U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

DWI Charge Reduction Study

Volume II: System Descriptions

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INTRODUCTION

The site visits on which these system descriptions are based took place during July through September 1985. Mid-America Research Institute staff members who visited the sites were: Ralph K. Jones, President; Paul A. Ruschmann, J. D., Project Director; and Susan S. Swantek, J. D., Senior Staff Attorney.

Mid-America wishes to thank the following individuals who met or spoke with project staff in connection with the site visits:

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FORT SMITH, ARKANSAS

Background

Fort Smith is the county seat of Sebastian County, Arkansas, and the state's second largest city. It is the center of a four-county standard metropolitan statistical area encompassing Sebastian and Crawford Counties in Arkansas and LeFlore and Sequoyah Counties in Oklahoma. Fort Smith is the largest population center within a 100-mile radius; it is one of Arkansas' principal manufacturing regions (the area is a major center for the furniture industry, and is the home of steel and appliance factories as well) as well as a commercial center. In addition to manufacturing, the local economy depends on light industry, oil, and services. Fort Smith provides thousands of jobs to residents of nearby counties in both Oklahoma and Arkansas. The city is served by three network television stations, eight radio stations, and one local daily newspaper, the Southwest Times-Record. Major highways serving the Fort Smith area include I-40, U. S. 64, and State Route 22, all of which are east-west highways.

During the nineteenth century, Fort Smith served as the seat of government for Indian Territory (now Oklahoma), a region plagued by outlaws; the famous "hanging judge", Isaac C. Parker of the Western District of Arkansas, held court in Fort Smith and imposed the death sentence then required by federal law on numerous murderers, rapists, and other violent offenders. To this day, residents of the area tend to be strong advocates of "law and order" and supporters of the police and prosecutors. Though a Southern city, Fort Smith is somewhat atypical in that it has for years elected Republicans to office and has a substantial Roman Catholic population. Sebastian County is the home of Fort Chaffee, a World War II Army base that is now largely inactive, except for National Guard training during the summer. Because Fort Chaffee was used as a camp for South Vietnamese refugees who fled that country after the Communist takeover in 1975, and for those who left Cuba during the Mariel boatlift in 1980, Fort Smith's population includes hundreds of Vietnamese and Cubans who eventually settled there. National Guard units from states other than Arkansas train at Fort Chaffee, and guardsmen from other states generally are not aware of the level of enforcement or the strict application of drunk driving laws that prevails in Fort Smith.

Three police agencies--the Fort Smith Police Department, the Sebastian County Sheriff's Department, and the Arkansas State Police--are responsible for enforcing criminal laws. However, nearly all drunk driving arrests within the Fort Smith city limits are made by the Fort Smith Police Department.

The Arkansas court system is not unified. Drunk driving prosecutions are heard initially in the Fort Smith Municipal Court, a trial court of limited jurisdiction. Decisions of the Municipal Court are appealable to the Sebastian County Circuit Court, a trial court of general jurisdiction. Because the Municipal Court is not a court of record, appeals from there to the Circuit Court are heard on a de novo basis, i. e., the case is retried in Circuit Court. Drunk driving charges are prosecuted by the Municipal Attorney's office. The municipal attorney in charge of prosecution is a practicing attorney who represents the city under a contract; his duties include both trials and appeals.

Alcohol and Highway Safety Legislation

Arkansas is considered part of the "Bible Belt" and its laws regarding the availability of alcohol reflect residents' conservatism on that issue. State law provides for local option with respect to alcohol sales, and most Arkansas counties are "dry". Although Sebastian County's laws regarding alcohol are more liberal than those of most Arkansas counties, they nonetheless impose restrictions not normally found in other parts of the nation. In Sebastian County, beer and liquor are available by the drink, but mixed drinks can be sold only in private clubs. Sunday beverage sales are forbidden. Despite the fact that Sebastian County borders the state of Oklahoma and two dry Arkansas counties, there is reportedly no appreciable amount of "border crossing". It has been reported, though, that some Oklahoma drivers are surprised by the hard line Arkansas authorities take with respect to prosecution and adjudication of drunk driving cases. The legal age for purchase and consumption of alcohol in Arkansas is 21; the age has not been changed since 1945, and it has been the same as that in the neighboring state of Oklahoma, which raised the legal age for purchasing and consuming 3.2 percent beer from 18 to 21 in 1983. Arkansas has no dram-shop statute, although there are reports that attorneys representing crash victims have filed civil lawsuits against establishments

that served intoxicated customers.

In spite of the state's conservatism, Arkansas' drunk driving legislation prior to 1983 was neither strong nor well written. However, that legislation was completely rewritten during the 1983 legislative session. The new law, variously called Act 549 and the Omnibus DWI Law (it is cited as Ark. Stat. Ann. secs. 75-1031.1, 75-1045, and 75-2501 - 75-2514 (Supp. 1985)), made a number of major changes with respect to adjudication and sanctioning. As is typical of other states, the Arkansas law resulted from increased public concern over drunk driving. That concern led then-Governor Frank White, a member of the President's Commission on Drunk Driving, to commission a state-level task force. The task force, which met during 1982, issued a report that recommended changes to Arkansas' drunk driving laws. A member of the task force, State Representative Judy Petty (R-Little Rock), introduced a bill containing those recommended changes at the beginning of the 1983 legislative session. Representative Ralph "Buddy" Blair (D-Fort Smith) was a cosponsor and strong legislative advocate of Petty's bill; his position apparently was popular in Fort Smith. In spite of strong public support for the bill, some of its provisions, especially those imposing mandatory penalties, drew strong opposition from attorneys, who were well represented on the judiciary committees of both houses of the Arkansas Legislature. Many judges were skeptical of mandatory penalties, partly because they reduced judicial discretion and partly because the penalties eliminated the judge's power to use the threat of a sanction such as jail to force a defendant into treatment. Some legislators and advocates of the new law, in turn, were skeptical of judges, and believed that they would misuse any discretion given them in sentencing. Despite a number of attempts made in legislative committees to weaken the bill, the Omnibus DWI Law was passed with most of its original provisions intact. The law took effect March 21, 1983. The major provisions of the new legislation included:

- Prohibiting prosecuting attorneys from reducing drunk driving charges.
- Authorizing on-the-spot seizure of arrested suspects' driver's licenses by the police (however, the seizure triggers neither an administrative revocation procedure nor a preconviction license suspension).

- Establishing a blood alcohol content of .10 percent as a per se, rather than presumptive, standard of intoxication.

- Imposing a mandatory 90-day license suspension, with no provision for a restricted license, on first offenders, a one-year suspension on second offenders, and a two-year suspension on third offenders. A 1985 amendment made first offenders eligible for an occupational license.

- Requiring multiple offenders to serve mandatory minimum jail sentences (seven days for a second offense, 90 days for a third offense, and one year in the state penitentiary for a fourth offense).

- Imposing mandatory minimum fines ($150 for a first offense, $400 for a second offense, and $900 for a third offense), as well as a mandatory assessment of $250 in court costs.

- Requiring persons convicted of drunk driving to undergo an alcohol assessment as part of a presentence investigation.

- Imposing a mandatory 10-day jail term for those convicted of driving while under an alcohol-related suspension.

The 1983 law changes thus addressed, among other issues, the longstanding problem of the "perpetual first offender"; the prohibition on charge reduction, if adhered to, would abolish the practice of plea bargains under which drunk driving charges were reduced to reckless driving. The prohibition on plea bargaining, in turn, would greatly increase the probability that habitual drunk drivers would face the more severe penalties prescribed for multiple offenders.

The defense bar raised a broad range of constitutional challenges to the Omnibus DWI Law. Three consolidated groups of appeals reached the Arkansas Supreme Court during 1984 and 1985; the court upheld the statute's constitutionality with respect to all of the challenges. Most of the cases that generated the appeals originated in Sebastian County. There were fears that the combined effects of the plea-bargaining ban and the mandatory penalties would lead to so many trials and appeals that they would disrupt the court system. Newspaper accounts indicate that the increased volume of criminal cases created delays in processing civil actions in some Arkansas courts, but the disruption was less serious than some feared.

In 1985 the legislature made several changes to the Omnibus DWI Law. One amendment provided that a first offender may apply for a restricted

driving permit: the amendment limited the issuance of permits to cases of true "hardship", and made the Office of Driver Services--which was responsible for issuing restricted permits before the 1983 law took effect--responsible for determining whether an applicant was eligible to receive one. Members of the state bar and the governor supported that amendment. Another amendment provided that failure to complete a court-ordered program of treatment was a contempt of court, punishable by an additional $200 fine.

Fort Smith's Charge-Reduction Problem

It was widely known in Fort Smith that under the previous legislation, most defendants, and white-collar individuals in particular, who arrested for drunk driving were likely to avoid a conviction on that charge. The most common disposition was a guilty plea to reckless driving, and the payment of a fine and costs. The old Arkansas drunk driving legislation did not restrict plea bargaining; and a combination of other factors made plea bargaining commonplace. One factor was the way drunk driving cases were prosecuted in Fort Smith. To obtain a conviction in Arkansas, a prosecuting attorney must in effect win two trials: the initial trial in Municipal Court; and the trial de novo in the Circuit Court. What made matters worse was the courts' heavy workloads. The Fort Smith Municipal Court reportedly handled the heaviest caseload in Arkansas and had only one judge. The Circuit Court was also busy; its level of activity was aggravated by its schedule for handling Municipal Court "appeals" (trials de novo). Those appeals, which actually were retrials, were heard twice a year. It was not unusual for more than 500 drunk driving cases to accumulate on the Circuit Court docket between scheduled trial periods. The manner in which the City of Fort Smith funded drunk driving prosecution was a major obstacle to effective adjudication. Under his contract with the city, the municipal prosecutor was paid a flat sum for each case, regardless of its disposition. Most municipal prosecutors were recent law school graduates establishing their own practices; they typically had little or no experience in prosecuting criminal cases. In addition, any prosecuting attorney who attempted to try rather than dispose of his criminal caseload was in essence spending the added time in court for free. The huge financial penalty associated with trying cases, combined with the

public perception that drunk driving was simply an "aggravated traffic offense", led prosecutors to make wholesale plea bargains, in which they accepted guilty pleas to reckless driving. In defense of both prosecuting attorneys and judges, it should be pointed out that under the previous legislation it was much more difficult to obtain a drunk driving conviction than it is now: under the previous law it was necessary to prove actual driving impairment, juries were far more likely to sympathize with defendants, and drunk driving was widely considered a "victimless crime". Poor records within the court system also hampered judges' and prosecuting attorneys' efforts to obtain convictions against multiple offenders; it was not uncommon for several drunk driving prosecutions to be proceeding at the same time against the same person. Even when dispositions of guilt occurred, no record was made of whether the defendant retained or waived counsel, even though such a record was required by the U. S. and Arkansas Constitutions to establish prior convictions against multiple offenders. In addition, lack of coordination between among the court, law-enforcement agencies, and prosecuting attorney led to officers being subpoenaed to appear in court on their days off or after completing night shifts; those problems in turn led to additional plea bargains.

The present municipal prosecutor, who had served previously as a county prosecutor, took office in 1980, when plea bargaining to reckless driving was the norm. At the same time, a Municipal Court judge (who is now serving as an appellate judge) attempted to take a hard line toward drunk driving defendants; however, his decisions could be appealed to the Circuit Court, where the factors mentioned above compelled widespread plea bargaining. Although the municipal judge met with only limited success, his example led the municipal prosecutor to limit plea bargaining in drunk driving cases. His policy was not to plea bargain multiple-offense charges, or first-offense charges involving such aggravating factors as an accident or a high blood alcohol content, to non-alcohol related offenses. To demonstrate that he would in fact limit plea bargaining, the municipal prosecutor was forced to try a number of cases; the time spent trying cases did not earn him additional money, and the trials consumed time that could be spent building a law practice. However, the fact that he did try cases served as a warning to defendants; they would go to trial, where they risked possible conviction as well as the likelihood of paying substantial

legal fees to defense counsel.

Fort Smith's Systems Approach

The same forces that led to the enactment of stricter drunk driving legislation nationwide--publicity, activism by victims and their families, and a growing mood of social conservatism--led to changes in the way the state of Arkansas and the city of Fort Smith dealt with the drunk driving problem. One reason for concern was that in spite of an unusually high arrest rate for drunk driving, Fort Smith experienced a high alcohol-related fatality rate and a low conviction rate--approximately 35 percent--for drunk driving. The reduction of drunk driving charges to reckless driving convictions was a common and accepted practice, one that led to the processing of many habitual drunk drivers as perpetual first offenders. There are indications as well that those within the local justice system engaged in "finger pointing", blaming one another for deficiencies in processing drunk drivers. It also appears that law-enforcement agencies, prosecuting attorneys, and courts each kept their own records and did not regularly share information.

Jim Horton, an official of a private, nonprofit mental health facility known as the Western Arkansas Counseling and Guidance Center, was the main force in coordinating Fort Smith's approach to the drunk driving problem. The Center had operated a diagnosis and treatment program for court-referred offenders since 1975, long before state law imposed a treatment requirement in drunk driving cases. During that time, Mr. Horton maintained contact with federal and state traffic-safety officials. He learned, through those contacts and the available literature, that individuals in other localities had taken a so-called systems approach to drunk driving. Under that approach, those responsible for law enforcement, prosecution, adjudication, and probation and treatment worked together to address the drunk driving problem rather than blame one another for deficiencies in the system. At the recommendation of Georgia Waskovich-Swearingen, the alcohol programs coordinator for the Arkansas Highway Safety Program, Horton called a "town meeting" to deal with drunk driving. Since Horton already knew most of the individuals within Fort Smith's justice system, he was in a position to bring them together. It should be pointed out that the individuals within Fort Smith's justice system

essentially acted on their own, and not under external pressure applied by the news media or citizen activists.

Meetings were held in Fort Smith beginning in June 1982, and individuals representing all aspects of the justice system participated. They included: Jim Horton; Captain Deloise Causey of the Arkansas State Police; Assistant Chief Bill Young of the Fort Smith Police Department; Sheriff William Cauthron; then-Circuit Judge Harper; Municipal Judge (now Circuit Judge) Don Langston; and B. R. "Pete" Kennemer, director of the Western Arkansas Counseling and Guidance Center. Other individuals expressed their support of the project, but did not participate as actively. Project activity moved slowly at first but, as one member of the working group stated, "everyone got on the bandwagon at the same time". One objective of the participants was to obtain a federal grant, administered through the Arkansas Office of Highway Safety; the intended uses of the grant money included an automated recordkeeping system for the Municipal Court, portable breath testing equipment for police agencies within Sebastian County, funding for improved drunk driving prosecution; a citizen-reporting program; and the salary for a project director. Several factors, including a change in governors in 1983, delayed approval of funding for the project. Nevertheless, the participants had become so strongly committed to the concept of a systems approach that they intended to carry it out whether or not it were funded. The proposed project, called the Sebastian County DWI Systems Approach, eventually won funding.

By the time the Omnibus DWI Law took effect, a working group had been established (it continues to meet on a regular basis) and efforts were underway to publicize the dangers of driving drunk. When the new law took effect, the Systems Approach project began to act as a "watchdog", ensuring that the actions of those within the system would be monitored and, if necessary, exposed to the public. The Systems Approach has undertaken a number of public information and education programs. Media messages sponsored by the project warn Fort Smith area residents of the penalties for drunk driving, stress such messages as "Friends Don't Let Friends Drive Drunk", publicize such programs as free cab rides home on New Year's Eve. Project staff also conduct an extensive education and prevention program, with emphasis being placed on students in elementary, junior high, and high schools. The Systems Approach has established a strong relationship with

the local television stations (which have donated air time for public service announcements) as well as some of the other local media. The local newspaper, however, has been somewhat suspicious of some aspects of the new drunk driving law and how it has been enforced. Local beer wholesalers have lent their support to the Systems Approach and have even contributed money to it.

Some changes occurred within the Municipal Court immediately before the new law took effect. A new municipal judge was elected, replacing the previous judge who moved to a higher court. The new judge took steps to improve his court's recordkeeping procedures, and instituted a filing system that "flagged" first and multiple drunk driving offenders. He also made computerization of the Municipal Court a high priority and stressed the need for an automated management system at Systems Approach task force meetings. In addition, under the Systems Approach, the city followed a new funding procedure for drunk driving prosecution: it paid the municipal prosecutor a flat amount for Municipal Court prosecutions, plus an hourly fee and costs for appeals to higher courts. The decision to fund appeals was essential, since the added appeals resulting from the new drunk driving law would have created an unmanageable problem for the prosecutor and the city.

