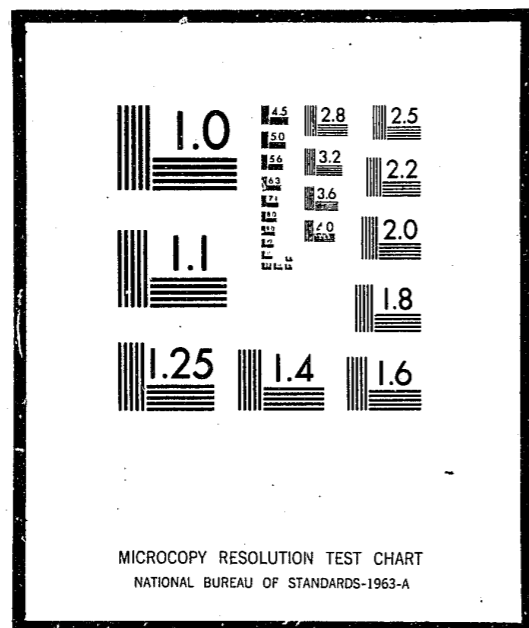


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● DWI ● Law Enforcement Training Student Manual

U.S. Department of Transportation
National Highway Traffic Safety Administration

MAY 1974

16775



STUDENT MANUAL

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National Highway Traffic Safety Administration

Contract DOT-HS-334-3-645

With

Michigan State University
Highway Traffic Safety Center
East Lansing, Michigan

May 1974

For many years there has been a growing concern about the level of alcohol enforcement activities and recognition of the need for DWI Law Enforcement Training. Although some training units have been incorporated in a few police academies, primarily in chemical testing and arrest procedure, little had been done to develop courses of instruction for law enforcement officers in dealing with alcohol related offenses per se.

In order to provide this needed curriculum, the Michigan Office of Highway Safety Planning awarded a contract to the Highway Traffic Safety Center in 1972 to develop and test an alcohol enforcement training program for law enforcement officers. The Highway Traffic Safety Center was then awarded a contract by the National Highway Traffic Safety Administration in July, 1973, to convert the Michigan Police Alcohol Training Course materials into an instructional package that could be used in states other than Michigan. Three field trials were conducted to test the revised training package and one to assess potential problems in the use of the package.

The DWI Law Enforcement Training program consists of the following basic materials: (1) Instructor's Manual, which contains lesson plans, learning activities, course content and teaching strategies; (2) Course Guide, which gives an overview of the instructional program; (3) Packet of Instructional Aids, which contains films, video tapes and transparencies; (4) Packet of Evaluation Instruments, which contains forms used in student and course evaluation; (5) Student Manual, which is intended to serve as a workbook to assist the trainee in successfully completing the course; and (6) Technical Report, which describes the project.

The DWI Law Enforcement Training program, when implemented nationally, should improve the alcohol enforcement activities of law enforcement officers.

DWI LAW ENFORCEMENT TRAINING

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ACKNOWLEDGEMENTS

The documents and packets for the DWI Law Enforcement Training Course were prepared by the staff of the Highway Traffic Safety Center at Michigan State University for the National Highway Traffic Safety Administration.

Fourteen months (July 1973 - August 1974) were allotted to complete the project which required a tremendous level of effort involving several members of the HTSC staff and other resource personnel. Each of the individuals listed in the preceding project participants roster made a contribution to some phase of the project.

Preparation of course materials involved the services of many agencies. Photographing the many detection clues was materially assisted by assigned personnel of the East Lansing Police Department; Ingham County Sheriff's Department; Michigan Department of State Police; and the Michigan State University Department of Public Safety.

Preparation of additional instructional aids (video tapes) concerning the case presentation portion of the curriculum involved the personnel and facilities of the Michigan Attorney General's Office; Lansing Police Department; and the Lansing District Court.

Assistance was rendered by the Department of Psychiatry, College of Human Medicine, Michigan State University, concerning medical problems likely to be encountered while performing alcohol enforcement duties. The Marathon County (Wisconsin) Sheriff's Department furnished assistance on this topic as well as did the Marathon-Cheboygan Counties Alcohol Safety Action Project.

The project staff is indebted to the above agencies for the assistance provided in the development of this curriculum. Agency personnel are to be commended as well for the interest demonstrated in bringing this research effort to a successful conclusion.

The Instructor's Manual and the Student Manual for the course were prepared by Carnahan, Holmes, Keyes, Stemler and Dreveskracht with the assistance of other project staff members. The Course Guide and the Technical Report were written by the project manager, Carnahan.

The Instructional Aids Packet for the course was prepared by Apps, Shinn and Nelson of the HTSC staff with the assistance of several staff members. In addition to the development of instructional

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The Evaluation Aids Packet for the course was prepared by Carnahan, Price and Dreveskracht with the assistance of other project staff members.

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Part I
INTRODUCTION

INTRODUCTION

DWI law enforcement tasks may be performed by alcohol enforcement specialists, traffic law enforcement officers, or the general patrol officer. Although specific roles and responsibilities vary among jurisdictions, the fundamental aspect of the alcohol enforcement function, common to all enforcement efforts, is the detection and apprehension of the drinking driver. In addition, the alcohol enforcement officer must perform as a credible witness in court when he testifies on his observations relating to drinking and driving offenses.

Detection and apprehension of drinking drivers, along with the subsequent processing of this particular type of violator, requires a different dimension of knowledge and skills than those needed for other enforcement tasks and activities. Personal success in alcohol enforcement endeavors requires additional knowledge and skill development to perform the difficult detection task of identifying subtle clues that depict behaviors of drivers with even low blood alcohol levels. A high level of performance in the alcohol enforcement task requires a good understanding of the drinking driver problem, the use of complex detection skills and abilities, and a commitment to the goal of removing the drinking drivers from the highways.

There is a relationship between knowledge (concepts, principles, laws, facts) and skills required in alcohol enforcement. The skills pertain to "how to" perform the task and knowledge about the drinking driver problem pertains to "why" enforcement

activity is needed. The understanding of both the "why" and "how to" of the alcohol enforcement task are necessary to successfully perform the alcohol enforcement function.

The development of alcohol enforcement competencies is the individual responsibility of each enforcement officer. But because few officers specialize and thus concentrate on alcohol enforcement tasks, self-recognition as an alcohol enforcement expert is the key to the self-development process.

The nature and extent of the detection and apprehension activities, the psychophysical testing procedures, the drinking driver processing policies and the procedures and the applications of statutes and court procedures in police alcohol enforcement vary among jurisdictions. As a result, there is no available reference text that will meet all the requirements for the DWI Law Enforcement Training Course. Therefore, this Student Manual was prepared for the student-officer. Each student will be provided with a copy of the Manual which he should bring to class each day.

Use of the Manual will enable the student to effectively prepare for each lesson. In addition, a systematic approach to use of the Manual will enable the student to concentrate on areas he needs to study and provide him with an opportunity for self-learning and evaluation. Finally, the Manual will serve as a reference resource after completion of the course.

Purpose and Design of Student Manual

Purpose of Student Manual

This Student Manual has been prepared to serve as a workbook to assist the student-officer in successfully completing the DWI Law Enforcement Training Course. It contains the subject matter content for the course in narrative form and is organized in the same manner and cross indexed with the Instructor's Manual. The Student Manual is intended to serve as the student's basic reference and study source for the course. The other documents which complete the training package are:

1. Instructor's Manual -- This document was designed to be used by course instructors. It contains a compilation of 36 lessons. The lesson content is in syllabus form and includes instructor references, equipment needed, instructional materials for lessons, and use of evaluation aids.
2. Instructional Aids Packet -- A packet of instructional aids to be used in the course was developed. The packet consists of films, transparencies and video tapes. Each of these are cross indexed with the Instructor's Manual to facilitate their appropriate use.
3. Evaluation Aids Packet -- A packet of evaluation aids to be used in the course was developed. This packet consists of quizzes, laboratory testing forms, pre- and post-test examinations and course evaluation forms.
4. Course Guide -- This document was prepared to serve as a guide for organizing and administering a training course for the alcohol enforcement officer. It should be used as the basic planning document to prepare for conducting the DWI Law Enforcement Training Course.

Design of Student Manual

The Student Manual provides the student with required reading material and affords a convenient means of review for problem

solving, quizzes, and the final examination. It is organized into 16 subjects, 36 lessons and 64 content topics in the same manner as the Instructor's Manual with the same format and numbering system. Each subject, lesson and topic relates directly to the Instructor's Manual to facilitate immediate reference.

The Manual contains student study plans for each of the 36 units of instruction and the content material for each lesson. The subject matter content is in narrative form and includes the tables and charts used by the instructor in the learning exercises.

Each subject in the Student's Manual has three parts:

1. A cover page that sets forth the title of the subject, subject objective, units or lessons to be found in each subject, and any appended material for subject.
2. A study plan for each unit of the subject (discussed below).
3. The subject matter content for each unit of the subject (discussed below).

Study Plans. The 36 study plans in the Manual were developed to assist the student in preparing for each lesson. Each study plan is self-contained and includes the necessary guidelines for the study of each lesson. The specific categories covered in each study plan are:

- . Unit objective -- The unit or lesson objective is stated here and simply states the purpose of the unit.
- . Terminal objectives -- These objectives identify the specific behaviors that the student will be able to demonstrate after successful completion of the course. The number of terminal objectives will vary from three to eight among the lessons.

- . Content topics -- A listing of the topics to be covered in the lesson.
- . Assignments -- The student assignments refer to the activities the student should complete prior to the indicated lesson.
- . Study questions -- The questions appearing here were prepared to assist the student with the study and interpretation of the content in the lesson. They establish a conceptual frame for approaching the content of the various topics.

Lesson Content. Each of the 36 lessons in the Student Manual contains the content to be covered in the lesson. A narrative discussion of each content topic listed in the study plan is provided to enable the student to read the assigned material prior to attending each classroom or laboratory session.

Student Study Suggestions

Preparing for Lesson

Preparation for each lesson is important to effective participation in the DWI Law Enforcement Training Course. The study of the lessons covering the cognitive material pertaining to the nature and dimensions of the problem need not necessarily be intensive but should include study of the ideas and concepts that are important to the lesson. The study of the lessons pertaining to skills will require learning the specific steps and procedures utilized in the performance of each skill.

Study Suggestions

The following steps should be utilized as a guide when preparing for each lesson:

1. Review the study plan for the lesson to understand the objectives and nature of the content.
2. Read the content material prepared for the lesson. Search for answers to the questions in the study plan.
3. Make a note of questions that come to mind while reading the content material.
4. Discuss the content of the lesson with fellow students.
5. Take study notes on the content, i.e., itemize, outline, and explain the major features of the lesson.
6. Review the lesson objectives, the study questions and the notes taken on the material.

Student Evaluation

The primary purpose of the DWI Law Enforcement Training Course is to improve the student-officer's alcohol enforcement capabilities. Student evaluations will, therefore, be utilized in the course to determine the extent and degree to which abilities have been developed and the extent to which the objectives of the program have been achieved.

Students in the course are evaluated on both skill and knowledge achievements. Each student must be able to demonstrate each skill according to the standards specified for each learning objective. Sufficient time is allotted for students to practice these skills. The student must have a sufficient grasp of the cognitive material (concepts, laws, principles, facts) to demonstrate the skills. Evaluation of the cognitive topics is accomplished by observing students' activities in problem solving situations and group discussions; by observing students' activities in lab sessions; and by analyzing student response forms, i.e., practice session forms, quizzes and examinations.

Specifically, student evaluation consists of a pre-test, quizzes, individual student response cards and a post-test.

The pre-test is designed to measure the entry level knowledge of the students so instruction can be geared to their specific needs and so that amount of individual accomplishment during the course can be measured.

Quizzes are designed to determine whether or not the students have read and understood the assigned reading materials. Problems are designed to give the students an opportunity to apply the information they have been learning to real world behavior. This allows them to clarify their thinking and make decisions concerning appropriate courses of action.

Individual student response cards provide immediate feedback as to how well each student is accomplishing the stated learning objective for the topic. This feedback is beneficial to both the instructor and the student-officers. The instructor will know immediately whether or not the students have been successful and thus whether he may proceed. This will also provide each student with the immediate results of his activity and will serve as a reward condition.

The post-test included in this training program is designed to: determine how many of the terminal objectives each student has achieved; determine what proportion of the students achieved each terminal objective; and determine which instructional procedures should be retained and which should be modified.

Outline of Subjects, Units and Topics

The DWI Law Enforcement Training course consists of 16 subjects, 36 units and 161 topics. It involves 40 hours of training including orientation, review and evaluation sessions. The subjects/units/topics of the course are as follows:

1. ORIENTATION

- 1.1 Overview of Course
 - 1.1.1 Course objectives.
 - 1.1.2 Plans and procedures for conducting course.
 - 1.1.3 Evaluation methods for course.
- 1.2 Administration of Pre-Test Examination
 - 1.2.1 Administration of pre-test examination.
- 1.3 Nature and Types of Forms Used in Alcohol Enforcement
 - 1.3.1 Nature and number of report forms used in alcohol enforcement.
 - 1.3.2 Design and style of required reports.

2. ALCOHOL AND HIGHWAY SAFETY

- 2.1 Effects of Alcohol on the Human Body
 - 2.1.1 Overview of unit.
 - 2.1.2 Physiological processes of alcohol absorption, metabolism and elimination.
 - 2.1.3 Individual tolerance in use of alcohol.
 - 2.1.4 Effects of alcohol on brain and body functions.
 - 2.1.5 Summary of unit.
- 2.2 Nature and Scope of Drinking Driver Problem
 - 2.2.1 Overview of unit.
 - 2.2.2 Classification of drinking drivers.
 - 2.2.3 Accidents related to drinking and driving.
 - 2.2.4 Summary of unit.

3. PREPARING FOR ALCOHOL ENFORCEMENT TASK

- 3.1 Drinking and Driving Incidents, Characteristics and Patterns
 - 3.1.1 Review of previous lesson.
 - 3.1.2 Overview of unit.
 - 3.1.3 Nature of drinking and driving incidents (offenses) in total driving population.
 - 3.1.4 Characteristics of driving patterns of impaired drivers.
 - 3.1.5 Probabilities of drivers on road who have been drinking.
 - 3.1.6 Use of alcohol enforcement as a deterrence (prevention).
 - 3.1.7 Summary of unit.
- 3.2 Selecting the Patrol Area
 - 3.2.1 Review of previous unit.
 - 3.2.2 Overview of unit.
 - 3.2.3 Location of DWI problem areas.
 - 3.2.4 Time frames for drinking driver offenses.
 - 3.2.5 Identification of alcohol related accident sites.
 - 3.2.6 Summary of unit.

4. DETECTION OF DRINKING DRIVER -- PRE-APPREHENSION

- 4.1 Nature and Description of Detection Task
 - 4.1.1 Review of previous lesson.
 - 4.1.2 Overview of unit.
 - 4.1.3 Probability of drinking drivers being stopped based on typical enforcement methods.
 - 4.1.4 Types of detection methods.
 - 4.1.5 Definition and description of detection task.
 - 4.1.6 Summary of unit.
- 4.2 Types of Identification Detection Clues That Indicate DWI.
 - 4.2.1 Review of previous unit.
 - 4.2.2 Overview of unit.
 - 4.2.3 Types of Phase I identification detection clues indicating DWI.
 - 4.2.4 Summary of unit.

- 4.3 Determination of Enforcement Action From Detection Clues
 - 4.3.1 Review of previous unit.
 - 4.3.2 Overview of unit.
 - 4.3.3 Departmental policies regarding alcohol enforcement.
 - 4.3.4 Use of discretion in alcohol enforcement.
 - 4.3.5 Making of enforcement decisions.
 - 4.3.6 Summary of unit.
- 4.4 Relating Identification Detection Clues to Environment . .
 - 4.4.1 Review of unit 4.2.
 - 4.4.2 Overview of unit.
 - 4.4.3 Relationship of identification detection clues to environment and other factors.
 - 4.4.4 Summary of unit.

5. DETECTION OF DRINKING DRIVER -- APPREHENSION

- 5.1 Detection of Drinking Driver Clues While Apprehending Vehicle
 - 5.1.1 Review of previous subject.
 - 5.1.2 Overview of unit.
 - 5.1.3 Types of reinforcement detection clues observed during apprehension indicating drinking drivers.
 - 5.1.4 Assessment of accumulated evidence obtained from identification and reinforcement detection clues.
 - 5.1.5 Summary of unit.

6. PRE-ARREST INVESTIGATION -- FIELD CONTACT

- 6.1 Detection of Drinking Driver Clues During Field Contact Pre-Arrest Investigation
 - 6.1.1 Review of previous subject.
 - 6.1.2 Overview of unit.
 - 6.1.3 Psychophysical and other indicators of alcoholic influence detected during field investigation.
 - 6.1.4 Summary of unit.

- 6.2 Determining Enforcement Action From Accumulated Detection Clues
 - 6.2.1 Review of previous units on detection.
 - 6.2.2 Overview of unit.
 - 6.2.3 Making of enforcement decisions.
 - 6.2.4 Summary of unit.

7. PRE-ARREST INVESTIGATION -- ACCIDENTS

- 7.1 Detection of Drinking Driver Clues During Accident Pre-Arrest Investigation
 - 7.1.1 Review of previous units on detection.
 - 7.1.2 Overview of unit.
 - 7.1.3 Types of pre-arrest investigation clues that indicate possible DWI detected during accident investigation.
 - 7.1.4 Summary of unit.
- 7.2 Relationship of Four Detection Phases
 - 7.2.1 Review of previous units on decision making.
 - 7.2.2 Overview of unit.
 - 7.2.3 Interrelation of the four detection phases.
 - 7.2.4 Summary of unit.

8. HANDLING OF THE DRINKING DRIVER SUSPECT

- 8.1 Citation or Release of the Non-DWI Driver
 - 8.1.1 Review of previous subject -- #6.
 - 8.1.2 Overview of unit.
 - 8.1.3 Citation or release of the non-DWI driver.
 - 8.1.4 Summary of unit.
- 8.2 Providing Care for Persons Needing Medical Attention
 - 8.2.1 Review of previous subject.
 - 8.2.2 Overview of unit.
 - 8.2.3 Symptoms of dangerous medical problems of the intoxicated.
 - 8.2.4 Pathological conditions that have symptoms in common with those of alcohol influence.

- 8.2.5 Types of emergency aid in alcohol enforcement.
- 8.2.6 Procedures for handling persons with medical problems.
- 8.2.7 Community medical resources.
- 8.2.8 Summary of unit.

- 8.3 Arrest of the Drinking Driver
 - 8.3.1 Review of previous subject -- #6.
 - 8.3.2 Overview of unit.
 - 8.3.3 Advising subject of his Miranda rights.
 - 8.3.4 Transportation of the arrested subject.
 - 8.3.5 Summary of unit.
- 8.4 Recording and Documentation of Evidence
 - 8.4.1 Review of previous unit.
 - 8.4.2 Overview of unit.
 - 8.4.3 Purpose and importance of recording and documenting evidence.
 - 8.4.4 Summary of unit.
- 8.5 Conducting Records Check
 - 8.5.1 Review of previous unit
 - 8.5.2 Overview of unit.
 - 8.5.3 Checking driving record with driver licensing authority of state.
 - 8.5.4 Checking criminal record with central crime records of state.
 - 8.5.5 Summary of unit.

9. PSYCHOPHYSICAL TESTING (CLASSROOM)

- 9.1 Use of Psychophysical Evaluation to Determine Extent of Alcohol Impairment
 - 9.1.1 Review of previous subject.
 - 9.1.2 Overview of unit.
 - 9.1.3 Nature and purpose of psychophysical testing.
 - 9.1.4 Administration of psychophysical tests.
 - 9.1.5 Summary of unit.
- 9.2 Recording of Psychophysical Test Information on AIR Form
 - 9.2.1 Review of previous unit.
 - 9.2.2 Overview of unit.
 - 9.2.3 Nature and use of AIR form.
 - 9.2.4 Summary of unit.

10. PSYCHOPHYSICAL TESTING (LABORATORY)

- 10.1 Determination of Alcohol Influence by Assessment of Drinking Subject's Appearance and Speech
 - 10.1.1 Review of previous subject.
 - 10.1.2 Overview of unit.
 - 10.1.3 Practice in assessment of impairment by subject's appearance.
 - 10.1.4 Practice in assessment of impairment by subject's response to questions.
 - 10.1.5 Summary of unit.
- 10.2 Determination of Alcohol Influence on Mental State
 - 10.2.1 Review of previous unit.
 - 10.2.2 Overview of unit.
 - 10.2.3 Practice in assessment of impairment by subject's mental state.
 - 10.2.4 Summary of unit.
- 10.3 Use of Coordination Tests to Determine Extent of Alcohol Impairment
 - 10.3.1 Review of previous unit.
 - 10.3.2 Overview of unit.
 - 10.3.3 Practice in assessment of impairment by subject's ability to follow instructions.
 - 10.3.4 Practice in assessment of impairment by subject's reactions to coordination tests (balance, walking, turning, finger-to-nose, picking up designated coins).
 - 10.3.5 Summary of unit.
- 10.4 Making of Enforcement Decisions Based on Psychophysical Tests
 - 10.4.1 Review of previous unit.
 - 10.4.2 Overview of unit.
 - 10.4.3 Practice in making enforcement decisions from Phase I, II and III detection clues and psychophysical test results.
 - 10.4.4 Summary of unit.

11. CHEMICAL TESTING

- 11.1 Chemical Testing in DWI Enforcement
 - 11.1.1 Review of previous subject.
 - 11.1.2 Overview of unit.
 - 11.1.3 Nature and purpose of chemical testing.
 - 11.1.4 Selection of appropriate chemical test.
 - 11.1.5 Administration of chemical test.
 - 11.1.6 Summary of unit.

- 11.2 Request for and Refusal of Chemical Tests
 - 11.2.1 Review of previous unit.
 - 11.2.2 Overview of unit.
 - 11.2.3 Advice as to chemical test rights.
 - 11.2.4 Completing "refusal to submit" form.
 - 11.2.5 Legal responsibilities relating to chemical testing.
 - 11.2.6 Summary of unit.

12. EXPERIENCE IN DEGENERATIVE EFFECTS OF ALCOHOL

- 12.1 Student Participation in Drinking Session
 - 12.1.1 Overview of unit.
 - 12.1.2 Method for controlled drinking exercise.
 - 12.1.3 Regulations for controlled drinking exercise.
 - 12.1.4 Summary of unit.

13. LEGAL AUTHORITY IN ALCOHOL ENFORCEMENT STUDENT REVIEW

- 13.1 Laws Pertaining to Drinking and Driving Offenses
 - 13.1.1 Overview of unit.
 - 13.1.2 Statutes pertaining to drinking and driving offenses.
 - 13.1.3 Elements of DWI offenses.
 - 13.1.4 Case law pertaining to drinking and driving offenses.
 - 13.1.5 Summary of unit.
- 13.2 Implied Consent Laws
 - 13.2.1 Overview of unit.
 - 13.2.2 Nature and purpose of implied consent legislation.
 - 13.2.3 Implied consent statutes.
 - 13.2.4 Case law pertaining to implied consent.
 - 13.2.5 Summary of unit.

14. CASE PRESENTATION -- TESTIMONY

- 14.1 Presentation of Testimony in Court
 - 14.1.1 Overview of unit.
 - 14.1.2 Presentation of testimonial evidence at trial.
 - 14.1.3 Defense tactics in drinking and driving cases.
 - 14.1.4 Summary of unit.

15. COURSE REVIEW

- 15.1 Course Review
- 15.1.1 Overview of unit.
- 15.1.2 Review of course.
- 15.1.3 Summary of unit.

16. STUDENT AND COURSE EVALUATION

- 16.1 Student Evaluation
- 16.1.1 Overview of unit.
- 16.1.2 Student evaluation.
- 16.1.3 Summary of unit and course.
- 16.2 Course Evaluation
- 16.2.1 Overview of unit.
- 16.2.2 Course evaluation.
- 16.2.3 Summary of unit.

Course Schedule

The schedule for the 40-hour DWI Law Enforcement Training course appears on the next page. This schedule shows the sequencing of the material and the time allotments for the sixteen subjects. Sufficient break time is given at appropriate intervals to reduce student fatigue and enhance student motivation and interest.

The course schedule enables both the student and the instructional staff to anticipate course activities and to plan their preparation and study time more effectively.

DWI LAW ENFORCEMENT TRAINING -- CLASS SCHEDULE

A.M.	Monday	Tuesday	Wednesday	Thursday	Friday
8:00	REGISTRATION		Subjects 6 & 7	Subject 10	Subject 13
9:00	Subject 1	Subject 4	PRE-ARREST	PSYCHOPHYSICAL	LEGAL
9:00		DETECTION	INVESTIGATION	EVALUATION	AUTHORITY
10:00	ORIENTATION	PRE-APPREHENSION	(Phase III & IV)	(Lab.)	Subject 14
	break	(Phase I) break	break	break	break
10:00					
11:00					CASE
11:00	Subject 13				PRESENTATION
12:00	LEGAL				TESTIMONY
12:00	AUTHORITY				
P.M.	L	U	N	C	H
1:00			Subject 9	Subject 11	Subject 15
2:00			PSYCHOPHYSICAL	CHEMICAL	COURSE REVIEW
2:00	Subject 2		EVALUATION	TESTING	
3:00	ALCOHOL &		(Classroom)	Subject 8	Subject 16
3:00	HIGHWAY SAFETY	break	break	HANDLING	STUDENT & COURSE
	break			SUSPECT	EVALUATION
3:00					
4:00					
4:00	Subject 3	Subject 5			
5:00	ENFORCEMENT TASK	DETECTION			
5:00		APPREHENSION			
		(Phase II)			
7:00			Subject 12	Subject 12	
10:00			CONTROLLED	CONTROLLED	
			DRINKING EXERCISE	DRINKING EXERCISE	

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STUDY PLAN AND CONTENT MATERIAL
Part II

SUBJECT # 1

ORIENTATION

Subject Objective:

To know the plans and procedures for conducting the course; to be acquainted with the content to be learned; to become familiar with forms to be used in the course.

Subject Units:

- 1.1 Overview of course.
- 1.2 Administration of pre-test examination.
- 1.3 Nature and types of forms used in alcohol enforcement.

Study Plan

Unit 1.1

Overview of Course

Unit Objective:

To understand the procedures to be followed in conduct of the course.

Content Topics:

- 1.1.1 Course objectives.
- 1.1.2 Plans and procedures for conducting course.
- 1.1.3 Evaluation methods for course.

Content Material

Unit 1.1

Overview of Course

1.1.1 Course Objectives.

A. The objectives of the course are as follows:

1. To develop the ability to detect and properly apprehend drivers who are DWI.
2. To develop an understanding of:
 - a. Relationships of drinking and driving to accidents.
 - b. Effects of alcohol on driving behavior.
 - c. Laws related to drinking driver offenses.
3. To develop an appreciation of the need for sufficient enforcement action against the drinking driver.
4. To develop skills in eliminating hazards created by drinking drivers, thus serving to accomplish the fundamental alcohol countermeasure goal.
5. To provide an understanding of the procedures for processing the suspect, gathering and recording evidence, and maintaining the chain of evidence.
6. To develop basic skills for testifying in court regarding observations of suspect during detection, apprehension, arrest and field test activities.

1.1.2 Student Learning Activities.

A. Classroom learning activities.

1. Providing students with new cognitive information by use of various visual aids.

1.1.2 A. (cont.)

2. Providing students with new manipulative (skill) information by use of various types of audio and visual aids.
3. Permitting students to discuss concepts, principles, facts and issues by structuring large and small group sessions.
4. Permitting students to practice application of knowledge and skills by individual and small group performance.
5. Providing students an opportunity to practice making decisions based on observed driving clues.

B. Laboratory learning activities.

1. Providing students an opportunity to practice psychophysical testing skills.
2. Providing students an opportunity to practice making decisions from drinking subject behavioral clues.

C. Social learning activities.

1. Providing students an opportunity to drink themselves and assess effects of alcohol on themselves.
2. Providing students an opportunity to witness behavior of their fellow students when drinking measured amounts of alcohol.

1.1.3 Evaluation methods for course.

A. Pre-test and post-test of content material.

1. Determination of entry level of individual student.
2. Determination of progress made by individual student.

1.1.3 A. (cont.)

3. Measurement of achievement and thus success of course.

- a. Evaluation to be used to assist learning.
- b. Establishment by each class of its own norm.

B. Periodic written quizzes to measure student's grasp of material.

1. Quiz to be used to assist learning.
2. Quiz to assist instructor in determining:
 - a. Extent of time required for reviews.
 - b. Extent of time required for summaries.
 - c. Needed adjustments in his presentation.
 - d. Level of difficulty of material.
 - e. Pacing of his content presentation.

C. Periodic oral questioning to measure student progress.

1. Questions to be used to assist learning.
2. Questions to be used to assist instructor.

D. Numerous tests of skills in laboratory.

1. Student performance in explanation to drinking subject of psychophysical tests.
2. Student performance in demonstration to subject of psychophysical tests.
3. Student performance in administering each coordination test.
4. Student ability to assess the extent to which subject follows instructions.

1.1.3 D. (cont.)

5. Student ability to assess the manner in which subjects react to test.
6. Peer group evaluation by observer student's critique of fellow student's testing methods.
7. Evaluation of student's understanding of procedure by review of critique of fellow student.

Study Plan

Unit 1.2

Administration of Pre-Test Examination

Unit Objective:

To measure knowledge of subject matter prior to conducting course to establish base for measuring student achievement and course success at completion of course.

Content Topic:

- 1.2.1 Administration of pre-test examination.

Study Plan

Unit 1.3

Nature and Type of Forms Used in Alcohol Enforcement

Unit Objective:

To become familiar with the various types of forms and reports used in alcohol enforcement.

Content Topics:

- 1.3.1 Nature and number of report forms used in alcohol enforcement.
- 1.3.2 Design and style of required reports.

Content Material

Unit 1.3

Nature and Types of Forms Used in Alcohol Enforcement

1.3.1 Nature and Number of Report Forms Used in Alcohol Enforcement.

- A. The nature, types and numbers of report forms used in alcohol enforcement will vary among the respective law enforcement jurisdictions. Most jurisdictions, however, use either the National Safety Council's Alcohol Influence Report form (AIR) or some modification of the AIR form. More variation is found in the forms used for obtaining subject's consent to chemical testing.

1.3.2 Design and Style of Required Reports

- A. Examples of alcohol enforcement reporting forms may be found on the following pages:
 - 1. The National Safety Council's AIR form.
 - 2. The Michigan State Police AIR form.
 - 3. The Texas PD's DWI/DUID Traffic Case Report.
 - 4. The Michigan Breathalyzer Test Report form.
 - 5. The Michigan Department of Health Alcohol Determination Report form.
 - 6. The Michigan "Refusal to Submit" Report form.

(Check) <input type="checkbox"/> Driver <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger	(Check) <input type="checkbox"/> Accident <input type="checkbox"/> Violation <input type="checkbox"/> Other
Date and time of accident or violation _____ am _____ pm	

ALCOHOLIC INFLUENCE REPORT FORM

Police Dept. _____
Arrest No. _____
Accident No. _____
Arresting Officer _____
Date and time in custody _____ am _____ pm

Name _____ Address _____

Age _____ Sex _____ Race _____ Approx. Wt. _____ Operator Lic. No. _____ State _____

OBSERVATIONS:

CLOTHES	Describe: (Type & Color)	Hat or Cap _____
		Jacket or Coat _____
		Shirt or Dress _____
		Pants or Skirt _____
	Condition:	<input type="checkbox"/> Disorderly <input type="checkbox"/> Disarranged <input type="checkbox"/> Soiled <input type="checkbox"/> Mussed <input type="checkbox"/> Orderly (Describe) _____
BREATH	Odor of Alcoholic Beverage: <input type="checkbox"/> strong <input type="checkbox"/> moderate <input type="checkbox"/> faint <input type="checkbox"/> none	
ATTITUDE	<input type="checkbox"/> Excited <input type="checkbox"/> Hilarious <input type="checkbox"/> Talkative <input type="checkbox"/> Carefree <input type="checkbox"/> Sleepy <input type="checkbox"/> Profanity <input type="checkbox"/> Combative <input type="checkbox"/> Indifferent <input type="checkbox"/> Insulting <input type="checkbox"/> Cocky <input type="checkbox"/> Cooperative <input type="checkbox"/> Polite	
UNUSUAL ACTIONS	<input type="checkbox"/> Hiccoughing <input type="checkbox"/> Belching <input type="checkbox"/> Vomiting <input type="checkbox"/> Fighting <input type="checkbox"/> Crying <input type="checkbox"/> Laughing	
SPEECH	<input type="checkbox"/> Not Understandable <input type="checkbox"/> Mumbled <input type="checkbox"/> Slurred <input type="checkbox"/> Mush Mouthed <input type="checkbox"/> Confused <input type="checkbox"/> Thick Tongued <input type="checkbox"/> Stuttered <input type="checkbox"/> Accent <input type="checkbox"/> Fair <input type="checkbox"/> Good	
Indicate other unusual actions or statements, including when first observed: _____		
Signs or complaint of illness or injury: _____		

PERFORMANCE TESTS: (Note—See departmental instructions for conducting these tests)

Check Squares If Not Made	Check appropriate square before word describing condition observed
<input type="checkbox"/> BALANCE	<input type="checkbox"/> Falling <input type="checkbox"/> Needed Support <input type="checkbox"/> Wobbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure
<input type="checkbox"/> WALKING	<input type="checkbox"/> Falling <input type="checkbox"/> Slagging <input type="checkbox"/> Stumbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure
<input type="checkbox"/> TURNING	<input type="checkbox"/> Falling <input type="checkbox"/> Slagging <input type="checkbox"/> Hesitant <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure
<input type="checkbox"/> FINGER-TO-NOSE	Right: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure
	Left: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure
<input type="checkbox"/> COINS	<input type="checkbox"/> Unable <input type="checkbox"/> Fumbling <input type="checkbox"/> Slow <input type="checkbox"/> Sure <input type="checkbox"/> (Other) _____ (Balance during coin test)
Ability to understand instructions: <input type="checkbox"/> Poor <input type="checkbox"/> Fair <input type="checkbox"/> Good Tests performed: Date _____ Time _____ am _____ pm	

OBSERVER'S OPINION:

Effects of alcohol: <input type="checkbox"/> extreme <input type="checkbox"/> obvious <input type="checkbox"/> slight <input type="checkbox"/> none	Ability to drive: <input type="checkbox"/> unfit <input type="checkbox"/> fit
Indicate briefly what first led you to suspect alcoholic influence: _____	
Observed by: _____ Assignment: _____	
Witnessed by: _____ Date _____ Time _____ am _____ pm	

HEMICAL TEST DATA:

Specimen: <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Saliva <input type="checkbox"/> Urine <input type="checkbox"/> None <input type="checkbox"/> Refused <input type="checkbox"/> Unable	Analysis result: If Breath, what instrument?
If refused, why? _____	

HP-21 (Rev. 1-72)

VIOLATOR OR SUSPECT

**TEXAS DEPARTMENT OF PUBLIC SAFETY
DWI/DUID TRAFFIC CASE REPORT**

County _____

DL No. _____ State _____

Birth Date _____ Sex _____ Race _____

NAME Last First Middle Address _____

Height _____ Weight _____ Occupation _____ Driver and Criminal Record _____

VEHICLE: Color _____ Year Model _____ Make _____ Body Style _____ Registered _____ Year _____ State _____ Number _____ A.M.

OFFENSE _____ Fatal Accident Non-Fatal Accident No. Accident Date _____ 19____ Day of Week _____ Hour _____ P.M.

ROAD ON WHICH OFFENSE OCCURRED _____ N E S W of _____

Name of Street or Highway No. _____ Section _____ In, or _____ miles _____ Town or City _____

WITNESSES	Name	Address	Elements of this case witness can testify to	Subject Driving Motor Vehicle		Intoxicated or Under Influence of Drugs	Person Killed Due to Accident	Accident Occasioned by Intoxicated Condition of Subject
				On Public Highway	In Incorp. City (NWOM)			

CHEMICAL TEST

Test Offered (alcohol) Breath Urine Blood None Other, specify _____

Test Given (alcohol) Breath Urine Blood Refused Other, specify _____

Test Result _____ % Refusal form Submitted Yes No Urine and/or Blood Submitted for Drugs

ARRESTING OFFICER _____ Ident No. _____ Dept. _____ Officer/Operator _____ Identification No. _____

OBSERVATIONS

CLOTHES - Describe type and color _____ Hat or Cap _____ Jacket or Coat _____ Shirt or Dress _____

Condition Disorderly Disarranged Soiled Mussed Orderly Describe _____

BREATH Odor of Alcoholic Beverage Strong Moderate Faint None

ATTITUDE Excited Hilarious Talkative Carefree Sleepy Profanity Combative Indifferent Insulting Cocky Cooperative Polite

UNUSUAL ACTIONS Hiccoughing Belching Vomiting Fighting Crying Laughing

SPEECH Not Understandable Mumbled Slurred Mush Mouthed Confused Thick Tongued Stuttered Accent Fair Good

BALANCE Falling Needed Support Wobbling Swaying Unsure Sure

WALKING Falling Staggering Stumbling Swaying Unsure Sure

TURNING Falling Staggering Hesitant Swaying Unsure Sure

Fingerprinted By _____ Not Fingerprinted

Signature of Officer Making Report _____ Name of DPS Officer or Name of Other Police Agency and their File Number _____ Date of Report _____ Charges Filed _____

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SUMMARY (Describe what you did and what you found, showing information such as when you started, etc. -- name of driver, -- condition of vehicle and defendant, -- possession of specific driver's license, by number, -- pertinent remarks of defendant, witnesses, factors, -- physical condition of road, traffic, weather, -- disposition of vehicle and defendant)

INTERVIEW

Were you operating a vehicle? _____ What street or highway were you on? _____ What time is it now? _____
 Direction of travel? _____ Where did you start from? _____ What time did you start? _____
 What city (county) are you in now? _____ What is the date? _____ What day of the week is it? _____
INTERVIEWER TO FILL IN ACTUAL _____ Date _____ Interviewer's Name _____
 When did you last eat? _____ What did you eat? _____ What were you doing the last three hours? _____
 Have you been drinking? _____ What? _____ How much? _____
 Where? _____ Started? _____ am/pm Stopped? _____ am/pm Are you under the influence of an alcoholic beverage now? _____
 What is your occupation? _____ When did you last work? _____ Do you have any physical defects? _____ If so, what? _____
 Are you ill? _____ If so, what's wrong? _____ Do you limp? _____ Have you been injured lately? _____ If so, what's wrong? _____
 Did you get a bump on the head? _____ Were you involved in an accident today? _____ Have you had any alcoholic beverage since the accident? _____
 If so, what? _____ Where? _____ How much? _____ When? _____
 Have you seen a doctor or dentist lately? _____ If so, who? _____ When? _____ What for? _____
 Are you taking tranquilizers, pills or medicines of any kind? _____ If so, what kind? suspected Get Sample? _____ Lost dose? _____ am/pm Do you have epilepsy? _____
 Diabetes? _____ Do you take insulin? _____ If so, last dose? _____ am/pm Have you had any injections of any other drugs recently? _____
 If so, what for? _____ What kind of drug? _____ Last dose? _____ am/pm When did you last sleep? _____
 How much sleep did you have? _____ Are you wearing false teeth? _____ Do you have a glass eye? _____ Other information _____

UD-31 (Rev. 10/69) **BREATHALYZER TEST REPORT**

NAME _____
 (First) (Middle) (Last)

ADDRESS _____
 (Street) (City) (State)

OPERATOR'S LICENSE NO. _____ DOB _____ MO. _____ DAY _____ YR. _____
 CHECK ONE _____ LODGED _____
 Accident Violation Yes No

COMPLAINT NO. _____ FILE CLASS _____ OFFENSE _____

AMPOULE CONTROL NO. _____ INSTRUMENT NO. _____ BLOOD ALCOHOL _____
 0. _____ %

Operational Check List

PREPARATION 1. Throw Switch to "On", wait until Thermometer shows 47-53° C.
 2. Gauge Both Ampoules, open, insert Bubbler and connect to Outlet, Balance, Set Pointer.

PURGE 3. Turn to Take, flush out, turn to Analyze.
 4. When Red empty signal appears, wait 1½ minutes, Turn On Light, Balance.

ANALYSIS 5. Set Blood Alcohol Pointer on Start line.
 6. Turn to Take, take breath sample, turn to Analyze (record time)-
 7. When Red empty signal appears, wait 1½ minutes, Turn On Light, Balance.

Record answer, remove ampoules, TURN SELECTOR VALVE to "OFF".

SIGNATURE OF OPERATOR & DEPARTMENT	DATE OF TEST	TIME OF TEST
		A. M. P. M.
SIGNATURE OF ARRESTING OFFICER & DEPARTMENT	DATE OF ARREST	TIME OF ARREST
		A. M. P. M.

MAIL THIS REPORT TO: Michigan State Police
 Safety and Traffic Division
 East Lansing, Michigan 48823

Use Reverse Side for Additional Remarks

ALCOHOL DETERMINATION

Michigan Department of Public Health
Bureau of Laboratories
Division of Crime Detection
Lansing 48914

PHONE (517) 373-1414

Crime Lab. No.

USE BLACK INK IN PREPARING BLANK

Address of Submitting Agency:

Street _____
City _____ Michigan _____ Zip Code _____

Name of Subject (Please Print) Name (Last) (First)

Blood Deceased Traffic Accident
 Urine Living Driver

Agency Comp. No. _____

Date of arrest _____ A.M. P.M.

Date specimen taken _____ A.M. P.M.

Signature of Person Taking Specimen _____

Officer Present _____

Copies to: _____

Results: Chemical analysis of the blood specimen showed it to contain _____ %
by weight ethyl (grain) alcohol.
Chemical analysis of the urine specimen showed it to contain _____ %
by weight ethyl (grain) alcohol. This value is equal to about _____ %

Reported

Copies

Analyst - Division of Crime Detection

F-222 4/72

Be sure return address is properly filled out. The form at the left, with the laboratory result included, will be returned to you in a window envelope as addressed.

TO LAW ENFORCEMENT OFFICER

1. Advise subject of his right to submit or refuse to submit a specimen for alcohol determination.
2. Be present when specimen is taken.
3. In taking urine specimen, collect in a clean container (milk bottle, large cup or glass, etc.). Pour urine into specimen vial until nearly full and **TIGHTEN CAP FIRMLY**. Mark date, time of collection, name of subject, and your initials on label of vial. Place vial in metal container.
4. Supply information requested on this sheet **IN BLACK INK**. Wrap sheet around metal container, and place in cardboard mailing container.
5. Seal mailing container with adhesive tape. Place sealing wax over end of tape or initial across end of tape, and draw vertical lines with ink from tape onto label, to help assure that seal is tamperproof.
6. Mail as **FIRST CLASS MAIL**.

TO PHYSICIAN OR NURSE
(if **BLOOD SPECIMEN** is taken)

1. Do not use alcohol or alcoholic solution to sterilize skin surface, needle, or syringe.
2. Draw blood in presence of law enforcement officer, and tell subject **IN THE OFFICER'S PRESENCE** that no alcohol was used in sterilizing skin surface, needle, or syringe.
3. Draw 10cc. of venous blood from subject and immediately transfer into vial. **TIGHTEN CAP FIRMLY AND SHAKE** to distribute anticoagulant throughout the blood.
4. Fill in name of subject, date, time, and your initials on label in ink.
5. In presence of subject, hand vial of blood to law enforcement officer, for initialling, packaging and transfer to laboratory, as above.

ADDITIONAL REMARKS OF SUBMITTING AGENT -

PREPARE IN DUPLICATE

Driver Records 1st Copy only for refusal
Officer's Copy

OFFICER'S SWORN REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TEST
(As provided by Act 253, P.A. 1967, as amended)

STATE OF MICHIGAN }
COUNTY OF _____ } ss.

I, _____, being first duly sworn on oath, depose and say that I am a Law Enforcement Officer; that on the _____ day of _____, 19____, the following person

was arrested by _____ Name and Badge No. _____ Department _____

in the county of _____ Michigan.

Name _____ Birthdate _____ Sex _____

Present address _____ Expiration date _____

Operator _____ Chauffeur _____

Driver License No. _____ State of Issuance _____

Vehicle License No. _____ State of Issuance _____

for the offense of driving a motor vehicle upon the highways of this state while under the influence of an intoxicating liquor or while his ability to operate a vehicle had been impaired due to the consumption of intoxicating liquor.

I had reasonable grounds to believe that the person had been driving a motor vehicle on the public highways of the state while under the influence of intoxicating liquor or that he had been driving a vehicle while his ability to operate a vehicle had been impaired due to the consumption of intoxicating liquor.

I requested him to take a chemical test, and I read to him the contents of the Advise of Rights for Chemical Test on the reverse side hereof and that he refused my request to take a chemical test and has been advised of the consequences of such refusal.

Date and Time Request Made

Month _____ Day _____ Year _____ Time _____

Subscribed and sworn to before me this _____

day of _____, 19____

Signature of Requesting Officer

Title

Badge No.

Notary Public, Judge or Clerk of Record.

Second officer, if any

Title

Badge No.

Law Enforcement Agency

MAIL THIS REPORT TO: Michigan Department of State, Bureau of Driver & Vehicle Services
Lansing, Michigan 48918

DI-93 - 9/70

ADVICE OF RIGHTS FOR CHEMICAL TEST

(The following Advice of Rights shall be read to all persons arrested pursuant to Section 625 (a) - (f) of Act 300 of 1949, as amended)

I am a law enforcement officer and pursuant to law I am hereby advising you that you have been arrested for the offense of driving a motor vehicle upon the highways of this state while under the influence of intoxicating liquor or while your ability to operate a motor vehicle has been impaired due to the consumption of intoxicating liquor. I am further advising you of your right to take a chemical test to determine the alcoholic content of your person through analysis of a specimen of your blood, breath, urine, or saliva; and further I am offering you such a chemical test and requesting that you take a chemical test. I further advise you that you have the following rights:

- (1) That the results of such tests shall be admissible and shall be considered with other competent evidence in determining your guilt or innocence in any prosecution relating to your driving a vehicle while either under the influence of intoxicating liquor or while your ability to operate a vehicle was impaired due to the consumption of intoxicating liquor.
- (2) That you have a right to refuse to take any such tests, and if you so refuse, no tests shall be given to you.
- (3) That your refusal to take a test as provided shall result in the suspension or revocation of your operator's or chauffeur's license or operating privilege.
- (4) Notwithstanding any other provision mentioned herein or anything else, you have the option to demand that only a breath test shall be given you, in which case your refusal to submit to any other test shall not constitute a refusal to take a chemical test.
- (5) That after taking a chemical test, administered at the request or direction of a law enforcement officer, you have a reasonable opportunity to have a person of your own choosing administer one of said chemical tests, within a reasonable time of detention, and that the results of such test shall be admissible and shall be considered with other competent evidence in determining your guilt or innocence in any prosecution relating to your driving a vehicle while either under the influence of intoxicating liquor or while your ability to operate a vehicle was impaired due to the consumption of intoxicating liquor.
- (6) Regardless of any other provision, if you are afflicted with hemophilia, diabetes or any condition requiring the use of an anticoagulant under the direction of a physician, you need not consent to a withdrawal of your blood, but may take a urine or a breath test.

SUBJECT # 2

ALCOHOL AND HIGHWAY SAFETY

Subject Objective:

To understand the effects of alcohol on the human body and the nature and scope of the drinking driver problem.

Subject Units:

- 2.1 Effects of alcohol on human body.
- 2.2 Nature and scope of drinking driver problem.

Study Plan

Unit 2.1

Effects of Alcohol on the Human Body

Unit Objective:

To understand the manner in which use of alcohol affects the human body.

Terminal Objectives:

- 2.1.2 . . . be able to demonstrate an understanding of the physiological processes of alcohol absorption, metabolism and elimination.
- 2.1.3 . . . be able to demonstrate an understanding of individual tolerances to alcohol.
- 2.1.4 . . . be able to demonstrate an understanding of effects of alcohol on brain and body functions.

Content Topics:

- 2.1.1 Overview of unit.
- 2.1.2 Physiological processes of alcohol absorption, metabolism and elimination.
- 2.1.3 Individual tolerance in use of alcohol.
- 2.1.4 Effects of alcohol on brain and body functions.
- 2.1.5 Summary of unit.

Assignment:

- 1. Read Unit 2.1 of Student Manual on Effects of Alcohol on the Human Body.

Study Questions:

- 1. How does the body absorb alcohol that is ingested?
- 2. How does the rate of metabolism alter effects of alcohol?
- 3. How is alcohol eliminated by the body?

Study Questions: (cont.)

- 4. What effects do various levels of alcohol have on vision?
- 5. How do various levels of alcohol effect muscular control?
- 6. How is judgment impaired by alcohol?

Content Material

Unit 2.1

Effects of Alcohol on the Human Body

2.1.1 Overview of Unit.

The primary objective of this unit is to create understanding of how the use of alcohol affects the body. The topics covered include bodily processes of alcohol absorption, metabolism and elimination; individual tolerance in use of alcohol; and the effects of alcohol on brain and body functions.

2.1.2 Physiological Processes of Absorption, Metabolism and Elimination.

A. Absorption:

Unlike most food substances, alcohol does not require digestion, but is absorbed directly into the bloodstream. About 20% of the alcohol is absorbed through the stomach walls, and most of the remaining portion through the small intestine.

Alcohol can also be absorbed by other body organs, chiefly the lungs and rectum. For example, when water containing 15% alcohol is given as an enema, the alcohol is rapidly absorbed.

Food is a principal inhibitor of the prompt absorption of alcohol. Eating food while drinking slows down the rate of absorption. The intoxicating effect of several drinks can be noticeably retarded when a meal soon follows the drinks. Milk, for instance, is known as an effective food which slows down the rate of alcohol absorption. Butter, cheese, meat, eggs and other foods rich in protein are also effective in retarding absorption rates. Protein, because of its complex chemical composition, remains in the stomach longer. This results in alcohol being retained in the stomach during the time required for the digestive process.

