Administrative Adjudication of Driving-While-Intoxicated Offenses

Marvin H. Wagner, M. H. Wagner and Company

Recent studies have shown that the enactment of strong laws and the stringent enforcement of those laws by the courts and police have not been empirically proved as effective countermeasures for reducing accidents caused by excessive drinking and driving. A multifaced alcohol countermeasure program is needed to significantly reduce the number of deaths and serious injuries caused by alcohol-related crashes. The problem of drinking and driving can be brought to a manageable level if all of the facilities and services available to states and communities are used. The concept of administrative adjudication, the handling of traffic offenses through an administrative or quasi-judicial approach, has gained widespread attention and is in use in some jurisdictions. The administrative adjudication of first-offense drivers charged with driving while intoxicated would increase the arrests and convictions of drunken drivers. If a driver is repeatedly arrested, the courts will have an indication of the drinking problem and be able to refer the driver to proper treatment or education programs.

Over the past 25 years, the problem of highway fatalities has grown to near epidemic proportions. During 1973, approximately 55 000 persons were killed on the nation's highways (1). Traffic crashes have been identified as the largest single source of death for individuals over 45 years of age (2). According to the U.S. Department of Health , Education, and Welfare, the total number of useful person-years lost to labor is growing and is now approaching the loss due to heart disease and cancer (3). As a result of traffic crashes, hundreds of thousands of persons are seriously injured and billions of dollars in societal losses are sustained each year.

The problems of alcohol-related crashes were first recognized and reported in 1904, but it was not until the 1950s that highway safety investigators began to understand the precise relationship between alcohol and driving. Today, it is indisputable that alcohol is the most significant single factor leading to fatal crashes.

A vital ingredient in the problem is the correlation between the type of drinker and his connection with fatal crashes. Extensive research has clearly established that problem drinkers or alcoholics, who represent about 7 percent of the driving population, are responsible for approximately two-thirds of these fatal crashes (3, 4).

A study by Borkenstein and others (5) shows that there is little increase in crash risk when a person has a blood alcohol level (BAL) of 0.05 percent or below. However, this risk increases sharply to 7½ times the normal risk at a BAL of 0.10 percent. Even more dramatically, the risk increases to 25 times that of the normal level at a BAL of 0.15 percent. Since the social drinker rarely exceeds a BAL of 0.08 percent, it is obvious that the problem drinker and the alcoholic represent a vastly disproportionate risk to the general driving population.

The question of methodology to deal with these heavy drinkers has created a division of opinion among highway safety authorities. The medically oriented experts claim that only extensive alcohol-treatment programs will effectively reduce alcohol-involved crashes; the law enforcement experts point to the limited proof of successful treatment of alcoholics and claim that only strong deterrent laws and enforcement will prevent the continued high incidence of abusive drinking and driving among the entire driving population.

The proponents for strong deterrent actions have pointed to several European experiments that appeared highly successful. The Scandinavian stories of stringent enforcement of strict laws with severe penalties have been reported in many studies (6, 7). The Swedes and Danes claim that only 15 percent of their fatal accidents are alcohol related and that 50 percent of the fatal crashes in the United States are alcohol related. Some U.S. authorities have questioned the accuracy of these data (8). Although the proportionate number of Scandinavian fatalities involving alcohol seems low, the actual number of deaths per 1.6 million km (1 million miles) driven is very high. A closer scrutiny of the comparative statistics would probably show little difference in the percentage of alcohol involvement. It is interesting to note that, at the last few meetings of the International Group on the Effects of Alcohol on Road Accidents of the Organization for Economic Cooperation and Development (OECD), Scandinavian representatives showed a strong interest in the area of rehabilitation and treatment for the drinking driver. In discussing the effectiveness of penal sanctions as an instrument to combat recidivism

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among subjects convicted for driving under the influence of alcohol, Buikhuisen (9) stated:

> All these studies have one thing in common: among subjects convicted for drunken driving there is a high percentage of alcohol recidivists. This suggests that many of the drunken drivers have drinking problems.... What can we do to combat drunken driving?... We have seen that punishment is not very effective. It does not make much difference whether subjects are sentenced to imprisonment or only to a fine. Even disqualification from driving (suspension or revocation of the driver's license) does not help.... It should be stressed, however, that this alcohol information would not help our problem drinkers. They will continue drinking excessively, unless we succeed in solving their problems.

