

**Section 23405 Driving While Under
The Influence of Alcohol or Drugs**

(a) It is unlawful for any person who is under the influence of alcohol or any drug or under the combined influence of alcohol and any drug, to drive or be in actual or physical control of any vehicle.

(b) It is unlawful for any person who has eight one-hundredths of one percent (.08%), or more, by weight, of alcohol in his blood to drive or be in actual or physical control of any vehicle.

(c) A person convicted of violating subsections (a) or (b) of this section shall be guilty of a misdemeanor, and upon conviction shall have his privilege to operate a motor vehicle suspended by the Court as provided in subsection (d) of this section and/or have the vehicle in which the offense was committed impounded by the Guam Police Department or its authorized agent at such locations as shall be designated by the Chief of Police, for the same period as the privilege to operate a motor vehicle is suspended. The towing and impoundment of vehicles pursuant to provisions of this section shall be at the expense of the person charged with the violation, in addition to any fine or restitution imposed and ordered by the Court.

(d) Upon conviction for any violation of this section a person shall be sentenced in accordance with the following:

(1) Any person convicted for a first offense under this section shall be sentenced to a minimum of forty-eight (48) hours imprisonment in the custody of the Department of Corrections or the Guam Police Department; provided however, that the Court may waive the mandatory minimum jail sentence a for first a time offender and impose other alternative sentencing. Additionally that person shall have his privilege

to drive suspended for a minimum mandatory period of ninety (90) days and a maximum of one year, but the Court may permit the person a limited privilege to drive if driving is required for that person to maintain his livelihood.

In those cases where limited driving privileges are granted by the Court, the Court shall issue a document to the individual granted limited privileges, signed by a Judge of the Superior Court, which shall specifically set forth the terms and conditions of such limited privileges. This document must be carried by the individual granted limited privileges at all times when he is driving. Failure to produce such document upon the request of a peace officer of the Territory of Guam shall be considered a violation of Section 3110 of Title 16, Guam Code Annotated. Proof by the Defendant that he had been issued limited privileges but at that time did not have the required document in his possession shall not be a defense.

(2) If any person is convicted of a violation of this section and the offense occurred within six (6) years of the date of conviction of a prior violation of this section or of sections (_____), that person shall be sentenced to a mandatory minimum period of seven (7) days imprisonment in the custody of the Department of Corrections or the Guam Police Department, no part of which may be suspended. Additionally, that person shall have his driving privilege suspended without occupational privileges for a mandatory minimum period of one year period.

(3) If any person is convicted of a violation of this section and the offense occurred within eight (8) years of the dates of conviction of two or more prior violations of this section or of sections (_____), that person shall be sentenced to a mandatory minimum period of twenty-one (21) days imprisonment in the custody of the

Department of Corrections or the Guam Police Department, no part of which may be suspended. Additionally, that person shall have his driving privilege suspended without occupational privileges for a mandatory minimum period of one (1) year and maximum of five (5) years.

(e) In addition to any other sentence imposed, the Court shall impose a mandatory fine of not less than One Thousand Dollars (\$1000) upon any person violating subsections (a) or (b) of this section and shall require restitution be made to persons injured or for property damaged.

(f) For purposes of this section date of conviction means the date on which a plea of guilty or nolo contendere was entered or the date on which a verdict of guilty was returned by either a judge or jury at trial. Notwithstanding any other law to the contrary, any conviction for vehicular homicide while intoxicated; for driving while under the influence with injuries; or for driving under the influence of alcohol, intoxicating liquor or drugs under this section or any predecessor statute, shall be considered a prior conviction within the meaning of subsections (d)(2) and (d)(3).

(g) Any person convicted of violating any provisions of this section for a third time, or more, shall forfeit the vehicle in which the third offense, or more, was committed. However, those cases where there is a showing of extreme circumstances or where a vehicle is owned by a person other than the one convicted of three (3) or more violations of this section, and the owner had no knowledge that the vehicle would be driven by an intoxicated person and where the owner had no knowledge of any prior violations of this section by the convicted person, the Court, instead of ordering the forfeiture of the vehicle, may suspend the convicted person's driving privilege for a minimum of one (1) year and a maximum of five (5) years and no limited privilege to operate a motor vehicle shall be granted.

At the time of arrest for any offense under this subsection, the vehicle in which the offense was committed shall be impounded by the Guam Police Department and released only upon the approval of the Prosecution Division of the Attorney General's Office when it is determined that the vehicle is not subject to asset forfeiture under this section. The forfeiture and seizure of the vehicle shall be enforced by the Guam Police Department and the vehicle shall be disposed of, in accordance with those provisions of law relating to assets forfeiture, by public sale or auction at such times as the Guam Police Department may choose to conduct such sale or auction. The Chief of Police of the Guam Police Department shall convey clear title as owner of said confiscated vehicles, subject to any perfected security interests in said vehicles.

(h) It is unlawful for any person, while under the influence of alcohol or any drug or under the combined influence of alcohol and any drug, to drive or be in actual or physical control of any vehicle and, when so driving or controlling, do any act forbidden by law in the driving of the vehicle or negligently drive a vehicle, which act or negligence proximately causes bodily injury to any person other than the driver.

(i) It is unlawful for any person, while having eight one-hundredths of one percent (.08%), or more, by weight of alcohol in his blood, to drive or be in physical control of a vehicle and, when so driving, do any act forbidden by law in the driving or control of the vehicle or negligently drive a vehicle, which act or negligence proximately causes bodily injury to any person other than the driver.

For the purposes of this section, "negligence" is defined as the failure to use the ordinary or reasonable care which a person of ordinary prudence would use in order to avoid injury to himself or to others under similar circumstances.

(j) A person convicted of violating subsections (h) or (i) of this section shall be guilty of a felony of the third degree.

(k) The fact that any person charged with violating any of the provisions of this section is or has been legally entitled to use alcohol or any drug shall not constitute a defense against any charge of violating the provisions of this section.

(l) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person (while driving or being in control of a vehicle while under the influence of alcohol or any drug, or both), the amount of alcohol in the person's blood at the time a test is taken subsequent to the driving, as shown by an analysis of that person's breath, blood or urine, shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than five one-hundredths of one percent (.05%) by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcohol at the time of the alleged offense.

(2) If there was at that time five one-hundredths of one percent (.05%) or more but less than eight one-hundredths of one percent (.08%) by weight of alcohol in the person's blood, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol at the time of the alleged offense.

(3) If there was at that time eight one-hundredths of one percent (.08%) or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of alcohol at the time of the alleged offense.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood.

