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DRIVING-UNDER-THE-INFLUENCE

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TRIAL JUDGES' VIEWS ON DRIVING-UNDER-THE-INFLUENCE LAWS

Thomas A. Cowan
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12 February 1985

This study was conducted by the Social Systems Sciences Department of the Wharton School, University of Pennsylvania. The study group was headed by Russell L. Ackoff, Principal Investigator, and included C. West Churchman. We appreciate the technical services provided us by Etannibi Alemika of the Criminology Department, University of Pennsylvania. Full identification of the study group is contained in the following page.

Observers too numerous to need mention have remarked that the present decade of the twentieth century bears unmistakable signs of a renaissance in Prohibition fervor. Reformist groups dedicated to the abolition of everything from pornography to drunk driving to abortion are advocating -- often successfully -- legislative measures that are "Prohibitionist" in the old sense of that term, i.e., that employ the harsh punishments of the criminal law in an essentially moralistic crusade.[1] There is grave danger in this trend since Reformists generally do not adhere to the old Roman law maxim that the highest law is the greatest wrong [SUMMUM JUS, SUMMA INJURIA], that law pushed to its extreme limits is tyranny. Members of the legal profession, on the other hand, must concern themselves mightily with preserving the balance between harshness and compassion in the law. It is their responsibility to maintain the efficacy of legal action, to identify the effective limits of what can and cannot be done by law. Hence they cannot allow themselves to get caught up in righteous indignation as the Reformists can. This is especially true of judges.

More than any other actors in the legal arena, judges are forced to confront the actual effect of law on individual lives. In every case that they adjudicate, it is their duty to try to synthesize all three goals of the

[1]Cowan, Thomas A.: "A Critique of the Moralistic Conception of Criminal Law", 97 Univ. of Pa. Law Review 502, 1949.

criminal law -- punishment, deterrence, and rehabilitation -- into a disposition that is specifically appropriate to the circumstances of the person being tried. Judges are, in this sense, "systems thinkers": in pursuit of justice they synthesize the multiple interests of all those who have a stake in each case -- the offender, the victims, the community, and even the abstract interest of justice itself.

Usually this judicial tempering of the law is achieved after laws are in place, when judges interpret the law. The conflicting interests that mold legislation in the first place are unfortunately considered mainly without the advantage of the practicing judiciary's point of view and expertise.

One of the principal barriers to involving judges in these debates has been the judges' need to preserve impartiality, both real and perceived. In order not to endanger their qualification for hearing cases, they stay mute on controversial issues. We therefore concluded that anonymous surveys of judges would be an excellent way to inject their considered opinions into legal discussions without endangering the public perception of their judicial

objectivity.[2] We have had the opportunity to conduct such a survey in a very active area of the law: Driving Under the Influence (DUI) laws. This article reports and comments upon the results of that survey.

THE PENDULUM SWING BETWEEN STRICT LAW AND EQUITY

The great American jurist and philosopher of law Roscoe Pound repeatedly called attention to a curious pattern in Western culture in which, he says, a period of Strict Law succeeds a period of lenient law and then vice versa. This phenomenon has been noticed by legal historians in legal systems stretching as far back as Roman times.[3]

Earliest Roman Law was strict law and it was notorious for its formalism. A defaulting debtor was turned over bodily to his creditor to be sold into slavery if necessary "to redeem the debt." If two or more creditors claimed the body of a single debtor, it was said that each should get his just proportion of the corpus. Roscoe Pound suggests

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[2]In light of the reasonableness of this idea, we were surprised to learn that judges are seldom surveyed for this purpose. Although there may be many surveys conducted by and for judicial administration, these do not find their way into use by the general public. In the Legal Resource Index, which catalogs 660 law journals and related literature, for the period January 1981 to June 1984, only one or two such studies were found. The Social Sciences Index, the standard source for social science periodical references, lists only four articles on the attitudes of judges in the four year period ending May 1983.

[3]Pound, Roscoe: Jurisprudence, Vol. 1, Ch. 1. St. Paul, Minn.:West Publishing Co., 1959.

that here the so called rule of law was demonstrating only a grimly macabre reductio ad absurdum. At any rate, the spirit of the law was quite evidently harsh, unyielding retribution.

Later the Romans invented a system of equity. Its origin was an accommodation to the expanding Roman aegis, which encompassed many different peoples of many different legal systems. The early strict law -- like strict law everywhere and throughout history -- was essentially religious in nature. Its religious grounding made it particularly strongly binding upon Roman citizens -- for to violate the religiously grounded law meant to displease not just the state but also the gods -- but it also meant that it was obligatory only on Romans, that is, among co-religionists. People of other religions simply could not be recognized by Roman religion. A different set of legal dispositions was needed that would be binding upon the growing population of foreigners doing business with Romans. A system of natural justice or common custom was developed to deal with these diverse foreigners. Its basis was a set of principles that drew their force from natural reason or common sense. Eventually, these principles of equity came to be recognized as a higher set of criteria for settling conflict than the religious code of laws. The natural law was not so harsh or as unyielding.

Despite their unparalleled genius for administration, the Romans were never able to free themselves from the oscillation between strict law -- which acted mechanically, aiming to deliver the same disposition in all similar cases -- and soft law or equity or reasonableness -- which tended to temper justice with mercy and to adapt legal dispositions to the individual case. The history of Roman Law illustrates the pattern again and again. When the passion for strictness takes over, new prohibitions stimulate legal ingenuity at avoidance or evasions. The evasions in turn are prohibited. New evasions spring out of the body of the new prohibitions. The passion for strictness becomes frantic and by and by everything gets condemned and the entire passion collapses like an exhausted manic-depressive fit. Liberality takes over and drags the law in the opposite direction: into the irrational negation of the strict law. Order gives way to license. Individual ingenuity expands permissible conduct. The human body is perceived to grow decadent until finally public order collapses, to be succeeded by the harsh rule of military dictatorship.[4] As late as the sixth century A.D. the pattern was in evidence. An imperial decree tried to restrain legal learning and citation to a condensed body of the "essence" of Roman Law by denying legal force to other sources save a handful of named jurists whose writings were

[4]Gibbon, Edward: Decline and Fall of the Roman Empire. NY:Modern Library, 1932.

to be incorporated in the new CORPUS JURIS. All such restraints, whether from the Emperor-God or not were promptly evaded and soon abandoned.

