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**edited by alexander cockburn and jeffrey st.clair**

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**Weekend Edition**  
February 4 / 5, 2006

## *Annals of Law Enforcement*

### A Glimpse Inside the San Francisco Hall of Justice, Where 90 Percent of the Cases are Drug Related

By FRED GARDNER

One afternoon in February 2000, when I was learning the ropes at the district attorney's office, I got a call from Phil Matier of the Chronicle who wanted to talk about police chief Fred Lau. On Chinese New Year's the SFPD's Lion Dancers had performed at a party in Brisbane, for which they got four hours of overtime pay, authorized by Lau. Matier wanted to know if the DA's office was investigating the episode; if a complaint had been received; and the section of the law

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pertaining to misuse of funds. I said I'd look into it.

It occurred to me that by making a big deal out of episodes like this, which may have cost the taxpayers a thousand dollars, the media directs attention away from the big ongoing story: one-third of all San Francisco cops' pay is overtime. Overtime pay goes out to the vice and narcotics squads daily, in amounts that add up to millions a year. Because it happens every day, it's routine; it's not news. Thus the system is never exposed. A thousand dollars in bullshit overtime pay is news. A thousand thousand dollars in bullshit overtime pay is not news.

Seventy percent of the cases handled by the district attorney's office are for possession or sale of illicit drugs--mostly crack cocaine--and another 20 percent involve attempts by poor, desperate people to get money for drugs.

On a typical morning in Department 10, one of the four municipal courts on the first floor, 26 people wait patiently as the proceedings begin at 9:20 a.m. None appear to be affluent. Guessing from their demeanor and attire, six are regularly employed, including a muni driver and his wife. The rest are lumpen. There's a tall white man with dyed black hair, a Carl Perkins impersonator. Two Samoans, four Latinos, a white woman dozing, a white-haired Greek gent in his sixties. Everybody else is African American.

At the end of the day I debriefed the assistant DA--a self-described "progressive" hired by Terence Hallinan--who handled all those cases.

*FG: One third of the cops pay is overtime. That's a big story. And the people of San Francisco do not know it.*

ADA: As you saw today, they don't always earn it. A lot of times they get a subpoena returned and they drop a card upstairs to get paid -they have an expression, "drop a card." I believe that happened today. I know that they were under subpoena and didn't appear. That I know. At least one of the officers who didn't appear had a partner sign in for him. I asked his partner, "Where's Joe?" He said, "He can't be here today he had me sign in for him."

*FG: Sign in so he could collect his overtime pay?*

ADA: I can't think of any other reason. And that's the core of what's wrong here. That's where the real reform needs to happen, but nobody says it The cops have a financial interest in not ending the war on drugs. A lot

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of them make substantially more in overtime than they make on their base salary. They even have a word for these cards they drop -they call them "salmon." The cards are kind of salmon colored. The cops say, "I gotta get my salmon." Meaning: "I gotta get a big stack of these overtime cards I can drop upstairs. "

(The Assistant DA flicks open a computer print-out): Look at the cases: drugs, drugs, drugs These are the prelims I had scheduled today.

*FG: Do you know what drugs and what quantities are involved?*

ADA: Very small quantities, typically. For example, this is an eleven three fifty, We wound up putting on the hearing and it was less than a gram of cocaine base. So they charged 11350, which is simple possession of cocaine. This is a 52 which is a sales.

*FG: To make a sales bust do they have to catch someone with a certain quantity?*

ADA: No, it's the conduct. Most of the sales cases we get are hand-to-hand sales from an undercover buy officer -a police officer posing as a willing customer. Although we're getting an increasing number of what they call observed sales where the cops are hiding somewhere with binoculars in a high drug area and they watch people make transactions and then they arrest them and they seize the drugs and the money on them and they file those cases. So, drugs, drugs, drugs, drugs -all four of the cases on this page are drugs. Drugs, that's the fifth one.

*FG: Are they all cocaine? Can you tell?*

ADA: Yes, every one of these is cocaine and I believe every one is cocaine base. Most of our cocaine cases are cocaine base, as opposed to cocaine salt or cocaine powder. Drugs. Maria's case was not drugs. I think it was a robbery case.

