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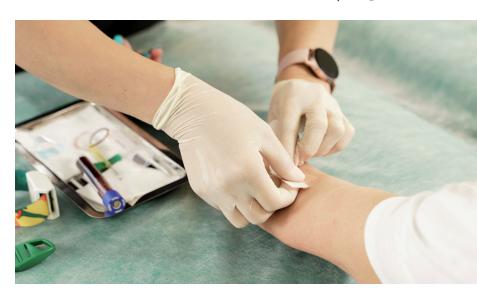
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The National Traffic Law Center is a division of the National District Attorneys Association. This document was prepared under Cooperative Agreement Number 693JJ91950010 from the U.S. Department of Transportation National Highway Traffic Safety Administration. Points of view or opinions in this document are those of the authors and do not necessarily represent the official positions or policies of the Department of Transportation or the National District Attorneys Association.

Volume 32, Issue 8 | August 2024



# **Law Enforcement** Phlebotomy Programs

# Indiana's Program—A Case Study

National Traffic Law Center staff interviewed Indiana Traffic Safety Resource Prosecutor Erica J. Dobbs about Indiana's Law Enforcement Phlebotomy Program

**Editor's Note**—This article is the second of a two-part series on Law Enforcement Phlebotomy Programs (LEPP). In May 2024, Indiana Traffic Safety Resource Prosecutor Erica J. Dobbs described what an LEPP is and the steps the National Highway Traffic Safety Administration suggest a jurisdiction follow if considering implementing such a program.1 Indiana established its own LEPP, and NTLC asked Ms. Dobbs about her state's experience and lessons learned while applying NHTSA's guidance.

NTLC: Can you start by reminding readers what a Law **Enforcement Phlebotomy Program is?** 

**Dobbs:** The LEPP is a program that trains law enforcement officers to draw blood from people suspected of impaired driving.

Dobbs, Erica J. "Law Enforcement Phlebotomy Programs," Between the Lines, Vol. 32, Iss. 5, May 2024. National Traffic Law Center, a division of the National District Attorneys Association.

NTLC: What prompted the creation of this program?

**Dobbs:** When Arizona created the first LEPP in the 1990s, the primary goal was to streamline the process of obtaining blood samples from suspected impaired drivers. Traditionally, officers had to take suspects to medical facilities for blood draws, which could be time-consuming and resource-intensive. As Arizona's program developed and other states began to follow suit, it became clear that training officers to perform these blood draws themselves helps significantly reduce the time and costs associated with these procedures.

Some of the benefits of training officers to perform these draws are:

- Reduced impact on healthcare operations
- No additional healthcare costs for blood draws
- Simplified chain of custody and presentation of evidence at trial
- More timely, accurate data collection
- Minimized out-of-service time for officers, without sacrificing investigation quality or evidence collection<sup>2</sup>

NTLC: What did you do to begin this process in Indiana?

**Dobbs:** The National Highway Traffic Safety Administration (NHTSA) published the Law Enforcement Phlebotomy Toolkit: A Guide to Assist Law Enforcement Agencies with Planning and Implementing a Phlebotomy Program.<sup>3</sup> This Toolkit is an invaluable resource, pulling together the experiences, insights, and best practices of the earliest LEPP-adopting states. As described in my May article, the Toolkit is primarily dedicated to the pertinent considerations to address when starting a program: identifying the appropriate stakeholders, assessing current state law and addressing any necessary changes, developing standards and a quality training program, and addressing liability concerns. We followed these steps pretty precisely in establishing our LEPP.

**NTLC:** Who are stakeholders involved in the creation of Indiana's program?

**Dobbs:** The list of appropriate parties will vary from state-to-state, but in Indiana, the LEPP developed through collaboration between the Indiana Criminal Justice Institute, Vincennes University, the Indiana State Department of Health, and the Indiana State Department of Toxicology. Our initial list of stakeholders included the traffic safety director from our Highway Safety Office (HSO), both Traffic Safety Resource Prosecutors (TSRPs), the HSO grant manager, the director of the State Department of Toxicology, the DRE program coordinator, a representative from Vincennes University, and a representative from the Department of Health. As our program has developed, the state law enforcement liaisons (LELs) and the law enforcement academy have also become involved as stakeholders.

NTLC: Did your LEPP require any changes to state law to allow officers to draw blood?

