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# EVALUATION AND SYSTEM DESCRIPTION OF ASAP JUDICIAL SYSTEMS

Volume III: Idaho Case Study

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16. Abstract  This study is a description and evaluation of the adjudicative-disposition systems in operation in five states and communities with Federally funded drinking-driver control programs called Alcohol Safety Action Projects (ASAP). The five sites selected had undergone significant change in the legal or judicial system or had developed innovative approaches for handling drinking-driving cases. Case studies were conducted for Puerto Rico; Phoenix, Arizona; Los Angeles, California; Hennepin County, Minnesota; and Idaho. A final technical report consists of a summary and analysis of the case-study findings with final conclusions and policy recommendations.  The objective of the Idaho case study was to examine the operation of a state-wide ASAP system with a progressive judicial system structure (Idaho has a unified, state-wide court system and centrally administered pre-sentence investigation) and the impact of stringent drinking-driver control laws (i.e. .08% BAC presumptive limit and mandatory penalties) on that system. The study found that the magistrate courts continued to have widely varying practices in the handling of drinking-driving cases, despite court unification. Inadequate pre-sentence investigation resources were thinly spread over a large jurisdiction. This created management problems, and uneven results since many courts did not have access to the investigators. The widespread use of withheld judgments and inadequate records, as well as general reluctance to convict on a drinking-driving charge at BAC levels below .15%, all combined to thwart the intent of drinking-driving laws.			
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# METRIC CONVERSION FACTORS

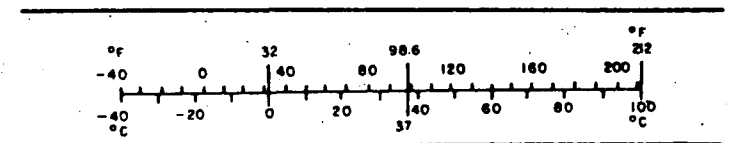
## Approximate Conversions to Metric Measures

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

\* 1 in = 2.54 exactly. For other exact conversions and more detailed tables, see NBS Mon., Publ. 290, Units of Weights and Measures, Dec. 1972, NIST, Gaithersburg, MD 20899.

## Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
<b>LENGTH</b>				
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
<b>AREA</b>				
cm <sup>2</sup>	square centimeters	0.16	square inches	in <sup>2</sup>
m <sup>2</sup>	square meters	1.2	square yards	yd <sup>2</sup>
m <sup>2</sup>	square meters	0.4	square miles	mi <sup>2</sup>
ha	hectares (10,000 m <sup>2</sup> )	2.5	acres	
<b>MASS (weight)</b>				
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
<b>VOLUME</b>				
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
m <sup>3</sup>	cubic meters	35	cubic feet	ft <sup>3</sup>
m <sup>3</sup>	cubic meters	1.3	cubic yards	yd <sup>3</sup>
<b>TEMPERATURE (exact)</b>				
°C	Celsius temperature	9/5 (then add 32)	Fahrenheit temperature	°F



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## IDAHO ASAP JUDICIAL SYSTEM

### EXECUTIVE SUMMARY\*

The purpose of the Idaho study was to examine the impact of much more stringent State laws and a reorganization of the State court system on local court processing of DWI offenders. The researchers made observations and inspected records at the site, interviewed selected persons in the criminal justice system and State agencies, and reviewed documents issued by the state Alcohol Safety Action Project (ASAP), the National Highway Transportation Safety Agency (NHTSA), and others.

The principal changes in the State's laws were a reduction in the presumptive level of driver intoxication from 0.10 percent blood alcohol content (BAC) to 0.08 percent (thereby making Idaho's the lowest presumptive level in the country) and mandatory 90-day license suspension for convicted DWI first offenders. The court reorganization increased the Idaho Supreme Court's authority over lower State courts and assigned all but the most serious DWI cases to magistrate courts.

The chief effect of the legislative changes was to cause magistrates to "withhold judgment" in a larger number of DWI cases rather than declaring offenders guilty. In this large, rural State, most judges had always dealt with drinking offenses leniently, in part because loss or suspension of license was considered a true hardship. Most magistrates therefore continued to bypass State law whenever they deemed such action appropriate.

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\* Evaluation and Systems Description of ASAP Judicial Systems, Volume III, Contract No. DOT-HS-4-00958, Institute for Research in Public Safety, Indiana University, July, 1977.

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This happened particularly often in the more rural areas of the State, where magistrates were frequently nonlawyers who relied on their personal knowledge of defendants more than on the laws when they passed sentence.

With the creation of the ASAP and its emphasis on education and rehabilitation, magistrates increasingly used withheld judgments as a way to persuade offenders to take part in rehabilitative programs. Withheld judgments also became more common due to the hiring of presentence investigators (PSI's). Previously, no attempt had been made to investigate the background of persons charged with DWI as a misdemeanor to discover whether they were social or problem drinkers.

The ASAP, however, was only able to provide funds for 11 PSI's to serve 67 magistrate courts. These 11 investigators were assigned to high-volume courts, not all of which used them efficiently, in part because of communications problems between the recently graduated PSI's and the magistrates.

One criticism of withheld judgments was their effect on driving records. Because offenders could avoid a DWI conviction by meeting the rehabilitation conditions laid down by the magistrates, no central records of original DWI charges were kept. This made it difficult to identify repeat offenders, and also to judge the usefulness of education and treatment programs.

Generally speaking, the court reorganization did not increase consistency among the magistrate courts in dealing with DWI cases. Most magistrates continued to operate according to their own rules, with considerable dependence on withheld judgments. In part, this was probably due to the fact that after an initial term as an appointed magistrate they had to seek popular reelection. Magistrates defended the withheld judgment on grounds that it reduced the number of jury trials, allowed greater latitude in

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sentencing, and speeded up case processing.

The Idaho study gives credence to a number of hypotheses made by the study team regarding judicial system processing of DWI cases:

1. Legislation alone is not enough to bring about all the necessary changes needed to improve the judicial system's approach to DWI cases.
2. The maximum penalties prescribed by statute are rarely used.
3. Judges are unlikely to suspend or revoke licenses if they believe it will cause hardship to defendants and their families.
4. The threat of trial is a crucial determinant of the way the system functions.
5. Lay judges are no less proficient in handling drinking-driving cases than legally trained judges.
6. The absence of records showing previous arrests or convictions for DWI offenses is a major problem.

## IDAHO ASAP JUDICIAL SYSTEM

When the Idaho Alcohol Safety Action Project (ASAP) got under way in 1972, it was thought that recent changes in the State's DWI law and an extensive reorganization of the State's court system would prove to be highly advantageous to the project. The statutory changes included a reduction in the presumptive level of intoxication for vehicle operators from 0.15 percent BAC to 0.08 percent, a limit legislated in only one other State, and mandatory 90-day suspension of the driver's licenses of all first-time DWI offenders. The court reorganization included the establishment of magistrate courts in each of the State's seven new judicial districts to replace justice of the peace, probate, and municipal courts. These magistrate courts, given authority to hear criminal cases involving a maximum penalty of a \$1,000 fine or 1 year in county jail, became the venue for all but the most serious DWI cases. In addition, State Supreme Court supervision over both the district and magistrate courts was strengthened.

Thus, Idaho's new court system seemed to offer an opportunity to bring greater coherence and uniformity into the processing of DWI cases. These would obviously be necessary, it was believed, both because of the tightening of the BAC standard and increased law enforcement sponsored by the ASAP.

Subsequent study, however, showed that neither the court reorganization nor the changes in the DWI law had the hoped-for effects. The Idaho story provides an example of the problems that can arise in the course of developing a functioning ASAP in a lightly populated, rural area whose inhabitants for



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the most part are accustomed to tolerating all but the most flagrant instances of drunken driving.

Various statistics underline Idaho's rural nature. Its population of fewer than 800,000 people is spread out over almost 84,000 square miles. (By contrast, Washington, D.C.'s approximately equal population inhabits 63 square miles.) Only three cities in Idaho have more than 25,000 people, and only the capital of Boise and its three surrounding counties can be called a metropolitan area. Agriculture is still the State's leading industry, with sales of about \$500 million annually, and Indians still comprise the single largest minority group.

Idaho's population includes about 550,000 licensed drivers, who operate vehicles over approximately 57,000 miles of roads, streets, and highways. The task of patrolling the long stretches of State highways is the responsibility of the 160 officers employed by the Idaho State Police, while local roads are under the jurisdiction of an estimated 725 local and county police personnel. The State's traffic fatality figures tend to be high. In 1974, for example, only two States (New Mexico and Wyoming) had more traffic deaths per 100,000 inhabitants than Idaho.

Yet despite high accident figures and the legislature's tightening of the DWI law in 1970, the criminal justice system in Idaho paid comparatively little attention to DWI offenders prior to the creation of the ASAP. Arrests were low in number, presentencing investigations of convicted violators were virtually nonexistent, and treatment facilities were rare.

Prior to 1970 the typical judge dealt with the typical guilty offender by routinely prescribing the traditional criminal law sanctions of jail terms and fines, which were then usually suspended. Once license suspension

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became mandatory upon conviction, however, both violators and judges took a different view of conviction. Persons charged with breaking the DWI statute became much more eager to plead guilty to a lesser offense (such as reckless driving), while judges looked for ways to avoid imposing the mandatory sanction. The tactic they used was to "withhold judgment" as a substitute for pronouncing judgment upon and sentencing offenders.

The withholding of judgment, while controversial, also proved to be useful following creation of the ASAP. After the ASAP funded a Court Alcohol School (CAS) in each of the State's seven judicial districts where social drinkers and potential problem drinkers were taught "to disassociate drinking from...driving," judges frequently told offenders that judgment would remain withheld as long as the offender completed the CAS course.

In addition to funding this alternative for DWI offenders, the ASAP made a strong effort to improve cooperation between itself and the Driver Improvement and Counseling Program (DICP) operated by the Driver Services Bureau of the Department of Law Enforcement. This program provided counseling and reeducation for drivers who were problem drinkers. The ASAP did not fund any rehabilitation or treatment facilities for problem drinkers, however, since it believed that funds for such facilities would be obtained from the National Institute of Alcohol Abuse and Alcoholism (NIAAA). Late in 1974 the NIAAA did allocate funds that allowed the Idaho Department of Health and Welfare to establish the Services for Drinking Driving Program, which strengthened the State's ability to provide rehabilitative counselling for problem drinkers.

More problem drinkers were entering the criminal justice system, partly because an Alcohol Emphasis Patrol (AEP) of the Idaho State Police had begun

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to enforce DWI laws. Funded by the ASAP, this unit was composed of 26 officers who were given special training and equipment (such as Mobile Breath Alcohol Test, or MOBAT, kits) to enable them to identify DWI offenders, arrest them, and obtain the evidence necessary for conviction.

Due to the surge of DWI arrests, however, the backlog within the magistrate courts increased during 1973 from about 1,500 to 2,462. The time needed to dispose of a case increased from a mean of 26 days to 41 days for a DWI conviction and from 11 to 65 days for a withheld judgment.

This problem would probably not have developed if another of the countermeasures sponsored by the ASAP had been successful. Although the ASAP allotted funds to improve the prosecutorial function, these funds never became available for use by local prosecutors. The problem in getting the funds to local prosecutors apparently stemmed from the fact that most of them were Republicans, while the State's attorney general was a Democrat.

Another countermeasure was more successful. This involved ASAP funding for 11 presentencing investigators (PSI's), hired to investigate the backgrounds of convicted DWI offenders and make recommendations to the court regarding the most appropriate sentencing or referral for these offenders--that is, either to education, rehabilitation, or medical treatment facilities. Previously, there had been no attempt to scrutinize the backgrounds of DWI offenders charged only with misdemeanors, although such investigations were obviously necessary if problem drinkers who had thus far avoided serious accidents were to be identified. (The State's probation and parole officers were responsible for investigating only felony DWI offenders, that is, those who had been convicted of a DWI offense that had resulted in serious bodily

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injury, property damage, or death.)

Unfortunately, these 11 PSI's were not enough to serve all of the State's 67 magistrate courts. Furthermore, there were a number of problems involving these presentencing investigators and their relation to the magistrate courts. These problems can be somewhat better understood in the context of magistrate court procedures.

It has already been noted that under Idaho law a driver with a BAC of 0.08 percent or higher is presumed to be intoxicated, and that a 90-day license suspension for first-time DWI offenders is mandatory. In addition, a first-time DWI conviction can result in a jail sentence of up to 6 months and a fine of up to \$300, or both. A second DWI conviction within 2 years of the first conviction means a mandatory loss of license for 6 months and imprisonment for not more than 5 years.

However, from 1972 through 1975 few, if any, magistrates showed themselves bound by the statutory definition of intoxication. While prosecutors throughout the State showed no reluctance to prosecute DWI defendants who had a BAC of 0.08 percent or higher, the prosecutors apparently knew that the courts would often temper findings of guilt by suspending sentencing and placing offenders--particularly first-time offenders--on probation. Generally speaking, during this period the courts tended to convict for BACs in the 0.15 percent to 0.19 percent range and tended to withhold judgment for accused persons with BACs in the 0.10 percent to 0.14 percent range. While precise data are not available, it has been estimated from an 11-day sample that magistrates withheld judgment in one case out of every three DWI arrests in 1975.

Using withheld judgments to deal with DWI offenders was not universally

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approved in Idaho. Law enforcement officials objected to it, for example, on the grounds that it did not deter anyone from committing further DWI offenses.

Another, and perhaps more widespread, objection was that withheld judgments effectively wiped out any record of a person's arrest on a DWI charge. Provided that an individual complied with the terms of his or her withheld judgment--attended Court Alcohol School, for example--the case was dismissed, and no record of the arrest was forwarded to the Department of Law Enforcement's central records. The records also failed to show that an individual had originally been arrested on a DWI charge if plea bargaining resulted in a lesser charge, since none of these lesser charges imply that an alcohol-related offense was the original charge.

As might be expected, this lack of records seriously hindered identification of repeat offenders. For example, some persons were given withheld judgments in two or three different jurisdictions, each of which was unaware that the individual had been charged with a DWI offense in another jurisdiction. Thus, in many cases it was difficult or impossible to spot repeat offenders, either to get them into rehabilitation or to penalize them through the criminal sanctions for second offenders. (Insurance companies were also unhappy that withheld judgments often made it difficult to identify repeaters.)

The lack of records indicating that many offenders were repeat offenders also precluded accurate evaluation of the education, rehabilitation, and treatment programs to which offenders were assigned. That is, no judgment could be made as to whether any particular program was reducing the number of repeat offenders.

In the face of these criticisms most judges and prosecutors defended the

withheld judgment as a way to "temper justice with mercy" when judges believed that was the proper course. Magistrates must stand for reelection at the polls after their initial appointment by the magistrate commission in each judicial district, so it might be contended that this tempering of justice with mercy had political connotations. But judges and prosecutors also pointed out that withheld judgments allowed more latitude in sentencing, helped to process large numbers of cases relatively quickly in order to avoid court congestion, and kept expenditures down by avoiding jury trials and appeals to higher courts.

