

*I would like to thank Jeanne Pruett, The National Motorists Association, getMADD.com, and David J. Hanson, Ph.D. You are the ones that led me to the truth and inspired this book.*

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## Preface

Do you think that drunk drivers convicted today are falling down drunk, seeing pink elephants, staggering around and cannot walk normally in a straight line? If you think these are the majority of arrest you are wrong. Millions of Americans who are not falling down drunk are arrested for drinking and driving and suffer extreme penalties. Back in the good ole days drunk was drunk, there was no question, but not anymore.

For the purpose of simplicity, DUI, DWI, OUI, OWI, OMVI, DUIL, DUUI, DWAI and DWUI are drinking and driving charges in many different states. This book will refer to these offences for the purpose of simplicity as DUI.

This book was written to stop the DUI frenzy. And inform the reader of what is really going on. I call it a modern day witch hunt, but it is much worse. Mothers Against Drunk Driving has gone completely amuck. The facts they have used to instill fear are far fetched. You will learn that DUI laws violate your Constitutional rights.

Let me say first of all anyone injured or killed by a drunk driver “who is at fault” is tragic and they should be judged by a jury of their peers. You will learn about breathalyzers and their inaccuracies. You will learn that you are guilty till proven innocent.

You are out to dinner at a nice restaurant; you have a glass of wine or a mixed drink. You get into your car to go wherever you happen to be going and you are pulled over for a minor traffic violation. The officer asked you if you have had anything to drink, and you say yes I had a glass of wine with dinner. You have just given the officer probable cause. He gives you a field sobriety test, you quickly discover that these test are quite difficult but you do a pretty good job. The officer then informs you that you are under arrest for driving under the influence. You are thinking on the way to the police station, I am not

under the influence, I only had one drink. When you get to the police station you are offered a chance to clear yourself by submitting to a breath analysis. You give the breath sample and the machine reads .03 BAC (blood alcohol content). Then you take the test again. The machine tells you that you have a .05 BAC. They read you your rights take you driver's license and you are on the phone trying to make a bond to get out of jail. You say but .05 is not legally impaired, .08 BAC is. It makes no difference. There have been cases of 0.0. BAC. After all this, and after attorney fees, you may have the charges dropped before it goes to trial.

If you are a woman or have a zinc deficiency or had taken an aspirin or any of many factors or even an untrained police officer, you could have a .08 BAC or higher. Now you are legally impaired. The best you can hope for is a plea bargain, (not allowed in some states) dropped charges, or a not guilty verdict by a jury of your peers. Wait! In some states you don't get a jury trial. That's against the Constitution! You betcha it is. The judge finds you guilty and you are ordered to do community service, two years in jail or on probation and a stiff fine and you still lose your driver's license.

I hope by now you are getting the point. This happens everyday to common folks just like you. It happens to doctors, lawyers, bankers and just about everyone else that you can think of. So fasten your seat belt, it only gets worse.

You are about to take a look into the world of the modern day witch hunt.

I did not write this book for defense attorneys, and I certainly do not claim to be an attorney. The book is written so it is simple to understand. I am what you would call an average American and I make average wages. I live in the suburbs. I never thought I would or could write a book. But, this truth has to be told. As far as I know this information has never been gathered up and put into book form. Most of this information is

on the internet. My intention is simple, to bring this information to the American people, before they get caught up in the system, over 10 million already have. If you have been caught in the system, don't be embarrassed or ashamed anymore, after you read this book, you will know the truth. Maybe you will help stop the modern day witch hunt.

## **Chapter 1 The Declaration of War**

The year is 1978. There is still a few drive in movies. The movie "The Deer Hunter" and "Grease" are on the big screen and "Laverne & Shirley" are on prime time television. Jim Jones and the Guyana tragedy happened. In December, 1977 two teenagers Karen and Timothy Morris, 17 and 19 year old teenagers were killed by a 22 year old drunk driver and in 1978 Remove Intoxicated Drivers was started. RID's mission was and still is to deter drunk driving and teenage binge drinking.

In 1979, a five year old little girl in Maryland, named Laura Lamb and her mother Cindi were hit head on by a repeat drunk driver. He had no license and had a record of 37 traffic violations of which were three prior drunk driving convictions. Laura Lamb became the country's youngest quadriplegic. She later became the poster child for MADD.

Six months later, Candy Lightner's 13 year-old daughter Cari was walking when she was fatally struck by a repeat drunk driver in California. Two days after he was released on bail for a hit and run.

These horrible events lead to a meeting. A meeting of Candy Lightner and Cindi Lamb and a few others at a steakhouse in Sacramento, California to discuss starting a group, and MADD was established. This moved the conflict of drunk driving to a full blown war which wages to this day with fatalities on both sides.

It was estimated that there were 28,000 killed and one million injured in alcohol-related traffic crashes in the United States. This averages to 78 deaths and 2,800 injuries each day. Take for example the FARS data of 1982, 43,945 fatalities occurred in automobile accidents. Of these 26,173 fatalities are

alcohol related. This means that 60% of auto fatalities were alcohol related. (see Appendix A)

Figures such as these are what activist such as MADD and RID used to get the attention of the lawmakers by lobbying Congress.

In 1980 Michael Barnes a Member of Congress, became informed of what was going on with drunk driving issues and got involved. He convened a news conference on Capitol Hill to bring together Candi Lightner, Cindi Lamb and Cindi's daughter Laura to launch the national MADD movement and declare war on drunk drivers. Michael Barnes and Senator Claiborne Pell announced introduction of legislation to pressure the states to crack down on drunk driving, and called for a blue ribbon presidential commission on drunk driving. That commission came to being in 1982 when President Reagan appointed the "Presidential Commission on Drunk Driving" which is now known as (NCADD) The National Commission Against Drunk Driving. This got the attention of the nation. Here is a letter from one of the most loved Presidents of all time.

To The American People:

Over the past ten years, 250,000 Americans have died in accidents caused by drunk driving, and millions have been maimed or crippled. Unless greater efforts are made to combat this problem, the best estimated tell us that these figures will recur over the next decade.

We must not allow this to happen. The Presidential Commission on Drunk Driving, which I appointed on April 14, 1982, has devoted 18 months to an exhaustive study of this problem. The Commission has held a total of 100 hours of hearings in eight cities around the country. Chairman John Volpe and his colleagues have listened to the experts: the medical people, the law enforcement officials, and other authorities in this field. They have also heard the heart-



breaking testimony of the victims: the bereaved and the permanently disabled. Most important of all, they have developed many new constructive proposals to help us get drunk drivers off the road.

I am proud of the great work the Commission has accomplished. I salute Chairman Volpe and the other members of the Commission for their dedication and tireless effort. I commend this Final Report, the product of their many labors, to you, the American people.

Drunk Driving is a national menace, a national tragedy, and a national disgrace. It is my fervent hope that this report will receive the attention it deserves, and that it will speed the adoption of whatever measures are appropriate to remove this hazard from our national life.

Sincerely,  
Ronald Reagan

Source: (See source 2)

To see the recommendations of the Presidential Commission on Drunk Driving please read Appendix B.

MADD is invited to become a member of NCADD. The mission of the National Commission Against Drunk Driving is to continue the efforts of the Presidential Commission On Drunk Driving to reduce impaired driving and its tragic consequences by uniting a broad based coalition of public and private sector organizations and other concerned individuals who share this common purpose. The Commission works closely with all related federal, state, local officials, and with interested private sector groups. Their purpose is to identify developing strategies and programs that show promise in reducing the incidences of driving impaired. (see source 2)

With MADD's help, the Barnes bill passes in Congress and signed into law. The Barnes Bill sets aside federal highway

funds to give to states funding for anti-drunk driving efforts. (sec. 410 of U.S. transportation code (see Appendix C)

In 1982 MADD had 100 chapters. Students Against Drunk Driving also known as SADD was founded. SADD is now known as Students Against Destructive Decisions. MADD was awarded a \$65,000 grant from the (NHTSA) National Highway Traffic Safety Administration to assist in forming more chapters. [NHTSA, under the U.S. Department of Transportation, was established by the Highway Safety Act of 1970, as the successor to the National Highway Safety Bureau, to carry out safety programs under the National Traffic and Motor Vehicle Safety Act of 1966 and the Highway Safety Act of 1966. The Vehicle Safety Act has subsequently been recodified under Title 49 of the U. S. Code in Chapter 301, Motor Vehicle Safety. NHTSA also carries out consumer programs established by the Motor Vehicle Information and Cost Savings Act of 1972, which has been recodified in various Chapters under Title 49. NHTSA is responsible for reducing deaths, injuries and economic losses resulting from motor vehicle crashes. This is accomplished by setting and enforcing safety performance standards for motor vehicles and motor vehicle equipment, and through grants to state and local governments to enable them to conduct effective local highway safety programs.

NHTSA investigates safety defects in motor vehicles, sets and enforces fuel economy standards, helps states and local communities reduce the threat of drunk drivers and promotes the use of safety belts, child safety seats and air bags, investigates odometer fraud, establishes and enforces vehicle anti-theft regulations and provides consumer information on motor vehicle safety topics.

NHTSA also conducts research on driver behavior and safety, to develop the most efficient and effective means of bringing about safety improvements.

NHTSA fatality reporting system is called FARS (Fatality Analysis Reporting System) it contains data on a census of fatal traffic crashes within the 50 States, the District of Columbia, and Puerto Rico. To be included in FARS, a crash must involve a motor vehicle traveling on a trafficway customarily open to the public and result in the death of a person (occupant of a vehicle or a non-occupant) within 30 days of the crash. FARS has been operational since 1975 and has collected information on over 989,451 motor vehicle fatalities and collects information on over 100 different coded data elements that characterize the crash, the vehicle, and the people involved.] (see source 4)

In 1983 NBC produces a made for TV movie about a grieving mother who takes on a seemingly uncaring judicial system in this emotional movie based on the story of Candy Lightner, the founder of M.A.D.D. This ignited the nation into frenzy, just like throwing gasoline on a fire.

In 1984 MADD successfully lobbied to pass a bill to amend title 23, of the United States Code, to establish a nationally uniform minimum drinking age of 21 years. [Statistics said that 55% of all fatal crashes involving 18 to 21 year olds involved alcohol. Since then, the alcohol-related traffic fatality rate has been cut in half. Research estimates that from 1975-1997 more than 17,000 lives have been saved.] (see source 1.) MADD changes their name from Mothers Against Drunk Drivers to Mothers Against Drunk Driving.

In 1986 MADD establishes Institutes to train volunteers in supporting victims of drunk driving and serving as advocates in the criminal justice system. "Recording Artist Actors and Athletes Against Drunk Driving" known as RADD becomes a nonprofit corporation.

In 1988 MADD took the information from the FARS data and continued their mission to stop drunk driving by giving workshops to instruct judges, legislators, law enforcement officials and MADD members on how to amend and implement

stronger anti-DUI laws. They also hold Public Policy Institutes to train state public policy liaisons in DUI issues and legislative "how-to" techniques.

In 1990 the use of roadblocks was upheld. The Presidential Commission on Drunk Driving 1983 Report recommended that Police agencies should apply selective enforcement and other innovative techniques, including the use of preliminary breath testing devices and judicially approved roadblocks, to achieve a high perception of risk of detection for driving under the influence.

The U.S. Supreme Court in 1990 (*Michigan v. Sitz*) upheld the constitutionality of sobriety checkpoints. The Court held that the interest in reducing alcohol-impaired driving was sufficient to justify the brief intrusion of a sobriety checkpoint. If conducted properly, sobriety checkpoints do not constitute illegal search and seizure in most states. Sobriety checkpoints are a law enforcement technique where law enforcement checks drivers for signs of alcohol. Right now, only one arrest is made for every 88 episodes of driving over the illegal limit. (Zador 1997)

MADD believes that concentrated law enforcement can help apprehend drunk drivers and deter those who hear about the checkpoints from driving under the influence. The Centers for Disease Control studied sobriety checkpoints and found that they can reduce alcohol-related crashes and fatalities by 20 percent. (CDC, 2001)

Because of this ruling by the Supreme Court MADD establishes the week of July 4th as National Sobriety Checkpoint Week. "Sobriety checkpoints and saturation patrols provide law enforcement officials with effective tools for removing impaired drivers from roads and highways." "Roadblocks act as deterrents to drivers who drink." (see source 3.)

"The goal of a sobriety checkpoint is to convince people not to drink and drive." (see source 4.)

In 1998 MADD lobbied for .08 BAC (Blood Alcohol Content) for all states, (please read Appendix D for Katherine Prescott's Statement before the Committee on Environment and Public Works) this was a very controversial move and had much opposition. Finally, President Clinton encouraged Congress to enact legislation as soon as possible to help ensure state passage of .08 BAC laws. On March 4, the U.S. Senate passed "The Safe and Sober Streets Act of 1997," which had been introduced by Senator Frank Lautenberg (D-NJ) and Senator Mike DeWine (R-OH). Similar legislation was introduced in the U.S. House of Representatives by Rep. Nita Lowey (D-NY). The Safe and Sober Streets Act would have required the withholding of certain Federal-aid highway funds from states that do not enact and enforce a .08 per se law. To avoid the withholding of funds, states would have been required to enact and enforce a .08 BAC per se law by October 1, 2001.

This brings us up to date on what is being said about drinking and driving from MADD and the government. Keep in mind the government does pretty much what MADD lobbies for because of the power and size of MADD's organization. [Because activist groups wielding a deviant description of drinking-drivers are quite influential, this deviant social construction largely shapes policy] (Hemel 1988; Evans 1991; Meier 1994).

Here are some quotes about drinking and driving.

Drunk driving is the nation's most frequently committed violent crime. (MADD, 1996)

“While a lot of attention is paid to the serious problems of repeat offenders, we don’t want to overlook the casual drinker.”  
Karolyn Nunnallee former president of MADD USA Today

Alcohol consumption is a major cause of motor vehicle crashes and injury. Historically, about half of all motor vehicle fatalities occur in crashes in which a driver or non-occupant has consumed a measurable level of alcohol prior to the crash. (NHTSA, 2002)

Education is important, but we're to the point where almost everyone knows they shouldn't drink and drive. The people who are still doing it are choosing to do it. The most effective way to deal with them is to arrest them." David Kelly, MADD, Virginia chapter.

If .08% is good, .05% is better. That’s where we’re headed, it doesn’t mean that we should get there all at once. But ultimately it should be .02%.” Steve Simon, Chairman, Minnesota State DUI Task Force.

One of the greatest injustices created by drunk drivers is that innocent people are most often the victims. And usually the perpetrators are drivers age 18-25 who don't have the slightest intention of hurting anyone says Livonia Attorney Terry Cochran.

We may wind up in this country going to zero tolerance, period.” U.S. Senator and MADD supporter Barbara Boxer (D-CA).

Promoting 'responsible drinking and driving' is like promoting 'responsible drive-by shootings'." MADD's Driven Magazine, Fall, 1997

Once you consume that alcohol, you are now a criminal because it's against the law to drink and drive. Period."

"Drink. Drive. Go to Jail."

"If you think there's a difference between heroin and alcohol, you're dead wrong." MADD TV video ad.

DUI conviction penalties: "Bulgaria – A second conviction results in execution. EL Salvador – No second chance. Execution by firing squad."

"Strictly speaking, a driver can register a BAC of .00% and still be convicted of a DUI. The level of BAC does not clear a driver when it is below the "presumed level of intoxication." Tennessee Driver Handbook & Driver License Study Guide

"I believe that most people would not mind the slight inconvenience of being arrested for a low blood-alcohol level, given the opportunity to prove their innocence..." Linda Campion, MADD member

"Every 23 seconds, someone is killed by a drunk driver." Oprah Winfrey, New Years Eve TV program.

## Chapter 2 The True Facts

That is what we are being told in a nutshell. It should make you mad about drunk driving. It does me. “Of the general driving age public, 98 percent see drinking and driving as a threat to their personal safety, and 86 percent feel it is very important to do something to reduce the problem.” (Gallup Organization, 2000) From what we have been told everybody is mad and scared to death. Oprah Winfrey, New Years Eve TV program. “Every 23 seconds, someone is killed by a drunk driver.” Now certainly you believe that because it was stated on a television show hosted by a charitable and wonderful person who does many great things. So, yes I believe it. Not!! That indicates that over 1,370,000 people are killed each year by drunk drivers. Now even NHTSA does not support that number.

The point I am trying to get across here is, that if you hear something, you have no reason not to believe it. If you hear it over and over again, you will probably just accept it as fact, until there is evidence to prove otherwise. The number of fatalities you have heard about drinking and driving are plain and simple, lies. Most, not all of our politicians and police officers, judges, prosecuting attorneys and MADD believe that the truth is being told about the fatalities of drunk driving and convey this false information because they do not know otherwise. Some do know the lies but continue to convey them for their own reasons.

So what is big deal? We are getting drunks off the road and it is safer for all of us. That is easy to say if you are not one of the 1,800,000 drivers each year arrested for drunk driving. (Note: due to older articles in this book, you will see that this number may vary, the 1.8 million arrested each year is 2004 numbers. The number arrested each year increases about 200,000 annually.) Maybe like Linda Champion, MADD member said, “you would not mind the slight inconvenience of being arrested for a low blood-alcohol level, given the opportunity to



prove your innocence.” All I can say to that is you have never been to jail. Proving your innocence in a DUI case is not as easy as you would think. With a DUI you are not innocent till proven guilty, you are guilty till proven innocent. We will learn why later.

Now let me clear the record before we continue. I do not condone drunk driving. If an intoxicated driver who is negligent kills or injures an innocent person, a jury of his peers should judge him. I am not taking about someone who had a beer an hour ago and another motorist runs a red light and plows into him. According to the DUI laws, he can be convicted of murder even though he was not at fault or legally drunk.

“Once you consume that alcohol, you are now a criminal because it's against the law to drink and drive. Period.” This was stated by a peace officer (see source 9) and is another lie. It is legal to drink and drive in the United States. You can legally drive as long as your BAC is below .08, but don't try it you will go to jail. You will find out why later.

### **NHTSA Bad Data**

The whole problem here is that the number of drunk driving fatalities is not as big as we are being told. If you believe everything, the government tells you, you are very naïve or you just crawled out from underneath a rock. Let us look at the FARS data, because this is the main source where the lies start. The FARS data is what MADD and other lobbyist use to support their claim about drunk driving fatalities. Let us examine the term alcohol related.

[NHTSA defines a fatal crash as alcohol-related or alcohol-involved if either a driver or a nonmotorist (usually a pedestrian) had a measurable or estimated blood alcohol concentration (BAC) of 0.01 grams per deciliter (g/dl) or above. NHTSA defines a nonfatal crash as alcohol-related or alcohol-involved if police

indicate on the police accident report that there is evidence of alcohol present. The code does not necessarily mean that a driver or nonoccupant was tested for alcohol. (See source 6) Note: National Highway Traffic Safety Administration (NHTSA) estimates alcohol involvement when alcohol test results are unknown. (see appendix A) Now that is the NHTSA official definition. Now let us take a closer look at the official definition.

NHTSA declares anyone above .01 as alcohol related. To put .01 BAC in perspective, eight times that amount is required to achieve a BAC of .08. A .01 BAC can be achieved by using mouthwash. Another problem with the FARS data is that the driver is not always the one counted in an alcohol related fatalities. It has been determined that this number also includes passengers with a BAC of .01 or above. If a pedestrian, bicyclist, equestrian or any other nonmotorist is above .01 BAC this is considered an alcohol related fatality. .00 BAC is sometimes considered an alcohol related fatality. And if police indicate on the accident report that there is evidence of alcohol present by any person in any vehicle, NHTSA uses this number in alcohol related fatalities. Note: NHTSA says, "NHTSA defines a nonfatal crash as alcohol-related or alcohol-involved if police indicate on the police accident report that there is evidence of alcohol present." The keyword here is nonfatal. FARS stands for "Fatality Analysis Reporting System" it only reports on accidents with fatalities. But, if there is a fatality and the police officer sees a beer can at a crash investigation he writes in the report alcohol related and FARS then says the fatality is alcohol related.

Here is another example of alcohol related: A pedestrian who had a one beer thirty minutes ago, walks out on the freeway a causes a ten car pile up which kills himself and four motorist or passengers. NHTSA would list this accident as an alcohol related crash with five fatalities. Are you getting the picture here? Hang on it gets better.

Test results are not available for all drivers and non-occupants involved in fatal crashes for a number of reasons, most frequent of which is that persons are not always tested for alcohol. To address missing data, NHTSA has developed and employs a statistical model to estimate the likelihood that a fatal crash is alcohol related. The new technique is called "Multiple Imputation". Here is what NHTSA says: [The National Center for Statistics and Analysis (NCSA) of the National Highway Traffic Safety Administration (NHTSA) has undertaken several approaches to remedy the problem of missing blood alcohol test results in the Fatality Analysis Reporting System (FARS). The current approach employs a linear discriminant model that estimates the probability that a driver or nonoccupant has a BAC in grams per deciliter (g/dl) of 0, .01 to .09 or .10 and greater. Estimates are generated only for drivers and nonoccupants (pedestrians, pedalcyclists) for whom alcohol test results were not reported. Beginning with the 2001 data, NHTSA will transition to "Multiple Imputation", a new method to estimate missing BAC in FARS. The publications for the 2001 data will reflect the estimates of alcohol involvement generated using "Multiple Imputation". The new methodology improves on the current model by imputing specific values of BAC across the full range of possible values rather than estimating probabilities. Imputing ten values of BAC for each missing value will permit the estimation of valid statistics such as variances, measures of central tendency, confidence intervals and standard deviations. On an average, approximately 60 percent of the BAC values are missing/unknown in FARS each year. Invalid inferences can be drawn on the level of alcohol involvement for cases where the BAC is missing as the characteristics of the persons with unknown BACs can be significantly different from those with known BACs. In order to perform complete-data analysis of FARS data with respect to alcohol involvement, the missing BACs need to be simulated (imputation!)] (see source 8)

Now let us look at that. [NHTSA assigns Blood Alcohol Content (BAC) values to 60% of the drivers who the police felt

no need to test for alcohol. Doesn't it seem strange that in a fatal accident a driver would not be tested if the police had any suspicion that he may be drinking?] (see source 7) Now think about that, if someone is killed in an automobile accident, don't think for one minute that the facts will not be gathered, blood will not be taken to get evidence to prosecute a drunk driver for murder charges. Some states require that blood samples be taken from all involved in any automobile fatality.

Many times .00 BAC drivers and passengers and non-motorist are included as the intoxicated driver. If you put bad data in the database for Multiple Imputation, bad data will come out.

One more thing I must mention is that all drug related fatalities are considered alcohol related although there is no alcohol involvement whatsoever. It makes no difference whether it is marijuana, heroin or legal prescription medication. If someone is high on LSD and crashes into a bus and kills 20 people including himself, NHTSA reports this an alcohol related with 21 fatalities.

(WARNING): If someone is taking the prescribed amount of medication with no alcohol and is involved in a fatal accident, it is considered alcohol related. Can this person get a DUI? Yes! Can this person be charged with murder? Yes! Do not drive while taking prescription medicine. You may get a DUI. If someone is injured or killed whether you are at fault or not, you can go to prison.

NHTSA does not bother to find out who was at fault in an alcohol related fatality. Nor do they care. Consider this scenario: Someone drinks a six-pack of beer during a football game. The game is over and his wife sends him to the store to pick up some potatoes for dinner. As he is setting at a red light waiting for it to turn green to go, he gets rear ended by someone who does not drink. The man that rear ended the football fan is killed on impact. NHTSA reports this as an alcohol related

fatality regardless of who was at fault. The football fan gets charged with murder because he had a measurable amount of alcohol in his body. When an alcohol related fatality happens, NHTSA is not concerned with who or what was the fault of the accident.

### **Innocent Victims**

Now MADD will probably be the first one to tell you that a drunk driver or drunk passenger is not a innocent victim. I do not consider a driver who is negligent let alone intoxicated to be innocent. MADD refers to drunk drivers and drunk passengers as offenders. Theresa McNeil a MADD spokeswoman on WXON-TV "Last year, 24,000 nationwide lost their lives because of drunk drivers." (see source 7). From what you have learned so far these numbers from FARS are blown way out of proportion. These numbers are also misunderstood. Because [90% of the alcohol-related occupant deaths (drivers and passengers) were in the vehicle driven by the drinking driver; 70% were the drinking drivers themselves.] (see source 10) Keep in mind even these numbers includes all the bad data, all the estimated data an so on.

So just how many innocent victims are killed by legally intoxicated drivers? The truth is because NHTSA is not concerned with who was at fault we will never know the exact number until NHTSA collects this data. Some of the experts say that the cause of the accident is intentionally disregarded to bloat NHTSA figures. So, for the time being, we are stuck with fatality numbers that do not take in account who or what was at fault.

With that being said let me introduce you to Jeanne Pruett, Founder, President and CEO of R.I.D.L. "Responsibility In DUI Laws, Inc.", she has worked as a computer network engineer and consultant since 1987. She specializes in data mining and reporting and has utilized these skills in many of the world's largest corporations including two of the big three automakers.

Ms. Pruett utilized these skills to evaluate the data in the FARS (Fatal Analysis Reporting System) database which is the same database used by the National Highway Traffic Safety Administration (NHTSA). In February 2003, Ms. Pruett and three other core members incorporated R.I.D.L. and opened the online website [www.RIDL.us](http://www.RIDL.us) in order to begin addressing the DUI issues and to offer moral support to people who feel they have been unfairly caught in the DUI system. R.I.D.L. has seen tremendous growth in membership and interest in the industry over the past year. (See source 17)

*She indicates in the USA 2002 Innocent Victims Report (see page number 170 ) that there where a total of 2,932 innocent victims killed in accidents where at least one driver had a BAC level over .01. Remember there is no way to determine who was at fault in these accidents. This number also includes passengers who willingly and knowingly got into a vehicle with a driver who had been drinking. Let us examine the fatalities at various BAC levels.*

*234 fatalities occurred when at least one driver had a BAC level under .08.*

*197 fatalities occurred when at least one driver had a BAC level at .08 or .09.*

*311 fatalities occurred when at least one driver had a BAC level at .10 or .11.*

*335 fatalities occurred when at least one driver had a BAC level at .12 or .13.*

*362 fatalities occurred when at least one driver had a BAC level at .14. or .15.*

*1,493 fatalities occurred when at least one driver had a BAC level over .15.*

*[ If you break out the driver with .08/.09 and .10/.11 and .12/.13, you can easily see that there are actually very few people getting killed in accidents where a driver had those BAC levels and that the vast majority of innocent victims are getting killed in accidents for which there are drivers with .15 and higher.*

*Also, since even NHTSA admits that at least 60% of people killed in accidents are killed by drivers with NO ALCOHOL or drugs whatsoever, we can easily extrapolate from there and it's not hard to imagine that at least 50-60% of those innocent victims may have been involved in an accident that was caused by a sober driver. Just because someone had alcohol in their system does NOT mean that they were automatically at fault. So if you take 50% of 2932, then we're talking about 1466 people killed in accidents where a driver with a BAC of .01 or higher was involved. And again, other factors could have been involved that may have been the cause of the accident and not alcohol.*

*We estimate that the actual number of innocent victims actually killed by a legally intoxicated driver per year is somewhere between 500 and 1000. There is no way to know for sure. But looking at the figures logically, rationally and mathematically, there really is no way the number could be any higher.*

*One point I would like to make. MADD and their ilk will constantly say that if the person hadn't had any alcohol, then they could have avoided the accident. So they try to say that the accident was 100% preventable had there been no alcohol involved. That's a load of rubbish. Because if being sober means that one could avoid an accident, then there would be NO fatalities involving sober drivers, now would there? Jeanne Pruett R.I.D.L.)*

Here Ms. Pruett tells the story of how the innocent victims report came about.

*[At one time, MADD allowed anyone to participate in their on-line General Discussion Forum where people could discuss the issue of drunk driving. Several RIDL members, including myself, joined in on the discussion. RIDL members talked about the issue from a logical, rational perspective, but the MADD members came from a strictly emotional perspective. The result was many long and heated arguments.*

*During one of these discussions, one of the MADD members mentioned the "millions of innocent victims", which the RIDL members immediately began to question. So I posed the following question to the MADD members: "If a person who dies in an accident is the drunk driver themselves, do you consider that person an innocent victim?" The resulting responses were a cacophony of, "No, no, no!!! They are guilty, guilty, GUILTY!!!!!"*

*So, ok, then an innocent victim is someone who was killed in a vehicular accident who themselves was not the drinker or driver. These are the people included in RIDL's Innocent Victims Report. Our report DOES include passengers who knowingly and willingly got into a vehicle with a driver they knew had been drinking. Does this make them an innocent victim? I don't know. You tell me. Naturally, if the answer is no, then the results of our Innocent Victims Report would be much, much smaller.*

Let us examine Ms. Pruett's claims. She indicates in the USA 2002 Innocent Victims Report (see page number 170 ) that there were a total of 2,932 innocent victims killed in accidents where at least one driver had a BAC level over .01. This number Jeanne Pruett has proven with FARS data. NHTSA indicates in 2002, 43,005 fatalities occurred in all auto accidents. 15,093 were alcohol related and above .08 BAC. The government tells us that 90% of all alcohol related fatalities are the drinking driver or passenger. So 10% are innocent victims. This gives us a number of 1,463. 50% of the numbers are estimated with Multiple Imputation now we have a number of 731. Then we split that number in half due to who was at fault or not, and we have 365. This is pretty darn close to the number Ms. Pruett



indicates that is the actual number of innocent victims killed in accidents where at least one driver had a BAC level over .08 BAC.

That means that innocent victims only account for around 1% of all traffic fatalities when at least one driver had a BAC level .08. or above. What does that mean? It means that:

**The United States of America does not have a drunk driving problem!!**

The first to plead his case seems right, until another comes and examines him. Proverbs 18:17

Many of you will find this statement completely ridiculous because for 25 years you have heard the we have a drunk driving problem. After you have heard something for so many years and so many times, it is hard to believe the opposite. How can I make that statement? Aspirin kills over 1000 people each year. [MADD fuels a belief that adults' legal freedom to drink responsibly before driving should be sacrificed if there is even the most remote possibility that it might stop one drunk driver.] (see source 13) Should aspirin be sacrificed if there is even the most remote possibility that it might stop one death? I am certainly not trying to shuck off 500 innocent victims. My point is that this whole drunk driving issue has been blown way out of proportion. Because of this, we have a drinking and driving law enforcement problem, which will be discussed in the chapters ahead.

