

I hope to convince you in the next hour, some of you, convince some of you, in the next hour that the greatest single threat to our freedoms, the freedoms set forth in our Bill of Rights to our constitution. The single greatest threat is not from China. I don't think it's from Choostan. I don't think it's from the extremists of the Muslim world. The threat as it has always been throughout history is internal. It is from within. I do not think it is from the American Communist party or extremists on the right. I hope to convince a few of you the greatest single threat to our freedoms today is a group of American housewives. They call themselves the Mothers Against Drunk Driving, MADD.

I am fully aware that some of you belong to MADD. And I am certainly not here to make fun. Many of you who are in MADD are — have had tragic losses at the hands of drunk drivers. Others of you here do not belong to MADD, but you have contributed to MADD and many more of you here, perhaps most of you here, are in complete sympathy with their goals and their activities. But I hope to convince you after one hour that you might want to reassess your view of that particular organization.

And I do not take them lightly in terms of their intentions. But we know that throughout history it is the well-intentioned zealots — those who believe strongly in the rightness of their cause — that are most willing to impose those ideas upon others. I do not, by the way, for a moment suggest that we should legalize drunk driving. I'm going to make that clear at the outset. But it is the true believer who is the greatest threat. And I should at the outset acknowledge my tremendous debt to Mr. Eric Hoffer who wrote that book, *The True Believer*. He was a longshoreman when I was going to school at Berkeley in the 60's. Did not have a high school education, but he was teaching Philosophy at the University of California Berkeley and wrote this tremendous little jewel of a book that has been terribly influential in my own thinking.

I would like you to imagine for a moment that you've gone to a friend's house for dinner. In the course of a very good dinner you've had a couple of glasses of a good Petit Serah and it is now time to drive home. I would like you to imagine that you are on your way home — and, I will tell you parenthetically, by the way, that two glasses of wine will not, in any state, put you under the influence of alcohol or over the legal limit of .08, or .10 depending on your home state. As you are driving along the highway, you see ahead of you some flashing lights and barricades and police cars accorded across the highway, with flashing lights directing you into an increasingly small channel. And, as you go in, you are stopped and two police officers approach you and stick a flashlight in your face and say, "Breath on me. Have you been drinking tonight? Please step out of the car."

Some of you say, "Well that can't happen in the United States. We have the Fourth Amendment to the constitution, which says, 'police officers have to have probable cause to stop you. They have to have a reason to believe you've done something criminal before they can stop and detain you.'" And so said the Michigan Supreme Court in the case of *Sitz vs. Michigan*. The Supreme Court of Michigan said, "The Fourth Amendment does not permit these types of roadblocks." And reversed the DUI conviction. They went up to the United States Supreme Court, unfortunately and that august body decided 5 to 4 that somewhere in the constitution there is something called a DUI Exception. And in a 5 to 4 vote sent it back to Michigan saying there is no violation here. What's interesting is the Michigan Supreme Court, bless them, for there are fewer and fewer of them, said, "Well, if you will not protect our citizens in the state of Michigan from this kind of police conduct, we will. And we again reverse the conviction and this time we rely upon our own state constitution." (Applause)

The state of Washington and three other states have followed suit. In 46 states today it is legal to stop you for absolutely no reason other than the fact that you are driving a car. But only to check you out for drunk driving.

You have been stopped, you have been taken out of the car and you have been handcuffed. You are placed in a police vehicle and you are on your way back to the police station. About this time you're probably wondering — I've seen this TV show somewhere — they're supposed to read me something aren't they? Something called Miranda? Aren't I supposed to have a right for an [attorney](#)? A right to remain silent? Because, as you're driving, the officer's asking you all kinds of questions. Like, "Where have you been?" "Where are you coming from?" "How much have you had to drink?" "How long ago was it?" "When was the last drink?" "Do you feel the effects?" "Where are you now?" "What time is it?"

Well, again, a state Supreme Court said, "Hey, this person's handcuffed under arrest, you've got to advise him of his constitutional rights under Miranda." And again, it went to the United States Supreme Court in the case of *Birkemer vs. McCarty* in 1984. The Michigan vs. *Sitz* case was 1990, by the way. In *Birkemer vs. McCarty*, the [United] States Supreme Court fooled around for about 20 or 30 pages of opinion and finally concluded that there was a DUI exception to the constitution. And that, "Well, we really can't tell you when you're supposed to give Miranda in a DUI case. We do know that it is later than in other types of criminal investigations." So, U.S. Supreme Court has told us we don't know when Miranda is supposed to be given in DUI cases, but it is clearly some time later.