The 1967 Road Safety Act of Great Britain is often cited to support strict deterrent measures for drinking drivers. This act combined the practice of certainty of apprehension (prearrest breath tests); certainty of conviction (illegal per se at 0.08 percent BAL); and certainty of punishment (mandatory loss of driver's license, stiff fines, and possible jail terms) for drinking drivers. In addition to enactment of the law, a massive public information program was undertaken. The initial effect of the law was astonishing: a 40 percent reduction in alcohol-related fatal crashes for the first year (1968) of operation. In a recent report (10), Ross strongly supported the British program: "The study of the Road Safety Act of 1967 provides support for the hypothesis that subjective certainty of punishment can deter socially harmful behavior as exemplified by drinking and driving in Great Britain."

After the initial dramatic reduction in alcohol and highway fatalities, a significant rise in alcohol-involved deaths has been noted for each succeeding year. These deaths have now returned to the level prior to enactment of the law. Ross (10) also discussed the Road Safety Act of 1967 and its future:

> The Road Safety Act of 1967 was a spectacularly effective law. Its effect on casualties was sharp, immediate, and—given the multiplicity of factors that cause accidents—surprisingly large. As its administration did not require a significant increase in resources for police and courts, its cost was certainly small in relation to the benefits documented in this report. Unfortunately, there are many signs that the initial effect of the legislation is diminishing.

Thus, it seems that a countermeasure program, which includes strict deterrent measures and public information, has a strong initial effect but may not have a lasting effect. There is some evidence that this experience has been encountered in programs of other countries, such as Austria, Czechoslovakia, and Canada (11).

In 1970, a program was initiated in Chicago by a traffic court judge who publicly announced that the policy of the court would be to sentence every person convicted of driving while intoxicated to at least 7 days in jail and to recommend to the secretary of state that the defendant's driver's license be suspended for 1 year. The experiment began in mid-December 1970 and continued through mid-July 1971. Since traffic deaths were reduced in the Chicago area during the time of this program, it was presumed that the mandatory jail approach was working effectively. However, a study (12) raised serious questions regarding the validity of the program's findings. The statistics from Milwaukee, which had no special countermeasure program, were compared with statistics from Chicago. The researchers stated:

> We conclude from the analysis that the change in motor vehicle fatalities that occurred during the Chicago crackdown on drivers convicted of driving while intoxicated was only a chance variation from the fatality rate over the preceding 5 years.... By comparing 1971 and 1970 figures, Chicago officials mistakenly concluded that the decrease occurred because of the crackdown rather than being part of a more general down trend which occurred outside Chicago as well.

Another study (13) also sharply criticized the severe sanction theory:

> We found no demonstrable advantage to any of the nonjail options available to a typical traffic court for the handling of drivers found guilty of driving under the influence of alcohol, within the limitations of our attempts to compensate for the biases introduced by the judge's departure from the scheduled sanctions. Nor does the study offer hope that a jail sentence would bring about the desired improvements in driving records.

Neither of the reports completely rules out the total ineffectiveness of a strong deterrent policy. They merely state that strong laws and strict law and judicial enforcement alone have not been empirically proved to be adequate countermeasures.

Innovative rehabilitation programs do not seem to fare much better. Most of the reports from judges who have initiated rehabilitation programs are mostly anecdotal and have no serious research to support findings. A study on the effectiveness of varying rehabilitation programs (14) stated:

> An experimental evaluation of the effects of different intervention methods, which includes Alcoholics Anonymous, an Alcoholic Rehabilitation Center, films and lectures, and different forms of group therapy, compared with a control group, which were given conventional treatment, was carried out. The results were inconclusive, but suggested that for a short one-year follow-up period, there is little difference between the conventional and the experimental treatment methods, or among different experimental treatment methods. An extended follow-up now underway may invalidate this negative conclusion.

