputy killed, 2 officers injured after being ambushed in Santa Cruz County". *ABC30 News*, June 7 2020. https://abc30.com/santa-cruz-shooting-ben-lomond-officer-shot-whats-going-on-in/6235547/
[cxv] On another patrol in Salinas, my ride along officer got a call regarding someone walking around Salinas High School with a gun. With only that information my ride along officer and I went to investigate. It turned out a student had made it all up. Upon leaving the school, my ride along officer said, "it happens sometimes", and we kept patrolling. Salinas PD, R.A.#1 (F1), 10/23/19, 3:00-6:45PM
[cxvi] Throughout the night I learned the driver had a baby, and her main concern was whether she could call her sister who had her child, and then later, to pick her up. It was her first DUI, and she was allowed to go home but had her car impounded. The driver had a red spaghetti strap and facial tattoos, very long brown hair and thin eyebrows done, almost as if they were tattooed on. The passenger had a tomboy/chola look: large baggy pants, an extra-large red and black squared shirt, and a beany. The Norteños gang is affiliated to the Nuestra Familia criminal organization, which was organized in the Fresno correctional facilities in the late 1960's and early 1970's.
[cxvii] They wanted her name, and it took time to get her to say her real name. In the end she spat on the sergeant's face. He did not like this and shoved her in the car as she struggled with both the sergeant and the female officer.
[cxviii] She did not injure anyone during the stop but we learned she kicked and injured an officer at the station.
[cxix] This phrase I learned from Santa Cruz PD J.T. at a Santa Cruz PD Citizens Academy Class. Notes Santa Cruz PD Citizens Academy Class 4/21/22
[cxx] The Constitution of the United States states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (U.S Const. Amend. IV, § 1).
[cxxi] As stated before, Sykes and Clarke (1975) studied the deference in police-citizen behaviors and hoped to explain police behavior based on sociological (normative) and interpersonal constructs using statistical analysis of participant observations. They tried to explain police behavior in terms of rules, which order their relations with civilians and are usually mutually acknowledged by both police and civilians.
[cxxii] Santa Cruz PD Police Citizens Academy "Use of Force and De-Escalation" Notes 5/19/2022
[cxxiii] Hemingway, E., 1945. "On the Blue Water: A Gulf Stream letter". *Esquire*, April 1936. It is notable that this same quote has also been the cause of some controversy regarding police officers, from a case in the 1990's when it was discovered that members of the NYPD Street Crimes Unit had the quote emblazoned on the shirts they wore on-duty, to as recently as March 2022 when the New York news source Gothamist released a photo of the quote painted on the wall of the Brooklyn police precinct. See: Offenharz, Jake. 2022. "NYPD precinct faces outcry for 'hunting of man' Hemingway quote". *Gothamist*, March 17. https://gothamist.com/news/nypd-precinct-faces-outcry-for-hunting-of-man-hemingway-quote
[cxxiv] The specificities of why this crime is overlooked by police or the contingent procedures that came with it: field sobriety tests, possible warrant write up to obtain blood & hospital visit to draw blood, written report, etc. and their steps, are the focus of the chapter 5 Police Understanding of Marijuana DUI's: "It's as clear as mud."
[cxxv] And if their own agency does not have a DRE officer available, they may call the California Highway Patrol for one if possible.
[cxxvi] It is important to agencies that the presence of order is visible, so they always have patrol divisions, even if they do not have a complete traffic division.
[cxxvii] Again, like much of policing this is conditioned based on what crime is happening around. For example, officer T.T. of Santa Cruz said the reason the Pred Pol Program failed was because it was

supposed to be useful for seeing where there were fires, and "if the whole city is on fire", it would not help. Santa Cruz PD, R.A.#1(A1), 7/8/19, 7:30-11:30AM

[cxxviii] Santa Cruz PD, R.A.#2 (A2), 7/16/19, 7:15-11:40AM(?)

