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# Racial Disparity in Narcotics Search Warrants

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## I. INTRODUCTION

I would like to thank the members of the Journal for organizing this symposium on such an important and timely topic. It is only through shared knowledge and research that we will be able to develop the tools needed to begin the difficult task of understanding the impact of race upon our criminal justice system. As a small step toward that goal, I would like to share with you some of our data from an ongoing research project we have undertaken at California Western School of Law, known as the San Diego Search Warrant Project.<sup>1</sup>

### *A. Background*

The search warrant is an important weapon in the government's arsenal for investigating suspected criminal activity. It also symbolizes the government's power to invade the privacy of a citizen's home, disrupt her life, and seize her property. Not surprisingly, search warrants have been a subject of controversy since the earliest moments of our national history. American colonists, it will be recalled, protested against British writs of assistance, which authorized customs officers to search their homes and businesses without individualized justification.<sup>2</sup> Indeed, according to John Adams, opposition to the hated writs of assistance was a catalyst that sparked the movement toward independence.<sup>3</sup>

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Professor of Law, California Western School of Law. A special debt of gratitude is owed to Charles T. Samarkos, who helped initiate the San Diego Search Warrant Project; to Dr. Nancy E. Johnson and Dr. Dennis Saccuzzo, for their invaluable assistance in research design and statistical analysis; to Associate Deans Janet Bowermaster, Barbara Cox, and Mark Weinstein for their support for this project; to Linda Weathers for indispensable research assistance and to my students, Allen D. Brown, Marc Gardner, Mark J. Corey, James M. Cullender, Tricia K. Lawson, Michael H. Lamphier, Adriana Rincon, Celine I. Samaneigo and Michelle Waters for their tireless energy and dedication.

1. Unless otherwise indicated all data presented in the text and tables of this article were collected by the author and CWSL students participating in this research project and are available in an SPSS database on file with the author.

2. See W.J. CUDDIHY, *THE FOURTH AMENDMENT: ORIGINS AND ORIGINAL MEANING PART II*, at 1091-1105 (1990).

3. In 1761, John Adams was present in a Boston courtroom when James Otis argued against reissuing new writs of assistance to customs house officers after the writs expired upon the death of King George II. Otis had resigned his position as Advocate General of the Admiralty in order to

Their recent memory of unreasonable searches undoubtedly influenced the founders to place restrictions on the government's use of search warrants in the Bill of Rights.<sup>4</sup> The most important restriction, of course, was the requirement that search warrants issue only upon a showing of probable cause.<sup>5</sup>

Our interest in studying search warrants initially arose because an increasing number of innocent citizens appeared to be victims of erroneous drug raids conducted pursuant to search warrants.<sup>6</sup> Decisions by the United States Supreme Court in the 1980s relaxed the standard for obtaining search warrants<sup>7</sup> and created a "good faith" exception to the exclusionary rule.<sup>8</sup> These decisions gave rise to concerns that the "probable cause" standard might be eroded as a result of increased reliance by police upon sources of doubtful reliability and integrity, such as undisclosed "confidential informants" and anonymous tips.<sup>9</sup> Indeed, newspaper accounts of bogus tips and mistaken drug raids by police SWAT teams, which traumatized innocent families and even resulted in the deaths of innocent citizens, lent credence to the fear that personal privacy and

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represent *pro bono* a group of Boston citizens who opposed the issuance of new writs. While Otis' argument was unsuccessful, Adams later wrote that after hearing Otis' eloquent oration: "Every man . . . appeared to me to go away, as I did, ready to take up Arms against Writs of Assistance . . . Then and there the child Independence was born." (spelling modernized), 2 LEGAL PAPERS OF JOHN ADAMS 107 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965).

4. The Fourth Amendment provides:

The right of the people to be secure in their person, 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 person or things to be seized.

U.S. CONST. amend. IV.

5. *Id.*

6. *See infra* note 10.

7. *Illinois v. Gates*, 462 U.S. 213, 229-31 (1983). In *Gates*, the Supreme Court substituted a less rigorous "totality of the circumstances" analysis for strict compliance with the two-pronged test established in *Aguilar v. Texas*, 378 U.S. 108, 114 (1964) and *Spinelli v. United States*, 393 U.S. 410, 416 (1969). The *Aguilar-Spinelli* test required police to show that the information used to establish probable cause was from a credible source who had obtained the information in a reliable manner. *Id.* The *Gates* court abandoned strict compliance with this two-prong test and upheld a search warrant based upon an anonymous tip even though the credibility of the tipster and the basis of his knowledge were unknown. *Gates*, 462 U.S. at 238.

8. *United States v. Leon*, 468 U.S. 897, 909 (1984). In *Leon*, the Court held that if police act in reasonable reliance upon a search warrant, evidence obtained pursuant to that warrant will be admissible even if probable cause did not exist for the issuance of a warrant. *Id.* at 925-26.

9. *See* RICHARD VAN DUZEND ET AL., THE SEARCH WARRANT PROCESS: PRECONCEPTIONS, PERCEPTIONS, PRACTICES 30-35, 99-101 (1984) [hereinafter THE SEARCH WARRANT PROCESS]; *see also* Mark Curriden, *The Informant Trap, First in a Series: Secret Threat to Justice*, NAT'L L.J., Feb. 20, 1995, at A1 (reporting the dramatic rise in use of unidentified informants); *see generally* Clifford Zimmerman, *Toward a New Vision of Informants: A History of Abuses and Suggestions for Reform*, 22 HASTINGS CONST. L.Q. 81 (1994) (critiquing the use of informants in a variety of contexts).

security were becoming unintended casualties of the war on drugs.<sup>10</sup> Therefore, we initiated the San Diego Search Warrant Project to study search warrants issued in San Diego County.

### B. Methodology

San Diego County is divided into four judicial districts: San Diego, North County, El Cajon, and South Bay. We initially studied a random sample of warrants issued in 1998 in the San Diego Judicial District, which is the most urban district in the county.<sup>11</sup> We then expanded the study to include a sample of warrants from the North County Judicial District,<sup>12</sup> which includes coastal cities as well as inland suburban and rural areas. We also sampled 100% of available search warrants from the two remaining smaller judicial districts, El Cajon<sup>13</sup> (suburban and rural area) and South Bay<sup>14</sup> (suburban area). We then

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10. See Joe Cantlupe, *A Father's Fears About Drugs and His Children Are Revealed*, SAN DIEGO UNION TRIBUNE, May 15, 1988, at A1 (reporting the killing of two people during separate drug raids in March of 1988. One of the victims, shot and killed in his home in southeast San Diego, was an innocent father whose son was suspected of selling drugs); Terry L. Colvin & Graciela Sevilla, *Mix-up: A Warranted Search?*, SAN DIEGO UNION TRIBUNE, Oct. 4, 1991, at A1 (reporting drug raid on innocent family in North San Diego County); Ron Soble, *Scott: Reclusive Millionaire Killed in Drug Raid that Came Up Empty*, L.A. TIMES, Oct. 12, 1992, at A1 (reporting the death of an innocent businessman, aged 61, shot by drug task force members in his home in Malibu, California); Mark Curriden, *Informer's Lies Trigger a Tragedy*, NAT'L L.J., Mar. 6, 1995, at A1 (reporting \$2.5 million settlement awarded to San Diego businessman who was shot in his home in Poway, San Diego County, during a nighttime drug raid by U.S. Customs and Drug Enforcement Administration officers in August of 1992); Dwight C. Daniels, *Cops Terrify Family in Case of Wrong I.D.*, SAN DIEGO UNION TRIBUNE, Aug. 11, 1994, at A1 (reporting traumatizing after-effects of armed raid on three children of an innocent couple).

11. We found that 953 search warrants were issued during the 1998 calendar year. Following the practice of other researchers who found that the January to June period was broad enough "to reduce the possible biases of seasonal patterns of crime or criminal investigation," we selected for study every odd numbered search warrant issued between January 1, 1998 and June 30, 1998. THE SEARCH WARRANT PROCESS, *supra* note 9, at 7. Over half (52%) of all warrants were issued during this six-month period. If the selected warrant was sealed or otherwise missing, we selected the next even numbered warrant as a substitute. This occurred in 11 cases representing 4% of the total sample. In this manner we retrieved 248 warrants for study. Narcotics were sought in 122 of the warrants in this sample. For further discussion of methodology, search warrant procedure and the preliminary findings resulting from this initial study, see Laurence A. Benner & Charles T. Samarkos, *Searching for Narcotics in San Diego: Preliminary Findings from the San Diego Search Warrant Project*, 36 CAL. W. L. REV. 221 (2000) (hereinafter Benner & Samarkos).

12. The North County Judicial District issued a total of 333 search warrants in 1998. In 22 of these cases, the file was judicially sealed. Except for sealed or otherwise unavailable warrants, we selected 100% of the warrants issued from January 1, 1998 to August 6, 1998, representing 60% of the entire number of search warrants issued, yielding a total of 200 warrants. In 88 of these cases, the warrant sought narcotics.

13. We examined 225 out of 249 search warrants issued by the El Cajon Judicial District. In 85 cases, the warrant sought narcotics. The unexamined warrants were either sealed, missing, or had missing pages preventing data collection.

14. We examined 140 out of 156 warrants issued by the South Bay Judicial District during 1998. In 86 of these cases, the warrant sought narcotics. The unexamined warrants were either sealed, missing, or had missing pages that prevented data collection.

drew a random sample from these combined databases in order to study the county as a whole.<sup>15</sup>

Table 1<sup>16</sup>

<b>Narcotics Search Warrants As Percent of Sample</b>			
<b>Judicial District</b>	<b>Number Issued</b>	<b>Number Sampled</b>	<b>Percent Narcotics</b>
San Diego	953	248	50% n = 122
North County	333	200	44% n = 88
El Cajon	249	225	38% n = 85
South Bay	156	140	61% n = 86
All Districts Combined	1,691	813	47% n = 214

The building blocks for our study included the probable cause affidavit filed by the officer seeking the warrant, the judicially approved search warrant, and the "receipt and inventory," which listed the items seized during execution of the warrant. From these documents, we collected over seventy-five variables concerning how search warrants are processed and executed. The race of the individual targeted by the search was one of these variables. This information appeared in the description of the suspect given by the police officer in the probable cause affidavit and/or the search warrant, which frequently authorized the search of a specifically described person as well as the premises. We did not attempt to guess a suspect's race based upon their first or last name.

Although we found that search warrants were sought in connection with a wide variety of crimes, as Table 1 indicates, narcotics search warrants represented the largest single category. The race of the target was also known in a substantial majority of the narcotics warrants issued in each district. We therefore concentrated upon this subset of data for the purposes of addressing the issues presented by this symposium.<sup>17</sup>

15. See Table 1. The combined database constituted 48% of all search warrants issued in the county in 1998. A random sample of 452 was drawn from this combined database and 214 of these were narcotics warrants.

16. See *supra* note 1.

17. Race was known for the targets of narcotics search warrants in at least three-fourths of the cases: San Diego Judicial District : 75%, North County Judicial District : 76%, El Cajon Judicial

*C. Summary of Findings*

To briefly summarize, we found that members of the Black and Hispanic communities in San Diego County were significantly over-represented as targets of narcotics search warrants. By contrast, White residents were under-represented when compared to their percentage of the population and studies showing patterns of drug use and drug distribution activities. This disparity was present in only two of the four judicial districts in the county. However, these two districts comprised over two-thirds (68%) of the county's population. We also found that racial disparity appeared to be linked to the type of drug sought by the search warrant. Looking at narcotics warrants from all judicial districts combined, we found that warrants for cocaine overwhelmingly targeted Black and Hispanic suspects, while search warrants for marijuana more closely mirrored the percentage a racial group represented in the population. Warrants for methamphetamine, on the other hand, targeted very few Black suspects. However, we again found over-representation of Hispanic suspects with respect to this drug, despite local data indicating that methamphetamine was largely used and distributed by Whites. Paradoxically, while Whites were under-represented as targets, we found that searches of White suspects were more successful in recovering the targeted drug than were searches of either Black or Hispanic suspects. We also collected data regarding gender and found that while the majority of targets were male, the majority of all female targets were White women. Indeed with respect to warrants for methamphetamine, White women outnumbered White men as targets.

Section II below examines data from the San Diego Judicial District, which encompasses the city of San Diego and is the county's most populous judicial district. Section III discusses data relating to the three outlying suburban and rural judicial districts. Section IV presents a composite portrait of the entire county.

