



**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

**MAKUS
RESPOND!**

In Chattanooga, TN a family was stunned with news that the pride of their lives, Michael Appleby, had died in a fluke accident. He was not wearing his seat belt, slid off the road in gravel, flipped and was killed. The response was the founding of **MAKUS**. MAKUS means Michael Appleby Keeping Us Safe.

At Michael's school a drivers education program was begun. Students conduct seat belt checkpoints as driver's leave the parking lot. Tips like those on the right are distributed. Billboards have been erected. A Driver's Skills Center is planned. One courageous family with community support has effected the way teens drive and think about driving.

URGENT DRIVING TIPS FOR TEENS

These basic driving tips can help you stay safe when driving and may possibly save your life.

- **Wear your seat belt.** Seat belts can lower your risk of injury in a crash by 45 percent.
- **Never assume that all roads are labeled correctly.** You could find a road with a sharp turn with no signs warning you of what is ahead.
- **Never swerve to miss an animal.** Swerving may cause the vehicle to flip.
- **Don't drink and drive.** About 36 percent of crashes killing young people each year involve alcohol.
- **Don't speed.** About 45 percent of crashes killing young people involve speed.
- **Don't talk on the phone while you drive.** A recent study found that talking on the phone while driving quadruples the risk of having a crash.
- **After a traffic light has turned green, always look in both directions.** You never know who may be running the red light.
- **While driving in the rain, cut back on your speed.** If it has not rained in several days, then the roads will be extremely slick due to oil buildup. Also, turn your headlights on! It's the law.
- **Don't turn the radio up too loud while driving.** Drivers should be concentrating on the road and loud music is distracting.
- **Don't ride with too many passengers.** Having a lot of friends riding in your car can also be distracting.
- **Don't drive when you're sleepy.** If you find yourself becoming sleepy, pull over at a safe place and get out of the car for a few minutes. Walking around can clear your head and wake you up.
- **Watch the traffic.** Look far down the road and keep your eyes moving so you can identify any problems before you reach them. Check your mirrors frequently.
- **Don't hog the left lane.** The left lane is for passing, not a "fast" lane. Keep right except when passing. Don't try to block speeders.
- **Think ahead.** Keep thinking of possible traffic emergencies, and plan escape routes.
- **Use your signal!** Signal when you change lanes as well as when turning.
- **Wait to turn left.** When you're stopped in traffic, waiting to turn left, keep the wheels aimed straight ahead until the traffic has cleared. If you wait with the wheels turned to the left, another car could hit you from behind and push you into incoming traffic.
- **Help other motorists merge.** When traveling in the right lane of a multilane highway, you can help traffic merge safely by temporarily moving into the left lane if traffic permits.
- **Don't brake too fast.** Slow down to a safe speed when entering a turn. Hard braking in mid-corner can effect the car's balance.
- **Be safe at night.** Don't stare at oncoming headlights. If you're blinded by headlights, focus on the right shoulder of the road.

**To learn more about MAKUS and how to make a difference go to:
<http://www.makus.info/>**



TNDAGC



Issue 6

March 2004

DUI NEWS

**NHTSA REGION IV RELEASES
GOLD STANDARDS COMMUNITY ASSESMENT TOOL**

After several years of study NHTSA Region IV, which includes Tennessee and other southeastern states, has released a new initiative intended to reduce recidivism of DUI crimes. The "gold standards" are intended to permit a community to measure its' strengths and weaknesses concerning its' current DUI system. Standards are set to permit review of Law Enforcement, Prosecution, Adjudication and Treatment/Probation.

Prosecution Standards

1. 80% of all arrests should result in a DUI conviction.
2. 85% of misdemeanor DUI cases should be adjudicated within 120 days of arraignment.
3. All DUI cases involving an alcohol concentration twice the per se level should receive enhance punishment.
4. All prosecutors should receive specialized DUI prosecutor advocacy training within 6 months of hire and continued training every two years.

