



# JUSTICE from NPR *Talking*

The public radio show about law and American life

## Justice Talking Radio Transcript

**Drinking and Driving: Are State Laws Too Punitive?—Air Date: 6/11/07**

*At the urging of victims' rights groups, state legislatures have enacted laws that impose new consequences for those convicted of drunk driving, from increased jail time to special markers on license plates or publication of convictions on the Web. Other states are considering laws that would require all first-time offenders to install breathalyzers in their cars. Tune in to this edition of Justice Talking as we look at drunk-driving laws. Do these measures reduce accidents and save lives or do they go too far in punishing offenders?*

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MARGOT ADLER: This is Justice Talking, from the University of Pennsylvania's Annenberg Public Policy Center. I'm Margot Adler. At this point most Americans are aware of the dangers of drinking and driving. "Don't drink and drive," "friends don't let friends drive drunk," we've all seen these slogans. But how well informed are we about drunk-driving laws? I'll admit I knew there was a legal limit but I didn't know exactly what the number was or what it meant. Could I drive after two drinks? How about three? I had a feeling I probably wasn't alone. So Justice Talking's Julie Mashack visited Philadelphia's Rittenhouse Square, a neighborhood teeming with local bars and restaurants, to see how much other people knew about the legal limit for drinking and driving.

JULIE MASHACK: Do you have any idea what the legal limit is?

UNIDENTIFIED MALE: The legal limit, as far as the blood level? No, not really.

JULIE MASHACK: You don't have any--if you had to take a guess, do you have any idea what it'd be?

UNIDENTIFIED MALE: Uh, 1.3 or something like that?

UNIDENTIFIED MALE: Well, I'm a lawyer. So you're asking the wrong person. But even I don't deal with that stuff. So I think it's like .05. What is the legal limit? Let me say .8, maybe? Is that right? Something like that, .8?

JULIE MASHACK: It's .08.

UNIDENTIFIED MALE: .08, that's what I meant, .08. I'd imagine that would probably be about four drinks, maybe. Three or four drinks, if we're talking liquor, maybe four.

JULIE MASHACK: Do you have any idea what the legal limit is?

UNIDENTIFIED FEMALE: Not exactly sure, but I'm sure one drink for me.

JULIE MASHACK: If you had to take a guess, do you have any--

UNIDENTIFIED FEMALE: I'll tell you--how many what?

JULIE MASHACK: What the actual--

UNIDENTIFIED FEMALE: Is it 1.3?

UNIDENTIFIED MALE: What is it, .001? Oh, so I guess I got that one wrong. I always remember from high school the one-per-hour rule type-thing, you know, so that's what I tend to stick with.

UNIDENTIFIED MALE: Uh, for myself? I'm a pretty thin guy so, I mean, if you're asking me I'd say that I'm not drunk until about four or five beers, but if you ask them they'd probably say two.

MARGOT ADLER: So did you know the answer? The amount that each person can drink before getting to the legal limit depends on the individual, but the limit itself never varies. In every state in America if you have a blood alcohol concentration, or BAC, of .08 you cannot legally drive.

Later in the show we'll ask a doctor about some of the ways we try to sober up before getting behind the wheel: drinking coffee, splashing cold water on your face. Do they really work? He'll also tell us if there's a way to test yourself to see if you've had too much to drink. About 1.5 million people are arrested each year for driving under the influence, or DUI. It's estimated that nearly 18,000 people died in alcohol-related accidents last year.

Anne McCartt is from the Insurance Institute for Highway Safety, an organization that tracks deaths, injuries, and property damage from highway crashes. Welcome to Justice Talking.

ANNE MCCARTT: Thank you.

MARGOT ADLER: Looking at the country as a whole, what areas are most affected by drunk-driving?

ANNE MCCARTT: One of the points that's important I think is that there's not any area of the country, not any state, not any age group, not any ethnicity that isn't affected by drinking and driving. But there are certain types of drivers in certain types of areas that are higher. Drinking and driving is higher in rural states and it's higher among certain age groups, particularly men. When you look across age groups, males are twice as likely to be impaired when they die in a crash. Age groups differ. Surprisingly to some people, the youngest age group, people under 21, are least likely to be impaired when they die in a crash. The group that has the highest rate would be drivers 21 to 30 years old.

MARGOT ADLER: In 1984, after much activism and organizing by MADD, Mothers Against Drunk Driving, the drinking age was changed to 21. How did that affect the statistics of drinking and driving? Or did it?

ANNE MCCARTT: It did. A number of studies showed that establishing a legal drinking age of 21 in all states significantly reduced crashes among underage drivers.

MARGOT ADLER: But despite that, underage drinkers contribute to the problem, but not as much as other age groups? Or how much do underage drinkers contribute to the problem now?

