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## A Study of Sex Law Enforcement in Louisville, Kentucky

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This article embodies the results of a study of the enforcement of the criminal sex laws in the Jefferson County Circuit Court situated in the city of Louisville, Kentucky, in the year 1947.<sup>1</sup>

The survey had two aims: first, to render an account of the functioning of the systems enforcing the sex laws, as fully as such social institutions are adaptable to statistical appraisal; and second, to attempt to trace to their sources whatever defects, weaknesses, or inconsistencies the study revealed. It was felt that in order to ascertain how the sex laws were administered that a day-to-day, quantitative study was essential as a basis for judgment. As a result, there is little play upon the occasional dramatic case; the emphasis is upon bare, unweighted statistics. On the other hand, however, it must be admitted that certain aspects of the social life in the City of Louisville have been taken into account. Since social ideals, opinions, mores, and practices all have their roots deep in the everyday job of enforcement of the criminal laws, such treatment was realized to be inevitable.

The study attempts to "prove" only one thing—the manner and extent to which the criminal sex laws in the area surveyed are enforced.

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<sup>1</sup> The Jefferson County Circuit Court has original jurisdiction over all felonies and misdemeanors committed within the county with the exception of various minor offenses, the jurisdiction over which has been vested exclusively in certain inferior tribunals, such as municipal and magistrate courts. KY. CODES, CRIM. PROC. sec. 13 (1948). As a result, the case statistics are not limited solely to offenses committed in the City of Louisville, but include an indeterminate number of offenses occurring outside the boundaries of the municipality. Since the City of Louisville completely dominates the county in which it is situated, however (Jefferson County, pop. 385,392; Louisville, pop. 319,077, U. S. Census, 1940), it is a safe assumption that a large majority of the offenses were committed within the confines of the city boundaries, or at least by residents of the municipality. The records, based upon the parties' given residences, so indicate, for 86 out of the total 120 cases involved Louisville residents. And the totals on municipal residents may actually be greater than stated, for in making the computation cases in which no record of residence was found were placed in the non-resident category.

## (1) TOTAL NUMBER OF DEFENDANTS CONVICTED AS CHARGED

In the Louisville area during the year 1947 a total of 120 persons were charged with the commission of some type of sex offense and their cases placed upon the docket books of the Jefferson County Criminal Court. Naturally, one would not expect all these defendants to be convicted of the offenses with which they were originally charged, for it would be presumed that some would be found not guilty, that cases would be filed away with leave to reinstate, or dismissed altogether, and that a number of defendants would be found guilty of lesser offenses.

The interesting question, however, is the percentage of cases that one would expect to result in conviction as originally charged by indictment. Would a conviction rate of 20%, 40%, or even 60% to 75% be expected? If you chose the first figure, you would be correct, for in the Louisville area during 1947, a total of 23 cases out of 120, or approximately 19 per cent, resulted in convictions as originally charged.<sup>2</sup>

## (a) Number of Persons Pleading Guilty as Charged

Important to a complete understanding of the 23 convictions is the fact that 12 of the defendants, or slightly more than 50 per cent, pleaded guilty to the offense as charged in the indictment. Only 11 convicts, therefore, entered pleas of not guilty and were actually found so by a jury after trial upon the merits of the case.<sup>3</sup>

## (2) TOTAL NUMBER OF DEFENDANTS CONVICTED ON REDUCED CHARGES

Figure I also shows the total number of defendants convicted of lesser offenses than the ones with which they were charged originally. It is found that 31 persons out of the total 120 fall within this category. This accounts for approximately 26 per cent of all defendants charged with the commission of a sex offense in the Louisville area during 1947.

FIGURE I

NUMBER AND DISPOSITION OF CASES  
DURING 1947—LOUISVILLE

I. Number convicted as charged .....	23
a. Pleased guilty .....	12
b. Found guilty .....	11
II. Number convicted of lesser offenses .....	31

<sup>2</sup> See Figure I, p. 393.

<sup>3</sup> *Ibid.*

a. Pleased guilty .....	26
b. Found guilty .....	5
III. Not guilty .....	5
IV. Filed away or dismissed .....	57
V. Disposition unknown .....	4
Total .....	120

(a) *Number Pleading Guilty and Number Found Guilty*

Of the 31 defendants convicted of lesser offenses, only 5 were found guilty after standing trial upon a charge of a greater offense. In the remaining 26 instances the original charges against the defendants were reduced and the defendants entered pleas of guilty to the lesser offenses.<sup>4</sup>

The existence of such a large number of reduced charges and pleas of guilty to the lesser offenses may be a matter of extreme significance, depending upon the reasons for the reduction of the charges. If the prosecuting attorney felt that the evidence was not sufficient to obtain conviction for the offense as originally charged, no complaint can be made. If, however, the prosecution recommended such reduction, and the court was willing to accept the recommendation, because by so doing the trouble and expense of trial is thereby alleviated, such attitude is open to severe criticism. Since the records did not contain the reasons for such reductions, it cannot be stated that either of the above reasons occurred to the exclusion of the other, or in what proportions they existed, or even, perhaps, that the second of the reasons given existed at all. It is felt by the writer that the latter reason did not play a very significant part in the Louisville area during 1947. This is due in part from a long personal knowledge of the character of the prosecuting attorney and his assistants, and, more particularly, from the fact that the chances of obtaining conviction for a sex offense as originally charged, upon the evidence that is ordinarily present, would appear to be only about 50 per cent. This is especially true in felonious offenses, and the great majority of offenses studied in the Jefferson County Criminal Court during 1947 have been felonies. One has but to glance at Figure I for the corroboration of this statement. Out of 21 persons actually standing trial in the Louisville Court during 1947<sup>5</sup> only 11 were found guilty as originally charged

<sup>4</sup> In actual practice, whenever such occurs, it is generally the result of an agreement between the prosecutor and the defendant to the effect that the prosecutor will recommend the reduction if the defendant will plead guilty.

