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EVALUATION AND SYSTEM DESCRIPTION OF ASAP JUDICIAL SYSTEMS

Volume I: Technical Report

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16. Abstract This study is a description and evaluation of the adjudicative-disposition systems in operation in five states and communities with Federally funded drinking-driver control programs called Alcohol Safety Action Projects (ASAP). The five sites selected had undergone significant change in the legal or judicial system or had developed innovative approaches for handling drinking-driving cases. Case studies were conducted for Puerto Rico; Phoenix, Arizona; Los Angeles, California; Hennepin County, Minnesota; and Idaho. A final technical report consists of a summary and analysis of the case-study findings with final conclusions and policy recommendations.

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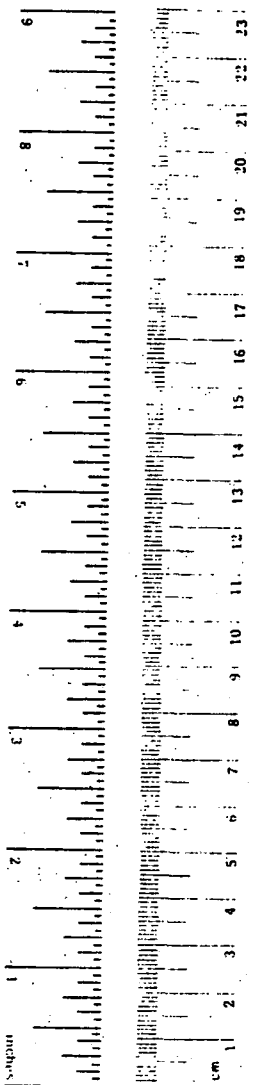
METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
in	inches	*2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
		AREA		
in^2	square inches	6.5	square centimeters	cm^2
ft^2	square feet	0.09	square meters	m^2
yd^2	square yards	0.8	square meters	m^2
mi^2	square miles	2.6	square kilometers	km^2
	acres	0.4	hectares	ha
		MASS (weight)		
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
		VOLUME		
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.95	liters	l
gal	gallons	3.8	liters	l
ft^3	cubic feet	0.03	cubic meters	m^3
yd^3	cubic yards	0.76	cubic meters	m^3
		TEMPERATURE (exact)		
°F	Fahrenheit temperature	5 9 (after subtracting 32)	Celsius temperature	°C



Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
		AREA		
cm^2	square centimeters	0.16	square inches	in^2
m^2	square meters	1.2	square yards	yd^2
km^2	square kilometers	0.4	square miles	mi^2
ha	hectares (10,000 m^2)	2.5	acres	
		MASS (weight)		
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
		VOLUME		
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m^3	cubic meters	35	cubic feet	ft^3
m^3	cubic meters	1.3	cubic yards	yd^3
		TEMPERATURE (exact)		
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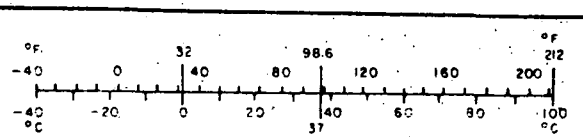

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- Forst Lowery, Hennepin County, Minnesota ASAP
- Moya G. Easterling, Phoenix, Arizona ASAP
- Warren L. Bennett, Los Angeles County, California ASAP
- George B. Lenz, Idaho ASAP
- Sylvia O. de Hufstetler, Puerto Rico ASAP

National Highway Traffic Safety Administration personnel, especially the staff of the Adjudication Branch of the Driver Licensing and Adjudication Division, Office of Driver and Pedestrian Programs, provided continuing inspiration, direction, and assistance. Mr. George D. Brandt, the Branch Chief, was largely responsible for the focus of the study on the five innovative systems selected and manifested a continuing concern for needed understanding of judicial system dynamics and change processes. Mr. Otto T. Hall, the contract technical manager, and to a lesser extent Mr. Paul F. Fish, his predecessor, were completely supportive and contributive in facilitating the ultimate development and production of the six-volume study.

H. Laurence Ross, Ph.D., provided invaluable assistance in the initial design of the case-study approach and critiqued an early draft of the initial case study report prepared. His observations and comments were most beneficial, demonstrating the value of the insight which a disinterested observer of a study such as this can offer.

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1.0 INTRODUCTION

1.1 Background

This is a selective study of the experience of the judicial systems operating in those states and communities which participated in a federally sponsored program of special drinking-driver control activities called Alcohol Safety Action Projects (ASAPs). These projects, which involved increased attention to the adjudication and disposition of drinking-driving offenders, grew out of increasing national concern over the relationship of alcohol and highway safety.

In 1968, the Secretary of the U.S. Department of Transportation, responding to a requirement levied by the Congress, issued a comprehensive report analyzing the role of alcohol in highway crashes. This report concluded that (1) each year the use of alcohol by drivers and pedestrians results in 25,000 deaths (or approximately 50% of the total highway fatality loss) and is involved in at least 800,000 motor vehicle crashes; and (2) two-thirds of the alcohol-related fatalities involve a small portion of the driving population who are either problem drinkers or alcoholics. Thus, the report recognized a significant social problem and identified a class of drivers responsible for much of the problem.[1]

In July 1969, the Secretary announced the establishment of the national Alcohol Safety Action Program under the National Highway Traffic Safety Administration (NHTSA) to respond to the problem of alcohol-related highway losses. Thirty-five special Alcohol Safety Action Projects were authorized to begin operation during 1971 and 1972. Recognizing the ineffectiveness of piecemeal and uncoordinated efforts in the past in combatting drinking drivers, NHTSA adopted a systems approach to the design and operation of the ASAPs:

> The ASAP concept was designed as a systems approach to surround the problem drinker with a set of countermeasures designed to identify him on the road, make decisions regarding rehabilitative procedures, and then take action to put these measures into effect.[2]

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1. U.S. Department of Transportation, 1968 Alcohol and Highway Safety Report, August 1968.

2. National Highway Traffic Safety Administration, Alcohol Safety Action Projects, Evaluation of Operations-1972, Vol. III (1974), p. 1.

Although the primary target group of the program was the problem drinker, the program also intended to deter social drinkers from driving while impaired through traditional measures, such as increased and publicized drinking-driving enforcement and public information on responsible drinking and driving behavior.

The ASAPs, which were funded at varying levels of approximately $2 million for a three-year operational period, were locally managed action programs which encompassed diverse geographic areas (e.g., state, city, county, or multi-county area). The objectives set by NHTSA for these ASAPs were:

- Demonstrate the feasibility and practicability of the systems approach for dealing with the drinking-driver problem, and further, demonstrate that this approach can save lives.

- Evaluate the individual countermeasures within the limits permitted by the simultaneous application of a number of different countermeasures at the same site.

- Catalyze each state into action to improve its safety program in the area of alcohol safety.

These ambitious objectives were to be achieved through implementation of a comprehensive action plan developed by each ASAP and approved by NHTSA. Each plan for implementing the ASAP systems approach to drinking-driver control included integrated activities in a number of countermeasure areas such as enforcement, prosecution and courts, rehabilitation, public information, licensing and registration, legislation, presentence investigation and probation, and project administration and evaluation.

1.2 General Objectives

The judicial systems at the ASAPs were characterized by their diversity in organization, procedures, personnel, and legal structure. Each judicial component of an ASAP drinking-driver control program was confronted with a multiplicity of demands and problems. Some systems responded with innovative, effective solutions, others collapsed despite well-intentioned efforts. The National Highway Traffic Safety Administration determined that its evaluation of these judicial system activities at ASAP sites would be enhanced through a selective study of several of the ASAP judicial systems which were most innovative or effective.

To accomplish this evaluative study, NHTSA contracted with Indiana University to provide the evaluation support by means of:

- A reveiw of the detailed project plans and quarterly and annual report data of the 26 ASAPs in operation in mid-1974 in order to identify five sites which had effected major system changes and/or which had developed innovative methods to more effectively adjudicate drinking-driving cases.

- Preparation of in-depth analyses of methods of organization and legal structure changes at each of the selected sites.

- Construction of a summary of the findings and conclusions of the site studies and an overall assessment relying heavily on the site studies, but also including material from other ASAPs.

1.3 Study Methodology

Approach. The basic approach to the ASAP judicial system evaluation was to prepare an in-depth descriptive and analytical case study of selected sites with innovative or effective programs. A sequence of five project tasks was performed to achieve the five case studies and a final summary presentation and analysis.

(1) Review of existing information on ASAP judicial systems, using the criteria of innovativeness and effectiveness to select five sites for in-depth case study.

(2) Conduct of site visits to gather the required data to prepare in-depth descriptions of the judicial system for each selected site.

(3) Preparation of a report of each of the five site case studies which synthesizes the experiences of that site in developing and implementing innovative and effective judicial system improvements and provides suggestions on how such improvements could most feasibly be transferred to other jurisdictions.

(4) Preparation of a final report of project activity which includes a summary of the findings and conclusions of the site studies and an overall assessment relying heavily on the site studies, but also including material from other ASAPs.

This volume (Technical Report) represents the "final report" of the study summary and assessment, while a report on each of the case studies is contained in a separate volume in the six-volume Final Report:

Volume I: Technical Report

Volume II: Puerto Rico Case Study

Volume III: Idaho Case Study

Volume IV: Hennepin County, Minnesota Case Study

Volume V: Phoenix, Arizona Case Study

Volume VI: Los Angeles County, California Case Study

Data Collection. These were three primary methods used to obtain relevant information about each site studied.

(1) Prior experience. The study team had worked extensively with many of the ASAPs under prior NHTSA contracts to study drinking-driver control systems and to develop and provide short-term seminars for key system personnel in each ASAP program (e.g., judges, prosecutors, and presentence investigators and probation officers). These seminars created an opportunity for considerable on-site investigation and communication with system personnel. At the time of conduct of the case-study data-collection, the study team was familiar with each site (except Minnesota) because of the prior contract involvement.

(2) Review of ASAP-generated literature. Each ASAP was required to prepare and submit to NHTSA periodic progress reports, culminating each year in an annual report documenting the site's activity and evaluating the major countermeasures. These evaluative reports, called analytic studies, and other available descriptive information were received from the ASAP and reviewed by the study team prior to the on-site phase of each case study.

(3) On-site interviews and observation. The major method employed for collecting information was the on-site interview activity. A two-man study team spent five days on site conducting interviews with thirty to forty different sources, usually key actors in the local drinking-driver control system. Whenever possible, the team physically observed system operations (e.g., courtroom proceedings and police patrol). A general open-ended interview guide, oriented to the specific objectives of each case study, was used in all interviews.

The guide was designed to allow the interviewers to learn what happened at the site, why an event or change occurred, what impact it had, and what the person interviewed felt--his opinions or attitudes about an event, program, law or person.

1.4 Site Selection

At the start of the study, an attempt was made to collect as much of the ASAP-generated literature as available. The purpose of this activity, which was reasonably successful, was to identify five sites which had demonstrated major changes, innovations, or achievements for selection as case-study targets. Assessment summaries were prepared for all the ASAPs in order to facilitate the screening process. After review of all appropriate factors, such as the type of key decision-maker (prosecutor vs. judge), geographic scope of the project (state vs. local), the administrative structure, the probable availability and reliability of data (since no independent collection of quantitative data was contemplated), the type of innovation or change, and the anticipated cooperation of the ASAP staff (local assistance was vital), five candidate sites were proposed and accepted by NHTSA.

The selected sites and the primary objectives for each case study are summarized. The scope and approach, and major findings and conclusions are described more fully in other sections of this report:

(1) Phoenix, Arizona. The primary objective of this study was to document and assess the site's efforts to manage an exceptionally large volume of drinking-driving cases and yet provide incentive or inducement for offenders to participate in appropriate therapy. The site, with ASAP support, had increased judicial resources and adopted innovative case processing techniques. The current PACT program, which has an earned plea-bargain feature, received emphasis. (See Volume V.)

(2) Hennepin County, Minnesota. The primary objective of this study was to determine the effect of innovative drinking-driving legislation on the operation of the judicial system. Minnesota has been a leader in the adoption of drinking-driving control legislation: implied consent (1961); .10% presumptive limit (1967); pre-arrest breath test (1971); and .10% illegal per se (1971). This study focused on the impact of the latter two laws. (See Volume IV.)

(3) Idaho. The primary objective of this study was to examine the operation of a statewide ASAP system with a progressive judicial system structure (Idaho has a unified state court system and centrally administered presentence investi-

gation) and the impact of strict drinking-driving control laws (mandatory penalties and .08% presumptive limit) on that system. (See Volume III.)

(4) Los Angeles County, California. The main objective of this study was to examine the three "presentence investigation" systems utilized by the three district courts operating in the mini-ASAP area. The different systems are (1) brief presentence screening, (2) post-sentence investigation, and (3) traditional felony-type presentence investigation. (See Volume VI.)

(5) Puerto Rico. The main objective of this study was to assess the impact of the statutory enactment of the ASAP concept. During the operational phase of this project, key legislation was passed which (1) adopted the NHTSA operational definition of problem drinking driver as the legal definition and (2) mandated a presentence investigation and drinker-type classification of all convicted drinking-driver offenders. In addition, Puerto Rico law provides for mandatory indeterminate driver's license suspension upon conviction with relicensing earned through rehabilitation--a variation on the "incentive system" found in many ASAPs. (See Volume II.)

2.0 PUERTO RICO CASE STUDY SUMMARY

2.1 Objectives and Approach

The primary objective of the Puerto Rico ASAP study was to assess the impact of (1) the statutory adoption of the National Highway Traffic Safety Administration's operational definition of a problem drinker as the legal definition for court disposition purposes, and (2) a mandated presentence investigation and drinker-type classification of all convicted drinking-driving offenders.

No independent data collection was attempted for this study; rather, the study depends entirely on ASAP evaluation and other local government information sources for statistical materials and quantitative evaluations of performance. Such information is readily available both from the sources and from NHTSA, and plays actually a minor part in the study itself. The ultimate purpose of this study is not to measure quantitatively how a system of drinking-driving control works, but rather to measure qualitatively why a system of drinking-driving control does or does not work. Accordingly, the report is not quantitatively oriented (although it does include some quantitative information for comparative purposes). It is rather oriented to an historical method of analysis which attempts to assess from oral and written sources the actual processes of change and the actual motivation for system operations in an explanatory, temporal sequence. Thus, information sources are difficult to document: they range from casual impressions gained in social conversations with Puerto Ricans unconnected with the ASAP to the interminable statistical tables of the ASAP evaluators' analytic studies. The information has been sifted by researchers familiar with the Puerto Rico ASAP from relatively long experience, and has been evaluated in light of the experience of the research team with this and other ASAPs around the United States.

The primary data collection for the project consisted of a month-long preparatory period followed by a week-long site visit in Puerto Rico for the purpose of examining official publications of the Puerto Rico ASAP and its evaluators and for the purpose of interviewing many of the actors in the Puerto Rican system of drinking-driving control. Most of the nonofficial information about the Puerto Rico ASAP is thus anecdotal in form. This information was gathered in a series of interviews utilizing a questioning technique guided by a collection instrument, but freely ranging in scope at the discretion of the interviewer. Persons interviewed included the entire ASAP staff, legislators, police officers, prosecutors, public defenders, judges, probation officers,

physicians and therapists working in alcohol rehabilitation, driver licensing officials, advisory committee members, news media representatives, and highway safety agency officials. These interviews, in addition to their function of gathering new information, served to allow the researchers to confirm or disprove previously formed ideas about the Puerto Rico ASAP gathered during previous trips to the island, conversations with the ASAP staff in the site visit preparatory period, and readings and interpretations of the official Puerto Rico ASAP literature.

One of the interviewers at the site visit was making his first trip to the Puerto Rico ASAP, but had visited and instructed judicial, prosecutors', and probation seminars at many other ASAP sites. The other interviewer had been involved with the Puerto Rico ASAP since August 1973 due to his participation in judicial, prosecutors', and probation seminars pursuant to another NHTSA contract.[3] Accordingly, he has been able to apply information and impressions gathered on these occasions, as well as the information gathered during the most recent site visit, to this report.

2.2 Findings and Conclusions

Background. Puerto Rico is an island located 1,000 miles east of Miami. The island is small, only 35 miles by 100 miles, and is roughly rectangular in shape. Its topography is rugged, having a small coastal plain which quickly rises to mountains in excess of 4,000 feet high. The climate is tropical with the temperature seldom falling below 70°F. The island is a Commonwealth of the United States, or as it is called in Spanish, the language of the island, an estado libre asociado (Associated Free State). Island government is on the American model, with a governor, a bicameral legislature, and an independent structure of supreme and lower courts. The people of Puerto Rico are American citizens, and thus the island is part of the American nation, but not a part of the United States itself.

3. In this capacity, he had periodically exchanged information with the Puerto Rico ASAP staff over the two years immediately preceding the site visit for this report. He had additionally visited the island and the Puerto Rico ASAP on six previous occasions associated with the NHTSA-sponsored seminars. He had also acted as a seminar instructor for judicial seminars conducted in March 1974 and October 1974, a prosecutors' seminar in May 1974, and two presentence-probation seminars in June and July 1974.

Puerto Rico, by American standards, is a poor island, but its people have the highest per capita income in all of Latin America. The island is densely populated with its 3.0 million inhabitants for an average of almost 885 people per square mile. The island has more than 7,300 miles of roads, approximately 750,000 registered vehicles, and more than 790,000 licensed drivers. Nearly half of the population is under the age of 20.

The language of Puerto Rico is Spanish. Virtually everyone on the island speaks at least some English, due to the mandatory teaching of that language in the island schools, but the language of everyday life, of business, and of the law is Spanish. The entire criminal justice system (with the exception of the Federal courts) operates in the Spanish language, and the law of Puerto Rico is written in Spanish (although the official English translation also has the force of law). Puerto Rico is thus caught between two cultures. This becomes a particular problem in its dealings with the Federal government. For example, all materials required to be submitted to NHTSA by the Puerto Rico ASAP had to be written or translated into English. Such an exercise is quite useful (indeed even essential) if NHTSA officials are to monitor and understand the progress of the ASAP. The exercise is, however, pointless for the Puerto Ricans, as they have no particular use for the English language materials other than to ship them to the New York regional office or to Washington. This generation of English language materials was an additional burden faced by the Puerto Rico ASAP that the other ASAPs did not have. The task consumed much time and energy, and sometimes led to administrative misunderstandings and mistaken meanings.

Puerto Rican cultural differences also created some problems for project administration. Puerto Rico has a proud and ancient cultural heritage considerably older than that of the United States. Columbus discovered Puerto Rico in 1493, and the first Spanish Governor, Ponce de Leon, arrived in the early 1500s. Puerto Rico boasts a culture over 450 years old. This culture is not in the least alien to the culture of the United States, as both have arisen from the Western European tradition. The differences, however, can cause difficulties of understanding at the cultural interface.

Before ASAP. Before the inception of the Puerto Rico ASAP, the offense of DWI resulted in a criminal justice system process little different from the process involved with any other criminal violation. The only unusual aspect of the process was that DWI cases were heard in the Superior Court rather than the District Court where all other traffic offenses were heard. This jurisdictional difference is

explained, however, by the fact that in the recent past no prosecutors were available to represent the government in the District Court traffic cases. The legislature sought, in 1960, to remedy this deficiency in DWI cases by transferring them to the Superior Court. This procedural change is the earliest indication that the legislature of Puerto Rico viewed DWI as an offense apart from other traffic offenses both in its seriousness and in its potential for procedural difficulty.

DWI cases in Puerto Rico before May 30, 1973 were virtually all processed in the same fashion. The first step in the process required that the police arrest a driver for the offense of DWI. Such an arrest was a relatively rare event (especially given the high incidence of drinking and driving in Puerto Rico), but it usually resulted either from the observation of a police officer of erratic driving or from the discovery by a police officer at an accident scene that one of the drivers had been drinking. After the driver had been placed under arrest, the police officer was required to offer either a blood or urine test for blood alcohol.[4] The driver was permitted to choose the test he preferred, but the normal response of the driver was to refuse the test entirely. If the driver agreed to the test, then the officer took him to a hospital where the appropriate sample was taken. The sample was then divided into three parts: one for immediate analysis, one for the possession of the driver, and one held in reserve for later analysis by the court should a discrepancy arise between the official analysis and any analysis done by the driver on his own sample.

Following the chemical testing procedure, the officer then took the driver to the nearest magistrate (either a J.P. or a District Court judge) for a probable cause hearing. If the driver had refused the chemical test, the officer also had to file appropriate sworn statements to that effect before a prosecutor (or directly before the magistrate at the probable cause hearing). The magistrate took testimony from the arresting officer, any witnesses, and the defendant himself (if the defendant so desired). The magistrate then either found "no probable cause" and released the driver, or he found "probable cause" and issued a warrant binding over the defendant to the Superior Court for arraignment and trial. The driver was then either jailed, bonded out, or released O.R. in the discretion of the magistrate.

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4. The statute authorized breath testing when available, but none was available.

Following the probable cause hearing closely was the transmission of all official documents so far generated in the case to the prosecuting attorney, who then proceeded with the next stage in the process--the prosecutor's investigation. The prosecutor's investigation in Puerto Rico is a formal proceeding wherein the prosecutor calls witnesses, under oath, to give testimony concerning the case. He may take statements from the arresting officer, the hospital personnel who administered the tests, the chemist who performed the analysis of the blood or urine sample, any witnesses to the event, the defendant himself, and any other persons who might have had relevant knowledge of the case. Following the hearing, the prosecutor then either decided that he lacked sufficient evidence to convict (in which case he would nolle prosequi the case) or he decided that he had sufficient evidence to convict (in which case he would file a bill of information with the Superior Court formally accusing the driver of DWI).

After the bill of information was filed by the prosecutor, the case would be docketed in Superior Court for arraignment (the defendant having already been bound over to the court by the magistrate who heard evidence of probable cause). At the arraignment the defendant would be required to plead. A plea of guilty would result in scheduling the defendant for a future appearance for sentencing. A not guilty plea would result in scheduling the defendant for trial.

Trials for DWI in Puerto Rico were (and still are) bench trials. There is no right to trial by jury for DWI in Puerto Rico. The trial followed a normal pattern with the prosecution calling the arresting officer, the chemist who performed the blood or urine analysis, and any other witnesses for the people. The defense would then offer its evidence, and the judge would render a verdict. The trial seldom lasted more than a morning or an afternoon session, and nearly half the time resulted in an acquittal of the accused.

Development of the ASAP System. Before May 30, 1973 there effectively was no functioning ASAP system in Puerto Rico. After that date, when the new Law No. 59 became effective, there was a legislatively created ASAP system, but it lacked adequate personnel to function. From mid-1973 until the Spring of 1974, the ASAP worked with other agencies of island government to obtain adequate staffing for the various functions mandated by the new law. The problem remained, however, of making the system mandated by the new statute an administrative reality. The solution to this problem required the ASAP staff to coordinate the various functional areas of the project by convincing each component agency to cooperate in processing DWI cases from arrest through rehabilitation.

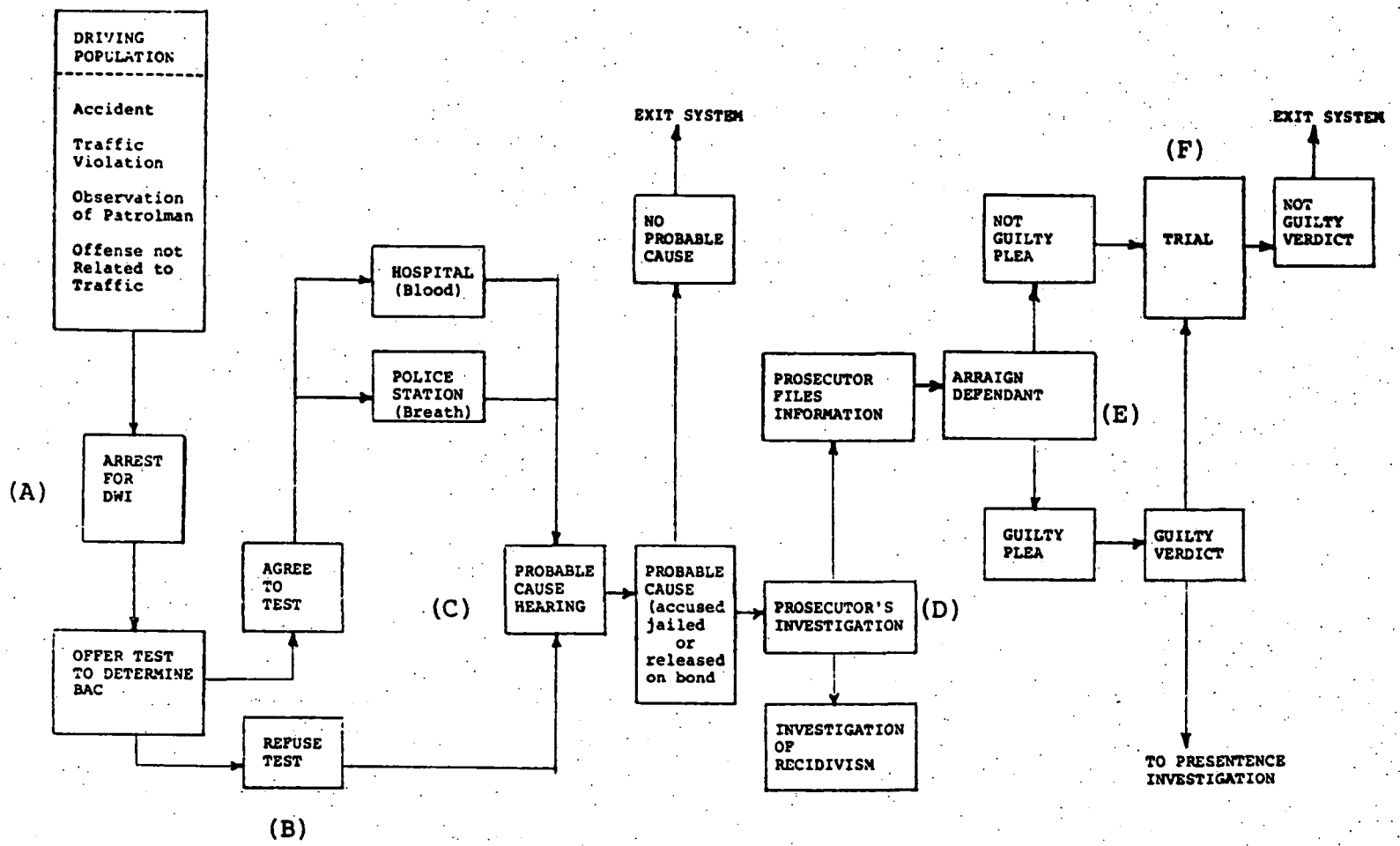

FIGURE 2-1a
PUERTO RICO ASAP
CASE PROCESSING SYSTEM FLOW DIAGRAM

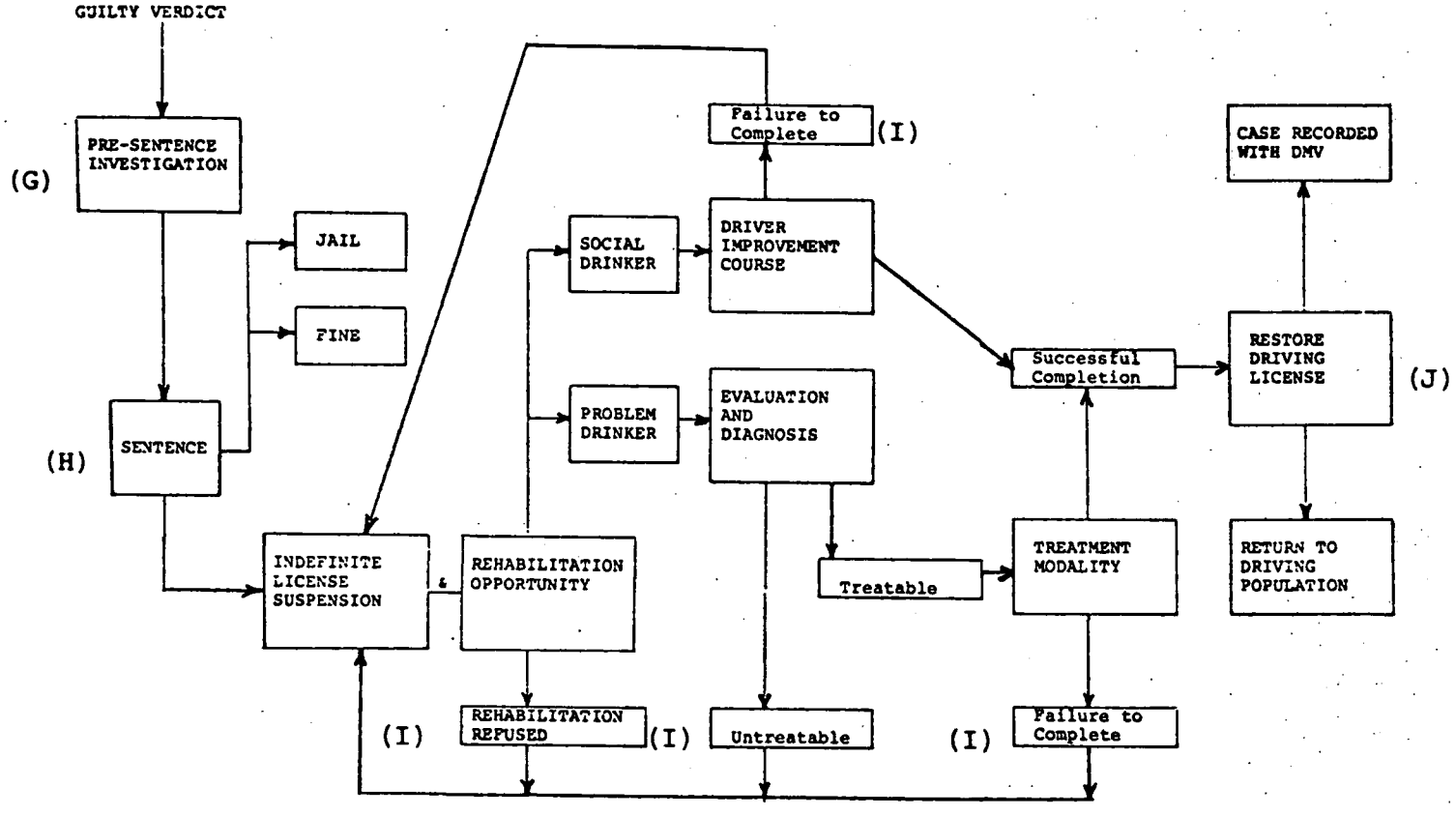

FIGURE 2-1b
PUERTO RICO ASAP
CASE PROCESSING SYSTEM FLOW DIAGRAM

Figure 2-1 illustrates the Puerto Rico ASAP as a system for processing cases from point "A" where drivers are selected from the general driving population because of their abusive drinking and driving, through point "J" where these drivers are returned to the general driving population, having undergone the appropriate rehabilitative treatment which theoretically causes them not to drive after excessive drinking again. Conceptually, the purpose of this case processing is to reduce the number and severity of the crashes experienced by these drivers and thus to reduce property damage, injury, and death caused by alcohol-related auto accidents. The mechanism for this case processing in Puerto Rico, as required by Law No. 59, is the criminal justice system.

Figure 2-1, Point B. With the advent of breath testing in Puerto Rico, and the change in the law which makes such testing a viable evidence collection method, the ASAP expected a significant decrease in implied consent refusals. This has not happened, due largely to the fact that the law on implied consent refusals has not changed and is ineffectual. Further, many Puerto Ricans drive without licenses and the penalty for this is only a $25 fine. Without the ability to suspend the license for refusal (the judge cannot suspend something that does not exist), even a vigorous implied consent enforcement policy would not work. The lack of BAC evidence tends to operate toward an acquittal. This fact combined with weak implied consent enforcement creates a positive incentive to refuse the breath test (or blood test) when offered. The refusal might even give the defendant an advantage at trial. The solution to this problem lies in either legislative change to create a stronger law, or attitudinal change to induce judges to suspend or otherwise penalize violators. To date the ASAP has not been successful in either respect.

Figure 2-1, Point C. The mandatory probable cause hearing for DWI arrests causes sometimes insurmountable problems for the police. An arrest at a time or place where a magistrate is not immediately available results inevitably in a technical violation of the rule requiring such a hearing. The lack of such a hearing has, in the past, been grounds for dismissal of the charges against the defendant, but contemporary police practices have resolved the problem by requiring only a cursory, formal attempt to find a magistrate followed by incarceration of the defendant. If the arrest is on a weekend, the defendant may have to wait two days for his probable cause hearing, but this practice has met with the tacit approval of the judiciary.

A more severe problem than the time requirement has been the disinclination of some magistrates to believe the defendant is legally intoxicated even when presented with

BAC evidence from the Breathalyzer. This problem has been largely solved by training the district judges who hear probable cause in alcohol and highway safety through several seminars. Nonetheless, the probable cause hearing requirement remains a burden on the arresting officer as it is an additional (and seemingly unnecessary) procedure.

Figure 2-1, Point D. The prosecutors' investigation is a formal proceeding for which the arresting officer must make another appearance, and for which he must also prepare a formal, written report. This additional burden on the police is irritating to many, but serves a useful function in the preparation of the state's case by the prosecutor. The investigation is, like the probable cause hearing, another procedural peculiarity of the Puerto Rican legal system which seems (at least in its formality) unneeded to process DWI cases. However, given the traditional approach to criminal law in Puerto Rico, it seems unlikely that the ASAP can ever dispense with the prosecutors' investigation.

