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EVALUATION AND SYSTEM DESCRIPTION OF ASAP JUDICIAL SYSTEMS

Volume II: Puerto Rico Case Study

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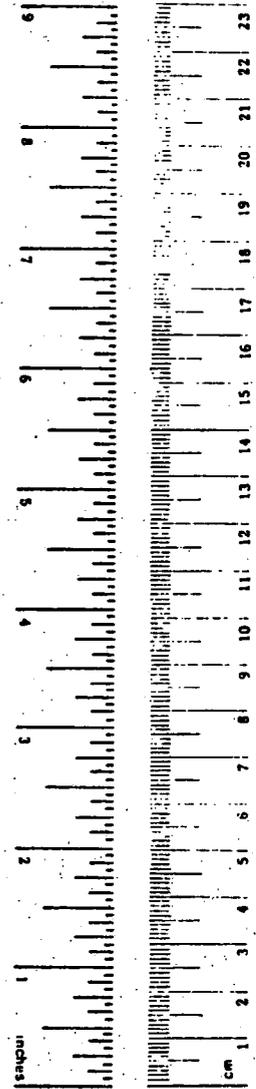
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16. Abstract This study is a description and evaluation of the adjudicative-disposition systems in operation in five states and communities with Federally funded drinking-driver control programs called Alcohol Safety Action Projects (ASAP). The five 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 primary objective of the Puerto Rico ASAP study was to assess the impact of (1) the statutory adoption of the National Highway Traffic Safety Administration's operational definition of a problem drinker as the <u>legal</u> definition for court disposition purposes and (2) a mandated presentence investigation and drinker-type classification of all convicted drinking-driving offenders. The study found that the Puerto Rico ASAP successfully created, implemented, and tested a viable system of drinking-driver control through legislative enactment in 1973, where no such system had previously existed. However, additional legislation in 1975, although theoretically desirable, will probably prove to be counter productive.					
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METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

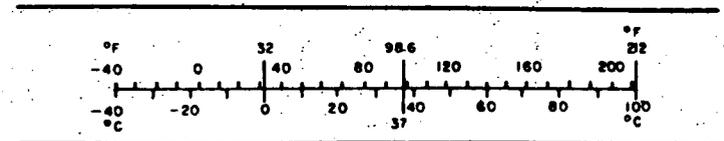
Symbol	When You Know	Multiply by	To Find	Symbol
LENGTH				
in	inches	2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
AREA				
in ²	square inches	6.5	square centimeters	cm ²
ft ²	square feet	0.09	square meters	m ²
yd ²	square yards	0.8	square meters	m ²
mi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

1 in. = 2.54 cm (exact). For other exact conversions and more detailed information, see: NBS Mon., Publ. 280, Units of Weights and Measures, Page 207b; SI Catalog No. 1-1-11-280.



Approximate Conversions from Metric Measures

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



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PUERTO RICO ASAP JUDICIAL SYSTEM

EXECUTIVE SUMMARY*

The Puerto Rico study was conducted to determine the effect of significant changes that were made in the island's DWI and BAC laws in 1973 at the urging of the Puerto Rico Alcohol Safety Action Project (ASAP). The methods of research included interviews with key persons in the Puerto Rican criminal justice system, observations in courts and elsewhere, and analysis of ASAP status reports prepared for the National Highway Traffic Safety Administration (NHTSA).

Prior to 1973 Puerto Rico's DWI law was a criminal law, with harsh penalties for offenders. First offenders were supposed to lose their driver's licenses for 1 to 2 years; second offenders were supposed to be given mandatory jail sentences and see their driver's licenses permanently revoked. Because of the harshness of the penalties, combined with widespread tolerance for drinking, there were few DWI prosecutions.

Those who were prosecuted, moreover, usually found it easy to avoid conviction by taking advantage of loopholes in the BAC law. Although an implied consent law existed, defendants were often able to convince judges that their refusal to take a BAC test was justified. Furthermore, defendants were permitted to decide whether they would take a blood, a breath, or a urine test. In addition, certain procedural rules--for example, the requirement for a probable-cause hearing for defendants "without unnecessary delay"--helped defendants evade conviction.

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

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The new DWI law, unlike the old, combined punishment with rehabilitation. It called for presentence investigations to determine whether offenders were problem or social drinkers, and allowed judges to issue restricted licenses until offenders participated in rehabilitation programs (for problem drinkers) or education programs (for social drinkers).

The BAC law's loopholes were closed at the same time. Breath testing was established as the preferred testing method, and the right to choose the BAC testing method was shifted from the defendant to the arresting officer. The new law did not, however, lower the presumptive level of intoxication from 0.15 percent BAC to 0.10 percent, as requested by the ASAP.

The new DWI law, combined with stronger law enforcement efforts sponsored by the ASAP, resulted in significant increases in the number of presentence investigations and in the identification of problem and social drinkers. Where 221 problem drinkers had been identified in 1973, for example, that number increased to 1,146 in 1974. As another effect of the new law, judges gradually came to rely on presentencing investigators and probation officers for advice on how DWI cases should be treated.

Unfortunately, the new BAC and DWI laws did not deal with certain problems that had existed in the criminal justice system prior to 1973, and they added a few new ones. The new DWI law, for example, required a presentencing investigation that was an investigacion minuciosa, words that were taken to mean an excessively thorough investigation of the entire life of defendants. The new BAC law, in giving the breath test preferred status, resulted in dismissals of cases when experts were unavailable to testify on the accuracy of breath testing equipment. Furthermore, judges continued to be lenient with defendants who refused to take a BAC test.

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In 1975 the island's legislature again revised the BAC and DWI laws. The presumptive level of intoxication was set at 0.10 percent BAC, and DWI cases were assigned to District Courts, thus relieving the congestion that such cases had caused in the Superior Courts. At the same time, however, the new legislation returned to defendants the right to choose a BAC testing method and required completion of the Driver Improvement School course by offenders within 30 days, thus creating severe administrative problems. These and other changes appeared likely to reduce much of the progress made by the 1973 law.

The Puerto Rican study, along with some of the other case studies, lends weight to the following hypotheses:

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 not likely to suspend or revoke licenses if they believe it will cause hardship to defendants and their families.

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PUERTO RICO ASAP JUDICIAL SYSTEM

In May 1973 a new and noteworthy law went into effect in Puerto Rico. Known as Law 59, the new legislation dramatically changed the way in which persons convicted of driving while intoxicated (DWI) were handled by the Puerto Rican courts. To the Puerto Rico Alcohol Safety Action Project (PRASAP), which had begun its work in October 1971, the new law culminated an effort to reform the Puerto Rican government's piecemeal approach to the problem of drunken driving. It was, however, a short-lived triumph.

Located in the Caribbean Sea approximately 1,000 miles southeast of Florida, Puerto Rico has been for many years a Commonwealth of the United States or, as the Puerto Ricans put it, an estado libre asociado (associated free state). Relatively small (about 3,500 square miles), predominantly mountainous, and densely populated, Puerto Rico's per capita income is far below that of the American mainland. Nonetheless, the island's three million inhabitants include more than 790,000 licensed drivers, who operate about 750,000 vehicles. For a variety of reasons--especially the large number of youthful drivers, the poor roads and congested traffic, and Latin American emphasis on that constellation of aggressive personal characteristics known as machismo-- Puerto Rican drivers are involved in many more traffic accidents, injuries, and fatalities than their counterparts in any state of the United States. Thus, when the national Alcohol Safety Action Program was established in 1969, Puerto Rico was a leading candidate for selection as one of the 35 sites for an Alcohol Safety Action Project.

As with all the ASAPs, the Puerto Rican project stressed a systems approach to the problem of drunken driving. In a land where the use of

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alcohol had traditionally been looked upon tolerantly, it was necessary to try to change both public attitudes and the entire criminal justice system's way of dealing with drunken drivers. But whatever else was attempted by the project, it seemed clear that the greatest need was a drastic revision of the commonwealth's DWI law.

That law was, with respect to its penalties, unusually harsh. These penalties included 1- to 2-year suspension of the driver's license of first offenders, as well as either a fine or a period of imprisonment. A jail penalty was mandatory for second offenders, as was permanent revocation of their driver's license. Given such stringent penalties, the small number of arrests for DWI offenses and the still smaller number of convictions are not hard to understand. On an island where poverty is common and where tolerance for drinking is high, few police officers, prosecutors, or judges were eager to convict someone of a DWI offense.

The law was also rigid; it made no provision for directing defendants to medical treatment or rehabilitation agencies or for placing them on probation. It was purely and simply a criminal justice law.

At the same time, however, the companion Puerto Rican law pertaining to blood-alcohol content (BAC) testing--as well as some of the island's rules of criminal procedure--provided several loopholes through which persons accused of DWI offenses could avoid being convicted.

Nominally, Puerto Rican drivers gave implied consent to a BAC test in accepting a driver's license, but the law permitted accused persons to elect one of the three methods of testing--blood, urine, or breath. (Until recently, however, no equipment for breath testing was available on the island.) Furthermore, those charged with DWI offenses were allowed to refuse a BAC

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test under certain circumstances, and it was up to the court to determine whether their refusal was justified. Under this arrangement accused persons had good reason to decline a BAC test. The absence of a BAC test result reduced the probability of conviction, and the absence of a conviction "proved" that the refusal was justified.

Two rules of criminal procedure also tended to reduce the number of persons convicted of a DWI offense by reducing the probability that they would be tried in court. One procedural rule required the arresting officer to take the accused "without unnecessary delay" before the nearest available magistrate for a probable cause hearing, whether or not the person submitted to a BAC test. In fact, persons arrested when magistrates were not easily available (e.g., in the middle of the night or during weekends) were customarily locked up until a magistrate was available. By that time the accused person was usually sober, and the case would be dismissed.

A second procedural rule set limits to the time that a person could be jailed without a formal complaint, and to the time between the filing of a complaint and trial, unless the prosecutor could show just cause for the delay or the defendant requested it.

The revised DWI and BAC laws that went into effect on May 30, 1973, changed the traditional criminal justice structure for dealing with DWI offenders. While the new DWI law retained the penalties of the old law, it also created a new process that emphasized the education of social drinkers and the rehabilitation of problem drinkers.

The first step in this process is a presentencing investigation carried out by the Adult Probation Division of Superior Court to determine whether a convicted person is or is not a problem drinker. The law makes this pre-

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sentencing investigation mandatory for all persons convicted of DWI offenses, further states that it shall be a "thorough investigation" (in Spanish, investigacion minuciosa), and requires completion of the investigation within 30 days.

This presentencing report is, of course, only advisory. Its purpose is to determine the seriousness of the offender's drinking problem and to suggest the best mode of treatment. Except for suspension of the offender's driver's license, which is mandatory, the ultimate decision on both criminal sanction (if any) and mode of treatment remains the prerogative of the judge.

Criminal penalties are determined by the judge on the basis of the circumstances surrounding the accident--whether the offender was driving recklessly, whether the offender resisted arrest, whether there was an accident, and so on. The customary sanction is a fine, although a jail sentence is sometimes imposed and then suspended to motivate the defendant to cooperate with the type of treatment to which he or she is assigned.

For persons classified as non-problem drinkers the mode of treatment is a driver's improvement course given by the Puerto Rico Department of Transportation and Public Works. For those classified as problem drinkers, the mode of treatment is a rehabilitation program established by the Puerto Rican Department of Health.

To encourage offenders to participate in one of these programs the court may order the issuance of a restricted driver's license during the treatment period. Offenders who decline to participate in the program to which they are assigned, and those whose participation is unsatisfactory, are penalized according to the court's original decision regarding criminal sanctions. Those who complete their programs are then certified as qualified

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to drive motor vehicles again, their driver's license is returned to them, and their case is dismissed. Their records, however, continue to show that they were convicted of a DWI offense.

At the same time that the Puerto Rico ASAP was urging changes in the DWI and BAC laws to include education and rehabilitation as well as criminal penalties it was also encouraging increased law enforcement. The ASAP funded both Special Alcohol Patrol Units and Special Alcohol Pedestrian Patrol Units, and as a result DWI arrests increased substantially. In 1973, for example, the first full year of operation by these special units, the number of arrests jumped to 4,877, compared to 1,795 in 1972.

This increase in the number of arrests was followed by a substantial rise in the number of convictions. Due to the new statutory requirement of pre-sentencing investigations for all convicted offenders, the Office of Court Administration found it necessary to hire 19 additional probation officers to carry out the investigations. The ASAP provided the funds for these additional probation officers and also funded four special prosecutors and support personnel to handle the increased DWI caseload.

These prosecutors were assigned to the Superior Courts with the heaviest caseloads and performed administrative and educational tasks in addition to their prosecutorial duties. In cooperation with the Licensing Bureau they helped to identify recidivists, and they also conducted special seminars for judges and regular prosecutors on DWI prosecution techniques and analysis of breathalyzer evidence.

The legislation of 1973 also made changes in the BAC law. The new BAC statute eliminated urine testing as one of the ways for determining BAC, thus spurring the development of a breathalyzer program that began in 1974. It

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also took away from the accused the choice of BAC test (blood or breath) and gave the choice to the arresting officer. Finally, the law authorized BAC testing of samples taken from dead or unconscious persons, a change deemed likely to make DWI statistics more accurate.

The law did not contain still another significant change that had been sought by ASAP. Despite the project staff's intensive efforts, the Puerto Rican legislature refused to change the presumptive level constituting "conclusive evidence" of intoxication from 0.15 percent BAC to 0.10 percent.

Even without this change, however, the new law was a landmark piece of legislation. The old criminal law approach to dealing with DWI violators was replaced by an educative and rehabilitative approach written into law. Indeed, as the probation personnel hired to conduct presentencing investigations and to provide rehabilitation services became more experienced in their work, judges became more and more inclined to "let the professionals make the treatment decision." The judges also tended to give probation officers the responsibility for enforcing the conditions imposed by the courts on probationers. All in all, it appeared that most judges saw the ASAP as the means by which they could divest themselves of a workload that they considered themselves ill-suited to handle in the first place. Of course, there was also a small minority on the bench who, long after the new law had been passed, "still do what they want to do...and ignore the law," as one Superior Court judge put it in 1975.

Other problems also arose in connection with the new method of dealing with DWI offenders, and the solutions were not always immediately apparent.

Once the entire ASAP went into full operation, congested dockets increasingly resulted in delays of DWI court trials. This congestion

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stemmed not only from the great increase in the number of DWI cases, but also from the fact that DWI cases were heard in Superior Court. All other criminal trials in Superior Court are for felonies, and thus are potential jury trials. DWI cases, conversely, were heard only by Superior Court judges. Because court cases were selected for docketing according to their "seriousness" and "time consumption," DWI cases tended to be given lower priority.

Another problem within the courtroom was what has been termed the ai, bendito phenomenon. This Spanish phrase is a customary expression of sympathy, and one that is used often by judges to express their sympathy to a defendant who has just recited all the troubles that led to his drinking. Up until recently, it was evident that most judges were reluctant to convict if the accused person himself did not plead guilty. The conviction rate has historically been low (around 70 percent) and has been comprised chiefly of guilty pleas. In the past Puerto Rican judges have found BACs as high as 0.20 percent to be unpersuasive evidence of guilt if there was "inadequate" evidence of erratic driving by the accused. This judicial reluctance did show signs of changing, however, largely because of alcohol safety seminars for judges sponsored by the ASAP.

Procedural problems inside and outside the courtroom also hindered the new methods. As mentioned earlier, persons charged with DWI offenses must be given a probable-cause hearing before a magistrate whether or not they have taken a BAC test, and due to delay the magistrates have often dismissed the charges, even when presented with BAC breathalyzer test results. Although this problem has been resolved somewhat by ASAP seminars for magistrates, the probable cause hearing continues to be a burden on arresting officers.

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A similar burden on police officers results from the tradition-bound "prosecutor's investigation," a formal proceeding at which the arresting officer must make an appearance after preparing a formal written report on the case. Although this proceeding is useful to the prosecutor in preparing the government's case against the accused, the necessity for it in DWI cases is debatable.

Police officers are also required to be present in court at any time the accused is involved in a formal action, even something as brief as being granted a continuance. Often, defendants ask for a continuance to save enough money to pay their fine, and when they have enough money to do so they plead guilty. Thus, police officers are frequently required to make, at a minimum, two court appearances for no good reason.

Yet another problem has been the inclination of judges to require expert testimony on the accuracy of the breathalyzer instead of simply stating for the record the generally accepted view of the equipment's accuracy. This concern with what most Americans would regard as excessive judicial formality is also reflected at the end of a DWI offender's involvement with the criminal justice system. A final court appearance is required under Puerto Rican law so that the court can take note of the fact that a DWI offender has completed the driver improvement course or some form of rehabilitation.

Courtroom hearings are also required by law when a probation officer or rehabilitation official wishes to revoke the probation of an accused who has failed to complete the driver education course or some form of rehabilitation. But for a variety of reasons (including the heavy workload of probation officers and rehabilitation personnel) revocation hearings have been infrequent.

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Two other problems are also worth mentioning. One involved the law's requirement that the presentencing investigation be an investigacion minuciosa or "detailed investigation." This has been interpreted to mean the most detailed investigation possible of the accused's personal history, family background, criminal record, and so on. But the purpose of presentencing investigations is simply to distinguish persons with a serious drinking problem from social drinkers. There is no point in making such a comprehensive investigation for persons who will be classified as social drinkers, and there is no point in making what amounts to a diagnostic investigation for problem drinkers until the investigation can be made by those who will be in charge of their rehabilitation. What is needed is either a change in the language of the law itself or a clarification of the meaning of the phrase investigacion minuciosa to mean an investigation sufficient to classify offenders as problem drinkers or social drinkers with a high degree of reliability.

The final problem arises from the fact that the new DWI law, contrary to expectations, did not significantly reduce the number of persons refusing to take a BAC test, even though breath testing had become a viable method of collecting evidence. Because accused persons are still allowed to refuse a BAC test if their refusal turns out to be justified in the eyes of the court, many of them continue to do so.

Yet whatever the problems under the new law, it brought into existence a totally different approach to dealing with DWI offenders and began to change the views of the Puerto Rican judiciary both as to the social importance of DWI violations and as to the appropriate methods of dealing with DWI offenders. Whether the new law would continue to be a better way of dealing

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with the drinking driver problem in Puerto Rico became somewhat problematical in June of 1975, however, when still further revisions of the DWI and BAC laws went into effect.

On the one hand, the 1975 revisions included certain changes that were quite acceptable to the ASAP. The presumptive limit of intoxication was lowered from a BAC of 0.15 percent to 0.10 percent, thus aligning Puerto Rico with the national standard required by the National Highway Traffic Safety Administration. In addition, the law shifted DWI cases from the Superior Courts (which otherwise try only felonies) to the lower District Courts, a much more appropriate venue.

At the same time, however, the ASAP found itself unhappy with other changes made by the legislature.

For one thing, the new law did nothing to overcome the problem involving judicial acceptance of breathalyzer evidence. Between 1973 and 1975 it was extremely hard to find breathalyzer experts to testify about the accuracy of the equipment in Superior Court. The 1975 revisions meant that the few breathalyzer experts would be spread out even further, that is, among 38 District Courts instead of 11 Superior Courts. Thus, whenever a defense attorney could convince a District Court judge that an expert was needed as a witness to testify on the accuracy of the breathalyzer BAC test and an expert was not at hand, dismissal of the case on a technicality seemed assured.

Furthermore, the 1975 revisions required social drinkers convicted of DWI offenses to begin driver improvement school within 15 days of sentencing and to complete the course within 30 days. Given the existing resources at that time, it seemed clear that there would be a drastic reduction in the number of offenders assigned to the school.

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Finally, the 1975 changes returned to accused persons the option of choosing the method of BAC testing. This change seemed likely to subvert the breath testing program and to ensure a return to the delay, confusion, and uncertainty that typified the cumbersome method of using blood samples to determine intoxication.

These changes, along with alterations in the rules for license suspension and implied consent, seemed likely to undo much that had been accomplished by the 1973 statutory revisions.

The Puerto Rican case study offered evidence in support of several tentative conclusions drawn by the study team on the basis of these five case studies as well as other studies conducted on DWI laws.

The first conclusion is that legislation alone is not enough to bring about all the changes necessary in a judicial system's approach to DWI cases. Even though the 1973 law, for example, installed breath tests for BAC in an attempt to reduce the number of defendants who refused to take the test, this more convenient testing method resulted in just as many refusals. The legislation, in other words, did little to alter the attitude of judges, who tended to sympathize with defendants who declined to take the test for some reason.

A second conclusion is that maximum statutory penalties are rarely invoked by judges. In Puerto Rico, in fact, judges were disinclined to find defendants guilty of a DWI offense--let alone invoke the maximum penalties--both before and after the 1973 changes in the laws. Convictions occurred primarily where defendants pleaded guilty.

The Puerto Rico study also supported a third conclusion: Courts are

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usually reluctant to suspend or revoke driver's licenses, although they do show a greater willingness to issue restricted licenses in order to persuade offenders to take part in rehabilitation. Many judges in Puerto Rico saw suspension or revocation as an excessively severe penalty for a transgression that they did not take all that seriously, particularly in the case of poor defendants with families.



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1.0 INTRODUCTION

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 it 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), to begin operation at various periods during 1971 and 1972, were authorized. Recognizing the ineffectiveness of piecemeal and uncoordinated efforts in the past in combating drinking-drivers, NHTSA adopted a systems approach to the design and operation of the ASAPs:

The ASAP concept was designed as a systems approach to surround the problem drinker with a set of countermeasures designed to identify him on the road, make decisions regarding rehabilitative procedures, and then take action to put these measures into effect. [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). The objectives set by NHTSA for these ASAPs are to:

- 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; and,
- 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.

2.0 BACKGROUND ON THE PUERTO RICO ASAP

2.1 Geography and Demography

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

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

2.2 Data Collection and Information Sources

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

uators' analytic studies. The information has been sifted by researchers familiar with the Puerto Rico ASAP from relatively long experience, and has been evaluated in light of the experience of the research team with this and other ASAPs around the United States.

The primary data collection for the project consisted of a month-long preparatory period followed by a week-long site visit in Puerto Rico for the purpose of examining official publications of the Puerto Rico ASAP and its evaluators and for the purpose of interviewing many of the actors in the Puerto Rican system of drinking-driving control. Most of the non-official information about the Puerto Rico ASAP is thus anecdotal in form. This information was gathered in a series of interviews utilizing a questioning technique guided by a collection instrument but freely ranging in scope at the discretion of the interviewer. Persons interviewed included the entire ASAP staff, legislators, police officers, prosecutors, public defenders, judges, probation officers, physicians and therapists working in alcohol rehabilitation, driver licensing officials, advisory committee members, news media representatives, and highway safety agency officials. These interviews, in addition to their function of gathering new information, served to allow the researchers to confirm or disprove previously formed ideas about the Puerto Rico ASAP gathered during previous trips to the island, conversations with the ASAP staff in the site visit preparatory period, and readings and interpretations of the official Puerto Rico ASAP literature.