## II. THE SAN DIEGO JUDICIAL DISTRICT

The boundaries of the San Diego Judicial District are roughly co-terminus with the city of San Diego, which in 1998 had a population of 1.2 million.<sup>18</sup> A wide variety of federal, state, and local agencies sought warrants from this district. These agencies included the federal Drug Enforcement Agency (DEA), a joint state/federal narcotics task force known as NTF, the San Diego County Sheriff and several suburban police departments from adjoining cities. The vast majority (80%) of the search warrants in our sample, however, were sought by

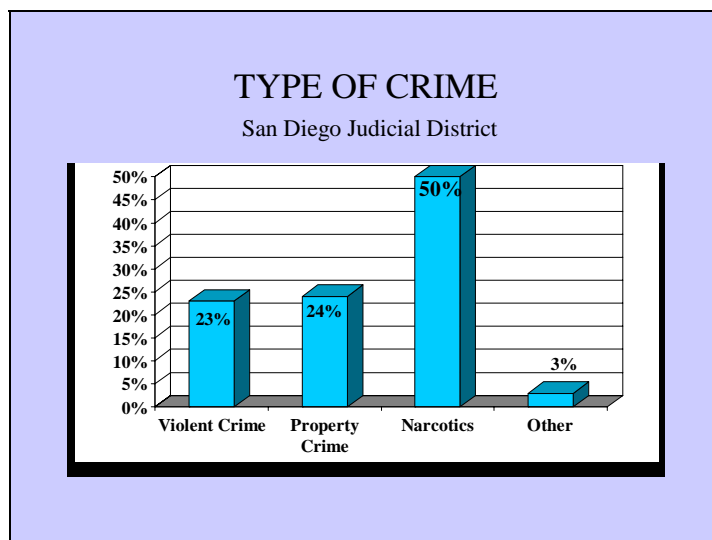
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District = 78%, South Bay Judicial District : 78%, All Judicial District random sample :76%. Race was classified as White, Black, Hispanic, Asian, and other. In a small number of cases individuals of different races jointly occupied the premises searched. In this circumstance, each race represented was recorded.

18. SAN DIEGO ASSOC. OF GOV'T, DEMOGRAPHICS, DATA WAREHOUSE, SUBREGIONAL ESTIMATES AND FORECAST, DEMOGRAPHICS-POPULATION BY GENDER AND ETHNICITY (1998), at [http://cart.sandag.org/sdw/ef\\_demog.asp?ef\\_model=1](http://cart.sandag.org/sdw/ef_demog.asp?ef_model=1) (last visited June 11, 2002).

the San Diego Police Department. As Table 2 reveals, less than a quarter of these search warrants were issued in connection with a violent crime, while half involved searches for narcotics.

Table 2

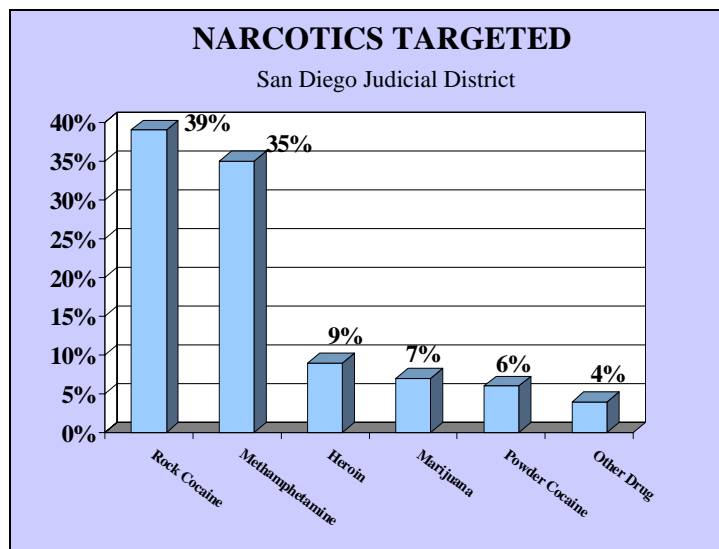


#### *A. Types of narcotics Sought*

As shown in Table 3, the narcotics most frequently searched for were rock cocaine (39%) and methamphetamine (35%).<sup>19</sup> Only 6% of the warrants sought powder cocaine. Heroin (9%) and marijuana (7%) were also sought infrequently. Other drugs (4%) included LSD and prescription drugs.

19. The percentages in Table 3 reflect the number of times a particular drug was expressly sought either alone or in combination with other drugs.  $n=113$ . Fifteen warrants sought more than one drug. The table excludes three warrants that simply sought unspecified "controlled substances." Ten drug detector dog cases were also excluded because the dogs are trained to alert to the presence of several different drugs. Their alert, therefore, did not differentiate which drug was present. Seventy-five per cent of the detector dog warrants involved the search of a package that recovered marijuana.

Table 3



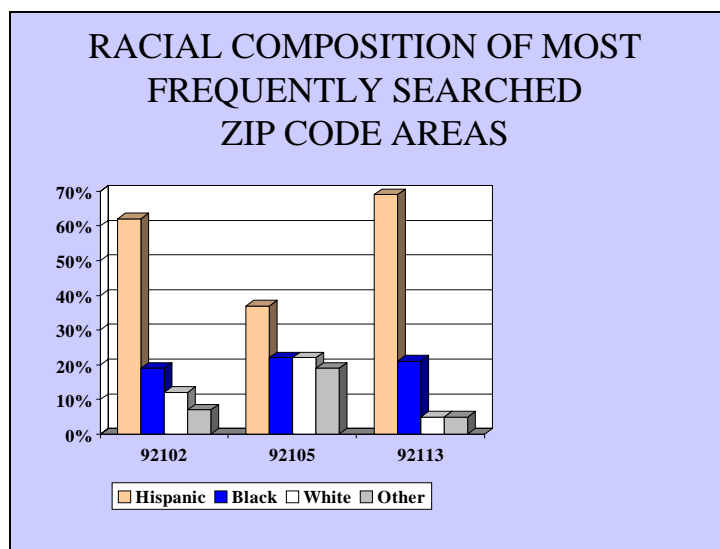
*B. Racial composition of most frequently searched areas*

The overwhelming majority of search warrants (89%) were directed at private homes. Search warrants were also obtained to search packages, luggage, a storage facility, motel rooms, and a detached garage. In well over half of the cases the search warrant also authorized the search of a named or described person, if found on the premises.

Using the street address provided on the search warrant and the U.S. Postal Service Zip Code Directory, we were able to obtain the postal zip code for almost all warrants that targeted either a home or commercial building. The majority of these search warrants were for locations clustered in zip code areas in the southeast portion of the inner city. As seen below, that area is comprised of predominantly low-income, non-White residents. Table 4 is based on demographic profiles for zip code areas prepared by the San Diego Association of Governments for 1998.<sup>20</sup>

20. SAN DIEGO ASSOC. OF GOV'T, *supra* note 18. The table does not break out Asian population figures because none of the search warrants targeted Asians.

Table 4



As the table demonstrates, the population of the top three zip codes most frequently targeted by narcotics warrants was predominantly Black and Hispanic. For example, the most frequently targeted zip code, 92102, was 88% non-White. Zip code 92113, the second most frequently targeted area, was 95% non-White. The third most frequently targeted zip code, 92105, was 78% non-White. The median income in the three zip codes was only about half that of the average resident of the city of San Diego.<sup>21</sup> These three zip code areas alone accounted for 44% of all narcotics warrants issued to search residential or commercial premises in the San Diego Judicial District.

By contrast less than 3% of all narcotics warrants targeted a predominantly White suburban area in the northern portion of the San Diego Judicial District.<sup>22</sup> The median income for each of the three zip codes in this area was above the median income for the city.<sup>23</sup> While Whites made up well over two-thirds of the

21. SAN DIEGO ASSOC. OF GOV'T, DEMOGRAPHICS, DATA WAREHOUSE, SUBREGIONAL ESTIMATES, ECONOMICS POPULATION AND HOUSING, at [http://cart.sandag.org/sdw/ef\\_econ.asp?ef\\_model=1](http://cart.sandag.org/sdw/ef_econ.asp?ef_model=1) (last visited June 11, 2002) [hereinafter DEMOGRAPHICS]. The median income for residents of the city of San Diego in 1998 was \$40,939. The median income in the three zip code areas in ascending order was: 92113=\$21,076; 92102=\$24,120; 92105=\$24,823. *Id.* The combined average median income for the three zip code areas was \$23,339. *Id.*

22. The combined population of the three zip codes making up this suburban area in 2000 was 131,189 as compared to the combined population of the three inner city zip codes of 169,070. U.S. CENSUS BUREAU, CENSUS 2000: SUMMARY FILE 1, available at <http://www.census.gov>. (last visited June 11, 2002). If one adds another adjacent zip code area to the three northern zip codes, the population of this suburban area exceeds that of the inner city area by 15,753, yet the number of warrants targeting the suburban area increases only slightly to 5% of the total. *Id.*

23. DEMOGRAPHICS, *supra* note 21. The median income for zip code area 92037 (known as



population (ranging from 69% to 78%), Blacks comprised less than 2% of the population in any of the three suburban zip codes.<sup>24</sup> In two of these zip codes, there were no warrants issued at all. In the third zip code, 92117, all but one of the warrants were for methamphetamine.

One may query whether any of this matters if drugs are in fact being found in the inner city of San Diego. However, despite the frequency with which the three inner city zip code areas were searched, the majority of the search warrants issued in this predominantly non-White area failed to recover the drug police were seeking.<sup>25</sup> Two out of three had significantly low rates of success. Indeed, in zip code area 92105, three out of four warrants failed to recover the drug sought.<sup>26</sup> By contrast, although the number of warrants in the predominantly White suburban area was too small to make a statistical comparison, it was observed that two-thirds of these warrants were successful. All of the successful warrants were for methamphetamine.

### C. Race of the Target of the Search

Not surprisingly an examination of the search warrants issued in the three inner city zip codes revealed that the target of the search was either Black or Hispanic in 96% of the cases.<sup>27</sup> However, the predominance of non-White targets was not confined to the three inner city zip code areas. As noted below

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La Jolla) was \$61,255. *Id.* The median income for adjacent zip code areas 92122 and 92117 were \$48,110 and \$52,741 respectively. *Id.* The combined average median income for these three zip codes was \$54,035, more than twice that of the three inner city zip codes.

24. U.S. CENSUS BUREAU, *supra* note 22. The racial composition of each zip code was:

92037: White (78%), Asian (11%), Hispanic ( 7%), Black (1%), Other (3%).

92122: White (70%), Asian (18%), Hispanic ( 7%), Black (1.5%), Other (4%).

92117: White (69.5%), Asian ( 9%), Hispanic (16%), Black (2%), Other (4%). *Id.*

25. Only 34% of all warrants issued in the three inner city zip code areas successfully recovered the drug targeted by the warrant; 36% were unsuccessful and 24% were not executed. In the remaining 6% of the warrants it could not be determined what happened because no return was ever filed. Normally when a search warrant was not executed, the officer obtaining the warrant would return it to the Clerk of the Court and write "not executed" either on the face of the warrant or the "receipt and inventory" form. *See* Benner & Samarkos, *supra* note 11, at 246 n.65. As a percentage of executed search warrants, the success rates ranged from 43% in zip code area 92101, to 67% in zip code area 92113, to only 25% in zip code area 92105. Success was measured by recovery of any amount (including remnant or residue) of the drug specified in the warrant as the target of the search.

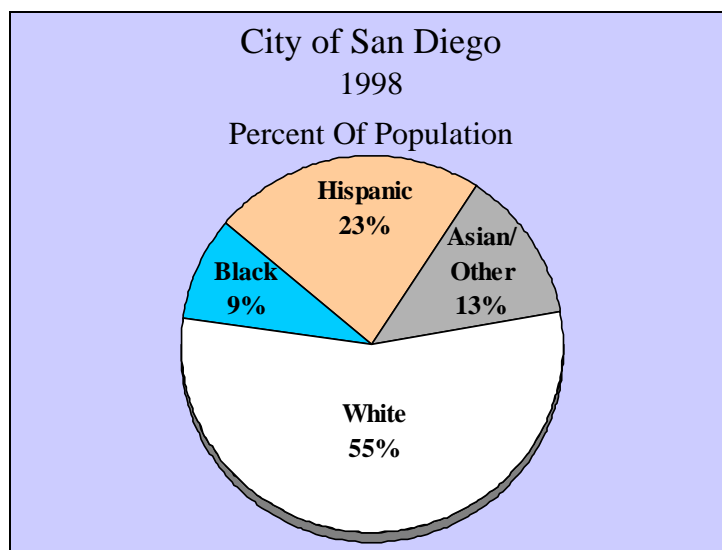
26. In our initial study we found that delay of five days or more in executing the search warrant had a significant impact on success rates. *See* Benner & Samarkos, *supra* note 11, at 258. While there were a number of examples at both ends of the delay continuum (i.e. where neither delay or promptness in execution made any difference to success) overall the warrants in these three zip code areas, like the sample as a whole, were less successful if executed five days or more after issuance. Sixty per cent of the warrants in the three zip code areas were executed five or more days after issuance. As discussed in Section IV, *infra*, delay did not appear to affect success rates in the random sample drawn from the entire county.

