

# **WINNING AGAINST DUI**

**A HANDBOOK FOR VICTIMS OF DRUNK DRIVING  
AND  
ANTIDRUNK DRIVING ADVOCATES**

**BY**

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With Chapters by  
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**“This is an excellent resource for people concerned about the problem of drunk driving in our nation. It is a well-researched, entertaining and highly readable book by two authors who have obviously been on the front lines of the fight against alcohol and other drug impaired driving. While some of the authors= positions are different from those of MADD, we feel this book should be required reading for anyone trying to effect change in our society. This book is a wonderful how-to manual for individuals and advocacy groups to interact with the legal system, the media and legislative bodies to effect worthwhile social goals.”**

**Katherine Prescott  
MADD National President**

**“Every parent, teacher and legislator should read this book who is interested in a safe and sober environment for their child, as well as justice in the legal system for victims of drunk driving and/or alcohol poisoning. This book, told from an insider=s point of view, is an expose of the frailties in the criminal justice system as well as the conflict of interest between the media=s role in educating the public about alcohol, and the millions of dollars spent in the media to advertise alcohol. The author, a lawyer, tells the truth about justice, public safety, and the role of the media in both. A fascinating and hard-hitting book.”**

**Doris Aiken  
RID Founder & President**

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**By Ivy Scarborough**

(with additional chapters by Steve Beverly)

<b>The Threat - Up Close And Personal .....</b>	<b>10</b>
<b>The Death Of Dreams - The Story Of Frank Ferrell .....</b>	<b>10</b>
<b>A Never-Ending Battle .....</b>	<b>14</b>
<b>Justice Denied - The Story Of Dwayne Younger.....</b>	<b>24</b>
<b>Injustice Exposed.....</b>	<b>28</b>
<b>Keeping The Light On.....</b>	<b>31</b>
<b>The Media And Drunk Driving .....</b>	<b>34</b>
<b>Baptism Into The Cause .....</b>	<b>35</b>
<b>Strategies And Tactics For Victims, Advocates, And Those Who Help Them.....</b>	<b>41</b>
<b>It's No Sin To Use The Media .....</b>	<b>42</b>
<b>Why The Legal System Fails .....</b>	<b>60</b>
<b>Producing Accountability .....</b>	<b>65</b>

<b>To The Victim: What You Should And Should Not Do &amp; How To Select An Attorney .....</b>	<b>71</b>
<b>Get The Facts - Quickly .....</b>	<b>78</b>
<b>An Alliance With Law Enforcement .....</b>	<b>90</b>
<b>Winning Through Legislation .....</b>	<b>94</b>
<b>Taxing Alcohol - Saving Lives And Compensating Victims .....</b>	<b>103</b>
<b>MADD And RID: Leaders In The Cause ...</b>	<b>110</b>
<b>The Drug Alcohol And Its Impact.....</b>	<b>119</b>
<b>The Drug Behind Every Drunk Driving Crash .....</b>	<b>120</b>
<b>Alcohol Abuse - The Lethal Trap.....</b>	<b>123</b>
<b>Children And Alcohol Abuse .....</b>	<b>137</b>
<b>The Impact On The Nation .....</b>	<b>140</b>
<b>Conclusion .....</b>	<b>147</b>
<b>Appendix A - Investigative Checklist.....</b>	<b>151</b>
<b>Appendix B - Civil Attorney Survey .....</b>	<b>155</b>
<b>Endnotes .....</b>	<b>161</b>

## PREFACE

Many years ago I was asked by our local MADD (Mothers Against Drunk Driving) chapter to assist them in their anti-drunk driving efforts. I agreed, but like many experiences in life, I didn't anticipate where it would lead. My profession as a trial lawyer had inevitably stripped away much naivete about human behavior. But I did not anticipate the disillusionment I would experience as I became deeply involved with this cause.

I had long since recognized disturbing realities about our legal system and our government, but what I learned about these institutions' responses to the dangers and tragedy of drunk driving prompted me to act on a larger scale. This book is a product of those experiences. It is intended as a source of information and a guide for victims of drunk driving, members of advocacy groups, and those individuals who care about this cause, whether they are lawyers, journalists, legislators, law officers or average citizens.

Steve Beverly, a former TV news editor and now a college professor of journalism, agreed to write some chapters on the media and to give his account from the media's perspective of two cases described in the book. We came to know each other when these cases became high profile news stories covered by the television station where Steve was news director.

Two predominant themes will be apparent. The first is the apathy of our society about drunk driving. The second is the failures of our institutions, especially the legal system and the media, to address the problem fully and effectively. It is the objective of this book to offer ideas and strategies to victims of drunk driving, advocates, and those interested in this issue on how to help themselves and change this situation for the better despite society's apathy and these institutions' failures.

As you will see through the true stories of victims there is another recurring theme. Frequently the emotional pain of victims of drunk driving and their families is compounded when they realize how poorly the legal system sometimes responds to their concerns, protects their rights, and acts to protect innocent Americans from drunk driving. Some have a similar reaction to the role of the media.

This is not to suggest that there are failures in all cases. Some

criminal prosecutions of DUI offenders are handled promptly and conscientiously. This may be true also with a victim's civil claim for damages. The media may do an effective job in reporting on the death or serious injury of a victim of a drunk driver. But often these are the exceptions rather than the rule.

Much energy has been applied to enacting new legislation to cope with drunk driving. But experience has shown repeatedly that the most common problem is the failure to fully implement and enforce the laws that exist. Probably the majority of Americans assume that when a law is passed it will be enforced. This is dangerously naive.

In any drunk driving case, a chain of individuals in the legal system is responsible for the steps in the disposition of that case, whether the victim's civil claim for damages or a criminal prosecution of the drunk driver. We often speak of the "legal system" without considering that this part of our government is a huge bureaucracy made up of individuals. If any one individual in that "system" fails to do his or her job properly, conscientiously, or in full compliance with the law, the "system" fails to protect the rights of the victims, penalize the guilty, and serve the interests of society.

The critical factor in ensuring any institution's effectiveness is accountability. Unfortunately, American government generally, and the American legal system in particular, lack sufficient measures to ensure accountability. The safeguards are either weak, incomplete, nonexistent, or unduly complex and burdensome to implement.

Unless and until that changes, other methods must be used to produce accountability. Some of the best methods are accomplished through the work of advocacy groups such as MADD or RID (Remove Intoxicated Drivers), usually in coordination with the media. How this is done is illustrated in true cases of the victims of drunk drivers. The actual methods used are described in greater detail in later chapters.

Though I have identified failures in the implementation of the law as a major problem, that does not mean there is no need to change the laws - quite the contrary. Some laws, even though they are supported by advocacy groups, fall seriously short of sending the message that drinking and driving is not permissible. If we are to ever end drunk driving as a significant threat on our highways, our legislative programs must be strengthened. How this can be done is addressed in two chapters.

For clarity, *Winning Against DUI* is divided into four major

segments. The first, entitled "The Threat - Up Close and Personal" is an account of actual cases. They illustrate what victims and advocacy groups can do in a real life situation to help themselves and change the status quo. Those interested in the media's role should read the second segment "The Media and Drunk Driving."

The third segment, "Strategies and Tactics for the Battle" is a "how-to" manual for advocates, victims of drunk driving, lawyers, and law enforcement personnel. **Victims of drunk driving will benefit especially from the chapters "What You Should and Should Not Do & How To Select an Attorney" and "Get the Facts – Quickly" and should read those chapters first.** This segment also contains proposals for changing our legal system and our legislative responses to drunk driving.

The fourth segment, "The Drug Alcohol and Its Impact" describes alcohol's effects on the human mind and body, the process of addiction, the effects of alcohol abuse on children, and the social and economic implications of alcohol abuse for the nation as a whole. Though this book is primarily intended for victims, advocates, and those concerned about drunk driving as a public issue, this segment would be of help to drunk drivers themselves and their families.

As is always the case in an endeavor of this type, many people have contributed to the writing and publication of this book. Volunteers and friends from MADD and RID have encouraged, prayed about, and nurtured this effort.

Certain individuals made very specific and significant contributions. Stephanie Frogge of MADD National might well be called the "godmother" of this book. She read the manuscript, gave it her stamp of approval, offered editorial suggestions of great value, and undertook to see that leaders in MADD reviewed it as well. Her willingness to weigh this book on its merits and then to stand by it as it evolved to publication says a great deal about her intellectual honesty and her commitment to find and support new resources in the fight against drunk driving.

A similar reaction was forthcoming from Doris Aiken, founder and President of RID. Though she did not know me, except by reputation, she read the manuscript and offered to endorse the book and support it, all within an astonishing three days of receiving it! One of her comments – "this is the book I have wanted to see written for over ten years" - was particularly appreciated.



Dean Wilkerson, Executive Director of MADD National, observed he hoped “millions would be sold.” Though that exceeded any expectations, it was particularly appreciated precisely because Dean is a fellow attorney. He knew that the very frank criticisms of the legal system contained in this book would draw the fire of many lawyers and judges.

Kay Largel, former Victim’s Assistance Coordinator for Tennessee MADD was an encourager and supporter in this process, as was Vicki Bruce, former Tennessee MADD president. Linda Bradford and Georgia McMinn, leaders of our local MADD chapter and two committed Christians who truly care about the suffering of victims of drunk driving, led me into this cause, and by their support and encouragement, prompted me to stay.

In sum, this book was not written from the perspective of an academic or a detached observer but from the viewpoint of a front-line combatant who has dealt personally and repeatedly with the tragedy and chaos caused by drunk driving. It has received the support, input and encouragement of other combatants who have more campaign ribbons than I do.

It is not intended and should not be used as a substitute for specific legal advice on a particular case or problem, but as a source of information and a guide. If you are involved in a drunk driving case, immediately seek out the help of experienced professionals who understand this problem and who are involved in the cause. I hope and pray that this book will be of benefit to you or someone you love.

Jackson, Tennessee  
February, 1996

Ivy Scarborough

## PART A

### **The Threat - Up Close And Personal**

#### CHAPTER 1

### **The Death Of Dreams - The Story Of Frank Ferrell**

(Ivy)

On the night of August 7, 1991, Frank Ferrell and Frank Maness were driving home to Memphis, Tennessee, towing a trailer loaded with cattle, another investment in Ferrell's lifelong dream to begin a cattle ranch. Suddenly, they were confronted by glaring headlights and a large, four-wheel drive pickup hurtling toward them at high speed and on the wrong side of the road. Maness later recalled his shouted last words before the collision: "He's going to hit us!"

The impact was explosive! The compact pickup was caught accordion-like between the tremendous forces of the oncoming heavy pickup and the cattle trailer it was towing.

The driver of the large pickup, Jeffrey Grammar, 27, according to Tennessee State Troopers, could not hold his vehicle on his side of the road as he entered the curve due to centrifugal forces. On impact, Grammar's vehicle crushed the entire front of the Ferrell truck, tearing out the windshield, ricocheting off the cattle trailer and into a ditch facing in the opposite direction. The cattle trailer simultaneously slammed into the rear of the Ferrell pickup.

Maness, who was 58 and disabled with severe emphysema, was knocked momentarily unconscious. It was later learned he had nine broken ribs, a broken pelvis, a broken right shoulder and

injuries to his head and face. During the wait for law enforcement authorities and an ambulance, he groaned in pain unable to move but glanced over repeatedly to Ferrell who said nothing. The steering wheel and column had been rammed directly into the chest and throat of Ferrell pinning him against the back of the cab. A death certificate later would indicate that this violent blow killed him. Maness was unable to do anything other than watch his friend die.

Investigating Tennessee State Trooper Terrill McLean later commented that he had never seen a vehicle so totally destroyed. It was a miracle that Maness survived at all. He was taken first to Jackson-Madison County General Hospital Emergency Room and subsequently to the MED in Memphis, then later to the Memphis VA Hospital. He spent nearly three months in the hospital and continues under medical treatment. He has a permanent disability to his arm since the break in his shoulder would not heal properly. His preexisting conditions caused his doctors to fear that to perform surgery might result in his death. Maness must cope daily for the rest of his life with these injuries.

Later that evening, Frank Ferrell's wife, Ann, received the terrible news, that for the second time in her life she had been widowed due to a motor vehicle crash. However, this time it was no accident. Over an hour after the crash, blood and urine samples were taken from Jeffrey Grammar at a local hospital revealing a blood alcohol level of .185 as well as marijuana.

A few days later, Ann and several members of the family including brothers and sisters and parents of Frank Ferrell met with me and asked me to represent them. As they related their story I noted that, significantly, there had been no media coverage of this crash. This omission was far more common than is often assumed. It was urgent to correct this soon with force and effect.

As always when representing victims of drunk driving, I would pursue three objectives: first, a successful criminal prosecution of the drunk driver; second, a successful resolution either by settlement or by litigation of the Ferrell family's and Frank Maness' civil claims for damages, and third, to make certain that Frank Ferrell's death was not completely in vain. We

would see that the public would hear in vivid and powerful terms of this tragedy and the suffering that drunk driving was causing in our society.

The strategy I outlined to the Ferrell family was the same strategy I had described many times in training seminars for MADD and other advocacy groups. I referred to it as "**the triad**". To use military jargon, the three objectives mentioned earlier corresponded with three "axes of advance": first, we would **do everything possible to ensure a vigorous criminal prosecution**; second, we would **prepare the civil claims and prospective lawsuits for Maness and the Ferrell family so thoroughly as to inhibit resistance by the defendant and/or his insurance company**; and finally, we would **saturate the media with provable factual information about the case so as to generate the maximum constructive publicity possible**.

**Each of these efforts**, though appearing to be independent and often implemented by different individuals, **is in fact complementary**. **Anything well done in one area will often have positive repercussions in one or both of the others**. **The most important feature of this strategy is to ensure that the individual or individuals who coordinate the strategy work in concert and have an understanding not only of criminal law but also of civil personal injury claims and especially the media**. **To pursue these independently without careful coordination or without a clear understanding of how each should be implemented invites confusion and possibly negative or contradictory results**.

The ammunition for these parallel "axes of advance" consists of the facts of the case, the law, and the public's own common sense attitudes about fair play and justice.

Of these three, by far the most critical are the provable facts. For that reason **the highest priority should be given to a very thorough, exhaustive and prompt investigation**. There are no substitutes for this foundation. It is the key to achieving all three objectives. It should never be delayed. In delay much can be lost. The will of prospective witnesses to come forward and testify is often eroded by the pressures related to DUI cases.

Memories fade and interest wanes. Obtaining their statements in writing early on is a hedge against a later reluctance which may become more pronounced as time passes. Because of the importance of this subject, I treat it more fully under the chapter entitled "Get the Facts - Quickly".

The Ferrell/Grammar case became a prototype or model by which similar cases might be managed. Throughout this book I will return to this case to demonstrate pitfalls and failures in society's institutions and how the advocate can still achieve victories in the war on drunk driving despite those failures.

In a later chapter another true account illustrates other methods and approaches. This came to be known as the Barton Fowler case. But first Steve will share his unique perspective on the Ferrell/Grammar tragedy.

## CHAPTER 2

### A Never-Ending Battle

(Steve)

Journalists, print or broadcast, who ply their trade with professional ethics, make editorial decisions on story coverage based on three primary criteria: interest to the audience, overall impact on society, and fairness. However, the human element always enters into news judgment. An editor or news director is lying if he or she says a decision is never made based on personal world view and experience.

I can name two dozen news directors who would never cover individual drunk driving court cases unless they involved prominent citizens. Despite its significance to the media, social prominence should never be the primary barometer in choosing to cover or omit any story.

Even with the political and polarizing factors behind the case of Jeffrey Grammar and the notorious case of Barton Fowler, which is covered in later chapters, most television stations would have ignored the stories. Indeed, without the journalistic diligence of *The Dyersburg Gazette* newspaper, the Fowler case and what it represented may have been left sinking in judicial quicksand. In the case of Grammar, no strong print reporting voice existed in his home county and the Jackson, Tennessee newspaper did not pursue the story until the actual hearings and trial.

Television, as a rule, would have ignored the Grammar and Fowler situations because of their rural locations. News executives in large cities tend to look on a DUI case in a small county as too insignificant to appeal to mass audiences. Geographically, Jackson is the closest television market to both Alamo and Dyersburg, where the two cases unfolded. In Jackson, as in other medium or small city stations, a news director is often forced to consider limited resources, in terms of dollars and personnel, when determining whether to commit to extensive out-

of-town court coverage.

As we will show, **it took deliberate planning and a complex strategy devised by Ivy in cooperation with the local MADD chapters and the victims' families to generate the media coverage that saved these cases from obscurity and possibly a complete failure of justice.**

The dilemma with the Jeffrey Grammar case was exasperating. We saw two stories slowly unfold: first, the emotional impact upon the family of Frank Ferrell, the man killed in the collision with the vehicle driven by Grammar in Crockett County, Tennessee; and second, the innumerable delays in bringing Grammar to trial, including one or more judges withdrawing from the case because of ties to the Grammar family, long influential in their home area.

Still, as news director, I had to be certain - despite my long-standing public editorial position advocating for tougher penalties for drunk drivers - we were not taking off on a witch hunt. The Ferrell family had endured rivers of tears and scars which would never be healed. Their singular interest was in seeing justice done. Grammar had a family, too. The public smudge on their name, not only in the home county but throughout the region, would be lasting. We had to be careful not to try and convict Grammar before his day in court, though that is never an easy proposition.

Ivy Scarborough had been our chief analyst on both international and political issues since I arrived at WBBJ in May, 1990. Several of his predictions on Middle East developments prior to the Persian Gulf War and on the dissolution of the Soviet Union had been amazingly accurate. On election night in 1990, Ivy was on the money with his prediction that a recount in a close state senate race could overturn the outcome. Ivy knew, from past experience, strange things could happen in small towns and rural counties.

Ivy is not your stereotypical attorney. He does not wear rumpled suits. He does not yell. He is tall enough (6' 7") to have been a competitive basketball player. He is a master of "media speak", the ability to answer questions in succinct, crisp responses

which permit an interviewer to cover a lot of ground in a short time. Unlike most lawyers, he translates the language of his profession into lay terms. He is careful not to use terms like "jurisprudence" in the course of a broadcast commentary on a legal issue.

Ivy had begun to alert me to the facts surrounding the Grammar case. As the first court hearing approached, I assigned reporter and assignment editor Ellen Crain to the story. Ellen at 27, was a thoughtful and sensitive woman. As it turned out, she was familiar with Jeffrey Grammar. I quizzed Ellen thoroughly to satisfy my own mind whether she could cover the story without bias seeping into her reporting.

The day Grammar made his initial court appearance at the Crockett County Courthouse was cold and rainy. Accompanied by his wife, Grammar entered on crutches, still appearing to suffer from the effects of the crash. His "not guilty" pleas to charges of vehicular homicide, vehicular assault, and driving under the influence would not be heard by a jury for more than a year. Ellen said Grammar exhibited little emotion, other than being a bit startled at the presence of a television camera.

Prior to the hearing, I told Ellen to do a thorough job of informing the public; we needed to show more than just Grammar and spectators entering the courtroom. She and a videographer traveled to the scene of the crash along state highway 54 near the small community of Johnson Grove. She showed what a normal day's traffic was like, then delivered what reporters term a "stand-up" to detail the emotional impact of Frank Ferrell's death on his family, Grammar's family and the county as a whole. Ellen interviewed both Ferrell's widow, who became tearful on-camera, and Grammar's attorney. The attorney declined to make Grammar available for comment. The report lasted one minute and forty-seven seconds.

Although both informative and emotion provoking, the story reflected the inherent limitations and flaws in broadcast media's ability to do justice to any complex issue such as drunk driving. Time is a serious barrier. On newscasts of a half-hour, as at WBBJ, and a full hour in larger markets, the pressure is on for



fast pacing to hold the audience's shrinking attention span. Two minutes can only offer a teaspoonful on each of the myriad issues in a case like Grammar's: a deceased victim's grieving family, the influence of the accused's family and the potential impact on the judicial process, the resulting polarization of the community, flaws in the courts and legislative system in coping with drunk driving, and the role of the media in covering the case.

In retrospect, we saw that the survivor of the crash, Mr. Maness, a bachelor, was only rarely the center of attention in the media coverage. **Typically, the public and the media's focus in such cases is primarily on the drunk driving defendant, with the families of the victims who were killed following in unintended order. The story of survivors is often the most neglected of all.**

A second barrier are the complications created by the legal system. Most attorneys take the approach of saying little or nothing to the media. Rarely is a defendant made available for an interview while a case is pending. Attorneys typically are intimidated by the prospect of pre-trial or trial-in-process public comment. In most instances, Grammar's included, an attorney will address little more than the steps in the legal process and hopes for the outcome. Such comment rarely offers true balance to the anger and, at times, revenge which drives relatives and friends of a victim. Yet it is often the best the media can obtain.

In addition, Tennessee at the time these cases occurred was one of the few states in which cameras are not allowed in courtrooms, even on a limited basis, during trials or other legal proceedings. (This rule has since changed.) Many judges and attorneys still express reservations that cameras will turn a trial into live theater. The opposite has been the rule in states where courts admit the broadcast media. In Tennessee, television and radio were limited to reporter accounts and interpretations, rather than providing a true-life picture of questioning and courtroom strategy as it develops during a case.

It was two months later before the hopes for a swift resolution to the case evaporated. On a Wednesday afternoon, Ivy made a surprise visit to the newsroom. Ivy had reliable

information that the judge assigned to the case was going to remove himself, thus further delaying the process. The only way I could envision covering the story was to do it myself.

The following morning inside the Crockett County Courthouse, I encountered one of the most bizarre scenes one could imagine. A crowd was spilling through the courtroom door. A fire marshal would have declared the exit a hazard. Astoundingly, the Ferrell family was stranded outside the door.

Ivy maneuvered through the crowd with the news. Jeffrey Grammar was not in the building. The judge who was to hear the case was disqualifying himself because of a professional connection with Grammar's family. Hearing the news, Frank Ferrell's widow burst into tears. I was capturing the scene with my video camera. Mrs. Ferrell was beginning to lose patience with the endless delays in the court system. "I just don't understand," she said, fighting her emotions. "Frank's gone, but that young man has every advantage on his side. I believe in innocent until proven guilty, but we also want to see justice. There's no justice today."

The choice by the judge to disqualify himself was not the problem. His relationship with the defendant's family made that step not only proper but necessary. The frustration stemmed from the fact that this had not been done sooner so another judge could step in and carry forward with the process without delay. Delay was to the defendant's advantage and the legal system was accommodating him to the detriment of the victims and society as a whole.

Tennessee State Trooper Terrill McLean was among those who were expected to testify and, instead, found his day wasted. Ferrell's older brother was particularly bitter. Ivy patiently told the delegation what the next legal steps were and that there was no way to predict how long the proceedings would drag on.

We would see at least four delays and another judge withdraw before Jeffrey Grammar came to trial in October 1992, over fourteen months after the tragic crash! Astonishingly, WBBJ was the only media outlet to cover or report on the first postponement. I was privately angry. Where were the

newspapers and several television stations? Did they not care? Was a fatal DUI case not enough to whet their interest?

During the ensuing months, the stories-behind-the-story began to unfold. As the journalistic agency with the largest circulation following the story, WBBJ soon became the focal point for the kind of crossfire which tests the endurance of any news organization.

The first explosion erupted after we reported in the winter of 1992 on one of the first tactics - the placing of a sign by members of the Jackson, Tennessee MADD chapter next to the location of Frank Ferrell's demolished truck at a heavily traveled intersection. The sign, clearly intended to alert public consciousness, included references to the date of Ferrell's death and to Grammar as the accused party awaiting trial. It contained no statements that were not already a matter of public record or that had not been reported in the media. Ferrell's widow and other relatives, MADD president Georgia McMinn, and Rev. Mike Gillespie, a MADD member and anti-DUI activist, were among those who spoke at the news conference.

Ellen Crain reported for us and found it hard to control her emotions. "To see this family week after week have to wait, not knowing what's going to happen and to see Jeffrey Grammar going about his life is just unfair," Ellen told me when she returned. Ellen had been unsuccessful, as I predicted, in several attempts to obtain an interview with Grammar and was frustrated. I reminded her we could not allow that to affect our reporting procedures. I further instructed her to include in every story she would produce on the case a line to indicate her continued efforts to talk to Grammar and a standing offer to him to present his side. At least the public could be assured we were attempting to provide both perspectives.

This is where many media organizations differ in policy. Some news directors I know have a rigid view, limiting coverage when the best which can be gained from half of a two-sided story is silence. However, in those instances, the silent party controls media coverage and many serious issues would not see the light of day. My belief, based on years of experience, has been to

expend every effort to procure multiple viewpoints, but still going full force in reporting when others refuse to cooperate.

As soon as the DUI sign story aired, the tornado began. A trickle, then a barrage, of anonymous "concerned citizens" started a telephone campaign to my newsroom. Most of the calls filtered to me; an occasional one went to another staff member. The callers claimed to be from Crockett County and almost unanimously expressed their displeasure with us and what they called our one-sided reporting. "We don't appreciate the bad name you're putting on the Grammar family," said one. I asked who the person was and if he was related to the Grammers and the caller refused to answer either question. That was typical of the responses we would receive for weeks.

We were then accused of protecting the Ferrell family. On at least three occasions, we had reported autopsy results which indicated Ferrell had a blood alcohol of .02, which was a very low reading, well below the .10 blood alcohol set as the legal presumptive limit.

Callers would never admit hearing it, even when I would read directly from scripts to refresh their memories. "I think you're practicing yellow journalism and I just want to voice my opinion," said one woman. I asked her what yellow journalism was and she could not define it. "Whatever it is, you're doing it," she told me.

Two weeks after the sign had been posted, I received a mid-afternoon call from Ivy. "The sign has been stolen," he told me. "We expected this would happen. There's an element which is angry about the negative attention." I interjected, "I know. I've had a fair sampling of it myself."

Ellen immediately went to Alamo to do a follow-up story. Ordinarily, the theft of a sign only becomes newsworthy when accusations are made from political camps about disappearances of their campaign posters from yards or streets. However, in this case, a darker sub-story was unfolding. I told Ellen to focus her story on the emotional turmoil over the Grammar case, the strong reactions we were receiving (negative mail, likewise anonymous, was now sifting in with the calls) from viewers, and the potential

impact the sign theft would have. I wanted her to do everything imaginable - go to the post office, the downtown square, to a barber shop - to attempt to solicit on-camera responses complaining about the news coverage and treatment of the Grammers.