[cxxix] Salinas PD, R.A.#2 (F2), 8/26/19, 10:00PM-2:20 AM

[cxxx] The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) is a commission created in 1979 by the four major law enforcement membership organizations: the International Associations of Chiefs of Police (IACP), the National Organization of Black Law Enforcement Executives (NOBLE), the National Sheriffs Association (NSA), and the Police Executive Research Forum (PERF). Its purpose was to improve law enforcement service. Developed by law enforcement professionals, they sought to professionalize law enforcement by creating a national standard, so agencies, training academies, communication centers, and other public safety agencies would be able to provide quality policing. When a police agency receives CALEA certification, it signifies to other law enforcement agencies that they are committed to excellence in law enforcement. To obtain CALEA certification an agency must meet administrative and operational benchmarks. For example, the Communication center (unit) must develop comprehensive written directives and have reports that meet certain standards set by CALEA, they must have a natural disaster plan, etc. For further information see their website: https://www.calea.org/

[cxxxi] The term "black letter law" was first used in the Supreme Court of Pennsylvania case Naglee v. Ingersoll in 1847. In that case, regarding the southern boundary of Mr. and Mrs.Camac's property, and their inaccessibility to waterfront property due to the diversion of a creek and construction of a public highway. Because of the diversion of water and the construction of a highway they lost access to waterfront property and the inheritors of Mr. and Mrs. Camac land claimed they owned the land below the low water mark. The inheritors of Mr. and Mrs. Camac did not have a claim, causing a lawyer to state, "the demurrers are not to be judged of by black-letter law, or even by cases shortly after the statute of Ann. The question on general demurrer is, whether the defense is so broadly set out, that issue may be taken upon it."(294). The lawyer was saying, in other words, that even if everything said by the inheritors of Mr. and Mrs. Camac was true, they are insufficient because the courts have so firmly established its fact that it is common law. This was key because the low water mark was commonly known at the time as the marker for rights. Judge J. Bell, in their opinion compares and contrasts the U.S. with England, in which he says, "In England, and in this country, the space between high and low water-mark on navigable streams belongs to the owner of the adjacent soil, and hence the right, within this limit, to set up a wharf, crane, or other contrivance, in a port-town, for the profit of the owner; for every man may make the most of his own; Hale de Portibus Maris, 77;
Cooper *v.* Smith, 9 Serg. & Rawle, 32. But the bed of a navigable river is there vested in the crown; and here, in the Commonwealth, for the use of the whole community, and no private man can challenge an individual interest therein. This is so familiar a principle, that I shall not stop to cite authority to sustain it…" (201). The case can be found here: Naglee v. Ingersoll, 7 Pa. 185 (1847). https://cite.case.law/pa/7/185/

[cxxxii] SANTA CRUZ PD Citizens Police Academy Class 5/11/22 Session #5 Traffic Stops/scenarios

[cxxxiii] This term I learned meant that the DA did not press charges. Scotts Valley PD, R.A.#1 (D1), 11/4/19, 7:00-11:20PM

[cxxxiv] SANTA CRUZ PD Police Citizens Academy "Use of Force and De-Escalation" Notes 5/19/2022

[cxxxv] On the Pacific Coast waterfront, work is organized by a number of principles that can be interpreted (and sometimes are by PMA officials, Pacific Maritime Association) as being subversive of capitalist values. Principles like equality are affirmed in the dispatch system and the pay scale. The principle of democracy is protected politically in the local's handling of its internal affairs *and* the dock. This principle is enhanced by the union's anti-hierarchical culture of subordination and its insistence on participating in promoting decisions. Principles like empowerment and self-actualization are also found on West Coast docks. These principles are embedded in the rotary dispatch, the reciprocation of personhood that occurs between longshoremen and their supervisors, and in the subsequent power longshoremen wield at work. Solidarity is yet another principle that is still found on the San Francisco waterfront. It is practiced in the longshoremen's political culture; their ethical codes give voice to it. (Wellman 1995; Pg.304)

