



# DUI NEWS

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## DUI LEGISLATION DELAYED

The Governor's office announced on April 11th that legislative proposals concerning DUI issues would be delayed until the second session of the current legislature in 2008. The official announcement stated: "Due to the number of unresolved issues with this proposed legislation, its undetermined fiscal implications and the limited amount of time remaining in this legislative session, the administration is delaying further action on this bill so that it can be thoroughly studied and discussed over the summer."

Efforts of the Task Force and the Governor's office this year went a long way toward educating key people about the multitude of issues that need to be addressed. People are now talking about DUI issues in a way that they have not for several years. The District Attorneys will continue to work with the Administration and both parties in the legislature to pass needed laws to protect the citizens of Tennessee. Hopefully these efforts will bear fruit in 2008.

## VIDEOTAPING JUVENILES

A bill proposed by Representative Vincent Dean of East Ridge and Senator Bo Watson of Hixson passed in the Senate 31-0 and the House 88-5. The bill will permit law enforcement to videotape juveniles who are in the process of committing a crime or juveniles who are performing field sobriety tests or juvenile victims who consent to the recording or photography. The photos or videos may not be used in any manner except for Court and will not be considered public records. The bill was HB 75 and SB 866. The bill was sent to the Governor's office May 1st. The bill was needed after the passage of a ban on videotaping minors was passed last year. An Attorney General opinion indicated the ban included videotaping during DUI arrests.

## MOTORCYCLIST REDUCTION ACT PASSES SENATE; PENDING IN HOUSE

Two years ago the Legislature passed an act permitting motorcyclists to run red lights. This year the Senate has passed an act to permit motorcyclists to remove their helmets. Each State that has passed such an act has seen dramatic increases in motorcycle fatalities. For instance Pennsylvania fatalities increased 300% in three years. Kentucky fatalities increased 51% in four years. There is an estimated one million dollar cost to TennCare if the bill becomes law. The legislature in estimating fiscal impact does not consider the long term cost of death and injuries that are not monetary. Factor in the effect of children being left without a parent or spouses left saddened and alone or daily spoon feeding regimens for the paraplegics with brain injuries and the cost estimate for this bill would be incredible. Helmets are not comfortable. Neither are the seats at the funeral home.

**RECENT DECISIONS**



**State v York, 2007 Tenn Crim App 299    **Wants no jail time for 10 years****

York challenged serving his ten year sentence for 4th offense DUI and two counts of evading arrest to which he pled guilty. He wanted community corrections supervision instead of a prison sentence. York testified that he began drinking at age nine. He claimed he had been drinking between a fifth and half gallon of whiskey a day prior to his arrest. He was also taking hydrocodone, zanax and lor-tab on a regular basis. He is thirty-seven years old and had been in and out of jail since he was eighteen. Like many experienced impaired drivers he refused all testing including field sobriety tests. (Note: In Tennessee **search warrants for blood are prohibited.**) The Court determined York would be a danger to society if he was permitted to remain on the streets.

**State v Anderson, 2007 Tenn Crim App Lexis 183    **Claims he got far enough away to go free****

Anderson crashed into a birdbath. A citizen heard a noise and looked out to see him backing out of a neighbors yard. She called 9-1-1 and described the truck involved. She then went out to talk to gathering neighbors and saw the truck parked four driveways away. Officers arrived and found Anderson in the drivers seat either passed out or asleep. When an officer opened the door and tried to revive him, Anderson with slurred speech threatened to kick his rear end and took a swing at him. Anderson was subdued with a taser. On appeal the defendant claimed the arrest was for a misdemeanor that occurred outside the presence of the officer, so the “stop” should be suppressed. The Court noted that the legislature has enacted a law effective July 1, 2005 that eliminated that defense by permitting a warrantless arrest for up to four hours when an impaired driver leaves the scene. This offense occurred prior to the new law. The Court upheld the arrest, because the defendant could have been arrested for assaulting the officer.

**State v Russom, 2007 Tenn Crim App Lexis 334    **Habitual offender drives to corrections dept.****

Roy Russom drove to see his community corrections officer after being declared an habitual traffic offender. Habitual offenders are not permitted to drive. The officer warned him not to drive again. Less than two weeks after the warning, Russom did it again. He was sentenced to four years as a Range Two offender.