(5) Before such presumptions are made in cases involving a breath test, the prosecuting attorney must show the following by a preponderance of the evidence:

(i) That the machine used for the test was properly checked and in proper working order at the time of conducting the test;

(ii) That the chemicals employed in the test were of the correct kind and compounded in the proper proportions;

(iii) That the person had nothing in his mouth at the time of the test and that he had taken no food or drink within fifteen (15) minutes prior to taking the test;

(iv) That the test be given by a qualified operator and in the proper manner.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person ingested any alcohol or was under the influence of alcohol at the time of the alleged offense.

Section 2. COUNSELING ON CONVICTION. Whenever the court penalizes a person, other than a first time offender, under this Chapter, it shall also require that the person be referred to a qualified substance abuse counselor at the Department of Mental Health and Substance Abuse for an assessment of the person's alcohol dependence and need for treatment. The counselor shall submit a report with recommendations to the Court, which may require the person to obtain appropriate treatment. All costs for such assessment or

treatment or both shall be borne by the penalized person except for one determined to be indigent.

Section 6. SEVERABILITY. If any of the provisions of this Act or the application thereof to any person or circumstance are held invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

To Be Noted: The changes in this proposed law were drawn from the California Driving while under the influence law.

FR: JACK WRICE

TO: SENATOR PILAR C. LUJAN
CHAIRMAN OF COMMITTEE ON
JUDICIARY AND CRIMINAL JUSTICE

OFFICE OF THE LEGISLATIVE SECRETARY

ACKNOWLEDGMENT SLIP

Received By Dora

Time 8:30 A.M.

Date 7/24/93 000224

I applaud any legislation that provides for the welfare of all people of Guam. During almost any day while driving on the streets and highways of our island, trying to keep within the posted speed limits, it seems like i am amongst the very few that try's to obey the saety rules.

In the mornings, about six o'clock i drive down to Agat from Sta. Anna area to get a newspaper, as i enter the highway i look up toward the South and see no vehicles, about 1/2 mile by the time i have driven about 3/4 of a mile several cars driving about 30 ft. apart and at an estimated speed at about 50 mile per hour are pulling up to about 20 feet of my bumper and try to pass. When i stop in Agat they continue on at 45-50 miles per hour thru Agat. Later in the day while driving to Agat, going thru Old Sumay area near the new Taco Bell, in pain sight of a 35 MHP sign, people start passing me at about 45 to 60 MHP. This continues all the way to Piti. many of the cars are waiting at the light at U.S.O.

Going on thru the 25 MHP Construction Zone people are driving 45-50 MHP (estimated) thru the slow posted areas. I have observed nuns, priest, school teachers, off duty policemen, ex-senators, naval officers and or their drivers, Guam Public Transit, almost all of the cargo, dump and fuel trucks, also most Government Vehicles, I also apologize that i also observe some of my group that i retired from 22 years ago, "The Navy Sea Bees".

I know that in 1958 a Judge Advocate General Instruction 11240. IE pretaining to driver education was issued to all commands. I was an Instructor in Driver Improvement and Education for about 12 years before i retired on Guam in 1970. Last year in the U.S only about 40 thousand people were killed in driving incidents. About 1,500,000 were injured. I don't know how many of those were turned into vegetables, lost limbs and maimed for life.

I was told by a policeman here on Guam that during a drive on speeders a while back that over 3,000 speeding tickets were issued? I understand that they were ordered to back off. By putting water

bumpers on power poles at about \$3,000 each and about 10,000 power poles, would be about 30 million. Study's have shown that where rules are enforced and obeyed that traffic incidences go down.

The Automobile is the most dangerous weapon on Earth. Yet we allow Parents to teach their children from birth to grave, "Bad Driving Habits". With several hundred of vehicles per year crowding our highways we will have to slow traffic down in order to speed it up.

If a person habitually drives 10 miles over the speed limit, in a 35 MHP Zone, they will only gain about 15 seconds per mile. If, as most of Guam has stoplights every little ways any time gained by breaking the rules, is lost at the next stoplight. Most lights last about a minimum. Zoom to the next light onlu wait in line. With over 15 traffic incidents per day (Fender Benders) at about \$1,000 per incident, \$15,000 per day into our economy \$450,000 per month,5,400,000 per year.

I do not see how an individual can gain time or any thing by thru traffic. I suggest raising speeding fines to at least \$100.00 for speeding plus \$25.00 per mile for every mile over the speed limit. This could raise about 600,000 per month if the police are given the tools to work with and are not hampered by Political Intervention. I am allowing 1,000 speeding tickets per month at \$100.00 each plus \$25.00 per mile for an average of 20 miles over the speed limit - \$7,200,000 over year. If these fines do not slow them down, allow in the legislation, for doubling the fine after one (1) year and for a second ticket.

These fund could be used for and Intensive Driven Improvement and Education Drive. More lights might cause our drivers to go that much faster between lights. A Radar System that allows for mailing out tickets would be great.If i get caught day dreaming it would be my fault. The human mind is capable of thinking of only one thing at time. If you are thinking of dinner or you boy or girlfriend or any of the thousand of things that might come up, you are not thinking of driving. The Natural Laws that affect your driving are very important, a few of which are

- 1). Friction- the entire control of your car depends on four (4) areas about the size of your hand, your tires that touch the pavement.
- 2).Enertia and Kenetic Energy - weight of car in motion wants to stay in motion - Energy is turned to heat by your brakes

which disappates the energy by turning it to heat thru friction.
3). Centrifugal Force - your car wants to go straight on curves.

On Guam, the Congestion Weather rain, heat change constantly. It about five (5) minutes to make a driver, about nine (9) months in the mixer, 17 years to get a license and one (1) second to kill him. I ask you to go down to Anigua Ace Hardware and park to watch the traffic Put up Radar Stations to check the speeds at various areas.

In order to educate "Brain Wash" our drivers, we may have to give them an ENAMA.

We've got to tighten up that not behind the wheel.

Thank you,
Jack Wrice

Box 7382

Agat GM 96928

Crosswalks won't solve safety problem

More Crosswalks? Say what! When I heard one of our representatives attempting to pass legislation for more crosswalks I was smashed. I don't believe that this is the solution. It's just an easy solution, but easy for who? Another crosswalk isn't going to force pedestrians to use them and most certainly won't prevent an innocent person from going to jail because he hit and killed someone who attempted to cross a busy street. What happens here is a jay walker, one who crosses a busy street out of a crosswalk, endangers their own life, jeopardizes the one who struck him or her. And until something is done about jay walking, you can install all the crosswalks you like and it won't do one bit of good. People will continue to be struck by motorists and in most cases it's the unfortunate motorist who'll need the money for a lawyer to prove he or she was in their right of way. This process costs taxpayers money and has no beneficial impact.

