ISSN 0085–7033

THE UNIVERSITY OF SYDNEY

Faculty of Law

PROCEEDINGS
OF THE
INSTITUTE OF CRIMINOLOGY

1975 No. 24

MOTORING OFFENCES

Registered in Australia for transmission by post as a book

THE INSTITUTE OF CRIMINOLOGY
SYDNEY UNIVERSITY LAW SCHOOL

Address: 173–175 Phillip Street, Sydney, N.S.W. 2000

The Institute of Criminology is an organization within the Department of Law of the Sydney University Law School for teaching and research in criminology and penology.

STAFF

Director
Associate Professor R. P. Roulston, LL.B. (Sydney), LL.M. (Tasmania).

Assistant Director
Associate Professor G. J. Hawkins, B.A. (Wales) *(Criminology).*

Senior Lecturers
W. E. Lucas, M.B., B.S., D.P.M. (Sydney) Dip.Crim. (Cambridge) M.A.N.Z.C.P. *(Forensic Psychiatry)*
J. Oxley-Oxland, B.A., LL.B. (Rhodes).
P. G. Ward, M.A., B.E. (Sydney) *(Statistics).*
G. D. Woods, LL.M., Dip.Ed. (Sydney).

Senior Research Assistant
Mrs Angela Coninos, LL.B., Dip.Crim. (Sydney).

Secretary
Miss Valda Cooper

Publications Officer
Miss D. M. Langley, M.B.E., B.Sc., Dip.Diet. (Melbourne).

N.S.W. ADVISORY COMMITTEE

Chairman
The Honourable Chief Justice Sir Lawrence Street, Supreme Court of New South Wales.

Members
Dr J. S. Blow, M.B., B.S., D.P.M., M.A.N.Z.C.P., Deputy Director (Research and Special Services) N.S.W. Department of Youth and Community Services.
Professor T. Brennan, M.A. (Cambridge) Professor of Social Administration in the University of Sydney.
W. Clifford, Director, Australian Institute of Criminology.
C. J. Cummins, M.B., B.S., D.P.H., Director General of Public Health of N.S.W.
Dr J. H. T. Ellard, M.B., B.S., D.P.M., M.R.A.C.P., Consultant Psychiatrist.

Members – continued

M. F. Farquhar, O.B.E., E.D., Dip.Crim. (Sydney) C.S.M. Chairman of the Bench of Stipendiary Magistrates.

The Honourable Mr Justice R. W. Fox, a Justice of the Supreme Court of the A.C.T.

F. J. Hanson, C.B.E., Q.P.M., Commissioner of Police for N.S.W.

F. D. Hayes, Dip.Soc. (N.S.W.), B.A., Dip.Soc.Stud., Dip.Crim. (Sydney) Assistant Director (Community Service) N.S.W. Department of Youth and Community Services.

Dr W. Hemphill, M.B., B.S., D.C.H., Assistant Director, Bureau of Maternal and Child Health, N.S.W. Department of Public Health.

The Honourable Mr Justice R. M. Hope, a Justice of the Supreme Court of N.S.W.

W. C. Langshaw, B.A., Dip.Soc.Stud. (Sydney), Director, N.S.W. Department of Youth and Community Services.

The Honourable Mr Justice J. A. Lee, a Justice of the Supreme Court of N.S.W.

W. J. Lewer, LL.M. (Sydney) S.M., Deputy Chairman of the Bench of Stipendiary Magistrates.

R. H. Lucas, formerly Chief Police Prosecutor and a Vice-President of the Australian Crime Prevention Council.

K. Lukes, Dip.Soc. (N.S.W.) Dip.Soc.Stud. (Sydney) A.I.H.A., Director, Probation and Parole Services for N.S.W.

W. R. McGeechan, A.A.S.A., A.C.I.S., Commissioner of Corrective Services.

The Honourable J. C. Maddison, B.A., LL.B. (Sydney), M.L.A. Attorney General and Minister of Justice for N.S.W

F. J. Mahony, O.B.E., LL.B. (Sydney), Deputy Secretary, Australian Attorney-General's Department.

J. A. Morony, F.R.I.P.A., a member of the Parole Board of N.S.W.

R. J. Marr, D.F.C., Q.C., LL.B. (Sydney), Solicitor-General of N.S.W.

H. F. Purnell, Q.C., LL.B. (Sydney), Senior Public Defender for N.S.W.

R. N. Purvis, A.C.A., Barrister-at-law.

Emeritus Professor K. O. Shatwell, M.A., B.C.L. (Oxford).

Mrs B. Shatwell, B.Com. (Tasmania).

His Honour Judge J. H. Staunton, Q.C., LL.B. (Sydney), Chief Judge of the District Court of N.S.W.

T. Vinson, Ph.D. (Sydney), Director of the N.S.W. Bureau of Crime Statistics and Research.

Dr F. W. Wright-Short, M.B., B.S., D.P.M., M.A.N.Z.C.P., Consultant Psychiatrist to the University of Sydney.

Special Adviser on Alcohol and Drug Addiction

Dr M. S. Dalton, M.A. (Edinburgh), M.D. (Lausanne), M.R.C.Psych. (London), M.A.N.Z.C.P., D.P.M. (R.C.P. & S.).

Overseas Correspondents

Professor Sir Leon Radzinowicz.

Professor Norval Morris, Dean, The Law School, University of Chicago.

O. V. Briscoe, Consultant Physican, Bethlem Royal and Maudsley Hospitals, London; Vice Dean of the Institute of Psychiatry, University of London.

Proceedings of a seminar on

MOTORING OFFENCES

Chairman: The Honourable Mr Justice C.L.D. Meares, Chairman of the Law Reform Commission of New South Wales, Chairman of the Australian Expert Group on Road Safety.

26th June, 1975
State Office Block, Sydney.

TABLE OF CONTENTS

OPENING COMMENTS

Chairman

I do not think any seminar serves any real purpose unless it broadens knowledge on the subject under discussion. I hope that this seminar will provide us with some new ideas and perspectives. This is by no means the first seminar in New South Wales on 'Motoring Offences'. Two years ago a two day seminar entitled 'Road Safety and The Law' was conducted by the Australian Government's Expert Group on Road Safety. There was a keynote address from Sir Leon Radzinowicz, then Wolfendon Professor of Criminology at Cambridge, and a further eight papers were read.

At that seminar we reached *inter alia* the following conclusion:

> *Little or no provision has been made to date for the continuous evaluation of measures adopted in each of the areas of legislation enforcement and sanction. There is a serious danger of the perpetuation of poor measures through want of evaluative data. The resources available for road safety countermeasures developments are too limited and the cost of accidents to the community too high for this situation to persist. We still have little more than a blind guess whether the system as presently applied to traffic offences does the good it is hoped to achieve. Superimposed on this is the central issue of the load on the legal system. The case for decriminalisation is perhaps the central point of agreement arising out of the seminar: a case based largely on a level of prosecution so large as to be almost unmanageable.*

It will indeed be interesting to hear any views expressed in relation to these particular conclusions and any views as to the other numerous questions posed in the papers.

MOTORING OFFENCES – THE LAW

K. S. Anderson, Dip.Crim.,
Stipendiary Magistrate.

The theme of this seminar, and a challenge to all of us, was set by Arthur Joseph Munby, poet, barrister, social worker and extraordinary diarist, in his poem 'London Town', published in 1909, but probably written some years earlier, for Munby was 81 in 1909:

... but for a new strange thing, a real and scandalous danger,
Which in these difficult days meets us wherever we go:
Danger, the latest gift that civilisation has brought us,
Danger to life and limb, threatening death to us all.
Hark! to the hideous roar of the ugly implacable monsters
Forging in frantic speed, each with the other at war;
Howling and growling and hoarse, in the riot of insolent triumph
Deaf to authority's voice, reckless of order and law.
Here then at last is a force that none have the courage to cope with,
None have the wit to suppress, none even dare to control:
Foul as a lava stream, shot straight from its hidden Inferno;
Making the fair broad streets seem like a vision of hell.[1]

In 1910 there were 4,374 motor vehicles registered in New South Wales; in 1950 there were 510,540, and as at 30th June 1974, 2,426,078. In 1910 there were in issue in New South Wales drivers' and riders' licences of all types 5,471; in 1951 there were 748,343 and as at 30th June 1974, 2,390,624.

If Munby thought the fair broad streets of London of the 1900's seemed like a vision of hell, what would he think of the streets of Sydney of the year 1975, or of Bangkok, Tokyo or New York? Do we have the courage, the wit or the daring to cope with, suppress or control that demon force, the motor car?

Some people see encouragement in the fatality rate per 10,000 vehicles registered, which in New South Wales has declined from 9.3 in 1961 to 6.1 in 1974, and in the fatality rate per 10,000 licences on issue, which has declined from 6.9 in 1961 to 5.3 in 1974, and in a fairly constant fatality rate per 10,000 people in the population – 2.4 in 1961, 2.6 in 1965, 2.8 in 1970, 2.4 in 1972, 2.6 in 1974. But the stark fact is that the number of fatalities increased from 934 in 1961 to 1,257 in 1974, and the number of persons injured, non-fatally, in road traffic accidents increased from 22,244 in 1961 to 40,852 in 1974. One distressing feature of the statistics is that more than half of those killed were under 30 years of age and the largest number of fatalities for any age group was 232 for the ages 17–20, the four years after eligibility for a licence. The population

1. Poem quoted from *Munby, Man of Two Worlds*, Derek Hudson. (John Murray, London, 1972).

of New South Wales aged 17 years and over in 1973 was 3.25 million, and of those 2.3 million held licences under the *Motor Traffic Act.*

My task is to examine what provisions the law, 'authority's voice', has made for the regulation and control of motor vehicles and those who use them. It is proposed to look briefly at criminal liability in motoring offences and then at the particular acts proscribed and the penalties provided. In the context of this seminar it is not thought that a dissertation on case law is called for.

Professor Howard[2] in *Australian Criminal Law* has said that the principle concepts used for the analysis of the state of mind of an offender are intention, recklessness and negligence. Put shortly, he says, *intentional conduct* is conduct in which it is a person's conscious object to engage, *reckless conduct* is the culpable creation of a foreseen risk, and *negligent conduct* is the culpable creation of an unforeseen risk. To these three categories of conduct involving criminal liability must be added that where it is the mere *doing* of the act which involves criminal liability, the principle of *strict liability.*

By far the greater number of motoring offences are offences of *strict liability.* The regulations abound with them – failing to stop at a 'Halt' sign, crossing double centre lines, illegal parking, exceeding the speed limit, etc. The doctrine of strict liability or strict responsibility has been attacked by a number of writers on the criminal law. Howard says:

> *If the doctrine of strict responsibility were to gain widespread acceptance in the criminal law the development would be of major and depressing significance, for it runs counter to both the spirit and the letter of every other general principle relating to the mental element in crime. Fortunately its spread is likely to be inhibited by the development of reasonable mistake of fact.*

Glanville Williams[3] in *Criminal Law* (1961) says:

> *Strict responsiblity . . . is an affront to the personality. To judges and others whose daily life is concerned with litigation, an unjust judgment, or some harsh words spoken publicly in court, may not matter much, even when they concern an individual. . . . One knows some unfortunates with minds unhinged as a result of worrying over the real or fancied injustice of a case in which they were involved. There is exaggeration, but also for many people an element of truth, in Oscar Wilde's observation that 'all trials are trials for one's life, just as all sentences are sentences of death'.*

2 Colin Howard, *Australian Criminal Law* (2nd edn, Law Book Co. Ltd., Melbourne, 1970).

3 Glanville Williams, *Criminal Law (The General Part)* (2nd edn. Stevens & Son Ltd, London, 1961) p. 258.

He says, secondly, that the practice of imposing small fines without enquiry into *mens rea* does not deter unscrupulous persons who are the real culprits, and thirdly, that absolute prohibition is an abuse of the moral sentiments of the community. 'To make a practice of branding people as criminals who are without moral fault tends to weaken respect for the law and the social condemnation of those who break it.' In a later article 'Absolute Liability in Traffic Offences', *1967 Criminal Law Review, p.* 142 Professor Williams speaks of confusion in the various meanings of the term 'absolute liability'. He sees a degree of negligence in many traffic offences, ordinarily classed as involving absolute liability:

> *The effect of the ordinary law of negligence is to enforce common rules of prudence, even though the latter lack the direct sanction of the law. . . . In many spheres, including that of driving, statutory duties supplement these rules of prudence by imposing legal requirements. The injunction to the motorist to drive with due care remains as the general rule; but it is reinforced by more particular directions: not to exceed certain speeds, to stop or give way at certain junctions, and so on.*
>
> *On all charges of breach of statute the question is not whether the defendant was negligent towards persons generally but, if anything, whether he was negligent in his breach of the statute.*

Williams' condemnation of 'branding people as criminals who are without moral fault' is in harmony with the American viewpoint. 'A Systems Analysis of the Traffic Law System'[4] by the Institute for Research in Public Safety of the Indiana University, 1972, makes the point that there are two reasons why the traffic offence should not be treated as a crime. First, the state of mind of the offender is irrelevant to a conviction for a traffic violation, and second, such an offence is too commonplace for the imposition of a criminal sanction:

> *Criminal conduct, by definition, is that which merits moral condemnation; there can be no such condemnation without an inquiry into the actor's mental state. Treatment of these offences as non-criminal would not be impractical. There can be effective regulation by means of strict liability without the additional onus of criminality. This view has been endorsed by the draftsmen of the Model Penal Code. The Code classifies any offence for which absolute liability is imposed with respect to any material elements as a 'violation'. A 'violation' is non-criminal, and the only penalties which can be imposed are fines and/or forfeitures.*

(Fiori Rinaldi[5] of the Australian National University in his paper on *Imprisonment for Non-payment of Fines* (1973) concludes that Australia's

4 U.S. Department of Transportation National Highway Traffic Safety administration; Report No. FH-11-7270-2. January, 1972.

5 Penology Paper No. 2 (1973); Faculty of Law, Australian National University, Canberra.

system of imprisonment for non-payment of fines is archaic and because of its expense and uselessness has been superseded in most other countries. He suggests enforcement by an Enforcements Office with authority to vary the Court order on proof of altered means of the offender, and full recovery powers including distress and attachment of earnings.)

Sayre,[6] in an article on 'Public Welfare Offences', *1933 Columbia Law Review*, expresses the pragmatic view of strict liability, upon which our legislation is based:

> *It is needless to point out that, swamped with such appalling inundations of cases of petty violations, the lower criminal courts would be physically unable to examine the subjective intent of each defendant, even were such examination desirable. As a matter of fact, it is not; for the penalty in such cases is so slight that the courts can afford to disregard the individual in protecting the social interest. . . . The ready enforcement which is vital for effective petty regulation on an extended scale can be gained only by a total disregard of the state of mind.*

Some escape from the straitjacket of strict liability in motoring offences is provided by provisions in the Regulations under the *Motor Traffic Act*, the *Metropolitan Traffic Act* and the *Transport Act*, of which Reg. 130 of the regulations under the *Motor Traffic Act* is typical:

> *No person shall be liable to a penalty for any offence under these Regulations if he proves to the satisfaction of the Court hearing the case that such offence was the result of accident, or could not have been avoided by any reasonable efforts on his part.*

At this point I might mention Gosney's[7] case in England which has set at rest the question whether or not the offence of dangerous driving was an absolute offence.

In the view of the court the cases of *Ball* and *Loughlin*[8] brought in for the first time the concept of liability without fault, which was wrong and not warranted by authority or principle. The law on the question of fault in the offence was as follows: it was not an absolute offence. There must be not only a situation which viewed objectively was dangerous but also some fault on the part of the driver causing that situation; fault that did not necessarily involve deliberate misconduct or recklessness or intention to drive in a manner inconsistent with proper standards of driving, or moral blame. Thus there was fault if an inexperienced or naturally poor driver whilst straining every nerve to do the right thing fell below the standard of a competent and a careful driver.

6 Cited by Gerhard Mueller in 'How to increase traffic fatalities', 60 *Columbia Law Review*, 1960, pp.953.

7 *R* v *Gosney* (1971) 3 WLR 343.

8 *Ball* and *Loughlin* (1966) 50 Cr App R 266.

Offences Involving Intent

Few motoring offences necessarily involve intent. A motorist may, of course, deliberately and intentionally break the law, say by speeding, but intent is not an essential ingredient of the offence. Some offences involving intent are envisaged in s.10(3A) of the *Motor Traffic Act,* 1909, as amended. In reciting offences which attract disqualification without specific order of the court, that section mentions murder, malicious wounding or inflicting grievous bodily harm with intent to do grievous bodily harm or with intent to resist arrest, and other offences under the *Crimes Act,* 1900, as amended, which may involve intent.

Whilst perhaps not strictly a motoring offence, 'taking a conveyance without the consent of the owner' is constituted by s.154A of the *Crimes Act* (as amended in 1974) indictable larceny, and by s.526 larceny triable summarily. The 1974 amendment added the offence 'knowing that any conveyance has been taken without consent, drives it, or allows himself to be carried on or in it', previously, where the accused was not present at the original taking but later got in the vehicle he was not guilty of an offence under these sections: *Matthews* v *Mitchell,* unreported, High Court, 13th December, 1956; *R* v *Stally* 1959 3 All ER 814. If proceedings are taken under s.154A, the offence may be dealt with summarily by a Stipendiary Magistrate under s.476, with the consent of the defendant, whatever the value of the vehicle.

Suicide cannot be punished and the offence of attempting suicide is, as a matter of policy, not prosecuted (it was omitted from s.476 in 1974), but there is reason to believe that some car crashes are literally suicidal. Statistics kept by the Sydney City Coroner in respect of inquests held at Sydney show:

	1974	*1973*	*1972*
Inquests held	1,263	1,475	1,309
Suicide findings	311	371	357
Finding 'deliberately crash car'	1	2	0
Finding 'lay in front of car'	2	1	1
Finding 'gassed by car exhaust'	34	23	29

Offences of Recklessness

Howard says: *The guiding idea is the conscious disregard of risk but liability to conviction is qualified in three ways: the risk must be both substantial and unjustifiable and the disregard must constitute a gross deviation from accepted standards of conduct.*

A charge of manslaughter or even murder may arise from reckless driving. Reckless driving itself is an offence under s.4(1) of the *Motor Traffic Act,* and carries a higher penalty than negligent driving; it also carries disqualification without specific order of the Court.

Offences Involving Negligence

The driver of a motor vehicle owes a duty of care to other users of the roadway. If he does not exercise that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances he is negligent. The test is reasonable foreseeability. If the failure to exercise the appropriate degree of care is proven beyond reasonable doubt, the offence of negligent driving has been made. It is unnecessary to prove damage to prove the charge.

Many serious motoring offences involve negligence. The more serious the charge and the higher the possible penalty, the higher the degree of moral blameworthiness required to support a conviction. In *Bateman* (1925) 19 CAR 8, the Court of Appeal said that to support manslaughter the facts must be such that the negligence of the accused went beyond a mere matter of compensation between subjects and showed such a disregard for the life and safety of others as to amount to a crime against the State and conduct deserving of punishment. In *Andrews* (1937) AC 576, Lord Atkin said:

> *Simple lack of care as will constitute civil liability is not enough: for purposes of the criminal law there are degrees of negligence: and a very high degree of negligence is required to be proved before the felony (of manslaughter) is established.*

The High Court of Australia in *Callaghan* (1952) 87 CLR 115 held that there can be degrees of negligence and, without venturing on a definition of its own, has followed the English cases; *Bateman* and *Andrews*.

Howard says:

> *The meaning of the rule that some offences require proof of a higher degree of negligence than others is that a stronger sense of condemnation, a more powerful conviction that D ought not to have acted as he did is needed to justify conviction of so serious an offence as manslaughter than is needed to justify conviction of such a comparatively lesser offence as careless driving.*

As to lesser degrees of negligence, Street J in *Clout* v *Hutchinson* (1951) 67 WN 203, said: '... the negligence which it is necessary to prove in order to constitute the offence of negligent driving ... is a different and lesser degree of negligence than that which it is necessary to prove in order to establish an offence under s.54 of the Crimes Act, 1900.' He was of the opinion that negligent driving under s.4(1) of the *Motor Traffic Act* is 'something less serious (qua proof) than reckless or furious driving'.

What Acts are Constituted Motoring Offences and What Sanctions are Provided by the Criminal Law?

1. The most serious motoring offences and the highest penalties are found in the *Crimes Act* 1900–1974.

Manslaughter. S.24 (Penal servitude for life).