**State v Harrison, 2007 Tenn Crim App 325    **Drinking, stealing and the ditch****

Harrison was convicted of stealing his former employer’s truck. The employer followed him in the stolen vehicle at 4:00 am until he landed in a ditch. He was convicted of the theft and his third DUI offense and for his refusal to submit to a breath test. (Note: In Tennessee **search warrants for blood are prohibited.**)

**State v Davis, 2007 Tenn Crim App 351    **Habitual offender steals identification-12 years****

The defendant was stopped going 62 mph in a 35mph zone by Officer James Roberts of the Sevierville Police Department. After he was stopped he recited his brother’s social security number as his own. He was cited and released. Later that night the same officer responded to an incident at Wal-Mart and discovered the identity of the defendant, who had been declared an habitual offender. Davis received a 12 year sentence for the two felonies of identity theft and violation of his habitual motor offender status.

**RECENT DECISIONS**

**State v Fields, 2007 Tenn Crim App Lexis 292 .09 and broken video**

In Carroll County, Tennessee, Deputy Michael Darnell was sent to respond to a 9-1-1 call. While driving about 70 mph, he had to swerve to miss a Ford pickup that pulled out in front of him. The deputy went off the roadway and through a yard. He finally got turned around and returned to the truck and found the defendant. Fields smelled of alcohol and was asked to perform field sobriety tests. Fields claimed he had a leg injury, so he was given alternative tests including the finger to nose and the five finger count. He missed his nose, was unsteady on his feet and messed up while counting. Subsequent to his arrest his car was searched. A bag of marijuana, a 380 semi automatic pistol, a throwing star and a 24 pack of beer were recovered. Fields took a breath test and had a .09 blood alcohol level.

On appeal after a jury conviction Fields had two complaints. First, the videotape of his field sobriety tests had been destroyed while being copied. Second, he challenged whether he had been observed twenty minutes prior to testing.

The Court upheld the conviction despite the inadvertent, unintentional destruction of the tape and confusion raised about the twenty minutes due to various clocks and watches not showing the same times.

**State v Day, 2007 Tenn Crim App Lexis 212 Stop Suppressed**

On the afternoon of May 16, 2004, Officer Jeff Tarkington of the Hendersonville Police Department, on routine patrol, was headed northbound on New Shackle Island Road when he noticed a vehicle traveling southbound flashing its lights. The female driver of the vehicle also waved her arms at the officer and pointed at the vehicle in front of her, a white sports utility vehicle (SUV). The officer stated that, in his opinion, the driver of the vehicle flashing its lights was attempting to get the officer's attention. The officer then made a U-turn and pulled in between the two cars, behind the white SUV and in front of signaling driver's vehicle. The officer then turned on his blue lights and pulled over the SUV. The other driver's vehicle also pulled off the side of the road. Before the officer approached the SUV, he talked briefly with the citizen to "find out what was going on." The officer stopped Tyson Lee Day in Sumner County and later discovered he had a .25 blood alcohol level. The Court of Criminal Appeals citing Pulley and Binnette ruled that the stop was not justified by reasonable suspicion. The defendant's conviction was reversed. The defendant benefited from the Tennessee Blue Light Special that defines a seizure with the activation of blue lights.

See also State v Hamilton 2007 Tenn Crim App 278 in which a consensual encounter became a seizure when an officer approached a citizen and watched the citizen put his hands in his pockets. Once the officer asked him to take his hands out of his pockets, the Court ruled a seizure had occurred without reasonable suspicion.

**RECENT RULINGS FROM TENNESSEE TRIAL COURTS THAT JUST SEEM GOOFY**

The following rulings have been issued in Tennessee in the recent past and caused nightmares for the prosecution:

- 1) Speeding Suppressed. The officer relied on his mounted radar to stop an offender going 71 mph in a 55 zone. The offender was impaired. The Court ruled that the State was required to produce an expert witness if the officer relied on radar. Imagine the fiscal note for that one. A conservative estimate of \$1,000 per speeding case would bankrupt the state.
- 2) The defendant admitted drinking seven beers. No time frame is given. The State can't use that admission unless it hires a toxicologist to explain what the admission means. That's about \$3,500 per case.
- 3) Two off duty officers observed extremely erratic driving including crossing lane lines. The defendant's car never went in a straight line and was all over the roadway. They contacted the on duty officer. When he got behind the driver, her driving improved. The Court ruled the on duty officer's testimony negated the testimony of the off duty officers and suppressed the stop.