**The National Weather Service indicates that about 400 to 500 people are injured each year by lightning. So, you have about as much of a chance of getting stuck by lightning as being fatality injured by a drunk driver.**

Let us look at repeat drunk drivers. In MADD's own words: [Repeat drunk driving offenders are among the most stubborn, persistent, and deadly threats on U.S. roads.] [Repeat drunk

drivers account for about one-third of DUI arrests annually and 10 to 20 percent of drinking drivers in fatal crashes. 2. They're over-represented in fatal alcohol-related crashes, although not responsible for the majority of them. (see source 11). These statements are made in the same article. You have learned that in 2002 there were about 500 innocent victims. 15% of 500 is 75 innocent victims each year are in fatal alcohol-related crashes due to repeat offenders.

"Get your facts first, and then you can distort them as much as you please."---Mark Twain (getMADD.com)

### **\$20,000 Reward**

A reward has been offered of \$20,000 if you can prove this statement from NHTSA "In 2002, 17,970\* people were killed in alcohol-related crashes, representing approximately 42 percent of the 42,850 total traffic fatalities."---NHTSA (National Highway Traffic Safety Administration), July, 2003 [\*NHTSA has revised their figure for 2002. Their new figure is 17,419. We will lower the Challenge number to reflect their revision.] Here are the rules:

1. Twenty thousand dollars will be paid to the first person who can document that 17,419 persons were killed by drivers impaired by alcohol or drugs in 2002.
2. The definition of IMPAIRED is the NHTSA definition stated on this page, substituting the words "is defined" for "can be defined" in their definition.
3. "Proof" of this claim must include verifiable data that clearly proves 17,419 persons were killed by drivers impaired by alcohol or drugs. Specific victim and accident details may be requested to verify submitted entries.
4. The names, facts and figures must be from a recognized

source.

Submit proof to: [info@getMADD.com](mailto:info@getMADD.com) Media inquiries, contact: Eric Skrum from The National Motorist Association: [nma@motorists.org](mailto:nma@motorists.org) (see source 7)

No one has ever challenged for the \$20,000.

Who are the three organizations offering the \$20,000 reward? [getMADD.com](http://getMADD.com), The National Motorists Association (NMA) and Responsibility In DUI Laws, Inc. RIDL.

### **getMADD.com**

[getMADD.com](http://getMADD.com) was founded in September, 2003 in reaction to the increased use of sobriety checkpoints which are used to stop motorists with no probable cause. The DUI arrest rate is a meager 1% at these roadblocks.

Other troubling Constitutional issues were investigated, which led us to the highly publicized corporation, Mothers Against Drunk Driving (MADD). Our researchers studied statistics and statements from MADD and from our government and found a deliberate pattern of deception.

[getMADD.com](http://getMADD.com) strives to expose these lies and exaggerations that have resulted in the erosion of our Constitutional freedoms and, at times, draconian punishments.

[getMADD](http://getMADD.com) accepts no donations and have no formal officers or staff.

### **The National Motorists Association**

The National Motorists Association (NMA) was founded in 1982. They advocate, represent, and protect the interests of North American motorists. NMA objectives are to guarantee the retention of your individual rights when using public streets,

roads, and highways. To support traffic laws based on sound engineering criteria and public consensus. To protect your right to own and use the kinds of vehicles you prefer. To support improved driver training and education. To oppose speed traps and other traffic enforcement measures carried out for revenue-generation purposes. (See source 26)

### **Responsibility In DUI Laws, Inc**

In 2003 RIDL also known as Responsibility In DUI Laws, Inc is a non-profit organization started by Jeanne Pruitt. RIDL is a group of concerned citizens who recognize that the current trend in DUI laws is aimed at criminalizing and punishing Responsible Drinkers and is having little if any affect towards curbing drunk driving. Their mission is to educate the public and lawmakers about the misdirection of the current laws, take the steps necessary to get the current laws repealed and to provide alternative suggestions for dealing with the problem of drunk driving. The organization is nationwide and is growing at a very fast pace. They currently have members in 33 states and a few from other countries. They have members who drink and members who do not drink. They have members who have had a DUI and those who have not. They have members who have had a friend or loved one killed by a drunk driver. What they all have in common is a concern about how the “drunk driving” laws are eroding our hard-won liberties and civil rights. (see source 17)

## **Chapter 3 Mothers Against Drunk Driving**

MADD's mission in the beginning was honorable. MADD and RID was started to get negligent repeat drunk drivers off the road. The problem was that negligent drunk drivers were not being held responsible for their actions. Had they been, I do not think I would not be writing this book because none of this would be blown out of proportion.

Most of the repeat negligent drunk drivers who cause injuries or fatalities to innocent victims do so within months of each other. Take for example the driver who killed Karen and Timothy Morris. This set into motion RID. The man who killed Laura Lamb and Cindi Lightner set into motion MADD. All three of these drivers were repeat negligent drunk drivers. Back then the legal limit of alcohol was under 1.5 BAC in most states. Above 1.5 BAC is where most injuries still occur to this day.

MADD, let me rephrase that, Candy Lightner the founder of MADD accomplished her mission within the first 3 to 5 years. She got stiffer penalties for repeat drunk drivers and made the public aware that driving drunk was a bad idea. The reason I said that Candy Lightner accomplished her mission and not MADD is because Candy Lightner left MADD in 1985.

["It has become far more neo-prohibitionist than I ever wanted or envisioned," said MADD's founder. "I didn't start MADD to deal with alcohol. I started MADD to deal with the issue of drunk driving."---Candy Lightner] (see source 12).

Since Candy Lightner left MADD, the organization now runs amok.

## **21 Year Old Drinking Age**

Now I do not agree with everything Candy Lightner did. She was responsible for raising the drinking age from 18 to 21. The greatest number of alcohol related fatality rates was and still is these young inexperienced drivers under 25. Instead of addressing the problem through treatment and education, MADD thought the simple solution was to keep anyone under the age of 21 from drinking. Some experts say that this did not work because alcohol became forbidden fruit, therefore more desirable.

The United States of America has the highest drinking age in the world. Consider that many men and women under 21 fight and die for our freedom yet they cannot go and have a drink if they desire to do so. They can get married at the age of 18, but cannot drink. I wholeheartedly disagree with a 21 year old drinking age.

## **MADD is a 501(c)(3)**

Today MADD has a male president, and for the most part is run by men. In 2002 Dean Wilkerson (who is no longer with MADD) was the National Executive Director making \$238,139 in salary and benefits this is 3 times the amount of Wendy Hamilton's \$75,381 in 2002 when she was president.

MADD is a 501(c)(3) organization. This is what the Internal Revenue Service says about anyone claiming as 501(c)(3):

[In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.

Legislation includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies.

An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.] (See source 27)

Are they breaking the law? I am not a tax lawyer so I cannot say. So you make up your own mind. MADD's activism has resulted in the passage of thousands of federal and state anti-drunk driving laws. They go to Capital Hill to pass more laws. They appear at DUI trials, to make sure judges are doing what MADD wants them to do. They appear before parole boards to deny parole of DUI offenders and the list goes on and on. If you are a tax attorney and you think they are breaking the law, call me let's talk.

## Chapter 4

### **Mothers Against Drunk Driving: A Crash Course in MADD**

**by David J. Hanson, Ph.D**

*Dr. Hanson has researched alcohol and drinking patterns and problems for over 30 years. With Dr. Ruth Engs of Indiana University, he conducted a series of pioneering nation-wide studies of collegiate drinking trends. Professor Hanson has received alcohol research grants from federal and state agencies, published over a dozen chapters in books on alcohol, prepared articles for several encyclopedias, and recently published two books on alcohol. His publications and scholarly papers number over 300 and textbooks in over a dozen different fields of study report his research.*

*Professor Hanson has served as alcohol consultant to the Canadian government and testified on Capitol Hill; his research has repeatedly been reported in the New York Times and other major newspapers, where he is frequently quoted; and he has appeared as an alcohol expert nationally on the "NBC Nightly News with Tom Brokaw," the "Dr. Laura" television program, the Fox News Channel, "CNN Saturday," National Public Radio's "All Things Considered" and "To the Best of Our Knowledge," the ABC national radio news and over fifty radio programs across the United States.*

Mothers Against Drunk Driving (MADD) was founded in 1980 by Candy Lightner, whose daughter was tragically killed by a drunk driver who was a repeat offender. The goal of MADD was to reduce drunk driving traffic fatalities and the organization has been highly effective in raising public disapproval of drunk driving. The proportion of traffic fatalities that are alcohol-



related has dropped dramatically, in part because of MADD's good efforts.

For more, visit:

<http://www2.potsdam.edu/hansondj/DrinkingAndDriving.html>

## **The Drunk Driving Problem**

The problem of drunk driving has now largely been reduced to a "hard core of alcoholics who do not respond to public appeal," according to MADD. 1 Most drivers who have had something to drink have low blood alcohol concentration (BAC) and few are involved in fatal accidents or crashes. 1a On the other hand, while only a few drivers have BAC's higher than .15, many of those drivers have fatal crashes. 2 For example, almost half of fatally injured drunk drivers have a BAC of .20 (which is over twice the legal limit in most states) or higher. 3

The biggest problem in reducing drunk driving fatalities now consists of the hard core of alcoholic drivers who repeatedly drive with BAC's of .15 or higher. But MADD has now decided to go after social drinkers and to eliminate driving after drinking any amount of alcohol beverage. This change appears to reflect the influence of a growing prohibitionist movement within MADD.3a

The founding president of MADD, Candy Lightner, left in disgust from the organization that she herself created because of its change in goals. "It has become far more neo-prohibitionist than I ever wanted or envisioned," she says. "I didn't start MADD to deal with alcohol. I started MADD to deal with the issue of drunk driving." 4 Ms. Lightner has apparently put her finger on the problem when she says that **if** MADD really wants to save lives, it will go after the real problem drivers. 4a

## **Vengeance**

Mothers Against Drunk Driving is fueled by anger and grief. In fact, its original name was Mothers Against Drunk Drivers. 5 As a leading researcher on drunk driving has observed, MADD is focused on the demand for justice or vengeance on the group that took the lives of friends and children. This warrants harsh punishment, whether or not deterrence is achieved. It also leads to rejection or a lack of enthusiasm for policies that promise to save lives of crash victims without regard for the cause of an accident. 6

A case in point. Research suggests that using a cell phone while driving may cause more traffic fatalities than driving drunk. But when a MADD official was asked how traffic fatality statistics involving cell phone use compared to those involving drunk drivers, he tellingly replied "I have absolutely no idea, nor do I care." 7 The issue for MADD is no longer preventing auto accidents but preventing drinking.

## **Prohibitionist Goal**

Drunk driving has been defined in the U.S. as driving at the .10 BAC level, but is being re-defined down to .08. At least five states have attempted to lower that definition of drunk driving to .05. Doris Aiken, the founder of MADD's sister organization, Remove Intoxicated Drivers (RID), wants to lower the level to .04. Exploiting the tragedies of September 11, the RID leader charges that "Drunken drivers are the terrorists of the road." There is now a move in Vermont to define drunk driving at the .02 BAC level. What's the ultimate goal? MADD's Tina Pasco asserts that "The only safe amount when you are mixing drinking and driving is zero -- double zero. No alcohol." 8

No one should drive after drinking, but defining drunk driving as driving after using mouth wash is counterproductive

and impractical and a waste of limited resources. Zero tolerance isn't working in schools 9 and it won't work on the highways.

For more, visit Zero Tolerance:

<http://www2.potsdam.edu/hansondj/ZeroTolerance.html>

Most alcohol-related traffic deaths occur when other important causal factors are present, such as using a cell phone, fatigue, drug use, inexperience in driving, road rage, speeding, poorly lit roads, and failure to use safety belts. 10 And, of course, most traffic fatalities don't involve any alcohol at all. If MADD really wanted to reduce traffic fatalities, it would also care about these major causes of traffic deaths --- but it clearly doesn't. MADD is no longer a safety-promotion organization but an anti-alcohol organization.

Mothers Against Drunk Driving stigmatizes light or moderate alcohol consumption, even when it isn't associated with either being underage or driving. For example:

- MADD sells a graphic showing two empty glasses of alcohol surrounded by the words assault, drowning, burns, rape and suicide.
- MADD sells a graphic that equates beer with heroin by depicting a beer bottle as a drug syringe.
- MADD sells a television ad insisting that "if you think there's no difference" between heroin and alcohol, "you're dead wrong." 10a

Mothers Against Drunk Driving has clearly become not simply anti-drunk driving or even anti-impaired driving, but anti-alcohol.

## **Junk Science**

Unfortunately, Mothers Against Drunk Driving often uses junk science to promote its agenda. For example, a very brief three-page study by MADD vice president Ralph Hingson asserts that a national definition of drunk driving set at .08 would save 500-600 lives per year. Although the U.S. Department of Transportation has been unable to establish such a conclusion after 15 years of careful research, and although the General Accounting Office issued a report to Congress insisting that the Hingson claim is "unfounded," MADD continues to quote the unsubstantiated estimate as scientific fact. 11 And the MADD vice president continues to churn out junk science reports used by the organization and other anti-alcohol groups. 12

A MADD ad campaign against underage drinking included purported "facts" linking alcohol to weight gain, rape and sexually transmitted diseases that weren't based on good evidence, according to the Wall Street Journal.

Reduction of consumption leaders James Mosher and Robert Reynolds criticized MADD's misuse of statistics. After reviewing MADD's ads, Reynolds informed MADD that "this is really sloppy, inadequate and embarrassing.... It imperils the integrity" of MADD and other groups in the field.

MADD's assertion that underage drinkers are 50 times more likely to use cocaine than abstainers made James Mosher "cringe," according to the Wall Street Journal. Mosher stressed that there is no research "that shows there's a cause and effect and that's being implied" by MADD. 12a

When pioneering researcher Dr. Laurence Ross reported that increasing the severity of punishments for drunk driving has only a short-term impact on drunk driving, MADD turned on him with a vengeance usually reserved for drunk drivers themselves. It even accused Dr. Ross, an independent scholar

with proven integrity, of being the drunk driver's best friend. 13 Actually, Dr. Ross is a strong foe of drunk driving who began studying the problem long before the existence of MADD. He has identified research-based evidence of what policies are most effective in reducing drunk driving. 14 Unfortunately for him, they are not always consistent with MADD's ideological and emotional agenda.

### **Lack of Integrity**

The Center for Consumer Freedom has pointed out that Mothers Against Drunk Driving ...will sell out its principles to keep its coffers full. One noteworthy case was the 2000 battle over two California ballot initiatives (Propositions 30 and 31) that sought to permit an automobile accident victim to sue the at-fault driver's insurance company if legal claims weren't paid promptly. Considering that victims of drunk drivers stood to gain an important legal tool, most Californians expected MADD to lead the charge in favor of these new measures. However, MADD aligned itself with a group of out-of-state insurance companies, which collectively ran a \$1 million-per-week advertising campaign against the propositions. MADD defended its position at the time by arguing that drunk drivers themselves, if convicted only of lesser charges, could sue insurance companies under the proposed law. Even after California's Attorney General disagreed, ruling that Propositions 30 and 31 could never give drunk drivers new rights, MADD never budged from its contradictory position. The organizations motive? Greed, plain and simple. MADD's 1999- 2000 annual report acknowledges Allstate Insurance Company for a gift in the "\$250,000 and above" category. Nationwide Mutual Insurance gave over \$100,000 for its share of the political cover. 15

MADD also has "cozy" relationships with its other major donors, including DaimlerChrysler, General Motors and Nissan.

Actually, they're more investors than donors. GM is a good example.

"GM and MADD have formed a mutually profitable relationship: in return for GM's financial support, MADD stays conveniently silent on traffic safety issues outside of 'impaired driving.' GM, meanwhile, is vociferous in its opposition to any drinking before driving, buying itself immunity from MADD's potential criticism for encouraging speeding." 15a

Speeding is a factor in about 31 percent of all fatal crashes involving almost 14,000 fatalities each year and the National Highway Traffic Safety Administration estimates that speed-related crashes cost over \$40 billion each year in the U.S. General Motors very aggressively promotes speeding as a pleasurable activity in order to sell its cars. 15b

What does MADD say about speeding? Nothing. As the Executive Director of Ohio MADD said, "Speeding isn't our thing." 15c

General Motors produces three of what Consumer Reports calls the "Four Deadliest Cars of All Time." However, by giving millions of dollars to MADD, the auto giant appears to have bought silence on the subject of improving vehicular safety features. 15d

#### MADD-GM Timeline

"1991 General Motors becomes a corporate sponsor of MADD

1992 General Motors commissions a Gallup Poll to test public opinion on roadblocks

1995 General Motors donates \$110,000 to MADD

1996 to 1998 GM General Counsel Charles Babcock serves as MADD's national chairman

1998 Babcock argues against drunk driving sensors for cars. MADD is silent.

1999 GM announces a five-year, \$2.5 million "corporate partnership" with MADD, and gave \$500,000 to MADD to kick it off.

2000 GM co-sponsors one of MADD's campaign and underwrites MADD's magazine, DRIVEN

2000 GM blocks an amendment to a highway bill that would have imposed criminal penalties on car-company executives who authorized faulty vehicles or equipment. MADD is silent.

2001 Former GM Vice Chairman Harry Pearce is appointed to MADD's National Advisory Board

2001 to 2002 GM donates \$542,180 to MADD, and GM-subsidiary Chevrolet donates \$120,000

2003 GM increases fatality risks with more distracting onboard telematics and infotainment devices in its cars. MADD is silent.

2003 GM introduces the new Cadillac 16 concept car, which features a 1,000 horsepower engine. MADD is silent." 15e

Coincidence? You decide

When a MADD leader was asked about how traffic fatality statistics involving cell phone use compared to those involving drunk drivers, he tellingly replied "I have absolutely no idea, nor do I care." On CNN's Crossfire, the President-elect of MADD refused to discuss cell phones and the traffic fatalities they

cause. She said "We're not here to talk about cell phones. We're here to talk about alcohol." Following more questions about how cell phones impair driving, the MADD leader snapped "I'm not going to talk about cell phones." Similarly, a MADD lobbyist was quoted on the program as saying "I don't care about deaths from cell phones." 15f

Perhaps MADD's callous lack of concern for deaths caused by cell phone results from the fact that the Cellular Telecommunications Industry Association (CTIA) gave free wireless phones to MADD chapters throughout the country along with free airtime. As the President of MADD exclaimed, "This is a tremendous shot in the arm for our organization." 15g

Just another coincidence? Perhaps.

Another top donor to MADD is Takata, a manufacturer of seatbelts. MADD uncharacteristically but very aggressively promotes the use of seatbelts.

This might only be yet another in a long string of coincidences. But realistically....well, draw your own conclusion.

When deciding if these are only coincidences, consider MADD's pitches to potential "donors."

"What MADD Can Do For You

Aligning with MADD gives your company added credibility and increased power by:

- Increasing store traffic and sales volume
- Connecting with customers on emotional and logical levels to provide incremental value to the consumer and sales lift to your company



- Increasing partner distribution channels
- Increasing shelf space and point-of-sale display space with key retailers
- Winning national marketing and media awards
- Increasing consumer and media awareness during key time periods
- Giving national promotions "local legs" through MADD's network of chapters
- Mentioning your company during interviews in national media
- Attracting national and regional media attention during sponsor-driven media events
- Delivering targeted media campaigns with other MADD partners

Call MADD's marketing department at 469-420-4518 to discuss how MADD can help your company meet its marketing and public relations goals." 15h

The organization brags that "during 2000, MADD delivered more than 102 million media impressions and exposure to over 500 legislators to DaimlerChrysler."15i As a former chapter President observed, MADD is big business.

For more on MADD's problems with integrity, visit MADD Flunks the Truth Test.

<http://www.alcoholfacts.org/MADDtruth.html>

## **Greed**

Non-profit organizations typically permit their chapters to keep most of the money they raise. For example, Remove Intoxicated Drivers (RID) chapters get to keep 90% of all funds they raise. But MADD claims ownership of every penny raised by all its many chapters. Thus, after raising \$129,000 locally and turning it all over as MADD demands, the Las Vegas chapter received a check from the national office for \$1.29 as its share. 16 MADD's "focus is on greed," said the chapter President, who reported "I've never seen such bloodsuckers!" 16a How is "greed" spelled? Perhaps its "MADD."

But Mothers Against Drunk Driving is always hungry for more money. Although the organization's net worth exceeds \$25 million dollars, MADD has paid telemarketers huge fees to raise tens of millions of dollars per year from hard-working Americans. MADD has spent almost two out of every three dollars raised on fund-raising, forcing the American Institute of Philanthropy (AIP) to downgrade its evaluation of the organization to a "D." MADD has spent twice as much on fundraising as the AIP finds acceptable. 16b It would appear that raising money has become an end in itself at the MADD bureaucracy, with high salaries ranging close to \$200,000.00 per year, numerous employees, and huge retirement funds. 16c

Salaries/benefits at the "volunteer" organization in 2001 included: 17

Dean Wilkerson \$217,651  
 Doug Kingsriter \$148,489  
 Bobby Heard \$118,539  
 Kyle Ward \$109,590  
 Michelle Smallwood \$104,376  
 Janice Bloom \$87,655  
 Gary Ellis \$86,294

Tresa Coe-Hardt \$83,363  
 Millie Webb \$76,762  
 Brandy Anderson \$75,762  
 Reidel Post \$72,709

Within a period of two decades, Mothers Against Drunk Driving has degenerated from a public service organization devoted to reducing traffic fatalities into an anti-alcohol bureaucracy largely focused on raising ever more money for itself. 17a

### **What Others Say About MADD**

"Mothers Against Drunk Driving may soon have to change its name to Mothers Against Any Drinking Whatsoever -- that is, if it wants to avoid false advertising." Washington Times. 18

"At the forefront of the neo-prohibitionist movement is MADD (Mothers Against Drunk Driving)." Dr. Thomas J. DiLorenzo of Washington University and Dr. James T. Bennett of George Mason University. 18a

"Mothers Against Drunk Driving (has) decided to wage war on social drinkers." Radley Balko, Fox News columnist. 19

"MADD has morphed from an anti-drunk-driving organization into an anti-alcohol organization. Jim Reynolds, writer. 19a

Mothers Against Drunk Driving "engages in a form of neoprohibitionism." Christian Restifo, Carnegie Mellon University. 19b

Although Prohibition ended 70 years ago, "a new agenda of temperance is alive and well today at Mothers Against Drunk Driving (MADD)." Charles V. Penna, MADD's former Northern Virginia Chapter Executive Director and now Director of policy studies at The Cato Institute. 20

Mothers Against Drunk Driving's "ongoing push to compel states to adopt ever-lower standards for being legally *drunk*, is becoming a prohibitionist jihad driven by hysteria, not medical reality." Washington Times. 21

A "prohibitionist movement (is) propagated by MADD." National Motorist Association. 21a

"We believe their (MADD's) true agenda is prohibition." TalkLeft. 22

MADD has become "overzealous." Candy Lightner, founder of Mothers Against Drunk Driving. 22a

"MADD continues to inflate the number of people killed by drunk drivers to further its prohibitionist agenda." Center for Consumer Freedom. 23

MADD's report is "chock full of inaccuracies and errors," but MADD officials have refused to comment on them. Jerry McCorry, Director of the Governor's Council on Impaired and Dangerous Driving. 24

Its "inflated drunk driving statistics confirm MADD's relevance and help it raise funds." Radley Balco, writer. 24a

Mothers Against Drunk Driving "has basically become a propaganda mill churnig out false and misleading statistics." Jay Caruso. 25

"MADD generally attempts to mask its radical, neo-prohibitionist agenda in the veneer of sound science and sober statistics." Charles V. Pena, former MADD official. 25a

"MADD has become a ruthless lobby more concerned with prohibitionist legislation and punishment of drinkers than with improving road safety." Iain Levison. 26

"Criticizing MADD is like criticizing the pope. They do not lightly tolerate disagreement." LeCuyer. 27

"Nobody wants to be in MADD's bad graces." Bruce Freidrich, People for the Ethical Treatment of Animals (PETA). 28

"MADD is just totally spiteful." Palmer Didion, attorney. 28a

Mothers Against Drunk Driving "threatened me." James Bostad, former MADD State Treasurer. 28b

"MADD is a hate group, without question." Darlene J. Dowling, AFA. 28c

"MADD is spiteful, vindictive, judgmental, holier than thou, self-righteous and obnoxious." Kevin. 28d

Mothers Against Drunk Driving "displayed its contempt for civil liberties, as well as the judicial system, by calling for (a) judge to resign because she criticized a MADD-backed program she felt violated the *constitutional rights of young adults*." Center for Consumer Freedom. 29

"One must wonder has MADD gone mad?" Foundation for Taxpayer and Consumer Rights. 29a

"MADD is out of control." Talk Left. 29b

Mothers Against Drunk Driving is guilty of "demogoguery." 29c

"MADD has allowed its emotions to preempt its common sense, hoping, therefore, to drive up support for its cause." S. G. Michalides. 30

Mothers Against Drunk Driving spends most of its time in "self-perpetuating fund-raising efforts." The American Institute of Philanthropy. 31

"MADD has become big bucks, and that's it." "It's a big corporation." Sandy Kaufman, former MADD chapter President. 31a

Mothers Against Drunk Driving is guilty of "dubious budget and fundraising tactics." (MADD deceptively lists fundraising mailings as educational activities rather than fundraising activities.) American Institute of Philanthropy. 32

"One of the worst performance records (on spending inordinately to raise money, then spending below-average amounts on their stated mission) goes to Mothers Against Drunk Driving." Daniel Puzzo describing MADD's low grade by the independent American Institute on Philanthropy. 33

"MADD uses viral e-mail to build (its e-mail) list." K. Brenner. 34

"MADD continues to deceive." National Motorists Association. 35

The list goes on and on. For more, visit  
<http://www.alcoholfacts.org/ReputationOfMADD.html>

## **MADD in the News**

**Hostility to Constitutional Rights.** Unfortunately, Mothers Against Drunk Driving has a long tradition of hostility toward the rights of the accused and apparently assumes them to be guilty unless they can prove their innocence. MADD has not identified a single instance in which it has ever, even once in its long history, defended the rights of an accused defendant, regardless of the circumstances. Here are some examples of MADD's antagonism toward fundamental human rights.

### **MADD: Police Need Even More Power**

The national President of MADD Canada is "calling for police to have more power to nab impaired drivers." The President complains that the burden of proof is on the police and prosecution to demonstrate that the accused is guilty.

MADD fails to understand that in North American systems of justice, accused individuals are innocent until proven guilty by the government. The burden of proof is correctly on the police and government. MADD leaders should take refresher courses in civics at their local middle schools.

It's in totalitarian societies that the accused are assumed to be guilty and must prove their innocence. Perhaps MADD leaders would be happier living in a totalitarian society more in keeping with their apparent beliefs and values. 36

### **Disregarding Constitutional Rights**

A new law in South Carolina requires law enforcement officers to read suspects of impaired driving their Miranda rights before administering field sobriety tests. The law is intended to prevent cases from being thrown out of court because officers didn't make suspects aware of their Constitutional rights.

MADD has strongly opposed this effort to safeguard rights provided by the law. 37

### **Defending Unconstitutional Blood Tests**

The Indiana State Court of Appeals has declared as unconstitutional mandatory blood tests without cause after traffic accidents.

It's important that Sheriff John Marvel says the ruling won't have any substantial effect on drunk driving law enforcement. Officers can still require a blood test of drivers if probable cause exists. Probable cause is anything that suggests a person may have consumed any alcohol, such as slurred speech or the odor of alcohol.

Nevertheless, MADD is angry. A spokesperson appears upset that protecting Fourth Amendment rights guaranteed by the United States Constitution might make it "hard to prosecute people who've caused pain in the lives of others." This assertion is consistent with a large study of MADD members that found the organization to focus on "the demand for justice and vengeance" against those they believe have caused them loss and pain. 38

### **MADD: Would Deny Right to a Trial**

Chante Mallard, charged with murder after striking a pedestrian and failing to seek medical help for him, claimed the charge should not be murder because she had been drinking and drugging before the accident and was in a "haze."

A MADD official was outraged at the defense and said "when Mallard entered her defense, the judge in the case should have taken it as a guilty plea to murder and immediately proceeded to the punishing phase of the trial."

Intoxication should never be accepted as a defense for any action, but to deny a citizen the right to a trial because of that defense is, itself, indefensible, and reflects MADD's extreme hostility to individual rights. 39

### **MADD Opposes Need for Evidence to Convict**

A Texas state appellate court ruling, known as the "Stewart case," has caused questionable breath test estimates to be



thrown out of courtrooms in 32 South Texas counties. The court held that authorities must provide reasonable evidence that a person's blood alcohol content (BAC) was at an illegal level at the time the person was driving. Civil libertarians and civil rights supporters have praised the Stewart case for not permitting questionable test estimates to be used to convict individuals who may be completely innocent.

It is very important to remove drunk drivers from the road, but most people recognize that innocent people shouldn't be victimized in the process. However, the Stewart case, which protects the innocent, has been strongly criticized by Mothers Against Drunk Driving. 40

### **MADD's Irresponsible Vigilantism**

The local chapter of Mothers Against Drunk Driving has engaged in "reckless and irresponsible public behavior," according to the District Attorney General of Anderson County, Tennessee, Jim Ramsey. Among other things, the MADD chapter has interfered in ongoing criminal investigations, including irresponsible vigilantism, according to the Attorney General.

The MADD chapter accused a local retailer of selling beer to a teenager who later had an auto accident that killed two people. However, a judicial hearing found that the beer hadn't come from the business accused by MADD of this illegal behavior. There is no report of an apology.

The MADD chapter defends its attacks and other questionable activities as being "within the policies and guidelines of MADD." 41

**Money.** Unfortunately, MADD's original concern with preventing drunk driving has largely been replaced with an emphasis on raising ever-larger sums of money and building an ever-larger bureaucracy. Raising money has become an end in itself and the national office of MADD insists that every penny raised by local chapters belong to the main office of the bureaucracy, instead of the chapter that raised it. Here are some examples of MADD's obsession with money.

### **MADD Opposes Free Speech Decision**

A United States Court of Appeals has overturned a Pennsylvania law that prohibited paid alcohol ads in college newspapers. The Court said the prohibition violated First Amendment rights to free speech guaranteed by the U.S. Constitution.

"The idea of making it a crime to publish lawful information in a newspaper is just incredible," says a lawyer who supported the case. Supporters of the defense of free speech rights included the Pennsylvania Newspaper Association, The Students Press Law Center, and the Reports Committee for Freedom of the Press.