One of the interviewers at the site visit was making his first trip to the Puerto Rico ASAP but had visited and instructed judicial, prosecutors' and probation seminars at many other ASAP sites. The other interviewer (who is the author of this report) had been involved with the Puerto Rico ASAP since August, 1973 due to his participation in judicial, prosecutors' and probation seminars pursuant to another NHTSA contract.¹ Accordingly, he has been able to apply information and impressions gathered on these occasions, as well as the information gathered during the most recent site visit, to this report.

¹In this capacity, he had periodically exchanged information with the Puerto Rico ASAP staff over the two years immediately preceding the site visit for this report. He had additionally visited the island and the Puerto Rico ASAP on six previous occasions associated with the NHTSA-sponsored seminars. He had also acted as a seminar instructor for judicial seminars conducted in March, 1974 and October, 1974, a prosecutors' seminar in May, 1974 and two pre-sentence-probation seminars in June and July, 1974.

2.3 Language, Culture and Relevance

It is obvious that Puerto Rico (and thus its ASAP) is different from the United States. The question then arises as to the relevance of a report about the Puerto Rico ASAP to the present and future ASAPs in the United States. The answer to that question is two-fold. In the first instance, Puerto Rico, despite its linguistic and cultural differences, is basically similar to the United States in its government, its legal system and its basic societal values: it is clearly a part of the American nation if not the United States. In the second instance, Puerto Rico, because of its linguistic and cultural differences, is a valuable place to observe any culturally specific problems of drinking-driving control: the relevance of this type of observation is apparent in light of the large Spanish-speaking, culturally Latin-American populations of New York, Chicago, Florida, Texas, New Mexico, Arizona, California and other areas of the mainland United States. Thus Puerto Rico is distinctly Latin, but it is also distinctly American.

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

Puerto Rican cultural differences also created some problems for project administration. Puerto Rico has a proud and ancient cultural heritage considerably older than that of the United States. Columbus discovered Puerto Rico in 1493, and the first Spanish Governor, Ponce de Leon, arrived in the early 1500s. Puerto Rico boasts a culture

over 450 years old. This culture is not in the least alien to the culture of the United States, as both have arisen from the Western European tradition. The differences, however, can cause difficulties of understanding at the cultural interface.²

Sometimes the differences in the languages cause unintended confusion. The new Law No. 59 adopted literally the NHTSA definition of a "problem drinker." This was translated literally into the Puerto Rican law as "bebedor problema." When the words were translated back into the "official" English language version, they were properly (but confusingly for ASAP purposes) translated as "troublesome drinker."

Sometimes cultural or ethnic stereotypes, or more directly prejudices, come into play in the relationships between Puerto Rican officials and the federal government. These prejudices exist in the minds of Puerto Ricans as well as "Anglos," and are realities which sincere administrators must deal with. Fortunately for the Puerto Rico ASAP and for NHTSA, the relationship between the Puerto Rican project administration and the regional and national federal officials who worked with them was sufficient to overcome these differences and misunderstandings as they arose. Good faith and respect on both sides did not eliminate problems caused by differences in language and culture, but did allow the project to move forward despite the problems.

Thus, the Puerto Rico ASAP seems relevant for a study of this kind both because of and despite its linguistic and cultural differences. The fundamental issue examined by this study relates not to Puerto Rican culture, but rather

²An example of difficulties encountered by the Puerto Rico ASAP is the tendency of Puerto Ricans not to answer requests in the negative (out of a sense of politeness). If an "Anglo" representative of the federal government asks a Puerto Rican governmental official to perform a task or to produce information, and the Puerto Rican official cannot comply with the request (because of a legal inability, a policy conflict or just because it is a ridiculous request), the Puerto Rican will probably say that compliance would "be very difficult" or similar words. Such an answer probably would be interpreted by the Anglo in his own cultural context: to-wit, the Puerto Rican could comply but he just does not want to. A Puerto Rican would know that he had heard a flat refusal, but that it was phrased politely.

to the Puerto Rican system for drinking-driving control. This report is then, basically, an assessment of the impact of the statutory enactment of the ASAP concept. In short, the question to be answered is: What was the response of the judicial system to a DWI case processing system mandated by the legislature?

2.4 The Traffic Safety Problem in Puerto Rico

Puerto Rico has, without doubt, the worst traffic safety record of any American jurisdiction in terms of accidents, injuries and fatalities. This is explainable by a number of factors. Puerto Rican roads are poor by American standards. They carry heavy traffic loads, and they cover proportionately a greater part of the land surface of Puerto Rico than of other jurisdictions. Puerto Rican drivers tend to be younger and less experienced than mainland drivers. Puerto Rican drivers must drive in more congested traffic. A great portion of the traffic safety record can be explained in terms of geography; the island is densely populated, with poor but multitudinous roads. Most of the traffic safety record can be explained, however, in terms of driver behavior.³

Puerto Rican drivers tend to be inexperienced (half of them have been licensed in the last five years), aggressive (machismo being a Latin American cultural characteristic encouraging such behavior)⁴, and prone to drink more heavily than their mainland counterparts. Many Puerto Ricans also tend to walk along highways when they have been drinking; about half of alcohol-related traffic fatalities are pedestrians. The traffic safety problem, particularly in relation to alcohol safety, is sufficient to justify an ASAP. The following tables, taken from official Puerto Rico ASAP publications, illustrate the scope of the traffic safety problem.

³In fairness to Puerto Rican drivers and traffic safety administrators, one must remember that Puerto Rico has a significantly better traffic safety record than most of the rest of the world. It suffers only when compared to the record of the mainland United States.

⁴See, e.g., Stan Steiner, The Islands, Chapter 6.

FIGURE 2

Traffic Safety Data -- Puerto Rico

	1970	1971	1972	1973	1974
Population	2,710,000	2,780,000	2,870,000	2,950,000	3,000,000
Licensed Drivers	530,000	586,900	650,200	710,000	790,000
Registered Vehicles	614,200	686,700	674,100	681,600	751,200
Vehicle Miles Driven (in 100 millions)	54.53	62.01	65.94	74.56	N/A
Single Vehicle Fatal Crashes	129	130	159	151	N/A
Fatal Crashes	429	447	544	514	N/A
All Crashes	60,118	70,589	80,318	77,227	N/A

Note: Puerto Rico has about 7300 miles of highways.

Source: Puerto Rico Traffic Safety Commission

FIGURE 3

Puerto Rico Roadside Surveys -- 1973

	Total Drivers Stopped	BAC .00	BAC .01-.09	BAC .10-.14	BAC .15 and Over
Island Police Districts (Puerto Rico outside San Juan)	792	513 (64.8%)	233 (29.4%)	35 (4.4%)	11 (1.4%)
Metropolitan (San Juan)	447	297 (66.4%)	126 (28.2%)	16 (3.6%)	8 (1.8%)
Total	1239	810 (65.4%)	359 (29.0%)	51 (4.1%)	19 (1.5%)

Note: The roadside survey was a random sample of drivers in Puerto Rico done to measure the probable level of intoxication of the driving population at any given time. In the total sample 5.6% of the drivers had BAC's above .10% and 34.6% of the sample of drivers had consumed some quantity of alcohol before driving.

Source: ASAP Evaluation Files

FIGURE 4

Puerto Rico Pedestrian Fatalities

	Fatalities	% of All Fatalities
1970	224	49.6
1971	235	48.8
1972	268	46.2
1973	228	39.7
1974	N/A	N/A

Source: Puerto Rico Traffic Safety Commission

3.0 PUERTO RICO ASAP COUNTERMEASURES AND SYSTEM AGENCIES

3.1 The Puerto Rican Criminal Justice System and the ASAP

The criminal justice system of Puerto Rico is substantially similar to the criminal justice system of any other American jurisdiction. Criminal law and procedure in Puerto Rico is influenced heavily by the penal code of California, and the Constitution of Puerto Rico is even more protective of individual rights and the rights of the criminally accused than the constitutions of most states. Federally-defined rights of the accused, of course, apply to Puerto Rican criminal procedure just as they do to criminal procedure on the mainland.

Puerto Rico seeks to control the problem of driving while intoxicated in the traditional manner; such behavior is a crime. Accordingly, the operation of the system of drinking-driving control requires that the components of the criminal justice system of Puerto Rico cooperate in identifying drinking drivers by arresting them, processing them through the criminal justice system and channeling them into appropriate courses of rehabilitation. In many ASAPs, this case processing is accomplished by formal or informal diversions around the criminal justice system. In Puerto Rico, the processing of DWI cases occurs in a formal, traditional manner which is prescribed by a comprehensive law that adopts NHTSA standards for controlling drinking drivers.

This law, Law No. 59, is the cornerstone of the Puerto Rico ASAP. The ASAP, however, has implemented a variety of additional countermeasures designed to promote the efficient processing of cases and the coordination of efforts by law enforcement, prosecution, judicial and rehabilitation agencies. This integrated systems approach to project organization and management is the means by which the new law providing for the Puerto Rican drinking-driving control system is brought into administrative reality.

ASAP countermeasures have been implemented in six general categories: program management and evaluation, enforcement, judicial, rehabilitation, public information and education, and legislative and regulatory.*

3.2 Program Management and Evaluation

Project administration for the ASAP began in October, 1971 with the appointment of the Project Director, and the

*A seventh category, licensing and registration, was terminated in February, 1974.

evaluation countermeasure began in February, 1972. Both of these activities were undertaken pursuant to the contract between NHTSA and the Puerto Rico Traffic Safety Commission, which is an agency of the island government created by Law No. 32 of May, 1972. Prior to the ASAP contract, there was no coordinated effort to control drinking-driving behavior on the island, but rather such behavior was controlled by traditional, uncoordinated criminal justice system operations.

In the first detailed plan for the ASAP, the ASAP identified functional areas to be coordinated through the implementation of countermeasures designed to operate the system toward the objective of reducing alcohol-related crashes.

The following is an excerpt from the first detailed plan:

(DETAILED PROJECT PLAN, ALCOHOL SAFETY ACTION PROJECT FOR PUERTO RICO, Contract #DOT-HS-160-2-251, SECTION TWO, SYSTEM DESCRIPTION AT II-1, II-2, II-3)

SYSTEM DESCRIPTION

I. Objectives of the Overall Project

- A. Attain a significant reduction in alcohol-related crashes and thus achieve a reduction in fatalities, injuries and property damage.
- B. Obtain a significant increase in knowledge in the general public concerning the effects of alcohol on driving.
- C. Achieve a significant change in the general public in attitudes toward the consumption of alcohol and driving.
- D. Generate support among influential groups and the public in general toward measures and legislation tending to reduce A/R crashes.

II. Overall ASAP System Operational Flow:

A. Total ASAP System Operation

Role and Objective of PRASAP Elements:

The Puerto Rico ASAP (PRASAP), as well as all other ASAPs, is made up of several inter-relating elements or efforts. These elements can be broken down into countermeasures and management support activities.

The Governor's Traffic Safety Representative:
The Secretary of the Department of Public Works, the Hon. Antonio Santiago Vazquez is the appointed Governor's Representative.

Community Alcohol Safety Advisory Committees:

The Traffic Safety Commission Advisory Committee, whose members have been selected from Government and private agencies as well as representatives of the public interest will serve as the ASAP Advisory Committee.

Director of ASAP:

The ASAP director, as appointed by the Governor's Representative, is Mr. Jose Mercado Reveron.

Judicial Countermeasure:

Will process A/R arrests and determine if the driver should receive treatment through the appropriate referral. The courts will act on the basis of driver profiles and the pre-sentencing investigation.

Enforcement Countermeasure:

Intensify the detection and apprehension of drinking drivers and act as a deterrent to drinking prone drivers and to intoxicated pedestrians using the streets and highways.

Public Information:

Increase the level of awareness within the general public and the alcohol-accident relationship, alcohol-driving relationship and alcohol-consumption-BAC relationship, DWI statutes as well as ASAP objectives toward DWI subjects.

Rehabilitation Countermeasure:

The primary objective of the Rehabilitation Countermeasure is to provide fast and reliable diagnosis of the individuals referred by the courts and the Licensing Bureau.

Licensing Countermeasure:

The major objective is to increase the number of problem-drinker profiles, reduce the possibility of a problem drinker being able to obtain or renew a license and reduce recidivism.

Education Countermeasure:

The major objective of this countermeasure is to increase the level of understanding of the effect of alcohol on driving and on traffic accidents among influential groups such as judges, increase the level of understanding of the effect of alcohol on driving and of related topics to students, workers and other groups.

3.3 Enforcement

Puerto Rico has had a unified police department with island-wide jurisdiction since 1908. There are no local police agencies, but rather the single department provides services in both urban and rural areas. The Police Department is large (around 7,000 officers) and is organized on paramilitary lines. There is a separate Traffic Administration and Highway Patrol Division which performs road patrol functions usually associated with state police departments in the United States, and within each of the five administrative Police Areas there is a Traffic Division which functions comparably to a city police department traffic division in the United States. The traffic control functions are coordinated by the departmental command structure.

Enforcement countermeasures included the following:

1. Special Alcohol Patrol Units

The ASAP provided funding for thirteen additional patrol vehicles for the Puerto Rico Police Department. Thirty-seven officers were trained in DWI enforcement techniques, and were scheduled to patrol during peak hours of DWI incidents and were assigned patrol areas selected on the basis of DWI related incidents and accidents reported. Patrolmen received incentive pay and were instructed to concentrate on DWI enforcement.

2. Special Alcohol Pedestrian Patrol Units

The ASAP funded two specially equipped vans operated by five patrolmen to emphasize enforcement of the unique Puerto Rican "drunken pedestrian" law. Pedestrians account for about 50% of alcohol-related traffic fatalities in Puerto Rico, and this countermeasure was designed to combat this unique problem in selected areas of highest incidence of fatalities. The Pedestrian Units also made some arrests for DWI.

3. Breath Testing

The ASAP funded training and equipment for the introduction of the Breathalyzer on the entire island. Originally, the detailed plan called for experimental Breathalyzer use on the "East Area" police district, but a change in the law prompted its introduction on an island-wide basis. The specially trained police officers completed their training, then provided demonstrations of the breath-testing equipment to judges, prosecutors and other interested persons on the island prior to the beginning of operational breath testing in April, 1974. Breath and blood analysis are now the only two methods of BAC testing on the island.

4. Video Tape Evidence Collection

Although it appeared in the original detailed plan, this countermeasure was never implemented.

The impact of the enforcement countermeasures on the police department structure itself was minimal. The countermeasures directly impacted on only around fifty officers of a 7,000 officer organization. Accordingly, police department cooperation with the ASAP may better be viewed as a formal cooperative decision by police management rather than any financial or organizational impact made by the introduction of ASAP funds and procedures.

Despite its relatively small size in the police organization, the ASAP patrol had its impact. Total DWI arrests in 1970 were 1,221, in 1971 were 1,443, and in 1972 were 1,795 in Puerto Rico. In 1973, the first full year of ASAP Patrol operations, total DWI arrests jumped to 4,877. Of these, the ASAP patrol made 2,059, the special pedestrian patrol made 50, and the rest of the Puerto Rico Police Department patrols made 2,768. Thus, in the first year of operations, the regular police patrols virtually doubled their arrest rates for DWI and the special patrols nearly matched their totals. DWI arrests approached 5,000 annually in 1973, and by 1974 had approached 7,300. Enforcement activity remained somewhat unsatisfactory to the ASAP management in this period (they wanted more arrests), but nonetheless the increased arrest rate began, inevitably, to put pressure on the rest of the criminal justice system.

3.4 Judicial

The judicial system of Puerto Rico is one of the most progressive of any American jurisdiction. Since 1952 the courts have been totally integrated for the purposes of jurisdiction, operation and administration into a single General Court of Justice. The Chief Justice of the Supreme Court is the administrative head of the entire court system.

The Puerto Rico General Court of Justice consists of a Supreme Court, which is the court of last resort, and the Court of First Instance, which is divided into a Superior Court division and a District Court division. Puerto Rico also has Justices of the Peace who are not part of the General Court of Justice, but rather are municipal officials who do not hear any criminal cases, but who are empowered to fix bail and issue arrest and search warrants.

The Chief Justice has power to assign judges as and when the business of the court requires. All court personnel, judges and support personnel alike, are appointed, nonpolitical, noncompetitive civil servants. Supreme Court justices are appointed by the Governor for life, Superior court judges for twelve years, and District Court judges for eight years. Advice and consent of the Senate is required for all appointments. Overall, day-to-day court administration is provided by the Office of Court Administration headed by an Administrative Director appointed by the Chief Justice.

The Supreme Court of Puerto Rico, with its Chief and eight Associate Justices, is almost exactly analogous to the form and function of the U.S. Supreme Court. Appeals from the Supreme Court of Puerto Rico may be made to the U.S. Supreme Court on the same basis as appeals from the Supreme Court of any state of the union.

The Superior Court (a division of the Court of First Instance) is divided into eleven judicial districts called "court parts." Each Superior Court Part has an administrative judge who is responsible to the Chief Justice for court administration. The Superior Court has general civil and criminal jurisdiction, and it hears all DWI cases in Puerto Rico.⁶ The Superior Court is also the court where all felony trials are held.

⁶See Appendix A.

The District Court (a division of the Court of First Instance) is the lowest court of general jurisdiction in Puerto Rico. The District Court has thirty-eight "court parts." The District Courts typically hold probable cause hearing in DWI cases.

Prosecution services are also provided on an island-wide, unified basis by the Puerto Rico Department of Justice, through its division of Criminal Investigations and Affairs. There is a system of appointed, professional district attorneys and their deputies who provide prosecutorial services in the Superior Courts and in the District Courts. Ordinarily, however, prosecutorial services are not provided for all misdemeanors in the District Court.

Criminal defense services are provided either by private attorneys or by the Legal Aid Society which is a private, non-profit agency of the organized Bar of Puerto Rico. Unlike its counterparts in the United States, the Legal Aid Society of Puerto Rico provides a full range of legal services to indigents (and has since 1955). The Society is governed by a Board of Directors composed of three public members, three Bar Association representatives and three Commonwealth government representatives. The society maintains an office in each of the Superior Court districts and in the Supreme Court. Legal services are also provided to inmates of jails and prisons. A large proportion of DWI defendants who plead not guilty are represented by lawyers of the Legal Aid Society.

Within the Office of Court Administration is housed the Adult Probation Program administered by the Director of the Social Services Division who is responsible to the Administrative Director of the Courts.⁷ The probation program provides pre-sentence investigations and supervisions of probation for the courts. The new Law No. 59 imposed on this division the responsibility for making a pre-sentence investigation in each case of conviction for DWI.

The ASAP planned and implemented two Judicial Countermeasures:

1. Special DWI Prosecutors

The ASAP funded four special prosecutors and support personnel primarily for the purpose of handling the DWI caseload created by the increased arrest rate. The special prosecutors, however,

⁷See Appendix A. The Adult Probation Program was transferred to the Corrections Administration effective July 1, 1975.

Figure 5

ADMINISTRATIVE ORGANIZATION CHART
GENERAL COURTS OF JUSTICE

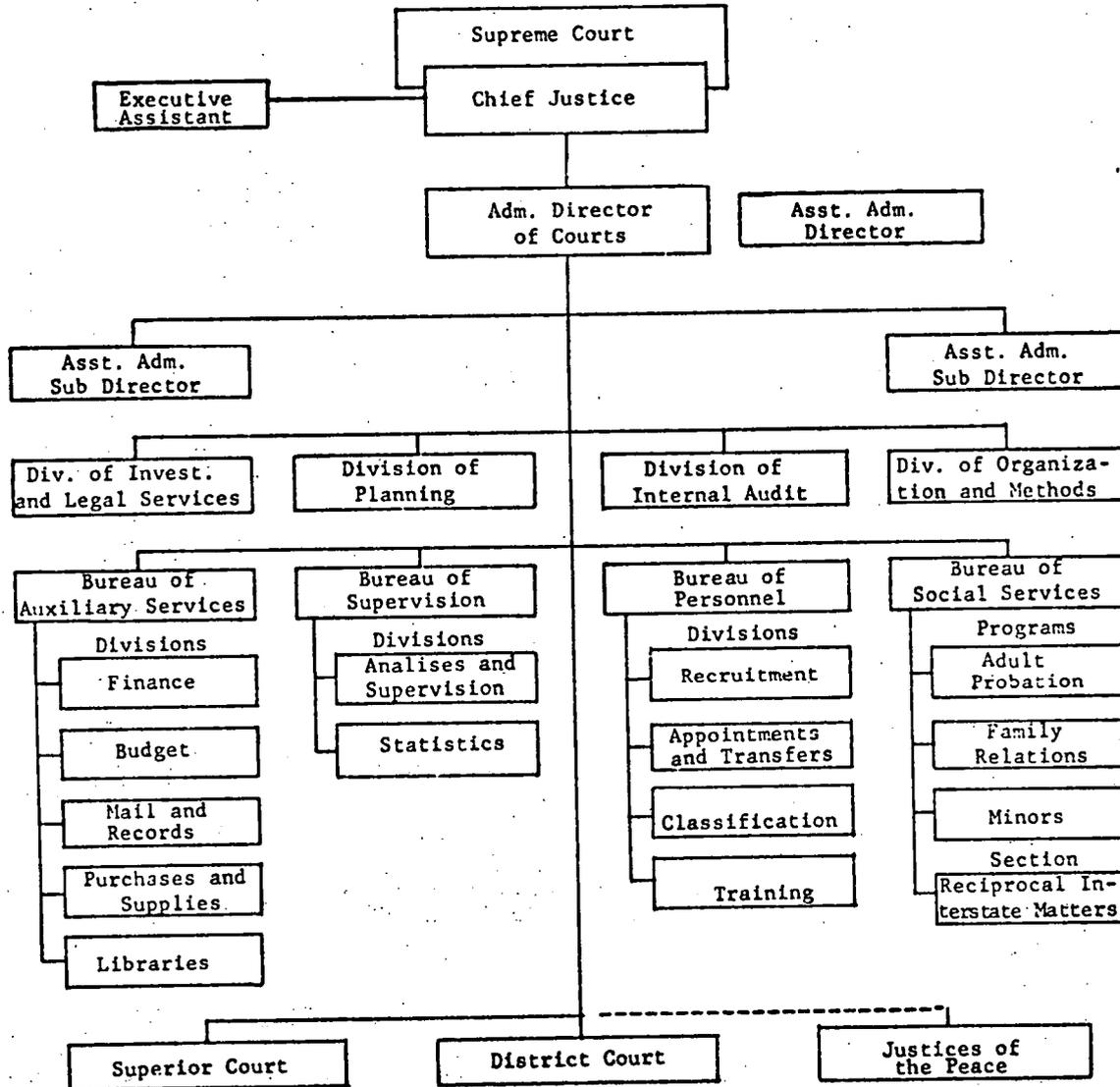


FIGURE 6

Personnel in the Puerto Rico Court System

Judiciary

Supreme Court	9 Justices
Superior Court -- Civil, Criminal, Family Relations, and General Jurisdiction	181 Judges
District Court -- Traffic, Civil, Criminal Jurisdiction	87 Judges
Justices of the Peace	49 J.P.'s

Prosecution

Department of Justice	
Division of Criminal Investigations and Affairs	87 Attorneys
Special Narcotics Prosecuting Task Force	21 Attorneys
Special Investigation Unit	9 Attorneys
Office of the Solicitor General	11 Attorneys

Public Defense

Legal Aid Society	55 Attorneys
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Probation

Adult Court Social Workers	2
Juvenile Court Social Workers	26
Adult Probation Officers	58
Juvenile Probation Officers	71

Source: Puerto Rico Office of Court Administration

FIGURE 7

Criminal Caseloads in Puerto Rico

<u>Year</u>	Superior Court			District Court		
	<u>Cases Filed</u>	<u>Cases Tried</u>	<u>Cases Pending at end of Year</u>	<u>Cases Filed</u>	<u>Cases Tried</u>	<u>Cases Pending at end of Year</u>
1970	19,009	14,750	11,765	52,690	50,414	12,596
1971	19,810	17,647	13,602	52,214	49,191	13,757
1972	21,171	19,573	14,264	55,654	53,355	15,517
1973	22,614	18,451	17,928	50,323	49,941	14,527
1974 (projected)	22,577	21,666		51,067	45,366	
1975 (projected)	23,623	22,202		50,415	43,315	
1976 (projected)	24,669	22,737		49,763	41,263	

Note: Generally, the Superior Courts hear any felony cases and the District Courts hear any misdemeanors. DWI cases are the only misdemeanors which are filed by the Superior Court.