Roscoe Pound has described in great detail the parallel oscillation in Anglo-American law. For example, not so awfully long ago, the ruling authorities in England sought to stem the tide of crimes by the poor. In a fit of legal absurdity springing from a desire for harsh retribution they defined the theft of any object of the value of a shilling or more to be a felony. The penalty for "felony" remained death. Only the good sense of the English juries helped save this desperate situation. They worked their way around the dilemma by refusing to find the value of the stolen object to be a shilling or more, hence refusing to punish minor thieves by death. One jury even solemnly declared the Bishop's stolen bejewelled snuff box to be worth less than a shilling. The climax of this legal farce was reached when a straight-faced jury found that a five pound note was not worth a shilling, thus reducing its theft to a misdemeanor.

THE CURRENT TIDE TOWARD STRICT LAW

Professor Pound remarks on the strange popularity of strict law, even among people most likely to suffer from it. In our own country it has been known by various names, the most popular being "Puritan Conscience." It would be a

mistake however to restrict this phenomenon to Puritanism for it may well be endemic in the human race.

The nineteen-eighties give unmistakeable evidence of a return to strict law. It is even accompanied by a renewed wave of religious fervor, recalling the Roman religious sentiments that repeatedly drove them back to their strict law. An interesting difference between the current decade and previous periods in which there was strong public sentiment in favor of strict law is that at the present time all segments of the field of American politics seem to be engaging in a contest as to whose particular form of hard law is to prevail. No longer is it true that liberal politics is associated with soft law or equity, while conservative politics favors hard law. The present sentiment favors hard law all along the spectrum. Indeed, liberal politics means illiberal law nowadays and vies with old-fashioned Populist Republicanism in the fervor with which it seeks to constrain its ideological enemies with the shackles of law.

Law is a highly complex and delicately balanced system for effectuating justice. To use it, especially its most noxious instrument, the criminal law, where inappropriate is to challenge the foundations of democratic government. It behooves us therefore to temper the public debates that lead to new law with as much wisdom and fact as we can muster.

There is a danger during the periods of harsh swings in the law that the strict law advocates will silence "equity" completely by removing from the judiciary the discretion to exercise it. Pound commented on how this was a particular problem in the United States. He noticed that the tendency to distrust judicial justice was stronger in America than in other lands he had studied and he expressed concern that America was carrying to an extreme the idea that a court should be merely a judicial automaton doling out strict dispositions.[5] It follows that we must exercise extra caution against this danger.

STRICT LAW, EQUITY, AND DUI LAW

The specific circumstance which inspired the present study is the public outcry in favor of strict law in the arena of drunk driving. Widespread but not widely substantiated charges that judges have been "soft" on drunk drivers have led many states to institute mandatory sentencing laws aimed at restricting judges' sentencing discretion.

The complaints against judges arose from a public debate led largely by two organizations: Mothers Against Drunk Drivers (MADD) and Remove Intoxicated Drivers (RID). These groups formed out of the frustration of people who had

[5]Pound, op. cit., Vol. 2, pp 461-465.

lost loved ones to drunk drivers and who were not satisfied that the reparations dealt out to these drivers were harsh enough. They fan the flames of public outrage with pictures of dead children and testimony from grieving parents. The pain of these families is heartwrenching, and it is valuable to all of us for them to participate in the legal arena, to raise awareness of where problems may exist, and to motivate all of us to do what we can to deter drunk driving. The unfortunate thing is not the existence of these groups but rather the fact that their horrible experiences have been allowed to become the main emotional and factual base on which the public discussion of this very complex issue has been conducted. Theirs should not be the only sort of input into the discussion of what constitutes our drunk driving problem and what should be done about it.

In view of this situation, we developed two interests. First, we felt it was a problem that apparently no response could come from the community of judges because of the inestimable importance of the tradition that keeps our judges from engaging in polemics on subjects of political consequence. Nonetheless, their voices should be heard in reply to the charge that they are the problem.

Second, we wanted to help raise the level of public debate about DUI above undocumented finger pointing and moralistic polemics. It was our opinion that gathering

reliable evidence on what the judges themselves thought of the current state of DUI laws would help achieve both ends. We therefore set about to conduct a study of their views on the subject.

SURVEY DESIGN

The survey was conducted in six states. Four were chosen for geographical dispersion (Wisconsin in the North; Georgia in the South; Pennsylvania in the East; and Colorado in the West). California and Maryland were added because they were considered particularly interesting cases: Maryland because it was perceived that enforcement of DUI laws there appears exceptionally stringent; and California because it is the most populous state and because of its reputation as a bellwether for national trends. Readers must bear in mind that this is not a statistically random sample. The lack of randomness means that we cannot estimate the degree to which our findings can be generalized to the population of all judges in the U.S. We <u>can</u> reliably say, though, that our results accurately reflect the views of a majority of the relevant judges in the six states sampled.

None of the states in the sample had either extremely harsh or extremely lenient DUI laws. Although, like most states, these six all have instituted tougher DUI penalties

within the past few years in response to public pressure, they can all be characterized as moderate insofar as these penalties are concerned.

A large random sample of the trial judges who hear DUI cases was drawn from each state. A total of 1038 such judges received our six page questionnaire; 60% responded (see Table 1). This high response rate was partly the result of some extraordinary preliminary and follow-up steps that we took because we were afraid that reluctance to intervene in the process in a way that is not directly judicial would make the judges hesitant to respond to a survey.[6] The response rate must also reflect, though, the judges' strong interest in the subject and their ample willingness to share their experience and opinions with the public upon terms that they considered appropriate.