**Dobbs:** In Indiana, no licensure or certification is required to work as a phlebotomist, and, as of 2013, our DUI chemical test statute<sup>4</sup> supports officers drawing blood, reading in pertinent part:

(i) ... A law enforcement officer may transport the person to a place where the contraband may be retrieved or the sample may be obtained by any of the following persons who are trained in retrieving contraband or obtaining bodily substance samples and who have been engaged to retrieve contraband or obtain samples under this section:

<sup>&</sup>lt;sup>2</sup> Indiana Criminal Justice Institute, Law Enforcement Phlebotomy Program, available at www.in.gov/cji/traffic-safety/impaired-driving/ phlebotomy/, last accessed on August 2, 2024.

National Highway Traffic Safety Administration (March 2019). Law Enforcement Phlebotomy Toolkit: A Guide to Assist Law Enforcement Agencies with Planning and Implementing a Phlebotomy Program. U.S. Department of Transportation, Washington, D.C. (DOT HS 812 705), available at www.nhtsa.gov/sites/nhtsa.gov/files/documents/14222-phlebotomy\_toolkit\_final-032819-v1a\_tag\_0.pdf.

<sup>&</sup>lt;sup>4</sup> Ind. Code. § 9-30-6-6.

- (1) A physician holding an unlimited license to practice medicine or osteopathy.
- (2) A registered nurse.
- (3) A licensed practical nurse.
- (4) An advanced emergency medical technician (as defined in IC 16-18-2-6.5).
- (5) A paramedic (as defined in IC 16-18-2-266).
- (6) Except as provided in subsections (j) through (k), any other person qualified through training, experience, or education to retrieve contraband or obtain a bodily substance sample.
- (j) A law enforcement officer may not retrieve contraband or obtain a bodily substance sample under this section if the contraband is to be retrieved or the sample is to be obtained from another law enforcement officer as a result of the other law enforcement officer's involvement in an accident or alleged crime.
- (k) A law enforcement officer who is otherwise qualified to obtain a bodily substance sample under this section may obtain a bodily substance sample from a person involved in an accident or alleged crime who is not a law enforcement officer only if:
  - (1) the officer obtained a bodily substance sample from an individual as part of the officer's official duties as a law enforcement officer: and
  - (2) the:
    - (A) person consents to the officer obtaining a bodily substance sample; or
    - (B) obtaining of the bodily substance sample is authorized by a search warrant.

Given this favorable statutory position, statutory or regulatory changes were not necessary to begin our program; we simply structured our program within this framework. We created experiential training to ensure officers were qualified to draw, and limited their ability to draw to instances when they 1. have consent or a warrant, 2. the subject is not also a law enforcement officer, and 3. they are acting within the scope of their duties for their department. This means the program requires each officer's department to establish a departmental standard operating procedure for law enforcement phlebotomy.

**NTLC:** What kind of standards were implemented as a part of the program development?

**Dobbs:** All of the officers functioning as LEPs trained through our program must abide by their departments' SOPs, the Indiana Criminal Justice Institute (ICJI) phelbotomy program policy, and a blood draw protocol maintained by the Indiana Department of Health. This ensures uniformity in venipuncture procedures across the state. We established our LEPP within the Office of Traffic Safety at the Criminal Justice Institute (ICJI). The ICII maintains an overarching Phlebotomy Program policy, which initially mirrored the sample policy from the Toolkit almost verbatim. In 2024, the policy was revised to address issues and questions that arose as the LEPP developed. Key revisions and additions we made to the NHTSA model based on our experiences were expanding the list of locations where officers could complete their draws and providing additional guidance to police departments on considerations for the SOPs:

- Expanded Allowable Locations for Blood Draws: Initially, blood draws were allowed in jails, law enforcement facilities, medical facilities, or ambulances at crash scenes. Based on feedback from active LEPs, we added fire departments and other public safety buildings to the list of approved locations.
- Guidance for Police Departments: The revised policy provides additional guidance for developing Standard Operating Procedures (SOPs) for phlebotomy. It leaves evidence handling to the discretion of individual agencies while offering several considerations for departments to address in their SOPs, such as how the department's inventory of blood draw equipment will be maintained and when and where a department's LEPs may assist other agencies.