Ellen genuinely tried. She returned with fifteen on-camera comments and only one which was negative toward our reporting. The other fourteen not only supported the Ferrells, they wanted to see what they considered justice done and were fed up with what they perceived as callousness and delays in the legal system regarding the prosecution of drunk drivers.

After Ellen's story aired, more negative anonymous calls came. I kept asking these callers why they would not identify themselves and started to refuse to talk to them unless they did. "I'm just giving you my opinion," one angry woman said, "and who I am isn't important."

Our management received letters, all unsigned, threatening to never again watch our newscast. Fortunately, my general manager treated them as he did most anonymous correspondence - he trashed them.

I was determined to seek out the other side. I sent a different reporter, Doug Fernandez, to Crockett County and asked him to focus strictly on news coverage of the case. "I tried, I really tried," Doug said, upon returning, "but I couldn't get but two people to agree with Grammar, and neither of them wanted to go on camera." Doug even tried to talk with people at the Alamo weekly newspaper. They were not interested in any interview.

I took to the air with a commentary the night of Doug's report. "It is evident from the nature of telephone calls and letters we have received in recent weeks," I said, "that there are a number of you - though it is hard to gauge how many - who are displeased with our coverage of the Jeffrey Grammar case." I related the pace of the anonymous reactions. "From the very beginning, we were alerted that this would be a politically-affected case and it is. That much cannot be denied with the delays and judicial withdrawals from this case," I said. "In Jeffrey Grammar's situation, I assure you, we, too, are interested

in justice. We reiterate our standing offer for him and his attorney to appear either live or in a taped interview to express their side of the story in as much detail as possible."

I tried to reach the crux of the dilemma in my closing sentences: "But for justice, regardless of the verdict, to have an impact, it should be swift. Perhaps this is a failing of the judicial system," I said. "but it is, unfortunately, often a case of political and financial clout. Jeffrey Grammar deserves a fair trial before his peers. But a still-grieving family deserves some answers, painful though they may be; answers we, too, would like to know."

Before Grammar would finally come to trial, we were confronted with two other prominent DUI cases. We would also spend a week spotlighting drunk driving in as much depth as our budget and reporting skills would allow.

In May, 1992, we decided to take our focus on drunk driving one step further. I assigned reporter and weekend anchor Doug Fernandez to a week-long series, focusing on whether law enforcement, especially the overnight patrol officer, was seeing any genuine progress in the war against DUI.

Doug traveled with two patrol units on a Friday and Saturday night. He followed officers as they confronted more than a half-dozen suspected DUI offenders. Doug was stunned. "The police believe they're making a dent in the overall number of cases," he reported, "but they're not making progress in the number of repeat offenders. They know these people by name, almost like they do repeat drug users."

As Doug would tell viewers in the third night of his series, the judicial system was simply recycling second and third time DUI offenders. "Two judges we talked with told us more than 850 drunk driving cases in this area alone are on the dockets waiting to be heard," said Fernandez. "With that kind of backlog, you're seeing many more suspended sentences or lighter penalties for the first-time and even second-time offenders. These people know this and they're often back on the streets the day after they appear in court." One judge told Doug the hopelessly overcrowded prisons in the state were a major part of the

problem. Doug also interviewed two experts who predicted that repeat offenders would continue to be recycled until such time that punishment became both tough and certain.

Doug and six other members of our news team were cited for public service by the West Tennessee chapter of Mothers Against Drunk Driving. Rev. Mike Gillespie had been instrumental in the recognition. We did a brief commentary to reaffirm our commitment to continued public awareness and involvement in combating what we saw as our region's most underrated crime.

## CHAPTER 3

### **Justice Denied - The Story Of Dwayne Younger**

(Ivy)

Perhaps one of the most tragic cases that I have seen involving a death at the hands of a drunk driver was that of Dwayne Younger. Dwayne and other utility linemen were repairing a downed power line on the night of July 11, 1990. While standing well off the roadway, Dwayne was struck, according to investigators, by an intoxicated driver, Barton Fowler, who swerved off the road clipping the left front corner of the parked utility company truck and careening into Dwayne. One heroine of the story, Kelly Seaton, a 19-year-old motorist who saw what had happened, tried desperately through CPR to save Dwayne's life.

Incredibly, Fowler was not charged with vehicular homicide and, indeed, when his DUI charge came before the General Sessions Judge of Dyer County, Tennessee, he was found guilty only of reckless driving. The end result was that Fowler did not spend a moment in jail nor did he lose his drivers license. Fowler's level of intoxication was .15. The Tennessee statutory presumption of intoxication was set at .10.

Months after Dwayne's death the Younger family sought my advice. It has always been my policy not only to represent families in their civil claim but to do what I could to ensure that justice is done in the criminal prosecution as well. Unfortunately, by the time I was retained by the family it appeared too much had already transpired to bring about a just result in the criminal prosecution. However, we took steps to make certain that Fowler would not entirely escape legal responsibility.

Compounding the problems for Dwayne's young widow, who was the mother of two children, the drunk driver, as is often the case, had no insurance. Nonetheless, litigation was filed on behalf of the family with the hope of making a recovery against the insurance carrier for Dwayne's employer under uninsured



motorist provisions of the employer's policy. On the day of trial, approximately a year later, a consent agreement was reached for a judgment of \$500,000. However, this money was never paid. The State Civil Court of Appeals and Supreme Court interpreted the insurance policy as not covering Dwayne since he was not in the company truck when struck.

Unfortunately, the absence of insurance in drunk driving cases is not unusual. In my experience, over half of drunk drivers, especially repeat offenders, have no liability insurance. Among those who do, the coverage is usually minimum limits. In Tennessee, that meant \$25,000, a pathetic sum when compared to massive medical bills, lost wages, or a lost life. Contrary to public assumptions, the victim and his family, in the overwhelming majority of cases, never recover even close to their financial loss. Yet the laws in many states continue to reflect a kind of tokenism about mandatory insurance limits and financial responsibility. (I address this aspect of the drunk driving issue in the chapter "Taxing Alcohol - Saving Lives and Compensating Victims.")

As I predicted to the media, Barton Fowler was subsequently arrested again for drunk driving. Regrettably, because there was no conviction for the previous DUI charge at the time of Dwayne's death, Fowler could not be charged with second offense DUI but only with first offense. He was, on this second occasion, convicted and his license revoked. A few months later, he was arrested a third time for DUI and, as of the writing of this account, is awaiting trial on that offense as well.

The story of Dwayne Younger illustrates another tragedy which so often follows in the wake of a drunk driving crash: that of the disillusionment of the victim's family when they discover that all too often our justice system fails to provide what its name implies. I have often pointed out when conducting training sessions for anti-drunk driving advocacy groups that a victim or his family cannot necessarily be assured that all of the people in our justice system will act conscientiously or competently in the handling and prosecution of a DUI case.

The breakdown may come at any juncture or may be

reflected in a series of failures. A law enforcement officer may not adequately investigate a crash or even charge a DUI suspect with all of the possible charges that could be levied against him. A prosecuting attorney may fail out of prejudice, bias, inexperience or simply a lack of conscientiousness, to vigorously pursue the prosecution of a DUI defendant. And worst of all, in the eyes of a naive public, a judge may refuse either to follow the law or to ensure that a defendant is punished with the maximum deterrent effect. **It has been my experience that the most effective way to expose and change this dereliction of duty is by working with the media and advocacy groups such as MADD and RID.**

**It is the certainty of punishment rather than the severity which is the primary deterrent to most crime.** Severity of punishment is an important factor in successfully combating crime, but simply passing "tough" laws is often misleading. "Tough" laws are politically expedient but are of no use if not vigorously enforced. Barton Fowler experienced neither severity nor certainty of punishment.

Therefore, we began an intensive effort to change the situation. Although no advocacy group existed in Dyer County, we had an ally in the nearby Jackson, Tennessee MADD chapter. This small group under the courageous and determined leadership of Linda Bradford and Georgia McMinn had acquired a reputation for getting things done. With their help, I arranged for a review of some of the court records where Barton Fowler's case was heard. To our dismay, the review revealed that our information about the handling of DUI cases in that court was well founded. The records reflected barely a one in five conviction rate over an 18 month period. Nearly four out of five DUI arrests were either dismissed by the judge or disposed of as reckless driving or public drunkenness convictions.

A state attorney general's opinion in Tennessee a few years previously clearly stated that the handling of DUI cases in the manner apparently employed was improper. We forwarded a copy of the opinion along with a letter from the president of the Jackson MADD chapter asking the judge to change his policy.

There was no response.

Simultaneously, we provided extensive information to the reporters of the local newspaper, *The Dyersburg State Gazette*, which showed considerable conscientiousness and public-spirited concern. After numerous articles and adverse publicity over a period of several months, the judge eventually wrote a letter to the *State Gazette* stating he was changing his policy and that he had been "misinformed" in his longstanding practice.

Space doesn't permit me to describe in detail the complicated and numerous steps this campaign took or the arduous duration of the effort by several people, most of whom were behind the scenes. Suffice it to say that it required an abundance of perseverance on the part of several people.

After months of this publicity, a MADD chapter was formed in Dyer County under the leadership of Ms. Tammy Higgs with 90 new members who expressed their outrage over the handling of DUI cases by their local court and justice system. Tammy, who was an unknown to MADD and the anti-drunk driving advocacy movement prior to her stepping forward in Dyer County, ultimately became one of the most aggressive and dynamic advocates in my experience. Later she became an advocate with RID. She and her group of Dyer County citizens displayed courage and assertiveness in the face of local complacency and the hostile attitudes of some political leaders.

Under pressure by MADD, the media and the public, Barton Fowler was finally brought before a grand jury and indicted for vehicular homicide nearly two years after Dwayne Younger's death. In the next election, the District Attorney who held office during most of the furor over the Barton Fowler case was defeated along with other public officials. Perseverance and an understanding of how to coordinate a legal effort with a media campaign can bring about positive change.

This account is the barest of summaries. In his chapter, "Injustice Exposed", Steve views these events from the perspective of the media. The efforts involved in this case were complex and exhaustive over more than two years. Some aspects remain unresolved even at this writing.

## CHAPTER 4

### Injustice Exposed

(Steve)

Late on a Monday evening, I received a call from Ivy. He had just returned from a vocal and enthusiastic organizational meeting of a new chapter of MADD in Dyer County, Tennessee. Residents in that area had become keenly concerned and annoyed at what they saw as excessive leniency and delay by a local judge in the handling of drunk driving cases. *The Dyersburg Gazette* had published a series of reports detailing outcomes and emotional impacts of DUI cases. Many citizens were especially infuriated by what was to become the notorious case of Barton Fowler. Without the journalistic diligence of *The Dyersburg Gazette* and the strategies Ivy planned and executed with the help of MADD, this case would have been lost in judicial quicksand.

I assigned Ellen Crain to the coverage for WBBJ-TV, telling her to develop as many segments over a week as necessary. My feelings were we had to emphasize four key elements: 1) the emotions of Younger's widow, more than two years after his death; 2) the reactions and growing anger of the townspeople to the lack of justice; 3) the perspective of the Memphis State University cheerleader Kelly Seaton, who witnessed the crash and tried in vain to revive Younger; and 4) an interview, if at all possible, with Barton Fowler. We knew the latter would be the most difficult to obtain.

The by-now-remarried Dena Younger Davis and Kelly Seaton, quickly agreed to our requests for interviews. So did Tammy Hipps, the newly-elected president of Dyer County MADD. We discussed the Fowler case with reporters from the Dyersburg newspaper and with a random sampling of townspeople. The district attorney refused our requests. Ellen did manage to get a curt "no comment" from the judge who brusquely rebuffed her questions about the complaints about his adjudication.

Ellen set the scene much as would be done in a

newsmagazine piece. Returning to the crash scene, she walked along the highway where Dwayne Younger met his death. At this point, we had received no response from Barton Fowler, although Ellen had two cordial conversations with his attorney. I instructed her to leave the door open for Fowler to present his side of the story. As with the Ferrell-Grammar case, my great concern and Ellen's, was that our ability to only obtain the views of the anti-DUI advocates would be perceived as one-sided and, in the worst scenario, would build sympathy for Fowler.

At midweek, as the series was airing, the breakthrough finally came. Fowler's wife, Kim, agreed to an on-camera interview. She had seen the first two nights of the series and felt a different side had to be told. I sent Ellen immediately to the Fowler home, anticipating that any delay would lead to Fowler's attorney attempting to nix the interview.

Mrs. Fowler felt the news media had been unfair to her husband and said the angry townspeople were "on a witch hunt." During the interview, Mrs. Fowler told Ellen that Fowler had "not had a drink for four months and is really trying to get over his problem." She acknowledged the emotions of Dena Younger Davis, but added, "Nobody knows what we've been through."

Yet, we were negligent in one aspect of reporting. Ellen failed to follow up Mrs. Fowler's claims by asking that if her husband had been sober for four months, why was he just arrested on yet another DUI charge in another county? That question cried out for an answer.

Though not quite as intense as during the Grammar case, telephone reaction was strong to the Fowler-Younger series. The ratio was eight to one in favor of our coverage. The most ironic response came from an anonymous caller who only identified himself as a former Tennessee Highway Patrol trooper. "I've come into contact with these cases through the years," the man said, "but I think you've tried and convicted a guy here without really attacking the problem itself - and that's the legal system." I argued we had not played judge and jury; we had merely outlined the various perspectives of the Fowler case and given the public a chance to make its own decision. "But you've started with the

premise that a man died and he was killed by a drunk driver," the alleged ex-trooper said. "You don't leave much room to the imagination here." I acknowledged his view, yet if the caller was telling the truth, I privately wondered how he, an ex-officer, could not believe that a drunk driver is, first and foremost, the primary problem.

Fowler would eventually plead "not guilty" to the vehicular homicide indictment. Our camera was in the Dyer County courtroom and, ironically, Mrs. Fowler attempted to place her hand over the camera as the couple entered the courtroom. Neither she nor her husband would comment to the camera, but they told Ellen they felt even more strongly they had not been given a fair shake from us.

Ultimately, Fowler was convicted of vehicular homicide. The new MADD chapter in Dyer County which was formed as a direct result of the case would acquire a reputation for activism and controversy. But it is beyond question that were it not for a handful of determined individuals working with the media, nothing would have changed in Dyer County and Dwayne Younger's killer would have gone unpunished.

## CHAPTER 5

### Keeping The Light On

(Steve)

Before Jeffrey Grammar stood trial, I retired from the rigors of the television newsroom after seventeen years to begin a career as a college communications professor. My departure brought to the forefront another key problem in the quality of media coverage of DUI issues, or any other festering social ill: continuity of personnel.

The nature of the news business is such that the background of an ongoing story is often poorly communicated to new staff members, particularly in smaller markets. The Grammar case was a textbook example.

Jury selection in the Grammar case began October 14, 1992. Because of staff changes, trial coverage was assigned to a reporter who had been with WBBJ barely six months. She knew little of the case's history and, as would become evident, had been poorly briefed.

No pre-trial background story was produced to refresh old and new viewers with the significance of Grammar's trial. No attempt was made to reacquaint the audience with the crash site, the controversy over MADD involvement and the subsequent sign thefts, and the more than one year of delays in bringing Grammar before a jury.

Frankly, the coverage was hollow. Over the two days of testimony, only footage of family members and some jurors walking up and down the steps of the Crockett County Courthouse was shown. No attempt was made to interview either attorney in the case. No comments were obtained from any of the Ferrell or Grammar family members. For someone not familiar with the case, the report left many questions unanswered.

Jeffrey Grammar was convicted of vehicular homicide, vehicular assault, and driving under the influence. The verdict gratified Ivy and MADD since it was the antithesis of what many

expected. While grouching about the TV coverage, I was reminded by Ivy of a key point: "If you hadn't taken the step more than a year ago to focus on this and keep the light on," Ivy said, "Jeffrey Grammar may never have been held accountable."

In spite of the guilty verdict, the victory for MADD and the victims was not yet secure. Even if Grammar received the maximum sentence of ten years, eleven months, and twenty-nine days, it would pale to the sentence of the Ferrell family: the rest of their lives without Frank, and Frank Maness would never be paroled from a disabled body.

The Grammar and Fowler cases and subsequent examination of drunk driving in our region illustrate how intense the public spotlight on a critical issue can be if media leaders commit to those issues. These cases also point up the inherent weaknesses of the media in not presenting thorough and probing coverage.

I reflected back on Ivy's words after the Grammar trial and on Doug Fernandez' report of 850 cases of DUI still waiting to go to trial in Madison County. **I could not help but wonder how many Jeffrey Grammers or Barton Fowlers across the nation were sliding through the cracks of the legal system because the media had failed to draw attention to their cases.**

Grammar was finally sentenced on a cold December day in Alamo, Tennessee. The judge handed him a five-year jail term for vehicular homicide, along with a three-year sentence for vehicular assault and eleven months and twenty-nine days in jail for his DUI conviction. He was also fined \$13,000. Grammar would serve the jail terms concurrently, as follows: December 30, 1992, to March 30, 1993, in the Crockett County Jail; April 1, 1993, to December 1, 1993, nights only in jail to allow Grammar to work in the daytime; December 1, 1993, to March 30, 1994, in the jail on a full-time basis. The remainder of the sentence was suspended. No restitution was ordered.

Grammar paid for the life of Frank Ferrell with fifteen months in a cell, with the jail serving as a virtual motel for eight of those months. Still, MADD leaders felt the Ferrell family was satisfied with the ruling in view of what could have happened. "I think the Ferrell family was content," Jackson, Tennessee MADD



president Georgia McMinn told *The Jackson Sun*. "They were not out for a vendetta."

Two sidebars from the Grammar case were almost full-circle stories. First, the WBBJ-TV news staff had become so depleted, the station could not spare a reporter to attend Grammar's sentencing. Instead, the outcome was reported in an on-camera story by anchorman Fernandez. Secondly, on the day Grammar was convicted, a Wisconsin judge handed down a sentence to Clarence William Busch on a DUI charge. Busch was the man convicted of killing thirteen-year-old Cari Lightner, daughter of Mothers Against Drunk Driving founder, Candy Lightner, in a 1980 drunk driving incident. Twelve years later, a subsequent DUI charge resulted in a fine of \$583 and a nine-month driver's license suspension for Busch. The state of Wisconsin convicted Busch as a first-time DUI offender because his record had been clean for five years!

PART B

**The Media And Drunk Driving**

## CHAPTER 6

### Baptism Into The Cause

(Steve)

The Grammar and Fowler cases were not my first exposures to the tragedy of drunk driving. It had struck home for me professionally and personally before. My experiences reveal how drunk driving is often handled by the media.

The warm Saturday night in Atlanta was one for celebration. Our news team of WTVM's "Action 9 News" had just swept the 1980 Georgia Associated Press Awards. Of thirteen categories, "Action 9" had won in seven.

I telephoned the weekend crew at the station to tell them of our success. Anchor Alyce Panzarino, was especially excited. One award had been hers for a series of reports on new police crime-solving techniques.

"Anything unusual happen today?" I asked, straining to hear over the music in the background at the Peachtree Plaza Hotel.

"Yeah. We had a fatality around 2:30 this afternoon," Alyce said. "It was on Macon Road. A man crossed the center line in front of another car."

"Really?" I answered half-heartedly. We did not see many fatal accidents in Columbus, but we had covered enough of them to view them with a steely grimness.

"Yeah. The woman who was killed was a doctor's wife," said Alyce.

My curiosity was now aroused. "A doctor's wife? Do you know who she was?" I asked with an uncomfortable feeling of the inevitable.

"Her name was Donna. . .," Alyce answered, but I didn't let her finish. The Donna in question was indeed the wife of a Columbus physician, but much more than that to my fiancée Rebecca, who was standing nearby, and me. Donna was a nurse who specialized in oncology medicine, spending hours upon hours with terminally-ill cancer patients. She was a mother of

three, an active, physical person. Donna was a member of our Sunday School class. She was our friend.

I didn't know how I was going to tell Rebecca. This was a night which had meant so much to my colleagues and me for our hard work of the past year. Rebecca was proud for me because she knew firsthand of the stressful days and nights that had led to the recognition. The joy had just evaporated for me.

Alyce dropped one other bit of information before I hung up: "The police said the driver of the other car was drunk."

I had always prided myself on being controlled. However, if a meter could have registered my emotions at that moment, it would have swung completely from sorrow at one end to intense anger at the other. For years, I had heard my father preach from his United Methodist pulpit on the consequences of alcohol on the family. I had witnessed the embarrassing spectacle of a boss having to be carried physically from a business party when he toppled over a podium from the effects of excessive liquor. As a broadcast journalist for four years I had been sent to the scene of crashes where alcohol had caused death. Now, I was crossing a line. No longer would I be a detached observer.

As I reluctantly told Rebecca what I had just heard, tears of anguished disbelief poured from both of us. We quickly excused ourselves and began the longest two-hour drive we ever made.

As we drove through the darkness, we pondered the tragedy. A drunk driver had ignored his responsibility in that instant when he took the wheel. Not only had Donna been killed, her three children had been in the car. Her son would face a serious brain operation and a touch-and-go forty-eight hours before his survival would be assured. The drunk driver escaped without a scratch, although his wife and child suffered several bruises. We would learn the next day that his license had expired.

I wondered privately how our news department would cover the story. Selfishly and emotionally, I wanted the thoughtless soul nailed to the wall - tried, convicted and punished by me on the air. Nonetheless, I was a journalist, and I begrudgingly realized even the drunk driver was entitled to fairness in the media. Yet, who defines fairness? What was fair?

The question of how the media follows DUI cases had troubled me since my second year in television. In 1977, I received a call from a WTVM photographer who said he would meet me on a busy expressway a mile from my apartment. A private airplane had crashed into a telephone pole less than 200 yards from the runway of the Columbus Georgia Municipal Airport. The plane came to rest in the median of this congested four-lane highway. Two men inside were pried out of the plane and carried by ambulance to a local hospital. They survived.

What we found inside the wreckage was as much a shock as the crash itself. I estimated at least two dozen cases of alcoholic beverages were stuffed in the rear of the plane. On the floor of the pilot and front passenger's seats were at least eight empty beer, wine and malt liquor bottles. We asked an officer on the scene about the alcohol. All he could tell us on the record was the possibility of alcohol being involved, but the issue "would be investigated."

What happened in the next twenty hours is revealing of how the media's gatekeepers exert pressures on their news departments. The two men injured in the crash were both members of a prominent and wealthy Columbus family. There were extensive political and financial ties dating back nearly a century. On both our newscasts and that of another TV station that Sunday evening, video tape and filmed accounts of the crash were aired, including footage of the alcohol containers and the blood-alcohol test results of the two injured men. Similar stories aired on the two stations' morning newscasts the next day.

This was a near catastrophe which could just as easily have killed a number of innocent drivers on that interchange. Yet, the reaction of the station management was almost unbelievable. The reporter was subjected to an extensive cross-examination when his news director arrived the next morning. That in itself was not unusual. Most news stories of a sensitive nature typically call for at least a token post-mortem to be certain all bases have been covered. The reporter, however, was shocked when the news director became antagonistic. "He asked how I could possibly put those liquor bottles on the air," the reporter told me. "I said,

'Because I'm a newsman. There was a plane crash. Liquor bottles were all over the plane and a bunch of them were empty. The police told us on camera they believe there could be a connection. That's why I aired it.'

He went into a tirade, reminding me over and over that I 'just didn't understand'. What I supposedly didn't understand was the pilot and the passenger were both close friends of the station owner. Their families had already made contact to complain and complain loudly." The owner of the station had spoken. The news editor went into the film editing room and excised the footage of the beverage bottles before his midday newscast. When the edited film aired the reporter promptly resigned.

My tape was not subjected to the same censorship. However, my general manager greeted me before my news director arrived. He proceeded to grill me for nearly 30 minutes on whether it was absolutely necessary to include the shots of the bottles. He insisted he would leave it to my discretion whether the story stayed "as is" for that evening's prime time newscast. However, I was left with the distinct impression he would not be happy if the tape was left intact. I stood firm, asking him if he would be leaning on me as strongly if the pilot were not from an elite family which had a personal relationship with him. He did not answer. The story aired in its entirety that evening. The manager did not speak to me for a week and had some less-than-subtle remarks for my news director (who backed me). I am not sure he ever forgave me.

In contrast, we reported Donna's story in a rather matter-of-fact fashion. The plain, hard facts: what happened, who was killed, where it occurred, and the ultimate disposition of the driver being booked on charges of driving under the influence of alcohol, reckless driving, and driving without a valid driver's license. We followed up on the day of Donna's funeral with news of the drunk driver's arraignment and his release on a \$5,000 bond.

I was angry. I stormed into the office of my news director, and clumsily demanded to know why we weren't doing more, why we weren't probing into the life of this man who was free on

the streets - as I saw it - to take another life; why we weren't striking back at the heart of a problem which had to be far more extensive than the one crash which took my friend's life.

The news director was a calm, analytical man. "You're too personally involved in this and you can't go off the deep end and turn this into a crusade. You'll lose your sense of fairness and credibility with the viewers," he pleaded. Ethically and realistically, he was right. But I didn't want to hear any such arguments. After all, where was fairness for Donna and her family?

He refused to allow me to pursue any follow-up stories or special reports on the accident or the subject of drunk driving. At the time, he was probably right. What bothered me most was that we did no more stories on the issue for the remainder of my tenure at the station, except for a four-part examination by another reporter during "ratings month". Ratings surveys are conducted four times a year by audience research companies to determine advertising rates for local television stations. That is why you often see sensational topics developed and heavily promoted by news departments during those ratings months. Our piece on drunk driving was, in my view, superficial at best and only touched upon the circumstances surrounding Donna's death. It did little to ease my rage.

In 1980, there was no Mothers Against Drunk Driving chapter in Columbus, Georgia. The Georgia legislature had made only a token effort at toughening drunk driving penalties in the state by making a driver surrender his other license after the third DUI offense. I asked a local state senator why the laws had no more teeth. "Just take a look around," said the lawmaker, who allowed me to quote him on the air upon condition of anonymity. "It doesn't take a genius. So many of the people here [legislators] like to drink. The lobbyists entertain them all the time and there's a lot of alcohol with that. How many of them get in their cars after they've had a few drinks? They don't want to become victimized by their own law." **This was a foreboding glimpse of something Ivy would later describe to me in detail and label "the brothers in the bottle syndrome."**

Over the next decade, I would make the decisions, as news director, on what was covered on television newscasts in four cities. During that ten years, Rebecca and I would lose fourteen friends to either drunk drivers or drunk boaters. My anger would no longer be suppressed inside. As an editorial commentator, news director and anchor, I made a vow to keep the issue of drunk driving before television viewers. That pledge would lead me to considerable conflict with station managers, some fellow employees, and - in one telling case - a few viewers from a small, rural community in Tennessee where a fatal DUI accident polarized an entire county. The crusade has opened my eyes to what I perceive are weaknesses in the media across the nation. That vow also brought me in contact with a committed and assertive MADD chapter, whose members have learned how to use the media for positive change.

