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DUI NEWS

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Belts, Booze and Lifesavers

It is a remarkable time in Tennessee. Dedicated prosecutors, police officers, legislators and advocates are doing their best to save lives on Tennessee highways. In late May, NHTSA Administrator, **Jeffrey W. Runge**, MD addressed the National Lifesavers Conference in San Diego. He informed us that one primary strategy at NHTSA is us. He stated, "Another strategy includes expanding the number of DWI courts and prosecutor positions, and reviewing ways to increase conviction rates of DWI offenders. Many prosecutors are new and inexperienced. They 'cut their teeth' on DWI cases until they move on to 'more serious' crimes. They need training and access to mentors with more DWI case experience. DWI cases are complicated. They both need and deserve experienced prosecutors. Specialized DWI courts are effective in improving case management. They have been successful in many areas, including helping to achieve a reduction in recidivism. Currently there are 80 DWI courts across the nation. In addition, there are 1,500 drug courts nationwide. We need more."

Then Dr. Runge also spoke about seat belts. He noted that of the 33,000 occupants killed in 2002, 59% were unbelted. About half would have been alive today if they were wearing a seat belt. Last year there was a 4% increase in use of belts in the nation resulting in 1,080 lives saved and a $3.3 million savings in cost. There was reduced severity of injuries in 16,000 accidents.

How are we doing in Tennessee?

This year with the leadership of **Senator Mike Williams** in the Senate Transportation Committee, we have a primary seat belt law. We are the 21st state in the nation to pass such a law. Every State that has passed such a law has had a reduction in traffic fatalities, severity of injuries and financial costs the following year. Lives will be spared through the efforts of our legislature and all who supported this law.

We in Tennessee currently have 10 DUI special prosecutors. Every day they focus on one crime, DUI. Their efforts have included contributing to a database to allow us to learn what is working well and what is not in Tennessee. The DUI entry log indicates that 85% of the DUI offenders they prosecuted were convicted as charged. Special Prosecutors make a difference. Since October 1, 2003, we know from the collected data that only 26% of those arrested for DUI are submitting to a breath or blood test. Refusal rates indicate that our implied consent law is in need of repair. Many thousands of dollars and man hours are wasted because we can't collect the most important evidence in DUI cases. Many States permit search warrants for blood if a defendant refuses the test. By judicial decree we do not. The District Attorneys General of Tennessee are grateful for the opportunity to help make a difference. We don't know what life has been or will be spared. It is an honor to be involved in saving lives.

Tom Kimball

WHO'S TRYING THE CASES?

According to the A.O.C. in fiscal year July 1, 2002 to June 30, 2003 there were 282 DUI jury trials in Tennessee Criminal Courts with 190 resulting in convictions.

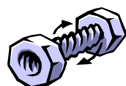
Convicted at trial by District:

9th: 19 (12 in Roane Co)
25th: 17 (11 in Tipton Co)
12th: 16 (14 in Franklin Co)
18th: 14 (Sumner Co)
22nd:14 (10 in Maury Co)
13th: 13 (12 in Putnam)
11th: 9 (Hamilton Co)
24th: 9 (4 in Hardin,
21st: 9 (8 in Williamson)
2nd: 8 (Sullivan)
26th: 7 (5 in Madison)
5th: 7 (Blount)
23rd: 6 (2 in Dickson & Humphries)
6th: 6 (Knox)
17th: 5 (5 in Bedford)
20th: 5 (Davidson)
28th: 5 (4 in Gibson)
4th: 4 (all in Sevier)
19th: 4 (3 Montgomery)
31st: 4 (all in Warren)
8th: 2 (both in Campbell)
15th: 2 (both in Macon)
16th: 2 (both in Rutherford)
30th: 2 (Shelby)
3rd: 1 (Hamblen)
7th: 1 (Anderson)
10th: 1 (McMinn)

1st, 14th, 27th, 29th: 0

DUI Conviction Rate lags behind all other types of crimes.

It takes 8,460 bolts to assemble an automobile, and one nut to scatter it all over the road.



CASE LAW FROM THE COURT OF CRIMINAL APPEALS

State v. Collins, No. M2002-02885-CCA-R9-CO, May 3, 2004

In Nashville, Trial Judge Frank Clement dismissed the implied consent count of the indictment and prohibited the prosecutor from arguing that the defendant refused the blood test knowingly. An interlocutory appeal was filed by Assistant District Attorney (ADA) **Scott McMurty** and written by former Assistant Attorney General Kim Helper, now an ADA in the 21st district.
The problem was that the defendant was advised he would lose his license for a year if he refused the blood test. In fact this defendant was a multiple offender. Under the revision passed before this arrest, he would lose his license 2 years. Judge Williams writing for the Court of Criminal Appeals pointed out, "This Court has previously refused to hold that admissibility of a driver's [*12] refusal to submit to a blood alcohol test is conditional upon the State's total compliance with the implied consent law. State v. Dennie Ray Loden, No. 03C01-9311-CR-00380" and lifted the trial judge's restriction concerning the argument.