## Recidivist Wall of Shame



Barry Edward Bolin is one of the worst offenders identified since this column began nearly four years ago. Bolin has been convicted of his 13th DUI and 6th violation of the habitual motor vehicle offenders act since he was declared habitual. He has not had a valid license since 1981. He has done jail time, prison time, probation and rehab including AA meetings. In May, 2005 he was involved in a three vehicle crash while he had a .29 blood alcohol content. Bolin tried to leave the scene, but could not start his van, so he hid on the backseat floorboard until he was arrested. Bolin in April, 2007 was convicted and received a sentence of six years as a career offender. He returned to the Shelby County Correctional Center from which he was last released in November, 2004. After his last release he lasted seven months until he committed the new offense, but was still able to make bond and still able to drive without a license until his recent conviction.



David Bankston, 52, of Jackson, TN pled guilty to DUI 9th offense and violation of the seat belt law April 9th in Madison County. Bankston was stopped for not wearing a seat belt. He claimed he could not perform standardized field sobriety tests due to injuries. He could not count or recite the alphabet. He admitted to drinking 2 beers and two shots of whiskey. Like many experienced impaired drivers he refused to take a breath or blood test. (Note: In Tennessee **search warrants for blood are prohibited**.) Bankston received a two year sentence, the maximum penalty for a felony DUI.

### Share the Road” -- Keep Motorcyclists Safe on our Roadways

Motorcycle riders now account for one out of every ten U.S. road fatalities each year – with motorcyclist deaths from traffic crashes rising each of the last eight years. With warmer weather, more motorcycles are back on the road. All motorists are reminded to safely “Share the Road” with motorcycles and to be especially alert to help keep motorcyclists safe.

- 1) **Remember the motorcycle is a vehicle with all of the rights and privileges of any other motor vehicle on the roadway. Always allow a motorcyclist the full lane width—never try to share a lane;**
- 2) **Always make a visual check for motorcycles by checking mirrors and blind spots before entering or leaving a lane of traffic and at intersections;**
- 3) **Don’t be fooled by a flashing turn signal on a motorcycle – motorcycle signals are often not self-canceling and riders sometimes forget to turn them off;**
- 4) **Remember that road conditions which are minor annoyances to passenger vehicles pose major hazards to motorcyclists;**
- 5) **Allow more following distance, three or four seconds, when following a motorcycle, so the motorcyclist has enough time to maneuver or stop in an emergency. Do not tailgate.**



# THE CRASH PAGE

By Jim Camp  
Traffic Safety Resource Prosecutor

## How to Spot an Effective Crash Reconstruction Expert

During my career as an elected prosecutor I have had the opportunity to work with many crash reconstruction experts. Some have been law-enforcement officers, some have not. Some have been highly trained, experienced, highly competent and very effective. Some have not. Just as with any other profession, (and any other courtroom expert) all crash reconstruction experts are not created equal.

That leads us to the logical question: “What makes a good crash reconstruction expert?” I think it consists of a combination of factors. There are several factors we can look to when evaluating the individuals we use as experts and when planning our destructive cross of the defense expert in a crash case. In this issue we will look at just two of those criteria.

### First: Is the expert ACTAR certified?

ACTAR is the **Accreditation Commission for Traffic Accident Reconstruction**. This commission was formed to provide a reliable standard for accreditation of both police and civilian crash reconstruction experts. This organization has established minimum training criteria for crash reconstruction experts and provide certification accordingly. In order to maintain ACTAR membership an individual must earn a certain number of continuing education credits yearly in the area of crash reconstruction. While ACTAR certification does not guarantee competence it certainly helps to weed out many of those who are not.

ACTAR certification is therefore important as it relates to the State’s expert in that it builds and enhances that expert’s credibility. The lack of such certification can be an important area of impeachment of the defense expert in cross examination.

### Second: Does the expert have practical experience at crash scenes?

In other words, have they actually worked a real life crash or have they simply processed measurements provided to them by others at the scene?

Hands on experience makes a crash reconstruction expert. It allows the expert to view crashes in a totally different light. This experience also enhances the expert’s credibility in the eyes of the jury. It sets the expert apart from the defense expert in most circumstances in the “battle of experts”. By that same token the lack of practical experience is great impeachment material on cross examination:

- DA: “How many crash scenes have you actually investigated the same day as the crash, while the vehicles were still present at the scene?”
- Answer: “None”
- DA: “So all of your experience involves reviewing someone else’s field work?”
- Answer: “Yes”

Experience matters and practical experience matters the most. In the next issue we will review several other factors to use in evaluating the competence of such an expert.