ANNE MCCARTT: One thing that's useful when you look at drunk-driving in this country is that if you look over time you see a very distinctive pattern. When you go back to 1982, which is the year that we have the best statistics for, you can see a very steady and very substantial decline in alcohol-related crashes until the mid-90s, and things since that point have been essentially flat. When you look at driver ages over this period, from 1982 to the present, the age group that experienced the largest declines was drivers under 21, and we believe that's primarily due to the establishment of a 21-minimum drinking age. There is another important law that's called a zero tolerance law that now in every state makes it illegal for drivers under 21 to drive with any measurable alcohol in their system. Both of these laws have been shown to be highly effective in reducing drinking among underage people and reducing drinking and driving.

MARGOT ADLER: I know it varies from state to state, but what happens today once you've been found guilty of drunk driving?

ANNE MCCARTT: In almost all states now there are two separate processes when someone is arrested for drinking and driving. There's a process that proceeds through the courts and there's a process that proceeds administratively. And what I mean by administratively is in most states now there are sanctions, primarily license suspensions, that are imposed on people who either refuse or fail a test for alcohol concentration. Those penalties are imposed regardless of what happens in the courts. And when they're convicted, assuming it's the first offense, the typical penalties would be fines, would be license suspensions, as I've mentioned. Typically an offender would be required to attend some sort of class on trying to educate the offender on the laws and a little bit about, for example, how much you can drink before you're impaired. There is increasingly another type of penalty that's available in most states. Persons convicted of

alcohol-impaired driving are required to install ignition interlocks on their vehicles, and these interlocks require the offender to blow into a device which then tests the level of alcohol in their system. And if they have alcohol in their system the car will not start. Another type of vehicle sanction, in Minnesota, for example, your license plate is impounded even on your first offense if you have a very high BAC. Another type of vehicle sanction, this is more for repeat offenders, might be forfeiture of the vehicle or impoundment of the vehicle. And states are increasingly looking to vehicle sanctions as a way to prevent offenders from driving, at least through that initial period after their conviction.

MARGOT ADLER: Let's look at history for a minute. The first drunk-driving laws came into effect in the early 20th century, and these were laws I gather that simply prohibited driving while intoxicated but there wasn't a lot of legal force behind them. It wasn't until the 1970s and the 1980s that the government took an active role in fighting drunk driving. Tell us a little about how the laws around drunk driving changed during this period.

ANNE MCCARTT: Well, probably one of the most, if not the most, significant statutes for drinking and driving involves what we call "per se laws." There was a major step forward in legislation with drinking and driving when research connecting certain levels of blood alcohol concentrations to certain driving impairments. It allowed legislators to craft laws that made it illegal in and of itself to have a BAC of a certain level. And for many years the per se DUI level, as it's referred to, was .10 percent. Now in all states that per se level has been lowered to .08 percent. And this is just a very powerful law as opposed to having to provide evidence to a jury or to the judge that someone's behavior shows that they are drunk. Because one of the challenges in drinking and driving is that a person can be impaired and impaired sufficiently to be at the risk of having a crash but that not be visible through--you know, we think of someone who's a, you know, an alcohol-impaired driver as someone who stumbles and slurs their words and slobbers or whatever and that's just not the case with many drinking drivers. And so the ability of officers to administer a breath test to someone and for a failure of that test to constitute a violation of the law was a major step forward.

MARGOT ADLER: Why do people drive drunk?

ANNE MCCARTT: I think some of it is simply reflective of our society in the sense that many people in the U.S. drink and drink on a regular basis and many, many people in the U.S. drive. And so when you compare the U.S. to some countries in Europe, for example, some of the differences in drinking and driving have less to do with the drinking than the fact that in some countries which have better mass transit, for example, there are fewer people who combine drinking and driving. I think there is a lack of understanding among some people about what constitutes impairment. So, you know, a fair percentage of the population may understand that driving with a BAC over .08 percent is illegal, but they may not understand how much alcohol they're able to drink before they get to that illegal level.

MARGOT ADLER: Anne McCartt is the vice president of research with the Insurance Institute for Highway Safety, a nonprofit organization dedicated to reducing deaths, injuries, and property damage from crashes on the nation's highways.

Thank you for talking with us.

ANNE MCCARTT: You're welcome.

MARGOT ADLER: So do you know how many drinks it takes for you to reach the legal limit of .08? Go to our website, [justicetalking.org](http://justicetalking.org). You'll find a link to a calculator that helps you figure it out.

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MARGOT ADLER: You've probably seen on billboards or in magazine ads for alcohol the admonition "Drink Responsibly." Some bars around the country are also doing their part. Gentlemen, this one's for you: a talking urinal.

UNIDENTIFIED FEMALE: Hey there, big guy. Having a few drinks? Then listen up. Think you've had one too many? Then it's time to call a cab or a sober friend for a ride home. It sure is safer and a hell of a lot cheaper than a DWI. Make the smart choice tonight. Don't drink and drive. Remember, your future is in your hand. [TOILET FLUSHING]

MARGOT ADLER: Coming up on Justice Talking, we'll hear about a New Mexico law that requires all first time DUI offenders to have breathalyzers installed in their cars. Also, a debate over how best to reduce or even end drunk driving in America.