*FG: Which could be to get money to buy drugs.*

ADA: Yes, that's typically what a defense attorney's going to tell you. (finds case on print-out) Yes, it's a robbery. Mr. E. is on two grants of probation for narcotics-related offenses, which makes it seem likely that that's what he was doing. They call it "drug-seeking behavior." And if you're to believe anecdotally what defense lawyers tell you, what defendants tell the police, what defendants say on probation reports, Yeah,



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the vast majority of burglaries and robberies are done to obtain money for drugs -an overwhelming percentage of them. I'd bet it's more than 75 percent; it may be more than 90 percent.

*FG: Make a ballpark guess, what percentage of cases handled in the Hall of Justice are drug cases?*

ADA: Eighty percent. Maybe more.

*FG: What else is there?*

ADA: Robberies. First and second-degree burglaries. Auto burglaries and auto thefts. Then you have your murders, your attempted murders, your rapes, and your assaults. Less than five percent for all those things. And combined less than 20 percent for all those things. (He focuses again on the print-out) So, we have one narcotics, two narcotics, three narcotics, four narcotics, five narcotics, six narcotics, seven narcotics, eight narcotics I'm keeping a record to show how often no one shows up. Here: I have Officer X, who never showed up. The other officer who signed him up appeared for the first time at 12 noon to sign in, and he had no dope and no 115 form. It's a massive problem.

*FG: When Dr. Mikuriya didn't make it up to El Dorado county to testify in a case recently, officers from Alameda County gave him a citation. He now has to go up there and deal with a contempt charge. Why isn't there an equivalent response when a cop who's subpoenaed doesn't come to court? Isn't that against the law?*

ADA: That's what it says on the subpoena form.

*FG: Well, they're not supposed to be above the law. Justice is supposed to be even-handed. If the cops routinely don't show up when subpoenaed, why isn't that a scandal?*

ADA: I try and get along with these guys and I try and accommodate them. So on this case, I was able to get it continued. I covered for them.

*FG: Did you cover for them all today?*

ADA: On this other case the officer had a pretty good excuse -he was testifying in another department. And, to his credit, he checked in first thing in the morning and wrote "jury trial, city hall." I have no problem with him -he's a professional. (Reviewing the "Preliminary hearing sign in sheet.") This guy showed up first thing



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with no dope, told me he couldn't be here after 11 o'clock, and then disappeared. Said he was gonna come back and disappeared. So when his partner came back I told the partner to go get the dope. Turns out the other guy had already taken the dope and had disappeared with it. So, this guy was useless to me and the other guy was missing. I managed to get it continued This case went without a hitch No cops ever showed on this case and I don't know where they are When I come down in the morning I spread the files out in numeric order and I have my calendar and I have this sign-in sheet. The police know it's standard practice to sign in with their pager number and their location, or their extension number if they happen to be inspectors who are upstairs.

*FG: What are they getting paid at this point?*

ADA: They get paid for three hours just for signing in.

*FG: Three hours overtime?*

ADA: Unless they're on duty. Most of the cops today were getting overtime. And I covered for them, I'm complicit.

*FG: Are you afraid of them? Why go out of your way to cover for them?*

ADA: Well, if we're getting along the cops will be more likely to sign off on my dispos. If I give some guy a third referral to diversion, he won't start complaining to the community, "Hallinan's giving away the store." Most cops don't like the idea that diversion exists. So to refer someone three times, you have to sell them on that The bulk of our cases are 11350s -simple possession of cocaine. An 11350 doesn't get me worked up. I see it for what it really is: a bottom-feeder case, usually Cocaine base -crack- and cocaine salt combined has to be at least three-quarters of our cases -mostly base. Then comes marijuana, then heroin. Ecstasy and those things you don't see much at all.

*FG: What kind of marijuana cases do we see?*

ADA: In prelim court you only see sales or possession for sale, because simple possession is a misdemeanor in California. The typical marijuana case that we get is a Haight Street caper or buy bust where a cop goes undercover and buys a baggie, usually a \$20 baggie of marijuana from some kid on one of the corners and then the arrest team's there and they arrest the person and charge him with sales.



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*FG: And they do that at the behest of the Haight St. merchants.*

ADA: They certainly hype that in their reports that they've received numerous citizen complaints about narcotics trafficking on Haight St. A lot of cops write that in the body of their police reports. They indicate that there's a great hue and cry for their services out there. There's a lot of narcotics busts out there for marijuana.