Malicious wounding or inflicting grievous bodily harm, *with intent*, etc. s.33 (Penal servitude for life).

Malicious wounding or inflicting grievous bodily harm. S.35 (Penal servitude for 7 years).

Culpable driving. S.52A (5 years imprisonment if death was occasioned, 3 years imprisonment if grievous bodily harm was occasioned).

S.52A was amended in 1974 to cover death or grievous bodily harm to a *passenger* in a motor vehicle driven by an accused through impact with any object by that motor vehicle, or through that motor vehicle overturning or leaving the highway, impact with a motor vehicle, or the impact of a motor vehicle with any vehicle or other object in, on or near which that person was at the time of the impact. It had been held by the High Court in *Harlor v The Queen* (1956) 95 CLR 170 that the then s.52A did not apply where the deceased was a passenger in a vehicle which, because it collided with another vehicle or object, brought such person into proximity with that other vehicle or object.

Furious or wanton driving. S.53 (2 years imprisonment).

By negligent act, causing grievous bodily harm. S54 (2 years imprisonment).

All of the above offences are specifically mentioned in the *Motor Traffic Act*, 1909, as amended, s.10(3A), with the exception of culpable driving, but that section provides that conviction for any offence under the *Crimes Act* involving death of or bodily harm to another caused by or arising out of the use of a motor vehicle driven by the accused at the time of the occurrence out of which the death or harm arose, carries *disqualification without specific order of the Court*, for 12 months, or, in some cases 3 years. The Court may if it thinks fit order a shorter or longer period of disqualification.

2. The *Motor Traffic Act*, 1909, as amended, provides for the next most serious offences, judged by penalty.

(a) All of the following offences carry a penalty of $400, or 6 months imprisonment, or both, and also carry disqualification without specific order of the Court, under s.10(3A):

Furious driving, reckless driving, driving at a *speed dangerous* to the public, driving in a *manner dangerous* to the public. S.4(1).

Driving a motor vehicle, or occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion, *whilst there is present in the blood the prescribed concentration of alcohol.* S.4E(1).

Refusing or failing to submit to a *breath analysis.* S.4E(7) (a).

Wilfully doing anything to *alter the concentration of alcohol in the blood* between the time of the event in respect of which a requirement has been made to undergo a breath test or breath analysis, and the time of the test or analysis. S.4E(7) (b).

Driving, or occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion, *whilst under the influence of intoxicating liquor or of a drug.* S.5(2).

Failing to stop and give assistance *after an accident* causing death or injury to a person. S.8(1).

(b) The following offences carry a penalty of $400 or 6 months imprisonment or both, but a lesser or no disqualification by operation of the statute:

Driving whilst disqualified, or whilst licence suspended, cancelled or refused.

During period of disqualification or suspension or after cancellation or refusal of licence, *making application for a licence,* stating name falsely or incorrectly or omitting to mention the disqualification, etc. S.7A(2).
The offences of driving after cancellation or refusal, or making false application after cancellation or refusal, carry no 'automatic' disqualification. The other offences under this section carry a *disqualification of 6 months* from expiry of the existing disqualification, suspension, etc., and there is no power given to the Court *to reduce* that period of 6 months, although it may be increased.

(c)

Negligent driving. S.4(1)	Penalty $200.
Refuse breath test. S.4E(2)	Penalty $200.
Any offence under the Act in respect of which no penalty is specifically provided.	Penalty $200.
Any breach of the regulations.	Penalty $200.

In addition, the Court may suspend a licence, or disqualify for holding or obtaining a licence, for such time as the Court thinks fit. (But there is no power to disqualify for life: *Thomas; re Arnold* 1966 84 WN).

3. *Driving uninsured vehicle. Motor Vehicles (Third Party Insurance) Act* 1942–1972, s.7(1). Penalty $200 or 12 months imprisonment or both.

4. *Parking offences* generally are breaches of the regulations for motor traffic, and incur a penalty not exceeding $200, but *parking meter* offences are breaches of Ordinance 34A made under the *Local Government Act* 1919, and the maximum penalty is a fine of $100.

5. There is a myriad of *other offences* under the *Metropolitan Traffic Act* the *Transport Act*, and *Motor Vehicle Driving Instructors Act* 1961, etc., etc. If one is driving through Centennial Park, a regulation made under the *Centenary Celebration Act* 1887, prohibits travelling at a speed in excess of 20 mph.

6. *Environmental offences.* The regulations for motor traffic, reg. 110, has long prohibited the causing or permitting an *undue amount of smoke* to be projected from the exhaust or other part of the machinery of a motor vehicle. The *Clean Air Act* 1961, was amended in 1972, to extend its provisions to the control of motor vehicle emissions. The Act contains provisions prohibiting a person or owner from using or selling a motor vehicle if when in operation it emits air impurities in excess of the prescribed standards. It also prohibits the sale or use of a motor vehicle if it is not fitted with the prescribed anti-pollution devices, and requires that such devices be properly maintained. The Act empowers the Minister to issue orders prohibiting the use of motor vehicles in any area and at any time this is considered necessary. Powers are also included for the making of regulations dealing with the operation, inspection and testing of motor vehicles, and with the fuels used in their operation. Regulations gazetted in April 1974 require the control of smoke emission from all motor vehicles and the control of carbon monoxide, hydrocarbons and oxides of nitrogen from new motor vehicles. A regulation requires the installation of vertical exhaust pipes, three metres in height, on new diesel vehicles. It is an offence for a registered motor vehicle to emit smoke which is visible for a continuous period of more than 10 seconds. Limits on emission from new cars are being progressively introduced. From 1st January 1975 the lead content of petrol sold in Sydney, Newcastle and Wollongong has been limited to 0.64 gram per litre maximum. From 1st January 1977, the limit will reduce to 0.45 gram per litre, and from 1st January 1980, to 0.40 gram per litre.

In England, according to an article by D. R. Pedley in the *New Law Journal* Vol. 125, No. 5693, P. 342 of 3rd April 1975, 'Is Petrol a Public Nuisance?', the maximum figure set by voluntary agreement between the oil companies and the government is 0.55 grams per litre. (Pedley, incidentally, comes to the conclusion that 'as most petrol is used and can shown to be used, in circumstances detrimental to public health, and no control can be effected on where (whenever or wherever sold) it is to be used, it is clear that distributing, selling and using leaded petrol is a conspiracy to effect a public nuisance and therefore an indictable common law misdemeanor.') The amendments to the *Clean Air Act* proclaimed in May, 1975, increase the penalties under that Act to $10,000 for a corporation and $1,000 for an individual. The *Clean Air Act* binds the Crown[9].

9 (Section 2(2)). Can one expect action in respect of Government buses?

Noise. Schedule F to the Regulations for Motor Traffic makes provision for 'an efficient silencing device' to be fitted to vehicles so as to prevent 'undue noise'. Regulation 106 prohibits the causing of undue noise. The *Noise Control Act* 1975, enables control of noise from motor vehicles by setting permissible noise levels and prohibiting the sale or use of a vehicle which emits noise in excess of that level or which is not fitted with the required noise control equipment. The Act provides for penalties up to $5,000 for corporations and $500 for individuals, with daily penalties for continuing offences.

Is the Present Law Adequate?

The penalties provided for breaches of motoring laws, if one is to look only at traditional penal sanctions, are adequate or more than adequate. A fine of $100, or up to $200, for breach of a regulation involving strict liability is stretching the concept of 'small fines' which advocates of the doctrine of strict liability mention.

Chesterton said of Christianity 'It has not failed, it has not been tried' and some might say of the *Motor Traffic Act* that it has not been tried, that heavy penalties are available and, if they were imposed by the Courts, there would be a deterrent effect and a reduction in offences.

The drinking driver is generally regarded as the greatest problem on our roads, but our society is oriented towards drinking and also towards driving. Perhaps Magistrates are reflecting the ambivalence of society and our legislators when they deal comparatively leniently with some drinking drivers. The legislative ambivalence is indicated by the encouragement of more drinking facilities; new hotels are commonly sited near a highway and are accessible to most people only by motor vehicle; the licensing authorities require that provision be made for extensive parking facilities before a licence will be granted; the legislators have declined to grasp the nettle of random testing. A fine and suspension of licence was the method of dealing with PCA[10] offences adopted by magistrates in 81.7% of cases in 1973. The British Home Office[11] in 1970, after examining various types of sentence, concluded that 'fines were followed by the fewest re-convictions compared with the expected numbers for both first offenders or recidivists of almost all age groups.'

If magistrates are unduly lenient with drinking drivers, it is not an exclusively magisterial syndrome, as the record of a driver set out in *Appendix A* will illustrate. Whilst magistrates may be comparatively lenient with first offenders, they do not hesitate to deal more harshly with the recidivist. *Appendix C* sets out the record of another driver who incurred progressively higher penalties; they appear, incidentally, to have had no deterrent effect. Comparison of penalties in New South Wales for PCA[10] offences with those provided by Statute in some other Australian States is in point.

10 Prescribed concentration of alcohol.

11 *The Sentence of the Court.* H.M.S.O. (1970) P.71.

In South Australia, the penalty for a first offence is a fine of not more than $100 and disqualification for not more than 12 months;
second offence – not less than $100 nor more than $300, or imprisonment for not more than 3 months, plus disqualification for not less than 6 months nor more than 3 years;
third offence – imprisonment for not less than 1 month, nor more than 6 months, plus disqualification for not less than 2 years.

In Victoria, the penalty for refuse breath test, or refuse breath analysis, is, first offence – fine not more than $100, disqualification not less than 1 year,
second offence, or subsequent offence – fine not more than $200 or imprisonment for not more than 1 month, and disqualification for not less than 2 years. Presumably the provisions for driving with the prescribed concentration of alcohol are the same.

In Queensland, for PCA, first offence $200 fine,
second offence – $300,
third offence – $400.
For DUI,[12] first offence – fine not more than $400 or 9 months imprisonment or both;
second offence – fine $600 or 18 months imprisonment or both;
third offence – imprisonment must be imposed as the whole or part of the punishment.

Disqualification for DUI or PCA:– without specific order of the Court, if not previously convicted in the last 10 years, for 6 months; and if previously convicted in the past 10 years, for 12 months. The Court may disqualify *absolutely* or for a longer period than 6 months or 12 months, but apparently not for a less period.

In all three of the abovementioned States there is provision for an offender who has been disqualified to be required to make application to the Court for removal of disqualification or for an order that a licence may issue.

In South Australia, the Court may disqualify for a period or until further order and may order that no licence be issued at the expiry of the disqualification period until the offender passes a driving test. Where a person is disqualified until further order he may apply after 3 months for an order removing the disqualification.

In Victoria, no licence is to issue at the end of a disqualification period except on the order of the Court.

In Queensland, a person disqualified absolutely or for a period greater than 2 years may apply to the Court for removal of the disqualification after 2 years. If that application is refused, he may make no further application for 12 months.

---

12 Driving under the influence of alcohol.

76.5% of breathalyser offenders in New South Wales in 1973 were first offenders and the penalties imposed were not out of line with those provided by Statute for first offenders in other States.

If it can be enforced, disqualification is a most useful sentencing tool. In the United States, the emphasis is on the driving licence being a privilege, not a right, and perhaps there should be greater emphasis on this fact here.

The Indiana University report already mentioned quotes:

> *Driving an automobile is not a natural or constitutional right. Court decisions in practically every state in the Union have established that the operation of a motor vehicle is a conditional privilege granted by the state. This fact is of extreme importance in the field of traffic law enforcement, for if driving were an absolute, unrestricted right of every person, effective control would be an impossibility.*

Enforcement of disqualification is the problem. T.C. Willett in *Drivers After Sentence* (Heinemann, London 1973) found that of 141 offenders in respect of serious motoring offences, 35 per cent drove after disqualification. Those who drove seemed to see nothing wrong with it and often used the familiar rationalization 'I'm only doing what they all do'. Willett mentions also 94 hard case young men interviewed in H.M. Borstal, Reading, about attitudes towards disqualification. All were incarcerated for motoring offences and most had additional convictions for a variety of other offences. Seventy six per cent admitted to driving whilst disqualified, and most said they had done so within a month of being disqualified. As Willett says, their reasons are interesting though not very surprising having regard to their ages (18–21):–

> 'Girls keep on at you to do it.'
>
> 'Once you've had a car you can't keep away from it.'
>
> 'The chances of getting caught are a hundred to one against.'
>
> 'It's because disqualification's stupid. There's nothing to stop you from driving, so why not?'
>
> 'The car's there; you can't let it rot.'
>
> 'It's too much of a bind going around on your feet or on buses after having had a car.'

Willett concludes of disqualification:

- Its utility as a short term deterrent or as one means of trying to keep the incorrigibly dangerous driver off the road for good is doubtful.

- However it is used, the period should be fixed with great care and its aim must be clearly understood unless it is to result in the very thing that the sentencer does not obviously want: a rebellious bitter individual who is almost certain to offend again and to be a worse nuisance than before.

- If a shock is thought to be necessary, 3 months disqualification should suffice in most cases: any longer would seem to lessen the impact and encourage disobedience.

- If the aim is to keep a menace off the road altogether, some additional supervision is required over and above the vague presence of the police. He instances the practice in Chicago whereby officers call unexpectedly on offenders who have been disqualified to see if they are abstaining from driving.

- It should be normal for a driving test to be passed before the licence is returned to the offender. (Compare the practice in other States, but not in New South Wales, of requiring an application to the Court for lifting disqualification).

Mention can be made here of the attitude of the superior Courts in England towards disqualification.

Section 5 (1) of the *Road Traffic Act* in England provides in respect of certain offences 'the court shall order him to be disqualified for such period not less than 12 months as the court thinks fit unless the court for some special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.' This provision has been strictly construed. In *Whittal v Kirby* (1946) 2 All ER 552, it was held:

> *... that a man is a professional driver cannot by any possibility be called a special reason. That in many cases serious hardship will result to a lorry driver or private chauffeur from the imposition of a disqualification is, no doubt, true, but Parliament has chosen to impose this penalty and it is not for courts to disregard the plain provisions of an Act of Parliament merely because they think that the action that Parliament has required them to take in some cases causes some or it may be considerable hardship* and *a circumstance peculiar to the offender as distinguished from the offence is not a 'special reason'.*

In *R. v Jackson* and *R. v Hart (1969) 2* All ER 453, it was held:

- the fact that ability to drive was not impaired by drink was irrelevant

- the fact that the offender is a cripple who requires transport has no relation to the offence

- the fact that he suffers from an idiosyncratic state of his liver which, when combined with his blood pressure, caused the retention of alcohol in the blood to be longer than usual to some unspecified extent and degree, and that he did not know of that idiosyncracy, can only be peculiar to the offender and not to the offence.

To balance the picture, long periods of disqualification have been disapproved (*R. v Shirley (1969)* 3 All ER 678), as has disqualification for life of an offender aged 28 (*R. v Bond (1968)* 2 All ER 1040).

Since the introduction of the breathalyser in England, appeals have been made both by defendants and by prosecutors relating to the allowance of a 'small excess' as a special reason for not disqualifying. Lord Parker decided in *Delaroy-Hall v Tadman etc.* (1969) 1 All ER 25, that it could not be allowed, although the excess was only 2 milligrammes: 'To introduce the principle would open the door to variability which the positive provisions of the Act are designed to keep shut.'

It can be argued, and some New South Wales magistrates proceed on this basis, that the disqualifications imposed for serious offences without specific order of the Court by the *Motor Traffic Act* are in the same position as those required to be imposed under the English Act. The words 'for special reasons' do not appear in the New South Wales Act, but where a period is fixed by the Statute and the Court is given power to increase it or reduce it as it thinks fit, it must have some special reason for departing from the period fixed.

It is of interest that in 42 cases out of 1,471 of convictions for driving whilst disqualified in New South Wales during the year ended 30th June 1974, the Court purported to reduce the statutory period of disqualification of 6 months, when there is no such power (*Commissioner for Motor Transport Annual Report* 1973–74). The same Report shows that, if one excludes the offence of driving whilst disqualified, of 19,174 cases dealt with which carry automatic disqualification the Courts failed to interfere with the statutory disqualification in only 5,231 cases. In the other cases, the period was varied as follows:

to less than 3 months	6381
to a period between 3 & 6 months	2709
6 months – 1 year	1857
1 year – 3 years	2123
3 years plus	873

In another 1,520 cases, the defendant was discharged or the information dismissed, under s.556A of the *Crimes Act*, entailing no conviction and hence no disqualification. Of the periods which were varied, it appears that 86 per cent were reduced.

Is any Change Required in the Present Law?

1. There is a need for *uniformity* of traffic laws throughout Australia. The penalties already instanced in some States other than New South Wales illustrate the disparities. Australia is sufficiently homogeneous that such disparities have the effect of bringing the law into disrepute. There are, I believe, reciprocal arrangements between the States for disqualification or cancellation of a licence in one State of an offender disqualified in another, but it appears to be a haphazard arrangement, permitting an offender disqualified in one State to obtain a licence in another with impunity.

In the United States a Uniform Traffic Code has been drawn up and pressure is exerted on those States whose traffic laws do no meet the requirements of the Code to change their laws. The European Convention on the Punishment of Traffic Offences is another example of the move to uniformity and towards facilitation of punishment for offences. (See 'Towards a European Traffic Law', *Crim. LR Oct, 1974*).

2. *Simplicity* should be the keynote. As well, traffic laws should be known to the public. When making a right hand turn at an intersection, into a street marked in lanes, may a motorist proceed directly to the lane nearest the kerb on the street he is entering; if he does so, does he have right-of-way over a vehicle in that street he is entering, which has his vehicle on its right?

3. *Flexibility* is desirable. This requires not so much a change in the law but in the administration of some laws. Fisher[13], an American writer, says:

> *Those engaged in traffic law enforcement face problems in human behaviour that those in other fields of the criminal law do not. . The difference lies in the fact that here we are not seeking to compel virtuous conduct on the part of the occasional criminal in our midst who wilfully and intentionally sets about to harm his fellow man in person or property. Traffic laws should be reasonable and acceptable to the public.*

Prosecution of the typical rear-end collision occurring in conditions of heavy rain, or heavy traffic, only arouse public resentment and hostility towards law enforcement.

4. *The driving test* checks little more than rudimentary driving skills in mild suburban traffic. It is always in daylight and lasts only a short time. A more searching test in more varied conditions might be considered. It is recognised that this also is a matter of administration.

5. Consideration might be given to empowering New South Wales Courts to require a *further test* to be passed before a licence is issued after

13 Edward C. Fisher, *Vehicle Traffic Law* quoted in 'A Systems Analysis of the Traffic Law System.'

disqualification. The disqualification provisions of some other States could be used to advantage – e.g. disqualification until further order, requiring an application to be made to the Court before a licence is restored after disqualification.

6. Following research to identify the potentially serious motoring offender, and a reappraisal of the armoury of sentences available, *new sanctions* must be found and incorporated in the law, designed not only to punish, but to rehabilitate the anti-social motoring offender. The use of probation and impaired drivers' programmes has been beneficial overseas.

In conclusion, it has been truly said that we in Australia have sold our souls to Detroit, Dagenham and Tokyo. Whilst more and more public money is spent on the construction of highways, freeways and expressways, and residential land or parklands appropriated for that purpose, and whilst air pollution is consequently increasing and the urban ugliness spreading, public transport is declining. If public transport can be upgraded and made more attractive to the commuter, and other measures taken to discourage the stream of cars in and about our cities and towns along clogged, inadequate roads, we shall have gone a long way towards solving the problem of motoring offences. Or was Munby's 1909 judgment correct –

> *Here then at last is a force that none have the courage to cope with, None have the wit to suppress, none even dare to control.*

APPENDIX A

The defendant, aged 58 was issued with his licence on 14.7.44 and the following is his record:

2. 3.55 Fail to stop. Fined £15 *.

2. 3.55 Driving under the influence. £20 fine with 1 year disqualification.

10. 6.55 On appeal on the 'driving under the influence' conviction of 2.3.55, defendant discharged under s.556A of Crimes Act, 1900.

25.10.55 No headlights. Caution.

12. 2.56 Speeding. Fined £20 with costs £1, plus 6 months suspension.

28. 5.56 On appeal on the pending conviction, penalty and costs confirmed, but suspension deleted.

28. 8.58 Speeding. Fined £3 with costs £1.

26. 8.60 Speeding. Fined £15 with costs £1.

2. 9.60 Warning issued.

26. 8.60 Unlicensed driver. Fined £4 with costs £1.