<sup>5</sup> This figure is compiled as follows: 11 persons found guilty as originally charged, 5 found guilty of a lesser offense, and 5 who also pleaded not guilty, stood trial, and were found not guilty after trial. See Figure I, p. 3.

in the indictment. In case of doubt, therefore, it might well be better for the prosecution to settle for a conviction of a lesser offense, than to take a chance before a jury in an attempt to secure conviction in a higher degree.

### (3) NUMBER FOUND NOT GUILTY

Twenty-one defendants out of the total 120 cases docketed for the year 1947 in the Louisville court actually stood trial after having been arraigned and having entered a plea of not guilty.<sup>6</sup> Of this number, 5 were found not guilty of any offense. Such disposition gives the Louisville court an approximate 76 per cent conviction record for the cases in which the defendants actually stood trial. It must be admitted, however, that 5 of the 16 cases in which convictions were obtained after trial, were instances in which the defendants were found guilty of a *lesser offense* than that originally charged in the indictment. If these 5 cases are discounted, only 53 per cent of the defendants actually standing trial were convicted as originally charged.

### (4) CASES FILED AWAY OR DISMISSED

The statistics furnishing the most important insight into the problem of enforcement of the sex laws from the conviction standpoint, perhaps, are those regarding the number of cases dismissed and filed away with leave to reinstate.

Fifty-seven cases out of the total 120 cases of all types during the year surveyed were either filed away with leave to reinstate or were dismissed outright. This represents approximately 47 per cent of the docketed sex cases, a truly ominous and significant fact when considered in the light of the time, money, labor, and general retarding effect upon the judicial process and administration that these 57 cases represent. The truth of this is best shown by the fact that in over 95 per cent of these cases the reasons given for the filing away were, in some way or another, directly indicative of a lack of interest on the part of the prosecuting witnesses.<sup>7</sup> In only 2 cases was the lack of evidence given as the prosecutor's reason for his recommendation of dismissal.

### (5) OTHER DISPOSITION OF CASES

The disposition of 3 cases is unknown, and 1 case was transferred from the Criminal Court to the Juvenile Court.

<sup>6</sup> See note 5 *supra*.

<sup>7</sup> The reasons were divided among the following: (1) witness simply did not desire to continue prosecution; (2) witness wished dismissal because of embarrassment connected with public trial; (3) witness could not be located at time of trial, or had moved out of town and did not appear, or would not appear.

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## (6) TOTAL NUMBER OF CONVICTIONS

Adding all the figures together, it is found that in the Louisville area during 1947, 54 out of the total 120 docketed cases resulted in some type of conviction.<sup>8</sup> This represents an over-all conviction rate of approximately 45 per cent.

## (7) NUMBER RECEIVING SUSPENDED SENTENCES

*(a) Convicted as Originally Charged*

It is one thing to convict a defendant, impose a penitentiary sentence or a monetary fine upon him, and require that the penalty be exacted. It is quite another to sentence an individual and immediately suspend all punishment. The former would, in almost all cases be regarded as more harsh than the latter,<sup>9</sup> and this is true whether one believes the purpose of punishment to be: (1) retaliation or retribution, (2) expiation, (3) deterrence, (4) reformation, or (5) protection of society.<sup>10</sup>

In order to obtain a complete understanding of the enforcement of the criminal law in a given field, it is of importance, therefore, to consider the number of suspended sentences handed down by the courts in the cases examined. In the Louisville area during 1947, 23 defendants were convicted as originally charged by indictment,<sup>11</sup> and within this number, 10 persons received suspended sentences, the 10 cases representing, therefore, approximately 43 per cent of the cases of this nature. The significant fact is that only 3 of the 10 persons receiving the suspended sentences were found guilty by the jury after trial upon the merits of the case, for the other 7 prisoners pleaded guilty to the offenses as originally charged in indictments against them.

The entering of a plea of guilty as charged would not appear to hinder the prisoner's chances of obtaining a suspended sentence, and, solely on the basis of the statistics presented, would even seem to enhance his chances. While the cases surveyed substantiate both conclusions, it is not felt that the latter conclusion can be anything more than a mere coincidental happening in the particular period surveyed, for no plausible reason can be advocated to substantiate such result.<sup>12</sup>

<sup>8</sup> See Figure I, p. 393.

<sup>9</sup> It is felt that the statement is justified, even though it is recognized that conviction alone, especially of a felony, is in itself a certain punishment — how much so depending, perhaps, upon the individual convicted.

<sup>10</sup> See HARNO, CASES AND MATERIALS ON CRIMINAL LAW AND PROCEDURE 8 (1939).

<sup>11</sup> See Figure I, p. 393.

<sup>12</sup> Since, as far as is known, all the defendants in the particular group were first offenders, no other plausible explanation remains.

