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FINAL REPORT OF THE NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE ON ALCOHOL SAFETY ADJUDICATION

U.S. Department of Transportation
National Highway Traffic Safety Administration
Washington, D.C. 20590

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FOREWORD

Since 1970, with the inception of the National Alcohol Safety Action Projects (ASAPs), increased emphasis has been placed on the processing and disposition of drinking driving offenders to achieve highway safety benefits. The 35 ASAPs, a number of ASAP progeny, and systems evolving independently of the ASAP concept developed adjudicative disposition systems which applied a "health-legal" approach to drinking driver control. This concept is based on the premise that punitive remedies alone will not achieve meaningful change in the behavior of drivers who are problem drinkers. Consequently, the health-legal approach seeks to couple the deterrent aspects of punitive sanctions (jail, fine, license action) with the therapeutic aspects of a forced referral to an appropriate educational or treatment program, depending on the status of the driver's drinking problem.

Although the ASAP or health-legal approach seemed appealing in concept and, apparently, in practice, little has been done to evaluate the various systems using it to determine its short- or long-term impact. Whether and how it achieves fairness, efficiency, and effectiveness and which type of system is most conducive to achievement of these objectives are not known conclusively.

Preliminary studies of the role of the legislative-judicial system in drinking driver control have been conducted. Each of the ASAPs carried out an extensive evaluation, pointing primarily to the ultimate impact of the project on recidivism and crash experience. The ASAP evaluations were an opportunity missed. The chance to document and evaluate the dynamics of social-program change was not exploited. Tentative conclusions as to the attributes of successful ASAP-type programs, however, have been reached. These are expressed in the annual reports on the total ASAP program and most recently in a "Summary of ASAP Results for Application to State and Local Programs" prepared by Southwest Research Institute. Even in this state-of-the-art publication, the author, Gary Scrimgeour, notes:

> Because ASAPs' work with the courts was innovative and experimental, many of their experiences with the courts have not been thoroughly analyzed and most were not carefully evaluated. The findings in the following pages are, therefore, tentative and sometimes unquantifiable, but they are backed by the experience of enough ASAPs to merit consideration (p. 30).

Another research study, published by Indiana University, focused on particular characteristics of five ASAP adjudicative disposition systems to identify the impact of innovative laws and practices (e.g., mandatory pre-sentence investigation in Puerto Rico: Unified State Court System in Idaho; diversity of pre-sentence investigation practices in Los Angeles; a proliferation of innovative laws in Minnesota; and an efficient, routinized plea-bargaining program in Phoenix). This study is essentially descriptive, providing insights into ASAP-type programs through instructive case studies. Further work remains to be done to determine: 1) what is necessary to achieve permanence in a system using the health-legal approach and how it can be done on a selfsufficient bases; 2) which systems were effective and efficient, while assuring fairness; and 3) which programs combined the best features of both — that is, they were enduring and self-sustaining while continuing to be fair, effective, and efficient.

In September of 1975 the Secretary of Transportation raised a series of key issues related to these concerns and affecting the long-term success of the State and local government highway safety programs with the National Highway Safety Advisory Committee (NHSAC). Secretary Coleman asked the National Highway Traffic Safety Administration (NHTSA) to consider the following three issues in an effort to make traffic adjudication a truly effective component of the highway safety system:

- How can alternative sentencing of problem drinker-drivers be more effectively coupled with innovative case processing methods to reduce recidivism and ultimately lower court workload?

- Can cost-effective systems of problem drinker-driver screening, referral, sanctioning, and followup techniques be developed for use by the lower courts?

- What innovative training approaches offer the greatest potential for inculcating highway safety values in traffic adjudication?

In the spring of 1976, the NHSAC's Adjudication Task Force submitted an *Interim Alcohol Safety Adjudication Report* dealing with these issues; this report was adopted by the full Committee. The NHSAC recommendations contained in this final report were based on the following general Task Force findings:

- The ASAP's combination of criminal and rehabilitative sanctions (the health-legal approach to sentencing) represents a major new contribution to concepts of misdemeanor justice.

- The enhanced cooperation in ASAP among the diverse elements of the criminal justice system (particularly the courts and the alcohol treatment system) has had a major impact on the overall community response to alcohol abuse.

On July 16, 1976, the Deputy Secretary of DOT, after conferring with NHSAC members and NHTSA staff, requested NHTSA staff to prepare an Alcohol Safety Adjudication/Referral plan (ASAR) based on the NHSAC Final Report. This requested ASAR plan will identify alternative approaches which could result in the integration of the criminal justice and health care delivery systems with the highway safety system. It will also offer DOT and the nation the best opportunity for achieving the vital social utilities of justice, protection of society, and treatment of the problem drinker-driver. The resolutions adopted by the Adjudication Task Force (changed to Adjudication and Alcohol Subcommittee;) are prerequisites for ASAR plan development.

PREFACE

Traffic safety professionals learn quickly that education, engineering, and enforcement are only part of the traffic safety matrix. We must coordinate with the emergency medical system, rehabilitation centers, researchers, the media, pedestrians, data processing systems, alcohol specialists, and adjudication systems. Generally speaking, our least successful efforts have lain with the courts (i.e., adjucication and sentencing). Whether our frustrations in this area are based in idealism, are the results of inertia, tradition, or our poor salesmanship remains to be seen.

Our current major concern is the revolving-door approach to drinking driving offenses which characterizes and strangles most lower courts. In talking with my counterparts in other parts of the country, I find that I am not alone in this feeling. Research on a national scale also bears this out. I doubt seriously that the judicial system as a whole — prosecution, defense, judiciary — recognizes the vastly increased collision risk presented by the alcohol-impaired driver.

Adjudicatory failures cause serious reverberations in other subsystems. They undermine the intent of the laws and reduce the inclination of enforcement personnel to apprehend, arrest, and charge people for alcohol-related offenses. They alter the nature, rate, and severity of the intended sanctions, dilute licensing integrity, and make the proper subjects for treatment unidentifiable or inaccessible to treatment agencies.

I recognize that identification of the problem drinker is not the primary function of the adjudication process. However, this does not preclude the courts from making a secondary use of this factfinding activity. Members of the bench are in a singular position with regard to the problem drinker — a position of control enjoyed by no one else in the community.

We must see that prosecutors and bar associations acquire an increased appreciation for the havoc precipitated by intoxicated drivers and pedestrians. We must demand that the prosecution, the defense, and the courts have access to all relevant information on each case. We must insist that counsel present cases in the best interests of the whole client rather than dealing only with the current charge. Looking only at the local prior record, if it is available, is like reading just one chapter of an unfinished book, so we must insist on the necessity of developing improved regional and national records systems and accessibility to them. The best single predictor of future crash involvement is still the total number of traffic convictions, including equipment violations.

Having a sophisticated pre-sentencing identification procedure is not nearly as important as having a workable method for identification which is both reasonable and apparently reliable. We must insist on meaningful sentences based on a fuller picture of the offender.

We must insist that all communities share the concern for problem drinking drivers and that local health, mental health, education, and other helping agencies provide diagnostic and rehabilitative services.

I am part of the judicial process; therefore, I suppose I cannot be criticized for not appreciating the safeguards and constraints of our traditional system for handling the alcohol-related traffic offender. Nevertheless, a system failure is apparent. I see the principal agent of behavior modification of problem drinking drivers — by and large — being ineffective. They are still on the road, and in increasing numbers. Through apparent apathy and perfunctory procedures, the courts are forfeiting the respect of those whom they judge and the confidence of those they serve.

We must work to implement our Task Force mandate and to answer the knock on our door. We must help develop the vast resources immediately available to help in this most important human problem and develop programs to use them.

The Committee worked hard to find, develop, and recommend innovative sanctions in the area of driving under the influence and other major traffic offenses with the view of achieving real and meaningful rehabilitation so as to reduce recidivism. This consideration remains urgent, of major importance, and we must continue to consult, research, study, and observe all information sources in this area.

While most projects and programs thus far developed nationally and internationally have been failures, the most promising procedures seem to lie in ASAP-type programs, alternative community service sanctions, PACT, and other diversionary programs. We must continue to study the use of mandatory sanctions; work-release programs; weekend sanctions; traffic school and education sentencing; formal supervised probation; volunteers in probation; detoxification programs and centers; A.A.; psychiatric staffs and

clinics; all community-based agencies and resources generally available; alcoholism clinics; and all facets of the ASAP programs (particularly identification of problem drinkers); and regional-national traffic record systems.

We have a special, immediate commitment to upgrading judicial or quasi-judicial personnel and developing and training parajudicial personnel to become specialists in handling traffic offenders. In this area we have diverse opinions as to the overthrow of the traditional judicial handling of these cases in the criminal arena. (The American Judges Association is on record in opposition.) While we might wish to change recommendations of the 1973 Task Force Report, it would seem that we should go forward on their recommendations to implement and develop national standards and programs for the use of parajudicial traffic specialists in handling of traffic offenses.

Our Task Force work has been very challenging and arduous. We will continue to work hard. As one who works with these problems as a professional, I fervently hope that we will also achieve.

I would suggest that appointment by the President to the National Highway Safety Advisory Committee is an honor — not an honorarium. I have been extremely impressed with the commitment, desire, and dedication of all of the members I have met thus far on the National Highway Safety Advisory Committee. There has been much disagreement and difference of opinion regarding many facets of our particular work. If this were not so, I would be greatly concerned about the product of our work. I continue to expect, and indeed welcome, spirited and enthusiastic contribution by all members of the Task Force to the hard work that lies ahead.

Rupert A. Doan,
Judge, Municipal Court
Cincinnati, Ohio

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THE HEALTH-LEGAL SENTENCING APPROACH FOR THE REFERRAL TO TREATMENT OF DRINKING DRIVER OFFENDERS

On May 21, 1975, the National Highway Safety Advisory Committee requested the Task Force on Adjudication to concentrate on three aspects of the adjudication and sentencing of drinking driver cases:

- Sentencing systems designed since 1971 by the jurisdictions cooperating with the Alcohol Safety Action Program (ASAP).[1]
- Judicial education in alcohol and highway safety.[2]
- Related activities of the U.S. Department of Justice (Law Enforcement Assistance Administration, LEAA); the U.S. Department of Health, Education, and Welfare (National Institute on Alcohol Abuse and Alcoholism, NIAAA); the American Bar Association; and the American Judges Association.[3]

The Task Force received extensive briefings from personnel at three ASAP sites (Cincinnati, Phoenix, Los Angeles), met with representatives of Federal and professional organizations, and examined materials prepared by NHTSA staff and consultants.[4] The following report presents the current findings and recommendations of the Task Force. These will be refined during the coming year, and new areas will be investigated.

ASAP Adjudication

The Alcohol Safety Action Program was a demonstration project which field-tested various new adjudication and sentencing concepts in 35 jurisdictions. The Task Force found broad, strong support for ASAP adjudication systems at the local level from all cooperating personnel, whether or not they received Federal highway safety funds. The Task Force concluded as follows:

The *system management* concepts used by ASAP have had a major impact on local court systems in terms of practices, resources, and attitudes, and they have materially improved the operation of those courts. Regardless of ASAP's impact on highway accidents, all persons and agencies concerned with the adjudicative process at the local level reported that the program had had more favorable impact on their own functions than any previous Federal effort. The Task Force believes that the system management concept provides major benefits to the adjudication of drinking driving cases and represents a highly significant undertaking by NHTSA to assist the whole process by which society responds to drinking driving.

Local personnel strongly endorsed the typical ASAP *combination of criminal and rehabilitative sanctions* known as the health-legal approach to sentencing. The Task Force believes that this combination represents a major new contribution to concepts of misdemeanor justice. Both criminal justice agencies and treatment agencies agree that a mixture of traditional and rehabilitative penalties is better than either set of penalties alone. However, some jurisdictions tend to substitute education or rehabilitation for traditional DWI penalties. The Task Force regards such complete substitution as undesirable, especially if attendance at alcohol safety school guarantees reduction of the original DWI charges to an offense not related to alcohol.

The Task Force concludes that, from a systemwide viewpoint, a standard mixture of both types of sanctions is desirable. Varying the amounts of different kinds of sanctions (e.g., reducing the fine in return for completion of alcohol safety school) seems to provide courts with enough effective authority. While recognizing the great variety of local practices, the Task Force believes that the remaining problems in implementing the health-legal approach nationwide are technical rather than theoretical.

In most States the Task Force found deep conflict between the apparent *intentions of legislation and the practices of the courts*. Such conflict is undesirable, costly, and avoidable, and it has proven a major impediment to the design of effective adjudication systems. (For example, mandatory jail sentences often result in widespread informal plea bargaining.)

The Task Force made the following observations:

1. As a result of ASAP, many courts for the first time recognize their potential for increasing public safety through purposeful action in drinking driving cases.

2. The courts have emerged as the pivotal agents in determining a community's response to drinking driving, and only the system management concept sponsored by ASAP involves them effectively in cooperative actions.

3. The operations, philosophy, and resources of misdemeanant courts cooperating with ASAP changed significantly during the period of project operation, with major innovations in the case-handling procedures of misdemeanor courts, including cases other then DWI.

4. Most adjudicators report major benefits from ASAP and regret the withdrawal of Federal funds just as their systems

became fully operational. Many court systems have continued portions of the ASAP approach with State and local funds.

5. By enhancing cooperation among the diverse elements of the criminal justice system and by establishing liaison between the courts and the alcoholism treatment system, ASAP has had a major impact on the overall community response to alcohol abuse, extending beyond DWI cases.

6. The ASAP concept represents a major constructive recognition by highway safety agencies that they have a responsibility to support the handling of DWI cases by the courts.[5]

In this area the Task Force recommends:

A. Continued implementation of basic ASAP system management concepts, fostered by highway safety agencies.

B. Further NHTSA support for existing ASAP adjudication structures and expansion to other jurisdictions, backed by specific allocations of Department of Transportation funds. While it is well aware that present ASAP concepts require improvement, the Task Force believes that successful existing efforts should not be allowed to decay as they reach maturity. Though many jurisdictions are continuing ASAP with State and local funds, operational and evaluation needs lead the Task Force to recommend increased funding from the Department of Transportation and other agencies to support, develop, and evaluate ASAP-type adjudication activities on a long-term basis.[6]

The Task Force also made some observations about a) specific elements of the adjudicative process, b) sanctioning approaches and effectiveness, and c) lower court structure and resources.

Elements of Adjudication

Legislation

The Task Force recommends that all legislation regarding DWI cases be scrutinized from the viewpoint of its implementation by the courts; for its effects on the actions of police, prosecutors, judges, and other system personnel; and for the probable responses of licensing agencies, insurance companies, and habitual drinking drivers. All legislation should be such as court systems can feasibly implement.

Special legislation should seek to ease the processing of drinking driver cases through the traditional court system, routine reversals on appeal, and sentencing alternatives. Particularly in the case of legislation dealing with mandatory alternative sanctions, costs to the court system should be studied in advance of enactment. The Task Force recommends that both Federal and State highway safety authorities should increase the degree of assistance given to State legislators in matters dealing with drinking driver adjudication. NHTSA should conduct a series of legislators' seminars in alcohol and highway safety around the country based on the materials already developed.[7]

Enforcement

The Task Force found that those courts which paid close technical attention to adjudicative relationships with the police had earned important dividends. Many courts were handling greatly increased caseloads with less expenditure of court and police time than before ASAP. Adjudicative practices affect arrest levels favorably or adversely. By paying attention to enforcement needs in such matters as scheduling, charge reduction, and testimony, the courts can benefit both themselves and defendants.

The Task Force recommends that NHTSA disseminate information concerning procedures by judges, prosecutors, and court administrators which lower the cost and increase the level of enforcement without infringing the rights of defendants. (For example, scheduling the officer's day in court; taking judicial notice of the accuracy of breath-test equipment; establishing standard criteria for charge reduction; providing information on recidivism; creating pretrial disposition courts.)

Prosecution

The Task Force found that in many jurisdictions prosecutors control the processing of DWI cases as much as do the judges, and several systems of referral are based on prosecutorial decisions rather than judicial actions (though none were diversionary). Prosecutors seem less aware than judges of highway safety. There is a widespread practice of reducing charges to an offense not related to alcohol, which undermines driver records, court records, and recognition of the degree of alcohol-involvement. However, the Task Force found that many ASAP jurisdictions had removed major inequities from plea bargaining, both by following standard procedures and by associating the prosecutors with the pre-sentence and probation functions. Such as association is a major development in court procedures.[8]

The Task Force therefore recommends that NHTSA increase the study of DWI prosecution, examine the effects

of prosecutor-based referral systems on other agencies, and devise methods of preserving the integrity and equity of the prosecution process. The Task Force believes that greater cooperation with professional prosecution and legal organizations at the national level would be desirable. It encourages previous NHTSA attempts to provide alcohol safety education to prosecutors.[9]

Defense Services

The Task Force believes that the public defender system is removing inequities which research had demonstrated to exist in the court handling of DWI cases. The Task Force found several jurisdictions so skillfully designed that few defendants feel the need for a defense attorney throughout the case. Although these developments have improved the system from the viewpoint of cost, efficiency, and equity and should therefore be encouraged, the Task Force recommends that any referral system based on court coercion should request monitoring of its procedure by the defense bar to insure preservation of the defendant's rights throughout the process of charging, adjudication, sentencing, and referral. NHTSA should give special attention to the development of seminar briefing packages for State and local bar associations in alcohol, highway safety, and the role of the DWI defense attorney.[10]

Trial

Few jurisdictions reported substantial problems with the trial process, since only a small proportion of cases goes to trial. The Task Force, however, found four trial issues which drastically affect adjudication: the threat of inordinate numbers of defendants' requesting jury trials; the existence of routine reversals on appeal, especially where the lower courts are not courts of record; the granting of automatic continuances; and the availability of adjudicatory personnel.

The Task Force recommends that both NHTSA and LEAA give greater attention to legislation and court rules which discourage routine manipulation of court calendars and procedures and that they disseminate information to misdemeanor courts. While recognizing the legal rights of defendants, the Task Force believes that meaningless manipulation of those rights should be discouraged in order to reduce costs and confusion and to speed up the process of referral to alternative sanctions. Special attention should be given to the use of parajudicials, pretrial hearings, and the selection of adjudicators by lot.

Sanctioning Approaches And Effectiveness[11]

Diagnostic Evaluation

The Task Force found almost universal enthusiasm for the ASAP-developed process for screening drinking drivers into three broad categories for the purpose of referral, and it believes this countermeasure has been one of the most successful in winning local support. There is great diversity among jurisdictions as to when the screening process takes place (pretrial, pre-sentence, post-sentence). Some jurisdictions have developed systems of record checks and group intakes which make possible the processing of larger numbers than had been contemplated at reasonable cost, with major implications for the pre-sentence investigation of all misdemeanant cases.

The Task Force did not attempt to evaluate the technical accuracy or the rehabilitative effectiveness of the diagnostic and screening process, but it found the process so popular operationally that it is likely to spread. The Task Force therefore endorses NHTSA's current efforts to develop further and evaluate the accuracy and effectiveness of screening instruments, criteria, and diagnostic procedures.[12]

There was also clear local endorsement of NHTSA's objective criteria for determining whether an offender is a problem drinking driver. The Task Force therefore believes that wider use of these criteria should be encouraged. However, the usefulness of these criteria is undermined where record systems are inadequate, where public drunkenness has been decriminalized, and where charge reduction to an offense not related to alcohol is widespread.

The Task Force recommends that NHTSA continue development of the screening process and diagnostic criteria; that it seek the help of alcoholism and judicial agencies in disseminating ASAP-developed knowledge;[13] and that it carefully examine the factors affecting the continued operational validity of the screening criteria.

Driver Records

The Task Force was perturbed to find that ASAP has not solved problems which allow charge bargaining to undermine the integrity of driver license records by resulting in conviction for an offense not related to alcohol.[14] The Task Force believes that lack of cooperation with licensing regulations and authorities, no matter how well-intentioned,

does not serve the courts' long-term interests. This practice undermines driver records, statutory authority, and NHTSA diagnostic criteria, and it creates many problems for other jurisdictions and eventually for the ability of the local courts themselves to impose appropriate sanctions.

While recognizing the complexity of the problem, the Task Force recommends that NHTSA devote special efforts to determining effective statutory, procedural, and theoretical responses to this major problem area. It particularly recommends that a survey of State driver licensing authorities be undertaken to determine whether solutions currently exist.

Sanction Effectiveness

There was widespread and startling disagreement at the local level about the effectiveness or ineffectiveness of all types of sanctions, though many people are convinced that the addition of education and rehabilitation does reduce recidivism more than previous sanctions. The Task Force found no research evidence to prove the superiority of any claim about sanction effectiveness. However, ASAP has advanced the state of knowledge concerning court procedures and evaluation to the point where effectiveness may be measurable in future years. The Task Force regards it as unfortunate that the original ASAPs were discontinued too soon for evaluation systems to become fully effective.[15]

The Task Force recommends that NHTSA singly and jointly with LEAA investigate the appropriateness of various kinds of sanctions with different types of drinking drivers. This should be a major area for future operational research.

Traditional Sanctions

The Task Force found continuing confusion about the use and effectiveness of traditional statutory sanctions against drinking drivers. Jail sentences, particularly if they are mandatory, are systematically avoided by the courts in a majority of cases. Avoidance of action against the license is widespread is some jurisdictions, although others are untroubled. Amounts of fines vary randomly from jurisdiction to jurisdiction. Judicial and prosecutorial discretion intervene to mitigate statutory sanctions. Some systems are designed specifically to avoid their imposition, especially against first offenders. Further, adjudicators routinely respond to their knowledge of traditional extralegal sanctions (notably, increased insurance rates) throughout the entire adjudicative process. In addition, beliefs about the effectiveness or ineffectiveness of such sanctions as deterrents are confused and contradictory.[16]

The Task Force as yet has no recommendations in this area, except that it clearly deserves increased attention from NHTSA, Law Enforcement Assistance Administration (LEAA), American Bar Association (ABA), American Judges Association (AJA), American Judicature Society (AJS), and the National Committee on Uniform Traffic Laws and Ordinances. Greater uniformity of sanctions applied by various jurisdictions should be encouraged.

Alcohol Safety Schools

Referral to alcohol safety schools is by far the most frequent alternative sanction in jurisdictions associated with ASAP. The schools are spreading rapidly to other jurisdictions. There is a lack of research evidence to demonstrate the schools' effectiveness with the populations they usually receive. There is a clear danger that the effectiveness of the schools will be lessened by poor quality curricula or by inappropriate referrals. ASAP jurisdictions have enormously advanced our knowledge of this area, but that knowledge has not been widely disseminated.

The Task Force therefore recommends that NHTSA pay greater attention to the development of subject matter and standards for alcohol safety schools, using ASAP experience. Because the schools are so popular, NHTSA may now usefully provide cautious advice as to the appropriate defendant population and referral methods. Closer cooperation with the National Institute on Alcoholism and Alcohol Abuse (NIAAA) and other alcoholism education agencies would be productive.

Rehabilitation

There was striking enthusiasm among local court and treatment personnel for ASAP-supported rehabilitation modalities. The Task Force believes that the funding period of the original ASAPs was far too brief to allow for the development of adequately tested rehabilitation but that the successes in this area are more than enough to encourage further national-level efforts. Rehabilitation seems to have been underused in comparison with alcohol safety schools.[17]

While realizing that NHTSA does not fund rehabilitation of extensive duration, the Task Force recommends that

NHTSA and NIAAA cooperate to develop and evaluate short-term rehabilitation modalities specifically for drinking drivers referred under court authority and that they improve management and information relationships between the criminal justice system and the alcoholism treatment system. This area offers great scope for future action.[18]

Probation

The Task Force found that ASAP has dramatically increased the use of probationary authority in drinking driving cases and substantially changed concepts of its purpose. This seems to have been one of ASAP's major contributions to the adjudicative process. Further, jurisdictions associated with ASAP have developed economical and innovative methods for using probation and evaluating its effectiveness. Whether or not probation is associated with a referral to rehabilitation or eduation, the concept of probationary control over drinking drivers has aroused much interest in the lower courts.

The Task Force therefore recommends that NHTSA continue to support the use of probation for drinking drivers; that different types of probation control be tested thoroughly in terms of effectiveness and cost-effectiveness, in conjunction with LEAA and NIAAA; and that further development of probationary power and resources be encouraged by local legislative and funding agents.[19] This sould be a major area for future NHTSA work. (DWI Probation Followup demonstration projects are currently in the first year of operation in Tennessee and Mississippi.)

Court Structures and Resources

The Task Force encountered much variety in court structure, authority, and resources and an equally complex set of national-level recommendations for court reform. Since drinking driving cases occupy a large proportion of the caseload of most misdemeanant courts, the general issues of court structure and resources are closely interrelated with the highway safety objectives of NHTSA. The Task Force noted two areas of special concern: the difficulty of designing model systems and criteria which will work in both rural and metropolitan jurisdictions; and the growing importance of NHTSA coordination with the American Bar Association, the American Judges Association, and the American Judicature Society concerning their efforts to improve the lower courts.[20]

Professional Standards

The Task Force recommends that NHTSA correlate the real-world experience of the ASAPs with existing professional standards concerning the courts (especially those of the American Bar Association) to identify where there is clear agreement, where cooperation would be of mutual benefit, and where existing disagreements may be adjusted. The Task Force recommends that NHTSA assist the ABA and the judicial organizations to disseminate and implement their standards, especially those which lead to increased resources for the courts.

Judicial Qualifications

The Task Force found that the handling of drinking driving cases is adversely affected by unqualified or uninformed adjudicators and that the issues of appropriate judicial qualifications, selection, and tenure are currently a matter of major contention in most States. The Task Force believes that drinking driving cases require particular qualifications of adjudicators and that ASAP has given NHTSA considerable new information about these qualifications.[21]

The Task Force therefore recommends that NHTSA begin to work on a permanent basis with judicial authorities at both the State and national levels to insure that the special interests of highway safety receive attention. The Task Force recommends that NHTSA systematically determine the qualifications needed by an adjudicator operating in an ASAP-type environment and also those issues of selection and tenure which affect an adjudicator's handling of DWI cases. The Task Force also recommends specific attention to the very different needs and potentials of rural and metropolitan jurisdictions.

Data Systems

All jurisdictions reported that major improvements in their records and data systems resulted from ASAP activities. The Task Force believes that this may be a major and underestimated achievement of the local ASAP management units, helping to overcome previous substantial data weaknesses in both criminal justice and alcoholism treatment systems.

The Task Force therefore recommends that NHTSA devote further attention to the individual ASAP developments in this area and that it cooperate with LEAA, NIAAA, and the

National Center for State Courts in devising model information and data systems for the court processing of drinking driver cases.

Judicial Education[22]

The Task Force found large differences between adjudicators connected with an ASAP and those not so connected. Most adjudicators do not understand how to handle drinking driving cases purposefully, do not give special attention to sentencing systems and resources, and are unaware of ASAP-developed principles, procedures, and objectives. (In each State, however, there are individual judges who are well informed and highly motivated in these areas; they operate programs without outside support.)

The judges exposed to ASAP differ significantly from the norm. Their attitudes toward ASAP principles and procedures are positive and enthusiastic. They are well informed and cooperative, with a tendency toward the experimental. Most ASAP-related courts have adopted new procedures and handle increased caseloads more efficiently and effectively than before. In several jurisdictions, judges have taken the lead in developing the ASAP concept, and there is a trend toward regarding ASAP systems as models for handling other alcohol-related misdemeanors.

The Task Force therefore concludes the ASAP has significantly changed the attitudes, knowledge, and behavior of cooperating judges. Such changes would not have occurred without ASAP. The ASAP concept has had a major impact on the lower court system.

The Task Force found that NHTSA sponsored a unique and highly influential effort to educate judges in court procedures for handling drinking driver cases, with both individual ASAP training sessions and nationally funded programs offered through the ASAPs.[23] Such training was well received by the judges and was reported by many ASAPs to be crucial to the design of new local adjudication systems. No other Federal or professional agency offers similar education to judges, with the exception of small programs such as those at the National College of the State Judiciary and the American Academy of Judicial Education which deal tangentially with drinking drivers.