17.11.60 Defective headlamps. Caution.

18. 6.61 No headlights. Caution.

17. 8.61 Speeding. Fined £12 with costs £1.

18. 9.61 Final warning issued.

11. 1.62 Fail to stop and render assistance. Fined £25 and disqualified till the rising of the Court.

11. 1.62 Driving under the influence of alcohol. Fined £50 and disqualified for 24 hours.

3. 9.63 Speeding. Fined £5.

10.12.63 Warned.

20. 8.66 Speeding. Fined $20.

16.11.67 Speeding. Fined $40.

* Equivalent rate of $2 for £1.

29.12.67 Warned.

3. 1.68 Speeding. Fined $40.

2. 5.68 Licence cancelled by the Commissioner and provisional licence issued on 8.5.68.

28. 1.69 Prescribed concentration of alcohol. Fined $120 plus 12 months disqualification.

1.12.69 On appeal on the 'prescribed concentration' conviction, which was not heard for approximately 12 months, conviction and penalty confirmed but disqualification reduced to 1 day.

23. 5.70 Resist arrest. Fined $30.

23. 5.70 Refuse breath analysis test. Fined $100.

23. 5.70 Refuse breath analysis test. Fined $300 and sentenced to 4 months hard labor which was suspended on self recognizance of $260 to be of good behaviour for 5 years. Disqualified for 5 years.

5. 4.71 On appeal on the 'refuse breath analysis' conviction, penalty reduced to $150 and sentence of imprisonment deleted. Period of disqualification reduced to 5 days and a recommendation made that thereafter licence be restricted for the purpose of driving to his place of employment and for any emergency in his family, for a period of 12 months.

15.4.71 Licence restored, restricted in accordance with the Court's recommendation.

APPENDIX B

The defendant's date of birth was 26.5.52, and his licence was issued on 18.8.70.

8. 8.70	Exceed speed limit. T.I.* fined $20.	
8. 8.70	Not displaying 'L' sign. T.I. fined $10.	
24.11.70	Exceed speed limit. T.I. fined $20.	
24.11.70	Not displaying 'P' sign. T.I. fined $10.	
9. 3.71	Provisional rider's licence cancelled by Commissioner on ground of offender's offences of 24.11.70.	
21.11.71	Exceed speed limit. T.I. fined $40.	Rider's permit.
25.11.71	Exceed speed limit. Fined $60.	Rider's permit.
4. 2.72	Exceed speed limit. Fined $90. Stealing. Fined $80.	Rider's permit.
11. 1.72	Exceed speed limit. Fined $80.	Rider's permit.
4. 1.72	Driving offside traffic dome. Fined $20.	Rider's permit.
14. 2.72	Exceed speed limit. Fined $100. Disqualified 12 months.	
12. 4.72	Disobey traffic control light signal. Fined $45.	Rider's permit.
11. 1.72	Exceed speed limit. Fined $70.	Rider's permit.
31. 3.72	Exceed speed limit. Fined $20.	
23. 5.72	Exceed speed limit. Fined $50.	
23. 7.72	Not signal intention. Fined $60.	Rider's permit.
9. 5.72	Exceed speed limit. Fined $60.	
23. 8.72	Exceed speed limit. Fined $100.	Rider's permit.
12. 7.72	Exceed speed limit. Fined $90.	Rider's permit.
22. 7.72	Exceed speed limit. Fined $136.	Rider's permit.
25.10.72	Exceed speed limit. T.I. fined $20.	Rider's permit.

* Traffic infringement notice, does not come before court.

10.10.72 Exceed speed limit. Fined $60.

5.11.72 Exceed speed limit. Fined $100.

4.11.72 Ride whilst disqualified. Fined $20. Disqualified 6 months.

25. 1.74 Ride manner dangerous. Sentenced to 6 months hard labor. Suspended on entering recognizance of $100, good behaviour for 3 years. Fined $150. Disqualified 3 years.

26. 1.74 Ride whilst disqualified. Fined $100. Disqualified 3 years.

APPENDIX C

The defendant's date of birth was 6.5.52, and his licence was issued on 11.6.69.

21.12.67 Unlicensed driver. Stealing Motor vehicle. On each charge released on probation for 2 years to be of good behaviour.

28. 6.68 Indecent language. Committed to an Institution. Appealed.

12. 9.68 Appealed against conviction for indecent language. Appeal dismissed. Conviction and penalty confirmed.

11. 6.69 Provisional driver's licence issued.

19.11.69 Exceed speed limit. T.I. fined $40.

26.12.69 Exceed speed limit. T.I. fined $40.

Exceed speed limit. Fined $80.

29.12.69 Exceed PCA* . Fined $100. Disqualified 12 months (automatic).

1. 3.70 Exceed PCA. Fined $50. Disqualified 3 years (automatic).

1. 3.70 Driving whilst disqualified. Disqualified 6 months (automatic) until 29.6.71.

31.10.70 Offensive behaviour. Fined $10.

29.11.70 Driving whilst disqualified. 3 months hard labor. Disqualified 3 years. Offensive manner. Fined $70.

25. 6.71 Take and use vehicle. Sentenced to 12 months hard labor.

25. 6.71 Driving whilst disqualified. Sentenced to 6 months hard labor. Disqualified 5 years.

9. 5.71 Exceed PCA. Disqualified 5 years.

Driving whilst disqualified. Sentenced to 6 months hard labor. Disqualified 5 years.

Surrender of surety. Committed to former custody.

5. 6.73 Driving whilst disqualified. Sentenced to 6 months hard labor. Disqualified up to and including 15.1.79.

* 'driving whilst there is present in the blood the prescribed concentration of alcohol' (PCA).

Exceed PCA. Sentenced to 6 months hard labor. Disqualified up to and including 15.1.79.

22. 5.73 Stealing. Sentenced to 9 months hard labor.

22. 5.73 Driving whilst disqualified. Sentenced to 6 months hard labor accumulative. Disqualified 7½ years from 25.6.73 until 25.12.80.

COMMENTARY

His Honour Judge R. F. Loveday, Q.C.

Judge of the District Court of New South Wales
Member of the Law Reform Commission of New South Wales.

I would like to congratulate Mr Anderson on his most interesting paper. Of special interest to me, having regard to my concern for law reform, were his remarks under the heading 'Is any Change Required in the Present Law'.

In an endeavour to provoke discussion, I suggest for your consideration, that there is an urgent need for change in our laws regarding motoring offences, particularly in relation to the administration of those laws. In criticizing the administration I am not being critical of the judiciary; but I put to you that under no circumstances could it be said that our laws are reasonably applied if the vast majority of persons who are charged with a motor traffic offence each year have no reasonable opportunity to answer that charge. This is the position at present, because the cost of defending a motor traffic charge in time, money lost and in relation to the cost of employing a solicitor or a barrister, far outweighs the likely fine that might be imposed by the court. The best advice, in most instances, that can be given by his solicitor to an alleged offender charged with a minor traffic offence is to pay the fine, even though the client may feel he has an answer to the charge. The cost of defending the charge will be a lot more than the amount of the fine. This appears to me to be a negation of our duty to provide a service; a negation of the duty of the legal structure to give satisfaction to any person who might believe that he should be allowed to put forward his case in answer to a charge. So that I might not be accused of being a person purely destructive in my criticism I wish to put before the meeting my ideas of what could be done. This is my personal view and not that of the Law Reform Commission.

At present a person who is served with a traffic infringement notice has two alternatives; he may pay the fine or he may attend and contest the matter in court. Indeed, if he does not pay the fine a summons has to be issued and he has to report before the court. As I understand it 60% of such cases, when they do proceed in court, are dealt with *ex parte* on a plea of guilty. They choke the court with the sheer volume of the business and are only to be preferred, so far as the court is concerned in getting through its business, to the contested cases. A contested case is an expensive procedure both for the State and for the individual concerned. Police officers are kept off their ordinary duties and are required to wait around courts; the alleged offender and his witnesses have to wait a day, or more on some occasions, to contest the matter.

I would suggest that in place of that system we give the alleged offender some additional alternatives. He could, of course, still pay the fine;

or he could be given the opportunity to bring forward in the form of a Statutory Declaration any matter that he wishes to put in answer to the charge, or in mitigation of the penalty, or in seeking time to pay. This choice should be made clear to him on the notice and, if necessary, by verbal advice given to him by the police officer. Or thirdly, he could request an appointment with a magistrate to put before him personally any such matter that he considers relevant. The failure to do any one of these three things would automatically result in the issue of a warrant and his apprehension, but even if the warrant were issued and he were served with it he could still avail himself of one of those three alternatives.

If the recipient chose the second alternative, i.e. if he chose to put in writing in form of a Statutory Declaration some matter in answer to the charge, then that would be considered by a chamber magistrate (i.e. by some person independent of the police officer and the Police Force), and it would be considered in conjunction with a report from the apprehending officer and the alleged offender's traffic record. That may offend some person who believes that no one should consider a traffic record before you determine the initial point of guilt or absence of guilt, but we are dealing with minor traffic offences and I believe that that is a small price to pay. The magistrate would have the power on the written material before him to dismiss or confirm the charge; confirm, reduce or waive the penalty; or grant time to pay; and he would also have the power to remit the charge for hearing in an open court.

If the recipient chose the third alternative i.e. if he requested an appointment before a magistrate to put his case in answer to the charge, then he should be granted an appointment at a particular time in private chambers. Again the magistrate would have the apprehending officer's report and a copy of the traffic record. The proceedings would be quite informal, although the magistrate might require the offender, and any witnesses that the offender chooses to bring, to be sworn if he thinks it is necessary. Again the magistrate would have full powers to dismiss the charge, confirm it, reduce the penalty or remit the case for hearing in open court. There would be a right of appeal as at present, and in any proceedings on such appeal or in open court the matter would proceed as a normal adversary type proceeding.

The advantage of such a system would be a great saving in time and costs over an adversary type proceeding. But more than that, because the alternatives are reasonable alternatives it would do a great deal to restore respect for the legal system generally.

In my experience, particularly in this area of strict liability, very few alleged offenders have any real answer to the charge. But they do have something that they would like to tell someone about, particularly someone in authority. Perhaps they have some grievance such as that they were not the only offender, that their speed was less than three or four other offenders, or that it was an open road and that there was no danger to anyone. The mere opportunity for them to get their grievances off their

respective chests is, I believe, a worthwhile exercise in public relations. I also believe that unless we provide some such service as this the judicial system and our legal system cannot hope to maintain the respect that it should have, and without such a respect we have little to fall back on.

I commend these ideas to you for your discussion.

Chairman

I do not think there was any need for Judge Loveday to state that the idea that he was putting was not the idea of the Law Reform Commission at this stage. I say that because I do not want it to be thought that other members of the Law Reform Commission at this stage are opposed to that idea, or that they will be opposed to it at any future stage.

In the seminar 'Road Safety and The Law' the picture that emerged from the papers presented to the seminar was of a system barely able to keep its head above water as a result of the workload imposed upon the magistracy in relation to traffic offences.

COMMENTARY

G. D. Woods, LL.M., Dip.Ed.

Senior Lecturer in Law, University of Sydney.

First of all may I, like Judge Loveday, compliment Mr Anderson on the paper which he prepared, particularly on the splendid poem with which it begins. That reminds me of nothing so much as the famous illustration in *The Wind in the Willows* of Toad progressing down the byways and highways near Oxford in the extraordinary contraption he drove.

So far as the question of strict liability is concerned I refer to the comment made by Mr Justice Meares at the beginning of the seminar with regard to the question of decriminalization of the laws in this area. Generally I am not inclined to accept with equanimity the argument often put by persons arguing against change in the form of the question 'What have you got to put in its place?' but so far as the matter of decriminalizing the motor traffic laws is concerned, I feel impelled to put that question, albeit in ignorance of the seminar which Mr Justice Meares referred to. It seems to me impossible, and presumably he would not even suggest this, that we ought to decriminalize the most serious of the motor traffic offences and in particular offences such as drunk driving. I assume that he does not mean that, but he refers particularly to non-moving offences and perhaps to the lesser moving offences.

As for the question of strict liability, Judge Loveday showed in his remarks a concern for the necessity for justice to be seen to be done. This is admirable but, in my view, strict liability in a number of areas of the law, not only in motor traffic offences, is necessary. I think that it is not acceptable in serious matters where there is a substantial penalty to be imposed, and Mr Anderson has pointed out that even in some of the minor traffic offences serious penalties can be imposed. Nonetheless, I must count myself as a 'strict liability' man, with the qualification that, of course, in Australia at the present time we do not really have strict liability in the full sense of the word. We have the decisions in *Sweet v Parsely* (1970) AC and *Iannella v French* (1968) 119 CLR84, and other relevant cases on strict liability which suggest that what we call 'strict liability' is more a matter of asking the defendant to prove that he was not negligent. That is a generalisation, because there is a lot of disputation about the so-called *Tolson* (1889) 23 QBD 168 defence, but I think that it is in effect the true position.

I endorse Judge Loveday's comments about the alternative of a statutory declaration and the possibility of a person charged with an infringement making an appointment with a magistrate. These ideas are clearly quite sensible. Whether they would have the effect of removing a vast bulk of material from the benches of the magistracy I am not certain, but one would hope that they might or might be allied with other changes which do that. Certainly in themselves they seem to be useful.

The only other matter I wanted to mention was that Mr Homel's paper, which will be dealt with subsequently, includes some hard evidence relating to the possible use of increased penalties for certain offences. This brings it within the category of that kind of extension of knowledge which Mr Justice Meares referred to at the beginning of the seminar as being necessary if any conference of this kind is to justify itself. I think that if you look carefully at Mr Homel's paper you will see that it is very important paper in terms of hard evidence relating to specific deterrence. Mr Anderson points out that there is in New South Wales a range of penalties which magistrates can impose in relation to traffic offences. It is useful that there is such a range because then the magistracy is able to formulate its policy in sentencing in this area with regard to the latest and best evidence available. Even if it were found in a particular point in time that heavier penalties would be likely to be more effective in relation to certain crimes it would not be necessary for a statutory increase in penalties to be enacted. The range of penalties presently available appears to be adequate for the purpose.

DISCUSSION

J. L. Lynn, Chamber Magistrate, and Clerk of Petty Sessions, Bankstown, President, Conference of Chamber Magistrates of New South Wales.

I was extremely interested to hear His Honour Judge Loveday's suggestion about people coming to see the chamber magistrates and to put forward their points of view concerning their alleged traffic offences.

This already happens to an extent, and not a day goes by without someone coming to me with a traffic infringement notice or a summons asking for advice.

As His Honour said in the great majority of cases, because of the strict liability problem, they are guilty. I tell them so and do my best to explain why they are, and I think that quite often they are content. However, there is the practical problem that neither I nor my colleagues can do anything for them, except to advise them how to plead or to assist them in writing a letter. Indeed, when traffic lists are being heard at the court the magistrate would quite often send the defendant to me. The defendant may have pleaded 'not guilty' or perhaps does not know how to plead, and I do my best to advise him.

I think I can confidently say on behalf of my colleagues in the Chamber Magistrates Conference as well as for myself, that we would wholeheartedly support Judge Loveday's proposition and we think it would have great benefit.

Chairman

I wonder has anybody any views about the fourth recommendation in the paper:– 'the driving test checks little more than rudimentary driving skills in mild suburban traffic. It is always in daylight and lasts only a short time. A more searching test in more varied conditions might be considered.' Are there any views as to whether anything should be done in relation to making the driving test more difficult?

Emeritus Professor K. O. Shatwell.

If this were done there would be an increase in the number of 'bodgie' licences in circulation. One wonders about the public interest. Perhaps the police may have an answer.

Chairman

I think Dr Henderson is going to deal with this in his paper. So far as the 'Expert Group on Road Safety' is concerned we have grave doubts as to whether this is practicable or cost effective.

D. C. Herbert, Department of Motor Transport.

I see a little difficulty in contrasting the fairly minor offences which in the seminar you referred to were described as 'not offending the morals of the community' with ordinary crimes which are offensive against the morals of the community.

Moral standards are only the customs of the times, and it seems to me that at present the one thing that reflects our customs is that we are not very strict in application of any moral standard. If we were then I think the public would take a very strict view of, say, someone parking across a driveway. This, after all, is a grave offence against the individual who owns the house which is blocked by that car.

I do not accept the distinction that is made when it is argued that these minor offences are not offensive against our moral standards. It seems to me that if you really examine this closely you will find that you can argue that they are all, even the most minor traffic offences, offences against the standards of the community. Our problem is that it is not fashionable to treat any offences against moral standards strictly. I would like to hear comments on this.

Chairman

Mr Anderson in his sixth recommendation says:

> *Following research to identify the potentially serious motoring offender and a reappraisal of the armoury of sentences available new sanctions must be found and incorporated in the law designed not only to punish but to rehabilitate the anti-social motoring offender.*

Willett's view in relation to disqualification is that three months is almost long enough; there are disadvantages generally speaking in imposing periods of disqualification for longer than that for reasons which are stated by Willett.

Have the magistrates or anyone else here any views about the periods of disqualification?

J. M. G. Callaghan, S.M.

One of the things that always strikes anybody who has been on the Bench for a time is that of all the 'regulatory' Acts the *Motor Traffic Act* seems to be the one which generates an amount of work which is far out of proportion to any other Act. The number of prosecutions that we get for breaches of say the *Pure Foods Act* or the *Industrial Act* are far less than what we get from the *Motor Traffic Act.* There appears to me to be two reasons for this. Firstly, the *Motor Traffic Act* is administered by and large by the members of the Police Force. They are trained in administering the criminal law so they treat the *Motor Traffic Act* as a criminal Act.

Secondly, the *Motor Traffic Act* Regulations are aimed at being very specific about what you can do and what you cannot do. In practically any other situation there is a large discretion which is left to those administering an Act (such as inspectors). I think it could be looked at as to whether more discretion could be given, and whether the regulatory side of it could be given more prominence than the deterrence side. Whether perhaps it would be possible for the alcoholic to be considered for his licence after certain specific tests had been done. Perhaps there could be restricted licences, say driving during daylight hours only, for somebody whose eyesight was defective.

The car is a great convenience, and tends to be classified as a social necessity. At the moment the police and courts are tied by tradition in what they can do for road safety, and they can only do something after the offence has been committed. There should be more flexibility, and it should be aimed at prevention rather than punishment.

D. A. McCann, Petty Sessions Officer, Solicitor

I am a Petty Sessions Officer of nearly twenty-five years standing and a solicitor, and have been a Chamber Magistrate in the Metropolitan area and the country.

It has been my experience that since the introduction of the points system the motorist becomes aware that he does not have a licence as a matter of right. He has a permit extended to him by the State. The points system seems to be working effectively; it works well in the courts as far as non accrual of points and keeping a driver on his very best behaviour, and with the 10P. 1 Class of licence the driver acts as his own bondsman for the next twelve months. Perhaps the 'P' plate system should be looked at critically, inasmuch as up until fairly recently immediately on acquiring a licence a driver may use a very powerful car or tow a caravan behind him on the day he is given a provisional licence. There seems to be relatively little reporting done on the crash caused by the driver inexperienced in handling any vehicles other than the one he is used to.

K. S. Anderson, S.M.

One comment I would like to make on this subject is that of the position of Rider's Permits. At *Appendix B* attached to my paper you will notice that in the case of that driver his provisional licence was cancelled by the Commissioner, then apparently he went for a very long time on Rider's Permits. I am told, and it appears from this record, that offences by drivers on Rider's Permits are not included in the points system. In this case he was disqualified by the court eight months after the event in respect of which that disqualification was imposed; that is an offence of the 14th February, 1975, was dealt with at Sutherland court on the 10th October, 1972, apparently by summons. It appears to me that that is a loophole which might be closed.

I would like to make an additional comment on provisions of the Victorian legislation. I have done further research on that subject and I find that the penalties for 'driving whilst there is present in the blood the prescribed concentration of alcohol' (PCA) and 'driving whilst under the influence of intoxicating liquor or of a drug' (DUI) are very much as I say there but there is a strictly graduated scale of disqualifications depending upon the percentage of the blood alcohol reading. If this is for the first offence, if the percentage is less than .10 the driver is disqualified for not less than three months and then on an increasing scale, not less than six months up to .15, and then not less than twelve months over .15. There are increased disqualifications on a graduated scale for second and further offences. This type of approach has been adopted in Western Australia. The (W.A.) *Road Traffic Act* 1974 provides graduated scales of penalties for first offence, second offence, third offence and fourth or subsequent offence for 'driving whilst there is present in the blood the prescribed concentration of alcohol' and with a very narrow margin for the court to exercise any discretion: for instance, for a third offence the penalty is a $600 minimum and an $800 maximum fine or twelve months imprisonment and permanent disqualification.