Characteristically, MADD says the court's decision is "irresponsible," "a step in the wrong direction," and believes that Pennsylvania should appeal the ruling. The state has decided to accept the decision, which it believed it could not overturn because it's so firmly based on the United States Constitution.

## **MADD's Main Goal: Fund-Raising**

All items in some issues of Mothers Against Drunk Driving's MADD E-Newsletter are devoted entirely to MADD's primary mission of fund-raising. There are no pleas for sober driving, no calls for more sobriety checkpoints, no news reports, no petitions for legislation to reduce impaired driving and improve traffic safety ---- just fund raising appeals. Most issues of the MADD E-Newsletter usually have at least one or two items not devoted to soliciting money.

MADD's national web site lists all local chapters. Each listing is followed by a plea to "Donate Locally." This is clearly deceptive because it implies that funds given to local chapters will be handled differently than funds given to the national office. In reality, all funds, wherever donated, must go directly and completely to the national office for use as it sees fit.

## **MADD Victim Impact Panels are Big Business**

Mothers Against Drunk Driving received \$2,657,293 in a single year from its Victim Impact Panel business. MADD reported on its non-profit tax form that This revenue is earned from DWI offenders who must pay a donation to MADD" to attend a meeting in which they learn the impact that impaired driving accidents have on those who suffer as a result.

MADD has a clear economic incentive to increase the number of DWI/DUI convictions because that increases its income from the required "donations." MADD determines exactly how much must be donated to itself by convicted drivers to sit through the court-mandated meetings.

Although they are a very profitable business for MADD, there appears to be little evidence that they are effective at all in reducing the incidence of either impaired or intoxicated driving.

## **Congressional DWIs Ignored**

It appears that dozens of members of Congress each and every year escape DWI arrests by invoking their congressional privilege of immunity (Article one, Section 6). The privilege was originally provided over 200 years ago to protect members of Congress from politically-motivated arrests made in an effort to prevent them from voting or otherwise performing their official duties.

The privilege of immunity serves no useful purpose today and is an affront to law-abiding citizens. There are many pressures that could be applied to discourage its outrageous misuse. For example, the use of the privilege by a senator or representative from a state could be used to lower that state's score used by Mothers Against Drunk Driving in calculating the state's MADD "grade."

Unfortunately, MADD insists on remaining completely silent on the issue. Apparently, the organization, which receives massive taxpayer funding from Congress, doesn't want to ruffle feathers and jeopardize a rich source of income.

### **MADD Official's Biggest Crime: Cheating MADD's National Office**

The founder of a chapter of Mothers Against Drunk Driving was found guilty of stealing about \$45,000 from the organization after a two-week trial. The actual theft may have been as high as \$48,000. And she had also been charged with systematically forging a police officer's signature to forms submitted to MADD's national office.

Although she stole money earned by her chapter, the money is considered to have been stolen from the national office of MADD. That's because the national office considers all monies

earned by local chapters, or donated to them, to belong to it rather than the local chapter.

"From our point of view, this is a particularly egregious offense," said a senior MADD official. The money should have gone to the national office. He said MADD headquarters is considering a civil lawsuit to get its money. 43

**Anti-Alcohol.** It appears that MADD has been gradually moving from a position of anti-drunk driving to one of anti-alcohol. Even the founder of the organization has rejected MADD's neo-prohibitionism. MADD insists that it's not anti-alcohol, but the following examples suggest otherwise.

### **MADD: "An Organization of Prohibitionists"**

Mothers Against Drunk Driving is increasingly finding itself "fighting off critics who say the once all-powerful group has become an organization of prohibitionists."

The founder of MADD, Candy Lightner, believes it is moving in the wrong direction. "It has become far more neo-prohibitionist than I ever wanted or envisioned," said MADD's founder. "I didn't start MADD to deal with alcohol. I started MADD to deal with the issue of drunk driving."

MADD has been calling for bans on alcohol advertising, widespread sobriety checkpoints, increased taxes on alcohol beverages, and other measures that have drawn sharp criticism not only from the organization's founder but also from consumer-rights advocates and civil liberties supporters, among others. 44

## **MADD Deception**

MADD's National President has implied that all alcohol-related crashes are actually drunk driving crashes, although only a minority really are.

The anti-Saloon League, the Prohibition Party, and similar temperance groups made no distinction between moderate drinking and alcohol abuse. To such anti-alcohol activists there was no difference....all drinking was alcohol abuse. Similarly, the leader of Mothers Against Drunk Driving appears to make no distinction between "alcohol-related" and "drunken" accidents. The Women's Christian Temperance Union (WCTU) would certainly be proud.

But alcohol-related only means that the driver, a passenger, pedestrian, or anyone else associated with the accident had consumed at least a sip of alcohol or was believed to have done so.

On the other hand, a drunk driving crash occurs when an involved driver has an estimated blood alcohol content (BAC) reading high enough that the person is considered legally intoxicated. There's an enormous difference between "believed to have had a sip" and "drunken."

This is a very important distinction and confusing people by equating the two is not in the public interest, although it may be in the interest of MADD and its fund-raising efforts. 45

## **Parental Rights Challenged**

A Wisconsin legislator is trying to change state law to prevent parents from serving their own children any alcohol beverage, even within their own home. This is in spite of extensive evidence that those who learn to drink in moderation with their parents tend to have fewer alcohol-related problems. At a public

hearing, it was pointed out that the law would cause the loss of "an important educational opportunity."

However, Mothers Against Drunk Driving supports the bill, which denies common-law rights of parents. It insists that it's unacceptable for parents to provide their children "a drug that can harm them." 46

### **Life-Saving Alcohol Test Kits Opposed**

To prevent unnecessary alcohol-related traffic crashes among young people, the Arizona State Department of Public Safety plans to supply high-school students with Guardian Angel Personal Alcohol Test strips. "Don't let your friend be dead wrong. Test your friend before it's too late" is the message accompanying the kit.

The test strips, which are activated by being placed in the mouth, indicate blood alcohol concentration (BAC) within three ranges that experts report are highly indicative of risk. The package conspicuously states that it is best not to drive even at low BAC levels. The Governor's Office of Highway Safety promotes the plan as the first part of an aggressive campaign to reduce alcohol-related traffic accidents.

Although it is praised by many parents, Mothers Against Drunk Driving is strongly opposed to the plan, which it sees as inconsistent with the organization's strict abstinence message. 47

### **Anti-Alcohol Bias Apparent**

A new service in Orlando, Florida, delivers alcohol beverages to individuals of proven legal drinking age.

The coordinator for Responsible Education and Actions for Campus Health at the University of Central Florida supports the

idea because it could reduce drunk driving. " If it takes one drunk driver off the road, it's a good thing," she said, adding that the service is "really trying to be pro-active."

To prevent underage purchases, the service requires buyers to show their drivers licenses, which are digitally photographed.

Although the service sells only to adults of legal age and may reduce drunk and impaired driving, the president of the Central Florida chapter of Mothers Against Drunk Driving calls it "frightening" because there is no sure way to make certain that none of the beverage ever falls into the hands of a person under the age of 21. Of course, that's also true of alcoholic beverages purchased in a liquor store, wine shop, grocery store, or elsewhere.

MADD's opposition appears to have more to do with its anti-alcohol attitudes than with logic. 48

### **Drinking Seen as Irresponsible**

The Tampa Bay Lightning offered patrons free beer during playoff hockey games if they purchased season tickets.

The offer was limited to four beers, beverage servers are all trained to detect intoxication and won't serve to anyone who appears to be intoxicated, and the club offers free taxi rides home for anyone who thinks they may have had too much to drink. About 25 patrons took advantage of the marketing offer and no complaints were made against the marketing promotion.

Nevertheless, officials at Mothers Against Drunk Driving (MADD) were outraged. "It's advertising irresponsible behavior. It's a huge insult to our community," insisted one MADD leader.



Another MADD official said "they're obviously using alcohol to get business."

They were offering alcohol, not cocaine, heroin or other illegal drugs. Apparently MADD believes that drinking is irresponsible, an insult to others, and that alcohol is an unacceptable consumer product.

The notorious anti-alcohol activist, Carrie Nation, who used her hatchet to destroy bars and intimidate both beverage servers and consumers, would be proud of MADD. 48a

**Miscellaneous.** Mothers Against Drunk Driving has drifted far from its original goal of preventing drunk driving, as its founder has explained. News reports reflect some of the many ways in which big and bureaucratic Mothers Against Drunk Driving has become vindictive, exploitive, greedy and intolerant. Here are a few examples.

### **Punishment Preferred to Rehabilitation**

The president of MADD Canada was outraged and publicly blasted a judge who sentenced a repeat drunk driver to restrictions, including electronically-monitored severe limits on his mobility on condition he remain in treatment for his alcoholism. The driver had maintained a long period of sobriety before experiencing a relapse.

In handing down the sentence, the judge cited scientific research demonstrating that severe punishments are ineffective in deterring drunk driving by alcoholics. Therefore, she developed a sentence designed to reinforce the long-term effectiveness of his rehabilitation.

MADD Canada strongly disagreed with the judge and wanted severe punishment rather than rehabilitation. 49

### **Shameless Exploitation**

Mothers Against Drunk Driving exploits tragedy after tragedy to advance its own agenda and it does so with remarkable disregard for the victims of those tragedies.

For example, shortly after the death of Diana, the Princess of Wales, MADD actually produced an advertisement exploiting the event in an effort to promote its legislative agenda. 1 Following the mass murder at Columbine High School in Colorado, MADD issued a press release arguing that the number of students shot was "insignificant" compared to those killed in alcohol-related traffic accidents! After 9/11, the President of MADD expressed frustration that the events of that day had shifted some of the limelight away from the organization. Attempting to capitalize on the tragedies of 9/11, she insisted that "if anybody knows terror, I think the victims of drunk driving certainly do." 50

It is difficult to imagine that such insensitive words and actions come from an organization that claims to be an advocate for victims. Apparently, the only victims who count are those of drunk driving; other tragedies and their victims are trivialized. MADD has the right to believe as it wishes, but it should learn to be less blatantly self-promoting at the expense of others.

People should be outraged at MADD's insensitive, self-serving exploitation.

Don't Ever Disagree with MADD (If You Know What's Good for You!)

Mothers Against Drunk Driving has asserted on its national website that "the Speaker of the (Virginia) House and the House

leadership are strong opponents of DUI legislation...and are the main obstacle to the passage of lifesaving DUI countermeasures in the legislature." That's a strong charge.

However, the Speaker of the Virginia House "has been a strong proponent of drunken-driving legislation. He introduced 'use and lose' legislation creating zero tolerance for underage drinking and driving. He supported legislation to lower blood-alcohol content limits, which define 'per se' impairment, from 0.1 to .08 percent and another measure making third-time DUI offenses a felony. He advocated mandatory jail time for two-time DUI offenders and supports ignition interlocks for convicted drunk drivers." This, according to Virginia's Free Lance-Star newspaper, a strong supporter of dui legislation.

Why the attack by Mothers Against Drunk Driving? Perhaps it's because the Speaker of the House was displeased with MADD's "report card" for the state. MADD has a long history of attacking anyone, even friends and supporters, who disagrees with it in any way.

Mothers Against Drunk Driving has refused to issue a retraction about its erroneous assertion to correct the record and clear the Speaker's good name. A word to the wise. No matter who you are, never ever disagree with MADD. 51

### **MADD Chapter Founder Arrested**

The founder of the Citrus County (Florida) chapter of Mothers Against Drunk Driving has been arrested and charged with aggravated assault with a deadly weapon. According to witnesses, MADD activist Leigh Gonzalez pulled out a gun and put it in the face of a man outside a bar.

Although Ms. Gonzalez had falsely claimed to be a law enforcement officer, there's no evidence that she was attempting

to prevent the man from driving while intoxicated or under the influence of alcohol.

The MADD founder recently stepped down from her post at the MADD chapter, claiming that national MADD officers demanded too much of the local chapter. 52

Remember that the national office of MADD insists that local chapters raise large amounts of money, all of which must be turned over to the national MADD headquarters for use as it sees fit.

### **MADD Intolerant of "Competition"**

Mothers Against Drunk Driving keeps suing Dads and Mad Moms Against Drug Dealers (DAMMADD) in the wrong courts in an effort to bully the non-profit anti-drug organization into changing its name, according to legal papers filed by the defendant.

Earlier, MADD filed its lawsuit in Texas, where it was dismissed for lack of jurisdiction. It has now filed suit in the Southern District of New York, instead of in the Northern District, where the defendant organization is located.

Repeatedly filing the suit in the wrong district "is part of a continuing effort to wear down a small defendant by dragging it through the court system and draining its limited resources" argues DAMMADD's attorney.

DAMMADD's income last year was \$80,000, during which time MADD took in over forty-six million dollars. DAMMADD was started two years ago by a self-employed electrician who operates the small organization from the basement of his home.

A long-time financial supporter of MADD was distressed by its action. "Haven't you some drunk drivers to catch? I am so

embarrassed about this lawsuit.... I am so ashamed of MADD -- I was always a contributor to the organization, but (now instead) I will contribute to DAMMADD." 53

### **Summary**

MADD's original goal was an enormously important one -- to reduce drunk driving and the deaths and injuries that it causes. However, as its founder observed, the group has become neo-prohibitionist. As a former MADD chapter president explains, it's "a big corporation" and "all about money." Unfortunately, what began as a dedicated volunteer group of caring women has become an indifferent and self-serving bureaucracy.

This concludes David J. Hanson, Ph.D "Mothers Against Drunk Driving: A Crash Course in MADD" (For his references see page 175)

## Chapter 5

### “The Reputation of MADD” by David J. Hanson, Ph.D

MADD "has turned into the new 'Women's Christian Temperance Union.'" Al Franken, liberal radio program host. 1

Madd is an "anti-alcohol group." Robert Wood Johnson Foundation. 2

MADD's campaign is "anti-alcohol." Chronicle of Higher Education. 3

MADD is an "anti-alcohol advocate." Associated Press. 4

MADD is led by "neoprohibitionists." Jerry G. Munez, Seton Hall University 5

MADD has a prohibitionsit agenda." Mimi Coffey, attorney. 6

MADD has a "neo-prohibitionist agenda." Chris Barry, Montreal Mirror. 7

MADD has "a neo-prohibitionist agenda." Equalbias.com 8

MADD is guilty of "anti-alcohol hysteria." Brian Carnell. 9

MADD has "become anti-alcohol, pure and simple." Jerry D. Mead. 10

MADD has morphed from an anti-drunk-driving organization into an anti-alcohol organization." Laurence Simon. 11

MADD has an "anti-alcohol campaign." Prof. Jenny Edbaure, University of Texas. 12

MADD is "anti-alcohol." Dr. K. Roehrig, Ohio State University. 13

MADD is "led and driven by anti-alcohol fanatics." Gary Witzzenburgh, Consumer Guide. 14

"the Women's Christian Temperance Union and the Anti-Saloon League spearheaded the constitutional prohibition effort. Groups such as Mothers Against Drunk Driving (MADD) assume that mantle today." Hans G. Nichols. 15

MADD is an outgrowth of "the ideology of the Woman's Christian Temperance Union." J. Leitzel, University of Chicago. 16

MADD is 'the most effective temperance organization' in the U.S. since Prohibition's repeal. David Frum, Wall Street Journal. 17

"The Women's Christian Temperance Union has merely been replaced by MADD." Christopher T. Ivicevich. 18

MADD consists of "closet neo-prohibitionsists." Thomas Clough. 19

MADD supports "anti-alcohol legislation." Carol Bryant. 20

MADD is an "anti-alcohol group." Casey Grabenstein. 21

"One of the most powerful anti-alcohol lobbies is MADD." Shobba Tsering Bhalla. 22

This concludes David J. Hanson, Ph.D "The Reputation of MADD" (For his references see page 191)

## Chapter 6

### **Alcohol—“MADD’s 24 Point Strategy for Winning the War”**

*This article “MADD’s 24 Point Strategy for Winning the War” has been reprinted with the generous permission of getMADD.com*

1. Get people to believe government statistics (not an easy task) by adopting them as our own. Interpret them in our favor.
2. Blame alcohol for causing all accidents and deaths no matter what the actual cause, as long as *any* measurable amount of alcohol is present at the scene.
3. Define drunk driver as any passenger, pedestrian, bicyclist and/or driver with an alcohol reading above .00. If two passengers were drinking and the driver was sober, add 2 to the total drunk drivers involved in the accident.
4. Add a percentage of sober & “alcohol unknown” drivers to the total, just for good measure.
5. Round all of the phony percentages up: 41% becomes 50%, 16,400 becomes 17,000.
6. Stress stories from Mothers with personal tragedies, not our \$44 million corporate structure and the Men in charge.
7. Refer to accidents as *crashes*. It sounds more dramatic and implies that they could have all been prevented if drivers did not drink.
8. Lobby Congress for money for the NHTSA so they can "grant" more money to us.



9. Define the ratio of blood alcohol to breath alcohol as 2100:1 even though the range varies from about 1300:1 to 3500:1
10. Label drunk drivers *violent criminals* and compare them to murderers and rapists.
11. Begin using the term *impaired driver* so that even if the driver is not legally drunk, they can still be arrested.
12. Spend over \$200 million in 20 years to convince the public that this is a more serious social issue than healthcare, poverty or education.
13. Swap employees with government agencies and research groups who will promote our cause.
14. Solicit money from groups that will benefit from more arrests, like insurance companies.
15. Lump the social drinkers in with the hard-core drunks and threaten them with vague statements like, "You drink, you drive. You lose."
16. Support police roadblocks to stop people without probable cause who don't display any drunk driving characteristics.
17. Convince lawmakers to sentence drunks to mandatory attendance at our Victim Impact Panels and collect over \$2 million each year for the effort.
18. Pass laws to shred anyone's drivers license on the spot if they refuse to incriminate themselves by taking the breath test and suspend it for one year even if they are found not guilty of DUI

19. Pass laws to suspend the drivers license of everyone convicted of DUI, so they can't earn money to buy alcohol. Impound their car, if we want to.

20. Continue to cite studies that support our cause even if they have been discredited by other studies that we also cite.

21. Continue to push for lower legal alcohol limits so more people qualify for arrest and deny that we are actually for virtual Prohibition.

22. Never show any sympathy or concern for the suicides, ruined careers and failed marriages of thousands of people arrested for DUI—even those who caused no accident, injury or death. After all they are still violent criminals.

23. Never worry about awkward Constitutional issues like probable cause, self-incrimination, right to counsel, cruel & unusual punishment, trial by jury and illegal search.

24. Spoon feed the press distorted and exaggerated information knowing that they'll never check its veracity.

All information is from MADD, NHTSA (National Highway Transportation Safety Administration) web sites and the American Institute of Philanthropy.

"...I had ceased my affiliation with M.A.D.D. when they would no longer allow me to say the name God or Jesus Christ when I spoke to people about the story of my daughter."---  
Former MADD coordinator, Vicki Soles.

## **Chapter 7 Law Enforcement**

Hurt people, hurt people. I truly believe that MADD has several agendas. Get even for the hurt that they feel, I am not taking about the drunk driver that kills someone, this includes getting even with anyone that has a drink and then drives. MADD wants you in jail and or broke. For some reason MADD thinks this makes victims of other drunk drivers feel better. (MADD Executive Director Doug Scoles says, "This is something that will even the playing field. Bring back some justice for victims.") (see source 28) They are referring to a bill to double the penalties for drivers who refuse to take a breath test. We did not kill or injure their loved ones. Someone else did. MADD's other agendas are prohibition and to remain in the limelight to keep the coffers full.

### **DUI Suicide**

As we have learned, there are about 500 innocent victims each year. For the moment, let us look at the other side of the coin. There are about 1.8 million DUI arrest each year. Because of the harsh and unfairness of DUI laws, there is anywhere from 3,000 to 6,000 suicides committed each year by accused offenders. [The suicide rate for those arrested for DUI is about 0.4%. The number of suicides per year committed by prisoners incarcerated on DUI charges is roughly six times greater than the total number of innocent deaths per year caused by drunken drivers in all the cities and towns in the entire United States.] (see source 12) It is impossible to nail down how many there are because suicides in jail are kept hush hush. The scales of justice have swayed too far.

Stiffer penalties do not stop drunk driving, education and treatment does. MADD knows it and state prosecutors know it. As you can see in the three cases that started RID and MADD, in all three of these cases the drivers had prior negligent driving problems. If these drivers would have been taken more seriously in the beginning the fatalities probably would not have occurred because they should have been educated or treated for their driving behavior. If they had injured someone before these tragic fatalities, they should have been judged by a jury of their peers. Before the 1980's if an drunk driver was negligent and caused an injury, usually the most he got was a ticket. If a person did get a DUI back then, there was usually no question that he did not have control of his vehicle. The legal limit in the majority of the states was .15 BAC.

Today drinking and driving has become a modern day witch hunt. The only way to get home after drinking a beer or a glass of wine is to walk. Don't get near the motor vehicle. If you are in it, under it, or around it with the keys locked in the trunk you can still be charged with DUI. People have received a DUI for walking away from their vehicle. A man in California in 2004 received a DUI in his RV. The RV was hooked up to the utilities and the stabilizers where on the ground. He had the keys to the RV in his possession so he got a DUI. (see source 29) If you walk you take a chance of receiving a public intoxication charge but it is better than a DUI. Forget all the crap about designated drivers, forget all the crap MADD has told you about how much you could consume before your BAC reaches .08. MADD loves DUI arrest because it keeps their coffers full. That's why MADD lied to us all on how much you could consume before your BAC reaches .08. Let us take a look at the .08 BAC per se law.

### **Illegal Per Se**

An "illegal per se" statute assumes, as a legal fact, that you were intoxicated when you operated a motorized vehicle while having the state's prohibited level of alcohol in your blood. It makes no difference whether you are drunk or not. What I mean

by that is that if you can walk a tightrope, or recite the “Gettysburg Address” it makes no difference. You are still drunk if your BAC is .08 or above. Most people that consume alcohol develop a tolerance, which means you need more alcohol to feel the same effect. Some people are born with a high tolerance. I had a friend that could drink a fifth of whiskey and pass any sobriety test you could throw at him. He has a high tolerance. The effects of alcohol can be totally different in each individual. The “illegal per se” law takes none of this into account. I am not going to put the chart of how much alcohol you can consume before your BAC reaches .08 in this book because it is not true for everyone, and this book is about truth.

### **Implied Consent**

“Implied Consent” is something the government came up with to make you take breath, blood or urine test. The government declares that because you operate a motor vehicle you automatically have given your consent to be tested for drugs or alcohol in your blood. I got news for them. I never consented to it and I bet you did not either.

### **Motor Vehicle**

A motor vehicle can be just about anything other than your two feet. A bicycle, a horse, riding lawnmower, wheelchair, motorized skateboard, boat, airplane, the list goes on and on. There is some good news regarding DUI on a bicycle. A few states have decided that they will no longer give a DUI to a bicyclist. But beware only a handful of states. And even some of these states you can still get a \$350.00 fine. Of course MADD disagrees that a bicyclist should not get a DUI. [The legislature should do nothing to soften rules for drunken drivers — whether the person is on four wheels or two, said Lydia M. Valliere, president of the state’s Mothers Against Drunk Driving chapter. “So if you’re too drunk to drive a car it’s OK for you to get on a mountain bike?” she said. “Now you’re putting the driving public at risk. You shouldn’t even be walking on the

street, let alone riding, if you're impaired.]" And of course the state prosecutors agree with MADD on the issue. [Rockingham County Attorney James R. Reams said intoxicated bicyclists should be subjected to drunken driving charges. Drunken bicyclists "are endangering the public, almost as much as being in a car," Reams said.] (see source 14). A man from my hometown has a felony DUI because he had prior DUIs on a bicycle. He has never had a driver's license or a car. He has never injured or killed anyone to my knowledge. No one has ever been killed due to a drunk bicyclist. A felony is what people get for murder, rape, burglary and so forth. We will learn more about felony DUI later in this book.

### **DUI On A Horse**

A horse. Yes a horse is a horse, of course..... Sorry couldn't resist. In Pennsylvania two men were charged with DUI while riding their horses from a bar. The judge threw the case out but, of course the prosecutor appealed it to the Supreme Court of Pennsylvania. The state Supreme Court ruled in favor of the equestrians, due to the fact that Pennsylvania's drunken driving law can't be enforced against people on horseback. (see source 15) A man in Texas got convicted of a DUI on horseback while leaving a rodeo. Be careful, all states are different.

### **DUI In A Wheelchair**

A Florida woman got her wheelchair stuck in sand in her front yard. She was trying to get wheelchair unstuck, when the wheelchair leaped out, hit a 4" curb and darted into the street. A mini van traveling down the street stuck the woman. A blood test revealed that she had a BAC of .12. The poor woman in the wheelchair was charged with DUI. The Florida judge said "While sitting at home in a wheelchair taking prescribed medication, a person could be charged and convicted of DUI," the judge went onto say "A wheelchair-bound person overindulging in alcohol at a wedding, in a restaurant, at a professional football game or in the sanctity of her own home would also be subject to arrest

for DUI." This Florida judge was often viewed as too lenient. He did say, that this case raised numerous questions about fairness and threw the case out of court. (See Source 30)

They are many more examples such as these, but you get the idea. Do not assume that everything turned out fine because a DUI case turned out not to be a conviction. Attorneys charge anywhere from \$1000 up to \$10,000 and going to jail is no fun.

If you can ride it, fly it or float on it, you might get a DUI on it.

### **Prosecuting Attorney**

You can see how ridiculous the cases above are. Why do they go to court? Why does someone sleeping in the back of a station wagon wrapped up in a sleeping bag at a rest area get a DUI? The answer is really simple. It is the prosecuting attorney's job to see that you get convicted. He knows whether you are guilty or not. If he knows you are not guilty period, it is still his job is to get a conviction. He hates to lose and the more convictions he gets the better his record is and he gets bragging rights. That's right bragging rights. Let me give you true example. A black man is charged with murder and raping a young girl. The state prosecutor knows the man is innocent, but it is his job to convince the jury that the accused man is guilty. The prosecutor knows that the perpetrator's hair and blood found on the girl is not from a black man. The jury gave the man who is an old acquaintance of mine the death penalty. The real murder was found several years later. The innocent man was on death row for about 10 years before he was released. These are the things most people don't know about our criminal justice system. So, if you think everyone is entitled to a fair trial your wrong. I certainly do not agree with it but that is the way it is. It is even more so for DUI. Don't believe me about prosecuting attorneys? Ask any attorney he may tell you, if he starts him hawing around, you know the answer. I really do not

know how some prosecuting attorneys and police officers sleep at night.

If a driver is weaving all over the road and is endangering motorist and is drunk, arrest him. I do not have a problem with that as long as the suspect rights are not violated. We have overzealous police officers out there that are under quotas, yes police officers have quotas, or they may be trying to get an award from MADD for bragging rights. MADD has an award called "Top Cops". [To reward the police for their efforts in curbing drinking and driving, MADD members present plaques to the local police officers who issued the most DUI citations in the previous year. Members organize a special reception, where they present the awards to the winners before their family, friends, fellow officers, public officials, and the local media.] (see source 16).

The common complaint about DUI with defense attorneys is officer honesty. I do not know if some officers lie intentionally or do not realize they are lying under oath. Only the officer knows the answer to that. Now if you are naïve enough to think that this does not happen, what planet did you just arrive here from? Just watch the news.

### **Driving home from a Baseball Game**

To give you some prospective on the whole drinking and driving, war in America, let us start with this scenario. These BAC values are only examples because, everyone is chemically different.

You and your wife left an evening baseball game. Because of extra innings you left the ballpark around 11:30. During the course of the game you had 2 or 3 beers. You notice there are not many cars on the road. You are obeying all the traffic laws. Soon you are almost home when you see a car following you extremely to close. The car follows you for almost a mile then



you are relieved when you discover it is a police car as he hits the lights and pulls you over. Now let me stop here for a minute. Why did he pull you over? If police want to pull someone over they can always find a reason. This is DUI exception to the constitution. (As you will see this is just one of many)

### **The Fourth Amendment**

The Fourth Amendment to the constitution, says, “police officers have to have probable cause to stop you.” In almost all 50 states now they don’t have to have any reason for DUI. In states where they still have to have a reason to stop and harass you, a license plate light out is always a good reason, dim tail lights, no blinker, the list goes on and on. The real reason he pulled you over is to give you some sort of a ticket or a DUI. If the officer wants a reason to stop and harass you he will find one. To make a DUI conviction look better especially if the police officer has a camera in the car he will wait for you to get black and white fever.

### **Black and White Fever**

*[Experienced traffic patrol officers are familiar with a phenomenon which is sometimes referred to as "black-and-white fever". That phenomenon is simply the normal reaction of most drivers to being followed by a marked police car (painted, in many jurisdictions, black and white). As soon as the motorist becomes aware that a police car is following him, he becomes understandably apprehensive—and focuses his attention increasingly on the rear view mirror. As the officer continues to follow, the driver becomes tense, worried, and his concentration on driving is broken: He keeps his eyes more on the mirror and less on the road ahead. Each time the driver brings his eyes back to the road, he finds that he has drifted and must correct the course of the car back to the center of the lane.*

*The result: weaving—and, possibly, erratic movements such as sudden increases or decreases in speed (tension can cause*

*the foot to depress the accelerator). And, of course, these are the most commonly encountered symptoms of a drunk driver on the highway.*

*In other words, it is the very presence of the officer which tends to create the probable cause for suspecting a DUI. And after the officer pulls the driver over, he gets out and approaches the car with the very human preconception that the driver is probably intoxicated. And, as we know from psychological studies, we tend to see what we expect to see: normally veined eyes appear "bloodshot", normally but stressed speech sounds "slurred", normal pink complexions appear "flushed", etc. These observations are quickly followed by the notoriously subjective field sobriety tests, difficult to perform under the best of conditions. Followed in turn by an arrest for DUI.]*

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### **Step to the Rear of Your Car**

Ok he asks you to step out to the rear of your car. He sticks a flashlight in your face. (WARNING: Some police officers use a special flashlight with a breath testing device in it, but it looks like an ordinary flashlight. With this special flashlight he can test your BAC without your knowledge or consent) The officer asks where you coming from? You tell him a baseball game. At this point, he may ask you to wait and proceed to ask the passenger of the car, "where are you coming from? The officer is trying to catch you in a lie. (If you are coming from a bar or a party and you indicate that, you get a nice ride downtown.) Next, he asks you if you had anything to drink? You believe that honesty is the best policy so you tell the officer you had a 2 beers. If the officer has not already had probable cause for suspicion of drunk driving he does now.