The Task Force also found that the structure for increasing education in this area already exists. The organizations for judicial education at the national level are favorably disposed toward such education. At the State and local levels there is an extensive network of both alcoholism training programs and judicial education agencies which could be exploited for highway safety purposes. The Task Force therefore concluded that expansion of NHTSA's efforts in judicial education is both essential and feasible.

The Task Force's preliminary recommendations are as follows:

1. Clear acceptance by highway safety authorities of resonsibility for educating judges in the design and operation of court systems for handling drinking drivers.

2. Increased cooperation between NHTSA and NIAAA, LEAA, ABA, AJS, and AJA, with the objective of defining common benefits from jointly funded or sponsored efforts to educate misdemeanor court judges in handling alcohol-related cases.[24]

3. Efforts by NHTSA to cooperate with the National College of the State Judiciary, the American Academy of Judicial Education, the National Center for the State Courts, the National Center for Alcohol Education, and the Area Alcoholism Education and Training Programs.

4. At the State and local levels, efforts by highway safety authorities to cooperate in education efforts with alcoholism authorities, judicial agencies, and State criminal justice planning agencies.[25]

5. Renewed efforts by NHTSA to update existing materials in this area, to disseminate existing curricula to new jurisdictions, and to continue new and existing education efforts with other court-associated personnel.

Judges and other personnel associated with the judges are logical targets for specialized education. Increased efforts in this area are essential, feasible, and highly cost-effective.

Interagency Liaison

The Task Force found that the system management concept used by ASAP has very successfully established liaison among agencies at the local level, that cooperation has begun at the State level, and that relationships at the Federal level need strengthening.[26]

Alcoholism Agencies

Among alcoholism agencies, there was enthusiasm at the local level for ASAP's ability to find cases and keep persons

in treatment. In some communities a majority of persons receiving education or rehabilitation about problem drinking come from ASAP intervention, and the concept of courtbased referral has widespread support among rehabilitation personnel. At the State level, some alcoholism authorities actively cooperate with the ASAP concept, although their involvement depends on local initiative. While recognizing that ASAP began as a community-based program, the Task Force observed that the program's statewide implications deserve much greater attention than they have yet received.

At the Federal level, liaison with Government and private agencies has been successful. NHTSA has formal agreements with NIAAA and the National Council on Alcoholism.[27] Alcoholics Anonymous has issued guidelines for cooperation with ASAP. Both NHTSA and NIAAA report favorably on the treatment programs funded by NIAAA to support ASAP, and NIAAA's evaluation approach adds a broader dimension to NHTSA's efforts. The Task Force observes that cooperation between these two agencies may weaken without special attention, welcomes the activation of the NIAAA-sponsored Interagency Committee required by the Hughes Act, and endorses active Department of Transportation membership on that Committee.

Criminal Justice Agencies

Among criminal justice agencies, liaison at the local level has been dramatically effective, and all criminal justice agencies report benefits from association with ASAP. However, cooperation seems not to have spread generally to the State level, and active cooperation at the Federal level requires greater attention. The State criminal justice planning agencies and State judicial authorities have not become sufficiently involved (with notable exceptions). Liaison with LEAA has not been developed, and the Task Force believes that the lack of interagency agreements between LEAA and NHTSA in this area has resulted in a regrettable failure to share programs, knowledge of common benefits, research results, and funds in the area of courts and corrections.[28]

Professional Associations

Areas of mutual interest with the professional associations should be developed. To build on existing interest and goodwill, NHTSA needs to specify areas in which it can cooperate with the American Bar Association, the American Judges Association, and the American Judicature Society. The Task Force strongly encourages recent NHTSA efforts to strengthen relationships with LEAA, ABA, and AJA.

The Task Force is not yet prepared to make specific project recommendations about interagency liaison, which it intends to investigate further during the coming year. It believes that:

- Existing cooperation with NIAAA at the program level should be increased and expanded.
- Efforts to establish active cooperation and jointly funded programs with LEAA and the State criminal justice planning agencies should commence.
- Formal cooperation with the ABA and State or local bar associations should be established.
- Exploration of mutual interests with major professional organizations and institutions in the judicial profession should occur, particularly with ABA, AJA, AJS, and the National Center for State Courts.[29]
- Services and information should be offered to such interested organizations as the U.S. Conference of Mayors, the National Association of Counties, and the Council of State Governments.
- At the State level, the interests of highway safety agencies, alcoholism authorities, criminal justice planning agencies, and driver licensing authorities should be deliberately coordinated by NHTSA.

Additional Conclusions

The Task Force found much evidence at the local level to show that the coordinated system management approach advocated by ASAP offers one popular and economical method for enabling a community to respond to the problems of alcohol abuse. ASAP has therefore furthered the long-term interests of highway safety and has also created a very important model for helping society confront the whole problem of alcohol abuse through use of the adjudication system and the lower courts.

The Task Force believes that the ASAP concept is beneficial to communities and States in terms of both governmental management and cost-effectiveness and that it should

therefore receive further development from the Federal Government.[30]

The Task Force also believes that increased funding for all types of programs related to alcohol abuse is desirable and that the necessary funds may suitably be raised through taxation.[31]

Summary of Recommendations

Adjudication

- Continued implementation of basic ASAP system management concepts, fostered by highway safety agencies.
- Further NHTSA support for existing ASAP adjudication structures and expansion to other jurisdictions, backed by specific allocations of Department of Transportation funds.
- Increased funding from Department of Transportation and other agencies to support, develop, and evaluate ASAP-type adjudication activities on a long-term basis.
- Examination of legislation regarding DWI for its effects on the actions of police, prosecutors, judges, licensing agencies, insurance companies, defense attorneys, and habitual drinking drivers prior to enactment.
- Increased assistance to State legislators from Federal and State highway safety authorities, including use of the existing educational package for legislators.
- Dissemination by NHTSA of information concerning court procedures which lower costs and increase the level of enforcement without infringing the rights of defendants.
- Increased study of DWI prosecution to determine the effects of prosecutor-based referral systems on other agencies and to devise methods for preserving the integrity and equity of the prosecution process.
- Cooperation with professional prosecution organizations, including further use of the existing educational package for prosecutors.
- Monitoring by the local defense bar of any referral system based on court coercion.
- Development of educational packages for State and local bar associations.
- Greater attention by NHTSA and LEAA to legislation and court rules which discourage routine manipulation of court calendars and procedures and to the use of para-judicials, pretrial hearings, and selection of adjudicators by lot.
- Continued development of the NHTSA screening process and diagnostic criteria for identification and referral of problem drinking drivers, to include both further research and dissemination.
- Efforts to find effective statutory, procedural, and theoretical responses to the problems which allow charge bargaining to undermine the integrity of driver records by resulting in conviction for an offense not related to alcohol, to include a canvass of driver licensing authorities.
- Investigation by NHTSA and LEAA of the effectiveness of various kinds of sanctions with different types of drinking drivers.
- Further study by NHTSA, LEAA, ABA, AJA, AJS, and the National Commissioners on Uniform Traffic Laws and Ordinances of the use and effectiveness of traditional criminal sanctions.
- Attention by NHTSA to the subject matter and standards of alcohol safety schools, including cooperation with other alcoholism education agencies.
- Joint NHTSA and NIAAA development and evaluation of short-term rehabilitation modalities specifically for drinking drivers referred under court authority.
- Joint NHTSA and NIAAA attention to management and information relationships between the criminal justice system and the alcoholism treatment system.
- Continued support for the use of probation for drinking drivers; expanded testing by NHTSA, LEAA, and NIAAA of the effectiveness and cost-effectiveness of different types of probationary control.
- Development of probation resources and power by local legislative and funding agents.
- Correlation of the ASAP experience with existing professional standards affecting the lower courts, including NHTSA cooperation with ABA and judicial organizations to assist in dissemination.
- Cooperation by NHTSA with State and national judicial authorities to insure that the special interests of highway safety receive attention when judicial qualifications, selections, and tenure are at issue.

- Specific attention to the very different needs and potentials of rural and metropolitan jurisdictions.
- NHTSA analysis and dissemination of individual ASAP developments in data systems, including cooperation with LEAA, NIAAA, and the National Center for State Courts to devise model information and data systems.

Judicial Education

- Clear acceptance by highway safety authorities of responsibility for educating judges in the design and operation of court systems for handling drinking drivers.
- Increased cooperation between NHTSA, NIAAA, LEAA, ABA, AJS, and AJA, with the objective of determining common benefits from jointly funded or sponsored efforts to educate misdemeanor court judges in handling alcohol-related cases.
- Efforts by NHTSA to cooperate with the National College of the State Judiciary, the American Academy of Judicial Education, the National Center for the State Courts, the National Center for Alcohol Education, and the Area Alcoholism Education and Training Programs.
- At the State and local levels, efforts by highway safety authorities to cooperate in education efforts with alcoholism authorities, judicial agencies, and State criminal justice planning agencies.
- Renewed efforts by NHTSA to update existing materials in this area, to disseminate existing curricula to new jurisdictions, and to continue education efforts with other court-associated personnel.

Interagency Liaison

- Expansion of existing cooperation at the program level between NHTSA and NIAAA.
- Efforts to establish active cooperation and jointly funded programs with LEAA and the State criminal justice planning agencies.
- Formal cooperation with ABA and State or local bar associations.
- Exploration of mutual interests with major professional organizations and institutions in the judicial profession, particularly ABA, AJA, AJS, and the National Center for State Courts.
- Provision of services and information to such interested organizations as the U.S. Conference of Mayors, the National Association of Counties, and the Council of State Governments.
- At the State level, coordination by NHTSA of the interests of highway safety agencies, alcoholism authorities, criminal justice planning agencies, and driver licensing authorities.

APPENDIX A
SPECIAL SUBCOMMITTEE REPORTS

THE USE OF MANDATORY SANCTIONS BY THE COURTS

Gary J. Scrimgeour, Ph.D.

I. NHTSA and Mandatory Sanctions

In a previous "Background Paper" (undated), NHTSA has indicated for the Ad Hoc Task Force the issues concerning mandatory/alternative sanctions which it presently has under study:

1. Effectiveness, efficiency, and fairness of driver licensing restrictions, revocations, and/or suspension actions.

2. Effectiveness of imprisonment for serious traffic law violations (especially first-offense DUI).

3. Probation sanctioning with highway-safety-related terms and conditions.

4. Followup research to determine whether there is clear evidence that mandatory sanctions and/or alternative sanctions are effective as deterrents to the driving public.

In a 1974 document, the Office of Driver and Pedestrian Programs (then Office of Alcohol Countermeasures) presented a thoughtful and thorough *Review of the Case For and Against Mandatory Jail Sentences for a First Conviction for DWI.* The document studies the experience of seven real examples where the application of mandatory sanctions was attempted and failed, and it analyzes the various ways in which the police and courts informally nullify mandatory sanctions. The author then makes the following recommendations:

1. Enforcement and judicial discretion concerning charging and trial should be minimized through "illegal per se" and preatrest breath-test statutes.

2. Penalties for first-offense DWI should be relatively light but significant; i.e., sufficient to deter social drinkers and motivate problem drinkers to accept rehabilitation.

3. Penalties for first-offense DWI should be flexible rather than mandatory, with judicial discretion in using traditional penalties to motivate problem drinkers to participate in rehabilitation programs.

4. Penalties for repeat-offense DWI should be relatively severe (e.g., 30-day jail sentences), providing judicial discretion may operate to place problem drinkers in rehabilitation programs.

The proposed revised High Safety Program Standard No. 8 calls for a pattern of mandatory sanctions, always with an alternative for referral into rehabilitation, such sanctions and alternatives to be imposed by either courts or licensing authorities. The new standard reflects clearly the ASAP health-legal approach in which a mixture of criminal and rehabilitation sanctions is to be used.

NHTSA internally is well aware of and anxious about the fact that the practices of the criminal justice system depart widely from the intentions of DWI statutes, that as long as the formal system and the informal system for DWI operate simultaneously no one can measure the nature or effectiveness of either, and that there is considerable inequity from jurisdiction to jurisdiction in the way DWI cases are handled. The ODPP is also well aware that they cannot make any claim that rehabilitation sanctions are more or less effective than criminal penalties or administrative penalties, as is shown in current evaluations of the national ASAP.

There is considerable interest within NHTSA in various concepts of administrative adjudication for first-offense DWI; in decriminalization (i.e., reduction to the status of infraction) of first-offense DWI; in the screening and identifying function of "traffic violations aggravated by alcohol" at lower BACs; and in the possible ineffectiveness of the lower court system in dealing with a highway safety objective in DWI cases. A certain distrust of the courts is apparent within NHTSA, but ASAP continues to work actively (and uniquely among Federal programs) with the lower courts. NHTSA is also evaluating the potential of probationary powers and conditions for controlling drinking driver behavior, though the quality of the research project in this area is in doubt. NHTSA is also putting considerable innovative effort into evaluating court referral systems and rehabilitation under court coercion, an extremely difficult task. The results of this experimentation will not be available during the life of the present Task Force.

II. The Task Force and Mandatory Sanctions

In the June 1973 *Report* of the Task Force, mandatory/alternative sanctions were not specifically studied. The *Report*, however, recorded the main fact about these sanctions: "Penalties which are mandatory or overly harsh tend to be subverted by police or prosecutors, judges or juries, and such penalties not only encourage more litigation but have proved to be counterproductive in the promotion of highway safety."

The mandate to the present Task Force from the National Highway Safety Advisory Committee includes three instructions, two of which deal with mandatory/alternative

sanctions. In the first, the Committee is instructed to study "sentencing alternatives for adjudicators" and to establish liaison for this purpose with HEW, Department of Justice, and AGA in the areas of "traffic law analysis and preparation, enforcement, and driver rehabilitation as they relate to adjudication." In the second, the Task Force is charged to continue "to collect information and recommend technical projects on sentencing alternatives with special consideration given to their implementation through legislation and court rules." There is no restriction visible in this mandate to deal with DWI cases only, but the present schedule of the Task Force implies concentration on this area and on the ASAP experience.

III. ASAP and Mandatory Sanctions

When ASAP started, the statutes in all States called for the imposition of traditional criminal sanctions only, with no statutory referral to rehabilitation. All referrals were originally made under inherent court powers. During ASAP, several States have passed legislation authorizing the alternative sanction of referral to rehabilitation, but the laws are not alike in any two States. (NHTSA also commissioned a study, now completed, on the constitutional questions surrounding the pre-sentence/referral process. This study found no inherent problems, but there is now some NHTSA analysis concerning the impact of the Privacy Act and the Freedom of Information Act.) In a majority of ASAP States the DWI legislation still calls for mandatory sanctions only, and the belief of most legislators seems to be that those sanctions are actually applied by the courts. A minority of States (e.g., Arizona) explicity forbid judges to interpose judicial discretion to soften the mandatory penlties, and in some States either court rulings or Supreme Court rules have decided the limits of judicial discretion (e.g., Ohio). However, in a majority of States judicial discretion is not explicitly discouraged by legislation or higher court decisions.

ASAP has shown its ability to function in all types of jurisdictions. Where legislation calls for alternative sanctions, ASAP obviously finds it easiest to maneuver. Where legislation allows judicial discretion, ASAP has to persuade individual court systems to cooperate, which is more difficult, since it lacks the support of legislative mandate. Where legislation forbids judicial discretion and does not allow for alternative sanctions, ASAP is in the most difficult situation, since it must convince courts and then cooperate with them in efforts which are counter to legislative intent. ASAPs are operating successful referral programs under all three circumstances (e.g., California, Ohio, Arizona).

The ASAP systems concept calls for the use of both punitive and rehabilitation sanctions. ASAP theory uses mandatory sanctions to coerce an alternative referral into rehabilitation. There are the two basic elements of the health-legal approach. ASAP is not a true diversionary progrm in any State. ASAPs also operate in at least two States (Wisconsin and Oregon) where first-offense DWI has been decriminalized.

IV. The Courts and Mandatory Sanctions

The previously mentioned NHTSA paper on mandatory sanctions contains a thorough review of the main dilemmas caused when the daily operations of a court system conflict with mandatory legislation, and it is not necessary to repeat that information here. Rather, this section summarizes the uses to which various court systems put mandatory sanctions, stemming from their attitudes toward mandatory and punitive sanctions. The purpose of this discussion is to illustrate the diversity of purposes for which mandatory sanctions can be used by the courts, in an attempt to avoid making the choice between support for or rejection of the concept if mandatory sanctions seem too simple.

1. Punishment

Some few judges regard legislated sanctions as properly retributive: If a person commits the crime of DWI, then he should be suitably punished. Some judges rarely use a rehabilitation alternative except in extreme cases where punitive sanctions have been tried and have failed. Many other judges regard punishment as a valuable element in the use of punitive sanctions, but they tend to mitigate the severity of the mandated sanctions by, for instance, reducing the amount of the fine or suspending all or some jail time. A few judges regard punishment as irrelevant in DWI cases and do not accept it as a proper motive in the sentencing process. The idea of punishment is, on the whole, not a major motivation in the adjudicative process for DWI.

2. Deterrence

The *general deterrence* theory is a much more popular concept with judges and prosecutors. They believe that the existence of a prohibitive law affects behavior and that

mandatory penalties enhance the public's perception of the risk involved in such behavior. Laws are seen as having a societal value, and few judges support complete decriminalization of DWI or a notable softening of legislated penalties. Judges also tend to accept the penalties set out by statute as being the right kinds of penalties. That is, they believe jail time, fines, and action against the license do deter DWI. Some few judges lobby actively for alternative sanctions (including rehabilitation), and few resent their introduction into legislation, but by far the majority regard legislative change as not their concern.

However, when it comes to *specific deterrence*, judges respond with very different attitudes. Few, if any, judges routinely apply the mandated penalties to all cases. Instead, they exercise judicial discretion. The full extent of the law will be applied only to extreme cases, usually to scofflaws. Very light penalties will go to a few favored offenders. The majority of cases will receive a routine and predictable set of sanctions which lies between the extremes. Judges always feel the need to soften sanctions for hardship cases, for deserving cases, and for respectable citizens, and they are irritated when such discretionary powers are removed. Most judges also know that traditional penalties fail to work with chronic offenders. In sum, when it comes to the individual case, judges do not see mandatory penalties as having the power to deter a repeat offense, or at least as having as great a power as the wise exercise of judicial discretion.

Thus as far as deterrence is concerned, courts use the theory of general deterrence and the statutes as an umbrella for their role in the handling of DWI cases, and they tend to justify attention to DWI cases by reference to the seriousness with this statutory sanctions treat the offense. There is some indication that if the severe mandatory sanctions were removed, then a majority of judges would treat DWI cases no more seriously than they do reckless driving or speeding cases. The courts use the theory of specific deterrence to justify their use of judicial discretion to mediate between offenders and the law, regarding these two entities as extremes between which judges must create a balance. Judicial action, in their minds, is better able to achieve deterrence in specific cases than is the general application of mandatory legislation.

3. The Judicial Experience

A pointed aplication of deterrence theories occurs when judges assert the value of "a judicial experience" to an offender. Many judges see an appearance before a judge as having an inherent deterrent value, regardless of the sanctions imposed or not imposed. This concept has two important consequences. When coupled with the belief in the judiciary's role as an impartial overseer of all criminal justice system operations, it leads judges to insist that all violators should appear before them at some time (which is in line with current professional recommendations from both NHTSA and the ABA). Systems which eliminate appearances before a judge are therefore unpopular with them for reasons other then simple job preservation.

The second consequence is the popularity of the "one free bite of the apple" concept of DWI adjudication. First offenders should not be punished too heavily, because they have not yet undergone the judicial experience. Second offenders, however, have done so, and in repeating the offense they have disobeyed a judge as well as the law, with the result that they should be more severely punished. This attitude can lead to the design of systems which are overly lenient toward first offenders and overly harsh or punitive toward second offenders.

In this area, judges use mandatory statutes as a means to enable them to withhold or assert judicial power. In a sense, the statutes merely back up the judge, ready for his use only when necessary to enhance the credibility of his authority. They are used to make the judicial experience more meaningful, and the law is a servant of the judge rather than vice versa, to be put to work selectively.

4. Highway Safety

Most judges see DWI as a criminal offense rather than as primarily a public safety offense, and they do not regard themselves as having a function in enhancing highway safety. A highway safety objective is normally mentioned only when the judge needs to justify a harsh sanction, such as the imposition of a mandatory 1-year jail sentence: When all else (i.e., the lesser sanctions) has failed, then at least "we've kept him off the road for a year." Jail sentences are unpopular with misdemeanor judges, and their imposition represents to the judges a failure of their prior responses. Thus, highway safety is used as the justification for imposing a severe punishment.

Concerning license suspension, the attitude is somewhat different. Judges for the most part believe that most persons whose licenses are suspended or revoked do not continue to

drive. Action against the license is usually seen as an effection sanction — so effective, in fact, that it is thought harsh and therefore properly subject to judicial discretion. Again, highway safety objectives justify a sanction perceived as severe, and where a judge does not think the cause of highway safety is more important than individual convenience, he will soften the severity of that sanction.

Judges see the legislated sanctions for DWI as having a highway safety objective, and they see them as generally effective. However, they tend to see judicial discretion as more important and to dislike the assumption that mandated sanctions are more effective than judicial sanctions in achieving highway safety.

There is some evidence that alternative sanctions raise a different attitude. Judges as a whole are slow but not overly reluctant to accept referral to rehabilitation as an alternative sanction. This is partly because they believe that problem drinkers are better off in treatment and that everyone can become a better driver through education; that is, alternative sanctions are more clearly related to the public safety nature of the offense and therefore more popular with many judges. Indeed, isolated judges around the country have been responsible for the design of referral systems prior to ASAP, using both inpatient treatment and education, and other judges have tailored innovative sanctions (such as work in an emergency ward) to the highway safety objectives of probation. These judges are normally operating individual programs; it is very rare to find a whole bench agreed on such directions without intensive work from an ASAP. It should be emphasized that the main reason for judicial acceptance of alternative sanctions is that they see them as "softer" than the criminal sanctions, a neat solution to their dilemma about the imposition of mandatory punitive sanctions in which they can still be seen as interposing judicial discretion between offender and law.

5. *Coercion*

The coercive use of mandatory penalties is the basis of almost all ASAP systems and is the theory behind mandatory alternative sanctions legislation. Under this theory, action by the courts coerces someone under court control into behaving or not behaving in certain ways for a stated period of time, under *threat* of imposition of punitive sanctions. If the behavior is satisfactory, then the earned reward is a reduction in the seriousness of the sanctions. In the case of ASAP, the coerced behavior is almost always attendance at education or rehabilitation programs for drinking drivers. Legislation about mandatory/alternative sanctions simply embodies in a statute a pattern with which the courts are already familiar: either severe punitive sanctions, or education and rehabilitation coupled with lesser punitive sanctions. It is a "carrot and stick" approach to controlling driver behavior.

There are many *methods* for bringing about the coercive situation. The most traditional method is the use of suspended sentence and probation; i.e., part of the punitive sanction imposed after a finding of guilt is suspended on certain conditions affecting the driver's behavior, and if he does not obey these conditions for a stated period, the original sanctions can be imposed in full after a formal revocation of probation. This is the method most normal in felony cases, and a majority of misdemeanor courts also have the power to place persons on probation. The period of probation lasts anywhere from a few weeks to 2 years (usually co-extensive with the length of the statutory jail sentence), with 6 months as an informal norm. Formal probation requires a judicial determination of guilt. The person is convicted, and notice of that conviction is posted throughout the record system. In drinking driving cases, conviction starts a train of events (such as action against the license or, more often, against the insurance) over which the court has no control but which are regarded as severe penalties.

Because of these other penalties, many court systems prefer to avoid convictions, and for that reason (plus the desire to avoid trials) many systems use a variety of techniques to exert coercive control over driver behavior which result in the eventual avoidance of a conviction for DWI. For instance, a judge can avoid making a final determination of guilt or innocence by taking a case under advisement or by withholding judgment for a certain period, during which the offender must behave in certain ways. If he complies with these behavioral conditions, then the judge will eventually dismiss the DWI charge and convict the person of a lesser offense (e.g., reckless driving) with lesser penalties. Most judges, however, prefer not to take the initiative in reducing charges, and it is at this point that the prosecutor begins to emerge as a major force.

Plea bargaining is under the control of the prosecutor and in DWI cases may be better regarded as charge bargaining. The prosecutor agrees to charge the offender with a lesser

offense if the defendant will plead guilty to that lesser offense. This system is used almost everywhere. The prosecutor wins convictions (though not for DWI) and saves trial time, and the defendant avoids conviction for DWI and the harsher sanctions associated with it. Most prosecutors place no conditions other than a guilty plea on a charge reduction, and plea bargaining is not inherently a device aimed at controlling driver behavior. However, under ASAP it easily becomes such when the prosecutor makes the defendant earn the charge reduction by behaving in certain ways for a period of time. (In ASAP, again, this is normally attendance at education or rehabilitation programs.) In these circumstances, all the elements of presentence investigation and probation come to be associated with the prosecutor rather than the judge. Although by professional standards judges are supposed to monitor the plea-bargaining process (as in Phoenix), in fact they often have nothing to do with the process, since the prosecutor files the charge and the defendant pleads guilty.

Whether a coercive system is judge-based or prosecutor-based, whether it uses probation or plea bargaining or any other method, the objective is the same, and so is the manner in which mandatory sanctions are used. The objective is to control driver behavior for a certain period of time, and the process can therefore be closely related to highway safety goals. The mandatory sanctions are always used as a threat. Further, none of the coercive methods could work if the mandatory sanctions did not exist. There would be no carrot or stick with which to induce behavior if the threatened sanctions were not punitive; and if they were not mandatory, there would always be the possibility of avoiding them. This is the reason that many jurisdictions like to see the mandatory punitive sanctions in legislation, even though they prefer never to impose them in individual cases.

The ASAP experience has produced no recommendation as to the needed degree of severity in the sanctions used in a coercive system. While some jurisdictions use the threat of a 60-day jail sentence, some jurisdictions have as little to offer as an extra 60 days of license suspension. Action against the license seems as powerful as jail, though reductions in the amount of fine seem to have less impact. (No research has been conducted to demonstrate the differences.) The charge to which the offender eventually pleads guilty is usually reckless driving or careless driving, but this varies widely in different jurisdictions, some of which will go so far as to discriminate between pleas to different charges bringing different point penalties under the licensing system. A few jurisdictions have a second alcohol-related offense which is used as the substitute charge (e.g., Colorado uses Driving with Ability Impaired by Alcohol).

6. *Administrative Action*

Many courts prefer a portion of the penalties for DWI to be outside their control, notably action against the license. They may prefer that the mandatory/alternative sanction pattern not be available. They try to restrict themselves to a determination of guilt or innocence and to sentencing by traditional sanctions such as fine or jail, disregarding entirely the highway safety function of bringing DWI cases to court. A referral to rehabilitation or education may well take place in such a system, but any actions taken by an administrative authority are as far outside the court's purview as are insurance penalties.

However, an equal number of courts seem to dislike any control over sanctions by any administrative agency and engage in frequent combat with driver licensing authorities. Some courts, for instance, refuse to forward a suspended license to the driver licensing authority or fail to file a notice of conviction as required by statute. Others engage in charge bargaining, working with the defendant against the driver licensing authority. Others take some action against the license which forestalls other action. Others send routine letters requesting the driver licensing authority to act in certain ways. There is widespread (but not serious) irritation among some court systems with the operation of the implied-consent laws, which are outside court control and are often seen as "unfair" to "cooperative" offenders.

Almost no predictions can be made as to the use to which judges may put administrative sanctions. Some will ignore them, some will use them *for* the defendant, other will use them *against* the defendant. The one generalization which can be made is that all judges and prosecutors are well aware of administrative action that will or will not be taken as a result of their decisions. The consequence seems to be that careful study should precede the creation of any mixture of court action and administrative action.