It is not certain, however, whether the widespread use of withheld judgments after 1972 was in response to the growing backlog of DWI cases. This may not have been the case, since use of withheld judgments appears to have decreased in 1975.

It seems clear, however, that more withheld judgments were issued after 1972, and that this rise was tied at least to some extent to the hiring of presentencing investigators. Just how much is difficult to say, however, due to the varying nature of the relationship between the PSI's and the magistrates for whom they worked.

The typical presentencing investigator was a young college graduate with no experience in background investigations and little understanding of the psychological and physiological aspects of alcohol use and abuse. What is more, in the early stages of the program some magistrates were giving PSI's only 48 hours or less to complete investigations. In most cases neither the PSI nor the magistrate would have known the offender's BAC test results, since most MOBAT analyses took 10 days to complete.

These demands for quick investigations may have been symptomatic of

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the fact that, in the beginning at least, most of the magistrates and most of the PSI's had trouble communicating with each other. Part of the problem was no doubt the difference in ages between the young PSI's and the mature magistrates, and part of it was the investigators' lack of experience.

In some courts a mutual understanding never was reached between the PSI and the magistrate, and in these courts the PSI was underutilized, assigning an investigator brought no increase in the number of cases handled in some magistrate courts.

In other courts, however, the magistrates came to rely more and more on the help and information provided by their presentencing investigators in making decisions about DWI offenders. Some PSI's were asked to conduct investigations of both DWI and non-DWI offenders, and in one jurisdiction the PSI was so well-received that the country agreed to pay his salary and hire two additional presentencing investigators as well.

The presentencing investigation process was initially hampered in all the courts where it was used by the lack of specific guidelines for conducting background investigations and by the fact that the criteria used by magistrates to select offenders for investigation varied widely. Ultimately a presentencing investigation manual intended to standardize procedures was prepared under the direction of the State's Supreme Court, but opinions vary markedly on the manual's success.

There were other problems involving the PSI's. Inaccurate determinations by PSI's as to whether an offender was a social drinker or a problem drinker were reported to be a frequent problem as late as 1975. Yet when PSI's accurately diagnosed certain offenders as problem drinkers, magistrates sometimes sent them to CAS nonetheless.

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Although PSI's were also given the responsibility of monitoring the progress of offenders after sentencing, few made an effort to do so. They were quick to report violations of probation to magistrates when they learned about them, however.

As noted earlier, withheld judgments in DWI cases dropped somewhat in 1975, and a drop also occurred in the number of presentencing investigations of DWI offenders in that year, particularly after Federal funding for the ASAP ended in the middle of the year. The investigations would not have continued at all, of course, had not the State started paying for PSI's after the Federal funds ran out.

Despite the various efforts of the ASAP and the Idaho Supreme Court to instill some measure of consistency into the handling of DWI cases by magistrates, they tended to depend strongly on their own personal judgments.

To some extent this could have been predicted. Many of Idaho's magistrates, particularly in the more rural areas, are lay judges without a law degree. They are, on the other hand, lifetime residents of their communities, and they tend to think that their willingness to skirt court formalities and protocol is justified by their extensive personal knowledge of many of the people brought before them on DWI charges.

To some extent the different views among magistrates about drunken driving also tend to illustrate the different views of city and rural people. Rural magistrates tended to be less concerned with DWI offenses and not as interested in sending offenders to some type of education or rehabilitation facility, although this might have been a natural tendency due to the smaller number of such facilities in the more rural areas of the State. Initially, however, few magistrates anywhere in the State were aware of the various



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facilities and range of possibilities of treatment for DWI offenders, and one of the ASAP's chief accomplishments was in bridging the gap between the criminal justice system and the various education, rehabilitation, and treatment facilities for persons with temporary or long-term drinking problems.

On the other hand, it has been said that the bridging of this gap would have occurred more quickly if the ASAP concept had been introduced to the magistrates with greater finesse. Although there were preliminary meetings to introduce the project to the magistrates, many of them apparently felt that those conducting the meetings failed to appreciate the facts of judicial independence and legal tradition. This failure to treat magistrates as independent and responsible individuals in their own right was probably partly responsible for some of the criticisms of the ASAP made by the magistrates. Some were said to have been openly critical of the fact that the bulk of the ASAP funds were devoted to the enforcement effort when there were pressing needs elsewhere. Some argued that the courts should be given a greater percentage of the money to handle the increased caseload, while others were particularly concerned about the weaknesses in the statewide criminal justice information system. Poor and inadequate records were, in fact, a distinct handicap to the Idaho ASAP throughout its existence, even though one of the measures was the creation of an Alcohol Data Bank whose purpose was to "provide each action countermeasure with a repository of DWI case-related data." The data bank never did become a totally adequate tool for keeping track of offenders and evaluating various aspects of the project.

Despite problems like these, the general view in Idaho was that the ASAP was successful. It heightened public awareness of the problem of drunken driving, and brought many problem drinkers into formal contact with

the education and rehabilitation system for the first time. This was deemed to be a significant achievement in a State that had devoted relatively little time and attention to the development of a modern system for dealing with DWI offenders.

The Idaho study offers support for several hypotheses developed by the study team about judicial processing of DWI cases.

One of these is that legislation alone is insufficient to bring about changes in DWI case processing. The reduction in the presumptive BAC level and the mandatory license suspension enacted by the State legislature had little effect on court practices or the number of suspensions. As before, DWI convictions were relatively rare unless the defendant had a BAC of 0.15 percent or more, while license suspensions were avoided through use of withheld judgments. These facts also support a second hypothesis--that maximum penalties prescribed by statute are rarely used.

Another conclusion reached by the study team on the basis of this and other studies is that judges are not likely to revoke or suspend licenses if it will cause hardship. This was particularly true in Idaho, a large, rural State where cars and trucks provide the only transportation other than horses, planes, and snowmobiles.

A fourth hypothesis is that the threat of trial is a crucial determinant in the way the system functions. Most of the magistrates in Idaho were quite reluctant to try DWI offenders, on the grounds that trials were costly, time-consuming, and usually ineffective as a means of correcting behavior. They saw the withheld judgment as an attractive alternative.

Idaho also supports a fifth conclusion, which is that lay judges handle DWI cases just as well as legally trained judges. Many observers of the State's

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judicial system gave lay magistrates high marks for being more flexible and receptive to change than magistrates trained in law.

Finally, this study supports the conclusion that the absence of records on DWI arrests seriously hampers both proper sentencing and intelligent evaluation of education and rehabilitation programs. In Idaho, there was frequently no way to know whether an offender was a first-time or repeat offender.

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## 1.0 INTRODUCTION

### 1.1 Background

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

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

The ASAP concept was designed as a systems approach to surround the problem drinker with a set of counter-measures designed to identify him on the road, make decisions regarding rehabilitative procedures, and then take action to put these measures into effect.  
[1972 Evaluation of Operations, Vol. III, Project Descriptions]

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

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

- Demonstrate the feasibility and practicability of a systems approach for dealing with the drinking-driving problem, and further, demonstrate that this approach can save lives
- Evaluate the individual countermeasures within the limits permitted by the simultaneous application of a number of different countermeasures at the same site
- Catalyze each state into action to improve its safety program in the area of alcohol safety

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

## 1.2 General Objective

The overall objective of this study has been to examine those ASAPs which have effected major judicial system changes or which have developed innovative approaches to the adjudication of drinking driving cases. This has required a review of the 26 ASAP sites still in operation at the outset of the study in order to identify those which met the general objective. Five sites were selected for intensive study as having apparently had a significant impact on their respective court systems. These sites are: 1) Phoenix, Arizona; 2) Puerto Rico; 3) Los Angeles, California; 4) Hennepin County, Minnesota; and 5) Idaho.

Each of the sites selected had particular aspects of change which were of interest. Accordingly, while the general objective was applicable to all five sites, specific study objectives varied with each site. Each site is the subject of a separate report. This present volume, which examines the Idaho ASAP, is one of the five volumes which comprise the site studies. A sixth and final volume provides a general review of problems encountered by the judicial systems in all ASAP sites, and examines their resolution where such resolutions occurred.

### 1.3 Specific Objectives

The specific objective in the case of Idaho was to examine the operation of a statewide ASAP system with a progressive judicial system structure (Idaho has a unified, statewide court system and centrally administered pre-sentence investigation) and the impact of stringent drinking-driver control laws (i.e. .08% BAC presumptive limit and mandatory penalties) on that system.

### 1.4 Scope and Approach

#### 1.4.1 Non-Evaluative

The reader should bear in mind then that the objectives for these studies do not encompass any substantive evaluation either of the ASAP concept, or of any particular ASAP site. The impact of ASAP, and its effect on alcohol-related highway fatalities or reduction of abusive drinking and driving, is not the focus. What has been attempted is to examine the experiences of the five sites in developing and implementing innovative and effective improvements in the court system and to assess the "transferability" of such improvements to other jurisdictions. Obviously any such improvements which are truly effective should be of wide interest, since they need not be limited only to the processing and adjudication of DWI/DUI cases.

#### 1.4.2 Data Collection

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

### 1.5 Data Limitations

#### 1.5.1 Site Visits/Personal Interviews

Real change occurs in real world contexts. It results from decisions made by key people, and such decisions are not always predicated on graphs, charts or other statistical bases. They are, rather, based on personal perceptions of



a given situation. "Change" as a subject for study, is not therefore readily susceptible to quantification, but rather to probing, structured personal interviews in order to identify the reason(s) why change was either accepted or rejected by a particular actor. This was the rationale which shaped the data collection phase of the present study. Data were collected from two types of sources. Pre-existing documents were studied and then site visits (of ten man days duration) were conducted at each of the five sites to collect individual perceptions by key persons in the drinking driver control system. (The site visit to Idaho was made during the period June 16 through 20, 1975.)

There was no attempt made to randomly select a representative cross-sample of key persons within the various agencies at a particular site. Rather it was a case of scheduling the site visit at a time most convenient to most of those whose opinions were desired. Interviews could not always be scheduled with appropriate persons during the brief span of the site visit. Wherever possible, interviews were conducted with an alternate person whose vantage point was deemed similar to that desired. This limited availability of particular actors within the system may have biased the opinions collected. Accordingly, these studies are not social science research efforts within the context usually associated with such research.

#### 1.5.2 Site-Generated Data

The brief duration of the site visit precluded extensive collection of quantitative data. Further, this was deemed to be unnecessary, as each ASAP site maintained extensive data files used to generate the various analytic reports required annually by NHTSA. These analytic reports then formed the basis for testing the hypotheses formulated by the research team for the present study--where such hypotheses were susceptible to testing. Tables and "numbers" have been deliberately kept to a minimum in these reports, being utilized only when required to illustrate system flow and to reflect variations in that flow as a result of system change.

In the case of Idaho, the statistical data generated by the site are inconsistent, and are sometimes incorrect due to computational errors. This is a particular problem with data for the year 1975. Some data elements presented in prior-year reports were dropped in the 1975 analytic studies and cumulative totals for the year, rather than quarterly breakdowns, were substituted. Case processing numbers presented are sometimes for 1974, rather than 1975.

Inaccuracies further complicated the compilation and interpretation of these data. For example, the 1975 Analytic Report #4 shows 6,892 DWI arrests for 1973 (p. 5). The 1975 Analytic Report #5 shows 7,673 DWI arrests for the same year (p. 20). Again, in the 1975 Analytic Study #5, Exhibit 1.1-1 shows 5,644 DWI convictions for 1975 and pre-sentence investigations requested on 2,545 of these--a stated percentage of 39.1%. In the discussion of this percentage on p. 7, the authors state "pre-sentence investigations are requested in 42% of the convictions, . . . ." Calculation shows the rate to be neither 39.1% nor 42%, but rather 45 (actually 45.09) %. A third example relates to the number of DWI offenders where the pre-sentence investigator was unable to classify the individual as either a problem or non-problem drinker. The 1973 Analytic #5 reports 279 such "undefined" cases referred in 1973 (p. 17), yet the 1974 Analytic #5 (p. 24) reports 868 such cases for 1973.

The reasons for these data discrepancies are not known. They may, in part, result from computer errors discovered by the site (see 1973 Annual Project Progress Report, Vol. 1, p. I-3-7). As a consequence, data tables in this report may contain empty cells, or data shown for the same elements and time periods may differ, depending on the particular source used. Wherever possible, the latest (i.e. 1975) data have been used.

## 2.0 IDAHO ALCOHOL SAFETY ACTION PROJECT

### 2.1 Community Description

Idaho is one of four Alcohol Safety Action Projects (ASAP's) designed to operate on a statewide basis.<sup>1</sup> Geographically, the state is the thirteenth in size, being approximately 300 miles wide by 500 miles long (a total land area of 84,000 square miles). Despite its area, Idaho ranks forty-second among all states in population with 713,000 estimated in 1970. It is a predominately rural state: only three cities exceed a population of 25,000. Only the capital city of Boise and its three surrounding counties (Ada, Boise and Canyon) might be termed "metropolitan." Terrain varies from rugged forested mountains in the "panhandle" and northern sections of the state to semi-arid plains in the south. Over 70% of the total land area is publicly owned national forest. Idaho is unique in that six other states and Canada are contiguous to the state's borders.

Idaho is primarily white and relatively poor, ranking thirty-eighth in personal income. Approximately 98% of the citizens of Idaho are white. American Indians comprise the largest minority group, about one percent (1%). Blacks comprise another three-tenths of one percent (.3%); all others (primarily Chicano and Oriental) make up the remaining seventh tenths (.7%). In addition to the permanent residents of the state, there is a large migrant farm labor population and significant numbers of military personnel are stationed at the several bases in Idaho. Further, during the summer months normal traffic is swelled by a large influx of tourists, and in winter by skiers and other winter sports enthusiasts.<sup>2</sup>

There are approximately 57,000 miles of roads, streets and highways in the state. These are used by the roughly 550,000 licensed drivers. In 1975 Idaho had 283 traffic

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<sup>1</sup>The others are South Dakota, Vermont, and Delaware. The Puerto Rico ASAP operated on an island-wide basis, and hence might be termed a state-wide ASAP.

<sup>2</sup>The proportion of all DWI arrests that comes from the population made up of out-of-state drivers, migrant farm laborers, unlicensed rural inhabitants and Indian populations, and out-of-state military servicemen temporarily stationed in Idaho may be as high as 29%. See Analytic Study #4 for 1975, p. 116.

fatalities; a fatality rate of 4.9 per hundred million miles. Only three states (Montana, Wyoming and New Mexico) had a higher mileage death rate in that year. (Nevada's rate was the same as Idaho's.) In terms of the population death rate (i.e., number of traffic fatalities per 100,000 inhabitants), only two states (New Mexico and Wyoming) had a rate higher than Idaho in 1974.<sup>3</sup> In July 1972, Idaho reduced the legal age for drinking from 20 years of age to 19, thus adding an estimated 16,500 persons to the population legally entitled to drink and drive.

Much of Idaho's road network is patrolled primarily by the 160 troopers of the Idaho State Police, of which 26 are assigned to the ASAP patrol. Additionally, there are an estimated 725 local and county police personnel who provide traffic law enforcement within their limited jurisdictions.