UNIDENTIFIED MALE: We literally can create a vaccine for drunk driving. It won't be on the drunk. It will be on the vehicle. Beginning in 10 years we're very hopeful that cars will be designed that will not be able to be driven over the legal limit, and what a great day for America that will be.

MARGOT ADLER: Stay with us.

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MARGOT ADLER: This is Justice Talking, the public radio show about law and American life. I'm Margot Adler. There's a bit of an alphabet soup when referring to drinking and driving depending on where you are in the country: DUI (driving under the influence), OUI (operating under the influence), and in New Mexico, DWI (driving while intoxicated). That state has one of the highest rates of DWI in the nation. To tackle the problem, laws were passed requiring ignition interlocks for repeat offenders. It's basically a breathalyzer installed in the car that won't let the car start if the driver has been drinking. Other states have similar laws, but in 2005 New Mexico became the first state to require interlocks for first-time DWI offenders. Many officials say they're beginning to see positive results from mandatory interlock sentencing for all DWIs. Some other folks disagree, and there have been problems with the law. Eric Mack has the story from Santa Fe.

ERIC MACK: Until a few years ago Leslie Hines didn't really think twice about driving home after a few drinks or even after a few too many. But these days that decision is out of her hands. [CAR DOOR CLOSING]

LESLIE HINES: It says "Ready to test, please blow." So I'm going to take kind of a deep breath. [WHISTLING NOISE AND BEEP] And you heard that little click which meant for me to stop blowing and then suck it. And then the test is passed. So, start the car [CAR ENGINE STARTING] and then it says drive safely.

ERIC MACK: Back in 2004 Hines tried to drive home after a party. She got on U.S. Highway 285 heading the wrong way without her headlights on. She says she still doesn't remember the accident.

LESLIE HINES: Never been arrested for DWI, never had an accident, so I figured I was an okay driver after drinking. And so this basically caught me, you know, off guard and by surprise. One minute I'm at a party having a good time drinking wine and the next minute I'm in the emergency room waking up to this horrible news of what happened.

ERIC MACK: Hines had crashed head on with a Miata and a Jeep. Her blood alcohol content was three times the legal limit. She walked away with serious injuries but a woman from the Miata wasn't so lucky. She was in a coma. Doctors weren't sure she would survive. While Hines waited for her sentencing, an ignition interlock was installed in her car. A judge ended up giving her jail time plus community service, and ordered that the interlock stay in place until further notice.

LESLIE HINES: You know I used to be embarrassed about it but now I talk about it. You know, it's just--it's just like part of putting the seatbelt on for me, the interlock, now. I think I would miss it if I didn't have it. Oh, here it goes. [BEEPING NOISE] Hear it beeping? It says "Please blow; retest required." [BLOWING INTO DEVICE] Okay.

ERIC MACK: The interlock requires the driver to pass a retest at random intervals while driving. Otherwise it will shut off the vehicle. It's meant to prevent people from drinking after they've got the car started or from having a sober person start the car for someone who's been drinking.

Hines is a true interlock success story. More than two years after her accident she hasn't driven drunk. In fact, she hasn't even had a drink at all. After completing her community service in DWI prevention, she got a paid job with DWI Impact, a group that advocates ignition interlocks. She frequently speaks on panels and at schools about DWI. Sometimes appearing and speaking with the woman from the Miata who survived, but with some permanent injuries.

Richard Roth is Hines' boss and the president of DWI Impact. He says his statistics show that DWI crashes are down since New Mexico's interlock laws went into effect, and he says requiring the offender to pay for their own interlock installation and maintenance also saves the state money.

RICHARD ROTH: I'm all in favor of law enforcement. I want us to be able to raise the salaries of officers, to hire more officers, but the ignition interlock is clearly the most cost effective and effective way in which we deal with drunk driving. And I don't think anybody can challenge that if they'd look, really look at the numbers.

ERIC MACK: But an official study has never been commissioned in the state to find out the impact interlocks have had on the DWI problem here. Steven Flint, former chief of the state's traffic safety bureau, says Roth's statistics don't reflect the reality.

STEVEN FLINT: Seventy percent of the drunk drivers in fatal crashes in New Mexico and nationally have never been arrested for DWI. So even if you mandate ignition interlocks for all convicted drunk drivers, they wouldn't have them on the cars of people who've never been convicted. That leaves only 30 percent who might be affected.

ERIC MACK: Flint thinks a more effective and proven strategy is to revoke the driver's licenses of many DWI offenders. Over the last five years, New Mexico has instituted a number of new DWI programs, including interlocks. Although there is some debate over their success, by most measures DWI crashes have fallen in the past few years. And in the case of Leslie Hines, her ignition interlock has helped to create some very important long-term changes in her life.

LESLIE HINES: The obvious one is, I know now that I won't kill anybody and by talking to all these different groups--I speak in front of MADD panels and different schools and kids--it makes me feel like I have another chance that I wasn't killed that night, and my victims weren't killed. So I could actually go on and tell the story.