Well, about this time you arrive at the police station and the officer takes you into a room and there is this little metal box about the size of an IBM typewriter. Some of you may remember those. And he says breathe in here. And you say, "Wait a minute, I have a right to an attorney. Can I make a phone call?" "No". And he's right. Only in DUI cases. He's right. You're about to give the most incriminating evidence it is possible to give in a DUI case and you have no right to seek the advice of an attorney as to whether to breath into that machine or to attempt a urine or a blood test in the alternative.

And I'm only touching on a few of the problems. In California, for example and in many other states, the law says you have a right to choose between breath, blood and urine. Your choice. We have discovered in California, through our own Supreme Court that when the officer doesn't give you that choice—just makes you breathe into that little black box—that's okay. They're not supposed to do it, but there's no remedy. There's nothing that can be done about it. You can't suppress the evidence. Police are not stupid, so now about half of them simply don't give you that choice, since nothing's going to happen if they don't. So you find out that you have no right to consult with an attorney.

Your next thought is, "I don't know if I trust that little machine. Maybe I should refuse to breath into it. I think I'm okay because, because as I remember, there's a Fifth Amendment right in the United States constitution that I don't have to incriminate myself and, not only that, but if it goes to trial, the prosecutor cannot even refer to the fact that I've exercised my Fifth Amendment right."

The South Dakota Supreme Court, in *Neville vs. South Dakota* agreed a few years ago and they said, "This gentleman refused to incriminate himself by breathing into that machine and it was reversible error for the prosecutor to comment upon that to the jury and tell them that he refused, because he knew he was guilty." Now you're probably ahead of them. It went to the United States Supreme Court. The United States Supreme Court, in *South Dakota vs. Neville* in 1983 said, "There's a DUI exception to the Fifth Amendment. There is no right to refuse and the prosecution can comment freely in trial upon that refusal." And they sent it back to South Dakota. And South Dakota said "If you in Washington will not protect our citizens, we will rely upon our own state constitution," and they reversed it again based upon the South Dakota constitution's provisions against self-incrimination. That's the last story I have of the State Supreme Court exercising protections of its own citizens.

So, you decide you're going to breathe into that machine. And you do. You breathe into one end and out the other end comes a piece of paper that says your blood-alcohol concentration is .13. Now, at this point, in most states, the police are supposed to give you a choice as to whether you want a urine or a blood saved as well, so that you have something for your defense attorney to examine with an independent analyst rather than [rely] upon a crime lab of that very same law enforcement agency.

This is called the *Trombetta* Advisement. They don't give it usually. They're supposed to, but if they don't, no harm, no foul and so it rarely isn't done. It's called the *Trombetta* Advisement because a few years ago, in 1984, a defendant in California said, "Wait a minute, that machine captured my breath and minutes after analyzing it, just purged it into the room air. It could have saved the breath. (Very easy to do. Costs about \$1.50 for a special kit to just preserve it.) It could have saved the breath and then my attorney could have had it analyzed by a separate laboratory. You have destroyed evidence that I could have analyzed and may have been exculpatory." This went to the United States Supreme Court and in *Trombetta vs. California*, the Supreme Court found yet another DUI exception to the constitution and said "Well, it would be nice if they saved the breath, but there's no obligation to do so. And destruction of that evidence, unless you can prove that it would have been exculpatory, has no impact." So, today it is alright to destroy the evidence after you get your own results and make sure the defense doesn't get a-hold of it.

Finally, you're rather outraged because you know you're not under the influence. You know you're not over .08, which is the California standard and the standard in about a third of the states today. And in 10 years will be the standard in all of your states because the federal government is telling you that's what it's going to be. And the Mothers Against Drunk Driving are ensuring that happens. You decide to go find one of these people completely without any social value and ask them to represent you in trial. You want to tell a jury of 12 of your peers what happened. You want to give your version. So you tell your attorney, "I want a jury trial." Your attorney says, "I am really sorry, but you can't have one. You see we don't have jury trials for DUI cases in this state, because in 1989 the United States Supreme Court in *Blanton vs. North Las Vegas*, a DUI case, said, "There is no constitutional right to a jury trial in a DUI case, so long as it's not punishable by more than six months in jail."