When the Systems Approach received funding, some of the money was used to purchase portable testing devices, fund telephones for a citizen-reporting effort, and increase mileage allowances for State Police patrols. But the major portion of Systems Approach money was dedicated to computerizing the Municipal Court. The court hired Jerry Selby, the president of Business Control Systems, a local data processing firm, as a consultant. Selby had five years' experience in Fort Smith's purchasing department, and was familiar with designing computer systems and with Fort Smith's government and court system. Several contacts in Fort Smith pointed out that retaining a locally-based consultant was an important reason why the automation of the Municipal Court succeeded. The system, which includes misdemeanor and traffic cases, became operational in June 1984; plans are underway to add civil cases to the system and expand access to prosecuting attorneys. Still, recordkeeping problems remain, largely due to a lack of coordination between the Municipal Court and other Arkansas courts.

Processing of Drunk Drivers in Fort Smith

The Fort Smith Police Department has historically had one of the highest drunk driving arrest rates in the nation. Arrest rates remained high despite the fact that most of the arrests made during the 1970s and early 1980s eventually resulted in guilty pleas to nonalcohol-related offenses. The average blood alcohol content of tnose arrested for drunk driving in Fort Smith reportedly was also below the national average. The Department pointed out that its force of 107 officers uses standard patrol techniques to make their drunk driving arrests. The department has no patrol unit dedicated to drunk driving enforcement; enforcement aimed at drinking drivers is integrated into general patrol, and 62 of the department's 107 sworn officers are assigned to the patrol division. The city police do not use roadblocks (a 1983 State Police roadblock on Interstate 40 generated strongly unfavorable publicity throughout Arkansas and resulted in a number of lawsuits), do not have a selective-enforcement program, avoid such tactics as stationing officers outside bars, and do not use vans for transporting and testing suspects.

The Fort Smith Police Department does not officially label drunk driving an enforcement "priority". However, newspaper reports indicate that the Department uses the number of drunk driving stops as an indicator of efficiency and some individuals expressed the opinion that the number of drunk driving arrests is one criterion for promotion. Reports alleging that arrest "quotas" existed created some controversy, including the threat of legal action by the Arkansas Civil Liberties Union; police officials denied the existence of quotas per se, but did state that the number of drunk driving stops was a factor in measuring an officer's productivity and the recommended number of stops actually reflected the average number of stops made during the past. Fort Smith's police officers are trained in visual detection of drunk drivers and, as already indicated, make a large number of vehicle stops.

Approximately 80 percent of the drunk driving arrests in Fort Smith are the result of "probable cause" stops resulting from traffic violations or bad driving indicating possible impairment. After stopping a vehicle, a Fort Smith police officer performs a more or less standard visual observation of the driver; if there are signs of intoxication, the officer

may ask the driver to leave the vehicle and perform field sobriety tests. Each patrol car is equipped with a portable breath tester commonly referred to as a "PBT"; however, Arkansas law does not contain a true prearrest-testing provision. The portable device is used by the officer only after he or she has a reasonable belief that the driver is intoxicated, and to determine whether the driver's blood alcohol level is high enough to ensure that transporting the driver to the police station and conducting an evidentiary test is justified. If the screening device, the results of field sobriety tests, or both indicate that the driver is intoxicated, then he or she is arrested and transported to police headquarters in downtown Fort Smith. There the suspect is advised of the consequences of refusing a test; after a 10-minute observation period, the suspect is asked to take an evidentiary test administered by the desk sergeant. A suspect who fails the test or refuses it is booked for drunk driving and his or her license is seized. The arresting department also check the defendant's driving record to determine whether to charge a first or subsequent offense (if the defendant has three previous convictions within the preceding three years, the charge becomes a felony and all paperwork is sent to the county prosecutor). After arrest, the defendant is placed in the Police Department's lockup until bail is posted and it is possible to release him or her to a responsible, sober adult. Those who cannot post bail are brought upstairs to the Sebastian County Jail. When the suspect refuses the test, the arresting officer files a separate charge of test refusal. The arresting officer forwards the driver's seized license, the Uniform Traffic Citation (which is the charging instrument), a copy of the arrest report, and a copy of the breath test report to the Municipal Court.

The license seized at the time of arrest is forwarded to the Arkansas Highway Safety Program, which retains it until the defendant proves he or she has completed all alcohol education and treatment required by law. The defendant's license is not officially suspended at the time of arrest; he or she is given a receipt that is good until the trial or court appearance date.

After the court receives the citation and other paperwork, its personnel enter the data from the citation to the Municipal Court's computerized management system. The computer system allows court personnel to verify whether the charged defendant has other other alcohol-related

prosecutions pending, or whether warrants are outstanding as the result of previous failures to appear in court or pay fines and costs. (The court's computer system also coordinates police officers' work schedules with court dates; that has eliminated instances in which an officer is subpoenaed to appear in court on a day off or several hours after completing a night shift). After entering the citation data into the court computer, the court clerk's staff transmits those documents to the municipal prosecutor's office, normally on the next business day after arrest. Copies of the citation are also given to the arresting police department and the court.

After receiving the citation, the Municipal Court sets an appearance date on which the defendant must appear and enter a plea. Many defendants choose to enter a plea earlier, and they are permitted to do so at the court's business office. If a defendant chooses to plead guilty, a presentence screening is scheduled and the defendant must sign a document establishing that he or she either was represented by an attorney or waived the right to one. The presentence screening--a process that includes evaluation for possible alcohol problems--is required by the Omnibus DWI Law, and a judge cannot sentence a defendant for drunk driving until that screening is completed. Some Arkansas judges have reportedly complained that the screening process has created a bottleneck in their courts. If the defendant pleads not guilty, the business office--which also has access to the courts' computer system--schedules a trial date. There is no pretrial conference in the Municipal Court. If a defendant wishes to change a plea after entering it at the business office, he or she must do so at the scheduled trial or sentencing date; a defendant must either waive, or be represented by, counsel to plead guilty.

Screening and education programs are uniform through the state; the Arkansas Highway Safety has drawn up statewide standards. To comply with Arkansas law, the defendant must make an appointment for a presentence screening report. In Fort Smith, the screening is performed at the Western Arkansas Counseling and Guidance Center. The Center's staff complete an "initial contact form" for each incoming defendant; completed forms are returned to the Highway Safety Program for keystroking. A "presentence screening report" is also completed, and copies are given to the Center and to the Municipal Court. Finally, a standardized test known as SSAST is completed and filed with the Center.

After completing the presentence screening, the defendant may appear in court to plead guilty. At that time, the judge verifies that the defendant has been represented by or waived counsel, and that the presentence report is complete. The judge then asks the defendant to read and sign the judgment, which advises him or her of the penalties for the offense as well as the procedure for obtaining a restricted driving permit and having his or her license restored at the end of the suspension period.

Since the Omnibus DWI Law went into effect, an increase in the frequency of not-guilty pleas has been reported. If the defendant pleads not guilty, a trial is scheduled in Municipal Court. There is no right to jury trial, and no record of the proceedings is kept. Typically, the only witnesses are the arresting police officer and the driver; however, it has been reported that some defense counsel routinely subpoena the officer who administered the breath test and the officer who calibrated the testing device. Over 90 percent of those who demand Municipal Court trials are found guilty as charged. However, when a defendant's blood alcohol level is exactly .10 percent, the proof of intoxication consists solely of the test result, and there are no aggravating circumstances such as an accident, the municipal judge dismisses the drunk driving charge and accepts a guilty plea to reckless driving. That is done because the test device can err by .01 percent, a fact that creates a reasonable doubt in the judge's mind whether the defendant's blood alcohol level was above the legal limit. A small number of drunk driving cases are dismissed outright because one or more prosecution witnesses fails to appear, there are difficulties in proving probable cause for the arrest, or there is difficulty in establishing that the defendant was in fact the driver.

The mean time from arrest to disposition at the Municipal Court level is 23 days. However, about one-quarter of the defendants who are found guilty in Municipal Court appeal the conviction and obtain a trial de novo in the Circuit Court. The reasons for appealing include "buying time" to obtain money to pay the fine and costs, delaying the conviction date for the purpose of counting multiple offenses, and attempting to postpone mandatory sanctions for as long as possible in hopes of avoiding them. Defendants with prior convictions may appeal to avoid a conviction that would result in a jail sentence. The defendant who appeals and demands a retrial is not as serious a threat to prosecution as he or she was under

the old law, because it is easier to prove drunk driving under the new law and juries are much more hostile to defendants in those cases. The cost of an appeal is another factor that tends to discourage defendants from seeking a retrial. A defendant who chooses to appeal faces the prospect of paying substantial legal fees for the retrial and, in addition, must post a $1,000 appeal bond. In most instances, the appeal bond is posted by a commercial bonding agency, and that transaction costs the defendant $100. The incentive to appeal has been reduced by recent legislation allowing a convicted first offender to apply for a restricted driving permit; a reduction in the number of appeals has been observed since that provision took effect. Many defendants enter guilty pleas before the retrial occurs, and some of them receive a $150 reduction in the fine and costs imposed. Some refer to this sentence bargain as a "plea bargain", but the defendant who enters into such an agreement still receives an alcohol-related conviction. One of Sebastian County's three circuit judges reported that he has not presided over any jury trials for drunk driving since being elected to his position in 1982, although he presided over a number of nonjury trials in which the defense raised constitutional arguments against the drunk driving statute itself. Trials de novo in Circuit Court are uncommon, but when they do occur, the municipal prosecutor will subpoena the testing and arresting police officers, the person who oversaw calibration of the breath test device, and any witnesses. Sometimes this "show of force" discourages defense counsel from trying the case in Circuit Court.

Under Arkansas law, the license suspension for drunk driving begins when the defendant is convicted or pleads guilty; the receipt issued at the time of arrest expires on that date. Although state law no longer imposes a "hard" suspension period before a convicted first offender becomes eligible for a restricted license, the procedure for obtaining a restricted license ensures at least a brief suspension. To obtain a restricted license, it is necessary to establish, before an Office of Driver Services hearing officer, true "hardship", i. e., that the license is needed to continue working, that no other family member is able to provide transportation, and that no other alternate transportation exists. The process of obtaining a restricted permit, termed a hearing, is a two-part procedure in Fort Smith. The first step is to appear before the hearing

officer and demonstrate the need for a restricted permit. In Fort Smith, the hearing officer asks the applicant where he or she works, whether anyone else in the family is able to provide transportation, when and where he or she works, and how far he or she must travel to work. She also asks whether the applicant has met the state financial-responsibility requirements. If the applicant satisfactorily answers the hearing officer's questions, and there are no serious traffic offenses (such as reckless driving or drag racing) on the driving record, he or she is asked to complete an affidavit stating the need for a permit, furnish proof of insurance, and provide a letter from his or her employer verifying the fact and circumstances of employment. When that paperwork is completed and submitted to the hearing officer, she issues the applicant a permit. The process of obtaining a restricted permit ensures that the applicant does not receive a permit immediately upon being convicted. First of all, the hearing officer who serves Fort Smith has a "circuit" that covers six counties and therefore may not be in town on a given day. In addition, obtaining proof of financial responsibility from one's insurer and verifying information relating to employment further delays issuance of the restricted license in many instances. It is therefore not uncommon for applicants to wait a week or more before receiving a restricted permit. If a restricted permit is issued, it limits driving to a maximum of 12 hours per day, and six days per week. It appears that the reinstitution of restricted permits for first offenders has not overburdened the Office of Driver Services, because that agency performed a similar function before the Omnibus DWI Law went into effect.

State law provides that a suspended license is not automatically restored at the end of the suspension period. To regain a license that was suspended after a drunk driving conviction, it is necessary to furnish the Highway Safety Program--which holds the license seized at the time of arrest--proof that all education and treatment requirements imposed as a part of the sentence were complied with. It is critical that the driver complete those requirements because a restricted license is good only for the balance of the suspension period. If an individual fails to do so, or fails to send the necessary paperwork, his or her license becomes suspended and the temporary permit cannot be renewed or extended. Under a 1985 amendment to the Omnibus DWI Act, failing to complete treatment is a

contempt of court, for which the violator is subject to an additional $200 fine.

Under the Omnibus DWI Law, second and subsequent offenders receive mandatory jail sentences. A second offender receives a seven-day sentence, and a third offender receives a 90-day term. Those sentences are served day for day, i. e., there is no "good time" provision allowing early release of prisoners. Arkansas law allows offenders confined to jail to enter a work-release program after serving 20 percent of the sentence. The goals of work release are to alleviate jail overcrowding, keep offenders working and prevent their going on welfare, and, by charging inmates for the costs of confinement, providing revenue for the county. To be eligible for the program, an offender must be serving a sentence for a misdemeanor, and have no convictions for sexual or violent offenses. Work release, which allows a prisoner to leave jail during the day to continue working, is considered a more feasible sentencing alternative than weekend sentencing because it does not burden the jail facility on weekends. Still, the new drunk driving law has greatly increased the number of drivers who are convicted of second or subsequent offenses, which carry mandatory jail terms. There has been an increase in the number of convicted drunk drivers in the Sebastian County Jail since January 1985, and the number is expected to increase further as the appeal process ends for convicted multiple offenders, and other offenders accumulate additional convictions. As of July 1985, approximately eight percent of the jail's 115 inmates were drunk driving offenders.

Observations

Based on the statements made by those within Fort Smith's criminal justice system, the following observations can be made about the effects of eliminating plea bargaining there:

- Plea bargaining of drunk driving charges to reckless driving convictions has virtually disappeared. Charge reductions and dismissals occur in the unusual cases in which the case for conviction is weak, and a limited amount of sentence bargaining, i. e., a small reduction in the fine and costs imposed, still occurs.

- The elimination of plea bargains from drunk driving to reckless driving has led, for the first time, to the conviction and punishment of a substantial number of white-

collar drunk driving offenders.

- The increased chance of being arrested for, convicted of, and punished for drunk driving has deterred many social drinkers but has not had a deterrent effect on problem drinkers, who are believed to be unable to control their drinking.

- The practice of convicting offenders as charged, combined with an improvement in the Municipal Court's recordkeeping procedures, has resulted in a substantial increase in the number of persons found guilty of multiple drunk driving offenses.

- Three factors aided the ban on plea bargaining in Fort Smith: the adoption of a per se standard of intoxication; changes in the manner in which the city funded drunk driving prosecution; and a marked change in local citizens' attitudes toward drunk driving.

- The mandatory 90-day "hard" license suspension for first offenders led to a number of instances in which the offender faced the loss of his or her job. That penalty, combined with the ban on plea bargaining, might have created dislocations within the justice system had the legislature not amended the law in 1985 to allow for restricted permits.

- Increased and mandatory penalties have increased the incentive to plead not guilty and appeal from findings of guilt in Municipal Court. An increase in not-guilty pleas occurred after the 1983 law went into effect, and that added to the courts' heavy caseload; however, the increased number of not-guilty pleas and appeals did not by itself seriously disrupt the courts.

- A delayed effect of the plea-bargaining ban appears to be a marked increase in the number of offenders serving jail sentences for drunk driving. As additional offenders accumulate multiple convictions and receive jail sentences, jail overcrowding may occur.

- In Fort Smith, the legislation banning charge reductions coincided with two other changes: the creation and funding of the Systems Approach project; and a marked improvement in management and recordkeeping procedures within the Municipal Court.

MADISON AND DANE COUNTY, WISCONSIN

Background

Dane County, Wisconsin is the state's second most populous county. Its county seat and largest city, Madison, is the state capital and the home of the University of Wisconsin-Madison campus. The state government, the University and its hospital, and the federal government provide employment for most county residents, although firms such as Oscar Mayer and Company and the American Family Insurance Group rank among the area's largest private-sector employers. Agriculture is the primary industry outside the city of Madison. Dane County is served by four television stations (the three major networks, and a public television station), 15 radio stations, and two newspapers, the Wisconsin State Journal and the Capitol Times. Two major east-west interstate highways, I-90 and I-94, pass through Dane County, as does U. S. 51, a major north-south highway. The Madison area is located near such tourism and vacation areas as the Wisconsin Dells; because of vacationers and students, a heavy volume of out-of-state traffic passes through the county.

The Wisconsin State Patrol, the Dane County Sheriff's Department, and local police departments, including the Madison Police Department, enforce criminal laws. Within the city of Madison, the Madison Police Department makes nearly all drunk driving arrests.

Wisconsin's court system is unified at the circuit court level and above. The circuit court is a trial court of general jurisdiction; it is responsible for hearing and deciding criminal cases ranging from traffic violations to murder, as well as ordinance violations and civil cases. Many smaller communities throughout the state, including several in Dane County, continue to operate municipal courts presided over by magistrates. Madison does not have its own municipal court.

Under Wisconsin's constitution, municipalities do not have the power to create criminal offenses; thus, all violations of city ordinances are classified as civil in nature. In the city of Madison, first offense drunk driving is an ordinance violation and therefore a civil offense. This is also true statewide, because under Wisconsin law the first drunk driving offense is civil and subsequent offenses are criminal. The effect of decriminalizing first offense drunk driving is that a person charged with

that offense is not entitled to appointed legal counsel, and cannot be sentenced to jail. However, the defendant is entitled to a jury trial if he or she posts a jury fee within 10 days of his or her initial appearance. Depending on where the offense occurred and whether the charge is first-offense or multiple-offense drunk driving, prosecution is carried out either by the Madison City Attorney's office (or another Dane County municipality's prosecuting attorney's office) or the Dane County District Attorney's office. The District Attorney is elected on a nonpartisan basis for a two-year term; the City Attorney is an appointed official.