Source: Puerto Rico Office of Court Administration.

FIGURE 8

Disposition of All Criminal Cases in
Superior Courts in Puerto Rico

	1973 All Criminal Cases (incl. DWI cases)	1973 All DWI Cases (DWI only)
<u>Total Cases</u>	18,451 (100.0%)	3,262 (100.0%)
<u>Convictions</u>	9,533 (51.7%)	2,075 (63.6%)
Guilty pleas	7,679 (41.6%)	1,729 (53.0%)
Bench trial	1,631 (8.8%)*	346 (10.6%)
Jury trial	223 (1.2%)	None
<u>Acquittals</u>	4,008 (21.7%)	881 (27.1%)
Bench trial	3,731 (20.2%)*	881 (27.1%)
Jury trial	278 (1.5%)	None
<u>Other Disposition</u> (dismissal, transfer, appeal)	4,910 (26.6%)	306 (9.3%)

* Note that contested (not guilty plea) bench trials for all criminal cases have only a 30.4% conviction rate in 1973, which is a representative year (according to numerous informants). Of 5,361 total such cases in 1973, only 1,631 or 30.4% resulted in a finding of guilty. If dismissals for cause were included in this total, the conviction rate would be even lower. As all DWI contested cases are bench trials, it is not then unusual that the conviction rate is relatively low. The conviction rate seems to be low for all bench trials in Puerto Rico. Interestingly, of the 501 jury trials in this year, 223 or 44.5% resulted in convictions.

Sources: Superior Court Clerks and Final Analysis of the Impact of Puerto Rico ASAP on the Traffic Safety System, Analytical Study IV.

FIGURE 9

Time Lapse from Filing to Final Disposition of Criminal
Cases in Superior Court in Puerto Rico
(representative sample of cases)

<u>Year</u>	<u>Cases</u>	<u>Less than 6 Months</u>	<u>6 Months to Less than 12 Months</u>	<u>One Year or More</u>
1970	6406	4398 (68.7%)	1454 (22.7%)	549 (8.7%)
1971	7500	4398 (58.6%)	2135 (28.5%)	967 (12.9%)
1972	6701	4350 (65.0%)	1558 (23.2%)	793 (11.8%)
1973	5862	3452 (58.9%)	1633 (27.8%)	777 (13.3%)

Source: Superior Court Clerks

FIGURE 10

Adult Probation Caseload in Puerto Rico

<u>Year</u>	<u>Persons placed on probation during the year</u>	<u>Total on probation during year</u>	<u>Cases closed during year</u>	<u>Total on probation at end of year</u>	<u>Average daily population on probation</u>
1970	851	3,414	841	2,573	2,568
1971	1,152	3,725	985	2,740	2,657
1972	1,611	4,351	1,242	3,109	2,925
1973	1,620	4,731	1,256	3,475	3,293
1974 (projected)		4,451		2,664	
1975 (projected)		4,623		2,690	
1976 (projected)		4,794		2,716	

Note: In 1973, there were 58 Adult Probation Officers in Puerto Rico

Source: Puerto Rico Office of Court Administration

also performed administrative and educational functions. They originally cooperated with the Licensing Bureau to formally search for recidivists in their caseload, and they conducted informational seminars for judges and other prosecutors on DWI prosecution techniques and (later) on Breathalyzer evidence. These prosecutors were assigned to the Superior Court parts with the heaviest caseloads, and were available for technical assistance in other court parts.

2. Pre-Sentence Investigation and Probation

The ASAP funded the addition of 19 probation officers to the Social Services Division of the Office of Court Administration. These probation officers were hired specifically to implement the statutory PSI requirements of the new Law No. 59. These officers were assigned to probation offices across the island on the basis of probation caseload. The new probation officers performed both pre-sentence investigations and supervisions of probation for DWI offenders.

The Special Prosecutors countermeasure was implemented in December, 1972 and has functioned smoothly. There is currently no significant backlog of cases awaiting a prosecutor's investigation (however, there is a backlog of investigated cases awaiting trial). The Pre-Sentence Investigation and Probation countermeasure was implemented in February, 1974 when nineteen new probation officers were hired and trained. This countermeasure has experienced continual backlogs and delays due largely to factors of time. There is a theoretical thirty day limit on investigations which must often be extended by the judge; there is an arrest rate which generates more cases than the officers can comfortably handle; and there is a statutory requirement for a "detailed" investigation which consumes many hours of the officers' time for a single investigation. Most judges, however, report that they are reasonably satisfied with the system of pre-sentence investigation.

3.5 Licensing and Registration

The Licensing Bureau of the Department of Public Works and Transportation performs the functions usually associated with a Department of Motor Vehicles in the United States. The department has developed, independently of the ASAP, a project called Vehicle and Driver Information System (VADIS) which converted manual vehicle and driver reports in Puerto

Rico to an electronic data processing system. Of particular significance to the ASAP was the VADIS offender file which provided the capability of retrieving violation records for all licensed drivers in Puerto Rico.

The ASAP implemented a single countermeasure in this area:

Profile File for Problem Drinkers

This countermeasure was designed to provide a VADIS-generated printout for the purpose of identifying recidivists and of preventing reissuance of licenses to those persons ineligible by reason of DWI conviction. VADIS programs were modified to incorporate ASAP identifier requirements. The computer generated identification system has been superseded by the mandatory pre-sentence investigation of Law No. 59. VADIS has been converted to accommodate ASAP requirements. Accordingly, this countermeasure, which began in September 1972 was terminated in December 1973.

After experiencing the expected "bugs" in the system caused by conversion to FDP, the driver licensing record system now functions reasonably well to keep the ASAP system agencies informed of essential information concerning recidivism. Pre-sentence investigators sometimes complain of delays in retrieving information, but overall the system is operational. The problem remains in Puerto Rico, however, that many drivers never bother to obtain a driving license and accordingly never enter the VADIS system. Additionally, it has been reported that some licensed drivers who are arrested for DWI are able to obtain a new driving license by claiming to have "lost" the old one. Apparently, if this false claim is made before the trial (which results in a license suspension upon conviction), the Licensing Bureau will issue a new license. The net result of this ploy is that the convicted DWI can maintain an apparently valid driving license in his possession even though his original license has been impounded by the court and the VADIS record on the driver shows his status as "suspended." Nonetheless, the driver can still have a physical license to show to a police officer.

3.6 Rehabilitation

The Puerto Rico Department of Health is the agency which provides virtually all alcohol rehabilitative services on the island. Alcoholics Anonymous has chapters on the island but is not formally connected with the Department of Health. Before the advent of ASAP, there were virtually

no alcohol treatment facilities or programs for problem drinkers in Puerto Rico, and there particularly was no capability of referring or diagnosing problem drinking drivers. Originally, the detailed plan called for the creation of an evaluation and diagnosis countermeasure to provide services to the courts in referring problem drinking drivers to treatment. This function has been subsumed, however, in the administrative change in the Department of Health that occurred at the same time as Law No. 59 became effective.

The ASAP implemented a single rehabilitation countermeasure:

Rehabilitation Evaluation and Diagnosis Countermeasure

This countermeasure was designed to supplement the staffs of regional mental health clinics to provide evaluation and diagnosis of drinking problems in DWI cases. The ASAP funded a cadre of nine social workers, five secretaries and a psychiatrist to provide evaluative and diagnostic services for each of five Mental Health Centers serving the entire island. This countermeasure is still operational and receives referrals of persons convicted of DWI who are classified as problem drinkers. This diagnostic unit then completes initial evaluations and refers the client to the ultimate treatment modality.

This countermeasure stood alone for the first two years of the ASAP and was relatively ineffective in that few referrals came from the courts and even for those clients referred, few treatment programs were available.

This difficulty was resolved with the creation of the Department of Addiction Services (DAS) in mid-1973 and with the successful application of that department for NIAAA funding for its alcohol treatment programs in 1974. Alcoholism treatment is under the control of an Undersecretary of DAS and in addition to the ASAP countermeasure the department offers emergency and detoxification services, a therapeutic recovery unit, an ambulatory clinic for individual, group and family counseling, two day-care centers and a half-way house. The department is also staffed to provide chemotherapy in cases where indicated. All of these treatment modalities are, of course, available to DWI referrals. By law, all persons classified as problem drinkers as a result of the pre-sentence investigation are sentenced to the Department of Addiction Services for rehabilitation.

3.7 Public Information and Education

The relatively heavy alcohol consumption experienced in Puerto Rico, coupled with its severe traffic safety problem and the tendency of Puerto Rican social customs to encourage drinking, tended to make the Public Information and Education countermeasure especially important to the success of the Puerto Rico ASAP. Accordingly, the information and education program was designed in three levels: an educational program for social drinkers who had been convicted of DWI; an educational program for influential citizens (especially legislators) who could help change attitudes and laws; and an informational program for the general public utilizing the broadcast media and advertising techniques.

Puerto Rico has a thoroughly modern system of communications and broadcast media. It has numerous television stations, radio stations and newspapers which disseminate information in both English and Spanish (although the predominant language is Spanish). Television is popular and widespread in Puerto Rico and is probably the most powerful advertising medium. Accordingly, the PI&E informational campaign proceeded in a fashion similar to other programs in stateside ASAPs with the exception that the Puerto Rico ASAP dubbed the NHTSA-generated advertising materials into Spanish and also created Spanish-language commercials which reflected Puerto Rican culture. These advertising spots received wide coverage, comprising about 10% of public service air time, and were shown during prime viewing times. PI&E coverage seemed to be comprehensive and effective.

The ASAP funded three PI&E countermeasures:

1. Lecture-Orientation Program

The lecture orientation program consisted of a demonstration and lecture prepared by the Institute of Legal Medicine of the University of Puerto Rico for presentation to groups of influential people to orient them to the ASAP program and the general problems of alcohol safety. Presentations were made to groups such as the Highway Safety Commission, communications leaders (e.g., TV station managers), Superior Court judges, legislators, the Puerto Rico Medical Association, labor leaders, business leaders, the Teachers' Association and the Mayors' Association. This countermeasure terminated in December, 1973, having accomplished its major objectives which were to raise the consciousness of community leaders about alcohol and traffic safety and to influence the legislature to pass appropriate drinking-driving legislation.

2. Regional ASAP Educators Program Countermeasure

The Traffic Safety Education Division of the Department of Public Works and Transportation developed, with ASAP funding, an educational program for the general public and for social drinkers concerning alcohol and driving. This was developed in conjunction with the Institute of Legal Medicine and its lecture-orientation program. Ultimately the ASAP funded six full-time instructors to conduct this educational program, primarily for social drinkers referred by the courts as a result of a DWI conviction. The course is called the Curso de Mejoramiento or Driver Improvement Program. This countermeasure is the treatment modality for social drinking drivers.

3. Public Information Campaign

This countermeasure was comparable to the PI&E campaigns conducted by ASAP in the United States, and involved the advertising media to convey alcohol-safety information and messages to the general public. The program was carried out through six television stations, 45 radio stations, four major daily newspapers and 110 motion picture theaters on the island.

The overall PI&E program seems to have been effective. A number of informants used expressions such as "raised consciousness" or "increased awareness" of the ASAP and alcohol safety problems which resulted from the advertising campaign and from the lecture orientations. The ultimate success of the informational efforts of the ASAP staff may be inferred by the passage of Law No. 59 which created a functioning ASAP where none had existed before.

3.8 Legislative and Regulatory

The legislative and regulatory countermeasure cost nothing. It consisted merely of drafting and presenting new legislation to the Puerto Rican legislature. Despite its low cost and simplicity, this countermeasure was the most important in the life of the ASAP.⁸ The existing legislation was clearly unsatisfactory,⁸ and legislative change was critical to any meaningful effort to reduce the incidence of unsafe drinking and driving. The ASAP chose

⁸See Section 5.0.

to institutionalize by statute the NHTSA recommended concept of an Alcohol Safety Action Project. In this fashion they were able to preserve the formality of the Puerto Rican criminal justice system which mandated that the system cooperate in a program of drinking-driving control.

4.0 THE DEVELOPMENT OF THE PUERTO RICO ASAP SYSTEM

4.1 The Pre-ASAP System of Drinking-Driving Control

Before the inception of the Puerto Rico ASAP, the offense of DWI resulted in a criminal justice system process little different from the process involved with any other criminal violation. The only unusual aspect of the process was that DWI cases were heard in the Superior Court rather than the District Court where all other traffic offenses were heard. This jurisdictional difference is explained, however, by the fact that in the recent past no prosecutors were available to represent the government in the District Court traffic cases. The legislature sought, in 1960, to remedy this deficiency in DWI cases by transferring them to the Superior Court. This procedural change is the earliest indication that the legislature of Puerto Rico viewed DWI as an offense apart from other traffic offenses both in its seriousness and in its potential for procedural difficulty.

DWI cases in Puerto Rico before May 30, 1973 were virtually all processed in the same fashion. The first step in the process required that the police arrest a driver for the offense of DWI. Such an arrest was a relatively rare event (especially given the high incidence of drinking and driving in Puerto Rico), but it usually resulted either from the observation of a police officer of erratic driving or from the discovery by a police officer at an accident scene that one of the drivers had been drinking. After the driver had been placed under arrest, the police officer was required to offer either a blood or urine test for blood alcohol.⁹ The driver was permitted to choose the test he preferred, but the normal response of the driver was to refuse the test entirely. If the driver agreed to the test, then the officer took him to a hospital where the appropriate sample was taken. The sample was then divided into three parts: one for immediate analysis, one for the possession of the driver, and one held in reserve for later analysis by the court should a discrepancy arise between the official analysis and any analysis done by the driver on his own sample.

Following the chemical testing procedure, the officer then took the driver to the nearest magistrate (either a J.P. or a District Court judge) for a probable cause hear-

⁹The statute authorized breath testing when available, but none was available.

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

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

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

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

In the event that the accused was found guilty, he would be immediately sentenced to a mandatory license suspension, a fine, and often to a jail term. No formal effort was ever made to direct the defendant to rehabilitation, nor was the defendant ordinarily ever placed on supervised probation. Recidivists received mandatory jail time.

4.2 The First Year of ASAP

Project administration began in October, 1971 with the hiring of the Project Director. The evaluation contract was signed and evaluation began in February, 1972, and by the late spring of that year project administration was fully staffed. The first order of business for the new project administration was the creation of the detailed plan. Upon approval of the plan, the substantive work of the Puerto Rico ASAP began.

The first and most obviously necessary substantive work of the ASAP was to change the unsatisfactory DWI law of Puerto Rico. New legislation, modeled on NHTSA guidelines, was presented to the legislature as a Governor's bill with the full endorsement of the island government administration. The ASAP staff spent great effort in educating the legislators about alcohol, traffic safety and the ASAP concept, but the legislature proved unresponsive, especially to the .10% BAC presumptive limit. Accordingly, the project was compelled to labor under the old law, at least until the staff could try to change the law once again when a new legislative session convened in January, 1973.

The ASAP met with greater success in its dealings with the Puerto Rico Police Department. The ASAP Director enjoyed a special relationship with the police, having been Police Department personnel director before becoming ASAP director, and was able to secure the early agreement of police cooperation with the ASAP. The major part of the enforcement countermeasure was implemented in July, 1972 when the Special ASAP Patrol units began to patrol Puerto Rican highways.

The Special ASAP Patrol countermeasure consisted of the training of thirty-seven police officers in DWI enforcement techniques. These officers were then equipped with thirteen patrol cars and in July began their successful effort to increase the DWI arrest rate. The immediate result of the implementation of the enforcement countermeasure was to create a significant backlog of cases in the Superior Courts which were not equipped to handle the volume of cases. Conviction rates for DWI remained low.

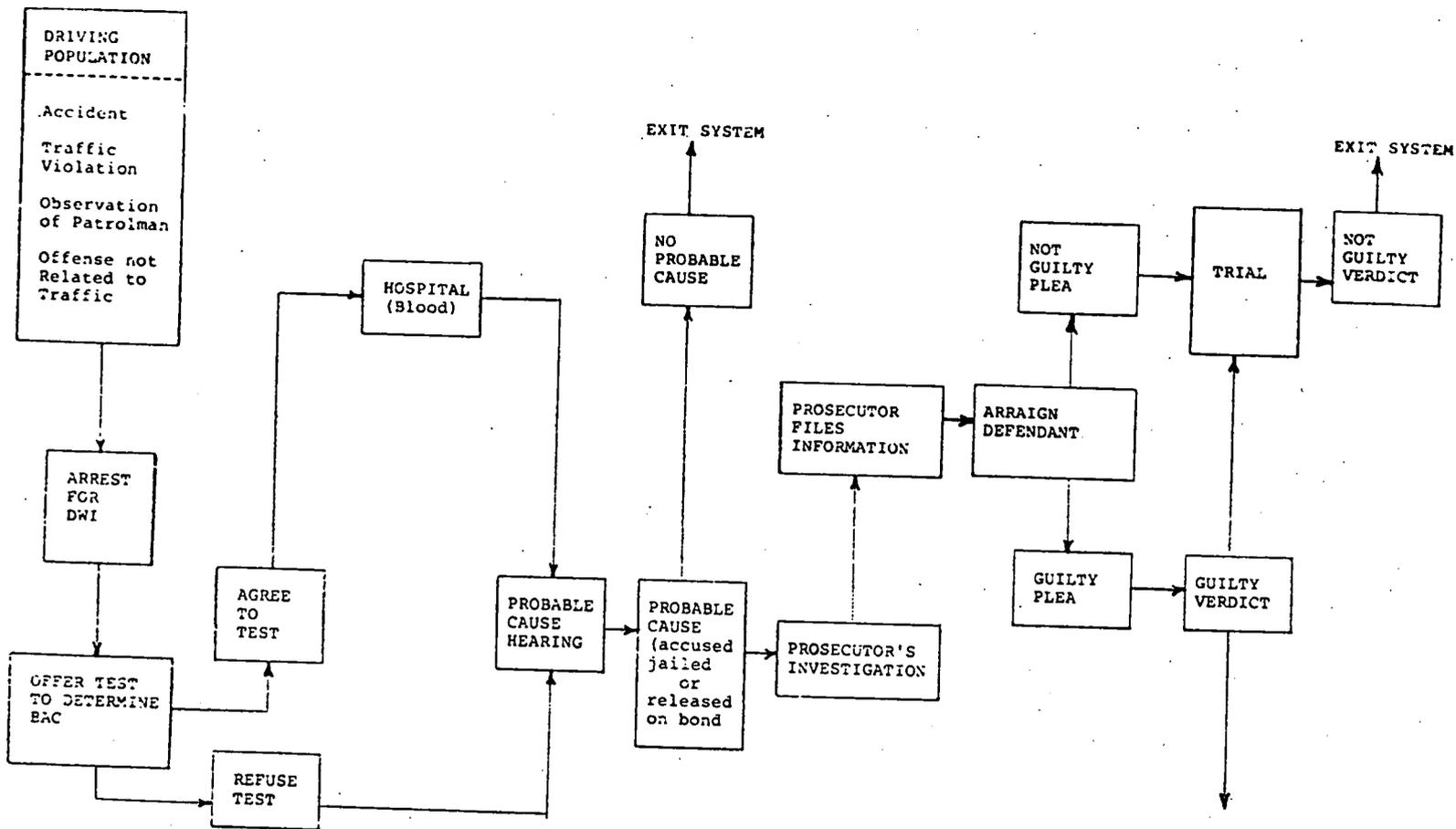


Figure 11a
PUERTO RICO ASAP
CASE FLOW CHART
OCTOBER, 1971

ASAP project administration began in October, 1971. The pre-ASAP system of case processing was a traditional criminal justice system model which did not differentiate among drinker types and which gave no special emphasis to alcohol offenses.

