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SENTENCING THE DRINKING DRIVER

A Statistical Analysis of Court Records in NSW

SHORT REPORT

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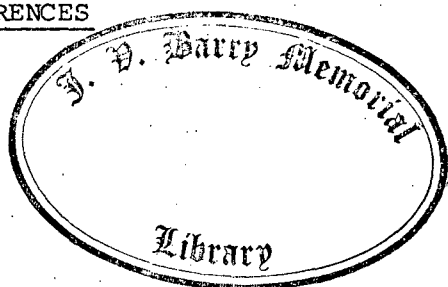
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## PREFACE

This report is a short version of a much longer report. Either report may be obtained (at a small cost) from the author or from the Criminology Research Council. The short report is not exactly a summary of the full report, since statistical results are reported in sufficient depth for them to make sense without reference to the full report. However, not all results are reported here, and the discussion of the implications of the findings merely touches on the major points. The short report is chiefly valuable for its presentation of key statistical analyses - the earlier chapters simply attempt to provide enough background for the reader to understand the issues which led to the analyses and to follow the technical details.

The origins of this research go back at least eight years, to the early days of the collection of statistical material on Courts of Petty Sessions in New South Wales. The completion of the massive amount of computing and the finalization of this report became something of an obsession as mounting demands on my time from a great many other sources threatened to crowd the project out altogether. Given that the report has been so long in coming, it may be of some value to outline the history of the project, and the way in which the methods and objectives have evolved.

In January, 1972, the newly formed New South Wales Bureau of Crime Statistics and Research began a system of statistical reporting from Courts of Petty Sessions in the State. At the time I was employed as statistician by the Bureau, and Dr Tony Vinson was the Director. Statistical returns were to be filed by court officers for all criminal matters dealt with at Magistrates' Courts. Information collected for each offender included type of offence, sex, previous criminal history, penalty imposed and whether the offender was legally represented.

Two more detailed statistical series were established, one for drinking drivers and one for drug offenders. Additional information available in these cases included the age, occupation and marital status of the offender, his previous motoring and drink/drive (or drug) convictions and his blood alcohol concentration (or type of drug used). Apart from informing the public and the Government about the range of offences dealt with at Magistrate's Courts, and the types of penalties imposed, the data had obvious potential as a way of researching the sentencing process.

Early publications of the Bureau included an examination of factors correlated with the penalty (see for example Court Statistics 1974: Statistical Report 6, Series 2, 1975). This was the first time in Australia that "extra-legal factors" such as social class and legal representation had been investigated as factors routinely influencing the penalties imposed in criminal matters. Although there has been a long history of such empirical research overseas (particularly in the United States) the pioneering work of the Bureau in the early seventies was not followed up in Australia for some years.

Our early work was published in the Australian Law Journal in 1973 (Vinson and Homel, 1973). This paper explored, by the use of crosstabulations, the relationship between legal representative and outcome, controlling for offence type, previous convictions, age and social class. The paper (which relied heavily on the drink/driver data) demonstrated a correlation between being legally represented and the penalty imposed, and was influential in the debate on legal aid and the Australian Legal Aid Office, the latter having become one of the reforms sought by the Federal Labour Government. Of course the ALAO would probably have been established without the publication

of our paper, but it is significant that the paper was one of the few sources of empirical data available to inform the debate.

At the time we published the ALJ paper, we were acutely aware that further analysis was required in order to take into account a wider range of variables than could be incorporated in a cross-tabulation analysis. In fact the paper was subtitled as a "progress report". Significantly, there has been some recent criticism of the article on this very point (see for example Cashman, 1981). A preliminary regression analysis of 1972 drink/drive data was presented by Dr Vinson at a seminar on road safety and the law in Sydney in 1973 (Vinson, 1973) and some further work on the same data was published in the 1975 proceedings of the University of Sydney Institute of Criminology (Homel, 1975). Apart from these two publications more comprehensive analyses languished.

The fundamental obstacle which confronted us when we attempted to undertake the analyses we knew were required was a lack of suitable scientific computing facilities and software within the NSW Public Service. Indeed, having now completed much of the analysis we originally planned it is clear that at the time the most appropriate computer programs were only just becoming available at the most advanced scientific establishments (such as the Rothamstead Experimental Station in the UK). It is not surprising therefore that the NSW Public Service lagged behind in the provision of the appropriate programs. Nevertheless it should be made clear that the orientation of the Public Service was, and still is, commercial data processing. Those interested in scientific research continue to experience great frustrations in obtaining access to suitable facilities.

This situation led to the application for a grant of \$2,000 from the Criminology Research Council. The purpose of the grant was to allow at

least some computing to be done on commercial computing utilities which had entered into agreements with the Public Service. The grant was approved at the end of 1975, and preliminary work commenced in early 1976. However, at this stage a series of events, including my move to Macquarie University and cutbacks in University funding effectively prevented any systematic work on the project for some years.

At the time work commenced on the study of sentencing, I also commenced work on an investigation of the deterrent impact of penalties imposed on drinking drivers. This latter project seemed to me at the time to be of greater urgency than the study of sentencing, a view I still hold. The work on sentencing proceeded only spasmodically while the deterrence project was completed (Homel, 1980). Only in 1979, and more especially in 1980, was I in a position to carry out the series of complex analyses which form the core of this report.

The analyses reported here have involved well over 200 hours of central processor time on the UNIVAC 1106 at Macquarie. The nominal cost of this computing far exceeds the amount of the CRC grant. The University's policy for research where a large amount of computing is involved is to request academics to obtain external funding for the computing, if possible. Although there need not be a direct equation between the value of the grant and the cost of the computing, the grant is used to help support the computing centre and offset the cost of computing to the University.

I would like to thank the CRC for their interest in this project and the incentive provided by their grant to complete this project. I would also like to thank Macquarie University for providing such generous support through the computing centre. Without the reliability and flexibility of the UNIVAC 1106, this project would have taken even longer to finish.

Finally, I would like to thank the Director of the Bureau of Crime Statistics, Dr Jeff Sutton, for making the data available to me after my departure from the Bureau. Needless to say, without his interest and support the research could never have been completed.

1. The Social Context: Drinking and Driving as Crime.

Motoring offences, including drinking and driving, are not usually perceived as crimes, despite the research which has linked various kinds of deviance with the commission of serious or repeated motoring offences (see below). Nevertheless there is considerable evidence that the general community favours a punitive approach to the problem. In August 1975, 62 percent of Australians called for more severe penalties on drinking drivers, and between 1975 and 1979 support for random breath testing rose from 30 percent to 73 percent (Gallup Polls 07/12/75 and 03/3/79). At the same time, however, it would appear that a very sizeable proportion of the population (particularly men) commit the offence at least occasionally (Freedman, Henderson & Wood, 1973).

## 2.

It is clearly necessary to seek explanations for the status of drinking and driving as a non-crime and for the apparent contradiction between public attitudes and behaviour. Part of the explanation for the discrepancy between attitudes and behaviour seems to lie in an "us and them" mentality - people either deny, to themselves and others, that they consume enough liquor to put them over the legal limit, or they consider that they are more able to "hold" their liquor than others (and are therefore not a danger). Similarly, the view of drinking and driving as a non-crime is probably related to the belief among most people that drinking and driving is something everyone does and that in most cases it causes no serious harm. Kelly's attribution theory (Shaver, 1975) may be used to formalise this explanation.

2.

3.

The common perception that even serious motoring offences are committed by most people at one time or another, and that drinking and driving in particular is a widespread phenomenon, runs counter to much academic research, which emphasizes the deviant nature of the drinking driver. Willett (1964) referred to the "criminal on the road", emphasizing the correlation between traffic offences and traditional crime, and later Buikhuisen (1969) presented evidence to support the picture of a "patient on the road". The redefinition of drinking and driving as a psychiatric problem was a particularly marked feature of research in the sixties (Selzer et al, 1967; Waller, 1967). As Gusfield (1976) has observed, this academic research had the effect of shifting the problem to people who are 'sick' and quite likely morally suspect anyway. We are left with the question: are drinking drivers mainly sick, violent lower class males expressing their deviance in traditional as well as in traffic crime, or do a majority of members of all social classes drink and drive and commit other motoring offences on a regular basis?

4.

A key to resolving the problem may lie in the recognition that most of the studies discussed above relied on an analysis of convicted offenders. As Macmillan (1975) has shown, if motorists involved in accidents are studied, a somewhat different picture emerges. Apart from being younger and more aggressive and competitive, accident involved drivers were no more criminal or deviant than accident free motorists. This suggests that the process whereby motoring offenders are caught, charged and convicted may be of fundamental importance in contributing to the deviant profile of the convicted group. Cressey (1974) has argued that police are forced to exercise a fair degree of discretion in traffic cases, primarily because motorists are typically of higher status and are more influential than

other groups with which the police deal. Homel (1980) has presented some data which supports the view that young men in particular are more visible on the roads and are more likely to come to police attention than other motorists, even if they do not drink and drive any more frequently.

5.

The behaviour of governments in relation to drinking and driving should be seen both as a response to pressures from a number of governmental half official and private organizations and as a reflection of the schizophrenic public attitudes documented in para 2 above. One of the easiest ways in which a government can appear to be doing something about the problem while leaving vested interests unthreatened is by simply increasing penalties for drinking and driving. Thus through mandatory penalties a government can put pressure on courts to deal more harshly with the tiny minority of drinking drivers who are caught. This will do little to reduce casualties from drinking and driving but will make the government look good. From the standpoint of the present study, this practice serves to highlight the symbolic importance of the courts as a way of dealing with drinking and driving and makes a study of the sentencing process a central feature of the evaluation of current drink/drive countermeasures.

#### 6. Theoretical Perspectives on the Courts

Turning our attention to the sentencing process, it is necessary to take cognizance of four major theoretical perspectives on the operation of the courts. First, the Durkheimian consensus model (Durkheim, 1974) argues that punishment serves to maintain social cohesion. The criminal justice system both expresses and preserves a common system of values (the common conscience) through the evenhanded enforcement of laws. In this model punishment is geared to the seriousness of the offence and to the blameworthiness of the offender and does not serve the interests of any particular group or reflect the idiosyncracies of any particular individual.

7.

Secondly, the conflict model states, in the words of Chambliss and Seidman (1971):

"... that society is composed of groups that are in conflict with one another and that the law represents an institutionalized tool of those in power which functions to provide them with superior moral as well as coercive power in the conflict" (p. 504)

In particular, the conflict model asserts that lower class persons will be more likely to receive harsh punishment if found guilty in court. In conflict theory the "subordinate classes" consist of more than the working class, and encompass in much of the empirical literature the poor (who are often not in the work force), minority racial and ethnic groups, women and the young. It is also important to note that conflict theory does not necessarily predict direct discrimination in the sentencing process due to extra-legal factors. Weaker versions of the theory assert that discrimination occurs at a number of earlier points in the system - the confrontation with the police, the granting of bail, the process of plea bargaining and so on - and that subordinate groups are disadvantaged at these points in so many ways that the strength of their case in court is diminished even if the sentencing process itself is non-discriminatory.

8.

The possible mechanisms of discrimination have been detailed by a number of authors (Quinney, 1974; Carter and Clelland, 1979; Chambliss and Seidman, 1971). The elaboration of the ideas of Chambliss and Seidman have been most influential in the literature (which is largely American). They add the notion of bureaucratization to help explain the oppression of subordinate groups, arguing that officials structured into a bureaucratic organization will respond to the demands of the rich and powerful unless sanctions or other controls are introduced. Actually, the essence of their thesis is that at each level of bureaucracy officials possess

considerable discretion in the performance of duties, and that the enforcement of laws against persons who possess little political power will generally be rewarding to legal agencies.

9.

As Hagen (1977) has pointed out, there is considerable disagreement on the consequences of bureaucratization. Cloyd (1977) saw it as promoting equity and efficiency in the treatment of drinking drivers. However, the bureaucratization thesis has the advantage that it focusses on the actual structures of the courts and the social relations between actors, being one perspective within a broader organizational theory framework. Within this third broad theoretical perspective, there are almost as many theories as theorists. Thus Feeley (1979) has argued that a lower criminal court is more like a marketplace than a bureaucracy, "a complex bargaining and exchange system, in which various values, goals, and interests are competing with one another." (p.12) Similarly, Hagan et al. (1979) have postulated the model of a "loosely coupled system" in which court subsystems (probation, prosecutor, judge) are responsive to each other while still maintaining independent identities. These kinds of models suggest that "court related" variables will be important: plea, bail, the prosecutor's recommendation for sentence (not formally allowed in Australian courts), the recommendation of the probation officer and the "residual discretionary power" of the judge.

10.

The essence of the fourth theoretical perspective is best captured by a quotation:

"... it appears from the analysis that we can explain more about sentencing by knowing a few things about the judge than by knowing a great deal about the facts of the case." (Hogarth, 1971, p. 350)

This approach emphasizes "that justice is a very personal thing", determined largely by the psychology of the presiding magistrate, and the interaction

between this psychology and the perceived attributes of offenders. Thus the focus is on beliefs, philosophy, attitudes, personality traits and background characteristics of magistrates. We will use the term individual factors to describe this theoretical approach, referring mainly to the magistrate but also to the individual characteristics of other actors in the courtroom drama.

11.

One of the major predictions of the individual factors model is that there will be disparities between sentences imposed by different magistrates. According to Hogarth (1971) and Hood (1972), the sentencing philosophy of the magistrate may have a direct effect on the way in which he processes information about an offender and his offence. Sentencing philosophy means, in the context of drinking and driving, the views which a magistrate holds on its status as a crime and his aims in sentencing. For example, as Hood (1972) points out, to the extent that a motoring offence is regarded as normal behaviour the magistrate is likely to apply a tariff approach to sentencing, largely ignoring the personal characteristics of the offender (apart from his previous convictions for similar offences). The overriding principle of the tariff is that of proportionality between offence and sentence (Thomas, 1979), which is also one of the key elements of the consensus model. Of course the aims of sentencing can include deterrence (general and specific), retribution, reformation and incapacitation. The literature cited would suggest that these aims, and sentencing philosophy as a whole, are perhaps the most important characteristics of the magistrate for the sentencing process, eclipsing in importance such things as personality attributes and social background.

## 12. The Empirical Literature on Sentencing

There is a very extensive empirical literature on the courts, much of it focussed on the issue of discrimination in sentencing. A complete

review of the recent literature is presented in the full report (Chapter 2). Some broad generalizations will be attempted here particularly with regard to the relative merits of conflict and consensus theory, and the individual factors model. Hagan (1974) reviewed twenty papers on the role of extra-legal factors in sentencing. His main finding was that when legal factors were adequately controlled, extra-legal variables (mainly race and social class) were either not statistically significant or accounted for a minute proportion of the variance in penalties. The evidence for direct discrimination in all cases was weak, with the additional variance explained by extra-legal factors seldom exceeding five percent.

The present author has reviewed about thirty empirical studies concerned with the role of extra-legal factors which have been published (in Australia and overseas) since Hagan's review. A number of statements can be made on the basis of this literature. Firstly, the evidence for a weak version of conflict theory is very strong, with the ability to make bail and the quality of court assigned counsel being two important factors in the pretrial process which can strongly influence the final outcome. For juvenile offenders the concept of "threat to the moral order" constitutes the basis for an indirect sex bias against girls. Secondly, the evidence for direct discrimination on the basis of race or social class is stronger now than when Hagan undertook his review in 1974, although most recent studies still only find evidence for at most small direct effects. This suggests a third conclusion, that when direct discrimination does occur it occurs in particular social contexts, for some kinds of cases only and perhaps more among some judges than others. Early studies of sentencing noted the bias against blacks in the southern United States; direct discrimination against non-whites for "street offences" currently seems more common in rural than in urban areas. Nevertheless the more broadly based findings of Tiffany et. al. (1975) should be kept in mind. In general, Carter and Clelland

(1979) may be correct in arguing that only when statistical indices are explicitly derived from well grounded theory will evidence of direct discrimination emerge (under specified conditions). Finally, there is growing evidence that the social organisation of a court can play a major role in the sentencing process, thus contributing to the kinds of indirect discrimination mentioned above. Future quantitative research would do well to pay closer attention to subtle organisational variables (including the characteristics of particular judges or magistrates) and to allow the possibility of interactions between these variables and the more usual social and legal attributes of offenders.

13.

Hood and Sparkes (1971) reviewed the pre-1971 literature on sentencing disparities. Studies such as Green's (1961), which utilized statistical techniques to control offender and offence characteristics, were regarded by Hood and Sparkes as being more reliable than studies (like that of Gaudet et al, 1949) which assumed that these variations would cancel out if large enough numbers from each court were used. They concluded that there was considerable evidence for the existence of the "individual factor". In their view it is primarily differences in the way in which information is categorised, perceived and processed by the judge or magistrate which lead to the greatest disparities, and disparities will be more apparent the greater the effort to individualize treatments.

Summarizing the more recent literature on magistrates and on sentencing disparities, we are perfectly safe in concluding that there is overwhelming evidence for the existence of disparities. This is in marked contrast to the fragmentary and confused nature of the evidence for direct discrimination on the basis of extra-legal attributes of offenders (para 12' above). There is something comforting about a situation in which all methods of research

converge on the same conclusion. It seems that sometimes sociological factors are the source of disparities (for example, aspects of court organization as in Rhodes, 1977) but that most frequently differences in penal philosophy and in the way magistrates process information are key variables (see especially Hogarth, 1971).

14.

One study, by Hood (1972), focussed exclusively on the sentencing of motoring offenders in Britain, and is therefore of particular relevance to the present research. A recent project by Broom and Cushing (1980) examined the sentencing of drink/drivers in ACT courts, and is therefore also of particular interest.

Hood (1972) used an experimental methodology to overcome the problem of variations in cases appearing before magistrates. He sent exactly the same detailed cases to a sample of magistrates, obtaining results from 538. There were five cases each of dangerous driving, drunken driving, driving while disqualified, careless driving, driving without insurance, failure to stop or report, speeding and pedestrian crossing offences. Hood observed that there was little evidence for the "compensation theory" in sentencing, where fines are increased if disqualification is a hardship, or vice-versa. Magistrates cited specific deterrence and prevention (removal from the roads) most often as their reasons for choosing an "optimum" period of disqualification. He observed that criminal record was seldom considered relevant by the magistrate, and that the criminal label was only thought appropriate by a large majority of magistrates where other criteria of the criminal stereotype were evident. Finally, Hood concluded that while disparities occurred for all types of cases, the variations in penalties were largest for the more grave offences (including drinking and driving). In addition, he found much greater consistency in the determination of fines than in the period of licence disqualification.

Broom and Cushing (1980) considered the evidence for the consensus, conflict and individual factor models (although they used different terms). Extra-legal factors considered were sex, age, ethnic surname, in camera hearing and employment status. Variations between the five magistrates were considered as part of the analysis. Nearly all offenders received the minimum three months disqualification period, so the authors concentrated on the amount of fine as the component of the penalty requiring more explanation. Unfortunately no analysis was undertaken of the factors related to the broad outcome categories: - guilt without conviction, bond, suspended sentence, restricted driving licence, or treatment for alcohol dependency. They found strong support for the consensus model, and only limited support for the Chambliss and Seidman version of the conflict model. Despite the fact that all data were derived from the same court and for one principal offence, magistrate differences accounted for 10% of the variance in fines. More interestingly, interaction effects between magistrate and offender/offence characteristics were found. The full model had an  $R^2$  of .66. Younger offenders were fined more heavily, but the authors interpret this to be a reflection of the accumulation of an unblemished driving record. The unemployed paid lower fines on average than employed offenders, but since disqualification period was not examined, the validity of the compensation theory could not be determined. Clearly, Broom and Cushing's (1980) major results are in line with most of the literature on sentencing.

#### 15. Dealing with Drinking Drivers: Trends in New South Wales

An examination of the 1978 Magistrates' Courts statistics for New South Wales reveals that, of all offences serious enough to get into the crime statistics, drinking and driving is by far the most common. In the decade of the seventies, there were nearly twice as many drink/drive

cases dealt with as all property offences combined. The large number of offenders, and the standardized nature of the evidence in PCA (Prescribed Concentration of Alcohol) cases, lends prima facie support to the contention that drinking drivers are dealt with in New South Wales in a routine and bureaucratic fashion. The breathalyser test itself is, as Cloyd (1977) pointed out, "the quintessence of the Western rational conception of objectivity". Fewer than one percent of PCA offenders plead not guilty, and the majority of cases are dealt with in less than ten minutes. The actual sentencing process is usually a much more routine affair than is often imagined. Unlike the American situation, the prosecutor cannot make a formal recommendation with regard to penalty and except at courts where a rehabilitation scheme is operating there is usually no presentence report. It is likely that in many cases PCA offenders are dealt with by means of a simple tariff. These aspects of the sentencing of PCA offenders make the methodology of the present study - statistical analysis of court records - particularly appropriate.

16.

Each year in NSW approximately 85% of PCA offenders are dealt with by means of a fine and a period of licence disqualification. The rate of imprisonment (before appeal) varies between two and three percent, and bonds make up the remainder of cases. The maximum fine is \$1000 (it was \$400 in 1976, the year from which the data for the present study was selected) and the maximum period of imprisonment is six months. In December 1979 the government legislated for a mandatory three month disqualification period to counter the excessively short periods magistrates were accused of imposing. In fact the median of disqualifications actually imposed in 1979 was six months, so (as intimated in para.5 above) the legislation had more symbolic than practical significance. Bonds may be of two types: good behaviour

bonds or suspended sentences under S-554 or S-558 of the Crimes Act, which represent quite a severe penalty, or a dismissal or bond under S-556A of the Crimes Act, which represents the most lenient penalty possible. The essence of S-556A is that the offender is found guilty, but having regard to his "character, antecedents, age, health, or mental condition" no conviction is recorded. Excluding rehabilitation schemes and community service orders (neither of which were available on a routine basis in 1976), the only other penalty available to a magistrate is a restricted licence. In 1976 more than one offender in ten (10.7%) was conceded this privilege, usually to allow the use of a motor vehicle at work but generally in combination with a substantial penalty in other respects.

Convictions for PCA have risen from 7552 in 1969 to 17008 in 1979. At the same time, penalty severity has gradually increased. The median period of disqualification stayed constant at three months until 1978 when it rose to four months (and six months in 1979), while the median fine rose from \$125 to \$400 in the same period (a bit faster than inflation). Imprisonment rates have increased, from 1.4% to 3.1%, although this partly reflects an increase in the use of periodic detention. The use of S.556A peaked at 9.5% in 1974, falling to 5.0% in 1979.

