12-16-1985

Impact of DUI Laws on the Courts

Senate Committee on Judiciary

CALIFORNIA LEGISLATURE

SENATE COMMITTEE ON JUDICIARY

BILL LOCKYER, CHAIRMAN

Interim Hearing on
IMPACT OF DUI LAWS ON THE COURTS

State Building
Oakland, Califoria

December 16, 1985
9:30 - 2:00 p.m.

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INTERIM HEARING

ON

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December 16, 1985
9:30 a.m. to 2:00 p.m.
State Building, Oakland, California

CHAIRMAN: HONORABLE BILL LOCKYER

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HEARING TRANSCRIPT

WITNESSES — PAGE NO.

CHAIRMAN BILL LOCKYER: I'd like to try to begin, if we may. There's a long series of--can we be heard with these microphones? You can hear generally? Okay. Our agenda is fairly lengthy today so I think we should get started and ask everyone with as much completeness, but succinctness as possible, to give us the benefit of their views regarding the drunk driving laws in California and tell us what they think might be done to improve and strengthen them; please deal with the general problem of alcohol and drug abuse in our society and the way it impacts our citizenry in public places, such as streets and highways.

I'm delighted that Senator Marks, , from San Francisco, who is with us today has personally had judicial experience in this and many other areas since he was once on the municipal court bench, and of course, is one of the distinguished Republican members of the State Senate. Thank you, Milton, for joining us.

The agenda has been distributed. If anyone has not found one, they're in the back. We began this project by soliciting the views of all of the municipal court judges in the State of California and numerous organizations, whether it be the district attorneys, the public defenders, Mothers Against Drunk Drivers, and so on. In so doing, we found that there were a variety of views expressed by representatives from the different groups; I hope that we can begin today to take a careful look at each of those particular viewpoints and begin to build a record and some dialogue as to some appropriate legislative steps for the 1986 session of the State Legislature. Of course, session will be beginning in just a couple of weeks.

I would guess that this topic will be among the many issues that are before us. There were six bills that were signed into law last year. There were many, many more bills that had hearings or have been introduced, so I think it's probably fair to predict that it will be a lively discussion during the next session. Senator Marks and I are delighted to be the two, hopefully , to be the two best informed members of the Judiciary Committee so that we can instruct our nine absent colleagues about these matters. We'll begin just going--here's how I'm hope we will do this. I'm hoping we will have each of the judges who have been generous with their time this morning make comments, and then perhaps when we get to the segment which has a group of district attorneys and public defenders, we might actually create some dialogue and interaction between those people; I'm hoping this that might be a constructive way to examine the respective points of view. If there are judges or others who wish to participate in that segment, they're invited to and they don't even have to say whether they came out of defense or prosecution practice before they went to the bench.

I guess we're beginning with Judge Brickner. Good morning. Now, if you can help us to figure out which microphone works and that sort of thing.

JUDGE DAVID BRICKNER: All right. Testing, one, two, three. Is that on?

CHAIRMAN LOCKYER: It seems to be.

JUDGE BRICKNER: Well, my name is David Brickner, I'm a municipal court judge from Orange County, and when I speak here today, of course, I'm speaking only on behalf of myself and not on behalf of my bench or, for all I know, even on behalf of the Orange County Bar but only in terms of my own views and observations and opinions on the drunk driving law.

For your benefit, my background is briefly as follows: I was admitted to the Bar in 1969 and was deputy district attorney for two and-a-half years in early law practice; practiced law on my own for ten years before appointment to the bench, and in that ten years I was mostly a criminal law attorney and also did some civil litigation. The point being, I did a lot of work in the municipal court and most of the work I've done in law has been in the municipal court.

My opinion concerning the drunk driving law is a follows: First of all, the drunk driving reform law I thought was meaningful as first because it seemed to focus a great deal of attention on the issue of drunk driving with the attendant result that the expectations were, in my view, the drunk driving law would become more strict and stringent and possibly some meaningful efforts would be undertaken to curtail drunk driving. As a practitioner during those days and later as a judge, my view quickly changed and, in my opinion, the drunk driving reform law simply boiled down to the same essential punishments with one really new twist--first offenders have to go to a program, first offenders have to have their license restricted for 48 hours. With respect to the latter point restriction and the 48-hour jail term, my opinion is that the restriction for 90 days of driver's driving privilege, except to and from work and program, is virtually meaningless.

In my three years on the bench, I have only seen about two complaints charging an offense, and I think I've got the code section right, 14601.2b, never have I seen a prosecution. Indeed, prosecution for such an offense would be very difficult. I suggest, therefore, that that aspect of the law, though it is aimed at a meaningful issue, is without importance.

Therefore, my opinion as to the impact as to first offenders is essentially the same. Part of this is true because the judiciary, for their own reasons, have determined that the more efficacious way to sentence drunk drivers is to sentence them to the minimum permissible term and fine. I suggest to you that this is true because most judges feel, and I do not happen to share this opinion, most judges feel that unless they sentence to as minimal a punishment as possible, they fear that persons will be inclined to plead not guilty and massive jury trials will result. For reasons which I may touch on later, I don't happen to share that opinion, but the net result is as to the first offender, I suggest, that the drunk driving reform law has not changed much.

As to the second offender, I would give it a "C". I think the so-called SB 38 which involved, as I understand it, meaningful abstention from driving and drinking, and drinking utterly, is a good idea. That is probably helpful to the extent that any program can help. Also, the issue of whether a license should be restricted or suspended for a year is an open question. My view is that a stronger punishment through absolute suspension on a second offense is probably wiser and has a greater deterrent effect.

As to the...

SENATOR MILTON MARKS: Can I ask you a question?

JUDGE BRICKNER: Yes, sir.

SENATOR MARKS: I was around, I'm sorry to say, the time the "implied consent" bill was passed in the Legislature a long time ago. If I understand the implied consent law, the second time, not the first time, the second time you get a traffic ticket and you refuse to take the test, you lose your license.

JUDGE BRICKNER: Right.

SENATOR MARKS: Now, is there anything in the law now that anyway changes that?

JUDGE BRICKNER: Nothing. I'm not talking about the refusal issue. As you know, a first offender who is apprehended and who refuses to take a test suffers DMV license suspension for six months if he has a prior conviction within one year. I'm talking about the judicial punishment of a second offender which if they do not go to the program, is a one-year license suspension, and if they do go to the SB 38 program, they are reprieved from that and their license is restricted instead. So the legal framework of which I'm speaking is different from the implied consent issue.

With respect to the third offender, driving under the influence matters under the new law; I think the law probably went too far. By that, I suggest the following: As you well know, the third offender law requires drivers' license revocation and if my memory is correct, it's three years. That is as it should be. It also requires a mandatory 120-day jail term. My view is that that is too much jail time. Why do I say that? Because it doesn't feel right to me. I think it's too much. I think there's nothing you can teach a driver under the influence that he can't learn in 90 days of custody. That is pure opinion. I don't have any studies or other emperical information to back it up, but I think 120 days is too much time because by and large, the person who drives under the influence is in other respects a law-abiding person. That is probably self-evident that a third offender is a person who's addicted to alcohol but who's offenses against society are probably no greater than that. If jail time can cure addition, which I doubt that it can, I don't think you need as much as 120 days. If jail time cannot cure addiction, then a mandatory minimum becomes even less meaningful, but I suggest therefore that 120 days is simply too much time, it locks people up for a long time, it crowds jails, and I don't think it accomplishes any meaningful objective that the drunk driving law is aimed at.

Concerning, if I may, I'd like to suggest what I think the law should be. I think first of all there should be greater emphasis on the issue of the first offender because at every cocktail party, at every social gathering, and every person who's of drinking age, and those even who are not, the central question is who cares about whether or not you drink and drive? I believe the Legislature, and by this of course, I am referring, of course, to the matter of peer presure--the Legislature cannot legislate these matters nor can the judiciary create peer values, but they can help.

In that regard, I suggest the following: I don't think the Legislature has unequivocally condemned drunk driving the way, as I sense public opinion, the Legislature should. In that regard, I think that the Legislature should take a position with respect to first offenders because basically, your first offense is it costs you losts of money, but other than that, it's a pass. You don't have to go to jail, you don't have to go to jail. They don't do bad things to you. They just make you pay lots of money and pretend that you're not driving against your restriction, so my thought is this: the

Legislature should say unequivocally that drunk driving is bad and must be condemned, and in so doing this should enact a law that creates a mandatory, non-negotiable, absolutely unavoidable jail term for first offenders. The amount of that jail term, of course, is something about which reasonable persons may differ.

My view is that you would really get people's attention if you made it a mandatory, non-negotiable 30 days. I realize that's a rather extreme position and perhaps nobody would support that, but even if you said it was five days...

SENATOR MARKS: I used to be a judge, so I'm speaking as a judge, and I used to handle all the drunk driving cases in San Francisco, which there were one or two. How do you make it non-negotiable?

JUDGE BRICKNER: Just like the 11550's. Remember the people you sent to 90 days for heroin influence? Same thing. I'm sure you know that code section says, you know, whatever you're doing, whatever you're thinking, don't even think about giving this person less than 90 days because it ain't legal. Remember, it says that as a probation term, if probation's imposed or granted, it still has to include a 90-day term. And indeed, the third offender drunk driving law today says that.

SENATOR MARKS: You really think you can make it non-negotiable?

JUDGE BRICKNER: Yes, to the extent that anything is non-negotiable. By that I mean if there is a plea or conviction to the offense, then the law requires the judge to impose the mandatory minimum time. If the offense is changed, of course, that becomes different.

SENATOR MARKS: What I'm concerned with is you will get a defense counsel and a prosecutor who will agree upon something, they'll modify it in some way and it really would not be non-negotiable.

JUDGE BRICKNER: I agree. If that should happen, the effect of that particular approach would be emasculated. My only suggestion is that that situation is the same as it has been since time immemorial with respect to DA's and defense counsel. If they agree to change the code section and amend it, pardon me, amend the complaint and charge different offenses, they're going to get around the law. My view is that the DA's, ever since 1982, have been, for better or for worse, absolutely uswervingly unwilling to negotiate drunk driving cases in our county at least, unless there were highly unusual or exceptional circumstances. But I agree, it depends on the DA to a great extent.

SENATOR MARKS: I think it should be non-negotiable, but I'm concerned that it will, in effect, become not non-negotiable.

JUDGE BRICKNER: Well, to the extent that the parties may agree on something to the contrary that the court would approve--of course, you know any plea bargain has got to be approved by the judge; but I agree that it is possible that parties could negotiate something different that a judge would find acceptable, but at least the essential point, or one of the essential points, has been made which is that the Legislature has declared itself on this subject and they've declared, "Yes, this isn't the most evil thing that's ever occurred, but it is a crime that we want to cease. We want you to understand we're serious."

Now in that regard I'd like to also suggest, by the way, the issue of the jail term, as I've said, is

probably not cast in concrete in anybody's mind. Maybe a five-day jail term that's absolutely, that they are absolutely going to get, is enough. I don't know; I would simply defer to the Legislature's wisdom on that. Another point though that I believe is imperative: I do not think persons convicted of drunk driving should be handed back their drivers' license. They're drivers' license should be sacrificed for at least six months, period.

And the final point that I'd like to suggest are the programs. Like every county, we have programs and I send people to programs by the shovel full. Most of them complete the programs and I think a lot of people get a lot out of them, but my thought is this: I suggest that the judiciary's main, the justice system's main objective is not to act as an educational resource for person's who are charged with more or less non-serious crimes. I think a more concise, simple, and trimmed legislative plan is better. Eliminate programs, in other words. I suggest this for two reasons.

First of all, the programs show a lack, in my view, of unequivocal commitment on the part of the Legislature and the people to declare whether this is or isn't a bad thing that you're doing by committing the crime of drunk driving. And because if you go to somebody and say, you have just committed a crime, you're going to be punished by jail and fines, but by the way, we're not really going to do any of that to you, instead, we're going to send you to a class. I believe that saps tremendously the vigor of the law that is aimed at trying to prevent and deter the commission of a crime.

Second, I'm not at all convinced that the programs help that much, that they deter people. There's no way in the world that the program's going to deter a potential drunk driver and that's the main thing that our law is not aimed at at all. He who thinks about drinking and driving will reflect on the mandatory jail and the mandatory license laws before he does it. Today, he has no reason to think about either one of those because they're not going to happen to him.

Finally, as to programs in my court and I would suggest that my court is more or less typical--it's a 10-judge court of about a 250,000 person judicial district. We spend a lot of time sending people back to the class. "Why didn't you go to the class?" "Why should you not be held in violation of probation?", and so on. We spend a lot of judicial time nursing folks through these classes. I think that's a waste of our time, and frankly, of their's.

With respect to what the law ought to be concerning second offenders, I think it's about right except that there should be a mandatory jail term that is above the first offender, and my only thought is with respect to the third offense, I suggest the 120-day jail term is too much.

CHAIRMAN LOCKYER: Judge, we found that there seems to be sort of sentencing patterns that vary a bit from court-to-court, or different counties or judicial districts, so I'm trying to make sure that we understand in each county what the general sentencing rule, if that's an okay word to use, might be. In Orange, it seems to be generally first offense--either the 48 or license? Is that what your practice has been there?

JUDGE BRICKNER: All right. In Orange County in general terms it is as follows: Three years informal probation, $390 fine, 90-day license restriction, go to the program.

CHAIRMAN LOCKYER: Okay. On the first offense? Okay.

JUDGE BRICKNER: Second offenses are all over the map.

CHAIRMAN LOCKYER: Some considerable variety there?

JUDGE BRICKNER: Yes. And that's good because a fresh second offense justifies a greater jail term than an old one and so there is a great variety of the second offenders, and the third offenders, once again, are locked down. Nobody, unless there's an accident or a fourth or fifth drunk driving, very few judges, I suggest, impose more than 120, because as I say, 120 is a whole bushel of time.

One final comment I would like to make. It will probably be said that if there is a mandatory jail term to be imposed upon drivers under the influence on a first offense or first conviction, that panic will reign in the courthouses and that the justice system will be destroyed because all these folks will plead not guilty and want jury trials. I really don't recall what the Alameda study says on that. I know that it focuses on that concern, but I can't recall what the conclusion was. Let me just tell you in my experience as a defense lawyer, as a DA, and as a judge in Orange County, that by and large these increases in punishment do not in any significant way affect the number of jury trials tried. It seems to me that there is a rule of nature that applies-- several rules. First of all, basically a drunk driver may be distinct among others, believes he's guilty, by and large, and finds it morally acceptable to acknowledge guilt. Second, I believe the unfortunate economic realities of life make it difficult for drunk drivers to litigate their cases. Public defenders, because of heavy caseloads, are not abashed in earnestly counseling persons to plead guilty when the evidence against them is manifest, and private attorneys are of the same inclination, by and large. Also, the financial aspect of trying your case with private representation can be pretty frightening to a person charged with driving under the influence who knows by virtue of his blood alcohol level that the chances of conviction are overwhelming.

Under the new first offender law, the pleas are about the same, and indeed, this is in the face of a much stiffened DA's office who require pleas of guilty straight up to relatively low blood alcohols levels, and they get them. Another example is that the third offenders happily flood to the counsel table to fill out their constitutional rights forms and take the 120 days, and the so-called 11550s, which are the persons who face mandatory 90 days for heroin influence. They plead in droves and so, for some reason, there does not seem to be, in my view, a direct connection between severity of punishment, so long as it is the inevitable minimum, and trial court congestion. So with that, I will submit or answer questions.

CHAIRMAN LOCKYER: Thank you very much, Judge. I guess Judge Cunningham is next.

JUDGE DOUGLAS CUNNINGHAM: Members, my name is Douglas Cunningham. I have been before your committee any number of times in a prior incarnation and in a different branch of government. I was, as you remember, for 7 and-a-half years the executive director of the Office of Criminal Justice Planning in Sacramento, and have for the past three years been practicing the same craft that Judge Brickner just spoke about as judge of the municipal court in Mt. Diablo.

CHAIRMAN LOCKYER: We miss you in your former role.

JUDGE CUNNINGHAM: Well, perhaps the Democratic side misses any department director of

a Democratic administration. Perhaps Milton Marks misses me as a registered Republican. I'm not sure.

SENATOR MARKS: I'm not that Republican. (Laughs.)

CHAIRMAN LOCKYER: Yes, I hesitated when I said it. It's...

SENATOR MARKS: I'm glad. I do miss you.

JUDGE CUNNINGHAM: Thank you. I'm not going to attempt to talk about all of the thoughts that come to mind having observed the case flow of DUI cases for three years, other than to indicate that in my estimate it accounts for about 50 percent of the judges workload. It's by no means 50 percent of the misdemeanor cases we handle, but when you add in the amount of time to voir dire juries for trials, and the very large portion of jury trials that are DUI cases, it adds up to about 50 percent. So we spend about half of our time wondering what to do better in the area of DUI.

Let me tell you at the outset, because you had asked...

CHAIRMAN LOCKYER: It seems to be an extraordinarily expensive way for the system to treat this problem. There's a lot of judicial resources, lawyers, public defenders, district attorneys, judges, clerks, etc., time going in to that one issue, that one kind of complaint.

JUDGE CUNNINGHAM: I'm not going to say, Mr. Chairman, that the amount of time that we spend on it is disporportionate to the size of the problem in the community. I think if you totaled up the total cost of DUI in the community, injury, enforcement efforts, the death and destruction that we've talked about and see in the case reports so frequently, it wouldn't be a disproportionate devotion of time.

Let me lay out for you very quickly what the standard penalty is in the court in our part of the county. Our part of the county is the northern part of Central Contra Costa County, comprising Concord, Pleasant Hill, Martinez, and some other communities in between. What I say for that part of the county operates also by and large for Walnut Creek, Lafayette, Danville, San Ramon area, so-called Central County.

First time offender will be placed on, as you well understood because it's required by law, three years summary court probation. We invariably impose the two days, the 48 hours; I say "invariably." There are exceptions for an ill or injured person or an out-of-state resident and in almost every case where we make an exception, we then run the fine up to the maximum. So if a person wants to get on a plane and go back to Missouri, or wherever, they can do that without doing the two days, but it will cost them fines and penalty assessments in excess of $850 instead of the typical total, which is $675, which includes, of course, the penalty assessments. A different program assignment is made based on blood alcohol level. At 2.0 or higher it's a six-months program costing about $400 out-of-pocket to the defendant. On less than 2.0 it is an 18-hour program costing about $100.

The district attorney is very stingy in our court with the so-called "wet, reckless reduction" under 23103.5. It is simply not available in refusal cases, and it is not available if the higher of the recorded blood alcohol levels is .12 or above. So it's really only available to the 1.0 and 1.011 area defendant. On a wet and reckless we impose a fine of about $295 and require the level one, the 18-hour DUI school. We do that as a condition of probation which has in it the standard conditions of

probation, not driving without a license or insurance, not refusing a test if rearrested, and not driving with any measurable blood alcohol level.

I was glad that the Legislature mandated several of those conditions of long-term probation. We had in our court developed, developed them earlier, and I would specifically recommend to the Legislature that it prohibit driving without insurance or without evidence of insurance in the vehicle as a condition of DUI probation. I recognize that the appellate courts have cast some clouds upon the Legislature's efforts in the area of mandatory insurance, but I doubt very strongly whether the courts would interfere with a reasonable requirement which was voluntary in the sense that it was accepted as a condition of probation.

On second-time conviction, the defendant is strongly encouraged to do SB 38. If he or she does SB 38, it's ten days county jail. If they do not do SB 38, it's 30 and the judges of our court are quite firm on that. We have, by the way, consulted among ourselves. We do almost on a monthly, if not more frequent basis, to be sure that the sentencing patterns are consistent.

On third-time DUI, the judges of our courts for quite a while after the publishing of the Hinton Decision, persisted in giving defendants the option of residential alcohol treatment in lieu of the 120-day minimum. We then got straightened out, not by the district attorney, not by MADD, but by some of our fellow judges who were concerned that there was shopping going, in that cases were being transferred to our district by individuals who wanted the opportunity to do residential alcohol treatment. I personally feel, in contrast to Judge Brickner, that there's nothing wrong with the 120 days, which frankly becomes $135 if the fine is commuted. But I feel, and when I say I, I'm speaking personally, of course, although I don't think you'd find much difference among the judges of our court on this point, I would feel that the judge ought to have the option in the third-time drunk driver of assigning residential alcohol recovery programming as a substitute for jail time.