Figure 2-1, Point E. When compared to other ASAPs, an inordinate number of persons arrested for DWI plead not guilty in Puerto Rico. An obvious explanation for this phenomenon is the fact that relatively few contested cases result in guilty verdicts. The conviction rate for DWI is very low (around 70%) and the bulk of convictions are simply guilty pleas. This problem results, ultimately, from the individual judge's disbelief in the evidence of guilt presented to him at trial. All DWI trials are bench trials in Puerto Rico; thus, the low conviction rate for contested cases is explainable as an inability to convince him that the defendant is guilty of DWI. In the past Puerto Rican judges found BACs of even .20% unpersuasive of guilt when there was (in their minds) "inadequate" evidence of erratic driving behavior. The ASAP staff reports that this situation is ameliorating. The conviction rate, although still "low" by standards of some other ASAP sites, continues to increase. Remarkably, many informants (including a public defender) report that Puerto Rican judges who have attended alcohol safety seminars sponsored by NHTSA and the ASAP are now convicting drivers of DWI who have BACs above .10% despite the legal presumptive limit being .15% in Puerto Rico.

Figure 2-1, Point F. The trials for DWI have never been long affairs. They usually last only three to four hours. Nonetheless, the trial procedure used in Puerto Rico causes problems in case processing largely because of heavy demands made on police time and the time of expert witnesses. There is no "officer's day in court" concept of scheduling. Often, officers are present in court only to witness a continuance granted to the defendant. Often these continuances are

for the purpose of giving the defendant time to save up enough money to pay his fine (as there are no installment payments permitted by the court). When the defendant has accumulated enough money, he returns to court (as does the arresting officer) only to change his plea to guilty. Thus, the officer has made at a minimum two court appearances for no purpose. Likewise, the very few technicians available to offer expert testimony in DWI cases (there is only one certified breathalyzer expert) are continually in court offering testimony. Eventually, the ASAP hopes (and some judges have already complied) that judges will simply take notice of the accuracy of the machine without the necessity of expert testimony. This seems both sensible and probable, especially since there is no jury to worry about in Puerto Rico.

Figure 2-1, Point G. The mandatory presentence investigation required by Puerto Rican Law in DWI cases is unique among the ASAPs. It also, as might be expected, causes unique problems. Some of these problems seem to be resolving themselves as the probation officers who conduct the investigations gain more experience. For example, judges and therapists are gaining in their respect for the ability of the probation officers to make appropriate classifications of defendants as social drinkers or problem drinkers. The percentage of cases classified as "problem drinkers" seem to be lower than that of most other ASAPs, but it continues to increase.

Other problems are intrinsic to the law inself. There is a requirement for an "investigacion minuciosa" or "detailed investigation" in each case. This has been interpreted by the probation officers at a policy-making level and by most judges as requiring a full-blown, felony-type presentence investigation which includes social history, family interviews, and record checks. This activity consumes incredible amounts of time, often requiring the judge to extend the thirty day limit on the investigation required by the statute. This also causes backlogs, because the 19 officers hired to do the job simply lack the time to handle the caseload. This problem seems to have resulted from a confusion of the function of "screening" with that of "diagnosis." In the former, the presentence investigation is merely a quick, short investigation for the purpose of roughly determining whether the defendant about to be sentenced has a drinking problem or not. If he does (or might), the recommendation is to sentence him for a detailed diagnosis which will be a more complete investigation of his background by a physician or other treatment specialist. In Puerto Rico, both functions seem to be performed by the probation officer. The diagnostic function is then performed again by the evaluation and diagnostic specialists in the Department of Addiction Services. The solution to

this problem is either a legislative change or clarification of the meaning of the words "investigacion minuciosa" or a change in probation department policy in interpreting the words which would allow a "screening" investigation to go forward in place of the cumbersome and very often pointless (e.g., the defendant has a BAC of .30% and previous convictions) "detailed investigation." The ASAP has not been successful in either respect to date.

Figure 2-1, Point H. Sentencing practices in Puerto Rico seem to be fairly regular in light of the requirements of the new law. There are, however, some judges who continue to ignore the law (and who presumably have not been reached by the ASAP education effort). There are other judges who have begun, in response to the backlogs of presentence investigations in their courts, to refer defendants directly to the Department of Addiction Services for therapy without a formal conviction. The case is later dismissed by the judge on his own motion upon successful rehabilitation. Such a response to caseload pressures and backlogs is to be expected in light of similar experiences in other ASAPs. It does not bode well, however, for the continuation of the statutorily mandated ASAP system as the deferred judgment is a method of diverting around the mandatory presentence investigation.

Figure 2-1, Point I. Upon failure to complete the Driver Improvement Course or upon failure to cooperate with the appropriate treatment modality, the driver is theoretically reported to his probation officer who brings the case back to the judge who holds a revocation hearing. The treatment official and the probation officer (neither of whom have a great deal of free time, given their caseloads) must then make a formal court appearance for the purpose of revoking probation. Many informants report that this simply does not happen, because the procedure is too cumbersome. There is simply not enough data collected over a long enough period to even make a cursory or tentative evaluation of this problem. Hearsay reports, however, indicate that there are significantly more non-cooperative probationers than there are petitions to revoke probation.

There is an additional problem in the relationship of the treatment modalities to the court. In the rare event of a misdiagnosis (e.g., a true social drinker is mislabeled a problem drinker) there is no handy mechanism or procedure for changing the diagnosis and referring the driver to the appropriate modality. Further, there is at this point no adequate evaluation (nor is there likely to be until six to eight years worth of data have accumulated) of recidivism following treatment. The Puerto Rico ASAP (and the other ASAPs for that matter) are simply too new for definitive evaluation.

Figure 2-1, Point J. The Puerto Rican law provides that driving privileges will not be restored to a driver until the Driver Improvement Course or the treatment modality is completed, and that fact is certified to the Licensing Bureau. This procedure requires another court appearance for all concerned. This seems particularly wasteful of court time in light of the already overloaded dockets and the fact that the licensing decision is essentially an administrative one to be made by the Licensing Bureau and not the court.

ASAP Accomplishments. The ASAP staff, the system actors, and the author of this report view the project as an overall success in the sense that it has created a viable, functioning system of drinking-driving control where none has existed before. In most other ASAPs, at least the basic building blocks of a functioning system were present at the beginning of the project. There were police trained in DWI enforcement and breath testing; there were prosecutors able to handle such cases and judges who at least tended to view DWI as a relatively serious offense. There were some court personnel available to perform some screening functioning for sentencing, and there were at least some alcohol treatment facilities and programs for judges to refer offenders to. None of these factors existed in Puerto Rico; they were created by the diligent effort of the ASAP staff and of related agencies of island government.

The following is a partial list of the most important ASAP accomplishments:

(1) The creation of an ASAP emphasis patrol and a modern breath testing program where none had existed before.

(2) A many-fold increase in the previously low arrest rate.

(3) An ability to identify DWI recidivists from motor vehicle records.

(4) The introduction and acceptance of breathalyzer evidence as proof of intoxication at trial.

(5) The training of judges in alcohol safety.

(6) The introduction of mandatory presentence investigation for DWI cases in a jurisdiction where the function was never before performed.

(7) The transition from a criminal sanction system of DWI control to one which uses the criminal justice system as an intake method for alcohol rehabilitation.

(8) The development of an alcohol education program for driver improvement where none had existed before.

(9) The creation of a major casefinding and intake mechanism for the various alcohol treatment programs of the new Department of Addiction Services.

(10) The creation of a method for using a relicensing incentive to control cooperation with treatment modalities.

Many other items could be added to the list, including perhaps the creation of a system for data collection and evaluation of the ASAP in a jurisdiction where records were previously poorly kept or often nonexistent. The greatest accomplishment of the Puerto Rico ASAP, however, is this: They successfully created, implemented, and tested a viable system of DWI control and mandatory presentence investigation which was brought into existence by statute. In this respect they are unique as an ASAP. That the attempt was not perfect is not nearly as important as that the attempt was made and lessons were learned.

The Lessons of Law No. 59. In the absence of a complete evaluation of the Puerto Rico ASAP (which might not occur for several more years), no definitive statements are possible and no ultimate conclusions can be reached on the success or failure of the project or on the utility or disutility of the method of operation. Accordingly, only tentative conclusions can be offered, based not on a full empirical analysis, but rather on an examination of the experience, attitudes, resources, and reports of the system actors.

The basic conclusion of this report must be that the Puerto Rico ASAP experiment in statutory mandate of the conceptual system of DWI control is both viable and effective. If a given jurisdiction wishes to preserve a traditional criminal justice system approach to DWI, rather than adopt some diversionary or other non-traditional system, then a legally mandated system seems not only desirable, but critical to success. Even the least cooperative judge will tend to cooperate (albeit grudgingly) with the system if the law requires him to do so. Even the most hard-line opponent of alcohol rehabilitation will have no choice but to operate his office (albeit hesitantly) toward that goal if the law demands it. Resistance might still, of course, be met, but that resistance will at least have no legal basis and may be dealt with administratively, legally, and politically.

Specific recommendations for any jurisdiction which hopes to enact a legally-mandated DWI control system include the following:

(1) System Rigidity. Although any statutory system of mandatory DWI case processing and presentence investigation must be precise in its requirements, it must also be sufficiently flexible to deal with occasional problems or irregularities in system operations. Specifically, there should be methods of correcting any misdiagnosis or misclassification without another court appearance. There should be flexible time limits on reports, and the mandatory investigation should be defined as "any investigation sufficient to classify offenders as problem drinkers or social drinkers with a high degree of reliability" rather than a definition such as a "detailed investigation" or other language suggesting more than a screening.

(2) Resources. A Puerto Rico model ASAP system should not be implemented (nor should any other ASAP for that matter) in a jurisdiction which lacks adequate resources to perform each of the functions mandated by law. Resources should be developed prior to (or at least in conjunction with) the development of the ASAP.

(3) Commitments. Each agency expected to perform functions under the new law should be formally committed to the system before it is implemented. An uncooperative agency (which condition might result merely from the political slight of not being consulted) can foul up an operating system, even one mandated by statute. Before implementation, attitudes of system actors should be assessed, and a concerted effort in alcohol safety education should be undertaken. Many problems can be avoided if system actors have sufficient information to make intelligent decisions.

(4) Funding. There must be adequate funds to support the system not only during the initial period of possible federal or state funding, but also after all outside (i.e., non-local funds) have terminated. The system should preferably be self-supporting with a portion of DWI fines and the fees charged for rehabilitation services going to an ASAP operating fund. In this way the ASAP is a minimal burden on local taxes and the very people who are causing the alcohol safety problem are made to pay for its solution. Ideally, if an ASAP is begun with other than local funds, the outside support should be gradually phased out rather than suddenly terminated after two, three, or four years.

(5) Role Definition. The roles to be played in the new system must be defined with precision and must be agreed upon by the system actors. For example, the screening function of the presentence investigator must not be confused with the diagnostic function of the therapist. The judge must not be expected to become a prosecutor and automatically convict everyone who comes before him merely for the purpose of getting the offender into rehabilitation. The police must not be expected to become alcohol rehabilitation workers, and alcohol therapists cannot be expected to police the compliance of their clients. In short, before the system is implemented, each actor must know his role, and that role must bear a rational relationship to the actor's own perception of his function.

(6) Management. It is critical to the success of any ASAP system that there be system management, not for the purpose of controlling the functioning of system actors, but rather for the purpose of coordinating their activities and serving as an informational clearinghouse. Without a management staff, the functioning system cannot be "fine tuned" as problems develop. Even in a system where the law mandates every function, there must still be someone with the administrative skills to convert the law in the books to the reality of a functioning government service.

3.0 IDAHO CASE STUDY SUMMARY

3.1 Objectives and Approach

Idaho was selected for study since it afforded an opportunity to examine the operation of a statewide ASAP system with a progressive judicial system structure (Idaho has a unified, state-wide court system and centrally administered presentence investigation) and the impact of stringent drinking-driver control laws (i.e., .08% BAC presumptive limit and mandatory penalties) on that system.

Data were collected through an extensive literature review (reports produced by the site, NHTSA evaluations, etc.) followed by on-site investigations/interviews of selected persons in the various agencies affected by the ASAP. This site visit took place during the period June 16-25, 1975. This approach required an examination of the police, prosecution, defense and treatment/rehabilitation components as well as the courts, in order to trace the impact of change throughout the drinking-driver control system. Underlying these efforts was the prior familiarity with the site acquired by the research staff in the course of previous work with the Idaho ASAP.

3.2 Findings and Conclusions

Background. Idaho is one of four Alcohol Safety Action Projects (ASAP) designed to operate on a state-wide basis. Geographically, the state is the thirteenth in size, being approximately 300 miles wide by 500 miles long (a total land area of 84,000 square miles). Despite its size, Idaho ranks forty-second among all states in population with 713,000 estimated in 1970. It is a predominately rural state: only three cities exceed a population of 25,000. There are approximately 57,000 miles of roads, streets and highways in the state. These are used by the roughly 550,000 licensed drivers.

Existing DWI and Associated Traffic Laws.

(1) Implied Consent. Any person who operates a motor vehicle is deemed to have given his/her consent to a chemical test of breath, blood, urine or saliva. Refusal to take a test will result in a 90-day suspension of the driver's license by the Department of Law Enforcement. The suspension can be effected temporarily without notice, and the offender--once formally notified--can request a hearing (49-352).[5]

5. Parenthetical citations refer to the Idaho Code. In this example, Idaho Code § 49-352.

(2) Driving While Intoxicated (DWI). The blood alcohol level at which a driver is presumed to be intoxicated is .08%. (Thus Idaho is one of only two states with this relatively low level.) A first conviction for DWI can result in a jail sentence of up to six months, and a fine of up to $300 or both. The State Department of Law Enforcement additionally is required (emphasis supplied) to suspend the offender's driving privileges for a period of 90 days.

A second conviction for DWI requires imprisonment in the state penitentiary for not more than five years. Repeat DWI offenders are--by law--to be tried as felons in district court. Second convictions for DWI occurring within a two-year period (from the time of first conviction) require a loss of driving privileges for six months. An offender with a third conviction occurring within three years of the original conviction shall lose his driving privilege for one year (49-1102).

(Driving While Intoxicated is the only alcohol-related traffic charge existing under Idaho law.)

(3) Reckless Driving. Persons convicted of this charge shall be jailed for not less than five (5) days nor more than ninety (90) days, and fined not less than $25 nor more than $300 or both. Second and subsequent convictions for Reckless Driving require a minimum of ten-day jail sentence and fines of not less than $50 nor more than $300, or both (49-1103). Further, the Department of Law Enforcement shall suspend the license of such offenders as follows:

- First conviction--30 days
- Second conviction within 2 years--90 days
- Third conviction within 3 years--1 year (49-330)

Further, conviction, or forfeiture of bond not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months requires revocation of the driver's license (49-329). (Reckless driving is a lesser charge sometimes used in plea bargaining DWI cases.)

(4) Inattentive Driving is a lesser offense than reckless driving and carries the same sanctions as those prescribed for reckless, except that the license suspension is left to the discretion of the magistrate (49-1103). (Probably because of this discretionary aspect, "inattentive" is frequently used in plea bargaining DWI cases.)

(5) Public Intoxication is delineated as a misdemeanor (23-604). (This statute is apparently not often used in the DWI plea bargaining process.)

(6) Legal Drinking Age in Idaho was lowered to 19 years-old in 1972 (23-603).

Department of Law Enforcement-License Sanctions. The Director of the DLE is empowered (by 49-356) to "institute studies and programs designed to determine the most efficient method of improving driver skills, attitudes and habits in order to reduce traffic violations and motor vehicle accidents and to place such (programs) to effective use." Further, the DLE "may establish by administrative rules a driver rehabilitation and improvement program or programs which may consist of, but not be limited to, classroom instruction, actual on-the-road training and other subjects and tasks which might contribute to or add to proper driving attitudes, habits and techniques" (49-359). This statute also provides that enforcement of any license suspension or revocation order shall be stayed if the offender complies with the requirements of the rehabilitation/improvement program prescribed by the DLE.

Judges who convict persons of offenses where license suspension or revocation is mandated are required to take custody of the license upon a finding of guilty and forward it to the DLE (49-328).

Formal hearings for suspension/revocation must be held within twenty days of request for such a hearing by the offender (49-330). Appeals from DLE hearings can be made to district courts (49-334).

Pre-Sentence Investigations. The statutes which establish the State Department of Corrections include a requirement that "when a probation and parole officer is available to the court, no defendant shall be placed on probation until a written report of investigation by a probation and parole officer shall have been presented to and considered by the court, and no defendant charged with a felony or indictable misdemeanor shall be released under suspension of sentence without such an investigation" (20-219). (For this reason, only felony DWI cases were handled by the Probation and Parole Division of the Department of Corrections. Presentence investigations for misdemeanor DWI offenders were performed by the pre-sentence investigators originally funded by the ASAP and attached initially to the Supreme Court.)

Withholding/Arresting of Judgment. The judiciary in Idaho is specifically empowered to "arrest" or withhold judgment (19-2511).

Court Organization. In 1971, the Idaho Judicial System changed from a multi-level court system to a centralized or "unified" system.

(1) Supreme Court. The Idaho Constitution now provides for a unified and integrated judicial system to be administered and supervised by the Supreme Court. The court may prescribe by general rule for all courts in Idaho, the forms of process, writs, pleadings and motions, the manner of service, time for appearance and the practices and procedure in all actions and proceedings.

(2) District Courts. With the abolition of justice of the peace, probate and municipal courts under the court reorganization of 1971, Idaho was divided into seven judicial districts. These districts vary in size, encompassing from three to ten counties. A district court sits in each of the 44 counties. District courts have original jurisdiction in all civil and criminal cases, may issue all writs necessary to exercise its powers, and have appellate jurisdiction in all cases assigned to the magistrate division of the district courts, except in preliminary hearings of criminal offenses. These courts therefore generally hear felony cases (including felony DWI cases), indictable misdemeanors and appeals from the magistrate courts. Trial juries consist of six jurors. Appeals from the magistrate division may be heard de novo in the district courts. Appeals from the district court are to the State Supreme Court.

(3) Magistrate Courts. Magistrate divisions were added to the existing district courts in 1971, replacing the probate, justice and municipal courts, in each of the seven judicial districts. Each magistrate division may have a small claims department which is created and organized by the district courts.

All cases are assigned to the magistrates by the district judge and administrative functions and other related matters are designated by the senior district judge in each judicial district.

Cases generally assigned include: Civil proceedings when the amount in controversy does not exceed $1,000, the probate of wills, administration of estates of decedents, minors and incompetents, criminal proceedings when the maximum punishment authorized by law does not exceed a fine of

$1,000 or confinement for 1 year in the county jail, or both and any juvenile proceedings, misdemeanors, and preliminary hearings. Accordingly, these courts hear the bulk of DWI cases.

A verbatim record of proceedings and evidence is maintained. When jury trials are required, the jury consists of six jurors. Appeals from final judgments of the magistrate division are to the district court on the record, or appeals may, at the discretion of the district judge, be returned to the magistrate division for a new trial or tried by the district judge de novo.

The number and location of magistrates in each county is determined by the district magistrates' commission. There are 67 magistrates in the 44 counties of the State (as of 1 October 1975), of which 30 are attorneys and the others laymen; 52 work full-time and the others work part-time.

Impact of Statutes on DWI Case Processing. Idaho appears to have achieved an unusually high rate of guilty pleas to DWI by magistrates agreeing to withhold judgment, thus avoiding the unpleasant sanctions mandated by the legislature. Where an offender is convicted of DWI and sanctioned, fines do not appear to be excessive, and jail is rarely prescribed. Further, entry into the Driver Improvement Counseling Program (DICP) allows the convicted offender to retain the driving privilege. Whether the widespread use of the withheld judgment was in response to the growing backlog of DWI cases cannot be stated with certainty. It can be conjectured that it was not, since the use of withheld judgments appears to have decreased in 1975, while the backlog of cases awaiting disposition continued to grow in 1975. Figure 3-1 presents data regarding DWI/Withheld Judgment dispositions based on samples drawn from four years of data. Figure 3-2 presents overall disposition data. Data on which to base conclusions are incomplete and/or inaccurate. Assessing the implications of "cases awaiting disposition" is difficult without knowing the definition of what kinds of cases are included in this category. If it includes withheld judgments, where a judgment has been entered but the case has not yet been dismissed, then certainly the burden on court time represented by this category takes on an entirely different complexion. Inferences about the rate of withheld judgments, sanctions imposed by BAC ranges and other key indicators are based on relatively small samples. Figure 3-3 presents DWI/Withheld Judgment dispositions by

FIGURE 3-1

1972 DISPOSITIONS/REFERRAL ACTIONS
(NHTSA Sample N=100)

Disposition Type	Referred		Not Referred		Total	
Guilty	28	28%	59	59%	87	87%
Withheld Judgement	1	1%	11	11%	12	12%
Dismissed or Acquitted	0		1	1%	1	
Lesser Charge	0		0		0	
TOTAL	29		71		100	

1973
(NHTSA Sample n=91*)

Disposition Type	Referred		Not Referred		Total	
Guilty	42	46%	17	18.6%	59	64.6%
Withheld Judgement	21	23%	6	6.6%	27	29.6%
Dismissed or Acquitted	0		4	4.4%	4	4.4%
Lesser Charge	0		1	1.1%	1	1.1%
TOTAL	63		28		91	

1974
(NHTSA Sample N=96*)

Disposition Type	Referred		Not Referred		Total	
Guilty	31	32.3%	34	35.4%	65	67.7%
Withheld Judgement	15	15.6%	14	14.6%	29	30.2%
Dismissed or Acquitted	0		0		0	
Lesser Charge	0		2	2.1%	2	2.1%
TOTAL	46		50		96	

1975
(NHTSA Sample N=99*)

Disposition Type	Referred		Not Referred		Total	
Guilty	19	19.1%	49	49.5%	68	68.6%
Withheld Judgement	12	12.1%	9	9.1%	21	21.2%
Dismissed or Acquitted	1	1%	8	8.1%	9	9.1%
Lesser Charge	0		1	1%	1	1.0%
TOTAL	32		67		99	

* Unknown dispositions not included

Source 1975 Analytic #4, p. 33

FIGURE 3-2

DISPOSITION OF A/R ARRESTS[1]

	1971[1]					1972[1]					1973[1]					1974[1]					1975[2]				
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Year Tot.	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Year Tot.	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Year Tot.	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Year Tot.	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Year Tot.
Arrests for DWI - Reported	529	693	683	696	2601	775	977	1477	1503	4732	1767	1746	1694	1689	6896	1932	1885	2038	1864	7719	1742	1819	1602	1337	6500
Arrests Not Arraigned	0	0	1	0	1	9	32	67	53	152	116	93	86	88	383	102	106	88	72	368	86	68	54	19	227
Awaiting Disposition	27	114	538	610	N/A	51	768	1271	1500	N/A	1942	2087	2321	2462	N/A	2760	2806	3010	3010	N/A	3221	3304	3613	3782	N/A
Convictions for DWI (includes Judgments Withheld)	492	567	409	432	1900	712	609	708	915	2944	1554	1540	1411	1490	5995	1796	1775	1766	1784	7121	1574	1671	1247	1144	5634
Convictions for Non-Alcohol Related Offense	0	0	213	177	390	0	0	279	303	582	34	20	16	25	95	25	32	39	39	135	22	18	25	15	180
Acquittals	1	2	2	2	7	2	3	4	13	22	7	11	8	4	30	5	4	2	3	14	4	8	2	2	16
Dismissals	9	10	6	45	70	10	11	20	45	86	27	30	25	29	111	23	28	26	26	103	44	39	19	7	109
Pre-Sentence Investigations Completed						N/A	N/A	285	517	802	709	710	653	677	2855	772	736	705	778	2991	773	797	537	422	2529
Mean Time to Disposition - In Days:																									
Conv. DWI					N/A					26					41					45					36
W/J					N/A					11					65					51					43
% of Arrests Resulting in Conv. for:																									
A/R					73.0					62.2					86.9					86.7					73.0
non-A/R					14.9					12.3					.01					.03					14.9

NOTE 1: These data are based on figures provided by the site in Table 10 (Judicial Operations - Dispositions of A/R Traffic Arrests) for each quarter of operations through 1975. These figures do not agree with those in the 1975 analytic studies, nor do they agree with data supplied by the Idaho State Police. They still serve to illustrate the trends in arrests, dispositions, and docket backlogs.

NOTE 2: **These figures do not agree with those in the 1975 analytic studies nor do they agree with data supplied by the Idaho State Police. They still serve to illustrate the trends in arrests, dispositions and docket backlogs.**

FIGURE 3-3
DISPOSITION (CONVICTED DWI OR WITHHELD JUDGMENT)
BY BAC AT TIME OF ARREST

CONVICTED DWI	1972		1973		1974		1975	
	N = (68)		N = (245)		N = (273)		N = (277)	
	n	%	n	%	n	%	n	%
Negative	1	.014	2	.008	5	.018	2	.007
.01 - .04	2	.029	4	.016	3	.010	3	.010
.05 - .09	4	.059	21	.090	27	.098	32	.120
.10 - .14	12	.180	63	.260	81	.300	86	.310
.15 - .19	19	.300	83	.340	88	.320	80	.290
.20 - .24	16	.240	47	.190	47	.170	50	.180
.25+	14	.210	25	.100	22	.080	24	.086
Average BAC		.185		.167		.159		.159
Average Positive BAC		.188		.168		.162		.160
% .15 or Higher		72.1		63.3		57.5		55.4
WITHHELD JUDGMENT	1972		1973		1974		1975	
	N = (25)		N = (76)		N = (130)		N = (320)	
	n	%	n	%	n	%	n	%
Negative	2	.080	2	.026	3	.023	4	.012
.01 - .04	0		1	.013	2	.015	2	.006
.05 - .09	4	.160	8	.105	17	.130	29	.090
.10 - .14	9	.360	25	.328	49	.376	130	.410
.15 - .19	6	.240	26	.342	40	.310	99	.310
.20 - .24	2	.080	13	.170	13	.100	46	.140
.25+	2	.080	1	.013	6	.046	10	.030
Average BAC		.137		.147		.142		.149
Average Positive BAC		.149		.151		.145		.151
% .15 or Higher		40.0		52.6		45.4		48.3

Source: 1975 Analytic #4, pp. 49 and 50.

BAC. As the site stated, "once these samples are broken down by disposition type, the number of entries become so small that a meaningful analysis of any group other than "Convicted DWI Offenders Including Withheld Judgment" was impossible.[6] Yet "meaningful analysis" of even this group requires that withheld judgments be segregated from those DWI convictions which ultimately became a matter of record. A withheld judgment might be regarded as a favorable outcome, in that some DWI offenders who receive a withheld judgment are also referred to treatment. But the later dismissal of the charge precludes any subsequent DWI offenses from being detected as a repeat offense. This not only precludes felony prosecution under the "Repeat Offender" provision, it also precludes an accurate evaluation of the treatment program--since the 'bottom line' measure of success is whether or not the treated offender continues to combine driving and abusive drinking.

Let us look in detail, based on the available data, at the various dispositions utilized during the life of the Idaho ASAP. First, what of mandatory sanctions? The law (47-1102) does not require either a fine or a jail sentence for a first offense. It simply imposes a maximum of six months and/or $300. The only mandatory sanction is a 90-day suspension of driving privileges.

Over the life of the Idaho ASAP (i.e., mid-1972 to 1975), only one person of 91 sampled (1.09%) received a jail sentence with a withheld judgment. Of a total sample of 279 persons who were convicted for DWI during the same period, 49 (or 17.6%) received jail sentences. The average number of days sentenced was 3.9 days.[7] There are no data to indicate how many, if any, of these jail sentences were actually served, or whether they were suspended. Cases where judgment was withheld also tended to get fewer fines (82% of all cases) as compared to persons convicted of DWI (90.7% of all cases).[8]

The site provides no data regarding driver's license suspensions for those convicted of DWI. However, records of

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6. 1975 Analytic Report #5, p. 45.

7. This was computed by excluding four 180-day jail terms imposed.

8. 1975 Analytic Report #4, pp. 38 and 39.

the Idaho Department of Law Enforcement indicate that it imposed DWI license suspensions as follows:

Year	Suspensions[9]
1972	1,885
1973	1,958
1974	1,967
1975	1,903

It is important to note that these license suspension figures include only those drivers who either (1) were not sent to DICP as a result of a reported DWI conviction, or (2) were sent but failed to successfully complete the program. Many DWI arrests and/or convictions go unreported to the Driver Services Division. Using these suspension figures, plus the total reported arrests for each year, and the percentages of arrests resulting in either a DWI conviction or a withheld judgment (based on a sample of approximately 100 cases in each year), we can construct Figure 3-4. Assuming the case figures are correct, we can infer that the percentage of all reported convictions for DWI/Withheld Judgments where the license was suspended did not reach 50% from 1972 on, and indeed the percentage decreased over the life of the ASAP, even though total arrests increased. As a percentage of all reported DWI arrests, license suspensions never exceeded 32 per cent.

We can infer then that mandatory license suspension was not invoked in the majority of reported DWI convictions/ withheld judgments. Indeed, this percentage dropped appreciably once the ASAP reached full operation in 1973, dropping to its lowest point in the peak year of arrests (1974), and then recovering somewhat in 1975.

Jail sentences were handed down even more infrequently. Only fines appear to have been assessed in the majority of cases, and the average amount of the fine assessed for DWI dropped by $20.00 over the life of the ASAP; 1972 to 1975. DWI fines dropped from an average of $168.82 in 1972 to $144.82 in 1975. Fines for withheld judgment cases increased from an average of $108.33 in 1972 to $128.29 in 1975.[10]

9. Source: Drivers Services Div., Dept. of Law Enforcement in telecon on September 28, 1976.

10. See 1975 Analytic Report #4, pp. 39-44.

FIGURE 3-4
LICENSE SUSPENSIONS AS (1) A PERCENTAGE
OF ALL DWI CONVICTIONS/WITHHELD JUDGMENTS
AND (2) A PERCENTAGE OF ALL DWI ARRESTS

1	2	3	4	5	6	7
Year	Total Reported DWI Arrests[1]	% of Total Arrests Resulting in DWI or WJ[1]	Estimated nr of DWI or WJ[2]	Total Suspensions for DWI[3]	% of All DWI Convictions or WJ's Which Were Suspended[4]	% of All DWI Arrests Suspended
1972	5960	65.7	3915	1885	48.1	31.6
1973	7673	86.4	6629	1958	29.5	25.5
1974	7719	92.2	7117	1967	27.6	25.4
1975	6504	86.7	5639	1903	33.7	29.2

1. Source: 1975 Analytic #5, Exhibit 34-1, p. 31.

2. Column 3 x Column 2

3. Source: Drivers Services Division, Department of Law Enforcement.

4. $\frac{\text{Column 5}}{\text{Column 4}}$

5. $\frac{\text{Column 5}}{\text{Column 2}}$

ASAP and the Courts. At the outset of this study, it was thought that the unified nature of the Idaho court system would provide exemplars of how state-wide, uniform policies and procedures for processing alcohol-related traffic offenses are identified and implemented. In fact, the larger population centers in the state seem to have developed fairly effective procedures for the identification, adjudication, and referral of the problem drinking driver. Once the researcher leaves these major urban areas, however, and gets out into the more rural areas, the span of management control of the Supreme Court appears to contract. In essence there is not one alcohol safety system in Idaho, but rather a series of systems which vary markedly as a result of adapting to local attitudes and local conditions.

One of the key factors in shaping these local systems has been the differences in procedures and attitudes of the local judicial personnel. After three and one-half years of ASAP operation, there were still some magistrates who would not "cooperate" with the ASAP program. This is probably more a function of their view of DWI as non-criminal, rather than any disagreement with the ASAP concept. One of the magistrates interviewed was quite candid in this regard. He stated that he does not view driving-while-intoxicated as a criminal offense, and refuses to treat such offenses in a formal criminal fashion. He observes only the technical procedural rules, he added, in order to either accept a plea down to a lesser offense, and/or to withhold judgment. While such anecdotal evidence is hardly conclusive as to the attitudes of all judges, the reluctance to invoke criminal sanctions in DWI cases does seem to typify a significant number of magistrate courts in Idaho. Another factor in Idaho which may influence some rural magistrates is the dearth of meaningful treatment/rehabilitation facilities to which they can refer DWI offenders and which address the physiological aspects of drinking problems.

The difficulties encountered by the Idaho ASAP were exacerbated by the predominately rural nature of much of the state. This is perhaps best illustrated by one county which has a total population of 900 people, yet insists on a full range of county governmental services. This kind of attitude (hardly unique to Idaho) makes the allocation of resources on the basis of need rather than the desires of the electorate an abstract goal rather than a realistic objective. Still another factor was the lack of availability of highly trained and experienced personnel to fill the key role of presentence investigator. Better training and better supervision at the outset might well have facilitated and accelerated the adoption and diffusion of this change throughout the magistrate courts.

For example, the magistrates should have received training at the outset of the ASAP (e.g., the judicial seminars sponsored by NHTSA) rather than two years after the initiation of the project.

The failure to train prosecutorial personnel adequately at the outset of the program was a major factor cited by many of the prosecutors interviewed. Deputies and trial attorneys, they feel, should have been the primary target of educational efforts.