GUILTY VERDICT

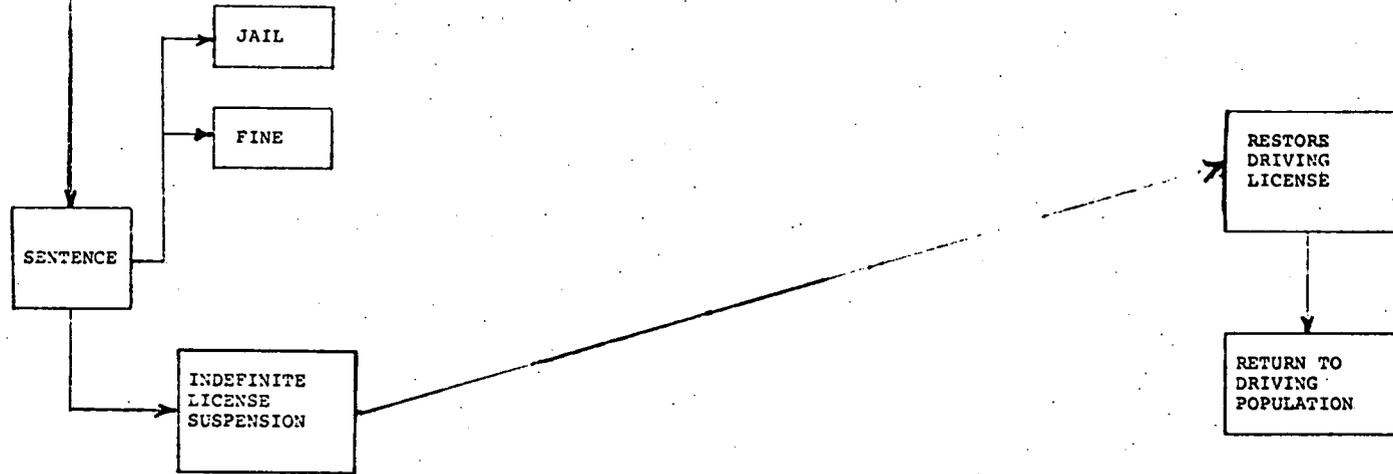


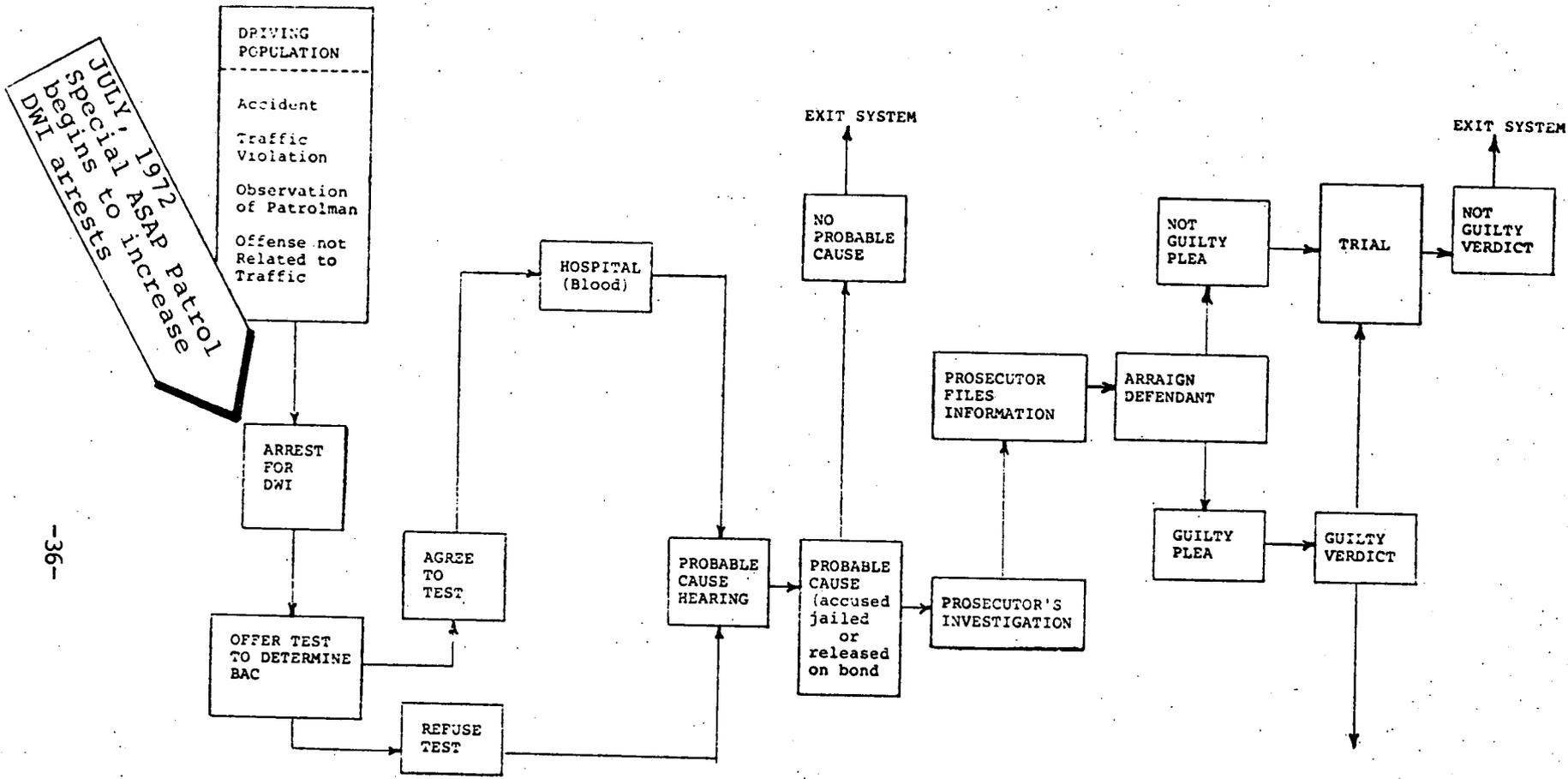
Figure 11b
PUERTO RICO ASAP
CASE FLOW CHART
October, 1971

In September, 1972 the ASAP implemented three other countermeasures. ASAP educators began to offer the Driver Improvement Course to persons convicted of DWI (as a condition to relicensing). The Public Information and Education program began informational advertising (using both NHTSA spots dubbed into Spanish and creating unique local spots as well). The DMV profile file was started in an attempt to begin to identify recidivists in some systematic, reliable fashion. These countermeasures had little impact on the courts. Conviction rates remained low, and judges seemed reluctant to cooperate in referring offenders to ASAP educational programs. Throughout 1972, the ASAP spent great effort in attempting to secure the cooperation of Puerto Rican criminal justice agencies.

By the end of their first year, the ASAP was able to implement (in December, 1972) both the Special Prosecutors countermeasure and the Lecture-Orientation countermeasure. The Lecture-Orientation countermeasure was a specialized public information effort (which terminated in December, 1973).

The Special Prosecutors were hired to solve two problems: first, they provided additional manpower to alleviate the backlog in the prosecutors' office, and second, they provided personnel to identify and enforce against recidivists. In the second role, they attempted to coordinate their prosecution efforts (especially at the prosecutor's investigation stage) with the DMV efforts to create the profile file to identify problem drinking drivers through their recidivism.

At the end of 1972, the Puerto Rico ASAP was operational, but had had little substantive impact on the processing of DWI cases except to increase the backlog of such cases because of the increased arrest rate. Relatively few people were being convicted of DWI. Of those convicted, relatively few were being referred to ASAP. And even for those referred, there was little ASAP could do--only the Driver Improvement Course was available for efforts at rehabilitation. The major achievement of the ASAP in its first year was to insinuate itself into the bureaucratic fabric of Puerto Rican government and thus to secure the formal agreement to cooperate from the head of each relevant agency in the government. Once the agency head had given official sanction to cooperative efforts, the job of ASAP became to persuade the individuals involved to cooperate on an operational basis. The task was a difficult one, especially in relation to the ninety independent-minded Superior Court judges, but even they had begun to show signs of cooperating.

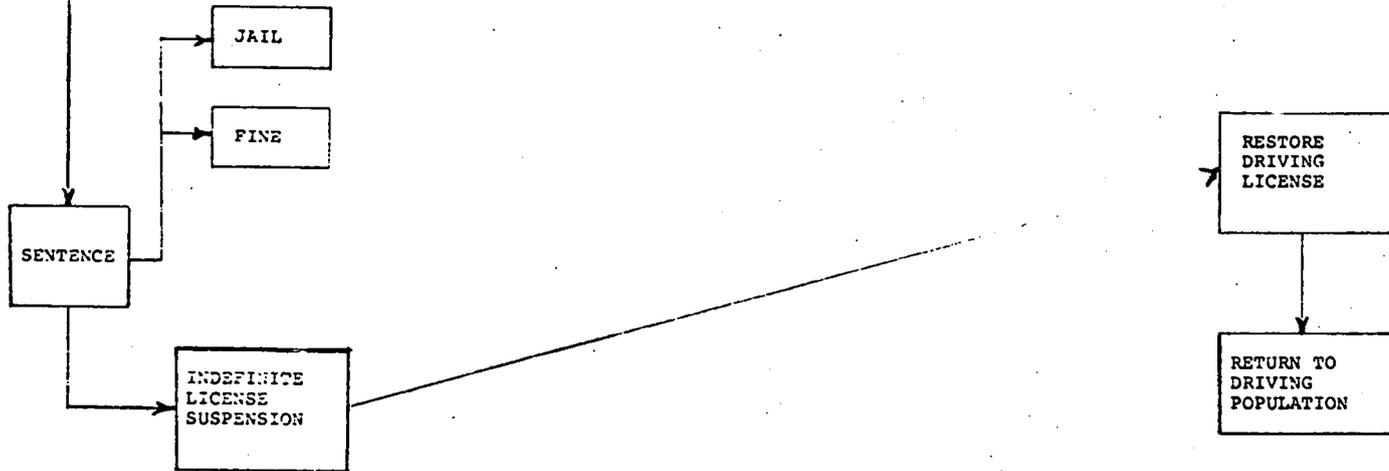


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Figure 12a
PUERTO RICO ASAP
CASE FLOW CHART
JULY, 1972

By July, 1972 project evaluation had begun and new legislation had been presented to the legislature (but without success). In July, the special ASAP patrol began operations. Arrests increased, but there was no structural or procedural change in the system.

GUILTY VERDICT



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Figure 12b
PUERTO RICO ASAP
CASE FLOW CHART
July, 1972

FIGURE 13

PUERTO RICO ASAP

IMPORTANT EVENTS

1971-2 THE FIRST YEAR

October, 1971

Project administration begins.

Project staff hiring begins--
staff organizes for project
management

February, 1972

Evaluation begins.

March, 1971

New legislation presented.

Staff begins major educational
effort with legislature, but
legislature is unreceptive,
especially to .10% BAC pre-
sumptive level.

July, 1972

Special ASAP patrol begins.

Arrests begin to increase. Back-
log starts building in courts.
Low conviction rates.

September, 1972

ASAP educators begin.

PI&E campaign begins.

DMV profile file started.

These countermeasures have little
impact as the courts usually fail
to convict DWIs. Those who are
convicted are not referred to
ASAP. Staff expends great effort
to convince criminal justice
agencies to cooperate.

December, 1972

Special prosecutors begin.

Lecture orientation program
begins.

Special prosecutors attack back-
log. Prosecutors also start
investigations of recidivists.
Conviction and referral rates
remain low, but all relevant
agencies have finally agreed
to cooperate with the project.

For the nonpolitical professionals of the ASAP staff, the Puerto Rican elections of November, 1972 were an inevitable burden. A new governor was elected, and predictably the new governor replaced all of the agency heads who had been appointed by his predecessor with administrators of his own party. The ASAP staff had no particular political preferences as they were all nonpolitical, civil service employees as well as professionals; their burden came rather in the form of the necessity of once again going through the bureaucratic ritual of securing the support and cooperation of the heads of the very agencies they had just spent a year convincing. The staff took up the burden and began their persuasive task all over again, for they viewed the burden as also an opportunity: a new legislature would be in session in January, 1973 and they could once again attempt to enact their ASAP legislative package into law.

4.3 The Second Year of ASAP

Fortunately for the ASAP, the new island administration proved just as cooperative as the old. The new legislature proved even more cooperative--it passed the ASAP legislation almost intact. The new Law No. 59 created by statute a mandatory system of pre-sentence investigation for DWI cases, and a mandatory system of rehabilitation for problem drinking drivers. The cumbersome chemical testing statute was changed, paving the way for a modern system of breath testing for the island. The new law also authorized blood alcohol determinations in fatal accidents, thus permitting valuable research data to be collected on a systematic basis for the first time. The only element missing from the legislative package was a change from the old .15% presumptive limit to the recommended .10%.

At the same time the substantive changes were made in the law of DWI, the legislature passed another new law creating the Department of Addiction Services. This agency, within the Department of Health, was mandated to provide rehabilitative services to persons who have alcohol problems, including those persons convicted of DWI. All of these new laws were effective May 30, 1973. The eighteen months of agonizing effort by the ASAP staff had paid off--the legislature of Puerto Rico finally mandated the creation of a functional ASAP along NHTSA prescribed lines. The problem of the ASAP staff now became one of implementation.

Also in May, 1973 the ASAP implemented the unique Special Pedestrian Patrol Units. These officers patrolled Puerto Rican highways to enforce the "drunken pedestrian" statute which was designed to address the special problem of high fatalities resulting from pedestrians being struck by autos. The majority

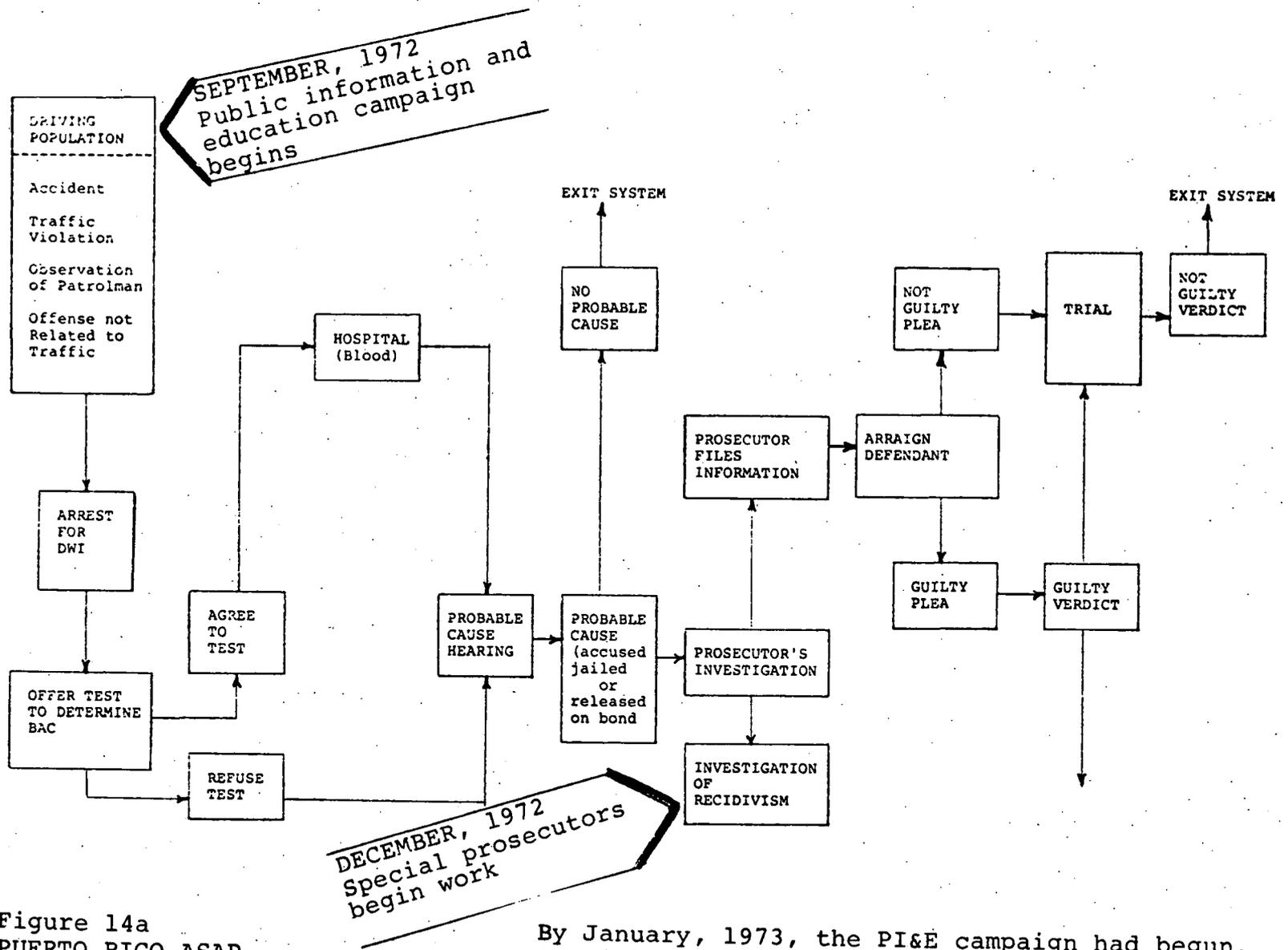


Figure 14a
 PUERTO RICO ASAP
 CASE FLOW CHART
 JANUARY, 1973

By January, 1973, the PI&E campaign had begun. Special prosecutors were hired and they began to investigate cases both for prosecution and to identify recidivists. In September, 1972, the ASAP educators had begun work, offering the Driver Improvement Course. The Department of Motor Vehicles had begun its Profile File at the same time.

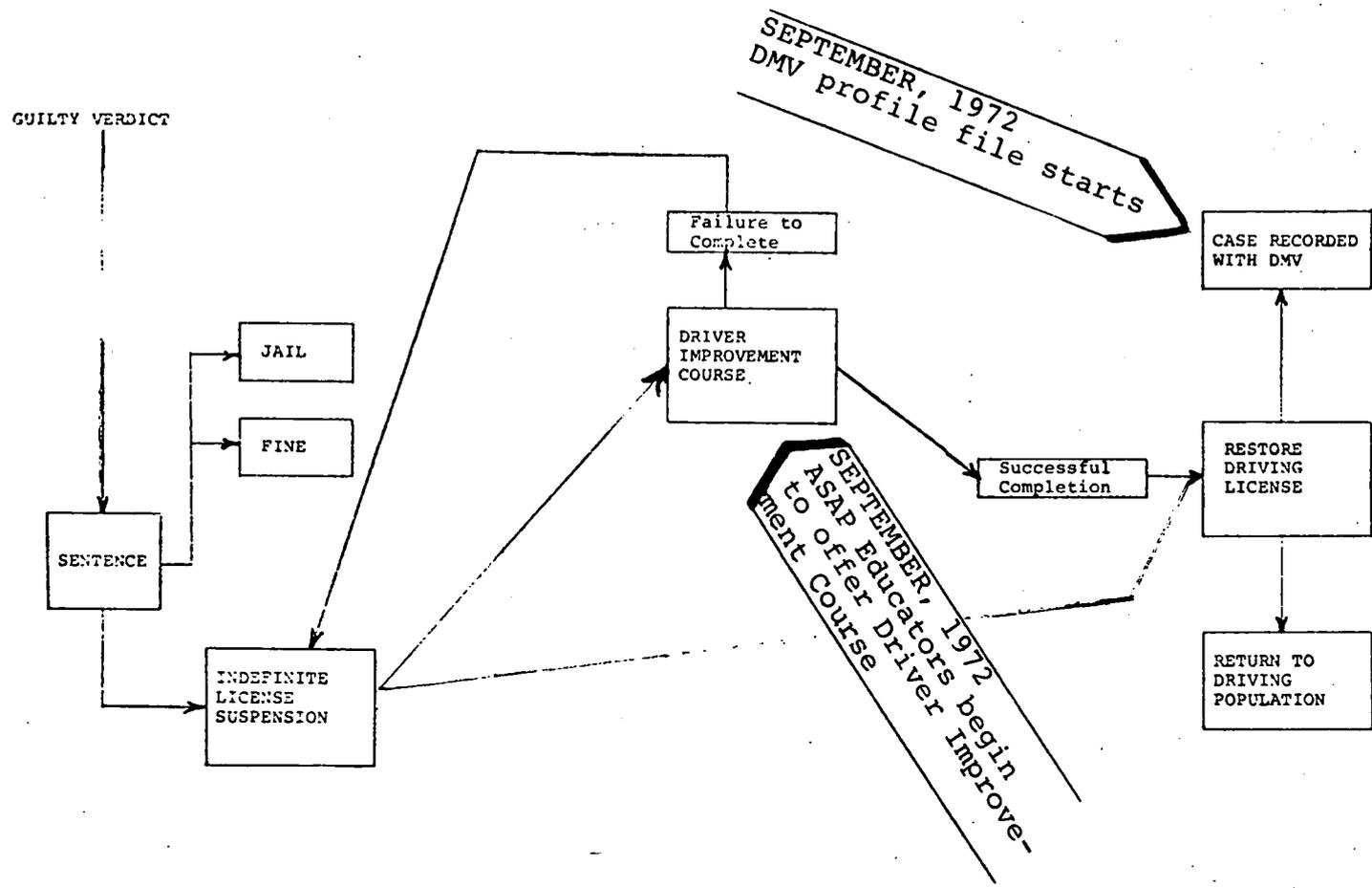
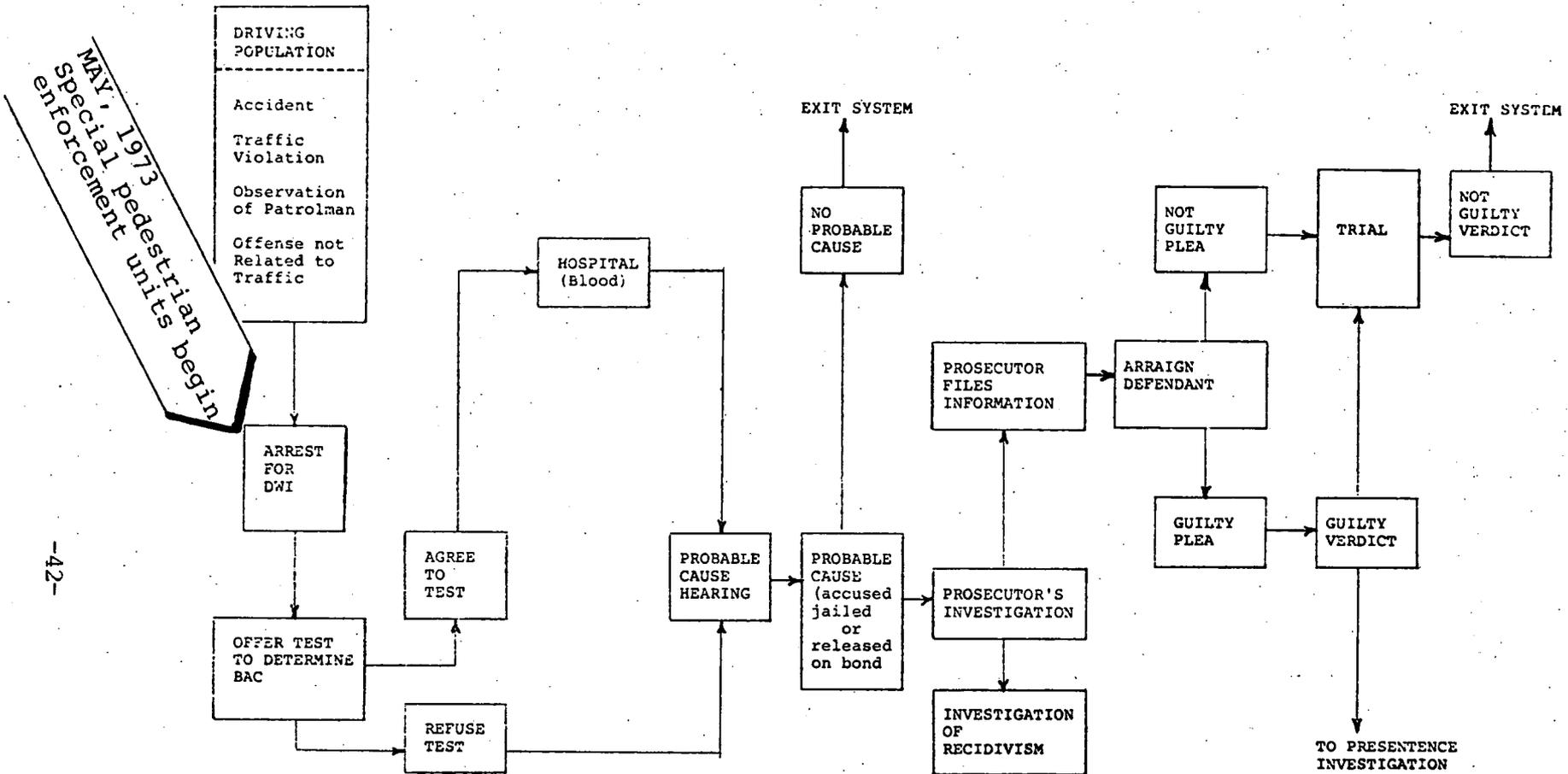


Figure 14b
 PUERTO RICO ASAP
 CASE FLOW CHART
 JANUARY, 1973



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Figure 15a
PUERTO RICO ASAP
CASE FLOW CHART
JULY, 1973

By July, 1973, special pedestrian units were enforcing the unique "drunken pedestrian" law. Law No. 59, which enacted the NHTSA ASAP concept by statute became effective at the end of May, but there were no personnel available to implement the law. The rehabilitation countermeasure was just beginning to offer services, but there were almost no referrals.