RESULTS

Although judges' attitudes about DUI have not before been systematically surveyed and the judges themselves have generally been reticent about their individual attitudes, there has been much printed about their attitudes anyway. The most common claim is that judges have lenient attitudes

[6]We secured endorsements in every state from judges' associations, top judges, and high level judicial administrators. We made prior telephone calls to each judge. To all those who did not respond to our initial mailing, we made a follow-up phone call and sent a second letter and copy of the questionnaire.

about drunk driving infractions. The MADD and RID groups have often stated that judges identify with drunk drivers because they drink and drive themselves so when they meet a DUI offender at the bench their reaction is "there but for the grace of God go I." Contrary to this reputation, the judges surveyed were not in favor of soft DUI laws. In fact, when we asked them to name one change they would make in DUI law, the most common answer by far was that they would increase the severity of available penalties (see Table 2). Since the demand for mandatory sentencing laws is based on the presumption that judges are too soft, it is most interesting that such a large group of judges believe the opposite: that it is the law, not they, that is too lenient.

Even though judges and activists share an interest in having strong DUI law, they may have very different opinions about the goal they believe DUI law should serve. Most of the judges in all the states believe present laws overstress the legal objective of retribution and underemphasize the objectives of rehabilitation and deterrence. We asked the judges to distribute 100 points among those three categories first according to the amount of emphasis the law presently places on each of them and then according to the amount of emphasis the judges would like the law to place on them. Overall, the judges' desired law would be much less retributive than current. It would also place significantly

greater emphasis on the goals of deterrence and rehabilitation (see Figure 1).

This finding is precisely what would be predicted in light of Pound's account of the strict law-equity conflict. The activists have set a very strong retributive tone in their discussions of DUI implying they are quite interested in this goal. They have succeeded in altering the law of late and the judges perceive these recently altered laws to be too retributive. It is important that the public become aware that these two sets of opinions may coexist simply because there are two distinct attitudes about goals of the the law and not because one group does not consider the problem a serious one. Equity-oriented judges will necessarily be perceived to be lenient by strict law advocates. This is not to say that the judges are not lenient. They may be. We have not researched their actual behaviors, only their expressed opinion. No one has yet done the very important, immensely difficult, work of surveying judges' actual sentencing behavior and evaluating whether these are lenient or harsh or somewhere in the middle. We only hope to point out that what constitutes leniency is much more complex than the DUI debate until now has made it seem.

The judges' opinions about mandatory sentencing related most strongly to their opinions about its effectiveness.

That is, the main difference between the judges who were most in favor of mandatory sentences[7] and those who were least in favor of them[8] was their beliefs about the deterrent effects of mandatory sentencing. The former were much more convinced that mandatory sentencing decreases drunk driving accidents than were the latter (see Table 3).

Another interesting difference between those judges most in favor of mandatory sentencing and those least in favor of it had to do with their beliefs about what makes a law an effective deterrent. We asked the judges to distribute 100 points among three categories -- severity of punishment, certainty of punishment, and speed of disposition -- according to their estimate of the importance of each in making DUI law effective. Those who were most in favor of mandatory sentencing tended to believe severity was the most important component while those least in favor of mandatory sentencing considered certainty of punishment more important (see Table 4).

Since mandatory sentencing is intended to make punishments automatic and unavoidable, there is a minor legal paradox reflected in the fact that the judges who favor mandatory sentencing did not consider certainty of

[7]Defined as those judges who believe mandatory jail sentences are among the most appropriate dispositions for even first offenders.
[8]Defined as those judges who believe mandatory jail sentences are not appropriate even for repeat offenders.

punishment the critical deterrent factor while those who did consider certainty the more important factor did not prefer mandatory sentencing. In other words the judges' opinions indicate that they believe mandatory sentencing makes it less likely that offenders will be sentenced. Like the old English juries that would not find thieves guilty if this meant hanging them, our modern American judges know that their colleagues and juries may prefer to give no punishment than to give one that is excessively harsh. This question of actual sentencing behavior needs to be researched in order to determine if mandatory DUI sentences achieve their intended effects and, if not, what interferes with them.

The factual question of what type of law best deters DUI offenses is a most important one to resolve. Any research that enhances understanding of whether severity or certainty of punishment is more effective in motivating people not to drive under the influence of mind-altering substances will help in developing more rational DUI law. Of course, what deters people from driving under the influence may be very different from what deters them from committing other crimes, such as theft or murder. Therefore, general research into which is the more effective deterrent to criminal behavior will not be entirely applicable to DUI offenders. Research that specifically focuses on DUI offenses, that takes into account the irrationality of the addicted driver and the impaired

reasoning of the social drinker, for example, will be needed.

All of the judges were far more likely to prefer mandatory jail sentences for repeat offenders than for first offenders. Mandatory jail sentences scored a very close second to license suspension as most preferred disposition for repeat offenders, while they were a very low fourth choice for first offenders. Fines, rehabilitative and educational programs, and license revocation are the preferred dispositions for first offenders (see Figure 2). In general, the judges feel that present law is adequate though far from optimal for both first offenders and repeaters and that it is somewhat better for the former than for the latter (see Table 5).

We were interested to note that the judges like to give packages of sentences in DUI cases (almost 4 dispositions per offender on average), not single sentences. This should be borne in mind as the search for ways to make the laws more effective continues. The judges probably would not make <u>one</u> change to improve the law; they would prefer a more complex solution, i.e., packages of effective dispositions that respond to their multiple legal goals.

Many judges we spoke with while preparing this survey expressed concern that they did not know how effective the

various dispositions were. They were not sure whether the rehabilitation programs were working or which ones worked best. They did not know how many people drive without a license after it has been revoked (though the consensus was that a very high proportion do so) or how often fines get paid. Some were not even sure how many DUI offenders that they sentenced to jail actually served time. There was suspicion that DUI offenders are often sent home to serve their time because of overcrowding in the jails. Facts about the effectiveness of dispositions even on this most basic level are needed. Once they are gathered, judges must be educated about them. In response to a question in our survey the judges indicated that judicial education on DUI laws and disposition alternatives would be useful (an average rating of 3.5 on a scale of 1 to 5 from "not at all useful" to "extremely useful").

CONCLUSION

In this article we've placed the debate over DUI law into a broader legal context. We've shown that the judges who try these cases do care about the issues and that they have thoughtful positions. We've injected some facts about judges attitudes where before there was a vacuum. We've also suggested a number of important concrete questions that could be researched to enhance the effort to devise more

effective law. It is hoped that all of this will help to raise the the debate to a more informed and useful level.