Adjudication Standards

1. Insist on availability and review by prosecutor and judge the DUI offender's complete driving record before sentencing.
2. Order all convicted offenders to drug/alcohol assessment; act on the evaluation ordering treatment, if indicated by the assessment.
3. Require treatment compliance supervision for all convicted offenders and probation supervision for repeat and high BAC (.16+) convicted offenders.
4. Judges convene a DUI community management system with at least quarterly meetings with stakeholders including law enforcement, clerk, judge, prosecutor, probation, defense bar, and treatment providers to enhance communication, facilitate problem solving, and improve the overall effectiveness of the system.
5. Adhere to all sentencing requirements and utilize options including mandatory sentences, victim impact panels, work release, house arrest, community service, inpatient treatment and utilize incarceration for convicted DUI offenders who drive while license is suspended or revoked for DUI.
6. Adjudicate all juvenile DUI cases as adult cases and have same sanctions and services available (except incarceration) in Juvenile Court.
7. All convicted offenders should be adjudicated using written plea form with fingerprint identification.

PUBLISHER:
Tom Kimball, A.D.A.
LAYOUT AND DESIGN:
Sherri McCloud

INSIDE THIS ISSUE:

<i>Recent Cases, Shame</i>	2-3
<i>New Prosecutor</i>	4
<i>General Schmutzer</i>	5
<i>Illinois v Lidster</i>	6
<i>Checkpoints</i>	7
<i>Cross Examination</i>	8
<i>Training</i>	9
<i>Children are Dying</i>	10
<i>Legislation</i>	11
<i>Teen Driving Tips</i>	12

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.

MINISTERS OF JUSTICE

During his presentation concerning Ethics at the recent DUI Trial Advocacy seminar in Memphis, General Al Schmutzer (see page 5) pointed out Comment 1 to Rule 3.8 of the Rules of Professional Conduct: "a prosecutor has the responsibility of a minister of justice rather than merely to advocate for the State's victory at any given cost." We are also expected to prosecute criminal offenses with "zeal and vigor".

Supreme Court Justice Janet Stumbo of Kentucky in her speech to a multitude of officers, prosecutors and other interested parties in DUI training reiterated the high standards of prosecutors in Tennessee. It was noted that there are many lawyer jokes. There are very few prosecutor jokes. Embrace the highest of standards. Be proud of the white hat you wear.

Ministers of Data?

Most agencies will always be data driven. Thus when our friends at NHTSA view us, they want to see numbers. Numbers can tell us much. We also know and won't forget that every case calls for a just result.

RECENT CASES CONTINUED

State v. Crawley, 2004 WL 112867 CCA 2004

Crawley passed a yield sign at an intersection and then stopped for 15-20 seconds. There was no traffic. The officer was about to activate his blue lights to investigate when the car started again. The officer filmed the car for a while and pulled the driver over after he drifted on an unlined street to avoid a parked car. The Court reviewed the video and citing Binette found it to be imperfect driving, but not reasonably suspicious. The Court did not think stopping in the middle of an intersection for a yield sign justified a stop. The defendant's plea of guilt was reversed.

State v. Daverson, 2003 WL 23094598 CCA Dec 30, 2003

Daverson was observed driving by an off duty deputy. A city officer was called after Daverson got out in front of his apartment. The city officer had not observed Daverson drive. Citing *State v. Ash*, 12 SW3d 800, Tenn Crim App 1999 the Court stated, "An officer's use of reliable information from another officer does not violate the statute's purpose "to protect citizens from harassment and baseless arrests."

This was the last jury trial of the late public defender Bill Dobson, a hard working man of integrity.

State v. Martin, 2004 WL 170353 CCA Jan, 2004

Judge Tipton takes the position that a habitual traffic offender can receive probation and alternative sentencing. In a lengthy opinion he points out there is a split within the Court of Criminal Appeals and notes that his position conflicts with *Cox v. State*, 53 S.W.3d 287, 295 (Tenn.Crim.App.2001). The issue revolves around whether the 1989 Sentencing Reform Act supercedes TCA 55-10-616

Supreme Court: Lesser included, Expungement, Blood Search Warrant Issues

State v. Hatfield, 2004 WL 440218, Tenn., Mar 11, 2004

The Supreme Court in a decision by Justice Barker ruled that reckless endangerment is a lesser included offense of aggravated assault and reinstated the R.E. conviction of Mr.

