

Mark Your Calendars

2010 Lifesavers Conference

April 11—13, 2010
Philadelphia, PA

IACT Conference

April 18—22, 2010
Dallas, TX

CLICK IT OR TICKET

National Mobilization
May 24—June 6, 2010

IPTM 22nd Annual Symposium on Alcohol and Drug Impaired Driving Enforcement

June 7—9, 2010
Naples, FL

NAPC Summer Conference

July 7—10, 2010
Napa, CA

NDAA Summer Conference

July 11—14, 2010
Napa, CA

IACP 16th Annual Training Conference on Drugs, Alcohol, and Impaired Driving

July 22—24, 2010
Pittsburgh, PA

Between the Lines is published by the National District Attorneys Association's National Traffic Law Center. Items may be reprinted if attributed to NDAA's National Traffic Law Center. Please provide copies of any reprints to the National Traffic Law Center. Contact us if you have any inquiries or article suggestions at 703.549.9222 or trafficlaw@ndaa.org.

Between the Lines

Build Your Ark

By James W. Camp*

Impaired driving cases carry with them many challenges. One of the most perplexing and frustrating of these challenges can arise from the need for health care participation in obtaining blood from suspects. This can become particularly problematic when suspects are being treated at a health care facility for injuries suffered in an impaired driving related crash.

In discussing this issue with our brethren around the country, the difficulties are, for the most part, the same. Sometimes breath tests just won't cut it. This includes situations where there is a suspicion of poly-drug use or when a suspect refuses a test and the law provides for forced blood. With a cooperative hospital staff blood is drawn and the investigation carries on. The plot thickens however when the health care providers involved refuse to draw that blood. This scenario usually leads to the dreaded 2:00 am phone call which is the bane of every prosecutor's existence. This is not the best time to try to fix the problem as the clock is ticking, your spouse is complaining and

alcohol is dissipating from the suspect's blood.

Hollywood provides surprising direction. In the motion picture *Spygame*, a retiring CIA operative played by Robert Redford was making plans to protect himself from being set up by superiors. When accused by his secretary of being paranoid for doing so, he asks the rhetorical question: "When did Noah build the ark?" His rhetorical answer: "BEFORE it rained". Great advice! The time to prepare for potential problems with health care providers is BEFORE they occur.

We as prosecutors need to take the laboring oar to prepare those in the health care community for these situations. We need to make sure they are aware of the requests that will be made of them and the consequences of their assistance. Brace yourselves now for what comes next To do this we have to get out of our office and actually GO TO the hospital and SPEAK to them. I can hear some of you beginning to complain all the way down here in Nashville. I know you

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are slammed. Everyone has insane case loads. It is inconvenient to take time out of your busy day to schedule a trip to the hospital to meet with doctors, nurses, hospital administrators and, God forbid, maybe even a hospital attorney. But a few hours spent now will save days and weeks of trying to fix something AFTER the fact that might not be able to be fixed at all. I also know the truth; for some of you it doesn't have anything to do with taking the time. It has everything to do with breaking out of your comfort zone. Many lawyers...specifically prosecutors...find it scary to talk to health care providers. Why? Because we don't speak the same language! That is one of the most important reasons to open the lines of communication and engage in a meaningful, non-threatening dialogue.

Who do we talk to? It is a good idea to include everyone that would otherwise complain if they are left out. Particularly the Director of the Emergency Department, the hospital attorney, the hospital administrator or their designee, the Director of Nursing, the Chief of Security as well as the heads of the law-enforcement agencies that will be serviced by this hospital. It is a good idea, however, to meet ahead of time with your law-enforcement representatives to discuss the potential problem areas. It is also a good idea to let them know that they should allow you to be the spokesperson and they should, whenever possible follow your lead.

But how and where do you begin? First we have to understand one of the things many health care providers fear most. Rightly or wrongly, that is getting sued. Remember, just about the only time most health care providers have contact with an attorney is when it has something to do with them getting sued or with them learning about how not to get sued. Also along this same line they are afraid they will get sued just for being part of the blood draw process. They usually have no knowledge of any immunity statute that applies and for that matter neither do the hospital attorneys. Furthermore they do not

want to be involved in restraining any individual much less a patient who is having blood drawn against that patient's will.

Second, health care providers are also afraid of going to court. Usually that fear originates from a lack of experience in court and a lack of understanding about their role in the criminal justice system. Myths concerning the system run rampant among many health care professionals. They are afraid they will be receiving daily subpoenas to court. They are afraid that their trip to court will end up taking a full day away from work. They are afraid they will be sued or charged with a crime. As a result, health care providers avoid court like the plague.

Third, we must understand the reality of hospitals in general. They are most certainly in the business of saving lives and helping people. But when it comes to some hospital administrators and for that matter hospital attorneys, they are in the business of making money (or at least not losing money) so they can continue to save lives and help people.

Knowing the way our friends in the health care profession think allows us to prepare for a true meeting of the minds. That includes approaching our hospital hosts in a conciliatory fashion. In other words, telling them they "had better draw or else", or coming in like a Panzer Tank doing 60 mph leaving nothing but scorched earth in our wake probably isn't going to be our best plan of attack. We need to use our new found knowledge to structure our discussion in a non-threatening way. We need to let them know we are not adversaries. Build bridges. Talk with them. Bust the myths. Ask them what concerns them about their involvement in the blood draw. Listen and address those concerns and educate. That is, after all one, of the things we do best.

