



# DUI NEWS

## The Nations New Strategy to Stop Impaired Driving

### PUBLISHER:

Tom Kimball, A.D.A.

### LAYOUT AND DESIGN:

Sherri McCloud

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High Visibility Enforcement, Support for Prosecutors and Treatment Courts, Screening and Brief Intervention by the medical profession are at the core of new initiatives to reduce traffic injuries and deaths. Here's how NHTSA views the Judicial system in a document released in 2004.

### Support for Prosecutors and DWI Courts

The success of general deterrence is dependent on an effective adjudication system. If any part of the system breaks down, individual offenders will not be subject to consequences, which could weaken general deterrence and serve as a disincentive to law enforcement. In addition, if DWI cases are not addressed effectively, offenders will be more likely to repeat their crimes. To ensure that the system works effectively, NHTSA is focusing its efforts on supporting both high visibility enforcement, and also the criminal justice system.

DWI cases are complex and, at least in many jurisdictions, are assigned to inexperienced prosecutors. Moreover, the turnover rate among prosecutors is high. According to a 2001 Bureau of Justice Statistics (BJS) survey, 58 percent of prosecutor offices in large districts report problems recruiting staff attorneys and 72 percent report problems retaining them. A 2002 study by the Traffic Injury Research Foundation (TIRF) reports that 48 percent of prosecutors surveyed believed that the training they received prior to assuming their positions was inadequate. Encouraging jurisdictions to assign cases to more experienced prosecutors, and developing an infrastructure that ensures adequate training and sharing of knowledge among all prosecutors who handle DWI cases, are critical elements in the effective prosecution and disposition of these cases.

In addition, many sentences are not completed and there is a high rate of recidivism among DWI offenders. Drug courts have been established to closely supervise drug offenders after sentencing to ensure compliance with sanctions, and they have been successful in reducing recidivism rates. Similar findings have begun to be observed in DWI courts, which employ the same type of close supervision used by drug courts for DWI offenders.

NHTSA's objective is to enhance DWI prosecution by establishing Traffic Safety Resource Prosecutor positions and improving prosecutor technical support and training in additional States, and to apply the strategies used in drug courts to DWI cases in additional jurisdictions. These initiatives will enhance the capacity of prosecutors to successfully pursue DWI cases, and also build the capacity of judges to ensure that court ordered sanctions of serious offenders are monitored and completed, to prevent further recidivism.

TN DISTRICT ATTORNEYS  
GENERAL CONFERENCE,  
James W. Kirby, Exec. Director  
226 Capitol Blvd. Bldg, Ste 800  
Nashville, TN 37243  
DUI Training Division  
DUI Office: (615)253-6734  
DUI Fax: (615) 253-6735  
e-mail: tkimball@tndagc.com  
web: www.tndagc.com

### Governor's Highway Safety Office

James K. Polk Office Bldg  
505 Deaderick Street, Ste 1800  
Nashville, Tn. 37243  
Office: 615-741-2589  
web-site: www.tdot.state.tn.us/

*This material was developed through a project funded by the Tennessee Department of Transportation, Governor's Highway Safety Office and the National Highway Traffic Safety Administration.*

**US SUPREME COURT**

January 19th the US Supreme Court declined to consider a Wisconsin case concerning "forced blood". The Wisconsin driver had agreed to a preliminary breath test which gave a .13 BAC reading. Later at the police department he scored a .09 on breath test. After refusing a blood test, he was transported to a hospital where blood was drawn with a .10 BAC result. The Wisconsin Supreme Court applied Wisconsin law in **State v. Faust, 682 NW2d 371** and found that the warrantless blood draw was proper. The rapid metabolism and dissipation of alcohol from the bloodstream provided exigent circumstances to justify proceeding without a warrant.

The defendant argued that the breath test was enough. The Wisconsin Supreme Court indicated that the police have no way to know if the blood test result will withstand the variety of attacks from the defense. The Wisconsin statute:

**(a) Upon arrest of a person for violation of s. 346.63(1)(DUI) a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample.**

**Case Law from the Court of Criminal Appeals**



**HABITUAL TRAFFIC OFFENDER**

In **State v. Davenport** No. M2003-02303-CCA-R3-CD - Filed October 8, 2004 "Does the setting forth of a specific period of time for the operation of an order declaring a person to be a motor vehicle habitual offender bar the prosecution of that person under T.C.A. § 55-10-616 for an offense that occurs after the expiration of the time period specified in such order?"

