

**Selective Enforcement of Drug Laws in Cuyahoga County, Ohio: A
Report on the Racial Effects of Geographic Disparities in Arrest
Patterns**

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This report sets out to describe the problem of disparities in law enforcement charging decisions in possession of controlled substances¹ and possession of drug abuse instruments² cases as a function of local jurisdiction within Cuyahoga County. As will be illustrated in this report, there is evidence that the differential enforcement by geographic location results in African-Americans and other minorities being disproportionately charged with felony drug possession within the county, since Cleveland Police officers are apparently much more likely to charge low level drug offenses, including possession of drug instruments containing drug residue, as drug possession felonies than their county peers. Because the city population is majority nonwhite, whereas the surrounding county population is overwhelmingly white, the differential enforcement practices disproportionately impact the non-white population of the county. Existing anecdotal evidence also raises the question of whether the predominant “residue” kinds of cases that are being pursued as felonies, both by law enforcement and the county prosecutor’s office, are those involving crack pipes, even though other kinds of drug users who possess paraphernalia with trace amounts of drugs in them reside within the county.

The report will proceed in three sections. I will begin by describing in detail what is known about this apparent disparity; that is, that those possessing drug abuse instruments are more likely to be charged with felony drug possession when arrested by the Cleveland city police, compared to those who live in the Cleveland suburbs under the jurisdiction of other local law enforcement agencies. In an effort to provide context for this problem, I will then provide a demographic description of the county and its major city, Cleveland, both in

¹ 2925.11 of the Ohio Revised Code, a felony unless less than 200 grams of “marihuana” or less than 10 grams of hashish.

² 2925.12 of the Ohio Revised Code, a misdemeanor.

terms of the general population and in terms of what is known about drug users and arrestees in the region. I conclude the report by laying out a proposed research agenda that will aim to more systematically document whether disparate patterns of drug law enforcement within the county exist, and if they do exist, the extent and characteristics of the disparities.

The arrest disparity problem:

In his final Grand Jury report, the foreman on the September term 2001 Grand Jury, Reverend Marvin McMickle, raised general concerns about the number of drug possession cases that were being brought to the Grand Jury for felony indictment, and questioned the wisdom of prosecutors' pursuit of such cases as felonies. He specifically raised the issue of race in how drug possession cases were being pursued, suggesting that although the county's population was majority white, the low level drug defendants in the cases presented to the Grand Jury were primarily African American and Hispanic. This concern was amplified for Reverend McMickle by his observation that by and large, the prosecutors, police, and grand jury members who were responsible for pursuing and authorizing the felony charges were predominantly white.

He commented that many of the cases presented to the grand jury involved "some infinitesimal amount of drugs," yet the consequences of the felony arrest and prosecution were both quite serious for the defendant and generally ineffective in stopping the drug problem (see McMickle report, Appendix A, page 2). Reverend McMickle did not specifically voice concerns that the lowest level cases, such as possession of crack pipes being charged as felony drug possession, were coming out of the city rather than the

county, however he clearly highlighted possibility that the racial disproportionality in who was being indicted was Cuyahoga County's "own brand of racial profiling."

(McMickle report, page 3, Appendix A).

A year later, grand jurors who sat on the 2002 September term Grand Jury concluded their service with another report that was critical of the indictment process. Their chief concern was that they felt "unfairly pressured" by prosecutors to issue indictments, even if they did not feel the evidence warranted it (see Hiaasen and Turner article, 1-16-03, in Appendix A). This report echoed McMickle's concerns about the high volume of low level drug offenses that were brought for indictment, particularly the cases brought with only "trace" amounts of cocaine present. The author of the September 2002 report referred to the underlying laws that allow for such prosecutions as "draconian."

In the spring of 2003, the issue of charging defendants in low level drug offenses with felonies again surfaced in the context of May term Grand Jury. In this instance, Judge Burt Griffin, who was responsible for giving the Grand Jury Charge to that body, included several controversial instructions to which the Cuyahoga County Prosecutor William Mason objected. One of the instructions that the prosecutor found objectionable specifically suggested that crack pipe possession cases coming out of the city of Cleveland were charged as felonies, whereas the same cases in suburban jurisdictions were not. As Judge Griffin's instructions worded it:

The most challenging decision you may have to make concerns cases involving what we call crack pipes.

A "crack pipe" is a glass or metal tube used to smoke crack cocaine. The pipe is usually fitted with a substance you may have in your own kitchen—

Chore Boy—to hold the crack cocaine. When the tube has cocaine residue in it, possession of that tube may be charged either as the misdemeanor of possessing a drug abuse instrument or possession or use of the drug itself. To prove the crime of *possession of the drug* in the tube, the State must prove beyond a reasonable doubt that the defendant knew that the residue in the tube still contained cocaine.

