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## TESTS FOR INTOXICATION

Donald S. Leonard

To eliminate driving under the influence of alcohol has become one of the most serious problems in modern traffic control. It is a problem which faces every police agency charged with safety on the highways. In this paper, which was read before the 35th National Safety Congress and Exposition at Chicago on October 7, 1947, Commissioner Leonard describes the steps taken and the success which has been obtained by the Michigan State Police through the introduction of chemical tests for intoxication. Donald S. Leonard (LL.B., Wayne Univ.) has served for over 24 years through all ranks of the Michigan State Police and as Commissioner since January 1947. He is well known in police circles having been president of the Michigan Association of Chiefs of Police, the Southeastern Michigan Association of Chiefs of Police, and the International Association of Chiefs of Police, and is active in these and other professional organizations.—EDITOR.

The story told of a police officer who testified in court that he knew the man he arrested was drunk because he found him kneeling in the center of the highway trying to roll up the painted stripe was not too great an exaggeration. But, on the other hand, it was not conclusive testimony, for the defendant could have said that he was not trying to roll up the stripe but paste it down where it had come loose, and furthermore he was not intoxicated because of spirits frumenti but suffered dizzy spells due to the spinning of the earth on its axis.

Facetious as that story may be, it nevertheless expresses all too realistically the problem which has confronted law enforcement officers in dealing with the drinking driver. By that I mean that without any standardized, legalized, and recognized method for measuring the extent to which alcohol has affected an individual, and whether he is intoxicated or not, it has been an uphill battle to adequately control this problem and successfully prosecute this worst of all traffic offenders and menaces.

Then, too, intoxication, in the absence of a measuring gauge, is ordinarily a matter of opinion on the part of an officer. The judgment of officers varying as it does in all human beings. It has happened more than once that a person has been accused of drunken driving, when actually he was not guilty. It may have been that he had not consumed enough alcohol to make him intoxicated as we interpret it, or some other cause—of which more than 60 are listed—may have been the reason for his having exhibited the appearance and actions of an individual intoxicated by alcohol.

Thus a measuring gauge serves the double purpose of protecting the innocent as well as determining the guilty.

All are too well acquainted with the seriousness, yes, the desperate seriousness of the problem presented by the drinking driver. He is the greatest single hazard on our highways. Every day, each 24 hours, he is responsible for thousands of accidents and for the injury and death of innocent persons. According to nation-wide statistics compiled by the National Safety Council, one out of five drivers involved in fatal accidents last year had been drinking. It is not just always the driver, for one out of four adult pedestrians who lost their lives on the highways also had been drinking.

Special studies show the drinking driver problem to be much more alarming than is revealed by the general statistics. One of the best of these was made in Evanston, Illinois, by the Northwestern University Traffic Institute in cooperation with the National Safety Council and other safety groups. This study revealed that, first, nearly one-half of the drivers involved in personal injury accidents had been drinking to some degree; second, the chances of such drivers becoming involved in accidents increased rapidly as the concentration of alcohol in their blood increased; and third, the driver with an alcohol concentration of 0.15% or more in his blood was 55 times more likely to become involved in a personal injury accident than the non-drinking driver. Other studies have shown the alcohol incidence in more than half the traffic accidents in which the drivers have met death, and there is good evidence that about one-third of the drivers in injury accidents have sufficient alcohol in their systems to be fairly classified as "under the influence."

Sometimes drivers have the weird delusion that several drinks make them better drivers. Others just black out, or at least drive in a fog, or with one eye closed to counteract the deceptions of seeing double.

Whatever may be the case, or the delusion, the cold hard fact is that alcohol shows no distinction. It affects the rich and the poor, the big and the small, the old and the young. Even in small quantities it impairs vision and speech, muscular coordination, judgment and quick thinking, and reaction time. All of these faculties must be at their very best if a driver is to be a safe driver.

So with the incidence of alcohol so prevalent in traffic accidents, it is definitely clear that here we are dealing with a problem with which there can be no temporizing and no compromise. But that is easier said than done.