[cxxxvi] In Willis's own words, he says, "Penetrations is meant to designate impulses within a cultural form towards the penetration of the conditions of existence of its members and their position within the social whole but in a way which is not centered, essentialist, or individualist." (Willis Pg.119) And he says of limitations, "Limitation is meant to designate those blocks, diversions and ideological effects which confuse and impede the full development and expression of these impulses." (Willis Pg.119)
[cxxxvii] I had heard them say it amongst themselves when I was with F.Y.—we had backed up T.T on a call of a possible "OD" (overdose) near downtown. But in my ride along with T.T. when I asked him, Q: What circumstances may prevent you from making a stop? T.T.: "When we have staffing shortages, or let's say you caught a case, that means you won't be able to back someone up. Sometimes you just gotta say (pause) FIFO." Q: What's that? T.T.: Fuck it, fight on". He said this embarrassingly, or begrudgingly, but I tried to visibly express understanding. I also heard this phrase in a police television show, Live PD, the 21st century's newer iteration of *COPS*, but could not find the clip.
[cxxxviii] Keyes, Vance DeBral. 2014. *A Thin Blue Line and the Great Black Divide: The Inter and Intra Departmental Conflict Among Black Police Officers, Their Agencies, and the Communities in which They Work Regarding Police Use of Force Perception By Black Americans in a Southwestern State.* Doctoral dissertation, Department of Conflict Resolution Studies, Nova Southeastern University (NSU). Retrieved from: https://nsuworks.nova.edu/shss_dcar_etd/28.
[cxxxix] "California Department of Justice opens needed investigation into troubled Riverside County Sheriff's Department". 2023. *Press Enterprise*, February 23. https://www.pressenterprise.com/2023/02/23/california-department-of-justice-opens-needed-investigation-into-troubled-riverside-sheriffs-department/amp/
[cxl] Castle, Cerice. "A Tradition of Violence: The History of Deputy Gangs in the Los Angeles County Sheriff's Department". *Knock LA.* https://knock-la.com/tradition-of-violence-lasd-gang-history/
[cxli]Byers, Christine et al. 2023. "Iron County Sheriff, other department members accused of helping man in alleged parental kidnapping scheme". *KSDK*, March 17. https://www.ksdk.com/article/news/crime/iron-county-sheriff-charges-kidnapping/63-7b475361-51b5-4d24-ab98-67d8b7d6693c?utm_source=fark&utm_medium=website&utm_content=link&ICID=ref_fark
[cxlii] Stinson Sr., P.M., et al. 2016. "Police Integrity Lost: A study of law enforcement officers arrested". U.S. Department of Justice, Final Technical Report. Link: https://www.ojp.gov/pdffiles1/nij/grants/249850.pdf
[cxliii] Sherman, Carter. 2021. "Cops Sexually Assault Women Way More Often Than Most People Think". *VICE*, June 10.Link: https://www.vice.com/en/article/m7e77y/sarah-everard-cops-sexually-assault-people?utm_source=reddit.com&utm_source=reddit.com
[cxliv] In a report by the Public Policy Institute of California (Lofstrom et al. 2019) on racial disparities in traffic stops. researchers found that traffics tops that lead to no enforcement (no enforcement/no-discovery) stops account for six percent of all traffic stops in California and seven percent of total office hours spent on traffic stops. This means this is not an insignificant number of police resources (and taxpayer money) spent that lead to no gains in safety and equity. https://www.ppic.org/publication/racial-disparities-in-traffic-stops/
[cxlv] Police officers I spoke to, specifically those I went on ride alongs with, talked at length about the difficulty of having friends or seeing people who were not in law enforcement on their time off. This is partly due to the organizing of their work schedules (patrol beats).
[cxlvi] T.T. from the Santa Cruz PD summed up his thoughts on why marijuana DUI's were unattractive to police by posing rhetorical question, "Is the juice worth the squeeze?" He explained, "It's (marijuana DUI's) not a huge priority, Santa Cruz (police department) is short staffed, and you may not want to get involved for several reasons. For starters, you don't want to screw over your partner that might need backup if you're focused for hours dealing with a DUI. That's one reason my wife doesn't make plans with me after a shift." The meaning behind the officers rhetorical question "Is the juice worth the squeeze?" illustrates that marijuana use is not worth police/officers' time, energy, or attention.