State v. Bowman, No. M2003-00257-CCA-R3-CD, April 6, 2004

The defendant claimed he was not under the influence and that leg injuries effected his performance on the SFST's. Prior to being stopped he made harassing phone calls to a Taco Bell attendant. Then he drove up to the drive through window and offered her $40 to smell her feet and suck her toes. His conviction for second offense DUI was affirmed. Is there a rehab facility for feet sniffing anywhere?

State v. Phillips, No. E2003-00401-CCA-R3-CD April 5, 2004

Trial Judge Scott in Anderson County suppressed a stop fifteen months after a hearing was conducted. ADA **Jan Hicks** filed an interlocutory appeal.
Judge Wade for the Court notes: "the trial court accepted as factual the testimony of the officer, who described the vehicle as not just making a 'wide' turn but actually entering the parking lot adjacent to the driver's left in the oncoming lane of traffic. A diagram prepared by the officer is included in the record and establishes that the left side of the defendant's vehicle missed Cobb Hollow Road entirely and that the right side of the Toyota barely penetrated its intended target. An investigatory detention requires only a reasonable and articulable suspicion that the driver of the vehicle was violating the law. The lateness of the hour and the unusually wide turn were a reasonable basis for the stop. Under these circumstances, the order of suppression could be upheld only if the trial court had rejected the veracity of [*10] the officer's testimony and accredited the claims of the defendant. In our view, the record establishes that the officer had a reasonable basis to suspect the defendant of an unlawful act."

State v. Vance, No. M2003-01748-CCA-R3-CD May 10,2004

Trial Judge Wyatt permitted a former Georgia officer and SFST instructor to testify as an expert in field sobriety testing. The conviction was affirmed. Notable for this decision is the conclusion that an officer can be qualified as an expert in the field sobriety tests including the horizontal gaze nystagmus. Not all officers will qualify. Particular knowledge is necessary. **Note**: In our Tennessee DUI training we often use eye doctors to teach HGN. The SFST instructors receive special knowledge and tend to be extremely capable of explaining the effect of depressants on the ocular nerves and eyes.

State v. Varner, No. E2003-02223-CCA-R3-CD, June 28, 2004

On September 1, 2000, the roadblock in this case was conducted. On September 11, 2001 State v. Hicks was issued by the Tennessee Supreme Court. Using the precedent of Hicks and the 1997 decision in State v. Downey, the Court reversed the decision of the Trial Judge and dismissed the case.
What went wrong?

1) Administrative procedures were changed at the scene.
2) The Administrative decision makers were present at the checkpoint.
3) Although pre-checkpoint publicity identified this as a "sobriety" checkpoint, the testimony of the Lieutenant indicated a mixed purpose. He said, "the roadblock was utilized as a generalized 'safety tool,' stating plainly that they 'weren't specifically looking for anything.'"
4) Drug dogs at the scene led the Court to believe the officers were looking for drugs.
5) There was no sobriety testing equipment at the scene. **Note : Few jurisdictions have portable breath testing units.**

This decision confirms that all "I's" must be dotted and "t's" crossed for checkpoint convictions to be affirmed. Several things were done well in this case including pre checkpoint publicity and the decision to conduct the checkpoint in an area that is problematic for DUI's. It is nearly impossible to set up a checkpoint properly when the rules are changed by the Supreme Court after the checkpoint has been conducted. Crystal balls are often foggy.

State v. Mullen , No. M2003-1123-CCA-R3-CD, March 31, 2004

Offender Mullen challenged the twenty minute observation period after he blew a .14. Judge Woodall refused to inject an observation distance requirement noting that the trial court accredited the testimony of Franklin County Sheriff's deputy Todd Hindman.

State v. Sandidge, No. E2003-01189-CCA-R3-CD, April 1, 2004

In an April Fools day decision, Judge Glenn reverses the 150 day jail sentence of this defendant. Crucial to the decision was the fact that the defendant had three pending DUI's at the time of this vehicular assault. Had the defendant been three times convicted prior to inflicting serious bodily injury on her victim by driving with a .23 blood alcohol level she would have gone to jail. Because her three cases were not resolved at the time of the crash, the Court ordered she be placed on probation.
Note: There is no mandatory jail time for vehicular assault. If the defendant had not hurt anyone, she would have been sentenced to jail.