## CONVICTIONS

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## SUSPENDED SENTENCES

*Originally Charged*

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standing of the enforcement of importance, therefore, to cases handed down by the Louisville area during 1947, 23 charged by indictment,<sup>11</sup> and suspended sentences, the 10 by 43 per cent of the cases to 3 of the 10 persons found guilty by the jury after other 7 prisoners pleaded in indictments against them. urged would not appear to a suspended sentence, and, noted, would even seem to eyed substantiate both conclusion can be anything more particular period surveyed, substantiate such result.<sup>12</sup>

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MINAL LAW AND PROCEDURE 8

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*(b) Convicted of Lesser Offenses*

The same trend is revealed in the convictions for lesser offenses than those with which the defendants were originally indicted. Out of a total of 31 persons convicted of lesser crimes than originally charged, 17 received suspended sentences. This represents approximately 55 per cent of the cases. Even more interesting, however, is the fact that here only 1 of the defendants was found guilty by the jury of the lesser offense—the remaining 16 defendants having pleaded guilty to the lesser offenses, the original charges reduced and their pleas accepted by the court.

The most logical explanation for the occurrence of such overwhelming numbers of suspended sentences in the cases in which the defendants have pleaded guilty as compared to the instances in which the prisoners were found guilty, appears to be that these defendants were given assurances of some sort by the prosecuting attorney that if pleas of guilty were entered, suspensions would be recommended. While such thesis is, perhaps, not as plausible an explanation of the suspended sentences in the instances in which the prisoners pleaded guilty as originally charged by indictment,<sup>13</sup> it is still the most probable explanation in the light of the overwhelming number of suspensions in cases where the parties pleaded guilty as compared to finding of guilty. As far as is known, all the prisoners were first offenders, and an examination of the cases revealed no record evidence, at least, that would be likely to exercise an ameliorating effect.

Whatever the reasons, however, the statistics in regard to suspended sentences in convictions for all type offenses when compared to the total number of convictions obtained shows that out of 54 convictions, 27 of the cases resulted in suspended sentences. And, out of this number, 23 of the defendants had pleaded guilty in the first instance.

## (8) NUMBER RECEIVING MINIMUM SENTENCES

*(a) Convicted as Originally Charged*

Also important to an understanding of the problem of law enforcement is the part played by minimum sentences. The very purpose of a legislature in providing minimum and maximum sentences for a given

<sup>13</sup> Because of the fact that even if the sentence is suspended, the defendant, in a felony case (and these cases were felonies) does stand convicted of a felony. While the offer might be made readily by the prosecutor, the prisoner may decide to chance jury trial in such instance, where he might not if the offer was made in exchange for a plea of guilty to a lesser offense and suspension of the sentence. Also, an offer originating on the part of the defendant to plead guilty to a lesser offense and suspension of the sentence is more likely to occur than an offer to plead guilty to the original charge.

to a lesser offense, or after having been found guilty of an offense in a lower degree than the one originally charged by indictment against him.

(10) MANNER OF ARREST

As between the two methods of taking a defendant into custody in the first instance, that of arrest by a police officer acting under his own powers and as a result of his own knowledge, or by a police officer acting under the authority of a warrant of arrest issued after complaint of a prosecuting witness, the first method of arrest occurred in only 5 instances during 1947, while the second occurred in the remaining 115 cases.

Since so very few arrests are made by law enforcement officials acting without the aid of warrants of arrest, the 5 cases in which warrants were not present are important, for they raise the question of a possible peculiarity of these cases as compared to the other 115. Upon inquiry it is found that 4 different type sex offenses are involved in these 5 cases of arrest by police officers. One case involved pandering, 1 prostitution, 1 the keeping of a house of ill fame, and the 2 remaining cases were instances of exposure of the private parts of the parties defendant. It is apparent, therefore, that at least the first 3 types have one peculiarity in common—they are all offenses involving organized vice. And these are the only type of sexual activity that is consciously and affirmatively sought out by the Vice Squad in the City of Louisville and, even by the police force as a whole, judging by interviews with various other members of the general police force.

Another element which is common to all 4 type offenses is the relative ease and likelihood of apprehension by a police officer in respect to these offenses as compared to the majority of other typical sex crimes such as rape, adultery, fornication, and incest. It is, for example, more probable that a police officer might wander across the path of a pimp, prostitute, or keeper of a house of ill fame plying his or her trade, which in most instances will be in a fairly localized, densely-populated slum area,<sup>19</sup> than it is that the same officer will cross the paths of a man and woman committing adultery, incest, or even rape. The same may also be said of the exposure cases, for it is more probable that in exposing himself to public view the offender

<sup>19</sup> In the 5 cases the addresses given by the defendants were in just such areas. It is, therefore, true in the house of ill fame case, and it would appear a valid assumption that the panderer and the prostitute would be likely to operate in the areas in which they resided. No such presumption can be made, perhaps, in the 2 exposure cases.

will commit the offense out in the open and not in the confines of a private house. It is felt that while these 4 type offenses *are* offenses of secrecy, they are apt to be committed with less secrecy than the other crimes surveyed.