SENATOR MARKS: May I ask you a question?

JUDGE CUNNINGHAM: Yes, Senator Marks.

SENATOR MARKS: Residential treatment has always bothered me. How would it operate? How, under what, how would a person be under supervision residentially?

JUDGE CUNNINGHAM: There are several of these programs in operation in the county right now. They are overseen by the county alcohol program staff. They have a variety of formats. Most of there are like group homes with six or so individuals...

SENATOR MARKS: In your own residence or in someone else's residence?

JUDGE CUNNINGHAM: No. You're in a facility with a staff, a 24-hour staff, and the facility controls the coming and going and they are very quick to bring to the court's attention if the person leaves the facility or breaks the rules, such as by having alcohol smuggled in. They are then returned to court and serve the balance of that term if the option has been given at the rehabilitation center or at the farm.

Now, the mention of the program touches upon an area that I really wanted to stress in the time allowed, and that is the relationship between the disease of alcoholism and the problem of drunk driving. I am persuaded that while there may be a substantial number of first-time DUI defendants,

the partygoer, the social drinker, you can see these cases in the police report, both from the absence of prior alcohol-related offenses, not just drunk driving but other alcohol-related offenses, and from the circumstances; on the way home from a wedding reception, a party, a fraternity party, these kinds of setting trigger a number of drunk driving arrests which I'm not going to suggest are related to the disease of alcoholism. But if a person has two driving under the influence cases, or has the .20 or higher blood alcohol level, or has a DUI case within 5 years of the two priors, or has a DUI case within one year of one prior, then the chances start getting very strong that we're dealing with a person who's underlying problem will be alcohol-dependency in the medical sense.

We have developed in our court what we feel is an effective way of early intervention in these cases. If a person falls into the categories I just mentioned, going over them again: Two DUI cases, two or more pending, not yet adjudicated, either in our court or any other court of which we have information we have on each judge's bench a computer directly connecting us to a county-wide data base, so we feel sometimes like reservations agents at the airline check-in counter, but it does get us information that we use. So, two or more cases pending, a prior within a year, more than one prior. There are some other special situation cases as well, such as a 3.0 or higher blood alcohol level even if there is no prior, and then these people are given a choice. They are either remanded to custody on bail of $10,000, or they accept specified conditions of pretrial release on their own recognizance. These conditions are: personal appearance at every court hearing unless excused; abstinence from alcohol; attendance not less often than two times a week at an outpatient alcohol treatment program which can be a regular Alcoholic's Anonymous fellowship chapter, and a court-prepared form for making written record of the alcohol treatment participation.

If the person doesn't appear at one of these intervening appearances prior to the disposition of the case show up, show up with the written record, or show up with a record that fails to show compliance with the two-time a week without some pretty good reason--an out-of-state traveler or the like might qualify, then they're remanded and it's a rare week in which some multiple case DUI defendant is not remanded essentially right out of the arms of the attorney because of failure to comply.

Since we instituted this program in August of '84, approximately 300, 290-some cases have been handled through this supervised or court-controlled pretrial release condition program. We think it's effective. To my memory, none of the cases on which we placed the defendant on these pretrial release conditions have gone to trial, that is, everyone of them is either still pending or the defendant has, through means of pleading guilty, accepted responsibility for their conduct.

The other linkage I want to make to the disease of alcoholism is in the area of conditions of probation. I don't feel that an alcoholic is a person who is subject to deterrents. The thought processes of a person affected by alcoholism don't react the way we think a citizen would react with threat of punishment. Some are perfectly willing to go to the incapacitative goal of sentencing that the Legislature accepted in the area of the career criminal program, and say if we can't deter the alcoholic driver, at least we can take the alcoholic driver off the road for a significant period of time. There are 120-plus people in Contra Costa County in jail based on DUI sentences, and that's of

a total correctional population at county level in the vicinity of 800 to 900, so it's a significant part of the jail caseload. But we feel that a residential, or I feel that a residential treatment setting can be just as effective as the work furlough center or the county farm as a way to incapacitate, that is keep the drunk driver, the alcoholic drunk driver off the road.

I will recommend, or am recommending, that the Legislature give municipal court judges in DUI cases the power to grant five years of probation. I say that because three years may not be enough time to really set in place the incentives to sobriety and changing life styles, as well as the preventive effect of mandatory test-taking, not driving with any measurable amount of alcohol, and as I've recommended, the requirement of insurance. I think following drunk driving conviction, a five-year period of these kinds of supervision, which don't require probation officer supervision, they're basically loaded into the computer and a ticket followed a DUI stop, followed by a refusal, or even a test showing a .08 or .09, which wouldn't result in a new case being filed may well be grounds to pull back on the leash of the person who's on long-term probation. I think that the effect and the roots of the disease of alcoholism are long-term and a five-year grant of probation would be a reasonable way, as I say, of creating some long-term incentives to sobriety and disincentives to drinking and driving.

CHAIRMAN LOCKYER: It's a three-year maximum currently.

JUDGE CUNNINGHAM: Yes. The maximum period that a municipal court can impose probation or grant probation in any case is now three years. I'm not recommending that it be made five years across the board, but for DUI cases, either DUI with or without an injury.

Some questions were asked of Judge Brickner having to do with the handling of the cases in the caseload context. I would say that we have experienced relatively little impact in terms of the trial calendar. A person being arrainged today for driving under the influence, pleading guilty, pleading not guilty rather, and demanding a jury trial would be set for trial sometime in March or April. The chances would be about 50-50 that the person would go out on their first setting, if not the first setting, they would go out on the second setting 30 to 60 days later. A DUI case with priors would almost certainly go out on a first setting because we give priority, irrespective of age of case, in those cases where we feel community safety may really be at stake.

Now, what do the juries do? Well, they convict. We took during calendar 1984 about 100, maybe 102, DUI cases before juries. Ours is a four-judge court which has about the same 250,000 population as Judge Brickner's. I'll have to find out how he gets 10 judges with the same population and we have four, but maybe it's our juries that make the difference. There were 90 cases in which the juries came back with a verdict on counts of driving under the influence, so 10 or 11 resulted in mistrials. In all but 11, the verdict was guilty. Those 11 cases consisted of 8 refusals and 3 cases in which some chemical test, blood, breath or urine result, was available. In 2 of those cases with blood alcohol measurements, 2 of the 3 acquittals, the arresting officer did not observe driving by the defendant, it was a solo accident or something of that nature. So that means that in those cases in which the jury was presented evidence of blood alcohol result over 1.0 and the arresting officer observed personally the driving, there was only one acquittal all year long before all of the four

judges of our court, and that's why...

CHAIRMAN LOCKYER: Are there similar statistics if we were to take other parts of the county? More urban, for example?

JUDGE CUNNINGHAM: I would say that the statistics in the Danville/Walnut Creek court district would probably be even more heavily weighted toward conviction by juries than the 87 percent or so in our court.

CHAIRMAN LOCKYER: How about Richmond?

JUDGE CUNNINGHAM: I can't speak to that, and I would say that in West County we do understand that the district attorney is more liberal with giving the reckless dispostion and I assume that speaks to the different attitude of the juries. So, the final suggestion is that your evaluation of the functioning of the law and of the possibility of changes does have to take into account differences between communities in the state and the courts that serve them, and what might be very well justified in a district where the juries don't convict close to all the time could be very disruptive to the pattern of cases in a court where the juries speak for a community that cares very strongly about DUI.

SENATOR MARKS: Let me ask just one question. When I was a judge a long time ago, 1966, I realize the law has been changed drastically since that time, but I can recall that rather frequently that prominent attorneys would come up to me, representing very prominent people in our city, and they would say to me something to the instance that "this person employes 100 people or 200 people and this person cannot afford to go to jail." He said to me unsuccesfully, because I felt that anybody who was convicted should go to jail under the proper circumstances; but I often wondered whether or not other judges might have been affected by the pleadings of these people and I just wondered what your experience has been because it's a very difficult situation when you get somebody who comes up to you and says that this person is president of General Motors, or whatever--this is not an isolated instance.

CHAIRMAN LOCKYER: That's in my district. Be careful. (Laughs.)

SENATOR MARKS: Ford. What do you do about a situation like that? Don't you get pleadings like that? I get them all the time from very prominent attorneys. I did get them.

JUDGE CUNNINGHAM: Well, Senator Marks, saying go to jail now is a lot different from the old Monopoly board injunction of go staight and don't cross "go" and don't "collect $200." Saying go to jail now simply invokes what then become a range of options. Under state law, the sheriff, with or without the consent of the sentencing judge, may place a person sentenced for 15 days or less on work alternative sentencing. This is an effective program in our county and I think it's well administered and it administers to the defendant the dose of punishment at much less cost, much less risk to the state and to the defendant than actual time in the slammer would be. Concomitantly, of course, much less deterrent value, so the work alternative program as it operates in our county is well supported by the judges and it certainly mitigates what I've indicated as the 48-hour minimum or the 10-day minimum on the SB 38 program. If the sentence is longer than 15 days, the sheriff may place, providing the judge doesn't veto, on work alternative placement, but more likely it's going to be a

work furlough setting. So the person you're talking about, if the sentence is less than 15 days, they're simply told to report to the sheriff's work alternative assignment sergeant and no interference with the livelihood of the person or the employees is going to be filled. If the person is regularly employed and is eligible for work furlough, then the sentencing judge will give a surrender date 4 or 5 weeks off to permit processing of the work furlough application and I would say that would be, we'd really look very skeptically if we're talking about sentencing in the misdemeanor range of a person who was enough of a pillar in the community to employ 15 people, that's some legal enterprise.

SENATOR MARKS: I'm glad to hear that. I thought it was very unfair to say to a judge that this person should not go to jail because he employs a lot of people, whereas he was just as drunk as the person who didn't, who was working for somebody else, and I found terribly unfair that these people of some prominence would come up to me and ask for help.

JUDGE CUNNINGHAM: I don't think, Senator Marks, that that would be a problem. I have not experienced that problem, again, because of the sentencing alternatives after the jail sentences have been...

CHAIRMAN LOCKYER: Have you recently found them very active in sheriff campaigns.

SENATOR MARKS: They're very active in various activities and I will not mention the names, but they would be names known to people.

CHAIRMAN LOCKYER: Doug, is there anything further you want to--okay. Milton?

JUDGE CUNNINGHAM: No. Thank you very much.

SENATOR MARKS: No.

CHAIRMAN LOCKYER: Thank you very much. Okay, Judge Kaufman, I guess, is next. Good morning.

JUDGE BERNARD KAUFMAN: There are a number of things I wanted to take up this morning. I've been before your committee--I don't know if you remember me--I had the privilege of coming before your committee and several bills came out of your committee last year. I would like to commence by saying this, that I would hope that you would take as a part of this particular meeting the testimony that was taken by the Senate Select Committee on Alcohol and Drugs that's chaired by Senator Seymour of Orange County...

CHAIRMAN LOCKYER: We have that, yes.

JUDGE KAUFMAN: If you will, this is on the 25th, I believe, of this month. I believe that you will find some extremely excellent material coming forth from judges and other persons that are interested in this particular area and I believe that you will find a lot of backup to what the two former speakers had to say about alcohol and alcohol problems. I believe Senator Seymour will again sponsor legislation in the areas that came before you before. If you recall, one of them was in the area of judicial education.

I come to you today as the chairman of the Drinking Driver Committee of Los Angeles County. It's a standing committee of Los Angeles County judges that's been a standing committee for almost 9 years; I've been on the bench about 10. I'm a typical example of a judge coming on not knowing the first thing about alcohol, drugs, or basically, drunk driving. I was not a prosecutor or defense counsel.

It's taken a long time to learn just exactly what is involved in this whole area of drunk driving. I believe I know a little bit. Right now, this last week, 4 judges from Los Angeles County just went to Reno to the state, National Judicial College, for a one-week course specifically to get them to understand the problems, and some of them were very sophisticated judges, several prosecutors, former prosecutors. They understand as well as everyone else, I believe, that on the judiciary that you have to educate a judge in certain areas that they have no prior expertise, generally speaking.

CHAIRMAN LOCKYER: What are they?

JUDGE KAUFMAN: Those are basically, what do you do with an alcoholic? What is an alcoholic? Just what does it mean to have a .10? It's just too often that you have someone come up, and I believe one of the problems that you're facing in certain counties is you've got so many of these .10 cases. It's a .10 judge. What's the big deal? I don't think too many people in this room can get to .10. I can't get to a .10 and function. It's just too much. I am not that sophisticated and I've been drinking for a long time and I'm not about to tell you that I don't drink, but I do not believe I can get to a .10 and I do not believe most of the people in this room can get to a .10 and yet that is the common thing that comes before every judge.

CHAIRMAN LOCKYER: So your point is, that's a serious impairment in most instances.

JUDGE KAUFMAN: It's a serious impairment. You can't get people to believe it. One of the most essential things that you do when you go to a college program, such as the National program, is to acquaint the judges with the fact of life of just what it is to get to a .10. Once a judge is convinced of that, then you're going to have a far beter judiciary. I must say, the judge that spoke from Contra Costa--I'm familiar with the judges in that county. You have a pretty high expertise in that county of judges, and they have a far more sophisticated system that you have in other counties in that they have early on realized that you just can't deal with all .10 offenders, or first offenders, on the same basis. They really aren't different and they have several programs specifically designed to that and they get down to the heart of it and they do a lot of work in that particular area.

Now, in conjunction with that, I would suggest this, that you--in order to fund this, the problem that we ran into with our bills that came out of Senate Judiciary, the problem that we had...

CHAIRMAN LOCKYER: That passed and was vetoed, wasn't it?

JUDGE KAUFMAN: I know. It's funny. Was the money aspect.

CHAIRMAN LOCKYER: The money in it was...

JUDGE KAUFMAN: It wasn't a question of what was in the bill.

CHAIRMAN LOCKYER: How much money was appropriated?

JUDGE KAUFMAN: One of them was only $100,000 for educating judges. It got down from a $300,000 project to $100,000, but I understand...

CHAIRMAN LOCKYER: The Governor is pretty tight.

JUDGE KAUFMAN: I'm not questioning that, I'm not questioning that.

CHAIRMAN LOCKYER: Well, I am.

JUDGE KAUFMAN: The question is that he had a lot of other things to say and there was a lot of other bills that went down, including this judges' salary increases.

SENATOR MARKS: He vetoed five of my bills.

JUDGE KAUFMAN: Okay. I would say...

SENATOR MARKS: On other subjects.

JUDGE KAUFMAN: I'm hoping that we'll be able to ...

CHAIRMAN LOCKYER: So you want to try with that again.

JUDGE KAUFMAN: I'll try again only with this understanding and it's as long as the senator from Orange County would go along with it. I am suggesting that we find a source and that the source of funding be increase the penalty assessment on drunk driving from it's present 70 percent to 100 percent. Now, and I would make it exclusively to be used in the area of drunk driving, I would, in other words, you have a 70 percent penalty assessment now, I would raise it up to the other 30 percent, I would break it down somewhere. I would use approximately 5 percent for judicial education of judges throughout the State of California and I would use the other 25 percent for setting up systems within the county in order for the court to determine, as the first speaker said, who is your problem drinker as he comes through.

Our county is the beneficiary of a substantial grant from the Office of Traffic Safety, and we're convinced, and so is the Office of Traffic Safety, that we're on the right track. Our goal in Los Angeles County with this grant is to screen people on the first time around. That's the only way you're going to do it and we have a project that's commenced in Long Beach that is a substantial court with over 5,000 drunk driving arrests during the years, it's a very substantial metropolitan court, and we have a strong judge or a number of judges who are willing to work in that area and they are finding that they are achieving substantial results in screening those first offenders to determine exactly who is the potential second offender or third offender.

So, I would strongly suggest that I hope we will be able to go back and work on both of those projects of allowing the courts to have in the courthouse personnel and people who will follow up for the judge, make those screening determinations and let the judge have alternatives. One of the things that the...

CHAIRMAN LOCKYER: Now when you screen, what are you screening, in and out?

JUDGE KAUFMAN: You're screening for substance of these problems, not only alcohol, but drugs. There's a substantial area of drug use in all drunk driving cases. You are screening for their potential as to whether or not they are problem drinkers or whether or not they're an alcoholic. Basically, one of the things you'll do you'll screen out who are your social drinkers.

CHAIRMAN LOCKYER: Okay.

JUDGE KAUFMAN: Once you get that out of the way, then you know who you have to deal with. A reporter asked me, "How do you find out about some of these people who were driving under the influence." You have the celebrated case that started MADD, "how do you find that person?" The only way you're going to deal with that person or find him early one is to have someone get in there to screen to find out if he has a problem. Then it's up to the judge and then you have to allow the judge certain alternatives. You have to give the judge the ability to deal with those persons instead of putting them in slots, because that's basically what the present system does. If it's a first offense,

he goes in this slot; if it's a second offense, he goes in another slot. Basically, what the legislative scheme right now is is taking a lot of the alternatives away from judges and in that regard, I might say that what happens is you don't have a lot--you have practically no jail on the first offense, you have varying amounts the second time, and then on the third time you dump them in jail for a minimum of 120 days.

You consider giving them the old carrot and stick approach and getting the plea up front, which would be up to the legislative branch to determine just how much credit you'd give for time served, but get them into the treatment course at the earliest possible time within a matter of 30 days if they're going to take advantage of it. If they're going to take advantage of this credit for time served, they must get into it early on instead of dragging it out for a year as they are capable of doing, and then asking you to allow them some kind of credit if that would be otherwise available.

You asked for some other suggestions with respect to alternatives, I don't have too many other specific suggestions. I would be happy to answer certain questions that you have with respect to what other legislation should take place, but the ones that I have mentioned so far, I believe should be on the top.

CHAIRMAN LOCKYER: Judge, is it your practice, is there sort of an effort to have consistent sentences in your district and so you could tell us what typical penalties have been? Are they somewhat like the ones we have heard from...?

JUDGE KAUFMAN: I think that what you find throughout the state is what the Legislature says is the bottom line. In other words, in your heavy metropolitan courts, even in your lesser volume courts, the bottom line is what the Legislature says. There's an alternative to jail which are the programs. They take the alternative to jail, they go to the program, they avoid going to jail. I'm not a strong advocate of everybody going to jail on a first offense, even though if that was the legislative policy, it could be carried out. You will have a speaker later on this morning from the Office of Planning and Research in Los Angeles County that will basically describe to you what Los Angeles, with 100,000 arrests each year, has gone through and basically, we've had a curve. We've had a substantial bottleneck up in the beginning when the '82 law went into effect, and as it's progressed we've been able to handle it. Municipal courts, I might say, have a unique way of handling anything you throw at them.

SENATOR MARKS: That's true.

JUDGE KAUFMAN: It is. It's true and I think that Senator Marks, formerly a judge, understands exactly what I'm saying. I never cease to marvel at the ability of the municipal court to absorb whatever you throw at them and I might suggest this further. This is a little aside. I think Senate Judiciary is going to see, or hopefully would see, a lot of changes going on in terms of what cases are heard where. I also sit on the California Judges' Executive Board and I've been privy to a lot of reports coming back and forth. In fact, the Los Angeles County judges just met with representatives of the Governor's office in terms of what he is thinking about in terms of implementing, and I would say that if ever there was a time, that the time is right now for making changes in the cases that go through the system and what courts will handle what: whether it goes

from traffic, whether it goes from drunk driving, whether it's with respect to felonies or any of these matters, the time is right now. I think the Governor may very well take the lead. I'm hopeful that he will; believe me, I don't have any questions because he vetoed a bill that I thought he never would veto, but I think the time is right now for the changes to take place and I believe you will find that the judiciary will be right out there in the forefront with you. If you will come to the judiciary for their advice and input and you have the director of the California Judges' Executive Committee right here with you today, Connie Dove. I think she would back me up even though she's not a speaker today. I think the time is right and I think that the judges will back you up. Other than that, Senators, I will be back up there.

CHAIRMAN LOCKYER: We'll see you then.