Lackland Air Force Base in Texas had one of the first educational countermeasure programs that involved an extensive evaluation program. This countermeasure program, which included educational, administrative, and psychiatric attributes designed to change tolerance attitudes toward airmen who drink and drive, revealed (18):

> During the year in which the countermeasure was applied, there was a significant reduction in accident experience (from 50 to 60 percent) depending on the criterion employed. The reduction ran counter to rising national, state, and city trends. It also ran counter to the experience at Randolph AFB, a nearby base.

There has not been a follow-up study about the lasting effect of this program. Even though the airmen did not constitute the general driving population, the apparent success of this program has been highly encouraging to the advocates of an alcohol educational and rehabilitation countermeasure program.

The foregoing suggests the complexity of the problem that relates to alcohol and its effect on highway safety. The potential solutions will be equally complex, and an answer will likely not be found within the framework of a single countermeasure area. In 1968, the Alcohol and Highway Safety Report stated, "Since the use and misuse of alcohol takes place in a much broader context than merely the highway, countermeasures concerned specifically with alcohol must also be broadly based." The multifaceted countermeasure concept has been proposed in many different forms over the last few years. Filkins (16) concluded, "It should be obvious by now that many specialists from the health, legal, and social welfare professions must begin to work together to solve the broad problems created by the drinking driver." An extensive treatise by Indiana University (17) stated:

> The social process aimed at controlling the drinking driver is diffuse and ill-organized, but is susceptible to analysis and improvement by the techniques of systems engineering.... The present system can then be engineered so as to increase its efficiency on the basis of high-risk identification and cost-effectiveness. Marked improvement would occur with the institution of management control and information-flow systems and with the development of precise objectives.

Many authorities claim that the potential achievement attained by rehabilitation programs for the alcoholic is extremely poor. Many psychiatrists will no longer accept alcoholics as patients because of the failure of the one-to-one relation. On the other hand, alcohol treatment specialists refute these allegations and are attempting to prove the efficacy of modern techniques for the alcoholic's rehabilitation. The U.S. Department of Health, Education and Welfare (HEW) created the National Institute on Alcohol Abuse and Alcoholism (NIAA) to bring all of the talent and experience of the nation together to combat the tragedy of alcoholism. In a report to Congress, HEW claimed (18):

> Alcoholism is a complicated disorder, but it can be treated successfully. Any technique used indiscriminantly will be much less successful. When the proper treatment modalities are utilized for the unique needs of the particular patient, however, we indeed have cause for optimism.

Therefore, it appears that, if states and communities use the appropriate approach and use all the facilities and services available to them, the problem of drinking and driving can be brought to a manageable level. In addition, the successful operation of an alcohol and highway safety countermeasure program can have a significant impact on the major social problems caused by alcoholism; problem drinkers or alcoholics would be identified at a relatively early stage of their disease and this fact would be forcefully brought to their attention.

ATTITUDE OF CRIMINAL JUSTICE SYSTEM

Police

The general rate of driving-while-intoxicated (DWI) arrests across the country is extremely low and it is estimated that as few as two DWI arrests per police officer per year represents the national average. It is also estimated that there is approximately one arrest for each 2000 DWI violators.

The perception of the driving population about the likelihood of being arrested and convicted of a DWI offense is also very low. Drivers not only do not consider the risk of being apprehended on the highways but also are aware of the reluctance of judges and juries to convict an average citizen charged with drinking and driving. To reduce the number of drinking drivers, the probability of apprehension and conviction must be real and constant. There must be a consistency in arrest convictions. A manual of the National Highway Traffic Safety Administration (NHTSA) (19) set forth this principle:

> The enforcement program directed toward alcohol-related crashes should be a refinement of the law enforcement agency's current selective enforcement programs. Evidence is mounting that alcohol is present in over 50 percent of fatal crashes and that the probability of a drinking driver becoming involved in a crash increases as the blood alcohol concentration (BAC) increases. Based upon the magnitude and severity of alcohol-related crashes, this refinement to the law enforcement agency's existing selective enforcement program is justified.