I believe that our approach, the more flexible approach, is better. It appears to me that fixing a tariff as has been done in Western Australia is far too absolute and rigid and that the courts there cannot have sufficient regard for the circumstances of an offence or the circumstances of an offender.

HOW EFFECTIVE ARE PRESENT OPERATIONS?

R. J. Homel, M.Sc.

Deputy Director N.S.W. Bureau of Crime Statistics and Research

Millions of traffic offences are committed each year in Australia. Thousands of man hours are wasted by the police, magistrates and court officers in deterring, catching and dealing with the trangressors of our motoring laws. The additional cost to the community of the death, maiming, injury and destruction caused by the more serious motoring offences is almost beyond calculation.

The community has a vested interested in reducing, if possible, the number of motoring offences, and in minimizing their seriousness in terms of danger to life and property. Measures currently employed with these goals in mind include public education, policing of the roads, and the imposing of penalties on convicted offenders. The bulk of this paper will be concerned with the third of these measures, namely the process of sentencing motoring offenders, and the deterrent effect of the penalties imposed.

Deterrence has traditionally been conceived as either general or special. Special deterrence is concerned with the effect of penalties in preventing an offender from relapsing into crime. A wider discussion of the effectiveness of present operations would certainly include a consideration of the general deterrent effects of highway patrols, radar speed traps and breathalyser units, as well as advertising campaigns designed to bring group pressure to bear on potential law breakers. However, the problems of measuring the effectiveness of general deterrent operations are very great.

According to Middendorff[1], a large majority of criminologists oppose taking general deterrence into account in judicial sentencing, since they doubt that variations in penalties have any effect on the attitudes of the general population. In fact, he goes further, and states that it is very difficult to evaluate the effectiveness of either general or special deterrence and to express these results statistically, since the mechanism of deterrence is unknown. Many factors other than laws and punishments may intervene to encourage or discourage criminal behaviour.

The problem of deterrence will be discussed in the latter section of this paper, which contains a preliminary analysis of the apparent effects of different penalties on a sample of convicted breathalyser offenders. Before that, however, we will consider some of the research which has been carried out overseas on sentencing the motoring offender, and we shall examine briefly the statistics on sentencing for New South Wales. The breathalyser offender will be subjected to a closer scrutiny than other motoring offenders, since much detailed information is available through the statistical series administered by the Bureau of Crime Statistics and Research.

---

1 Middendorff, W. *The Effectiveness of Punishment, especially in relation to traffic offences.* (Rothman, 1968).

Overseas Research

The Cambridge Institute of Criminology has recently published two books which are concerned with the process of sentencing the motoring offender, and with the effects of penalties on subsequent behaviour.

Sentencing the Motoring Offender, by Roger Hood (Heinemann, London, 1972) is a study of disparities in sentencing and the theoretical basis of sentencing as perceived by magistrates. He avoided the problem of comparing penalties imposed by different magistrates on widely differing offences and offenders by sending to samples of magistrates exactly the same detailed cases. Recognizing that this is a 'game' method, an attempt was made to compare decisions reached with sentences passed on similar cases in court. Hood found that the personal characteristics and background of magistrates had little effect on the penalties they imposed. Important factors included the perception of the seriousness of the offence, and the 'pervasive influence' of the bench to which the magistrate belonged. Overall, there was a greater disparity in sentencing more serious motoring offenders.

This is an important study for those interested in the use of penalties as a deterrent, because it illustrates the complexity of the sentencing process, as well as the importance of understanding the way in which magistrates perceive the offender and his offence, and make use of the information available to them. Hood makes the important point that motoring offences are not viewed by the public as 'crimes', and that the public view of motoring offenders demands a *retributive* or tariff approach based on the gravity of the offence, ignoring considerations of future recidivism. A *preventive* system would entail an individualized approach to sentencing which attempts to distinguish those who are unlikely to commit the offence again from those who are really dangerous. The way in which British magistrates resolve this tension is discussed in his book.

A study parallel to Hood's, undertaken by T. C. Willett, is published as *Drivers After Sentence* (Heinemann, London, 1973). A sample of people convicted of relatively serious motoring offences (causing death by dangerous driving, driving under the influence etc.,) were followed up and interviewed as many as three times over a period of two years. Nearly three quarters (71 per cent) of the 181 offenders felt their sentences were unjust, especially the drunken drivers. More than one in three (36 per cent) of those disqualified from driving admitted to having disobeyed the disqualification order, and most of these were never caught. After a four year period 39 per cent had been reconvicted for some offence, whether motoring or not (27 per cent committed a motoring offence).

Willett found that overall about two thirds of the offenders were relatively untouched by their sentences. There was a great distaste for disqualification, but its power rested mainly on bluff; as soon as it was realized that the disqualification order is not energetically enforced, it was reduced to the status of an irritant. On average, offenders were younger than a control sample of drivers, of lower educational and occupational

status, and were more likely to have had previous convictions for both motoring and non-motoring offences.

Willet's study gives little encouragement to the view that heavier penalties, or the use of one type of penalty (such as disqualification) rather than another, will deter offenders from further offences. Moreover, his figures confirm the statement made by Middendorff[2] and others that motoring offenders are not typical of the driving population, but are more like those who commit other common forms of crime.

A recent American study by Blumenthal and Ross[3] supports the argument that the penalty imposed makes no difference to the probability of a reconviction or an accident. They studied the impact of a fine, 'conventional' probation or 'rehabilitative' probation on a total of about 500 first offenders for a drink/drive offence, but did not find that any measure was more effective than the others. Overall about 5 per cent of the sample were reconvicted for a DUI offence within one year.

As a final example of overseas research, Middendorff's book, *The Effectiveness of Punishment*, contains a comprehensive summary of many studies undertaken in Europe and the United States up till about 1968. One important West German study to which he refers compared the effect of a suspended gaol sentence versus an actual period of imprisonment on a sample of drinking drivers. The reconviction rates between the years 1959 and 1962 averaged 8 per cent for both groups; there was no significant difference.

Sentencing the Motoring Offender in New South Wales

There seem to be very few published Australian studies which cover the same sort of ground as that outlined above, although several are in progress. One study by Raymond[4] established that at least 25 per cent of drivers convicted in Melbourne on breathalyser charges repeat the offence, some as many as four or five times over a period of three years.

It is not hard to ascertain what courts in New South Wales do with motoring offenders. In 1971 there were 511,005 minor traffic offences settled by payment of fines without court proceedings. (1971 is the latest year for which figures are quoted in the published Year Books.) At the other extreme, in 1973 there were 9 people convicted of manslaughter as a driving offence, compared with 38 convictions for manslaughter other than by driving. It is interesting to note that of the 38 cases of manslaughter, 34

2 Middendorff, W. 'Is there a relationship between traffic offences and common crimes?' *International Criminal Police Review*, 214, January, 1968.

3 Blumenthal, M. and Ross, H. L. *Two experimental Studies of Traffic Law. Volume I: The Effect of Legal Sanctions on DUI Offenders.* (U.S. Department of Transportation, February, 1973).

4 Raymond, A. E. 'Characteristics of drivers breathalysed in Melbourne in 1967'. Proc. 5th Conf. Aust. Rd. Res. Bd. Vol. 5: (3) 209–208. (1970).

were imprisoned, generally for five years or more and 4 were placed on a bond. However, only 4 of the 9 people convicted for motor vehicle manslaughter were imprisoned, and only one for five years or more.

Motoring offences of the 'middle range' of seriousness are dealt with at Courts of Petty Sessions in New South Wales. These include dangerous driving, failing to stop after an accident, and driving while licence is disqualified, cancelled or suspended. The penalties imposed in these cases are outlined in *Table 1*, for 1974[5].

Table 1

Convictions for driving offences at Petty Sessions in 1974, by action taken (percentages).

action taken	offence			
	dangerous driving	fail to stop	drive while disqualified	drive while suspended/ cancelled
s.556A	2.9	5.4	2.5	3.9
bond	5.2	2.0	22.8	8.3
fine	88.2	91.8	40.6	85.1
prison	3.0	0.0	33.4	1.7
other	0.7	0.8	0.7	1.0
TOTAL	1378	294	727	181

The most popular penalty was clearly a fine, although whether a period of disqualification applied as well was not recorded. The only offence for which imprisonment or a bond was used to any extent was driving while disqualified, the original order having been made by a magistrate, as opposed to the Commissioner for Motor Transport. Approximately three quarters of offenders were under 30 years of age.

Breathalyser Offences

By far the most numerous motoring offender dealt with at Petty Sessions is the drinking driver. The number of cases has risen from 7552 in 1969 to 18961 in 1973, an average annual increase of 26 per cent. The figures now seem to be stabilising at around the 1973 figure.

One measure of the deterrent effect of the breathalyser legislation is the mean blood alcohol concentration (BAC) of convicted drivers. This figure dropped between 1969 and 1970, and this fact gave rise to optimism that the breathalyser programme was having an effect in encouraging some 'heavy' drinkers to reduce their alcohol intake before driving. However, the mean BAC has remained steady at 0.16 since 1970, indicating that any initial movement was not sustained.

5. Court Statistics 1974. N.S.W. Bureau of Crime Statistics and Research. Statistical Report No. 6. Series 2 1975.

One further general comment relating to the deterrent effect of the breathalyser programme concerns the number of people with previous drink/drive convictions. The percentage of such people has risen steadily from 21 per cent in 1971 to 27 per cent in 1974, indicating that since the inception of the breathalyser system, a hard core of offenders have been appearing regularly before the courts. When this fact is coupled with the observation that people with one or more previous drink/drive convictions tend to have much higher blood alcohol concentrations, one is led to the hypothesis that there is a group of offenders, probably alcoholics, who drink more heavily than average and who are undeterred by penalties. This view is supported by Raymond[6].

The penalties imposed on breathalyser offenders, and the characteristics of the offenders, have been published in great detail by the Bureau of Crime Statistics and Research each year since 1971, and there is no point in repeating all the figures here. Offenders are nearly all men and younger than the general population of drivers, although the younger men tend to have lower blood alcohol concentrations. They tend to be drawn from the lower status occupations, and about half are legally represented. Almost all plead guilty.

One characteristic which has not been stressed in published reports is the association between convictions for drink/drive offences and other forms of crime. This association is consonant with what is known about motoring offenders overseas. *Table 2* gives the percentages for 1974.

Table 2

Association between previous DUI convictions and previous criminal convictions.

percentage with a criminal conviction	no previous DUI convictions	one or more previous DUI convictions
	27.4	57.3

Overall, 35 per cent of drivers had a previous criminal record. This compares with a figure of 37 per cent for English drunken drivers investigated by Willett. The implication of this finding is that the process of deterring or rehabilitating the drinking driver may not be a problem as separate from the problem of deterring other types of criminals as is sometimes supposed.

Sentencing the breathalyser offender

Penalties imposed on breathalyser offenders have varied little over the past few years. Generally speaking, 85 per cent receive a combination of a fine and a period of licence disqualification, 10 per cent received a dismissal

6. Raymond, A. E. *A Review of Alcohol in relation to Road Safety.* (Aust. Govt. Publishing Service, Canberra, 1973).

or recognizance under s.556A of the *Crimes Act*, 2 per cent go to prison, and the remainder receive a combination of recognizance, fine, probation and licence disqualification. The most favourable outcome for which a convicted offender can hope is a s.556A dismissal or recognizance, for which there is no fine or licence disqualification.

Before proceeding to the follow-up study of breathalyser offenders, it needs to be stressed that the process of sentencing is extremely complex. Hood's study makes this point abundantly clear. Magistrates proceed on certain assumptions about which sorts of offenders deserve certain penalties, and which penalties are most effective as deterrents for particular classes of offenders. Sentencing, as Hogarth[7] points out, is one of the most difficult tasks a human being can undertake and involves a complex interaction of factors.

This point can be illustrated by some results from an analysis of factors associated with the granting or refusal of a 556A dismissal or recognizance[8]. The sample upon which the analysis is based is of size 2000, and was drawn from the total of breathalyser convictions for 1972. Results are presented pictorially in *Diagram 1.*

The way of interpreting this diagram is as follows: The box at the top (numbered 1) represents the total sample of size 2000, in which 7.0 per cent received a 556A. The statistical method employed[9] splits the sample into two sub-groups in such a way that the resulting groups have a maximum difference in terms of the percentage of 556As in each group. Thus the first split tells us which single variable is most strongly associated with the granting or a refusal of a 556A. This process continues, each sub-group being split according to the variable most closely associated with 556As in that group. The total 'tree' obtained gives us a picture of the interaction of the various factors entering into the sentencing process.

The diagram illustrates that the age of the offender is crucially important in determining whether or not he receives a 556A. Nearly one in five (19.1 per cent) of those over 40 years of age received a 556A, compared with 2.6 per cent of those under 40. The existence of previous convictions for a traffic or DUI offence is important in differentiating the over 40 group.

7 Hogarth, J. *Sentencing as a Human Process*, (University of Toronto Press, 1971).

8 This subject was dealt with in a preliminary way by Vinson, T. and Homel, R. 'Legal Representation and Outcome'. *The Australian Law Journal*, March 1973.

9 The method used is the Automatic Interaction Detector (AID III). The figures shown are for a validation sample, not the sample on which the tree was first produced. The percentages shown are unbiased estimates of the population percentages in each category. For the criteria upon which the program is based, see Sonquist, J. A., Baker, E. L. and Morgan, J. N. *Searching for Structure* (Survey Research Centre, Institute for Social Research, University of Michigan, 1974).

The role of legal representation is interesting. It can be seen from the diagram that it is of importance in cases which are 'in the balance' in some sense. For example if someone is over 40 with previous traffic convictions but no previous DUI convictions, it can make a difference. Similarly if someone is between 25 and 39 years of age and of low occupational status, a legal representative can help in arguing for a 556A.

The main point to be noticed is that the magistrate is clearly employing certain criteria in the sentencing process. Certain factors, such as a previous conviction, are important provided certain other characteristics are also present. One role of criminological research should be to feed back to the magistrate information concerning which factors, if any, are relevant with respect to future recidivism.

The Breathalyser Follow-up Study[10]

The results of overseas research would make one pessimistic about the impact of penalties on any sort of motoring offender, including the drunken driver. The safest hypothesis would be that the amount of the fine, the length of disqualification, even the act of being sent to prison, has no effect on an offender's subsequent conviction record, and may even serve to make him resentful and feel that he has been unjustly treated.

In view of the large number of convictions for drinking and driving each year in New South Wales, and the complete absence of information as to the effect of the various penalties imposed, the Bureau of Crime Statistics and Research has undertaken a study of a sample of 810 people convicted of a breathalyser offence in the first six months of 1972. The aim was to make use of the detailed statistical information which has been available on breathalyser offenders since 1972, and to relate this information to the subsequent traffic, drink/drive and criminal records of the offenders[11] .

No attempt has been made to interview any of the offenders or follow them up in any way other than to look up their records for a period two years from the original date of conviction. Thus the criterion for the effectiveness of a given penalty is whether the offender was reconvicted within a two year period. This is clearly a very crude and arbitrary index, since it takes no account of drivers who committed offences but who did not get caught, and it takes no account of more subtle effects, such as changes in attitudes or feelings of resentment.

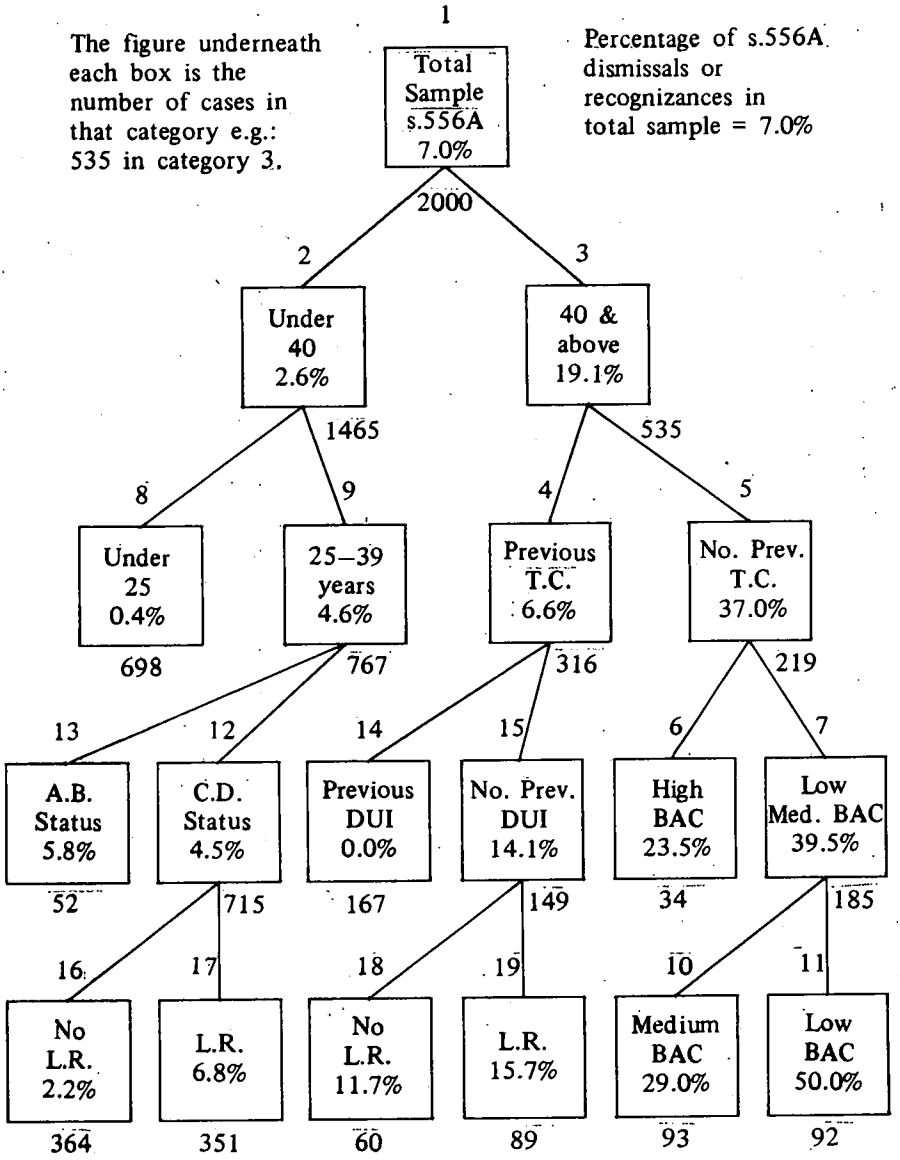
However, precisely because the reconviction criterion is a fairly crude index, any observed correlation with penalties may be assumed to be

10 **Acknowledgement:** The breathalyser follow-up study was undertaken with the financial assistance of the Australian Department of Transport.

11 Information on restricted licences, as opposed to disqualifications, was not available from the 1972 statistics.

Diagram 1

The interaction of factors associated with the granting of a S.556A dismissal or recognizance.



Note: Prev. T.C. Previous Traffic Convictions
L.R. Legal Representation

reflecting at least a temporary effect. Moreover, to compensate for our lack of subjective data on the effect of the penalty, we have devised a methodology which attempts to capture statistically, at least indirectly, a person's feelings of having been treated harshly, fairly or leniently. The basic idea of this approach is to take into account not only the basic penalty which an offender received back in 1972, but also the characteristics of the offender and his offence (canonical correlation analysis).

Canonical Correlation Analysis.

The details of this method will be described in the final report. The statistical method employed is called canonical correlation analysis, and by its use we have been able to assign, for every case, a weight to every known characteristic of the offender, his offence, and the penalty. From these weights we have been able to derive two scores for every case: a measure of the overall 'severity of the penalty', and a measure of 'offender/offence characteristics'. This latter score may be interpreted broadly as a measure of the 'seriousness of the case' or the 'entitlement for punishment'[12].

As one would expect, the characteristics which weighted most heavily on the severity score were the higher level of fine, the longer suspensions, the receiving of a recognizance and a prison sentence. People who received a dismissal or recognizance under s.556A achieved the lowest score on the severity scale, and those who were sentenced to prison tended to receive the highest scores. It should be stressed that none of these weights was assigned as value judgements; they were determined on the basis of the average behaviour of all magistrates. The factor which contributed most heavily to the offender/offence score was the presence or absence of a previous drink/drive conviction. This was followed by the blood alcohol concentration and the age of the offender.