JUDGE KAUFMAN: I'll see you then. You were very gracious and kind to me then. I hope to be able to get some better success in the future.

SENATOR MARKS: We're always gracious and kind.

JUDGE KAUFMAN: Well, it's always...

SENATOR MARKS: We may not do what you want, but...

JUDGE KAUFMAN: It's very difficult, you know, Senator Marks. You're experienced on both sides, but it's very difficult for a judge to go up to the Legislature because you not only have to deal with the Assembly and then the Senate but then with the Governor's office. It's extremely difficult, timewise. If some of us are sophisticated in politics, we still don't know how the system works, and basically, I think what you find judges wanting to do, they want to be judges. They really do. They don't want to be political advocates and caught up in a political system, but I think that sometimes we'll be able to be of some help to you.

SENATOR MARKS: Yes. Thank you.

CHAIRMAN LOCKYER: Thank you. Judge Gorelick.

JUDGE WALTER GORELICK: I think I'm up now. I had to get up a little early to get here this morning from down in Tulare County.

CHAIRMAN LOCKYER: How's the fog?

JUDGE GORELICK: Pretty bad, but I got here on time. I bring somewhat of a unique perspective. I'm a judge of a one-judge court. I've been the judge for about 5 years now. Before that, I was the chief public defender for Tulare County and also, I was certified as a criminal law specialist by the State Board of Legal Specialization before assuming the bench. I'm also the author of the Summary of California Driving Under the Influence of Alcohol Cases that was published last year. That's the way of background.

Now as far as specific proposals I would like to make, let me start by saying I think there ought to be a state commission to study sentencing trends, effectiveness of licensing sanctions, alcohol education programs, and training of persons in law enforcement. I realize there has been some sort of a quasi-commission set up in the past by the Governor and by various other agencies, but I think it ought to be an all-encompassing commission. I'll leave the...

CHAIRMAN LOCKYER: You mean all sentencing?

JUDGE GORELICK: Yes, and I'd leave the selection of who's on the committee to people like yourself and Senator Roberti and the other people in the Legislature.

CHAIRMAN LOCKYER: Your Honor, maybe I should interject that I've been working on that kind of a bill, mainly focused on the felony sentencing problems that we've got where many prosecutors, D.A.'s, judges say, they're using computers to figure out. In fact, there's one court administrator that's contemplating marketing a computer program in order to help people figure out what sentences what might be available.

JUDGE GORELICK: Well, our's are not quite as complicated as the determinate sentencing, but they're getting there. They're moving along

CHAIRMAN LOCKYER: Right, so we're getting there.

JUDGE GORELICK: I've got some proposals to make them a little more complicated for you today.

CHAIRMAN LOCKYER: Well, why don't you tell us those?

JUDGE GORELICK: Okay. Well, first of all, let me just say on the first offender situation, I agree with the first speaker that the 90-day license...

CHAIRMAN LOCKYER: What do you do in your court?

JUDGE GORELICK: All right, you want the whole--all right. I can summarize that quickly for you, although I say the usual way because a judge was reversed recently in our county for saying this is the only way he does it. The usual sentence for a first offender is 48 hours in custody. We don't usually use the 90-day license restriction and I think that ought to be done away with. It's very--nobody's caught in 90 days. There've been no prosecutions under that alternative. If you want to leave an opening for the judge, and I think you should because once in a while you get somebody that's 80 years old or has a heart condition or diabetes or something like this, you might fear incarcerating them for even 48 hours. Maybe put as an alternative, 5 days of volunteer work like the second offense now has a provision going into effect starting in '86, but we...

SENATOR MARKS: I think that would be fine if it applied just to people who were in situations like that and not have it apply to the wealthy person.

JUDGE GORELICK: Yes, that's difficult.

SENATOR MARKS: That really bothers me, very much.

JUDGE GORELICK: Try a small community. You talked about that earlier, yes. But anyway, I think that there are other--well, let me go to the second offense. In our community many times we give as much as a 10-day minimum, although I realize the minimum by law could be 48 hours under certain alternatives, even on the second offense; but usually, it's between 10 and 30 days on a second offense in our county, plus the fine, and plus the SB 38 one-year program. On the third offense, of course, we have the minimum 120 days. We often exceed the minimum 120-day period. If the person is still on probation, we often throw in an extra 30 days, make it 150.

One of the proposals that I feel, though, is important in that area is, you know, under the current law on a third, fourth, or subsequent offense, if a person hasn't completed that one-year alcohol program, they're required by state law to impose that as a condition of probation. However, I

sort of feel that we ought to have more alternatives than that one-year SB 38 program. Although I have no particular criticism of it, if somebody is an alcoholic or if somebody has a severe alcohol problem, they often need a residential facility that was mentioned before, and I think the judges should have an alternative where we don't have to send people to the one-year SB 38 program on third or fourth or subsequent offenses. We ought to be able to also send them to perhaps licensed live-in facilities, half-way houses, that sort of thing. But, of course, the fourth offense--there's a minimum 180 days by law and we certainly adhere to that.

Now I know there are a few select counties in the state, like Los Angeles, that have an alternative of sending people to live-in facilities rather than the minimum jail time. I feel that the minimum jail time is a good solution and should continue, however, in most respects. We ought to have some more flexibility though, like let's take the second offense. We now have, I think, the possibility of minimum 48 hours or minimum 10 days I think it's going to go in '86, or 10 days community service. What about something like an alternative possibly of 10 days house arrest with this new electronic monitoring device we can put on somebody that the National Traffic Safety Administration has an article about it in their most recent publication that has just come out.

We need to look at some more innovative things too, but what about some of the laws, some of the loopholes in the laws? I want to address that very briefly, if I can, and I do have some written material that I will give to you afterwards though.

CHAIRMAN LOCKYER: Super.

JUDGE GORELICK: Okay. Our current DUI laws do not clearly provide for the factual situation where a person is found behind the wheel of a stationary vehicle passed out or asleep as a result of being under the influence of alcohol or drugs. I think our laws should be more clear in that respect and such amendments would insert the operant words "operate and be in actual physical control" to enable the drunken driver to be apprehended before he strikes. This would be similar to language that exists in, for example, Florida, Oklahoma, and there are exceptions. The Arizona Supreme Court, in interpreting similar legislation, pointed out that the person that pulled off to the side of the road out of the way of traffic and turned off their ignition, they have voluntarily ceased to exercise control over to the vehicle prior to losing consciousness and would not be culpable under this type of legislation, but we've had the defense used where somebody's parked alongside the road in a vehicle, unconscious. "Well, I started the drinking after I pulled over to side of the the road." Well, this might be a defense, but we need to clarify this a little bit in our law. In Britain, as a matter of fact, the law reads basically under the influence or .10 or above, "to drive, attempt to operate, or be in actual physical control of the vehicle." I think our laws need a little clarification on that.

CHAIRMAN LOCKYER: Is there a significant number of cases?

JUDGE GORELICK: Not really significant. It's just a possible way of clarifying some things that come up.

CHAIRMAN LOCKYER: Some loophole.

JUDGE GORELICK: Now, another thing is, what about the situation--certain states, Michigan New Jersey, and West Virginia, have a law that it's unlawful for the owner of a vehicle to permit the

driving of his or her vehicle by an intoxicated person. Another thing that we don't have under our current laws that I would suggest that we might want to take a look at. And by the way, I'm not expressing any view here on the constitutionality of these things that I'm mentioning. These are just proposals that have been given to me by various people to communicate to this committee.

CHAIRMAN LOCKYER: Okay.

JUDGE GORELICK: Now, another thing is, the Attorney General's office just issued an opinion, Volume 68-189 in 1985, which says that under current laws, the various people that take blood tests--paramedics, whoever's taking, the technicians--do not have to obey the request of a peace officer to take such a test when the person is unconscious, refuses to consent, or is forcibly resisting the taking of the test, and they say that our current laws do not specifically provide for that situation, and I say that it's true. I don't think anybody particularly would want to see a medical technician having to wrestle with somebody to take a blood test; however, in the situation where a person is unconscious or indicates they don't want to take the test but are not forcibly resisting, I think the peace officer should have a right to order that person to take that test and they should have to take it. I think that provision ought to be clarified in the law as well.

SENATOR MARKS: Is that constitutional?

JUDGE GORELICK: Pardon me?

SENATOR MARKS: Do you think that's constitutional?

JUDGE GORELICK: Oh, yes. Absolutely, because under the current implied consent laws, and the cases that have interpreted it, taking a blood test, in fact there's a very recent case that just came out that the Supreme Court has denied a hearing on--a blood test can be taken from a person who does not want it taken from him as long as it's done in a medically reasonable manner and not with excessive force. In other words, you can't kick the person or choke the person or that sort of thing, but you can take it from him even if he doesn't want it; that's what the implied consent law says.

Now, in addition, I'm recommending that you might consider that it be made a misdemeanor, and I realize that this bill has been turned down in the past, but I think it possibly ought to be made a misdemeanor to refuse to submit to a chemical test if the peace officer has offered the subject a choice of tests, and the consequences of refusal are set forth in the Vehicle Code. In addition, the officer would have to adivse his subject that a refusal is a separate misdemeanor offense punishable up to 6 months in jail, and a fine of up to $1,000. Now, I realize that there has been a very significant piece of legislation that will go into effect January 1 of '86, called the La Follette-Katz Chemical Test Enhancement bill. Frankly, to me, that seemed like a very complicated procedure as opposed to just making it a misdemeanor. That procedure, I think, has different categories of penalties if the person refuses the test and the district attorney will have to prove that--plead it and prove it. It ranges, I think, anywhere from 96 hours on the second offense to 18 days on the third refusal, and it's very, very complicated. I say just make it perhaps a misdemeanor to refuse to take a chemical test.

Now, even more important, what about the situation where a person has five or more prior

convictions for driving under the influence .10 or higher, reckless, alcohol related reckless driving within five years. I say at that point in time, we ought to go back to what we did many, many years ago in California and that was let's have a felony drunk driving statute that would indicate a person that's committed five or more prior convictions of those offenses within five years has committed a felony punishable by a fine not exceeding $5,000, or by imprisonment in a state prison or in a county jail not exceeding one year, both by such fine and imprisonment, with a mandatory minimum of 180 days if confined locally. Now, there are states that have that sort of law now, so this is not something new. There are states that would under those types of circumstances permanently revoke the driver's license of the person, and I say that those people, even our Supreme Court which has been quoted in many, many ways recently, has stated numerous times in drunk driving decisions that drunken drivers are extremely dangerous persons. I think that when a person has that many prior convictions it ought to be a felony with an alternative of local incarceration. Also, Arizona has a law that indicates that a person's who's driver's license is suspended for a previous driving under the influence of alcohol conviction or refusing a chemical test and they drive again and are convicted of driving under the influence of alcohol, becomes a felony at that point in time. I say, let's perhaps look at that.

Now, a couple of other little things. Under our impoundment laws that currently exist there was a loophole that permits, that does not address the alcohol related prior conviction of reckless driving and that ought to be closed up. That's put forth by Mr. Ilich, who's going to be one of your speakers later, in a memo he put out through the L.A. County Planning and Research Committee this year.

Now, another thing, I've already talked about the alternative, I think, on the third or fourth offense in a residential half-way house. I won't go into that any further, but the next thing I want to quickly tell you about is all these laws that change every year are causing a great deal of problems to the courts in the sense of having to revise our "Change of Plea" forms each year, and I suggest that perhaps you draft some kind of legislation that would have the Judicial Council promote a uniform "Change of Plea" form for all the courts in the state because it's very important that these prior convictions stand up. They're doing better nowadays because we're getting better communication between the judges and the courts. We have people like Mr. Illich from L.A. County who puts out a form each year for the L.A. courts that many of us use, but we should have some uniform statewide "Change of Plea" form to ensure the constitutional validity of these forms.

The next thing I had has already been addressed by the last speaker, Judge Kaufman.

SENATOR MARKS: Couldn't the Judicial Council establish what you're saying?

JUDGE GORELICK: Yes, possibly. That's a minor point, relatively minor, but it does have impact on all our courts. Anyway, the next thing is what Judge Kaufman indicated about the $100,000 that was vetoed by the Governor. The only thing I would say there is maybe next time the bill should include provisions for training of deputy district attorneys and law enforcement personnel. It might be easier to get through certain roadblocks that way. All right.

The next thing is there should be some consideration for the use in California of preliminary

breath tests by officers in the field, legislation that would permit them to administer preliminary breath tests before the person even gets to the station house, therefore, those that are much below the level might be released without having to go to jail, whereas, it would also give the officer a better idea of where he was in performing the, having the person perform, roadside sobriety tests. Perhaps the refusal to take the preliminary test could be used in court as indicating a consciousness of guilt.

These are some of the proposals I wanted to put forth to you and I just want to address one or two other things and then I'll stop, but I think we need a great deal more in the way of education in the area of drunk driving and I would hope that the Legislature would encourage agencies, like the Department of Motor Vehicles, to make more information available to all Californians on how one gets to a .10 level, and that sort of thing. There is some now in the current driver manuals. I think more has to be done in that area.

On first offenders, let me just say this. A very interesting thing is being done in Washington now, the State of Washington, where in the education programs people who are victims of drunk driving offenses who have had relatives killed, now participate in these programs and explain their experiences to first offenders, and I think that's going to have a significant impact on many people who go through those programs. We're going to be trying that in our county in the very near future and I would suggest that as part of this state commission that would be set up that that would be one thing to look at. Anyway, I think that I've summarized the basic things I wanted to say and I'll answer any questions, if you have any.

SENATOR MARKS: No.

CHAIRMAN LOCKYER: No. Thank you very much. Judge Stewart.

JUDGE JAMES STEWART: Good morning. My name's Jim Stewart. I'm on the Santa Clara County Superior Court. Prior to that time I spent almost five years in the Santa Clara County Municipal Court. Senator Lockyer and I go back some ways. I think we're proof that there was life after the McGovern campaign. Not much, but (Laughs.) in any event...

CHAIRMAN LOCKYER: Sometimes I wonder.

JUDGE STEWART: Let me move as quickly as I can. I've got a study for you that I think's important. It was done in my courtroom with student volunteers and started in 1982, and we took all the second, third, and fourth offenders and we divided them into two groups. The first group were those people that just went to jail, some for substantial period of time--up to over a year. The other group were those who I required and forced to deal in an intensive way with their alcoholism and working on the assumption that second offenders and more are alcoholic. Once you have been one time arrested, handcuffed, humiliated, jailed, fined, put on a work crew, strip searched, all these things. If it happens a second time, there's a real drinking problem, you're alcoholic.

Now, we took the first group of 200 people, the student volunteers tooks the names, the case numbers, and those were people who went to jail for a variety of reasons. They may have refused treatment, they may have been in jail so long that by the time they came before me there was nothing I could do. The second group were those that are required to deal in an intensive way with

their alcoholism. I'm not talking about county programs, SB 38. I'm talking about something real. I'm talking about 25 AA meetings in 30 days for the first month just for starters, or 90 to 100 days in a social model live-in alcoholism program.

Of course, all these names and numbers went into the computer so last year I looked at them for the first time and the results are interesting. Out of the 200 people who nothing had been done other than jail, we had already two years down the line, we had 30 recidivists. For those who had been required to deal with their drinking problem we had 14 recidivists. What I submit to you is that means that treatment for alcoholism is a deterrent to the drinking drive and like everything in the world, it's not perfect but it helps.

The fact is that the Hinton case has fairly well prevented that from continuing in Santa Clara County because you need to be able to hold some inducement out to the defendant for going into a 120 day live-in alcohol program prior to sentencing, and if you tell that defendant that the minimum sentence, even after getting sober and staying sober, is 120 days minimum or for the fourth offender is a six-month sentence, that defendant's going to tell the judge to stick it in his or her ear, and they won't do it. I am not advocating, frankly, as was mentioned this morning, that treatment be substituted for punishment. I don't think the public will stand for it, I don't think they should. But if I can tell an individual that I can reduce that six-month sentence to 60 days and grant work furlough if that person is documentedly sober for a given period of time, under those circumstances it seems to me that with that kind of documentation that the sentence need not be--I share the former speaker's view--the sentence need not be 120 days. I believe some jail is needed in all cases but it ought to be with some form of treatment.

CHAIRMAN LOCKYER: Judge, help me remember how Hinton...?

JUDGE STEWART: Hinton just simply said 120 days is 120 days is 120 days, and that started because in Southern California some of the courts were sending people to cure treatment, and of course, my understanding is that the district attorney's office wasn't going to put up with that so they appealed. The law was interpreted as not permitting treatment, that it was 120 days.

CHAIRMAN LOCKYER: This is the third offense?

JUDGE STEWART: This is the third offense. This is the clearly alcoholic offender that I can't get to go into a live-in treatment program for 120 days or 6 months if I tell them when you get out it's 120 days jail. About all I can offer them then is work furlough. If they don't go into treatment in our county, at least I think most of the judges do not give work furlough.

CHAIRMAN LOCKYER: So the court's interpretation of the statute in that case is that the 120 days mandated jail time can't be served in a residential treatment home?

JUDGE STEWART: That's right, even though the Penal Code provides that if the court orders you to live in a certain place prior to sentencing, that you are required to be given credit for the time that you lived there. The Hinton case simply said the Vehicle Code takes precedence over the Penal Code. I didn't share that view, but I do now, it's a higher court.

All right, finally, I'd like to indicate to you for the third and fourth offender, the mandatory suspension of a driver's license for three years for for five years for the fourth offender, I'd really

like you to give some thought to that. I think everybody knows that people with suspended licenses drive. They all drive. Some drive carefully (Laughs.), but they all drive. The fact is there are a number of people in our county that have been through alcoholism treatment. They have been sober, some people I've gone to their AA birthdays the second and third times. It seems to me that if they could convince a judge by preponderance of the evidence that they had been to AA meetings, hundreds within two years, had been through live-in treatment, and had been sober for a substantial period of time, that they ought to have the right to a license at least to get to and from work, although I do share the view of prior speakers that the restricted license isn't real. Maybe we just ought to return the license on a probationary status.

Finally, I'd like to say to you that SB 1915, this pilot program, is not selling in any county except one and I'm concerned about that. That was a way around the Hinton problem. The fears are, at least in our county, that the pilot program in that bill is going to cost too much money and the county will be putting money out for indigents and beyond that, there's kind of a turf-mindedness that the bill is going to take the power, at least in our county, away from the Bureau of Alcoholism Services. If you want that bill to fly, Senator, you really need to amend it after talking with the people in the various counties and finding out what their opposition is, but we're not having any luck, at least the judges are not, in Santa Clara County.

In any event, I might indicate to you questions that you've asked in the past. Our work alternative program in our county, 15 days you're out of jail immediately, has not very well been successful because these people without treatment, and the sheriff does not understand the alcoholism problem in his jail, these people out on work alternatives are back in my courtroom for having driven under the influence of alcohol or drugs while they were on the work alternative program. Whenever I have an opportunity to deny that, I do.

What do we do in our county? Very briefly, I think you're interested in that. First offense, and I'm trying to take the judiciary as a whole, 6 to 10 days, normally weekend work program, almost no judge now gives a license restriction, fine about $600, plus a penalty assessement. Second offense goes from 10 days, weekend work, to 30 days without weekend work, especially, at least in my court, if a person refused to get into intensive alcoholism treatment. Third offense, in our county you cannot rely on just simply 120 days, it will go up from 120 to 6 or 8 months, plus a $1,200 fine.

In any event, my message to you is treatment has an important place because we're dealing with alcoholics, and the present state of the law fairly well ties the hands of the judiciary not to be able to hold out to alcoholic criminal defendants, some major benefit to getting alcoholism treatment. Thank you very much.

SENATOR MARKS: Mr. Chairman, I wonder if I may ask a question. No, not you, sir.

CHAIRMAN LOCKYER: It's nice to see you again, Judge Stewart.

SENATOR MARKS: Is this committee going to look at the question of what is done in Sweden and England and various other places to determine whether or not our laws are appropriate? Is that part of our process?

CHAIRMAN LOCKYER: It would be an appropriate thing, yes.

SENATOR MARKS: I would think that it would be logical for us to look to see what the situation is in the more civilized countries of the world to determine whether our laws are appropriate or whether they're far out of line. They may be totally out of line.