State v. Orr, No. M2002-02332-CCA-R3-CD, April 13, 2004

After the Wynonna plea TCA 55-10-403 (n) was the subject of much conversation. Subsection (n) permits Nashville DUI offenders to serve 200 hours of community service in lieu of 48 hours in jail for a first offense. Marshall County Judge Charles Lee decided that (n) rendered all DUI sentencing unconstitutional. The Court of Criminal Appeals in a decision by Judge Tipton disagreed. Even if the Court ruled subsection (n) unconstitutional, it would not effect the balance of the sentencing structure. It would only mean that Nashville offenders would be treated in the same way as all other offenders.

AFFIRMED

Prosecutors rarely get a pat on the back. As the one representative of the People in the Courtroom they are usually surrounded by defense lawyers and defendants. Thus when a conviction is appealed and affirmed, I enjoy letting our prosecutors know their work has been noticed.

Appellate affirmations this quarter belong to:

Jerry D.Hunt
Kim Menke
William B. Copeland
Weakley E. Barnard
Jan Hicks
Scott R. McMurtry
Colin Campbell
John W. Galloway,Jr.
Steven M. Blount
Angela R. Scott
Steve Hall
Howard R. Ellis
Bates Bryan
Katie Hagan

HORIZONTAL GAZE NYSTAGMUS

For some time we have known that the most reliable of field sobriety tests is the horizontal gaze nystagmus. Not even an experienced drinker can master motor skills that can fool the observer in this test. The actions of the eyes can not be voluntarily induced. This is why officers give this test first in the battery of the standardized field sobriety tests. The properly conducted test determines if there is a lack of smooth pursuit, distinct nystagmus at maximum deviation and onset of nystagmus prior to 45 degrees.

State v. Cora Murphy
953 S.W.2d 200 Tenn.,1997

Our Supreme Court in an opinion by Justice Birch ruled in 1997 that the HGN was special. The Court ruled that it could not be admitted if the witness was less than an expert. Specifically the Court wrote: *"Consequently, testimony concerning the HGN field sobriety test constitutes 'scientific, technical, or other specialized knowledge.'" [FN6] As such, it must be offered through an expert witness and must meet the requirements of Tenn. R. Evid. 702 and 703 as explained in McDaniel v. CSX Transportation, 955 S.W.2d 257 (Tenn 1997).*

NEW DEVELOPMENTS

The defense bar has come to our rescue. In the case of **State v. Vance,** No. M2003-01748-CCA-R3-CD - Filed May 10, 2004, a defense attorney contracted with a former police officer from Gainesville, Georgia. The Trial Court permitted the former officer to testify as an expert in the area of field sobriety evaluation. His qualifications included his certification as an instructor in the standardized field sobriety tests. The Court of Criminal Appeals affirmed the conviction of the impaired driver and acknowledged that the Trial Court had considered the testimony of the former officer in reaching its conclusion.

OFFICER AS EXPERT

This ruling indicates that an officer can posses the "scientific, technical, or other specialized knowledge" necessary to testify concerning HGN. However, not all officers posses such knowledge. An officer that had attended law enforcement training in DUI offender apprehension and the HGN test was not qualified to testify as an expert in **State v. Grindstaff** 1998 WL 126252 Tenn.Crim.App.,1998.

Where will the line be drawn? We will know in several years. For now Prosecutors should determine who the officers are in their jurisdictions that have specialized knowledge in this area. Having helped instruct on legal issues and Standardized Field Sobriety Test 24 hour courses, I know that the SFST instructors are extremely knowledgeable. We in the DUI Training area have also employed eye doctors to teach the HGN at several courses in the last two years. On a case by case basis expertise will be determined by the Courts. The time is ripe to call your best HGN officers in your jurisdiction to the stand.

WAS THE HGN PROPERLY PERFORMED?

One advantage to bringing in your SFST instructor pre-trial to determine if he or she should testify is that this expert can review the video of the HGN performed in the field. Some HGN's are not properly conducted. There are six possible clues to the HGN. The one area most often poorly conducted has to do with examining for nystagmus at maximum deviation. To use the clue the officer should hold his stimulus, finger, penlight or whatever, for four seconds after the eye has moved as far to the side as possible. There must be distinct jerking. For some unknown reason some officers move through this phase much too quickly. If this happens, do not count the clue from this part of the HGN test. If your SFST instructor sees this type of testing from the roadside test, he or she can talk to the officer and correct the problem so it does not repeat itself. Don't waste the Court's time with an improper test. This could cause us to lose the ground we have gained.