17.

The characteristics of offenders have changed gradually over the decade. The mean blood alcohol concentration (BAC) has remained stable at approximately .160 but there has been a gradual rise in the percentage of recidivists, from 17.3% in 1969, to 28.4% in 1979. The number of women convicted has gradually risen, from 1.8% in 1972 to 3.0% in 1979, while there has been a trend towards increased representation of younger age groups. These changes undoubtedly reflect police procedures as much as real changes in the composition of the population of drinking drivers (Homel, 1980). Of particular interest is the rise in the percentage of

offenders legally represented. In 1972 only 50% of offenders were represented; in 1976 the figure was 64%, and by 1979 it had risen to 80%. This rise has probably been due to a combination of increased legal aid (through the Public Solicitor) and increased involvement of private solicitors or barristers. Since the expansion of the work of the Public Solicitor did not occur until late 1976, we may be sure that in 1976 private attorneys appeared for the vast majority of represented defendants, which is a useful simplification in the data analysed in the present study.

#### 18. The Aims of the Present Study

The general aim of the study is to improve our understanding of the processes involved in the sentencing of drink/drive (PCA) offenders. One way of doing this is to assess the relative merits of the conflict, consensus and individual factors theories of the courts. (Organisational theories are important but are not capable of being tested through the use of court records). The specific aims of the study are:

1. The develop a set of parsimonious statistical models which test the following major hypotheses:
  - (a) That by simulating a modified tariff model, magistrate "sentencing styles" can be identified as influences on the penalties imposed;
  - (b) That sentencing style will affect the weight attached to offender and offence characteristics (that is, there will be interaction between sentencing style and offender/offence characteristics);
  - (c) That the extra-legal factors of age, sex, legal representation, occupational status, employment status, marital status and location of court (rural/urban) will influence the severity of penalties, over and above legal factors;
  - (d) That legal factors will have most predictive power, followed by

sentencing styles and then extra-legal characteristics.

2. To explore the concept of a penalty model which is "optimum" in terms of specific deterrence and compare this model with the statistical model describing the actual sentencing process.
3. To explore the possibility of draft "sentencing guidelines", based on the statistical data, which could form the basis of a scheme for reducing discrepancies between magistrates in penalties imposed for similar offences.
4. To exploit the existing variability in penalties imposed for cases with similar offender/offence profiles to construct an index of perceived severity of penalty", for use in the study of specific deterrence (Homel, 1980).

CHAPTER 2. METHOD1. Research Design

The study is based on the statistical records maintained by the NSW Bureau of Crime Statistics and Research. Since 1972 the Bureau has received a statistical return for every drink/drive case determined at a magistrate's court. Most of the analysis is based on 1976 PCA cases, with some use being made of 1972 data. The reasons for concentrating on 1976 PCA cases are as follows:

- (a) For PCA cases an objective measure of the seriousness of the offence is available (BAC level);
- (b) The processing of PCA cases is likely to lend itself to statistical analysis because of their frequency and routine character;
- (c) Previous drink/drive conviction data was obtained by the Bureau for only a quarter of cases in 1977 and later years;
- (d) Details of which offenders were diverted to a rehabilitation scheme were not recorded in 1976 or later years, and this missing information would seriously bias the analysis of these cases since it is known that they received lighter penalties (Court Statistics 1978). The problem was sidestepped for the 1976 data by omitting cases dealt with at the particular courts in which the scheme began.
- (e) In 1977 the NSW Government greatly expanded the role of the Public Solicitor's office, and many drink/drivers in 1977 and later years were represented through the Public Solicitor. By contrast, in 1976 and earlier years nearly all offenders who were represented were represented by a private solicitor. This simplifies the interpretation of the legal representation variable.
- (f) The period 1972-1976 is the relevant period for a follow-up study of a sample of 1000 convicted offenders conducted by the present author

(Homel, 1980). A study of the sentencing patterns during this period is obviously relevant to the question of specific deterrence. For this reason, some of the results for 1976 are contrasted with 1972 data (see Chapter 3).

2. The use of official records in sentencing research raises a number of fundamental methodological issues. These issues are dealt with at length in the full report (Chapter 2), where criticisms by Hogarth (1971) and Feeley (1979) of quantitative methods are assessed. Summarizing the arguments, it would seem that the usefulness of court records as a basis for research into the sentencing of PCA offenders in New South Wales depends on a number of conditions being fulfilled. Firstly it needs to be demonstrated that organisational factors are less important than in Feeley's study of the New Haven lower court. A case for this has already been made out in Chapter 1, where it was argued that PCA offenders are dealt with in an increasingly routine and bureaucratic fashion. Plea bargaining would seem very rare, bail is rarely an issue, in the data under study there was no presentence report, the Australian prosecutor is not directly involved in the recommendation for sentence, and there is an objective measure (in the BAC level) of the seriousness of the offence. Secondly, some measure of individual magistrate input is required. This condition has been fulfilled in the present study through the development of surrogate measures of magistrate's "sentencing styles". These cannot be regarded as attitude or value dimensions, but they can be accepted as a general measure of the "individual factor" component of the sentencing process. Thirdly, statistical models based on court records need to explain a substantial portion of the variance in penalties for us to have much confidence in their usefulness in explaining the sentencing process.

The variables included in the analysis are set out in Table 1, together with their method of measurement. The grouping into "families" of variables is fundamental to all the analyses carried out, and is a reflection of the theories discussed in Chapter 1. The consensus model emphasises the seriousness of the offence and the blameworthiness of the offender (Family A), the conflict theories emphasise the role played by offender characteristics, particularly sex, social class and age (Family B), organisation theories emphasise factors related to the structure of the courts and the interactions between key personnel (Family C), while the individual factors model focusses on the psychology of the magistrate (Family D). The grouping of variables into these families is not a pure reflection of theory since the variables derived from court records are themselves not unambiguous indices. Thus caseload and whether the court is located in a rural or urban area are arguably related to aspects of court organisation, but have been included in Family D since they also relate to the issue of disparities between courts. Similarly, some offender characteristics included in Family B (such as employment status or licence status) could be considered by a magistrate as legitimate factors to be taken into account in determining the amount of fine or the period of licence disqualification - that is, as factors affecting the level of punishment which the offender "deserves".

Table 1. Variables included in the analysis, and method of Measurement.

Family A - Offence Characteristics/Previous Record

* Blood alcohol level (BAL)	80+ mg/100ml.
* Number of previous drink/drive (DUI) convictions	0, 1, 2, 3+
* Number of previous traffic (non-drink/drive) convictions	Numerical, 0 - 67

- \* Previous criminal record  
(4 variables)

Presence or absence of:  
 Children's Court indictable  
 Children's Court summary  
 Other Court indictable  
 Other Court summary

#### Family B - Offender Characteristics

- \* Sex
- \* Age
- \* Occupational status

Male, female

Numerical, 17 - 84

Congalton Scale of prestige:  
 A - Professional/managerial  
 B - semi-professional/middle  
     management  
 C - sales, small business,  
 D - unskilled  
 Student  
 Pensioner  
 Domestic  
 Unemployed  
 Not stated

- \* Marital status

Single  
 Married  
 Widowed  
 Divorced  
 Separated  
 De Factor  
 Not known

- \* Licence status

Learner - no licence - suspended  
 Interstate or not known  
 Licence first granted: 1976  
                             1971 - 1975  
                             1961 - 1970  
                             Before 1961

#### Family C - "Appearance" or "Court Organisation" Variables

- \* Plea
- \* Legal representation
- \* Appeal

Guilty - ex parte  
 Not guilty

Private solicitor  
 Not represented

Appeal by offender against the  
 severity of the penalty  
 No appeal

Family D - Court characteristics

- |                 |  |
|-----------------|--|
| * Location      | Urban (Sydney, Newcastle, Wollongong)<br>Rural                             |
| * Caseload      | Number of PCA offences in 1976   |
| * Court circuit | Grouping of 255 courts into 49<br>circuits - see full report,<br>Table 3.2 |

Penalties

- |                                      |   |
|--------------------------------------|---|
| * Outcome                            | 556A, rising of the court<br>Bond, with or without fine and<br>disqualification<br>Fine and disqualification only<br>Restricted licence with fine and<br>disqualification<br>Imprisonment, with or without<br>fine and disqualification |
| * Amount of fine                     | Numerical : 0 - \$400   |
| * Period of licence disqualification | Numerical : 0 - 5475 days (15 years)  |

4. Numerical variables have been incorporated into the various analyses wherever possible without dividing them into categories, usually allowing for the possibility of a complex cubic relationship between dependent and predictor variables (see the discussion of statistical methods below). The number of previous drink/drive convictions forms an exception to this rule, since the distribution was extremely skewed with only 2.5 percent of offenders possessing three or more previous convictions.

Occupational status has been measured using Congalton's (1969) scale. This scale measures the prestige of occupations as perceived by the Australian public, and as such is a useful way of operationalising the concept of "social class", at least in the sense in which stratificationist theorists (eg: Parsons (1954)) use the term. Controversy over the measurement of

social class is one of the features of the literature, with some conflict theorists arguing against the concept of class as an ordinal scale. Thus Carter and Clelland (1979) argue on Marxist grounds for a simple dichotomy into stable and unstable working class, while Hopkins (1977) argues more generally for a dichotomy into lower class versus upper and middle class. Debate about the nature and measurement of class is a major and continuing theme in sociology, and cannot be pursued here (see Connell 1977) for a useful account of the Australian debate). As far as the present study is concerned, the method of measurement and analysis meets the objections of conflict theorists in at least two respects: firstly, occupational status is treated as a categorical (rather than ordinal) variable, and hence a contrast between the unskilled and skilled employed should emerge automatically, and secondly people not in the workforce (such as the unemployed) have been classified separately rather than omitted or fitted into an ordinal status ranking.

Some categories listed in Table 1 represent a marriage of theory and convenience. For example, there were so few offenders recorded as "learner drivers" (18 cases) or as "suspended licences" (27 cases) that they were grouped with the 543 drivers who were simply recorded as having no licence. Similarly, there were only 13 ex-parte pleas out of 14311 cases analysed, so these were grouped with the "guilty" pleas on the grounds that this was what their plea amounted to. Rare penalties, such as being disqualified until the "rising of the court", have also been grouped. Note that the penalty categories listed in Table 1 were described in detail in Chapter 1, para 16.

The grouping of courts into court circuits is also a compromise measure. The variable of interest is of course the magistrate, but the presiding magistrate was not recorded on the statistical form. Fortunately NSW has a system of stipendiary magistrates who generally sit fulltime in one court or (in rural areas) service a number of courts in a "circuit". Thus in most cases knowing the court is equivalent to knowing the magistrate. There are some exceptions to this, since in a number of courts (such as Central Court in Sydney) there is more than one magistrate, and in any case magistrates can be away on holidays, sick leave and so on. The problem of the "multi-magistrate" court has been reduced somewhat by excluding those courts which began rehabilitation schemes in 1976; that is, Central and Bankstown (both with more than one magistrate) from March onwards, and Hornsby and North Sydney (single magistrate courts) from June onwards.

To the extent that using court (or court circuit) entails an averaging of the decisions of different magistrates, the court variable is clearly a conservative measure of variability between magistrates. Thus evidence of disparities in sentencing between courts is strong evidence for disparities between magistrates. In fact in the major analyses reported in Chapter 3 a number of dimensions derived from a discriminant analysis of the court variable will be interpreted as aspects of "magistrates' sentencing styles".

##### 5. Method of Analysis

The first step in the analysis involved developing via discriminant analysis, measures of magistrate "sentencing styles". It is too difficult to analyse variations between 49 courts on top of all the other variables listed in Table 1, and in any case it is not easy to interpret these variations.

What is needed is a small number of constructs which will capture most of the observed variation between courts while allowing a fairly simple interpretation. Examples of such constructs could be a "toughness - leniency" dimension, or perhaps a dimension which contrasted the use of bonds with the use of imprisonment.

In developing these constructs it is necessary to use one sample, but another sample must be used to apply these constructs to the prediction of penalties. If the same sample were to be used for both exercises, there would be the certainty of overfitting to the data and obtaining an  $R^2$  value which was artificially high (this is a defect in the analyses of Hagan (1979) and Hagan and Bernstein (1979)). Thus the sample of 14311 cases for 1976 was divided at random into two halves, and the discriminant analysis carried out on one half. This analysis paralleled that of Homel (1979), and involved simulating a simple additive model of sentencing.

The major analyses were carried out on the second half of the file, incorporating four sentencing style dimensions derived from the initial analysis. All models involved fitting the families of variables in the following order:

- (a) Family A -- offence characteristics/previous record
- (b) Family C -- "appearance" variables (omitting the appeal variable)
- (c) Family B -- offender characteristics
- (d) Family D -- court characteristics (omitting the caseload variable)

This method of fitting has the effect of giving most weight to those variables predicted by the consensus model to be most important. Thus the "official" version of sentencing is given maximum opportunity to prove itself.

The ordering of the other three families is to some extent arbitrary, but by placing the court variables last we minimize the possibility of concluding that there are disparities between courts when in fact variations in penalties can be explained in terms of offender/offence variations. In any case the ordering is most relevant to the process of obtaining a reduced model; once the reduced model is obtained, the effect of each retained term is interpreted in the light of the contributions of the other terms to the determination of the penalty.

The fitted models were in fact more complex than that implied above. Previous analysis of 1972 and 1974 data (Homel, 1979) suggested that four factors were important predictors of penalty severity: age, BAC, legal representation and previous drink/drive convictions. Therefore in order to investigate the effects of these variables in a systematic way, two-way interactions of each of these variables were incorporated in one series of models. In addition, the possibility of interactions between each of these four factors and the magistrate sentencing style constructs was investigated. This latter set of interactions was an attempt to follow the suggestion of Hagan (1974) that interactions of magistrate attitudes and offender/offence attributes be investigated in sentencing research. This part of the model amounted to a test of the hypothesis that magistrates with different sentencing styles will attach different weights to the four offender/offence attributes listed above.

It should be clear from the discussion of the literature in Chapter 1 that the role of social class in sentencing is the subject of considerable controversy. Since occupational status was seen as one of the key variables

in the present study, a second series of models was constructed, incorporating interaction between previous drink/drive record, age, BAC, Magistrate toughness (one of the sentencing style constructs), sex and legal representation. Given the size of these models, it was not possible to combine the interactions described above with these occupation interactions in the one huge model. This second series of models allowed a test of the hypothesis that offender/offence attributes are weighted differently depending on the social class of the offender.

6. The analysis of penalties constituted a fundamental problem.. The essence of the problem is that penalty imposed is multivariate, consisting of several components applied simultaneously, but with some components being measured on a categorical scale (bond, prison etc) and the remainder on a numerical scale (amount of fine etc.). This is a problem which has been tackled in many different ways. The statistical problems are discussed below, but the general approach will be summarised here. In one series of analyses, outcome (the categorical component of the penalty) was treated as a series of binary variables and analysed together with amount of fine and period of licence disqualification. In a second series of analyses those granted a 556A or imprisoned were excluded, and the amount of fine and period of disqualification jointly analysed, incorporating the imposition of a bond or restricted licence as covariates. The logic of this second series of analyses was that fines and disqualification are either not applicable in the extreme penalty categories, or have a very different distribution to that of the mainstream of the sample. Finally, a third series of analyses was carried out, using the categorical outcome variable alone as the (multivariate) dependent factor.

The various models and analyses are summarised in Table 2.

Table 2. Summary of Statistical Models Constructed

	<u>A</u>	<u>B</u>	<u>C</u>
<u>Construction of</u> <u>Penalty</u> <u>variables:</u>	* 556A ) correlated * Bond ) binary * Fine/disqual. ) variables * Rest.licence * Amount of fine ) log * Period of ) scale disqual.    }	* Amount of) fine ) log * Period of) scale disqual. ) (excluding 556A and prison cases)	* 556A . ) * Bond ) Multi- * Fine/disq.) nomial * Rest.licence respon * Prison ) variab
	<u>I</u>	<u>II</u>	<u>III</u>
<u>Construction of</u> <u>independent</u> <u>variables</u> <u>(in order of</u> <u>fit)</u>	* Offence/record * Representation-plea * Offender/characteristics * Offender/offence interactions * Sentencing style constructs. * Constructs x offender/ offence attributes	* Covariates: Bond, rest. Licence * Offence/record * Representation, plea * Offender characteristics * Sentencing style constructs * Occupation x offender/offence attributes	* Offence/record (omitting criminal record) * Representation * Offender Characteristics * Major sentencing style constructs

MODELS FITTED: AI, AII, BI, BII, CIII.

Note from Table 2 that three aspects of the penalty have not been analysed: period of restricted licence, period of bond and period of imprisonment. It has been assumed in each case that the type rather than the quantity of each of these penalties is the most pertinent piece of information. Moreover, it is likely that the variables included in the present study would not predict those quantities - particularly the period of imprisonment (Chiricos and Waldo (1975)) - with any degree of precision. It should be noted from Table 2 that the analysis of the categorical outcome variable (treating it as a multinomial response - series C) required a

simplified additive model (series III). This is because of the very large amount of space in the computer required by this method of analysis.

## 7. Statistical Methods

Technical details are set out in the full report (Chapter 3). A summary of relevant details will be presented here. All methods of analysis were based on variations of the multivariate general linear model. This includes multivariate regression or multivariate analysis of variance (Timm, 1975) and multivariate logistic regression analysis (Bock, 1975; Cooney and Homel, 1981).

The elegance of the linear models approach is bought at the cost of some statistical assumptions. In the case of multivariate regression analysis the major assumption is multivariate normality of the response variables. Taking the penalties as set out in Table 1, this is obviously not met in the present study. Even if attention is restricted to the numerical variables fine and disqualification (as in the Series II models), their skewed and relatively discrete distributions militate against bivariate normality. On the basis of regression analyses carried out on a 5 percent sample (748 cases) the distribution of fines was much more difficult to fit to a linear model than disqualification. Plots of residuals from the fine analysis indicated severe non-normality and non-linearity, due chiefly to the discrete nature of this variable (magistrates settle on whole numbers when imposing a fine). A log transformation improved the situation only slightly. The residuals from the disqualification analysis were close to normal and indicated little departure from linearity; a log transformation improved the  $R^2$  value slightly. For the major analyses both fine and

disqualification were analysed in the log scale and the Central Limit Theorem invoked for significance testing, a not unreasonable approach given the large numbers involved.

The problem of mixed categorical and numerical response variables (as in models AI and AII) was solved in the same way, the large samples employed justifying the use of the standard significance tests. The problems with these models are more with interpretation than with formal statistical technique. For example the 556A outcome category must correspond to the absence of fine and disqualification, while prison usually corresponds to no fine and a very long disqualification period. These constraints must be taken into account when interpreting such statistics as the discriminant function. To guard against the possibility of distortions being introduced into the analysis by constructing the dependent variables in this way, Models BI, BII and CIII were constructed. The B series models restrict the analysis to cases in which fine and disqualification are always applicable as penalties, while Model C focusses solely on the categorical outcomes.

8. The two techniques of multivariate analysis employed in the present study - multivariate analysis of variance and multivariate logistic analysis - were both carried out using REG, a general linear models program developed by the Biometrical Branch of the NSW Department of Agriculture (1979). The MANOVA results were interpreted using the univariate results together with the standardized discriminant functions. Wilks' Lamda criterion was used to assess significance. Where more than one discriminant function was significant, plots of discriminant function scores have been adjusted to reflect the variance explained by each dimension. This has the effect

(implicit in the mathematical analysis) of giving the correct weight visually to the dimension which does not discriminate as well.

The multivariate logistic model employed in the present study is a simple extension of that of Bock (1975) to include numerical independent variables. The dependent variable is categorical, and hence the elements of the response vector follow a multinomial distribution. The major advantage of the multivariate logistic analysis over (say) a standard MANOVA is that it is more rigorous, making no unrealistic assumptions about multivariate normality. Cooney and Homel (1981) argue that with large samples this advantage is probably marginal; nevertheless the model allows us to inspect the data in a way which the MANOVA analyses do not, and allows us to develop estimates of the probabilities of the various outcomes which can be shown to be mathematically "optimal". Given the nature of the available data, the multivariate logistic analysis is probably the most thorough method of analysing outcome, conceptualised as a categorical or nominal scale variable.

In both sets of analyses Aitkin's (1978) method of model reduction was employed. This approach involves specifying the full model and then testing groups of terms simultaneously for significance, working in a hierarchical fashion down from high order interactions to main effects, or in the present case through the families of terms specified in Table 2. Among its many advantages this approach reduces the problem of overfitting to the sample by an accumulation of Type I errors, since the Type I error rate for the whole model can be fixed at a reasonable level in advance. The labour of fitting terms in many orders is reduced by the simultaneous test procedure which

tests a whole family of effects at once. Since a number of large models have been fitted, levels of significance for individual variables were set at .01 and all simultaneous tests were carried out at a corresponding level. For example, if a family of 15 terms was being tested for significance, the significance level for the simultaneous test was set at  $1 - .99^{15} = .14$ .

The aim of the model reduction procedure is to produce a model with the minimum number of terms necessary to "explain" the response variables, including necessary interaction terms. A model is "adequate" if the deviance or sums of squares for omitted terms is not significantly large by the simultaneous test procedure, and a model is "minimal adequate" if no proper subset of it is adequate (Aitken, 1978). Thus the aim of each model reduction is to produce a minimal adequate model. In some cases, there is more than one minimal adequate model.

## CHAPTER 3      RESULTS

### 1.    Basic    Statistics

The analysis was based on information derived from the court records of 14311 offenders convicted in NSW in 1976. Offenders were predominantly male (97.7%), semi-skilled or unskilled (42.6% and 39.0% respectively), young (median age 29) and single and married in about equal proportions (42.3% and 48.5% respectively). Only 108 offenders, or .8% of the total were A status (professional), while 3.6% were unemployed. More than one in twenty (6.2%) was divorced or separated. Forty five percent were dealt with in rural areas.

The median BAC was .150, 70.4% were first DUI offenders, 68.5% had at least one previous traffic offence, while nearly one in three (31.5%) had a previous criminal conviction at a lower court. One offender in 40 (2.5%) had three or more previous DUI convictions, while four offenders had 10 or more such convictions!

### 2.

The distribution of penalties imposed is shown in Table 1.

