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IMHO (In My Honest Opinion)

DUI Laws: Out of Control

This Nightmare Can Happen to You



By Gary Witzenburg

March 23, 2003 -- You're driving home from a social evening a little after midnight. You're driving safely, carefully, at the 55-mph limit, on an empty two-lane road, almost home, thinking of a warm bed and a good night's sleep. A car comes up from behind and crowds you, way too close. This makes you nervous. You unconsciously speed up a bit to open the gap. The car follows so closely that you lose its headlamps in your mirror. You turn left at a light. The car follows, still too close for comfort. My God, you think, he's following me! Now you're scared. Then the red and blue lights come on, and your nightmare begins.

You ask why he stopped you. "Sixty-two in a 55 zone," he says. "Have you been drinking?" You tell the truth: two glasses of wine in four hours, your self-imposed limit. He asks you to perform some physical tests--walk a straight line, touch your nose--all of which you do just fine. Then he wants a breath test. Why? "Because you admitted you were drinking." "Blow longer, harder!" he commands. You blow again and again, longer, harder, until you're out of breath. He says your BAC (Blood Alcohol Content) is over the legal limit *but refuses to show it to you*. Next thing you know, you're handcuffed, on your way to jail, leaving your car by the side of the road. It will soon be towed and impounded, at great expense. And that is just the beginning.

Horror Stories

This exact experience (more later) happened to someone I know well enough to know he's telling the truth, and it *really got my attention*. . . as it should yours. At this point, you're probably in one of two camps: Camp One is thinking, "Handcuffed and jailed, with no sign of impairment?" Camp Two is thinking, "You drank, you drove, you got caught. Tough luck!" Both camps should visit these Web sites to learn what they can on this critically important issue: National Motorists Association (NMA) www.motorists.org and Responsibility in DUI Laws (RIDL) www.ridl.us/. The former works to protect America's motorists from a whole gamut of political and revenue-driven government abuses. The latter is a new organization fighting unreasonable "drunk driving" laws and the growing number of awful abuses of them.

As a result of today's unjustifiably low DUI/DWI (Driving Under the Influence/Driving While Intoxicated) limits and massive overkill in enforcement and prosecution, RIDL says, "over 1.6 million people are being arrested annually, most of whom committed no actual crime and did not hurt anyone." Put yourself in the place of one of these unlucky victims quoted on the RLDI Website:

"I recently fell victim to this new BAC level. I had two drinks five hours before being pulled over. I was subjected to a battery of sobriety tests, all of which I passed. When they could not find me incapacitated, saying they smelled alcohol on my breath (although I was chewing gum), they arrested me. . . . Because of this law, I stand the chance of losing everything. I have always been a law-abiding citizen, with not so much as a speeding ticket. I do not deserve this, cannot afford this and have nowhere to turn."


"I got popped for DWI with a BAC of only .02 percent. That's five times below the legal limit of 0.10 BAC. The trooper said 0.01 percent was proof of DWI as far as he's concerned."

"This man blew .000 on the BAC. The officer lied because it did not suit his needs and noted 'refused' on the citation. This resulted in the man -- with a wife, child, successful business -- getting a 90-day revocation of his license, at the whim of a police officer. And now he is forced to spend \$2,500 to get his word heard in a courtroom."

"An overzealous political organization with a lot of power has forced these laws into effect when we weren't looking. I always had much respect for police officers and had


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taught my daughter (age 14) the same. Now, after what she has seen me go through...she wants to be a criminal defense attorney and make fighting stuff like this a lifelong goal."

A New Jersey professional couple, in their mid-30s with clean records, were hauled off to jail in separate police cars. The wife (*the designated driver*) because she got momentarily stuck reciting the alphabet for an overzealous officer. The husband for "Allowing a DUI," which carries the EXACT SAME PENALTIES as a DUI. Both face six-month license suspensions, plus a combined total of \$5,400 in fines and charges, plus \$12,000 in insurance surcharges over three years, plus lawyers' fees of \$3,500 to fight these charges.

Lies vs. Truths

Still in Camp Two, thinking "they got what they deserved"? Let's examine some DUI myths:

Lie: Drunk driving causes 41 percent of traffic deaths in this country. The National Highway Traffic Safety Administration (NHTSA) and Mothers Against Drunk Driving (MADD) quote this figure liberally to exaggerate the problem, and compliant popular media play along. Repeat a lie loud and often enough, and it becomes accepted as truth.