## 2.2 The Idaho ASAP

The Idaho ASAP operated under the Idaho Traffic Safety Commission. As a statewide project, the support of both the Governor and appropriate state officials was a necessary prerequisite before the project could be implemented. Active participation in the program by a number of major branches and departments of state government was required. These included the:

- Idaho Legislature
- Idaho Supreme Court
- Idaho Traffic Safety Commission
- Department of Law Enforcement
- Department of Health and Welfare
- Department of Education

The cooperation of numerous city, county and private agencies was also required to make the project work.

The ultimate goal of the Idaho ASAP project was stated as "[t]o measurably curtail drinking-driving in the State of Idaho and, as a result, the toll of death and injury on

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<sup>3</sup>National Safety Council, Accident Facts 1976 Edition, p. 63.

Idaho's roadways."<sup>4</sup> To achieve this goal a major task of the ASAP staff was to act as a coordinating body for all agencies who deal with the drinking driver. Another was to collect data and evaluate the effectiveness of the project and its individual countermeasures. The following subsections provide a brief description of the major ASAP countermeasure areas.

### 2.3 Enforcement

A special Alcohol Emphasis Patrol (AEP) within the Idaho state police was created and deployed statewide to combat DWI offenders. This effort can be described under two primary operational tasks. The first was surveillance. This was accomplished by funding the 26 man AEP, including cars, equipment and alcohol emphasis training to instruct the officers in specialized methods of DWI apprehension and in the collection and presentation of evidence. The second task was that of arrest. This involved a program to provide Mobile Breath Alcohol Test (hereafter "MOBAT") kits for state police officers as well as local and county departments. Although the ASAP has been terminated, the ISP/AEP has continued with local funding. The arrest task is fulfilled through selective enforcement, whereby AEP patrols are assigned to high-probability DWI locations. These locations are identified on the basis of accident and arrest records. The activity centered on apprehending DWI's, obtaining evidence of intoxication and, as necessary, presenting that evidence in court.

### 2.4 Judicial and Prosecution

In this area three countermeasure programs were planned. The first involved training magistrates to acquaint them with the particulars of DWI evidence, DWI case processing and the general categories of DWI offenders. The second area was to provide assistance for the prosecution component in order to process DWI cases. This effort was made in anticipation of overloaded court dockets generated by the special enforcement efforts of the Alcohol Emphasis Patrol. Finally, Pre-sentence Investigators (PSIs) were funded to determine the background circumstances of the convicted DWI offender and to recommend to the court a course of rehabilitation, treatment or education for the defendant. (This PSI countermeasure has also been continued with local funds.) The ASAP also funded the creation of an alcohol data bank so that records of prior alcohol involvement were available to the courts.

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<sup>4</sup>Idaho ASAP Project Plan, Vol. 1, Project Overview,  
dated June 15, 1972, p. 2.0-1.

The major thrust of the judicial countermeasures component centered on the hiring and training of 11 pre-sentence investigators and one PSI supervisor. These operated under the direction of the Idaho Supreme Court. These PSIs performed background investigations and presented recommendations to the court regarding sentencing or referral to rehabilitation facilities. Convicted DWI offenders could then be referred to Court Alcohol School or to other alcohol rehabilitation facilities, depending on the severity of their drinking problem and the availability of treatment resources.

#### 2.5 Expert Witness/Chemical Laboratory

This countermeasure had a two-fold purpose. The first was to ensure that the state laboratories could handle the increased number of breath analyses generated by increased arrests. The second was to train laboratory personnel in the techniques of effective court testimony as experts in blood-alcohol testing.

#### 2.6 Education/Reeducation

The education component was a Student Alcohol Education adjunct to the Driver Education Program in public schools. The reeducative component was--and remains--the Court Alcohol School (CAS) program. Both were conducted by the State Department of Education. The goal in CAS was to persuade the DWI offender referred by the courts "to disassociate his drinking from his driving."<sup>5</sup> The CAS resource was designed to handle "the social drinker or the 'early' problem drinker."<sup>6</sup> (It should be noted that the site classified the Court Alcohol School as an education countermeasure because of its placement within the State Department of Education.)

#### 2.7 Rehabilitation

The stated purpose of the rehabilitation countermeasure was to "treat individuals afflicted with severe alcohol misuse problems and to restore in them a sense of responsibility toward their own use of alcohol."<sup>7</sup> The

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<sup>5</sup>First Annual Project Progress Report, July-December 1972, p. 58.

<sup>6</sup>Ibid. p. 58

<sup>7</sup>Ibid, p. 99.

Idaho ASAP project did not fund any rehabilitation or treatment facilities. It was anticipated that funding from the National Institute for Alcohol Abuse and Alcoholism (NIAAA) would become available for this purpose. The ASAP did however, identify the various public and private agencies which accept referrals and provide psychological and psychiatric evaluations, psychotherapy and/or hospitalization services to persons with drinking problems. Here the ASAP acted as a coordinating body, trying to resolve differences and assisting in the establishment of consistent procedures.

## 2.8 Driver Testing, Licensing and Regulation

This was a two-pronged effort designed both to increase the knowledge of all drivers about alcohol and also to treat DWI offenders. The Driver Testing and Licensing countermeasure involved revisions to the "Drivers Handbook" to provide general information on the effects of alcohol and the sanctions prescribed by law. The regulation countermeasure was designed to increase the capability of the Driver Improvement and Counseling Program (DICP) to handle drivers with drinking problems. This program is operated by the Driver Services Bureau of the Idaho Department of Law Enforcement and received no ASAP funding. Hence, termination of the ASAP did not affect this program. The DICP provides counseling and attempts to reeducate and rehabilitate problem drinking drivers; thus the program complements the Court Alcohol School. Since the Driver Services Bureau is the driver licensing agency, it can (and is empowered by law to do so) control, restrict or revoke driving privileges until acceptable driving behavior has been demonstrated. The success of this countermeasure required detailed and long-term cooperation between the Department of Law Enforcement (Driver Services) and the Traffic Safety Commission (ASAP).

## 2.9 Public Information and Education

The ASAP mounted an active public educational effort, disseminating drinking/driving control information through all media. This effort was funded entirely by ASAP. It was handled on a subcontract basis with a private firm.

## 2.10 Legislative and Regulatory

The ASAP staff utilized its knowledge and expertise in identifying needed legislation and made recommendations for desirable legislative approaches to drinking driving control. These recommendations were made to the state legislature; the ASAP staff also acted to secure public support for their enactment.

### 2.11 Medical Advisory Board

The objective here was to set up a board which would establish physical standards for driver licensing. This was to include an assessment of the feasibility of testing to identify license applicants with drinking problems. This countermeasure was never activated.

### 2.12 Project Administration

The administration of the project, including administrative, fiscal and staff services, was conducted under the auspices of the Idaho Traffic Safety Commission and was provided overall direction by the Governor's Highway Traffic Safety Representative. Direct project management responsibility was vested in the ASAP Project Director, whose office was located in the capitol. He was assisted by an Assistant Project Director, who managed fiscal matters and secretarial support.

In order to operate the ASAP project on a statewide basis, Idaho was divided into three administrative regions with a regional ASAP coordinator in each region reporting to project management. These regional coordinators acted as local program managers in each region and provided aid to the separate countermeasures in carrying out their operations. In addition, these coordinators conducted the roadside surveys and addressed civic groups and various community organizations, thereby aiding in the dissemination of information regarding ASAP goals and activities and soliciting public support.

Functional coordinators for each countermeasure in each region represented the agency directly involved in each of the countermeasure activities.

### 2.13 Alcohol Data Bank

The purpose of the Alcohol Data Bank (ADB) was to "provide each action countermeasure with a repository of DWI case-related data."<sup>8</sup> This in turn depended upon each countermeasure reporting its actions to the ADB. As the central source of ASAP-related data, the ADB was designed to be a major tool for project management as well as individual cases. Further, it was designed to play a central role in evaluation efforts.

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<sup>8</sup>First Annual Project Progress Report, July-December 1972, p. 116



#### 2.14 Evaluation

This final countermeasure was designed to yield measures of the effectiveness and overall impact of the ASAP project. In addition to tracking current system-wide activities, there was the additional need to compile baseline data for some period of time prior to ASAP so that any changes could be detected and measured. Significant project funding was dedicated to this effort, and a private systems development corporation was contracted with to provide evaluation services. This same contractor was charged with the concurrent development of the Alcohol Data Bank (ADB). This evaluation effort was continued, with federal funds, one year beyond the termination of the ASAP. The final evaluation report is scheduled to be produced in 1977.

### 3.0 IDAHO DRINKING-DRIVER CONTROL SYSTEM

In Idaho the societal mechanism for controlling abusive drinking-driving behavior is similar to that controlling many other types of legally deviant behavior; that behavior is denominated a crime or infraction. The criminal justice system is then assigned responsibility for enforcement, prosecution, adjudication and sanctioning, including application of appropriate correctional and treatment dispositions. In performing the latter function, the criminal justice system acts as a case-finding (or intake) and referral source for the public health and social service system which functions to provide educational treatment and rehabilitative services for those who combine abusive drinking and driving. Providing coordination, evaluation, and funding support for this inter-system cooperative effort was the function of the ASAP. The major agencies operating in, and the control law providing the basis for, the general Idaho drinking driving control system are briefly outlined in the following subsections.

#### 3.1 System Agencies

##### 3.1.1 Legislative Agencies

All drinking driving legislation for the state is general statewide statutory law enacted by the Idaho state legislature.

##### 3.1.2 Enforcement Agencies

The major traffic law enforcement agency for much of the land area in Idaho is the Idaho State Police (ISP). The ISP has a total strength of 160 officers, of which 26 are organized into a special Alcohol Emphasis Patrol (AEP). This unit was originally hired, trained and equipped with ASAP funds. This was the only enforcement countermeasure funded by ASAP, and represented less than three percent (3%) of the total 884 state, county and local police officers in Idaho.<sup>9</sup>

##### 3.1.3 Prosecution Agencies

Prosecution in Idaho is a responsibility of the state's 44 counties, many of which are too small to support a full-time prosecutor. There are also city prosecutors in the major urban areas, as well as the staff of the Idaho Attorney General's Office.

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<sup>9</sup>Idaho ASAP First Annual Progress Report, July-December 1972, p. 2.

#### 3.1.4 Courts

Idaho has a centralized or "unified" court system. The five supreme court justices serve six-year terms. Twenty four district judges located in seven judicial districts report directly to the Idaho supreme court. The bulk of DWI cases are handled by 67 magistrate courts located in major cities and towns throughout Idaho. These magistrates report to the respective district judge.

#### 3.1.5 Public Defender

Public defense services are available for indigents arrested for DWI. The majority of these public defenders are attorneys who provide services when required under a contract with the jurisdiction. Full-time public defenders are available only in major urban areas.

### 3.2 Legal Environment

#### 3.2.1 Pertinent Statutes

This section presents synopses of statute law in Idaho relevant to the drinking driver control system. Citations in brackets refer to the appropriate section and paragraph of the Idaho Code. Comments, where appropriate, are included.

#### Implied Consent

Any person who operates a motor vehicle is deemed to have given his consent to a chemical test of breath, blood, urine or saliva. The choice of the test used rests with the arresting officer rather than the offender. (A breath test--using MOBAT--is the one that is usually administered.) Refusal to take a test will result in a 90-day suspension of the driving license by the Department of Law Enforcement. The suspension can be effected temporarily without notice, and the offender--once formally notified--can request a hearing [49-352]. (Idaho law does not provide for pre-arrest breath testing/screening.)

#### Driving While Intoxicated (DWI)

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

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

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

#### Reckless Driving

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

First conviction--30 days

Second conviction within 2 years--90 days

Third conviction within 3 years--1 year [49-330]

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

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

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

Legal Drinking Age in Idaho was lowered to 19 year-olds in 1972 [23-603]. This statute prohibits the consumption of alcoholic beverages, wine or beer by persons under 19.

## Department of Law Enforcement--License Sanctions

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

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

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

## Pre-Sentence Investigations

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

## Withholding/Arresting of Judgment

The judiciary in Idaho is specifically empowered to "arrest" or withhold judgment [19-2511].

## Records

The DLE is directed to file "all accident reports and abstracts of court record of convictions--in order that an individual record of each licensee, showing the convictions of each licensee and the traffic accidents in which he has been involved shall be readily ascertainable...." [49-324].

## Alcoholic Beverages Defined

"Alcoholic liquor" is defined as containing more than 4% alcohol by weight [23-105]. "Beer" is defined as containing not more than 4% alcohol by weight [23-1001]. The ASAP site has stated that "it is legal to have an open container of beer in the driver's compartment, because the amount of alcohol in beer does not meet the definition of an alcoholic beverage."<sup>10</sup> A statute search uncovered neither a legal exemption of beer from being transported in an open container in a motor vehicle nor a prohibition against such transportation.

## Blood Alcohol Concentration (BAC) of Traffic Fatalities

The taking of a blood sample during autopsies on traffic fatalities is required [49-1016]. However, this statute stipulates that the BAC results from such tests are for statistical purposes only, and shall not be made known with the identity of the deceased. This precluded the correlation by the ASAP of individual driving histories to traffic victims.

### 3.2.2 Court Organization

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

## Supreme Court

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

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<sup>10</sup> Analytic Study #1, 1973, p. 3.

may sit in divisions of not less than three justices and must sit at least six times annually; at least two terms must be held at the seat of the State government (Boise), and one term each at Lewiston, Coeur d'Alene, Twin Falls and Pocatello. (Actually the court has four terms in Boise and two terms each in Lewiston, Coeur d'Alene, Twin Falls and Pocatello.) The Supreme Court has original jurisdiction in claims against the state (adversarial opinions), writs of mandamus, certiorari, prohibition, and habeas corpus, with appellate jurisdiction from final judgment in district courts.<sup>11</sup>

The Supreme Court consists of five justices; the one with the shortest term to serve, and not holding office by appointment or election to fill a vacancy, is designated the Chief Justice. Justices are elected to serve a term of six years on a nonpartisan ballot and vacancies are filled by the Governor with the advice and consent of the State Senate. A candidate for justice of the Supreme Court must have been admitted to practice law and have been a resident of the State of Idaho for two years preceding election. The court appoints a clerk of the court, an administrative assistant, and any other necessary personnel.

#### District Courts

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

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<sup>11</sup> National Center for State Courts, Analysis of the Idaho Courts Information System, Denver, Colorado, June, 1974, p. 2.

There are 24 district court judges in the seven judicial districts: In each district, one judge is elected by his peers as the senior district judge. District court judges are elected (i.e., retained in office) by the voters in their respective districts on a nonpartisan ballot to serve a term of four years. District court judges must be "learned in law." The senior district judge or acting senior district judge in each judicial district, subject to the rules of the Supreme Court, has administrative authority and supervision over the operation of the district courts and the magistrate divisions of the district courts.<sup>12</sup>

Clerks of the district courts are also elected in each county, and also serve four year terms.