If the results indicated by the statistics are true, i.e., that the discovery of sex offenders by police officials acting on their own can be counted upon only in areas of commercialized vice,<sup>20</sup> it is felt that the public should be told of the inability of the law enforcement officials to cope with the problem, and the aid of the public enlisted, or at least the burden of decision placed upon the citizenry as to whether sex offenders should be punished or permitted to go free. Surely, when warrants of arrest sworn to by members of the public were the direct causation of arrest in 115 out of 120 cases in one year, the ability of the police to enforce the sex laws is subject to doubt.<sup>21</sup>

#### (11) PROCEDURE USED IN BRINGING CASES TO CRIMINAL COURT

Since indictment by grand jury is the only method of procedure permitted in Kentucky in felony cases, and in all except specifically excepted misdemeanors,<sup>22</sup> it is to be expected that in the great majority of cases surveyed indictment by grand jury was present. It occurred in 118 of the 120 cases docketed during 1947. Only in the 2 exposure cases was it not used.

#### (12) AGES OF THE PARTIES

The records of the Louisville Criminal Court in regard to the ages of the parties involved in sex offenses during 1947 were not complete.

<sup>20</sup> Even here the extent to which reliance may be made is not known, for the total number of crimes committed in this area is not known. Professor Kinsey reports that "In terms of the town of 100,000 inhabitants, the contacts average about 3,190 per week" for prostitution alone. KINSEY, POMEROY AND MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* 603 (1948). The Louisville area surveyed is over 3 times as large as the town of 100,000 referred to by Dr. Kinsey.

<sup>21</sup> The word "ability" is used advisedly, for it is not felt that the police officials, either as a whole or individually, are neglecting to enforce the majority of the sex laws when knowledge and evidence sufficient to warrant arrest are obtained by them. True, while the individual patrolman may be influenced, and even restrained, by the attitudes of the particular educational or economic group of which he is a product in regard to such offenses as adultery, fornication or seduction, there is no reason to suppose that other sex offenses of such nature as rape, incest and sodomy would be looked upon lightly by any person, regardless of his background. Even in those areas, however, the burden of discovery and complaint has rested with the public. And, even if it is felt that the reason for the small number of arrests by police officers is attributable to their disinclination to do their strict duty under the statutes, it is more reason than ever to apprise the public of the existing situation and allow the latter the choice of selecting the course to be pursued.

<sup>22</sup> KY. CODES, CRIM. PROC. SECS. 9 AND 10 (Russ. Rev. 1948); KY. REV. STAT. sec. 455.080 (1946).

In fact, in only 19 instances are the ages of both the defendant and his "victim" known. These 19 cases are set out in Figure II.

The average age of the defendants listed in Figure II is approximately 25 years. The average age of the so-called "victims" of the offenses is 19 years of age. It is apparent, therefore, that both parties fall into a relatively young age group in relation to the population as a whole.

Perhaps even more significant than the average ages of the parties, however, is the comparison of the ages of the defendants in relation to the ages of their particular victims. Using such a case-by-case comparison, it is found that in 7 instances the difference in age was

FIGURE II  
AGES OF THE PARTIES—LOUISVILLE

	Defend- ant	Vic- tim		Disposition
1.	20	19	(Rape)	Pleaded guilty assault & battery. 1 yr. <u>Sentence suspended.</u>
2.	21	22	(Rape)	Pleaded guilty to rape. 10 yrs. Defendant received minimum sentence. <u>Sentence suspended.</u>
3.	22	18	(Rape)	Not guilty.
4.	22	20	(Rape)	Filed away with leave to reinstate.
5.	23	23	(Rape)	Pleaded guilty assault & battery. 6 months.
6.	24	22	(Rape)	Pleaded guilty to rape. 10 yrs. Defendant received minimum sentence. <u>Sentence suspended.</u>
7.	29	15	(Rape)	Pleaded guilty to statutory rape. 5 yrs.
8.	31	21	(Rape)	Filed away with leave to reinstate.
9.	35	27	(Rape)	Pleaded guilty to rape. 10 yrs. Defendant received minimum sentence.
10.	38	10	(Rape)	Filed away with leave to reinstate.
11.	40	29	(Rape)	Found guilty of detaining woman. 3 yrs.
12.	19	15	(St. Rape)	Pleaded guilty assault & battery. \$175. <u>Sentence suspended.</u>
13.	20	17	(St. Rape)	Pleaded guilty statutory rape. \$200. <u>Sentence suspended.</u>
14.	22	17	(St. Rape)	Pleaded guilty assault & battery. 6 months. <u>Sentence suspended.</u>
15.	23	16	(St. Rape)	Pleaded guilty statutory rape. 2 yrs. Defendant received minimum sentence. <u>Sentence suspended.</u>
16.	24	17	(St. Rape)	Pleaded guilty assault & battery. 6 months. <u>Sentence suspended.</u>
17.	28	17	(St. Rape)	Pleaded guilty statutory rape. 5 yrs. <u>Sentence suspended.</u>
18.	30	17	(St. Rape)	Pleaded guilty assault & battery. 12 months. <u>Sentence suspended.</u>
19.	21	20	(Seduction)	Filed away with leave to reinstate. St. Rape—Statutory Rape

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not greater than 3 years,<sup>23</sup> and in 2 other cases not more than a 4 year difference existed.<sup>24</sup> Also of significance is the fact that mere physical difference in years may not be important in every instance. Just as important, perhaps, is the loose age group into which the parties fall. For example, a 10 year age difference between a 39-year-old defendant and a 29-year-old "victim", while the same physically, is not as great psychologically as the same discrepancy in age between a 21-year-old male and an 11-year-old female child. Considered in this light, the statistics show, for the most part, a tendency on the part of the male defendants to select a "victim" in the same loose age group<sup>25</sup> that he himself falls into. In only 4 instances is this not true.<sup>26</sup> Even there, however, in 2 of the cases the basic ages of the female victims and the ages of the male defendants are not so far removed that all the parties cannot be classified as young.<sup>27</sup>

If so few cases might be taken as indicative of the whole sex pattern, it may be stated that the parties involved are from the younger segments of the population as a whole. At least, the statistics so indicate.