Truth: NHTSA and MADD blithely equate "alcohol related" fatalities -- which involve someone, anyone, often not a driver, who is either proven or ASSUMED to have some level of BAC -- to "drunk driving" deaths. Who was driving, who was at fault, and BAC levels matter not here. If a sober driver hits a drinking pedestrian or bicyclist; if two sober drivers collide and anyone in either vehicle has had a drink, these organizations consider it "alcohol related."

Truth: Some level of BAC--sometimes ridiculously high (beyond fatal), more often in the low .08-.10 range that MADD has recently criminalized--is entered into the data in a great many cases where there is no testing, no evidence, and no one is ticketed as DUI. How many? RIDL analyzed NHTSA's 2001 fatal accident data and found, in Michigan, for example, that 154 (35%) of 441 claimed "drunk" drivers were listed as "drunk" with neither evidence nor proof.

Lie: Drivers with BACs .08 and over are dangerously impaired and should be arrested, prosecuted, and severely punished--even first offenders. Citing tragic, heartbreaking individual stories of loved ones killed and lives ruined by drivers supposedly in the .08-.10 range, MADD convinced Congress in 2000 to force states to lower their legal limits to .08. Thirty-four states had done so by this January, and the rest (fearing the loss millions of dollars in federal highway funds) likely will comply by the October 1, 2003, deadline.

Truth: NHTSA's own highly questionable 2001 data shows clearly that targeting drivers in that low-BAC range is an egregious waste of resources. Less than 1.3% of 2001 fatalities involved a driver between .08 and .10 BAC vs. 12.4% at .15 or greater. Even the .00-.02 (trace level) range accounts for about 1.2% of fatalities. Should we target that group next? Don't ask. "Anyone with a modest understanding of this issue, and who is honest, " says NMA President Jim Baxter, "knows that drivers with low BACs such as .08% are no more likely to be involved in an accident than someone with a BAC of 0.0%."

Lie: Breathalyzer tests are accurate indications of alcohol impairment.

Truth: Only blood tests provide accurate readings of blood content. Breath tests indicate the content of alcohol in the breath, which is affected by medications, aspirin, cough drops and mouthwash and correlates very poorly -- plus or minus 50% -- with actual blood alcohol content. The portable ones used "in the field" are notoriously inaccurate, yet they are routinely viewed as reliable indicators of driver impairment, leading to arrests, incarcerations, instant vehicle and license confiscations without due process and, incredibly, court decisions.

Key Questions

Let me be crystal clear: I would never encourage nor condone drunk driving. Such behavior is extremely dangerous and irresponsible and deserves severe punishment--especially repeat offenders. But neither should laws, enforcement, and prosecution of alcohol-impaired drivers be so over-the-top as to ruin more lives than they can possibly save. All I am asking is for responsible lawmakers, enforcement authorities, and courts to base their potentially life-altering decisions on honest answers to the following questions:

1. What should be the legal definition of "drunk" or "impaired"? For many years, it was typically .14-.15 BAC. More recently, it has been .10 in most states, and now, thanks to relentless pressure from MADD, it is fast being lowered to the completely unreasonable level of .08, where drivers are statistically no more dangerous than if stone sober.

2. What should be the penalty for "suspicion of impaired driving," which is all a Breathalyzer can provide? Someone blowing .10 is really somewhere in the range of .05 to .15 (plus or minus 50%). Should *suspects* in that range be dragged off to jail, their vehicles impounded, and their licenses shredded without due process?
3. What should be the penalties for convictions of drunk or impaired driving? The lesser crime of "impaired driving" begins at the ridiculously low BAC level of .07 in Michigan, while DUI starts at .10. Yet the penalties are nearly identical and extremely harsh, even for first offenders. Why shouldn't DUI penalties, like those for speeding and other offenses, be graduated--harsher for higher levels? If you blow .070 in Michigan, theoretically, you're on your way home. If you blow .071, you're an ax murderer.

NMA's position is that "DWI penalties based on blood alcohol counts should be graduated to reflect the potential severity of impairment. The more severe penalties should be phased in at a BAC of .15, where impairment begins to directly correlate with accident involvement. Lower penalties should be adopted for less severe DWI violations."

Why, Why, Why?

As if this were not enough, MADD will not be satisfied with criminalizing .08 BAC. These misguided zealots want ".05 by '05" and eventually, though they won't admit it, zero tolerance of any alcohol consumption at all--virtual prohibition. Why? Probably because they are led and driven by anti-alcohol fanatics, many of whom have themselves been tragically victimized by drunk drivers. Subconscious revenge motive?