Since 1983, I have delivered more than forty television commentaries on the subject of driving under the influence of alcohol. Before each, I hearken back to the day Donna died and how fourteen other lives of decent, innocent people close to me have been lost to the combination of a bottle and a steering wheel. My objectivity is clearly out the window.

**Yet, the issue of drunk driving in the United States fails to strike a chord with most Americans unless it becomes personal to them.** As we will further illustrate, the dilemma is twofold. For one thing, mainstream media display timidity in keeping the problem before the public frequently out of a fear of losing the advertising dollars. Further, as Ivy describes, the problem is compounded by a legal system clouded with politics and gridlock comparable to the stalemates in Congress. Only when we find examples of the law and the media joining in a symbiosis for the public good do we see progress in the fight against a societal killer.



PART C

**Strategies And Tactics For Victims, Advocates,  
And Those Who Help Them**

## CHAPTER 7

### **It's No Sin To Use The Media**

(Steve)

Journalists abhor being told that specific news sources are "using the media". Often, news organizations will avoid particular advocacy groups if they begin hearing significant criticism of being "used".

According to the Communications Act of 1934, consumers own the broadcast airwaves; television and radio station owners are merely licensed as public trustees of the air. Under federal law, citizens are guaranteed access to broadcasting to present divergent views. It is the legal right and responsibility of every citizen to "use" the media.

When Ivy discusses the "triad" of steps in the effective handling of a drunk driving case, the most underrated of the three - exposing delays and politics in the legal system as a case flows through the courts - is anathema to many attorneys. The legal profession is traditionally imbued with reticence toward reporters, except to explain process and procedure. The alleged overriding fear of excessive publicity is that it might force anything from a change of venue to a prejudicial action affecting the outcome of a case.

As a journalist, I have discovered the most effective attorneys are those who know how to "use" the media. Rather than adversely affecting cases, media-savvy lawyers are adept at keeping public awareness of issues at a level that brings about grassroots pressure on the legal system.

Among any grassroots movements, such as anti-drunk driving groups, the question most often asked is, "How can I gain access to the media?" Ironically, the problem isn't usually one of access, but ignorance, or a fear of approaching the media. A surprising number of people say, "I can't picture myself actually calling a television station."

Another problem many advocacy groups encounter results

when their commitment crosses into militancy. They are then often viewed by reporters as vigilantes. The result is what journalists frequently refer to as the "them again" syndrome. This is the view that the advocates no longer possess any vestige of objectivity or fairness, but are relentlessly intent on attacking their real or perceived enemies. With the media consistently receiving low confidence ratings in public surveys, journalists are acutely sensitive to the need to develop a relationship with the reader or viewer before information can be conveyed.

Quality public relations is essential in the local fight against drunk driving. **Ivy has for years conducted seminars for advocacy groups and other organizations on dealing with the media. He and I have done this together. We regard this as a subject and a form of instruction which can only be dealt with effectively in person-to-person seminars. But in view of the need, in the remainder of this chapter we attempt to provide a "how to" mini-seminar in developing effective relationships with both the print and broadcast media.** The first steps involve making initial contacts and follow-ups. The second level focuses on how to use the media in a positive manner once key relationships are established.

### BUILDING THE RELATIONSHIP

Whether you are affiliated with a chapter of Mothers Against Drunk Driving, Students Against Driving Drunk, Remove Intoxicated Drivers, a law enforcement agency, or an independent organization dedicated to combat DUI, **knowing the right people with whom to build a media relationship is often the best way to launch the latter third of "the triad"**.

Depending upon the size of a television, radio station, or newspaper, the layers and depth of internal bureaucracy will vary. In a small city, access to the news director or managing editor will be far simpler than in a metropolis. The first step, nevertheless, involves picking up the telephone and making contact, something you will hopefully do many, many times:

**\*\*ASK TO MEET WITH THE ASSIGNMENT**

EDITOR AND NEWS DIRECTOR (Broadcasting) OR MANAGING EDITOR AND CITY EDITOR (Newspaper): These will be the key contacts you will need to maintain from the journalism side. If the news agency maintains a public service director, ask to include that person. You may well need to interface with that individual on future non-hard news projects.

**\*\*MAKE THE INITIAL CALL THOROUGH BUT BRIEF:** A good way to maintain quality relations with reporters is to clearly identify yourself, the purpose of your anti-DUI effort, and your intentions. Attempt to work within the news people's schedules in setting up an initial meeting. Keep the first call and all other calls brief. Few telephone systems stay as constantly busy as those in a newsroom. Your mission is important, but it will be only a fraction of the interests an editor will have to address during a given day. Brevity is appreciated.

**\*\*WHEN THE INITIAL IN-PERSON MEETING IS SCHEDULED, BE ON TIME:** With their tight schedules, it is unreasonable to expect more than twenty to thirty minutes of an editor's time. Promptness gets the relationship off to a good start.

**\*\*BE ORGANIZED:** Write down an informal agenda you would like to follow in meeting with the media and stick to it. If you have brief written materials on your anti-DUI effort, or a brochure, your chances of making a positive impression will be enhanced. However, don't bombard the reporter with too much printed matter at first. This should be an ice-breaking, personality-oriented, face-to-face meeting.

**\*\*DO NOT SEND A LARGE DELEGATION:** Remember, this is not a full-blown anti-DUI meeting.

If you are representing an organization, simply send your president/chairperson and the individual who will handle media relations.

**\*\*INVITE THE JOURNALISTS TO YOUR NEXT GROUP MEETING:** A good suggestion is to perhaps ask them to address your anti-DUI group on dealing with the media. Remember, you will have those in your membership skeptical of reporters. A healthy give-and-take can build a bridge and incorporate a journalist as an active participant in your mission.

You should be prepared for some friendly, yet pointed, questions at your first meeting. Likely, the queries will be for clarification and specifics. However, journalists are trained to be skeptical.

Sincerity is the key. If you and your representatives have been personally touched by the tragic impact of drunk driving, you will already have a passion. You do not need to be an orator to get your points across. **Both the print and broadcast media rely much more on "real people" as sources today. Viewership and readership respond more readily to the sincere, personal story,** but be careful not to tell your life story in the first session.

Follow that get-acquainted session with a short, congenial thank-you note. Journalists are frequently criticized but rarely receive positive reinforcement. A brief written acknowledgment will cement a bridge.

The best-organized anti-DUI groups in Tennessee have made openness and frequent contact with the media hallmarks of their success. They are effective in monitoring cases of repeat drunk drivers which drag through the legal system. They make their positions known through crisp press releases and media briefings. They are visible in their contributions to law enforcement agencies and stands taken with their state legislature. Further, they take an active role in supporting drunk driving victims at local trials and make themselves available for interviews.

**Ivy suggests that the public relations/ media effort may be the most significant element of "the triad" for anti-DUI coalitions and victims.** However, far too many citizens' groups are unsure of how to follow through with the media.

### PRESS RELEASES

Advance notice to reporters and editors of upcoming events, media conferences, and public stances is essential. The press release is a key to the communication pipeline. Development, crisp writing, and follow through will bring success. (An example of an effective press release is included in the appendix).

**\*\*APPOINT SOMEONE WITH WRITING EXPERIENCE TO HANDLE PRESS RELEASES:** You may not have a working journalist, but perhaps your group can solicit the help of a local high school or college journalism or English instructor. Nothing is worse than a press release which has improper sentence structure. Find the best assistance possible.

**\*\*TRY TO "GRAB" ATTENTION IN THE FIRST PARAGRAPH:** The thrust of your anti-DUI group's stand on a court case or legislative issue, or the focus of a public rally, do not leave an editor hanging on your intent by saving it as a "surprise" for the final paragraph. News stories are primarily structured as an "inverted pyramid," progressing from the most important facts to the lesser or restated information. Good press releases follow the same approach and include quotes from your key leadership.

**\*\*BE SURE TO INCLUDE WHO, WHAT, WHEN, WHERE, WHY:** These are the important "five W's" essential to any news organization. Leaving one out will require an unnecessary telephone call, which is always a distraction in a newsroom. Omitting the time

of a meeting, the location of a rally, or the date of a court hearing can be irritating to any editor. Check and double check your dates, names and facts.

**\*\*BE CERTAIN TO INCLUDE KEY TELEPHONE NUMBERS OF PEOPLE NAMED IN PRESS RELEASES:** If you are seeking media coverage and your anti-DUI news story has significance, competing news organizations will often battle to be first to report it. You enhance interest when you assist reporters in making contact with your key personnel. Always include the telephone number of your media liaison person, as well.

**\*\*WHENEVER POSSIBLE, USE A FAX MACHINE:** This has become the most instant tool for written communication. If people in your anti-DUI group have access to a facsimile machine, utilize it for transmitting releases. Media outlets appreciate same-day reception of information. Some of the biggest complaints of news directors revolve around getting press releases in the mail two or three days after they have been written. Delays increase the chance of your release being declared old news. A fax is the best insurance policy for getting an editor's attention.

**\*\*UPDATE NAMES, TELEPHONE NUMBERS, AND ADDRESSES OF MEDIA OUTLETS ON A REGULAR BASIS:** Once a quarter is not too often to make a check. News is a migrant business. The majority of news agencies have personnel turnovers several times a year. Frustration develops in a newsroom when mail comes to a reporter or editor who left six months ago. Telephone systems are often revamped, creating change of numbers. Organizations change locales, post office box numbers, or zip codes. Keep a list handy and check for any changes by

telephone three or four times during the year.

**\*\*ABOVE ALL, DON'T PLAY FAVORITES IN TRANSMITTING PRESS RELEASES:** Make a thorough check of all newspapers, radio and television stations in your area. Send your releases at the same time to every outlet which reports news. Journalism is a competitive, and often jealous, business. Make every effort not to single out any agency for preferential treatment. If you want fair reporting, be fair in your public relations efforts. We believe it is important not to overlook minority oriented media. The gospel radio station or Spanish language newspaper, for example, likely will care about the issue of drunk driving, yet many organizations fail to include such media members on their media list.

## INTERVIEWS

Once you have delivered vital information in your press release, you may be asked for an interview. The media will want interviews with the chairperson, spokespersons, or key individuals of your anti-DUI group. For many people, the thought of participating in an interview causes panic, especially a television interview. There is a distinct difference between an on-camera interview and one which is given by telephone or in conversation to a newspaper reporter. Even sitting before a microphone with tape recorders or live in a studio can be traumatic for the amateur. However, for a public relations effort to be effective, an advocate cannot play hide-and-seek from the interview process with the media. **Television, in particular, is going to be the most visible and emotionally-communicative medium.**

If your advocacy group has a membership which is exceedingly camera-shy or camera-inexperienced, several techniques can be used to strengthen interview skills. One is the interview seminar which can be employed by qualified off-duty journalists or speech communication instructors.



An "interview seminar" involves simulated question-and-answer situations under time and camera constraints. I have conducted sessions for groups ranging from the American Red Cross to local hospital agencies to women's organizations. A favorite technique of mine is to attempt to put an interviewee at ease while throwing him or her a few friendly curves in questions. Imagine the reaction when I am interviewing a male and suddenly ask why he was seen lurching with a woman other than his wife the previous week (hopefully, it was not true). That kind of curve ball usually brings laughs from the audience and loosens up the guest. But, more importantly, this technique teaches the interviewee to always pay close attention to the question asked and keep a tight reign on his or her poise.

The interview seminar is conducted under specific time limits. I do two-minute and five-minute interviews, the first to simulate "live" newscast situations and the latter for local talk show sequences. The time cues show seminar participants how brevity of answers is important. The technique is known as the "soundbite" answer, usually a 15-to-40 second response which gets to the point in answering a question and leaves the interviewer adequate time to bring out more essential information. When watching the interviews on video tape, the participants gain a clearer understanding of how long, verbose answers can quickly lose the viewer's attention.

Another revealing exercise is role reversal. I enjoy placing seminar participants in the role of interviewer with me as the guest. The results are often thought provoking. People unaccustomed to these situations (oddly enough, this still happens with many experienced yet unskilled interviewers, as well) will commit the cardinal sin of broadcast interviews: asking the yes-or-no question. In these instances, I deliberately answer the question "yes" or "no" with no elaboration. The abrupt response often throws off the interviewer and leads to an uninformative exchange. The technique is used to show people that they may face poor interviewers and, if so, need to compensate by taking control of the interview and giving brief explanatory answers to yes-or-no questions. Remember: **in any interview, it is up to you to communicate your message, within the time limit**

## **afforded, regardless of the interviewer's skill.**

Practicing these techniques in front of a camcorder can do wonders. Once you've survived the trauma of facing a lens, the prospect of facing a microphone in a radio studio is much less anxiety-provoking. Further, the newspaper interview becomes even easier, because, although some reporters use tape recorders to ensure accuracy in quotes, notepads and pencils are typically less intimidating.

If an advocacy group is to be effective in communicating its positions, practice seminars should be held on a frequent basis, particularly for victims of drunk drivers who want their stories told. Developing the courage and patience to tell personal stories in public takes time and support from other members.

As your group becomes better known, representatives will be asked to speak to civic, religious and social organizations. A separate seminar should be scheduled once a year to tutor the membership in speech making. A local Toastmasters club can help you put together a speakers bureau training. Once media relationships have been established, how does the anti-DUI coalition keep its message before the public on a consistent, meaningful basis? A threefold process is recommended: the media event, the news briefing/conference, and the public announcement.

## **MEDIA EVENTS**

The media event is an orchestrated situation designed to attract news coverage, primarily for print and broadcast picture purposes. News organizations are often sensitive to charges they are being used by special interest groups strictly to gain attention for non-controversial goals. Occasionally, the publicist for an advocacy group will find editors resistant to coverage - particularly if the media event is an annual one, staged the same way, year-after-year. However, you have the right as a media consumer to persistently ask for coverage.

Innovation and substance in staging your event will be critical in gaining media access. The following suggestions can bring variety and attention to your issue. Many are used

effectively by anti-DUI groups throughout the nation.

**\*\*MADD RED RIBBON CAMPAIGN:** This is an annual emphasis for the end-of-the year holiday period, in which red ribbons are tied to auto radio antennas to promote sober driving during the holiday season. The standard staging finds MADD officers convening at local police departments and tying ribbons to law enforcement vehicles.

For variations of the theme, the ribbons kickoff could be presented at a local high school to involve youth in the campaign and provide a critical age perspective on the issue, allowing media members to interview students about their views. Another way is to work in tandem with an area trucking association, because commercial traffic is heavy during the holidays. A positive spin to the message can be created by involving independent drivers in a safety campaign. Using a celebrity helps, too.

**\*\*CANDLELIGHT VIGILS:** Many anti-DUI groups organize candlelight memorials for victims of crashes involving drunk drivers. Alternate themes can include organizing a day of prayer through local ministerial associations to encourage the participation of religious communities in the fight. In hundreds of cities, MADD and other groups stage silent marches outside city halls or county buildings prior to elected officials' votes on key drunk driving issues.

**\*\*VIDEO EQUIPMENT PRESENTATIONS:** MADD and independent pro-law enforcement citizens' groups frequently raise money to purchase portable camcorders for police to use to document drunk driving arrest scenes. This simple media event brings together a citizen and police officer as spokespersons and they demonstrate the equipment to the media.

An even more effective variation takes the media onto a parking lot and allows reporters to see the video gear installed in police cars. Officers can more readily explain about the difficulty of their jobs, rather than simply express appreciation for the donation.

The most graphic and attention-grabbing method of publicizing video contributions requires preparation. With the help of your police chief or sheriff simulate a DUI arrest with the video equipment at work. Organize a day where reporters can ride along in patrol cars and officers can demonstrate what would happen if an actual arrest is made and how the camcorder is used as a tool. This is the most visual approach to displaying the equipment's purpose and gives the viewer, reader, or listener the feel of "being there."

### NEWS CONFERENCE BRIEFING

News conferences are traditional exchanges between public leaders and the media for either designated purposes or general questioning. When the latter is conducted in an informal, sit-down situation, the more appropriate term is media briefing.

Where the drunk driving issue is concerned, news conferences are often called to state positions on single issues: a legislative proposal on DUI penalties, an increase in drunk driving crashes over a specific period of time, lagging drunk driving court cases, or repeat offenders. A spokesperson, usually the president/chairperson of the anti-DUI group, issues the statement from a prepared text. Have other key group members present, including some who can supplement the primary spokesperson's opinion. The organization's publicist should be diligent to see that all media outlets are contacted and given the precise time and location of the conference.

The news briefing is a more discussion-oriented, multi-faceted communication. As opposed to a single-issue, response-

focused agenda, the media briefing is more of a "where we stand" and "how are we doing?" presentation, which encourages interaction with reporters. For maximum benefit, briefings should be conducted by anti-DUI groups in regularly scheduled six-month cycles. Utilize charts and graphs which indicate trends in the fight against drunk driving, along with results in legislative action at the national, state, and local levels.

Briefings can be effectively conducted before editorial boards of larger newspapers and groups of broadcast editors and reporters. The public service or promotion directors of all media agencies should be included. Anti-DUI group leaders should objectively ask media managers how effectively the issue's cause is being presented to the public and in what ways it can be better focused. Such feedback can be immeasurably valuable in evaluating future steps to take in communicating your message.

#### PUBLIC POSITION ANNOUNCEMENT

Although the news conference is the ideal format to present a stand on drunk driving-related issues, your group may need to make a point quickly and not have time to organize a conference. In this case electronic technology will relay your message most quickly.

As demonstrated in the Jeffrey Grammar case, the MADD chapter in Jackson, Tennessee, zeroed in on the criminal proceedings because of the repeated delays and what they feared would be inappropriate influences. In an attempt to expedite the judicial process, MADD leaders frequently made use of the fax to present their positions instantly on days when news conferences could not be organized. On at least four occasions, WBBJ-TV highlighted the MADD stances in first-segment stories when postponements and other developments negatively impacted the families of the victims in the Grammar case. The news department was able to make decisions more efficiently because MADD officers transmitted their positions by fax for same-day exposure on the evening newscasts.

If a fax machine is not available, reading a statement over the

telephone is the next best thing. The mail is the least desirable method. **Remember, journalists want immediacy, not history.** Sending your organization's opinion by mail often results in "too little, too late" when the issue needs to be addressed while it is current.

### VIDEO NEWS RELEASES

As one who is sensitive to the horrors of drunk driving, I learned to watch for information on satellite video transmissions of video news releases on the issue. Some are offered by MADD, some by medical organizations, some by independent producers. The video news release (VNR) is received differently in different television newsrooms. Only the most cash-starved of broadcast news departments will air a VNR unedited without adding its own reporters' or anchors' perspectives. However, an increasing number of stations liberally use VNRs to enhance their programming.

At least four times during my tenure at WBBJ-TV, I used VNRs on MADD testimony before Congress, and its report card on how the individual states are graded in the fight against DUI. In each instance, I revoiced the transmitted material and added information (and, when possible, an interview) from our local chapter which highlighted local perspective on the problem. Always, I would attempt to follow the VNR with a live interview with either a local MADD member or police DUI task-force member, or in Jackson, Tennessee with Ivy who could give viewers a lawyer's perspective.

If you are an activist in an anti-DUI group, chances are you receive information on satellite transmissions concerning drunk driving issues. Don't assume that the data automatically gets into the hands of your local news teams. Reinforce the VNR with a short mailing, fax, or pres release. That may be the catalyst to additional news coverage.

An even more dramatic possibility would be to cultivate a relationship with a local satellite dish dealer, or a college which employs satellite down linking. When you learn of national or regional anti-DUI VNRs, invite the broadcast and print media to a

common location (business or a classroom) to watch the feed. Make yourself available for responses and comments after the showing. You may gain exposure for your local issues far beyond what the national information would provide.

### LIVE BROADCAST INTERVIEWS

With so much time to fill and an insatiable information-demanding public, media entities, television stations in particular, are constantly looking for live interview subjects of substance. With DUI among the nation's major killers, the issue is of perpetual interest.

**The live interview is an ideal way to offer more information on the fight against drunk driving.** Ivy is one of the best because - as we mentioned in our section on interview seminars - he is a master at answering with brevity and clarity. Once members of your anti-DUI effort are trained in basic communication with the media, provide a list of five to ten of your best to every television and radio station in your city. Let them know these people are top-flight "experts" on the subject of drunk driving opposition efforts and would welcome live interviews on a DUI issue. If you learn that something nationally or regionally will break on the subject, tell your editors or producers and offer to come on live. They may not always be interested, but you will likely get a positive reaction. News producers and talk show hosts are constantly challenged to localize national stories. Your availability can be the key to communicating the message.

### DEALING WITH THE TROUBLESOME REPORTER

Despite their reputation for being biased and difficult, most media members are normal human beings, just like you. They have bills to pay, personal problems to deal with, and their own daily ups and downs. Their occupation is much more public than yours, and some have difficulty dealing with the "celebrity" facet of their life. However, the majority of journalists are basically good, curious, interesting, and pleasant people.

Nevertheless, the recalcitrant or renegade reporter does exist.

Such a journalist is one who appears to be always looking for the negative in any story, trying to engender frequent controversy, and appearing to seek debate - rather than information - at every scene. Part of this trait comes from the natural training of journalists as skeptics, to look for contradictions in an effort to seek the truth. However, spin doctors of news - the consultants - have abetted this tendency by encouraging personal reporter involvement in stories. In newspapers, as well as in television, such situations inject the reporter as a focus of stories as much as the issues themselves.

What do you do when faced with a confrontational journalist in a news conference? Several steps are helpful.

First, remain calm. Answer questions courteously and thoroughly, but do not counter-confront. You do not enhance your cause by entering into a shouting match.

Second, where applicable, answer a question with a question. Calmly placing the ball back in the reporter's court can often throw the journalist off-stride.

Third, if a reporter obviously gets out of hand, politely end the conference and tell the other media representatives you will attempt to assemble them at a later time. Chances are, if the confrontation is created by a single reporter, the rest of the media corps does not respect or share the attitude. You are better off calling a time out and regrouping at a time when emotions are eased.

Fourth, ask for a conference with the reporter's superior as soon as possible after the confrontation. Be polite, yet firm about your perspective of what happened. Do not be antagonistic or threatening. However, express your concern directly to the assignment editor, news director, or city editor. Ask if there is anything your group has done to strain relations with the media outlet and what can be done to improve them. Often, that technique will disarm a media manager who may be unaware of the degree of concern.

Fifth, as a precaution in all news conferences, have a member video tape the proceedings for your own records - and verification. Review the tape. If an editor questions your view



about a reporter's behavior, offer to show the copy of your tape - with you present, of course. A complete video tape of a news conference can tell a full story.

With anti-DUI groups, this situation will rarely occur. However, one should be aware that the deliberate antagonist does exist. Effective methods in dealing with the problem can be used.

### KEY COMMUNICATION TIPS

**Hopefully, you now understand why Ivy and I both believe "use the media" is anything but a dirty phrase. Using the media is not only a right, it is essential if we are to make a significant inroad against drunk driving.**

This chapter can serve as a short course in public relations, not only for an anti-DUI organization, but for any group attempting to promote a positive issue, or fight a negative one. Now that we have charted a proper course, some key points can serve as important reminders:

**\*\*BE PREPARED:** This is not just a Boy Scout motto, it is the lifeblood for any communications effort. Every step we have related is supportive of and complementary to every other, but none of it will be effective if you do not first prepare your membership in how to meet with and deal with the media. Those seminars will be among the most important events you hold, particularly for victims or camera-shy members.

**\*\*NEVER PIT MEDIA MEMBERS AGAINST EACH OTHER:** One of the worst mistakes a public interest group can make is to attempt to shame a media organization into attending your event. Many times a publicist has called an editor and suggested, "The television stations are going to be there," or told an assignment editor at channel six, "Channel three's coming." Never attempt to use the competitor as leverage. The tactic will tend to create resentment. Especially in smaller cities the decision not to attend

may be based on lack of resources, not lack of interest. If the station or paper cannot send a reporter or photographer, ask if someone from your anti-DUI concern could make themselves available at a later time for an interview.

**\*\*ALWAYS TREAT THE MEDIA WITH COURTESY:** Remember, they need you - but you need them far more. Without them, your message will go nowhere. You will deal with different personalities, some of whom are not as pleasant as others. However, kindness is still the great magnet. You will win far more friends and better coverage in the media with an amiable disposition.

**\*\*MAINTAIN REGULAR CONTACT:** That once-a-month phone call or in-person visit just to check in with your local media agencies will work wonders in ways you cannot measure at the moment. Don't call only when you want something. Make the media part of your mandatory schedule.

**\*\*BRACE FOR SOME NEGATIVE REACTION:** When it comes to the fight against drinking and driving, you will be stepping on the toes of ignorant citizens who feel you are attempting to deprive them of a constitutional right, rather than save their lives. When you take public stands before lawmaking bodies and appear before the media, you run the risk of receiving antagonistic phone calls from those who disagree. Some will accuse you of being a vigilante. Again, courtesy, calmness, personal experience, and accurate information are the best defenses to disarm the insensitive and uninformed and alert them to the plight of families affected by inebriated drivers. You have the cause of truth and, at times, pain on your side. Answering with the question, "How would you feel if

this was someone in your family injured or killed by a drunk driver?" is a pertinent and thought-provoking response.

**\*\*BE AVAILABLE:** This may be the most important advice. Availability is the key to build a bridge with any journalistic agency. If editors and reporters recognize that you will be dependable when they need you, you will be sought as a news source more than you can imagine. **If you or your members are frequently inaccessible, you will rarely be contacted.** That makes the cause of fighting drunk driving ultimately suffer.

Above all, the key to success in dealing with and appearing before the media is to be yourself. The cameras and journalists can spot phonies in an instant. Viewers and readers want to learn the stories of real people in their own words and personalities. Drunk driving and its aftermath, all too tragically, will always be a story of real people. The more these stories are told from a sincere, personal point of view, the more effective they are.