The police officer is a reflection of the community and is responsive to the attitudes of the public and the other elements within the criminal justice system. When the public, the prosecutors, the courts, and the corrections departments are indifferent to or easy on drinking drivers, it is difficult and futile for the police officer to act differently. A study by Newman (20) stated, "The apparent lack of communication among police, district attorneys, and magistrates in dealing with motorists who are arrested for drunk or drug driving has caused a breakdown in dealing with these violators." However, it has been amply demonstrated that, through the introduction of a comprehensive alcohol-safety action program in a community that is sufficiently financed and properly motivated, substantial improvements can be made on these arrest figures. A recent NHTSA publication (21) stated:

> In Fairfax County, Virginia, only 75 arrests were made during 1971 when the courts operated under a state law providing for a mandatory one year suspension of the license. In 1972, after the initiation of the NHTSA Alcohol Safety Program (ASAP), which provided for treatment and re-education in place of license suspension, there were just under 3000 DWI arrests.

Therefore, there should be a serious investigation into the most effective and efficient means for increasing apprehension of DWIs by police. This is essential for the development of a manageable and sophisticated system to reduce highway accidents.

Prosecutors

The attitude of the prosecutors throughout the country is certainly no better than that of the police officers and is perhaps even worse in many instances. In an article on the responsibilities of a prosecutor in traffic court, Reeder stated (22):

> Much of the responsibility for failure of the Traffic Law enforcement effort can be laid at the door of indifferent, disinterested prosecutors. An efficient official in this position can prevent the loss of many cases which should result in conviction, if he will bestir himself and assume the responsibilities that are his.

The suggestion that driving while intoxicated is a relatively minor offense for prosecutors was illustrated as follows in instructions to prosecutors on the handling of all forms of criminal prosecutions (23):

> Illustration No. 4. Two uniformed officers brought in a man whom they stopped for reckless driving. The suspect was intoxicated and admitted he had recently been drinking. The lieutenant in charge of the precinct desk informed the suspect that, if he agreed to leave his car at the station and promised to take a taxi home, no charge would be lodged. The suspect agreed to this and was released.
>
> Each day the police handle large numbers of cases involving public drunkenness and minor traffic violations. To prosecute all such cases would place a considerable burden on the criminal justice system. Thus, other considerations are used by the prosecutor to effect selective enforcement at the charging stage.
>
> The relatively minor character of the offenses, the expenses of prosecution, and the harm to the suspect's reputation by prosecution and conviction were all factors in the decision not to charge commission of the offense that the evidence supported.
>
> The man in Illustration No. 4 was sent home to "sleep it off." Neither suspect was an habitual drunkard, at least as far as the police knew.

This work obviously shows an insensitivity to this problem and indicates the usual position held by most prosecutors. The prosecution of drinking and driving offenses is given minimal priority in most jurisdictions.

Many problems are faced by district attorneys in the total criminal practice. One of these problems is the overcrowded conditions of the calendars in most metropolitan areas. As part of his recommendations to defense counsel, Erwin stated (24):

> Observe the trial calendar to see if it is so loaded that there is no time to try all of the cases set. If that is the situation, be ready and so announce. Many times the prosecutor, and occasionally the judge, will suggest that your client plead guilty to a lesser offense in order to save time of the court and the jury, or to prevent continuance beyond the time fixed by law for trial.

The fact of the matter is that in most jurisdictions, if defense counsel is hired by the defendant, then the prosecuting attorney will almost automatically offer a plea

reduced from the DWI charge. Again, we see a serious shortcoming in the attitude and practice of one of the segments of the criminal justice system with regard to the problem of abusive drinking and driving.