Without a standard to go by, the enforcement officer is usually under the necessity of making a diagnosis that even a physician would hesitate to undertake without calling upon the aids which medical science has developed. The officer must base his decision on his observation of how a driver handled his car, how he looked, how he talked, how he acted, etc. Nor does he have the helpful guide of knowing how a particular driver appears normally. He is also aware that there are other conditions, such as injury, illness, medicine, or even extreme fatigue, which may produce the same symptoms as being under the influence.

In court it is the testimony of the officer against that of the driver, and in most instances the driver claims that his indulgence was limited to "a couple of beers." Defense attorneys can confuse the issue and create doubt in the minds of the jury by asking questions as to the extent of the defendant's intoxication and whether the condition observed was caused by alcohol or something else. Witnesses are brought in to testify to the sobriety and good character of the accused. Then in most states the laws fail to exactly define the meaning of "driving under the influence."

Finally, there is the pressure angle. Convictions for driving under the influence usually result in the loss of a driver's license for a period of time in addition to a fine or jail sentence. Consequently, prosecutors and others are besieged and beseeched to reduce the charge to reckless driving or some lesser offense before the case ever gets to court.

Of major importance, too, is the fact that the public, and frequently even prosecuting attorneys, judges, and enforcement officers, are not sufficiently conscious of the gravity of the problem, and therefore have a somewhat tolerant attitude toward it.

Because all of this makes it difficult in many communities to obtain convictions for driving under the influence, enforcement officers too often will not press a charge for such an offense unless the driver is obviously and undeniably drunk. Yet it is known that the bulk of the problem is represented by drivers who have consumed only enough to deteriorate their ability to drive safely, even though they may not be obviously drunk. The result is that only a small percentage of the drivers who should be arrested for driving under the influence are so charged.

Many of the difficulties encountered in connection with the drinking driver problem can be minimized, if not overcome, by use of chemical tests. Where they are used properly and fairly, good results are generally obtained.

Chemical tests accurately measure the amount of alcohol in a

person's blood, and this is a reliable index of the extent of intoxication. When such tests are available to the officer, it takes the guesswork out of judging whether a driver is under the influence, even in the borderline zone. The officer quickly knows whether the driver has had just two beers or two beers too many, or whether his condition is due to illness, injury, or some cause other than alcohol. Likewise, a thoroughly investigated case plus chemical test evidence will quickly and positively refute most of the common defenses employed to beat a charge of driving under the influence. The result is more arrests for the offense, more convictions, and a wholesome effect on the conduct of other drivers in the community.

It is not uncommon for departments using the chemical test to obtain guilty pleas in more than 90 per cent of their cases. A driver who knows that he has registered well above the two-beer mark will usually admit that perhaps he made an error in his mathematics and that he really meant two times two, or four, or eight.

Also, by providing scientific, accurate, and indisputable evidence to supplement the officer's testimony, only a small percentage of contested cases are lost in court. The scientific test is an unbiased, unprejudiced witness, and it is no easy task to create a doubt on the part of a jury that this witness is not telling the truth.

Chemical tests offer an excellent educational medium. They are still new to most people and hence present a way to educate the public to the seriousness of the drinking driver problem, the obstacles hindering the enforcement officer in dealing with it, and the value of the test in stamping out this driving evil. In communities where chemical tests have been used extensively, records show a sharp decrease in the number of drinking drivers involved in accidents.

A report on Detroit's experience last year in handling the drinking driver problem following introduction of a chemical test program is of interest and lends weight to the claims made for this type of evidence. There were 955 persons convicted of driving under the influence, or more than 92 per cent of those charged with the offense. Convictions were 222 per cent higher than for the previous year, and this was attributed primarily to the chemical test. More important, the Detroit record showed a reduction of more than 47 per cent in accidents resulting from driving under the influence of liquor.