To prove that the defendant knowingly *used cocaine* where a crack pipe is the only evidence, the State must prove beyond a reasonable doubt that the defendant had actually used the pipe. It is not proof against the defendant that someone else had used the pipe or that the defendant intended to use the pipe to smoke crack cocaine.

Crack pipe cases may or may not pose those evidentiary issues, depending upon what other evidence exists. The reason that I suggest to you that these crack pipe cases are challenging is that they involve what I will call “differential prosecution” throughout the State of Ohio and in Cuyahoga County. For example, in many counties in Ohio, possession of a tube with cocaine residue is not prosecuted as the felony of possessing or using cocaine but as the misdemeanor of possessing a drug abuse instrument. Indeed, some courts have held that mere possession of a pipe with cocaine residue is not a felony.

You *may* notice that your Grand Jury is being asked only to prosecute these crack pipe cases as felonies when the arrest has been made in the City of Cleveland. That is because few, if any, of our suburbs bring these matters as felony prosecution. They are prosecuted in the suburban municipal courts.

Just as the police and local suburban prosecutors and prosecutors in other counties have decided that the misdemeanor prosecution is more appropriate for crack pipe cases, you may also make that decision if you

believe that justice so requires that they be prosecuted as misdemeanors.
(Grand Jury Charge, May Term, 2003, pages 7-8; see Appendix A)

Judge Griffin went on to remind the jurors that a felony indictment was a “serious event in any person’s life,” so they should use their discretion in making those decisions, yet he also assured them that he was not attempting to tell them what to do. The county prosecutor, William Mason, immediately moved to disband this Grand Jury panel based on these and other instructions that Judge Griffin had read to the panel. The Grand Jury members, as well as Judge Griffin, challenged Mason’s authority to dissolve the panel, and the challenge eventually ended up in the state Supreme Court for resolution. Ultimately the Grand Jury’s term was almost fully aborted as the case proceeded through a number of hearings. The May 2003 term Grand Jury heard one day’s worth of cases at the very end of their term, once the Mason challenge was resolved following a number of legal machinations and negotiations (see Phyllis Crocker’s Grand Jury report and her Ohio State Journal of Criminal Law article in Appendix A for more details on this process).

In the January 2006 Grand Jury term, a retired Cleveland Municipal Court judge, C. Ellen Connally, was appointed foreperson. Judge Connally wrote a concluding report that addressed a number of concerns about the general Grand Jury process, including, specifically, the apparent geographic disparity in terms of who was being indicted in crack pipe cases. She first echoed concerns raised by Foreperson McMickle in his September 2001 term Grand Jury report regarding the racial composition of the prosecutors, court staff, and county law enforcement personnel who interacted with the Grand Jury (see page 7 of the Connally Grand Jury Report, in Appendix A). She also expressed concern about prosecutors’ pattern of over-indicting, particularly in drug cases.

Her deepest reservations, though, appeared to be related to the charging of crack pipes as felonies. As she put it in her report:

I served on the Grand Jury for four months. During that four months period I never saw a crack pipe case from a suburb. Only Cleveland police brought in cases for possession of a crack pipe. No one will ever convince me that the possession of crack pipes stop[s] at the borders of Cleveland.

Crack pipes come into the system in four ways. The vast majority seem to come in through traffic stops where the pipe is retrieved during the arrest or incident to a search of the vehicle. Others are the result of some observed unlawful conduct or suspicion thereof and the resulting pat down and arrest. Many come in as a result of a buy/bust sting conducted by the police. Finally many such cases come in when police enter a residence or hotel room and find the crack pipes, almost always in plain view. I got the impression that in many cases police go out and essentially “shot fish in a barrel.” They know the so called ‘high drug areas’ so they go to the locations, pick up a couple of crack uses, arrest them, get an indictment and conviction, get some overtime, keep the crime statistics up and repeat the same cycle. (Connally Grand Jury Report, pp. 10-11, Appendix A)

She reported that after three weeks of service, she could no longer in good conscience follow her oath as a Grand Jury member as it pertained to the crack pipe cases. Therefore, she recused herself from those cases for the remainder of her four month term. In her discussion about her reasoning leading up to the recusal decision in these cases, she reiterated her concerns about the geographic dimension of the crack pipe cases, and further raised the racial impact of these prosecutions:

[T]he vast majority of these cases involved African American residents of the inner city. Not one suburb brought in similar charges. Again, possession of crack pipes does not end at the border of Cleveland. If it is a felony in Cleveland to possess a crack pipe, it should be a felony in West Lake, East Lake and every other suburb. Other jurisdictions charge possession of crack pipes as possession of drug paraphernalia, a misdemeanor of the first degree for which the person can receive up to six months in jail. In addition, there is a driver's license suspension in connection with the charge. It is a serious offense. But residents of Cleveland are not allowed the opportunity to avoid a felony conviction. They receive a felony indictment and if convicted will suffer the stigma of a felony conviction and the numerous collateral sanctions that go along with the conviction for the rest of their lives. (Connally Grand Jury Report, pp. 11-12, Appendix A)

Thus, over at least a 5 year period, there have been several well situated people within the county court system who have raised serious concerns about the general law enforcement and prosecution practices as they relate to drug cases in Cuyahoga County. There is some consensus that the county is overzealous in pursuing low level cases as felonies, that this overzealousness seems to be happening primarily or exclusively in cases that originate within the city of Cleveland, and that there are racially based inequities that exist within the county's criminal justice system. It appears that the handling of crack pipe cases is at the core of these concerns, and it is notable that there have not been any issues raised about how other drug instrument cases (i.e., syringes) are pursued.

Judge Connally's report raises one possible motivation for the local jurisdictional differences in the charging decisions; that is, that police officers in Cleveland earn overtime for their court appearances, thus can financially gain at a personal level by charging such cases as felonies. This potential motivating factor for the felony crack pipe charges was

reiterated to me by another judge, who indicated that officers earn 4 hours of overtime pay for court appearances (presumably outside of their normal shifts). Since most misdemeanor cases do not require the appearance of the citing officer,³ yet in felony cases, officers are routinely called to court in case they are needed to testify, the charge as either a felony or a misdemeanor does indeed have an impact on how much overtime is necessary for court appearances. In this case, Cleveland police officers are paid to show up to court in the felony cases, even though they rarely end up testifying since the majority of cases settle early on in the adjudication process. Furthermore, given that felony drug cases reportedly comprised a significant share of the grand jury's time, there is reason to believe that such cases result in considerable overtime pay for Cleveland officers.

The most recent collective bargaining agreement between the city of Cleveland and the Cleveland Police Patrolmen's Association (CPPA) bears this out. Article XI of the most recent contract, effective April 1, 2001, mandates that officers who are called to court at times when they are not scheduled to work get paid one and one half times their regular hourly pay for a minimum of three hours, or a minimum of four hours for 3rd Platoon officers—the night shift—who are scheduled to work that day. The contract also authorizes an additional shift of officers to overlap the second and third platoons, between 7:00 PM and 3 :00 AM in the winter and 8:00 PM and 4:00 AM in the summer since those are the peak hours for police. Presumably, then, given the added shift of police officers on duty during non-court hours and the added police activity during those hours, a majority of the police in the city, in any given week, are eligible for the overtime pay when required to appear in court.

³ In the majority of cases, misdemeanors are resolved in municipal court at the first court appearance, with the defendant appearing without representation and pleading guilty or no contest to the charges.

On the flip side, there may be a counterincentive to keep the drug instrument possession cases in the county municipal courts as misdemeanors. Like a number of municipalities, local jurisdictions in Ohio have expanded the criminal law through municipal codes.⁴ In most places in the U.S., the new municipal codes aim to criminalize behavior that is deemed to compromise the “quality of life” within the locale, so such laws will specifically, for instance, target certain behaviors in defined public spaces like parks and libraries, regulate people congregating in certain areas of the city, and ban “nuisance” behaviors that may deter tourists and/or retail customers from frequenting business districts. These laws typically supplement the state code, and are specific to the local municipal jurisdiction.

Yet, in many parts of Ohio, cities and townships have written full criminal misdemeanor codes that mimic almost exactly the state penal code. Thus, numerous municipalities have adopted a single version of the code regulating drug offenses that is taken almost verbatim from the state code. For instance, of the approximately 140 municipal codes from Ohio that are available on the internet,⁵ nearly all of them have an entire Part devoted to criminal offenses. Within the “General Offenses” Part, there is generally a chapter specifically addressing “Drug Abuse Control.” This is typically, but not always, Chapter 513 of each of these individual municipal codes, and each of these chapters generally includes about twelve specific drug violations that read almost word for word as does the state code. By bringing these violations into the municipal code, each jurisdiction can then collect the fines (which are held to a maximum of \$1000 per

⁴ See Wayne Logan, *The Shadow Criminal Law of Municipal Governance*, 62 *Ohio State Law Journal* 1409, for more on this process.