On the basis of these two sets of scores, it was possible to divide all the cases for 1972 into nine groups, depending on whether the severity of the penalty was high, medium or low and the entitlement was high, medium and low. One would expect that people with a low entitlement but a high penalty would have most reason to feel resentful; in fact there were only 22 cases for the whole year in this particular category.

The preceding description of the methodology may sound fine but somewhat academic. What evidence do we have that these scores can be used as a measure of relative severity of penalty? One objective indication is afforded by the percentage of people in each of the nine groups described above who appealed against their sentence. The figures are given in *Table 3.*

12 For the technical reader, the two scores represented the first two canonical variables, which had a correlation of 0.70. The analysis was based on 15054 cases determined in 1972.
We would like to thank Mr Paul Ward, of the Sydney Institute of Criminology, who first suggested the use of this tool in the context of an analysis of sentencing.

Table 3
Percentage of appeals in various penalty groups.

severity	entitlement	no. of cases	percentage of appeals
high	high	485	5.2
high	medium/low	400	9.5
medium	high	613	3.9
medium	medium	1385	6.0
medium	low	534	5.6
low	high	294	2.7
low	medium	3185	2.4
low	low	8158	2.4

The overall percentage of appeals was 3.2 per cent. It can be seen that when the penalty was high or medium in severity, the percentage of appeals was higher than average. In particular, there were nearly three times the usual number of appeals amount those who received a heavy penalty but had a medium to low entitlement.

The Sample

The original sample of size 810 was a stratified random sample drawn from some 7,500 breathalyser cases dealt with during the first half of 1972. The strata were defined by the penalty groups listed in *Table 3.* A total of 18 cases could not be followed up due to missing records, duplicate forms, or some other reason. The sample over represented people who received heavier penalties.

In order not to confuse the study of the impact of penalties, appeal cases were excluded.

Basic findings.

The basic findings are presented in *Table 4.* Sixty eight people, or 8.6 per cent of the sample, were reconvicted for a drink/drive offence within two years of their original conviction. Remembering that the sample was not a simple random sample but stratified, the estimate for the population is 9.3 per cent. In other words, if we had followed up everybody convicted in 1972, we would have found a reconviction rate of about 9.3 per cent[13]

This figure over two years is very similar to the 5 per cent figure over one year found by Blumenthal and Ross in Denver. It is also similar to that already quoted from Middendorff's book for West Germany.

13 The population estimates are actually subject to standard error. Calculations indicate that these are small, and in order not to complicate the discussion, they have been omitted from this summary.

Table 4

Number reconvicted within two years from their original offence.

	number	percentage of sample	population estimate
DUI offence	68	8.6	9.3
any motoring offence	150	18.9	22.5
criminal offence	108	13.6	12.2

Nearly one offender in five (18.9 per cent) was reconvicted for a motoring offence. The population estimate actually exceeds one in five. This rate of reconvictions exceeds that found by Willett, when it is considered that only 26.5 per cent of the offenders he followed up were convicted of a motoring offence over a four year period. The particular offences for which people were convicted are shown in *Table 5*.[14]

Table 5

Traffic offences committed.

	number	percentage
DUI/PCA	67	44.7
drive while disqualified	17	11.3
negligent driving	21	14.0
speeding	29	19.3
other	16	10.7
TOTAL	150	100.0

The Effect of Penalties

The construction of the sample in terms of the severity of penalties and the seriousness of offences has already been discussed. Using these scores it is possible to construct a variable which measures the severity of the penalty, *relative* to the seriousness of the offence. We have already seen that a person is more likely to appeal if he is high on this scale, and consequently there are some grounds for believing that it measures the *perceived* severity of the penalty.

The relationship between this variable and the probability of a reconviction for a DUI offence is presented in *Table 6*. Nearly twice as

14 Trivial offences, like parking, were not recorded. If someone committed a motoring offence inter-state, it was only available on the records if it was relatively serious (a drink/drive offence, for example).

many people who received a more lenient than average penalty relative to their offence were reconvicted than those in the heavy penalty category. On the face of it, this seems to indicate that a heavier perceived penalty is a deterrent. However, the relationship is not statistically significant.

Table 6

Relationship between relative severity of penalty and reconvictions for drink/drive offences.

	relative severity		
	high	average	low
number of DUI convictions	9	48	1
percentage	5.1	9.5	10.1
TOTAL	177	506	109

The observed percentage differences would certainly be statistically significant if the numbers involved were larger. However, it can be argued that if penalties are a deterrent, they should discourage other types of motoring offences. In *Table 7*, the effect of relative severity on the probability of a conviction for any motoring offence is presented.

Table 7

Relationship between relative severity of penalty and reconvictions for motoring offences.

	relative severity		
	high	average	low
number of convictions	21	104	25
percentage	11.9	20.6	22.9

This relationship is significant at a level of .025. The differences observed in *Table 6* are sustained, but this time the numbers involved are larger.

A further question that is natural to ask concerns the efficacy of particular types of penalties. Granted that heavier penalties appear to be some deterrent, is it the fine which is effective, or the disqualification, or what? While it is not possible in this short paper to examine this question in detail, preliminary indications are that the period of disqualification is primarily effective as a deterrent.

When the tables above are controlled for the period of disqualification, the relationship between relative severity of penalty and reconvictions is in most cases greatly reduced. There is some evidence that fines may have an effect for periods of suspension below twelve months.

Certainly there is no evidence that imprisonment has any effect on subsequent convictions for motoring offences *(Table 8)* but there is a strong tendency for people who have been sent to prison to be reconvicted for a criminal offence. However this may be due to the fact that people with indictable criminal records are more likely to be sent to prison, and these people are poor risks anyway.

Table 8

The effect of prison on reconvictions for motoring offences[15]

	imprisoned	not imprisoned
number of convictions	8	142
percentage	16.3	19.1
TOTAL	49	743

(The difference is not statistically significant).

Discussion

The summary of findings presented in the previous section have done little more than to scratch the surface. Further questions concern:

(i) the effectiveness of probation and/or bonds;
(ii) the relationship between criminal convictions and convictions for motoring offences;
(iii) the number of people who drive while disqualified;
(iv) the existence of an 'optimum period' of disqualification;
(v) the relationship between attributes of offenders and the probability of a reconviction.

15 Obviously people can't commit motoring offences when they are in prison, and to this extent the table is misleading. Ideally one needs to record the date of release from prison, and follow-up the offender from this date. When the table is controlled to exclude those who committed offences in the first six months (the maximum prison sentence), the percentages in both groups are even closer.

In addition, some thought needs to be given to the meaning of a reconviction rate. The most obvious drawback to its use is that offenders drive during their period of disqualification, and presumably also commit other offences without being caught. However, self-reported infractions of the disqualification order are not necessarily a perfect substitute. Willett found some people reluctant to say whether they had been driving or not, and in other cases where offenders admitted to driving, one might suspect that they had in fact only been taking a chance occasionally.

For statistical purposes, one really needs to establish the 'relative risks of apprehension' of different classes of offenders, such as young men. The reconviction rates within different penalty categories could then be adjusted to obtain a fairer comparison of the impact of different levels of penalties. It is possible that the statistical information already available on breathalyser offenders could be used for this purpose.

Another important question is the social composition of those convicted of a drink/drive offence. Evidence has already been presented that there may be at least three distinct types of offenders; those also convicted of a criminal offence, alcoholics, and 'ordinary' motorists who seldom have a brush with the law. Further analysis will attempt to distinguish these groups, and examine the impact of penalties on each one separately.

A further question for consideration concerns feedback of information to magistrates. As has already been discussed, deterrence is not the only aim of punishment; retribution is also accepted as a goal. In sentencing breathalyser offenders, there are questions of justice as well as of deterrence. The complexity of the sentencing process, with its interaction of factors, is such that it would be simplistic to expect an overnight change in sentencing policy, even if the effectiveness of disqualification as a deterrent had been proved beyond all doubt.

In order to answer some of the questions discussed above, further analyses will be undertaken before publication of the final report. In addition, we are augmenting the sample to include all cases in which imprisonment or probation were employed as penalties. We are also planning to extend the follow-up period from two to three years for all offenders.

Conclusion

This paper has attempted to survey some of the literature on the deterrent effect of court penalties on motoring offenders. Sentencing in New South Wales courts has been examined briefly, and some evidence presented that for drink/drive offenders, heavier penalties, especially in the form of a licence disqualification, have some deterrent effect, at least over a two year period.

The finding of a deterrent effect is generally contrary to overseas research results; although Willett found that offenders who were interviewed

feared a period of disqualification more than a fine, or even in some cases a short prison sentence. Middendorff quotes a number of commentators who believe, generally without strong supporting evidence, that disqualification is an effective penalty. He himself believes strongly in its value.

However, Willett found evidence for the common-sense view that the longer the period of disqualification, the greater will be the temptation for drivers to disobey the order. He found that 80 per cent of offenders who admitted to driving during their disqualification period did so within three months. This is supported by results from the present survey (not quoted above) which show that the percentage of drivers convicted during their disqualification period is higher for offenders with a longer period of disqualification. Consequently, if the usefulness of disqualification as a deterrent is accepted, it is vital that an estimate of the optimum period be developed.

PRESENTATION OF PAPER

R. J. Homel, M.Sc.

At the outset I wish to make three points. Firstly, the topic is about the effectiveness of present operations. I am not at all concerned in this paper with changes in dealing with motoring offenders, driver re-education, etc. Some of the conclusions of this study may well not apply if new methods are brought to bear on motoring offenders.

Secondly, the paper is not intended to be a wide ranging discussion of all the operations which are presently employed such as all the aspects of policing the roads, radar speed traps, breathalyser squads and so on. I am not competent to deal with the effectiveness of such operations. My paper is concerned almost solely with the sentencing process and with the effect of penalties on motoring offenders, giving particular attention to the drink/driver. One of the reasons for this is that since 1972 the Bureau of Crime Statistics and Research has built up a fairly substantial body of data on this offender. The information comes from court conviction statistics and it is this statistical base on which my paper mainly relies.

Finally, I am not dealing at a philosophical level in this paper. It is fundamentally an empirical study and, although at the end I have discussed some of the implications, I am going to adhere to our substantive research findings.

The paper is divided into four sections. The first section concerns some selected overseas research; the second section concerns the process of sentencing the motoring offender in New South Wales; the third section concerns what I refer to as the 'breathalyser follow-up study' and the fourth section is discussion and conclusion.

One of the major studies discussed in the overseas research section is Dr Willett's study in England of a sample of convicted motoring offenders. The fundamental thing that comes out of Willett's book is that we should be pessimistic about the effect on the motoring offender of any of the sanctions of criminal law. There is not much room for optimism about the effect of fines or disqualification, or imprisonment, or any other sanction.

Another study that I deal with in the discussion of overseas research is a recent study by Blumenthal and Ross in the United States. They followed up some 500 motoring offenders and compared the effect of fines with what they call 'conventional' probation and 'rehabilitative' probation. 'Rehabilitative' probation emphasised programs of driver education, alcohol treatment programs, and so on. Their study was also very pessimistic about the effect of penalties. They found that there was no difference between each of the group in terms of reconvictions or violations or crashes.

One other book I refer to is by Roger Hood. This is not exactly an evaluative study or a follow-up study of motoring offenders. It is a study

of sentencing in magistrates' courts in Britain, and I think it is one of the very best books available on that subject. The reason I included it in my literature review is because I think that this question of the effectiveness of penalties is intimately tied up with the sentencing process. I do not think that you can separate the two. One of the great advantages of his book is that Hood emphasises the complexity of the sentencing process and the great tensions which are being brought to bear on the magistrate when he passes sentence on a motoring offender.

The second section of the paper is concerned with the sentencing of the motoring offender in New South Wales. I have conceptualised this process as occurring at three levels. The very large number of people who are dealt with by payment of fines without court proceedings (which now exceeds 500,000 in New South Wales in each year) and, at the other extreme, the offenders who are dealt with at the higher courts generally for the offence of manslaughter or culpable driving. At the middle level of severity are found offences such as dangerous driving, failing to stop after an accident and driving while disqualified which are dealt with at courts of Petty Sessions. *Table 1* shows the penalties that are imposed at Petty Sessions for those offences.

I then go on to look in more detail at the breathalyser offender. It is noted that the mean blood alcohol concentration of drinking drivers has not dropped since the initial drop which was recorded between 1969 and 1970. In fact, one could cast doubt on the validity of that initial drop because perhaps the breathalyser units were bringing in more people who had slightly lower blood alcohol concentrations than was the case when the old drink/driving legislation was in force.

Before I go on in the paper to talk about the breathalyser follow-up study I include a short excerpt from a current study on the sentencing process in courts of Petty Sessions. The diagram is meant to illustrate the complexity of the sentencing process to which I have already referred. It shows the interaction of factors that are associated with the granting or not granting of a dismissal or a recognizance under s556A of the *Crimes Act*. The statistical method used attempts to search for the factors that are most closely associated with some outcome; in this case the granting of a s556A dismissal. It seems to be that age, which perhaps reflects the number of years driving experience, is most closely related to the granting of a s556A. Other factors start to become important, and so you can see that if you are over forty, have no previous traffic convictions and a low blood alcohol concentration, you have a 50 per cent chance of a s556A! The diagram simply illustrates some of the various factors that a magistrate takes into account either directly or indirectly in the process of sentencing. One of the jobs of criminologists ought to be to feed back to the magistrate information as to which factors are important with respect to future recidivism.

The most important part of the paper is the breathalyser follow-up study. This study is being funded by the Australian Department of

Transport. They are also funding a number of other studies, for example, in Melbourne where offenders are being interviewed, somewhat similar to the study in England by Willett. I apologise that the description of the methodology in this section is difficult for a non-statistician to read. I would like to thank Paul Ward, Senior Lecturer Criminal Statistics, Institute of Criminology, Faculty of Law, The University of Sydney, who was one of the people who suggested the use of canonical correlation analysis for this study. However, I feel that one fault of previous studies has been the relative lack of sophistication of the methodology.

In my opinion, and I think in the opinion of my colleagues, it is not sufficient just to look at the effect of a fine, or the effect of a disqualification on an offender because offenders vary enormously. Some have many previous convictions, some have none, some are young, some are old and so on. The differences are very great. What we have tried to do in the study, when looking at the effect of penalties on a sample of some 800 breathalyser offenders, is to take account not only of the magnitude of the penalty but of the characteristics of the offender. We chose the sample in such a way that the people who received a heavier penalty were over represented in the sample. This was so that we could have a closer look at the effect of various penalties.

Our fundamental criterion for the effectiveness of a penalty was the recording or not recording of a reconviction. Clearly this has limitations. One would like to know about the more subtle effects of the sentencing process; about changes in attitudes of offenders, about feelings of resentment and similar subjective responses. Our study is limited to the use of reconviction statistics as a criterion. It may not be possible to make statements about the strict causal relationship between the magnitude of the penalty and the percentage of reconvictions, but it does give a certain amount of information on which one can base further research and upon which one can act at a policy level.

Tables 6 and *7* show the apparent relationship between the relative severity of the penalty and the reconviction statistics. The idea of a relative severity is that it is the severity of the penalty in relationship to the entitlement for punishment of the offender. For example, a prison sentence for someone with no previous convictions for drink/drive would be much harsher than it would be for someone with twenty previous convictions for that offence. I have not assigned these weights to these variables as a value judgement on my part. The weights are based solely on a statistical analysis and represent the average behaviour of all magistrates.

There are 177 people who were treated in a severe way according to this measure and, out of that group, nine (or 5.1 per cent) were reconvicted. Of the 506 people who were treated with an average severity of penalty in relationship to their entitlement for punishment 9.5 per cent were reconvicted, and among those who had a low severity of penalty in relationship to their entitlement 10.1 per cent were reconvicted. There does appear to be some *prima facie* relationship between the relative severity of

penalty and the likelihood of a reconviction within a two year period. Unfortunately *Table 6* is not statistically significant.

One could argue that if penalties are supposed to have a deterrent effect then they ought to have an effect in terms of all motoring offences, not only the drinking/driving offence. *Table 7* shows the relationship between the severity of the penalty and reconvictions for motoring offences. The same sorts of differences between the different levels of severity are sustained in this Table, but 12 per cent of those who received a penalty of high severity were reconvicted compared to 23 per cent of those with a penalty of low severity. This difference is statistically significant, because the numbers involved are larger.

The main component of the relative severity variable is disqualification. When you look at the partial effect of fine and disqualification on the figures you find that when you divide up the table according to whether the period of disqualification was short, medium or long the differences disappear. In other words it is disqualification which is the important component of the penalty.

In the final section of the paper I discuss some of the implications of this finding for the sentencing process for motoring offences in general. There is a whole list of further questions that I would like answered and which I think are capable of some sort of answer from our data. We need to give thought to the meaning of the reconviction rate. In particular, we would like to adjust the reconviction figures for the relative risks of apprehension of different classes of offenders. For example, young men are more likely to be picked up by the police so we would like to adjust the reconviction figures to take account of the fact that some offenders are more likely than others to be noticed if they do commit an offence.

Another important question which is crucial to the study of the effect of penalties is the social composition of the people who are being sentenced. I put up a hypothesis that there are at least three distinct groups of breathalyser offenders; the ordinary motorist who seldom comes into contact with the law, the alcoholic who is an important sub-group of those convicted, and thirdly those who are criminals in the more commonly accepted sense of the word. I would like to look at the effect of penalties on those groups separately.

My final comment is that I think it would be wrong to come to the conclusion that the period of disqualification should be automatically increased for all offenders. There is definitely an optimum period. Willett talks about three months as having a suitable shock effect before people start to disobey the order, and become more likely to commit offences thereby than if they had not been disqualified. What one needs to do is to balance the reduction in reconvictions that one has against the number of people who disobey the order and who are in fact reconvicted during their suspension period. I think that from our data it will be possible to form an estimate of the optimum period of disqualification by balancing these two factors.

Chairman

The Melbourne study has been designed to find out the percentage of people who have been disqualified but who continue to drive. The research team is having trouble in locating people who are disqualified, as a number of them seem to have vanished. This study will be very interesting when completed.

COMMENTARY

R. L. McKinley, Esq.

Superintendent of Traffic. New South Wales Police Department.

In his paper Mr Homel has concentrated particularly on the statistics relating to the driving of a motor vehicle whilst a person has the prescribed concentration of alcohol in the body. The figures quoted were for 1973 when there were 18,961 breathalyser offences before the court. In 1974 figures from the section show that this has dropped to 17,546. The figure so far this year shows a further decline. The figure for last year represents approximately 48 persons charged per day for the 365 days of the year. How significant is this figure in the overall picture of the driver in New South Wales?

In this State there are 1979 hotels and 1516 licensed clubs, of which 624 hotels and 598 clubs are in the metropolitan licensing district; in addition there are numerous licensed restaurants. Is it reasonable to assume that from these licensed premises, be it club, hotel or restaurant, that each day persons leave those premises who have the prescribed concentration, or more than the prescribed concentration of alcohol in their system and that these persons then enter motor vehicles and drive away? Can we imagine what this figure might be on the average daily rate? Would it be unreasonable to suggest that there could be a least 5000 persons daily who leave licensed premises with the prescribed concentration of alcohol in their system and then drive a motor vehicle? I think that that is a very conservative estimate myself, especially when you consider the large number of licensed clubs within our metropolitan district which cater for 10,000 and more members and are so situated that it is necessary for people to use motor vehicles to travel to them. What can we do about this problem of the intake of alcohol followed by the driving of motor vehicles?

It would be impossible to have police patrolling in the vicinity of every licensed establishment to deter motorists leaving such establishment from driving their cars. We just do not have enough police, apart from the public outcry that it would invoke. As an alternative could we have a special mobile squad of police, say fifty, such as has been operating in relation to hoodlum behaviour? Could we have a squad whose duty would be to patrol in the vicinity of licensed establishments and to operate in one area today and a different area tomorrow to deter the motorist leaving those premises whilst he is affect by liquor, and to detect those who drive having the prescribed concentration of alcohol? I think this would have a salutory effect on the motorist.