State v. Jennings, No. M2002-01190-SC-R11-CD - Filed March 11, 2004

In another opinion from Justice Barker the Court clarified that a person found not guilty by reason of insanity cannot have the record expunged.

State v. Blye, No. E2001-01227-SC-R11-CD - Filed February 25, 2004

A defendant is not entitled the defendant to participate, through counsel, in the determination of the existence of probable cause for the issuance of a warrant to seize a sample of the defendant's blood.

LEGISLATIVE ACTIVITY



In January the 103rd General Assembly reconvened. Several bills of interest to those concerned with traffic safety were proposed. As of this date here is what has been proposed.

SB 3141 and HB 3268:

Arrests - Permits police officer to arrest without warrant driver of motor vehicle who leaves scene of accident and is apprehended within four hours of the accident if officer has probable cause to believe the driver was intoxicated. Amends TCA Section 40-7-103.

SB3164 & HB 3046:

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. Amends TCA Section 55-10-406.

SB3182 & HB 3398:

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.

SJR 0728:

This Senate resolution proposed by Senator Cohen directs department of transportation to cease and desist its use of any component of "Click It or Ticket" campaign that states or implies to public that Tennessee has primary seat belt enforcement law. It would include forfeiting \$525,000 of federal funds and an unknown number of Tennessee lives.

SB 3237 & HB 3296:

Alcoholic Offenses - Provides for the immediate confiscation and administrative revocation of driver license upon person refusing to take breath test or who tests .08%; prohibits any person in car from possessing open container of alcohol; changes burden of proof and scope of proof under the dram shop liability act; and increases from \$1,100 to \$2,500 the minimum fine for 3rd offense DUI and from \$3,000 to \$4,000 the minimum fine for 4th or subsequent DUI. Amends TCA Title 55, Chapter 10, Part 4 and Title 57, Chapter 10.

SB 1717 & HB 1213:

Open Containers- A Class C Misdemeanor for open containers in a vehicle. Exceptions are buses, chauffer driven vehicles and RV passenger compartments.

SB 3098 & HB 2952:

Seat Belts - Would make enforcement of seat belt law primary.

VICTIM WITNESS COORDINATORS

Congratulations to **Judy Humphrey**, 5th Judicial District, Maryville, **Peggy Atchley**, 6th District, Knoxville and **Sue Jones** of the Tennessee District Attorneys General Conference. These three state Victim Witness Coordinators have completed the **National Advocate Comprehensive Intervention Specialty** further enabling them to provide services to those victimized by crime.

WHY MUST OUR CHILDREN DIE ?

The last week of February and first week of March have been very disturbing. In Millington, Tennessee, seven teens died when the fifteen year old driver went airborne topping a hill and crashed into a tree. He was driving illegally on a permit. Some of the deceased had snuck out a window from a slumber party to join the joyride.

In Portland, Tennessee, five kids in two cars collided. Three in a Chevy Cavalier were killed. The speedometer was locked at 100 mph. One passenger in the car wearing a seat belt lived. The driver of the other car in critical condition was flown to Vanderbilt Hospital. A friend of the Chevy driver was quoted in the Tennessean as saying, "He said that driving fast kept the rest of the world from catching up with him."

Statistics from the Department of Safety tell us that fewer teens are dying on our roads. The graduated driver's license legislation has saved lives. By March 2nd this year we have lost 167 people on our highways. Thirty of them were drivers or passengers under the age of eighteen. When any person is killed on our highways, it is a tragedy. When a young person with an entire lifetime of hopes and dreams dies, the tragedy is almost too hard to understand.

What can be done to stop these losses? We seem to live in a culture that glorifies speed. Almost all citizens are law abiding on foot. Why then do so many believe that speed limits are mere suggestions? There is no stigma against speeding.