⁵ Please see <http://www.conwaygreene.com/municipalCodes.htm> for examples.

first degree misdemeanor for individuals and \$5000 per first degree misdemeanor for organizations) on top of the court costs, and keep that revenue local. While misdemeanors can be charged under either the state penal code or the municipal code, with identical potential penalties, if they are charged under the state code, fines go to the county, but under the municipal code they go to the city. Felony charges do not afford that potential fiscal benefit to the local jurisdictions since felonies are handled in the county level courts. So it appears that there may be a financial incentive within municipalities to charge misdemeanors under the municipal code in cases that could conceivably be charged either as a felony or misdemeanor.

Of course this raises the question of why the city attorney's office in Cleveland does not also experience local political pressure to file misdemeanor charges in the low level cases for the benefit of the city coffers. Cleveland's municipal code does indeed include the same range of drug offenses as the other municipal codes around the state,⁶ yet according to a member of that city attorney's office, when the low level drug cases get brought to the city attorney's office with the police recommendation for felony charges, that office generally just processes them through to the Cuyahoga County Court of Common Pleas for felony indictment. The police union may be a sufficiently powerful political constituency to counteract any fiscal pressure to pursue the bulk of the crack pipe cases as misdemeanors.

While it appears that the potential explanations for the disparity in charging decisions by local jurisdiction are non-racial in nature, there is a differential racial impact of such practices. As I will illustrate in the following section, due to the demographics of

⁶ Please see http://caselaw.lp.findlaw.com/clevelandcodes/cco_part6_607.html to illustrate.

the city of Cleveland and the surrounding county, minorities are much more likely to bear the brunt of the felony overcharging than are Whites within Cuyahoga County.

Furthermore, since it appears from the anecdotal evidence that the practice of charging possession of drug instruments as felony drug possession is primarily occurring in cases involving crack pipes, there may be some racially influenced enforcement discretion at issue within the city and county.

Demographics and drugs in the city and county:

Cuyahoga County has been steadily shrinking in size since 1970, when it reached its peak population of 1,721,300. The city of Cleveland has had a more dramatic and sustained pattern of population loss, beginning in 1950 when the population peaked at above 900,000 residents; by 2000, the city was just over half that size. A significant impetus of the population loss in this region has been the decline of manufacturing industries, which has resulted in fewer good paying jobs and high unemployment rates relative to other American urban settings. Within the county, there has been a notable shift of population from the city to the surrounding suburbs over the past several decades; the flight from the city limits has been disproportionately of Whites, so Cleveland has become increasingly non-white in population.⁷

According to the 2000 U.S. Census data, Cuyahoga County had a total population of 1,393,978. Of that population 69% identified as White, 27% identified as Black/African-American, 2% identified as Asian/Pacific Islander and the remainder identified as other races. More than one third (478,403) of the county's population lived

⁷ Source: Cleveland City Planning Dept., http://planning.city.cleveland.oh.us/cwp/pop_trend.php

within Cleveland city limits in 2000, and the majority of the remaining population lived (and continues to live) in the inner and outer ring suburbs to the city. Demographically, the city has a much higher minority population than the county as a whole: As of the 2000 census, 51% of Cleveland's residents were Black, 43% were White, 2% were Asian/Pacific Islander and the remainder identified as other races. The county's racial composition outside of the city of Cleveland was thus overwhelmingly white, in that Whites comprised 82% of the county population outside of the city limits in 2000. In contrast, Blacks comprised only 15% of the non-Cleveland county population.⁸

Within the city of Cleveland, there continues to be significant segregation, with African-American residents concentrated on the Eastside and White and Latino residents on the Westside. When one looks at a breakdown of where police make a significant portion of their drug arrests within the city, it is predominantly within neighborhoods on the Eastside. In the case of drug enforcement, due to the highly discretionary nature of identifying and arresting drug offenders, this indicates, at least in some part, a policy decision on the part of the Cleveland Police Department to concentrate a significant share of its law enforcement resources within certain sections of the city. So not only are city residents as a whole more likely to be subject to felony charges on low level drug instrument cases than their suburban counterparts, but within the city, those areas that have the highest percentages of African-Americans are especially likely to be subject to police surveillance and arrests.