Table 1.    Distribution of Penalties

	<u>Number</u>	<u>%</u>	<u>Fine</u>
556A, Rising of Court	1090	7.6	Median = \$150. Only 17.5% were fined
Bond, fine, disqual.	808	5.6	\$200 or more (half the maximum).
Fine and disqual.	10653	74.4	<u>Disqualification</u>
Fine and Rest.licence	1412	9.9	Median = 3 months (93 days)
Prison	348	2.4	Maximum of 15 years. Only 15.7%
	14311	100.0	disqualified longer than 1 year.

### 3. Variations between Magistrates

There was considerable prima facie evidence for disparities between the 49 court circuits.

	<u>556A (%)</u>	<u>Restricted Licence (%)</u>	<u>Prison (%)</u>	<u>Mean Fine (\$)</u>	<u>Mean disqual. (days)</u>
Minimum	0.0	0.0	0.0	107	94
Maximum	20.9	49.3	9.4	223	450

Judging even from the simple statistics there is some evidence that some magistrates adopt certain types of penalties as their "signature mark". The next highest percentage of restricted licences after the maximum of 49.3% was 31.3%, and only five circuits exceeded 20%. Only six circuits had an imprisonment rate in excess of five percent. There were similar marked variations in the use of heavy fines, with four circuits recording more than 40% of fines over the \$200 mark. Extremes in the use of long disqualification periods did not appear to be as pronounced.

Variations in offender/offence attributes were less marked than variations in penalties. The minimum number of first DUI offenders was 58%, and the maximum was 79%. Variation in BAC scores in excess of 200 was 8.1% minimum to 36.5% maximum. Neither the variations in previous DUI offenders nor the variations in BAC corresponded very closely to courts with light or heavy penalties. For example, the court with the highest imprisonment rate had only slightly more than the quota of repeat and high BAC offenders.

### 4.

In order to determine the dimensions on which magistrates varied in their sentencing, a model of the sentencing process was set up. The model was similar to that employed by Homel (1979, 1980), and was based upon the assumption that magistrates determine penalties at least partly through a process of weighting various factors and adding the weights (see Lawrence, 1981). The method employed was multivariate regression analysis on one

half of the total sample, selected at random (7137 cases). For this analysis only, all variables (except amount of fine and period of licence disqualification) were categorized. This was for comparability with the previous analysis, and to more closely simulate the presumed psychological process of weighting and "totting up".

Examination of the full model allows a test of the goodness of fit of the best statistical model to the presumed psychological model. The results of the analysis are set out in Tables 2 and 3.

Table 2. Test of Canonical Variables from the Full Model

	Canonical R	Canonical R <sup>2</sup>	% of Trace	Chi-square	df	P
Root 1	.765	.585	61.0	11926.0	588	.000
Root 2	.496	.246	14.3	5693.7	485	.000
Root 3	.458	.210	11.7	3695.6	384	.000
Root 4	.368	.135	6.9	2029.7	285	.000
Root 5	.279	.078	3.5	996.9	189	.000
Root 6	.241	.058	2.6	424.7	93	.000

$\Lambda$  for full model = .186

Table 3. Coefficients for First Canonical Variables

<u>Penalties</u>		<u>Offender/offence variables</u>	
556A	2.16	<u>Family A - Offence characteristics/previous record</u>	
Bond	1.21	BAC: 80 - 100	2.88
Fine/disq.	2.01	101 - 115	1.60
Res. licence	1.61	116 - 130	3.15
Prison	0.00	131 - 150	1.36
Fine (\$)	-.0052	151 - 170	.42
Disq. (days)	-.0016	171 - 190	1.93
		191 - 215	.38
		216 - 240	.20
		241 +	.00

Family B - Offender Characteristics				Family A - Offence Characteristics (Cont'd)			
Sex	-	Male	.00	Previous DUI	0		3.41
		Female	.13		1		2.48
Age	-	Under 18.	- .59		2		.97
		19 - 20	-1.36		3		.23
		21 - 24	-1.25		4+		.00
		25 - 29	- .64	Previous Traffic	0		.74
		30 - 39	- .58		1		.45
		40 - 49	- .20		2		.33
		50 +	.00		3		.25
Occupational Status:	A	.06			4		.22
	B	.10			5-7		.19
	C	.83			8 +		.00
	D	.34		Criminal Record:			
	Student	.26		Children's Court Indictable			-.03
	Pensioner	.42		Children's Court Summary			.07
	Domestic	.17		Other Court Indictable			.05
	Unemployed	.05		Other Court Summary			.08
	Not Stated	.00		Family C - Appearance Variables			
				Plea - Not Guilty			-.05
Marital Status :	Single	- .09		Guilty			.00
	Married	+ .01		Legal Rep. No			-.03
	Widowed	- .05		Yes			.00
	Divorced	.00		Family D - Court Circuit			
	Separated	.00		49 scores ranging from			
	De Facto	- .20		- 1.48 to .73			
	Not Known	.00		Median =			.15
Licence Status:	No Licence	- .68		One extreme value at			- 1.48;
	Not known	- .43		next weight was			- .32
Licence granted:	1976	- .21					
	1971-1975	- .64					
	1961 - 1970	- .39					
	Before 1961	.00					

Note from Table 2 that the first squared canonical correlation was .585, and that the first root explained 61.0% of the trace. The second squared canonical correlation was only .246, indicating that the first root is dominating. From Table 3 we see that the penalty weights can be interpreted as forming a severity of punishment dimension, with low or negative scores corresponding to heavier penalties. Thus the lightest penalty is a 556A, with a score of 2.16. The next lightest is a combination of a small fine and short disqualification, followed by a restricted licence with similar conditions. Imprisonment with a heavy fine and long disqualification corresponded to the most negative scores.

This means that an offender/offence attribute with a high positive weight contributes to a lenient penalty, while an attribute with a low or negative weight contributes to a tougher penalty. It is clear that being aged 50 or more, having a low to moderate BAC and having no previous DUI convictions contribute most to a lenient penalty. Criminal record, marital status, legal representation and sex contribute relatively little to the overall penalty severity, with occupation, licence status and previous traffic convictions occupying the middle ground.

It should be noted that the sizes of the weights are affected by intercorrelations between variables, and hence do not always correspond to the ordering implicit in some variables. For example the weights for BAC fluctuate at the lower levels.

The model above suggests discrimination on the grounds of age, but not on the basis of sex, occupational status or legal representation. In fact C and D status offenders appear to receive lighter penalties than higher status offenders, other factors taken into account. However it should be remembered that the penalty dimension is a single composite, eliminating some of the finer distinctions in types of penalties imposed. Conflict theory receives much more detailed attention in later analyses.

To the extent that the variables and their methods of

categorization are comparable, the results of this analysis are similar to that of Homel (1979,1980). The first squared canonical correlation is higher than previously (58.5% compared with 50.0%). This is partly because court circuit was included in the present analysis, while it could not be fitted in the analysis of 1972 data. When circuit was omitted, the first canonical  $R^2$  value dropped to 53.8%, still slightly higher than the 1972 analysis. Overall, both analyses indicate a high degree of patterning in the data.

The results presented above provide clear evidence for the existence of disparities between courts which are not explicable in terms of variations in offender--offence attributes, and also provide evidence for the existence of a magistrate toughness/leniency dimension. However, note that only one magistrate stood out as being particularly tough, with a score of - 1.48, so this dimension needs to be interpreted with caution. The extreme magistrate had the highest rate of imprisonment (9.4%) and imposed among the longest periods of disqualification (29.8% exceeded one year in length). He also imposed fines which were among the heaviest, and had a very high rate of usage of restricted licences.

The relative importance of factors in the above analysis may be gauged from Table 4.

Table 4 Importance of each Factor when Fitted Last in the Model, using the Trace and Lamda criteria.

<u>Factor</u>	<u>% of explained variance in penalties accounted for by each factor fitted last (Trace criterion)</u>	<u>% of explained variance in penalties accounted for by each factor fitted last (Lamda criterion)</u>
Previous DUI	31.0	33.6
Circuit	21.3	27.1
BAC	4.4	5.8
Driving Record	3.4	4.6
Previous Traffic Record	2.8	3.8
Occupational Status	2.4	3.3
Age	2.0	2.7
Legal Representation	1.1	1.5

Note that the figures in Table 4 are not derived from an examination of the first canonical variables for the full model (the subject of Tables 2 and 3), but are based on all six eigenvalues for each term when fitted last. Both criteria generally agree in the relative importance of each factor. Clearly previous DUI convictions and court circuit are the two major contributors to the model's predictive power, which again is strong evidence for sentencing disparities. Note also that legal representation makes a small but significant contribution, reinforcing the need to consider measures of penalties more complex than the composite severity index in Table 3.

5.

The examination of the first canonical variables from the full model had the advantage that it yielded a dimension interpretable as toughness/leniency. However, the distribution of scores on this dimension indicated that apart from one tough magistrate it may not differentiate magistrates very effectively. The most effective way (by definition) of differentiating magistrates according to their sentences is to use discriminant analysis. The results of this analysis are set out in Table 5.

Table 5. Discriminant Analysis of 49 Court Circuits, Adjusted for all other Terms in the Model.

	<u>Canonical</u> <u>R</u>	<u>Canonical</u> <u>R<sup>2</sup></u>	<u>% of</u> <u>Trace</u>	<u>Chi-square</u>	<u>df</u>	<u>p</u>
Dimension 1	.441	.195	49.3	3224.4	288	.000
Dimension 2	.321	.103	23.4	1694.2	235	.000
Dimension 3	.245	.060	13.0	926.4	184	.000
Dimension 4	.192	.037	7.8	488.7	135	.000
Dimension 5	.138	.019	4.0	223.2	88	.000
Dimension 6	.110	.012	2.5	86.6	43	.000

$$\Lambda = .633$$

Despite the fact that all six dimensions are highly statistically significant, the first two roots actually account for 72.7% of the variance

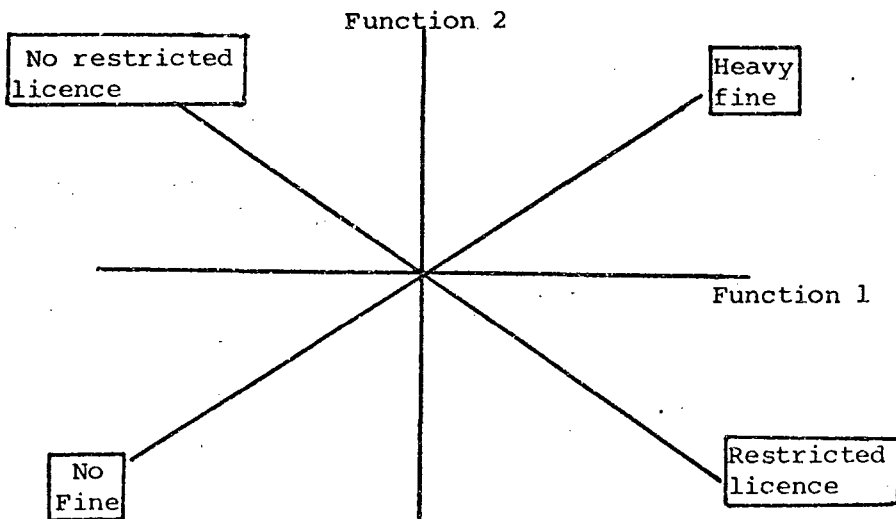
explained by court circuit. The discriminant function weights can be interpreted so that each dimension can be given a meaning in terms of magistrate sentencing patterns.

In fact the discriminant functions are most conveniently interpreted in pairs. Their meanings are set out graphically in Figures 1, 2 and 3 (overleaf). The first two dimensions are dominant, as explained above, and Figure 1 shows that they distinguish magistrates in terms of their use of restricted licences and in terms of their use of low and heavy fines. The dimensions are seen more clearly if the axes are rotated. The rotation is non-orthogonal since the scale for axis 2 is only .7 of the scale for axis 1 (i.e., the first discriminant function accounts for double the variance of the second root). The importance of the use of restricted licences and of heavy fines (the two of course need not coincide) was apparent from the descriptive statistics discussed in Para. 3 above.

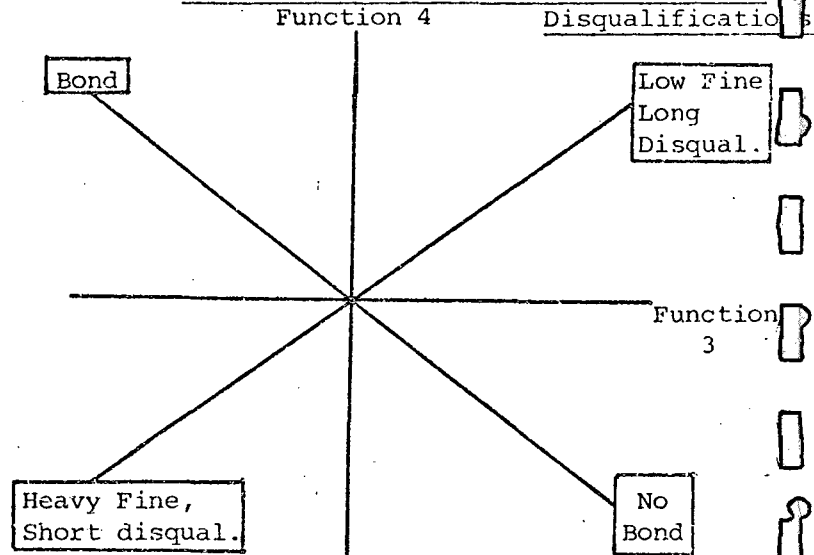
Thus every magistrate may be located at some point in the plane defined by the first two dimensions. It is of great interest that both fines and restricted licences emerged as key aspects of magistrates' "sentencing styles", since it may be argued that fines reflect a simple punishment dimension while restricted licences reflect an attempt to individualise the penalty to fit the circumstances of the offender. We may have here a reflection of the punishment/non-punishment and treatment/non-treatment dimensions isolated by Hogarth (1971, Chapter 19).

Dimension 3 and 4 together explain 20.8% of the variance accounted for by court circuit. They should therefore not be given as much weight as the first two dimensions. Figure 2 demonstrates a slightly more complex pattern than Figure 1, but once again a rotation of the axes simplifies the interpretation. Two basic processes appear to be operating: a bond/no bond dimension together with a dimension which can be regarded as the relative balance or imbalance of the amount of fine and period of licence disqualification. A high score on this second dimension indicates a

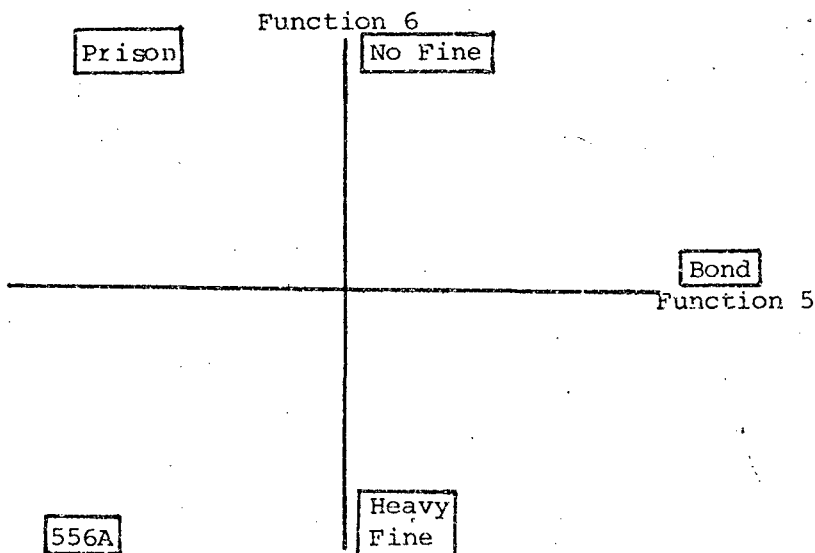
**Figure 1: First Pair of Discriminant Functions**  
Representing Magistrates' Sentencing Styles -  
Use of Restricted Licences and Size of Fines



**Figure 2: Second Pair of Discriminant Functions**  
Representing Magistrates' Sentencing -  
Use of Bonds and Balance of Fines and  
Disqualification



**Figure 3: Third Pair of Discriminant Functions**  
Representing Magistrates' Sentencing Styles -  
Size of Fines, Use of Prison, 556A and Bonds



tendency to use long disqualification periods with relatively low fines, a low score indicates the opposite pattern, while an average score represents a balance between the two components (as measured by the average behaviour of all magistrates).

The last two dimensions account for only 6.5% of the explained variance, and therefore represent only very minor aspects of "sentencing style". Their interpretation is set out in Figure 3. Once again bonds and level of fines appear, but with the addition of prison and 556A. Essentially the graph is saying that three outcomes are distinguished: prison, 556A and bond, with amount of fine cutting across this classification. It should be remembered that prison usually corresponds with no fine, that a bond often does (since the offender is required to deposit a sum of money as surety), and that a 556A never involves a fine since no conviction is recorded).

In principle every magistrate can be located at some point in six dimensional space. In practice it is impossible to work with six dimensions, so each pair of dimensions will be considered separately. In any case the patterns revealed in Figures 1, 2 and 3 not only confirm the existence of sentencing disparities, more importantly they illustrate the primary features of these disparities and point to those aspects of the sentencing process which need to be examined if greater uniformity is to be achieved. A policy on the use of restricted licences and agreement on the level at which the "tariff" should be set are the two most obvious features which merit attention.

6.

The level at which a magistrate sets a fine is clearly a key piece of information in distinguishing him from other magistrates - far more so than the period of licence disqualification he imposes. Yet variability in disqualification periods among the 49 court circuits is twice as great as for fines (the ratio of standard deviation to mean is .32 for disqualification

and .16 for fines). However the important thing for discrimination is the ratio of the between to the within courts variances, and this is higher for fines than for disqualification (F values are 15.4 and 10.8 respectively). This suggests that more of the overall variability in fines is accounted for by magistrate policies than is the case for disqualification. Putting it another way, relatively more of the variance in disqualification periods is due to inconsistency within magistrates, supporting Hood's (1972) contention that there was much more confusion among magistrates concerning the purposes of disqualification than the purposes of a fine. Magistrates clearly disagree on how heavy fines should be, but follow a more internally consistent (tariff?) policy in determining a figure than they do for disqualification period.

7.

The magistrate "sentencing style" dimensions do not have to be accepted completely on trust. One way of cross-checking their interpretations is to examine the appeal rate for each court. If the toughness/leniency dimension has any objective meaning, tough magistrates should have higher appeal rates. Similarly, scores on the other dimensions which correspond to tougher penalties should correspond to higher appeal rates. This in fact is exactly what we find. The strongest correlation is with the severity dimension (.42), and the next highest with discriminant functions 1 and 2, high scores on which indicate heavy fines (.41 and .40 respectively).

8.

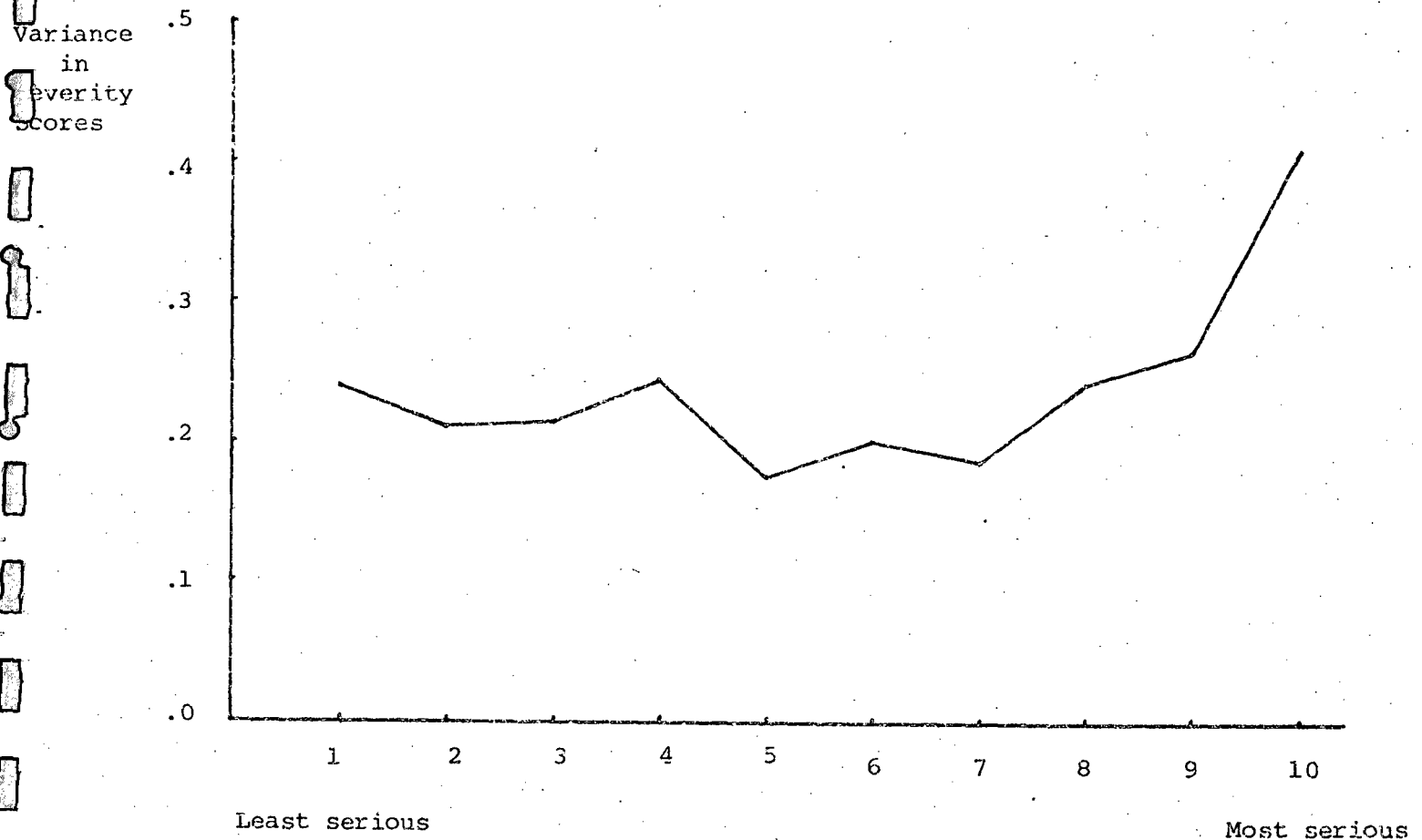
Another aspect of the courts which is of some interest is size (PCA caseload per annum). Some researchers have found a link between bureacratization and severity of penalties imposed, with a strain toward legalism (and less overt discrimination) in larger (urban) courts (e.g., Hagen, 1977). To the extent that simple correlations between caseload and sentencing style variables mean anything, this thesis is not supported in the present data. Although larger courts tended to have higher appeal

rates ( $r = .325$ ), there were negligible correlations with severity and the other dimensions. The rural/urban distinction was also not associated with sentencing style.