27. Race was known in 92% of the warrants issued in the three inner city zip code areas.

we also found that Blacks and Hispanics were significantly over-represented in the sample as a whole. While this disparity may be explained in part because this judicial district includes San Diego's inner city, which as just noted comprises significant Black and Hispanic populations, the majority of the judicial district's population in 1998 was White.<sup>28</sup>

Because drug use is not exclusive to any racial group, it might be expected that the race of search warrant targets would mirror the proportion each racial group represents in the population. This did not turn out to be the case. Table 5 below reflects the racial composition of the city of San Diego, which has virtually the same boundaries as the San Diego Judicial District.<sup>29</sup> Table 6 below shows the distribution of narcotics search warrants by race of the target.<sup>30</sup>

Table 5

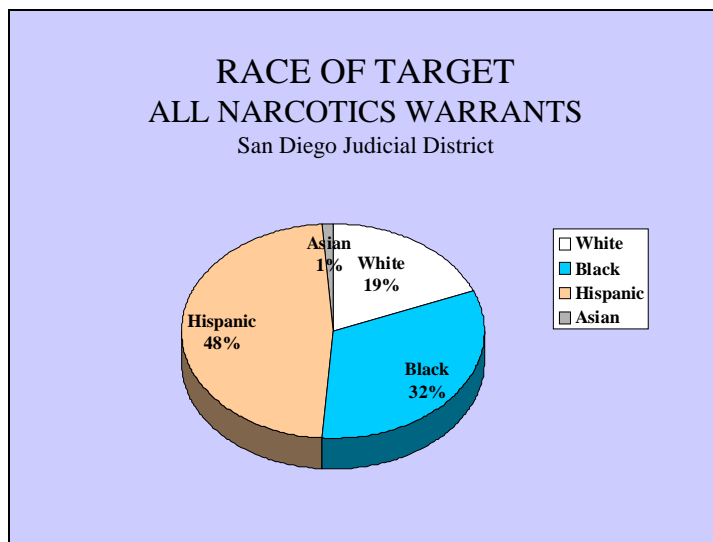


28. See *infra* tbl.5.

29. Tbl.5 is based on data from the SAN DIEGO ASSOC. OF GOV'T, *supra* note 18.

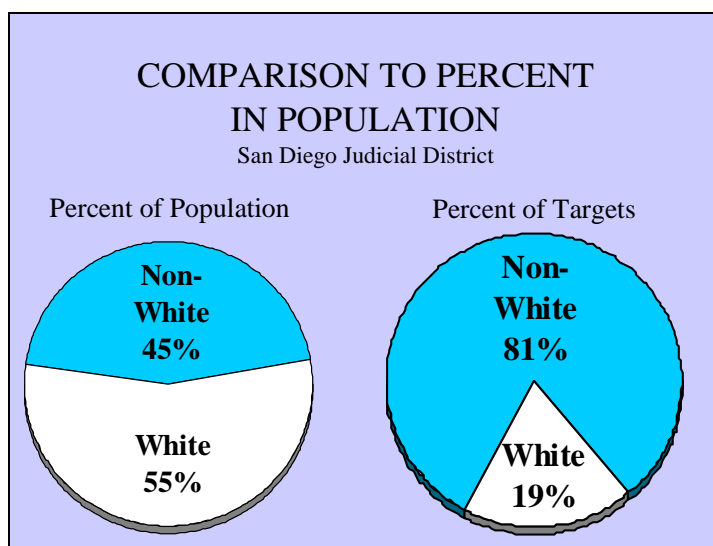
30. The table is based upon the percentage of cases in which race was known. These race-identified cases constituted 75% of the sample. The gender of the target was also identified in the vast majority (93%) of cases. While 10% of the warrants involved both male and female targets together, only one in four involved a female target alone. See Benner & Samarkos, *supra* note 11, at 236.

Table 6



As these tables demonstrate, while approximately 55% of the population of the city of San Diego was White at the time of these searches, less than one in five narcotics warrants targeted a White resident. Although only 23% of the population was Hispanic, almost half of the targets were Hispanic. While Blacks made up only 9% of the population, they were a target in almost one-third of the warrants.

Table 7



As Table 7 reveals, although only 45% of the population is non-White,

81% of the narcotics search warrants targeted non-Whites.<sup>31</sup> This disparity, however, only affected Blacks and Hispanics. While 13% of the population was Asian, only one search warrant involved an Asian suspect. Thus the actual disparity for Blacks and Hispanics is even greater. Together they comprised less than one-third of the population yet made up over 80% of the targets.

Using statistical methodology created by Dr. John Lamberth, we discovered that Black members of the San Diego community were about four times more likely to be the target of a search warrant for narcotics than Whites.<sup>32</sup> Members of the Hispanic community were about twice as likely as Whites to be the target of a search for narcotics.<sup>33</sup>

What accounts for this disparity? Are Whites under-represented because they are less likely to be involved in drug use and distribution activities? National studies of drug use indicate this is not a likely explanation. According to the federal government's National Household Survey on Drug Abuse in 1998, 72% of all drug users were White, while only 15% were Black.<sup>34</sup> There were, for example, almost five times as many White marijuana users in 1998 as Black users and three times as many White cocaine users as Black cocaine users.<sup>35</sup> According to former drug enforcement Czar, William J. Bennett, the "typical cocaine user is white, male, a high school graduate employed full time and living in a small metropolitan area or suburb."<sup>36</sup> Other studies have shown that drug users purchase drugs from members of their own race.<sup>37</sup> Commentators have also noted that the overwhelming majority of drug sellers are White.<sup>38</sup> The available national statistics therefore strongly suggests that Blacks and Hispanics do not have a monopoly on either drug use or drug distribution

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31. Even if the targets of search warrants for whom race was unknown (25%) were all assumed to be White and were added to the White total, the majority of the search warrants (61%) would still target non-Whites.

32. See Benner & Samarkos, *supra* note 11, at 233 n.34 for discussion and calculation of the likelihood ratio.

33. *Id.*

34. OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE AND MENTAL HEALTH ADMIN., 1998 NAT'L HOUSEHOLD SURVEY ON DRUG ABUSE, SUMMARY OF FINDINGS, (1999) at [http://www.samhsa.gov/Oas/nhsda/98SummHtml/NHSDA98Summ-03.htm#p305\\_25702](http://www.samhsa.gov/Oas/nhsda/98SummHtml/NHSDA98Summ-03.htm#p305_25702).

35. OFFICE OF APPLIED STUDIES, SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMIN., 1998 NAT'L HOUSEHOLD SURVEY ON DRUG ABUSE: SUMMARY TABLES, at tbl.25A, (1999) at <http://www.samhsa.gov/oas/NHSDA/98DetailedTables.htm>. This data is based upon self-reporting by persons responding to the National Household Survey on Drug Abuse. *Id.* It is not known whether under-reporting of such activity occurs at the same rate for each racial group.

36. Ron Harris, *Blacks Take Brunt of War on Drugs*, L.A. TIMES, Apr. 22, 1990, at A1.

37. See K. JACK RILEY, WASHINGTON D.C.: NAT'L INSTITUTE OF JUSTICE & THE OFFICE OF NAT'L DRUG CONTROL POLICY, CRACK, POWDER COCAINE, AND HEROIN: DRUG PURCHASE AND USE PATTERNS IN SIX U.S. CITIES 15, tbl.16 (1997); David Rudovsky, *Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause*, 3 U. PA. J. CONST. L. 296, 309-310 (2001).

38. Rudovsky, *supra* note 37, at 310 (reporting that on average Whites represented 82% and Blacks 16% of drug sellers during 1991-1993).

activities.<sup>39</sup>

This conclusion has been confirmed by local studies of San Diego's unique drug culture. Since the mid-1980s, San Diego County has acquired the dubious distinction of being considered the methamphetamine capital of the country by law enforcement personnel.<sup>40</sup> The Arrestee Drug Abuse Monitoring program (ADAM), conducted by the San Diego Association of Governments during the same time period as our sample, found that Whites were far more likely than Blacks and Hispanics to be engaged in the manufacture and distribution of methamphetamine.<sup>41</sup> Based upon drug testing of arrestees, the ADAM study also found that methamphetamine use by Whites was substantially greater than that of Blacks or Hispanics.<sup>42</sup> By contrast ADAM found that a higher percentage of Black arrestees tested positive for cocaine use than did either White or Hispanic arrestees.<sup>43</sup>

If the different racial groups have different drug use patterns does this factor aid us in understanding the racial disparity in narcotics search warrants? It will be recalled that the two most frequently sought drugs in the San Diego Judicial District were methamphetamine and cocaine.<sup>44</sup> Separately examining the search warrants for the two drugs, we found that substantially more White residences were searched than Black residences when the target was

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39. See David A. Harris, *The Stories, the Statistics and the Law: Why "Driving While Black" Matters*, 84 MINN. L. REV. 265, 296-97(1999).

40. Unpublished statement of Gary D. Helson, Enforcement Group Supervisor, Clandestine Laboratory Enforcement Group, San Diego Field Division, Drug Enforcement Administration, April 21, 2000, given at field hearing held by the House Judiciary Subcommittee on Crime. On file with subcommittee and available at <http://www.usdoj.gov/dea/pubs/cngrtest/ct042100.htm> (last visited April 23, 2002). In one year over 100 meth production labs were seized, representing 30% of all illegal lab seizures in the country. *Id.*

41. See JOE ELLETT & SUSAN PENNELL, SAN DIEGO ASSOC. OF GOV'T, ADAM: ARRESTEE DRUG ABUSE MONITORING 1998, at 49 tbl.23 (1999) [hereinafter ADAM]. The ADAM study, conducted during the period 1996-98, was based on a sample of 384 White, 238 Black, and 247 Hispanic adult arrestees who voluntarily participated in confidential interviews and drug testing at the Central Jail in San Diego or the Women's Facility at Las Colinas. *Id.* Based on the ADAM data it appears that 58% of White arrestees admitted involvement in methamphetamine distribution activities as compared to 29% of Hispanic and only 10% of Black arrestees. *Id.* The ADAM study researchers did not conduct a similar survey of cocaine distribution activities in San Diego during that period.

42. *Id.* at 26 tbl.6. The ADAM study found that 46% of White arrestees (as opposed to only 12% of Black arrestees) tested positive for methamphetamine use. *Id.*

43. The ADAM study found that 45% of Blacks (as opposed to only 9% of Whites) tested positive for cocaine use. *Id.* It must be noted that using the ADAM arrestee data for purposes of comparison may be problematic. It may be, for example, that White middle class cocaine users living in bedroom communities are simply not arrested in the same proportion as Black cocaine users living in the inner city. Other studies have indicated that overall drug use by Blacks and Whites is roughly the same as the presence of each group in the population as a whole. See Harris, *supra* note 39, at 296-97. With respect to distribution activities, there also may be differences among the races in the extent to which those arrested are willing to disclose their illegal activities. Nevertheless, this data does give an indication that there are different drug use patterns among the various races.

44. Methamphetamine was sought in 31% of the warrants. Combining powder (5%) and rock (35%) cocaine together, it appears cocaine was sought in 40% of the warrants.

methamphetamine. The reverse was true, however, with respect to cocaine. It also appears that Hispanics were over-represented as targets with respect to both drugs.

#### *D. COCAINE WARRANTS*

One might reasonably expect, in light of the national statistics discussed above, that there would be at least two to three times as many White cocaine users and sellers in San Diego as non-White users and sellers. However, as Table 8 below reveals, our study found that 98% of the search warrants for cocaine targeted Black and Hispanic residences.

Table 8

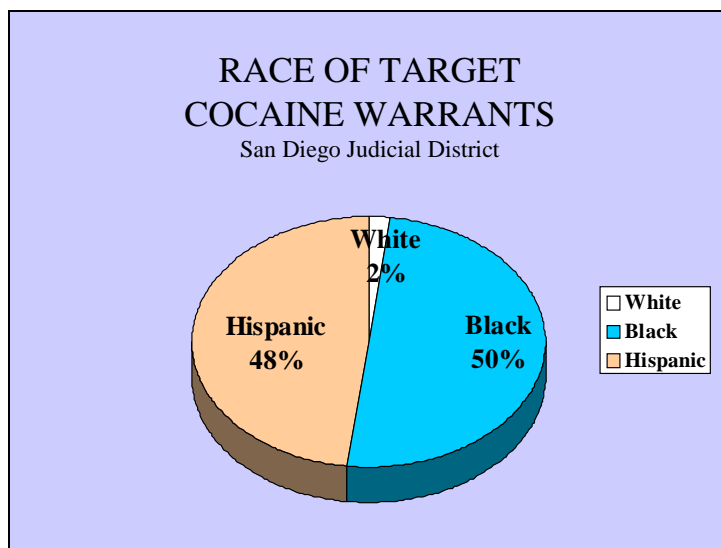
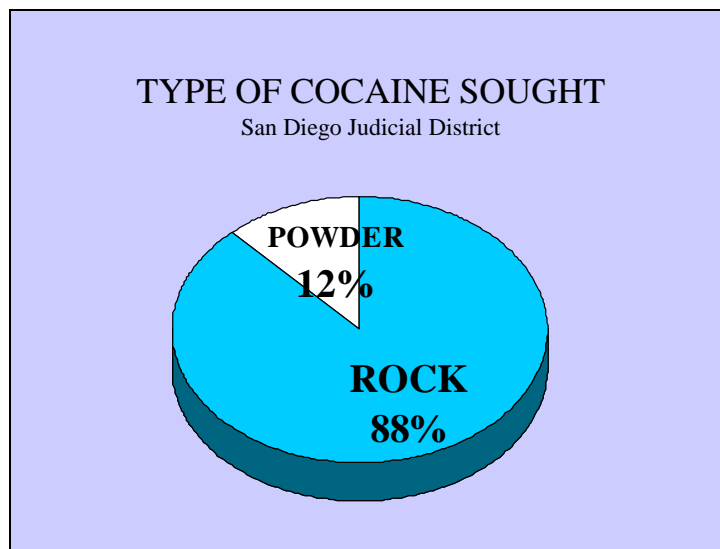


