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Preface

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Repository Citation

Urbonya, Kathryn R., "Preface" (1983). *Faculty Publications*. 462.
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PREFACE

The search to achieve the golden mean is one that still thrives today when society seeks to define moderate consumption of alcohol. All states have defined the blood alcohol level that creates the presumption of legal intoxication. The legislatures' definitions, however, have not resolved the issues arising from society's attempt to control consumption. This symposium represents an effort to apprise society's agents — lawyers, judges, and legislators — of those complex legal issues.

Providing a background for the discussion of the legal issues is Thomas R. Hedin's introduction, *Alcohol — An American Ethic*. Mr. Hedin, the Director of the Division of Alcoholism and Drug Abuse for the North Dakota Department of Human Services, describes society's vacillating attitude towards the consumption of alcohol. He notes that the diverse cultural backgrounds of its citizens contributes to society's inconsistency.

Society's inconsistency is also apparent in its use of breath testing devices, which measure a person's blood alcohol content. Recognizing this inconsistency, Donald H. Nichols advocates a coordinated judicial view of the accuracy of breath testing devices. As the author of *Driving While Intoxicated* and *The Drinking Driver in Minnesota* and as editor-in-chief of the *Drinking/Driving Law Letter*, Mr. Nichols evaluates the three most common methods of insuring the accuracy of testing: the laying of a foundation, the right to discover the circumstances surrounding the breath test, and the requirement of a second test to confirm the results of the first test. These three approaches, if coordinated, would provide society with a more reliable approach to the prosecution of driving while intoxicated (DWI) offenses.

Also evaluating the prosecution of DWI offenses is Susan Waite Crump's timely analysis of *State v. Neville*, the most recent United States Supreme Court decision concerning DWI prosecutions. Ms. Crump, a professor of law at South Texas College of Law, examines the Court's rationale in finding admissible a defendant's refusal to take a blood alcohol test. Ms. Crump states that the Court's holding is consistent with prior case law and advocates that states do not undermine the effect of *Neville*

by enacting statutes that prohibit the prosecution from introducing as evidence a defendant's refusal to take the test.

A different view of the prosecution is presented in Daniel J. Crothers' article about the constitutional dimension of discovery in DWI cases. Mr. Crothers, a law clerk for the New Mexico Court of Appeals, traces the history of discovery in DWI cases and concludes that a defendant has a constitutionally protected right to discover the circumstances of the blood alcohol test he took. This right would assist a defendant in proving the inaccuracy of the test.

Also perceiving the problems inherent in the criminal system, Mr. Larry Kraft suggests that legislatures consider adopting a civil approach to deter the drinking driver. Mr. Kraft, a professor of law at the University of North Dakota, proposes three civil remedies. He suggests that when the owner of a vehicle or one to whom he entrusts his vehicle drives after drinking when a reasonable person of ordinary prudence would not, the owner may be subject to confiscation and forfeiture of his vehicle, to an assessment, or to the loss of a bond previously posted. Without the safeguards afforded to criminal defendants and without the imposition of criminal status, these approaches promise to be beneficial to society in more effectively removing drinking drivers from the highway and in protecting its citizens from being labeled criminals for acts committed by most of society.

With these articles providing insights into the issues concerning the control of alcohol consumption, Donald A. Hughes, Jr., librarian for the University of North Dakota School of Law, provides a bibliography of current articles to facilitate in-depth research.

The remainder of the symposium is composed of student works. The first student work examines the issue of assessing punitive damages against drunk drivers. The author concludes that because the vast majority of courts favor imposition of punitive damages in drunk driving cases and because of support from North Dakota's tort law, North Dakota courts should also award punitive damages against drunk drivers.

Also demonstrating this "get tough" attitude in controlling alcohol consumption is the Note discussing a social host's liability for injuries caused by the acts of an intoxicated guest. The author maintains that case law supports the extension of civil liability to individuals who contribute to a driver's intoxication.

Elaborating on the extension of liability is the Case Comment about the right of a survivor in an alcohol related auto accident to

seek restitution from a defendant convicted of DWI. The author states that the Montana Supreme Court decision in *State v. Morgan* defines key terms that would assist North Dakota courts in awarding restitution to injured persons when a defendant is convicted of DWI.

Discussing the rights of the DWI offender is another Case Comment. The author states that the Arizona Supreme Court case of *McNutt v. Superior Court* supports the argument that a DWI defendant in North Dakota has a right to call his attorney after submitting to a breathalyzer test to arrange for a second test.

The articles in the symposium thus explore various aspects of society's attempt to control alcohol consumption. The *North Dakota Law Review* hopes that this symposium will aid professors and practitioners in defining the proper relationship of alcohol and the law.

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