9.

Hood (1972) noted that the more serious motoring offences were more difficult for magistrates to "price", and there were therefore greater disparities for serious offences. This observation was confirmed by Homel (1979, 1980) and is also confirmed in the present analysis. Figure 4 shows the variances of severity scores for offences of different degrees of seriousness (severity and seriousness scores were the first canonical variables discussed in Para. 4).

Figure 4: Variance in Severity Scores by Offence Seriousness (Deciles).



The graph shows the variance of severity scores for the least serious ten percent, the next most serious ten percent, and so on. There is a clear increase in variance for the ten percent of most serious offences. A further question immediately arises: is the greater variance due to greater inconsistency within magistrates, or is it due to an increased level of disagreements between magistrates? Examination of the within and between court mean squares for each decile suggests that both explanations have validity, with perhaps a slightly increased degree of between magistrate variability. In other words there is more disagreement within courts for the serious cases, but a slightly greater increase in disagreement between courts (Table 6)

Table 6. Variability within and between courts for offences of increasing seriousness.

	<u>Between courts MS</u>	<u>Within courts MS</u>	<u>F=Between/ Within</u>	<u>Total Variance</u>
10% most serious	1.19	.35	3.40	.407
Next most serious 10%	.81	.23	3.53	.268
Remainder (mean)	.56	.23	2.45	.247

10.

Considering the six discriminant function dimensions simultaneously, it is interesting to ask whether (in six dimensional space) natural clusters of courts occur. In other words, is it possible to find a typology of magistrates in terms of their sentencing styles? Cluster analysis of the 49 court circuits using the six dimensions identified in Para. 5 failed to reveal any interpretable patterns. This suggests that more detailed information on magistrates is necessary for a meaningful classification into discrete groups to emerge (if, indeed, such a classification is possible).

#### 11. Simple Correlates of Penalty

The major analyses were carried out on the second half of the sample (7174 cases), incorporating the magistrate sentencing style dimensions as variables. Before reporting the results of the major linear models fitted, it will be useful to summarize the simple correlations. The analysis of fines and disqualification excludes 556A and prison cases (in the former

case neither penalty is applicable, and in the latter case very long disqualification periods are usually imposed in lieu of fines).

#### Family A - Offence Characteristics/Previous Record

BAC - Not surprisingly higher BAC scores were associated with tougher penalties, although the correlations were not as marked as we might expect. The probability of imprisonment and a bond climbed steadily with BAC (1.5% were imprisoned at BAC levels below 130, 4.8% at levels above 200) but the chances of a bond or a restricted licence were unrelated to BAC. Mean fines increased from \$150 at levels below 130 to \$205 at levels above 200, and disqualification periods increased from 7 months to 14 months over the same range.

Previous DUI convictions - This variable was very strongly correlated with penalty. Chances of imprisonment increased from .004 for a first offender to .26 for someone with three or more previous convictions, while 96.4% of all 556A dismissal or recognizances went to first offenders. Similarly the chances of a bond increased from .02 for first offenders to .28 for those with three or more convictions and the proportion of restricted licences declined from 10.5% to 2.7%. Similarly fines increased from \$154 to \$242 and disqualification from 5 months to 32 months over the same range.

Previous traffic convictions - Once again a strong correlation was observed although not as strong as for previous DUI. The chances of a 556A declined from 14.5% for first offenders to .9% for those with 4 or more previous convictions, while the chances of imprisonment increased by a factor of 10, from .6% to 6.3%. Interestingly the proportion of restricted licences rose slightly, from 7.3% to 11.0% over the same range. Fines increased from \$151 to \$197, while disqualification rose from 6 months to one year.

Previous criminal record Strong correlations occurred in the expected directions. For example, an offender with previous summary convictions had three times the chance of a bond (10.2%) and four times the chance of

imprisonment (5.4%) as an offender without such a record, while his chances of a 556A were reduced by a factor of four (2.5%). Fines were only slightly higher but disqualification periods averaged 13 months compared with 7 months for the conviction free group.

Judging from simple correlations the support for the consensus model is strong, with previous DUI convictions leading the field as a measure of offender blameworthiness.

#### Family B - Offender Characteristics

Sex - Women received more lenient penalties. None of the 155 women in the sample went to prison, while 20.0% received a 556A. They were only a third as likely as men to receive a restricted licence (3.2%). Women received an average fine of \$129 (\$175 for men), but disqualification periods were identical.

Age - Age was strongly related to some types of penalties. Only .4% of offenders under 20 received a 556A compared with 24.6% of offenders over 45, although older drivers were twice as likely to receive a bond and were slightly more likely to go to prison. Older offenders received slightly heavier fines (\$178 compared with \$142) but disqualification periods varied little across age groups.

Occupational status - A status offenders generally received the lightest penalties. None went to prison, 29.4% received a 556A and 15.7% received a restricted licence. By contrast 3.8% of D status offenders went to prison (the chances steadily increased as status declined) and only 5.4% received a 556A. The unemployed were least likely to receive a 556A (1.5%) and were most likely to be imprisoned (4.5%). Fines did not vary by status for those in the workforce, but all categories of the non-employed received lower fines (particularly housewives). On the other hand, disqualification periods declined markedly with status: D status offenders averaged 10 months while A status offenders averaged 2 months. Perhaps to compensate for the lower fines, all categories of the non-employed (except students)

received longer disqualification periods than those in the workforce (the unemployed, for example, were disqualified for more than a year on average).

Marital Status - This variable was only weakly correlated with penalties. Divorced, separated or de facto offenders were most likely to be imprisoned or to be put on a bond, and were disqualified for the longest periods (5 months longer than average).

Licence Status - Unlicensed offenders were most likely to go to jail (8.6%) and never received a 556A. Offenders who had been driving for many years were most likely to get a 556A (23.0% for those first licensed before 1961). Fines increased with driving experience (probably reflecting capacity to pay) while disqualification periods varied little. Unlicensed offenders were disqualified for 16 months on average.

Conflict theory propositions receive some support from these correlations, particularly on the basis of age and occupational status.

#### Family C - Appearance variables

Plea was not related to any of the penalty variables.

Legal representation - weakly correlated with penalties. Those represented were slightly more likely than those not to get a 556A (8.6% compared with 5.3%), and were rather more likely to get a restricted licence (11.4% compared with 5.6%). Fines were slightly heavier for those represented but disqualification periods were about one month less on average.

#### Family D - Court Characteristics

Rural/Urban - Urban courts were slightly more likely to dispense restricted licences (11.2% compared with 8.0% in rural areas) but fines and disqualification periods did not differ.

Magistrate Sentencing Style - strongly related to penalties as described previously.

#### 12. Testing the Conflict Model: Analysis of Outcome (Model C)

The problem of course with descriptive statistics is that the predictor variables are correlated. Thus the correlations between licence status and

penalties may simply reflect the operation of age; or vice versa.

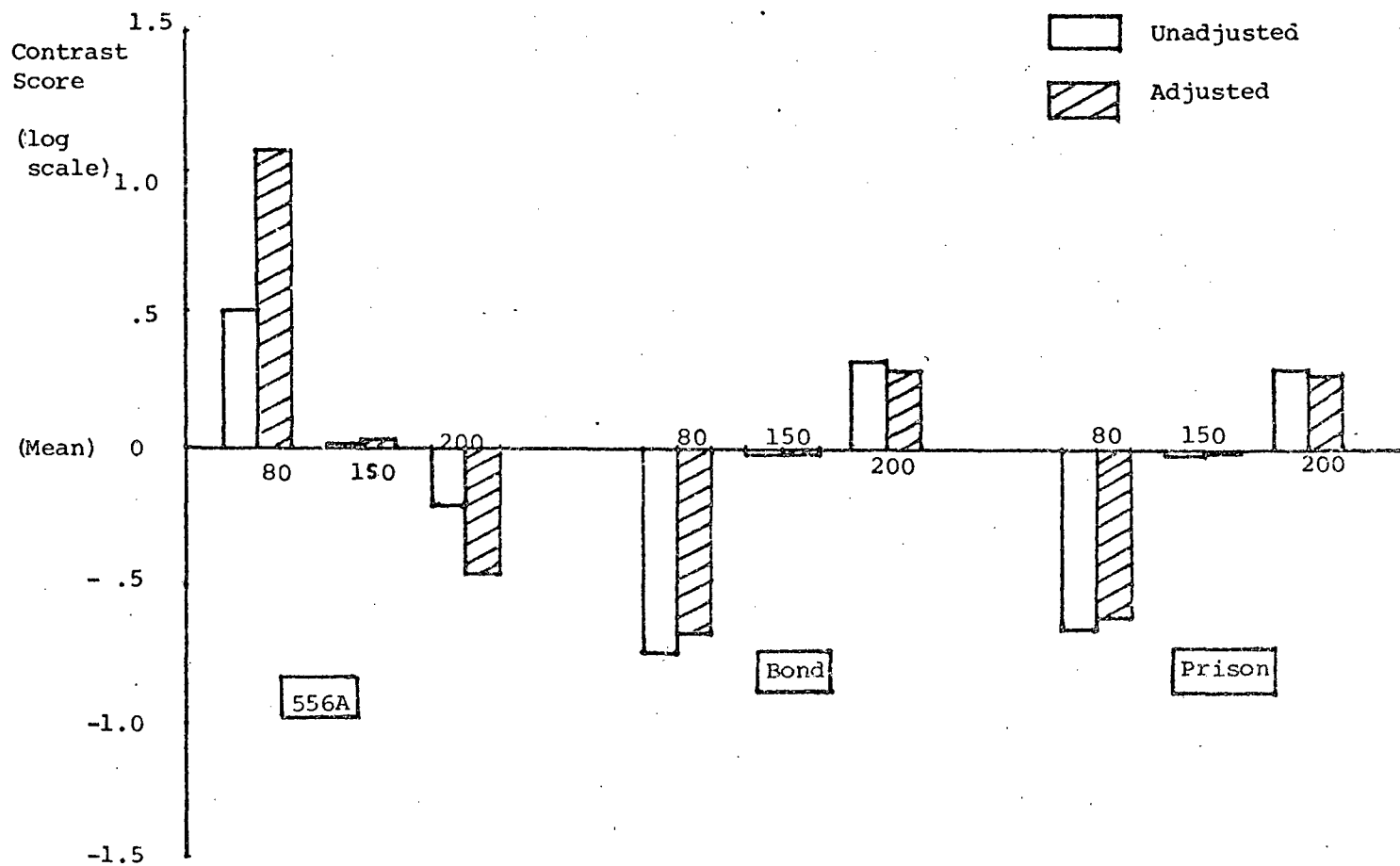
Similarly, lower status and unemployed offenders may have worse records. The purpose of the various linear models is to unravel some of these interconnections. We will begin with the simple linear models, working up to those which incorporated the maximum information. The best starting point is the analysis of categorical outcomes (model C III).

The model reduced to the following terms: occupational status, age, licence status, legal representation, BAC, number of previous traffic convictions, number of previous DUI convictions, the first two sentencing style dimensions and toughness/leniency. The terms most relevant to an assessment of consensus and conflict perspectives are discussed below. The main method is to compare contrasts of the regression coefficients (which represent the effects of each factor adjusted for all other terms) with contrasts of the logarithms of proportions (which represent the unadjusted effects).

#### Family A - Offence Characteristics/Previous Record

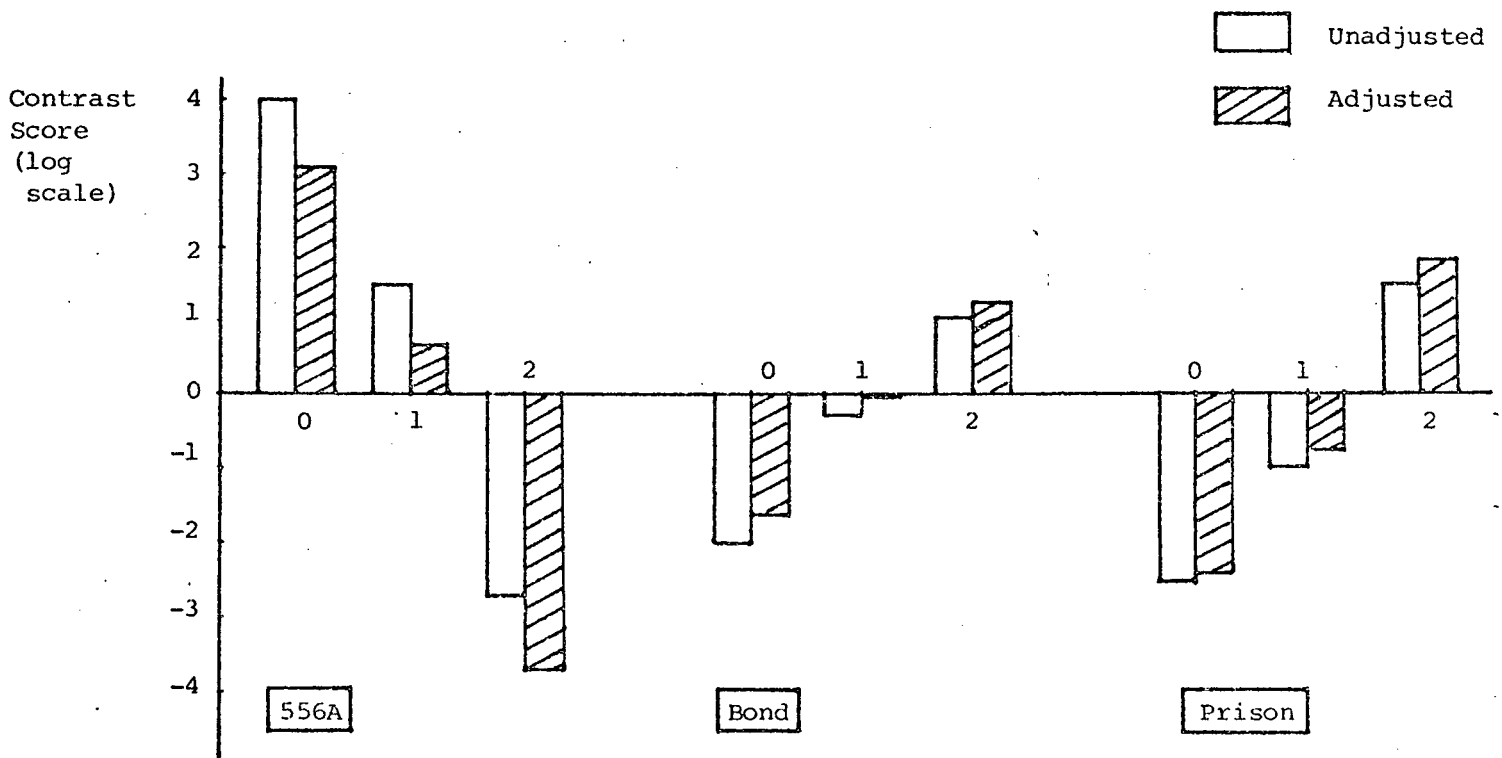
BAC - After adjustment for other factors, BAC remained unrelated to the probability of receiving a restricted licence and remained related to the chances of imprisonment. However, adjustment showed that BAC was related to the likelihood of a bond, and also showed that the chances of a 556A were more strongly related to BAC than appeared from the simple correlations. The adjusted and unadjusted contrast scores (in the log scale) are shown in Figure 5 for three representative BAC levels. Overall the linear model confirms that BAC is not a major determinant of the outcome, with the possible exception of a 556A. This finding is not consistent with the predictions of the consensus model.

Figure 5: Adjusted and Unadjusted Contrast Scores for BAC  
(Model C III)



Previous DUI Convictions - Adjustment for other factors did little to diminish the importance of this variable. Figure 6 shows that a 556A was a little less likely for a first offender than appeared from the simple correlations but that a bond was more likely for someone with previous convictions. Prison remained strongly correlated with previous convictions after adjustment. (The pattern for the group with 3 or more previous convictions was somewhat anomalous, being based on small numbers, and has therefore not been included in Figure 6).

Figure 6: Adjusted and Unadjusted Contrast Scores for Previous DUI Convictions  
(Model C III)

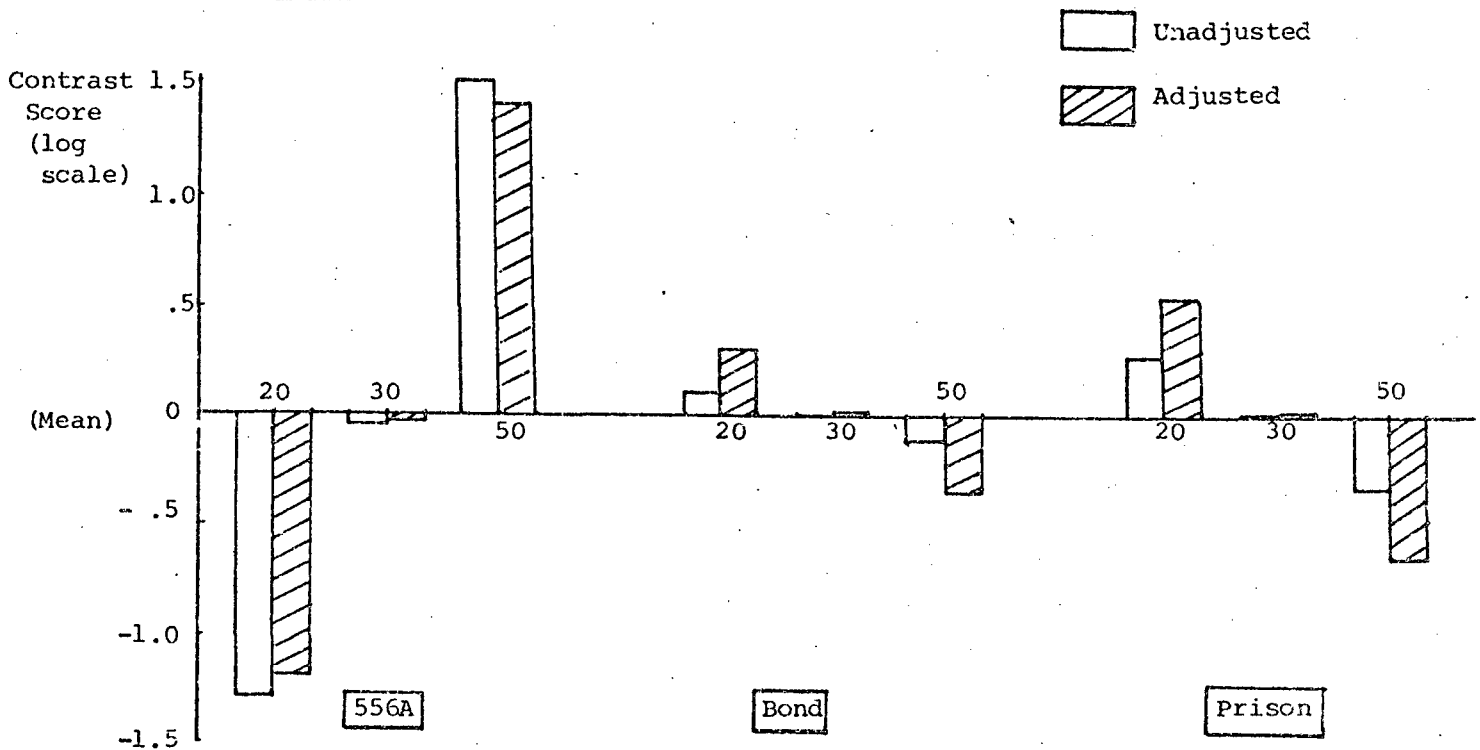


Previous Traffic Convictions - Adjustment for other factors diminished the importance of this factor slightly. Imprisonment and bonds were less strongly associated with repeated convictions, although the probability of a 556A remained strongly inversely correlated with number of previous convictions. As before the analysis suggested that the use of restricted licences increased with previous convictions ( $z = 4.34, p < .00001$ ), although only by a few percent in real terms.

#### Family B - Offender Characteristics

Age - Adjustment for other factors had the effect of clarifying the ways in which young offenders are dealt with more severely. As Figure 7 shows, older offenders were much more likely to receive a 556A (this pattern was almost unaffected by adjustment) and were markedly less likely to go to prison or receive a bond. The use of these latter two penalties for younger offenders is particularly clear after adjustment for other factors.

Figure 7: Adjusted and Unadjusted Contrast Scores for Age  
(Model C III)



Occupational Status - See Figures 8 - 10. Adjustment for other factors did little to dispel the impression that higher status offenders receive lighter penalties. Figure 8 shows that A status offenders and students were most likely to receive 556A's. In fact only four out of 70 students were granted a 556A, but three of the four were under 21 years of age. Among the 1203 offenders in the same age range who were not students, only two got a 556A ( $\chi^2 = 65.6, P = .000$ )! It would seem that students are a privileged group of young people. On the debit side, lower status offenders, pensioners and especially the unemployed were less likely to receive the benefits of Section 556A.

Figure 9 shows that restricted licences were granted primarily to those in the workforce, but again A status offenders headed the list.