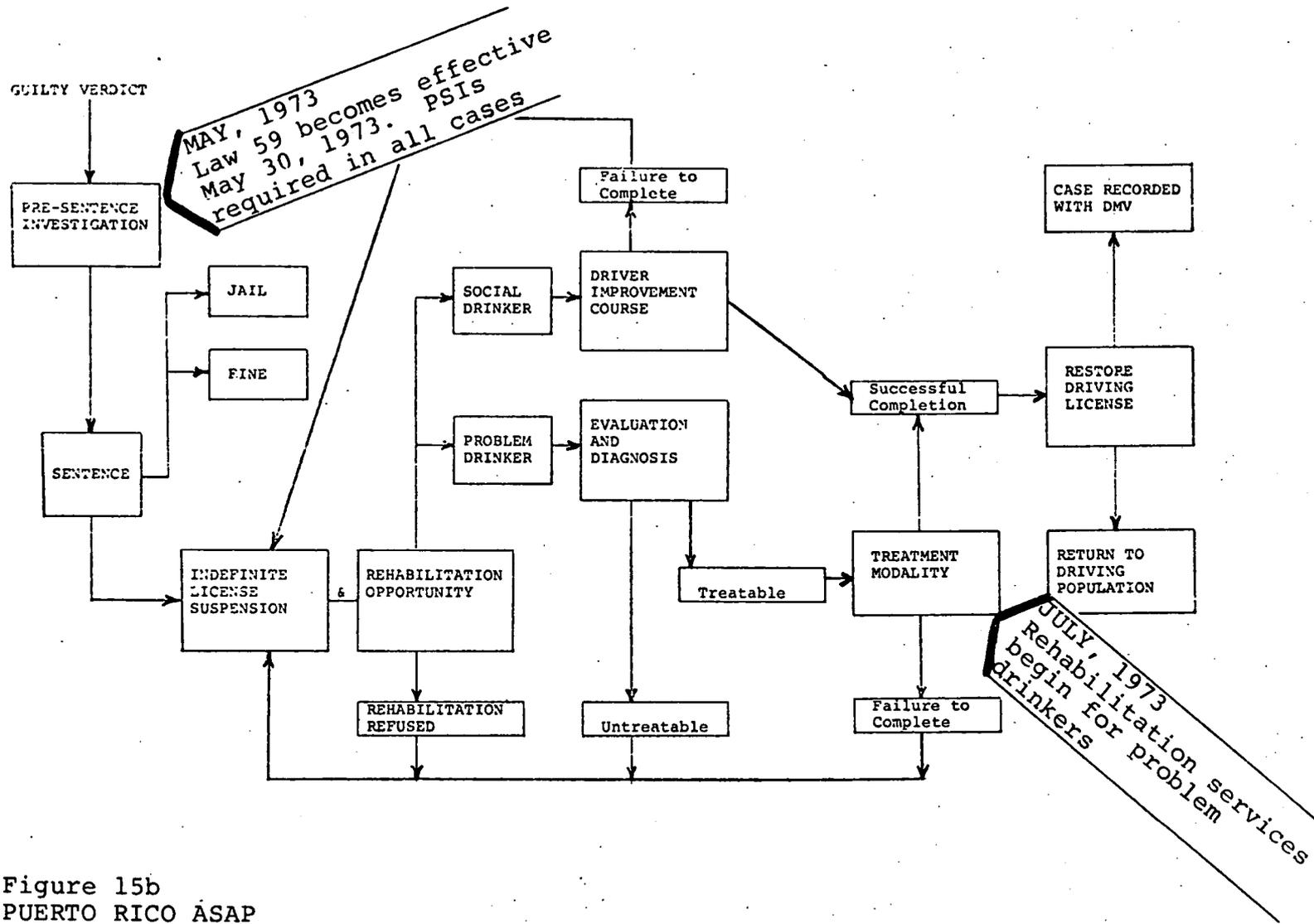


Figure 15b
PUERTO RICO ASAP
CASE FLOW CHART
JULY, 1973

FIGURE 16

PUERTO RICO ASAP

IMPORTANT EVENTS

1973 THE SECOND YEAR

January, 1973

New governor is inaugurated.
Political party change in
control of government.

All department heads are replaced
by the new governor. Previous
cooperative agreements with ASAP
are effectively voided. ASAP
staff begins new "selling" effort
to secure inter-agency cooperation.

May, 1973

Special pedestrian units
begin.

Law 58 and Law 59 become
effective May 30, 1973.

ASAP staff meets great success
with legislature. Entire legis-
lative package with the exception
of .10% presumption is passed.
NHTSA recommended ASAP system
is created by statute. Pre-
sentence investigations and prob-
lem drinker rehabilitation is
mandated by law.

July, 1973

Rehabilitation services begin.

With implementation of this
countermeasure, Puerto Rico
finally has a full range of serv-
ices to operate the ASAP.

Remainder of 1973

Lack of personnel in Probation Department and in Addiction Services
Department prevents utilization of new law--backlog of investi-
gations builds. Conviction rate and referral rate still low due
to lack of judicial cooperation. NIAAA funding for full rehabili-
tation program is delayed. ASAP staff continues to push for imple-
mentation of its detailed plan.

of pedestrians so killed in Puerto Rico have BACs above .10%. In July 1973 the Rehabilitation Services countermeasure began; finally there were services available to receive problem drinker referrals from the courts. At the same time, the new Department of Addiction Services was pursuing its first NIAAA grant to expand its services further.

The ASAP encountered immediate and severe problems in implementing the new laws for which they had worked so vigorously. The backlog in pre-sentence investigations shot up almost immediately toward the 1,000 mark--there were no probation officers to conduct the investigations. Referrals could not be made to the Department of Addiction Services--not enough personnel staffed the agency to handle the referrals because the NIAAA grant had been delayed. The enforcement rate remained relatively stable, but convictions remained low and referrals, although now mandated by law, could not be made without the PSI which could not be done without the probation personnel. In the midst of all this confusion, the ASAP had to revise significantly its detailed plan to accommodate the new developments in the law.

4.4 Third Year of ASAP

The third year of ASAP operations was effectively the first year of operations for the ASAP in its present form. The last two (and probably the most important) countermeasures were not implemented until the Spring of 1974, and the system was not functioning smoothly until the Fall of that year. In February, 19 new probation officers were hired specifically to conduct the pre-sentence investigations mandated by the new Law No. 59. In April, the breathalyzer technicians completed their training, and breath testing became available on the island for the first time.

Notable events in 1974 included a series of seminars for system personnel (sponsored by NHTSA) and the award of an NIAAA grant to expand the cooperative services of the Department of Addiction Services. During 1974, the ASAP conducted two judicial seminars (in March and October), a prosecutors' seminar (in May) and two probation-pre-sentence seminars (in June and July). These seminars were credited with much success by the ASAP staff and by system personnel in smoothing out rough spots in the processing of DWI cases and in

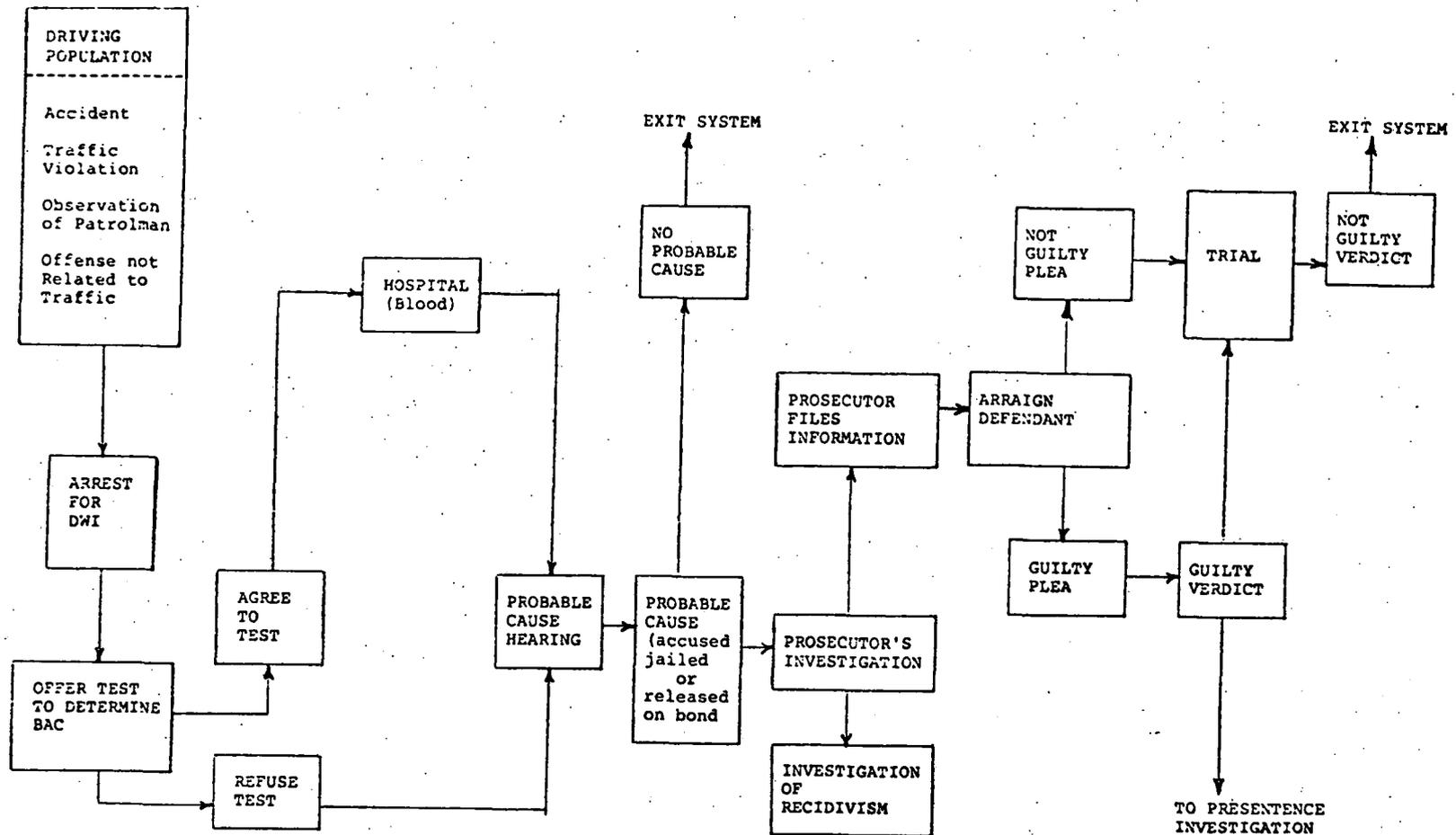


Figure 17a
 PUERTO RICO ASAP
 CASE FLOW CHART
 JANUARY, 1974

By January, 1974 the system structure was virtually in its present form, but there were still no personnel to operate the post-conviction procedures of Law No. 59. The ASAP staff continued to work with the Office of Court Administration, and the Probation Department to identify and hire 19 new probation officers to perform the special PSIs required by the new law.

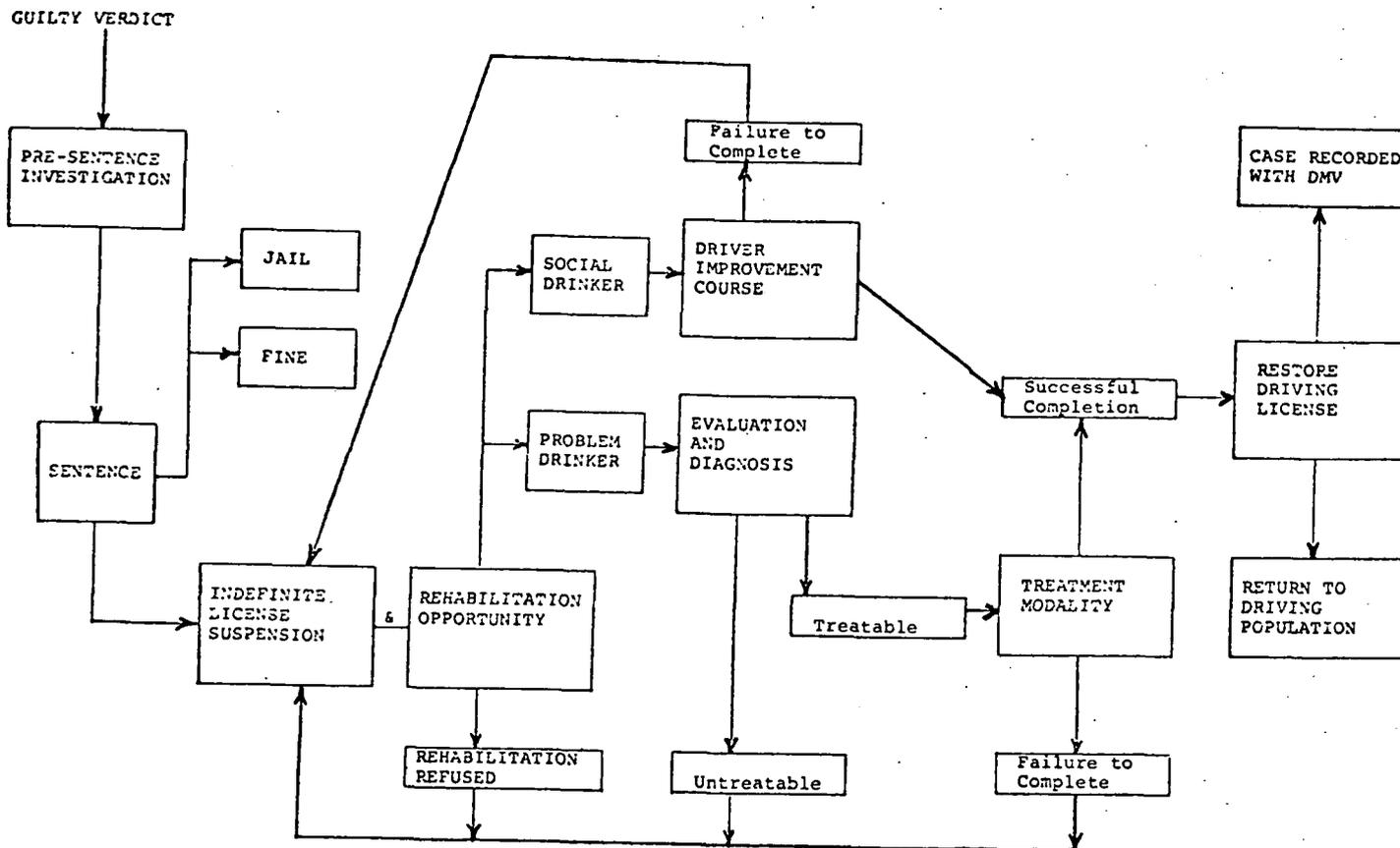


Figure 17b
 PUERTO RICO ASAP
 CASE FLOW CHART
 JANUARY, 1974

securing the cooperation (especially of the judges) necessary to operate the system in an effective manner.¹⁰

The NIAAA grant, so long awaited by the Puerto Rico Department of Addiction Services, was approved. By late summer, rehabilitation programs were underway and were receiving referrals from the courts through the device of the mandatory pre-sentence investigations. The drinking-driving control system planned by the ASAP was finally complete and operational.

As with the old system, the first step in the present system of DWI case processing in Puerto Rico is an arrest by the police. The arrests occur as a result of accidents or of police observations of erratic driving. Arrests also occur as a result of observations of the special ASAP patrols. Whatever the reason for the arrest, once it is made, the driver is offered a chemical test for BAC, either breath or blood (in the discretion of the arresting officer). The driver has no choice as to testing method, but must accept the test offered by the officer or go through the implied consent refusal procedure (which has not changed under the new law).

If the driver agrees to the test, he is taken either to the hospital for a blood test (the new law has deleted urinalysis) or to the nearest police station for a breath test. Breath testing is now the preferred method of BAC evidence collection in Puerto Rico. Following the evidentiary testing, the driver is taken before a magistrate (either a J.P. or a District Court judge) for a probable cause hearing. Those drivers tested on the Breathalyzer of course have their BAC reading as well as demeanor evidence presented at the probable cause hearing. Drivers who consent to the blood test or who refuse to be tested do not have blood alcohol determinations available at the probable cause hearing. Delay in obtaining results of blood analysis is a significant motivating factor in the preference for breath testing.

¹⁰The reader should be cautious in evaluating this statement. As the author of this report was also an instructor at each of the seminars mentioned and also the site visitor who gathered the information leading to the statement, informants may have been overly generous in their praise of the impact of the seminars out of politeness. Nonetheless, numerous ASAP staff members and several judges who had attended the seminars reported attitude changes among system personnel as a direct result of the seminars. Accordingly, the statement is offered for what it is worth.

The magistrate either releases the driver on a finding of no probable cause, or finds probable cause and binds over the driver to the Superior Court as under the old system. The police have begun a practice of abandoning the search for a magistrate when arrests are made at inconvenient hours (e.g., 3:00 a.m.) and instead have begun holding drivers in custody until they are sober, citing and releasing (or sometimes incarcerating), and then requiring appearance at a probable cause hearing the next day when a judge is available. This method saves police time, and seems especially effective in cases where there is a Breathalyzer determination of BAC for presentation at the probable cause hearing the next day.

The next stage in processing is the prosecutor's investigation where testimony is taken and the case prepared. Often now the prosecutor has immediately available to him the BAC determined by Breathalyzer to assist in his determination of the strength of his case against the accused. Upon the prosecutor's filing of a bill of information, the defendant is scheduled for arraignment in Superior Court. If the defendant pleads not guilty, he is scheduled for trial. Upon a guilty verdict (or a guilty plea without trial), the heart of the new case processing system comes into play--the defendant is scheduled for a pre-sentence investigation.

The pre-sentence investigation consists of a felony-style investigation of the defendant, including appropriate record checks, field interviews with family, neighbors and friends, a battery of diagnostic tests to screen for alcohol problems, and any other information gathering deemed appropriate to the individual case by the probation officer. This pre-sentence report must classify the driver as either a social drinker or a problem drinker and must recommend to the judge the appropriate sentence for purposes of rehabilitation. Investigations are required to be completed within 30 days of conviction, but usually take significantly longer as judges will grant delays, seeming to prefer complete reports to quick ones.¹¹

Once the pre-sentence report is presented to the judge with its classification of the driver as a social or a problem drinker, the judge must sentence the driver to the appropriate treatment modality; either the Driver Improvement Course for social drinkers (along with a fine) or the program

¹¹ Law No. 59 requires an investigacion minuciosa or "detailed investigation" for each person convicted. The procedure consumes tremendous amounts of time and seldom can be completed within the statutory 30-day limit.

of the Department of Addiction Services, involving the evaluation and diagnosis of the individual drinking problem and the assignment of the individual to the proper modality. Problem drinkers are placed on six months supervised probation, and are motivated to cooperate with treatment by the ability of the judge to execute sentence in the event of failure to complete the prescribed course of rehabilitation. Before any convicted driver may be relicensed, the proper rehabilitation authority (either the Driver Improvement Course administrator or the Department of Addiction Services) must certify successful completion. The Department of Addiction Services may also order the issuance of a restricted driving license as part of the course of therapy.

Thus under the new statutory system, every driver convicted of DWI in Puerto Rico receives a pre-sentence investigation which classifies him as either a social drinker or a problem drinker. That classification then results in a sentence to the appropriate treatment modality. That modality theoretically alleviates the drinking problem of the driver, and drivers who successfully complete the appropriate modality have their driving licenses restored. Conceptually and operationally, the Puerto Rico ASAP has implemented the NHTSA concept.

Certain obvious problems remain in the smooth operation of the system in Puerto Rico. The enforcement effort seems too low in light of the heavy pattern of drinking and driving in Puerto Rico. The growing backlog of cases indicates certain processing problems between the prosecutor's investigation and the trial. Lax implied consent enforcement by the courts tends to encourage chemical testing refusals. A low conviction rate (on the assumption that many persons who are acquitted are actually guilty) indicates possible poor performance by prosecutors, a "softness" on the part of judges, and perhaps poor evidence collection by the police. The low conviction rate results in the loss of many people who could benefit from rehabilitation from the system. Large backlogs and long delays in the pre-sentence investigations tends to be counterproductive in that defendants are delayed in their transition from trial to rehabilitation by more than a month. And ultimately, there has been too short a period of performance to actually evaluate the impact of the treatment modalities on future drinking-driving behavior. Yet despite these problems, the Puerto Rico ASAP is a functioning system that appears to be a reasonable and effective way to process DWI cases. System deficiencies may be found not so much in system design as in the performance of certain components of the system.