I'd like to suggest that we weigh the possibilities of installing catwalks over crosswalks. Those of you who don't know what a catwalk is, it is a steel-structured bridge that starts on one side of the street and ends on the other side of the same street. It is enclosed by chain-link fencing to prevent people from falling or being pushed into the street. It safely enables one to cross even the busiest streets without obstructing the flow of traffic and lastly eliminates the possibility of an unfortunate motorist landing in jail, for he or she might not have the money for proper representation, not to mention the court cost which in turn all burden the taxpayer.

The possibility of installing catwalks will not work alone. Penalties must be imposed for jay walking in the effort to force them to use this safe method of crossing the street. These penalties could be applied to the construction cost of erecting or maintaining these catwalks. Another beneficial factor is a large enough shoulder could be in place on either side of this catwalk for any transport buses, especially our school buses.



Voice of the People

They are a contributing factor to our uneasy flow of traffic and make way the possibilities of an accident occurring. This easy remedy is capable of eliminating a good portion of our morning and afternoon traffic congestion and would prevent school children from mixing with hazardous traffic. While I'm on this subject let's not forget the possibility of adding a bicycle lane.

If jay walkers prefer to risk their lives, jeopardize someone else's when already in place are catwalks, is shouldn't be the motorist's fault if this offender is struck by a moving vehicle, for the pedestrian should not have the right of way in our already busy, not to mention dangerous streets. The implementation of catwalks would certainly cost more money than laying strips of tape on our street but look at the problems we'd solve with just one stone with catwalks in place. Weigh it, Don't Lay It.
Michael L. Dotts
Dededo

February 24, 1993

Senator Pilar Lujan
Chairperson
Committee on Judiciary and Criminal Justice
Twenty-Second Guam Legislature
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIVED

Received By D. L. W.

Time 8:30 A.M.

Date 2/24/93 **000226**

Subject: **Testimony - proposed Bill 186**

Dear Senator Lujan:

First of all, I want to thank you for allowing me the opportunity to express my sincere interest in and support of the following proposed bill:

BILL NO. 186, AN ACT TO SECTION 23405.1 TO THE GOVERNMENT CODE PROVIDE FOR SUMMARY REVOCATION OF THE PRIVILEGES TO OPERATE A MOTOR VEHICLE OF ANY PERSON WHO REFUSES TO SUBMIT TO A BREATH OR URINE TEST UNDER THE IMPLIED CONSENT LAW AND TO AMEND SECTION 12101 AND 12102 OF TITLE 19 OF THE GUAM CODE ANNOTATED TO PERMIT JUDICIAL REFEREES TO HEAR APPEALS OF SUMMARY REVOCATIONS OF DRIVING PRIVILEGES.

I am here today, not only as a concerned citizen but also as a concerned parent of three healthy adolescents for whom, my wife and I constantly pray for continued well-being and safety. Just like other normal parents wish for their loved ones.

I am appearing in front of this committee, pleading to each and every member to give proposed Bill No. 186 the highest consideration and priority for passage. We cannot continue to allow drunk drivers or anyone who is considered by law to be under the influence of alcohol or drugs, to operate a motor vehicle on our public streets, roads and highways and get away with a slap on the wrist and then walk out and drive again. We must not allow these time bombs to roam our streets behind the steering wheel and injuring, maiming or killing more innocent citizens.

Testimony
Proposed Bill 186
Page 2

If we don't take a stand now, it would be like enabling the drunk driver to continue with the suffering, nightmares and terrifying consequences that each alcohol and drug related accident brings to the innocent victims and their loved ones.

I know that this law will not completely eliminate the alcohol/drug related accidents, but if it prevents even one death, then it has served it's purpose.

It is high time that the drunk drivers realize that it is not a right to drive a motor vehicle here in Guam, but merely a privilege that requires great responsibility for one's action and conduct on the road.



PEDRO D. PAULINO

Your Honor:

It is almost one year since my wife died and the sound of her voice and the sound of the life support machines at intensive care unit still haunts me today. Many friends and relatives express their condolences with kind words would end up by saying "accept it, it was her destiny". What I have the most difficulty in accepting is the way that she died. Her death was caused by an inconsiderate individual who does not value the life of others by driving while the influence of alcohol.

My wife was hit by the defendant's truck and throwing her approximately 20 feet from the point of impact. She suffered a broken leg, broken pelvis and a broken neck. On the first night after the accident, she was infused with 24 pints of blood, by the time she died she took a total of 30 pints. During the whole time she was alive after the accident, she was not given any pain killers as administration of such drugs would cause her heart to stop. No one could imagine the amount of physical pain she had to endure. I cannot find the right words to describe our feelings of seeing someone you love suffering helplessly and there is nothing that you can do alleviate her pain.

My wife was beautiful woman, both physically and spiritually. She was a woman who loved life, she was full of life and with an infinite source of energy. She was a woman who loved God and valued her body God had given her. She had always taken care of her body by eating the right foods, not smoking, drinking and most of all by exercising. She was 46 years when she died but she could easily pass for a woman in her early 30's.

My wife was an accomplished woman despite having a limited education. She had held very good positions in big companies. She was a controller for Cocos Lagoon Development, Treasurer at Atkins Kroll, Special Assistant to Bob Black of Black Construction, Consultant to Mr. Charles Lee owner of Bunny Market and her last venture is opening a Human Resources Company.

My wife was a devoted Catholic. She had always been involved with the church. She maintained the books for the Barrigada Catholic Church for many years on a voluntary basis and President for Christian Mothers Association for many terms.

My wife was an accomplished athlete. A runner to be specific. She ran many marathons and competed in almost all races with the Guam Running Club.

Despite her career, church activities and sports, my wife was a family woman, and a full time mother. She was the driving force of our family. Our success as a family was attributed to her. She was not only the mother to my children but also a close and trusted friend. She was truly the wind beneath our wings.

The defendant has taken not just one life, but has taken a part of mine as well as my daughters. This part will be missing as long as we live.

We all the pain, grief and sorrow, we as a family had to endure, it is hard to believe that the defendant can only get a maximum of three years incarceration. I do not blame this court but by the way the present Guam Laws are written. I pray our legislature will review the laws affecting this case and make necessary revisions to protect future victims.