Figures 8, 9 and 10: Adjusted and Unadjusted Contrast Scores for Occupation

Figure 8: 556A

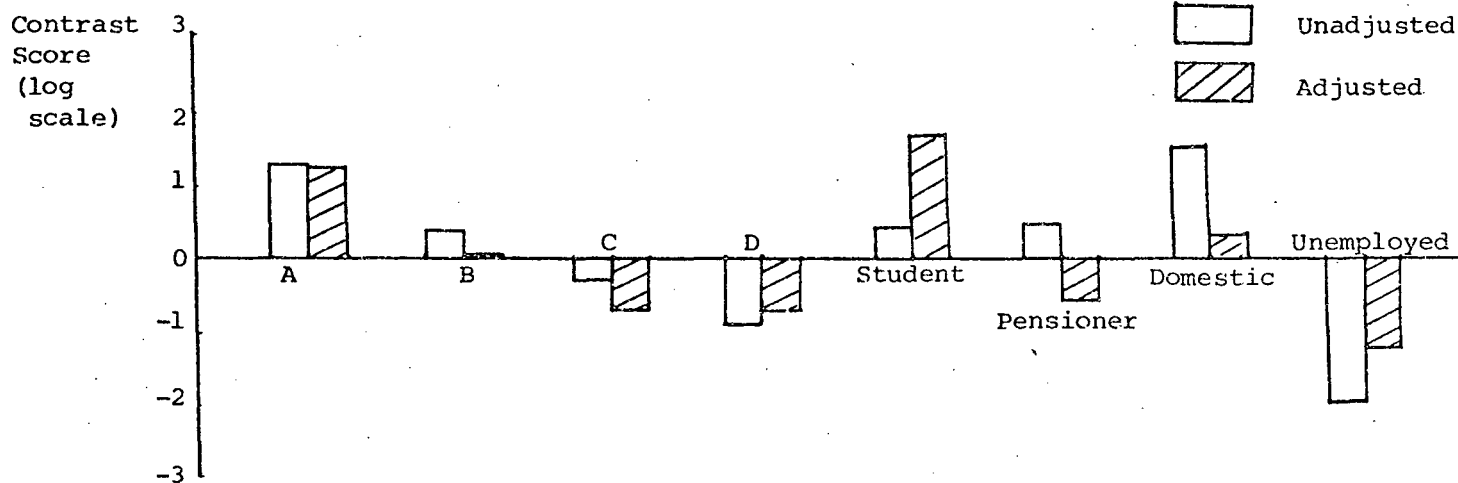


Figure 9: Restricted Licence

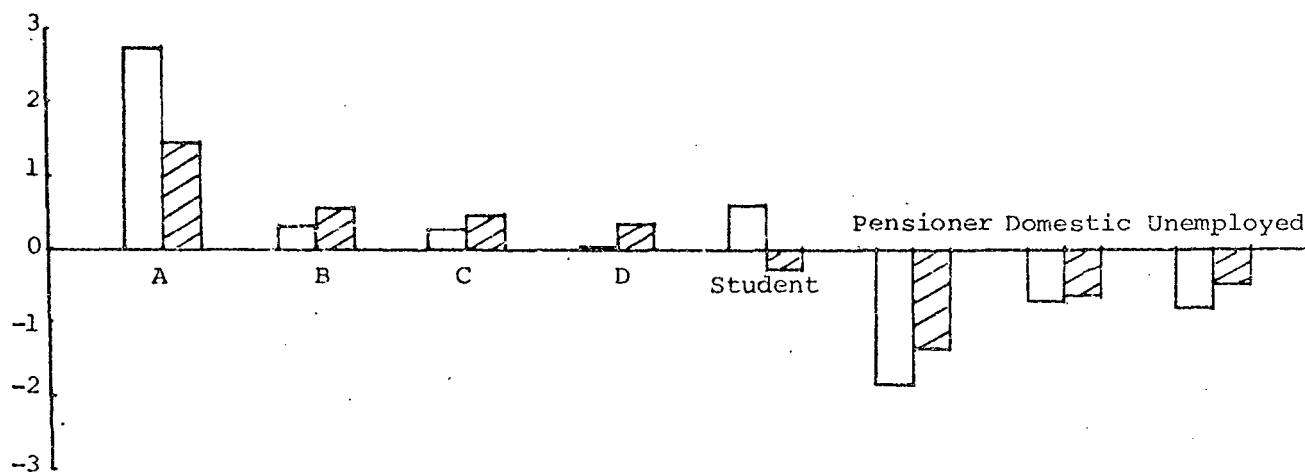


Figure 10: Prison

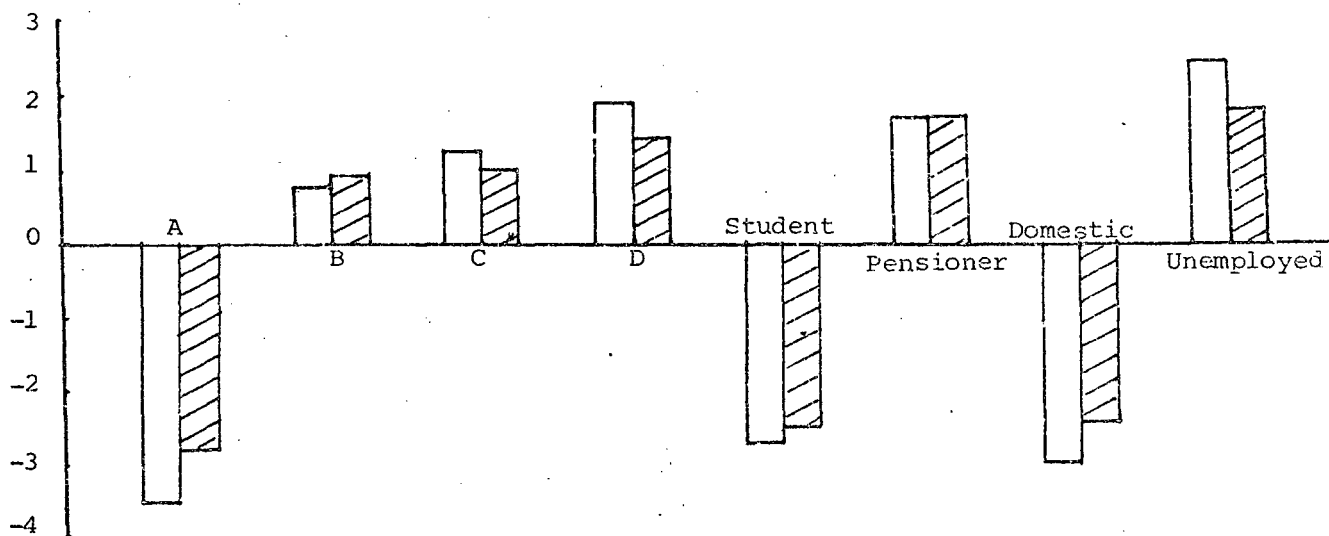


Figure 10 turns Figure 8 on its head. Those most at risk of imprisonment were the unskilled, the unemployed and pensioners, even if they had committed offences no more serious than their higher status colleagues. In fact the adjusted probabilities of imprisonment varied little from the unadjusted.

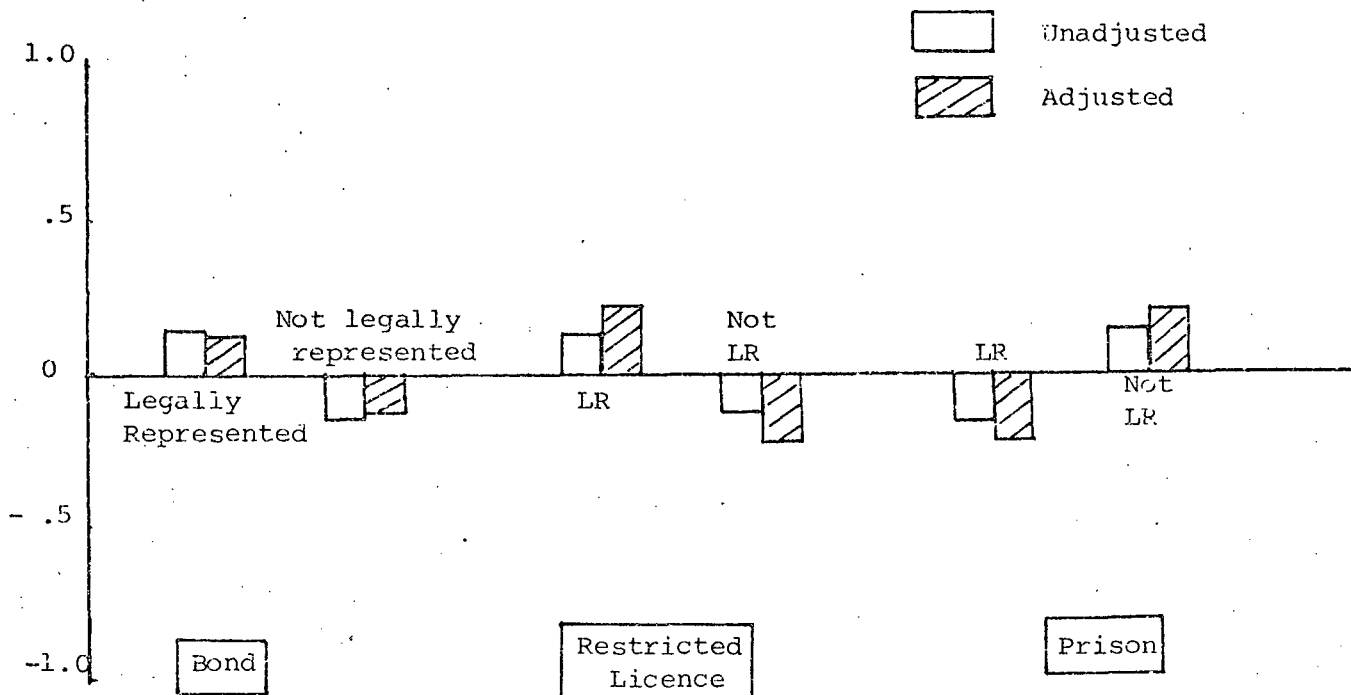
The analysis of occupational status provides strong evidence for conflict theory. A status offenders in particular seem almost certain to receive privileged treatment, while the unemployed appear to be punished for their status as much as for their offence.

Licence Status -- Detailed results are not reported here. Suffice it to say that driving experience exerts a strong effect on penalties independently of age, contrary to the speculations of Broom and Cushing (1980). For example, those first licenced before 1961 were much more likely to receive a 556A (even taking account of their greater age) and were much less likely to be imprisoned.

### Family C - Appearance Variables

Legal representation - Figure 11 shows that the advantage of legal representation with respect to imprisonment or the granting of a restricted licence is clarified after adjustment for other factors. Legal representation was not related to the chances of a 556A and only weakly to getting a bond (the represented were slightly more likely to get a bond, probably in lieu of imprisonment). The usefulness of being legally represented, at least for some classes of offenders, would seem to be demonstrated by this analysis.

Figure 11: Adjusted and Unadjusted Contrast Scores for Legal Representation



### Family D - Court Characteristics.

Severity of magistrate - This factor was related primarily to the likelihood of imprisonment, tougher magistrates being more likely to use prison as a penalty. (For an offender with one previous DUI conviction who was otherwise "average", the chances of prison varied from 8.2% for the toughest

magistrate to .4% for the most lenient).

Other aspects of the magistrate's sentencing style affected penalties in ways predictable from their nature (particularly in the use of restricted licences). The present analysis simply reinforces the importance of the individual magistrate in the determination of a penalty.

13.

In reviewing Model C III it is of interest to assess the relative contributions which different factors make to the two most extreme penalties: a 556A and imprisonment. A rank order for both penalties is presented in Table 7 (excluding non-significant factors).

Table 7 - Rank Ordering of Factors According to their Importance in Predicting 556A and Imprisonment

<u>556A</u>	<u>Imprisonment</u>
1. Previous DUI convictions	1. Occupational status
2. Previous traffic convictions	2. Previous DUI convictions
3. Licence status	3. Licence status
4. Occupational status	4. Severity of magistrate
5. Age	5. Previous traffic convictions
6. BAC	6. Age
	7. BAC
	8. Legal representation

The prominence of previous convictions as factors in the decision to grant a 556A is very reasonable, given that S.556A is commonly known as the "first offender's provision". The importance of number of years driving experience is also understandable, since this is obviously taken by the magistrate as an index of "good standing". However, the roles of occupational status and age are surely less defensible, although given the wording of S.556A it is

easy to see how older, higher status offenders gain an advantage. It is arguable that the very existence of a "penalty" like S.556A is the problem, since it invites the kinds of biases revealed in the present analysis.

The role of social class is even more marked in the decision to send someone to prison. The unskilled, pensioners and unemployed were at much greater risk of imprisonment than A status offenders, a finding which is difficult to understand except in the light of conflict theory. A further reason for disquiet is the role of the individual magistrate, a finding which appears to confirm the worst fears of critics of the courts. The presence of age and legal representation in the list merely underlines the urgency of the need to develop adequate (and fair) guidelines for the use of imprisonment in lower courts.

14.

Before leaving Model CIII, it is worth noting that although it was the simplest model fitted, the statistical evidence for its goodness of fit to the data was very strong. The residual deviance was not significant ( $\chi^2_{28548} = 8949, p > .99$ ) and  $R^2$  (calculated by correlating observed and predicted values) was .571. Even more impressive, in the other half of the sample the identical model had an  $R^2$  of .585, indicating no "overfit" to the initial sample. In other words, the model, simple as it is, has considerable utility as a predictive instrument.

#### 15. Further Tests of the Conflict Model (Models A and B)

Discussion of the more complex linear models must necessarily be more selective. We shall focus on Models A II and B II in order to complete the discussion of the conflict model, and then examine models A I and B I in order to demonstrate the ways in which magistrate sentencing style affects the role of other variables.

A number of factors emerged from Models A II and B II. Of major

importance were two interaction terms involving occupational status: age by occupational status and number of previous drink/drive convictions by occupational status. In both cases the portions of the models involving age, occupational status and previous drink/drive convictions accounted for about 40 percent of the total explanatory powers of the models, so the patterns discussed in the following paragraphs ... of considerable importance.

Model A II yielded four statistical significant discriminant functions for the age/previous DUI/occupation terms. Together these accounted for 98.2% of the variance, but the first factor alone explained 72.8% suggesting the existence of a basic penalty dimension. Figure 12 shows the discriminant function scores for the first two dimensions (which accounted for 83.6% of the variance). The first function has a straightforward interpretation as overall penalty severity: high scores correspond to jail, bonds, and heavy fines and long disqualification periods, while low scores correspond to low fines, short disqualification periods, or a 556A. The amount of fine was the only variable which loaded on the second dimension, except that the granting of restricted licence made a very small contribution. Thus high scores on the second dimension are due mainly to a heavy fine, and to a small extent to a restricted licence.

Model A II is more comprehensive than Model B II, since it is based on the full sample and incorporates all aspects of the penalty. However, Model B II has the advantage that it focusses in detail on the amount of fine and period of disqualification imposed, excluding 556A and prison cases (for which fines and disqualifications are atypical or not applicable). It is therefore useful to keep the results of both models in view when interpreting the effects of factors common to both. As in the case of Model A II, Model B II yielded a major penalty dimension which accounted for 78.3% of the variance. Once again it could be interpreted as an overall

penalty dimension, representing in this case a simple sum of fine and disqualification. The second dimension, which accounted for the remaining 21.7% of the variance, could be interpreted as a contrast between amount of fine and period of disqualification. Discriminant function scores are set out in Figure 13. To facilitate interpretation of Figure 13, the axes have been rotated to correspond to simple fine or disqualification dimensions.

FIGURE 12

Scores on first two discriminant functions for age, occupational status and previous DUI convictions  
interaction - Model A II

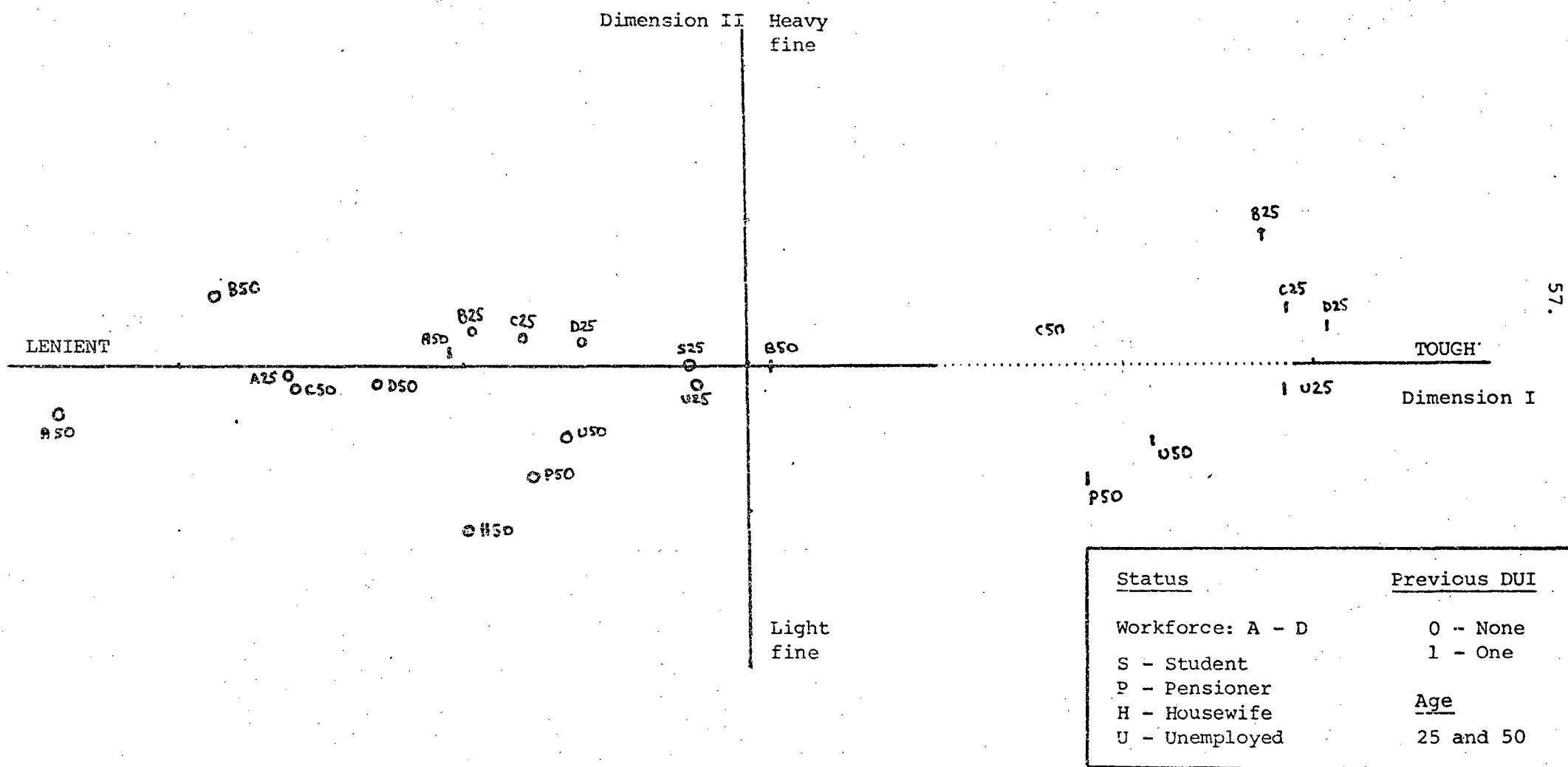
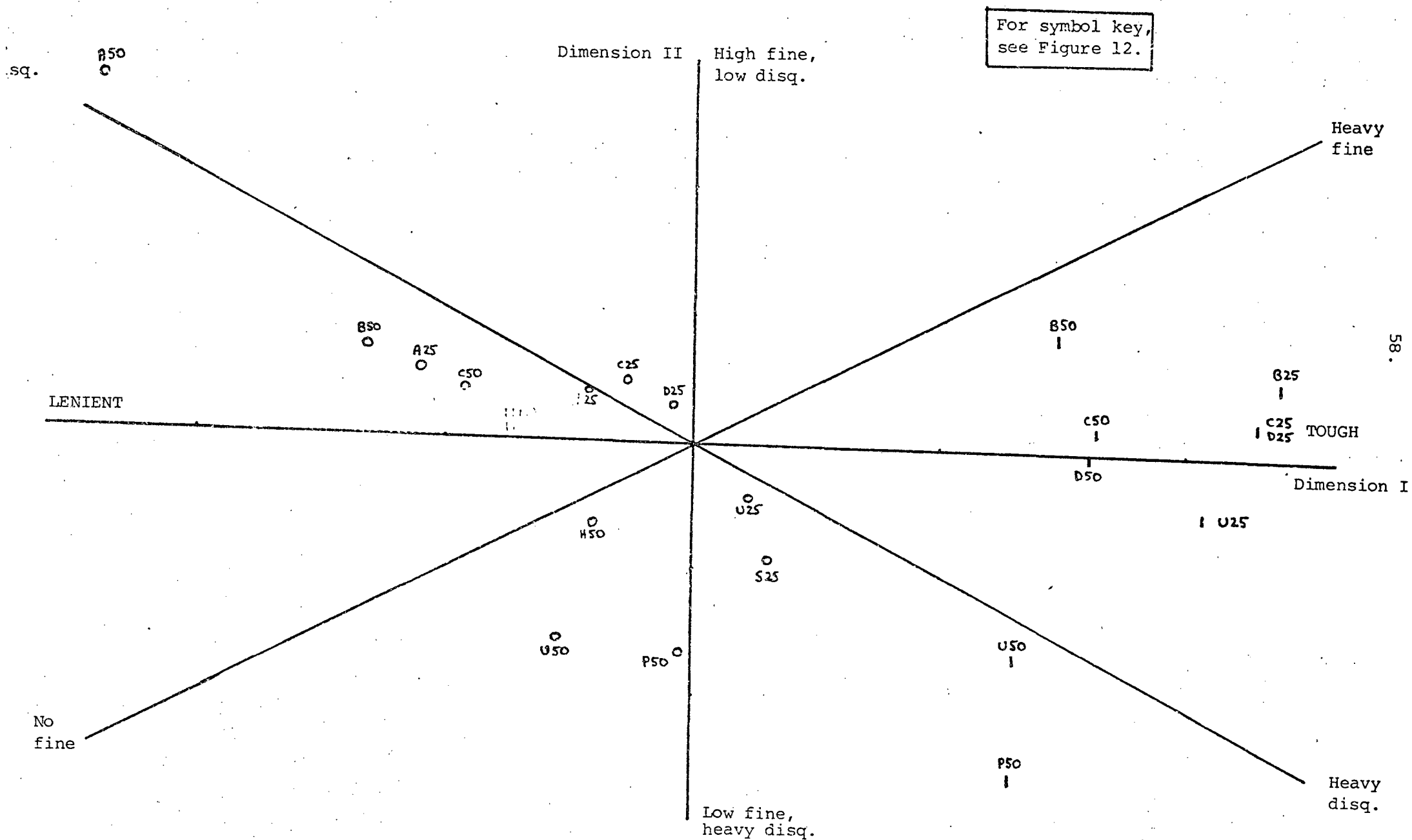


FIGURE 13. Discriminant function scores for age, occupational status and previous DUI convictions interaction - Model BII (fine and disqualification as dependent variables)



In both figures, data for all occupational status groups is shown, for first offenders and for those with one previous DUI, and for a 20 year old offender and a 50 year old offender. Age has actually been analysed as a numerical variable (see Figure 14) but results are too complex if all ages are shown simultaneously. Non-existent groups (such as recidivist housewives or 50 year old students) have naturally not been plotted.