ERIC MACK: Hines expects another of year of probation with the interlock installed in her car. The state is working with legislators on closing loopholes in the interlock law that currently allow more than half of offenders to get around having one installed in their car. Other states are following New Mexico's lead in mandating interlocks for all DWI offenders. Arizona's governor recently signed such a bill. And the Illinois State Senate is now considering a similar measure.

For Justice Talking, I'm Eric Mack.

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MARGOT ADLER: For over 25 years, Mothers Against Drunk Driving, or MADD, has spearheaded the efforts to end drunk driving in this country. MADD has successfully lobbied for stiffer drunk-driving laws like changing the drinking age to 21. More recently, the organization has come out strongly in favor of new technology, things like the ignition interlock we just heard about. And they hope someday cars will be designed with a steering wheel that detects alcohol in the sweat of a driver's palm. If he or she has had too much to drink the car won't start. But not everyone is as hopeful as MADD when it comes to new technology. Many of the country's DUI lawyers question whether the interlocks really work and wonder more broadly whether the fight to end drunk driving in this country has actually turned into an attack on our civil liberties.

Joining me to debate how we can end drunk driving in America are Chuck Hurley and Lawrence Taylor. Chuck Hurley is the chief executive officer of Mothers Against Drunk Driving, and Lawrence Taylor is one of the country's leading DUI attorneys and a founding member of the National College for DUI Defense, a professional organization which provides legal training and information for attorneys defending drunk drivers. Chuck, in the latest campaign to end drunk driving, MADD puts a lot of emphasis on technology. Explain to me what MADD sees as so promising when it comes to technology.

CHUCK HURLEY: The fact is we've made tremendous progress since MADD's founding in 1980, about a 40, 44 percent reduction in alcohol related fatalities in that time. But if we're honest with ourselves, a lot of that progress happened by the mid-90s and the people who continue to drink and drive 27 years after everyone knows what it does, the main reason they do so is because they can. And there is technology well-proven to work now that would stop that for offenders, interlock technology for offenders currently. And we're delighted that the federal government and the automakers and the insurance industry are working around the world, to create technology that in about 10 years may make it possible for new cars to be sold that simply won't be operable by drunk drivers.

MARGOT ADLER: Lawrence, when it comes to the way drunk driving laws are enforced, you've coined the phrase "the DUI exception to the Constitution." First of all, what do you mean? Give me a couple of examples.

LAWRENCE TAYLOR: Well, I'd love to and I will, Ms. Adler. I just want to point out that Mr. Hurley and I are not at odds on our objectives or at least one of them. And that is making the roads safe. But I have a second objective and that is to safeguard the Constitution of the United States. And the unseen victim in all of this, the consequences, the side effects of this war on drunk driving perpetrated by MADD over the last 13 years, during which there has been zero decrease in fatalities, has been a terrible toll on the Constitution. We have DUI roadblocks which appear to be clear violations of the Fourth Amendment.

MARGOT ADLER: That is of course the search and seizure--

LAWRENCE TAYLOR: That's the *Michigan vs. Sitz* case in which Chief Justice Rehnquist said yes it is, it appears to be a violation of the Fourth Amendment. It is a search--

CHUCK HURLEY: He was not in the majority, however.

LAWRENCE TAYLOR: No, he was the majority. But we are essentially going to suspend that Constitutional right because it is a greater good, the greater good being saving lives on the highways.

MARGOT ADLER: Isn't driving a car a privilege, however? You know, haven't the courts said there are fewer constitutional rights in your car than in your home or walking on the street?

LAWRENCE TAYLOR: It used to be that way. It is a privilege to obtain a driver's license. Once you have the license the Supreme Court has said that it is a right that cannot be taken away without due process.

MARGOT ADLER: Chuck, where do you stand here?

CHUCK HURLEY: I agree with some of the things Mr. Taylor said. The fact is, however, checkpoints have been proven effective. They do deter drunk drivers from getting on the road in the first place. And we have no interest like MADD in repealing the Constitution. We are very fond of the Constitution. But at some point we have to say that turning the Constitution on its head and saying the only rights under the Constitution are those of the defendant, we don't agree with. We think the public has a right to drive the roads safely. We see the victims of this crime. We represent the families who've lost kids, who've lost family members, and those who don't want to. And so I guess we see a different reality than Mr. Taylor.

MARGOT ADLER: Lawrence?

LAWRENCE TAYLOR: Well, the reality I see--I think Mr. Hurley and I will agree because of course the statistics are from the National Highway Traffic Safety Administration over the past 13 years--there has been absolutely no effect in the fatality rates despite the fact of MADD and legislatures to try all kinds of different approaches. Oh, one of which is interlock devices, another is roadblocks. But at least we can agree that whatever it is MADD has been doing for the past 13 years, it has not worked. Ignition interlocks is--

MARGOT ADLER: But wait a minute. All the statistics, all the statistics that I've seen say that at least until, you know, the last few year's fatalities have gone down and then there has been a plateau. Is that wrong? That's what I've been reading everywhere.