It appears change (i.e., acceptance of the ASAP goals and objectives) was effected in the Idaho judiciary through the device of personalized contact and intensive "selling" of the program to judges on an individual basis. Not all judges were convinced by this effort; but it appears that once a judge accepted and endorsed the goals of the ASAP program, his change in attitude became self-sustaining, buoyed up by constant reminders from the ASAP and members of the criminal justice system about successes with offenders from his court which could be attributed to the program. The Supreme Court's decision to share the control of the presentence investigation system with the magistrates and district court judges may, in itself, have been a potent device by which change in this crucial area was effected.

It is interesting to note when studying the subject of ASAP-related change in the Idaho courts that several of the people interviewed contended that the non-attorney or "lay" magistrates were much quicker to accept the ASAP philosophy and adapt to, and utilize, this new resource. It has been hypothesized that lay magistrates, by virtue of not having the formal training of law school, are less concerned with the procedural aspects of the criminal process and are, therefore, more receptive to innovative, "people-oriented" changes. This would seem to be an area worthy of further research, particularly in light of the current trend across the nation to "upgrade" judgeships so as to require all to be filled by holders of law degrees.

Several of the judges interviewed not only stated their endorsements of the ASAP concept, but urged new national NHTSA programming in the courts area. One of the needs cited was the promulgation of standards on information-gathering. There seemed to be general concurrence in the view that the Idaho ASAP brought many problem drinkers into formal contact with the treatment system for the first time. Unfortunately, the funding for the total ASAP concept in Idaho--as in most other sites--was only three years. This

is simply not enough time in which to iron out the many problems and mold a viable drinking driver control system. Whether the Idaho system can now operate without the intra- and inter-system coordination role formerly filled by the ASAP staff remains to be seen. Certainly the creation of appropriated state funding for the continuation of the State Police Alcohol Emphasis Patrol (AEP) and Pre-Sentence Investigation (PSI) functions is encouraging. But the larger question remains--can the health/legal system, composed of the criminal justice, highway safety and alcohol treatment systems, continue to cooperate in the absence of an agency specifically tasked to act as an interface?

4.0 HENNEPIN COUNTY, MINNESOTA CASE STUDY SUMMARY

4.1 Objectives and Approach

The specific objective in the case of Hennepin County was to examine the operation of an ASAP which was supported by a broad range of legislation targeted at the drinking-driver problem. Historically, Minnesota has had active, progressive legislation in the area of drinking-driving well ahead of most other states. As a result, the Hennepin County ASAP (hereafter "HCASAP") began and operated in a particularly receptive environment. This study then attempts to examine (1) how the environment created by this legislation facilitated the operation of the Hennepin County ASAP and (2) the impact of such legislation on the judicial component and the adjudication process for offenders charged with Driving While Intoxicated (DWI).

Data were collected through an extensive literature review (reports produced by the sites, NHTSA evaluations, etc.) followed by on-site investigations/interviews of selected persons in the various agencies affected by the ASAP. This approach required an examination of the police, prosecution, defense, and treatment/rehabilitation components, as well as the courts, in order to trace the impact of change throughout the drinking-driver control system. Hennepin County was the one site with which the study staff had no prior familiarity. In all other cases, the staff had worked with the ASAPs selected for study.

4.2 Findings and Conclusions

Background. The State of Minnesota has a population of 2,760,000 (1972), of which Hennepin County contains slightly under one million. There are 583,000 licensed drivers and 620,000 licensed motor vehicles in the county. The City of Minneapolis contains 456,000 people, or approximately one-half of the county's population and one-sixth of the state's total. Minneapolis occupies only 10% of the total land area in Hennepin County. The remaining 90% is divided into ten more cities and 34 villages. Accordingly, traffic law enforcement is performed by more than 26 police agencies. Twenty-three of these have full-time officers and 20 of these participate in the ASAP enforcement countermeasures program. The misdemeanor court system through which arrested DWIs are processed is a unified, county-wide municipal court having jurisdiction over misdemeanor and lesser offenses.

The Hennepin County Municipal Court is made up of 17 judges who rotate assignment among five divisions. Division I encompasses the City of Minneapolis. The other four divisions

cover the remaining areas of the county. Judges rotate assignments among the five divisions. The court states that it is "one of the busiest courts between Chicago and the west coast, processing over 100,000 cases per year." There were, for example, 425,000 traffic tickets issued in Hennepin County in 1974. In that same year the DWI arrests totaled 8,325; an arrest rate of over 12 per 1,000 licensed drivers. DWI cases comprise over 20% of all traffic offenses appearing at arraignment in the Hennepin County Municipal Court System.[11]

Each of the court divisions handles cases arising from arrests made in the geographical area it serves. Prosecution is furnished by the community in which the arrest is made. Some communities employ full-time prosecutors; in others the city or village attorney prosecutes cases as well as performing other municipal legal duties; in still others part-time prosecutors are retained or perform under contract.

Prior to the advent of the HCASAP, the greater Minneapolis area could be characterized as above the national norm in terms of awareness of the drinking-driving problem, but possessing nevertheless serious shortages of resources. Enforcement was above the average, with over 3,000 arrests for DWI in 1971. Court facilities and resources were strained. An average of 12 months was required to get a DWI case from arrest to trial. The result was large scale plea bargaining by prosecutors, or withholding of judgments by the bench in an attempt to accelerate case flow. Presentence investigations were the responsibility of the Court Services Division, which, like the bench itself, was faced with a large and growing backlog. The inevitable result was that not all DWI offenders were assessed as to the nature of their drinking problem. Only 16% of the 3,000-plus offenders received a pre- or postsentence investigation (PSI).[12]

The availability of treatment/rehabilitation facilities reflected the community's sensitivity to the problem of alcohol and alcoholism. They were excellent in terms of quantity, quality, and diversity. However, the small number of DWI offenders receiving PSI's in turn severely limited referrals by the court to treatment. Another deficiency was in the area of records. The inability to detect multiple DWI offenders was another reason for lack of referrals by the court, since judges were frequently denied the knowledge of prior drinking offenses which would have enabled them to make their own screening diagnosis and hence referral.

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11. "Hennepin County Municipal Court," a brochure produced by the court in 1975.

12. HCASAP Detailed Plan, p. II-38.

The Hennepin County Alcohol Safety Action Project. The Hennepin County Alcohol Safety Project commenced full-scale operations in early April 1972.

(1) Law Enforcement. The ASAP provided funds to underwrite the cost of 17,290 hours per year of increased DWI enforcement. The result of this countermeasure was a very significant increase in the number of DWI arrests. Figure 4-1 provides all reported DWI arrests for the period 1969 through 1974.

(2) Courts Countermeasures. The ASAP project funded the hiring, training, and operation of presentence investigators (PSIs). These PSIs screened and classified DWI offenders as to the nature of their individual drinking problem, i.e., "problem drinker," "non-problem drinker," or "unclassifiable." Based on these findings, the PSI then made a disposition recommendation to the judge. Until the ASAP PSIs were merged in the Court Services Division in 1974, the judge retained the discretionary power to decide whether the investigation would be conducted by a Court Services Probation Officer or a special ASAP PSI.

(3) Treatment/Rehabilitation Countermeasures. The ASAP also funded a DWI course designed to act as the initial point of entry for both those referred by the court directly or who wished to voluntarily undergo such treatment. Designed as an education rather than a rehabilitation modality, this three-session course focused on education in the areas of alcohol and highway safety. It was prescribed for all alcohol-related traffic offenders.

Existing DWI and Associated Traffic Laws. The state legislature of Minnesota has been in the forefront of innovative legislation designed to address the problem of the drinking driver. The legislature has exhibited a continuing interest in such laws and there has been a steady improvement and tightening of statute law as it relates to drinking-driving offenses. As a result, Minnesota statutes in this area are considered to be among the best in the United States.

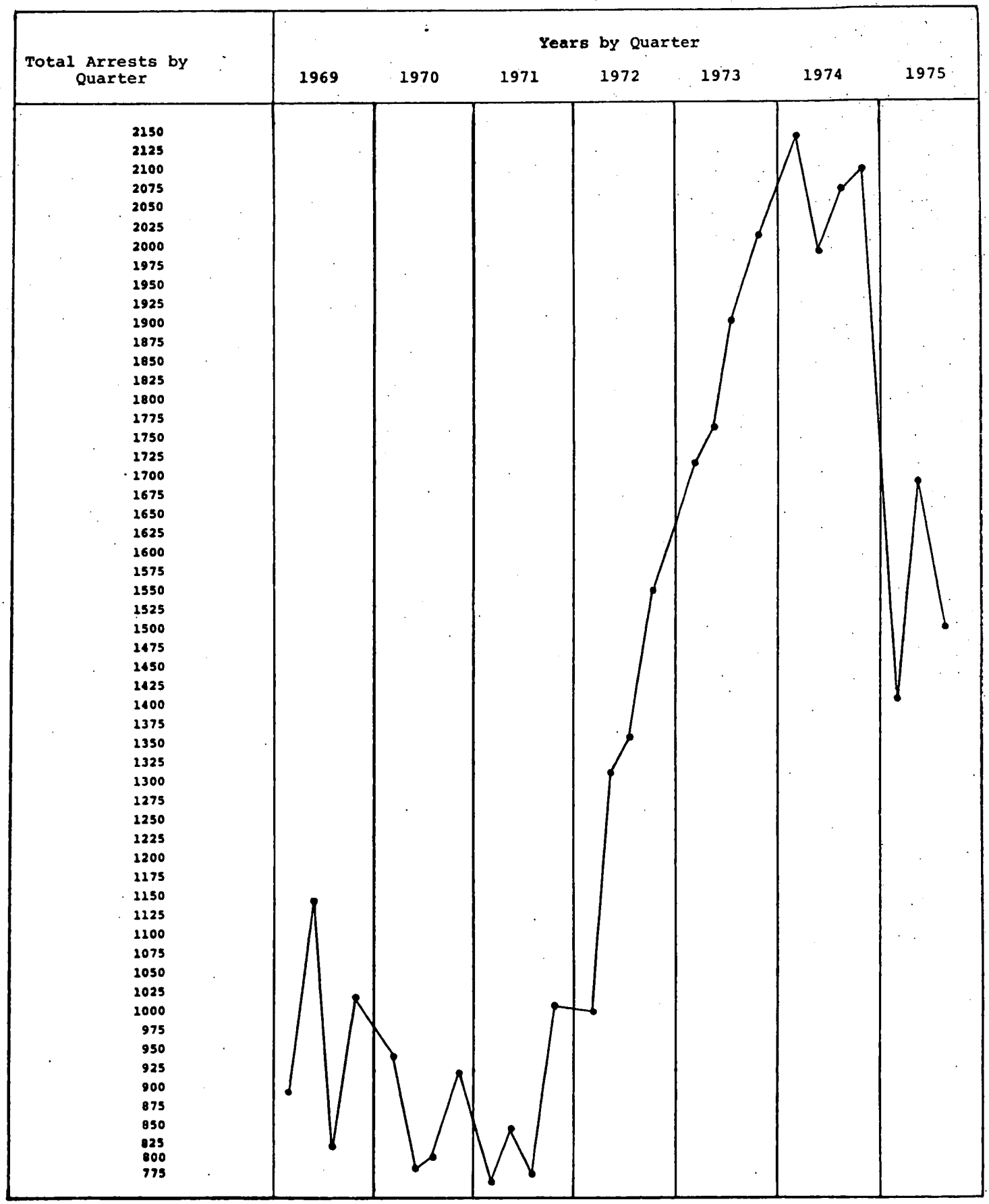
(1) Driving While Intoxicated. Minnesota law defines as a misdemeanor the act of operating a motor vehicle by a person who:

(a) is under the influence of alcohol or a narcotic drug;

(b) is an habitual user of narcotic drugs;

(c) is under the influence of a combination of alcohol and narcotic drugs; or

FIGURE 4-1


Total Arrests by Quarter
Years by Quarter
1969
1970
1971
1972
1973
1974
1975
2150
2125
2100
2075
2050
2025
2000
1975
1950
1925
1900
1875
1850
1825
1800
1775
1750
1725
1700
1675
1650
1625
1600
1575
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1425
1400
1375
1350
1325
1300
1275
1250
1225
1200
1175
1150
1125
1100
1075
1050
1025
1000
975
950
925
900
875
850
825
800
775

(d) has a blood alcohol level of .10% or more. (169.121 Subd. 1)

Further, if the BAC at time of arrest was .05% or less, this is prima facie evidence that the person was not under the influence. A BAC of .10%, but less than .10%, is relevant evidence, but it is not to be given prima facie effect in indicating whether or not such a person was under the influence of an alcoholic beverage. (169.121 Subd. 2) The sanctions prescribed for DWI first offenders are imprisonment of not less than ten nor more than 90 days, and/or a fine of not less than $10 nor more than $300. License revocation for not less than 30 days is mandatory. Persons convicted of a second DWI offense within three years of the first are also subject to license revocation for at least 90 days. The prescribed jail term remains at ten to 90 days. No fine is required. (169.121 Subd. 4)

(2) Impact of .10% Per Se. The change from a presumption of guilt at a BAC above .10% to one where a BAC of .10% is a per se violation was an attempt by the legislature to reduce the inordinate amount of trial time being taken up by the requirement to establish evidence of impairment.

Many judges in the Hennepin County Municipal Court are reported to refuse to accept guilty pleas, or make a finding of guilty to DWI, where the BAC is in the .10% to .14% range. Instead, they continue to require testimony from arresting officers regarding demeanor and other supporting evidence, as well as a BAC of +.15%. For example, the site selected a random sample of 565 repeat DWI offenders, and correlated BAC at time of arrest with disposition. Of 68 records surveyed where the BAC was below .15%, only 36 resulted in conviction for some offense, and only eight of these convictions were for DWI.[13]

The HCASAP staff reported wide disparities in the BAC/plea bargaining criteria between Division I, the central city court (where approximately 40% of all cases are heard), and the other four outlying suburban divisions. As can be seen from Figure 4-2, at BACs between .10% and .14%, the percentage of convictions in Division I (Minneapolis) for lesser charges was 52.2%, while in the suburban courts, the percentage was 78.1%. Similarly, for the .15% to .19% BAC range, 87.8% of offenders in this range were convicted for DWI in Division I, as compared to only 53.3% in the outlying satellite courts.

13. HCASAP 1974 5th Analytic Study, dated 5/30/75, p. H-7.

FIGURE 4-2 CASE DISPOSITION WITHIN BAC GROUPINGS

COMPARING MINNEAPOLIS WITH SUBURBAN DIVISIONS

	MINNEAPOLIS				SUBURBAN DIVISIONS			
	GUILTY OF DWI	GUILTY OF LESSER CHG.	OTHER DISP.*	TOTAL	GUILTY OF DWI	GUILTY OF LESSER CHG.	OTHER DISP.*	TOTAL
.00	3 (25 %)	6 (50 %)	3 (25 %)	12	0	2 (67)	1 (33)	3
.01 - .04	5 (26.3)	8 (42.1)	6 (31.6)	19	0	3 (100)	0	3
.05 - .09	9 (19.2)	27 (57.4)	11 (23.4)	47	2 (3.8)	41 (78.8)	9 (17.3)	52
.10 - .14	128 (37.1)	180 (52.2)	37 (10.7)	345	112 (17.0)	488 (78.1)	25 (4.)	625
.15 - .19	488 (87.8)	43 (7.7)	25 (4.5)	556	538 (53.3)	429 (42.5)	43 (4.2)	1010
.20 - .24	541 (94.6)	17 (3.)	14 (2.4)	572	471 (78.8)	96 (16.)	31 (5.2)	598
.25 or over	263 (96.7)	7 (2.6)	2 (.7)	272	206 (84.4)	22 (9)	16 (6.6)	244
Implied Consent	330 (82.5)	45 (11.3)	25 (62)	400	270 (58.2)	161 (34.7)	33 (7.1)	464
Unknown	8 (80)	0	2 (20)	10	40 (55.6)	26 (36.1)	6 (8.3)	72
TOTAL	1775 (79.5)	333 (14.9)	125 (5.6)	2233	1639 (53.3)	1268 (41.3)	164 (5.4)	3071

*Includes dismissals and jury trials.

Source: Memo to Judges of Hennepin County Municipal Judges from Forst Lowry dated No. 1, 1973.

Figure 4-3 arrays average BAC at time of arrest with conviction for alcohol-related (A/R) or non-alcohol-related (non-A/R) offense, together with whether or not a crash was involved.

It is apparent that there is a fairly constant BAC range within which both DWI convictions, and convictions for a lesser (non-alcohol-related) offense are made. This seems to be independent of whether or not a crash was involved. This is particularly evident after mid-1972, by which time the HCASAP had begun to collect better, and more segregable data. DWI convictions, both crash and non-crash, usually resulted where the BAC was .20% and above. Convictions for lesser offenses, both crash and non-crash, are within a range of .13% to 16%. These ranges are both well above the .10% level prohibited under the Per Se statute.

It can be hypothesized that the .10% per se law results in lower BACs at time of arrest. Those police officers interviewed stated that their PBT devices are calibrated so as to indicate failure of the tested driver at .11% blood alcohol. (This tolerance factor ensures that the driver will then test at a minimum of .10% in the evidentiary test on the breathalyzer). This only reveals the impact of .10% per se on the arrest process. It tells us nothing about the charging or adjudication/guilt-finding processes on the part of prosecutors and judges. We know from interviews that charging criteria vary widely among prosecutors. But to measure the impact of PBT on charging, we must be able to correlate the charging history of a particular prosecutor with BAC at time of arrest for those specific cases he has handled. Existing data cannot be segregated to allow such correlations. Nor can similar correlations be made for particular judges. The data in Figures 4-3 and 4-4 allow us to infer only that convictions for DWI at BACs close to, or at, .10% are sufficiently rare to produce the averages shown--which are well above the level prohibited by the .10% per se statute.

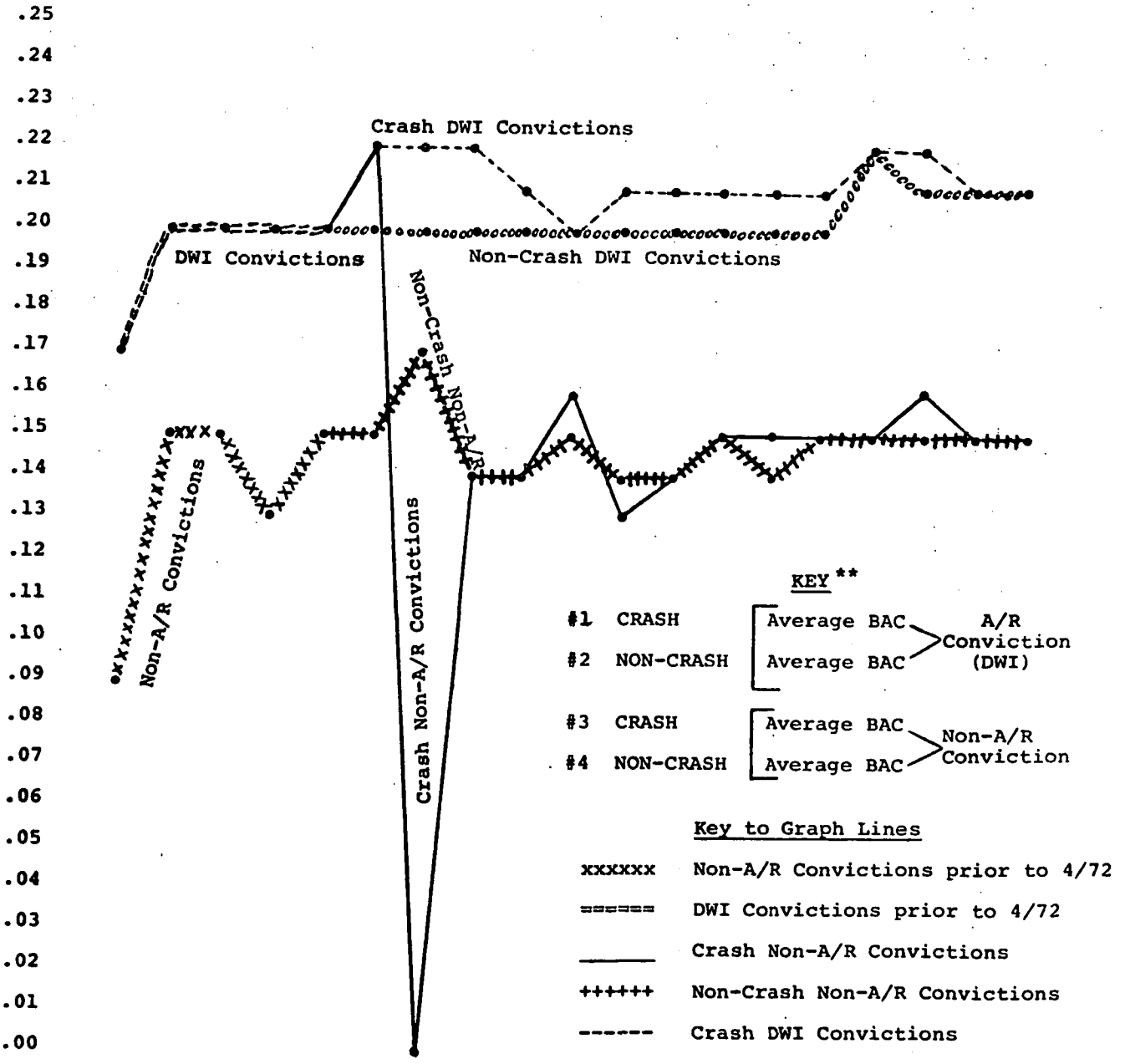
(3) Implied Consent. In 1971 the legislature, in conjunction with passage of the preliminary breath test law, amended the implied consent statute so that arrest is no longer a mandatory precondition for requiring a chemical breath test.

People within the Hennepin County drinking-driver control system are agreed that the implied consent statute, as currently drafted and/or implemented, is largely ineffective. The current statute leans heavily toward the violator, in that he is entitled to two judicial hearings before a suspension can be effected.

FIGURE 4-3

DISPOSITION OF A/R ARRESTS - BY AVERAGE BAC

	1971*				1972				1973				1974				1975			
#1 **	.17	.20	.20	.20	.20*	.22	.22	.22	.21	.20	.21	.21	.21	.21	.21	.22	.22	.21	.21	
#2	↓	↓	↓	↓	↓	.20	.20	.20	.20	.20	.20	.20	.20	.20	.20	.22	.21	.21	.21	
#3	.09	.15	.15	.13	.15*	.22	0	.14	.14	.16	.13	.14	.15	.15	.15	.15	.16	.15	.15	
#4	↓	↓	↓	↓	↓	.15	.17	.14	.14	.15	.14	.14	.15	.14	.15	.15	.15	.15	.15	



* Includes both crash and non-crash.

FIGURE 4-4

AVERAGE BAC AT TIME OF ARREST (CRASH AND NON-CRASH COMPARED TO DISPOSITION

	1972				1973				1974				1975			
	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Convicted of DWI - Average BAC			.161	.166	.160	.161	.151	.151	.143	.142	.149	.149	.148	.155	.160	.157
Convicted of Non-A/R Offense - Average BAC			.970	.137	.143	.139	.155	.130	.118	.104	.157	.138	.141	.117	.171	.157
Acquitted			.0	.124	.080	.126	.175	.090	.140	.160	.100	UNK	.05	.190	.230	.085
Dismissed			.146	.129	.082	.090	.087	.103	.099	.078	.085	.086	.116	.081	.124	.095

Source: Table 10, Judicial Operations, of Volume III, Appendix H Tables, Annual Progress Reports for 1972, 1973, and 1974.

NOTE: The average BACs for Convicted of DWI shown here are significantly lower than either average BAC or average positive BAC for convicted-DWI shown in Figure 5-3. The figures in this table include withheld judgements.

Judicial aversion to the six months revocation required by the statute was widely reported. The length of this revocation is significantly longer than the one month required on a finding of guilty to DWI. "Accordingly," said one judicial source, "many [judges] look for an 'out'." Such an "out" is to be found in the limited license.

(4) The Limited License. In 1971, the legislature amended Section 171.30 to allow an individual whose license has been revoked under the implied consent statute to have a limited license if the operation of a motor vehicle is essential to his livelihood. Such limited licenses must (emphasis supplied) be issued by the Commissioner of Public Safety when hearing courts so recommend. The Commissioner may also exercise his own discretion where the courts do not so recommend.[14] The effect of this limited license feature on the implied consent law was to increase the number of license suspensions. (See Figure 4-5). This gives additional support to those who assert that judges generally dislike mandatory license suspensions and look for ways to avoid depriving offenders of their driving privilege.

(5) Pre-Arrest Breath Test (PBT). The salient features of the Minnesota Preliminary Screening Test for Intoxication Act include the following: when a police officer has "reason to believe" from the way in which the car is being operated that the driver is under the influence of an intoxicating liquor, he may require a sample of that driver's breath for an immediate preliminary screening test or analysis before an arrest is made. The results of this test are to guide the officer in deciding whether an arrest should be made and not as evidence in any court action. A second test may be required which shall be admissable in court as evidence.

System changes as a result of the pre-arrest breath test would appear to be marginal. It is and will remain a useful device for borderline cases, but it is difficult to attribute significant increases in arrests to the PBT law. Data are not sufficient to assess its impact on the courts or treatment agencies.

(6) Eighteen Year Old Drinking Age. In 1973, the Minnesota legislature acted to lower the age of majority from 21 to 18 years of age. By this reduction an estimated 200,000 licensed drivers were added to the state's driving population who are legally entitled to drink and drive.

14. Offenders who have a previous revocation under either the DWI or Implied Consent law within the past three years are specifically exempted from this provision.

FIGURE 4-5

STATEWIDE REVOCATIONS UNDER IMPLIED CONSENT LAW*

Year	No. of Revocations
1964	17
1965	25
1966	22
1967	22
1968	166
1969	691
1970	855
1971	423
1972	568
1973	871
1974	920
1975	1488

*Sources: (1) Minnesota Alcohol Programs for Highway Safety-1972 Minnesota Dept. of Public Safety, St. Paul, Minn., Sept. 1973, and
(2) 1975 Minnesota Motor Vehicle Crash Facts, Minnesota Dept. of Public Safety, St. Paul, Minn.

Impact of Eighteen Year Old Drinking Age. A Minnesota study states that "[t]he number of 18 to 20 year olds arrested statewide for DWI in the two months following the lowering of the legal drinking age to 18 almost doubled from the same two months of the previous year, increasing from 96 to 174 (an 81% increase)."[15] These data are based on BAC analyses conducted by the state laboratory, and do not include BACs of 18 to 20 year olds arrested for DWI and tested at the scene of the arrest. Accordingly, they are based on a small sample, and probably exclude most DWI arrests for this age group made during the same period in Hennepin County. (Virtually all DWI arrests in Hennepin County are tested locally.)

Statements by those persons interviewed for the present study seem to support the conclusion that the immediate and dramatic increase in DWI arrests for the 18 to 20 year old age group state-wide may not be representative of the Hennepin County experience. The HCASAP evaluator, for example, stated that the 18 year drinking law had had no discernible impact. He added that the 18 to 20 year old population was underrepresented in their roadside surveys. This lack of discernible impact was echoed by the Chief Probation Counselor, as well as staff members of treatment agencies.

The Judicial Officer Program.

(1) Description. Even before the advent of the HCASAP, the DWI caseload in the Hennepin County Municipal Court had severely taxed the capability of the available judges to provide timely adjudication. A pretrial disposition program for DWI offenders had been attempted during 1968 and 1969. This program depended on plea negotiation, with a judge acting as arbiter in a hearing where both prosecution and defense negotiated the plea bargain. This program reportedly was quite successful, but the widespread use of plea bargaining offended various segments of the community and was soon scrapped.

By the end of 1972, the court was faced with approximately 1,000 DWI cases awaiting disposition. As the special enforcement effort funded by the HCASAP generated more and more DWI arrests, the court's backlog increased accordingly. By July 1973, this backlog had grown to over 2,000 cases, and by the end of the year stood at an all time high of over 3,600 cases. The court responded by reinstituting the pretrial plea-negotiation conference, presided over by judges. This approach operated for the first six months in 1974.

15. Minnesota DPS "Minnesota Alcohol Programs for Highway Safety-1972," p. 49.

Like its predecessor, however, this new initiative was alleged to be beset by the same lack of uniformity in procedures or sentencing between the different judges who presided at the hearing as had afflicted the 1968/69 pre-trial conferences. Further, it still required greater judicial resources than were available. The use of local attorneys to preside as hearing officers (called "Judicial Officers") was devised, and adopted, as being a more viable method of dealing with the DWI backlog.

Judicial Officers were private attorneys who were paid a flat $100 a day to hear and adjudicate DWI cases. This figure contrasts quite favorably with the estimated $300 a day cost for a judge. While several attorneys acted as Judicial Officers, only two heard cases in any one period of time. There was no statutory authority for the JO program. it was created under "the inherent powers of the court." This left the court open to criticism.

The JO served as a mediator between the prosecutor and the defense attorney, with both being present at the conference. The usual procedure was to consider both the BAC at time of arrest and the offender's prior history of drinking/traffic offenses. If the BAC was above .20%, the prosecutor was usually reluctant to plea bargain. With a BAC of .15% to .20%, the prosecutor was more amenable to plea bargaining if the offender had no prior record. (Typically, no reduction in charge was permitted if the offender had a previous DWI arrest and had received a plea bargain in connection with that prior arrest.)

Under the JO program, a "pre-plea" investigation took place before the bargained plea was agreed to by both sides. In this way the prosecutor had available to him the offender's record of any prior offenses before agreeing to the terms of the sentence. This investigation included a financial statement on the offender which provided the basis for deciding the amount of any fine assessed. This pre-plea investigation, like the normal pre-sentence investigation found in other ASAPs, also included a diagnosis of alcohol problems.

The usual outcome was a small fine, and a jail sentence which was stayed on the condition that the offender comply, during the term of his/her probation, with the court's recommendations for treatment of his/her drinking problem. A 30-day revocation of the driver's license was usually included. Typically, this carried a recommendation (which is binding on the state licensing authority) for the issuance of a limited license.

In essence, the JO performed all the functions of the judge. However, the sanctions he prescribed were really recommendations which had then to be reviewed and approved by the Chief Judge of the Hennepin County Municipal Court. The Chief Judge also imposed the sentence.[16] There was then an element of direct judicial supervision in the JO program, as well as greater consistency in procedures and sentencing.

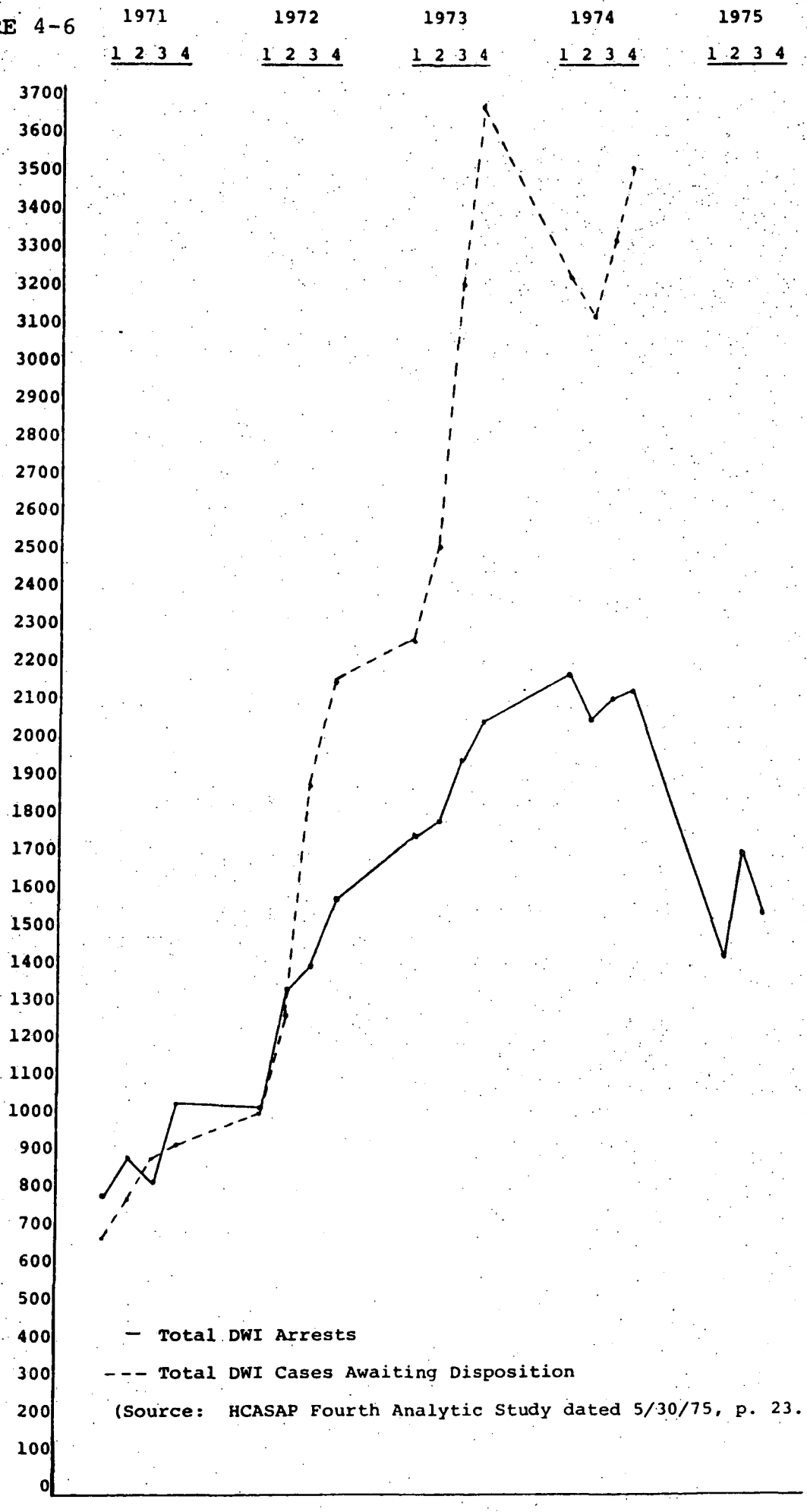
Not all of the judges on the Hennepin County Municipal Court bench agreed with the Judicial Officer program. They seemed to be in agreement with the basic need for a pre-trial conference approach, but their major difficulty stemmed from the delegation of the sentencing prerogative to the JO. One judge termed this delegation "legally and ethically wrong." It was alleged that the judge simply "rubber stamped" both the program and the sentences "recommended" by the JOs. This had the effect of negating the judicial prerogative to sanction.