Our general blood draw statute, which I referenced earlier, contains a provision that a person drawing blood to collect evidence in an impaired driving case has to be acting under a protocol prepared by a physician or at the specific direction of a physician. In order for LEPs to be able to draw blood for DUI cases, it was imperative that they have a physician's protocol to follow. One of the first steps we took in developing our LEPP was to partner with the Indiana Department of Health (IDOH) in creating an LEPP-specific protocol. Our protocol, approved by the IDOH medical director, who is a physician, ensures uniformity in venipuncture procedures across the state.

- Protocol Details: The protocol outlines a standard, medically appropriate blood draw process, citing the Clinical Laboratory Standards Institute (CLSI) as recommended by the NHTSA Toolkit. It includes using nonalcohol wipes and grey top tubes to meet evidentiary standards in DUI cases.
- **Protocol Management:** The protocol is housed in the Indiana Department of Health (IDOH) and signed by the IDOH medical director. Law enforcement officers who have completed the LEPP training program are designated as "limited staff" of IDOH while performing blood draws. Only officers who have successfully completed the LEPP training may use the protocol, and they must follow it strictly adhere to its requirements.

NTLC: What kind of training is required for the law enforcement officers to do blood draws?

**Dobbs:** As NHTSA says in its Toolkit, "The key to success is developing a program that produces a qualified, professional phlebotomist who understands and follows the standards of care."<sup>5</sup> Drawing blood, while not overly complex or invasive, is a medical procedure that demands a high level of proficiency. The success of the LEPP hinges on the quality of its training program. This includes:

- Relevant Curriculum: Comprehensive and up-to-date educational materials that cover all necessary aspects of phlebotomy.
- **Effective Instructors:** Skilled trainers who can impart knowledge clearly and effectively.
- **Experiential Learning:** Hands-on practice to ensure officers gain the practical experience needed to perform blood draws confidently and correctly.

NTLC: Why did Indiana decide to partner with an established educational institution?

**Dobbs:** Vincennes University was a natural fit for Indiana's LEPP training due to its long-standing phlebotomy technician course. However, the university's 14-week (90-classroom-hour) program covers a wide range of topics, many of which are not relevant to law enforcement phlebotomists, such as blood cultures, drawing blood from babies and children, drawing from PICC lines and ports, lab and instrument maintenance, and basic testing techniques. For the LEPP, only the skills necessary for drawing blood in impaired driving investigations are required. For the LEPP, only the skills necessary for drawing blood in impaired driving investigations are required.

Additionally, Vincennes University had pre-established clinical agreements with hospitals across the state. LEPP students, after completing the classroom portion of their training, must complete an 8-hour clinical experience performing blood draws in a hospital lab. As the program has expanded, new hospital relationships have been developed, adding to Vincennes's network of clinical contracts.

This streamlined approach ensures that law enforcement officers receive the specific training they need for their duties while benefiting from the university's established infrastructure and expertise.

<sup>&</sup>lt;sup>5</sup> NHTSA *Law Enforcement Phlebotomy Toolkit* at 5.

NTLC: What content does the Indiana law enforcement phlebotomy course include?

**Dobbs:** By paring down Vincennes University's full phlebotomy technician program, we developed a more manageable Law Enforcement (LE) phlebotomy course that can be completed in 32 classroom hours. Utilizing the Phlebotomy Essentials textbook, co-authored by Cathee Tankersley, one of the original developers of the Arizona LEPP, our course covers the following topics:

- · Infection Control
- Safety, First Aid, and Personal Wellness
- Medical Terminology
- **Anatomical Positions**
- **Body Functions**
- Body Organization, Systems, and Structures
- Blood Collection Equipment, Additives, and Order of Draw
- Pre-examination/Pre-analytical Considerations
- Venipuncture Procedures as outlined and required by the LEPP blood draw protocol.

These units are bookended by Traffic Safety Resource Prosecutor (TSRP) training sessions addressing issues unique to LEP draws. The course opens with a presentation on the general legal landscape of blood evidence in DUI cases, covering topics such as implied consent and warrant requirements, and concludes with an in-depth discussion of policy and procedure, report writing, phlebotomy documentation, and courtroom testimony.

In addition to lectures, the students engage in practical exercises and experiential activities throughout the course. For example,

- Students practice the basics of venipuncture preparation, such as tourniquet tying, donning and doffing gloves, and cleaning the site. They also initially practice inserting a needle into an orange, as the sensation is similar to piercing human skin.
- Students learn the steps of the LEPP blood draw protocol by practicing on a mechanical arm.
- Students progress to drawing blood on each other and volunteers. By the end of the classroom component, each student must complete at least ten instructor-observed draws on the mechanical arms and at least five on live subjects.