#### Magistrate Courts

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

#### Legal Jurisdiction

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

Cases generally assigned include: Civil proceedings when the amount in controversy does not exceed \$1,000, the probate of wills, administration of estates of decedents, minors and incompetents, criminal proceedings when the maximum punishment authorized by law does not exceed a fine of \$1,000 or confinement for 1 year in the county jail, or both and any juvenile proceedings, misdemeanors, and pre-

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<sup>12</sup> Law Enforcement Assistance Administration, National Survey of Court Organization, Washington, D.C., 1973, p. 129.



liminary hearings.<sup>13</sup> Accordingly, these courts hear the bulk of DWI cases.

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

The number and location of magistrates in each county is determined by the district magistrates' commission. There are 67 magistrates in the 44 counties of the State (as of 1 October 1975), of which 30 are attorneys and the others laymen; 52 work full-time and the others work part-time. Magistrates are initially appointed by the magistrate commission within the judicial district on a nonpartisan merit basis, with the approval of the majority of the district judges of the respective district. Magistrates serve a first term of two years. They must then stand for popular election (i.e., retention). If elected, they serve four-year terms. Before taking office for the first time, each magistrate must attend an institute on the duties and functions of the magistrate's office, held under the supervision of the Supreme Court.

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<sup>13</sup>Section 1-2210 of the Idaho Code restricts certain classes of cases heard in the magistrate courts to only those magistrates who are attorneys. These include:

- a) Civil actions where the amount claimed exceeds \$1,000;
- b) Criminal proceedings where the maximum authorized punishment exceeds that authorized for misdemeanors;
- c) All proceedings involving custody of minors and habeas corpus;
- d) Proceedings for divorce, separate maintenance or annulment; and,
- e) Proceedings in quo warranto, or for injunction, prohibition, mandamus, ne exeat or appointment of a receiver.

The clerk of the district court may assist the magistrates or a deputy clerk may be assigned to the magistrates division in a particular county.

#### District Magistrates Commission

Each of the seven judicial districts has a district magistrates commission composed of the chairman of the county commissioners for each county in the district, the mayors of three municipalities who are appointed by the Governor, and the senior district judge (all of whom may vote) and two lawyers from the district (appointed by the State Bar, neither of whom may vote). This commission determines the number and location of magistrates in each county, appoints the magistrates on a nonpartisan basis and determines their salaries. All actions of the commission are subject to the approval of the majority of the district judges in each district.

There is also the Judicial Council. This council was established to 1) conduct studies for the improvement of the administration of justice; 2) make reports to the Supreme Court and legislature; 3) submit nominations to the Governor for vacancies in the office of Supreme Court justice or district judge; and 4) recommend the removal, discipline and retirement of judicial officers.

The council consists of seven members: The Chief Justice of the Idaho Supreme Court; three attorney members, one of whom is a district judge, appointed by the Board of Commissioners of the Idaho State Bar with the consent of the senate, and three non-attorney members appointed by the Governor with the consent of the senate.<sup>14</sup> Appointed members of the council serve six-year terms.

#### 3.2.3 Prosecution

The attorney general and his staff are located in the capitol city of Boise. County prosecutors are located in the county seats of the forty-four counties in Idaho. Because of the small population of many counties, the county prosecutor is frequently only a part-time officer who also conducts a private law practice. In some counties, the prosecutor's position is contracted to a particular law firm. Only a few counties, including Ada County (the location of Boise) have full-time prosecutors and only three counties have sufficient population to warrant deputy prosecutors.

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<sup>14</sup>National Survey of Court Organization, p. 130.

#### 3.2.4 Presentence Investigation

With the advent of the Idaho ASAP, a misdemeanor pre-sentence investigation capability was created. The ASAP funded twelve Pre-Sentence Investigators (PSIs); one supervisor and eleven field workers. The field personnel were assigned to various jurisdictions across the state, reporting through the supervisor to the State Supreme Court. Their function was confined to DWI cases. The responsibility for conducting felony pre-sentence investigations remained with the Adult Probation and Parole Division of the Idaho Department of Corrections.<sup>15</sup> Each PSI was under the immediate supervision of the respective District Court Administrator as well as the various magistrates to whose divisions they were assigned. Since the court system contains sixty-seven magistrate courts, the eleven field PSI's were deployed to high volume courts. Obviously, not all magistrates had access to the services of a PSI. This in part accounts for the fact that not all DWI cases received a pre-sentence investigation.

#### 3.2.5 Procedures for Disposition of Alcohol-Related Traffic Arrests

In the State of Idaho, the relation of a traffic arrest to alcohol can be established only in the case of Driving While Intoxicated (DWI). There are no lesser charges from which alcohol involvement can be inferred.<sup>16</sup>

The typical DWI arrest results when the officer on patrol observes what he believes may be a DWI and stops the vehicle. The officer interviews the driver and observes the physical condition. He then gives the subject the field dexterity tests. At this time, the officer determines if he will arrest for DWI, orally warn, or issue a citation for a lesser offense.

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<sup>15</sup> In June of 1976, this division absorbed the DWI PSI's, thus placing the responsibility for pre-sentence investigations--felony or misdemeanor-- in a single agency.

<sup>16</sup> In Idaho police officers can note "Had Been Drinking" on traffic citations, but few do so, as they may become personally liable if they cannot subsequently furnish proof that the offender had indeed been drinking.

If he arrests the violator, he gives the Miranda warnings, and gets a chemical (MOBAT) test from the offender. The suspect is then transported to the county jail, and is admitted to bail or jailed. The officer then prepares his case for court.<sup>17</sup> Should the driver refuse the test, the officer reads the offender the Refusal Code (49-352), and makes note of refusal on the citation. An Affidavit of Refusal will later be filled out, notarized, and sent to the Department of Law Enforcement in Boise.

The MOBAT sample is mailed to the laboratory operated by the State Department of Health and Welfare for analysis.

While in custody, the subject may post bond and is then released. If the subject subsequently forfeits bond, the arrest will remain on his record locally, and it is up to the local magistrate to follow up by issuing a bench warrant for his arrest. Otherwise, the arrest may not be recorded at the state level.<sup>18</sup>

The State Department of Health and Welfare conducts a Blood Alcohol Concentration (BAC) analysis of the specimen submitted by enforcement personnel. The chemist conducting the analysis documents his findings in preparation for possible court appearance.<sup>19</sup>

Upon arraignment, the defendant will enter a plea of guilty or not guilty. The majority of DWIs plead guilty at arraignment.<sup>20</sup> In a relative few cases, the prosecutor adjudges the evidence to be inadequate. Plea bargaining will then ensue. In plea-bargained cases during the life of the ASAP, judges were to prepare an "ASAP Court Disposition Record" reflecting reductions through plea bargaining. Cases not disposed of by a guilty plea or a bargained plea are scheduled a trial date and the prosecutor is notified of that date. The defendant's case is then submitted to the prosecutor, who considers the adequacy of the evidence and decides whether the case will be tried as a DWI or on a lesser charge. The prosecution prepares his case from facts contained in the arresting officer's report, the chemist's BAC report, and testimony from other witnesses, if any.

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<sup>17</sup>Analytic Study #3, 1973, p. 11.

<sup>18</sup>Analytic Study #4, 1975, p. 15.

<sup>19</sup>Analytic Study #5, 1973, p. 7.

<sup>20</sup>Analytic Study #4, 1975, p. 15.

Assuming that there has been no plea bargaining prior to trial, the defendant may be advised of the weight of the evidence against him or of his need for treatment, and may at this time decide to change his plea to guilty. If the defendant does not change his plea, the trial will ensue, either before a judge or before a jury, according to the request of the defendant. Witnesses will be subpoenaed and evidence for the defense and the prosecution--including the arresting officer and expert witness testimony--will be presented. The magistrate then pronounces judgment, based on evidence presented or jury verdict. In most cases a guilty verdict is obtained in a DWI case.<sup>21</sup> If the defendant is found not guilty, his driving privileges will be restored and, if he is in custody, he will be released.<sup>22</sup> Where the offender pleads guilty, or is found guilty of DWI at trial, the judge may order a pre-sentence investigation, and, based upon the findings of that investigation, sentence the offender. If the defendant is found guilty of a first offense DWI, he may receive the maximum sentence of six months in jail, a \$300 fine and a 90-day suspension of driving privileges. Typically, DWI first offenders are sentenced to six months of probation, with attendance prescribed at Court Alcohol School and the Driver Improvement Counseling Program (DICP).<sup>23</sup>

The device of "withholding judgment" is widely used. It allows the judge to defer judgment of guilt until the subject has complied with the terms--if any--of his probation, such as attendance of Court Alcohol School, Alcoholics Anonymous meetings, and the like. When these obligations have been fulfilled, the judge may dismiss the case, and there is no requirement that a record of the disposition be forwarded to the Department of Law Enforcement for inclusion in the individual's driving record.

#### Procedures for Pre-Sentence Investigation

Where the magistrate requests a pre-sentence investigation, the PSI begins with an interview of the offender.<sup>24</sup>

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<sup>21</sup>Analytic Study #5, 1975, p. 9.

<sup>22</sup>Analytic Study #4, 1975, p. 10.

<sup>23</sup>Ibid., p. 12.

<sup>24</sup>During the life of the ASAP, the Division of Probation and Parole of the State Department of Corrections conducted the pre-sentence investigation only in those areas where a DWI repeat offender was tried on the felony DWI charge.

This initial interview has as its goal to classify the individual as a problem or non-problem drinker, and to identify appropriate educational or rehabilitative modalities. During the defendant interview, an alcohol-propensity test may be given to assist in determining the probability that the defendant has a drinking problem. Based on this test, the defendant's interview, the defendant's prior driving record and BAC at the time of arrest, the pre-sentence investigator will classify the defendant as either a problem drinker, a non-problem drinker, or "undefined." He may also make recommendations to the court for rehabilitative and reeducative measures. The following are possible pre-sentence investigation classifications and recommendations.

- PROBLEM DRINKER--reveals a definite problem drinking pattern, but is still capable of conducting the majority of social transactions. The pre-sentence investigator normally formulates a referral to an agency with a rehabilitative program and Court Alcohol School.
- NON-PROBLEM DRINKER--reveals an immoderate use of alcohol by the defendant, but not of a habitual nature. The pre-sentence investigator formulates referral to a Court Alcohol School.
- UNDEFINED DRINKER classification--adequate data to determine the extent of the defendant's problem was not available. Based on whatever information was available, the pre-sentence investigator formulates a referral recommendation, usually to Court Alcohol School.

The two primary reeducative resources available in Idaho are:

- COURT ALCOHOL SCHOOL--the majority of the defendants are assigned to Court Alcohol School for reeducation in the problems and considerations involved in drinking and driving.
- DRIVER IMPROVEMENT COUNSELING PROGRAM--the DICP is operated by the State Department of Law Enforcement (Driver Services Division) and focuses on the "hard core" drinker-drivers. Any driver (not just those charged with DWI) who faces either permissive or mandatory suspension may request admission to the DICP. If the driver meets the requirements and is accepted into the program, the Department of Law Enforcement (DLE) stays its action of license suspension. The suspension action is completely

rescinded if the offender successfully completes the DICP program. The program utilizes face-to-face counseling and other reeducation and rehabilitation resources and agencies available, e.g., Alcoholics Anonymous and Defensive Driving. The DICP Counselor monitors the defendant's probation while in DICP and may recommend suspension of driving privileges if the defendant fails to complete his probationary program.<sup>25</sup>

#### Procedures for Monitoring of Probation

Monitoring of DWI offenders placed on probation is limited due to a shortage of resources. Where DICP is included as a condition of probation, then the DICP counselor assigned will monitor the offender's traffic violations for as long as the subject is in the program. Where DICP is not prescribed, the court PSI will normally do a six-month check of the driver record file, looking for violations subsequent to the original charge on which probation is based. "In truth, the subject may be arrested by a local agency in another part of the state and forfeit bond or be issued a withheld judgment. In either case, the record will not necessarily be recorded on the driver record file" (in the Department of Law Enforcement central record system).<sup>26</sup>

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<sup>25</sup> Analytic Study #5, 1973, p. 13.

<sup>26</sup> Analytic Study #4, 1975, p. 11.

#### 4.0 HISTORY OF THE IDAHO ASAP

The history of the Idaho Alcohol Safety Action Project, like those of other ASAPs, is one of continuing change. As a particular effort succeeded or failed, modifications were required to adapt to new conditions. Unforeseen results of some program aspects forced further change. Underlying every effort was the constant requirement to compromise with, and accommodate to, the prevailing political winds as well as the changing attitudes of decision makers in the criminal justice, highway safety and treatment systems. In order to understand the history of the ASAP program, it must be remembered that what was planned could not always be implemented, and what was implemented could not always function as planned. In short, the ASAP concept was--like politics-- "the art of the possible;" for effecting major social change is only partly science. The rest is art.

In order to appreciate the impact of change within or upon any particular facet of the Idaho drinking-driver control system, particularly the judicial component, it is also necessary to understand the general evolution of events, the broader historical milieu, in which that change occurred. Therefore, this section presents a brief history of the Idaho ASAP and the control system to which it relates.

#### 4.1 First Year Activities--1972

The Idaho ASAP was funded for 2.1 million dollars over a three-year period. Operations formally began on July 1, 1972.

The first six months were devoted primarily to initiating the various project activities. This included hiring and training personnel, purchasing equipment, and finding office space. Obviously not all countermeasures could be implemented at the same time, and not all impacted on the courts. Only those which did have a direct impact are covered in the following discussion.

One of the most significant was the enforcement countermeasure. The Alcohol Emphasis Patrol (AEP) of the Idaho State Police (twenty-six patrolmen and three supervising sergeants) was hired, equipped, trained and commenced operations in late July. They made 742 DWI arrests during the last five months of 1972,<sup>27</sup> while the 134 regular ISP patrol-

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<sup>27</sup> First Annual Progress Report, July-December 1972, p. 93.



men issued another 2,009 citations for DWI.<sup>28</sup> This ISP effort combined with the reported 3,209 DWI citations issued by local police officers throughout the state makes a total of 5,960 DWI arrests in 1972, a 229% increase over the 2,601 reported during the preceding year.

The prosecution countermeasure area was originally to be augmented by having the ASAP reimburse each county for DWI overload case prosecution where the arrest had been made by AEP or non-AEP officers of the ISP. This subsequently was deemed infeasible and the alternative adopted was to have the State's Attorney General provide prosecution assistance to county prosecutors on a case-by-case basis where it could be demonstrated that overload of DWI cases was due to the ASAP program. No project funds were spent on the prosecution countermeasure in 1972.

Two training seminars for magistrates were conducted during the initial six months; the first in July and the second in November. (That some magistrates remained uncommitted to the ASAP concept could perhaps be inferred from their attendance at the one-day July seminar: Of the 61 invited, only 40 remained by the end of the day.<sup>29</sup>) By the year's end, the site reported three problem areas in the judicial countermeasure area. The first involved the lack of adequate rehabilitation resources to which judges could direct DWI offenders. The second was an objection to the withheld judgment by the insurance industry.<sup>30</sup> The third problem area was delicately described as "the reticence of some courts to report actions on DWIs for which no PSI (was performed. . ."