GENERAL RECOMMENDATIONS FROM THE RESEARCH GROUP

The net result of this study permits us to make a series of recommendations to lead expert and lay opinion toward a balanced attitude on the problem of enforcement of drunk driving laws.

1. The issues surrounding DUI law are far more complex than indicated by the present, largely one-dimensional level of debate. Society should give more serious attention to positions, such as the judges, which primarily emphasize rehabilitation and deterrence rather than punishment. A whole host of subproblems that deserve serious study and debate are being neglected because such opinions are not being explored.

2. Legislation should incorporate a wide range of sentencing options and flexible judicial discretion. In brief, trust the judges more rather than less.

3. Increased education for judges on DUI issues should be encouraged.

4. Draconian and especially single-shot solutions seem inappropriate.

5. More attention should be focussed on drugged as well as well as drunk driving as a DUI problem.

6. Research to highlight rehabilitative programs that really work should be encouraged.

7. Efforts to promote local DUI programs rather than national utopian schemes may be more effective.

8. Ambivalence in attitudes toward mandatory sentencing exists. We have discussed at length the current favor for strict law. We should realize that long range sentiment for equity is not dead but perhaps is sleeping. This would mean that the attitudes expressed by judges on mandatory sentencing are not contradictory but merely too complex for our initial pioneering study. The times themselves may well be the source of this ambiguity. A curious mixture of sentiments in favor of harshness are present at the same time that the traditions in favor of equity and compassion for the unfortunate are being expressed.

TABLE 1

RESPONSE RATES

STATE	NUMBER OF JUDGES COMPLETING SURVEY	RESPONSE RATE
CA	134	66%
CO	59	56%
GA	88	40%
MD	42	52%
PA	94	53%
WI	137	63%
	554	
REPLIES RECEIVED TOO LATE TO BE INCLUDED IN STATE ANALYSES	16	
	570	60%

TABLE 2

THE ONE CHANGE THEY WOULD MAKE

	% OF JUDGES SUGGESTING THIS CHANGE
INCREASE THE PENALTIES	30
INCREASE JUDICIAL DISCRETION	11
MANDATE THERAPY	6
INCREASE THE CERTAINTY AND PUBLICITY OF THE PENALTIES	5
ELIMINATE THE INCONSISTENCIES WITHIN THE LAW OR ACROSS JURISDICTIONS	5
NONE (ADEQUATE AS THEY ARE)	9
NO RESPONSE OR DON'T KNOW	15

TABLE 3

JUDGES' PERCEPTIONS OF THE EFFECT OF MANDATORY SENTENCING ON DRUNK DRIVING ACCIDENTS

	JUDGES MOST IN FAVOR OF MANDATORY SENTENCING (N=116)	JUDGES LEAST IN FAVOR OF MANDATORY SENTENCING (N=148)
NO EFFECT	15%	32%
DECREASES ACCIDENTS	44%	20%
PROBABLY DECREASES ACCIDENTS	7%	7%
DECREASES ACCIDENTS BUT ONLY FOR A WHILE	2%	2%
DON'T KNOW OR TOO SOON TO TELL	4%	12%
OTHER	2%	1%
NO ANSWER	27%	25%

TABLE 4

RELATIVE IMPORTANCE OF SEVERITY CERTAINTY AND SPEED IN DETERRING DUI OFFENSES

(MEAN SCORES)

	JUDGES MOST IN FAVOR OF MANDATORY SENTENCING (N=116)	JUDGES LEAST IN FAVOR OF MANDATORY SENTENCING (N=148)
SEVERITY OF PENALTY	42	30
CERTAINTY OF PUNISHMENT	33	44
SPEED OF TRIAL	25	25

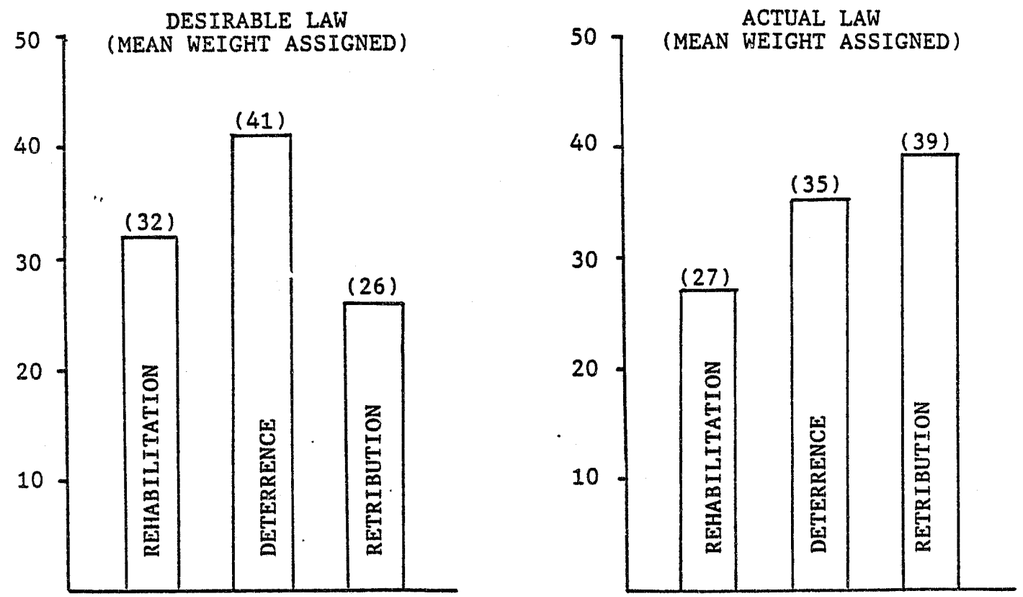
TABLE 5

ADEQUACY OF EXISTING DUI LAWS FOR DEALING WITH OFFENDERS
(FIRST VS. REPEAT OFFENDERS)
(% of JUDGES CHOOSING EACH SCORE)