### **Horizontal Gaze Nystagmus Test**

He puts the flashlight under his arm and pulls out a pen or pencil. He tells you to follow the writing instrument with your eyes. This is called the “horizontal gaze nystagmus” test or HGN. Nystagmus simply means an involuntary jerking of the eyeballs. This jerking becomes more distinct and obvious as the amount of alcohol increases in the subject’s bloodstream.

1. I am going to check your eyes. (Please remove your glasses) 2. Keep your head still and follow the stimulus with your eyes only. 3. Do not move your head. 4. Do you understand the instructions?

(See appendix E) and you can see how easy it is to get and arrest with this ridiculous test but of course, it will stand up in some courts. In order for it to stand up in court the officer must have proof of HGN training. I heard a DUI defense attorney say that HGN stands for “Here Goes Nothing.”

### **Walk and Turn**

Now the officer tells you to perform some sobriety test. First the walk and turn.

1. Put your left foot on the line and put your right foot in front of it with your right heel touching your left toe. Keep your hands at your side. (Demonstrate).

2. Do not start until I tell you to.

3. Do you understand the directions?

4. When I tell you to begin, take nine heel-to-toe steps on the line, turn around keeping one foot on the line, and return

nine heel-to-toe steps. (Demonstrate heel-to-toe; three steps is sufficient).

5. On the ninth step, keep the front foot on the line and turn by taking several small steps with the other foot. (Demonstrate turn)

6. While Walking, watch your feet at all times, keep arms at side, count steps out loud. Once you begin, do not stop until test is completed.

7. Do you understand the directions? 8. You may begin the test.

Here is what the officer is looking for:

Loses Balance During Instructions  
Starts before Instructions are finished  
Stops while walking  
Doesn't touch heel-to-toe  
Steps off Line  
Uses arms for balance  
Loses balance while turning/incorrect turn  
Incorrect number of steps.

If you make 2 errors there is a 68% chance you are intoxicated.

### **One Leg Stand**

Next one leg stand.

1. Stand with your heels together and your arms at your side. (Demonstrate).

2. Do not begin the test until I tell you to.

3. Do you understand?

4. When I tell you to, I want you to raise one leg, either leg, approximately six inches off the ground, foot pointed out. Keep both legs straight and keep your eyes on the elevated foot.

5. While holding that position, count out loud; one thousand and one, one thousand and two, one thousand and three, and so forth until told to stop. (Demonstrate raised leg and count)

6. Do you understand the instructions?

7. You may begin the test.

Here is what the officer is looking for:

The test is timed for 30 seconds and scored by the following possible clues.

Sways while balancing. Uses arms for balance. Hopping. Puts foot down.

If you make 2 errors there is a 68% chance you are intoxicated.

Two things can be happening here, either the officer is deciding whether or not to take you to jail or he has already decided that you are going to be charged with DUI and he is gathering evidence against you because you are being video taped.

### **Stupid Pet Tricks**

Guess where all these test come from. Your friends over at NHTSA. We have already learned what NHTSA is all about. I don't care how well you perform on these test. The prosecuting attorney will try to prove you are intoxicated. All of these test are based on bad science and have nothing to do with driving ability. But the state always has some expert who will claim these test are valid. Try the test on some friends when no one is drinking and with no coaching. You are the officer or

prosecuting attorney. Most people will fail these test. I call field sobriety test “stupid pet tricks” because that is what they are tricks. [Almost EVERY knowledgeable DUI / DWI attorney will say to you, "NO. Don't attempt ANY 'field tests'---EVER." That is because many studies have concluded that the SFSTs are "designed to fail".] (see source 20)

These are not all the test that an officer can ask you to perform. You have the right to refuse all test. If you do, there is a good chance you going to jail.

There is one reason why these test are so easy to fail. The state and local police departments and prosecutors want DUI convictions; this is why some police and state agencies took video cameras out of the patrol cars. These agencies thought that by installing video cameras the conviction rate would for DUI would go up. The opposite happened, the conviction rate went down. The jury were seeing the videos and determining the defendant was not impaired and giving a not guilty verdict. So the police cameras were removed. Back in the late 1970s when you were driving drunk it was obvious and you were charged with DUI. Today even if you are not impaired, you get a DUI.

### **Miranda Rights**

You do good on the test but the officer arrest you and he is suppose to read you your Miranda rights. He does not read you the Miranda rights because there is an exception to your constitutional rights when it evolves DUI. This way the officer can ask you all kinds of incriminating questions on the way to jail. In some states your car is impounded and you wife either calls somebody or walks home. In some states the car is impounded anywhere form 30 days to indefinitely. That’s right indefinitely. So much for that beautiful Lexus.

## **Observation Period**

When you arrive at the police station you get a 15 to 20 minute observation period. This is to make the breath test more fair they say but it is a double edged sword. If you had just stopped drinking this time will allow more alcohol to be absorbed into your system, so your BAC will show higher on the breathalyzer. If you burp or vomit, the 20 minutes start over again. Does the 20 minutes really start over again? No, it is not going to happen, because a police officer is not going to watch you to see if you burp. More on this burping later. After the 20 minutes you are off to the video room. The sobriety test you took on the road are done again in this controlled environment. You can refuse these test as well. The officer asks you for a specimen of your breath or blood, he informs you that if you blow under a .08 BAC you can go home and the charges will be dropped. Don't believe him he is lying, he wants you to take the test because he knows how bias the breathalyzer is. (more on breathalyzers in another chapter) Even if you only had a beer 4 hours ago an blew .00 BAC, you are can and probably will remain under arrest.

## **Right for Counsel**

You say you would like to seek the counsel of an attorney before giving a specimen. The officer declares you are refusing the test at this point and he shreds your drivers license. For refusing a specimen of your breath you are violating the implied consent laws. What about my right for an attorney? You don't get one! You are about to give the state evidence to convict you. You have a constitutional right to counsel in everything and I mean everything except DUI. (in some states, you have 20 minutes to get an attorney, but you have to ask; try getting an attorney in 20 minutes, this is a clever way around the right for counsel) Here is another exception to your constitutional rights: In some states, it a declaration of guilt and or a crime to refuse a breath or blood test. Let me clarify this. If you pled the 5<sup>th</sup> amendment or demand your right to counsel; (which should be

your constitutional right) by refusing the test, you have violated the implied consent law and just committed a crime. The penalty for refusing the blood or breath test is anywhere from 30 days to 2 years license suspension and or 5 days in jail. In some states if you refuse the judge can get a warrant for a specimen of your blood and get the blood sample anyway.

### **Breath Test**

Let's say you do decide to take a BAC test. It is almost always going to be a breath test. In most cases you do not get an option of blood or breath. Blood tests are more accurate and not as easily manipulated as breath. If the authorities are offering a breath test and you want a blood test you are out of luck. You get a breath test or you get a refusal to submit a BAC sample. You are told to blow into a machine which measures your blood alcohol content. The officer is screaming at you at the top of his lungs, "blow harder, blow harder!" The officer knows the deeper the air comes from your lungs the higher your BAC will be. Finally after nearly passing out from blowing, you get to blow all over again. Now this breath sample is taken and a printout of your BAC is now state's evidence. All that remains of the most incriminating evidence against you is this printout piece of paper that has your BAC printed on it. The breath sample is purged into the air and is gone forever. Your breath sample could be saved for a couple of dollars but the Supreme Court has determined that a piece of paper is good enough. Another DUI exception to the constitution. The reason the courts don't order the breath sample saved is because they know the fallacies of the breathalyzer machines. In my opinion if outside tests were allowed of the breath sample the breathalyzer would soon be out of commission and no longer admissible in any court. At this point the officer should give you your Trombetta Advisement. What is the Trombetta Advisement? Here it is from California's Vehicle Code.

23614. (a) In addition to the requirements of Section 23612, a person who chooses to submit to a breath test shall be



advised before or after the test that the breath-testing equipment does not retain any sample of the breath and that no breath sample will be available after the test which could be analyzed later by that person or any other person.

(b) The person shall also be advised that, because no breath sample is retained, the person will be given an opportunity to provide a blood or urine sample that will be retained at no cost to the person so that there will be something retained that may be subsequently analyzed for the alcoholic content of the person's blood. If the person completes a breath test and wishes to provide a blood or urine sample to be retained, the sample shall be collected and retained in the same manner as if the person had chosen a blood or urine test initially.

(c) The person shall also be advised that the blood or urine sample may be tested by either party in any criminal prosecution. The failure of either party to perform this test shall place neither a duty upon the opposing party to perform the test nor affect the admissibility of any other evidence of the alcoholic content of the blood of the person arrested.

(d) No failure or omission to advise pursuant to this section shall affect the admissibility of any evidence of the alcoholic content of the blood of the person arrested. (see source 18)

Law enforcement authorities by law should give you the Trombetta Advisement, but look at article (d) so they don't have to, and they usually don't because it is more trouble on them to find an independent blood or urine testing location and besides; it could prove your innocence. Article (d) is another example of just how screwed up DUI laws are. They make a law and then law enforcement does not have to enforce it. You tell me if it makes any sense.

If, for any reason such as asthma, cleft palette, ect. you cannot complete the test it will probably be listed as a refusal to submit a breath specimen.

Around 1985 the legal BAC limit in a certain state was .10 BAC. Someone I know, we will call him Scott, blew a .04 after consuming the equivalent of 2 glasses of wine. This really made the state trooper mad. I guess he did not want to ruin his reputation. The trooper was visibly upset when he went to get another officer. They officers fiddled with the breath testing machine and with a smirk on his face said sarcastically, "Now blow in it." He did and amazingly enough Scott blew a 1.4 BAC. Scott knew his BAC could not be that high after the equivalent of 2 glasses of wine. He was poor and could not afford an attorney so he pleaded guilty and spent 6 months in jail.

My point in telling this true story is that I am not sure if I would take the breath test 24 hours after consuming one beer. If you take the breath test and blow under a .08 you probably will not be off the hook. You can still get a DUI for reason of impairment. Remember the field sobriety test you took, the one that most sober people can't pass. If you don't perform these test to the satisfaction of the authorities, you will be guilty till your trial comes up, where you try to prove you innocence.

If your BAC is .08 or over, you lose your drivers license. This is another DUI exception to the constitution. No judge, no jury. You are guilty and you lose your drivers license. When you go to court and the court finds you guilty, you can lose your license again. Another DUI exception to the constitution. It is double jeopardy.

### **Interlock Device**

Hopefully by this time your wife is trying to get you out on bond. The bond can be anywhere from \$500.00 and up. Sometimes you can get out on your own signature bond. Let us

say the judge sets your bond at \$1,500.00. You can put up the \$1500.00 yourself or call a bondsman to put the bond up for you. The bondsman usually charges about 30% so that would be about \$500.00 that you will not get back.

So you get out of jail and if you did not get your car impounded for so many days or indefinitely, you find out that you have to have an interlock device installed on your car as a condition of your bond. If you do not have it installed your bond is revoked by the judge and you could set in jail for up to two years waiting on your trial. The interlock device cost about \$300.00 to get it installed and then you pay about \$100.00 monthly thereafter to have it calibrated. You have to blow into this device to start your car. After the car is in motion you will have to blow in it to provide a breath sample about every 20 minutes. If your BAC is over .03 or there about, your car will not start and you get a violation. If you are driving down the road and decide to drink and your BAC is over .03 your car will not stop but you will get a violation. If you get so many violations you will have to get your car towed to the place where you get the device calibrated and you get surcharged more money, and your bond may get revoked. WARNING; if you have this device, do not drive unless your BAC is .00. It records every breath sample, which is turned in each month when you have the device calibrated, which can be used against you in a court of law. The interlock device company calls these monthly visits calibration, I call these visits reporting, because a report of all breath samples is given to the proper authorities. Some judges want this device on every car in the household. The average family has 3 cars, you do the math. You can be court ordered to have this device from a few months to 10 or more years.

You say, "wait a minute, They took my license." Even if your driver's license was revoked, you still have to have the interlock device on your car. So, how do you get the interlock device "calibrated" if you do not have a driver's license? You have to have someone else drive the car.

## **Administrative License Suspension**

You got a temporary driving permit for about 30 days when your license was taken from you. Some states call this a suspension, while others call it a revocation. You have an administrative license suspension or administrative license revocation hearing (also known as an ALR or an ALS hearing) usually in 15 days. This is a kangaroo court hearing. Your chances of winning this hearing is under 10%. Your attorney should be handling this hearing for you because it is important for your DUI defense later in court. Now this ALR hearing is a civil matter. Your DUI is a criminal matter. Now most of us know that in a criminal matter you have to be proven guilty beyond a reasonable doubt. In a civil matter all you need is a preponderance of the evidence. And believe me, they have it because they have the arresting officer's police report.

The police report always says, "Strong odor of alcohol." On some police reports this is a checkbox. Some reports have 3 checkboxes for "strong", "moderate", "weak", but there are no checkboxes for "none". (see source 19) This is so the officer does not forget to write in on the report. So naturally, he checks one of the boxes. I do not have to tell you which of the three he is going to check off, do I? Alcohol has no odor. So, where they came up with that one I don't know. You can smell beer and whiskey, but not the alcohol in it. You can drink a "near beer" and have the smell of beer. Don't believe me? Drink some "near beer" and go to your job, and see how long you keep it. Have whiskey flavored lollipop or whiskey flavored chewing tobacco and smell like whiskey. Grape juice smells just like wine. You can have nothing at all but bad breath and smell like alcohol. When I was married my wife got angry with me because I came home and she said she smelled alcohol on my breath. She would not even talk to me the whole evening. I hadn't had an alcoholic beverage in months. If the officer is expecting to smell alcohol, he probably will, besides, on some police reports there is no checkbox for "none". Also the police report will probably have a "Field Sobriety Scoring Sheet". Remember those field

sobriety test instructions? The officer has it all in the report. The “Walk and Turn” looks like this:

(Check as many as you observe)

- Loses Balance During Instructions
- Starts before Instructions are finished
- Stops while walking
- Doesn't touch heel-to-toe
- Steps off Line
- Uses arms for balance
- Loses balance while turning/incorrect turn
- Incorrect number of steps.

Now do you see anywhere on there where it says: “no errors”? On none of the test does the form say “no errors” There is no place on this report for no errors, including the “nose touch”, the “alphabet” or simple counting from 1 to 10. There is also a place for clothing, balance, walk, speech, and eyes. The three things the officer will always observe and puts on the on the DUI police report is; “strong odor of alcohol”, “bloodshot eyes”, and “slurred speech”. I suspect there are 3 reasons why officers observe this. 1. The officer expects to observe it. 2. It makes the arrest look better. 3. It really is true.

Now if you are wearing a suit and tie, you better have your tie straight or the officer might indicate “clothing disorderly” if you spilled soda pop on your clothing he may indicate “clothing soiled”. Your balance will almost always be “swayed” and “unsteady”. So the police report is always of course incrementing. After all, the police officer does not want the department to be sued for false arrest. Maybe it could cost him his job.

If the officer is unsure if you have had a drink, he probably will not let you drive home. He is protecting himself, if you have accident on the way home and injure yourself or someone else he and the department can be sued because the officer let you go and did not arrest you. Most of the officers and the police

departments believe the numbers and propaganda that FARS has published. They have no reason not to believe it. Let me give you an example, I heard through a peace officer that the police sergeant said, "I don't care if he his high on marijuana; if he has been drinking and driving, arrest him.

So you see he is damned if he does, and damned if he doesn't. So he has to make the DUI arrest look like you are intoxicated.

In some jurisdictions you have an DUI interview along with the police report. This interview includes such incriminating questions as:

- Where have you been in the past three hours?
- How much have you had to drink?
- When did you start drinking?
- What street was you on when you were arrested?
- What did you get arrested?
- What time is it now?

### **Your Day in Court**

After all this you wait to go to court, so now we are will take a look at the DUI kangaroo court.

Merriam-Webster defines kangaroo court as:

- 1 : a mock court in which the principles of law and justice are disregarded or perverted.
- 2 : a court characterized by irresponsible, unauthorized, or irregular status or procedures.
- 3 : judgment or punishment given outside of legal procedure.

The main reason this is a kangaroo court is because, as you have learned some constructional rights have been violated and because most of the evidence against a DUI suspect is based on bad science.

If you are lucky, your state will allow trial by jury in a DUI case. Some states do not. This is another DUI exception to the

constitution. You should all know that everyone is entitled to a jury trial under the constitution. But, some states do not allow jury trials in DUI where the jail term is under 6 months. (see Appendix F) What do you expect with 1.8 million DUI arrest each year. Something has got to give, the courts are overwhelmed. So let's take more constitutional rights from the citizens. Believe me, you do not want to try to prove your innocence to a judge.

You have learned the prosecutors job is to get a guilty verdict whether the suspect is innocent or guilty. Let us look at what he does to prove his case to get a conviction. The process starts with the jury selection (also known a voir dire) however, there have been volumes written about jury selection. Jury selection is beyond the scope of this book so it will not be covered.

It does appear that almost everyone has knowledge of NHTSA and MADD's propaganda to one degree or another. Even DUI defense attorneys believe it, because they have not been exposed to the truth. The people that get arrested for DUI believe the propaganda. So if all these people believe the propaganda so does the jury.

The prosecuting attorney will try to get a guilty verdict by several different ways. We will look at a few.

**WARNING:** This is an example only. I am not an attorney nor do I pretend to be.

The two ways that the prosecutor will prove your guilt is your BAC test which is the "illegal per se" if the test showed over a .08 BAC and he can try to prove impairment or both. The BAC test is simple if your BAC is over .08 you have violated the "illegal per se" law you are legally drunk. A good defense attorney can show how bias and inaccurate the breath test is. A blood test is considered more accurate and is another matter. The prosecuting attorney will bring in a specialist to explain

how the breath test is totally accurate. Does the specialist believe in the breath machine? I do not know but, he can get several thousands of dollars for showing up, so why not believe in the machine. While I'm on this subject some prosecuting attorneys belong to MADD, go figure.

If you did not provide a specimen the prosecuting attorney has to prove impairment or that your BAC was over .08. The prosecuting attorney will have the arresting officer to testify against you. The DUI arrest report provides the police officers observations. Of course, the officer considers you to be impaired or he would not have arrested you. You have already seen how falsely incrementing the police report can be. The prosecutor will show the video of the arrest if there was a camera in the police car. He will also show the tape of when you were on camera in the video room. You have seen how ridiculous these test are so yes he will attempt to prove impairment or that your BAC was over .08. The prosecutor can also bring in an expert witness to testify on how accurate the "HGN", "walk and turn" and "one leg stand" are accurate test (this expert witness can get thousands of dollars too). The prosecuting attorney will say you are guilty because you did not provide a specimen to prove you are innocent. So here, you are guilty because you do not believe in the accuracy of the breath testing machine. Maybe you knew that your BAC was over .08 and you do not believe in the .08 BAC illegal per se law. I don't blame you, I don't. These laws were conceived by MADD, angry and hunt people set out to get you. And by their own words, "If you drink and drive, you go to jail"

Here is an example of the "bouncing ball theory". The prosecutors like this one. You're driving along in the middle of the day in a neighborhood with kids playing. An ball bounces in front of your car, you hit the brakes. If you've lost any part of your mental or physical faculties, you'll brake a moment too late. This implies that if you are impaired you could have killed or injured the girl. Remember, you were arrested around midnight.



## **No Victim, No Crime**

That is what is wrong with this whole process. You are getting punished for what you might do. If you did injure someone, well that is a different story.

I want to introduce you to a concept: No victim, no crime. Here is another one. No victim, no jail time. We punish too many Americans for what could have happened. Now as you can see if someone is injured or there is property damage, there is a victim and this cliché does not apply. If an intoxicated driver who is negligent kills or injures an innocent person, a jury of his peers should judge him.

## **Criminal Penalties**

Now we will look at the criminal penalties that MADD has imposed through the court system. There are two classes in most states, misdemeanors and felonies.

Misdemeanors are usually crimes that carries less than 2 years in the county jail. In most states the 1<sup>st</sup> DUI is the highest misdemeanor offense, as there are many degrees of misdemeanors. A speeding ticket is usually the lowest. You get the idea.

If you go to trial and loose, or you plea bargain, (remember plea bargaining is not allowed for DUI in some states) you get convicted of a misdemeanor DUI. You can get up to 2 years in jail. In most cases this jail time you serve out on probation. If you do something to violate probation, you serve the time in jail. The states appear to be making a great deal of money off this DUI process. Everyone seems to win but you.

Let me show you the money.

|                   |                                       |
|-------------------|---------------------------------------|
| Bondsman Fee      | \$250.00                              |
| Defense attorney  | \$2500.00 at least                    |
| Interlock device  | \$75.00 a month for 2 years \$1800.00 |
| Probation fees    | \$40.00 a month for 2 years \$ 960.00 |
| Alcohol treatment | \$500.00                              |
| Higher insurance  | \$2500 over 3 years                   |

So far we are up to \$8510.00 and this is just for starters. So you can figure over \$10,000.00 this is true in just about every state. Although the fine assessments may be different.

### **Antabuse**

You can also be ordered to take “Antabuse” also know as “Disulfiram” for a couple of years. This is the drug that makes you extremely sick if you consume any alcohol or use alcohol products such as aftershave, perfume, hair spray, ect. Antabuse causes a buildup of acetaldehyde in your body, this is what makes you violently sick. It will cost an extra \$75.00 a month. Now to keep me from being sued by the makers of “Antabuse” I am not going to publish all the warnings of this drug. But, I will tell you that I would rather serve my time in prison busting boulders into pebbles than be on this stuff. I will say that if you take Antabuse, you will have to carry a “medic alert” card. This is so when you get violently sick, medical personal will know what is wrong with you. If you want more information on this medieval punishment look up the drug on the internet.

Have I got your attention yet? Hang on it gets worse.

### **Felony DUI**

A felony is state penitentiary time anywhere from 2 years to life and the death penalty. Felonies also have many different degrees. (See Appendix G for DUI laws in your state.)

If your DUI causes a fatality or injures someone, you can get life in prison. If you have never injured anyone at anytime, you can still get life in prison. This is known as a repeat offender. Also, if you get a DUI and have a minor in the car you can get a felony DUI. If you have a couple of beers and get stopped for a minor traffic violation and have a minor in the car you can get a prison sentence for it. Have many of you have taken your family out an had a couple of drinks with you're your dinner at a nice restaurant? Should you get 2 to 20 years in prison for driving home? MADD will tell you an absolute yes. With almost all felonies, you have to have intent and or a victim. I see neither in this case.

In most states, your 3<sup>rd</sup> non-injury DUI is a felony. Your 4<sup>th</sup> non-injury DUI can get you life in prison. This is true if you have never had an accident on your driving record. Now, I can hear some of the comments now, "By the 1<sup>st</sup> or 2<sup>nd</sup> non-injury DUI you should have learned a lesson and if you have not you should go to prison." "Why?" I would reply. Many will say get him off the road before he kills somebody! If you say that you have not been reading this book or you believe the lies that MADD spreads. Remember there are about 75 innocent victims fatality injured each year by repeat DUI offenders.

### **Death Penalty**

{Prosecutors have tried to give the death penalty in a DUI case, but the jury didn't go for it. Not yet anyway. This is a case where the fatalities happened through negligence. Now let us look at the death penalty because it will show you how MADD has manipulated and distorted the laws our forefathers have laid down. In most cases, you have to commit 1<sup>st</sup> degree murder to receive the death penalty.

In order for someone to be found guilty of first degree murder the government must prove that the person killed another person; the person killed the other person with malice aforethought; and the killing was premeditated.

To kill with malice aforethought means to kill either deliberately and intentionally or recklessly with extreme disregard for human life.

Premeditation means with planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. It must be long enough, after forming the intent to kill, for the killer to have been fully conscious of the intent and to have considered the killing.

Maybe you can, but I cannot find premeditated murder in a DUI and apparently the jury that heard the case could not either because the death penalty was not handed down.

### **Reckless Driving**

How many innocent people are killed by running red lights, stop signs, and reckless driving? I cannot find a truthful answer to that because the FARS data is, as you have seen a flat out lie. The National Center for State Courts says that aggressive driving is responsible for more than 27,000 fatalities a year. (See source 21) But, you would half to agree with me that at least 2000 out 43,005 fatalities in 2002 were caused by these bad driving factors. So, should you go to prison for running two red lights in a 10 year period with no accidents? Should you go to prison for running one red light with a minor in the car? Should you even get one year probation for one red light? I can hear MADD now, they would say that DUI is a decision to drink and drive. Well so is stepping on the gas instead of the brake. Once again if you did not get it the first time.

The United States does not have a drinking and driving problem.

## **Sobriety Checkpoints**

“Sobriety Checkpoints” is what MADD calls it. It really is a DUI Roadblock. This is another DUI exception to the constitution.

On June 14, 1990, the U.S. Supreme Court gave another killing blow to our constitution. In *Michigan Department of State Police v. Slit*, 496 U.S. 444 (1990), the Court reversed the state appellate court and held that DUI checkpoint operation did not violate the Fourth Amendment's prohibition against unreasonable searches and seizures. Here is a comment from that ruling:

["Drunk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage." 4 W. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment* 10.8(d), p. 71 (2d ed. 1987). For decades, this Court has "repeatedly lamented the tragedy." *South Dakota v. Neville*, 459 U.S. 553, 558 (1983); see *Breithaupt v. Abram*, 352 U.S. 432, 439 (1957) ("The increasing slaughter on our highways . . . now reaches the astounding figures only heard of on the battlefield"). ] See Appendix H

The 4th Amendment guarantees freedom from search and seizure without probable cause. It has been proven time and time again that Sobriety Checkpoints do not work and are a waste of taxpayers money. [Checkpoints yield very little enforcement.] -- Inspector John Sassano, NYPD (see source 22)

## **Drunk Driving is a Violent Crime?**

I should think by now you are asking why there are so many DUI exceptions to the Constitution. The reason is because MADD has lied to the United States so long the United States believes the lies. So lawmakers are willing to give up rights to citizens of this great country and we agree. All this is based on

bad data that we have been led to believe as truth. MADD knew if they could instill fear in the nation, they could get away with anything they wanted to.

I do not want to leave Canada out of all this. MADD has become more powerful in Canada than in the United States. In fact, if you have a DUI on your record forget going to Canada. You may get permission but you will have a lot of paperwork and fees to pay. The permission process can take 3 to 12 months. Under Canada's laws (Section 19(2)(a.1) of the Immigration Act), anyone who has been convicted of drunk driving is of an "Inadmissible Class" and entry into the country would be a criminal and deportable offense. However, if you are president of the United States they will let you in. President George W. Bush got a DUI in Kennebunkport, Maine in 1976 when he was 30 years old. He did lose his driving license in Maine for awhile and had to pay a \$150.00 fine. MADD declares that drunk driving is a violent crime. Humm, maybe someone should ask MADD if our President is a violent criminal.

If you believe that drunk driving is a violent crime as MADD proclaims, then Dana Nipper voice for Mothers Against Drunk Driving in Rutherford County, Tennessee is a violent criminal. She was arrested for drunk driving on May 5, 2004.

On the 9<sup>th</sup> of November 2004 the US Supreme Court unanimously ruled that seriously injuring someone while driving drunk does not amount to a "crime of violence" that would be grounds for deporting non-citizens.

So there you have it, the Supreme Court denies what MADD is still saying about drunk driving being a violent crime.

### **Madd Spokesman Gets DUI**

If you have something to do with law enforcement are can rest assured that you DUI will not be as severely treated as us common folks. Judges, policeman, prosecuting attorneys

usually get out of their DUI because charges are dropped or when the charges are not dropped, they get a fine and a little community service. Take for example Lydia Dempsey Wardell, she is a prosecutor in Pinellas County, Florida and she is known to be tough on drunk drivers. In November 2004 Lydia Dempsey Wardell was arrested and charged with drunk driving. Here is the details of her DUI accident. Lydia Wardell had her sons, in the car, she was driving the wrong way on a one way, when her car collided with another car. When the police arrived, Lydia Wardell said she was looking for her house but could not find it. (She only lived a couple of blocks away). She refused the field sobriety test, but she did blow into the breathalyzer. She blew a .23 BAC. Anything over a .15 BAC in most states is considered an aggravated DUI. Because she had minors in the car this DUI is a felony. She had an accident so her DUI could be considered a felony in some states. She got a misdemeanor DUI with probation and community service. She still has her job, but no longer works with DUI cases.

## **Chapter 8 The Breath Test**

When scientific truth clashes with the "war on drunk driving", truth inevitably loses. Lawrence Taylor

A .99 cent anal thermometer is more accurate than this \$8,000.00 to \$12,000.00 machine. The Intoxilyzer® (a brand name breath testing machine) has no warranty as to its accuracy. [There are no warranties expressed or implied, including but not limited to, any implied warranties of merchantability or fitness for a particular purpose.] (see source 23) In simple terms it is not warranted for breath testing accuracy.

### **Drunkometer**

The first breath testing machine was invented in by Professor Rola Harger around 1931. This breath testing machine was called the "Drunkometer". These machines were designed to take a deep air sample (breath from the alveolar sacs, the site of gas exchange in the lungs) and calculate the rate or proportion of alcohol-in-blood to alcohol-in-breath.

This is a perfect DUI kangaroo machine for DUI kangaroo court. This amazing machine has been responsible for DUI charges that puts someone in prison for decades. It has destroyed more lives than you can count. This book does not include all the problems with the breath testing machine only a few so you can get an idea. It is far beyond the scope of this book. There have been several technical books written on the problems of these breath testing machine.

### **Breathalyzer Trade Secret**

Let us see how this machine works....opps, we cannot look because the makers of this machine will not release the internal software workings. They say that it is a trade secret.



[Hundreds of cases involving breath-alcohol tests have been thrown out by Seminole County judges in the past five months because the test's manufacturer will not say how it works.] [Florida cannot contract away the statutory rights of its citizens," a judge wrote] (see source 24)

This is one county, there are 3086 counties in the United States. I am glad to see that some officials are stating to do the right thing, however we have 3085 counties to go. [Judges in other counties have said the opposite: The state cannot turn over something it does not possess, and the manufacturer should not have to turn over trade secrets.] (see source 24) So in DUI cases, you do not have the right to face your accuser, the breath testing machine.

