LEGAL DISPOSITIONS AND VIDEOTAPING OF DRUNK DRIVERS

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TABLE OF CONTENTS

SECTION	PAGE
OBJECTIVES	2
VIDEOTAPING PROJECT	3
METHODOLOGY	4
BASELINE DATA	6
Caseloads and Number of Arraignments	6
Size of Departments	7
Type of Offense	8
BASELINE OUTCOMES	11
Court Costs	11
Case Status	12
Cases with Final Disposition	12
Type of Offense and Resulting Disposition	14
Method of Disposition	14
Length of Time from Arraignment to Disposition	16
Type of Offense and Method of Disposition	19
Disposition of Multiple Charge Defendants	20
POST INTERVENTION	23
Type of Offense	23
Case Status or Disposition	24
Method of Disposition	29
Length of Time From Arraignment to Disposition	33
Disposition of Videotaped Cases	35
SUMMARY	37
RECOMMENDATIONS	37

LIST OF FIGURES AND TABLES

FIGURES

FIGURE		PAGE
FIGURE 1	Type of Offense, Baseline Reporting Period	10
FIGURE 2	Status of Cases, Baseline Reporting Period	13
FIGURE 3	Type of Offense by Disposition of Case Baseline Reporting Period Individual Level Data (N =1,818)	15
FIGURE 4	Method of Disposition, Baseline Reporting Period	17
FIGURE 5	Type of Offense by Method of Disposition, Baseline Reporting Period Individual Level Data (N = 1,818)	21
FIGURE 6	Type of Offense, Post Intervention Quarterly Reporting Periods	25
FIGURE 7	Status of Cases, Quarterly Reporting Period	27

FIGURE 8
Disposition of Cases by Percent for Individual Baseline Data and Aggregate Quarterly Reports 28

FIGURE 9
Method of Disposition, Quarterly Reporting Periods 30

FIGURE 10
Percent Method of Disposition for Baseline and Post Intervention Cases 32

TABLES

TABLE PAGE

TABLE 1 18

AVERAGE LENGTH OF TIME FROM ARRAIGNMENT TO DISPOSITION FOR BASELINE CASES BY TYPE OF OFFENSE

TABLE 2 19

AVERAGE LENGTH OF TIME FROM ARRAIGNMENT TO DISPOSITION FOR BASELINE CASES BY METHOD OF DISPOSITION

TABLE 3 34

LENGTH OF TIME FROM ARRAIGNMENT TO DISPOSITION FOR BASELINE AND POST INTERVENTION CASES THAT REACHED A FINAL DISPOSITION

LEGAL DISPOSITIONS AND VIDEOTAPING OF DRUNK DRIVERS

Drunk driving is a serious challenge for police departments. In Massachusetts in 1987 more than 2,700 people were incarcerated for this offense. More than 41,00 were arraigned by the Massachusetts courts during that same year and three hundred thirty-one people were arraigned for vehicular homicide. Nationally, arrests for drunk driving have increased 223 percent from 1970 to 1986 (Bureau of Justice Statistics, 1988).

One response to the problem of drunk driving is videotaping of drunk drivers. Police departments in the Commonwealth that have utilized videotaping of drunk driving offenders (those arrested for Operating Under the Influence, OUI) since 1984 have reported that videotape evidence can reduce the expenses and delays of trials. The number of time-consuming defense motions was reduced. After a pre-trial viewing of their intoxicated condition, defendants were more likely to plead guilty, which also reduces the demand for court time and jury trials. A reduction in the number of jury trials also has been reported to result in a savings for the police departments by reducing the cost of police overtime.

These reports, however, were impressionistic. Consequently, the Massachusetts Committee on Criminal Justice

designed a project to take a more systematic look at the effects of videotaping OUI offenders.

OBJECTIVES

This project had three objectives: speed disposition of cases, lower court costs, and lessen overtime required for officers. These objectives are expected to result primarily from an increase in guilty pleas and a decrease in jury trials. The supposition is that videotapes of drunk drivers will provide clear evidence to convince OUI offenders that they shouldn't waste their time on a jury trial and should try to resolve their case with a plea. Persons receiving a more questionable charge should also have clearer documentation of their innocence.

VIDEOTAPING PROJECT

In 1988 the Massachusetts Committee on Criminal Justice (MCCJ) implemented a Bureau of Justice Assistance Block Grant program designed to reduce delays in the District Court Department of the Trial Court through the videotaping of drunk driving arrests. Early in the year, MCCJ began funding police departments who had submitted proposals to videotape suspects arrested for Operating Under the Influence.

The Committee paid for approximately two-thirds of the cost of a color videotape recorder with playback capacity and fifty blank tapes, or $1,833 per grant. Each department was required to assume the cost of maintenance and storage of the equipment and tapes, to file a set of written procedures governing the operation and use of videotape equipment with the MCCJ, and to agree to commence videotaping by March 1, 1988.

Forty-nine departments applied for assistance and agreed to the conditions. The Committee awarded grants to all forty-nine police departments to buy videotaping equipment. Videotaping equipment was also provided to the District Attorneys offices serving these police departments. A description of the forty-nine departments may be found in the section on baseline data.

The police departments were required to videotape suspects arrested for Operating Under the Influence. Tapes were made of the booking process and offenders were also requested to perform the behavioral field sobriety test. Some offenders refused to perform the test on camera. Others were so inebriated that they were unable to perform the test. Although Massachusetts does impose a 120 day suspension of a driver's license for refusal to submit to a test of blood al-

cohol level (M.G.L 90 § 24(1)(f)), there are no penalties for failure to perform for videotaping. Videotape records were intended to create a visual record of both the arrestee's conduct at the time of booking and to monitor the actions of the arresting officer. Lawyers for the arrestees were allowed access to the tapes.

While the mandatory taping of OUI arrests might be thought to be self incriminatory, this inclusion of videotaping as a required part of the booking process does not constitute self incrimination or search and seizure. See Commonwealth vs. Mahoney (400 Mass. 524, N.E.2d 759, 1987).

METHODOLOGY

As part of the grant process, these departments were required to provide designated historical data and four quarterly reports (See Appendix). The historical (baseline) data provide a source for comparisons with the subsequent quarterly reports. This will allow evaluation of the effects of videotaping on the disposition of OUI arraignments.

This report evaluates the grant program by looking at the effects of videotaping on the flow of cases through the criminal justice system. Baseline data from the original ap-

plication are described and compared with information from the follow-up quarterly reports. This baseline report for the forty-nine participating police departments includes aggregate data on District Court and police department caseloads, OUI arraignment and offender status counts, number of officers, cost of overtime, and estimated percentage of overtime costs attributable to court proceedings in OUI cases.

Individual level information was included in the baseline reports for 1,818 cases. Data on these baseline cases include type of offender, disposition of case, method of disposition, and length of time from arraignment to disposition. Additional information is described for 516 of the 1,818 for those in which the defendants were charged with at least one other offense in addition to OUI. These cases are described in terms of the additional charges, the disposition time, the outcome, and the method of disposition.

Beginning with April 1, 1988 quarterly reports were provided by the forty-nine participating departments. The information in these reports includes aggregate data on number of OUI arrests, a breakdown by type of offender, number of arrests videotaped, disposition of cases, length of time to and type of disposition, overtime costs during the reporting period and estimated percentage of overtime associated with court

costs in OUI cases.

BASELINE DATA

Descriptive data for the six month period between January 1 and June 30, 1987 were provided by each police department as a part of the grant application process. There was considerable variation in the size of the participating police departments, the number of arrests for drunk driving, and the caseload of the District Courts which served these departments. There was less variation in the type of offense of the arrests. Most of the arrestees were first offenders in the communities in which they were arrested. Some of these "first offenders," however, may have prior unknown charges from other communities.

Caseloads and Number of Arraignments

The aggregate level data include information on District Court and participating police department caseloads. A total of thirty-four District Courts served the forty-nine police departments. Caseload information for these courts was incomplete with a reporting rate of less than sixty percent for this variable. The twenty-nine reported totals ranged from 226 cases handled to more than seven thousand. Forty-four, or

ninety percent, of the baseline reports included information on the number of drunk driving arraignments in these District Courts. Total arraignments ranged from 18 to 1,161 with an average of 325 such cases per Court. The range for Massachusetts as a whole in 1987 was less than one hundred cases to as many as 1,500 with an average of six hundred per court.

Size of Departments

The smallest department had five full-time officers and the largest reported having 187 officers. The average size of the study departments was forty-two officers. The average for all of the departments in Massachusetts was approximately thirty-five officers per department. The smallest number of OUI arraignments for a given department was two and the largest number of arraignments was 237 with an average of 50 per department.