V. Conclusion

With the decline during recent years in our belief in the effectiveness of mandatory punitive sanctions, there has arisen a great deal of interest in legislated sanctions which

allow better processing *through* the courts, almost as though the statutes and courts had themselves become as big a problem as the drinking drivers. Reduction of first-offense DWI to the status of an infraction, or the substitution of administrative adjudication for court action, or the offering of alternative sanctions in legislation all create techniques which avoid the attrition and delay associated with present court action by offering a) popular alternatives to punitive sanctions and b) swift referral to an administrative agency for either disposition or rehabilitation. All these new ideas presently seem superior as processing techniques to the traditional system, though there is considerable dispute as to how they work out in practice.

However, the basic fact remains that society uses criminal sanctions eventually to back up any social action against a deviant. In all the above techniques, action by the criminal justice system is a potential — if final — consequence. There is always, in other words, a basic and crucial relationship between legislation and the courts. There is therefore considerable debate as to whether mandatory punitive sanctions may need to be retained, no matter which other processing technique or objective is assigned to DWI legislation. It may be that, even if the punitive sanctions are not effective in preventing DWI directly, they are the essential backup for other sanctions which may do a better job.

Finally, it should be noted that mandatory punitive sanctions have not been fully evaluated as far as their real effects in deterring DWI, with the possible exception of various kinds of action against the license. They are, in fact, used against such a small proportion of the DWI population, and they are used so reluctantly and capriciously by the courts, that it seems almost impossible to evaluate them. It could be that they are presently effective and that we do not know it. It could be that they would be effective if rigorously applied. It is certainly true that no other pattern of sanctions has yet been conclusively demonstrated to be superior. One of the foremost needs in the field of highway safety (which has only recently begun to work with the courts) is knowledge of what sanctions are applied, what disposition methods are used, and whether or not they are effective with what kinds of offenders.

The ASAP experience has generated a great deal of information on how the courts use mandatory punitive sanctions. We presently lack knowledge of the comparative benefits of the various alternative uses, methods, and results. Also lacking is dissemination of existing knowledge from one jurisdiction to the next, since each jurisdiction tends to think its way the only possible way. Certainly it seems clear that the reasons the judges and prosecutors nullify mandatory legislative sanctions are more complex than has been thought and that the very act of nullification can be given a highway safety objective.

December 1, 1975

JUDICIAL EDUCATION IN ALCOHOL SAFETY

Gary J. Scrimgeour, Ph.D.

The intent of this document is to describe the framework within which attempts by the U.S. Department of Transportation to educate judges would operate and to suggest that such attempts are necessary, feasible, and cost-effective.

Until 1975 basic information about American judicial education was lacking, but three recent documents reasonably summarize current facts and concepts: the *State Judicial Training Profile*, edited by Barbara Franklin for the National Center for the State Courts; "Structuring and Financing a Justice System Program," a paper delivered by B.J. George at the 1974 National Judicial Educators' Conference; and *Sentencing Alcohol-related Cases: Option via Judicial Education*, by Gary J. Scrimgeour, for the National Center for Alcohol Education. These publications are the basis for the present document and should be consulted for details.

The Judges

The judiciary is a logical target group for education. While most judges preside over small courts, the most important judges in terms of caseload are in metropolitan jurisdictions, and increasing numbers operate within a reasonably integrated State system. Though statutes and resources differ enormously from State to State and jurisdiction to jurisdiction, there are two integrative forces: the homogeneity of a single State's laws, and the sharing by several judges of jurisdiction within a community. Therefore, although no judge can be ordered to attend an educational program, the most important judges can be identified and contacted through State, local, and professional organizations, and the majority of a State's judges can be reached through the traditional annual statewide conference.

As of July 1, 1971, the 50 States and D.C. contained 17,057 courts with a total of 23,073 judgeships, plus between 10,000 and 20,000 magistrates and JPs. Most judges (between 20,000 and 30,000) hear traffic cases. Most lower court judges (more than 75 percent of the total judges) hear DWI cases. Since anywhere between 20 percent and 100 percent of the defendants within any given category of cases are abusers of alcohol, judges see almost as many alcohol-abusers as they do "criminals." They see more people with drinking problems than does any person in the treatment system. They see at least 10 percent of the nation's problem drinkers every year, most of whom are not skid-row drinkers. They handle more than 1 million DWI cases per year (possibly as high as 2 million). In many courts DWI cases constitute as much as 80 percent of the caseload. Thus, education in highway safety and alcohol is highly relevant to their professional concerns.

The level of judicial interest is a strong limiting force. Neither highway safety nor alcoholism is a major concern to most judges, and they tend to react negatively at first to education in either subject. They have been put off by previous overly evangelistic attempts to turn them, as they see it, into social workers.

Counteracting this initial lack of interest are two important factors. First, a corps of highly educated and motivated judges exists in every State, including increasing numbers dissatisfied with present court handling of problem drinking defendants. Second, judges are increasingly interested in anything to do with improved court systems and sentencing procedures — areas with which highway safety is now very familiar. Cooperation between court managers and highway safety managers at the State and local levels is comparatively simple and mutually beneficial, given the right timing and subject matter.

Judicial Education

Until very recent years, judicial education has been almost totally neglected, and it is still in poor shape. To educate 30,000 judges, the Government presently spends about $6 million per year. (For comparison, a single campus of one university with 31,000 students receives a direct appropriation from the State legislature of $114 million per year.) There are about 50 full-time judicial educators in the country. (The above-mentioned campus has 33 full-time faculty members in a law school with 540 students.)

Before this decade, no agency trained anyone in how to be a judge. There are still no law school courses in the subject, and by no means all judges have been to law school. Very few States impose educational requirements (other than a law degree) on entering judges or on those seeking promotion, and very few States mandate educational programs for sitting judges. On-the-job training is the norm. Many judges come from the defense bar or prosecution departments, and others are elected from the community. They learn in the courts, on the bench, from books and colleagues. All formal judicial education is "continuing education," carried out in short, annual periods (too often in a single large conference). Professional educators rarely work with the judiciary. Only seven States have ongoing

arrangements with universities, and only five (at last count) have full-time judicial education centers.

Commentators on judicial education criticize its subject matter from two points of view: It tends to be too narrow, and it occurs only in crisis situations. Judicial education is rather like medical education, concentrating on technical matters which necessitate the use of fellow professionals — lawyers, judges, and law professors — as faculty. This means that few judges see the social ramifications of their role or are exposed to the opinions of persons outside the legal profession. It also means that educational methods tend to be conservative, lectures predominating. Most judicial education responds to demands from the judges, which usually arise only from changes in State law, Supreme Court rulings, or professional standards. While each education is essential, it omits many basic materials which the judges themselves may not see as necessary or urgent, but which others wish to communicate to them — such as alcohol or highway safety.

But the field is changing dramatically, and during the last 5 years there have been highly significant developments. Rising dissatisfaction with the courts' performance and national and State attempts to improve the courts' quality have made people pay more attention to the needs of the judges; an environment has developed in which serious judicial education is feasible. Further, a structure of organizations and funding has come into being to sponsor judicial education, and these organizations are developing rapidly and imaginatively.

Both the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals have recently issued standards strongly recommending State-level implementation of permanent judicial education. These ideals have been backed by the reality of funds from the Law Enforcement Assistance Administration (U.S. Department of Justice), from the ABA, and from one or two foundations. For the first time in the country's history, there is a chance that judicial education will become a legitimate and essential activity.

There now exists (as was not true a decade ago) a structure on the national level and within each State which may be exploited by "outsiders" wishing to educate judges. Most important in this structure are the American Academy of Judicial Education and the National College of the State Judiciary. AAJE was originated by the American Judges Association and the American Judicature Society. It concentrates on judges from courts of limited jurisdiction. The staff (headquartered in Washington, D.C.) travel extensively to give training sessions on site, and AAJE also has a central training facility and program for part of the year. It responds to needs identified by the States, developing special training packages on demand and offering basic training packages to those who request them.

The National College of the State Judiciary has a permanent building on the campus of the University of Nevada in Reno, where a year-round program of special sessions is offered. NCSJ also carries its training to the States. Officially under the aegis of the ABA Judicial Administration Division, NCSJ originally concentrated on judges of limited jurisdiction but now has expanded to include all judges. Both organizations have high reputations. They already reach more than a thousand judges per year, and they have larger ambitions for the future.

Also located at Reno is the National College of Juvenile Justice, the training arm of the National Council of Juvenile Court Judges. It offers only four sessions a year, but it expands more into the behavioral sciences than do the other organizations, and its judges should find both alcohol and highway safety items of some concern. (Note: The Institute of Judicial Administration, located in New York, and Louisiana State University both train appellate judges. The Institute for Court Administration in Denver trains court administrators. Also in Denver, the National Center for State Courts has a training division which acts as a research and coordinating unit but does no training itself.)

At the State level there is a growing trend toward centers for judicial education or for judicial councils with a training function. This means that a structure exists within which organizations seeking to reach judges can operate. There will be problems of funding and attitude, but for the first time there is an opportunity.

By far the majority of funds for judicial education come from the Law Enforcement Assistance Administration (U.S. Department of Justice), either by direct grants to the national-level organizations (e.g., NCSJ, AAJE) and to the State-level centers, or by State formula block grants. (The funds expended by each State and their sources are listed in the *State Judicial Training Profile*.) With rare exceptions, State governments provide few funds for judicial education except in the form of matches with Federal money. All

States use more Federal funds than State-appropriated funds.

Municipal and county governments spend next to nothing on judicial education and today regard a few hundred dollars as more than enough. In most states, the total expenditures are so low that even small allocations (less than $10,000) made by State highway safety agencies for the purpose of judicial education show up as major items in the area's judicial education budget. At the national level, some foundations (notable Fleischmann) have demonstrated their desire to get permanent efforts started. As a final note, judges do not expect to have to pay for their education, and they tend to regard it as a favor when they attend a session paid for by the executive branch.

Most judges do not expect, indeed, to be inconvenienced by education. For many years the sole tradition was the annual State judicial conference, whose main purpose was never education. The efforts of NCSJ and AAJE have improved matters, and more and more judges of limited and general jurisdiction are venturing into educational programs, but they are not yet at ease with the idea. Nor are their teachers. The concept of intellectual discipline is only just beginning to plant itself in the field, as new and younger judges begin to show a stronger interest in learning. Specialty programs are popular, especially if they lead to promotion within a bench or are needed because of transfer to a different kind of court. Almost all judges accept the law school approach to education as the norm.

Should a judge decide he wants education, he will not find it easy to get. Few States allocate a period of his time for continuing education, so he must either close his court, find a substitute judge, or use vacation time. He will normally not want to travel far from home or use more than a couple of days. Educational opportunities which fit all these needs and still have appealing subject matter are not frequent, though judicial educators tend to bend over backwards to fit the judges' requirements.

If the judge mixes with judges from many other States, he will be startled to discover the wide difference between judicial procedures and resources from State to State, since he tends to regard his own court and State as the norm. If he mixes with other judges from within the State, he will be deferential to those from higher courts and careful not to be too forward among his peers. Mixed with other members of the criminal justice system (e.g., police, prosecutors, probation staff), he will tend to be overly authoritarian or too defensive, and he will learn only uneasily about their view of the operations of his court. Given a training experience specially designed for his own colleagues and jurisdiction, he will find it novel and stimulating to find out what his peers think and do. He may well change his mind as a result of the experience, but he may also decide that he has neither the time nor the resources to implement large-scale changes unassisted. Neither judges nor educators find the process of judicial education simple.

NHTSA and Judicial Education

The ABA Traffic Court Program (Judicial Administration Division) used to be the only nationwide program aimed specifically at traffic court judges. The program was discontinued in 1973 and restored in a very limited fasion in 1975. This decline leaves NHTSA the major sponsor of education in traffic adjudication, even though its efforts are recent and small. The Agency has performed very well.

Almost all NHTSA efforts have been associated with ASAP or emphasize the handling of drinking drivers. Beginning in 1971 NHTSA started a series of contracts to educate judges in traffic court adjudication, while other contracts created training for prosecutors, legislators, pre-sentence/probation staff, and local or State bar associations. Using different approaches, some contracts trained trainers in each State, while others were aimed specifically at judges at ASAP sites. All of the packages have been published and are available for general use through the Government Printing Office or the contractors.

NHTSA intends to update the packages in the near future, but it is presently funding no nationwide effort to see that they are used at the State or local level. Although it encourages their use, NHTSA takes the stand that States or localities should use their own funds for the packages. Each seminar costs from $4,000 to $10,000 to conduct at a site, using outside instructors. Some are for large conference groups, others for small (less than 30) groups with common planning problems. NHTSA has expended about $250,000 over 5 years on these packages.

The varieties of NHTSA's experiences with the several packages is instructive. Those which trained trainers were successful with their immediate learning group, but use by the trainers subsequently was disappointly infrequent. Those which used outside instructors were more successful,

particularly in connection with a functioning ASAP. The package designed by Indiana University has been used most often, in some 50 jurisdictions. For most of these, but not all, NHTSA bore the full cost. More than half of those jurisdictions report the seminar as having contributed to a major turnaround in their judges' attitudes and court problems. Some ASAPs report no success with the seminar, and in others there was little attempt to follow up. Some ASAP sites did not want the seminar for a variety of reasons, while a handful did not need it. The other seminars offered by NHTSA (e.g., for legislators) have shown a similar pattern of predominant success, though they were used less often.

The main problems with NHTSA's efforts in judicial education are lack of expertise, funds, and solidity of commitment. Under the heading of expertise, the main difficulty is to find qualified judicial educators who can also deal with highway safety and alcohol problems. The transdisciplinary area is difficult, and it is doubtful that NHTSA's efforts to enlarge the number of educators at the State level can be successful while they use a single, brief training experience. On the other hand, the large number of former ASAP employees — who do have the expertise — have not been used systematically for education.

Under the heading of expense, the main problem is cost per judge. Most NHTSA packages aim at small groups, which is realistic, since the seminars enable all the judges from a homogeneous jurisdiction to plan the complexities of court-based referral systems with some thoroughness. At a cost of between $4,000 and $7,000, however, few communities will use scarce judicial training funds for such a specialty, which means either that NHTSA must fund the seminars directly from the national level or incorporate judicial education in the Annual Work Plans.

This leads to the issue of commitment. ASAP sites were well supported by national-level contracts, and no ASAP missed a seminar for lack of money. Independent sites do not have the same chance, however, since there are no national funds allocated to judicial education and no known NHTSA plans to disseminate existing packages further or to design new packages containing the fresh information gathered from ASAP experience. In sum, NHTSA created a solid group of materials, offered them generously and successfully for a short period, but has not followed up with a permanent commitment.

Nor has NHTSA yet sought formal cooperation from existing permanent institutions for judicial education or alcoholism training. Neither the American Academy for Judicial Education nor the National College of the State Judiciary has a traffic court program, but both are willing to cooperate with highway safety interests. AAJE already offers a package called *Handling the Alcoholic Defendant*, and NCSJ last year began to redevelop its once-a-year Alcohol and Drugs Specialty Session (lasting one week). Both programs deal with drinking drivers, without NHTSA assistance.

Conferences at the State level seem more often to include NHTSA personnel (from the regional offices), but sessions dealing with traffic case adjudication remain unsupported by a package or personnel provided through NHTSA. Liaison seems to be created mainly at the initiative of the judges themselves, or often at the instigation of the States' driver licensing authorities. Some governors' representatives for highway safety are also active.

There are other opportunities among the authorities for alcohol education. The National Institute on Alcohol Abuse and Alcoholism does not sponsor any direct attempts to educate judges, though it has indicated its interest through small activities by the National Center for Alcohol Education (Washington, D.C.). Of recent origin (1975) are the four NIAAA-funded Area Alcoholism Education and Treatment Programs (AAETPs) created on a regional basis to identify and serve community and State needs in alcohol education. AAETP surveys indicate that judicial education in alcohol is regarded as a top priority in a majority of States. Further, there are now nationwide more than 70 Summer Schools in Alcohol Studies, either State, local, or national, each of which needs education about judges. Finally, professional journals exist in both alcohol and legal education which would publish articles designed to disseminate information about judicial education on alcohol safety.

Conclusions

There is plenty of opportunity for NHTSA to engage in judicial education, and there may be some obligation to do so because of the proportion of the total lower court caseload represented by DWI cases. NHTSA has already made a major contribution at the sites of the ASAPs. It has no competitors, but many potential collaborators. Particu-

larly as long as NHTSA advances the ASAP concept, it will need to assist the courts with the design of referral systems if the concept is to become a reality.

Cooperation with existing agents for judicial education and alcohol education would seem beneficial to both the design and the continued presentation of training for judges. This cooperation should begin with the funding agencies (NIAAA and LEAA) and the major nation-level organizations (e.g., National College of the State Judiciary, American Academy for Judicial Education, Area Alcoholism Education, Area Alcoholism and Treatment Programs). The active cooperation of the judiciary should be sought, particularly through the American Bar Association, the American Judges Association, and the American Judicature Society. Cooperation should also be carried to the State and local level through the NHTSA Regional Offices and governors' highway safety representatives to the State court administrators, judicial councils, judicial education centers, alcoholism authorities, criminal justice planning agencies, and driver licensing authorities.

NHTSA can expect to bear the cost of education either at the national level or through State formula funds.

If the education is to be of high quality, persons who have worked in ASAP management may provide the expertise to form a cadre of educators. Creation of other experts will require considerable care in selection and training.

The subject matter of judicial education in alcohol safety should emphasize court procedures and the design of effective adjudication systems rather than the interests of highway safety or alcoholism. Though all three subject areas are of equal importance in DWI cases, the best approach to the judges is by means of their own professional concerns as managers of court systems.

Collaterally with judicial education, NHTSA can also offer existing packages designed for pre-sentence/probation staff, for prosecutors, and for legislators. Further attention should be paid to judicial liaison with the driver licensing authorities. Those States attempting to implement an ASAP-type referral system (particularly if required by legislation) should receive priority support in such education.

February 15, 1976

Attachment

Attachment

The American Bar Association includes the following standard in its *Standards Relating to Court Administration:* 1.25 Continuing Judicial Education:

> Judges should maintain and improve their professional competence through continuing professional education. Court systems should operate or support judges' participation in training and education, including programs of orientation for new judges and refresher education for experienced judges in developments in the law and in technique in judicial and administrative functions. Where it will result in greater convenience or economy, such programs should be operated jointly by several court systems, or regionally or nationally. Provision should be made to give judges the opportunity to pursue advanced legal education and research.

The National Advisory Commission on Criminal Justice Standards and Goals contains the following standard 7.5 in its *Report on Courts:*

> Every State should create and maintain a comprehensive program of continuing judicial education. Planning for this program should recognize the extensive commitment of judge time, both as faculty and as participants for such programs, that will be necessary. Funds necessary to prepare, administer, and conduct the programs, and funds to permit judges to attend appropriate national and regional educational programs, should be provided.

APPENDIX B
ALCOHOL SAFETY ACTION SITE VISITS

In 1975 and 1976 the Adjudication Task Force made site visits and conducted public hearings in Phoenix, Arizona, Cincinnati, Ohio, and Los Angeles, County Alcohol Safety Action Projects (ASAP). Committee members rode with Police, reviewed court operations and visited local jails. Local appointed and elected criminal and traffic Justice System officials made presentations and were interviewed by committee members.

The site visitation program produced insights into the problems and needs of local court systems in alcohol-traffic adjudication. This final report examines both short-range and long-range problems in handling the drinking-driver in a wide variety of settings in urban and rural metropolitan programs of traffic courts. Based upon this heuristic background the Adjudication Task Force structured its report.

SUMMARY OF THE PHOENIX AND CINCINNATI SITE VISITS February 11, 1976

Members present: Chairman Doan, Vice Chairman Cannon, and members Avila, Carmichael, Cellini, Forman, Howard, Jones, McCamment, and Middleton.

Staff present: Marsh, Miller, Brandt, and Hall.

The members met in public session to review their conclusions following visits to the Phoenix and Cincinnati ASAP adjudication systems. The members expressed their opinions concerning diversion of DWI defendants from traditional court processing into rehabilitation modalities such as the Phoenix PACT system (formalized plea bargaining).

Forman: Opposes reduction (plea bargaining) in the crime charged, since the driver's record is permanently distorted; supports the rehabilitation modalities.

Jones: Impressed with the Cincinnati experience, particularly the fact that the populace is aware there's a good chance of being picked up for DWI. Wants to see a longer term program, beyond the 2- to 3-year ASAP. Not just declare DWI a medical problem but also do something about it.

Howard: Recommends court-ordered ANtabuse as a modality; suggests Task Force bring this up with HEW officials.

Doan: Any reform of adjudication must include a restructuring of the courts; recommends State financing and organization of courts.

Howard: Favors a tougher approach by the courts in sentencing DWI but realizes circumstances may not make hard approach feasible. Believes public will support anything so long as all receive equal treatment.

Cannon: The courts are not solving the DWI problem. They can't control drinking, and licensing revocation means nothing. The only way to solve the DWI problem is to confiscate the car.

Forman and Doan: The alcohol interlock may accomplish the same thing by preventing someone from driving his car when drunk.

Jones: Briefed the members on the interlock concept, pointing out that individuals vary a great deal in their ability to drive at various BAC levels. Some are drunk at .05, and some are not drunk at .20 BAC; therefore, the .10 legal BAC limit is arbitraty. An interlock could measure the actual performance of the individual and prevent those whose physiological abilities are impaired to the point they can't drive safely, regardless of the individual's BAC.

Howard: Supports the interlock or "black box" concept that might be ordered installed by the court, along with other options such as jail, Antabuse, and rehabilitation modalities.

Carmichael: Summarizing the meeting, said:

- People are going to drink, and we can't stop them.
- We are concerned that court diversionary tactics and reducing charges distort traffic records.
- Alcoholism/DWI is a disease; therefore, we are concerned with rehabilitation, matching the patient with the appropriate treatment.
- We are also exploring other techniques to keep the drunk from driving, such as the interlock.

Doan: Task Force must address the issue of parajudicial personnel in the courts, either under the jurisdiction of the courts or under an administrative agency. He also suggests the Task Force consider rules of superintendence which establish time limits for case disposition.

Carmichael: The Committee should recommend restoration

**Complete transcripts of the Phoenix, Arizona and Cincinnati, Ohio meets are available in the Office of the Executive Secretary, NHTSA.*

of the ASAPs, since their Federal funding was cut off just as they were becoming successful.

Scrimgeour: Every ASAP has resulted in significant changes to its court system; LEAA, Justice Department, and other organizations have not had as much impact in changing the courts as DOT's ASAPs. (Of the 35 original ASAPs, 8 are continuing with Federal funds.)

Doan: The following points should be considered in developing the Task Force report:

1. Judicial attitudes:
   - Job security is vital.
   - Pay is too low.
   - Selection/retention is too political.
   - Retirement benefits are abominable.
2. Mandatory sentences won't/can't be applied unless the judges are secure in their jobs.
3. Court structure: must do away with parajudicials and JPs; need a standardized trilevel, statewide court system with local, appeals, and supreme court levels.

Forman: Non-attorney judges may have to be retained in areas of low population density.

Doan: Court reform should therefore be focused on the metropolitan/urban areas which contain 80 percent of the population.

Scrimgeour: State and local governments rightfully control the courts.

Doan: "Court reform is not a race to be entered by the short-winded."

Howard: Must educate key judges in each State, who in turn would sell the concept of court reform to their fellow judges. Volunteer public interest groups such as the National Association of Women Highway Safety Leaders should be solicited to get behind the court reform movement.

Doan: Must also be concerned with the number of judges, support personnel, and court facilities. By and large, the courts present a poor image for the public. This in turn affects people's attitudes toward the law, justice, and society, particularly since most people come into contact with traffic courts more than any other adjudication system.

Carmichael: The societal cost of alcohol should perhaps be compared to the minimal amounts spent on courts and rehabilitation in treating the problem.

Jones: Supports a tax on liquor, which could generate $2 billion a year for courts and rehabilitation.

Doan: Additional points to consider in the Task Force report are:

1. De novo hearings or courts of no record should be eliminated. (Judgment can't be appealed on the record; entire court proceeding must be repeated if an appeal is made.)
2. Should traffic violations be handled in a criminal justice system?
3. Should judges be responsible for developing and/or administering rehabilitation for problem drinking drivers?
4. Should we advocate use of parajudicial personnel under the control of judges?

Scrimgeour: Concerning decriminalization, the issue now is whether a first-offense DWI should be decriminalized.

Carmichael: Summary of Adjudication Task Force goals:

1. Restoration of the ASAPs.
2. Reorganization of the judicial system.
   - Decriminalization.
   - Tie-in with LEAA, AJA, ABA, and NIAAA.
   - National restructuring including pay, job security, facilities, and use of parajudicial personnel.
3. Uniform sentencing.
4. Nationwide seminars on adjudication for State and local judges and legislators.

Brandt: Probation is the principal link in the system, but there's a big gap in the data on ASAP probation effectiveness.

Forman: The 3-year ASAP period was too short to show probation results in most cases.

Van Natta: The Task Force should be concerned with safety on the highways, not rehabilitation of the drunk.

Carmichael: Summary conclusions:

1. Stop R&D; digest and evaluate results to date.
2. Alcoholism is an illness.
3. Revive the ASAPs.

Jones: Suggests concept of immunization to prevent drunks from driving (i.e., alcohol interlocks). Task Force needs a summary of ASAP results. Effectiveness of ASAPs should not be determined by degree of recidivism but by whether incidence of alcohol-involved crashes is lowered.

Problem of lack of public support for an automotive device such as interlocks, evidences by negative public reaction to the safety belt interlock system.

Forman: Public support comes through public awareness.

Carmichael: Supports a self-funding concept either by rehabilitation fees or liquor tax.

Scrimgeour: Suggests Task Force evaluate traffic courts from the public's point of view in that these courts are often the first and most frequent contact with the public. The Task Force should be concerned with the equity of this system and the public reaction to this system.

Doan: Summary of Task Force report points:

1. Restructuring of the courts (organizationally and geographically).
2. Rehabilitation.
3. Qualifications and continuing training for judges.
4. Sanctions.
5. Judicial attitudes toward highway safety.
6. Procedures and processing.
7. Funding/social costs (time frame for case disposition must be established).

Carmicheal: Should push for a "nationwide highway safety alcohol probation program."

DRINKING DRIVING COUNTERMEASURES EFFECTIVENESS REPORT
Los Angeles, California

The opening topic of discussion at the Los Angeles meeting centered on the final report to the State legislature on drunk driving countermeasure effectiveness in California. The meeting was attended by members of the Adjudication Task Force and local judges, prosecutors, police, probation, health, and driver licensing officials. A significant part of the meeting was focused on report 007 approaches utilized to prevent, control and reduction of the incidence of drinking driving offenses.*

Mr. Raymond Peck, Research Program Manager for the California Department of Motor Vehicles, gave a presentation on the above report and the resolution therein. The study was actually precipitated in 1971 by the California State Senate and extended in 1972.

The resolution asked the Department of Motor Vehicles (DMV), in cooperation with the Office of Alcohol Program Management (OAPM), to study certain recommendations regarding drunk driving that are contained in a commission report, the 1970 Governor's Automobile Accident Study Commission, which was formed by the then Governor Reagan. The essence of the resolution can be summarized in three questions:

"Can We Classify?" Is it possible to classify individual dri.ers into subtypes that correspond to the nature and extent of the individual's drinking problems and drunk driving recidivism?"

"Who Should Classify? If classification is possible, who is best suited to perform this classification?"

"How Effective Are Customized Treatment Approaches? Namely, does diagnostic classification result in a more effective treatment and rehabilitation of problem behavior as measured by driving record information?"

In the case of drunk drivers, this would be measured like drunk driving recidivism, alcohol-related accidents, and things of that nature. The study team believed that it may be possible to classify drivers very reliably, and yet that classification would not necessarily result in true treatment. That is an assumption that has to be tested.

In terms of their approach to the study, which took about 3 years to complete, they used a number of analytical methods. First they conducted extensive reviews of the literature, including the following areas: alcohol, drunk driving; drunk driving treatment, with particular emphasis on all the ASAPs that were available at the time — roughly 35 ASAP reports — various NHTSA summaries of their studies. They paid particular attention to California ASAP studies and other California non-ASAP projects. Included in these were the Los Angeles ASAP; the OCATS, which is the Orange County ASAP; two studies by the University of Southern California; and a couple of other minor studies.