Your Honor, I will accept your fair and good judgement in sentencing the defendant. I know you have a very difficult job. Thank you for giving me the opportunity in expressing my feelings and making you familiar who the late Vicky D. Flores was.

OFFICE OF THE LEGISLATIVE SECRETARY

ACKNOWLEDGMENT RECEIPT

Received By Dora
Time 8:30 A.M.
Date 2/24/93 000227

*Monica Slora
on behalf of Joe Slora*

Testimony on Bill 186 and Bill 244

February 24, 1993

To: Senator Lujan; Committee on Judicial & Criminal Justice

From: Robert L. Wade; President, Guam Running Club

Re: Amendment to written testimony

Senator Lujan and Committee Members I have had a chance to review Bill 244 in addition to Bill 186 and am submitting this revised testimony.

Vicky Flores one of our members, a running partner and a friend was killed as the result of a car accident where the driver was DUI. The fact that I can present this testimony and Vicky cannot is a matter of two or three inches. I was walking beside her when she was hit. Life or death is sometimes a matter of inches.

This happened last March at 6:30 in the morning. Vicky and I were walking along Route 16 near Barrigada Heights. We were walking towards the airport access road on the shoulder facing on-coming traffic. The vehicle hit Vicky from behind and missed me, as I said, by inches. The driver had apparently fallen asleep and drifted across four lanes of the highway. The police investigation determined that the operator of the vehicle was legally drunk. An individual was legally drunk at 6:30 in the morning and chose to drive a vehicle. This experience has affected me a great deal and will continue to affect me. By presenting this testimony I

am attempting to do some small part to make accidents that caused Vicky's death less likely to happen.

I believe we all have a job to do in this regard. The legislature needs to examine the laws relative to drunk driving and make sure there are serious penalties for operating a vehicle while under the influence of alcohol. You have taken some steps in the right directions. Bill 186 and Bill 244 are more steps in the right direction. It appears the substance of Bill 186 is included in Bill 244, perhaps the sponsors could combined the two bill under joint sponsorship. Individuals who operate motor vehicles on our highways take on a serious responsibility. Every time any of us drives a car, rides a bike or is a pedestrian we are risking our lives and the lives of others. This is an awesome responsibility. We all must work together to make sure that our crowded highways are as safe as we can possibly make them. Therefore an individual driving in a manner that causes a police officer to suspect he /she is driving impaired should be required to submit to an appropriate test. If the individual is convicted the penalties outlined in Bill 244 should go along way to discourage individuals from driving under the influence of alcohol or drugs. These penalties should also protect innocent people from being injured or killed by drunk drivers.

In light of the sentencing of the individual responsible for Vicky's death, I think the legislature should review and revise upward the mandatory sentence for vehicular homicide. When a person is sentenced to 5 years in jail for robbery, a sentence of one year in jail and two years probation for being drunk, driving a vehicle and killing somebody is ridiculous.

Section 10 of Bill 244 is a good idea. I would suggest however that the mentioned government departments be urged to confer with organizations like the Guam Running Club, The Guam Visitors Bureau, The Guam Bicycle Club and other groups who use the highways but are not in motor vehicles. I fear that one solution is to ban bikers, runners and walkers from many of Guams roads. This solution WOULD NOT be supported by the Guam Running Club.

One technical note, I believe section 11 of Bill 244 should refer to section 10 and not section 9.

In an effort to make some sense out of what happened to Vicky, I am taking some positive actions. I am not opposed to drinking alcohol and have a drink once in a while. However since this experience with Vicky, I am very, very cautious about drinking and driving. If I do drink, either I stop drinking alcohol long before I'm going to drive, or I let someone who

has not been drinking drive. I encourage all others to follow this example.

I also will take a public stand on this issue at every opportunity. Our society is based on the premise the adults are responsible for their actions. As long as adults follow the rules of society they should be free to do as they wish. However if an adult chooses to drink and then drive, that person is endangering life, limb and property. Such an individual should not be able to refuse to have our sobriety tested with impunity. Also people who drink and drive should be severely punished. And the severity of the punishment should greatly increase if driving and drinking causes property damage, injury or death. I encourage this legislature to take a strong stand and pass Bill 186 and/or Bill 244.



copy;

Senator Brooks


Senator Santos.

emo 7671	# of pages >
From	R Wade
Co.	GRC
Phone #	734-2244
Fax #	734-2246



Chambers of
ROBERT G.P. CRUZ, ESQ.
 Referee / Administrative
 Hearing Officer

SUPERIOR COURT OF GUAM
 Judicial Hearings Division
 Judicial Center
 120 West O'Brien Drive
 Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY
 ASSIGNMENT RECEIPT
 000230
 Referred to: *Phil U*
 Time: *4:45 pm*
 Date: *2/24/93*


Tel: (671) 475-3259
 475-3114

February 24, 1993

Honorable Pilar C. Lujan
 Chairperson, Committee on
 Judicial and Legal Affairs
 Twenty-Second Guam Legislature
 Agana, Guam 96910

Re: Bills No. 186 and 244

Dear Senator Lujan:

This letter is submitted on both of the above bills being heard by your Committee at public hearing today. I have reviewed both measures with regard to their impact upon the Superior Court, and submit these comments on my own behalf.

Both measures would address the need for an implied consent statute to help in the effort to eliminate drunk drivers on our roads. Bill 224 would provide that an individual has the right to petition the Department of Revenue and Taxation for restoration of his drivers license which had been summarily suspended. Bill 186, on the other hand would provide for a hearing before the Superior Court referee(s) of the Judicial Hearings Division. While Bill 186 would place emphasis on the child support responsibilities of the Division, it would nevertheless place an additional burden which would make it more difficult for the Territory to meet federal requirements which mandate the creation of the Division and provide strict timetables for child support cases to be adjudicated. At this time, the Division does not yet meet federal standards.

Presently, the Superior Court may appoint referees for domestic or small claims matters. The use of referees certainly reduces time that judges are required to devote their time to the matters in which referees are required. However, the caseload of the entire Court remains high.

Rather than adding another set of cases to be processed by the Court, it may be appropriate to leave the process to the Executive Branch. The counsel for the Department of Revenue and Taxation currently serves as hearing officer for a variety of hearings, including conducting hearings for the ABC Board and the Cockpit License Board. It would be possible to add this responsibility to his duties. My own experience as an Assistant Attorney General for eight years performing a variety of hearings for the Contractors License Board, Workers Compensation Commission, Nursing Board, GEPA, and for the Department of Revenue and Taxation leads me to the conclusion that the Solicitors Division of the Department of Law is fully capable of fulfilling hearing requirements under the Administrative Adjudication Law, 5 GCA Section 9200 et seq.