The average mean number of OUI arrests per officer for this six-month reporting period was 1.4. One department reported an average of five arrests per officer for this baseline reporting period. The average number of arrests per officer was less than one for close to half of the forty-nine departments.

Type of Offense

More than twenty four hundred (2,468) persons were arraigned for drunk driving in these departments during the baseline reporting period. Two thousand twenty-one, or eighty-one percent, of these arraignments provided information by type of offense. Most of the arrests for drunk driving, 1,665 or 67.5 percent, were first offenses in so far as was known by the arresting department. For half of the departments, first offenders constitute at least three-quarters of the arrestees. The number of first offenders ranged from one to 162 with an average of 35 people arrested by each of the police departments (See Figure 1).

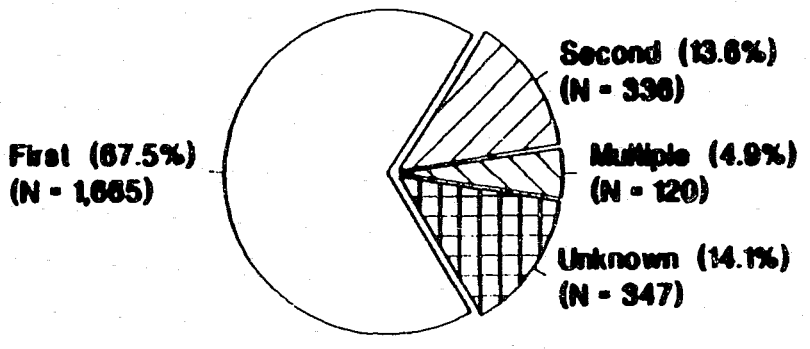
Second drunk driving offenses account for most of the remaining arrests. Three hundred and thirty-six, approximately fourteen percent, of the arrestees were second offenders. The percentage of arrests in this category ranged from none to fifty with an average of nineteen percent per department. (See Figure 1)

Of the other 467 arrestees, 120 (five percent of the total) were multiple offenders who had been arrested at least twice previously for Operating Under the Influence of Liquor. Given that some offenders may have had prior OUI arrests un-

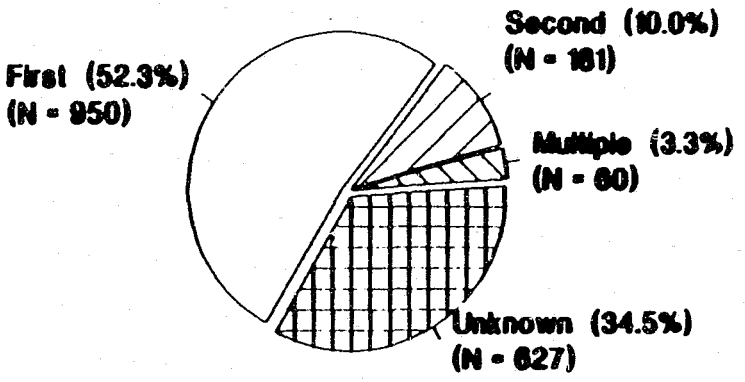
known to the departments, this should be regarded as a lower bounds for the percent of multiple offenders The three hundred forty-seven arrestees remaining were reported by the departments without including information on type of offense (See Figure 1). Nearly one-third of the forty-seven reporting departments did not have any multiple offender arraignments at all. On average, multiple offenders represented six percent of the arraignments per department.

Individual case level information was reported for 1,818, 73.7 percent, of the 2,468 OUI arrests made during the baseline period. Of these, information on type of offense was reported for 1,191, 65.5 percent, of these cases. Nine hundred and fifty, approximately 80 percent, were listed as first offenses, 181, 15.2 percent, were second offenses, and sixty, five percent, were multiple offenders. These proportions mirror those in the aggregate historical data (See Figure 1).

Type of Offense, Baseline Reporting Period
(Total OUI Arrests = 2,468)



Aggregate Baseline Data (N=2,468)



Individual Level Baseline Data (N=1,818)

Figure 1

BASELINE OUTCOMES

This section describes the court costs and dispositions of the OUI arrests before videotaping began. It also examines the relationships between dispositions, type offense, and length of time to disposition.

Court Costs

A considerable amount of money was required to cover overtime expenses of officers testifying in OUI cases. Ninety percent of the police departments provided information on the approximate percentage of their overtime costs that were the result of court proceedings in OUI cases. During this time period, the average departmental share of overtime generated by court costs in these cases was twenty-six percent--nearly half of the departments spent more than twenty percent of their overtime expenses on these cases. OUI overtime costs were between two and seventy-six percent of departmental overtime costs. The seventy-sex percent was unusually high compared to other departments. Actual overtime costs for these departments ranged from a total of $304 to more than $187,000.

Case Status

Type, method, and length of time until disposition were reported for individual cases for the baseline data. Disposition information was not reported at the aggregate level. For the 1,818 individual cases reported, the status of eighty percent, 1,451 cases, is known. The status of the remaining 193 cases is unknown. One thousand and fifty-six defendants, 58 percent of all or 72.8 percent of the cases whose status is known, were found guilty. One hundred sixty-six cases, 11.4 percent, were found to be not guilty or continued, and two hundred sixteen or 6.7 percent were either pending or had defaulted. The status of the remaining 380 cases was unkown (See Figure 2).

Cases with Final Disposition

Eighty-four percent of the 1,451 cases having a known status reached a final disposition of guilty or not guilty within the six-month baseline reporting period. The 1,056 guilty verdicts represent eighty-six percent of these. The remaining one hundred sixty-six or fourteen percent were not guilty.

Status of Cases
Baseline Reporting Period
(Individual Level Data, N = 1,818)

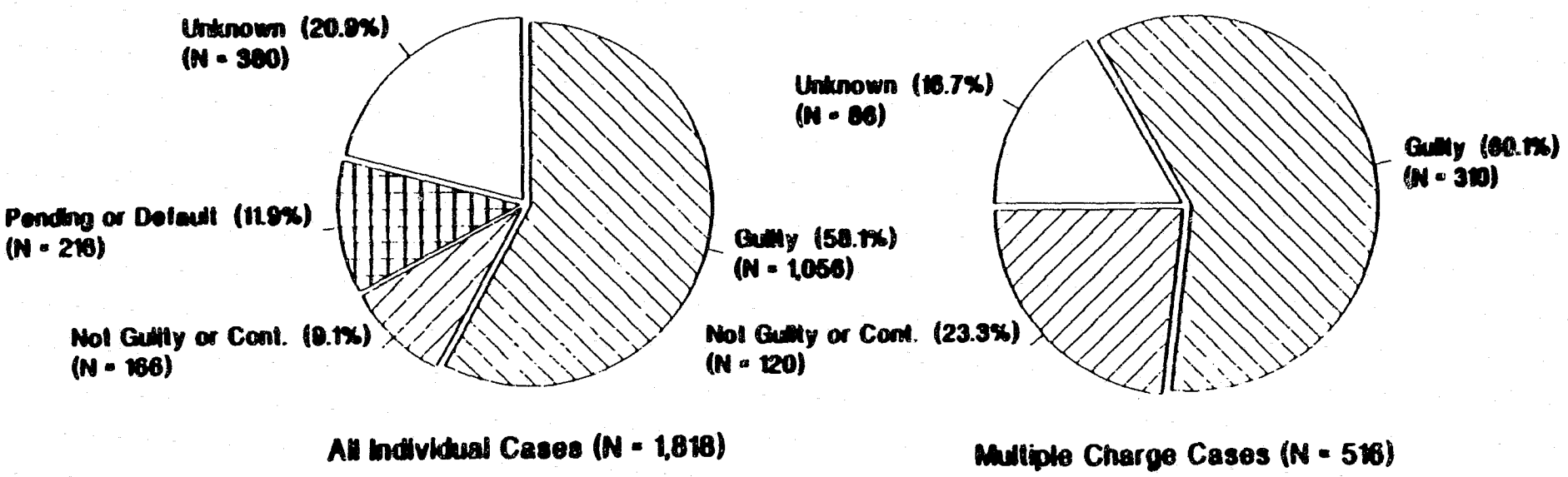


Figure 2

Type of Offense and Resulting Disposition

Nine hundred and fifteen (or a little more than half of the cases) include information on both type of offense and disposition. Multiple offenders were more likely to be found guilty--eighty-eight percent of the first offenders had guilty dispositions, ninety-two percent of second offenders were found guilty and multiple offenders were judged to be guilty ninety-six percent of the time (See Figure 3).