Recidivist Wall of Shame

As the clock ticked down during the St. Louis Rams overtime loss to the Carolina Panthers defensive star Leonard Little was shown with his head in his hands. Little, a former Tennessee Vol, served 90 days for a DUI vehicular homicide in 1999. On April 25, 2004 at 4:00 a.m. he was stopped for speeding and arrested for another DUI. His case is pending in Missouri.

TWENTY DUI'S GETS 12 YEARS

Ricky Lee Beavers, 43, of Chattanooga pled guilty to his 19th and 20th DUI's and will serve twelve years in the Department of Correction. His first DUI occurred in 1979. Prior to the passage of the felony DUI law in 2002, these cases would have carried a maximum of 11 months and 29 days each. Beavers was eligible for six years for each conviction due to being a career felon. To qualify as a career felon a defendant must have been convicted of 6 felonies. Records show Beavers has been ordered to rehab on several occasions, but continued to drink and drive. Beavers has never had a driver's license.

SEVEN AT A TIME!

Claire Pressley, 50, pled guilty to seven DUI's that were all pending in Shelby County. She was arrested on seven occasions between June 6, 2002 and August 8, 2003. Her bonds began with release on recognizance, went to $250 each for the next three, $1,000 on number five, $2,500 for the sixth and $ 3,500 for the seventh! If she paid 10% on each, she was out a grand total of $775 bucks. This was not enough to get into the money for alcohol. She submitted to three blood alcohol tests with .24, .26 and .27 readings. After pleading to seven DUI 1st offenses she began serving 150 days in jail with four years probation. Pressley, an employee of the Internal Revenue Service, was given a week to report to jail.

OUR FIRST REPEAT CUSTOMER

Bobby Seffield, 66, of Rockwood, Tn. pled guilty to **15th and 16th** offense DUI on July 1, 2004 in Campbell County. Seffield appeared in the first edition of the Wall of Shame in June, 2003 after pleading in Cookeville in 2002. He had to be blocked in by three police units to stop in one of these arrests. He committed these offenses in December, 2003 and April, 2004. He claimed to be diabetic. An EMS determined his blood sugar was normal.

Frankie Sullivan, 41, pled guilty to DUI 9th and Habitual Traffic Offender in Hartsville, Macon County, in March, 2004. He was arrested after striking another vehicle and creating a mystery driver defense.

William Mohrmann, 42, pled in Shelbyville to DUI 9th offense.

Martin McMurray pled guilty in the Sullivan County Criminal Court to DUI 8th and the Violation of an HTO Order. He will serve 3 years as a Range II multiple offender.

Vince Murphy, 37, pled in Washington County to DUI 8th, so did **Terry Pardue**, 44 in Dickson County.

TENNESSEE 7TH OFFENDERS

Joseph Pemberton,33 Maury County;

Kerry M Sellars,32 Wilson County;

Thomas F Cobb,55 Campbell County;

Frankie Prater, 48 Bedford County;

Diana Medling, 44 Humphreys County

John Cloninger,43 Moore County;

Steven Echols, 47 Crockett County

Jeffrey Everson, 43 Dickson County

United States Supreme Court
Constitution Does Not Require Cautionary Advice on Benefits of Counsel

Iowa v. Tovar, U.S. (2004) (No. 02—1541, United States Supreme Court, filed March 8, 2004.) Justice Ginsburg.

Tovar was arrested for OWI in 1996. He was ineligible for court appointed counsel, and advised the court that he wished to plead guilty without an attorney. The judge questioned him about his decision and then allowed him to go forward with the guilty plea and sentencing without an attorney. In 2000, Tovar was charged with OWI 3rd offense. He challenged the level of that charge, arguing that the 1996 conviction could not be used to enhance the 2000 charge. Tovar argued that although he waived counsel in the 1996 charge, the waiver was inadequate because the trial court had failed to inform him of some of the benefits of having an attorney. The trial court rejected the challenge and Tovar was found guilty of OWI 3rd offense. He appealed. The Iowa Court of Appeals affirmed the trial court, but upon further review, the Iowa Supreme Court reversed.

The Iowa Supreme Court found that the 1996 waiver of counsel was inadequate and violated the Sixth Amendment right to counsel because when the court accepted Tovar's guilty plea in 1996, the judge had not advised the defendant that 1) by waiving counsel, there was a risk that a viable defense could be overlooked and 2) by waiving counsel, Tovar was losing an opportunity to have an independent opinion on whether it was wise to plead guilty. The State of Iowa sought review in the United States Supreme Court.
The United States Supreme Court reversed. "We hold that neither warning is mandated by the Sixth Amendment. The constitutional requirement is satisfied when the trial court informs the accused of the nature of the charges against him, of his right to be counseled regarding his plea, and of the range of allowable punishments attendant upon the entry of a guilty plea."