The course concludes with a final examination covering all material from lectures, homework, and discussions. After four days in the classroom, students spend the fifth day in a hospital lab completing their 8-hour clinical experience. During their clinicals, they must successfully complete at least fifteen draws, though most end the day having completed far more.

NTLC: Is there a process through which a law enforcement phlebotomist maintains qualifications for blood draws?

**Dobbs:** Once qualified as an Indiana LEP, an officer must maintain an accurate rolling log depicting at least an 85% blood draw success rate in the field, and attend a biennial refresher training where they will demonstrate a protocol-appropriate blood draw on a live subject to maintain their qualification. Over the last three years, we have incrementally qualified officers, allowing us to address the biennial requirement flexibly. Currently, very few officers come due for requalification simultaneously. Their refresher training is therefore accommodated by having them attend the final day of our regular LEP course. This allows them to receive the legal updates and

<sup>&</sup>lt;sup>6</sup> Ruth E. McCall, *Phlebotomy Essentials, Enhanced Seventh Edition* (2021).

refreshers and allows them to demonstrate their proficiency on both a mechanical arm and a human subject in front of the LEPP coordinator. Incorporating LEP refresher training into the last day of the LEPP also provides additional live subjects the new LEP students to practice on.

As the number of officers requiring requalification simultaneously increases, we will shift to offering a dedicated refresher class. This class will likely be part of our annual traffic safety conference, where we also conduct DRE and SFST recertification.

This structured approach ensures that all officers remain proficient and up-to-date with the latest procedures and legal requirements.

NTLC: In developing your program, did you have any concerns about liability? If so, how did you address them?

Dobbs: The most common concern and strongest pushback we receive about the LEPP is the perceived liability risks of officers acting as phlebotomists. Questions often arise, such as: What if they hurt the person? What if the officer is injured by the needle or during the procedure?

To address liability concerns, we established comprehensive training and protocols. Our training and venipuncture protocol are designed to minimize the risk of injury. Upon completing the course and clinicals, officers will have successfully performed numerous draws. All blood draws must be conducted in a clean, safe setting. Officers are trained to troubleshoot issues and provide proper treatment if a draw goes poorly.

Additionally, we established a pre-draw medical screening. Before beginning any draw, officers ask basic medical questions to address issues unique to each suspect, such as blood thinners or adhesive allergies. LEPs will not proceed with a blood draw if the suspect has certain bleeding disorders, (e.g., hemophilia) or other medical conditions that make venipuncture potentially dangerous (e.g., post-mastectomy).

We also employ injury prevention protocols. The protocol limits the number of draw attempts to two and restricts the draw locations to the median cubital vein or basilic vein in the antecubital fossa (inner elbow), or the back of the hand. These sites pose the least risk of injury to surrounding nerves and tissues. LEPs are prohibited from "fishing" for a vein or moving the needle in anything other than a gentle back-and-forth motion.

To further limit the potential for injury while completing a draw, LEPs are only permitted to draw from noncombative subjects. Although Indiana's chemical testing statute allows officers to use force to assist a person doing a draw, our program design discourages LEPs from attempting draws themselves where force is required.

LEPs are also encouraged to have another officer witness the draw and provide backup. This ensures that if a previously compliant subject becomes combative or if another risk arises, there is another officer ready to step in to ensure the LEP's safety. All LEP draws must also be video or audio recorded, if recording is available. Most Indiana officers wear bodycams nowadays, and the preferred location for performing a draw is a law enforcement facility, which will be equipped with surveillance cameras.

Generally, officers have qualified immunity for actions taken as part of the law enforcement duties—another reason departments must have an SOP for LEPs on staff. However, the question of liability and the assumption of the perceived risk must ultimately be answered by a department's legal counsel.

NTLC: Has your program experienced any bias or misunderstanding by the public? If so, what steps have been taken to overcome it?