(2) Impact. There are limited data available which allow at least a partial assessment of the impact of both approaches to the pretrial conference, i.e., where a judge presided or where the JO presided. By the close of 1973, DWI cases awaiting disposition had climbed to an all-time high of over 3,600. As Figure 4-6 shows, by the end of March 1974, this number was reduced by over 400 cases, while arrests continued to increase. By the end of the second quarter, the cases awaiting disposition decreased by a further 100, although this drop occurred concurrently with a similar decrease in arrests. These decreases in backlog (or, stated another way, the increase in dispositions) took place during the period when pretrial conferences were being heard by two regular judges of the court. An HCASAP staff study in August 1974 reported a 6% decline in cases awaiting disposition during the first half of 1974, despite the increase in arrests. The court's pre-trial program was deemed "largely responsible" for the increasing disposition rate and the report concluded with the expressed hope that the impending use of non-judicial hearing officers would further reduce the court's backlog.[17]

16. HCASAP "Annual Report--1974," June 30, 1975, Section I, p. 17.

17. HCASAP Memo from F. Lowry to T. Enright dated August 14, 1974, Subject: "DWI Case Court Disposition Time." The enclosure to this memo presents a detailed exposition of backlog vs. case disposition.

FIGURE 4-6



(Source: HCASAP Fourth Analytic Study dated 5/30/75, p. 23.

Cases awaiting disposition - by Quarter

From Figure 4-7, it can be seen that the most dramatic decreases in both cases awaiting disposition as well as the number of months arrests in process occurred during the first half of 1974, when judges initially presided at the pre-trial conference. When Judicial Officers took over this function in the second half of the year, the decline in both indices was reversed. Thus, it would appear that, at least initially, the Judicial Officers were not able to work as efficiently as their predecessors on the bench. It must be admitted that new personnel and new procedures take time to reach maximum efficiency. Thus, it may be that the disposition rate of the JO's improved in calendar year 1975. Unfortunately, available data are not sufficiently detailed to allow a definitive statement in this regard.

(3) Modification. The principal architect of the JO program was the Chief Judge-designate of the Hennepin County Municipal Court (who was subsequently installed as Chief Judge November 1974). He resigned as Chief Judge effective January 1976, six months earlier than the normal expiration of his term. Coincidentally, in January 1976 the use of attorneys as Judicial Officers ceased. Their function is now being performed by staff personnal of the Hennepin County Municipal Court. Under this new arrangement, once agreement has been reached, all parties go before a judge who reviews and formalizes the recommended sanction(s). In the event that the reviewing judge does not agree with the bargain struck in a particular case, it is up to him to resolve it.

Under the new system, the judges may retain greater control over the plea bargaining and sentencing process, but the possibility of rubber stamping recommendations would not appear to be appreciably reduced. The basic pretrial conference approach is retained, where, like civil cases, the prosecution and defense deal "attorney to attorney" to work out a just bargain for both parties. The new hearing officers (who are deputy court clerks) simply handle the scheduling and docketing of cases and preside over the hearing.

1976 Legislation. In keeping with its reputation for dealing with the drinking-driving problem, the 69th Minnesota Legislature enacted three new measures.

(1) In the first bill passed, the legislature deemed the driving of a motor vehicle while under the influence of alcohol or drugs (Sec. 169.121) a gross misdemeanor when the driver's license or driving privilege was at that time cancelled, suspended, or revoked because of a prior conviction for DWI, violation or the open bottle law, or violation of the implied consent law (refusing to take a blood alcohol test). The gross misdemeanor penality for these offenses

FIGURE 4-7

COURT BACKLOG*

	Number of Cases Not Disposed Of At End of Qtr.	Number of Months Arrests in Process
1971-Q1	676	2.6
Q2	759	2.7
Q3	842	3.2
Q4	898	2.7
1972-Q1	994	3.0
Q2	1267	2.9
Q3	1866	4.2
Q4	2156	4.2
1973-Q1	2222	3.9
Q2	2496	4.2
Q3	3181	5.3
Q4	3650	5.6
1974-Q1	3195	4.6
Q2	3081	4.4
Q3	3397	4.9
Q4	3583	5.0
1975-Total Year	N/A	2.4**

Note: The number of cases not disposed of for 1971 through 1974 includes cases for which bench warrants were issued subsequent to a defendant's failure to appear. By the end of 1974, there were approximately 500 such cases. The HCASAP staff believed that bench warrant cases should be separately accounted for, and these are not included in the 1975 figure. The site produced only an aggregate total for 1975, rather than the quarterly data as in prior years.

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*Source: HCASAP 1974 Analytic Study #4, p. 23.

**Source: HCASAP 1975 Analytic Study #4, p. E-1.

allows for a fine of up to $1,000 and a jail term of up to one year. Violation of Sec. 161.21 is otherwise a misdemeanor with a maximum fine of $300 and 90 days in jail.

(2) The second bill requires law enforcement agencies to report to the State Department of Public Safety the results of all chemical tests (blood, breath, or urine) for blood-alcohol concentration where the result is .10% or above. The commissioner of public safety is directed to revoke the driver's license for 90 days, but may issue a limited license and reinstate the full license after 60 days if the driver is participating in alcohol education or rehabilitation programs.

The law provides no revocation can be made until the driver is notified, and allows him 20 days in which to request a hearing. If such a hearing is requested, it must be held within 30 days in county or municipal court. The results of the hearing will then be referred to the commissioner of public safety for further action.

This law deals only with the driver license. It does not eliminate prosecution in the courts with possible fines and jail sentences.

In every case, sustained revocations and BACs will be recorded on the driver license record.

(3) The third bill requires individual counties of more than 10,000 population (75 of 87) to establish presentence investigation and alcohol safety counseling programs designed to evaluate persons convicted of a DWI offense (or convicted for another offense arising from an arrest for DWI). This law requires that Public Safety provide the courts with information and assistance in establishing the presentence investigation programs suited to the needs of the area, as well as promulgate rules for reimbursement the program. The bill provides an initial $250,000 for up to 50% of the cost of each investigation, not to exceed $25 per case.

Under this law, courts are authorized to stay imposition or execution of an authorized sentence on the condition that the convicted person submit to treatment by a public or private institution or, as the new law adds, a chemical dependency rehabilitation facility licensed by the Public Welfare Department. Any stay granted must be reported to the Department of Public Safety.

5.0 PHOENIX, ARIZONA CASE STUDY SUMMARY

5.1 Objectives and Approach

The primary objective of this case study was to document and assess the efforts of the Phoenix drinking-driver control system to manage an exceptionally large volume of DWI (drinking-driving offense) cases and to provide incentive or inducement for DWI offenders to participate in appropriate alcohol therapy. This community, with the support of its Alcohol Safety Action Project, increased its judicial resources and adopted innovative case processing techniques. The prosecution-based PACT (Prosecution Alternative to Court Trial) program, which was founded on the concept of an earned plea bargain for DWI offenders who participate satisfactorily in a short-term alcohol rehabilitation program, received special attention during the study. The study covers the time period of 1972 through 1975, with special emphasis on the changes occurring in 1974 and their resultant impact on the Phoenix system.

There were three primary methods used to obtain relevant information about the Phoenix drinking-driver control system:

- staff observation and experience;
- ASAP-generated literature; and
- on-site interviews with system personnel.

The Institute for Research in Public Safety, under several training contracts with the National Highway Traffic Safety Administration, conducted at many of the ASAP sites a series of three-day problem-solving seminars for personnel involved in ASAP programs. During the 1973-1975 period, four of these seminars were presented in cooperation with the Phoenix ASAP: a judicial seminar in 1973; a prosecutors' seminar; a probation-diagnosis-referral seminar; and a second judicial seminar in 1974. A second probation-diagnosis-referral seminar was conducted in early 1976. At the time of the one-week on-site activity for this case study in March 1975, the study team had accumulated considerable information and insight into the nature and dynamics of the operation of the Phoenix control system. The major method employed for collecting information was the on-site interview. The two-man study team spent five days in Phoenix in March 1975 conducting interviews with over forty different sources. The team physically observed system operations whenever possible.

5.2 Findings and Conclusions

Background. Phoenix, the capital of Arizona, is a sprawling metropolitan area located in the south central area of the state. Situated in a large, flat valley with scenic mountains rising to the north and south, the city has a pleasant, warm, and dry climate, a feature which attracts large numbers of tourists and retirees each year. There were approximately 670,000 Phoenicians in 1975. There is a sizable Mexican-American population (14%), while 5% are Black and 1% Indian. The median age is 27.5 years.

There are over 2,600 miles of roads within the 273.4 square-mile area of the city. There are only 23 miles of interstate highway within the corporate limits, with 434 miles of major arterial streets and 240 miles of collector streets. The primary mode of transportation is the automobile. There is a mass transit system in existence, but it is largely inadequate to service the transportation needs of the Phoenix area. There are an exceptional number of registered vehicles in Phoenix and the surrounding area (with 452,000 in Phoenix alone in 1972). A large number of driving-age individuals (402,000 in 1975), who comprise 68% of the population, are licensed drivers. The automobile assumes an important and necessary role in Phoenix.

The Phoenix ASAP. In 1971 the Phoenix city administration, in cooperation with the state highway safety coordinator, determined that a special drinking-driver countermeasures program would enhance the highway safety effort in Phoenix. The city subsequently developed and submitted in May 1971 a proposal to the U.S. Department of Transportation for approval of the city as one of the thirty-five federally-funded Alcohol Safety Action Projects. This proposal was accepted, and a contract was concluded obligating $2.2 million in federal funds to support the project during the three and one-half year project term. The six-month planning and preparation phase commenced July 1, 1971, with full operations planned to begin January 5, 1972.

During the six-year existence of the ASAP, $5.1 million, of which $3.2 million represented federal funding support, were expended for this action program. By 1974 alternative funding sources had been identified and used to support successful elements of the program, with a trend to decreasing reliance on federal funds and increasing emphasis on city-appropriated funds and user fees required of DWI offenders referred to short-term rehabilitation programs.

Using the systems approach to drinking-driver control, developers of the ASAP designed a coordinated and integrated

program of multiple countermeasures, each directed to a major need of the control system. This broadly based program, with the ASAP functioning as a funder, coordinator, and stimulator, involved a diverse range of criminal justice, public health, and community resource agencies cooperating in a common goal to reduce the incidence of abusive drinking-driver behavior.

The original effort in the prosecutor-judicial areas involved a significant increase in resources. Funding was provided for three prosecutors including a chief ASAP Prosecutor, three (later reduced to two) additional judges, support personnel, and two new courtroom facilities dedicated to the processing of the planned increase in DWI cases. The ASAP also funded an innovative volunteer probation partner program, the purpose of which was to identify, train, and assign volunteers to work with DWI offenders. A simple presentence investigation capability was created by funding police department employees who were assigned to collect background records information on DWI offenders.

In August 1974, the Prosecution Alternative to Court Trial (PACT) program was begun. This formalized plea-bargaining program allowed DWI offenders the opportunity to earn a reduction in the DWI charge upon successful completion of a short-term rehabilitation. This program was fostered by the ASAP staff; however, much of the funding for the PACT activities was derived from sources other than federal funds, such as city appropriations and client fees.

Legal Environment. The legal milieu in which the drinking-driver control system operates in Phoenix is typical of other jurisdictions in the United States. Arizona has had, since 1935, a statute proscribing the driving of a motor vehicle while under the influence of intoxicants (DWI). An evidentiary presumption of being "under the influence" if the driver has a blood alcohol concentration (BAC) of .15% or more was established in 1939. No major substantial changes in these basic drinking-driving laws occurred until 1969, when the state passed an "implied consent" law, which authorized driver's license suspension for refusal to submit to a chemical test to determine BAC.

In 1972, the state legislature enacted several significant amendments which resulted in (1) the reduction of the presumptive evidence level from .15% to .10% BAC, to bring the state into conformity with nationally recommended standards, and (2) the increase of the penalties for conviction of a DWI offense (for example, a nonsuspendable imprisonment period of at least one day was mandated). This 1972 legislative session also resulted in the reduction of the minimum drinking age from 21 to 19 and the decriminalization of the offense of public intoxication (effective January 1, 1974).

Genesis of PACT. During the first two and one-half years in which the ASAP was operating to improve the local system, the prosecutorial and judicial activities within that system had become increasingly purposeless and ineffective. Despite a substantial increase in judicial and prosecutorial manpower and facilities to provide a fair, efficient, and lawful adjudication and disposition capability for the anticipated influx of a large number of DWI cases, the system failed to achieve its basic objectives. Constraints imposed by state law, limited system resources, defense bar trial tactics and the increasing caseload made the operation of the system unacceptable to many Phoenicians.

There appeared to be no possibility to eliminate the required mandatory jail sentence for a first DWI conviction, at least through legislative recourse. The legislative response was that the deterrent value of a mandatory jail term should be maintained; local resources should be increased to implement the law. The overloaded jury trial schedule and the inefficient cycle of trial in City Court, followed by the right to automatic de novo retrial in Superior Court crippled the system. Despite unrestricted and extensive plea bargaining by the City Prosecutor in 1973 and 1974, the caseload remained unmanageable. Large numbers of DWI offenders avoided any remedial action other than fines, few were being referred to education or treatment via the plea bargaining process, and virtually none were going to jail.

In recognition of the need to revitalize the system for processing DWI offenders, restore fairness to its procedures and ensure the regular referral of drinking drivers to non-traditional dispositional programs for education and treatment, a quasi-diversionary program was devised, mainly by the Chief ASAP Prosecutor. The Prosecution Alternative to Court Trial (PACT) was designed to reestablish the control system to a state of efficient and fair operation, while applying innovative sanctions, either alone or in conjuncion with traditional punitive sanctions.

The PACT Concept. Using the opportunity presented by the inhibiting problem of a large DWI case backlog, the ASAP Staff, the Chief ASAP Prosecutor, the Chief Presiding Judge of the City Court, and the City Intergovernmental Programs Administrator cooperated in the development and promotion of a proposal to alleviate the case processing problem while achieving more basic system objectives, i.e., to prevent recurrence of abusive drinking-driver behavior. The approach selected was the "earned" charge reduction method.

Plea bargaining customarily involves charge reduction, but seldom is the offender required to earn his bargain.

The planners of PACT felt that meaningful behavioral change could be more readily achieved and sustained if the participant in a DWI plea bargain was required to earn the charge reduction and avoidance of jail by demonstrating a willingness to complete a short-term program of alcohol reeducation or treatment. The use of the carrot-and-stick approach provided an incentive for the offender not present in traditional plea bargaining. Under traditional plea negotiation procedure the benefit of the bargain, in the form of a reduced charge or sentence, is realized immediately by the offender before performance of any additional conditions of the plea bargaining agreement is required.

Impact of PACT. The four years of operation of the Phoenix drinking-driver control system, through the intervention of the Alcohol Safety Action Project with significant federal funding made available to the system, involved major changes in the perception and handling of DWI offenders. The trend of activity during the period can be seen in Table 5-1.

The police agencies were sufficiently motivated to increase and maintain DWI arrest levels. Arrests remained at a 9,000 to 10,000 level through the project term.

Guilty pleas at arraignments became increasingly infrequent during the four years, reaching nearly 100% in 1975. This reflected the court policy to encourage not guilty pleas to allow participation in the PACT program. The impact of plea bargaining is also reflected in the increasing proportion of DWI cases dismissed in return for pleas to lesser traffic charges. The plea-bargaining activity in 1972 through mid-August 1974 was the result of the City Attorney policy. The plea bargaining after that date, through the PACT program, represented system-wide policy which the major actors in the control system accepted.

The caseload trend during the four-year period is clear. Pending jury and nonjury trials generally declined, while appeals to Superior Courts were virtually eliminated. The PACT program and court trial recordation program in City Court were responsible for the latter, while plea bargaining, both before and after PACT, served to reduce the pending trial backlog.

One unresolved problem which worsened during the period was the backlog of unserved bench warrants, usually issued for failure to appear in court. No information is available as to the exact nature of this problem or to attempts to seek a solution.

TABLE 5-1

PHOENIX DRINKING-DRIVER CONTROL SYSTEM

1972-1975

	1972	1973	1974	1975
Population	701,300	743,400	773,000	670,000
Traffic Fatalities	109	117	131	124
DWI Arrests	10,401	9,329	8,935	10,804
Not Guilty Arraignment Plea by Year of Arraignment	57.4%	75.0%	92.5%	99.3%
Outcomes*				
• Guilty of DWI	70.8%	41.4%	48.1%	12.7%
• Not Guilty	1.7%	1.1%	0.8%	0.8%
• Dismissed	27.6%	57.5%	51.1%	86.5%
DWI Cases Pending of End of Year				
• PDC	----	284	1,632	1,798
• PACT Disposition Sessions	----	----	816	1,383
• Jury Trials Set	1,700	955	160	193
• Non-Jury Trials Set		17	46	31
• Appeals to Superior Court	n/a	641	304	9
Bench Warrants to be Served	n/a	1,184	2,072	3,043
Exposure to Drinking Diagnosis or Screening**	40.7%	30.4%	45.7%	72.7%
Referred to Rehabilitation by Type of Arraignment Plea				
• Guilty	66.5%	72.6%	47.4%	21.3%
• Not Guilty	48.3%	38.8%	60.0%	82.1%
• Overall	56.0%	47.2%	59.0%	81.7%

*Includes total dispositions of DWI cases during the year with an arrest date of 1972 or later.

**Includes persons with an arrest date in the year indicated who received screening or diagnosis in the arrest year or a subsequent year.

SOURCE: Phoenix Alcohol Safety Action Project, numerous reports, including Analytic Study IV, An Analysis of Judicial System Performance (1975) and Analytic Study VI, Analyses of Drinker Diagnosis and Referral Activity and Alcohol Rehabilitation Efforts (1975).

The ASAP approach is based on the premise that traditional sanctions alone for DWI offenders have not been proven to be effective and that a DWI control program must identify and respond to underlying drinking problems in order to achieve success. The process of identification or screening of drinking drivers in Phoenix was most successful during 1975, the first full year under the PACT program. Nearly 73% of those arrested for DWI were subjected to drinking diagnosis or screening of some type. The frequency of referral of DWI offenders to special short-term education or treatment programs was also highest during 1975, reaching approximately 82% of all DWI offenders arraigned. The change in the method of referring offenders to rehabilitative programs is seen in the type of plea at arraignment that results in a referral. In 1972, when there was no mandatory jail penalty for conviction, there was a higher guilty plea rate and a greater rate of referral for those pleading guilty (67%); while in 1975, when the not guilty plea rate was nearly 100% of all those arraigned, referrals were most likely to result after a not guilty plea (82%). As a means for identification and referral to rehabilitative programs, the PACT program was successful.

The ultimate success of the PACT program, however, may well be determined by the efficacy of the rehabilitative programs to which DWI offenders are referred through PACT. Evaluation of education and treatment impact will be concluded in 1977. Preliminary results are not exceptionally encouraging. It appears that, based on preliminary results, DWI offenders undergoing treatment are less likely to recidivate than those not undergoing treatment, but there is nothing to indicate that exposure to short-term rehabilitation or education produces lower recidivism than exposure to minimal treatment. These conclusions were reached tentatively by the ASAP evaluation staff and should be viewed with caution until the evaluation effort is completed in 1977.[18]

The PACT Change Process. The adoption of major system change in the Phoenix drinking-driver control system, i.e., the PACT quasi-diversionary process, was achieved within a span of about one year. Since it is a program based on the discretionary powers of the prosecutor to control the charging process, including negotiation with defendants over charging concessions to be made in return for a plea of guilty, it appears interesting that such a prosecution-oriented program could be implemented without the support of the chief prosecuting official. Indeed, this is what transpired in the adoption of the PACT program in Phoenix.

18. Phoenix Alcohol Safety Action Project, Analytic Study VI, Analyses of Drinker Diagnosis and Referral Activity and Alcohol Rehabilitation Efforts, 1975, pp. 136-140.

Five functional steps have been identified in the change which resulted in the adoption of the PACT program in Phoenix:

- identification and diagnosis of the problem;
- design of a solution (the change);
- authorization for implementation (preliminary acceptance);
- conduct of trial and evaluation; and
- modification and stabilization.

(1) Identification and Diagnosis of the Problem. The problem confronting the control system depended upon the perspective from which the problem was being defined. To all actors and personnel in the system the problem was, at a minimum, the processing inefficiency of the judicial process; to the ASAP staff, most judges, probation personnel, treatment/rehabilitation, and to many other personnel (except for the City Attorney, his City Prosecutor, and most of the prosecution staff), the problem was the processing and referral dysfunction of the judicial process. Not only was the system not functioning as a timely and efficient processing mechanism, it was also not responding to the need perceived by many system personnel, including the ASAP staff, for referral of DWI offenders to innovative education-and-treatment programs designed to diminish further abusive drinking-driving behavior. There was an attitudinal stalemate: the ASAP wanted regular referrals to alcohol education and treatment, and the prosecutor wanted to continue traditional plea-bargaining practice and not include any requirement for such referrals. The identification of the problem was not difficult; statistics clearly showed that a sizeable court case backlog was developing in both City and Superior Court, and large numbers of offenders were not being referred to any program after conviction. Procedural alterations in the system to alleviate the problem proved not to be fully effective. Pretrial disposition conferences (PDC) expedited the traditional plea-bargaining activities, while the backlog remained at an unacceptable level. Requests for additional resources were declined, with perceived underutilization of existing resources being cited as the reason. It was at this point that the impetus for major change was provided.

(2) Design of a Solution. Early in the course of the ASAP, the Chief ASAP Prosecutor suggested the possibility of using a diversion approach with drinking-drivers. Diversion had been successfully employed with juveniles, drug abusers, mental defectives, and alcoholics; and application to drinking-drivers appeared practicable. This concept was rejected at the time. In October 1973, at an ASAP-sponsored seminar

for judges and other system personnel, the concept was again offered by the Chief ASAP Prosecutor as a solution to the current problem. The Intergovernmental Programs Administrator, the immediate supervisor of the ASAP management staff, being aware of a need for change, authorized the Chief ASAP Prosecutor (the innovator) and the ASAP staff to proceed to develop a proposal for a diversionary program for drinking drivers. A major barrier to development of this proposal, the City Attorney, was ignored. The Chief ASAP Prosecutor, an employee of the City Attorney, operated under unrestrictive administrative control and was able to work on the proposal without the express approval of his immediate superiors. The assignment of the task to the ASAP Prosecutor was made by higher authority in city government (the Intergovernmental Programs Administrator), responding to the desire of the City Council for development of an optional plan.

In January 1974, the new Chief Presiding Judge of the City Court assumed office. After becoming acquainted with the ASAP program and the concept for a diversionary program, he became actively involved in the developmental process and apparently took control of PACT development. Meetings were held with key system actors, primarily enforcement administrators and judges, to solicit input on the design of a new system. It was concluded that the diversionary program would operate within the traditional system. There would be processing through the court, and dismissal of all charges, the usual procedure in a diversionary program, would not be utilized. The concept of an "earned" plea bargain as a mechanism to encourage participation in an education or treatment program was accepted. A system involving the use of a "sweet offer," coupled with referral to an alcohol program, and provision for permanent entry on the driving record, appealed to most of the key actors involved. The ASAP staff, the Chief ASAP Prosecutor, the Chief Presiding Judge, and the Intergovernmental Programs Administrator all functioned as advocates of adoption of the new system, entitled "Prosecution Alternative to Court Trial" (PACT).

(3) Authorization for Implementation. Strategies for securing implementation of this new system were devised. Since it appeared unlikely that the City Attorney or his staff would alter the policy of nonreferral plea bargaining, it was necessary to develop an adoption strategy which would neutralize any resistance presented by the chief prosecuting official. The advocates determined that endorsement and authorization by the policy-making leader of the city, the City Council, would be necessary. At the urging of ASAP, a citizen's committee was appointed by the City Council to

review the ASAP program and to provide recommendations on activities which should be continued with local funding. The proposed PACT program had advocates influential with the Council: the Intergovernmental Programs Administrator, who was the City Manager's liaison to the Council; the Chief Presiding Judge, who was effective in presentations to that body; and an attorney councilman, responsible for overseeing the court area for the Council.

The City Council endorsed the PACT concept in April, 1974. In May, the citizen's committee endorsed PACT. In June, the Council approved funding for PACT for a six-month trial period. It appears a bandwagon effect of sorts occurred, carrying PACT to initial acceptance for implementation. There were ineffectual critics and defenders; the City Attorney and staff, the probable major defenders, did not offer active opposition. Resentment, however, was created because of the limited involvement afforded the City Prosecutor's regular staff in the planning of PACT.

(4) Conduct of Trial and Evaluation. The City Council authorized a test of the proposed system. The next step in the adoption process involved the planning, preparation, implementation and operation of the PACT program for the trial period. The ASAP coordinated the gearing-up activities during this phase, including the development of procedures and the hiring and training of personnel.

In July, a Prosecutor Seminar was sponsored by the ASAP to introduce the PACT program to the City Prosecutor's staff. The Chief Presiding Judge and the Chief ASAP Prosecutor were present as advocates to explain and sell PACT. Recognizing a probable decrease in their involvement in DWI case processing, the prosecutors tentatively accepted the program, despite one or two vocal defenders of the status quo.

On August 14, one day prior to the inauguration of PACT, final coordination and briefing of system personnel was conducted by the ASAP. On August 15, 1974, PACT commenced operations. The program generally operated as planned and, in spite of some staffing deficiencies and inefficient procedures, the PACT was considered successful. The acceptance rate for PACT participation started and remained at the 95-97% level throughout 1974 and 1975.

In January, 1975, after notice of continued federal funding had been received, the City Council renewed its authorization of the PACT program for another six months.

(5) Modification and Stabilization. The final step of the adoption process was modification of system operating procedures and stabilization of the program by final integration of the system into the operations of the responsible agencies. During this period, the need was recognized for an administrator to ensure further revision and refinement of procedures to achieve maximum system efficiency. This role was assumed by the new City Prosecutor. The City Attorney, recognizing that PACT would endure for at least the first six months of 1975, requested his City Prosecutor to assume responsibility for developing a more efficient paper flow process in cooperation with the ASAP and the City Court, and for documenting the system procedures to which the participating agencies should subscribe.

The institutionalization of the PACT process into city operational routine was achieved later in the year. A Rehabilitation-Probation Center was created as an arm of City Court to provide the PACT orientation, screening, and referral activities, the management of the short-term rehabilitation programs, and the city's expanding probation services. In September, the City Council responded positively to reports of PACT effectiveness from the ASAP management and the Citizens Alcohol Safety Advisory Committee by endorsing the program for further continuation as part of the City Court.

Specific Findings and Conclusions. Based on the analysis of the history of the operation of the Phoenix drinking-driver control system from 1972 through 1975 and the reports and impressions of numerous observers and participants in the system, the following findings and conclusions were determined to be appropriate.

Findings.

(1) The DWI enforcement activity achieved and sustained a high level of arrests during the period, significantly increasing the arrest rate compared to the pre-1972 experience.

(2) Despite an increase in available resources, the prosecutorial-judicial component of the system was not able to provide timely adjudication and disposition of DWI cases after the arrest rate increased.

(3) The reason for the failure to process cases in a timely fashion resulted from a high rate of requests for trial, particularly jury trials, and subsequent overscheduling.

(4) The underlying reasons for the system failure were generally agreed to be a combination of factors:

- high arrest rate;
- mandatory one-day jail term for conviction of DWI;
- increased involvement of defense attorneys as a result of Argersinger and the possibility of incarceration as an outcome in DWI cases;
- prosecutor and court processing inefficiencies; and
- availability of a trial de novo upon appeal to the Superior Court.

(5) The primary response of the system to the trial backlog problem, since additional resources were not authorized, was widespread plea bargaining.

(6) The plea bargaining policy was effective in reducing the trial backlog, but did not result in either jail terms or referral to alcohol education or treatment programs.

(7) The policy of the managers of the city prosecution activity was that requiring participation in alcohol rehabilitation was not an appropriate function for prosecutors.

(8) By late 1972 and throughout 1973 and 1974, the legislative policy of mandatory incarceration and discretionary treatment for alcohol abusers was not being fulfilled because of the plea bargaining policy.

(9) The PACT program was designed to remedy several perceived deficiencies in the system:

- unfairness of plea bargaining for offenders unrepresented by counsel;
- lack of referrals of drinking drivers to alcohol rehabilitative programs; and
- inefficiency and lack of uniformity and consistency in prosecutor and court procedures for handling DWI offenders.

(10) PACT is a comprehensive plea-bargaining program designed to provide an expedient, uniform, and fair method of classifying and diverting DWI offenders into a short-term alcohol rehabilitation program, with the inducement to participate provided by a plea bargain and thereby avoidance of the possibility of any incarceration.

(11) From August 1974 through 1975, the PACT program operated in a consistent and uniform manner, provided an entry into appropriate rehabilitative programs for all

eligible offenders, and efficiently processed most cases to conclusion within a reasonable period of time.

(12) The commitment of key members of city management to the PACT program, despite the lack of interest or approval by managers of the prosecution agency, was sufficient to ensure the trial of the new approach.

(13) The program was continued after periodic review and evaluation determined that it was meeting its objectives of fairness, referral effectiveness, and efficiency. The satisfactory performance of the program eventually resulted in its integration into the standard operating routine of city government and its support with local funds.

(14) The general attitude toward PACT has been one of ambivalence. Nearly everyone wanted the traditional system to work as designed, but there was unanimity that it had ceased to function fairly, efficiently, or effectively in implementing legislative policy. Concern was expressed that the PACT program constituted a circumvention of the law, but all recognized that the PACT program was necessary and that it was a fair and efficient case processing method.

(15) Throughout the four-year period, the Alcohol Safety Action Project was the only agency in the control system which ensured a cooperative, system-oriented approach to drinking-driver case disposition. The ASAP worked to identify problems and facilitate their solution through coordination, stimulation, and funding. It was the ASAP which fostered the development and support for the PACT approach.

Conclusions.

(1) The PACT system did not fully effectuate the intent of the DWI law; mandatory sanctions were avoided, but treatment options were provided. The practical effect of the PACT system, which routinely results in conviction for charges substituted for DWI, is a de facto decriminalization of first-offense DWI.

(2) Legislative policy in the form of a mandatory jail term for a drinking-driving offense may not be implemented if a drinking-driver control system has inadequate enabling law, resources, or procedures, or if the key personnel in the system do not support the legislative policy. All of these factors were operative in the Phoenix system.

(3) A misdemeanant court (such as the Phoenix City Court) system must be capable of providing opportunity for trial for all DWI offenders who seriously desire to contest the charge or who want to test the ability of the system

to provide the trial within the time limit required. Any continuing inability to provide this opportunity will result in an increase of those offenders who will want to test the system in the anticipation of a less severe outcome.

(4) The PACT program is an effective mechanism for referral of DWI offenders to any type of program for changing undesirable drinking-driving behavior, as long as the offender perceives the alternative program to be less onerous than the other sanctions threatened.

(5) The PACT program is transferable to any jurisdiction where a routinized, high-volume, but discriminating, referral mechanism is needed. The methodology can be applied to either a court-operated or prosecutor-operated program. The approach can be used to link offenders with whatever treatment or correctional programs are available. It may find greatest applicability in jurisdictions which cannot or will not apply the existing legal sanctions because of actual or perceived overpenalization by the legislature.

(6) The design and implementation of a PACT approach requires the involvement of all key agencies in the control system to ensure acceptance of the program and the development of an efficient processing procedure. A system-coordinating agent similar to an ASAP can facilitate this process.

6.0 LOS ANGELES COUNTY, CALIFORNIA CASE STUDY SUMMARY

6.1 Objectives and Approach

The primary objective of this case study originally was to examine the three drinking-driver "presentence investigation" systems utilized by the three municipal courts within the major operational area of the Los Angeles County Alcohol Safety Action Project. Actually, only two of the three drinking-driver screening, referral, and monitoring systems in the so-called "mini-ASAP" area conducted presentencing investigations. One system employed brief presentence screening, a second used traditional felony-type presentence investigation, and the third functioned in a postsentencing context. Further analysis of the Los Angeles County drinking-driver control system and the ASAP-supported programs resulted in an expansion of the number of drinking-driver investigative systems to be studied. One studied presentence system supported the world's largest traffic court, which handled all traffic cases in the City of Los Angeles, while another provided volunteer screening, referral, and monitoring services to another large-volume court. A final drinking-driver investigative system analyzed was the special Department of Motor Vehicles pilot program for review of driver records for identification of possible problem drinking drivers and assignment of these high-risk drivers for further diagnosis and referral to alcohol-related programs.

