There have been many recent approaches to the problem of drunk driving that are of an extreme nature, from lack of enforcement to mandatory and excessive jail terms. This overview addresses an aspect of dealing with the problems of the drunk driver from a networked treatment approach which includes intervention, evaluation and referral, and the clinician together with the criminal justice system.

The opinions, findings, and conclusions, along with the methodology expressed in this publication, are those of the author and not necessarily those of the State of New Jersey, Division of Motor Vehicles, Division of Alcoholism or the Bureau of Alcohol Countermeasures.

Drunk driving has been a major concern across the nation, particularly in the last 2 years. In 1982, 33 states put new laws on the books aimed at getting drunk drivers off the roads. During 1983, at least 39 states passed measures to tighten further their drunk driving laws with many other bills presently pending in other states. At one point there were over 700 bills pending. Most of the wave of drunk driving laws has centered around tougher penalties -- longer loss of driving privileges, mandatory jail sentences, and heavier fines. Some states, including New Jersey, have also added community service to their penalties. In spite of all of these efforts, drunk driving continues to be a major problem. Why?

Many feel that the persistence of drunk driving means that there has been little attitude change among those who are likely to drive after drinking and that attitudes have failed to change primarily because the chances of getting caught are slim. In New Jersey alone, it has been estimated that there are over 300,000 drinking or drunk drivers on the road each year, yet, in 1982 there were 30,000 arrested and of these 28,000 convicted. Under normal circumstances, studies have shown, the chances of getting caught are 1 in 1,000. Yet, the same studies reveal that, on an average weekday evening, every 10th driver is drunk and, after midnight, every 5th driver is drunk.

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Another of the primary problems with attitudes is that incarceration, in and of itself, does not reduce drunk driving or alcohol problems. A person who is arrested and is placed in jail normally has a detrimental attitude change. However, the problem of alcohol is not addressed: he/she is shamed and the "normal" thing to do upon release is to drink. So, the problem continues.

The news media, the legislators, and the courts have said almost everything that can be said about the dangers, horrors, destruction, and mayhem that is caused and presented by the drunk and drinking driver. The anti-drunk driver movements, which are unprecedented, have no opposition and have no enemies as yet, but are of concern to the legal profession as a potential danger. The danger may be that in response to these highly justified and emotional outcries and the demands to impose harsher penalties, over-kill sanctions and harsher penalties will be imposed. When this happens, laws are enacted and courts may render decisions which may satisfy the retributive demands of this outraged public, but which may do little to control the problem. Drinking, drunk, and alcoholic drivers will continue to drink and drive as long as the wall of denial of a problem exists within them and they feel that they are going to get away with it: drinking and driving.

The New Jersey Motor Vehicle Commission Report on which the New Jersey laws are based did conclude that the harsh laws, severe mandatory sentences, and severe license suspensions which were intended to deter drunk driving have little effect and may be counter-productive: they do not decrease alcohol-related fatalities or control drunk drivers. What happens is that police enforcement is discouraged, court manipulation encouraged, and judges are forced to impose perhaps unwarranted mandatory jail sentences.

I agree with experts on highway safety who feel that it is essential to have realistic laws which encourage police enforcement and credible apprehension, laws which have swift and amenable adjudication and, essentially, laws that provide mandatory treatment that can be individualized to and for the drunk driver who suffers from the disease of alcoholism.

The concept of previous drunk driving laws in New Jersey changed drastically when, in 1977, an amendment to the laws required mandatory treatment and rehabilitation for drunk drivers, all of whom were convicted offenders. This was the Countermeasures Program. Countermeasures consisted of a screening process, 6 hours of intensive alcohol
education, and referral into treatment if necessary (e.g., Alcoholics Anonymous). Some of these evolved into specific out-patient programs of 12 to 16 weeks duration. In the program description it states: "Certain first offenders may receive their driver's licenses back before they complete the Bureau of Alcohol Countermeasures' Program. Repeaters (persons with prior alcohol related convictions, but no Bureau of Alcohol Countermeasures participation) may be required to complete a Bureau of Alcohol Countermeasures Program before restoration." Since 1977, amendments have provided increased license suspensions, higher fees, and the requirement of community service along with a jail sentence. The sentence for conviction on the first offense is now a fine of $250 to $400 and/or jail up to but not more than 30 days plus license suspension of not less than 6 months but no more than 1 year. The second offense has a fine of $500 to $1,000 and/or jail for a sentence of up to 90 days, 30 days of community service, and license suspension for 2 years. The third offense has a fine of $1,000, a jail sentence of up to 180 days, a provision of community service of up to 90 days or 540 hours, and loss of license for 10 years.

For the offender, provisions have now been enacted that 90 days of the jail sentence can be served as an inpatient in a residential treatment center and the court can be petitioned for the remainder of the sentence to be served in an outpatient program. One of the major problems is that there are really no treatment centers with a 90-day treatment program: typically, the offender will have the treatment of the standard of 28 days, serve the balance of the sentence in jail, and do his community service. This does not solve the problem as, again, we are dealing with the drinking driver and the way he/she looks at this: even though compliance is mandatory, recidivism is high. Treating a person for 28 days for alcoholism then placing that same person in jail with no further treatment is similar to cutting off one's nose to spite his face. Who would want to get sober and become a productive member of society with these odds?