Courts

The courts have also paid little attention to the seriousness of the problem of drinkers who drive. By and large, they have not accepted the concept that assistance can be given to problem drinkers, once they have been identified. Instead, judges levy the traditional small fine and, in some instances, suspend the driver's license of the defendant. Generally, no attempt is made to determine the extent of the violator's drinking problem. Many experiments under the present structure have not fully succeeded in improving the system.

At the beginning of 1972, the Arizona legislature enacted a law that required a minimum 1-day jail sentence upon DWI conviction. In Phoenix, the results seriously impeded the progress of the NHTSA Alcohol Safety Action Program (ASAP), which was being conducted there. Innocent pleas rose from 27 to 74 percent over the course of the year. Demands for jury trials increased from 54 to 85 percent over the same period. The dismissal rate increased from 20 to 38 percent, and the proportion of those convicted dropped from 74 to 57 percent. In addition, there was a significant increase in the court backlog and expenses for court operations.

Numerous studies indicate the inability or unwillingness of courts to adequately "attend to" the drunk driver. The traditional system and some of the new experimental programs do not appear to deal appropriately with this problem. Therefore, it is necessary to look toward totally new concepts for apprehending drinking drivers, identifying their individual needs, and taking the necessary actions that would reduce the incidence of recidivism.

IMPROVED TRAFFIC ADJUDICATION PROCEDURES

The National Highway Safety Advisory Committee, which is composed of 35 members appointed by the President, was created by the Highway Safety Act of 1966. The act requires the advisory committee to consult with and make recommendation to the Secretary of Transportation on activities and functions of the transportation department in the field of highway safety.

The Ad Hoc Task Force on Adjudication was established by a resolution of the advisory committee at its meeting November 30, 1972, to "meet with necessary staff of the Department of Transportation to explore effective adjudication of traffic offenses, including administrative adjudication, and consider the ramifications of sentencing alternatives for traffic offenses. . . ." The task force reported to the advisory committee the general findings (25):

> The present traditional lower criminal court processing of traffic violations in the U.S., using sentences of fines and incarceration, evolved for the purpose of determining the guilt or the lack of guilt of an offender charged with a criminal complaint.
>
> Because conviction would involve a jail sentence, adjudication historically has been by the judiciary to accord full protection of constitutional due process. In fact, however, jail sentences are imposed in very few traffic cases and all but the most serious offenses are processed by mail or bail forfeiture. In the present process, self-adjudication and self-sanctioning are the norm.

The task force recommendations included the following:

> To achieve integrated traffic law system components which combine traffic adjudication with traffic safety and improved driver behavior, a new approach to traffic case processing, which contains the following basic features, is recommended:
>
> —Adjudicate a lower-risk category of "Traffic Infractions" by simplified and informal judicial, quasi-judicial or para-judicial procedures.
>
> —Combine "Traffic Infraction" and high-risk criminal traffic offense sentencing with driver improvement and rehabilitation programs.
>
> —Give priority to identifying problem drivers, assigning them to treatment and monitoring the results.

The task force concluded:

> The Task Force believes that adoption by the states of the Report Recommendations and their elements would result in a more ideal traffic law system which will advance highway safety through traffic offense adjudication. . . . However, to achieve this ambitious highway safety goal through a more cost-effective adjudication subsystem may require a higher level of public funding.

Many variations of this approach to the decriminalization of traffic offenses exist. In a recent article (26) Brandt reported:

> The states of New York, New Jersey, Pennsylvania, and Minnesota have classified most moving traffic violations as noncriminal. On October 1, 1972, a number of former criminal offenses, such as reckless driving and driving while intoxicated, became first offense civil forfeiture violations in Wisconsin. In California, parking, equipment violations and most nonmoving offenses, as well as a limited number of moving violations, are classified as infractions. In many states local ordinance traffic violations are considered civil actions in debt to collect a penalty, even though the rules of criminal procedure are generally followed.