B. Metabolism:

Following absorption, alcohol is distributed by the blood system. The next phase of the process is metabolism, or the oxidizing of alcohol in the body. The liver is the principal organ in which alcohol is metabolized. The most important aspect of this function is that oxidation alters alcohol in such a way that it no longer causes intoxication. The rate at which alcohol is oxidized is solely a matter of bodily capability.

There is no known method of increasing the oxidizing rate. Coffee or brisk walks do not speed up the process. Only time can sober up the intoxicated person.

C. Elimination:

As much as 90% of absorbed alcohol is oxidized in the liver. Alcohol is also eliminated, chemically unchanged, by the kidneys, breathing process and perspiration. About 10% of the total amount of consumed alcoholic beverage is excreted to complete the elimination process.

2.1.3 Individual Tolerance in Alcohol Use.

Tolerance may be defined as the ability of living matter to adapt to the presence of foreign chemicals or drugs so that larger quantities are required to produce an effect similar to that originally noted. Laboratory experiments and chemical observations have documented this occurrence with alcohol.

Tolerance rarely occurs in an individual who has not had previous exposure. It is also dependent, on occasion, on both age and sex. Tolerance is not a result of difference in alcohol metabolism since the blood alcohol concentration (BAC) remains the same.

The possible mechanisms to explain tolerance are delayed absorption, decreased penetration in the central nervous system and increased tissue tolerance. The view of most investigators, and the opinion of most clinicians, is that tolerance is limited and most frequently occurs at alcohol levels not exceeding .10%.

2.1.4 Effects of Alcohol on Brain and Body Functions.

The several effects of alcohol on brain and body functions are classified by chemical measurement of blood alcohol concentration (BAC). Most experts agree there is observable impairment of brain function when the blood alcohol concentration measures even less than .05%.

As a person's intake of alcohol increases, changes in behavior follow a characteristic progression or pattern. At first, the face is flushed, reactions become slower and less exact, judgment is impaired. The person's normal inhibitions

and restraints relax or disappear and the drinker begins to give free rein to his impulses. As intake goes on, his thinking becomes dazed and confused. He may become silly, irritable, angry or morose. Bodily movements become uncertain, less coordinated. Then, as the drinker becomes drunk, he loses both the power of rational thought and control of his bodily movements. The final stage of this increasing alcohol intake pattern is coma and then death.

The effects of alcohol on vision and muscular control are important. Vision is impaired in some subjects with a BAC as low as .04%. Vision is substantially impaired in all subjects when the BAC exceeds .08% to .10%. Muscular control is disrupted in some individuals with a BAC as low as .03% while clumsiness is observable in all drinkers when the BAC reaches .10%.

Impairment of judgment begins with BACs lower than those causing muscular incoordination. In most persons, reduction of both judgment and inhibitions are more apparent once the BAC goes above .05%.

There are even more dramatic indications of response to the extremely high blood alcohol concentrations. A person having difficulty in controlling his emotions -- crying or laughing at length, for example -- may have a BAC of more than .20% and is severely impaired. When the BAC reaches .30% the person's comprehension of sights and sounds is distorted and he may lapse into unconsciousness. At levels from .35% to .50% the individual loses his ability of perception and often falls into a coma. When the BAC reaches .50% the brain centers controlling breathing and heart action are critically disabled and death is the usual result.

Study Plan

Unit 2.2

Nature and Scope of Drinking Driver Problem

Unit Objective:

To understand the nature and scope of the drinking driver problem.

Terminal Objectives:

- 2.2.2 . . . be able to demonstrate an understanding of the classification variations of drinking drivers.
- 2.2.3 . . . be able to demonstrate an understanding of the relationship of drinking driving and traffic accidents.

Content Topics:

- 2.2.1 Overview of unit.
- 2.2.2 Classification of drinking drivers.
- 2.2.3 Accidents related to drinking and driving.
- 2.2.4 Summary of unit.

Assignment:

1. Read Unit 2.2 of Student Manual on Nature and Scope of Drinking Driver Problem.

Study Questions:

1. How would you define "drinking-driver"?
2. Do your definitions clearly describe the nature of the concept?
3. What is the nature, extent and impact of the accident problem in the nation involving drinking drivers?

Study Questions: (cont.)

4. What is the nature, extent and impact of the accident problem in your respective states involving drinking drivers?
5. What kinds of problems are inherent in using accident records as indicators?
6. What kinds of information have been disclosed by research into accidents caused by drinking drivers?

Content Material

Unit 2.2

Nature and Scope of Drinking Driver Problem

2.2.1 Overview of Unit.

The topics covered in this unit are the classification of drinking drivers and the nature and incidence of accidents related to drinking and driving. The unit objective is to understand the nature and scope of the drinking driver problem.

2.2.2 Classification of Drinking Drivers.

The vague compound term "drinking driver" is ambiguous and often causes considerable misunderstanding. Both drinking and driving are widely practiced customs, taking on many different forms and many different meanings. Some part of each may be termed deviant; that is, so different from accepted practice it brings social disapproval. This does not mean the customs (use of alcohol, use of roads or both) are disapproved as a whole. However, the two sets of customs, drinking and driving, can converge into an accident. This may result from acceptable road use but deviant alcohol use. It may result from acceptable alcohol use but deviant road use. Or it may result from deviant use of both.

The classification of drinking drivers shows extensive variations:

First, those drinking drivers who are skilled drivers, but whose basic problem is chronic, compulsive, sociopathic drinking, which frequently results in high BACs when they are driving.

Second, drinking drivers to whom alcohol is not a compulsive problem, but whose basic problem is aggressive, sociopathic driving. Alcohol inclines such drivers from bad to worse.

Third, drinking drivers to whom neither drinking nor driving is usually a problem, but who occasionally drink too much, and on such occasions drive with too high BACs.

A fourth group includes drinking drivers who are unusually sensitive to alcohol.

Another grouping is of drinking drivers who have only recently started driving and for whom driving has not yet become a learned skill. Even small amounts of alcohol may have drastic effects on their driving behavior. This classification includes some teen-age drivers.

There is also the category of drinking drivers to whom neither drinking nor driving is a problem. When they drink, amounts are always minimal and BACs are always at sub-threshold levels.

2.2.3 Accidents Related to Drinking and Driving.

A review of national statistics on alcohol and highway safety provides ample cause for great concern.

First, there is the obvious futility of deaths, injuries and damages caused by vehicle crashes. Such futility is even more regrettable if the person responsible was drinking and driving. In the wide perspective, this is a social problem that has 100% disapproval, and gives justifiable grounds for public irritation.

Over 55,000 people are killed on our highways each year. Half of the fatal accidents involve the use of alcohol. Twenty five to 40% of injury accidents involve the use of alcohol. Economic costs are huge, with alcohol-related crashes estimated at \$2 billion per year, equivalent to .2% of the Gross National Product.

The odds of being involved in an accident are formidable from the viewpoint of the individual. During his lifetime, the average driver has one chance in two of being involved in an accident with an alcohol-impaired driver. He also has one chance in ten during his lifetime of being in an accident that will kill either him or the drinking driver.

There are certain problems and limitations in using accident records as indicators. Traffic officers should be familiar with these.

Such statistics focus primarily on fatal accidents, which in number amount to a small percentage of total accidents. Not all injury and property damage accidents are reported to authorities. The numbers of potential accidents, those narrow squeaks and near misses, are unknown. And the average driver will not report other drivers as DWI if claims, when an accident does occur, are taken care of quickly.

Although useful in some ways, statistical descriptions of accidents do not get to the scope and nature of the problem. They may serve as a stimulator, but they do not provide understanding. They sometimes actually lead in the opposite direction. Nevertheless, when used as "shock" treatment, they may have some merit.

Statistics are also affected by conditions that vary in the gathering of accident data. Some police officers are hesitant to report drinking conditions of drivers on accident report forms. There are extreme variations among states, and among jurisdictions within a state. The widespread inaccuracy in police reporting of drinking in accidents is pointed out in a 1969 Highway Safety Research Institute study. Only 2 persons out of 38 with a BAC greater than .10% were reported as drivers who had been drinking. Nine persons out of 38 with BACs greater than .10% were reported as had not been drinking. Eighteen persons out of 38 with BACs greater than .10% were reported as not known if drinking.

Fourteen persons out of 28 with BACs greater than .15% were reported as not known if drinking.

Thirty-one persons out of 57 with BACs greater than .10% were not reported at all, such data being missing from the accident report.

The circumstances surrounding accident policing often prevent correct assessment by police in fatal crashes. This occurs in cases when injured or dead persons have been removed from the scene to a hospital before police arrive, or because injured persons may be unconscious. Moreover, in accident emergencies, police have a first duty of caring for the injured, rather than assessing details of alcohol involvement. Other crash-related duties also distract police attention from details of alcohol involvement.

Several studies of accidents with drinking-related factors do provide data of interest.

The Highway Safety Research Institute (HSRI) case history investigations of Wayne County, Michigan, traffic fatalities from July, 1967, to January, 1968, list 177 fatalities in 160 separate crashes. Of the 177 killed, 84 were drivers, 38 were passengers, and 55 were pedestrians. Of the 84 drivers, 27 (32.1%) had BACs ranging from .15% to .24%. Fourteen (16.7%) had BACs of .25%. Thus, a total of 41 drivers (48.8%) had BACs at or over .15% (see Table 2-1). Table 2-2 shows hours of occurrence in this accident group, with 47.6% from 9 PM to 3 AM, 26.2% from midnight to 3 AM, and 21.4% from 9 PM to midnight.

Table 2-1

DISTRIBUTION OF FATAL DRIVERS BY BAC

	Not Taken	Nega- tive	.01- .04	.05- .09	.10- .14	.15- .24	.25+	Total
No.	1	22	6	2	12	27	14	84
%	1.2	26.2	7.1	2.4	14.3	32.1	16.7	100

Source: Lyle Felkins and Cheryl Clark, "Wayne County Traffic Fatality Study," Alcohol Safety Project, Vol. II, Highway Safety Research Institute, University of Michigan, February 1969, p. 33.

Table 2-2

DISTRIBUTION OF FATAL DRIVERS BY HOUR OF ACCIDENT

	01- 3	3-6	6-9	9-12	12-15	15-18	18-21	21-24	Total
No.	22	5	9	7	5	8	10	18	84
%	26.2	6.0	10.7	8.3	6.0	9.5	11.9	21.4	100

Source: Lyle Felkins and Cheryl Clark, "Wayne County Traffic Fatality Study," Alcohol Safety Project, Vol. II, Highway Safety Research Institute, University of Michigan, February 1969, p. 47.

Further analysis in the HSRI study indicates that 79% of the deceased responsible drivers had BACs above .10%; 68% had BACs above .15%. Of the drivers in single car crashes, 58% exceeded .15% BAC; .43% of drivers in multiple car crashes, exceeded .15% BAC.

Another significant finding (shown in Table 2-3), is that drivers involved in fatal vehicle accidents had generally inferior driving records in comparison with a normal population sample.

A study conducted in Grand Rapids, Michigan, placed major emphasis on the relationship between drinking and accidents. The study covered 3,305 accidents with 3,305 drivers between May, 1959 and April, 1962. The study determined accident involvement by BAC, and compared BAC rates of subjects in the accidents to the BAC rates of a general driving population sample of 7,590 drivers (See Table 2-4).

The study found that drivers with positive alcohol levels (.10% and up) caused over one-fifth of the accidents (21.2%) though numbering only 11% of the driving population. Drivers with BAC greater than .05% caused 15% of the accidents but were just over 3% of the driving population. Drivers with BAC over .10% caused 10.8% of the accidents but numbered less than 1% of the driving population. Those drivers with BAC greater than .15% caused almost 6% of the accidents but were less than two-tenths of one percent of the driving population.

Other conclusions indicate that when a BAC of .10% is reached, accident probability is six to seven times as great as .00% BAC; and when BAC of .15% is reached, the accident probability is 25 times greater than that of the sober driver (See Chart 2-1). It is clear that when BACs over .20% are reached, an extremely high accident probability prevails.

The Department of Transportation Alcohol Countermeasures Program of June, 1970 analyzed the relationship between BAC and fatalities. In Chart 2-2, data is presented for three groups. The first bar on the graph represents drivers stopped on roads at scene and time of fatal accidents and given breath tests. Two percent (2%) of these drivers had BACs over .10%. In other words, one in fifty drivers on roads at these times and places is DWI.

The second bar represents the BAC measurement of drivers fatally injured who were judged not to be at fault -- 12% had BACs of .10% or over.

Table 2-3

COMPARISON OF MOVING VIOLATIONS OF FATAL DRIVERS AND
SAMPLE OF DRIVING POPULATION
January 1961-January 1968

No. of Viols.	Normal Pop. Driv. Profile	%	Fatal Drivers	%
0	505	47	11	15.2
1	246	23	11	15.2
2	115	11	9	12.5
3	70	7	12	16.7
4	44	4	6	8.3
5	33	3	5	6.9
6	14	1	5	6.9
7	10	1	2	2.7
8	17	2	2	2.7
9+	14	1	9	12.5
Total	1068	100	72	100.0

Source: Lyle Felkins and Cheryl Clark, "Wayne County Traffic Fatality Study," Alcohol Safety Project, Vol. I, Highway Safety Research Institute, University of Michigan, February 1969, p. 56.

Table 2-4

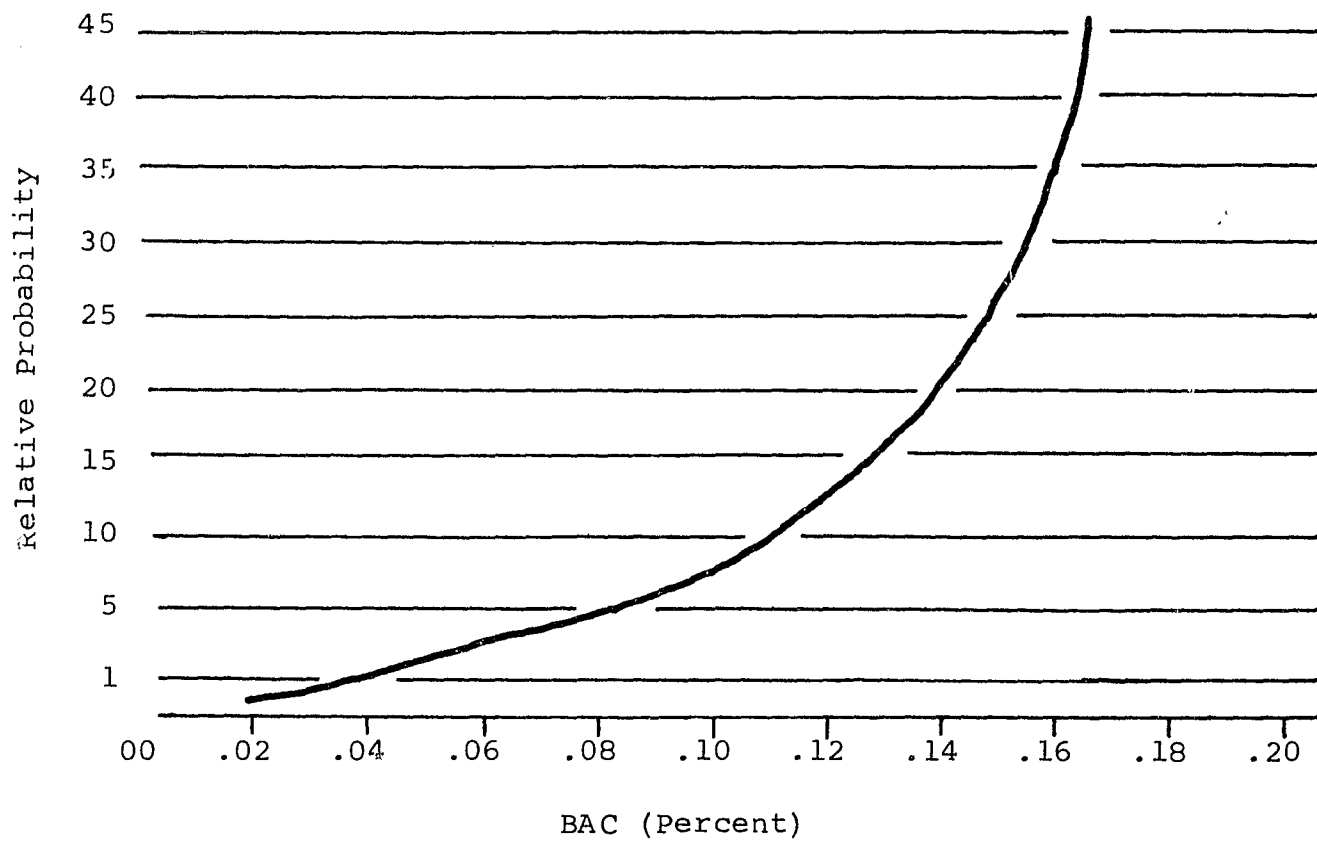
NUMBER AND PERCENT OF DRIVERS IN ACCIDENTS AT OR OVER
SPECIFIED ALCOHOL LEVELS COMPARED WITH CONTROL GROUP

BAC% Percent	Accident Causing Group Equal to or Exceeding		Control Group Equal to or Exceeding	
	Number	Percent	Number	Percent
0.00	3305	100.0	7590	100.0
0.01	701	21.2	834	11.0
0.02	602	18.2	558	7.4
0.03	562	17.0	424	5.6
0.04	539	16.3	328	4.3
0.05	501	15.2	245	3.2
0.06	471	14.3	189	2.5
0.07	441	13.3	145	1.9
0.08	416	12.6	113	1.5
0.09	387	11.7	85	1.1
0.10	358	10.8	58	0.8
0.11	308	9.3	44	0.6
0.12	273	8.3	37	0.5
0.13	235	7.1	21	0.3
0.14	206	6.2	17	0.2
0.15	186	5.6	14	0.2
0.16	154	4.7	10	0.1
0.17	128	3.9	8	0.1
0.18	99	3.0	7	0.1
0.19	78	2.4	5	0.1
0.20	63	1.9	4	0.1
0.21	49	1.5	2	0.0
0.22	38	1.2	2	0.0
0.23	31	0.9	2	0.0
0.24	24	0.7	1	0.0
0.25	18	0.5	1	0.0
0.25+	15	0.5	0	0.0

Source: R. F. Borckenstein and others. "Role of the Drinking Driver in Traffic Accidents," Indiana University, March 1964, p. 230.

Chart 2-1

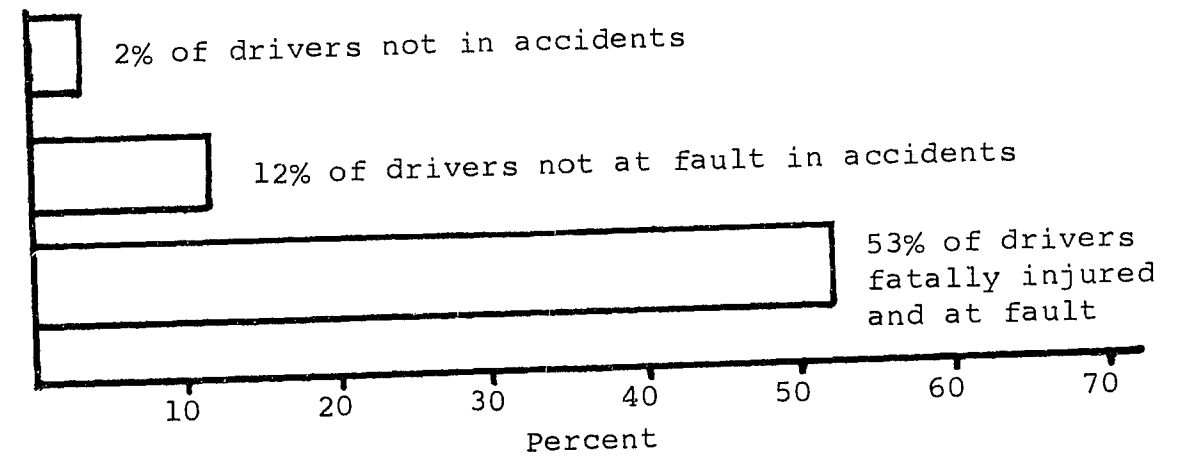
RELATIVE PROBABILITY OF CAUSING AN ACCIDENT BY BAC



Source: R. F. Borckenstein and others. "Role of the Drinking Driver in Traffic Accidents," Indiana University, March 1964, p. 166.

Chart 2-2

BLOOD ALCOHOL ABOVE .10% AND FATAL ACCIDENTS



Source: "Alcohol Safety Countermeasures Programs," National Highway Traffic Safety Administration, Department of Transportation, June 8, 1970, pp. 2-9.

The third bar represents the BAC of drivers fatally injured who were judged at fault, 53%. Thus, while only 2% of the drivers on the road are DWI, they account for half of the drivers "at fault" in fatal accidents. Note that Chart 2-2 data relate only to the drivers involved. While many of these were single vehicle accidents in which only the DWI driver was killed, many others were multiple vehicle crashes in which innocent persons died.

A series of studies sponsored by the California Traffic Safety Foundation examined drinking driver accidents. The first of the series of three was a "Pilot Study on Alcohol Involvement in Fatal Motor Vehicle Accidents in 8 California Counties in 1962" published in 1963. The second was "Alcohol Involvement in Fatal Motor Vehicle Accidents in 41 California Counties in 1966" published in 1967. A third study was entitled "Alcohol Involvement in Fatal Motor Vehicle Accidents in California -- 1962-1968" published in 1969.

In the 1963 pilot study, BACs of 633 driver fatalities were taken by county coroners. Results indicated that 54% had been drinking; 266 cases were single vehicle crashes in which 67% had been drinking, and 59% had a BAC greater than .10%; 30 drivers hit parked cars, and 63% of these had BACs greater than .10%.

Table 2-5 shows similar significant differences in BACs of "responsible" and "non-responsible" drinking drivers.

In California's 1969 study, 5,123 driver fatalities were tested for alcohol, indicating that 53% had been drinking. 44% had BACs greater than .10%; 34% had BACs greater than .15%; and about 9% had BACs of .25% and up. Table 2-6 gives the results of this study by types of accidents and by responsibility.

Indiana University conducted a study on "A Systems Approach to Analysis of the Drinking Driver Control System" published in November, 1970. This study used data from other research to develop DWI control models and computed the risk of involvement in an accident with a DWI.

Table 2-7 shows fatal, injury and property damage accident rates for all accidents and for those caused by legally impaired drivers. These figures show the risk imposed by the DWI.

Table 2-5

BAC DIFFERENCES BETWEEN RESPONSIBLE AND NON-RESPONSIBLE DRIVERS

<u>Alcohol Intake</u>	<u>Responsible Driver</u>	<u>Non-Responsible Driver</u>	<u>Difference</u>
HBD	55%	20%	2.5 to 1
.10% up	44%	12.8%	3.4 to 1
.15% up	35%	5%	7 to 1

Source: Royal A. Neilson, "The Deadly Tranquilizer," Traffic Safety Magazine, Vol. 64, No. 4, pp. 8-10, April 1964.

Table 2-6

ACCIDENT INVOLVEMENT IN FATAL MOTOR VEHICLE ACCIDENTS IN CALIFORNIA 1962-68

Types of Accidents	Cases Tested for Alcohol	% HBD	% with BAC-.10%	% with BAC-.15%	% with BAC-.25%
One vehicle--driver fatally injured.	2521	65	56	44	11
Vehicle struck non-moving vehicle--driver fatally injured.	156	56	47	35	10
Vehicle struck non-moving vehicle--driver of non-moving vehicle injured.	19	37	32	21	11
More than one vehicle and in motion--driver in responsible vehicle fatally injured.	1433	52	43	34	9
More than one vehicle and in motion--driver in non-responsible vehicle fatal.	666	20	10	5	1
More than one vehicle and in motion--responsibility of fatal driver unknown.	225	28	19	12	2
More than one vehicle and in motion--two or more drivers fatally injured.	103	41	30	26	5

Source: Royal A. Neilson, "Alcohol Involvement in Fatal Motor Vehicle Accidents in California--1962-68," California Traffic Safety Foundation, 1969.

Table 2-7

FATAL AND INJURY ACCIDENT RATES--1968

Category	Per 100 Million Vehicle Miles	Per 1000 Population	Per 1000 Reg. Drivers
Fatal Accidents			
All	4.5	.23	.43
Accidents with Driver's BAC \geq .10%	2.3	.12	.22
Injury Accidents			
All	258	8.3	15.7
Accidents with Driver's BAC \geq .10%	51.6	1.7	3.1
Property Damage Accidents			
All	2050	66	125
Accidents with Driver's BAC \geq .10%	144	4.6	8.8

Source: K. B. Joscelyn and others. "A Systems Approach to Analysis of the Drinking Driver Control System," University of Indiana, November 1970, p. 54.

Table 2-8 shows the estimated probability of involvement with a DWI before a certain point in time. The period of time used was 50 years to approximate a lifetime of driving. As the table shows, there is a 50-50 chance that a driver will be in some kind of accident involving a DWI during his driving lifetime. There is about one chance in ten that a driver will be involved in a fatal accident with a DWI during his lifetime.

Wisconsin did annual studies on BAC testing from motor vehicle deaths from 1968-70. The 1970 report shows 439 drivers tests, with 264 of these (60%) showing some alcohol content in blood. Of the 264 decedents with alcohol in the blood, 233 (53%) had BACs over .05%. One hundred sixty-one (37%) had BACs greater than .15%. These results are similar to those found in Wisconsin's 1968 and 1969 studies.

Other studies have considered the role of alcohol and highway safety and have been conducted under various sponsorships: the President's Commission on Law Enforcement and the Administration of Justice, Task Force on Drunkenness, 1967; a study in August, 1968 transmitted by the Secretary of the Department of Transportation to the 90th Congress, entitled "1968 Alcohol and Highway Safety Report"; and the International Association of Chiefs of Police study to develop an alcohol enforcement countermeasures manual.

Table 2-8

PROBABILITY THAT A DRIVER WILL BE INVOLVED IN AT LEAST ONE ACCIDENT WITH A DWI DURING A DRIVING LIFETIME

Accident Category	Meantime Before Involvement, Years	Probability of Involvement In Driving Lifetime (50 yrs.)
Fatal	455	.11
Injury	322	.14
Property Damage	114	.35
Any of Above	83	.45

Source: K. B. Joscelyn and others. "A Systems Approach to Analysis of the Drinking Driver Control System," Indiana University, November 1970, p. 56.

SUBJECT # 3

PREPARING FOR ALCOHOL ENFORCEMENT TASK

Subject Objective:

To understand the drinking driver characteristics, patterns, and incidents and be able to select appropriate patrol area for alcohol enforcement.

Subject Units:

3.1 Drinking and driving incidents, characteristics and patterns.

3.2 Selection of the patrol area.

Study Plan

Unit 3.1

Drinking and Driving Incidents,
Characteristics and Patterns

Unit Objective:

To understand the nature of drinking driving incidents and impaired driver characteristics and patterns.

Terminal Objectives:

- 3.1.3 . . . be able to demonstrate an understanding of the nature of the drinking driver population and the numbers of drivers operating a vehicle while impaired.
- 3.1.4 . . . be able to demonstrate an understanding of the characteristics and driving patterns of impaired drivers.
- 3.1.5 . . . be able to demonstrate an understanding of the probabilities of impaired drivers on the road.
- 3.1.6 . . . be able to demonstrate an understanding of the use of alcohol enforcement as a deterrence.

Content Topics:

- 3.1.1 Review of previous subject.
- 3.1.2 Overview of unit.
- 3.1.3 Nature of drinking and driving incidents (offenses) in total driving population.
- 3.1.4 Characteristics of driving patterns of impaired drivers.
- 3.1.5 Probabilities of drivers on road who have been drinking.

Content Topics: (cont.)

- 3.1.6 Use of alcohol enforcement as a deterrence (prevention).
- 3.1.7 Summary of unit.

Assignment:

- 1. Read Unit 3.1 in Student Manual on Drinking and Driving Incidents, Characteristics and Patterns.

Study Questions:

- 1. How many one ounce shots would you have to consume to reach a BAC of .05%? .10%? .15%?
- 2. What kinds of impairment is caused by various levels of BAC?
- 3. What percent of drivers on roads at all hours have been drinking? are \geq .05% are \geq .10%?
- 4. What percent of drivers on secondary roads at nighttime have been drinking? are \geq .05% are \geq .10% are \geq .15%?
- 5. What age group of drivers have the highest exposure during nighttime driving? Greatest number of drinking drivers?
- 6. How many violations per year would be committed by 100 DWI drivers? How many per average DWI driver?
- 7. Do you think an increased drunk patrol would deter the drinking driver? To what extent?

Content Material

Unit 3

Drinking and Driving Incidents, Characteristics
and Patterns

3.1.2 Objective.

The objective in this unit is to develop understanding of the nature of drinking and driving incidents and impaired driver characteristics and patterns. Topics to be covered include the nature of drinking and driving incidents (offenses) in the total driving population; the characteristics of the driving patterns of impaired drivers; the probabilities of drivers who have been drinking being on the road; and the use of alcohol enforcement as a deterrence.

3.1.3 Nature of Drinking and Driving Incidents in Total Driving Population.

The nature of the relationship of the driving population to alcohol consumption provides an important general picture of the situation. Sixty-five percent (65%) of the adult population over 21 report they drink alcoholic beverages. Males consume 80% of the total amount. The national consumption is about 2 gallons per person per year for people over 15 years of age. This is equivalent to about one ounce of 80-proof whiskey per person per day. In California, for every tank of gasoline burned, one gallon of intoxicating beverage is consumed by human beings.

Table 3-1 sets forth the percentages of the population who drink various kinds of alcoholic beverages.

The information in Chart 3-1 is from the 1968 report to Congress from the Department of Transportation on Alcohol and Highway Safety. This gives the percentage of individuals of driving age who drive, who drink, and who do both separately or in combination. Key points here are: (1) a majority of persons of driving age do drink, but not necessarily in combination with driving; (2) a majority of drivers who drive and also drink, combine the two activities.

The relationship of consumption to impairment can be easily shown. Alcohol impairs sensory, perceptual, psychomotor, and mental functions. Impairment becomes visible even at low BACs. Lab tests and operation of vehicles on experimental field courses show deterioration of driver performance at minimal BACs, around .03%-04%.

Table 3-1

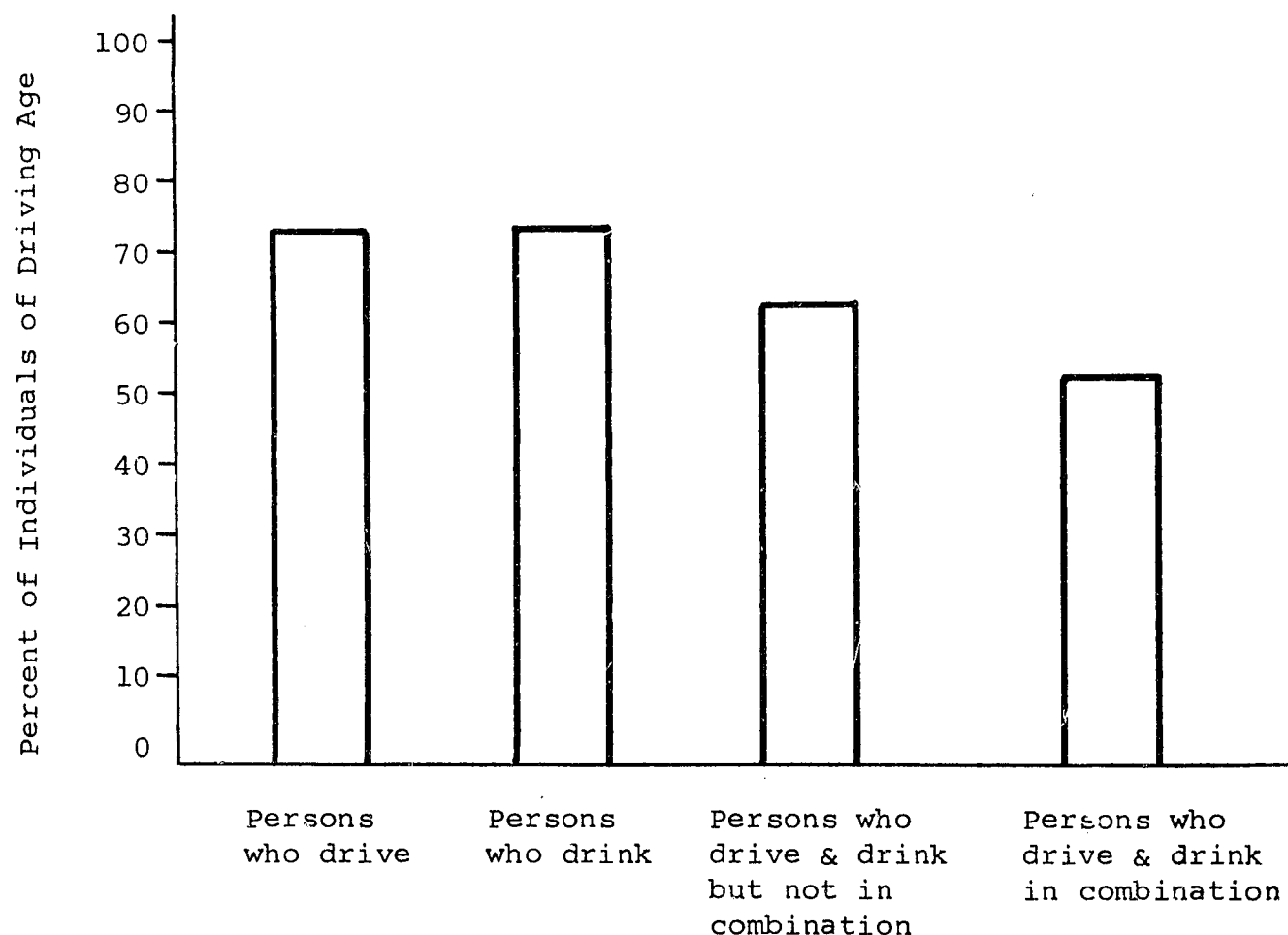
PERCENTAGE OF POPULATION DRINKING
VARIOUS KINDS OF BEVERAGES

<u>Type of Beverage</u>	<u>Percent of Total Population</u>
Wine only	4
Beer only	15
Wine & beer only	6
Liquor only	7
Wine & liquor	3
Beer & liquor	11
Wine, beer & liquor	16
Other (cordials, liqueurs, etc.)	<u>3</u>
Total	65

Source: Alcohol and the Impaired Driver. Chicago: American Medical Association, 1968, p. 3.

Chart 3-1

PERCENTAGE OF INDIVIDUALS OF DRIVING AGE WHO DRIVE, WHO DRINK, WHO DO BOTH, BUT NOT NECESSARILY IN COMBINATION, AND WHO DO BOTH IN COMBINATION.



Source: Alcohol and Highway Safety. Submitted by Secretary of Department of Transportation to 90th Congress, August 1968, p. 61.

According to lab experiments impairment gets worse with increased amounts of alcohol in the drivers' blood. Levels of .05% created a tendency to drive toward the ditch in 82% of the test cases. A level of .10% and up caused deviation from the traffic lane and increased time used to return to correct lane. It is estimated that at .10% BAC, driving ability is reduced 15%. At .15% BAC, the driving performance deficit is 30%. Deterioration of judgment occurs at levels below .05%. Significantly, driving efficiency is actually reduced at the same time the driver's confidence in his own ability is increasing.

The relationship of Blood Alcohol Concentrations to amounts consumed (intake) are shown in Table 3-2. Note that amounts over 5 fluid ounces of 86-proof generally result in BACs of .10% or above.

Data from several studies show the number of drivers operating vehicles while under the influence of alcohol. In a Grand Rapids, Michigan, study, 7590 drivers were given breath tests, which showed that 834 (11% of the total) had been drinking; 245 drivers (3.2%) had BACs at least .05%; 58 (.75%) BACs of .10%; and 14 (.2%) BACs of .15% or over.

During a Highway Safety Research Institute study conducted on 16 different nights in a one-month period, 746 drivers were given roadside breath tests. This study sought to obtain a measurement of the nature and extent of alcohol usage within the night time driving population.

Drivers were selected at random by a research team member and then were stopped by police officers for the tests. Nineteen percent (19%) of the drivers tested had BAC at least .02%; 10% of these drivers measured BACs of .05%; 4% of the BACs reached .10%; and 1% had BACs of .15% or over. The highest proportion of drinking drivers were found during the early morning hours and on less travelled roads. Table 3-3 sets forth the number and proportion of drivers in each BAC category.

In Evanston, Illinois, 1750 drivers were stopped at random at all hours during one week in 1938. Twelve percent (12%) of all drivers stopped had been drinking; 2% had BACs as high as .10%; and 4% had BACs of .15%.

Table 3-2

COMPARISON OF BAC TO NUMBER OF DRINKS REQUIRED
TO ATTAIN THAT LEVEL

<u>BAC</u>	<u>Approx. No. of Drinks (1 fluid oz. of 86 proof)</u>
.01 - .04	up to 2
.05 - .09	3 - 5
.10 - .14	6 - 8
.15 - .19	9 - 11
.20 - .24	11 - 14
.25 - .29	14 - 16
.30 - .34	17 - 19
.35 - .39	20 - 21

Source: Task Force Report: Drunkenness, Washington, D. C.: President's Commission on Law Enforcement and Administration of Justice, 1967, p. 37.

Table 3-3

DISTRIBUTION OF DRIVERS BY BAC

	<u>0</u>	<u>.01</u>	<u>.02-.04</u>	<u>.05-.07</u>	<u>.08-.09</u>	<u>.10-.14</u>	<u>.15-.19</u>	<u>.20-.22</u>	<u>Total</u>
No.	559	47	64	35	11	22	6	2	746
%	74.7	6.3	8.6	4.7	1.5	3.0	.8	.3	100

Source: Carlson, W. L., and others. "Washtenaw County BAC Roadside Survey," Ann Arbor, Michigan: Highway Safety Research Institute, University of Michigan, Sept., 1971, p. 16.

3.1.4 Characteristics and Driving Patterns of Impaired Drivers

In considering the characteristics of the impaired driver, age distribution in drinking and driving is a factor of prime interest. Data is presented in Table 3-4.

Exposure to night time driving for each age group is plotted in Chart 3-2. Distribution of drivers with BAC .05% is shown by age group. The graph also relates age group to fatalities with BAC .05% or higher. Since more persons under 25 are both drinking and driving, more will be killed in alcohol-related crashes. Note that all three distributions peak at age 21-25; this clearly suggests that drinking driver countermeasures should emphasize the 21-25 year old driver.

There is a positive association between annual mileage and distribution of alcohol level. Also, numerous other characteristics of the drinking driver have been identified in current research, including BACs related to sex distribution, occupation, race, income and education.

The drinking and driving patterns of impaired drivers have been analyzed in two studies. A survey of drinking patterns of 748 persons in Washtenaw County, Michigan, gave these results: 16% of the drivers stated they did not drink; 48% stated they did not have a drink on the day of the interview; while 36% stated they had a drink on the day of the interview.

In the Grand Rapids, Michigan, study, drinking patterns were analyzed for 7067 persons. According to the drivers' statements, 25.77% abstain; 14.93% drink once a year; 15.24% drink once a month; 22.71% drink once a week; 11.07% drink 3 times per week; and 10.29% drink daily.

There were about 4 times more lunch and afternoon drinkers than morning drinkers. There were 4 times as many before dinner drinkers than lunch and afternoon drinkers. Seventy percent (70%) of the drinking is done in the evening; 37% of the respondents felt they could drive safely after more than five drinks.

In the Washtenaw County, Michigan, study, trip destinations data indicated that 2/3 of the drivers with BAC .10% were going home; 2 of the 748 drivers were going to work.

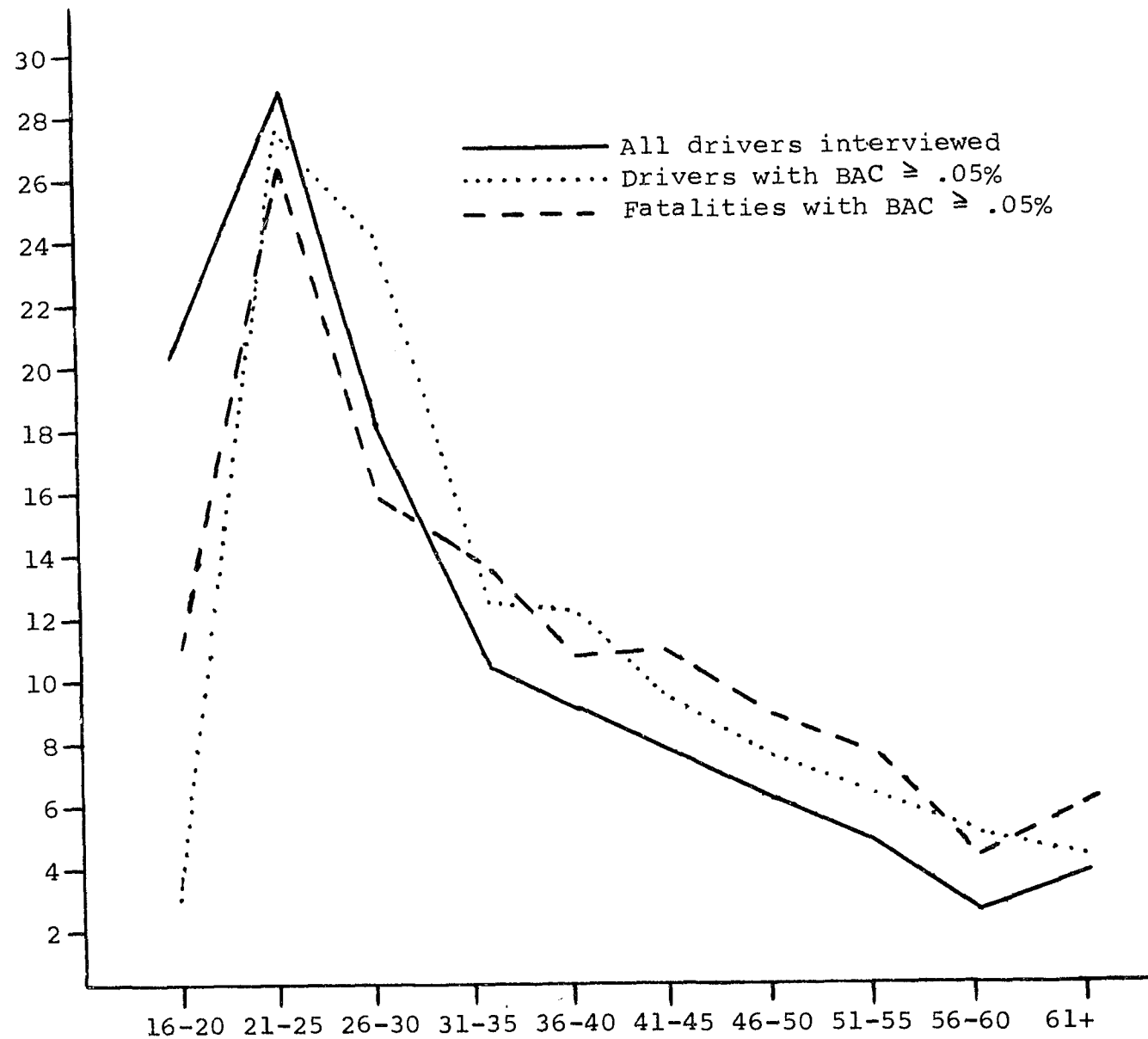
Table 3-4

NUMBER AND PROPORTION OF DRIVERS AT OR ABOVE THE INDICATED BAC BY AGE GROUP				
Age Group	.02%	.05%	.10%	Number Observed
16-20	10 (7%)	2 (1%)	0 -	150
21-25	44 (21%)	22 (11%)	6 (3%)	210
26-30	27 (21%)	18 (14%)	8 (6%)	126
31-35	16 (23%)	9 (13%)	6 (9%)	69
36-40	12 (27%)	8 (18%)	2 (5%)	44
41-45	9 (23%)	5 (13%)	1 (3%)	39
46-50	9 (23%)	5 (13%)	3 (8%)	40
51-55	9 (30%)	4 (13%)	3 (10%)	30
56-60	2 (11%)	2 (11%)	1 (6%)	18
61+	2 (11%)	1 (5%)	0 -	19
Total	140 (19%)	76 (10%)	30 (4%)	745

Source: Carlson, W. L., and others. "Washtenaw County BAC Roadside Survey," Ann Arbor, Michigan: Highway Safety Research Institute, University of Michigan, Sept., 1971, p. 27.

Chart 3-2

DISTRIBUTION BY AGE OF DRIVER SUBGROUPS



Source: Carlson, W.L., and others. "Washtenaw County BAC Roadside Survey," Ann Arbor, Michigan: Highway Safety Research Institute, University of Michigan, September, 1971, p. 28.

3.1.5 Probabilities of Drivers on the Road Who Have Been Drinking

The foregoing research studies involving roadside surveys provide a basis for estimating the probability of drinking drivers on the road. From 1%-4% of all drivers during all hours have BACs of .10%; 12%-38% of those drivers who have been drinking have BACs of .10%. The number of drinking drivers at various BACs identified in each study is shown in Chart 3-3.

The Grand Rapids study developed a formula for estimating numbers of violations involving DWI drivers. For every 100 drivers with BAC \geq .11%, there will be 8000 DWI violations a year. Thus, there is an average of 80 violations per DWI per year.

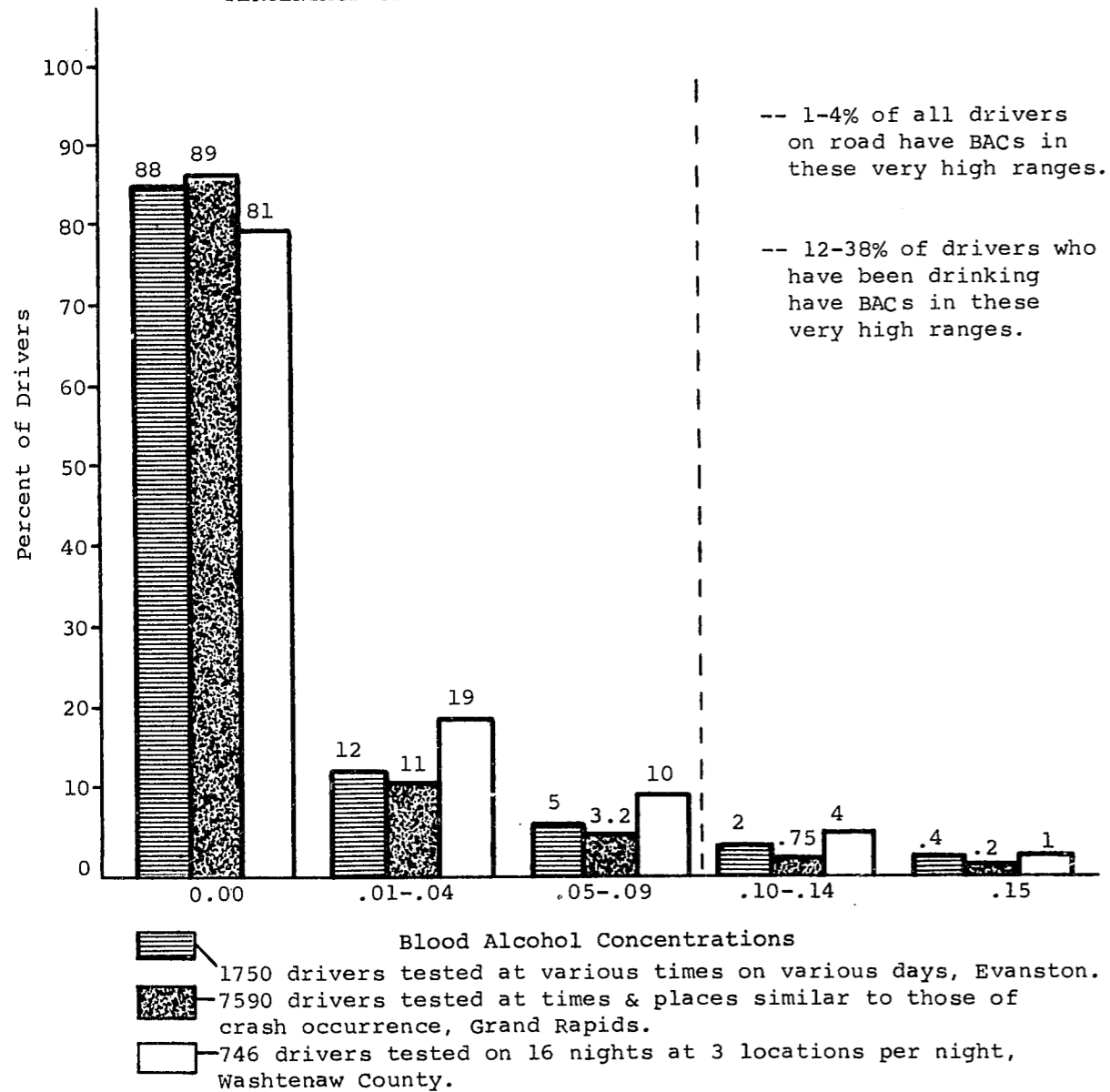
3.1.6 Use of Alcohol Enforcement as a Deterrence -- Prevention

There is very little evidence that increased patrol deters the drinking driver. Table 3-5 shows the relationship by BAC to whether or not subject noticed the police and whether or not the subject was influenced by awareness of the police. About 18% noticed police patrol and were influenced by it. Nearly 27% noticed police and were not influenced; 54% did not notice police at all.

It may be concluded that research has not discovered any significant deterrence through DWI enforcement. Moreover, experience has shown that many drinking drivers continue drinking and driving after apprehension and conviction. Apparently, there is very little hope in deterrence as a solution to drinking driver problems.