The current law (NJSA 39:4-50) is a most workable law with the treatment alternative enforced as a combination of inpatient, outpatient, and Alcoholics Anonymous programs, and counseling as a treatment acceptable to the courts. The law encourages enforcement, sure and swift adjudication, and sentencing with provisions for mandatory treatment and rehabilitation. A general rule of thumb is that for the first offense the possibility is that the offender may have had just one too many and get caught; for the second offense, the party has a good possibility of being a problem
drinker; and for the third offense, chances are that the authorities are dealing with an alcoholic. In New Jersey, we have the alternative to incarceration: treatment. Yet, there are so many who view the drunk driver not only as a criminal, but as someone who is trying to worm out of a prediciment by hiring an expensive lawyer and then pursues every avenue of attacking the credibility of police procedure and the scientific evidence presented. The view that should be addressed is the driver and his alcohol use, abuse, and alcoholism as well as his drug use, abuse, and addiction. If a driver is suffering from alcoholism or addiction, he is suffering from illnesses that deserve to be treated not condemned. Successful rehabilitation of those with alcohol and drug problems will have lasting benefits compared with incarceration which may be nothing more than warehousing and the avoidance of a greater issue.

As a clinician, I feel that treatment is appropriate any time — in this case, any time from the point of arrest, through the adjudication, to the time of conviction. If the offender can be referred to treatment at any point or stage of the legal process, chances are good that with an intensive evaluation, proper confrontation, and good referral sources, that person will opt to enter treatment "voluntarily" prior to or during adjudication, and be prepared for treatment upon sentencing. If so, the catalyst has been introduced and the pre-sentencing, sentencing, and post-sentencing program started. Pre-sentencing treatment can be the more rewarding to the driver as, not only the alternative to incarceration utilized early, but the driver is mandated to sobriety for the length of his entire sentence. The offender pays his fines and the newly mandated surcharges of $100 and $1,000 a year for a 3-year period, and loses his license: he stays out of jail and the treatment process continues. The offender is actually given a choice at the time of the evaluation: treatment or jail! You, as the clinician can offer no guarantees, but if the offender makes the right choice, chances are good that he has a better chance of not becoming a recidivism statistic. In New Jersey residential treatment is normally 28 days for alcoholism and 42 days for poly-addiction and cross-addiction, yet the law states 90 days. The courts are beginning to accept treatment recommendations of the 28-day residential treatment, plus extensive out-patient after-care programming, and compulsory participation in Alcoholics Anonymous and counseling as long as a recommended treatment plan is submitted in writing and follow-up monitoring and reports on the offender's progress are part of the recommended plan. Otherwise, the offender can be sentenced into a 28-day treatment program and then spend the balance of the sentencing period in jail. Again, the clinician may
have the responsibility of this as he/she "walks" the client and the case through the courtroom, perhaps even testifying on behalf of, in defense of, and/or an expert witness regarding the disease of alcoholism.

Several problems have been aluded to, yet, the biggest problem faced has been the lack of knowledge concerning the disease of alcoholism on the part of the criminal justice system. This problem may be getting better, however, as awareness and education are reaching into the system. One way of hastening the process is to offer your assistance as the clinician and professional, not only when dealing with the specific case and client, but whenever expert assistance is needed in the resolution of problems of alcoholism. Present yourself well and you will be listened to. The court system is such today that anything you can offer to do to alleviate the workload is not only appreciated but, usually, accepted. This also is true of the police, court personnel, and attorneys.

Networking is essential, learn who are your police, attorneys, and judges. Know with whom you are dealing as cooperation is essential and one person must start the process. We can all work together, before adjudication and after adjudication, to alleviate the carnage and waste caused by the drunk driver, the carnage of death on the highways, and the waste of viable human lives destroyed by alcoholism.

Treatment is cost effective and does save money: the offender pays for this treatment; the tax payer pays for incarceration. The alcoholic does deserve a chance, not necessarily a chance to be an inmate who, as soon as he is released, usually drinks. And why not? He is shamed, guilty and has had the adverse experience of being in jail. He does not have the opportunity to look at himself in a realistic manner nor look at or through the wall of denial he has built up around himself regarding his drinking. With treatment he is able to look at reality -- perhaps for the first time in his life -- and do something about his problem, pay his liability for a wrong act, and at the same time gain back his self-esteem. He, then, has a good chance of becoming a healthy, productive member of society and a responsible driver. If we all work together, the carnage on our highways will be substantially decreased.

Treatment or incarceration: which works? Presently, there really is no simple answer. Therefore, we must explore all avenues in order to, hopefully, come up with practical and effective solutions to this problem of alcoholism and the drinking/drunken driver.
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