**A complete transcript of the Los Angeles meeting is available in the Office of the Executive Secretary, NHTSA.*

In addition to these literature reviews, they conducted several empirical studies of their own. One study related to the relationship between the blood alcohol level and recidivism. In other words, do people with high blood alcohol levels tend to recidivate more often? Do they get more drunk driving convictions or alcohol-involved accidents, et cetera?

A second study related to the psychological factors in high BAL. What kinds of people have concentrations of blood alcohol level above .20?

A third effort was an attempt to evaluate the deterrent effect of license suspension.

In terms of the findings, the study team concluded the following:

Can We Classify?

Finding 1: "The evidence indicates that drinkers and drinking drivers can be classified on a problem drinking continuum — which was not a particularly remarkable finding. It is evident that these classification systems have at least a moderate degree of internal reliability and validity."

Finding 2: "Research studies relating drinking driver classifications to external driving-oriented violation criteria have shown a slight but statistically significant relationship in the expected direction. That is, drivers diagnosed as problem drinkers tend to have worse driving records and recidivate more often than drivers diagnosed as social drinkers."

Finding 3: "Blood alcohol level, the number of prior drinking driving offenses, and alcohol tests such as the Michigan Alcohol Screening Test (MAST) and the Mortimer-Filkins Test which have been validated on driving populations are the best indicators of problem drinking driving."

Finding 4: "In the final analysis, justification for a customized approach to the drinking driver in California rests upon whether classification leads to more effective remediation and control of the drinking driver."

Who Should Classify?

Finding 1: "The medical advisory board concept is not recommended for the following basic reasons: A corps of competent, trained physicians in the field of alcoholism is not available, and the cost of providing a medical advisory board is prohibitive, with an extremely low cost-benefit ratio."

Finding 2: "Classifications made by trained nonmedical personnel agree substantially with the medical profession's, indicating that the expense involved in a medical diagnosis may not be warranted."

Treatment Approaches

Finding 1: "There is no scientifically acceptable evidence to demonstrate that classifying drinking drivers has a beneficial effect on subsequent accidents and drunk driving recidivism or that customized rehabilitative treatment programs based on such classifications have positive driving record effects. These results, however, do not mean that we conclude that such programs are ineffective, since nearly all research evaluations reviewed had methodological flaws or deficiencies."

Finding 2: "There is evidence to suggest that punitive sanctions have impact on subsequent driving record and deterrent effects on the general driving population." The references for that are a study by Sylvania, a study by Ross, and several other studies that we conducted as part of this effort.

Recommendations based upon these findings are:

Number 1: "Based on the currently available research, a customized rehabilitation approach to drunk driver control should not be adopted on a statewide basis in California at this time."

Number 2: "Present legal sanctions against drunk driving, particularly license suspension, should not be relaxed in favor of approaches based on medical and rehabilitative models. The concept of a restricted license for work-related driving should be explored as a means of decreasing hardships caused by license suspension."

Number 3: "Drunk driving should continue to be viewed as a criminal offense distinct from the concept of alcoholism. Driver enrollment in treatment programs should have no influence on the court's adjudication of the drunk driving offense and the reporting of such offenses to Department of Motor Vehicles."

Number 4: "Medical advisory boards are not cost-effective, viable mechanisms for testing and classifying drinking drivers."

Number 5: "Drunk driving programs should be coordinated on an integrated statewide basis by the California DMV, Office of Traffic Safety, Office of Alcohol Program Management, and the Administrative Office of the Courts."

Number 6: "Blood alcohol level should be a mandatory requirement on all abstracts of drunk driving conviction reported to DMV."

Number 7: "The results of ongoing research in the areas of drinking driver rehabilitation should be reviewed periodically by OAPM and DMV and the present recommendations modified if effective rehabilitative programs are found. Particular attention should be paid to the followup evaluation of the OCATS project" — that is the Orange County project — "and the recent NHTSA non-ASAP studies on drinking driver diagnosis and treatment. These projects show sufficient promise to warrant careful monitoring and review."

Number 8: "The feasibility of integrating a customized rehabilitative approach with DMVs reinstatement of suspended/revoked drunk drivers should be evaluated. Under this approach all or some suspended drunk drivers would be required to undergo treatment as a precondition to reinstatement of their driving privilege."

A possible variant of this approach which the study team would like to evaluate would be one where drivers who enrolled in such a program might have the revocation shortened — sort of a reward concept. Show successful progress, say for 6 months on a 1-year suspension, then possibly the suspension could be reduced to 6 months, or something like that, on a probationary basis.

Number 9: "The treatment of drunk drivers, whether through punitive sanction or rehabilitative treatment, should be done as part of a statewide coordinated systems approach and in such a way as to improve equivalence of justice and equivalence of treatment principles. Locally autonomous program development is not consistent with these principles."

Number 10: "Changes in California's existing drunk driving sanction schedules do not appear needed at this time. What is needed is the application of existing court sanctions."

Number 11: "Research and demonstration projects in the area of drunk driver countermeasures should be continued in California but should be conducted in accordance with rigorous research design principles. Even though past experience has indicated that this is difficult to achieve in a court environment, it is critical that truly randomized assignment techniques be used in future studies."

Number 12: "If administrative adjudication of traffic infractions by DMV hearing officers is deemed desirable based on further studies, the administrtive adjudication concept should be extended to include drunk driving offenses."

Mr. Peck, however, stated that, "The department is currently involved in a study of the feasability of administrative adjudication of traffic infractions in California. I am not involved in that study, but I understand that they have rejected this recommendation number 13 for reasons I won't go into. So you can strike out 13; it has already been rejected because of legal problems."

Number 13: "Legislation should be adopted which would make driving with a BAL of .10 or greater a nonrebuttable illegal offense ('illegal per se' law)."

Judge Doan: Starting on page 2, under "Can We Classify?", under item 3, you are recommending the use of MAST and Mortimer-Filkins. Yet later in your report you quote Ellingstadt as saying that "the major problem in assessing the validity of diagnosis at most ASAP sites is the lack of objective criteria against which drinker diagnosis procedures may be validated. This problem is no doubt due in part to the fact that drinker diagnosis for persons other than those at the alcoholic end of the social drinker/alcoholic continuum is a relatively new procedure."

Do you think, from that, that Ellingstadt is saying that the MAST and Mortimer-Filkins tests are not very valid?

Mr. Peck: Basically, I think he is qualifying — he is saying that the literature is rather limited. I don't think he is saying that they are completely invalid. He is saying it is difficult to develop an objective criterion for validating a psychometric test in this area because of the lack of an external, objective criterion. But there still is evidence, and I think Ellingstadt acknowledges this, that Mortimer-Filkins does identify some drinkers and some drivers who most people would agree have problems with liquor.

Now, the contribution of the Mortimer-Filkins beyond what you can get through objective indices is relatively minor. I personally don't feel that Mortimer-Filkins contributes much in terms of literature beyond what one would get through the objective criteria. However, the

evidence does indicate that it does contribute some. It is just a question of whether or not the additional contributions, predictions, work, and the added expense to administer the test — that is something that can be debated.

Judge Doan: Under number 1 of "How Effective Are Customized Treatment Approaches?" you indicate there is no scientifically acceptable evidence to demonstrate that classifying drinking drivers has a beneficial effect on subsequent accidents and drunk driving recidivism. Actually, it is not supposed to; it is only supposed to identify and diagnose.

Mr. Peck: That is true, but I think the essence of SCR-44 was the hypothesis of classification followed by a customized term of treatment. In other words, you classify the people... in terms of some kind of a classification taxonomy, and you assign people to the countermeasure or rehabilitative mode which appears most responsive to the pigeonhole they fall in. What we are saying here is that there is no evidence to show that that classification (combined) with the customer treatment results in any more effectiveness.

Judge Doan: Right. But you are not saying that classifying — well, you are saying that classifying has no beneficial effect on subsequent accidents of —

Mr. Peck: I think it is kind of misleading. We mean classification results in et cetera, et cetera. We mean classification including the countermeasures which fall within the classification.

Judge Doan: Well, but they are sort of two separate things. I mean, the classification might be a good thing, but we haven't developed countermeasures that are effective, perhaps, to deal with those who are classified.

Mr. Peck: That could be true. In other words, it may be that, you know, with future research one might be able to develop customized treatments that are somehow anchored in the classification system, and these may prove to be effective. All we are saying here is there is no evidence as of now to support that assumption.

Judge Doan: Now, you say that there should be no — or that there is no evidence to suggest that punitive sanctions have impact on subsequent driving records —

Mr. Peck: We say there is evidence.

Judge Doan: There is, pardon me, and you say particularly license revocation. What else do you feel, or does the Ross or Sylvania report indicate in the way of punitive sanctions that has an impact, and to what extent?

Mr. Peck: We don't know anything for sure, unfortunately. The one where the evidence is strongest would be suspensions. Now, Ross found in his evaluation of the 1967 British Drunk Driving Act that there was substantial evidence of an effect due to that law. He couldn't separate out the cause and effect because it was all intertwined —

Judge Doan: It fell apart after a year.

Mr. Peck: Yes, after a year it dissipated. So it included publicity, and it included things like — well, there was a mandatory chemical test; I think the .09 level was the criterion. And there was a license suspension, and then there was jail — I can't recall, but there may have been jail too.

Judge Doan: When you say "punitive sanctions" — plural — and you specify license suspension particularly, I was wondering what other punitive sanctions have the impact, and to what extent?

Mr. Peck: I don't know of any strong evidence to show that jail sentences or fines have any effect.

Mr. Bupp: I have one question. Just out of curiosity — I am not familiar with Ross and Sylvania — I was wondering how you were able to correlate in any way what takes place in Britain to what takes place in the United States, particularly in California. You relate this to California studies in your preamble, and yet you are citing from British studies to say that rehabilitation in California or the system in California is not very good, yet punitive sanctions are — I don't really —

Mr. Peck: Okay. It does generalize a setting in another country to make assumptions, and what you are saying, I think, is true. But there were additional data that we presented to further substantiate that point. We showed, for example, that when you look at drunk drivers, you know, under suspension and not under suspension, you find that their violation rate and accident rate is roughly 50 percent lower when they are suspended than when they are not.

Another study that we did, called the Quasi-Experimental Study, we compared suspended drunk drivers with a matched group of nonsuspended drunk drivers. The nonsuspended drunk drivers had the same number of prior drunks and everything. The only reason they were not suspended was because they had their priors dismissed by the court, so we couldn't suspend them. We found that on

almost every driver record index that the suspended group was from 25 to 50 percent lower in terms of alcohol-related accidents, drunk driving, arrests, things of this nature.

So you have to put them all together. One single study —you never can prove anything with a single study. Taking all three together, we felt there was evidence to support or at least suggest that suspensions have a deterrent effect. We qualified this. We do point out very carefully, I believe, that none of these studies is a randomly controlled experiment, so —

Judge Doan: Methodological flaws.

Mr. Peck: Right. I have to admit that. But it was the best we could do, because we don't have control over what was going on, so all we could do was just point that out.

Mr. Bupp: Were there other studies with methodological flaws that suggest that rehabilitation programs are successful, equally as well — that suggest that?

Mr. Peck: Not that I can find. Not anything quite as rigorous as the evidence that we presented on the suspensions. If you look at all the ASAP studies — 35 ASAP studies — in some you can show an increase in accidents.

Now, those had flaws, too, like, I think, the Phoenix. And there were several — In fact, there weren't that many more that showed a positive effect than a negative effect.

Now, there may be things that I am not aware of. The Los Angeles ASAP did show some suggested evidence. They pointed out that there are some flaws in that study, as there are in all the studies.

Judge Doan: I have read everything that you have in here, but I know in my own instance that — well, I have a low recidivism rate; I use a combination. And that gets me to the point that I would like to ask you here.

In 3, under your recommendations, the first sentence says, "Drunk driving should continue to be viewed as a criminal offense distinct from the concept of alcoholism."

Now, would you tie that in with 2 up there under "How Effective Are Customized Approaches?" where you say punitive sanctions are effective?

For the sake of argument here, I might agree with you that drunk driving should continue to be viewed as a criminal offense distinct from the concept of alcoholism as to finding — as to apprehension and finding of guilt.

Now, I assume tht you would go further and say that it should be treated as a criminal offense in the sentencing as well; that is, tying it in with your number 2 statement under "Customized Treatment." Is that a proper feeling?

Mr. Peck: Not exactly. I think what it is trying to say here, when you take the totality of our recommendations in the report, what we are saying is that until evidence is presented to show that these rehabilitative modes are effective, we feel that one should be very conservative in making changes in the existing system.

Now, I don't have much of a hangup about people going to a rehabilitation school as long as it doesn't interfere with the department of motor vehicle's getting the abstract. But when you actually start interfering, getting people into diversion programs, losing information from the department and the courts, then I have some hangups with that, because that influences what happens later. It is lost.

Judge Doan: I agree with you that everything should be reported.

Mr. Peck: That is one hangup I have.

Judge Doan: But you are not saying that the position of the DMV, then, is that the drunk driving, after finding, could not be, or should definitely not be, handled in a treatment modality —

Mr. Peck: No, no.

Judge Doan: — as opposed to a criminal sanction sentence?

Mr. Peck: I am not sure they are effective, but I would have —

Judge Doan: Neither one is effective.

Mr. Peck: The Department would have no hangups at all, and neither would I. We are concerned with things like the Lucky Deuce Program and, to a lesser extent, SB-330. At least by SB-330 we get a report that something happened.

Judge Doan: You don't want a reduction to something that is sort of unintelligible for reporting purposes, and you want to know what treatment modality.

Mr. Peck: Exactly. I think that is our main concern.

And let me stress that we are not concluding that license suspensions are effective. We are saying that the evidence is suggesting it, and I would say strongly suggesting it, but I am not fully convinced it is effective. So we are talking about the kinds of adjectives we use to describe the evidence, I think. Certainly, given the evidence we present here, and some of

the comments that were made this morning — Warren Bennett for one — that he knows suspensions are worthless, because drivers drive anyway. I just don't think that can be defended. I don't know what your basis for that statement is. Maybe you can doubt it, but I just don't see how you can prove that comment.

Now, I realize that a lot of drivers drive under suspension. But is it not possible that, because they are revoked, that they might drive, first of all, less often, to reduce their exposure? With reduced exposure there has got to be an effect on things like recidivism and accidents, because there is a function relationship between the two. Secondly, they might drive more carefully. If your license is revoked, you might be more concerned about being picked up. So I think the fact of driving is irrelevant, but the driving more carefully — the revocation is still serving a purpose....

APPENDIX C
COMMITTEE LIAISON ACTIVITIES

On May 21st, 1975, the National Highway Safety Advisory Committee established an Ad Hoc Task Force on Adjudicationon (Adjudication Task Force) with a responsibility to establish liaison with the Department of Health, Education and Welfare, the Department of Justice, and the American Bar Association in the areas of traffic law analysis and preparation, enforcement, and drinking driver rehabilitation as they relate to sentencing alternatives for adjudicators. The Adjudication Task Force met with representatives of the aforementioned organizations to identify mutual concerns. Subsequent meeting have been scheduled. The Task Force Chairman and members of the committee have made speeches and conducted panel discussions on alcohol and highway safety adjudication problems and needs before such professional organizations as the American Bar Association and the American Judges Association.

The Committee's objective is to encourage and gain support for national leadership coordination and funds to intensify legislative, judicial, prosecutorial and defense educational programs in the drinking and driving field.

The Committee plans to continue its liaison activities to encourage imaginative programs at the local level so that local state legislative, judicial and executive agencies focus productively upon the problem and solutions to drinking-and-driving.

PROCEEDINGS OF THE ADJUDICATION TASK FORCE LIAISON SESSION
Wednesday, March 31, 1976

Presiding Official:

Judge Rupert Doan
Chairman

Members Present:

Dr. Lois Whitley
Deputy Director, State Assistance Branch
National Institute on Alcohol Abuse and Alcoholism

John Whitlock
Program Administrator, Drinking Driver Projects
National Institute on Alcohol Abuse and Alcoholism

Philip B. Singer
Executive Assistant for Implementation, Criminal Justice Section, American Bar Association

Stephen Goldspiel
Staff Director, Judicial Administrative Division
American Bar Association

Albert B. Logan
Director, American Bar Association

Bud Thar
Special Assistant for Transportation
National Governors Conference

Bonnie Gowdy
Courts Specialist
National Institute on Law Enforcement and Criminal Justice (LEAA)
U.S. Department of Justice

Chuck Livingston
Director, Office of Driver and Pedestrian Programs

Dwight Fee
Special Assistant for Public Education and Information

Elaine Weinstein
Highway Safety Program Specialist
Rehabilitation and Education Division

George Brandt
Chief, Adjudication Branch
Driver Licensing and Adjudication Division

Otto Hall
Probation and Pre-Sentence Investigation Specialist
Adjudication Branch

Hon. T. Quentin Cannon
Utah House of Representatives

Robert J. Forman
Vice President, Safety
Greyhound Lines, Inc.
Greyhound Towers, Phoenix, Arizona

Judge Rupert Doan, Chaiman of the Ad Hoc Task Force on Adjudication, opened the Liaison Session pursuant to the NHSAC's Driver Subcommittee mandate to establish liaison with other agencies, specifically HEW, NIAAA, the American Bar Association, LEAA, American Judges Association, and all other agencies that have a mutual interest or endeavor in the areas of traffic law analysis and

**A complete transcript of the Adjudication Task Force Liaison Session may be obtained from the NHTSA Office of the Executive Secretary.*

preparation, enforcement, and driver rehabilitation as they relate to adjudication.

Judge Doan established the fact that members of the Task Force had made site visits to Phoenix, Arizona, Cincinnati, Ohio, and Los Angeles, California for the purpose of studying and reviewing their respective traffic adjudication systems as well as referral and rehabilitation programs.

Dr. Gary Scrimgeour presented an overview of the Task Force interim report which included the following recommendations:

1. NHTSA should continue to support the use of probation for drinking drivers. This is strictly an NHTSA-oriented recommendation, but such effort should be done in conjunction with LEAA and NIAAA. Dr. Scrimgeour noted that such an endeavor should be a major area for future NHTSA work: "This crosses LEAA in the area of corrections and courts. It crosses NIAAA in the area of coerced referral as a treatment modality. It crosses with ABA in the standards, and what the implications are — I think there are some major implications there. It crosses with the American Judges Association, obviously, in the way they are interested in support."

2. The Task Force recommends that NHTSA devote further attention to the individual ASAP developments in this area. "NHTSA should have a look at what the ASAPs have created at the local level. Then it should cooperate with LEAA and NIAAA in devising model information systems for the court processing of drinking driver cases."

Other recommendations, other than inter-agency liaison, involve the areas of judicial education, the health-legal approach, enforcement of drinking driver cases, prosecution, defense services, and trial. Dr. Scrimgeour state for example that "the Task Force recommends that both NHTSA and LEAA pay more attention to legislation and court rules which discourage routing manipulation of court calendars and procedures. Again, there is impact on ABA for standard."

Another example is diagnostic evaluation, which is the presentence process. "The major recommendation affecting NIAAA — possibly affecting NIAAA and definitely affecting LEAA, or any area where you are designing court or correctional data systems, is what this one addresses, and some major contributions have been made."

A third example is probation,traditional sanctions, alternative sanctions including alcohol safety schools and rehabilitation modalities,sanction effectiveness and driver records.

The general conclusions of the Task Force, as presented by Dr. Scrimgeour, regarding ASAP as a viable systems approach to the drinking driver are:

1. "The ASAP concept represents the first major constructive acceptance by highway safety agencies of responsibility for supporting the handling of drinking driver cases through the courts. It has created in many courts for the first time a recognition of public safety and societal objectives of drinking driving laws."

2. The second conclusion is: "The operation and philosophy and resources of misdemeanor courts cooperating with ASAP change significantly during the period of project operation, with resulting innovation in the procedures for misdemeanor justice. That one is aimed specifically at ASAP's relationship with the court and the effect which the coordinating agency had in changing procedures for misdemeanor judgments."

3. The systems approach used by ASAP reveals the strong influence of courts on all other components of the system for handling drinking drivers. The Task Force believes the courts emerge as the pivotal agents in determining society's response to drinking driving. Only the systems approach seems to involve these key agents deeply in the system.

4. The fourth one: By enhancing cooperation among the diverse elements of the criminal justice system, and by establishing liaison between the courts and the alcoholism treatment system, ASAP has had a major impact on the community response to alcohol abuse, extending beyond that of drinking driving cases.

"Now, this one, when rewritten, will aim specifically at the community and city management and county management benefits of the systems approach."

It is important to note that the Task Force study team did not investigate the highway safety effectiveness of ASAP. It concentrated only on the benefits to the adjudication system.

In response to a question by Ms. Bonnie Gowdy of LEAA, as to the possibility of mutual governmental agency funding of alcohol-related traffic safety programs, a general discussion by various attendees ensued. No consensus or specific commitments on mutual funding resulted from this exchange of dialogue.

Just prior to adjournment the liaison session representatives were informed by Chairman Doan that they would be receiving a final report of the Task Force.

FRONTIERS OF TRAFFIC ADJUDICATION OR VISIONS OF THE FUTURE*

Judge Rupert A. Doan

I am delighted to be here today to take part in this seminar.

By way of introduction, I have served 10 years in the Hamilton County Municipal Court, which encompasses the whole greater Cincinnati area. Technically, my geographic jurisdiction has a population of 1 million, but our area is the tristate hub of employment, sports, entertainment, shopping, and cultural activities and has a real or weighted caseload of a population of 1½ million. Also contributing to our caseload is the fact that we are the transportation gateway to the West and South for most Northeastern States.

I have served two terms as presiding judge of this lower court "circus," but I feel the reason for my invitation to participate in this seminar is the result of work I have been a part of as chairman of the Adjudication Committee within the Department of Transportation's National Highway Transportation Safety Advisory Commission.

Our subject today, "Frontiers of Traffic Adjudication," is an intriguing and provacative one, because experience has repeatedly demonstrated that today's dreams often become tomorrow's reality. Some of the ideas I will touch upon are already "old hat" in many jurisdictions but may be 25 years away in others.

Now, to predict what might happen a quarter century into the future is pretty risky at best, particularly in transportation and adjudication. For example, who in 1944 would have had the temerity to predict that the United States would land men on the moon 25 years later, in 1969? For most of us, certainly, that thought was as remote as the Moon then was from the planet Earth. On the other hand, change often does not come as rapidly as we sometimes foresee. In 1950, for instance, there were some who believed that by now we all would be enjoying automated highways. That has not yet come to pass.

Also, who in 1950 envisioned that this nation was on the brink of embarking on the greatest roadbuilding program the world has ever known? Yet just 6 years later Congress enacted the legislation that launched the 42,500-mile Interstate system. And in 1950 who would have had the prescience to foretell the incredible collapse of the American railroads?

Obviously, then, prophecy is an inexact science, to put it in the most favorable light. However, with considerable trepidation, and with the hope that no one will hold me to them, I submit the following thoughts:

- The automobile, in some form, will continue to be the predominant form of transportation in this nation. Thus traffic courts will still be in business. The autos will be much more energy-efficient and will come in great variety. Passenger vehicles will range from very high-mpg mopeds to multipassenger van-buses and recreational vehicles, with a high proportion of diesel and some sterling cycle engines. Low-powered electric and other two- or three-seat vehicles capable of a practical maximum speed of 30 miles per hour for use in neighborhoods and urban areas, carefully streamlined high-speed intercity vehicles in two- and fiveseat models, and very light utility vehicles serving the pickup and van role will be available.

- Motor fuels will include gasoline blended with 20 to 30 percent methanol, diesel fuel, nonpetroleum fuels from coal, gasahol (made from corn), cellulose products and wastes, and electricity. Great progress will have been made in developing and producing synthetic fuels.

- Fuel, in terms of 1976 dollars, will cost about $2 per gallon, including taxes. But expenditures per passenger-mile will have increased less than 100 percent, perhaps only 25 percent for the conservation-conscious family.

- Trucks will be operating in designated lanes on selected intercity routes as trains of 3 to 12 semitrailer units behind a single tractor-truck, with tandem axle loads of 40,000 pounds.

- Carpooling will be an established way of life. During rush hours in urban areas more than 75 percent of the automobiles used for commuting will carry more than one person.

- Control technology will have been developed and be in use which will permit vehicles to travel at much closer headways more safely.

- Exclusive bus lanes will be in use in all large urban areas, so the future courts will have added burdens of hearing lane usage cases on top of all you have now.

- There will be much more emphasis on paratransit facilities. Buses will continue to play a major role in the urban mass transit picture, but unless there are major technological breakthroughs which greatly reduce the capital investment, few new subway systems will be in use. There will be increased use of light fixed-rail facilities (an updated version of the old trolley cars), and monorail may play a very limited role in certain areas.

**Speech presented at the American Bar Association meeting in Philadelphia and Atlanta — March, August, 1976.*

- All major cities will have several ARZs — automobile restricted zones.
- Some new Interstate-system-type freeways will have been constructed. But the focal point of the Federal-State highway program will be on expanding the capacity of existing Interstates and dramatically upgrading the existing primary and secondary roads (by then known by other names).
- Federal highway funds will be available for use by the States for rehabilitation of existing roads.
- The primary function of the railroads will be the long haul of freight, with piggybacking being used on a much larger scale. Passenger service will exist only in relatively short, high-density corridors (such as Washington-New York), but there it will thrive.
- There will be widespread use of various wastes as materials for highway pavements.
- The Federal interest in all forms of surface transportation will be expressed through a surface transportation administration, which will include highways, rails, mass transit, and perhaps the waterways.
- Highway travel will be much safer. Vehicles will have many more safety features, and our engineering technology will have advanced to the point that the roads constructed in 2001 will make those we know now look out of date.

I believe we will see, in addition to the seat and shoulder belts we now have, several new prevent systems on automobiles. We will have crash airbags in some form as standard equipment on all vehicles and a system to prevent an incompetent or alcohol- or drug-impaired driver from operating a vehicle. The latter system can be put in all production models at a cost less than an AM radio. They can be installed now individually for something over $1,000. I'll talk more about this in a few minutes.

The future of judges in the traffic system is a complicated and fast-developing topic. There are many experts who have studied the subject and say judges should not be dealing with other than aggravated DUIs and vehicular homicide cases and that all other traffic matters should be diverted and handled by referees or other parajudicial personnel. In Cincinnati, for instance, we use referees who must have the same qualifications as judges, who may handle all traffic matters if the defendant waives hearing by a judge.

I am sure that parajudicial personnel will be handling traffic cases in all jurisdictions, not just some of the larger ones, as is the present situation, in the near future. The big problem to be worked out is whether or not these traffic adjudicators should be under the control of the courts or some other authority such as the State or local department of vehicles or the prosecutorial authority. The debate is whether or not traffic cases should be a criminal matter or diverted from the court and decriminalized.

There are several projects of diversion now ongoing that you can study. There is a prosecutorial program in Phoenix (PACT); a decriminalization program by so-called traffic specialists in Seattle, called SAFE; and a DMV program in New York City. In all three areas, special circumstances have dictated these programs and approaches. They are experimental and have many constitutional and philosophical questions to be answered.

I submit that when all is said and done, there will be widespread use of parajudicials in traffic adjudication and they will be controlled and programmed by the authority of the courts. One pragmatic reason is that many judges feel threatened by the use of parajudicials, in that the bulk of many judges' work is traffic, and they feel their bench might be eliminated or made unnecessary. Thus, judges will fight to keep traffic cases under their authority.

Another, better reason for keeping traffic within the judicial authority is one of psychological countermeasure. I call this the mother-father syndrome. That is, any sort of probation or educational countermeasure of rehabilitation is much more effective if the judge serves as a father figure who will be rough and tough if a probationer does not respond and cooperate with the mother-helper figure of the probation or clinic officer and his breach is reported to the judge-father person. The system needs this psychological clout or threat.

It seems appropriate to talk here about the inevitable restructuring of our future court systems. Within the next 25 years all States will join the few that now have a unified trial bench with districting. The present so-called lower courts will be merged with general-jurisdiction courts as a division thereof. This development will eliminate salary jealousies and the threat of lower court judges running against higher court judges. Maximum use of judicial and supportive personnel will result, along with elimination of duplicate systems and personnel that we now see.