LISTERINE PocketPaks
Do Not Contain Alcohol

Everyone knows that Listerine contains alcohol, right? So, it must stand to reason that Listerine Pocketpaks contain alcohol as well, right? So when a drunk driver uses a PocketPak prior to blowing into the breath testing instrument, it will surely show up as blood alcohol, right? **WRONG.**

According to Pfizer, Inc., the manufacturer of Listerine PocketPaks, the little breath strips are sugar-free, calorie-free and **alcohol-free.** You need only look at the label to notice the absence.

If that isn't enough, two prosecutors in Florida demonstrated the fact for a jury. A drunk driver alleged that she was so worried about her bad breath during the 20 minute observation period that she slipped one into her mouth before blowing into the instrument. She argued that this must be the reason her breath sample was over .08 BAC. The prosecutors had a witness place two of the PocketPak strips in his mouth and blow. The result was an astounding .00. Guilty.

Between the Lines. Vol 13, No.1, Winter, 2004, APRI National Traffic Law Center

Protecting Lives; Saving Futures
Standardized Field Sobriety Testing

Recently the District Attorneys General DUI Training Division and the Governor's Highway Safety Office Training Committee got together to try a new experiment. Since the mid 1970's, officers across America have received Standardized Field Sobriety Test (SFST) Training. The availability and the effectiveness has varied widely. The goal is to give all officers that may need to detect impairment in a driver the opportunity to learn how to do so effectively.

Since September 2002, the DA's Conference has offered DUI Training to prosecutors. One of the courses offered is Protecting Lives, Saving Futures. That course is intended to train prosecutors and officers together, so that each will better know how the other successfully does his/her job.

The new development was the decision to attempt to merge the two classes in a regional setting. The DA class always includes expert instructors including an eye doctor to teach about the horizontal gaze nystagmus test; a toxicologist to teach about alcohol and drug impairment and a drug recognition expert to teach about indications of drug impairment that can be detected at the scene. The biggest complaint from officers is that they would spend 24 hours learning from an amazing group of instructors, but would not be SFST certified when the 24 hour class was completed.

We decided to fix the problem by combing the two classes. We protected the SFST requirements and added doctors and prosecutors to the agenda. Our first effort was in Cookeville, June 14-17, 2004. Eleven prosecutors including ten from the 13th Judicial District participated with sixteen local police officers. The only regret was that more officers were not in attendance.

The immediate reward was a trial in Smithville where defense attorney **Frank Buck** entered a guilty plea for his client after SFST instructor **Dan Blake** responded to the direct examination of District Attorney **Bill Gibson**. Here's Dan's e-mail:

"because of the training I had gone through with Dr. Ferslew the court allowed me to testify as to the different drug levels (Therapeutic, Toxic and Fatal) the meanings of those levels and as to what level 11.9 ug/ml of butabital was and common effects of that drug. As soon as we completed the prosecution's case the defense decided they would go ahead and enter a plea and didn't even put on a case."

BURPS DON'T EFFCT DRINKER'S BAC

Three volunteer drinker's were breath tested in a different way. Each stopped drinking, waited 20 minutes and blew into the ECIR. Their score was recorded. Then each leaned back and let out a burp and blew again. Their score was recorded. Twenty minutes later they blew a third time and the score was recorded.

The burps had no effect on any of the three. TBI Special Agent/ Forensic Scientists David Ferguson, Brian Eaton and Samera Zavaro helped us make these observations. More detail will be included in the next newsletter.

Web Site:

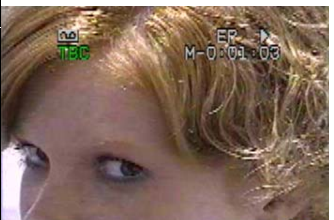
This and the previous issue are available at www.tndagc.com.

Protecting Lives with training:

Dan Blake teaching.

Volunteer blowing into ECIR breath test instrument

Volunteer at .11 trying to walk the line for students.



HGN. Looking for distinct nystagmus at maximum deviation

Cop Killer Convicted

A Sullivan County jury heard the evidence and convicted Fallon Tallent for mercilessly running down and killing Wilson County Sheriff's Deputy John Musice, 49, and Mt. Juliet Police Sgt. Jerry Mundy, 43. Tallent had previously been stopped by spike strips while involved in a car theft and chase. She had decided she would never be stopped by the strips again. She ran down the officers as they did their jobs trying to protect the driving public. Tallent had raced across I-40 from Knoxville and was headed into Metro Nashville at speeds over 100 mph in a stolen Mercedes.

Prosecutor **Bobby Hibbett** in closing outlined for jurors the choices Tallent had made with the intent to kill anyone who got in her way. He started with her theft, chase and arrest in March, 2003 after she was stopped by a "Stinger" spike strip in the road.