We have tried such schemes with great success to a smaller degree in recent months by concentrating effort in certain areas where we know there is a certain pattern of conduct on Friday and Saturday nights. Suppose we did have a squad such as this, how long would we be allowed to operate it before we had interference from the powerful bodies whose income might

be affected, or who thought we were interfering with the rights of the motorist who is entitled to drive his car to and from the establishment? Probably we could operate a month only, but is it not a practical approach to the problem of the drinking driver? What is more important – human life or property? The motor vehicle is killing over 1200 people annually in this State and maiming thousands more. Is it not more important that we direct as much time and manpower to the elimination of this waste of human life as it is to the many of the criminal offences which only involve loss of property? Human life is to me much more valuable than property.

Leaving this aspect I turn to another phase of present operations briefly mentioned by Mr Homel: the deterrent effects of highway patrol and the radar speed traps. The highway patrol only came into operation during March, 1975. Its operations are limited because we do not have vehicles suitably marked, but we do know that the presence of a marked highway patrol vehicle on the road has the effect of causing motorists to behave in an orderly fashion. However, what happens when the vehicle is passed or overtaken? Do the arrogant and inconsiderate motorists revert to their normal standard pattern of behaviour? The answer is *Yes.* My staff operating radar detecting devices say that certain motorists, if they are going north, and see a radar operating for traffic in a southerly direction immediately accelerate and just do not care about the operation of the radar or the speed they are travelling. What then do we say for the deterrent effect on motorists?

We are conscious of the use of radar as a tool in our hands. It is not a trap and was never intended to be a trap. I would much rather see radar being used on roads, if we detect only half the speeding motorists that we do now, if we are going to prevent the senseless speeding by police vehicles in pursuit of motorists who are breaking the speed limit. Motorists speed because they want to speed, and it does not matter how many radar sets we put along our roads they will still speed. Aren't we getting to the stage where we have to eliminate the sort of driver who speeds in spite of radar warnings or do we have to re-educate him?

Complaints come into us about the use of radar, but instructions have been given that radar be placed in areas where we have high accident or fatality rate. It is significant that in one area of the State, in the north, radar units were not available for a period of one week. There were two fatalities in that area that week. The radar went back the next week and there have been no fatalities since. The attitude of the motorist in complaining about the use of radar stems I think from the attitude of the motorist who, for so many years, had one eye on the rear vision mirror looking for the police car to come up behind and then he would reduce his speed. Radar now picks him up when he is some distance from the police. He does not have the opportunity to reduce his speed before he comes to the radar or if he does, he is within range of the beam and is detected.

The other comment is that this attitude is not limited to the driver who speeds. Everyone who drives a car sees the repeated arrogance, selfish

or inconsiderate actions by drivers. It even extends to the trivial parking problem, such as the driver who parks his car across a driveway. What do we do? I think that the answer is that all of us look to a re-education program designed to change driver attitudes. Let us have not the *offensive* driver but the *defensive* driver, then we may seek to curb the toll of the road.

COMMENTARY

E. A. Huxtable, B.E., Dip.T. & C.P., M.I.E. Aust. F.C.I.T.

Public Affairs Executive, N.R.M.A.

In the N.R.M.A. there are quite a number of us who are frequently being accused of being fatalistic when any discussion comes up about the human element in road safety. The main thrust of most of the work that we do is aimed at improving the road system or improving the vehicle because from the experience that we have had, and from all the research we have seen, the prospects of changing the human being seems to be very slim. One of the main impressions from Mr Homel's paper was that there seems to be even less prospect of doing something with drivers when they get to the stage of reaching the courts. It is because of the very nature of these people, that whatever you do does not seem to have much effect on their future behaviour. This is also borne out by Superintendent McKinley's comments.

I want to offer my congratulations to Mr Homel for what I thought was a very excellent and well documented paper. I think he and his team are to be congratulated on the research that they are doing and let us hope that we see more and more of it. There is only one query which I want to raise and that concerns *Table 4*. This shows that the number of people who had been convicted of a drink/driving offence who subsequently were reconvicted for motoring offences is 18.9 per cent for the sample or 22.5 per cent for the population; in other words about one in five of the drivers in the sample over the two-year period. There are 600,000 people in New South Wales who are booked for a motoring offence each year out of approximately 2.4 million drivers. This works out at an average for the average driver of one in five for *every* year. In other words it seems that the sample drivers, those who had appeared before the courts, showed a subsequent driving record of about half that of the average population. There has to be some explanation for this, and I am hoping that Mr Homel will inform us.

This section of the seminar is devoted to the effectiveness of present operations. I believe that before we can address ourselves to the question in general we must have in mind some sort of yardstick by which we measure effectiveness. There are any number of yardsticks that people can select: for example, the number of accidents that occur, or the number of people that are killed or injured. I believe that this should be the primary objective of our enforcement processes, but there are always difficulties in relating any changes in these patterns back to specific changes in enforcement processes themselves. We can look at the total number of bookings, and as I mentioned there are 600,000 people booked each year for a moving traffic offence or for an equipment offence, and there are another 732,000 that are booked for parking offences. For the total population of drivers in New South Wales there are 1.3 million offences, which is one for every 1.8 drivers.

You can take as a yardstick for a particular purpose the number of *driving whilst there is present in the blood the prescribed concentration of alcohol* (PCA) convictions or *driving whilst under the influence of intoxicating liquor or of a drug* (DUI) convictions. From my reading I think that the main achievement for this activity is to identify the people who are in need of rehabilitative treatment by other institutions. You could also look at the legal outcome of the bookings that are made and obviously if everyone who is booked pleads guilty you know you can say that enforement procedures are effective.

Another measure of effectiveness may lie in the attitude engendered in the public by their contact with the law. Mr Homel refers to studies by Willett and others in which drivers convicted of serious offences were asked their attitudes to the sentences they had received, and it was apparently felt that the attitude of these drivers had some influence on their subsequent behaviour. If we apply this reasoning to all drivers I think we should be concerned about the attitude of the 600,000 people booked for moving traffic offences. Of course, one of the main attitudes expressed by the general motoring public is that the police are not concerned with road safety but with revenue. I think that this is a very important matter and that it sould be examined because if it is a general situation it may not be producing the right sort of influence on driver's behaviour.

The complaints that we receive about police frequently refer to so called 'radar-traps'. The people who complain say that the meters are only used in places where you can only have one vehicle in the beam, that you need to have good sight distance and that the traffic has to be light. They can see that the arbitrary speed limit that is posted can be exceeded by some margin with comparative safety in these circumstances, and they question whether the police are achieving anything beyond amassing bookings and antagonising drivers. It is a popular pastime to knock the police and I was very gratified to hear Superintendent McKinley's statement that this is going to change. I think he is to be complimented on taking this attitude.

I think it may be of some value to record these impressions that we have been given. Some particular incidents which have happened have given us some misgivings about the tactics the police use. I do not want to give the impression that these incidents are occurring every day. It is far from that, but then again we are only seeing a small sample of the total number that are booked, and we do not know just how representative the sample is. The impression left by some of these incidents have been that the police have been very adept at finding locations where a speed limit or some other regulation is regularly broken by large numbers of motorists and instead of looking for cures they look for bookings. The sorts of cases involved have been locations where the speed limit in the first place might have been unrealistic, or had become unrealistic because of some road widening or other improvements that had been made, where the speed limit signs themselves had been found to be deficient, where there was an obvious need for a turning arrow so that vehicles could turn legally from two lanes,

or where turn restriction signs (which applied in most cases for part of the day only) were not readily obvious in heavy traffic; and similar complaints.

If we go back to the figures on the total number of bookings that the police make each year and if we look at a break-down of them by the types of offences the first thing that comes to notice is that speeding was far and above all other offences in popularity. There were 445,000 reports of moving traffic offences and almost 153,000 of them, or 34 per cent, were for speeding offences. Out of the total 445,000 offences there is quite a number that can be removed if you are looking at the effectiveness of police patrolling the roads and picking up motorists actually committing offences. You can take out all the charges that were laid after an accident, and all the charges that related to licence offences. I would hazard a guess that if these were removed then speeding would probably account for fifty per cent of all the bookings. I think that whichever figure is used, it becomes clear that of all the regulations open to the police to enforce, speed limits are by far the most popular. It may be that speeding has become so popular because it is in fact the most rewarding one to deter. In discussions with police officers over many years it has been argued that speed is an important factor in most serious accidents, and certainly is a deciding factor in the severity of injuries. It has been argued that without the intense concentration of speeding the situation would get out of hand and things are bad enough as they are. It has been argued that police can do more in achieving a general deterrence against overall abuse of traffic regulations by bringing home to motorists that they have a specific obligation tobserve the rules and the signs erected by the authorities as and where they are, and it would be quite wrong to allow motorists to please themselves when the rules or the signs do not appear appropriate. There is a lot of validity in these arguments, and I would be interested to hear other comments.

I believe that the underlying objective of our motoring laws and the way they are enforced should be to *help* the motorist rather than give the impression that we are trying to harass him. Motorists do not set out to have accidents, and there are, in effect, many factors already at work to deter drivers from taking risks (such as the risk of death, disfigurement and permanent incapacity to himself and to others; the cost of the accident itself; the likely financial loss through reduced employment opportunities; loss of mobility and many others). The added incentive produced by threats of fines, or the risk of being detected on a radar meter amount to nothing, as far as many drivers are concerned.

Everyone acknowledges that the training that we give our drivers is inadequate. Driving tests can never be wholly effective in identifying people who should not drive. The driving task has got beyond the capabilities of every human being for at least part of the time. Some people will never make good drivers without a radical change in attitude and we do not know how to achieve this.

I think we should stop deluding ourselves that we can reform drivers into observing every traffic regulation and every sign by presenting them with a penalty notice every now and then.

I would like to emphasise that none of my remarks is intended to be a personal criticism of anyone in the police department. I am certainly not suggesting that there should be a moratorium on enforcement of traffic regulations until something better comes along. Finally all of the views expressed are my own personal views and not necessarily those of the N.R.M.A.

DISCUSSION

Dr M. Henderson, Traffic Accident Research Unit.

Ross Homel's fundamental criterion for his work was the reconviction record of people who had come into the system. He did say he wished he could use more valid criteria, and he suggested that he would have liked to use more subtle criteria such as attitude change or resentment against authority.

What I wish to say is in no way critical of this research but it is unfortunate that the fundamental criterion for laws which are designed to prevent traffic crashes is not the preventions of the losses in traffic crashes; that is the deaths and injuries and so on. It is regrettable that it was not possible to use the chance of a convicted driver being involved in a crash compared to his previous history as the critical criterion rather than simply his reconviction... I am sure that both the Bureau and the Traffic Accident Research Unit would be interested in that as the criterion rather than simply the conviction. About half the convictions are related back to an offence which was not associated with a crash, so the population should be big enough.

As the Chairman mentioned earlier the rather more mechanistic laws have not been considered yet in this conference, the laws relating to vehicle inspection, to the Australian Design Rule system and so on. I would add that among the most successful traffic laws we have is the law which makes it an offence not to wear a seat belt if one is available to you. The beauty of this law is that it works in a way which people understand, that is, it actually reduces the number of people killed. Our research has shown that people do believe this even though there may be some argument about the statistics themselves. There is positive reinforcement thinking that this law is a good thing and the community accept it. I think that it is worth examining closely *why* the seat belt law has been so successful in this State. One might hypothesize that there has been a tremendous degree of public acceptance of what might have *seemed to be* an infringement of civil liberties. It is a change in behaviour which is easy, and which people can understand. If you tell someone to 'drive safely' he does not know what you are talking about–he always drives safely. But you tell him to make a simple mechanical action, he can understand what you are trying to say. It is a fairly easily enforced law and people appear to perceive that the chance of being caught is fairly high.

An interesting point arises from this and I think relates to the success of the law in this state. It is a law which is enforced and the order of reported offences for not wearing a seat belt is about 34,000 per year. We have a measured 'wearing rate', that is the proportion of people wearing belts when they are available of 80 to 90 per cent varying slightly by type of driving. This is in contrast with South Australia which is complaining that the seat belt law is not working in that state. People are not putting their seat belts on and the 'wearing rate' is dropping. But the number of reported offences in South Australia for the same year was 42 per cent. Therefore, I think it is time that we started measuring the success and the *reasons* for the success of one of our best traffic laws.

Mr E. R. Morgan, Insurance Broker.

I have been associated with motor car accidents most of my life. Listening to the speakers I am wondering whether we have reached any conclusion which will result in less accidents. The important person in any accident is the driver of the motor car and that person is not necessarily the owner of the motor car.

For thirty-six years Compulsory Third Party Insurance has been paid for by the owner of the car. There has been no financial responsibility on the driver of the car. It has always been my theory that perhaps it might be preferable if the Compulsory Third Party Policy were the responsibility of the driver and not the owner. We would then have a system whereby there would be always available statistics of who actually was causing millions of dollars worth of payments made year after year for personal injury. At present there are payments to many accident victims where there is no charge against the driver and he never gets to court. The law states that the responsibility is on the owner, but as you know a driver can be drunk and steal the vehicle, but the person who can be sued is the owner of that car which is, to my mind, quite wrong.

One advantage of making the driver responsible for Compulsory Third Party Insurance would be that he could be made to bear a portion of that claim, and just as young people have become more accident conscious because of having to allow the first part of any claim for damages to the car, then the same principle could apply for personal injury.

It may be argued that it is easier for the car owner to pay the insurance. However, it could be just as easy for the driver to pay for the insurance as for the owner, and he must be able to satisfy his insurer that he is entitled to insurance before he gets a licence.

Inspector Hyde, Police Prosecuting Branch, New South Wales.

In the current absence overseas of Superintendent Taylor I am in charge of the Police Prosecuting Branch.

I would like to comment on how comparatively easy it appears to be for a person to obtain a motor vehicle driver's licence.

A new driver has to obtain a Learner's Permit and subsequently pass a test both oral and driving, but a person who has been deprived of a licence by virtue of a disqualification or a suspension obtains a licence in some other name. This is a difficult matter to police, of course, by virtue of the number of drivers – there are in New South Wales approximately two and half million.

If a person seeking to obtain a driver's licence was required to bring a photograph of a good likeness and after passing the driving test, the tester was required to state that the photograph had been sighted some of the trouble might be eliminated.

D. W. Hand, S.M., Traffic Magistrate, Parramatta and Blacktown, N.S.W.

I wish to speak on driver education.

Last year there was a lot of publicity in the Parramatta area with reference to a particular intersection of Windsor Road; motorists coming in and joining Windsor Road in two lanes when they could only legally joint it on one. Publicity went on for some weeks in the newspapers which circulated in the area, and included statements from the police that they would start patrolling this particular intersection and booking drivers who were making the turn from the incorrect lane. Despite this in the last three or four months I have had numerous offenders for this particular offence. The number of people who said: *'I saw the policeman booking others but I still turned'*, was unbelievable. I don not know whether driver education will work in most cases, but there are drivers on the road who will not take any notice of whatever is shown to them or whatever education we try to give them.

Chairman

Both Dr Henderson and Mr Homel have been talking about research. We are learning a great deal as a result, and the Australian Government's Expert Group on Road Safety is supporting research through various agencies of which the following are examples:—

- a study of the human element in road accidents (Monash University)
- the effectiveness of penalties imposed on drink/driving offenders (The Bureau of Crime Statistics and Research)
- the operation of licence suspension as a sanction (The University of Melbourne)
- the evaluation of television publicity to improve the manner of wearing seat belts (The Department of Motor Transport)
- the characteristics of road casualties related to blood alcohol concentration (Monash University)
- the study of the difficulty that legend type signs present to poor readers (The University of Melbourne)
- the evaluation of the Western Australian graded licence scheme for motor cyclists
- the effectiveness of severe sentences (The University of Sydney)
- the possibility of modifying driver error through television films (Monash University).

T.A.R.U. and many similar organisations are engaging in a great deal of research. This scientific approach is absolutely necessary, and we are gradually beginning to learn from it.

Emeritus Professor K. O. Shatwell

The question comes up from time to time about the great contribution to road safety that could be made by improvements to the public transport system.

Presumably this needs proper research. Could anybody say whether there is any feasible means of improving public transport, in terms of something during the next ten years that is within the budget of the road authorities? Is it possible to switch people from using the public roads to using the public transport, bearing in mind that most people are only transported by car because it is essential either for work or trading purposes? Is it possible to get a public transport system that serves the needs of the people?

Chairman

I think there is some evidence that it is almost impossible to pursuade people to use public transport when they are used to cars, and that they are going to keep using cars. This presents a problem but if we could get people into public transport, it would be very much cheaper for us all and save a lot of lives. But even if we had a more efficient public transport system would people use it?

THE SEARCH FOR ALTERNATIVES

Dr J.M. Henderson, M.A., M.B., B.Chir.

Executive Director of Traffic Safety, Traffic Accident Research Unit, Department of Motor Transport New South Wales

The need for effective measures

The search for alternatives to present attempts to tackle the problems of traffic safety is easy. Every road user has his own views on how best to fix up the situation as he sees it, on what other drivers should be doing, and the motor manufacturers, and the Government. Ideas are two a penny; which, in most cases, is about their worth.

The search of workable, effective alternatives is another matter altogether, and a very much more difficult undertaking. It is now taking the time of many hundred of dedicated professionals, with the support of thousands more, throughout the entire motorized world. The alternatives are becoming clearer. Unfortunately, decisions as to which alternatives to accept are becoming harder.

The fundamental alternative is, of course, to break our reliance on the private motor car. There are signs that this may come about earlier than we expected twenty years ago. Motoring is becoming more restricted and expensive. There is vigorous debate to whether the transportation costs of urban freeways exceed the social costs of building them. Manoeuvres such as transit lanes help buses but hinder most cars. Keeping cars out of inner cities by barriers of price, concrete or law is an openly discussed possibility.

But even if the growth in automobile usage was to stop today, we would still be faced with over 1000 deaths each year in New South Wales alone, and nearing 4000 in Australia. We have to accept the situation as it is, not what we would like it to be. The speed of technological, social and political change means that most realistic alternatives demand attention in the short term, with only passing regard to the turn of the century. (Which, even so, is only twenty years away. Twenty-five years ago, Japan had nearly no private cars at all. Now it is an automotive society, with two of its car manufacturers in the world's top five. Who could have foreseen that change?).

Our discussion of the search for alternatives, therefore, should concentrate on the system we have right now, on measures which do not cost astronomical sums to undertake and administer, and – most importantly – work. That is, measures which have been proved to reduce unnecessary damage to humans and cars alike, or which have been shown to have a high potential for doing so. Most alternatives, most commonly discussed, cannot be shown to comply with even these reasonable criteria.

Where might we search?

There are three components to the traffic system: the human beings, the vehicles they use, and the environment in which they operate. All components are under some sort of control already, and most of the controls have safety as at least a secondary objective.

So, before going on to specific cases, we should be clear that the following changes are both 'alternatives', to be considered alongside entirely new activities: first, doing more of what we are doing now; and, second, doing less of what we are doing now. For example, one of the most cost-effective safety measures of all is to abandon an expensive activity which is doing no good, thus releasing resources for more worthwhile activities.

Many safety measures are highly effective: the use of seat belts and crash helmets, well-planned traffic lights, street lighting, and many more. It is not the purpose of this paper to describe and discuss present activities in any detail. But it is worth stressing that they have had a potent, although largely unrealized, beneficial effect over the years. The number of people killed in relation to the number of cars on the road has been cut to one-fifth of what it was fifty years ago, and this decline mirrors the effect of a wide variety of successful measures. It is the constantly increasing number of miles driven each year which swamps this benefit in the public eye, by inexorably pushing the total toll higher each year.

In terms of miles travelled, the system is today safer than it has ever been. No other country's road system generates markedly fewer deaths per million miles travelled. Our search for alternatives, then, should be in realization of the fact that the road crash situation is not one of crisis but is, rather, horrifically stable; further, that the safer we make the road transport system the more expensive and difficult it becomes to make it safer still.

Let us now review the three components of the system, briefly consider what safety-related controls are already being applied, and see how these controls might be modified or complemented.

The Road Users – Education

Road users are a cross-section of society today. Being part of society, they share what are seen as its behavioural faults. Among them, therefore, are many who are careless, or antisocial, or preoccupied, or intellectually dim, or lacking in manipulative skill, or dreamy, or drink too much, or aggressive, or timid, or otherwise have traits which make them ordinary people, not supermen. But to perform perfectly on the roads would take a superman. The roads of Australia developed from bullock tracks. The system is therefore generally archaic but at the same time vastly expensive to upgrade at the speed which safety, as a pre-eminent objective, would

demand. Given the hard tasks which people face, it is little wonder that they sometimes fail.