CHAIRMAN LOCKYER: We'll have a--yes.

SENATOR MARKS: They may not be. I'm not necessarily arguing that the laws in other countries are good, they may be terrible, but they may also be good. I think it would be appropriate for us to look to see what those laws are and see whether or not those laws are appropriate for us to consider.

CHAIRMAN LOCKYER: We'll be providing, Senator, some background.

SENATOR MARKS: That would be helpful.

CHAIRMAN LOCKYER: Judge Duncan, and I don't know if Judge Hyde was going to be here? Have you heard anything? Okay, well, how do you do?

JUDGE ROD DUNCAN: Good. I'm on vacation this week, or else I'd have a hard time being here.

CHAIRMAN LOCKYER: What a way to have a vacation.

JUDGE DUNCAN: I've been a municipal court judge for 10 years in Oakland and I must say that hearing from the judges in Orange County and Contra Costa and some of the other communities that I've heard from today make me feel like I'm in a dream world.

CHAIRMAN LOCKYER: Is this a nightmare? What kind of dream is this?

JUDGE DUNCAN: Well, our situation with drunk driving cases is a nightmare as compared to their dream world. We do not have people pleading guilty by droves, we do not have people who cannot afford an attorney because almost everyone in our court qualifies for the services of the public defender and they take those services. The average blood alcohol rating in our court is a .18, the average is a .18. We see very few .11's and .12's, and in our court the juries do not rubberstamp the decision of the prosecutor. A good 25 to 30 percent of our cases come back hung or not guilty, more than that.

CHAIRMAN LOCKYER: What percentage was it?

JUDGE DUNCAN: Well, it's about a third that come back either not guilty or hung, and if the jury is hung, even on a 10-2, there is such a backlog that the district attorney normally will not retry the case, so if you're able to get one or two jurors to vote not guilty, normally you skate in our court and you do not get recharged, and although the district attorney has the option of trying it again, they do not take that option.

SENATOR MARKS: If you get a hung jury or an acquittal, what happens?

JUDGE DUNCAN: It's all over. The only thing the judge...

SENATOR MARKS: What, if anything, is the penalty?

JUDGE DUNCAN: The only possible penalty is that the judge may decide to charge you for the services of the public defender, in which case he examines your financial condition and decides whether or not you should have to pay something for the fact that you've had a free lawyer.

SENATOR MARKS: They lose their license, those, don't they?

JUDGE DUNCAN: Only if they refuse an alcohol test and in Oakland, most people who refuse a test are not even charged so that the district attorney makes a decision that they normally cannot win a case unless there is a blood alcohol test. A person has the right to refuse a blood alcohol test and if he or she does refuse the test, in most cases, they will not be charged with drunk driving and they will lose their driver's license, but our court is so packed with drug cases, drunk driving cases and such, that driving without a license, without a driver's license while it has been suspended, is really not a very dangerous thing to do.

We have now between four and five judges out of our 14 judges working full time on drunk driving cases, one of them arraigning and handling the people who plead guilty, the people who don't go to the schools and such, the rest of them trying drunk driving cases back to back at a time.

SENATOR MARKS: When I was a judge I handled them all, and there were one or two in San Francisco.

JUDGE DUNCAN: Right. A trial now takes about four days in Oakland, a drunk driving trial. That's because of the length that we're here, it's because of the complexity of the attack on the breath test machine, and the fact that the lawyers, including the public defenders, are extremely aggressive and do a very total defense job in attempting to get a not guilty or a hung jury on a first-time offense. At the same time in Oakland, we have something called the "War on Drugs" going on and the district attorney is asking us to concentrate more judicial manpower on the war on drugs to increase the number of judges who are hearing felony preliminary examination in drug cases. We can't do that unless we cut down the number of people that we're using on the drunk driving attack, handling the drunk driving cases.

So, the one point that I want to make today is that the urban courts, as distinguished from Contra Costa and Orange County and some of the other judges that you've heard from today, need help in streamlining the jury trial process in drunk driving cases. If we're going to give every first-time drunk driver the option of having a jury trial, then we've got to do something to cut down the amount of time it takes for that case to be tried from the present 4 days to something which can be done in the surburban counties of getting down to 1½ to 2 days. One of the reasons that that happens is because the juries in those counties so regularly convict the defendants that voir dire isn't that helpful to the defendant to go through 30 or 60 or 90 jurors to try to find a panel of 12.

CHAIRMAN LOCKYER: It's been suggested that, I guess there's a bunch of suggestions, and I want to hear just to make sure to focus on some of these. We've heard about limitations on the number of challenges that might be possible, smaller juries, that's been suggested. Do you want to come in on any of those or others?

JUDGE DUNCAN: Well, I think that smaller juries is one very good solution, that would be a good solution. There is no constitutional requirement that there be 12 jurors. To allow the judge...

CHAIRMAN LOCKYER: What number would you have if you were...?

JUDGE DUNCAN: I think 6 would be sufficient. To allow the judge to do the voir dire and not to allow the attorneys to go on and on with their long binders full of questions that they ask everyone about, the questions which the Supreme Court has now said they are entitled to ask every juror under

the present law. I think that cutting down voir dire would be a real help.

Another one, and probably not a practical one, would be to eliminate the breath test machine and leave people with only blood or urine options. There are now experts, M.D.'s in the Bay Area, who hire themselves out for very large fees, approaching $1,000, to spend the better part of a day telling the jury why the breath test machine is not reliable, and that takes up a lot of time. There is really no reason, as far as I'm concerned, as to why we have to give people the option of the breath machine. If it's going to so lengthen the process, why not just go back to blood and urine? Again, that's probably not a practical proposal but it is one that would certainly speed up the trial process.

CHAIRMAN LOCKYER: In our setting "practical" I suppose means other than sensitivity to due process in those matters. "Practical" means can you get a bill on the Governor's desk and signed, and the truth is that probably both full houses of the legislature would subscribe to a number of these sorts of reforms and strengthenings in the law. There's only one bottleneck and that's the Assembly Criminal Justice Committee--it changes it's name periodically--it's currently the Committee on Public Safety and the practical consideration really is can we persuade a majority of those members to pass any laws that might be opposed by criminal defense bar, basically. But they're doing it. There were a half dozen bills last year that passed and got through. We've gotten into this situation where we lob one over and figure, well, it will be cut in half or a third and so we puff it up enough to have it still be something when it goes through the winnowing process. Some of these might work. I'm sorry to interrupt. Did you want to add to that list of possible procedural reforms?

JUDGE DUNCAN: Well, just one. I think that if we can cut down the process of picking a jury, which in Oakland now takes 1½ to 2 days in a drunk driving case, that would be it.

CHAIRMAN LOCKYER: Challenges? Do you think that matters? To limit?

JUDGE DUNCAN: Actually, if they have the opportunity to do the voir dire, the number of challenges they have doesn't really substantially lengthen the process. If it were the number of jurors, if a person were going to be tried by 6 jurors, or if the voir dire were going to be done only by the judge, that would substantially shorten it.

SENATOR MARKS: Suppose the person's not guilty? The thing that bothers me about all these bills, and I'm not a member of that other body in the Assembly, but I am concerned that if a person is not guilty, the limitation that you're suggesting may be very prejudicial to...

CHAIRMAN LOCKYER: But they're all presumed not guilty, of course.

SENATOR MARKS: But if you make it easier to get a jury, you make it easier to go ahead with the process, you may make it more difficult for a person who's innocent to get off.

JUDGE DUNCAN: Well, we find that...

SENATOR MARKS: And that bothers me.

JUDGE DUNCAN: ...in our court jurors are very skeptical of law enforcement testimony about things which cannot be scientifically proved, and that's why, for instance, one reason the district attorney in our court does not charge the cases or does not charge many of the cases where there's been a refusal to take any tests because juries are just plain not going to convict unless there is some chemical proof that the person actually had a 1.0 or above.

SENATOR MARKS: I guess my problem with this whole hearing is that I'm sort of, I'm not stepping back into the days I was a judge and I'm thinking about the process of how it happened when I was judge, and I recognize that the law has been changed substantially. That's the difficulty that I'm having.

JUDGE DUNCAN: Well, perhaps you can also recall looking down into the faces of those fresh jurors who have just been brought in from the jury assembly room and you tell them this is a drunk driving case for something that occurred a year and-a-half ago, and they look at you in wonder, "Why in the world is the system taking a year and-a-half to bring this case to...

SENATOR MARKS: That's correct, they do, and they did.

JUDGE DUNCAN: ...and then the highway patrolman comes in and tries to recall what happened a year and-a-half ago when out on the stormy freeway he or she stopped this car and talked to people. With our backlog, that's what we're dealing with. We're dealing with cases that are a year or more old for jury trials.

SENATOR MARKS: Let me say this, I mean, I have a tremendous respect for the municipal court and I think that they're working very hard and I think that they have a very difficult problem, so anything I'm saying is not in any sense against the municipal court because I remember all the cases that I had, the huge number of cases that I had to hear that I thought it was a rather difficult job. I had to run for the Senate to get out of it. (Laughs.)

JUDGE DUNCAN: The one suggestion that I wanted to make, and it's one that's going to be, as I understand it, approached by the district attorney's office later in the day, is that in counties where the district attorney want to, why not let them charge first offense DUI as an infraction rather than as a misdemeanor? Now, in Orange County, no. In Contra Costa County, in central Contra Costa County, no. Maybe in Richmond; in the urban areas, maybe yes, but the situation varies so much around California. The backlogs, the time to pick juries, the length of trials varies tremendously from county to county--and within Contra Costa County, I think it varies grossly from which side of the county you're talking about. But if the district attorney wants to, after all, that's the chief law enforcement officer, if the district attorney wants to, why not let him or her charge as an infraction for first offense DUI? It would still be priorable. You could still go after the person if they get another one, but we could eliminate the jury trial, therefore, eliminate the right to an attorney at the expense of the taxpayers. We could process this case within a month and still give the person a trial, but have it a trial only by a judge.

Many states have done this. There was a story in The Chronicle last December that indicated that Maine had found this to be the solution to their problems and that they can get a case quickly before a judge, get it adjudicated, and get it over with.

CHAIRMAN LOCKYER: What's the urban area there?

JUDGE DUNCAN: The whole State of Maine has gone to this system, but leave it up to the district attorney in each county so that Orange County doesn't have to do it and those counties would be...

SENATOR MARKS: Portland is the biggest.

JUDGE DUNCAN: Portland would be the largest, yes.

SENATOR MARKS: My son went to college in Maine, so I know.

JUDGE DUNCAN: That's it. I just think that it's easy to misinterpret this as being a plea to go softer on drunk drivers. I don't think that's, I'm sure that's not my situation and it's not, certainly not that of the other judges from this county who are in favor of that particular proposal. We think that it ought to be tried, that it ought to be left discretionary with the district attorney, but if we could get the first offender in and out of court more quickly, we could then concentrate on the people who are more serious problems. Thank you.

CHAIRMAN LOCKYER: Thank you, Judge. It may be that we can fashion some proposal that would have multiple provisions which expanded a district attorney's flexibility and might be viewed as some as a lessening of the sanction, would be more than couterbalanced by a variety of things that were either procedural or substantative that have the impact of strengthening or increasing penalties, and would contain other parts which would make it easier to obtain a conviction that would make that kind of a proposal successful. It's nice to talk with you. Senator Marks, I know you have another meeting. I want to thank you for your participation.

SENATOR MARKS: Thank you. It's a very interesting subject.

CHAIRMAN LOCKYER: I would appreciate it if judges who are with us would give some thought to some of those procedural suggestions. Maybe we could talk about that at some point. Dorie Klein, yes.

MS. DORIE KLEIN: Good morning.

CHAIRMAN LOCKYER: Hi.

MS. KLEIN: I'm Dr. Dorie Klein from Alameda County Office of Court Services. We're a small research and development office for the Alameda County Municipal bench. Other than the County of Los Angeles, we're the only county in California that has an office like this. My personal training is as a criminologist and former alcohol researcher.

CHAIRMAN LOCKYER: Thank you.

MS. KLEIN: I'm here today to present the results of a study that was done of 5,000 DUI cases in Alameda County, both before and after the new law from 1980 to 1984. This study was funded by the State Office of Traffic Safety. To my knowledge, it's the most comprehensive study done in the state, for sure, and I believe also across the county, although there was a big study done in New York City and Mr. Ilich is going to present the Los Angeles results as well. I have copies here of the executive summary and of a tree which traces the process of the defendants in Alameda County and let me just briefly tell you what we found.

We found that out of every 1,000 arrests in Alameda County, 500 or more are second arrests. That is, they're at least second arrests. They are people who have been arrested just in Alameda County in the last 10 to 15 years, so this is an underestimate of the number of repeaters. At the other end, by the way, we found that just looking at the two years after somebody's arrest that we studied, something like, I believe it was one-quarter have a subsequent DUI arrest just within that one to two-year period after the arrest we studied. So in other words, over a one to two-year period, 25

percent of all these folks will come back to the core and we know, of course, that the longer we looked, the more of them would come back, perhaps up to 50 percent would come back. So one of our major findings is we're looking at a substantial number of repeaters and we would suspect that the results in Alameda County would be simlar to other counties, that their's nothing unique to Alameda County's driving population.

Out of those 1,000 arrests, the district attorney in our county does not charge 160 of those, and in fact that's 16 percent not charged rate is slightly above what it was before the new law passed in '82. What's happened is that the D.A. in our county, as Judge Duncan noted, doesn't always have the discretion and the option to charge what might be a weak case or a refusal or a low BAC, because a conviction might not be possible. So one of the things that I'd like to suggest from our study is that you have to look very carefully when you tighten a law or create a mandatory sentence you may be pushing the discretion in the system to another point. In other words, if you move the discretion out of the sentencing or out of the charging, then it might go down to another level, and that's something researchers found time and time again and our study confirmed it.

Out of those 840 who are charged out of 1,000 arrests, 220 are charged with priors, so there's some of what we would call slippage of repeaters. In other words, people with real DUI arrests are not always charged with those.

CHAIRMAN LOCKYER: Why would that be?

MS. KLEIN: Well, part of it is you can only charge someone for a DUI conviction within the last five years and that's a substantial limitation...

CHAIRMAN LOCKYER: Oh, these were arrests in the first box, not convictions. Okay.

MS. KLEIN: Yes, these are arrests. There may also be some slippage, the DMV records apparently have had some problems in them in the past, but I understand they are getting better and more accessible, but we would certainly recommend that judges and D.A.'s have access to the best records possible, which has not always been the case in the past. I guess Contra Costa has come a long way. They have computers in every bench.

CHAIRMAN LOCKYER: Is that the only county in our state where that's the case? Do people know offhand of other judges having computers?

MR. _____: (Inaudible.)

CHAIRMAN LOCKYER: It's a little bit inconvenient, I guess, but still doable. Thank you.

MS. KLEIN: What we found, however, is that once people are charged the conviction rate is extremely high and in fact it's gotten higher since the new law, although we've also found that within the county, such as Alameda, which is fairly diverse, ranging from Oakland, which Judge Duncan described, out to Livermore and down to Fremont and up to Berkeley, there is quite a variation, so you might have a 25 percent, say, acquittal or hung jury rate per jury trials in Oakland, whereas out in Livermore it would be only 5 to 10 percent, and I do have all those figures.

However, overall there's an 80 percent conviction rate. Most of those are pleas. Only, I believe, one percent of our cases overall actually go to a trial with a verdict. Again, there is some variation, slightly more in Oakland, slightly fewer in Livermore, for example. For those people who

do go to trial where there is a verdict, 80 percent of the time the verdict is guilty. However, that's less true in Oakland again, and it's more true, say, in Livermore and Fremont.

CHAIRMAN LOCKYER: Well, now when we hear one-third in Oakland not guilty or hung juries, there we're talking about the one percent or some smaller number that actually go to trial.

MS. KLEIN: I think it's more like, something like, maybe 2 percent in Oakland that go to trial, but 2 percent of 13,000 cases coming into Alameda County every year is quite a number. It doesn't take very many trial cases to create a backlog is what we've found.

Acquittals don't happen that frequently. As you notice on the chart, 2 acquittals out of 840 people charged. There were only 10 of those 840, however, who do go to trial. Eight of those 10 who go to trial are convicted and the other 2 are acquitted; however, there may be some unknowns who slip through the cracks because of hung juries and mistrials, and unfortunately, again we have a computer problem. Our computers can't track those folks.

Failures to appear don't appear to be too significant in the long-run, although there are temporary failures to appear that occur all along throughout the process that can create backlogs in the courts and create problems for the judiciary.

In terms of how long this takes, one of the things that we found that was while the conviction rate is high and climbing, the process is taking much longer than it used to be. For example, before the 1982 law it took an average of 48 days in the courts to dispose of a DUI case. However, now, as of '83-84, the most recent period we looked at, it takes 86 days. So in other words, the process has almost doubled in time.

CHAIRMAN LOCKYER: In what period of time?

MS. KLEIN: In '83-84 it took 86 days versus 46 days in '80-81, again with some court variation.

CHAIRMAN LOCKYER: That's from the time of...

MS. KLEIN: The arraignment all the way through the sentencing. It used to be that something like more than a third of the folks pled out, pled guilty right at the arraignment, but that's very unusual now. Fewer than a quarter do that. Most people, as Judge Duncan mentioned, in our county want an attorney now, and have access to an attorney, and they're not going to plead at all until they at least go to their attorney and plea, which is the second appearance. It is something like 15 to 20 percent--it's in here--they actually will not plead out until the trial date is actually set, so it's taking a much longer period of time.

More DUI defendants, as I mentioned, are being represented by counsel. It used to be that in 1980-81, fewer than half of all of our DUI defendants had lawyers, however, now only 27 percent don't have lawyers. Everyone else has a lawyer. That has an enormous impact on the system, of course.

Now when we go down to sentencing we see that out of every 1,000 arrests, 700 people do get to the sentencing process and that means that almost everybody who's convicted is sentenced, of course, because we have few failures to appear. Most people are being placed on court probation, that's the 3-year informal probation that you've heard of. Again, almost everybody is fined and we've discovered that the fines given in our county are generally at the maximum level, including

penalty assessments.

About 490 out of every 700 sentences are given either DUI school or treatment. That's usually the first offender DUI school. We don't have various levels of DUI school in our county, we just have one DUI school. We tried to look at DUI school...

CHAIRMAN LOCKYER: Is that what, is that the 16 hours?

MS. KLEIN: I believe it's 16 hours, right. We tried to look at the effectiveness of DUI school in our county in this study, and although we don't really have strict control groups or comparisons, the preliminary results are that it doesn't seem to make a whole lot of difference. In other words, we cannot say it's effective, we cannot say it's ineffective, however, we feel, and now I'm speaking for the Office of Court Services rather than for each individual judge here, we feel, however, that it would be a good opportunity to use DUI school as a basis of education. In other words, to educate people to the level of the problem, what does it take to drunk, and so forth, and perhaps to use it for, you know, other types of screening procedures as well as has been suggested by Judge Kaufman. So, we favor the continued use and development of DUI school, although we can't produce any results on it's effectiveness at this time.

We found that court license action is not taken in most cases. As you see here fewer than half of our cases get some kind of license action taken by the court. Of these, almost all are restrictions, the 90-day restrictions. Out of 385 court license actions, 315 are restrictions and I think we would want to say, although we have no data, that we would echo the judges who've said here today that the 90-day license restriction is not very meaningful because it's not going to be taken back to court if it's violated. There were only 70 suspensions or revocations imposed out of these 700 sentences by the courts, however, the DMV does far more suspensions and revocations than the courts and it would be important to look at those and to see what happened.

Three hundred and thirty out of 700 in our county are sentenced to court jail, but I want to use the term "jail" with a grain of salt here. Only 100 are sent to what we would call real jail, that is either straight jail time in Santa Rita, our overcrowded county jail, or weekend jail, that is doing your weekend time in barracks in Santa Rita. So, that means that out of every 1,000 people arrested in Alameda County for DUI, only 100 are going to see the inside of Santa Rita and I think most people are beginning to understand that now in Alameda County, that those are not heavy odds of going to real jail.