The study provided a historical perspective on the development of these programs during the nearly three-year operational period of the Los Angeles County ASAP from late 1972 through 1975, with emphasis on the status of the alternative drinking-driver identification and referral models existing in May 1975.

There were three primary methods used to obtain relevant information about the Los Angeles County drinking-driver control system:

- staff observation and experience;
- ASAP-generated literature; and
- on-site interviews with system personnel.

The Institute for Research in Public Safety, under several training contracts with the National Highway Traffic Safety Administration, conducted at many of the ASAP sites a series of three-day problem-solving seminars for personnel involved in ASAP programs. During the 1973-1975 period, two of these seminars were presented in cooperation with the Los Angeles County ASAP: a prosecutors' seminar in March 1974; and a

judicial seminar in July 1974. These seminars created an opportunity for members of the study team to analyze the Los Angeles system in some depth over an extended period of time. Each seminar was usually preceded by on-site investigation and communication with local personnel. Consequently, at the time of the one-week on-site activity for this case study in May 1975, the study team had accumulated considerable information and insight into the nature and dynamics of the operation of the Los Angeles control system.

6.2 Findings and Conclusions

Background. Los Angeles County is a sprawling metropolitan area located in the southern portion of California, adjoining the Pacific Ocean. Within the 4,060 square miles of the county is a diversity of prominent geographic features including a coastal plain, fertile valleys, desert area, and rugged mountains. There has been a proliferation of cities and unincorporated areas in the heavily populated county, with the City of Los Angeles being by far the largest city. In 1975 the county population was nearly 7,000,000. Of this total, over 4.3 million were licensed drivers who operated the more than 4.9 million vehicles registered in the county. During 1973 there were approximately 400 alcohol-related motor-vehicle fatalities.

The main area for ASAP operations, called the "mini-ASAP," is located in the eastern portion of the county in the San Gabriel and Pomona Valleys. This area is coincident with the boundaries of the three adjoining court districts of El Monte, Citrus, and Pomona. The area is approximately one-tenth of the total land area of the county (496 square miles), although nearly one-half of it is in a rugged unpopulated national forest. There are sixteen incorporated cities and eight unincorporated communities, with considerable industrial and commercial development; however, the mini-ASAP area is primarily a series of bedroom communities for the City of Los Angeles.

In 1975 there were 729,420 residents in the mini-ASAP area, most of whom were lower- or middle-class whites (72%). There existed, however, a sizable Mexican-American population (24%) in this area of diverse racial and ethnic groups. There was a large number of licensed drivers (400,280) and vehicles (453,455) in the mini-ASAP area. Here, as in the county as a whole, the automobile assumed an important and vital role for most of the inhabitants, particularly in view of the inadequate mass transit system existing in the county.

Los Angeles County ASAP. In 1972 the National Highway Traffic Administration entered into a contract with Los Angeles County for conduct of a three-year alcohol countermeasures

program to be operated throughout the county. The Los Angeles County Alcohol Safety Action Project, which was created by this funding, became the largest of the thirty-five ASAPs in terms of federal funds allocated ($6 million) and population served (7 million). Most of the other ASAPs were supported with approximately $2 million in federal funding. Sixty-four percent of the funds (approximately $3.9 million) was programmed for conduct of a full range of countermeasure operations within the mini-ASAP area.

Using the systems approach to drinking-driver control, developers of the ASAP designed a coordinated and integrated program of multiple countermeasures, each directed to a major need of the control system. This broadly-based program, with the ASAP functioning as a funder, coordinator, and stimulator, involved a diverse range of sixteen criminal justice, public health, and community resource agencies cooperating in a common goal to reduce the incidence of abusive drinking-driver behavior.

In the judicial area the ASAP sponsored the introduction of special drinking-driver alcohol screening, referral, and monitoring programs in five courts in the county, including three in the mini-ASAP area. These programs provided judges with more meaningful sentencing information on DUI offenders and spurred development of additional alcohol education and treatment alternatives throughout the county.

Legal Environment. The State of California traditionally has been in the vanguard of states with innovative laws and practices. In the area of drinking-driver control, the state of the law in California has been one of considerable change, noteworthy innovation, and some confusion. During the nearly three years of ASAP operations, the California legislature was active in the development and enactment of highway safety legislation. The area of investigation, referral, and monitoring of drinking drivers received emphasis by the legislative body, with the result that California offers an interesting model for consideration for adoption by other jurisdictions.

Disposition Alternatives. The ultimate success of a drinking-driver control system is dependent on the dispositional opportunities available to the system, both from the standpoint of legal authority to handle drinking drivers in certain ways and from the standpoint of punitive and therapeutic resources available to change abusive drinking-driving behavior. The California law has evolved since 1972 in granting a range of varied dispositional options and incentives to be used with DUI offenders.

Driving Under the Influence (DUI). The severity of the penalties for DUI increases according to the frequency of conviction for such behavior. As in most states, the penalties for DUI depend upon the number of prior convictions for DUI and the recentness of any prior convictions.

(1) First Offense DUI. An offender convicted of his first DUI offense must be penalized, at a minimum, by a fine of $250. A jail term of at least 48 hours (in lieu of or in combination with a fine), and a driver's license suspension of six months are discretionary dispositional alternatives. Treatment may be required. If the offender cooperates with a driver improvement or treatment program, the minimum fine required is lowered to $150.[19]

(2) Second and Subsequent Offense DUI. An offender convicted of a second or subsequent DUI offense within five years must be penalized, at a minimum, by 48 hours in jail, a fine of $250, and a one-year driver's license suspension. Treatment may be required. If the conviction is the third within seven years, a three-year driver's license revocation is mandatory.[20]

"330" Law. Since the time of analysis of the Los Angeles program in mid-1975, the state legislature enacted a new law regarding dispositional alternatives in DUI cases. The DUI disposition portions of the legislation are commonly referred to as "Senate Bill 330" or just "330." This new disposition program is intended to supplement and not replace any existing programs or procedures for handling drinking drivers. The "330" program permits a court, by refraining from suspending a DUI offender's driver's license, to induce a drinking driver to participate in an approved alcohol treatment program for one year and thus retain his license. This law is effective statewide on January 1, 1978.[21]

Dispositional Information. In 1972, special legislation ("Deukmejian Law") regarding presentence investigation for DUI offenders was enacted. This law, which originally made presentence investigations mandatory in the case of second and subsequent DUI offenders, was modified to defer the mandatory investigation requirement until January 1, 1974. For conviction of first-offense DUI, a judge has the discretion whether to order a presentence investigation to determine if the offender would benefit from treatment for persons who are habitual users of alcohol. For persons convicted of DUI for a second or subsequent time, the judge must (effective January 1, 1974) order the presentence investigation. The court is authorized to order suitable

19. Cal. Veh. Code §§ 23102, 13353, 23102.3 (C) (West).

20. Cal. Veh. Code §§ 23102, 13352, 23102.3 (West).

21. Cal. Veh. Code §§ 13201.5, 13352.5 (West).

treatment for persons who would benefit from alcohol treatment, in addition to other required penalties.[22]

Probationary Control. Any court in California which has jurisdiction to impose punishment in misdemeanor cases also has the power to suspend the imposing or the execution of sentence in a misdemeanor case (such as DUI) and to make and enforce the terms of probation for not more than three years.[23] There are two basic types of probation in California: (1) summary probation; and (2) "formal" probation, or probation under the supervision and control of a probation officer.

Evaluation of the Law. The legal framework in California provided adequate enabling authority to permit the drinking-driver control system (particularly courts and supporting agencies) to develop and apply to DUI offenders a broad range of dispositional alternatives, depending on the particular problems and needs of each offender. The courts were authorized to employ traditional sanctions (fine, jail, and license suspension) and therapeutic sanctions ("suitable treatment"). The therapeutic sanctions could be applied with the aid of financial inducements, e.g., a fine reduction for first-time DUI offenders who participated in a driver improvement or treatment program, or through direct court coercion as a condition of summary or formal probation.

In 1974, the legislature required judges to conduct presentence investigations for multiple DUI offenders; however, the investigation was discretionary for first-time offenders. This law expressed legislative policy that judges should have adequate sentencing information to apply appropriate dispositions for DUI offenders likely to have drinking problems (second or subsequent offenders).

Despite the fact that a second DUI conviction within a five-year period requires a two-day jail term, the major interest of DUI offenders has been retention of the driver's license. Suspension of the driver's license is discretionary with a court on the first offense, and is mandated for a one-year period for a second conviction in five years. The inducement of continued license retention upon compliance with prescribed remedial programs, sometimes used in plea bargain agreements, was endorsed by the state legislature as an appropriate incentive.

The so-called "330" program,established an alternative approach for handling drinking-driver offenders. The courts will have the discretion to allow a DUI offender, regardless of the number of prior DUI convictions, to retain his driving privilege upon satisfactory participation for one year in an approved alcohol treatment program. Approved "330" programs must be able to provide a variety of treatment services or be able to refer to other agencies providing such services.

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22. Cal. Veh. Code § 23102.3 (West).
23. Cal. Penal Code § 1203(a) (West).

In addition, periodic personal supervision and monitoring for compliance must be offered. The mandatory presentence investigation law and the "330" law together represent legislative endorsement of alternative disposition programs for DUI offenders, particularly therapeutic programs for those with alcohol problems. Nevertheless, the judiciary for many years has possessed adequate discretionary authority to fashion individualized dispositions of either a punitive or therapeutic nature for DUI offenders.

ASAP Investigation-Referral-Monitoring System Models. During the operation of the Los Angeles ASAP from 1973 to 1975, several different approaches or models for conducting the three essential functions of a drinking-driver disposition program were designed, implemented, and evaluated. These critical functions are:

- investigation and diagnosis;
- referral; and
- supervision, monitoring, and follow-up.

Investigation and diagnosis are information collection and analysis activities to determine the most appropriate disposition of the drinking driver to ensure reduction or prevention of future abusive drinking-driving behavior. Investigation typically is a problem-identification process which, in the case of analysis of drinking-driving offenders, involves a nonmedical assessment of the nature of the individual's alcohol-related problems and a determination of the legal and therapeutic dispositions most appropriate for him. Referral usually involves the identification of a specific community resource for resolution of the offender's problems, communication with that agency regarding admission, and direction of the offender to the appropriate agency. It is essentially a linkage function; referral links the offender with the appropriate remedial resource.

Supervision, monitoring, and follow-up are three interrelated activities which have a primary purpose to ensure compliance with the requirements of the court disposition or referral. Supervision is an active compliance confirmation activity which requires periodic communication between the offender and the compliance agent. Monitoring is a more passive activity, usually requiring a precipitating event of noncompliance to be brought to the attention of the compliance agent. Typically, monitoring is accomplished through the reporting of subsequent offenses or other noncomplying behavior through a routinized system of record review. All three functions are essential to an adequate drinking-driver disposition program.

The five main investigation-referral-monitoring system models studied were associated with different municipal- or misdemeanant-level courts in Los Angeles County. Three were in the mini-ASAP area: (1) El Monte Municipal Court Model (brief presentence procedure); (2) Citrus Municipal Court Model (postsentence procedure); and (3) Pomona Municipal Court (extensive presentence procedure). Supporting the three municipal courts in the mini-ASAP area were two additional diagnosis-and-referral resources: (1) Diagnosis, Evaluation, and Referral (DER) Center, which involved a medically-oriented diagnostic procedure designed to enter eligible problem drinkers into disulfiram therapy; and (2) Alcoholism Council of East San Gabriel and Pomona Valleys, which operated as an alcohol information and referral service with an AA-orientation. In addition, the Department of Motor Vehicles field offices in the mini-ASAP area conducted a screening and referral program involving review of driver records for possible problem drinkers and referral to the DER Center to confirm the problem drinker assessment and determine eligibility for disulfiram treatment.

The two additional court models were: (1) the Los Angeles Downtown Traffic Court (brief presentence procedure); and (2) The Van Nuys Municipal Court (postsentence procedure conducted by volunteers). The Downtown Traffic Court model is quite similar to the El Monte model, but processes a considerably higher volume of cases. The Van Nuys model is the prototype for postsentence investigation and referral programs conducted by alcoholism councils in the county.

The impetus to develop effective and efficient investigation-referral-monitoring systems was created by the enactment of the Deukmejian law review earlier, which requires a presentence investigation to be conducted for persons convicted of a second or subsequent DUI violation to determine if the offender is an habitual user of alcohol and would benefit from alcohol treatment. The investigation is optional in the case of first-time DUI offenders. The implementation of the "330" law, which is effective statewide on January 1, 1978, requires an investigation-referral-monitoring capability in each county. As a result of the recent laws mandating the performance of these functions, California has been experimenting with alternative models to determine the most effective and efficient method. The ASAP program presented an opportunity to conduct an analysis of several alternative models.

Tables 6-1 and 6-2 present relevant comparative data pertaining to the alternative models. These evaluative characteristics are ranked according to the relative performance or capability of each system [high, low, or somewhere in the mid-range (-)]. Comparative data from 1974 are

TABLE 6-1

COMPARATIVE ANALYSIS OF FIVE COURT INVESTIGATION-REFERRAL-MONITORING SYSTEMS

	El Monte	Citrus	Pomona	Van Nuys	Downtown Traffic
Performing Agency	Public Health Investigation	Probation Department	Probation Department	Alcoholism Council	Public Health Investigation
Investigation Point	Pre-Sentence	Post-Sentence	Pre-Sentence	Post-Sentence	Pre-Sentence
Time per Investigation*	Low (30 min.)	--- (1-2 hrs.)	High (2-4 hrs.)	--- (1-2 hrs.)	Low (20 min.)
Cost per Investigation	--- ($26.24)	High ($37.98)	High ($55.37)	Low ($17.03)	Low ($8.67)
Court Contacts per Investigation	High (3)	Low (1)	--- (2)	--- (2)	--- (2)
Classification Rate (1974)	High (97.8%)	Low (47.3%)	--- (76.8%)	Low (56.2%)	High (96.1%)
Referral Recommendation Rate (1974)	High (99.3%)	High (97.9%)	--- (82.6%)	High (99.7%)	--- (88.1%)
Misdiagnosis and Misreferral Rates	Unknown	Unknown	Unknown	Unknown	Unknown
Court Acceptance/ Investigation Rate (1974)	Low (67.0%)	High (85.0%)	Low (66.0%)	Low (n/a)	Low (n/a)
Court Acceptance/ Recommendations Followed (1974)	High (98.2%)	High (Implied)	High (93.9%)	High (Implied)	High (100%)
Monitoring Capability	---	High	High	---	---
Supervisory Capability	Low	High	High	---	Low

*Approximations based on interviews with investigators for each court.

TABLE 6-2

THREE-YEAR INVESTIGATION EXPERIENCE FOR FIVE LOS ANGELES COUNTY MUNICIPAL COURTS

	MINI-ASAP AREA												Van Nuys				Downtown Traffic			
	El Monte				Citrus				Pomona											
	73	74	75	TOT	73	74	75	TOT	73	74	75	TOT	73	74	75	TOT	73	74	75	TOT
Cases Eligible for Investigation	3166	2505	2002	7673	3169	3467	3848	10484	1037	1147	360	3094	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Investigation Output	619	1685	942	3246	2799	2955	2254	7999	682	755	439	1876	1540	4830	4658	11028	2679	4111	7855	14645
Investigation Rate (%)	20.0	67.0	47.1	42.3	88.0	85.0	58.6	76.3	63.0	66.0	51.0	60.6	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Classification Rate (%)	n/a	97.8	74.1	----	42.0	47.3	48.4	----	87.4	76.8	54.4	----	76.1	56.2	60.7	----	n/a	96.1	41.2	----
Referral Recommendation Rate (%)	97.4	99.3	99.0	----	99.1	97.9	36.3	----	64.6	82.6	81.2	----	99.6	99.7	98.2	----	72.3	88.1	89.8	----
Court Acceptance Rate (%)	90.5	98.2	n/a	----	----	----	----	----	74.3	93.9	n/a	n/a	----	----	----	----	100.0	100.0	n/a	n/a
	El Monte				Citrus				Pomona				Van Nuys				Downtown Traffic			
Cost per Case*	$26.24				$37.98				$55.37				$17.03				$8.67			

*Average cost based on findings of three cost studies conducted by Los Angeles ASAP in 1973 and 1974.

Source: John F. Gahan, Drinker Diagnosis and Referral Countermeasures Performance Report for 1975, Los Angeles County ASAP, 1976; Mary Beauchamp, An Analysis of the Drinker Diagnosis and Referral Countermeasures: Final Report, 1974, Los Angeles County ASAP, 1975.

relied upon because 1974 was the only complete year under ASAP funding during which all five systems were fully operational. It is hoped that the final ASAP analytical studies to be completed when the final data are accumulated and analyzed will provide a more thorough assessment of these models.

There were three distinct organizations providing investigative-referral-support services in the five courts: the Bureau of Public Health Investigation of the county Department of Health Services; the county Probation Department; and an alcoholism council (Alcoholism Council of San Fernando Valley). Each offered a different approach adjusted to the needs and desires of the specific court being served. The primary distinctions were related to the scope and time of performance of the activities and the nature of the personnel to perform the tasks. The investigations provided ranged from brief screening assessments to extended diagnostic procedures before sentencing, after sentencing, and sometimes both before and after. The personnel performing the required functions were on the professional staff of a health-oriented agency and a traditional probation organization, while others were unpaid volunteer counselors donating their services to the court.

El Monte Model. The Bureau of Public Health Investigation provided presentence screening, referral, and short-term follow-up monitoring for this court. The public health investigator conducted a brief thirty-minute investigation to determine the existence of a drinking problem and returned a recommendation to the court. The procedure failed to attain much judicial acceptance, even though it functioned efficiently and effectively.

Citrus Model. The Citrus Municipal Court was provided investigative, referral, and follow-up services by the county probation department on a postsentencing basis. As a condition of formal probation, DUI offenders were required to report to and cooperate with the investigation and referral decision of the probation officer. The investigation procedure was endorsed by the court, but was time-consuming and costly. Only one court appearance, however, was required. The probation department was able to provide effective continuing personal supervision and monitoring for probation compliance.

Pomona Model. The probation department also provided investigative, referral, and monitoring services for the Pomona court. A traditional presentence investigation procedure was employed requiring an intensive background investigation and administration of an alcohol screening test.

There was a two-week time lag from referral to the probation department for investigation until final sentencing. The comprehensive procedure was very costly and time-consuming and resulted in judicial concurrence with probation officer recommendations in only two-thirds of the cases. As in Citrus, the supervision and monitoring capability of the probation department was exceptional.

Van Nuys Model. The Van Nuys Municipal Court was served by volunteer counselors of the alcoholism council operating in the judicial district. DUI offenders were referred for diagnosis and referral after a sentence of summary probation had been imposed. The one- to two-hour interview process and subsequent follow-up activity were performed with reasonable cost per case. The monitoring process, with two follow-up sessions at thirty-day intervals, was effective. Turnover and referral consistency were a problem under the alcoholism council volunteer approach.

Downtown Traffic Model. The public health investigators provided screening, referral, and short-term monitoring support for this high-volume traffic court. A presentence screening procedure (virtually identical to the El Monte method) was provided quickly (twenty minutes) and inexpensively. The screening, sentencing, and referral were concluded during the same day. This process received widespread judicial acceptance for its timely and efficient procedures. The follow-up monitoring of referrals was minimal but adequate.

Department of Motor Vehicles Model. The Department of Motor Vehicles pilot program to identify and refer problem drivers who had been tentatively classified as problem drinkers appeared to be a sound approach, but was not fully implemented. The driver improvement analysts reviewed driver records to identify drivers with probable alcohol-related violations (reckless driving and DUI). Hearings were scheduled for those likely problem drinkers, at which time many drivers were given an opportunity to participate in a diagnosis and treatment program sponsored by the ASAP. Cooperating drivers retained their driver's license under probation, while those not cooperating were subject to suspension.

The program was never fully implemented by DMV due to time restrictions on analysts' time and lack of commitment by the department. In fact, a departmental research report indicated that traditional licensing measures such as suspension had greater demonstrable impact than unproven therapeutic programs. In any event, the approach to identification and referral of drivers with drinking problems as performed through the licensing system has merit and should be considered for adoption and evaluation by state driver licensing agencies.

Conclusions. The ultimate determinant of the value of any program to identify problem behavior and selectively refer individuals to programs for remedying that behavior is the effectiveness of the remedial program itself. If the remedies, the educational and treatment approaches, are inefficacious, then the system for identification and referral to those programs may be considered ineffective also. The problem identification and resource linkage activities, however, should be viewed separately from the remedial resources referred to. Investigation, referral, and monitoring systems should be assessed according to their problem-identification capabilities and processing efficiency. This study, while unable to determine the former, was able to determine which of the Los Angeles County systems were performing in the most efficient manner.

The most efficient procedure adopted in the court studied was that of the Downtown Traffic Court system. Although the accuracy of its diagnostic and referral decisions is not known, the Department of Public Health Investigation investigators were able to provide drinking-driver investigation, referral, and monitoring support which included quick and inexpensive presentence screening and referral decisions and satisfactory monitoring for compliance with short-term treatment or education. The most effective method would have been a postsentencing procedure using the same screening and referral methodology, thus removing the need for a reappearance before the judge for final sentencing (as applied by the Citrus court).

The Van Nuys volunteer investigator approach, with its low cost and its postsentencing procedure, is a satisfactory alternative. The probation department procedures are inefficient for investigation, but are appropriate for effective long-term personal supervision and compliance monitoring if needed.

7.0 OBSERVATIONS AND HYPOTHESES

In addition to the conclusions drawn about individual sites, the study team believes that some general conclusions about court systems, and especially about the factors which make court systems difficult to manipulate, need to be made. That is the subject of the following section.

Generalization is particularly difficult in connection with this study. To use five jurisdictions as representative of all jurisdictions would be valid only if those jurisdictions had been selected carefully as a sampling--which Los Angeles, Puerto Rico, Idaho, Hennepin County, and Phoenix clearly were not. To make valid generalizations about even these five systems is difficult in the absence of quantitative comparative data, which this study did not seek because each case-study had a different objective.

For this reason the study team's observations have been presented as hypotheses. Each hypothesis has considerable evidence to support it both within the five visited jurisdictions and in others. Each is accompanied by enough data from the visited sites to make it worth checking out with other jurisdictions. Each hypothesis deals with some factor important to outsiders' understanding of court systems.

In addition, each hypothesis is accompanied by a recommendation, normally for further research. The study team does not believe that all these recommendations should be followed out. The resulting research effort would be massive and expensive, and it might simply not be worth it. If one is content that the courts are generally doing something appropriate to highway safety by adjudicating and sentencing drinking-driving cases, then there may be little need for further extensive research. (This has historically been the attitude toward the courts of the highway safety establishment prior to the advent of ASAP.)

There are, however, four reasons for conducting some research into court systems. Obviously, there is great room for improvement in the efficiency of courts. Either they get more efficient or they will slowly be replaced in a great number of functions by simpler systems of administrative or executive adjudication. It would also be agreeable to discover whether the courts are at all effective, and to improve their effectiveness by finding out where they are and are not effective in each function. The highway safety establishment also has an obligation to promote fairness, and the present legal system, ramshackle as it may be, is built on a long tradition of

seeking justice; courts not only enforce the law, they protect the rights of citizens, even from the interests of highway safety if necessary. Finally, highway safety has a major contribution to make to the nation's court systems. If we can work out a way of processing drinking-driving cases properly, we will have taken care of the single most important category of cases with which our lower courts deal. Highway safety experts may feel they have an obligation here.

Future investigation, preferably empirical, will show whether the following hypotheses are generalizable to many or all jurisdictions. At present each hypothesis is supported by evidence from at least two of the case-study jurisdictions--enough to make future investigation worthwhile.

Hypothesis No. 1

Changes in legislation did not always change court practices as quickly or as fully as had been hoped. Legislation alone is insufficient to effect change in judicial systems.

At each of the five sites, there was significant legislative change either shortly before or in conjunction with the advent of the ASAP. In none of the cases was ultimate system performance to match exactly what the legislature seemed to have in mind. Four basic kinds of legislative change occurred in the ASAPs: (a) changes in the presumptive level of intoxication from .15% down to either .10% or .08%; (b) changes in authorized methods of evidence collection, for example, pre-arrest breath testing; (c) changes in mandatory sanctioning requirements, for example, the imposition of mandatory jail time; and (d) changes in requirements for pre-sentencing procedure, for example, the imposition of mandatory presentence investigations for DWIs.

(a) Changes in presumptive limits

Either in conjunction with or shortly before the inception of the ASAPs, California, Arizona, Minnesota and Idaho reduced the presumptive limits of intoxication (to .10% for the first three and .08% for Idaho). Minnesota further made .10% BAC "illegal per se." The apparent intent of the legislatures in each of these jurisdicitons was to make arrest and conviction of DWIs easier and more likely, and to bring the legal definition of driving while intoxicated into line with the state of scientific knowledge. In Los Angeles, Minnesota, Idaho and Phoenix, the judges failed to give full credence to the legislative intent.

In Idaho, magistrates began to use the device of "withheld judgment" as an "out" in order to avoid the consequences of a conviction at the .08% BAC level. The Idaho judges would tend to convict for DWI in those cases with BACs above the old limit of .15%.[24] In Los Angeles, the prosecutors commonly allowed pleas to reduced charges (typically reckless driving) for DWI cases where the BAC was below .15%, despite the statutory presumption of .10%.[25] In Minnesota, despite the .10% BAC per se legislation, municipal judges required BACs above .15% and supporting demeanor evidence from a police officer before they would accept guilty pleas in DWI cases.[26] For Phoenix, no real information was collected on this subject by the study team because virtually all defendants enter PACT and avoid the statutory consequences of their conviction. It seems likely that despite the legislative intent to reduce the blood alcohol concentration which defines intoxication, for all practical purposes the illegal BAC remained at or about .15%.

(b) Changes in evidence collection

In conjunction with the ASAP, Minnesota enacted enabling legislation to allow pre-arrest breath testing. Puerto Rico for the first time implemented existing legislation authorizing breath testing after arrest. Both changes were intended to improve case processing and increase convictions. The impact of pre-arrest breath testing, as measured by the average BAC at time of arrest in Minnesota, seems to be marginal.[27] The breath testing program in Puerto Rico has been "successful" in the sense that it is operational, but it also produces severe scheduling problems and unreasonable demands on the time of Breathalyzer-qualified officers who must divide their time between breath testing and the court room. Further, the breath testing program in Puerto Rico was intended to reduce the number of implied consent refusals by offering a more convenient alternative to blood testing, but the refusal rate has not changed.[28]

24. Idaho Case Study, pp. 48-50.

25. Los Angeles Case Study, p. 49.

26. Minnesota Case Study, p. 20.

27. Id., p. 39.

28. Puerto Rico Case Study, p. 77.

(c) Changes in mandatory sanctioning requirements

In Idaho, the law required a mandatory license suspension upon conviction for DWI; the judges merely withheld judgment when they did not wish to suspend a license.[29] In Arizona, the law mandated a one-day jail sentence for all DWI offenders. When judges enforced the law, they interpreted one day to be four hours. Usually, however, they did not enforce the law. Dislike of the mandatory jail sentence was one factor leading to the development of PACT, which diverts offenders around the courts.[30]

(d) Changes in requirements for pre-sentence procedure

Puerto Rico enacted legislation requiring a presentence investigation in all DWI cases, and California had a similar requirement, but for recidivists only. In Puerto Rico, the intent of the law was to facilitate case processing by providing the judge with a speedy report containing adequate information for intelligent sentencing. In Puerto Rico, the investigations were done, but they proved time-consuming and too informative, that is, they contained more information than the judge really needed to make his decisions. Often the statutory 30-day time limit on the investigation had to be extended by the judge.[31] In Los Angeles, some of the courts simply ignored the mandatory aspects of the law, and conducted their investigation of recidivists post-sentence.[32] In 1976, Minnesota adopted a mandatory DWI pre-sentence investigation law effective in counties of more than 10,000 population, but the impact of this legislation is not known.[33]

In each site, legislative change occurred because of or in association with the ASAP. In each case, the impact of that legislation differed from the apparent intent of the legislature. The reasons for the variances are unknown, but the study team speculates that there might be three primary causes for discrepancies between legislative intent and its implementation: (1) the judges or other system actors who must imple-

29. Idaho Case Study, p. 48-50.

30. Phoenix Case Study, p. 41.

31. Puerto Rico Case Study, pp. 79-80.

32. Los Angeles Case Study, p. 37, p. 53.

33. Minnesota Case Study, p. 60.

ment the law might not perceive it as fair or practical; (2) the implementation of the law might be so costly, so time consuming and so cumbersome that it is perceived negatively and ignored by system actors; and (3) the system actors might sometimes be ignorant of the law, or may genuinely disagree as to its exact meaning. The study team believes that these possibilities deserve further study.

Hypothesis No. 2

The full range of statutory penalties is applied so rarely as to make them irrelevant except in terms of general deterrence.

Accurate data as to how many sanctions of what kind were actually applied were surprisingly and disappointingly rare. The study team concludes with considerable regret that we do not even know how often the statutory sanctions are applied, let alone whether they are applied effectively or appropriately.

There is considerable evidence to show, however, that the penalties set out by statute are used in the courts as only the roughest of guidelines; that maximum penalties prescribed by statute are almost never used; and that minimum penalties may be those most used as guidelines.

In Idaho, for instance, the statute calls for mandatory suspension of the driver's license, but ASAP figures show that a maximum of 32% of those convicted for drinking driving had their licenses suspended (and this excludes those handled under withheld judgment). At the same time the average amount of fine declined by $20. Where the statute allowed a maximum of $300, the average fine was below $150. Where the statute allowed a maximum six months in jail, only 17.6% of those convicted received a jail sentence, the average jail sentence was 3.9 days, and there are no data on how many persons actually served time. Jail and fines are not mandatory under Idaho law.[34]

In Minnesota, a 6-month license suspension for refusal to submit to a chemical test is mandatory, but generally the state fails to revoke in cases of refusal to submit to a chemical test, and the judges began exercising their powers of suspension routinely only after the legislature gave them discretion to provide a limited license.[35] Further, whereas the

34. Idaho Case Study, pp. 60-62.

35. Minnesota Case Study, p. 57.

Minnesota statutes allow for both a fine (maximum $300) and a jail sentence (maximum 90 days), the data show that in 1975, for example, 42% of those convicted for drinking-driving received neither penalty, and only 12% received the maximum fine.[36]

In Phoenix, the plea-bargaining supported by the PACT system developed originally in order to avoid a mandatory 1-day jail sentence. No data are available as to the number of persons actually serving jail-time, but no one cooperating with PACT receives a jail sentence, and the issue that created PACT was how the system might avoid imposing that statute-mandated penalty. There is no mention of anyone serving the maximum possible six months for first-offense DWI.

In Los Angeles, recent statutes have acknowledged reality by making all the penalties for first-offense drinking driving suspendable, while for second offenses within 5 years there is a minimum non-suspendable 48-hour jail term. The study team did not attempt to identify data on the actual usage of these penalties, though anecdotal evidence suggested that the fine was routinely lowered by $100 for cooperation with an education program, whereas the statute allowed a $250-$500 range.[37] The frequency of reductions to a lesser charge, as in Minnesota, also shows a strong desire to avoid statutory penalties.

It seems inconceivable that we should not know at this stage with certainty exactly what penalties are meted out to drinking drivers. The statutory penalties create an illusion. Their full range is clearly not exploited, but a state may seem harsh or soft if only the statute is read. For research purposes, there seems to be a need to determine exactly the sanction experience of drinking drivers. For legislative purposes, there seems a need to destroy the illusion that what is written is also done. For purposes of fairness, there seems a need to distribute exact and standard information to all judges.

Hypothesis No. 3

The factors which cause court systems to disregard the sanctions against drinking drivers imposed by statute can be identified. Among the most significant are the following:

36. Minnesota Case Study, p. 57.

37. Los Angeles Case Study, p. 16.

a. Transportation difficulties.

This subject has been fully discussed elsewhere in this section (Hypothesis No. 10). It is directly related to the contemporary significance of the driver's license, to mobility and economic survival, to the citizen's belief in his right to drive, and to the relationship between judicial and executive branches of government. Mention of this as affecting court actions was frequent in all visited sites, leading to the popularity of restricted and limited licenses on the one hand, and to contortions of the court system so as to avoid mandatory license suspension on the other. It is clear that in many states the relationship between transportation difficulties and court actions needs much more imaginative study than anyone outside the courts is at present accustomed to giving the subject.

b. Judicial autonomy in sentencing.

Almost everyone interviewed, judge or not, personally believed in the necessity of preserving judicial autonomy in sentencing. Such autonomy may be used in almost all cases of a certain type (e.g., Phoenix), or in a specific proportion of cases (e.g., Puerto Rico, Minnesota, Los Angeles), and it will exist everywhere in a minority of cases. It will exist even where a statute specifically attempts to reduce it (e.g., Idaho). To the judiciary, their autonomy in the face of both the legislative and the executive branches of government is the essence of their function. They will intervene wherever they feel it to be appropriate, usually but not always in favor of the defendant. They tend to regard cooperation with a standard sentencing pattern as a concession, and they regard themselves as free to cease making that concession at will. For example, some ASAPs using random assignment to treatment modalities obtained written consent from the judges to cooperate in advance; the judges nonetheless overrode their own plan where they thought proper. Judges sharing a courtroom or in a multi-judge court do not necessarily agree with each other or follow "court policy" which they have established themselves.[38]

Judicial autonomy makes experimentation very difficult. It seriously weakens evaluation. It frustrates highway safety and alcoholism experts. It leads to the belief that someone less autonomous should carry out adjudication. It is also a sine qua non of our legal system, a basic guarantee that every

38. Minnesota Case Study, pp. 53 ff.

man should have his day in court.[39] Thus, any person designing programs or legislation must take it into account as a basis either for his design or for subsequent court operations. Many jurisdictions show lessened exercising of judicial autonomy, but no visited jurisdiction showed it absent. Sometimes it was used "well," other times "badly," but it was always present.

c. Perception that statutory sanctions are ineffective.