#### (13) AGES AND MINIMUM SENTENCES

Figure II also shows the ages of the defendants and their victims in respect to the specific disposition of the cases. Four of the 19 cases listed resulted in minimum sentences.<sup>28</sup> Here again the ages of the 4 parties were, for the most part, relatively young. The average age of the defendants was 24.75 years, or approximately .75 years older than the average age of all the defendants. The average age of the female "victims" in this same category was also higher, standing at 21.75 as compared to approximately 19 years for all the known cases.

A much clearer picture is obtained, however, after comparison of the individual cases. In 2 of the 4 instances the age difference was almost non-existent, there being only a 1-year difference in the 1 case and a 2-year disparity in the other.<sup>29</sup> Also, in both cases the female "victims" had reached the age of majority. In the 3d case, while a difference of 8 years existed in the ages of the parties, since the de-

<sup>23</sup> See Figure II, p. 402, cases 1, 2, 4, 5, 6, 13, and 19.

<sup>24</sup> See Figure II, cases 3 and 12.

<sup>25</sup> Age groups based upon a classification of extremely young, young, middle-aged, old, and very old.

<sup>26</sup> See Figure II, cases 7, 10, 17, and 18, where the parties were 29 and 15, 38 and 10, 28 and 17, and 30 and 17 years of age, respectively.

<sup>27</sup> The two cases are Nos. 17 and 18, Figure II, where the defendants were 28 and 30 years of age, and the "victims" both 17 years old.

<sup>28</sup> Cases 2, 6, 9 and 15, Figure II.

<sup>29</sup> Cases 2 and 6, Figure II, p. 402. The defendants were 21 and 24 years of age, while the victims were both 22 years old.

fendant was 35 years old and the female 27, their basic ages would place them in approximately the same age group, if based upon a classification of young, old, and middle-aged. This would, it seems, qualify to a large extent the 8-year difference between them. The same may be said, in effect, for the last of the 4 cases,<sup>30</sup> which involved a 23-year-old defendant and a 16-year-old girl. Here, even though the female had not reached majority, both parties were, in reality, very young.

The reason for the receiving of minimum sentences by these 4 defendants might, therefore, be explained by way of their likeness in age in relation to their victims, and their relative "younghness" as a whole if it were not for the fact that when compared to the other 15 cases the same might be said of them!<sup>31</sup> If this be true, then the important question is whether age difference, or similarity, matters at all as far as minimum sentences are concerned. Taking the 19 cases as indicative of the age structure probably existing in the majority of instances in the 120 cases surveyed during 1947, what then would appear to be the answer in regard to the imposition of minimum sentences? It is submitted that the answer lies in the harshness of the minimum penalty that is required by law to be imposed upon a defendant after conviction of the offense. For example, Figure II shows that 3 of the 4 defendants<sup>32</sup> receiving minimum sentences had pleaded guilty to rape, an offense for which the mandatory statutory penalty upon conviction is a minimum sentence of 10 years.<sup>33</sup> With the exception of case number 7, where the sentence imposed was for 5 years, no other defendant received a sentence of longer than 3 years. These were not particularly harsh penalties when it is considered that all these persons were charged with either rape or statutory rape in the first instance, and that all except 1 pleaded<sup>34</sup> guilty to the offense for which they were convicted.

In all these instances the minimum penalties permissible upon conviction varied from any amount of fine, and/or imprisonment in the discretion of the jury in cases of assault and battery,<sup>35</sup> to a minimum of 2 years upon conviction for statutory rape.<sup>36</sup> While it is true that in the 4th, and last,<sup>37</sup> case involving a minimum sentence that the mandatory penalty upon conviction was only 2 years, and that in 2

<sup>30</sup> See case 15, Figure II, p. 402.

<sup>31</sup> See Figure II, p. 402.

<sup>32</sup> See cases 2, 6, and 9, Figure II, p. 402.

<sup>33</sup> KY. REV. STAT. § 435.090 (1946).

<sup>34</sup> Case 11, Figure II, p. 402.

<sup>35</sup> *Cornelison v. Com.*, 84 Ky. 583, 2 S.W. 235 (1886).

<sup>36</sup> KY. REV. STAT. § 435.100 (1946).

<sup>37</sup> Case 15, Figure II, p. 402.

other instances<sup>38</sup> the defendants received sentences of 3 and 5 years, respectively, it is not felt that these 3 cases detract from the 3 cases of rape<sup>39</sup> for which the convicts in the latter received only minimum sentences. This is because the minimum mandatory penalty involved in the statutory rape cases was only 2 years, as compared to 10 years in the 3 cases for which the defendants were convicted of rape. The penalties of 2, 3, and 5 years in regard to the former cannot be considered harsh for the type offense involved, and it is quite natural to expect that the juries would vary their sentences according to the merits of the individual cases. However, when the 10-year minimum is reached, no such variation is found, for here a level of punishment that is relatively severe has been attained. The ages of the parties in the 3 rape cases listed in Figure II are not identical, and it is not illogical to suppose that the facts of the 3 cases were not identical. As a result, since no variation is found at this level in any case,<sup>40</sup> it would appear to support the thesis that the relative length, or harshness, of the penalty that must be imposed upon conviction determines more than anything else whether the minimum penalty is imposed or whether the jury will go above the lowest limit permitted by statute.