**Dobbs:** Combating public fear of police performing a blood draw requires clear communication about the LEPP training and protocol restrictions. We have addressed these concerns by emphasizing the officers' training and assessment tools. Anyone can be trained to draw blood; it is not inherently difficult. However, our LEPs undergo rigorous training to ensure proficiency. LEPs are trained to assess individuals before beginning venipuncture. They determine if there is a suitable draw site and confirm there are no medical conditions that pose risks or could lead to complications. We also stress the program's protocol restrictions. Once the draw begins, LEPs are prohibited from fishing, prodding, or blind probing. If the first attempt is unsuccessful, only one additional attempt is allowed. Lastly, we accentuate the program's track record. Since the program's inception, Indiana

LEPs have successfully completed over 400 blood draws with no injuries or problems. Only a handful of draw attempts have been unsuccessful. This track record demonstrates that officers can safely and effectively draw blood, meeting the public's expectation of being safe and free from harm. By highlighting these points, we can help alleviate public concerns and build trust in the LEPP.

NTLC: What other hurdles did you experience in implementing your program?

**Dobbs:** One significant logistical hurdle faced by the Indiana program was that once law enforcement phlebotomists were trained and qualified to draw blood, they could only perform their duties if their department had a Standard Operating Procedure (SOP) in place. This SOP was necessary to clarify that the officer was acting within "the course of their official duties as a law enforcement officer." The administrative processes for establishing SOPs, however, varies widely between departments and is often very slow, or worse, restricted to certain times of the year by agency rules.

After training, several LEPP-trained officers were unable to serve as LEPs because their departments had not adopted an SOP. To address this issue, we enlisted the help of our regional Law Enforcement Liaisons to work with agencies in their regions to facilitate the adoption of SOPs. Additionally, we created a collection of departmental SOPs to provide agencies new to the program as templates and guidance.

Despite these efforts, many LEPP-trained officers are still unable to use their skills in the field. In early 2024, we revised our LEPP policy to require departments to implement or begin the process of implementing an SOP before an officer attends training. The program coordinator and TSRP now work cooperatively with departments that have officers registered for upcoming classes to draft and begin adopting SOPs.

NTLC: In Indiana, who manages the LEPP?

**Dobbs:** While our LEPP relies on the support of numerous engaged partners, the day-to-day operations are primarily overseen by the Program Coordinator, the TSRP, and the grant manager. Indiana's Program Coordinator, an employee of Vincennes University, dedicates her entire time to the LEPP. Funded by the program grant, she handles all administrative tasks and serves as the primary instructor for the course.

The TSRP attends the entire classroom portion of the course and teaches the legal units. Beyond the classroom, the TSRP addresses inquiries from LEPs, officers, departments, and prosecutors regarding program details, qualifications, liability concerns, and the presentation of LEPP evidence. As the program continues to grow, the TSRP also tracks every criminal case involving an LEPP blood draw and provides necessary assistance. To date, Indiana's LEPP has completed nearly 400 blood draws. Of the criminal cases that have already resolved, all but one case resolved via quilty pleas, and the sole case that went to trial was litigated on issues unrelated to the blood draw.

The grant manager maintains all grant payouts, and our highway safety office supplies each LEP with kits containing the non-alcohol wipe, needle, hub, tourniquet, gauze, and band aid they need for each draw.8

NTLC: What's next for Indiana's LEPP?

**Dobbs:** NHTSA recommends new programs follow existing programs, comport with state law, follow standardized policies and procedures, have a quality training program in place, and comply with Clinical and Laboratory Standards Institute (CLSI) guidelines, and be transparent.9 As I have outlined, Indiana has carefully structured its program with each of these recommendations in mind. We hope to eventually have at least one active LEP in every county in the state. We are deliberately growing the program slowly but steadily, and in just three short years, it has proven itself an effective means of collecting evidence and improving enforcement. With the continued success of our LEPP, Indiana hopes to serve as an example to other states hoping to begin an LEPP as this program helps hold impaired drivers accountable and keep our roadways safe.

<sup>&</sup>lt;sup>7</sup> Ind. Code. § 9-30-6-6(k)(1).

Our toxicology department provides the grey top tubes and lab-submission materials.

<sup>9</sup> NHTSA Law Enforcement Phlebotomy Toolkit at 11-14.

#### Additional Information about Law Enforcement Phlebotomy Programs

National Highway Traffic Safety Administration, Law Enforcement Phlebotomy Toolkit: A Guide to Assist Law Enforcement Agencies with Planning and Implementing a Phlebotomy Program, available at www.nhtsa.gov/sites/ nhtsa.gov/files/documents/14222-phlebotomy\_toolkit\_final-032819-v1a\_tag\_0.pdf.

