

# Seizure of Heroin Ruled Illegal; Case May Never Go to Trial

31, 9/16  
By Paul W. Valentine  
Washington Post Staff Writer

Police officer Arthur L. Jones pulled up to the curb in the 1700 block of 14th Street nw. It was 3:30 a.m., last Sept. 30.

There were four men on the sidewalk, one of them a regular drug user Jones remembered from his undercover days on the Narcotics Squad. He did not know the other three.

Without getting out of his patrol wagon, he asked one of the three, Leon Yarber, 32, for his identification and asked him if he was a drug user.

Yarber said, "No."

The officer asked if Yarber would mind pulling up his sweater sleeves to see if there were any needle marks on his arms.

Yarber started to pull his sweater off, then suddenly turned and ran down the street, throwing a container of gray powder to the ground, according to Jones.

The officer pursued and arrested the man moments later. He recovered the powder and charged Yarber with narcotics possession. Later

tests showed the substance to be heroin.

## A Sudden Turn

Yesterday in District Court, Judge Edward M. Curran brought the Government's prosecution of Yarber to a sudden halt when he ruled the heroin was illegally obtained evidence.

Seizure of the drug resulted from Jones's illegal act of asking Yarber to pull up his sleeves, the Judge held.

Curran acted on a motion to suppress the evidence brought by Yarber's attorney, John A. Shorter Jr. Yarber has been awaiting trial on the narcotics possession charge, but without the heroin, the prospect of a trial is clouded.

Government Prosecutor Donald S. Smith said he is considering an appeal of the Curran ruling.

In arguments yesterday, he and fellow Prosecutor Allan M. Palmer contended that past court decisions give police broad discretion in stopping citizens for questioning without arresting them.

## The Defense Argument

The citizen does not have to answer the questions,

Palmer said, and is free to leave the presence of the officer.

Shorter countered that Jones's request that Yarber pull up his sleeves exceeded the intent of the court decisions. Yarber, in effect, thought he was under arrest or, at least, that he had no choice in complying with the officer's request, Shorter argued.

Jones acknowledged in earlier testimony that he had no reason to believe Yarber possessed the narcotics beyond the fact that he was with another person known to be a drug user.

Judge Curran ruled that these circumstances did not provide Jones with sufficient cause to ask Yarber to pull up his sleeves. Any evidence obtained thereafter would thus be inadmissible in a trial.