The defense pursued an "accident" theory. If the murder weapon is a car, it must be an accident. This jury was not convinced that a murder by car is any different than a murder by gun, knife or club.

Technology to Provide Solution

Hi-Tech Zapper could prevent future tragedies

The need to chase killers like Tallent may soon disappear. In the testing stage is a new innovation that may save many lives. A hi-tech device that can bring speeding cars to a halt at the flick of a switch is set to become the latest weapon in the fight against crime. The zapper delivers a blast of radio waves that knocks out vital engine electronics and causes the target car to stall. The radio wave car stopper is being tested by the US Marines and the Los Angeles Police Department. It is designed to stop cars up to 50 meters away. When the radio waves hit the targeted car, they induce surges of electricity in its electronics, upsetting the fuel injection and engine firing signals. It works on most cars built in the past 10 years, because their engines are controlled by computer chips. The zapper will disrupt the computer and stop the car. A prototype is due to be ready by next summer.

Wilson County Deputy John Musice

Mt. Juliet Officer Jerry Mundy

God bless my family when I am away,
Leave the lights on I'll return from harms way,

Grant me courage and strength to protect others each day,
So they live in peace without worry, fear or dismay,

Bless those who have fallen given their life for another
May their spirit live on from then and forever,

Return me home to my family at the end of each night,
May I pass through the door before the morning's first light,

Shall I give my life for another before the dawn breaks today,
God bless my family when I am away.

By Corporal Tim Scott, South Bend Indiana and Patrolman D. Adams, Elkhart Police Department

70 NEW STATE TROOPERS ON PATROL IN TENNESSEE

An April 23rd graduation of 70 new State Troopers should help in the battle to save lives on Tennessee highways. Cadet class 404 included 65 men and five women, who have been assigned to various counties after completing a 16 week intensive training school. The Tennessee District Attorneys General Conference extends best wishes to the new Troopers with our hopes for wonderful careers. Thanks for your willingness to serve and protect.

TENNESSEE DUI TRAINING OPPORTUNITIES

PROTECTING LIVES, SAVING FUTURES STANDARDIZED FIELD SOBRIETY TEST August 9-12, 2004 Kingsport, Tennessee

This course is designed for prosecutors and police officers from local jurisdictions. Together each learns what the other does and needs to succeed. Prosecutors and officers see and perform field sobriety tests and write police reports. Officers learn how prosecutors prepare for court and perform direct and cross examinations. All seek "strategies for success" to improve communication and systematic problems. Upon completion of this class the police officers in attendance will be certified in the SFST. This is a **free** regional training. **No** student expenses for travel, lodging or meals will be reimbursed.

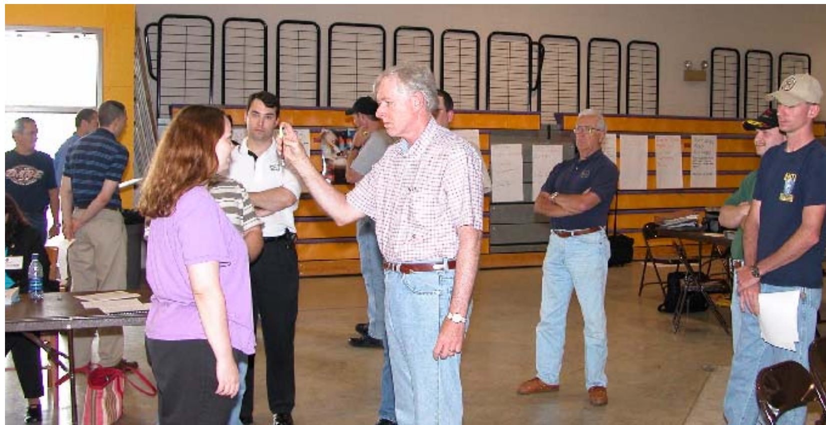


Photo from the most recent Protecting Lives class in Cookeville.
On Left: **ADA John Moore** of the 13th performs the HGN with a volunteer drinker at Protecting Lives; Saving Futures. In the background, **John Tierney** who later taught cross-examination and Indiana Traffic Safety Resource Prosecutor, **Joel Hand** with police officers from the 13th District.

TRIAL ADVOCACY FOR SESSIONS COURT Chattanooga, TN September 21-23, 2004

This seminar is intended to instruct prosecutors with less than one year experience in trial advocacy skills needed to succeed in Sessions Court. There will be a heavy emphasis on direct and cross examination. The last day will include performing numerous direct and cross examinations of police officers.
This seminar is intended to train prosecutors from all corners of the State. This is a statewide training. Travel, lodging and per diems **WILL** be reimbursed from the DUI training grant.