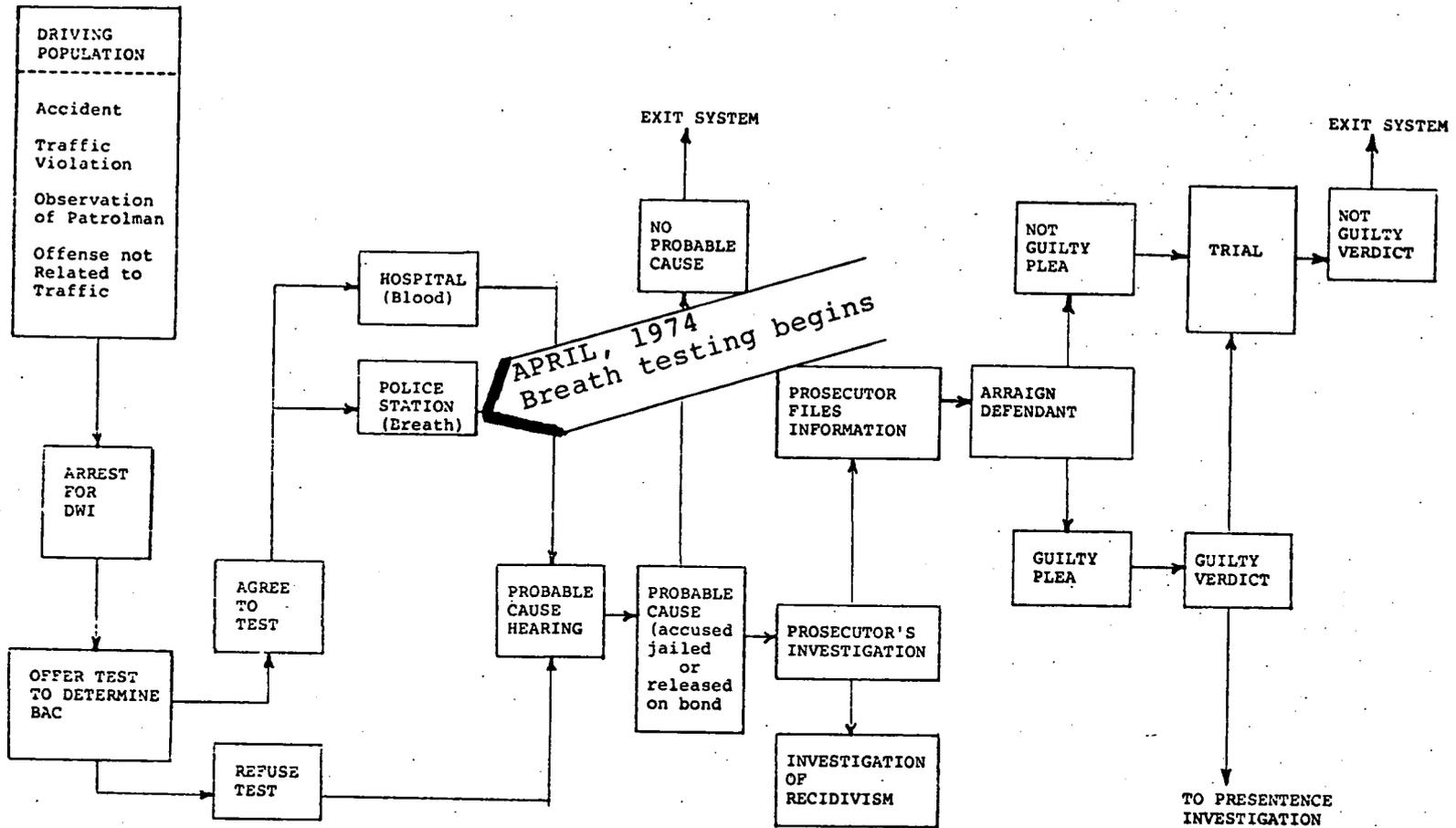


Figure 18a
PUERTO RICO ASAP
CASE FLOW CHART
JULY, 1974
(and present system)

By July, 1974 the Puerto Rico ASAP was in its present form and functioning. In February, the new pre-sentence investigators started work across the island, and in April the newly organized and trained breath testing unit began operations.

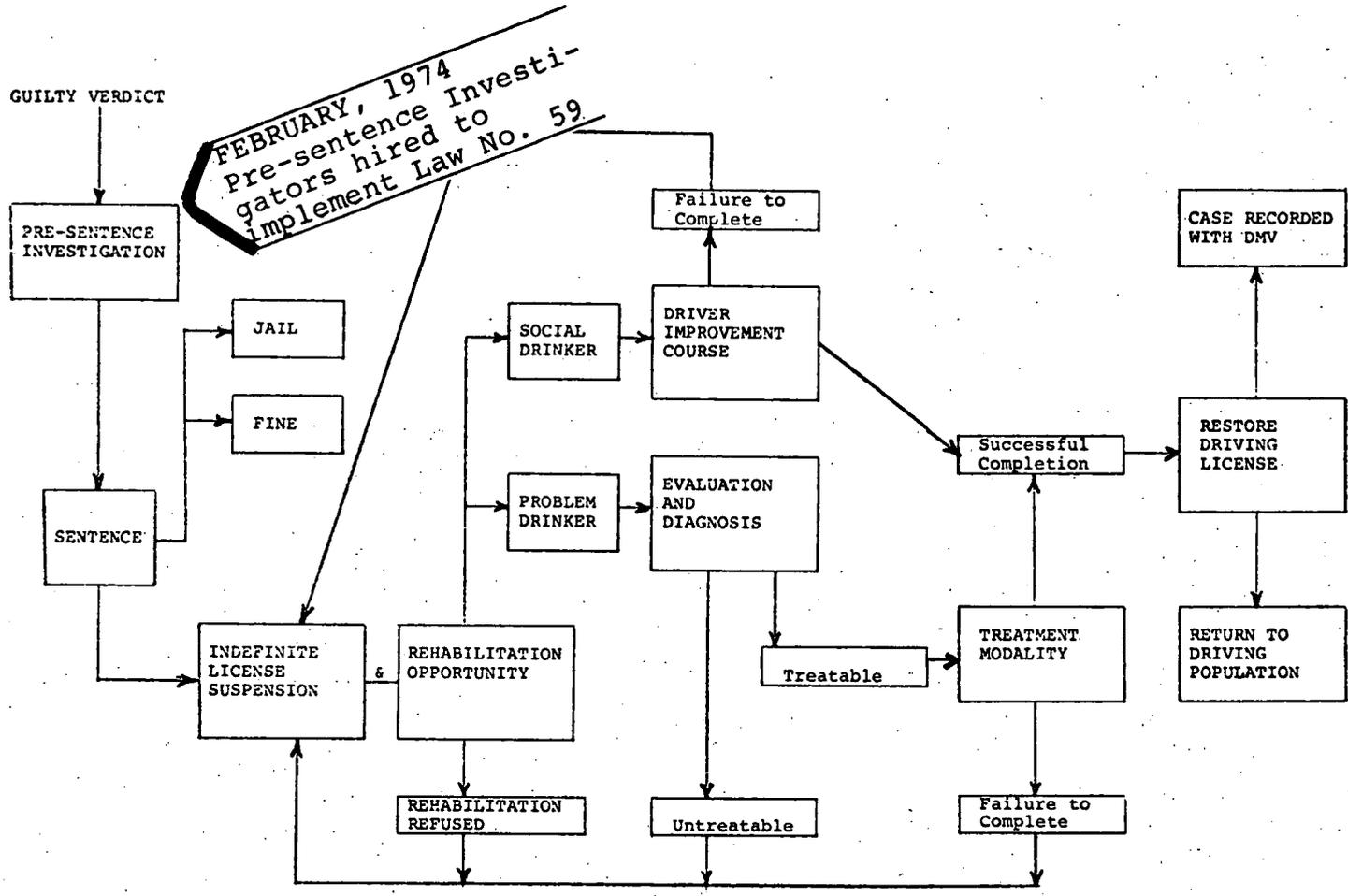


Figure 18b
 PUERTO RICO ASAP
 CASE FLOW CHART
 JULY, 1974
 (and present system)

FIGURE 19

PUERTO RICO ASAP

February, 1974

April, 1974

Remainder of 1974

IMPORTANT EVENTS

PSI and Probation counter-measures begin.

Breath testing begins.

Puerto Rico ASAP system finally becomes fully operational. ASAP staff organizes NHTSA sponsored seminars for judges, prosecutors and probation officers. System components agree to cooperate in new system. Conviction rate remains low but shows steady percentage increase. Many judges who attended seminars begin to convict at BACs below .15%. Referral rate for persons convicted goes to 100% due to new law, but serious backlog problems persist due to the volume of PSIs required by the law.

1974 THE THIRD YEAR

19 new probation officers are hired to conduct ASAP pre-sentence investigations under Law 59.

Police begin breathalyzer operations. BAC becomes immediately available in many cases.

PUERTO RICO ASAP

May, 1975

June, 1975

IMPORTANT EVENTS

Bill 1317 pending in Senate.

Bill 1317 passes both houses and becomes law.

1975

Bill 1317 modifies DWI legislation to reduce presumptive limits to .10%. Bill moves DWI cases from Superior Court to the more numerous District Courts in response to backlog problem.

5.0 LEGAL ENVIRONMENT OF THE ASAP

From its inception until May 30, 1973 the Puerto Rico ASAP (PRASAP) labored under a DWI statute which could not have been more difficult to work with if it had been intentionally designed to prevent the successful control of the drinking-driving problem on the island. Since mid-1973, the Puerto Rico ASAP has operated pursuant to a new statutory scheme which, although far from perfect, institutionalizes and formalizes the ASAP concept and compels the Puerto Rican criminal justice agencies to function in the manner prescribed by the NHTSA-developed ASAP requirements. Where other ASAPs have created their systems by administrative restructuring, Puerto Rico has created its system by legislation. The story of system change (and of the success or failure of the Puerto Rico ASAP) hinges on the new statute and its impact on the criminal justice system.

5.1 The Old Law of DWI

Law No. 141 of July 20, 1960 introduced sweeping changes in the Puerto Rican traffic law system. Among those changes were the specifications of the definition, penalties and blood alcohol testing methodology for the offense of driving while intoxicated.¹² The statute under which the PRASAP functioned from October, 1971, until June, 1973 provided that "[i]t shall be unlawful for any person who is under the influence of intoxicating liquor to drive or operate any motor vehicle." The law further specified that a BAC of less than .05% was presumptive evidence that an accused was not intoxicated; that a BAC of more than .05% but less than .15% gave rise to no presumption; and that a BAC of .15% or more gave rise to a presumption of intoxication. Significantly, the statute also provided that violations "shall be heard in the corresponding part of the Superior Court by a court without a jury." This section of the law alone made Puerto Rico unique among the ASAPs in three respects: (1) it was the only ASAP to retain the .15% presumptive level as the sole measurement of impairment, (2) it was the only ASAP which did not permit jury trials, and (3) it was the only ASAP which required DWI cases to be heard in the felony-level courts. DWI is the only misdemeanor heard by the Superior Courts, which are courts of general jurisdiction only one step below the Supreme Court of Puerto Rico.

¹²The offense referred to in this report as DWI, driving while intoxicated, drinking driving and similar fungible terms is, in the official Spanish text of the Puerto Rican statute, "Conduccion de vehiculos de motor bajo los efectos de bebidas embriagantes."

Penalties provided by the 1960 law for DWI were unusually harsh. No fines were provided, but a first offense required a jail sentence of 10 days to one year. A first offense which caused injury called for 2 months to two years, and a subsequent offense carried a 6 month to three year sentence. First offenders also received a one year to two year license suspension and recidivists lost their driving licenses permanently. The harshness of the law was offset somewhat by the fact that few people were ever arrested for the offense, and fewer still were ever convicted. In 1965 that law was amended to add an alternative penalty of a fine and to delete the minimum term of imprisonment for the first offense, but it retained the jail penalty for the second violation.

The 1960 law also provided for BAC testing either by blood, urine or breath. The statute purported to imply consent to the tests by anyone driving in Puerto Rico, but it also allowed the driver to elect which of the three methods of testing he desired (conditioned only by the availability of breath testing equipment which in reality was non-existent). Any police officer could require the driver to take a test for blood alcohol, and judges and prosecutors could also require the test. The Secretary of Health was empowered to regulate the testing methodology; and for the blood and urine tests, three samples were required, one for the driver, one for the prosecution and one reserved for the use of the court if the need arose to settle discrepancies.

Despite the elaborate provisions for BAC testing, drivers could, of course, refuse the tests in which case they were immediately to be taken before a judge or prosecutor for a probable cause hearing. Upon a finding of probable cause, the driving license was impounded pending trial. At the actual trial on the DWI charge, there would be a concurrent administrative procedure by the same judge who heard the DWI charge. The judge could then suspend the license for up to two years, but he was not obligated to suspend if the test refusal was in any way "justified." Such a system clearly gave strong motivation for drivers to refuse BAC testing as the absence of BAC evidence lessened the likelihood of conviction and the lack of conviction tended to confirm that the test refusal was "justified" in that the driver was not guilty of DWI.

5.2 Rules of Criminal Procedure

In addition to the old DWI statute, DWI enforcement has been complicated in Puerto Rico by the application of two important rules of criminal procedure: Rule 22 and Rule 64(n). Both of these rules remain in effect at the present time.

Rule 22 provides that in the case of an arrest without a warrant (as are DWI arrests) "the person making the arrest shall without unnecessary delay take the person arrested before the nearest available magistrate, and . . . the person making the arrest shall forthwith file a complaint" The magistrate is required to inform the accused of his rights and admit him to bail. If the magistrate finds probable cause, he issues a warrant or summons and remits the complaint and the warrant or summons to the Superior Court part for trial. This rule requires Puerto Rican police officers who make DWI arrests immediately to take the person arrested before a magistrate (following the arrest and the BAC testing) for a probable cause hearing. This appearance, theoretically, must occur regardless of the hour or the location of the arrest. As a practical matter, officers often make a cursory attempt to locate a magistrate (e.g., at 3:00 a.m.) and then jail the accused pending an appearance for a probable cause hearing the next morning when a magistrate is available. In either event the arresting officer must make this court appearance in addition to his other duties in processing a DWI arrest.¹³ Many Puerto Rican judges report that those drivers held in jail overnight are more likely to be dismissed at the probable cause hearing because the magistrate does not actually observe the accused in an intoxicated condition as he would in the case of an arrested driver taken immediately before the magistrate.

Once probable cause is determined and the complaint and warrant are remitted to the Superior Court for trial, Rule 64(n) becomes critically important to the successful operation of the drinking driver control system. A violation of Rule 64(n) by the prosecution will allow the defendant to successfully move to dismiss the case. Rule 64 reads in pertinent part:

¹³For the effects of a valid determination of probable cause for an information charging a person with driving a motor vehicle under the influence of intoxicating liquors--necessary requirement for holding the corresponding trial--it is necessary to present at the corresponding preliminary hearing witnesses who have personal knowledge of the two essential elements of said offense, to wit, driving the vehicle and defendant's state of intoxication at the time of driving it. Martinez Cortez v. Superior Court, 98 P.R.R. 640 (1970).

Rule 64. Grounds of Motion to Dismiss

The motion to dismiss the information or complaint, or any count thereof, shall be based only on one or more of the following grounds:

(n) That one or several of the following circumstances exists, unless just cause is shown for the delay or unless the delay to submit the case to trial is due to defendant's motion or his consent:

1. That the defendant was detained in jail during thirty days after his arrest without any information or complaint having been filed against him.
2. That no information or complaint was filed against the defendant within sixty days after his arrest or summons.
3. That the defendant was detained in jail for a total period of sixty days after the filing of the information or complaint without being brought to trial.
4. That the defendant was not brought to trial within 120 days after the filing of the complaint or information.

Accordingly, if the prosecution fails to file an information within sixty days of the DWI arrest, the case will be lost on a motion to dismiss. This has been specifically applied to DWI cases by Davila Vives v. Superior Court, 93 P.R.R. 757 (1966) where an information for violation of the DWI statute filed on September 28, 1965 following an arrest on June 19, 1965 was dismissed because more than sixty days had elapsed from the date the defendant had been arrested and there was no "just cause" to justify the delay in the filing of the information. Similarly, the defendant must be brought to trial within 120 days after the filing of the information unless "just cause" is shown by the prosecution for the delay. The Supreme Court has held that the congestion of a court's docket does not constitute "just cause" for the delay in holding the trial in a criminal cause. Jimenez Roman v. Superior Court, 98 P.R.R. 855 (1970). Thus even if the prosecutor has a completely current caseload (e.g., all informations are filed within the 60 day limit), the case might still be lost if it does not come to trial within 120 days after the information is filed. A backlog of cases in the prosecutor's office which causes a 60 day

processing delay will guarantee the dismissal of all cases. A backlog of cases in the Superior Court which causes a 120 day processing delay will guarantee the dismissal of all cases. Both Rule 22 and Rule 64(n) are currently effective; their tendency is to set rigid, finite limits on the backlog of DWI cases in Puerto Rico.

5.3 The New Law of DWI

Given the clearly unsatisfactory nature of the "old" DWI statute and the rigid processing requirements of Rules 22 and 64(n), the first priority of the Puerto Rico ASAP was the implementation of its legislative countermeasure. From March, 1972 when the ASAP legislative package was first presented to the Puerto Rican House and Senate until May 30, 1973 when the successful portion of that package became effective, the ASAP director and staff engaged in an intensive effort to educate and persuade legislators to enact the following legislative changes:

1. A change in presumptive limits from .15% to a .10% presumptive limit which would constitute "conclusive evidence" of intoxication. Below the .10% limit, there would be a rebuttable presumption that the defendant was not under the influence.
2. A change in the BAC testing statute to eliminate urine testing and to delete the ability of the defendant to elect the testing method. The legislative package also sought to expand the use of BAC testing and to provide for BAC determinations in fatal accidents.
3. A change in the basic sanctioning system from the rather harsh traditional sanctions to a system which in essence formally adopted the NHTSA concept of the ASAP.

The legislature failed to enact the change in presumptive limits, but in all other aspects the legislative countermeasure was essentially enacted into law. Over a year of hard work by the ASAP staff had paid off--the legislature of Puerto Rico created an operating ASAP by statute with the passage of Laws No. 58 and 59, effective May 30, 1973.

Law 58 and Law 59 amended Law No. 141 of July 20, 1960 (the old DWI statute). Law 58 changed the BAC testing portion of the statute to its present form and Law 59 fundamen-

tally altered the sanctioning process for DWI cases by making Puerto Rico the first (and only) American jurisdiction to require a mandatory pre-sentence investigation for DWI cases and a mandatory program of rehabilitation for persons convicted of DWI. The Puerto Rico ASAP actually began on May 30, 1973 when this new law became effective.

The new law did not change the basic definition of the offense of DWI, and it retained the same evidentiary presumptions: a BAC up to .05% still gives rise to a presumption of no intoxication; a BAC greater than .05% and less than .15% gives rise to no presumption; and a BAC of .15% or more give rise to a presumption of intoxication.¹⁴

Significant changes occurred in the provisions for chemical analysis to determine BAC. Urine testing has been entirely eliminated and the defendant no longer has a choice of testing methods. The arresting officer now offers either blood or breath testing in his discretion and the defendant must comply or face the implied consent refusal procedure (which has not changed from the old law). Significant for statistical purposes is specific authorization to conduct BAC testing on samples taken from dead and unconscious persons. The most sweeping change in the law, of course, is the change in the provision for penalties for persons convicted of DWI. The complete English text of that section of the law reads as follows:

§ 1042. Penalties

(a) Any person violating the provisions of section 1041 of this title shall be guilty of a misdemeanor and shall upon conviction be punished, for first violation, by a fine of not less than one hundred (100) dollars, nor more than five hundred (500) dollars, or by imprisonment in jail for a term of not less than five (5) days nor more than six (6) months, or both penalties in the discretion of the court.

(b) Any person who violates the provisions of section 1041 of this title and as a result thereof causes bodily injury to another person shall be guilty of a misdemeanor and shall upon conviction be punished, for the first conviction, by a fine of not less than

¹⁴ See Appendix A.

§ 1042. Penalties (Continued)

two hundred (200) dollars nor more than five hundred (500) dollars, or by imprisonment in jail for a term of not less than ten (10) days nor more than six (6) months, or both penalties in the discretion of the court. Conviction of violation of this subsection shall preclude further prosecution upon the same facts for violation of subsection (a). If evidence is insufficient to sustain a conviction under this subsection, but sufficient to sustain a conviction under subsection (a), the Court shall adjudge the defendant guilty of a violation of subsection (a). For any second conviction for a violation, both of this subsection and subsection (a) the defendant shall be punished by imprisonment in jail for a term of not less than fifteen (15) days nor more than six (6) months. For any subsequent conviction, both of this subsection and subsection (a) the defendant shall be punished by imprisonment in jail for a term of not less than one (1) month nor more than six (6) months.

(c) If a person who has been convicted of violation of subsection (b) should subsequently violate subsection (a) or if having been convicted for violation of subsection (a) should subsequently violate subsection (b), said person shall be considered a recidivist for the purposes of both subsection (a) and subsection (b).

(d) In case of a first or subsequent conviction, the Court shall, upon rendering judgment, decree the suspension of the driver's license until the agency in charge of the rehabilitation, pursuant to subsection (j) of this section certifies that the person is qualified to drive; It being provided, That if the person refuses to submit himself to the rehabilitation system hereinafter provided in subsections (e) to (j), the license shall be indefinitely suspended and until he consents to be submitted to the rehabilitation system and it is certified that the person is qualified to drive. The Court shall revoke the permit or privilege to drive motor vehicles granted under the provisions of this chapter to any nonresident convicted under the provisions of this section.

(e) Before rendering judgment on any person convicted under the provisions of section 1041 of this title or subsection (b) of this section the Court shall order the Adult's Probation Division of the Courts Administration to carry out a thorough investigation,¹⁵ and that a report be rendered within the

¹⁵Thorough investigation = investigacion minuciosa.

§ 1042. Penalties (Continued).

thirty (30) days following the order. Said report shall include history and record of the person convicted with regard to the use of intoxicating liquors as to decide if such person would benefit from the program of rehabilitation established and approved by the Department of Health in coordination with the Department of Transportation and Public Works.¹⁶ Provided that for the effects of this section, "rehabilitation" shall mean any kind of treatment, orientation, guidance, advice or any other kind determined by the agency in charge of the rehabilitation.

(f) If it is determined from the report rendered by the Probation Officer that the person has not been convicted previously for violations to the provisions of section 1041 of this title, and that he is not a troublesome drinker,¹⁷ the Court shall render judgment pursuant to the penalties provided in subsections (a) and (b) of this section, as the case may be. Provided, that the driver's license shall be suspended until such person participates and approves the driver's improvement course¹⁸ established by the Department of

¹⁶ Program of rehabilitation established and approved by the Department of Health in coordination with the Department of Transportation and Public Works = programa de rehabilitacion establecida y aprobado pro el Departamento de Salud en coordinacion con el Departamento de Transportacion y Obras Publicas.

¹⁷ Troublesome drinker = bebedor problema. The original legislation simply translated the English term "problem drinker" literally into the official Spanish text of the bill to become bebedor problema. When translated back to English from the official Spanish text, bebedor problema was properly rendered "troublesome drinker." The intent of the legislation, however, was to adopt exactly the "problem drinker" language used in the NHTSA operating definition of a problem drinking driver.

¹⁸ Driver's improvement course = curso de mejoramiento.

§ 1042. Penalties (Continued)

Transportation and Public Works. For the purposes of this section, a "troublesome drinker" shall mean any person who voluntarily admits his alcoholic condition, or who has been submitted to medical diagnosis as such, or who presents two (2) or more of the following characteristics: (a) record of previous contacts with social services or medical agencies due to alcoholic problems, (b) reports of marital, finance or work troubles due to the use of alcohol, (c) one or more previous arrests for offenses related to alcohol, (d) amount of alcohol in the blood at the time of the analysis is equal to the amount established by section 1041 of this title, as legal presumption of intoxication.