So, in four states today, obviously including Nevada, you have no right to a jury trial. And the Mothers Against Drunk Driving and a few other organizations are doing everything they can to make sure there are no jury trial rights in other states as well.

All right, we've taken a look at what happens to you as you go through the process in terms of any constitutional rights you thought you had. And if you'd been charged with burglary, murder, rape, you would have had those rights. At least for now.

Now, let's take a look at what the crime itself is. What is the offense you just committed? I will tell you, that when I have clients come in the door, almost none of them know what the crime is and probably half of them don't know if they're guilty or not.

In the beginning there was a law. That law said thou shalt not drive under the influence of alcohol. Period. It was a good law. We need it. It addressed the problem. It was fair. Unfortunately, there were some defendants being acquitted. And so an inventor came along and said, "Well, I've got this super neat little gizmo here. I call it the Breathomatic. It's a box and if you breath in this end, out the other end comes this piece of paper and it'll tell you exactly how much alcohol is in the person's blood, which is going to the brain."

Well, that sounded pretty cool. And so legislators and prosecutors and MADD approached the American Medical Association and said, "We've got this great machine. Can you tell us at what level of alcohol concentration a person is impaired in their ability to drive a vehicle?" And the AMA said, "After extensive research it is .15 percent." This was about 30 years ago... .15 percent.

Well, that was okay for awhile, but a whole lot of people were not getting convicted. Part of the problem was there was only a presumption that you were under the influence. In other words, the jury could accept if you were over a .15 that you were under the influence, or they could reject it and say other evidence shows that he wasn't under the influence. Second problem is that a lot of people were coming in at .13, .14, .12. Third problem is, you were .15 at the time of the test in the station, but what were you an hour earlier when you were driving?

So, those organizations went back to the AMA a few years later and said, "Are you sure about that .15. Couldn't it be a little lower?" And the AMA said, "You know, you're right. It's a .10." Now, the human body, to my knowledge, had not changed in those 20 years, but certainly the American Medical Association's research did. And replied to considerable political pressure. So, now jurors were told that they could presume guilt if there was a .10%.

Unfortunately, there were still defense lawyers out there and there were acquittals and the Mothers Against Drunk Driving, a very effective, very well financed organization, as some of you here know, was successful through a federal agency called National Highway Traffic Safety Administration in putting pressure on states to drop it further to .08%. And I indicated earlier, about a third of the states have done exactly that, the others are following suit.

Well, there's no question, there are fewer acquittals now and the prosecutors were upping their, their conviction rate. But, there were still some acquittals. And so MADD and the other federal agencies decided to change the law further. More accurately, to come up with another law. This is called the per se law. If we can't convince jurors that a person is under the influence over .08 we can make the crime being over .08. The crime is being over .08 per se. We don't care if they're intoxicated or impaired. If they have over .08% blood-alcohol, or .10% blood-alcohol perhaps, in your state; that is a crime. Not only that, let's keep the original law. So, now we get the prosecutors two shots: If they can't convince the jury he's under the influence, well then maybe they can convince them he was over .08, even though he was not under the influence and visa versa.

Well, this once again certainly increased the conviction rate and the number of acquittals continued to drop. But there was a problem, again and we're going to get into it, if I have time, a little bit about the technology involved in breath alcohol analysis. But, the machine, to put it simplistically, assumes that you are an average person. Okay? It is measuring the breath. It is measuring the alcohol in the vapor of the alveolar air in the deep lungs that you expel and is analyzed in the machine. The machine is telling you how much alcohol is in the blood. Not in the breath. There is what we call a partition ratio. To put it simplistically, the machine has a very primitive Z80 computer. There are different machines, but the computers will all say, "Well, if you've got this much in the breath, there must be 2100 times as much in the blood," and that's what it prints out. .14% blood-alcohol.

But the computer is assuming that your partition ratio is 2100. Problem. Very few people have a partition ratio of 2100. It ranges anywhere from about 1100-to-one up to 3500-to-one. And there is no way of knowing at the time what your partition ratio was. You are going to be very different than you. You, your partition ratio tomorrow is going to be different than what it is right now. Well, what does that mean? It means if you blow, let's say, a .11 and you have a 1300-to-one partition ratio, .11 is really .07. You're innocent. Your crime was not being average.