Chart 3-3

PERCENTAGE OF DRIVERS ON ROAD WITH VARIOUS BACs



CONTINUED

1 OF 4

Table 3-5

COMPARISON OF BAC GROUP TO NATURE OF INFLUENCE BY
 INCREASED POLICE PATROL (IN % OF 619
 RESPONDENTS WHO HAD BEEN DRINKING)

<u>BAL</u>	<u>Noticed Police and Influenced</u>	<u>Noticed Police Not Influenced</u>	<u>Did Not Notice</u>	<u>Total</u>
.00 - .01	12.8	22.1	43.1	78.0
.02 - .04	2.4	1.9	5.5	9.8
.05 - .09	1.6	2.3	3.6	7.5
.10+	<u>1.8</u>	<u>.6</u>	<u>2.3</u>	<u>4.7</u>
Total	18.6	26.9	54.5	100.0

Source: Carlson, W. L., and others. "Washtenaw County BAC Roadside Survey," Ann Arbor, Michigan: Highway Safety Research Institute, University of Michigan, September, 1971, p. 37.

Study Plan

Unit 3.2

Selecting the Patrol Area

Unit Objective:

To be able to select the appropriate patrol area for DWI enforcement.

Terminal Objectives:

- 3.2.3 . . . be able to identify potential drinking driver problem areas and plan patrol procedure.
- 3.2.4 . . . be able to determine the appropriate time for maximum DWI enforcement.
- 3.2.5 . . . be able to identify alcohol related accident sites and plan patrol procedures.

Content Topics:

- 3.2.1 Review of previous unit.
- 3.2.2 Overview of unit.
- 3.2.3 Location of DWI problem areas.
- 3.2.4 Time frames for drinking driver offenses.
- 3.2.5 Identifying alcohol related accident sites.
- 3.2.6 Summary of unit.

Assignment:

1. Read Unit 3.2 in Student Manual on Selecting the Patrol Area.

Study Questions:

1. Where do you think most drinking takes place? At home? At parties? In bars? Other places?
2. Where would you expect to find the greatest number of drinking drivers? Rural area? Suburban areas? Central city? Other areas?

Study Questions: (cont.)

3. During what time periods would most drinking drivers be on the road?
4. How could you plan your enforcement activities to accommodate the drinking driver times and locations?
5. How would you determine the alcohol related accident locations in your jurisdiction? How would you use spot maps? Accident summaries? Violation data?

Content Material

Unit 3.2

Selecting the Patrol Area

3.2.2 Overview of Unit.

The topics in this unit include location of DWI problem areas, time frames for drinking driver offenses, and identifying alcohol-related accident sites.

3.2.3 Location of DWI Problem Areas.

Locations most frequently used for drinking is of prime importance in patrol planning. Most drinking is done in bars or at home (see Chart 3-4). Drinking in bars results in much higher BACs, particularly when more than one drinking episode is involved.

Drinking drivers may be on any highway but are more likely to be found on less heavily travelled roads. These are routes that carry medium volumes of traffic during daylight and early evening hours. They do not include residential streets which contain little traffic during early morning hours.

According to the Washtenaw County study, drinking driver locations may be classified as to the proportions of drinking drivers in rural, suburban or urban areas (see Chart 3-5).

Observation of patrol procedures and detection activities during a field survey conducted by the Highway Traffic Safety Center, Michigan State University, gave several general trends. There was a high percentage of drinking drivers on primary streets with moderate to light traffic. There were numerous drinking drivers on industrial streets of light traffic load and on secondary streets serving alcohol dispensing establishments open to the public. There were also numerous drinking drivers arriving at and leaving social events that serve alcohol (dances, parties, etc.).

3.2.4 Time Frames of Drinking Driver Offenses.

Chart 3-5 relates the times of drinking offenses to locations and to time of night. Note that there is a sharp increase of drinking offenses after midnight at all locations and for all traffic conditions. The time of night has relationship to BACs, with a slow increase in the percentage of drinking drivers

Chart 3-4

DRINKING LOCATIONS OF PERSON INTERVIEWED
IN BAC ROADSIDE SURVEY

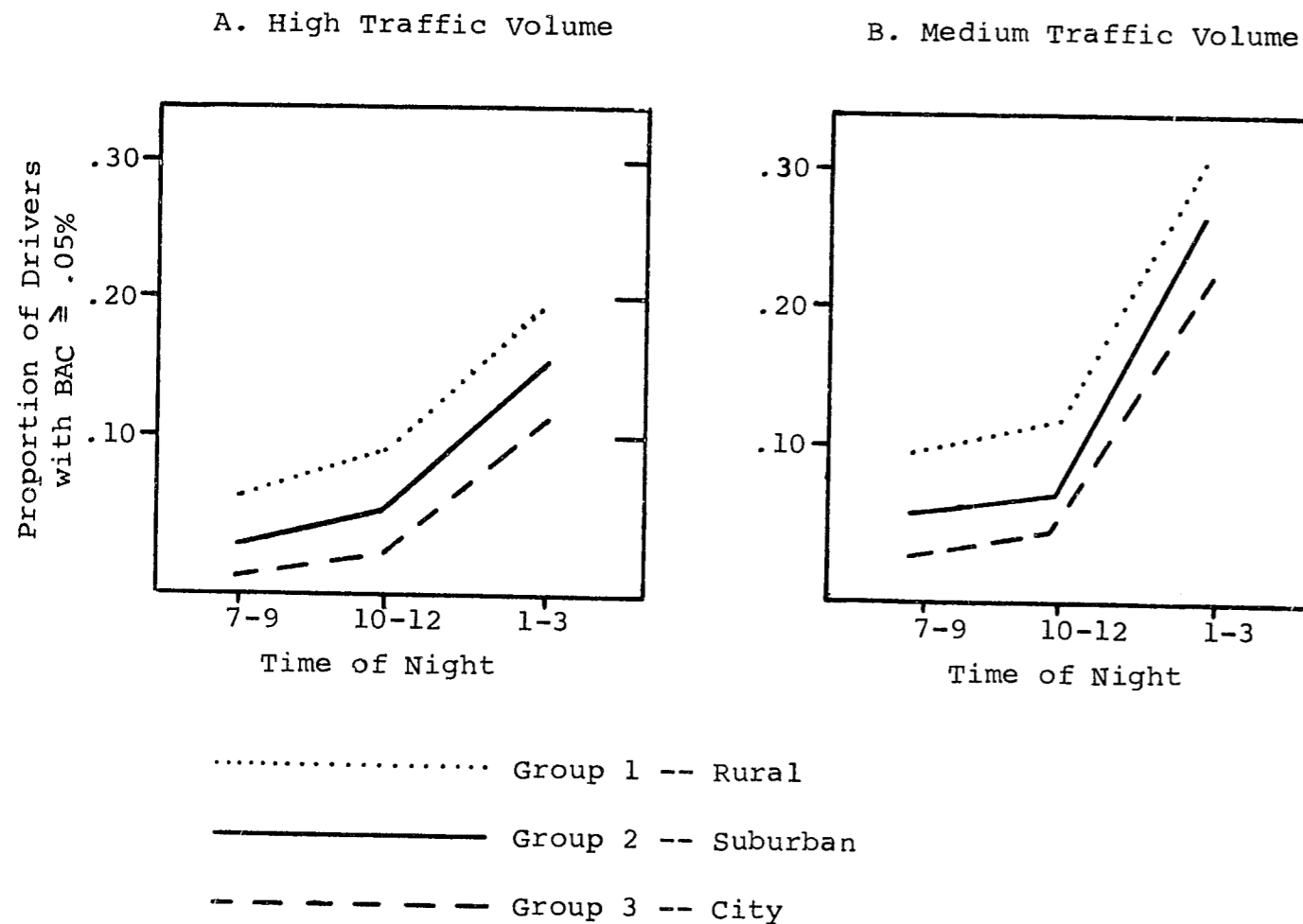
Location	Drinking Episode					
	1st		2nd		3rd	
1. Bar or club	78	29%	25	46%	4	44%
2. Restaurant	24	9%	4	8%	2	22%
3. Own Home	82	31%	11	21%	1	11%
4. Friend or Relatives	58	22%	11	21%	2	22%
5. Others*	26	9%	2	4%	-	-
	268	100%	53	100%	9	100%

*Parties, weddings, banquets, in vehicles, etc.

Source: Carlson, W.L., and others. "Washtenaw County BAC Roadside Survey," Ann Arbor, Michigan: Highway Safety Research Institute, University of Michigan, September, 1971, p. 33.

Chart 3-5

LOCATION OF DRIVERS HAVING HIGH BACs



Source: Carlson, W.L., and others. "Washtenaw County BAC Roadside Survey," Ann Arbor, Michigan: Highway Safety Research Institute, University of Michigan, September, 1971, p. 25.

until midnight, then a rapid upswing from midnight to 1 AM. The rapid increase of drinking drivers is combined with the dramatic decrease in traffic volumes. Table 3-6 and Chart 3-6 give the number and percent of persons with positive BAC at specific time periods.

3.2.5 Identifying Alcohol Related Accident Sites.

Spot maps are useful in determining high accident locations. A spot map depicts location and type of accidents in a jurisdiction, indicating fatal, injury, property damage, and pedestrian accidents. The map should picture the accident experience on a particular beat, and help identify specific problem areas. Spot map analysis is supplemented by accident data which summarize the types of accidents in a jurisdiction, causes of accidents, and data enabling identification of serious alcohol related crash sites.

Violation statistics are also useful in analyzing the nature and trends in both accident violations and traffic violations in a locality.

The numbers and types of accident violations and of motor vehicle code violations may be compared with the proportion of drinking driver violations. Interpretation of such data helps to pinpoint locations of previous citations and arrests and to identify locations of previous drinking driver offenses.

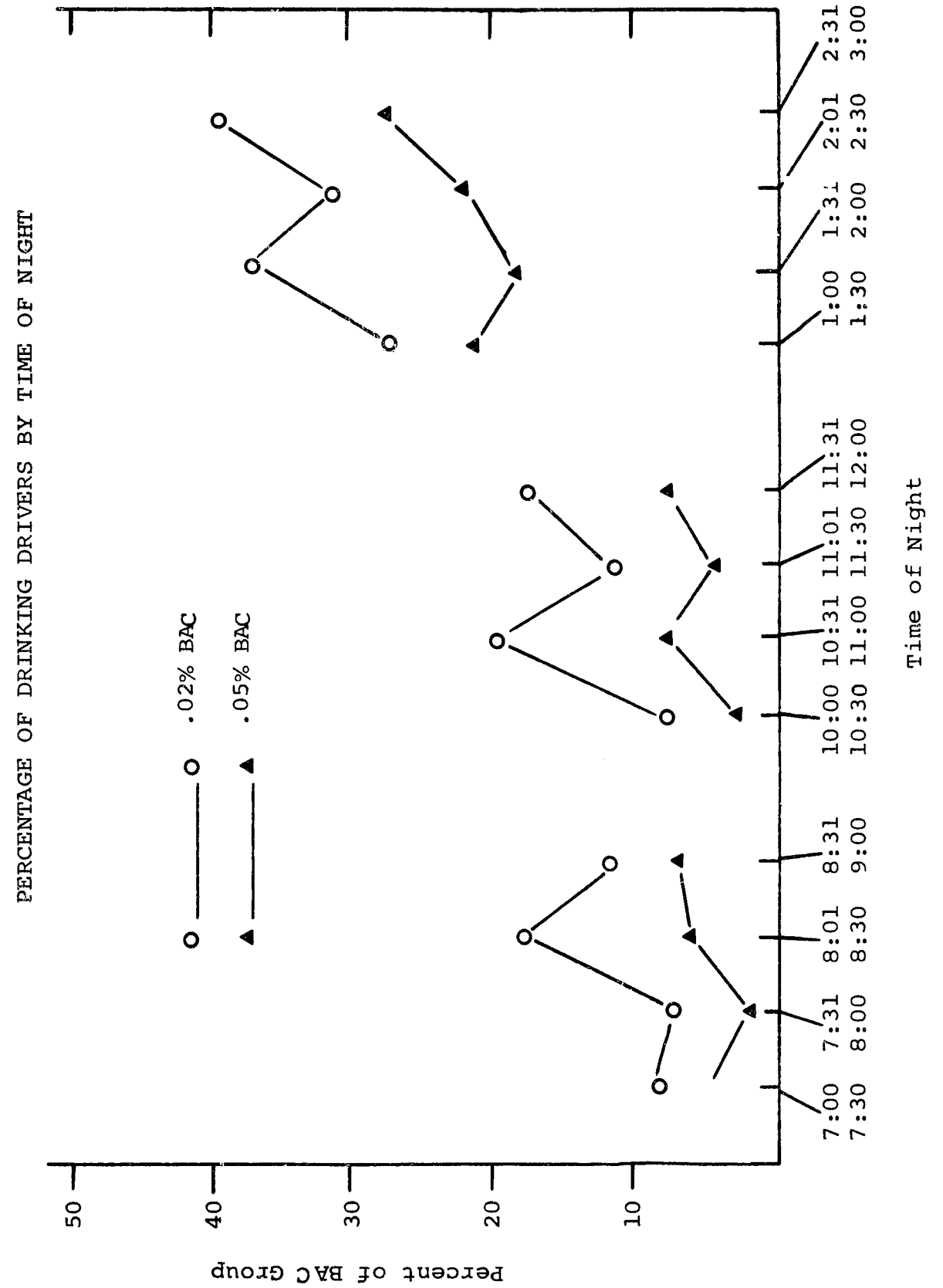
Table 3-6

NUMBERS OF PERSONS WITH BACs AT SPECIFIC PERIODS OF TIME

Time	No. of Tests	.02		.05	
		No.	%	No.	%
7:00 - 7:30 pm	22	2	9.0	1	4.5
7:31 - 8:00	61	5	8.2	1	1.6
8:01 - 8:30	66	11	16.7	4	6.1
8:31 - 9:00	76	8	10.5	6	7.9
9:01 - 9:30	30	3	10.0	1	3.3
10:00 - 10:30	67	6	9.0	2	3.0
10:31 - 11:00	82	16	19.5	8	9.8
11:01 - 11:30	71	7	9.8	4	5.6
11:31 - 12:00	58	10	17.2	5	8.6
1:00 - 1:30 am	48	14	29.2	10	20.8
1:31 - 2:00	56	21	37.5	10	17.8
2:01 - 2:30	59	18	30.5	12	20.3
2:31 - 3:00	50	20	40.0	13	26.0
	746	141	18.9	77	10.3

Source: Carlson, W.L., and others. "Washtenaw County BAC Roadside Survey," Ann Arbor, Michigan: Highway Safety Research Institute, University of Michigan, September, 1971, p. 73.

Chart 3-6



SUBJECT # 4
DETECTION OF THE DRINKING DRIVER --
PRE-APPREHENSION

Subject Objective:

To understand the nature and purpose of the detection task and develop competency in performance of this task.

Subject Units:

- 4.1 Nature and description of detection task.
- 4.2 Types of identification detection clues that indicate DWI.
- 4.3 Determination of enforcement action from detection clues in a given environment.
- 4.4 Relating identification detection clues to environment.

Appendices:

- A. Identification Detection Clues.
- B. Decision flow chart.

Study Plan

Unit 4.1

Nature and Description of Detection Task

Unit Objective:

To understand the nature of detection activities, the various methods of detection and the nature of the detection task.

Terminal Objectives:

- 4.1.3 . . . be able to predict the approximate number of drivers who are drinking and further predict the chances of them being stopped by a police officer.
- 4.1.4 . . . be able to list and describe the methods for detecting drinking drivers.
- 4.1.5 . . . be able to list and define four phases of detection and describe nature of detection task.

Content Topics:

- 4.1.1 Review of previous subject.
- 4.1.2 Overview of unit.
- 4.1.3 Probability of drinking drivers being stopped based on typical enforcement methods.
- 4.1.4 Types of detection methods.
- 4.1.5 Definition and description of detection task.
- 4.1.6 Summary of unit.

Assignment:

- 1. Read materials on nature and description of detection in Unit 4.1 of Student Manual.

Study Questions:

- 1. How many drinking drivers are on the road?
- 2. What percentage of drinking drivers on the road are officers apprehending?
- 3. Why is it important to locate the drinking drivers?
- 4. What methods could be used for detecting and apprehending the drinking driver?
- 5. What techniques are presently being applied to detect and apprehend the drinking driver?
- 6. What is the level of present alcohol arrest activities?

Content Material

Unit 4.1

Nature and Description of the Detection Task

4.1.2 Overview of Unit.

The purpose of this unit is to develop an understanding of the nature of detection activities, various methods of detection, and the nature of the detection task. Topics include the probability of drinking drivers being stopped, types of detection methods, current alcohol enforcement activities, results of improved detection and apprehension efforts, and definition and description of the detection task.

4.1.3 Probability of Drinking Drivers Being Stopped Based on Typical Enforcement Methods.

While you may feel that the chances of a police officer stopping a drinking driver are so subjective as to be incalculable, such is not the case. There are several formulas that can be applied to determine this relative probability.

1. Probability of Being Stopped (Not Necessarily Arrested)

It is necessary to first determine the frequency with which DWI violations occur. Information from the Washtenaw County study revealed the following drinking and driving experience between the hours of 9:00 P.M. and 3:00 A.M.:

- 25.3% of the drivers had been drinking.
- 10.5% had BACs of .05% or above.
- 5.6% had BACs of .08% or above.
- 4.1% had BACs of .10% or above.

The same study showed that from 1% to 4% of all drivers during all hours of the day and night have BACs of .10% or above. Though 2% is toward the bottom of this range, this percentage figure will be used for further computations of probability of a drinking driver being stopped (not necessarily arrested) by the police.

An additional item of information relevant to these computations is taken from studies by Indiana University which indicated that for every 100 drivers with a BAL of .11% or above there will be 8,000 DWI violations a year, or an average of 80 DWI violations per DWI driver.

Utilizing the above figures and the following formula derived by Indiana University the probability of a drinking driver being stopped can be determined. The formula is as follows:

$$E_E = \frac{N_A}{N_V}$$

E_E = Enforcement effectiveness (probability of being stopped)

N_A = Number of DWI arrests.

N_V = Number of DWI violations.

To demonstrate the use of the formula to determine enforcement effectiveness, the following problem has been worked out using Michigan data. N_A equals 27,384, the number of DWI arrests in Michigan in 1971. The value of N_V is calculated by taking the 2% figure previously mentioned (that percentage of all drivers during all hours having BACs of .10% or above) and multiplying it by the 5.15 million licensed drivers in the State of Michigan in 1969, equalling 103,000 DWI drivers. Each DWI driver, according to the Grand Rapids Study findings, averages 80 DWI violations per year. Thus, N_V equals 103,000 times 80 or 8,340,000. Consequently, the enforcement effectiveness is computed as follows:

$$E_E = \frac{27,384}{8,340,000} \quad \text{or } .0033$$

$$.0033 = \frac{33}{10,000} \quad \text{or, expressed in simpler terms, } \frac{1}{303}$$

2. Probability of Being Arrested for DWI

Having determined in the previous problem that the probability of the DWI driver being stopped by the police is low (1/303), let us examine the chances of the driver, now that he has been stopped, being arrested for DWI.

The applicable formula to be used to determine the probability of arrest is:

$$P = \frac{A}{D}$$

P = Probability of arrest for DWI.

A = Number of DWI arrests.

D = DWI population.

In the Michigan example, the values used in this equation are:

A = 27,384 (the number of DWI arrests in 1971)

D = 103,000 (2% of 5.15 million licensed drivers)

Thus, $P = \frac{27,384}{103,000} = .266 = \frac{266}{1,000}$ or roughly, 1/4

3. Estimating Arrest Probability as a Function of Time

Having calculated the probabilities of being stopped and of being arrested for DWI after having been stopped in the preceding problems, the average time before arrest can be estimated by means of the following formula:

$$T = \frac{Y}{P}$$

T = Average time before arrest (in years).

Y = Number of years, used as a base factor.

P = Probability of arrest for DWI.

Thus, $T = \frac{1}{.266}$ (year)
(our previously determined probability of arrest factor)

T = 3.76 years

4. Estimating Arrest Probability as a Function of Mileage

In addition to estimating probabilities based on the factor of time, it is possible to determine the number of miles driven by the average DWI driver before his arrest for DWI as well, assuming that the average licensed driver drives 10,000 miles per year. Based on the Michigan data the following formula is used in calculating this probability:

$$M = \frac{AAM}{P}$$

M = Average mileage before arrest for DWI.

AAM = Average annual mileage per driver.

P = Probability of arrest for DWI.

Thus, $M = \frac{10,000}{.266} = 37,594$ miles

Refer to Table 4-1 for a summation of the DWI arrest probability as a function of time and mileage in the example using 1971 Michigan data.

4.1.4 Types of Detection Methods.

There are four basic types of detection methods that officers can use in detecting drinking drivers. They are:

1. Surveillance for Observing Driving Behavior

Surveillance requires the patrolling police officer to observe driving behavior that he feels may be indicative of a drinking driver. Pre-contact recognition is involved since the officer at least suspects he is encountering a drinking driver before the face-to-face contact is made between the officer and the suspect driver. Here the officer is treating a problem based upon typical recognition factors such as crossing the center line, driving without lights, etc.

The officer may be utilizing selective enforcement techniques in that he is patrolling locations known to have above average frequencies of drinking drivers present at certain time periods.

Table 4-1

DWI ARREST PROBABILITY AS A FUNCTION OF TIME AND MILEAGE IN MICHIGAN, 1971

Probability of At Least One Arrest in One Year	Mean Time Before Arrest, Years	Mean Mileage Before Arrest
.266	3.76	37,594

It is important to note that utilization of this method means that the identity of the perpetrator of the offense is clearly established since the violation is "on-view". In addition, the fact that the officer witnesses the offense assists in establishing reasonable cause. It permits the officer to believe that the driver did, in fact, commit the offense of DWI, through observation of the alleged driving behavior.

The officer utilizes common recognition factors in employing this method; that is, he observes and acts upon behavior that is either extremely hazardous or constitutes performance that is out of the ordinary. The officer is acting upon:

- a. Conduct that demonstrates a momentary driving error.
- b. Conduct that exhibits the driver's abnormal mental or emotional state of mind.
- c. The driver's unusual personal appearance and/or posture.

2. Stopping Drivers for Non-Moving Violations

Utilization of this method of detection means that the officer does not suspect that he is contacting a drinking driver until after face-to-face contact has been made. He may have stopped the driver for a defective taillight or license plate light, for example, subsequently finding that the driver's physical condition is subnormal due to consumption of alcoholic beverages. Thus, this method involves post-contact recognition.

After discovering the presence of alcohol impairment in this manner, the officer proceeds to "treat" the problem in much the same way that he would have if he had stopped the driver as a DWI suspect.

While the officer has established the identity of the perpetrator (the driver) since the offense is still "on-view", this method of detection has a serious drawback. Since the stop was made for a non-moving violation (too often equated with "non-hazardous"), some prosecutors and judges may be of the opinion that the "reasonable cause" requirement has not been fulfilled. They may cite the lack of gross driving error as insufficient evidence of driver error to justify arrest and prosecution for DWI.

This apparent lack of "reasonable cause" is made all the more difficult by the fact that such stops for non-moving violations are typically done in a highly selective fashion. For example, the officer will typically stop only a few of the many vehicles that he sees that have defective vehicle lights. The fact that one of these highly selective traffic stops results in a DWI arrest, can too often be turned around to the drinking driver's benefit when prosecution is either contemplated or initiated.

The use of random stops can be highly effective as a variation of typical selective traffic enforcement schemes. That is, employing the tactics of stopping numerous drivers for equipment, license and registration checks during hours of high alcohol involvement, will typically disclose numerous DWI violations that otherwise would go undetected.

3. Contacting Drivers Involved in Traffic Accidents

This method certainly involves post-contact recognition of the DWI violation for it is detection "after the fact". Treatment of the problem is more difficult than in the "on-view" situation since (1) the drinking driver may appear to be less intoxicated than he actually is, due to the accident occurrence itself and (2) the legal problem presented by the "not on-view" observations by the officer present obstacles to effective "treatment" of the DWI driver.

The fact that the officer does not witness the vehicle operation poses a basic problem in identifying the perpetrator of the violation, i.e., the drinking driver. His investigation of the traffic accident does, however, provide evidence that materially aids in establishing "reasonable cause" in that the accident itself is the result of the violation(s) that "caused" it.

The discovery of DWI violations through investigation of traffic accidents is most frequently done through the use of typical recognition factors. By "typical recognition factors" is meant that the general patrol officer who has had little or no training in alcohol enforcement has little or no trouble in detecting the existence of alcohol impairment because the symptoms are so obvious -- either the driving conduct is found to be extremely hazardous or the subject appears obviously intoxicated. The symptoms are so gross that the average lay person could spot them.

The second type of recognition factors consists of selective enforcement recognition factors. They may be employed by either the trained general patrol officer or the specialist in either alcohol enforcement or accident investigation. As a result of his accident reconstruction, this officer determines that the driving conduct was either normal or slightly abnormal, as compared to the presence of gross symptoms. This officer couples this subjective driving behavior with the accompanying subjective clues which indicate that the driver's condition is slightly abnormal -- the sum total of this driving behavior and physical condition being something that the general patrol officer often misses altogether.

4. Stopping Drivers for Roadside Checks

This last method of detection of drinking drivers involves the use of roadside checks or roadblocks.

Utilization of this method deals, for the most part, in post-contact recognition. While a few obviously intoxicated drivers will be recognized immediately and subsequently stopped, investigated and arrested, experience indicates that the vast majority will be stopped on a random basis and then determined to be DWI in the course of face-to-face contact.

The greatest benefit of this method, as compared to the foregoing three methods, is that it emphasizes prevention of the problem. The officer does not wait for hazardous driving behavior to be exhibited, or a traffic crash to occur, before he is taking action to "treat" the problem that we all know exists. Thus, the roadside check method is characterized by the preventive benefit inherent in this method.

As in two of the three previously described detection methods, this method easily establishes the identity of the perpetrator of the violation as it is taking place before the officers' eyes. It is an "on view" DWI violation.

The greatest drawback is that this method does not easily satisfy the concept of "reasonable cause" since typically there is little in the way of gross driving errors for the officer to cite to his superiors, the prosecutor or the judge.

It is unfortunate that this method of detection is not practiced in many jurisdictions due to legal obstacles because, as previously indicated, it permits apprehension of drinking drivers before they are involved in traffic accidents.

The utilization of this method also increases the deterrent effect since all drivers eventually come to know that they may be stopped regardless of whether or not they have committed driving violations. Experience in those states where the roadblock method is used (generally those states in the western half of the nation) indicates that numerous license violations, equipment violations, etc., may be enforced with a minimum of effort as well as resulting in the detection and apprehension of many drinking drivers who might otherwise go unnoticed.

It is interesting to note that experience obtained in the random motor vehicle inspection (RMVI) check lanes which are authorized and utilized in some states support the premise of the effectiveness of roadblocks in the apprehension of drinking drivers. In addition to the many equipment and license violations they detect, checklane personnel detect and apprehend drinking drivers.

4.1.5 Definition and Description of the Detection Task.

1. The Nature of the Detection Task

The student must recognize that the detection task is fundamental to all other alcohol enforcement tasks. It is the initial step upon which the remaining tasks hinge.

It is necessary to locate the drinking driver in order to institute enforcement action, to establish the framework for investigative activities, to lay the foundation for accumulating evidence, and to build a case for subsequent trial and conviction.

The entire alcohol countermeasures program depends on the detection of the drinking driver. Experience shows that few problem drinking drivers are identified by other agencies; the police are the primary source for the identification of potential problem drivers.

2. Defining the Various Phases of Detection

Traditionally, detection of drinking drivers has been defined simply as the process of observing various types of driving behavior on the part of the suspect driver. Once the suspect's vehicle has been halted, the process of detection has been considered to be complete. The driver is arrested, processed, jailed, and prosecuted with "detection" having

been performed as the initial step of the overall process. This course will define "detection" in a different manner, since the process of detecting alcohol impairment is actually a much longer process than many officers believe it to be. "Detection" as described here consists of four phases.

A. Pre-Apprehension Detection Phase (Phase I)

This may be referred to as the identification phase. In it the officer observes either or both of the following types of clues that may be indicative of a drinking driver:

- 1) Vehicle maneuvers.
- 2) Human indicators.

This phase starts at the point where the vehicle or driver (or both) attracts the officer's attention; it stops when the officer first signals the driver to stop.

B. Apprehension Detection Phase (Phase II)

This is a reinforcement phase that normally is very short in duration. It starts when the officer signals the driver to stop. It ends when the driver finally has stopped and the officer has exited his patrol vehicle. During this phase, detection clues are observed by the officer that may or may not reinforce his initial belief that the driver may be impaired by the consumption of alcohol. Detection clues are of two types:

- 1) Vehicle maneuvers.
- 2) Human indicators.

C. Pre-Arrest Investigation -- Field Contact Detection Phase (Phase III)

This may be considered the investigation phase. It starts when the officer approaches the driver's vehicle on foot. It does not terminate until the cell door is locked (assuming that a DWI arrest is made). It includes face-to-face contact, questioning, roadside and stationhouse sobriety tests, chemical tests, photographing, fingerprinting, etc. This is the phase in which the officer's initial belief that the driver might be DWI (from observation of Phase I and II clues) is either confirmed or refuted.

There are four types of Phase III clues. (They are explained fully in Subject #6):

- 1) Physiological.
- 2) Psychological.
- 3) Subject's actions.
- 4) Physical evidence.

D. Pre-Arrest Investigation-Traffic Accident Detection Phase (Phase IV)

This phase differs from the other phases in that the officer does not personally observe the driving behavior resulting in an accident. It is not an "on view" situation. In the course of investigating the traffic accident, the officer discovers clues indicating either or both of the following:

- 1) Physical evidence depicting driving behavior possibly caused by alcohol impairment (e.g., driving on wrong side of road).
- 2) Human indicators of alcohol impairment (e.g., statements of witnesses).

3. The Process of Various Phases of Detection

During the identification phase (Phase I) the officer makes the initial observation of possible drinking drivers, precipitating the entire chain of events that follow. These observations are made while he is patrolling a selected area, observing traffic movements, looking for erratic vehicle maneuvers, observing drivers and occupants, and looking for driver behavior clues.

Having decided to stop a suspect vehicle, the reinforcement phase (Phase II) begins. The officer assumes the proper position to stop the suspect vehicle, signalling the driver to stop. The driver then reacts by coming to a halt, attempting to elude the officer, etc. During this stopping procedure, the officer is seeking vehicle maneuver and driving behavior clues to reinforce or refute his original suspicion that the driver may be alcohol-impaired.

Phase III, the investigation phase, involves many detection opportunities because this phase can be a long one. The officer is able to observe various types of clues as he walks up to the vehicle, talks to the occupants, conducts his pre-arrest investigation, arrests the driver, advises him of his rights, administers field sobriety tests, transports the arrested driver, conducts chemical tests to determine BAC and books the person. During all of these functions, the officer must be observing clues relating to the driver's behavior and condition.

Appendix B -- Decision Flow Chart of Investigation of Driving While Intoxicated -- describes in detail the many opportunities that the officer has for noting driving behavior and physical condition clues in the course of his investigation.

Phase IV, detection that takes place during accident investigation, is as complex as any of the other phases. There are many opportunities for detection to take place, beginning with the initial dispatch to and arrival at the scene, through all of the steps that are taken in seeking physical and non-physical evidence of accident causation. Of course, when alcohol appears to be a contributing factor, observation of the suspect driver(s) is especially important. Noting the driver's behavior and condition can be as important as determining the facts of the accident itself.

4. The Numbers and Types of Clues in Each Phase

Field studies conducted by a team of specialists from the Highway Traffic Safety Center, Michigan State University, identified numerous clues for each of the four detection phases that have been defined. A total of 445 individual clues were identified and are listed in appendices to Subjects #4 through #7. These clues have been catalogued according to clue classes, clue elements, and the specific behavior (clue) involved. Appendix A of this Subject (#4) depicts the format used in the classification of clues. Table 4-2 contains a summary of these clue classes, clue elements, and specific behaviors that will be referred to as "clues" throughout the remainder of this course.

Table 4-2
NUMBER AND TYPES OF CLUES BY DETECTION PHASE

Phase	Clue Class			Clue Element			Behavior		
	Veh. Man.	Human Ind.	Other Evid. Total	Veh. Man.	Human Ind.	Other Evid. Total	Veh. Man.	Human Ind.	Other Evid. Total
Identification	30	15	45	76	37	113	148	87	235
Reinforcement	12	7	19	30	18	48	38	18	56
Investigation Field Contact	-	50	54	-	84	88	-	105	123
Investigation Accident	-	2	10	-	3	21	-	6	31
TOTAL	42	74	128	106	142	270	186	216	445

Study Plan

Unit 4.2

Types of Identification Detection Clues
That Indicate DWI

Unit Objective:

To attain an understanding of detection clues for identification of DWI drivers and develop skill in use of these clues.

Terminal Objective:

- 4.2.3 . . . be able to identify and record nature and number of identification detection clues that depict DWI.

Content Topics:

- 4.2.1 Review of previous unit.
4.2.2 Overview of unit.
4.2.3 Types of Phase I identification detection clues indicating DWI.
4.2.4 Summary of unit.

Assignments:

1. Become familiar with Identification Detection Clues in Subject #4 (Appendix A) of Student Manual.
2. Become familiar with Decision Flow Chart in Subject #4 (Appendix B) of Student Manual.

Study Questions:

1. What types of vehicle maneuvers would be committed by persons who are DWI.
2. What types of human indicators, i.e., personal appearance, posture, and actions, depicting persons who are DWI would an officer be able to discern if he watches for them closely?

Content Material

Unit 4.2

Types of Identification Detection Clues
That Indicate DWI

4.2.2 Overview of Unit.

The purpose of this unit is to develop an understanding of detection clues for identification of DWI drivers and to develop skill in the use of these clues. The topic covered is the nature and number of identification detection clues that depict DWI.

4.2.3 Types of Phase I Identification Detection Clues
Indicating DWI.

Refer to Appendix A -- Identification Detection Clues. Review Section I-A which lists clues for detecting the vehicle maneuvers of drinking drivers and Section I-B which lists the human indicator clues for detecting drinking drivers.

Use of Appendix

The study method for use of the Appendix of this unit is important. Appendix A contains a total of 45 clue classes, 113 clue elements, and 235 specific vehicle maneuver and human indicator clues that have been identified as being indicative of the behaviors and conditions of drinking drivers.

You are not expected to memorize any or all of these clues; that would be an impossible as well as useless exercise. Instead, you should read them with the idea of becoming familiar with the general concepts put forth therein. During the appropriate class period, selected sample clues will be demonstrated through the use of visual aids. Discussion of the concept of the detection task as put forth in this course will also take place in class. Time permitting, you may also ask in class about any of the clues contained in Appendix A, not just those that have been selected for presentation.

One final note -- it is not expected that you will agree completely with all of the specific clues contained in Appendix A of this Subject, nor the lists of clues for the other three detection phases covered in Subjects #5, #6, and #7. Information concerning clues for all four phases were drawn from the following sources:

- a. Review of existing medical and police literature.
- b. A panel of Michigan police officers from state, county and local agencies.
- c. The alcohol enforcement specialists in the following police agencies:
 1. San Diego Police Department.
 2. California Highway Patrol.
 3. Reno Police Department.
 4. Phoenix Police Department.
 5. Denver Police Department.
- d. Staff members and patients in an alcoholism ward.
- e. The knowledge and experience of those members of the Highway Traffic Safety Center, Michigan State University, assigned to the DWI Law Enforcement Training Project staff who are former police officers.

The list of clues is intended to cite all identified clues; thus, if any of the above sources identified a clue, it has been included in the appended material.

Study Plan

Unit 4.3

Determining Enforcement Action From Detection Clues

Unit Objective:

To be able to determine appropriate enforcement action when detecting drinking driver clues.

Terminal Objectives:

- 4.3.3 . . . be able to answer questions regarding departmental policies on alcohol enforcement.
- 4.3.4 . . . be able to describe the use of discretion in traffic law enforcement.
- 4.3.5 . . . be able to interpret the drinking driver detection clues in relation to the environment, traffic and situation and weigh their importance; to list alternative enforcement actions appropriate for each detection situation; and to make appropriate decision as to type of enforcement action required.

Content Topics:

- 4.3.1 Review of previous unit.
- 4.3.2 Overview of unit.
- 4.3.3 Departmental policies regarding alcohol enforcement.
- 4.3.4 Use of discretion in alcohol enforcement.
- 4.3.5 Making enforcement decision.
- 4.3.6 Summary of unit.

Assignment:

- 1. Study decision flow chart (Appendix B) in Subject #4 of Student Manual.

Study Questions:

- 1. What are the various steps you might follow in making an enforcement decision based on observed driving behaviors?
- 2. How do departmental policies affect the officer's decision?
- 3. How does the officer's own discretion affect an enforcement decision?
- 4. Are there other indirect factors (not related directly to the incident) that influence the officer's decision?
- 5. If drinking drivers are to be removed from the road, who is in the best position and is most likely to detect them?

Content Material

Unit 4.3

Determining Enforcement Action from Detection Clues

4.3.2 Overview of Unit.

The purpose of this unit is to enable the operational officer to determine appropriate enforcement action upon detecting drinking driver clues. Topics include departmental policies regarding alcohol enforcement, the use of discretion in alcohol enforcement, and making enforcement decisions.

4.3.3 Departmental Policies Regarding Alcohol Enforcement.

A. The Role of Departmental Policies on Officers' Decision-Making

Departmental policies regarding alcohol enforcement play a role in the decision making of each officer. The wide range of policies that exist in various police agencies have a parallel in the wide range of effects they have on officer performance. Some policies are written and mandated, others are written but flexible, others are written for political purposes and are not followed in practice. Some departments have policies that are verbal and mandated, or verbal and flexible, or verbal and infrequently used. Some departments' policies endure for long periods of time while others change, adjusting to the needs of the times. In any case, department policies tend to have an effect on each officer's performance.

B. The Effect of Policies on Officer Performance

Generally, department policies determine the officer's expected performance. In addition, they are designed to impose limitations on his performance. They provide guidance concerning tolerance levels that the officer should consider in his enforcement of criminal and traffic laws.

While energetic, imaginative officers may be stimulated to perform due to certain policies (e.g., a policy that stresses the enforcement of a particular statute or ordinance), other officers may utilize other policies that they may favor as a "crutch" to justify performance that gets them by on a day-to-day basis.

C. Relating Policies to Drinking Driver Detection Task

Relating department policies to the drinking driver detection task usually requires significant interpretation. Such interpretation is needed because general orders and policies typically exist to mandate providing a public service (i.e., "the protection of life and property"), not specifically directing officers to detect or not to detect drinking drivers. Generally, line officers follow traditional practices of DWI enforcement simply because specific DWI enforcement policies often do not exist.

4.3.4 Use of Discretion in Alcohol Enforcement.

A. Role of Discretion In Officers' Decision Making

In the context of the application of (police) enforcement action, "discretion" can be defined in several ways. First, it may refer to cautious and correct judgment, prudence, sagacity, and the quality of being discreet. Secondly, it can mean liberty of action or freedom in the exercise of judgment.

The first definition applies to the intelligent application of judgment by all people and is a prerequisite for police officers as well. The second definition applies to the right to make judgments. This is the definition that deals with the police-public contact situation.

The essence of the decision-making dilemma for law enforcement is -- to what extent should officers be permitted, or encouraged, to exercise their own judgment? What should be the discretionary powers of the officer? Of his department, which administers the law? Of the legislature, which established the law? Of the judiciary, which interprets the law?

Traditionally, police officers have been granted wide latitude of discretion. This stemmed from the old "laissez faire" type administration which told a man when he was hired, "Here is a badge and gun -- now go and do the job". This type of approach was utilized for many years because of the absence of public complaint and because of conservative court dictum.

More recent trends in the administration of criminal justice reduce this wide latitude of discretion, requiring officers to substantiate their decisions. A combination of factors together have produced this change, including more concerned administrators, more competent officers, more minority group complaints and reactions, increased public debate over the limits of police discretion, and, last but certainly not least, more liberal court dictum.

B. The Relationship of the Use of Discretion to the Drinking Driver Detection Task.

The police officer is the key to the entire DWI enforcement effort. He is the catalyst for the entire "system" that operates to detect, apprehend, prosecute and rehabilitate drinking drivers. He initiates all enforcement contacts, whether positive, negative, or indifferent. To effect a reduction in alcohol-related traffic crashes, police officers must make field decisions -- basic original judgments -- that will reduce drinking driver incidents. Consequently, the use of discretion by individual officers is of critical importance in the alcohol enforcement task. It is only when officers choose to arrest for DWI (where adequate evidence exists) that they are participating in the solution of a serious social problem. Looking for reasons not to arrest is rationalizing poor officer performance and amounts to contributing to the presence of this serious social problem -- the drinking driver.

4.3.5 Making Enforcement Decisions.

The first level of decision making in alcohol enforcement, when an officer observes driving behavior that may lead to the detection of a drinking driver, is to start to focus on the suspect and commence the DWI detection process.

At this point in time the officer has three alternatives for making his initial decision; 1) to stop the suspect, 2) to wait for additional clues, or 3) to disregard and take no enforcement action.

If the driving behavior (clues) observed by the officer is an aggravated violation of traffic law or is any type of hazardous driving maneuver the officer has cause and justification for stopping the vehicle to investigate further. Thus, there are many situations and circumstances where the officer should stop the suspect as soon as possible to remove the immediate hazard.

In other instances an officer will observe slightly erratic driving behavior that may have been caused by alcohol ~~impairment~~. He may then focus his attention on the vehicle and driver and attempt to identify additional detection clues. In other words, the officer uses the alternative to wait for additional clues before making the contact.

In the event the officer observes an incidence of erratic driving, but when following the suspect observes normal driving behavior, he may have only the alternative to disregard and "kick the driver loose".

The decision making process for the enforcement action to be taken during the identification phase of detection, therefore, consists of the following steps: 1) interpret and weigh the evidence (behavior observed), 2) consider alternative actions available, and 3) make decisions as to appropriate enforcement action.

Selected Phase I identification detection clues will be depicted on filmed situations in class and the students will practice making enforcement decisions based on the material presented.

Study Plan

Unit 4.4

Relating Identification Detection Clues to Environment

Unit Objective:

To know the relationship of identification detection clues to the driving environment.

Terminal Objective:

- 4.4.3 . . . be able to relate the DWI detection clues to environmental factors and make judgments as to relevant combinations.

Content Topics:

- 4.4.1 Review of Unit 4.2.
4.4.2 Overview of unit.
4.4.3 Relationship of identification detection clues to environment and other factors.
4.4.4 Summary of unit.

Assignments:

1. Become familiar with STRESS table (Table 4-3) in Unit 4.4 of Student Manual.
2. Read the discussion on the STRESS concept in Unit 4.4 of the Student Manual.

Study Questions:

1. What is the relationship between detection clues and the environment in which they are committed?
2. What is the nature of the patrol environment? What different elements or factors constitute the patrolling environment?
3. What role does time play in alcohol enforcement detection activities? How many categories of time apply? What are the dimensions of each category?

Content Material

Unit 4.4

Relating Identification Detection Clues to Environment

4.4.2 Overview of Unit.

The purpose of this unit is to develop an understanding of the relationship of detection clues to the environment. The clues referred to are those types discussed in Unit 4.2. The sole topic covered in this unit is the relationship of identification detection clues to environment and other factors.

4.4.3 Relationship of Identification Detection Clues to Environment and Other Factors.

In Unit 4.1, the concept of the detection task and the four detection phases were introduced. In Unit 4.2 only Phase I clues were discussed. It is obvious, however, that the clues listed do not occur in a vacuum. For instructional purposes, the clues have been singled out, taken out of context and examined one at a time. This does not happen in real enforcement situations. When on patrol, you will find these clues under a wide variety of circumstances. The clue will be only a part of what the operational officer sees. It is his responsibility to observe and document as many facts as possible surrounding an event. Consequently, it is necessary to look at Phase I clues taking place in the context of their environmental setting.

For purposes of assisting you in understanding this relationship, Table 4-3 was developed. This table shows the relationship of one behavior (clue) -- faster than posted speed -- to the environment in which it occurs. This relationship is demonstrated by means of the Systematic Traffic Related Environmental Situational Sequences (hereinafter referred to by the acronym "STRESS") model that Table 4-3 illustrates. This table analyzes only one clue from one clue class. Since a total of 445 possible clues have been identified, one can easily determine the complexity of a clue to the environment in which it may be found.

Examine closely the STRESS Table (4-3). The columns classify the various factors that may be involved in the identification phase of the drinking driver detection task. Clue class, clue element, and behavior (clue) are charted in

TABLE 4-3
 SYSTEMATIC TRAFFIC RELATED ENVIRONMENTAL SITUATIONAL SEQUENCES (STRESS)
 IN DRINKING DRIVER DETECTION TASK (IDENTIFICATION PHASE)

SYSTEMATIC			TRAFFIC	ENVIRONMENT	SITUATIONAL		SEQUENCES
Clue Class	Clue Element	Behavior	Traffic	Environment	Time	Condition	Sequences
Number of clue classes:	Number of clue elements:	Number of behaviors:	Density:	Location:	Season of year:	Lighting:	B = 235 E = 576 Tf = 16 Tm = 224 C = 14,400
30 maneuver clues	76 maneuver elements	148 maneuver behaviors	heavy moderate light none	rural suburban urban	winter spring summer fall	daylight dusk dawn night (lighting)	
15 human indicators	37 human indicator elements	87 human behaviors	Movement (flow):	Establishments:	Day of week:	night (no lights) Weather:	Thus, there are 15,216 individual factors for each single behavior.
Total of 45 clue classes.	Total of 113 clue elements.	Total of 235 behaviors.	rapid moderate slow stopped	business industrial residential schools	Monday Tuesday Wednesday Thursday Friday Saturday Sunday	clear cloudy rain snow	
Example: vehicle speed	Example: posted speed	Example: faster than posted speed		Road condition:	Time of day:	Temperature (F): Hot (90 ^o +) Warm (50-89) Cool (32-49) Cold (freezing)	There are 29,727,129,600 combinations of factors for each single behavior.
				dry wet snow packed icy road	0:01-3:00 3:01-6:00 6:01-9:00 9:01-12:00 12:01-15:00 15:01-18:00 18:01-21:00 21:01-24:00	Wind velocity (MPH): High (50+) Strong (20-50) Mod. (10-20) Low (5-10) Calm (5 or less)	The number of combinations of factors and behaviors is astronomical
				Road surface: paved black top gravel dirt		Events: Public Social Private	
				Road maintenance: good fair poor		Functions: Public Social Private Social influence: No. of passengers age of vintage of car sex of driver age of driver	

relation to other variables -- traffic density and flow, location, type of area, road condition, time of day, day of week, season of year, lighting, weather and temperature conditions, nature of related events, and social influences such as age and number of passengers, vintage of car, age and sex of driver. The sequences column summarizes the variables, indicating that there are 15,216 individual factors for each single clue or behavior. The combinations of factors for each single behavior totals nearly 30 billion, while the number of combinations of factors and behaviors is astronomical. These myriad relationships readily reveal the complexity of the detection task.

Examples of STRESS situations to be discussed in class are as follows:

1. Speeding (45 mph) -- posted 25 mph zone -- residential -- good paved road surface -- no traffic -- 1:00 a.m. -- street lights.
2. Wrong side of street -- multi-lane divided -- business zone -- no traffic -- 2:00 a.m. -- street lights.
3. Right turn from left lane -- business zone -- moderate traffic -- Wednesday night -- 10:00 p.m. -- street lights.
4. Left wheels on line -- moderate -- rural -- dry/wet -- blacktop -- fair -- Saturday -- 11:00 p.m. -- darkness -- clear/cloudy -- older car.
5. Unsafe backing -- moderate -- fast -- freeway -- dry -- paved -- good -- night -- clear -- Saturday -- midnight -- night (no lights) -- vehicle backing up to exit ramp while other traffic passing.
6. Following too closely -- moderate -- rural -- dry -- gravel -- poor -- Fall -- Friday -- 10:00 p.m. -- dark -- clear.
7. Speed too slow -- 35 in a 50 mph -- moderate -- rapid -- rural -- dry -- paved (2 lane) -- good -- Fall -- Saturday -- 2:00 a.m. -- dark (no lights).
8. Failure to yield -- private drive (bar business) -- moderate -- urban -- business -- dry -- paved -- good -- Friday -- 9:00 p.m. -- dusk -- clear -- 2 passengers -- older model car.

9. Weaving (touches line) -- moderate -- slow -- rural -- residential -- dry -- blacktop -- fair -- Saturday -- 9:00 p.m. -- night -- clear -- older model pick-up -- male.
10. Stopping beyond crosswalk at traffic signal -- heavy (pedestrians) -- slow -- urban -- business -- dry -- paved -- good -- Fall -- Friday -- 9:00 p.m. -- night -- clear -- female -- newer model car.
11. Driving close to parked vehicles -- light -- moderate -- residential -- dry -- paved -- fair -- Fall -- Friday -- 7:00 p.m. -- dusk -- male (2 occupants) -- older model car.
12. Failure to yield from stop sign (vehicle stopped but pulls out in front of cross traffic) -- light -- moderate -- residential -- dry -- paved -- Fall -- Friday -- 2:00 a.m. -- night -- 2 occupants -- van type vehicle.
13. Driving with left wheels over center line on blind curve -- light -- rapid -- rural -- dry -- blacktop -- fair -- Fall -- Monday -- 1:00 a.m. -- night -- clear -- male -- older model car.

STRESS situations will be demonstrated in class through the use of 16 mm filmed situations to illustrate the relationship of detection clues to the patrol environment. The students will discuss these relationships and practice their interpretation of others on student response forms when shown additional STRESS situations.