Court problems relating to the ASAP were subsequently discussed at two meetings held by the Supreme Court at Lewiston and Coeur d' Alene in the fall. The two major

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<sup>28</sup>These figures are those provided by the ISP in September, 1976. They vary considerably with those provided by the site in the 1972 Annual Progress Report on p. 94.

<sup>29</sup>Attendance data for the November seminar are not available.

<sup>30</sup>Where the judge withholds judgment, frequently no entry is made to the individual offender's moving violation record maintained by the Department of Law Enforcement, Driver Licensing Section. This in turn allows the offender to circumvent the provisions of the Safety Responsibility Law.

areas discussed at these meetings were 1) the lack of a system by which magistrates reported those defendants placed on withheld judgments and 2) the inconsistency of policy from one judicial district to another. The general tenor of these two meetings was to express the active interest in ASAP by the Supreme Court justices. The problems raised at these first meetings, however, were never completely resolved.

The incomplete reporting of withheld judgments was simply one manifestation of the absence of a comprehensive traffic records system in Idaho. DWI citations issued by local police agencies, for example, are reported only where the offender is convicted. Reduced charges and withheld judgments were not reported.<sup>31</sup> In some courts, disposition data were reported to the Alcohol Data Bank only where a pre-sentence investigation was requested. This incomplete reporting problem was to plague the development of an adequate data bank for tracking of offenders and program evaluation. More importantly, it was to be a constant irritant to some judges and prosecutors, since absolute (as distinct from sampling) measures of recidivism were precluded. This deficiency was due also in part to inadequate reporting to the data bank by rehabilitation agencies.

By mid-July of 1972, the eleven ASAP-funded Pre-Sentence Investigators (PSIs) had been deployed to the field. The ASAP reported a steady increase in the number of pre-sentence investigations requested by the courts, with a total of 802 investigations completed by the end of the year. This represents 13 percent of the total 5,960 DWI citations issued during the entire year, but 26.9 percent of the 2,980 citations issued during the last six months of the year. At year's end, the active caseload for the PSIs was reported to be 969 cases, or an average of 88 cases per investigator.

PSIs reported that some magistrates were allowing only 48 hours or less for the complete investigation and reporting process on a particular offender. These time constraints resulted in hasty reports which these same magistrates frequently found unsatisfactory. In these cases, neither the pre-sentence investigator nor the magistrate knew the offender's BAC at time of arrest, since the "turnaround" time for most MOBAT analyses was approximately ten days.

By September of 1972, the Court Alcohol Schools had commenced operations in all seven judicial districts. Adminis-

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<sup>31</sup>The Supreme Court has reportedly initiated a system for reporting/recording withheld judgments by all magistrate divisions. This system did not become effective, however, until after the termination of the ASAP.

tered and operated by the State Department of Education, this program was designed to provide the courts with a treatment modality primarily for DWI offenders diagnosed as social drinkers. These monthly 2 1/2 hour sessions were to ultimately become self-financing, with operating costs defrayed by tuition fees paid by attendees. Collection of fees was delegated, however, to the PSIs, who increasingly found their time being consumed by recordkeeping and reminding offenders of payments due.

By the end of the first year of operation (i.e., December, 1972), a backlog of 1,500 DWI cases awaiting disposition had developed. This was an increase of 890 cases (40.6%) over the 610 cases on the docket at the end of 1971. The site reported, however, that this growing backlog "has not reached the critical level."<sup>32</sup>

#### 4.2 Second-Year Activities--1973

As the Idaho ASAP entered its first full year of operation, it had been the agent of change in the courts in two major areas. The first was the expanded input of DWI cases resulting from increased arrests; the second was the creation of a (heretofore nonexistent) capability to conduct pre-sentence investigations on misdemeanor DWI offenders. Aside from some training, the magistrate courts were still in their pre-ASAP state, faced now with a growing backlog of DWI cases awaiting disposition. No change at all had been effected in the prosecutorial component. The attempts to develop a comprehensive or complete data base on DWI offenders were still encountering difficulty, as were efforts to monitor offenders through the probationary period. A new referral resource (Court Alcohol School) had been created, and efforts by the regional ASAP coordinators to upgrade rehabilitation and treatment resources were continuing.

The AEP continued its selective enforcement patrol strategy. Available data indicated that 86.9% of all highway fatalities in Idaho occurred in rural areas. Accordingly, the patrol concentrated its efforts in those rural areas with the highest volume of fatal accidents. By December 31st, the AEP had made 1,702 DWI arrests for the year, while the rest of the ISP had made a further 2,855 arrests. Combined with the 3,116 arrests reported by non-ISP officers throughout the state, this meant that the court system had received 7,673 cases in 1973, an increase of 1,713 cases over those received in 1972.

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<sup>32</sup> Annual Project Report July-December, 1972, p. 74.

It can be seen from Figure 4-1 that the backlog of DWI cases in the courts during 1973 mounted from 1,500 to 2,462, a 57% increase. Concurrently, the mean time to disposition increased from 26 days to 41 days from a DWI conviction, and from 11 to 65 days for a withheld judgment. Commenting on what it termed this "dramatic" increase, the site stated that "[t]he impact of [this increase] on the judicial systems is not clearly measurable at this time."<sup>33</sup> It further concluded that this backlog still had "not reached the critical level."<sup>34</sup>

One factor which may relate to this backlog is the lack of success in the Prosecution Assistance countermeasure. The site reported problems in distributing the funds dedicated to this area "through the county to the local prosecutors, and the attitude of the prosecutors toward prosecution assistance money . . ."<sup>35</sup> (By 1975, the site was less inclined to "talk around" the real reason why the prosecution assistance countermeasure had never been effected. "Upon implementation, it was determined that any monies provided would have to go into the county general fund and [therefore] there was little assurance that this money would eventually reach the prosecutor's office. The ability to provide state support was implemented; however, the political structure, a democratic [sic] attorney general and predominantly republican [sic] prosecutors, was such that this service was never used. Thus, the countermeasure has been cancelled."<sup>36</sup>) As a consequence, these funds were re-allocated to the Pre-Sentence Investigation and Chemical Laboratory/Expert Witness countermeasures.

Other factors cited in the 1973 Annual Report of the Idaho ASAP center on the added time required to conduct pre-sentence investigation and the increasing time required by some of the state laboratories to analyze and report breath samples.

The hoped-for NIAAA funds were not received in 1973. This precluded significant improvement in rehabilitation

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<sup>33</sup>Analytic Study #4, 1973, p. iii.

<sup>34</sup>Idaho ASAP 1973 Annual Project Progress Report, Vol. II, p. II-3-32.

<sup>35</sup>Ibid, Vol. I, p. II-3-32.

<sup>36</sup>Analytic Study #4, 1975, p. 11.

FIGURE 4-1  
Disposition of A/R Arrests<sup>1</sup>

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

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

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

services to which the courts could refer DWI offenders. Court Alcohol-School, Driver Improvement Counseling Program and Alcoholics Anonymous continued to be the primary referral resources. Figure 4-2 shows the numbers of Problem, Non-Problem and Unidentified (i.e., could not be classified by the PSI) drinkers referred in 1973, and the primary agencies to which they were sent. It should be remembered when viewing these data that no uniform referral procedures existed between judicial districts, or frequently, between magistrate courts in the same district. Accordingly, referral decisions depend upon the judgment of the individual magistrate. These decisions may be based on the recommendations of a PSI-- assuming one is available--and assuming that the magistrate requested a pre-sentence investigation. It also assumes that the magistrate concurred with the recommendation.

In any event, the decision is constrained by the availability of rehabilitation and treatment agencies. Both the sensitivity of the magistrate to drinking problems and the availability of referral resources vary markedly throughout Idaho. For these reasons, Figure 4-2 does not reflect the referrals by all magistrates, but rather those who a) had resources available and b) elected to use them.

#### 4.3 Third Year Activities--1974

The Idaho State Police Alcohol Emphasis Patrol arrested 2,002 DWIs during 1974. This is roughly 76 arrests per officer per year, a continuation of the performance level in 1973 of about 6 arrests per man per month. In addition to its arrests, the patrol also produced a series of DWI/Alcohol Training Seminars for 200 city, county and state police officers.

Early in the year, two judicial seminars were provided for magistrates in the area of alcohol safety and DWI case processing. Additionally, the Supreme Court scheduled a magistrates Sentencing Institute which convened in December. The goal of this institute was to enable the magistrates to assist in the development of a sentencing manual designed to enhance the uniformity of procedures for the various magistrate courts. An ancillary goal was to assist the judges in the better utilization of PSIs in disposing of DWI cases.

A pre-sentence investigation seminar was held at the end of January, in which the PSIs also attempted to develop more uniform procedures and work out methods by which the classification process (i.e., whether the offender was a problem drinker or a social drinker) could be shortened. The pre-sentence investigation area advanced significantly

FIGURE 4-2\*

DRINKER CLASSIFICATION AND REFERRALS FOR 1973

	Problem <sup>1</sup>	Non-Problem <sup>2</sup>	Un-identified <sup>3</sup>	Total
<u>Total Subjects Classified</u>	841	1,366	279	2,486
<u>Referral Activity</u>				
Court Alcohol School	574	595	188	1,357
Driver Improvement Counseling Program	152	239	61	452
Defensive Driver	0	179	30	209
Alcoholics Anonymous	81	0	0	81
<u>TOTAL Subjects Referred</u>	807	1,013	279	2,099
<u>Percent of Classified</u>	96.0	74.2	100.0	84.4

<sup>1</sup> PROBLEM DRINKER - The total number of problem drinker referrals was 807, or 96 percent of the 841 reported Problem Drinkers. The majority of the problem drinker referrals, 574, or 71 percent, were referred to a Court Alcohol School. A total of 152, or 19 percent, were referred to the Driver Improvement Counseling Program. Another 81, or 10 percent, were referred to Alcoholics Anonymous.

<sup>2</sup> NON-PROBLEM DRINKER - The total number of non-problem drinker referrals was 1,013, or 74.2 percent of the 1,366 cases classified as Non-Problem Drinkers. A majority of these, 595, or 50 percent, were also sent to a Court Alcohol School. Some 239, or 24 percent, of the non-problem drinker referrals were sent to the Driver Improvement Counseling Program; and 179, or 17 percent, were sent to the Defensive Driver School.

<sup>3</sup> UNIDENTIFIED - All 279 of the unidentified driver class were referred to either Court Alcohol School, the Driver Improvement Counseling Program, or Defensive Driving School.

\* Source: Analytic Study #5, 1973, p. 17.

with the development of a Pre-Sentence Investigation Training Manual which was produced under the auspices and guidance of the Supreme Court. Complementary to this effort was the development of a new Magistrate Division pre-sentence form. In the third quarter of the year, a pre-sentence investigation procedures manual was also produced.

The major change in the Idaho ASAP in 1974 was the dedication of the Combined Alcohol Referral and Education Services center (CARES) in Idaho Falls. The result of many months of hard work, the center brought together under one roof all of the services in the Idaho Falls area available to those with alcohol-related problems. Funded despite the continued failure to obtain NIAAA funds, the center provided a coordinated multi-agency rehabilitation program for problem drinkers. The courts of the 7th judicial district (which is served by CARES) now had a "single agency" to which to refer subjects for either education or rehabilitation programs. CARES was designed to eliminate some duplication of agency effort and to provide the PSIs in the Idaho Falls area with professional resources to assist in making a proper determination of the offender's drinking problem. Further, CARES provided a probation control resource in order to track offenders through the duration of their probation and/or treatment.

Another development in this area during 1974 was the establishment of the Community Action Alcohol Education Program. This program was established at the Fort Hall Indian Reservation and was designed to provide education to Indian minorities with a drinking problem. One major change which affected both the pre-sentence investigation and treatment and rehabilitation was the decision in August of 1974 that the instructors at the Court Alcohol School rather than the PSIs would collect the fees. This was a logical development and one which freed up considerable blocks of PSI time in order to better respond to the needs of the courts.

In late 1974, NIAAA funds were received. This money allowed the State Department of Health and Welfare to establish the Services for Drinking Driving Program. This program represented an entirely new capability for state agencies in Idaho. As pointed out earlier, both the Court Alcohol School and the Driver Improvement Counseling Program are primarily reeducative in nature and provide only limited counseling. Accordingly, the majority of DWIs received no real treatment for the drinking problems but have rather been subjected to educational programs designed to prevent a recurrence of the manifestation of that problem. For example,



in 1974, only 2,890 (37.4%) of all arrests were referred for any kind of reeducation or rehabilitation. This may be partly a function of the relatively low volume of pre-sentence investigation requests by magistrates.

There were some improvements during 1974 to the Alcohol Data Bank and to the Idaho Drivers Records System. Unfortunately, these improvements were still not sufficient to allow the tracking of all arrests; for this reason the 1974 analytic reports produced by the site make inferences about dispositions, case loads, referrals and recidivism based on a very limited sample of 200 cases. By the end of 1974, the backlog of cases had mounted from 2,462 to 3,010, but showed no increase between the third and fourth quarters of the year. (See Figure 4-1.) The mean time to disposition continued to increase for DWI convictions, from 41 to 45 days, but decreased for withheld judgments from 65 to 51 days.

The legislative area is the last countermeasure in which significant developments took place in calendar year 1974. The state legislature passed the liquor surcharge act (23-217) which created a three percent surcharge on the sale of alcoholic beverages in the state. The resulting funds are specifically credited to the Alcohol Safety Action Program Fund in order to continue the pre-sentence investigation and enforcement (Alcohol Emphasis Patrol) countermeasure areas of the original ASAP project. The 1974 legislative session also saw the deferral of two bills desired by the ASAP. The first would have changed the legal BAC level from .08 presumptive to .10 per se. The second was a bill which would have prohibited open containers of beer in automobiles.

#### 4.4 Fourth Year Activities--1975

The most significant events in 1975 revolved around the expiration of federal funding in June. The Public Information and Education Countermeasure was discontinued. The special Alcohol Emphasis of the State Police and the pre-sentence investigation effort were continued, using the liquor surcharge funds. The ASAP Management staff and Alcohol Data Bank/Evaluation countermeasures were temporarily continued with federal funds in order to complete data collection and wrap-up the project. Other countermeasures were continued in their respective state agencies. (Court Alcohol School had become financially self-sufficient through the collection of fees.)

The 1975 analytic studies produced by the site differed from those of preceeding years in that data were tabulated and arrayed for all years beginning with 1972. Some

data elements which had been separately tabulated in prior years were dropped, while new ones were added, and cumulative totals were frequently presented. These data did not become available until mid-1976, one year after the original site visit and data collection had been conducted for the present report.