If the above is true, it may be that in actual practice the minimum statutory penalty upon conviction of certain offenses such as rape, for instance, may be at the same time the maximum limit of the usual jury in the average case.

#### (14) AGE AND SUSPENDED SENTENCES

Statistics regarding the ages of the parties and the number of suspended sentences are set out in Figure II.<sup>41</sup> If these are taken at their face value, the import would appear to be that the age of the convict was of some consequence in the awarding of suspended sentence by the Louisville Court during 1947. Of the 13 cases in Figure II in which conviction for some type offense was obtained, only 3 failed to result in suspended sentences. The first of these 3 cases involved a 23-year-old defendant and a 23-year-old victim. The defendant was originally indicted for rape, but his plea of guilty of assault and battery was accepted and the charge against him reduced. He received only a 6-month jail sentence. The 2d case involved a 35-year-old

<sup>38</sup> Cases 7 and 11, Figure II, p. 402.

<sup>39</sup> Cases 2, 6, and 9, Figure II, p. 402.

<sup>40</sup> Nor was any variation found in any instance where the defendant was convicted of rape. Figure II lists only 3 cases in which the ages of the parties were known. Five other persons were convicted of rape as charged in the Louisville Court during 1947, however. All 5 of these convicts also received only the minimum 10-year terms.

<sup>41</sup> See p. 402.

defendant and a 27-year-old woman. Again, the prisoner pleaded guilty of rape and received a 10-year penitentiary term. The 3d prisoner was 40 years of age and his victim 29 years old. After the return of an indictment for rape, the prisoner was found guilty of statutory rape and given a 3-year sentence. Significantly, the last 2 defendants were the oldest of the entire 19 set out in Figure II, and were, in comparison with the rest of the defendants, relatively old.

Since in all 13 cases of conviction the defendants were, as far as is known, all first offenders, it may well be that the Louisville Court consciously considers the ages of the parties before suspending sentences. At least, the statistics in regard to the particular cases considered so indicated, although it is possible that the facts of the individual cases in respect to the specific manner in which the crimes were committed could have been the prime factor considered in suspending all or part of the sentences.<sup>42</sup>

#### (15) COLOR OF THE PARTIES

In the Jefferson County Criminal Court situated in Louisville, Kentucky, only 9 out of a total 120 cases docketed during 1947 involved members of the Negro race. This is a percentage representation of 7.5, as compared to a 13.3 per cent representation in the population as a whole in the Jefferson County area.<sup>43</sup>

##### (a) *Disposition of the Cases*

Upon breaking the 9 cases down in accordance with the offenses for which the defendants were originally indicted, it is found that 3 were indicted for rape, 2 for detaining a woman against her will with intent to have carnal knowledge of such woman, 3 prisoners were charged with statutory rape, and 1 negro defendant was charged with the keeping of a house of ill fame.

Not one of these defendants, however, was convicted as originally charged, and only 2 were convicted of any offense at all. One of these was convicted of assault and battery, a misdemeanor, after having been indicted for detention of a woman against her will, a felony. After his plea of guilty of the lesser offense was accepted the jury imposed a 6-month jail sentence upon him. The other convict was originally charged with rape, but his plea of guilty of detaining a

<sup>42</sup> Such would appear to be the only explanation for the case of the 23-year-old defendant and the 23-year-old victim which was one of the 3 cases not resulting in suspension, for while this defendant pleaded guilty and received only a 6-month sentence, there were many other cases of similar pleas and sentences. See Figure II, p. 19.

<sup>43</sup> U. S. Census, 1940.

woman against her will was accepted and he was given a 5-year penitentiary sentence which was suspended by the court. The remaining 7 cases were filed away with leave to reinstate.

(b) *Race Prejudice*

Since 7 of the total 9 cases were filed away with leave to reinstate at some future date, it cannot be said that the fact that there were only 2 convictions shows a total absence of race prejudice, for the reasons for the filing away of the cases were due either to a lack of interest on the part of the prosecuting witnesses or because of insufficient evidence on the part of the prosecution.<sup>44</sup>

Neither can it be said that since convictions were obtained in the only 2 cases which were not filed away with leave to reinstate that such evidences a prejudice against members of the Negro race. Certainly, it does not evidence prejudice on the part of the prosecution or the court, for in both instances of conviction the defendants' pleas of guilty of a lesser offense were accepted, most probably upon recommendation of the prosecuting attorney, and the sentence of the 1 defendant upon whom was imposed a substantial sentence<sup>45</sup> had the sentence suspended by the court.

There would also appear to have been no prejudice on the part of the juries in regard to the sentences imposed—6 months in the 1 instance and 5 years in the next. It is true that the 5-year sentence was 3 years above the minimum 2-year term mandatory upon conviction for the detention of a woman against her will,<sup>46</sup> but it must be remembered that the defendant had originally been charged with rape and that he also pleaded guilty to the lesser offense and was not found so by the jury. Also, it is very possible that the prosecutor, intending to recommend that the sentence be suspended, called upon the jury to return a sentence of at least 5 years against the particular defendant. The reason for such apparently being that, once convicted of a felony, if the sentence is to be suspended anyway, the length of the sentence does not harm the convict, but the greater the length the greater the possible deterrent upon him in the future.