The common sense response of Judge Wedemyer, Tipton and Ogle: "A defendant may not, by merely failing to file a petition, circumvent the requirement that the trial court restore his or her driving privileges."

**LOST VIDEOTAPE**

**State v. Fairbetter**, has to do with the consequences of a lost videotape. This case examines the rule established in previous cases. The Court reverses the Trial Judge's decision to dismiss the case due to the lost tape. The rule as stated by the Court: "If the state has a duty to preserve the evidence, the reviewing court must conduct a balancing test based upon the following three factors:

- (1) the degree of negligence involved;
- (2) the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and
- (3) the sufficiency of the other evidence against the defendant."

**JURISDICTIONAL LIMITS**

**State v. Bellamy**,

No. E2003-02728-CCA-R3-CD - Filed October 20, 2004

The core issue has to do with the jurisdictional limits of city officers and the authority to pursue dangerous drivers outside the city limit. By the time the officer was able to catch up with and pull over the driver he was one and a half miles outside his city limit. The Court affirmed citing State v. Francis, 498 S.W.2d at 114-16. "We conclude that the appellant herein was lawfully arrested by the city policeman even though the arrest was made outside the officer's jurisdiction. Officer Feathers had the authority to stop and arrest the appellant under the private arrest statute although when he made such an arrest, he acted at his own peril.

**VIDEO REVIEW**

**State v. Trew**,

No. E2003-01915-CCA-R3-CD - Filed November 17, 2004

The Supreme Court ruled in State v. Binnette, 33 S.W.3d 215 (Tenn. 2000) that it could review video tapes of traffic stops de novo. In an attempt to push this concept farther, Trew argued that the Court should view the videotape of the standardized field sobriety tests in the same de novo manner.

The Court rejected the argument noting that much of the defendant's guilty conduct was not captured on the video.

## Case Law from the Court of Criminal Appeals



### PUBLIC HOUSING CHECKPOINT

#### State v. Hayes,

No. E2003-02338-CCA-R9-CD - Filed November 9, 2004

The Court reversed the suppression of a checkpoint by the trial judge. The checkpoint was at the entrance to a public housing development. The Court performed a three part analysis and found:

- 1) The checkpoints in question served an important public concern. This involved keeping convicts out of the housing development.
- 2) The purpose of these entry checkpoints is to provide a measure of security for those who live within the development. The identification checkpoint is an efficient means of determining that persons entering the housing development are residents or visitors with a legitimate business or social reason for being there.
- 3) The intended level of intrusion to motorists or pedestrians was minimal.

### ENCOURAGING DRUNKS TO FLEE THE SCENE

#### State v. Warren

No. W2004-00107-CCA-R9-CD - Filed December 15, 2004

The Court affirmed in part a Trial Court decision concerning a .23 BAC driver who fled the scene of his crash into a ditch. The defendant had gone home and was brought back by a family member to complete an accident report. When he arrived in a pickled state the officer asked if he had drunk anything since he put his car in the ditch. He had not. The officer performed field sobriety tests and combined what he learned with what he saw, smelled and heard. He arrested the defendant.

The Court decided the arrest was in violation of TCA 40-7-103. The Court found that the roadside discussion and sobriety tests can be used in evidence, but the blood alcohol test given after the arrest could not. The impaired drivers of Tennessee continue to benefit from fleeing the scene. This problem was examined in the last legislature. A change in the law that would have allowed an arrest up to four hours after a defendant flees passed the House by a vote of 88-1, but was killed in the Senate Judiciary Committee after 3-3 tie vote.

### SIGNATURE STAMPS

#### State v. Kemper,

No. M2004-00219-CCA-R3-CD - Filed September 30, 2004

The defendant complains that the trial court erroneously admitted the results of his blood alcohol test because the accompanying certificate bore a rubber-stamped signature. His complaint failed.

### COMPUTER ASSISTED CRASH RECONSTRUCTION TESTIMONY

#### State v. Phillips,

98 P.3d 838 (Wash. App.2d 2004)

The Appellate Court in Washington has examined and affirmed the use of computer assisted crash reconstruction. The decision refers to the program PC-Crash. The program when used by a qualified crash reconstructionist satisfied the FRYE standard.