LAWRENCE TAYLOR: The fatalities have gone down. Understand that we're talking about alcohol-related fatalities. It used to be alcohol-caused fatalities, but those numbers were apparently felt not to be dramatic enough and they changed the data base to alcohol-related according to the--

MARGOT ADLER: I'm confused. I'm not exactly sure what the difference is.

LAWRENCE TAYLOR: Well, let me explain. The government accounting office looked at statistics and found them to be unreliable because they had switched to alcohol-related, meaning if alcohol-related in any way then it would go into the alcohol-related statistics. It didn't have to be the cause. In other words, it doesn't have to be the driver who was under the influence. It can be the passenger who had been drinking. It can be a pedestrian who steps off the sidewalk and is hit by a car. It can be an open container in a car of a sober driver. All are alcohol-related.

CHUCK HURLEY: May I respond?

MARGOT ADLER: Yes, let Chuck respond to that.

CHUCK HURLEY: The fact is Mr. Taylor is in part right. There are about 100 fatalities of the nearly 17,000 fatalities that involve a driver with less than .01. It does include some of the other numbers Mr. Taylor refers to, but there are 13,000 fatalities, right just at 13,000--12,885--that involve a .08 driver. These are not collected by MADD. These are the federal government statistics, as Mr. Taylor knows.

LAWRENCE TAYLOR: The problem is not the .08 social drinker. The problem is alcoholics, problem drinkers, a small percentage of the arrests, but a very high percentage of the fatalities. And once you've identified that then you develop a rational solution. We have the punitive vengeance model versus the rehabilitative model. Now when I was a prosecutor 37 years ago, the rehabilitative model was in vogue. It went out of vogue and we now have the punitive punishment model. But alcoholism is a genetically influenced disease. Behavior modification through punishment is simply ineffective.

MARGOT ADLER: I'd like to let Chuck respond and then I want to go on to another topic.

CHUCK HURLEY: Well, we agree that alcoholism is a disease. We also believe that drunk driving is a crime and we believe that both need to be dealt with. The fact is that about 80 percent of fatal crashes are caused by first-time offenders, so-called, obviously not first offense, but first time caught. And many of these drivers are not addicted yet. That's why we strongly believe that if you get the technology on the vehicle, an interlock device, the driver gets to keep his job, gets to keep his family, just doesn't get to keep his bottle during probation, which is a requirement of probation.

MARGOT ADLER: That was Chuck Hurley, the CEO of Mothers Against Drunk Driving, or MADD. Also with me is Lawrence Taylor, one of the country's leading DUI attorneys. This is Justice Talking. I'm Margot Adler. We're talking about the law and drunk driving. Lawrence, I've heard some DUI defense attorneys say that the way we punish DUI constitutes double jeopardy. Even if the offender doesn't hurt somebody, they're still subject to a civil case in which their license can be revoked and a criminal case in which they can be convicted and punished for the crime of drunk driving. Explain this to me.

LAWRENCE TAYLOR: The double jeopardy issue is first of all when you're stopped and arrested by the officer and either breathe into a machine or not, your license is confiscated by the officer, and you're served with a notice, a lawful notice of suspension. That's it. The officer is judge, jury, and executioner and all you can do is try to appeal to the DMV. You are also then charged with driving with .08 percent blood alcohol. Third, you are also charged with a separate offense of driving under the influence or in some states driving while intoxicated. In fact, you can be convicted of both. You can also have your license suspended again in criminal court. That is multiple punishment. That is double jeopardy.

MARGOT ADLER: Chuck, how do you respond to that accusation?

CHUCK HURLEY: Well again, Mr. Taylor sees a different reality that we do. We see the families of the victims and when he says that checkpoints are unconstitutional or that administrative license revocation is unconstitutional that's his view, it's not the fact. The

Supreme Court has upheld these provisions. The fact is the main reason why people continue to drive drunk is because they can. We believe that technology approach is the entirely fair and appropriate approach; that we literally can create a vaccine for drunk driving. It won't be on the drunk. It will be on the vehicle. Beginning in 10 years we're very hopeful that cars will be designed that will not be able to be driven over the legal limit and what a great day for America that will be.

MARGOT ADLER: I'd like to ask both of you if you had one thing that you could do to help eliminate drunk driving, what would it be? Let's start with you Chuck.

CHUCK HURLEY: Our approach really is that of enforcement and technology, to continue the enforcement that we have, which is maintained the 330,000 lives saved since 1980, but to go into the direction of producing new vehicles in about 10 years that simply won't be operable over the illegal limit of .08 blood alcohol concentration.

MARGOT ADLER: Lawrence, what would you do?