In 8 of the 9 cases, the manner of arrest was by warrant sworn to by members of the defendant's own race, so there was no possibility of race prejudice entering into the taking into custody of the defend-

<sup>44</sup> Lack of interest on the part of prosecuting witnesses accounted for 6 of the 7 cases filed away, and in the 7th case, that of keeping a house of ill fame, since the prosecuting witnesses were police officers, lack of interest in proceeding with prosecution was probably not present.

<sup>45</sup> A term of 5 years after conviction of detention of a woman against her will. The other convict received only a 6-month jail sentence.

<sup>46</sup> KY. REV. STAT. § 435.100 (1946).

ants. In the remaining instance the prosecuting witness was a white police officer. Since this case was filed away with leave to reinstate because of insufficient evidence, it is within the realm of possibility that the arrest came about as a result of race prejudice. However, there are just as many factors to counter-balance such assumption. For one, the offense was that of keeping a house of ill fame, a more or less organized form of vice and one that the Louisville police force actively attempts to wipe out. Also, unless the house attracted attention in some way, or unless a complaint was made to the police in the first instance, it is doubtful whether knowledge of the establishment would have been obtained by the officer witness. It also is questionable as to whether a police officer would arrest the occupant of a house unless some evidence of a suspicious nature existed. Realistically, too much time and trouble are involved for a policeman when any arrest is made in which he is the chief witness to believe that arrests because of prejudice are likely to occur with any frequency. At least, since the case was filed away, no matter what compelled the arrest in the first instance, no actual harm was done.

The most interesting question which is presented as a result of the statistics is that pertaining to the small number and per cent of the cases involving negroes in comparison with their representation in Jefferson County, Kentucky, as a whole. Naturally, the question of whether members of the Negro race are more moral, or law-abiding, than their fellow whites, and, as a result, actually commit fewer sex crimes, is a pertinent one in light of the statistics presented. While, of course, no categorical answer can be made, the more sensible one would appear to be a negative one, for there is no inherent difference between the races other than color. And, on a basis of race and color, it is not felt that any one race is more likely to commit sex crimes with greater frequency than any other.

However, when non-racial factors and influences are considered, the problem assumes a different character, and the question might then very plausibly be asked whether negroes are not more likely to commit sex crimes than whites, rather than are they less likely to commit such offenses. Setting race prejudice aside, this question might be answered in the affirmative if the Kinsey Report statistics and predictions are assumed to be an adequate indication of sexual behavior, for Dr. Kinsey and his associate conclude that:

Patterns of social behavior are, in an astonishingly high percentage of the cases merely reflections of the patterns of the particular social level to which an individual belongs.<sup>47</sup>

<sup>47</sup> KINSEY, POMEROY AND MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE*, 204 (1948).

Dr. Kinsey also found that the incidence of violation of the sex laws is greater among the lower social, economic and educational levels than among members of the higher levels.<sup>48</sup>

It cannot be denied that the overwhelming majority of negroes in the Louisville area are in a lower educational, social and economic strata when compared to their white counterparts as a whole. If this is true, when coupled with the findings of Dr. Kinsey and his associates, it would appear unlikely that members of the Negro race in the Louisville area would commit fewer sex offenses for any given year than members of the white, or other races.

It is felt that the most plausible answer lies in the fact that the so-called "victims" of the negro defendants just do not report the offenses to the authorities in the same degree that white "victims" report the commission of such crimes. And, as discussed before, unless the offense is reported either by the victim or by someone outside the enforcement field, there is little hope that the offense will be prosecuted.<sup>49</sup>

#### (16) RESIDENCES OF THE DEFENDANTS

##### (a) General Characteristics of the City of Louisville

The addresses of defendants residing within the City of Louisville are known in 64 cases out of the total 120 docketed in the Jefferson County Criminal Court during 1947. Although representing only slightly more than one-half of the cases surveyed, the number is believed sufficiently large to warrant discussion.

For the purpose of illustrating the various socio-economic areas, the City of Louisville may be regarded as two concentric circles, the inner circle which shall be designated Zone I, and the outer circle Zone II.<sup>50</sup>

Within the center of Zone I is the main business district, which is dominated by retail stores, office buildings and banks. Close by are found passenger and freight terminals, wholesale houses, theatres, municipal buildings and various types of light industry. Scattered throughout this zone, with the exception of the central business district, are various residential sections. Many of the dwellings are single residences, but, for the most part they are multiple, with crowded

<sup>48</sup> *Id.* at cc. 10 and 11. While the Kinsey Report did not include the Negro race, it is felt that in the specific areas discussed above the color of a man's skin would not affect the matter.

<sup>49</sup> This is borne out by the arrest statistics. Out of 120 cases docketed during 1947, only 5 defendants were arrested by police officers acting under their own knowledge and authority.

<sup>50</sup> Admittedly, the City of Louisville is not circular in form, but generalized illustrations cannot portray specific individual variations.

