

SOLICITOR GOWDY CALLS FOR TOUGHER DUI LAWS

On April 5, 2002, Allan Howard kissed his wife goodbye, got into his truck and headed south on Highway 221. With three beautiful daughters, a good business and even better friends, he had the world ahead of him.

Unfortunately, less than a mile behind him -- and coming at a speed near 100 mph -- was a seven-time convicted drunken driver trying to drive a car at double the legal limit for alcohol.

In the instant that Jerry Carruth's car hit Howard's truck, one man was killed, countless lives were fractured, and many were left wondering how and where the criminal justice system failed.

While Howard's death has garnered significant attention, there are dozens of other cases in our office -- representing similarly shattered lives -- involving alcohol-related deaths and serious injuries.

Nearly everyone agrees there is a problem: South Carolina ranks at the bottom of states in alcohol-related traffic fatalities, and Spartanburg ranks at the bottom of counties within South Carolina. The issue is whether substantive changes in our drunken driving laws are required, and if so, what those changes should be. The collective focus should be on preventing deadly accidents in the first instance rather than merely punishing people after the fact.

Several weeks ago, I wrote our local legislative delegation and proposed some changes to our current DUI laws. In addition, the prosecutors in my office and I have recommitted ourselves to vigilantly enforcing existing laws and providing training for law enforcement on how to make better cases in an increasingly skeptical and questioning world. While legal changes are certainly necessary, so, too, is a cultural change in our perspective on drunken driving.

As parents, friends, spouses, owners of establishments that sell alcohol, even hosts and hostesses of parties where alcohol is served, we must begin to view drunken driving as more than just embarrassing or inconvenient but as a crime. None of us would consider allowing a party guest to steal silverware before leaving the party. Business owners would not allow patrons to not pay their tab or deface furniture and leave. But for some, that view changes when watching someone leave a party or restaurant while materially impaired by alcohol.

The Legislature cannot change cultural perspective on drunken driving. That is something each of us must decide ourselves. The Legislature, however, can and should consider augmenting existing drunken driving laws in new, innovative and forceful ways.

Here is a place to start:

* A graduated system that creates harsher penalties for higher blood-alcohol ratios:

Someone who drives a car at double the legal alcohol limit should be punished more harshly than someone who is barely above the legal limit. Currently, South Carolina law makes no distinction between someone who has a glass of wine too much and someone who has a case of wine too much.

Yet, there is no question that the drunker someone is, the more impaired his or her driving is and the more likely he or she is to get involved in a traffic accident resulting in death or serious bodily injury.

With drug crimes and financial crimes, the amount of drugs or money involved in the crime impacts the sentence the offender faces. So, too, it should be in drunken driving cases that the drunker a person is the more danger he is to the public, and correspondingly his punishment upon conviction should be greater. It's a simple solution: a sliding scale that

punishes the offender based on the level of intoxication and the number of previous convictions.

It would be up to the Legislature to then fill in the proper punishment on a sliding scale upward, taking into account the level of impairment and the offender's prior record for alcohol- or driving-related offenses.

* Strengthening automobile forfeiture laws for repeat offenders and those driving at high levels of impairment:

Merely taking driver's licenses does not stop a person from driving. In those cases where the level of impairment is high or the offender is a repeat one, the Legislature should consider taking the car itself, the license tag or forfeiting the equity in the car. Obviously, this would not apply to innocent owners of automobiles who did not realize the car would be used to drive drunk.

* A reduction of the blood-alcohol ratio to .08 with per se impairment:

South Carolina's per se DUI law is one of the most poorly constructed pieces of legislation ever passed. The law needs to be simplified where defendants, law enforcement and others can understand it and enforce it. Most prosecutors prosecute under the old DUI law because the new per se one is an impossible legal labyrinth.

* Requiring offenders to equip their vehicles with devices that register blood-alcohol ratios prior to allowing the car to be started.

* Requiring blood tests for the presence of drugs or alcohol in all accidents involving death or which require medical treatment.

* Placing civil, administrative or quasi-criminal restrictions on those who serve alcohol commercially not to sell to individuals at or above legal impairment.

* Require the successful completion of alcohol counseling for drunken driving offenders regardless of whether the offender considers himself or herself to have an alcohol problem.

Watching and listening to the family, friends and loved ones of both Allan Howard and Jerry Carruth bear the pain, grief and anger that this incident brought about, one could not help but wonder: Can anything good come from this? Do we simply go on burying the dead, consoling the grieving and prosecuting the offender after the damage has been done? Or do we search for new ways to confront this epidemic? Do we adopt different drunken driving laws merely because our state is on the verge of losing federal highway dollars, or do we change our laws because we have a problem that warrants correction regardless of financial consequence?

We are all on notice that this state has a serious drinking and driving problem. And the goal should not be to merely punish offenders after they have caused death or serious bodily injury but to get the attention of drunken drivers before they kill someone.

Merely lengthening prison sentences or installing mandatory minimum prison sentences will not work. In fact, it will result in more jury trials in a court system already buckling under the weight of crime now. The problem of drunken driving must be met legally but also commercially and socially.

One can hardly drive our state highway system without noticing the white crosses and flowers that serve as temporary memorials to the children, teenagers, women and men killed in alcohol-related traffic accidents. Each cross and each bouquet of flowers tells a story of grief, unfulfilled promise and senseless tragedy. What are we going to do about it?