After an extensive study in 1967 (27), the California Judicial Council stated:

> In view of the weight of authority that such offenses (minor traffic violations) are not properly classifiable as crimes and the fact that criminal sanctions are not used, it seems desirable that both the criminal classification and the immediate sanction of jail be eliminated and an appropriate classification be provided which conform to the noncriminal nature of minor traffic regulations and to the enforcement needs and practices in such cases.

New York State Administrative Adjudication Program

In July 1970, New York State implemented a law to remove cases that involved most moving traffic infractions from the criminal courts in New York City. New York State was the first jurisdiction (1930) to reduce many minor traffic violations to a new category of traffic infractions. These offenses were heard in the criminal court system until administrative adjudication took effect in New York City. Under the new law, these cases are heard by hearing officers of the Department of Motor Vehicles, who are experienced attorneys. Almost all moving traffic infractions that occur in New York City and Buffalo are part of the new system; however, these offenses do not include DWI. Misdemeanors, such as driving while intoxicated, reckless driving, leaving the scene of an accident, and driving without a license or registration, continue to be heard before criminal court judges.

In this program, judges of the criminal court are replaced by administrative hearing officers. The hearings are conducted with decorum in a quasi-judicial setting. If defendants wish to contest a charge they are given a specific time to appear. In most cases a person can be in and out of a hearing within an hour. Persons found guilty can appeal to an administrative board and, ultimately, have recourse to the state trial court. Under the law, motorists can plead in person or by mail to traffic infractions. Upon filing a denial of charges and $15 security, a motorist who wishes to contest charges of a traffic infraction is granted a hearing before a

referee, who decides the case. The motorist retains the right to be represented by legal counsel at any hearing. He may also, if he so desires, be his own counsel. A motorist who fails to answer a traffic ticket citation is subject to having his driving privilege suspended until a response is made.

The Commissioner of Motor Vehicles is authorized to establish within legal limits a schedule of fines for various infractions. If a specific fine has been set for the charged violation, then a motorist admitting the charge by mail can send the specified fine, the traffic ticket, and the record of convictions portion of his driver's license to the Department of Motor Vehicles.

Recent Supreme Court Decisions Affecting Traffic Court Adjudication

Three recent decisions by the U.S. Supreme Court have made a major impact on the effective adjudication of traffic violations in the courts:

1. Tate v. Short, 401 U.S. 395 (1971), dealt with the automatic conversion of a fine to a jail term upon nonpayment of the fine;
2. Baldwin v. New York, 399 U.S. 66 (1970), dealt with the right to a trial by jury; and
3. Argersinger v. Hamlin, 407 U.S. 25 91 S. Ct. 2006 (1972), dealt with the right to counsel in any criminal trial when faced with imprisonment.

In the Tate case, the court stated that a statute that imposes a fine as a sentence and automatically converts the fine to a jail term when an indigent cannot pay forthwith operates as an invidious discrimination in violation of the U.S. Constitution. Since the decriminalization of the major traffic offenses would remove the potential threat of a jail term, supporters of administrative adjudication initially feared that this holding would minimize the effectiveness of the fine provisions of the new statutes and would result in a decriminalization of traffic offenses. An examination of this decision shows that the court was mostly concerned with the automatic conversion to a jail term when the defendant "cannot forthwith pay the fine" or fails to make "immediate payment." The court did not remove the possibility of jail as a potential sanction for persons who will not pay the fine, as opposed to those who cannot pay the fine. In fact, the court cited statutes from several states, such as California, Delaware, Maryland, Massachusetts, New York, Pennsylvania, and Washington, that had developed procedures to allow for a wide variety of alternative methods for collection or sanction and for the payment of fines in installments.

In the Baldwin case, the court rejected the concept that the label of "felony" or "misdemeanor" should constitute the proper criterion for the severity of the specified penalty: "... no offense can be deemed 'petty' for the purposes of the right to trial by jury where imprisonment for more than six months is authorized." Under this decision, most traffic offenders facing a possible jail term in excess of 6 months may now demand and receive a jury trial. However, as mentioned earlier, the Phoenix defense attorneys take full advantage of the charged DWI's right to trial by jury and clog the courts' trial calendar.