LAWRENCE TAYLOR: I think what you've got to do is recognize you're not going to eliminate it but you can certainly decrease the incidents. I've already made my views pretty clear how I think we decrease the incidents among those individuals who represent the greatest threat to us, that is, the problem drinkers. And until we abandon a punitive approach on those individuals and adopt a rehabilitative approach, you're not going to make any more dent than there has been in the last 13 years.

MARGOT ADLER: Lawrence Taylor is one of the country's leading DUI attorneys and a founding member of the National College for DUI defense. Chuck Hurley is the chief executive officer of Mothers Against Drunk Driving, or MADD. Thank you both for coming on Justice Talking.

LAWRENCE TAYLOR: Thank you, Ms. Adler. It was a real pleasure.

CHUCK HURLEY: Thank you.

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MARGOT ADLER: Coming up on Justice Talking:

UNIDENTIFIED MALE: Well what the law says is that if you serve somebody who's obviously intoxicated, you've committed a crime.

MARGOT ADLER: How the law can hold a bartender responsible if you drink too much and an emergency room doctor tells us about the effect alcohol has on the ER.

UNIDENTIFIED MALE: When I'm working in the emergency department alcohol is a totally and ever-present component of the patients that come in.

MARGOT ADLER: Stay with us.

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MARGOT ADLER: This is Justice Talking, where we make the connection between law and American life. I'm Margot Adler. Thousands of people are killed and injured each year in drunk driving accidents and something like half of these accidents are caused by drivers leaving bars. Under dram shop liability laws bars can actually be held responsible for these accidents. So what's a bartender to do? James Mosher is a lawyer who teaches bartenders and waiters how to comply with the law. He works with the Pacific Institute for Research and Evaluation. I asked James to tell me about these laws. By the way, a dram is an ounce of hard liquor.

JAMES MOSHER: They were first enacted in the 19th century and back 150 years ago many of the bars were called dram shops because it's where you went to get a dram of liquor. So in the dram shop situation where the liability again, there's three types, the most common in this area are the suits against bars for serving an intoxicated adult or a young person who then goes out and causes injury to a third party. The third party sues the bar for breaking the law and allowing this to occur in the bar and thus causing the accident--or contributing to the accident.

MARGOT ADLER: Now a bar is in it to make money by selling alcohol.

JAMES MOSHER: Right.

MARGOT ADLER: They also clearly have some responsibilities but isn't that a basic contradiction?

JAMES MOSHER: Well, you'd think so but I've done a lot of work in this area and I've worked with a number of people who have been bar managers and servers themselves. And what we say to the bars is it's not good business to have drunks in your bar. It scares people away. It causes breakage and damage. It brings the police out. It puts you at risk for lawsuits. That in fact the way, the best way, to serve alcohol is responsibly, to make sure that your patrons are having a good time but not becoming intoxicating and becoming a risk to the community. And you'll make, in the long run you'll make more money that way.

MARGOT ADLER: But how realistic is this in a large bar? It's Friday night. It's happy hour. It's crowded. How can a bartender really keep track?

JAMES MOSHER: Well, you know, back up one step. The focus that we work with when we work with bars is to review their management policies, to make sure that you're not doing things in your bar that are going to make it, first, harder for your staff to identify and prevent intoxication among the patrons, and, second, that you're not promoting drinking as part of the bargain that you're giving to your customers. So when we--happy hours are just a bad idea. You lose money on them. You're promoting intoxication and you're making it harder on your staff to be able to identify intoxicated persons. When you do happy hours you should be giving out free food or, you know, discounted appetizers. Charge the full price for the drinks; don't use the drinks as part of the bargain. And we have found actually these programs do work. First, you

train the staff to serve each patron, you know, with good service, but you're counting the drinks as you're serving it. Don't be plying customers with drinks. And if you need to cut somebody off, have a backup and let the patron know a drink early. So what you do is you say to the patron: I won't be able to serve you another drink for at least an hour.

And what we've found actually in a study we did at a Navy bar is that in doing this kind of training and reducing the level of intoxication and the amount of alcohol sales, the bar made more money because they increased their food service. And the patrons reported that they felt that they were getting better service and they like the atmosphere of the bar better. So I think it can be a win-win situation. And in fact, when you look at the statistics it's only about 10 to 20 percent of the bars in any given community that churns out 60, 70 percent of the drunk drivers. Most alcohol establishments are already serving alcohol responsibly and they don't have a problem of churning out drunk drivers.

MARGOT ADLER: But I still wonder, you know, suppose someone's on a pub crawl. How can any one of those bars be held responsible because the bartender may have only served them one drink?

JAMES MOSHER: Well what the law says is that if you serve somebody who's obviously intoxicated you've committed a crime. So first of all one of the things I say to bar owners is don't do pub crawls. You're just opening yourself up to plaintiff attorneys. A bad idea. But if you're going to have that and you're the bartender and someone comes in on a bar crawl who's fumbling their change and slurring their words and stumbling and you can tell they're intoxicated, you better not give them that drink, or you've committed a crime. The bartender can go to jail. The owner of the establishment can lose their license. So it can be a really expensive drink that's served.