Becoming media-conscious is no simple task. Anti-DUI groups which are well organized and active can master the basics within their first year. They can learn how to use the media.

## CHAPTER 8

### **Why The Legal System Fails**

(Ivy)

Those who are veterans of the battle over drunk driving - and for that matter, veterans of other worthy causes - know what I mean when I speak of the failures of the legal system. There is no need to explain to them. Many Americans are naive about this system and only learn its realities when they are drawn into it - sometimes as the result of becoming victims of a drunk driver.

It is beyond the scope of this book to analyze all the reasons why our legal system so frequently fails society and the victims of drunk driving. There are numerous reasons and they are sometimes complex. To understand them often requires inquiry about human motives, which is speculative at best. In sum, sometimes you cannot prove - in the legal sense - what your mind and heart tells you is nonetheless evident.

I will venture some views here on why the legal system often fails based on experience. How some of these failures occur has already been suggested or illustrated by actual cases. What follows is an admittedly subjective analysis.

Politics is a dirty word in our society with considerable justification. When it rears its head in the justice system, nothing good or just will come of it. We use the term politics in this book primarily in the broad generic sense to include not only conventional partisan politics but also the power of individuals who may possess some form of influence or leverage with officials in our legal system and governments.

It is important to remember that our legal system is a huge complex bureaucracy run by officials who often gain or lose power through the same process of politics that drives other branches of our government. The legal system is, therefore, subject to many of the same ills and defects that are endemic to

other areas of government. In many jurisdictions, judges run for election and, even where judicial posts are filled by appointment, there still exists a political connection or influence since the elected executive branch is charged with filling those judicial positions. Commonly, appointments are based, at least in part, on party affiliation and political connections.

The naivete in our society about the legal system may originate in part from generations of books, movies and television programs which portray it as possessing an immunity to the defects which are more conspicuous in other branches of government. **It would be of immeasurable benefit to the cause of anti-drunk driving advocacy if advocacy groups would make it a priority to expose the realities and help to bring about a more realistic perception of our legal bureaucracy.**

The legal system is in need of massive reform in both its civil and criminal arms. It is unduly complex, painfully slow, extravagantly expensive, and economically burdensome on other areas of society. In many respects it is philosophically archaic. But this is a subject for another book entirely or, more probably, many books. **The primary problem is the failure of the American people to recognize the need for massive reform.** Reform is discussed in some quarters but still with a relatively narrow focus. There is no significant impetus for reform in society at large.

It should not be assumed that these defects and problems are confined to isolated jurisdictions. I represent clients across the state of Tennessee and from time to time in other states. Experience indicates these are pervasive problems. Furthermore, conversations with MADD and RID personnel in different sections of the country invariably include expressions of concern about the legal system that are usually similar, if not identical. And, of course, much has been written and said by many commentators and a few lawyers about the need for comprehensive reform.

The system's defects impinge negatively and powerfully upon the cause of ending drunk driving. But since there is an absence of any real impetus for sweeping reform, I have restricted

my counsel to advocacy groups, as well as in this book, primarily to dealing with this system as it exists.

For example, one of many possible illustrations of how politics affects justice is demonstrated by the fact that prosecutors are elected through the political process which results in these individuals sometimes being compromised by political considerations (e.g. who not to offend, who to please, etc.). I have often advised clients and advocacy groups to turn that political propensity around by using the close scrutiny of the media and carefully worded press releases and public statements to encourage prosecutors to more vigor in the anti-drunk driving effort.

Just before this book was to go to print, Tennessee's governor proposed new and stronger legislation to deal with drunk driving. The proposals grew out of the death of a lawyer in Nashville at the hands of a drunk driver. Though those of us in the advocacy movement were pleased with the Governor's actions we also remembered hundreds of others similarly slain in an ongoing carnage with no ripple on the governmental waters. The difference is often found in the prominence of the victim or the power and influence of his or her family. **I have made it my objective in this book and in the counsel I have given advocates and victims to show them how to make legal and governmental officials pay attention to any innocent victim's suffering.**

We, of course, can never escape human weaknesses of a very personal nature in these considerations either. I refer to one of these as the "brothers in the bottle syndrome" - the tendency of some officials to be influenced in their actions by their own abuse of alcohol. Some manage to conceal their problems with alcohol while maintaining positions of considerable responsibility in the legal system.

We have seen judges whose own weaknesses in this regard have quite clearly impaired their willingness to enforce the DUI laws even when repeat offenders were before their courts. In one case, we knew of a prosecutor, who himself had been convicted of DUI. He busied himself improperly disposing of DUI cases as

public drunkenness or reckless driving cases. Law enforcement officers may charge drunk drivers with less than all the possible charges which the evidence supports and may even fail to give field sobriety tests despite conspicuous indicators of intoxication.

A person's weakness for alcohol does not impart tough minded objectivity. **This weakness instills in these judges, D.A.'s or officers a tendency to identify with DUI defendants to the detriment of their victims and society as a whole.**

One should not assume that this is an isolated or rare phenomenon. Rather, it should be remembered how pervasive alcohol abuse is in our society. From that the objective observer can extrapolate for himself what the probabilities are that alcohol is a problem in the legal system. Personal experience has convinced me that this is a significant reason why the battle against drunk driving has not been more successful. It is comparable to a judge who is himself a sympathizer with the Ku Klux Klan or other white supremacist group being asked to rule against racism and for African-Americans in a civil rights case. Even though the law and the evidence may be starkly clear, he will seek opportunities and construct rationalizations to avoid the obvious conclusions and judgments.

There is another reality which usually escapes the public's notice. A noted law professor once made the point that he believed the majority of our society's problems were not caused by intentionally bad conduct but more often by incompetence. Certainly incompetence and neglect of duty are another problem in the legal system. Even those who are capable of performing their duties as officials in the legal system may not fully discharge those responsibilities with conscientiousness. An unselfish willingness to expend one's time, to work hard for others, and to display initiative are not the norm in the human race. They are relatively rare qualities sought out by wise employers. We, the citizens of this country, should be demanding these qualities in our public officials. But in reality demand for these qualities in government is far less prevalent than in the private sector.

Lawyers, especially prosecutors and judges, should be among the most stringently screened and scrutinized of all the professionals in our society not only as to their training and competence, but with regard to their character and moral integrity. Emphasis prior to acceptance to law school should be placed primarily and intensively on character and only secondarily on intellect and academic achievement. The FBI has long been known for intensive background checks and screening before hiring new agents. Those agents are then held to high standards throughout their careers. **Should we expect anything less from judges and prosecutors who make life-changing and society-altering decisions?**

These officials should be held strictly accountable since they have such great power to hold others accountable and to make momentous decisions about other people's lives. **The failure to hold these members of our government fully accountable is the single greatest factor behind the failures of our legal system generally but especially as it relates to the problem of drunk driving.**

Though we treat drunk driving and its consequences as a distinguishable issue from others which face our society and our legal system, this compartmentalization is, in reality, artificial. The greater and more fundamental issue is the failure and decrepitude of our legal system generally. Ultimately, not only drunk driving, but a multitude of other social ills would be substantially improved, if not alleviated, by massive legal reform. Until this occurs we will be forever limited in our remedies, in our treatment of society's ills, and in the achievement of justice.



## CHAPTER 9

### Producing Accountability

(Ivy)

One of the oldest and most fundamental precepts of good government is accountability. Accountability is written into our Constitution and laws in many forms. It is fundamental to the effective management of any human endeavor.

It is necessary at this point to repeat the observation that the failure to fully implement and enforce laws is the most common cause, in my experience, of the legal system's failure to provide justice and effectively address drunk driving.

The single most important factor in preventing these failures is a lack of accountability. Lack of accountability of officials in the legal system is most often the culprit in states or municipalities which have poor prosecution and conviction records for DUI and related offenses.

It becomes obvious then that a major thrust of any advocacy organizations' fight against drunk driving should be focused on accountability in the legal system. An advocacy group might respond to that statement by asserting that accountability for drunk driving is what they have been pursuing all along. *But they are usually thinking of drunk drivers themselves when they make this statement; they are not thinking of the officials in the legal system.*

The primary focus should be on the officials in the system - holding DUI offenders themselves accountable will naturally flow from that. **The goal of holding drunk drivers accountable can never be achieved without first ensuring accountability of all of those individuals society has charged with dealing with this problem: law enforcement officers, prosecutors, judges, and parole review boards (And I might add, politicians, but that will be addressed in a later chapter).** Unless these officials are held accountable with some immediacy and with significant penalties, the ultimate objective of holding drunk

drivers themselves accountable is a vain pursuit destined to be perpetually frustrated by incompetence, prejudice, bias, corruption, and dereliction of duty.

Accountability for these officials can be achieved through two means: first, by means of procedures established to provide accountability within their profession or the institution and, second, through public scrutiny, primarily through the attention of the media. I believe that utilizing both means simultaneously can be quite effective, but experience has led us to be skeptical of pursuing the institutional procedures alone.

In most states, provisions are made through either court rules or some other statutory enactments for a board of professional responsibility, or similarly named entity, before which lawyers may be brought on various complaints based on ethical violations. A similar structure is usually set up to deal with complaints against judges. In Tennessee, for example, judges must answer to an entity known as the Court of the Judiciary.

The procedures of these entities are sometimes arcane, obscure, cumbersome, and time consuming. Indeed, they may seem designed and intended to frustrate rather than promote accountability.

These boards, panels, or "courts" are typically fundamentally flawed by the practice of filling them with members of the legal profession or the judiciary. When a board or panel is made up of a professional group's peers they are less likely to be predisposed to censure or penalize their colleagues. Though officials on these disciplinary boards or "courts", as well as some lawyers and judges themselves, will often disavow any compromise of the integrity of the system, the appearance of what once was referred to as "one pack of coyotes watching another" does not enhance the credibility of these systems.

For these reasons alone, they should be reformed. The reforms should not only simplify and clarify procedures and make the systems more accessible to laymen, but permit other citizens unconnected to the professions to participate in the scrutiny and judgments. **The law is not so lofty or so complex as to defy the reason and insights of those who are not its practitioners.**

**This is doubly true when the concern being addressed relates to ethics and accountability.**

Until reform of these institutions occurs, public scrutiny is the best recourse to achieve some measure of accountability for several reasons. First, it is nearly always the most readily available remedy. Public scrutiny can usually be brought about promptly and requires simply the communication of facts, and occasionally opinion, to receptive media.

Second, **public scrutiny is often more potent than any other form of accountability.** This is especially true where the official holds office by virtue of election. But even in the absence of a political vulnerability, few people are not affected strongly by the reproach and stigma which results from the exposure of their incompetence or failure to do their duty in an office of public trust.

Third, and **perhaps most significantly, public scrutiny has the added benefit of educating the public.** This may take two or three forms or more including: ridding the public of naive notions about the reliability and effectiveness of the legal system; alerting people to the very real dangers on our highways; and motivating them to action.

Finally, there is a fundamental moral principle at stake: the people have a right to know. **No nation is well served when it is governed even in part in obscurity or secrecy.**

The publicity generated in the Dwayne Younger case, as recounted in previous chapters, produced all of these results. The judge in that case, who had previously excused his leniency to drunk drivers as a "policy of giving everyone a second chance," had to answer to the public because the media exposed how he was handling DUI cases in his court. Eventually he took the unusual step of writing the local newspaper and disavowing his "policy" and stating that he was "misinformed" in his previous practice. The district attorney under whose tenure the public scrutiny took place was subsequently defeated in an election. And, a MADD chapter was formed with 90 new members who openly expressed their outrage at the way their legal system handled DUI cases. The DUI offender himself, Barton Fowler,

was finally taken before a grand jury and indicted nearly two years after the crime had occurred.

**We are certain that none of these results would have occurred without the intensive and sustained public scrutiny brought about through the media by means of a carefully orchestrated campaign to expose what was occurring with DUI cases in that county.** We are equally certain that if institutionalized procedures for accountability had been relied upon solely, these results would not have been so satisfactory.

Practical questions about when and how to communicate with the media are answered by Steve in the chapter "It's No Sin to Use the Media." Therefore, I will only mention two points which bear emphasizing, one has to do with fear, the other with credibility.

**The advocacy group or the victim should not fear using the media to communicate to the public. There is no other realistic or practical method for doing so.** Furthermore, the anxieties and reluctance of many to use this tremendous asset are rarely well founded. **Always remember the moral point alluded to earlier: the people have a right to know.**

When you use this strategy there may be complaints, some of which will originate from unexpected quarters. Public officials suffering an intense dose of sunshine often have an allergic reaction. Symptoms include very public moaning and groaning, and sometimes private threatening. It is reminiscent of the Biblical observation: "Men love darkness rather than light because their deeds are evil." **Conscientious and effective officials welcome scrutiny, for it only enhances their standing in the eyes of the public.**

Drunk drivers and their families and friends will also often complain loudly when media attention is focused on their case. Their defense is usually to portray themselves as "victims" either of "persecution" by the media or by an advocacy group, or of having been found "guilty" prior to trial. It is common also for a drunk driver to take this "I'm a victim" stratagem to the point of

asserting he is a victim of alcohol itself. Ironically, this latter defense has some validity, but despite that tragic truth, **an advocacy group must never allow themselves or the media to be distracted from the ultimate issues of accountability and individual responsibility.**

The power and success of a campaign for public scrutiny can be measured in part by the loudness and aggressiveness of the statements and tactics used to counterattack. In the Ferrell/Grammer case, there was some complaining publicly by sympathizers of Grammer's. Their defense was to portray the drunk driver, Grammer, as the victim. Interestingly though, the tactic failed. As described in the chapter "A Never Ending Battle", people-on-the-street interviews conducted by WBBJ-TV after weeks of media coverage, resulted in only two individuals willing to defend Grammer. **This experience illustrates another important point - just one, or a handful, of individuals can generate a lot of clamor and misleading perceptions which do not in any way reflect the true attitude of the public. A victim or advocacy group should stand resolutely by the truth - it is the best assurance of ultimate vindication.**

Counterattacks can become vicious. In the Grammer/Ferrell case, while Steve dealt with anonymous callers, the victim's family and I were faced with a new and particularly ugly maneuver - blackmail. Anonymous individuals contacted members of the Ferrell family and threatened to expose alleged misconduct in one Ferrell family member's past. Significantly, the allegations had no relevancy to the deceased victim, Frank Ferrell, and no relationship to the case. But the threat was clear - call off MADD, remove the death vehicle from public display, and stop the publicity, or the allegations would be made public. I conferred with my clients and was very gratified when they as a family, and the affected member in particular, decided to stand firm.

Subsequently I received an anonymous call with the same threat against the family member. I told the caller that if she believed the cause of justice and truth would be served by airing these allegations, she should take them to the media; then I

offered the names and phone numbers of local media news editors. The conversation ended abruptly with that and *the threats never recurred. Nor, I might add, were the threats ever carried out.*

In a battle to bring about accountability, the ammunition is provable facts. The advocate or victim must show presence of mind to effectively use them. **Never panic, just aim carefully** is an appropriate motto.

This brings us to the second critical principle in using the media to produce accountability: credibility. **Without credibility no individual or advocacy group can long sustain an effective offensive through the media. Credibility is the single greatest asset any group has and should be protected and cultivated with great care.**

My primary theme in training sessions I have conducted for MADD and other advocacy groups has consistently been to **be sure of one's facts in dealing with the media and never embellish, exaggerate, or stray from them no matter how great the temptation or how strong one's feelings about the subject.**

This is important not only for your credibility but for an overlooked reason. Not only is the public now cynical and suspicious of what they hear on so many issues, but they are jaded and weary of hyperbole and oversell. **The advocate can distinguish himself or herself in the public eye not only by being scrupulously truthful, but by establishing a sharp contrast between themselves and other causes in our society's frequently excessive and overwrought communication of ideas.** Abraham Lincoln had the quality of understatement and I believe that is one reason he came to be known as "Honest Abe".

## CHAPTER 10

# To The Victim: What You Should And Should Not Do & How To Select An Attorney

(Ivy)

In the aftermath of a drunk driving crash, victims and their families are often lost in a haze of grief, worry, fear and uncertainty. Though they may be called on to make many decisions, some of them urgent and grave, they typically have no experience and little guidance in what to do. The result - bad choices are sometimes made or important decisions put off for too long. In many cases, the consequences of those choices or omissions are irrevocable; though something positive could have been accomplished, it is too late.

In an effort to address that problem, I was asked some years ago to prepare a checklist of steps for a victim or his family to follow. The steps which were included are set out below. In the latter half of the chapter the decision of selecting an attorney for the victim is discussed in depth.

### What To Do

**1. Contact a MADD or RID** chapter and obtain their immediate advice and assistance. A volunteer or victim=s assistant will provide counseling, information, and advice. Most volunteers are also victims. Volunteers are usually available to spend time with victims= families and assist them in addressing the problems they confront.

**2. Contact an experienced attorney** to obtain legal advice regarding your claim for civil damages and to ensure that the prosecution of the drunk or drugged driver is handled properly. It is critical that you not take any steps of a legal or financial nature until you have talked with an attorney. (See the remainder of this chapter)

**3. Consider speaking out**, with the help of MADD or RID, against drunk driving. Be willing to use your experience to help

others and to heighten public awareness.

### **What Not To Do**

**1. Do not discuss the accident** or any aspect of the case with an insurance adjuster until you have legal advice. An insurance adjuster may approach you or your family soon after the crash intent upon limiting the size of the claim the insurance company must pay. Refer an adjuster to your attorney.

**2. Do not make any statement** except to legitimate law enforcement investigators who are actually investigating the crash.

**3. Do not assume** that the criminal prosecution of the drunk or drugged driver will be handled promptly or to your satisfaction. Furthermore, it is often difficult for victims or their families to even obtain complete information from the prosecuting attorney=s office about the case. The prosecuting attorney works for the state and does not represent individual victims. It is best to have your attorney deal with the prosecuting attorney=s office.

**4. Do not sign any document** or make any agreement either verbally or in writing to settle your or your family=s claim for any property or personal injury damages without first consulting an attorney.

**5. Do not discuss any aspect** of your case with a defense attorney hired by an insurance company or by the driver.

**6. Do not delay** in obtaining professional help from MADD or RID and an appropriate attorney. Almost immediately you and your family will be faced with making important decisions. A wrong choice can have serious and irrevocable consequences.

### **Other Considerations**

**1. Act quickly** to ensure that the evidence does not grow cold. A crash should be investigated by your attorney **promptly** and statements taken from all witnesses and other relevant evidence obtained before witnesses become forgetful or evidence is no longer available. Do not rely solely on law enforcement investigations.

**2. You may wish to speak out** before the media to ensure that



other individuals or families do not become victims as you have. This is best done again in consultation with your attorney and a representative of MADD or RID.

**3. You or your family** may be entitled to compensation from a victim compensation fund provided under your state law.

**4. You or your family may be** entitled to payment of money damages not only from the drunk or drugged driver or his insurance company, but from his employer, your own insurance company, and, in some cases, drinking establishments where the driver was served alcohol. Money damages may also include punitive damages which are designed to punish the drunk driver. Spouses may recover damages for what is known as loss of consortium with injured or deceased husbands or wives.

**5. Those individuals or families** who face this ordeal do well not only to seek out professional help and volunteer help in the form of an attorney and MADD but also to seek spiritual support. Those who experience this tragedy often state that spiritual faith was the most important factor in their physical and emotional recovery.

### **Remember**

In relation to the death or serious injury of someone you love, the law offers little that could truly compensate you or your family. It is important to recognize though that these legal rights have been made available to you through our legal system and they are just that - **your rights**. Furthermore, by exercising those rights and by speaking out through MADD or RID you may play a significant role in protecting someone else from becoming the victim of a drunk or drugged driver!

### **Selecting An Attorney**

It is an understatement to say that attorneys don't enjoy the highest credibility in our society. For that reason alone, when a victim searches for a plaintiff's personal injury attorney to represent him, he should select someone who has greater credibility than the norm for the profession. **This credibility is not simply the kind that attaches as the result of professional**

**competence but is a more fundamental and personal integrity as an individual.** The best advocates possible are needed for this cause, and credibility is the greatest asset for any form of advocacy.

Many advocacy group leaders advise victims to avoid attorneys who also represent DUI defendants either as criminal defense attorneys or for insurance companies defending lawsuits filed by DUI drivers' victims. I agree with that completely. Though this is a common practice and is not prohibited by the ethical rules of the legal profession, it often smacks to the public of "playing both sides of the fence" for a fee. Jurors have been heard to comment with contempt about lawyers who argue for DUI drivers' victims in one case while on behalf of DUI defendants in another. **The issue of drunk driving in our society is too critical and tragic for such practices to be allowed to handicap the important work of advocacy.**

The significance of this consideration has been illustrated by many incidents. The way this destroys credibility and fosters cynicism and suspicion was flagrantly demonstrated by one case involving vehicular homicide by a drunk driver. The family of the deceased consulted with me after their civil claim in a distant jurisdiction had already been settled, but before the criminal prosecution of the drunk driver had been completed. They were in anguish that despite their loved one's death and months had passed, the drunk driver was still free.

Their misery and frustration had just been compounded. Their lawyer told them at their first meeting of his revulsion to drunk driving and how offended he was at how the system frequently failed to punish this crime. Impressed with the apparent sincerity and fervency of his statements, they retained him. Within a few weeks he settled their wrongful death claim for the drunk driver's insurance policy limits (\$25,000) without investigating the crash, the driver, or the source of his alcohol. The family had signed a release when they accepted the money, and now neither I nor any other lawyer could change these irrevocable acts.

But worst of all to this family, the lawyer would not return

their calls after promising to help them make certain there was a prompt and vigorous prosecution of the drunk driver and by bringing their case to the attention of the media. Neither of these commitments were kept.

It took me just a few minutes on the phone to learn that this lawyer had a reputation as a criminal defense attorney who frequently represented drunk drivers. He was, I was told, known in his area as a reckless manipulator of the truth. The information provided by these sources was consistent with the pattern of behavior described by the family. It was now clear why he did not want to deal with either the district attorney or the media. He probably would have had no credibility with either. Besides, apparently his real goal was “to get the money and run.” And that he had done.

A good choice as a victim's attorney, will be able, willing and credible in filling three roles: civil lawyer in pursuit of the victim's claim, consultant and intermediary for the victim with the D.A. regarding the prosecution of the drunk driver, and intermediary and consultant in dealing with the media. **The most difficult of these roles to fill is the last; few attorneys have an in-depth understanding of, or skill in, dealing with the media.** Why an ability to fill all three roles effectively is important is a matter of common sense. Some prosecutors, though steeped in the practices of the legal system, resent it when their usual adversaries in criminal court DUI cases urge more diligent or aggressive prosecution of a DUI driver. Likewise, reporters who cover the courts may be influenced in their perceptions of attorneys who make no distinctions between representing DUI drivers and their victims. **And with the media especially, the victim - who wants his or her suffering to serve some useful purpose in changing society's response to drinking and driving - needs an advocate whose sincere concern and credibility are not tainted or in question.** It is human nature to be influenced by such considerations. People want to see heartfelt sincerity, true commitment and real credibility.

Though it would seem to be a statement of the obvious, attorneys who themselves drink and drive should be avoided.

The shortcomings of the ethical systems of the legal profession are demonstrated by the fact that cases come to the attention of advocacy groups in which DUI offenders were also attorneys who represented the victims of DUI's. In one case we are aware of, one such attorney was a DUI driver in a crash that resulted in the death of a passenger in another car.

The destructiveness to the credibility of the legal profession and the legal system generally should not be underestimated. Even if the drunk driver was not an attorney but was associated in some way with the legal profession the effect can be damaging. I once represented a 13 year old girl who was the victim of a drunk driver. The drunk driver had been driving his vehicle at night, in the wrong direction and on the wrong side of a four lane divided highway for several miles before he collided with the car in which my client was a passenger. The front seat passenger in this vehicle was killed immediately. My client suffered a broken skull, brain injuries and massive scarring to her face.

According to our investigator's report, when a Tennessee State Trooper arrived on the scene, the drunk driver was sitting in his wrecked vehicle drinking yet another beer! The understandably angered officer slapped the beer from the drunk driver's hand, whereupon the driver responded "That's alright, I have more where that came from." And, indeed he had a case of beer behind his seat. This young man turned out to be a third year law student at Memphis State Law School where I graduated in 1976! This fact became one of the most frequently reported in the case.

This problem, of course, is not limited to civil attorneys. Sometimes an assistant district attorney whose job is to prosecute DUI defendants, is himself arrested for DUI and convicted. This offense should result in dismissal for a prosecutor, but it does not always.

Many of these concerns have been effectively addressed in a questionnaire produced by MADD to help victims in finding a suitable lawyer. A copy has been appended at the end of this book.

Though much of what is said in this chapter may raise the

hackles of many lawyers and judges, I would cite common sense and some basic understandings of credibility and integrity in support of these views. Furthermore, **the emphasis should be on helping the innocent victims of drunk drivers and working toward the elimination of this threat on the highways, not accommodating the interests of any professional group.**

## CHAPTER 11

### **Get The Facts - Quickly**

(Ivy)

Since the ammunition for the advocate is facts, then the process of acquiring those facts is of critical importance. What the advocacy group, victim, or their attorney needs to know about a drunk driving crash can seem complex to the point of being confusing. With some experience however, and the use of checklists as guidelines, this process becomes much simpler and clearer. I have appended at the back of this book one checklist for your convenience.

In DUI cases, there are two primary methods for accumulating facts. The first is through law enforcement investigations. If an advocacy group operates in a community blessed by conscientious and highly motivated law enforcement, this source can be of immeasurable benefit. If the advocacy group has a reputation for acting responsibly and cooperatively, most law enforcement agencies want to assist them. They recognize that there is mutuality in their respective efforts to fight drunk driving. This relationship will be discussed further in the chapter entitled "Alliance with Law Enforcement."

Law enforcement agencies will be reluctant to cooperate with advocates in two situations. Obviously, there will be coolness, if not outright hostility, if the law enforcement community is itself under suspicion for its handling of drunk driving cases. In those instances, the advocate must rely more on other sources for facts.

Likewise, if the law enforcement community must work with either a prosecutor and/or courts whom they do not trust or who are suspected of either incompetence, dereliction of duty, or corruption in the disposition of DUI cases, then law enforcement officers may be wary of cooperating, at least openly, with an advocacy group.