16.

It is clear from both figures that a previous DUI conviction had a marked effect on the overall severity of the penalty. Even so, it is interesting to note that the penalty for older A status offenders with one previous DUI was less severe than for all but the A status younger offenders with no previous DUI convictions. It is necessary to exercise caution here, since there were relatively few A status offenders in the whole sample - nevertheless, it does seem significant that both A status offenders with a previous conviction received a 556A. Statistically we are on firmer ground with the older B status second offenders who, as Figure 12 shows, received penalties only a little more severe than 25 year old students or unemployed first offenders.

Generally the effect of a previous DUI conviction was to increase all aspects of the penalty in roughly equal proportions. Thus Figure 13 shows an increase in amount of fine and period of disqualification for all groups, except that recidivist pensioners tended to be disqualified longer rather than fined more heavily. This latter practice is presumably related to capacity to pay, although the same consideration was apparently not extended to the unemployed.

The difference between occupation groups was particularly marked for first offenders, with the toughest penalties (in decreasing order of severity) being imposed on groups not in the workforce, and then D, C, B and A status offenders. Those not in the workforce tended to get lower

finer but longer disqualification periods (Figure 13), evidence for the "compensation theory" of sentencing rejected by Hood (1972). Overall unemployed and student first offenders were dealt with more harshly (Figure 12). The result for the unemployed is consistent with the analyses reported in Figures 8, 9 and 10, but the finding of harsh penalties for students seems contrary to our earlier observation that they were relatively likely to receive a 556A and relatively unlikely to go to jail. However, what the present analysis adds is information about fines and disqualification and (taking other factors such as BAC and driving record into account) student first offenders not granted a 556A received disqualification periods twice as long as average for their age group. Housewives (who were generally older and without previous convictions) were treated most leniently among those not in the work force, but for reasons which are not immediately apparent were dealt with more severely than employed offenders (nearly all of whom were male).

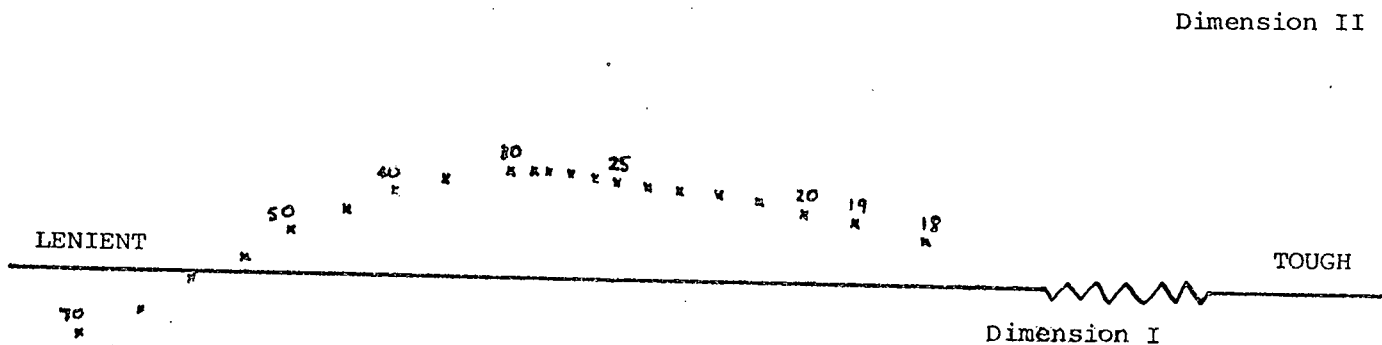
Variations in penalties between status groups was less marked for second offenders, except that as noted above A and B status offenders were dealt with much less severely than other groups. Once again, those not in the work force were fined less but penalized in other respects more severely.

It is very clear from both Figures 12 and 13 that older offenders were penalized less severely than younger offenders. Figure 12 shows that the higher the status of the offender, the more likely it was that the benefit was in terms of disqualification period rather than amount of fine. Thus 30 year old A status first offenders were fined almost the same amount as 25 year old A status first offenders but received markedly shorter disqualification periods, while the reverse was true for unemployed first offenders. Since it is generally true that offenders, (especially those in the work force) fear disqualification more than fines (Willetts, 1973)

it would appear that the benefit gained by older offenders is greater the higher their status - a reduction in fine to an A status offender is of less value, given that he is relatively well off, than a reduction in disqualification period.

Variation in penalties due to age is very marked, and cannot be appreciated fully from an examination of Figures 12 and 13. Figure 14 shows variation in penalties due to age for C status first offenders. This was a large group (2260 cases), allowing a detailed study of age effects, from 18 years through to 70 years of age. The axes in Figure 14 are the same as in Figure 13 - the major (horizontal) axis represents a general toughness/leniency dimension, and the second (vertical) axis represents mainly the amount of fine. It is clear that overall penalty severity steadily declines with age, and that in particular there is a tendency for lower fines to be imposed the older the offender, beyond the age of about 30. Before the age of 30 the reduction in penalty severity as age increases tends to take the form of shorter disqualification periods, probably reflecting the high premium placed on keeping young (and therefore crash prone) offenders off the road for a considerable period of time. The raw data bears out this contention - among C status first offenders, those under 20 years of age were disqualified for an average of nearly six months, 30 year old offenders for an average of only three months, and those over 50 years of age for two months.

FIGURE 14. Penalty variations by age for C status first offenders - Model A II



NOTE: This graph may be regarded as a detail from Figure 12, in a larger scale.

The general impression conveyed by Figures 12, 13 and 14 is that being older, of higher status and without previous DUI convictions is the best possible combination of attributes for securing a lenient penalty. Of course other factors (discussed below) are also important, but as we noted above, the three factors under discussion account for around 40% of the predictive power of the model. We have seen that the effect of any single attribute on penalty severity depends on the other two factors, so it is difficult to summarize briefly the relative importance of the variables. Looking at scores on the general penalty dimensions in Figure 13, having a previous conviction generally increased the penalty score by more than one unit. Neither age nor status had such a large effect, although the difference between A status and 50 year old unemployed first offenders was .9. The difference between younger and older offenders of the same status and with the same number of previous convictions was of

the order of .4 or .5.

17.

Before leaving Models A II and B II and the discussion of the evidence for conflict theory, let us consider the effect of legal representation on outcome. In fact Models A I and B I, discussed below, show that the effect of legal representation depends to some extent on the individual magistrate. This is not apparent in Models A II and B II, since the focus was on the role of occupational status rather than the magistrate's sentencing styles. However, Models A II and B II threw light on the effects of legal representation, averaged over all magistrates (the same is true for age, occupation and previous DUI convictions in para. 15 above).

We have already seen (Figure 11) that legal representation reduces the probability of imprisonment and increases the chances of a bond or a restricted licence. Models A II and B II confirm these findings while adding information about periods of disqualification and amounts of fines. However it should be stressed that as in Model C III legal representation was not a major factor in predicting the penalty. It contributed only about .5% to the total explanatory powers of Models A II and B II, compared with 40% for the age/occupation/previous DUI combinations discussed above. On the other hand, the impact of representation in real terms cannot be dismissed. Model A II showed that unrepresented offenders had periods of disqualification 50% longer than represented offenders, and fines 12% higher. These figures partly reflect the effects of representation on the chances of getting a 556A or going to prison, but even excluding these cases the disqualification periods for unrepresented offenders averaged 30% longer than for represented offenders (although the effect on amount of fine disappeared).

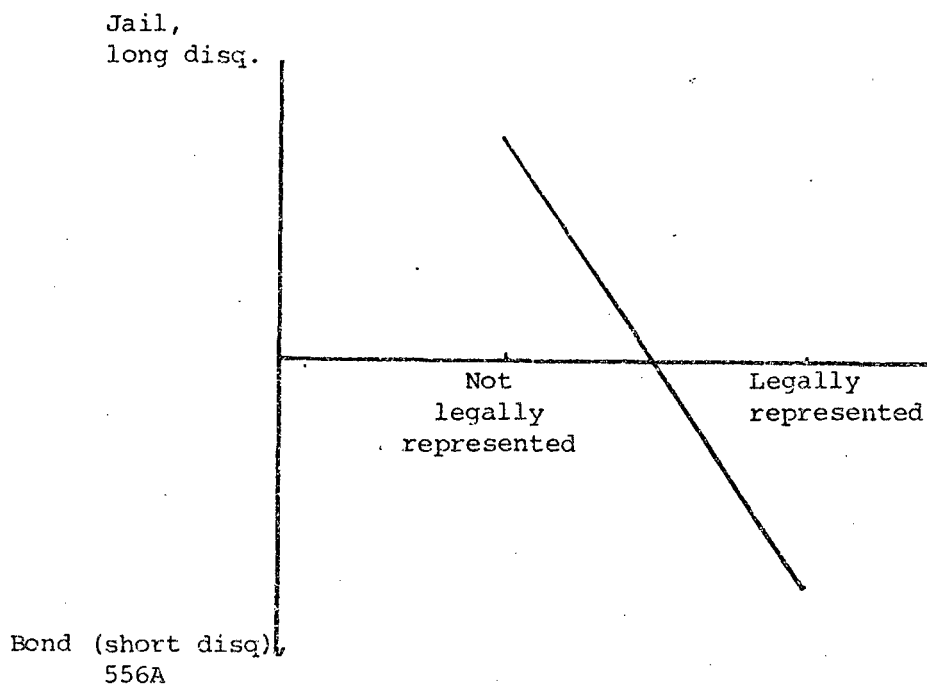
The best overview of the effects of legal representation can be obtained by examining the discriminant function from Model A II. Figure 15 sets out the interpretation of this dimension, and Figure 16 shows the mean

scores on the dimension for the represented and unrepresented groups. It is clear from Figure 15 that bonds with short disqualification periods and 556A's are distinguished sharply from long disqualification periods with or without imprisonment but without bonds. Consistent with the figures quoted above, disqualification period is the variable loading most heavily on the dimension, although the contribution of legal representation to the chances of imprisonment, 556A and bonds cannot be discounted. Figure 16 shows that the non-represented group achieved higher scores on the discriminant function, which means that they received longer disqualification periods, were more likely to go to jail, were less likely to get a bond (particularly with a short disqualification period) and were less likely to get a 556A (see para. 11 for descriptive statistics).

FIGURE 15. Interpretation of discriminant function for the effect of legal representation (Model A II)



FIGURE 16. Scores on discriminant function for the effect of legal representation (Model A II)



In summary, legal representation has a moderate but (from the offender's point of view) quite desirable effect on all aspects of the penalty except amount of fine. The effect on period of disqualification can be quite marked, and in addition Model C III (discussed earlier) demonstrated a positive effect on the chances of receiving a restricted licence (nearly doubling the probability). In fact the granting of a restricted licence is undoubtedly one of the reasons why represented offenders receive shorter disqualification periods, and probably reflects the ability of a lawyer to plead special circumstances.

#### 18. Magistrate Sentencing Style and the Influence of other Factors

It was noted in paras. 4 and 5, above that there is strong evidence for disparities in penalties imposed by different magistrates. The preliminary analysis yielded several dimensions, or measures of magistrates "sentencing styles", which were subsequently incorporated into the later analyses, particularly Models A I and B I. These two models allow the investigation of interactions between the magistrate dimensions and other offender/offence attributes; in other words, the possibility that sentencing style affects the penalty indirectly by influencing the way in which other factors (such as previous convictions) are viewed.

The existence of such indirect effects are confirmed, particularly by Model A I. Restricting attention to the two major magistrate dimensions (Figure 1), two interaction terms were revealed: previous DUI convictions by dimensions one and two, and age by dimensions one and two. This means that the effect of previous DUI convictions and the effect of age on the penalty depended on certain characteristics of the magistrate. We saw in para. 15 that there were interactions between age and previous DUI convictions and occupation, but the possibility of complex three-way interactions between age and previous DUI, magistrate and occupation could not be tested statistically, being beyond the storage capacity of the computer. Since occupation of offender and magistrates' sentencing

style are not correlated variables, the two sets of interactions involving age and previous DUI should be viewed as complementary rather than as alternative models. As with the occupation interactions, the interactions involving the first two dimensions of magistrates' sentencing styles accounted for a major portion of the total explanatory power of the model (about 50%).


Before presenting the results of the analysis, it is necessary to consider in more depth the nature of the magistrate sentencing style dimensions set out diagrammatically in Figure 1. As noted earlier, they distinguish magistrates in terms of their use of restricted licences and in terms of their use of low or heavy fines. These were seen as reflecting an individualized approach to sentencing on the one hand, and a simple punishment or tariff style on the other. However, this relatively subtle distinction should not obscure the fact that the first discriminant function is also, to some extent, a general "toughness" dimension. Low scores on this dimension correspond to low fines or short disqualification periods or a 556A, while higher scores are associated with bonds, heavy fines and long disqualification periods. However, imprisonment occupies a middling position on the scale, while very high scores correspond to restricted licences, so the function cannot be interpreted simply as a toughness dimension. Taking both discriminant functions together, it seems that "tough" magistrates can be divided into two groups: those who are prepared to individualize the penalty through the use of restricted licences while still imposing heavy fines and disqualification periods of at least a few months, and those who simply levy a tariff penalty of above average severity, imposing heavy fines and long periods of disqualification, possibly with bonds but probably not with imprisonment. At the other end of the scale the "no fine" group of magistrates (low on both dimensions) are not necessarily the most lenient since they may impose a bond with surety in lieu of a fine, although it is true they may also grant a 556A

or impose a relatively small fine. The "no restricted licence" group (low on dimension 1, high on dimension 2) are the most heterogeneous in terms of their preferred penalties and are characterized solely by their comparative reluctance to grant restricted licences.

In interpreting the interaction terms involving the first two sentencing style dimensions, it is theoretically necessary to take six discriminant functions into account since all were significant at probability levels less than one percent. Fortunately most of the variance was explained by the first few functions: root 1 represented 55.6% of the variance, root 2 represented 19.4% and root 3 represented 11.1%, making 86% of the variance explained by the first three dimensions. The first discriminant function can be interpreted as a general severity of penalty dimension, with high scores corresponding to jail, long disqualification periods, heavy fines and bonds and low scores corresponding to no bonds, short disqualification periods, low fines and 556A. The next two functions need to be interpreted jointly (see Figure 17 for a diagrammatic representation of the three dimensions scaled to reflect the varying amounts of variance each explains). Low scores on functions 2 and 3 indicate a 556A; high scores on function 2 and low scores on function 3 indicate a restricted licence; low scores on function 2 and high scores on function 3 indicate jail or perhaps a bond with a low fine; and high scores on both functions indicate long disqualification periods, heavy fines, or both, possibly with a bond. Group configurations in the three dimensional space defined by these dimensions are set out in Figures 18, 19 and 20. The groups plotted are the four sentencing style groups discussed above, broken down by age of offender (25 or 50 representing "young" and "old") and previous DUI convictions (none or one).

FIGURE 17.     Interpretation of discriminant functions for interactions  
between magistrate sentencing style (first two dimensions), age, and  
previous DUI convictions (Model A I)

Dimension I




A horizontal line with three tick marks. The first tick mark is labeled '556A' above it. The second tick mark is unlabeled. The third tick mark is labeled 'Jail' above it.

Short disq.  
low fines

long disq.  
or heavy fine

Bond with long disq.  
heavy fine

Dimension II




A horizontal line with three tick marks. The first tick mark is labeled '556A' above it. The second tick mark is unlabeled. The third tick mark is labeled 'Rest. licence' above it.

Jail

Bonds

Long disq. and/  
or heavy fine

Dimension III



A horizontal line with three tick marks. The first tick mark is labeled '556A' above it. The second tick mark is unlabeled. The third tick mark is unlabeled.

Rest.  
licence

Bonds or  
heavy fines/disq.

Jail

No fine and/or  
low disq.

FIGURE 18. Discriminant function scores on Dimensions I and II for age, previous DUI and magistrate groups (first two sentencing style dimensions) - Model A I

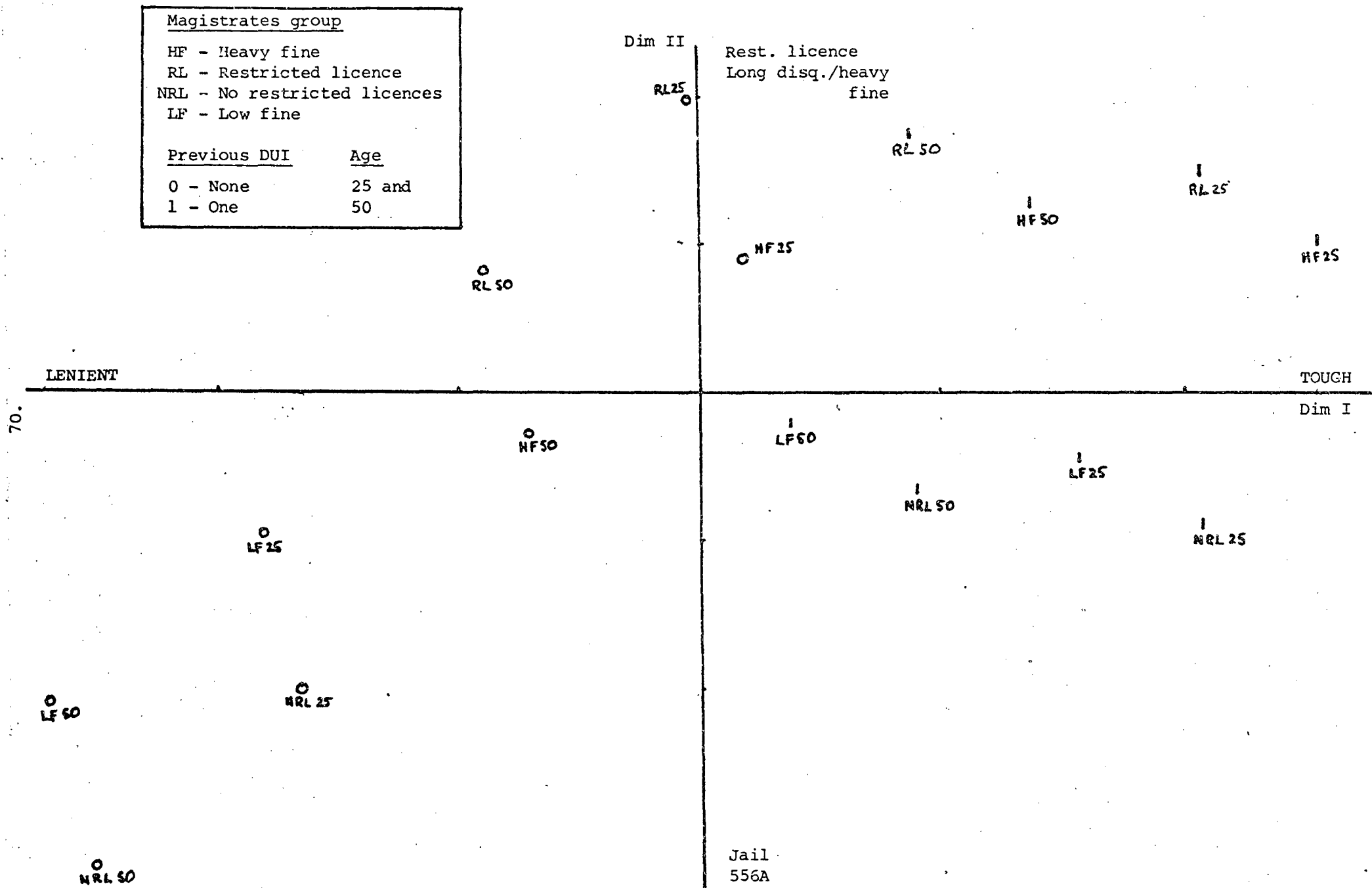


FIGURE 19. Discriminant function scores on Dimensions I and III for age, previous DUI and magistrate groups  
(First two sentencing style dimensions) - Model A I