Method of Disposition

The process used to arrive at a disposition was reported for 1,142 or 62.8 percent of the cases. The remaining 37.2 percent of the cases were either pending, defaults, or of unknown disposition. The most common form of disposition was a plea--four hundred and forty-six or 39.1 percent of the cases which included information on method of disposition. This method of reaching a disposition was followed closely by bench trials which accounted for four hundred fifteen, 36.3 percent, of known dispositions. Approximately twenty-three percent of

Type of Offense by Disposition of Case, Baseline Reporting Period Individual Level Data (N = 1,818)

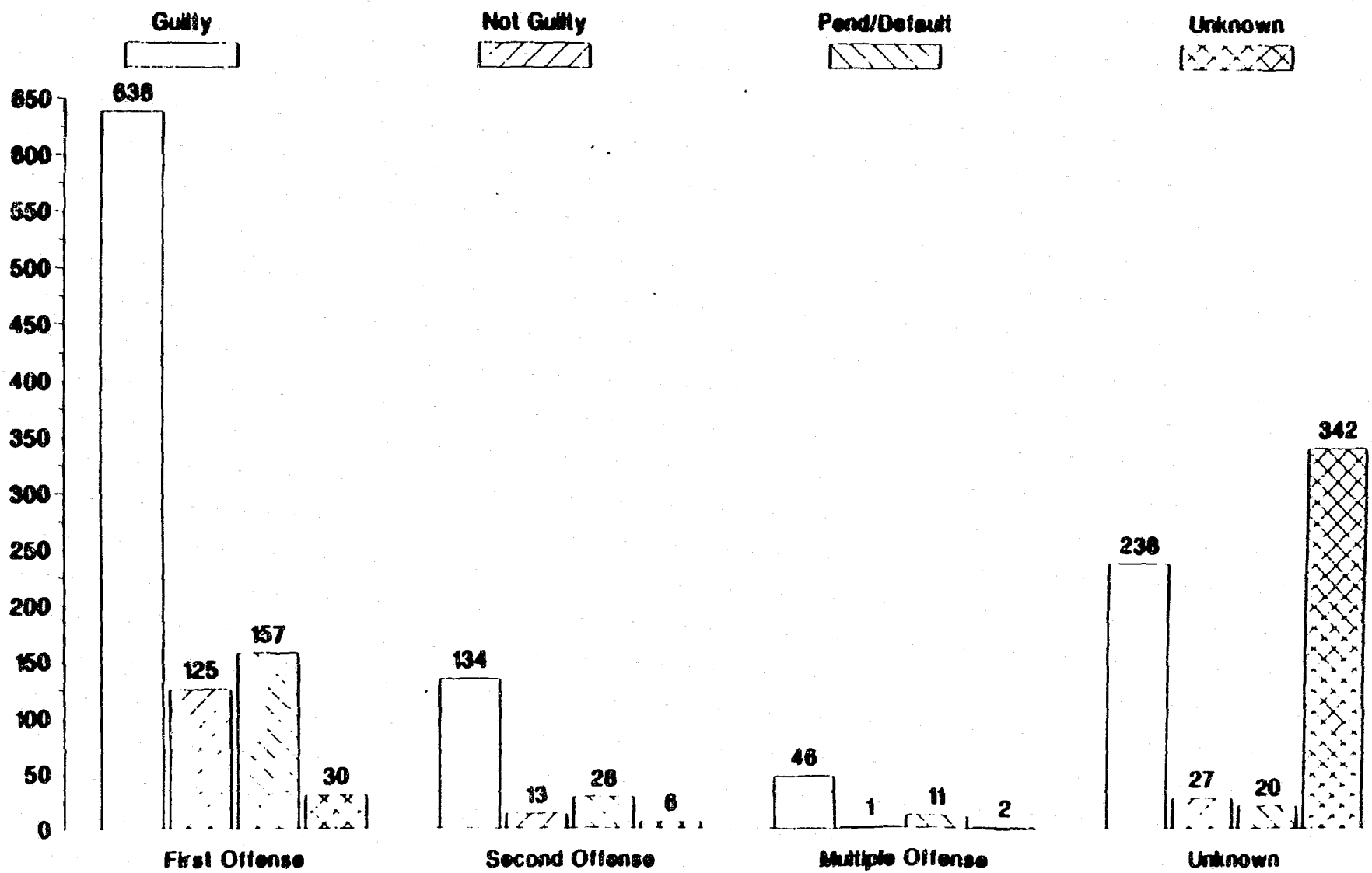


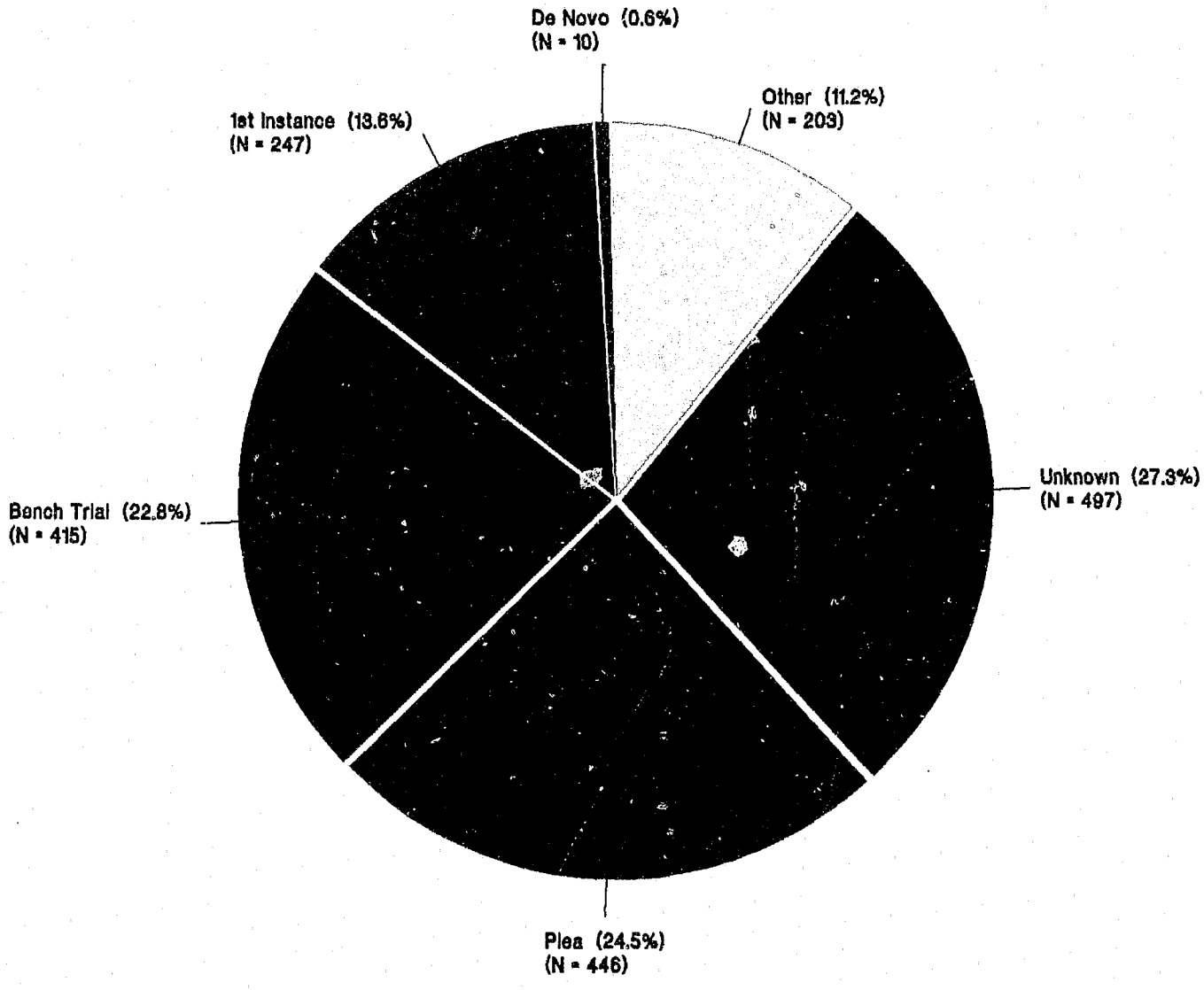
Figure 3

the cases were disposed by first instance or de novo jury trials. Of the 257 jury trials, two hundred forty-seven were first instance jury trials and only ten were trials de novo (which result when a defendant challenges the verdict from a bench trial) (See Figure 4).