## Recidivist Wall of Shame

### **NUMBER 1 OFFENDER IN TENNESSEE?**

Phillip Flint, 42, a Murfreesboro resident, currently residing in the Rutherford County workhouse, was featured on WSMV-TV in Nashville as the ultimate in DUI recidivism. He has garnered 21 DUI convictions. After being locked up as an habitual offender in Williamson County he received an early release and committed two more DUI's. He was sentenced in Nashville to 6 years. The Department of Corrections felony offender lookup site indicates he is eligible for parole February 6, 2005.

David Appleby, 44, was sentenced to life in prison in West Virginia due to seven felony DUI convictions. In West Virginia, unlike Tennessee, DUI is classified as a crime of violence. A third offense DUI is a West Virginia felony. Thus Appleby had nine total DUI's in his lifetime. Tennessee law would have punished Appleby with a maximum penalty of 6 years as a career felon for the lowest class of felonies. Appleby will be eligible for parole in 15 years. The West Virginia Supreme Court rejected Appleby's request to appeal.

William Mack Gross, 35, of Soddy Daisy, Tennessee pled guilty to DUI 8th offense in Hamilton County. Gross received a six year sentence as a Range 3, class E felon. Gross was declared a habitual motor vehicle offender in 1991. He has been convicted of seven DUI's since the Court banned him from driving.

Ricky D Trent, 46, pled guilty to DUI 8th offense in Macon County, Tennessee.  
William Travis pled to 8th offense in Columbia, Maury County.  
David N Rowe pled to DUI 9th in Hartsville in Macon County.

Timothy Harrell, 44, pled guilty to DUI 7th in Waverly about one year after pleading to DUI 6th. Each time Harrell's license to drive was revoked 5 years. How do multiple DUI offenders act at arrest? Here's the narrative written by officer Wesley Hagler of the Waverly Police Department:

"I observed the vehicle traveling north on North Clydeton Rd. without a tag displayed. I followed the vehicle across highway 70 and across the railroad crossing close to Hunt's Outdoors. I did not see any tag displayed. I activated my blue lights so the vehicle would stop. The vehicle continued traveling for a short distance. I turned the spotlight on my patrol unit on the vehicle. I observed the occupants change seats while the vehicle was still moving. The vehicle stopped in the middle of the road on North Clydeton. I approached the driver side of the vehicle and found Teresa Wiles in the driver seat and Timothy Harrell in the passenger seat. I asked Wiles for her D.L. and she handed it to me. I then asked them why they changed seats. Both Wiles and Harrell stated that they did not do this. I could smell the strong odor of an intoxicant coming from Harrell and inside the vehicle. Harrell was wet. I asked him why he was wet and he stated the small dog inside the vehicle spilled his drink. I asked him what kind of drink he had and he stated it was a mixed drink. I then asked Wiles to exit the vehicle. I looked inside the vehicle and found some ice in the front driver seat. The seat was also wet from something being spilled there. I also found an open container of Wild Turkey behind the driver seat. The container was pint size and only a quart full. I knew Harrell to be classified as an Habitual Motor Vehicle Offender. I placed him under arrest and put him in the rear of my vehicle. I also found a six pack container with empty beer bottles inside. These were in the passenger side floorboard area. Wiles drove the vehicle from the traffic stop. I transported Harrell to the Waverly Police Department. I asked Harrell if he would do some field sobriety tasks and he refused. I asked him to submit to a chemical alcohol and or drug content test and he refused. Harrell also refused to sign the Implied Consent form."

## DEVELOPMENTS IN LEGISLATION

Every year bills are proposed in the State Legislature that may have an impact on Traffic Safety in Tennessee. This year will be no exception. Below are several proposals that could effect the motoring public.

### **House Bill 36 Senate Bill 60 Multiple tests for DUI Offenders**

Alcoholic Offenses - Permits law enforcement officer to require both alcohol and drug test if reasonable grounds driver has committed alcohol related driving offense; imposes \$100 BAC fee on each person convicted to be used by TBI to hire forensic scientists for increased number of tests.