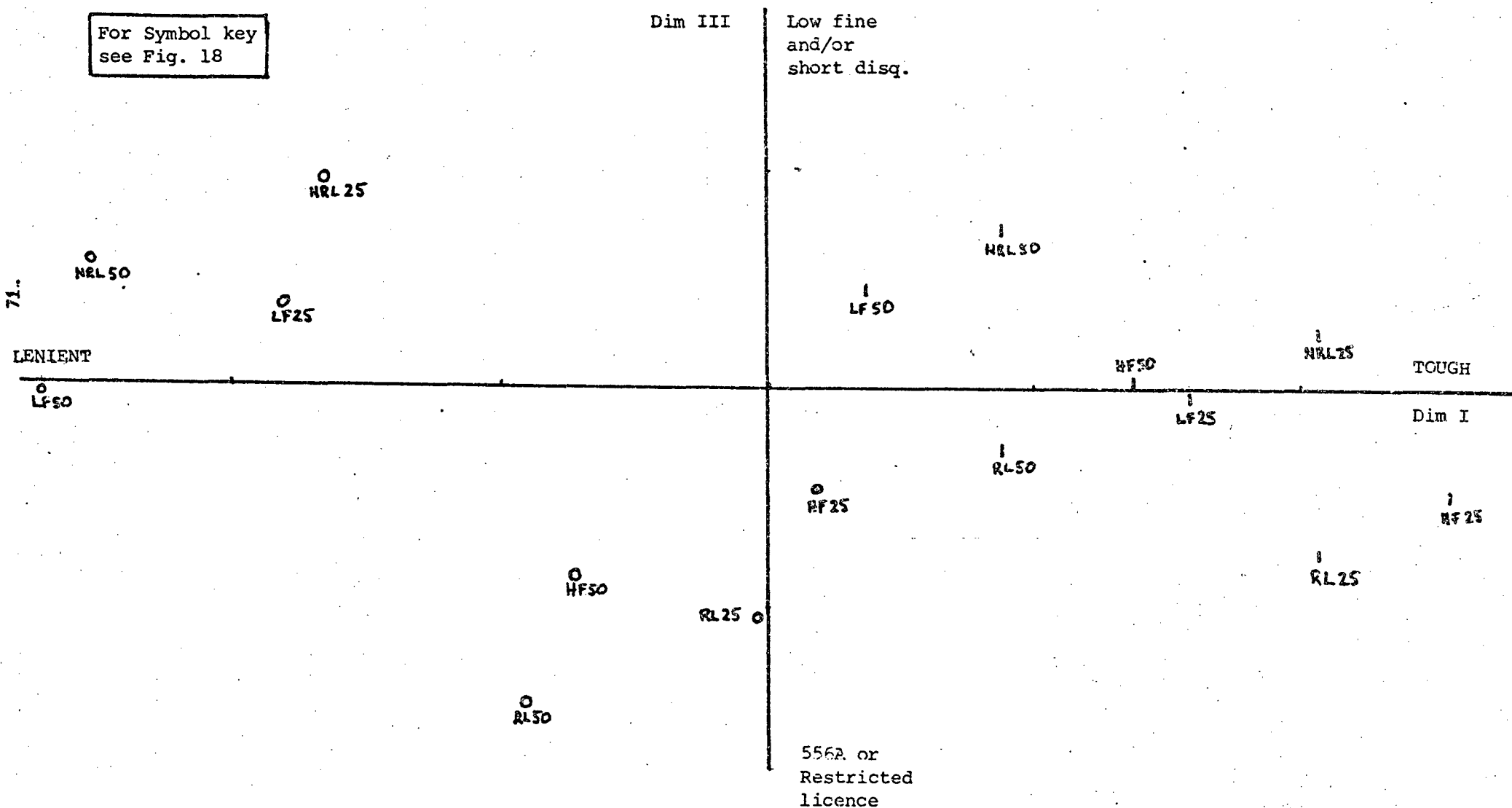
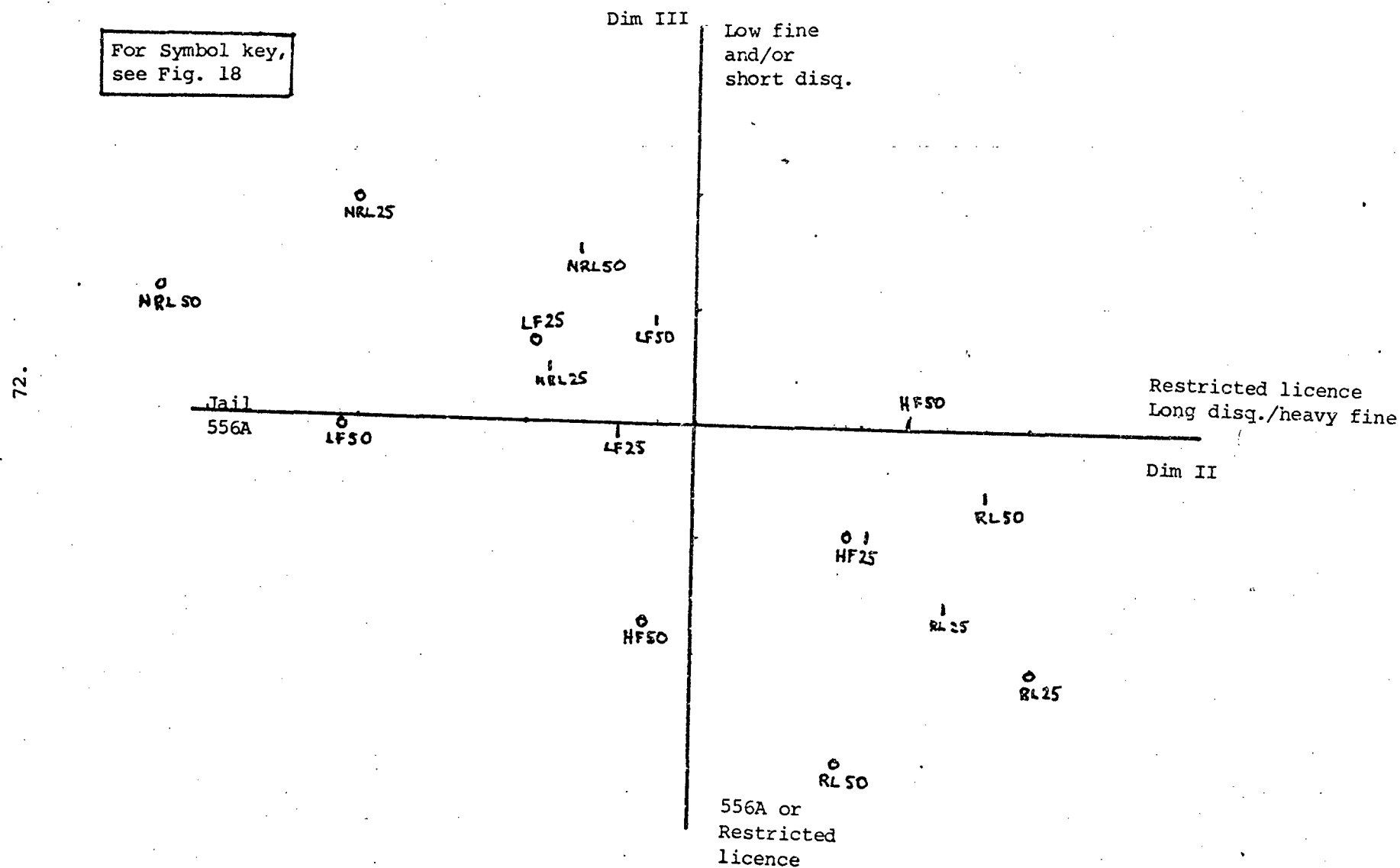


Figure 20. Discriminant function scores on Dimension II and III for age, previous DUI and magistrate groups

(First two sentencing style dimensions) - Model A I



The four sentencing style groups behave in the way we would expect. The RL (restricted licence) group are highest on dimension 2 and lowest on dimension 3 (Figure 20), indicating the higher probability of a restricted licence in this group. The HF (heavy fine) group are highest on dimension 1, the general toughness dimension, indicating the contribution of heavy fines to the penalty. Both the NRL (no restricted licence) and LF (low fine) groups are lower on this general toughness dimension, confirming that the first discriminant function derived from the magistrates' analysis may be viewed as a "toughness of magistrate" dimension. Among the "tough" magistrates, the RL group give restricted licences while the HF group tend toward bonds with short disqualification periods but heavy fines. Among the "lenient" magistrates, the NRL group tend also toward bonds with short disqualification periods, while the LF group (it seems) simply impose a light tariff style penalty consisting mainly of a small fine and disqualification.

Perhaps of more interest than the simple differences in penalties imposed by magistrates with differing styles are the various effects of sentencing style on the effects of other variables, particularly age and previous DUI convictions. Focussing first on previous DUI convictions, it seems that the difference between tough and lenient magistrates was greater for first offenders than for second offenders. Thus taking either age group, the difference on dimension 1 between the HF or RL groups' treatment of first and second offenders was less than the corresponding figure for the NRL or LF groups (Figure 18). In other words, lenient magistrates are particularly likely to exercise leniency with first offenders; there is relatively more consensus among magistrates on the general level of penalty severity for second offenders.

Looking further, to dimensions 2 and 3, it is necessary to consider young and old offenders separately. Among the older group of offenders, in all magistrate groups there was a movement to longer disqualification periods,

heavier fines and bonds for second offenders, but among the tough magistrates (RL and HF groups) there was also a movement toward the use of imprisonment (since among these groups the difference between first and second offenders was greater on dimension 3 than dimension 2). This again is consistent with our view of them as being generally tougher, and is supported by the raw data. Among the HF group 5.4% of second offenders were imprisoned, compared with 1.3% in the two lenient groups. The RL group was slightly above average at 1.9%.

Magistrate sentencing style also affected the response to previous DUI conviction among offenders in their mid-twenties, but in a different way from the older group. In the RL group there was a noticeable shift away from the use of restricted licences for second offenders, and in the HF group an increase in all types of penalties, including imprisonment.

In the two more lenient groups, all except imprisonment were used more frequently for second offenders.

So far in interpreting Figures 18, 19 and 20 we have focussed on the interaction between magistrate and the previous DUI convictions of the offender, regarding age as a moderating influence. One can reverse this perspective, and focus on the interactions between magistrate and offender's age. Among first offenders older offenders are lower on all three dimensions than those in their mid-twenties, which means that they receive more lenient penalties and 556A's in particular. Within magistrate groups: age differences on dimension 2 are less in the LF and NRL groups than in the two tougher magistrate groups, while the age difference in the HF group is nearly twice as great on dimension 3 as in other groups. Together these patterns suggest that the HF group are particularly likely to favour older offenders with 556A's, or perhaps are particularly unlikely to favour younger offenders in this way. In addition, among first offenders, the RL group tend to give restricted licences across all age groups (at least older than 25).

For second offenders, the following conclusions may be drawn:

the "tariff" groups (HF and LF) tend to restrict penalties for the older offenders to fines and disqualification, with the severity of both these penalties being lower than for young offenders. Of course the heavy fine (HF) group still tend to be tougher than the low fine (LF) group. In addition, offenders in their mid-twenties were at greater risk of receiving a bond without a fine from LF magistrates and imprisonment from the HF magistrates. By contrast with the "tariff" groups of magistrates, the RL and NRL groups reduced not only fines and disqualifications for older offenders but also the use of bonds, but did not vary the use of imprisonment or bonds requiring surety (i.e. bonds without fines).

Figures 18, 19 and 20 contrast two age groups only. As mentioned above, age was analysed as a numerical variable, and it is possible to plot the contribution of age to penalty for different magistrate groups, covering the range from 18 years to 70 years of age. There are too many such graphs to include all of them; by way of illustration Figure 21 shows the pattern on the first two dimensions for first offenders appearing before HF (heavy fine) magistrates.

FIGURE 21. Variations in penalties by age, for first offenders appearing before HF (heavy fine) magistrates

- Dimensions I and II only (Model A I)

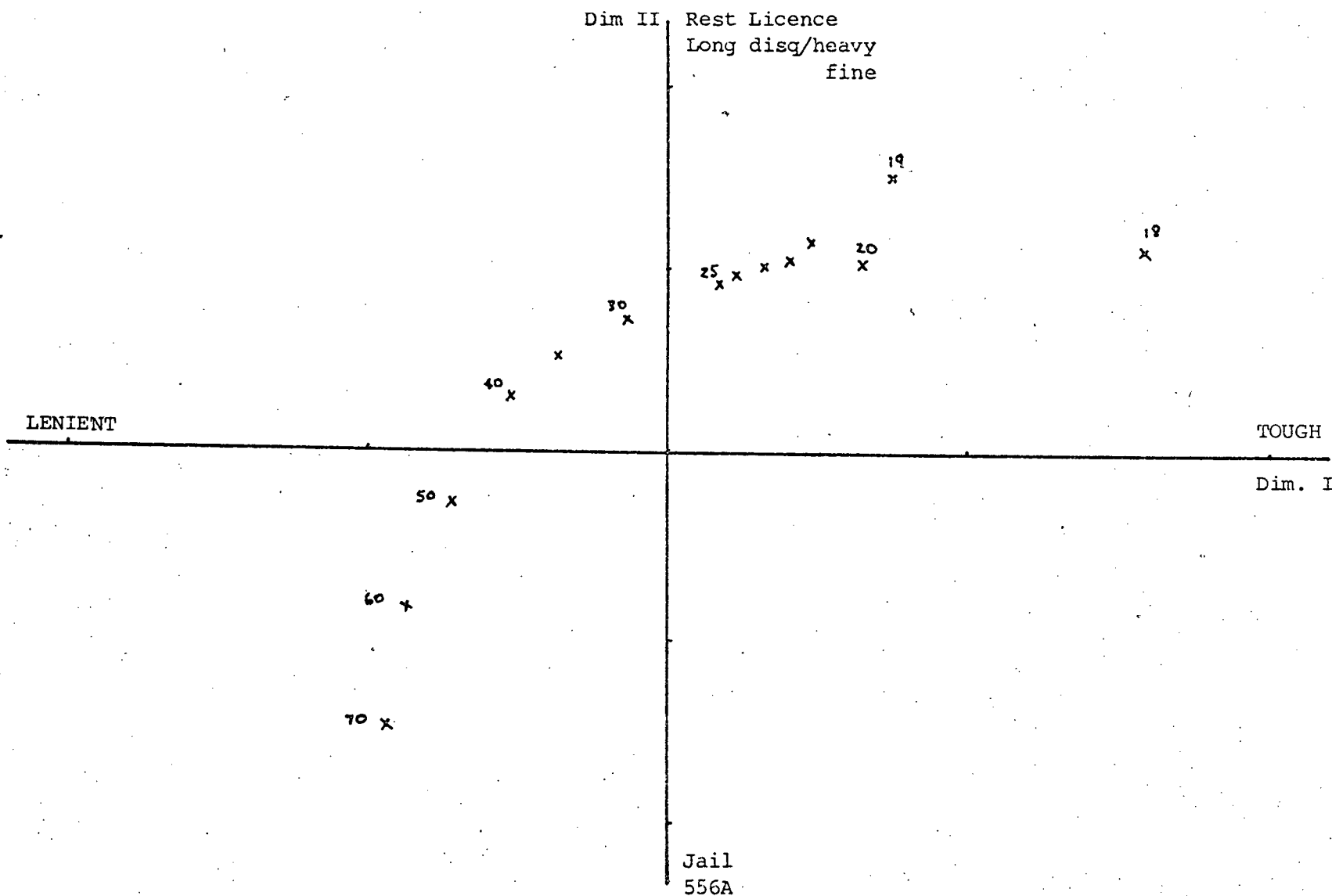


Figure 21 shows very clearly that among HF magistrates 18 and 19 year old first offenders, and particularly 18 year olds were singled out for special treatment. Much the same pattern was evident for the RL group, but not for the two more lenient groups of magistrates. Eighteen year old offenders represented 4.7% of the total sample, and 19 year olds 6.2%, so the particular treatment of these groups is quite important numerically. The interpretation seems quite clear: tough magistrates (HF and RL) impose particularly tough penalties on 18 year old first offenders, while the lenient magistrates do not single out this particular group. Again, there are quite important differences between the two tough groups, with the RL magistrate demonstrating their toughness by withholding restricted licences from 18 year olds, but less so from 19 year old offenders.

Restricting attention to second offenders, the two tough magistrate groups were once again obvious by their treatment of 19 and 20 year olds (there were very few 18 year old second offenders). In summary, the RL group showed no mercy to 19 year olds, imposing tough fines and long periods of disqualification, but increased the use of restricted licences and reduced the fines and disqualification periods as offenders got older. HF magistrates imposed bonds with heavy fines and disqualification on 19 year olds, but quickly reduced the use of bonds and general levels of fine and disqualification as offenders got older.

19.

The evidence marshalled in para. 18 above is sufficient to demonstrate beyond any reasonable doubt that not only does the penalty for a drink/drive offence depend on the sentencing style of the particular magistrate hearing the case, the impact of both legal and extra-legal factors (particularly previous convictions and age) on the penalty is dependent, to some extent, on sentencing style. Sentencing style, in the way it has been defined and measured in this analysis, seems to reflect not only a preference for certain kinds or levels of penalties but a way of organizing information

and assessing the characteristics of offenders. Among the more pronounced aspects of these differences was the treatment of first offenders and the treatment of 18 year olds in particular. Thus "lenient" magistrates were particularly so for first offenders; "tough" magistrates were particularly so on 18 year olds. Tough (heavy fine) magistrates made greater use of imprisonment for young offenders but were relatively quick to grant 556A's to offenders around the age of 50. Magistrates who used restricted licences frequently tended to use the withholding of a restricted licence as a way of increasing the severity of the penalty, and were particularly likely to do this for 18 year olds. The two lenient groups of magistrates tended to withhold the use of imprisonment, even for second offenders. Cutting across the notion of "tough" and "lenient" magistrates was the extent to which a magistrate used a tariff rather than an individualized (restricted licence) approach to sentencing, basing his penalty primarily on a "deserved" amount of fine and period of disqualification. The analysis in para. 18 suggests that this notion of a tariff approach may be more appropriate for older than for younger offenders, since it was in the older group that the tough and lenient tariff magistrates were most clearly distinguishable in terms of amount of fine and period of disqualification. Younger offenders tended to receive bonds and imprisonment in addition to tougher fines and disqualification periods, perhaps reducing the usefulness of the tariff idea as a basis for explanation unless bonds and imprisonment can be clearly "priced".

20.

The analysis reported in para 18 represents only one aspect of the interaction between magistrate sentencing style and other factors. Model B I, which paralleled Model A I but restricted the dependent variables to amount of fine and period of disqualification, also isolated several such interaction effects, and in addition Model A I involved several interaction effects not discussed above. All interactions arising from Models A I and

B I which involved magistrate sentencing style are summarized in Table 8.

Table 8. Interaction between magistrate sentencing style and offender/offence characteristics, derived from Models A I and B I.

<u>Sentencing Style Constructs</u>		<u>Offender/offence Characteristics</u>	<u>Model</u>
Fine/no fine - Rest.licence/no rest. licence (Figure 1)	X	Age Previous DUI	A I
Bond/no bond - Balance of fine & disq. (Figure 2)	X	Previous DUI	A I
Magistrate severity (Para. 4)	X	Previous DUI Legal representation Blood alcohol concentration	A I
Fine/no fine - Rest.licence/no rest. licence (Figure 1)	X	Blood alcohol concentration	B I
Bond/no bond - Balance of fine & disq. (Figure 2)	X	Previous DUI Blood alcohol concentration Age	B I

The analysis in para. 18 dealt with the first interaction term listed in table 8. Note that these various interactions cannot be interpreted in complete isolation from each other, since there are terms which overlap. For example, number of previous DUI convictions seems to have a pervasive influence - or perhaps more accurately, the way a magistrate weighs previous convictions in determining a penalty is dependent on all aspects of his particular sentencing style. Thus in order to come to a complete understanding of the role of previous convictions in determining the penalty, nearly all interaction terms need to be interpreted in the manner of para. 18. This detailed analysis is not undertaken in this short report. The only other interaction term which will be examined here is the one involving legal representation (see para. 21 below). However it is worth making two more general comments about Table 8 before leaving it. Firstly,

interactions involving the general magistrate severity dimension appear only in Model A I. This is understandable, since as the discussion in para. 4 emphasized, this severity dimension related particularly to the behaviour of one magistrate in the use of imprisonment, restricted licences and bonds - variables not included in Model B I. Secondly, the magistrate constructs involving the balance of amount of fine and period of disqualification are particularly prominent in Model B I.

Again this is understandable, given that Model B I focusses exclusively on those variables determining the amount of fine and period of licence disqualification.

#### 21. Magistrate Sentencing Style and Legal Representation

It will be recalled from para. 17 that legal representation had an impact on most aspects of the penalty, particularly the period of licence disqualification. Model A I yielded one additional piece of information of great importance: the effects of legal representation vary with the toughness or leniency of the magistrate. The measure of severity which emerged as important in this model was not that derived from the discriminant analysis (Figure 1) and discussed in para. 18, but the more general measure derived from the canonical correlation analysis reported in para. 4. As discussed in para. 5, this measure is not the most efficient way of discriminating between magistrates since factors such as the individualization of penalties through restricted licences and the preference for a tariff style penalty need to be taken into consideration. However, the canonical severity dimension does have the virtue of simplicity of interpretation and was successful in isolating one particularly tough magistrate. In any case, it was this dimension which proved important in understanding the impact of legal representation.

It can be seen from Table 8 that the severity construct interacted with three variables: previous DUI, legal representation and blood alcohol concentration. The set of interactions accounted for 3.3% of the variance,

rather more than the .5% of variance explained by legal representation on its own in Model A II. Four discriminant functions were significant at .01 or lower, but the first three accounted for 94.4% of the variance. Fortunately only one of these dimensions (the second, accounting for 35.5% of the variance) was relevant to the interpretation of the severity by representation interaction. Of course for a complete interpretation of all terms in the set (including magistrate severity) it is necessary to examine all three major dimensions, but this analysis is not reported here.

Dimension II was almost identical in form to the discriminant function, described in Figure 15, which captured the effects of legal representation in Model A II. Reference to Figure 15 is therefore sufficient to understand the present analysis, since the other two dimensions were not relevant to the effects of legal representation. The crucial point to note is that tough magistrates (on the simple severity scale) were much more affected by representation (or its absence) than lenient magistrates. Although in all cases the represented group was more likely to receive a 556A or bond with a short disqualification period and were less likely to get long disqualification periods or go to prison, this trend was more pronounced among offenders appearing before tough magistrates. Since disqualification period was the single penalty loading most heavily on dimension II (as in para. 17), we would expect that the differential effects of representation among magistrate groups would be most apparent for period of disqualification. This is in fact the case in Table 9, which presents descriptive statistics for magistrate and representation groups.

Table 9. Penalties by legal representation and severity of magistrate.

	<u>High severity</u>		<u>Medium severity</u>		<u>Low severity</u>	
	<u>Legally represented</u>	<u>Not legally represented</u>	<u>Legally represented</u>	<u>Not legally represented</u>	<u>Legally represented</u>	<u>Not legally represented</u>
Mean disq. (months)	10.0	12.0	8.4	9.3	7.3	7.3
Mean fine (\$)	199	194	177	157	157	143
<u>First offenders:</u>						
% 556A	9.9	5.3	12.5	7.5	13.7	8.0
% rest.licences	18.9	11.9	13.8	6.3	5.1	3.4
<u>Second offenders:</u>						
% bonds	16.2	12.0	14.4	7.1	7.4	11.8
% rest.licences	8.7	5.2	14.4	5.7	10.3	3.4
% prison	3.0	6.3	0.6	4.3	1.4	2.5
Total	1476	2560	1489	858	1649	716

As expected, penalty severity generally declined with magistrate severity, and in nearly all cases the represented group received lighter penalties. In addition, in nearly all instances the low severity group exhibited the smallest difference between the represented and unrepresented offenders. There was no difference at all in mean disqualification periods, compared with a month for medium severity magistrates and two months for the toughest magistrates. As predicted by the discriminant analysis, legal representation had no impact on fines for any group. The pattern for other penalties was rather mixed, but generally the differences were smallest within the lenient group, with the exception of 556A's (representation had a uniform effect across magistrate groups) and restricted licences for second offenders.

The appropriate conclusion from all analyses, with respect to legal representation, would seem to be that the cost involved in retaining a solicitor is worthwhile not in direct financial terms but in terms of other components of the penalty, particularly if one's offence is sufficiently serious to make imprisonment a possibility. Moreover, if one has an occupational need for a car, hiring a lawyer

definitely seems worthwhile especially if the magistrate is not at the most lenient end of the spectrum. On the other hand, it is only possible through representation to reduce marginally one's losses if appearing before a tough magistrate; a better general policy would be to commit one's offence in an area under the jurisdiction of a lenient magistrate, in which case it may be worth the risk of representing oneself.