There will be districting so that judicial time will be equalized. And the best part of all is that these restructured

courts will be financed by the State rather than the local fiscal authorities, who often are financially pinched or are engaged in petty political or personality problems with judges. Thus all courts will have the ability to have proper facilities and countermeasure programs, financed by the State.

Every State will have judicial rules of superintendence under the authority of the State supreme court, and these rules will set forth the conduct for traffic adjudication and mandatory time frames for terminating cases. In the next 25 years, too, there will be an elimination of the political judiciary, and systems of selection and retention will follow a modified Missouri plan nationwide.

I submit that all traffic court judges will approach sentencing in serious offenses using the Federal ASAP modality of identification and diagnosis, whether used in the pre-sentence form or in a direct sentencing over to a probation authority for handling. This approach is perhaps the best thing ever to happen in serious traffic offenses and makes the designing of countermeasures easier and appropriate. I foresee the elimination of statutory mandatory sentences across the country in the next 25 years, contrary to what you may hear today, because they just don't work, for a variety of reasons They haven't worked in America, England, Germany, or Sweden, contrary to popular belief.

Behavior modification is a relatively new science in the traffic field and will be a developed and widely used component of traffic sanctions in the future. Many programs are showing great promise in this field, not just with specific offenders but also with the public as a whole.

Countermeasure sanctions will be varied and innovative and will have as many variances as necessary to fit and mold to a particular offender. I am sure we will see a great use of community service alternative sentencing in the future.

The present handling of DUI cases in this country is muddled and confused. We are groping now, and our efforts portend the future. I definitely feel the health-legal approach will become the standard of the future. The ASAP programs showed that the method of identification and diagnosis is the best program we have, and the most intelligent. There was a definite effect on the recidivism rate in most of the ASAP programs, but these programs did not last long enough to scientifically support this conclusion. Right now there are several DOT-supported long-term random-sampling followup studies in progress which will support the effect we know has resulted.

In the DUI area there is an abundance of plea or charge bargaining in many areas of the country. It is rampant in California, for instance. I was recently in California attending a series of seminars regarding DWI and was stunned to learn that they have very few DWI convictions. They have good enforcement, as pointed out by 125,000 DWI arrests in Los Angeles County alone, but the charges are overwhelmingly reduced to reckless driving. I questioned several judges about this, and the unanimous response was "Everyone in California knows that 'reckless operation' is really DWI."

Well, this brings up the horrible fallacy of charge bargaining as it relates to the reporting process for statistical purposes. This type of facade is driving all DMVs up a wall and is giving a terribly inaccurate statistical view of the biggest traffic problem in this country. Everyone in California or Phoenix may know what "reckless driving" means there, but the safety and hiring personnel for Greyhound and other large over-the-road operators don't know.

There is a wild hue and cry from DMVs, the transportation industry, the governors' transportation representatives, and the Department of Health and LEAA in this regard. And in the future these ruses in all forms to get around a DWI will be eliminated, and we will have a "pure" approach. This is a big pressure and influence in the elimination of mandatory DWI sentences regarding incarceration and total license suspensions. All judges, prosecutors, and the public in the future will realize that a pure approach to DWI charging and reporting is necessary if this country is to reduce the 50 percent death toll and annual $30-billion price tag caused by drunk driving.

In the future we will be using more hospitalization and concentrated psychiatric modalities, such as they do in Sweden, in DWI cases. The future use of the identification and diagnosis approach will enable courts to make appropriate use of these techniques.

Another DWI countermeasure that looms in the future is the ordering of the prevent interlock installation as a condition to keep or regain driving privileges. This would be at the expense of the defendant.

The last look into the future I would like to mention is that of continuing judicial education. Up to about 10 years ago if a man was appointed or elected to the bench, he was deemed to know everything necessary to be on the bench the rest of his life. Fifty years ago it was the exception for a judge to

attend seminars or continuing judicial education programs. Actually, the law was pretty static, and a judge could generally effectively function without any upgrading. Today, with the tremendous, almost daily appellate changes in search and seizure and other phases of the law, it is a rare exception for a judge not to attend continuing educational programs.

In the future, under rules of superintendence that I mentioned, all States will require that sitting judges earn so many credit hours of continuing judicial education. Under the restructuring, all expenses and fees will be paid by the State. So tell your comrades at home to shine up their traveling shoes. I can even envision sabbaticals for rest, rehabilitation, and education.

SYNOPSIS OF NHSAC ADJUDICATION & ALCOHOL SUBCOMMITTEE SEMINAR PRESENTATION AT THE AMERICAN JUDGES ASSOCIATION ANNUAL CONFERENCE

Las Vegas, Nevada
November 29 - December 2, 1976

NHSAC Members Participating

Judge Rupert A. Doan, Chairman
Hon. T. Quentin Cannon, Vice Chairman
Robert Forman
Hon. Norman Howard
Virginia Silva
Ralph Van Natta

NHSAC Invited Participants:

Dr. Gary Scrimgeour
Professor Studies Associates
(NHTSA Contractor)

Dr. Lawrence Wharton
Director, Alcoholism Program
Long Beach General Hospital

Gilbert Carmichael
Former Member, NHSAC

NHTSA Staff Participating:

Otto Hall
Traffic Safety Programs

Judge Doan spoke to the convened conference on November 29, outlining the Adjudication & Alcohol Subcommittee's seminar, and encouraged the judges to attend. Judge Doan established liaison with the American Judges Association (AJA) executive director, Judge Seymour Brown, confirming the Subcommittee's seminar agenda and selecting the conference room to accommodate the seminar. Room reservations for the participants were confirmed.

All the participants were present on November 30 for the 8:30 a.m. briefing by Judge Doan. All members were instructed to attend and observe the judicial education sessions conducted by the American Academy of Judicial Education. Members were advised to converse and socialize with the attending judges and to attempt to engage them in discussions pertaining to the handling of alcohol-related traffic offenses and other misdemeanors.

All members chose to attend the seminar entitled "Scientific Evidence in Traffic Cases" conducted by Dr. Edgar W. Kivela, a safety official in Michigan. The members and staff joined in the discussion and offered some expertise in areas unfamiliar to the seminar leader. Dr. Kivela covered all phases of mechanical testing for blood alcohol concentrations to be used in court cases. He related all known variables in this scientific area. Many members also attended the session entitled "Recent U.S. Supreme Court Decisions" by Professor Charles H. Whitebread. Another session, "Inherent Powers of the Court — Judicial Responsibility," was also attended.

The seminar sponsored and conducted by the Adjudication & Alcohol Subcommittee began at 1 p.m. on December 1, 1976, and concluded about 5:15 p.m. Attendance by delegate judges varied throughout the afternoon between 40 and 61. Our first speaker, Mr. Gilbert Carmichael, spoke of his experience on the Advisory Committee and his early frustration with the adjudication process in this country in handling alcohol-related traffic offenses. He indicated that at one point he was in favor of total decriminalization of all traffic-alcohol cases, as he felt that American judges and the court system could not adequately or effectively deal with the problem. Mr. Carmichael related that he has fully changed his mind and is in favor of the health-legal approach to the sentencing of drinking drivers, as a result of studying and analyzing the ASAP system management approach to alcohol-related cases and seeing the procedure in Cincinnati, Ohio. He further indicated that judicial education in this area is much needed and pre-sentence investigation personnel for all courts is an absolute necessity.

Judge Doan initially had presented an overall history of the Advisory Committee. He outlined the Subcommittee's status report and gave a broad overview of the health-legal approach to the sentencing of alcohol-related traffic offenses. He also outlined the concept of identification, diagnosis, and referral in the court process. Judge Doan indicated that the courts historically have a poor record in dealing with alcohol-abusing offenders and that, while the courts have a primary legal function, secondarily the courts provide the best opportunity in this country to identify the alcoholic or alcohol abuser. Judge Doan introduced all members of the Subcommittee, indicating their specific strong backgrounds relating to the subject.

Dr. Larry Wharton, guest participant, was introduced and spoke on the topic "Alcoholism: Disease and the Law." Dr. Wharton spoke expertly on the physiological and psychological effects of the use of alcohol. He addressed the judges in lay terms and covered the subject thoroughly, giving the

judges insight into the practical effects of and reactions to alcohol abuse.

Dr. Gary Scrimgeour, guest participant, lectured the judges regarding judicial education and presented a very learned and candid analysis of the general judicial personality and attitude. Dr. Scrimgeour indicated that judges are very difficult to educate inasmuch as they have to play the part of the "all-knowing" which the public has placed on them, and their insecurity with this mantle tends to make them indifferent and unresponsive to the call for continuing education.

Mr. Otto Hall of the NHTSA staff next apprised the judges of the Department's concern in the field of adjudication of alcohol-related traffic offenses and judicial education in this area. He outlined many of the projects the Department is involved with and informed the judges of the ongoing research of the Department. He invited them to apply for participation where appropriate. He informed the judges that the Department stands ready to help in any way possible with the problems confronting them in this area. Mr. Hall requested the judges to participate in an evaluation of our efforts at the seminar, as well as listing any problem areas of specific interest that they would like to see developed by the Department.

The final portion of the program was a question-and-answer session where the judges directed questions to our Committee and lecturers. The judges and the panel discussed the practical aspects and concerns in this whole area.

General Observations

1. The need of judges for education in this field.

2. We must emphasize to the public and the judges that they (the judges) are not able to cure, nor should they be thought to have the responsibility to cure, alcohol offenders. They merely identify, diagnose, and refer.

3. A unique and wonderful thing happened: State legislators and judges got together in a give-and-take discussion. This should happen more often.

4. Future seminars should be longer, with general sessions, then divide into two groups; i.e., multijudge, large jurisdictions and single-judge, smaller jurisdictions.

5. I believe most judges who attended have had some contract with developing the identification, diagnosis, and referral concept. They seem to accept this and are familiar with the system management approach — more so than we may think. Perhaps judicial educators, NHTSA, and others should concentrate on educating judges in the "how to do it" plan.

We should package all plans and experiences that have proved useful around the country and disseminate them to the judges. We have to teach them how to set up the court procedures, how to marshal the community and its resources to create referral alternatives. The Southern sites we visited have done a great job on this for very little money compared to DOT ASAP site expenditures.

APPENDIX D
NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE RESOLUTIONS

The NHSAC adopted resolutions for the Secretary of Transportation of the United States Department of Transportation to improve the effectiveness highway safety programs. The recommendations make sense as a unit — in that way they are significant. Separately they are fragmented into meaningless parts of a whole that is difficult to grasp. In the resolutions, the Secretary of Transportation is cast into a central energizing role with reference to the President, the Cabinet, and other federal agencies on the subject of drinking-and-driving. The White House Conference resolution in particular stresses this responsibility.[1]

The vital point to keep in mind about the resolutions is that they provide the needed integration of policy impacts at every level of government so that there is a united force at work on a very serious social problem which grows more acute as our energy conservation needs rise to reduce the waste of accidents. Multiple goals are:

1. Reduction of accidents, deaths and property damage.

2. Improving highway safety, security in driving and public health.

3. Reduction of economic losses in all levels of impact after accidents.

4. Reduction in waste; an increase in efficiency per unit of energy expended for transportation.

5. Improvement of the fairness, efficiency and effectiveness of the drinking-driver control system.

Resolution:
NHSAC Representation on the Interagency Committee on Federal Activities for Alcohol Abuse

Be it Resolved, that the Secretary of Transportation take appropriate action to have a member of the Adjudication Task Force of the National Highway Safety Advisory Committee sit as a public member representative on the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism (Hughes Act) to provide essential input in addressing the Nation's alcohol problems and the public safety implications. (April 2, 1976.)

Resolution:
Funding Support for Judicial Education in Alcohol and Highway Safety

Be it Resolved that the National Highway Safety Advisory Committee 1) supports congressional legislation to provide funds for the education of the Nation's lower judiciary in alcoholism and alcohol abuse to assist them in improved offender case processing, and 2) encourages the revision of the National Highway Traffic Safety Administration's (NHTSA) and the National Institute of Alcohol Abuse and Alcoholism's Interagency Agreement to include a provision for lower judiciary education. The Secretary of Transportation is requested to provide copies of this resoluton to the Senate and House Judiciary Committees, NHTSA, and the National Institue. (April 2, 1976.)

Resolution:
Statewide Alcohol Safety Program Coordinator

The National Highway Safety Advisory Committee has reviewed in depth the importance of the development of a Statewide Alcohol Highway Safety Program that would mobilize the resources of alcohol safety programs, both private and public, that are developing within State jurisdictions.

Special attention should be given to judicial alcohol safety referral activities which involve the private and public sectors in order to insure maximum utilization of available treatment alternatives within the two sectors.

The Advisory Committee recommends to the Secretary of Transportation that in all jurisdictions there be established a position of Statewide Alcohol Highway Safety Program Coordinator reporting directly to the Governor. (January 13, 1977.)

Resolution:
State Revenue Legislation for Alcohol and Highway Safety-Related Programs

The National Highway Safety Advisory Committee recommends that the Secretary of Transportation take all necessary steps to encourage the legislatures of all jurisdictions enumerated in the Highway Safety Act of 1966, as amended, to take the initiative to adopt revenue legislation which would sufficiently fund future Statewide development of alcohol abuse, alcoholism prevention and treatment, and appropriate highway safety-related programs.

Legislation, from which such revenue would be derived and earmarked for the funding of the respective State alcohol programs, could range from an excise or user tax on alcohol

**Secretary of Transportation responses to each resolution are on file in the NHTSA Office of the Executive Secretary.*

beverages sold (subject to legislative review or public scrutiny), to a special court cost levied on alcohol-related convictions. (January 13, 1977.)

Resolution: White House Conference on Alcoholism and Alcohol Abuse

Whereas the societal problem of alcohol abuse and alcoholism permeates all facets of public and private life, and is disproportionately represented in civil and criminal litigation nationally, as exemplified by the major driving under the influence of intoxicating liquor caseload in the courts of limited jurisdiction, and

Whereas alcohol abuse and alcoholism continues to adversely impact on the Nation's economy, health, and public safety, particularly in terms of loss of individual and family initiative, life, and property damage, especially motor vehicle reparations, and

Whereas in the last five years the private industry and professional associations, States, local jurisdictions, and the Federal Government have mounted efforts to develop means of deterring the public, through education and identification, referral, and treatment programs, from alcoholism and alcohol abuse, and

Whereas there is a great need to reassess the progress that has been made in this field and to chart future national areas of joint effort by the private and public sector to better combat rising alcoholism and alcohol abuse and its deleterious effects;

Be It Resolved, that the Secretary of Transportation request the President of the United States to convene a White House Conference to 1) identify the pervasiveness of the alcoholism and alcohol abuse problem, 2) determine which "working solutions" have been effective in this field, and 3) develop a report which will assist in unifying private and public sector support for more effective efforts in the future.

Be It Further Resolved, that the Secretary of Transportation request the President of the United Sates to conduct the White House Conference under the sponsorship of the National Highway Safety Advisory Committee and by the dual secretariats of the Department of Transportation and the Department of Health, Education and Welfare (National Institute for Alcohol Abuse and Alcoholism), and invite as participants key members and executives from all facets of society who have the authority to commit resources and assign priorities and resonsibility in both private and public sectors. (January 13, 1977.)[31]

APPENDIX E
BIBLIOGRAPHY

Following is a list of the educational packages designed for personnel within the criminal justice system supporting the ASAP concept. Some packages are designed to be given by outside experts, while others use trained local or State personnel to deliver the materials. Further information may be obtained from Dr. William Tarrants, Manpower Development Division, National Highway Traffic Safety Administration, Washington, D.C. 20590, or from State and regional highway safety representatives.

DWI Law Enforcement Training

Manuals prepared and published by Highway Traffic Safety Center, Michigan State University (Lansing, Mich.) under Contract No. DOT HS-334-3-645 for NHTSA. Instructor-trining institutes conducted by Dunlap and Associates, Inc. (Darien, Conn.).

Police Management Training on Factors Influencing DWI Arrests

Manuals prepared and published by Dunlap and Associates, Inc. (Darien, Conn.) under Contract No. DOT HS-4-00987 for NHTSA. Instructor-training institutes conducted by Applied Science Associates, Inc. (Valencia, Pa.).

Alcohol Highway-Traffic Safety Workshop for the Judiciary

(Same) for State Officials.

(Same) for Law Enforcement Officials.

(Same) for Alcohol Rehabilitation and Treatment Personnel.

Manuals prepared and published by Abt Associates, Inc. (Cambridge, Mass.) under Contract No. DOT HS-820-300 for NHTSA. Instructor-training institutes conducted by Technical Education Research Center, Inc. (Champaign, Ill.)

Legislators' Seminar in Alcohol and Highway Safety

Manuals prepared and published, and seminars conducted, by Applied Science Associates, Inc. (Valencia, Pa.) under Contract No. DOT HS-4-00985 for NHTSA.

Prosecutors' Seminar in Alcohol Safety

Manuals prepared and published, and seminars conducted, by the Institute for Research in Public Safety, Indiana University (Bloomington, Ind.) under Contract No. DOT HS-034-351-72 for NHTSA.

Judicial Seminar in Alcohol Safety

Manuals prepared and published, and seminars conducted, by the Institute for Research in Public Safety, Indiana University (Bloomington, Ind.) under Contract No. DOT HS-034-1-207 for NHTSA.

Seminar in Alcohol and Highway Safety: Pre-sentence, Probation, Referral, and Rehabilitation

Manuals prepared and published, and seminars conducted by the Institute for Research in Public Safety, Indiana University (Bloomington, Ind.) under Contract No. DOT HS-034-2-351-72 for NHTSA.

Alcohol, Highway Safety, and the DWI Defense Attorney: A Seminar Briefing Package for State and Local Bar Associations

Manuals prepared and published, and seminars conducted, by Dunlap and Associates, Inc., One Parkland Drive, Darien, Conn. 06820, 31 July 1975, under Contract No. DOT HS-4-00986.

The best source for both descriptive and statistical information concerning the 35 Alcohol Safety Action Projects is the National Highway Traffic Safety Administration. NHTSA has published four full summaries of ASAP activities. The first is *Alcohol Safety Action Projects: Evaluation of Operations, 1972* (DOT HS-800-874), in three volumes. Volume I is a summary of all countermeasure areas; Volume II deals with each countermeasure area in seven separate chapters; and Volume III contains formal descriptions of the individual projects. The report is particularly useful for basic descriptions of ASAP history and objectives. Its statistical information is limited to coverage of 2 operational years for the first 9 ASAPs and of only 1 year for the second 20 ASAPs. The *Evaluation of Operations, 1973* (DOT HS-800-973) is briefer than the 1972 report but contains data for 2 full years of operations. Much more complete and current is the most recent in the series, *Alcohol Safety Action Projects: Evaluation of Operations, 1974* (DOT HS-801-726). This series covers data through April 1976 and is the first report to reflect changes in NHTSA's procedures as a result of information from the ASAP experience.

Early in the development of ASAP, NHTSA published a

**The Secretary of Transportation's response is on file in the office of the NHTSA Executive Secretariat.*

series of documents for use in establishing an ASAP, including handbooks for project directors and evaluators. Though most of these documents are not outmoded, *Guidelines for Planning and Developing State and Community Alcohol Programs* (DOT HS-800-995), published in late 1973, remains a valuable introduction. As NHTSA made progress in the area of evaluation design, both the court countermeasure and the rehabilitation countermeasure benefited. Particularly useful is *One Model for the Evaluation of ASAP Rehabilitation Efforts* (DOT HS-801244), by James L. Nichols and Raymond E. Reis, a presentation made originally at the Sixth International Conference on Alcohol, Drugs, and Traffic Safety (1974).

The NHTSA materials are, for the most part, based on data supplied by the ASAPs. Each ASAP produced quarterly reports and annual reports for 3 years or more, providing NHTSA with both narrative and statistical information about all countermeasures. The reports were produced by project staff and by the independent evaluators attached to each project, and they are intended mostly for internal consumption. Some of their statistical elements have been thrown in doubt by critiques from outsiders, by changes in evaluation requirements, and by the inability of local jurisdictions to supply all the required information. The reports remain invaluable for learning the problems and solutions encountered by the ASAPs, but only those reports which deal with the reader's specific interest should be sought. Various special analytic studies undertaken by individual ASAPs are listed in the NHTSA annual reports. There is much valuable information in all these reports, but they are difficult to obtain and to digest.

There is a series of important evaluations from independent sources. Earliest was P. Zador, *Statistical Evaluation of the Effectiveness of Alcohol Safety Action Programs* (Insurance Institute for Highway Safety, 1974), which concentrated on the evaluation methodology used in the 1972 NHTSA report and reanalyzed the results to undermine claims that the ASAPs were saving lives. Broader in scope are a series of reports from the University of South Dakota Human Factors Laboratory which (under contract to NHTSA) analyze and evaluate the methodology and accuracy of the individual ASAP reports, countermeasure area by countermeasure area. Especially useful are V.S. Ellingstadt, D.L. Struckman, and R.E. Reis, *Interim Assessment of Total Project Impact* and *Interim Analysis of Drinker Diagnosis, Referral, and Rehabilitation Countermeasures* (DOT HS-191-3759), published in 1974. In the area of rehabilitation, two reports sponsored by NIAAA are important. Stanford Research Institute evaluated the NIAAA-supported treatment programs at 10 ASAP sites and published their affirmative results in *Development of a Pilot Program for Monitoring and Evaluating the Operation of Ten DOT/NIAAA Joint Alcoholism Programs (1974)*. George R. Jacobson produced a "comprehensive review" of diagnostic and assessment techniques, including those used by ASAP, in *Diagnosis and Assessment of Alcohol Abuse and Alcoholism* (DHEW Publication No. ADM 75-228, published 1975).

A useful summary of prior evaluations is coupled with new opinions and recommendations by the California Department of Motor Vehicles, *Final Report to the Legislature of the State of California. SCR-44*, June 1975. The report analyzes both the quality of ASAP evaluations and the evidence for effectiveness of the ASAP concept with a view to making recommendations concerning new legislation. The report is appropriately cautious and readable (though it seems to interpret ASAP as nonpunitive rather than as a health-legal approach), and its skepticism about basing a referral program on the courts is salutary.

There have not yet been as many publications by outside experts concerning ASAP as might be expected, though many writers are resonding to the concept at least by inference. The authors with recent publications of most relevance to ASAP include the following: Robert F. Borkenstein, Noel Kaestner, H.L. Ross, Gary J. Scrimgeour, Robert B. Voas, and Richard Zylman. The *Proceedings of the Sixth International Conferenece on Alcohol, Drugs, and Traffic Safety* (Toronto, 1974) contains papers by NHTSA personnel on ASAP results and the recent views of several of the above authors.

The probable community impact of an ASAP has been measured by two teams of independent researchers working under NHTSA contract. Thomas E. Hawkins and Gary J. Scrimgeour provide a narrative of findings and realistic expectations from an ASAP in Southwest Research Institute's *Summary of ASAP Results for Application to State and Local Programs* (DOT HS-5-01150). This was based on experience with and materials from all 35 ASAPs and is oriented to people contemplating a local or State ASAP system. It includes important information on costs. A second analysis, aimed at measuring especially an ASAP's catalytic impact, appears in *Review of State and Com-*

munity Highway Alcohol Safety Projects: A Study of the Stimulus Effect of NHTSA Alcohol Safety Programs, prepared by Planning and Human Systems, Inc. (DOT HS-801-798).

The two most recent studies completed are:

Program Level Evaluation of ASAP Diagnosis, Referral, and Rehabilitation Efforts: Volume I, *Description of ASAP Diagnosis, Referral, and Rehabilitation Functions:* Volume II, *Analysis of ASAP Diagnosis and Referral Activity:* Volume III, *Analysis of ASAP Rehabilitation Countermeasures Effectiveness:* Volume IV, *Development of the Short-Term Rehabilitation (STR) Study:* September 1976, by the Human Factors Laboratory, Department of Psychology, University of South Dakota (DOT HS-191-3-759), and *Evaluation and System Description of ASAP Judicial Systems: Volumes I, II, III, IV, V and the Final Report,* April, 1977, by the Institute for Research in Public Safety, Indiana University (DOT HS-4-00958). The Adjudication and Alcohol Subcommittee of the National Highway Safety Advisory Committee has just completed a corollary investigation entitled, *Rural Courts: Recommendations for Courts and Highway Safety,* March, 1977.

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[1]*See Appendix E, "Evaluation & System Description of ASAP Judicial System, Final Report;" "Summary of ASAP Results for Application to State and Local Programs," and "Rural Courts: Final Report of the National Highway Safety Advisory Committee."*

[2]*See Appendix A, "Special Subcommittee Reports."*

[3]*See Appendix C, "Liaison."*

[4]*See Appendix B, "ASAP Site Visits" and Appendix E, "Summary of ASAP Findings for Application to State and Local Programs;" "Evaluation and System Description of ASAP Judicial Systems, Final Report," "Rural Courts, Final Report of the National Highway Safety Advisory Committee."*

[5]*See Appendix B, "ASAP Site Visits: Los Angeles Meeting."*

[6]*See Appendix D, "Resolutions: State Highway Safety Alcoholism Coordinator."*

[7]*See Appendix E, "Alcohol, Highway Safety Seminars for State Legislators."*

[8]*See Appendix B, "Phoenix ASAP Site Visit."*

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[10]*See Appendix E, "Alcohol, Highway Safety, and the DWI Defense Attorney."*

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[13]*See Appendix D, "Resolution: Statewide Alcohol Program Coordinator."*

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DOT HS 802 510
September 1977

Report on Administrative Adjudication of Traffic Infractions

Highway Safety
Act of 1973
(Section 222)

July 1977
U.S. Department of Transportation
National Highway Traffic Safety Administration
Washington, D.C. 20590

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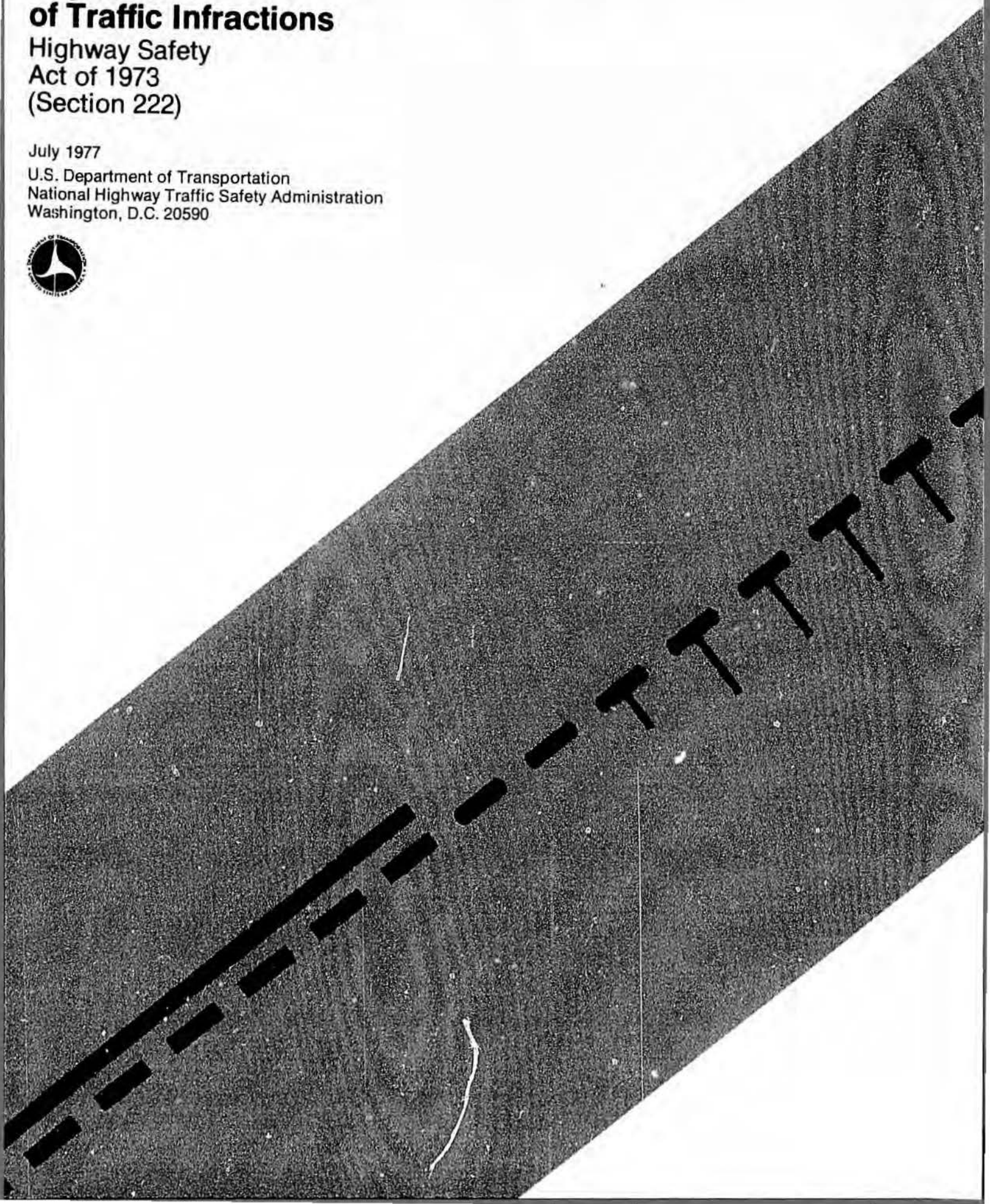

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Preface

The provisions of the Highway Safety Act of 1973, Section 222, direct the Secretary of Transportation to conduct projects to demonstrate the administrative adjudication of traffic infractions and to report by July 1 of each year on the effectiveness of such a system as compared with other methods of handling minor traffic violations. This is the third annual report of the Department of Transportation in response to those directives.