Length of Time From Arraignment to Disposition

One of the objectives of the project was to shorten the length of time cases take to reach disposition. Length of time from arraignment to disposition was reported for approximately fifty-five percent or one thousand (1,025) of the 1,818 arrestees. It ranged between one day and one year. The average time period reported was sixty-three days. Ten percent of the one thousand cases were disposed within five days. One-fourth were disposed within twenty-three days, half were disposed within forty-seven days and ninety percent were disposed within five months (See Table 3). The difference between the median length of time to disposition (47) and the mean length (63) indicates there were some extreme outcomes whose time to disposition was very long. One police department reported an average disposition time of less than sixteen days in contrast to two departments reporting average disposition times of more than one hundred days.

FIGURE 4
METHOD OF DISPOSITION
BASELINE REPORTING PERIOD



(Total Individual Level Cases = 1,818)

The length of time to disposition varied by type of offense. The type of offense is known for approximately eighty-eight percent (898) of the cases reporting a length of time to disposition. Disposition time for first offenders was considerably shorter than for second or multiple offenders. Cases involving first offenders were disposed, on average, within sixty-one days, second offenders took approximately seventy-four days and multiple offenders averaged ninety-five days (See Table 1). One reason for this is that first offenders were more likely to dispose their cases with a plea (see next section below).

TABLE 1

AVERAGE LENGTH OF TIME FROM ARRAIGNMENT TO DISPOSITION FOR BASELINE CASES BY TYPE OF OFFENSE

TYPE OF OFFENSE	NUMBER OF OFFENDERS	AVERAGE LENGTH OF TIME TO DISPOSITION
First Offense	726	60.9 days
Second Offense	129	73.7 days
Multiple Offense	43	94.7 days

The outcome of the disposition was related to the length of time to disposition. Guilty verdicts took approximately fifty-nine days and a finding of not guilty took an average of one hundred and two days. The average time to disposition was much shorter for those cases where a plea was entered. The average time for these cases was forty-three days whereas the average time for disposition via bench trial was seventy-five days, and a first instance jury trial took an average of eighty-seven days (See Table 2).

TABLE 2

AVERAGE LENGTH OF TIME FROM ARRAIGNMENT TO DISPOSITION FOR BASELINE CASES BY METHOD OF DISPOSITION

METHOD OF DISPOSITION	TOTAL NUMBER OF OFFENDERS	AVERAGE TIME TO DISPOSITION	NUMBER OF MULTIPLE CHARGE OFFENDERS	AVERAGE TIME TO DISPOSITION
Plea	423	42.5 days	118	39.2 days
Bench Trial	375	74.7 days	113	92.3 days
Jury Trials				
First Instance	174	87.1 days	48	97.4 days
Trials De Novo	3	46.7 days	1	105.0 days

Type of Offense and Method of Disposition

The type of offense was related to the method of disposition. Both method of disposition and type of offense were reported for approximately two-thirds of the 1,818 defendants. Plea and bench trials accounted for the majority of the dispositions for all types of offenders. First offenders were more likely to plead guilty--thirty-eight percent. Second offenders plead guilty twenty-four percent of the time and multiple offenders plead guilty twenty-two percent of the time. Second offenders and multiple offenders were most likely to be disposed via bench trial, thirty-seven and forty-one percent respectively compared with thirty-one percent of the first offenders (See Figure 5).

Disposition of Multiple Charge Defendants

Multiple charged defendants did not greatly differ in their outcomes compared with the sample overall. Individual data were reported for 516 defendants who were charged with other infractions in addition to their OUI charge. Case status, final disposition type and length of time from arraignment to disposition are similar to those for the total (1,818) for this subset of offenders. For the 516, three hundred and ten, or 60 percent were found guilty, ninety-three,

Type of Offense by Method of Disposition, Baseline Reporting Period Individual Level Data (N = 1,818)

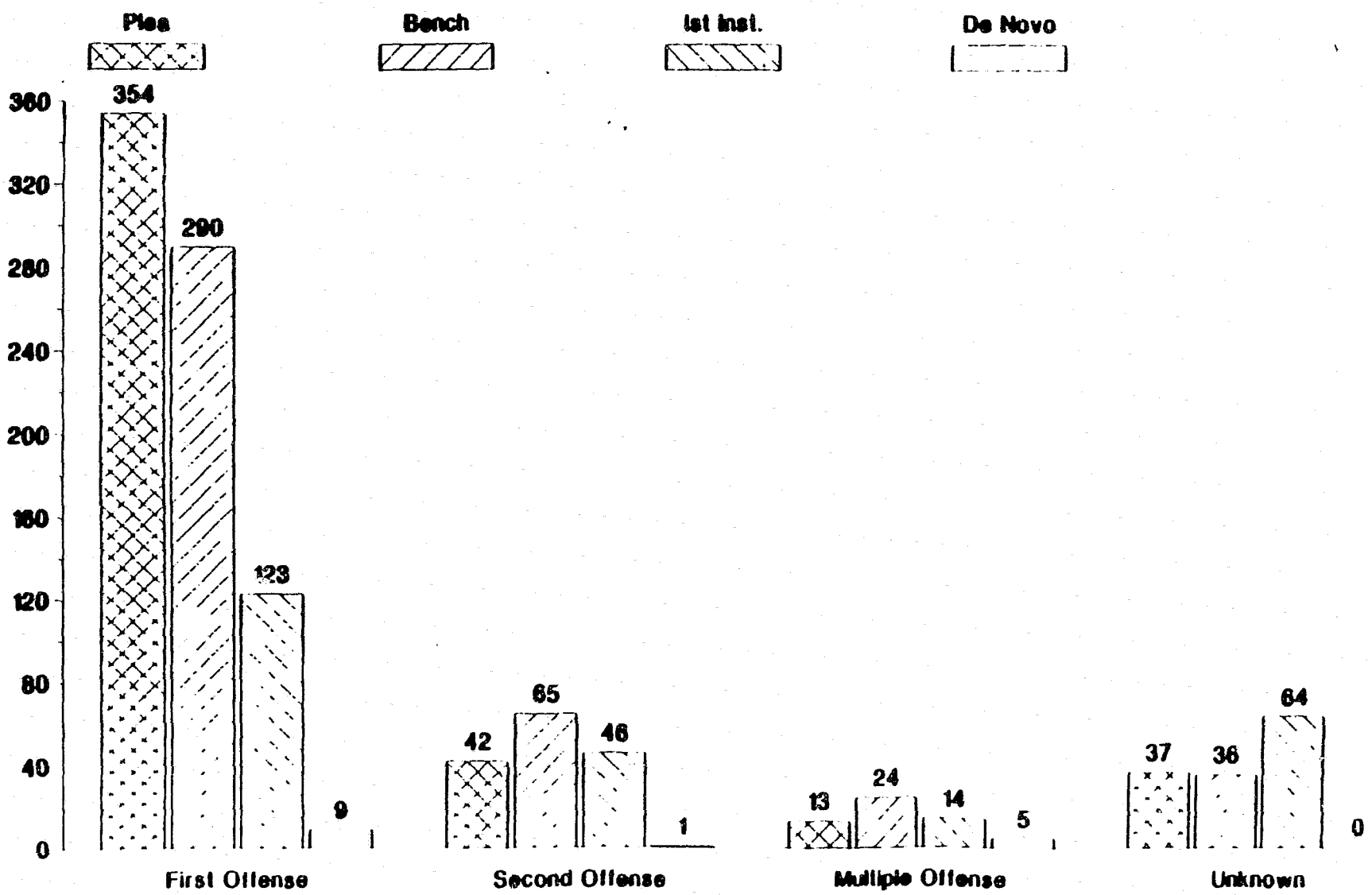


Figure 5

or 18 percent were found not guilty and there was no known disposition the remaining 113 cases (See Figure 2).

Guilty pleas and bench trials were each responsible for the outcome of approximately one-fourth of the charges. Sixty cases, twelve percent, were disposed by first instance jury trials. There was only one trial de novo in this category of offenders and the remaining 203 cases were continued, pending, defaults, or unknown.

The length of time from arraignment to disposition was longer for the defendants with multiple charges than for the cases as a whole. The average for the multiple charge cases was seventy-four days, as compared to sixty-three for the total cases. Offenders with the most severe additional charges took longer to dispose as did those with the greatest number of additional charges. Once again, pleas took the least amount of disposition time--approximately thirty-nine days. Bench trials averaged ninety-two days until disposition. First instance jury trials averaged ninety-seven days until disposition, and the one trial de novo required 105 days (See Table 2).