#### CHAPTER 4. DISCUSSION AND IMPLICATIONS

##### 1. Summary of Results

Before considering some implications of the statistical analysis it may be useful to summarize the major findings. Firstly, there were variations in penalties from court to court which were not explicable in terms of variations in offender/offence characteristics. The evidence therefore points to the existence of disparities between magistrates, or what Gottfredson et al (1978) refer to as "unwarranted sentencing variation". Moreover, it has proved possible to identify the major dimensions of sentencing variation. Although it is possible to classify magistrates according to their general degree of toughness or leniency (the canonical correlation analysis), a more efficient (or discriminating) classification involves, in addition, the notions of individualization of penalty through the use of restricted licences and the notion of a tariff approach which attempts to scale the punishment (particularly the fine) to the perceived seriousness of the crime. In more concrete terms, the aspects of the penalty which most clearly distinguished magistrates were the level at which they set fines, the use of restricted licences, the use of bonds and the relative balance of fine and disqualification period.

Secondly, extra-legal factors, particularly age and occupational status, exerted an influence on the penalty over and above the contribution of factors such as previous convictions and BAC. Age effects were not a simple reflection of driving experience, and the very young (18 and 19 year old offenders) received particularly severe penalties. The youngest offenders were at greater risk of going to prison or receiving a bond, were much less likely to get a 556A, and also received longer disqualification periods and

heavier fines. Offenders not in the workforce, particularly the unemployed and those classified as pensioners, were penalized more severely than those in the workforce, while the occupational status of the employed was negatively related to penalty severity. The small number of A status (professional) offenders received particularly light penalties.

Of course legal factors exerted a strong influence on the penalty, and in fact interacted with the extra-legal factors. Previous DUI convictions emerged as the single most important determinant of penalty severity (followed closely by the magistrate) but the effect of previous convictions varied to some extent with the age and occupational status of the offender. Thus, for example, variations in penalties between status groups was less marked for second offenders than for first offenders. Surprisingly, BAC exerted a relatively minor influence on the penalty, despite the fact that it is widely regarded as an objective indicator of offence seriousness.

Legal representation emerged as a minor but significant factor in the determination of most aspects of the penalty. Representation was a "significant" factor both in the statistical sense and in the sense that it made a real difference to the penalty received. For example, unrepresented offenders received disqualification periods up to 50% longer than those imposed on represented offenders. However, there was an important interaction between representation and magistrate, with tough magistrates apparently being more influenced by a solicitor than lenient magistrates.

The representation/magistrate interaction illustrates perhaps the most theoretically interesting finding of the analysis: that magistrate sentencing style has an influence not only in its own right but also an influence on how other factors, particularly previous DUI convictions, are perceived and weighted in the determination of a penalty. Thus, for example, there was a bigger difference between lenient and tough magistrates for first offenders than for second offenders. As a second example, tough magistrates

were particularly harsh on 18 year old offenders, while among lenient magistrates there was little difference in their treatment of offenders in the 18-22 year old age range.

## 2. Principles of Sentencing

If we accept that the patterns described above reflect a conscious (if not entirely rational or consistent) intention on the part of magistrates to relate the penalty to aspects of the offender and his offence, then it would seem sensible to review briefly those principles, enshrined in previous judgements, which are supposed to guide the sentencer in his decision making task. Following Potas (1979), we may make the following statements (which are a selection and paraphrase from a larger list of principles abstracted from a number of recent decisions):

- \* One of the main aims of punishment is the protection of the community.
- \* The several purposes of punishment, including deterrence, retribution and rehabilitation are means employed for the attainment of the protection of the community.
- \* Punishment must not only fit the crime, but also the offender.
- \* The sentence should be a sufficient deterrent both to the offender and to others (specific and general deterrence).
- \* The sentence should be commensurate with the seriousness of the crime.
- \* By virtue of the principles of justice and humanity, sentences should examine the offender's background, estimate his probable future life and conduct and other effects of sentence on these. (However, this enquiry is subsidiary to the determination of the appropriate amount of punishment.)

Emphasizing this last point we may quote Potas (1979, p.81):

"To impose a sentence in excess of that which is commensurate with the gravity of the offence even though it may serve the object of protecting the community is both cruel and tyrannical."

### 3. Assessment of Consensus and Conflict Theories

The emphasis on protecting the community through punishment is clearly close to the consensus model outlined in Chapter 1. According to the consensus model, punishment should be geared to the legally defined seriousness of the offence, the number and seriousness of the offender's previous convictions, and to the harm or potential harm to the community caused by the offender in the commission of the offence. The consensus model receives mixed support from the analysis. In common consciousness (and in some legislation, such as the Victorian) the BAC is a yardstick of offence seriousness, yet on the whole magistrates in this state apparently do not attach a great deal of weight to this factor. This is really quite surprising, in view of the well known correlation between BAC and crash probability (see for example the House of Representatives Standing Committee on Road Safety, 1980), and suggests that some magistrates may be working with a different concept of "harm to the community".

The importance of previous DUI convictions is consistent with the predictions of the consensus model. Previous convictions are probably regarded as a measure of blameworthiness and are also probably taken as an index of future behaviour. It is interesting to note that only previous drink/drive or traffic offences are regarded as relevant - criminal history failed to emerge as a significant predictor of penalties when other factors were taken into account. This supports the argument presented in Chapter 1 that drinking and driving is not perceived as a crime, and that "blameworthiness" is seen in the context of delinquent driving rather than in the more general context of law breaking and criminal behaviour. If this interpretation is correct, it may explain other puzzling features of the sentencing patterns (see below).

### 4.

The strong version of conflict theory (outlined in Chapter 1) is supported by the analysis. In other words, there is evidence for the role of extra-

legal factors, over and above the contribution of legal (consensus theory) factors. Social class effects seem particularly strong, whether one defines class in terms of an ordinal ranking of statuses, as a dichotomy of unskilled versus the rest, or as a more complex set of categories including those not in the workforce. The predictions of Chambliss (1969) and of Chambliss and Seidman (1971) are correct, in the context of the present analysis. However their explanation, based on the idea of bureaucratization, seems less likely than an explanation based on the principles of sentencing listed in para. 2 above.

It is an accepted principle that sentences should (or may) be individualized to fit the offender. This may be for reasons of "justice and humanity", so that the penalty imposed is less severe than the seriousness of the offence would warrant. An example of this practice could be the granting of a restricted licence to ease the hardship which could flow from the loss of job entailed in loss of driver's licence. Another reason for individualizing the penalty could be the calculated risk of re-offending. Offenders judged to be "high risks" may be penalized more severely in order to deter them from future crime. A further basis for individualized penalties could be the perceived need to protect the community. For example, licence disqualification or imprisonment might be imposed on an offender who, because of his dependence on alcohol or anti-social attitudes, is considered to be too dangerous to let loose on the roads, at least for a period. The key idea here would be incapacitation rather than deterrence.

Once the idea of individualization is accepted, it is easy to see how social class could become an important factor in determining a penalty. At the simplest level, those least able to pay a fine (those not in the workforce) would be expected to be fined less heavily than employed offenders, on the grounds of humanity. This was exactly what was found.

However, a number of the non-workforce groups were penalized more heavily in other ways (particularly through imprisonment and licence disqualification), so that the overall severity of the penalties they received was very high. To understand this we need to look at some of the other grounds for individualization, as well as the particular characteristics of the non-workforce groups.

It is likely that the pensioner group was largely alcohol dependent and unable to work, since only a minority were past the age of retirement. It is also likely (Homel 1980) that they exhibited a variety of social and personal problems which caused the magistrate to see them as a "high risk". Similarly, many of the unemployed could have been seen as alcohol dependent, and in any case may not have been able to demonstrate the "ties with the community" which would have allowed the magistrate to see them as deserving a second chance (Cloyd, 1977). Housewives are another special group. There is evidence that most women offenders are screened out at the stage of apprehension (Homel, 1980), so that those passing through to the stage of sentence are likely to be seen as particularly troublesome, or as chronic alcoholics behaving in a manner not at all appropriate to a lady. Significantly most of these women were older, supporting the idea of a chronic drinking problem developed over a number of years. With respect to these three non-workforce groups, it is useful to recall Gusfield's (1976) comments on the consequences of redefining the problem of drinking and driving within a psychiatric framework (see Chapter 1). The problem is shifted to people who are 'sick' and quite likely morally suspect anyway, and so the legitimacy of the social hierarchy is reinforced. It is also worth recalling that in a study of ACT drink/drivers, Broom and Cushing (1980) found an "alcohol dependent" group who were fined much more heavily than other groups.

The final non-workforce group - students - is in a rather different category.

The analysis suggested two distinct subgroups: a small number, probably from a "good" social background, who received 556A's, and the remainder who received longer disqualification periods than average for their age group. The explanations for the heavier penalties would seem to lie in the image of students as rebellious and irresponsible, reinforcing the magistrate's belief that as young offenders they should be kept off the roads for the sake of the community.

Some of the arguments presented above are speculative. However, some such set of processes must be operating to explain the observed penalties. Perhaps the key point to note is that these groups are seen as a danger, or potential danger, to the community and are therefore deserving of heavier penalties. This logic behind this practice is examined in more detail below.

The notion of "previous character and conduct" is undoubtedly crucial in explaining the light penalties imposed on high status (particularly A status) offenders. Section 556A of the Crimes Act, described in Chapter 1, makes these considerations explicit. Who is more deserving of humane treatment than a man who has demonstrated through his past record, profession and community activities that he is (apart from the aberration which brought him before the court) respectable and responsible and moreover unlikely to offend again? In addition, as suggested in Chapter 1, the magistrate is more likely to feel closer socially to the white collar offender, sharing with him values and modes of communication. Although not explicitly analysed in the present study the dress, demeanour and attitude of the white collar offender undoubtedly help to create the image of deference to the court and contrition for the offence which could incline the magistrate toward leniency.

In summary, we are compelled to reject Braithwaite's (1979) conclusion that "the tide of evidence is turning against the assumption that there is all-pervasive bias against the lower-class offender in the criminal-justice

system" (p.43). The evidence marshalled in the present study supports the existence of such an all-pervasive bias, at least in the sentencing of drink/drivers in New South Wales. Conflict theory must be seen alongside consensus theory as having an important role to play in explaining the sentencing process.

#### 5. The Role of Legal Representation

The analysis demonstrated the importance of legal representation to the outcome, even when other factors were taken into account. No study is final, and there is no doubt that other variables could have been incorporated into the analysis. However, the case in favour of legal representation must now be seen as very strong, contrary to the conclusions of the La Trobe (1980) study. The conclusions of the early study by Vinson and Homel (1973) have been confirmed, at least for the major offence of drinking and driving, and in fact the sizes of the effects found for the 1976 data were comparable with those indicated (for drink/drivers) in the analysis of the 1972 data.

Surely the immediate response to this analysis must be to redouble efforts to ensure that all defendants at magistrates' courts have the opportunity for legal representation, either through a private solicitor or through legal aid (the Public Solicitor in NSW). As noted in Chapter 1, there was a steady increase in the percentage of drink/drivers legally represented in NSW even before the expansion of Public Solicitor work in 1976. In the present study, based on 1976 data, 64% of offenders were represented, mainly by private solicitors. The current rate of representation is around 80% for drink/drivers and around two thirds for all magistrates' courts defendants in NSW. The NSW Law Foundation is currently completing an evaluation of the effects of legal representation (public and private) for eight offence groups. Without anticipating the results of this study, we may assert that it is in the best interests of all drink/drivers (with

the possible exception of those appearing before the most lenient magistrates) to be represented in court by a solicitor. A similar statement can probably be made for other classes of offenders. It therefore becomes an urgent research question to determine why 20% of drink/drivers (and a third of all defendants) are still not represented.

As Carlin and Howard (1969) point out, there are a number of reasons why people may not seek legal representation. Apart from the basic conditions of being aware of a legal problem and willingness to take legal action (conditions where are forced on the drink/driver when he is arrested), an offender must also have access to a lawyer and believe it possible to obtain his services. The existence of legal aid in all states has greatly eased this problem for the poorest and most unsophisticated groups, but there does seem to be an element of uncertainty concerning the role of the Public Solicitor in NSW in representing drink/drivers. The Public Solicitor is supposed to be restricted to criminal matters, but as we saw in Chapter 1 there is fundamental uncertainty as to whether drinking and driving is really a crime. As a consequence, motoring offenders are only supposed to be given legal aid if there is the possibility of imprisonment or loss of licence. Despite the fact that these conditions would seem to be met for drinking and driving, it remains a grey area. Clarification of guidelines would seem to be a high priority.

It is likely of course that some offenders choose not to be represented, calculating that the possible benefit will be outweighed by the certain cost. As we have seen, in some cases this is probably the most rational course of action. There is, as Blumberg (1969) points out, the need for more systematic data on the function of defence counsel, and in a sense some sort of advertising of the services which can be performed by a legal representative in drink/drive cases. The aim should be to ensure that all defendants are able to make a rational and informed decision regarding the costs and benefits of legal representation.

## 6. Young Offenders

In addition to social class and legal representation, the age of the offender emerged as an "extra-legal" factor strongly related to outcome. In fact age effects pervaded all aspects of the analysis, and often exceeded in magnitude the effects of occupation and of legal representation. It is important to note that contrary to the speculations of Broom and Cushing (1980), age effects existed over and above the effects of driving record. The two factors were correlated but made separate contributions to the penalty.

It seems that the explanation for the strong age effects lies in the way in which drinking and driving is perceived. We saw in para. 3 above that there is a certain amount of "tunnel vision" in the way in which the drinking driver is regarded, since his criminal record is generally ignored. As part of the same process, great attention is focussed on those aspects of the offender and his offence which are seen as relating to driving behaviour. It is not difficult to see why the age of the offender is accorded so much weight, given the strong emphasis on deterrence and protection of the community in sentencing philosophy and given the stereotype of the young driver as "the most skilled but also the most killed". Personal experience on the roads, together with countless statistics and expert reports, would reinforce in the magistrate's mind the need to protect the community from reckless, dangerous and irresponsible young drivers. The need for such protection appears to be a particularly high priority for the tough magistrates identified in the analysis. It is of great importance that the NSW Law Foundation study referred to above confirmed the existence of age effects for drinking and driving but for no other offence (Cashman, Homel and Sowerbutts, in preparation). This finding strongly supports the thesis that drinking and driving is perceived as a motoring offence rather than as a crime and that this has profound consequences for the sentencing process.

Perhaps the most crucial question is whether the policy of penalizing

young offenders more severely is justified. Does it in fact achieve the objectives of protecting the community? There are three separate issues here: specific deterrence, general deterrence and incapacitation. Taking specific deterrence first, it is possible, on the basis of extensive research undertaken by the present author (Homel, 1980, 1981 (b)) to state quite categorically that tougher penalties do not deter offenders from repeating the offence of drinking and driving. There is some evidence that heavy fines have a deterrent effect on a small group of drive disqualified offenders and that long disqualification periods discourage "good risk" offenders from committing further motoring offences (other than drinking and driving). By and large, however, heavy penalties do not prevent drink/drive recidivism. It is necessary therefore to reject specific deterrence as a basis for individualized penalties.

With regard to general deterrence, we can again be quite brief and definite. Ross (1981) (see also Homel, 1981 (a)) has shown that general deterrent effects can be achieved through police enforcement - which increases, at least temporarily, the perceived probability of apprehension - but that increases in penalty severity (either through legislation or through penalties imposed by judges and magistrates) do not reduce the extent of drinking and driving. In his own words:

"The three studies evaluating efforts to increase the severity of penalties provide little evidence supporting the effectiveness of these efforts."

(Ross, 1981, p. 19)

In other words, general deterrent effects are achieved by increasing the perceived probability of apprehension; they are not achieved, at least under current social arrangements, by tougher penalties. General deterrence cannot, on the basis of present research findings, be invoked as a justification for penalties imposed on any particular group of drinking drivers.

The final way in which heavy penalties imposed on young offenders could act to protect the community is through incapacitation. In other words,

licence disqualification or imprisonment could operate to prevent physically an offender from driving for a period. Incapacitation through imprisonment must have been a consideration in the minds of some magistrates, since young men had much higher probabilities of imprisonment, other things being equal. However, the efficacy of licence disqualification in this regard must be questioned, since about 50% of offenders drive while disqualified (Homel, 1980). The problem of course with imprisonment as a penalty - conceding its value as a form of incapacitation - is that its severity usually exceeds that justified on the basis of offence seriousness. No doubt many young men could be removed from the roads for six months if they were sent to prison, but this practice is hardly likely to be seen as just. We need to recall Potas' words (para. 2) concerning "cruel and tyrannical" penalties.

The conclusion seems very clear: the policy of penalizing young offenders more severely on the grounds that the community is thereby being protected must be rejected as being without scientific or moral justification. This is perhaps the most important conclusion to be drawn from the present analysis. It is worth recalling Foster's words (quoted in Potas, 1979, p. 58):

"The over-riding consideration when dealing with young first offenders, who are only just out of the age group in which they must be dealt with as children, should be that of rehabilitation and to give them a chance, if they wish to take it, of demonstrating that they are capable of living their lives so as not to bring themselves again in conflict with criminal law ....."

## 7. Sentencing Disparities and Sentencing Guidelines

The rejection of specific and general deterrence as a basis for individualized penalties, and the limited role of penalties which incapacitate, had consequences beyond the treatment of young offenders. The final major problem which the present research has highlighted is the enormous variation in penalties from court to court and the pervasive influence of "magistrate sentencing style". It is arguable that one reason for these disparities is the emphasis currently placed on individualizing the penalty. It is clear

however that even a "just deserts" type model of sentencing (Von Hirsch, 1976), in which the punishment fits the crime, would still yield disparities since we saw in Chapter 3 that tough and lenient magistrates vary in the weight which they accord even to basic variables like previous drink/drive convictions.

A number of solutions have been suggested to the problem of sentencing disparities (see Potas, 1979, for a good review). Over simplifying the alternatives, we may mention (a) sentencing councils, (b) a legislative based system of presumptive sentencing, (c) appellate review, (d) sentencing guidelines. The idea of sentencing councils is that judges consult with colleagues before imposing a sentence on a convicted offender. It is difficult to see how this approach could work in a busy magistrates court. Presumptive sentencing makes extensive use of mandatory minimum sentences and attempts to specify (through legislation) a narrow range of penalties for an offence with certain specified characteristics. Legislation in some states of Australia (such as Victoria) has gone a long way in this direction, specifying penalties for offenders with given BAC/previous DUI characteristics. Movement in this direction has also occurred in NSW, with the introduction of minimum disqualification periods in December 1979.

Potas' conclusion concerning this approach seems appropriate:

"The lower limit is best left to be determined in accordance with common law principles. Otherwise the scope for individualised penalties and the ability of the courts to respond adequately to changing circumstances, including changing community standards, attitudes or needs will be endangered." (p. 88)

Appellate review of sentencing is a form of control over excessively heavy penalties which is built into the current (British and Australian) judicial system. In 1976, only one PCA offender in forty (2.6%) appealed against the severity of the penalty, although the correlation with magistrate severity (Chapter 3) suggests that the system may have worked to some extent in reducing the gap between tough and lenient magistrates. It is clear,

however, that although appellate review could be extended in scope (Potas, 1979) it cannot completely eliminate sentencing disparities. A method which addresses itself more directly to this problem is called sentencing guidelines (Potas, 1979; Gottfredson et.al. 1978) In brief, sentencing guidelines suggest a range of penalties, based on the average behaviour of all judges or magistrates, for an offence of given seriousness and for an offender with a given degree of blameworthiness or culpability. Where the judge departs from the guidelines, he is required to give reasons (in writing) for his decision. Sufficient departures from the norm would mean that the guidelines would themselves be altered to accommodate or reduce future departures.

The use of sentencing guidelines has been widely discussed in recent years, and actually implemented for parole decision making in the United States. One Australian judge commented (Australian Law Reform Commission, 1980, p. 272) that sentencing guidelines are an attractive and intelligent compromise between the two extremes of guesswork and mandatory penalties. Moreover 80% of NSW magistrates feel there is a need for greater uniformity in sentencing (ALRC, 1980, p. 362), although (again from the ALRC report) it is less clear that they wish to see guidelines implemented (p. 248). As Tarling (1979) has commented, the guideline system as developed in the US only states whether an offender should be imprisoned and for how long; there is no guidance on the type of non-custodial sentence to use.

As implemented in the US (Gottfredson et.al. 1978) offenders are located at some point in two dimensions. One dimension relates to offence seriousness and the other to the calculated risk of reconviction. These two dimensions accord with factors generally considered relevant to the time to be served in prison by a parole applicant before release, and seem to reflect the retributive and incapacitative aspects of punishment. In the parole context it makes sense to keep people in prison who are judged (either clinically or by an actuarial device) to be high risk, on the grounds of protecting the

community. However we have seen that in the magistrates' courts incapacitation has a much smaller role to play, and the primary considerations become specific and general deterrence. The problems in implementing guidelines for sentencing drink/drivers become really acute at this point - should a "risk" dimension be included, as dictated by current sentencing philosophy, or should heed be paid to the scientific research which questions the effectiveness of penalties as a way of achieving a deterrent impact?

There is no doubt that a two dimensional system of guidelines could be constructed, on the basis of the present study (see the full report) giving weight to offence seriousness and culpability on the one hand, and risk of reconviction on the other (Homel, 1980 has developed a typology of offenders which could be used for developing this last dimension). There is also no doubt that if this or a similar system were to be implemented, it would reduce the amount of unwarranted variation in sentencing. In other words the process of sentencing drinking drivers in NSW would be fairer. However, such a system of guidelines would leave open the wider question of justice, since it would help to perpetuate a system in which factors such as age and social class are built in as determinants of the penalty. It has been argued that such a system is not justifiable on the grounds of protection of the community, although it may under some circumstances be justifiable on the grounds of humanity.

It is my view, supported by all the evidence of this and previous research, that guidelines should be pursued, but that they should be based on a "just deserts" model in which there are only two dimensions - seriousness of the offence as measured by BAC together with the perceived "danger or harm to the community", and the blameworthiness of the offender as measured by previous drink/drive and motoring convictions. The ranges of penalties specified for each cell in the grid should be sufficiently broad to allow for mitigating factors, such as unemployment or number of years driving experience, but much narrower than those which currently obtain. It is

probable that such a model would enhance any general deterrent properties of punishment without affecting any specific deterrent effects which may occur. It would put extra-legal factors (particularly age and social class) back into their place as minor and justifiable influences on the penalty, and would ensure fewer disparities in sentencing.

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