SIGN UP FOR TRAINING

Please contact Sherri McCloud at (615) 253-6733 for registration forms and other information on training hosted by the District Attorneys General Conference.

SELETS ANNOUNCES VEHICULAR HOMICIDE CONFERENCE SEPTEMBER 28-29

The Tennessee Governor's Highway Safety Office has agreed to help fund the Southeast Law Enforcement Training Seminar (S.E.L.E.T.S.) in Lawrenceburg, Tennessee. S.E.L.E.T.S. is the brainchild of District Attorney **Mike Bottoms**.

Last year about 400 officers from throughout the Southeast attended. Sessions will include passenger kinematics, drug impairment, the horizontal gaze nystagmus, witness interviewing and pro active traffic stops.

District Attorneys, Judges, lawyers and police officers often need to decipher the language of crash reconstruction. This is a lecture/presentation style conference with great information for all.

For more details on the seminar visit the web-site at www.selets.com.

WHAT I HEAR, I FORGET
WHAT I SEE, I REMEMBER
WHAT I DO, I UNDERSTAND

CONFUCIUS 451 B.C.

LEGISLATIVE REVIEW

In the last issue various bills awaiting action by the Legislature were listed. Here's what happened:
SB 3098 Primary Seat Belt: **Passed** with 17 Senate votes. It includes a required annual review by Safety.
SB3141 Leaving the Scene would have permitted arrest of intoxicated person who left the scene up to four hours after crash. **Failed** in Senate Judiciary Committee.
SB3237 Administrative license revocation: **Failed** in Judiciary Committee.
SB 1717, HB 1213 Open Container: **Failed** in House Local Government Subcommittee of State and Local Government Committee for lack of a second.
SB 3182 would have made the reckless killing of another while evading arrest in a vehicle a second degree murder. **Failed** in Finance Ways and Means Committee.
SB 3164 would have mandated emergency rooms to tell police if a driver was in a crash and registered above a .08. **Failed** in subcommittee of Transportation Committee.

A FEW THAT PASSED:

Noise law: It is now a state violation if the stereo sound is plainly audible at a distance of fifty (50) or more feet from the vehicle.
License plate tint: No tinted materials may be placed over a license plate even if the information upon such license plate is not concealed.

Woman says she won't do it again after 6th DWI arrest

Monday, June 21, 2004 1:09 PM CDT Reprinted with Permission from the Benton Courrier Express, Benton, Arkansas Carrie Snodgrass, editor

One hundred sixty dollars. This was the price for temporary freedom for a Benton woman when she was charged with her sixth DWI in 18 months.

The day before her arrest, local officers cited the woman for drinking in public and public intoxication. She had previously received two DWI charges in Saline County and three in Pulaski County.

Her previous history of DWIs and the earlier citations did not deter her from getting behind the wheel of a vehicle. She said she had to go to the emergency room because she fell down a set of stairs and injured her arm. Because of her history of driving while intoxicated, she did not possess a valid driver's license at the time of her arrest.

None of these factors kept the woman from walking out of the Saline County jail after a mere two hours.

Each year more than 700,000 people are injured in alcohol-related crashes; of these 74,000 people suffer serious injuries. About 2,000 people are hurt each day in alcohol-related accidents.

To release a woman with a track record in such a short time makes a mockery of our entire judicial process.

Some will argue it is because space was not available in the Saline County Jail. However, when Prosecuting Attorney Robert Herzfeld requested the woman be re-arrested and held without bond, space was suddenly available.

We understand the jail is operating under the watchful eye of the attorney general's office; however, we feel that arrangements with other law enforcement agencies could have been made to hold the woman following her arrest.

The woman's actions show complete disregard for her safety and the well-being of others.

When questioned about her behavior, she said, *"I will never drink and drive again. I have given my keys away."*
For the safety of all Saline County residents, we hope she fulfills her promise.

Note: If this sounds familiar check the Wall of Shame at page 3 for the woman who had seven pending DUI's at once. How's your system working? Does everyone that needs to know made aware of the DUI arrest that is committed while the driver is on bond These time bombs need special attention.

SPONSORS NEEDED FOR AARP DRIVER SAFETY PROGRAM

The AARP Driver Safety Program (formerly titled 55 ALIVE) needs organizations to sponsor the 8 hour classroom course in Tennessee. This training is oriented to the over 50 driver. There are over 100 trained and certified volunteer instructors, located all over Tennessee, ready to teach the class. A great number of senior drivers want and need the training. However course sponsors are needed!

