

KENTUCKY'S DUI LAW:

Does the punishment
fit the crime?

MIKE HERNDON
Athenaeum Society
April 4, 1985

It was Christmas Eve 1982 at the New Era and — as usual following presstime — the staff was in a jovial mood. There was laughter and loud talking as employees passed through the reception area to the kitchen and the annual office party, with its abundance of food and Christmas “spirit.”

Into this raucous atmosphere came Mr. and Mrs. Frank Morris. They had stopped by the office with a photo of their only son, 18-year-old Ted — a photo that was to run with Ted’s obituary. Ted had died earlier in the day of injuries received when his car collided head-on with a drunk driver who was traveling in the wrong lane.

I was called to the front desk to receive the Morrises and immediately was embarrassed by the unfeeling behavior of my fellow workers, who continued their rowdy procession through the building. Most of them — especially the non-news types — were not even aware of the accident, and the remainder didn’t recognize the Morrises. But my only thought at the moment was: “How can they be so callous when Christmases to come for the Morrises will bring only bitter memories.”

I was ushering the visitors as quickly as possible to the sanctity of my office when my worst fears were realized. A co-worker who knew the Morrises, but obviously knew nothing of their loss, approached Mr. Morris, jovially slapped him on the back and asked: “How’s it going, Frank?” Mr. Morris handled it remarkably well. “We’re O.K., how are you?” he responded softly without stopping to await a reply. I completed my business with them quickly, amazed at their composure as I went through the necessary formalities.

There was little festivity left in me as I joined my fellow workers at the Christmas party. I did not have to wonder how the Morrises felt because I had lost my only brother under similar circumstances, and the incident in the office had stirred those memories. Wayne was killed at 19 when a friend with whom he was riding missed Gary Lane Bridge and the car plunged into rain-swollen Little River. Drinking also was involved in that accident, and I remember thinking that, to many, Wayne was one of those “statistics” the “safe driver” ads warn us not to become. Wayne was no “statistic” to me — and neither was Ted to the Morrises.

I was not surprised when I noticed a few months later that Mrs. Morris took an active role in the first local candlelight vigil conducted during Drunk and Drugged Driving Awareness Week to remember those killed in highway accidents. The vigil was one of the first functions of the newly organized area chapter of MADD — Mothers Against Drunk Driving — an organization that already was becoming a potent political force across Kentucky and the nation.

It is not difficult to understand the pain and bitterness that lead to the organization of such groups as MADD — pain that draws people of similar suffering together and bitterness that spurs them to strike back at the shadows of their torment. But sometimes this single-mindedness of purpose — this hell-bent-for-leather charge toward what otherwise might be a commendable goal — becomes as great a danger as the cause itself.

Such is the case with Kentucky’s new driving-under-the-influence law. There is a clear danger that the victims of the DUI law will far exceed the numbers who suffer at the hands of drunk drivers.

This is not an argument in defense of drinking and driving, nor even a tacit defense of alcohol consumption. Drinking and driving are indefensible, and those of us who occasionally “bend an elbow” under any circumstance literally have “no leg to stand on” in defending it — from a health, moral or social standpoint. It is also hard to argue against toughening drunk driving laws. According to state police statistics, alcohol was involved in 25 percent of Kentucky’s fatal accidents in 1982 and 27 percent in 1984.

The MADD lobby and the alarming statistics are the reasons, perhaps, that 88 percent of the respondents in a 1984 legislative poll of Christian countians favored tougher DUI laws, and that the new DUI law drafted by the 1984 General Assembly sailed through the Senate in a 35-2 vote and through the House by a 98-1 margin.

But did we go too far?

The law that took effect July 13, 1984, is tough all right:

— 1st Offense — A minimum of 48 hours and a maximum of 30 days in jail, a possible fine of between \$200 and \$500, a minimum one-month suspension of driving privileges. After sentencing, a first offender may apply to a judge to perform community service work in lieu of a fine or jail time.

— 2nd Offense — A minimum of seven days and a maximum of six months in jail, a fine of between \$350 and \$500, and an automatic one-year suspension of driving privileges.