Most of the additional charges filed against these drivers were some kind of moving or equipment violations. The

most common second charge, for eighty-two (sixteen percent) of the defendants with multiple charges was operating to endanger. For one-third of the cases, other moving violations such as failure to keep right, driving in the wrong lanes, speeding, failure to stop for a police officer, etc. constitute at least one of the additional charges. Miscellaneous moving and equipment violations account for virtually all of the other charges. Less than one percent of the cases included felony offenses such as drugs, assault and battery on a police officer, or vehicular homicide.

POST INTERVENTION

Quarterly reports were requested beginning with April 1, 1988 and continuing until March 31, 1989 (See Appendix). The data presented here are for the first three of the four quarters. Each report provides information for a given three month period. One hundred and forty-seven reports should have been filed during this nine month time period. One hundred and twenty-one actually were. There were forty-one reports filed for the second quarter of 1988, forty-one reports filed for the third quarter of 1988, thirty-nine reports filed for the last quarter of 1988 and nineteen missing reports.

<u>Type of Offense</u>

The types of offenses were similar in post intervention to those during the baseline period. The 128 quarterly reports that were filed listed 2,531 arraignments for drunk driving. Two thousand two hundred and twenty-six, eighty-eight percent, were reported in terms of type of offense. The remaining twelve percent of the arraignments were not broken down by type of offense. As was the case for the baseline data, the majority, seventy-nine percent (1,758), were first offenses. Fifteen percent (332) of the cases reported by type of offense were second offenses and six percent (136), were multiple offenses (See Figure 6).

Case Status or Disposition

The status of the cases, especially the ratio of disposed to pending cases, was different in the quarterly reports than in the baseline data. Approximately thirty-five percent (880), of the cases contained in the quarterly reports resulted in guilty dispositions. Another three percent (73) of the defendants were found not guilty for a total of 953. Thus, approximately ninety-two percent of the dispositions were guilty compared with approximately eighty-six percent (1,056) for the the baseline data.

Type of Offense,
Post Intervention Quarterly Reporting Periods
(Aggregate Data, Sum = 2,531)

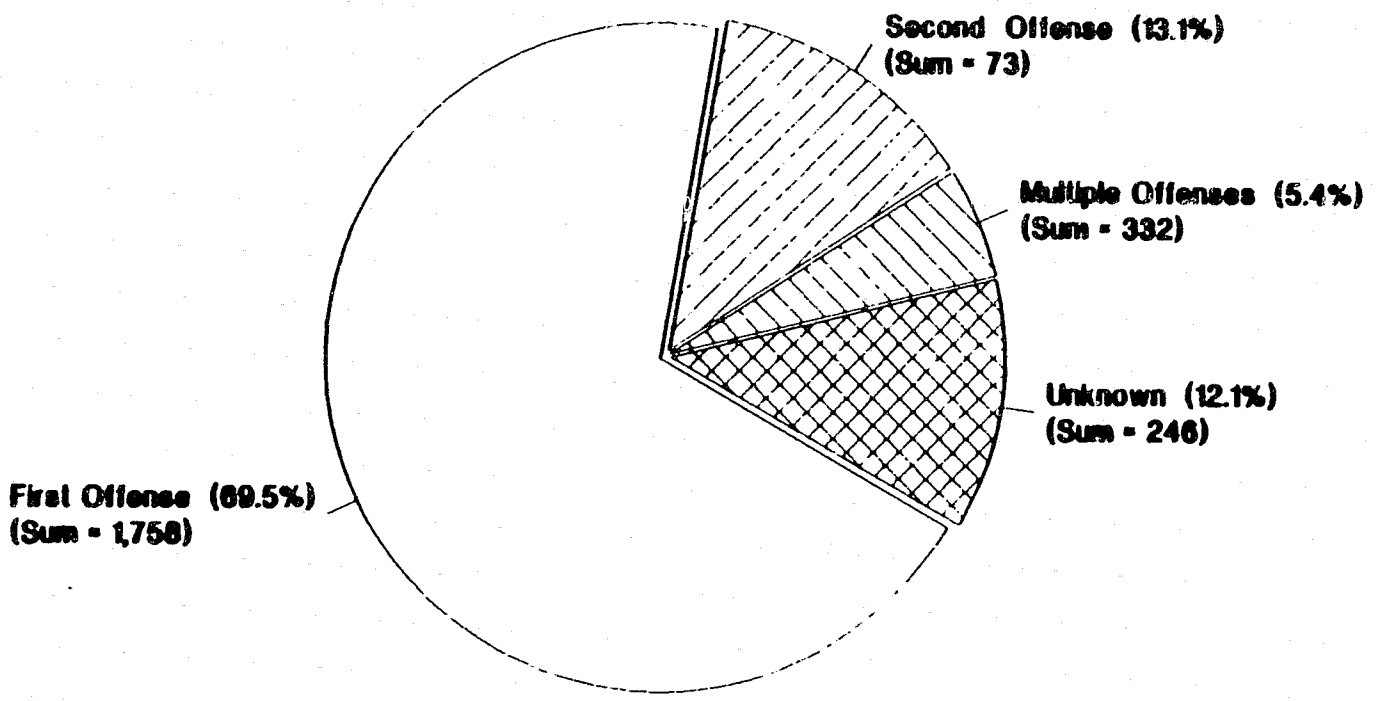


Figure 6

Since the quarters were only half as long as the baseline reporting period, the percentage of pending or defaulted cases was considerably greater. Thirteen percent of the baseline cases were still pending or had defaulted. Almost four times as many cases were still pending in the quarterly reports, more than half (53 percent), (See Figures 2 and 7).

The ratio of guilty to not guilty verdicts is greater for the post intervention data. In the baseline data, eighty-six percent of the cases that reached a final disposition were found to be guilty. In the quarterly reports, ninety-two percent of the disposed cases had guilty verdicts. This suggests that the videotaping increased the number of guilty verdicts. This increase might be thought to be partially caused by the more problematic cases not yet being disposed by the end of each of the quarters in question (See Figure 8). When the time period is controlled in the baseline data, however, the ratio of guilty verdicts is still lower than the post-intervention level. The baseline cases that were disposed within ninety days were found to be guilty ninety percent of the time.

Status of Cases
Quarterly Reporting Periods
(Aggregate Data, Sum = 2531)