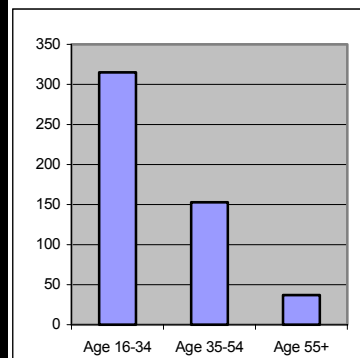
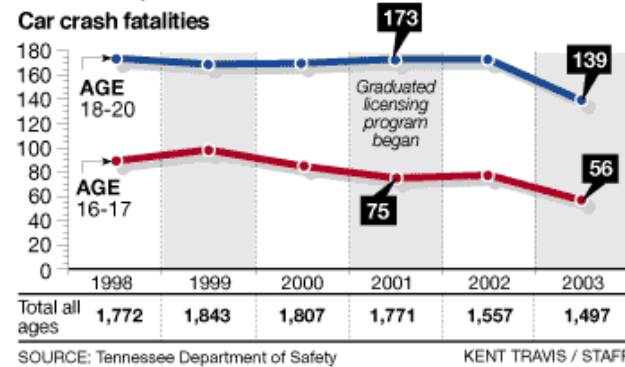
According to Insurance company analysis the fastest drivers are students, military personnel, laborers and politicians. How can we be surprised at student deaths when speeding is socially acceptable even to those that write the laws? A February 22nd article in **USA Today** notes there is no Mothers against fast driving, but there is a Speed channel.

According to NHTSA, speed is a factor in 30% of all fatal crashes killing an average of 1,000 Americans per month. The fastest drivers are young males. There is a reason for those outrageous insurance rates. One response to saving teens' lives in Tennessee is the MAKUS program in Chattanooga. Go to page 12 to see how one family in one supportive community has fought back the tears to try to save the lives of it's young citizens. Michael Appleby was not speeding when his car flipped on gravels. A community organization may not effect our lead-foot nation, but it may encourage more use of belts.

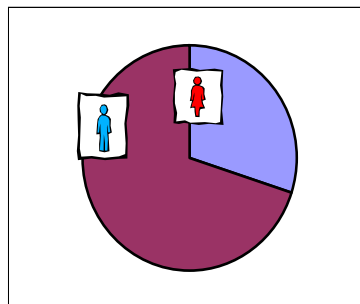
Secretary of Transportation Norman Y Minetta announced that 36.4 million dollars would be made available to the States to encourage seatbelt use. Currently 18 billion dollars a year is lost in medical care and lost productivity in America. This is in addition to the many lost lives. Since the beginning of this year we have lost 254 persons on our highways. Of the deceased at least 137 were not buckled in. How many more must die needlessly on our roads?

Teen fatalities on decline

The number of teens killed in car crashes statewide has decreased since the state began its graduated licensing program for young drivers in 2001. The law places restrictions on drivers based upon their age and level of experience.



Speeding tickets by age



Speeding tickets by sex

RECIDIVIST WALL OF SHAME

James Thomas of Biloxi, Mississippi, would taunt friends who did not want to ride with him when drunk. According to an article on the Sun Herald's web-site, written by Robin Fitzgerald, at <http://www.sunherald.com/mld/sunherald/8011867.htm>, Thomas would taunt "Are you scared? Are you a coward?" His nine year old daughter was killed and young son injured when he wrecked. He faces 10th offense DUI and negligent homicide charges that carry a penalty of 12 to 50 years. Wonder if he is scared?

James A Staggs of Lawrence County, TN pled guilty to his 15th DUI and a violation of habitual traffic offender status January 5, 2004. Staggs has also been convicted of driving on a revoked license 17 times. He will be eligible for parole in August.

James E. Dixon (49) of Washington County pled guilty February 25, 2004 to DUI 12th offense. Dixon had prior felony convictions and will serve 4 years as a range 2 multiple offender.

John Henry Henderson (44) of Campbell County, TN pled to DUI 9th offense February 9th, 2004.

Randy Lee Abbott (46) of Dickson County, TN is busy serving his sentence of 4 years for his 9th offense of DUI. He pled January 26th, 2004.

Billy Gene Watson (53) of Dyersburg, TN pled to DUI 8th offense in September, 2003. He is already out on probation.

Alan B. Crass (35) of Powell, TN pled to a DUI 8th offense on February 23, 2004. He will serve 180 days.