Well, a few defense attorneys were able to master the technology involved and attorneys usually go to law school because they fail physics, chemistry and so on in college. Where else can you go? In that sense, Mr. Murray is absolutely right. But, a few of these defense attorneys were actually learning how this machine worked. And they

thought, "Whoa! There's an assumption here, 2100-to-one," and they cross-examined the expert from the law enforcement's crime lab and said, "Isn't it a fact?" And the guy would hem and ha and so on and say, "Well, yeah." Acquittal. It's still a problem in a lot of states. Not in California anymore. In California, our Supreme Court, which is slightly to the right of the U.S. Supreme Court, said, "No, not really because see what you're doing is you're measuring the alcohol on the breath. You're not measuring the blood directly, you're measuring on the breath and therefore we don't have to have a partition ratio." Now, you probably don't appreciate the complete idiocy of that statement, because the Supreme Court did not understand the technology involved. And it was an eight-to-one decision. The dissenting justice said, Joyce Kenner had said, "Do you realize that we just created a new crime called alcohol on the breath." And she was absolutely right. That's what the Supreme Court of California did.

Result? If I now ask a law enforcement crime lab expert on the stand in front of a jury, "Isn't it a fact that the partition ratio you used assumes an average of 2100-to-one?" I will be held in contempt of court and jailed by the judge. If I try to bring out the truth, I will be jailed as an attorney. I'm not exaggerating. And I'm telling you that, approximately, to my knowledge, in four other states. I have lectured in 36 states to lawyers' groups, bar associations and so on, so I'm somewhat familiar with the different states and their different approaches. All of which are becoming much more standardized as the Federal Government continues to step in.

Well, that made things a lot easier in California. Again, the conviction rate continued to go up. It became more and more difficult to defend people accused. I did not say "guilty". Accused of drunk driving. Well, but there's still lots of defenses left, because, as I will I hope I will have time to get into, this machine is, to say the least, unreliable. But one of the problems is called retrograde extrapolation. And I alluded to it earlier. And that is, well it's all well and good, he was a .11 at the time that he breathed into the machine at the police station. But it's not against the law to be over a .08 in a police station. It's against the law to drive a car over .08. What was it at the time he was driving?

Well, that caused prosecutors a lot of problems. And so most states, almost all states, passed a new law with the assistance of the Mothers Against Drunk Driving. And that law said, "Any test within three hours that results in a blood-alcohol reading, it shall be presumed that it was the same at the time of driving." Even though we know absolutely, as a matter of science, fact, that that is not true.

Well, that again raised the conviction rate, except it was a rebuttable presumption. In other words, you could introduce evidence that that simply wasn't true. And so now, to make a depressingly long story short, some states are beginning to pass laws saying that the crime is having over .08 at the time you breath into the machine. And they don't care what you were when you were driving the car. Notice how we've gotten further and further and further away from the evil we were trying to cure. And that is: "Were you impaired by alcohol when you were driving your car?"

Okay. Let's take a look at this machine. The vast majority—in most states there is no urine and if there is blood, you're usually not going to have access to it. In the vast majority of cases, because it's cheap, easy and fast, you're going to be breathing into one of these machines. Let me just give you a real quick rundown on theory and the book I wrote on DUIs is about 1200 pages long, of which about 400 pages are just on the technology of breath machines, so this is going to be very cursory. But, I think, for purposes of illustrating some of the problems, it will help.

Basically just taking, as I said, the alveolar air, injecting it through a tube into a sample chamber and capturing it in that chamber. It's a little tube. Nickel-plated in most of the machines. And, by the way, there are a lot of different manufacturers around of these different machines, different types, but we'll get into that in a moment. These machines rust. The sample chamber rusts, it absorbs alcohol from previous subjects and so on. But let's just say for purposes of theory it captures a sample, a given volume of lung air, alveolar air. At one end it has a projector that projects infrared energy, infrared light, a beam through the chamber. Through your breath sitting in that chamber. Now, at the other end of the chamber is a receptor and it measures how much of this infrared energy gets through.