Alcohol and Highway Safety Legislation

Wisconsin laws regarding the availability of alcohol have historically been liberal; that trend reflects the state's heavy German population as well as the political power of the Tavern League of Wisconsin and Wisconsin-based brewers. Several Wisconsin cities are among the nation's leaders in the number of licensed establishments per capita. The legal age for purchase and consumption of alcohol in Wisconsin is 19 (from 1972 through mid-1983 it was 18), which has made the state's southern counties a magnet for residents of Illinois, where the legal age has been 21 for a number of years. Despite federal legislation that will result in the loss of highway funds if Wisconsin does not adopt a legal age of 21 by October 1, 1986, there is still strong opposition to the higher age and the possibility that the state will "hold out" against the federal legislation. Dram shop liability in Wisconsin is limited to damages caused by serving alcohol to underage patrons. Currently, no Wisconsin legislation prohibits "happy hours" and similar promotions.

Wisconsin's drunk driving laws, as written, were strict during the 1970s, but 1977 amendments reduced penalties in hopes of encouraging police officers to make more drunk driving arrests. During the 1970s, practices such as earned-charge reduction and plea bargaining of drunk driving charges to reckless driving convictions were common and, as a result, very few first offenders actually were convicted of drunk driving. A person who was convicted of drunk driving commonly avoided license action, in the form of a three- to six-month suspension, by completing a nonclinical alcohol education program known as Group Dynamics. In addition, it was reported that some police officers who stopped drunk drivers transported them home

or to a diner to sober up instead of arresting them. In Wisconsin, as elsewhere, the public attitudes toward drunk driving during that time were more tolerant than they are now.

The public and political climate regarding drunk driving forced Wisconsin's legislature to make a number of major changes in that state's drunk driving laws during the past several years. 1981 Wis. Laws, Chapter 20, effective May 1, 1982, and 1981 Wis. Laws, Chapter 347, effective July 1, 1983, made the following changes:

- All persons convicted of drunk driving were required to undergo alcohol assessment, and to complete any program of education or treatment recommended by the assessor.

- Fines and costs imposed on convicted drunk drivers were increased; a $150 "driver improvement surcharge", earmarked for drunk driving law enforcement, prevention, and treatment, was added to all fines; and judges were forbidden to commute portions of those fines and costs.

- All plea bargains that would result in the reduction of a drunk driving charge to a nonalcohol-related offense required the court's approval.

- Second offenders within five years were made subject to a mandatory five-day minimum jail term, and third offenders a mandatory 30-day minimum jail term. Likewise, multiple offenses of driving after revocation, especially after being declared an habitual traffic offender, were made punishable by mandatory jail terms.

- Drivers too young to drink legally were made subject to a license suspension for driving after consuming any amount of alcohol.

- The first offense of driving while under revocation was made a civil offense, but progressively more severe criminal penalties were imposed for repeat offenses. The legislature apparently anticipated that more stringent drunk driving legislation would result in more license revocations and a higher incidence of driving after revocation.

Wisconsin law has established a .10 percent per se standard of intoxication since 1977. In addition, Wisconsin was one of the first states to pass legislation authorizing the use of preliminary breath test devices; however, the current law does not impose penalties on drivers who refuse to submit to such a test.

By requiring court approval of proposed plea bargains to lesser

charges, Wisconsin law discourages charge reduction but does not prohibit it entirely statewide, and there are still reports of widespread charge reduction in some Wisconsin courts. The 1982 amendment relating to charge reduction, by itself, had little effect on drunk driving prosecution within Dane County since the new law was still less restrictive than the prosecutors' existing policies, but the amendments concerning penalties caused some changes in law enforcement and adjudication.

At the same time the legislature amended the drunk driving law to require a license revocation for all first offenders, it eliminated the waiting period for obtaining an occupational license; under prior law, a first offender was required to wait 15 days before receiving such a restricted license.

As already pointed out, first offense drunk driving is not a criminal offense in Wisconsin. (Only one other state, Oregon, treats a first drunk driving conviction as civil in nature, and that state's supreme court required lower courts to give defendants the right to jury trial.) The legislative decision to decriminalize first offense drunk driving, made in the 1970s, was not reversed despite a general strengthening of the state's drinking driving laws.

In addition to the controversy over the legal drinking age, there are legislative efforts underway to require all convicted drunk drivers to receive a "hard" license suspension before obtaining a restricted license, to lower the legal standard of intoxication to .08 percent, to extend the time period for counting multiple offenses for enhanced penalties from five to 10 years, and to recriminalize first offense drunk driving. The proposed recriminalization would bring about serious changes in the way in which Dane County's criminal justice system processes first offense drunk driving charges: it would make the District Attorney's office responsible for all drunk driving prosecutions in the county, deprive the city of Madison of thousands of dollars in forfeitures (civil fines) paid by convicted first offenders, and greatly increase the number of defendants who would qualify for free legal representation through the Public Defender's office.

Dane County's Charge-Reduction Ban

Although local attitudes toward drinking and driving were relatively

liberal at the time, drunk driving surfaced as a campaign issue during the 1978 race for Dane County District Attorney. Jim Doyle, the eventual winner of that campaign, instituted a policy of not plea bargaining drunk driving charges to nonalcohol-related offenses and instructed his deputies not to deviate from that policy. Soon afterwards, Madison's city attorney imposed a similar policy to be consistent. It was reported that after both prosecutor's offices in Dane County sharply limited charge reduction, the number of defendants demanding trials increased; however, judges and prosecutors both adhered to their policy limiting charge reduction. A study by University of Wisconsin Law School professor Herman Goldstein tracked a sample of 1980 drunk driving prosecutions, and found that 90 percent of those charged pled guilty to drunk driving, that charge reduction occurred only at intermediate blood alcohol levels (.10 to .13 percent), and that sentence bargaining and dismissal of collateral charges--such as test refusal or driving after revocation--occurred.

In 1982, after Wisconsin's drunk driving laws were amended to provide for more severe penalties, the District Attorney's office made internal changes to improve its efficiency. The office's "Traffic Team", organized on an informal basis in 1978, was given official status. The so-called "T-Team" consisted of four of the office's 25 attorneys, who were assigned to prosecute traffic cases--including drunk driving--on a full-time basis. The T-Team continues to exist in that form. It has allowed other assistant district attorneys to concentrate on prosecuting serious felonies. A second administrative change was to coordinate criminal pretrials by placing the T-team in charge of scheduling pretrials, and by holding pretrials in the absence of the judge assigned to preside over the case; that change allowed assistant district attorneys to schedule pretrials at times convenient to them and avoid occupying court time with pretrials.

One harsh consequence of the charge-reduction ban was the abolition of the prosecutors' so-called "Illinois rule". Illinois law provides for severe penalties--including a one-year license revocation--for first offense drunk driving, but mitigates the harshness of those penalties by allowing a first offender to participate in a program called "court supervision" and earn a dismissal of the charge. The court supervision program, however, only applies to offenses that occurred in Illinois; neither the Illinois courts nor the Secretary of State allows a driver to

avoid the mandatory one-year revocation that results from a first offense drunk driving conviction in another state. Recognizing the harshness of Illinois procedure, Dane County's prosecutors traditionally allowed Illinois drivers to participate in a program, similar to court supervision, under which the driver "earned" a reduced charge of reckless driving. When the District Attorney's and City Attorney's offices abolished charge reduction, they also abolished the Illinois rule. Some Illinois residents arrested in Dane County for drunk driving have been surprised by the Wisconsin prosecutors' refusal to reduce charges; a number of them retain counsel and contest the charges.

Since 1978 the reduction of drunk driving charges--other than for reasons other than inability to prove them--is limited only to certain offenders. Professor Goldstein found that some defendants charged with first offenses who had blood alcohol levels of .13 percent or below and who were represented by counsel were allowed to plead guilty to lesser charges; the apparent rationale was that the defense could present experts persuasive enough to make conviction difficult. Given the current restrictions on charge reduction, one prosecuting attorney remarked that there is now less leeway for plea bargaining in drunk driving cases than in some felonies that are punishable by imprisonment.

Processing of Drunk Drivers in Dane County

The Madison Police Department makes most drunk driving arrests within Madison's city limits, and the Dane County Sheriff's Department and Wisconsin State Patrol make most arrests elsewhere in the county. Both departments rely on standard patrol procedures (i. e., probable cause stops and accident investigation) to enforce drunk-driving laws. Neither department made dramatic changes in the number of officers assigned to traffic duty, or in officers' patrol duties, either after the 1978 charge-reduction ban or after the 1982 amendments to the drunk driving laws. However, after the 1982 amendments took effect the number of arrests declined temporarily while officers made themselves familiar with the new law. Madison Police Department data show that a relatively constant number of arrests occurred each year from 1980 through 1984. The Madison Police Department conducted a selective-enforcement program until 1984 and is considering reviving it for the 1985 holiday season. The Dane County

Sheriff's Department presently uses selective enforcement and receives state funds to pay deputies for overtime work. The city police do not use prearrest testing devices because the testing facility is located downtown and therefore little time is saved by testing at the roadside. It appears that the Dane County deputies make at most limited use of the devices, since there are several satellite testing facilities throughout the county. There has been some discussion of establishing drunk driving roadblocks to intercept drunk drivers leaving Madison on weekend nights, but there is some uncertainty as to how Madison's residents would react to roadblocks.

After stopping a driver for a traffic violation or suspected drunk driving, both departments' officers rely on observing the driver in the car, and conducting field sobriety tests if there is reason to believe the driver is intoxicated, to determine whether a driver should be arrested and transported to a test facility. Drivers arrested within the Madison city limits are transported to the City-County Building in downtown Madison; drivers arrested in the outcounty area may be taken to the City-County Building or to one of the the testing facilities maintained throughout Dane County by the Sheriff's Department and other law-enforcement agencies.

When a driver is brought to a test facility, the arresting officer seizes the driver's license and issues a temporary receipt. Wisconsin law does not authorize administrative license removal; the license seizure itself does not begin a suspension procedure, and a person charged with drunk driving and awaiting trial can obtain extensions of his or her receipt for 30-day intervals. After a driver is taken to a facility for testing, and before the test is offered, the arresting officer advises the driver of his or her rights concerning the test and the consequences of refusing it. If a driver either fails or refuses the test, the officer gives the driver his or her Miranda warnings and begins to question the driver about the incident. The questions used are a standard set developed by the U. S. Department of Transportation.

Madison Police Department data show that appoximately one driver in six refuses to take a chemical test. If the driver refuses the test, the arresting officer completes a form entitled "Notice of Intent to Revoke". The refusal becomes a separate proceeding that may be tried in the Circuit Court; thus, in Wisconsin it is not uncommon for a defendant to face the possibility of a drunk driving prosecution in a municipal court and a

refusal proceeding in the circuit court. In fact, however, few drivers choose to contest a refusal proceeding because the refusal charge is often dismissed when the driver pleads guilty to the drunk driving charge; even if refusal is charged and the driver contests it, it is very difficult to establish justification for not submitting to the test. With respect to testing, law-enforcement and prosecutorial agencies report increased cooperation by medical and hospital personnel when a suspected drunk driver is hospitalized after a crash; many of those individuals are often willing to draw specimens or turn them over to the police for the purpose of having them analyzed for alcohol. There was initially some fear on the part of hospital personnel that they would face legal liability for drawing blood from injured drunk driving suspects without their actual consent. However, Wisconsin's implied-consent law specifically provides immunity from suit for medical personnel who draw specimens.

There is some uncertainty as to whether the arrested drunk driver population has changed since the 1982 amendments took effect. Some sources report that the number of arrestees with intermediate blood alcohol levels has increased, and that the change is the result of police officers' increased attention to the physical signs of intoxication and a greater willingness by officers to ask drivers stopped for traffic offenses to undergo field sobriety tests. On the other hand, several individuals within Dane County's criminal justice system reported that more "hard core" drinkers are appearing among those arrested for drunk driving, and that law-enforcement agencies still cannot arrest all of those hard-core offenders. Many sources reported that social drinkers have become much more cautious about driving after drinking, and still others maintain that drivers under age 25 continue to drive drunk, possibly because their behavior is more impulsive, and possibly because they are more active and log more "recreational" miles.

Most first offenders are never placed in jail after arrest; a Wisconsin resident charged with a first offense is allowed to post his or her driver's license in lieu of bail, provided a responsible, sober person is willing to provide transportation home. Accused multiple offenders and nonresidents are transported to the county jail and booked. If an accused is able to post bail, he or she is released as soon as a responsible, sober person arrives; otherwise, the accused remains in jail until the next court

day, at which time he or she makes an initial appearance before a circuit court commissioner. Increasingly, Dane County court commissioners who preside over initial appearances will free a defendant on bail on the condition that he or she does not drive after drinking; thus, if a defendant is arrested again for drunk driving while awaiting trial on the first charge, bail may be revoked and sometimes a separate prosecution is brought for "jumping bail". It has been reported that even a brief confinement to jail is shocking enough to many white-collar offenders--who typically do not view themselves as criminals--that it tends to discourage them from committing another offense.

After the arrest and testing are completed, the arresting officer completes the citation. If the test result showed the driver had a blood alcohol content of .10 percent or more, then the officer also charges the driver with the .10 percent offense. The arresting officer forwards the citation, an alcoholic influence report, a narrative report of the incident, a form containing the implied-consent advisories, the police accident report (if an accident occurred), and the test results to the prosecutor's office. The total elapsed time, from the initial stop to booking, is about two to three hours. On the next working day after arrest, if the offense is criminal, the Dane County District Attorney's office draws up a complaint and files it with the Clerk of Criminal and Traffic Court within the Circuit Court. First offenses require no criminal complaint; the citation suffices as the charging instrument; however, second and subsequent offenses require that a criminal complaint be prepared and filed. Before preparing a criminal complaint, the prosecuting attorney's also examines the accused's driving record to determine whether additional charges, such as driving after a revocation, are warranted. The Department of Transportation routinely informs prosecuting attorneys whether the driver has accumulated enough traffic convictions to be declared an habitual traffic offender.

Under Wisconsin law, the District Attorney is responsible for filing habitual offender petitions with the Circuit Court. The filing and service of process begin the proceeding against the defendant; if his or her driving record contains a sufficient number of convictions within the preceding five years, then the defendant's license is revoked for five years, with the first two years a "hard" suspension. At present, habitual-

offender proceedings are backlogged, in part because many suspected habitual traffic offenders are difficult to locate and serve with the legal process necessary to have the court grant the habitual traffic offender petition. Some sources voiced a concern that habitual-offender proceedings have not been brought against more of Dane County's chronic traffic offenders.

After the prosecuting attorney's office draws up and files the criminal complaint, the case file is physically left with the court clerk, who enters the data concerning the charge on the court's computer system and assigns the case to one of Dane County's 14 circuit judges. The file is then returned to a clerk located near the chambers of the judge assigned to the case; the file stays with that clerk until the case reaches final disposition.

The first court appearance after arrest is the initial appearance, also called the arraignment, in which the defendant is advised of the charges and of the right to trial and counsel and--if he or she was jailed after arrest--released, usually on recognizance. Most defendants who were not jailed make their initial appearances about two weeks after the arrest date; those jailed after arrest and not released on bail appear the first court day after arrest. In Dane County, the initial appearance is the only adjudicative step presided over by a court commissioner, an attorney whose role is similar to that of a magistrate in other jurisdictions. In Dane County, the court commissioner's role was expanded during the early 1980s; one effect of that expansion has been to relieve the circuit judges of some of the burden of handling drunk driving cases. At the initial appearance, the court commissioner is allowed to take pleas and dispose of first offense charges, which are civil in nature, and to take guilty or no contest pleas to multiple offenses, which are criminal. The court commissioner discourages accused multiple offenders from pleading guilty at the initial appearance, but a small percentage insist on doing so. If an accused insists on entering a guilty plea, and is represented by or waives counsel, the court commissioner records the facts of the incident and recommends that the circuit judge assigned to the case accept the plea; in nearly all instances, the judge will accept it.

If the defendant does not plead guilty or no contest at the initial appearance, then a pretrial conference is scheduled, ideally one month

after the initial appearance. The pretrial conference is a local practice, one not required by Wisconsin law; it is intended to reduce the circuit judges' caseload by disposing of as many cases as possible through pleas. Under local practice, all motion requests must be made at the pretrial conference. If the city attorney's office is prosecuting the action, the pretrial is held before the court commissioner; if the district attorney's office is prosecuting, the pretrial is held in the Dane County Board Room. The defendant is notified in advance of the pretrial conference. If he or she fails to appear, a bench warrant is issued if the case is criminal; otherwise, the defendant suffer a default judgment. If the defendant does appear, the prosecuting attorney makes the defendant an "offer" under which the prosecutor recommends a specific sentence in exchange for a guilty plea. The offer typically remains open until the scheduled trial date.