[cxlvii] He said, “Hey look, that would be a good case for your study.” Q, “What?” C.G., “Those guys back there were smoking weed (he said smiling and pointing back behind us).” Notes from Salinas PD, R.A.#1 (F1), 10/23/19, 3:00-6:45PM
[cxlviii] Alpert et al. (2004) studied how officers formed suspicion while driving on patrol and found in most of the cases, it was the behavior of the suspect(s) that concerned the officer. “Police formed suspicion any time an officer became doubting, distrustful, or otherwise troubled or concerned about an individual. In most of the cases, it was the behavior of the suspect(s) that concerned the officer. This concern did not always result in a stop of an individual or vehicle.”(Pg.i)
[cxlix] In that instance, the case was not picked up by the DA (no reason was given). Scotts Valley PD, R.A.#1 (D1), 11/4/19, 7:00-11:20PM
[cl] CA NORML Legal Seminar February 9, 2019
[cli] This is in the 2018 Driving While Impaired (DWI) Detection and Standardized Field Sobriety Test (SFST) Refresher Instructor Manual Guide session 6 Pg.15-18, found here: https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/sfst_full_instructor_manual_2018.pdf
[clii] An added instruction given to officers who are doing checkpoints is they should put their whole head in cars to see and smell more. I observed checkpoints set up by California Highway Patrol at UCSC and Live Oak. At the first UCSC checkpoint I observed, the commanding officer explicitly told them, “Get as many heads in (those cars) as possible.” UCSC 420 Notes April, 2019.
[cliii] In the 2018 Driving While Impaired (DWI) Detection and Standardized Field Sobriety Test (SFST) Refresher Instructor Manual Guide, being straightforward with civilians is not one of the interviewing techniques. The closest of the techniques is “asking unusual questions” Session 6, pg. 18, found here: https://www.nhtsa.gov/dwi-detection-and-standardized-field-sobriety-test-sfst-resources
[cliv] This is in the 2018 Driving While Impaired (DWI) Detection and Standardized Field Sobriety Test (SFST) Refresher Instructor Manual Guide session 6m pg.15-18, found here: https://www.nhtsa.gov/dwi-detection-and-standardized-field-sobriety-test-sfst-resources
[clv] However, in the question where I asked about the possibility of false positives, or their experience with false positive cases, they said that this slow response, or unexpected response could be caused by nervousness, a disability, age, or feeling intimidated, or any other range or reasons.
[clvi] My first ride along officer in San Diego told me this, and others later also mentioned these facts. The association has various courses on drugged driving, being a Narcotics specialized unit supervisor, and Basic Narcotics School. Their website has more information: https://www.cnoa.org/training/dar
[clvii] Santa Cruz PD, R.A. #3 (A3), 10/07/19, 8:00-11:00AM
[clviii] Capitola PD, R.A.#2(B2), 8/28/19, 5:00-7:30PM
[clix] Watsonville PD, R.A.#1 (C1), 10/1/19, 8:00-11:00AM
[clx] Santa Cruz PD, R.A.#2 (A2), 7/16/19, 7:15-11:40AM(?)
[clxi] Santa Cruz PD, R.A. #3 (A3), 10/07/19, 8:00-11:00AM
[clxii] Watsonville PD, R.A. #4 (C4), 11/1/2019, 3:00-7:00PM
[clxiii] Salinas PD R.A.#3 (F3), 11/13/19, 5:00PM-8:30 PM
[clxiv] Salinas PD, R.A.#3 (F3), 11/13/19, 5:00PM-8:30 PM
[clxv] Retrieved from: https://www.expertlawfirm.com/criminal-defense/dui/california-drunk-driving-information/hgn/
[clxvi] Salinas PD, R.A.#3 (F3), 11/13/19, 5:00PM-8:30 PM
[clxvii] Salinas PD, R.A.#3 (F3), 11/13/19, 5:00PM-8:30 PM
[clxviii] Capitola PD, R.A.#1(B1), 8/23/19, 8:45-12:20 AM
[clxix] Santa Cruz PD, R.A. #3 (A3), 10/07/19, 8:00-11:00 AM
[clxx] This was a public outreach event, Coffee with a Cop, at an upscale coffee shop where free coffee and donuts were handed out.
[clxxi] Much like Rios's (2020) study on policing practices in Oakland that revealed “contextual and situational contradictions between modern police attempts to establish legitimacy and the hegemonic practice of investigatory stops” officer’s strategies of action in my study hinged on similar contextual and situational factors. He seeks to reveals “the limits of community policing and courtesy policing…The contradictory continuum of *mano suave-mano dura* (soft hand, hard hand) produces an environment in which the practice of trust and relationship-building plays a subordinate role, while