In summary, I would suggest that the approach under Bill 244 would be more appropriate, leaving the responsibility for hearings within the Executive Branch of our government.

Robert G.P. Cruz
 Robert G.P. Cruz



Government of Guam
GUAM POLICE DEPARTMENT
 287 West O'Brien Drive
 Agaña, Guam 96910
 U.S. Territory of Guam



JOSEPH F. ADA
 Governor of Guam

FEB 24 1993

COLONEL A.P. SGAMBELLURI
 Chief of Police

FRANK F. BLAS
 Lieutenant Governor

The Honorable Pilar C. Lujan
 Chairperson, Committee on Judiciary and
 Criminal Justice
 Twenty-Second Guam Legislature
 155 Hesler Street
 Agaña, Guam 96910

Subject: Bill No. 244 - The safe Streets Act of 1993;
Bill No. 186 - An Act to Add Section 23405.1 to the
 Government Code to Provide for Summary Revocation of the
 Privileges to Operate a Motor Vehicle of Any Person
 Refusing to Submit to a Breath or Urine Test Under the
 Implied Consent Law.

Dear Senator Lujan:

The Guam Police Department supports the enactment of many of the provisions contained in Bill No. 244 because they are needed in the fight against drunk driving.

The provision in Section 5 of Bill No. 244 is critically needed for reducing DUIs and related car accidents that result in serious injuries or deaths. This section proposes to amend Subsection 23405(b) of Title XXIV of the Government Code of Guam by making it "unlawful for any person who has eight one-hundredths of one percent (.08) or more, by weight of alcohol in his blood, to drive or be in a actual control of any vehicle." Lowering the Breath/Blood Alcohol Content (BAC) from .10 to .08 is in keeping with contemporary traffic safety enforcement and scientific literature and research data as well as with the public's understanding that driving is impaired at BAC levels lower than .10.

The provisions in Sections 3,4,5,6,7 and 8 are also necessary in creating a deterrence to those persons convicted of driving under the influence of alcohol and/or drugs more than one time. Increasing the severity of the penalties (e.g., longer time period for license suspension) for repeat DUI offenders and establishing mandatory minimums should have a significant impact. GPD believes that such an impact will especially be felt by a DUI offender convicted for a third time and whose vehicle originally impounded in connection with the third DUI offense is now subject to asset



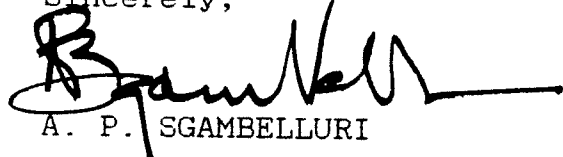
The Honorable Pilar C. Lujan
Chairperson, Committee on Judiciary and
Criminal Justice
Subject: Bill Nos. 244 and 186
Page 2 of 2

forfeiture that places Guam up there with a handful of jurisdictions who are on the cutting edge of DUI traffic safety enforcement laws with such a provision.

The issue of immediate suspension or revocation of drivers licenses or permits under the Implied Consent Law for refusals to submit to testing for blood alcohol content (BAC) is addressed in both Bill 244, Section 3 and Bill 186. The Guam Police Department is supportive of the intent of those two bills to supplement Guam's DUI enforcement laws by providing for an administrative response of drivers license suspension or revocation for refusals to submit to BAC testing. The latter bill (No. 186) appears to be far more comprehensive than the former bill (No. 244) in setting out the rules, regulations and procedures which address due process issues for those whose drivers license is suspended or revoked for refusing to submit to testing of BAC. However, the Department of Revenue and Taxation may desire more latitude on developing rules and regulations for this area through the Administrative Adjudication Law rather than having them locked in statutorily at this point without regard for their available resources to implement such procedures.

Finally, the Guam Police Department supports the provisions of Sections 10 and 12 of Bill 244 calling for research and identification of hazardous areas on our highways and for the placement of emergency call boxes throughout the island. This provides for better planning rather than addressing the problem areas in piecemeal fashion when the matter is individually brought to the attention of GPD, Department of Public Works, Office of Highway Safety and/or the Legislature.

Sincerely,


A. P. SGAMBELLURI

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VIA FACSIMILE

CONFIRMATION COPY

March 5, 1993

Honorable Pilar C. Lujan
Chairwoman
Committee on Judiciary and Criminal Justice
22nd Guam Legislature
155 Hesler Ave.
Agana, Guam 96910

Re: Bill Nos. 114, 186, and 244

Dear Senator Lujan and Members of the Committee:

I attended the public hearing on the above bills, however, due to time constraints I was unable to deliver oral testimony. In lieu, I submit the following comments regarding the above bills currently pending in your committee.

Bill 114 will provide for an additional judge of the Superior Court of Guam. I join in the comments submitted by the Guam Bar Association Bench Bar Committee, particularly the concern that before any judgeship is created, your committee consider the other problems currently facing our court. It is clear that of the current judges, some work much harder than others. Senator Ben Pangelinan's inquiries regarding the absenteeism rate of the judges is a valid and justified concern of litigators who appear regularly in court only to be told that a judge is not available. Many in the bar, including myself, feel that perhaps if all the current judges did their fair share of work, there would not be so many problems and backlogs.

The Bench Bar Committee submitted a copy of its survey of Guam's lawyers regarding the efficiency of our court system. A brief glance at the survey reveals it is a comprehensive attempt to gauge court problems and find solutions to them. Adding a new judge may be a simple method of resolving the legislative intent and findings stated in Section 1 of Bill 114. However, in order to accurately and effectively address the legislative intent and findings and before taking any action on Bill 114, your committee should, at the very least, await the forthcoming

Honorable Pilar C. Lujan
Re: Bill Nos. 114, 186, and 244
March 4, 1993

report on the survey and opinions of those who face the problems of the court on a daily basis.

Lastly, if the new judgeship is created (which appears likely), the appointee should be carefully scrutinized to ensure a competent trial judge is seated so that the problems will be corrected. Permitting an inexperienced political crony to fill the position will only serve to further burden the court's problems.

Bills 186 and 244 seek to strengthen Guam's drunk driving laws. I support a safe streets act; who wouldn't? I also support tough drunk driving laws to deter such conduct. However, I oppose the bills as currently drafted. Please consider the following.