For example, work conducted by two researchers, William Sabol and Kristen Mikelbank, at Case Western Reserve's Center on Urban Poverty and Social Change,

⁸ Sources: NEO CANDO (<http://neocando.case.edu/cando/>); US Census, 2000.

examined the demographic and geographic trends in drug dealing within the city between the years of 1990 and 2001.⁹ Their research indicates that while drug arrests occurred in almost all of the census tracts within Cleveland, they were most concentrated in several areas along the eastern side of the city. The two neighborhoods with persistently high drug arrest rates from 1990-2001 were Mt. Pleasant and Forest Hills. According to this research, the predominant arrest method utilized by the Cleveland police is “buy-bust” methods as well as periodic sweeps of known drug use sites within the city (i.e., “crack” houses), indicating that the arrests are made as a result of police decisions to seek out drug offenders in those areas.

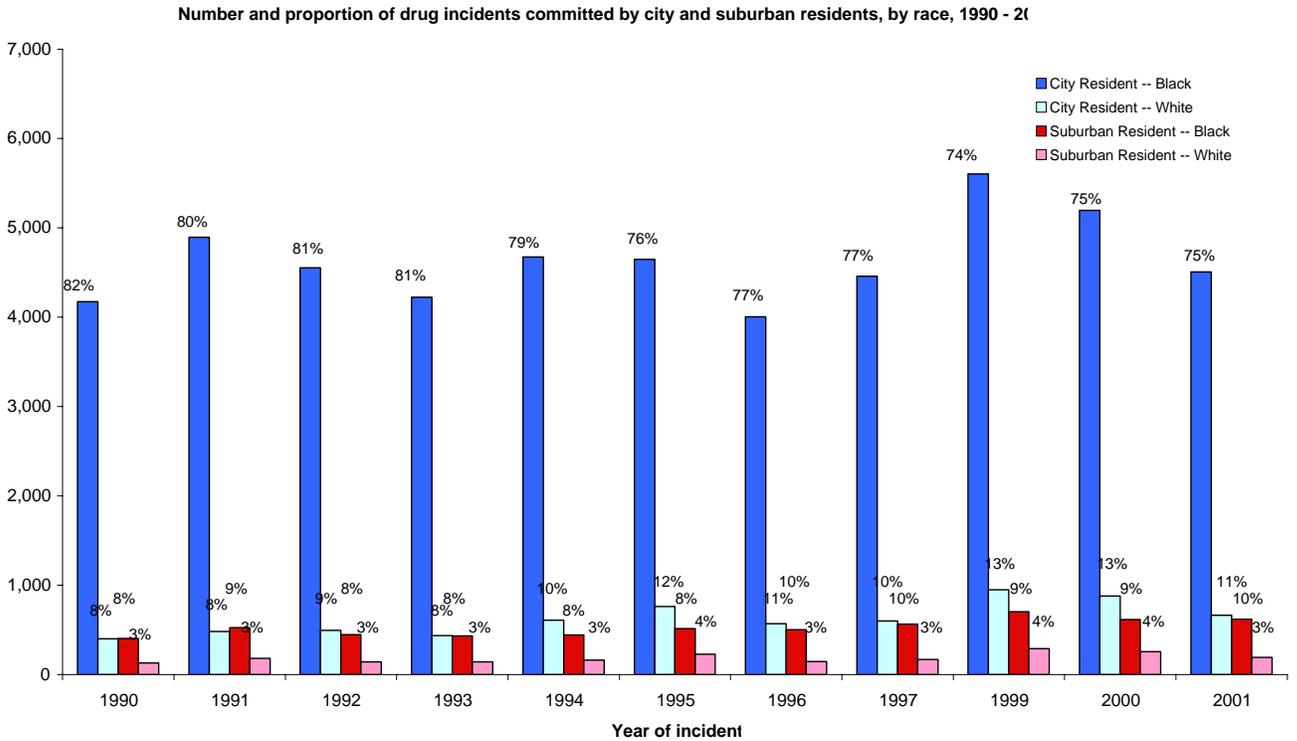
Furthermore, their data indicate that the majority of drug arrestees (both drug possession and drug trafficking) from 1990 through 2001 have been young, African-American males. In 2001, 85% of the drug offense arrestees were Black, which was close to the average over the prior decade. Approximately 10-12% of the arrestees over the period were suburban residents, but even among that population, Blacks were the majority of the arrestees. See Chart 1 below for specific breakdowns over the entire period.

An examination of the 2005 Uniform Crime Report arrest data by neighborhood indicates that overall drug arrests continue to be concentrated in several primarily Eastside, majority African-American neighborhoods: Central (333 arrests in 2005), Corlett (324), Downtown (408), Glenville (342), and Mt. Pleasant (341). In each of these neighborhoods, the arrestees were overwhelmingly African-Americans and other minorities. The one white majority neighborhood in which the number of drug arrests

⁹ For more details on this work, a full Powerpoint presentation is available for download at: www.ojp.usdoj.gov/nij/maps/savannah2005/papers/Mikelbank.ppt.

was in excess of 300 was Detroit-Shoreway (383), nonetheless, two thirds of the arrestees in this neighborhood were non-white.