APPENDIX A
IDENTIFICATION DETECTION CLUES

Unit 4.2

IDENTIFICATION
DETECTION CLUES
(Pre-Apprehension)
(Phase I)

I-A CLUES FOR DETECTING VEHICLE
MANEUVERS OF DRINKING DRIVERS

Clue Class

Clue Elements and Behaviors

I-A-1
Vehicle speeds.

- A. Posted speed:
 - 1. Faster than posted.
 - 2. Slow speed (impede).
- B. Safe speed: (Basic Speed Law)
 - 1. Faster than safe.
 - 2. Slow (impede).

I-A-2
Inconsistent speeds.

- A. Fluctuating speed.

I-A-3
Drag racing.

- A. Speed contest.

I-A-4
Improper turns.

- A. Right turn:
 - 1. Cutting corner.
 - 2. Wide turn.
- B. Left turn:
 - 1. Cutting corner.
 - 2. Wide turn.
- C. "U" turns:
 - 1. Illegal U-turn.
 - 2. Wide U-turn.

Clue Class

Clue Elements and Behaviors

I-A-5
Turning from or
into wrong lane.

- A. From wrong lane:
 - 1. Right turn from left lane.
 - 2. Left turn from right lane.

I-A-6
Weaving on roadway.

- B. Into wrong lane:
 - 1. Right lane to left lane.
 - 2. Left lane into right lane.

I-A-7
Driving continually
in left lane.

- A. Changes lanes -- passing:
 - 1. Enters passing lane frequently.
 - 2. Passes in different lanes.
- B. Changes lanes -- not passing:
 - 1. Changes lanes frequently.
 - 2. Weaves in lane.

I-A-8
Failure to maintain
lane position
(multi-lane road).

- A. Traffic trying to pass:
 - 1. Sounding horn.
 - 2. Blinking lights.
 - 3. Traffic passes on right.

I-A-9
Driving over center
line.

- A. Encroaches to left:
 - 1. Continuously drives straddling lanes.
 - 2. Frequently.
 - 3. Infrequently.
- B. Encroaches to right:
 - 1. Continuously.
 - 2. Frequently.
 - 3. Infrequently.
- A. Straight roadway:
 - 1. Fails to keep right of painted line.
 - 2. Fails to keep right of center (unmarked).
- B. Curves:
 - 1. Fails to keep right of painted line.
 - 2. Fails to keep right of center (unmarked).

Clue Class

I-A-10
Disregarding signs
and signals
(right-of-way
violation).

- Clue Elements and Behaviors
- A. Disregards traffic signals:
 - 1. Runs red light, increases speed.
 - 2. Runs red light, constant speed.
 - 3. Runs red light, reduces speed.
 - B. Disregards stop sign:
 - 1. Runs stop sign -- increases speed.
 - 2. Runs stop sign -- constant speed.
 - 3. Runs stop sign -- reduces speed.
 - 4. Runs stop sign -- rolling stop.
 - C. Disregards yield signs -- other traffic:
 - 1. Fails to yield -- increases speed.
 - 2. Fails to yield -- constant speed.
 - 3. Fails to yield -- reduces speed.
 - D. Disregards railroad signals:
 - 1. Fails to stop -- increases speed.
 - 2. Fails to stop -- constant speed.
 - 3. Fails to stop -- reduces speed.
 - E. Disregards warning (caution) signs and signals:
 - 1. Passes with increasing speed.
 - 2. Maintains constant speed.

Clue Class

I-A-11
Unusual approach to
signs and signals.

I-A-12
Overshooting signs or
signals.

I-A-13
Stopping short of
signs and signals.

I-A-14
Jerky starts
and stops.

Clue Elements and Behaviors

- A. Approach to sign or signal:
 - 1. Approach at high speed.
 - 2. Approach at moderate speed.
- B. Abrupt stop at sign or signal:
 - 1. Severe abrupt stop (locked wheels).
 - 2. Rapid deceleration.
 - 3. Not a smooth stop.
- A. Stops in intersection -- obstructs traffic.
- B. Stops in intersection -- no obstruction.
- C. Stops few feet beyond sign.
- A. Stops great distance from line (e.g., 30-40 feet).
- B. Stops considerable distance from line (e.g., 15-20 feet).
- C. Stops slight distance from line (e.g., 8-10 feet).
- A. Jerky starts:
 - 1. When stopped at intersection.
 - 2. When stopped in traffic lane.
 - 3. When leaving parked position.
 - 4. When leaving private driveway.
 - 5. When entering freeway.
- B. Jerky stops:
 - 1. When stopping at intersection.
 - 2. When stopping in traffic lane.
 - 3. When approaching parked position.
 - 4. When entering private driveway.
 - 5. When leaving freeway.

Clue Class

I-A-15
Long stops at
signs and signals.

I-A-16
Driving close to
curb or shoulder.

I-A-17
Improper passing.

Clue Elements and Behaviors

- A. Stops extreme amount of time (full signal cycle or one minute).
- B. Stops for considerable amount of time (30-60 seconds).
- C. Stops for appreciable amount of time (15-30 seconds).
- D. Hesitates for 5-15 seconds.
- A. Vehicle position to unpaved shoulder:
 - 1. Vehicle driven on shoulder.
 - 2. Right wheels of vehicle on shoulder.
 - 3. Vehicle driven close to shoulder.
- B. Vehicle position to curb:
 - 1. Vehicle driven over curb.
 - 2. Right wheels over curb.
 - 3. Right wheels rubbing curb.
 - 4. Right wheels striking curb.
 - 5. Vehicle driven close to curb.
- A. Passes on hills:
 - 1. Passes on the crest.
 - 2. Passes on grade.
 - 3. Clips yellow line.
- B. Passes on curves:
 - 1. Passes in the curve.
 - 2. Passes entering curve.
 - 3. Clips yellow line.
- C. Passes at intersections:
 - 1. Passes in the intersection.
 - 2. Passes entering the intersection.
 - 3. Clips yellow line.

Clue Class

I-A-17 (cont.)

I-A-18
Loss of control
of vehicle
(non-maneuver cause).

I-A-19
Loss of control
of vehicle
(maneuver cause).

I-A-20
Unnecessary stop.

Clue Elements and Behaviors

- D. Passes at railroad crossing:
 - 1. Passes at crossing.
 - 2. Passes entering crossing.
 - 3. Clips yellow line.
- E. Passes in restricted zones:
 - 1. Passes over double yellow line.
 - 2. Passes over single yellow line.
 - 3. Clips over single yellow line.
- A. Leaving roadway:
 - 1. Fails to regain control.
 - 2. Recovers and returns to roadway.
- B. Skids on roadway:
 - 1. Fails to regain control.
 - 2. Has difficulty in regaining control.
 - 3. Has momentary loss of control.
- A. Loses control in passing:
 - 1. Fails to regain control.
 - 2. Has difficulty in regaining control.
 - 3. Has momentary loss of control.
- B. Loses control in closing on other traffic (following too closely):
 - 1. Fails to regain control.
 - 2. Has difficulty in regaining control.
 - 3. Has momentary loss of control.
- A. Stops in traffic lane for no apparent reason.
- B. Vehicle moves and stops again.

Clue Class

I-A-21
Improper backing
(right-of-way).

I-A-22
Locking brakes
without cause.

I-A-23
Unusual use of
turn signals.

I-A-24
Improper use of
turn signals.

I-A-25
Excessive use
of horn.

I-A-26
Improper vehicle
lighting.

Clue Elements and Behaviors

- A. Backs up to off-ramp.
- B. Backs onto roadway from parked position.
- C. Backs onto roadway from driveway.
- D. Backs up to reverse direction.
- E. Backs up at intersection.
- A. Curve skid.
- B. Straight skid.
- A. Excessive use of signal (signal at fork in road when continuing on primary roadway).
- B. Over cautious (signals far in advance).
- A. Uses wrong signal.
- B. Delays use of turn signal.
- C. Corrects use of wrong signal.
- A. Vehicle in motion:
 - 1. Use in passing.
 - 2. Use when weaving.
 - 3. Use on pedestrian.
 - 4. Use for non-traffic situation.
- B. Stationary vehicle:
 - 1. Excessive use of horn.
- A. Illuminated roadway:
 - 1. Drives without lights.
 - 2. Drives with parking lights only.

Clue Class

I-A-26 (cont.)

I-A-27
Failure to dim
headlights.

I-A-28
Driving on
flat tire.

I-A-29
Open car window
(inclement weather).

I-A-30
Driving vision
obscured.

Clue Elements and Behaviors

- B. Non-illuminated roadway:
 - 1. Drives without lights.
 - 2. Drives with parking lights only.
- A. Fails to dim for on-coming traffic.
- B. Fails to dim when signaled.
- A. Drives on soft tire.
- B. Drives on flat tire.
- C. Drives on flat, ruined tire (e.g., shredded).
- A. Only driver's window down:
 - 1. Cold.
 - 2. Raining.
- B. Driver's and other's windows down:
 - 1. Cold.
 - 2. Raining.
- A. Dirty windshield:
 - 1. Complete obstruction.
 - 2. Partial obstruction.
- B. Ice and snow:
 - 1. Complete obstruction.
 - 2. Partial obstruction.
- C. Frost:
 - 1. Complete obstruction.
 - 2. Partial obstruction.
- D. Condensation (fogging up):
 - 1. Complete obstruction.
 - 2. Partial obstruction.

I-B HUMAN INDICATORS FOR DETECTING
DRIVING BEHAVIOR OF DRINKING DRIVER

Clue Class

Clue Elements and Behaviors

I-B-1
Loss of attention.

- A. Passenger distractions:
 1. Head turned (long time).
 2. Hand and body gestures.
 3. Head turned and/or gestures (brief).
- B. Distractions when alone:
 1. Head turned, prolonged.
 2. Abnormal use of hands and body gestures.
 3. Looking at materials; e.g., map.
 4. Looking to side (brief glancing).
- C. Operating devices improperly:
 1. Tuning radio.
 2. Setting temperature controls.
 3. Setting mirrors.
 4. Using windshield wiper.
- D. Improper use of smoking materials:
 1. Lighting smoking material.
 2. Extinguishing smoking material.
 3. Reacting to burning ashes.

I-B-2
Falling asleep.

- A. Driver's body position:
 1. Drowsily slouches in seat.
 2. Leans against window.
 3. Leans against head rest.
 4. Falls asleep when stopped; e.g., signal (vehicle creeps).
 5. Falls asleep when stopped; e.g., signal (stationary vehicle).
- B. Driver's body movement:
 1. Head drops frequently.
 2. Repeatedly slouches in seat.

Clue Class

Clue Elements and Behaviors

I-B-2 (cont.)

- C. Driver's behavior:
 1. Frequently drifts from lane.
 2. Closes rapidly on preceding vehicle.
- D. Driver's behavior when parked:
 1. Sleeps on steering wheel.
 2. Sleeps against door.
 3. Sleeps on front seat.

I-B-3
Vomiting.

- A. Vehicle in motion:
 1. Vomits while driving.
 2. Vomits on car exterior.
- B. Stationary vehicle:
 1. Driver vomits in car.
 2. Driver vomits beside car.
 3. Vomits on clothing.
 4. Vomits on vehicle.

I-B-4
Unconsciousness.

- A. Driver slumps over wheel.
- B. Driver slumps in seat.

I-B-5
Urinating.

- A. Urinates in rural area:
 1. Standing by vehicle stopped on road.
 2. Standing by vehicle legally parked.
- B. Urinates in inhabited area:
 1. Standing by vehicle stopped on road.
 2. Standing by vehicle legally parked.

I-B-6
Use of profanity.

- A. Directs profanity towards companions:
 1. By car.
 2. In car, stopped at signal.

Clue Class

I-B-6 (cont.)

Clue Elements and Behaviors

- B. Directs profanity towards other than companions:
 - 1. Obscenities toward pedestrian.
 - 2. Obscenities toward other motorists.
- C. Directs profanity towards vehicle:
 - 1. Obscenities when unlocking car door.
 - 2. Difficulty in starting vehicle, e.g., can't get key in ignition.

I-B-7
Directing attention straight ahead.

- A. Leans into steering wheel.
- B. Face close to windshield.
- C. Clutching steering wheel.
- D. Fixed gaze straight ahead.

I-B-8
Sluggish body movements.

- A. Slow movement of arms; e.g., over and under steering.
- B. Holds steering wheel at bottom with upturned hands and dropped elbows.

I-B-9
Slumped down in seat (non-fatigued).

- A. Slouches in seat (yet alert).
- B. Slouches in seat (drinking).

I-B-10
Blank staring look (no facial expression, observation without comprehension).

- A. Fixed gaze.
- B. Minimal eye movements.

Clue Class

I-B-11
Consuming alcoholic beverages.

Clue Elements and Behaviors

- A. Drinks while driving:
 - 1. Picks up can or bottle from floor.
 - 2. Raises can or bottle to mouth.
 - 3. Drinks from can or bottle.
- B. Drinks in stationary vehicle:
 - 1. Slumps in seat to sip drink.
 - 2. Raises can or bottle to mouth.
 - 3. Drinks from can or bottle.

I-B-12
Driver's head protruding out of window.

- A. Head protruding out window -- inclement weather.
- B. Head protruding out window -- fair weather.

I-B-13
Throwing objects from vehicle.

- A. Throws objects from moving vehicle:
 - 1. Tosses cans or bottles from driver's window.
 - 2. Tosses cans or bottles from windows other than driver's.
 - 3. Throws other litter from moving vehicle.
- B. Throws objects from stationary vehicle:
 - 1. Throws alcohol containers from driver's window onto roadway.
 - 2. Throws alcohol containers from window other than driver's onto curb or shoulder.
 - 3. Throws other litter from stationary vehicle.

I-B-14
Obscene gestures.

- A. Obscene gestures by driver toward other motorists:

Clue Class

I-B-14 (cont.)

Clue Elements and Behaviors

1. "Giving the finger"; i.e., hand up, fingers curled except upright middle finger.
 2. Thumbs his nose.
 3. Sticks out his tongue.
- B. Obscene gestures by driver toward pedestrians:
1. "Giving the finger".
 2. Thumbs his nose.
 3. Sticks out his tongue.
- A. Driver alone in vehicle:
1. Laughs hysterically.
 2. Crys uncontrollably.
 3. Talks to himself.
 4. Pounds fist on steering wheel.
 5. Shakes his head violently.
 6. Excessively rubs his brow.
 7. Repeatedly scratches his face.
 8. Repeatedly passes hands through hair.
- B. Driver with occupants in vehicle:
1. Argues with occupant.
 2. Excessively and wildly gestures.
 3. Rapidly moves up and down in seat.
 4. Laughs hysterically.
 5. Crys uncontrollably.
 6. Pounds fist on steering wheel.
 7. Shakes his head violently.

I-B-15
Signs of
exaggerated
emotions (anger,
joy, sorrow).

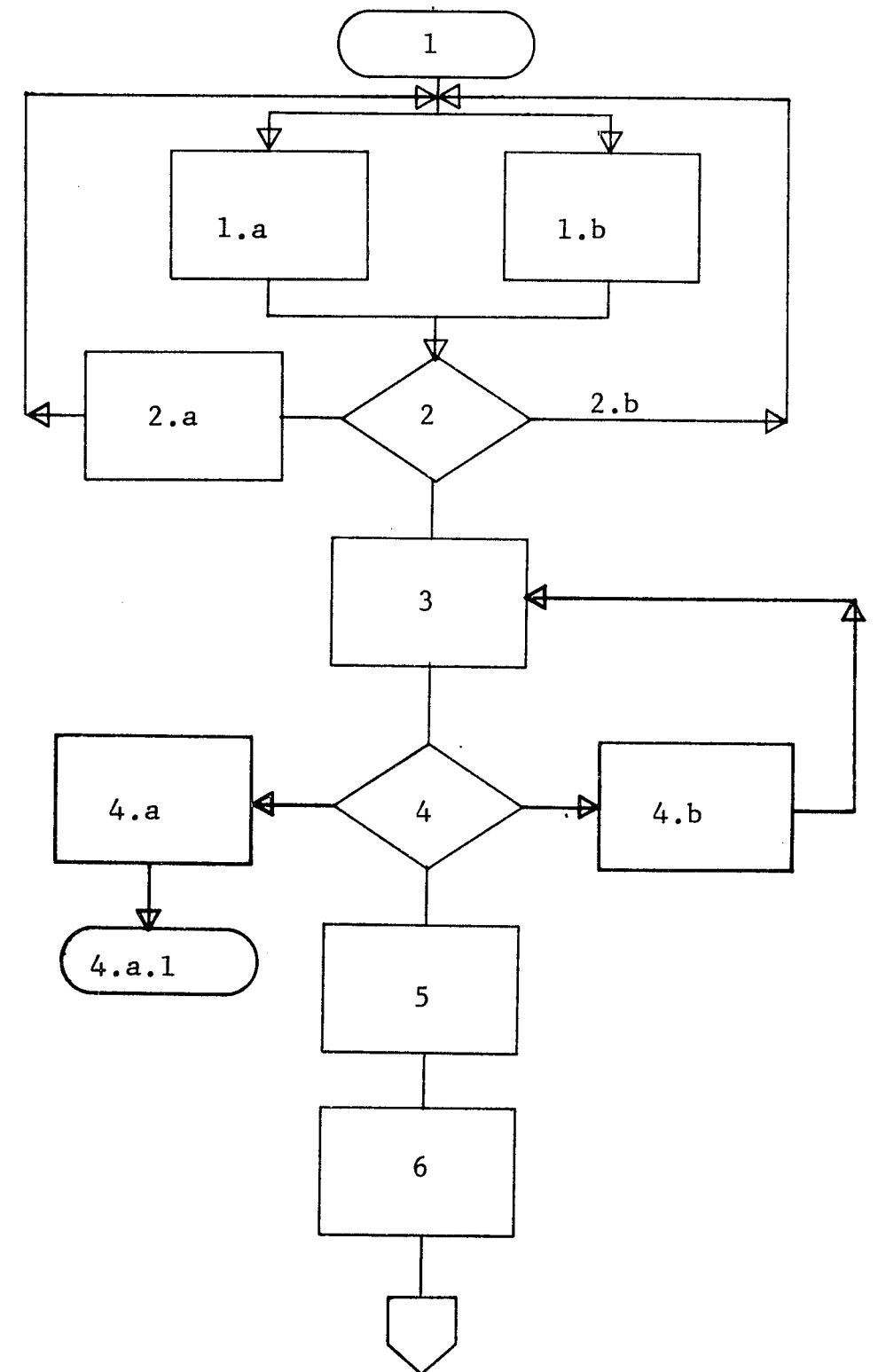
APPENDIX B
DECISION FLOW CHART

INVESTIGATION OF DRIVING WHILE INTOXICATED

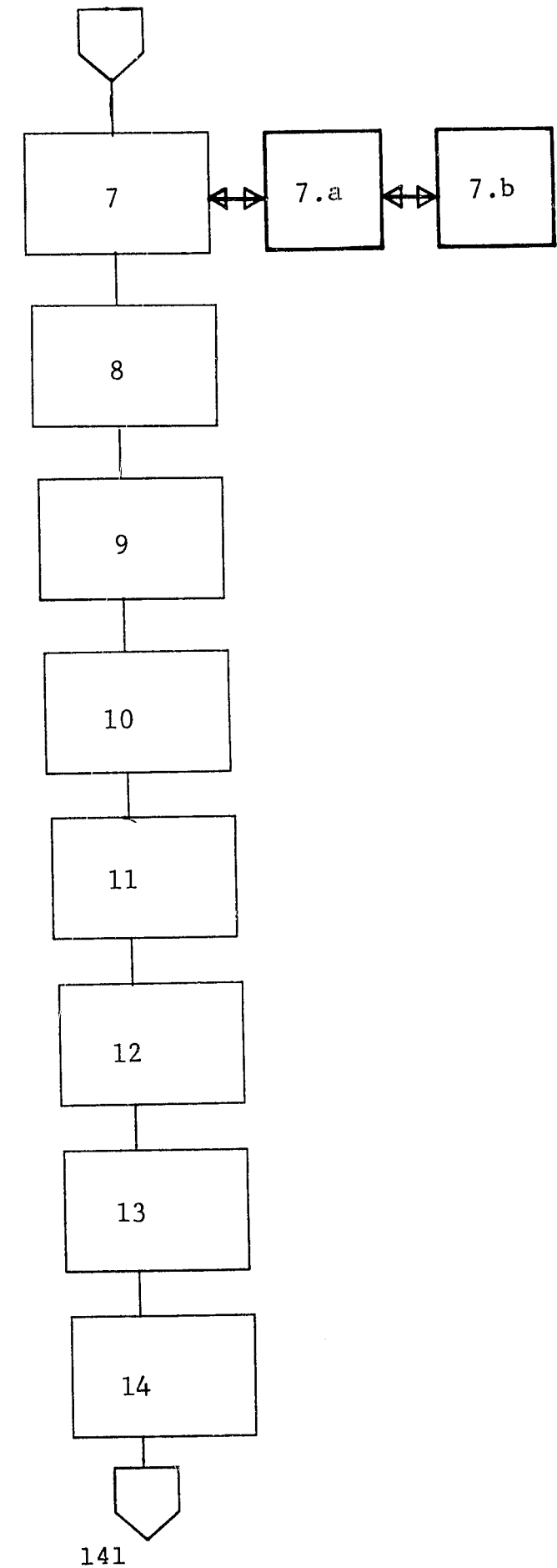
Investigation of Driving While Intoxicated

1. Patrol.
 - a. Look for erratic vehicle behavior.
 - b. Look for unusual driver behavior.
2. Decide to stop violator.
 - a. Continue following for further observation.
 - b. Decide not to stop, return to patrol.
3. Communicate intention to stop to violator.
4. Was communication made?
 - a. Attempts to elude.
 - (1) Follow departmental procedures.
 - b. Utilize additional devices.
5. Look for erratic movement of vehicle while stopping.
6. Communicate stop to headquarters.

DECISION FLOW CHART
Investigation of DWI



7. Park patrol vehicle in accordance with law and department policies and procedures.
 - a. Turn on overhead lights.
 - b. Turn on 4-way flashers.
8. Approach violator's vehicle.
9. Look for unusual behavior or activity within vehicle.
10. Make mental notes of all behavior and/or activity.
11. Collect potential evidence.
12. Ask for operator's license, vehicle registration and proof of insurance.
13. Observe manner in which requested documents are located by driver.
14. Observe condition and behavior of driver and occupants of vehicle.



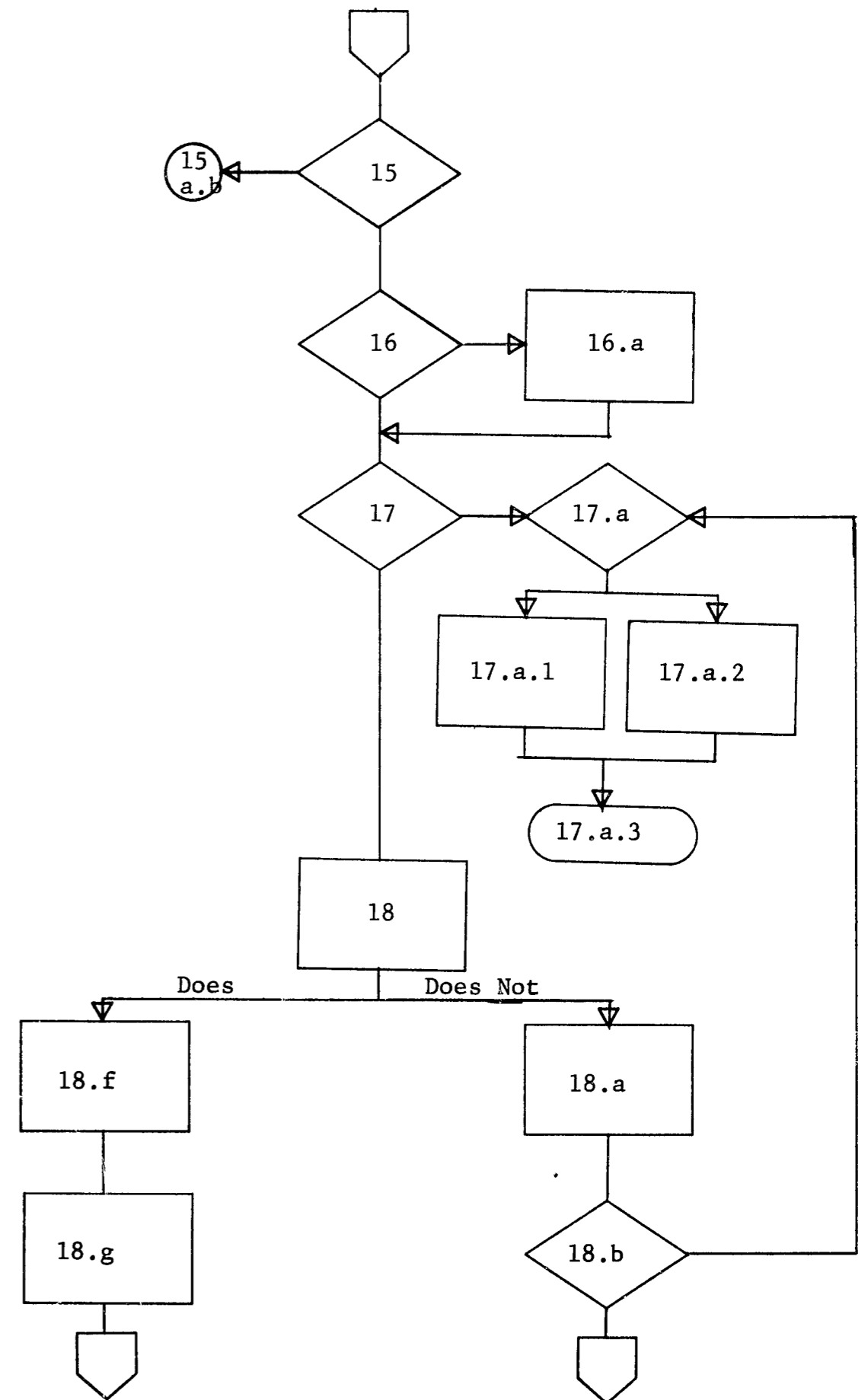
15. Watch for indicators of need for immediate medical attention.
 - a. Make arrangements, if needed, to transport driver to hospital.
 - b. Administer first aid, if needed.
16. Decide if you are going to advise driver of constitutional rights.
 - a. Advise driver of these rights.
17. Decide if you desire driver to get out of vehicle.
 - a. Decide on other action to be taken.
 - (1) Use of citation for traffic violation.
 - (2) Traffic warning.
 - (3) Release of driver and vehicle, return to patrol.
18. Request that driver step out of vehicle.

If He Does Not

 - a. Persuade driver to get out of vehicle.
 - b. Decide if you have enough evidence to make an arrest.

If He Does

 - f. Request that driver walk to shoulder of roadway.
 - g. Administer dexterity tests.

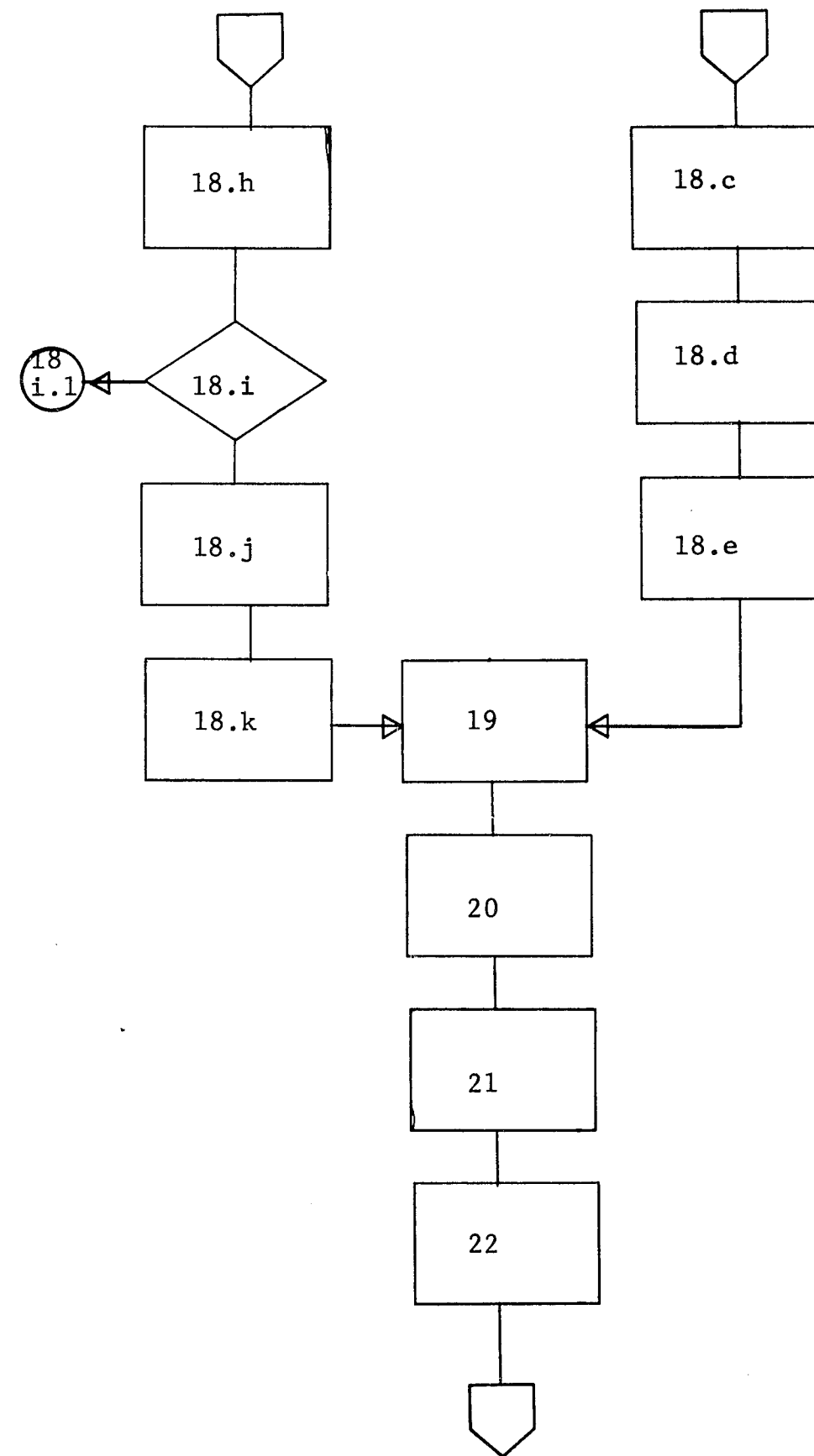


Does Not

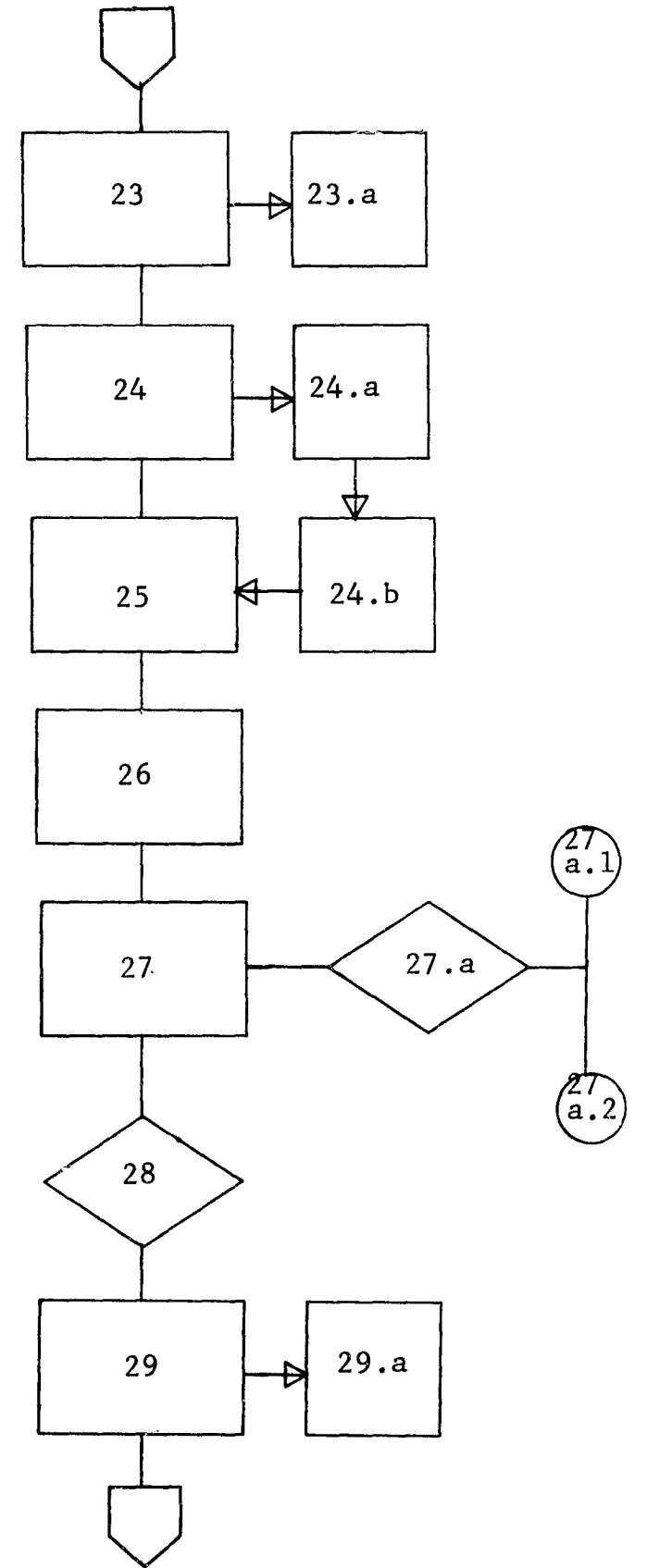
- 18. c. Place driver under arrest.
- d. Handcuff the violator.
- e. Make mental notes on driver condition, behavior and statements.

Does

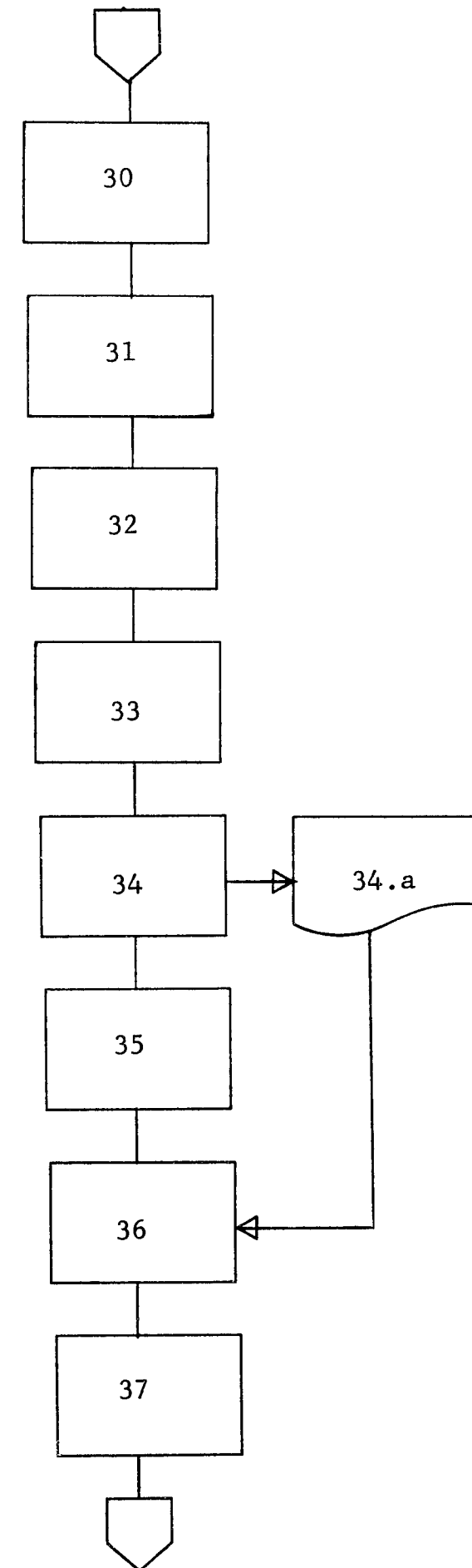
- h. Make field notes concerning results of dexterity test, condition, behavior and statements of driver.
 - i. Decide if you have enough evidence to arrest violator.
 - (1) If not enough evidence to arrest, take other action as shown under Step 17.
 - j. Place violator under arrest.
 - k. Handcuff the violator.
- 19. Search violator for evidence and weapons.
 - 20. Place violator in patrol car.
 - 21. Advise violator of rights under Implied Consent Law.
 - 22. Make field notes on driver behavior and statements.



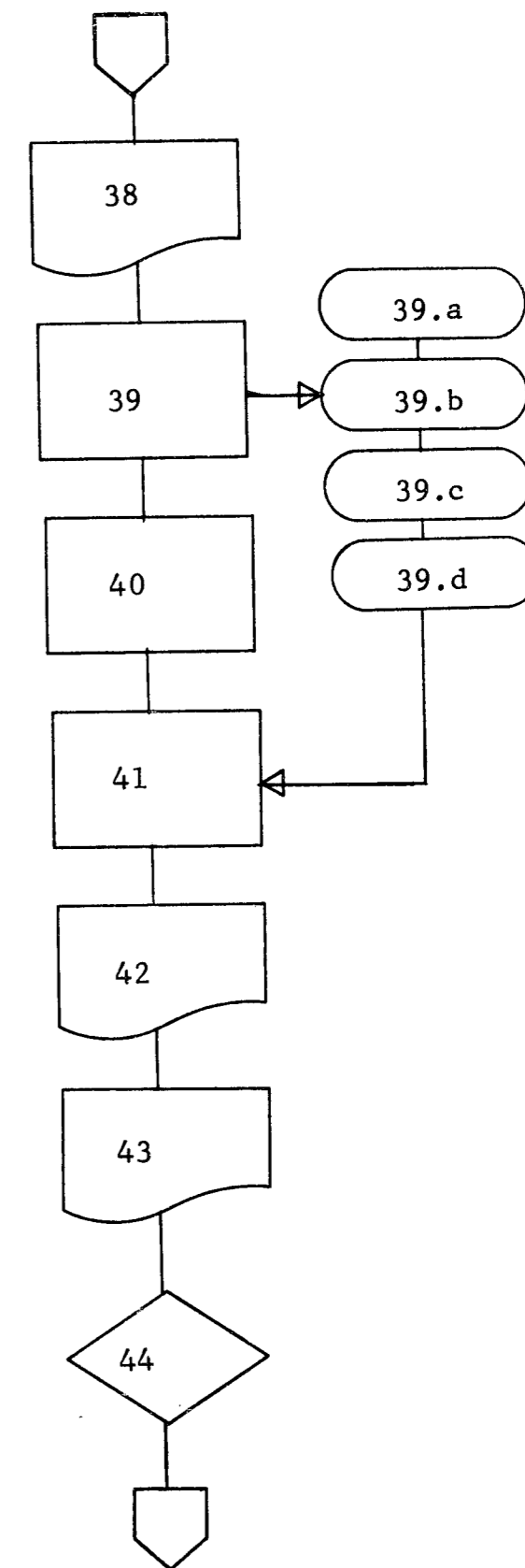
23. Interview witnesses and other occupants in vehicle.
 - a. Make field notes on pertinent data and statements.
24. Search violator's car for evidence or contraband.
 - a. Label and identify all evidence or contraband seized.
 - b. Lock all evidence in patrol car.
25. Perform complete inventory of vehicle and its contents, fill out any necessary forms for this purpose.
26. Advise violator of any and all items removed from vehicle.
27. Make arrangements for protection of violator's vehicle.
 - a. Decide on disposition of other occupants of vehicle.
 - (1) Place occupants under arrest.
 - (2) Arrange transportation and any needed care of occupants.
28. Decide where violator will be transported.
29. Transport violator.
 - a. If to hospital, plan to make necessary arrangements.



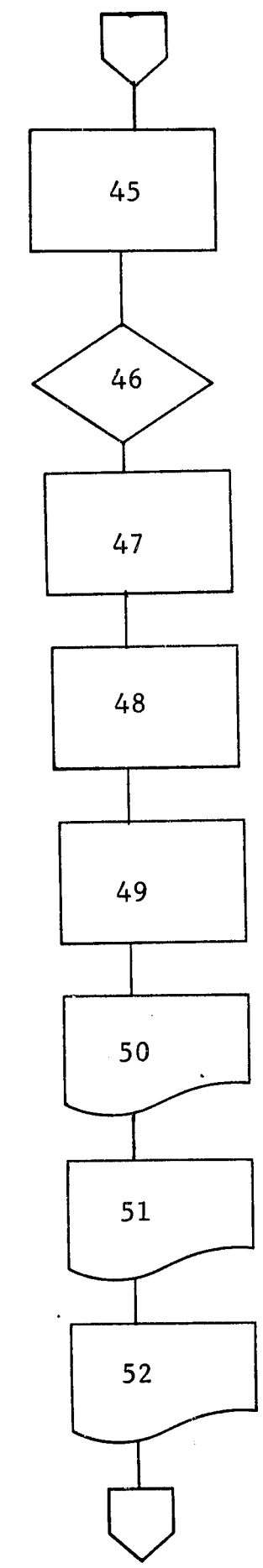
30. Make mental notes of comments, actions and condition of violator while enroute.
31. Upon arrival at detention facility, perform complete search of violator, label and identify any evidence seized.
32. Re-advise violator of constitutional rights.
33. Grant violator use of telephone.
34. Re-advise violator of Implied Consent Rights.
 - a. If violator refuses chemical test, complete refusal forms and have violator, witnesses and arresting officer sign.
35. Complete Advisement of Rights Form, have violator, witnesses and arresting officer sign.
36. Take violator to booking officer for booking of charges.
37. Observe booking process.



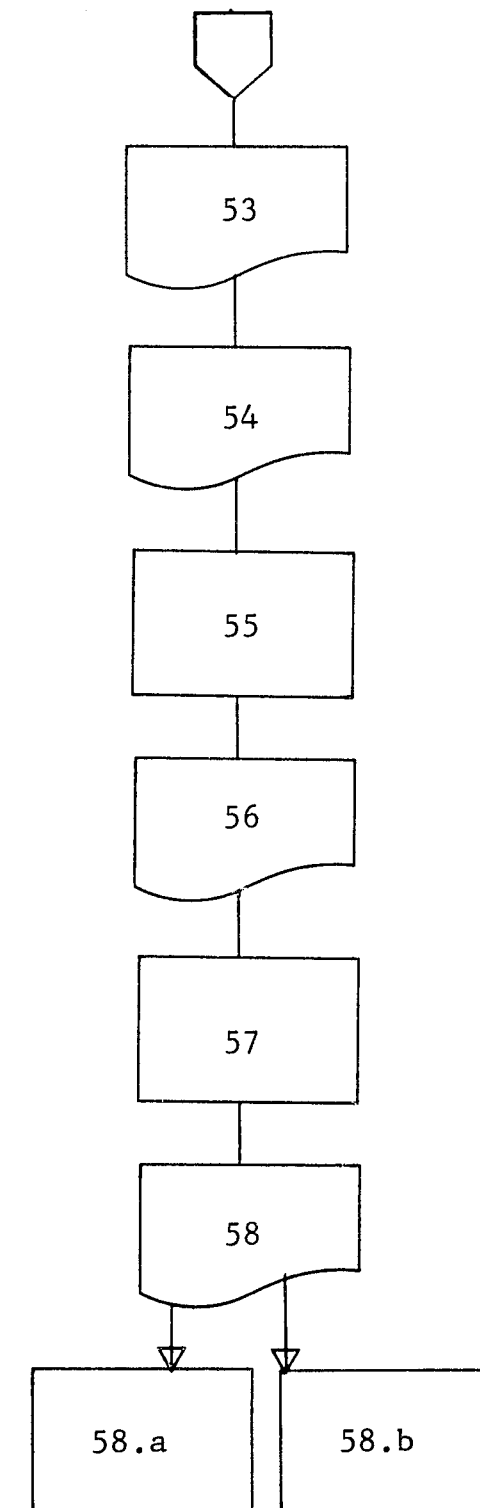
- 38. Begin filling out Alcohol Influence Forms.
- 39. Take violator to chemical testing authority for desired chemical test.
 - a. Blood.
 - b. Breath.
 - c. Saliva.
 - d. Urine.
- 40. Observe violator for 20 minutes prior to breath test.
- 41. Conduct or observe chemical test.
- 42. Sign chemical test forms.
- 43. Complete filling out Alcohol Influence Forms.
- 44. Decide if violator is to be detained.



- 45. Fingerprint and photograph violator.
- 46. Decide where violator will be detained.
- 47. Have checks made for criminal record or wants.
- 48. Have driver records check made.
- 49. Check local records for criminal record.
- 50. Complete Arrest Report.
- 51. Complete Prosecutor's Confidential Report.
- 52. Issue citation for DWI.



53. Assemble all forms, documents, reports and evidence for review by supervisor or review officers.
54. Place forms, documents and reports in appropriate location.
55. Place evidence in appropriate safe location.
56. Take forms, documents, reports and evidence to prosecutor.
57. Discuss case with prosecutor.
58. Sign complaint with specified charges.
 - a. 1st offense, follow normal procedures for trial.
 - b. 2nd and 3rd offense, follow normal procedures for arraignment, preliminary hearing and trial.



SUBJECT # 5

DETECTION OF DRINKING DRIVER--APPREHENSION

Subject Objective:

To understand nature of drinking driver clues during apprehension process.

Subject Units:

5.1 Detection of drinking driver clues while apprehending vehicle.

Appendix:

A. Reinforcement detection clues.

Study Plan

Unit 5.1

Detection of Drinking Driver Clues While
Apprehending Vehicle

Unit Objective:

To understand nature of drinking driver clues
while apprehending vehicle.

Terminal Objectives:

- 5.1.3 . . . be able to identify and record the types
of reinforcement clues depicting a drinking
driver observed when apprehending a vehicle.
- 5.1.4 . . . be able to interpret and weigh the drink-
ing driver evidence accumulated through observ-
ing identification and reinforcement clues.

Content Topics:

- 5.1.1 Review of previous subject.
- 5.1.2 Overview of unit.
- 5.1.3 Types of reinforcement detection clues observed
during apprehension indicating drinking drivers.
- 5.1.4 Assessing accumulated evidence obtained from
identification and reinforcement detection
clues.
- 5.1.6 Summary of unit.

Assignment:

- 1. Read Subject #5 in Student Manual.
- 2. Become familiar with Reinforcement Detection
Clues in Subject #5 (Appendix A) in Student Manual.

Study Questions:

- 1. What types of vehicle maneuvers would be committed
by drinking drivers during apprehension?
- 2. What types of human indicators (personal behavior)
would an officer be able to discern while stopping
a drinking driver?

Study Questions: (cont.)

- 3. Having identified a possible drinking driver, what
additional evidence might you look for while you
are stopping the vehicle?
- 4. What is the relationship between the initial clues
which caused you to pursue a drinking driver suspect
and those behaviors you observed while apprehending
(stopping) the vehicle? How would you use them to
start building your case?

Content Material

Unit 5.1

Detection of Drinking Driver Clues While
Apprehending Vehicle

5.1.2 Overview of Unit.

The purpose of this unit is to develop an understanding of the nature of drinking driver clues during the apprehension process. Topics include types of reinforcement detection clues observed during apprehension which indicate drinking drivers and the relationship of reinforcement clues to the decision-making process.

5.1.3 Types of Reinforcement Detection Clues Observed During Apprehension Indicating Drinking Drivers.

Appendix A lists Reinforcement Detection Clues. Become familiar with Section II-A -- Clues for Detecting Vehicle Maneuvers of Drinking Drivers During Apprehension and Section II-B -- Human Indicators for Detecting Vehicle Maneuvers of Drinking Drivers During Apprehension. Selected sample clues will be demonstrated in class through the use of filmed situations.

5.1.4 Assessing Accumulated Evidence Obtained From Identification and Reinforcement Detection Clues.

In Subject #4, the identification detection phase (Phase I) was defined and described. In that phase, identification clues served as a catalyst for initial enforcement action to be taken. Accordingly, it was outlined that:

1. Evidence of probable DWI requires immediate contact to be made.
2. Evidence of possible DWI requires seeking additional clues (additional observation of the suspect) which, if subsequently determined to be sufficient, indicates the need for an enforcement contact to be made.
3. Evidence of DWI does not materialize in which case the officer typically disregards making an enforcement contact.

In the apprehension phase (Phase II), additional reinforcement clues will be observed which will have one of the following effects:

1. Definitely reinforce the officer's initial interpretation of Phase I detection clues as evidence that alcohol impairment is present, or

2. Possibly reinforce the officer's initial interpretation of Phase I detection clues as evidence that alcohol impairment is present, or

3. Not reinforce the officer's initial interpretation.

It is important to note that it is this accumulation of clues from the various phases that leads to the ultimate enforcement action that is taken (i.e., physical arrest, issuance of citation, or release without arrest or citation). Each clue, or set of clues from Phases I, II, and III, either independently documents, substantiates initial interpretations, or indicates a need for additional clues (evidence) to justify further action. It is the sum or accumulation of these clues that ultimately builds the officer's case against the drinking driver.

Phase III detection clues are discussed in Subject #6 and Phase IV clues in Subject #7.

APPENDIX A
REINFORCEMENT DETECTION CLUES

Unit 5.1

REINFORCEMENT
DETECTION CLUES
(Apprehension)
(Phase II)

II-A CLUES FOR DETECTING VEHICLE MANEUVERS
OF DRINKING DRIVERS DURING APPREHENSION

<u>Clue Class</u>	<u>Clue Elements and Behaviors</u>
II-A-1 Attempts to elude.	A. Acceleration: 1. Accelerates rapidly. 2. Comes to full stop, then accelerates rapidly. B. Turning movements: 1. Side-streets. 2. Driveways. C. Turns off lights. D. Passes on right. E. Disregards traffic controls: 1. Signs (e.g., stop, yield). 2. Signals.
II-A-2 Failure to stop promptly.	A. Appears to perceive signal to stop: 1. Increases speed moderately; e.g., by 10 mph. 2. Maintains constant speed. 3. Decreases speed but not to full immediate stop. B. Does not appear to perceive signal: 1. Increases speed moderately; (e.g., by 10 mph.). 2. Maintains constant speed. 3. Decreases speed but not to full immediate stop.