In the Argersinger decision (28), the court held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." The court was not unaware of the effect of its decision on the administration of traffic violations. The impact and expense of court-appointed counsel on the already overburdened judicial administration of traffic offenses were considered by Justice Douglas in his opinion. He indicated that a "partial solution to the problem of minor offenses may well be to remove them from the Court system." Justice Douglas specifically referred to a report by the American Bar Association Special Committee on Crime Prevention and Control (28), which stated:

> Regulation of various types of conduct which harm no one other than those involved (e.g., public drunkenness, narcotics addiction, vagrancy and deviant sexual behavior) should be taken out of the courts. The handling of these matters should be transferred to nonjudicial entities, such as detoxification centers, narcotics treatment centers, and social service agencies. The handling of other nonserious offenses, such as housing codes and traffic violations, should be transferred to specialized administrative bodies.

The initial concern following the Argersinger report was that, should judges wish to preserve their discretion of jail or fine, they would be required to appoint counsel in each case. Such a decision could potentially force a collapse not only of the existing traffic administration system but of the entire criminal process. There are not enough lawyers, judges, courthouses, or court reporters that could meet the time, space, and personnel demands if every traffic offender insisted on his right to counsel.

Apparently, no such catastrophe has occurred within the judicial system. However, the decision does place serious shortcomings on the present judicial discretion of sanctions, and a defense counsel who learns to use this decision to his advantage may play havoc with the existing traffic court system.

RATIONALE FOR THE ADMINISTRATIVE ADJUDICATION PROCESS

One of the most difficult problems facing those persons responsible for alcohol and highway safety programming is the appropriate "handling" of the drinking driver. As stated earlier, there are two major conflicting schools of thought on this matter: the position of taking strong deterrent action, such as mandatory jail terms and long periods of driver license suspension, and the more liberal position of not arresting the driver for any offense but rather placing him in a detoxification center. Many advocates of these positions fail to recognize that there are distinctly different types of drinkers who drive and that each one must be treated differently. The social drinkers, who represent the largest number of drunk drivers, would most probably be deterred from repeating their actions by arrest, adjudication process, and the sanction imposed (educational program and fine). Therefore, they do not need to be jailed or have their driver's licenses suspended. In fact, these actions may be counterproductive and increase the problem. Certainly, in the case of problem drinkers or alcoholics, who are considered responsible for the largest number of alcohol-related fatalities, these stringent measures will not prevent them from drinking and driving again. In most instances, they have little control over their drinking and driving practices and cannot be coerced into refraining from drinking and driving through the threat of jail or license revocation.

To determine the type of educational program or treatment program that would be most effective for the different types of drinkers, some measurement or classification is necessary. While it would be best to conduct a presentence investigation and an alcohol profile test on every DWI arrestee, the time and cost of this operation are far too high for consideration as a practical measure. On the other hand, a second DWI con-

viction within a relatively short period of time (3 to 5 years) strongly indicates a serious drinking problem and the need for a presentence investigation. This principle was stated in a new section in the Uniform Vehicle Code (29):

> Before sentencing any person convicted for a first offense of violating Section 11-902 (Driving While Intoxicated) the court may, and upon a second or subsequent conviction of such an offense committed within 5 years of a prior offense the court shall, conduct or order an appropriate examination or examinations to determine whether the person needs or would benefit from treatment for alcohol or drug abuse.

This concept was also followed by California in 1972 through a law that authorized a presentence investigation for first DWI conviction to determine whether treatment designed for habitual users of alcohol would be beneficial. Such an investigation is mandatory for a second or subsequent conviction.

In terms of the very practical problems of time and expense, what is the most propitious method for apprehending the drunk driver, determining the extent of his drinking problem, and providing appropriate educational or treatment programs to deter him from repeating this offense?