Our island's drunk/drugged driving laws should not only be used to sock it to a d.u.i. suspect and convict. If your media sound bites for stiffer penalties, effective combatence of the alcohol/drug driving casualties and plethora of other societal ills caused thereby are sincere, then perhaps you should follow one of the nation's strictest and most comprehensive set of laws, California's. Take a moment to compare California's Vehicle Code Article 2 "Offenses Involving Alcohol and Drugs," (Cal. Vehicle Code §23152 - §23249) to Guam's Government Code Section 23405 et.seq. and your proposed bills. Clearly, California has enacted a comprehensive, tough (lots of bite in it), and fair set of d.u.i.-related laws.

California's laws ensure stiff penalties, appropriate safeguards in lieu of the denial of numerous privileges and rights, and adequate professional treatment and education for long-term success. By comparison, and as evidenced by the Legislature's inability to comprehensively address the d.u.i. problem here on Guam (i.e., our d.u.i. law has been amended several times over the past few years), the proposed legislation is utterly inadequate. It vests broad and sometimes exclusive discretion in officers, many of whom already have chips on their shoulders, to yank someone into jail, take away their car and license and eventually sell the car. This is opening the door to abuse. It does not consider varying degrees of punishment for factors such as causing injury or death, presence of children in the car, subsequent offenses, and high blood alcohol content levels; nor does it ensure that citizens are protected from overzealous police conduct in an implied consent

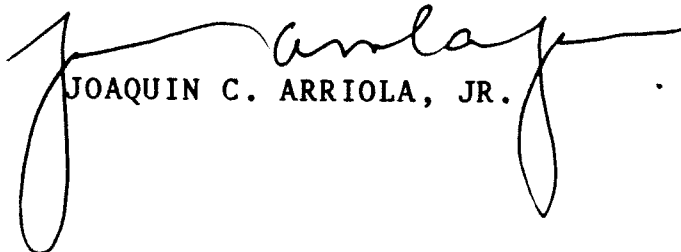
Honorable Pilar C. Lujan
Re: Bill Nos. 114, 186, and 244
March 4, 1993

jurisdiction. California's codes address these issues and more. For instance, California's laws regarding implied consent ensure that a suspect is given a choice of which test to submit to, and that officers adequately advise suspects of their rights. The bottom line is this: if you are going to once again amend Guam's d.u.i. laws, at least try to do it right. Adopting some of California's provisions would assist in developing a comprehensive law to address a broad problem.

Piecemeal legislation like Bills 186 and 244 make for good headlines and media releases, but they make bad law.

Thanks for the opportunity to comment. Si Yuus Maase.

Sincerely,


JOAQUIN C. ARRIOLA, JR.

D#3862J

fc: All Senators

February 24, 1993

Senator Pilar Cruz Lujan
Legislative Secretary
Chairman,
Judiciary and Criminal Justice
155 Hesler Street
Agana, Guam 96910

Dear Senator Lujan:

Good morning, I am very pleased to offer support of the concept of providing emergency call boxes along the roadways of the island. Last year GTA worked with the Guam Energy Office, The Guam Police Department, Guam Fire Department and the Department of Parks and Recreation in providing a study to determine the best method to provide emergency call box facilities for the island of Guam.

That plan recommended the placement of 27 emergency call boxes around the island with funding allocated through the Guam Energy Office for \$110,000.00 which will pay for all equipment and installation.

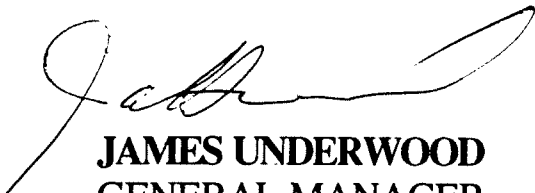
Because our study was for specific grant purposes the scope and intent of that study was somewhat narrow and limited when compared to the broader unlimited scope and intent of Section 12 of Bill 244, which warrants a more comprehensive and exhaustive input. The study indicated preliminary costs of \$110,000.00 for 27 call boxes around the island.



Commonwealth Now!

As we were happy to lead the 911 implementation task force, we welcome this new opportunity to be of service again.

Thank you for allowing GTA to testify before you this morning on this important bill.



JAMES UNDERWOOD
GENERAL MANAGER

ATTACHMENT:

CELLULAR CALL BOX SYSTEMS

GTE



- Highways
- Campuses
- Parking Lots
- Shopping Centers
- Stadiums
- Hospitals
- Schools
- Special Events
- Hike & Bike Trails



CELLULAR CALL BOX APPLICATIONS

GTE Government Information Services, Inc. cellular call boxes provide vital communication services on highways, bridges, tunnels, school campuses, parks, hike and bike trails, stadiums, marinas, golf courses, beaches, parking areas, shopping centers, hospitals and other critical locations.

NOW EVERYONE HAS A CELLULAR TELEPHONE

GTE solar powered cellular call boxes, designed as stand-alone units, offer highly reliable telephone quality voice communications.

- Emergency And Non Emergency Assistance
- Enhancement For Personal Security
- Deterrence Of Crime And Vandalism
- Timely Resolution Of Traffic Incidents

INSTALLATION AND SUPPORT SERVICES

Our "highway approved" bases and standards are readily adaptable for other types of installations. We also offer other mounting methods and can modify mounting hardware for special needs, including wall mounting or attachment to a variety of other existing poles.

Our experienced staff is skilled in all aspects of the job - from site surveys and signal strength tests to construction, installation, testing/certification, and final "turn-over" to the customer.

Our impressive statistical database of information on use, operating factors and applied data from actual operational installations gives you a "head start" for a successful implementation.

We offer various maintenance plans to respond to your needs and ensure top performance from the call box system.