Now the theory of infrared spectroscopy, as applied to DUI cases, is that there is a part of a compound called the methyl group and that any compound containing the methyl group, will absorb the energy from this lightwave which is 3.61 microns. And that one of those compounds is ethanol, ethyl alcohol. Ethyl alcohol contains the methyl group as part of its molecular structure. It is resonant with this particular frequency of lightwave. So the more ethyl alcohol in the sample chamber, the more energy is going to be absorbed, the less will get through to the receptor, the higher the blood-alcohol reading will go. Actually fairly simple. Except, again, it is absorbed not by ethyl alcohol, but by the methyl group in any compound. In other words, it is a stupid machine. It does not differentiate between ethyl alcohol and any other compound. It is what we call "non-specific" for ethanol. Any compound on your breath that contains the methyl group will be detected as alcohol and reported as alcohol. If you

happen to have 32 different compounds containing the methyl group on your breath, it not only will report them all as alcohol, it is cumulative. It will add all of those, including any ethyl alcohol and then report it as ethanol.

So, do any of these methyl groups exist in the human breath? There are a number of scientific studies—one of which indicates that there are 102 different compounds found on the human breath that contain the methyl group. So what you are getting is not alcohol. What you are getting is some unknown cumulative reading of any of these compounds on your breath. If you had been painting a house yesterday, today you would be registering alcohol. If you had been using solvents, or thinners or glue or anything like this. If you had pumped gasoline into your car and inhaled any of the fumes, hours, even days later, you will be breathing out vapors containing compounds with the methyl group in it.

Now the second major problem I've already mentioned or alluded to and that is the partition ratio. It is becoming less of a problem as the legal system chooses to pass laws or make rulings outlawing, essentially, science.

A third and this is just the last example I will give you, is called the mouth alcohol phenomenon. The machine assumes that the alcohol, or whatever it is measuring comes from your breath and that's why it's multiplying by 2100. Obviously, if it is getting alcohol directly from your stomach or your throat or your mouth, it's going to fool the machine and the results are going to go extremely high. It would take a minuscule amount of alcohol in your mouth, throat or stomach to fool the machine and go pretty high reading. This is called the trapped alcohol or mouth alcohol problem. So, if for example, you burp or belch and any gases from your stomach, or you have reflux condition, or a hiatal hernia and any of those gases or liquids come up, it will stay there for about 15 to 20 minutes before saliva dissipates it. It will be breathed into the machine, the machine will go an unknown amount high. It does not mean you're under the influence. It does not mean you're an .08. It's simply that you had alcohol in your mouth, your throat or your stomach. The police officers are supposed to guard against this by observing you for 20 minutes. They are supposed to sit down and watch you for 20 minutes before giving the test. In all the years that I have been defending, or for that matter prosecuting, DUIs, I don't think I've ever encountered an officer who actually did that. They are far too busy to fool around with things like that. They will check the box, it said they did, but it does not happen and I'm not sure they could even tell if it did happen. But that is a safeguard.

So, these are just three examples. There are hundreds of things wrong with these machines, not just theoretically, but applied to the machines themselves. How accurate are they? They're accurate—they're close enough for government work. In California, for example, the standards of accuracy by law are that you have to have duplicate analysis within .02%. That means you'd have to take two tests. If the first one, just to use a number to make it mathematically easy, if the first one is .10%, the next one has to be .08, .09, .10, .11 or .12. Think about it. 40% range of error is scientifically accurate in a case where they're going to convict beyond a reasonable doubt. 40% range of error is considered by law acceptable accuracy.

The people that make these machines—and I have never referred to them as instruments—the people that make those machines keep coming out with new models. They'll come out with a model to be state-of-the-art, foolproof, fail-safe and then two years later they come out with a new model that takes care of all of the problems of the first model. And then a competing company comes out, comes out with a new model that takes care of the problems with their competitor's new model. And this is a fairly constant and aggravating circumstance.

If you look at the warranties—it is sort of interesting—the warranties are they—none of the manufacturers warrant these things to actually test blood-alcohol. If you read the warranties, there is no warranty for fitness for a particular purpose. That's a legal phrase. Basically it means they don't want to get sued by somebody if there is a false reading. So they will not even warrant these things to do what they're selling them to do. The warranty, for a total breakdown, is about one year—about what your toaster is—parts and labor 90 days. About what your toaster is. Difference? Your toaster is warranted to toast bread.