Harold W. Huddleston Jr. (39) pled to DUI 10th offense in Sevier County. He will serve 3 years as a multiple range offender.

Larry K. Bone (38) of Waverly, TN pled guilty to DUI 8th offense in October. Mr. Bone is currently in prison.

Got a Wall Nomination? The criteria: 8th offense or above. No pending charge or pending appeal.

SUSPENDED DRIVERS CRASH, KILL MORE

FARS Data (2000-2002) indicates:
6,685 drivers in fatal crashes had a prior conviction for DUI within three years.
Of those, 48% did not have a valid license at the time of the crash!
13% of all fatal crash-involved drivers were driving without a valid license.

An Interview with DUI Prosecutor John Sellars, 4th Judicial District



John Sellars, born and raised in Dandridge, Tennessee is now busy trying to save lives in his local district as an Assistant District Attorney specializing in DUI.

I had the pleasure of spending a day in Cocke County in East Tennessee with John Sellars. John opted to apply for and was named to a new position funded by a grant from the Governor's Highway Safety Office as DUI prosecutor. John is one of the ten DUI prosecutors in nine judicial districts funded by the GHSO. After a day of in-house training, I thought that you might like to find out what makes a young prosecutor want to specialize in DUI cases.

John graduated from U.T. Law in 1997. He worked in private practice a year and joined the District Attorneys office. He worked in the General Sessions Court in Sevier County from 1998 until November 2003 at which time he became the first A.D.A. in his district to specialize in DUI prosecution. He now prosecutes all DUI's in the Sessions and Criminal Courts of Cocke and Grainger Counties.

Tom: Why did you apply for this position?

John: I liked the idea of being able to specialize in one area in which I could make a real difference. In Sessions Court I saw repeat DUI offenders every day. I also saw the harm they caused. I want to remove impaired drivers from our roads. Convicting the multiple offender keeps that offender off the road during his/her sentence. It may save a life. It may even be his own life that I help save.

Tom: What do you think are the greatest opportunities in your new position?

John: I can have an impact on the safety of the community. I can effectively track the worst offenders, remove drunk driver's from our streets, get habitual traffic offender's banned from driving and be proactive with training and communicating with law enforcement.

Tom: What are your greatest challenges?

John: I will be working in different counties. There are new Judges, clerks, defense attorneys and procedures. I am in a new position that will be defined by what I do. Police officers, fellow prosecutors, Judges, victims and the community will expect me to have a greater knowledge about DUI than anyone else. I have no Criminal Court trial experience. I have to learn fast, so that any shortcomings I may have will not result in injustices. I want the guilty to go to jail, but also I want to make sure someone who is not guilty does not.

TRAINING

COMING SOON

Demystifying the DUI, Nashville DA's office, May 17-21, 2004

Protecting Lives, Saving Futures, Cookeville, June 14-18, 2004

Cross Examination and Cops in Court, Knoxville, July 12-16, 2004

Cross Examination, Kingsport August 16-20, 2004

Sessions Court Trial Advocacy Chattanooga, Sept 20-24

Southeast Law Enforcement Forensic Training Seminar, Lawrenceburg, TN June 8-10, 2004. Contact Paul Rosson at paul.rosson@tndagc.com or 931-762-7777 for more information.

Two Step Process

Make a list of the points you wish to make on cross that support your theory of the case. Arrange them with the questions that the witness will agree with on top. Then draw a line where the questions get nasty, listing all your questions for impeachment below. Thinking of cross as a two-step exercise of "nice and nasty" is helpful. While you should always be courteous in both portions of your cross, this categorizing of questions helps maximize your performance. Remember the first step is the proactive portion of cross-examination, where you speak through the witnesses. Impeachment is the reactive part of cross where you discredit the witness and his testimony. You baste; then broil.

DUI TRIAL ADVOCACY

On March 16-19 an outstanding group of prosecutors met in Memphis to participate in a trial advocacy course. The faculty included, Justice Janet Stumbo, Kentucky; Generals Bill Cox, Hamilton County; Al Schmutzer, 4th District; Jim Camp, Green Lake, Wisconsin and ADA's Tom Henderson, Karen Cook, Jim Lammey, Memphis; Tracy Brewer, Ripley; Kristen Shea, Nashville; Joe James, Gallatin; Stephanie Wong, Bloomington, IL and retired prosecutor, Jerry Landau, Phoenix, Arizona. Thanks also to Lisa Knight of the Dept of Safety and Dr. Kenneth Ferslew of E.T.S.U.