## Working To Change DUI Laws

By: MELISSA KINTON

Source: *The Monroe County Advocate*

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It was three years ago this week that 22-year-old Jennifer Marie Shell was killed by a drunk driver. Since then, despite her friends and family's efforts to change Tennessee's DUI laws, the circumstances surrounding Shell's death have not changed.

In fact, the same thing could happen again.

Benjamin C. Kelly was convicted of aggravated vehicular homicide and two counts of aggravated assault after the car he was driving hit the car in which Shell was a passenger. At the time of the accident, Kelly was driving on the wrong side of Highway 411 in Madisonville. He is currently serving a 19-year sentence with the possibility of parole in 2009.

The wreck was Kelly's fourth recorded DUI. That charge was dropped, however, when he pleaded guilty to aggravated vehicular homicide.

Kelly was convicted of his third DUI less than a month before the accident. After that conviction, he was given 30 days to get his affairs in order before he was required to turn himself in to the county jail to serve his time.

It was during those 30 days of borrowed freedom that his path crossed Shell's.

"It was a terrible thing," said then-General Sessions Judge Edwin C. Harris.

Harris was the judge who gave Kelly the furlough. Harris said he tried at the time to cooperate with the county jail when issuing sentence start dates so the jail could accommodate state prisoners. He said Kelly was the only person he knew of who caused a fatal accident when he was supposed to be getting his affairs in order.

With the exception of certain crimes like murder, there are currently no laws requiring convicted criminals to go directly to jail after sentencing. Whether or not they have time to get their affairs in order is up to the judge.

Shortly after Shell's death, her friends and family circulated a petition to try to get a law in place that would prohibit repeat DUI offenders from being given time to get their affairs in order before going to jail.

"I don't think they even looked at it," said Charlotte Shell, Jenny's mother. "I just wonder how they would feel if it was theirs."

"I'm always afraid when somebody's convicted of DUI," said General Sessions Judge Reed Dixon. He is often asked for time to allow those convicted to get ready to begin serving their sentence. In DUI cases, the extra freedom he grants is usually the result of a plea, he said.

District Attorney General and former Judge Steven Bebb agreed with Dixon, calling DUI cases "a real problem."

"Every judge makes that decision," he said. "I always said get your affairs in order before you plead guilty or you're convicted." But Bebb pointed out that once a court of appeals ordered a driver he had convicted and sent to jail be released pending the outcome of an appeal.

During the month of December 2006, 203 people were booked into the Monroe County Jail. Of that number, 21 people (about 10 percent) were charged with DUI and 27 people (about 13 percent) were charged with driving without a license. Some were charged with one offense or the other while some were charged with both. Several were repeat offenders.

At least one person arrested in December, Christopher Keith West, was charged with driving on a revoked license during the 30 days he was supposed to be getting his affairs in order. He pleaded guilty to DUI third offense in November and was due to report to jail after Christmas to serve 120 days. Following the Dec. 23 arrest, he received (and is currently serving) a six-month sentence that will cover both his third DUI and the charge of driving on a revoked license.

Sen. Roy Herron (D-Dresden) has proposed legislation that would require repeat DUI offenders to go directly to jail after they are convicted of drunk driving. This would prevent repeat offenders from getting behind the wheel after a conviction.

"It sure would be easier if there was a law," said Dixon.

Had the law been in place in 2004, Kelly would have been in jail on March 12, the night he hit the car carrying Shell, her fiancé and her younger sister.

Last year, Gov. Phil Bredesen created a DUI Task Force to review the state's DUI laws and recommend changes.

Some of the findings, if acted on, could significantly affect the way DUI cases are handled in Monroe County.

The task force recommended requiring all DUI felons and those driving without a valid license to submit to sobriety testing if they are suspected of DUI. This would help cases stand up better in court, which could lead to less plea-bargaining.

(cont'd next page)

## Working To Change DUI Laws (cont'd)

When he gets out of jail, Kelly's driving record will only show three DUIs because the fourth charge was dropped. In West's case, he was actually charged with DUI fourth offense for his part in a May 2006 wreck. But in November, West pleaded guilty to DUI third offense even though his driving record actually shows eight DUIs since 1990. "It's hardly ever done for any reason other than to get a conviction," said Dixon. "Everything doesn't always come in the same sizes."

West was also convicted of driving on a revoked license 11th offense for the Dec. 23 arrest. He has 13 charges of driving on a revoked license on his record. Kelly did not have any charges of driving on a revoked license on his record but there were three accidents, including the last one with Shell.