Prosecuting attorneys' offers must be consistent not only with the prosecuting agency's policy against reducing drunk driving charges but also the sentencing guidelines followed by judges. The Circuit Court judges use guidelines to determine the sentence a convicted drunk driver will receive. The recommended sentences are based on the charge itself (i. e., a first or multiple offense), the blood alcohol content, whether a test was refused, the defendant's driving record, and whether there were aggravating factors (such as whether the driver fled the police or drove at excessive speeds or on the wrong side of the road). The offer generally includes sanctions less serious than the maximum and, if there are collateral charges such as driving after revocation or test refusal, a recommendation that jail sentences and license revocations associated with those charges be concurrent with those for drunk driving.

Most pleas of guilty or no contest occur at the time of the pretrial conference. If the defendant rejects or wishes to consider further the offer made by the prosecutor at the pretrial conference, then the next adjudicative step is the "final conference" before the circuit judge assigned to the case. Dane County's circuit judges have differing philosophies regarding final conferences: some take an active part in forcing a settlement, and insist that the parties make a final decision either to try or settle the matter at the conference; others give the final conference little or no importance. The circuit judges also vary with respect to how quickly they move drunk driving cases toward trial; the

elapsed time from arrest to trial in Circuit Court ranges from several months to as long as two years.

About two to three percent of drunk driving cases go to trial; the percentage of first offense cases tried is about equal to the percentage of multiple offense cases that go to trial. Those cases make up a large portion of the number of Circuit Court cases docketed, perhaps as much as half of the dockets of the six circuit judges assigned to hear criminal cases. On the other hand, a high percentage of drunk driving cases are disposed of through guilty pleas than other criminal cases. The average drunk driving trial in Dane County is increasingly likely to include expert testimony and therefore likely to consume added time. Although the stakes are higher when a multiple offense is charged, the fees for legal defense and the odds against acquittal discourage many defendants from contesting the charges; in addition, the Public Defender's staff will not insist on trying drunk driving cases unless they believe the prosecution cannot prove guilt. However, several sources reported that some of Dane County's more "marginal" practicing attorneys pressure their clients to fight drunk driving charges despite long odds against being acquitted.

Although the first offense is civil, the defendant is entitled to jury trial unless he or she fails to post a jury fee within 10 days of the initial appearance. Second and subsequent offenses are criminal, and the defendant is entitled to trial by jury. It has been reported that juries have become much more willing to convict accused drunk drivers, and the number of potential jurors claiming to be members of groups such as Mothers Against Drunk Driving has increased.

The conviction rate is very high, and that is due in part to the establishment of a per se standard of intoxication. A driver who fails a chemical test faces two charges: the newly created .10 percent offense based on test evidence; and the offense of driving while intoxicated. Defense counsel and experts are forced to make increasingly imaginative arguments (such as radio frequency interference with the test device) to obtain a not-guilty verdict in the face of a test result above .10 percent. Faced with two charges requiring different elements of proof, juries frequently return "split verdicts" in which they find the defendant guilty of the .10 percent offense but not guilty of driving while intoxicated. Some jurors reportedly believe that it is not appropriate to return two

guilty verdicts for a single incident, and others reportedly consider returning one guilty verdict, rather than two, to be an appropriate "compromise" verdict. However, if a defendant is found guilty of both driving while under the influence and the .10 percent offense, Wisconsin law requires that only a single conviction be entered for the purpose of sentencing and counting multiple offenses.

When a defendant pleads to, or is convicted of, drunk driving, he or she is required to contact a mental health agency within 72 hours and make an appointment for the alcohol assessment required by law. Completing the assessment as well as the treatment recommended by the assessing agency is a condition of retaining a driver's license. One difficulty commonly faced by convicted drunk drivers is raising the money to pay the mandatory fines and costs, plus the added costs of assessment, treatment, and insurance. The court commonly gives defendants the option of paying fines and costs on the installment plan; however, that option has greatly increased the amount of time that court personnel must expend on supervising compliance with the terms of installment plans. Several individuals within Dane County's criminal justice system maintain that supervising defendants' compliance with installment plans has become as burdensome as overseeing child-support payments. One individual observed that the penalties for drunk driving and for driving without a license have created a twentieth-century "debtor's prison" for poor offenders: the fines and collateral costs (such as assessment and treatment fees, and automobile insurance) have risen to the point that poor offenders can never regain their licenses; those individuals continue to drive, however, and by doing so they face even greater penalties for multiple offenses, which they cannot pay, and as a result they go to jail. Although community service is available for some offenders in lieu of paying fines, many offenders are poor candidates for community service because they lack skills or have never developed good work habits, and compliance with a community-service program is difficult to supervise. Thus, the option of community service is considered not very feasible in Dane County.

Wisconsin law provides for mandatory jail terms for those convicted a second or subsequent time of either drunk driving or driving after revocation. Persons jailed for those offenses have contributed heavily to Dane County's jail population, which was well above the facility's capacity

during the early 1980s. The Dane County Jail opened new space in early 1985, and that has relieved the overcrowding problem for the time being. Still, the jail population is continuing to increase as more repeat drunk driving offenders are sentenced to jail, and the increasing population is expected to remain a problem. Several alternatives are available to ease the effects of Wisconsin's mandatory jail penalties. Work release, called the "Huber law" in Wisconsin, is available to many inmates. State law also provides for statutory "good time" that reduces jail sentences by 25 percent. Since jail sentences are measured in days rather than hours, a weekend confinement beginning at 6 p.m. Friday and ending at 6 a.m. Monday is counted as four days' jail time; those four days, plus the statutory good time, constitute a five-day sentence. A few individuals convicted of multiple offenses have been sentenced to inpatient treatment in lieu of a jail sentence, provided the treatment is administered at a secure facility and the treatment period is approximately the same as or longer than the mandatory minimum jail sentence.

The 1982 drunk driving law amendments require all persons convicted of drunk driving to undergo alcohol assessment and complete treatment recommended by the assessing agency as a condition of retaining one's driver's license. In Dane County, the assessing agency is the Dane County Mental Health Center, a private, nonprofit organization that performs assessments under a contract with the county. State administrative rules require assessment agencies throughout Wisconsin to follow a more or less standard procedure; the standard assessment instrument is adapted from one developed by the National Council on Alcoholism. As might be expected, the offender population assessed by the Center contains more males, young drivers (under age 35), unmarried persons, and unemployed individuals than Dane County's population as a whole. Mental Health Center data indicate that 75 percent of those assessed are first offenders. It is believed that offenders with drinking problems are now assessed at earlier stages of their disease, and are less willing to admit they have problems. About half of the offenders assessed by the Center are diagnosed as "irresponsible alcohol users" and are referred to the Group Dynamics program. The remainder are diagnosed as having either a suspected or actual alcohol dependency, and are referred to outpatient or inpatient treatment. Beginning in mid-1984, the Center adopted a policy placing

greater emphasis on treatment as opposed to educational programs such as Group Dynamics. Once an assessment is performed and a treatment recommendation made, the findings are forwarded in writing to the Department of Transportation, which supervises offenders' compliance with treatment programs and determines whether their drivers' licenses should be revoked for failing to complete treatment.

It is imperative that a convicted offender make arrangements for assessment and treatment as soon as possible. For most offenders, assessment usually occurs two to three weeks after conviction. The cost of assessment in Dane County is $85, payable in advance, and treatment costs a minimum of $50 for Group Dynamics and ranges as high as thousands of dollars for inpatient therapy. Those costs can present an insurmountable barrier to poor offenders and can result in their driving without a license, risking progressively more severe penalties. A person who wishes to contest an assessment and treatment recommendation may do so through an informal review procedure within the Center.

To obtain an occupational license in Wisconsin, it is necessary to prove financial responsibility, and establish a need for the license. The occupational license is good for travel to and from work, treatment, and church, and can be valid for up to 12 hours per day and 60 hours per week. Under current state law, a first offender does not have to undergo a waiting period before applying for the occupational license. An offender who wishes to obtain an occupational license in Dane County may appear before a deputy court clerk on a drop-in basis and establish his or qualifications for the license. The great majority of applicants who show that they meet the minimum requirements for an occupational license are granted one.

Observations

Based on the statements made by those within Dane County's criminal justice system, the following observations can be made about the effects of eliminating charge reduction there:

- The no charge reduction policy was initiated by the prosecuting attorneys even before legislation restricting that practice was passed, and that policy appeared to be highly effective.

- Arrest rates for drunk driving have essentially remained constant despite changes in legislation, adjudication, and public attitudes.

- Charge reduction is the exception rather than the norm; however, it does occur in some instances when a defendant has a relatively low blood alcohol level and the prosecution anticipates difficulty in proving guilt at trial. Sentence bargaining occurs at all levels of alcohol-related offenses as well as with respect to collateral offenses such as test refusal, driving after revocation, and driving after having been declared an habitual offender. The treatment of collateral offenses in part reflects a difference in opinion as whether the offense of driving after being declared an habitual traffic offender is a separate offense or an enhancement of a charge of driving while under revocation.

- Although first offense drunk driving is civil in nature and is not punishable by mandatory jail or "hard" license suspension, it nevertheless results in substantial financial penalties.

- The elimination of charge reduction apparently has caused an increase in the number of individuals convicted of multiple offenses.

- There appears to be a growing "hard core" of multiple offenders who enter a cycle of drunk driving arrests, sanctions, illegal driving, and further sanctions. Many of those offenders are poor and unable to pay the financial penalties associated with drunk driving convictions; they are an increasing burden on the court system.

- Changes in drunk driving legislation have added to the administrative burdens on judges, prosecutors, and court personnel.

- It is believed that more severe penalties for and increased awareness of drunk driving have deterred many social drinkers from driving drunk, but they have not had as great an effect on hard-core drinkers, who account for an increasing proportion of those arrested for drunk driving.

VENTURA COUNTY, CALIFORNIA

Background

Ventura County, California is located on the Pacific coast, between Santa Barbara County to the north and west and Los Angeles County to the south and east. According to the 1980 census, Ventura County's population was 527,946. The county seat is Ventura (1980 population 74,474); other communities within the county include Camarillo (population 37,732), Oxnard (108,195), Port Hueneme (17,803), Simi Valley (77,500), Thousand Oaks (77,797), and Santa Paula (20,552). The major highways serving Ventura County include U. S. 101, a principal north-south highway linking Los Angeles and San Francisco, and state highways 33, 118, and 126. U. S. 101 is designated the Ventura Freeway in the eastern part of the county; that portion of the county contains its fastest-growing communities, many of which are home to commuters who work in Los Angeles County. Ventura County contains both ocean and mountain resorts and attracts a considerable number of visitors from out of county and from states other than California. The county's major industries include government and service employment, light manufacturing, oil, utilities, and agriculture. Residents enjoy one of the nation's highest per capita incomes, although some of Ventura County's population is poor. Ventura County's voters tend to be fiscally and socially conservative, and are apt to take a hard line toward crime (the county boasts a very low crime rate). Much of Ventura County is located within 50 miles of downtown Los Angeles, and fall within that city's media market: the primary newspapers are the Los Angeles Times and the Los Angeles Herald Examiner; and the principal television and radio stations serving Ventura are based in Los Angeles.

The law-enforcement agency that accounts for most of Ventura County's drunk driving arrests (about 60 percent) is the California Highway Patrol which, since the 1960s, has specialized in what one official termed "proactive" drunk driving enforcement. Most of the remaining arrests are made by the Ventura County Sheriff's Department as well as municipal police departments in Fillmore, Oxnard, Port Hueneme, Santa Paula, Simi Valley, and Ventura. The level of drunk driving enforcement by both the Highway Patrol and municipal departments has increased substantially during the past 10 years, as has the level of sophistication. The Simi Valley Police

Department and the Ventura County Sheriff's Department have each established a DUIT (Driving While Under the Influence Teams) program, and Ventura has received funding to receive one.

California's court system is unified at the Superior Court level (trial court of general jurisdiction) and above. Drunk driving prosecutions are brought in municipal courts, which are trial courts of limited civil and criminal jurisdiction. Appeal from Municipal Court judgments is on the record to the Superior Court. Ventura County is served by a single Municipal Court, which is located at the county government complex near Ventura. A small satellite court whose responsibilities include arraignments and small claims cases sits at Simi Valley in the eastern part of the county, and it is likely that a full-service satellite court will soon be established there to accommodate that area's population growth. Drunk driving cases are prosecuted by the approximately 70-attorney staff of the Ventura County District Attorney, who is elected on a nonpartisan basis.

Alcohol and Highway Safety Legislation

California's population is diverse and considered somewhat liberal on social issues; its laws regarding the availability of alcohol reflect the state's makeup. The legal age for purchase and consumption of alcohol was set at 21 after the repeal of Prohibition and has remained there without change. There is no statewide prohibition of Sunday sales, and no population center of consequence has prohibited the sale of alcoholic beverages. California has had no dram shop law since 1978, the result of legislation (1978 Cal. Stat., Chapter 929, Section 1) which stated in effect that a person's consumption of alcohol, not the server's act of providing it, was the cause of alcohol-related accidents. The 1978 legislation "repealed" decisions, such as Coulter v. Superior Court of San Mateo County, 21 Cal.3d 144, 145 Cal. Rptr. 534, 577 P.2d 669 (1978), which imposed server liability on social hosts. It is considered likely that promotions such as "happy hours" will be prohibited or restricted in the near future.

California is the birthplace of Mothers Against Drunk Driving, and that organization has received much of the credit for the passage of 1981 Cal. Stat. Chapters 939-941, which toughened the state's drinking driving

laws (codified as Cal. Veh. Code secs. 13352 et seq., 23152 et seq. (West Supp. 1985)). The changes, which took effect January 1, 1982, included:

- Establishing a blood alcohol level of .10 percent as a per se, rather than presumptive, standard of intoxication.
- Mandating confinement to jail for all convicted drunk drivers except first offenders, who may be sentenced to three years' probation, a fine, mandatory attendance at an alcohol-education or alcohol-treatment program, and 90 days' license restrictions.
- Mandating a minimum fine of $375 (now $390) for convicted drunk drivers.
- Creating what is known in California as a "wet" reckless driving conviction: when a drunk driving charge is reduced to reckless driving, the prosecuting attorney is required to note the defendant's alcohol involvement on the record; this reduced charge with alcohol involvement is counted as a prior conviction if the defendant is subsequently charged with drunk driving.
- Requiring judges who dismiss drunk driving charges or reduce them to nonalcohol-related offenses to record their reasons for doing so. The reasons for dismissal or reduction become a part of the defendant's driving record.
- Allowing the impoundment of vehicles owned by a convicted drunk driver if that vehicle is involved in any drunk driving violation.

Some individuals within Ventura County's criminal-justice system stated that the 1981 amendments prevented California trial judges from acting as the system's "weak link" in drunk driving enforcement; others stated that the tougher laws allowed judges to place their own beliefs into action and impose harsher sentences, now that they could blame the legislature rather than themselves for those sentences.

Although California's drinking driving laws require both jail (for other than first offenses) and license suspension, they allow judges to sentence convicted offenders to three years' probation. Probation, combined with state-mandated alcohol education and treatment programs, allow most first offenders to avoid jail and receive a restricted license instead of a "hard" license suspension, and allow second offenders to serve as little as 48 hours in jail and likewise avoid a hard license suspension. However, since drivers placed on probation for drunk driving remain there

for three years, and because subsequent drunk driving is a violation of the driver's probation terms, a multiple offender may receive severe punishment, i. e., the penalties for the second conviction, for violating probation (a separate offense under California law), and possible reinstatement of the original penalties suspended after the first conviction, in connection with the grant of probation. A number of multiple offenders have received lengthy jail sentences due to these multiple punishments arising out of a subsequent drunk driving conviction while on probation, combined with the Ventura County judges' practice of imposing consecutive sentences on such offenders.

Ventura County's Policy Toward Charge Reduction

Ventura County has traditionally elected judges and district attorneys who take a hard line toward prosecution and sentencing of criminals. One judge observed that district attorneys had at least informally discouraged plea bargaining (for example, by requiring deputy district attorneys to obtain approval of proposed plea agreements) since 1950; others within the criminal-justice system noted that judges have, for years, been very reluctant to accept plea bargains. Sentences for crimes, including drunk driving, have usually exceeded the minimum penalties required by law. Several factors, including the county's conservative tendencies, have caused the vigorous prosecution and severe sentencing of criminal defendants in Ventura County. There has been a great deal of continuity within the District Attorney's office--the current district attorney, Michael Bradbury, served as his predecessor's chief deputy, and it is reported that the two district attorneys who preceded Mr. Bradbury had also served as chief deputy. Many of Ventura County's judges are former deputy district attorneys; the campaign signs for one judge running for reelection bore the slogan "Former D. A.".