— 3rd Offense — A minimum of 30 days and a maximum of one year in jail; a fine of between \$500 and \$1,000, and an automatic two-year suspension of driving privileges.

An additional \$150 service fee is assessed on all convictions to pay for enforcement and treatment programs. Second and third offenders also must pay the cost of their own mandatory treatment program.

And these are the penalties for people who merely are caught driving drunk — never mind those who have been involved in accidents.

“So what?” you might ask. “We need a strong deterrent to stop this slaughter on the highways.”

Perhaps we do. But why are we singling out drunk drivers? Why not crack down on thievery, for instance? The latest available Uniform Crime Report for Kentucky shows that in 1983 there were 111,834 crimes against property — cases of burglary, larceny, auto theft or robbery.

Some have compared drinking and driving with carrying a loaded gun. Well, let's compare the penalties.

According to Christian County District Judge Grady Ruff, a person caught flourishing a gun likely would be charged with menacing or with some form of wanton endangerment. Under state law, menacing is intentionally placing a person in reasonable apprehension of imminent physical injury. Wanton endangerment generally is wantonly engaging in conduct which creates a substantial danger of physical injury to another person.

Although the potential penalties for these crimes are comparable with DUI — fines of between \$250 and \$500 and jail time of from 90 days to one year — there is an important difference. In the gun-waving case, according to Ruff, a judge has wide latitude in imposing the sentence ... to the point of dismissing the case entirely if he feels there are overwhelming extenuating circumstances. Under Kentucky's DUI law, however, virtually all punishment is mandatory — regardless of circumstances. That includes the man who is home alone drinking beer and watching a ballgame when he receives an emergency call that his wife has been in an accident.

The new law also singles out the drunk driver in another respect. It allows for arrest on mere “probable cause.” Previously, as with all other misdemeanors, the officer actually had to see the violation before making an arrest.

As severe as Kentucky's DUI law is, it could have been worse. One proposed amendment would have required juries in drunk driving cases, after determining guilt, to be given a report on a defendant's driving record before considering a sentence. The only other similarity in Kentucky law is a capital offense case when, after guilt is decided, a separate hearing determines the penalty. Fortunately, that provision was weeded out in committee, but it does show that the drunk driving is being singled out.

There were voices in the wilderness as the DUI bill was rolling through the 1984 General Assembly on the momentum of public opinion. But those voices largely went unheeded because the DUI bill was more politically explosive than even the Equal Rights Amendment issue of prior sessions. If a vote against ERA was a vote against women's right, what was a vote against tougher DUI laws? It was akin to voting against motherhood and apple pie.

Sen. Mike Maloney of Lexington questioned, among other things, the mandatory sentencing requirements. “We're violating the separation of powers,” he argued. Sen. Danny Yocum of Louisville agreed, saying: “We've completely taken all authority away from the district courts. I feel like it's bad when we go beyond the constitution to pass a law.” Rep. Joe Dan Clark of Danville, the only dissenter in the House, called the bill “an unnecessary act of overkill.”

The law got even tougher when the state attorney general interpreted the law as retroactive. That permitted second- and third-offense prosecution of offenders whose prior arrests had come as many as five years prior to law's taking effect. This interpretation has led to unequal sentencing practices and raised constitutional questions currently before the state's appellate courts.

Whitley County District Judge C.B. Upton and others across the state have been quoted as saying they consider it a first offense if someone convicted of drunken driving has had no similar convictions since the new law went into effect. But the state is including prior convictions before that date in its calculations, and many drivers are finding their licenses suspended unexpectedly, the Associated Press reported recently.

Judge Ruff reported at least one instance of an East Kentucky judge issuing restricted licenses of sorts to suspended drivers by providing signed notes that say something like: "If Jones is picked up in this county, contact me."

By the way, getting a suspended license back legitimately under the new law is not a simple case of going to the circuit clerk's office and retrieving it. Offenders must obtain official certification from Frankfort that the suspension has been completed, pay \$30 in re-instatements fees and retake their driver's test.