The system, therefore, places a heavy responsibility on people to behave well, skilfully and safely. It exacts a heavy penalty on those who do not, the death of a whole family can result from a moment's inattention from its breadwinner. Recognizing this responsibility, society attempts to control behaviour by educational and legislative means, predominantly the latter, at present.

First, then, what about the educational process? Might alternatives to the present system be sought? The present system, in this State as under most administrations, is a rather loose-knit one. Heavy reliance is placed on the private driving-school industry, plus some theoretical and practical training at public and private schools, and a handful of 'post-licence' training facilities under Government and private sponsorship.

Would a more tightly-knit organization, perhaps under Government control, have a beneficial effect? It is easy to argue that it might, but impossible to prove that it would. Systematic attempts to provide nationwide, behind-the-wheel training for schoolchildren at public expense in the USA have had disappointing results, and have resulted in the demise of the commercial driver-training industry. It is hard to see how publicly-sponsored training schemes would necessarily be better than the private enterprise system now operating in Australia. American research has shown that an individual's crash record is significantly related to his father's record, but not related at all to how he learnt to drive. Does this not simply show that our crash potential depends more on what sort of people we are and how we behave than on how information is imparted to us by institutions?

Nevertheless, there are some groups who are in need of training before they face – and, by facing, gain experience in the only practicable way – the hazards of road traffic. Two of these groups are very young children and motorcyclists, among whom simple mistakes can have devastating consequences at blink-of-the-eye speed. Who seriously expects children, or adolescents faced by a most difficult task, never to make mistakes?

Training in higher skills once the basic licence is acquired is a commonly advocated alternative. Clearly, the notion has merit. But if it was to become a matter of public expenditure policy, those responsible for the public pursestrings have to ask: what do we teach, how do we do it, how much would it cost, and would it reduce crashes? There is extraordinary disagreement among 'advanced' driving instructors as to what 'advanced' means. Some groups are in open conflict. How to choose a curriculum? Research is badly needed here and, indeed, is now being performed. The numbers of people involved are frightening – the two million plus driving licences in New South Wales are being added to at the rate of 3,500 every *week*, with over 400 each week at the Rosebery head office of the Department of Motor Transport alone. The number of applications for new

licences is growing at about 8 per cent per annum. If these drivers were to be compelled to take, say, a $50 (very cheap) retraining course after, say, a year's on-road experience, the annual cost would be a staggering $9.2 million.

Would it work? Again, the evidence is doubtful. We just do not know. We do know that 'skilful' racing drivers have above-average crash rates, and that one rather dogmatic scheme in the United States of America appeared to increase the chance of an intersection crash among its pupils. Nevertheless, we may agree that an educational approach is as a matter of first principle sound, that educational measures require thorough, constant review and evaluation if possible, and that the present system is a good one on which to build.

There is, further, the untried measure (in Australia) of remedial driver training whereby individuals with identifiable faults are given the chance of (or are compelled to take) training which is clearly oriented to their special problems. There is some suggestive evidence from the U.S.A. that this can have a good effect, but we must tread warily – we have been caught by such enthusiasm before. Specialized training is an even more highly expensive activity. Only a tiny proportion of the State's annual half million offences are committed by people who could be treated this way, and the net benefit may be questionable. Nevertheless, some evaluation might help us to understand this alternative more fully.

The Licence System

On the face of it, one way to cut the wasteful loss of young life on the road would be to ban all driver training endeavours until the age of 21, limit driving by those of 21 to 25 in the daytime, restrict full licences to the over 25's and motorcycles to the over 30's. The practical and political impossibility of such a scheme serves to point out that safety is not the only objective of the transport system, that whether we like it or not we are as of now wedded to the motor car (although divorce proceedings may not be that far away), and that the search for safety measures is a search for workable compromises.

This is true for the regulatory, licensing and enforcement systems. Logic tells us that, given the research results we have right now, driving after drinking should be illegal. But we cannot accept that proposition as an absolute, and a compromise acceptable to most is to set a limit. So driving after drinking is perfectly legal – up to a point. Pass that point, and a happy citizen becomes a criminal.

Logic might lead us to the belief that the inexperienced should not be allowed to operate cars or motorcycles of exceptional power. There is little or no research evidence to show that driving powerful cars or bikes *causes* crashes, although non-causal associations have been shown. Given our blind eye on the alcohol problem, can we justify such discrimination, in the

absence of hard evidence? Or are we simply passing the buck to another group? After all, it's not *we* who are having all these crashes we read about. Therefore it must be the other fellows.

Nevertheless, there is a strong intuitive case for extending present licence grading to cover some interactions of inexperience and vehicle characteristics, and this is a question under continued review and research. It could be an alternative, complementary to present schemes, but it would be a grave error to expect too much of it. The experience/skill/personality/vehicle interaction is much too complex to assume that changing one component will markedly cut crashes.

Similarly, there is a strong intuitive case for making entry into the licensed population harder, by making testing more extensive or complex. Highly 'sophisticated' schemes have been trialled in the U.S.A., involving simulators, computers, off-road testing and so on, but none have been shown to be so beneficial that they have been therefore picked up elsewhere. Such measures are costly. Licence administration and testing procedures here are regarded with respect overseas, and we should not get carried away by gadgetry and complication.

About 50 per cent of driving tests result in failure of the candidate. Would increasing the failure rate make the test consequently better? Could an administration already badly short of money test realistically for night, bad-weather, freeway and emergency driving skills of 3,500 novice drivers every week, 700 each working day? Alternatives, yes: rational, in terms of what we now know, no.

Regulation and Enforcement

Traffic law administration and enforcement takes a healthy slice of public resources, especially police and the courts. The search for alternatives here is of high priority because of this, and because of the many other responsibilities of the legal system and the need to free it from the crippling weight of traffic offences.

The criminal justice system is an unwieldy tool for modification of road-user behaviour. It demands a degree of perfection in human task performance which is virtually impossible to attain in the concrete jungle of much of our road system. In *R.V. Evans* (1962) 3, All E.R. 1086, it was stated:

> *It is quite clear from the reported cases that, if a man in fact adopts a manner of driving which the jury think was dangerous to other road users in the circumstances, then on the issue of guilt it matters not whether he was deliberately reckless, careless, momentarily inattentive or even doing his incompetent best.*

But to safety administrators, such factors are fundamental to consideration of how best to treat the situation. To the common man, there is a difference between deliberate, dangerous lawbreaking and more technical breaches of the regulations.

The U.K. Law Society[1] suggested in 1965 that a clear differentiation should be made between 'reckless driving', defined as deliberate and conscious violation of the law, and 'improper use of the roads', falling short of such recklessness. This type of differentiation might lead to a number of alternatives, and more efficient administration of complex laws. It could lead to more favourable public acceptance of safety-related regulations generally. It could increase the extent to which uniformed, but non-police officers have powers of enforcement of laws relating to traffic movement rather than deliberately criminal behaviour. It could accompany moves, too, towards qualitative differences in treatment of offenders in addition to the quantitative differentiation which presently exists.

A special case is that of the drinking driver. Our own research has shown the extent to which the two socially acceptable activities, drinking and driving, are mixed, and the potentially disastrous consequences of this mixture. But many drinking drivers are actually heavy drinkers who drive – they are usually, or often, drunk to an extent which infringes the 0.08 per cent law. To treat these people *only* as criminals does nothing for them if their primary problem is social or physiological, and there are attempts currently under way in this State to examine an alternative: to seek ways to combat their primary problem, drinking, which has signalled its effect by a traffic crash or violation of the law.

Drink/driving laws based on prescribed blood alcohol limits have not had as good an apparent effect in this country as in the U.K. The main reason for this is, arguably, a low perceived chance of detection, the law itself, and the penalties prescribed and handed down, are virtually the same. It has been suggested that 'random' breath testing would raise the perceived level of detection, and this might well be so. But there are other ways of raising the perceived level of detection within the scope of the present law, without straying into alternatives at such variance with most people's views of personal liberty.

For example, there is nothing to stop clearly marked police cars waiting outside public houses, watching for contravention of the relevant Act or the regulations, or watching for signs that 'by the manner in which any person drives a motor vehicle, or occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion, that person has alcohol in his body'. Highly specific deterrent/enforcement activities of this kind *could* be more beneficial than dilution of efforts by testing drivers 'at random', especially when most of the latter will be sober.

And again, as I said before, if we were a rational society we would not go about tackling the drink/driving problem by setting limits, but by prohibiting the mixture. We make people wear seat belts *all* the time, not

1 *Motoring Offences.* Memorandum by the Council of the Law Society, June 1965, para. 20
see also: D.W. Elliott and Harry Street *Road Accidents.* (Law and Society Series) Penguin Education Books.

just at speeds over which they might get killed without them. But, then, irrational behaviour is one of the more interesting facts of life.

Punishment for drink/driving offences could be more stringent. Is this a viable alternative? Supporters of this proposition often cite the Scandinavian countries without ever having been there and without any real knowledge of their laws. For example, there is a myth that Sweden, by imposing strict penalties, has brought about a low alcohol-related crash rate as a consequent, causal effect. But plotting Sweden's crash rates over time shows no significant deviations in association with the introduction of stringent controls on drink/driving, let alone a causal effect. Sweden's good drink/driving history is more likely to be a function of her social environment than an effect brought about by law.

To put drinking drivers in prison would do nothing for any drinking problem they may have, would fill prisons we are trying to empty, and increase the social problems of drinking drivers who would on release also be exconvicts. There must be better ways, and these are most likely to be found in effective deterrence and in enlightened administration and rehabilitation where appropriate. For traffic laws in general, the constant problem exists to find alternative punishments which makes the roads safer without increasing social costs, usually to other people. But how do we measure these things? How do we assess the effect on the well-being of a wife and children of the deprivation of the licence of the head of the family, or even the impounding of his car, if mobility is sharply curtailed thereby and he loses his job as well?

Cars and the Environment

Human behaviour is notoriously hard to change, irrespective of cost. On the other hand, the extent to which the hardware of the traffic system can be changed is limited only by cost. We know right now how to guarantee survival in crashes up to given speeds, and how to mechanically limit cars to those speeds. We know how to build roads with such low crash rates that, if they were universal throughout the system, less than a quarter of those now dying would do so. All that stops us doing all this is money.

So, the search for alternatives in these fields is different. We know *how* to do all sorts of effective things. What we have to determine is *whether* to do them. This, in turn, depends on the relative benefits offered by the measures, features or whatever, and the costs of them. Alternatives, therefore, exist in the allocation process; shall we do it or not, knowing as we do the benefits and costs as well as the benefits and costs of competing alternatives? This is a very mechanistic business, highly technical, which strays into public and media debate only in the most simplistic terms, such as 'will people buy safety?'.

In relation to cars, a complex system of Australian Design Rules for vehicle safety is administered throughout Australia, via appropriate State and

Territory regulations. Additions to the rules are thrashed out by co-operative committees consisting of academic, Governmental and industry representatives, and are endorsed (or otherwise, occasionally) by the State transport ministers. The public has little say. One alternative is to allow greater public access to the decision-making process, but this is the only real qualitative alternative to an efficient and well-regarded system. In quantitative terms, just how much safety is built into cars depends on a myriad of often conflicting factors, including manufacturing feasibility, costs, jobs, consumer demand, and even the state of the economy.

Much the same situation exists for the streets, roads and highways: it is a matter of the most efficient allocation of public money to a public resource. We can say, glibly, that we need better roads in the same sense that we need better hospitals, schools, and drainage systems. 'We can't afford not to have them' is as much unhelpful, emotional double-talk for these other societal benefits as it is for roads. And there is the additional problem that many, now probably a minority, believe that we *don't* need better roads, or cars, at all, for that matter. So public expenditure policy is expanded by alternatives which mean, in effect, do nothing, or even undo what you have done so far.

From a strictly safety point of view, there are enormous benefits to be gained by attention to the systems we have right now. Roadside poles, for instance, impose a vicious destructive penalty on those who stray from the travelled right-of-way, and are but one group among the many boobytraps which the one-eyed refuse to see. But it is the speed of change, change which is acknowledged as effective by highway and traffic professionals and administrators alike, which represents the alternatives we face. Faster – if so, how much? Continue as we are? Spend the money on hospitals? The debate continues.

Summary

We all acept that the traffic system should be 'safer', just as we accept that people shouldn't rob banks or batter their babies. But the problems roll on. The search for alternatives should be accompanied by a search for hard evidence of effectiveness, coupled with a greater, more detailed understanding of the system we wish to change. There can be no place for the 'let's give it a go' philosophy of times gone past. There is too much to lose for that, and too much which we know can be done and which will be effective.

Constant reappraisal of all that we are now doing in the fields of human behaviour, and vehicle and environmental design, will in itself throw up alternatives for evaluation, and it may be only through those alternatives that we can continue to increase our safety in traffic.

PRESENTATION OF PAPER

Dr M. Henderson

This is the third seminar on 'Motoring and the Law' at which I have spoken in this very lecture room in the last four or five years, so that no one can say that the problem is being ignored.

From the discussion it is clear that the search for alternatives to what we are now doing is easy. There is no individual, I venture to suggest, who does not know, if not *the* solution to traffic crashes, at least the solution to part of it or a very good solution for most of it.

The very much more difficult problem in the search for alternatives is to find some which work. This is especially the case, as Mr Huxtable has already highlighted, when the alternatives affect how we are attempting to control human behaviour. Comments so far have been pessimistic about that, and I think that we incline to be too pessimistic.

In discussing alternatives I was asked not to keep within the bounds of the legal system, and I will try to examine the alternatives to managing traffic for safety which are outside the present bounds of the legal system.

We should bear at least passing regard to the fundamental alternative which has just been proposed from the floor by Emeritus Professor Shatwell, who observed that our reliance on the motor car has put us into a situation where as a direct consequence we have a high crash rate. Our crash rate in terms of the mileage driven in Australia is not particularly bad by international standards. This is not to excuse it or to say that it is justifiable, but it is to say that motorised nations have a motorised problem, and that the motorised problem is traffic crashes and these arise directly from our reliance on the car. It is quite clear therefore that a fundamental alternative, and I am not going to argue as to whether it would be an acceptable one, would be to decrease our reliance on the motor car.

There are three components of the system to be examined; the people, the vehicles they use, and the environment in which they operate. Basically when we are trying to control people there are two groups of activities to explore in the search for alternatives which can be roughly labelled education and legislation. They are clearly not exclusive but are convenient for the purposes of discussion.

I have examined the education process as it affects drivers and, indeed other road users to see how it might be modified in order to reduce the crash losses. We know from personal experience, apart from research, that to deal with our highly complex road system sometimes needs near superhuman skills, and it is bound to require extraordinary skills at some time during our driving life. Is there some way then that we can impart to individuals the sort of skills which enable them to deal with all problems at

all times? Clearly, not. How far then can we move towards helping people to cope with the system? The present system? Well in this State the driver education system is a fairly loose knit one. It depends fundamentally on the commercial driving school industry. There is also some theoretical and practical training in what are rather loosely labelled 'Advanced Driving Schools'.

It is often suggested that a rather tighter organisation, perhaps under Government supervision and control, would have a better effect than the present loosely knit one. It is certainly easy to argue that that might be the result, but at the moment it is impossible to prove that it would. It may always be impossible to prove that it would unless we try it, but current evidence leads us to be cautious rather than overoptimistic. For instance the education of children at school in the United States did not reduce the crash rates among the children who were given that education. That is not to say that all that was done for all the children was faulty. It does mean to say that if we want to seek the best aspects of whatever was done we are going to have to look very hard and very deep into the system. We simply cannot assume that if we take over driver education, say among school children, that it would make them better drivers. It may be the case, but we cannot assume that it is the case.

There is an intuitive case for government support of improving driving skills after the driving licence has been granted. That once people have got into the system at some low level of skill and having had some experience of it then they should be held to cope with the system even better than they do, and there are private organisations which cater, and many of them very well, for this wish. However, the logistics beat you when you are talking about public expenditure, and this is what governments must consider. It is not at all clear what should be taught, how it should be taught, how much it would cost and, indeed, whether it would reduce crashes. Without that sort of information it is impossible to rationally plan for public expenditure policy in this area. The budget for New South Wales can be calculated knowing that each week in New South Wales alone 3,500 brand new drivers go onto the roads, that each week there are 400 in the Department of Motor Transport's Head Office. On the hypothesis that compulsory re-training after one year's driving experience will reduce the driver's chance of crashing and be to the net public benefit, the annual expenditure for simple re-training, at say $50 per driver, would be $9.2 million. It is easy to argue that this would be justifiable if it saved only one life; this is a fine moral argument but it ignores the fact that $9.2 million spent on the roads would definitely save lives to an extent which is measurable.

In the United States, and to some extent in Australia, there are re-training schemes under evaluation which take some identified problem drivers back into the system, examine whether their problem is a physiological or psychological or skill-related problem, or whether it can be trained out of him in some way. I think it is highly likely that that sort of scheme may well be evaluated, and it is only by the evaluation and the careful measurement of its results that we can tell whether it works. But

given the limited resources that we have, we might have to reluctantly to admit that people have got to show themselves to be at risk before they come into the retraining system rather than assume that everybody is at risk and retrain everybody.

On the legislative side as opposed to the educational side we have got a whole battery of alternatives. In fact there are books of alternatives. A rough estimate of relevant references to changes, improvements, evaluations of the licencing system would be some 500 in our library alone. I will select those that are of most interest to us. There is a strong intuitive case for separating some people from some types of vehicles. It is perhaps dangerous to be more specific about that but the case which is currently argued strongly is that new drivers or new driver applicants should not be granted access to, say, large capacity motor cycles. Let us examine this proposition. Certainly it is an alternative which is in active operation in one Australian State and overseas. Evaluations that I have seen have not been convincing, but nevertheless are not completely pessimistic.

Let us look and see what the evidence seems to be about young, inexperienced drivers on heavy motor cycles. We know that large motor cycles are over-represented in crashes, that is that there are more of them in crashes than you would expect from the number in the motor cycle population. It appears, although it is far from being proven, that this over-representation is distributed throughout the riding population irrespective of experience; that is, the experienced riders are just as over-involved on big bikes as the inexperienced riders, so that because big bikes tend to be chosen by more experienced riders numerically there are far more crashes among experienced riders on big bikes than there are among inexperienced riders on big bikes. None of that necessarily disproves the case for some licenced grading system for motor cycles, and that is the subject of a current project, but what it does say is that you cannot make easy assumptions that proposed legislation would be fair or effective. I think those are two criteria we have to apply to alternatives when we are trying to control human behaviour.

Similarly, there is a strong intuitive case for making entry into the driving population more difficult. In a recent *Journal of the American Association for Automotive Medicine* there is an article headed 'Licences – Hard to Get: Vienna', which states that it is 'tough' to get a driving licence in Austria. In 1973 they say, forty-four per cent failed to pass the test the first time, they had to come back a second time; some of them even a third time. Yet, by standards here, that is not 'tough'. The pass rate in New South Wales is lower than that and a larger proportion of people have to come back to be tested again. Therefore, to say a driving test is 'hard' or 'difficult' is a value judgment. It is what the individual thinks and many times these individuals who speak about whether the licence test is hard or difficult have no firsthand experience of it at all. Hardness or softness or even difficulty is a matter of perception, not of fact. In the article the American reviewers, and, clearly, the Austrian sponsors of a scheme to make the driving test harder believe that it is hard, but in fact if the comparison is valid it is easier that it is here. Clearly the intuitive case

should be tested, but should bear in mind the fact that it would not necessarily reduce the number of bad drivers and would not necessarily identify accurately those who are going to err or those who are going to crash.

Our alternatives, to some extnet, are rather more limited when we look to the drinking driver, and many of them relate to the drinking driver himself. It is quite clear now from work which is done in this country and overseas that a proportion of people convicted of drink/driving offences have, as a primary problem, their drinking. Most of the time during the course of the day they have blood alcohol levels which are higher than the prescribed concentration. They are simply drunks who drive. That being the case, it is not rational to simply look at their driving or at the offence they have committed and punish them for that, but it is necessary to look further to their primary problem, which might be their drinking, and to make some attempt as a society to cope with that primary problem.

I would just like to point out a couple of alternatives in dealing with the drink/driver which come under the heading of what I call 'Gee Whiz' technology, they are always good for a headline! There are ways of identifying drinking/drivers and deterring them which are not often considered at all. For instance it is quite technologically feasible to detect from a distance whether someone has been drinking. There are very sophisticated 'sniffer machines' which have been developed as part of the American war effort which can detect alcohol on the breath from a distance away. The same sort of deterrent force as Mr McKinley's Radar Squads could operate with an 'alcohol radarscope'. It is well within the bounds of technological possibility, if not practical possibility, to stop drunks starting cars, to interpose some sort of task which they have to undertake before the car can be started. Devices like these are working and are under research. At the moment they are insufficiently discriminatory, i.e. some sober people cannot start their cars. But there are alternatives for controlling human behaviour which extend beyond the education and legislation systems which we are considering.