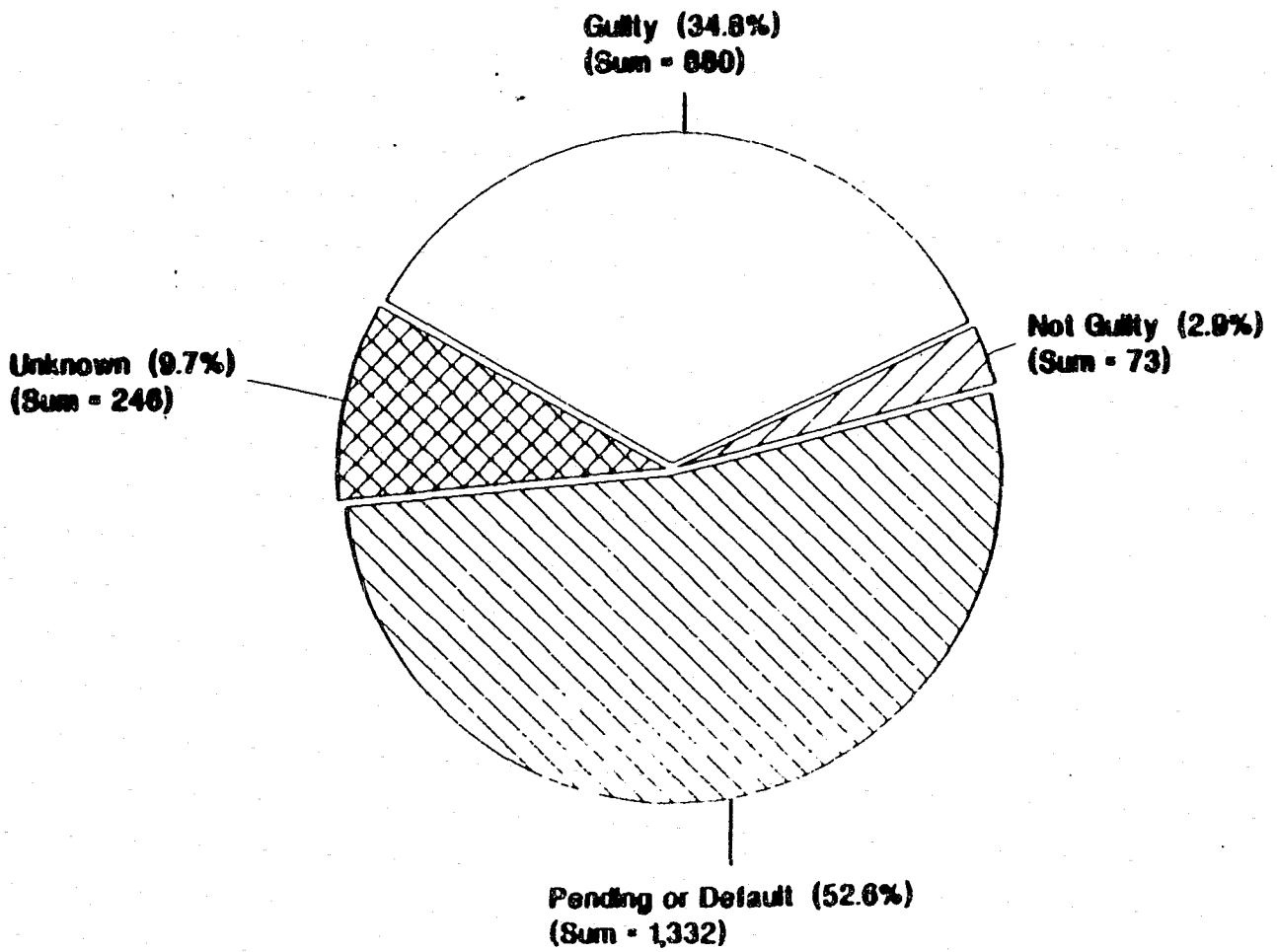


Figure 7

Disposition of Cases by Percent
for Individual Baseline Data and Aggregate Quarterly Reports

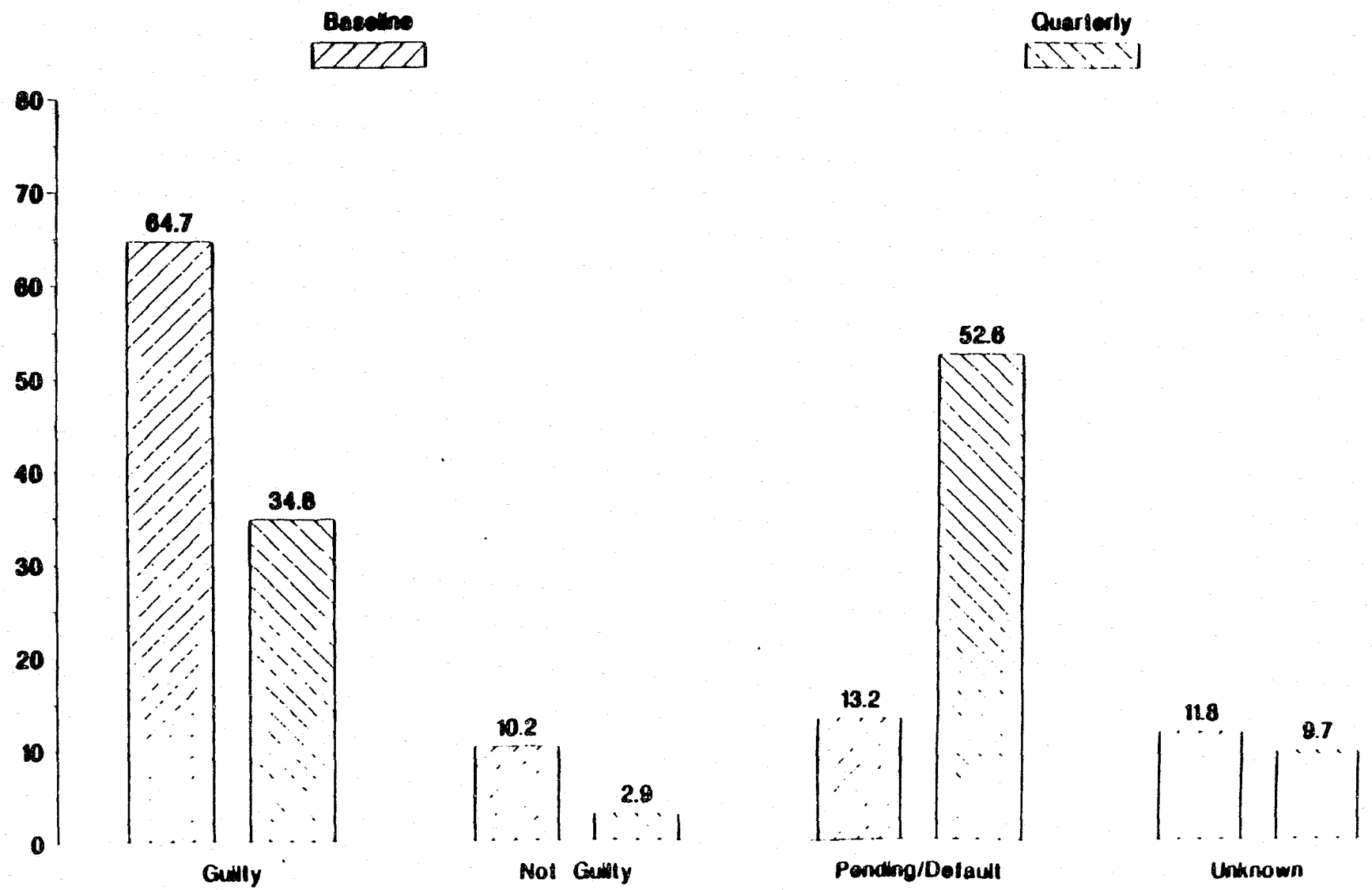


Figure 8

Method of Disposition

The proportion of dispositions resulting from guilty pleas is greater for the post intervention cases. Forty-seven percent (446) of the cases were settled by a plea. In the baseline data only one-fourth of the cases were disposed by guilty pleas (See Figures 4 and 9). As was the case with the guilty verdicts, however, there was an increase in the number of pleas and a decrease in the proportion of cases that had reached a final disposition by the end of each ninety day period. Thirty-six percent (902) cases included information on the method of disposition. The remaining 1,629 cases were either pending or the method of disposition was unknown (See Figures 9 and 10).

It is possible to control for the difference in length of the baseline time period as compared with the post intervention data by selecting only those cases from the baseline data that were disposed within ninety days. Forty-eight percent (880) of the 1,818 individual cases were disposed in ninety days or less. When these cases are selected, the percentage of cases with a known disposition (766) that were disposed by

Method of Disposition,
Post Intervention Quarterly Reporting Periods
(Aggregate Data, Sum = 2531)