However, jail is not an option in Alameda County because we have over 2,000 people sitting in a jail that was built for 1,200. In fact, the new jail is only going to hold 1,200 too, so it's not even an option in the future. And we would, again, like to echo what's been said before by some of the judges testifying on the limitations of using jail time, particularly long jail sentences in urban situations. It's not a very realistic option.

Most of the people who get sentenced in Alameda seem to be, so far as we can tell, over the few months, complying with the sentence, however, a significant minority are returned to court and that, of course, takes up court time making sure that people comply with the sentence, and so forth. Because we have a very overburdened probation department, almost no first offenders are going to be

put on formal probation with a probation officer, which means that the court has to monitor these sentences. That is a very important thing to take into account when you look at court time.

So, just to sum up our findings here, we're finding that we do see a continued high conviction rate but it's taking quite a bit longer than it used to before the law. We're seeing few people actually go to real jail, and we're also seeing few people actually losing their licenses in a permanent way, it's done by the court, and we're seeing an enormous number of "chronic DUI offenders" or repeaters. I think that the more carefully that people do studies, the more repeaters they'll come up with. I think this is a rock bottom estimate of DUI recidivism rates. So, we're seeing a real variety of people coming through our courts: some of them obviously have alcohol problems, some of them also have other kinds of criminal records and DUI may be just one thing they're picked up for, and some are "heavy social drinkers" and those folks we think might be deterred after the first or second arrest, but for the others we're looking at a situation where more treatment alternatives are needed.

The Judicial Coordinating Committee, which is a representative group of judges from Alameda County, has now set up a permanent DUI subcommittee which is looking into alternatives and uniform sentencing and legislative proposals which will be submitted to you over the next few months. Judge Duncan has brought up one of the options that we've talked about, such as the infraction option. We're also looking at different kinds of treatment alternatives. I think screening will probably come up. Some of our judges are doing vehicle impoundment, and so forth. So I think that the idea of trying new and creative sentencing is one that our judges generally support.

CHAIRMAN LOCKYER: Let me ask--I guess I should have thought of this with Judge Duncan, maybe there's a way to do this--if there's an infraction option, but it's in a circumstance where, I guess, 98 percent of those who are charged are going to plea to a greater penalty, don't we generally then encourage lots of people who probably would have pled to the current greater offense not to in order to get in on the infraction track? Did I ask that in a way that makes sense?

JUDGE DUNCAN: I see what you're saying, but the one thing that you lose by going from a misdemeanor to an infraction is jail. If it's an infraction, you can't go to jail, but we don't put anybody in jail on a first offense anyway.

CHAIRMAN LOCKYER: Yes, very few are, yes.

JUDGE DUNCAN: We give them a work program, pick up papers for Cal Trans, or 90-day restriction of driver's license, or something like that. So since we're not punishing these people anyway with jail, why go through the great big complex program of jury trial where the consequences are not really that great.

CHAIRMAN LOCKYER: Judge Gorelick?

JUDGE GORELICK: Yes, I would like to briefly comment on that now. Of course, on the infraction, the way it usually works is the person loses their right to a jury trial to and they would have to consent to that. There's one other point I'd like to make. There is a current infraction section in the Penal Code for certain offenses now, and I think, I could be wrong, but if you look at it carefully there's a provision in there that says--now let's assume somebody's on probation already for a misdemeanor and then they get one of these DUI's that's now going to be an infraction--I think

there's a provision in there that you cannot violate their probation because of a plea with infraction, so you better take a look perhaps at amending that out of the section if you want to keep some teeth in the law also.

CHAIRMAN LOCKYER: Dr. Klein.

MS. KLEIN: One of the reasons that I think the infraction option is being discussed very seriously by the judges and the D.A.'s office and so on is so that we can devote our limited court resources to the repeat offenders who clearly need some kind of intervention because of their drinking problems. And without dealing with the bulk of the first offenders in a more expeditious way it's going to be impossible for us to find the judicial, correctional, and probation resources to do that.

CHAIRMAN LOCKYER: Thank you, Dr. Klein. Mr. Ilich.

MR. DRAGUTIN ILICH: Good morning. My name is Dragutin Ilich and I'm a staff attorney for the Los Angeles County Municipal Court's Planning and Research Unit. The Planning and Research Unit provides legal research and special projects on behalf of our 230 municipal court judicial officers in the county.

As you know, in 1981 the California Legislature enacted new laws for driving under the influence in response to increased public concern regarding the drinking driver problem. Penalties were increased, alcohol programs became mandatory for most first offenders, restrictions on plea bargaining were imposed, and a new defense was established which provides that persons driving with .10 percent or more of alcohol in their blood are guilty of a misdemeanor. Since more DUI cases are filed in the municipal courts than any other single offense, the potential significance of these changes on the 24 municipal court districts in L.A. County was immediately evident.

In March of 1982, therefore, the Planning and Research Unit Management Committee directed the unit to study the impact of the laws on the court system. Soon, the unit will be distributing it's most comprehensive study on this subject. It offers our analysis of the DUI laws on municipal courts during the first three years after the legislation took effect, 1982 through 1984, and we have comparative data for the previous three-year period, which is 1979 through '81.

Before I discuss the results of this study, one precautionary note should be made. It did not seek to determine whether the laws were successful in their ultimate purpose, which is reducing traffic fatalities or injuries caused by drinking drivers. The sole purpose of this study was to evaluate the effects of this legislation on the court system. I believe that the study demonstrates that the DUI laws have had a tremendous and wide-ranging impact on the L.A. County Municipal Courts in the three years following enactment. All stages of the judicial proceedings were significantly affected, although the extent of the impact varied among our 24 districts. On a county-wide level, it was clear that the average DUI case required more court time and judicial resources than prior to the revision. In general, the early stages in the processing of cases was affected almost immediately, while the later stages took a full year or more before the impact was felt, but by the end of 1984, which was the period that our study examined, all stages, including the post-sentencing stage in the proceedings had been significantly affected.

Now I'd like to briefly review some of the more interesting specific findings of the study. As I

indicated, the earlier stages of the processing of the cases were affected first by this legislation, and in fact, the very first area that was affected had to do with the DUI arrests. I think it's unanimously agreed throughout the state that there was some impact in the first quarter of 1982 and in L.A. County, we did, in fact, experience a significant decline in arrests in January, in particular, of that year; and I think that there's a unanimous consensus at this point that this decline in arrests was caused by the substantial publicity which accompanied the enactment of the laws. But while the level of the publicity seemed to continue at a higher rate than prior to enactment, the arrest rate did accelerate after the first quarter of '82 so that by the end of 1982 we actually had more DUI arrests than in 1981. It was a slight increase of about .05 percent but it shows you that the rate must have increased at a much more markedly greater rate after the first quarter for us to have more arrests in 1982 than we had the year before. And in 1983, this situation basically continued and we had more arrests in 1983 followed by a moderate decline in 1984 of about 5 percent.

The study, I believe, demonstrates that the most important factor in terms of DUI arrests and why we have increased or decreased arrests is the level of law enforcement efforts that we have available for DUI enforcement. In many districts significant increases or decreases in the arrest data was due to the beginning or completion of a DUI task force, so one example of this was the L.A. Olympic Games. We had a 18 percent decline in DUI arrests in the City of Los Angeles during 1984 and one of the factors in this was the L.A. Olympics which required police departments to divert significant resources for security means, and during a period of about two to three months in the summer of 1984, the number of DUI arrests in the city declined markedly. So I think that that gives you a sense that it's not always just the publicity or some of these other more subtle factors, but actually it's the amount of police officers we have available for the DUI problem that pretty much determines how many arrests will be made. Overall, in terms of the three-year period that was examined, 1982 to 1984, the DUI arrests caseload, in terms of filings, increased by 5 percent as compared to the previous three-year period; so that give you just a general sense at what we're looking at in terms of our study.

The next stage that was affected by the DUI laws is the first stage in the judicial proceedings--the arraignment stage; I think that after the first quarter of 1982, our arraignment stage started to feel substantial impact of this law in terms of a declining number of guilty pleas entered at this point. In 1982, we had 10 percent fewer guilty pleas entered in L.A. County as compared to '81, and that translates to about 10,000 fewer guilty pleas. That's 10,000 fewer defendants who, instead of pleading guilty immediately and getting out of the system, that meant 10,000 more cases that were now in the system waiting for some further court hearings. I believe that the reason for this decline in guilty pleas in the early part of '82 was a wait-and-see attitude on the part of many defendants and their attorneys to see how the cases were going to be sentenced in other matters. They wanted to see whether the laws were going to be enforced or not, they wanted to know what kind of sentences were going to be handed down before they were going to plea.

Fortunately, in 1983 the situation improved somewhat and by 1984 we had returned to almost a pre-enactment situation in terms of the arraignment stage in Los Angeles so that we are now

receiving about as many guilty pleas as we had in 1981 in terms of the percentage.

CHAIRMAN LOCKYER: What are those?

MR. ILICH: That's approximately 80 percent right off the bat. It's hard just to know exactly what it is in the long-term, but in terms of a one-year period we would estimate about 80 percent of the cases would plead out. One of the findings of the Los Angeles City Attorney's office, to show you how the plea stage had been affected, was that there was a 200 percent increase in the number of guilty pleas at the trial stage in 1983 as compared to '81. So what's happening is that many of the people are simply waiting until the very last moment and then are pleading out because they really are not serious about fighting the case, but are trying to delay the sentence and they're trying to delay the tough sanctions which will be imposed.

One of the consequences of the fact that we have as many more people who are not pleading out is that the courts have had to use pre-trial conferences and settlement conferences at a much greater rate than previously. Over the three-year period in question there were 71,916 more pre-trial settlement conferences as compared to the previous three-year period, and that was a 58 percent increase in terms of the use of this device to encourage people to plead out.

Clearly, one of the areas that was most significantly affected by the DUI laws was the area of trials. The most substantial increase in trials occurred in 1983 when there was nearly 30 percent more trials than in '81, and nearly all of this increase was accounted for by jury trials. We had 50 percent more jury trials in 1983 as compared to 1981 and the consequence and the significance of his is clear when you realize that it takes a full court day or more simply to voir dire a jury so that here we're clearly seeing, I think, one of the more substantial areas where the laws have affected the court system.

Despite the increased demands of these more frequent jury trials, and just to give you a sense of how many more we had, there were 765 more jury trials conducted in our county in this three-year period as compared to the previous three-year period. Despite these new demands, the court system in Los Angeles County has been generally successful in handling the added caseload and in dealing with the court congestion. While we have had problems, we have had no "speedy trial" dismissals on a mass scale as some people had anticipated when the new laws went into effect. There were dire predictions of the system basically coming to a halt by any kind of increased request for jury trial, and this didn't happen. But maybe that one of the reasons that the courts have been successful in dealing with this is a 20 percent decrease in civil trials during this period. Since criminal cases have precedence over civil cases, that's under Penal Code 1050, it may be that the court systems in L.A. has been successful in dealing with DUI cases because we basically put the civil caseload on a standstill, and this may be of increasing importance since on January 1, the civil jurisdiction will increase from $15,000 to $25,000. That increase may have indirect consequences, therefore, on our ability to handle DUI cases, even though the criminal matters do receive precedence; it would affect the allocation of resources and basically, the sheer numbers that the courts have to deal with.

CHAIRMAN LOCKYER: I guess L.A., perhaps, bumps into the maximum, but in many courts you just further delay civil trials.

MR. ILICH: That's a possibility as well, but I imagine we'll also be looking at increased use of arbitration and some other things to deal with that, but it will tend to make our available resources somewhat more scarce in terms of how we deal with the different problems.

Turning to the conviction rate area, the overall conviction rate in Los Angeles County declined from 95.8 percent to 95.1 percent, and this is looking at guilty pleas, as well as trial convictions. This is looking at the overall trial conviction rate. The fact that there was a slight decline was actually somewhat surprising in light of the fact that many of the cases going to trial and many of the cases handled in our system are cases between .10 and .15, which traditionally had been disposed of as reckless driving or some other lesser offenses. These cases in Los Angeles County are going to trial as drunk driving cases for the most part. This is particularly true in cases handled by the district attorney's office, which handles about 50 percent of our cases. They have a mandatory ".10 go to trial" policy which they've upheld throughout this period.

One of the ways in which the prosecutors may have been helped is the new .10 per se law. A five-month survey by the district attorney's office in 1985 of their trials shows that over 8 percent of their convictions in trials were rendered under the .10 law, which is Vehicle Code 23152(b), and that had we not had that section, 8 percent of those cases would have resulted in acquittal instead of the convictions. So to some extent, the prosecutors have apparently been aided by that new section.

Finally, the area that has experienced perhaps the greatest change, and this was a surprise to me and a surprise to our unit when we looked at this (because we hadn't anticipated it), relates to the court's increasing workload in DUI cases after the imposition of sentence. For example, the number of probation revocation hearings in 1984 was nearly double the number in 1981. To give you some perspective, in the three-year period that we examined, there were 43,477 more probation revocation hearings as compared to the previous three-year period, and our study discovered several possible reasons to explain this incredible increase in revocation hearings.

The first reason, I think, is the very high levels at which fines set. With the alcohol programs costing as much as $1,000, the average fine being approximately $680, attorneys' fees, if that's applicable, defendants are having increasingly difficult time paying their fines. We're using installment payments more frequently, community services are being used, but nevertheless, many people simply are not able to meet their obligations.

CHAIRMAN LOCKYER: Do you accept MasterCharge?

MR. ILICH: In some cases I think they're getting to that, but that's not yet on the horizon. The point is that many defendants have to come back into court, explain before a judge why they haven't been able to pay; so the courts in essence have become quasi-debt collecting agencies in this process instead of simply dispensing with justice here. That may be one reason for the increase in probation revocation hearings. Another reason for this may have to do with the provisions for first offender programs. First offenders programs, which in the past were not mandatory, have very complicated procedures defining the time period within which defendants must enroll or complete a program. In many cases, judges are finding the defendants coming back into their courtroom because they failed to meet the procedures--they failed to go to the program on time or complete it--and that has also

had an effect.

One of the areas which I think is also important in this regard is the complexity of the laws themselves. As I'm about to show you, the laws have gotten to the point where it is nearly impossible for one to define for the average defendant what is going to happen, what the options are; I believe that in many cases defendants are not meeting the terms of their probation because they simply don't understand well enough all the complicated, myriad number of regulations with which they have to comply.

CHAIRMAN LOCKYER: I think it's possible that there's a direct relationship between the complexity of these laws, and maybe some others, and the fact that we have a full-time legislature which feels an obligation to tinker with the statutes each year.

MR. ILICH: Senator, I'm glad you said that. I was thinking that, but I really didn't have the guts to say it. (Laughs.)

I'd like now to turn to the specifics of this hearing. In your letter, Senator, you asked for my views regarding problems with the existing DUI statutes. In order to best address your request, I brought with me a few copies of the Planning and Research Unit's Advisement of Rights, Waiver of Rights, and Plea Forms, which are used for drunk driving cases.

CHAIRMAN LOCKYER: Good.

MR. ILICH: I have them here at the table if you would like to take a look at them. I'd like to first quickly give you the background of these forms and explain what they do, and then I'll, I think, make my points with them last. When in 1982, the new laws were passed, in Los Angeles County we had 40 or 50 different versions of the form that you are looking at right now. This is for defendants--the purpose of the forms is to inform the defendants as to what their rights are, to make sure that they knowingly and understandingly waive those rights and enter their plea. The importance of these is that if the plea is not taken correctly, the conviction will not stand up under scrutiny in the future, so that within the five-year period within which one may be charged with a prior, if there is something technically or if there is something of constitutional dimensions which is not complied with...

CHAIRMAN LOCKYER: Do you think you need to be a college graduate to understand the form?

MR. ILLICH: I think so, I think so, especially when you consider that many of the defendants are non-English speaking and have to deal with an interpreter. I think that what you see, especially on Page 3 of that form where you'll see the penalties, is something which--I actually prepare these forms and I know that I understand them, but there are times when I wonder whether anyone else does. The point is that with each new provision that the Legislature enacts, the Planning and Research Unit has to prepare an additional provision. It's usually cast in very technical terms because if we get too general, we may miss some of the essence of it and one of the purposes is to make sure that the defendants will not successfully attack this prior conviction, and so we kind of walk a fine line between trying to inform the defendants as best we can and making sure that the conviction will stand up against later attack.

These forms are now used in Los Angeles County. We prepare approximately 80,000 copies of

them for our county. They're also distributed in about 30 other counties in the state. With that said, I'd like to indicate that the views I'm now going to share with you are my own personal views.

CHAIRMAN LOCKYER: Okay.

MR. ILICH: But I believe that one of the important things for the Legislature to keep in mind with regard to drunk driving statutes is that urgency measures in particular have a negative effect on the administration of justice in municipal courts. If the Legislature enacted an urgency measure, for instance, in January, which changed the fine from $390 to $400, the 80,000 forms that we have prepared for our county have to be destroyed immediately. We'd have to also contact all the other counties where we distribute our forms to indicate that this is no longer the law so that we could protect the plea in the future. And so that one of the points that I'd like to underscore now...

CHAIRMAN LOCKYER: Print in smaller quantities.

MR. ILICH: Well, that's one of the things that we're trying to do but perhaps if the...

CHAIRMAN LOCKYER: Actually, I don't think that we enact too many urgency bills in the criminal justice area.

MR. ILICH: The Municipal Court Judges' Association has sent letters in the past indicating this perspective on this. We did have one last year, however, the one that increased, that indicated that if you had a .20 or above, that that should be considered in terms of sentencing enhancements. That was made an urgency measure. It's my view that that should have been made part of that form, but we simply were not able to do it in the short period of time that we had. I think that having a rule whereby July 1, or January 1 effective dates is a good idea in terms of the DUI laws so that we avoid those kinds of problems.

There are many technical areas in the law that we deal with every day in our courts as we answer judge's questions that we're familiar with the technical problems, but I think that many of these technical problems, while it might be a good idea to address them at some point, are not as significant as the general problem: the laws are simply getting too complicated and that at some point we are causing the problems ourselves by making it so difficult that even well-educated defendants will simply not understand what's happening to them, they'll have a resentment based on that, they'll have to come back into court because of probation violation hearings, and I think that this is something to consider as we look to the future with regard to DUI laws.

CHAIRMAN LOCKYER: Now, are you planning on issuing sort of a written report soon?

MR. ILICH: Yes, our report will be prepared within the next month or so. We'll certainly distribute that to members of your committee.

CHAIRMAN LOCKYER: Okay. I'd like to make sure they all receive it. Thank you very much. I think next is Dr. Elliot. Is Dr. Elliot here? Okay, well, we'll keep our eyes open for Dr. Elliot. What I'm hoping we can do with--there's seven people with district attorneys' offices or public defenders, criminal defense lawyers--I would hope that perhaps if all of those people will come forward, we'll find another chair, I'm counting on your creativity about trying to focus on the issues and encourage some interaction among you rather than simply be listening to each person's testimony. If that doesn't work, we'll figure out how to go back to the more traditional format, but I think it will

be perhaps more constructive to allow for some dialogue.

Oh, I should also mention that my hope is that we'll just continue to work through the lunch hour and conclude in a reasonable amount of time rather than trying to break and resume. We'll just keep working. Now, let's see who we don't have. Well, let's see, Susan Aguilar, I guess--late? Okay, well, if she shows up. Mr. Sherrod, we haven't seen yet today either. Mr. Gridley is here. Mr. Ogul. Mr. Lovell. Mr. Iglehart. Mr. Duran. Okay. Now the only thing I don't know how to do is to begin this. Mr. Gridley, maybe you want to--and if you'll just share the microphones with each other...

MR. MIKE GRIDLEY: I thought what I would do is share with your committee Marin County's experience on the...

CHAIRMAN LOCKYER: I should probably interject, if Senator Marks were here I'm sure he would reargue the necessity of more municipal courts in Marin. We got into that number game last year so I'll say that on his behalf, and sorry to interrupt. Go ahead.

MR. GRIDLEY: That was one of my comments. We have four municipal court judges in Marin County. We're still looking for another one.

Marin County is unique in that we're small compared to Alameda County here and the other counties around the Bay Area. We're dealing in the district attorney's office with 26 attorneys total, whereas, that's just division in many of the other offices. What we experienced in Marin County with the change in the law was that, actually Marin County had started a year earlier in enforcing, or increased enforcement in the DUI law with some grants to the police department, so we went from 3,000 DUI arrests in 1980 to 4,400 in '81, and then in '82 when the law went into effect, there were 4,440. So the arrest rate in 1982 increased a little bit.