### **Breathalyzer Accuracy**

As far as accuracy of this machine Dr. Michael Hlastala, Professor of Physiology, Biophysics and Medicine at the University of Washington says:

*Breath testing, as currently used, is a very inaccurate method for measuring BAC, Even if the breath testing instrument is working perfectly, physiological variables prevent early reasonable accuracy....Breath testing for alcohol using a single test method, should not be used for scientific, medical or legal purposes where accuracy is important. (Hlastula, Physiological Errors, Associated with Alcohol Breath Testing)*

There are so many variables that effect the test results of this machine, it is unbelievable that the courts ever allowed the breath testing machine to be admissible evidence. ["The legal system is not concerned with truth. And it may come as a shock, but it is not. It is concerned with order, stability." William C. Head] So, some states changed the laws to avoid inaccuracies of the breath testing machine as we will see in a moment. It seems to be common in DUI cases, "If you can't get a DUI conviction, change the laws so we can get a conviction.

The reason this machine is so widely accepted is because it is cheaper and faster than blood test. The breath evidence is not saved so it easier to get a DUI conviction because there is no evidence to prove your innocence.

Let us look into the many problems of the breath testing machine:

### **Partition Ratio**

Breath testing machines multiply a breath sample 2100 times to get a BAC reading. The breath testing machine is programmed to assume that the suspect has 2100 units of alcohol in his blood for every unit of alcohol in his breath. This is called the "partition ratio". Not everyone has the same "partition ratio" because we are all chemically different. Recent research shows this ratio to vary from 990 to 1 to 3005 to 1. If someone has a partition ratio under 2100 to 1 the breath test result will be artificially high. If someone has a partition ratio higher than 2100 to 1, then the breath test result will be artificially low. If a person took a breath test and produced a .10 and had a breath to blood partition ratio of 1000 to 1, the persons true blood alcohol content would be .05. Because the machine does not have the capability to determine what a person's actual ratio is, it has no way of detecting the error it has made. So what have law officials done? They changed the laws to get a conviction. The laws in some states no longer just have a .08 BAC law. Remember that BAC stands for "blood alcohol content". Some states (any many are trying to adopt it) also have a BrAC law. It stands for "breath alcohol content". If you have a breath to blood partition ratio of 1000 to 1 your BAC would be .05 but you would be guilty of DUI because you BrAC is .10, and so you are violating the .08 implied consent law. California was the first state to do this.

## **Mouth alcohol**

The most widely used breath testing machine will register mouth alcohol. This has nothing to do with your BAC but it registers in the machine as BAC. The law enforcement officials are suppose to give you a 15 or 20 minute observation period before testing your breath. You may get your 20 minutes, but in most cases you don't get an observation. If you burp or vomit your 20 minutes is suppose to start over. Yeah right. The reason for this is to eliminate mouth alcohol. Some expert said that 20 minutes is long enough for your saliva to rid your mouth of alcohol. If you burp or vomit, alcohol from your stomach may enter your mouth or throat. Just one drop of liquor in your mouth can put you well over the .08 BAC. If you wear dentures, braces or have dental work, or periodontal disease, your mouth can hold alcohol much longer than 20 minutes. If you have Gastroesophageal Reflux Disease you can also have alcohol in your mouth or throat because the valve between your throat and stomach does not close properly.

## **Interferents**

Breath testing machines do not actually measure alcohol. What they actually detect and measure is any chemical compound that contains the methyl group. I am not going to try to list all these compounds. But, here are a few: Isopropyl Alcohol, Propane, Butane, Propylene, Methane, Ethane, Ethyl chloride, Acetic Acid, Butadiene, Dimethylether, Dimethylamine, Dimethylhydrazine.

Acetone and acetaldehyde, can be found on the human breath. Recent studies have shown that over 80 methyl groups can be found on the breath at any given time. And the breath testing machine will detect each of these as alcohol. Smokers will more likely have higher BrAC because more chemicals are in the breath.

Phil Price, a nationally prominent DUI attorney in Montgomery, Alabama, conducted a series of experiments in which subjects ingested various foods and were then tested on an Intoxilyzer 5000 (64-series). Interestingly, bread caused the highest readings! Using alcohol-free subjects, Price consistently obtained readings in the area of .05 BrAC after consumption of various types of bread products. Further, the slope detector failed to detect any interferent during the tests. (See source 25)

### **Radio Frequency Interference**

You can imagine all the electronic equipment in a police station or a mobile DUI task force. All of this equipment puts out RFI also known as radio frequency interference. Radios, computers, teletypes, cell phones, security cameras, even florescent lights and the list goes on and on. The breath testing machine is affected by all this radio interference. In 1983, the National Bureau of Standards reported on tests performed on breath testing machines. (Effects for the Electromagnetic Fields on Evidential Breath Testers) The National Bureau of Standards tested 16 different breath testing devices. 6 of the breath testing devices showed minimal interference; 10 of the 16 devices showed substantial susceptibility on at least one frequency. The report characterized the potential effect of RFI on the testing of alcohol as "severe". To avoid a loss of public confidence in breathalyzers, the report was kept confidential -- until attorney Don Nichols of Minneapolis successfully filed a legal action under the Freedom of Information Act. (See source 19)

This is just the tip of the iceberg. Many more problem exist with these breath testing machines. There are more circumstances that affect your partition ratio, mouth alcohol and interferences.

The state of Washington solved the entire problem:

Washington State recently passed a new law, essentially making all breath tests admissible as evidence -- regardless of

whether the particular breathalyzer was broken, defective, given incorrectly or otherwise inaccurate. (see source 19)

Unfortunately, it looks like this is where all the states may be headed.

### **BAC When Driving**

One more law that has been created around the breath testing machine I must mention. Many of accused DUI offenders were not getting convictions due to the fact, that at the time they were driving they were not over .08 BAC. It takes some time to get processed into jail and get a breath test done. Anywhere from say 45 minutes to a couple of hours. During this processing time your BAC will continue to go up as the alcohol in your stomach is absorbed into your bloodstream. If you had not been arrested you would have already been home watching TV before your BAC would have risen to the illegal limit. (This jail processing time may be deliberate so your BAC will increase.) Here is an example: when you were arrested, your BAC is .05, under the illegal limit. You are taken to the jail and after all this time you take a breath test. Your BAC has risen to .09 because the alcohol has been absorbed from your stomach to your bloodstream. You are now over the legal limit and guilty till proven innocent. To be found innocent due to rising BAC is a dilemma for the courts so they made a law to fix it. In some states, and many more are jumping on the bandwagon. It is now illegal to operate a vehicle with a BAC or BrAC over the legal limit within 3 hours of operation. That's right think about it. You cannot be in your home and consuming alcohol within 3 hours of driving. OK here is another example: You have had a rough day at work, you decide to stop at the store on the way home to pick up some liquor so when you get home you can have a couple of drinks. You stop and get gas so you don't have to fill up in the morning. You forget to pay for your gas; it is an honest mistake. You are home enjoying your drinks when you get a knock on the door. It is a policeman informing you that

you forget to pay for your gas. He discovers you are drinking so off to jail you go for DUI.

### **The Iron Curtian**

Breath testing machines have been kept under an iron curtain. If you are not law enforcement, you will have a hard time getting your hands on one. The reason for this is because law enforcement knows how much of a kangaroo machine it is. If the breath testing machine got out into the public, the public's confidence in this machine would plummet and an outcry for fairness may erupt. If DUI convictions were fair, the money tree would wilt.

Marcus Hill is a DUI defense attorney in North Carolina. He did just what law enforcement fears. Marcus Hill bought an Intoxilyzer® 5000 from an alternative source. "The state wouldn't let me play with their machines, so I bought one," he said. Wanting to show off his Intoxilyzer Marcus Hill invited about 10 other lawyers from around the state to his office for a seminar on the workings of the Intoxilyzer. The Intoxilyzer® 5000 is supposed to screen out alcohol or alcohol residue in a person's mouth and register only the amount of ethanol in a person's breath, which can be translated into blood concentration. One of the attorneys invited is Durham attorney Kerry Sutton. During the seminar, Sutton put two drops of bourbon into her mouth for less than a second before spitting them out. The Intoxilyzer gave her a reading of 0.35, more than quadruple the legal threshold. "The manufacturer says that's impossible," Sutton added. She called the breath-test machine "a hunk of junk" that's an interesting tool. But I don't think it deserves anywhere near the credibility the courts give it," she said. (See source 32)

## Chapter 9

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### **Fallibility of Breath Alcohol Measurement**

The technological backbone of the nation's anti-drinking and driving crusade is the Breathalyzer test. This is the process where the breath of suspected drunk drivers is tested for the presence of alcohol. The Breath alcohol content is then converted by a standardized formula to determine the Blood alcohol content, which is the actual indicator of impairment. The whole process appears very scientific, very equitable, and very fair. The problem is that the process is not any of these things. It is not scientific nor does it rely on existing and accepted science. It is not equitable in that there is a wide variation in the results from person to person. And, it is not fair given that persons who are not realistically impaired are found "guilty" of drunk driving and persons who may be significantly impaired escape detection as drunk drivers.

Blood alcohol content can be accurately measured by a blood test. Blood alcohol content has been generally accepted as an accurate indicator of impairment. Setting aside the accepted fact that alcohol tolerance and effect varies greatly from individual to individual I want to exclude that issue to focus solely on the ability of the breathalyzer to accurately determine Blood alcohol content by measuring Breath alcohol content.

Peer reviewed and uncontested studies (LaBianca, Simpson, Thompson et.al.) prove a margin of error of 50 % when comparing breathalyzer estimates of Blood alcohol content to actual Blood alcohol content! That means a breathalyzer reading of .1 % represents a Blood alcohol content level

somewhere between .05 % and .15%, hardly a level of precision on which to base an irrefutable presumption of guilt!

When confronted with this proven inability of breathalyzers to accurately represent Blood alcohol content some state legislatures, in their wisdom and desire for expedience, have decided to grant Breath alcohol content the same status as Blood alcohol content as irrefutable evidence of intoxication, impairment and drunk driving. This is criminal in its error and implementation. Breath alcohol content is a legitimate measurement of only one thing, the alcohol content of the sample of air it is measuring. It is not an accurate indicator of Blood alcohol content, nor an accurate indicator of alcohol related impairment.

Breathalyzer readings should not be considered as per se evidence of Driving While Intoxicated (or impaired) unless the reading is high enough to overcome the inherent 50 % margin of error. That means a Breathalyzer reading must exceed .2 % in a state with a .1 % DWI threshold to be granted per se status (irrefutable presumption of guilt). Breathalyzer readings above .1 % and below .2 % should be accorded prima facie status (rebuttable presumption of guilt). Breathalyzer readings below .1 % should be accorded no credibility beyond providing probable cause for a DWI arrest. In no case should breath alcohol content be considered an accurate measurement of Blood alcohol content or the degree of impairment.

The desire to eradicate the deaths, injuries and property damage associated with drunk driving does not excuse the courts or legislatures from their duty to provide just laws that are fairly administered. If standards, limits and quantities are included in these laws they should be relevant to the subject at hand, clearly delineated, and accurately measured. If there is room for substantial error there should be appropriate opportunities for the accused to address those errors in their defense. The "rush" to arrest and punish drunk drivers has badly trampled these principles.



## **Chapter Breathalyzers Fail the Legitimacy Test Part I**

*by John Holevoet, Director of Development*

This is the first in a three-part series on the fallibility of breath alcohol measurement. Over the past several years, research findings have made it clear that breath testing is not a valid method for determining illegal intoxication.

The work of three researchers, Michael Hlastala, G. Simpson, and Dominick Labianca, has been particularly valuable in debunking the "solid accuracy" of Alcohol Breath Test (ABT). This column will draw on the work of Dr. Hlastala, a professor of physiology and biophysics at the University of Washington Medical School. His research undermines the very notion that breath alcohol can be used as a measurement of intoxication.

Breath tests were first introduced in the 1950s. For the past 50 years, the large degree of variation among breath alcohol concentrations obtained through the ABTs has raised doubts about the technique. The ABT is built upon the theory that the level of ethyl alcohol (ethanol) in the blood is in balance with the ethanol level in "alveolar air" (breath coming from small air sacs in the lungs called alveoli). This led to scientists' belief that by measuring the concentration of ethanol in a person's breath, the amount of alcohol in a person's blood can be determined.

Viewed through the lens of 1940s physiological knowledge, the breath alcohol test seemed to be a sound method. More recent research has provided numerous problems with this 1940s perception. Hlastala has shown that no such equilibrium exists, and therefore, an accurate determination of blood alcohol level could not be obtained from a breath test.

Currently, methods depend on the blood-breath ratio (BBR), the ratio between blood alcohol concentration (BAC) and breath alcohol concentration (BrAC) to calculate BAC from breath tests. The BBR has been assigned an average value of 2,100, which is then used to calibrate most breathalyzers. The problem is that contemporary measurements have shown the average BBR value to be 2,407, with a typical range of variation between 1,981 and 2,833.

Clearly, this can cause test results to be extremely skewed, and the degree of variance is all the more troubling given that this technology is used to obtain criminal convictions against motorists. Researchers first reported this drastic variability in the blood-breath ratio in 1978, but in the name of "legal expediency" this flaw has been purposely buried.

Problems with ABTs go well beyond the variation in the blood-breath ratio. During a breath test, a person's BrAC reading will steadily increase as a person exhales before leveling off at what has long been erroneously called the "constant BrAC." This constant has been presented by Breathalyzer manufacturers as proof that a reading from the all-important alveolar air can be obtained at the end of exhalation.

What these self-interested manufacturers fail to point out is that this important leveling-off, which is often referred to as the "alveolar plateau," is affected by numerous external factors, and is therefore highly variable. Key factors to be considered are the amount of air exhaled, temperature (both internal body temperature and external environmental temperature), as well as breathing patterns, all of which can produce radical variations in breath alcohol results. Therefore, the so-called "constant BrAC" is really anything but.

To deal with the inconsistencies involved with the "alveolar plateau," the increasingly popular method of "rebreathing" was developed. This method involves a person breathing in and out

of a bag several times, until the air within the bag is thought to reach equilibrium with the alveolar air within a person's lungs.

This technique, however, also has its share of problems. For example, complete equilibrium may not be reached unless the "rebreathing" is strictly timed and monitored. Furthermore, as is the case with the single-breath ABTs described above, external factors can play a role in invalidating test results. One unexpected byproduct of the increasing use of the "rebreathing" method is that results from this type of breath test strengthens the argument against the commonly held view that the blood-breath ratio consistently hovers at or around 2,100.

The fact is the ABT is invalid; It is based on outdated scientific principles from the 1940s and 1950s, the majority of which were discredited over twenty years ago. Dr. Hlastala's research illustrates that ABT results, by their very nature, can vary dramatically from one test to another because of external influences. Despite this fact, results from ABTs still find their way into courtrooms, where they are used against motorists.

Recognition of the findings of Hlastala and his colleagues opens up the ABT to a series of legal challenges. This research strikes at the core foundation upon which these tests are based. Furthermore, it is just one research approach that has been taken, which now calls into question the effectiveness of breath alcohol analysis. In the next newsletter, we will look at the research of chemist G. Simpson whose research has examined the over-all margin of error associated with breath test results.

## **Breathalyzers Fail the Legitimacy Test Part II**

*by John Holevoet, Director of Development*

This is the second in a three-part series on the problems and inaccuracies commonly associated with breath alcohol measurements. In the July/August issue of the NMAF NEWS, I addressed the research findings of Dr. Michael Hlastala, whose work discredits the assumption that a stable, proportional relationship exists between breath alcohol concentration (BrAC) and blood alcohol concentration (BAC). Hlastala's arguments strike at the very basis upon which contemporary breath alcohol analysis has been built.

This article will explore the large and troubling degree of uncertainty that is associated with all breath tests. To aid in my arguments, I will rely on the research of Dr. Gerald Simpson. When he first began to look into the accuracy of breath alcohol testing, very few of his colleagues had ever considered staging an analysis of breath testing methodology that would actually reflect conditions that might be seen in the field by law enforcement officers administering such tests to suspected drunk drivers.

The majority of the studies done before Dr. Simpson's pioneering research involved homogeneous participant pools that were given breath tests under strictly-controlled laboratory conditions, which were not true to the reality of DUI enforcement. Police officers pull over both women and men of all races, ages, body types, each with their own unique physiology and story to tell.

Only a small number of field trials had been conducted. While these precursors to Simpson's work were more representative, they still failed to yield results based on truly random samplings of people. Simpson was determined to break

the mold and conduct his research outside the vacuum of run-of-the-mill clinical chemistry. During the preparation for his scientific trials, Simpson was forced to grapple with the various uncertainties associated with alcohol breath testing. The type of breath analyzer to be used and the type of breath-alcohol simulator used to calibrate the aforementioned device were major concerns, not to mention the great uncertainties stemming from biological variance among test subjects.

In the end, Simpson found that the uncertainty of postabsorptive (after full absorption of alcohol, i.e. when a person's BAC is declining) breath test could range from + 15 to + 27 percent. He calculated that over 90 percent of this variance was attributable to biological factors specific to the test subject. Furthermore, limits on the accuracy and precision of breath testing in the absorptive state were not available and overall testing subjects tested during this state (i.e. when alcohol is still being absorbed and a person's BAC is rising) were even less reliable than those conducted in the postabsorptive state. Simpson deemed all breath tests unreliable for the determination of BAC.

These results led Simpson to conclude that breath tests should not be used for evidentiary purposes unless the results yield a number high enough to make the many uncertainties associated with breath tests a irrelevant. In his view, the margin of error was typically too high for the results to be used in the courtroom, even when multiple breath tests were conducted.

At the same time, Simpson sought to make reasonable recommendations to the legal establishment that would justify the continued use of breath tests in DUI enforcement. These included a call to breath analyzer manufacturers to be more candid about their product's limitations and precision. Simpson also sought to make it clear that a direct blood test is much more accurate than breath tests and stressed the importance of making all police agencies and the public aware of this fact. In his mind, using an often inaccurate method (i.e. breath tests),

which is further plagued by problems associated with the conversion between BrAC readings and BAC reading (see Part I of this series), to determine blood alcohol content is ridiculous when blood tests can simply be administered.

Simpson first came forward with these reasoned suggestions for the legal community and breath analyzer manufacturers in a peer-reviewed article in the journal, *Clinical Chemistry*. The article dates from 1987, but astoundingly many of his warnings about breath tests' accuracy were never heeded.

Over 17 years later, breath tests continue to play an integral role in the arrest, prosecution, and conviction of DUI offenders. This continues despite clear evidence of the uncertainties that come with breath test results. The problem of relying on breath tests too heavily is only exacerbated by the per se limit of 0.8. With the entire process plagued by uncertainty, the enforcement of such a low and arbitrary limit becomes an untenable position. The legal system still relies on flawed science and unsupported claims as it continues to churn many responsible motorists through the gears of DUI "justice."

## **Breathalyzers Fail the Legitimacy Test Part III**

*by John Holevoet, Director of Development*

This is the final installment in a three-part series dealing with the problems related to breath-alcohol measurements.

First, we looked at the work of Dr. Michael Hlastala, who has invalidated the commonly understood relationship between breath-alcohol and blood-alcohol levels. Hlastala demonstrated that no consistent linear relationship exists between the two levels, and therefore breath-alcohol analysis cannot be fairly used to estimate the level of alcohol in a person's blood, and is therefore worthless as evidence.

The second piece in this series examined the margin of error associated with breath-alcohol measurements. The work of Dr. Gerald Simpson has confirmed that these readings are prone to errors of 46 percent or more. Despite a high potential of variance and error, these unreliable measurements still find their way into courts of law.

This final installment will look at the problem of calibrating breath-alcohol analyzers. To shine light on this subject, we turn to the work of Dr. Dominick Labianca, a professor of Chemistry at Brooklyn College of the City University of New York.

Labianca, like Hlastala, has written on the lack of a consistent correlation between Breath Alcohol Content (BrAC) and Blood Alcohol Content (BAC). However, Labianca's criticism has been directed specifically at how this deficiency discredits the current methodology used to calibrate breath-alcohol analyzers.

Henry's law is the principle upon which breath-alcohol analysis is based. It describes the relative distribution of alcohol

vapor between "alveolar air" (breath coming from small air sacs in the lungs called alveoli) and circulating pulmonary blood that occurs at 34 degrees Celsius (the average temperature of such air). Henry's law wrongfully assumes that all breath-alcohol analysis subjects have an average alveolar air temperature of 34 degrees.

Breath-alcohol simulators, which are used to calibrate devices like the Breathalyzer, are based on the Henry's law system. These devices consist of a diluted solution of alcohol in water maintained at 34 degrees. The assumption, which again is false, is that these solutions accurately simulate human test subjects.

Although, the base assumption is incorrect, this method is still used to ensure the "accuracy" of breath-alcohol analyzers used by police to arrest and often convict people of DUI. While it is known that these devices are calibrated with solutions maintained at 34 degrees, oral temperature measurements are not part of a typical DUI arrest. This major problem is ignored even though forensic science educators insist such a measurement is necessary to make the appropriate corrections needed for a more reliable test result.

Yet another problem with this technology is one discussed in the first part of this series. The Blood-Breath Ratio (BBR), which, in theory, allows Alcohol Breath Tests (ABTs) to estimate Blood Alcohol Content (BAC) has been legally set at the static rate of 2100:1.

However, the work of Dr. Hlastala and his peers has shown repeatedly that the BBR is highly variable from person-to-person. Breath-alcohol analyzers rely on a fixed BBR to produce results, despite the fact that no such fixed ratio has ever been found among the people on which the tests are administered. As discussed in the July/August issue of the NMAF NEWS, common variables such as a test subject's overall health or



typical breathing pattern can cause drastic variations in an individual's BBR.

This is the problem inherent with ABTs: they produce results within an acceptable margin of error only when they used a fixed BBR, which is not consistent with actual testing conditions in the field. Simply put: they cannot guarantee accurate results for actual test subjects.

All the calibration in the world will not correct this problem. The simulator solutions are based on an ideal Henry's law system, not natural conditions.

Calibrating breath-alcohol analyzers with the type of solutions mentioned above, which is standard practice, only addresses the possibility of an instrument error. It does nothing to deal with concerns about mistakes made by the person administering the test or a host of physiological variables that affect any human breath-alcohol testing.

Furthermore, the failure of the liquid solution to adequately simulate a human subject also occurs when dry gas ethanol standards are used for calibration. Once thought to be a viable alternative to the flawed liquid solutions, these gas standards have been repeatedly tested and generate results, and errors, consistent with liquid solutions.

Dr. Labianca's research dispels the myth that breath-alcohol analyzers are accurate simply because they produce accurate results when specially formulated simulator solutions or dry gas standards are used. DUI arrests do not take place in laboratories. They happen on dimly lit streets, where poorly trained officers must use delicate equipment. The variability of test conditions and test subjects makes breath-alcohol analysis all but worthless.

Over the course of several months, this series has endeavored to take on the serious problem of Alcohol Breath Tests. The fact is, ABTs are not reliable. Yet, they remain widely used by law enforcement across the United States and Canada.

Legal reforms are sorely needed to protect the public from unjust prosecutions based on faulty breath test results. This entire series along with the research upon which it was based is available on our web site, [www.motorists.org](http://www.motorists.org). Visit our "Issues" section and click on the "Drinking and Driving" link to view it. Feel free to enclose these articles with any letters you write to your legislators asking them to take a stand against the use of breath-alcohol analyzers. The change, as this series demonstrates, is long overdue.

Source: National Motorists Association

## **Chapter 10**

### **What You Can Do**

When I started to write this book I thought I was all alone. I knew that the numbers that NHTSA and MADD are publicizing just did not add up. I knew that people that had never hurt anyone were going to jail, sometimes for years. I could not understand why a man on a bicycle could get a felony DUI and spend years in prison. I could not understand why a sleeping person in the back of a pick-up can get years in jail.

Can you make a difference? Yes you can. If you think you know of someone else who can make a difference give them a copy of this book.

Ben Franklin: "Justice will not be served until those who are unaffected are as outraged as those who are."

Get on the R.I.D.L. website and just learn or join in on the forums. <http://www.ridl.us>

At the time of publishing this is the only organized forum where you can get involved to get the federal government to drop the .08 mandate that has forced so many states, against their will, to lower their legal BAC limit to .08%. There you will find sample letters to write your government officials.

You can join the National Motorists Association  
<http://www.motorists.org/>

No victim, no crime. We must stop sending people to jail for what they might do. When it comes to DUI, some are spending years in prison and they have never injured anyone or even been in an accident. It is estimated that around 5000 people commit suicide a year because of the harshness of these unfair laws. All of these laws have been enacted due to the lies that MADD has spread.

Of the estimated 1.8 million accused each year, how many others are affected? These people have children and spouses. Even if they don't go to jail, it will cost them around several \$1000 of dollars to prove their innocence. Try to be the bread winner and lose your driver's license, your car, then your job because you can't get to work on time and still try to pay for a defense. No wonder we have such a DUI suicide rate.

The constitution might as well be a piece of used toilet paper when it comes to DUI. Our country was founded on the rights of its citizens to get fair treatment and a fair trial. How many of you thought everyone had the right to a trial? Let alone a fair trial? DUI road blocks are a blatant violation of our constitutional freedoms but when MADD lied to the Supreme Court, the lie won and our rights lost.

If we continue to set back and do nothing, MADD will continue the lies. The constitution will continue to be chipped away, ever so slightly. This way, the many will not yell foul. This is how changes are made now. A little chip here and there until before long the government and or MADD makes the changes they want over time. The legal BAC will drop, some say to .00 BAC. If MADD gets their way prohibition will return, interlock devices will be installed on all cars period. New Mexico is working on a bill to have all cars in the state fitted with an interlock device by 2008. Will it pass? As it stands now there is a small amount of opposition so, who knows. This interlock device will have GPS (global positioning system). When you blow an illegal BAC value, your car will not start and the police are on their way to arrest you for DUI. And, if you have not been paying attention (you do not have to be driving to get arrested) so you will go to jail. Lose your driver's license and or get your car impounded.

DUI in a wheelchair? DUI on a bicycle? DUI in a motor home hooked up to utilities? DUI while you are asleep in the back seat? These people are going to jail! For what? All this madness

has been created because of MADD and money that DUI brings in.

I have done something. I wrote this book to expose the MADDness, and tell the truth. You can bet that MADD will call me every name in the book, but I am standing up and doing the right thing, so for the sake of all of us spread the truth and expose MADD, they already have blood on their hands from the 1000's of suicides each year. And they have no intention of stopping.

## Appendix A

Persons Killed, by Highest Blood Alcohol Concentration (BAC) in the Crash 1982-2003

| Year | <i>BAC</i><br><i>=0.00</i> |                | <i>BAC=0.0</i><br><i>1-0.07</i> |                | <i>BAC=0.08</i> |                | <i>Total</i><br><i>Number</i> | <i>Total</i><br><i>Fatalities</i><br><i>Alcohol</i><br><i>Related</i><br><i>Crashes</i> |                |
|------|----------------------------|----------------|---------------------------------|----------------|-----------------|----------------|-------------------------------|-----------------------------------------------------------------------------------------|----------------|
|      | <i>Number</i>              | <i>Percent</i> | <i>Number</i>                   | <i>Percent</i> | <i>Number</i>   | <i>Percent</i> |                               | <i>Number</i>                                                                           | <i>Percent</i> |
| 1982 | 17,773                     | 40             | 2,927                           | 7              | 23,246          | 53             | 43,945                        | 26173                                                                                   | 60             |
| 1983 | 17,995                     | 42             | 2,594                           | 6              | 22,041          | 52             | 42,589                        | 24635                                                                                   | 58             |
| 1984 | 19,496                     | 44             | 3,046                           | 7              | 21,715          | 49             | 44,257                        | 24762                                                                                   | 56             |
| 1985 | 20,659                     | 47             | 3,081                           | 7              | 20,086          | 46             | 43,825                        | 23167                                                                                   | 53             |
| 1986 | 21,070                     | 46             | 3,546                           | 8              | 21,471          | 47             | 46,087                        | 25017                                                                                   | 54             |
| 1987 | 22,297                     | 48             | 3,398                           | 7              | 20,696          | 45             | 46,390                        | 24094                                                                                   | 52             |
| 1988 | 23,254                     | 49             | 3,234                           | 7              | 20,599          | 44             | 47,087                        | 23833                                                                                   | 51             |
| 1989 | 23,159                     | 51             | 2,893                           | 6              | 19,531          | 43             | 45,582                        | 22424                                                                                   | 49             |
| 1990 | 22,012                     | 49             | 2,980                           | 7              | 19,607          | 44             | 44,599                        | 22587                                                                                   | 51             |
| 1991 | 21,349                     | 51             | 2,560                           | 6              | 17,599          | 42             | 41,508                        | 20159                                                                                   | 49             |
| 1992 | 20,960                     | 53             | 2,443                           | 6              | 15,874          | 40             | 39,250                        | 18290                                                                                   | 47             |
| 1993 | 22,242                     | 55             | 2,361                           | 6              | 15,547          | 39             | 40,150                        | 17908                                                                                   | 45             |
| 1994 | 23,409                     | 57             | 2,322                           | 6              | 14,985          | 37             | 40,716                        | 17308                                                                                   | 43             |
| 1995 | 24,085                     | 58             | 2,490                           | 6              | 15,242          | 36             | 41,817                        | 17732                                                                                   | 42             |
| 1996 | 24,316                     | 58             | 2,486                           | 6              | 15,263          | 36             | 42,065                        | 17749                                                                                   | 42             |
| 1997 | 25,302                     | 60             | 2,290                           | 5              | 14,421          | 34             | 42,013                        | 16711                                                                                   | 40             |
| 1998 | 24,828                     | 60             | 2,465                           | 6              | 14,207          | 34             | 41,501                        | 16673                                                                                   | 40             |
| 1999 | 25,145                     | 60             | 2,321                           | 6              | 14,250          | 34             | 41,717                        | 16572                                                                                   | 40             |
| 2000 | 24,565                     | 59             | 2,511                           | 6              | 14,870          | 35             | 41,945                        | 17380                                                                                   | 41             |
| 2001 | 24,796                     | 59             | 2,542                           | 6              | 14,858          | 35             | 42,196                        | 17400                                                                                   | 41             |
| 2002 | 25,481                     | 59             | 2,432                           | 6              | 15,093          | 35             | 43,005                        | 17524                                                                                   | 41             |
| 2003 | 25,630                     | 60             | 2,383                           | 6              | 14,630          | 34             | 42,643                        | 17013                                                                                   | 40             |

Note: NHSTA estimates alcohol involvement when alcohol test results are unknown.