	FIRST OFFENDERS	REPEAT OFFENDERS
VERY POOR OR POOR	14	22
ADEQUATE	27	30
VERY GOOD OR GOOD	59	48

FIGURE 1

DESIRED AND ACTUAL WEIGHTS OF PENAL GOALS IN DUI LAW



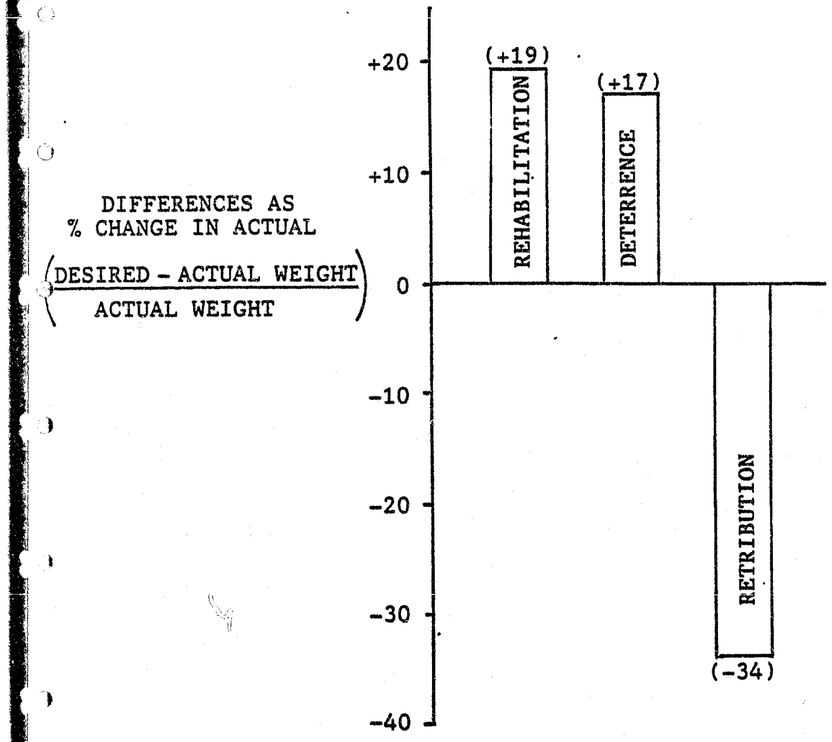
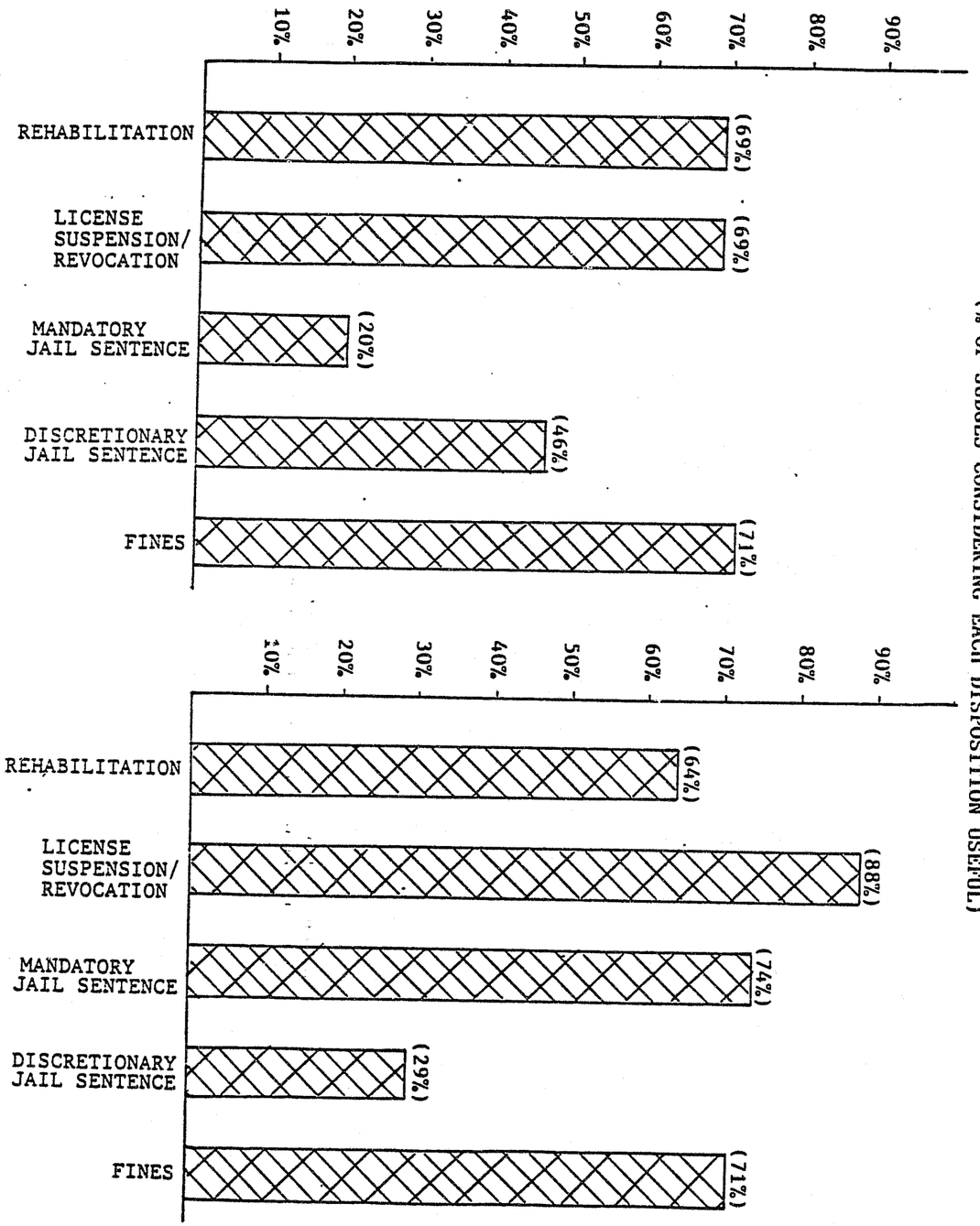


FIGURE 2



USEFULNESS OF DISPOSITION ALTERNATIVES: FIRST VS. REPEAT OFFENDERS
(% OF JUDGES CONSIDERING EACH DISPOSITION USEFUL)

APPENDIX

This appendix reports complete findings of the study of judges' opinion on Driving Under the Influence (DUI) Laws.