CHART 1



Source: Sabol & Mikelbank, 2005; www.ojp.usdoj.gov/nij/maps/savannah2005/papers/Mikelbank.ppt

The Uniform Crime Report data do not include any misdemeanors, so we have no good current measures of rates of arrests for the county on misdemeanor charges of possessing drug abuse instruments. The UCR data do indicate, though, that the majority of Cuyahoga County’s felony drug possession arrests are made in the city of Cleveland. Specifically, 69% of the 2005 drug possession arrests (5139/7412) in Cuyahoga County were made by the Cleveland Police within the city limits. Thus, the rate of arrests for felony drug possession in the city of Cleveland is twice the expected rate, given the city’s

share of the county population (and assuming that drug possession incidents are evenly distributed in the county). Furthermore, within Cleveland, African-Americans have an overall drug related felony arrest rate that is nearly 4 times higher than Whites. In 2005 the felony drug arrest rate for African-Americans was 21.3 per 1000 population whereas for Whites it was 5.49 per 1000.

Of those drug possession cases in which the race of arrestee is known within Cleveland city limits, as Table 1 below illustrates, there has been a consistent magnitude of overrepresentation of non-whites among drug possession arrestees over the past 10 years.

TABLE 1

Drug Possession Arrestees, by Race of Offender, 1995-2005

Year	Illicit drug possession arrests: white arrestees	Illicit drug possession arrests: non-white arrestees
1995	895 (19%)	3882 (81%)
1996	729 (19%)	3035 (81%)
1997	758 (17%)	3814 (83%)
1998	NA	NA
1999	1509 (19%)	6489 (81%)
2000	1466 (20%)	6008 (80%)
2001	1166 (16%)	6131 (84%)
2002	1021 (17%)	4974 (83%)
2003	1058 (18%)	4946 (82%)
2004	886 (18%)	3933 (82%)
2005	968 (19%)	4092 (81%)

NOTE: Excludes cases in which race of offender is unknown
 Number of "race unknown" cases ranges from 79 in 2005 to 628 in 1997.
 DATA SOURCE: NEO CANDO, <http://neocando.case.edu/cando/>

While Cleveland police have made in the range of 4900 to around 7500 drug possession arrests per year since 2000, existing data indicate that the city police have only very rarely charged the less serious misdemeanor charge of possession of drug instruments. According to the February 2007 Office of National Drug Control Policy's "Profile of Drug Indicators" report on Cleveland, in 2004, there were 5841 drug possession and trafficking violations in Cleveland (4900 of these were for drug possession according to Case Western's Urban Poverty dataset, NEO CANDO), and only 119 "drug equipment" violations, potentially indicating that very few cases that involved suspects possessing drug instruments with residue were charged with the less serious misdemeanor charge.

More recently, NEO CANDO data for a two year period from January 1, 2005 to December 31, 2006 indicate that Cleveland Police made 2 arrests under the state misdemeanor code for possession of drug instruments (2925.12 of the Ohio Revised Code), and 28 arrests for possessing drug instruments under the city's municipal code (607.04 of the Cleveland Municipal Code). During the same time period, they made 10,771 arrests for drug possession.¹⁰ Thus, very few citations were issued by the Cleveland police for misdemeanor drug instrument offenses, especially relative to the number of drug possession arrests made within the city in the most recent three years for which data are available. There are virtually no accessible data available for such arrests in Cuyahoga County by suburban and rural law enforcement agencies.

¹⁰ Source: Kristen Mikelbank, research associate at Case Western Urban Poverty Center, using the most recent data obtained from Cleveland Police Department.

Drug abuse pattern in Cuyahoga County:

While the above-described data suggest that it is nonwhite offenders, arrested within the city of Cleveland, who disproportionately bear the brunt of law enforcement intervention within Cuyahoga County, there is strong evidence that those who use drugs are both more geographically and racially diverse than the arrest data imply. Although it is difficult to pinpoint specifically who uses what drugs within Cuyahoga County, due to the existence of very few accurate or reliable sources, there are several published reports that shed some light on this. The greater Cleveland metropolitan area was one of 25 cities profiled by the Office of National Drug Control Policy's 25 Cities Pulse Check research initiative in the early 2000s. Pulse Check uses two confidential sources who work with drug users in treatment programs (both methadone and non-methadone types), an "epidemiologic/ethnographic" respondent who has contact with drug users in the community, and a law enforcement respondent.