Total DWI arrests in 1975 dropped to 6504, a decrease of 1,215 from 1974 or 15.7%.<sup>37</sup> There was also a corresponding drop in convictions for DWI: from 92.2% in 1974 to 86.7% in 1975. Mean time to disposition also decreased sharply; from 45 to 36 days for DWI convictions, and from 51 to 43 days for withheld judgments. The processing times for both types of dispositions however remained significantly higher than those for 1972.<sup>38</sup> The volume of PSI's also declined.<sup>39</sup>

No explanation for the decrease in arrests and/or convictions could be discovered. The reason for the drop in pre-sentence investigations proffered by the site is that "when federal funding of the pre-sentence investigators terminated in July 1975, the PSI's were instructed to conduct pre-sentence investigations for other than alcohol-related offenses."<sup>40</sup> Earlier in the same volume of the 1975 report, the site states that "when we inquired as to the possible causes for the decline in drinker classifications, we found that after federal funding for the Idaho ASAP expired on July 1, 1975, the pre-sentence investigators did not classify DWI offenders."<sup>41</sup> Whether the PSI's simply extended their function to other, non-DWI misdemeanors on July 1, or whether they ceased investigating/classifying of DWI cases altogether is unknown. Whatever the changes to their function, this change may have been preparatory to the shift of the PSI component from the supervision of the Supreme Court to that of the Idaho Department of Corrections, Probation and Parole Division. This shift did not formally take place however until one year later, July 1, 1976.

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<sup>37</sup>Analytic Study #4, 1975, p. 5.

<sup>38</sup>Ibid, p. 68.

<sup>39</sup>Analytic Study #5, 1975, p. 24. Data produced by the site is conflicting and there may--or may not--have been a drop in the referral rate during 1975. See Analytic #4 for 1975, p. 105 for a discussion of the possible cause for these conflicting data.

<sup>40</sup>Ibid, p. 24.

<sup>41</sup>Ibid, p. 17.

## 5.0 JUDICIAL SYSTEM CHANGE AND ANALYSIS

The Idaho Alcohol Safety Action Project was unusual in several respects. First, it was a statewide program which encompassed an area of considerable geographic size with relatively sparse population. Second, it had to work with a court system which had been unified only eighteen months before the ASAP began. The need to encourage further change in a new court system still in the "shakedown" stages of reorganization added further complexity to an already challenging endeavor. And third, Idaho had very few resources available for the treatment and rehabilitation of problem drinkers. Accordingly, it would seem safe to say that the major system change in Idaho was the creation of a relatively coherent system for the detection, identification and treatment of those who combine abusive drinking and driving. As with all sites, accommodations had to be made within the framework of existing legislation and local mores and attitudes.

### 5.1 Background

When we talk of courts, and the behavior of the court system, we are really talking about judges and their individual behavior, for by design the constraints placed on judges by the institutional framework of the courts allows them maximum latitude. In the traditional multi-level court system there is no centralized authority to manage changes and ensure coherence. A lack of uniformity and very disparate sentences for similar offenders found guilty of similar offenses is one result. The treatment by the misdemeanor courts of alcohol-related traffic offenses is no exception.

The unification of the Idaho court system, then, represented an opportunity to bring to these courts greater coherence in the processing of cases. The advent of ASAP brought into being an agency which could complement the Supreme Court's efforts by facilitating more uniform, equitable and meaningful sanctions.

Before discussing the changes which occurred in the courts, the reader is reminded that--as with all institutions--there are variances between the forms and the realities. Many DWI offenders in Idaho with BAC's above the .08 presumptive limit are not convicted of DWI. The withheld judgment is widely used. It can be inferred, therefore, that the courts do not always implement the stated intent of the legislature as embodied in statutes. The Supreme Court's ability to create change in the lower courts is likewise limited.

The magistrates, who nominally report to the Supreme Court through the District Courts, are originally appointed. Once appointed, however, they must stand for re-election (i.e., retention in office). They are therefore answerable to the electorate as well as to the Supreme Court. Some magistrates interviewed candidly stated that they are more responsive to their electorate than to the Supreme Court. For this reason the Supreme Court's control over the magistrate courts is in part dependent on the willingness of a particular magistrate to subordinate himself to the Supreme Court. It is, therefore, difficult to make generalized statements about "change" in Idaho's misdemeanor courts. Some changed their methods of processing DWI cases; some did not. Of those who did experience change, the kind and degree of change experienced also varied.

## 5.2 Statute Change and Judicial Reaction

Shortly before the creation of the ASAP and the unification of the court system, the Idaho state legislature lowered the presumptive intoxication level from .15 BAC to .08 and made a 90-day license suspension mandatory for persons convicted of DWI. The reaction of the Idaho judiciary was typical of judges in other sites studied: they looked for ways to avoid the mandatory sanction. The device used in Idaho is the withholding of judgment.

As stated earlier, the withheld judgment is frequently used in lieu of pronouncing judgment and sentence. This allows the judge to require certain actions (e.g., attendance at Court Alcohol School or Alcoholics Anonymous) by the offender. Once any such conditions have been fulfilled, the offender has then "earned" the dismissal of his case, and frequently no record of the offense will be made in the individual's state driving record. This failure to record withheld judgments at a central point such as the driver record file has had a significant--and adverse--affect on the system's ability to detect recidivism. Where prior arrests or withheld judgments for DWI are unreported, the lack of a drinking-driving record can make diagnosis as an alcohol abuser more difficult. Further, where either the PSI or the DICP counselor attempts to monitor an offender's probationary period, both must rely on the driver record file to detect violations. Unless any subsequent arrest occurs in the same jurisdiction where the prior offense occurred, chances are that withheld judgments or bond forfeitures will not be reported to the driver record file.<sup>42</sup>

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<sup>42</sup> Analytic Study #4, 1973, pp. 8 and 9. See also Analytic Study #4, 1975, p. 11.

Precise data regarding the proportion of DWI cases which result in a disposition of withheld judgment are not available. The Driver Services Bureau did however monitor those withheld judgments which are reported by magistrates to the Department of Law Enforcement. An examination of reported withheld judgments for an 11 day period just prior to the site visit for this study in June, 1975 disclosed 102 withheld judgment reports processed in the 11 working days. This is an average of nine such reports per day. If this is representative for the year, then in a 240 working day year a total of 2,160 withheld judgments would be reported. (Unreported withheld judgments would, of course, increase this number by an unknown amount.) This represents 33% of all (6,504) reported DWI arrests in 1975.

Another set of data provide a look at withheld judgments from a different vantage point, and appear to indicate roughly the same proportion of withheld judgments. Figure 5-1 presents data compiled by the site to show how many of the various types of dispositions were referred to rehabilitation. These same data can also be used to make inferences about how widespread is the use of withheld judgments. It can be seen that the percentage of withheld judgments increased from 12% in 1972 to 29.6% in 1973, and increased slightly (to 30.2%) in 1974 before dropping to 21.2% in 1975. These figures are somewhat suspect however. Not only are they based on small sample sizes, but the percentages of DWI convictions do not agree with those reported elsewhere by the site. The site reports DWI conviction rates (including withheld judgments) as being 87.2% in 1973, 92.2% in 1974, and 86.8% in 1975.<sup>43</sup> Adding guilty and withheld judgment cases from Figure 5-1 provides percentages of 94.2% in 1973, 97.9% in 1974, and 89.8% in 1975. The reason for this disparity is unknown. In any event, it would not seem unwarranted to estimate that withheld judgments result in roughly 20 to 30% of all reported DWI arrests/dispositions. Further, both arrest and withheld judgment figures would be increased by an unknown amount if all DWI arrests and their disposition were reported.

As a response to the mandatory license suspension, the withheld judgment is not in conflict per se with the goals of ASAP, as the withheld judgment is reported to be frequently predicated on the condition that the offender undergo treatment for his drinking problem. This is not to say

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<sup>43</sup> Analytic Study #4, 1975, p. 5.

FIGURE 5-1

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

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

1973  
(NHTSA Sample N=91\*)

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

1974  
(NHTSA Sample N=96\*)

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

1975  
(NHTSA Sample N=99\*)

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

\* Unknown dispositions not included

Source 1975 Analytic #4, p. 33

however that the device of withholding judgment was uniformly endorsed by all persons interviewed during the course of this study. Law enforcement officers, for example, object to it on the grounds that this device does not deter repeat offenders. (They added, however, that the widespread use of the withheld judgment has not affected the level of enforcement and this appears to be the case, at least until 1975.) The Drivers Services Division of the Department of Law Enforcement objects to it on the grounds that unreported withheld judgments make the record system incomplete, and therefore unable to identify many DWI offenders. It appears that the only time a prior DWI offense (where judgment was withheld) is detected is when the subsequent offense occurs in the same jurisdiction as the original offense.<sup>44</sup> Instances were reported where offenders had two or three withheld judgments for DWI arrests in various jurisdictions, each unknown to the others. The insurance industry is also alleged to object to the use of the withheld judgment. The stated reasons are that this prevents the industry from identifying the high-risk driver. As a result, the increased costs of claims must be spread across the premiums for all drivers.

Courts personnel who were interviewed (public defenders, prosecutors, and judges) all defend the use of the withheld judgment. The rationale is that it allows the judge to "temper justice with mercy," allowing more latitude in sentencing and avoiding the severity of the mandatory license action for a DWI conviction.<sup>45</sup> Further, that the withheld judgment is an effective means of processing large numbers of DWI cases which would otherwise clog the court's docket. The use of the withheld judgment is also seen as avoiding jury trials and/or appeals and hence the further expenditure of public monies. In any event, it appears from those interviewed during this study that the use of withheld judgment became much more widespread with the advent of ASAP. Some people interviewed reported that the withheld judgment was endorsed at the outset of ASAP by the ASAP evaluation staff as a means of securing judicial cooperation, while at the same time allowing the judge to avoid the sanctions required under Idaho law. Unfortunately, data are not available to support or refute this allegation.

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<sup>44</sup>DWI arrests made anywhere in the state by the ISP since 1972 can be picked-up through the Alcohol Data Bank (ADB).

<sup>45</sup>Although suspension action is arrested for those entering DICP.

The ASAP informed the Supreme Court about those cases where withheld judgments were detected but which had not been reported. The Supreme Court responded by designing a procedure whereby magistrates would be required to report withheld judgments to the Supreme Court in Boise. This reporting system did not become operational until after the Idaho ASAP was terminated.

### 5.3 The Courts and Law Enforcement

The autonomy of local law enforcement agencies in Idaho (as elsewhere) has resulted in an uneven allocation of available resources to the DWI problem. There are approximately 60,000 miles of roads in the state and the Idaho State Patrol has only 160 enforcement personnel. Of these, 26 men are dedicated to the special Alcohol Emphasis Patrol (AEP). This is roughly 15% of the total ISP strength and is reported to be 3% of the total active patrol assets throughout Idaho. Yet these 26 men account for over 20% of all DWI arrests by all police officers in all agencies in the state. (Figure 5-2 presents arrest totals for the period 1972 through 1975.) Nevertheless, this works out to only six DWI arrests per man per month for the AEP. It must be remembered that the AEP patrols rural highways, not population centers. If one is accustomed to the densely populated eastern seaboard it is difficult to comprehend the long distances in Idaho which the AEP must cover to achieve reasonable exposure to the driving public. Without some appreciation for the vastness of the area patrolled, the arrest rate would appear to be very low. In reality it represents a significant increase in enforcement on the part of the state patrol.

The picture is quite different among the local and county police departments. Here no concerted effort was made, and no local police resources are known to have been exclusively dedicated to DWI enforcement. The efforts by the ASAP to effect some kind of coordination at the local level met with little discernible success and an unknown number of DWI arrests remain unreported. The major change, then, that has impacted on the courts which is attributable to enforcement efforts has come primarily from the Idaho State Patrol since 1973.

It should also be noted that the necessarily rural emphasis of the Idaho State Police resulted in less than half of all DWI arrests (that is, arrests by non-ISP officers) being made in the population centers (i.e., urban areas) of the state. It can be inferred then that the impact of the ASAP on these urban areas was minimized by the failure of local police to make more DWI arrests.



FIGURE 5-2

## DWI ARRESTS - STATE POLICE/OTHER AGENCIES

YEAR	Total Reported DWI Arrests	ISP/AEP Arrests*		ISP Non-AEP Arrests*		Total ISP DWI Arrests		All Other Known Police Arrests**	
		NR	%	NR	%	NR	%	NR	%
1972	5,960	742	.12	2,009	.33	2,751	.46	3,209	.54
1973	7,673	1,702	.22	2,855	.37	4,557	.59	3,116	.41
1974	7,719	2,002	.26	3,154	.41	5,156	.67	2,563	.33
1975	6,504	1,727	.26	2,569	.39	4,296	.66	2,208	.34
TOTALS = ALL YEARS	27,856	6,173	.22	10,587	.38	16,760	.60	11,096	.40

\* Source: Idaho State Police Alcohol Emphasis Patrol, Telecon on September 27, 1976.

\*\* These figures are inferred by adding ISP/AEP and ISP Non-AEP arrests and subtracting this from the total arrests.

### 5.3.1 Police Perceptions of DWI Processing by the Courts

Those ISP/AEP officers who were interviewed reported considerable variances in policies and procedures among magistrates who try their DWI arrests. These officers also stated that they had a much better working relationship with the bench under the former Justice of the Peace system. Under the new court structure, their relationship to the magistrate is much more formal. Police also expressed dismay at what they see as a trend to replacing lay magistrates with persons who have been admitted to the bar. They perceive these law-school-trained magistrates as people who use the office as a temporary milestone in their career, or as a stepping stone to higher political office. They also cite the fact that lay magistrates are more cooperative in advising arresting officers of dispositions and their reasons for those dispositions. As might be expected, police officers are also in favor of the lay magistrate's sometimes reduced insistence on procedural formalities to protect the rights of offenders. Several persons interviewed contended that the lay magistrates are or were (because of their tenure on the bench and long residence in the community) more familiar with individual offenders and made more individualized, and hence more equitable, dispositions. It would seem then that, although court unification did bring more formality and procedure to bench trials, the ASAP enforcement effort probably could have functioned in the absence of a unified court system.

Another problem reported by some AEP personnel was the requirement by some magistrates for the police officer to appear in court at 9 o'clock the day following the DWI arrest to file a formal complaint. Since the standard Idaho traffic ticket is designed to serve as a formal complaint, the requirement to appear the morning after arrest to file a formal complaint before the magistrate is viewed by police as unnecessary. Further, since the AEP officers work from 7:00 p.m. to 3:00 a.m., the net effect is to "punish" the officer for making a DWI arrest. Some magistrates also require the officer to file an incident report even before the defendant is allowed to enter a plea. This too represents a considerable paperwork burden on the police officer. As in other sites studied, the arresting officers are unhappy with the fact that court appearances are scheduled at the convenience of the defense attorney and not the criminal justice system--and more specifically the arresting officer.

#### 5.4 ASAP and the Courts

Most of the magistrates and prosecutors interviewed during the data collection phase of this study endorsed the concepts embodied in the ASAP program. This is more readily understood when viewed in the light of the widespread use of withheld judgments and, through the ASAP, the availability of essentially non-punitive alternatives, e.g., Court Alcohol School.