There is further discussion in the paper relating to the fact that the legal system now is being used to support devices such as the design, quality and installation of seat belts and of steering columns which do not inflict unnecessary damage on chests. Soon motoring offenders will include not only people who do not wear seat belts but other people who change things on their cars to make them less safe, because the system now is beginning to recognise that many of these mechanistic laws do have a measurably good effect on the number of crashes, the number of deaths, and the number of injuries which occur.

Similarly, with the environment the alternatives generally speaking are known but few of them are backed by legal control: perhaps in the future they will be. From a strictly safety point of view it is clear that if we have a certain sum of money, we know that we can get a good effect by spending it on our existing road system. We know that we can get safety

by building new roads and that there are other benefits from new roads. We know that from a safety cost effective point of view there is massive benefit in eliminating say, the roadside power pole which has a devasting effect on cars that hit it and a devastating effect on the occupants of those cars. In fact, death is one of the penalties now for reckless driving which culminates in hitting a pole, and I do not think that in a humane society we can go on tolerating that sort of sad aspect of management of traffic.

Things are changing. We all know that the traffic system should be safer, and we do not know how quite to define that. We know it in the same way as we know that people should not rob banks and should not batter babies. But the search for alternatives cannot go on a 'let's give it a go' philosophy without considering the sort of money which is involved. It has to be based on good research, it has to be based on the evaluation of the effectiveness of those alternatives. So that I am sure, as in seminars like this, constant reappraisal of what we are doing will lead us on the pather to safer movement in our present complex traffic system.

COMMENTARY

Professor S. H. Lovibond,
School of Psychology, University of New South Wales,
Member of the Australian Expert Group on Road Safety.

Dr Henderson has made a number of important points on which I would like to comment at length, but as I have been asked to speak about the work we have been carrying out at the University of New South Wales, I must limit myself to brief comments on a few points which I believe deserve special emphasis. Firstly, Dr Henderson draws attention to the fact that the number of people killed on the roads, in relation to the number of registered cars, has been cut to about one-fifth of what it was fifty years ago. As he says, this decline in road deaths reflects the effect of a wide variety of successful measures. This point ought to be given a good deal more emphasis than it has received over recent times. It is a fact that collectively the countermeasures we have been using have been effective, but one of the problems is that very often we are not certain of the contribution of particular measures that have been introduced.

Secondly, Dr Henderson uses the term 'crash' right through his paper. I think this is very sensible usage because it emphasizes the quite crucial distinction between the bumps and dents that are the panel beaters' delight, and the sort of collision that quite typically results in death or serious injury unless the persons involved are extraordinarily lucky. This is a distinction that is often not made.

Thirdly, Dr Henderson does well to remind us that there is no practicable way of drastically cutting the crash rate, and he draws attention to the tremendous stability of the problem. What has always fascinated me is the awesome predictability of the crash rate from year to year, and also the striking similarity of the problem in all highly motorized communities. This is the sort of situation that arises when the effects we are interested in are the result of a concatenation of interacting causal influences. When we are dealing with a system of this nature it is quite unrealistic to expect that modification of some feature will cause drastic changes in the total system.

In considering alternatives then, we must have due regard for the constraints we face. Five years ago everybody concerned with the problem of road crashes would have agreed that there were two major areas in which countermeasures could conceivably have produced substantial, if not, dramatic results. The areas were seat belt wearing and drinking driving.

Since that time, compulsory seat belt wearing has been shown to be a very effective countermeasure. Dr Henderson has always been rather pessimistic about the possibility of controlling human behaviour, although he has witnessed a very substantial change in driver behaviour in relation to seat belt wearing. I think the massive increase in seat belt wearing that occurred soon after introduction of the legislation making it compulsory in this State, was a brilliant example of the effects of a combination of educational and legislative measures. Many people were worried about

whether people would accept the law, and it seems likely that its ready acceptance was due to the educational campaign that had preceded its introduction.

Let me turn now to our own work on the problem of the drinking driver. We are interested in a number of other aspects of the total problem, but, over a number of years, we have been particularly concerned with modifying the drinking behaviour of drivers who clearly have a drinking problem. We have now seen about one hundred and fifty people convicted of drinking driving offences, and we have had over one hundred of them in specific programs designed not only to modify the drinking behaviour of the individuals concerned, but to make an experimental analysis of the components of the total treatment programme.

In our program we have typically spent eight to ten two-hour sessions with each person. In that time we come to know our subject rather well. I was interested in the earlier suggestion that a great number of people who are convicted of drinking driving offences believe that they have been unjustly treated. We find that almost universally these people believe that they have been unlucky. In a statistical sense, of course, they are quite correct in believing that they have been unlucky, because the detection rate is so very low. We quite routinely ask our drinking drivers to make an estimate of the number of times they have actually broken the law relating to the PCA (driving whilst there is present in the blood the prescribed concentration of alcohol) after they have learned what a blood alcohol concentration means. We first train them to recognize their own blood alcohol concentration up to about .08 per cent. It is really intriguing to see the startled look that comes over the faces of many of them when they make this calculation, and they realize that they have driven a car literally hundreds of times with a blood alcohol concentration above the prescribed limit. During the course of our studies we have followed up a control group comprised of people who had been convicted of drinking driving offences and had gone through the ordinary processes of being dealt with by the courts. We were anxious to see how much the court procedures had modified their drinking behaviour, because our principal aim was the modification of drinking behaviour.

To summarize our results: in the case of the older drinking drivers (those over thirty years of age) there is virtually no change in drinking behaviour as a consequence of the usual statutory penalties; in the case of young people the situation is slightly different. We did come across the odd lad who seemed to have changed his drinking pattern fairly drastically, but the numbers were not very great. This means, of course, that in developing a program to modify the drinking behaviour of our drinking drivers we have a base line that is very low indeed.

What have we done and what effect has our program had? In our original program we used what has come to be known as 'aversion therapy.' There were aversive components in our procedures which were designed to change the individual's motivation to drink, not to produce a conditioned

reflex of the character depicted in the film 'A Clockwork Orange.' We were certainly not aiming to produce those sorts of effects, but rather we were trying to reduce the individual's motivation to consume large quantities of alcohol. There are many other features of the total training package, including a counselling component and an educational component. In addition we teach our subject the principles governing behaviour and we try to get them to use these principles in a self-control procedure. We also try to interest members of the family in becoming co-therapists.

We divided our first group of forty subjects into two groups aged above and below thirty years. We found that we could modify the alcohol intake of 65 per cent of the younger ones in accordance with the criteria we established, i.e. keeping the blood alcohol concentration below .05 per cent on almost all drinking occasions. We found that in the follow-up period, extending in some cases up to two years, there was a remarkably small relapse rate among the young group. The extent to which the change in behaviour we were able to produce has been maintained has surprised and heartened us. We have also been surprised that we have been able to modify the behaviour of so many of the older people who would normally be characterized as alcoholics, but these people tend to relapse at a considerably greater rate than the younger group.

Subsequently we have tried to eliminate the aversive component of our total treatment program purely on the grounds of expediency. We recognize that there is no way in which there is going to be general acceptance of any therapeutic program that uses aversive procedures, although we have concrete evidence that the aversive component of the program does produce an effect. We now believe that we can get almost as good results, particularly with young subjects, without using the aversive component, and we are now concentrating our attention on this program because we realize it is much more politically viable. We have already demonstrated to our satisfaction that it is possible to modify the behaviour of drinking drivers providing we spend 16–20 hours with them. The question to be answered, of course, is to what degree it is practicable on a very large scale?

In this connection, I believe there is a tendency always to think in terms of what it is going to cost the State. It seems to me that we need to think in terms of what it is going to cost the individual, because it is the individual himself who ought to be paying for it.

COMMENTARY

M. F. Farquhar, O.B.E., Dip. Crim.
Chief Stipendiary Magistrate, Courts of Petty Sessions, New South Wales.

The objectives of any traffic law system are mainly set by the magnitude of the road toll in that society. That magnitude in New South Wales can be estimated from the statistical information for this State in 1961, 1967 and the year for which the most recent statistics are available, 1974.

The figures show a tremendous rise in the number of vehicles registered (although the actual population had not increased in anything like the same ratio), and in the total number of crashes in those respective years. To give emphasis to Dr Henderson's comments, the figures do show the drop in the fatality rate per 10,000 vehicles over the thirteen years. In regard to the level of police activity, the statistics show that there were some 650,000 breaches of traffic offences in 1963 and in 1971 this passed the million mark. I understand from the Superintendent of Traffic that there has been a falling back from that number subsequent to 1971.

Nonetheless, all of this suggests strongly that we cannot be complacent about road safety and driver behaviour, nor can we assert that conventional legal processes have been markedly successful. It was interesting to learn from Ross Homel's excellent follow up study that there was a significant correlation between a relatively high severity of penalties and a substantially lesser likelihood of reconviction, but, as the author agrees, this does have criminological implications and appears to run counter to some other studies. It will be more useful when the number available in the sample is greater to guarantee its statistical significance.

My basic contribution is to urge that we increase our sentencing armoury and to do this I suggest that we must strive for a much more direct approach to the motoring offender. I would like to describe just two such additions to that armoury and, as well, a procedure that could be implemented, in my opinion, most usefully by the Department of Motor Transport.

The first comes within the armoury of any court sentencer and is what is termed in the United States 'alcohol counter-measures'. Professor Lovibond has described how he, with the support of some of the magistrates in this State, has been able to bring about a change in the behaviour of some of the drivers who have gone to him. This concern with alcohol counter-measures in the United States was brought about because the *status quo* there worried them immensely. Borkenstein in 1970 had said that the *status quo* was: 'the occurrence of alcohol in more than half of all crashes', and yet it was found in random tests that only a little over 10 per cent of all drivers using the road under similar conditions of time and place as to the fatality, but not involved in crashes, were affected at all by alcohol. They also found that the blood alcohol level in 40 per cent of

fatalities was .10 or higher and yet only 1.4 per cent of all drivers tested at the same time had this level. This was the *status quo* that worried all those who had an interest in road safety at that time in the United States.

I would like to mention two programs that were undertaken in the State of California. The first was on the question of driver education. It is true that Dr Henderson mentioned that the scheme with regard to children appeared to fail. However, he has also suggested that where people have obviously already come into conflict with the law there was more chance of success, and it is on this latter program that I wish to comment.

The driver education program in respect to alcohol counter-measures was developed as a part of the general driver improvement program. This was simply an education course which focused attention on alcohol and its effects, emphasised the impairment of driving tasks and, as well, pointed to safety hazards and to the resources available for rehabilitation. It was obviously designed for those thought to be less likely to continue driving whilst affected by alcohol. If it turned out that the original selection had not been good, and indeed that those selected became identified as problem drinkers, then they were encouraged to seek other help and to accept voluntarily a therapeutic course at a clinic.

The system in many of the States was to take a plea, for the problem drinker to be identified, and hoping to gain some motivation from him to persuade him to volunteer to go into a system; then to be directed by the court to a clinic and there to receive diagnosis and/or treatment. The staff available consisted of medical practitioners, psychologists and counsellors, and the services that they provided were medication and medical care. *Disulfiram* was the chemical agent used (more loosely termed *antabuse*). They were given a great deal of counselling, both group and individual therapy and finally a report was prepared for the court. If the report from the school or clinic was favourable the defendant was placed on summary probation with the condition of continued treatment. That is a summary of what was a very expensive and I thought, in most cases, a very well planned program, and one certainly likely to interest us here.

However, in some ways it was thwarted by court actions; for example, at a court in Los Angeles the judge having charged the man with drunk driving, invariably received the plea of 'not guilty'. The judge then would simply say 'I am prepared to withdraw charge one and offer you a plea to "reckless driving"', which had a very much less severe penalty than the 'drunk driving' charge. All but one so charged then accepted the 'reckless driving' charge, and without any other facts being mentioned was fined $100, $50 to be paid within 'X' period and the balance to be suspended on summary probation for a period of twelve months. The police, of course, were not at all happy about this because they would spend hours on the freeways finding these offenders, and then had their efforts swept away in this rather cavalier fashion.

What is the position in New South Wales? For the past six months a Committee, at the invitation of the Attorney General, has been investigating

to see whether we can plan and offer a similar treatment course in New South Wales. There are representatives of the magistracy, probation and parole, the police, motor transport, the Health Commission and three of its separate divisions, (liaison, community service and alcohol service) and the Bureau of Crime Statistics and Research. We have had the advantage of a lot of change since that original less refined project and I think we have followed most of that advice. After a good deal of searching and changes of mind among certain members we have designed the project that we will be recommending to the Attorney General, and which we hope will be beneficial to drivers in this State who have their driving behaviour impaired by alcohol.

We thought it improper to describe this project in absolute detail before it had reached the Attorney General, but its outline is summarised below. After apprehension it is intended, where the person has a blood alcohol content of .15 or above, or is a second or subsequent offender, that he be offered at two pilot courts the opportunity of going into a voluntary program, hopeful of improving his general behaviour. There will be considerable use made of pre-sentence reports. Obviously he can reject the offer or, of course, he may not come within that criteria, and if so he will be dealt with by the normal court process. It is intended there should be a preliminary assessment. This could be carried out by a clinician in consultation with a probation officer and the report would come back to the court. It may well be that in the odd case where he does not fit into the program, or if he has changed his mind and does not want to be in the program, then he will come back to the conventional court process. If, on the other hand, it is felt that he will benefit from the program, or if he intends to continue withint this treatment course, then there will be a further assessment with diagnosis and hopefully some motivation. He may then be offered psychiatric referral and, if necessary, other types of referral; e.g. it may well be that he is a man we think would be better suited to the program offered by Professor Lovibond. We would hope that we could persuade those running all types of other services to fit into this scheme. There would be a great deal of counselling, of course, both individual, group and family, and it would be hoped that various community organisations would also assist. Throughout there would be educationists for groups of twelve available for those who did not require the medical or counselling care initially referred to, and throughout there would be a regular audit going on. From all of this we are hopeful of some attitude change in drinking drivers, and we are pursuing this because we found it very hard to get away from that *status quo* mentioned in the United States, i.e. that drinking drivers form only 1 per cent of the traffic flow but are responsible for more than 33 per cent of deaths on the road.

The second thing that I want quickly to refer to is the effort to improve drivers generally, not just those who drink. There has been reference made to education policies and programs. In the United States, many of the States use Federal funding to carry out this kind of training, hopeful of improving driver competence and skill. A feature in California, for example, is that there is a great deal of experimentation in various

types of syllabuses and their content, and their subsequent evaluation. The courses are attended in many schools at night in all counties of California, both by offenders and other drivers, but what we propose to look at will be the offenders that are court directed to attend. In 1972 in California 20,000 persons attended. Those drivers directed by the courts to the schools initially showed hostility, but then appeared to become quite co-operative and very interested.

The process in California followed a court conviction, or a plea at least, with selection of those who could fit into the education scheme. This was followed by an adjournment for sixty days, while the court would arrange assignment to the particular course. The course contained both theory and practice, usually two hours on one night per week for four weeks of theory followed by four successive Saturday mornings (two hour session) for the practical side. The course was available in a number of languages. Generally this was for the driver who had had problems and whose present offence nonetheless was not so grave as to demand more salutary punishment. It was designed basically to improve his driving behaviour.

The New South Wales Attorney General has now commissioned the creation of a committee to look at an educational scheme. Obviously I can say nothing of how we will finally decide the issue but we are certainly aware of the current interest, and aware of various evaluations that took place in California. We are hopeful that we can introduce a fruitful scheme into New South Wales, possibly by the turn of the year 1976.

For a project to be successful in the United States it was thought that three things were essential: it must have community support, it must present a uniform program of validity and thirdly it must be so arranged that all the courts are prepared to accept it. This final requirement was very important because many judges would not accept some of the programs, although some particular courses were willingly accepted. These three facets had to be present and the New South Wales committee will be very conscious of this requirement.

I referred earlier to a scheme that might be of value to the Motor Transport Department. In California the Department of Motor Vehicles (equivalent to our Department of Motor Transport) have the right to refuse to issue or renew driving licences for a variety of reasons, and have the right to call a man up for evaluation of his problems if he was getting near what they called his 'violation points count'. Whereas we wait until he reaches it, then disqualify him, they preferred, after he had amassed say six points, to call him up to have skilled officers capable of analysing driving performance look at his conduct. These officers had the right eventually of licence revocations, licence suspension, or of putting him on probation and no action. It is a good crisis intervention time to catch a man where he is fearing that in the next few months he might lose his licence, it is then perhaps that he will improve his behaviour. This appears to me to be worth looking at.

Generally the public are very apathetic in respect to driver behaviour, perhaps because it is part of a syndrome of 'There, but for the Grace of God, go I!'. It was, therefore, heartening to read in to-day's *Sydney Morning Herald* an editorial and a quite definitive letter touching on aspects of the problem of improving driver performance. As I see it we must not let it lie here to-night.

DISCUSSION

Question

Mr Morgan talked about a logistics problem as far as personal injuries insurance, and Dr Henderson talked about logistics. Has any work been done requiring the person who is detected in the commission of a moving traffic violation and whose licence is endorsed to obtain a 'fitness slip' from a driving school before the licence can be renewed?

Dr Henderson

Not that I know of.

Chairman

It has been said that a driver's likelihood of apprehension is a key factor to his behaviour. It is, I believe, now well appreciated by most drinking drivers that the chance of them being detected is very low indeed because they cannot be apprehended unless a member of the police force has reasonable cause to believe that the person is under the influence of liquor. For the police to have that 'reasonable cause' a driver has to be doing some very strange things on the road. I think that is the reason why the Australian Government's Expert Group on Road Safety, of which I am Chairman, are quite satisfied that a method that should be tried in this State is one which gives the police the right to test any motorist, whether he suspects that he is drinking or not, for the purpose of ascertaining whether he is driving under the influence of alcohol. If that is an infringement of the civil liberties then what is the right of the Customs official to search you and to strip you if he wishes to see if you are carrying contraband?

I would like to conclude the seminar by thanking the Institute, the writers of the papers, the commentators and all who have contributed to the discussion.

SUMMARY

Chairman

It was pointed out that although the number of those killed or injured in 'crashes' (a word employed by one of the paper writers in preference to the word 'accident') had been reduced substantially in relation to the number of cars on the road, it was the increasing number of miles driven every year which pushed the road toll up.

Most of the papers concentrated upon and discussion was centred around aspects of human behaviour rather than vehicle, road and environmental design.

Many suggestions were discussed, examples of which were that the driver and not the owner should be liable to pay compulsory third party premiums, that licensing standards should be upgraded, that various types of driver training courses should be encouraged, including a compulsory driving course for those disqualified, and that there should be a great uniformity in the traffic laws throughout Australia.

It was interesting that the desirability of introducing random breath testing was only mentioned by one speaker and merely in passing.

There was some interesting debate on the effects of radar detection of speeding offences but the general view was that the greatest human behavioural problem was that of the drunken driver and that present efforts of detection of this offence in this State were inadequate. A Police Traffic Superintendent expressed the view that some 5,000 people daily left licensed premises driving vehicles, with an excess of alcohol in their blood. Mobile police squads to apprehend offenders were advocated. The personality of those convicted of drunken driving was discussed and it was agreed that many should best be regarded simply as 'drunks' and there was some interesting discussion on the merits and methods of their treatment rather than punishment.

As to the criminal law, a Magistrate expressed the view that if heavy criminal penalties available were in fact imposed by the courts, this would result in a reduction of offences. The views of various writers as to an optimum period of licence disqualification were considered and a period of three months was mentioned more than once. The suggestion that drivers charged with minor traffic offences be permitted to submit statutory declarations instead of having to appear in court and if they wished appear before a Magistrate in his private chambers, received some support, the idea being, in this event, that the driver's record and the police report could be considered together with the statutory declaration or what the driver had to say when he appeared in the Magistrate's chambers.

There was general agreement that seat belt legislation had proved effective in reducing the road toll. The point was made on more than one occasion that the relative benefits offered by various safety measures should be evaluated scientifically, both from the point of view of their efficacy and their relative costs and that they should be constantly re-appraised.

D. West, Government Printer, New South Wales - 1976