PRODUCT FEATURES

Portable - No Trenching

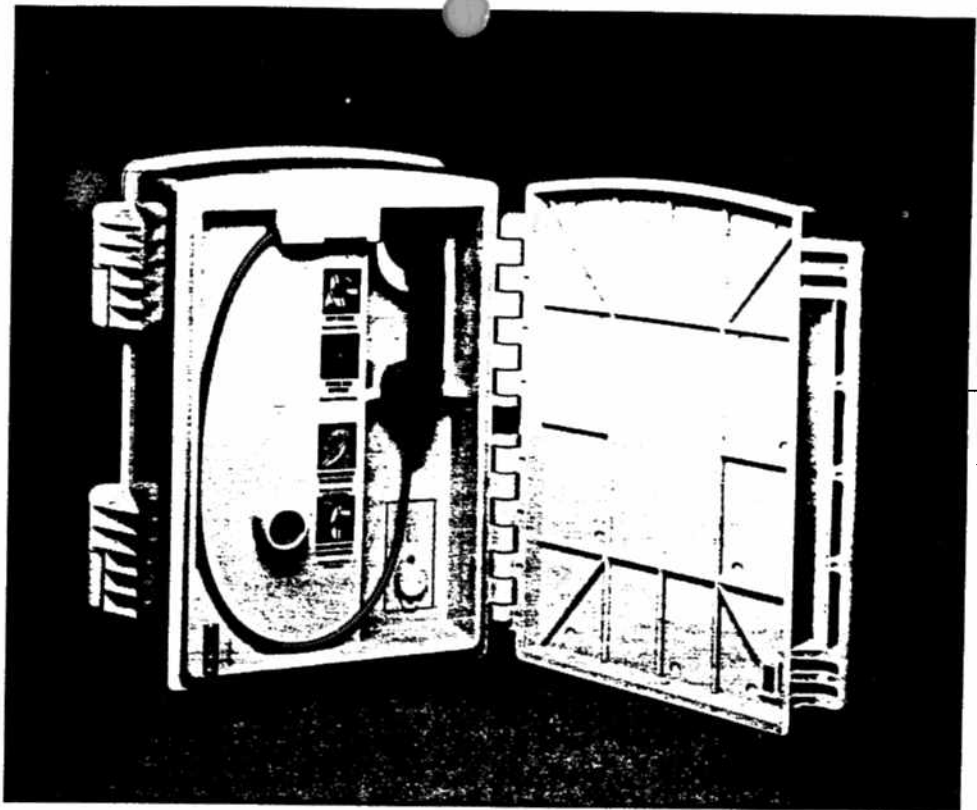
Cellular network operation and solar power make this call box transportable for changes in location or for temporary use. Ideal for remote or difficult to access sites.

Battery Operated with Solar or AC Recharging

The call box's batteries can be recharged through either a solar panel or AC source including 110 and 220 VAC. Solar recharging results in a stand-alone independent unit, no cables or lines.

Rugged Lexan® Housing

Engineered to withstand severe weather and vandal abuse, the call box is injection molded from high strength Lexan® polycarbonate structural foam and is finished with a UV stabilized high gloss polyurethane enamel. Weather proofing gaskets, a special hardened lock, and tamperproof hardware adapt it to "tough"



environments. Receiver for hearing impaired has 29 inch armored cable for wheelchair handicapped.

Box Location Identification

ANI (automatic number identification) is sent whenever a box calls the answer center. The operator can verify the caller's location by this ANI even if the caller does not speak but pushes the call activation button.

Self Diagnostic/Alarm Features

Each box "reports" its status on a pre-selected recurring time interval and can send real-time alarms for major malfunctions, tampering or knockdowns.

Call box alarm conditions include: tilt or knockdown including vandalism, outer door open, transceiver abnormalities, authorized and unauthorized inner door entry, open solar panel circuit, low battery, light burnout, handset circuit open, processor (BIT) test and cellular system problems.

Remote Programming

Using the maintenance computer, all boxes in the system can be remotely programmed for changes in report times; new or alternate number to be called; masking of alarms; number of redial attempts; intervals between reports; call-back time and up to nine different call box personalities.

Illuminated Call Panel

Inside front panel has overhead lamp to illuminate the handset, the call activation push-button and calling instructions during periods of low light.

Electronic Access

By holding a hand held DTMF tone generator against the handset speaker, up to 20 additional pre-programmed numbers may be dialed from the transceiver memory slots. Authorized personnel can use this feature in the conduct of their duties without interrupting the answer center.

Optional Answering Equipment

Available answering point equipment ranges from a simple LED decoder and thermal printer to a specially designed computerized answer station with monitor display of the call box identification, descriptive data on the location, call box telephone number, call hold lapse time status and provision for call time extensions.

Optional "Blue Light" Identification

"Blue-light" illumination of the call box is available to provide call box identification quickly at night.

GTE Government Information Services, Inc.

1 Jenner, Suite 100, Irvine, California 92718 714/727-3021

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Twenty-Second Guam Legislature

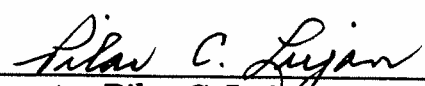
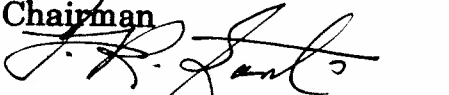
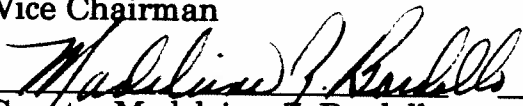
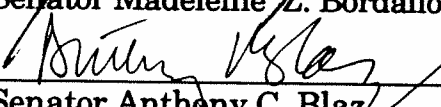
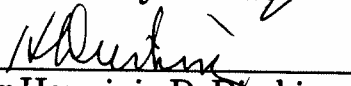
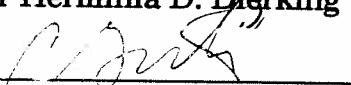
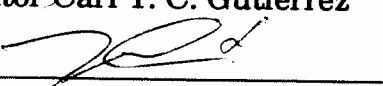
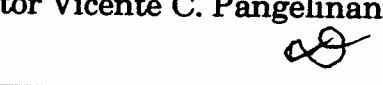
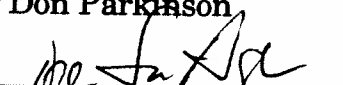
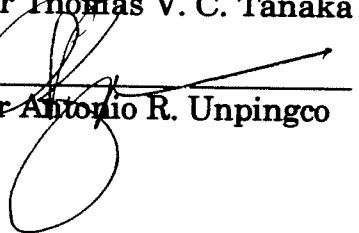
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COMMITTEE ON JUDICIARY AND CRIMINAL JUSTICE

Vote Sheet on: Substitute Bill 244

<u>COMMITTEE MEMBER</u>	<u>TO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>	<u>TO PLACE IN INACTIVE FILE</u>
 Senator Pilar C. Lujan Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Francisco R. Santos Vice Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Madeleine Z. Bordallo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Anthony C. Blaz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Herminia D. Dierking	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Carl T. C. Gutierrez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
 Senator Vicente C. Pangelinan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Don Parkinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Speaker Joe T. San Agustin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Thomas V. C. Tanaka	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Antonio R. Unpingco	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

DOUG BANDOW

This is a crusade that is in no one's interest

WASHINGTON, February 24 — Increasing public intolerance of drug use has been matched by growing social pressure against abusive drinkers, an understandable response to the significant harm caused by the misuse of alcohol. The problem, however, is that some opponents of drinking have started to sound a bit like the crusading Prohibitionists of old. This has been particularly evident in the activities of such anti-drunken driving groups as Mothers Against Drunk Driving.