Table 1: Judges Eligible for the Survey

State	N (estimated # of DUI trial judges)	n (size of sample)
CA	255*	215
CO	108	108
GA	237	179
MD	85	85
PA	342	215
WI	285**	236'
All	1312	1038

Table 2: Judges Responding to the Survey

State	# Completing Survey	#who don't hear DUI cases	Response Rate
CA	134	8	66%
CO	59	2	56%
GA	88	7	40%
MD	42	2	52%
PA	94	20	53%
WI	137	51	63%
Replies rec'd too late to be included in state	16		
ALL	570''	51	60%

* Includes only judges who are members of the CA Judges Association (about 95% of CA. judges)
** Includes 186 circuit judges, 99 municipal judges
' Includes 186 circuit judges, 50 municipal judges
'' All states is slightly greater than the sum of the six states due to late arriving responses.

Note: small discrepancies are due to rounding.

EXISTING DUI LAWS: ADEQUACY FOR DEALING WITH OFFENDERS
Table 3: Level of Adequacy, First vs. Repeat Offenders

First Offender

	CA	CO	GA	MD	PA	WI	All
(1) Very Poor	2	--	2	--	1	2	2
(2) Poor	19	7	3	12	13	14	13
(3) Adequate	24	22	31	24	27	30	27
(4) Good	34	56	27	15	29	38	34
(5) Very Good	21	15	36	49	30	17	25
Mean Score	3.5	3.8	3.9	4.0	3.7	3.5	3.7

Repeat Offender

	CA	CO	GA	MD	PA	WI	All
(1) Very Poor	2	--	1	2	--	4	2
(2) Poor	31	21	20	14	19	13	20
(3) Adequate	32	26	31	19	36	28	30
(4) Good	20	43	30	31	36	41	32
(5) Very Good	15	10	18	33	10	15	16
Mean Score	3.2	3.4	3.5	3.8	3.4	3.5	3.4

PENAL GOALS OF DUI LAWS (desirable vs. actual laws):

Criminologists and legal theory emphasize three societal goals of criminal law: rehabilitation, deterrence and retribution. Judges were asked their opinion of the relative weight (on a scale from 1 to 100) which each of the goals should have and the weight they actually have in DUI law.

Table 4: Desired and Actual Weights of Penal Goals in DUI Law

Penal Goal	Desirable Law (mean weight assigned)						
	CA	CO	GA	MD	PA	WI	All
Rehabilitation	30	34	28	38	38	32	32
Deterrence	44	42	39	37	40	42	41
Retribution	26	24	34	23	22	26	26

	Actual Law (mean weight assigned)						
	CA	CO	GA	MD	PA	WI	All
Rehabilitation	24	31	22	36	27	26	27
Deterrence	32	38	34	33	35	37	35
Retribution	43	32	43	31	38	37	39

Table 4 cont'd

	(Desired - Actual Weight)						
	CA	CO	GA	MD	PA	WI	All
Rehabilitation	+6	+3	+6	+2	+11	+6	+5
Deterrence	+12	+4	+5	+4	+5	+5	+6
Retribution	-17	-8	-9	-6	-16	-11	-13

	Differences as % Change in Actual ((Desired - Actual Weight)/Actual Weight)						
	CA	CO	GA	MD	PA	WI	All
Rehabilitation	+25	+10	+27	+6	+41	+23	+19
Deterrence	+38	+11	+15	+12	+14	+14	+17
Retribution	-40	-25	-21	-19	-42	-30	-34

Judges were asked to state the reasons for their rating of the adequacy of the DUI laws for first and repeat offenders.

Table 5: Reasons for Rating Adequacy of DUI Laws, First vs. Repeat Offenders
(% of judges responding)

	First Offenders						
	CA	CO	GA	MD	PA	WI	All
POSITIVE REASONS:							
Provide enough deterrence/penalty	52	53	52	50	36	70	53
Provide for education/rehabilitation/treatment	31	59	26	33	40	28	34
Provide for discretion in handling offenders	8	14	9	24	10	4	9
Provide uniformity	1	--	1	--	1	1	1
Other positive	1	--	5	--	1	--	1
NEGATIVE REASONS:							
Insufficient deterrence/penalty	14	2	8	7	3	15	10
Insufficient education/rehabilitation/treatment	6	2	3	2	4	3	4
Insufficient discretion in sentencing	4	3	2	2	10	2	4
Do not solve DUI problem/inappropriate measures	4	5	1	--	6	4	4
Misperceive DUI as criminal problem	--	--	1	--	1	--	--
Other negative	--	--	--	--	--	--	--
NEUTRAL RESPONSE							
No answer/don't know	10	7	23	7	9	4	10

Table 5 cont'd

	Repeat Offenders						
	CA	CO	GA	MD	PA	WI	ALL
POSITIVE REASONS:							
Provide enough deterrence/penalty	40	56	50	52	48	63	51
Provide for education/rehabilitation/treatment	16	32	16	21	11	14	17
Provide for discretion in handling offenders	6	5	2	21	10	2	6
Provide uniformity	--	--	--	--	1	--	--
Other positive	--	--	1	--	1	1	--
NEGATIVE REASONS:							
Insufficient deterrence/penalty	20	7	10	7	6	20	14
Insufficient education/rehabilitation/treatment	11	5	2	2	7	3	6
Insufficient discretion in sentencing	3	2	5	2	10	--	3
Do not solve DUI problem/inappropriate measures	16	14	8	5	11	7	10
Misperceive DUI as criminal problem	4	2	--	--	7	--	2
Other negative	--	--	--	--	--	--	--
NEUTRAL RESPONSE							
No answer/don't know	9	7	23	10	11	7	11

RELATIVE RANKINGS OF AVAILABLE DISPOSITIONS:

Respondents were asked to rate the usefulness of ten dispositions and one potential change in the law (increase in penalties) on a scale of 1 to 5 (from least useful to most useful).