Chemical tests are not exactly new. Ten years ago they were in use by several of the larger cities and state enforcement agencies, and this group has slowly grown to 72 cities and 18

state agencies. In all, chemical tests are used in 27 states and the District of Columbia. Iowa leads with the largest number of departments in any one state using the test, or 11 cities and the State Highway Patrol. Ohio and Wisconsin, with eight cities each, and Indiana, with seven cities and the State Police, are next on the list.

Those cities and states using chemical tests have in general obtained a higher number of convictions for drunken driving, on a population basis, than have those not using them. Unquestionably many lives also have been saved because these cities and states have the tests and are curbing drunken driving. In view of this record of success, it is surprising that more states and cities have not adopted the tests.

During the ten years since the introduction of the program, traffic accidents have caused the death of more than 300,000 persons and the injury of more than 11,000,000. How many of these deaths and injuries were caused by the drinking driver and how many thousands of casualties might have been averted by more universal use of the chemical tests are questions with which you and the public should be vitally concerned. By the same token, those officials charged with the responsibility of preventing traffic accidents should take inventory to determine if all accessible tools are being used to make police efforts most effective.

There are several reasons, of course, for the retarded development of the chemical test program. In the first place, to establish such a program requires the interest and cooperation of enforcement officers, prosecutors, and judges, as well as the backing of the public. It is not always easy to obtain this interest and cooperation. Many persons, including enforcement officers, still question the value of scientific aids utilized in such a manner. There are also other practical obstacles all along the way which must be overcome if chemical tests are to be used properly and the results admitted as competent evidence in court.

Through the years the Michigan State Police department has obtained blood or other specimens in serious cases where the question of the extent of intoxication was especially important. Because of the difficulty of getting such specimens, however, they were not always obtained when they should have been. We also used one type of breath test experimentally for several years and had satisfactory results. But again such tests were on a very limited basis.

About the middle of 1946, our department became interested in a new type of chemical test equipment which seemed particu-

larly well adapted to our requirements in rural areas. We wanted a device which would be portable so that it could be carried in our patrol cars and a test made at the scene of a violation or accident. We wanted one which could be operated accurately and efficiently by our officers with a minimum amount of training and which would help an officer to determine if he should charge an individual with driving under the influence. We also wanted one which would produce accurate laboratory results to be used as evidence in court.

Having found such a device, we outlined our procedure for its use, and also discussed the entire program with prosecutors and judges. We gave special consideration to observing legal requirements, such as obtaining the consent of the individual to make the test, and assuring admissibility of the evidence by maintaining proper records and methods of handling. All the members of our Uniform Division were then trained to give the test.

Our officers are instructed to obtain a chemical test sample whenever the result of their preliminary investigation gives them reason to believe a traffic violator may be under the influence of alcohol. In every case chemical test results are considered as evidence to supplement the officer's observation of the conditions and circumstances which attracted enforcement attention, and never are they a substitute for the officer's observation, interrogation, and orderly recording of findings.

To assist in the proper recording of findings and give direction to those factors which would be considered, our officers fill out the alcoholic influence questioning form. The information gathered in this way assist the officer in deciding whether to charge the subject with driving under the influence and also provides a written record which can be used in presenting the case in court. It is also of assistance in the interpretation of the chemical test results. The written form and the direction it gives to good investigation is, we believe, one of the best aids available in these cases.

To insure that the chemical test evidence will be admissible in court we provide that:

1. The test must be given as soon as practicable after discovery of facts which indicate a determination as to alcoholic influence should be made.
2. The subject must be advised by the officer that the test is entirely voluntary and that the results may be used either for or against him in court.
3. Only a sealed container may be used and the seal must be

broken in the presence of the subject, calling this fact to his attention.

4. The officer must follow explicitly the instructions provided for making the tests.
5. Upon completion of the test, the container must be resealed in the presence of the subject, again calling this to his attention.
6. The breaking of the seal, making the test, and resealing the container must be done in the presence of witnesses whenever possible, their attention called to the various steps, and their signatures obtained on the seal after it has been replaced.
7. The officer making the test must retain custody of the container, not permitting it to be accessible to anyone until turned over to a properly designated person. A written record of all persons through whose hands the testing equipment passes before it reaches the laboratory is also kept on the container.