Okay. Science and law. Right off the bat we've got a problem. Science, if you can define it, would be, I would say, the systematic pursuit of truth. The objectives of law are very different. It is a governmental mechanism for imposing order, structure, predictability, security, confidence of the public in its institutions. It is not concerned with truth. It is important to understand the entire DUI field. To understand it you must understand the difference. Hundreds of years ago a guy named Galileo said the universe is not the way the Vatican says and you saw what happened to Galileo. Have we progressed? Not if a lawyer tries to tell the truth to a jury and is thrown in jail for doing it. I would say we have not come all that far.

Now lastly, as to what you're looking at as you imagine going through these different procedures, I would just very briefly, as to punishment, rather than going through all the horrors of punishment today, complexities of punishment today, other than to say in California you're better off as a first offense burglar or grand theft; a felony, than you are as a first time misdemeanor DUI. But I will comment on two things. The Mothers Against Drunk Driving have been very active recently in trying to get "Scarlet Letter" laws passed. Almost did it two

months ago in California. Came close. The Scarlet Letter law is: if you are convicted of a DUI, you must have a big bright red license plate saying the big scarlet letter DUI, DUI. Your wife has to drive it, your kids have to drive it, you can't rent a car, whatever. You have to carry that brand on you. As long as you drive a car for whatever period of time.

The other comment is a case many of you may have heard about in North Carolina. Now, we have never executed people, we've never, until recently, given the death penalty unless there was pre-meditation. Intention to kill and time to reflect upon that and then to carry out the plan and cold-bloodedly murder. Some exceptions have been added: Killing a police officer; multiple murders; murder by torture; murder for ransom. In North Carolina this year there was a DUI. It would in any other case, in another state, be a manslaughter case. A death occurred. It was not intentional. It was negligent; it may have been reckless. And the prosecutor sought the death penalty. The death penalty. Fortunately, they didn't get it. My understanding is they got life, but I don't know.

So, in the DUI field you have unfair procedures. You have false evidence. You have erosion of rights. But at least the DUI-caused fatalities are falling correct? If you believe the statistics from the Mothers Against Drunk Driving and National Highway Traffic Safety Administration. If you look at it more closely, you'll find they start using terms like "alcohol-involved", "alcohol-related" and those statistics start changing to justify what they have been doing for the last few years.

So, what is happening in the DUI field? Same thing that's always been happening. The danger to your lives, to my children and your children's lives, are from recidivists. Statistically overwhelmingly recidivists. People that have done it before. Repeat offenders. Which is a relatively, despite what MADD says, a relatively small percentage of those who are arrested. Problem. How do you reach those people? Can you affect the incidence of death caused by DUIs by increasing the punishment? As to those recidivists and I tell you—no.

You are trying to use the legal system to address what is at least a medical, perhaps psychological, but in my opinion, absolutely a genetic problem. Now that sounds like an easy cop-out for me. I wrote a book about 15 years ago called Born to Crime, The Genetic Causes of Criminal Behavior, so I suppose that I am a little bit biased, but I'm relying upon defending thousands and prosecuting thousands of DUIs and I'm absolutely convinced that it is genetic in origin. And I think the studies and one of the chapters of that book Born to Crime was devoted to alcoholism. The studies are overwhelming, overwhelming. If my own experiences with clients have not been, those studies certainly are. And so long as you have a system that is geared to behavioral modification—that is, we're going to change his drinking habits by putting him in jail for six months, or deterrence—we're going to stop other recidivists from driving drunk because of the deterrent effect, then you're fooling yourselves. Do I have an answer? No, I don't. But I know that system isn't working and in the meantime you are destroying the constitutional rights that we've enjoyed.

Again, the legal system is not concerned with truth. And it may come as a shock, but it is not. It is concerned with order, stability. If it was seeking truth, they would not falsely assume that there's a 2100 partition ratio. If the legal system was caring about truth, they would not conclusively presume that your blood-alcohol was the same three hours earlier, when they know it is not. If they sought truth, they would recognize that these machines are non-specific, among other problems. The legal system is not concerned with justice, either. It is concerned with expediency, not justice. If they were concerned with justice, they would not permit roadblocks. They would not presume guilt. They would not pass laws refuting scientific truth.