Clue Class

II-A-3
Loss of control
of vehicle.

II-A-4
Comes to abrupt
halt.

II-A-5
Stops in roadway
(where shoulder is
available).

II-A-6
Jerky stopping.

II-A-7
Uses wrong turn
signal.

II-A-8
Unnecessarily obstructing
other traffic.

Clue Elements and Behaviors

- A. Veers left:
1. Into oncoming lane.
2. Across oncoming lane and
continues off roadway.
- B. Veers right:
1. Off roadway.
2. Onto shoulder.
3. Strikes curb.
4. Strikes object in roadway
(e.g., parked car).
- A. Without locking brakes:
1. Comes to unusually fast stop.
- B. Locking wheels:
1. Skids to a stop.
- A. Two-lane, two-way street:
1. Stops in oncoming lane
(left lane).
2. Stops in right lane.
- B. Multi-lane, one-way street:
1. Stops in center lane.
2. Stops in right lane.
- A. Uncoordinated, jerky stop.
- A. Activates left turn signal:
1. Then turns to right.
- B. Activates right turn signal:
1. Then turns to left.
- A. Public roadway:
1. Cross street.
2. Entrance/exit to expressway.
- B. Private:
1. Business entrance.
2. Shopping center entrance
or exit.
3. Factory entrance or exit.

Clue Class

II-A-9
Vehicle left in gear --
creeps forward.

Clue Elements and Behaviors

- A. Creeps forward:
 - 1. Driver realizes it and stops his vehicle himself.
 - 2. Driver fails to realize it -- must be told to stop the vehicle.
 - 3. Driver fails to realize it -- officer stops the vehicle.
- B. Backs up:
 - 1. Driver realizes it and stops his vehicle himself.
 - 2. Driver fails to realize it -- must be told to stop the vehicle.
 - 3. Driver fails to realize it -- officer stops the vehicle.
- A. Improper lane usage:
 - 1. Straddles lane.
 - 2. Starts to make turn, then returns to driving lane.
- B. Disregard of signs and signals:
 - 1. Traffic signals.
 - 2. Stop signs.
 - 3. Yield signs.
- C. Forces traffic off road.

II-A-10
Erratic driving.

II-B HUMAN INDICATORS FOR DETECTING VEHICLE MANEUVERS
OF DRINKING DRIVERS DURING APPREHENSION

Clue Class

II-B-1
Concealing alcoholic
beverages.

II-B-2
Assumes erect position
in seat.

II-B-3
Littering.

II-B-4
Exchanging seating
positions.

Clue Elements and Behaviors

- A. In various places in the car:
 - 1. Under the seats.
 - 2. On floorboards.
 - 3. In glove compartment.
 - 4. Between edge of driver's seat and driver's door.
 - 5. Between driver's seat and transmission hump (bucket seat models).
 - 6. On seat under loose object (e.g., jacket).
- B. About the driver's person:
 - 1. In clothing being worn (e.g., jacket pocket, trouser's pocket).
 - 2. By sitting on the items.
 - 3. In waistband of trousers.
 - 4. In purse or handbag.
- A. Driver sits up -- assumes erect seating position.
- A. Littering of alcoholic beverage containers:
 - 1. Out driver's window.
 - 2. Out other windows.
- B. Littering of other objects:
 - 1. Out driver's window.
 - 2. Out other windows.
- A. Moving vehicle:
 - 1. As vehicle is coming to a halt.
- B. Stationary vehicle:
 - 1. After vehicle has halted.

Clue Class

II-B-5
Signs of emotional
upset.

II-B-6
Flees scene on foot.

Clue Elements and Behaviors

- A. Verbal signs:
 - 1. Talks to self.
- B. Non-verbal signs:
 - 1. Shakes head violently.
 - 2. Pounds steering wheel.
- A. Flees scene on foot before
contact by officer.

SUBJECT # 6

PRE-ARREST INVESTIGATION--FIELD CONTACT

Subject Objective:

To understand the nature of drinking
driver field investigation clues and
their relationship to previously
observed evidence.

Subject Units:

- 6.1 Detection of drinking driver
clues during field contact pre-
arrest investigation.
- 6.2 Determining enforcement action
from accumulated detection
clues.

Appendix:

- A. Field contact investigation
detection clues.
- B. Decision matrix for accumulated
detection clues.

Study Plan

Unit 6.1

Detection of Drinking Driver Clues During Field Contact Pre-Arrest Investigation

Unit Objective:

To understand nature of drinking driver clues during field contact pre-arrest investigation.

Terminal Objective:

- 6.1.3 . . . be able to identify the various types of psychophysical clues that depict alcoholic impairment.

Content Topics:

- 6.1.1 Review of previous subject.
6.1.2 Overview of unit.
6.1.3 Psychophysical and other indicators of alcoholic influence detected during field investigation.
6.1.4 Summary of unit.

Assignments:

1. Read Unit 6.1 of Student Manual on Detection of Drinking Driver Clues During Field Contact Pre-Arrest Investigation.
2. Become familiar with the field contact pre-arrest investigation clues in Subject #6 (Appendix A) in Student Manual.

Study Questions:

1. What types of physiological clues (condition) would be observable in a drinking subject during pre-arrest field investigation?
2. What types of psychological clues (behavior) would be observable in a drinking subject during pre-arrest field investigation?

Study Questions: (cont.)

3. What types of actions committed by a drinking subject would be observable during pre-arrest field investigation?
4. What other types of physical evidence depicting drinking would be observable during pre-arrest field investigation?

Content Material

Unit 6.1

Detection of Drinking Driver Clues During Field Contact Pre-Arrest Investigation

6.1.2 Overview of Unit.

The purpose of this unit is to develop an understanding of the nature of drinking driver clues during the (field contact) pre-arrest investigation. The topic covered is psychophysical and other indicators of alcoholic influence detected during field investigations.

6.1.3 Psychophysical and Other Indicators of Alcoholic Influence Detected During Field Investigations.

Appendix A lists investigation-- Field Contact Detection Clues. Review Section III-A -- Physiological Indicators of Alcoholic Influence Detected During Investigation. These physiological clues are indicative of the physical condition of the suspect driver.

Review Section III-B -- Psychological Indicators of Alcoholic Influence Detected During Investigation. These psychological clues are indicators of the mental and emotional state of mind of the suspect driver.

Review Section III-C -- Action Indicators of Alcoholic Influence Detected During Investigation. These clues relate directly to observable actions that the suspect makes in the officer's presence.

Review Section III-D -- Other Indicators of Alcoholic Influence Detected During Investigation. This section contains significant detection clues that do not fall into either the physiological, psychological, or action categories. Select situations exemplifying the pre-arrest field investigation clues will be demonstrated in class through the use of filmed situations.

Study Plan

Unit 6.2

Determining Enforcement Action From Accumulated Detection Clues

Unit Objective:

To be able to determine appropriate enforcement action based on accumulated detection clues.

Terminal Objective:

- 6.2.3 . . . be able to make appropriate decision as to enforcement action that should be taken.

Content Topics:

- 6.2.1 Review of previous units on detection.
6.2.2 Overview of unit.
6.2.3 Making enforcement decisions.
6.2.4 Summary of unit.

Assignments:

1. Read Unit 6.2 in Student Manual on Determining Enforcement Action From Accumulated Clues.
2. Become familiar with decision matrix in Subject #6, Appendix B.

Study Questions:

1. What is the relationship between the initial clues which cause you to pursue a drinking driver suspect, the reinforcement clues obtained when apprehending the suspect, and those behaviors and conditions you observe during the field pre-arrest investigation? How would you use the sum of these clues to build your case?
2. What alternatives for taking enforcement action does an officer have after considering all his evidence?

Content Material

Unit 6.2

Determining Enforcement Action From Accumulated Detection Clues

6.2.2 Overview of Unit.

The purpose of this unit is to develop the ability to determine appropriate enforcement action based upon accumulated detection clues. The material covered includes assessment of evidence from identification, reinforcement and investigation clues, and making enforcement decisions.

6.2.3 Making Enforcement Decisions.

Phase I (identification clues) served as a catalyst for initial enforcement action. Discussion in Subject #4 indicated that the probable DWI driver was to be stopped immediately, the possible DWI was to be observed for additional clues, and the officer would typically disregard (for purposes of alcohol enforcement) further enforcement action in the event insufficient evidence existed.

Phase II (reinforcement clues) followed the presence of Phase I clues. In Phase II, the officer would observe clues that would lead him to feel that his initial interpretation was definitely reinforced, possibly reinforced, or not reinforced at all.

In Phase III (investigation clues), the officer's previous interpretations (stemming from Phase I and/or Phase II clues) are again either:

1. Definitely reinforced, or
2. Possibly reinforced, or
3. Not reinforced.

Again, it is the sum or accumulation of the clues from all phases that leads to the ultimate enforcement action that is taken. The clues from each phase either independently substantiate previous interpretations, or indicate a need for further evidence. The sum of all clues builds the officer's case against the drinking driver.

Selected filmed situations of various clues from Phases I, II and III will be shown in class. These clue combinations will illustrate the initial observation of Phase I clues, followed by typical clues observed during apprehensions (Phase II), and typical clues that occur during field investigations (Phase III). By this method, the sequence of detection clues by phase is presented in a manner closely resembling the real enforcement situation.

There are relatively few types of enforcement options from which to choose. First, the officer may make a physical arrest for DWI, an arrest that may or may not be accompanied by the simultaneous issuance of a traffic citation for DWI. Secondly, the officer may choose not to arrest for DWI but rather simply issue a traffic citation for an offense other than DWI. Typically, he will charge the driver with a moving violation that relates to the Phase I clue(s) that attracted his attention in the first place (e.g., driving over center line). Third, the officer may decide against both arrest and citation, releasing the driver with a verbal or written warning. Last, the officer may or may not release the driver while seeking additional evidence. This last choice often is used in conjunction with the investigation of traffic accidents where the officer feels that additional on-scene and/or off-scene investigation is warranted before a valid enforcement decision can be made. Appendix B sets forth a decision matrix depicting alternate decisions.

The time and place of the enforcement decision may vary. In the case of the typical "on view" violation, the enforcement decision is made in the field at the scene of the apprehension. Enforcement decisions associated with the investigation of traffic accidents may be made off-scene as soon as follow-up investigation has been completed. In some instances, the enforcement decision will be made at the station, as in the case of the driver who is arrested for DWI but subsequently is determined to have a health-related reason for his erratic driving.

In conjunction with the film presentation of selected accumulated clues, students will have the opportunity in class to practice making enforcement decisions from among the alternatives described in this topic.

APPENDIX A
FIELD CONTACT INVESTIGATION DETECTION CLUES

Unit 6.1

INVESTIGATION -- FIELD CONTACT
DETECTION CLUES
(Phase III)

III-A PHYSIOLOGICAL INDICATORS OF ALCOHOLIC INFLUENCE
DETECTED DURING INVESTIGATION

<u>Clue Class</u>	<u>Clue Elements and Behaviors</u>
III-A-1 Dilated pupils.	A. Obviously dilated pupil.
III-A-2 Slow pupil reaction to light.	A. Slow pupil reaction.
III-A-3 Bloodshot, watery eyes.	A. Bloodshot, watery eyes.
III-A-4 Deficient depth perception.	A. Finger-to-nose test: 1. "Poor" results. B. Picking up coin test: 1. "Poor" results. C. Reaching for object (e.g., door handle of patrol car): 1. Fails to grasp door handle. D. Walks into objects (e.g., patrol car): 1. Collides with object.
III-A-5 Complaint of double vision.	A. Complains of double vision.
III-A-6 Crossed eyes.	A. Eyes are "crossed."

CONTINUED

2 OF 4

Clue Class

III-A-7
Affected speech.

III-A-8
Talkative.

III-A-9
Affected hearing.

III-A-10
Complaint of
ringing in ears.

III-A-11
Increased
reaction time.

III-A-12
Impaired balance.

III-A-13
Impaired walking.

Clue Elements and Behaviors

- A. Impaired speech:
 - 1. Slurred.
 - 2. Slow and deliberate.

- A. Talks continuously on same topic.

- B. Talks continuously on numerous topics (rambling).

- A. Partial loss of hearing:
 - 1. Difficulty in hearing normal conversational tones.
 - 2. Loud car radio.

- B. Hears better than usual.

- A. Complains of ringing in ears (due to high BAC).

- B. Complains of ringing in ears -- no alcohol in body.

- A. Turns during "walking straight line" test:
 - 1. Fails to turn quickly.

- B. Avoids approaching object (e.g., patrol car door being opened):
 - 1. Fails to avoid object.

- A. While standing still:
 - 1. During psychophysical test(s).
 - 2. Non-test situation.

- B. While walking:
 - 1. During psychophysical test(s).
 - 2. Non-test situation.

- A. Stands and walks with legs far apart.

Clue Class

III-A-14
Impaired coordination.

III-A-15
Deliberate body
movements.

III-A-16
Hiccoughing and
belching.

III-A-17
Nausea and
vomiting.

III-A-18
Urge to urinate.

III-A-19
Incontinence of
urine and feces.

III-A-20
Fatigue.

III-A-21
Feeling of warmth.

Clue Elements and Behaviors

A. Uncoordinated movement of hands and fingers (e.g., fumbling while locating driver's license).

A. Arm movements (e.g., picking up an item):
1. Slow, deliberate motion.

B. Leg movements (e.g., walking):
1. Slow, deliberate motion.

C. Head movement:
1. Slow, deliberate motion.

A. Hiccoughs.

B. Belches.

A. Complains of nausea (but no vomiting).

B. Complains of nausea resulting in vomiting.

A. Complains of strong urge to urinate.

A. Incontinence of urine only (e.g., wet trousers).

B. Incontinence of urine and feces (e.g., wet and soiled trousers).

A. While standing.

B. While sitting (e.g., in patrol car).

A. Outside of any vehicle (e.g., not wearing a jacket in cold weather).

B. In vehicle (e.g., patrol vehicle).

Clue Class

III-A-22
Dizziness.

III-A-23
Decreased sense
of pain.

III-A-24
Coarse tremors.

III-A-25
"Blacked out"
condition.

III-A-26
Feelings of numbness.

III-A-27
D-Ts (delirium tremens).

III-A-28
Difficulty in
breathing.

III-A-29
Unconscious.

III-A-30
Abnormal
facial color.

III-A-31
Closely bitten fingernails.

III-A-32
Multiple bruises.

Clue Elements and Behaviors

A. Complaint of dizziness.

A. Injury sustained in officer's presence (e.g., walking into car door); does not react normally.

B. Visible injury not sustained in officer's presence (e.g., laceration).

A. Coarse tremors of hands, arms and head.

A. Cannot recall events immediately preceding the police contact.

A. Complains of various body parts being numb.

A. Active case of D-Ts.

A. Labored breathing (e.g., shallow, very rapid, etc.).

A. Unconscious.

A. Flushed.

B. Pallid.

A. Extremely short.

A. Head.

B. Arms.

C. Hands.

Clue Class

Clue Elements and Behaviors

III-A-33
Tattoos.

A. Professional tattoo(s).

B. Self inflicted tattoo(s).

III-A-34
Odor of alcoholic
beverages on breath.

A. Odor is present:
1. Strong.
2. Moderate.
3. Slight.

III-B PSYCHOLOGICAL INDICATORS OF ALCOHOLIC INFLUENCE
DETECTED DURING INVESTIGATIONS

Clue Class

Clue Elements and Behaviors

III-B-1
Increased self-
confidence.

A. Confident in speech; unsure
in actions (e.g., producing
driver's license).

III-B-2
Loss of comprehension.

A. Understanding officer's
verbal directions:
1. Hears but doesn't understand.

B. Understanding officer's demon-
stration of psychophysical test:
1. Doesn't understand.

III-B-3
Emotionally unstable.

A. Sudden change of emotions
(e.g., anger to laughing).

III-B-4
Disoriented.

A. Dazed condition -- can't
react to environment.

III-B-5
Unprovoked hostility.

A. Hostile (e.g., insulting,
argumentative).

III-B-6
Accommodating mood.

A. Request to exit vehicle:
1. Volunteers freely.
2. Reluctantly consents.
3. Objects.

B. Administration of psycho-
physical tests:
1. Volunteers freely.
2. Reluctantly consents.
3. Objects.

C. Search of vehicle:
1. Volunteers freely
(e.g., "go ahead, take
a look in my car!").
2. Reluctantly consents.
3. Objects.

Clue Class

III-B-7
Impaired judgment.

Clue Elements and Behaviors

- A. Manifest in speech:
 1. Unsolicited, incriminating statements.
 2. Inappropriate statements (e.g., racial remark to black officer).
- B. Manifest in actions:
 1. Consumes alcoholic beverage in officer's presence.
 2. Fails to comply with sound advice of officer (e.g., failure to stay out of path of passing traffic).

III-B-8
Impaired memory.

- A. Address:
 1. Can't recall.
- B. Alphabet:
 1. Can't recall.

III-B-9
Apathy.

- A. Indifferent to events (e.g., total lack of concern).

III-B-10
Use of profanity.

- A. Toward officer:
 1. Used.
 2. Used after warning by officer.
- B. In general conversation:
 1. Used.
 2. Used after warning by officer (e.g., in public area).

III-B-11
Decreased span of attention.

- A. Comprehends but cannot "stay with" topic in question (e.g., a particular psychophysical test).

III-B-12
Attempts to change topic of conversation.

- A. Attempts to change topic of conversation.

III-C ACTION INDICATORS OF ALCOHOLIC INFLUENCE
DETECTED DURING INVESTIGATION

Clue Class

III-C-1
Littering.

III-C-2
Heavy smoking.

III-C-3
Lighting multiple cigarettes.

III-C-4
Averts breath from officer.

III-C-5
Forceful-aggressive actions.

Clue Elements and Behaviors

- A. Tosses cans or bottles from driver's window.
 - B. Tosses cans or bottles from passenger's window.
 - C. Throws other litter from the vehicle.
 - D. Sets alcoholic beverage containers on ground beside vehicle.
- A. Smokes heavily (e.g., "chain-smoking").
 - B. Smokes during the contact.
- A. Lights a cigarette while he has one already burning.
- A. Obviously averts breathing toward officer.
 - B. Slams vehicle doors:
 1. His vehicle.
 2. Patrol vehicle.
 - B. Pulls items from pockets so hard as to cause contents to fall to ground.
 - C. Jerks credentials from officer's hand.
 - D. Slams his wallet down hard on trunk or hood of his car.

III-D OTHER INDICATORS OF ALCOHOLIC INFLUENCE
DETECTED DURING INVESTIGATION

Clue Class

Clue Elements and Behaviors

- III-D-1
Driving in
unusual location.
- III-D-2
Alcoholic
beverages in
vehicle.
- III-D-3
Alcoholic
beverages on
person.
- III-D-4
Unusual physical
appearance.
- A. Contacted at unusual hour in
unusual location -- no
explanation:
1. Not near residence.
2. Not near employment.
- A. Beverages in vehicle:
1. Open containers.
2. Sealed containers.
- A. Beverages on person:
1. Pocket flask.
2. Other type of container
(open).
3. Other type of container
(sealed).
- A. Unusual physical appearance:
1. Torn clothing (e.g.,
trousers).
2. Clothing dirty in spots.
3. Loose necktie.
4. Unbuckled belt.
5. Shirrtail out.
6. Shoes untied.
7. Trousers zipper open.
8. Unbuttoned trousers.
9. Unbuttoned shirt.
10. Vomitus on clothing.
11. Ruffled hair.

APPENDIX B

DECISION MATRIX FOR ACCUMULATED DETECTION CLUES

SUMMARY OF DETECTION CLUES

DECISION MATRIX

Decision Phase	Decision	Actions		
		Arrest	Cite	Release
Identification	Stop			
	Wait			
	Disregard			
Apprehension (Reinforcement)	Definite			
	Possible			
	No			
Field Investigation (Reinforcement)	Definite			
	Possible			
	No			
Accident Investigation (If used)	Follow-up			

SUBJECT # 7

PRE-ARREST INVESTIGATION--ACCIDENTS

Subject Objective:

To understand the nature of drinking driver accident investigation clues and the interrelationship of all detection clues.

Subject Units:

- 7.1 Detection of drinking driver clues during accident pre-arrest investigation.
- 7.2 Relationship of the four detection phases.

Appendix:

- A. Accident investigation detection clues.

Study Plan

Unit 7.1

Detection of Drinking Driver Clues During Accident
Pre-Arrest Investigation

Unit Objective: .

To understand nature of drinking driver clues
during accident pre-arrest investigation.

Terminal Objective:

- 7.1.3 . . . be able to identify and record the types
of pre-arrest investigation clues detected
during accident investigation that indicate
DWI drivers.

Content Topics:

- 7.1.1 Review of previous units on detection.
7.1.2 Overview of unit.
7.1.3 Types of pre-arrest investigation clues that
indicate possible DWI detected during accident
investigation.
7.1.4 Summary of unit.

Assignments:

1. Read Unit 7.1 in Student Manual on Detection of
Drinking Driver Clues During Accident Pre-Arrest
Investigation.
2. Become familiar with Accident Investigation
Detection Clues in Subject #7 (Appendix A) in
Student Manual.

Study Questions:

1. What types of evidence, determinable through
the process of accident reconstruction, would
an officer encounter at the scene of an acci-
dent that would indicate that a driver was
possibly DWI?
2. What types of human behavior would an officer
observe at scene of an accident that would
indicate a driver was possibly DWI?

Content Material

Unit 7.1

Detection of Drinking Driver Clues During Accident Pre-Arrest Investigation

7.1.2 Overview of Unit.

The purpose of this unit is to develop an understanding of the nature of drinking driver clues during accident pre-arrest investigation. Topics include identifying and recording the vehicle maneuver clues and human behavior clues that indicate possible DWI drivers.

7.1.3 Types of Pre-Arrest Investigation Clues that Indicate Possible DWI Detected During Accident Investigation.

Appendix A lists Accident Investigation Detection Clues. Become familiar with Section IV-A -- Non-Human Indicators of Alcoholic Influence Detected During Accident Investigation and Section IV-B of Appendix A -- Human Indicators of Alcoholic Influence Detected During Accident Investigation.

These sections list the various non-human clues (vehicle maneuver clues) that may be determined during accident reconstruction and the several human indicators that may become evident in the course of interviewing the suspect driver.

Study Plan

Unit 7.2

Interrelation of the Four Detection Phases

Unit Objective:

To understand the interrelationships of the four detection phases.

Terminal Objective:

- 7.2.3 . . . be able to describe the relationship between the four detection phases.

Content Topics:

- 7.1.1 Review of previous units on decision making.
- 7.1.2 Overview of unit.
- 7.1.3 Interrelation of the four detection phases.
- 7.1.4 Summary of unit.

Assignments:

1. Read Unit 7.2 in the Student Manual on Interrelating the Four Detection Phases.
2. Become familiar with detection clue decision flow chart (Chart 7-1) in this unit.

Study Questions:

1. How many types of decisions about enforcement actions would an officer make when identifying, apprehending and investigating a drinking driver suspect?
2. How do the different types (phases) of detection clues studied in Subject #4, #5, #6 and #7 interrelate? Are they independent of one another? Dependent on others? Combination of both?
3. What is the purpose and function of each detection phase?

Content Material

Unit 7.2

Interrelation of the Four Detection Phases

7.2.2 Overview of Unit.

The purpose of this unit is to develop and understanding of the interrelationships of the four detection phases.

7.2.3 Interrelation of the Four Detection Phases.

In previous units, the concept of four detection phases has been discussed. The various detection phases are closely related because the sum total of all detection clues provide the reasonable grounds to believe that the driver committed the offense of DWI -- reasonable grounds does not stem from "after the fact" (i.e., "after the arrest") measurements of the BAC of the person.

Application of the concepts of detection phases and detection clues involve several levels of decision-making. First, there is an initial enforcement decision to be made -- whether to stop the suspect on the basis of the Phase I clues that have been observed. Second, there is an enforcement decision to be made after the (face-to-face) field investigation is concluded. This decision involves the total of the detection clues from Phases I, II, and III. Clues from all three phases go into the making of the appropriate enforcement decision. Last, a decision has to be made regarding enforcement action when the investigation of a traffic accident has been concluded. That decision involves detection clues that really originated back in Phase I, although the investing officer "sees" these clues through the process of accident reconstruction. In addition, he usually has the benefit of face-to-face contact (Phase III) with the suspect driver unless the driver is seriously injured or killed in the crash.

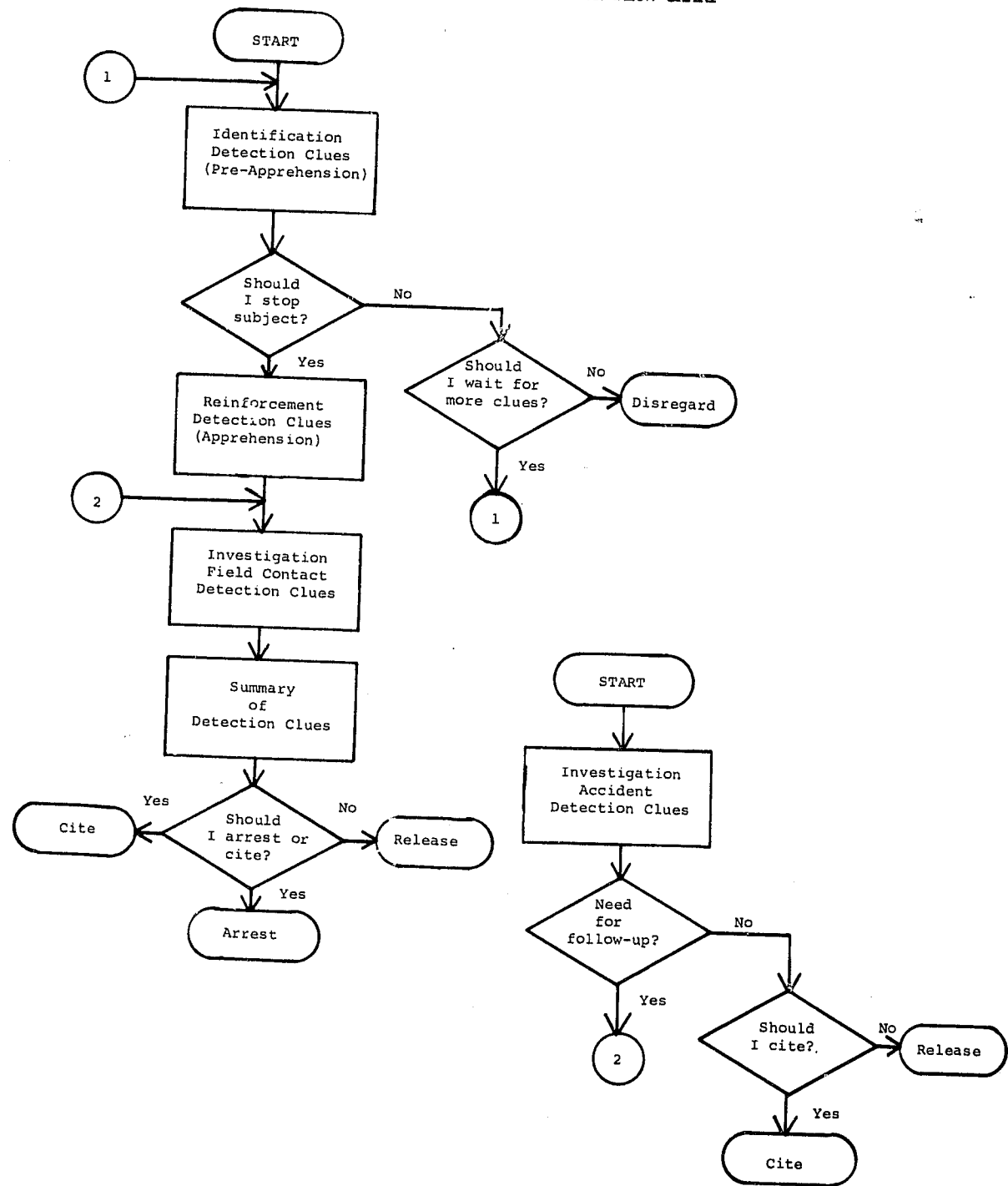
Thus, the various clues are interrelated as follows:

1. Identification clues (Phase I) are the initial catalyst that start the enforcement process.
2. Reinforcement clues (Phase II) substantiate or fail to substantiate the initial interpretation.

3. Field contact investigation clues (Phase III) further substantiate or fail to substantiate previous interpretations.
4. Accident investigation clues (Phase IV) initiate enforcement action but require different handling due to legal restrictions.

Chart 7-1 "Detection Clue Decision Flow Chart" sets forth where the various detection phases apply to the enforcement process. Chart 7-1 also reflects the overall sequence of events that lead to the enforcement decision of physical arrest, issuance of a traffic citation, or release of the suspect driver.

Chart 7-1
DETECTION CLUE DECISION FLOW CHART



APPENDIX A
ACCIDENT INVESTIGATION DETECTION CLUES

Unit 7.1

INVESTIGATION--ACCIDENT
DETECTION CLUES
(Phase IV)

IV-A NON-HUMAN INDICATORS OF ALCOHOLIC INFLUENCE
DETECTED DURING ACCIDENT INVESTIGATION

<u>Clue Class</u>	<u>Clue Elements and Behaviors</u>
IV-A-1 Skidmarks.	A. Absence of any skidmarks. B. Short skidmarks. C. Lengthy skidmarks.
IV-A-2 Tire prints on shoulder of road.	A. Entirely on shoulder. B. Partially on shoulder.
IV-A-3 Evidence of driving on wrong side of road.	A. Completely in opposing lane: 1. Final resting position of vehicles. 2. Location of damage on vehicles. 3. Location of debris on roadway. 4. Tire prints or skidmarks on roadway. 5. Statements (e.g., witnesses). B. Partially in opposing lane: 1. Final resting position of vehicles. 2. Location of damage on vehicles. 3. Location of debris on roadway. 4. Tire prints or skidmarks on roadway. 5. Statements (e.g., witnesses).

Clue Class

IV-A-4
Evidence of
weaving in
roadway.

IV-A-5
Evidence of
driving with-
out lights.

IV-A-6
Evidence of
multiple pre-
vious accidents.

IV-A-7
Alcoholic
beverage con-
tainers in
vehicle.

IV-A-8
Hit-run accident.

Clue Elements and Behaviors

- A. Damage to objects (e.g., cars, mailboxes) on both sides of roadway.
 - B. Tire prints and skidmarks on both sides of roadway.
 - C. Statements (e.g., witnesses).
- A. Statements re: driving without lights.
 - B. Light switch in "off" position.
 - C. Unoxidized headlight filament(s).
- A. Vehicle displays evidence of numerous minor collisions (e.g., dents, scratches).
- A. Containers present in vehicle:
 - 1. Evidence of recent consumption (e.g., open, cold, wet).
 - 2. No evidence of recent consumption (e.g., unopened, bagged).
- A. Responsible vehicle and driver fled scene.
 - B. Responsible vehicle present; driver fled scene.

IV-B HUMAN INDICATORS OF ALCOHOLIC INFLUENCE
DETECTED DURING ACCIDENT INVESTIGATION*

Clue Class

Clue Elements and Behaviors

IV-B-1
Hazard
perception.

- A. Driver states he did not perceive hazard:
 - 1. Attempted evasive action.
 - 2. Did not attempt evasive action.
- B. Driver states he perceived hazard:
 - 1. Attempted evasive action.
 - 2. Did not attempt evasive action.

IV-B-2
Driver
indifference.

- A. Driver indifferent to seriousness of accident.

IV-B-3
Awareness of
driver.

- A. Driver unaware that accident occurred.
- B. Driver unconscious.

* The clues listed are unique to an accident situation.
The human indicator clues listed in Appendix A of
Subject 6 also apply as Phase IV human indicators.

SUBJECT # 8

HANDLING THE DRINKING DRIVER SUSPECT

Subject Objective:

To understand the procedure for
handling the drinking driver
suspect.

Subject Units:

- 8.1 Citation or release of the non-DWI driver.
- 8.2 Providing care for persons needing medical attention.
- 8.3 Arrest of drinking driver suspect.
- 8.4 Recording of and documenting evidence.
- 8.5 Conducting records check.

Study Plan

Unit 8.1

Citation or Release of the Non-DWI Driver

Unit Objective:

To understand the procedures for citing or releasing the non-DWI driver.

Terminal Objective:

- 8.1.3 . . . be able to cite or release the non-DWI driver.

Content Topics:

- 8.1.1 Review of Subject #6.
8.1.2 Overview of unit.
8.1.3 Citation or release of the non-DWI driver.
8.1.4 Summary of unit.

Assignment:

1. Read Unit 8.1 in Student Manual on Citation or Release of the Non-DWI Driver.

Study Questions:

1. Having stopped a drinking driver suspect and found no evidence of alcohol impairment, what types of facts or circumstances would cause you to issue a citation? Under what circumstances would you simply admonish and release the non-DWI driver?
2. How would you define "no evidence of alcohol impairment"?
3. Is a vigorous DWI enforcement program likely to result in more frequent or less frequent use of the verbal warning than before such a program was undertaken?

Content Material

Unit 8.1

Citation or Release of the Non-DWI Driver

8.1.2 Overview of Unit.

The purpose of the unit is to develop an understanding of the procedures for citing or releasing the non-DWI driver.

8.1.3 Citation or Release of the Non-DWI Driver

Obviously, not all investigations of driving under the influence will result in the physical arrest of the drinking driver. Various factors and circumstances will be identified during the field contact that will result in insufficient grounds for a DWI arrest. The available enforcement alternatives are outlined in Chart 8-1.

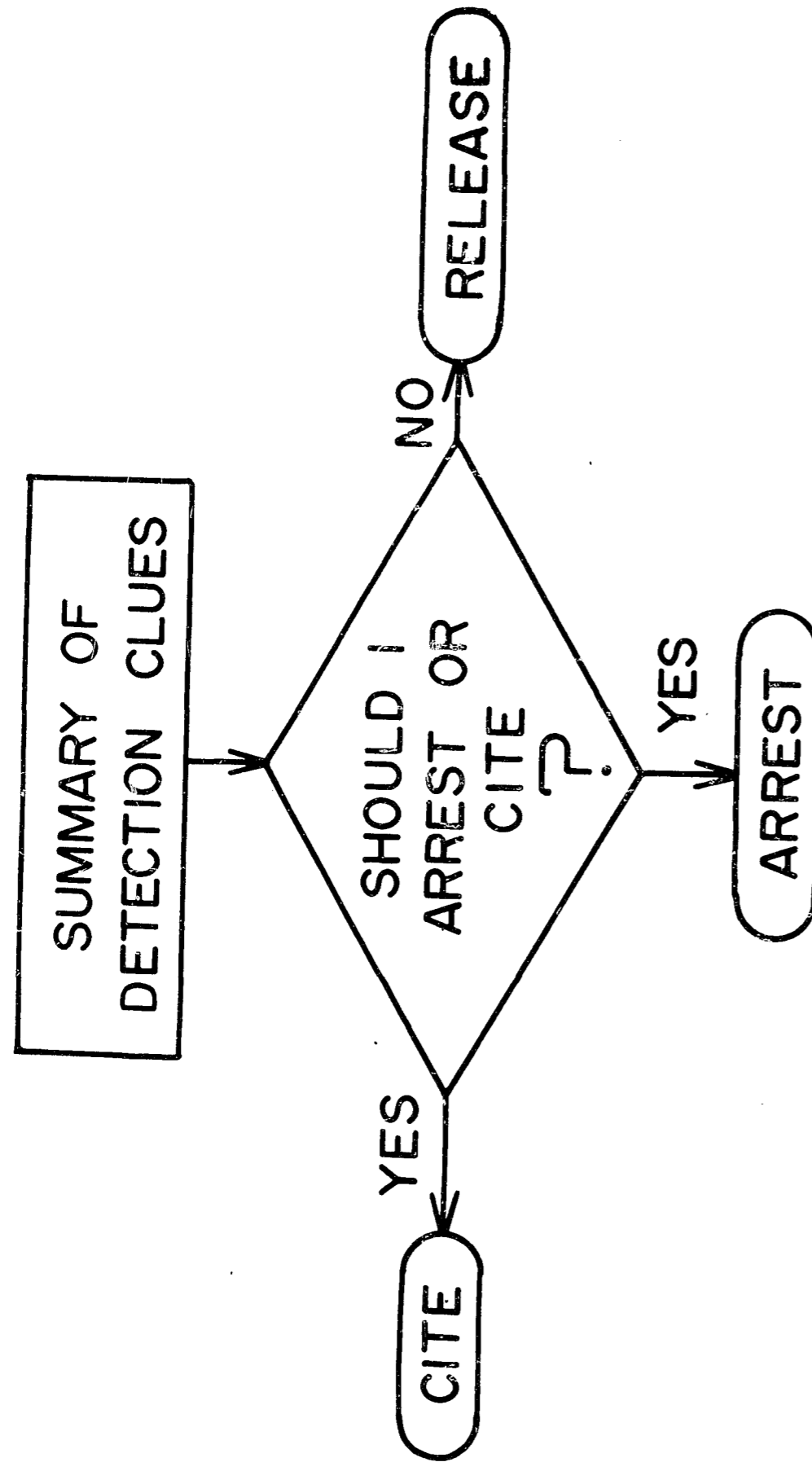
The following discussion is intended to describe, in general terms, some of the factors that will result in issuing a citation (for a violation other than DWI) or simply releasing the errant driver rather than physically arresting him.

Having decided not to physically arrest the driver, you must resolve the question of whether or not to issue a citation for a violation for which you do have sufficient evidence to obtain a conviction. The violation for which you are considering issuing a citation will usually be the driving behavior that led you to notice the driver and his vehicle in the first place. Alternatively, there may be various licensing, registration and equipment violations discovered in the course of your investigation and field contact with the suspect.

The following violations call for the issuance of a citation as the most effective enforcement action:

1. Hazardous violations of rules of the road, such as over the centerline, failure to yield right of way, etc. These are hazardous moving violations likely to result in an accident.
2. Serious vehicle equipment violations (e.g., defective brakes).

ENFORCEMENT ALTERNATIVES



3. Driver license violations, such as no license in possession or violating a license restriction.
4. Registration violations (e.g., improper transfer of plates).

Violations under 4 (above) do not include driving while license is suspended or revoked since these are best discussed separately. They are not included above because, while definite enforcement action should be taken against the violator, the range of enforcement action taken in various jurisdictions differs widely.

Some agencies do not act without a certified copy of a suspension/revocation order, thus permitting the violator to drive away from the scene where he was contacted.

At the other extreme there are agencies that make a physical arrest based upon preliminary information from the driver licensing authority. They do not delay action until a certified driving record is received. Consequently, as the arresting officer, you must be guided by your department's policies regarding immediate enforcement action against drivers with suspended or revoked licenses.

The important point to note is that issuance of a citation for the above offenses is to be done only when you have concluded that there is no evidence of alcohol impairment. This lack of impairment could result from the driver either (1) having consumed no alcoholic beverages; or (2) having had such minimal consumption that you are confident that no impairment has taken place.

It must be recognized that there are many field contacts where neither physical arrest nor issuance of a citation is appropriate. In fact, the officer who is conscientious in his drinking driver enforcement activities will encounter this circumstance often.

It is anticipated that the officer will often utilize verbal warnings for minor violations, since he is "following up" on subtle clues rather than only the very obvious clues that DWI drivers typically exhibit.

Thus, the officer will frequently admonish drivers for (non-hazardous) minor traffic law violations and minor vehicle equipment violations, in lieu of issuing citations. This can be done, for example, in the interests of gaining and keeping

citizen support (public relations) or for the more practical reason of not "bogging down" the officer. Instead, it keeps him free to make more traffic stops, issue more citations for hazardous violations, give more verbal warnings for minor violations, and make more DWI arrests.

Study Plan

Unit 8.2

Providing Care for Persons Needing Medical Attention

Unit Objective:

To understand the nature of medical problems related to or similar to intoxication and to know the proper procedure for providing assistance to persons needing medical attention.

Terminal Objectives:

- 8.2.3 . . . be able to list various physiological symptoms and major mental disorders of dangerous medical problems of the intoxicated.
- 8.2.4 . . . be able to list various pathological conditions that have symptoms in common with alcohol influence.
- 8.2.5 . . . be able to list and describe various types of first aid remedies for providing assistance to ill drivers.
- 8.2.6 . . . be able to list and describe procedures for handling persons with medical problems.
- 8.2.7 . . . be able to list and describe various types of community medical resources available for emergency treatment.

Content Topics:

- 8.2.1 Review of Subject #6.
- 8.2.2 Overview of unit.
- 8.2.3 Symptoms of dangerous medical problems of the intoxicated.
- 8.2.4 Pathological conditions that have symptoms in common with those of alcohol influence.
- 8.2.5 Types of emergency aid in alcohol enforcement.
- 8.2.6 Procedures for handling persons with medical problems.

Content Topics: (cont.)

- 8.2.7 Community medical resources.
- 8.2.8 Summary of unit.

Assignment:

1. Read Unit 8.2 in Student Manual on Providing Care for Persons Needing Medical Attention.

Study Questions:

1. What are the types of symptoms of dangerous medical problems of the intoxicated that an officer should be aware of in his alcohol enforcement tasks?
2. What illnesses or injuries that have symptoms in common with those of alcohol influence might an officer encounter in his alcohol enforcement activities?
3. What are the various types of first aid treatment that you could use in emergency situations found when making alcohol enforcement contacts?
4. What are the various procedures you would use in handling persons with medical problems found while you are making alcohol enforcement contacts?
5. What types of medical facilities or resources are available in your community or area that are equipped to treat persons with medical problems? Persons with alcohol-involved medical problems?

Content Material

Unit 8.2

Providing Care for Persons Needing Medical Attention

8.2.2 Overview of Unit.

The purpose of this unit is to develop understanding of the nature of medical problems related or similar to intoxication and to explain the proper procedure for providing assistance to persons needing medical attention. Topics include symptoms of dangerous medical problems of the intoxicated; pathological conditions with symptoms similar to alcohol influence; types of emergency aid in alcohol enforcement; procedures for handling persons with medical problems; and community medical resources.

8.2.3 Symptoms of Dangerous Medical Problems of the Intoxicated.

Persons suspected of driving while intoxicated may well be exhibiting symptoms of medical problems rather than routine DWI behavior. No doubt you have heard of or have been involved with a person arrested for DWI who, investigation later reveals, has consumed little or no alcohol. Available statistics reveal that this type of situation does not happen frequently; however, because of the possible consequences, it is imperative that you know how to recognize various medical symptoms.

Dangerous medical problems that may be found in contacting drinking driver suspects are of two types: physiological and psychological.

Physiological problems have observable symptoms; that is, they are capable of being noted by the officer who takes the time to look for them and recognizes what he sees. The first type involves evidence of impairment of circulation -- impairment due to interference with normal respiration. The high BAC has affected the body to the point where there is a noticeable decrease in both the rate and volume of breathing. The body is not receiving an adequate supply of oxygen, thus the ears and lips become bluish (cyanosis) and the face very pale. These are due to the subject's failing circulation.

Accompanying the respiratory symptom is a sub-normal temperature; the person feels cool to the touch. You can hear the sound of breathing, which also becomes irregular in rhythm. The pulse becomes slow and weak.

The person whose condition is as described here may lapse into a coma. If such coma continues untreated for approximately 5-10 hours, it usually is fatal. Death is due to paralysis of the respiratory system. Note that the usual 8-hour lodging in jail that most agencies require could fall within this 5-10 hour period. Death can occur despite the fact that nature is self-protective in several senses. First, coma frequently occurs before a fatal dose can be consumed, preventing the ingestion of such large amounts that may cause death. Second, the rapid consumption of large amounts of alcohol often induces vomiting, during which the potency of alcohol is reduced.

It takes a considerable amount of concentrated effort to attain such a high degree of intoxication that death may result. Nevertheless, experience reveals that people do drink to such proportions and that a small percentage of such drinkers do die as a result. These deaths indicate clearly that adequate screening of physiological symptoms was not performed during the arrest and custody functions.

The second type of dangerous medical problems deals with mental problems. There are eight such categories; a brief description of each follows:

1. Acute alcoholism: alcohol-caused severe chronic behavior interfering with the drinker's health and his social or economic functioning, accompanied by a loss of control after drinking has begun.
2. Delirium Tremens (D-T's): a nervous system disorder manifested by violent excitement or mania caused by the excessive and continued use of alcohol or the abrupt termination of the use of alcohol after a period of prolonged use.
3. Korsakoff's Psychosis: disorientation or no appreciation of time or place; the victim talks freely and often plausibly about events that have never taken place.
4. Acute alcoholic hallucinosis: alcohol induced hallucinations or seeing and hearing things that are not real.

5. Alcoholic paranoia: alcohol induced feelings of persecution, that people are "out to get me".
6. Chronic alcoholic deterioration: the deterioration of physical and mental processes caused by excessive long term use of alcohol.
7. Alcoholic epilepsy: epileptic seizure triggered by the use of alcohol producing many symptoms resembling intoxication though the BAC may be as low as .02%.
8. Dipsomania: an uncontrollable desire for intoxicating drinks.

As in the case of any substance to which a person becomes addicted, there are certain physiological effects that occur when that substance is withdrawn. It is the stress of withdrawal symptoms during periods of abstinence that lead alcoholics to seek relief by using more alcohol.

The major symptoms of abstinence include convulsions, delirium, tremors, marked weakness, hyperpyrexia (high body temperature) and hypertension (nervousness). Lesser symptoms include insomnia, anorexia (loss of appetite), vomiting, nausea and diarrhea.

8.2.4 Pathological Conditions with Symptoms Similar to Alcohol Influence.

There are numerous body conditions that produce symptoms that are similar to symptoms of alcohol influence. The following information reflects these symptoms that are similar to those caused by alcohol influence; however, only a few of the pathological conditions that could cause these symptoms to be exhibited are discussed. An attempt has been made to indicate those pathological conditions that would be encountered most frequently.

The first symptom similar to alcoholic influence to be discussed is that of an acetone odor on the breath of the DWI suspect. This is a fruity odor that can be mistaken for the odor of alcoholic beverages on the person's breath. Probably the most common pathological conditions causing an acetone odor are diabetes, vomiting and stomach ulcer.

In the course of a DWI investigation, you may determine that the suspect has experienced full or partial loss of memory (amnesia). This may be caused by consumption of alcohol or by such body conditions as epilepsy, traumatic injury of the brain (such as in a traffic accident) or a phenomena known as Korsakoff's Psychosis (defined earlier in this section).

Ataxia, or failure of muscle coordination, is given considerable weight as a measure of alcoholic influence; however, it may be caused by chemicals (e.g., lead), drugs (e.g., anti-histamines, barbiturates and other sedatives) and gasses (e.g., carbon monoxide). It may also be a case of traumatic ataxia due to injuries commonly sustained in traffic accidents (example -- head injury).

The DWI suspect may be in a stupor, lapsing into a coma (unnatural, heavy, deep sleep sometimes ending in death). Such a coma may be a diabetic coma or, on the contrary, insulin shock due to an overdose of insulin. It may well be a coma brought on by head injuries such as concussion or skull fracture.

Cases may be encountered where delirium is present. It consists of hallucinations, incoherence, illusions, etc. Of course, it may result from alcoholic influence but you should not overlook the possibility that it may stem from diabetes; the stopping of a drug habit or the use of legitimate and illegitimate drugs such as marijuana, cocaine, opium derivatives; or from injections causing allergic reactions such as horse serum and penicillin.

Drowsiness is a symptom frequently noted by investigating officers. It may stem from the liberal consumption of alcoholic beverages, coupled with the late hour during which most drinking driver contacts are made. Such drowsiness may be associated with a brain concussion (a common injury in traffic accidents), diabetes and the use of many prescription and non-prescription drugs.

Inspection of the suspect's eyes may reveal one or more eye disorders, such as bloodshot eyes, dilated pupils, contracted pupils, etc. The general effect of alcohol on the eyes is to cause the pupils to dilate more than usual and to fail to constrict (when exposed to bright light) as quickly as they would normally. This occurs as part of the general depressant effect that alcohol has on the human body. It must be noted, however, that there are many pathological conditions which may similarly affect the eyes. Those most frequently found include glaucoma, hay fever and other allergic disorders, far-sightedness, nearsightedness, use of opium derivatives, concussion and fright.

A flushed face is often interpreted as a sign of alcohol influence. Indeed, it may be caused by alcohol, but there are numerous body conditions that also produce a flushed face. They include chronic inflammations of the face, arteriosclerosis (hardening of the arteries), diabetes, emotions (blushing) and chemical or drug poisoning (e.g., carbon monoxide).

Shock and collapse may be caused by such things as heart trouble, skull fracture, insulin shock, and apoplexy (stroke).

Speech disorders are a clue that virtually all officers consider to be significant in the identification of DWI drivers. They are certainly correct in recognizing that speech is often affected by alcohol, but you should keep in mind that facial paralysis, mental deficiencies, and Parkinson's Disease (shaking palsy) can be the cause of speech disorders as well. In addition, missing teeth are frequently the cause of affected speech, especially in older persons.

Upon occasion, you may observe tremors or muscular twitching in DWI suspects. This can stem from numerous causes, the most frequent of which might be neurosis (functional disorder of the nervous system), senility, brain tumor, chemical or drug poisoning (e.g., narcotics, tobacco), and general paresis (softening of the brain, usually of older people).