Table 9



What accounts for the fact that only 2% of the search warrants for cocaine targeted White subjects? As Table 9 above discloses, upon closer examination we found that the overwhelming majority (88%) of all cocaine warrants were for rock cocaine (also called "crack" or "cocaine base") rather than powder cocaine. This fact is significant because it appears that Whites and Blacks have different patterns of use with respect to the two forms of cocaine. Based upon calculations from data collected in 1998 by the Substance Abuse and Mental Health Services Administration, Human Rights Watch reported that while over 18.5 million Whites have tried cocaine at some time, of that group only 2.8 million Whites have tried rock ("crack") cocaine.<sup>45</sup> More importantly, this same data indicates that Black use of rock is more frequent than White use. While it is estimated that 214,000 Blacks recently used rock (during the past month) only 147,000 Whites recently used this form of cocaine.<sup>46</sup> By contrast, over 1.1 million Whites reported that they recently used cocaine.<sup>47</sup> These national statistics are consistent with our data which found no White targets among the search warrants for rock cocaine and no Black targets among the search warrants for powder cocaine. The fact that almost nine of every ten warrants for cocaine were for rock cocaine, the type used most frequently by Blacks, would thus seem to shed some light on why there was such a significant racial disparity with respect

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45. Human Rights Watch, *Punishment and Prejudice: Racial Disparities in the War on Drugs*, May, 2000, at tbl.17, at <http://www.hrw.org/reports/2000/usa> (last visited September 2, 2002). To be consistent we have continued to use the local term "rock" which is synonymous with "crack," the term used by Human Rights Watch. *id.*

46. *Id.*

47. *Id.*

to this drug. What remains unanswered, however, is why law enforcement focus was almost entirely on rock cocaine.<sup>48</sup>

Hispanics were also over-represented in cocaine warrants in terms of both their percentage of the population and their reported use of that drug. Hispanics made up 23% of the population in 1998.<sup>49</sup> According to the ADAM study only 13% of adult Hispanic arrestees tested positive for cocaine use.<sup>50</sup> Yet as Table 8 above reveals, almost half of the cocaine warrants involved Hispanic suspects.<sup>51</sup>

#### *E. METHAMPHETAMINE WARRANTS*

A somewhat different picture emerges with respect to search warrants for methamphetamine. As Table 10 below illustrates, the number of Whites and Blacks targeted by warrants for methamphetamine ("meth") was approximately the same as their percentage of the population. However, Hispanics were over-represented not only in relation to their percentage of the population, but also in terms of their reported use and distribution activity regarding this drug.

Fifty percent of the warrants for methamphetamine targeted White residences, while only 7% targeted Black residences. In addition to being proportionate to each group's percentage in the population, we see, when comparing our data with the data collected by the ADAM program, that the distribution of targets as between White and Black suspects is also in roughly the same proportion as meth use and distribution activities by Whites and Blacks. ADAM reported that 46% of adult White arrestees tested positive for meth use.<sup>52</sup> This was significantly higher than adult Black arrestees (12%).<sup>53</sup> Similarly, while 58% of Whites admitted to participating in meth distribution activities only 10% of Blacks did so.<sup>54</sup>

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48. California makes no distinction between rock/crack cocaine and powder cocaine in terms of punishment. See CAL. HEALTH AND SAFETY CODE § 11351.5 (West, 2000). Recently the U.S. Sentencing Commission recommended to Congress that the disparity in federal sentencing between crack and powder cocaine be eliminated, citing new information which shows that fears about the harm caused by crack cocaine and concerns about a "crack baby epidemic" have not been justified. *Sentencing Commission Will Seek Changes in Law Governing Crack Cocaine Sentences*, 70 U.S. L. W. 2646, 2647, (April 16, 2002). Under 21 U.S.C. §841(b), one unit of crack is punished as severely as 100 units of powder cocaine. Although such a sentencing disparity does not exist under California law, the perception of crack cocaine as a more dangerous drug than powder cocaine may have been a factor leading to its being so frequently targeted.

49. See *supra* tbl.5 in text.

50. ADAM, *supra* note 41, at 26 tbl.6. This study did not survey distribution activities regarding cocaine.

51. While the majority of these warrants involved rock cocaine, two-thirds of the warrants for powder cocaine also targeted Hispanic residences. The proximity of San Diego to Mexico and the fact cocaine comes from Latin America may also be factors influencing this result.

52. ADAM, *supra* note 41, at 26 tbl.6.

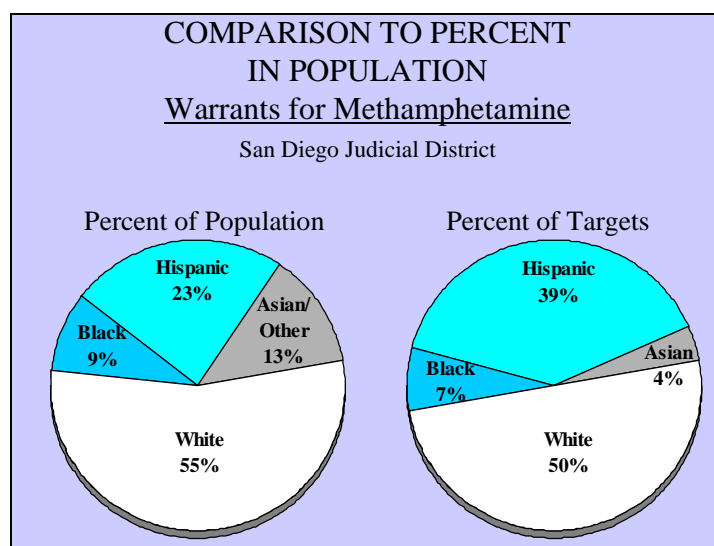
53. *Id.*

54. *Id.* at 49 tbl.23. Note, however, that there may be racial differences in reporting such activities.



Conducting the same type of comparative analysis for Hispanics shows varying degrees of over-representation. Although Hispanics represent only 23% of the population,<sup>55</sup> 39% of the search warrants for meth involved a Hispanic subject. When compared to drug use statistics, however, the extent of over-representation diminishes. ADAM reported that about one-third (34%) of Hispanic arrestees tested positive for methamphetamine use.<sup>56</sup> However, ADAM also reported that only 29% of Hispanic arrestees admitted to participation in distribution activities.<sup>57</sup> Thus, while there is only slight over-representation compared to drug use, there is considerable over-representation of Hispanics when compared to their percentage of the population and their known involvement in distribution activities. If one constructs a likelihood ratio for Hispanics based upon reported drug distribution activities, it appears Hispanics are about one-and-a-half times more likely than Whites to be a target of a search warrant for meth.<sup>58</sup>

Table 10



55. See *infra* tbl.10.

56. ADAM, *supra* note 41, at 26 tbl.6. It may be, however, that arrestees as a group tend to use illegal drugs to a greater extent than the general population. Thus, the disparity may be greater than that reflected by this method of comparison.

57. *Id.* at 49 tbl.23.

58. *Id.* See Benner & Samarkos, *supra* note 11, at 233 n.34, and text at 234 (showing calculation of Hispanic likelihood ratios based upon both drug distribution activity and drug use patterns). Despite the limitations previously noted regarding these forms of comparison (see *supra* notes 54 and 56) all three comparisons, whether based upon population, drug use, or drug distribution activity, show over-representation of Hispanics.

*F. SEARCHING FOR ANSWERS*

Our data therefore indicates that Blacks are over-represented as targets of search warrants for rock cocaine, while Hispanics are over-represented as targets of warrants for both methamphetamine and cocaine (rock and powder). Discussions with police officers, criminal defense attorneys, prosecutors, judges, students, and colleagues have generated a plethora of theories attempting to explain these results. It may be, for example, that police resources are more concentrated in inner city areas and this naturally leads to more information becoming available about illegal drug activities in those neighborhoods. As one veteran police officer observed when asked to comment on our findings: "We go where the work is."<sup>59</sup>

Examination of the three most frequently searched zip code areas discussed earlier shows that 36% of the searches in this inner city area were initiated by an anonymous tip. It may be that members of this community are simply more proactive than other communities in rooting drugs out of their neighborhood and the police are simply responding to complaints. However, that would still give only a partial explanation, because the majority of searches in the three zip code inner city areas did not initiate as a result of an anonymous tip. We found that 80% of the searches in this inner city area involved the use of a confidential informant.<sup>60</sup> Thus, such heavy reliance upon confidential informants may also play a role in determining where searches will be carried out. Because little information is normally given in the probable cause affidavit about the confidential informant, it is difficult to assess this impact. The confidential informant can be a citizen from the neighborhood, the identity of whom is kept secret because of fear of retaliation. However, confidential informants can also be drug users who have been caught and are given incentives by police to cooperate by turning in their supplier. Because every racial group has drug users and sellers among them, if Blacks and Hispanics are stopped on the street disproportionately to their percentage of the population, this could be expected to produce a disproportionate number of Black and Hispanic informants.

As Tables 11 and 12 below disclose, the San Diego Vehicle Stop Study, conducted by the San Diego Police Department, has shown that Black and Hispanic drivers are significantly more likely to be stopped and have their cars searched than are White or Asian drivers.<sup>61</sup> The chances of being stopped for a

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59. Interview with veteran San Diego Police Officer, in San Diego, Cal. (Feb. 17, 2000). We note that the San Diego Police Department is a nationally recognized leader in community policing and that both the current and immediate past Chiefs of Police have undertaken initiatives to combat racial profiling, including the San Diego Vehicle Stop Study, which, as noted below, has collected and published data on the race of persons stopped for traffic offenses.

60. A confidential informant is a source who's identity the police refuse to disclose in their probable cause affidavit. Tips by such confidential informants frequently initiated the investigation that led to obtaining a search warrant. Confidential informants were also used in cases initiated by an anonymous tip to confirm the existence of drugs on the premises to be searched. *See* Benner & Samarkos, *supra* note 11, at 239.

61. SAN DIEGO POLICE DEPARTMENT, VEHICLE STOP STUDY YEAR END REPORT: 2000, at 18

traffic violation for Black and Hispanic drivers were about one in four.<sup>62</sup> The chance of being stopped for White drivers, however, was only about one in ten.<sup>63</sup> Even more revealing was the disclosure that once stopped, the chance of being searched was only 3% for White drivers, but 10% and 11% for Black and Hispanic drivers respectively.<sup>64</sup> There were 9,931 vehicle searches, 4,918 searches of drivers and 1,441 searches of passengers recorded during the twelve-

Table 11

San Diego Police Department Vehicle Stop Study			
Chances of Being Stopped			
ASIAN	BLACK	HISPANIC	WHITE
15%	26%	25%	14%

Table 12

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tbl.14, and at 21 tbl.17 .

62. *Id.* at 18 tbl.14.

63. *Id.*

64. *Id.* at 21 tbl.17.

San Diego Police Department Vehicle Stop Study			
Chances of Being Searched			
ASIAN	BLACK	HISPANIC	WHITE
3%	10%	11%	3%

month period covered by the study.<sup>65</sup> Contraband was found in 957 cases.<sup>66</sup> The discovery of drugs during a vehicle stop may lead to the further search of the driver's home or the driver may become an informant and tell police where the drugs were purchased. Because Black and Hispanic drivers are stopped and searched more often than White drivers, this also may be a factor contributing to their over-representation as targets of search warrants for narcotics.

As previously noted in Table 7, over 80% of all narcotics warrants targeted Blacks and Hispanics, while less than one in five targeted a White suspect. Even if drugs were always found in the Black and Hispanic homes that were searched, this would be a cause of concern. However, we found that search warrants targeting Blacks and Hispanics were not very successful in recovering the illegal drug sought. As discussed above, in the most frequently searched inner city zip code areas (which were predominantly Black and Hispanic), only about one out of every three warrants issued was successful in recovering the targeted drug.<sup>67</sup> As Tables 13-15 below demonstrate, looking at all narcotics warrants issued in the San Diego Judicial District as a whole, there was a dramatic disparity in success rates based upon the race of the target. Ironically, searches were most successful against White targets, the least targeted race. Over half (53%) of the warrants targeting Whites were successful. However, little more than one third (36%) of the warrants targeting Hispanics and only about one in four (28%) of the warrants targeting Blacks resulted in recovery of the drug sought by the warrant. It would therefore appear to be more productive for police to target

65. *Id.* 7 tbl.3

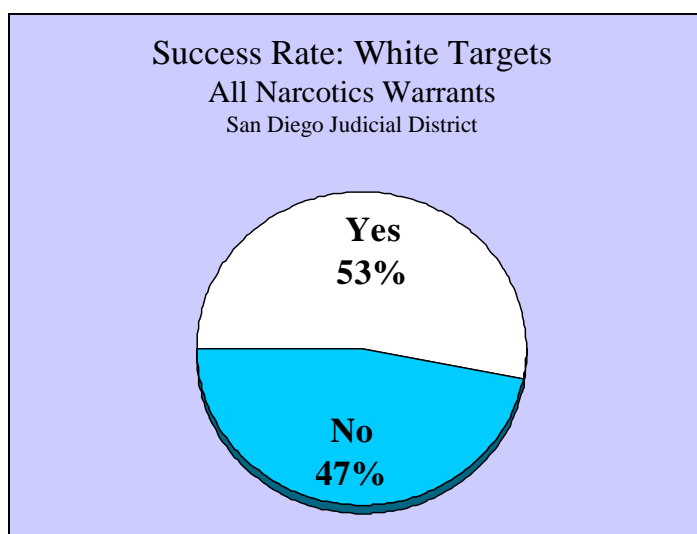
66. *Id.* The study did not report on follow-up activity resulting from these discoveries.