The latter is a more common phenomenon than many might

suspect. It is often characterized by a high level of frustration and low morale among the law enforcement community. Usually they will be unwilling to cooperate except, perhaps, covertly. These conditions existed to some extent in the Younger case described earlier. When MADD volunteers moved to expose and change what was happening with drunk driving cases in that jurisdiction, it was discovered that local law enforcement officers would not talk openly even about the most flagrant abuses, but they would express intense frustration and resentment in private. We recognized, as any advocate must, that this state of affairs has to be dealt with as it exists. It cannot be changed overnight.

Though certainly it is preferable if law enforcement officials individually or, better yet, collectively will come forward and state publicly what they know of abuses, this only rarely happens. Many fear they will lose their jobs or, at a minimum, they will suffer unpleasant professional and personal consequences. In most such situations, the power of a feared judge or other government official to harass or harm the officer is more imagined than real. **Paradoxically, the officer's best protection is usually to come forward and publicly speak out, preferably with the support of an advocacy group. By so doing, he makes retaliatory moves against him more unlikely.** But the advocate must always be prepared to deal with these fears. In some instances where serious corruption exists, an honest officer may have much more to fear.

Relationships can be established with individual law enforcement officers even in this unholy environment, but caution should be a watchword. In any jurisdiction where there is evidence of corruption in the courts or prosecutor's office, there may be some complicity by law enforcement. Advocacy groups may come to trust, to their detriment, the wrong people in law enforcement. Caution should not only be a byword for the advocacy group, but even more so for an attorney representing a DUI victim or his family.

In situations like this, the particular county or city may have a longstanding reputation for corruption. Usually where this exists, the local government is dominated by one political party

and, typically, one political clique. It frequently takes external forces to bring any semblance of accountability.

In the county where the Younger case occurred, it took the efforts of federal authorities to come to grips with corruption and abuse of power in office. After a lengthy investigation a sheriff was sent to prison, and later, a judge, though not the judge responsible for the handling of the DUI charges growing out of Dwayne Younger=s death. There appeared to be little will on the part of many of the people themselves to stand up against these forces. Complacency was the state of affairs and fear was the undercurrent. Though, in time, some members of the community would show great courage.

An important ray of light in this environment was a conscientious, public-spirited newspaper, *The Dyersburg Gazette*. One reporter in particular, Darrin Devault, had impressed me as someone who would care about drunk driving. The editor had a similar reputation. This would be the medium to convey into the hearts and minds of the local people the reality of what was occurring in their county.

The first task was to accumulate provable facts. In the absence of law enforcement officers who would come forward and help openly, this burden would be solely ours. My sources told me that the failure to hold the drunk driver Barton Fowler legally accountable for Dwayne=s death was not an isolated case, but consistent with a pattern in the General Sessions Court. If this was true, then hopefully, a search of the court records would reveal other cases of DUI charges before that court that went awry.

I explained these circumstances to our local MADD chapter in Madison County, which was about an hour=s drive from Dyersburg, and enlisted their aid in dispatching an investigator to check the court records. The findings were even worse than we had been told. Over approximately an 18-month period (the investigator was so overwhelmed by his findings that he did not take the time to research further), over three quarters of all DUI cases did not result in convictions. A large number were disposed of as reckless driving or public drunkenness convictions or just



dismissed. These dispositions not only allowed a drunk driver to avoid jail time and loss of his license but, perhaps just as seriously, they kept the offender's name out of the state's crime computer as a convicted drunk driver. The net effect was to undermine the will of the people as expressed through legislation that provided penalties to keep drunk drivers off the road.

When confronted by reporters of *The Dyersburg Gazette* and WBBJ-TV, the judge was quoted as saying that it was his "policy" to "give everyone a second chance." He failed to note that his "policy" meant that repeat offenders could not be charged with second offense DUI with its stiffer penalties because there was no conviction for the first offense.

I predicted, when interviewed by the media, that the drunk driver Barton Fowler, having now been given a "second chance" would see this as a "second opportunity" to commit the offense again. A short time later, Fowler was arrested in a nearby county for DUI. As expected, he could be charged only with first offense DUI. We were told he was arrested again for DUI two more times in ensuing months bringing the number of arrests for drunk driving to four. Ultimately, the media publicity surrounding the Younger case was to be the catalyst for the positive changes in Dyer County we have already described.

As illustrated by this case, it is always best when taking a case to the public through the media, to provide facts in two forms. The first is objective hard facts such as our documentation of the court records.

The second form is facts presented with a human face. **The public must be made to see (and feel) the heartrending tragedy, the despair, and the gross injustice which often characterizes drunk driving and its aftermath.** In that vein, we made certain the media was privy to the accounts of Dwayne Younger's death from those who were there, to his widow's and children's grief, and the gross injustice of his killer never being charged with vehicular homicide, or even convicted of DUI.

I especially emphasize this because, to my great disappointment, I have repeatedly seen DUI-caused deaths never

even reported in the media (this was the case initially with Frank Ferrell=s death ) and when reported, **treated with such dry detachment and spare facts as to rob the victim's death of the gravity which any human being's death under such circumstances should carry. If, as John Donne said, "Any man's death diminishes me," then how much more does the purposeless death of an innocent person by virtue of mindless and unfeeling behavior too readily tolerated by our society diminish us as individuals and a society?**

Although the lawyer representing the victim must be careful not to violate professional rules, he or she should play, in our judgment, a central role in dealing with the media. It should be an integral part of the lawyer=s representation to develop strategies for dealing with the media. It is imperative to convey to an often oblivious and frequently indifferent public the extent of the tragedy in their midst. **Without touching peoples' hearts and offending their consciences this problem will never be cured. There is no better way to accomplish this than to place before them in graphic and poignant terms the true stories of real people.**

Victims should be encouraged to talk to the media if they are emotionally able and willing. Dena Younger was willing despite the fact that within a year she had lost both her husband and her father, a law enforcement officer who was killed in the line of duty. She consented to interviews with the media including a visit with the TV news crew to her husband's grave as Steve relates in the chapter entitled "A Never Ending Battle." We also provided photographs of Dwayne with his children to the print media.

A study of television news coverage by Karyn Fritz Brown in the fall 1993 *MADDVOCATE* indicated that many victims objected to TV coverage of the story of their loved one's death or of their family members. Neither Steve nor I ever had this experience. Invariably, clients I have worked with wanted the world to know of their tragedy and what drunk driving did to innocent people. **I believe the difference in the reactions of victims can be traced to two factors: how well they had been**

**prepared for dealing with the media beforehand, and whether they had skilled help in coping with the media, including someone to serve as an intermediary with the media.** Victims who do not have this insulation or this advice for coping with media exposure are likely to feel vulnerable and exploited.

Tennessee MADD chapters have focused considerable attention on training volunteers to deal with the media. Indeed, I have probably spent as much time conducting seminars on that topic as I have on legal issues relating to drunk driving. I believe this has been a wise priority decision by Tennessee advocates. **The power to effect change is greater through the media than through the legal system.** And if advocates are so skilled at dealing with the media that they can encourage and protect victims in doing so also, the power to influence the public's thinking is multiplied many times over.

**When representing drunk driving victims, an attorney should: (1) brief his clients thoroughly on what to expect of the media; (2) control the media's access to his clients; (3) carefully plan everything that is done and said to the media about the case; and (4) serve as an occasional intermediary between his clients and the media, or have someone else, such as a skilled MADD or RID volunteer, do so. Nothing should be left to chance or circumstance.** Of course, all this presupposes that the attorney himself is very knowledgeable and skilled in dealing with the media.

In any drunk driving case, the focus should be kept on the victims and their families wherever possible. It is preferable that the attorney representing the victims keep a low profile except in those instances where his direct involvement is needed. Generally, I avoid frequent direct contact with the media when representing a victim. I stay in the role of media consultant and behind-the-scenes director. It is my task to make certain the focus is on the tragedy of the victims - who represent all such victims - and on the work of the advocacy group, such as MADD or RID. **The public is most likely to be influenced by the faces and statements of the victims, followed by the statements of advocates.**

In the Younger case, an unexpected phone call proved to be highly beneficial to our efforts with the media. Some weeks after I began my representation of the Younger family, I received a call from a young woman who identified herself as Kelly Seaton, a student at Memphis State University. Kelly, as a passing motorist, had seen Fowler's truck strike Dwayne Younger. The 19 year old Kelly not only stopped, but performed CPR at the roadside in a vain effort to keep Dwayne alive. At the request of ambulance personnel, she continued CPR in the ambulance on the way to the hospital.

She explained to me that she had given her statement to law enforcement officers at the hospital and assumed that the arrest and the prosecution of Barton Fowler would be handled swiftly (as we have noted, a common and misbegotten assumption in our society). She had just learned, as a result of the publicity we had generated, that not only had Fowler not been charged with vehicular homicide but that he had only been convicted of reckless driving.

This young woman was outraged! Of greater importance, **she had the courage to act**, and she readily agreed to interviews with the media. Kelly, by virtue of her status as a third party and not a victim, had another quality - she could not be treated or perceived as an emotionally overwrought family member of the deceased. In short, she had great credibility.

When her revelations became public through the media, it became impossible for anyone in Dyer County official circles to defend the handling of the Younger case without destroying their own credibility.

Kelly took her concerns even further by confronting the district attorney and other officials on her own initiative and demanding that Fowler be prosecuted for vehicular homicide. The same courage and willingness to get involved that led her to stop that stormy night and aid a dying Dwayne Younger was displayed again and again as she challenged officials with a moral courage that should be the envy of anyone. It is worthwhile to contrast the actions of this 19-year-old college student with that of many others. As Andrew Jackson observed, "One person with

courage makes a majority."

One of the perverse ironies of DUI prosecutions, in spite of the frequent failures of our legal system, is that it is, by comparison, one crime for which there is considerable technology available to fight it. This includes related offenses such as vehicular homicide. The technology available is very effective in establishing in objective, scientific terms the level of a drunk driver's blood alcohol. Every state has presumptions written into its laws establishing levels of presumed intoxication, though, unfortunately an officer's or prosecutor's job may be made immeasurably more difficult by many laws that require proof of "impairment" no matter what the objective, scientific evidence shows about blood alcohol.

In DUI cases, the suspect is usually caught at the scene of the crime, typically in or near his vehicle, with apparent evidence of intoxication. In the event of a crash, he may be injured, incapacitated and unable to flee. Obtaining the blood alcohol or drug screen reports should be a high priority for the advocate or the victim's attorney for this objective scientific evidence will carry a lot of weight before a jury. Furthermore, any reports or witnesses' statements should be scrutinized carefully for evidence of physical or psychological symptoms displayed by the defendant that suggest a loss of control of his faculties from the use of alcohol or drugs.

A victim's attorney or an advocacy group should pay close attention to the detailed facts and circumstances in the criminal investigative reports. Trial lawyers learn early that it is often a seemingly trivial or obscure fact that may significantly influence a jury.

Many law enforcement agencies are wisely using video cameras in their pursuit of drunk drivers. Video confirms in graphic and irrefutable images the evidence of guilt. A drunk driver who can be seen on video tape staggering, slurring his words, or even urinating on himself is securing his own conviction and likely the success of any civil lawsuit against him.

A secondary method of accumulating facts in a DUI case is through private (non law enforcement) investigations. Neither an advocacy group nor a private attorney should rely solely on criminal investigations conducted by law enforcement. This is particularly true where a civil lawsuit may be filed. It is standard practice in our office to place the highest priority on our own investigations. We may have two investigators working independently and, in some instances, multiple investigators working in different geographic locations, but all on the same case. In one case involving a 13-year-old girl who was seriously injured by a drunk driver, we arranged for out-of-state investigations of the defendant's driving record and personal history, while another investigator accumulated evidence and statements regarding the crash itself. Simultaneously, investigators in another city searched for the defendant's financial assets. Thoroughness in investigation is an invaluable asset, not only to a victim's attorney but to advocacy groups as well and often the prosecution.

Even if the law enforcement investigation is top notch, the victim's civil attorney should conduct or arrange for independent investigations. Law enforcement investigations do not address all of the important questions pertinent to a civil lawsuit. For example, it is imperative that the victim's attorney know where the drunk driver got his alcohol. If he can prove that a bar, liquor store or nightclub was negligent in serving the drunk driver, the establishment may be liable to the victim. This is known as a dram-shop action.

In the Ferrell case, our investigator discovered early on what law enforcement did not know - where Jeffrey Grammar had been minutes before the crash that killed Frank Ferrell and disabled Frank Maness. Posing as a patron, our investigator visited a local bar and elicited statements from employees confirming Grammar's presence just prior to the fatal crash. Unfortunately, the evidence gained was still insufficient for a dram shop lawsuit, but that was due to the inordinately high evidentiary standards of Tennessee's dram shop law. It was not the result of any failure in the investigation. Advocacy groups also need this information

since an important part of their work is exposing establishments that irresponsibly serve or sell alcohol to drivers. **There are few things which encourage drinking establishments to act responsibly like expensive civil judgments.**

The victim's civil attorney also needs to know the defendant's financial status, including the location and value of any assets or property he owns. This information will not be gathered in law enforcement investigations. This is an especially important aspect of a civil lawsuit against a drunk driver because minimum statutory insurance limits are woefully inadequate in most states and seldom cover the losses of victims who have suffered death or serious injury. If the drunk driver has no insurance and the victim has little or no uninsured, or underinsured, motorist coverage, this becomes an even more important factor.

Above all, **investigations should be undertaken as soon as possible after a crash.** The longer the delay, the more likely that evidence will be lost or distorted. Witnesses move, die, become forgetful or, perhaps more commonly, lose their willingness to "get involved".

Extensive use of photography is a corollary to the old maxim that a "picture is worth a thousand words". Photos should be taken at the scene of the crash, of the victims, of the vehicles, of the alcohol containers and other objects, persons, and scenes that are relevant to the investigation. Though some consider it an insensitive intrusion, photos should be taken of the victims in their hospital beds, of their injuries and of any deceased victims, even in caskets. **The human capacity for rationalization and insensitivity to the pain and tragedy of others seems to be unlimited,** especially where a drunk driver, an insurance company and a defense attorney may be concerned. **Photographs can go a long way toward stripping away these callous defenses and compelling others, including juries, to face the harsh truth.** *It is imperative though that the victim, or the victim's family, be asked for permission before these particularly sensitive photographs are taken or used.*

The death, maiming or dismemberment of a human being is not simply an objective reality, but a reality that should carry

considerable emotional weight.

I mentioned earlier in this chapter, while describing criminal investigations, the importance of video taping at DUI arrests or at the scene of DUI crashes. The video camera is an extraordinary tool which carries tremendous weight with a jury and should be extensively used by advocacy groups as well as private attorneys representing the victims of drunk drivers. Unfortunately for the private attorney, the timing may be poor and he or his investigator may not be able to video tape the scene of the crash shortly after it has occurred. But he can still successfully make use of video tape to depict the scene, the damage to the vehicles, and in some instances the statements of witnesses. Obtaining a copy of the video tape made by law enforcement personnel should be a high priority for the private attorney or advocate.

In one case in which I served as advisor to a MADD chapter, I learned that an investigating law enforcement officer had summoned his wife, a MADD chapter member, to the scene of a fatal drunk driving crash with their family video camera. She video taped the feet of the 17 year-old-victim pedestrian protruding from beneath the vehicle of the drunk driver. She also used the video camera to film the interior of the defendant's vehicle and the open case of beer sitting on the seat. She explained to me later that every time she viewed the video tape she remembered the advertising jingle for that particular brand of beer and how perversely it related in her mind to the youthful dead body beneath the wheels: "This [beer] is for you." The diligence of that officer and his wife, the MADD member, resulted in a powerful visual testimony.

In other areas of investigation, witnesses' statements should always be recorded or at least written and signed by the witnesses. **Obtaining the criminal and driving record of the defendant should always be a high priority.** This can usually be obtained with the cooperation of law enforcement.

Access to law enforcement investigation reports may be restricted, especially during the course of an ongoing investigation. It may be necessary to obtain the approval of the prosecuting attorney before reports are released.



There is an important distinction to be aware of here. The crash or accident report is a public record in most jurisdictions and readily available for a copying charge to the media or anyone else. However, more detailed background information, such as witness statements, etc., may be withheld. This is especially true in vehicular homicide crashes. This restriction is usually a matter of policy and not law. It is often helpful to be pleasantly assertive and continue to talk to higher and higher ranking officials until the information is released.

The advocate's first priority and the very foundation of his or her strategy, must always be the accumulation of the objective facts. They are the sword for decapitating the dragon of deceit and waging the war against drunk driving.

## CHAPTER 12

### **An Alliance With Law Enforcement**

(Ivy)

In the chain of individuals who make up our "legal system," law enforcement officers are usually the first to have contact with the DUI offender and, in the event of a crash, with the victims. This, as well as the officer's responsibility for investigating the offense, makes his or her role critical to the final outcome of any DUI case.

The officer's actions are often the most difficult to scrutinize of all the officials in the legal system chain. His or her conscientiousness in seeking out and apprehending offenders is difficult to assess. The officer may or may not pursue the task with diligence and a public spirited concern. But when he doesn't, few if any, may ever know.

If an officer stops a weaving vehicle but refrains from conducting a field sobriety test or fails to charge an offender, it's likely that only the officer and the offender will ever know. Just prior to finishing this book, I learned of a sixteen-year-old girl who was stopped by police in a nearby town for drunk driving. Instead of charging her and getting her out from behind the wheel, the officer instructed her to go home. She crashed within minutes killing herself and seriously injuring her fifteen-year-old passenger. Many who work in anti-drunk driving advocacy believe that these situations are not uncommon and that the statistics for drunk driving deaths in the United States (17,699 in 1992 or 45% of the total of 39,235 and over 355,000 injured victims) are significantly inaccurate. If it is true that drivers involved in fatal crashes are not always tested for alcohol and other drugs, and we believe it is, then the percent of alcohol-related highway deaths is probably higher than reported.

Law enforcement officers also carry an inordinate share of the burdens for fighting crime relative to the rewards society grants for their services. Invariably they are paid substantially

less than prosecuting attorneys, lawyers and judges who make up other links in the "legal system" chain. Yet they are expected to endure long hours of boredom interspersed with great hazard and risk in their service to the public.

These conditions attract individuals who are motivated by non-material rewards. Some enjoy the power and the respect they believe comes with carrying a badge and a gun and having the authority to arrest, but the majority are undoubtedly among the most public spirited and unselfish people in our society. Though it would be hard to substantiate, it has been my experience that there are fewer failures in this link of the legal system chain than in any other in the handling of DUI cases. Admittedly, though as we stated earlier, a law enforcement official's failure would be more difficult to detect than that of other professionals in the system, but I have personally seen less evidence of failure here than in any other part of the system. When compared with the conditions of their employment, the absence of material motives, and the fact that they actually see in graphic and tragic terms the results of drunk driving, we may make some positive general inferences about law enforcement.

For many of these reasons there is a natural alliance between law enforcement and anti-drunk driving advocacy groups - an alliance which should be carefully cultivated. I will address this more fully after devoting some attention to those instances where there are serious weaknesses in the law enforcement link.

As society becomes more complex, as it surely will, and as population growth continues, the role of law enforcement will become increasingly critical to the maintenance of stability and order. The profession already suffers from varying degrees of neglect depending on the jurisdiction and the particular agency. Agencies are overworked, underpaid, understaffed, poorly funded and equipped, and are perpetually balancing competing priorities.

The neglect takes many forms, one of which was illustrated to me in an unsettling way a few years ago. In the course of representing a client who had been injured in a non-alcohol related car crash, I discovered while reviewing his medical records that my client had been diagnosed as paranoid

schizophrenic and was taking medication for the illness. A few months after the settlement of his claim, he visited my office to tell me of a position he had taken as an officer with a nearby law enforcement agency. To my discomfort, he proudly displayed his badge and gun. Clearly no one in the agency had even done a background check on this man, much less conducted in-depth personality screening and psychological testing. Quite possibly the agency was so under funded and understaffed that these measures were omitted and an applicant who appeared healthy and stable was hired.

I often think of this experience when I am consulted on a case involving some act or omission of an officer which was inconsistent with his duty. Though these may appear to be unrelated, in reality they are often manifestations of the same underlying root causes: a failure in some agencies to attract, screen, properly train, and retain the best people possible for law enforcement positions.

Anti drunk driving advocates can accomplish a lot by supporting not only the work of law enforcement but also the development and the enhancement of its professionalism. It clearly demonstrates misplaced and immature priorities for our society to lavish so much attention and wealth on sports stars, actors, and entertainers while underpaying, overworking, and in many respects neglecting one of the groups in our society that does the most to keep us civilized - law enforcement.

An alliance between advocacy groups and law enforcement can be mutually beneficial. Citizens and advocacy groups should promote through legislation, the media, and government substantially increased pay, better benefits and working conditions for law enforcement personnel with a simultaneous enhancement of the standards, screening procedures, and accountability for law enforcement officers.

Advocacy groups can also honor and recognize those doing an outstanding job in fighting crime generally including drunk driving. Support for law enforcement can ultimately strengthen police performance and enhance their professionalism which, in the long-term, results in greater effectiveness in combating crime

of all types, not just drunk driving. More immediately it should induce law enforcement to a higher level of cooperation in assisting advocacy groups. Both groups gain and society ultimately benefits.

## CHAPTER 13

### Winning Through Legislation

(Ivy)

**Advocacy groups and concerned Americans should have as their ultimate objective the virtual elimination of drunk driving in our society. There will be naysayers and pessimists as there are in any great human challenge. We should reject this view and press on toward the goal.**

Our society has not yet truly engaged in an all-out assault against drunk driving. The impetus for change thus far has come primarily from fairly narrowly groups, especially the survivors and victims of drunk drivers as well as some law enforcement. Typically, human nature leads people to react with alarm only when we ourselves are directly threatened or affected. Despite the numbers of Americans killed or wounded on our highways, recruitment for the cause from the "walking wounded" who survived either the physical or emotional trauma of a DUI crash, still leaves us with relatively few numbers with which to wage the war. Though there has been considerable headway, thanks to groups like MADD and RID, society as a whole remains largely apathetic. Thus it cannot be honestly said that precedent shows that drunk driving cannot be virtually eliminated because our society has never truly moved to eliminate it.

Given the significant attitudinal and legislative changes that have come about as the result of the work of a relatively small group of people in MADD and RID, it seems clear that drunk driving could be eliminated if society would embrace that goal. I believe this is possible even if society as a whole never comes around.

Secondly, the efforts thus far, especially those of a legislative nature, despite their merit and the good intentions behind them, have been largely tailored to what many might call the "pragmatic" view of "realities" in our society. The classic illustration of this approach can be summed up with the

statement: *we have never truly moved to legislate an end to drunk driving*. At first glance that observation may come as a shock even to some advocates, but consider the following. In most states, laws have been passed which create a "presumption" of intoxication at some blood alcohol level, most commonly .08 or .10 per cent. For commercial drivers, the law may set that level at .04 per cent. In either case, we have communicated the implicit message "you may drink and drive, just don't let us catch you at the level at which you are presumed intoxicated".

This contradiction is apparent as well with the under 21 age group. The legal drinking age in every state is 21, yet some states won't charge the under-age offender with drunk driving until he or she reaches the standard legal limit, whether .08 or .10 depending on the state. At this writing only seventeen states have a zero tolerance law for the under-age driver, though the trend favors these laws.

For society to succeed at eliminating drunk driving, the message must be: "You may not drink and drive under any circumstances, and when you get behind the wheel of a car much will be demanded of you, including a high level of training in its use, strict adherence to the rules of the road, and a physical and mental state which isn't impaired even marginally by your use of alcohol or other drugs whether legal or illegal."

Sweden has come closest to communicating this message legislatively. Its statutory blood alcohol level is .02. **I believe that our only hope for success in the war against drunk driving is to legislate zero tolerance in all states or by following the Swedish example of .02 and making the offense illegal per se.**

Significantly, the American Medical Association has declared that the presumptive blood-alcohol level should be lowered *to at least .05* since virtually anyone is significantly impaired at that level.

There are many strong reasons to support this legislative *coup de gras* to drunk driving. The first is to remove any excuse or basis for rationalizations by a drunk driver. For example, even after years as a personal injury attorney I still am surprised at how

often the defense is used by a drunk driver, "but I only had a couple of beers."

This excuse is more than a lack of originality in lying. I have come to the conclusion that it often reflects the drunk driver's state of mind and actual reasoning. Society, by its laws and customs, has communicated that he can have alcohol in his system and still be permitted to drive without criminal penalty. The drunk driver is already disposed to rationalize his behavior in the way most conducive to the course of conduct that suits him. This is especially true if he is suffering from alcoholism or other addictive behavior. The result is that many drunk drivers get behind the wheel genuinely having convinced themselves that they are neither intoxicated nor impaired. This, as explained in the chapter entitled "The Drug Behind Every Drunk Driving Crash," is complicated by the fact that impairment is first manifested in impaired judgment.

But what if society, by its laws, removed the option for the drunk driver to rationalize that way? What if the driver knew that a serious criminal penalty (at least as severe as those mandated for DUIs in most states today) awaited him if he is caught driving with any alcohol in his system? "But I only had two beers" and other such excuses would be stripped of any validity even in the mind of the perpetrator.

A second consideration in support of this approach would be the effect on enforcement of the law. Absolute sobriety would be a prerequisite to the legal operation of any motor vehicle on our highways. The officer's task would be simplified to conducting a breathalyzer test, or some other scientifically accepted method of measuring blood alcohol. It would be unnecessary for him to concern himself with evidence of impairment. In short, the officer would only have to show by objective tests that some blood alcohol had been found in order to make a case. This is what is referred to as "illegal per se".

Having made what some will regard as a radical proposal, I hasten to point out that this is not a repudiation of other less stringent legislative goals being pursued by advocacy groups around the country. We must support any lobbying efforts which



may save someone's life.

Drunk driving though, like many problems in our society, cries out for the infusion of some moral integrity into the debate over how, and to what extent, it is to be addressed. Simply being "pragmatic" and "realistic" will never stop the killing. These can be euphemisms for fear or an unwillingness to do everything possible.

It may be that addressing this issue at the federal level is the most likely way to succeed. A number of federal anti-drunk driving measures could be advanced with the intention of compelling full implementation at the state level by making passage and enforcement of the package a prerequisite to receipt of federal highway funds. This approach brought speed limits down to 55 mph across the nation in response to the oil crisis of the 1970's. The country saved a lot of petroleum - should we fail to do any less in our efforts to save lives?