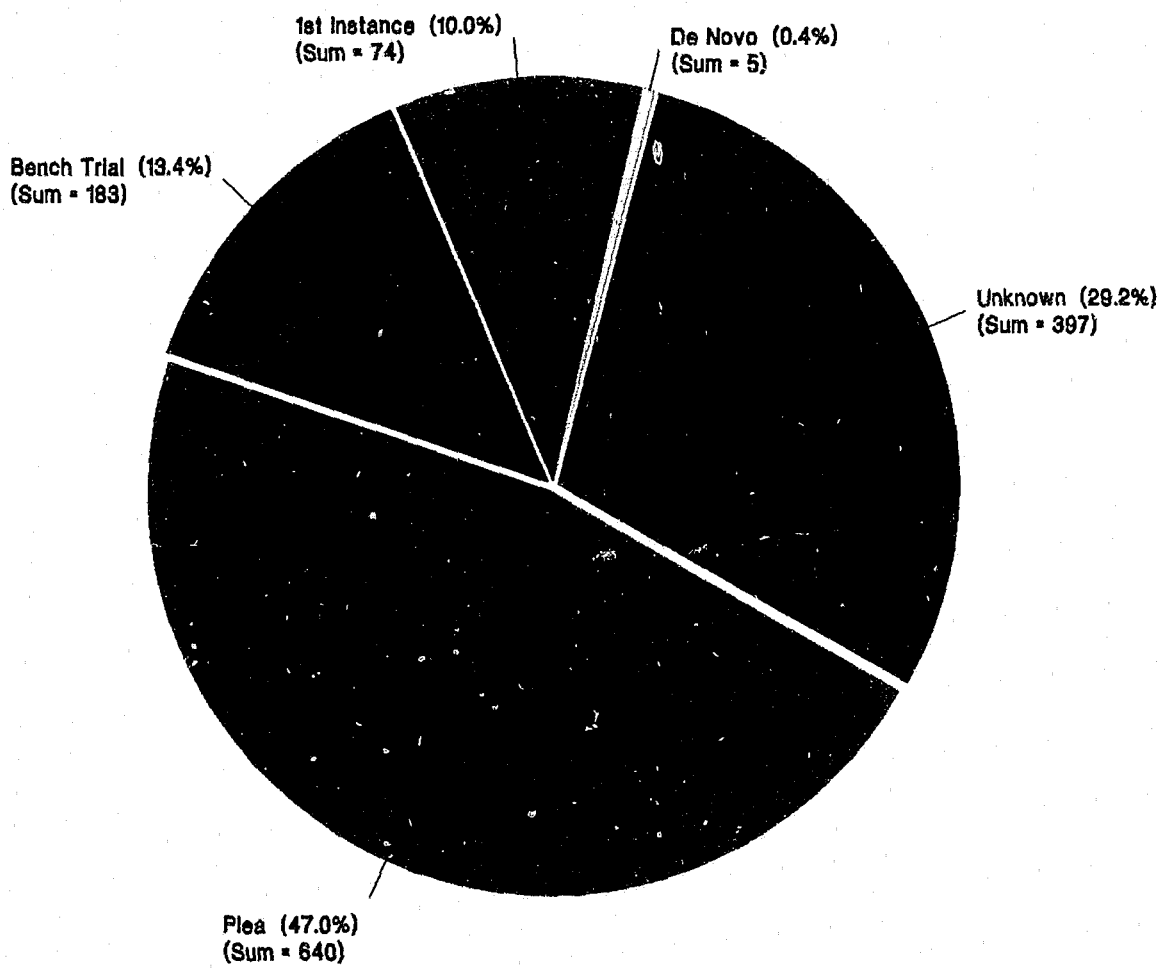


Figure 9

a plea is less than that for the disposed cases in the quarterly reports. Half (386) of the defendants plead guilty within ninety days as compared with the seventy one percent (640) of the known dispositions in the post intervention data. Twenty percent (183) of the disposed post intervention cases were settled by bench trials, eight percent (74) by first instance jury trials, and less than one percent (5) by trials de novo as compared with thirty-five percent (268) bench trials, fourteen percent (110) first instance jury trials, and less than one percent (2) trials de novo in the first ninety days of the baseline reporting period (See Figure 10).

The percentage of known methods of disposition is roughly equivalent for the baseline and post intervention data. In both instances trials de novo constituted an insignificant (less than one percent) proportion of the methods of disposition (See Figure 10).

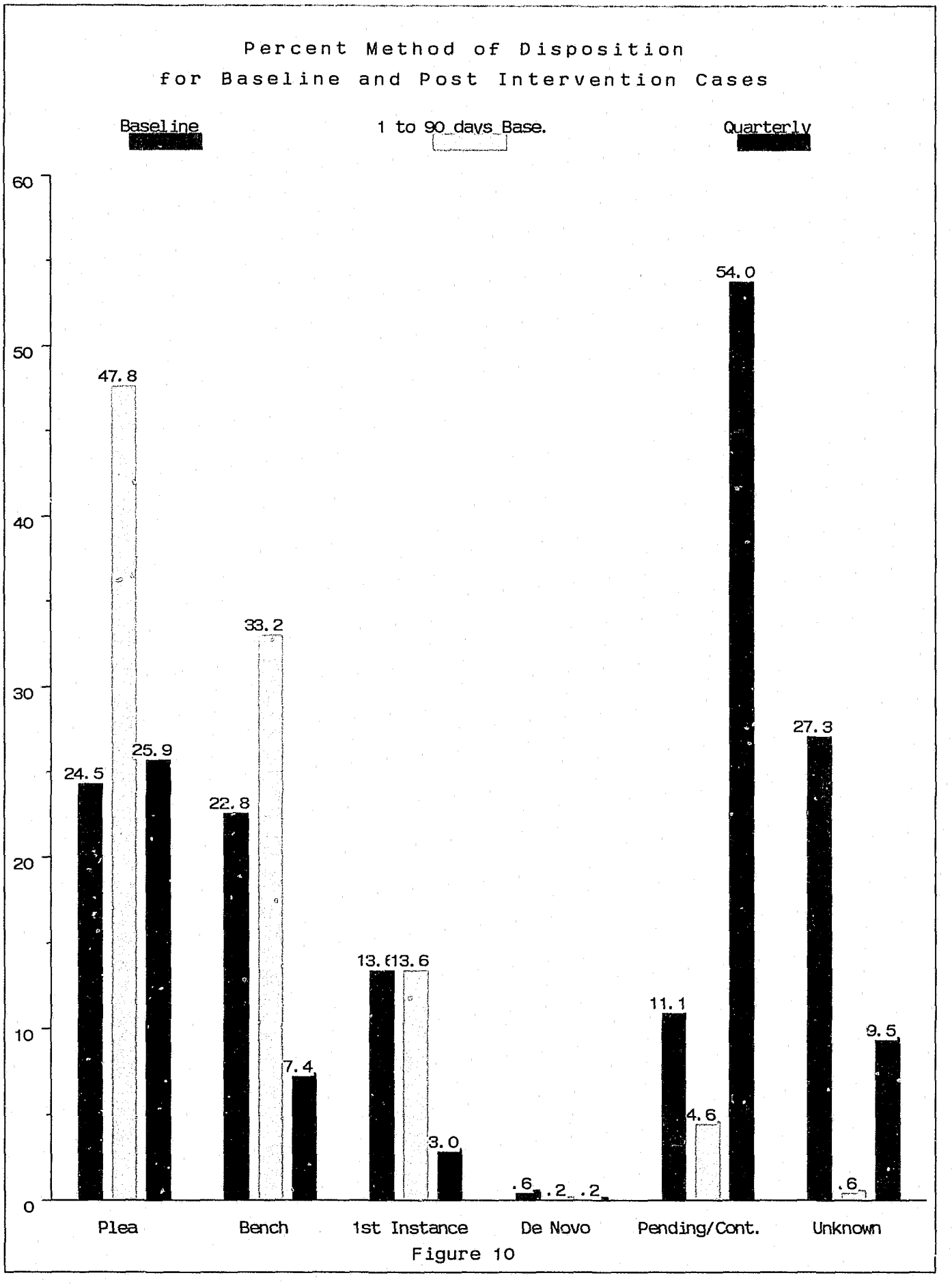

Percent Method of Disposition
for Baseline and Post Intervention Cases
Baseline
1 to 90 days Base.
Quarterly
60
50
40
30
20
10
0
24.5
47.8
25.9
22.8
33.2
7.4
13.6
13.6
3.0
.6
.2
.2
11.1
4.6
54.0
27.3
.6
9.5
Plea
Bench
1st Instance
De Novo
Pending/Cont.
Unknown

Figure 10

Length of Time From Arraignment to Disposition

Videotaping was associated with faster dispositions. Approximately thirty-seven percent (943) of the post intervention cases included an estimate of the length of time from arraignment to disposition. A larger proportion of these cases were disposed within a shorter period of time than were those baseline cases (808) that were disposed within ninety days. More than ninety-one percent of the 943 cases are disposed within sixty days. In the baseline data, approximately eighty-two percent of the cases that reached a disposition in ninety days or less were complete within sixty days.

Fifty-seven percent (541) of the post-intervention disposed cases were resolved within thirty days of arraignment. This is a higher proportion than in the baseline data. For the baseline cases that were disposed within the first ninety days of the reporting period (808), we find forty-seven percent (382) disposed within thirty days. Another twenty-two percent (210) of the post-intervention cases were disposed between thirty-one and forty-five days after arraignment as compared with only thirteen percent (103) for the baseline cases that reached a final disposition within ninety days.

