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DRINKING DRIVER ENFORCEMENT PROBLEMS*

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The problems encountered by peace officers trying to enforce Section 23102 of the California Vehicle Code are complicated by the differences between moderate drinkers and alcoholics. The experience of the last 17 years indicates two important conclusions.

1. The clinical picture of the moderate drinker at a particular blood level is distinctly different from the appearance and actions of the alcoholic at the same blood level.

2. More than 90% of persons investigated by the police for possible drinking driver violations are in some stage of alcoholism.

To further develop Point One, it is clear from experience and experimental work that the moderate drinker who has perhaps one or two highballs at most before dinner reaches the obvious intoxication point at low blood alcohol levels, which is from .08% to .12% and requires 6 to 8 drinks. Further, it is clear that the heavy drinker, or one who has developed a habit of drinking large doses of alcohol, does not show clinical signs of intoxication until accumulation of alcohol in the blood reaches levels of .18% to .24% and requires 16 to 24 ounces of 100 proof liquor over several hours. To pursue this further, a distinction must be made between "under the influence" and "intoxicated."

The condition of "under the influence" refers to the skills involved in driving ability. Specifically these include such items as impairment of visual acuity in regard to distance acuity, peripheral vision, stereopsis; impairment of reaction time; impairment of manual dexterity; a loss of awareness to the immediate physical environment; and a mental state of well being or euphoria.

Driving skill can be seriously impaired without obvious intoxication being apparent in the person.

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This is more particularly true in the case of the habituated drinker than the moderate. The habituated drinker and the moderate drinker both are under the influence at levels which begin as low as .03% and go to .10% before they include all habituated drinkers. Beyond this level there is no question that all persons are seriously impaired in driving skills.

The moderate drinker in most cases reaches the obvious intoxicated stage of symptoms by the time that the blood alcohol levels reach .12% to .15%, but the habituated drinker does not. Indeed the habituated may consume one-fifth of whiskey in four or five hours and not appear to be intoxicated although his blood level may be as high as .23% and his driving skill is seriously impaired.

These performances seem enigmatic to police officers, prosecutors, judges, and juries. People have been taught to believe that the onset of blood alcohol levels from .10% and up always bring on signs of obvious intoxication. Experience and experimental work indicate that this is not true in the case of the habituated drinker. The prosecutor sees some cases where there is little habituation and has a chance to correlate blood alcohol levels from .10% to .16% where there is obvious intoxication. He also sees other cases where there are high blood alcohol levels running from .24% to .32% in which there is less obvious intoxication than in the group that he sees between .10% and .16% which were previously mentioned. The difference, of course, is caused by habituation in the case of high levels as against non-habituation in the case of the low levels. The prosecutor then is perplexed by the fact that he has a level as high as .30% with very little sign of obvious intoxication. He may be inclined to think that the investigative officer did a poor job of observing and reporting visual signs of intoxication, or he may mistrust the blood test results. If

he knew the facts about various stages of alcoholism and the ability of such subjects to accumulate high blood alcohol levels without showing much sign of intoxication, he would be able to understand this apparent enigma; likewise, with judges and juries.

Another point worth making is that many persons apprehended at the scene of a violation show obvious signs of intoxication in reference to speech and walking ability, but by the time they reach the examination room, they have lost these obvious signs and in the presence of witnesses do not demonstrate the overt obviousness of intoxication that they had demonstrated at the scene of apprehension. This is an ability of habituated drinkers that is understood only by those who work with such cases. Those who have acquired the drinking habit have also acquired the understanding of its effect on their walking musculature and speech organs to the extent that they are able to compensate for these deficiencies by intense concentration and deliberate action. It is well known, for example, that an alcoholic may start drinking in the morning and continue throughout the day reaching a blood alcohol level of .22% without his working associates knowing that he has had more than a drink or two. (A test of his driving skill will show heavy impairment.)

As a result of these variances between the moderate and heavy drinker, situations are found in which a prosecutor does not want to give the police officer a complaint on a driver of long alcoholic record whose level is .32% because the physical observations do not show sufficient drunkenness to be consistent with what the prosecutor thinks it should be. Also found is the problem of the police officer at the scene of apprehension as to whether or not to bring the subject to a testing room where blood alcohol samples may be taken because he has had many experiences in which this type of heavy drinker after a full investigation and trial is acquitted, even though the officer did a good job and a high blood alcohol level was indicated by tests.

These problems can be overcome by several methods. The most important is a detailed training program for both police officers and prosecutors so that they understand the differences in the observation of functions between the moderate drinker and those who have the problems of alcoholism.

The second step in the production of a sound enforcement program has to do with a systematic

procedure in the examination of subjects which ends with a reliable blood alcohol analysis.

The third measure which should be accomplished is a set of laws which would enable the peace officer to obtain the evidence which is necessary to achieve the degree of enforcement desired by the populace. The foremost objectives here are legislative action which include (1) "implied consent" and (2) "presumed" guilt at blood alcohol levels above 0.10%

EXPERIMENTAL FACTS

Some experimental results worth quoting for the uninformed include the fact that a 180-pound person requires ten ounces of 100 proof liquor (equivalent to $12\frac{1}{2}$ ounces of 80 proof liquor) to be consumed in an hour to an hour-and-a-half to reach a maximum blood level of .14%. This varies proportionately with the weight of the individual. The other point which may be startling to some is the evidence for the conclusion that more than 90% of the persons apprehended for drinking driver violations are in some stage of alcoholism. Experiments have indicated that moderate drinkers cannot be raised to levels higher than .15% without becoming ill, nauseated, regurgitating, and passing out. Then one must reason that persons who have levels higher than this and who do not show these symptoms must have a developed habit for alcohol through consistent use and are to be considered in some stage of the cycle of alcoholism.

With these understandings one can now examine experience data taken from an analysis of blood alcohol data accumulated through a large number of cases. If the frequency distribution of blood alcohol levels is studied from this data, it is apparent that the average of all people apprehended is .23% and that two-thirds of the apprehensions involve levels between .18% and .28%. Furthermore, 90% of these are beyond the level of 0.10%. One must also consider that a good many persons apprehended have had higher blood levels before the apprehension was made and are in the declining blood level of metabolism, whereas the experimental data mentioned concerning the fact of 10 ounces of 100 proof liquor to produce .14% is based on maximum accumulation.

It seems reasonable therefore to conclude that more than 90% of the persons apprehended by the police in these violations are alcoholics.

Moving pictures have been recommended as a means of gathering evidence in these violations;

however, moving pictures at best demonstrate *Walking ability* and *speech ability*. It has been pointed out that these two functions have greater variability between moderate and heavy drinkers and therefore cannot be considered to be of probative value when the movies fail to show impairments of walking and speech under examination room conditions.

A series of 500 movie strips taken by the author

show great disparities between performance and blood alcohol level in accordance with the drinking habits of the subject. Therefore, moving pictures are not recommended as a means of gathering this type of evidence. Many an alcoholic who would be exonerated by moving pictures of his walking performance actually has a blood level in the range of .18% to .24% and has heavily impaired driving skill.