This paper advocates a program that would decriminalize the first DWI offense and process these cases through an administrative adjudication procedure. The principal purpose of this proposal is to achieve the maximum opportunity for detection and identification of drinking drivers. The assumption is that arrests for DWI will be dramatically increased if the time required for a police officer to make an arrest and the time required for the trial of the offender are substantially reduced.

For the social drinker, the apprehension by police, civil penalties imposed in the form of a fine or license restriction, and educational courses should be effective deterrents. But more important, increased detections should provide the alcohol countermeasure program of the community with a system that identifies problem drinkers.

Once an offender has been apprehended a second time, the traditional approach of arrest and trial for a criminal misdemeanor would be appropriate. Certainly, second offenders will be far fewer than first offenders and will be manageable through the existing criminal court structure.

By using the decriminalization and quasi-judicial or administrative adjudication of the offense, this proposed program eliminates the problems created by the requirements for DWI offenses of trial by jury (Baldwin case) or assigned counsel for indigents (Argersinger case). As previously mentioned, the constitutional rights of defendants in criminal cases have caused serious difficulties in most instances in which there has been a large increase in DWI arrests. If more DWI arrests were made (which are needed to accomplish the reduction of alcohol-involved crashes), the existing criminal justice structure would be hopelessly congested for all criminal matters.

In 1972 Wisconsin amended its penalty provisions for DWI by eliminating jail sentences for DWI first offense and increased its potential penalties for second offense DWI. A bill was introduced in the New York legislature to change a first-offense DWI from a misdemeanor to a traffic offense. Primarily, the bill was designed to obviate the requirement of trial by jury for the first DWI offense. In a memorandum supporting the bill the Independent Mutual Insurance Agents of New York State stated:

> This measure represents a step forward in dealing with the problem of the impaired driver, simply because it is aimed to deal in realistic fashion with the evil sought to be prevented by the law. Presumably, the purpose of a law of this type is not to incarcerate or confine violators, but rather to ultimately remove such persons from the highways of New York State. This measure would do just that directly without relying on a solely deterrent basis which has to this point been ineffective.

The bill was overwhelmingly passed by the Senate, but a companion bill in the House was not enacted.

In January 1975, the Committee on Judiciary proposed a revision to the Oregon Vehicle Code that would decriminalize the first DWI offense and make it a Class A traffic infraction subject to a fine of $1000. To date, the Oregon legislature has not acted on this provision.

CONCLUSION

The problems of alcohol and highway safety are a small, but critical, part of a much larger picture: the tragedy of alcoholism. The effects of alcohol on family, friends, and society are quite far-reaching. The massive increases in arrests and the simplified process of adjudication that are proposed not only will assist in the apprehension and reduction of recidivism of drinking drivers but also will serve as a new means for the early identification of existing or potential alcoholics. Generally, the alcoholic will not seek treatment or be guided toward a rehabilitation program until he has reached the later stages of his disease. Through this program and with the appropriate cooperation of local alcohol and health organizations, the opportunity for early identification can be of significant importance in reducing the incidence of alcoholism.

There can be many impediments to the implementation of this plan. One of the more serious is the general attitude of the criminal justice system toward the use of retributive sanctions against drinking drivers. It must be clearly shown that these repressive measures have not succeeded in the past, and there is no reason to believe that they will be effective in the future. There will also be strong challenges to the removal of constitutional rights for defendants such as trial by jury and counsel for indigents. By removing the incarceration provisions, these rights will no longer need to be exercised. The most important consideration should be the removal or reduction of the threat to loss of life, limb, and property caused by irresponsible actions of individuals. Many authorities speak of DWI as a criminal offense, but most people do not consider drunk drivers as criminals. They are usually thought of as "unlucky" for being caught.

Therefore, if the public does not change its tolerant attitude toward the drinking driver and implement serious social castigations for his deviant behavior, then the most effective and appropriate means for dealing with drunk drivers is a simplified administrative procedure.

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