Ventura County has been a pioneer in the field of alcohol education and treatment. It became one of the first sites for California's so-called SB330 (now SB38) alcohol education and treatment program; in contrast with some other jurisdictions, however, Ventura County operated its treatment program as a postconviction program, rather than a means by which a defendant could earn a dismissal or reduction of the drunk driving charge.

Before 1979 the District Attorney's office reportedly offered plea

bargains to reckless driving, as a routine matter, to defendants whose blood alcohol levels were less than .15 percent. That policy was ended as a consequence of personnel changes resulting from the 1978 general election. "Law and order" was a prominent theme in the 1978 election campaign, in which Michael Bradbury was elected District Attorney, and two judges known for their conservative views were elected to the Municipal Court. Upon taking office, Bradbury made public his office's policy against plea bargaining in any criminal cases, including drunk driving. Bradbury's policy, and the publicity given it, gained Ventura County a measure of statewide prominence.

The 1982 changes in California's drunk driving laws spawned somewhat incorrect news media reports to the effect that all drunk drivers go to jail, and those reports reached Ventura County drivers. In fact, the announced threat of jail appeared to discourage some drunk driving in the county; for several months after the media aired their "go to jail" reports, the number of alcohol-related fatalities declined. Publicly announcing a policy against plea bargaining in drunk driving cases also proved beneficial to Bradbury, who later served on the President's Commission on Drunk Driving and gained wide recognition in the traffic-safety field.

An increase in enforcement activity apparently occurred within the county at the same time plea bargaining was eliminated. Court filings for "selected traffic" offenses, a category roughly equivalent to drunk driving, increased from an average of about 4,700 per year during fiscal 1971-77 to over 6,000 in fiscal 1979. (Filings now average more than 7,000 per year).

For much of the 1970s and early 1980s, Ventura County's public defender was Richard D. Erwin, the author of Defense of Drunk Driving Cases and an outspoken advocate of defendants' rights in drunk driving cases. As could be imagined, relations between the District Attorney's Office and the Public Defender's Office at times became stormy, and there have been instances when the Public Defender fought certain aspects of drunk driving prosecution. Ventura County's defense bar is able to mount a strong counterattack: drunk driving prosecutions account for more of the Municipal Court's jury trial caseload than any other offense; a drunk driving trial in Ventura County often requires as long as three to four

days; and California law imposes rigid speedy-trial deadlines. Thus the defense bar can, if it chooses, disrupt the court system. Jury trial demands in drunk driving cases reportedly increased more than 100 percent in 1979, after the District Attorney's plea-bargaining prohibition took effect, and also increased sharply in 1981 as the result of a dispute over sentencing practices. In Ventura County, one Municipal Court judge is responsible for sentencing; that responsibility is rotated, with each judge serving for four months. In 1981 a judge who took an especially hard line toward drunk drivers took his turn in the rotation as the sentencing judge; his sentences reportedly were so severe that the Public Defender's Office chose to try pending cases in hopes of winning acquittals rather than plead clients guilty and expose them to unusually harsh penalties. It is said that the number of trials so badly backlogged the Municipal Court, and that a few charges had to be dismissed because they could not be tried within 45 days of arrest, as required by California's speedy-trial statute. The Public Defender's Office has also expressed some resentment over decisions by the District Attorney's Office to charge persons with "low blows", that is, blood alcohol levels of .08 or .09 percent, with drunk driving.

The 1979 decision by the District Attorney not to plea bargain apparently led, as mentioned above, to a marked increase in the number of jury trials. The District Attorney's staff endured the increase in trials by adding five deputy district attorneys and "working through" the added trials by working overtime. Others within the criminal-justice system also felt the impact of the added trials. It was reported by several sources that some Municipal Court judges at first reacted negatively to their increased trial load resulting from the plea-bargaining ban. It was also reported that some police officers disliked the added documentation and recordkeeping made necessary by the increased likelihood of a case going to trial, while other officers expressed dismay over the dismissal of cases they considered "worth" at least a reckless driving conviction because of the plea-bargaining ban. Most of those concerns proved short-lived; the increased number of trials largely subsided by the end of 1979, at which time the District Attorney's staff established its willingness to try cases and its ability to obtain convictions. Police officers also adjusted to the plea-bargaining prohibition; the quality of their documentation, especially with respect to physical or qualitative evidence of

intoxication, improved, as did officers' presentations in court. Higher quality presentation of the prosecution's case, the adoption of a blood alcohol content of .10 percent as a per se standard of intoxication, and the high fees charged by defense counsel induced many defendants to plead guilty despite the lack of a "carrot" in the form of a reduced charge or sentence.

Ventura County's approach contrasted sharply with that followed in the neighboring jurisdiction of Los Angeles County; Ventura County prosecutors' determination not to engage in plea bargaining came as a shock to attorneys from Los Angeles County, where court dockets were backlogged and prosecutors traditionally were willing to reduce charges to avoid going to trial. However, most Los Angeles attorneys are now aware of Ventura's policy and have become much less willing to plead their clients not guilty. Ventura County has the reputation of being the "toughest county in the state" with respect to its handling of drunk drivers.

Processing of Drunk Drivers in Ventura County

As already stated, the California Highway Patrol, whose officers have been most skilled in drunk driving enforcement, makes most of the drunk driving arrests in Ventura County. The Highway Patrol deploys a "drunk shift" whose officers work at night and who are primarily responsible for stopping drivers. The Highway Patrol relies on selective-enforcement techniques to identify times and places where violations are most likely to occur. Officers rely primarily on visual observation to identify suspected drunk drivers. Visual "cues" are especially important to the Highway Patrol, whose officers are not allowed to use radar for speed enforcement and consequently are less able than other departments to identify drunk drivers through stops for speeding. In general, it is said that police officers have been making "better" drunk driving arrests because of improved officer training, greater awareness of how serious an offense drunk driving is, and the tendency, mentioned earlier, toward better documentation of arrests. Although roadblocks have been used in other locations in California (and it appears that they enjoy popular support), none have been established in Ventura County. Other law-enforcement agencies within Ventura County have begun to establish drunk driving teams such as Simi Valley's DUIT, and those officers are applying the same

sophisticated techniques to detect drunk drivers.

The level of drunk driving enforcement has increased substantially during the past 10 years. The increase is partially attributable to the increased attention paid to drunk driving, and partly to an increase in the number of officers and their hours worked. Figures compiled by the Highway Patrol are a good barometer of the level of enforcement activity: from 1978 through 1980, Highway Patrol officers made about 2,500 arrests per year within Ventura County; from 1982 through 1984, they made about 3,300 arrests per year.

Drunk driving arrests are initially triggered by a probable-cause stop or an accident investigation. After stopping suspected offenders, officers rely on their observations of the suspect, his or her performance of physical tests, and (if the officer is trained) gaze nystagmus to determine whether to arrest the driver and transport him or her to the testing facility. Prearrest test devices are not used, most likely because California's implied-consent law expressly requires an arrest before a suspect may be tested. Although there are only two testing facilities within Ventura County, one located at the county jail and one located in the eastern part of the county, law-enforcement agencies do not consider the number and location of testing facilities to be a major problem.

At the testing facility, the suspect is read one set of implied-consent warnings and asked whether he or she will take a breath test; the suspect is also asked to read and sign another set of advisories relating to the availability of breath specimens and the right to obtain a second, independent test. Most suspects submit to the test, as indicated by a statewide refusal rate of only 10 percent. If the suspect "passes" the test (i. e., has a blood alcohol content below .10 percent and there is no evidence of other drug use and a satisfactory performance on the physical sobriety tests), he or she is released. (The Highway Patrol has "drug recognition experts" who are capable of visually examining the suspect for physical evidence of drug use). In addition, if the suspect refuses the test, the arresting officer completes an affidavit of refusal and forwards it to the Department of Motor Vehicles. If the Department later determines, after a hearing, that the suspect unjustifiably refused to submit to the test, a mandatory, "hard" six-month suspension is imposed by the Department. Recently enacted legislation also makes refusal punishable

by a mandatory jail term.

If the suspect fails or refuses the test, he or she is booked and either released on recognizance from the police station or placed in jail until he or she can post bail. At the time a suspect is booked, the arresting agency queries the Department of Motor Vehicles computer to determine if the suspect has prior convictions of drunk driving. An arraignment date, about 14 days later, is set for those released on bail or recognizance. A suspect who cannot make bail is arraigned the morning of the next court day and is usually released on recognizance at the arraignment.

After booking the suspect, the arresting police department makes three copies of the following: the citation, a standard form complaint (California law allows charging using the citation, but that is not done in Ventura County), the Intoxilyzer(R) checklist and result card, the narrative police report, the Department of Motor Vehicles printout showing the suspect's driving record, and a copy of the notice to appear. One set of copies is forwarded to the District Attorney's Office, and one is provided to the defense at the time of the arraignment; the originals are forwarded to the Municipal Court.

Deputy district attorneys review each complaint and the supporting materials and decide whether to file a complaint, ask the arresting department for additional information, or inform the arresting agency that it cannot file a complaint and cite the reasons for its decision. The office policy against plea bargaining also discourages "overcharging" and in effect forces the prosecution either to file a complaint with the expectation of obtaining a conviction or guilty plea to that charge, or to decline to file the complaint. One individual who has observed the handling of complaints noted that five to eight percent of drunk driving arrests resulted in decisions not to file a complaint, and that some of those rejected complaints involved blood alcohol levels of .10 percent or above.

If the District Attorney's Office chooses to file, a deputy district attorney signs the complaint and files it with the Municipal Court's misdemeanor clerk. The complaint is filed no less than four days before the defendant's scheduled court date. If a defendant fails to appear on that date, he or she is guilty of a separate offense, failure to appear,

and a bench warrant is issued. During the two fiscal years 1984 and 1985, about three percent of the defendants charged with drunk driving failed to appear.

The Ventura County Municipal Court uses a computerized calendaring system as one tool to manage its caseload. During the two fiscal years 1984 and 1985, an average of 92.5 percent of the defendants charged with drunk driving eventually pled guilty, and about two-thirds of those defendants entered their guilty pleas at the time of arraignment. Defendants who plead guilty at the arraignment are referred to the sentencing judge who takes the guilty plea and imposes sentence. If the defendant pleads not guilty, a trial date is set on the Municipal Court's "master calendar": no specific judge is assigned to try the case until court staff determine who is available on the trial date. One judge is assigned to both the master calendar and sentencing on a rotating basis, so that a defendant cannot engage in "judge shopping" before deciding how to plead. In the fashion of airlines, the Municipal Court "overbooks" trials, expecting that a certain percentage of defendants will plead guilty between arraignment and trial. In some instances, such as when several judges take vacation or a smaller than expected number of defendants plead guilty, cases "trail", that is, they are delayed one or two court days. Coordination of the trial calendar is especially critical in California, where tight speedy-trial deadlines constrain misdemeanor prosecutions. In about one percent of all cases, a dismissal occurs, most commonly because the prosecution is unable to secure the attendance of necessary witnesses at the scheduled date and time, and the defense attorney refuses to grant a continuance.

During the two fiscal years 1984 and 1985, only about 1.5 percent of Ventura County's drunk driving prosecutions resulted in trials. About three-fourths of the trials were before juries. Drunk driving trials, as pointed out earlier, last as long as three or four days. The unusual length of trials is attributable to California's liberal court rules allowing extensive questioning of and challenges to would-be jurors, as well as lengthy direct and cross-examination of witnesses, and the presence of experts. Experts--who appear primarily in cases where the defendant's blood alcohol level is .15 percent or less--testify to the possibility that the testing equipment was not reliable, or improperly maintained and

calibrated, or that the operator failed to conduct the test properly. Despite the time and effort defense counsel invest in jury trials, most Ventura County juries are conservative by nature, increasingly aware of the dangers posed by drunk driving, and more inclined to consider drunk driving socially unacceptable; thus they are inclined to find defendants guilty. The figures for the two fiscal years 1984 and 1985 bear this out: juries returned guilty verdicts against about 75 percent of the drunk driving defendants. One source stated that some juries return guilty verdicts in spite of poor case presentation by the prosecution. Those who escape conviction tend to be "attractive" defendants, i. e., middle-class, professional individuals, with blood alcohol concentrations near or below 0.10 percent, with little physical evidence of intoxication or bad driving. In addition, a few defendants with very high blood alcohol levels and little physical evidence of intoxication are acquitted, apparently because the jury cannot believe the test reading. Many juries return "split verdicts" in which they find the defendant guilty of the .10 percent offense but not guilty of driving while under the influence; this compromise relieves the jury of determining the more difficult question of whether the defendant was "under the influence".

Sentencing, especially of first offenders, is quite uniform in Ventura County Municipal Court. Except when a convicted defendant shows gross symptoms of alcohol abuse, or has a bad work and family history, no presentence investigation or screening takes place. Sentencing of multiple offenders is based on the number of prior convictions and when the prior offenses occurred. The standard sentence for a first offender is three years' summary probation, a $750 fine, a choice between 90 days' license restriction and two days--normally a weekend--in jail, and attendance (mandated by state law) at alcohol school. However, those who refuse to submit to the breath test are likely to serve jail time, since the six-month suspension for test refusal is a "hard" one and therefore the 90-day restriction is not appropriate. An offender whose blood alcohol content is 0.17 percent or less is required to attend so-called Level I alcohol information school (five weekly education, evaluation, and referral sessions totalling 12 1/2 hours). A first offender with a blood alcohol content of .18 percent or more is required to attend an "intensive" version of Level I, a 35-hour program which includes the basic Level I program plus

individual interviews and attendance at Alcoholics Anonymous meetings.

The standard sentence for a second offense is 30 days in jail (45 days if the second offense occurred within three years of a previous Ventura County drunk driving conviction), a $750 fine, and one year's license suspension. However, a second offender may receive a restricted license by participating in the Level II (SB38) program. That program, which is one year long, consists of 105 hours of group counseling, plus individual interviews and education. The standard sentence for a third offense is 120 days in jail, one year's license revocation, and a $750 fine; however, at this point, the sentencing judge is more likely to take aggravating factors into account when imposing sentence. The limited amount of bargaining that does occur in Ventura County involves sentencing for collateral charges, such as driving with a suspended license or leaving the scene of an accident.

The $750 fine, which includes $70 in penalties that are channelled to alcohol and victim-restitution programs, is mandatory; however, those who lack the money to pay it at the time of sentencing are allowed to pay in installments. A few defendants choose to serve time in jail rather than pay the fine; those individuals serve one day for each $30. Failure to make installment payments is a violation of probation conditions, and may result in reimposition of suspended jail time as the result of a separate prosecution for the probation violation.

State law requires every person convicted of drunk driving to complete an alcohol education and treatment program. In Ventura County, an offender must enroll within five days of conviction. Ventura County's program is administered by a county agency known as the Ventura County Health Care Agency; it is fee supported, but those unable to pay the cost of alcohol school can apply to have their fees reduced or even waived. Failing to complete alcohol school is grounds for an additional license suspension imposed by the Department of Motor Vehicles. In addition, the failure is a violation of probation and grounds for reimposition of suspended jail time as the result of violating probation. Both the Health Care Agency and the Municipal Court prefer to keep probation violation cases out of court; typically, a person who fails to abide by conditions of probation (for example, by failing to remain sober through the course of treatment) is placed on a more restrictive treatment program, and some are placed in a

program requiring the taking of Antabuse(R).

Although California law does not mandate jail for all first offenders, those convicted of alcohol- and drug-related offenses go to jail in such numbers that they account for some 35 percent of Ventura County's jail inmates. Jail sentences imposed by Municipal Court judges tend to be long; the average inmate's sentence--six to nine months--reflects that tendency. Court and corrections personnel have so far managed to cope with the large and apparently increasing number of offenders sentenced to jail by bringing defendants promptly to trial and thus reducing the proportion of prisoners awaiting trial, and by qualifying some offenders for the work furlough program operated by the Corrections Services Agency. The work furlough program is open to offenders serving 15 or more days in jail; those who qualify reside at night at a decommissioned military installation.

All drunk drivers convicted in the Ventura County Municipal Court are placed on summary probation for three years. Under California law, a first offender placed on probation avoids an otherwise mandatory six-month license suspension imposed upon conviction. As already pointed out, common probation violations include failing to maintain installment payments, failing to complete alcohol school, and committing subsequent offenses. Being placed on probation can "raise the ante" if the probationer is arrested for and convicted of subsequent offenses; the subsequent incident violates a probation condition against driving after drinking any amount of alcohol. A second or third conviction within the probation period normally results in a longer jail sentence. And, in cases of chronic or flagrant probation violation, the sentencing judge may choose to reimpose all the suspended jail time, and make that time consecutive to the jail term imposed for violating probation. Many individuals within Ventura County's criminal-justice system were familiar with the cases of offenders sentenced to several years' confinement in the county jail.