The Foundation for Advancing Alcohol Responsibility, Law Enforcement Phlebotomy webinar, available at www.responsibility.org/law-enforcement-phlebotomy-webinar/.

Indiana Criminal Justice Institute, Law Enforcement Phlebotomy Program, available at www.in.gov/cji/trafficsafety/impaired-driving/phlebotomy/.

# **NTLC Staffing Changes**

#### **Erin Inman, Director of NTLC**

Following the retirement of former NTLC Director Joanne Thomka, Erin Inman was named the new Director effective April 1. Erin has been part of the NTLC team since September 2019. Her passion for traffic safety and excitement to help save lives on our roadways was evident in the execution of her duties as Staff Attorney. In that role, she oversaw the management of NTLC's extensive DUI Library for Prosecutors, which includes the maintenance and organization of several statutory and case law compilations, research regarding cross-examination topics, and a variety of other frequently arising issues prosecutors face in processing DUI cases. Prior to joining the NTLC, Erin practiced law in Montana; she was elected to serve as the Prairie County Attorney, guest lectured throughout the country on prosecuting traffic cases, launched Montana's Traffic Safety Resource Prosecutor program, taught at the Montana Law



Enforcement Academy, and participated in authoring and designing many criminal justice publications and curricula. She also served her country as a pharmacy technician in the Army Reserves. Her subject matter expertise has been instrumental in shaping effective legal strategies and fostering collaborative efforts aimed at reducing traffic-related fatalities and crimes. She has served her country and her community in many different ways and is passionate about NTLC's mission.

# Jim Camp, Senior Attorney (FMCSA)

In July 2024, Jim Camp transitioned to a part-time position with NDAA. Jim joined NTLC in October 2020 as a Staff Attorney on the FMCSA grant; in July 2021, he became the Senior Attorney. A nationally recognized authority on traffic safety, trial advocacy, law enforcement and prosecution issues, he has remained an in-demand subject matter expert. Jim served as an Elected District Attorney in Wisconsin for over 16 years and as an Assistant District Attorney General and Traffic Safety Resource Prosecutor in Tennessee for more than nine years. With nearly four decades of experience as a trial lawyer, Jim has educated and provided authoritative advice to and for law enforcement, staff and command, prosecutors, legislators, committees, boards, traffic safety partners and private industry nationally. Jim's experience, gift for training, and aptitude for making friends with colleagues and students alike are just a few of the



reasons NDAA values him. Moreover, his congenial company and big heart are endearing. He will continue to provide training on matters relating to CDLs and masking.

### Bella Truong, Senior Attorney (FMCSA)

Bella joined NDAA in March 2022 as a Staff Attorney and NTLC in January 2023. In July 2024, Bella agreed to step into the role of Senior Attorney for the FMCSA grant. Bella has a dozen years of multifaceted legal experience prior to joining NDAA, the majority of which she served as a prosecutor in both the Cumberland County District Attorney's Office (Fayetteville, NC) and the Pierce County Prosecuting Attorney's Office (Tacoma, WA). She has focused on prosecuting impaired driving cases for many years and also provided training and guidance for multidisciplinary teams, including instructing about local human trafficking laws. Additionally, she served as a Military Intelligence Officer with the United States Army where she led teams of analysts to prepare, train, and execute tactical and combat operations, including Operation Enduring Freedom. Bella's continues to serve Americans and anyone who travels on American roadways



by spreading the word about the dangers of masking. Her commitment to saving lives on our roads and dedication to excellence in her work are just a couple of reasons she is such a good fit for the role.

## Stacy Graczyk, Staff Attorney (NHTSA)

Stacy joined NTLC as our newest staff attorney on July 1. Most recently and since 2018, Stacy served as one of Vermont's Traffic Safety Resource Prosecutors. She brings to NTLC a wealth of experience in prosecuting complex impaired driving cases involving fatalities and serious bodily injury. She also has experience in the training of and outreach to traffic safety partners, including law enforcement, prosecutors, high school students, and other community groups. Prior to becoming one of Vermont's TSRPs, Stacy served as a prosecutor in two state's attorneys' offices in Vermont and as a staff attorney for Prisoners' Legal Services of New York. She has a penchant for teamwork, a passion for saving lives on America's roadways, and an excellent sense of humor.