Finally, vertigo or dizziness may be noted in the course of your DWI contact. This symptom obviously can be caused by alcohol influence but may stem from any one of a host of other causes as well. Some of these might be motion sickness; injuries to the brain; use of barbiturates, marijuana or opium; and Meniere's Disease (congestion of the inner ear).

In summary, you might conclude that the fact that there are so many conditions with symptoms resembling alcohol influence it could easily discourage officers from placing much weight on their own observations. After all, some of these symptoms have been known to fool physicians. All of this is true and can be used as an excuse for not performing drinking driver enforcement since, if you don't make contacts of DWI suspects, you aren't faced with having to recognize those symptoms and determine their true cause. It must be said, however, that the vast majority of DWI arrests do not involve such medical problems. Such cases are in the minority but the possible consequences dictate that you need to know how to recognize basic symptoms of medical problems -- problems that require some form of follow-up to protect the DWI suspect and

you. The well-informed and conscientious officer is the one who is not deterred by the possibility of encountering a person with a possible medical problem, but rather is competent to properly handle this type of a situation.

8.2.5 Types of Emergency Aid in Alcohol Enforcement.

A small percentage of what were believed to be routine DWI contacts turn out to be either (1) a person who is not a drinking driver but rather has medical problems; or, (2) a drinking driver whose condition is made more serious by the presence of a medical problem.

Discussion here will be limited to the latter category since it is not the intent of this course to cover the general topic of first aid. It is important, though, that you be informed of the few emergency situations that alcohol influence presents. The particular situations are failure of the respiratory system and failure of the circulatory system, both of which may be caused by the depressant effect of relatively large amounts of alcohol.

Failure of the respiratory system is apt to occur for reasons previously described. The application of rescue breathing or artificial respiration is obviously the emergency aid that is needed followed by medical treatment.

The second emergency situation that may occur will take place in conjunction with the above respiratory failure. The depressant effect of alcohol can result in cardiac arrest, in which case the application of cardio-pulmonary resuscitation is imperative with subsequent transportation to the nearest emergency medical facility.

Other situations requiring first aid treatment that may be encountered in drinking driver enforcement contacts involve diabetic coma, insulin shock, carbon monoxide poisoning, inhalation of gasoline vapors, bee stings and sunstroke.

8.2.6 Procedures for Handling Persons with Medical Problems.

If during the course of a field contact (non-accident) you identify possible medical problems, prompt notification should be made to your supervisor. Subsequently, the subject should be examined by a physician to insure that proper screening takes place to prevent needless loss of life.

Unless a chemical test shows that the subject's system contains sufficient alcohol to account for his condition, never lodge the person in jail if:

1. He cannot walk straight.
2. His balance is impaired.
3. His breathing is labored.

If the subject shows obvious impairment but has a relatively low BAC (e.g., .04%), he may be ill in addition to having consumed alcohol or he may have been taking drugs in addition to alcohol.

Proper custodial procedure calls for those who are lodged as intoxicated to be inspected at least twice an hour to insure that their bodily processes have not been depressed to dangerous levels.

Often the possibility of combinations of injuries and alcohol influence will be found at the scene of traffic accidents. Proper procedures in this event call for any DWI suspect showing (or complaining) of any injury to be examined by a physician before being lodged in jail. Again, this is done for the protection of all concerned -- the suspect, you and your department.

8.2.7 Community Medical Resources.

There are several types of medical resources available to you, depending upon the nature of your jurisdiction. Probably the most commonly used resource is the hospital emergency room. Other resources may include emergency treatment clinics, detoxification centers (typically affiliated with hospitals), and the offices or homes of private physicians.

The availability of these medical resources is, of course, dependent upon the proximity of them to your jurisdiction and the seriousness of the emergency. Utilization of them should be dependent on pre-arranged planning for such emergencies. Transportation to such medical resources will be by means of ambulance, patrol car, air ambulance, etc.

Study Plan

Unit 8.3

Arrest of the Drinking Driver

Unit Objective:

To know the proper procedures for arresting and transporting a drinking driver.

Terminal Objectives:

- 8.3.3 . . . be able to demonstrate the proper procedure for advising an arrested drinking driver of his Miranda rights.
- 8.3.4 . . . be able to describe the proper procedure for transporting the arrested drinking driver to the chemical test location or detention facility.

Content Topics:

- 8.3.1 Review of previous Subject #6.
- 8.3.2 Overview of unit.
- 8.3.3 Advising subject of his Miranda rights.
- 8.3.4 Transportation of the arrested subject.
- 8.3.5 Summary of unit.

Assignment:

- 1. Read Unit 8.3 of Student Manual on Arrest of the Drinking Driver.

Study Questions:

- 1. What are the procedures for advising an arrested drinking driver of his Miranda rights?
- 2. Should the driver be advised of his Miranda rights in the early or late stages of the field contact?

Study Questions: (cont.)

- 3. What is the primary criterion for the officer to consider in deciding when to advise a drinking driver of his Miranda rights?
- 4. What procedures should be followed in transporting the arrested drinking driver?
- 5. Should arrested drinking drivers be handcuffed?

Content Material

Unit 8.3

Arrest of the Drinking Driver

8.3.2 Overview of Unit.

The purpose of this unit is to establish the proper procedure for arresting and transporting a drinking driver suspect. Topics include the advising of a subject concerning his rights and transporting the subject to a location for chemical testing.

8.3.3 Advising Subject of his Constitutional (Miranda) Rights.

There is some controversy as to whether or not a person suspected of the offense of DWI must be advised of his Miranda rights and, if so, when he must be advised. It is essential that you, the arresting officer, be well informed on this topic in view of the hue and cry that can be raised when it appears that a defendant's constitutional rights may have been violated.

The following discussion is intended not only to help you in your field contact, but in the courtroom as well, for it is there that the quality of your work is open for all to see and hear.

1. Elements of Advisement Requirement.

There are three basic elements of the requirement that a suspect be advised of his Miranda rights. They are required when you:

- a. Focus your investigation of an offense on a specific person (a discussion of "focusing" takes place later in this section).
- b. Take the suspect into custody for the offense.
 - . This may or may not be a formal arrest situation; the weight of authority appears to be that there are instances when a suspect who is not actually under arrest must be advised. If, for example, a suspect is not formally arrested but is ordered to sit in the back seat of a patrol car and is not permitted to leave until after the interview, he must be advised of his Miranda rights.

- c. Attempt to elicit incriminating information from the suspect.

- . The key point to note in the Miranda decision is that it is intended to guarantee that incriminating verbal evidence will not be improperly elicited from a suspect and then used against him in court. Verbal statements not made freely, knowingly, and intelligently are prohibited from use against the suspect at trial.

2. Focusing Your Investigation:

The question of when you "focus" your investigation of the offense of DWI is of prime concern. In all probability, a sharp defense counsel can, at trial, push back the focusing of your investigation of his client to a point much earlier in your field contact than you would like. Thus, it may be advantageous to advise the DWI suspect of his rights early in your investigation.

Generally, case law has permitted general inquiry into the reasons for a driver's erratic driving behavior. Thus, general questioning to determine the presence of an illness or injury, use of medicine, lack of sleep, etc., has until now been upheld by most courts. It is becoming increasingly difficult to pinpoint where general inquiry ends and "focusing" begins.

It can be (and has been successfully) argued that your focus begins at the point where you first detect the odor of alcoholic beverages upon initial face-to-face contact with the driver. Thus, an immediate advice of Miranda rights is necessary. This would have you, in the same breath, asking for his driver's license and advising him of his rights.

In those few cases of obvious intoxication, this procedure is applicable. However, it is not likely that you will often be that fortunate. It is more likely that you will be faced with the driver that displays more subtle clues, requiring greater analysis and judgment on your part. The presence of these types of clues is precisely what makes difficult the pinpointing of where your general inquiry ends and the focusing begins.

Thus, the best general rule that can be stated at the present time is that you certainly have "focused" your investigation on the DWI suspect by the time that you are attempting to elicit incriminating verbal statements from him -- and it is very possible that the investigation may even have "focused" at some earlier point in the field contact.

3. When to Advise of Rights:

As indicated by the following listing, there are many points in the DWI field contact at which officers choose to advise the suspect of his Miranda rights. Officers have been observed to advise suspects of their rights at various points in the field contact-arrest process. Chart 8-2 lists a number of these points.

Briefly, there are two conflicting philosophies concerning when to advise a DWI suspect of his Miranda rights. First, it is argued that premature advising may subsequently result in poor cooperation in performing psychophysical tests, answering questions, and so on. Proponents of this philosophy would tell you to not advise of rights until absolutely necessary, thus keeping the suspect's cooperation for as long as possible.

This group might also state that you should not be too concerned with what the suspect says but rather you should be guided by driving behavior, observed physical condition, and other non-verbal clues. They point to case law that indicates that Miranda only applies to verbal evidence, not physical evidence.

The second position that could be taken is that delayed advising of rights will render incriminating statements inadmissible. This second group would advise of rights far earlier in the field contact than the former group. Their argument might lean heavily on the fact that proper investigative technique in DWI cases will always require that questioning be attempted to determine quantity of alcoholic beverages consumed, type of beverage, where and when it was consumed, etc.

CHART 8-2

WHEN TO ADVISE OF MIRANDA RIGHTS?

- . INITIAL CONTACT
- . FIRST MENTION OF DRINKING
- . PSYCHOPHYSICAL TESTS
- . AT TIME OF ARREST
- . TRANSPORTATION
- . COMPLETION OF A.I.R. FORM
- . ADVICE OF CHEMICAL TEST RIGHTS
- . VIDEOTAPING
- . CHEMICAL TEST
- . NO ADVICE OF RIGHTS

Since questioning will take place at some point, advising of rights should be done as soon as possible to insure that whatever statements are made will be admissible at trial. Proponents of this position would argue as well that prompt advising of rights tends to have a favorable effect on judges and juries, leaving them with an impression of the officer as a fair and impartial investigator.

In view of the foregoing discussion, it is difficult to specify at what exact point you should advise a suspect of his Miranda rights. Well defined departmental policies in this area, endorsed by the prosecuting attorney, would obviously provide some guidance to the individual officer. Even then, however, the ultimate application of such policy rests with the officer.

As an operational enforcement officer, you are the person who must balance the pros and cons of each philosophy, existing departmental policy (if any), and the circumstances you are confronted with in a specific field contact, arriving at what you feel is the most appropriate point to advise a particular DWI suspect of his Miranda rights.

4. Utilizing a Printed Card:

Many officers are skeptical about literally reading the Miranda rights from a printed card. Unless still a recruit, the officer is likely to state that he doesn't need to read the rights -- he can recite them from memory. In most cases he is absolutely right; he could recite them backward and forward. Nevertheless, there are several reasons for even the most experienced officer to read the rights. Briefly they are:

- a. Offers Less Chance of Error -- even the best of us make mistakes at times. In order for you to testify with 100% accuracy that you advised John Doe of his rights through the use of certain wording, it will usually be necessary for you to have read it to him.

- b. Expedite the Process -- instead of taking the time to think of the exact wording, it may well be quicker (and more impressionable) to simply read from a printed card contained in your notebook, taped to your clipboard, printed on the reverse of a business card, etc.
- c. Establishes Uniformity -- since all officers of your department would be utilizing the same format and wording that you are using; a logical practice since the same rights apply to all persons in your agency's jurisdiction.
- d. More Effective at Trial -- probably the most important reason for reading the Miranda rights is a clear demonstration of your utilization of the most accurate procedure that could be used.

Certainly, unusual circumstances encountered in field contacts may force you to recite the Miranda rights from memory. Since most DWI (field) contacts are routine; however, reading the rights is usually feasible and may be especially helpful to your case at trial.

The wording of the advising of rights must be the same (or similar to) as that contained in Chart 8-3.

8.3.4 Transportation of the Arrested Subject.

The basic principles of prisoner transportation apply to the transportation of arrested DWI subjects since the objectives are identical:

1. Protection of the officer.
2. Prevention of escape of the arrested subject.
3. Protection of the arrested subject.

Obviously, objective #1 is of primary concern to you. This is only natural and this discussion is not intended to play down protection of the arresting officer. Rather, it is intended to emphasize that the three objectives are very compatible; that steps taken to accomplish any one objective tend to accomplish the others as well.

CHART 8-3

MIRANDA RIGHTS

1. You have the right to remain silent.
2. If you choose to waive your right to remain silent, anything you say, and any answers you give, will be used against you in court.
3. You have the right to talk to an attorney or other person of your choice before questioning, and to have an attorney or other person of your choice present during any questioning.
4. If you want an attorney, but cannot afford one, an attorney will be appointed.
5. If you give up your right to remain silent, and your right to an attorney, at any time during the questioning that you decide you want an attorney, the questioning will stop until you have talked with one.
6. If you give up your right to remain silent, at any time you say that you don't want to answer any more questions, the questioning will stop.
7. Do you understand what I have just told you?
8. Do you want an attorney?
9. Do you wish to waive, or give up, your right to remain silent?

Though most officers probably take steps most of the time to secure their prisoners properly for transportation to station or jail, it is safe to say that in handling arrested DWI subjects, many officers deviate from normal procedure.

It is very easy to use the subject's intoxicated condition as an excuse not to handcuff him. But let's examine the facts further. Inherent in your decision to arrest for DWI is the fact that you are saying that the subject is not in full control of his faculties -- a factor that may be your best reason for handcuffing him.

The sudden change of emotions that drinkers sometimes experience could result in an assault by a quiet docile subject who looks as if he couldn't muster up the courage to tell his wife he was arrested.

The loss of inhibitions that some drinkers experience may work against you, the arresting officer, in the event that a subsequent assault or escape attempt can be attributed to your failure to properly secure your prisoner.

The safest policy to follow is that you adhere to the usual procedures in handling prisoners:

1. Search carefully.
2. Restrain adequately (usually handcuff).
3. Transport safely.

Searching the arrested DWI subject should always be performed prior to transportation. Here you should be attempting to locate additional evidence relative to DWI (e.g., pocket flask, weapons that could be used in assaults and escapes, and evidence of other crimes).

Restraint will usually be accomplished by means of handcuffing the hands behind the back unless you choose to take the risk of handcuffing the hands in front of the subject.

Transportation to station or jail will be accomplished in the usual manner (i.e., subject seat-belted in the right front seat if the officer is transporting the subject alone, or subject strapped in the right rear seat if a second officer is accompanying you).

It should be pointed out that the existence of a well-enforced department policy that all prisoners will be handcuffed can tend to make the individual officer's job less difficult. Some departments have a well-publicized handcuffing policy that the officer may point to (e.g., numerous signs on station walls) as evidence that all prisoners are handcuffed and that the subject has not been singled out for any special treatment.

Transportation of female DWI subjects requires a few additional steps to be taken to avoid allegations of misconduct on your part. This comes as no surprise to experienced officers. They are well aware of the belligerence that is often displayed by the drinking female, a factor that some claim leads to fewer females being arrested for DWI.

One essential requirement is that at least two officers must be present with the female subject at all times. The officer who leaves his fellow officer alone for several minutes to make a rest stop, obtain report forms, etc., is leaving that officer open for allegations of misconduct. The presence of the second officer for witness purposes is especially important in DWI cases where the female subject often becomes emotional.

Searching the female subject is another area where adherence to proper procedures will maximize your safety while minimizing the possibility of misconduct complaints. Keep in mind that it is policy, not law, that prevents the full search of the female prisoner. Your search for evidence and weapons during the field contact will usually consist only of searching the handbag and outer garments (e.g., jacket) leaving the full search to a matron or policewoman. Exceptions to the limited search at the scene would be if you observed the suspect attempting to hide evidence or weapons on her person, in which case it becomes necessary for immediate action to be taken.

The female DWI subject should be transported in the same manner as male subjects, as described earlier in this unit. Of course, time and mileage checks should be made with your dispatcher upon departing the scene enroute to the station and upon arrival at the station.

Handling the juvenile DWI subject differs little from the procedures used in handling adults. Juveniles may be searched, restrained and transported in the same manner. However, it should be noted that the use of restraints may be especially important. Typically the juvenile drinking driver is not an experienced drinker, thus he can be expected to act less rationally than do adults under similar circumstances.

The basic difference in handling the juvenile suspect in most jurisdictions is that the Juvenile Code requires that the place of detention be separate from adults while being interviewed, awaiting parents, etc.

Study Plan

Unit 8.4

Recording of and Documenting Evidence

Unit Objective:

To understand the purpose and importance of recording and documenting evidence.

Terminal Objective:

- 8.4.3 . . . be able to list and describe the various reasons for recording and documenting evidence.

Content Topics:

- 8.4.1 Review of previous unit.
8.4.2 Overview of unit.
8.4.3 Purpose and importance of recording and documenting evidence.
8.4.4 Summary of unit.

Assignment:

1. Read Unit 8.4 of Student Manual on Recording and Documenting Evidence.

Study Questions:

1. What is the purpose of recording and documenting evidence?
2. Why is such documentation important?
3. Why should field notes be made as soon as possible after information is obtained?
4. What various methods can be applied for recording pertinent evidence?

Content Material

Unit 8.4

Recording of and Documenting Evidence

8.4.2 Overview of Unit.

The objective of this unit is to develop understanding of the purpose and importance of recording and documenting evidence. Material covered includes the importance of field notes; use of recording equipment; and examination of subject by a physician.

8.4.3 Purpose and Importance of Recording and Documenting Evidence.

Field Note-Taking.

Notes are important in any type of investigation but especially so in alcohol-involved offenses. Adequate field notes can be essential to the preparation of a well-documented case against an arrested DWI subject.

Proving impairment of driving ability due to consumption of alcoholic beverages is no easy matter. Despite the existence of chemical tests that accurately specify the alcoholic content of a person's blood, many subjective factors must be established in court before such chemical test results are even admissible.

Also, there is always the possibility (currently the odds are 1 out of 5) that the chemical test will be refused, thus putting even greater reliance upon non-quantitative, subjective information that you have collected pertaining to the case. In this event, your field notes take on added importance.

Recording information as soon as possible after it is acquired is beneficial for several reasons:

First, the details of the information are fresh in your memory, thus you can be expected to have more comprehensive and meaningful notes.

Second, because the details are fresh in your mind, the chances of omitting information are reduced.

Third, the accuracy of your notes should be increased, a very important advantage since there may come a time at trial when defense counsel will attempt to discredit you by questioning you closely concerning the specific wording of statements his client is alleged to have made; specific points concerning his physical condition and demeanor; etc.

Fourth, adequate notes properly reviewed will permit rechecking questionable evidence while the case is still fresh.

Last, the proper use of notes permits obtaining overlooked evidence -- serving to jog your memory concerning specific information that you, your superiors, prosecutor and others feel is necessary or desirable.

There is little question that effective note-taking results in more complete information about your investigation. Recording such information can easily stimulate thoughts about additional supportive evidence that would prove helpful to your case. It is easy to have too few notes while it is the rare officer who has too many.

Notes so taken have numerous uses in your case preparation. It must be constantly remembered that DWI is a very subjective type of charge; hence, the best documentation possible is needed. Information so recorded is basic to your case -- from initial field contact through trial and sentencing. The most immediate function of your notes is to assist you in preparing your written report of the violation and arrest. Good notes are invaluable in preparing a complete, accurate and easily understandable police report. Later, good notes, along with your report, permit you to thoroughly review your case prior to trial, preliminary examination or a license appeal board hearing. There is always the possibility that your notes may be of value to the prosecutor in reviewing the case before issuance of a complaint and warrant or before trial. Generally, the chief benefit is that sufficient field notes reduce dependence solely on your memory for recalling the facts of the case.

For purposes of the trial that may result from the arrest, good notes may be vital to the outcome of the trial. Certainly you will wish to review them before trial and at times will need to refer to them during the trial. Procedural law permits the use of such notes as the courts generally recognize limitations to human memory. They also recognize that notes taken in the field at the time of occurrence tend to be the most accurate. The fact that your notes are permanent makes them invaluable when delays occur between arrest and trial.

The worth of good notes is proven through the greater recall of facts and accuracy of testimony that takes place, even when a considerable amount of time has elapsed. Keep in mind that the defense gains a point every time you testify that you "can't recall" a detail.

Use of Recording Equipment.

Since the charge of DWI is so subjective, some police agencies have turned to using mechanical recording equipment in order to obtain the best documentation possible. Recording equipment so used may consist of only an audio recorder (tape recorder) or an audiovisual recording unit such as a film or videotaping unit. There is a wide variation of equipment that is in use in both of these categories.

Audio tape recorders used in the field are typically the cassette type; hence, they are simple to use, relatively inexpensive and can easily be used to record conversations during field contacts. The chief drawback is that there is no visual documentation of the subject's condition or behavior.

On the other hand, the audiovisual recording unit (usually the videotape) provides visual documentation but is more complex to operate, is considerably more expensive to acquire and operate and is generally used only at police headquarters. There are a few agencies (e.g., California Highway Patrol and Marathon County, Wisconsin, Sheriff's Department) utilizing vehicle-mounted videotape units to record actual driving behavior, but they are few in number at the present time.

Both types of recording equipment provide a means of collecting and preserving evidence that is superior to the officer documenting in writing (only) his observations. If properly used, these devices can be very helpful to your case since they offer the best documentation available at the present time -- documentation that can be heard and sometimes seen by a judge and jury charged with hearing the case.

Recording evidence in this manner has several specific advantages in that it presents evidence of your patience and courtesy and can be used to impeach the defendant's testimony if need be.

Case law indicates that, at least for the present, it is not necessary to tell the subject that he is being tape recorded or videotaped. Most agencies do anyway as evidence that their officers are acting in a reasonable manner. Experience has shown that the reaction to being so informed may be evidence in itself (e.g., obscene gestures and/or statements) or at least may document behavior that the subject would not want displayed in court.

Overall experience indicates that the use of recording equipment, whether in the patrol car or at the police station, tends to reduce not guilty pleas. This is especially true when the recordings are made available to the subject and his counsel before trial.

Examination of Subject by Physician.

Examination of the DWI subject by a physician can serve two purposes:

First, it can provide corroborative evidence to your case since, unlike yourself, the physician is considered an expert witness (and a professional unbiased one at that). His testimony can serve to nullify the defense argument that some other condition than alcohol impairment caused the subject to look and act the way he did.

Second, the physician's examination, in cases where there is an apparent need, can resolve any questions of medical problems that might endanger the subject's life. Such an examination should be made when there is a question of illness, injury or unusually high

blood alcohol content. Arranging for such an examination may be time consuming and bothersome, but there is no question that it is advantageous for both the ill or injured subject and for you to have such a physician's examination performed.

Study Plan

Unit 8.5

Conducting of Records Check

Unit Objective:

To know the procedure for conducting comprehensive checks of driving and criminal histories of the arrested drinking driver.

Terminal Objectives:

- 8.5.3 . . . be able to list and describe the steps in conducting a driving record check on a drinking driver.
- 8.5.4 . . . be able to list and describe the steps in conducting a criminal record check on a drinking driver.

Content Topics:

- 8.5.1 Review of previous unit.
- 8.5.2 Overview of unit.
- 8.5.3 Checking driving record with Driver Licensing Authority in state.
- 8.5.4 Checking criminal record with Central Crime Records of state.
- 8.5.5 Summary of unit.

Assignment:

- 1. Read Unit 8.5 of Student Manual on Conducting Records Check.

Study Questions:

- 1. What are the various steps you would follow in obtaining a records check from the Driver Licensing Authority of state on an arrested drinking driver? From the Central Crime files?

Study Questions: (cont.)

- 2. Why would you bother to obtain a criminal history as well as the driving record?
- 3. How could you use in your case the results of a records check?

Content Material

Unit 8.5

Conducting Records Check

8.5.2 Overview of Unit.

The purpose of this unit is to emphasize the importance of conducting records checks. Topics include checking the driving record and checking criminal records.

8.5.3 Checking the Driving Record.

Obviously, it is to your advantage to know as much as possible about the DWI subject you have arrested. During your field contact you should have availed yourself of the technology that exists, conducting a pre-arrest status check on the person. Such a status check can be made within minutes in many law enforcement jurisdictions.

The practice of obtaining the driving records of out-of-state drivers is encouraged since the data banks of the officer's state will typically contain little or no information on your suspect. In his home state, however, your subject might have a significant driving record. Your National Crime Information Center (NCIC) terminal can be used to direct messages to the licensing authorities in other states.

Once obtained, the driving record can be used in several ways to aid in the preparation of your case against the subject.

First, knowledge of the driving record enables you to seek prosecution for the proper charge such as second or third offense DWI. Thus, you may be in a position to oppose the routine issuance of a first offense DWI when, in fact, the proper charge should be second or third offense DWI.

Second, knowledge of the full driving record may increase your chances of obtaining prosecution on the charge that you want. This might occur when the subject has a poor driving record when all convictions (non-alcohol-related as well as alcohol-related) are considered.

Finally, the arresting officer (or his representative) will have the full driving record available for court purposes. The driving record will not be admissible at trial as evidence (exception: may be used as evidence of previous conviction(s) in second and third offense cases); however, it may be used

in the sentencing process. It would be available for incorporation into the pre-sentence investigation report (if one is prepared) or simply be given to the judge for his review and consideration at the time of sentencing.

8.5.4 Checking the Criminal Records.

A source of information frequently overlooked in the course of prosecuting a DWI offender is the individual's criminal record. Because of the nature of the (traffic) charge, some officers/departments do not consider a check of the criminal history to be a worthwhile step in their case preparation.

Most persons arrested will be residents of both the state and the general area in which the arrest takes place. An adequate record check on this category of subject would involve checking the records of:

- . State Identification Bureau files.
- . The arresting agency.
- . Other local agencies deemed appropriate.

Those persons arrested who are state residents but not residents of the local area should be record-checked through the above agencies plus the police agencies serving the area of his residence. The most time consuming check is that involving the out-of-state resident whereupon a record check of the appropriate state level agency in that state should be made.

The results of these criminal record checks must be put to good use to be worthwhile. There are numerous uses they can be put to; however, in the context of DWI, you should be most concerned with arrest an/or conviction entries relative to alcohol-related arrests (drunk and disorderly, public intoxication, etc.). The presence of these entries will often indicate that your subject is a problem drinker.

Perhaps the most useful function the results of criminal record checks serve is to assist you in combatting the "he's never been in trouble before" notion that some prosecutors have. Perhaps the combination of significant traffic and criminal records (they often occur) will sway a prosecutor toward prosecution for DWI when he might otherwise settle for a lesser charge.

As in the case of the driving record, the criminal record check is useful for the pre-sentence investigation (if any) and is available for the judge's use at sentencing.

Experience around the nation reveals that the results of both driving and criminal record checks, taken together, are far more significant than the results of either check standing alone. Complete record checks aid in the identification of problem drinkers and problem drinking drivers. Inadequate record checks handicap the identification of these problem people; and without proper identification, referral to rehabilitation agencies cannot be made.

SUBJECT # 9

PSYCHOPHYSICAL EVALUATIONS (CLASSROOM)

Subject Objective:

To understand the nature and procedures for conducting psychophysical evaluations.

Subject Units:

- 9.1 Use of psychophysical evaluations to determine extent of alcohol impairment.
- 9.2 Recording of psychophysical test information on AIR form.

Study Plan

Unit 9.1

Use of Psychophysical Evaluations to Determine Extent of Alcohol Impairment

Unit Objective:

To develop an understanding of the use of psychophysical evaluations for determining the extent of alcohol impairment.

Terminal Objectives:

- 9.1.3 . . . be able to demonstrate an understanding of the nature and purpose of psychophysical evaluations.
- 9.1.4 . . . be able to demonstrate an understanding of specific psychophysical tests.

Content Topics:

- 9.1.1 Review of previous subject.
- 9.1.2 Overview of unit.
- 9.1.3 Nature and purpose of psychophysical evaluations.
- 9.1.4 Administration of psychophysical tests.
- 9.1.5 Summary of unit.

Assignment:

1. Read Unit 9.1 of Student Manual on Use of Psychophysical Evaluations.

Study Questions:

1. What are the various methods used in field psychophysical evaluations to determine extent of alcohol impairment?
2. Can you list six types of performance tests?
3. What are the purposes for conducting field psychophysical evaluations?

Content Material

Unit 9.1

Use of Psychophysical Evaluations to Determine Extent of Alcohol Impairment

9.1.2 Overview of Unit.

The primary objective of this unit is to develop an understanding of the nature and purpose of psychophysical evaluations. Topics discussed include the nature and purpose of psychophysical evaluations and the administration of psychophysical tests.

9.1.3 Nature and Purpose of Psychophysical Evaluation.

Previous units have discussed in detail the many vehicle clues available to the alert police officer for the detection of the drinking driver. These initial clues, generally manifested in erratic driving behavior, are important to the initiation of enforcement and may not be in themselves sufficient evidence for conviction of DWI. Once a suspect is apprehended, it is necessary for the arresting officer to investigate further in order to confirm his suspicions and collect adequate evidence of driver impairment.

Research has shown that alcohol ingested into the blood stream will cause a depressing or anesthetizing (numbing) influence on the human brain or nerve center functions. The extent of influence is proportionate to the concentration of alcohol in the blood.

Alcohol generally influences the highest order functions first -- judgment, moral value, and conscience -- then rapidly expands this influence as the blood alcohol concentration (BAC) increases, to control of the voluntary and involuntary muscles affecting vision, hearing, speech, balance and coordination. If the BAC becomes high enough, those areas controlling breathing and heartbeat are influenced. Death then results.

Because we know the relationship between brain function and alcohol concentration, we are able to predict or observe much of the influence as manifested in the impairment of our basic mental and physical processes. By keying on selected mental and physical (psychophysical) functions, using an organized evaluation, a police officer can observe and collect fairly reliable evidence of impairment.

Study Questions: (cont.)

4. Why are coordination tests used in field psychophysical evaluations? To determine extent of impairment by what?
5. How would you test a suspect for psychological impairment?
6. What kinds of behaviors would permit you to assess subject's mental state?
7. What would the subject's appearance and/or condition tell you about his state of impairment? List some of the things you would look for.
8. How would you proceed to question a drinking driver suspect? What questions would you ask?
9. How important is your explanation of the test to suspect? How important your demonstration?
10. In what way can you better assure understanding of your explanations and demonstrations?

Therefore, psychophysical tests, as used by the police officer, are selected and administered for the purpose of providing identifiable extra-vehicular (non-vehicle related) symptoms of driver impairment.

Purpose of Psychophysical Tests -- In current DWI enforcement, law enforcement officers must rely a great deal on psychophysical testing. These types of tests serve two major purposes for the officer. First, they aid in the decision making process that he must go through in establishing "probable cause" subsequent to the DWI arrest. They can be extremely beneficial, for instance, in identifying the person with a low BAC who is a light or moderate drinker, or the person with a high BAC who is a heavy drinker or alcoholic. In today's drug-modern society, however, psychophysical tests can also be beneficial in detecting some forms of drug impairment.

Second, psychophysical testing provides important corroborative evidence for chemical test results. Chemical testing can show that the subject did, in fact, have alcohol in his system and can even show how much. But, under most chemical test laws, it is presumed only that a suspect is under the influence at a certain BAC. The observations made by the arresting officer through psychophysical testing will serve to provide evidence that the suspect was, in fact, impaired.

Use of Psychophysical Tests -- Psychophysical testing has traditionally been used to exemplify the more gross symptoms of impairment -- those exhibited by the "drunken" drinking driver. Today, because of the new emphasis on low blood alcohol concentrations, the officer using psychophysical testing must be sensitive to the more subtle signs of impairment. Good case preparation becomes extremely important.

Defense counsels have always attacked psychophysical test evidence. There is no reason to believe this will change and the arresting officer should be prepared for such attack.

The use of psychophysical tests is generally a policy decision by the police department, the prosecutor or the courts. Many jurisdictions have strong feelings as to what tests should be given, when and where they should be given and even whether they should be given at all.

The extent of psychophysical impairment by alcohol is directly proportionate to alcohol concentration. However, the extent of recognizable psychophysical impairment can be a somewhat different matter. This is primarily due to tolerance (experience). The more drinking experience the person

has accumulated, the better he is able to compensate or cover for the affects of alcohol. His BAC does not change, but his ability to handle it does. The effects of tolerance is thought to diminish for even the heaviest of drinkers at about .30% BAC.

Chart 9-1 shows the relationship of BAC and observable psychophysical impairment. Differences of tolerance in light, medium and heavy drinkers may cause a variance in the relationships.

Chart 9-1

Blood Alcohol Level	Percentage of People Displaying Some Outward Sign of Impairment
.02%	0%
.04%	5%
.06%	10%
.08%	20%
.10%	40%
.16%	60%
.20%	80%
.30%	100%

Source: "Effects of Drinking Alcoholic Beverages", S.H. Sher, M.D.

The degree of psychophysical impairment by drugs is varied and inconsistent depending largely on the kind and amount of drug and upon the personality of the individual. Presently the observable manifestations of drugs are not nearly as predictable or identifiable as they are for alcohol.

The arresting officer should make certain that he is familiar with and considers the many other non-alcohol or drug related conditions which may show impairment of mental and physical functions. Included are medical and physical disabilities such as injuries, shock, epilepsy, arthritis, and natural conditions such as old age, which can diminish physical ability or even bring senility and everyday fatigue. Any of these conditions when combined with alcohol can be misleading if the arresting officer is not informed and prepared.

Classification of Psychophysical Tests -- The application of psychophysical testing will most always begin in the field, following the apprehension phase of the arrest procedure. Testing will serve to assist the arresting officer in making the decision to arrest or not to arrest. Some departments do use selected psychophysical tests after the arrest when the suspect is brought back to the station. Used in this manner, tests serve primarily to add supportive evidence for courtroom use.

Psychophysical tests can be grouped and administered into three general categories or types of testing ranging from simple to complex. The number and kinds of tests utilized will vary in degree depending upon the particular need of the arresting officer for a given situation.

First type of tests consist of the initial evaluation of the driver's general physical appearance and condition while he is still seated in the vehicle, utilizing minimum directed effort on the part of the officer. Most of the elements of the first type of tests are standard evaluations made by police officers for all traffic stops as a matter of good police work.

Tests include the quick evaluation of:

1. Odor of breath.
2. Condition of eyes.
3. Color of face.
4. Demeanor.
5. Dexterity.
6. Speech.
7. Clothing.

This type of testing quite often produces the initial suspicion that DWI is involved. In most cases the officer will continue into a second type of testing.

The second type of tests involve a more specific effort on the part of the driver in order that basic mental and physical conditions may be evaluated. They also provide a re-evaluation of first type of tests.

Tests of the second type require the cooperation of the driver to exit from the vehicle and walk to a designated area for further investigation. This will afford the officer an opportunity to observe the suspect and make a closer examination. At night, the officer should make certain that the spot selected has good visibility. The officer should also be certain that maximum safety precautions are exercised when moving the driver.

Tests include simple, non-structured evaluation of:

1. Body coordination.
2. Judgment.
3. Balance or equilibrium.
4. Mental awareness.
5. First type elements of odor, eyes, face, speech and appearance.

At this point the officer has merely observed and conversed with the suspect but has not attempted to conduct any special routine or exercise. Adequacy of evidence at this point will determine whether or not the officer continues beyond this type of test.

Tests of the third type are specially structured performance tests of more complicated physiological coordination and require maximum officer-suspect involvement.

Tests of the third type are given outside the vehicle and in an area suited for standing or walking. At night a location of good visibility should be selected. The area should be safe from traffic and preferably free from unsympathetic observers.

These tests include mental and physical exercises given singly or in combination to evaluate:

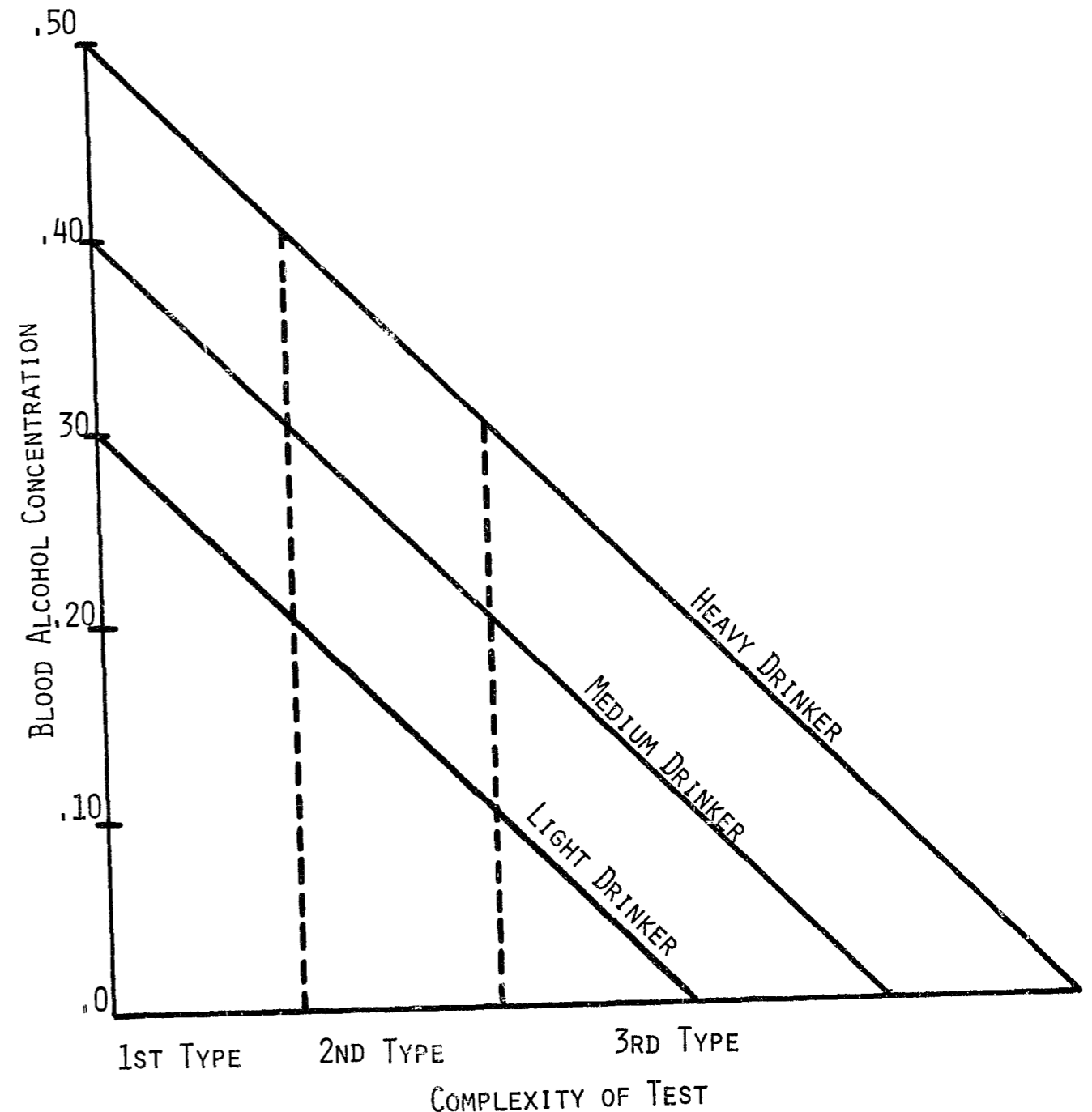
1. Coordination.
2. Equilibrium.
3. Judgment.
4. Comprehension.
5. Concentration.

Tests of the third type should always be administered with clear and demonstrated instructions to the suspect.

The degree to which psychophysical testing must be applied for decision making will vary according to the suspect's blood alcohol level and tolerance. Generally speaking, the lower the BAC the greater the degree of testing necessary. However, if the suspect is a light drinker with a low BAC then sufficient impairment may be demonstrated during first or second type of tests. Chart 9-2 illustrates this relationship.

CHART 9-2

RELATIONSHIP OF BAC AND COMPLEXITY OF PSYCHOPHYSICAL TESTING OF THE LIGHT, MEDIUM AND HEAVY DRINKER



Decision Point for Arrest -- For case preparation purposes, it is important that the arresting officer be able to identify at what point in the evaluation process he specifically decided the subject was, in fact, under the influence. This decision point will be of use to the prosecutor when evaluating the elements of the arrest prior to issuing a warrant, and will most always be pursued by the defense during trial. Psychophysical testing should be continued after the decision point only if the results will be of positive value in case preparation. However, the officer should consider the implication that failure to administer additional tests may have in the courtroom.

If it is the policy of the arresting officer's department to advise a defendant of his constitutional rights in a DWI case, then these rights should be given immediately after the decision to arrest is made. In some cases, it may be advisable to repeat some of the questions asked the defendant during the psychophysical testing so that answers may be submitted as evidence.

9.1.4 Administration of Psychophysical Tests

Although the value of psychophysical tests is somewhat controversial at times, it remains the best (and only) method currently available to the officer for demonstrating evidence of driver impairment.

When using psychophysical tests, especially the more complex ones (third type of tests), the officer should be certain that his choice is fair and his procedure correct.

When evaluating performance or conditions, the officer must continually keep in mind that many other medical and physical conditions can also cause the observed impairment.

The major value of psychophysical tests is the comparison of the conditions or performance witnessed with the same conditions or performance that would be demonstrated by a sober person. Consequently, any tests utilized should be such that they can be performed successfully by the average, sober individual.

The decision reached by the arresting officer is not made by any one, single test, but rather by a combination or summation of results of an organized inquiry involving a series of related tests and observations.

The police officer should remember that when combining the traffic stop (which is recognized as one of the most dangerous events in law enforcement) with face-to-face contact with someone potentially under mental influence, extreme caution must be continually exercised.

First Type of Tests -- These tests consist of the initial evaluation of the driver's condition immediately after the apprehension. The evaluation begins with the officer's first personal contact with the driver, generally while the suspect is still seated in his vehicle.

Note: Even if the officer suspects alcohol influence, he should exercise every precaution in accordance with proper police procedure when approaching the vehicle.

1. Odor of breath -- The officer may detect the odor of alcoholic beverages emanating from the vehicle. Although the odor may be from passengers or from a beverage spilled on the driver's clothing, there should be little trouble in determining if the odor is originating, at least in part, from the driver.

Description of Test Evaluation	None; weak; moderate; strong.
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The officer should be suspicious of the driver who avoids talking directly to him. He should also mentally catalogue the associated odor of alcoholic beverages mixed with gum, breath conditioners and cigarettes.

2. Condition of eyes -- Bloodshot eyes are probably the most common symptom of alcohol indulgence due to dilation tendency of the blood vessels.

Description of Test Evaluation	Normal; bloodshot; watery; sleepy.
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More than one description may be used. If the suspect is wearing colored glasses or objects to light in his eyes (at night), examination of eyes can wait until second type of tests are administered.

3. Color of face -- The flushing, or reddening of the facial tissue is common to alcohol indulgence for much the same reason as bloodshot eyes.

Description of Test Evaluation	Normal; flushed (red); pale (white).
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A pale face could indicate the need for medical attention.

4. Speech -- If the suspect does not voluntarily begin talking, attempt to engage him in a conversation of more than just one or two word responses. What is said will vary according to conditions (when, where, who and his attitude). Consider clearness and correctness of enunciation.

Description of Test Evaluation	Normal; clear; slurred; stuttering; mumbling; confused; incoherent.
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More than one description may be necessary. In the follow-up interview, consider possible natural speech impediments or use of dentures.

5. Attitude -- Being stopped by a police officer can do a lot to the emotions of most everyone, especially if they've done something wrong. This should be kept in mind when making the initial assessment of attitude or demeanor displayed by the suspect.

Description of Test Evaluation	Polite; insulting; cooperative; indifferent; sullen; hilarious; carefree; talkative; reserved; antagonistic; combative; cocky; defiant; sarcastic; profane.
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More than one description may be necessary. The initial attitude displayed by the suspect may change later in the investigation, especially after he is informed that he is under arrest. Make note of and distinguish between every attitude change.

6. Dexterity -- Many departments request the driver to produce the required credentials immediately after contact. When this is done, this procedure can afford an excellent opportunity for the officer to observe and evaluate the suspect's coordination or dexterity of hand movements. It is possible, however, for the suspect to brace his wallet (or her purse) and hands in the lap. If this is done, some of the value of this test is lost. This test can also show loss of perception or judgment to a certain degree. The suspect may pass over his otherwise obvious driver's license, or may not see it at all, requiring the assistance of the officer. Once the license is found, the driver may not be able to figure out how to remove it. If the suspect must retrieve something from the glove compartment, the process should be evaluated (e.g., use of the key, sorting through items, etc.).

Description of Test Evaluation	Normal; clumsy; unsure; pass over items (no. of times); unable to find; needs assistance.
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More than one description may be necessary. If the suspect's fingers are swift and sure, it may be a good indication that his nervous system has not been too adversely affected by alcohol. This test (producing the driver's license, etc.) is also effective as a second type of test where other dimensions can be added.

7. Clothing -- The condition of clothing is a fairly weak indicator of impairment unless there are gross symptoms present; e.g., wearing a tie without a shirt; few clothes on or clothing open during cold weather; signs of vomitus or urine; torn or bloody, etc.

Description of Test Evaluation	Orderly; clean; disarranged; torn; bloody; soiled.
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More than one description may be necessary. Whether or not the officer uses clothing as an indicator of impairment, he should always make note of the suspect's condition of dress for comparison purposes at the time of trial. Many times the defense will use the way the defendant was dressed at the time of arrest to test the arresting officer's memory.

All tests of the first type can create or support suspicion; but either way, they generally require follow-up with a second type of test -- if not for decision, at least for court testimony.

Second Type of Tests -- These tests require an increased effort on the part of the driver, at the request of the arresting officer. They begin by having the suspect exit from the vehicle and move to an area out of traffic where the tests are continued with interviewing and limited examination.

Second type tests usually provide the first opportunity for the officer to evaluate neuromuscular coordination and balance and equilibrium, as well as mental awareness. Identifiable impairment in these evaluations will generally occur for persons of high BAC who are moderate or heavy drinkers, and medium to high BACs of light drinkers.

1. Exiting vehicle -- Ask the suspect to step from the vehicle, observing closely as he does so. There are distinct considerations: 1) the movement of the suspect from the seat to his feet, and 2) the suspect's movement when closing the vehicle door. Although many persons utilize the door for support when exiting a vehicle, note the suspect's difficulty in rising to his feet and his ability to balance once he is on his feet. The initial steps taken to move away from the doorway should be observed for balance and coordination. Even an experienced drinker with a rising BAC can be affected by rising to his feet after a prolonged period of sitting down. Recovery and compensation is usually very quick. However, let the suspect close the door himself. Persons with medium to high blood alcohol concentration may lose their balance slightly as the door swings shut.

Description of Normal; unsteady; staggering;
Test Evaluation needs assistance.

Make certain there is no danger of the suspect stepping into the path of traffic.

2. Walking to roadside -- Select a flat area off the roadway out of traffic and direct the suspect to walk to it. Make certain the suspect hears and understands the instructions. Repeat them if necessary. (Inability to easily understand these simple directions could itself be indicative of impairment). Observe the manner in which the subject walks and whether or not he seeks support as he walks. If there is a curb he must step up to, note his ability to do so.

Description of Normal; staggering; falling;
Test Evaluation needs assistance.

3. Standing -- After moving to the roadside, instruct the subject to stand in one spot. During any subsequent questioning or examination, note the effect on balance and equilibrium as manifested in the subject's ability to stand without support, swaying or falling.

Description of Normal; swaying; staggering;
Test Evaluation falling; needs assistance.

Because alcohol can affect the ability to concentrate, the person who must concentrate in order to maintain his balance may be thrown off guard when attempting to answer questions.

4. Sensation of time and space -- Certain questions can be asked to evaluate any distortion of the sensation or perception of time and memory. Two questions in particular should be asked:

A. Do you know where you are now?

B. Do you know what time it is now?

In addition, other questions can be asked to evaluate speech (use the outline under first type of testing).

5. Dilation of pupils -- Shine a flashlight into each of the subject's eyes. Note the dilation movement of the pupil. Next shine the light into each of the eyes of your partner; compare the speed of his pupil dilation with that of the suspect. Alcohol (some drugs also) will influence the normal dilation of the pupil causing it to contract slower at low or medium blood alcohol concentrations.

Description of Normal; slow; fast; none.
Test Evaluation

If the arresting officer does not have a partner, this test may be delayed until someone who is sober is available with whom to make your comparison.

6. Dexterity -- If the coordination of the hand movement was not tested during the first type of tests, it should be tested at this time. Conduct the test as previously described. If this evaluation has been made during first type of testing, it can be repeated by asking the suspect to produce additional identification. Balance should be noted while the suspect is attempting to comply with this request.

7. Re-evaluation of first type of tests -- While the suspect is in the open and in better light, re-evaluate speech, condition of eyes, attitude and clothing. Many of the elements may change considerably.

If the arresting officer, after first and second type of tests, feels that he is still uncertain of his decision to arrest or if he feels additional evidence of a third type of test will improve his case in court, then he should continue into the third type of examination.

Third type of tests -- The third type of testing is considerably more structured than either first or second type tests in that these tests deal with more complicated psychophysical performance and require maximum cooperation of the suspect.

All third type tests are relatively simple in nature and can be performed successfully by the average, sober person. It is important that the location for conducting these tests should be level and well lighted at night.

All third type tests must be thoroughly explained and demonstrated. The officer must be able to perform any test he asks the suspect to perform; he may have to prove this in court. The suspect should be asked to wait until the officer has completed his instructions before attempting the test. After the instructions are given, the officer should ask the suspect if he understands what he is to do. If there is any doubt, the instructions should be repeated.

The instruction and demonstration phase prior to each test can also serve as a valuable opportunity for observing an indication of impairment. The distortion of comprehension and concentration as well as of judgment and perception will generally begin to emerge at this time. A person under the influence of alcohol, especially the low and medium BAC's, tends to feel mentally expanded and able to rise to any situation. This attitude is a result of the distortion of the subject's judgment and perception. The following may occur and should be noted:

1. Suspect may begin test simultaneously with instructions.
2. Suspect may disregard or stop instructions, claiming he knows what the officer wants and then proceed without complete instructions.
3. Suspect may have trouble comprehending instructions as indicated by his questions or his inability to begin.
4. Suspect may not comprehend or remember instructions as indicated by his performance.
5. Suspect may hurry through test with a display of "cocksureness".