The Special Adjudication for Enforcement (SAFE) approach integrates informal administrative hearings with follow-up driver referrals. This third annual report concludes that SAFE has been a milestone in the history of adjudication and traffic research, and merits being continued as an effective and inexpensive means of streamlining the nation's judicial process. Other communities may adapt the special judicial procedures to their situations. License hearing officers must be duly qualified and any agency influence avoided.

The Seattle SAFE found that the success of the projects was attributable partly to the informal parajudicial proceedings, but that the specific driver rehabilitation programs formed the major benefits.

In Rhode Island, the new program reduced by 17 percent the backlog of cases, as well as the cost of hearings, and saved time to the police departments and prosecutors, *and* satisfied the public.

In California, the transition from judicial to administrative adjudication was difficult. Opposition stemmed from judicial and legal sources, and the qualifications of the hearing officers were questioned. The California legislature was not persuaded that the safety and cost benefits of the program outweighed questions about the rights of violators and the need for procedural safeguards.

In this and previous reports, *the concept of administrative adjudication applies to the noncriminal case processing and adjudication (within the judiciary or an executive agency) of traffic infractions such as speeding and disobeying signs, signals, and roadway markings.

**Report on Administrative Adjudication of Traffic Infractions*, July 1975; July 1976; *Supplemental Report*, 1976 (Washington: U.S. Department of Transportation).

Foreword

Until 1970 traffic adjudication throughout the country was handled by the courts of limited jurisdiction. In July 1970 the State of New York implemented an Administrative Adjudication Program (NYAAP) for traffic infractions in New York City. A strong lawyer, civil servant, driver-licensing hearing capability provided the cornerstone of the NYAAP.

A national survey was recently completed to determine the status of State driver-licensing-agency hearing authority. In addition, a limited survey was conducted on the qualifications and training of driver-licensing-agency hearing officers.

In recent years, the nation's lower criminal courts have been inundated with a large nontraffic criminal caseload. Limited judicial attention has therefore been given to traffic offenses and driver-licensing cases. The future of administrative, noncriminal traffic infraction adjudication may depend on the willingness of States to strengthen their hearing authority capability and extend it to traffic infractions. (This approach is in keeping with recommendation I. D. of the American Bar Association's Report of Pound Conference Follow-up Task Force, August 1976 on the "increased use of the administrative process as an alternative to resort to the courts."

Background

Sec. 222 of the Highway Safety Act of 1973 stated that "administrative adjudication demonstration projects shall be designed to improve highway safety by developing fair, efficient, and effective processing and procedures for traffic infraction adjudication, utilizing appropriate punishment, training, and rehabilitative measures for traffic offenders."

The National Highway Traffic Safety Administration (NHTSA) therefore initiated research and demonstration projects. Two Special Adjudication for Enforcement (SAFE) projects were funded to demonstrate administrative, noncriminal traffic infraction adjudication. The first, awarded in fiscal year 1973 to the State of Washington Department of Motor Vehicles and the Seattle Municipal Court, involved the adjudication of traffic infractions by parajudicials. The second project, awarded in fiscal year 1974 to the Rhode Island Department of Transportation, involved the adjudication of traffic infractions by administrative hearing officers. The reports from both projects were favorable.

Previous NHTSA studies focused on the evaluation of traffic adjudication approaches and the development of innovative, improved traffic case disposition methods. A traffic case processing model developed in one of the studies was used by the State of California in a major feasibiilty study and in preparing legislation to pilot test administrative adjudication of traffic offenses in that State.

An analysis was made of all State laws that have reduced the bulk of the moving rule-of-the-road violations to infractions. All the available information on administrative adjudication and noncriminal traffic case processing was summarized in a primer on advanced adjudication techniques. The primer, now in its second printing, was obtainable by interested jurisdictions.

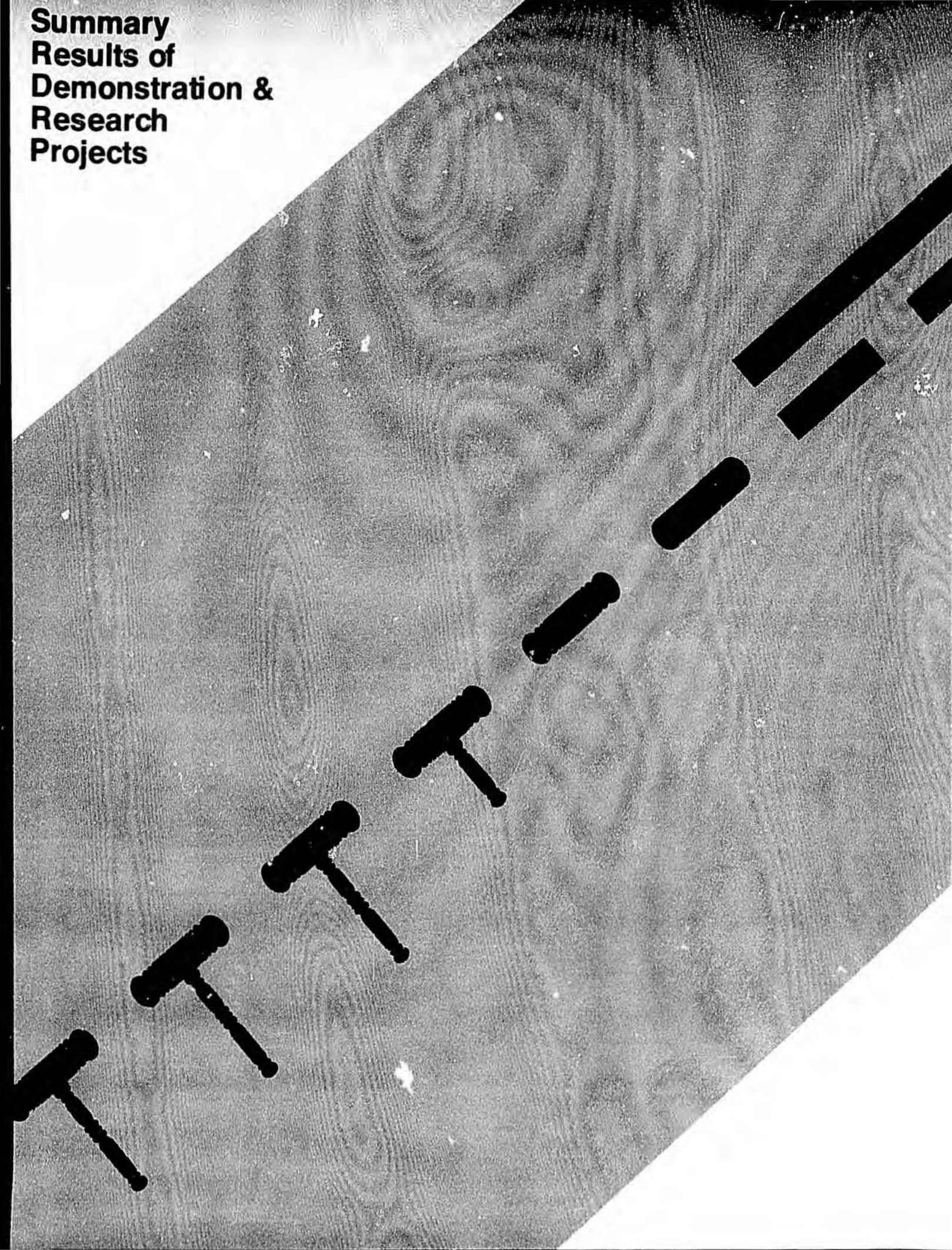
Currently, NHTSA is conducting comparative field research on (1), the fairness, efficiency and effectiveness of the administrative adjudication of traffic infractions as compared to traditional case processing in New York State, and (2), the North Dakota traffic infraction processing system as compared to the traditional system of South Dakota. There are no new results since the 1976 Supplemental Report on Administrative Adjudication of Traffic Infractions.

Demonstration and Research Project Status

Federal funding support of the first SAFE demonstration project in Seattle, Washington, ceased on June 30, 1976. The final report required by NHTSA detailing results from the two full years of operations was submitted in March 1977. The Rhode Island SAFE project completed its first full year of operations in July 1976. The first annual report detailing interim results from project activities was submitted in January 1977.

Status reports on the progress to date of contractor efforts are given in an ensuing section. Included are studies of the fairness, efficiency, and effectiveness of administrative adjudication and noncriminal case processing compared to traditional adjudication procedures; of the degree of use by the States of administrative hearings in driver-licensing agencies; of hearing-officer characteristics; of purpose and method of conducting hearings; of conformance to due process requirements as prescribed by recent court decisions; and of the development of a training curriculum for driver-licensing-agency hearing officers.

Summary Results of Demonstration & Research Projects



Seattle SAFE

Although not all Seattle SAFE components and combinations of components were equally effective in improving traffic case adjudication effectiveness, certain subsystems revealed considerable promise as a strong nucleus for the development of an optional driver control system. Some benefits were attributed to the informal, parajudicial magistrate hearings, but the specific rehabilitation programs accounted for major benefits.

Limitations of time and money did not allow a detailed analysis of each of the Seattle SAFE system elements available for assessment in this complex system, but the grouping of elements into system components did permit an adequate evaluation of the major features of the Seattle SAFE system. These elements should provide a sound basis for developing new and improved adjudication-sanction-rehabilitation procedures superior to those of the past. The SAFE system elements are the following:

- Defendant's driving records immediately available by video terminal access to State files for the adjudicator at the time the case is heard.
- Informal "one-on-one" adjudication processes, where the defendant and the magistrate discuss the case, and the magistrate renders a disposition.
- Counseling of offenders, and diagnosis of their driving problems by trained driver improvement analysts.
- Application of general and problem-specific driver rehabilitation training programs, where appropriate.

Rhode Island SAFE

Rhode Island is the first and only statewide administrative adjudication program. The program is based on a State law that decriminalized most traffic offenses and, created an Administrative Adjudication Division, to implement and manage the system, in the State's Department of Transportation.

The first year report from the Rhode Island SAFE project states that the removal of most traffic cases from the court's jurisdiction reduced by 17 percent the backlog of cases and permitted the courts to take on new functions. The report makes the following additional points.

- The public is satisfied and accepts the system.
- Savings of time to police departments and police prosecutors is the result of simplified procedures and the resolution of many cases at first hearing. Only 5 percent of the hearings involved contested cases.
- Hearings costs were lower than in traditional court system.
- Referrals to driver retraining and safety programs were made in 22 percent of the cases which were disposed of at a hearing.
- Processing and disposition of traffic offenses in terms of consistency of sanctions were improved.

The administrative adjudication system installed under the SAFE demonstration in Rhode Island is a workable one which is likely to be retained on a permanent basis. A budget submission was made to the 1977 legislature for State funding for fiscal year 1978.

Among the several advantages found in the structure of SAFE in Rhode Island are centralized record keeping, flexibility in hearing scheduling, easy access to cooperating agencies such as the registry of motor vehicles, and the promulgation of policies for all elements of the organization.

Whether the Rhode Island model could be transferred to other States would be determined by the scale of the required operation. In larger States, some regional organization may be more desirable than a totally centralized one.

State Driver-Licensing-Hearing Authority

NHTSA research has demonstrated that States must extend an "opportunity to be heard" to drivers, before their licenses may be withdrawn if there is discretion over the withdrawal. Whenever there are contested facts involved in the license withdrawal decision, the driver is entitled to a "trial type" hearing. State legislatures have full power to determine where within the State—the courts or an executive agency—should be vested the authority (1) to exercise this discretion and (2) to conduct license withdrawal hearings.

Traffic laws and other regulations concerning driver licenses were enacted, historically, as measures to protect the public safety on our highways. Driver licensing agencies were given the primary responsibility for administering traffic safety programs affecting drivers, and for determining when (and sometimes for what reason) a driver's license should be withdrawn. The full authority and control over procedures for the issuance and withdrawal of driver licenses should be vested within a single agency. There are other reasons for vesting the hearing authority with the driver licensing agency, rather than the courts.

Courts have become more and more concerned with the backlog of criminal cases and hence tend to give less attention to traffic offenses and license hearings. Moreover, it can be demonstrated that administrative agencies can more effectively conduct hearings like those concerning the withdrawal of the driver license.

The authority of an administrative agency to conduct hearings and make determinations is strengthened by provisions set forth in the model Administrative Procedures Act (APA) under which a court of law may reverse or modify the agency decisions. First, judicial reviews are to be conducted by the court *on the record*, with the addition of needed oral argument or written briefs. The Model APA identifies specific reasons for which a court may reverse or modify a decision, and these generally relate to the agency's interpretation or application of the law. The model APA states that "the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact,"[1] and thus clearly delineates the authority and responsibility of both the administrative agency and the court with respect to the conduct of such hearings. This concept should certainly apply to driver license cases. The driver licensing agency has sole jurisdictional authority to issue licenses and, similarly, should have sole authority to determine when a driver's license is to be withdrawn, subject to judicial review to guarantee due process. Eighteen jurisdictions currently do not have an APA that applies to licensing agency hearings.

Due process requires the separation of adjudicatory functions from enforcement functions within administrative agencies. This single constraint only precludes a State from having enforcement officials conduct license withdrawal hearings. Beyond due process there are other factors, however, such as the public perception of the fairness of a proceeding, that should be considered in establishing an organizational entity to conduct these hearings. The appearance of justice often depends on the perceived degree of independence of the decisionmaker, and this affects the acceptable organizational relationships of the various State personnel involved in the proceeding.

From the perspective of the driver the hearing is viewed as either a first or a final contact with driver control officials. It demonstrates how licensing agencies may be using the driver's appearance for a license withdrawal hearing as the first step in screening problem drivers. To use the hearing this way is inappropriate and demeans its importance. The hearing has great import for the driver in that it may determine whether he retains his means of earning a livelihood. The hearing, therefore, should not be subverted by using license withdrawal appearances as simply a screening mechanism.

Current practices were evaluated for their satisfaction of due process requirements. The area of greatest weakness was in notifying drivers that their licenses may be withdrawn and that they have an opportunity for a hearing. The notice of proposed withdrawal is the key document to provide the driver with sufficient information on the reasons for the withdrawal action and on his rights. He can then determine whether or not to request a hearing. This first notice to the driver should clearly state the reason that the license may be withdrawn, and should include an explanation as well as a citation of the authorizing statute. When appropriate, the date and time of the traffic offense should be indicated, particularly for implied consent or financial responsibility cases. For frequent violator cases, the notice should include a list of the offenses that culminated in the agency's seeking to withdraw the license (See Chart 1).

The information considered during the sanctioning portion of the hearing depends primarily upon the policy of each licensing agency as to what may be considered in withdrawing the driver's license. For example, some States may provide occupational licenses to those using their license as a means for earning their living; other States do not believe that the need to drive should affect whether or not a problem driver is permitted to retain his license. Furthermore, the driver's attitude, as shown by his conduct during the hearing, may be considered more by some States than by others in setting the sanction. Specific guidelines would be helpful in determining the amount of discretion over this process; these should also apply to interviews providing the "opportunity to be heard."

Driver licensing administrators are concerned with whether a special staff of legally trained hearing officers must be established to conduct license withdrawal hearings. Although this is not necessary to satisfy due process, many agencies may take this approach to obtain the capability for conducting proper hearings.

Due process does not require hearing officers to be lawyers. Nevertheless, the type of hearing envisioned requires someone familiar with many legal techniques, such as how to accept evidence and enter it into a record, how to create a record that will stand up to court review, and how to judge facts and make decisions. These skills can, of course, be taught through training programs, such as that being conducted by NHTSA.[2] Hearing

[1] Model State Administrative Procedure Act, subsec. 15(g), Uniform Laws Annotated, Vol. 9c, 1967 Com. Supp. pp. 134-161.

[2] In-service training seminar for the Driver Licensing Administrative Hearing Officer, contract no. DOT-HS-5-01268, Applied Science Associates, Inc., 1976.

officers must be able to control the conduct of the hearing and to interact with lawyers representing licensees (these counsel often do not understand the procedures applicable to driver license hearings). States faced with a choice of training nonlawyer hearing officers or of hiring new personnel, may opt for the hiring of lawyers as a means of obtaining qualified personnel as hearing officers.

Openness of Jurisdictions to Proposed Changeover

The transition from judicial adjudication of traffic infractions to administrative adjudication in California was a difficult one. Judicial and legal interests opposed the use of nonlawyer hearing officers as traffic infraction adjudicators. There was also considerable opposition to changing traffic infraction adjudication from a criminal to a civil and administrative procedure.

A central issue in the California legislature's consideration of administrative adjudication of traffic infractions was the status and qualifications of the hearing officers. Nonlawyer hearing officers who come from the ranks of the department of motor vehicles may have too much of an "efficiency/ safety" orientation to be fair and impartial in decisionmaking.

The case for highway safety and cost benefits of administrative adjudication has not been as persuasive to the California legislature as concern over the rights of the violator and the need for special procedural safeguards in case processing.

Chart 1. Sample of Proposed License Suspension Form

DEPARTMENT OF TRANSPORTATION
DRIVER LICENSE DIVISION

TO: DRIVER'S NAME
ADDRESS

DATE: _____
DRIVER LICENSE NO: _____
CASE NO: _____

NOTICE OF PROPOSED LICENSE SUSPENSION

You are hereby notified that your driver's license will be suspended due to your accumulation of _____ points on your driving record as a result of the following traffic violations:

Date	Time	Location	Violation

Under the authority of Section _____ of the State Code of Laws, your license will be suspended for _____ days beginning on _____, unless you request a hearing.

YOU HAVE A RIGHT TO A HEARING BEFORE YOUR LICENSE IS SUSPENDED.

IF A WRITTEN REQUEST FOR A HEARING IS RECEIVED BY THIS DEPARTMENT WITHIN 30 DAYS OF THE DATE OF THIS NOTICE

The hearing will determine whether there is adequate reason for the proposed suspension, or whether you may be allowed to attend driving school and retain your license because of your need to drive. To request a hearing, please detach and complete the form below and mail it to:

Driver License Division
P. O. Box
City, State
Telephone:

_____
John Doe, Director
Driver License Division

Driver's Name: Driver License No.:

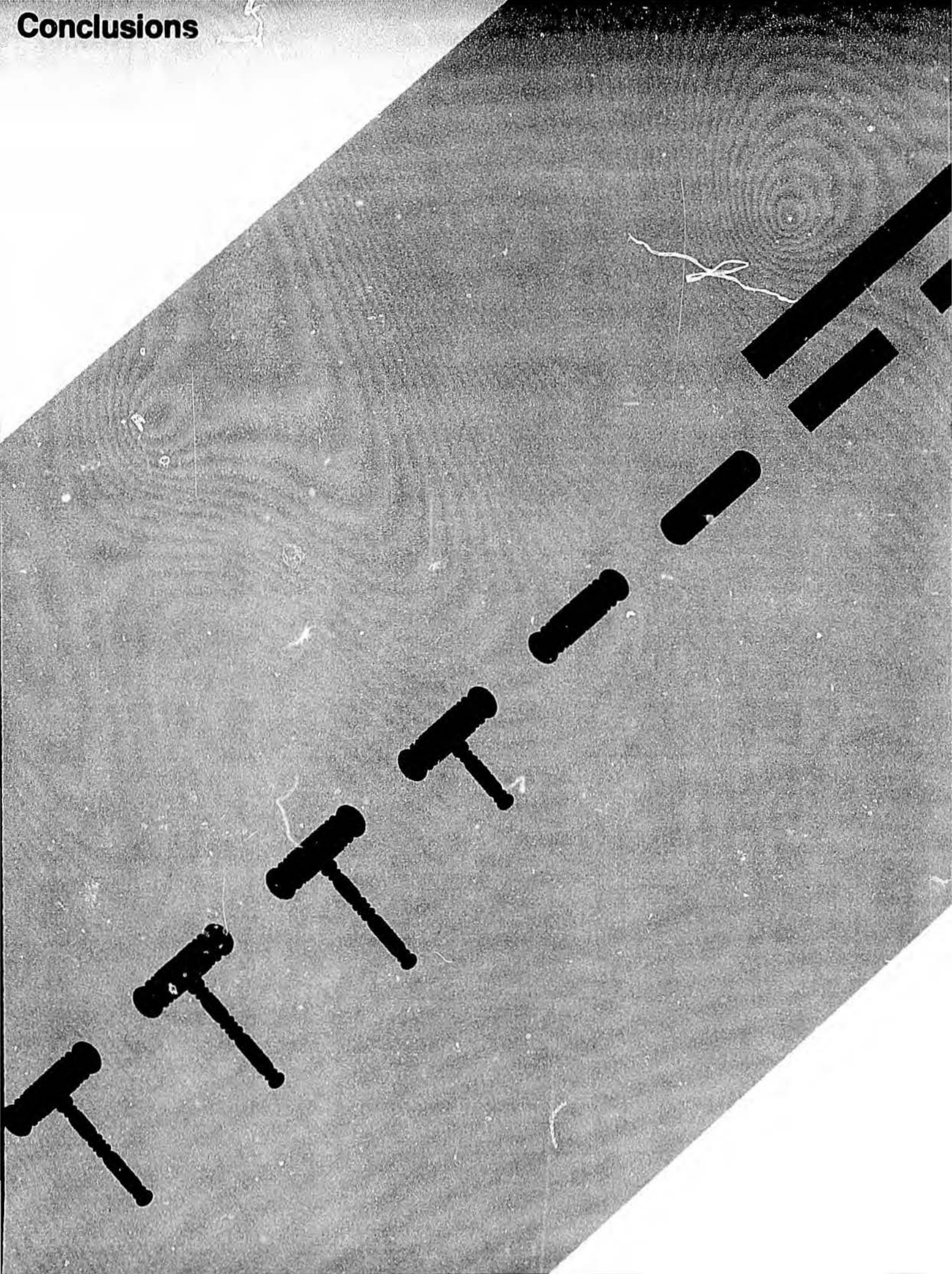
Notice Date: Case No.:

I request a hearing on the proposed suspension of my driver's license. This request is made to (check one):

- ☐ refute the traffic convictions shown above
- ☐ discuss my need to drive at work or to my job
- ☐ discuss my driving record and the reasons for the above violations
- ☐ other: _____

_____ (signature) _____ (date)

Conclusions



SAFE in both States freed the courts of a large traffic caseload and reduced the per case processing costs. The impact on the subsequent driving performance of offenders processed by the Seattle SAFE magistrates was clearly demonstrated to be as effective as the traditional court procedure. On the other hand, the even simpler bail forfeiture was also found to be least expensive and almost as effective as either the magistrate or traditional system. It could not be determined whether either magistrates or driver analysts could improve the effectiveness of driver improvement programs by selecting the clients referred to these courses.

Communities considering a parajudicial approach to handling traffic cases of the type covered by the SAFE project should continue evaluation of these procedures however, to insure that the SAFE results are applicable to their particular jurisdiction.

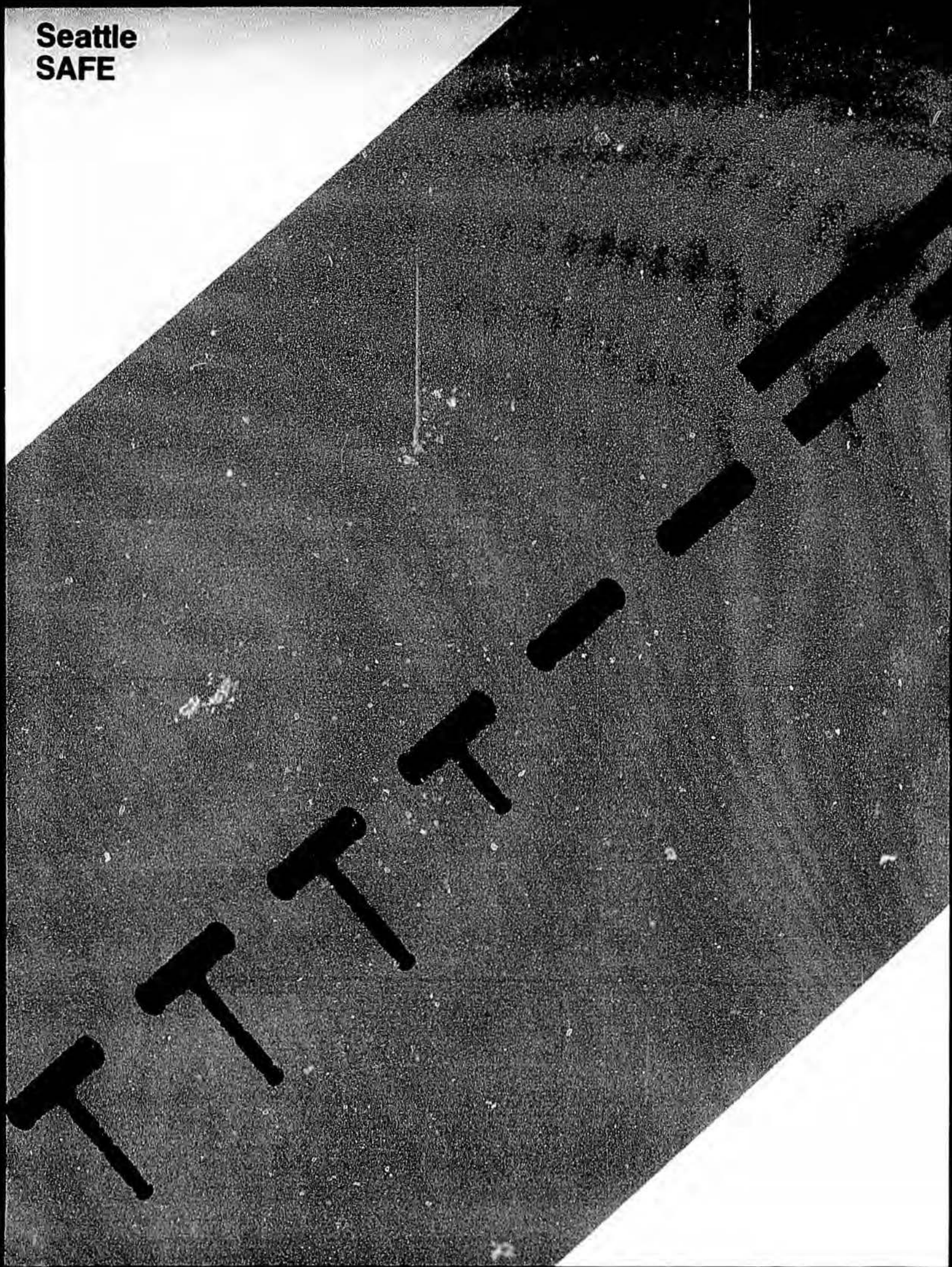
In addition to relieving court caseload, a pivotal factor to any jurisdiction's decision to adopt a parajudicial or administrative adjudication of traffic infraction should be the feasibility of integrating judicial sanction decisions with driver-licensing-agency rehabilitation and license withdrawal decisions. The Seattle SAFE parajudicial model should be the standard for this integration. If such an integration is not feasible, serious consideration should be given to the administrative adjudication approach.