It is necessary in Michigan, as in most of the other states where the use of chemical test evidence is not specifically defined by law, to have an expert testify in contested cases as to the amount of alcohol found, extent of impairment caused by varying concentrations of alcohol, and the validity of chemical test results.

Fortunately guilty pleas are being obtained in a high percentage of our cases. Even so, however, our expert is called upon to do a lot of traveling, and this is a handicap which must be considered in carrying out a chemical test program. What is needed is a law similar to those in Indiana, Maine, Oregon, and New York by which the phrase "under the influence" is defined in terms of alcohol concentration in the breath, blood, or other body fluids. Until there is such a law, an expert will be required to appear in court in every contested case where chemical test evidence is presented.

Our experience is still quite limited as our training program has been completed for only about six months, and we have had some difficulty in getting equipment. We have had enough experience, however, to make us feel certain that we can deal much more effectively with the drinking driver by using chemical tests than we can by not using them.

Our arrests for driving under the influence during the first six months of this year increased 30 per cent and our convictions increased 45 per cent in comparison with the same period last year. Pleas of not guilty have been entered in less than five

per cent of the cases in which the chemical test has been used. Convictions have been obtained in all of such cases which have gone to trial except one, and in this instance the charge was dismissed by a justice of the peace who ruled that there was no evidence showing the defendant had been properly advised of his constitutional rights.

In connection with the successful prosecution of the contested cases, I should like to quote an excerpt from a letter written recently by our commanding officer, Sergeant Freeman, of the Cadillac, Michigan, detachment, to Dr. C. W. Muehlberger, of the Michigan state crime laboratory, who is our expert witness in these cases. The letter was written with reference to a recent case in which Dr. Muehlberger testified. I want to quote this excerpt to show the results that can be obtained:

“Dear Dr. Muehlberger:

The jury convicted the defendant of drunk driving. They were out just long enough to smoke a cigaret. . . . Our Prosecuting Attorney was well pleased with the disposition of the case and he feels that without the aid of the intoximeter and your expert testimony the defendant in all probability would have been acquitted of the charge.

“This is the first contested case we have experienced at this post, and the result accomplished with the jury has given everybody a lot of encouragement in the use of the intoximeter.”

Now, good as chemical tests are, it should be remembered that they offer no cure-all and cannot take the place of careful and thorough police investigation. On the contrary, they should be used only to corroborate and supplement other findings which through the years have been proved necessary to substantiate charges of driving under the influence. But they do provide a tremendous aid as the records prove.

In summarizing the values of the chemical test, I should like to emphasize the following.

The test takes the guesswork out of judging whether a driver is under the influence.

It convicts the guilty and exonerates the innocent.

It provides a means of awakening the public to the seriousness of the drinking driver problem.

It places a restraint upon those who would otherwise drink and drive.

It is the most notable advance in recent years in attempting to control the biggest single traffic hazard problem we have.

Maybe other and more effective means will eventually be found for dealing with the drinking driver. I do not know. But I do know that this is one means for reducing the inexcusable and horrible slaughter of the innocent by reckless individuals

who have no greater sense of moral responsibility than to drink and then drive. If we have to bring them under control through fear of an arrest by a method that leaves no doubt of their guilt, then this fear should be encouraged.

The drinking driver has no place on our highways. He has no right to bring tragedy into thousands of homes through his wanton disregard of the lives of others. The daily toll in deaths and injuries that he exacts must be stopped.

Every means that is used to eliminate him is a fair means, and the chemical test is not only a fair means but an effective means. The greater that its use becomes, the more decisive will be our entire general attack on this grave problem of the person who combines drinking with driving.

Let us overlook no opportunity to press this attack aggressively with all our energy, ability, and resources.