Trial Advocacy courses are no picnic. The effort put forward by an outstanding group of students was inspiring. Justice Stumbo commented at the dinner for consolidated training that Tennessee DA's despite problems with staffing shortages and low pay are doing a great job of hiring quality prosecutors.

From Left: Jason White, Sean Lyons, Kris Coyne, Brooks Yelverton, Thomas Dean, Jack Irvine, Marty Savage, Rachel Newton, Kirby May, Dean Decandia, Billy Miller, Diona Layden and Johnny Sellars



John Bobo currently serves as Director of the National Traffic Law Center at the American Prosecutors Research Institute. He is a Tennessee prosecutor who served in the Chattanooga and Maryville offices. The National Traffic Law Center provides research, training, and technical assistance to law enforcement officers, prosecutors, judges, and researchers across the country on issues of impaired driving.

Editor's Note: This article was published in APRI's *Between the Lines*, a National Traffic Law Center Publication. Volume 12, Number 1, Winter 2003. For past issues of *Between the Lines*, go to: [www.ndaa - apri .org/apri /programs/traffic/ntlc_home.html](http://www.ndaa-apri.org/apri/programs/traffic/ntlc_home.html)



John Bobo speaks for prosecutors on a syndicated radio show which can be heard at <http://1160wmet.com/audio/ndaa/ndaa.htm>. You can encourage your local radio station to carry this informative show.

Baste & Broil: A Cross Examination Strategy

By: John Bobo

Thanks to Perry Mason and Matlock re-runs, jurors have unrealistic expectations of what happens during cross examination of witnesses. While prosecutors would love to see witnesses leap up and scream, "Yes, yes, I did it, I drove drunk and that was wrong," that's never happened in a courtroom outside a Hollywood soundstage. Yet, many prosecutors still feel the pressure of jurors' expectations, so how can prosecutors be effective in cross examination? How can prosecutors pave the road towards closing arguments with all the points they need to make?

Prepare

Is it reasonable that someone would lie to avoid going to jail? You bet. So, to anticipate defenses, the single best question to ask yourself is: What is the lie going to be? Then, ask yourself, what can I do to make that lie unreasonable? Remember, the burden of proof is beyond a reasonable doubt. Showing that defense claims are unreasonable is the single best technique in shooting down their claims.

Control Witnesses

Getting loud or cutting the witness off only makes you look bad and gains sympathy for the witness, so be polite, firm and always appear fair using witness control techniques such as:

- Repeating the question.
- Asking if the witness heard the question.
- Having the witness repeat the question.
- Emphasizing the question the witness is avoiding.
- Letting the witness run until finished.
- Providing the answer yourself.
- Entering into an agreement with the witness that you will ask questions and he will answer them.
- Requesting the judge instruct the witness to answer the question.
- Asking the answer to be stricken as non responsive.
- Using short, short, simple questions.

Techniques of the Last Resort

- "I'm sorry. I must have confused you. Let me ask the questions again..."
- "Are you through? Anything else you want to say before you answer my question?"
- Pause. Look at the jury. Ask the question again.
- "You swore an oath to tell us the truth. If the truth is yes, can't you tell us yes?"

Your Strategy

There are as many approaches to cross examination as there are prosecutors, but for impaired driving cases, try the consensus based cross followed by impeachment. Consensus based cross is where you build consensus with a witness before you turn to impeachment. In other words, you get the witness to agree with you on every element and fact that you can to bolster the credibility of your case and reduce areas of dispute. The effect is three-fold: (1) it focuses the trial, (2) it takes advantage of witnesses when they are most helpful, and (3) the door is opened occasionally when witnesses give information they didn't realize was damaging.

(Continued page 9.)

There are as many approaches to cross examination as there are prosecutors, but for impaired driving cases, try the consensus based cross followed by impeachment.