I just said, "They would not presume guilt." That was another DUI exception to the constitution that I didn't tell you about. One other thing the police officer does after he has you breathe into that machine, if you're over .08, he immediately grabs your license and confiscates it. Another contribution from MADD. Immediate seizure of the license in about 42 of the states today. On the spot. Justice administered by the officer. You are presumed guilty. Your license is confiscated and you are given a notice of suspension. What happened to the presumption of guilt, excuse me, of innocence? I'm from California. I mix them up.

Well, it's that DUI exception again. You are presumed guilty.

Now what do you do about it? They give you 30 days within which to request a hearing. Most states are somewhat similar. Let's take California again. [Within] 30 days you can request a hearing. At the hearing there will be a hearing officer and there will be a prosecutor. And you, hopefully with one of those socially worthless lawyers. The prosecutor will do his or her level best to sustain the conviction—to prove that you were over .08. They don't—

When the prosecutor has done his or her level best to prosecute your client, he or she turns around and becomes the judge. Yeah: The prosecutor now decides whether he wins or you win.

If you are so ungrateful for your driving privilege as to want to confront and cross-examine, as is your constitutional right, the police officer, upon whose hearsay paper evidence this hearing officer is relying, you have to subpoena him to court and pay his salary while he testifies against you. That is, in California, the right of confrontation. Only in DUI cases.

So, again, the system is not concerned with justice. It is concerned with expediency. It is certainly not concerned with the protection of rights, but rather with political self-interest and pressures. For those of you familiar with the situation a number of years ago when Chief Justice Rose Bird was voted out of the Supreme Court of California along with two of her associate justices for being too soft on crime, that was the water shed. Not just in California. That politicized the judiciary for all time. After that, the judges started keeping an eye on the coming elections when they made their decisions and still do to this day. And, if there are any doubts in their mind—I practice in Los Angeles and Orange County—once a week a representative from MADD comes through most of the courts and all of the cases are public record and they will take all the statistics, every single DUI case, who the judge was, who the DA was, what the result was. And come election time, those statistics will be published and any judge or DA perceived to be soft on DUI will be, of course, voted out of office. And, if you do not think that has a terribly repressive impact on judges in making their so-called independent decisions, then you're wrong.

I just got a couple more minutes. Extremism has always been acceptable in certain areas where it is politically correct to be so. I think some great philosopher in Arizona once said extremism in the defense of virtue is no vice, or some such thing. There are two crimes today that are politically correct crimes. That is, it is politically correct to do something about it. It is child molesting and DUI. It is acceptable to be extremist in these areas. But there is a cost. As you know, in the past there always has been.

Our system of justice was, hopefully still is, based upon the constitution and most importantly the Bill of Rights of that constitution. Secondly, our system depends upon what you've been twice told today; the common law. The common law, or case law, or precedent. We got it from the British. All the British commonwealth nations and those who used to be in the commonwealth have this system of common law. Almost all other countries have the French Napoleonic or civil code. We have the common law. It has strengths. It has weaknesses.

Those who would see the constitution weakened as to the rights afforded us and the freedoms, are fond of referring to the constitution as "a living document." Meaning that the Supreme Court is free to change that document as they see fit to suit modern times.

When decisions are rendered in a state supreme court, in a state appellate court, in the United States Supreme Court, whatever, there is precedent value. That means in the future, other courts, trial courts, other courts will follow that lead. The danger that I am talking about—and I hope by now you realize I'm not talking about a micro. I'm not talking just about DUI—I'm talking about macro. The danger is a legal system does operate under a precedent system. And what is okay in the DUI field is going to be okay in other fields. So, you may turn your eyes or say, "Well, we've got to get rid of the DUIs." When they set up roadblocks to stop you for absolutely no reason, no probable cause and say, "Well, it's only a roadblock, it's only for a DUI." And I tell you if there are roadblocks for DUIs today, there will be roadblocks tomorrow for drugs, or weapons, or whatever the police choose to use. So for those of you who still support Mothers Against Drunk Driving and their objectives—they are a very well-intentioned group that do not understand the significance of what they do. And I would hope many of you, hopefully, would take a second look the next time you're asked to contribute to Mothers Against Drunk Driving.