Observations

Based on the statements made by those within Ventura County's criminal justice system, the following observations can be made about the prohibition of plea bargaining there:

- The prohibition of plea bargaining in drunk driving cases was part of a general prohibition of that practice in

criminal cases. The policy reflected increasing social conservatism, a trend away from rehabilitation and toward incapacitation and retribution, and the election of a new district attorney.

- The harsher treatment of drunk drivers beginning in 1979 occurred before the shift in popular attitudes toward drunk driving, but public opinion has since "caught up".

- Previous practice within the District Attorney's office called for charge reduction with respect to drivers with intermediate blood alcohol levels. The elimination of that practice in favor of a complete ban on plea bargaining led to an increase of more than 100 percent in the number of jury trials during that policy's first year, but the number of jury trials stabilized after that.

- Ventura County's close-knit criminal justice system, and conservative and somewhat affluent population, greatly increased the likelihood that a no-plea bargaining policy would be adhered to. It is significant that the District Attorney and Municipal Court judges share similar views on criminal-justice issues.

- Although the District Attorney met initial resistance in implementing his policy banning plea bargaining, his determination to try cases ultimately created an expectation on the part of judges, police officers, and defense counsel that cases would be tried and convictions obtained.

- In Ventura County, convicted drunk drivers account for an increasing number of jail inmates and an increasing proportion of the inmate population. A number of individuals consider the jail system overburdened, and some believe that those confined to the county jail fail to receive adequate treatment.

- A number of individuals within the system pointed out several possible sources of resistance to a ban on plea bargaining: judges whose trial loads increase; police officers who must document their arrests more thoroughly; and individual prosecuting attorneys who lose their authority to decide whether to try cases.

BATON ROUGE, LOUISIANA

Background

Baton Rouge is Louisiana's capital and second most populous city, and is the seat of government for East Baton Rouge Parish. The city and parish, which have been combined for governmental purposes, have a total population (1980 census) of 398,800. The population (1980 census) of Baton Rouge itself is 219,486. Baton Rouge is located on the Mississippi River in the south central portion of the state, about 80 miles northwest of New Orleans. It is the home of Louisiana State University as well as Southern University. As might be expected, state government and universities account for most of the area's economy. The area is served by two east-west interstate highways, I-10 and I-12, and by U. S. 61 (Airline Highway, a north-south highway), U. S. 65, and U. S. 190. The Baton Rouge area is served by four television stations (two UHF, two VHF), 13 radio stations, and two daily newspapers, the Morning Advocate and the State Times.

Louisiana is divided into a predominantly Catholic southern region and a predominantly Protestant northern region, and there are sharp differences in social and political views between those regions. Both denominations are represented in roughly equal numbers in greater Baton Rouge. More than one-third of the population of East Baton Rouge Parish is black. Louisiana is legendary for its colorful politicians as well as political scandals, and any system description of a Louisiana site must take political considerations into account. The law enforcement agency that accounts for most of the drunk driving arrests within Baton Rouge is the Baton Rouge Police Department; a small fraction of arrests are made by the Louisiana Highway Patrol, the East Baton Rouge Parish Sheriff's Department, and the Louisiana State University and Southern University Police Departments. Arrests made by city police officers within the Baton Rouge city limits result in trial before the Baton Rouge City Court, a trial court whose jurisdiction is limited to civil cases involving $10,000 or less and misdemeanor violations of city/parish ordinances. There is no jury trial in criminal cases in City Court. Louisiana's court system is not unified--wealthier courts do not wish to subsidize the poorer ones located in rural areas--but the City Court is a court of record; appeals from City Court convictions are taken on the record to the 19th District Court, which

serves East Baton Rouge Parish. Cases involving violations of Baton Rouge city ordinances, including drunk driving cases, are prosecuted by the City Prosecutor, an official appointed by the Parish Attorney who, in turn, is appointed by the City/Parish Council. Arrests made by law-enforcement agencies other than the Baton Rouge Police Department result in trial in the 19th District Court; in that case, the charge is a state law offense and is prosecuted by the District Attorney, who is elected.

Alcohol and Highway Safety Legislation

Louisiana's laws regarding alcohol reflect the sharp division in views between the Catholic south and Protestant north. The legal age for purchase and consumption of alcohol has been 18 for decades; however, federal law requires Louisiana to raise the legal age to 21 by September 1986 or suffer the loss of federal highway funds. State law imposes no statewide closing hours and, as a result, there is variation across the state. East Baton Rouge Parish and its neighbors have agreed on a uniform closing time of 2 a.m., which has eliminated some late-night travel across county borders. Louisiana has no "open container" law, although East Baton Rouge Parish enacted an ordinance prohibiting open containers of intoxicants in motor vehicles, effective December 1983. Louisiana has no dram-shop statute, although court decisions provide a limited basis for holding a server civilly liable.

Louisiana's drinking driving laws were amended, effective January 1, 1983, after a Governor's Task Force was convened and made a number of legislative recommendations. Major provisions of the amendment, 1982 La. Acts, No. 14, include:

- Requiring, for first offenders, a mandatory minimum penalty of either 10 days in jail, or a probation term including: 32 hours of community service; a court-approved substance abuse program; and a court-approved driver-improvement program. Some judges viewed mandatory sentencing as an infringement of their discretion and were opposed to it.

- Establishing the following minimum penalties: for first offenders, a $125 fine (increased from $100); for second offenders, a $500 fine (increased from $400) and either 30 days in jail, or probation with either 15 days in jail or 30 eight-hour days of community service, plus both a substance-abuse and driver-improvement program; for third offenders, six months' imprisonment, which cannot be suspended and

required participation in a substance-abuse program. (Third offenders are subject to one to five years' imprisonment, with or without hard labor, and fourth offenders are subject to 10 to 30 years' imprisonment at hard labor; the 1983 legislation did not affect those penalties).

- Requiring court-established substance abuse programs to include screening procedures to determine which programs are appropriate for specific drunk driving offenders.

The following year, the legislature enacted 1983 La. Acts, No. 632, effective January 1, 1984. That amendment made a blood alcohol level of 0.10 percent a per se rather than a presumptive standard of intoxication, and instituted a system for administrative license removal. The administrative license removal legislation vests all driver-licensing authority in the Department of Public Safety, and provides for a minimum 30-day "hard" suspension for a first offender who submits to but "fails" a chemical test.

The Baton Rouge drunk driving ordinance, which applies to first and second offenders arrested within the city limits by city officers, was amended in 1983 to provide for the same penalties as the state statute.

Baton Rouge's Drinking Driving Programs

During the late 1970s, traffic statistics indicated that Louisiana had the highest alcohol-related fatality rate of any state east of the Mississippi River, and that Baton Rouge had one of the highest fatality rates in Louisiana. In Baton Rouge during 1980, there were 30 percent more traffic crashes caused by drunk drivers than in any other U. S. municipality of comparable size, and between 72 and 80 percent of the city's traffic fatalities were alcohol-related. Statistics such as those led federal, state, and local authorities to take action to solve the area's drinking driving problem.

Baton Rouge has been the site of several programs aimed at combatting drunk driving. From 1979 to 1982, a program known as Checkmate operated in the city. Under Checkmate, the National Highway Traffic Safety Administration and the Louisiana Highway Safety Commission provided $1 million to fund a comprehensive anti-drunk driving program involving law enforcement, prosecution, adjudication, and public education. Program funds provided the mondy to create another City Court judgeship, a position devoted exclusively to hearing and deciding drunk driving cases. Funds

also partially underwrote the costs of an assistant city prosecutor and additional probation personnel, as well as a van used for testing and videotaping of suspects arrested for drunk driving. When Checkmate's funding expired, many of its elements were maintained through city funds, since the fines and costs paid by convicted drunk drivers were sufficient to allow those elements to support themselves.

In November 1983, Baton Rouge was designated a site under the National Highway Traffic Safety Administration's Target of Opportunity program. That program, which was scheduled to run for two years, included liason work with criminal justice system personnel, case tracking, and a public information and education program known as H. E. A. R. T. ("Help End Alcohol-Related Tragedies"). The Target of Opportunity program was temporarily discontinued during 1984 because of personnel changes, but was revived soon afterward. At the same time the Target program got underway, the mayor of Baton Rouge convened a drunk driving task force, chaired by the individual who eventually became the Target of Opportunity project director. In addition, at about the same time, the Louisiana Highway Safety Commission provided the Baton Rouge Police Department a $200,000 grant which funded police enforcement efforts against drunk driving. Funding under that grant expired in May 1985, and the grant money was not replaced by local funding; the city's budget deficits, combined with voter rejection of a police millage in 1984, ruled out any appropriations by the city. However, several local groups have begun efforts to persuade the City/Parish Council to fund drunk driving enforcement on the grounds that the added arrests "pay for themselves" in the form of increased fines and court costs.

Changes in Drunk Driving Adjudication

State law does not prohibit plea bargaining, charge reduction, or diversion, and it was reported by local sources that judges and prosecuting attorneys in other parts of Louisiana frequently engage in those practices. In fact, the Baton Rouge newspapers ran stories in August 1985 about a "straight" diversion program (one in which charges were dismissed without any reference to the proceeding appearing on the defendant's driving record) operated by the District Attorney serving East Baton Rouge Parish.

Baton Rouge's city charter contains a provision, reportedly added

after a ticket-fixing scandal during the 1940s, which prohibits the city prosecutor from filing a nolle prosequi (a motion to dismiss the case with prejudice) in any criminal case. However, a recent Attorney General's opinion indicates that the charter provision violated the Louisiana Constitution. In any event, the charter provision does not prohibit plea negotiation and charge reduction, and Baton Rouge's current drunk driving ordinance specifically provides that reckless driving is a "responsive verdict" to a drunk driving charge. The City Prosecutor's office does not, as a matter of policy, reduce charges, except in a very limited number of cases involving certain first offenders.

Before the late 1970s, the prosecution and adjudication of drunk driving cases discouraged dispositions of guilt as charged. Then, the City Court operated on a schedule under which six months elapsed from arrest to arraignment, and another six months from arraignment to trial. It was also possible to move for continuances and delay proceedings even longer, sometimes to the point that prosecution became "proscribed", that is, dismissed for lack of prosecution. Court personnel could not identify languishing cases because it lacked a case management and tracking system. Many arrests were poorly documented, a fact that made convictions even more difficult to obtain. Even when a defendant was convicted in City Court, he or she had an excellent chance of avoiding a final disposition of guilty because some judges on the District Court, which heard appeals (then in the form of trials de novo) from City Court, refused to schedule appeals; delay within the District Court caused additional prosecutions to end without a disposition of guilt.

Personnel changes in three offices--senior judge of City Court, clerk/court administrator, and city prosecutor--and cooperation among federal, state, and local officials, particularly in conjunction with funding the Baton Rouge criminal justice system under Operation Checkmate, resulted in a reorganization of the City Court. Specific changes, some of which were brought on by the Checkmate program, included:

- Adding two City Court judges, bringing the total to four. One judge was assigned on a rotating basis to hear drunk driving cases exclusively.

- Reducing the periods between arrest and arraignment and arraignment and trial from six months to approximately two weeks, one if the shortest periods in the nation.

- Amending the Baton Rouge drunk driving ordinance, effective January 1983, to conform its penalties to those required by state law.

- Tracking each citation and following up to ensure that all drunk driving cases were being prosecuted.

The clerk/court administrator, an official appointed by the City Court's judges, has been and remains a principal figure in improving the operation of Baton Rouge's criminal justice system. That individual, Milton R. ("Mickey") Skyring, has served as the director of the Checkmate project and was later appointed to the President's Commission on Drunk Driving. At the same time the City Court changed its procedures, other changes occurred within Baton Rouge. The City Court judges moved in the direction of imposing more severe sentences on convicted drunk drivers; meanwhile, the public began to demand a harder line toward drunk drivers, and a strong Mothers Against Drunk Drivers chapter was formed in Baton Rouge. At about the same time, the Baton Rouge Police Department increased the number of drunk driving arrests: for the purpose of comparison, the monthly arrest total was less than 100 during the 1970s; the total was well over 200 per month in 1984; in 1985, even after state funding for police overtime expired, monthly arrests averaged 135 and had begun to recover from their low point. Conviction rates in City Court have been high (they reportedly ranged from 94 to 98 percent) since the late 1970s; however, in some cases involving drivers with blood alcohol levels of .10 to .13 percent, judges found drivers guilty of reckless driving rather than drunk driving because of the lack of corroborating evidence under Louisiana's then-presumptive standard of intoxication.

Processing of Drunk Drivers in Baton Rouge

The 570-officer Baton Rouge Police Department uses two innovative drunk driving enforcement techniques: vans used for administering breath tests in the field (the Department reportedly has used vans since 1969); and videotape equipment to record the suspect's performance of physical tests and establish his or her intoxication. The Department does not use roadblocks, nor does it use prearrest testing equipment.

The Department's drunk driving arrest totals reflect the Checkmate program and state funding for overtime: in 1979, there were 1,648 drunk

driving arrests; in 1980, 1,959; in 1981, 1,865; in 1982, 2,240; in 1983, 1,659; and in 1984, 2,273. Until the end of May 1985, the Department received state funding for a special nighttime drunk driving patrol consisting of officers working overtime; however, the state funding has since run out. There was an immediate and sharp decline in the number of drunk driving arrests, but the figures have since recovered somewhat. The Department maintains a DWI unit which operates two or three nights per week; the unit consists of three or four officers permanently assigned to it, plus as many as six to eight additional officers who enforce drunk driving laws on an overtime basis.

Baton Rouge police officers rely primarily on visual observation in deciding whether to make an initial stop. If the officer's observation of the driver after the stop, plus other evidence (such as the odor of alcohol) lead to a belief that the driver may be impaired, the officer asks the suspect to leave his or her vehicle and perform field sobriety tests. Baton Rouge officers also use gaze nystagmus to determine intoxication. If the driver performs poorly, the officer places the driver under arrest and either has the Department's van dispatched to the site of the arrest or transports the driver to the van.

Inside the van, an officer warns the driver that he or she is being vidotaped (the driver has no legal basis to object to the taping), and the driver the performs a series of physical tests. If the suspect's performance of physical tests indicates intoxication, he or she is arrested, read the Miranda warnings, and asked to submit to a breath test. At that time, the defendant is also given another set of warnings relating to Louisiana's implied-consent law; the driver is asked to sign a form verifying that he or she has in fact been given the required advisories. If the suspect refuses to take the test, or submits to a breath test but "fails" it (has a blood alcohol level of .10 percent or above), the officer seizes the suspect's license, and issues the driver a Department of Public Safety form advising that the driver's license is suspended effective 30 days after arrest, and providing a temporary permit allowing the suspect to drive for the 30-day period.

Louisiana law gives the Department of Public Safety almost exclusive authority over driver license action in connection with drunk driving proceedings; one exception is that courts may hear petitions for hardship

licenses, filed by drivers who suffer license action on account of a second drunk driving offense. The penalty for failing a test is a 90-day suspension, the first 30 days of which are "hard" (that is, the driver cannot qualify for a hardship license during that period). However, the penalty for refusing a test is a 180-day hard suspension. Penalties for a second failure or refusal are more severe: a 180-day hard suspension for failing a test, and a 545-day hard suspension for refusing a test. The heavy penalties for refusal apparently encourage drivers to submit to tests; it was reported that only 10 to 15 percent of those arrested for drunk driving refuse to submit. A driver whose license is seized is also given a form on which he or she may request an administrative appeal before the Department of Public Safety, but the hearing must be held during the 30-day period before the administrative suspension takes effect.

After the testing and videotaping, the suspect is placed in the arresting officer's patrol car and transported to central booking facility at the the Baton Rouge Downtown Jail, examined by the jail's medical personnel, fingerprinted, and booked. The defendant remains in in the Downtown Jail until bail is posted. A parish resident charged with a first offense must post $250; nonresidents and those charged with subsequent offenses must post larger amounts. Those unable to post bond are kept in jail until a public defender is appointed and the defendant is arraigned before a City Court judge.

The arresting officer forwards the following material to the City Court: the citation (the Uniform Traffic Ticket is used, but charging is done by complaint, not citation); an arrestee information form, known as a "rap sheet"; an arrest report and one to three or more pages of accompanying narrative; an affidavit of probable cause; the calibration sheet and breath test result; and an alcoholic influence report.

After arrest, the City Prosecutor's office receives a file consisting of: the police file described above; an information sheet with the defendant's driver's license attached to it; a copy of the defendant's driving record, obtained from the Department of Public Safety; and a videotape of the defendant's performance of sobriety tests. If the defendant's record contains prior convictions, the City Prosecutor's staff must determine whether those convictions were properly recorded ("Boykinized") for the purpose of enhanced punishment for multiple

offenses, and whether the evidence justifies filing a drunk driving charge. If filing is justified, and the charge involves a first or second offense, the City Prosecutor's office files a bill (complaint) with the City Court; the clerk's staff, in turn, certifies the bill filed by the City Attorney. If the charge involves a third or fourth offense, the matter is transferred to the District Court. Several sources reported problems with identifying multiple offenders, because the Department of Public Safety has a backlog of convictions and sometimes does not enter drunk driving convictions into drivers' records until a number of weeks after the conviction occurred.