There is, however, a need for "pragmatism" and "realism" in the recognition that there are tremendously powerful forces in opposition to these lifesaving measures. Preeminent among these forces is the beer and liquor industry. Despite much hypocritical posturing, this industry is the primary resistance to efforts to deal with drunk driving. I am convinced that every significant proposal that we have made in this book would be vigorously opposed by the liquor industry. Their opposition, as always, would be veiled behind a facade of rationalizations and expressions of sympathy and goodwill.

This brings us again to one of our primary themes - accountability. We have spoken at length of the need for accountability in the implementation and enforcement of laws. **Without true and effective implementation and enforcement, laws, no matter how potentially effective, are of no service to the nation. Indeed, it fosters greater apathy among an often naive and disengaged citizenry when so-called "tough" legislation is passed but not fully enforced. Citizens then mistakenly assume that the problem is being dealt with.** The principle of accountability must be applied perhaps even more intensively to the sources of our laws - the national and state

legislatures.

These institutions, by and large, mirror the values of American society as a whole, both altruistic and selfish. But they are also unusually susceptible to the influences of some of the worst and most self-serving elements in our society simply because they are positions of power. Legislative bodies often attract those whose primary motive is the pursuit of power. These "political personalities" are unusually susceptible to the temptations of the money, and the influence of powerful lobbies who seek to manipulate governmental officials for their own selfish ends.

The result of these influences is legislation which is "tough" only in the sense that it is marginally or superficially more stringent than anything preceding it. **The real measure of legislation should not be "toughness" but effectiveness.** When we measure legislation by that standard we recognize that some laws on the books are largely ineffective when compared with the continuing deaths and carnage from drunk driving.

The tendency of some legislators to nurture and sustain their power by means of the wealth and influence of special interests leads to many forms of mischief with our nation's resources and its best interests. As a result, some legislation can only be described as hypocritical. To illustrate, in Tennessee while one bill against drunk driving was being deliberated and subsequently passed in the state legislature, other legislation that was passed made lawsuits by victims of drunk drivers against bars and night clubs which had sold liquor to a drunk driver so difficult that it nearly guaranteed that victims would not attempt them, or if they attempted them it would make their failure likely. The new statutes provided that the victim/plaintiff had to prove that the drinking establishment not only sold the drunk driver alcohol but that he consumed it prior to the crash! Furthermore, the standard of proof was raised to "beyond a reasonable doubt", a criminal justice standard not utilized in civil actions for damages and one which is much more difficult to meet. The liquor industry had quietly moved to protect its own interests at the expense of victims of drunk drivers. Meanwhile, the people of Tennessee

were misled into believing that the problem of drunk driving and its consequences was being addressed.

This is but one example of a "thumbprint" left by the highly-organized and well-funded liquor industry whose fingerprints and credit card slips can be found at the scene of most legislative setbacks in the fight against drunk driving.

The use of alcohol pervades our economy and our culture. It is doubtful that there is any state legislature in the nation which doesn't have the agents of the liquor industry mingling among our public servants. Sometimes they are in the role of our public servants.

Over their political careers, politicians may receive numerous and substantial financial contributions as well as a great deal of attention from the agents of this industry. If anyone is still gullible enough to believe politicians' when they say that these contributions do not influence them, then we might ask them to ponder why the liquor industry would bother to make them. If we have matured as a society to the point that we can recognize not only the undermining of our best interests by these practices but also the deceit used to justify and defend them, then why do we not move to stop this?

Anti-drunk driving forces can do a great service to the nation by focusing the public's attention and much of their efforts on this problem. Another alliance is called for. **By making common cause with reform efforts to purge our legislative bodies of the influence of money, especially through political contributions, and to drastically limit the power of special interests, lobbyists and politicians who dominate their offices for years, advocacy groups may well save more lives on American highways than they ever could by addressing only the problem of drunk driving.**

We have advocated for and described how to bring light and publicity to the handling of DUI cases so as to produce accountability. The same approach and techniques can be utilized where legislators are concerned.

Remember, **the focus must be on an awareness of individual, not just institutional, responsibility.** The voting

record of every legislator should be individually scrutinized with the publicly stated intention to cast an intense media spotlight on those legislators who do not support anti-DUI legislation. Success is truly in the details. Investigations here can be even more critical and useful than in DUI cases themselves. Those legislators who do not actively support anti-DUI legislation should never be permitted to avoid exposure of their voting record, their campaign contributions, and their political alliances. Any rationalizations they offer in defense should be rebutted publicly by advocacy groups. Note that the phrase "do not actively support" is used here rather than "oppose." This phrasing is deliberate to take into account those politicians who are evasive or hypocritical in their public and legislative positions.

The advocate should also remember the "brothers in the bottle syndrome" which we referred to earlier. There are legislators who themselves abuse alcohol. We understand that the Nebraska MADD organizations once published the driving records of everyone in the Nebraska State Senate and the number with DUI convictions was considerable.

Nebraska is not the only state with that weakness among its lawmakers. Like college freshmen away from home, some legislators away from their districts violate basic principles and laws they have sworn to uphold. They are not inclined to pass tougher DUI legislation that someday might be used against them. Furthermore, these "brothers in the bottle" are especially receptive to the attention of the liquor industry lobby.

Advocacy groups should be prepared for anything and should leave nothing to chance when dealing with a legislature. Conferences should be scheduled by advocacy groups well in advance of legislative sessions for the purpose of developing a strategic plan to pass anti-drunk driving bills. These strategic planning sessions should address: (1) developing alliances with other groups which could broaden the power base; (2) deciding which bills are to be promoted; (3) seeking out legislators to serve as sponsors; and (4) the development of a media plan for focusing attention on the legislative agenda. It should be publicly

announced by press conference prior to the legislative session that publicity will be focused on those legislators who support the bills as well as those who oppose them. Advocates must never bluff and never fear controversy, but should be concerned simply with credibility and the soundness of their facts.

It is of great value in the legislative arena for advocacy groups to build alliances with other interest groups in order to broaden their power base and more effectively influence the outcome of legislation. Alliances with other anti-drunk driving advocacy groups are the most obvious. But the possibilities of cooperation with other groups such as political reform organizations, law enforcement lobbies, religious organizations, and any anti-crime movement, can be beneficial.

Any reform movement (e.g. such as those to limit campaign contributions and spending, to restrict lobbyists' activities, or to limit terms of legislators) which make the legislative process more democratic and responsive to the needs of the people and not just special interests will benefit the anti-drunk driving cause. This is a consideration which cannot be overstated.

Sometimes there is an opportunity to make common cause with some professional lobbies. Trial lawyer associations might support a legislative package which broadens legal rights for victims in civil litigation. Medical associations could be persuaded to support some components of anti-DUI legislation on the obvious grounds that this is a national health issue as much as it is a law and order issue. Insurance companies have compelling motives for supporting legislation which could substantially reduce drunk driving and ultimately their claims.

Any advocacy group must take into account, however, that an alliance with another group will necessarily require them to support their ally in at least some of their goals. This is a mutually beneficial relationship that may lead to considerable involvement in issues that are not directly anti-drunk driving related. This should not be a deterrent, but reason for careful consideration of which issues the advocacy group can support. Of greater importance is the need for the anti-drunk driving advocacy group to make certain that their ally does not behave in

a way which indirectly taints or undermines the credibility of the anti-drunk driving group.

Of paramount importance to the cause is aggressive advocacy based on strong convictions and conducted with integrity. Political figures who operate from selfish motives at the behest of interest groups, don't act in the interests of the people. If we are not willing to confront them and hold them accountable, then we must accept the consequences without complaint.

## CHAPTER 14

### **Taxing Alcohol - Saving Lives And Compensating Victims**

(Ivy)

Behind the deaths, injuries and staggering economic costs caused by alcohol abuse there is one pronounced human trait - greed. That greed is rationalized and veiled behind euphemisms, one of which is referred to as pursuing the "American Dream." The evidence suggests that the beer and liquor industry, in particular, have acted irresponsibly and selfishly in their materialistic pursuit of their version of that dream. And others have to pay.

Sometimes the media, in the pursuit of advertising revenues, and politicians, in pursuit of power and financial support, have become accessories to the callous disregard of the welfare and interests of their fellow human beings.

The human consequences of these practices are evident in thousands of drunk driving crashes each year. Victims lives are traumatically interrupted. If a loved one, particularly a breadwinner, is killed or disabled the financial blow may be catastrophic. Families never recover. Even where there is insurance, commonly it is woefully insufficient to compensate them for their financial loss.

The American people, as we point out several times in this book, often naively believe that laws either exist or will be enforced which will protect them and their loved ones from the criminal or negligent conduct of others. One of these common assumptions is the notion that other drivers will be fully insured as the result of financial responsibility laws, and if they or their loved ones are injured by that driver, they will be able to sue and recover their financial loss..

The truth is very different. In approximately six out of ten drunk driving cases I have been consulted on, the drunk driver has no insurance. In approximately three out of the remaining

four cases there is insurance, but it is inadequate to compensate the victims to the extent that the law would otherwise permit. In about one out of ten cases, the insurance is sufficient to fully compensate the victims, but that is usually because the victim himself had uninsured and underinsured insurance coverage. In cases involving the death or the permanent disability of the victim, insurance is rarely sufficient to financially compensate the victim or family members as the law would otherwise allow. I do not know how this compares with statistics nationally or even if there are such statistics, but I suspect it is indicative of a national problem.

It doesn't require a great leap of logic to recognize that anyone who is irresponsible enough to drink and drive may not be responsible enough to maintain insurance. Furthermore, drivers with a DUI record may not be able to readily obtain insurance.

Even if insurance coverage is present, most policies are for minimum liability limits. In Tennessee, the most common figure is \$25,000 for liability coverage, a pathetic sum in relation to staggering medical bills, lost wages, and, perhaps, a permanent disability. Victims are often left with little recourse but to settle for the policy limits even though their expenses may far exceed this coverage.

There is frequently little hope in trying to find assets of the drunk driver as well. In only a low percentage of cases will a drunk driver have any significant assets such as a home or large bank account which are unencumbered by mortgages or liens. Even if the victim and his lawyer pursue the claim through the time consuming and often expensive process of preparing and going to trial, the chances are slim that without substantial insurance coverage, victims will receive significant compensation, certainly not in relation to the magnitude of their loss.

Furthermore, though some form of compulsory insurance or financial responsibility laws exist in every state, they are not always enforced and, even when they are enforced, they do not obligate a driver to have substantial insurance coverage sufficient to cover liability for death or serious permanent injury.



A case in point came through our law office recently. We were contacted by the New York mother of a soldier stationed at Fort Campbell, Kentucky. Her soldier son had been killed in a car crash in Tennessee. Our investigation indicated liability on the part of another soldier from Fort Campbell who had been drinking earlier in the evening and apparently went to sleep behind the wheel of a car and caused the crash. The mother and family of the dead victim had been through an agonizing search for answers to questions about their son's death.

We were encouraged during our investigation when we were told that it was a rule on the base that all soldiers and officers operating vehicles had to show proof of liability insurance. Yet no one seemed to be able to answer our questions about this particular soldier and his insurance coverage. Finally, through continued investigative probing we learned that there was no liability insurance coverage. It was a small step from there to learn that the young soldier who caused the crash had no assets to pay a judgment. The victim had no car and, therefore, no uninsured motorists insurance.

Adding insult to injury, the family, with the assistance of the Tennessee state office of MADD, learned that the offending driver had filed no proof of financial responsibility with state authorities, nor had the owner of the vehicle he was driving. When asked what they would do about this, these state authorities readily admitted that the law was not being enforced.

Despite the fact that society had laws on the books to protect and compensate victims in situations like these, this family would never benefit from them. This common scenario starkly contrasts with the public's image of litigants walking away from lawsuits with large settlements or judgments.

Ironically, even where insurance benefits are available, the victim or his family may never receive any of them. The wrong that can be perpetrated by our own system of laws and insurance was never more apparent than in the case of the 13-year-old girl which was mentioned earlier.

This young lady was the back seat passenger in a car struck head on by a drunk driver. The passenger in front of her, her

older sister's fiancée, was killed instantly. The young woman's skull was cracked. No bone was left unbroken in her face. Her leg and hip were badly broken.

Liability could not have been clearer. As I mentioned earlier, the drunk driver, a third year law student, had been driving northbound on the wrong side of a divided four lane highway for many miles. He was so intoxicated he didn't realize the glaring headlights of many cars which swerved to miss him were from traffic in the southbound lanes.

It was not certain whether the young woman would survive. Her parents feared to leave her side. At their request, I traveled to the hospital where she had been taken. Although I had seen many injured people and traveled in six war zones on four continents, no one I had seen before looked as bad yet still survived.

As we began our investigation, I was concerned about the extent, if any, of insurance coverage. Ultimately, we learned that the coverage was above the norm - \$100,000 - yet still woefully deficient for what we knew would be the extent of this child's injuries and her medical bills. As described earlier, I assigned three investigators to the case to check the defendant's background and criminal record, to learn where he had purchased the beer and, to find out if he had other assets. Although we learned where he purchased the beer, the evidence under Tennessee law would not support a dram shop action. (See the chapter: "A Declaration of War Through Legislation"). Furthermore and disappointingly, our investigators reported he had debts rather than assets.

We made demand on the insurance company for the policy limits. They were paid, but were to be held by the court until the young lady reached age eighteen. But a serious setback occurred when her mother's employer refused to pay the child's medical expenses under her mother's health care plan. Citing an arcane area of federal law known by the acronym ERISA, the employer insisted that they were not obligated to pay the medical bills, which by that point totaled around \$70,000, because of the \$100,000 insurance settlement now held by the court.

Our research and investigation indicated that our clients were

not likely to win this argument in the courts. Despite the years of premiums the mother had paid for the health insurance coverage, the law permitted the employer to refuse to pay the medical bills and to insist that those bills be paid exclusively by the \$100,000 trust fund held by the court. In view of the need for additional reconstructive surgery on the child's face, and to remove metal pins in her leg, this would effectively mean that she would get nothing for her pain and suffering, her permanent disability, and the facial scars that she would carry for the rest of her life. The entire fund would be completely depleted by paying the medical expenses.

The frequency with which drunk driving injuries or deaths occur without the victims being compensated leads to the conclusion that a better way to protect and compensate victims must be found. That better way might be found in a proposal by Paul LeBel, a professor of law at William and Mary College in Williamsburg, Virginia, in his book entitled *John Barleycorn Must Pay: Compensating the Victims of Drinking Drivers*, published by the University of Illinois Press and reviewed in the Fall 1992 issue of *The Bottom Line on Alcohol and Society*.

Professor LeBel believes, as I do, that the burden of paying the bill for drunk driving should be borne by the liquor and beer industry, not by taxpayers, nor by responsible drivers through higher insurance rates. He proposes that every state establish a victim's compensation fund financed by new and higher taxes on alcohol manufacturers and distributors. This fund would not replace but supplement the law system.<sup>1</sup> Victim's funds are available today in many states, but are usually woefully underfunded in relation to the catastrophic losses victims often suffer. In Tennessee the maximum amount recoverable from the victim's fund is \$7,000.00.

There are other arguments for raising taxes on beer and liquor substantially. In a commentary by Mr. David R. Francis, published in the *Christian Science Monitor*, and later quoted in the *Bottom Line*,<sup>2</sup> it was noted that a tax hike on beer alone from .10 an ounce to .25 would save a projected 1,500 lives of eighteen to twenty year olds per year through reduced drunk driving

crashes.<sup>3</sup> This was but one narrow illustration of the benefits. Mr. Francis, citing economic statistics and studies, persuasively demonstrated how the benefits would accumulate. If the present excise tax had been raised to .25 per ounce on pure alcohol on January 1, 1994, the federal government would save an additional 3.7 billion dollars in fiscal 1994 above the 1992 level of 8 billion dollars. If the present excise tax were doubled this would raise about 4 billion dollars more.<sup>4</sup>

Significantly, Mr. Francis concluded with the observation: "Because tobacco users have become a minority in the United States, it has become easier for politicians to restrain its use through taxes or other actions. Liquor has a broader constituency, however."<sup>5</sup> That reality is offset by a survey in the same volume of *The Bottom Line*, indicating that voters would be willing to pay for a national health care plan more readily through new taxes on alcohol and cigarettes (76% of voters) than any other form of taxation, with new income taxes ranking last (29%).<sup>6</sup>

It cannot be overstated that unlike any other form of taxation which could be used to compensate victims and pay for the additional health care brought on by alcohol abuse, new taxes on alcohol would have the added benefit of inhibiting alcohol abuse, thereby reducing the need for victims= compensation and additional health care. The nation would save in every respect - in money, blood and misery.

Yet in the face of strong evidence and irrefutable benefits, the federal government has raised taxes on beer and wine only twice, and three times on liquor, since 1951.<sup>7</sup> In the report entitled *Substance Abuse: the Nation's Number One Health Problem*, from the Robert Wood Johnson Foundation, Princeton, N.J., the question was asked "do taxes presently in effect on cigarettes and alcohol pay for the burden inflicted on society by those substances?" The report's answer: "economists compare total tobacco and alcohol taxes paid in the late 1980's with the total costs these products imposed upon society - including injuries, medical care, and disability: cigarette taxes covered societal costs but alcohol taxes did not. The societal costs of alcohol was more than double alcohol tax revenues".<sup>8</sup>

All other authoritative sources we have consulted have reached the same conclusion. Professor LeBel refers in his book to a study done by the University of Michigan, which was reported in the *Journal of the American Medical Association*, confirming that federal and state excise taxes on alcohol fail to even approximate the extreme costs of heavy drinking."<sup>9</sup>

Professor LeBel reinforced these findings with three recommendations of the Surgeon General's Workshop on Drunk Driving:

1. "Equalizing the tax rate according to the ethanol content of alcoholic beverages. This would require a substantial increase in beer and wine taxes.

2. Adjusting the tax rates to account for past inflation, which had led to an effective decrease in alcohol tax rates over the past forty years.

3. Indexing future tax rates to a price index so that annual adjustments for inflation can be made."

The Workshop concluded that increasing taxes to those levels would save a projected 8,400 to 11,000 lives otherwise lost to alcohol related fatalities.<sup>10</sup>

The evidence is so strong that an increase in taxes at the federal and state level on all forms of alcohol would save huge sums of money, that we believe it cannot in good conscience be debated.

At the beginning of this chapter I referred to the materialistic interpretation of the concept "the American Dream". I conclude it by noting that the bulk of the factual argument and evidence offered in this chapter addresses only the economic consequences to victims of drunk driving. It should never be forgotten that unnoted in this analysis are a sea of tears shed by victims of drunk driving whose perception of the "American Dream" may have been more closely shaped by the values of good health, peace, justice, order, and lasting and loving relationships.

## CHAPTER 15

### **MADD and RID: Leaders In The Cause**

(Ivy)

It was in broken hearts that new and now famous organizations to fight drunk driving were conceived. Tragedy merged with the wills of a few individuals who committed themselves to the goal of trying to make certain others did not suffer as they had.

The world's youngest quadriplegic, at five and a half months, Laura Lamb was made so in May of 1979 when the vehicle her mother Cindi Lamb was driving on a trip to the grocery was hit head on by a repeat drunk driving offender.

Cindi was one of those rare individuals who made a courageous commitment which she kept. Over the following years she waged a war against drunk driving in her home state of Maryland and in the U.S. Congress, with Laura's frail body as the most powerful statement of the urgency of her cause.

One year later, in Fair Oaks, California, Cari Lightner, age 13, was killed by a drunk driver only recently out of jail for another hit and run drunk driving crash. Despite previous offenses, he still had a California drivers license. The revelation of this drunk driver's record, led Cari's mother, Candy Lightner and several of her friends, to conceive a new organization which they called Mothers Against Drunk Drivers (later changed to Mothers Against Drunk Driving).

The organization was incorporated in California the following September as a non-profit tax-exempt entity. Its creation led to a meeting between Cindi Lamb and Candy Lightner who merged Cindi's planning with Candy's concept and name, resulting in the development of the largest crime victim assistance organization in the United States.

The history of MADD has been most informatively recounted by a leading MADD administrator, Janice Harris Lord, from which this account is taken. From time to time in this

chapter we will let Ms. Lord's words speak for themselves in relating this history.

Statistics gathered by MADD in that first year of existence, were bloody beyond most people's comprehension: 250,000 lives lost to alcohol related crashes during the previous ten years, at the rate of 70 Americans a day, one every 23 minutes. Drunk driving was the leading cause of death for 16 to 20 year olds. It was estimated that on an average weekend night one of every ten drivers was intoxicated. Noting these statistics the founders of MADD pointed out, as I have in this book, that every two years as many Americans were killed by drunk drivers as were killed by the entire Vietnam War in its ten year duration.

Media analysts noted that MADD was capable of generating the power of sentiment and emotion. Indeed, the more perceptive realized it was not simply the gravity of the issue but the tremendous emotional impact of seeing on a television screen or reading in a newspaper account the horrors and grief caused by drunk driving which gave MADD its momentum.

MADD had income of half a million dollars by the end of 1981 and by the fall of 1982 had inaugurated 70 chapters. Typically the impetus and initiative came from victims of drunk driving crashes themselves and not from concerned citizens. An NBC television movie in March 1983 brought MADD's nationwide recognition to an even greater high, and resulted in the chartering of 122 chapters in 35 states. By March of 1983, 84% of respondents to a public poll had heard of MADD, and 55% felt that it was succeeding in its goals.

Between 1983 and 1985, MADD moved its headquarters to Dallas, Texas and hired a new Executive Director, Dr. Phillip Roos, along with eleven staff members. In late 1984, MADD had chartered 350 chapters with a total budget of \$2 million. As often occurs in rapidly growing volunteer organizations, friction developed between Candy Lightner and the new professionals hired to deal with what had become a large and complex entity. This ultimately led to a parting of the ways between MADD and Ms. Lightner, though with the widespread recognition that her early role in MADD's history was secure and honored.

Soon MADD was re-incorporated in the District of Columbia and MADD chapters were allowed to retain membership fees and much of their fund-raising monies. The following years stabilized MADD as an organization and made it possible to develop more complex legislative initiatives. By 1994, MADD had 3.2 million supporters, or members, by 1988-89 the number of chapters had leveled out at around 400 with approximately 50 being added each year and an equal number lost to attrition. By 1989, MADD's mission statement was simple: "to stop drunk driving and to aid victims of drunk driving crashes."

Janice Lord, the administrator in charge of MADD's victim's assistance program, describes that program in her own words:

"Victim assistance is a major component of MADD's mission. MADD has published a series of twelve brochures for victims (four also available in Spanish) which all chapters distribute to victims free of charge. The brochures educate victims of crashes about their unique grieving process, how to help children cope with death, how the injured and their families can live with their daily trauma. The set of literature also includes an introduction to the criminal justice system, tips on dealing with financial stress (civil suits, insurance, crime victims compensation), and what to do when someone in the family drinks and drives. Many chapters also make books available.

"Most MADD chapters offer victim support groups, usually co-led by a professional counselor and a victim. More than 200 chapters conduct Victim Impact Panels, an innovative program in which a panel of three or four victims share their personal stories with convicted drunk drivers, ordered by judges to attend the panel as a component of their sentence. This creative sentencing program does not replace conventional sentencing, but complements it.

"More than 1,000 MADD victims advocates have completed 40 hours or more of advocacy training offered by the national or state offices. A highlight of MADD's victim assistance program



is an international candlelight vigil in December of each year which is attended by victims and advocates from all states and international affiliates. Local chapters hold vigils simultaneously.

Many chapters conduct tree plantings as symbols of hope for lives saved during Crime Victims Rights week in April. MADD's crisis line, 1-800-GET-MADD, responds to approximately 400 calls per month. Three-fourths of the state MADD organizations have their own 1-800 numbers. MADDVOCATE magazine for victims and their advocates is distributed to 40,000 people. MADD also offers educational opportunities for allied professional through its Death Notification workshops for law enforcement and chapters, and its symposia on dealing with sudden, violent death for clergy and funeral directors.

"MADD's excellent youth programs include an annual Poster/Essay contest, Operation Prom/Graduation, and Team Spirit, and MADD's Teen Court Program, funded by the Nancy Reagan Foundation, which places teen misdemeanor offenders in a typical court situation, except the attorneys and jurors are peers their own age."

It has been unquestionably clear that MADD's greatest asset has been its ability to draw media attention to the issue of drunk driving. By 1989, a commitment had been obtained from the three major television networks to promote the designated driver concept in episode story lines and public service announcements. More than 60 prime-time television shows incorporated this concept with a popular public service message by actress and MADD spokesman Connie Selleca which was viewed by an estimated 13.5 million people and shown immediately after a movie in which she starred.

Project Red Ribbon is probably the MADD's most famous public awareness program and has been accompanied since 1986 by the National Candlelight Vigil, as well as independent candlelight vigils held across the nation by state and local chapters. Interestingly, MADD developed a successful program entitled "I'm a MADD Dad" intended to spread the word that

MADD wasn't simply for mothers or women.

Legislatively MADD has been a forceful leader as well. Its initial efforts centered on a mandatory 48 hour jail sentence for drunk driving in California and administrative license revocation.

In 1982, 47 new drunk driving laws were passed and 129 more in 1983. National Highway Safety Administration records reflected that the percentage of fatalities that were alcohol related fell from 57% in 1981 to 55% in 1983 while there was an increase in overall fatalities due to more miles traveled.

The most conspicuous achievement of MADD's legislative efforts was the passage in 1984 of a national 21 year old drinking age law which later withstood a Supreme Court challenge. By 1988, all fifty states had enacted this legislation. By 1985, alcohol related fatalities decreased by 20% from the previous five years.

In 1986, alcohol related fatalities rose slightly. This was explained by some as the natural result of more intensive policing and testing. Indeed, DUI arrests reached an all-time high of 1,793,000 which was more than three times the total of all other violent crimes combined.

By 1986, MADD was becoming more assertive in its legislative pursuits and in cooperation with the National Highway Traffic Safety Administration co-sponsored ten regional workshops in which strategies were devised for passing state legislation including administrative license revocation, open container laws, .08 blood alcohol content per se, and others.

In 1988, President Reagan signed the Omnibus Anti-Drug Abuse Act which, among other things, re-authorized the Victims of Crime Act of 1984 to provide victims= compensation to victims of drunk driving crashes. (See the chapter "Taxing Alcohol and Compensating Victims" on this topic).