TABLE 3

LENGTH OF TIME FROM ARRAIGNMENT TO DISPOSITION FOR BASELINE AND POST INTERVENTION CASES THAT REACHED A FINAL DISPOSITION

	BASELINE			POST INTERVENTION	
DAYS TO DISPOSITION	NUMBER OF CASES	PERCENT TOTAL CASES	PERCENT DISPOSED WITHIN 90 DAYS	NUMBER OF CASES	PERCENT TOTAL CASES
1 To 30	382	37.3	47.3	541	57.3
31 To 45	103	10.0	12.7	210	22.3
46 To 60	177	17.3	21.9	121	12.8
61 To 75	66	6.4	8.2	46	4.9
76 To 90	80	7.8	9.9	25	2.7
91 To 105	30	2.9	N/A	0	N/A
106 To 120	51	5.0	N/A	0	N/A
121 To 365	136	13.3	N/A	0	N/A
Subtotal 1 To 90	808	78.8	100.0		
TOTAL DISPOSED	1,025	100.0	100.0	943	100.0
Pending or Default	228			1,332	
Status Unknown	565			256	
TOTAL ARRAIGNED	1,818			2,531	

Disposition of Videotaped Cases

Not all of the cases that were handled by the police departments during tha quarterly reporting periods were actually videotaped. The 2,245 cases that were videotaped represent approximately ninety percent of the total arraignments during the first three quarters of reporting. Some arrestees were not videotaped because of equipment problems, temporary lack of blank videotapes, and officers responding to emergencies. An analysis of the differences between the cases that were videotaped as compared with those that were not reveals some important differences.

More of the videotaped cases were disposed than non-videotaped cases. A positive correlation of .29 was found between the percent of cases that were videotaped and the percent of cases that were disposed. The significance level of this correlation was .0017. The bivariate regression of the percent disposed on percent videotaped estimates 15.2 percent dispositions for no videotaping and 45.7 percent dispositions for complete videotaping.

In addition, there was a significant difference in the percentage of OUI arrests that were disposed via a plea. A correlation of .21 was found with a level of significance of

.0228. The regression of percentage pleas on videotaping predicts that 11.6 percent plea with no videotaping and 32.8 percent plea with uniform videotaping.

The relationship between cases that were disposed either by pleas or by bench trials, which are the two quickest methods of disposition, and cases which were videotaped is even stronger with a correlation of .29 with a significance of .0021. The regression of percent pleas on videotaping predicts that a complete lack of videotaping results in 10.3 percent of the cases being disposed by a plea or bench trial as compared with 41.8 percent when all of the defendants are videotaped.

The percentage of arrests that resulted in guilty dispositions is also significantly different for the two groups. There is a positive correlation of .31 the .01 level of significance between videotaping and guilty dispositions. There was no significant difference between the percent of cases that had been disposed and the percent of guilty verdicts. The regression of percentage guilty on percent videotaping estimates that without videotaping 10.4 percent of cases would result in a guilty plea or verdict. With videotaping 41.4 percent would have guilty dispositions within the first ninety days If videotaping were used uniformally this could quadruple

the number of sentenced OUI offenders for those communities not yet videotaping, posing a challenge for the correctional system to handle.

Although more cases were disposed for the group that was videotaped, there was no significant difference between the proportion of disposed cases that reached a final disposition as the result of a plea. In addition, there was no significant difference between the two groups in terms of length of time from arraignment to disposition.

SUMMARY AND RECOMMENDATIONS

SUMMARY OF ISSUES

Data from the study support two primary conclusions. Videotaping does aid the prosecution of first time, inexperienced, or heavy drinking drunk drivers. It is substantially less effective against experienced offenders who are impaired, but not falling down drunk. Among arrestees having few or no known priors, it increases guilty pleas or verdicts and speeds disposition of the cases. Among arrestees having multiple priors, it does not increase guilty pleas or verdicts and may increase the length of time to disposition.

It does not appear to reduce the proportion of First Instance jury trials, but it does seem to reduce the number of de novo trials. It does not reduce the amount of officer overtime; and, in fact, increases the time needed to book a case. There were insufficient data to determine whether overall costs were reduced.

The experience of court, police, and other criminal justice officials has suggested that videotaping provides a useful record of officer behavior. However, the usefulness of the tape of the arrestee is affected by their willingness to cooperate with officers during videotaping. If a subject voluntarily performs sobriety tests in front of the camera, it may produce useful evidence. If the subject refuses to perform any sobriety test or do anything in front of the camera, no useful information may be provided on the subject's degree of impairment. Qualitative observations also suggest that juries are not swayed by testimony that an arrestee refused to perform any tests for videotaping. They may even think it is evidence the offender did not have impaired mental faculties. Reports indicate that it is the more experienced drinkers who are less likely to perform sobriety tests during videotaping, which supports the study findings that videotaping is less effective for multiple offenders. In some states a per se statute or a stiff penalty for non-cooperation is used to

provide evidence of intoxication, countering the non-cooperation of the offender.

The effectiveness of the behavioral tests in distinguishing impaired from non-impaired drinkers has been demonstrated in experimental studies. Even if more effective tests were available, their worth would depend on the willingness of the driver to perform them under videotaping. In some states refusal to perform the test is prima facie evidence of impairment. In other states a sentence or fine may be imposed (like Ch. 90 § 24(1)(f) in Massachusetts), but the penalty is often less severe than that resulting from an OUI guilty verdict.

Members of the Governor's Statewide Anti-Crime Council have expressed a variety of views on whether the benefits of videotaping justify the costs. Some hold the view that if videotaping doesn't work equally well for all OUI arrestees, it should not be done. Others hold the view that the fact it works for some justifies using it for all. In such a discussion it is important to keep in mind that it may be cost effective in some communities, but not in others. It is also true that there are less costly procedures that also work for only some offenders.

As long as breath analysis is not mandatory the proce-

dures that research indicates as working for all have two drawbacks. Either they are very expensive to implement because they require specialized equipment or they utilize officers' expert judgment--which, though highly accurate given sufficient training, is open to challenge by defense lawyers. An example of the former is a computerized test of visual coordination using lazer technology. The procedure works, but it would be extremely expensive to outfit a van so the test could be administered at sobriety roadblocks. The equipment also could not be installed in individual patrol cars. The horizontal gaze nystagamus test (a test of the ability to move one's eyes horizontally in a uniform, coordinated manner), like the more widely used behavioral sobriety test, is an example having the second problem. It is a procedure that has been validated as differentiating intoxicated from non-intoxicated persons. However, its effectiveness as evidence depends on the credibility of testimony by the arresting officer.

This underscores the fact that legal and administrative initiatives are needed in addition to technological ones. In states where <u>per se</u> statutes exist, such a statute augments the credibility of the officer's testimony and is likely to lead to more effective use of officers' testimony. In states where breath analysis is mandatory or is subject to a strong

penalty upon refusal, relatively inexpensive, highly portable breath analyzers are often used for field screening with a more rigorous test done if the driver fails the screening test.

VIDEOTAPING RECOMMENDATIONS

- Videotaping of OUI offenders could be more widely considered for communities in which OUI offenders have fewer priors and that have adequate financial resources for taping all offenders.

- Videotaping could also be considered for those communities in which better documentation of booking procedures is desired.

- Communities in which there are many repeat offenders who refuse to perform any sobriety test in front of a camcorder should consider alternative strategies for these offenders.

Police records and officer testimony will provide information on the extent to which first time or multiple offenders are arrested in a given community. For these communities that videotape this will result in speedier and more certain

punishment for guilty offenders. It will also allow individuals having a more questionable charge to receive clearer documentation of their innocence. Communities having a higher percentage of habitual drunk drivers and more restricted finances need to closely examine whether alternative strategies are less expensive or more effective. Police records and officer experience will also supply information on the extent to which a given community has many offenders who refuse an alcohol test.

OTHER RECOMMENDATIONS

Other tools in addition to videotaping are needed by police in combating drunk driving. Other evidence is needed especially for the drinkers who can act sober in front of the camera.

- The Anti-Crime council should renew efforts to pass a *per se* statute and allow testimony regarding defendants refusal to take a breath or blood alcohol test.

- The current 120 day suspension of a driver's license for refusal to take an alcohol test (Ch. 90 § 24(1)(f)) should be lengthened and/or also incur a substantial fine.

- More extensive use of the horizontal gaze nystagamus test should be considered.

- Another tool the Anti-Crime Council might consider is a procedure matching driver's licenses with vehicle registrations to more easily identify OUI offenders who drive with suspended licenses.

When drunk drivers have their licenses suspended, it would be possible to develop a computer flag for the registrations of any vehicles owned by them. Officers observing a vehicle being operated by a person having some similarity to the drunk driver would then have reasonable cause to stop the vehicle. This would allow determining whether the driver was driving without a license and whether there was any obvious indication of inebriation. Such a flag could be modified to identify other persons who had their licenses suspended that might be driving their vehicle. Suggestions have also been made to suspend the vehicle registrations and require surrender of the license plates of convicted drunk drivers. However, this strategy requires close attention requirements of due process and any applicable state laws regarding vehicle registration suspension.

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