Recent teachers of cross examination at TNDAGC seminars, John Tierney and Tom Henderson

THE GENERAL'S VIEWPOINT



District Attorney General Al Schmutzer found a capable and interested Assistant District Attorney on his staff. Moving John Sellars to the DUI prosecutor position allowed him to hire another Assistant for Sessions Court in Sevierville and permits other assistants to focus on other crimes.

1. General you recently applied for and received a grant for a DUI Prosecutor from the Governor's Highway Safety Office. Why did you apply?

My four county district has a large number of DUI and DUI related cases. This is augmented in part by the influx of tourists in this area. Unfortunately, like most DA's I'm understaffed and I did not feel that these cases were being handled as well as they could be which is why I applied for the grant.

2. How do you plan to use the new prosecutor position?

Presently, I have assigned my DUI Prosecutor, Johnnie Sellars, to handle DUI and DUI related cases in Jefferson and Cocke Counties and HMVO Offenders in all four counties. These are the counties where I have the biggest shortage of prosecutors.

3. How do you think this position will affect your office and your communities?

It will not only ensure better and more consistent prosecution of DUI and DUI related cases but will also free up the other assistants to spend more time on other crimes such as murder, rapes, and robberies. This can't help but be a benefit all the communities in my district.

4. What do you anticipate to be the biggest obstacles for the new DUI Prosecutor?

I don't anticipate any large obstacles but Johnnie has never prosecuted in either of these counties so it is going to take him a while to get to know the Judges, lawyers, and officers in order to develop a good comfort level that will aid him in the vigorous prosecution of these cases.

U.S. Supreme Court Examines Checkpoints

Illinois v Lidster ruling favors information gathering

In an opinion issued January 13, 2004, The Supreme Court reversed the opinion of the Illinois Supreme Court and upheld the use of an informational checkpoint.

One week prior to the checkpoint a citizen had been killed by a hit and run driver at the location and approximate time the checkpoint was conducted. The Lombard, Illinois Police reasoned that people are creatures of habit. They believed they might discover witnesses by passing out a pamphlet giving details about the hit and run fatality to passing motorists.

Police cars with flashing lights partially blocked the eastbound lanes of the highway. The blockage forced traffic to slow down, leading to lines of up to 15 cars in each lane. As each vehicle drew up to the checkpoint, an officer would stop it for 10 to 15 seconds, ask the occupants whether they had seen anything happen there the previous weekend, and hand each driver a flyer. The flyer said, "ALERT . . . FATAL HIT & RUN ACCIDENT." And requested assistance in identifying the vehicle and driver in this accident which killed a 70 year old bicyclist.

Mr. Lidster, a motorist, drove up to the checkpoint and was discovered to be under the influence. He was prosecuted and convicted.

The Court distinguishes this type of checkpoint from the drug checkpoint in *Indianapolis v. Edmond*, 531 U. S.32 (2000). Edmond involved a checkpoint in which officers looked for evidence of drug crimes in the cars that were stopped.

The Court finds notes that the 4th Amendment does not treat a motorists car as his castle. Further the Court notes that "special law enforcement concerns will sometimes justify highway stops without individualized suspicion. See *Michigan Dept. of State Police v. Sitz*, 496 U. S. 444 (1990) (sobriety checkpoint); *Martinez-Fuerte, supra* (Border Patrol checkpoint)."

The concept of individualized suspicion has little role to play. An information seeking stop is not the kind of event that involves suspicion of the relevant individual.

The Court decides to use the reasonableness standard to evaluate this type of checkpoint.

"In judging reasonableness, we look to the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.. "*Brown v. Texas*, 443 U. S. 47, 51 (1979) See also *Sitz, supra*, at 450.455 (balancing these factors in determining reasonableness of a checkpoint stop); *Martinez-Fuerte, supra*, at 556.564 (same).

Finding that this checkpoint addressed a grave concern and was tailored appropriately to meet the investigatory need and minimally interfered with anyone's liberty the Court finds the checkpoint is constitutional.



left to right, back row: Ruth Bader Ginsburg, David Souter, Clarence Thomas, Stephen Breyer; front row: Antonin Scalia, John Paul Stevens, William Rehnquist, Sandra Day O'Connor, and Anthony Kennedy.