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living conditions and the general characteristics of a transitory area in which business and commerce have encroached. Here are the tenements, the rooming houses and the single rooms for rent. Proceeding further toward the periphery of Zone I, the area is characterized by workingmen's homes, some erected as such, but many left behind by the well-to-do who have long since moved to the outskirts of the city.

Also contained within Zone I, in isolation and in mixture, is the great majority of the Negro population in the City of Louisville.

Once outside Zone I, however, where business and residences are found in the same general areas they seem to exist in mutual exclusion, with little or no inter-mixture of the two. Each occupies its specific geographic area, with the inherent characteristics of such localized within that area. Here are predominantly found the homes of the middle-class, and the farther one proceeds from the center of Zone II, the upper middle-class and the rich.

*(b) Areas in Which the Defendants Resided*

Of the 64 defendants whose Louisville addresses are known, 48 resided within Zone I. This is 75 per cent of the cases. Since this area represents, for the most part, persons who are in the lower economic, educational and social strata in the City of Louisville, the results are, perhaps, not surprising, for crime is often associated with such areas and strata. It is also Dr. Kinsey's general thesis that within this group occurs the greatest sexual activity of a general over-all nature.<sup>51</sup> And the Louisville statistics would appear to bear him out, if it is conceded that the number of arrests and prosecutions are an accurate indication of the number and frequency of sex violations.<sup>52</sup>

The importance of the statistics, however, is not the raising of the problem of whether this area is more productive of crime than other areas in the same city, or whether the economic, social and educational backgrounds of these people are more productive of crime than those of persons in other strata, but rather that here is a well-defined area where evidence has been obtained that a substantial number of sex offenders, or alleged sex offenders resided.

The significance lies, therefore in the fact that a definite criminal area has been located,<sup>53</sup> for until identification has been accomplished

<sup>51</sup> KINSEY, *op. cit. supra* Note 47, at cc. 10 and 11.

<sup>52</sup> A matter open to some doubt, for these arrests came only after sworn complaint had been made. If complaints had not been made, most, if not all, of these arrests might not have occurred. It could have been that complaints were not made in such proportion in instances where defendants resided in other areas.

<sup>53</sup> Even though only 48 cases occurred within this area, and the addresses of only 64 defendants were known definitely to have been within the City of Louisville in the 120 sex cases surveyed, 48 cases, over one-third of the total, occurring within the area seem worthy of consideration.

causal factors cannot be identified and elimination of the crimes expediently effected. Here, then, is one area in the City of Louisville that can be singled out by law enforcement officials for close observation and an attempt made to eliminate the factors producing sex violations, or at least to give surveillance to the area sufficient to deter would-be violators of the sex laws.

Of the remaining 16 cases in which the addresses of the defendants were known, 4 were in sections of the City outside Zone I, but in areas also classified as lower-class. Eleven cases existed, however, in which the addresses indicated that the defendants were from middle and upper-middle class areas, areas in which the defendants were likely to be at least high school graduates, for the most part, and which are made up predominantly of skilled and white-collar workers.

Only one instance was found in which the address of the defendant placed him in an exclusive residential area. In that case the accused was a medical doctor charged with the commission of statutory rape. The case, however, was dismissed for lack of sufficient evidence.

In summary, the Louisville statistics appear to indicate that the lower the educational, economic and social status, the greater the number of arrests, complaints and prosecutions:

#### CONCLUSION

The specific aspects of the general problems of enforcement of the sex statutes have been discussed at length. I shall do no more than sum up what seem to be the salient points.

(1) The police played a very minor role in the detection and arrest of alleged sex offenders. Arrests by police officers acting without the aid of a warrant sworn to by prosecuting witnesses were made in only 4 per cent of the Louisville Criminal Court cases.

(2) Enormous amounts of time, money and energy are wasted and the due administration of the law hindered by lack of continued interest in prosecution on the part of complaining witnesses. As a direct result of such lack of interest, approximately 47 per cent of the cases docketed in the Louisville court during 1947 were filed away.

(3) In the Louisville area, 19 per cent of all cases docketed during 1947 resulted in convictions as originally charged in the indictment. Within this group, 50 per cent of the defendants pleaded guilty and the remaining one-half were found guilty after trial.

(4) Twenty-six per cent of the docketed cases resulted in convictions for offenses in lesser degrees than those with which the defendants were originally indicted. Within this group, 84 per cent pleaded guilty.

(5) Only 4 per cent of all defendants were found not guilty.

(6) Minimum sentences and penalties were given defendants convicted as originally charged by indictment in 61 per cent of the cases in the Louisville area. Only 4 per cent received maximum sentences.

(7) Fifty per cent of all Louisville convicts received suspended sentences.

(8) Negro representation on the Louisville court's docket was 7.5 as compared to their representation in the population as a whole in the Louisville county of 13.3 per cent.

(9) None of the Negro defendants in the Louisville area were convicted as originally charged; 22 per cent were convicted of lesser offenses, and 78 per cent of the cases were filed away.

(10) There was no intermixture of the races involved in the commission of sex offenses in the area, and race discrimination, as evidenced by the statistics concerning arrest, prosecution and sentencing, was not apparent.

(11) While the persons, both white and black, accused of sex offenses were, in general, older than their victims, both were relatively young, and the age differences existing between particular defendants and their victims were not large in the majority of cases.

(12) The majority of Louisville residents resided in the lower class residential districts in the City of Louisville, a fact which, in all probability, indicates that these persons were also from the lower educational, economic and social strata of the city.