We now look at the results of what occurred after that as far as the arrest goes and we see that in the three years there's been a decrease of 22.5 percent of DUI arrests in Marin County. Now as the last speaker mentioned, whether that's attributed to less enforcement, actually in Marin County there hasn't been less enforcement. We're wondering whether or not it is a reflection on the stance that Marin County has taken on the enforcement of the DUI law. When it went into effect in 1982, we issued a policy in the D.A.'s office that we would file all cases from .11 and above. We allowed for the .01 error factor that our criminologist will testify to. We took the position that on .11 and above, that was it.

CHAIRMAN LOCKYER: You have to go to trial?

MR. GRIDLEY: You either pled to it or you went to trial. We do not have a wet reckless in Marin County. There is no such thing as reckless driving in Marin County. That's a reduction from a drunk driving.

CHAIRMAN LOCKYER: What's the penalty in those places that have it?

MR. GRIDLEY: In Marin?

CHAIRMAN LOCKYER: Wet reckless? What are those? How are those...

MR. GRIDLEY: I'm not sure.

JUDGE GORELICK: (Inaudible.)

CHAIRMAN LOCKYER: Okay. What's the potential? Is there a max that's...

JUDGE GORELICK: Well, on any reckless driving, whether it's wet reckless or just reckless, it's a maximum of 90 days with a $1,000 fine.

CHAIRMAN LOCKYER: Okay, but the practice is that that would be rare? Thank you. Sorry to interrupt.

MR. GRIDLEY: What we found was the affect in Marin County was really on the backload that it caused in our courts. As a comparison, in 1980 there was something like 70 jury trials set at any particular time in our municipal court for drunk driving. In December of '82, after the first year it was at 650, then in the middle of the next year it was 800, and at the middle of, in August of 1984 it was at 800. It was about a year, year and-a-half from arraignment to getting yourself to a trial. Probably it was almost malpractice on the part of the defense attorney to come in and plead their client guilty at arraignment. They knew that they could get a year, year and-a-half continuance on a case, and I guess insurance reasons being what they are, that's probably a considerable savings.

In Marin County, in order to counteract that, in the summer of '84 the judges, the public defender, the district attorney got together and planned what we called a trial fair. It was a jury trial fair specifically for drunk driving cases that had occurred last January and went for nine weeks. We brought in three judges: two from the Judicial Council, retired judges; and one sitting as a pro tempore, and hired three part-time D.A.'s and tried a large number of cases. The backlog was something around 600 when it started. They disposed of 550 cases during this nine-week period. The other cases still coming into the system, it got down to about 250 cases. It did away with the arguments of the backlog at that particular time. There's another jury trial fair scheduled for this January for four weeks. Our level right now is around 250 to 300 trials. The goal is to get that down to about 70 cases, back to where it was in 1980.

One other area that came up in 1982 with the new law was they were telling us that well, since you're not giving reckless on the .11, the .12, and the .13's, you're going to clog up the courts even more and you're going to lose all of these. Well, we kept statistics on that and as an example, in 1984 the conviction rate on .11's was 90 percent, and .12's it was 92 percent, and a similar rate is occurring in '85 and our overall conviction, including the pleas of guilty, is around 94, 95 percent. So the people, the critics that were saying you're going to clog everything, you're not going to get the conviction, you need to give the wet reckless to us, well, our statistics anyway seem to show that we need not give wet reckless. We cannot in good faith do it in Marin County. Now I'm specifically referring to Marin County. We have a small county and we have a different jury than Contra Costa or Alameda or different parts of Alameda County, so that's been the effect in Marin County of the new DUI law and one of the things we believe is really effective is to try to get the cases through as quickly as possible. It seems like the swift justice seems to be the fastest and the fairest. There's no incentive for the defense attorneys, then, to go for the continuances. If we can get our trial load or trial cases set for jury trial down to this 70, 80 cases, there won't be any continuance time whatsoever and we can continue to proceed.

There are a number of changes, I think, that we've heard earlier this morning that would be helpful. We'd like to see them explored.

CHAIRMAN LOCKYER: Any particular one you wanted to recommend?

MR. GRIDLEY: Well, I think the one about the option for the D.A.'s to make the first offense an infraction is a viable option; however, the way it is read in, I believe, that study that the prior speaker talked about giving the defendant's concurrence eliminates the effectiveness of it as it stands right now. They are not getting a jail sentence right now as it is. Why would they want to give up a right to a jury trial when mandatorily they would not get a jail sentence as an infraction, but they aren't getting it now anyway.

CHAIRMAN LOCKYER: Do you feel outnumbered? It's only three-to-one. That's normal distribution of resources, I'm told, between P.D.'s and D.A.'s? (Laughs.)

MR. PAULINO DURAN: No, not really.

CHAIRMAN LOCKYER: Okay, if you want to go next.

MR. DURAN: Yes, especially since I'm from Marin County, the assistant there in the public defender's office. The fact that Marin County had always been enforcing drunk driving laws with the help of law enforcement agencies, plus the CHP...

CHAIRMAN LOCKYER: You might pull that microphone over closer. Thank you.

MR. DURAN: ...didn't in effect cause what Mr. Gridley indicated, that we didn't have that much of an effect initially. The greatest effect in my opinion is that, contrary to what you indicated earlier that there's a presumptuous of innocence in drunk driving, I believe you start off at the other end given the fact that on a .10 you are considered under the influence, there is a presumption of guilt.

CHAIRMAN LOCKYER: Good point.

MR. DURAN: So defending these cases has become an even greater bar for the defense community in that not only do you now start off with your back to the wall, but you're even in a corner now. So that is the biggest effect.

Second of all, in Marin County the sentencing appears to be much higher with respect to the fines than I've heard from any other community. For example, for the first offense, while there is no jail there's obviously a year's probation and 90-day driver's license restriction, but you get a fine of $784, and I should include that's including the penalty assessments, plus the person has to attend the drinking drivers' school which in our county is over $100. So we're talking about $800, $900 total for a person to avoid any jail time in a first offense.

On a second offense or more, the fine will always be, including penalty assessments, $1,384. For the second offense and the third, if you haven't attended the SB 38 program it costs you $900-plus. So basically, what people are doing on a first offense, they get two days in the county jail if their prior was within three to five years from the new one, and 15 days if it was within the last three years. So our fines are much, much higher. The people are being affected by it much more. It's causing a backlog in a different sense in that we're bringing more work to our municipal court bench, and that they are dealing with more petitions to revoke probation and more petitions seeking modification of a sentence. Also, we see petitions seeking clarification of sentences because sometimes when we try to get creative we indicate that a person must do so many days in jail, then

after that many days they can get day-for-day credit in other facilities, such as live-in, and that can cause problems if the person or the program doesn't understand what is happening. So we have that effect.

Another effect that we get is that, in my opinion, driving with the suspended/revoked licenses is the area where we've jumped up considerably since the new DUI laws were passed. It seems like every case coming in now has that added charge to it.

CHAIRMAN LOCKYER: That's because there's an arrest and they find that they've also violated that particular...

MR. DURAN: Exactly. I'm talking now about the second, third offenders where they're license has been suspended for whatever reasons.

In terms of overcrowding in the jail we initially had some problem with that to the point where we were making reservations for jail and it was some months in advance, which became ridiculous. Probation and all the criminal justice units got together and devised a program, the adult offender work program where the person now if they're sentenced up to 90 days, they can do day-for-day credit working for the county on a volunteer type basis. The problem with that is there's a $6 per day fee and that has to be paid up front before you even start the program, so over and above, say, a second offender fine of $1,384, the drinking driver program of 900-plus, now we have to also foot out immediately $6 per day, say it's a 90-day sentence, six times nine and you can see the problem. We're talking a lot of money in our county and that is affecting us in many, many ways.

The backlog which Mr. Gridley alluded to and spoke about was very real. The trials were not going out in any reasonable period of time and part of the reason was all the litigation that went on with Foretta, Trombetta and the other cases that went with it; cases were being continued six months in advance to wait for the decision, so that caused part of our backlog which was addressed with the jury fair. The reason for most of the attorneys pleading once they got to the jury, obviously, was because with the .10 law presumption and given the jury makeup in a county such as ours, the chances of being successful are very, very slim as attested to by the 95 percent conviction rate that Mr. Gridley alluded to.

So in effect, I think, we have had quite a few effects and those effects are somewhat diminishing with the exception of the prices that people are having to pay, while a first-time offender may not have to go to jail, they're being probably slapped harder than any place else because even if they went to jail they could attend one of these programs where they wouldn't in fact do jail time.

CHAIRMAN LOCKYER: How do you react to some of the suggestions we've heard of possible changes in the law?

MR. DURAN: I see some problems with the equal protection statutes, excuse me, amendments to our constitutions, with doing it on a, giving the D.A. the discretion to file as infractions. The only way I could see that is if they got the concurrence of the defendant and then you wouldn't have it, but that would still be attackable in that sense.

With regards to having smaller juries, I for one as a defense attorney would be loath to see that happen. I think that is the case already with respect to certain misdemeanor crimes and yet, even so,

I still witnessed a few trials where they could have gone with six are still going with 12. I don't know if it's because they forget, they meaning everybody in the system, or because nobody really likes to deal with six and take the issue up to one of the courts.

CHAIRMAN LOCKYER: Do you have any sense from having spoken with lots of defendants in a friendly way, as compared to some of the others, about the numbers that are addicted to alcohol or other things, and some treatment kind of program might work? Especially, multiple, when people are back with strings of priors.

MR. DURAN: You get many individuals who admit to a problem but I question the degree of their wanting to address it simply because they won't go out and do it on their own by and large, and most of the treatment programs that I've dealt with or the attorneys in our office have dealt with have advised us that unless that person wants to do it for themselves, they're not going to even deal with it. So whether they want to because they want to avoid jail or not is another question, and I don't know what the figures are. We've never done a study with respect to that.

CHAIRMAN LOCKYER: Okay. Thank you. John.

MR. JOHN LOVELL: My name is John Lovell. I'm with the Los Angeles District Attorney's office. Prior to that time I was with the L.A. City Attorney's office, and prior to that time I spent two years at an executive level in the alcoholic beverage industry working for the Gallo Winery and I have a lot of exposure to these issues while I was there, because as you can appreciate, these are very sensitive issues to those folks.

Let me focus, if I may, on a slightly different tack and deal first of all with the magnitude of the problem and it really is something that can't be understated. In L.A. County last year the various jurisdictions, our office, city attorney, the other city attorneys that have misdemeanor jurisdictions, files about 90,000 drunk driving cases. That's a lot of cases but even that doesn't begin to tell the story. Depending on whose study you look at, and there have been a number of studies in this area, for every time a person is arrested for drunk driving, they've probably committed that same offense between 20 and 200 times. Now you start to play those numbers out and they become mind boggling. We're looking at not 90,000 instances a year, but something closer to 1.9 million instances a year and that's a problem of enormous quantitative magnitude. But there's another dimension to it as well and there are significant qualitative implications. Let me turn to a second facet of the issue to illustrate that.

We've heard it said again and again, drinking and driving don't mix. I mean, you hear it and you never really, I think many of us never really put that under an analytical microscope, but when you do and you take that statement and put it under an analytical microscope, it's simply not true. In the United States, culturally, drinking and driving mix. The number of restaurants that serve alcohol, the number of bars, the number of taverns, sports arenas, stadiums that serve alcohol, they all serve as eloquent testimony to that fact, that drinking and driving is inexplicably intertwined with the American culture. Everyone who goes to one of those establishments, consumes alcohol and leaves is drinking and driving. The more proper way to state it is that drunk driving and driving don't mix.

Now, measured against this backdrop, what are the actions that we take? It seems to us in the

L.A. District Attorney's office that the criminal law is only one element of attacking this problem. In addition to the matters that are within the jurisdiction of this committee, there are other committees of the Legislature that may wish to examine various licensing, marketing procedures, getting to the issue of availability. I think to the extent that we choose not to address those availability issues, we're placing a greater burden on the criminal law to step into that breach.

In our office we've already spoken to at least one of those issues, so we have an office position in support of Senator Russell's legislation banning happy hours in bars, and we've taken that position for a very good reason. We did a survey of the random sample of the drunk driving arrests in L.A. County last year and we found that fully 70 percent of them involved people coming from bars. Well, that suggests that perhaps someone ought to be addressing the marketing and consumption patterns in bars.

In the criminal law area we think that it's essential to remove the driving aspect of drunk driving and we favor legislation that would provide for a first-time impoundment of a vehicle at some term to be determined. Now I know that the argument that will be raised in opposition to that is that causes family inconvenience. Well, the fact of the matter is that most criminal sentences of a criminal defendant cause some kind of familial inconvenience and in our view that the problem is so serious that that's not a reason to decline to take action.

We also feel, as some of the earlier judges who testified feel, that first offense should involve mandatory incarceration of some period to be determined. One of the things we feel is that people who are convicted, arrested and convicted for drunk driving, by and large do have a drinking problem; and one of the ways you address or encourage people to address that problem is if they go through a period of what's referred to as hitting bottom and to some extent, mandatory incarceration for some of those people will constitute the hitting bottom phase and cause them, as Mr. Duran was pointing out, to then volitionally take matters into their own hands to treat that problem.

The third area we wanted to address is the area of refusals. We feel the refusal should be a separate offense. Right now in the district attorney's office, 34 percent of the cases that go to trial involve refusals. What in effect has happened is the refusal has become the new behavior pattern of the drunk driver and for a good reason; it's cost effective. In our refusal cases we're only getting a conviction rate of about 50 percent, as opposed to the much higher percentage rates that have been talked about.

That's really the areas that we wanted to throw out for consideration. We have reservations about the first infraction concept for two reasons. One, we feel that there is a potential, as Senator Marks was alluding to earlier, to go to two standards of justice at that point. Secondly, though, we feel that the first-time drunk driver is something that cannot be minimized. As earlier testimony said, .10 is a hell of a lot of alcohol in the system and given the fact that we're probably looking at past behavior patterns that involve many offenses, we feel that the first drunk drivers should be looked at as seriously as subsequent drunk drivers.

CHAIRMAN LOCKYER: What if it were an option that the district attorney had? Would that help?

MR. LOVELL: Not certain. We're not opposed to this per se, but feel that should be approached with a great deal of caution.

CHAIRMAN LOCKYER: Sure. The principal argument, I guess, for it has been one of court workload as much as anything. Perhaps it would have to be some backlog or other basis before a D.A. even had that option.

MR. LOVELL: Well, the workload is great. Again, going back to some of the studies, because the problem itself is so great and it really takes a multifaceted attack.

CHAIRMAN LOCKYER: Thank you. Mr. Iglehart.

MR. DICK IGLEHART: I'd like to express my appreciation. I'm Richard Iglehart from the D.A.'s office in Alameda County and I've expressed my appreciation for you coming here and taking a look at the problem, you and your staff. I think that often what occurs, and I'm taking coals to Newcastle here with you, because I know that you know this, but what occurs often is major public policy matters get passed by the Legislature and then you lob them over here...(Laughs.)...and then we sit and wrestle with them for a long period of time and sometimes we have a feeling that you don't really realize what you've done, or perhaps you do and you close your eyes to it because if you really faced it up there, you would never have done it in the first place or would never been able to pay for it. So I congratulate for having these hearings and paying some attention to this.

Whenever the Legislature makes grandiose schemes like, "anyone who gets arrested for drunk driving must do at least 2 days in jail," well it sounds like a great idea and has a very leveling impact on those who are going to think about driving drunk. Whenever they have an idea like, "there is going to be no plea bargaining on drunk driving cases," it's really important that the Legislature is mature enough to be able to say, "What are we really saying? What kind of an impact is this going to really have? What kind of impact is it going to have on rural counties? What kind of impact is it going to have on urban counties? What kind of impact is it going to have on wealthy counties? What kind of impact is it going to have on counties with high levels of indigents?" And are we really saying that while this is a good idea and it sounds good and it gets a lot of publicity, is this really going to happen? I think some of the evidence from this particular, the Morehead legislation, and by that obviously I mean the group of legislation that passed all at one time, clearly there was a publicity effect and certain, I think, certainly all of us saw for some period of time a recognition by the public to some degree that, "Wait a minute. Wow. They're getting tough. They're getting tough on drunk driving," and that means you really are going to go to jail, that means that they're really going to get tough with these cases in court, and so they're really starting to take this seriously. And I think we all saw an increased level of awareness by the public, as well as law enforcement, the courts, and all of that, and there was an original, I think, dip that I reported in most of the statistics shortly after that legislation passed; a lot of publicity during Christmastime about the new law going into effect and all that. I think that that does show that there can at least be a short-term effect to measures that the Legislature passes that supposedly has teeth in them. Then what we have to do is we have to be able to say is there some long-term effect? Do they really have teeth in them? Obviously, on the

issue of--and I'll complete this issue now--on the issue of putting your money where your mouth is I really think, of course you know the Morehead legislation was an SB 90 bill which did have money in it until there was discussion about how much money it would really cost, and that together with additional problems involved with appropriating that kind of money ended up knocking the money out of the Morehead bill. Then what you really do, and I know you know this, is that you cause all of us to redirect our efforts and attempt to make do at our level with mandated new services, programs, and policies that I think are a good idea, by the way. I totally encourage them, but you make us do that and essentially use the same amount of limited resources that we have and redirect those resources in some way to cut and paste and make do. And as the municipal court judge said earlier, the municipal courts are an amazing piece of silly putty that do adapt and bind and bend and try to make do, all the time looking at, you know, what have they done to us this time? Okay, let's see what we can do. And we all do a pretty good job--public defenders, D.A.'s, defense attorneys--in trying to figure this out and make do and move on from there.

I think the Legislature needs to be able to then take a look at what they've done, be able to answer they have imposed, and determine which new mandated state programs that they haven't paid for. Are there ways that we can either deal with it by providing new monies available? Is it such an important issue that perhaps a bond measure would be passed and have public approval? I personally think it is and I argued for years that this was necessary in the custody area and finally those got on the ballot and those passed pretty well. And if not, are we willing to take a look at what we've done and are we willing to say that either it's working and it's costing them a lot, or it's not working and let's face the fact that it's not working and go from there. I would ask you to look at your no plea bargaining provision because as I talked to various D.A.'s, none of us like to admit that there's any plea bargaining that goes on in drunk driving cases because you've made it real clear there's not going to be any plea bargaining in drunk driving cases, period; and if you do get a reduced charge and you do get a wet reckless, whatever, you have to file a written statement with the court explaining what the special reasons were that caused that.

Well, I'm here to tell you that even those of us who have instituted a no plea bargaining policy in our counties, and many counties have not, there are many counties in this state who don't even pay lip service to that particular provision for one reason or another, either because of, again, crowded courts or because of their own particular policies. In any event, they ignore that provision. Other counties attempt to, one way or another, attempt to put it into practice. We said in Alameda County, all right, fine, the Legislature, even though they finally took money out of the bill and passed it, they made it real clear--no plea bargaining in these cases. We got together with law enforcement and said what we're going to do is on some of the cases that before we would have charged because they came within the bare minimum of the code, in some of those cases we're going to have a tougher charging standard, but we're going to go to no plea bargaining on these cases. We talked to law enforcement ahead of time about that. There was some, they were griping to some degree because some of the .11's didn't get charged, and it's not that they wouldn't get charged, but if there isn't otherwise evidence of bad driving behavior, bad field sobriety test behavior, statements made by the

person, whatever; if there isn't otherwise corroborating evidence there then because of the statements by experts about the ability of the tests to be off by a .10 percent, because of that we're going to go to the next higher percent to charge. So we don't charge in this county unless there is through the rest of the person's behavior evidence to corroborate the drunk driving and many times there isn't. Many times that chemical test is it, and thank God for chemical tests because, you know, the Highway Patrol's evidence is that the people they stop, they're average in terms of people they see doing something wrong on the highway and stop is about a .17. That means that you can, a lot of people can, drive with a .10 and not be detected. Our freeways are built so that you can drive down just about blind and not make a mistake, you know, and unless we've got people watching you when you go through that redlight or whatever, a lot of people are going to make it home drunk. And as John said, there are a sizable percentage. I don't think that anyone of us know what that is, but there is a sizable number of people who have done that and have made it home. It's mainly just because they weren't put in that position where their peripheral vision was called upon instantaneously to see another car, or whatever. There, but for the grace of God, they got home safe; and the more times they're out there driving, the more times they increase the possibility that either they will become victims or they will create victims out of somebody else.