Arraignments occur on Tuesday mornings before the City Court judge assigned to the drunk driving docket; the City Court attempts to conduct the arraignment 10 days to two weeks after arrest. When drunk driving arrests were at their peak in 1984, arraignments numbered 40 to 60 per week; the weekly average has since declined, reflecting the drop in the number of arrests after state grant money to Police Department ran out. During 1980 through 1984, City Court data indicate that about 60 percent of those charged with drunk driving who enter pleas at arraignment plead guilty. Those who plead guilty at the arraignment are given a "notice to appear" directing them to report immediately to the City Court Probation and Rehabilitation Division. City Court data indicate that less than two percent of drunk driving prosecutions result in charge reductions at or before arraignment. Current law and practice provides drunk driving defendants with the following incentives to plead guilty as charged: the administrative license-removal procedure (under which a suspension begins 30 days after arrest); videotape evidence (which is made available to the defendant and his or her attorney), which convinces many defendants and their attorneys that it would be futile to contest the charge; and the absence of jury trial in City Court.

At least one source reported that "no-shows", failures to appear at arraignment or trial, remain a major problem in Baton Rouge City Court, principally because the court lacks both the funds and the personnel to serve bench warrants against defendants who fail to appear. City Court data for 1980 through 1984 indicate that bench warrants are initially entered against about 15 percent of all drunk driving defendants; and even though many defendants later appear, the remaining ones do not. The process of serving bench warrants has been described as the "weakest link"

in Baton Rouge's criminal justice system. One source commented that failing to appear is "the best way to avoid a (drunk driving) conviction in Baton Rouge."

If the defendant pleads not guilty, a trial date is set and the defendant is given a notice to appear on which the trial date is set. Once a trial is scheduled, the City Attorney's office prepares a case file, lists the persons and evidence required for the trial, obtains the certificates for both the testing equipment and testing officer, and obtains the minutes of any prior convictions.

A **limited** number of drivers charged with first offenses are allowed to enter guilty pleas to reckless driving. To be considered for charge reduction, the defendant must have a blood alcohol level no higher than .11 percent, no "solid" evidence of poor driving, and good performance on the field sobriety tests. Records of charge reductions are maintained, and a person who granted the opportunity to plead guilty to a lesser charge and commits another offense is reportedly treated more harshly than other first offenders. City Court data indicate that fewer than 10 percent of those charged with drunk driving are found guilty of less serious offenses.

City Court judges are committed to speedy trial of drunk driving cases; the judges, who control their own calendars, will schedule as many trials as necessary to ensure a 30-day continuity of the City Court docket. Trial is typically set for two weeks after arraignment. The conviction rate at trial is reportedly above 90 percent. That 90-percent figure may include defendants who plead guilty between arraignment and trial but, in any event, the number of defendants found not guilty is small, only one to two percent of those charged with drunk driving. As already alluded to, two factors have greatly reduced the number of not-guilty verdicts: the adoption of a blood alcohol content of .10 percent as a per se standard of intoxication; and the use of videotapes by the Baton Rouge police.

In general, about 30 days elapse from the entry of a guilty plea until sentencing, and 45 to 60 days elapse from the arrest date to the sentencing date. The mean elapsed time is considered one of the nation's lowest and is consistent with the judges' desire to follow a drunk driving offense with swift punishment. Swift action by the City Court judges is important for another reason: in Louisiana, multiple offenses are counted for the purpose of enhancing punishment from the date of conviction, not the date

of the offense. A defendant who has been convicted is directed to report to the Probation and Rehabilitation Division for an evaluation of his or her drinking patterns and a sentencing recommendation. During the time between conviction and sentencing, the City Court Probation and Rehabilitation Division assigns the offender to a community-service project (a convicted first offender performs the required 32 hours of community service before sentencing), assigns the offender to the court-operated DWI school (four two-hour sessions), administers several alcohol-screening instruments, and arranges for an interview with a probation officer. Recommended sentences include varying severities of fines and jail terms, and an appropriate community-service assignment (most first offenders perform their 32 hours' service before being sentenced), combined with either supervised or unsupervised probation. An offender who is assigned to supervised probation is often assigned to a treatment plan prepared by the Probation Department staff.

Louisiana law allows sentencing judges to sentence first and second offenders to a combination of probation and community service instead of jail. However, second and some third drunk driving offenders account for an increasing percentage of East Baton Rouge Parish's jail population. The reasons for the rising number of inmates are: not all second offenders qualify for probation or successfully complete it; and courts are providing better documentation of prior convictions, and prosecuting attorneys are able and willing to press prior convictions. There is no formal work-release program in East Baton Rouge Parish, although "good time" ranging from one-third to one-half of the sentence imposed is available. The Baton Rouge City Court operates what is regarded as one of the nation's best community-service programs. Because of the success of community service, as well as overcrowding in East Baton Rouge Parish's jail system that has prompted a federal court order limiting the jail population, judges are inclined to assign first and second drunk driving offenders to community service instead of jail.

An offender may request, at the time of sentencing, that the court dismiss his or her charges under La. Code Crim. Pro. art. 894. If the judge grants the defendant's Article 894 request, the sentencing judge defers imposition of sentence and orders the defendant to pay "restitution" to the court in place of a fine. The defendant is placed on one year's

unsupervised probation, during which time he or she agrees to refrain from violating the law. If the defendant abides by those conditions, a City Court judge dismisses the conviction one year later. However, Article 894 dismissals are granted only in a small fraction of drunk driving cases, and such a dismissal does not remove the prior conviction from the offender's record for counting subsequent offenses. The only value of an Article 894 dismissal appears to be for insurance purposes: the offender's insurer might not learn of the conviction.

Violation of probation conditions, including failing to complete a community-service assignment, attend alcohol education, or complete court-ordered treatment programs, are treated as contempt of court and possibly results in reimposition of the jail sentence that was suspended as part of the probation order.

Observations

Based on the statements made by those within Baton Rouge's criminal justice system, the following statements can be made about the effects of eliminating charge reduction there:

- Although a City Charter provision appears to limit the prosecuting attorney's powers with respect to charging, the true reason for Baton Rouge's restrictions on charge reduction was the prosecuting attorney's policy to that effect.

- The major cause of charge reductions, dismissals, and other failures to obtain convictions was the lack of an adequate recordkeeping system, combined with court procedures that made swift prosecution of accused drunk drivers impossible.

- Personnel changes within Baton Rouge's criminal-justice system, especially the positions of senior City Court judge and court clerk/administrator, caused changes in court practices that made drunk driving prosecution more effective.

- The intervention of "outsiders"--in this case, federal and state highway-safety administrations--rather than Baton Rouge citizens made possible the initial changes in enforcement and adjudication; however, public opinion regarding drunk driving later "caught up" with that of justice-system personnel.

- The absence of jury trial in City Court, the use of videotape to show drivers' intoxication, and, most recently,

the adoption of .10 percent as a per se standard of intoxication, all reduced the incidence of charge reduction in Baton Rouge.

- Other Louisiana jurisdictions demonstrate that the elimination of charge reduction requires close cooperation among law-enforcement departments, the prosecuting attorney's office, court personnel, and the bench, plus the presence of a "watchdog" willing to track cases and bring unusual case dispositions to the attention of those in the system. The clerk/judicial administrator has served, and continues to serve, as Baton Rouge City Court's "watchdog".

- The City Court bench has been credited with much of the impetus toward adopting a firm policy against charge reduction and consistent sentencing of those found guilty of drunk driving.

CHATTANOOGA, TENNESSEE

Background

Chattanooga, Tennessee, the state's third largest city (1980 metropolitan area population 287,740), is located in the mountainous, southeastern part of Tennessee, immediately north of the Georgia border. The city is served by three major interstate highways--I-75, a north-south highway linking the Great Lakes states with Florida; I-24, an east-west highway linking Chattanooga and Nashville; and I-59, a north-south highway linking Chattanooga and Birmingham, Alabama--and, as a result, a large volume of traffic travels through the city.

Chattanooga is one of the nation's oldest manufacturing cities, with 26.2 percent of its employment in that sector. However, there is no single dominating industry. Chattanooga is generally viewed as a conservative city, with what some actors in the criminal justice system term a "Bible Belt" orientation. It is the home of the University of Tennessee at Chattanooga. The Chattanooga area is also a major Civil War battle site and the home of such tourist attractions as Rock City and Ruby Falls.

Chattanooga is served by two daily papers: the Chattanooga Times in the morning and the Chattanooga News-Free Press in the afternoon. The city also has eight television stations (including one local independent station) and 23 radio stations.

Most drunk-driving arrests--about 92 percent--are made by the Chattanooga Police Department and the Hamilton County Sheriff's Department, with the Chattanooga Police Department accounting for slightly more than half of all arrests.

Tennessee's court system is not unified. The court in which a drunk-driving prosecution is tried is determined by where the arrest took place and which police agency made the arrest. There are two courts in which a drunk-driving prosecution may begin: the Hamilton County General Sessions Court and the Chattanooga City Court. Both are trial courts of limited jurisdiction, and neither is a court of record. Appeals from General Sessions Court and City Court convictions result in trial de novo in the Criminal Court of Appeals. All drunk-driving arrests in Chattanooga are made under state rather than local law. Police agencies do not use the Uniform Traffic Citation. Drunk driving cases are prosecuted by a State

District Attorney, who is elected on a partisan ticket; the current officeholder is Gary Gerbitz, a Republican.

Chattanooga is a site of the National Highway Traffic Safety Administration's Target of Opportunity program. Funding under that program supports a DWI Task Force, a special prosecutor for drunk-driving cases, and a communitywide traffic safety assessment. As part of that assessment, the Hamilton County Board of Commissioners formed a council of elected officials, the Advisory Council on Traffic Safety, to coordinate traffic safety activities.

Alcohol and Highway Safety Legislation

The legal age for the purchase and consumption of alcohol in Tennessee was raised from 19 to 21, on a phased-in or "grandfather" basis, effective October 1, 1984. Although Chattanooga borders Georgia, there is little "border crossing" because of different age restrictions (Georgia is raising its legal age from 19 to 21 in two steps, to be fully effective in September 1986); however, it has been reported that residents of some Georgia towns travel to Chattanooga because of that city's more active nightlife.

The Tennessee legislature rewrote the state's drinking driving laws in 1982. Those changes, contained in 1982 Tenn. Laws, Chapter 891 (Tenn. Code Ann. sec. 55-10-101 et seq. (Supp. 1985)), took effect July 1, 1982. Major changes brought about by those laws included:

- Requiring first offenders to spend a minimum of 48 consecutive hours in jail, second offenders to spend a minimum of 45 days, and third and subsequent offenders to spend a minimum of 120 days in jail.

- Increasing the minimum fine from $10 to $250 for a first drunk-driving conviction, from $25 to $500 for a second conviction, and from $50 to $1,000 for a third or subsequent conviction.

- Excluding defendants charged with drunk driving from participating in Tennessee's statutory diversion program.

- Prohibiting the sentencing judge from suspending or probating any of the mandatory penalties for drunk driving.

- Requiring judges to place convicted offenders on probation for the difference between actual jail time served and the maximum allowable jail term; and requiring the terms of

probation to include participation in "DWI school", paying restitution to victims, and undergoing treatment (if the person is a second or subsequent offender).

Tennessee is one of only a few states that requires all drunk-driving offenders, including first offenders, to serve jail time. The statute allows an offender to serve his or her time during nonworking hours, which usually means weekends; as a result, some Tennessee officials, especially the Nashville/Davidson County sheriff, have resorted to using such facilities as gymnasiums to accommodate the large number of offenders serving weekend sentences. Some legislators attempted, unsuccessfully, to amend the mandatory-jail provision during the 1984 and 1985 legislative sessions; another attempt is expected during the 1986 session. The proposed amendments would have allowed offenders to perform community service instead of going to jail; sponsors of the amendment argued that the 45-day jail term for a second offender often resulted the offender losing his or her job.

The 1982 amendments also required Tennessee's driver-licensing authority, the Department of Safety, to impose a one-year license suspension on those convicted of drunk driving. State law provides that a first offender may obtain a restricted license, if the drinking driving incident that led to the suspension did not result in any casualties, the convicted drunk driver can show evidence of insurance, and the convicted drunk driver paid all his or her court costs. However, since the Department of Safety imposed similar license suspensions under the old drunk-driving law, the 1982 amendments had little operational effect.

After the 1982 amendments to the drunk-driving laws took effect, the legal drinking age was raised, as mentioned above; and the Tennessee Alcoholic Beverage Commission prohibited "Happy Hour" promotions after 9:00 p.m. and "two for one" drink specials at any time. Even though Tennessee has no dram-shop statute, a number of civil suits against servers, demanding large amounts of damages, have recently been filed.

The number of drunk-driving convictions statewide reflects the state's harsher stance toward drunk drivers: convictions rose from less than 12,000 in 1977 to 24,699 in 1983, with the largest increases occurring between 1981 and 1982, and between 1982 and 1983.

It should be noted that the Oak Ridge chapter of Remove Intoxicated Drivers was instrumental in passage of the 1982 changes in the state drunk-

driving law. RID remains very active in monitoring the courts' handling of drunk-driving cases and in focusing public attention on drunk-driving enforcement and adjudication.

Chattanooga's Charge-Reduction Restrictions

Tennessee law prohibits the use of statutory diversion programs in drunk-driving cases, but does not absolutely prohibit plea bargaining and charge reduction. However, the 1982 amendments to the drunk-driving law are viewed as strong legislative disapproval of those practices. In Chattanooga the combination of mandatory penalties, public pressure, and the changed attitudes of the local bench have sharply cut down on the reduction of drunk-driving charges.

Although reduction of drunk-driving charges, on the part of prosecuting attorneys, rarely occurred even before the 1982 amendments took effect, about 95 percent of the drunk-driving cases filed under the old law were reduced to convictions of lesser offenses by the trial judges. Therefore first offense convictions were rare, and multiple-offense convictions rarer still. The State District Attorney stated that his office currently has no **formal** policy regarding reduction of any criminal charges, including drunk driving. However, he did state that when a chemical analysis shows that a defendant's blood alcohol level to be at or above the legal standard of intoxication (.10 percent in Tennessee), his office almost never offers a plea bargain to a less serious charge. The State District Attorney stated that if the defendant had a blood alcohol level of less than .10 percent, or if there was no chemical test result, then the attorney in charge of that case might decide to plea bargain; however, an individual attorney who did so had to be able to explain, in writing, his or her reasons for doing so.

It was the observation of several people in the criminal-justice system that judges in Chattanooga have, since 1984, become increasingly wary of reducing drunk-driving charges to reckless driving. The reason is that the judiciary recently received a great deal of unfavorable publicity surrounding its handling of two drunk-driving cases in 1984; one involved the daughter of a Tennessee Supreme Court justice and the assistant to a member of Congress, the other a former county commissioner.

Despite the State District Attorney's office practice not to accept

guilty pleas to offenses less serious than drunk-driving, it should be noted that drunk-driving charges still can be reduced. The trial judge still maintains the discretion to find a defendant not guilty of drunk driving when the evidence (usually a low blood alcohol content) presents a "borderline" situation. Some local judges have been protective of their discretion; that sentiment created some initial resentment toward the mandatory sentences introduced by the 1982 amendments. A recent opinion issued by the Tennessee Office of the Attorney General held that reckless driving was not a lesser included offense of drunk-driving, and that there was no basis therefore for reducing a drunk-driving charge to reckless driving. However, some judges in Tennessee continue to amend a drunk driving charge to reckless driving, provided the defendant agrees to the amendment, although it appears that none of the judges in Chattanooga do so.

There have also been several instances in which "sitting judges" have avoided convicting and sentencing a defendant for drunk driving in a particular case. A sitting judge is a substitute judge who replaces a judge who plans to be be absent from court on a given day. Although Tennessee law provides that a sitting judge shall be elected by a vote of the attorneys in the court that day, in actuality, the judge contacts an attorney to sit for him, and the attorney then is "elected" pro forma by the attorneys in the court. Some sitting judges have been known to reduce drunk-driving charges to reckless driving in particular cases, especially those involving defendants with political influence.

Processing of Drunk Drivers in Chattanooga

As stated earlier, most drunk-driving arrests in Chattanooga are made by Chattanooga Police Department or Hamilton County Sheriff's Department officers. The DWI Task Force consists of seven law enforcement officers--five from the Chattanooga Police Department and two from the Hamilton County Sheriff's Department--whose duties include only drunk-driving enforcement. Each DWI Task Force officer has a white "DWI car" which is readily distinguishable from other police vehicles. DWI Task Force officers use their vehicles to drive through the parking lots of bars and restaurants throughout the city, a tactic which they believe to be successful in discouraging drunk-driving. The Task Force has also been

involved in staging juvenile liquor-buys as part of a crackdown on the sale of alcohol to minors by convenience stores. Both the Sheriff's Department and the Chattanooga Police Department also make use of selective enforcement, targeting areas and days for drunk-driving enforcement. Although the use of roadblocks has been considered, a decision was made to delay any such program out of concern that roadblocks might have a negative effect on public support for stricter enforcement of drunk-driving laws. The DWI Task Force has emphasized tactics that generate publicity, in an effort to increase general deterrence.