A sponsor can be a law enforcement agency, Senior Center, bank, insurance company, hospital, funeral home, American Legion Post, VFW, church, etc. Any group with a training room large enough to accommodate up to 30 students can be a sponsor. It does not cost the sponsor anything.

The students pay $10.00 each for the course. They get 8 hours of training, a course workbook, and other related materials. The class is usually presented in two 4 hour segments (two morning sessions or two afternoon or evening sessions).

The sponsor would be expected to promote the course within the community, provide a room with a TV and VCR, and handle advance registration. The volunteer AARP instructor will provide all training materials.

One incentive for senior drivers is that upon completion of the course they will receive a certificate which will enable them to receive a discount on their auto insurance. This certification is good for three years.

What is in it for the sponsor? First, this course might help save lives in their community. There are also side benefits. The sponsor will get exposure, traffic in their facility, and in general create community good will.

If you are interested in becoming a sponsor, please contact Dr. John Tidwell, AARP Marketing Specialist (volunteer) for Tennessee (615-855-1755). If you know of someone in your community who could be a sponsor, please pass this information on to them. Potential instructors should also contact Dr. Tidwell.

One of the hundreds of roadside memorials that line our highways. Tragedy results at the whim of the impaired driver when he/she decides to drive after consuming too much. Yet, vehicular homicide is not punished as a violent crime in Tennessee. Is death by auto less heinous than death by gun?

When he sentenced Pierre Jackson in Memphis for aggravated vehicular homicide, Judge John Coulton Jr. stated, “It was almost like a time bomb waiting to blow up and it finally did. This is the kind of defendant that should be taken off the street and separated from society.”

Once the homicide has occurred, everyone knows the time bomb has killed. Any person on bond for DUI that commits another with his first case pending is a time bomb. Revoking the bond will diffuse the bomb for a while. The binge offender will not stop on his own.

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IMPAIRMENT

The DUI Jury Instruction includes this language:
"The degree of intoxication must be such that it impairs to any extent the driver's ability to operate a vehicle."
People with the unfortunate problem of having any disease or medical condition may be more likely to cross the line of intoxication more rapidly than others.
Most people with diabetes keep a religious regimen. They check blood sugar levels several times a day. They eat foods consistent with their situation and are very careful about alcohol consumption.
When a defendant lies about diabetes, he slanders a large group of responsible citizens.
Don't let the lie prevail.

THE DIABETES DEFENSE

It is not uncommon that a defense to DUI will be raised concerning diabetes. The defense lawyer will approach the prosecutor in the hall and inform the prosecutor that the charge of DUI is a travesty of justice. He'll claim the defendant was not impaired by alcohol, but was having a diabetic episode. It is vital that Prosecutors know the effects of diabetes and realize that the defense attorney is relying on the claim of the defendant. Often times the defense is a lie. On occasion it is not. Our Ethics demand we know the difference between a legitimate defense and a scam.

To understand the nature of the claim a prosecutor must know what the defendant is claiming. The effects of low blood sugar, HYPOglycemia are much different than the effects of high blood sugar, HYPERglycemia.

HYPOGLYCEMIA

HYPOGLYCEMIA can occur when a diabetic injects too much insulin resulting in insulin shock. This can result in coma or death. The suspect, if he knows he is diabetic will ask for sugar. If the suspect can stand or sit long enough to do any testing, the officer may notice a lack of smooth pursuit during the HGN. There will not be nystagmus at maximum deviation or nystagmus prior to 45 degrees. The officer may see:

1) uncoordinated, drunk-like movements,
2) Slurred speech;
3) Difficulty paying attention;
4) Irritability;
5) Aggressive/combative behavior.

The jail nurse or an EMT would easily recognize this condition. A lump or two of sugar would immediately fix the problem.

HYPERGLYCEMIA

HYPERGLYCEMIA can occur when a diabetic does not use his insulin regularly or properly. This comes from having too much sugar in the bloodstream. This produces a fruity acetone-like smell much different from the smell from beer, bourbon and other drinks. The E.C.I.R. breath testing instrument differentiates ketones from alcohol. This is a long term problem. It will not cause impaired behavior that mimics intoxication.

DIABETES AND ALCOHOL

The American Diabetes Association notes**: "**Some of the signs of drinking too much, such as confusion or slurred speech, are similar to the effects of a low blood sugar reaction or ketoacidosis (most common in people with type 1 diabetes who have taken too little insulin). You may be asked to take a blood or a breath test for alcohol if you have some of these signs. Don't worry. Diabetes will not affect the results of a test for alcohol, even if you are having a reaction or have a fruity smell to your breath because of high ketone levels. If you are asked to take a test for alcohol and you have a choice, choose a blood test. That way, health care providers can check your levels of glucose and ketones, too.