"Taking their license away from them, it doesn't stop them," said Dixon. "Putting them in jail, that doesn't stop them. It's hard to know what sentences are appropriate."

"Nobody likes it but sometimes that's all you can do," said Bebb about letting a DUI offender plea to a lesser charge. "If we cannot get the prior conviction, there's no way to get a third or a fourth."

Finally, the governor's task force asked that vehicular homicide sentencing be included in sentencing provisions for violent crime. That would increase the mandatory time served before parole eligibility from 30 percent to 85 percent. Under this provision, Kelly would not be eligible for parole until 2020 – not 2009.

Whatever happens regarding DUI laws in Nashville, Shell's family will continue to mark the day here in Monroe County with a trip to the Towee Falls cemetery.

"It don't get any better," said her mother.

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## NEW STUDY FINDS HIGHEST LEVELS OF THC IN U.S. MARIJUANA TO DATE

### ***White House Drug Czar Warns: "This isn't your father's marijuana."***

Last week, the Office of National Drug Control Policy (ONDCP) and the National Institute on Drug Abuse (NIDA) released the latest analysis from the University of Mississippi's Potency Monitoring Project, which revealed that levels of THC – the psychoactive ingredient in marijuana – have reached the highest-ever levels since scientific analysis of the drug began in the late 1970's. According to the latest data on marijuana samples analyzed to date, the average amount of THC in seized samples has reached 8.5 percent. This compares to an average of just under 4 percent reported in 1983 and represents more than a doubling in the potency of the drug since that time.

John Walters, Director of National Drug Control Policy and President Bush's "Drug Czar" expressed serious concerns regarding this trend, "This new report serves as a wake-up call for parents who may still hold outdated notions about the harms of marijuana. Evidence now tells us that the higher-than-ever potency of today's marijuana translates into serious health consequences for teens."

The health consequences of marijuana are heightened during the teen years. Dr. Nora Volkow, Director of NIDA stated, "During adolescence and into young adulthood, the brain continues to develop and may be vulnerable to marijuana's deleterious effects. Science has shown that marijuana can produce adverse physical, mental, emotional, and behavioral changes, and - contrary to popular belief - it can be addictive." While current teen marijuana use has declined in the past five years, there has been an increase in the number of American teenagers entering treatment for marijuana dependence. Each year, more teens enter treatment with a primary diagnosis of marijuana dependence than for all other illicit drugs combined. Treatment for this substance alone increased 115 percent between 1994 and 2004 among the teen age group. According to the National Survey on Drug Use and Health (NSDUH), of the 15.1 million current (past-month) users, 4.1 million Americans (1.7 %) report dependency or abuse of marijuana. Additionally, the latest information from the Treatment Episode Data Set (TEDS, 2005), reports that 20.1 percent of drug treatment admissions were for marijuana as the primary drug of abuse. This compares to 6 percent in 1992.

**RECENT DECISIONS  
JARRETT**



Dennis Jarrett

**State v Jarrett, 2007 Tenn Crim App Lexis 298 (Jarrett 1)**

Dennis Jarrett claims he was going too slow to injure or kill when he tried to run into police officer.

Jarrett ran a red light on May 19, 2004. Deputy Julie Bradley, Madison County Sheriffs Department, pulled him over. As she approached she saw Jarrett was laughing. She smelled alcohol and asked for a license and he began rummaging in the console with both hands. The deputy told him to stay put and backed off to call for backup. Jarrett drove off. He drove through town and went the wrong way on a one way street. He drove behind a building and the deputy followed. Jarrett drove at her with high beams on and the engine revving. The deputy put her car in reverse to avoid getting smashed into. Jarrett missed her, turned around and attacked from behind. He missed the car, hit a curb and blew out a tire. He then took off running. Another officer caught him. He jumped into a

culvert. Jarrett broke his leg, but managed to run to the other end of the culvert and another officer caught him.

He was transported to the hospital due to a broken leg. Prior to surgery a doctor asked him if he was under the influence. Jarrett admitted drinking four beers and smoking twenty dollars worth of crack cocaine about thirty minutes before being pulled over. Jarrett refused to have blood tested for alcohol or drugs. Jarrett claimed he had been shot in the leg. He said after jumping a fence he noticed his leg was hanging on by a piece of string. Photos showed that his broken leg bone had pierced his skin, but there were no bullet wounds. The deputy had not removed her gun from it's holster during the pursuit.