MARGOT ADLER: How often are these dram shop laws enforced?

JAMES MOSHER: Most states now have some form of dram-shop liability. I'd guess somewhere between 35 and 40. There's not a definitive count. The legislatures have defined it differently in different states. So it varies state by state, but they're still pretty common. And if you're a plaintiff attorney and you're representing a person who's been harmed in a drunk-driving crash, one of the first things you're going to do in most states is you're going to try to find out who served the alcohol and whether the law might apply so that you could add them as potential defendants to the lawsuit.

MARGOT ADLER: And tell me a little bit more about the origin of the dram-shop laws.

JAMES MOSHER: Well, it's interesting. It was one of the strategies of the temperance movement back in the 19th century to hold bars responsible for serving what were termed back then "habitual drunkards." The focus of the temperance movement was on the family and the fact that alcohol ruined families by enticing the male breadwinner away from the family to the bar, and that these, the bars which were primarily many owned by the producers of the beer and distilled spirits, who were not members of the community, were considered really the purveyors of this, of the "demon rum." So they got legislatures to pass laws that held that if you, if you as a

bar owner served someone who could be shown to be a habitual drunkard, you would be responsible for maintaining the upkeep of his family. Now many of the laws were written so broadly that 100 years later when cars were introduced they could also be applied to drunk-driving crashes.

MARGOT ADLER: James Mosher is the director for the Center for the Study of Law and Enforcement Policy at the Pacific Institute for Research and Evaluation. Thank you so much for coming on Justice Talking.

JAMES MOSHER: Sure. Thank you very much. I enjoyed it a lot.

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MARGOT ADLER: It's not just bartenders who need to worry about serving an intoxicated patron. Did you know that you could be held liable if your teenager has a party at your house and there's underage drinking?

JAMES MOSHER: They really--the major cases in this area are ones in which the homeowner has really acted irresponsibly. They've allowed this party to happen. It's clear that they did. They didn't do anything about it even though there were warnings.

MARGOT ADLER: To find out more, go to our website, [justicetalking.org](http://justicetalking.org), and listen to the rest of my conversation with Jim Mosher.

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MARGOT ADLER: It's the summer. You may find yourself at a barbeque or party where alcohol is being served. If you know you are going to be drinking and you are going to drive home, what do you do?

UNIDENTIFIED MALE: Take a cab would probably be the bright move.

UNIDENTIFIED FEMALE: Usually what I do is drink early and then stop at a certain point so I can sober up and then I eat a lot.

UNIDENTIFIED MALE: Usually I just try to get some type of absorption, you know? Crackers and peanuts will not fill you up enough. I'd say a good sandwich, you know. Like a nice deli sandwich or something like that usually seems to do the trick.

UNIDENTIFIED FEMALE: If I feel like I'm going to drink that day then I'll probably drink earlier and then stop drinking. Depending on how many drinks I've had I'll stop drinking one or two or three or even four hours ahead of time, ahead of when I expect to drive.

UNIDENTIFIED MALE: I would say my thing was probably coffee, yeah. Probably coffee and fresh air. You know, drive with the window, all the windows down, you know. I think plenty of

cold air and stuff like that and you hope that keeps you alert. Yeah. But I guess you think back on it is to say overall it's just pretty stupid to try to do it.

MARGOT ADLER: Do any of these strategies work? I asked emergency room doctor Zachary Meisel if, for example, drinking coffee helps you sober up.

ZACHARY MEISEL: It's a myth. Perhaps the caffeine will wake you up a little bit but it will not change the physiology of your blood alcohol concentration and will not make you sober in any way.

MARGOT ADLER: What about taking a cold shower?

ZACHARY MEISEL: Same.

MARGOT ADLER: Dr. Meisel is also an assistant professor at the University of Pennsylvania School of Medicine. Perhaps the most popular belief is that eating something will sober you up. Dr. Meisel, wouldn't eating those peanuts or pretzels at the bar keep you from getting too drunk?

ZACHARY MEISEL: No, they don't keep you from getting drunk at all. That's a myth. They, in fact, the same quantity of alcohol will raise your blood alcohol concentration by the exact same amount whether or not you drink it with food in your stomach or not. However, food in your stomach does slow down the rate of absorption of that alcohol into your blood stream. So it'll take you longer to get there but again they are still going to reach the same blood alcohol concentration regardless of whether or not they have food in their stomach or not if they drink the same amount.

MARGOT ADLER: The legal definition of drunk is a .08 blood alcohol concentration. Can you tell us what this means from a medical point of view?

ZACHARY MEISEL: .08, which is equivalent to 80 milligrams per deciliter which is the--how we refer to it in medical terminology, can mean a lot of different things for a lot of different people. Certain people can behave, and act, and look very different at an 80 milligram per deciliter blood alcohol content level than other people. And a lot of those differences in variations depend on many factors including how frequently somebody drinks, their body size, gender, ethnicity, genetic factors, etc.

MARGOT ADLER: And is there a medical definition of drunk?