Why do enforcement authorities, prosecutors, and judges target and punish even low-BAC drivers so aggressively when statistics clearly show that virtually all real drunk driving accidents, injuries, and fatalities are caused by drivers testing at .14 and above? Because NHTSA, MADD, and politicians (believing the "41%" lie) relentlessly pressure and incentivize them (with federal grants) to increase their numbers of arrests and convictions...increasingly difficult in recent years since fewer and fewer Americans these days of us are foolish enough to actually drive drunk.

Why do officers too often (illegally) stop people late at night for no reason, "fishing" for impaired drivers, sometimes lying to falsify reports and create DUI busts despite no physical evidence of impairment? Because they too, are pressured, judged by ticket quotas, and motivated by the promise of overtime pay for time spent in court.

The unfortunate truth is that DUI enforcement has degenerated into a dollar-driven system created by well-intentioned but uninformed people who are pressured by truth-twisting zealots and supported by a popular media too lazy to check the facts or question their propaganda. "DUIs are BIG BUSINESS," says RIDL founder Jeanne Pruett. "Lowering the BAC limit does nothing to save lives but increases the potential income pool for police, courts, lawyers, and insurance companies which substantially increase rates for DUI offenders."

The Rest of the Story

What happened to my friend? Breath tests at the station showed .08 BAC. Officers made a point of cutting up his driver's license and tossed him into the tank. He was allowed to call his wife, who arrived to find that they would not release him for *five hours*--at .08 BAC, he was deemed too "drunk" to be driven home. They didn't let her see him or tell him she was there. He agonized all night thinking she was too angry to rescue him.

Because his record was clean and he was legally "impaired" (the lesser charge), not DUI, his lawyer got it reduced to Careless Driving. He paid a healthy fine, plus the lawyer's fee, plus a charge to reinstate his license, plus an exorbitant fee to the towing company (whose owner is probably best pals with the sheriff), but he was luckier than most. This completely unwarranted conviction will stain his record and boost his insurance bills for three years. The misdemeanor of Impaired Driving is a crime that haunts your record for life!

A law-abiding citizen, he had always respected the authorities and thought they were on his side. Now he is bitter and resentful, knowing he was abused, humiliated, and robbed by the system. Now, he is afraid to consume even one drink when planning to drive--which, if you think about it, is exactly MADD's intent. This means he stays home or begs rides from others-- who may not be as safe or sober as he was behind the wheel.

What to Do

How can you avoid this nightmare? You could simply take MADD's advice: "don't drink and drive"--anything at all, ever. If you do choose to drink moderately and responsibly and then drive (as the vast majority of Americans routinely do), be very careful...not *overly* careful, though--that's a sign of impairment to lurking cops. One good idea from RIDL's Pruett is to buy a portable breathalyzer and test yourself before driving. If stopped "never admit to any drinking at all," advises Todd Levitt, a Michigan attorney who defends such cases. "Let them prove it. Admitting it gives them what they need for

a conviction."

Also, be sure you know your local laws. In Michigan, you can refuse field sobriety tests without penalty but not the breathalyzer at the station. And you can demand a blood test to verify the result. Few people know these things, and cops rarely volunteer them.

"In addition, in Michigan," says RIDL's Pruett, "you have the right to ask to speak to your attorney prior to agreeing to take any chemical test. If they won't let you speak to your attorney, despite threats that you will automatically lose your license for six months, you can appeal to the Secretary of State. The police MUST give you an opportunity to speak to an attorney or at least give you a reasonable opportunity to try and contact him/her. In addition, the police are REQUIRED to tell you that you have the right to a blood test. They often don't."

Do some research, write letters, call your lawmakers and question anything MADD or NHTSA says. We know that government agencies and special interest groups make up and bend facts because they believe the ends justify those means. Why should we believe these two are any different? So powerful has MADD become, and so noble are its mission and motives in most peoples' minds, that virtually no one dares to question or disagree with them.

"Thoughtful, objective discussion of this subject in the popular media has been sadly lacking," says NMA. "The press has been content to reprint whatever they receive from self-serving and vested interests. The result has been a misinformation campaign of staggering magnitude. Claims such as '50% of all highway fatalities are caused by drunk drivers' are unmitigated propaganda. The public officials and special interest groups that perpetuate this myth know it is a lie but persist in this kind of gross deception."

Above all, don't sit back and allow your legislators to pass unreasonably low BAC laws with Draconian penalties in the name of "saving lives" when they instead ruin peoples' lives to enrich local coffers. And if you do, don't be surprised if you become a victim, too!

This nightmare is happening now to people you know. It can happen to you!

Gary Witzenburg is not an employee of Consumer Guide or Publications International, Ltd. The views expressed do not necessarily reflect the views of Consumer Guide.

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