Source: DOT HS 809 775

January 2005 National Highway Traffic Safety Administration  
National Center for Statistics and Analysis U.S. Department of  
Transportation  
Washington, DC 20590

## Appendix B

### Presidential Commission on Drunk Driving 1983 Report

#### 1. Public Information Campaign

A media program should be developed and coordinated among appropriate agencies in each State, in cooperation with the private sector, to focus on alcohol use and abuse and their correlation to highway safety. Properly included should be information relating to new laws, fatalities and injuries, arrests and current program activities. Specifically, the program should have the following aims:

(1) To increase public awareness of the risks of a crash caused by drinking and driving;

(2) To heighten the perceived risk of apprehension, especially by urging newspapers to report names and addresses of persons arrested and/or convicted of driving under the influence, and also of those whose licenses have been suspended or revoked;

(3) To encourage responsibility on the part of the general public to intervene in DUI situations and to provide education on how to do so;

(4) To support private organizations in the establishment of prevention programs; and

(5) To foster awareness of the health benefits of safety belts, child restraint devices, and adhering to the 55 mph speed limit.

#### 2. Administration

Each State should identify a single coordinating agency for public information and education programs to minimize or prevent issuance of contradictory messages that confuse the public and endanger long-term continuity of combined efforts.

### 3. Media and Influentials

Editorial boards and media trade associations should encourage their associates and members to communicate with the public regularly about alcohol use and abuse and highway safety.

Television and radio program managers and film makers should portray alcohol use and abuse and highway safety in a responsible manner, and, where appropriate, use program content to communicate with the public about the problem of driving under the influence.

The clergy in each community should periodically remind their congregations about their responsibility for highway safety, particularly in regard to alcohol use and abuse.

Medical schools and associations should give a high priority to alcohol use and abuse issues in their curricula and organizational agendas. Physicians should be encouraged to educate their patients.

### 4. Youth Programs

The best hope for prevention lies in teaching people how to prevent drunk driving among those in their own social circles-family, friends, neighbors, and co-workers. Young people must be a primary focus, both because they are at greatest risk for involvement in motor vehicle crashes and because their driving and drinking habits are still in the formative stages. Programs must include a variety of curricular and extra-curricular educational activities:

(1) Curricula concerning alcohol, drugs and other impairments on the body and their relationship to highway safety should be included as part of general school curricula promoting values clarification and decision making skills. Training for teachers and school counselors is an essential ingredient.

(2) Extracurricular programs in junior and senior high schools and in colleges should be publicized and encouraged.



(3) Driver education programs should include information on the effects of alcohol, drugs, and other impairments on the body.

(4) Athletic clubs and other youth organizations should establish programs for members and their peers concerning the use and abuse of alcohol, drugs, and other impairments on the body.

#### 5. General Outreach

Corporations and industry trade associations, labor organizations, civic, fraternal, and social organizations should:

(1) Develop and disseminate to employees and/or members policy statements regarding the use and abuse of alcohol and alcohol's relationship to highway-related deaths and injuries, and implement these policies at company-sponsored events.

(2) Implement educational programs directed toward their employees and customers concerning the problems caused by driving under the influence and the solutions available.

(3) Implement employee assistance programs to deal with employees' alcoholism problems.

(4) Become active advocates and participants in local or State endeavors to reduce driving under the influence

#### 6. Motor Vehicle Related Industries

Motor vehicle manufacturers and dealers should include in their owner's manuals, advertising programs, showrooms, and local sales efforts information on the hazards of combining alcohol use and driving and the benefits in reducing death and injury of using safety belts and child restraints and adhering to the 55 mph speed limit.

Insurance companies should include in their policy billings, advertising and sales materials, and agent information kits, information on the hazards of combining alcohol use and driving and the benefits in reducing death and injury of using safety belts and child restraints and adhering to the 55 mph speed limit.

Gasoline stations and motor vehicle repair shops should display signs informing their customers of the law and their responsibility relating to the hazards of combining alcohol use and driving and the benefits in reducing death and injury of using safety belts and child restraints and adhering to the 55 mph speed limit.

#### 7. Alcoholic Beverage Industries and Servers

The beer, wine and distilled spirits industries at the producer, wholesale and retail levels should either initiate or expand educational programs to warn the public of the hazards of drinking and driving.

Package stores, bars, restaurants, fraternal and social organizations, and other establishments having an alcoholic beverage license should display signs informing customers of the laws relating to alcohol use and highway safety.

Alcoholic Beverage Control Commissions should encourage owners of retail establishments which serve alcoholic beverages to provide their employees with education on alcohol use and abuse and highway safety

Schools for bartending should provide education and training concerning alcohol use and abuse and highway safety.

Party hosts should be provided information on ways of entertaining that help prevent the abuse of alcohol at social functions and on methods of intervening to prevent intoxicated guests from driving.

## 8. Minimum Legal Purchasing Age

States should immediately adopt 21 years as the minimum legal purchasing and public possession age for all alcoholic beverages.

Legislation at the Federal level should be enacted providing that each State enact and/or maintain a law requiring 21 years as the minimum legal age for purchasing and possessing all alcoholic beverages. Such legislation should provide that the Secretary of the United States Department of Transportation disapprove any project under Section 106 of the Federal Aid Highway Act (Title 23, United States Code) for any State not having and enforcing such a law.

## 9. Dram Shop Laws

States should enact "dram shop" laws establishing liability against any person who sells or serves alcoholic beverages to an individual who is visibly intoxicated.

## 10. Alcoholic Beverage Consumption in Motor Vehicles

State and local governments should prohibit consumption of alcoholic beverages in motor vehicles and prohibit the possession of open alcoholic beverage containers in the passenger compartments of motor vehicles.

## 11. Program Financing

Legislation should be enacted at the State and local levels which creates a dedicated funding source including offender fines and fees for increased efforts in the enforcement, prosecution, adjudication, sanctioning, education and treatment of DUI offenders.

## 12. Citizen and Public Support

Citizen Support Grassroots citizen advocacy groups should be encouraged to continue fostering awareness of the DUI problem, to cooperate with government officials, prosecutors and judges to deal more effectively with the alcohol-

related crash problem, and to encourage the development of personally responsible drinking/ driving behavior.

*Task Forces:* State and local governments should create task forces of governmental and non-governmental leaders to increase public awareness of the problem, to apply more effectively DUI laws, and to involve governmental and non-governmental leaders in action programs.

*National Body:* A non-governmental body of public and private leaders should be established at the national level to ensure a continuing focus on efforts to combat driving under the influence.

### 13. Criminal Justice System Support

*Priority :* Police, prosecutors and courts should publicly assign a high priority to enforcing DUI statutes.

*Training:* Police, prosecutors, judges and other related justice system personnel should participate in entry level and annual in-service training programs established to improve the detection, prosecution, and adjudication of DUI offenders.

*Legal Updates:* Prosecutors should provide local enforcement agencies and courts with periodic legal updates on developments and/or changes in the DUI laws.

*Legal/System Review:* The Chief Justice or highest appellate judge in each State, in the interest of uniformity and effectiveness, should convene an annual meeting of all components of the legal system to review the progress and problems relating to DUI offenses and issue a report on the results.

### 14. Tracking and Reporting Systems

*Record System:* Police, prosecutors and courts should collect and report DUI apprehension, charging and sentencing

information to the state licensing authority. Convictions on military and Federal lands, including Indian tribal lands, should also be reported. The State licensing authority must maintain a traffic records system capable of tracking offenders from arrest to conviction or other disposition, including sanctions imposed by both judicial and licensing authorities. This system should also be used for evaluation purposes.

*Uniform Traffic Ticket:* State and local governments should adopt a statewide uniform traffic ticket system.

*Driver License Compact:* Each State should adopt the Driver License Compact and the one license/one record policy, while also utilizing the National Driver Register.

#### 15. Safety Belt and Child Restraint Usage Laws

States should enact safety belt and child restraint usage laws.

#### 16. Improved Roadway Delineation and Signing

States should give increased attention to improvements in road-way markings and signing, and roadside hazard visibility as important countermeasures to alcohol-related highway crashes.

#### 17. Selective Enforcement and Road Blocks

Police agencies should apply selective enforcement and other innovative techniques, including the use of preliminary breath testing devices and judicially approved roadblocks, to achieve a high perception of risk of detection for driving under the influence.

#### 18. Chemical Testing

*Implied Consent:* Each State should establish an "implied consent" statute which provides that all drivers licensed in that State are deemed to have given their consent to tests of blood,

breath or urine to determine their alcohol or drug concentration. This statute should provide:

Sufficiently severe license suspensions to discourage drivers from refusing the test

That a test refusal can be introduced at a DUI trial as evidence of consciousness of guilt

That offenders who are unconscious or otherwise incapable of refusal are deemed to have given their consent to a test, the results of which are admissible in any trial or proceeding.

That an individual's right to consult his attorney may not be permitted to unreasonably delay administration of the test.

That results of preliminary breath test devices be admissible in the DUI trial proceedings.

That refusals in sister States shall result in license suspensions in the State of driver residence.

*Preliminary Breath Testing:* States should enact a statute allowing the use and admissibility in evidence of Preliminary Breath Test (PBT) devices by police officers.

*Police Choice of Chemical Tests:* The arresting officer should determine the appropriate chemical test or tests to be administered to the driver suspected of driving under the influence.

*Mandatory BAC Test:* States should require mandatory alcohol and other drug testing of: (1) all drivers fatally injured, and (2) where there is probable cause to suspect alcohol involvement, all drivers involved in a fatal or serious personal injury crash.

19. Booking Procedures Laws, policies, and procedures should be adopted to expedite arrest, booking and charging procedures.

20. Citizen Reporting

Citizens should be encouraged by governmental and non-governmental groups to report drivers under the influence.

21. Plea Bargaining

Prosecutors and courts should not reduce DUI charges.

22. Definition of BAC

States should enact a definition of breath alcohol concentration and make it illegal to drive or be in control of a motor vehicle with a breath alcohol concentration above that defined level.

23. 0.08 Presumptive Level of Under the Influence

Legislation should be enacted which provides that a person with an alcohol concentration of 0.08 is presumed to be driving under the influence.

24. 0.10 Illegal Per Se

Legislation should be enacted making it illegal per se for a person with an alcohol concentration of 0.10 or higher within three hours of arrest to drive or be in actual physical control of a motor vehicle.

25. Appellate Action

Prosecutors should initiate appropriate appellate actions to ensure judicial compliance with statutory mandates governing DUI cases.

26. Mandatory Sentencing

*Sentencing of DUI Offenders:* The sentence recommended herein upon conviction of driving under the influence should be mandatory and not subject to suspension or probation. Specifically, the recommendations are that:

All states establish mandatory substantial minimum fines for DUI offenders, with correspondingly higher mandatory minimum fines for repeat offenders.

Any person convicted of a first violation of driving under the influence should receive a mandatory license suspension for a period of not less than 90 days, plus assignment of 100 hours of community service or a minimum jail sentence of 48 consecutive hours.

Any person convicted of a second violation of driving under the influence within five years should receive a mandatory minimum jail sentence of 10 days and license revocation for not less than one year.

Any person convicted of a third or subsequent violation of driving under the influence within five years should receive a mandatory minimum jail sentence of 120 days and license revocation for not less than three years.

*Sentencing of License Violators:* States should enact a statute requiring a mandatory jail sentence of at least 30 days for any person convicted of driving with a suspended or revoked license or in violation of a restriction due to a DUI conviction.

## 27. Felony

Causing death or serious bodily injury to others while driving under the influence should be classified as a felony.

## 28. Court Administration

*Speedy Trials:* DUI cases at the trial level should be concluded within 60 days of arrest. Sentencing should be accomplished within 30 days. The appellate process should be expedited and concluded within 90 days.



*Traffic Infractions:* To relieve court congestion and to focus attention on DUI cases, minor traffic infractions should be adjudicated by simplified and informal procedures.

#### 29. Pre-Conviction Diversion

Pre-conviction diversion to alcohol education or alcohol treatment programs should be eliminated. A finding on the charge should be rendered and participation in education or treatment programs should then become a condition of sentencing.

#### 30. Pre-sentence Investigation

Before sentencing, a court should obtain and consider a pre-sentence investigation report detailing the defendant's driving and criminal record, and, where possible, an alcohol problem assessment report. In all cases an alcohol problem assessment report should be completed by qualified personnel prior to the determination of an education or treatment plan.

#### 31. Victim Programs

*Victim Restitution:* Any person convicted for driving under the influence who causes personal injury or property damage should pay restitution.

*Elimination of Bankruptcy Loophole:* The United States Congress should enact legislation which eliminates the possibility that a drunk driver, judged civilly liable, will be able to escape the penalties of civil action by filing for bankruptcy.

*Victim Assistance:* State and local governments and private and volunteer organizations should provide assistance to victims of DUI offenders.

*Victim Impact Statements:* State and local governments or courts by rule should require victim impact statements (including oral or written statements by victims or survivors) prior to sentencing in all cases where death or serious injury results from a DUI offense.

### 32. Administrative Per Se License Suspension

States should enact legislation to require prompt suspension of the license of drivers charged with driving under the influence, upon a finding that the driver had a BAC of 0.10 in a legally requested and properly administered test. The prompt suspension should also extend to those who refuse the test, as well as those who are driving in violation of a restricted license. Such suspension may be carried out by the arresting law enforcement agency, the court upon arraignment, or the administrative agency charged with license administration. There should be a reciprocity among States to assure a driver's license suspension by the home State if the driver meets these conditions in another State.

### 33. Restricted Licenses

Each State driver licensing authority should review its practice of issuing Occupational Hardship Driver Licenses following suspension or revocation and establish strict uniform standards relative to issuance and control of such limited driving privileges. These licenses should be issued only in exceptional cases. In no event should this be done for repeat offenders.

### 34. Provisional License for Young Drivers

States should adopt laws providing a provisional license for young beginner drivers which would be withdrawn for a DUI conviction or an implied consent refusal.

### 35. Licensing Information

*Driver Licensing Manuals* should discuss the relationship of alcohol and drugs to highway safety and include the penalties for arrest and conviction of driving under the influence.

*Motor Vehicle Administrators* should include in license and motor vehicle registration renewal applications information on the relationship of alcohol and drugs to highway safety.

*Driver's License Examinations* should include questions specifically designed to determine the applicant's knowledge of the relationship of alcohol and drugs to highway safety, as well as his or her understanding of the laws governing such conduct.

36. Assignment Process *Rehabilitation and education programs* for individuals convicted of driving under the influence should be provided as a supplement to other sanctions and not as a replacement for those sanctions.

*Pre-sentence investigation*, including alcohol assessments conducted by qualified personnel, should be available to all courts in order to appropriately classify the defendant's problem with alcohol. Repeat offenders should be required to undergo medical screening for alcoholism by a physician trained in alcoholism, and alcoholism counselor, or by an approved treatment facility.

*Alcohol Education programs* should be used only for those first offenders who are classified as social drinkers and for those who have had no previous exposure to alcohol education programs. Problem drinkers and repeat offenders should be referred to more intensive rehabilitation programs.

*Alcohol treatment and rehabilitation programs* should be available for individuals judged to need such services. The programs should be tailored to the individual's needs, and the individual should be assigned to such programs for a length of time determined by treatment personnel and enforced by court probation.

*State insurance commissioners* should require and/or State legislators should enact legislation requiring health insurance providers to include coverage for the treatment and rehabilitation of alcohol and other drug dependent persons in all health insurance policies.

### 37. Compliance

When assignments are not complied with, the courts or the administrative licensing agency must take steps to impose further restrictions on driving privileges or to assess further penalties as spelled out in the original sentence.

A records reporting system should be available to assure that individual offenders assigned to education or treatment services do in fact comply with the assignments, and to make information on compliance available to motor vehicle administration officials at the time of appearance for re-licensing.

Offenders should be required to appear in person to request return of driving privileges and should be given appropriate tests to determine their level of knowledge about alcohol and its relation to highway safety, as well as about the laws governing operation of a motor vehicle while under the influence of alcohol.

### 38. Juvenile Offenders

Juvenile offenders should be required to participate in a program which closely follows the requirements for adult offenders.

### 39. Administrative

State standards, criteria and review procedures should be established for alcohol education schools, treatment and rehabilitation services, and community service programs. A State agency should be assigned responsibility to certify to the courts the alcohol education and treatment and rehabilitation programs that meet established criteria and standards. This same agency should make efforts to draw upon and involve appropriate existing programs, e.g., employee assistance programs.

States should develop and implement an on-going statewide evaluation system to assure program quality and effectiveness.

Individuals should be assessed fees for education or treatment and rehabilitation services at a level sufficient to cover the costs.

*The Presidential Commission on Drunk Driving was appointed by President Reagan in 1982 to make a national study of the problem. In its final report, the Presidential Commission proposed 39 recommendations for reducing drunk driving. Among the 39 recommendations was a call for the formation of a private nonprofit organization to promote the implementation of the other 38 recommendations. The National Commission Against Drunk Driving subsequent/v began operations in January 1984.*

Source:

National Commission Against Drunk Driving  
8403 Colesville Road, Suite 370  
Silver Spring, MD 20910

## *Appendix C*

### *Sec. 410. Alcohol-impaired driving countermeasures*

U.S. Code as of: 01/26/1998

(a) General Authority. - Subject to the provisions of this section, the Secretary shall make grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol or a controlled substance. Such grants may only be used by recipient States to implement and enforce such programs.

(b) Maintenance of Effort. - No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for alcohol traffic safety programs at or above the average level of such expenditures in its 2 fiscal years preceding the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991.

(c) Maximum Period of Eligibility; Federal Share for Grants. - No State may receive grants under this section in more than 6 fiscal years beginning after September 30, 1992. The Federal share payable for any grant under this section shall not exceed -

(1) in the first fiscal year the State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year a program adopted by the State pursuant to subsection (a);

(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

(3) in the third, fourth, fifth, and sixth fiscal years the

State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

(d) Basic Grant Eligibility. - A State is eligible for a basic grant under this section in a fiscal year only if such State provides for 5 or more of the following:

(1) Establishes an expedited driver's license suspension or revocation system for persons who operate motor vehicles while under the influence of alcohol which requires that -

(A) when a law enforcement officer has probable cause under State law to believe a person has committed an alcohol-related traffic offense and such person is determined, on the basis of a chemical test, to have been under the influence of alcohol while operating the motor vehicle or refuses to submit to such a test as proposed by the officer, the officer shall serve such person with a written notice of suspension or revocation of the driver's license of such person and take possession of such driver's license;

(B) the notice of suspension or revocation referred to in subparagraph (A) shall provide information on the administrative procedures under which the State may suspend or revoke in accordance with the objectives of this section a driver's license of a person for operating a motor vehicle while under the influence of alcohol and shall specify any rights of the operator under such procedures;

(C) the State shall provide, in the administrative procedures referred to in subparagraph (B), for due process of law, including the right to an administrative review of a driver's license suspension or revocation;

(D) after serving notice and taking possession of a driver's license in accordance with subparagraph (A), the law enforcement officer immediately shall report to the State entity responsible for administering drivers' licenses all information relevant to the action taken in accordance with this clause;

(E) in the case of a person who, in any 5-year period beginning after December 18, 1991, is determined on the basis of a chemical test to have been operating a motor vehicle under the influence of alcohol or is determined to have refused to submit to such a test as proposed by the law enforcement officer, the State entity responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer -

(i) shall suspend the driver's license of such person for a period of not less than 90 days if such person is a first offender in such 5-year period; and

(ii) shall suspend the driver's license of such person for a period of not less than 1 year, or revoke such license, if such person is a repeat offender in such 5-year period; and

(F) the suspension and revocation referred to under subparagraph (D) shall take effect not later than 30 days after the day on which the person first received notice of the suspension or revocation in accordance with subparagraph (B).

(2)(A) For each of the first three fiscal years in which a grant is received, any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; and

(B) For each of the last 3 fiscal years in which a grant is received, any person with a blood alcohol concentration of 0.08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

(3)(A) A statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol.

(B) A State shall be treated as having met the requirement of this paragraph if -

(i) the State provides to the Secretary a written certification that the highest court of the State has issued a



decision indicating that implementation of subparagraph (A) would constitute a violation of the constitution of the State; and

(ii) the State demonstrates to the satisfaction of the Secretary that -

(I) the alcohol fatal crash involvement rate in the State has decreased in each of the 3 most recent calendar years for which statistics for determining such rate are available; and

(II) the alcohol fatal crash involvement rate in the State has been lower than the average such rate for all States in each of such calendar years.

(4) A self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned, or an equivalent amount of non-Federal funds are provided, to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

(5) An effective system for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages. Such system may include the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals age 21 years of age or older.

(6) Establishment of a mandatory sentence, which shall not be subject to suspension or probation, of (A) imprisonment for not less than 48 consecutive hours, or (B) not less than 10 days of community service, of any person convicted of driving while intoxicated more than once in any 5-year period.

(7) Any individual under age 21 with a blood alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated or driving under the influence of alcohol.

(e) Amount of Basic Grant. - Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (d) shall equal 30 percent of the amount apportioned to such State for fiscal year 1992 under section 402 of this title.

(f) Supplemental Grants. -

(1) Open container laws. - Subject to subsection (c), a State shall be eligible to receive a supplemental grant in a fiscal year of 5 percent of the amount apportioned to the State in fiscal year 1992 under section 402 of this title if the State is eligible for a basic grant in the fiscal year and makes unlawful the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway, except -

(A) as allowed in the passenger area, by persons (other than the driver), of any motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers; or

(B) as otherwise specifically allowed by such State, with the approval of the Secretary, but in no event may the driver of such motor vehicle be allowed to possess or consume an alcoholic beverage in the passenger area.

(2) Suspension of registration and return of license plates. - Subject to subsection (c), a State shall be eligible to receive a supplemental grant in a fiscal year of 5 percent of the amount apportioned to the State in fiscal year 1992 under section 402 of this title if the State is eligible for a basic grant in the fiscal year and provides for the suspension of the registration of, and the return to such State of the license plates for an individual who -

(A) has been convicted on more than 1 occasion of an alcohol-related traffic offense within any 5-year period beginning after the date of the enactment of the Intermodal

Surface Transportation Efficiency Act of 1991; or

(B) has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for such an offense.

A State may provide limited exceptions to such suspension of registration or return of license plates on an individual basis to avoid undue hardship to any individual (including any family member of the convicted individual and any co-owner of the motor vehicle) who is completely dependent on the motor vehicle for the necessities of life. Such exceptions may not result in unrestricted reinstatement of the registration of the motor vehicle, unrestricted return of the license plates of the motor vehicle, or unrestricted return of the motor vehicle.

(3) Mandatory blood alcohol concentration testing programs. - Subject to subsection (c), a State shall be eligible to receive a supplemental grant in a fiscal year of 5 percent of the amount apportioned to the State in fiscal year 1992 under section 402 of this title if the State is eligible for a basic grant in the fiscal year and provides for mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in an accident resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense.

(4) Drugged driving prevention. - Subject to subsection (c), a State shall be eligible to receive a supplemental grant in a fiscal year of 5 percent of the amount apportioned to the State in fiscal year 1992 under section 402 of this title if the State is eligible for a basic grant in the fiscal year and -

(A) provides for laws concerning drugged driving under which

-

(i) a person shall not drive or be in actual physical control of a motor vehicle while under the influence of alcohol, a controlled substance, a combination of controlled

substances, or any combination of alcohol and controlled substances;

(ii) any person who operates a motor vehicle upon the highways of the State shall be deemed to have given consent to a test or tests of his or her blood, breath, or urine for the purpose of determining the blood alcohol concentration or the presence of controlled substances in his or her body; and

(iii) the driver's license of a person shall be suspended promptly, for a period of not less than 90 days in the case of a first offender and not less than 1 year in the case of any repeat offender, when a law enforcement officer has probable cause under State law to believe such person has committed a traffic offense relating to controlled substances use, and such person (I) is determined, on the basis of 1 or more chemical tests, to have been under the influence of controlled substances while operating a motor vehicle, or (II) refuses to submit to such a test as proposed by the officer;

(B) has in effect a law which provides that -

(i) any person convicted of a first violation of driving under the influence of controlled substances or alcohol, or both, shall receive -

(I) a mandatory license suspension for a period of not less than 90 days; and

(II) either an assignment of 100 hours of community service or a minimum sentence of imprisonment for 48 consecutive hours;

(ii) any person convicted of a second violation of driving under the influence of controlled substances or alcohol, or both, within 5 years after a conviction for the same offense shall receive a mandatory minimum sentence of imprisonment for 10 days and license revocation for not less than 1 year;

(iii) any person convicted of a third or subsequent violation of driving under the influence of controlled

substances or alcohol, or both, within 5 years after a prior conviction for the same offense shall -

(I) receive a mandatory minimum sentence of imprisonment for 120 days; and

(II) have his or her license revoked for not less than 3 years; and

(iv) any person convicted of driving with a suspended or revoked license or in violation of a restriction imposed as a result of a conviction for driving under the influence of controlled substances or alcohol, or both, shall receive a mandatory sentence of imprisonment for at least 30 days, and shall upon release from imprisonment receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license;

(C) provides for an effective system, as determined by the Secretary, for -

(i) the detection of driving under the influence of controlled substances;

(ii) the administration of a chemical test or tests to any driver who a law enforcement officer has probable cause under State law to believe has committed a traffic offense relating to controlled substances use; and

(iii) in instances where such probable cause exists, the prosecution of (I) those persons who are determined, on the basis of 1 or more chemical tests, to have been operating a motor vehicle while under the influence of controlled substances and (II) those persons who refuse to submit to such a test as proposed by a law enforcement officer; and

(D) has in effect 2 of the following programs:

(i) An effective educational program, as determined by the Secretary, for the prevention of driving under the influence of controlled substances.

(ii) An effective program, as determined by the Secretary, for training law enforcement officers to detect driving under the influence of controlled substances.

(iii) An effective program, as determined by the Secretary, for the rehabilitation and treatment of those convicted of driving under the influence of controlled substances.

(5) Blood alcohol concentration level percentage. - Subject to subsection (c), a State shall be eligible to receive a supplemental grant in a fiscal year of 5 percent of the amount apportioned to the State in fiscal year 1992 under section 402 of this title if the State is eligible for a basic grant in the fiscal year and requires that any person with a blood alcohol concentration of .08 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated in each of the first three fiscal years in which a basic grant is received.

(6) Video equipment for detection of drunk and drugged drivers. - Subject to subsection (c), a State shall be eligible to receive a supplemental grant in a fiscal year of 5 percent of the amount apportioned to the State in fiscal year 1992 under section 402 of this title if the State is eligible for a basic grant in the fiscal year and provides a program to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance and in effectively prosecuting those persons, and to train personnel in the use of that equipment.

(g) Administrative Expenses. - Funds authorized to be appropriated to carry out this section shall be subject to a deduction not to exceed 5 percent for the necessary costs of administering the provisions of this section.

(h) Applicability of Chapter 1. -

(1) In general. - Except as otherwise provided in this subsection, all provisions of chapter 1 of this title that are applicable to National Highway System funds, other than

provisions relating to the apportionment formula and provisions limiting the expenditure of such funds to the Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section.

(2) Inconsistent provisions. - If the Secretary determines that a provision of chapter 1 of this title is inconsistent with this section, such provision shall not apply to funds authorized to be appropriated to carry out this section.

(3) Credit for state and local expenditures. - The aggregate of all expenditures made during any fiscal year by a State and its political subdivisions (exclusive of Federal funds) for carrying out the State highway safety program (other than planning and administration) shall be available for the purpose of crediting such State during such fiscal year for the non-Federal share of the cost of any project under this section (other than one for planning or administration) without regard to whether such expenditures were actually made in connection with such project.

(4) Increased federal share for certain indian tribe programs. - In the case of a local highway safety program carried out by an Indian tribe, if the Secretary is satisfied that an Indian tribe does not have sufficient funds available to meet the non-Federal share of the cost of such program, the Secretary may increase the Federal share of the cost thereof payable under this title to the extent necessary.

(5) Treatment of term "state highway department". - In applying provisions of chapter 1 in carrying out this section, the term "State highway department" as used in such provisions shall mean the Governor of a State and, in the case of an Indian tribe program, the Secretary of the Interior.

(i) Definitions. - For the purposes of this section, the following definitions apply:

(1) Alcoholic beverage. - The term "alcoholic beverage" has the meaning such term has under section 158(c) of this title.

(2) Controlled substances. - The term "controlled substances"

has the meaning such term has under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

(3) Motor vehicle. - The term "motor vehicle" has the meaning such term has under section 154(b) (FOOTNOTE 1) of this title. (FOOTNOTE 1) See References in Text note below.

(4) Open alcoholic beverage container. - The term "open alcoholic beverage container" means any bottle, can, or other receptacle -

(A) which contains any amount of an alcoholic beverage; and

(B)(i) which is open or has a broken seal, or

(ii) the contents of which are partially removed.

(j) Authorization of Appropriations. - For purposes of carrying out this section, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) \$25,000,000 for each of fiscal years 1994 through 1997, an additional \$500,000 for fiscal year 1997, and \$12,500,000 for the period of October 1, 1997, through March 31, 1998. Amounts made available to carry out this section are authorized to remain available until expended.

**Source**

(Added Pub. L. 100-690, title IX, Sec. 9002(a), Nov. 18, 1988, 102 Stat. 4521; amended Pub. L. 101-516, title III, Sec. 336, Nov. 5, 1990, 104 Stat. 2186; Pub. L. 102-240, title II, Sec. 2004(a), Dec. 18, 1991, 105 Stat. 2073; Pub. L. 102-388, title VI, Sec. 601-606, Oct. 6, 1992, 106 Stat. 1569, 1570; Pub. L. 104-59, title III, Sec. 324, Nov. 28, 1995, 109 Stat. 591; Pub. L. 105-18, title II, Sec. 8003, June 12, 1997, 111 Stat. 195; Pub. L. 105-130, Sec. 6(b), Dec. 1, 1997, 111 Stat. 2558.)



## Appendix D

TESTIMONY OF KATHERINE P. PRESCOTT  
NATIONAL PRESIDENT, MOTHERS AGAINST DRUNK  
DRIVING (MADD)  
ACCOMPANIED BY DR. RALPH HINGSON, Sc.D.  
BOSTON UNIVERSITY SCHOOL OF PUBLIC HEALTH  
BEFORE THE COMMITTEE ON ENVIRONMENT AND  
PUBLIC WORKS  
U.S. SENATE  
MAY 7, 1997

Good morning, Mr. Chairman and Members of the Committee.