ZACHARY MEISEL: No. There certainly isn't a medical definition of drunk. Intoxication refers to anyone who has used any substance or has any substance in them which has created some level of impairment whether it's physical, behavioral, emotional, psychological, etc.

MARGOT ADLER: In your view how much alcohol can someone drink before they're affected?

ZACHARY MEISEL: So there've been scientific studies that have looked at how people respond to two various levels of alcohol, and it's really a linear dose-response curve so that any

alcohol will affect people in scientifically measurable ways, although that may not be outwardly or externally obvious.

MARGOT ADLER: In other words, we all know people who, for example, seem to drink a lot and don't seem to be that affected. You know they might be at the same restaurant you are and have five or six drinks and seem to talk exactly as they did when they entered the room, whereas if I drank five drinks I'd be on the floor.

ZACHARY MEISEL: Exactly. They're what we call "habituated." It's not just that they're able to cover up their symptoms because they're good at it. It's because they're actually less affected by the same quantity of alcohol and by the same blood alcohol concentration than you or I might be if we don't drink as much.

MARGOT ADLER: Are there any tests you can do to see if you're impaired? You know, oh I think the famous ones are walking a straight line, saying your ABCs backwards.

ZACHARY MEISEL: Right, so those tests are tests that test for medical phenomenon called "ataxia" which speaks to your brain's ability to coordinate balance and body positioning with your muscles. The problem with those tests is that they speak to a phenomenon that occurs only at relatively high blood alcohol concentrations. So you don't get difficulty with your gait or your balance until your blood alcohol content for the average person reaches 100 milligrams to 150 milligrams per deciliter which is above the legal limit.

MARGOT ADLER: So in other words, there are lots of things that you could perhaps do when you've reached .08 blood alcohol content, but in fact you still would be impaired, your reaction time would still not be as good, etcetera, but you might not even notice it.

ZACHARY MEISEL: That's correct. Because the first things to go as the blood alcohol level rises are fine motor coordination and judgment. And the gross motor coordination and the gait and balance abilities go at much higher levels.

MARGOT ADLER: Do you think most people know if they are drunk?

ZACHARY MEISEL: That's hard to say. Clearly we do know that at lower levels of alcohol consumption between the 50 and 100 (or .05 and .1) levels of alcohol in your bloodstream, judgment is the first thing to go. Thus it makes it difficult for people to be able to assess their own abilities as well as their own levels of intoxication.

MARGOT ADLER: I know there are some specific concerns around teenagers and drinking, but I'm curious about whether alcohol actually affects teens differently than adults.

ZACHARY MEISEL: Well we know that teenagers have different brains than adults particularly with--in regards to their ability to make sound judgments and their ability to assess their own condition in relation to other people in situations.

MARGOT ADLER: So talk me through how alcohol affects our brains.

ZACHARY MEISEL: It clearly affects different parts of the brain in vastly different ways. So we talk about how it impairs judgment. The judgment center of the brain is in a different location, in a different part of the brain that's your coordination center is as well as your gait and balance center. Again a different part of your brain. But alcohol affects all of these at different levels and in different ways. And in general alcohol works as a depressant or a suppressor of brain function. So as you drink more and the blood alcohol concentration in your body goes up, as that alcohol is delivered to your brain it will suppress certain aspects of your brain's ability to perform the functions that it's designed to do.

MARGOT ADLER: You're an emergency room doctor in a major city, Philadelphia. Tell us about the reality of what you see every day in the emergency room, particularly in regard to what we're talking about, alcohol.

ZACHARY MEISEL: It's clearly a major component of what I do when I'm seeing patients in the emergency department and it is a well known component of close to 50 percent of all patients in this country who present to emergency departments, not just as it relates to injuries, although injuries and alcohol are a deadly mix and that's well known. Up to 50 percent of all fatal motor vehicle crashes are alcohol-related. But alcohol affects people in many ways that are not apparent, and they can contribute to the non-specific things that bring patients to the emergency department frequently, such as abdominal pain, chest pain, cardiac conditions, stroke, neurologic conditions. On a day-to-day basis when I'm working in the emergency department alcohol is a totally and ever-present component of the patients that come in. And we're always grappling with that because it also affects, again, their judgment and their ability to make sound decisions about themselves. So it makes it sometimes harder to treat them as well.

MARGOT ADLER: Dr. Zachary Meisel is an emergency room doctor and an assistant professor in the department of emergency medicine at the University of Pennsylvania School of Medicine. Thank you for coming on our show.

ZACHARY MEISEL: Thank you for having me.

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MARGOT ADLER: To find out more about drinking and driving in America, including how much alcohol is likely to put you over the legal limit of .08, go to our website, [justicetalking.org](http://justicetalking.org). While there, post on our message boards, learn more about our guests, and sign up for our free podcasts. And don't forget to check out our blog, where many of the nation's leading commentators give their views on law and American life.

Thanks for listening. I hope you'll tune in next week. I'm Margot Adler.

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