67. *See* text in *supra* note 25.

White rather than non-White suspects. However, we found that the success rate was also linked to the type of drug sought.

As Table 16 below discloses, searches for methamphetamine (where users and sellers were largely White and Hispanic) were much more successful than searches for rock cocaine (where the users and sellers were largely Black). This raises the question whether success rate is linked to the type of drug involved rather than race. We discuss this factor below when examining warrants for the entire county which yielded a larger sample to analyze.<sup>68</sup> Another factor influencing the success rate may also be the reliability of information provided by anonymous tipsters and confidential informants. For example, with respect to the warrants issued in the three most frequently searched inner city zip code areas, only one in four (27%) of the warrants that were initiated by an anonymous tip was ultimately successful in finding their target. All of these unsuccessful searches sought cocaine.

Table 13



68. See *infra* text at tbls.35 & 36.

Table 14

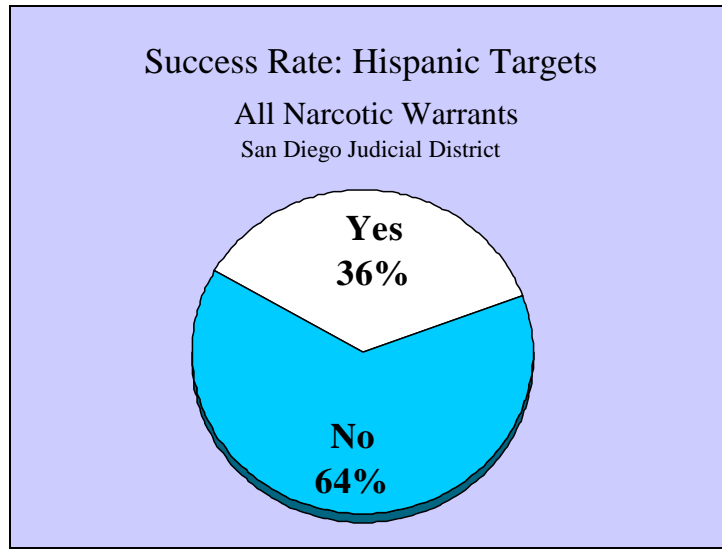


Table 15

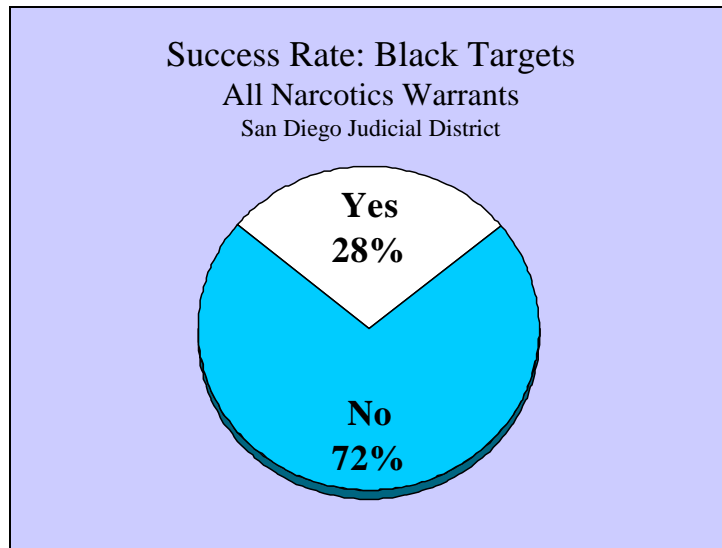
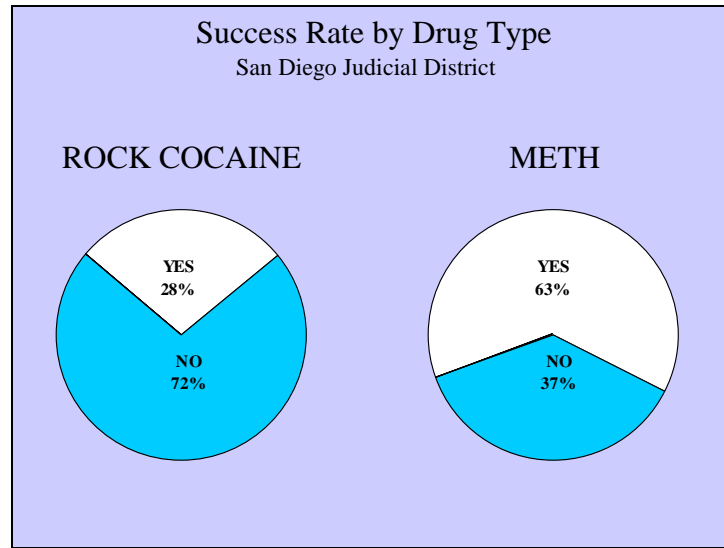


Table 16



II. OUTLYING JUDICIAL DISTRICTS

We also collected data on search warrants issued in the three other judicial districts in San Diego County. Table 17 shows the urban centers in San

Table 17

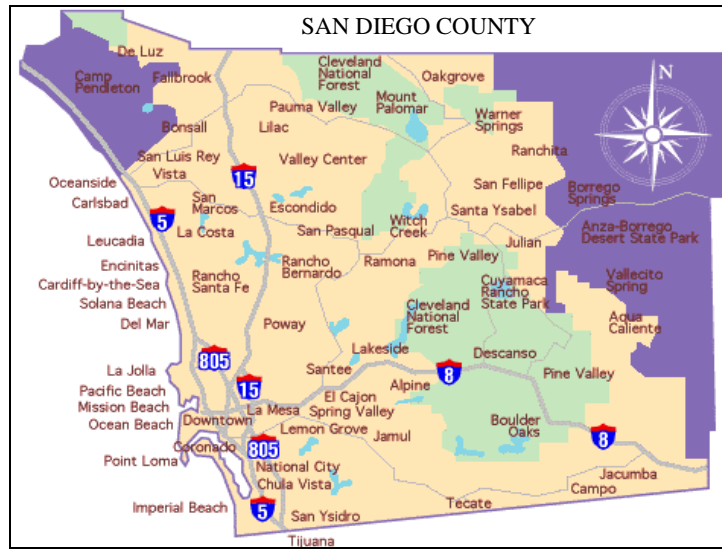
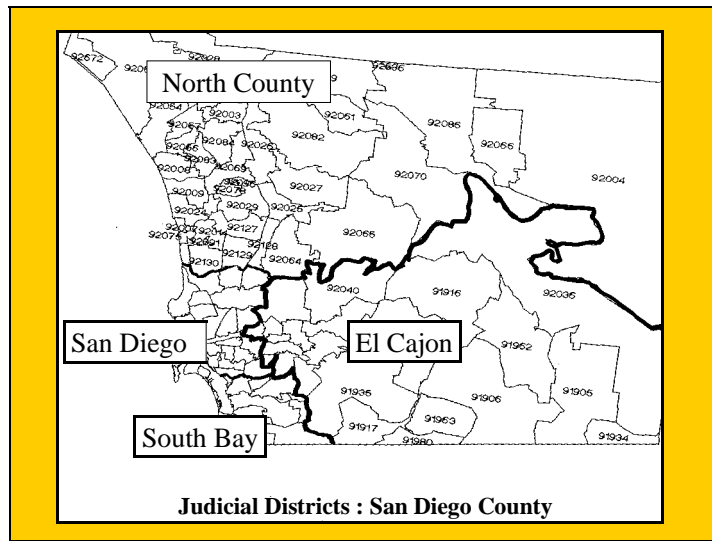


Table 18



Diego County.<sup>69</sup> Table 18 outlines the boundaries of the county's four judicial districts and their zip codes.<sup>70</sup> Using zip codes as a reference, we were able to

69. COMPACT MAP, available at <http://www.co.san-diego.ca.us/cnty/sandiego/map.html> (last visited May 8, 2002).

70. ZIP CODE AREAS, available at [http://cart.sandag.org/spw/help/maps/map\\_zip.htm](http://cart.sandag.org/spw/help/maps/map_zip.htm) (last visited May 8, 2002). Data obtained from the Clerk of the San Diego Superior Court was used to determine which zip codes fell within each judicial district.



determine demographic information for each judicial district.<sup>71</sup> A snapshot of each judicial district is presented below.

*A. North County Judicial District*

As its name implies, this judicial district lies north of the city of San Diego. The North County Judicial District includes a number of coastal cities, inland bedroom communities, and rural areas. Its population in 1998 was approximately 721,000.<sup>72</sup> We sampled 200 of the 333 search warrants issued during 1998 and found that 44% were for narcotics.<sup>73</sup> Half of these narcotics warrants were obtained by the San Diego County Sheriff. The remainder were issued to city police departments or federal agencies such as the DEA. As Table 19 below reflects, most warrants (61%) sought methamphetamine. Other frequently targeted drugs included marijuana (17%) and heroin (15%). Only 6% of the warrants sought cocaine.<sup>74</sup>

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71. Population and ethnicity were determined by adding the population and ethnic breakdowns of the various zip code areas making up the district. This information was obtained for the year 1998 from the San Diego Association of Governments. See SAN DIEGO ASSOC. OF GOV'T, *supra* note 18. Where the boundary of two adjacent districts cut across a single zip code area, the population was allocated between the two judicial districts on the basis of criteria which included the percentage of land mass falling within the district, population density, and whether search warrants in our sample from that zip code were issued by the particular district. This occurred with eleven zip codes comprising 7.5% of the total county population.

72. *Id.*

73. n=88.

74. About 14% of the warrants sought more than one drug. The percentages therefore reflect the number of times a particular drug was expressly sought either alone or in combination with other drugs. Two warrants sought both rock and powder cocaine. Four drug detector dog cases were excluded from this calculation because the dog's alert is not specific for a particular drug. See *supra* note 19.

Table 19

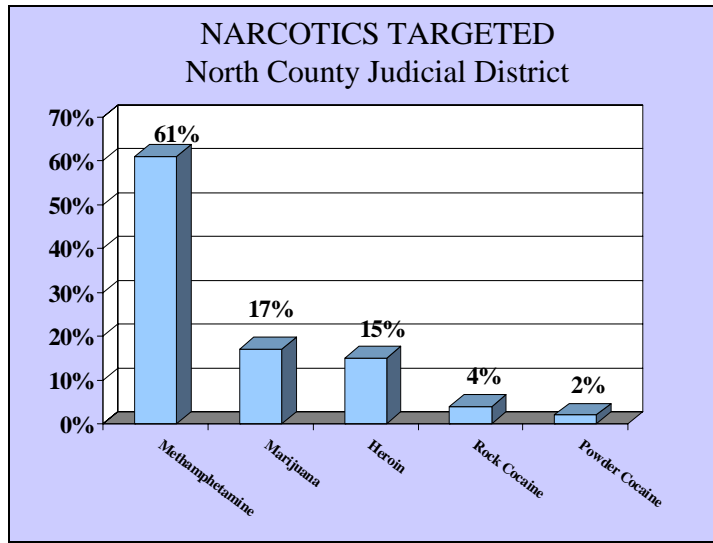


Table 20

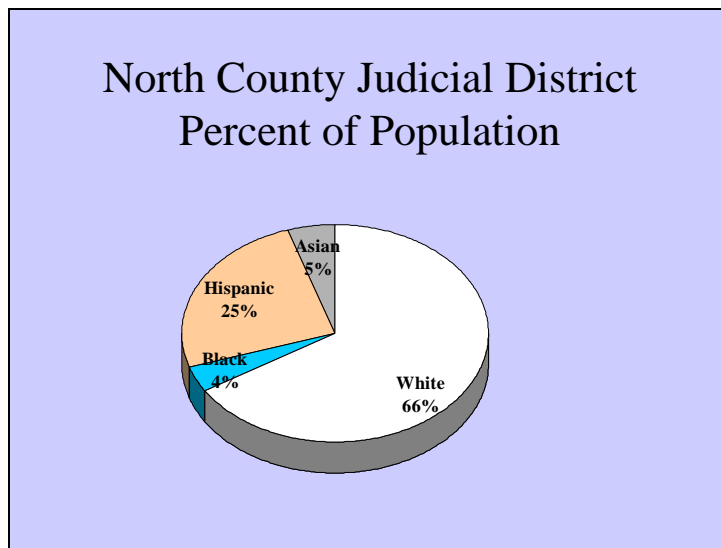
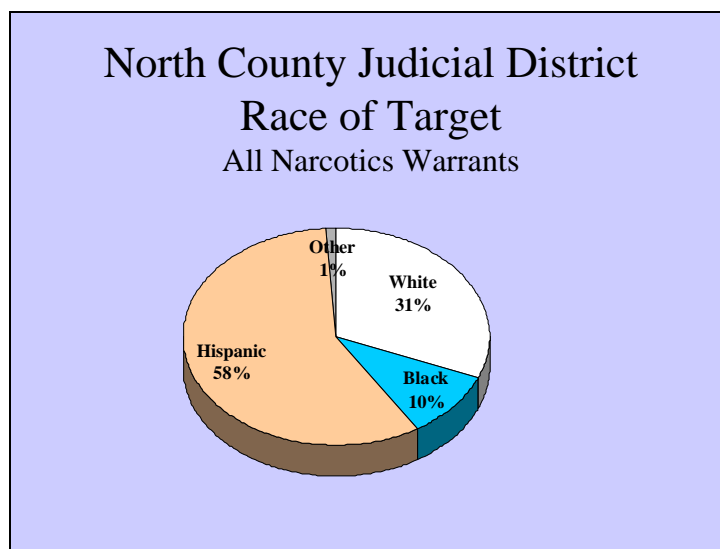