As National President of Mothers Against Drunk Driving, I am here today to request that before this year is out, the Congress of the United States make it the law of the land that the definition of intoxication in every state be set at .08 blood alcohol content (BAC) for all drivers above the minimum drinking age of 21.

Earlier this year, Senator Mike DeWine of Ohio and Senator Frank Lautenberg of New Jersey, the author of the 21 Minimum Drinking Age law in 1984, introduced S. 412, the Safe and Sober Streets Act of 1997, a bill withholding highway construction funding from states which failed to lower their level of intoxication to .08 BAC after the expiration of a grace period. MADD strongly supports the passage of the Lautenberg/DeWine legislation.

The question raised by S. 412 and the question we raise here today is quite direct. It has long been lawful in the United States to drink and drive. MADD encourages people not to drink and drive and to be constantly aware of the dangers of mixing alcohol with driving a car. Nonetheless, it is legal to drive a car

after consuming some measurable amount of alcohol. The question we ask today is: Where do we draw the line?

MADD urges this Committee to draw the line at .08 BAC.

Earlier this year, the National Highway Traffic Safety Administration (NHTSA), along with the National Safety Council, issued a report called "Setting Limits, Saving Lives: The Case for .08 BAC Laws." In this report, NHTSA answers the most frequently asked questions about .08 BAC, which is, how much can I drink before I reach .08 BAC?

The answer is, if you are a 170 lb. male, you can drink four drinks on an empty stomach in the space of one hour and not exceed the limit. If you are a 137 lb. female, you can consume three drinks on an empty stomach in a one hour period before you reach the .08 BAC limit. MADD believes that .08 BAC is a generous definition of impairment and that level of alcohol consumption can hardly be characterized as social drinking.

You will be hearing, if you have not already heard, a lot of disinformation from the alcohol beverage and hospitality industries on this subject. The purpose of the information is clear to us. They are in the business of selling that 4th or 5th drink to a person who is already substantially impaired: we are in the business of dealing with the consequences of the impairment which results.

.08 BAC will save lives. How many lives? A conservative estimate is 500 to 600 per year. The person who made that estimate is Dr. Ralph Hingson of the Boston University School of Public Health, who accompanies me here today and would be pleased to answer questions you have about the life-saving potential of this measure and the impact .08 laws have had in states that have already adopted .08 as the illegal blood alcohol level .

The alcohol industry likes to try to discredit Dr. Hingson's work in this area because he happens to serve on the MADD National Board of Directors. It so happens that Dr. Hingson was a well-respected researcher in the field of drunk driving prevention well before he ever joined our board and his research on this issue was completed before he was asked to serve on MADD's Board. Senator Lautenberg might recall that Dr. Hingson did some of the most persuasive work on the lifesaving effectiveness of 21 year-old minimum drinking age laws.

You might ask, "Why .08 BAC, why not some other BAC level?" The answer is that while impairment begins with the first drink - which is the reason we set the BAC level for those below the 21 legal minimum drinking age at .02 BAC or less- the point at which all drivers critical driving tasks such as braking, steering, lane changing, judgment and divided attention are significantly impaired is .08 BAC. I would note that the Congress has set the acceptable BAC level for commercial motor vehicle operators, railroad engineers and airline pilots at .04 BAC.

Some of the opponents of .08 BAC have called this measure a step in the direction of prohibition. I would note, Mr. Chairman, that the permissible BAC level in Canada is .08 as it is in Great Britain, Switzerland and Austria. The highest permissible level in Australia is .08 BAC. I know of no one who maintains that Great Britain, Canada or Australia practice prohibition and it is clear that France who has set their BAC limit at .05 does not. The suggestion that .08 BAC constitutes prohibition is ridiculous.

In fact, .08 BAC does not heavily impact the consumption of alcohol. Despite the dire predictions made by its opponents, the passage of .08 BAC in the states has not led to a decrease in alcohol sales. There is no evidence that the per capita consumption of alcohol was affected in any of the five .08 BAC states examined by NHTSA in a recent analysis and even a four-state analysis by several alcohol industry organizations showed virtually no affect on overall consumption. To quote from the

NHTSA report, " Smart business owners know that demonstrating concern for their patrons' safety is a good business practice that encourages loyalty."

Mr. Chairman, this nation has made remarkable progress in the fight against drunk driving. I'm proud to say MADD has been part of that fight. You and this Committee can be proud of your role in passing such life-saving measures as 21 and Zero Tolerance for underage drinking. There are tens of thousands of Americas alive today who owe you a debt of gratitude because you had the courage to act. We've come a long way yet have a long journey ahead of us.

Last year 17,274 Americans lost their lives on our nation's highways in alcohol-related fata; traffic crashes. This number constituted the first increase in drunk driving fatalities in a decade. The 17,274 Americans who lost their lives is 17,274 too many. We cannot tolerate this senseless loss of life. While the law tolerates the mixture of drinking and driving, there is a point at which we cannot tolerate this deadly combination and that point for all those over 21 is .08 BAC.

Some will argue that states should have the sole discretion in determining what their drunk driving laws should be. We believe that the states and Congress should listen to the American public and a 1996 survey revealed that 78% of those surveyed believe that federal involvement in assuring safe highways is very important. In a Gallup survey released in 1994, the majority of Americans surveyed supported lowering the illegal blood alcohol limit to .08. We are asking you today to listen to the American public.

When the time came for the 21 minimum drinking age law to be the law of the land, withholding sanctions were appropriate. When the time came for zero tolerance for drivers under the age of 21 to be the law of the land, withholding sanctions were used. The time has now come for .08 BAC to be the law of the land.

Some issues are of such national importance that they transcend state lines and require uniformity across our nation. This was the message that states' rights proponent and former President Ronald Reagan gave when he signed into law the federal 21 minimum drinking age law. That was the message that former Arkansas Governor and now President Clinton gave when he signed into law the National Highway System bill requiring states to adopt the zero tolerance standard of .02 BAC for young drivers. Every day millions of Americans cross state borders for business or pleasure. They should have a right to safe passage.

Mr. Chairman , I hope that this Committee and this Congress will demonstrate that it will not tolerate an increase in drunk drinking deaths for the first time in a decade. I implore this Committee to draw the line at .08 BAC and make .08 BAC the law of the land before this year is through. The increase in alcohol-related fatalities in 1995 should serve as a wake-up call to this nation, to the American public and media. The drunk driving problem has not been solved and will not be solved until safety becomes our top priority, not only in Washington, but in every state. We must avoid the complacency which can come with success. We must not only continue what has worked in the past, but we must remain vigilant in our efforts to find new solutions to drunk driving, our nation's most frequently committed violent crime. We can no longer tolerate more than 17,000 alcohol-related deaths a year on our nations highways just because they happen one, two or three at a time. The time has come for the U.S. to follow the lead of the other industrialized nations and not lag behind them in efforts to reduce alcohol-related deaths and injuries on our highways.

Thank you for the opportunity to present our views and I and Dr. Hingson look forward to your questions.

Source: U S Senate Committee on Environment and Public Works [http://epw.senate.gov/105th/pre\\_5-07.htm](http://epw.senate.gov/105th/pre_5-07.htm)

## Appendix E

### Horizontal Gaze Nystagmus

Here is a list of SOME of the conditions that can cause horizontal gaze nystagmus.

1. problems with the inner ear labyrinth;
2. irrigating the ears with warm or cold water under peculiar weather conditions;
3. influenza;
4. streptococcus infection;
5. vertigo;
6. measles;
7. syphilis;
8. arteriosclerosis;
9. muscular dystrophy;
10. multiple sclerosis;
11. Korchaff's syndrome;
12. brain hemorrhage;
13. epilepsy;
14. hypertension;
15. motion sickness;
16. sunstroke;
17. eye strain;
18. eye muscle fatigue;
19. glaucoma;
20. changes in atmospheric pressure;
21. consumption of excessive amounts of caffeine;
22. excessive exposure to nicotine;
23. aspirin;
24. circadian rhythms;
25. acute trauma to the head;
26. chronic trauma to the head;

27. some prescription drugs, tranquilizers, pain medications, anti-convulsants;
28. barbiturates;
29. disorders of the vestibular apparatus and brain stem;
30. cerebellum dysfunction;
31. heredity;
32. diet;
33. toxins;
34. exposure to solvents, PCBS, dry cleaning fumes, carbon monoxide;
35. extreme chilling;
36. eye muscle imbalance;
37. lesions;
38. continuous movement of the visual field past the eyes;
39. antihistamine use.
40. lack of sleep

As you can see being drug and alcohol free the HGN test is just another way to get a DUI arrest. If you fail this HGN test you will most likely go to jail, because most police officers think if you fail this test you are drunk. There are more papers on this subject than I can shake a stick at, about the problems with the HGN test. One such paper is "End-position nystagmus as an indicator of ethanol intoxication" by JL Booker. In his report a test concluded that 55% of persons that are alcohol and drug free failed this test due to lack of sleep. One thing that this study found is that in 52 police car videos, only one officer conducted the test properly. In almost all states, these officers are trained in the HGN test by another officer. So as you can see this test created by NHTSA is just another way to get an arrest.

## Appendix F

U.S. Supreme Court

BLANTON v. NORTH LAS VEGAS, 489 U.S. 538 (1989)

489 U.S. 538

BLANTON ET AL. v. CITY OF NORTH LAS VEGAS, NEVADA  
CERTIORARI TO THE SUPREME COURT OF NEVADA

No. 87-1437.

Argued January 9, 1989

Decided March 6, 1989

Under Nevada law, a first-time offender convicted of driving under the influence of alcohol (DUI) faces up to six months of incarceration or, in the alternative, 48 hours of community work while identifiably dressed as a DUI offender. In addition, the offender must pay a fine of up to \$1,000, attend an alcohol abuse education course, and lose his license for 90 days. Penalties increase for repeat offenders. Petitioners, first-time offenders, were charged with DUI in separate incidents. The Municipal Court denied each petitioner's demand for a jury trial. On appeal, the Judicial District Court again denied petitioner Blanton's request but granted petitioner Fraley's. The Nevada Supreme Court remanded both cases, concluding that the Federal Constitution does not guarantee a right to a jury trial for a DUI offense.

*Held:*

There is no Sixth Amendment right to a trial by jury for persons charged under Nevada law with DUI. This Court has long held that petty crimes or offenses are not subject to the Sixth



Amendment jury trial provision. The most relevant criterion for determining the seriousness of an offense is the severity of the maximum authorized penalty fixed by the legislature. Under this approach, when an offense carries a maximum prison term of six months or less, as DUI does under Nevada law, it is presumed to be petty unless the defendant can show that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense is a "serious" one. Under this test, it is clear that the Nevada Legislature does not view DUI as a serious offense. It is immaterial that a first-time DUI offender may face a minimum prison term or that some offenders may receive the maximum prison sentence, because even the maximum prison term does not exceed the constitutional demarcation point of six months. Likewise, the 90-day license suspension is irrelevant if it runs concurrently with the prison term. The 48 hours of community service in the specified clothing, while a source of embarrassment, is less embarrassing and less onerous than six months in jail. Also, the \$1,000 fine is well below the \$5,000 level set by Congress in its most recent definition of a petty [489 U.S. 538, 539] offense, while increased penalties for recidivists are commonplace and are not faced by petitioners. Pp. 541-545.

103 Nev. 623, 748 P.2d 494, affirmed.

MARSHALL, J., delivered the opinion for a unanimous Court.

John J. Graves, Jr., argued the cause for petitioners. With him on the briefs was John G. Watkins.

Mark L. Zalaoras argued the cause for respondent. With him on the brief was Roy A. Woofter. \*

[ Footnote \* ] Dan C. Bowen and John A. Powell filed a brief for the American Civil Liberties Union et al. as amici curiae urging reversal.

Briefs of amici curiae urging affirmance were filed for the United States by Solicitor General Fried, Acting Assistant Attorney General Dennis, Deputy Solicitor General Bryson, Michael R. Lazerwitz, and Louis M. Fischer; for the State of Nevada by Brian McKay, Attorney General, and Brian Randall Hutchins, Chief Deputy Attorney General; for the State of New Jersey by W. Cary Edwards, Attorney General, and Boris Moczula, Larry R. Etzweiler, and Cherrie Madden Black, Deputy Attorneys General; for the city of Las Vegas, Nevada, by George F. Ogilvie; and for the Louisiana District Attorneys Association by Dorothy A. Pendergast.

JUSTICE MARSHALL delivered the opinion of the Court.

The issue in this case is whether there is a constitutional right to a trial by jury for persons charged under Nevada law with driving under the influence of alcohol (DUI). Nev. Rev. Stat. 484.379(1) (1987). We hold that there is not.

DUI is punishable by a minimum term of two days' imprisonment and a maximum term of six months' imprisonment. 484.3792(1)(a)(2). Alternatively, a trial court may order the defendant "to perform 48 hours of work for the community while dressed in distinctive garb which identifies him as [a DUI offender]." Ibid. The defendant also must pay a fine ranging from \$200 to \$1,000. 484.3792(1)(a)(3). In addition, the defendant automatically loses his driver's license for 90 days, 483.460(1)(c), Footnote 1 and he must attend, at his own [489 U.S. 538, 540] expense, an alcohol abuse education course. 484.3792(1) (a)(1). Repeat DUI offenders are subject to increased penalties. Footnote 2

Petitioners Melvin R. Blanton and Mark D. Fraley were charged with DUI in separate incidents. Neither petitioner had a prior DUI conviction. The North Las Vegas, Nevada, Municipal Court denied their respective pretrial demands for a jury trial. On appeal, the Eighth Judicial District Court denied Blanton's request for a jury trial but, a month later, granted Fraley's.

Blanton then appealed to the Supreme Court of Nevada, as did respondent city of North Las Vegas with respect to Fraley. After consolidating the two cases along with several others raising the same issue, the Supreme Court concluded, inter alia, that the Federal Constitution does not guarantee a right to a jury trial for a DUI offense because the maximum term of incarceration is only six months and the maximum possible fine is \$1,000. 103 Nev. 623, 748 P.2d 494 (1987). Footnote 3 We granted certiorari to consider whether petitioners were entitled to a jury trial, 487 U.S. 1203 (1988), and now affirm. [489 U.S. 538, 541]

It has long been settled that "there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision." *Duncan v. Louisiana*, 391 U.S. 145, 159 (1968); see also *District of Columbia v. Clawans*, 300 U.S. 617, 624 (1937); *Callan v. Wilson*, 127 U.S. 540, 557 (1888). Footnote 4 In determining whether a particular offense should be categorized as "petty," our early decisions focused on the nature of the offense and on whether it was triable by a jury at common law. See, e. g., *District of Columbia v. Colts*, 282 U.S. 63, 73 (1930); *Callan*, supra, at 555-557. In recent years, however, we have sought more "objective indications of the seriousness with which society regards the offense." *Frank v. United States*, 395 U.S. 147, 148 (1969). Footnote 5 "[W]e have found the most relevant such criteria in the severity of the maximum authorized penalty." *Baldwin v. New York*, 399 U.S. 66, 68 (1970) (plurality opinion); see also *Duncan*, supra, at 159. In fixing the maximum penalty for a crime, a legislature "include[s] within the definition of the crime itself a judgment about the seriousness of the offense." *Frank*, supra, at 149. The judiciary should not substitute its judgment as to seriousness for that of a legislature, which is "far better equipped to perform the task, and [is] likewise more responsive to changes in attitude and more amenable to the [489 U.S. 538, 542] recognition and correction of their misperceptions in this respect." *Landry v. Hoepfner*, 840 F.2d 1201, 1209 (CA5 1988) (en banc), cert. pending, No. 88-5043.

In using the word "penalty," we do not refer solely to the maximum prison term authorized for a particular offense. A legislature's view of the seriousness of an offense also is reflected in the other penalties that it attaches to the offense. See *United States v. Jenkins*, 780 F.2d 472, 474, and n. 3 (CA4), cert. denied, 476 U.S. 1161 (1986). We thus examine "whether the length of the authorized prison term or the seriousness of other punishment is enough in itself to require a jury trial." *Duncan*, *supra*, at 161 (emphasis added); see also *Frank*, 395 U.S., at 152 (three years' probation is not "onerous enough to make an otherwise petty offense `serious'"). Footnote 6 Primary emphasis, however, must be placed on the maximum authorized period of incarceration. Penalties such as probation or a fine may engender "a significant infringement of personal freedom," *id.*, at 151, but they cannot approximate in severity the loss of liberty that a prison term entails. Indeed, because incarceration is an "intrinsically different" form of punishment, *Muniz v. Hoffman*, 422 U.S. 454, 477 (1975), it is the most powerful indication of whether an offense is "serious."

Following this approach, our decision in *Baldwin* established that a defendant is entitled to a jury trial whenever the offense for which he is charged carries a maximum authorized prison term of greater than six months. 399 U.S., at 69 ; see *id.*, at 74-76 (Black, J., concurring in judgment). The possibility of a sentence exceeding six months, we determined, is "sufficiently severe by itself" to require the opportunity for a jury trial. *Id.*, at 69, n. 6. As for a prison term of six months or less, we recognized that it will seldom be viewed by the defendant as "trivial or `petty.'" *Id.*, at 73. But we [489 U.S. 538, 543] found that the disadvantages of such a sentence, "onerous though they may be, may be outweighed by the benefits that result from speedy and inexpensive nonjury adjudications." *Ibid.*; see also *Duncan*, *supra*, at 160.

Although we did not hold in *Baldwin* that an offense carrying a maximum prison term of six months or less automatically qualifies as a "petty" offense, Footnote 7 and decline to do so

today, we do find it appropriate to presume for purposes of the Sixth Amendment that society views such an offense as "petty." A defendant is entitled to a jury trial in such circumstances only if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a "serious" one. This standard, albeit somewhat imprecise, should ensure the availability of a jury trial in the rare situation where a legislature packs an offense it deems "serious" with onerous penalties that nonetheless "do not puncture the 6-month incarceration line." Brief for Petitioners 16. Footnote 8

Applying these principles here, it is apparent that petitioners are not entitled to a jury trial. The maximum authorized prison sentence for first-time DUI offenders does not exceed six months. A presumption therefore exists that the Nevada Legislature views DUI as a "petty" offense for purposes [489 U.S. 538, 544] of the Sixth Amendment. Considering the additional statutory penalties as well, we do not believe that the Nevada Legislature has clearly indicated that DUI is a "serious" offense.

In the first place, it is immaterial that a first-time DUI offender may face a minimum term of imprisonment. In settling on six months' imprisonment as the constitutional demarcation point, we have assumed that a defendant convicted of the offense in question would receive the maximum authorized prison sentence. It is not constitutionally determinative, therefore, that a particular defendant may be required to serve some amount of jail time less than six months. Likewise, it is of little moment that a defendant may receive the maximum prison term because of the prohibitions on plea bargaining and probation. As for the 90-day license suspension, it, too, will be irrelevant if it runs concurrently with the prison sentence, which we assume for present purposes to be the maximum of six months. Footnote 9

We are also unpersuaded by the fact that, instead of a prison sentence, a DUI offender may be ordered to perform 48 hours of community service dressed in clothing identifying him as a DUI offender. Even assuming the outfit is the source of some embarrassment during the 48-hour period, Footnote 10 such a penalty will be less embarrassing and less onerous than six months in jail. As for the possible \$1,000 fine, it is well below the \$5,000 level set by Congress in its most recent definition of a "petty" offense, 18 U.S.C. 1 (1982 ed., [489 U.S. 538, 545] Supp. IV), and petitioners do not suggest that this congressional figure is out of step with state practice for offenses carrying prison sentences of six months or less. Footnote 11 Finally, we ascribe little significance to the fact that a DUI offender faces increased penalties for repeat offenses. Recidivist penalties of the magnitude imposed for DUI are commonplace and, in any event, petitioners do not face such penalties here. Footnote 12

Viewed together, the statutory penalties are not so severe that DUI must be deemed a "serious" offense for purposes of the Sixth Amendment. It was not error, therefore, to deny petitioners jury trials. Accordingly, the judgment of the Supreme Court of Nevada is

Affirmed.

### **Footnotes**

[ Footnote 1 ] A restricted license may be issued after 45 days which permits the defendant to travel to and from work, to obtain food and medicine, and to receive regularly scheduled medical care. 483.490(2).

[ Footnote 2 ] A second DUI offense is punishable by 10 days to six months in prison. 484.3792(1)(b). The second-time offender also must pay a fine ranging from \$500 to \$1,000, *ibid.*, and he loses his driver's license for one year. 483.460(1)(b)(5). A third DUI offense is punishable by a minimum term of one year's

imprisonment and a maximum term of six years' imprisonment. 484.3792(1)(c). The third-time offender also must pay from \$2,000 to \$5,000, *ibid.*, and he loses his driving privileges for three years. 483.460(1)(a)(2).

A prosecutor may not dismiss a DUI charge "in exchange for a plea of guilty or *nolo contendere* to a lesser charge or for any other reason unless he knows or it is obvious" that there is insufficient evidence to prove the offense. 484.3792(3). Trial courts may not suspend sentences or impose probation for DUI convictions. *Ibid.*

[ Footnote 3 ] Accordingly, the Supreme Court of Nevada remanded Blanton's case with instructions to proceed without a jury trial. Because Fraley pleaded guilty to DUI before he took an appeal to the District Court, the Supreme Court remanded his case with instructions to reinstate his conviction.

[ Footnote 4 ] The Sixth Amendment right to a jury trial applies to the States through the Fourteenth Amendment. *Duncan v. Louisiana*, 391 U.S. 145 (1968).

[ Footnote 5 ] Our decision to move away from inquiries into such matters as the nature of the offense when determining a defendant's right to a jury trial was presaged in *District of Columbia v. Clawans*, 300 U.S. 617, 628 (1937), where we stated: "Doubts must be resolved, not subjectively by recourse of the judge to his own sympathy and emotions, but by objective standards such as may be observed in the laws and practices of the community taken as a gauge of its social and ethical judgments." Our adherence to a common-law approach has been undermined by the substantial number of statutory offenses lacking common-law antecedents. See *Landry v. Hoepfner*, 840 F.2d 1201, 1209-1210 (CA5 1988) (*en banc*), cert. pending, No. 88-5043; *United States v. Woods*, 450 F. Supp. 1335, 1345 (Md. 1978); Brief for United States as Amicus Curiae 18.

[ Footnote 6 ] In criminal contempt prosecutions, "where no maximum penalty is authorized, the severity of the penalty actually imposed is the best indication of the seriousness of the particular offense." Frank, 395 U.S. at, 149.

[ Footnote 7 ] We held "only that a potential sentence in excess of six months' imprisonment is sufficiently severe by itself to take the offense out of the category of `petty.'" Baldwin v. New York, 399 U.S., at 69 , n. 6 (plurality opinion) (emphasis added); see also Codispoti v. Pennsylvania, 418 U.S. 506, 512 , n. 4 (1974).

[ Footnote 8 ] In performing this analysis, only penalties resulting from state action, e. g., those mandated by statute or regulation, should be considered. See Note, The Federal Constitutional Right to Trial by Jury for the Offense of Driving While Intoxicated, 73 Minn. L. Rev. 122, 149-150 (1988) (nonstatutory consequences of a conviction "are speculative in nature, because courts cannot determine with any consistency when and if they will occur, especially in the context of society's continually shifting moral values").

[ Footnote 9 ] It is unclear whether the license suspension and prison sentence in fact run concurrently. See Nev. Rev. Stat. 483.460(1) (1987). But even if they do not, we cannot say that a 90-day license suspension is that significant as a Sixth Amendment matter, particularly when a restricted license may be obtained after only 45 days. Cf. Frank v. United States, *supra*. Furthermore, the requirement that an offender attend an alcohol abuse education course can only be described as de minimis.

[ Footnote 10 ] We are hampered in our review of the clothing requirement because the record from the state courts contains neither a description of the clothing nor any details as to where and when it must be worn.



[ Footnote 11 ] We have frequently looked to the federal classification scheme in determining when a jury trial must be provided. See, e. g., *Muniz v. Hoffman*, 422 U.S. 454, 476 -477 (1975); Baldwin, *supra*, at 71; Duncan, 391 U.S., at 161 . Although Congress no longer characterizes offenses as "petty," 98 Stat. 2027, 2031, 99 Stat. 1728 (repealing 18 U.S.C. 1), under the current scheme, 18 U.S.C. 3559 (1982 ed., Supp. V), an individual facing a maximum prison sentence of six months or less remains subject to a maximum fine of no more than \$5,000. 18 U.S.C. 3571(b)(6) (1982 ed., Supp V).

We decline petitioners' invitation to survey the statutory penalties for drunken driving in other States. The question is not whether other States consider drunken driving a "serious" offense, but whether Nevada does. Cf. *Martin v. Ohio*, 480 U.S. 228, 236 (1987). Although we looked to state practice in our past decisions, we did so chiefly to determine whether there was a nationwide consensus on the potential term of imprisonment or amount of fine that triggered a jury trial regardless of the particular offense involved. See, e. g., Baldwin, *supra*, at 70-73; Duncan, *supra*, at 161.

[ Footnote 12 ] In light of petitioners' status as first-time offenders, we do not consider whether a repeat offender facing enhanced penalties may state a constitutional claim because of the absence of a jury trial in a prior DUI prosecution. [489 U.S. 538, 546]

Source:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=489&invol=538>

## **Appendix G**

### **Alabama**

4<sup>th</sup> or subsequent offense is a class C felony  
(fewer offenses not classified)

### **Alaska**

1<sup>st</sup> and 2<sup>nd</sup> offenses are class A misdemeanors  
3<sup>rd</sup> or subsequent offense within 5 years is a class C felony

### **American Samoa**

all DUI offenses are class A misdemeanors

### **Arizona**

1<sup>st</sup> and 2<sup>nd</sup> offense are class 1 misdemeanors  
3<sup>rd</sup> or subsequent offense is a class 4 felony

### **Arkansas**

4<sup>th</sup> or subsequent offense within 5 years is a felony  
(fewer offenses not classified)

### **California**

non-injury DUI offenses are generally misdemeanors, a 4<sup>th</sup> or subsequent offense is a felony if offender is sentenced to incarceration in a state prison

**Colorado**

DUI and impaired offenses are misdemeanors, injury-related DUI offenses are class 4 felonies

**Connecticut**

1<sup>st</sup> and 2<sup>nd</sup> offenses are misdemeanors, 3<sup>rd</sup> and subsequent offenses are felonies

**Delaware**

1<sup>st</sup> and 2<sup>nd</sup> offenses are unclassified misdemeanors, 3<sup>rd</sup> is a class G felony, 4<sup>th</sup> or subsequent is a class E felony

**Florida**

1<sup>st</sup> and 2<sup>nd</sup> offenses are misdemeanors, 3<sup>rd</sup> or subsequent offense is a 3<sup>rd</sup> degree felony

**Georgia**

1<sup>st</sup> and 2<sup>nd</sup> offenses are misdemeanors, 3<sup>rd</sup> and subsequent offenses are high and aggravated misdemeanors

**Guam**

1<sup>st</sup> and 2<sup>nd</sup> non-injury DUI offenses are misdemeanors, 3<sup>rd</sup> and subsequent non-injury DUI offenses and any injury-related DUI offenses are third degree felonies

**Hawaii**

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> offenses are petty misdemeanors, 4<sup>th</sup> or subsequent offense is a class C felony

**Idaho**

1<sup>st</sup> and 2<sup>nd</sup> offenses are misdemeanors, 2<sup>nd</sup> or subsequent offense with BAC = .20 is a felony, 3<sup>rd</sup> or subsequent offenses are felonies, DUI with bodily harm or disfigurement is a felony

**Illinois**

1<sup>st</sup> and 2<sup>nd</sup> offenses are class A misdemeanors, 3<sup>rd</sup> and subsequent offenses are class 4 felonies

**Indiana**

Illegal per se offense with a BAC of .10 to .15 is a class C misdemeanor; with a BAC of .15 and higher, it is a class A misdemeanor; for subsequent convictions within 5 years, it is a class D felony.