This perception was the main reason that the ASAP concept of appropriate referrals to education and rehabilitation had such nationwide success. Rightly or wrongly, most judges and prosecutors have little faith in the traditional armory of criminal justice sanctions against addicted drinkers. They emphasize the repeat offenders against whom sanctions have already been applied. They are generally (and often naively) hopeful that "rehabilitation" can succeed where traditional sanctions have failed, and the study team believes that there has been a steady change during the last six years, with more and more legal system personnel ready to adopt a rehabilitative attitude and a "disease model" of alcoholism.

The striking fact to the study team was that the effectiveness of traditional sanctions was nowhere thoroughly tested by any ASAP. There are so many reasons for this failure that it seems unlikely that traditional sanctions will ever be scientifically tested by any court in the United States. But the fact remains that such a testing would be thoroughly desirable. Like everybody else, judges and prosecutors have no knowledge of, only opinions about, the efficacy or inefficacy of traditional sanctions. Such sanctions are being steadily abandoned because they aren't applied, not because we know that they don't work. The perception of ineffectiveness is therefore a greater factor influencing court actions than actual effectiveness or ineffectiveness.

It would seem appropriate to attempt to discover a jurisdiction which would experiment completely and only with traditional statutory sanctions, so that opinion might be tempered by knowledge.

d. Perception that statutory sanctions are too harsh.

This was another reason for the rapid acceptance of the rehabilitation referral recommended by ASAP. "Education" was universally seen as "softer" than jail, fine, or action against

39. Puerto Rico Case Study, p. 73.

the license. "Treatment" was seen--often inaccurately--in the same light. In all sites, a referral to education or rehabilitation was used as the "carrot" to induce cooperation, since apparently a majority of defendants and defense attorneys saw this as less harsh than the statutory sanctions.

In addition, at all sites some judges and prosecutors criticized specific statutory sanctions as too harsh. For example, only a handful of ASAPs used imprisonment as a regular punishment. The jails often are seen as appalling, and their seedy, moribund, and sexually threatening environment was seen as grossly inappropriate for drinking-driving offenders. Jail tended to be used very briefly ("Hit him over the head to get his attention") or as a last resort for a multiple offender ("At least I can get him off the streets for six months since nothing else works"). Actions against the license, as discussed before, were seen as causing undue suffering, and fines were often lessened to fit the economic circumstances of the poor population which tends to be a majority of arrested drinking drivers.

The study team noted two serious weaknesses in this area. First, it was impossible to get accurate data about how often a traditional sanction was actually applied to offenders. So frequent are system interventions avoiding the actual imposition of sanctions that even court records do not reflect what actually happened. Second, there was no investigation as to whether the traditional sanctions were actually harsh, or were seen as harsher than rehabilitation by those who had experienced both.

Finally the study team was struck by the difficulty of measuring "harshness." One jurisdiction would see as overly harsh a sanction which another jurisdiction was applying specifically because they saw it as soft. This was especially true of the amount of fine.

In sum, myth rides triumphant in this area. There is no exact knowledge about harshness of various sanctions, and in the absence of knowledge the court systems have to define what is harsh and soft for their own jurisdiction. This is probably one of the major factors causing the vast differences between court systems and penalties in various states and communities, and it must be considered in any legislation dealing with sanctions. If the courts believe statutory sanctions are too harsh, they will not apply them regularly, choosing rather to redesign themselves at great cost and difficulty.

There is a warning here for those who would legislate severe, mandatory penalties, and the persuasive hypothesis must be that they would not be adopted if the courts perceived them as too harsh. Evidence to support this hypothesis comes from all five of the visited sites.

e. Empathy with drinking-driving behavior.

Only one visited site was able to provide direct evidence that empathy with defendants affected court actions to drinking drivers. In Puerto Rico, where there was very little understanding of alcoholism, and where (reflecting hispanic attitudes) there was less moral disapproval of heavy drinking than on the mainland, the judges frankly expressed the attitude of "There but for the grace of God stand I." (In Puerto Rico, this judicial habit is jokingly referred to as the "Ai bendito!" syndrome.)[40]

Judges and prosecutors elsewhere were much more cautious. Most of them drink, and there is a suspicion that the legal profession has a higher proportion of heavy drinkers than most professions. They rarely condemn heavy drinking among their colleagues. At the same time they are well aware that the public disapproves of heavy drinking by court personnel, and that alcohol abuse may bring professional disapproval or dismissal. Thus, their expressions of empathy for drinking drivers were largely restricted to those with whom they could clearly identify--other professionals, respectable men, those who "happened" to get caught on a rare occasion. Empathy also went to certain minority groups, either racial or professional: "What else can you expect?" Or to those living under certain climatic and sociological conditions: loggers, cowboys, backwoodsmen, cold or hot climate residents, etc.

There were few cases where empathy for drinking drivers affected court actions in all cases, unless we accept the general desire not to be too harsh as a measure of empathy. There was enough hearsay, however, to suggest that the empathy quotient needs examination, especially when judges deal routinely with some minority groups, or, more important, in rural and small-town courts where the social dynamics have much more complex effects on a judge who is very much part of the community.

40. Puerto Rico Case Study, p. 71.

f. Fear of generating not-guilty pleas.

Some jurisdictions are designed to generate not-guilty pleas (e.g., Phoenix), but in four of the five visited jurisdictions there was a freely expressed desire to avoid them because they lead to trials. Even in Phoenix, the objective of encouraging not-guilty pleas to the drinking-driving charge was to avoid trial by encouraging a later guilty plea to a lesser charge.

Two rationales were offered for the universal desire on the part of both prosecutors and judges to avoid trials. First, the volume of drinking-driving cases was so great that scheduling of trials for even a small proportion of cases caused overload problems for the court system. Second, assuming trials could be held, the cost would be so great that the community would not tolerate it.

The fear led to widespread avoidance of statutes. Plea-bargaining at a BAC of .15% or lower was almost a national policy [41,42] on the grounds that cases below that limit would go to trial and be found not guilty by either jury or judge. This attitude reflects the court system's general lack of faith in some or all of its members--either arresting officers, or prosecutors, or juries, or judges themselves--ultimately finding expression in lack of faith in the breath-test equipment or the procedures connected with the breath-test, or even in the relationship between BAC and impairment.

In each site, the study team asked local personnel what advice they would give to someone with a BAC in the .10 to .14 range wanting to "get out of" a DWI charge. In every case, the advice included making a plea of not guilty. Most sites assumed that a lower BAC, even if above the legal limit, made it much more sensible to plead not guilty.

In sum, there is considerable evidence to suggest that the requirement for a jury trial on request, or even the availability of a bench trial, seriously affects the actions of courts in drinking-driving cases. Most courts have developed methods--good and bad--for discouraging trials, and no court welcomes a large number of not-guilty pleas. It would thus seem appropriate for researchers and theorists to assist the courts by designing a system which discouraged routine application for jury or bench trials while still retaining them

41. Los Angeles Case Study, p. 49.

42. Minnesota Case Study, p. 21.

for those who genuinely believe in their innocence. This may well involve a change in the potential penalties for drinking-driving offenses, including, possibly, decriminalization (i.e., abandonment of a possible jail sentence) for first offense DWI.

It should also be noted that the court system's desire to avoid trials conflicts drastically with their desire to use strong criminal sanctions. As is shown in some ASAP sites (e.g., Cincinnati), it is possible to keep the number of trials under control while still using jail penalties, but such a situation is exceptional.

g. Fear of being over-ruled on appeal.

The courts of limited jurisdiction everywhere are highly conscious of the effects of appeals to higher courts. In Phoenix, for instance, appeals de novo to the Superior Court were frequent pre-PACT, especially where a strong set of sanctions had been imposed. At the level of Superior Court, such cases were often dismissed or plea-bargained, since the higher court did not regard them as serious. The result was that the City Court itself engaged in plea-bargaining, seeking to avoid appeals.

The solution to this problem seemed to be to make the lower courts courts of record, and to ask the higher court to treat drinking-driving cases seriously for long enough to discourage the defense bar from appeals.

Appeals were not frequent in most sites, but it was impossible to detect how many of the lower courts' actions were determined by the fear of appeal. In some states (other than the five visited) appeals courts had drastically undermined lower court practices by specific rulings in individual cases, and in these states, the fear of reversal on appeal was genuine and sensible (e.g., Utah and Alaska).

h. Fear of alienating voters.

In only one state was the study team able to obtain direct evidence of this as a factor influencing court actions. In Idaho some magistrates admitted that they had to be more responsive to the electorate than to the unified court administration.[43] These magistrates in small communities felt they could not go too far aginst community mores, regardless of state law. The study teams were told, however, that judges

43. Idaho Case Study, p. 39.

were conscious of their image with the electorate, whether that electorate consisted of public voters, the legal profession, senior judges, or elected and appointed officials. Every jurisdiction had an anecdote concerning a "hot potato" case; e.g., a prominent politician with a vote over the court's budget or a case of vehicular manslaughter involving a driver on probation and in treatment as a result of a prior offense. The frequency, magnitude, and weight of such incidents are unknown, though it seems likely that they are a persistent factor only in small-population areas.

i. Perception of defendant's economic situation.

Aware of Blumenthal and Ross' findings concerning the effect of the presence of a defense attorney on court dispositions,[44] the study team attempted to find data to show the effect of a defendant's economic situation on court actions, whether his attorney was private or a public defender. Only anecdotal evidence could be found, and it is to be regretted that no known ASAP investigated the matter.

All that could be concluded was that judges are generally aware of a defendant's economic status, that in some cases this affects the amount of fine or the period of collection for the fine[45] and therefore court scheduling.

j. Reaction to external sanctions.

As discussed elsewhere, courts tend to regard penalties subsequent to a drinking-driving conviction but not imposed directly by the criminal justice system as a portion of the total package of sanctions applied to offenders, and this knowledge affects the sanctions which the court imposes and/or the procedures which it follows. Sanctions called for by statute often take second place to these external sanctions (e.g., insurance fees). This matter is discussed more fully elsewhere in this section.

Hypothesis No. 4

In terms of numbers, actual trials are not important to the adjudication system; but the threat of trial and the right to trial are crucial determinants of system action.

44. Murray Blumenthal and H. Laurence Ross, Two Experimental Studies of Traffic Law, Vol. I: The Effect of Legal Sanction on DUI Offenders, 1973.

45. Puerto Rico Case Study, p. 79.

The outstanding example of this truism is visible in Phoenix. The city has never had a large number of trials held, but rather a large number scheduled, causing great confusion.[46] The threat of trial was regarded as disabling the system,[47] and PACT removed the incentive for asking for trial by offering lesser charges.[48] In Idaho, the desire to avoid jury trials is a major reason for the popularity of "withheld judgment".[49] Minnesota's Hennepin County reports that only 1.4% of all dispositions in 1974 resulted from jury trials, and in 1975 only 0.6%, but at least a partial explanation of the extensive plea-bargaining to a reduced charge apparent in the county (over one half of all arrests) is the "poor" success rate of prosecution in jury trials--in 1974 the prosecution was successful in 70% of jury trials, and in 1975 in 52%.[50]

The Puerto Rican system is the most trial-oriented of the investigated systems and it exemplifies the problems caused by trials. In Puerto Rico there is no plea-bargaining, and no right to a jury trial. There are a large number of not-guilty pleas because the chances of being found not guilty at trial are very high. Most of the conviction rate (which hovers around 70%) results from voluntary guilty pleas rather than from trials.[51] Though trials take only three or four hours, they are costly in terms of court time and witness time. They are given short shrift in the calendaring process because they are less important than felony trials (with juries), creating long delays and backlogs.[52] They are reportedly unpopular with everyone, to the extent that the Superior Court urged moving them back to the District Courts. The congestion caused by the right to trial--even though it is not a jury trial, and even though a majority of cases are disposed of by guilty pleas--is a major determinant of court practices in Puerto Rico.

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46. Phoenix Case Study, p. 39.

47. Id., p. 24.

48. Id., p. 42.

49. Idaho Case Study, p. 42.

50. Minnesota Case Study, pp. 54-56.

51. Puerto Rico Case Study, p. 78.

52. Id., p. 71.

Can trials be appropriately described as the tail which wags the dog? It is cavalier to dismiss a constitutional right in such terms. Is the number of trials or potential trials the real problem, or is it rather the court's perception of the number of potential trials? Should we dedicate enough resources to try whoever wants to be tried? What proportion would demand trial? Should we soften the penalties which encourage calls for trial? Should we remove the jail penalty which requires offering the opportunity for a trial? Should we adopt various complicated practices--such as plea-bargaining or pretrial dispositions--designed to reduce the number of scheduled trials? These are the kinds of questions which face most of the nation's lower courts as regards drinking-driving cases, and there is no consistency visible in the answers given by different jurisdictions.

The study team can only comment unhappily on the absence of real data and controlled experimentation to provide the basis for decisions in fact rather than perception. This is another hypothesis which needs testing, with the expectation that adequate research would produce conclusions which might drastically affect the operations of the courts, their funding level, and legislation dealing with drinking-driving cases. The dynamics of the interaction between trials and the attitudes of judges and prosecutors need study.

Hypothesis No. 5

A major determinant of court actions is the availability or unavailability of support resources. Courts tend to choose a course of action if the appropriate resources are available--but not always.

An important role of ASAP was the development and funding of resources to support the courts: better record systems; criteria for decision-making; presentence and probation officers; educational programs; rehabilitation agencies; paperwork systems. A remarkable feature of all visited ASAPs was the eagerness with which the courts had welcomed such support resources. There were almost no reported cases of complete refusal to utilize such resources. Judges and prosecutors may or may not have been convinced of the validity of a diagnostic/therapeutic approach, but they tended to use the resources provided by ASAP anyway.

Availability of resources does not guarantee their utilization, however. Figures from all visited jurisdictions show that not all appropriate resources were applied to all appropriate cases. As far as the study team could determine, two

factors caused the underuse. First, judicial and prosecutorial autonomy functioned so as to allow the courts to take "short-cuts" such as a direct referral into treatment without a presentence investigation,[53] or simply to remove any individual case, or any category of cases (such as second offenders) from the routine system. Second, familiarity influenced usage rates. Phoenix, for instance, was not familiar with a misdemeanor probation function, with the result that follow-up capabilities are inadequate due to lack of resources (i.e., probation officers). In Idaho, adoption of a presentence recommendation seems to have depended on either an individual judge's increasing trust in the investigator or his increasing belief in the efficacy of a rehabilitation agency.

Complex educational efforts seemed necessary to win full utilization of resources. All the visited sites had conducted repeated educational programs for judges and prosecutors, and all reported favorably on the impact of such programs. Routinization of availability seemed also an important factor. That is, systems designed so that a resource would be used in all cases (e.g., Phoenix, Puerto Rico) seemed to win a higher usage for available resources than did systems which relied on the judge's volition. Both the prosecutors and the judges seem to have liked a routine, as long as they had the freedom to depart from it. They did not seem especially interested in systems which required them to take a special, individual initiative--though there were outstanding exceptions.

Like the relationship between caseload and court action, the relationship between support resources and court practice was not (and could not have been) satisfactorily investigated by ASAP. They were too preoccupied with emplacing the resources, and too glad to see them used to any extent. However, since some ASAPs have continued, and resources originally emplaced by ASAP remain in many jurisdictions, the relationship could now appropriately be investigated, especially from the viewpoint of cost benefits.

Hypothesis No. 6

There is no evidence that lay judges are any less proficient in handling drinking-driving cases than legally-trained judges.

Two of the sites studied, Idaho and Minnesota, utilized non-lawyers to perform what are traditionally judicial functions. In Idaho, the lowest rung of the judicial ladder is the

53. Los Angeles Case Study, pp. 31 and 39.

magistrate who may or may not be a lawyer. In Minnesota, the case processing system evolved from direct judicial involvement in the pre-trial bargaining process, to "judicial officers" (lawyers appointed by the judge) who performed the pre-trial function, to non-lawyers within the clerk's office who now function as hearing officers for the pre-trial disposition of drinking-driving cases. The study team (because of its previous involvement with alcohol safety seminars at the various ASAP sites) also has observed systems of lay judges in Delaware and Texas.

In Idaho, several informants thought that the lay judges were superior in performance when compared to the legally trained judges because (1) most of them had had a longer tenure on the bench, (2) most of them were more familiar with the offenders, especially in rural areas where most offenders were known personally to the judge, (3) most of them were not concerned with niceties of criminal procedure but rather with the equitable and speedy disposition of the case, and (4) most of them were quicker to accept and adopt "people oriented" programs such as ASAP.[54]

In Minnesota, the evolution of the present system of non-lawyer personnel in the clerk's office who handle judicial aspects of pre-trial procedure from the previous lawyer-dominated system seems to indicate support for the notion that non-legally trained personnel can handle drinking-driving case dispositions as well as can legally trained judges.[55]

Judges, either legally trained or lay, typically receive no specific training to be judges before they take the bench. Legally trained judges might be well qualified as practicing attorneys, but they have virtually no training in how to be a judge. Thus, in terms of training and experience, legally trained and lay judges begin on an equal footing; both receive their training on the job. The only function of a judge which demands extensive prior training is the function of presiding at a trial, and enforcing rules of evidence. As most DWI cases are disposed of by guilty plea, the trial is a fairly rare event. The principal functions of a judge who handles DWI cases, then, are the processing of cases to the guilty-plea stage, and the sentencing of defendants who plead guilty.

54. Idaho Case Study, pp. 45 and 65.

55. Minnesota Case Study, p. 51.

Neither lay nor legally trained judges typically have any training in the sentencing process. Particularly, they tend to be ignorant of the appropriate punitive or therapeutic dispositions which are most suitable to the sentencing of DWI defendants. Accordingly, the level of legal training of DWI judges, while perhaps important, is not nearly so significant as the level of training of the judge in terms of case processing management and sanction selection. As neither of these functions is found in the law school curriculum, there is no reason to believe that legal training equips judges or quasi-judicial officers.

The study team believes that this hypothesis should be tested by rigorous comparisons of dispositions in systems which have only legally trained judges, mixed systems, and systems where the judges are all lay persons. If there is in fact nc significant difference between dispositions of lay judges and legally trained judges in DWI cases, then a system might effect great cost savings by utilizing lay judges who typically receive lower compensation that their legally trained counterparts.

Hypothesis No. 7

Court procedures for drinking-driving cases may be routinized and standardized to the point where much of the two crucial judicial functions--adjudication and sentencing--can be done by personnel other than judges.

Research studies have already suggested that both prosecutors and probation officers tend to take over functions traditionally thought the realm of judges exclusively, and the study team found further examples of this phenomenon.

Prosecutors, of course, can well determine whether or not a certain category of cases even reaches the judges. Standardized plea-bargaining for, say, all cases where the BAC is .15% or lower represents an intrusion by the prosecutor on the adjudication function. Such practices are widespread among most ASAP jurisdictions (though in both Puerto Rico and Idaho there was no evidence that prosecutors were exercising their preemptive power). Probation officers similarly determine the criteria for various sentencing decisions, most notably the characterization as social drinker or problem drinker and therefore the choice as to the "track" upon which the sentence will place the defendant. In all the visited jurisdictions, the judges agreed to an extraordinarily high percentage (usually more than 90%) of the probation officers' recommendations.[56]

56. Los Angeles Case Study, p. 64.

These two patterns are widespread throughout the lower courts, but they are usually not formalized. The sites visited by the study team showed interesting examples of formal deputization. For example, in Los Angeles two court systems (Citrus and Van Nuys) used what amounted to post-sentence investigations resulting in a referral where appropriate, thus leaving the non-legal elements of the disposition up to the probation officer in Citrus and to the volunteer counsellor in Van Nuys. (The ultimate result was no different in the other three Los Angeles court systems because the judges accepted an extremely high proportion of the presentence recommendations.)

Minnesota's Judicial Officer Program affords an excellent example of a court solving its backlog problem by delegating adjudication functions usually reserved for a judge to, first, a prosecutor, and second, a judicial surrogate. Acting under the doctrine of inherent court powers, the Hennepin County Municipal Court established a routine of pretrial disposition hearings, at which the prosecutor and the defense attorney would seek a resolution of the case. The pretrial hearings were presided over successively through the years by (a) regular judges; (b) private attorneys paid $100 a day to act as Judicial Officers; and (c) non-attorney staff personnel of the Court. The hearing eventually came to include even a "pre-plea investigation" identical with a presentence investigation, whose results were given to the Judicial Officer. A defendant in a drinking-driving case on which prosecution and defense agree is allowed to plead guilty to a lesser charge in return for milder sanctions and a referral to treatment or education. All formal actions are reviewed by a judge, who is the official adjudication and sentencing agent. The detailed report on this program should be read.[57] The program is imaginative, controversial, and either successful or unsuccessful according to the criteria one uses. At this point its significance lies in its endeavor to speed up the court process and reduce costs by formal delegation of every routine judicial function to the prosecutor, the defense attorney, the pre-plea investigator, and the Judicial Officer.

The significance of the Phoenix system is also considerable. The PACT method currently in use represents a clear example of the assumption of the case-disposition function by the prosecutors, but it is done with complete judicial cooperation. The prosecutor in turn then delegates a major portion of that function to "case counsellors." The detailed

57. Minnesota Case Study, pp. 41-42.

description of PACT should be read.[58] The involvement of judges is confined to crucial points of the PACT process: approval of the plea-bargain; final sentencing; review of PACT violators to determine appropriate response.[59] The prosecutor determines the specific legal penalty and reduced charge, while the case counsellor, acting similarly to the Minnesota pre-plea investigator but reporting to the prosecutor, determines the therapeutic track.[60] Local personnel see many dividends from this system.

The study team concludes that elements of the adjudication and sentencing functions can and perhaps should be delegated. In a system as successful as PACT, the key factor is precise delegation of limited authority on the basis of written guidelines and standard criteria. Each person in the system seems to have a clear idea of where his functions begin and end, since carefully determined policy controls their actions. The system theoretically could be simplified even further (e.g., by the use of paraprosecutorial staff).

Objections to the system are based on traditional legal ethics revolving around the unauthorized practice of law.[61,62] Justifications are based on efficiency and cost. Interestingly, most judges do not see themselves as having lost power and importance, but rather as reserving the exercise of that power for occasions when it is really appropriate. In both Phoenix and Hennepin County, Presiding Judges were largely responsible for the impetus and the design of the programs, and they had, at least initially, the support of a majority of their colleagues.

The study team therefore recommends further investigation and experimentation with systems in which portions of the judicial authority are delegated.

Hypothesis No. 8

Greater legislative and research attention should be paid to the ingenuity displayed by court systems in inventing methods for encouraging offenders to cooperate with requirements on their behavior.

58. Phoenix Case Study, pp. 41-56.

59. Id., pp. 30 and 55.

60. Id., pp. 47-48.

61. Id., pp. 77 and 66.

62. Minnesota Case Study, p. 45.

It is possible that the practice of demanding specific behavior from an offender by means of a direct sentence (e.g., "you will attend the following treatment agency") is now used less widely than methods for inducing voluntary behavior by creating a clear choice of alternatives. These methods are coercive to the extent that they use the carrot-and-stick approach, often involving the charge as well as the sentence. All methods are based on two basic principles: either the defendant is given the chance to earn a reward, or he is threatened with more punishment if he fails to comply.

Phoenix, for instance, has used both approaches at different times. Prior to PACT, the routine disposition was to continue sentencing pending completion of DWI School, which resulted in a reduction of fine.[63] After legislation of the mandatory jail sentence and the development of PACT, the reward was enlarged; satisfactory completion of short-term rehabilitation earned a reduction of the charge. However, for those who stand trial for drinking-driving and are convicted, the same rehabilitation track is made a condition of probation, and if someone violates that condition or if he fails to complete PACT, then he is punished not only with deprival of the reward but also with application of the punitive sanctions.

In Los Angeles, several variations are visible. Summary or non-reporting probation is allowed by statute and widely used. If the offender violates that probation by another drinking-driving offense, he can be punished for both offenses.[64] In the El Monte court, sentencing is deferred to allow a first offender to earn a fine reduction.[65] In Citrus, sentences are routinely imposed but suspended on conditions of formal probation.[66] Pomona used the traditional formal probation,[67] based on a presentence investigation and including a monitored referral to treatment, while the Downtown Traffic Court frequently used traditional summary probation.[68] In Van Nuys, the sentencing of first offenders was postponed to allow time to earn a fine reduction by participating in a treatment pro-

63. Phoenix Case Study, p. 22.

64. Los Angeles Case Study, p. 22.

65. Id., p. 33.

66. Id., p. 35.

67. Id., p. 41.

68. Id., p. 48.

gram, whereas second offenders were sentenced immediately, placed on summary probation, and ordered to report to alcoholism council personnel.[69]

In Idaho withheld judgment is frequently used. The defendant pleads guilty to a drinking-driving offense, is given a withheld judgment and placed on six months probation including a referral to treatment. At the end of six months, satisfactory compliance earns dismissal of the charge. In Minnesota, both a stayed sentence with a conditional referral to treatment, and a withheld judgment ending in an earned charge reduction are used. Puerto Rico in 1973 introduced a new statute designed to set down in detail the reward/punishment alternatives newly available and contingent upon both voluntary choice and cooperation with rehabilitation. This law should be read in detail.[70] Although it is not functioning perfectly, it changed the Puerto Rican system completely and effectively, and it remains one of the few statutes which express in the code exactly the choices which a defendant will face when he enters the court system.

Thus it seems that a large variety of techniques can be used to accomplish the same ends, and that these techniques can be embodied in legislation, though they rarely are. The study team concluded that careful attention should be paid to legislation embodying the attitudes and techniques actually used by the courts. In most states, the legislatures seem to be missing an opportunity by creating statutes which do not reflect actual court practice, or which are spread confusingly throughout the state code. There also seems to have been too little attention at the national level to the variety of practices which the courts are spontaneously using, and there is no visible attempt to identify, collect, and disseminate the various statutory approaches being used by the states. This is an area in which the practice of the courts seems well ahead of most professional study, and it is becoming an area in which many states are heading in a very different direction from national-level priorities. The study team believes that it is generally preferable to have statutes which reflect the actual practice of the courts, and they believe that this is an area in which the Federal government and national organizations should take the lead as they did previously with the laws dealing with BAC.

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69. Los Angeles Case Study, p. 55.

70. Puerto Rico Case Study, pp. 61-67.

Hypothesis No. 9

External sanctions are universally seen as part of the total sanctions package resulting from arrest for a drinking-driving offense and may affect both the adjudication and the sentencing process.

All interviewed judges and prosecutors were very well aware that action by the criminal justice system against drinking drivers usually causes actions against the driver by other agencies or individuals outside the criminal justice system. These actions are seen as part of the inevitable consequences of an arrest or conviction for a drinking-driving offense. The factors most universally mentioned were (a) loss of driver's license by administrative action; (b) loss of job or income; (c) increased insurance rates; (d) defense attorney fees; and (e) fees for DWI school or rehabilitation.

Loss of license has been discussed elsewhere. Loss of job or income was seen as a potential effect of either loss of license or a jail term, leading judges either to avoid a jail term, to make it brief, to apply it on weekends only (with the rationale that this is also the defendant's greatest period of drinking), or to use it as a very severe sanction against recalcitrant and recidivist offenders.

Increased insurance rates were seen as major sanctions, often greater than the amount of fine which a court would apply. No data were offered to show that convicted drinking drivers are in fact penalized with higher insurance rates, an area which requires research since the belief is widespread. In Los Angeles, Phoenix, Minnesota, and Idaho, the desire to avoid increased insurance rates was advanced as one of the reasons for avoiding conviction or a record of conviction for drinking-driving. No opinion was expressed as to whether (a) increased insurance rates deterred drinking driving, or (b) prohibition from increasing insurance rates would increase conviction rates. Both matters are worthy of research, since there is frequent action resulting from unsubstantiated belief. In at least two sites (Los Angeles and Minnesota) some insurance companies are reported to have become so skeptical of court action that they interpret conviction for a substitute offense (e.g., reckless driving, careless driving) as though it were a drinking-driving conviction, possible resulting in unfairness.[71,72]

71. Minnesota Case Study, p. 55.

72. California Case Study, p. 14.

Fees for defense counsel were also seen as a major sanction. Judges and prosecutors showed themselves aware of the local "schedule" for defending a drinking-driving case. Provision of a public defender or a court-appointed attorney to those unable to afford a private attorney was a characteristic of all five visited sites, and such legal personnel represented a substantial proportion of all defendants represented by counsel. Some systems had made the process of plea-bargaining so routine that representation by a defense counsel was not regarded as essential (Phoenix, Idaho). However, private attorney fees remained a factor in many cases in most jurisdictions. In some jurisdictions--not among the five visited--it has been reported that judges force defendants to hire attorneys even when they are entitled to a public-paid attorney, on the principle that the fees are a vital part of the sanction. The extent of this practice is unknown, but gossip about it is common.

The issue of the validity of attorney fees as a sanction is confused by the court's desire to ensure that an attorney receives his fee. Hearsay has it that continuances are frequently granted on the grounds that the attorney has not been paid. One interviewee reported that there was a strong incentive in his jurisdiction to encourage a client to plead not guilty, thus raising the fee.[73] Idaho reported that attorneys often charge the same fee whether or not the defendant goes to trial.[74] In Phoenix a prosecuting attorney saw the loss of income to the defense bar as a "problem",[75] reflecting the initial perception of the local bar itself.[76]

Clearly, therefore, defense fees affect court attitudes and perhaps practices. No reliable data whatsoever were available concerning them. Despite the availability of data and the variety of practices, no ASAP investigated their use or effects. This seems a defect worthy of remedy by research.

As the ASAPs increased the use of schools and rehabilitation agencies, the fees charged for such services also began to affect court actions. Some states included payment for these services as part of statutes or regulations (e.g., Idaho,

73. Puerto Rico Case Study, p. 71.

74. Idaho Case Study, p. 58.

75. Phoenix Case Study, p. 66.

76. Id., p. 43.

Virginia). Some courts formally notified defendants of the cost of the court-mandated rehabilitation, as though it were a formal part of the sanctions. Some courts decreased the amount of fine by an amount equal to the cost of the education or rehabilitation (California), either universally or selectively. Some courts became involved in the collection of fees for education/rehabilitation.[77] Some courts deliberately chose an education/rehabilitation modality because its fees were appropriate to their estimate of the client's income, even if it was unsuited to his drinking problem, and of the five visited sites, three were eager to find financial support for the education/rehabilitation modalities either from general government funds or from special liquor revenues, citing court unwillingness to cause further costs to an offender as a major reason.

No data were offered as to a client's real ability to pay, except anecdotally. Sources of income other than job earnings were almost universally unknown or ignored. There was a detectable inconsistency in judicial attitudes; defendants were regarded as rich enough to pay court and often defense costs and charges, but too poor to pay rehabilitation charges. This, too, is clearly an area which would repay investigation.

In sum, there is evidence to suggest that court actions are determined by probably inaccurate information concerning penalties external to the criminal justice system but resulting from criminal justice system action. The degree to which court actions are thus determined is unknown, but it seems sufficiently extensive to require research, particularly in the light of the long-standing desire of both the U.S. Department of Transportation and the American Bar Association that trial and sentencing should not be affected by any matter relating to fees.

Hypothesis No. 10

License suspension or revocation is not routinely used where the perception is that it would cause difficulties in achieving transportation to and from work.

In all five sites, loss of driving privileges was seen as a hardship--even as an undue hardship. Frequent mention was made of the "necessity" of having a driver's license, not just in order to drive but also in order to act as an identification document. Where someone needed his license in order to work, it was almost certain that he would not lose that

77. Idaho Case Study, p. 35.

license. Loss of license was seen as imposing hardship on families rather than on just the offender. The inadequacy of mass transit systems was a universal reason offered for ensuring license retention, especially in the western states and in rural areas, but also in metropolitan areas. In sum, while driving was still seen as a privilege authorized by the state, pressures to see it as a right necessitated by the practicalities of modern existence were strong enough to affect sentencing decisions in perhaps a majority of cases.

Loss of license was used as a severe punishment. Second offenders seemed more likely to lose their license (though no site provided comprehensive data on this subject). Removal of a license was often the result of disobedience to a court requirement (e.g., condition of probation, mandatory appearance, attendance at rehabilitation), rather than the offense itself.

The power to threaten the license was widely used, as was the power to restore it. Particularly popular was the use of a restricted or limited license in order to induce cooperation with the court. In Puerto Rico, for instance, part of the inducement to attend treatment is the concomitant issuance of a restricted license, and the reward for having completed a Driver Improvement Course is restoration of the license.[78] This concept has been written into the statutes in California,[79] reflecting a pattern already widely used by judges, and applicable to all offenders regardless of prior convictions. Minnesota statutes allow judges to issue a limited license even after license suspension under the implied consent law.[80] In Idaho the Department of Law Enforcement is required to suspend the license for 90 days, and the judges are required to take custody of the license upon a finding of guilty and forward it to the Department of Law Enforcement.[81] In reality, however, the technique of "withheld judgment" enables everyone to avoid these requirements; the proportion of suspensions is small, and there is considerable irritation between the DLE and the judges, whether they suspend or fail to suspend the license.[82]

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78. Puerto Rico Case Study, pp. 73 and 81.