1. Walking -- This test can be administered in three different ways, from simple to complex. The first can be used for persons who have high BACs with impairment symptoms obvious in first and second type tests. The second method can be used when the officer is fairly certain of impairment and the third can be used when maximum discrimination is needed.

- A. Instruct the subject to walk in his normal manner, turn on command and walk back.
- B. Establish a line, using any markings available but with a clearly visible end point and approximately 10-15 feet long. Ask the subject to walk, heel-to-toe to the end point (or turn on command) and return heel-to-toe to the starting point.
- C. Ask the subject to walk, heel-to-toe, in a straight line. Identify the number of steps he is to take going forward, whether he is to turn around to the right or left at the end of the forward steps, and the number of steps (different number) he should take when returning.

In all three forms this test can show balance and coordination of walking and turning movement. In the more complicated forms, it can show the suspect's ability to concentrate on more than one thing at a time by adding the need for following simple but explicit instructions while walking and turning.

Description of Test Evaluation	1) Good; unsure; swaying; staggering; falling.
	2) Followed instructions: yes, no, Comment: _____

When using the more complex method of walking, record the number of steps and the turn, as instructed and as performed.

2. Romberg -- Have suspect stand at "attention" position, heels and toes together, arms at side, head tilted back and eyes closed for approximately 10 seconds.

Description of Test Evaluation	Normal; swaying; staggering; falling.
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Make certain suspect's eyes are closed and be prepared to catch him if he begins to fall.

3. Finger-to-nose -- This test can be administered in two different ways, the first being the traditional method and the second a modification to provide additional instruction and precise procedure.

- A. Suspect stands erect with feet together, eyes closed, arms stretched out to the side at shoulder height with the index finger of each hand extended and the rest of the hand closed to a fist. With the left hand first, the suspect is instructed to touch the tip of his nose with the tip of his finger by swinging his arm in at the elbow. The process is repeated for the right hand.
- B. Standing in the same position with his arms and hands in the same manner as "A", the suspect is requested to:
 - 1) Swing right arm at the shoulder, directly in front of him, as if pointing straight ahead.
 - 2) With arm extended, roll hand until fist palm is upward.
 - 3) Bend fist backward at the wrist until finger points straight up.
 - 4) Bend the arm at the elbow; bring the hand back touching the end of the finger on the end of the nose.
 - 5) Return the hand to the starting position in lock step fashion by reversing the procedure.
 - 6) Repeat the process a second time.
 - 7) Follow the same procedure with the left hand.

It is important that the suspect sees and hears a clear demonstration of instruction. Do not allow him to begin until he has acknowledged that he understands the procedure.

Description of
Test Evaluation

Right: sure; uncertain; missed.
Left: sure; uncertain; missed.
Following instruction: yes, no,
Comment: _____

The number of times or order (right or left hand) in which the subject must touch his nose can be modified by the officer. If the suspect fouls when attempting to touch the nose the first time, and subsequent efforts are acceptable, the officer should minimize the value of any error on the first try. It may be beneficial to note what part of the finger hits what part of the nose on each try.

4. Balance -- Suspect stands erect, feet together, arms at side while looking straight ahead. He is directed to raise and extend his left foot forward, without bending his leg at the knee. With the heel approximately 6-12 inches off the ground, the subject maintains this position for approximately 10 seconds. Repeat the process for the opposite foot.

Description of
Test Evaluation

Sure; wobbling; needs support;
falling.

Do not ask the suspect to close his eyes during this test.

5. Alphabet -- The suspect is asked to repeat aloud the English alphabet (A, B, C's). This test can demonstrate memory and concentration. Besides incorrect order, note speech pattern and periods of hesitation. Hesitation can be an indication of loss of concentration. If the suspect fouls the first try, ask him to try again. If the second try is successful, the officer should minimize the value of any minor error made in the first. The officer need not demonstrate this test.

There are many other psychophysical tests which might be included in the third type of tests. However, it is felt that most would be of limited value to the arresting officer in demonstrating impairment except in the most obvious cases of intoxication.

The tests that have been selected are those thought to be the most discriminating of the tests known of at this time, for lower as well as higher BACs. When third type of psychophysical testing is applied inside the police station, the tests listed, as well as others, can be applied with greater sophistication than that obtainable on the roadside.

Evaluation for Drug Use -- It should be remembered that intake of drugs may be by varied methods and by multiple drugs. Needle marks suggest opiate use but may be confused with amphetamine injections. Barbiturate injection frequently produces tissue damage which is more clear-cut. Intoxication from one of the last two drugs, singly or in combination with alcohol confuses the diagnosis. Chemical tests are necessary to determine the causing drug.

1. LSD -- Behavior varies, depends on basic personality, may be bizarre. NO DEFINITE PHYSICAL SIGNS. Hallucinations, visual and auditory fantasy in varying degrees. Both senses may fluctuate and/or distort; sounds may be transposed into visual sensations; change in time perception. Subject retains the knowledge that what is happening is temporary. Contacts with reality may be impaired and survival-oriented thinking becomes inefficient. Attention span usually diminished. Pupillary dilation is the most dependable and constant objective symptom.

2. Marijuana -- Varies with the degree of intoxication. Pupils may dilate, accommodation poor. Typical odor on breath of burnt grass, white of eye inflamed. Depending on basic personality, may be quiet and drowsy or restless, talkative, jocose, or euphoric. May be confused -- disoriented. Perception of time and distance distorted.

3. Opiates -- Pupils constricted. Drowsiness, incoordination, sleep, lethargy, euphoria -- respiration rate decreased. Withdrawal symptoms: yawning, sweating, running nose and eyes, dilation of pupil, alternating hot and cold sensations, muscle twitching, nausea, diarrhea, severe cramps, inability to sleep; marked increase in respiration and blood pressure. Definite diagnosis with nalline or urinalysis.

4. Cocaine -- Pupils dilated, alternating periods of depression and exaltation. Release of inhibitions tending toward violence, tremors. Sensation of insects crawling on or under the skin. Mental deterioration, paranoia.

5. Amphetamine -- Pupils tend to be dilated. Euphoria, restlessness, hyperactivity. Dryness of the mouth, rapid heart action. May result in panic reaction or hallucinations.

6. Barbiturates -- Varies with dose and time after ingestion. Pupillary reaction not constant. Tend toward depression, constriction of pupils. However, in severe poisoning, they may dilate. Rotary motion to eyeball. Talkative, impaired judgment, loss of coordination, slurred speech. Blood and urinalysis disclose use.

Study Plan

Unit 9.2

Recording of Psychophysical Test Information on AIR Form

Unit Objective:

To know the nature and use of information recorded on the AIR form.

Terminal Objective:

- 9.2.3 . . . be able to demonstrate an understanding of the nature and use of the AIR form.

Content Topics:

- 9.2.1 Review of previous unit.
9.2.2 Overview of unit.
9.2.3 Nature and use of AIR form.
9.2.4 Summary of unit.

Assignment:

1. Read Unit 9.2 in Student Manual on Recording Psychophysical Test Information on AIR Form.

Study Questions:

1. How are informational items grouped on the AIR form?
2. These groupings make up how many major categories?
3. When the form is completed for a drinking driver suspect, will you have a reasonable amount of information?
4. Is there need for any additional information?

Content Material

Unit 9.2

Recording of Psychophysical Test Information on AIR Form

9.2.2 Overview of Unit.

The student officer needs to develop an understanding of the purpose and use of an alcohol influence report form for case preparation of DWI prosecution. The topic discussed is the nature and purpose of the alcoholic influence report form.

9.2.3 Nature and Use of the Alcoholic Influence Report Form.

Proper case preparation for the prosecution of DWI is a major key in successful drinking driver enforcement. Throughout the entire arrest process, the arresting officer must observe and record all information relevant to establishing the elements of the arrest.

From the time of detection to the time of release from custody, the amount of information that must be evaluated or retained by the officer is far too voluminous to attempt to commit to memory or to brief notes. The process is far too important to subject it to hasty judgments of decision.

Good case preparation for DWI should be the result of an organized and methodical approach to the collection and recording of information.

In those cases that ultimately go to trial, the arresting officer many times must recall the facts of an arrest that took place eight months to a year earlier. If an organized, thorough method of collecting and recording evidence has not been used, it is highly unlikely that the officer's testimony of facts as he remembers them will be sufficient to convince a jury.

Many law enforcement agencies, large and small, utilize a pre-printed form especially designed for the recording of observations and information during a DWI investigation. These forms which are unique to drinking driver enforcement, are often referred to as "Alcoholic Influence Report", "Intoxication Report", "Sobriety Examination Form" or other similar names.

Samples of different types of forms used can be seen in Unit 1.3 of Subject #1. Included is a copy of a universal form provided by the National Safety Council. This form, or a modification of it, is used by most law enforcement agencies. Another sample included is a copy of the form used by the Michigan Department of State Police.

The influence report form (the only link to the past) can serve to collect and preserve two types of information for case preparation:

First, it provides a place and means of recording the officer's observations and any comments made by the suspect during the psychophysical testing phase of the arrest procedure. Second, the form contains pertinent questions (to be used during the interview stage of investigation) which are relative to the circumstances surrounding the suspect's condition. The answers to these questions are the defendant's own admissions, not interpretations by the officers. Consequently, they can become extremely important during trial for contradicting any of the defendant's "alibis". (See sections marked "Interview" on the NSC and MSP forms.)

Use of the Alcoholic Influence Report Form -- Much of the information relative to the observations made during psychophysical testing will be transferred to the AIR form after the suspect is arrested. The arresting officer should be thoroughly familiar with the form as well as with testing procedures in order to eliminate any loss of evidence.

Included with, or supplemented to, the AIR form should be a section in which the officer can include a narrative of the various events that occurred prior to and subsequent to the arrest. This narrative should be as detailed as possible including street names, weather and road conditions, witnesses and the defendant's vehicle condition.

An often overlooked or minimized use of the AIR form is its value in assisting the arresting officer in determining the need for medical attention. The officer should mentally digest, as well as record, the information he receives in order to provide maximum consideration to the health and safety of the suspect.

While most AIR forms provide for the recording of the most often needed information, the arresting officer should not feel restricted to its format. There may be a great deal of additional information that would be relative to a particular incident which the officer should elicit and record.

Even though the answers provided on the form may be a simple "yes" or "no" to check, the officer should record in a supplemental area the exact answer given by the defendant if it has testimonial value in establishing the subject's impairment. The exact reply to the officer's questions, repeated by the officer to the jury, is often more convincing evidence of impairment than testimony as to certain psychophysical manifestations. Inappropriate answers to normal questions, asked in a serious vein, indicate the subject's judgment is impaired.

The alcoholic influence report form will not alone serve to present the case in court. Neither will the results of a chemical test. The arresting officer has to give convincing oral testimony in each case to prove his allegations. The use of an organized and complete method of evidence collection will enable the officer to present the court with a true and complete picture of all the facts.

It is important that the arresting officer consult his department policy with regards to advisement of constitutional rights in DWI arrests. If constitutional rights are to be given, it may be necessary to advise the suspect prior to asking the majority of the questions on the influence report form.

The format of the influence report form may provide several methods or combinations of methods of recording the various observations and responses. The officer may have only to check or circle a particular word that best describes an observation to a psychophysical test or to a response to a question. Or, he may write in the complete answer to a question.

Some forms provide a space for the officer to write his own word or phrase describing his observations of a particular event. The officer is then provided a typical list of adjectives from which to select. These same words can also be used in the narrative portion of the report. Table 9-1 provides a partial listing of typical words or phrases that can be used in completing the influence report.

Table 9.1
Glossary of Terms

Demeanor - Attitude

Fighting	Un-cooperative	Threatening
Excited	Polite	Argumentative
Indifferent	Calm	Arrogant
Hilarious	Sleepy	Abusive
Jovial	Crying	Belligerent
Antagonistic	Resisting	Sarcastic
Cooperative	Profane	

Actions

Hiccoughing
Belching
Vomiting
Dropping ashes

Walking & Standing

Falling
Veering
Swaying
Holding onto ___ for stability
Staggering
Wobbling
Stiff, rigid
Stumbling
Sagging

Speech

Shouting	Slurred	Slow, deliberate
Rambling	Hoarse	Confused
Slobbering	Whining	Thick
Incoherent	Crying	Profane
Boisterous	Stuttering	Misusing words
Whispering	Accent	Hissy

In using any of these words, the officer must be prepared to explain in court what they mean. Some of these terms will not stand alone. The list is by no means complete and can undoubtedly be expanded upon as the experience of the officer increases.

SUBJECT # 10
PSYCHOPHYSICAL EVALUATIONS (LABORATORY)

Subject Objective:

To develop competency in administering psychophysical tests.

Subject Units:

- 10.1 Determination of alcohol influence by assessing drinking subject's appearance and speech.
- 10.2 Determination of alcohol influence on mental state.
- 10.3 Use of coordination tests to determine extent of alcohol impairment.
- 10.4 Making of enforcement decisions based on psychophysical tests.

Study Plan

Unit 10.1

Determination of Alcohol Influence by Assessing
Drinking Subject's Appearance and Speech

Unit Objective:

To develop competency in determining alcohol influence by assessing drinking subject's appearance and speech.

Terminal Objectives:

10.1.3 . . . be able to assess an approximate level of impairment by assessing subject's appearance.

10.1.4 . . . be able to assess an approximate level of impairment by questioning drinking subject.

Content Topics:

10.1.1 Review of previous subject.

10.1.2 Overview of unit.

10.1.3 Practice in assessment of impairment by subject's appearance.

10.1.4 Practice in assessment of impairment by subject's response to questions.

10.1.5 Summary of unit.

Assignment:

1. Read Unit 10.1 in the Student Manual on Determining Alcohol Influence by Assessing Subject's Appearance and Speech.

Study Questions:

1. What behavior(s) indicating alcohol impairment might the officer be able to observe while the subject is still seated in his own vehicle?
2. How would the subject's appearance indicate alcohol impairment while still seated in own vehicle?

Content Material

Unit 10.1

Determination of Alcohol Influence by Assessing
Drinking Subject's Appearance and Speech

10.1.2 Overview of Unit.

The purpose of this unit is to develop competency in determining alcohol impairment by assessing subject's appearance and speech. The topics covered are practice in assessing impairment by subject's appearance and practice in assessing impairment by questioning subject.

10.1.3 Practice in Assessing Impairment by Subject's Appearance.
(First type of tests)

Students will be given an opportunity in a lab setting to assess the extent of alcohol impairment by observing the appearance of several drinking subjects at various BACs. Film will be shown depicting the appearance of several contacted drinking drivers at various levels of impairment.

10.1.4 Practice in Assessing Impairment by Subject's Response to Questions. (First type of tests)

Students will be given an opportunity in a lab setting to assess the extent of alcohol impairment by questioning several drinking subjects at various BACs. Film will be shown depicting questioning of several contacted drinking subjects at various levels of impairment.

Study Plan

Unit 10.2

Determination of Alcohol Influence on Mental State

Unit Objective:

To develop competence in determining alcohol influence by assessing mental state of drinking subject.

Terminal Objective:

- 10.2.3 . . . be able to assess approximate degree of impairment by observing and analyzing drinking subject's mental state.

Content Topics:

- 10.2.1 Review of previous unit.
10.2.2 Overview of unit.
10.2.3 Practice in assessing impairment by subject's mental state.
10.2.4 Summary of unit.

Assignment:

1. Read Unit 10.2 in the Student Manual on Determination of Alcohol Influence on Mental State.

Study Questions:

1. What behavior(s) indicating alcohol impairment might the officer be able to observe as driver exits vehicle? Walks to designated location? Comments and statements to officer?
2. How can the officer assess the subject's mental state?

Content Material

Unit 10.2

Determination of Alcohol Influence on Mental State

10.2.2 Overview of Unit.

The purpose of this unit is to develop competency in determining alcohol impairment by assessing the mental state of drinking subject. The topic covered will be practice in assessing mental state.

10.2.3 Practice in Assessing Impairment by Subject's Mental State. (Second type of tests)

Students will be given an opportunity in a lab setting to determine the extent of alcohol impairment by assessing the mental state of the drinking subject. Film will be shown depicting assessment of mental state of several drinking drivers at various levels of impairment.

Study Plan

Unit 10.3

Use of Coordination Tests to Determine Extent of
Alcohol Impairment

Unit Objective:

To be able to use coordination tests to
determine extent of alcohol impairment.

Terminal Objectives:

- 10.3.3 . . . be able to assess the extent of alcohol
impairment by the subject's ability to follow
instructions.
- 10.3.4 . . . be able to assess the extent of alcohol
impairment by the subject's reaction to
various coordination tests.

Content Topics:

- 10.3.1 Review of previous unit.
- 10.3.2 Overview of unit.
- 10.3.3 Practice in assessing impairment by subject's
ability to follow instructions.
- 10.3.4 Practice in assessing impairment by subject's
reactions to coordination tests (balance,
Romberg, walking, finger-to-nose, alphabet).
- 10.3.5 Summary of unit.

Assignment:

1. Read Unit 10.3 in the Student Manual on Use of
Coordination Tests to Determine Extent of Alcohol
Impairment.

Study Questions:

1. What behavior(s) indicating alcohol impairment can
the officer observe and assess through the use of
coordination tests?
2. How does the subject's ability to follow instruc-
tions influence the officer's assessment.

Content Material

Unit 10.3

Use of Coordination Tests to Determine Extent of
Alcohol Impairment

10.3.2 Overview of Unit.

The purpose of this unit is to develop ability to use
coordination tests for determining extent of alcohol impair-
ment. The topics covered are practice in assessing impairment
by subject's ability to follow instructions and practice in
assessing impairment by subject's reactions to coordination
tests.

10.3.3 Practice in Assessing Impairment by Subject's Ability
to Follow Instructions. (Third type of tests)

Students will be given an opportunity in a lab setting
to determine the extent of alcohol impairment by assessing
drinking subject's ability to follow instructions. Film will
be shown depicting instructions given during roadside testing
of several drinking subjects at various levels of impairment.

10.3.4 Practice in Assessing Impairment by Subject's Reactions
to Coordination Tests. (Third type of tests)

Students will be given an opportunity in a lab setting to
determine the extent of alcohol impairment by assessing subject's
reactions to coordination tests. Film will be shown depicting
roadside coordination tests of several drinking subjects at
various levels of impairment.

Study Plan

Unit 10.4

Making of Enforcement Decisions Based on
Psychophysical Tests

Unit Objective:

To be able to draw conclusions from psychophysical tests and make enforcement decisions.

Terminal Objective:

- 10.4.3 . . . be able to make enforcement decisions based on results of psychophysical tests.

Content Topics:

- 10.4.1 Review of previous unit.
10.4.2 Overview of unit.
10.4.3 Practice in making enforcement decisions from psychophysical test results.
10.4.4 Summary of unit.

Assignment:

1. Read Unit 10.4 in the Student Manual on Making Enforcement Decisions Based on Psychophysical Tests.

Study Questions:

None.

CONTINUED

3 OF 4

Content Material

Unit 10.4

Making of Enforcement Decisions Based on Psychophysical Tests

10.4.2 Overview of Unit.

The purpose of this unit is to develop competency in drawing conclusions and making enforcement decisions based on psychophysical tests. The topic covered is practice in making enforcement decisions from psychophysical test results.

10.4.3 Practice in Making Enforcement Decisions from Phase I, II and III Detection Clues and Psychophysical Test Results.

Students will be given an opportunity in a lab setting to interpret detection clues and psychophysical tests and make enforcement decisions. Film will be shown depicting clues and psychophysical tests administered to several drinking subjects at various levels of impairment. Students will evaluate the evidence and record their enforcement decisions on student response cards distributed by the instructor.

SUBJECT # 11
CHEMICAL TESTING

Subject Objective:

To understand the nature and
purpose of chemical testing.

Subject Units:

11.1 Chemical testing in DWI
Enforcement.

11.2 Requests for and Refusals
of Chemical Tests

Study Plan

Unit 11.1

Chemical Testing in DWI Enforcement

Unit Objective:

To understand nature of chemical testing procedures.

Terminal Objectives:

- 11.1.3 . . . be able to describe nature and purpose of chemical tests in case preparation and as corroborative evidence.
- 11.1.4 . . . be able to describe various types of chemical tests available and steps for requesting suspect's permission to take test.
- 11.1.5 . . . be able to describe procedure for obtaining chemical test.

Content Topics:

- 11.1.1 Review of previous subject.
- 11.1.2 Overview of unit.
- 11.1.3 Nature and purpose of chemical testing.
- 11.1.4 Selection of appropriate chemical test.
- 11.1.5 Administration of chemical test.
- 11.1.6 Summary of unit.

Assignment:

- 1. Read Unit 11.1 in Student Manual on Chemical Testing in DWI Enforcement.

Study Questions:

- 1. What is the role of chemical testing in preparing your case?

Study Questions: (cont.)

- 2. What are the procedures for offering a subject a chemical test?
- 3. Why must you observe a drinking subject for a sufficient period of time prior to giving him a breath test? How long a period of time should this be?
- 4. What are the various types of chemical tests available in DWI enforcement?
- 5. What chemical test is predominantly used in DWI enforcement?

Content Material

Unit 11.1

Chemical Testing in DWI Enforcement

11.1.2 Overview of Unit.

The purpose of this unit is to develop an understanding of chemical testing in DWI enforcement. Topics include the nature and purpose of chemical testing, the selection of appropriate chemical tests, and the administration of chemical tests.

11.1.3 Nature and Purpose of Chemical Testing.

Chemical analysis of human body fluids and tissues for determining the presence of alcohol has been used for close to one hundred years. Alcohol determinations have traditionally been the most commonly performed forensic chemical examination since the advent and popularity of the automobile.

The primary use of chemical analysis is to verify through its use the observations, examinations, and tests performed upon a subject arrested for DWI by the arresting officer. In addition to confirming the officer's opinion, the results also give rise to certain statutory presumptions. With increased use of drugs in recent generations, chemical testing in DWI law enforcement is assured of being more popular than ever.

The basis for chemical testing in the enforcement of implied consent statutes is found in the fact that the intoxicating effects of ethyl alcohol are caused by the depressing influence of alcohol on the brain or nerve centers. Since the blood is the method by which the alcohol is distributed to the brain, after it is absorbed from the digestive tract, a direct relationship can be established between the degree of depressing influence and the amount of alcohol in the blood (e.g., the more alcohol in the blood, the greater the influence on the brain).

By determining the amount of alcohol in the blood stream -- either directly (blood sample) or indirectly (breath or urine) -- the degree of psychophysical impairment can be identified based on the results of national and international research. This determination of blood alcohol concentration (BAC) is almost always stated in terms of a decimal percentage (e.g., .10%, .05%, etc.) with reference to a measurement of the weight (grams) of alcohol in a volume (100 milliliters) of blood (e.g., .05 g/100 ml = .05%; .21 g/100 ml = .21%; etc.).

In most states, chemical test results are not conclusive proof of driving under the influence. They merely serve as corroborative evidence that previously observed signs of impairment were caused, at least in part, by the presence of alcohol or drugs. It is important to keep in mind, however, that the results of chemical testing are indicative of the time the test was given (sample collected) and not the time of arrest or when the driving occurred.

Besides providing important corroborative scientific evidence, chemical testing provides a vast amount of statistical data for traffic safety -- data which is vitally important to programs of research, enforcement, education and rehabilitation.

The current popularity and abuse of drugs has escalated the importance of chemical analysis in law enforcement. When a specimen of blood or urine (breath is not used for drug analysis) discloses the presence of a drug, the amount found may or may not be stated by the laboratory. Sufficient research work has not been done to establish a correlation between drug levels in blood or urine and their effect upon driving performance. So at the present time no presumptions can be made in this respect.

There are some popularly abused drugs for which there are, as yet, no analytical methods available to law enforcement (e.g., marijuana, LSD). In addition, the law in some states allows the charge of DWI to apply only to narcotics and barbiturates, which severely limits the power of law enforcement where drugs are concerned.

In many jurisdictions, there is an increasing use of chemical analysis for drugs for charges other than DWI.

Types of Chemical Tests Available -- The statutes of most states will allow evidence of a person's alcohol concentration as determined by chemical analysis of blood, urine, breath or saliva. Blood and urine samples have been accepted for analysis by the various states for several years. Breath testing, however, has only recently been available in many states when Implied Consent legislation was enacted.

Results of the analysis of blood, breath and urine, when properly collected and analyzed, are accepted in most courts as reliable scientific evidence. Nevertheless, many judges and juries hesitate to convict on the evidence of a blood alcohol concentration. This problem stems from the lack of a true understanding of the relationship of a BAC and the impairment of safe driving ability. It is evident that increased educational efforts are needed if this problem is to be solved.

11.1.4 Selection of Appropriate Chemical Test.

In order to: 1) meet statutory requirements, 2) maximize the benefits of chemical test evidence and 3) use law enforcement personnel more efficiently, it is important that the law enforcement officer be familiar with the various chemical tests available for his use. The following will provide you with the background of each chemical test available including its specific purpose, advantages and disadvantages and when it should be used.

Breath Test -- The breath test incorporates the collection and analysis of a sample of deep lung air using breath testing equipment operated by a trained and certified operator. The only purpose of this test is to determine the amount of ethyl alcohol in a person's blood.

The breath test should be the primary choice of testing when alcohol influence is suspected. Breath testing has a unique feature of being able to provide immediate, reliable results. The officer has at his disposal immediate feedback information which can be invaluable to his performance:

1. Educational value -- immediate reinforcement to a good or bad arrest decision.
2. Evaluation of the results -- which can indicate need for medical attention.
3. Exoneration of the person who is, in fact, not impaired.

The breath test is not only readily available but also has a relatively minimal per test expense. In addition, it involves only law enforcement agencies in the collection and analysis of the sample.

Breath testing requires a relatively greater dependence upon the cooperation of the subject, primarily in providing the sample. The subject must also be strictly observed for 20 minutes prior to the test in order to verify that he did not eat, drink, smoke, or otherwise place any candies or mouth-washes in his mouth which might influence the test results.

Although the weight of testimony relative to the proper administration of the breath test and validity of its results is on the police agency, certain scientific or expert testimony is available in most states from the Department of Public Health. In those instances when the case goes to court, the arresting officer should expect to have an expert available for appropriate testimony.

Blood Test -- The blood test involves the collection of a sample of venous blood by medical personnel and analysis of the same by a qualified laboratory, using the process of distillation and titration and/or gas chromatography for the purpose of determining the type and amount of alcohol and/or the presence of barbiturates or tranquilizers in a person's blood. This test, which should be the officer's second choice for alcohol determination, has historically had greater acceptability by the courts and the public -- a fact which is currently decreasing in significance.

The law requires that a blood sample must be drawn in a medical environment by or under the supervision of a physician. This legal requirement presents one of the major stumbling blocks to the more frequent use of the blood test. It is often difficult to find a convenient facility and a cooperative medical staff in order to obtain a sample. Many of the less populated areas do not have "around-the-clock" facilities (e.g., hospital emergency rooms) and most doctors are reluctant to leave home at 2 or 3 AM in order to accommodate the request of a law enforcement officer. Doctors and nurses are also hesitant about being involved in court action when testimony is required.

Once the blood sample is properly drawn, it must be refrigerated until it can be mailed to a qualified laboratory for analysis by trained personnel. This process eliminates any immediate feedback of results and requires relatively greater activity on the part of the arresting officer in packaging of samples, filling out of special forms and mailing.

By having to rely on outside agencies for assistance, the interval between the time of arrest and the time the test is increased greatly, causing the results to be less indicative of the person's blood alcohol concentration at the time of driving. In addition, increased involvement means increased chain of evidence as well as per test cost.

Despite some of the major disadvantages of the blood test, there are times when the blood test becomes the most appropriate test. For example, if the subject has been involved in an accident and is in the hospital receiving medical attention; or, in a more obvious case, if the subject is dead, in which case a breath test would be impossible. There are also times when an officer might feel that the blood test would be more advantageous in court. This might occur when a subject has a severe case of emphysema, a mouth deformity or an indication of a combination of barbiturates or tranquilizers in addition to the alcohol. In any of these instances, a blood test might serve to strengthen the case.

One unique feature of the blood test is that in some states it is the only chemical test that the subject has a legal right to refuse without jeopardizing loss of his driver's license, thus providing reasonable protection to those persons who may be hemophiliacs (bleeders) or who, for a religious reason perhaps, do not want their blood to be drawn. However, it also can serve as a loophole for those persons who are on drugs and want to avoid being detected.

Urine Test -- The urine test requires a collection of a sample of urine by law enforcement personnel and an analysis of the same by a qualified laboratory using a process of distillation and titration and/or gas chromatography in order to determine the amount of alcohol in a person's blood or show the presence of the narcotic or stimulant drug in the urine.

For alcohol determination, the urine test is the least accurate of the three available tests due to the variation between true and calculated results after analysis. The most accurate specimen for analysis must be taken from the subject approximately 1/2 hour after an initial emptying of his bladder. Because the normal rate of bladder accumulation equals approximately 1cc per minute, the subject should have no trouble in providing at least 10cc of urine for analysis 1/2 hour later.

A unique feature of the urine test is its convenience for determining whether or not a subject's blood alcohol concentration was increasing or decreasing at the time of the test. To do this, an additional specimen must be collected during the initial voiding of the bladder (separate test kit). This is essentially the same as taking two separate urine tests 1/2 hour apart.

The urine test is the most convenient test with reference to personnel and technical requirements for collection of sample in that it does not require a trained operator or medical personnel. The officer can administer this test unassisted unless, of course, the subject is a female in which case a matron must be used. While this test is most convenient for sample collection, it requires maximum activity on the part of the arresting officer in the collection, packaging and mailing of sample, as well as the completion of appropriate forms. Because the specimen requires special facilities and trained laboratory personnel for analysis, there is no immediate feedback of results.

In court, the officer may be required to testify that the specimen was not diluted or contaminated, or that the subject did, in fact, empty his bladder during the initial voiding. Therefore, the administration of the urine test requires that the arresting officer be present during both the first and second voiding.

While the urine test is the least desirable for alcohol analysis, it is the most preferred for drug analysis with the exception of barbiturates and tranquilizers. At the present time, urine can be used to detect the majority of the abused drugs, especially the opiates, cocaine and amphetamines.

Because of sanitary implications, the urine test is disliked and avoided by many police officers. If, however, the breath test is not available and the subject refuses a blood test, it may be necessary for the officer to administer the urine test. Urine tests are usually readily available. This test requires the use of an Alcohol Determination Kit available in most states from the Department of Public Health.

Like the breath and blood tests, the urine test should be provided as soon after the arrest as possible in order to minimize the interval between the time the test was taken and the time the officer observed the subject driving.

Use of Chemical Tests for Other Than Alcohol Determination--
The increased use and abuse of various drugs throughout our nation has stimulated the use of chemical testing for charges other than DWI. It should be remembered that the same statute in the motor vehicle code of many states dealing with DWI also includes driving under the influence of "drugs" (narcotics, barbitol or derivatives of barbitol). Procedure for the collection of a specimen of blood or urine for drug determination is the same as for alcohol determination, with one exception: for drug analysis of urine the laboratory requires two ounces of the subject's urine. The sample can be collected from the initial voiding of the bladder but will require the use of three standard Alcohol Determination Kits, provided by the Department of Public Health, in order to provide the necessary two ounces.

It is important that the officer indicate to the laboratory the name of the drug the suspect has been taking if he has this knowledge. If the subject has unused portions of the drug or drugs on his person, samples should be sent to the laboratory along with the collected specimen.

The following table illustrates which drugs are chemically detectable in body fluids. When in doubt, take both a blood and urine sample if possible.

Table 11-1

<u>DRUG</u>	<u>URINE</u>	<u>BLOOD</u>
Opium	Yes	No
Morphine	Yes	No
Heroin	Yes	No
Codeine	Yes	No
Marijuana	No	No
LSD	No	No
Cocaine	Yes	No
Demerol	Yes	No
Methadone	Yes	No
Barbiturates	Yes	Yes*
Amphetamines	Yes	No
Tranquilizers	Yes	Yes*

*Blood test preferred.

It is important for the officer to remember that, in those cases where a chemical test is desired for charges other than DWI (e.g., reckless driving; drunk and disorderly; possession and use; homicide charge; etc.), the implied consent portion of motor vehicle law does not apply. The specimen must be obtained with the consent of the subject. Be sure to make note that this consent was obtained. The question will be raised in possible later prosecution and court action against the subject.

Criteria for Selection of Appropriate Chemical Test --
Table 11-2 sets forth criteria that an officer may apply for selecting chemical test. Table 11-3 contains a check list to assist an officer with important considerations relating to his responsibility in chemical testing.

Table 11-2

CRITERIA FOR THE SELECTION
OF APPROPRIATE CHEMICAL TEST

If any of the criteria for the first choice cannot be met, then the second or subsequent choice should be considered in order.

BREATH TEST

- | | |
|---------------|--|
| 1st
CHOICE | 1. BREATH TEST IS AVAILABLE. |
| | 2. DRUGS ARE NOT A MAJOR CONSIDERATION. |
| | 3. SUBJECT DOES NOT REQUEST A TEST OTHER THAN BREATH. |
| | 4. THERE ARE NO MEDICAL REASONS PROHIBITING A BREATH TEST. |

BLOOD TEST

- | | |
|---------------|---|
| 2nd
CHOICE | 1. SUBJECT DOES NOT REFUSE TO SUBMIT TO BLOOD TEST. |
| | 2. BLOOD TEST IS READILY AVAILABLE. |
| | 3. BARBITURATES, TRANQUILIZERS OR ALCOHOLS ARE THE MAJOR CONSIDERATION. |

URINE TEST

- | | |
|---------------|-------------------------------------|
| 3rd
CHOICE | 1. URINE TEST IS READILY AVAILABLE. |
|---------------|-------------------------------------|

ADMINISTRATION OF CHEMICAL TESTS

Check list of important considerations as they relate to the responsibility of the arresting officer in the administration of these chemical tests.

BREATHBEFORE sample is taken:

1. Notify Breathalyzer operator.
2. Observe the subject at least 20 minutes immediately prior to testing.
3. Witness preparation of instrument.

DURING taking of sample:

1. Witness subject giving sample.

AFTER taking sample:

1. Witness the recording of the BAC.
2. Sign the "Breath Test Report Form".
3. Evaluate subject's BAC for necessary medical attention.
4. Record in notes any relevant comments or observations made during entire test.

BLOODBEFORE specimen is taken:

1. Make certain both you and the physician or nurse are familiar with the appropriate directions on the Alcohol Determination form.
2. Break the seal on the collection kit and provide the nurse or physician with vial.

DURING taking of specimen:

1. Witness the fact that no alcohol or alcoholic solution was used in the collection procedure.
2. Witness drawing of blood from the subject (note time).
3. Witness placing of specimen into appropriate vial and initialing of label.
4. Receive the filled vial directly from the nurse or physician and place in metal container.

AFTER specimen is taken:

1. Complete the Alcohol Determination form.
2. Wrap form around metal container and place into cardboard mailing container.
3. Seal cardboard mailing container with adhesive tape.
4. Place sealing wax on tape or initial and draw line from tape onto label.
5. Mail or refrigerate immediately.
6. Record in notes any relevant comments or observations made during entire test.

URINE*BEFORE specimen is taken:

1. Make certain that you are familiar with the appropriate directions on the Alcohol Determination form.
2. Ask subject to void bladder completely approximately 1/2 hour prior to collection of sample.
3. Be present when subject empties bladder.

DURING taking of specimen:

1. Provide subject with a clean and dry container (preferably with spout) to collect specimen.
2. Be present when specimen is taken (note time).

AFTER specimen is taken:

1. Fill the glass sample vial from test kit, tighten lid and shake.
2. Complete and initial label on glass sample vial and replace into metal container.
3. Complete the Alcohol Determination form.
4. Wrap form around metal container and place into cardboard mailing container.
5. Seal cardboard mailing container with adhesive tape.
6. Place sealing wax on tape or initial and draw line from tape onto label.
7. Mail or refrigerate immediately.
8. Record in notes any relevant comments or observations made during entire test.

*If two samples are to be taken, a specimen should be collected from initial voiding as well (use two separate test kits). If test is for a drug analysis, then it is not necessary for subject to void prior to collection of sample (eliminate steps 2 and 3 under "BEFORE").

11.1.5 Administration of the Chemical Test

Regardless of the arresting officer's choice of chemical tests, there are certain procedures and considerations within the administration of each for which he is responsible. The following outlines these various procedures and considerations for each of the chemical tests as they relate to the arresting officer, notwithstanding policy by individual departments, prosecutors or judges.

Breath Test -- The breath test should be administered as soon after the arrest as possible so as to minimize the interval between the time of the test and the time of the observation made by the arresting officer of the subject's driving.

Subjects must not be allowed to drink (any liquid), smoke, eat or otherwise place any mints or sprays in his mouth for at least 20 minutes prior to the test. It is the policy of many departments to have the arresting officer observe and verify this fact beginning with the time of the arrest. If the subject vomits or belches, his mouth should be rinsed and the 20-minute waiting period repeated.

The breath testing operator should be aware of any severe medical problems (e.g., acute emphysema) or abnormally high body temperature of the subject.

If at all possible, the arresting officer should witness the entire procedure in order to provide support or other relevant testimony to the test. In some instances the breath testing operator may provide a running commentary of the procedures for the benefit of the subject. In this situation, the arresting officer benefits also.

Blood Test -- Blood from a suspect must be drawn by a physician or other medical personnel under the supervision of a physician, and it must be drawn in a medical environment.

Only the Alcohol Determination Kit furnished by the State's Department of Public Health should be used for the storage and mailing of the sample. When used properly, these kits, which contain an anticoagulant and preservative, will provide maximum reliability of results and chain of evidence, as well as being more convenient for laboratory personnel. It is strongly recommended that departments obtain from the Department

of Public Health a supply of the Alcohol Determination kits to be kept: (1) in the station; (2) in the patrol cars; and (3) at the location where the blood is usually drawn.

It is important that the arresting officer witness the entire collection of a sample and receive the sample directly from the physician or nurse in order to provide testimony relative to the procedure. The officer should make certain that no alcohol is used to draw the sample. He should also check to be certain that the label on the sample bottle is filled out and initialed by the physician or nurse.

The arresting officer should complete the Alcohol Determination form, which usually accompanies the test kit. It is important that he read and follow explicitly the directions printed on the form. The officer should jot down, in the space provided, any information that would be important, or of interest, to the laboratory personnel (e.g., results of the breath test). If analysis for drugs is desired, this should be indicated in the appropriate spot on the form. If the officer knows what drugs are involved, he should so indicate in the assigned area. If the subject has portions of the unused drug on his person, a sample should be included (wrap and place in metal container) and sent with the blood sample.

When the test kit is properly reassembled and sealed, it should be mailed as soon as possible. If a delay is anticipated, the entire test kit should be refrigerated.

Results of the blood analysis usually will be returned to the law enforcement agency by mail in approximately one week.

Urine Test -- The specimen for urine analysis may be collected by the arresting officer. This test requires that the subject void the bladder twice, 1/2 hour apart, with the specimen for analysis being collected from the second voiding. If the officer collects a specimen from the initial voiding as well as the second (using two separate test kits), it is possible for the laboratory to determine whether or not the subject's blood alcohol concentration was increasing or decreasing. If the urinalysis is to be used for the determination of the presence of a drug, then the specimen may be taken from the initial emptying of the bladder and a second voiding is not necessary.

The subject should be provided with a clean, dry quart pitcher or similar container with which to collect the specimen. Experience has shown that a container which has a spout is much better when pouring the specimen into the small sample vial.

The arresting officer should be present when the specimen is collected to ensure that the subject does not dilute or otherwise contaminate the sample. It is also wise that the officer be present during the initial voiding to ensure that the subject does, in fact, empty his bladder.

The arresting officer should complete the Alcohol Determination form, which accompanies the test kit. It is important that he read and follow explicitly the directions printed on the form. The officer should jot down, in the space provided below the directions, any information that would be important, or of interest, to the laboratory personnel (e.g., results of the breath test). If analysis for drugs is desired, this should be indicated in the appropriate spot on the form. If the officer knows what drugs are involved, he should so indicate in the assigned area. If the subject has portions of the unused drug on his person, a sample should be included (wrap and place in metal container) and sent with the blood sample.

When the test kit is properly reassembled and sealed, it should be mailed as soon as possible. If a delay is anticipated, the entire test kit should be refrigerated.

Results of the urine analysis will be returned to the law enforcement agency by mail in approximately one week.

Regardless of what test is administered, the officer should record any comments or actions on the part of the subject which may occur during the testing procedure. He should be especially aware of the general condition of the subject at the time of the test as compared to the time of arrest.

Expert Testimony -- The Department of Public Health, Crime Detection Laboratory, usually will provide expert testimony when needed for any case involving DWI regardless of whether blood, breath or urine specimen was taken. They will not, however, provide testimony if proper procedures have not been followed by the arresting officer and the law enforcement agency.

If the prosecutor is in doubt about using expert testimony, he should be encouraged to contact the Department of Public Health for advice. When expert testimony is required, the Department of Health should be notified as soon as possible so that schedule conflicts can be avoided. When obtaining a subpoena for expert testimony, the subpoena should request a "representative" of the crime laboratory rather than listing a specific toxicologist or technician by name.

Study Plan

Unit 11.2

Requests for and Refusals of Chemical Tests

Unit Objective:

To understand the method and legal requirements for requesting and refusing chemical tests.

Terminal Objectives:

- 11.2.3 . . . be able to demonstrate an understanding of the requirements for advisement of rights in chemical testing.
- 11.2.4 . . . be able to demonstrate an understanding of requirements for completing "refusal to submit" form.
- 11.2.5 . . . be able to demonstrate an understanding of legal responsibilities relating to chemical testing.

Content Topics:

- 11.2.1 Review of previous unit.
- 11.2.2 Overview of unit.
- 11.2.3 Advisement of chemical test rights.
- 11.2.4 Completing "Refusal to Submit" form.
- 11.2.5 Legal responsibilities relating to chemical testing.
- 11.2.6 Summary of unit.

Assignment:

1. Read Unit 11.2 in Student Manual on Requests for and Refusals of Chemical Tests.

Study Questions:

1. What is the purpose of the "Refusal to Submit" form designed for chemical testing?
2. What are the requirements for completing the "Refusal to Submit" form?

Content Material

Unit 11.2

Requests for and Refusals of Chemical Tests

11.2.2 Overview of Unit.

The purpose of this unit is to identify the procedures and forms required when the request to submit to a chemical test is made by the arresting officer or refused by the suspect. The topics include the advisement of chemical test rights; completion of refusal to submit form; and legal responsibilities relating to chemical tests.

11.2.3 Advisement of Chemical Test Rights.

When an arresting officer has made the decision to arrest under a DWI charge, the law requires that the subject be advised of his rights concerning chemical testing. The arresting officer should make certain that, under all circumstances (unconsciousness an exception), he has read completely these rights to the suspect.

Because it is important that the chemical test reflect as nearly as possible the BAC of the driver at the time he was actually driving, it is important that the suspect be advised of his chemical test rights as soon after the arrest is initiated as possible. When this is done, the time allowable for the suspect to make up his mind to take or refuse a chemical test will begin without delay. The responsibility of the advisement of chemical test rights is most always upon the arresting officer.

11.2.4 Completing Refusal to Submit Form.

Implied Consent law allows for the suspect to refuse to submit to a chemical test. Under such circumstances, the arresting officer is required to complete the Officer's Sworn Report of Refusal to Submit to Chemical Test. When the form is completed by the arresting officer and signed by him in the presence of a notary, it is sent immediately to the driver licensing authority of the state. Upon receiving the properly completed refusal form, the licensing authority will notify the defendant of his right to a hearing before the License Appeal Board.

11.2.5 Legal Responsibilities Relating to Chemical Testing

The following is a brief summary of the key legal responsibilities that must be observed by the arresting officer as they relate to drinking driver statutes:

A. Prior to requesting a chemical test:

1. Subject must be under arrest.
2. Subject has a right to a chemical test.
3. Officer has the right to request a chemical test.

B. Requesting a chemical test:

1. Subject must be advised of his rights concerning a chemical test.
2. Subject has right to refuse test.
3. Subject is not required to submit to a test which requires the withdrawal of his blood.
4. After submission to the chemical test provided by the police officer, subject has the right to an additional test by someone of his own choosing.
5. Under normal circumstances, the subject shall be allowed sufficient time from the time of his advisement of the implied consent rights in which to decide if he wants to refuse or submit to a chemical test.

C. Providing a Chemical Test.

1. Samples and specimens of urine, breath and saliva shall be taken and collected in a reasonable manner. Only a duly licensed physician, or a licensed or medical technician under the direction of a licensed physician and duly qualified to withdraw blood, acting in a medical environment, at the request of a police officer, can withdraw blood with the purpose of determining the alcohol content.

- a. Breath tests must be given by an operator certified by the State Department of Public Health.

- b. Blood and urine samples must be handled in accordance with proper chain of evidence procedures.

SUBJECT # 12

EXPERIENCE IN DEGENERATIVE EFFECTS OF ALCOHOL

Subject Objective:

To become familiar with effects
of alcohol on own person.

Subject Unit:

12.1 Student participation
in drinking session.

Study Plan

Unit 12.1

Student Participation in Drinking Session

Unit Objective:

To understand the volume of alcohol required to reach a given blood alcohol level and the corresponding effect on the human condition.

Terminal Objective:

- 12.1.2 . . . be able to express relationship of volume of alcohol consumed to feeling of intoxication; to express reactions to intoxicating beverages; and to relate results of breath tests to way student feels and behaves.

Content Topics:

- 12.1.1 Overview of unit.
12.1.2 Method for controlled drinking exercise.
12.1.3 Summary of unit.

Assignment:

1. Read Subject #12 in Student Manual on Experience in Degenerative Effects of Alcohol.

Study Questions:

1. How much alcohol can you consume prior to feeling any affect? A slight affect? Considerably affected?
2. How many drinks can you consume before your driving abilities are impaired?

Content Material

Unit 12.1

Student Participation in Drinking Session

12.1.1 Overview of Unit.

The following discussion is for the purpose of developing an understanding of the relationship between an identifiable blood alcohol concentration and the corresponding influence on the human condition. The topic covered is the method for the controlled drinking exercise.

12.1.2 Method for Controlled Drinking Exercise.

The student will be provided a measured amount of alcoholic beverage mathematically calculated, according to his weight (Widmark Formula) to produce a blood alcohol concentration of .12%. One hour will be allowed for total consumption of the alcohol. Fifteen minutes after completion of drinking, the BAC of the student will be determined, by the use of breath testing equipment. Breath tests will continue each fifteen minutes thereafter.

Prior to each test, the student will estimate his own BAC and enter the figure on a special form. After the result of each breath test is obtained, it will be entered on the same card, allowing any difference between the estimated and actual BAC to be figured.

Each breath test result will be plotted on special graph paper so the student can follow the absorption and destruction pattern of alcohol within his system.

Throughout the exercise, the students will conduct various psychophysical tests on one another in order to detect any visible signs of impairment. Students will display, on special badges, their current BAC to enable others to relate observable conditions.

Depending on individual stomach content and physiological reaction, the student is expected to reach a BAC in the range of .06% to .10%.

Table 12-1 sets forth the special regulations to be applied to the controlled drinking laboratory session.

Table 12-1

Regulations for Controlled Drinking Exercise

1. Students do not have to drink to pass course; this is a voluntary exercise.
2. No alcoholic beverage, other than that provided to the individual student, will be consumed prior to or during the exercise.
3. No student will be allowed to leave at the end of the exercise unless his BAC is below .05%.
4. No guns will be carried during the exercise by either drinkers or non-drinkers. Any gun brought to the classroom must be turned over to an instructor to keep until the class is over.
5. Students who eat a heavy dinner may minimize the desired effects of the alcohol intake. However, for the infrequent drinker, this exercise should not be conducted on a completely empty stomach.
6. The student can mix or chase his alcohol with any beverage he wishes, the purchase of which will be up to the student prior to class time. Alcohol, ice and cups will be furnished.

SUBJECT # 13

LEGAL AUTHORITY IN ALCOHOL ENFORCEMENT

Subject Objective:

To know and understand the laws pertaining to alcohol enforcement.

Subject Units:

13.1 Laws pertaining to drinking and driving offenses.

13.2 Implied consent laws.

Study Plan

Unit 13.1

Laws Pertaining to Drinking and Driving Offenses

Unit Objective:

To understand laws pertaining to drinking and driving offenses.

Terminal Objectives:

- 13.1.2 . . . be able to demonstrate an understanding of appropriate statutes pertaining to drinking and driving offenses.
- 13.1.3 . . . be able to list and describe the elements of DWI offenses.
- 13.1.4 . . . be able to demonstrate an understanding of case law pertaining to drinking and driving offenses.

Content Topics:

- 13.1.1 Overview of unit.
- 13.1.2 Statutes pertaining to drinking and driving offenses.
- 13.1.3 Elements of DWI offenses.
- 13.1.4 Case law pertaining to drinking and driving offenses.
- 13.1.5 Summary of unit.

Assignment:

- 1. Study Unit 13.1 in Student Manual on Laws Pertaining to Drinking and Driving Offenses.

Study Questions:

- 1. What are the elements of the offense of driving while under the influence?
- 2. What is the difference between advisement of rights for chemical tests and the Miranda warning?

Content Material

Unit 13.1

Laws Pertaining to Drinking and Driving Offenses

13.1.1 Overview of Unit.

The purpose of this unit is to develop an understanding of the laws pertaining to drinking and driving. Topics include a review of the statutes pertaining to such offenses, elements of DWI offenses and case law pertaining to drinking and driving.