(g) If the report required under subsection (e) of this section shows that the person has need of the rehabilitation program established by the Department of Health, the Court shall render judgment and shall suspend the execution of same provided said person agrees to voluntarily participate in the rehabilitation program. If during the rehabilitation process the Department of Health determines that the person needs hospitalization, and if the person accedes voluntarily to be hospitalized, the Department of Health shall order the hospitalization. The hospitalization shall be made in any public institution providing adequate hospitalization and treatment, previously approved by the Department of Health. If the person considers that he does not need hospitalization, and can provide medical proof to such effects, he may request from the court to be excused from such hospitalization and to let him continue under the ambulatory treatment under the provisions of this section for a term of more than three (3) consecutive months. Upon request of the hospitalized person, the court may, at any time, review or modify its hospitalization order. In consideration of the progress obtained by the person under treatment, the Court may, in its discretion, render without effect the hospitalization order and direct that the person continue under ambulatory treatment in the agency provided by the Department of Health.

(h) If the person participates in the rehabilitation program except in case of hospitalization, the Court may direct the Secretary of Transportation and Public Works to issue a provisional license to said person, upon previous recommendation to that effect by the

§ 1042. Penalties (Continued)

agency in charge of the rehabilitation, setting forth in the license such restrictions which in the judgment of the court are necessary to protect the society and guarantee public safety.

Said restrictions may impose limitations upon the type of motor vehicle said person may drive, places through which he may drive it, daily hours, and days of the week during which he is authorized to drive said vehicle upon the highways, as well as any other limitation deemed necessary for reasons of safety, all of which shall be set forth in the license issued to him.

(i) If the person refuses to participate in the advisory and rehabilitation program, or if he does not appear, or if he violates the rules and regulations established for said program, or if he discontinues his participation, the Secretary of Health shall notify the Secretary of Justice, who shall request the court to render without effect the suspension order of the judgment, and to proceed to execute the same.

(j) When the agency in charge of the rehabilitation certifies that the person is qualified to drive motor vehicles, the court may order the dismissal of the case, however, the case may be used for computing the recidivism as set forth in subsections (b) and (c) of this section.

The Court shall, further, order the Secretary of Transportation and Public Works to return to said person his driver's license without the restriction previously imposed, if any.

(k) The Secretary of Health is hereby empowered, in consultation with the Secretary of Transportation and Public Works, to promulgate the regulations that may be necessary to enforce the provisions of this section. -- July 20, 1960, No. 141, p. 408, § 5-802; amended April 30, 1965, No. 6, p. 9, eff. April 30, 1965; May 30, 1973, No. 59, p. 232, § 1, eff. 30 days after May 30, 1973.

The legislative change was a watershed in the history of the Puerto Rico ASAP. Heretofore, despite dedicated efforts on the part of the ASAP director and staff, on the part of cooperating agencies and on the part of the govern-

ment as a whole, no progress of any substance had been made toward the goal of taking problem drinking drivers off the road and getting them into rehabilitation. This lack of success can be explained by two factors: Superior Court judges had not been entirely cooperative with the project, and the DWI statute had been inadequate and even counter-productive in relation to the ASAP concept. Suddenly, with the passage of the new laws, both of those factors were obviated. The new statute (except for its retention of the .15% BAC presumption) was designed specifically to implement the NHTSA ASAP concept and the new pre-sentence investigation procedure literally mandated the judges to cooperate with ASAP (at least for those defendants who were convicted of DWI). After more than a year of effort, (during which time enforcement, education, PI&E and prosecution countermeasures had been implemented) the ASAP finally had official sanction and a formal mandate to begin breath testing, pre-sentence investigations, social drinker educational programs and problem drinker rehabilitation. Unfortunately, of these four major functions of the new system only the educational program had been implemented. There was a statutory duty to conduct pre-sentence investigations for DWI convictions, but there were not enough probation officers to conduct them (nor did probation officers have any special training in alcohol problems). The new legislation introduced the capability for a modern breath-testing system to replace the old, cumbersome analyses of blood and urine, but the island lacked breath-testing equipment and technicians. The law mandated, for problem drinkers, a program of rehabilitation which simply did not exist. The ASAP director and staff turned their efforts from the creation of a viable ASAP system design (which they had accomplished) to the implementation of the system they had created. Rehabilitation services did not begin until July of 1973. Sufficient probation officers to handle the pre-sentence investigations were not hired until February of 1974, and breath testing did not begin until April of 1974. Accordingly, despite the fact that the Puerto Rico ASAP began project administration in October of 1971, the full-blown, functioning Puerto Rico ASAP did not come into being until around the middle of 1974. Thus the ASAP has actually experienced only one year of successful (i.e., fully-implemented) operation. What is remarkable about this fact is not that it took from October, 1971 until mid-1974 to implement the Puerto Rico ASAP but rather that the director and staff of the project were able, in only two and one-half years, to implement a complete, functioning system of drinking-driving control in a jurisdiction where literally none of the major functions of the ASAP had ever been available before.

6.0 THE PROCESS OF CHANGE IN THE PUERTO RICO ASAP

6.1 ASAP Attitudes

A primary purpose of the site visit in Puerto Rico was to ascertain the attitudes of the various actors in the ASAP system about the project itself and about each other. Given the very large numbers of people employed in the criminal justice system of Puerto Rico, the sample of persons interviewed is quite small. The sample is, however, reasonably representative. The representativeness of the sample has been determined, of course, subjectively by the site visitors in light of their experience with other ASAPs and specifically with Puerto Rico.

The ASAP Generally

Officials in the Puerto Rican criminal justice system seem universally to perceive the ASAP staff as skilled professionals. The project is generally viewed as "successful" in the sense that it has accomplished worthwhile changes in the system of drinking-driving control and that it has been "worth the money." Many people, however, expressed reservations about a generalized "inefficiency" and about other more specific problems. Many informants identified the greatest contribution of the project as "raising the consciousness" or "increasing the awareness" of Puerto Ricans about the risks involved in abusive drinking and driving. All in all, the image of the Puerto Rico ASAP was strongly positive.

Enforcement

In general, the attitudes expressed by and about the police are typical of those which may be heard in any mainland criminal justice system. Puerto Rican police are viewed by outsiders as basically "honest." Sources as diverse as a TV station manager, a public defender, a prosecutor, several judges, and an advisory committee member agreed on this point. But the police are also viewed as somewhat inept, due largely to poor training. This ineptitude is commented on most frequently by prosecutors and judges who often explain their dismissals and acquittals of DWI cases in terms of poor police performance either in following proper arrest procedure or in offering believable testimony in court. The police, predictably, view prosecutors who lose cases as inept and judges who dismiss cases as lax or "too lenient."

Several informants reported that there was little real DWI enforcement before ASAP. Generally, the police would

merely take a drunken driver to his home rather than arrest him unless there was some aggravating circumstance present such as an accident. Several explanations were offered for this low incentive to arrest, the most popular being that Puerto Rican police are sensitive to the rights of the accused and are disinclined to subject him to the social loss of respect incident to an arrest (especially for so "petty" a charge), and that the policemen themselves, in off duty hours, drive in an aggressively macho fashion, frequently in combination with alcohol consumption, and they see nothing particularly wrong with this behavior. This problem seems still to exist: one judge reported a measurable difference in the attitudes and testimonial skills of the ASAP officers when compared to regular officers. He attributed this difference to a lack of training and sensitivity to alcohol problems on the part of the regular officers. Another judge reported that his understanding of the change of DWI cases from the District Courts to the Superior Courts in 1960 was exactly this inability of the police to prosecute their own cases in court without the assistance of a district attorney.

Virtually everyone agreed that the enforcement system operated fairly and without discrimination of any kind. Judges, prosecutors, public defenders and citizens alike agreed that the system was fundamentally fair. An ASAP evaluator specifically tested the data for any evidence of discrimination on a basis of race, economic or social status and could find none.

Many police officers complained that police officers must spend too much of their time in court. They also identify a severe lack of technically qualified people to handle the breath testing program. The police are generally irritated at having to schedule their time in court for the convenience of the judge and the defendant. Several judges commented that this was a "negative attitude" on the part of the police, but also admitted that docketing practices tended to create a burden on arresting officers.

Prosecution and Defense

Lawyers as a class enjoy perhaps a higher status and greater respect in Puerto Rico than their counterparts in the United States. The title Licenciado is used for lawyers in Puerto Rico in the same fashion that "Doctor" is used for physicians on the mainland. Political leadership on the island is dominated by lawyers, and lawyers (because they also have a monopoly on the notarial services on the island) are involved in virtually every transaction of any

significance. The Bar of Puerto Rico is equal to and perhaps of a higher quality than that of the mainland. Puerto Rican lawyers are trained either in mainland law schools or in one of the law schools on the island, and give the appearance of taking their profession and their public responsibilities very seriously.

Unlike the U.S., Puerto Rican prosecutors are usually professionals who have made a career of prosecution. It is not unusual to find senior prosecutors in their 50's and 60's who have thirty years experience in the courtroom representing the people. Also unlike the U.S., the Legal Aid Society of the organized bar provides a full range of legal services to indigents. Public Defenders in Puerto Rico are employees of the Society. They tend to be younger lawyers, but are nonetheless competent.

Puerto Rican prosecutors do not plea bargain in DWI cases except to the extent that they attempt to induce a guilty plea to the original charge by explaining the ASAP program. There are no "back up" charges available to bargain down to, and bargaining solely for the purpose of obtaining a conviction is ethically repugnant to most Puerto Rican prosecutors.

An ASAP special prosecutor reports that there are no formal guidelines for prosecutors in DWI cases, but that a rule of thumb has evolved whereby prosecutors will move to dismiss cases where the BAC was less than .05% and there was no accident (because there is virtually no chance of conviction). All other cases will proceed to trial. This prosecutor (and most others) views the charging decision as one made by the police. Once that decision is made, the prosecutor will go forward with the charge so long as there is evidence of guilt sufficient to secure a conviction.

Prosecutors report their office procedures are efficient. The prosecutors' investigation required in each case goes forward without delay and cases are processed on time (because the prosecutor is well aware of the time limits imposed by Rule 64(n)). They do report delays, however, in bringing cases to trial because of congested dockets in the courts. One informant showed the interviewer file cabinets full of cases which had been investigated and were ready to go to trial as soon as a courtroom and judge became physically available. Several informants indicated that the special ASAP prosecutors are very good, but that the regular prosecutors are "more interested in felonies than in DWI." The reason for the delay between the completion of the prosecutor's investigation and the DWI trial

seems to be that DWI cases must compete for a place on the docket with other criminal trials. The other criminal trials in the Superior Court Parts are all felonies, each of which is a potential jury trial. Accordingly, the administrative judges who set the dockets will select the cases for docketing according to criteria of "seriousness" and "time consumption." DWI cases tend to have lower priorities than any other cases handled by the Superior Courts, and yet in terms of sheer numbers the DWI case is one of the most prominent on the docket. The increasing volume of DWI cases coupled with the relatively low priority they can be given by the felony courts provide the motivation for returning the DWI cases to the District Courts for trial.

A public defender who handles many DWI cases views the ASAP system as not a very efficient way to process cases. He strongly endorses the concept of diversion around the traditional system, but agrees that ASAP is far superior to what existed before. Many defense lawyers like the ASAP because it has created new clients and thus more income for them. A fee for a guilty plea case may be as low as \$150, but for a not guilty plea and trial the fee may go above \$1,000. Many informants report a strong incentive for defense lawyers (who have paying clients) to plead them not guilty in order to increase the fee. Most lawyer-informants however, report that they would have no objection to a system which reduced their fees if it kept their clients out of jail and got them into treatment for their drinking problems. Many lawyers also use terms such as "increased consciousness of alcohol problems" when talking about the ASAP.

Judicial

Puerto Rican judges enjoy an extremely high social status relative to their counterparts on the mainland. Typically, in the United States judges at the lowest rung of the judicial ladder hear DWI cases. In Puerto Rico the cases are heard in Superior Court which is the highest court of general jurisdiction and is only one step below the Supreme Court. The judges of the Superior Court (and of the District Court which hears probable cause in DWI cases) are professional judges who are appointed for long terms and without political affiliation.

The judges have tended to empathize with the DWI defendants before them (as only bench trials are available), and in the past have displayed the "Ai, bendito" phenomenon. This phrase is a typically Puerto Rican expletive which expresses empathy with and sympathy for the defendant who has just told his troubles to the judge. It is the same

reaction often reported for DWI juries on the mainland: "I will acquit this obviously guilty defendant because there, but for the grace of God, go I." This social phenomenon tends to explain the surprisingly low conviction rate in contested DWI cases (i.e., cases where the defendant pleads not guilty and goes to trial). Only about 20% of such cases overall have resulted in convictions.

Many informants, judges and non-judges alike, report that Puerto Rican judges in the pre-ASAP days were quite ignorant of alcohol problems and the methods of alcohol treatment and rehabilitation. This deficiency has been largely remedied by a series of seminars conducted by the ASAP for the judges, but there are still some judges who remain ignorant, and "after two years, some judges still do what they want to do . . . and ignore the law," according to one Superior Court judge. This same judge, however, reports that the ASAP is successful because the "judges' level of consciousness has been raised and the system functions."

A characteristic of the Puerto Rican legal system is its very great concern about the rights of individuals and its insistence on formal, traditional criminal procedure. Many judges agree that this attitude causes sometimes severe pressures on case processing, but they also agree that it is better to follow traditional methods and thus preserve civil rights than it is to adopt case processing short-cuts and thus move the docket. This attitude does not mean that the judges are anti-progressive. They merely insist that any system changes be accomplished by legislation rather than administrative fiat.

Pre-sentence Investigation and Rehabilitation

Both the probation services and the rehabilitation services of the ASAP are, ironically, inexperienced and tradition-bound. They are inexperienced because the new personnel hired both to conduct the pre-sentence investigations and to provide many of the alcohol rehabilitation services had never performed such services before. They are tradition-bound because the senior officials who direct these activities have trained the new personnel in felony-type pre-sentence investigations and in the medical model of alcohol rehabilitation.

Most judges viewed the new probation officers as professionals. Even though inexperienced, they tended to know more about alcohol problems than the judges. As they have gained experience on the job, judges have grown more and more inclined to "let the professionals make the

treatment decision."¹² Similarly, the judges tend to rely on a "reporting-by-exception" approach to enforcing the conditions of probation imposed by the court. Judges view the ASAP as a convenient way to dispose of a work load which they believed themselves ill-suited to handle in the first place. Generally, people in the system view the pre-sentence investigation and rehabilitation components of the ASAP with a healthy, friendly skepticism. This part of the project is simply too new (only eighteen months old) to evaluate, but all hope that results will manifest themselves in the form of reduced accidents and reduced recidivism.

6.2 ASAP Problems and Responses

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

¹²Note, however, that the classification of the defendant as a problem drinker or social drinker does not determine the punishment (i.e., the potential fine and jail term). The classification performed by the pre-sentence investigator is used to determine which treatment modality the defendant shall be assigned to. The criminal sanction (if any) is determined by the judge on traditional criteria surrounding the circumstances of the offense (e.g., recklessness of the driving behavior; accident causation; resistance to the police officer, etc.). Often the only real criminal sanction is a fine. Jail time might be ordered and suspended in order to motivate the defendant to cooperate with his treatment as a condition of probation (under threat of jail for failure to cooperate). The license suspension is, of course, mandatory upon conviction; but a restricted driving license may be issued as a part of the treatment modality. Finally, the ultimate decision for both criminal sanction, and treatment modality belongs to the judge. The pre-sentence report is merely advisory.

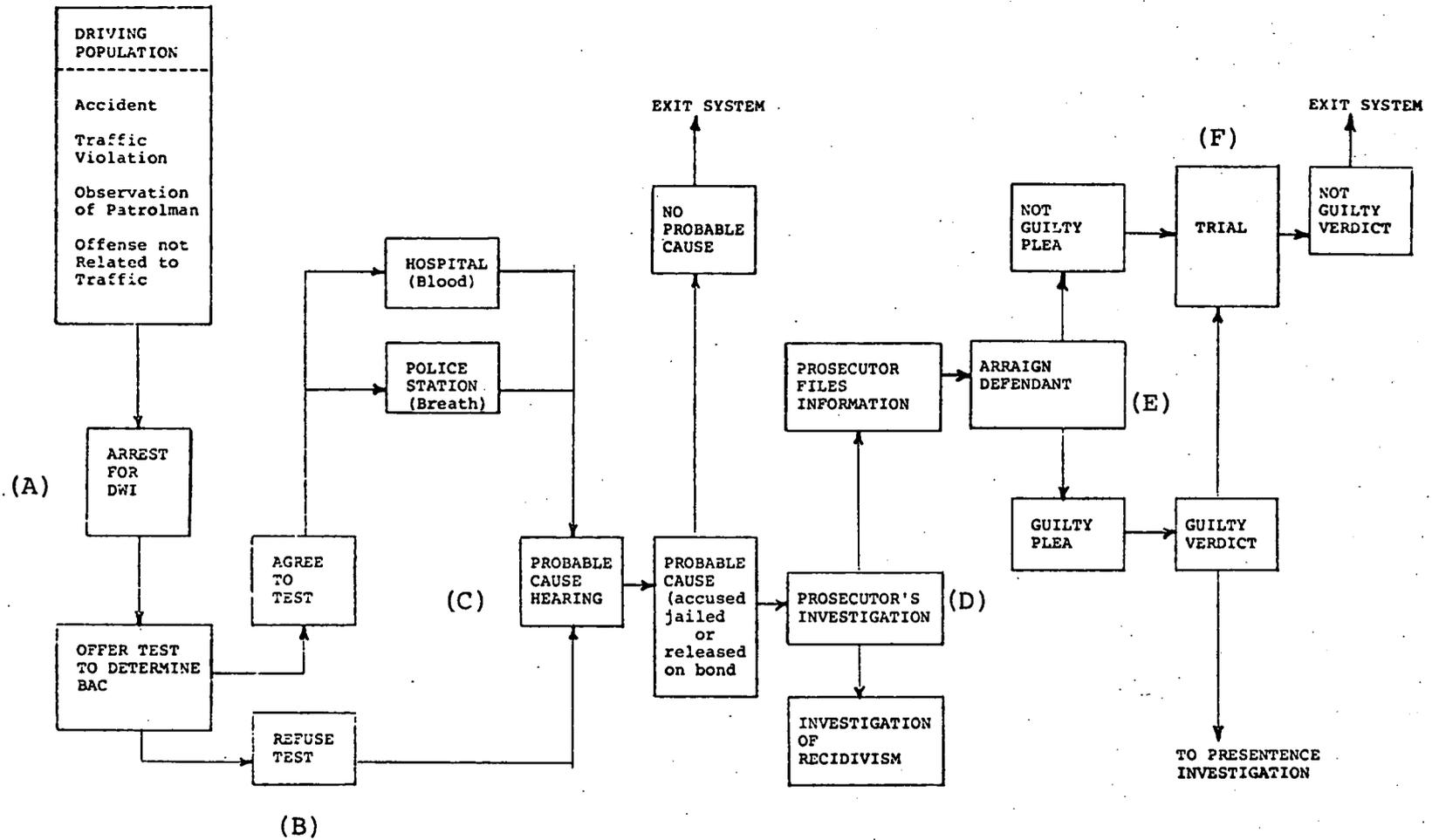


Figure 20a
PUERTO RICO ASAP
CASE PROCESSING SYSTEM FLOW DIAGRAM

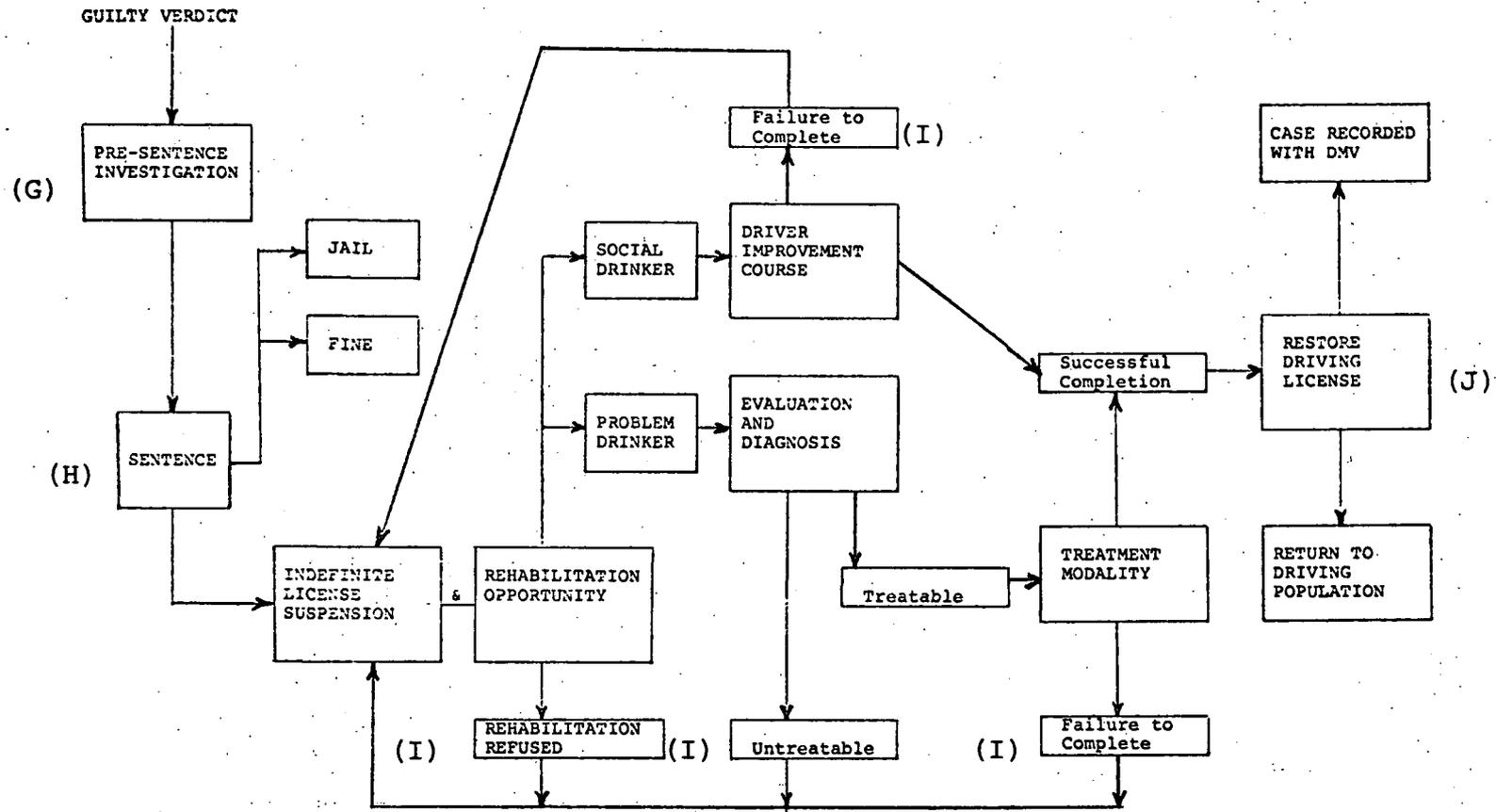


Figure 20b
 PUERTO RICO ASAP
 CASE PROCESSING SYSTEM FLOW DIAGRAM

Figure 20 illustrates the Puerto Rico ASAP as a system for processing cases from point "A" where drivers are selected from the general driving population because of their abusive drinking and driving through point "J" where these drivers are returned to the general driving population having undergone the appropriate rehabilitative treatment which theoretically causes them not to drive after excessive drinking again. Conceptually, the purpose of this case processing is to reduce the number and severity of the crashes experienced by these drivers and thus to reduce property damage, injury and death caused by alcohol-related auto accidents. The mechanism for this case processing in Puerto Rico, as required by Law No. 59, is the criminal justice system. Section 4.0 of this report explains the historical development of this case processing system, and Section 5.0 explains the new Law No. 59.