79. Los Angeles Case Study, p. 19.

80. Minnesota Case Study, p. 35.

81. Idaho Case Study, pp. 14 and 16.

82. Id., pp. 58, 60 and 61.

Experience with other sites indicates that these patterns are common around the country. Generally speaking, the courts regard their power to withdraw or not withdraw licensing privileges as one of their most important weapons. If the statute gives the courts no discretion (e.g., Idaho), they will find some way of creating it. In four of the five visited states, the statutes included judicial discretion over some aspect of license withdrawal, though in all states the driver licensing agency remained the focus of most authority over the license.

None of the visited states was particularly happy with their operations concerning licenses, though only anecdotal evidence could be found to support this statement. All states reported some antagonism between the licensing agency and the judges, though the degree of animosity varied widely. The main sources of complaint were (a) rigidity on the part of the driver licensing agency; and (b) softness and subterfuge on the part of court systems.

The study team was struck by the universal lack of data concerning the extensiveness and the effects of actions against the license. Whether because record systems were inadequate or because the ASAPs had not found a successful basis of cooperation with the licensing agencies, precise data had not been developed. In none of the visited jurisdictions was there a specially close relationship between the ASAP and the driver licensing agency. (Note: this statement does not apply to all ASAPs. Some--Seattle, Washington, for instance--were run by the driver licensing agency, and others worked closely with them.)

The absence of data allowed myths to influence the judiciary. Do people lose their jobs because they lose their licenses, as many judges believe? Do people find alternative means of transportation or continue to drive? Are families adversely affected? Are persons convicted of drinking-driving who are professional drivers more or less likely to have accidents? Is retention of the license a necessity of life, as many judges and most defendants seem to believe? Does the issuance of a restricted or limited license affect driver behavior, or drinking behavior, or attendance at a rehabilitation program? There were no data on any of these important questions, and the only data widely (and often exaggeratedly) reported by the judges were to the effect that various studies (e.g., California, Oregon) showed that a majority of drivers continued to drive even if their licenses were suspended.

If the loss or threat of loss of licensing privileges is to remain a sanction available to the courts, it would seem appropriate to investigate further the ramifications of this important, universal, and confusing sanction.

Hypothesis No. 11

Classification of defendants into drinker types (screening) can be done by almost anyone in the court system. The choice of agent depends almost entirely on local desires and situational factors. Only very limited training is necessary.

The study team is familiar with a great diversity of screening agents in different communities. Screening is being done by prosecutors, judges, probation officers, presentence investigators, court clerks, volunteers, treatment personnel, and secretaries. The two key developments in the field are the issuance of NHTSA criteria for problem drinking-driving, and the development of the Highway Safety Research Institute Drinking Driver Questionnaire and Interview (Mortimer-Filkins protocol). These criteria and instruments may be used by anyone with fairly minimal training.

In Phoenix the screening is done by case coordinators without any specified prior background. In Los Angeles screening is done by the Probation Department, by the Public Health Investigators in the county health department, and by volunteers from a local alcoholism council. In Minnesota it is done by presentence investigators and in Puerto Rico by probation officers who lacked special training. In Cincinnati a secretary supervised administration of a screening questionnaire (first stage). In Kansas City computers can classify about half of the defendants on the day of arrest.

The tendency at the beginning was to exaggerate the difficulty of classifying people appropriately and the risk of classifying them falsely. According to NHTSA documents and study team experience, the results were overelaborateness of presentence investigation and clear underdiagnosis. As court systems grew more familiar with the screening process, there was a distinct tendency to simplify it, to use the NHTSA criteria more extensively, to rely more on record checks, to develop shorter and more direct screening instruments, to abbreviate the amount of time spent on an investigation, and to delegate the task. Since the courts developed these tendencies spontaneously, and since cost and caseload are both vital factors in determining the number of screenings accomplished, the study team recommends attention to (a) new knowledge concerning the validity of NHTSA criteria, especially the usefulness of

those which are quantitative and determined by records; (b) development of short-form, validated screening instruments aimed at nationwide standardization; and (c) encouragement of the use of such instruments by the least costly appropriate personnel.

Hypothesis No. 12

Legal factors (i.e., statutes, procedures and common practices) can cause inherent system weaknesses. These factors include the following:

-- lack of courts of record

-- speedy trial requirements

-- mandatory sanctions

-- defendant choice in blood alcohol testing

-- weak implied consent legislation

-- artificial time limits

-- free continuances

In a sense, the American system of criminal justice is a system that has been intentionally designed not to work very well. As a nation, we have made a conscious choice to favor the rights of individuals over the efficient operation of the criminal justice system. Accordingly, the hypothesis that the above-captioned legal factors cause system "weaknesses" is not necessarily critical of system operations. The hypothesis merely states what the study team has observed in the five sites: legal factors can have an impact on system operations that tends to reduce case processing and sanctioning efficiencies.

The five case study reports bear evidence of each of the assertions of the hypothesis. The following comments offer selected examples of instances of each assertion of the hypothesis in action.

Lack of courts of record

In Phoenix, the lack of courts of record to hear DWI cases was a major factor leading to the collapse of the case processing system and the evolution of the PACT system.[83] Before PACT,

83. Phoenix Case Study, p. 23, pp. 26-27.

a typical pattern of disposition in Phoenix was the following:

a. A defendant would enter a plea of not-guilty at arraignment.

b. The defendant would attempt to secure a favorable plea bargain at the PDC (pretrial disposition conference).

c. If unsuccessful at the PDC, he would attempt to bargain up to and including the day of trial.

d. If unsuccessful, the defendant either underwent the trial (though very unlikely) or did not contest the charge (a procedure called "submit and appeal"). In either event, if conviction resulted, the case was immediately appealed to the Superior Court for a trial de novo.

e. At the Superior Court level, plea bargaining was again conducted, with a high probability of a favorable plea bargain being obtained by the defendant. Most appealed DWI cases were resolved by plea bargain under pressure from the Superior Court judges.

The adoption of a system whereby the DWI trial courts become courts of record could preclude this kind of procedural manipulation which in effect permits people with enough money to buy their way out of the criminal justice system.

Another abuse of the trial de novo potential in Phoenix in pre-PACT days arose in situations where there was no bargained disposition, but rather a plea or finding of guilty in the lower court. Petitions to change pleas were routinely granted, thus necessitating a second trial. Appeals from findings of guilty tended to allow the defense to use the original trial as a "discovery" procedure. If there was any possibility of victory for the defendant, the defense then had a second chance in the trial de novo, this time with a "free peek" at the prosecutor's case. In either event, a great deal of time and money was wasted which could have been avoided by providing courts of record in the first instance.

Speedy trial requirements

In Puerto Rico, the speedy trial requirement demands that the prosecutor file his information within sixty days after arrest and that the trial commence within 120 days after arrest.[84] This rule is important to preserve the rights of the defendant, but it operates to put severe time pressure on the prosecutor

84. Puerto Rico Case Study, p. 60.

to complete his formal investigation and file the information, and to put tremendous pressure on the court to docket and try cases within the limit. The Puerto Rican system, largely because of this rule, ran a perpetual backlog of cases that had been investigated and filed (thus clearing the first 60 day hurdle) but were awaiting trial (thus running the risk of dismissal upon the expiration of the 120th day). Because the DWI cases in Puerto Rico were in the Superior Courts, they competed for docketing with all the more serious felonies. Thus the speedy trial rule in Puerto Rico raised the continual possibility of system breakdown merely because court facilities were inadequate to handle the caseload within an artificial time limit.[85]

Mandatory sanctions

In Idaho, the law requires a mandatory license suspension upon conviction for DWI. For a number of reasons, judges in Idaho tend not to comply with this mandatory requirement, thus subverting the intent of the legislature and also underreporting the incidence of DWI to the statewide driver licensing record system. The judges viewed the statute which gave to the Department of Law Enforcement the total discretionary power over the driving license as an infringement on judicial discretion. They further were sensitive to the impact of a license suspension upon the defendant (e.g., higher insurance rates, the dearth of public transportation). Finally, many judges perceived that a mandatory license suspension in fact interfered with alcohol rehabilitation efforts (e.g., how will the defendant attend his treatment modality if he can not drive there?). The judges arrived at a simple device to avoid all the bad consequences (in their view) of a mandatory license suspension: they merely withheld judgment (and thus did not report to the Department of Law Enforcement the conviction), and ordered the defendant to the appropriate treatment modality. The net effect of the mandatory sanction in Idaho seems to have been to force the judges to ignore the law in order to effectuate what seemed to them to be their proper function.

Defendant choice in blood alcohol testing

In Minnesota, police officers reported that allowing the defendant to choose among breath, blood or urine as the mode for blood alcohol testing significantly lengthened their time off patrol. The quickest and easiest mode of processing for them was breath testing. However, when a defendant chose either blood or urine for the test, the officer had to transport the offender to a hospital for testing.[86]

85. Puerto Rico Case Study, pp. 70-71.

86. Minnesota Case Study, p. A-3.

In Minnesota and in Puerto Rico (and in other sites previously visited by members of the study team such as Virginia) police officers reported that not only did the choice of the defendant of blood or urine cause them time delays and processing problems, but also that the medical personnel who conducted the tests sometime tended to intentionally botch the procedure in order to avoid testifying in the subsequent trial.

Weak implied consent legislation

In Puerto Rico, the implied consent legislation tended to encourage the arrested person to refuse the breath test. The license suspension associated with an implied consent refusal was accomplished at a concurrent administrative procedure held by the same judge who heard the criminal charge of DWI. In Puerto Rico, if the defendant pleaded not guilty and at the trial there was no evidence of BAC (which of course would be missing due to the implied consent refusal), then very often the court would find the defendant not guilty. At the implied consent hearing which immediately followed the trial, the judge was required to suspend the driving license for the implied consent refusal unless the refusal to take the test was in any way "justified." Almost always, the fact that the defendant was not guilty of DWI (that fact had just been determined, largely because BAC evidence was missing due to the defendant's refusal) was sufficient "justification" to refuse the test.[87] The study team has visited other sites (e.g., several projects in Texas) where similar problems may be found: the implied consent refusal is justified because the defendant is not guilty because the state has no evidence of intoxication which the state was prevented from collecting because the defendant refused the test in the first place. Such systems tend to encourage implied consent refusals.

Artificial time limits

In Puerto Rico, the mandatory presentence investigations are required by statute to be completed within 30 days. They almost never are, and the judge has to take time to grant extensions. As the time limit seems to have been imposed largely for the convenience of the judge, it seems odd that the artificial time limit ends up wasting his time. In Arizona, probation for DWI is limited to 6 months. This artificial time limit is counterproductive, because it gives the court control over the defendant only long enough to begin his alcohol treatment modality but not long enough to finish it.[88]

87. Puerto Rico Case Study, pp. 58 and 77.

88. Phoenix Case Study, p. 22.

Free continuances

It is common practice in virtually all the courts to give defense counsel "free" continuances. Although the continuance might often be legitimate, that is, allowed for the purpose of preparing the defendant's case, it is often granted for other purposes: in order to allow the defense lawyer to collect his fee; in order to allow the defense lawyer to reconcile his personal schedule; in order to harass the prosecution; in order to give the defense multiple chances to move to dismiss as soon as the case is called and the arresting officer is absent. In Puerto Rico, continuances are sometimes granted to allow the defendant time to save up the money to pay his fine. The net result of this loose continuance policy is to require the non-lawyer personnel (police officers, probation officers, clerks, witnesses) to make appearances several times in the same case for no apparent purpose. The sheer inefficiency of such a system, combined with the disastrous impact on police costs, time and morale, suggest that the continuance practices of courts deserve more study.

The study team has identified many other legal factors which can cause system weaknesses (e.g., rigid evidentiary rules, the high presence and cost of defense attorneys, poor license revocation procedures, privacy laws and regulations), but the examples given above should serve to emphasize the need for continued research in this area.

Hypothesis No. 13

Judges are untrained in court management and administration, and they do not usually see these subjects as necessary components of their expertise. Investment in these areas, particularly investment which provides access to a trained court administrator, is likely to produce considerable dividends.

The art of court management is in a state of change and growth, and highway safety would probably find it worthwhile to support its expansion, especially for its impact on large-volume urban courts. This may be a necessary accompaniment to working with the judges themselves. Contemporary judges may be interested in court management, and they will almost certainly be interested if they are Presiding Judges, but they have rarely received any extensive training in either management in general or in court administration. Most urban courts have access to a court administrator, but his status as regards the judges is usually low and needs strengthening. The application of professional expertise by both administrators and judges could have solved many of the problems encountered by ASAP.

In Phoenix and Hennepin County the impetus for redesign came from the Presiding Judge and Chief Judge, who became deeply involved in the alternatives for action but were both prone to make decisions which did not take account of the detailed difficulties which might arise. (In Phoenix, a court administrator was available but played only a small role in the design of PACT.) In Idaho a statewide unified court system had only recently come into existence, and the influence of ASAP--aiming at statewide consistency--presented a series of problems both to the Justices of the Supreme Court and to the State Court Administrator, resulting in almost a case-study of the powers and limitations of an administrator dealing with judges. In Puerto Rico one of the Superior Court judges was appointed to serve full-time as an Administrative Judge, with the support of administrative staff, and a structure in which each court part throughout the Commonwealth was also served by an administrative judge. The system was therefore thoroughly and really unified, and the Administrative judge had great authority with both his fellow judges and the legislature.

It therefore seems likely that effective court administration is obtained best by cooperation between a specific administrative judge and experts in court administration. No administrator of course can absolutely determine the actions of individual judges. The study team noted, however, that disagreements occurred almost entirely at the level of principle (e.g., whether a referral to treatment was useful; whether a jail term was mandatory; whether withheld judgments should be used) whereas by far the majority of problems arose at the detailed level of operations. (This is an oversimplification; principles also caused many problems in details.) The problems of principle were not easily or quickly solved. The problems of detail were quickly soluble if the right technical expertise was available.

The study team therefore recommends encouragement of the use of traffic court and state court administrators, with special emphasis on system details of a technical nature. The endeavor of this investment would be to avoid the waste of time caused by errors at the detail level, and to embody permanently a concept which ASAP performed with considerable success but only temporarily.

Hypothesis No. 14

The absence from record systems of an indicator that a person has been arrested and/or convicted for a drinking-driving offense is a major problem.

In attempting to avoid some or all of the penalties for drinking-driving offenses which encourage not-guilty pleas, and in attempting to avoid losing "borderline" cases by routinely reducing charges, prosecutors and judges are undermining the records systems (interstate and intrastate). Since these records systems have been built into the process of screening and referral, and since they are the basis for second-offense prosecution, the courts are undermining their own ability to continue functioning in the planned manner.

For instance, in Los Angeles the practice of widespread reduction to reckless driving[89] has reduced credibility of both the drinking-driving charge and the reckless driving charge. If some local personnel operate (as they say they do) on the assumption that a reckless driving charge is in fact a reduced drinking-driving charge, then the integrity of the records, the proportions of repeat offenders, and the ability of the system to evaluate its activities are all suspect. Informal knowledge partly replaces formal records.

In Phoenix, there is no recorded relationship under the PACT system between the original drinking-driving charge and the charge for which a person is ultimately convicted, which depends on the point value which the prosecutor wants to select.[90] The court has its own methods of determining second offenses, and PACT records determine whether someone has already been through PACT, but these records are not available to other jurisdictions within or without the state. The charge for which the individual is ultimately convicted would give no easy clue to the alcohol-relatedness of the offense. As time passes, the PACT records system and the state traffic records system will depart further and further from each other.

In Idaho, the widespread use of "withheld judgment" makes the records systems inaccurate. The judges withhold judgment until the defendant has completed the assigned education or rehabilitation, whereupon the case is dismissed. No entry is made into the state driver record file because there has been no formal conviction for a drinking-driving offense. At the same time, diagnosis of problem drinking is based partially on the driver's record of prior offenses.[91] The absence of record in the case of withheld judgments makes it much

89. Los Angeles Case Study, p. 14.

90. Phoenix Case Study, p. 47.

91. Idaho Case Study, p. 39.

more difficult to identify and classify a recidivist, possibly leading to inappropriate referrals. Thus, one action of the court makes another action more difficult. The situation is worsened by the local police practice of reporting citations for a drinking-driving charge to the driver record only if they result in a conviction.[92]

Many ASAPs have dedicated great amounts of energy to working with court and driver licensing records. The kinds of problems which they can and cannot solve are illustrated by Minnesota. Prior to ASAP, the inadequacy of the records in identifying repeat offenders, rather than judicial attitudes, prevented the judges from making appropriate referrals.[93] The ASAP and the courts addressed and largely removed the causes of this difficulty, but by the end of the ASAP it had again become difficult to identify second offenders because of the frequency with which an earned plea bargain resulted in conviction for reckless or careless driving, leaving no trace of the prior offense, and therefore depriving the diagnostic agencies of an important piece of information for referral.

In most jurisdictions both courts and presentence investigators had their own ways of identifying prior offenses, but these ways were informal, and they certainly did not allow neighboring or out-of-state jurisdictions to make a similar identification. Eventually, the number of incidents will be so great as to lead to creation of a separate system of some kind--such as the Alcohol Data Bank envisaged by Los Angeles.

There can be no doubt that the conflict between methods of disposing a case and the need to maintain adequate records needs further examination. The courts did not bring about this situation without considerable exploration of alternatives, and it is possible that legislative changes are necessary in all such states (e.g., creation of a second alcohol-related charge with lesser penalties as the charge to which a negotiated guilty plea will be accepted). Other jurisdictions did not see a similar conflict.

The study team therefore recommends this as a major area for concern for operational research, particularly on the part of state highway safety agencies.

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92. Idaho Case Study, p. 29.

93. Minnesota Case Study, p. 7.

Hypothesis No. 15

Judges say they cannot promulgate a formal, standardized policy for the disposition of drinking-driving cases because such a policy would interfere with judicial discretion and would amount to preadjudication of cases. Despite their reluctance to adopt uniform policies formally, judges do tend to adopt uniform policies de facto.

The study team found evidence in support of this hypothesis in each of the five sites studied. There seemed to be a tendency toward consistent policies in the processing of cases and the sentencing of defendants within judicial units where the judges had frequent personal contacts, and there was a lesser tendency toward consistency in larger systems where judges did not have frequent personal contact.

In Los Angeles, the study team visited five distinct court systems. By design, each court system functioned somewhat differently from all the others, and accordingly there was no system-wide consistency or policy for the processing and sentencing of defendants. However, there tended to be consistency of dispositions within each system in the county. In the El Monte court, the judges lacked a consistent policy or performance in referrals,[94] but the other four Los Angeles courts (Citrus, Pomona, Van Nuys, and Los Angeles Downtown Traffic) each displayed a fairly consistent pattern of referrals and sentences. In these courts there seem to have evolved informal standards for decision-making which were roughly adhered to by all of the judges without any formal agreement or policy.

In Phoenix, the judges came closest to initiating a formal, standardized policy of adjudication through their concurrence in the standardized PACT policy of the prosecutors. Although nominally a prosecutor's program, PACT could not have functioned without the tacit approval and cooperation of the judges.[95]

In Idaho, despite the unified court system, there was no truly consistent state-wide system of adjudication for DWI cases. Early in the project, there were no uniform referral procedures among the judicial districts, and often judges within particular districts were inconsistent with one another.[96] In 1972, the Idaho Supreme Court held two

94. Los Angeles Case Study, p. 31.

95. Phoenix Case Study, p. 69.

96. Idaho Case Study, p. 33.

meetings to discuss these problems of inconsistent referrals, but the problems were not completely resolved.[97] In some areas of Idaho, magistrates began to attend and experience some of the DWI School classes. This seemed to have resulted in discussions among the judges which resulted in a growing tendency toward more consistent practices within each judicial district.[98]

In Minnesota, the Judicial Officer program, whereby local attorneys were hired to sit in place of judges in pre-trial proceedings was reported to have resulted in more uniform and consistent dispositions of cases.[99]

In Puerto Rico, the development of informal inconsistencies in case dispositions was masked by the mandatory nature of the procedure under Law No. 59, which required presentence investigations and drinker classifications in all cases. Nonetheless, despite the mandatory nature of the procedure, there was widespread inconsistency among the judges in the early stages of the project. After NHTSA-sponsored seminars were conducted, communication seems to have increased among the judges, and informal consensus resulted in increasing consistency of decisions and dispositions.[100] Interestingly, the prosecutors in Puerto Rico also developed informal guidelines for case processing to aid them in decisions about the probability of conviction and the utility of filing cases.[101]

The study team concluded that, under pressure of increasing caseloads, there is a natural tendency to standardize dispositions in order to reduce processing time. Once the majority of judges in multi-judge courts settle upon a course of conduct relative to dispositions which strike them as fair and effective, they generate tremendous (albeit unconscious) peer pressure for all the judges to conform. This peer pressure weakens in the case of judges who are not in personal contact, but nonetheless, there seems to be a tendency for judges to officially resist the imposition of formal, standardized policies for the disposition of cases, while at the same time interactions among the judges cause informal, standardized policies to emerge. This phenomenon merits further study, particularly in reference to the ability of judges to function in cavalier disregard of statutory requirements.

97. Idaho Case Study, p. 29.

98. Id., p. 57.

99. Minnesota Case Study, p. 45.

100. Puerto Rico Case Study, pp. 47-50.

101. Id., pp. 70-72.

Hypothesis No. 16

Inconsistency is an inherent and expectable characteristic of the court system.

Another truism long identified by researchers and jurists, this statement was confirmed by the study team. There is no necessary consistency between different decisions by the same judge; by different judges within the same jurisdiction; by judges within different jurisdictions. Differences may occur because of principle, interpretation of the law, absence of information, varying support resources, incompetence, impatience, personal preferences, the desire for reform, ignorance of the law, and varying degrees of sympathy with drinking drivers.

The point should not be belabored, because there is also a counterthrust toward consistency, based both on the desire for efficiency and the doctrine that similarly situated defendants should be treated similarly (constitutional equal protection). The area of consistency, therefore, offers great opportunities for change and improvement.

In Phoenix prior to 1974, for instance, the central docket system then in effect meant that different judges might handle different aspects of the same case depending on who was assigned to what court for that day, creating major complaints about inconsistency from prosecutors, defendants, and police. The change to a modified division system and the creation of PACT eliminated this problem by assigning continuing responsibility for each case and by sharply reducing the need for judicial involvement and placing all "problem court" cases in the hands of a single judge.[102] The tendency to appoint a single judge to handle the majority of drinking-driving cases seemed to be a tendency nation-wide (noted also in Memphis, Sacramento, Little Rock, Portland, and other jurisdictions). Though it has obvious dangers, it does promote consistency.

Presentence investigators and probation officers also seem to promote consistency. For instance, in the El Monte Municipal Court in Los Angeles County there was a problem where judges had the power to determine who would be sent for a diagnostic screening and used different criteria,[103] but once the screening categorization is made by the investigator, the judges comply with the recommendation with remarkable consistency.

102. Phoenix Case Study, pp. 29 and 50.

103. Los Angeles Case Study, p. 31.

Idaho's unified court system is still less than consistent. Some magistrate courts changed their methods of processing drinking-driving cases, while some did not. The kind and degree of change also varied.[104] Observers conclude that there is no single alcohol-safety referral system in Idaho despite the existence of a unified court system, but rather a series of systems depending on local conditions and attitudes.[105] However, an important force for consistency was the provision to the magistrates of presentence officers using standard screening criteria, and it should be noted that the newly unified system was, at the time of ASAP, undertaking its first experiments and showing a clear shift toward greater consistency.

The courts in Hennepin County, Minnesota reported wide disparities in the plea-bargaining criteria between the different divisions of the Municipal Court, seemingly the result of variations in prosecutor policy.[106] The pretrial conferences seem also to have suffered from differences in sentencing criteria used by different judges.[107] However, the introduction of both the pre-plea investigators and the Judicial Officers created more consistency in both sentencing and plea bargaining, to the point that some judges complained that their colleagues were guilty of "rubber-stamping" by automatic endorsement of pretrial decisions.[108] In Puerto Rico, an even more haphazard system, dependent almost entirely on the attitudes of the individual judge, was influenced toward greater consistency by the availability of presentence investigators, the presence of trained chemical-test witnesses, and new legislation. Although inconsistencies remain. local personnel agreed that there has been a sharp improvement.[109]

The issue of judicial consistency is very complex. Consistency can certainly not be mandated. It can, however, be encouraged so that judges tend to move together. The key factors encouraging consistency seem to be (a) design of a system rather than continuing to allow judges to function with complete autonomy; (b) provision of resources--data, criteria, personnel--who use standard guidelines to handle portions of all cases and dispositions; (c) centralization of certain functions; and (d) perhaps, creation of appropriate statutes. Since most ASAPs tended in these directions, it

104. Idaho Case Study, p. 39.

105. Id., p. 62.

106. Minnesota Case Study, pp. 24 and 27.

107. Id., p. 42.

108. Id., p. 45.

109. Puerto Rico Case Study, pp. 72 and 80.

can be seen that the ASAP approach had major significance for the courts, and ASAP could be credited with being on the side of consistency at all times.

The study team recommends further attention to this area. While inconsistency is predictable, consistency is possible. Research should specifically examine all those techniques which tend to create consistency, and especially when "model adjudication systems" are being designed, they should be carefully scrutinized to determine whether they contain the basic factors leading to consistency. (Note: Many statutes demand or imply "uniformity." The study team believes that uniformity is an inappropriate goal, since it seeks to deprive the judges of necessary freedoms and discretion, including the power to safeguard civil rights in individual cases. It will, therefore, be shunned by many judges. "Consistency" is offered as a viable alternative, one which the judges will accept, and one in which their natural momentum can be encouraged.)

Hypothesis No. 17

The monitoring of referrals, and follow-up to determine compliance with court dispositions, are often major weaknesses in the referral systems developed by ASAP.

Historically, the lower courts have never been especially good at monitoring compliance with behavioral requirements placed by the court. While there is normally no trouble with supervising imposition of a jail term or a fine, conditions of probation have often been little more than a gesture. Under the ASAP concept, some degree of monitoring was usually built in to assure at least that the defendant attended the designated education or rehabilitation agency, and there was a clear attempt to check records for recidivism. But the complexity of these tasks was considerable. Easy in theory, they turned out to be extraordinarily difficult in practice.

For example, the Idaho system for follow-up was eminently sensible; each subject was to monitored either by a counselor or by a probation officer, whichever had responsibility for his program. They looked especially for subsequent violations. But in fact the system did not work well, partly because some jurisdictions allowed offenders to forfeit bond or issued them a withheld judgment (resulting in a failure to record the offense in the traffic records system), partly because the dual function of providing counseling and monitoring services was too great in terms of caseload for individuals concerned.[110]

110. Idaho Case Study, p. 26.

Phoenix also developed a major problem in ensuring compliance. By 1975, there was a backlog of 3,043 bench warrants unserved. They were normally issued for failure to appear in court as scheduled, and failures to appear had affected the original PACT orientation sessions, final court disposition sessions, and therapy programs.[111] Phoenix also had trouble with probation services. With a very small probation staff, the city ingeniously turned to the use of volunteers to "monitor" probation, but the degree of supervision was never as complete as theory would prefer. Most defendants receiving probation were only on "summary" or "non-reporting" probation, without supervision at all, and in their case the only sign of failure to comply was a rearrest for drinking-driving. When PACT was developed, however, Phoenix developed a very efficient system of monitoring the crucial area of attendance at educational and treatment programs, so that the most important sanction applied by the court was carefully supervised.[112]

The court systems in Los Angeles all used different methods for determining compliance, and it provides several effective models.[113] Generally speaking, it seemed that monitoring by the traditional Probation Department methodology was the best method for extended, long-term monitoring and supervision (including record checks and monthly visits where necessary, and extending for the full length of the probation period).

Monitoring by Public Health Investigators had a different objective: limited, short-term monitoring during the period of summary probation, with emphasis on compliance with the initial referral as in Phoenix. In one system (Van Nuys) volunteers associated with the alcoholism council conducted one or two follow-up sessions with the offender after the initial referral, allowing for monitoring of compliance, and each offender eventually had to provide evidence of completion of a referral program. Each of these various systems worked well after considerable effort and expertise had gone into their design. The general conclusion was that each system had its distinct merits depending on the objective of the monitoring, with the preponderance of practical merit going to the short-term control system. It should also be pointed out that various court procedures militated against supervision of all arrested drinking-drivers (e.g., reduced charges), and that the total of convicted drinking-drivers receiving probation monitoring never approached the total convicted of drinking-driving.

111. Phoenix Case Study, pp. 38-39.

112. Id., p. 50.

113. Los Angeles Case Study, pp. 70-72.

Despite the quality of various systems, therefore, it seems difficult for them to achieve the extensiveness, duration, and thoroughness which might seem desirable. Monitoring and follow-up are as important to the credibility of a drinking-driver control program as is enforcement, and both are equally directed at deterrence. To have a deterrent effect, enforcement must be real, the imposition of sanctions must be meaningful, and the desire of the court to see that imposed sanctions are actually applied must be credible. Further, the courts cannot examine the effectiveness of their sanctions if they do not know (a) whether they were applied, and (b) whether they forestalled further drinking-driving behavior.

Does this mean that a complete and elaborate monitoring system of the kind preferred by George Orwell's Big Brother is necessary? Probably not. Is such a system feasible and affordable? Almost certainly not. The key matter seems to be determination of the objective of monitoring and follow-up. Determination of initial compliance with a referral, and determination of completion of a program both seem essential and easy. Determination of recidivism in terms of rearrest is somewhat less easy, but equally important to both credibility and effectiveness. However, determination of changes in drinking habits or drinking-driving habits short of rearrest does not seem practicable.

The real problem here may consist of two factors: (1) are the resources available to achieve the objectives of monitoring, and are they equally applied to all offenders; and (2) do some court practices actively forestall either the entire monitoring process or the credibility of the monitoring process?

The study team was informed repeatedly that the probation monitoring of drinking drivers is essentially different from traditional probation monitoring, requiring less time and fewer person-to-person contacts, a concept which is currently being examined in NHTSA demonstration projects. At the same time, the lower courts' inexperience with the monitoring of misdemeanants makes them reluctant to provide from their own resources the necessary monitoring capability. It, therefore, seems that the clearer specification of objectives, methods, and staffing for the purposes of monitoring may be rewarded by the removal of weaknesses in this area which, at present in many sites, hamper the system's operations and hurt its credibility.

Hypothesis No. 18

The courts are run with undue attention to the convenience of the legal profession, at the cost of court convenience and often without regard to the needs of other members of the criminal justice profession.

It was extraordinarily difficult to collect evidence concerning this hypothesis, which has been advanced by generations of court reformers. A series of rationalizations cloud the issue: (1) due attention must be paid by the court to the needs of a defendant seeking trial; (2) the courts need the cooperation of the defense bar to function successfully, and must therefore offer as well as receive courtesy; and (3) the courts are often at the mercy of defendant rights provided for by statutory and constitutional guarantees.

While all three points are valid, the study team often detected practices which represent an undue attention to the needs of professional colleagues. There was no possibility of documentation short of court-watching, which was not undertaken to any great extent, but corollary evidence is available.

In Idaho, for instance, police officers freely complained, as they do in many other jurisdictions, that all court appearances are scheduled for the convenience of the defense attorneys (not the defendants) rather than for that of the criminal justice system, especially testifying officers.[114] The same complaint was registered by presentence investigators. Only one of the five visited jurisdictions scheduled cases according to the officer's day in court, a technique with which many courts were surprisingly unfamiliar, and in which few showed great interest. Puerto Rican officers made the same complaints.[115] In Phoenix, prior to PACT, there was no control over continuances. Either prosecution or defense could ask and receive without question. Rumor--and only rumor--had it that here, as in many jurisdictions, continuances were given so that (among other reasons) the defense attorney could get his fee from his client. Another more overt reason for continuances was to allow time for a defendant to obtain money to pay his fine,[116] requiring unnecessary appearances for the police officer and complicating court scheduling.

114. Idaho Case Study, p. 45.

115. Puerto Rico Case Study, p. 69.

116. Id., p. 79.

The issue of continuances is thorny. They are desirable and required under certain circumstances. The point of doubt comes, however, when the rationale for a continuance is "professional courtesy," which too often seemed, as one judge put it, an excuse for "letting the lawyers keep bad habits."

The study team noted that court scheduling is often not a high priority with judges, though they are increasingly influenced by court administrators. There was little thought to the effects in time and paperwork on the courts themselves of granting a continuance or of failing to schedule some kind of pretrial disposition. Further, few courts took into active consideration the costs or the physical burden of poor scheduling practices on the police or other witnesses, as for example in calls upon a toxicologist to be instantly available for a trial, or paying overtime rates to officers kept waiting all day in the corridors.

No ASAP seems to have investigated two other relationships between the court and the defense bar which have often been the subject of attack by reformers. There was, for instance, no study to follow up on Blumenthal and Ross' suggestion as regards the Denver court that defendants represented by attorneys are more likely to get lighter or better sanctions, though the study team was told in three of the visited sites that such was probably the case. Nor was there any evidence that a court system or practice was designed to ensure that defense attorneys got fees from the "drinking-driving business," an accusation made in connection with some other ASAPs, but never formally documented. There were, however, many expressions of uneasiness that the defense bar might fail to cooperate with a system which rendered their presence unnecessary. Defense attorneys, on the other hand, did not seem preoccupied with their incomes from drinking-driving cases, finding a good "deal" for their clients the greater value.[117]

The lack of data coupled with the presence of rumor suggests that traditional relationships between the judiciary and the defense bar should be examined, especially by the courts themselves. At the very least, it seems that many courts are obeying outdated conventions, and at the worst, they are allowing their scheduling to be controlled by outside factors which might be irrelevant. Professional and bureaucratic traditions operate within the courts as elsewhere, even against all reason.