stop-and-frisk, surveillance, and information gathering become a dominant outcome." Rios, V. M., Prieto, G., & Ibarra, J. M. (2020). "Mano Suave–Mano Dura: Legitimacy Policing and Latino Stop-and-Frisk". *American Sociological Review*, 85(1), Pg.58–75.

[clxxii] What they did like to do was help. Two said they wanted to help deal with crimes against women and children, another two said they liked gang-related crimes, others chose to skip the question, and one rookie female officer said, "unsure still, for now I like patrol".

[clxxiii] This was a public outreach event, *Coffee with a Cop*, at an upscale coffee shop where free coffee and donuts were handed out. Notes 10/18/18

[clxxiv] Sudnow defined these as "normal crime" as, "those occurrences whose typical features, e.g., the ways they usually occur and the characteristics of persons who commit them (as well as typical victims and typical scenes), are known and attended to by the public defender." Sudnow, David. 1965 "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office" Social Problems Vol. 12 No.3 Pg. 225-275

[clxxv] Corral, Amy, Stock, Stephen, Sanches, Jose. 2022 "Growing backlog of Bay Area court cases delays justice for crime victims and the accused" *CBS News*. Dec. 20,2022. Retrieved: Jan 4, 2023. Link: https://www.cbsnews.com/sanfrancisco/news/growing-backlog-of-bay-area-court-cases-delays-justice-for-crime-victims-and-the-accused/

[clxxvi] Reinarman (2011) studied this state of "cultural and legal limbo" in medical marijuana discourse. He suggests medical marijuana discourse is not uniform, and not a conceptually coherent alternative to criminalization, and concludes that "cannabis remains caught in a cultural and legal limbo in the US, entangled in conflicting webs of meaning from which it will not be easily extracted. The only thing safe to predict is increasing contestation." (Pg.183) Reinarman, Craig. 2011. "Cannabis in cultural and legal limbo: criminalization, legalization and the mixed blessing of medicalization in the USA" in Fraser, Suzanne and David Moore. 2011. *The Drug Effect: health, crime, and society.* Cambridge University Press.

[clxxvii] Her manager was also a potential respondent, who had actually been charged with DUI recently for driving high. However, in the two months I was in contact with him he could not, or would not, meet with me. This was an example of how grounded theory and snowball sampling in action.

[clxxviii] And as we learned from police officers in chapter 5, trick question is a part of the interviewing technique repertoire police are taught. For example, P .M. of Scotts Valley says he asks compound questions because people who are impaired (from any substance) will have delayed response time, and he pays attention not to the response, but to the quickness and ease with which people respond.T his is in the 2018 Driving While Impaired (DWI) Detection and Standardized Field Sobriety Test (SFST) Refresher Instructor Manual Guide session 6m pg.15-18, found here: https://www.nhtsa.gov/dwi-detection-and-standardized-field-sobriety-test-sfst-resources

[clxxix] Conversation w/ Nick Morrow July 9th 2020

[clxxx] These lawyers are based in Los Angeles, their website can be found here: HTTPs://potbrothersatlaw.com And tik-tok and Instagram are the current social media application of choice for Millennials and Gen Z.