Three of the DWI Task Force's officers also act as instructors to the rest of the police force in the area of drunk driving enforcement. Both police officers and sheriff's deputies are trained in the use of NHTSA's visual cues to spot a drunk driver; in using techniques such as gaze nystagmus and other on-site testing; and in accurately completing prearrest reports. A greater degree of observation for visual signs of impaired driving, and increased attention to drivers' physical signs of intoxication, on the part of police officers may be responsible for a decline in the average blood alcohol content of a drunk driving arrestee to about .15 percent. The Chattanooga Police Department at one time used to videotape suspects' performance of physical sobriety tests. Although videotape appeared to be an effective evidentiary tool, the Department abandoned it when DWI Task Force logistics forced it to use single-officer patrol vehicles.

A typical drunk-driving arrest begins with a stop for a moving violation or, especially after midnight, a stop on suspicion of drunk driving. If the officer suspects that a driver may be intoxicated, he or she asks the suspect to get out of the car, and then carries on a conversation with the driver. In addition to asking the driver to leave the car, the officer also asks the suspect to produce his or her driver's license, and observes the driver's manner of speaking, posture and appearance. If the suspect appears to be impaired, the officer will then administer a series of field sobriety exercises, consisting of a gaze nystagmus observation and various divided-attention tasks. The officer's observations of the suspect during this process are instrumental in establishing at trial that the officer in fact had probable cause to arrest the suspect for drunk driving. If the officer believes that the driver's

blood alcohol content would be less than .10 percent, he or she will usually transport the driver home. However, if the driver's performance of physical tests indicates that he or she would "fail" a chemical test, then the officer will place the suspect under arrest, search the vehicle for weapons, and handcuff him or her. At the same time, the officer will decide how to dispose of the suspect's car, i.e., whether to allow it to remain where the stop occurred, to be picked up by a friend of the suspect, or to be towed.

If the officer decides to make an arrest, he or she then begins writing up an arrest report, which consists of the basic arrest form, plus an alcohol influence report, and an affidavit complaint, which contains the basic facts of the arrest and the date on which the officer wishes the case to be heard. The officer also explains the implied consent laws to the suspect and reads the Miranda warnings. The suspect is then transported to the jail, unless the officer decides that a blood alcohol test is required, in which case the suspect is taken to Erlanger Medical Center, a hospital.

At the jail (usually the Chattanooga city jail, depending upon where the arrest was made) the suspect is placed into the holding section. The officer gives the arrest report to the jail personnel and hand carries the affidavit complaint to the court clerk; jail personnel then book the suspect. The breath test is administered after booking by either a member of the DWI Task Force or by one of the jail personnel; the test device is the Intoximeter 3000(R). If the suspect refuses to take the test, the test administrator fills out a form for that purpose. If the suspect refuses the test the testing officer seizes the suspect's driver's license and issues the driver a 30-day temporary license. Refusal carries a six-month license suspension, at the end of which the driver must appear at a Department of Safety hearing to have his or her license restored.

It is police policy to require a drunk-driving defendant to spend at least six hours in jail to "sober up". A defendant who cannot post bail must spend the night in jail and make an initial court appearance the next morning, unless the suspect is arrested on a Saturday night, in which case the initial appearance takes place on the following Monday morning. If the defendant is still unable to post bail (usually $500, 10 percent of which is payable in cash) at the initial court appearance, he or she is transferred to the county jail to await the arraignment.

Arraignment in drunk-driving cases occurs from seven to 10 days after arrest, and is held either in the Hamilton County General Sessions Court or the Chattanooga City Court. Arraignment occurs in the City Court if the arrest was made within the city of Chattanooga by a Chattanooga Police Department officer; otherwise, it occurs in the General Sessions Court. If the defendant pleads guilty at arraignment, he or she is sentenced then and there. By the time the arraignment occurs, the prosecution has searched the defendant's driver-licensing record for prior drunk-driving convictions, if any, and has amended the charge, if appropriate, to an enhanced one.

If the defendant pleads not guilty and requests a bench trial, the trial is undertaken immediately unless the defendant requests an attorney, in which case a later court date is assigned to the case. However, if the defendant pleads not guilty and demands a jury trial, Tennessee law requires that a grand jury decide whether there is probable cause to indict the defendant for drunk driving. If the grand jury returns an indictment, a second arraignment is held, at which a defendant may plead guilty or not guilty. Obtaining an indictment appears to be a pro forma procedure (the grand jury returns an indictment in approximately 98 percent of the cases), but it is one means by which the defense can, if it wishes, delay the proceedings. If the indicted defendant pleads not guilty at the second arraignment, the case is scheduled for trial in the Criminal Division of the Sessions Court. A "settlement day" is scheduled between the arraignment and the trial date, and the defendant has one final opportunity to enter a guilty plea before trial.

About 90 percent of all drunk-driving cases are disposed of in the General Sessions Court or City Court, either through a guilty plea or a verdict at a nonjury trial. The remaining 10 percent have created a backlog; one reason for the number of jury trial demands and appeals has been the desire of defendants to delay, for as long as possible, the imposition of mandatory penalties (especially the 45-day jail sentence for a second offense). However it was the observation of one of the session court judges that the number of cases going to trial or appeal is beginning to decrease as the system "stabilizes itself". One of the reasons for this is the fact that many criminal judges are giving drunk-driving defendants who demand trials or appeal convictions sentences more severe than the

mandatory minimum sentences.

It appears that the State District Attorney's office is experiencing an increasing backlog of drunk-driving cases, due to legislation prohibiting pretrial diversion of offenders, prosecutorial practices discouraging charge reduction, and the increased volume of jury trial demands and appeals. The Target of Opportunity program funds a special prosecutor in the State District Attorney's office who handles all of the criminal court appearances and also appears in court on "DWI Task Force Day", which is every Wednesday in both City Court and General Sessions Court.

Prior to the initial appearance, the State District Attorney's office receives no information regarding a drunk driving case. The warrant, which acts as the charging instrument, is forwarded directly to the court either by the Chattanooga Police Department or by the Hamilton County Sheriff's Department. If the drunk-driving defendant does not plead guilty, the State District Attorney's office uses the information on the warrant as the basis for its pretrial investigation.

The pretrial investigation by the State District Attorney's office usually consists of contacting the arresting officer, the backup officer (if one assisted), the officer who administered the breath test (if one was administered), and the victim (if there was one). Because of the increased use of expert testimony by defense counsel, the State District Attorney's office may also contact its own expert, usually the coroner. A prosecution expert is especially likely to appear in cases involving the suspected use of drugs other than alcohol. The special prosecutor stated that more drunk-driving defendants are requesting trials even though there is no factual dispute at issue, out of a desire to delay sentencing, and plan to settle the case just before trial. It has therefore become the policy of the State District Attorney's office not to settle any case, for the minimum sanctions, if the settlement was unjustifiably delayed by defense tactics. It is estimated that delaying tactics by the defense have increased the time from arrest to trial by 200 percent. It is said that usually a case is disposed of within three to four months after an arrest, but it is possible for the defense to delay disposition much longer; some cases are still pending two years after arrest.

There is no public defender's office in Chattanooga and, although the

court may appoint counsel for an indigent drunk driving defendant, that is rarely done. Generally if a defendant can make bond or is employed, the judge will not consider him or her to be indigent. Retained counsel defending drunk-driving cases have increasingly found new defenses, including lack of probable cause for the police stop, inaccuracy of the testing device, and the mishandling of blood specimens.

In 1983, about 16 percent of all drunk-driving cases in the greater Chattanooga area resulted in dismissals, another 16 percent in convictions on charges less serious than drunk driving, and the remaining 68 percent in convictions of the original charge. In 1984, about seven percent resulted in dismissals, eight percent in convictions of less serious charges, and 85 percent in convictions of the original charge. The City Court presently reports a drunk-driving conviction rate of 75 to 80 percent, while the General Sessions Court reports an 85 percent conviction rate.

A defendant who is convicted of drunk driving is required to surrender his or her license to the judge, if the license was not seized earlier by the police. Following conviction, the appropriate court clerk prepares an "Abstract of Record" card which contains basic information about the defendant and his or her conviction. Since the court clerk's office is not computerized it can be difficult to locate a defendant's card, especially if the conviction is several years old. The problem of finding cards increases the difficulty of locating a prior drunk-driving conviction if it is needed to charge a defendant with an enhanced offense, and also increases the difficulty of collecting a fine agreed to be paid on an installment basis. However, because the Abstract of Record card is also sent to the Department of Safety offices in Nashville and placed in a computerized record system, local courts can locate cards by applying to the Department; still, the court may wait several weeks to receive that information.

The increased fines required by the 1982 amendments to Tennessee's drunk-driving law can cause significant economic hardships for a convicted drunk driver, especially a lower income defendant or one who also faces legal fees resulting from an unsuccessful jury trial or appeal. Many people in Chattanooga's criminal justice system system believe that the economic effects of the fines have not received much publicity. In Chattanooga, convicted drunk drivers can "work off" their fines at the rate

of $5 per day, but cannot work off actual court costs of $106. Although many convicted drunk drivers are financially able to pay their fines, there have been problems with nonpayment. Court personnel have begun to use civil remedies, such as garnishing wages, to collect unpaid fines.

Fines which are paid in their entirety are paid to the court clerk; when an installment-plan agreement is made to pay fines, the Abstract of Record is certified to Workhouse Records and falls under the jurisdiction of either the City of Chattanooga or the Hamilton County Auditor for collection. The city is currently collecting only about 40 to 45 percent of its fines, while the county in 1984-85 collected almost 90 percent of its drunk-driving fines. In light of the city's difficulties in collecting fines, and the fact that the city owes Hamilton County money for the housing of convicted drunk drivers, the county has recently begun to collect the city's fines as well.

The perception of almost all people in Chattanooga's criminal justice system is that all convicted drunk drivers are serving the minimum mandatory jail sentence. This belief seems to be shared by the general public, as disclosed in a recent poll done by the Advisory Council on Traffic Safety. In addition to the mandatory minimum sentences, several judges also sentence a defendant to the maximum allowable sentence (11 months and 29 days), and suspend the balance to create an additional disincentive, in the form of reimposed jail time, to driving drunk again.

Tennessee law requires all convicted offenders to serve their mandatory jail sentences in a county jail or a workhouse. Chattanooga and Hamilton County officials have adhered to this requirement, with the result that already-overcrowded corrections facilities have been even more severely burdened. That problem is expected to grow worse as increasing numbers of offenders accumulate second and third drunk-driving convictions.

Three jail facilities are available in Hamilton County: a city jail (capacity 30 prisoners); a county jail (280 prisoners); and a workhouse (280 prisoners). The Chattanooga City Jail acts as a temporary holding facility only. Most drunk drivers sentenced in Chattanooga are sent to the workhouse, named Silverdale, which is privately operated by the Corrections Corporation of America. Recently Silverdale opened a new wing for the exclusive use of convicted drunk drivers. Drunk driving offenders sentenced to serve jail terms there are assigned work duties.

There is presently some confusion over whether a person sentenced to jail for drunk driving is entitled to credit for time served after arrest and before conviction. Tennessee law does not specifically address this question, although Tenn. Code Ann. section 55-10-403(b)(1) regarding suspension of sentence or probation requires that a sentence be "...fully served day for day at least until the minimum sentence provided by law.". Individual judges observe different policies in regard to credit for time served. It appears that none of the judges in Chattanooga will give a convicted drunk driver credit for the minimum six-hour sobering-up period spent in jail after arrest, and that some judges--but not all--will credit an offender with preconviction jail time totalling more than 48 hours against the 48-hour mandatory minimum sentence for a first offense. In a recent case, a City Court judge refused to credit an offender with the 51 days he served in jail against the 45-day sentence he received for second offense drunk driving.

Corrections authorities are experiencing funding problems in regard to jailing convicted offenders, since the reimbursement required by statute is less than the expense of housing prisoners, and because reimbursement is paid to the municipality where the drunk-driving arrest occurred, not the municipality responsible for jailing offenders. In Chattanooga, fine revenue is deposited into a general contingency fund which is supervised by the mayor. The law provides that the corrections facility housing the prisoner is to be reimbursed for its costs from this fine. However, there has been some disagreements between the city and the county regarding the reimbursement of these funds. Currently 65 to 75 percent of the DWI prisoners at the workhouse are sent there from the city court and just recently the city has agreed to pay the county for their costs in housing these DWI prisoners. Silverdale charges the county $28 a day for each drunk-driving offender (in contrast, it charges only $10 per day for convicted felons). The county charges the city to the extent of the fine collected, and then charges the offender for the remaining balance.

The workhouse budget for the fiscal year ending June 30, 1985, had to be amended by the addition of $200,000. This amendment was required because even though the original budget was based upon an average daily inmate census of 260, the actual inmate census for the last seven months of the fiscal year was almost 300, attributable to a large degree to the

influx of convicted drunk drivers.

The correctional facilities are also experiencing overcrowding problems due to the influx of drunk drivers sentenced to jail terms. As in other jurisdictions, prisoners other than drunk drivers have been granted early release because of the overcrowding. The overcrowding problem is especially severe on weekends when most first offenders serve their sentences. Approximately 40 persons convicted of drunk driving report to Silverdale each weekend to serve their sentence, and jail personnel stated that on some weekends they have had to turn offenders away because there has been no room for them.

Alcohol treatment programs are administered by the Hamilton County Sheriff's Department. Before being assigned to an alcohol class, a convicted offender is evaluated and additional treatment--either inpatient or outpatient--is recommended when necessary. However, it appears to be rare for any treatment beyond the mandated drunk-driving school to be recommended, primarily because there is no public treatment program available and few can afford the cost of private treatment. The Council on Alcoholism and Drug Abuse was originally expected to fill the void in public treatment, but so far that has not been the case. Those who are able to afford private treatment generally are able to receive more lenient sentencing although they are still required to serve the minimum mandatory jail term.

Observations

Based on the statements made by those within the Chattanooga criminal justice system, the following observations can be made about the effects of restricting charge reduction there:

- The practice of the State District Attorney's office, combined with greater public insistence on stricter enforcement, has made the reduction of drunk-driving charges increasingly rare. The 1982 changes in Tennessee's drunk driving laws did not address charge reduction per se, but helped create an atmosphere that was hostile to the practice.

- Charge reduction by trial judges still occurs, though on a far less widespread basis than before the 1982 law changes. Some observers believe that the judges' power to reduce charges has been abused on occasion, and that it tends to undercut the State District Attorney's policy discouraging

charge reduction.

- Increased sanctions required by the 1982 drunk-driving amendments did not affect the level of activity, or the efficiency, of law-enforcement agencies; however, the shift in public opinion toward drunk driving has resulted in large increases in the number of persons arrested.

- The State District Attorney's office faces an increasing backlog of cases because of the abolition of pretrial diversion by law, its own decision not to engage in plea bargaining, and defendants' increased demand for jury trials and appeals in an effort to avoid mandatory jail sentences.

- The lower-level courts have experienced a significantly increased caseload even though most defendants charged with drunk driving plead guilty. Chattanooga City Court, in particular, where the caseload was already very heavy, has felt the impact of the increased number of drunk driving cases. The higher-level courts have been faced with a sizable increase in the number of jury trials and appeals.

- As might be expected, the combined effects of the State District Attorney's informal no-charge reduction policy and the 1982 Tennessee law requiring jail for all convicted drunk drivers, has created a heavy burden on correction facilities: there is a lack of space, especially on weekends, and a backlog of prisoners waiting to serve their jail sentences; and the costs of housing prisoners sentenced for drunk driving have exceeded the revenues obtained from those offenders. Both of those problems, overcrowding and lack of funds, will grow worse as the number of second and subsequent offenders in the system increases.

- Statistical analyses performed by the DWI Task Force indicate that there has been a decrease in the number of traffic fatalities, and an increase in drunk driving arrests (though the number of arrests began to fall in 1985), a decrease in the average blood alcohol level of those arrested for drunk driving (it is now approaching .15 percent), a decrease of 20 to 30 percent in the number of alcohol-related accidents.

- Many people, both within and outside the criminal justice system, believe that further "fine tuning" of Tennessee's drunk-driving law will take place in the next couple of years. The changes viewed as most likely include the substitution of community work (with an emphasis on physical labor) for a jail sentence for a first offense; allowing convicted drunk drivers to undergo inpatient treatment instead of jail under certain circumstances; establishing public treatment programs; and removing drunk-driving cases from City Court to General Sessions Court.

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