And the Legislature, I think, should be congratulated because we've now seen a reduction in deaths that are related, alcohol-related deaths. Whether or not the reduction of the speed limit, how much that has to do with it, I can't tell you, but we have seen a reduction in driving death and I think that that shows that those kinds of grandiose public policies do work. Now I think we have to say what kind of cost have we put on the local jurisdictions. Let's be reasonable about it. Let's face up to the fact and say that, you know, are we really going to make you sue the state on an SB 90 claim to get that money back, or to what degree should the state be putting their money where their mouth is in this area?

So, I have, like I say, some general comments there. I think that what you've heard here today shows you, first of all, diversity amongst counties, and we really do have, as you know, 57 separate justice systems in this state and we always will as long as the counties are the main basis for determining law enforcement policies and judicial policies and all that, we'll have different attitudes in different counties, sometimes very similar in contiguous counties and sometimes not. Like I say, I suggest to you that the no plea bargaining provision does work in some counties and doesn't in others. D.A.'s have told me in some counties that, while they would tell the Lions Club that that's what they do, in fact, they know that their deputies plead cases out that are marginal cases, that are going to be too tough; they'll take a half a loaf, and they'll plead those cases out. When you get to a system that says you don't take half a loaf and you either go to trial and have trouble in trial on those cases or you end up dismissing those cases short of doing that; whenever you do that, it costs a lot in terms of being able to go for that rare trial time and use your deputies and put them in on sometimes marginal cases and say, "Instead of dismissing this case, we're going to go to trial on it and see what happens. And then, as we've all seen, we have real trouble with refusals in those cases where we don't have the evidentiary basis to go more than the opinion of the officer and some other indication

of the person's behavior.

I was pleased to see your reactions last year in legislation to refusals and I think we need to pay greater attention to the lessons that the public is learning about refusals, even perhaps more so than the measures taken last year, but let's let those sit and see how they work and see whether or not those having enhanced penalties, etc., for refusals, if that works. But the public is starting to get the message: that is, there isn't that chemical evidence of the test. Then at least there's a much better chance of either getting a hung jury or having the case not be charged in the first place, or whatever. We have to face those facts. I think that people don't talk about it, don't make that public, leave that out there as an unwritten thing that happens but nobody really knows about. I think we have to face those facts and say what do we do about it and move on from there. I'd like to.

One of the other policies, the 48 hours in jail, started out as a great idea and I think a lot of people really thought that you were going to go to jail, no matter what; you were going to go to jail if you got arrested for drunk driving. And of course, what we found is that that varies in different counties. In some counties you're going to go to jail for more than that period of time and quite frankly, in some parts of Alameda County you are not going to go to jail for 48 hours, I can guarantee it. In some parts of Alameda County you are not going to do it because of the fact that either the 90-day provision, or even without that, judges are not going to send a person to jail for 48 hours. Our sheriff has gotten to the point where he is pleading with judges not to send weekenders out there because of the problems involved with the jails, so first-timers are not going to go to jail to a large part in most of the parts in Alameda County. I think that we ought to be mature about that, be honest about it, be willing to admit it. I'm certainly willing to tell any representative from MADD what is going on, in the realities in this system, and I would suggest to you that in some way, in some way we need to take a look at this infraction idea. I think it certainly has enough merit to it to at least take a look at the guts of it and see whether or not it would work, and I don't mean by that to say that we're putting out the white flag and saying this drunk driving policy doesn't work and we simply have to step back. I think it really means that we're going to be realistic about it and perhaps do it in either a pilot project with a particular county, or put certain restrictions regarding the blood alcohol test, the driving background, and many other things so that only a limited window is available there for the charging as an infraction, then let's take a look at it and see. It certainly would, it certainly would speed up the processing of the first-time case.

If, as we see in Alameda County, over half our cases are second-time arrests, and if we say that the issue of deaths and destruction on the highway relate to the increased time that people drive on the highway drunk, then it seems to me that putting our attention on the chronic offender is probably well placed, and if we can save that rare court time for that chronic offender and then service the hell out of them. That means that upon conviction seeing more than just perhaps minimum levels of jail time at that point and going to the other ideas you've heard about here, and a number of creative ideas I think. Certainly, I think we have to address the disease itself with those people who are alcohol-dependent, and moving on from there and paying attention to those people, using the first-

time as a prior, using the first one as a prior but saying you're not going to go to jail because it's an infraction, you're not going to go to jail with that first one. After this, this use as a prior, it enhances what happens to you the next time out. To me, it seems to me to be a mature way of dealing with this overall problem and still not getting into a position where everyone suffers when caseloads go a year, year and-a-half, before you can get out to trial.

Either that or the Legislature should provide, I think, the monies available for us to make this policy work as it is, and that obviously, is a difficult thing to do. But if we are going to have, so much of this country is going to spend it's time and money, and receive money, and receive as tax money from the alcohol industry, then it seems to me that we ought to pay some real serious attention to those people who are at least going to be the chronic offenders and do what we can to make sure that we can reduce their driving time. And to me, all kinds of creative ways to do that should be looked at, including the locking of cars, taking away vehicles, making people aware of the fact that certain offenders are drunk drivers in their job, making sure everyone knows: their family, their job, everyone knows that a certain offender is a drunk driver. Making him admit that to everyone he comes in contact with that he has that particular disease and that he has been a drunk driver in the past so that people get to have some information and make some choices about who they plan to drive with and who they plan to deal with, that kind of thing.

I'm heartened by the student's approach, this number of SADD chapters that are increasing, this self-help amongst students to me is facinating and I see them--while it's not a case of being down on drinking and unfortunately, I think is of course rapidly on the rise amongst students--at least there is growing awareness of the carnage that drunk driving causes students; and therefore, we see many more situations where a designated driver is not going to be drinking. I think that's good and bad news to us but at least there is some hope in the future of some overall public education in that area.

CHAIRMAN LOCKYER: Thank you, Mr. Iglehart. Do any of you wish to respond to any point or comment that's been made? Last short, here. Thank you all very much here, and let me double-check as to whether Ms. Aguilar, Mr. Ogul or Mr. Sherrod have joined us. I think not, but if they have--our next thing we want to do is ask Mr. Brodsky to talk about his proposal.

MR. HARVEY BRODSKY: Good morning, Senator. I need one moment to get my briefcase from the back and put it up here.

CHAIRMAN LOCKYER: Okay. Is Mr. Rob Laurance in the room? Mr. Laurance? No? Okay. Who else did we miss? We missed Auben Elliot. I don't think she's joined us. Okay. I think you're the clean-up batter.

MR. BRODSKY: Okay. I'm Harvey Brodsky and I'm president of Stay Alive Systems, and I have my attorney, Joel Franklin, with me because he will be a better position to answer question you have than I would be, legislative-type questions. What I'm doing here is a poor substitute for an ignition interlock device that would be in a car. However, happily, my car is right outside and as this meeting is over, if you or anyone else would like to see my car with a real live ignition interlock device, I'll be more than happy to show it to you.

I might add that while we're waiting for this to warm up that I have been using one in my car

for the last, a little over two years, an ignition interlock device. It's not because I'm a drinking driver. As a matter of fact, as an aside, ever since I became involved in ignition interlock devices, I've lost my taste for alcohol. The only drinking I do now is just for demonstration purposes. (Laughter.)

CHAIRMAN LOCKYER: How often do you demonstrate this?

MR. BRODSKY: Some say as often as I can. I've really lost my taste for it. Here's a little bottle of rum that I have and what we're going to do here is I'm going to demonstrate our ignition interlock device.

This is the device. We call it our Stay Alive System, but generically, it's an ignition interlock device. This portion in a car would not be visible. This would actually be underneath the dash and we have an armored cable feeding up. This portion hooks right on to the dashboard which is, again, you can see this in my own car, if you'd like. When I get in my car...

CHAIRMAN LOCKYER: Now, is all of that equipment somewhere, what's in the briefcase? That's underneath or in the...?

MR. BRODSKY: No, actually the briefcase itself is simply so we're able to demonstrate this in this type of environment.

CHAIRMAN LOCKYER: But is that volume of stuff necessary in the car?

MR. BRODSKY: No. Only this.

CHAIRMAN LOCKYER: Okay. Gotcha.

MR. BRODSKY: This is what get's installed in the car.

CHAIRMAN LOCKYER: That's power, or whatever.

MR. BRODSKY: This is just a power source in order to simulate an automobile.

CHAIRMAN LOCKYER: Gotcha.

MR. BRODSKY: Now, when I get in my car I turn my ignition key and this is exactly what does happen in my car--nothing. I hear nothing as if I have a dead battery, however, the unit begins to blink and from where you're sitting you may not be able to read it, but it says "wait." Now, in a normal environment when my ignition interlock device is in my car and it's actually been energized, it takes somewhere between 15 and 40 seconds for the "wait" light to go to the "blow" light because I just only plugged this in and it's not been energized, it will take a few more seconds right now. So, I'll put it on the side just for a moment. It make take a minute or so, or even two minutes to get to that point.

While I'm doing that I would like to make a case for ignition interlock devices. I feel as if I'm one of the blind men around the elephant for I have my own point of view about the drunk driving problem. For the past two years I have been really immersed in it and I'm certainly not an expert, but as a layperson I know a fair amount about the drunk driving problem and I'm impressed with the amount of rhetoric that I hear and the fact that with all the rhetoric the numbers really don't change significantly.

I'm reminded of a recent visit of mine to Washington, D.C., at the Viet Nam Memorial where 54,000 people approximately lost their lives in approximately 13 years. In the same period of time,

nearly 300,000 people lost their lives in the United States to drunk driving. The real monument needs to be built for the victims of drunk driving.

I believe that ignition interlock devices--by the way, this is in a "blow" mode, it's ready to go in a moment--I believe that ignition interlock devices present the first breakthrough in the arsenal against the fight against drunk driving. Now it's now the be-all, end-all. It's not the pill that's going to be the cure for drunk driving but it's certainly a very powerful tool that I think that the courts should have in their arsenal to use against drunk drivers. Why? Because it's a realistic approach. We all hear this morning of the drunk drivers who say on a stack of bibles, "I'm never going to tak another drink," and we all know exactly what the guy does, from driving without licenses, etc. And it's very difficult with a second offense drunk driver, to stop this guy from getting back into his car and doing damage.

With the ignition interlock device what will happen, if it's used the way we believe it should be used, as a, on a mandated basis, as a condition of probation with convicted multiple offenders and certain convicted first offenders. The courts will mandate the use of an I.I.D. in the offender's car for the term of his probation, 36 months according to the Vehicle Code. The fellow will get into his car, he will, every single time he starts his car, will have to do the following. And I might add before I blow into it, he still can't start his car. There is no bypass. He's going to pick it up and he's going to blow into it for 5 full seconds. (Five seconds of blowing.)

CHAIRMAN LOCKYER: No one with emphysema will ever start their car.

MR. BRODSKY: Yes, they will.

CHAIRMAN LOCKYER: I'm sorry, I didn't want to interrupt you.

MR. BRODSKY: Most of the time when people try it for the first time, and I have little mouth pieces here in case anyone else wants to try it, most of the time we're amused because they try to blow their ears off. They think you have to blow very hard. The fact is you don't. You can blow as easily you want. I might add that the inventor just walked into the room, Jack and Joni Simon, so if there are any technical questions as this unfolds, he'd be the one who could really answer them. But because I have not been drinking, I've got a green light and I'm able to start the car. Now this is what we would see if we were to actually go out to my car. Now I'm going to turn it off and I'm going to turn it on again and we'll wait for the green light, the "blow" light to come back on so I can take the test and then I'm going to demonstrate what in fact happens if I had been drinking.

CHAIRMAN LOCKYER: What's the cost?

MR. BRODSKY: The cost of our device would be about $300, including installation. The offender would have to bear the cost of $300, however, he would own the device. The life expectancy of the device is longer than the person. There's no question that because...

CHAIRMAN LOCKYER: Resale market?

MR. BRODSKY: There's a resale market, yes. At the end of the three-year period we envision one of a couple of things might happen. For one, he might say, "Hey. This is not such a bad thing. I have not had a DUI arrest and I've still been able to move my car," because we have found, in my experience anyway, and this is a generalization, but a lot of people with the problem are really Jekyll

and Hyde's. In a sober state they do not want to go out and run over and kill my kid. In a drunken state they do indeed, run over and kill a lot of people's kids. So because of that we think the idea of having this in their car, and it doesn't keep them from drinking and driving--it doesn't keep them from drinking, rather. We think we'll be appealing to them because there are very few people, I like to character I use from the Superman movie, Lex Luther types. There are very few people who are dedicated to drinking and driving just to drink and drive. You know, there's really not a lot of pay off for that.

CHAIRMAN LOCKYER: Now, are these being used in other states or anything yet?

MR. BRODSKY: No, sir, because we're a California organization and we're beginning right in Monterey County, and the first judge in Monterey County is now mandating these, and this is Judge Bill Burleigh.

CHAIRMAN LOCKYER: Oh, that's happening now?

MR. BRODSKY: Yes. Judge Burleigh has asked us not to publicize this because of the fact that we are in the formative stages of the company and he did not want to lend his name to a promotion type of thing, but he is indeed mandating them and that's a fact. You can be in his courtroom and hear him mandating that.

CHAIRMAN LOCKYER: How long ago did that begin?

MR. BRODSKY: He's just only begun. Just only begun in the last couple of weeks.

CHAIRMAN LOCKYER: Oh, very recently. Okay.

MR. BRODSKY: Past month or so. We have yet to install the first one because he gives the offender 30 days after he mandates the use of the device to contact us and have it installed in his car, and we're still within that period. So we have not installed any in any offender's car as yet.

CHAIRMAN LOCKYER: Are there other manufacturers of these yet somewhere else in the country?

MR. BRODSKY: Yes, there is a manufacturer to our knowledge in Colorado.

CHAIRMAN LOCKYER: But they're not being used there? That is, there are no courts that we know that are requiring it or something?

MR. BRODSKY: I have no knowledge of that, but there is another company called Guardian Interlock and they are indeed...

CHAIRMAN LOCKYER: Same basic cost?

MR. BRODSKY: We don't know--their cost is higher.

MR. JOEL FRANKLIN: Yes, excuse me, I think the cost is a little higher. It's a much more cumbersome device. When you asked your initial question about parts and size and so forth, it's our understanding that that device is a bit more cumbersome and complicated to use.

MR. BRODSKY: We've seen their literature and it's nothing like our as far as size and I imagine they would say the same thing, but we think ours is the premier unit. In any event, the more the merrier because if there is more than one manufacturer that simply will lend a little bit of validity, perhaps, to the whole concept which we think is a very valid concept.

Now I'm going to demonstrate what will happen had I been drinking.

CHAIRMAN LOCKYER: Okay. How much is this?

MR. BRODSKY: I'm not going to drink the whole thing. I'm just going to touch a little bit to my lips because one of the nice features about the device is because it's easy to fool it into thinking your drunk. It's very, very difficult to fool into thinking you're sober and I'll touch on that in a moment. First, I'll show you what will happen when I...

CHAIRMAN LOCKYER: How about mouthwash? We've heard that claim.

MR. BRODSKY: No, this is calibrated at .04. It is high enough that, which is less than one-half the legal limit. It's high enough that mouthwash would have no effect, unless a guy sat in his car, drank mouthwash and tried to start his car. I think he'd have a problem. (Five seconds of blowing.) That's exactly five seconds, I might add. I timed it. Now you notice that I get a red light and when I get a red light I cannot start the vehicle. It's just that simple.

CHAIRMAN LOCKYER: That wasn't even one drink.

MR. BRODSKY: That's because I fooled the machine into thinking that I have a lot of alcohol simply because I blew into it within a second after putting it to my lips.

CHAIRMAN LOCKYER: Oh, okay. Right after having, yes. Okay.

MR. BRODSKY: Exactly. In fact, in a real life situation one, depending upon the body weight, could have as much as .04 alcohol. Somebody of my body weight or let's say of your body weight, in a course of an hour, we could have approximately two drinks. If we try to go anymore than that over an hour period, I can assure you we would not start the car. Or if we had two drinks in a half an hour and went out to our car we would not be able to start our car.

Now, in the models that we are manufacturing and now beginning to use, if I get a red light when I turn my ignition key on and I go to start the car again, the whole unit is shut down and I cannot even retake the test for 30 minutes, so it's almost as though I'm being put in the penalty box for half an hour. This is to give the person behind the wheel an opportunity to maybe consider a different way to get home, but even if he waits the 30 minutes and he hasn't sobered up and he takes the test again, he's going to get a red light and he's going to get another 30-minute penalty.

CHAIRMAN LOCKYER: So you can't even try that for another half hour?

MR. BRODSKY: On this particular model I can, but...

CHAIRMAN LOCKYER: But on the others you can't.

MR. BRODSKY: Yes. On this one and on the one I have in my car, we have bypassed that just for demonstration purposes, but in the models we manufacture you cannot take it again for 30 minutes. I'm always interested in what would happen in a real life situation if a fellow had one in his car. Would he be able to use his car in the real world? Would he be able to park it in front of the hotel, for example? Last week I was in Los Angeles and I was at the Century Plaza Hotel for several days where there is only valet parking, and we have little disposable mouthpieces that fit on top, especially in these days, and I deliberately did not give the parking attendants any more information about them than I had to simply to see if it would be possible to get that car in and out. There was absolutely no problem. My car was in and out of there maybe 30 times in the four days that I was in Los Angeles.

CHAIRMAN LOCKYER: You mean the parking attendants weren't drinking?

MR. BRODSKY: They were not drinking. (Laughter.) You know, one guy--it was interesting--as a matter of fact, one fellow would not go near the car. He shied away from it a couple of times and the other ones looked at him kind of askance. Maybe they had a problem.

That's the ignition interlock device. We have prepared a memorandum for judges. Joel prepared it.

CHAIRMAN LOCKYER: Can you leave that with us?

MR. BRODSKY: I have a copy.

CHAIRMAN LOCKYER: I assume you anticipate some legal challenge to a court requiring these?

MR. FRANKLIN: Quite frankly, I don't. That's one of the reasons why we prepared the memorandum. We've received very positive feedback from the courts. We've talked to district attorneys, defense lawyers. There really are no strong objectionable areas to legislation or to the laws that currently exist. In other words, judges right now can order these devices installed.

CHAIRMAN LOCKYER: They have a general authority?

MR. FRANKLIN: They have a very broad discretionary power to order reasonable conditions of probation and we believe this certainly to be reasonably related to the kind of behavior that a probationer is subject to under the condition that he or she shall not drink and drive.

I wanted to mention just briefly a couple of areas where we think some legislation would be helpful.

CHAIRMAN LOCKYER: Sure.

MR. FRANKLIN: And by the way, I might add that we've discussed some of this with Assemblyman Sam Farr from Monterey.

CHAIRMAN LOCKYER: Yes. He's told me that too.

MR. FRANKLIN: He's been interested in the project. But there are essentially four areas that I think need to be evaluated from a legislative point of view.

One is I think we need some statutes that would prevent, a sort of anti-tampering statute, that is it would be two-fold. One is it would prevent the probationer from soliciting the help from somebody else. He goes over and pays a kid $10 and says, "Here. Go blow into the thing so I can get going," or whatever.

CHAIRMAN LOCKYER: That sounds like a thing that might happen.

MR. FRANKLIN: Somebody might really want to go to some contorted lengths to get a car started, so we would recommend that be considered as misdemeanor type treatment to tamper with this device, solicit another individual to effectively start this vehicle. The other form of the tampering statute would deal with installers and folks who are smart enough to actually deal with tampering with the electronical and actual mounting of this device. We see having a tamper-proof seal placed on this so that, in fact, one thought is the probationer would have to prove to the court upon completion of his or her probation that the tamper-proof seal has not been messed with, hasn't been tampered with. So we'd like to have some supportive legislation to make sure that the general

public realizes that these devices are not to be tampered with, are not to be manipulated, and that probationers indeed who solicit folks to do this are look at sort of misdemeanor punishment, aside from whatever violations of probation that would befall that individual. So that's one area.