[clxxxi] She said her boyfriend was given a ticket for speeding. At that time she told me he had a bong in a bong bag. She said the officer did not question him about the bag. I asked, "Was he high?" She replied, "Probably, yea if I had to guess."

[clxxxii] California's law on possession of marijuana for personal use, found in the Health and Safety Code section 11357 HS, was amended by proposition 64. California law since allows citizens to possess and transport up to 1oz of marijuana while medical marijuana patients are permitted 8 oz.

[clxxxiii] For example, in 2017 CHP officer Trista Drake told the Santa Cruz Sentinel, "It's not uncommon for us to find someone passed out in their car" from marijuana or other substances and that, "We are seeing an increase of drugs and we expect it to continue, especially with (recreational) marijuana sales being legal the first of the new year." Source: https://www.santacruzsentinel.com/2017/12/26/santa-cruz-county-patrol-officers-prepare-for-rise-in-cannabis-related-duis/ However, the latest firm numbers for the state of California from the DMV's annual report of the California DUI management information system (2020) states the DUI arrest rate per 100.000 from 2008 to 2018 fell consistently from 906 per 100,000 in 2008 to 470 per 100,000 in 2018. In Santa Cruz County, Mary Mason and

SUDS have found impaired driving on the road is most attributed to: prescription pills, alcohol, using the phone, and driving tired are a more serious concern for them.

[clxxxiv] This applies only to Santa Cruz County, as they all spoke of their experience here, although one compares his time as a lawyer in Monterey County and Santa Cruz County.

[clxxxv] Conversation with Nancy De la Peña May 10th, 2019

[clxxxvi] Conversation with Lawyer Ben Rice 2/25/19

[clxxxvii] The notes for this conversation were lost when my computer crashed but this snippet was taken from a previous version of this chapter.

[clxxxviii] Notes from Scotts Valley PD, R.A.#1 (D1), 11/4/19, 7:00-11:20PM

[clxxxix] This use of plea bargaining is well known tool used by prosecutors to provide them with the flexibility to deal with administrative necessities of the court system. Wright, D.B., 1984. "Plea Bargaining- A Necessary Tool" *Connecticut Law Review* Vol: 16 Issue: 4 https://www.ojp.gov/ncjrs/virtual-library/abstracts/plea-bargaining-necessary-tool

[cxc] Johnson, Thea. 2023 "2023 Plea Bargaining Task Force Report." *American Bar Association:* Criminal Justice Section. Link: https://www.americanbar.org/content/dam/aba/publications/criminaljustice/plea-bargain-tf-report.pdf

[cxci] This was also in reference to the changes that occurred due to the COVID 19 pandemic. Police Citizens Academy Class 4/20/22

[cxcii] Talk with Judge Banks 5/12/21

[cxciii] For more, information on the program, see the County of Santa Cruz Website. Link: https://www.santacruzhealth.org/HSAHome/HSADivisions/BehavioralHealth/SubstanceUseDisordersServices/DeferredJudgmentDrugProgram.aspx

[cxciv] More information can be found in their website: https://www.co.monterey.ca.us/government/departments-a-h/district-attorney/drug-treatment-court

[cxcv] Recall the story mentioned in chapter four case study of the combative woman that was affiliated to the Norteños gang who went to jail for fighting police and her friend who was released despite driving under the influence.

[cxcvi] The judge did throw the book at him: he suspended his license, said he must submit himself to police searches and blood tests, told him he is not allowed to drive other than to work for five years, must attend twelve step meetings and nine months in classes, must have an interlock device for one year, and was ordered to spend thirty days in jail. Bert told me they charge people to have interlock device in their cars, and that it is about $60-$70 monthly in addition to installation fee's. It's $2000 for the DUI charge itself, but around $10,000 for including all the additional costs ($150 tuition fee, $40 conviction fee, $40 facility fee, amongst others). Notes from: Salinas Courtroom Notes #1 June 2021

[cxcvii] Black wrote, "we may propose that whenever there is comparatively open conflict between an authority system and those subject to it, practice legal systems will tend towards desuetude and there will be pressure for greater use of the proactive control strategy." (Black (2010[1976]): Pg.55)

[cxcviii] By style Black (2010[1976]) meant specifically: penal, compensatory, therapeutic, and conciliatory styles of social control.