Table 21



As seen by comparing Tables 20 and 21, Hispanics were disproportionately targeted in terms of their percentage of the population. While Hispanics made up only 25% of the population of the North County Judicial District, well over half (58%) of the narcotics search warrants were issued against Hispanic targets. Blacks were also over-represented. Although Blacks made up only 4% of the population, they comprised 10% of the targets. While Whites made up approximately two-thirds of the population, they were targets in less than one-third of warrants. Since the majority of these warrants were for methamphetamine, this disparity is puzzling in light of the ADAM study's previously discussed finding that Whites were heavily involved in both use and distribution of methamphetamine during the period 1996-98.<sup>75</sup> Yet almost two-thirds of the warrants seeking methamphetamine targeted Hispanics, while only 29% targeted Whites. Success in recovering methamphetamine was lower for Hispanic targets (60%) than it was for White targets (86%). Confidential informants were involved in 64% of all cases. Only three cases involved an anonymous tip. The rate of success for all warrants was 71%.<sup>76</sup>

#### *B. El Cajon Judicial District*

This judicial district had a population of approximately 544,000 in 1998. It includes the city of El Cajon and a vast rural area encompassing the eastern

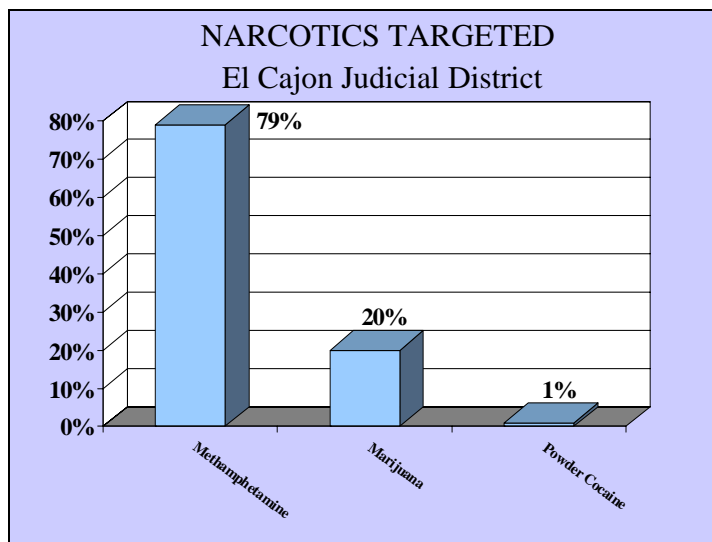
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75. See *supra* note 41, at 49; see *supra* note 42, at 26.

76. This represents the success rate of executed search warrants. All of the search warrants on file with the Clerk of the Court were executed warrants.

portion of the county.<sup>77</sup> We examined 225 of the 249 search warrants issued in this judicial district.<sup>78</sup> Narcotics warrants represented 38% of our total sample.<sup>79</sup> As Table 22 discloses, the overwhelming majority of the El Cajon narcotics warrants (79%) sought methamphetamine, while 20% targeted marijuana. Only one warrant sought powder cocaine and none sought rock cocaine or heroin.

Table 22



77. See text in *supra* note 71; see *supra* note 18.

78. The unexamined cases were either sealed, missing, or missing pages so that data collection was impossible.

79. n=85.

Table 23

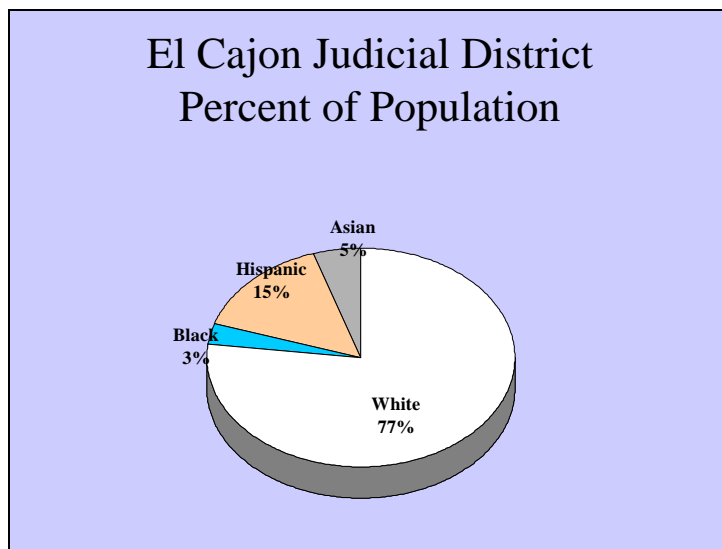
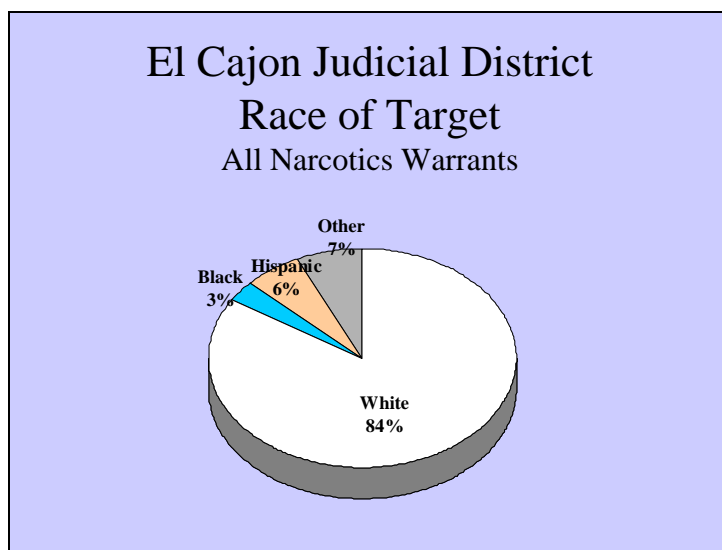


Table 24



Tables 23 and 24 compare the race of the target of the narcotics warrants to the percentage of that race in the population of this judicial district.<sup>80</sup> In contrast to the two previous judicial districts, it appears that in this district Whites were slightly over-represented as targets of narcotics warrants. While Whites made up 77% of the population they comprised 84% of the narcotics warrant targets.

80. Race of the target was known in 78% of the cases.

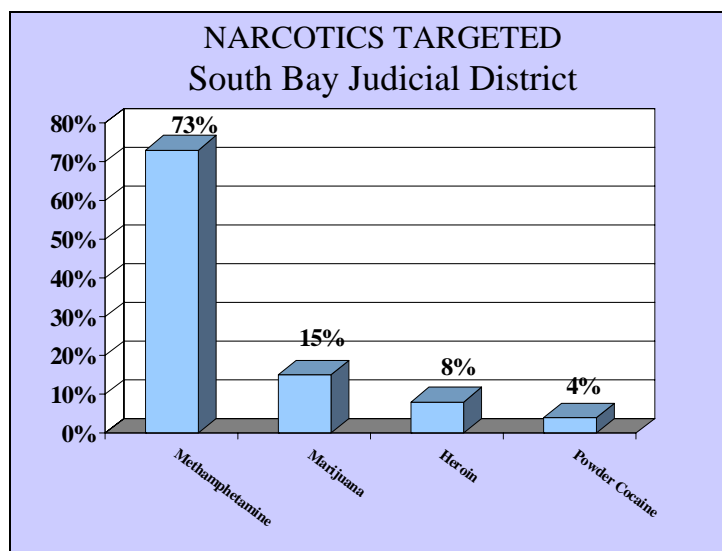
Blacks were targeted proportionate to their percentage of the population (3%) and Hispanics, who made up 15% of the population, were under-represented, constituting only 6% of the targets.

Looking at the searches against White targets for methamphetamine and marijuana combined, it appears 76% were successful while none of the searches against Black or Hispanic targets were successful. Confidential informants were involved in 66% of the cases and anonymous tips figured in 9% of the cases. Overall 77% of the warrants issued in this judicial district recovered the drug targeted by the warrant.<sup>81</sup> This was the highest rate of recovery in the county.

### *C. South Bay Judicial District*

Lying between the city of San Diego and the border with Mexico, the South Bay Judicial District encompasses a largely suburban community, which had a population of approximately 381,000 in 1998.<sup>82</sup> Having the smallest population of the four judicial districts it also had the smallest number of search warrants. We examined 140 out of 156 search warrants issued in 1998 and found 61% of this sample were narcotics warrants.<sup>83</sup> As seen in Table 25 below, again the vast proportion of warrants were directed at methamphetamine. Marijuana (15%) was the next most frequently sought drug, followed by heroin (8%) and powder cocaine (4%). There were no warrants for rock cocaine.

Table 25



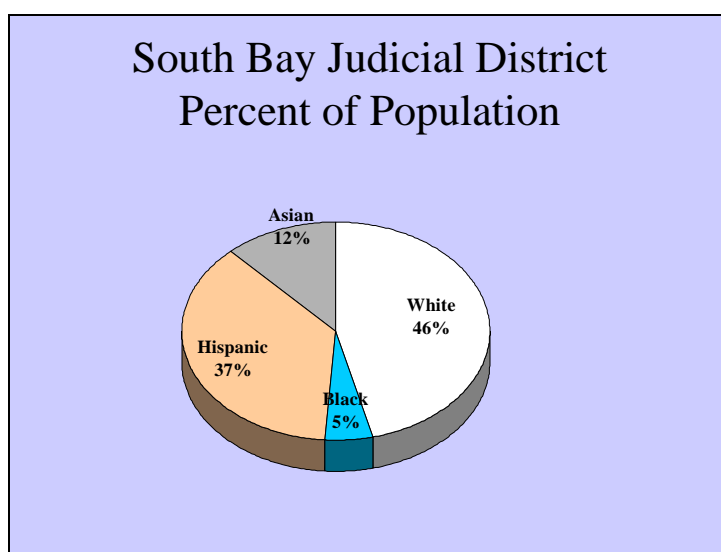
81. 93% of the warrants were executed. The success rate as a percentage of executed warrants was 83%.

82. See text in *supra* note 71; see *supra* note 18.

83. n=86. The unexamined warrants were either sealed, missing, or missing pages so that data collection was impossible.

As Table 26 below discloses, the district is ethnically diverse, with Whites making up less than half of the population. Table 27 below reflects this diversity, showing that the narcotics warrants issued in this district targeted the different racial groups in roughly the same proportion as their percentage in the population.<sup>84</sup> Confidential informants were involved in 78% of the cases and 5% were initiated by an anonymous tip. Searches against Hispanic targets were the least successful (52%) while overall 62% of issued warrants recovered the targeted drug.<sup>85</sup>

Table 26

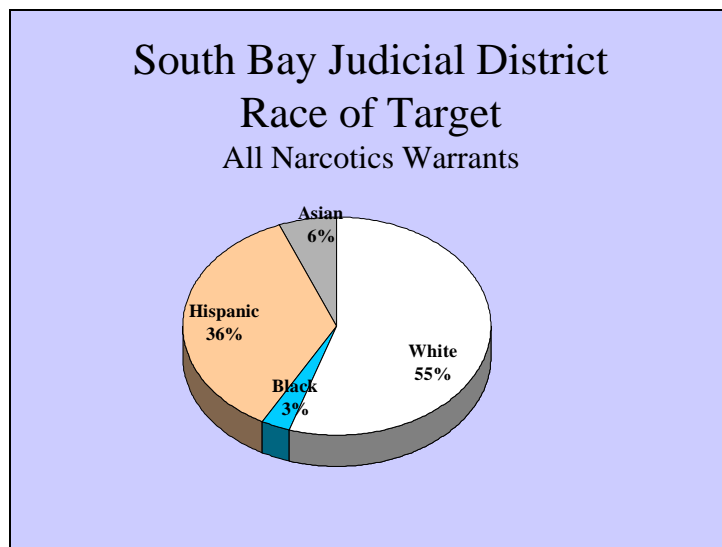


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84. Race of the target was known in 78% of the cases. Interestingly, Whites were the only race over-represented in terms of their proportion of the population, while Asians, as was true in all other districts, were under-represented.

85. 80% of all warrants were executed. The success rate as a percentage of executed warrants was 75%.