*FG: How many heroin cases do we get?*

ADA: We apparently have an epidemic problem vis a vis other American cities, but still vis a vis those other drugs it's not a huge amount.

*FG: Isn't it obvious that making opiates available through doctors' offices would solve the problem just like that?*

ADA: What you saw today on the micro level with these individual cops exists on the macro level. Individually and collectively have a tremendous interest in maintaining the war on drugs. They're part of a whole complex that includes the religious right and politicians who want to pander to them. This system is so entrenched and so calcified, it now has a life of its own.

*FG: Do you see any chance for opposition to the war on drugs developing within the law enforcement community?*

ADA: I think there'd be tremendous peer pressure for them not to. I've had conversations with cops who say the war on drugs is fucked. But then they say there's no better solution that's tenable or acceptable to them. The cops are human beings. There's lesbian cops and black cops and Democrats and Republicans. There's people who are angry and probably shouldn't have a gun; there's people who probably wouldn't use a gun even if they had to. They run the whole continuum. A lot of them have a lot of humanity and a lot of decent intentions. And by and large I think they have a hard job. But there's some real rot at the core of the way we're administering justice here. It's money more than ideology.. I've got to believe that one of the reasons the POA doesn't like Mr. Hallinan is that they see Mr. Hallinan's narcotics policies as a threat to salmon. You'll never convince me otherwise.

*FG: So you might say the cops are in the "save the salmon" movement.*



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ADA: But if you ask them they'll say that they're doing the right thing and they're trying to protect the neighborhoods they work in. They have these community meetings and we get invited to them and they bring in people who own businesses and they say, "Why are these hookers and drug dealers allowed to hang out and do business on our streets?" The cops blame the DA.

*FG: Could you make any generalizations about the defendants coming through today?*

ADA: Most are these marginalized characters, mostly charged with simple possession or sales of a very small amount. They're clearly not big fish, they're clearly not major traffickers or drug kingpins or anything like that. Most of them have drug addictions themselves. No money. No education. Most of them have health problems. A lot of them have psychological problems.

*FG: What was the story of the man and woman where she was out of custody and he was still in?*

ADA: We had done a search of the house and found drugs in the house and found them there. We had a CRI -a confidential reliable informant. The drug cases that don't involve us doing either a buy bust or an officer-observed sale typically come by way of warrant. In order to get a warrant you have to demonstrate probable cause to a magistrate. The typical way you demonstrate it is by police officers staking out an area and recording their observations; and police officers receiving information from CRIs. These are people who anonymously give the police tips which cause them to further investigate and prepare a warrant package and come to us. We typically sign off on them. Sometimes we'll say "this is insufficient," and sometimes we'll say "this is bullshit." And then they go to a judge and try to get a judge to sign the warrant.

*FG: Why was he in custody and she not?*

ADA: My recollection is that he was on probation I think for a narcotics thing, what's called a 1203 hold. When you're on probation and pick up a new arrest there's typically a hold placed in superior court. And typically if you're on felony probation it's a no-bail hold and you're stuck.

*FG: Do you know the drugs involved and the quantities?*

ADA: I have it back in my office. I can tell you some of them were under a gram. Amador was under a gram.

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Kosyn was under a gram. I believe two of Logan's cases were under a gram.

*FG: What did you make of the domestic violence case where you got bail of \$40,000?*

ADA: That is a really hot issue in his building. Terence deserves a lot of credit for sensitizing the judges. When we came here they were diverting domestic violence cases and a lot of people were getting Ored. Now, if you're charged with felony DV you're almost definitely not going to get Ored and you're certainly going to have a reasonably high bail set.

*FG: What was the Elvis impersonator charged with?*

ADA: He was charged with misdemeanor stalking. 646.9 of the penal code. One of the more intrepid misdemeanor deputies decided that the conduct was actually felonious and took it upon themselves to amend it to make it a felony.

*FG: What about the Muni driver?*

ADA: Domestic violence case.

*FG: He was accompanied by a woman.*

ADA: Very good chance she was the victim. Standard custom and practice is for them to reconcile shortly after he's taken into custody. And henceforth they work at cross-purposes with the prosecution. They create problems for us in prosecuting their batterers.

**Fred Gardner** is the editor of [O'Shaughnessy's](#) Journal of the California Cannabis Research Medical Group. He can be reached at: [fred@plebesite.com](mailto:fred@plebesite.com)



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