Sponsors are:  
Representative  
Beth Harwell  
(left) and  
Senator David  
Fowler (right)



### **House Bill 14 Evading Arrest Murder**

Criminal Offenses - Adds to circumstances that constitute Class B offense of second degree murder that the defendant committed the reckless killing of another while evading arrest. - Amends TCA Title 39.

### **House Bill 12 & Senate Bill 51 Keg Registration**

Under this bill, if a person age 18 or above willfully supplies alcohol or illegal drugs to a person under the age of 18 and causes impairment of such minor, then such adult would be liable for death and injuries to persons or property caused by the minor's impairment. The damages recoverable under this bill include: economic damages such as medical expenses and loss of economic potential, non-economic damages such as physical and emotional pain and suffering and loss of consortium; attorneys' fees and litigation costs; and punitive damages. Neither contributory negligence nor contributory intentional conduct could be asserted as defenses under this bill. This bill would not apply to licensed liquor retailers.

Sponsors are Rep. Newton and Senator McNally

### **House Bill 21 & Senate Bill 50 Administrative License Revocation**

Driver Licenses - Provides for administrative revocation of person's driver license for specified period upon department of safety's determination that person was driving under influence of intoxicant or refused alcohol test; provides for administrative review and hearing. - Amends TCA Title 55, Chapter 50.



Sponsors are:  
Representative  
Chris Newton  
(left) and  
Senator Randy  
McNally (right)



### **Senate Bill 8**

Traffic Safety - Requires health care provider to notify law enforcement officer at hospital if results of tests performed on driver of vehicle involved in collision indicate that the driver had a .08 percent BAC or was under influence of drugs.

### **Senate Bill 39**

DUI/DWI Offenses - Decreases from .20 percent to .16 percent the percentage of alcohol in a first time DUI offender's blood necessary to make such offender a most aggravated drunk driver and thereby receive mandatory confinement for seven days rather than 48 hours. Sponsored by Senator Stephen Cohen.



### **Senate Bill 89 Open Container & Consumption**

Alcoholic Offenses - Creates Class B misdemeanor offense of consuming alcoholic beverage while driving motor vehicle on public highway and Class C misdemeanor offense of possessing open container of alcoholic beverage within passenger area of motor vehicle on public highway.



Sponsor of  
SB 8 & 89 is:  
Senator Jim Bryson



## WSMV Television investigates Recidivist Impaired Drivers

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Phillip Flint



### I-TEAM INVESTIGATES Thousands of drivers convicted of 5 D.U.I.'s

Reported by Nancy Amons  
E-mail: namons@wsmv.com  
November 4, 2004

A Channel Four I-Team investigation found **13,434** Tennesseans have been convicted of driving drunk at least five times. Of those, 150 have a "dirty dozen" DUI's.

For the vast majority of Tennesseans, that first DUI is their last. They learn their lesson after a 48- hour jail term, losing their license for a year and paying nearly \$5,000 in towing charges, court costs, lawyers fees and fines. But this story isn't about them. It's about the repeat offenders who never seem to "get it." People like Phillip Flint; the man with more DUI convictions than anyone in the entire state of Tennessee. (Jeannette Lyttle) "He's a menace with a car."

Jeannette Lyttle met Phillip Flint nine years ago. She was on her way to get a pizza, on Ewing Lane. Flint's car cut in front of her, forcing her into the ditch.

"I was really dazed, because I didn't know what had happened. I knew by then that I had been hit." Flint fled the scene - a hit and run. When Lyttle came to, she had a fractured knee, a twisted neck, and a face full of glass from the windshield.

"It was out in a point. It looked like a cone-head, my forehead hit is with such force." She didn't know, until we told her, that Philip Flint had 15 DUI convictions before he hit her, and he kept on getting more.

"That is amazing. That is really scary. " She couldn't believe his record: 19 DUI convictions.

(Jeanette Lyttle) "You would expect that a person with that many DUI's to be in jail."

The I-Team found Flint after analyzing hundreds of thousands of DUI convictions from the Tennessee Department of Safety. We found Flint is tied for number one with Oscar Patterson of Roane County. The two have 19 DUI's each.

Ten years ago, the I-Team first exposed major gaps in the laws to punish drunk drivers. We wanted to find out if anything had changed. We found that despite stronger laws, the drivers with a dozen or more DUI convictions still don't go to jail for very long.