Table 6: Usefulness of Alternatives, First and Repeat Offenders Combined

Disposition	Mean Ranking Score						
	CA	CO	GA	MD	PA	WI	All
Rehabilitative Programs	3.3	3.7	3.1	4.1	4.1	3.4	3.5
License Suspension/Revocation	3.5	4.2	4.3	4.3	4.1	4.3	4.0
Mandatory Jail Sentence	3.9	3.2	3.5	2.0	3.0	3.9	3.5
Discretionary Jail Sentence	3.5	3.9	3.5	4.4	3.7	3.1	3.6
Fines	3.2	3.0	3.7	3.3	3.2	3.3	3.3
Driver's Education	2.8	2.8	3.4	2.8	3.4	2.9	3.0
Community Service	2.8	3.4	3.2	3.0	3.0	2.4	2.9
Presentencing Assessment	2.7	3.7	3.1	3.4	3.5	2.7	3.1
Victim Compensation	3.7	3.3	3.4	3.2	3.6	3.1	3.4
Victim/Survivor Testimony	3.2	3.3	3.4	3.2	3.3	3.3	3.3
Increase in Severity of Penalties	3.9	3.6	3.8	3.2	3.6	3.8	3.7

It appears that the judges support a wide variety of alternatives as is further confirmed in Table 8.

Judges were asked to assess the relative importance on a scale from 1 to 100) of these three factors in determining the general effectiveness of DUI law. Certainty was considered most important except in Georgia where judges gave a small but noticeable edge to severity.

Table 7: Relative Importance of Certainty, Severity, and Speed

Factor	Mean Score						
	CA	CO	GA	MD	PA	WI	All
Severity of Penalty	39	31	41	31	38	37	37
Certainty of Punishment	38	47	37	42	37	40	39
Speed of Trial	24	21	22	27	25	23	24

RELATIVE USEFULNESS OF ALTERNATIVE DISPOSITIONS:

Judges were asked what dispositions they consider most appropriate for the typical first offender and for the typical repeat offender. The average judge suggested a package of between three and four dispositions for the typical offender. The most striking difference was that discretionary jail mandatory jail sentences were preferred to discretionary for repeat offenders.

Table 8: Perceived Most Appropriate Disposition for Typical DUI Offenders First vs. Repeat Offenders
(% of judges reporting each disposition)

Disposition	For Typical First Offender						
	CA	CO	GA	MD	PA	WI	All
Rehabilitation Treatment	65	83	32	93	83	75	69
Licenses suspension/revocation	51	58	60	81	77	89	69
Mandatory Jail Sentence	43	18	15	2	7	15	20
Discretionary Jail Sentence	51	56	47	57	42	38	46
Fines	78	51	80	69	54	80	71
Driver's Education	40	32	60	45	64	34	45
Community Service	32	75	31	38	33	15	33
Mandatory Treatment Programs	2	5	--	7	4	--	2
Other	8	10	7	12	6	5	7
Avg. # of dispositions/judge							3.6

Table 8 cont'd

Disposition	For Typical Repeat Offender						
	CA	CO	GA	MD	PA	WI	All
Rehabilitation treatment	76	81	39	71	14	*	64
Licences suspension/revocatin	84	88	86	93	89	93	88
Mandatory Jail Sentence	88	71	68	33	55	90	74
Discretionary Jail Sentence	16	37	25	76	47	13	29
Fines	72	54	76	74	69	77	71
Driver's Education	21	17	38	17	21	17	24
Community Service	25	59	34	17	21	14	27
Mandatory treatment Programs	3	10	2	12	15	3	6
Other	12	5	5	5	4	6	7
Avg. # of dispositions/judge							3.9

* Not available

Having been asked about preferred dispositions for the typical offender, judges were then asked what factors, if any, might cause them to vary their sentences.

Table 9: Factors Which Might Cause Variation from a Typical Sentence
First vs. Repeat Offenders
(% of judges citing each factor)

Factor	Respondents citing for first offenders						
	CA	CO	GA	MD	PA	WI	All
BAC Level	41	32	24	19	30	39	33
Seriousness of injury/damage	24	32	9	33	48	37	30
Prior Offense Record	25	31	13	36	16	32	25
Circumstances of the Offence	11	15	10	33	17	18	16
Social Status of the Offender	37	25	26	26	25	23	28
Attitude of the Offender	19	19	16	14	19	13	16
Chances of Rehabilitation/Recidivism	8	14	2	19	11	4	8
Alcohol Usage History	8	14	2	26	13	9	10
Economic Hardship for Offender/Dependents	6	5	7	2	9	7	7
Absence of Mitigating Factors	2	--	1	5	1	--	1
No Insurance	2	--	1	--	1	1	1
Other	1	5	3	2	2	2	2
No Answer/don't know	11	10	34	2	7	10	13

Table 9 cont'd

	Respondents citing for repeat offenders						
	CA	CO	GA	MD	PA	WI	All
BAC Level	26	19	13	5	18	29	21
Seriousness of injury/damage	15	19	9	19	26	26	20
Prior Offense Record	33	36	16	33	18	38	30
Circumstances of the offense	8	14	9	21	18	12	13
Social status of the offender	25	19	17	19	21	17	21
Attitude of the offender	20	19	7	7	12	14	14
Chances of rehabilitation	21	31	11	36	18	13	19
Alcohol Usage History	8	5	8	10	9	8	8
Economic Hardship for offender/dependents	5	9	8	10	7	7	7
Absence of Mitigating Factors	--	2	1	5	--	--	1
No Insurance	2	--	1	--	1	1	1
Other	--	2	5	2	2	2	2
No answer/don't know	24	10	32	12	14	15	19

INFLUENCE OF RELATED LAWS ON DUI:

Judges were asked to rank on a scale of 1 (low) to 5 (high) the relative influence of related laws on the occurrence of DUI. All items received a mean rank close to the mid-point of the scale, indicating a general view among judges that these other laws are of moderate importance to DUI incidence.

Table 10: Influence of Other Laws on DUI

Law	Mean Ranking Score						
	CA	CO	GA	MD	PA	WI	All
Legal Drinking Age	3.0	3.0	3.3	3.6	3.5	3.5	3.3
Drinking While Driving (open container laws)	3.0	2.8	3.5	2.6	3.0	3.0	3.0
Hours of Sale of Alcoholic Beverages	3.0	2.5	3.0	2.6	2.8	3.1	2.9
Location of Sale of Alcoholic Beverages	2.6	2.1	2.7	2.2	2.6	2.6	2.6

DESIRABLE CHANGES IN DUI LAW:

Judges were asked to state the one change they would make in existing DUI laws to make them more useful. The plurality supported increasing the penalties; the second most cited change far less frequently cited judicial discretion. The reader should be aware that the base (existing law) from which they were working was different in the six states.