Jarrett was convicted of violating the habitual motor offender law; felony reckless endangerment; felony evading arrest; drug paraphernalia, implied consent and failure to appear.

Like most experienced impaired drivers he refused all testing and the jury in this case found him not guilty of his 7th DUI offense. (Authors Note: In Tennessee **search warrants for blood are prohibited.**) Jarrett received a six year sentence and appealed the reckless endangerment charge claiming he was not going fast enough to place the deputy in imminent danger of death or serious bodily injury when he tried to run into her twice. His appeal failed.

**State v Jarrett, 2007 Tenn Crim App 336 (Jarrett 2)**

Defendant, Dennis Jarrett was removed from Courtroom due to profane rants. His conviction was based on citizen tip and officer intervention.

The defendant was driving on October 3, 2003 after being declared an habitual motor vehicle offender. Such offenders commit a felony if they drive. A citizen called in the news that Jarrett was driving. Trooper Claude Cain received the tip, ran a computer check to verify Jarrett's license status. A few minutes later he spotted the defendant and pulled him over. An open beer was found in the vehicle. Jarrett was alone.

After being released on bond, the defendant committed the felonies in the above case.

During trial the defendant was unruly and disruptive. He was cussing and screaming from his wheelchair. He claimed his leg had been shot off. He was consistently disorderly, disruptive, and disrespectful. Judge Donald Allen ordered he be removed from the courtroom, but kept trying throughout the trial to permit the defendant to return if he would behave. The defendant would not comply. The Appellate Court determined that the Trial Court had followed all the correct procedures for dealing with this type of behavior and did not permit the defendant to gain a reversal due to his own conduct.



# TRAINING NOTICES

## COPS IN COURT MONTGOMERY BELL STATE PARK JULY 29-AUGUST 3

Prosecutors and Judges are needed to help in five one-day trainings for law enforcement officers. This training focuses on professionalism and integrity for officers on the witness stand. Every officer in attendance will receive instruction during morning presentations and be assigned to court rooms in the afternoon. Prosecutors and Judges are needed to conduct direct and cross examinations and to critique officer performance. Fifty officers per day will have the opportunity to learn about the perils of courtroom testimony in classrooms and mock courtrooms.

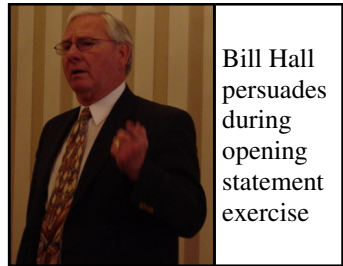
Faculty members will be needed during afternoon hours and at the dinners each evening that introduce the officers to the course. Lodging and meals will be provided and faculty will be reimbursed for travel Expenses. Contact Sherri Harper at (615) 253 6733 to volunteer.

### REMEMBERING THE DUI TRIAL ADVOCACY COURSE

Twenty-four prosecutors from twenty judicial districts completed a challenging Trial Advocacy seminar in Chattanooga March 12-15, 2007. Each received information concerning best trial practices, created presentations and performed before a camera and peers. The outstanding faculty was greatly impressed by the effort of each participant. Thanks to all the participants and faculty for their tremendous effort. Participants were Scott Bearup, Charles Bell, Brooks Irvine, Chris Lareau, Rob Ratton III all of Memphis; Laura Bush, Lebanon; Richard Cawley, Shelbyville; Joshua Crain, McMinnville; Jayson Criddle, Gallatin; Chris Dotson, Clarksville; Bill Hall, Chattanooga; Steve Jackson, Huntingdon; Tracy Jenkins, Huntsville; Craig Monsue, Ashland City; Patti Murphy, Kingston; Robin Ray, Johnson City; Matthew Stephens, Nashville; Connie Trobaugh, Morristown; Andy Watts, Maryville; Sandra Wells, Franklin; Melanie Widner, Elizabethton; Barry Williams, Sevierville; Sarah Winningham, Cleveland; and Ben Wrather, Lawrenceburg.



John Tierney taught language skills and cross examination



Bill Hall persuades during opening statement exercise



Laura Bush makes a point



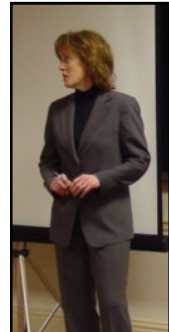
TBI Forensic Scientist Samera Zavaro uses Andy Watts of Maryville to show how the ECIR II breath instrument works. The result was .00 BAC.