Just listen to what happens to Flint as he's sentenced for his latest two DUI's. (Judge) "Six years to serve. Good luck, sir."

Six years. He'll get out early if the parole board says its ok. He's getting more time than most. Our I-Team investigation found the average sentence for someone convicted of felony DUI - that's DUI 4th offense or more- is 1.7 years. And most don't serve the whole time in jail. (Continued on page 7.)

**I-TEAM INVESTIGATES** (Continued from Page 6)

(Kristen Shea) "So the reality is, you're doing about 150 days if you're convicted of a felony DUI." Kristen Shea is the assistant Metro District Attorney prosecuting Phillip Flint. She was glad he plead to a six year sentence. Flint got more time than usual because he got two new DUI's while he was out on early release from the last one.

(Kristen Shea) "I would like to see it become a more serious class of felony, which is the only real way to get serious jail time."

(Jeannette Lyttle) "I don't know what the answer is to drunk driving. I really believe that if the person is unwilling to change, that they will keep putting the public in danger. I think you're encouraging them to drink, when you give them that many chances."

How many Phillip Flints are out there? The I-Team found 150 Tennesseans have a dozen or more DUI convictions. More than 13,300 drivers have been convicted of five or more DUI's.

Shea thinks repeat DUI should carry a stiffer sentence.

(Kristen Shea) "I personally have dealt with so many families whose names and faces pop into my mind. Who have lost totally innocent people who were grandparents driving home from church, young people driving home from visiting a friend at the hospital, who are hit head on by these out of control drivers. And it's not until that point that it becomes a serious felony."

Flint declined our request for an interview. There's something Jeannette Lyttle wants him to hear.

(Jeannette Lyttle) "That I hope he gets help for his problem. It's an addiction that he's not addressing. And it's possible on down the road that if he doesn't, instead of just injuring someone, like myself, he could actually take somebody's life."

**DUI PROSECUTORS**

The Governor's Highway Safety Office with funds from the National Highway Traffic Safety Administration has provided grants to 15 District Attorney offices to employ 17 DUI prosecutors. These prosecutors only handle cases involving traffic safety, primarily DUI prosecutions. The DUI attorneys are:

Josh Parsons, Johnson City 1st Judicial District;  
 Ricky Curtis, Kingsport, 2nd District;  
 Johnnie Sellars, Newport, 4th District,  
 Marya Wilkerson, Knoxville, 6th District;  
 Tom Barclay, Huntsville, 8th District;  
 Michelle MacFadyen, Cleveland, 10th District;  
 Brett Alexander, Chattanooga, 11th District;  
 Marty Savage, Cookeville, 13th District;  
 Chris Dotson, Clarksville, 19th District;  
 Ben Winters and Michel Clair Bottoms, Nashville; 20th District;  
 William Elledge, Lawrenceburg, 22nd District;  
 Georgia Felner, Franklin; 21st District;  
 Ray Crouch, Ashland City; 23rd District;  
 Anna Banks, Jackson 26th District;  
 Kirby May and Brooks Yelverton, Memphis; 30th District.  
 In addition James Woods, 11th District and Kristen Shea, 20th District are assigned to direct the DUI divisions in their offices.

Prosecutors from ten Judicial Districts entered data into a log for analysis during the last year. The findings:

In 2,267 completed cases 634 Defendants submitted to a **Blood Alcohol test**. That is slightly less than **28%** of offenders.

1,620 offenders (71%) were found guilty as charged including 1,145 that did not submit to a test.

The top reason for stopping a vehicle was **weaving across lane lines**. 462 vehicles were stopped. Of those, 348 or 75% were found guilty as charged of DUI.

291 drivers were stopped for **weaving without crossing a lane line**. 83% were found guilty.

Specialized prosecution permits the development of expertise to counter the multitude of new DUI defenses created by attorneys that do not have the huge caseloads of District Attorney offices. The goal of the GHSO in funding the prosecutors is to reduce fatalities and injuries caused by impaired drivers. The guilty driver causes no harm when in jail. Treatment Courts can only work to cure the guilty driver if he is first proven

**COURTROOM QUOTES:**

Q: Where was the location of the accident?

A: Approximately milepost 499.

Q: And where is milepost 499?