At MADD's tenth anniversary celebration in Washington, D.C. in 1990, a new legislative plan was introduced with the objective of reducing the percentage of fatalities caused by alcohol by another 20% by the year 2000. The five-point plan utilizes the following components:

- (1) Youth countermeasures to reduce alcohol and drug-impaired driving by youth

- (2) Enforcement of DWU/DUI laws.
- (3) Sanctions to prevent repeat offenses.
- (4) Self-sufficient user-funded DWI Programs.
- (5) Responsible marketing and service of alcohol.

In a similar manner, the five point program for victims included:

(1) Amendments to state constitutions to ensure victim rights in 38 states, the number necessary to ratify a federal amendment (accomplished in 14 states).

(2) Bankruptcy protection for victims of drunk driving crashes by amending the federal bankruptcy law (accomplished).

(3) Compensation rights for victims of drunk driving crashes in all 50 states (accomplished).

(4) Dram Shop recovery for victims by statute or case law in all 50 states (i.e., a lawsuit against a bar, nightclub or other entity that negligently served alcohol to the drunk driver).

(5) Endangerment of Children sanctions in all 50 states (additional sanctions for individuals driving impaired with minor children in the automobile).

In concluding her history of MADD, Ms. Lord stated she believes the designated driver concept was perhaps the most significant social change initiated by MADD.

The history of the other leader in this cause is equally remarkable. Significantly, RID too originated in the mind and heart of a single individual who had the will to see it come to reality. Like MADD, RID=s story has been documented many times. One particularly well known account is found in the book *Arrive Alive* by Peggy Mann:

In December 1977 in Schenectady, New York, Doris Aiken, age 51, picked up the newspaper at the breakfast table, and saw the story of two children who had been killed by a drunk driver. They were outstanding students, leaders in their school. And, although Mrs. Aiken did not know them, they were exactly the same ages as two of her three children.

She investigated and learned that the youngsters had been killed by a 22-year old drunk driver. She promptly formed a group of a few equally incensed people. "If it hadn't been for us," said Doris, "he probably would have gotten off with a \$250 fine and a suspended sentence."

Despite the fact that she had a part-time job, a husband, three children, and a house to look after, Doris Aiken decided to pursue the matter further.

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The more Doris Aiken looked into the matter, and the more she learned, the angrier she became. Consequently, in February 1978 she formed an organization called RID (Remove Intoxicated Drivers). The organization now has over 130 chapters [152 chapters as of this writing] in over 30 [now 42] states. About half of RID's chapter heads have been personally touched by tragedy caused by the drunk or drug-high driver. The other half feel as Doris does: "I believe this is the most valuable thing anyone can do in the community. Think, if you can save even one life."

\*\*\*\*\*

In 1980, Doris's husband, Bill Aiken, Vice President of Logicworld, a computer company, became a board member of RID. Throughout New York State RID volunteers and other interested citizens had been sending in newspaper clippings and their own reports on drunk driving cases. Bill now put into a computer all the data RID had collected concerning drunk driving arrests, convictions and sentences in the 10-county Capital area. "We could see instantaneously," he said "which judge in what court had a lenient attitude toward drunk drivers." RID volunteers in each county then went to the courts and searched all the records for those judges who looked "weak" in the computer printouts.

The next step: RID called a press conference and published the results. This became front page news in the local section of the newspapers. One judge decided not to run again when his “score” came out. Another, a popular Republican in a heavily Republican area, declared, “I live in a sleepy little town. The people seem to like what I did.”

Five months later came the election. He lost by a 15-percent margin to a Democrat - a retired police patrolman.

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Since 1979, RID has been gaining a steadily widening circle of experience and influence, which demonstrates that the people have the power when they choose to use it. In fact, *our experience leads us to the firm conclusion that the control of drunk driving begins and ends at the local citizen-action level.*

Thanks largely to RID-New York, the state now has anti-drunk driving programs in every county, one of the best record-keeping systems in the nation, and landmark legislation.

What is particularly interesting about the birth of RID is the fact that Ms. Aiken took the initiative to begin RID though she was not a victim. This concern and willingness to become involved without having been first victimized is especially noteworthy, and contrasts sharply with the attitudes of most Americans.

MADD and RID have contrasting styles and sometimes dissimilar techniques despite their unanimity of purpose. But regardless of the approach, Americans owe much to MADD and RID and other organizations like them, and to the people who have made them work. Some individual Americans owe far more than they will ever know. Only God Himself knows how many lives have been saved, and how much suffering did not occur as a result of the efforts of these dedicated people.

Sadly, though, many Americans have to bear shame. The

burden of carrying forward with this cause has been borne primarily by victims themselves. When I first attended a national leadership conference of MADD I was struck by how many people I saw in wheelchairs, on crutches, limping, or otherwise scarred or disfigured. Their courage and commitment was all the more apparent when viewed in the context of their injuries, both physical and emotional. Even now, after MADD's and RID=s extraordinary efforts and achievements, there remains a prevailing apathy among most Americans. Every American should ask himself the question: Will it take the death or maiming of a loved one of mine to motivate me to act?

MADD and RID can be contacted as follows:

MADD  
511 E. John Carpenter  
Suite 700  
Irving, Texas 75062-8187  
1-800-GET-MADD

RID  
P.O. Box 520  
Schenectady, New York 12301  
518-372-0034

PART D

**The Drug Alcohol - The Big Picture**

## CHAPTER 16

### **The Drug Behind Every Drunk Driving Crash**

(Ivy)

Alcohol is a drug. No matter what face is put on it by image makers in the alcohol industry, or in television, movies, entertainment or other commercial and advertising ventures, it remains a drug by medical and chemical definition. The first step in dealing with any of the consequences of its abuse is the recognition of this fact.

Alcohol has been with mankind for millennia. It is undoubtedly the oldest drug used by man, certainly that is still in use. It has been portrayed in art, literature, and especially in entertainment as an aphrodisiac, an enhancer of romance and friendships, and as an indicator of masculine (and sometimes feminine) prowess and toughness by virtue of how well someone "holds their liquor."

It is, in fact, none of these things. Chemically it is  $C_2H_5OH$  or ethyl alcohol, a colorless liquid with a harsh burning taste. Alcohol fits into a category in medicine known as depressants. The term is very descriptive. As it applies to the subject of this book it is descriptive literally, scientifically, and figuratively.

The class of drugs known as depressants includes Valium, and Phenobarbital. Although these drugs primarily reduce anxiety, they may first ignite a brief state of euphoria and excitement before the sedative effect becomes pronounced. In higher doses they produce anesthesia.

As a person drinks they may first feel more alert. It is this state of mind that leads many drunk drivers to actually profess that a drink or two helps them to be better drivers. In fact, even after only one drink their coordination is already beginning to be impaired. This is one of several reasons why I advocate what has been termed "zero tolerance" in the operation of a vehicle, rather than setting an arbitrary presumptive level of .10 blood alcohol



content, for example.

Alcohol impairs judgment as well as coordination and the two should not be confused. The former applies to intellectual awareness and reasoning ability, the latter to the body's ability to move and react. With the very first drink this process of impairment begins even though the actual physical and intellectual symptoms may not be apparent to an observer until the process is significantly advanced.

As it does advance, the drinker becomes increasingly limited in his intellectual and physical capabilities. If the drinking continues, the ultimate result is coma and possibly death from respiratory paralysis.

When a person drinks any amount of alcohol it enters the bloodstream and circulates to all parts of the body in a few minutes. Its primary effect is on the brain. The liver will burn up the alcohol under normal conditions at the rate of twelve ounces of beer (equivalent to five ounces of wine and one and a half ounces of whisky) in about one hour.

It is this process which makes it difficult to determine in some cases how intoxicated a drunk driver was at the time of a crash. If a blood alcohol content (BAC) test is not administered immediately after a crash, which is rarely the case, then any BAC test results will not accurately reflect the BAC level at the time of the crash. A drunk driver's defense attorney will often use these results to manipulate and mislead a jury. This is another reason why we believe zero tolerance for a driver should be the law. Zero tolerance would make it much less likely that blood alcohol content test results could be used to inaccurately portray the drunk driver as not impaired.

The frontal lobe of the brain is affected by as little as .01 percent of alcohol in the blood. This part of the brain controls reason and self-control. Alcohol here, even in slight doses, has the effect of removing inhibitions, weakening willpower, and creating a feeling of well-being and false confidence. It is, therefore, here in the drunk driver's brain where the seeds of trouble are sewn with false perceptions that lead to the belief that he can safely operate a vehicle.

In the parietal lobe at the top of the brain, sensory control is impaired by the alcohol. As the drinking progresses this leads to dulled sensibilities, unsteadiness of movement, deterioration in handwriting and speech, and loss of technical skill.

When the alcohol reaches the occipital lobe at the very back of the brain, visual abilities are lost. The driver may lose color perception and distance perception and begin to see double or distorted vision.

At the bottom of the brain, the cerebellum controls coordination. Alcohol here disturbs balance and bodily coordination.

Finally, at the center of the brain, the thalamus and medulla regulate respiration and circulation. Here alcohol produces apathy, slowed respiration, failure of circulation and, eventually, shock and death.

In view of the effects of alcohol on the brain, it should come as no surprise that brain damage can be so extensive from drinking that permanent psychosis results. But any drinking causes the death of some brain cells.

Research has linked drinking directly with cancer of the mouth, esophagus, and stomach as a result of the irritating effects of alcohol.

Drinking also contributes to an enlarged heart, congestive heart failure, and can cause hepatitis, cancer of the liver, and cirrhosis of the liver, the last two of which are often fatal.

Alcohol effects reach even the unborn. Fetal alcohol syndrome and related birth defects are caused by a mother's use of alcohol during pregnancy. Mental retardation of a child is one of the most common long term effects and is the primary cause of mental retardation in children.

Drinking invariably produces acute effects on the body. The faster alcohol is consumed the more quickly and completely vision, coordination, judgment and speech are affected. A young person, with less body mass, will absorb alcohol even faster than an adult and be impaired longer and to a greater extent. Finally, and significantly, not only does drinking cause car crashes, the drinker has a greater chance of serious injury in the crash because of the harmful effects on his body.

## CHAPTER 17

### **Alcohol Abuse - The Lethal Trap**

(Ivy)

It is estimated that one out of ten drinkers is an alcoholic which means that eighteen million people, including four million teenagers, are included in this category. ( The American Council on Alcohol Problems, January 1994) This does not include many more individuals who abuse alcohol. Nor do these statistics suggest that only alcoholics drink and drive - not at all.

However, those who are addicted to alcohol frequently do drink and drive. For that reason, and because of the pervasiveness of alcoholism, any program that addresses the problem of drunk driving must take into account alcohol addiction.

Addictions are defined by most experts in terms of the control a habit, or substance or even an activity exercises in a person's life. Addictions can include gambling, food, exercise, drugs, even relationships.

Addiction is a physical and psychological dependence on the substance or behavior. It originates by using something to feel good or avoid feeling pain whether psychological or physical. As the addiction progresses, the earlier perceived benefits become less and less pronounced and increasingly the addiction takes over. Indifference to everyone and everything in the person's life becomes the addiction's hallmark despite the damage being done to the person, others in his life and his life goals. Alcohol becomes the alcoholic's "god" and the center of his universe.

Psychological studies suggest strongly that addiction seems to run in families and is more common in people whose pasts and personalities have certain common denominators. The most prevalent of these include: parents or other family members who were addicted; having too much or too little discipline, love, or security, as a child; a propensity for associating with others who are addicted; a sense of insecurity, loneliness, or alienation; and

difficulty experiencing positive emotions such as joy, love, or intimacy in times of trouble.

The most disturbing feature of these findings is the realization that in view of the deterioration in American society, especially in the high divorce and illegitimacy rates, it is obvious that the seeds are being sown every year for millions more personalities with these addictive tendencies.

Alcohol addiction takes hold of the individual both physically and psychologically. Alcohol, like other drugs, but unlike other addictions, takes control of the body chemistry and thus dominates the individual in all aspects of his being.

In the early stages of addiction, alcohol is perceived by the individual as a friend which helps them cope with emotional or physical pain or simply unpleasant situations or thoughts. The person increasingly drinks, and with the use of alcohol the body's tolerance builds requiring the drinker to drink more to achieve the same effect. Commonly, a drinker make drink rapidly, take a drink secretly or conceal the fact that he is drinking more than others in a social setting.

In the second stage of addiction, daily drinking and secret drinking become commonplace. The individual may make desperate efforts to control his drinking, trying to set rules or "go on the wagon." Other interests and people diminish in importance, and the individual becomes less dependable. The hook is set.

Only at the final stage may others begin to perceive that something is seriously wrong. Drinking is now an imperative, if for no other reason than to stave off withdrawal symptoms. Ambition is gone, relationships unravel, distrust is pervasive and irresponsibility is the primary feature of what may have at one time been a very responsible personality.

Through it all the individual increasingly distorts reality in his thinking and engages in what experts call denial which is defined as a pattern of deception by which the alcoholic hides the truth of his dependence from himself and others. **This deception is the foundation upon which all of the tragic edifices of alcohol abuse are built. It is the deception which leads to**

**addiction, which reinforces and perpetuates addiction once it occurs, and which leads to drunk driving and the resulting crashes.** The deception of denial is where the battle must be fought. Denial is the major obstacle to ending drunk driving, not just releasing individuals from the prison of addiction.

Denial is a stubborn and persistent trait which distorts reality and perverts logic. A seemingly impenetrable wall of excuses and rationalizations is erected by the alcoholic to defend his behavior. He may insist that if his wife didn't badger him about his drinking that it would be unnecessary, or that his boss' attitude toward him at work "drives" him to drink. Invariably, anyone or anything is blamed except the individual himself or alcohol.

Denial has a psychological relationship to other myths about alcohol abuse generally, all of which prevent constructive action to deal with the alcoholism. Commonly, an alcoholic or his friends or family will insist he only drinks beer, the implication being that beer cannot be an alcoholic's drink. Yet alcohol is a drug found in many forms. One beer is equivalent in total alcohol content to one shot of whiskey or a glass of wine. Significantly, in the majority of cases I have handled as a lawyer for victims of drunk driving, the drunk driver had been drinking beer. This real world experience is supported by statistics which show that the majority of drunk drivers had been drinking beer.

It is frequently assumed that continuing employment, especially at very responsible jobs, is evidence that the individual cannot be an alcoholic. Yet many of the worst addicts are professional people and executives who turn to alcohol, in part, to cope with the demands of their work.

Being a "nice person" with a good home and rarely being seen drunk are misleading indicators as well, as are intelligence, academic achievement and social standing. Only three in one hundred alcoholics are "skid row bums." Indeed, as part of the scheme of denial the alcoholic may go to great pains to make a good impression in most areas of his life.

Sadly, but expectedly, alcohol use affects everyone in proximity to the abuser either directly or indirectly. This is especially true of his family. Even in the face of other financial

obligations, the alcoholic will use limited family financial resources to purchase more alcohol. He conceals what he is doing by claiming that he spent the money for other purposes. This and other forms of denial create a pervasive atmosphere of suspicion which leads to frequent accusations and conflicts, and a stressful environment for everyone.

Invariably, alcoholics neglect their family duties and fail to meet the emotional needs of family members. This only aggravates the family's feelings of insecurity. Indeed, family members may even begin to believe they are responsible for the alcoholic's drinking - that were it not for their shortcomings the alcoholic would not drink.

Guilt is compounded by fear. Family members fear the unpredictable consequences of the drinking, including the extreme mood shifts, anger, and sometimes violence. Their anxiety suggests to them that the family unit will disintegrate, which is not a misplaced fear. Statistically there is a much higher incidence of divorce in families of alcoholics.

Family members are forever the victims of disappointing behavior on the part of the alcoholic due primarily to the alcoholic's inability to live up to promises and obligations. Each member of the family eventually is forced to cope with the situation in his or her own way, often without openly sharing with other family members what each feels. This contributes to the breakdown of communication and the bonds among family members.

As the alcoholic's inability to conceal his addiction becomes more pronounced, family members are subjected to embarrassing scenes in the presence of non-family members. This leads the family to become more reclusive, avoid social contacts, and fail to seek help when it is most needed. If the addictive behavior continues unabated, resentments build to an intense level in the family, putting a strain on all relationships, and contributing to the breakdown of the family unit.

Ironically, the family may unwittingly contribute to the alcoholism through coping strategies that are ineffectual and which shield the alcoholic from accountability. These strategies

are usually intended to protect the alcoholic or to simply minimize the family members' own anxieties and negative feelings about the situation.

A wife may shield her alcoholic husband from responsibilities by taking care of obligations herself, or by making excuses for his behavior to other people, such as his employer. This leads the family member into a pattern of deceit which invariably creates additional stress for that member and worse, makes it easier for the alcoholic to continue his deceitful and irresponsible pattern of behavior.

Family members may attempt to eliminate responsibilities for the alcoholic and assume those responsibilities themselves. This is a misbegotten effort to compensate for the alcoholic's unreliability and to minimize the potential for conflict with the outside world. However, it only makes it easier for the alcoholic to continue his addictive behavior.

Some family members, especially some children, rebel in the face of the hostility and resentment they feel. This leads them into conflicts at school, delinquency, or other misbehavior. Therapists refer to this as an unconscious plea for help. It may manifest itself in bad grades and poor performance in activities even though the child is not overtly rebellious.

Some family members, especially children, react very differently and begin an intense striving for achievement. Their thinking suggests to them that if they can perform at a high level, academically, in sports, or socially, it may lead the alcoholic family member to stop drinking. In any event, they believe this validates their own self worth, which is under attack from feelings of guilt and resentment.

Perhaps an alcoholic's family members will engage in angry accusations of the alcoholic for his contribution to family problems. Often this approach includes blaming the alcoholic even for problems unrelated to his addictive behavior. It provokes greater anger from the alcoholic who uses it as an excuse for more drinking.

Perhaps the saddest reaction is for a family member to simply withdraw in an effort to escape the pain. Family members

who resort to this tactic become very apathetic and passive. This does not mean that they do not care but does reflect an unwillingness to confront the alcoholic or the painful consequences.

The denial and deceit which characterizes alcoholism is, as indicated, such a fundamental problem that it is the single greatest obstacle to overcome in the search for a resolution to the problem and a return to a normal meaningful life. We as human beings often live with rationalizations. One of the most useful personality traits to acquire is the habit of regular introspection and soul searching about our lifestyles, conduct and weaknesses. With this in mind, an appendix to this chapter includes a series of "yes" and "no" questions which indicate whether an individual is already displaying addictive behavior and whether a family member is being controlled, at least in part, by that behavior. Readers who have any questions in their own minds can take this simple short test first.



## SELF TEST

### ARE YOU CONTROLLED BY ALCOHOL OR DRUGS?

How do you know whether you are chemically dependent? A dependent person can't stop using drugs or alcohol. This abuse hurts the user and everyone around him. Take the assessment. The more "yes" checks, the more likely there's a problem.

YES NO

- \_\_\_\_ Do you use alcohol to handle stress or escape from life's problems?
  
- \_\_\_\_ Have you unsuccessfully tried to cut down or quit using alcohol?
  
- \_\_\_\_ Have you ever been in trouble with the law or been arrested because of your alcohol use?
  
- \_\_\_\_ Do you think a party or social gathering isn't fun unless alcohol or other drugs are served?
  
- \_\_\_\_ Do you avoid people or places that do not support your usage?
  
- \_\_\_\_ Do you neglect your responsibilities because you'd rather drink?
  
- \_\_\_\_ Have your friends, family, or employer expressed concern about your use?
  
- \_\_\_\_ Do you do things under the influence that you would not normally do?
  
- \_\_\_\_ Have you seriously thought that you might have an alcohol problem?

ARE YOU CONTROLLED BY AN ALCOHOL OR DRUG  
USER?

YES NO

- \_\_\_ Do you often have to lie or cover up for the chemical abuser?
- \_\_\_ Do you spend time counseling the person about the problem?
- \_\_\_ Have you taken on additional financial or family responsibilities?
- \_\_\_ Do you feel like you have to control the chemical abuser's behavior?
- \_\_\_ At the office, have you done work or attended meetings for the abuser?
- \_\_\_ Do you often put your own needs and desires after the user's needs?
- \_\_\_ Do you spend time each day worrying about your situation?
- \_\_\_ Do you analyze your behavior to find clues to how it might affect the chemical abuser?
- \_\_\_ Do you feel powerless and at your wit's end about the abuser's problem?

Alcoholics, and for that matter all drug abusers, are often enabled by friends or family members to continue their behavior. These family members or friends may believe, erroneously, that they are doing the best they can for the abuser, when they are in fact contributing to the situation. As addiction progresses alcoholics cannot continue their drinking without others=

assistance. Family members or friends may, as we have seen, make excuses for them, rescue them, and, worst of all, participate in their denial and accept their delusional thinking and attitudes. This pattern of behavior often develops without the family member or friend being conscious of its growth and evolution in their own lives.

Not only is the alcoholic's life diminished by the addictive behavior, but friends= and family members= lives are damaged as well. Alcohol, either in terms of its actual use, or in terms of thinking about it's abuse, preoccupies so much time and energy as to become the central issue and focus of friends= and family members' lives. It is stressful and emotionally damaging.

Until the pattern of denial, not only on the part of the alcoholic, but on the part of his family members and friends is broken the situation is self-perpetuating in the worst way. Indeed, it usually continues in a downward spiral leading to crisis after crisis and more and more injury and damage, whether physical, social, financial, or psychological.

It is useful to understand this progressive deterioration by describing its characteristics. Initially, the soon-to-be alcoholic will engage in what is called occasional relief drinking. This develops into constant relief drinking which produces an increase in alcohol tolerance. Soon, the alcoholic, or other family members, begin to notice memory blackouts. Increasingly, the alcoholic feels an urgency to get his first drink of the day and he engages in more and more deceptive, secretive behavior as he drinks.

The deceit and secretiveness leads to feelings of guilt and an increasing dependence on alcohol. He will become unable to discuss the problem openly or frankly. Memory blackouts increase.

Denial becomes more pronounced as he develops more and more excuses and rationalizations for his behavior. In social settings his ability to stop drinking when others do markedly diminishes. The alcoholic's behavior becomes more grandiose and aggressive, yet coupled with a persistent underlying remorse. Repeated efforts to control his behavior fail. All promises and

resolutions he makes to himself and others fail.

The alcoholic may even attempt to escape in a physical sense by leaving his family or his geographical setting. By this stage, which therapists call the crucial phase, he will have lost most other interests and will seek to avoid family and friends as much as possible. Work and financial problems will have accumulated to a burdensome level.

As he moves from the crucial phase to what is known as the chronic phase, his ordinary willpower in virtually every area of life is lost. Increasingly, he feels resentment and bitterness with no foundation or factual basis. He engages in early morning drinking accompanied by tremors. His health continues to decline in part due to his neglect of food and his decrease in alcohol tolerance which in turn, leads to more drinking to achieve the same effect.

In the chronic phase, he engages in lengthy periods of intoxication which lead to moral deterioration in other areas of the alcoholic's life, including sexual behavior, financial responsibility, and truthfulness.

The damage to the alcoholic's brain manifests itself increasingly in impaired thinking, indefinable fears, and an inability to initiate virtually any activity other than more drinking.

The alcoholic may tend to associate with other alcoholics or individuals he would not have associated with earlier. His drinking soon becomes obsessive as all of his alibis and excuses for his behavior are exhausted. At this, the very last stage of the chronic phase, he experiences vague spiritual desires even as he comes to acknowledge complete defeat.

How long the alcoholic stays at this level is determined by many factors, both external and internal, but it is a sad and tragic truth that some never recover from this lowest pit of despair and chemical slavery.

For the alcoholic to move into the stage of rehabilitation he must first develop an honest desire for help. This can be contributed to immeasurably by friends and family members, as described later.

At this point, the alcoholic learns that his condition is an

illness and that total addiction can be stopped but only if he is willing to completely stop all use of alcohol in any form.

During this phase he has the opportunity to meet former addicts whose lives have returned to stability and happiness. This causes him to take stock of himself and his own life and reassess his thinking, which to this point has been deceitful and irrational.

This is the single most compelling and helpful step the alcoholic may take. By recognizing a greater reality beyond himself and an accountability to a higher law, the alcoholic takes a tremendous step away from setting his own rules which are invariably delusional. Furthermore, this spiritual perspective gives him hope that there is forgiveness for his behavior and an opportunity for a return to a normal, healthy and happy life.

With the onset of this new hope the alcoholic must deal with - through the aid of his physician - his physically deteriorated state. By strengthening his physical condition he contributes to the increasing mood of optimism and hopefulness, psychologically and spiritually.

As he moves from the rehabilitation stage into the recovery stage the process is facilitated by group therapy usually through organizations such as Alcoholics Anonymous. This in turn, diminishes many of his fears of the future and begins to restore his self-esteem, especially when he is able to understand how others have experienced his same self-defeating course and yet successfully recovered.

With proper medical guidance, his appetite and physical strength begin to return. He becomes increasingly realistic in his thinking, and with more rest there is a diminished desire to attempt to escape from the difficult circumstances and demands of life.

Reinforcing this process, his family and friends recognize his achievements and begin to express appreciation for the effects on their lives. This in turn reestablishes bonds and relationships and may even result in a new circle of friends who are not enslaved by addiction.

As old interests are regenerated and new interests develop, the recovering alcoholic may begin to notice the development of

new ideals as well the restoration of lost ideals. His emotional control increases and he more frequently faces even adverse circumstances with courage.

As his physical and emotional stability increases, so does his economic stability and the confidence of coworkers.

In the final stages of recovery, his personal appearance and his sense of contentment are restored. He now recognizes his rationalizations and self-deluding thoughts and works to avoid them. The recovering alcoholic continues with group therapy which is a must for the remainder of his life. Ironically, though much has been lost during his enslavement to alcohol his experience may actually enhance his understanding of life and higher values, leading him to become a far more unselfish and responsible individual than he was before his addiction began.

In order for the alcoholic to achieve this extraordinary recovery and high plateau, family members and friends must be part of the solution. They too must reassess their thinking and the patterns of behavior they have fallen into during the progression of their loved one's addiction. If they are willing to change these attitudes and behaviors it is much more likely that the addicted family member will change his.