It appears that one important step to effecting change in the courts was the appointment of regional coordinators in the three ASAP regions. These coordinators knew--or got to know--all of the magistrates and prosecutors in their areas on a personal basis. As with all innovative programs, a great deal of salesmanship was required. The coordinators reported that this personal acquaintance was helped considerably by both the judicial seminars which the site conducted and also "drink-in's," which were used to acquaint magistrates and prosecutors personally with the effects of alcohol and impairment.<sup>46</sup>

#### 5.5 Change and the Prosecutorial Component

In Idaho the prosecutorial function in most counties is a part-time arrangement for a local attorney. As a rule these prosecutors view themselves as reflecting the community's attitudes, including the attitude towards drinking and driving. Some prosecutors in the larger urban areas are reported to be willing to take a more vigorous approach to DWI prosecution, although supporting data are not available. If true, this may be a function of the anonymity afforded both prosecutor and offender in cities, which in turn provides "distance" and impersonal processing. In rural areas, on the other hand, the prosecutor may well be personally acquainted with the offender and/or his family and friends.

It is of course at this prosecutorial stage in the criminal justice system that any plea bargaining occurs, and the decision made on whether or not the case will be taken to trial. It was alleged that plea bargains--where they occur--are frequently made without conducting the necessary records checks to identify prior offenses. By law, the

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<sup>46</sup>Since the authors of this study also conducted these seminars, the reports of the impact of the seminars may have been biased. At the typical "drink-in," participants are given carefully measured amounts of alcohol and are periodically given breath tests. In this way they can experience the degree of impairment which is produced by increasing BAC levels.

second offense for driving while intoxicated (with a prior conviction for DWI) is to be tried in the district court as a felony. Even where records are available to establish a prior offense, most prosecutors reportedly decline to prosecute, however, on a felony charge. Again, the data to support this assertion do not exist.<sup>47</sup>

Prosecutors interviewed felt that the detection, investigation and prosecution aspects of the ASAP were well designed and well executed. They reported deficiencies, however, in the followup to sentencing, the monitoring through the probationary period, and the fact that recidivism data are frequently not available. Those interviewed believed that there should have been greater educational efforts for persons in the prosecutor's office, particularly for deputy prosecutors and trial attorneys in the larger urban areas in trial tactics and the problems posed by DWI cases. As in the case of the magistrate courts, there appears to be little uniformity or commonality of criteria among prosecutors in the prosecution of DWI cases. It could not be determined, for example, with what frequency the prosecutor either recommends or concurs in the withholding of judgment on a DWI conviction. In this regard, it is notable that the prosecutors interviewed endorse the judgment withheld as a device for effectively disposing of cases without alienating the offender through the imposition of jail sentences, fines or license suspension. Thus, the need for good relations with the community at election time manifests itself in the prosecutorial component as it did among the magistrates interviewed.

## 5.6 The Role of BAC in Processing

### 5.6.1 Charging

The key to the formal charge is of course the prosecutor. There was general agreement among those persons interviewed that prosecutors in Idaho area generally amenable to filing a formal DWI charge when all necessary elements are present. This view is supported by the high conviction rate attained for DWI in Idaho; from 73% in 1971 to 92.2% of all arrests in 1974. (See Figure 4-1). It must be remembered however that these conviction rates include withheld judgments and do not, therefore, accurately reflect the number of cases in which a criminal sanction, or treatment, was actually imposed.

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<sup>47</sup>The Department of Law Enforcement states that it does not maintain felony arrests for DWI as a record. Letter dated October 15, 1976.

Any weakness in the case, or the defendant's presentation of "mitigating factors," can result in the reduction of the DWI charge to either reckless driving or inattentive driving. In some jurisdictions the bargained charge is reported to depend upon the BAC at time of arrest. One defense attorney interviewed stated that in his place of practice the scale is as follows: a "reckless driving" plea down is possible with a BAC from .11 to .12. A plea to "inattentive driving" will be accepted if the BAC was at the .08 to .10 level. While these BAC "point spreads" probably vary from prosecutor to prosecutor, the data in Figure 5-3 tend to support the assumption that this "point spread" approach is widely used. However, it appears that the threshold at which lesser pleas are accepted may be increasing.

#### 5.6.2 Adjudication

The willingness of prosecutors to go to trial on the original (i.e., DWI) charge is mirrored in the willingness of the magistrates to either accept guilty pleas to DWI, or make findings of guilt. It can only be conjectured that the willingness of both functionaries is predicated on the foreknowledge that a withheld judgment will probably result. This action of withholding judgment is a matter solely within the purview of the presiding magistrate. It is here that control of the DWI system in Idaho rests. The prosecutor's role appears to be fairly routinized and affects the outcome only insofar as an individual magistrate may entertain the prosecutor's recommendations.

When viewing the available data correlating BAC at time of arrest with disposition, the reader should bear in mind that the percentages are derived from a sample, rather than a census, of offenders. The sample is relatively small, resulting in even smaller numbers for each of the possible dispositions. The result, as the site points out, is that "the number of entries becomes so small that meaningful analysis of any group other than "convicted DWI offenders including withheld judgment" was impossible."<sup>48</sup>

Table 5-4 correlates BAC at time of arrest with the two most common dispositions; conviction of DWI or withheld judgment. This correlation is based on a sample of reported convictions and withheld judgments. If all convictions and withheld judgments were reported, the proportions could be different. It can be seen that the largest proportion of DWI convictions occur in the .15 to .19 BAC range, in 1972 (30%), 1973 (34%) and 1974 (32%). In 1975 the largest proportion of DWI convictions dropped to the .10 to .14 range. The largest proportion of withheld judgments occurs

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<sup>48</sup> Analytic Study #4, 1975, p. 45.

FIGURE 5-3

Average BAC at Time of Arrest (Crash and Non-Crash) Compared to Disposition

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

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

NOTE: The average BACs for Convicted of DWI shown here are significantly lower than either average BAC or average positive BAC for convicted-DWI shown in Figure 5-4. The figures in this table include withheld judgements, whereas withheld judgements are specifically excluded in the convicted DWI data in Figure 5-4. This may account for the variance.

FIGURE 5-4  
DISPOSITION (CONVICTED DWI OR WITHHELD JUDGMENT)  
BY BAC AT TIME OF ARREST

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

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

in the .10 to .14 range; in 1972 (36%), 1974 (37%) and 1975 (41%). In 1973 the majority of withheld judgments were almost evenly split between the .10 to .14 range (32.8%) and the .15 to .19 range (34.2%). It would appear then that BAC may play a role in the decision to either convict for DWI or award a withheld judgment, with convictions at BAC's above .15, and withheld judgments at .10 to .14. The fact that the largest proportion of convictions in 1975 dropped from the .15-.19 range to the .10-.14 range, coupled with the fact that the average BAC for convictions dropped from .185 in 1972 to .159 in 1975 could be interpreted to mean that Idaho magistrates are manifesting an increased willingness to convict at lower BAC's. However, the site tested for significance the difference between percentages for persons with a BAC of .15 or higher. It concluded that there "were no significant changes from 1974 to 1975."<sup>49</sup> In any event it can be seen that the vast majority of withheld judgments and/or DWI convictions occur well above the .08 level established by the legislature, above which there is a presumption of guilt.

#### 5.7 The Change in Pre-Sentence Investigation/Diagnosis and Referral Procedures

Consonant with the stated goals of the ASAP program, one of the major areas of change within the adjudication process was in the area of pre-sentence investigation and the diagnosis and referral of offenders for alcohol-related traffic offenses. Prior to the creation of the Idaho ASAP, the criminal justice system paid scant attention to the DWI offender. There were relatively few arrests, and there were virtually no resources available in the courts to conduct pre-sentence investigations for misdemeanants. Judges, unaware of the few existing treatment facilities, routinely prescribed traditional sanctions (i.e., jail and fines) which were then usually suspended. The ASAP funded 11 pre-sentence investigation positions in the field, plus one supervisor. This misdemeanor pre-sentence investigation function was reportedly placed within the court system at the outset rather than in the State Department of Corrections in order to enhance the cooperation of the courts with the ASAP. While the best available people were hired to fill these positions, they were virtually untrained. The typical pre-sentence investigator was a young college graduate with no prior experience in the field, and one who lacked knowledge of alcohol and chemical dependency. This created problems.

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<sup>49</sup>Analytic Study #4, 1975, p. 45.



As a rule the magistrates had difficulty in relating to these young PSIs and the PSIs in turn found it difficult to relate to a mature magistrate. For those lay magistrates without a college education, the presence of a young, college graduate nominally under his control was perhaps somewhat threatening.<sup>50</sup> How quickly this mutual distrust and suspicion was broken down was largely dependent on the individual PSIs and magistrates. In some cases it is reported to have taken two years and in a few cases it never happened.

Where the working climate between a particular magistrate and his PSIs improved, it appears the magistrate slowly began to rely more and more on the pre-sentence investigator. Indeed, the PSIs proved so useful to some magistrates that they were routinely requested to conduct pre-sentence investigations on other non-DWI misdemeanor offenders. This may be one reason why the percentage of DWI cases receiving pre-sentence investigations declined in 1975. (See Figure 5-5.)

Initially the PSIs had no specific guidelines for conducting offender interviews. Further, the criteria for requesting pre-sentence investigations varied widely between magistrates. Persons interviewed estimated that only 50% of offenders who pleaded guilty or were found guilty in the Boise area were the subject of a pre-sentence investigation request. This lack of standardized criteria as to when a pre-sentence investigation was to be requested was another manifestation of the individualized attitudes on the part of the magistrates. The Supreme Court attempted to address this particular problem. It established a sentencing committee comprised of presiding judges and magistrates, and a sentencing manual was drafted. Once the manual was completed, a series of sentencing workshops were to be scheduled to allow all judges to provide input to the final draft of the manual. The Supreme Court also prepared a manual designed to standardize procedures used in the pre-sentence investigation process. Opinions among those interviewed as to just how successful the Supreme Court was in establishing uniform procedures and policies among the judicial districts varied markedly, and no conclusions can be drawn with existing data.

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<sup>50</sup> The PSIs originally worked directly for one or more magistrates in the jurisdictions to which they were assigned. The responsibility for their day-to-day supervision was subsequently assigned to the respective district court administrators.

FIGURE 5-5

## PRESENTENCE INVESTIGATION REFERRALS

	1973		1974		1975	
	Number	Percentage	Number	Percentage	Number	Percentage
Investigations	2855		2991		2548	
Court Alcohol School	1357	47.5	1222	57.6	1268	49.8
Driver Improvement Counseling Program (DICP)	452	15.8	968	32.4	553	21.7
Defensive Driving School	209	7.3	40	1.3	30	1.2
Alcoholics Anonymous	81	2.8	37	1.2	28	1.1
Not Referred	70	2.5	101	3.4	669	26.3
Arrests	7673		7719		6504	
Referrals	2785		2890		1879	
<u>Referrals</u> <u>Arrests</u>	36.3%		37.4%		28.9%	

Source: 1975 Analytic #5, Exhibit 2.3-2, p. 23

Inaccurate diagnoses or screening by PSIs was a frequently-reported problem in 1975. Further, some offenders correctly diagnosed as problem drinkers by pre-sentence investigators were nevertheless sent to the Court Alcohol School, despite recommendations to the contrary by the PSI. As can be seen from Figure 5-5, referrals to CAS ranged from a low of 47.5 percent of all referrals in 1973 to 57.6 percent in 1974. Figure 5-6 breaks down referrals by classification. It can be seen here that 21.2 percent of problem drinkers went to CAS in 1973; 23 percent in 1974, and 24 percent in 1975. Yet Court Alcohol School was designed for the social drinker, not the habitual alcohol abuser.

Once an offender was sentenced to one of the treatment modalities, follow-up and monitoring of his activities to ensure that the conditions of his probation were met was reported to be usually inadequate. It was the responsibility of the pre-sentence investigator to determine the outcome of a particular referral. Generally, the PSIs did not see their role as extending to such monitoring activities subsequent to the imposition of sentence. However, it appeared to be fairly routine for PSIs to notify the magistrate in cases where they learned, however inadvertently or infrequently, of probation violations. When a violation of the conditions of probation was detected, the magistrate was requested to issue a bench warrant. No data are available regarding the frequency with which such warrants were issued. The lack of supervision and follow-up of the DWI offender during the ASAP is probably a manifestation of the misdemeanor status of the offender. What the impact on monitoring has been with the placement of the DWI PSI responsibility under the State Department of Corrections is not known.

It is difficult to generalize about the activities of the pre-sentence investigators during the life of the Idaho ASAP. In some jurisdictions they were under-utilized; in others their services were in great demand. A growing awareness of the need for pre-sentence investigators in smaller communities, whose magistrate courts are not now served by existing pre-sentence investigation resources, was reported during the site visit. In one jurisdiction, for example, the PSI function was so well received that the county picked up the funding and hired two additional pre-sentence investigators. In this instance, the ASAP PSI concept burgeoned into a full fledged county probation department for misdemeanants.

FIGURE 5-6  
REHABILITATION REFERRALS BY DRINKER CLASSIFICATION  
1973 - 1975

Countermeasure Modalities	PROBLEM			NON-PROBLEM			UNDEFINED		
	1973	1974	1975	1973	1974	1975	1973	1974	1975
Court Alcohol School (CAS)	105 .212	147 .230	86 .240	419 .482	544 .576	270 .583	237 .397	168 .339	264 .401
Driver Improvement Counseling Program (DICP)	43 .087	79 .116	46 .128	71 .082	110 .117	44 .095	70 .117	117 .236	77 .117
Defensive Driving Course (DDC)	12 .024	5 .007	1 .002	50 .057	11 .012	10 .022	25 .042	3 .006	11 .017
CAS and DICP	40 .081	136 .199	61 .110	127 .146	184 .195	62 .134	50 .084	113 .228	81 .123
CAS and DDC	30 .061	7 .010	3 .008	79 .091	13 .014	0 .000	32 .054	1 .002	5 .008
CAS and Other	13 .026	2 .003	1 .002	11 .013	3 .003	1 .002	39 .065	1 .002	1 .002
Other	252 .509	298 .436	161 .448	113 .130	109 .115	76 .164	144 .241	92 .186	220 .334
Total*	495	684	359	870	944	463	597	495	659

\* Out-of-state offenders not included.

Note: Rehabilitation referrals in 1975 were only available for six months.

Source: 1975 Analytic #5, Exhibit 2.5-1, p. 27.

The need to involve the magistrates in the management of the pre-sentence investigation function was recognized by the Supreme Court. This took the form of asking the magistrates to assist in the selection (final screening) of candidates for PSI positions. The pre-sentence investigation management function was split; the Supreme Court exercised administrative control (through the PSI supervisor) but the day-to-day management of the individual PSIs was finally delegated to the district court administrators. There was a concurrent effort to emphasize the "investigations" aspect of the PSI position and a deliberate attempt to avoid the "social welfare worker" role.