Attention must be given also to the status and qualifications of the driver-licensing-agency hearing officers. If the proceedings are to be noncriminal in nature and some of the hearings officers nonlawyers, it will be necessary to try to insulate the hearing process from any appearance of undue driver-licensing-agency influence in infraction case fact finding.

Most jurisdictions need to improve and upgrade their existing driver-license-withdrawal hearing capability. Jurisdictions should be aware that the impression of justice left by these administrative hearings on the motoring public and judicial and legal interests will reflect on their professionalism and competency in highway safety. Pending adoption of the Seattle SAFE parajudicial model by more jurisdictions, progress will rest on jurisdictions' willingness to improve their licensing agency hearing capability. The following areas are identified for improvement:

- The authority to withdraw the driver license and to conduct driver license hearings should rest with the administrative agency responsible for issuing and controlling driver licenses.
- Administrative procedures acts should be adopted by all the States and made applicable to driver-license-withdrawal proceedings.
- An independent unit responsible for conducting trial type hearings be established and trial type hearings be provided in all license withdrawal actions involving contested facts.
- Driver control interviews and other driver screening mechanisms should be clearly separate from license withdrawal hearings.
- The notice of proposed license withdrawal should clearly inform the driver of his rights.
- The notice of schedule appearance should clearly inform the driver of the schedule and purpose of the appearance.
- The driver should be informed of any procedures for administrative appeals of a hearing officer's decision. Further appeals to a court of law should be made on the record.
- The driver should be informed of the findings of the hearings and reasons for the agency's determination.
- Trained specialists should serve as hearing officers.
- The hearing officer position should be a senior level one in the agency.

Seattle
SAFE



Special Adjudication for Enforcement (SAFE)[3] became operational in Seattle in July 1974 and received Federal funds through June 1976. SAFE combined the adjudication processes of the courts and the driver improvement functions of the State department of motor vehicles and the local safety council in an effort to improve traffic safety and the utilization of public resources and facilities devoted to solving driver problems. The project's objectives were the following:

- To apply swift and fair adjudication to traffic defendants.
- To identify problem drivers and refer them to appropriate corrective programs.
- To remove chronic traffic-law violators from the roads.
- To implement cost effective adjudication and rehabilitation programs.
- To reduce the traffic-case burden of the municipal courts.
- To develop programs that are accepted by the public and people who come in contact with the programs.
- To reduce traffic violations and accidents.

The SAFE program, designed to meet these objectives, included these central features:

- Appearance for adjudication at the defendant's discretion, without having to await a court date.
- Defendant's driving records immediately available by video terminal access to State files for the adjudicator at the time the case is heard.
- Informal "one-on-one" adjudication processes, where the defendant and the adjudicating magistrate discuss the case, and the magistrate renders a disposition.
- Counseling of offenders, and diagnosis of their driving problems by trained driver improvement analysts.
- Application of traditional sanctions of fines and license suspension where appropriate.
- Application of general and problem-specific driver rehabilitation training programs where appropriate.
- Education of the public concerning the SAFE program.

SAFE was designed and implemented to permit scientific evaluation of the effectiveness of the program and its elements. Major features of the evaluation strategy were the following:

- Random assignment to treatment and control groups, where appropriate and consistent with preservation of equal justice.
- Comparisons of alternative experimental treatments for handling minor traffic violations.
- Large sample sizes to facilitate statistical and practical detection of significant differences in treatment outcomes.
- Multiple criteria, or outcome measures, to assess the project's impact.

The evaluation was directed toward two broad issues: The efficiency of administering the program, and the impacts of the program on those involved. Efficiency and impacts were assessed for both the adjudication and rehabilitation components of the system. A number of factors were measured: (1) Case processing time—adjudication, analysis, rehabilitation; (2) caseflow volume—numbers of cases entering and completing programmatic system parts; (3) case dispositions—verdicts, appeals, referrals; (4) revenue and costs—fines and program administration costs; (5) driver recidivism—violations and accidents; (6) attitudes toward SAFE of affected population groups—SAFE defendants, public, police, attorneys, adjudicators.

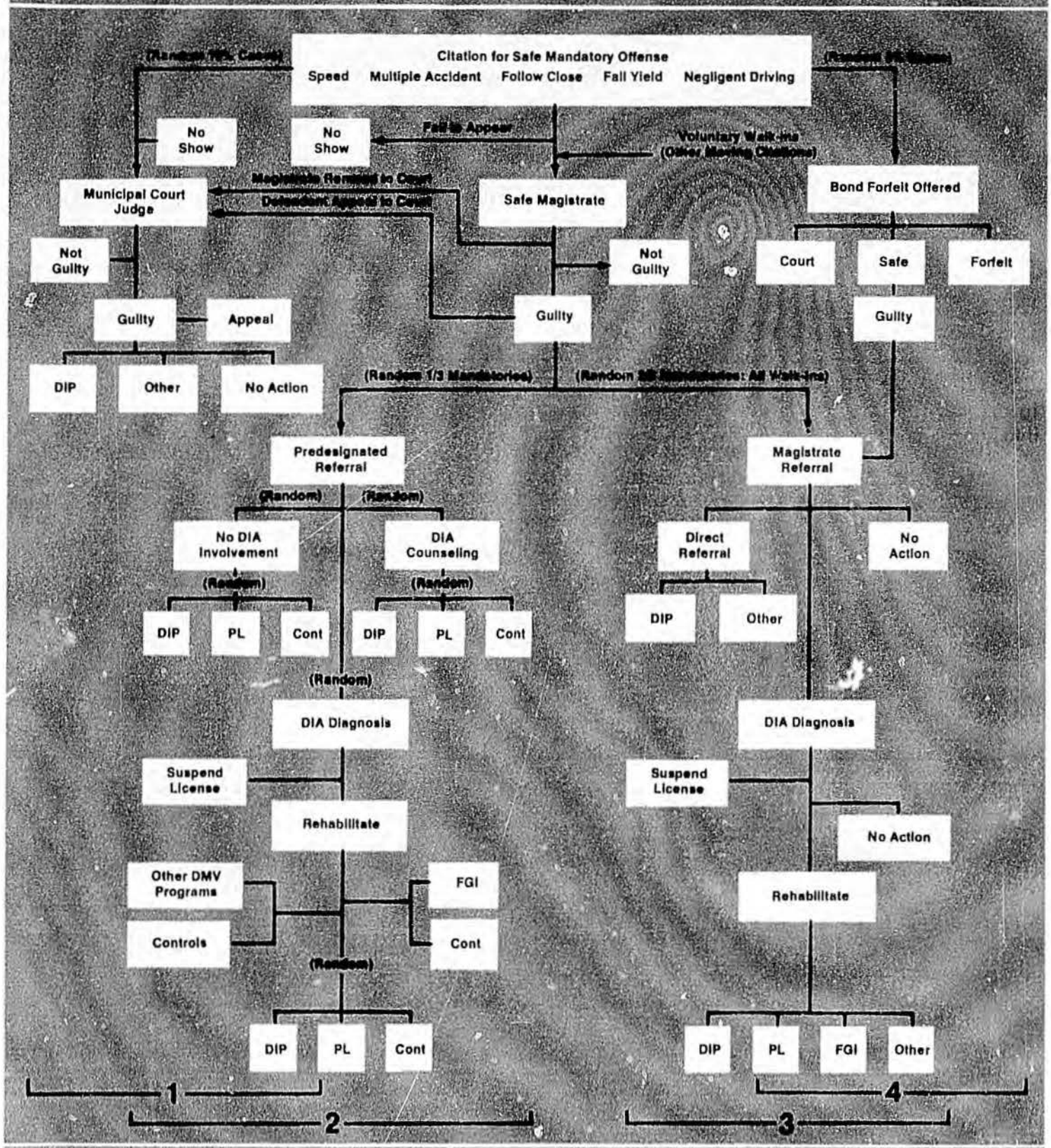
These outcomes were assessed and compared for three adjudication alternatives as shown in Chart 2: SAFE—adjudication in an informal magistrate-defendant hearing; court—adjudication by trial with a judge in the city municipal court; and no adjudication—the traditional pre-SAFE practice of allowing forfeiture of bail (ticket payment) by mail or personal delivery.

Case Processing: Volume and Speed

During 21½ months of operation, SAFE processed 41,660 minor traffic cases, of which 65 percent involved mandatory appearances; 36 percent were speeding cases and 28 percent were multiple offenders, having three citations in 1 year or four in 2 years. The caseload averaged 101 a day or 505 a week. Most of the defendants were men (72 percent), white (83 percent), relatively young (65 percent between the ages of 18 and 34), with low-to-moderate incomes (88 percent earned less than $15,000). Voluntary defendants included more women and people with better driving records.

[3] Seattle Special Adjudication for Enforcement (SAFE) Project, contract number DOT-HS-343-3-682, 1973, Final Report, December 1976. Parts of this section are a verbatim extract from the Final Report.

Chart 2. SAFE Evaluation Design



Cont - Control
DIA - Driver Improvement Analyst
DIP - Driver Improvement Program*
FGI - First Group Interview*
PL - Programmed Learning*
*See Page 13

It took an average of 52 minutes to process a SAFE case, excluding any time spent in rehabilitation programs. The defendant spent about 6 minutes with the magistrate and 11 minutes with the driver improvement analyst (DIA). Half of the defendants had to wait less than an hour for their hearing; 86 percent saw a magistrate within an hour. The times the DIA spent either counseling offenders or diagnosing their driving problems did not differ substantially.

Case Dispositions

Eighty-nine percent of the cases were judged guilty, exclusive of approximately 8.5 percent of the cases which were referred to court for formal trial. Offenders were fined an average of $20, of which $10 was typically suspended. For offenders assigned to rehabilitation and also fined, the amounts suspended were higher. Twenty percent of the defendants were referred to some form of rehabilitation; of these, 5,989 (73 percent) were assigned to Defensive Driving Courses, 1,543 (19 percent) were sent to First Group Interview and 668 (8 percent) were referred to other Department of Motor Vehicles (DMV) programs. DIAs recommended driver license suspensions for less than .3 percent of the defendants. The exception rate on predesignated referrals was approximately 16 percent.

Case Processing Costs

Based on established volume, it cost $13.22 to process a SAFE case, including only costs associated with direct defendant processing. Excluded are enforcement costs and some ancillary office management costs. Comparable costs for formal court trial and bail forfeiture was $40 and $9, respectively. The diagnostic-rehabilitation component of SAFE accounted for 61 percent of the administrative cost. The addition of costs incurred by the defendant (fine and time) and the subtraction of savings due to recidivism prevention, produced a net societal economic cost of $17.35 per case.

Adjudication Efficiency

SAFE's effect on the efficiency of court operations was that of permitting the courts to maintain a manageable docket despite a 25 percent increase in total court trials. Except for a significant increase in the fine-based court revenues, there was no consistent or reliable improvement or decrement in court performance during the SAFE program period. A comparison (across quarters) of the proportion of cases heard by the courts which were not related to traffic and the number of cases awaiting trial for various lengths of time showed similar caseload characteristics at the beginning and end of the SAFE program, although with marked differences between the first and second year of operation.

Equality in Adjudication

Notwithstanding different personal characteristics, defendants with few exceptions fare equally in their SAFE hearings. Only driving exposure was related to verdicts, with guilty outcomes more common for people who reported that they typically drove fewer miles per week. Fines levied on offenders appeared superficially to vary with their sex, age, education, and income. The effects of such personal characteristics were minimal or nil, however, when the influence of other factors, such as offense committed and driving record, were partialled out (controlled). Thus, for example, while men were fined more than women, men also tended to have had poorer driving records and to have committed more serious offenses, which carry higher fines. The only characteristics related to fines, which could not be explained

Table 1. Summary of SAFE Hearing Activities and Outcomes for the Three Magistrates

Activity or Outcome	Magistrates (1)	(2)	(3)
Average cases heard per working day	42	30	24
Percent of cases referred to court	2.1	10.7	16.3
Percent of cases found guilty	87.4	86.9	88.1
Average dollar fine per case	19.08	20.40	21.06
Average fine after participation	9.28	9.96	10.28
Minutes spent by defendants in SAFE	43.07	47.82	50.07
Number of magistrate-determined direct referrals to DIP[1]	18	258	364
Percent of defendants receiving[2]	6.0	9.4	8.2
Percent of defendants receiving[3]	15.6	16.7	16.3

[1] DIP—Driver Improvement Program.
[2] SAFE citation.
[3] Other citation.

by other logical correlates, were the defendants education and income. High school graduates were fined more than people with either less or more education. Except for offenders earning less than $3,000 per year, those earning more money tended to be fined less, after fine suspensions were taken into account.

Magisterial Consistency

SAFE employed three magistrates at any given time. What ultimately happened to the defendant generally did not depend on which magistrate heard his case (see Table 1). Magistrates spent different amounts of time with defendants, differed in the average number of cases they heard in a workday, and differed in their referral patterns (that is referrals to court and to rehabilitation). They were consistent in their verdicts, however, with each one finding approximately 89 percent guilty. Although magistrates differed significantly in their fines, the magnitude of the difference (after partial fine suspensions) was on the order of only $1. Citation recidivism rates were equivalent for offenders who saw different magistrates.

Driver Improvement Analyst Consistency

Offenders directed to post-adjudication driver improvement diagnosis and rehabilitation program referral were treated essentially the same by each of the three Driver Improvement Analysts in cases where the initial referral (to the DIA) was at the discretion of the magistrate, and DIAs had totally free choice of their actions (see Table 2). Although between-analyst variance was minimal, strong preferences for certain types of available referral actions were noted.

Attitudes toward the SAFE Program

Defendants who experienced the SAFE process were generally favorably disposed toward the program, though their degree of satisfaction and perceptions of convenience did not differ from those of court and forfeit defendants. Most SAFE defendants thought their driving improved after their SAFE experience, due to having learned something new or more about driving. Sixty-five percent felt the magistrate was helpful, and 66 percent thought the DIA was useful. Eighty percent of those who attended rehabilitation programs considered those programs worthwhile. Defendants generally reacted well to components of the adjudication system, particularly rehabilitation.

Attitude surveys of other population groups showed that SAFE was most favorably received by the public and personnel of the host court. There were some ambiguities between the program objectives and (a) attorneys' preferences for bail forfeiture and (b) the "harder-line" viewpoint of police officers toward sentencing traffic offenders.

Effectiveness of the SAFE Adjudication Process

An important feature of the SAFE program was the use of a research design permitting the magistrate hearing system to be compared with traditional court trial procedure in its effect on the subsequent driving records of the defendants. All the drivers used in this portion of the study were randomly assigned to one of three processes; bail forfeiture, magistrate hearing, or court trial. In this way, differences

Table 2.—Percentage of Different Actions Applied by the Driver Improvement Analysts

Action Recommended	Driver Improvement Analysts (1)	(2)	(3)
License suspension	2.4	2.6	2.1
FGI[1] rehabilitation	26.8	25.8	28.5
DIP[2] rehabilitation	18.0	12.6	16.9
PL[3] rehabilitation	1.8	6.1	1.2
None	48.6	52.8	48.7

[1] First Group Interview—a DMV driver improvement program designated primarily for overly aggressive drivers.
[2] Driver Improvement Program—a local term for the Defensive Driver Course (DDC).
[3] Programmed Learning—a modified version of DDC employing tape players and cassettes for self-instruction.

between drivers (in age, sex, socioeconomic status, previous record, etc.) which had often made comparisons between various alternative court programs impossible, were eliminated as sources of bias in the SAFE study. A well-controlled study of the effectiveness of the magistrate hearing in comparison to the court trial was important because, while the magistrate system proposedly improves efficiency and reduces costs, the procedure should be at least as effective as the traditional system in influencing the subsequent driving behavior of traffic offenders.

The three basic alternatives bail forfeit, magistrate hearings, and court trials, were compared separately from the influence of rehabilitation procedures by limiting the study to those judged not guilty or who received fines but were not assigned to a school. The results indicated that there were no differences in the proportion of each group who were subsequently involved in accidents. The drivers who received either a magistrate hearing or a court trial had fewer subsequent traffic offenses than did those who were allowed to forefeit bail (see Table 3). The results indicated, therefore, that those who received a magistrate hearing did at least as well as those who were treated in the traditional way. In fact, there was some evidence that the magistrate hearing produced better results. Those offenders who had had such a hearing delayed longer in committing either a traffic offense or being involved in an accident than did individuals who had had a court trial (see Table 4). It should be noted, however, that there was no difference between bail forfeiture and magistrate hearings (SAFE) as regards the accident delay measure. These results suggest that the increased efficiency and savings associated with magistrate hearings and bail forfeiture can be achieved without a loss in the effectiveness of the process for reducing accidents.

The use of the random assignment procedures also provided a good test of the relative effectiveness of the four rehabilitation programs. (The results of this analysis will be presented in NHTSA reports on driver education.)

Although most of the defendants processed by the SAFE were "predesignated" for one or another type of course on a random basis to permit the program's evaluation, some were left unassigned so that the magistrates and the DIA counselors might make referrals to treatment. It was not possible to evaluate the effectiveness of these referrals because appropriate control groups were not available. The individuals referred to the Defensive Driving Course (DDC) by the magistrates did not do as well as those predesignated at random for this treatment. This may indicate that the magistrates required the drivers with the worst records to take DDC. On the other hand, the drivers referred to the DDC by the DIA counselors generally did better than the randomly assigned drivers. This may indicate that they sent the drivers with better records to DDC and used the other sanctions or treatments for the drivers with a poorer driving prognosis. Until the effectiveness of magistrate or Driver Analyst referrals to treatment can be tested with appropriate controls, it cannot be determined whether magistrates improve the impact of an otherwise effective rehabilitation program by selecting the individuals assigned to it—an important question since fine forfeiture appears to be almost as effective as the magistrate hearings. If a driver education program can be added to this simpler, less expensive forfeiture procedure without significant loss in effectiveness relative to magistrate referred, then it may be possible to process most cases without a hearing.

Table 3.—Percent of Traffic Offenders Recidivating

Procedure	Violations	Accidents
Formal court	36.1	10.0
Bail forfeiture	40.6	11.3
Magistrate hearings	35.1	11.8

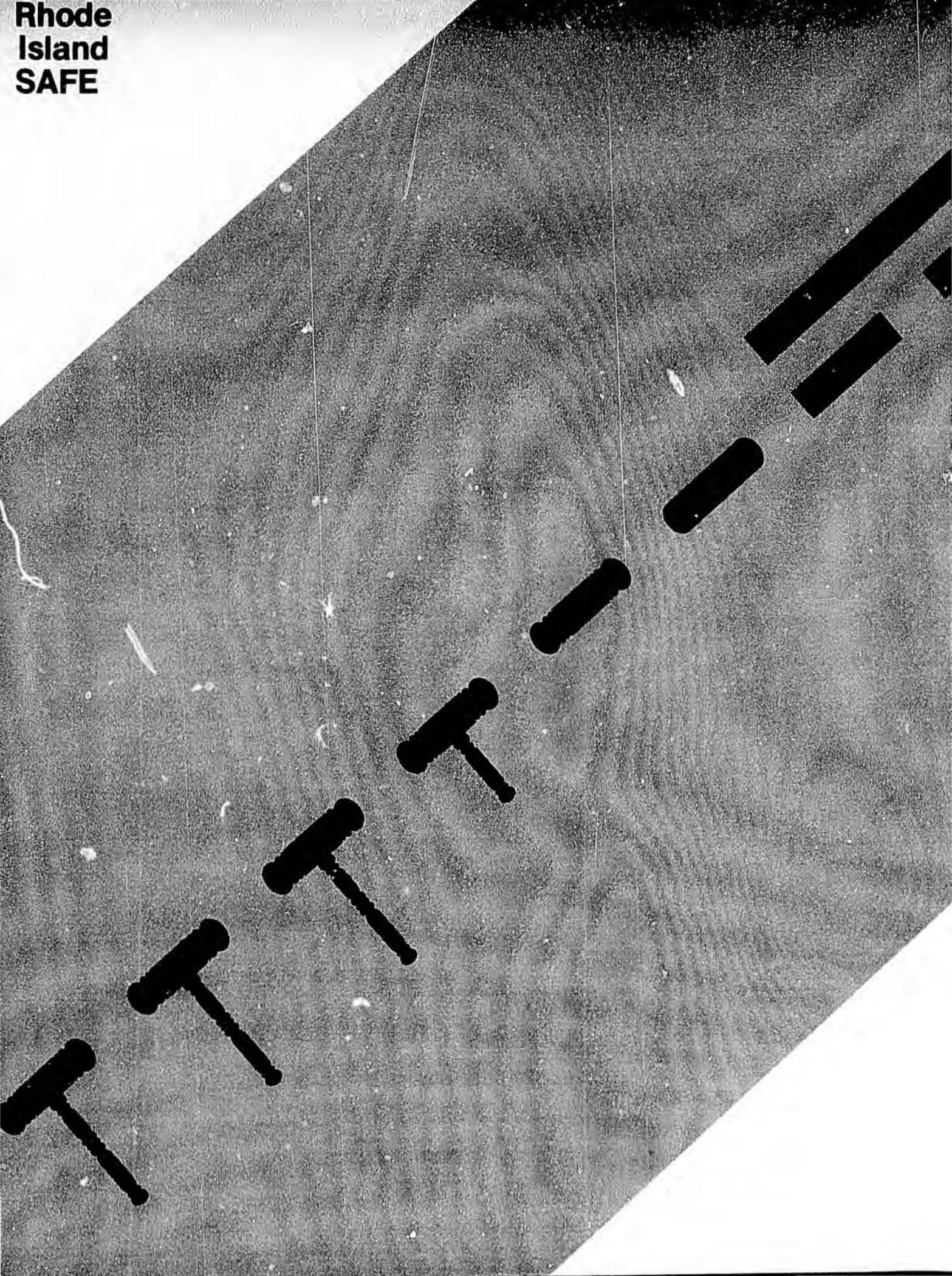
[1] Significantly higher than the other two case-processing procedures.

Table 4.—Mean Time in Days to Occurrence of New Offense or Accident (High Scores Are "Good")

Procedure	Violations	Accidents
Formal court	125	141
Bail forfeiture	125	166
Magistrate hearings	1150	184

[1] Significantly different from the other two case-processing procedures.

Rhode
Island
SAFE



The Special Adjudication for Enforcement (SAFE)[4] demonstration project in Rhode Island is operated by hearing officers of the Administrative Adjudication Division (AAD) of the State Department of Transportation. On July 1, 1975, a State law became effective in Rhode Island which decriminalized most traffic offenses and established the AAD to adjudicate these cases. SAFE began on the same date. These results are based on the first year's experience of a 2-year operational period. The project's objectives are the following:

- To remove the bulk of the annual traffic caseload from the district courts permitting the reduction in backlog of other types of cases and assignment to the district courts of certain functions previously handled by the superior courts.
- To implement a reliable system that permits the nonchronic offender to pay a fine by mail in minor traffic violations or, if desired, to contest the facts or explain the circumstances at an administrative hearing.
- To identify the chronic offender and require him to appear at an administrative hearing to adjudicate his offense.
- To make accurate and up-to-date driver histories available at hearings (after judgment) so that sanctions can be applied based on the facts of the case and on the driving history.
- To require individuals who represent a possible traffic safety hazard to complete a driver retraining school as an alternative or adjunct to the sanctions imposed.
- To reduce the elapsed time from the violation to the final imposition of sanctions.
- To provide consistent case dispositions throughout the elements of the adjudication system.

Case Processing

During its first year of operation AAD disposed of approximately 65,000 traffic summonses, with 49,626 of these having been paid by mail and the remainder adjudicated at hearings. The pay-by-mail summonses generated fines in the amount of $1,089,682 of which $113,761 came from follow-up procedures implemented by the project.

The volume of summonses paid by mail declined by approximately 14 percent compared to the 12 months prior to the project. AAD's ability to enforce the condition that a motorist can pay only one summons by mail in a 12-month period was the responsible factor.

Analysis of the violations paid by mail revealed that speeding charges account for 78 percent of all summonses. Seven of 51 violations payable by mail (speeding, obedience to devices, conditions requiring reduced speed, obedience to stop and yield signs, operating left of center and overtaking where prohibited) account for 94 percent of the pay-by-mail volume.

Of persons paying summonses by mail 73 percent were State residents. Drivers under age 25 were overrepresented in summonses paid, in comparison to their numbers in the licensed driver population.

At the end of June 1976, 3,742 persons who received summonses and were eligible to pay by mail, had not responded. They had their driver licenses or rights to operate in the State suspended.

Hearing Officer Staff and Case Disposition

The AAD hearing section is composed of three full-time commissioners and one part-time commissioner and security and clerical personnel. The commissioners sit at various sites around the State to adjudicate violations requiring the driver to appear personally. During the first year of operation, 14,982 summons containing 16,254 violations were disposed of. This was an increase of some 70 percent in the number of personal appearances required, compared to the 12 months prior to AAD.

Approximately 56 percent of the hearings were required because the motorists were not eligible to pay by mail, while 40 percent involved offenses that could not be paid by mail. Less than 2 percent of the hearings were of people eligible to pay by mail but wishing to contest the case or to admit culpability with explanation.

Five percent of the AAD hearings involved contested cases requiring the appearance of the issuing officer. This figure contrasts with the 9 percent contested rate in the last year of court jurisdiction over the relevant traffic violations.

The sustained rate in contested cases was 54 percent and 85 percent in uncontested cases. Both rates are significantly higher than those in the courts in the year before AAD. (Table 5).

[4] Rhode Island SAFE Project, contract number DOT-HS-4-00956CA, Annual Report, July 1975-June 1976. Parts of this section are a verbatim extract from the Annual Report.

Variations existed in the sustained rates of various violations and among the hearing sites. Also certain violations (those related to an accident) were more likely to be contested.

Fines for similar violations were found to have been levied with a high degree of consistency among the hearing sites. The average fine in uncontested cases was higher under AAD than the courts; the reverse was true in contested cases.

In 22 percent of the cases disposed at hearings referrals to driver retraining were made. Variations in referral rate occurred among the hearing sites. These differences related to variations in driver history and residence, and to policy on referral as an alternative to fines.

Rhode Island residents made up 93 percent of those disposed at hearings, a significantly higher proportion than the 73 percent figure for summonses paid by mail. This difference was occasioned by Rhode Island residents being more likely to be ineligible to pay by mail (that is, have a prior violation) and to be more likely to receive a summons for an offense that cannot be paid by mail. No differences were found in the sustained rates as a function of residence.

Defendant Characteristics and Attitudes

Approximately 86 percent of the persons adjudicated at hearings were males, a higher rate than the 78 percent of males who paid summonses by mail. The reasons are probably the greater likelihood that males are ineligible to pay by mail and to be issued summonses for offenses that require a hearing. Differences were found in the sustained rates for males and females charged with like violations. The sustained rates for males and females also differed among the hearing sites.

Young drivers were overrepresented among those disposed at hearings compared to the licensed driver population and to those who paid summonses by mail. Significant differences related to age were found in the likelihood of having uncontested charges sustained—older drivers were more likely to have charges dismissed. Drivers who contested cases were found to be somewhat older than those who did not contest.

Ninety-three percent of motorists leaving hearings sites said they had been treated fairly. Approximately 41 percent said there could have been a better time for the hearing. There was no unanimity of opinion, however, about when that time would be.

Appeals and Scofflaws

Appeals of hearings are taken first to an AAD appeal board and then to court. During the first year, 35 appeals were filed, representing a rate of about 13 percent of all contested hearings where the charges were sustained. To date, two appeals have continued into the court system.