13.1.2 Statutes Pertaining to Drinking and Driving Offenses.*

§ UVCA 11-902 -- Persons Under the Influence of Intoxicating Liquor.

(a) It is unlawful and punishable as provided in section 11-902.2 for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within this state.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath or other bodily substance shall give rise to the following presumptions:

- 1. If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor.
- 2. If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

* In order to accommodate the variations in the statutes for drinking and driving offenses for the various states in the nation, the UVC statutes are used in this unit. Your instructor will provide the class with pertinent statutes for your jurisdiction.

3. If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.
4. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.
5. The foregoing provisions of paragraph (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor.

(c) Chemical analysis of the person's blood, urine, breath or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the State Department of Health and by an individual possessing a valid permit issued by the State Department of Health for this purpose. The State Department of Health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses and to issue permits which shall be subject to termination or revocation at the discretion of the State Department of Health.

(d) When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of section 6-205.1, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

(e) The person tested may have a physician, or a qualified technician, chemist, registered nurse or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(f) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney.

(g) If a person under arrest refuses to submit to a chemical test under the provisions of § 6-205.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle (upon the public highways of this state) while under the influence of intoxicating liquor.

§ UVCA 11-902.1 -- Persons Under the Influence of Drugs.

It is unlawful and punishable as provided in section 11-902.2 for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this state. The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

§ UVCA 11-902.2 -- Penalties and Administrative Action of Commissioner.

(a) Every person who is convicted of a violation of section 11-902 or section 11-902.1 shall be punished by imprisonment for not less than 10 days nor more than 1 year, or by a fine of not less than \$100 nor more than \$1,000, or by both such fine and imprisonment. On a second or subsequent conviction under either section he shall be punished by imprisonment for not less than 90 days nor more than 1 year, and, in the discretion of the court, a fine of not more than \$1,000.

(b) The commissioner shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted under section 11-902 or section 11-902.1.

13.1.3 Elements of DWI Offenses.

The elements of the DWI offences are those items which the officer must be prepared to show in court. If you are unable to show each of these elements, than it is doubtful that you can win your case since, according to trial law, you have failed to prove the case.

In DWI cases you must be prepared to show the following:

- A. That the person arrested was driving or in actual physical control of a vehicle at the time you observed his driving behavior.
- B. That the person arrested was under the influence of intoxicating liquor. A blood alcohol concentration of 0.10% or greater is presumptive proof of this.
- C. That you had reasonable grounds to stop the driver for either a traffic violation, in which case you could have issued a summons, or that the vehicle maneuver was hazardous to the public.
- D. That the violation for which you arrested the driver occurred upon a public highway of this state.

13.1.4 Case Law Pertaining to Drinking and Driving.

When studying case law, the student should keep in mind that case law does not re-write the statute. The statute will still be enforced as it is written; the impact of case law will generally dictate how the arresting officer handles the arrested person or how he obtains or handles evidence. With this in mind, you should guard against attempting to enforce case law on the street.

People v. Miller, 357 Mich. 400.

Issue: Admissibility of Urine Test.

Holding: A suspect's sample of urine shown to have been taken at a time reasonably soon after incident complained of, subjected to test having general scientific recognition, with results correlated to probable blood alcohol concentration at time of violation charged, is properly admissible as bearing upon issue of intoxication.

State v. Donaldson, 36 A.D. 2d. 37, 319 N.Y.S. 2d. 172 (1971).

Issue: Admissibility of Breath Test.

Holding: "Moreover," the court said, "by providing in the statute, that the results of the chemical analysis of breath tests are admissible into evidence, the legislature has obviously determined that breath tests are scientifically reliable."

People v. Mellor, 302 Mich. 537.

Issue: Charge of second offense does not require information of first offense.

Holding: In prosecution of defendant as second offender for driving a motor vehicle while under the influence of intoxicating liquor, the information was not faulty because it did not contain two counts, since the prior offense was not an element of the instant offense but merely applied to punishment after conviction, and motion to dismiss information because second offender charge was made more than six years after first conviction was properly denied, since former conviction was merely an additional fact or circumstance to be considered in imposing a severer penalty for the second conviction.

Mississippi State Supreme Court Ruling on Appeal of Charles T. Scarborough, Jr.

Issue: (1) Appellant had witness who could verify that he had drunk no more than three glasses of beer, and left bar in sober condition. (2) Argued he was convicted on perjured testimony. (3) Not given a chance to call a doctor for a blood test or a friend to verify his sober condition.

Holding: Holding a prisoner incommunicado and unreasonably denying, or ignoring his request for assistance to have tests made amounts to a denial of due process of law by suppressing possible evidence favorable to the defendant. To limit such a person access to an attorney or friends until after a certain number of hours have passed in effect (denies) him effective means to prepare a defense.

The practice of not allowing a person prompt access to a phone would nullify a new implied consent law. Under that law, driving a car implies the driver's consent to a test; if he is not satisfied with the results, he can have his own test made. Rule will apply only after a defendant showed a request to have a test made at his own request, showed cooperation so a test could be made without jeopardizing safe custody, showed that facilities and personnel were available to make the test at the time and place asked, and showed that officers refused to let him contact a lawyer or other person in an effort to have the test made.

People v. Mellor, 302 Mich. 537.

Issue: Reasonable Grounds for DWIL Arrest.

Holding: In prosecution of defendant for driving a motor vehicle while under the influence of intoxicating liquor, there was evidence to warrant a finding that defendant was operating the car at the time and place in question and that he was under the influence of liquor to such an extent that it would materially affect his ability to drive an automobile.

State v. Myers, 26 Ohio St. 2d. 190, 271 N.E. 2d. 245 (June 23, 1970).

Issue: Right to Additional Tests.

Holding: In spite of the Ohio Implied Consent statute's specific pronouncement that a DWI suspect "shall be advised of the right to take additional tests at his own expense, the Ohio Supreme Court ruled that, in the absence of a showing of prejudice," and without a specific statutory sanction, the results of chemical tests could not be excluded due to the lack of such advice being given. The court, therefore, in a case affirming the reversal of the defendant's DWI conviction on other grounds, overruled a line of lower court decisions which had found that a failure to so advise a DWI suspect was grounds for excluding the test results.

Zadina v. Weedlun, 190 N.W. 2d. 857 (Neb., Oct. 22, 1971).

Issue: Failure of Officer to Advise of Right to Additional Test.

Holding: The Nebraska Supreme Court ruled, inter alia, that the failure of an officer to advise appellant of his right to take additional tests at his own expense "did not excuse the failure to submit." The court found the statute did not require the officer to advise him of his "privilege".

People v. Craft, 28 N.Y. 2d. 274, 270 N.E. 2d. 297 (April 14, 1971).

Issue: Miranda Rights.

Holding: Reasoning that Miranda was only applicable to "testimonial or communicative" and not "real or physical evidence" (Schmerber) the New York

Court of Appeals rejected the defendant's contention that his 1966 DWI conviction should be set aside since, due to the failure to advise him of his constitutional rights, he had been denied the opportunity to consult with his attorney and to thereby be advised that if he were willing to lose his license he could refuse to request to take the chemical test. (Miranda was decided 30 days after the occurrence.) The court also found that Wade and Gilbert had made it clear that the defendant was not entitled to counsel at this point since he was only exposed to a "minimal risk". In reaching the decision, the court established a precedent by its ruling in the Gurse Case (239 N.E. 2d. 351) on the ground that a specific request to speak with an attorney was refused; here there was only a failure to "advise or warn" defendant of his constitutional rights.

Decker v. Department of Motor Vehicles, 5 Cal. 39 902.

Issue: Officer's Warning that the License of the Suspect Could be Suspended was Misleading.

Holding: Arresting officers should be alert to the fact that in giving the required advice to the suspect under the implied consent law (Vehicle Code 13353) it is important to be explicit about the legal consequences of a refusal to submit to a test for intoxication.

13.1.5 Summary of Unit.

The statutes between states differ somewhat, mainly in the presumptive level of intoxication, but the basic pattern of laws pertaining to drinking and driving statutes are quite similar. The pattern is as follows:

1. It is unlawful to operate or be in physical control of any vehicle while under the influence of alcohol.
2. Presumptive levels established are:
 - a) At 0.05% or less, the driver is presumed not under the influence.
 - b) At greater than 0.05% but less than 0.10%, there is no presumption. In some states this is grounds for a charge of Driving While Ability Impaired (DWAI) due to alcohol.

- c) At 0.10% or greater, the driver is presumed to be under the influence.
 - d) Percent by weight is based upon grams (milligrams) per 100 cubic centimeters of blood.
 - e) Other competent evidence bearing upon case is admissible, to show whether person is under the influence.
3. Methods of obtaining and analyzing chemical analysis are to be approved by State Department of Public Health.
 4. Withdrawal of blood is to be performed by physician or registered nurse.
 5. Right is granted to additional tests by person of own choosing at expense of defendant. Inability to obtain additional tests does not preclude admission of other tests.
 6. Results of test or tests are to be made available to defendant.
 7. Refusal to submit to test or tests will result in loss of license and is admissible in civil or criminal action.
 8. Users or habitual users of drugs are controlled under the same statute. No provision is made for tests.
 9. Conviction of violation is punishable by up to 1 year in jail or a fine of up to \$1,000 or both fine and imprisonment.
 10. Revocation of license, permit to drive or operating privilege is included.

Case law has generally upheld drinking and driving statutes throughout the United States.

Study Plan
Unit 13.2
Implied Consent Laws

Unit Objective:

To understand the implied consent laws.

Terminal Objectives:

- 13.2.2 . . . be able to demonstrate an understanding of the nature and purpose of implied consent legislation.
- 13.2.3 . . . be able to demonstrate an understanding of the implied consent statutes.
- 13.2.4 . . . be able to demonstrate an understanding of case law pertaining to implied consent law.

Content Topics:

- 13.2.1 Overview of unit.
- 13.2.2 Nature and purpose of implied consent legislation.
- 13.2.3 Implied consent statutes.
- 13.2.4 Case law pertaining to implied consent.
- 13.2.5 Summary of unit.

Assignment:

1. Study Unit 13.2 in Student Manual on Implied Consent Law.

Study Questions:

1. How old is implied consent legislation?
2. Does implied consent legislation today conform to what original thinkers felt about it?
3. What are the purposes of implied consent laws?
4. What happens to a subject if he refuses to submit to a chemical test?

Study Questions: (cont.)

5. What constitutes a reasonable refusal to a chemical test?
6. What agency establishes standards for administering chemical tests?

Content Material

Unit 13.2

Implied Consent Laws

13.2.1 Overview of Unit.

The purpose of this unit is to develop an understanding of implied consent laws. Topics include a review of the nature and purpose of implied consent legislation, implied consent statutes and case law pertaining to implied consent.

13.2.2 Nature and Purpose of Implied Consent Legislation.

Most members of the judiciary are keenly aware of the role that the excessive use of alcohol on the part of motorists and pedestrians play in the every increasing number of injuries and fatalities on the highways of this nation.

Many courts have welcomed the use of scientific evidence in the battle to control the drinking driver (as the problem becomes more acute each year) rather than having to depend upon the mere opinion evidence of lay witnesses. This is indicated, particularly in the many and various court decisions involving chemical test evidence, by the fact that none have been reversed on the grounds that chemical test evidence is not good evidence if the test has been properly conducted and the evidence has been properly presented.

One of the chief advantages of scientific chemical test evidence is that it shows definitely whether the obvious physical symptoms of impairment are due to alcohol.

In the early 1950s, many people in this country were advocating (and many still are) compulsory chemical test laws -- every motorist suspected of driving while under the influence of intoxicants should be compelled to submit to a chemical test. A number of people in the traffic safety field have dissented, pointing out the possible legal problems in some jurisdictions, but also emphasizing that laws to be enforceable must be acceptable to the public. They venture the opinion that there are far too many people in this country who are not yet ready to accept the fact that the hazards created by the drinking driver are so aggravated as to warrant this extreme type of legislative action.

Others suggested that every driver should be required to sign an agreement, as part of his driver's license application, to submit to a chemical test should he be suspected of driving while under the influence of intoxicants. Many questioned how such a proposal would be effective in controlling non-resident motorists, or resident drivers who neither had a license nor ever applied for one and who therefore would not have been a party to such an agreement as part of a license application in the enacting state.

About this time, an interim legislative committee in New York, studying the problems of traffic safety and traffic laws, found that even though that state had been among the first to enact a chemical test law, only a comparatively few law enforcement agencies had established chemical test programs. After the committee investigated the reasons it was decided the state needed stronger laws to bolster the chemical test statute.

After considerable study and research, the committee and its counsel decided upon what is known as the "implied consent law". It provided, in effect, that as a condition of the privilege of driving a motor vehicle upon the highways of the state, every motorist was deemed to have given his consent to a chemical test of his blood, breath, or urine to determine blood alcohol concentration if charged with driving while in an intoxicated condition. It provided further that if he was so charged and refused to submit to a test, no test would be given, but his privilege to drive within the state was to be revoked because of his refusal to abide by this condition upon which the privilege was based.

The committee and its counsel considered their recommendation for such a statute to be based upon a sound legal foundation. The New York courts had held for many years, as had the courts of other states, that the use of the public highways, whether it be called a privilege, right or freedom was a matter which could be regulated and to which reasonable conditions could be attached by the state legislature.

Furthermore, an implied consent type of law was not a new kind of law. Most states have the "long-arm" law patterned after the recommended provision in the Uniform Vehicle Code, which provided that, as a condition of his using the highways in the host state, a non-resident motorist is deemed to have implied the appointment of the motor vehicle administrator of the host state as his agent upon whom service of process may be made in case he is involved in an accident in the host state and is sued therein as a result.

In 1962, the implied consent type of law was included in the Uniform Vehicle Code by the National Committee on Uniform Traffic Laws and Ordinances at the recommendation of the National Safety Council, the American Medical Association, and other national organizations interested in traffic safety and the prevention of traffic accidents. The Committee adhered closely to the provisions of the uniform act approved and recommended by the National Conference on Uniform State Laws and the American Bar Association in 1957, but did make some revisions and improvements dictated by subsequent experience and appellate court decisions construing existent implied consent laws.

13.2.3 Implied Consent Statutes.*

§ 6-250.1 -- Revocation of license in event of refusal to submit to chemical tests.

(a) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of § 11-902, to a chemical test or tests of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section and the test or tests may be administered, subject to the provisions of § 11-902.

(c) If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency provided in paragraph (a) of this section, none shall be given, but the department, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe

* In order to accommodate the variations in the implied consent statutes of the various states, the UVC statutes are used in this unit. Your instructor will provide the class with pertinent statutes for your jurisdiction.

the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the law enforcement officer, shall revoke his license subject to review as hereinafter provided.

(d) Upon revoking the license, as hereinbefore in this section directed, the department shall immediately notify the person in writing and upon his request shall afford him an opportunity for a hearing in the same manner and under the same conditions as is provided in § 6-206(c) for notification and hearings in the cases of discretionary suspension of licenses, except that the scope of such a hearing for the purposes of this section shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether he refused to submit to the test upon request of the officer. Whether the person was informed that his privilege to drive would be revoked if he refused to submit to the test shall not be an issue. The department shall order that the revocation either be rescinded or sustained.

(e) If the revocation is sustained after such a hearing, the person whose license has been revoked, under the provisions of this section, shall have the right to file a petition in the appropriate court to review the final order of revocation by the department in the same manner and under the same conditions as provided in § 6-212 in the cases of discretionary revocations and suspensions.

13.2.4 Case Law Pertaining to Implied Consent.

The same application of case law to DWI enforcement should be maintained here as that stated in Unit 13.1.4.

Decker v. Department of Motor Vehicles, 6 Cal. 3d. 902.

Issue: Explicit Warning.

Holding: Arresting officers in giving the required advice to the suspect under the implied consent law must be explicit about the legal consequences of a refusal to submit to a test for intoxication.

Lee v. State Highway Commission, Motor Vehicle Department, 187 Kansas 566, 358 P. 2d. 765, 769-770 (1961).

Issue: Constitutionality of Implied Consent Law.

Holding: Right to operate a motor vehicle upon a public street or highway is not a natural or unrestrained right, but a privilege which is subject to reasonable regulation under the police power of the state in the interest of public safety and welfare.

The statute does not compel one to submit to a blood test and does not require one to incriminate himself within the meaning of constitutional provisions. It gives the driver the right of choice of the statutory suspension of his license, and further gives him the right to a hearing on the questions of the reasonableness of his failure to submit to the test.

In Re-Application of Kunneman, 501 P. 2d. 910 (Okla. App. 1972).

Issue: Non-Verbal Chemical Test Refusal.

Holding: Even though one charged with driving while under the influence of intoxicating beverages orally states he will submit to a breathalyzer test, but refuses to blow his breath into the machine, this constitutes a non-verbal refusal.

Holt v. U.S. 218 U.S. 245, 252, 31 S. Ct. 2, 6, 54 L. Ed. 1021.

Issue: Constitutional Privilege Against Self-Incrimination.

Holding: The privilege is restricted to oral testimony and does not preclude the use of one's body as evidence. It does not bar the use of secretions of the defendant's body and the introduction of their chemical analysis in evidence.

Shirley L. Harlan v. State, Supreme Ct. N.H. April 30, 1973.

Issue: Is Chemical Test Refusal Cured by Later Agreement to Submit?

Holding: Initial test refusal to submit to a breath test not cured by her offer to take test one hour later.

State v. Florence B. Johnson, 199 A. 2d. 809, 42 N.J. 146 (1964).

Issue: Reliability of Breath Test as Evidence.
Holding: It is not essential to sustain the charge that the particular driver could not safely drive a car, although proof of the erratic manner or result of his driving is admissible as evidence of the existence of the statutory condition. As Judge Gaulkin said in State v. Miller, 64 N.J. Super. 262, 268 (App-Div-1960): "The drunkometer is sufficiently established and accepted as a scientifically reliable and accurate device for determining the alcoholic content of the blood to admit testimony of the reading obtained upon a properly conducted test, without any need for antecedent expert testimony by a scientist that such reading is a trustworthy index of blood alcohol or why... It is of course, most essential, in view of the heavy impact the result can have, that proper administration of the test be clearly established. . . This includes full proof that the equipment was in proper order, the operator qualified and the test given correctly..."

Although corroborating evidence of objective symptoms would ordinarily be available, it cannot be required as necessary for conviction.

Lanford v. People, 409 P. 2d. 829 (Sup. Ct. Colo. Jan. 10, 1966).

Issue: Evidence Admissible.
Holding: Motion pictures and their sound showing demeanor and condition of a defendant charged with drunken driving, taken at or soon after the time of arrest, were held to be admissible even though films showed defendant's refusal to take sobriety and coordination tests.

State v. Baker, 56 Wash. 2d. 846, 355 P. 2d. 806 (1969).

Issue: Reliability of Breath Test as Evidence.
Holding: Prima Facie evidence of following basic requirements must be introduced by the prosecution before breathalyzer test is admissible:

1. Machine properly checked and in proper working order at the time of conducting the test;*

*State v. Woodward, 462 P. 2d. 685 (Ore. 1969).

2. The chemicals employed were of the correct kind and in proper proportions;
3. Subject had nothing in his mouth at time of test and he had taken no food or drink within fifteen minutes prior to the test;
4. Test be given by a qualified operator and in the proper manner.**

**City of Bremerton v. Osborne, 66 Wash. 2d. 281, 401 P. 2d. (1965).

Collins v. Secretary of State, 19 Mich. App. 498, affd. 384 Mich. 656.

Issue: Right to Particular Chemical Test.
Holding: Under this act, police officers have the right to request an accused to take a particular chemical test and the accused, at the risk of revocation or suspension of his driver's license; must take the test offered by the police or the optional breath test also provided in such statute.

People v. Burton, 13 Mich. App. 203.

Issue: Failure to Advise Defendant that Doctor had not been Contacted.
Holding: Failure of police to timely inform defendant that they had not contacted physician requested by him to administer blood alcohol test following his arrest would be held to have denied defendant due process by depriving him of reasonable opportunity to gather defense evidence, thereby requiring reversal, without demand for retrial, of conviction for driving under influence of intoxicants.

13.2.5 Summary of Unit.

It has taken over twenty years to bring about implied consent legislation in all fifty states. The details differ somewhat among states, but the basic pattern of implied consent laws is quite similar. The pattern is as follows:

1. Any person who operates a motor vehicle upon a public highway shall be deemed to have given consent to a chemical test of his blood, breath or urine for the purposes of determining the alcoholic content of his blood.

2. He is deemed to have given consent if arrested for any offense arising out of acts alleged to have been committed while he was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor.
3. The test or tests shall be administered by a law enforcement officer having probable cause to believe the person to be under the influence of intoxicating liquor while driving or in actual physical control of a motor vehicle.
4. If the arrested person refuses to submit to the chemical test when requested by a law enforcement officer, none shall be given.
5. Upon a refusal, the officer sends a sworn report to the motor vehicle department stating that he had probable cause to believe the person under the influence and that the person refused to submit to a chemical test.
6. The motor vehicle department shall then revoke the person's license.
7. The department then notifies the person and affords him an opportunity for a hearing on the license revocation.

The hearing held by the department is an administrative action. Thus the person can appeal the results of this hearing to a higher court, i.e., circuit court.

The only issues that can be heard at this hearing can also be termed the elements of the offense, these are:

1. Whether the law enforcement officer had probable cause to believe the person had been driving or was in actual physical control of a motor vehicle upon a public highway.
2. Whether the person was placed under arrest.
3. Whether the person refused to submit to the chemical test.

SUBJECT # 14

CASE PRESENTATION -- TESTIMONY

Subject Objective:

To understand methods and procedures for presenting testimony in court on alcohol related offenses.

Subject Unit:

14.1 Presentation of Testimony in Court.

Study Plan

Unit 14.1

Presentation of Testimony in Court

Unit Objective:

To understand the proper method for presenting testimony in court.

Terminal Objective:

- 14.1.2 . . . be able to demonstrate an understanding of proper methods for testifying in court.

Content Topics:

- 14.1.1 Overview of unit.
14.1.2 Presentation of testimonial evidence at trial.
14.1.3 Defense tactics in drinking and driving cases.
14.1.4 Summary of unit.

Assignment:

1. Read Subject # 14 in Student Manual on Case Presentation.

Study Questions:

1. What case preparation should be done before the trial by the arresting officer?
2. What are some of the problems officers have when giving testimony?
3. What are some of the tactics that a defense counsel might use in cross-examining the arresting officer?

Content Material

Unit 14.1

Presentation of Testimony in Court

14.1.1 Overview of Unit.

This unit is designed to develop understanding of the proper methods for presenting testimony in court. Material covered includes the importance of pre-trial review; types and classification of evidence; essential elements of the state's case; testimonial requirements; cross-examination; essential elements of the defense's case; and typical subject areas and questions encountered in cross-examination.

14.1.2 Presentation of Testimonial Evidence at Trial.*

Pre-Trial Review of the Case and Evidence

In considering how to prepare for testifying in court, bear in mind that the entire investigation process should be considered as preparation for courtroom presentations. There are numerous duties which are performed at the scene to assure that evidence is properly identified and labeled, that witnesses are located and interviewed and that the specifics of the incident such as time, place, weather, etc., are properly recorded. All go towards measuring the adequacy both of the investigation and the preparation for testifying. In addition to underlining the importance of writing complete, accurate reports of each incident regardless of the apparent chances of a subsequent trial or hearing, each officer should review his personal notebook to assure that it, too, contains sufficiently comprehensive notations to make its use in court an asset rather than a liability.

To optimize the chances of a conviction, it is highly desirable that all evidence and possible testimony be thoroughly reviewed during a conference between the prosecuting attorney and the arresting officer before going to trial. The review should include:

- A. Suspect's case jacket/file. This should be verified as being complete, and procedures for checkout and return of court evidence thoroughly understood.
- B. Admissible and non-admissible evidence. The arresting officer must know which evidence is admissible and which is non-admissible. He should know the reasons for evidence being inadmissible.

*At the conclusion of this topic the instructor will conduct a practice session on presenting direct evidence by using VTR segment of a mock trial.

- C. Limits or boundaries of testimony. The arresting officer should review what kinds of questions he should and should not attempt to answer and the detail with which answers to key questions should be given.
- D. Independent review of evidence by arresting officer. The arresting officer should independently review and become thoroughly familiar with, but not memorize, all evidence he will be called upon to present shortly before going to trial; e.g., forms, test results, memo notes, etc.

This meeting between witnesses and counsel enables the attorney to become aware of the scope and the specifics of a witness' knowledge of a case. Too often, officers are reluctant to admit, on cross-examination by defense counsel, that they have discussed their testimony with anyone. This reluctance should be abandoned since the pre-trial conference is an acceptable procedure used by both prosecution and defense alike as a means of directing their examination of witnesses to those subjects which are within the area of knowledge of each witness. When the pre-trial conference is used, officers should treat it with the same degree of professional concern as they do a summons to appear in court.

Types and Classification of Evidence

When conducting the investigation and arrest for the offense of DWI, the arresting officer must be familiar with and remember the types and classifications of evidence.

After the arrest, the search, the seizure of evidence and other preliminaries, the time of the hearing or trial is at hand. We learn, at this point, the importance of the rules of evidence. If you have sufficient admissible evidence of the offense of DWI, you will bring a lawbreaker to justice and you will have successfully completed your case. If your evidence is not sufficient, or if it is incompetent (legally inadmissible), then you have wasted a great deal of valuable time. A poorly or hastily prepared case taken into court is like inoculation of the defendant against prosecution.

Evidence (General)

- A. Definition: All the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved.

- B. Types: There are basically four kinds of evidence that may be considered:

1. Knowledge:

- a. Acquaintance with fact or truth.
- b. Of law -- includes knowledge of the decisions of the courts, which are part of the law.
- c. Personal -- knowledge of the truth in regard to a particular fact or allegation, which is original, and does not depend on information or hearsay.

2. Testimony:

- a. Evidence given by a competent witness, under oath or affirmation, as distinguished from evidence derived from writings and other sources.
- b. The words "testimony" and "evidence" are not synonymous.
- c. Evidence is the broader term and includes testimony.
- d. Testimony properly means only such evidence as is delivered by a witness on the trial of a cause, either orally or in the form of affidavits or depositions.

- 3. Physical fact -- in the law of evidence: A fact having a physical existence, as distinguished from a mere conception of the mind; one which is visible, audible, or palpable; such as the sound of a pistol shot, a man running, impressions of human feet on the ground.
- 4. Written instrument: Something reduced to writing as a means of evidence and as the means of giving formal expression to some act or contract.

- C. Classification of evidence: Basically, there are three major classifications of evidence:
1. Direct: Facts which a witness knows of his own knowledge having been gained through one of the five senses, such as the officer's account of the DWI driving, etc.
 2. Indirect or circumstantial: The existence of the principal fact is inferred from one or more circumstances which have been established directly.
 3. Real: Evidence which can be seen or felt and which speaks for itself, not requiring explanation. An open and partially consumed container of alcoholic beverage would be real evidence.
- D. Direct and indirect evidence: These may further be categorized as:
1. Competent: Duly qualified; answering all requirements; having sufficient ability or authority; possessing the requisite natural or legal qualifications; able; legally fit. Also, generally, admissible or relevant, as the opposite of "incompetent". Evidence which is legally adequate and sufficient.
 2. Relevant: Applying to the matter in question; affording something to the purpose. It must relate to or bear directly upon a fact in issue, and prove or have a tendency to prove the truth or untruth of such fact.
 3. Material: Such as is relevant and goes to the substantial matters in dispute or has a legitimate and effective influence or bearing on the decision of the case.

Essential Elements of the State's Case

- A. Evidence: The prosecuting attorney will seek to assemble and introduce evidence in support of the following:
1. Grounds for arrest. The arresting officer had reasonable grounds for arresting the suspect because of:

2. Manner in which suspect's motor vehicle was operated and suspect's behavior indicated that suspect was under the influence of alcohol.
 3. Suspect was operating or was in physical control of the motor vehicle in question.
- B. Proper arrest procedure: Suspect was properly arrested and taken into custody.
- C. Suspect's rights: Suspect was given his rights (Miranda warning, right to obtain counsel, implied consent rights).
- D. Observation and interrogation: Suspect's behavior and appearance indicated he was under the influence of alcohol as shown by recorded results of arresting officer's observations, interrogations and performance testing of suspect.
- E. Chemical test request: Suspect was requested to take a chemical test.

Testimonial Requirements

Arresting officer's case presentation:

- A. Performance and condition of suspect's vehicle from detection to apprehension:
1. Description of the setting, time and place, etc.
- B. Results of observations and interrogations of suspect conducted at the scene or at headquarters:
1. Suspect's spontaneous behavior and commentary.
 2. Suspect's responses to interrogation.
 3. Suspect's mannerisms and physical coordination.
 4. The test results noted on Alcohol Influence Report Form if administered by the arresting officer.
- C. Procedures employed when placing suspect under arrest.
- D. Procedures employed when requesting suspect to submit to chemical test.

Recommendations for giving testimony:

In addition to what is said during testimony, the manner in which testimony is given greatly contributes to the overall impression left with the court. Some points of general advice to the officer who gives testimony:

- A. Be on time; present a well-groomed and businesslike appearance and maintain a sober and confident manner inside and outside the courtroom.
- B. As a rule, be careful to testify on facts and events you have personally witnessed.
- C. Don't memorize your testimony or use unfamiliar words or phrases.
- D. Be concise and expressive:
 1. Don't offer more information than is required.
 2. Do not drone on in a monotone.
- E. Don't seem overly anxious or unduly hesitant to answer a question.
- F. Listen carefully to an entire question before answering:
 1. Refer to any notes, if necessary, to answer a question (not too often, though).
- G. Correct any mistake made in testimony in a forthright and unhesitant manner.
- H. If a question posed by defense counsel is objected to by the prosecuting attorney, don't answer until the court has ruled on the objection:
 1. If objection is sustained, don't answer the question as phrased.
 2. If objection is overruled, answer the question.
- I. If defense counsel insists on a "yes" or "no" answer to a complicated question which is only partly true or false, respectfully decline to do so, but offer to tell the facts as you know them.

- J. Be on the alert for the badgering, persecuting type of defense counsel and the friendly, chatty type:
 1. Some defense counsels may use both approaches, shifting rapidly from one to the other.
 2. Maintain your composure in spite of defense counsel harassment.
- K. If you don't know the answer to a question, or shouldn't testify on a particular matter, answer "I don't know" or "I don't remember" as appropriate. Don't guess or manufacture answers. You wouldn't be telling the truth as you know it and the defense will likely trap you at a later time.
- L. Be on guard for, and quickly and firmly correct, any misquotes or misstatements by the defense counsel.
- M. Never appear biased against the defendant.
- N. Always address the judge as "your honor".
- O. Avoid nervous or disturbing mannerisms (e.g., smiling, twiddling thumbs, adjusting clothing, etc.).
- P. Keep conferences with the prosecuting attorney to a minimum and carry them out in a subtle manner -- written communication, if necessary, is more discreet.
- Q. When finished testifying, leave the stand promptly and return directly to your seat, refraining from any conferences along the way.
- R. Summary:
 1. Prepare your case thoroughly and completely. Make your notes of facts and evidence, complete, at the scene. Use your notes at the trial to refresh your memory.
 2. Your conduct and physical appearance should be exemplary.
 3. Appear on time for the hearing or trial.
 4. In the witness stand, take a position that gives you a full view of the courtroom.

5. Sit erect and still, speak in a conversational voice to the jury and in tones and language that they can hear and understand.
6. Answer all questions truthfully and honestly. Do not "editorialize" or offer information. Answer only the question asked.
7. Do not hesitate to say you don't know an answer or that you don't understand the question.
8. Be confident in your responses.
9. Tell the facts as you know them.
10. Finally, always strive to be a better witness. This requires practice and self-evaluation. Each time you testify you should critically evaluate your method of testifying. If possible, discuss your technique with the prosecutor or other officers who were in court. Above all, improve your testimony.

14.1.3 Defense Tactics in Drinking Driver Cases.*

Cross-Examination of Arresting Officer

The theory upon which defense cross-examination should be based is to take apart each fact or circumstance on which the officer based his opinion that the defendant was intoxicated. The defense wants to demonstrate to the jury that it should not rely upon the opinion of the officer because it was based upon questionable facts or circumstances.

Essential Elements of the Defense's Case:

Typical excuses offered to account for the alleged violation include:

- A. Unusual vehicular performance attributable to one or more of the following:
 1. Lighting a cigarette, pipe or cigar.
 2. Tuning the radio.
 3. Prolonged coughing or sneezing.

*At the conclusion of this topic the instructor will conduct a practice session on defense tactics (cross-examination) by using VTR. Segments of a mock trial.

4. Interference from an ill or drunken passenger, or a child.
 5. Sudden feeling of nausea or pain.
 6. Obscured vision.
 7. Defective vehicular component(s); e.g., steering.
 8. Person or animal on road.
 9. Other excuses for unusual vehicle performance.
- B. Suspect's condition due to one or more of the following:
1. Recent use of mouthwash or medication to account for breath odor.
 2. Speech impediment responsible for slurred speech.
 3. Windburn or fatigue causing bloodshot eyes.
 4. Effects of recent injury (e.g., blow on head) or illness (e.g., diabetes).
 5. Recent use of medication to account for unsteadiness or stupor.
 6. Other conditions.
- C. Careful observation of the suspect and his vehicle, and the use of an Alcoholic Influence Report Form, will likely prevent the use of such excuses by the defense.

Typical approaches used by defense counsel:

The cross-examination by defense counsel will present the greatest challenge for the arresting officer. The following tactics are employed by the defense counsel (largely through cross-examination):

- A. Discredit the reputation, qualifications and credibility of arresting officer in the following ways:
 1. In cases where an arresting officer does not have a formal or advanced academic degree, emphasize this fact.

2. Attempt to anger or otherwise destroy the arresting officer's composure by badgering and harassment.
 3. Entrap the arresting officer by requesting a simple "yes" or "no" answer to a complicated question.
 4. Attempt to have the arresting officer answer a question beyond his background and experience.
 5. Bring in an expert witness to refute the testimony of arresting officer, or support an allegation of the suspect.
- B. Attack the accuracy of the breath testing method.
- C. Attack the interrogation, psychomotor and breath testing procedures by:
1. Asking the arresting officer to demonstrate one or more of the performance tests.
 2. Attempting to break the chain of evidence in case of a blood, breath, urine or saliva sample collected for later laboratory analysis.

Sample Subject Areas and Questions Encountered in a Typical Cross-Examination:

The following outline of a suggested cross-examination is included to indicate possible subject areas and questions encountered. While it will vary in any particular case, the outline is included to demonstrate the importance of proper responses on the part of the testifying officer.

A. Erratic Driving:

1. Have the officer draw a map on a blackboard showing streets and intersections where he observed the defendant driving.
2. Find out condition of traffic at the time.
3. If defendant made an illegal turn or committed some minor traffic offense that brought him to the attention of the officer, defense will make the most of it.

B. Failure to Stop Immediately:

1. How far was patrol automobile from that of the defendant when officer first turned on his red light?
2. How far when officer first honked his horn?
3. Was defendant's window up or down?
4. Does officer know whether or not defendant's radio was on in the car when officer honked his horn at him?
5. When officer turned on his siren, defendant stopped almost immediately (this will generally be the case).

C. Stopping Several Feet From Curb:

1. Where did officer stop his car with relation to defendant's? (The answer is generally a few feet to the rear, although on occasions the officers pull by and park in front.)
2. How far from the curb was the police car parked?
3. Defense may be able to show that the defendant was more intent upon obeying the order to stop than he was on parking exactly parallel to and against the curb.

D. Odor of Alcohol:

1. The objectives of defense cross-examination as to the officer's observations of an alcoholic odor are:
 - (a) To create a doubt as to the accuracy of the officer's observation.
 - (b) To show that even if your observation is true, it does not prove intoxication.
 - (c) To lay the groundwork for defense argument to the jury that the only reason his client is here charged with driving while under the influence is that he had the misfortune of being stopped for some minor traffic violation with

the odor of alcohol upon his breath; that police officers are of a very suspicious nature, and the mere presence of an alcoholic odor about a driver who has committed some minor traffic offense will cause them to jump to the conclusion that the person is under the influence of alcohol; that having jumped to that conclusion immediately upon smelling the alcoholic odor on the defendant, they were naturally biased and prejudiced in their observation of all the other acts and conduct of the defendant, and, therefore, all of their testimony is subject to suspicion.

E. Suspicion of Intoxication:

1. "Officer, when you first saw the defendant and smelled the odor of alcohol about him, you formed the opinion that he was under the influence?"

(If you answer "no", then it can be argued that the defendant was not so drunk that it was immediately obvious to any observer. If you answer "yes", then you can be accused of jumping to conclusions before making a fair investigation and of interpreting the results of the field sobriety test in a way to bolster up your original opinion.)

F. Use of the Term "Under the Influence":

1. One of the purposes of cross-examination is to make the officer admit that the defendant was only under the influence of alcohol. It will be argued by the prosecution, and in many states the jury will be so instructed, that the state of drunkenness is so common that a person need not be an expert to recognize it; but the same is not true of the state of being under the influence of alcohol. Therefore, if defense can prod you into saying that the defendant was not drunk but only under the influence of alcohol, defense has gone a long way toward establishing a doubt in the minds of the jurors.

2. Defense will use the term "under the influence" whenever possible in referring to the condition of the defendant, and the term "drunk driving" when referring to the charge.

G. Flushed Face:

1. In the usual case, if the defendant's face was really flushed because of consumption of alcohol, defense does not have a case. Often, however, the flushed face of the defendant is a permanent condition, and it is suspected that sometimes it is the figment of the officer's imagination created to conform to the Alcoholic Influence Report Form. In either event, the problem could be attacked.

H. Bloodshot Eyes:

1. The problem of bloodshot eyes can be defended the same way as the flushed face. Many people have defective eyes, sometimes permanently bloodshot; very few people's eyes are perfectly clear.

I. Swaying and Leaning Against Car:

1. The officer's description of the manner in which defendant walked a line or performed the finger-to-nose test or the balance test will not be consistent with the description of the defendant finding it necessary to lean against the car for support when he first alighted from it.
2. Sometimes, if defense has no alternative, a slight amount of sarcasm or ridicule is effective and will give defense something to argue to the jury.

J. Fumbling Through Billfold:

1. If your case is in a court where the jurors have heard a lot of drunk driving cases, it is likely that they have heard many other cases where the officers have testified that the defendant did fumble through his papers. If it develops that the defendant in this case had no difficulty getting his license from his billfold, defense will use that fact to show that he was perfectly normal and had his wits about him. If the matter has not been brought up, defense will be quite sure what your answer will be before he opens the subject.

2. If the matter has already been raised and you have testified that the defendant fumbled through his billfold to find his driver's license, you can be sure that the prosecutor has laid the groundwork for part of his argument to the jury. However, the damaging effect of that evidence can be minimized: the defendant was quite nervous and excited when first stopped and the license was produced; it's usual for people to be nervous; the mere fact that a person has difficulty locating his driver's license does not indicate that he was drunk, or under the influence; etc.

K. "Just Two Beers":

1. Every lawyer who takes a drunk driving case is apt to be confronted with the "just two beers" problem. The peculiar thing is that the defendant may have told him that he doesn't drink beer, and that he told the arresting officer that he had consumed two Martinis before dinner and a light wine after dinner. He may have witnesses to prove the drinking and the conversation. Still, when the officer testifies, he will say that the defendant stated that he had drunk just two beers. The truth of the matter is difficult to determine. In any event, the worst thing the defendant can say is that he had just two beers. It may be the truth, but no one will believe him. This is probably because the newspapers and radio and TV commentators have used the phrase in an off-hand way to indicate that every drunk will admit the consumption of just two beers and no more.
2. However, if the defendant denies making the statement to the officer, defense will keep in mind that he may be able to take the sting out of the statement by questions such as: Officer, the admission by the defendant that he consumed two beers is practically an admission of intoxication, isn't it?

L. Time and Other Factors:

1. If the defendant did actually admit having two or three beers, the time factor is important.
2. The rate of absorption is influenced by the type and amount of food in the stomach and intestinal tract and the alcoholic content of the drink. In an empty stomach, absorption is extremely rapid.

M. Walking the Line:

1. Following is a list of some of the most ordinary things to look for in attempting to explain the inability of the defendant to properly walk a line heel-to-toe:
 - (a) Was there an accident? If so, was defendant injured either about the head or about his feet or legs?
 - (b) Does defendant have any physical defect about his feet or legs that would contribute to his inability to properly walk heel-to-toe?
 - (c) Does the defendant have middle ear defects? This can cause unstable balance which will be reflected in the walking-the-line test as well as in the balance and finger-to-nose tests.
 - (d) If the defendant is a woman, what kind of shoes was she wearing? In many instances, you will find that she was wearing extremely high heels and no one would expect her to walk a line heel-to-toe in them. For some reason, the officers frequently refuse a woman's request to be permitted to remove her shoes for the test, and if this fact is brought out, it can be used to advantage.
 - (e) If the officer has testified that the defendant walked the line fairly well until ordered to turn around, as will often be the case, emphasize the fact that he did, in fact, walk the line as demonstrated to him by the officer. Ask if the officer demonstrated how he wanted the defendant to turn around. Usually, he will not have done so. Remember that not every person, particularly if elderly, can walk a line heel-to-toe. Be sure to bring this point out in your argument to the jury. Ask them to try it in the jury room, stating that most of them will probably be able to do it, but that some of them will not and if they were under the stress of being tested by police officers with the immediate possibility of going to jail, their ability would be lessened.

N. Finger-to-Nose Test:

1. Any physical handicaps, disabilities, or injuries that have been used to explain the failure to walk-the-line can also be used to advantage in the cross-examination on the finger-to-nose test. An examination of the Alcoholic Influence Report Form will show that there are only two words that can be circled to indicate the manner in which the defendant performed the test with each hand: "sure" and "uncertain". Often, several weeks or months have elapsed between the time of arrest and trial and the officer depends upon his notes, including the Alcoholic Influence Report Form, to refresh his recollection. There being no information on the exact manner in which the defendant failed to perform the test, the officer has to rely upon his memory of the event and that is often faulty. This can be shown most effectively if there are two officers and one of them has been excluded from the court while the other is testifying. They are apt to describe the details of the finger-to-nose test in very different ways.
2. Some police report forms include a picture on which the officers mark the exact spot where the suspect touched his nose or face. If this is the case, the officers will seldom make a mistake. The fact that each has not heard the other testify in detail how the test was performed and describes it in the same manner will serve to emphasize their honesty and integrity to the jury.
3. The officer may be asked on cross-examination to demonstrate to the jury exactly how he requested the defendant to perform the test. It is to be remembered that you may have asked the defendant to place his feet together, extend his arms, tilt his head back, close his eyes, and touch his nose with the index finger of his right hand and then his left hand. Chances are very good that you will be unable to do so with your eyes closed; nevertheless, the defense may ask the jury to try this same test in the jury room.

O. Balance Test:

1. The balance test can be handled on cross-examination in almost exactly the same manner as the finger-to-nose test. Defense won't forget that you asked the defendant to close his eyes when he performed the test.
2. Everyone who tries the test will have a tendency to sway to some extent and the longer they try to maintain their position, the more they will sway. Defense will most certainly ask the jury to try it in the jury room.

P. Pupil Reaction to Light:

1. Your testimony that you flashed your light into the defendant's eyes and noticed that the pupils contracted very slowly is subject to all kinds of doubt.
2. You have no particular training that would give you basis for your opinion that the reaction time was slow. You have no timing device. Your observation becomes pure guesswork. You may examine your fellow officer's eyes but you are still subject to the same objection.

Q. Picking Up Small Change:

1. If you have testified that the defendant failed to pick up small change placed on the sidewalk, or had great difficulty picking it up, it is very probable that the defense will ignore the subject on cross-examination.
2. However, quite frequently, even though the defendant has failed miserably in the walking-the-line and balance tests, you may have testified that he was able to pick up the small change quite readily. If you did so, you will be made to repeat it for the jury and it will be turned to the advantage of the defense.

R. Slurred Speech, Etc.:

1. An examination of the Alcoholic Influence Report Form will show that you have the following choices to describe the speech of the defendant: "fair", "slurred", "stuttering", "confused", and "incoherent".

2. This is probably the most important part of the defense cross-examination. By doing it properly, the defense can prevent the prosecutor from laying the foundation for impeachment and making it look as if the defendant's memory of the circumstances surrounding the arrest is poor, as heretofore outlined, and at the same time defense can demonstrate that the officer is overstating his case when he says that the defendant's speech was confused and/or incoherent.
3. The defense can continue questioning you concerning this until it begins to sound ridiculous, emphasizing that you understood each and every answer given by the defendant.
4. At this point, it doesn't matter much what the answer is. You can try to explain, but you have overstated your case and been caught in the act. Since you did it with regard to the defendant's speech, it may be reasonably suspected that you have done it in other respects.

Summary:

- A. Pause after questions to give prosecutor time to offer any objections.
- B. Do not argue with defense counsel or allow yourself to be badgered.
- C. Remain calm and polite regardless of the tactics used by defense.
- D. Do not allow your feelings to enter into your testimony.

SUBJECT # 15

COURSE REVIEW

Subject Objective:

To review the concepts, principles, laws, procedures, facts and skills learned during course in preparation for the final written examination.

Subject Unit:

15.1 Course review.

Study Plan
Unit 15.1
Course Review

Unit Objective:

To review content covered in course in preparation for final written examination.

Terminal Objective:

- 15.1.2 . . . be able to place all the information learned in the course into context and relate the content to student's alcohol enforcement task.

Content Topics:

- 15.1.1 Overview of unit.
15.1.2 Review of course.
15.1.3 Summary of unit.

Assignment:

1. Review contents of Student Manual.

Study Questions:

1. What major concepts were presented in the course?
2. What principles were set forth in the course?
3. What were the procedures and tactics discussed in the course?
4. What new skills have you learned during the course?
5. What laws and regulations pertain to alcohol enforcement?

Content Material

Unit 15.1
Course Review

15.1.1 Overview of Unit.

The purpose of this unit is to review the content covered in the course in preparation for final examination. Topics to be covered are selected from the entire course which the students in the class have either demonstrated a need for additional discussion or have specifically asked to be covered in the review.

15.1.2 Review of Course.

Each student should be able to systematically organize the learned information from the course in such a manner that he can directly relate this information to his alcohol enforcement responsibilities. The areas in which students cannot do so should be covered in group discussion.

The review session could consist of questions from students. In some cases, the instructor may desire to ask questions of the students to be sure they understand the course content.

The review session might consist of reviewing the highlights of each subject to refresh the students' memory prior to the final examination.

SUBJECT # 16
STUDENT AND COURSE EVALUATION

Subject Objectives:

To complete a written examination prior to taking the course and upon completion of course to permit measurement of student achievement during the course.

To evaluate the quantity, quality, and importance of course content.

To evaluate the teaching method, manner of material presentation (instruction) and the instructional materials utilized in conducting the course.

Subject Units:

16.1 Student evaluation.

16.2 Course evaluation.

Study Plan
Unit 16.1
Student Evaluation

Unit Objective:

To measure the achievement of the students during the course.

Terminal Objective:

- 16.1.2 . . . be able to demonstrate an understanding of the entire content of the course.

Content Topics:

- 16.1.1 Overview of unit.
16.1.2 Student evaluation.
16.1.3 Summary of unit and course.

Assignment:

1. Review content of manual and class notes in preparation for final examination.

Study Questions:

None.

Content Material

Unit 16.1

Student Evaluation

16.1.1 Overview of Unit.

The purpose of this unit is to measure the achievement of the students during the course. The types of student evaluations utilized are a pre-test, quizzes, individual student laboratory response cards and a post-test.

16.1.2 Student Evaluation.

Student evaluation in the DWI Law Enforcement Training Course consists of pre and post written examinations to determine individual student achievement, quizzes, problem solving and student response in laboratory sessions. Each of these is discussed below.

The pre-test examination is designed to measure the entry level knowledge of the students so instruction can be geared to their specific needs and the amount of individual accomplishment during the course can be measured.

Quizzes are designed to determine whether or not the students have read and understood the assigned reading materials. Problem solving is used in the course to give the students an opportunity to apply the information they have learned to real world behavior. This allows them to clarify their thinking and make decisions concerning appropriate courses of action.

Individual student response cards designed for the laboratory sessions provide immediate feedback as to how well each student is accomplishing the stated learning objective for the topic. This feedback is beneficial to both the instructor and the student. The instructor will know immediately whether or not the students have been successful and whether he may proceed. The student will have immediate results of his activity and knowledge of his progress.

The post-test examination is designed to determine how many of the cognitive terminal objectives each student has achieved and determine what proportion of the students achieved each of these objectives.

Study Plan
Unit 16.2
Course Evaluation

Unit Objective:

To determine the quality, quantity and importance of subject matter presented in course and evaluate instruction.

Terminal Objective:

- 16.2.2 . . . be able to complete the course with a feeling of involvement and participation.

Content Topics:

- 16.2.1 Overview of unit.
16.2.2 Course evaluation.
16.2.3 Summary of unit.

Assignments:

None.

Study Questions:

None.

Content Material
Unit 16.2
Course Evaluation

16.2.1 Overview of Unit.

The purpose of the course evaluation is to gather information that will enable the instructor to improve his instruction. The instructor needs to determine the quality, quantity and importance of the subject matter presented in the course and to evaluate the instruction.

16.2.2 Course Evaluation.

The information obtained in the course evaluation will disclose reasons for successes and failures. Each failure will permit selection of an alternative instructional procedure to use the next time the course is offered. Instructional improvement is a never-ending process consisting of planning, testing, interpreting and modification.

To help the instructor obtain information about the instructional program, a post-class questionnaire will be completed by each student. This questionnaire is designed to obtain feedback from the students concerning the program they have just completed. The questionnaire consists of a few questions which the students should answer anonymously. The questions vary from general information about the entire course to specific information about parts of the course. The general questions will permit the students to identify problems in the program which the instructor may not notice.

END