GHSO Director, Kendall Poole makes his point about prosecution efforts during the class dinner. It's all about teamwork. It's not easy reducing traffic deaths and injuries on Tennessee roads, but that's ultimately how all our efforts are judged. Convictions for the guilty discourage future DUI crimes and ultimately save lives.



General Dave Clark speaks about opening statements.



Joanne Michaels of the National Traffic Law Center listens.

# NOTRE DAME HIGH SCHOOL HOSTS MOCK CRASH

## Event before prom/summer driving season serves as safety reminder

By Tom Kimball

During the four years my daughter attended Notre Dame High School in Chattanooga, three of her fellow students, Michael Appleby, Cassie Moore and Jonathon Meeks died in car wrecks. None of the accidents were alcohol related. One involved an intersection crash. Another involved an inexperienced driver who skidded on gravel during a turn and flipped his car. Without a seatbelt, he was ejected and killed. A third involved errant driving and leaving a lane.

Each crash caused extreme pain and loss to the families, student body, parents and faculty. The deaths were a terrible reminder that anyone can die in a car wreck. The deaths were also a motivator for the administration, faculty, parents and students to do something to stop the tragedies. Born from this motivation was the organization, *MAKUS*. Created by Judy Appleby in memory of her son, the organization has been a great advocate for traffic safety in Hamilton County ever since. Billboards, community awareness events and educational programs have been the result. No student from the high school has died in a car wreck since 2002.

An amazing educational program was conducted in March. Making it possible were the Hamilton County Advisory Council on Traffic Safety, law enforcement from Chattanooga and Hamilton County, fire departments, emergency services, wrecker services, the county maintenance department, the NDHS theatre department, the District Attorneys General Conference and Notre Dame students, parents, faculty and staff.

A call was received by Father Mike Nolan in the school's auditorium. A crash had occurred involving Notre Dame students. He was needed to administer the Sacrament of the Catholic Church for those who are sick or dying. Father Mike rushed to the scene and asked the student body to follow prayerfully.



Students watched from a hillside as the at-fault driver looked around and discovered what he had caused. Ambulances and the Fire Department arrived. These public servants scampered about assessing the situation, rendering first aid and preparing needed equipment to free those entrapped. A sheet was placed over the ejected passenger. The police arrived. They cordoned off the crime scene, assisted the injured and found the driver who caused the crash.



The mother of an injured student watched as her daughter was placed on a gurney and taken away. She collapsed in grief. No words would console her.



After the jaws of life were used to free the entrapped, the deceased were covered, the injured transported and the offender arrested, I was given the opportunity to talk to the students. It was humbling. All of us were sixteen once. Not all of us at sixteen had lost friends to death. Not all of us at sixteen had attended funerals. Few of us at sixteen had felt what these students had felt watching their peers from the hillside. My message for the day: Live well and respect the power of driving. The use of seat belts is not an option if we treasure life on earth. There is never an excuse for driving impaired. Do not cause anyone to suffer or grieve by your actions or by ignorance. Live well and respect the power of driving.

**VEHICULAR HOMICIDE  
MURDERERS ROW**

**State v Carter**, 2007 Tenn Crim App Lexis 209

Carter was spotted in Guthrie, Kentucky by Kentucky officers in a high drug crime area talking to a known drug dealer. He took off at a dangerous speed driving recklessly. Officers pursued. Carter crossed the Tennessee line and a couple miles later left the road. His airborne vehicle flipped and landed upside down in the Red River. Carter’s passenger, his fifteen year old nephew, was stuck in the truck. Officers tried to rescue the passenger, who had a blood alcohol level of .24, and asked Carter to help. Carter responded with “F\_ You” and took off. The passenger drowned.

Carter was a Range Three persistent offender. He was convicted of vehicular homicide. At sentencing Carter and his family blamed the police for the juvenile’s death. The Trial Court partially agreed. Carter was given ten years of probation by Judge John Gasaway who stated,:

*“ Mr. Stacey Carter was indicted and convicted for his acts, but others were not. They were acting without – without – outside their jurisdiction. They were not chasing a fleeing felon. They should not have done what they did. It was wrong. And the conduct of the officers in conjunction with Mr. Carter caused the death of Michael Carter. That’s important when it comes to figuring out what to do with Stacey Carter.”*

The State appealed. The Court of Criminal Appeals reversed the Trial Court’s sentence. The Court found that Carter had a history of criminal convictions beyond the minimum to establish his range. Carter had a seventeen year history of criminal conduct. Carter was on parole from Kentucky for a fifteen year sentence for burglaries when he killed his nephew. Carter was on probation from Tennessee for six years for aggravated assault and worthless checks. The police were not at fault.