Table 27



### III. COUNTYWIDE PORTRAIT: ALL JUDICIAL DISTRICTS

In order to construct a portrait of the county as a whole, we drew a random sample from the combined databases of the four judicial districts.<sup>86</sup> To insure that this portrait accurately represented the entire county, the random sample was weighted so that it reflected the proportion of search warrants each judicial district had issued.<sup>87</sup>

#### *A. Narcotics Targeted*

As shown in Table 28, close to half (45%) of the search warrants issued in San Diego County as a whole sought methamphetamine.<sup>88</sup> About one in five (22%) sought rock cocaine, while only 6% sought powder cocaine. Marijuana and Heroin were also targeted infrequently.

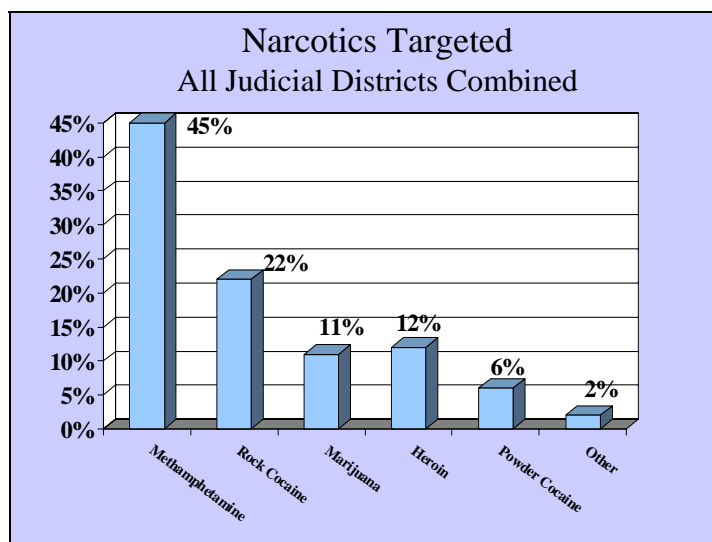
86. n=214.

87. Thus 56% of the sample is composed of warrants randomly drawn from the San Diego Judicial District, 20% from the North County Judicial District, 15% from the El Cajon Judicial District, and 9% from the South Bay Judicial District. *See supra* tbl.1.

88. Percentages equal 101% due to rounding. Seven percent of the warrants studied sought more than one drug. Table 28 reflects the number of times a particular drug was sought either alone or in combination with other drugs, but excludes 12 drug detector dog cases because the dog's alert is not specific for a particular drug. *See supra* note 19. Ten of the 12 dog-sniff cases ultimately resulted in the seizure of marijuana.



Table 28



*B. Racial Disparity*

As seen in Table 29 below,<sup>89</sup> Whites were significantly under-represented while Hispanics and Blacks were significantly over-represented as targets of narcotics search warrants issued in the county as a whole.<sup>90</sup> While

89. In tbl.29 the percentage for each racial group is based upon total population figures. Because these figures include young children and the elderly, who it may be assumed are not drug users or sellers, we also checked to see if excluding these two age groups would make any difference in the percentage attributable to each race. We found that there was no significant difference. In fact, looking only at the percentage of each racial group within the 18 to 64 years of age category slightly increases the White percentage to 62% and decreases the Hispanic percentage to 22%, while the Black and Asian percentages remain the same. SAN DIEGO ASSOC. OF GOV'T, *supra* note 18.

90. Race was known for 78% of the cases. The results of chi-square analysis confirmed these findings were significant at  $p < .01$  or greater. Chi-square analysis compares observed frequency with the frequency that would be expected based on random assignment. The value of chi-square increases to the extent the actual observed frequency deviates from a random assignment. The chi-square value is deemed "significant" when the deviation from randomness is so great that one is justified in ruling out the possibility that the deviation was due to chance. When the probability of obtaining the observed deviation from randomness exceeds five in 100 ( $p < .05$ ) it can be concluded that the results are due to some systematic pattern of behavior rather than chance. *See generally*, DENNIS P. SACCUZZO, *PSYCHOLOGY: FROM RESEARCH TO APPLICATIONS* 571-85 app. (1987).

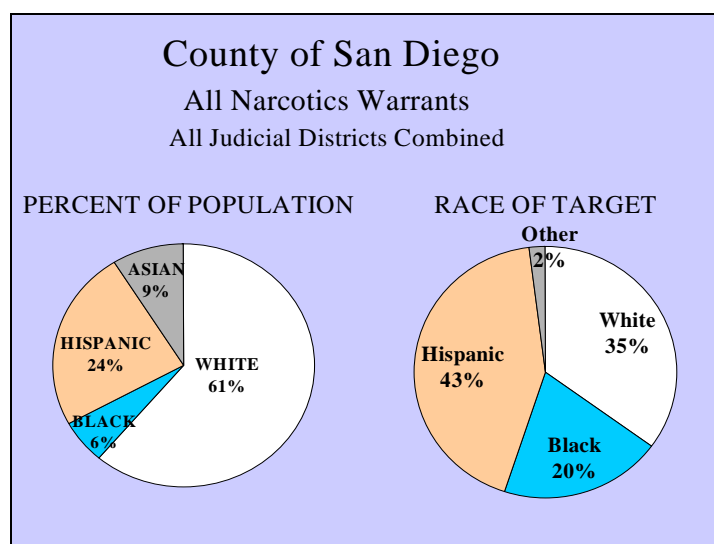
In this case the expected value for each race was their percentage in the population. Chi-square analysis for White under-representation and Hispanic and Black over-representation is shown below:

White Under-representation	chi-square (n=218, df 1) = 99.902, $p < .001$
Hispanic Over-representation	chi-square (n=218, df 1) = 11.821, $p < .01$
Black Over-representation	chi-square (n=218, df 1) = 35.591, $p < .001$

Whites made up close to two-thirds (61%) of the county's population in 1998, only about one-third (35%) of the narcotic search warrants targeted White suspects. In contrast, while just under a quarter (24%) of the county population was Hispanic, 43% of the search warrant targets were Hispanic. Similarly, while only 6% of the county population was Black, 20% of the targets were Black. One percent of the targets were Asian and 1% were Native American.

Not surprisingly, Table 30 reveals that Hispanics and Blacks were targets in 96% of the warrants seeking rock cocaine.<sup>91</sup> As might be expected in light of our previous discussion of methamphetamine use, Blacks were under-represented with respect to methamphetamine warrants.<sup>92</sup> However, Whites continued to be under-represented, while Hispanics were over-represented, as targets of warrants for methamphetamine.

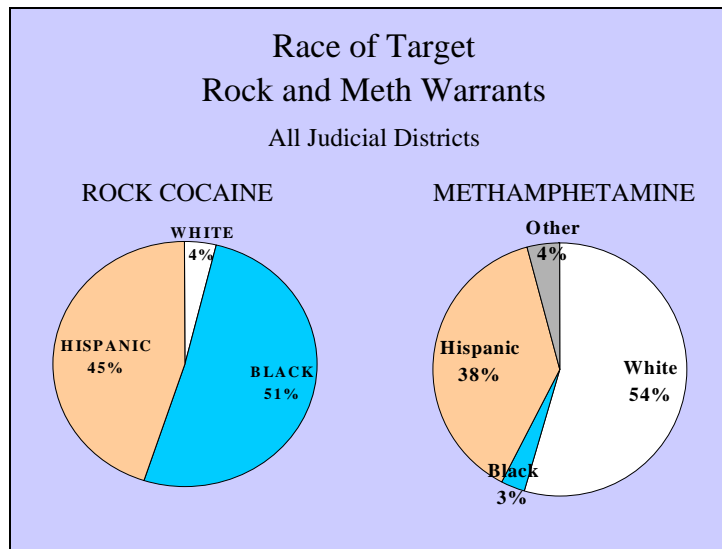
Table 29



91. Warrants for rock cocaine made up almost a quarter of the random sample and were mostly warrants from the San Diego Judicial District.

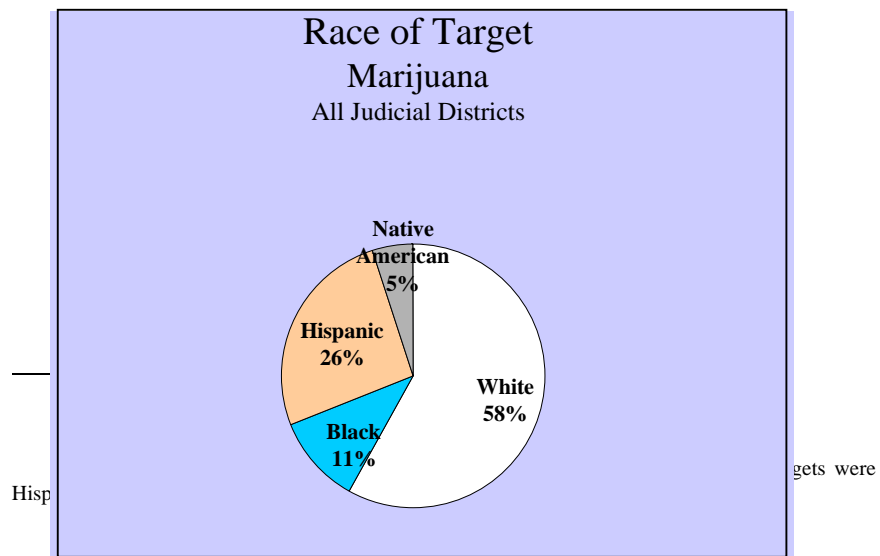
92. See *supra* text following tbl.7.

Table 30



As Table 31 indicates, warrants seeking marijuana more closely conformed to the percentage of Whites and Hispanics in the population, although Blacks continued to be over-represented.<sup>93</sup> The number of warrants seeking powder cocaine was too small for meaningful analysis.<sup>94</sup>

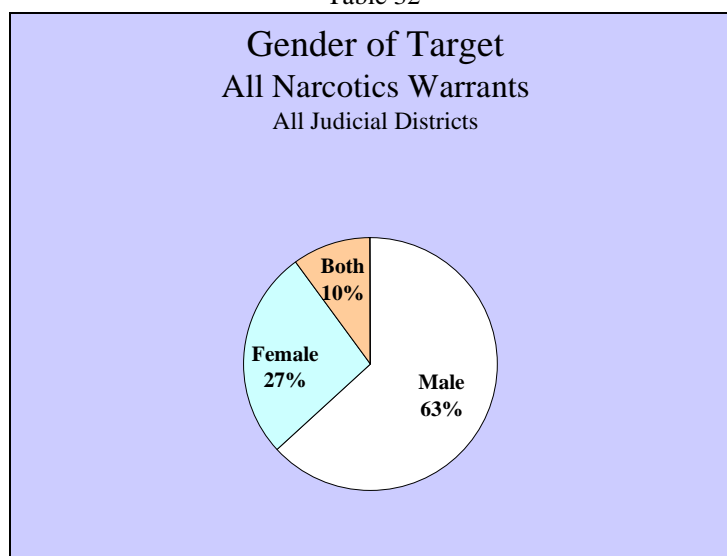
Table 31



*C. Gender*

Gender was also known for 95% of all targets. While women made up almost half (49%) of San Diego County's population in 1998, Table 32 reveals that women were involved as targets either individually or together with male counterparts in just over one-third (37%) of all cases.<sup>95</sup>

Table 32



However, as Table 33 below reveals, when looking at both race and gender we discovered that White females made up the majority (53%) of all female targets. Indeed as seen in Table 34, with respect to warrants targeting White methamphetamine suspects, White women were more frequently targeted than White men. By comparison, Hispanic women made up only about one-third (34%) of all Hispanic methamphetamine targets. Similarly, Black women made up slightly more than one-third (39%) of all Black warrants for rock cocaine.

95. SAN DIEGO ASSOC. OF GOV'T, *supra* note 18.

There were no Asian women targeted for any drug. With respect to all other drugs, males were the predominant target regardless of race.