Of course, no one believes that people should drive drunk. The question is, what standard should be used to decide that someone is legally drunk?

AN INCREASINGLY popular tactic is to lower the legal blood alcohol content: States have traditionally set .1 as the legal limit, but a half dozen, including California, have moved to .08, and the federal Department of Transportation is pressing the rest of the states to follow suit.

MADD's president, Milo Kirk, would apparently go even further. Kirk recently complained that "we're behind much of the rest of the world. England has a .08 limit. Parts of Australia are at .05, and in Sweden the maximum legal blood alcohol content level is .02!"

A BAC of .02 would almost certainly save some lives because it would scare off a number of drivers from drinking altogether, but the number likely to be saved is small. Although nearly half of all auto deaths in the United States are alcohol-related, some of those include drunken pedestrians.

Intoxicated drivers are also more likely to kill themselves than others. The risk of an innocent person being killed by a drunken driver is really quite small — one-ninth the likelihood of choking to death, for instance.

Moreover, as Candy Lightner, MADD's founder, points out, half of drunken drivers who cause deaths have a BAC of at least .17, well beyond the current legal standard in every state.

"Lowering the blood alcohol content won't make a difference to these offenders," she observes.

In fact, a recent study by David Moore, director of the University of New Hampshire's Survey Center, suggests that BAC reduction is one of the least effective ways of reducing drunken driving. Automatic license revocation and mandatory jail sentences and fines would be far more effective, because they increase the price paid for driving drunk.

The problem with cutting the BAC, Moore found, is that people aren't able to easily measure their own levels. Thus, if you don't feel intoxicated, most will go on drinking.

.08 would hike the total number of drunken-driving cases by 60 percent. Since there is little performance difference between drivers with BAC's of .1 and .08, the police would be forced to rely more on Draconian tactics like roadblocks to enforce the lower limit. Yet most of the additional drivers arrested would pose no threat to other motorists.

The law, explains Ross, "would brand as criminal much behavior that is customary, pleasurable and much less risky to society."

Indeed; arresting and processing these added drivers would likely divert resources from immobilizing the seriously intoxicated drivers who are most likely to kill, leaving the roads less safe than before.

Perhaps the fundamental problem with today's anti-alcohol crusade is that the neo-Prohibitionists are turning a means into an end. The ultimate goal should be to reduce the harm caused by intoxicated drivers. Lowering the BAC is not only a poor method of doing so, but it also has the greatest adverse impact on innocent people.

Activists fixated on lowering BACs have no answer to the question posed by the American Beverage Institute's Richard Berman: "When will we have achieved victory?"

In contrast, Lightner points to state programs that focus on recidivists. And Moore cites administrative license revocation, a procedure where the policeman is allowed

to take your license on the spot, as well as increased fines and jail time for those who are really drunk.

The thousands of needless traffic deaths caused by alcohol abuse are tragic and intoxicated drivers should be punished. But if that is really our goal, we should focus on the methods most likely to deter genuinely drunk drivers.

ALAS, LOWERING the BAC is not one of them. This crusade is in no one's interest.

DOUG BANDOW
Copley News Service

WILLIAM MURCHISON

Gimme that old time religion

FEBRUARY 25 — Heresy, heresy! — and may there be infinitely more of it; anyway of the sort perpetrated in the *Wall Street Journal* by Glenn Loury, a Boston University economist, whose firm opinion it is that government programs can't arrest, let alone reverse, "the disintegration of urban black society." What can do that tricky job? Spirituality.

Spiritu-what? Like G-o-d? The whiskered old boy we thought was dead? The same. "The mention of God may seem quaint," Loury writes, "but it is clear that the behavioral problems of the ghetto (and not only there) involve spiritual issues. A man's spiritual commitments influence his understanding of his parental responsibilities... One cannot imagine effectively teaching sexual abstinence, or the eschewal of violence, without an appeal to spiritual concepts."

INSTEAD OF STAGING "sterile debates over policy," we should "engage the fundamental questions of personal morality, of character and values. The advocacy of a conception of virtuous living has vanished from American public discourse, especially in the discussion of race and social policy." I draw in front of Loury's body the shield necessary to deflect accusations bearing on his insensitivity, racism, etc.: Loury himself is black.

of Massachusetts? Ah, but there's more from that quarter. Don Feder, the syndicated columnist, whose base is the *Boston Herald*, has published a collection of columns exemplifying the same kinds of concerns as Loury's essay does.

The collection (*A Jewish Conservative Looks at Pagan America*; Huntington House, \$19.99) is perfectly splendid. Feder is full of moral outrage. He's no secular, "cultural" Jew. He stands with the Law, the Prophets and the Lord God Jehovah against modern trends that have brought us to "the verge of moral collapse."

BY WAY OF affirming piety, individual responsibility and other nostalgic concepts, Feder assails pornography, the abortion cult, the condom cult, the debasement of sex, gay rights, secularism, moral relativism, drugs and the like. He even mentions Sin — a quaint religious concept of some years back.

The idea here is, we're not animals, we're God's created beings, though you wouldn't know it from watching us in action. It leads back to Loury's question: Without spirituality, how can we address, far less solve, problems that are essentially spiritual? The answer is, we can't. We call on the government for help. But the government, by its nature, can do little more than scatter some more drachmas among us. That won't do.

cerned. The roots of our drug problem, teen alcoholism, the crisis of illegitimacy, of a million abortions annually, criminality in our inner cities and family dissolution lie in our abandonment of the doctrines decreed at Sinai." Right. And of the Gospels, too, a high-church Episcopalian would chime in.

The question, of course, is what now? The Humpty Dumpty of religious faith lies in shards. This is thanks in large part to a succession of priests and rabbis eager to ingratiate themselves with the secular culture by sandpapering to a more becoming softness religion's "hard" edges: all that talk of sin and right behavior, for example; the reliance on a God nobody can see.

A black and a Jew — Loury and Feder — would have us bring back the old-time religion: for which, frankly, I think Americans of all sorts are ready, whether they know it or not. There is increasing apprehension — evident everywhere — about society's present course. The new ways aren't working. What about the old ways we know used to work?

IF SUCH QUESTIONS can come down to us from Teddyland, where else must they be bubbling? And how long before they will be sizzling on our eardrums, burning in our brains?