The noncompliance rate (failure to pay by mail or appear at a hearing) was found to be higher for out-of-State residents than among those holding Rhode Island licenses. A recent policy of adjudicating through the mail out-of-State residents who do not appear at hearings has had a compliance rate of 50 percent.

Table 5—Sustained Rates in Contested and Uncontested Violations

	Contested violations		Uncontested violations	
	Guilty or Sustained	Other	Guilty or Sustained	Other
AAD	308	262	8,309	1,907
Court	310	585	4,454	1,469

Data Systems and Costs

The AAD data system has been implemented at the State's central data processing installation. Consisting of 26 functional subsystems made up of 48 programs, the data system supports the major activities of AAD. These include summons and fine accounting and control, determination of eligibility to pay by mail, hearing scheduling, generation of suspension notices, and the production of various reports. The bases of the system are driver-based files of violation, accident, suspension, and driver retraining history.

The typical monthly charge for data processing was $8,200 of which about 62 percent came from computer time and the remainder from keypunching. The cost per disposed summons amounts to $1.53.

Operational costs during the first year amounted to $369,814 with the hearing process the major cost element. The unit cost of disposing a summons paid by mail is estimated to be $2.78, while the unit cost of a hearing disposition is $16.82.

Limited data make cost comparisons with the district court disposition of traffic cases difficult. At a gross level, the average court cost of disposing of a case regardless of type was at least $19.56. The AAD hearing cost of $16.82 is therefore cost competitive.

Recidivism

Because of the relatively short period of operation and some problems associated with the data base, it seems premature to discuss recidivism at this point. An encouraging finding was that the average elapsed time between offenses among those who went to more than one hearing was 105 days compared with 92 days for multiple violations requiring court appearances in the year before the project.

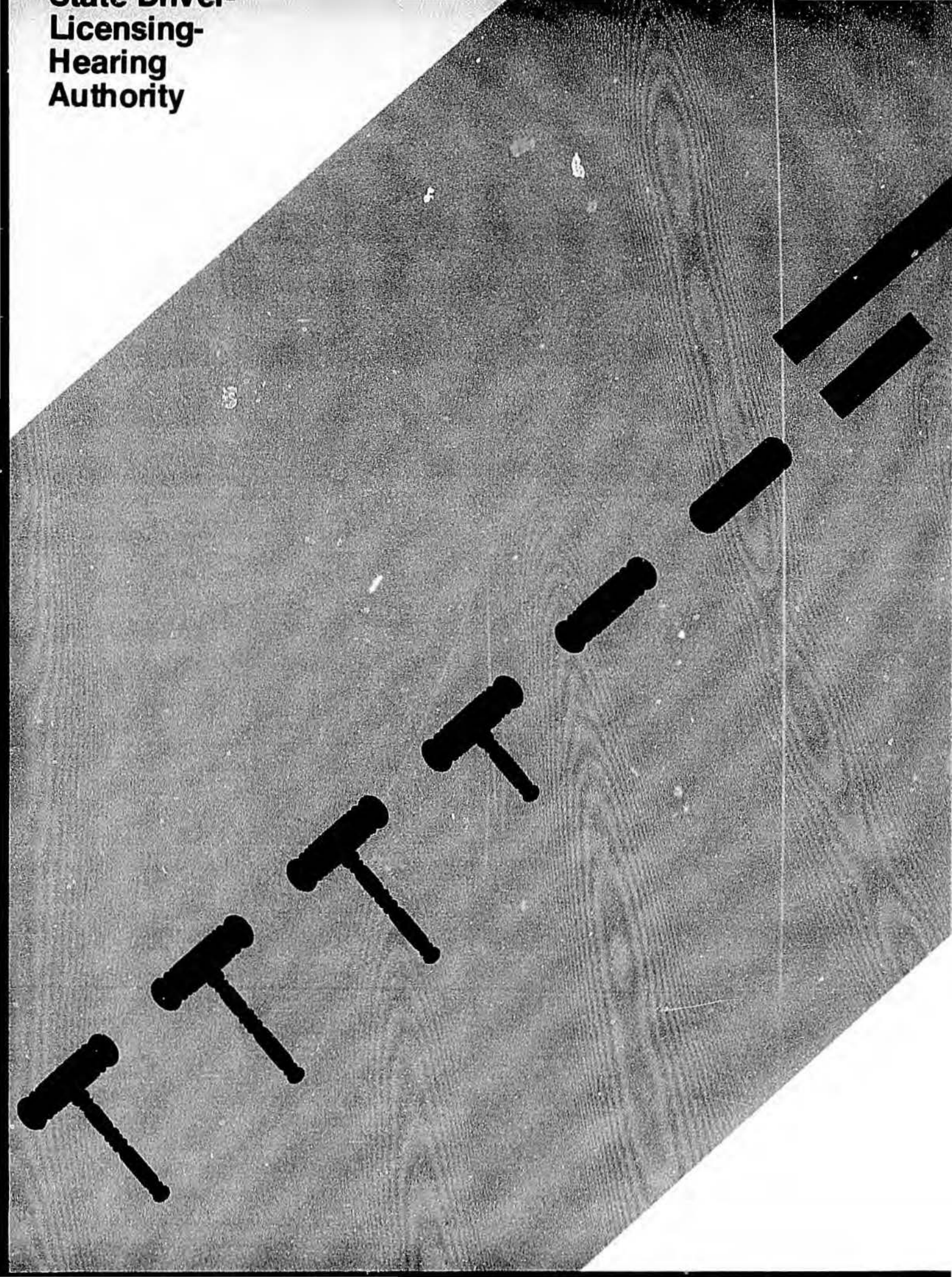
The median time from issuance of the summons to hearing disposition was approximately 45 days in uncontested cases and over 90 days in contested cases. The 45-day figure is substantially higher than the less than 30 day median for the courts in uncontested cases because of the initiation of the AAD scheduling system. No data are available on the time to court disposition of contested cases.

Case Backlog and Enforcement Costs

AAD had a major impact on the court system. Removal of most traffic cases from the court's jurisdiction brought about a 17 percent reduction in the backlog of cases and permitted the courts to take on new functions. Thus AAD helped alleviate court caseload and permitted progress to be made to a restructuring of the court system.

AAD also provided savings to the police departments through the reduced need for police prosecutors at arraignment of traffic cases; officers spending less time at contested hearings than at contested court cases; reduced clerical tasks owing to the elimination of warrants in most traffic cases and the elimination of the capias as the follow-up to defaulted court appearances.

State Driver-Licensing-Hearing Authority



Background[5]

All 50 States enacted driver licensing laws and established agencies to administer those laws. Driver licensing agencies historically issued licenses to qualified drivers, collected licensing fees, and maintained information on those licensed to drive. At first, these agencies were primarily concerned with fee collection and driver identification. With the advent of traffic safety programs, the agencies took on new responsibilities to identify problem drivers, to conduct driver control and improvement programs, and to withdraw licenses from those deemed no longer qualified to drive. Agency actions to withdraw driver licenses led many courts to direct that certain individual rights must be afforded to drivers before their licenses may be suspended or revoked. Some courts regarded the driver license, once issued, as a right in itself, although other courts still considered it a privilege extended by the State. These differences in interpretation affected numerous court decisions in upholding or denying various individual rights in the license withdrawal process. In 1970, considering the dependency of Americans on their driver licenses, the Supreme Court, in *Bell v. Burson*,[6] went beyond the basic question of whether a license is a right or a privilege. The Court determined that before a State could withdraw a driver's license, the State must afford the individual certain due process rights. This decision recognized the right of the individual to request a hearing, with the State, on the reasons for a proposed license withdrawal.

Although, the Supreme Court ruled that hearings are required in license withdrawal actions, in *Bell* v. *Burson* it did not specify how these hearings are to be conducted or what aspects of due process are necessary in a license withdrawal proceeding. Although many States have implemented administrative procedures to guarantee due process rights, some of which provide for formal hearings, many others have not done so. Part of the problem is that lower courts have differed in their interpretations as to which license withdrawal procedures are necessary to guarantee individuals rights. For these reasons, research was undertaken to (1), provide guidelines as to the due process rights that must be afforded in license withdrawal proceedings and, (2), identify the extent to which State driver licensing agencies have adopted adequate procedures.

Authority to Withdraw Drivers Licenses

State legislatures have authorized driver licensing agencies to withdraw licenses for several different reasons. For example, as a deterrent to violating traffic laws, the suspension of the driver license is used as a sanction against those convicted by the courts of serious or repeated traffic violations. License withdrawals also serve as an administrative sanction to enforce other statutes, such as laws requiring drivers to take alcohol tests when requested by enforcement officials, or laws requiring drivers to be financially responsible for liabilities as a result of their involvement in automobile accidents. Licenses may be suspended for a specific period of time, or revoked indefinitely, depending upon the reasons for the action. The term "license withdrawal" is used in the report to refer to both actions.

[5] State Driver Licensing Agency Hearing Authority, contract number DOT-HS-5-01252, Arthur Young and Company, Final Report, April 1977.

[6] *Bell* v. *Burson*, 402 U.S. 535 (1971).

License Withdrawal Process

Driver licensing agencies have developed various methods for taking action against drivers whose licenses may have to be withdrawn. Once an agency determines that license withdrawal proceedings should be initiated against an individual, a notice is sent to that driver to inform him of this action, the reasons that his license may be withdrawn, and what the next steps, if any, are in these proceedings. At this point in many States, a driver may request a hearing for several reasons: He may want further explanation of why his license is being withdrawn; he may contest the facts upon which the agency has begun the license withdrawal action; or he may want to tell the State how dependent he is on his license.

License Withdrawal Hearing Procedures

States follow different procedures in responding to requests for hearings from drivers subject to license withdrawal actions.

In some States a formal hearing is scheduled before a hearing officer. The driver may present his case in person, sometimes with the assistance of an attorney. The hearing officer then determines whether the driver will be allowed to keep his license and, if so, under what conditions.

In other States, the driver is told to come in for an interview before a driver improvement officer or similar official. Driver improvement officers are the State officials, involved in the traffic safety programs in the State, who may conduct driver improvement sessions, interview problem drivers, or identify those who should attend certain driver improvement clinics. Interviews before a driver improvement officer may be very informal, and sometimes procedures fail to recognize certain basic due process rights.

The reasons for the license withdrawal in some States determines that the driver is given no opportunity for a hearing until after the withdrawal takes effect.

To summarize, drivers are not always afforded an opportunity for a hearing as part of a license withdrawal proceeding. There is great variation in the types of hearings provided and in the due process procedures incorporated into the license withdrawal proceedings and the hearings.

"Trial Type" Hearing vs. Interview

What some States refer to as a "hearing" is only an "interview" in other States, some of which conduct formal hearings in addition to driver improvement interviews. Professor Force, Tulane University School of Law, distinguished a "trial type" hearing—one providing for the submission and rebuttal of evidence before an impartial tribunal—from [illegible] proceedings such as interviews. He believes a "trial type" hearing was the type contemplated by the Supreme Court in *Bell* v. *Burson*.

Using this definition of a hearing, Professor Force determined when, and in what cases, such a hearing is required to satisfy due process in a license withdrawal proceeding. Generally, he believes a hearing is required when there are questions as to the factual basis for the State's action to withdraw the driver's license. Moreover, Professor Force asserted that even when the factual basis for withdrawal is not being contested, additional factors (such as the driver's attitude or need for his license) may enter into the agency's decision as to whether or not to withdraw the license. Some "opportunity to be heard" should be extended to the driver before this decision is made. Thus, Professor Force defined a new area, a middle ground between the absolutes of requiring or not requiring a hearing, when an informal interview, for example, would be appropriate in providing an opportunity to be heard.

To determine what constitutes an adequate hearing, Professor Force reviewed case law for those specific procedures that may be appropriate for driver license withdrawal actions. For example, he reviewed the notice requirements which would insure that the opportunity for a hearing be extended to a driver and that the driver be aware of his full rights. Specific procedures applicable to the conduct of the hearing were analyzed. It appears that drivers must be allowed to bring an attorney to the hearing, to present evidence on their behalf, and to crossexamine those testifying against them. Additionally, it may be necessary that States notify drivers of the final decision as a result of the hearing, and also of the reason for taking that action.

With respect to who conducts the hearings, Professor Force found few limitations as to who may be assigned to this function in a driver licensing agency. The hearing officer need not be an attorney. No conflict with due process appears to exist when the same individual serves as both a hearing officer and a driver improvement analyst.

Findings

The findings of the national survey on license withdrawal proceedings indicate that great variations exist among States in meeting a number of due process related requirements (see Tables 6, 7, and 8). The survey revealed that most States provide a hearing as required for when an opportunity for a hearing must be extended; moreover, most States provide opportunities to be heard in cases deemed appropriate. Of great concern was the fact that several inadequacies were cited in how drivers are notified that their licenses may be withdrawn. They were not sufficiently informed of either the opportunity for a hearing or of their rights in the license withdrawal proceeding (Table 6). Also, many jurisdictions do not provide a hearing prior to license action (Table 7).

There was also a general lack of notification to the driver of the reasons for the final decision. With respect to the actual conduct of the hearings, there were many minor variances from the criteria established by Professor Force. Yet in general, States appear to be providing an adequate hearing that meets due process requirements (Table 8).

Lastly, with few exceptions the States are using personnel qualified to conduct the hearings as compared to minimum due process requirements. Although these personnel meet minimum due process qualifications, those responsible for conducting hearings generally lack training as to the due process rights and procedural requirements. Also most hearing officers have other duties (Tables 9 and 10).

Table 6.—Responses to Questions on Contents of Hearing Notice

Contents	Yes	No	No Response
Time and Place of Hearing	46	1	4
Details of Reason License In Jeopardy	40	6	5
A Statement of Where Burden of Proof Rests	14	31	6
List of Sanctions that May Be Imposed	31	12	8
Action Taken on Nonappearance of Driver	29	13	9
Where To Get Information On Hearing Procedures	14	29	8
Statement of Rights of Licensee	17	26	8

Table 7.—Number of States According or Denying Driver Rights to Hearing by Type of Action

Action	Number of States			
	Prior to Action	After Action	No Hearing Provided	No Response
Denial:				
Mandatory	11	13	18	11
Discretionary	23	17	1	10
Suspension:				
Mandatory	17	13	13	8
Discretionary	33	14	0	4
Restriction:				
Mandatory	11	14	9	17
Discretionary	20	13	3	15
Revocation:				
Mandatory	13	13	18	7
Discretionary	28	12	1	12
Cancellation:				
Mandatory	12	13	10	16
Discretionary	16	15	3	17

Table 8.—Rights of Driver at a Hearing in All States

Rights	Number of States		
	Yes	No	No Response
Present Evidence and Have That Evidence Considered?	48	0	3
Examine Witnesses?	44	1	6
Subpoena Witnesses?	37	7	7
Subpoena Records?	34	10	7

Beyond the requirements of due process additional measures may be used to judge whether adequate hearings are being conducted. Obviously, there are many traffic safety implications in this overall process, because the original reason for withdrawing driver licenses was to remove those who may pose a safety risk to other drivers and passengers from our highways. Thus, it is helpful to review the conduct of hearings with respect to whether they meet, or have a role in meeting, the traffic safety objectives of a particular driver licensing agency. Should the hearings be used as a method to identify drivers for certain driver control sanctions? Many situations arise where the hearing officer determines that the individual's license should not be withdrawn. Yet other sanctions may very well be appropriate, such as attendance at a driver improvement school, an occupational license, or probation. The understanding of these factors by a hearing officer depends upon his having an integral role in the State's driver safety program.

Table 9.—Additional Duties of Hearing Officers

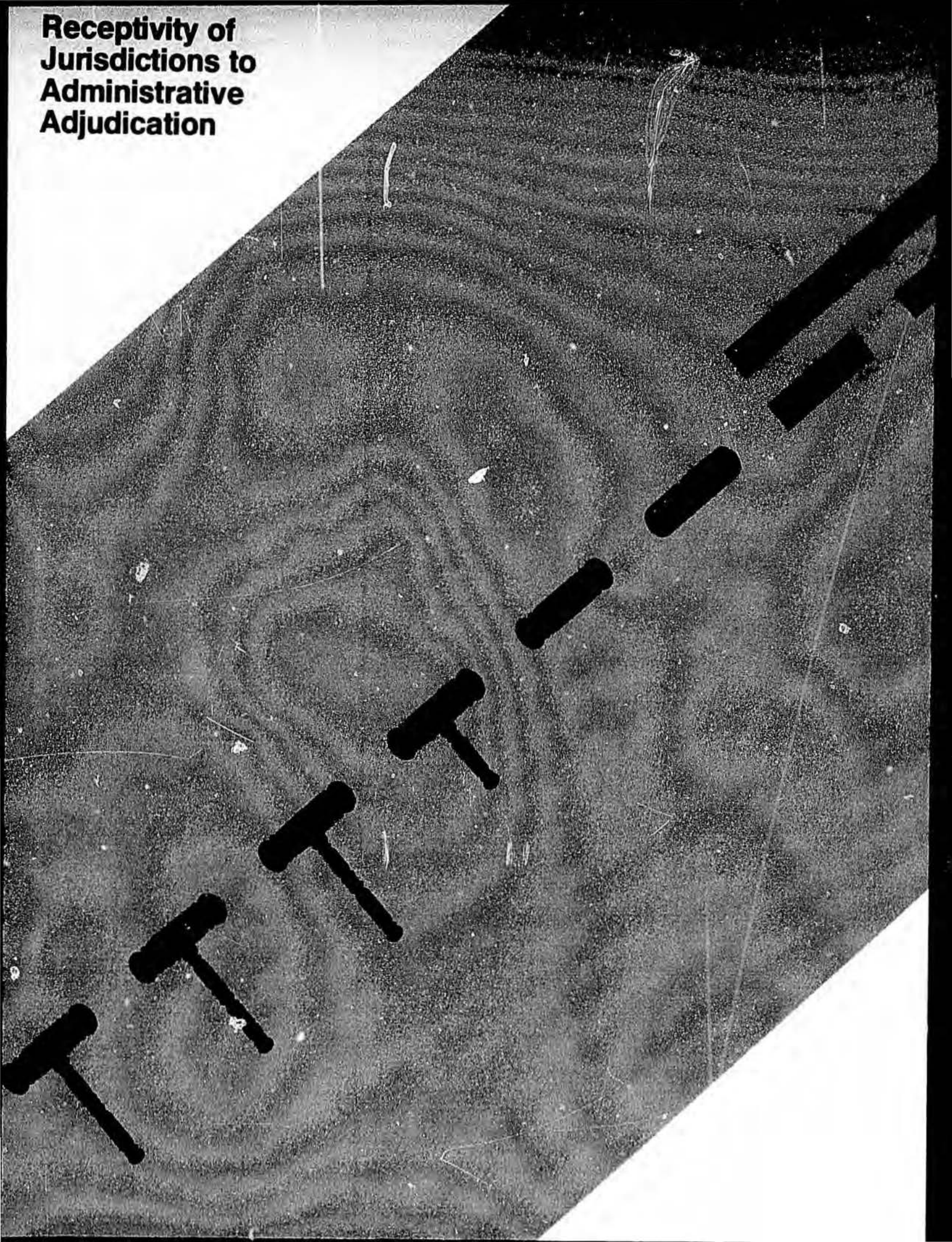
	Certified DL Cdtn.	Driver Improvement Course Mgr.	Driver Training	Liquor Control Bd. Duty	Health Driver Licensing or Driver Service Div.	Traffic Violations Hearings	Non-driver Administrative Hearings
Alabama	-	+	+	-	-	-	-
Alaska							
Arizona	-	-	-	-	-	-	-
Arkansas	-	+	-	-	-	-	-
California	-	+	-	-	-	-	+
Colorado							
Connecticut	-	-	-	-	-	-	+
Delaware	+	+	-	-	-	-	-
D.C.	-	+	-	-	-	-	+
Florida	-	+	+	-	-	+	-
Georgia	-	+	-	-	-	+	-
Hawaii	+	-	-	-	+	-	-
Idaho	-	-	-	-	-	+	+
Illinois	-	-	-	-	-	-	+
Indiana							
Iowa	+	+	-	-	-	-	-
Kansas	-	-	-	+	-	-	-
Kentucky	-	+	-	+	-	+	+
Louisiana							
Maine							
Maryland	-	-	-	-	-	-	+
Massachusetts	-	+	-	-	-	+	+
Michigan							
Minnesota	-	+	-	-	-	-	-
Mississippi	-	+	-	-	-	+	-
Missouri							
Montana	**	**					
Nebraska							
Nevada	-	-	-	-	-	-	+
New Hampshire	-	+	-	**	-	****	*
New Jersey							
New Mexico	+	+	-	-	-	+	-
New York	-	-	-	-	-	+	+
North Carolina	-	+	-	-	-	+	-
North Dakota	-	-	-	-	-	+	-
Ohio							
Oklahoma	-	+	-	+	-	+	-
Oregon	-	-	-	-	-	-	-
Pennsylvania	-	-	-	-	-	-	-
Rhode Island	-	+	-	-	-	+	-
South Carolina	+	-	-	-	+	+	-
South Dakota	+	+	-	-	-	-	-
Tennessee	-	+	+	+	-	+	+
Texas							
Utah	+	+	-	-	-	-	-
Vermont							
Virginia	-	+	*	-	-	+	+
Washington	-	-	-	-	-	-	-
West Virginia	-	+	-	-	+	-	-
Wisconsin	+	+	-	-	-	-	-
Wyoming	-	-	-	-	-	-	+

+ = YES
- = NO
BLANK = NOT AVAILABLE
* = SPECIAL EXAMS
** = ON OCCASION
*** = PARAPROFESSIONAL
**** = ADMINISTRATIVE ONLY

Table 10.—States Having Formal Training in Hearing Procedures, Driver Improvement, and Traffic Safety

	Pre-Service Training	In-service or Refresher Training	Hearing Procedures	Driver Improvement	Traffic Safety	Hearing Procedures
Alabama	•	•	•			
Alaska						
Arizona						
Arkansas	•	•	•	•	•	•
California	•	•		•		
Colorado	•	•	•	•		
Connecticut					•	
Delaware				•	•	•
D.C.				•	•	•
Florida	•	•	•	•	•	•
Georgia	•	•	•	•	•	•
Hawaii						
Idaho					•	•
Illinois				•		
Indiana	•	•		•		
Iowa				•		
Kansas						
Kentucky	•	•	•	•	•	•
Louisiana	•	•		•		
Maine	•	•	•			
Maryland	•	•	•			
Massachusetts	•	•	•	•	•	•
Michigan	•	•		•	•	•
Minnesota	•	•		•	•	
Mississippi			•	•	•	
Missouri						
Montana				•	•	
Nebraska						
Nevada						
New Hampshire						
New Jersey						
New Mexico						
New York	•	•	•	•	•	•
North Carolina	•			•	•	
North Dakota	•					
Ohio						
Oklahoma					•	
Oregon				•	•	•
Pennsylvania				•	•	•
Rhode Island						
South Carolina	•	•	•	•	•	•
South Dakota	•	•				
Tennessee	•	•	•	•	•	•
Texas						
Utah				•	•	•
Vermont						
Virginia					•	
Washington	•					
West Virginia						
Wisconsin	•	•	•	•	•	•
Wyoming						

Receptivity of Jurisdictions to Administrative Adjudication



In the March 1977 Supplement to the 1976 Report on Administrative Adjudication of Traffic Infractions, brief descriptions of advances made in traffic law adjudication were presented. These covered the States of California, Kentucky, Maine, Michigan, Oregon, and Washington. Some additional or supplementary reports are provided in the following paragraphs.

California

The California Assembly is at present considering a second legislative proposal[7] that allows for the processing, adjudication, and disposition of traffic infractions by administrative adjudication hearing officers in a pilot project based in three counties. This legislation, like the first legislation considered by the California Senate, is based on a major feasibility study requested by Senate Concurrent Resolution 40 and conducted by the Department of Motor Vehicles, in cooperation with the Judicial Council and in consultation with the League of California Cities and the County Supervisors Association of California. An advisory committee chaired by the Director of the Department of Motor Vehicles reviewed the study and submitted comments to the governor and legislature. Although the advisory committee made a preliminary finding of feasibility, it recognized that certain questions relating to feasibility remained and had to be resolved through the regular legislative process. A minority report submitted by the traffic commissioner of the Oakland-Piedmont Municipal Court stated that the legal training of an attorney was more appropriate for a hearing officer than that of a driver improvement analyst because of its adjudicatory nature. It was also pointed out that California had eliminated lay judges and the use of non lawyer hearing officers would be a return to that situation. The project will be conducted for 5½ years and be independently evaluated in terms of cost, service to the public, improvement of driver behavior, and reduction of accidents. Also the California Judicial Council will evaluate the impact of administrative adjudication on the judicial system during the pilot project.

Two major provisions of the legislation would (1) allow for the appointment of non lawyer hearing officers "attached to, but independent" from the department of motor vehicles, and (2) summary hearings without the presence of the citing law enforcement official. These provisions were criticized by representatives of the California State Bar Association, the American Civil Liberties Union, and the American Trial Lawyers' Association at an Assembly judiciary committee hearing on May 9, 1977, in Sacramento. They questioned whether these hearing officers could be impartial especially in the summary trial situation where they would serve both as prosecutor and judge. The groups contended that the hearing officers would have an "efficiency/safety" bias. The hearing officer appointment provision required that they "have legal training at least in the areas of evidence, criminal law, administrative law, and constitutional law, in addition to education and experience in traffic safety as established by the State Personnel Board." Under this legislation, unlike the first legislative proposal, infractions would remain a crime or public offense with concurrent jurisdiction within the courts. The burden of proof of the infraction was changed from the civil one of clear and convincing evidence back to the criminal burden of beyond a reasonable doubt. At the committee's suggestion, this second legislative proposal was withdrawn to make whatever changes are necessary to answer this criticism.

Washington

A bill[8] before the Washington State legislature designates minor violations of traffic laws as traffic infractions and creates a modified judicial adjudication system. The proposed adjudication system would permit an offender to request a formal or contested hearing to which he could subpoena witnesses or an informal hearing to explain mitigating circumstances.

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[7] California Senate Bill No. SB 1949, introduced in April 1976, was referred to an interim study which became the basis for compromise Assembly Bill No. AB 1068.

[8] Washington Senate Bill No. SB 2293, 1977.

Denver, Colorado

A study funded by the Colorado Division of Highway Safety with concurrence and cooperation from the Denver County Court was initiated to develop recommendations for a modified system of adjudication for routine offenses. The final study report was prepared by the University of Denver College of Law and Denver Research Institute. The report, titled "Traffic Adjudication in Denver, Colorado," was submitted as phase I of a three-phase study. Phase II will be a pilot demonstration of the adjudication model which will provide experience as to process and procedures prior to initiation of phase III, the institution of the adjudication model, city or countywide.

District of Columbia

The District of Columbia Department of Transportation is seeking District Council approval of a broad-based program of Improved Parking and Traffic Enforcement.[9] The problems the program is designed to alleviate are frequent incidents of illegal parking and its adverse effect on safe and rapid traffic movement; an unmanageable volume of unpaid parking tickets; and the high cost and inefficiency of processing parking and non-hazardous moving violations in overcrowded criminal proceedings. The program proposes decriminalizing parking and minor traffic violations; establishing efficient administrative hearings in place of formal trial proceedings; using a civilian, nonpolice, ticket-writing cadre to complement police enforcement; denying vehicle registration renewal to motorists who fail to respond to ticketing or to appear for adjudication; and the expanding use of driver rehabilitation for habitual offenders through individual or group counseling or structured attendance at a driver improvement school.

Virginia

A new law,[10] approved March 31, 1977 designates certain traffic offenses as traffic infractions. Traffic infractions are violations of public order and are not deemed criminal in nature. The new law provides for the establishment of a uniform fine schedule applicable throughout the State. A maximum fine of $100 is set. District courts are empowered to hear traffic infraction cases without jury and to suspend the operator's license for failure to pay fine and costs or failure to appear.

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[9] "Improved Parking and Traffic Enforcement in the District of Columbia" (Washington: Metropolitan Police Department, Office of the Corporation Counsel, and D.C. Department of Transportation, April, 1977).

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[10] Virginia State Laws, 1977 chap. 585.

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