In the January 2004 Pulse Check summary report, the respondents indicated that crack cocaine and heroin were the two most frequently abused drugs in the area, and that the prevalence of heroin and powder cocaine was increasing as of the fall of 2002. Marijuana was also used very frequently, and MDMA/ecstasy abuse was on the rise. Methamphetamine use was low in the area, and illicit OxyContin use was on the rise. According to the Pulse Check field sources, heroin was being used most frequently by whites with some African-American use being reported (by the non-treatment sources).

Indeed, according the Pulse Check sources, heroin usage was growing among suburban, white, upper socio-economic status young adults who bought the drug in the city, but used it in the suburbs. Crack cocaine was reportedly used predominantly by

African-Americans in the central city, although the non-methadone treatment respondent reported working with both Black and White users from the entire metropolitan area. Powder cocaine was reportedly used predominantly by white suburban residents, and marijuana was reportedly used by both Black and White residents from all areas (for more details, see “Snapshot: Cleveland, Ohio; Pulse Check January 2004 report in Appendix B).

Like the Pulse Check report, the February 2007 “Profile of Drug Indicators” Cleveland report by the Office of National Drug Control Policy also reports official estimates about drug use and availability, but in this case for 2005. Again, in this report, both powder and crack cocaine are described as “readily available” throughout the greater Cleveland area, particularly in the “lower income/inner city” neighborhoods where city residents as well as suburbanites, who travel in to purchase cocaine, purchase drugs. By 2005, heroin availability reportedly had dramatically increased over the prior few years, and its use was especially prevalent among Hispanics. Heroin was also reportedly available for purchase in “Hispanic neighborhoods” throughout the metropolitan area (see February 2007 ONDCP report in Appendix B). Marijuana continued to be widely available and its use was increasing among elementary school children.

The Ohio Substance Abuse Monitoring Network (OSAM) also provides periodic reports on drug abuse patterns in Ohio, broken down by county. The researchers who wrote the most recent report on the Cleveland area, “Surveillance of Drug Abuse in Cuyahoga County, Ohio, June 2006-January 2007,” relied on 45 respondents who are identified as “users” or “treatment providers” to assess drug use patterns. The report indicates that crack cocaine continues to be the most frequently abused drug in the county,

and its prevalence had spread from the inner-city to the suburbs, and spans generations from early teens to older people. Powder cocaine was also reportedly quite accessible and widely trafficked, both to convert to crack cocaine and for purchase by predominantly white suburban high schoolers and urban professionals. Heroin availability was deemed to be “mixed,” depending upon the respondent. Its use was perceived to be growing in the Cleveland area, especially among younger people, Hispanics and Whites. Marijuana was reportedly widely available (as available as crack cocaine) and widely used, across different demographic groups and generations. Ecstasy use was primarily among people under 30 and its price had dropped over time, making its availability moderately high.¹¹

An OSAM report from six months earlier indicates very similar patterns of use and availability of the above described drugs, with respondents reporting that crack use was spreading outside of the poorer inner city neighborhoods, powder cocaine was prevalent across a wide variety of the population in the greater Cleveland area, and was growing more socially acceptable, and heroin use was significantly on the rise, and was especially prevalent in the Hispanic Westside neighborhoods of Cleveland (see “Surveillance of Drug Abuse in Cuyahoga County, Ohio, January 2006-June 2006” report in Appendix B).

Taken together, these sources clearly indicate that drug use, and by implication, drug possession and possession of drug instruments, occurs across the entire county among a diverse range of the population, and that there is a multiplicity of drugs being bought, sold, and used in the region. Thus, as Judge Connally pointed out in her Grand Jury report, it seems nearly impossible to argue that possession of “crack pipes” or other

¹¹ Please see “Surveillance of Drug Abuse in Cuyahoga County, Ohio, June 2006-January 2007” report in Appendix B. To see all of the OSAM reports, go to <http://www.odadas.state.oh.us/gd/Templates/Pages/GDCContentViewer.aspx?content=393>.

paraphernalia with trace amounts of drugs stops at the Cleveland city border. So if, as the anecdotal evidence suggests, the overwhelming number of these cases that are charged as felonies are originating within the jurisdiction of the Cleveland Police Department, it seems to be a matter of differential enforcement policies rather than stark differences in offending behavior driving this phenomenon.

Next steps:

It is clear that there is a need to more systematically document the parameters of the apparent geographic disparity in drug instrument charging decisions within Cuyahoga County, particularly to assess whether it results in racially disparate outcomes for drug offenders in the county. In order to do so, the following research protocol is recommended.