First and foremost, family members should not enable the addict. Indeed, **they should totally dismantle the support system that enables the alcoholic to drink and escape consequences of his behavior.** By compelling the alcoholic to take full responsibility for his own obligations and the consequences of the addictive behavior, they force the alcoholic into a confrontation with reality. Indeed, it is useful to deliberately precipitate a crisis for the alcoholic which compels him to respond.

Second, family members must deal with their own needs and not allow the alcoholic's behavior to consume their thinking, energy or time. The sickness of alcoholism is so damaging that anyone in close proximity to it stands to be damaged as well. It is imperative that family members do everything they can to escape being pulled into the vortex of the alcoholic's obsession. By taking care of their own needs, they can make progress toward a

normal existence for themselves, and model a behavior that may have an effect upon the alcoholic's thinking.

Family members should not attempt to overwhelm the alcoholism on their own. Anyone victimized by this disease can benefit immeasurably from the support and guidance of organizations such as Al-Anon (for adults) and Al-ateen (for teenagers).

**It cannot be emphasized enough that the family must be ready to acknowledge the problem and accept help for it before any progress can be achieved.** Because alcohol abuse has been for so long a pervasive part of our society, treatment centers and other facilities to treat it are common. They are usually listed in the telephone book under "Alcoholism information and treatment."

Among the most effective of these options are treatment centers which provide a wide range of services including, if necessary, in-patient care. They also provide support services for family members of the alcoholic as well as intensive treatment on an in-patient basis and subsequently in the form of group therapy.

They work in a mutually supportive role with organizations like Alcoholics Anonymous.

The effects of alcoholism on the children of alcoholics should never be underestimated. Indeed, it has been shown that the children of alcoholics have a much higher risk of developing alcoholism than does the remainder of the population. For that reason an organization known as Adult Children of Alcoholics (ACA) was established to help these children overcome negative thinking patterns which they adopted while growing up in an alcoholic home.

Finally, the alcoholic must face his own problem and seek help. No one can compel him to do this. By refusing to enable the alcoholic, family members or friends may bring about a crisis which causes the alcoholic to come to the conclusion that he needs help, but the choice is ultimately theirs alone.

Undoubtedly, the most common and well known treatment group is Alcoholics Anonymous. AA is a self-help organization which centers on getting its membership sober and keeping them

that way through healthful patterns of thinking and behavior.

In most cases, more intensive professional care is necessary at the beginning of the rehabilitation process. In-patient hospitalization and detoxification are often an absolute necessity for the process to work. Since alcoholism is such a widely recognized and pervasive disease in our society, most health insurance plans provide some coverage.

As the rehabilitation progresses, relapses can occur. The alcoholic must, at all costs, stay away from alcoholic drinks and environments where alcohol is served. The weakness will remain with him for the remainder of his life. A relapse though, does not suggest failure.

With a spiritual perspective, and the help of competent support groups such as AA, or professional therapists, the probabilities for lifelong sobriety are excellent. And, ironically, the truly recovered alcoholic is one of the least likely to become the cause of someone else's death or serious injury as a result of drunk driving. He has learned in a painful way the importance of realistic and honest thinking about one's own behavior.



## CHAPTER 18

### Children And Alcohol Abuse

(Ivy)

It was mentioned earlier that alcoholism tends to run in families. But it should not be assumed that only an individual from alcoholic families can develop alcoholism. Studies have shown that alcoholics are much more likely to have alcoholic siblings, parents or other relatives and are more likely to marry into families where alcoholism is prevalent.<sup>11</sup>

Studies suggest that one third of any sample of alcoholics will have at least one parent who was, or is, an alcoholic. Roughly one in eight American adults is either an alcoholic or experiences problems with alcohol.<sup>12</sup>

In view of these statistics there are 28.6 million children of alcoholics in the United States! Of those, 6.6 million are under the age of eighteen!

Children of alcoholics are two to four times more likely to develop alcoholism than are other children. Approximately 18 million Americans report negative consequences from their drinking. Children of alcoholics are at increased risk for other drug use, especially in late adolescence.

Significantly, alcoholism of a parent has been closely connected to child abuse.<sup>13</sup> These findings were no surprise to me. As a young attorney working for the state department of human services I learned that child abusers tended to follow certain profiles. A common feature was alcohol or drug abuse by one or both parents. Research suggests that alcoholism is more strongly related to child abuse than are other family disorders. Some studies have also suggested very high rates of alcoholism among the parents of incest victims.

Children of alcoholics score lower on tests measuring verbal ability. The ability of children of alcoholics to express themselves is impaired to an extent that it can undermine their scholastic performance, relationships, and job performance. The

low verbal scores do not necessarily reflect intellectual impairment in the broadest sense. Children of alcoholics do have greater difficulty with abstract and conceptual reasoning.<sup>14</sup> Children of alcoholics also require very concrete instructions.

Children affected by fetal alcohol syndrome, which is caused by the mother consuming alcohol during pregnancy, suffer from deficits including dysmorphic facial features, growth retardation, intellectual impairment, and disruptive behavior patterns such as attention deficit disorders and hyperactivity. The only safe choice, in view of the statistics, for a mother during pregnancy is not to drink.

Expectedly, children raised in alcoholic families score lower on tests measuring family cohesion, intellectual-cultural orientation, recreational orientation and independence. Customarily they experience higher levels of conflict within the family.<sup>15</sup>

Children of alcoholics may be hampered in their ability to grow and develop in healthy ways, including learning to engage in problem solving and how to share and interact.

Other parental problems, including anxiety and depression, are important factors in determining the child's own problems. Indeed, children raised in other types of dysfunctional families show similar traits and characteristics to those raised in alcoholic families. Children of alcoholics display depression and anxiety more than other children. They may also display other behaviors symptomatic of depression and anxiety such as crying, bed-wetting, alienation from others, and fear of school or other phobias. They may choose to isolate themselves from others more frequently and for longer periods.

Children of alcoholics are more likely to be truant, drop out of school, fail subjects or end up in conflict with school authorities. Perhaps most significantly, children of alcoholics cannot see themselves as successful; they anticipate failure even when they achieve in specific areas.

Some measure of protection for the children of alcoholics can be secured. An emphasis on spiritual and religious beliefs seems to be the paramount asset in protecting these children from

the more damaging aspects of the alcoholic family. The presence of significant others who are consistently available in the life of a child, as well as an adherence to family rituals and traditions also facilitates this protective process.

## CHAPTER 19

### The Impact On The Nation

(Ivy)

"Alcohol is used by more Americans than any other drug, including cigarette tobacco".<sup>16</sup>

"There are more deaths, illnesses and disabilities from substance abuse than any other preventable health condition. Of the two million U.S. deaths each year, more than 1 in 4 is attributable to alcohol, illicit drugs, or tobacco use".<sup>17</sup> These conclusions from two of the most noted recent studies on substance use and abuse received nationwide attention including newspaper headlines to the effect that 500,000 people die every year in the United States from preventable substance abuse!

There is a perverse irony in this, illustrated best by reference to the Vietnam War which cost the United States almost 60,000 lives over approximately ten years. Hundreds of books, thousands of articles, editorials and commentaries, and countless television accounts have dealt with this tragic loss to the nation. The gravitational pull produced by the memory of Vietnam has profoundly altered our government's foreign policy. Vietnam juts onto the horizon of recent American history like a Mt. Everest no one would dare attempt to scale again.

**Yet to this day, late in the 20th century, billions of dollars are spent each year advertising, cultivating and encouraging the use of substances that will kill more Americans every two months than the Vietnam War did in it's ten year duration!** It has been a primary objective of this book to point out this national disgrace with statistics and facts, though it should be obvious to any American just from observation.

Significantly, of the three categories used in those two studies: alcohol abuse, drug abuse, and smoking, by far the most expensive in total economic costs, as of 1990 was alcohol at 98.6 billion dollars. Smoking followed at 72 billion dollars and other drug abuse at 66.9 billion dollars.<sup>18</sup> These costs include medical

treatment, crime, lost productivity, premature death and destruction of property. The burden on the economy and every taxpayer is enormous. No one escapes - even those who do not use any of these substances have to bear the cost, not to mention the risk of drunk driving and other forms of criminal conduct.

The obstacles to changing this are the alcohol and tobacco industries with more than 100,000 employees and a combined payroll of more than 1.5 times that of the soft drink industries.<sup>19</sup> Annual retail sales for alcohol, in all forms, total 92 billion dollars, a figure which, significantly, does not quite reach the 96 billion dollars in cost to the nation each year for alcohol abuse.<sup>20</sup>

According to the report of the Robert Wood Johnson Foundation, alcohol and tobacco are some of the most widely advertised products in the economy. **The political clout of these industries and the weakness of our political leadership results in an absurd situation - billions are spent each year to promote the use of these products, while taxpayers in turn pay billions to cope with the consequences of that use.**

The effects of abuse of alcohol are felt throughout society. No group or category is immune. The largest segment of the American people who use one of these substances are those who use alcohol, with a reported 103 million Americans using this drug in the last month, as indicated by a 1991 study.<sup>21</sup> Expectedly perhaps, young adults are most likely to use alcohol, and, as we point out, the alcohol industry specifically targets this age group in their advertising campaigns. Men are more likely to be users of alcohol; whites rather than blacks are more likely to drink, but neither is more likely than the other to drink heavily; and native Americans are at greater risk for alcohol dependence.<sup>22</sup>

Oddly, those who are more educated are more likely to use alcohol, but those with lower education levels are more likely to drink heavily. Teenagers are at greater risk because of the experimentation coupled with peer group pressure that characterizes those years. Most importantly, teenagers and young adults do not recognize the threat, and as a result, continue to use alcohol to the point that time and accumulated effects finally show up in mid or late life when it is too late to avoid the

consequences of damaged health, disability, or premature death.

How this process evolves is unsettling. By the 8th grade, 70% of students have tried alcohol, a figure that increases to 88% by the 12th grade.<sup>23</sup> Compare this statistic with the fact that the purchase and possession of alcohol by anyone under 21 is illegal in all 50 states. Studies indicate that two-thirds of teenagers who drink report they can buy their own alcoholic beverages.<sup>24</sup> **The earlier the age when alcohol is first used, the more likely the individual will become a heavy user later in life.** In the early 20's, a critical stage in life when choices are made about marriage, work, etc., many problems related to alcohol are already observable. For women, this threshold may be delayed until their 30's.<sup>25</sup>

As already indicated earlier in this book, the use of alcohol is closely associated with motor vehicle crashes, homicides, and suicides. This is especially true among teenagers and young adults for whom these forms of death and injury are their greatest threat.<sup>26</sup> Drivers under the age of 25 are more likely than those who are older, to be intoxicated in a fatal crash.<sup>27</sup> Furthermore, more than 126,000 of the patients admitted to state funded alcohol treatment programs (this does not include privately funded programs) were under the age of 21, or, to put it another way, 10% of all patients admitted to these state funded treatment programs were under the age of 21.<sup>28</sup> Furthermore, nearly 1/3 of all minors incarcerated in juvenile institutions in 1987 were under the influence of alcohol at the time of their arrest.<sup>29</sup> Being under the influence of alcohol also contributes to the vulnerability to crime, not just the perpetration of crime, as indicated by one study which revealed that almost half of college students who had been the victims of crime had used alcohol or drugs before the crime occurred.<sup>30</sup> Not surprisingly, there is a relationship to drug and alcohol use and grade point average which suggests that students with D's or F's drink three times as much as those who earn A's.<sup>31</sup> Studies also indicate that alcohol use is implicated in one to two-thirds of sexual assaults and "date" rape cases among teens and college students.<sup>32</sup>

Significantly, 56% of grade school and high school students

admit that alcohol advertising encourages them to drink.<sup>33</sup> This, of course, does not speak to the other influences in our society which encourages this behavior: movies, TV, and other forms of entertainment, not to mention adult modeling.

Both the Robert Wood Johnson Foundation Report and the Department of Health and Human Services Report on Alcohol and Health, downplayed a slight decline in recent years in alcohol use. Despite this marginal decline, there is evidence of an increase in the proportion of heavy drinkers.<sup>34</sup> Heavy drinking, which the Robert Wood Johnson Reports defines as "five or more drinks per occasion, on five or more days in the past thirty days" is practiced by 10% of the population to such an extent that they consume 50% of the alcohol.<sup>35</sup>

All of this leads to a great deal of damage to many Americans' bodies. The extent of the physiological damage from alcohol abuse encompasses virtually every system and part of the human body. "Alcohol is a major cause of premature death in the United States" with Americans dying an average of 26 years earlier than they otherwise should.<sup>36</sup> Liver disease, the ninth leading cause of death, is largely preventable since cirrhosis is caused by alcohol.<sup>37</sup>

Alcohol consumption is a major risk factor for developing cancers of the mouth, throat and gastrointestinal tract as well as pancreatitis. Significantly, it is also a risk factor in acquiring an HIV infection.

Inevitably, with so many hazards attendant to its use, alcohol abuse causes a major strain on the nation's health care system and consumes huge sums of money. Projected costs for dealing with alcohol abuse have reached 150 billion dollars for 1995. These figures are not adjusted for inflation, but reflect values in terms of 1983 dollars.<sup>38</sup>

Problem drinkers will spend four times as much time in hospitals as non-drinkers. Disturbingly, studies indicate that as many as 40% of all patients in general hospitals are being treated for the consequences of alcohol abuse.<sup>39</sup> Alcohol treatment center care alone costs over 300 billion dollars a year.<sup>40</sup> The physical and mental debility brought on by drinking also leads to

more nursing home care. These objective realities contrast painfully with the misleading images of beer and liquor advertising.

Costs of alcohol abuse can be measured in economic terms far more readily than in human terms, but each of these very comprehensive studies made significant efforts at demonstrating the human tragedy.

More than 25% of women state that drinking was a cause of family trouble in their homes. But the Johnson Report, which provided the survey results, also indicated that despite these figures substance abuse and family problems are "no doubt seriously under reported" with over 45% of all women reporting some family exposure to alcoholism or problem drinkers in a 1988 study.<sup>41</sup>

The effects of problem drinking on the family are many, not the least of which is causing divorce. Surveys suggest that more than 1/3 of women who are separated or divorced were formerly married to a problem drinker. Wife abuse and physical fights characterize the marriages of problem drinkers as opposed to 14% of those who were not problem drinkers, according to one study.<sup>42</sup>

The chances that there will be violence in a family increase in direct relationship to the extent of drinking.

The Robert Wood Johnson Study simply states: "Families with problem drinkers experience a host of social problems, such as violence between spouses, child abuse and a higher likelihood of raising children - particularly boys - who themselves become problem drinkers. Almost 1/5 of adults say that they lived with a problem drinker or an alcoholic when they were children."<sup>43</sup>

With a deluge of statistical and objective evidence, the Health and Human Services Special Report demonstrated that the adverse social and economic consequences of alcohol use touched on every area of American life. **Not only did the report corroborate that motor vehicle crashes were the leading cause of injury deaths, but that these crashes were the single greatest cause of death for people between the age of 5 and 34 in the United States.**<sup>44</sup> The report also concluded: "Alcohol increases the risk for falls (in one study 60% of emergency room



patients injured in a fall had a blood alcohol content),<sup>45</sup> fires and burns (the fourth leading cause of death from injury), drowning (one study found alcohol involved in 38% of drowning deaths),<sup>46</sup> and suicide (20-36% of suicide victims were drinking before their suicide or had a history of alcohol abuse).<sup>47</sup>

What has been attempted in this chapter cannot truly be achieved - to paint a clear, complete picture of what alcohol abuse is doing and has done to our society and individual lives. No quantity of written words, statistical surveys, or scientific studies can fully depict this tragedy of historically epic proportions. We are living in a time and place when a society's greatest enemies have not been recognized - they are among us and, in many instances and in many ways, are we ourselves.

PART E

**Conclusion**

## Conclusion

(Ivy)

As we come to the end of our discussion of the tragic issue of drunk driving we all recognize there are choices others make which we have no control over. But we can change the thinking in our own ranks - the ranks of anti-drunk driving advocates and victims. What follows are some concerns for reflection.

The first is what may be a too ready willingness to compromise in this cause in the name of "realism" and "pragmatism". To succeed, every great human cause must have an over-arching philosophical and moral structure which is readily discernible not only to its proponents but to its opponents and, most especially, to those occupying neutral ground - for they are the people who must be influenced.

The anti-drunk driving cause has long represented moral objectives - the diminishment of human suffering, the saving of lives and the dispensing of justice. But the evidence suggests it has failed to define goals which brook no compromise with the forces that impede or oppose the complete achievement of these objectives. A prime illustration, as noted in earlier chapters, is the practice of admonishing the public "don't drink and drive" while failing to pursue legislative goals which mandate this behavior. Until the message to not drink and drive is conveyed by law, we cannot hope to achieve the ultimate objective.

Indeed, the ultimate objective needs to be stated forcefully and uncompromisingly - the elimination of drunk driving as a serious threat on our highways. If ending the human suffering and deaths caused by drunk driving are worthy and moral goals then no compromise should be countenanced in the defining of the objectives which we set on the way to our ultimate objective. If we continue to speak of our goals without making it clear that ultimately there can be no compromise in their achievement, we may appear (whether it is acknowledged or not) as, at best, weak and equivocal, or, at worst, hypocritical.

The importance of setting uncompromising goals was

illustrated by the civil rights movement. The objective was clear - the elimination of racism in American society - a daunting task made so by the fact that racism is fundamentally an attitude and a state of mind. The ultimate goals were equally clear - a legal regimen in every state, municipality, and the nation which prohibited racist conduct (even if all attitudes could not be reformed) and legally mandated equality. The civil rights leadership recognized that there would be incremental achievements, but they never wavered in their public statements and pursuit of their ultimate goals. To have suggested that any law anywhere in the nation could be allowed to stand which permitted any form of racist or unequal treatment would have stripped the civil rights movement of much of its moral force and integrity.

Likewise, our movement must define its goals in the same uncompromising way - that ultimately no law can be permitted to stand which even by implication suggests that drinking and driving is permissible under any circumstances. And as a corollary, we must be stubbornly frank in identifying our adversaries - preeminently the liquor and beer industry - and relentless in our focus of the light of publicity on their conduct and that of political figures, in blocking and impeding the achievement of these objectives. Though there must be a tough-minded realism: The liquor industry, as with the tobacco industry, enjoys great power in our state and national governments. But they can be defeated - the interests of Americans as a whole are in conflict with their interests.

Of great importance also is the need to consider placing greater emphasis on the development of extensive grass roots organizations. Many opportunities have been lost and much power has been left unclaimed by this omission.

Every aspect of this cause - fund raising, publicity and media support, political and legislative influence, and the education of the public - is enhanced by the development of a large and diverse power base of volunteers and supporters.

It is, perhaps, more exciting, to focus on publicity and media contacts, legislative agendas, or fund raising than to do the time-

consuming, tedious, demanding, and often obscure work of building grass roots organizations, but therein lies power. A cause such as ours is not dissimilar to a political campaign, and any experienced political professional is acutely aware that the larger and better organized the grass roots organization, the more certain the victory.

Finally, but by no means the least of these considerations, is the concern that we have still not come to grips with the dangerous pervasiveness of alcohol and drugs in our society. We live in a culture which is strangely and perversely apathetic to forces which are detrimental to its own well-being.

Emerson once said, "Beneath each depth a greater depth lies." Indeed, beneath the failures of our legal system, beneath the self-serving conduct of political figures and the alcohol industry is "the greater depth" of a society which is destroying itself morally, emotionally, and physically with the abuse of these substances. Historians of future generations and cultures may well write of the irony of a society which did not recognize what was so conspicuously adverse to its best interests. The costs to society in financial terms alone of permitting this to continue are incalculable. Medical costs for the care of victims of drunk driving and the cost of legal and social services for dealing with its consequences could fund many great challenges to the nation.

The most recent estimate indicates a \$2.4 million cost for each drunk driving fatality. This is borne by all of us in increased insurance premiums and taxes. Twenty-five percent of each auto insurance dollar is for the cost of drunk driving.

What if we were to substantially eliminate drunk driving as a serious threat in our society - a goal I believe is not unrealistic? The highway death toll would probably be cut by nearly half. Serious and disabling injuries would be comparably reduced. The savings to society in economic, not to mention human terms, would be tremendous. Personal injury and property claims would be reduced by billions.

A greater and more forceful appeal needs to be made to the nation in terms of the human cost. But in a society in which national elections are frequently won or lost on economic issues

alone and "the American Dream" is interpreted by many solely in material terms, would such an appeal be treated as an idealistic irrelevancy? I hope and believe not.

We have a moral obligation to confront the suffering and the injustice. If we fail to do so, then we and our children must continue to bear the consequences and the shame.

**Appendix A**  
**Investigative Checklist**

## INVESTIGATIVE CHECKLIST

1. Attempt to get statements of witnesses as soon as possible after the crash either by obtaining statements given to law enforcement investigators, or by directly contacting witnesses and drivers.
2. Reduce all statements to writing as soon as possible and have the witness sign the statement. This is preferably done at the time the statement is taken.
3. In lieu of a written statement, at least try to get the statement tape recorded or video taped.
4. Have numerous high quality photographs taken of the vehicles involved, the scene of the crash, and the victims (with their permission).
5. Seek law enforcement help to obtain the accident report and to determine whether or not the drunk driver had any prior convictions, traffic violations or a criminal record.
6. Determine whether or not the drunk driver was driving his own car, and if not obtain the name and address of the owner of the vehicle.
7. Determine whether or not the drunk driver was on the job, or going to or from some form of employment at the time of the crash. If this was the case, obtain the name and address of the employer.
8. Determine if there are any witnesses, not only to the crash, but also to its aftermath, and if any statements were made by the drunk driver or any other passengers or victims, or about the drunk driver's intoxication or drinking and driving prior to the crash.



9. Determine the purpose of the drunk driver's trip, his origin and his destination. Particularly try to establish where he obtained his alcohol or drugs.
10. Inquire about the speed of the drunk driver's vehicle before and during the crash.
11. Determine the existence and location of any traffic signs or indicators at the scene.
12. Ask why the drunk driver was unable to avoid the crash.
13. Determine all weather conditions at the time and scene of the crash.
14. Determine if possible the details of the drunk driver's insurance coverage, including the name of the company, the amounts and type of coverage.
15. Inquire whether the drunk driver, any of his passengers, the victim, or any of his passengers made any statements at the scene of the crash and if so, the content of those statements.
16. Determine if a video tape was made by anyone, whether by law enforcement officer, media or private citizen, of the scene and attempt to obtain a copy of the tape.
17. Obtain the drunk driver's present employer and address.
18. Determine the financial status of the drunk driver, including whether or not he owns a house, or real estate, or any other property that may be of significant value.
19. Obtain the names and titles of all investigating law enforcement officers.
20. Obtain copies of all breathalyzer, blood, or drug tests or

screens.

21. If an advocacy group is concerned that a judge who will hear the case is doing a questionable job in the disposition of DUI cases then all court records may be reviewed and a record kept of the disposition of all DUI cases before that court over any period of time. These records are a matter of public record and can be reviewed by requesting access from the clerk of the particular court.

## **Appendix B**

### **Civil Attorney Survey**

## CIVIL ATTORNEY SURVEY

DATE COMPLETED

NAME:  
PHONE

FIRM NAME:

ADDRESS:

I AM:

\_\_\_ A sole practitioner

\_\_\_ In a partnership or corporation with \_\_\_ attorneys.

\_\_\_ Associated with or sharing office space with \_\_\_ attorneys.

Year licensed in a state? \_\_\_ How long in private practice?

Primary area of practice?

Are you certified by the State Bar? \_\_\_ If so, in what areas?

In what courts of this state are you licensed to practice?

What percentage of your practice is civil? \_\_\_ Criminal?

Of your civil practice, what percentage is plaintiff?

Defense?

Have you represented the plaintiff in any personal injury cases (including wrongful death) involving drunk driving? \_\_\_ If so,

how many?\_\_\_\_\_ Of those, what percentage were settled in the plaintiff's favor? \_\_\_\_\_ How many were tried and resulted in settlement for the plaintiff?

Have you represented the plaintiff in any suit involving Dram Shop liability?\_\_\_\_\_ If so, how many?\_\_\_\_\_ What percentage were successful?

Based on existing statute and case law in your state, do injured parties have possible causes of actions against social hosts, convenience store retailers, and/or social clubs who provide set ups?\_\_\_\_\_ If so, would you be willing to discuss these cases with the involved injured parties?

If there has been a death involved, are you able to do the probate court work?

Will you charge extra for this work?

If you handle criminal cases, do you defend persons accused of drunk driving or manslaughter or homicide involving drunk driving?

Does any attorney associated with you or in your firm defend persons accused of drunk driving or manslaughter or homicide involving drunk driving?

Do you, or any attorney associated with you or your firm, represent insurance companies in personal injury cases?

Do you, or any attorney associated with you or your firm, represent any business involved in the manufacture, distribution, sale or service of alcohol?

Are you willing to take an occasional case pro-bono or at a reduced fee for economically disadvantaged victims?

What is your charge, if any, for an initial client consultation?

In fee cases, how are you paid?

\_\_\_\_\_ Retainer:

\_\_\_\_\_ Contingent fee:

\_\_\_\_\_ Specific job:

\_\_\_\_\_ Hourly rate:

\_\_\_\_\_ Promissory note as security for fees:

Do you have a written fee agreement that sets forth not only the client's obligation to pay, but also exactly what you will do for the client?

Do you, or are you willing, to provide clients with a written evaluation of the case as you see it following the initial investigative interview?

If called upon, would you be willing to assist MADD in non-trial related matters such as legal research, writing and drafting public policy statements, giving presentations, speeches, or other work on a pro-bono basis?

APPENDIX C

**SAMPLE PRESS RELEASE**

FOR IMMEDIATE RELEASE

M.A.D.D. CHAPTER TO TAKE STAND ON  
LEGISLATION

JACKSON, TENNESSEE - The Jackson Chapter of Mothers Against Drunk Driving will announce its stand on proposed new D.U.I. legislation at a news conference tomorrow (May 14) at 3:00 P.M.

Chapter leaders will discuss their views on proposed open container laws, now pending before the Tennessee Legislature. State Representative Edward Gilbert is expected to attend the news conference.

Two bills before the legislature propose differing penalties. One would make illegal the drinking of an alcoholic beverage in a moving vehicle by any driver or passenger. The other would only ban drinking in a vehicle by a driver.

The news conference will be held in front of Jackson City Hall on East Main Street.

For further information contact:

(Name) \_\_\_\_\_ (Phone)



## Endnotes

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