Table 33

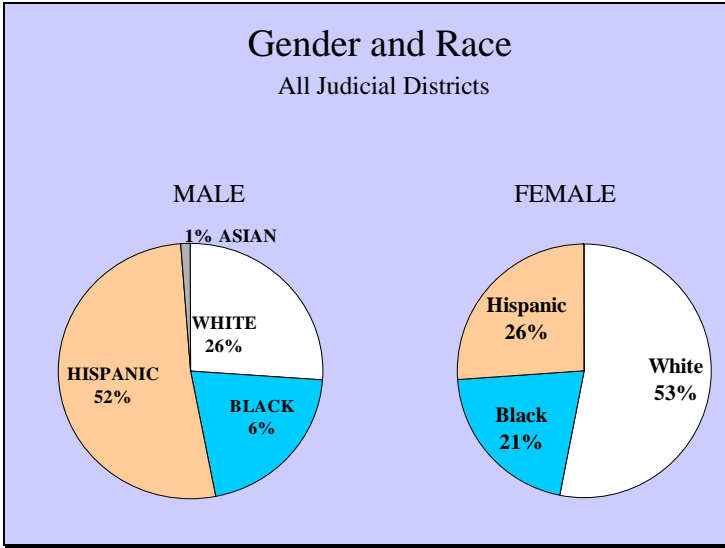
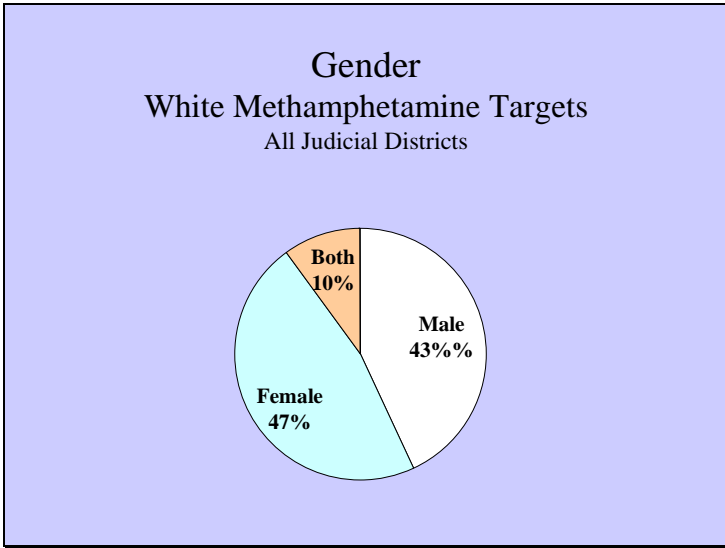


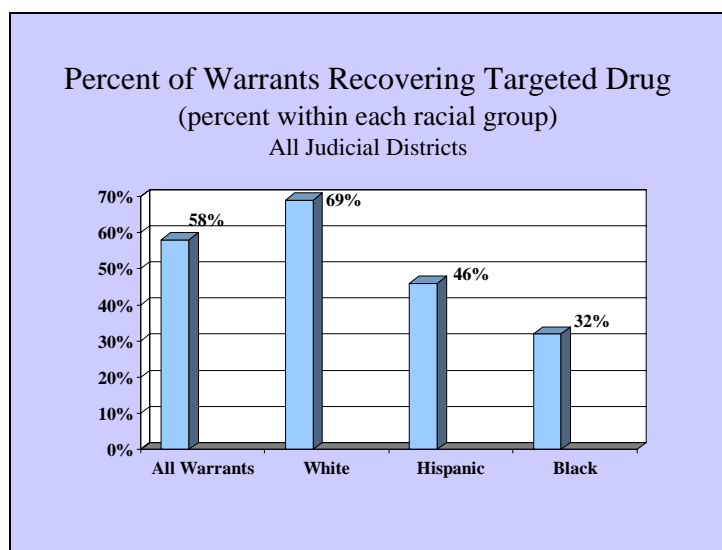
Table 34



*D. Success Rates*

As seen in Table 35, 58% of all narcotics warrants issued were successful in recovering the drug that was the target of the warrant. Warrants that targeted White suspects were the most successful. Over two-thirds (69%) of all warrants targeting Whites recovered their target. However, less than half (46%) of the warrants targeting Hispanic suspects and less than one-third (32%) of the warrants targeting Black suspects were successful in recovering their targets.<sup>96</sup>

Table 35



In seeking to understand why warrants targeting Whites were more successful than warrants targeting Blacks and Hispanics, we discovered that success rates also appeared to be linked to the type of drug sought. For example, almost two-thirds (65%) of the methamphetamine warrants were successful in recovering their target. On the other hand, less than half (48%) of the warrants for rock cocaine successfully recovered that drug. However, because the majority (70%) of all warrants targeting Whites were also warrants for methamphetamine, this data presents us with a classic conundrum: Is the success rate for Whites attributable to some factor associated with methamphetamine, or is the success rate for methamphetamine due to some factor associated with Whites?<sup>97</sup> If the reason is linked to methamphetamine, we

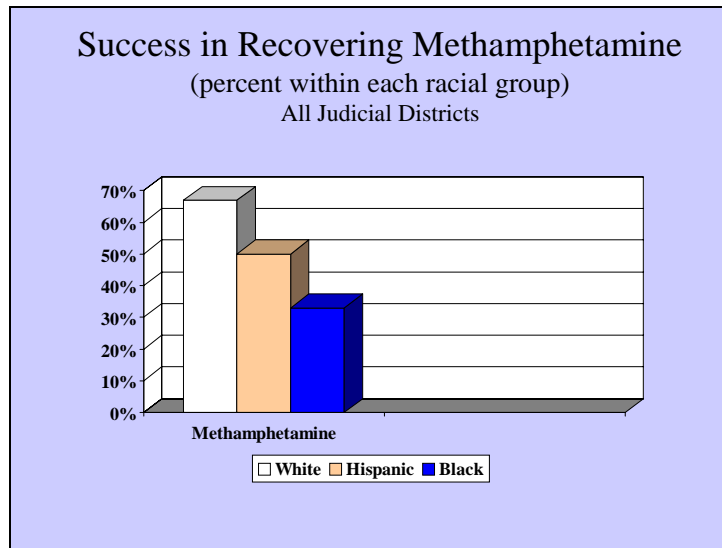
96. A high percentage of warrants issued against Black targets (38%) were never executed. There are many reasons why a search warrant might not be executed. For example, new information may indicate that drugs are no longer at the premises to be searched. Logistical delays may also be a factor. Under California law, a search warrant must be executed within ten days after it is issued or it is void. See CAL. PENAL CODE § 1534 (West 2000).

97. A similar pattern occurred with respect to warrants for rock cocaine. The majority (69%)

would expect to find that all warrants for methamphetamine would have about the same degree of success without regard to race.<sup>98</sup>

Table 36 examines the success rate of each race for methamphetamine warrants. This table indicates that when controlling for methamphetamine, it appears that warrants for White targets continue to be more successful than warrants for either Hispanic or Black targets.<sup>99</sup> This suggests that there is something about White suspects, or about the search warrant process when dealing with White suspects, that leads to higher success rates.<sup>100</sup>

Table 36



It is noteworthy that only a handful (8%) of warrants targeting White suspects involved an anonymous tip as a source of probable cause. In marked contrast, anonymous tips played a much more frequent role in establishing probable cause for warrants targeting Blacks (35%) and Hispanics (19%).<sup>101</sup>

of all warrants targeting Blacks were for rock cocaine. Correspondingly, a majority (51%) of all rock cocaine warrants targeted Blacks. Only 4% of rock cocaine warrants targeted Whites. *See supra* tbl.30.

98. It might be argued, for example, that because methamphetamine is made locally in laboratories, these "meth labs" are more stationary and easier to find than rock cocaine, which can easily be moved from place to place.

99. Race was known in 86 of the 121 warrants for methamphetamine. There were 49 White targets, 34 Hispanic targets, and only 3 Black targets. The same pattern of higher relative success rates for Whites was also seen when controlling for the two other most frequently sought drugs, rock cocaine and marijuana. However, the number of rock cocaine warrants that targeted White suspects was extremely small (n=2) as was the number of marijuana warrants targeting Blacks (n=2).

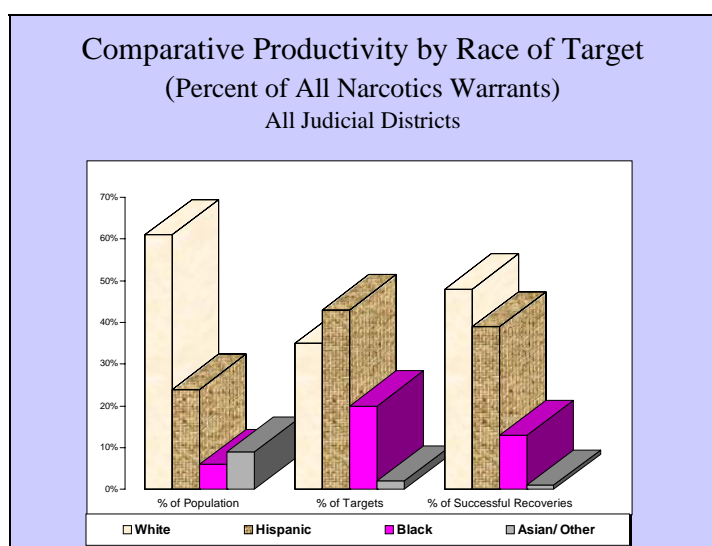
100. The success rate for White warrants is significantly greater than the success rate for the sample as a whole. Chi-square (n=61, df 1) = 3.908, p<.05.

101. Other possible explanations include the high incidence of unexecuted warrants in cases

## IV. CONCLUSION

Table 37 summarizes our chief findings on racial disparity. Comparing column one (percent of population) with column two (percent of targets) graphically demonstrates the under-representation of Whites and over-representation of Hispanics and Blacks as targets of narcotics warrants in San Diego County. Comparing column two (percent of targets) with column three (percent of successful recoveries) reveals the paradox that while Whites were targeted less often than either Blacks or Hispanics, warrants targeting Whites had the highest recovery rate.

Table 37



Our research, of course, has only begun to scratch the surface of this difficult and complex issue and raises many more questions than it answers. While our data establish that the disproportionate targeting of Black and Hispanic residents is not due to chance, statistical disparity alone does not answer why this has occurred. Yet the disparity is simply too glaring to be ignored. One has only to envision a time in the not too distant future when the demographic proportions in San Diego County might be reversed.<sup>102</sup> Imagine that the bars representing

involving Black suspects. However this does not help to explain the disparity between White and Hispanic suspects, since both had comparable levels of unexecuted warrants. Unexecuted warrants amounted to 15% for Whites and 19% for Hispanics. Furthermore, when controlling for this factor by looking at only executed warrants, the same pattern appears. Looking at only executed warrants, the success rates were 81% for Whites, 56% for Hispanics and 52% for Blacks. We also looked at the impact of delay in executing warrants and found that this did not appear to be a contributing factor. Indeed the pattern was the exact opposite one would expect if delay were a factor. Over half of all White warrants (51%) were executed five or more days after issuance, while 47% of Hispanic warrants and only 32% of Black warrants were delayed in execution five or more days.

102. It is projected that Whites will comprise only 49% of the population in the San Diego region in the year 2020. See SAN DIEGO ASSOC. OF GOV'T, DEMOGRAPHICS, DATA WAREHOUSE,



Whites in Table 37 now represent the Hispanic population and the Hispanic (textured) bars represent the new "minority" White population. If Whites were thus disproportionately targeted even though searches of their homes yielded fewer drugs than those of their non-White neighbors, would this not be viewed as a cause for concern?

While most would agree that it is important for our criminal justice system to be colorblind, this assumes that it is possible to somehow put on a pair of magic glasses which eliminate the concept of race altogether. Yet race *is* the pair of glasses through which we see the world. We cannot escape the significance of race. It is part of our culture. Our understanding of race and the stereotypes built up around it begin in childhood and are perpetuated into adulthood by images created by the mass media. For example, what image comes to mind when one is asked to describe a drug trafficker or a drug kingpin? The movie industry has sensationalized Latin American drug cartels and placed Hispanic villains in the forefront of our consciousness in movies like *Traffic*.<sup>103</sup> But are there no White drug lords? The evening news and television crime docu-dramas, moreover, barrage us with scenes of crime that are often from the inner cities where, as we have seen in San Diego, there are large Black and Hispanic populations. We only discover the drug activities that occur in White suburban bedroom communities when a high profile violent crime shatters the mystique of suburban respectability.<sup>104</sup>

The standard of probable cause, which shields the citizen from unwarranted governmental intrusions, is an elusive concept that in practice (if not legal theory) is quite subjective. As the Supreme Court has repeatedly stated, the concept of probable cause "cannot be reduced to a neat set of legal rules."<sup>105</sup> Instead it is based upon a common sense judgment, looking at the "totality of the circumstances."<sup>106</sup> Because race is part of that totality, do perceptions about race unconsciously color that determination and make probable cause appear more readily when the suspect is Hispanic or Black and lives in a "high crime" area? Statistical disparity standing alone, of course, does not establish unconstitutional discrimination,<sup>107</sup> and indeed we do not contend or mean to imply that intentional discrimination is at work here. However, would it not be surprising to find that the police, who wear the same cultural glasses as the rest of us, are immune from their distorting influence? The locations the police choose to patrol and what drugs they choose to target are largely a function of

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2020 REGIONWIDE FORECAST, POPULATION BY GENDER AND ETHNICITY, *available at* [http://cart.sandag.org/sdw/rgf\\_demog.asp](http://cart.sandag.org/sdw/rgf_demog.asp) (last visited June 11, 2002).

103. *TRAFFIC* (Gramercy Pictures/USA Films 2000).

104. A recent example was seen in the revelations surrounding alleged drug use by parents of seven-year-old Danielle van Dam, who was taken from her home in suburban San Diego County and murdered. *See* Preston Turegano, *TV Coverage Captivates Local Crowds*, SAN DIEGO UNION TRIBUNE, March 15, 2002, at A1; Anne Krueger, *Experts Offer Ideas on Why the van Dams Went on Stand*, SAN DIEGO UNION TRIBUNE, March 15, 2002, at A16.

105. *Gates*, 462 U.S. at 232.

106. *Id.* at 238.

107. *Washington v. Davis*, 426 U.S. 229, 242 (1976), *Vill. of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977).

where they perceive "the work is." <sup>108</sup> Those decisions are not made in isolation from the totality of our cultural beliefs, stereotypes and perceptions. Therefore, any effort to understand this aspect of our criminal justice system will necessarily be incomplete until we begin to consider the implications of the pervasive yet subtle influence of race.

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108. "We go where the work is." Interview, *supra* note 59 (interview with a veteran San Diego police officer).