117. Puerto Rico Case Study, p. 71.

Hypothesis No. 19

Increased arrest-rates tend to force more routinization of case-processing by the courts and may therefore be a major factor in improving court procedures.

This hypothesis may well be incorrect, but it is worth examination. Traditionally the courts have handled sudden or sharp increases in arrest-rates by various techniques leading to dismissal or reduction, a practice giving rise to one of the major complaints against the courts (especially by the police). However, some of the ASAPs had a different experience. Increased caseload--plus the presence of a systems approach and an ASAP--forced the courts to pay more attention to processing principles and resulted in more efficient procedures. The experience of the ASAPs varied widely; some court systems "improved" and some collapsed.

The hypothesis is offered because (a) if true, it would suggest that highway safety, the police, and the courts have a mutual self-interest in increasing arrest-rates; and (b) the improvements made in some courts might be translatable to court systems which fared less well.

Phoenix provides evidence that a responsible court system can respond ingeniously to an increased arrest-rate. With an already high arrest-rate in 1972, the courts had defined a standard sentencing procedure for handline a large volume of DWI School referrals.[118] The mandatory one-day jail requirement legislated in 1972 crippled this procedure, and in 1973-1974 the prosecutors and judges instituted a formalized plea-bargain procedure and a Pretrial Disposition Court, handling an increased caseload with some efficiency but with a less clear objective.[119] Under the influence of the speedy trial requirement, the PACT system formalized both the plea-bargain and the referral to treatment, sharply decreasing the need for both prosecutor-time and judge-time, starting in August 1974. The current system is capable of handling a greater load than at present, and its capacity is far above that of the previous systems.[120] However, with so many influences from the legislature, it is hard to tell what was the effect of the high arrest-rate alone. With a high arrest-rate, and with the presence of outside influences and observers, the courts in Phoenix devised a new system satisfactory to all participants which would not have been necessary without a high arrest-rate.

118. Phoenix Case Study, p. 24.

119. Id., p. 25.

120. Id., pp. 28 and 30.

Los Angeles offers a good example of changes in the diagnosis/referral process brought about by caseload. The Downtown Traffic Court, handling 20,000 to 30,000 DUI cases per year, initially referred a small proportion to treatment and could, if they wanted, adopt a two-step screening procedure which dealt only with that small and almost randomly selected proportion. One year after the legislature mandated presentence investigations, the court abandoned its rather redundant system, increased staff, and required automatic interviews for all second offenders and selected first offenders with a high BAC. In this case, therefore, the increased caseload encouraged standardization.[121]

In Minnesota, the backlog of cases resulting from increased arrests mounted steadily until the court revived the use of pre-trial hearings presided over by Judicial Officers. The data show, however, that initially the number of dispositions then decreased despite an increase in the proportion of reductions to a lower charge. In this case, therefore, the increased load changed the routine without improving court operations, some evidence that arrest-rate alone is not sufficient to improve court procedures.

The study team discovered no thorough data investigating the relationship between caseload and court efficiency. There were no standard measures against which efficiency could be measured. There was no evidence of the use by courts or ASAPs of the customary efficiency measures used in management engineering, and indeed there was a negative reaction whenever such concepts were mentioned to court personnel, who usually have no understanding of their nature or purpose.

The conclusion of the study team was that elementary management techniques need to be applied to the relationship between caseload and court routinization. There are major implications for (a) the ability of a community to increase arrest-rates; (b) the usefulness of "assembly-line" justice in disposing of routine cases; (c) the cost-effectiveness of case-handling by various kinds of court system; and (d) the impact or lack of impact of various kinds of legislation. The issue of the relationship between caseload and allocated court manpower is at present largely unexamined, though it is the obvious basis on which an efficient court system should be developed.

Hypothesis No. 20

A paramount interest of court systems is developing solutions to their own caseload problems. This will sometimes override their obedience to statutes, and their concern for other agencies and/or needs.

121. Los Angeles Case Study, pp. 48-49.

This statement became a truism to the study team. No matter how much goodwill court personnel expressed toward highway safety, the law, the defendants, other agencies, and the good of society, the only abiding and constant theme was the necessity to keep the courts functioning. If they could function effectively, this was all to the good, but the two main themes were "efficiency" and "convenience." In this attitude the courts were supported by everyone concerned with them, including legislatures and funding agencies. Despite the current demands from many sources that the courts behave effectively (especially from the police), when it came to practicalities this meant at most "cost-effectiveness." No community was willing to support a level of court operations that maximized effectiveness regardless of cost and efficiency.

Any of the sites visited may serve as an illustration of this tendency, and following are examples from each of them which happen to be more dramatic. In Phoenix, for instance, the entire structure of the ASAP-developed PACT system is determined by the court's desire to avoid: (a) jury trials; and (b) appeals. It was taken for granted that the courts could not offer jury trials to all defendants. Plea-bargaining was widespread before the advent of ASAP, and in adopting PACT, all supporting agencies offered efficiency as the major rationale. It was seen as a method of encouraging people to avoid trials and de novo appeals.[122] There was considerable difficulty in convincing the prosecutor's office to include a referral to treatment as part of the plea-bargaining process, but opposition withered as ASAP invented methods of using support personnel to decrease the use of prosecutors' time even more than the previous plea-bargaining.

In the Los Angeles area, an outstanding example of the paramountcy of court efficiency is evident in the Citrus courts. Having developed an efficient system which called for post-sentence investigations, the judges were unwilling to respond to a new statute calling for presentence investigations, which would have required more court appearances. Rather than follow the statute, they added one more paper to the pile--a waiver from the defendant of the presentence investigation so that the post-sentence system could be continued.[123] A similar path can be traced in the Los Angeles Downtown Traffic Court, first in the number of cases which are suspected of having been reduced from original DWI charges,[124] then in the comparative inadequacy and incompleteness of the

122. Phoenix Case Study, pp. 41 ff.

123. Los Angeles Case Study, p. 37.

124. Id., p. 49.

in-court, presentence investigation system introduced as a result of statutory requirement.[125] There is also enough evidence throughout the County to suggest promotion by the judges and/or the prosecutors of a standard policy to offer a reduced charge in return for a guilty plea if the BAC is below .15%.[126]

In Idaho, the desire to avoid trials and repeated court appearances is the main reason for the widespread use of "withheld judgment." In Minnesota, efficiency is the main reason for the use of Judicial Officers and pre-trial disposition hearings, and it is a major factor in increasing the percentage of plea-bargained cases from 18% in 1971 to 52% in 1975. In Puerto Rico, the entire system for handling drinking drivers may be seen as resulting from the conflict between a desire for court efficiency and a desire to preserve individual rights. The latter are simply too expensive for the existing system to cope with despite their vital importance to the judges. One early result was a pattern of frequent dismissals and not-guilty findings. This was later ameliorated by legislation which allowed the judges to discourage trials by a "softening" of penalties, including a rehabilitation referral, but the Superior Court judges still expressed an active desire to remove all DWI cases from their docket, filled with other more "serious" offenses, and allocate them to the dockets of the District Courts of limited jurisdiction.

There is, of course, nothing to be blamed and everything to be praised in a court desiring efficiency, which is often a matter of simple survival, demanded increasingly often by speedy trial laws, and always a consideration in the eyes of both the public and funding agencies. The paramountcy of the court's desire for efficiency, however, has important implications for highway safety interests, jurists, and legislators. Even good highway-safety practices called for in legislation designed to ease the problems of the courts may not work, as in the case of "illegal per se" laws having much less effect than had been hoped.[127] Even the best intentions of the judges and prosecutors may succumb to the pressure of caseload, and certainly no interviewed court personnel believed that the tactics they were forced to use should be confused with the principles they wished to use.

The courts visited were all implementing the "reforms" characteristic of and required by contemporary professional standards, constitutional rulings, and case findings. But

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125. Los Angeles Case Study, p. 48.

126. Id., pp. 14 and 49.

127. Minnesota Case Study, p. 55.

the old, "bad" practices survived side-by-side and even increased. This is not the place to join in the debate as to whether the reforms or the old ways are better, but the survival of the old ways suggests their vigor. They cannot be waved away. They cannot be simply prohibited. They grow and thrive because of the need for efficiency. The courts in all jurisdictions visited were willing to abandon old practices or to change them or to add new practices as long as the changes did not involve a substantial decrease in efficiency. If a reform increased efficiency, it was readily endorsed. There was even widespread belief that a major motive for adopting rehabilitation as a sanction alternative was because it was seen more inducive of cooperation by the defendant with the court, totally regardless of its effectiveness or relevance.

Clearly then all changes in court actions recommended by highway safety interests or researchers must be examined from the viewpoint of their effect on the court's efficiency. No action which decreases that efficiency can be said likely to survive. Any action likely to increase that efficiency has an excellent chance of adoption. And efficiency must be measured by the courts themselves, since even those actions evaluated in abstract as efficient may prove inefficient in a particular court because of local habits or practices which, right or wrong, make the theory an untenable reality.

This statement clearly affects all possible recommendations affecting the court handling of drinking-driving cases. Before any recommendation is endorsed, it should receive extensive pilot testing in sample jurisdictions selected because of representativeness, and the opinion of all states and their local courts should be carefully sounded before adoption.

Hypothesis No. 21

Judges in some jurisdictions are well aware of the budgetary effects of their case-dispositions, and in some jurisdictions, court actions are determined partially but significantly by money and/or revenue source.

The study team found many jurisdictions less than ready to discuss the financial implications of their court's actions. Traffic courts, of course, generate revenue for either state or local government, and decisions which reduce that revenue have ramifications which may potentially affect court practices (e.g., abandonment of fines consequent to acceptance of a referral).

Phoenix, however, investigated the revenue consequences of its drinking-driving system thoroughly. The Presiding Judge observed that increased revenues to the City were a

consideration important to the acceptance of PACT,[128] and the ASAP prosecutor confirmed that the standardization of revenue ($110 fine per case) was a good selling-point.[129] The City Council, having previously refused the court new courtrooms on the grounds that the present courtrooms were not used efficiently, approved PACT on the basis of planned efficiencies and the certainty of the amount of revenue.[130] An influential Councilman emphasized the importance of revenue.[131] The prospective loss of revenue was reported as a major factor in the City's failure to adopt a pure diversion program.[132]

The study team failed to scrutinize this issue in other visited jurisdictions, but it believes that Phoenix's attitudes are unusual only in their frankness about the significance of revenue patterns. It, therefore, recommends that the flow of revenue from drinking-driving cases be examined nationwide, that the effects of changes in revenue-flow be examined before any changes in legislation, and that "income" to either state or local government be accepted as a basic and valid consideration in the design of drinking-driver control systems.

Hypothesis No. 22

Quantitative evaluation of court systems for drinking drivers will continue to be very difficult and always challengeable because of: (a) inadequate data; (b) changes during operation; (c) individual unrecorded variations between judges; and (d) reluctance of court systems to cooperate.

The ASAPs reported extreme difficulties in acquiring baseline data on which to base their evaluation component. Data difficulties plagued all projects throughout their duration. The study team itself had difficulty collecting accurate quantitative data for this report. Further, many data regarded as necessary to adequate description of a court system had not been collected by any ASAP. The state of the data systems in all visited jurisdictions had vastly improved during the course of operations, but there were still unfortunate problems.

128. Phoenix Case Study, p. 60.

129. Id., p. 66.

130. Id., p. 31.

131. Id., p. 74.

132. Id., p. 30.

Minnesota reported clearly on the inadequacy of the pre-ASAP records system and its deleterious effects on the court's actions.[133] Idaho reported inconsistencies in their own data throughout the project and devoted considerable effort to overcoming them.[134] Los Angeles found that some courts ceased cooperation with evaluation when ASAP funding expired.[135] Other comments on data problems are scattered throughout the five case studies in this report. It is, in sum, extremely difficult to discover exactly what is happening with drinking-driving cases in our court system.

The study team believes that even more detailed evaluation is, however, essential. At present, there is no proven relationship between any action of the courts and any decline in crashes due to drinking-driving. There is even less information about the effectiveness of various sanctions, or about their appropriateness to certain kinds of drinker. Even the careful evaluations currently undertaken by NHTSA and ASAPs of various ASAP education and treatment modalities may be invalidated because of their lack of information concerning previous court actions. In every drinking-driving case, the defendant is subject to a whole series of actions, many of which are caused by the court, and it is not known which of these actions has effects (if any) on which defendants.

During the course of ASAP, the evaluation of court systems has made major advances, which the research team believes should be continued. However, they may be neither feasible nor cost-effective, and alternative evaluation measures may have to be chosen. The study team therefore commends the attention of evaluators to the possibility and the difficulty of conducting quantitative evaluations of court actions and recommends that considerable conceptual effort be placed into the subject prior to expansion of evaluation components of current projects.

Hypothesis No.23

There is a danger that court-based referral programs could make alcoholism, in effect, a criminal offense in itself. Though defendants are normally given a choice as to whether they will accept rehabilitation or a punitive sanction, the court's powers of coercion are such as to make acceptance of treatment common by the majority of defendants,

133. Minnesota Case Study, p. 7.

134. Idaho Case Study, p. 4.

135. Los Angeles Case Study, p. 56.

to the point where they may be regarded as having been sentenced into treatment.

This point is self-explanatory. It is the basis of all the referral systems examined. Courts everywhere offer a choice between rehabilitation and criminal penalties. The process is basic to the ASAP concept. In certain jurisdictions and cases, treatment includes in-patient hospitalization, psychiatric treatment, and/or chemotherapy.

An NHTSA study shows that the present ASAP systems are constitutional.[136] At the same time, the thrust of current law is to free citizens from the overuse of court-mandated treatment. The study team wishes to point out, especially to the alcoholism profession, that current ASAP practices frequently skirt constitutional correctness, making excessive use of voluntary waivers by defendants of such rights as privacy of records, speedy disposition, rights to a presentence investigation, etc. Further, the classification of individuals as problem drinkers could be regarded as discriminatory rather than diagnostic, since it usually results in an entirely different pattern of case-disposition. In effect, an identified problem drinker is more subject to court coercion than is an identified social drinker, though both are guilty of the same legal offense: drinking-driving.

The issues here are more complex than can be debated in the present study. The study team wishes only to comment that there was no evidence that the courts were concerned about any possible differential treatment of alcoholics, and that NHTSA has not directed efforts to determine whether civil rights are in danger of abrogation either in general or in particular. This seems, therefore, an appropriate area of investigation for civil rights groups and for the alcoholism establishment. The study team is particularly concerned about the inappropriate use of disulfiram chemotherapy under court mandate. There is also a tendency for courts to place individuals into treatment programs without being familiar with the nature of the treatment or its appropriateness to the offense.

136. J.W. Little; G. Young; S. Selk. Constitutional Protections Of Convicted DWI Offenders Selected To Receive Special Sanctions. (HS-801 231), 1974.

Summary of Hypotheses. During the course of the study, the researchers worked consistently according to a concept borrowed from systems analysis. They conceptualized a societal response to drinking drivers called "the drinking driver control system," divided into a series of separate "functions" which society requires the legal system to perform under the ASAP approach to highway safety. Those functions are as follows:

1. The legislative function, dealing with laws aimed at drinking-driving behavior by the legislative branch of government.

2. The enforcement function, accomplished usually by the police, ensuring that laws are made real in the highway environment.

3. The adjudication function, which includes prosecution, defense, trial, sanctioning, and such other activities as are designed to ensure the rights of both the public and the defendant under the aegis of the judicial branch of government.

4. The information-collection function, traditionally called pre-sentence investigation and probation, and comprising (a) investigation, screening, and diagnosis; (b) referral to outside agencies; and (c) supervision, monitoring, and follow-up.

5. The rehabilitation function, including education and alcoholism treatment and any other activity intended to modify driver behavior by other than punitive actions.

6. The system management function, including all activities designed to keep the court system operating in conventional administrative terms, and in harmony with other agencies.

The study team was contracted to concentrate on the third of these functions (adjudication) and did not attempt to formulate equal numbers of hypotheses for other functions. However, the hypotheses offered in this section relate to the above functions as follows:

- Legislative. Hypothesis No. 1 points out the lack of correlation between legislation and court practices, and Hypothesis No. 8 emphasizes the need for legislatures to pay greater attention to helping the courts exercise their ingenuity in getting offenders to cooperate with both judicial and legislative intent.

- Enforcement. Hypothesis No. 19 suggests that increased arrest-rates may benefit court operations by forcing routinization of court procedures.

- Adjudication. Hypothesis No. 2 suggests that statutory penalties seen as "harsh" are rarely applied, and No. 3 identified the key factors leading to disregard of such penalties. Hypothesis No. 4 makes a complex suggestion concerning the real significance of trials to the system, and No. 5 deals with the similar significance of support resources. Hypothesis No. 6 reports no evidence that lay judges are worse than lawyer judges in handling drinking-driving cases, and No. 7 suggests that the reason for this may lie in the routine nature of most drinking-driving cases. Hypotheses Nos. 8, 9, and 10 all deal with the dynamics of the sanctioning process. Hypothesis No. 15 discusses the difficulty for judges in adopting standardized "policy" for cases, and No. 16 points out the consequent necessity of accepting inconsistency in judicial practices. Hypotheses Nos. 18, 20, and 21 present some of the real-world determinants of court procedures: the convenience of the legal profession, caseload, and judicial awareness of financial impact.

- Information-Collection. Hypothesis No. 11 suggests that the screening process can be undertaken by any minimally trained person. Hypothesis No. 14 reports the absence of an alcohol-related conviction indicator as a problem for the entire system. Hypothesis No. 17 identifies monitoring and follow-up as major system weaknesses. Hypothesis No. 23 recommends caution lest the collection of too much information make alcoholism again a crime.

- System Management. Hypothesis No. 12 points to some of the legal factors which cause identifiable weaknesses in the whole drinking driver control system. Hypothesis No. 13 suggests the necessity of help from professional court administrators. Hypothesis No. 22 points out the difficulty of quantitative evaluation of court systems and actions.

Many of the hypotheses, of course, deal with more than one system function. The study team also believes that many other hypotheses could be developed from the case-studies and invites other readers to develop their own hypotheses. There are also some noteworthy and deliberate omissions from the listed hypotheses. They are in the following areas:

a. Rehabilitation. The effectiveness of court sanctions, including education and/or rehabilitation, is a fascinating and complex issue which is to some extent the subject of other current NHTSA studies. The study team therefore thought it

wiser to avoid the subject. A warning, however, is implicit in many of the hypotheses listed; that is, the complexity of court operations makes evaluation of the effectiveness of court-coerced education and/or rehabilitation a matter of extreme difficulty. The difficulty arises first in practical terms: how does one get the courts to behave and to record as an evaluator would want them to? It also arises in conceptual terms: assuming court-caused events are having good and bad effects, precisely which events are having what effects?

The present contract did not allow for the degree of detailed analysis that answers to such questions require, but the researchers urge evaluators of rehabilitation/education to pay greater attention to the dynamics of the psychological relationship between court actions and drinking drivers, since our impression is that a great deal of unrecognized or poorly understood activity is taking place in this area.

Further, those dynamics need to be closely related to the similarly complex dynamics of recovery from alcoholism. The researchers found much anecdotal evidence as to the complexity of the relationship between the recovery process and the nature and timing of court-caused events, but the subject was obviously too complex for the present investigation. We can only suggest that thorough cooperative study by alcoholism experts and court experts may enable design of a court system for drinking drivers that causes the two sets of dynamics to cooperate rather than conflict. If this is so, a court-based drinking-driver control system will have to be designed with greater attention to detail but may end up cheaper and simpler than the existing system.

b. Pre-sentence, Probation, Referral. Though several hypotheses deal with this area, again the research tesm were brought up short by complexities beyond the scope of the current contract. Again, the researchers believe that further conceptual and operational research in this area may result in a system simpler and cheaper than most present systems, and one much better suited to the needs of the clients and of government.

c. Education of System Personnel. At every site visited, extensive education had taken place, aimed at the police, prosecutors, judges, probation officers, alcoholism counselors, etc. Some such education consisted of special "seminar" occasions. Some took the form of technical assistance from NHTSA staff, and much was the result of NHTSA or other scholarly publications, or NHTSA program guidelines. Much education was done by members of one system component working

daily with members of other system components. The ASAP management units fulfilled a constant educative function. Repeatedly, interviewed persons and written project reports referred to the benefits of this educative process.

Despite the fact that the researchers had actually participated in conducting some portions of the education, they were slow to realize the extent and depth of the impact of the educative effort in creating both attitudinal and behavioral change among system personnel. Having identified it as a factor, they were unwilling to make shallow statements about the nature of desirable education. It is obvious that the process of social change--which is what ASAP is trying to create--depends heavily on education, and the research team concludes that both NHTSA and ASAP educational efforts were of major importance, but the precise nature of that education, the specification of appropriate "educators," and the definition of methods of conducting education are all matters that deserve a depth of examination which would have led the present research effort too far afield.

8.0 CONCLUSIONS AND RECOMMENDATIONS

Throughout the long course of this study of ASAP-related adjudication systems, the study team has had two matched questions in mind: what can the courts do to promote highway safety? and what can the highway-safety establishment do to help the courts perform safety-related functions? We regret that we cannot provide definitive answers to either question. No one as yet knows enough about the courts, or about the relationship between their actions and highway safety.

It is, however, very clear that the Alcohol Safety Action Projects made major advances towards establishing a basis from which answers to those questions can be sought. They have brought us a long way. The current study examined five ASAPs which have contributed to major innovations in their court systems' processing of drinking-driving cases. In some cases, those innovations failed to achieve their purpose, in others the period of change was short-lived, and in others the verdict is not yet in, but in every case the ASAP-related innovations demonstrated two facts whose importance we should not underestimate. First, change in the court systems is desperately needed if their processing of drinking-driving cases is to have any meaning at all. Second, we need to know a great deal more about the way courts work before we can go much further in improving their highway-safety orientation.

The study team found that the ASAP-generated reports on and evaluations of their court systems were not as helpful as they might have been. The ASAP evaluators at different sites produced reports varying widely in quality, reliability, utility, perceptiveness, and readability. And unfortunately most of them were misdirected. Because they knew so little about the courts when ASAP began, they did not know exactly what to measure. And because the record systems of the courts are of poor quality, they had to spend too much time in establishing a minimal data base. The regrettable result was that too many of the evaluation reports did not even record precisely what happened, let alone why it happened. Concentration on the effectiveness of education and rehabilitation, on the bottom-line accident statistics connected with ASAP activities, and on levels of activity throughout the ASAP system actually veiled from the evaluators (or at least from the readers of evaluation reports) what precisely was heppening and why in the absolutely crucial "gatekeeper" area of the courts.

The study team was consistently perturbed that some ASAP evaluations missed the point altogether by failing to study their court systems more closely. If, for instance, all persons referred by the judges into a rehabilitation modality intended for social drinkers are in fact problem

drinkers, then what could evaluation of the effectiveness of that rehabilitation modality possibly show? Yet how would the evaluator know if the referrals were appropriate unless he had carefully scrutinized the choices made by the judges? Or again, many ASAP evaluations showed a large decline in the population moving through successive components of the ASAP system. Many more drivers were arrested than ever entered education or rehabilitation. What is the significance of such a loss? Does it invalidate evaluations of the later components in the system? Does it forestall satisfactory evaluation of the whole ASAP concept? Certainly we know where most of the attrition occurred--during the period of court action--but we do not know why, or whether the attrition caused major distortions. Printed ASAP evaluations did not address this issue thoroughly, though conversations were ASAP staff and evaluators reveal that they were well aware of it. Next time, perhaps, evaluators will be able to increase the correspondence between their evaluation schemes and actuality by adding the legal expertise of, for example, judges, attorneys, jurists, and court researchers to their armory.

The study team certainly believes that in future court research the expertise of empirical investigators should be wedded to the skills of legal system managers and researchers, since without such a match neither field will progress as rapidly as it could. The present study resulted only in a series of hypotheses about adjudication systems. It allowed for no novel empirical investigation. But what it showed conclusively is that the field is now, thanks to ASAP, ready for good empirical investigation on a large scale.

ASAP took the highway safety establishment for the first time into a close relationship with the courts adjudicating drinking-driving cases. What are highway safety's alternatives for the future?

i. Highway safety interests could proceed on the basis that present knowledge about the operations of adjudication systems is enough to make their job easier, and that is enough. It could act on the assumption that the courts, generally speaking, are doing a good job, and that there is not much more that highway safety could do for them.

ii. Highway safety interests could decide that the courts are so chaotic and unpredictable that the sooner we find other ways of dealing with drinking-driving offenses the better. They would presumably turn to decriminalization and/or administrative adjudication.

iii. Highway safety interests could decide that the state of the art of adjudication is ready for advances, and should be advanced with the assistance of the highway safety establishment.

If the last course is chosen, and clearly it is the course to which the present study team leans, then genuine empirical research is necessary, manifested in pilot and demonstration projects, with accurate and complete data and evaluations, control groups or sites, and sophisticated statistical analysis. Such research would cost more and last longer than was the case with court-related research undertaken by most ASAPs. The study team, therefore, completely endorses the 1976 recommendations from the National Highway Safety Advisory Committee that the U.S. Department of Transportation continue and increase funding for "ASAP-type" adjudication systems, judicial education, and demonstration and research projects, but with the important rider that future projects not simply repeat past ASAP patterns but deliberately select and build on the discoveries of the past which seem most likely to be productive for the future.

We cannot, in other words, endorse the expansion of weak or token versions of ASAP, such as seems to be happening spontaneously at the local level since the degree of Federal leadership decreased. We certainly do recommend the development of scientific and legal experiments in adjudication and referral systems of the type which certain innovative ASAPs have pioneered--"pioneered" being a term which the present study shows must be given full weight.

The hypotheses advanced in the preceding section of this study show what directions such future effort might pursue. Those hypotheses group themselves roughly into four categories:

a. the effectiveness of sanctions

b. the dynamics of the adjudication process

c. the impact of statutes

d. court management and administration

It so happened that sanctions, adjudication, and statutes each found four hypotheses associated primarily with them, and eleven hypotheses dealt primarily with court management. While this may be the result of the study team's bias, it may also represent the proportional emphases that should be given to future research and demonstration. Court management and administration seems a high priority area. The details of the way courts work need much further investiga-

tion, and to operate well, the courts clearly need all the help they can get from highway safety interests and the alcoholism profession.

Especially because of this, the study team wishes to draw to the attention of the National Highway Traffic Safety Administration two resources which are currently being neglected. First, we urge strengthening of the ties at both state and Federal level between the activities of highway safey agencies, alcoholism agencies, and criminal justice agencies. At the Federal level this would involve more than the current nominal cooperation between the National Highway Traffic Safety Administration (NHTSA), the Law Enforcement Assistance Administration (LEAA), and the National Institute on Alcohol Abuse and Alcoholism (NIAAA). At the state level, it would involve deliberate fostering of cooperation between the Governor's Representatives for Highway Safety, the State Criminal Justice Planning Agencies, and the State Alcoholism Authorities. At the national level, it would involve a much better flow of information between the various professional organizations, and cooperation with the current ASAP variants developed by the Army, Navy, and Air Force. The structure for such cooperative efforts has already been established, especially because of NHTSA's efforts. The study team hopes that Congress and the Executive Branch will further encourage these developments.

Second, we draw the attention of the National Highway Traffic Safety Administration and the state highway safety authorities to the loss of expertise which the field is suffering since the end of the special ASAP funding. The ASAP experience created a reservoir of skilled personnel which the field never before possessed--highway safety personnel with some understanding of our court systems, court personnel with some dedication to highway safety, and alcoholism personnel with some knowledge of both. Nominally, it has always been the objective of the National Highway Safety Program, working with the states and local communities as a result of the Highway Safety Act of 1966, to promote such a sharing of knowledge and interests. The study team was distressed to find--as they visited familiar ASAPs just when they came to an end--that the reservoir of expertise is emptying in a steady trickle. The loss is caused by two factors: the decline in the flow of Federal emphasis and knowledge to freshen local spirits, and the inability of local jurisdictions to fund the management and evaluation units which are essential to keeping the ASAP components energetic.

The study team's final recommendations are thus addressed to these issues. First, the Federal government now possesses a level of knowledge in this area greater than that of most local communities. We, therefore, recommend that NHTSA make every possible effort to disseminate their expertise, whether by their own efforts or through the number of skilled contractors which were associated with ASAP (especially in the evaluation field), on a continuing basis. NHTSA, we feel, now has an obligation to keep current reports on the state of the art available to operational personnel, not just to those individuals who read technical journals, or to those who earn their living in highway safety operations. Second, we recommend scrutiny of the Highway Safety Act of 1966 to determine whether Section 402 funds could be specifically directed to the support of state and local management units designed to assist the courts, rather on the pattern recently mandated by Congress for criminal justice funds distributed under the Safe Streets Act, aimed at promoting the planning capability of State and local courts.

There is no doubt in the minds of local and state persons whom the study team interviewed that NHTSA made major contributions to their court systems through the operations of ASAP. Those contributions were the more welcome because they were largely unanticipated. The opinion of the study team is that the imaginative NHTSA initiative should not be lost, and that the U.S. Department of Transportation should proceed as rapidly as possible to support local needs and desires by means of further research and demonstration in the field of adjudication systems for drinking-driving cases.

The study team strongly supports further development of and support for the "systems approach" which was the basis of the ASAP concept. Though radically new in all ASAP communities, it won their support; almost every site reported continued interest in the validity of the idea. The Federal government was clearly assisting local community management to function better. The hypotheses listed in Section 7.0 show over and over again the validity of the systems approach to the control of drinking drivers; simply speaking, it brings rational order to what is already happening haphazardly. If the hypotheses listed above prove correct, then the systems approach is not just desirable but essential in two ways:

a. to sustain traditional court operations by increasing their efficiency and their effectiveness;

b. to develop the new functions necessary to vitalize the court approach to drinking-driving cases.

Further, with so many hypotheses concentrating on issues of system management, only the systems approach and the existence at state and local levels of system management units can really improve liaison in the necessary ways. Yet the systems approach is itself still poorly understood. Particularly in traditional highway safety agencies, there is still a tendency to see "ASAP" as meaning a special enforcement effort in the old manner, with court-related functions and rehabilitation tacked on; and other components of the system still focus on their own functions exclusively. In sites which did not benefit from the original Federal effort, "the ASAP concept" has become popular, but in a debased form. The researchers' projection in such cases would be that the approach is doomed to fail, or at least to become just one more partial and unsatisfactory government activity. Necessary to all such jurisdictions is more and better information about the systems approach, provided through publications, technical assistance, thorough education, etc. We do not suggest "selling" ASAP as a proven concept. We do strongly recommend explaining its merits and defects in great detail to any community tempted to try it.

To this purpose, there are certain actions which the U.S. Department of Transportation could take to make more permanent the new acceptance by highway safety of responsibility for the legal processing of drinking-driving cases. They are as follows:

a. Further detailed work with Federal executive agencies (e.g., NIAAA) and professional bodies (e.g., American Medical Association) to determine the appropriate relationship between court actions and the social and medical theory of alcoholism recovery.

b. Examination of social policy decisions, especially with legal and sociological theorists, and especially with Congress, to develop a national policy toward drinking-driving which is based less on emotion and more on professional knowledge. A report to Congress, created jointly by multidisciplinary experts within and without government, may be timely perhaps three years from now. At present there is no such national policy, but ASAP has suggested the basis on which it could be developed.

c. Cooperation with the American Bar Association, the American Correctional Association, and any other such bodies to create Standards dealing with the court processing of drinking-driving cases. The nucleus for such an effort already exists in the ABA Traffic Justice Standards. It may also be possible to carry this effort further into the design of court rules to be disseminated by the ABA and other professional organizations.

d. Ffforts by NHTSA to develop, with these professional organizations, model drinking-driving legislation similar to that developed in other areas by the National Conference of Commissioners on Uniform State Laws and the National Committee on Uniform Traffic Laws and Ordinances.

There is as yet no national consensus on what to do about drinking drivers, but there is more agreement in this area than there is about what to do about alcohol abuse in general. With the assistance of the legal profession, NHTSA could lead a thorough national attempt to decide what the law and the legal profession should do about alcohol abuse in general. ASAP has--perhaps fortuitously--given NHTSA more information in this area than is possessed by any other Federal agency, and it would be serving the public well to make systematic and deliberate use of that knowledge to develop national policy.

Our final recommendation concerns future use of the hypotheses advanced in Section 7.0. Some deserve thorough dissemination among highway safety agencies, as part of an attempt to aid those agencies to work more sympathetically with the courts. Others, especially those dealing with the dynamics of court-processing and sanctioning, deserve further research investigation. The research team would appreciate attention to those hypotheses from the NHTSA staff who plan future research and demonstration projects, since they may add new material to the ongoing highway safety debate concerning attempts to control driver behavior. They suggest, for instance, that if we are to affect driver behavior by <u>any</u> system action, we need to pay much greater attention to the behavior of the system itself. All highway safety research in this area is recent. The court processing of drinking-driving cases needs further energizing, and that energy may well come from imaginative, multidisciplinary study of the kinds of hypothesis uncovered by this study. The local Alcohol Safety Action Projects developed a mass of new information; it would seem appropriate, now, that the new information is conveyed to and used by agencies and persons on the national level with the resources to construct and influence national policy.