A: Probably between milepost 498 and 500.

Q: How far apart were the vehicles at the time of the collision?

Q: Did you blow your horn or anything?

A: After the accident?

Q: Before the accident.

A: Sure, I played for ten years. I even went to school for it.

Q: Have you lived in this town all your life?

A: Not yet.

Q: Were you alone or by yourself?

Q. Officer, what led you to believe the defendant was under the influence?

A. Because he was argumentary and he couldn't pronounce his words.

And finally...the dissent on a horseback drunk driving charge in Pennsylvania sings to the tune of Mr. Ed:

"A horse is a horse, of course, of course, but the Vehicle Code does not divorce its application from, perforce, a steed as my colleagues said. 'It's not vague,' I'll say until I'm hoarse, and whether a car, a truck or horse this law applies with equal force, and I'd reverse instead."

--- *Michael Eakin, Pennsylvania Supreme Court*

**SUSPECTS GET CHOICE: Court or humiliation**

Posted on Mon, Nov. 15, 2004

**Washington county makes catching absconders priority, competition**

AMES ALEXANDER  
Staff Writer

In Pierce County, Washington., drunken driving suspects who fail to show up in court are sometimes given a choice: Turn yourselves in, or face the embarrassment of getting arrested at home or work.

Law enforcement officers there have made catching absconders a priority. Last year, they rounded up more than 1,100 drunken driving suspects who had failed to appear in court.

The Tacoma/Pierce County DUI task force, a group trying to fight drunken driving, brainstormed about the best ways to catch such offenders. Police made catching absconders part of their daily routine and turned it into a competition.

"We'd have a neighboring agency say we got three DUIs this month," said task force chairman Bryan Jeter, chief of the Bonney Lake police department. "Then someone else would go out and try to top that."

In past years, law enforcement agencies have teamed up for special sweeps to track down drunken driving suspects who never showed up for court. Law enforcement officers worked with the jails and courts to prepare for the additional offenders. The sweeps caught more than 100 DUI suspects in 2001 and 2002.

State troopers use information kept by other Washington state agencies, such as the revenue department, to find out where many of the suspects live and work.

Troopers often call the suspects and tell them they can avoid the embarrassment of being arrested at home or work by turning themselves in. And many of the suspects do, according to Capt. Tim Braniff, who supervises troopers in Pierce and Thurston counties, south of Seattle. The patrol arrested more than 400 DUI absconders last year.

Many state patrol divisions have set up special warrant teams to find absconders. Troopers focus on the worst offenders -- those who have repeatedly been charged or have repeatedly skipped court.

"You can't forget about the end result -- making sure people are brought to justice," Braniff said.

Courtesy of the Charlotte Observer



# TRAINING OPPORTUNITIES

The following training courses scheduled in the next three months are funded through the Governors Highway Safety Office, the Tennessee Department of Transportation and the National Highway Traffic Safety Administration:

## PROTECTING LIVES ; SAVING FUTURES AND STANDARDIZED FIELD SOBRIETY TESTS

Location:	Dates:
Columbia	February 14-17, 2005
Jackson	March 7-10, 2005
Nashville	April 18-21, 2005
DUI Trial Advocacy for Sessions Court Nashville	April 12-15, 2005

### Who should attend Protecting Lives?

Any prosecutor that handles any DUI cases is encouraged to attend this seminar. The seminar will permit prosecutors to better understand the science of toxicology and optometry as well as and law enforcement methods. The seminar includes the opportunity for the prosecutor to perform standardized field sobriety tests with impaired volunteers and see the clues of impairment for themselves. This seminar also helps prosecutors build better working relationships with police officers they usually only see in court. This seminar is conducted for prosecutors and police of-

## COPS IN COURT

Location:	Date:
Columbia	February 18
Jackson:	March 11
Nashville:	April 15

### Who should attend Trial Advocacy?

Trial Advocacy in Sessions Court involves direct and cross examination. Case loads are huge and little time is available for trial preparation. This course concentrates on the skills used in preliminary hearings and non jury trials. Many Sessions Court prosecutors spend up to 50% of their time on DUI cases. The goal of this conference is to enable prosecutors to analyze case strengths and conduct direct and cross examinations. One day will include examinations of expert witnesses. The final day will include a "Cops in Court" class in which the prosecutors will conduct direct and cross examinations of officers as the officers learn about professionalism on the witness stand.