Judge Kelly Thomas writing for a unanimous court: *“The Kentucky officers pursued the defendant only a few miles into our state before the fatal accident occurred. Furthermore, the pursuit occurred as a direct result of the officers' observation of a suspected drug transaction and the defendant fleeing from the scene and evading arrest in a wholly reckless manner.”*

The case was remanded to the trial court to impose a fifteen year sentence to serve.



George Washington, 54, of Memphis struck and killed a twenty two year old motorcyclist. Washington had a blood alcohol level of .34. At the sentencing Washington claimed he was not drunk and had not been since 1979. Washington had six prior DUI convictions. Washington was convicted by a jury and received a sentence of twenty five years. The case was prosecuted by Brooks Yelverton and Dennis Johnson.



Raymond Ashley, 23, of Sommerton, drove impaired with a .11 BAC on New Year’s Eve after drinking beer. He slammed into a Ford Ranger with three occupants. Two were killed. They were high school students riding with their sister. Amanda Hawkins, the sister, survived with serious injuries after a life-flight to Vanderbilt Hospital. Amanda testified at the sentencing hearing after Ashley pled guilty. She stated that she and her brother and sister were like triplets. Every day she wakes up to a “living hell”. She stated that her life was shattered and her family torn apart.

Photo:  
Greg Menza,  
Columbia  
Daily Herald

Ashley had one passenger, another student who was also killed. After the crash Ashley smoked marijuana, according to the pre-sentence report. Ashley received an eight year sentence.



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**More BAD NEWS**

The 16 ounce ROCKSTAR energy drink containing caffeine, taurine, guarano, ginko and milk thistle swept the high school and college scenes after it's debut in 2001.

Now the makers, have added .06% alcohol to a blend called Rockstar 21.

Confused ? One Rockstar is an energy drink. The other is an energy drink mixed with alcohol. The drink has been marketed for its alleged aphrodisiacal qualities on the "Girls Gone Wild" series according to the website, Answers.com

# ANHEUSER BUSCH INTRODUCES "SPYKES" ALCOHOL'S JOE CAMEL?

ANHEUSER BUSCH has come up with a new additive for beer. Spykes have a 12% alcohol content, caffeine, guarana, and ginseng. They come in cute bottles about the size of nail polish. They are currently available in 32 states.

Joseph A. Califano, Jr., the former Secretary of Health Education and Welfare states: "This product is sure to attract underage drinkers. No 30 or 40 year old beer drinker is going to add hot chocolate or some other flavor to make beer more palatable -- but kids will and when they do they will get two drinks in one. Anheuser-Busch well knows that the younger kids are when they start drinking, and the more they drink, the likelier they are to become excessive adult drinkers. Spykes is a predatory move to attract underage drinkers who already account for almost 20 percent -- \$23 billion -- of alcohol sales."

"It's the perfect drink for a child," lamented Judi Vining, coordinator of the Coalition to Prevent Underage Drinking in Long Beach, N.Y. "Prom season and graduation season are coming up," said Vining, who notes how easy it would be to conceal Spykes. "It's scary. We don't want to see people die."

**MADD's Statement:** "MADD is deeply disappointed by yet another violation of the public trust by Anheuser-Busch in the promotion of its enhanced alcohol product, Spykes. While they state the product is aimed at the 21 to 27 co-ed age group, its packaging and promotion ("it opens the night up to experimentation") have every appearance of being attractive to teenagers. Because the critical issue of underage drinking and the Surgeon General's recent Call To Action, we are asking Anheuser-Busch to withdraw its promotion of Spykes." Glenn Birch, National President

**Especially as prom season rolls around, these products that are low in price, marketed online, look like nail polish bottles and have food-like names, are very alarming and only exacerbate the underage drinking problem.**



MURFREESBORO, Tenn. April 27, 2007 - A Rutherford County woman was arrested for allegedly providing alcohol and marijuana at her 15-year-old son's birthday party. Sherry Baker, 38, was charged with contributing to the delinquency of a minor and child neglect. Her friend, 19-year-old Joshua Edwards, was also charged with contributing to the delinquency of a minor, according to the Rutherford County Sheriff's Office. Teens at the party claim they received beer, vodka and some type of energy drink.

See complete story at: <http://www.newschannel5.com/Global/story.asp?S=6435067>