Be prepared to discuss what the health care provider's role really is in the blood draw procedure. Make it clear that they will not be involved in restraining the suspect. Discuss the availability of a restraint chair or bed along with a room away from other emergency patients for

use with a combative suspect. Perhaps even a separate entrance can be used for legal blood draws. Discuss the procedure to be used if the suspect is admitted as a patient and is already out of the emergency department and in residence in a patient room. Explore the use of hospital security personnel or University/Campus police (where appropriate) as an aid in suspect restraint as well as a liaison with law-enforcement agencies should any unforeseen issues develop. Suggest they consider creating a written Standard Operating Procedure for the draw to avoid confusion and disagreement between hospital staff and law-enforcement.

Despite your best efforts, the facility may decide to simply not cooperate and refuse to draw for law-enforcement. If that occurs ask for the reasoning behind that decision. If you cannot change their mind be prepared for the alternative. Affirmatively declare that since they have not decided to draw themselves you assume they would have no problem with other statutorily authorized individuals drawing the blood while the suspect is being treated there either in the Emergency Department or in the suspect's room depending on the circumstances. Be prepared to secure a private nursing service or other provider for this purpose. You need to discuss this option with the law-enforcement agencies involved ahead of time since they will most likely be paying for this service out of their budgets. Provisions should be made to fulfill blood draw requests of other agencies from outside of your jurisdiction relative to suspects who are taken to the hospital in your jurisdiction for treatment. This is critical when dealing with a hospital emergency department that is a Level One Trauma Center or one that is located so as to be commonly used by out of state emergency medical services. An agency such as the County Sheriff's Department can be the liaison for those outside agencies to deal with in obtaining the blood draw using the protocol already established for your jurisdiction. Also, request a written protocol from the hospital so

it can be disseminated to hospital staff so any future 2:00 am phone calls can be avoided.

If all else fails be prepared to use search warrants to secure not just medical blood test results, but the blood itself. Some hospitals either fail to test for alcohol or drugs when medical blood is drawn from a suspected impaired driver in the Emergency Department or they perform the test and file the results separately so they are not contained in the ordinary patient file. This practice is rare but does occur. The reason: money. Many state health insurance plans as well as private health insurers will not pay for treatment costs incurred by an individual who was injured as a result of his impairment. The hospital may not want evidence of any impairment in the patient's file. The search warrant should obviously be executed as soon as practically possible after operation of the vehicle. This means officers should have a boiler plate search warrant and affidavit at their disposal if possible. In states where telephonic search warrants are available your officers should be educated in the proper methodology for their use. In states like Tennessee where search warrants are not available for blood if the blood is being obtained for a DUI case, a search warrant should be obtained for the blood drawn by the hospital for medical purposes. This warrant should be executed as close to the suspect's admission to the hospital as possible to avoid destruction or "loss" of the blood sample. Once you have the blood sample itself you can have your state lab test the blood to obtain the results.

So do your homework. Initiate dialogue. Educate. Dispel the myths. Build bridges. Work to create a standard operating procedure for hospital blood draws that addresses the needs of both law-enforcement and the health care community. In so doing you will enhance the reputation of your office and our profession in general. You will avoid sleepless nights and most importantly you will help ensure that justice is done and future lives are saved. Build your Ark. BEFORE it starts to rain.

Traffic Fatalities Decline

The number of overall traffic deaths reported at the end of 2009 reached the lowest levels since 1954. The projected number of deaths was put at 33,963, an 8.9% drop from 2008.

According to early predictions, the fatality rate, which takes into account the number of miles driven, reached the lowest number ever recorded. The fatality rate reach 1.16 persons per 100 Million vehicle miles traveled, down from 1.25 in 2008

Technical Assistance

The National Traffic Law Center provides evidentiary and technical assistance on a number of topics in the traffic law realm, tracks national and state legislation, provides training programs on legal issues concerning impaired driving, and a number of other services. This includes an informational database on topics related to traffic safety, including expert witnesses, studies, case briefs, decisions and more. If you are in need of any assistance, please contact the National Traffic Law Center.

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NTLC Publications

Many publications by the National Traffic Law Center are available for download from our website in pdf format free of charge. Please visit www.ndaa.org and click on the link to the National Traffic Law Center

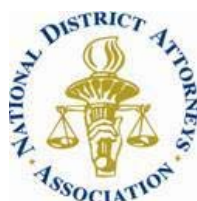
Other publications available in print by contacting the National Traffic Law Center directly include the *DWI Prosecutor's Handbook*, *Hardcore Drunk Driving Prosecutorial Guide* and *The Criminal Justice System: A Guide for Law Enforcement Officers and Expert Witnesses in Impaired Driving Cases*.

Sample Texting Law

Secretary of Transportation Ray LaHood has unveiled sample legislation that will serve as a starting point for states crafting new law to prohibit texting while driving. The sample law, prepared by the National Highway Transportation Safety Administration (NHTSA) and a number of traffic safety and industry organizations, including the National Traffic Law Center of the National District Attorneys Association, would authorize law enforcement officers to stop a vehicle and cite drivers who are texting while driving. Joanne Michaels, Program Director of the National Traffic Law Center, served on the panel that undertook this project.

Nearly 6,000 people died in 2008 in crashes involving a distracted driver and more than 500,000 were injured. Currently, nineteen states and the District of Columbia have texting laws covering all drivers.

To read or download the sample law, go to: http://www.nhtsa.gov/staticfiles/DOT/NHTSA/Rulemaking/Texting_Law_021910.pdf



The National Traffic Law Center is a program of the National District Attorneys Association. This document was prepared under Cooperative Agreement Number DTNH22-998-H-05881 from the U. S. Department of Transportation National Highway Traffic Safety Administration and Grant Number CD099913NDAAOP from the U.S. Department of Transportation Federal Motor Carrier 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.