Other questions surrounding Kentucky's get-tough DUI law will remain unanswered until the statistics starting rolling in a few years down the road, but there are a few indications.

Is the new law a deterrent to drunk driving? The Nashville Tennessean reported on Feb. 10 that in 1984 — two years after the Tennessee passed its similarly tough DUI law — 66 percent of those involved in Nashville's 96 fatal accidents had alcohol in their blood, compared to 61.2 percent in 1983.

Can Kentucky's already overcrowded jails absorb the increased population of drunk driver offenders? In Nashville, according to newspaper and television accounts, DUI offenders are being housed in school gymnasiums. In Christian County, DUI prisoners serving weekend sentences often are freed early to make room for more serious offenders.

Is drunk driving actually a crime or is it the result of a social, mental or physical problem? What are the immediate and long-range psychological effects on an otherwise law-abiding citizen who suddenly is confronted not only with incarceration but with the probable loss of his job? The Washington Post National Weekly Edition reported March 11 that while no official statistics exist, experts say that the number of jail suicides may have jumped to 1,000 last year, compared with about 400 in 1979. They credit, among other things, tough new drunk driving laws that impose jail penalties on even first offenders. The same article noted that in Ohio in March 1983, during the first week that mandatory 72-hour jail sentences were imposed on drunk driving offenders, three persons arrested for DUI committed suicide in their jail cells. A fourth inmate, out on bond, went home to get a change of clothes and shot himself.

What happens to the families that are dependent on the offender's income and driving ability? "They're losing their jobs and their families are having to go on public welfare. I don't think our original law intended that," the March 21 Nashville Tennessean quoted a Tennessee legislator as saying. The Tennessee legislature is considering joining Ohio in providing work release and restricted licenses for DUI offenders.

Christian County District Judge Peter Macdonald may have summed up best the inequities of Kentucky's DUI law. Speaking March 14, 1984, at a MADD-sponsored forum on drunk driving, Macdonald said: "A judge has to use some kind of compassion and discretion as to what is done. We have to weigh what is best for everyone concerned. Punishment alone does not deter anybody."

With that statement in mind, I would like to tell you the implausible story that caused me to pick such a sensitive subject for my first Athenaeum paper. Although the case has yet to reach final disposition in local courts, I am telling the whole story as an example of the shocking effect of new DUI law on one individual.

Dwayne Hood joined our staff in November 1983 as a young, shy, inexperienced police beat and general assignment reporter. For those of you who never met him, Dwayne, with his large brown eyes and heavy brow, exhibited a sort of permanent whipped-dog expression which — when combined with his natural indecisiveness and penchant for daydreaming — left the distinct impression of man who has had a lot of luck — all bad. In his case, first impressions didn't lie.

Dwayne was not a heavy drinker. In fact, about the only time he drank at all was at parties, to overcome his shyness, or just to be "one of the guys." That may have been the reason he couldn't hold his liquor very well and never knew when to quit. This became quite evident a month after he arrived during the New Era's annual Christmas dinner-dance. He became so tipsy that several of us told Dwayne to stay put until we could drive him home. The next thing we knew he was gone. My phone rang the next day; it was Dwayne informing me that he had spent the night in jail. He explained that he was within a half-block of home when an officer pulled him over — not because he was weaving all over the road — but for failing to come to a full stop at an intersection. The luckless Dwayne was filled with remorse. Nothing of this kind had ever happened to him before, and he vowed it never would happen again.

But he did slip up a second time, almost exactly a year later, and at another newspaper function. This time he had been drinking beer at an employee stag party at Lake Tandy when he chose not to waste the cocktail that he had mixed improperly for someone else. Dwayne began to feel the effects of the alcohol and, after going outside for some air, decided he should go on home before he drank too much. Inside, several of the revelers — realizing Dwayne already was drunk — wondered aloud what had happened to him and whether one of them should drive him home. By that time, Dwayne had reached Greenville Road. He seemed to be making it fine when a car passed and cut back too quickly in front of him. He veered to avoid a collision and drove his car onto the front lawn of a home. That home, unfortunately, was the residence of State Trooper Danny Noisworthy, who came outside to investigate and had Dwayne arrested on the spot.