CHAIRMAN LOCKYER: I wonder if that's a deterrent.

MR. FRANKLIN: Well, it may not be. You know, I think that that's a problem. I think it would be worthwhile to have a stamp or a big sign in back of this thing or below it saying that anyone who used the device who is unauthorized is guilty of a misdemeanor. It may be no more of a deterrent than those signs posted anywhere throughout a city, but I think there are situations where I think with a conviction or two, people would take it seriously. Certainly, I think younger folks would not want to get involved in it, kids or teenagers, in terms of aiding or abetting. It might not be a deterrent.

There's one other thing in that area that I think is worth looking at and that is folks generally drink together. You get four or five guys going out, they're all going to have a few beers, they're all going to drink, so generally it would be difficult for a passenger. This is just an assumption. I don't have data on it, but I think it would be hard for other folks in the car to then blow into the device to get it started.

MR. BRODSKY: There's a lot of evidence in that area, Senator, that drunk driving injuries and fatalities, more of them than, far more of them than not, are caused by either a sole driver in the car who is drunk, or the passengers in the car are equally drunk. So, when you have two people in the car who were drunk--let's say that Joel and I are together and I ask him to blow into it. Both of us could blow into it and it wouldn't matter. Neither of us could start the car. On the other hand, if I were the drive and Joel were the passenger and he were not drinking and I said to him, "Joel, would you blow into it as a sober person so that I as a drunk person can drive you," it doesn't take much figuring out to think why would I do that? Rather, it's more likely he would say, "I'll blow into it but I'm going to be the person who's driving." Very few sober people are going to allow a drunk person to drive him around.

CHAIRMAN LOCKYER: You mentioned the Century Plaza and L.A. parking. I guess there's a special problem you need to work out of having that person start the car and turn it over to the driver without having gone through the requirement of starting it.

MR. BRODSKY: That's true, that's true. As one judge said to us, we've talked to many, many judges throughout the state on this, one of the things that he liked about the device and he said if in fact there's a way around it, and we don't think there are many ways around it, he said we're absolutely no worse off than we were before. Now, I think it would be very easy for every parking garage to receive a notice from the private sector simply saying when there is ignition interlock device in the car, you, and in fact, correct me Joel, you may be liable if you turn that car over to a drinking driver, so turn the car off and let him start it again.

CHAIRMAN LOCKYER: I think the trial lawyers will probably...

MR. FRANKLIN: The defense trial lawyers. You know, the civil liability...

CHAIRMAN LOCKYER: The defense trial lawyers will inform their client parking lot attendants, yes.

MR. FRANKLIN: Yes.

CHAIRMAN LOCKYER: Because I would guess that that's just wonderful evidence for a plaintiff to have that they turned the car over.

MR. FRANKLIN: Exactly. And in terms of a statute, if there was a statute I think you could just have it posted in every garage. You know, these devices shall not be tampered with subject to this Penal Code provision. I think that's strong, I think that's a strong warning. If people really want to get around it then they might be able to do that.

MR. BRODSKY: Now, from getting around it point of view, we have been playing cat and mouse with this for the last couple of years thanks in no small part to the Department of Transportion who's been very helpful with this. We have recently subjected this device to an independent testing laboratory, Pittsburgh Testing Laboratory, a very well known national organization, and we said try and start it with a vacuum cleaner, with a hair dryer, with devices similar to this that are stuffed with cotton and all types of filtering devices that might filter out alcohol so that if a cottage industry sprung up, would it be able to be one where a fellow could buy one of these and put it on and start the car. And in no case, in no case were they able to start it, and I have a copy of that testing laboratory report that we will leave with you. I may have sent one already but I have other copies with me.

CHAIRMAN LOCKYER: Why is that? What prevents just some air source that you blow in...?

MR. BRODKSY: That's a good question. The inside of this device is a very intelligent chip,computer chip and it does two things. Correct me, Jack, if I'm mistaken here. The first thing it does when I blew into it is it took my temperature. Unless my temperature were within a very narrow window, it stopped the test right away and then it measured the amount of pressure coming in. And again, I had to pass that before it went onto measure the amount of alcohol in my blood as expressed through my breath, which is why it requires that four or five seconds. Any of the artificial air sources or the filtering devices that we have tried with this, it will not allow the test to even take place. Now, I'm certain that if someone dedicated their entire workday and their fortune to building a device to pull it, they would do that, but we have to look at the numbers game. For everybody who did it, there would probably be 10,000 starts where it did not happen, or non-starts, happily, and that would be 10,000 speeding bullets stopped right in their tracks. And that's why I say that this has the potential to be one of the most effective deterrents against drunk driving that has ever come into our arsenal.

CHAIRMAN LOCKYER: It's very interesting.

MR. FRANKLIN: Which brings me to my second point in terms of legislative assistance. We think some sort of mandatory legislation should be established for repeat offenders. We believe the courts right now have plenty of discretion to order the installation of these devices but we think it could be done on sort of an ad hoc basis and we think it should be done on a more uniform basis; and we think in order to really effectuate the condition of probation that you shall not drink and drive, that this device is really designed to do that. I think it would strengthen the integrity of the courts, it would provide the probation department with an effective means of really enforcing that particular

condition, and so we would urge some legislative thinking about a mandatory use of this device for repeat offenders.

I might add that courts ought to have discretion to order installation for fairly serious first-time offenders, say, folks that are blowing .17, .18, .19, .20, you know, significant blood alcohol content. I think the court should have the power to say, listen, this is a very serious case and in this particular case we're going to order that you install this for a certain period of time of your probation. Again, I think that the law, the constitutional law and the criminal law, in the State of California clearly supports this type of exercise of judicial discretion. We have had no objections from the judges that we've talked to. We've talked to many judges throughout the state to this exercise of power. They've been quite comfortable with it.

The third area would deal with some sort of funding for indigent defendant type situation. We want to make sure that people who can't afford the device would have equal access to it because otherwise we'd have the situation where perhaps some poor defendants might have more onerous probation conditions imposed upon that person if they couldn't have access to the device, and we think that some type of funding, either through traffic fines or other criminal related fines, or some portion of revenues generated in the criminal justice system could be set aside to reimburse counties or however the Legislature might set it up, for poor folks. We think that's an issue that needs to be addressed.

CHAIRMAN LOCKYER: Do you fear any equal protection problems?

MR. FRANKLIN: Yes, there could be an equal protection. I might suggest that that really varies from state to state. Some states do not believe that wealth or sort of economic status is a suspect classification.

CHAIRMAN LOCKYER: This state...

MR. FRANKLIN: This state does. I might add, in my memo I point out that there are cases in the California Supreme Court who use this issue where they do require defendants to obtain gainful employment in order to pay back a fine. Give a defendant, perhaps, a two or three-month period to pay off a particular fine to a court. I think these are elastic and flexible sorts of tools that we can use along with some kind of funding mechanism to cover this one area. I think it's the only area of the legal analysis of this device that needs to be dealt with directly in terms of some kind of legislative support.

The last point is that we believe some sort of quality control legislation needs to be implemented to make sure that the devices meet the Department of Transportation standards, or whatever standards that the Legislature feels ought to be set, because we think that indeed, there will be some other devices built. The device in Colorado, the Guardian, is a mail order device. it can be installed by the individual, that is you can order one in the mail, you can put it in. We think this probably is not a good approach. We think it should be installed by folks who are trained and know how to deal with electrical systems, and indeed, you might not want to have the defendant responsible for installing the device in his car. I think there's some problem with that as a probation division. So we think that some type of quality control standards should be set by the state with

specifications as to what these things should do, how reliable they should be, and that whatever device is ordered by the state, under whatever cirumstances, they should have to meet that threshold standard.

So, it's the anti-tampering, it's the mandatory use for repeat offenders, funding under the equal protection issue, and then some sort of certification procedure so that with devices, such as our device, those types of quality standards are set. Otherwise, we really perceive no other legal objections or problems, constitutional parameters to the use of this device. We think it will really be able to cut down on the accidents, fatalities, and DUI convictions throughout the state. Is there any questions in terms of any of the legal aspects?

CHAIRMAN LOCKYER: There may be some that come up, but especially if there's legislation moving, then we'll have an opportunity.

MR. FRANKLIN: We'll be happy to assist in any way.

MR. BRODSKY: Thank you very much.

CHAIRMAN LOCKYER: Thank you very much. Thank you for the demonstrations. I guess I'm back at asking if there's anyone I have missed, knowing Miss Aguilar is one. Is there anyone else present who had hoped to say something? Why don't you, Susan, take the microphone there. We have had several district attorneys talk about what changes in the law they might recommend, so anything you would add--not having heard their comments, I understand that's a little difficult.

MS. SUSAN AGUILAR: Well, I'll apologize first of all if I should repeat anything that you've heard before, but there are a couple of principal point I'd like to make. I thought you might find it interesting to know what our statistics are in Sacramento County in terms of refusals and the number of arrests, things like that, to give you a picture of what impact, if any, the DUI laws are having right now. Our principal argument being that they lack the deterrent effect that we would have liked to see them have.

First of all, I think one of the principal points is that there's just a whole culture of drinking and driving in our society. I'm sure this point has probably been made before by other speakers today. It's found to be acceptable. It's found to be a matter that's a source of joking and laughing. When we put up the roadblocks in Sacramento it was simply a matter of making everybody on Friday night knew where they were going to be and you avoided that part of town if you were drinking and driving. In terms of, if we've been educating people to the risks of drinking and driving, I think you have only to look at the average defendant who comes through our DUI courts, and that includes an awful lot of law enforcement and lawyers in recent years in Sacramento County. So the message that, " this is something dangerous that needs to be taken seriously," has not thoroughly gotten through the populace yet. It is a problem that cuts across all economic levels, all professional levels, and we see a very large number of repeat offenders, which I'll speak to in a moment, in terms of our statistics so that I think one of the principal things that needs to be addressed is this entire culture that we have, the level of acceptance of drinking and driving.

We took a look to see if from the time that the stricter DUI laws went into effect, when they were passed in 1982, whether we've had a decrease in the number of arrests. As a matter of fact, the

number of arrests in Sacramento County has increased, notwithstanding the stiffer penalties that went into effect and notwithstanding the amount of publicity that has gone into effect about drinking and driving. In 1983, our total DUI arrests in Sacramento County were 11,513. In 1985, by November 25, 1985, we'd already had 10,063. So from an average of just around 953 per month in the prior two years, 1983-1984 where the statistics were pretty constant for those two years, 1985 we're now averaging 1,006 per month. We have a 5.6 percent increase in the number of DUI arrests in Sacramento County. Those are pretty disturbing statistics for us because it seems like the message is just not getting through to people.

In an average month, 11 percent of our cases are refusals. Of the refusals alone, 46 percent have a prior DUI. In general, about 31 percent, about a third of the DUI arrests are refusals, but again, one of the interesting correlations is that when you have a repeat DUI offender, they're more likely to refuse the chemical test the next time around because they understand that that's the principal evidence that's used against them in court.

CHAIRMAN LOCKYER: Would you hold your next thought for about one hundred seconds?

MS. AGUILAR: Sure.

CHAIRMAN LOCKYER: Okay. Now, refusals. We got to that.

MS. AGUILAR: I was saying that in general, almost a third, some 31 percent of our DUI cases are refusals and it's clear that you can see the correlation between repeat offenders and refusing because they understand that that's the principal evidence that can be used against them, some of the strongest evidence in court, and so they tend to refuse the second time or the third or fourth time around.

I'd like to move for just a second to the question of fine and punishment and there's four proposals...

CHAIRMAN LOCKYER: You know what I don't understand--go ahead.

MS. AGUILAR: Okay. There's been a lot of talk about the strengthening the DUI laws and the fact that California's very strict about that and you've got 48 hours in jail on a first offense. I do not believe that Sacramento County is unique in this, but even if we are I think are problems are illustrative of what can happen in the rest of the state. We're under a Federal court order to minimize the number of inmates in our county jail. It has a lot of impact in a lot of areas in the criminal justice system, but the biggest thing it means is it's really a fraud on the public to say that you're doing jail time for DUI's. No DUI convicted person does jail time in Sacramento County. Forty-eight hours does not mean 48 hours in jail. It means 48 hours on a work project which means you report in the morning and you do 8 hours of raking leaves, washing cars, or filing papers and you go home at the end of your 8-hour work day. You do that again to make up your 48 hours.

CHAIRMAN LOCKYER: You do it six times? Is that how 48 is...?

MS. AGUILAR: There's actually some credits that go into that. It's a rather complex procedure so you're not actually doing 48 straight hours on.

CHAIRMAN LOCKYER: But several days.

MS. AGUILAR: Two or three days is really what it works out to be, it's done on the weekends.

The weekend work project is what it's referred to. That really is what holds true for anybody who gets up to about 60 days to about 100, 120 days will do weekend work project. They will never spend a moment of in-custody time in jail for what they do. What they're simply doing is almost the equivalent of volunteer work. Those people who get longer periods of time to where it simply becomes absolutely logistically impossible to believe that they'll show up every weekend for the next three years, do a theoretical version of in-custody time, but again they're released to go to their jobs. So they spend a minimum period of time incarcerated.

To get the picture of what this means, the vast majority of people who come in on DUI cases, even with one, two or three priors do not do any in-custody time in jail. There are a lot of reasons for that. One is the overcrowding of the jails, but if in fact we are going to tell people that people get jail for driving under the influence, we either need to be able to put massive amounts of money into the system up front so that people actually do that, or we ought not tell people that that's the penalty because it really is in many ways a perpetration of fraud on the public. These people are not doing jail time. The punishment is not as severe in reality but we're letting people think it may be. There's a fine that people pay. I worked out the figures for a first offense DUI, it's a $390 fine, 70 percent a penalty assessment, $10 to the restitution fund, there's $1 that I think helps fund the night courts. It works out to a grand total of $674 of fine and the 48 hours in a weekend work project. That's roughly the equivalent of 192 six-packs of beer, or 227 $3 bottles of wine who for somebody who's isn the habit of drinking and driving becomes almost a cost of doing business. Spread out over the course of a year, 192 six-packs of beer is not that much. These people pay it through the Office of Revenue Reimbursement, they don't have to come up with the money up front. They're allowed to make payments scheduled through the Office of Revenue Reimbursement so they're paying off a fine a little bit at a time over the course of a year. There are varying statistics about now effective the collection procedures are for the Office of Revenue Reimbursement, but I can state as a fact that nobody's probation is violated for not having paid their fine. They don't end up going to jail because they didn't pay their fine that they got originally on their DUI case.

We feel that, there's one other thing that I should mention and that's Sacramento County was one of the first places to make use of the roadblocks by the CHP where a roadblock would be set up in a certain area of town and people would be stopped and checked to see if in fact it appeared that they had objective symptoms of being under the influence, and then field sobriety tests might be administered, and indeed, if it looked like there was a reason to believe they were under the influence, they could be taken downtown for a breath test. I don't have precise statistics on that but we found that when those roadblocks are used by the CHP, arrests increased but accidents in Sacramento dramatically decreased. And so in terms of the public safety involved, they had a very good effect on public safety by reducing the number of accidents. If nothing else, it might have been that there simply was a consciousness. People were thinking very clearly, "They're out there, they're checking." They also had, because of the roadblocks, an ability to check random groups of people and to get them off the street if in fact it appeared they were driving under the influence.

CHAIRMAN LOCKYER: What's the status of legal challenge to this? Didn't something go up

from San Mateo or San Jose?

MS. AGUILAR: Yes, it did and I am not certain what the California Supreme Court did on that. My understanding is, however, that there is no injunction against using that.

CHAIRMAN LOCKYER: Is that what they were asked?

MS. AGUILAR: I think that they've been asked to enjoin that and to rule on the constitutionality of it.

CHAIRMAN LOCKYER: Okay.

MS. AGUILAR: Unlike the insurance question where there has been an injunction.

CHAIRMAN LOCKYER: So the declaratory relief part is still pending?

MS. AGUILAR: I think so, but I woud have to honestly say that that's something I'm not certain of, so it's probably not a good idea for me to comment too thoroughly on it because I'm just not certain. I wouldn't want to give you erroneous information.

We have basically four proposals that we think ought to be seriously considered and I spoke at great length with the supervising attorneys in our misdemeanor section that handles the DUI cases. I should say also that the statistics that I've given you thus far deal with misdemeanor DUI. They do not deal with the issue of those people who drive under the influence and cause serious injuries such as they're treated in our felony courts. We have far less problem, it appears, with the sentencing and the enforcement on that end of it.

Our proposals are that increased use of roadblocks be used because of the public safety benefit to that. That we take a very close look at and strengthen the law regarding impounding of cars for DUI drivers. That we penalize refusals in and of themselves. The latest status of that is that legislation went through this year that makes refusal about the equivalent of an enhancement, really. You have to convict the person originally and then you can strengthen their punishment if, in fact, they refuse. We feel that a very serious look should be taken and some real efforts made to penalize the refusal in and of itself.

And finally, there has been a lot of legislative activity in recent years in terms of increasing the maximum penalties in DUI cases. It is our contention that has looked at DUI driving from the wrong angle. We have found through experience, and again I think this plays into the idea of the cultural aspects of drinking and driving, that judges are extremely reluctant to sentence DUI drivers, especially the nicely dressed ones that they may in fact see standing in front of them in court arguing a case in the next few days. That is because of that what people get is the mandatory minimum and no more than that. If, in fact, we wish to have a real impact on DUI in the State of California, it's our contention that we ought to take a look at increasing the mandatory minimum sentences, rather than the maximums. Few, if any, people get the maximum, especially when you're talking about first, second, and third time DUI drivers. Absent aggravating circumstances there would no reason that they would get the maximum penalty there. Therefore, if you really want to hit people when they drive under the influence, you need to increase the mandatory minimum penalty. Again, because of things such as jail crowding, the crowding of the court systems in general with the number of DUI cases that there are, that means funding. Counties are going to need funding up front from the

Legislature, but in terms of hitting the broadest number of people in a truly realistic fashion, we feel that it's that bottom end of the spectrum that needs to be addresssed in terms of penalty and punishment for DUI. Other than that, it clearly becomes, I suppose, a philosophical question as to how strict you wish to make the mandatory minimums.

California has received a lot of publicity from the fact that we have been strengthening our laws in recent years. If one were to take a look at the laws of various other countries we would find that as a matter of fact, ours are some of the most lenient in the world. Some countries require mandatory prison sentences for a first-time offense and the like. We are not contending that that is what we want to have happen in California. We are contending, however, that it is a broader philosophical question that one must look at how far are we willing to go and how serious are we willing to be about the problem of people who drive when they're under the influence of alcohol.

CHAIRMAN LOCKYER: Have you looked at those house arrest devices as a way of perhaps having a, as a cost-effective way...

MS. AGUILAR: We have not studied those in Sacramento County yet. I am aware of them and aware that they are being used, I think primarily in the East.

CHAIRMAN LOCKYER: In Florida.

MS. AGUILAR: But we have not studied whether or not those would be useful in Sacramento County yet.

CHAIRMAN LOCKYER: All right. Thank you. Anything else?

MS. AGUILAR: I should say that one of the concerns we have with that is it is a particularly ironic truth that the person who comes into court to plead guilty and be sentenced for his DUI case, he has his license either suspended or revoked or restricted in some manner, then very often turns around, walks outside and gets into his car and drives away, without even giving it a second thought. I think the idea of house arrests for DUI's would have to look very carefully at the issue of allowing people to continue to drive while they were under that kind of house arrest.

CHAIRMAN LOCKYER: I don't think they can.

MS. AGUILAR: Well, that would be our hope and our contention that the only way it would be useful and appropriate is if you could keep them from driving.

CHAIRMAN LOCKYER: As I understand those devices, and I have sort of mixed feelings about them, but you can't go more than 50 feet from some beacon or the phone or depending on the different systems. Thank you, Susan. We appreciate having you with us. Does anyone else want to add anything, any further comment?

Okay, we'll adjourn for the day.

--oo0oo--