**Iowa**

1<sup>st</sup> offense is serious misdemeanor, 2<sup>nd</sup> offense is aggravated misdemeanor, 3<sup>rd</sup> or subsequent offense is class D felony

**Kansas**

1<sup>st</sup> offense is class B non-person misdemeanor, 2<sup>nd</sup> offense is a class A non-person misdemeanor, 3<sup>rd</sup> or subsequent offense is a non-person felony

**Kentucky**

1<sup>st</sup> offense is a class B misdemeanor, 2<sup>nd</sup> offense within 5 years is a class A misdemeanor, 3<sup>rd</sup> offense within 5 years with a BAC under .18 is a class A misdemeanor, 3<sup>rd</sup> offense with a BAC of .18 or higher is a class D felony; 4<sup>th</sup> and subsequent offenses are class D felonies

**Louisiana**

1<sup>st</sup> and 2<sup>nd</sup> offenses not classified, 3<sup>rd</sup> offense can be either a misdemeanor or felony, 4<sup>th</sup> offense is a felony

**Maine**

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> offenses are class D crime, 4<sup>th</sup> or subsequent offenses are class C crime

**Maryland**

all DUI offenses are misdemeanors

**Massachusetts**

1<sup>st</sup> and 2<sup>nd</sup> offenses are unclassified, 3<sup>rd</sup> and subsequent offenses are felonies

**Michigan**

1<sup>st</sup> and 2<sup>nd</sup> offenses are misdemeanors, 3<sup>rd</sup> or subsequent offenses are felonies

**Minnesota**

1<sup>st</sup> offense is a misdemeanor, 2<sup>nd</sup> and 3<sup>rd</sup> offenses are gross misdemeanors, and 4<sup>th</sup> offense within 10 years is a felony

**Mississippi**

1<sup>st</sup> and 2<sup>nd</sup> offenses are misdemeanors, 3<sup>rd</sup> and subsequent offenses are felonies

**Missouri**

1<sup>st</sup> intoxication offense is a class B misdemeanor, 1<sup>st</sup> per se offense is class C misdemeanor, 2<sup>nd</sup> offenses are class A misdemeanors, 3<sup>rd</sup> or subsequent offenses are class D felonies

**Montana**

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> offenses are misdemeanors, 4<sup>th</sup> and subsequent offenses are felonies

**Nebraska**

1<sup>st</sup> and 2<sup>nd</sup> offenses and 3<sup>rd</sup> offense within 12 years are class W misdemeanors; 4<sup>th</sup> and subsequent offenses within 12 years are class IV felonies; injury related DUI offenses are class IIIA felonies

**Nevada**

1<sup>st</sup> and 2<sup>nd</sup> offenses are misdemeanors, 3<sup>rd</sup> or subsequent offenses are category B felonies

**New Hampshire**

1<sup>st</sup> - 3<sup>rd</sup> non-injury DUI offenses are misdemeanors, 4<sup>th</sup> or subsequent non-injury DUI offenses are felonies, and DUI with serious bodily injury is a class B felony

**New Jersey**

drunk driving is not a "crime"

**New Mexico**

4<sup>th</sup> offense is a 4<sup>th</sup> degree felony (fewer offenses not classified)

**New York**

impaired offenses: 1<sup>st</sup> offense is a traffic infraction, 2<sup>nd</sup> and subsequent offenses are misdemeanors.

per se offenses: 1<sup>st</sup> offense is a misdemeanor, 2<sup>nd</sup> offense within 10 years is a class E felony, 3<sup>rd</sup> offense within 10 years is a class D felony

**North Carolina**

4<sup>th</sup> or subsequent offense is a class F felony, fewer offenses are classified as levels 1-5, based on length of sentence

**North Dakota**

1<sup>st</sup> and 2<sup>nd</sup> offenses are class B misdemeanors, 3<sup>rd</sup> and 4<sup>th</sup> offenses are class A misdemeanors, 5<sup>th</sup> and subsequent offenses are class C felony

**Ohio**

1<sup>st</sup> and 2<sup>nd</sup> offenses are 1<sup>st</sup> degree misdemeanors, 3<sup>rd</sup> offense is a misdemeanor, subsequent offenses are 4<sup>th</sup> degree felonies

**Oklahoma**

1<sup>st</sup> offense is a misdemeanor, 2<sup>nd</sup> and subsequent offenses are felonies

**Oregon**

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> offenses are class A misdemeanors, 4<sup>th</sup> and subsequent offenses are class C felonies

**Pennsylvania**

1<sup>st</sup> or 2<sup>nd</sup> offenses are 2<sup>nd</sup> degree misdemeanors, 3<sup>rd</sup> or subsequent offenses are 1<sup>st</sup> degree misdemeanors

**Puerto Rico**

non-injury DUI offenses are misdemeanors, 1<sup>st</sup> and 2<sup>nd</sup> injury DUI offenses are misdemeanors, 3<sup>rd</sup> or subsequent injury DUI offenses are felonies

**Rhode Island**

non-injury DUI offenses are misdemeanors, DUI with serious bodily injuries are felonies



**South Carolina**

1<sup>st</sup> offense is a misdemeanor, 2<sup>nd</sup> offense is a class C misdemeanor, 3<sup>rd</sup> offense is a class A misdemeanor, 4<sup>th</sup> and subsequent offenses are class F felonies

**South Dakota**

1<sup>st</sup> and 2<sup>nd</sup> offenses are class 1 misdemeanors, 3<sup>rd</sup> offense is a class 6 felony, 4<sup>th</sup> and subsequent offenses are class 5 felonies

**Tennessee**

1<sup>st</sup> offense is a class B misdemeanor, 2<sup>nd</sup> and 3<sup>rd</sup> offenses are class A misdemeanors, 4<sup>th</sup> and subsequent offenses within 10 years is a class E felony

**Texas**

1<sup>st</sup> offense is a class B misdemeanor, 2<sup>nd</sup> offense within 10 years is a class A misdemeanor, subsequent offenses are 3<sup>rd</sup> degree felonies

**Utah**

1<sup>st</sup> and 2<sup>nd</sup> offenses are class B misdemeanors, 3<sup>rd</sup> and subsequent offenses are 3<sup>rd</sup> degree felonies

**Vermont**

1<sup>st</sup> and 2<sup>nd</sup> offenses are misdemeanors, 3<sup>rd</sup> and subsequent offenses are felonies

**Virginia**

1<sup>st</sup> offense and 2<sup>nd</sup> offenses within 10 years are class 1 misdemeanors, 3<sup>rd</sup> offense within 10 years is a class 6 felony.

**Virgin Islands**

1<sup>st</sup> offense is a misdemeanor, subsequent offenses are felonies

**Washington**

all DUI offenses are gross misdemeanors

**West Virginia**

1<sup>st</sup> and 2<sup>nd</sup> offenses are misdemeanors, 3<sup>rd</sup> and subsequent offenses are felonies

**Wisconsin**

non-injury DUI offenses are civil convictions, injury-related DUI offenses are class D or class F felonies

**Wyoming**

non-injury DUI offenses are misdemeanors, 1<sup>st</sup> injury-related DUI offense is a misdemeanor, 2<sup>nd</sup> or subsequent offenses are felonies

## Innocent Victims Report

| Innocent<br>Victims Of<br>Innocent Victims of Drivers At<br>Various BAC Levels By State (Does<br>not include drinking driver) | .01-.08 | .08/.09 | .10/.11 | .12/.13 | .14/.15 | Greater<br>Than.15 | Total<br>Innocent<br>Victims<br>Any<br>Alcohol |
|-------------------------------------------------------------------------------------------------------------------------------|---------|---------|---------|---------|---------|--------------------|------------------------------------------------|
| Alabama                                                                                                                       | 0       | 1       | 3       | 3       | 1       | 24                 | 32                                             |
| Alaska                                                                                                                        | 0       | 0       | 1       | 1       | 1       | 2                  | 5                                              |
| Arizona                                                                                                                       | 3       | 2       | 9       | 1       | 8       | 19                 | 42                                             |
| Arkansas                                                                                                                      | 5       | 3       | 10      | 7       | 6       | 22                 | 53                                             |
| California                                                                                                                    | 42      | 33      | 35      | 33      | 53      | 151                | 347                                            |
| Colorado                                                                                                                      | 1       | 0       | 4       | 8       | 10      | 35                 | 58                                             |
| Connecticut                                                                                                                   | 1       | 1       | 3       | 4       | 3       | 14                 | 26                                             |
| Delaware                                                                                                                      | 0       | 0       | 1       | 0       | 2       | 2                  | 5                                              |
| D.C.                                                                                                                          | 0       | 0       | 0       | 2       | 1       | 1                  | 4                                              |
| Florida                                                                                                                       | 26      | 33      | 29      | 34      | 38      | 152                | 312                                            |
| Georgia                                                                                                                       | 10      | 11      | 8       | 9       | 15      | 52                 | 105                                            |
| Hawaii                                                                                                                        | 2       | 1       | 2       | 3       | 1       | 3                  | 12                                             |
| Idaho                                                                                                                         | 0       | 0       | 1       | 1       | 0       | 15                 | 17                                             |
| Illinois                                                                                                                      | 21      | 15      | 16      | 14      | 16      | 81                 | 163                                            |
| Indiana                                                                                                                       | 4       | 4       | 10      | 7       | 8       | 33                 | 66                                             |
| Iowa                                                                                                                          | 1       | 0       | 8       | 3       | 1       | 15                 | 28                                             |
| Kansas                                                                                                                        | 1       | 1       | 4       | 4       | 0       | 16                 | 26                                             |
| Kentucky                                                                                                                      | 10      | 7       | 7       | 5       | 6       | 30                 | 65                                             |
| Louisiana                                                                                                                     | 3       | 0       | 13      | 15      | 3       | 43                 | 77                                             |
| Maine                                                                                                                         | 0       | 3       | 0       | 3       | 1       | 3                  | 10                                             |
| Maryland                                                                                                                      | 3       | 5       | 6       | 8       | 10      | 15                 | 47                                             |
| Massachusetts                                                                                                                 | 1       | 2       | 0       | 2       | 1       | 8                  | 14                                             |
| Michigan                                                                                                                      | 3       | 0       | 16      | 8       | 13      | 47                 | 87                                             |
| Minnesota                                                                                                                     | 9       | 0       | 4       | 8       | 12      | 22                 | 55                                             |
| Mississippi                                                                                                                   | 3       | 1       | 9       | 8       | 8       | 34                 | 63                                             |
| Missouri                                                                                                                      | 5       | 13      | 5       | 16      | 14      | 36                 | 89                                             |
| Montana                                                                                                                       | 0       | 0       | 2       | 5       | 2       | 17                 | 26                                             |
| Nebraska                                                                                                                      | 5       | 6       | 7       | 1       | 3       | 11                 | 33                                             |

|                |     |     |     |     |     |      |      |
|----------------|-----|-----|-----|-----|-----|------|------|
| Nevada         | 0   | 0   | 4   | 3   | 2   | 33   | 42   |
| New Hampshire  | 1   | 1   | 0   | 2   | 1   | 7    | 12   |
| New Jersey     | 2   | 1   | 2   | 1   | 4   | 12   | 22   |
| New Mexico     | 4   | 0   | 4   | 2   | 3   | 13   | 26   |
| New York       | 4   | 0   | 4   | 3   | 5   | 24   | 40   |
| North Carolina | 9   | 6   | 6   | 3   | 4   | 15   | 43   |
| North Dakota   | 2   | 0   | 3   | 3   | 1   | 2    | 11   |
| Ohio           | 0   | 0   | 13  | 19  | 18  | 54   | 104  |
| Oklahoma       | 3   | 2   | 1   | 2   | 3   | 13   | 24   |
| Oregon         | 5   | 1   | 4   | 8   | 1   | 16   | 35   |
| Pennsylvania   | 4   | 0   | 3   | 6   | 12  | 51   | 76   |
| Rhode Island   | 0   | 0   | 0   | 0   | 0   | 2    | 2    |
| South Carolina | 3   | 1   | 3   | 5   | 4   | 21   | 37   |
| South Dakota   | 1   | 3   | 2   | 4   | 7   | 12   | 29   |
| Tennessee      | 6   | 3   | 6   | 8   | 5   | 30   | 58   |
| Texas          | 21  | 26  | 18  | 28  | 28  | 152  | 273  |
| Utah           | 0   | 4   | 3   | 2   | 3   | 15   | 27   |
| Vermont        | 0   | 0   | 2   | 1   | 0   | 4    | 7    |
| Virginia       | 3   | 0   | 1   | 0   | 1   | 19   | 24   |
| Washington     | 3   | 6   | 6   | 6   | 11  | 29   | 61   |
| West Virginia  | 3   | 0   | 3   | 7   | 5   | 12   | 30   |
| Wisconsin      | 1   | 0   | 7   | 8   | 5   | 47   | 68   |
| Wyoming        | 0   | 1   | 3   | 1   | 2   | 7    | 14   |
| TOTAL USA      | 234 | 197 | 311 | 335 | 362 | 1493 | 2932 |

Source: <http://www.ridl.us>

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Source 8: National Highway Traffic Safety Administration DOT  
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Source 9: [www.consumerfreedom.com](http://www.consumerfreedom.com)

Source 10: The Pennsylvania Driving Under the Influence (DUI)  
 Association <http://www.padui.org/>

Source 11: MADD Driven Magazine Fall 1998

Source 12: Big Brother's Prohibition by Stephen Beck

Source 13:

<http://www.alcoholfacts.org/CrashCourseOnMADD.html>

Source 14:

<http://www.reddirtpedalers.com/WheelIssues/DisplayReprint.asp?id=299>

Source 15: <http://www.dui.com/>

Source 16: <http://madd.org>

Source 17: <http://ridl.us>

Source 18:

[http://www.dmv.ca.gov/pubs/vctop/d11\\_5/vc23614.htm](http://www.dmv.ca.gov/pubs/vctop/d11_5/vc23614.htm)

Source 19: <http://www.duiblog.com/>

Source 20: <http://www.dui-dwi.com/field-sobriety-evaluations-or-tests.html>

Source 21:

[http://www.ncsconline.org/WC/Publications/KIS\\_AggDri\\_Trends04.pdf](http://www.ncsconline.org/WC/Publications/KIS_AggDri_Trends04.pdf)

Source 22: The Washington Post, December 2002

Source 23: <http://missouri-dui-dwi-defense.com/research/cmiwarranty.html>

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Source 25: [http://www.drunkdriving-california.com/breathalyzer\\_tests.html](http://www.drunkdriving-california.com/breathalyzer_tests.html) /  
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Source 26: <http://www.motorists.org/>

Source 27: <http://www.irs.gov>

Source 28:  
<http://www.onnnews.com/Global/story.asp?S=3304695&nav=LQlCZUdH>

Source 29:  
<http://community.lawyers.com/messageboards/message.asp?channelId=26&subId=&mId=660759&mbId=116>

Source 30:  
[http://www.stpetersburgtimes.com/2004/01/10/Hernando/Wheelchair\\_DUI\\_case\\_f.shtml](http://www.stpetersburgtimes.com/2004/01/10/Hernando/Wheelchair_DUI_case_f.shtml)

Source 31:  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=US&vol=496&page=444>

Source 32: <http://www.nc-dwi-defense.com/>

## References Chapter 4

### **Mothers Against Drunk Driving: A Crash Course in MADD**

*by David J. Hanson, Ph.D*

1. Center for Consumer Freedom, "Mothers Against Drunk Driving".

[www.consumerfreedom.com/activistcash/org\\_overview.cfm?ORG\\_ID=17](http://www.consumerfreedom.com/activistcash/org_overview.cfm?ORG_ID=17)

1a. Mothers Against Drunk Driving has made a misguided national issue over the use of the term "crash," which it insists on using rather than "accident." An accident is "an unexpected and undesirable event; a mishap" or "anything that occurs unexpectedly or unintentionally" according to a typical dictionary. No known dictionary of the English language defines an accident as something that could or might have been avoided. Therefore, unless a drinking driver expects or intends to crash, the event is, by definition, an accident. (Morris, W., Ed. *The American Heritage Dictionary of the English Language*. Boston: Houghton Mifflin, 1978). But Mothers Against Drunk Driving sees it differently. MADD's national office insists that

It is more philosophical than anything you'll find in Webster. You said yourself "unless the driver **EXPECTS** or intends to crash." Anybody that (sic) drinks has GOT to know that their (sic) chances of a crash are much higher than if they (sic) had not been drinking.

MADD's belief is obviously based on philosophy and ideology instead of reality. Knowing that we assume some additional risk if we consume alcohol before driving clearly doesn't mean that we expect a mishap. MADD's position seems a ludicrous distortion of reality. (The quoted material is an e-mail from the Public Policy



Office at Mothers Against Drunk Driving's national office dated 8-6-03.)

2. Simpson, H. M., and Mayhew, D. R. *The Hard Core Drinking Driver*. Ottawa, Ontario, Canada: Traffic Injury Research Foundation, 1991, pp. 23-24.

3. Simpson, H. M., and Mayhew, D. R. *The Hard Core Drinking Driver*. Ottawa, Ontario, Canada: Traffic Injury Research Foundation, 1991, p. 12.

3a. The strong anti-alcohol sentiment of MADD expresses itself in many ways. For example, the international professional school, Johnson and Wales University, includes the study of wine in its culinary curriculum because that is an important part of much food preparation and service around the world. A bill introduced in the Florida legislature at the request of the university would permit adult students age 18 and older to participate fully in any curriculum requiring such courses. No alcohol would ever be consumed because the beverage would be savored and spit out in a supervised classroom environment. In spite of these strong protections and lack of any danger whatsoever, Mothers Against Drunk driving has steadfastly refused to support this education bill. (Florida bill would allow wine tasting by underage. Alcohol Beverage Control, 2-15-99, p. 4.)

4. Bresnahan, S. MADD Struggles to Remain Relevant. Washington Times, August 6, 2002, B1-2. Center for Consumer Freedom, "How Low Can You Go?"

4a. [www.consumerfreedom.com/oped\\_detail.cfm?OPED\\_ID=137/](http://www.consumerfreedom.com/oped_detail.cfm?OPED_ID=137/). Incredibly, MADD has now gone out of its way to try to minimize the role of Ms. Lighter as the founder of the organization. It poses the question "Who founded MADD?" to which it replies "Although

Candy Lightner is probably the best known of MADD's organizers, MADD was established by a group of women in California outraged after the death of a teenage girl killed by a repeat offender drunk driver."(www.madd.org). MADD does not deal kindly with anyone who dares to disagree with the organization's anti-alcohol agenda. Although it may now try to deny that Ms. Lightner founded and ran the organization for eight years, she was recognized by the President of the US. as the founder of MADD when he bestowed upon her the Presidents Volunteer Action Award. Candy Lightner was recognized as the founder of MADD by the movie "Mothers Against Drunk Drivers: the Candy Lightner story." Candy Lightner was recognized as the founder of MADD by researchers when they prepared her biography for The *Biographical Dictionary* and other reference works. And Candy Lightner appears to have been recognized as the founder of MADD by everyone except MADD, which is angry at her for not agreeing with its radical new agenda.

5. The name was changed on the recommendation of a marketing consultant. (MADD - Mothers Against Drunk Driving web site, www.madd.org) "Mothers Against Drunk Drivers" seems to be the honest name, conveying the hostility toward alcoholics and others characteristic of the group. On the other hand, "Mothers Against Drunk Driving" conveys a humane image, and that's much more useful for fund-raising.

6. Ross, H. L. Reflections on doing policy-relevant research: How to cope with MADD mothers. *The American Sociologist*, 1987, 18(2), 173-178; A study of 212 local MADD chapters found very high support for strong legal penalties for drunk drivers (vengeance) but little support for rehabilitation (compassion) (Ungerleider, S., et al. *Assessing the Effects of Grass Roots Drunk Driving Prevention Programs: First Facts*. Report from the Drunk Driving Project. Eugene, Oregon: Integrated Research Services, 1986 . ERIC ED286102). Also see Weed, F.J. Grass-roots activism and the drunk

driving issue: a survey of MADD chapters. *Law and Policy*, 1987 (July). Vengeance is also directed toward MADD members and officers who ask too many questions about the organization's questionable fundraising practices. They may be forced to resign or find their positions eliminated (MADD Money investigative report, K5 News, Seattle, WA). Blacklisting by MADD is also reported (personal communication).

7. Center for Consumer Freedom, "Mothers Against Drunk Driving - Overview."  
[www.consumerfreedom.com/activistcash/org\\_overview.cfm?ORG\\_ID=17](http://www.consumerfreedom.com/activistcash/org_overview.cfm?ORG_ID=17)

Perhaps MADD should care. A study in the *New England Journal of Medicine* found that drivers who used mobile phones while driving were four times more likely to crash than those not, a rate equal to that for drunken driving. MADD doesn't care that cell phone use is as dangerous as drunken driving! Although MADD may not care about fatalities cause by cell phone use, at least 25 countries restrict or prohibit cell and other wireless technology/ Israel, Japan, Portugal and Singapore all prohibit mobile phone use while driving. Australia, Brazil, Chile, Denmark, Germany, Greece, Hungary, Italy, Poland, the Phillippines, Romania, Slovenia, South Africa, Spain, Switzerland, Turkey, the United Kingdom, and the United Arab Emirates prohibit the use of hand-held cell phones while driving. Drivers in the Czech Republic, France, the Netherlands, and the United Kingdom may use cell phones but can be fined if they are involved in crashes while using such a phone.

8. Center for Consumer Freedom, "How Low Can You Go?"  
[www.consumerfreedom.com/oped\\_detail.cfm?OPED\\_ID=137](http://www.consumerfreedom.com/oped_detail.cfm?OPED_ID=137)

9. Zero Tolerance, Zero Evidence (Bloomington, IN: Indiana University, Indiana Education Policy Center, 2001), an analysis of

zero tolerance programs since their inception in the 1980's, found no credible evidence that zero tolerance is effective; to the contrary, it is often counterproductive. The author of the report emphasized that "Zero tolerance is a political response, not an educationally sound solution." *AScribe News*, May 15, 2001; [www.jointogether.org/May 17, 2001](http://www.jointogether.org/May17,2001).

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10a. Center on Consumer Freedom. *Memo to MADD's New Celebrity Board*, 9-17-03 ([www.consumerfreedom.com](http://www.consumerfreedom.com))

11. Center for Consumer Freedom, "Mothers Against Drunk Driving" - [www.consumerfreedom.com/activistcash/org\\_blackeye.cfm?ORG\\_ID=17](http://www.consumerfreedom.com/activistcash/org_blackeye.cfm?ORG_ID=17)

12. Hingson, R., *et al.* Magnitude of alcohol-related morbidity, mortality, and alcohol dependence among U.S. college students between the ages of 18 and 24. *Journal of Studies on Alcohol*, 2002, 63(2), 136-144; Milloy, S. College Drinking Study is Intoxicating Scam. *Fox News* (April 12, 2002), [www.foxnews.com/story/0,2933,50104.00.html](http://www.foxnews.com/story/0,2933,50104.00.html); College Drinking and Junk Science. In citing Hingson's estimates, which MADD presents as solid, factual evidence, it never mentions the important fact that Hingson is part of MADD. The problem of integrity is a recurring one for the organization.

12a. MADD over the edge? Advocacy group heats up the rhetoric as drunk driving statistics continue to fall. *Alcohol Issues Insights*, 1999, 16(6), 1-2.

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to cope with MADD mothers. *The American Sociologist*, 1987, 18(2), 173-178.

14. Ross, H. L. License plate confiscation for persistent alcohol impaired drivers (with S. Simon and J.P. Cleary). *Accident Analysis and Prevention*, 1996, 1, 53-61; *Confronting Drunk Driving: Social Policy for Saving Lives*. New Haven, Connecticut: Yale University Press, 1992; *The Deterrent Capability of Sobriety Checkpoints: Summary of the American Literature*. Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration, 1992; Are DWI sanctions effective? *Alcohol, Drugs and Driving*, 1992, 8(1), 61-69; *Administrative License Revocation for Drunk Drivers: Options and Choices in Three States*. Washington, DC: AAA Foundation for Traffic Safety, 1991; License deprivation as a drunk-driver sanction. *Alcohol, Drugs, and Driving*, 1991 7(1), 63-69; Drunk driving among American blacks and hispanics. *Accident Analysis and Prevention*, 1991, 23(1), 1-11; The effectiveness of legal sanctions in dealing with drinking drivers (with J. L. Nichols). *Alcohol, Drugs and Driving*, 1990, 6(2), 33-60; Deterrence-Based Policies in Britain, Canada, and Australia. In *Social Control of the Drinking Driver*. Chicago, Illinois: University of Chicago Press, 1988; Effects of license revocation on drunk-driving offenders. *Accident Analysis and Prevention*, 1988, 20(5), 379-391; Administrative license revocation in New Mexico. *Law and Policy*, 1987, 9(1), 5-16; *Deterring the Drinking Driver: Legal Policy and Social Control*. Lexington, Massachusetts: Lexington Books, 1984; Liberalization and rationalization of drunk-driving laws in Scandanavia. *Accident Analysis and Prevention*, 1984, 16(5-6), 3-7; *Deterring the Drinking Driver: An International Survey*. Washington, DC: National Technical Information Service, 1981; Two Experimental Studies of Traffic Laws: Final Report (with M. Blumenthal). Washington, DC: U.S. Department of Transportation, 1973; *The British Crackdown on Drinking and Driving: A Successful Legal Reform (with others)*. Boulder,

Colorado: University of Colorado, Laboratory of Educational Research, 1969.

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15a. GM's Hidden Agenda. MADD at GM. [www.maddatgm.com](http://www.maddatgm.com)

15b. GM's Safety Record. MADD at GM. [www.maddatgm.com](http://www.maddatgm.com)  
 "GM openly advocates speed. Its summer 2003 marketing campaign is called 'Summerdrive 2 the max,' with a commercial encouraging viewers to 'Take it 2 the limit,' and 'Put the pedal 2 the metal.' The Insurance Institute for Highway Safety recently found that 'Print ads for [GM] Pontiacs are even less subtle, encouraging potential buyers to 'unleash your nasty little urges.' The ad copy promoting the new ZO6 Corvette is equally speed-focused, calling it the 'quickest, most agile ... ever,' and bragging that the car 'accelerates 0 to 60 mph in 4 seconds, [and] handles 1 g of lateral acceleration.' GM doesn't flinch at using the macabre phrase 'new level of overkill' to hawk the Z06. The company even boasts that it has decreased the windshield weight by two pounds to produce a speed-enhancing extra."

15c. GM's Safety Record. MADD at GM. [www.maddatgm.com](http://www.maddatgm.com)

15d. MADD at GM. [www.maddatgm.com](http://www.maddatgm.com)

15e. GM-MADD Relationship. MAD at GM. [www.madatgm.com](http://www.madatgm.com)

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Drivers with Phones, Airtime (Mothers Against Drunk Driving) CTIA press release, January 19, 1998; Sundeem, M. Cell Phones and Highway Safety: 2002 State Legislatures Update. Denver, CO: National Council of State Legislatures, 2002.

15h. Mothers Against Drunk Driving. Becoming a MADD Corporate Sponsor. MAdd national web site. [www.madd.org](http://www.madd.org).

15i. Mothers Against Drunk Driving. Becoming a MADD Corporate Sponsor. MADD national web site. [www.madd.org](http://www.madd.org). Mothers Against Drunk Driving aggressively seeks financial support from it's "corporate partners" and is pleased to describe what it can deliver for these investors:

"MADD has a track record of helping our corporate partners meet their goals:

- For a \$.15 per case donation, MADD chapters obtained premiere product placement for Coca-Cola products in more than 400 Wal-Mart stores, increasing Coke's case sales volume by 490 percent over same store sales.
- Working in partnership with General Mills, MADD helped the Bugles brand enjoy the highest sales promotion in the company's history, with a six-fold increase in weekend sales.
- DaimlerChrysler presented MADD the opportunity to help achieve two key objectives: increase public knowledge of their safety initiatives and interact with members of Congress. During the MADD National Youth Summit to Prevent Underage Drinking 2000, MADD delivered more than 102 million media impressions and exposure to over 500 legislators to DaimlerChrysler.

- In a unique retail merchandising partnership, a MADD connection increased Stonehenge Limited neckwear sales by more than 270 percent over its previous product launch.
- Together, MADD and Allstate Insurance distributed more than 5 million red ribbons, 86 percent of their managers reported the MADD relationship was "extremely valuable" to their corporation after their involvement in MADD's holiday campaign. 58 percent of Allstate field managers agreed that the program increased consumer recognition of Allstate."

Of course, unspoken is what MADD can deliver by remaining silent on issues that its investors want ignored and supporting what they want to promote. For example, silence in the face of blatant promotion of speed to sell cars, on the one hand, and active support of the use of cell phones while driving, on the other.

It would appear that corporate "donations" are really corporate investments on which MADD can deliver.

16. MADD Money. Investigative report., *K5 News*, Seattle, Wa., n.d.

16a. MADD Money. Investigative report., *K5 News*, Seattle, Wa., n.d.

16b. Center for Consumer Freedom, "Mothers Against Drunk Driving"

[www.consumerfreedom.com/activistcash/org\\_motivation.cfm?ORG\\_ID=17/](http://www.consumerfreedom.com/activistcash/org_motivation.cfm?ORG_ID=17/). Even the Mothers Against Drunk Driving web site ([www.madd.org](http://www.madd.org)) is full of requests for money. As an official of the American Institute of Philanthropy said, "we'd like to see MADD spend a lot more money on things other than asking more more money." (MADD Money investigative report, *K5 News*, Seattle,



WA). Not surprisingly, Dean Wilkerson, head of Mothers Against Drunk Driving refused to talk with a television station about MADD's fundraising practices. (MADD Money investigative report, K5 News, Seattle, WA). Apparently he refuses to be accountable to the same public from which MADD aggressively solicits money.

16c. BBB Wise Giving Alliance ([www.give.org](http://www.give.org)). Mothers Against Drunk Driving lobbies Congress to allocate more money to its mutual supporter, the National Highway Traffic Safety Administration (NHTSA). In turn, NHTSA gives more money to MADD. (Pena, C.V. *The Anti-Drunk Driving Campaign: A Covert War Against Drinking*.  
[www.maddatchevy.com/downloads/whitepaper\\_MADD.pdf](http://www.maddatchevy.com/downloads/whitepaper_MADD.pdf)).

17. All figures from FY2001. Mothers Against Drunk Driving tax form #990. See *The Gravy Train: Top Dogs at MADD*, [www.getmadd.com/MADDsalaries.htm](http://www.getmadd.com/MADDsalaries.htm)

17a. Peters, E. MADD house. *National Review*, 1998, 50(18), 36-37. The author observes that "Mothers Against Drunk Driving (MADD) is evolving from a well-intentioned lobbying group to a self-perpetuating Washington institution" which is already "one of the most powerful and well-funded lobbying groups in the country."

18. Power MADD (editorial), *Washington Times*, 3-6-00

18a. DiLorenzo, T.J. and Bennett, J.T. The U.S. is becoming a nanny state. *USA Today* (Magazine), 1998 (May), 126(2636), 12-15.

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Perhaps because of its desire for revenge, Mothers Against Drunk Driving repeatedly opposes actions that protect peoples' individual

rights under the US Constitution. See, for example, MADD May Fight Ruling, MADD and Protecting the Innocent, End Justifies Any Means? , and Alcohol Ad Ban. MADD has contempt for those who defend the rights of the accused, who are assumed by it to be guilty. Describing one defense attorney, a MADD leader said "He's infamous. Everybody in MADD knows about him. We don't welcome him in the community" because he's "spreading out his poisonous influence" in protecting basic constitutional rights. (Nolin, R. "Infamous" DUI lawyer expands into Volusia. *The News Journal*, 8-17-87.) On the other hand Mothers Against Drunk Driving has failed to identify a single instance during its entire long history when it ever defended the constitutional rights of even one individual (personal communication, MADD).

19a. Reynolds, J. *Electrolite*, 1-6-03.

19b. Restifo, C. neoprohibition gone mad. *The Tartan*, 9-23-02.

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[www.talkleft.com/archives/001908.html](http://www.talkleft.com/archives/001908.html)

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Perhaps because of its desire for revenge, Mothers Against Drunk Driving repeatedly opposes actions that protect peoples' individual rights under the US Constitution. See, for example, MADD May Fight Ruling, MADD and Protecting the Innocent, End Justifies Any Means? , and Alcohol Ad Ban. MADD has contempt for those who defend the rights of the accused, who are assumed by it to be guilty. Describing one defense attorney, a MADD leader said "He's infamous. Everybody in MADD knows about him. We don't welcome him in the community" because he's "spreading out his poisonous influence" in protecting basic constitutional rights. (Nolin, R. "Infamous" DUI lawyer expands into Volusia. *The News Journal*, 8-17-87.) On the other hand Mothers Against Drunk Driving has failed to identify a single instance during its entire long history when it ever defended the constitutional rights of even one individual (personal communication, MADD).

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