To sign up for any of these courses or  
To volunteer to help at Cops in Court  
Contact Tom Kimball or Sherri McCloud  
Phone: 615 253 6733 Or 4  
Fax: 615 253-6735  
E-mail: tkimball@tndagc.com

## COPS IN COURT

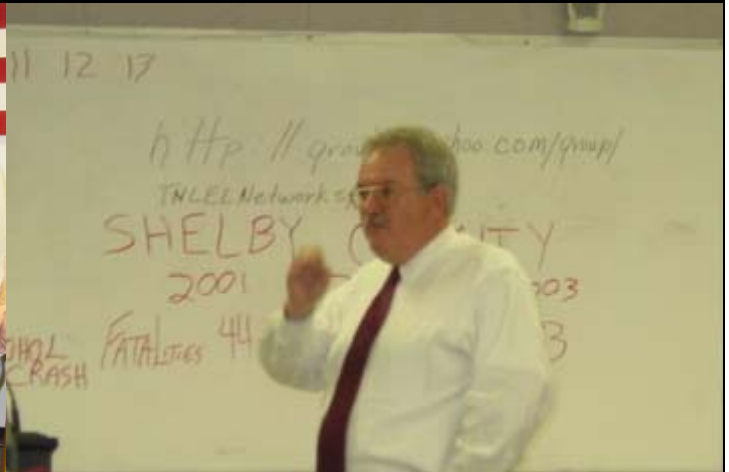
This one day seminar for police officers is intended to allow officers to experience direct and cross examination in Criminal Court without the consequences of a jury trial. The course includes lectures concerning credibility and testimonial skill and direct and cross examinations followed by a critique from a prosecutor.

### What goes on in training?

**Millington Naval Base hosts Protecting Lives; Saving Futures. 40 officers and six prosecutors from West Tennessee complete the 32 hour course.**



After the volunteer performs the field sobriety test, the student teams evaluates how he performed. Is the drinker going to jail or do we call his mom? Here Mason, Tn. police chief Jason Collins leads the discussion. To the left is ADA Neal Oldham and looking over the shoulder is Catherine Homra from the Administrative Office of the Courts.



District Attorneys like Phillip Bivens of Dyersburg teach the police officers what prosecutors need to convict the guilty. Detailed reports which include observations of the defendant on the way to the jail; Mirandized statements after an implied consent refusal and notes concerning which of the standardized tests clues apply are encouraged.



The Protecting Lives; Saving Futures course contains a 24 hour block for officers to become adept in conducting standardized field sobriety tests. Included are pre-tests and final exams. Prosecutors work closely with the officers to gain expertise for trial purposes. The prosecutor that understands what the officer is doing and why is well prepared for direct examination and defense attacks. Above left is ADA Brooks Yelverton taking the exam with officers he works with in the Shelby County Courts.



Mock Court pulls together the week of learning. Prosecutors question every officer in the class. The cross examination provides a teachable moment. Here officer, Brian Childress, of the Millington police department testifies at the Millington Naval Base courtroom, while instructor Jerry Tucker acts like a Judge. Is he doodling or working the daily crossword?

*This and all past issues of the DUI News are available on line at:  
<http://tndagc.com/NL.htm>*

# National TRAINING OPPORTUNITIES

## **CROSS-EXAMINATION** **National Advocacy Center** **March 29-April 1, 2005**

### ***A complete review of cross-examination theory and practice***

This course will review all aspects of cross-examination from pretrial case theory analysis to re-activating cross-examination of opposing witnesses. Using the method of Approach Point Cross-Examination, this course will cover the Pro-Active Cross-Examination method; development of thematic transition questions; the "chunking" of cross-examination data; the concept of "locking in" witnesses on material points prior to impeachment; exploratory cross-examination; the principal means of impeachment; and the recognized objections to cross-examination. The course will also cover the ethical and professional considerations of witness examination.

### **Who should attend:**

- Prosecutors with at least two years of experience.

## **Jury Selection** **National Advocacy Center** **March 8-11, 2005**

Jury selection is a challenging trial advocacy activity for even the most experienced prosecutor. This is a course for prosecutors who actively engage in jury selection and recognize that both the process and the trial advocacy techniques for questioning and exercising challenges are critical.