Dwayne, having served another night in jail and recovered his impounded car, was a very depressed individual when he came to work that Monday morning. But he did not realize until later that things were even worse than they appeared. Not only would he be prosecuted under Kentucky's new DUI law, he would be considered a second offender although his first arrest had come under the old law. In addition to fines he could not afford, Dwayne was faced with the loss of his driver's license for one year. He lived alone and worked at a job that required him to drive.

When the seriousness of the situation hit him, Dwayne went into a shell and seemed content simply to give up. It was only at the urging of the newspaper management and his fellow employees that he sought legal advice. Dwayne's behavior became a series of peaks and valleys as he pursued one legal loophole after another in an effort to save his job and his driver's license, only to reach a dead end. He phoned me one night after one of these setbacks and was so depressed that I feared he might take his own life. He told me Hopkinsville was his fourth town in as many years, and that he felt he finally had found a home here. He said he had a job he liked and, he couldn't believe he had thrown it all away on a drink. Dwayne also was bitter. "I feel like a common criminal. There are people who go out and shoot somebody. They're out walking the street the next day or they get probated. I do much less, and my life is ruined," he said.

Dwayne finally decided that his only hope was to get to another state as quickly as possible. "I saw the handwriting on the wall," he said. "I had to give up my job, leave town and pick up my career and life somewhere else. Those are pretty tough penalties for a traffic offense, but I had no one to blame but myself."

Three days before he was to surrender his Kentucky license, he went to Todd County and was able to obtain a duplicate license by saying he had lost his old one. He went from there to Nashville, where he hoped to land a job, and applied for a Tennessee license. Meanwhile, he received and accepted a job offer from a newspaper in his native Alabama. Before he was able to move out of his apartment, he had been forced to surrender his Christian County license. So he was forced to complete his move to Alabama by leaving his car in Clarksville and having friends drive him back and forth to the stateline to avoid being spotted by local officers, most of whom knew him from the police beat.

The misfortune that led to Dwayne's arrest in the first place continues to haunt him. He learned later that he never would have been charged with a second offense except that a court clerk who recognized him from the police beat remembered his previous conviction and corrected the record. That correction, however, never made its way to Frankfort. The state has informed him that his 30-day suspension for first offense has expired and that he is free to apply for re-instatement. If he is able to regain his Kentucky license, it is possible that the only Kentucky county in which he will be unable to drive is Christian County, where he is known and where he technically has a one-year suspension. Meanwhile, he continues to drive in Alabama on both the Todd County and Tennessee licenses.

Bad luck even followed Dwayne behind bars when he began serving his mandated sentence on weekends. One Sunday afternoon, a flock of new prisoners had arrived, forcing authorities to free the DUI inmates early. A deputy jailer came to cellblock yelling, "Okay, you Weekenders, get out of here," and began calling names from a list. The deputy called the name "Hunt" several times before a prisoner responded and left the cell. When the jailer walked away without calling "Hood," Dwayne became curious, fished in his pocket for his property receipt and, sure enough, found the name "Hunt." It took Dwayne almost three hours to convince a trusty to summon the jailer and another 45 minutes to convince the jailer that a mistake had been made. As you might have guessed, the prisoner who left the cell had seized the opportunity to escape and was halfway to Crofton when he was recaptured. Dwayne quoted the escapee, who was serving a 90-day sentence, as saying he would have been "Hood," "Hunt" or anybody else in order to get out of there.

Dwayne discovered that he had spent his prior weekends serving a sentence for a DUI offender named Hunt, who apparently never had bothered to show up. There was no record of Dwayne Hood having served any of his jail time. Is it any wonder Dwayne never has returned to Christian County to complete his sentence?

So Dwayne Hood also has become a victim, first of circumstances, and then one of the first in a long line of victims of Kentucky's new DUI law. Yes, let's get tough on drunk drivers, but let's temper a little mercy with our justice. Let's don't create a whole new set of statistics. Because Dwayne Hood is no mere statistic — any more than Ted Morris or Wayne Herndon.