The first step is to obtain police records for all arrests and citations made on drug possession charges and possession of drug instruments charges for a given period of time from a set of selected law enforcement agencies. First, we should select a set of municipal court jurisdictions that can represent the suburban areas contiguous to the city, to see if there are indeed differences in enforcement patterns between jurisdictions with geographic proximity. Because the number of local law enforcement agencies within the county is quite high—there are more than 60 distinct agencies in Cuyahoga County—and it is not feasible to obtain records from all of them, we should purposively select one representative municipal court jurisdiction from the Eastside inner ring suburbs and one from the Westside inner ring suburbs for comparison to each other as well as to cases

coming from the Cleveland Police Department and Cleveland Municipal Court local jurisdiction.

Potential Eastside jurisdictions include the Shaker Heights Municipal Court jurisdiction, which serves the municipalities of Beachwood, Hunting Valley, Pepper Pike, Shaker Heights, and University Heights; the Euclid Municipal Court jurisdiction, which exclusively serves the city of Euclid; and/or possibly the Cleveland Heights Municipal Court jurisdiction, which exclusively serves Cleveland Heights. On the Westside, possibilities include the Rocky River Municipal Court jurisdiction, which serves Bay Village, Fairview Park, North Olmsted, Rocky River, Westlake, and the Metroparks; the Berea Municipal Court jurisdiction which serves the municipalities of Berea, Brook Park, Middleburg Heights, Olmsted Falls, Olmsted Township, Strongsville, and The Metro Parks; and/or the Lakewood Municipal Court jurisdiction which exclusively serves the city of Lakewood.

Each local law enforcement agency within the selected municipal court jurisdiction would be asked to supply copies of original citation/arrest records for the same 1 year period in either 2005 or 2006 for all violations of sections 2925.11 and 2925.12 of the Ohio Revised Code, as well as for all violations under the relevant municipal codes for misdemeanor drug possession and misdemeanor possession of drug instruments. Each local law enforcement jurisdiction citation/arrest report for ***drug possession*** cases will be coded for the following information:

- 1) Type of illegal substance(s)
- 2) Estimated quantity/amount of illegal substance(s)
- 3) Whether drug being charged was exclusively trace/residue in drug instrument

- 4) Recommended charge(s), including any non-drug related charges, for incident
(specific codes)
- 5) Race/ethnicity of alleged violator (note for Hispanic surname)
- 6) Gender of violator
- 7) Age of violator
- 8) Zip code of violator's home address
- 9) Police action type (citation/notice to appear issued; arrest, etc.)
- 10) How violation was detected (traffic stop; drug area sweep, part of another
alleged offense, etc.)
- 11) Citing/arresting agency

Each local law enforcement jurisdiction citation/arrest report for *possession of drug instrument* cases will be coded for the following information:

- 1) Type of drug instrument(s) alleged
- 2) Estimated quantity/amount of illegal substance(s), if any, in, on or with
instrument.
- 3) Recommended charge(s), including any non-drug related charges, for incident
(specific codes)
- 4) Race/ethnicity of alleged violator (note for Hispanic surname)
- 5) Gender of violator
- 6) Age of violator
- 7) Zip code of violator's home address
- 8) Police action type (citation/notice to appear issued; arrest)

9) How violation was detected (traffic stop; drug area sweep, part of another alleged offense, etc.)

10) Citing/arresting agency

That set of cases will then be followed through to resolution on the relevant drug charges in the respective courts to which they were referred, and outcome data will be assessed. First, formal charges sought by the relevant prosecutor's office will be assessed (to see if the charges are generally the same as the police recommendations). In felony cases, outcomes of the probable cause proceedings will be recorded. Final case outcomes will be categorized as: dismissal; guilty or no contest plea (with a notation of what specific charges were sustained); trial, with acquittal outcome; trial with guilt determination (with a notation of what charges resulted in conviction); and other. Finally, in cases that resulted in charges being sustained (through plea or trial), sentence outcome will be coded and assessed.

This data set will allow for multiple analyses that will enable us to systematically document whether there are differences in law enforcement charging recommendations, prosecutorial charging decisions, and sentencing outcomes as a function of locale within Cuyahoga County. The data will also reveal whether there are racially disparate outcomes that result from how low level drug cases are being treated within the county's criminal justice system(s). Furthermore, we will be able to assess which kinds of drugs and drug instruments are associated with various charges, and whether "crack pipe" cases are more likely to be treated more seriously than other kinds of cases involving drug instruments.