In summary, some persons interviewed contended that the failure of some of the PSIs to increase the caseload handled is due to the fact that some magistrates did not rely on their pre-sentence investigators. Hence, the number of referrals was so low as to leave the PSI under-utilized. Other persons interviewed contended that the number of cases handled had not grown in some courts for precisely the opposite reason: that the magistrates had come to rely on their pre-sentence investigators so greatly that they began requesting pre-sentence investigations in many other kinds of misdemeanor cases. Those who took this latter position predicted further declines in the number of DWI pre-sentence investigations as the PSIs were increasingly tasked to provide investigations on other kinds of (non-DWI) misdemeanants. This prediction was borne out by the 1975 data when it became available in mid-1976. (See Figure 5-5.) It can perhaps be inferred that magistrates accept, and use, the PSI capability, but that the refusal of some to treat DWI as criminal accounts for their increasing use of the PSI in non-DWI cases.

#### 5.8 Rehabilitation/Treatment Agencies and the Courts

The courts found in the Idaho ASAP a "go-between" which could coordinate its need for referral resources with the existing treatment agencies. Since the ASAP had no funds to create new treatment modalities (as distinct from educative modalities like CAS), it was necessarily limited to this coordination role. The creation of new and urgently needed treatment resources had to await funding from other sources, principally the National Institute on Alcohol Abuse and Alcoholism. One major exception, and one which demonstrated what ASAP could do even without funds was the Combined Alcohol Referral Education Services (CARES) Center in Idaho Falls. CARES is a multi-agency entity which provides a

"single door" service to people with alcohol-related problems. CARES then enables the court and the PSI to make a rapid and effective disposition of cases. Offenders are simply sent to CARES for diagnosis, referral and treatment as required. The various state-run driver education programs (Court Alcohol School, Driver Improvement Counseling Program, and the Driver Rehabilitation Program) are all represented at CARES, as well as all local public, quasi-public and private treatment and rehabilitation agencies.

Funded with local money, CARES represented a significant step forward. But it was not accomplished at the stroke of a pen. One local judge was alleged to have been particularly vehement in his opposition to the combination of such agencies. The manner in which his opposition was overcome is interesting: one of his close personal friends, a clergyman interested in alcohol problems, was appointed head of the center and he then persuaded the judge to support CARES.

The Court Alcohol School (CAS) in Idaho Falls reported great success with an innovative program in which offenders in the class were asked to comment on any aspect of their arrest, trial, sentencing, probation, etc. Local magistrates then appeared before the class to field questions about these complaints. It was claimed that this allowed the individual magistrate to reflect upon his own decision-making in different DWI cases, and to compare his disposition rationales with those of his fellow magistrates. It is reported that the net result was a growing tendency on the part of magistrates in the Seventh Judicial District to be more consistent in their handling of DWI cases. Obviously such a program is predicated on the willing cooperation of the local judiciary. It may represent however a much more meaningful change than will be wrought by manuals or directives handed down from higher authority.

There was general agreement among those interviewed that the ASAP's primary impact on the treatment and rehabilitation agencies lies in the greatly expanded enforcement effort and the consequent referrals by the courts. These have served then as an intake mechanism. This mechanism has allowed the treatment and rehabilitation agencies not only to reach greater numbers of problem drinkers, but has allowed them to reach a whole class of problem drinkers which might not otherwise have been identified. Further, the intake mechanism allowed much earlier intervention in the lives of those with incipient drinking problems. At the same time, the treatment agencies have provided the courts with an alternative to the traditional sanctions which they have been quick to utilize.

#### 5.8.1 Change and the Driver Services Bureau, State Department of Law Enforcement

At the inception of ASAP, the Driver Services Bureau hosted a series of meetings and briefings for magistrates, police and prosecutors. The stated goal was to try to enhance coordination at an early stage and to address the problems arising from the lack of uniform procedures among the various judicial districts.

The Driver Services Bureau is responsible for implementing all license suspensions. Under Idaho law, suspension is automatic upon conviction of DWI or reckless driving. Only where the charge is inattentive driving does the judge retain discretionary power over the driving license. As might be expected, this has been a point of contention and confusion between the magistrates and the Department of Law Enforcement. Some magistrates interviewed contended that the Driver Services Bureau does not coordinate or cooperate on license suspensions of one year or less (e.g. first offense DWI convictions). This contention was echoed by other persons interviewed, including one individual who further stated that the Department of Law Enforcement does not even follow up and effect license suspensions for breath test refusals under the implied consent statute. Basically this imbroglio can be reduced to the fact that the Department of Law Enforcement controls the driving license irrespective of the desires of the court. The judiciary appears to be rather hostile to this perceived encroachment upon its discretion in sanctioning.

#### 5.9 The Courts and the Local Defense Bar

The defense attorneys interviewed during the course of this study were quick to admit that the ultimate goal of their representation is a withheld judgment. They justify this on the grounds that it avoids jury trial and is an "easy way out for all concerned." Many Idaho defense attorneys are reported to charge the same fee whether the client pleads guilty or goes to trial. Exceptions to this of course were encountered. In general defense attorneys support the alcohol safety action concept because it assists their clients and keeps them out of jail. It might be argued that the attorney fee is itself a significant "sanction" for those arrested for DWI.<sup>51</sup>

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<sup>51</sup>Where defense counsel in Idaho elects to contest the DWI charge, three successive stratagems are used. The first is to seek a jury trial, the second is to ensure that all jury members drink or do not object to drinking, and the third is to stress the presumptive nature of the law prohibiting DWI.

## 6.0 SUMMARY

### 6.1 Impact of Statutes on DWI Case Processing

Idaho appears to have achieved an unusually high rate of guilty pleas to DWI by agreeing to withhold judgment, thus avoiding the unpleasant sanctions mandated by the legislature. Where an offender is convicted of DWI and sanctioned, fines do not appear to be excessive, and jail is rarely prescribed. Further, entry into the DICP allows the convicted offender to retain the driving privilege. Whether the widespread use of the withheld judgment was in response to the growing backlog of DWI cases cannot be stated with certainty. It can be conjectured that it was not, since the use of withheld judgments appears to have decreased in 1975, while the backlog of cases awaiting disposition continued to grow in 1975 (see Figure 4-1). Data on which to base conclusions are incomplete and/or inaccurate. Assessing the implications of "cases awaiting disposition" is difficult without knowing the definition of what kinds of cases are included in this category. If it includes withheld judgments, where a judgment has been entered but the case has not yet been dismissed, then certainly the burden on court time represented by this category takes on an entirely different complexion. Inferences about the rate of withheld judgments, sanctions imposed by BAC ranges and other key indicators are based on relatively small samples. As the site stated, "once these samples are broken down by disposition type, the number of entries become so small that a meaningful analysis of any group other than 'Convicted DWI Offenders Including Withheld Judgment' was impossible."<sup>52</sup> Yet "meaningful analysis" of even this group requires that withheld judgments be segregated from those DWI convictions which ultimately became a matter of record. As stated earlier, a withheld judgment might be regarded as a favorable outcome, in that some DWI offenders who receive a withheld judgment are also referred to treatment. But the later dismissal of the charge precludes any subsequent DWI offenses from being detected as a repeat offense. This not only precludes felony prosecution under the "Repeat Offender" provision, it also precludes an accurate evaluation of the treatment program--since the 'bottom line' measure of success is whether or not the treated offender continues to combine driving and abusive drinking.

Let us look now in detail, based on the available data, at the various dispositions utilized during the life of the

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<sup>52</sup>Analytic Report #5, 1975, p. 45.



Idaho ASAP. First, what of mandatory sanctions? The law (47-1102) does not require either a fine or a jail sentence for a first offense. It simply imposes a maximum of six months and/or \$300. The only mandatory sanction is a 90-day suspension of driving privileges.

Over the life of the project (i.e., mid-1972 to 1975), only one person of 91 sampled (1.09%) received a jail sentence with a withheld judgment. Of a total sample of 279 persons who were convicted for DWI during the same period, 49 (or 17.6%) received jail sentences. The average number of days sentenced was 3.9 days.<sup>53</sup> There are no data to indicate how many, if any, of these jail sentences were actually served, or whether they were suspended. Cases where judgment was withheld also tended to get fewer fines (82% of all cases) as compared to persons convicted of DWI (90.7% of all cases).<sup>54</sup>

The site provides no data regarding drivers license suspensions for those convicted of DWI. However, records of the Idaho Department of Law Enforcement indicate that it imposed DWI license suspensions as follows:

<u>Year</u>	<u>Suspensions</u> <sup>55</sup>
1972	1,885
1973	1,958
1974	1,967
1975	1,903

It is important to note that these license suspension figures include only those drivers who either (1) were not sent to DICEP as a result of a reported DWI conviction, or (2) were sent but failed to successfully complete the program. Many DWI arrests and/or convictions go unreported to the Driver Services Division. Using these suspension figures, plus the total reported arrests for each year, and the percentages of arrests resulting in either a DWI conviction or a withheld judgment (based on a sample of approximately 100 cases in each year), we can construct Figure 6-1. Assuming the base figures are correct, we can infer that the

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<sup>53</sup> This was computed by excluding four 180-day jail terms imposed.

<sup>54</sup> 1975 Analytic #4, pp. 38 and 39.

<sup>55</sup> Source: Drivers Services Div., Dept. of Law Enforcement in telecon on September 28, 1976.

FIGURE 6-1  
 LICENSE SUSPENSIONS AS (1) A PERCENTAGE  
 OF ALL DWI CONVICTIONS/WITHHELD JUDGMENTS  
 AND (2) A PERCENTAGE OF ALL DWI ARRESTS

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

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

2. Column 3 x Column 2

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

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

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

percentage of all reported convictions for DWI/withheld judgments where the license was suspended did not reach 50% from 1972 on, and indeed the percentage decreased over the life of the ASAP, even though total arrests increased. As a percentage of all reported DWI arrests, license suspensions never exceeded 32%.

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

Jail sentences were handed down even more infrequently. Only fines appear to have been assessed in the majority of cases, and the average amount of the fine assessed for DWI dropped by \$20.00 over the life of the ASAP; 1972 to 1975. DWI fines dropped from an average of \$168.82 in 1972 to \$144.82 in 1975. Fines for withheld judgment cases increased from an average of \$108.33 in 1972 to \$128.29 in 1975.<sup>56</sup>

## 6.2 ASAP and the Courts

At the outset of this study it was thought that the unified nature of the Idaho court system would provide an example of how statewide, uniform policies and procedures for processing alcohol-related traffic offenses are identified and implemented. In fact, the larger population centers in the state seem to have developed fairly effective procedures for the identification, adjudication and referral of the problem drinking driver. Once the researcher leaves these major urban areas, however, and gets out into the more rural areas, the span of management control of the supreme court begins to contract. In essence there is no one alcohol safety system in Idaho, but rather a series of systems which vary markedly as a result of adapting to local attitudes and local conditions. One of the key factors in shaping these local systems has been the differences in procedures and attitudes of the local judicial personnel. After three and one-half years of ASAP operation, there were still some magistrates who would not "cooperate" with the ASAP program. This is probably more a function of their view of DWI as non-criminal, rather than any disagreement with the ASAP concept. One of the magistrates interviewed was quite candid in this regard. He stated that he does not view driving-while-intoxicated as a criminal offense, and refuses to treat such offenses in a formal criminal fashion. He observes only the technical procedural rules, he added, in order to either accept a plea down to a lesser offense,

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<sup>56</sup>See Analytic Report #4, 1975, pp. 39-44.

and/or to withhold judgment. While such anecdotal evidence is hardly conclusive as to the attitudes of all judges, the reluctance to invoke criminal sanctions in DWI cases does seem to typify a significant number of magistrate courts in Idaho. Another factor in Idaho which may influence some rural magistrates is the dearth of meaningful treatment/rehabilitation facilities to which they can refer DWI offenders and which address the physiological aspects of drinking problems.

In terms of case load imposed on the magistrate courts by DWI arrests, several persons in the court system who were interviewed stated that DWI cases are significant to the caseload of the magistrate--not only in gross numbers, but also in the time required to process them. It was estimated, for example, that the bench might devote 15 to 30 minutes to the average DWI case. Further, the magistrate is supposed to bring the defendant back before the bench subsequent to his successful completion of treatment; however, this formal termination of probation frequently does not occur. Instead the probationer simply slips out of his probation--and the drinking driver control system.

On the basis of the interviews conducted, it can be concluded that the initial introduction of ASAP to the judiciary might have been better handled. While this is a statement which could probably be made about any ASAP site, the Idaho experience appears to have been particularly unfortunate. There were preliminary meetings to explain the ASAP concept but it would seem that these meetings were not sufficiently personalized. In the words of one experienced ASAP regional manager, "You have to approach each judge as an individual." Because of the peculiar role society has assigned them and the requisite trappings of that role, judges (including magistrates) are particularly sensitive to real or imagined encroachments upon the independence of the judiciary. For this reason judges frequently appear to outsiders as rigid and conventional thinkers who fear and resent federal projects or projects from outside their own jurisdiction. It is obvious from some other ASAP sites that such suspicions, where they exist, can be overcome.

Initially, the magistrates did not know what facilities or treatment modalities were available to them. The communication established by the ASAP through the PSI certainly served to bring the treatment system personnel into more direct contact with the criminal justice system. As the project progressed, most magistrates began to recognize that the ASAP was the only agency touching all of the various system components from detection and arrest through treat-

ment and rehabilitation. This bridging of communication gaps was one of the most significant contributions of the Alcohol Safety Action Project. It is in the traditional, uncoordinated system that the problem drinker frequently "falls between the cracks." He manipulates the system, depending on its uncoordinated nature and lack of mechanisms to double-check. These are the problem people for whom the ASAP was designed, and in this respect the system coordination function of the ASAP is of critical importance.

Most of the persons interviewed agree that in any program like ASAP, there must be an inventory of available resources in the initial stages of such a program and then an agency to coordinate their efforts to avoid duplication.

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

Some magistrates interviewed were openly critical of the manner in which the ASAP funds were distributed; the bulk of funds were devoted to the enforcement effort. They expressed a belief that a larger percentage of the funds should have been provided to better staff and equip the judiciary to handle the increased caseload. The continued lack of a comprehensive information system haunted the project from its inception until its demise. Some magistrates contend that a national traffic safety data bank could facilitate the identification of problem drinking drivers and, hence, help to deter the combination of driving and abusive drinking. Such a data bank would also, it is argued, make up for deficiencies in state-level records systems.

The failure to train prosecutorial personnel adequately at the outset of the program was a major factor cited by

many of the prosecutors interviewed. Deputies and trial attorneys, they feel, should have been the primary target of educational efforts.

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

The courts, then, are not necessarily inflexible and do not always resist innovation or federal monies, but they must be convinced of the basic soundness of the program and the fact that it will assist them in discharging their judicial duties without placing limits on judicial discretion.

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

Several of the judges and magistrates interviewed stated their endorsements not only of the ASAP concept but urged new national NHTSA programming in the courts area. One of the needs cited was the promulgation of standards on information-gathering. There seemed to be general concurrence in the view that the Idaho ASAP was an overall success because of the resulting heightened public awareness of the DWI problem. Further, that it brought many problem drinkers into formal contact with the treatment system for the first time. Unfortunately, the funding for the total ASAP concept in Idaho--as in most other sites-- was only

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