### **Who Should Attend?**

Prosecutors with a preferred experience level of at least two years including jury trial experience at the general felony level.

Applicants should be in a prosecutor-active jury selection system in which the prosecutor directly questions prospective jurors.

## **Lethal Weapon** **National Advocacy Center** **June 13-17, 2005**

Vehicular fatality cases are complex, requiring prosecutors to have a working knowledge of crash reconstruction and toxicology, as well as skills to work with expert witnesses and victims. The Lethal Weapon course is focused on assisting prosecutors to develop their knowledge and skills in trying vehicular fatalities.

### **Who Should Attend?**

Prosecutors with a preferred level of two-three years trying impaired driving cases.

Prosecutors who currently handle vehicular fatality cases.

Experienced prosecutors who want to increase their understanding of the technical evidence required to prove guilt in cases involving vehicular fatalities, and at the same time improve their trial advocacy skills.

To apply for any of these courses complete the application form at:

<http://www.ndaa-apri.org/education/index.html>



**Tennessee District Attorneys  
General Conference**

226 Capitol Blvd. Bldg.,  
Suite 800  
Nashville, TN 37243-0890

Tom Kimball  
(615) 253-6734  
Sherri McCloud  
(615) 253-6733

(615) 253-6735 Fax

## DRUG RECOGNITION

Through the efforts of many Nashville has been selected to host a pilot project this year to begin a drug recognition expert program. Officers will go through an extensive training program and then work under the tutelage of Instructors on the street. The officers will look for the signs of drug impairment in drivers that appear to be impaired despite minimal levels of alcohol. Drug Recognition categories include:

1. Central Nervous System Depressants;
2. Inhalants;
3. Phencyclidine (PCP);
4. Cannabis;
5. Central Nervous System Stimulants;
6. Hallucinogens; and
7. Narcotic Analgesics;

The officers will look for indications from a series of examinations. Included are examinations of the eyes that include: Horizontal Gaze Nystagmus, Vertical Nystagmus; Lack of Convergence; Pupil Size; Reaction to Light. Also considered are pulse rate, Blood Pressure, Body Temperature and General Indicators.

As an example officers will learn that a driver under the influence of PCP will have HGN clues and usually will have vertical gaze nystagmus. His eyes will lack convergence. His pupils size will be within the normal range. His reaction to light will be normal. His pulse rate, body temperature and blood pressure will all be above normal. Other general indicators will include some of the following: Perspiring, warm to the touch, blank stare, very early angle of onset for the HGN, difficulty in speech, incomplete verbal responses, repetitive speech, increased pain threshold, Cyclic behavior, confused and agitated, hallucinations, possible violent or combative behavior, chemical odor and "moon walking". Not all pcp impaired drivers will show all indicators.

Studies from the University of Tennessee and Vanderbilt both indicate that a large number of impaired persons in crashes that are treated in the emergency rooms are impaired by both alcohol and other drugs. It is most difficult in our judicial system to convict the drug impaired driver. We welcome this new attempt to detect, arrest and convict the drug impaired driver to protect the law abiding drivers on our roads.

Recently the T.B.I. Lab sent a breakdown of laboratory findings concerning drug involvement in impaired drivers with Blood Alcohol Contents lower than .10. Two hundred consecutive cases were sent.

Samples with a B.A.C. of 0.0% were positive for other drugs 88% of the time.

Samples with >.03 BAC were positive other drugs 87.5% of the time.

Samples with .03-.05 were positive for other drugs 83.77% of the time.

Samples with .05 to .10 were positive for other drugs 77.5% of the time.

The drug most common in the mix was marijuana 28% followed by Diazepam 17%; Carisoprodol 15.5%; Nordiazepam 15%; Meprobamate 14%; Alprazolam 12%;

Methamphetamine 8%; Amphetamine 7.5%; Butalbital 6%; Cocaine 6%; Hydrocodone 5%; Venlafaxine 4% Dextromethorphan 3.5%; Diphenhydramine 3.5%; Oxycodone 3.5%; Methadone 3%; Norpropoxyphene 3%; Propoxyphene 3%. There were 26 other drugs identified in less than 3% of the samples.