Certain problems arose in the implementation of this case processing system, and they linger in one form or another in the present system in Puerto Rico. These problems and their solutions (or perhaps lack of solutions) offer opportunities to avoid similar problems in the implementation of possible future ASAPs on the statutory, mandatory pre-sentence investigation model.

Figure 20, Point A

The immediate problem for any DWI case processing system is the identification of such cases to process. In Puerto Rico, as in any criminal-law-based system, the case identification occurs through the arrest of a DWI offender. Obviously, the higher the arrest rate, the more cases there will be to process. Accordingly, a low enforcement rate (that is, the arrest of fewer offenders than actually violate the law) results in those offenders who are not arrested escaping any possibility of being processed through the system. If enforcement fails to apprehend, the system fails to reach its objective before it even starts.

With this principle in mind, the ASAF viewed the rate of enforcement as too low, particularly given the extent and severity of the drinking-driving problem in Puerto Rico. By 1974, through a variety of incentives (including the replacement of non-productive police officers) the arrest rate reached 7,000 annually. This is a significant caseload, but pales to insignificance when compared to, for example, the City of Los Angeles which processes over 20,000 DWI cases annually in a jurisdiction with a population comparable to Puerto Rico. On the other hand, enforcement in Puerto Rico is greater now by a factor of 5 or 6 than it was in pre-ASAP days and the rate of enforcement continues to increase.

Figure 20, Point B

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

Figure 20, Point C

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

A more severe problem than the time requirement has been the disinclination of some magistrates to believe the defendant is legally intoxicated even when presented with BAC evidence from the breathalyzer. This problem has been largely solved by training the district judges who hear probable cause in alcohol and highway safety through several seminars. Nonetheless, the probable cause hearing requirement remains a burden on the arresting officer as it is an additional (and seemingly unnecessary) procedure.

Figure 20, Point D

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

Figure 20, Point E

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

Figure 20, Point F

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

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

Figure 20, Point G

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

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

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

Figure 20, Point H

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

Figure 20, Point I

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

There is an additional problem in the relationship of the treatment modalities to the court. In the rare event of a misdiagnosis (e.g., a true social drinker is mislabeled

a problem drinker) there is no handy mechanism or procedure for changing the diagnosis and referring the driver to the appropriate modality. Further, there is at this point no adequate evaluation (nor is there likely to be until six to eight years worth of data have accumulated) of recidivism following treatment. The Puerto Rico ASAP (and the other ASAPs for that matter) are simply too new for definitive evaluation.

Figure 20, Point J

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

Management Problems

The ASAP management, throughout the life of the project, has been faced with inherent operating difficulties on a day-to-day basis. The ASAP has constantly been in the position of having to compete for the attention of island government policy makers. The project itself, when compared to the island government as a whole, is a relatively insignificant part of the total government both in its size, cost and overall perceived significance. The ASAP has also been in the position of having to compete for operating funds in order to continue its existence after the period of federal funding expires. This places the project in competition with other, more "critical" governmental services such as teachers' salaries, crime control, economic development and welfare. The island government is, bluntly, broke. Puerto Rico has suffered far greater economic stress as a result of the recent recession than has the mainland. The depressed economy coupled with very high inflation on the island have resulted in drastically reduced revenues. In such a governmental crisis, the continuation of an ASAP is not a high priority. The ASAP staff has already been in the position of having to deal with a certain hostility on the part of some colleagues within the governmental department that houses the ASAP and its nominal supervisory agency, the Traffic Safety Commission. ASAP personnel have, since the beginning, been paid at a rate higher than that of their counterparts in their "parent" Commission. This has caused some personal and political problems, but the salary differential has been justified

by the fact that the ASAP jobs required the attracting of competent professionals from other long-term civil service employment to a project with a three-year life.

ASAP Accomplishments

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

Accordingly, in fairness to the ASAP after listing its problems, at least a brief listing of its accomplishments seems in order. The following are a partial list of the most important ASAP accomplishments:

1. The creation of an ASAP emphasis patrol and a modern breath testing program where none had existed before.
2. a many-fold increase in the previously low arrest rate.
3. An ability to identify DWI recidivists from motor vehicle records.
4. The introduction and acceptance of breathalyzer evidence as proof of intoxication at trial.
5. The training of judges in alcohol safety.
6. The introduction of mandatory pre-sentence investigation for DWI cases in a jurisdiction where the function was never before performed.
7. The transition from a criminal sanction system of DWI control to one which uses the criminal justice system as an intake method for alcohol rehabilitation.

8. The development of an alcohol education program for driver improvement where none had existed before.
9. The creation of a major casefinding and intake mechanism for the various alcohol treatment programs of the new Department of Addiction Services.
10. The creation of a method for using a relicensing incentive to control cooperation with treatment modalities.

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

6.3 The Lessons of Law No. 59

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

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

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

1. System rigidity--although any statutory system of mandatory DWI case processing and pre-sentence investigation must be precise in its requirements, it must also be sufficiently flexible to deal with occasional problems or irregularities in system operations. Specifically, there should be methods of correcting any misdiagnosis or misclassification without another court appearance. There should be flexible time limits on reports, and the mandatory investigation should be defined as "any investigation sufficient to classify offenders as problem drinkers or social drinkers with a high degree of reliability" rather than a definition such as a "detailed investigation" or other language suggesting more than a screening.
2. Resources--a Puerto Rico model ASAP system should not be implemented (nor should any other ASAP for that matter) in a jurisdiction which lacks adequate resources to perform each of the functions mandated by law. Resources should be developed prior to (or at least in conjunction with) the development of the ASAP.
3. Commitments--each agency expected to perform functions under the new law should be formally committed to the system before it is implemented. An uncooperative agency (which condition might result merely from the political slight of not being consulted) can foul up an operating system, even one mandated by statute. Before implementation, attitudes of system actors should be assessed, and a concerted effort in alcohol safety education should be undertaken. Many problems can be avoided if system actors have sufficient information to make intelligent decisions.
4. Funding--there must be adequate funds to support the system not only during the initial period of possible federal or state funding, but also after all outside (i.e., non-local funds) have terminated. The system should preferably be self-supporting with a portion of DWI fines and the fees charged for rehabilitation services going to an ASAP operating fund. In this way the ASAP is a minimal burden on local taxes and the very people who are causing the alcohol safety problem are made to pay for its

solution. Ideally, if an ASAP is begun with other than local funds the outside support should be gradually phased out rather than suddenly terminated after two, three or four years.

5. Role definition--the roles to be played in the new system must be defined with precision and must be agreed upon by the system actors. For example, the screening function of the pre-sentence investigator must not be confused with the diagnostic function of the therapist. The judge must not be expected to become a prosecutor and automatically convict everyone who comes before him merely for the purpose of getting the offender into rehabilitation. The police must not be expected to become alcohol rehabilitation workers, and alcohol therapists cannot be expected to police the compliance of their clients. In short, before the system is implemented each actor must know his role and that role must bear a rational relationship to the actor's own perception of his function.
6. Management--it is critical to the success of any ASAP system that there be system management, not for the purpose of controlling the functioning of system actors, but rather for the purpose of coordinating their activities and serving as an informational clearinghouse. Without a management staff, the functioning system cannot be "fine tuned" as problems develop. Even in a system where the law mandates every function there must still be someone with the administrative skills to convert the law in the books to the reality of a functioning government service.

6.4 Postscript on Bill 1317

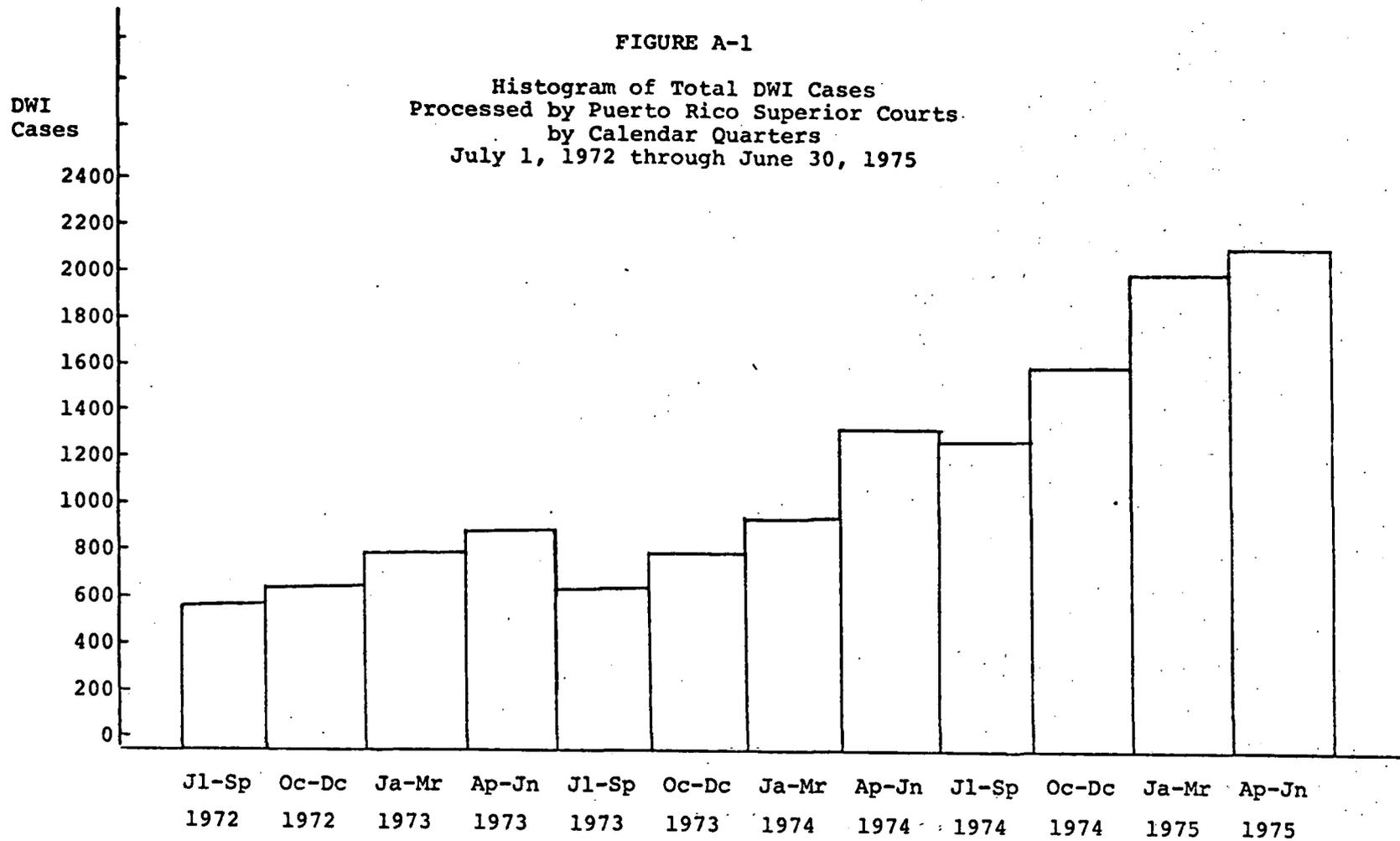
During the site visit for this report, there was pending, before the Legislature of Puerto Rico, Bill 1317 which amends the basic DWI law of the island. This bill was being pushed by the Traffic Safety Commission with the less than enthusiastic support of the ASAP staff. The bill, briefly, lowers the presumptive limit of intoxication to .10% in order to satisfy the national standards imposed by NHTSA. The bill also changes jurisdiction for DWI from the Superior Courts to the District Courts, and allows pre-arrest breath testing. Seemingly, the ultimate goal of the ASAPs legislative counter-measure has been accomplished.

The new bill will now effectively require the already thinly spread breath testing experts to appear in 38 District Court Parts instead of 11 Superior Court Parts. The unavailability of these experts can result in dismissals for cause. The bill requires that the Driver Improvement School begin within 15 days of sentencing and be completed within 30 days. This time sequence is physically impossible given present resources, and thus virtually no social drinkers will be required to attend the school. License suspension rules will be changed, and implied consent weakened further. Finally, the driver will once again be allowed to choose the method of BAC testing, thus subverting the breath testing program.

The functioning ASAP system of Puerto Rico, created by statute after so much hard work by the ASAP staff, will now be effectively destroyed by the new legislation which passed the legislature in June of 1975.

APPENDIX A

STATISTICAL INFORMATION CONCERNING DISPOSITIONS
OF DWI CASES BY SUPERIOR COURT JUDGES IN PUERTO RICO



Source: Final Analysis of the Impact of Puerto Rico ASAP on the Traffic Safety System, Analytical Study IV.

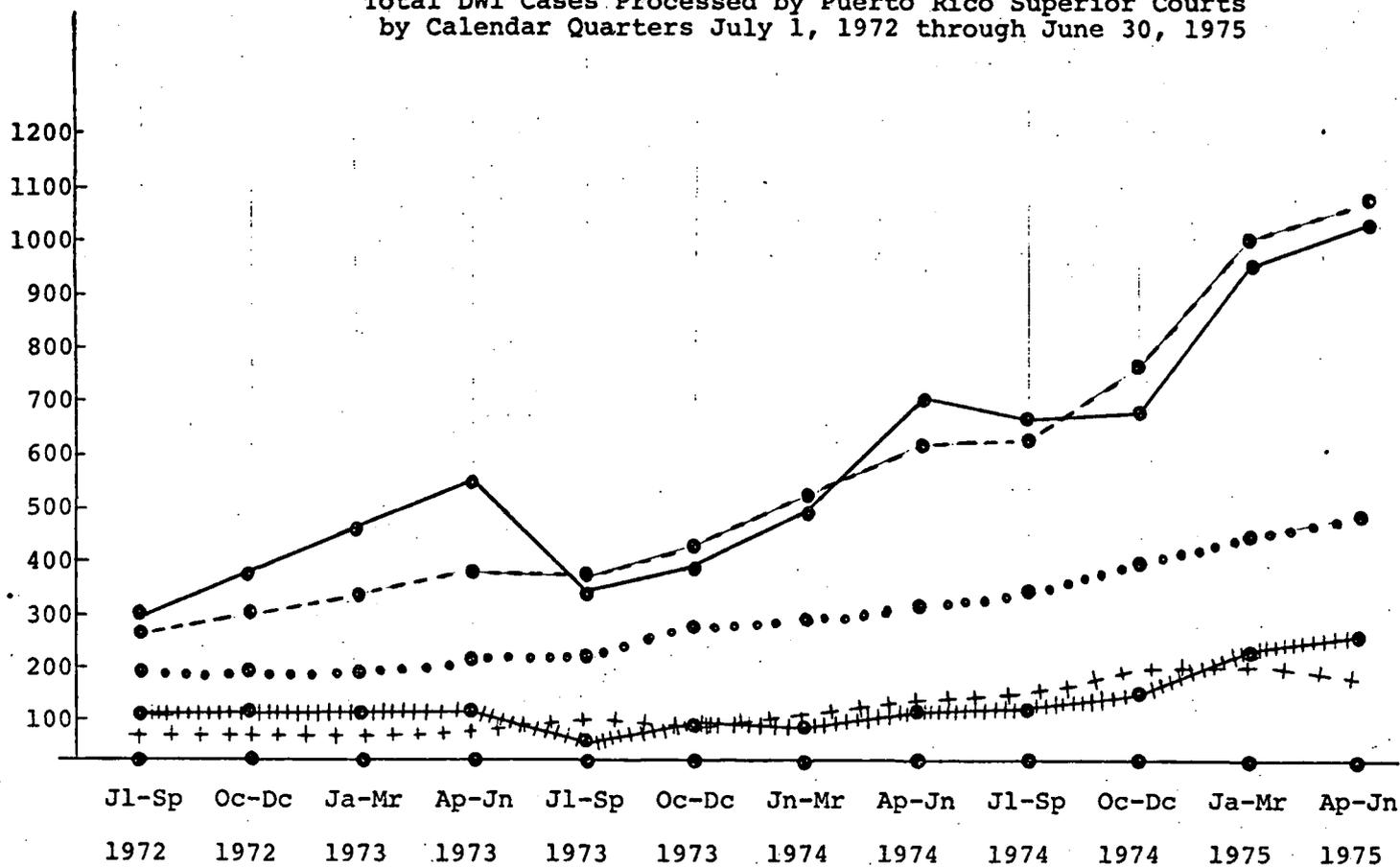
FIGURE A-2

Total DWI Cases Processed by Puerto Rico Superior Courts
by Calendar Quarters July 1, 1972 through June 30, 1975

A-4

Frequency
Polygons

- Guilty Pleas
- - - Not Guilty Pleas
- ||||| Convictions in Contested Cases
- +++ Dismissals
- ... Acquittals



Source: Final Analysis of the Impact of Puerto Rico ASAP on the Traffic Safety System, Analytical Study IV.

FIGURE A-3

Disposition of DWI Cases by Superior Courts of Puerto Rico by Quarter

	<u>Jl-Sp</u> <u>1972</u>	<u>Oc-Dc</u> <u>1972</u>	<u>Ja-Mr</u> <u>1973</u>	<u>Ap-Jn</u> <u>1973</u>	<u>Jl-Sp</u> <u>1973</u>	<u>Oc-Dc</u> <u>1973</u>	<u>Ja-Mr</u> <u>1974</u>	<u>Ap-Jn</u> <u>1974</u>	<u>Jl-Sp</u> <u>1974</u>	<u>Oc-Dc</u> <u>1974</u>	<u>Ja-Mr</u> <u>1975</u>	<u>Ap-Jn</u> <u>1975</u>
Total DWI Cases	522	656	752	894	651	924	1060	1383	1350	1540	1990	2094
Guilty Pleas	284 54.4%	365 55.6%	442 58.8%	516 57.7%	317 48.7%	439 47.4%	522 49.3%	761 55.0%	712 52.7%	733 47.6%	972 48.9%	1012 48.3%
Not Guilty Pleas (Contested Cases)	238 45.6%	291 44.4%	310 41.2%	378 42.3%	334 51.3%	485 52.6%	538 50.7%	622 45.0%	638 47.3%	807 52.4%	1018 51.1%	1082 51.7%
Convictions in Contested Cases Only	75 14.4%	86 13.1%	99 13.2%	93 10.4%	50 7.7%	98 10.6%	82 7.7%	134 9.7%	120 8.9%	150 9.7%	340 17.1%	366 17.5%
Acquittals	123 23.6%	150 22.9%	163 21.7%	203 22.7%	208 32.0%	294 31.7%	307 29.0%	319 23.1%	325 24.1%	371 24.1%	427 21.4%	447 21.4%
Dismissals	40 7.7%	55 8.4%	48 6.4%	82 9.2%	76 11.7%	96 10.4%	149 14.1%	169 12.2%	193 14.3%	286 18.6%	251 12.6%	269 12.8%
Problem Drinkers Referred by Court to Treatment Program	0	0	0	0	17	121	144	309	247	239	352	302

Source: Final Analysis of the Impact of Puerto Rico ASAP on the Traffic Safety System, Analytical Study IV.

FIGURE A-4

Disposition of DWI Cases in the
Superior Courts of Puerto Rico

	<u>FY 69-70</u>	<u>FY 70-71</u>	<u>FY 71-72</u>	<u>FY 72-73</u>	<u>FY 73-74</u>	<u>FY 74-75</u>
DWI Cases arraigned	1387	2438	2536	3595	5879	7414
BAC's obtained	1366	1534	1618	2542	4198	n/a
Convictions	928	1609	1614	1960	2437	4405
Conviction rate	72.9%	70.6%	67.5%	69.0%	59.8%	63.1%
Acquittals	296	539	596	639	1142	1570
Dismissals	46	128	173	225	500	1002
Transfers	3	3	7	5	12	318
Total dispositions	1273	2279	2390	2829	4079	7295
Court DWI Backlog	772	873	962	1707	3300	3419

Source: Final Analysis of the Impact of Puerto Rico ASAP on the Traffic Safety System, Analytical Study IV.

FIGURE A-5

Disposition of All DWI Cases in
Superior Courts of Puerto Rico,
Calendar Years 1973 and 1974

	1973	1974
Total cases prosecuted	3262	5235
Guilty pleas	1729 (53.0%)	2750 (52.5%)
Convictions	2075 (63.6%)	3221 (61.5%)
Acquittals	881 (27.1%)	1316 (25.1%)
Dismissals	306 (9.3%)	692 (13.2%)
Backlog of DWI cases	1699	3486 (105% increase)

Source: Final Analysis of the Impact of Puerto Rico ASAP on the Traffic Safety System, Analytical Study IV.

FIGURE A-6

Disposition of All Contested (Not Guilty Plea)
DWI Cases in Superior Courts of Puerto Rico,
Calendar Years 1973 and 1974

	<u>1973</u>	<u>1974</u>
Contested Cases (Number of Not Guilty Pleas)	1533	2484
Contested Cases as Percent of All Cases Prosecuted	47.0%	47.4%
Convictions among Contested Case	346	470
Conviction Rate for Contested Cases	22.6%	18.9%
Acquittals	881	1316
Acquittals as Percent of Contested Cases	57.5%	53.0%
Dismissals	306	692
Dismissals as Percent of Contested Cases	20.0%	27.9%

Source: Final Analysis of the Impact of Puerto Rico ASAP on the Traffic Safety System, Analytical Study IV.

FIGURE A-7

Presentence Investigation Activity in
Puerto Rico 1973-1975

	1973	1974	1st 6 Mo. 1975	Total
Persons convicted of DWI referred to Probation Officers for PSI	959	3751	2564	7274
Presentence Investi- gations Completed	586	3279	2105	5980
Problem Drinkers Identified	221	1146	759	2124
Social Drinkers Identified	365	2133	1356	3854
Pending Cases	373	472	931	
Problem drinkers referred by courts to driver improve- ment school	226	2034	1306	3566

Note: Some slight discrepancies may be noted between these data and the data reported in quarterly dispositions (Figure). The source for this chart was from a different analytic study than the other chart.

Source: An Evaluation of the Rehabilitation Countermeasure Activities Final Analytical Study VI.

APPENDIX B
BIBLIOGRAPHY

BIBLIOGRAPHY

In addition to the "official" Puerto Rico ASAP publications (i.e. the Detailed Plan and Revisions, Quarterly and Annual Reports, Analytic Studies) the following items proved useful in the production of this report.

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