[cxcix] York, Jessica. 2021 "Santa Cruz man to stand trial in county analyst's death" Date published February 10, 2021. Retrieved April 3,2022 https://www.mercurynews.com/2022/01/20/santa-cruz-man-sentenced-to-prison-for-vehicular-manslaughter/

[cc] These concerns over edibles on the road have been voiced by most police officers I have spoken with in my research.

[cci] To read this dissenting opinion, please see the Supreme Court's website. 594 U. S. ____ (2021) Statement of Thomas J. Standing Akinbo, LLC et al. v United States. The link is provided here: https://www.supremecourt.gov/orders/courtorders/062821zor_6j37.pdf

[ccii] Black said, "the reluctance of citizens to mobilize law is so widespread, indeed, that it may be appropriate to view legal inaction as the dominant pattern in empirical legal life (pg.48) (In *Policing: View From the Street* Peter Manning 1978).

[cciii] The first mention of marijuana in the British colonies was in a 1619 Virginia law that stated hemp had to be grown on every farm as it was key to building a variety of materials including rope, paper,

and cloth. For more info see: Barney Warf. 2014. “High Points: An Historical Geography of Cannabis” *Geographical Review*, Vol.104, Issue 4, Pg.414-438.

[cciv] In chapter one I mentioned how Bonnie and Whitebread (1999) looked at how marijuana laws were used to control unwanted groups like immigrant and other minorities in the early 20th century. Part of that process was omitting history, or rewriting it.

[ccv] Researchers of the endacanibinoid system in humans have found marijuana is a complex plant with many compounds that may have opposing effects on the body and brain in humans. Even though there is only one cannabis breed, cannabis sativa L., the plant adapts well to its environment and climate, and can produce up to 100 endacannabinoids—but the two main ones are delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD). In nature, cananbinoids (like THC) are released to make the plant unattractive to insect herbivores, prevent of overheating, defend against the cold, and to attract pollinators. It also can produce up to 100 terpenes. These terpenes are what give distinct smells in pine, lemon, and lavender. This partially explains why plants can look different and have wildly different effects on people. I spoke with various workers in the marijuana industry who also suspect the current classification system for marijuana consumers (sativa, indicia, and hybrid) does not accurately represent the variety of marijuana strains (types) and the effects dispensaries or distributors claim to have. For further reading on the marijuana plant, read Zerrin Atakan’s, 2012. “Cannabis, a Complex Plant: Different Compounds and Different Effects on Individuals.” *Therapeutic Advances in Psychopharmacology* Vol.2, No. 6: 241–54.

[ccvi] Schlepp, Travis. 2023. “LAPD may no longer send armed officers to these police calls” *KTLA 5*, Feb 28, 2023. https://ktla.com/news/local-news/lapd-may-no-longer-send-armed-officers-to-these-police-calls/

[ccvii] In Illinois, Senate Bill 125 would make it so "the odor of raw or burnt cannabis by itself would no longer constitute probable cause for searching a driver or their passengers," according to State Senator Rachel Ventura. She said, "People – especially people of color – are unnecessarily pulled over far too often," and "The odor of cannabis alone shouldn't be one of those reasons. Cannabis is legal in Illinois, and it's a pungent scent that can stick to clothes for extended periods of time." Fox 32, 2023. “Illinois bill would bar police from searching vehicles over marijuana odor” *Fox 32 Chicago*, March 30, 2023 https://www.fox32chicago.com/news/illinois-bill-bar-police-searching-vehicles-marijuana-odor