Statistical data abuse

The State's reply brief succinctly points out that statistics can be used to prove anything. According to amicus, experience has proven that there is no nexus between sobriety checkpoints and highway safety because eight of the nine states with the highest rate of alcohol-related deaths allow checkpoints, while eight of the nine states with the lowest rate of alcohol-related deaths also allow checkpoints. See DUI College Br. 20. Those statistics are meaningless, for they do not reveal the extent to which the States that allow sobriety checkpoints actually use them, or whether eliminating checkpoints would have increased the alcohol-related death rate in each of those States. Amicus further asserts that between 1992 and 2001, "60% of the states that do not employ roadblocks experienced a reduction in alcohol related traffic fatalities," while 62.5% of the "states using roadblocks ... experienced an increase in alcohol-related fatalities." Id. 20-21 (emphasis in original). But, again, those statistics do not speak to the relevant question of whether the rate of alcohol-related fatalities would have been higher without checkpoints (in the States that use them) or lower with checkpoints (in the States that do not use them)."

Center For Disease Control finds Checkpoints Save Lives

Research Update: Sobriety Checkpoints Are Effective in Reducing Alcohol-Related Crashes

Fewer alcohol-related crashes occur when sobriety checkpoints are implemented, according to a report published in the December 2002 issue of Traffic Injury Prevention. This conclusion is based on a systematic review of research on sobriety checkpoints. The review was conducted by a team of experts led by CDC scientists, under the oversight of the Task Force on Community Preventive Services—a 15-member, non-federal group of leaders in various health-related fields. (Visit www.thecommunityguide.org for more information.) The review combined the results of 23 scientifically-sound studies from around the world. Results indicated that sobriety checkpoints consistently reduced alcohol-related crashes, typically by about 20%. The results were similar regardless of how the checkpoints were conducted, and results were similar for short-term "blitzes" or when checkpoints were used continuously for several years. This suggests that the effectiveness of checkpoints does not diminish over time.

What Are Sobriety Checkpoints?

Sobriety checkpoints are traffic stops where law enforcement officers systematically select drivers to assess their level of alcohol impairment. The goal of these interventions is to deter alcohol-impaired driving by increasing drivers' perceived risk of arrest. Two types of sobriety checkpoints exist. Selective breath testing (SBT) checkpoints are the only type used in the United States. At these checkpoints, police must have a reason to suspect that drivers have been drinking before testing their blood alcohol levels. At random breath testing (RBT) checkpoints, all drivers who are stopped have their blood alcohol levels tested. These checkpoints are used in Australia and several European countries.

Elder RW, Shults RA, Sleet DA, Nichols JL, Zaza S, Thompson R. Effectiveness of sobriety checkpoints for reducing alcohol-involved crashes. Traffic Injury Prevention 2002;3:266-74.

Issues for Implementation

Legal issues: Although the U.S. Supreme Court ruled in 1990 that sobriety checkpoints are constitutional, some states prohibit them based on statutes or from interpretation of state constitutions.

Financial issues: Sobriety checkpoints result in substantial savings to society as a whole. Nonetheless, for the agencies that implement them, it can be costly to initiate and maintain checkpoint programs. For this reason, it is important that sobriety checkpoint programs are adequately funded.

Community involvement and support: Most Americans support sobriety checkpoints, and levels of public support often increase after checkpoints are implemented. Building on this support can lead to partnerships between the general public, advocacy groups, federal, state, and local government, and law enforcement agencies. Broad-based community support can help law enforcement agencies develop and maintain strong checkpoint programs.

Support among law enforcement: Support among the police officers conducting checkpoints is important. Because checkpoints tend to result in few arrests for alcohol-impaired driving, it is important for officers to understand that the primary goal is to prevent such occurrences. Checkpoints can also lead to the arrest of drivers for other offenses, such as weapons possession.

The full opinion and oral arguments in Illinois v. Lidster may be viewed on the Tennessee District Attorneys Conference web-site at www.tndagc.com. Hit the link for Departments. Then hit the link for DUI case law. Go to traffic stops and click on the case name.