Table 11: The ONE CHANGE they would make
(% of judges citing each change)

	CA	CO	GA	MD	PA	WI	All
Increase the Penalties	42	22	19	31	22	33	30
Increase Judicial Discretion	10	9	10	--	28	6	11
Mandate Therapy (medical/ social/psychological)	8	5	5	2	5	9	6
Increase the Certainty and Publicity of the Penalities	4	9	7	2	3	5	5
Institute or Increase Education in Schools on DUI/ Alcohol problem	2	3	5	2	2	2	3
Eliminate Inconsistencies within the Law or Across Jurisdictions	2	12	6	10	2	5	5
Increase Restrictions on Sale or Advertisement of Alcoholic Beverages	2	5	2	10	3	4	3
Raise the Driving Age	--	--	--	--	3	2	1
Other	10	19	11	12	7	14	12
None (adequate as they are)	7	5	10	24	5	8	9
No Response or Don't Know	13	12	25	7	17	14	15

USEFULNESS OF JUDICIAL EDUCATION ON DUI LAW AND SENTENCING ALTERNATIVES:

The respondents were asked to rank on a scale of 1 (not at all useful) to 5 (extremely useful) the usefulness of judicial education on DUI law and disposition alternatives.

Table 12: Usefulness of Judicial Education on DUI Law and Disposition Alternatives

State	Mean Ranking Score	Mode	Score of 3 or higher
CA	3.5	4.0	81%
CO	4.0	4.0	98%
GA	3.6	3.0	79%
MD	4.0	5.0	93%
PA	3.4	4.0	74%
WI	3.3	3.0	79%
All	3.6	4.0	82%

EFFECT OF MANDATORY SENTENCING ON CRIMINAL JUSTICE AGENCIES:

The judges were asked to indicate what effects the mandatory penalties in DUI law have on the criminal justice system. The majority consider the effects of mandatory sentencing on judges and the courts to be unfavorable -- limiting discretion, increasing the number of trials and workload and adding to court backlogs. However, many like the simplification of sentencing which comes about directly through using mandatory provisions and indirectly through reducing the need for the sentencing judge to justify the sentence in the face of argument by the public or the offender.

Table 13: Effects of Mandatory DUI Provisions on Judges
(% of judges reporting each effect)

	CA	CO	GA	MD	PA	WI	All
Results in limited judicial discretion	42	48	28	33	52	36	40
Simplifies sentencing	37	22	36	10	25	40	32
Frustration and resentments	4	15	3	21	12	4	8
None	10	17	7	10	10	16	12
Increases trials and workload*	4	5	--	2	9	2	4
Other	4	--	3	7	5	2	3
Don't know/no answer	8	3	24	21	4	7	10

* but see also table following for effect on the courts

Table 14: Effects of Mandatory DUI Provisions on the Courts
(% of judges reporting each effect)

	CA	CO	GA	MD	PA	WI	All
Increases trials and backlog	49	56	18	31	54	53	45
None	16	9	11	26	14	10	13
No discretion/confining	5	5	9	14	6	9	7
Pew guilty pleas	4	7	1	5	5	6	5
Simplification of task	8	5	11	5	3	9	7
Uniformity of disposition	10	5	13	5	2	7	7
Other	8	9	9	--	10	4	7
Don't know/no answer	8	12	28	21	13	8	14

Table 15: Effects of Mandatory DUI Provisions on the Police
(% of judges reporting each effect)

	CA	CO	GA	MD	PA	WI	All
Increased enforcement	34	29	32	14	30	22	28
None	40	34	15	24	22	29	28
Selective enforcement	3	17	13	36	22	25	17
More time spent in court	2	--	--	--	2	2	1
Other	3	7	3	--	9	4	4
No answer/don't know	19	14	38	26	17	20	22

Table 16: Effects of Mandatory DUI Provisions on the jails
(% of judges reporting each effect)

	CA	CO	GA	MD	PA	WI	All
Overcrowding	76	64	49	57	66	43	60
Jail is an inappropriate sentence	9	3	2	2	17	7	7
Jails will be improved	2	3	6	2	4	8	5
Other	2	7	2	7	--	1	2
None	5	15	14	14	17	26	15
No answer/don't know	12	9	31	17	6	17	15

Table 17: Effects of Mandatory DUI Provisions on the District Attorney's Office
(% of judges reporting each effect)

	CA	CO	GA	MD	PA	WI	All
Increased prosecutions/trial burdens	13	9	6	14	30	18	15
Increased workload/backlog	3	15	9	7	18	10	10
None	24	15	14	12	17	15	17
Removes discretion/plea bargining	22	44	6	24	11	21	20
Slows down trials	5	5	1	2	5	11	6
Other	5	3	2	12	5	3	4
Speeds up processing	16	5	11	7	3	14	11
No answer/don't know	15	12	52	24	21	12	22

EFFECTS OF MANDATORY DUI PROVISIONS ON DUI RELATED ACCIDENTS:

Since a primary goal of DUI laws is to reduce accidents resulting from drunk driving, the judges were asked to indicate what impact they think mandatory sentencing provisions have on DUI related accidents. Their responses indicate a positive view for the respondents as a group but also a great deal of uncertainty.

Table 18: Effects of Mandatory DUI Provisions on DUI Related Accident
(% of judges citing each effect)

	CA	CO	GA	MD	PA	WI	All
Decreases accidents	37	31	35	29	28	41	35
None	23	37	9	29	13	21	20
No answer/don't know	18	15	44	31	20	21	24
Probably decreases accidents	9	7	7	2	18	9	9
no statistics yet	7	3	--	--	4	4	4
Too soon to tell	3	3	1	5	15	3	5
Decrease only for a while	3	3	--	2	2	1	2
Other	1	--	3	2	--	--	1

END