

UPCOMING NDAА TRAININGS

- **Investigating and Prosecuting Drug Cases**
Salt Lake City, UT / October 1–3, 2018
- **NDAА-APLAN Regional Opioid Training**
Indianapolis, IN / October 10, 2018
- **NDAА-APLAN Regional Opioid Training**
Omaha, NE / October 15, 2018
- **Domestic Violence**
Long Beach, CA / October 29–November 2, 2018
- **NDAА-APLN Regional Opioid Training**
Portland, OR / November 5, 2018
- **Mental Health**
Myrtle Beach, SC / November 5-7, 2018
- **NDAА-APLN Regional Opioid Training**
Atlanta, GA / November 13, 2018

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PREPARING FOR THE DIRECT EXAMINATION OF A TOXICOLOGY WITNESS

By M. Kimberly Brown, Senior Attorney, NTLC

A new prosecutor typically finds his or her first assignment in the misdemeanor section of the office. There, he or she learns how to prepare cases for arguments, hearings, and trials in court as well as how to deal with law enforcement officers, defense attorneys, and judicial staff. Impaired driving cases usually comprise a significant portion of a new prosecutor's assignment. Although typically a misdemeanor, an impaired driving case, however, can be extremely complex, involving scientific evidence ranging from the crash reconstruction calculations to toxicology evidence about the amount of alcohol or drugs in a defendant's breath or blood. For this reason, impaired driving cases can be quite

daunting for a newer prosecutor. This article offers guidance to the prosecutor about what he or she may want to consider when faced with preparing for the direct examination of a forensic toxicologist in an impaired driving case.

The first step to prepare an impaired driving case with a toxicology witness is to schedule a witness conference to review the evidence the toxicologist will offer in court. Such an appointment can be conducted at the office or the toxicology lab. This meeting is particularly important since the prosecutor will need to qualify this witness as an expert and, to lay the appropriate foundation, the prosecutor will need to establish the education, training, and certifications of the expert. The witness meeting provides the opportunity for the prosecutor to learn this information.

The prosecutor should request the toxicologist provide a copy of his or her curriculum vitae (*i.e.*, CV or resume) at this meeting. The prosecutor will likely be required to provide it to the defense prior to trial. The witness meeting provides the prosecutor an opportunity to discuss the toxicologist's background in greater detail since the prosecutor will want to elicit the witness's education, work history, specialized training, and any certifications or accreditations he or she has earned during his or her initial testimony. This will provide the foundational qualifications to support the opinion the witness will offer later in his or her testimony.

Additionally, this meeting provides the opportunity for the prosecutor to ask any questions he or she has about the science behind the laboratory testing or about any of the procedures used or protocols followed. Sample predicate questions follow this article and may be helpful for the prosecutor and toxicologist to review together to prepare for trial. Witnesses rarely answer questions in the exact way a prosecutor may expect, so reading a list of



questions at trial, without listening and responding to the answer, can confuse the witness and the jury. The best use of any list of questions is preparation. Lastly, the prosecutor should keep in mind that while the witness may be comfortable in the laboratory, he or she may not be comfortable in the courtroom; the prosecutor can use this meeting as an opportunity to explain how the trial will be conducted and what the toxicologist can expect while on the witness stand.

When called to the witness stand, the prosecutor will want to establish the qualifications

of the toxicologist as described above. Additionally, the prosecutor will want to elicit information from the witness about the number of times he or she has previously been qualified as an expert in other courts. Also, the prosecutor should have the toxicologist explain what a toxicologist is and what types of job duties a toxicologist performs. After doing this, the prosecutor should make a motion to qualify the witness as an expert. At this time, the defense attorney may be permitted to question the toxicologist to challenge the level of his or her expertise.

The prosecutor should next ask a series of questions of the toxicologist to establish the protocols and procedures used in the laboratory when it receives a biological specimen for toxicology testing. This will educate the judge or jury about how samples are handled in the lab, what equipment and / or instruments are used for testing, what kinds of tests are performed in the lab, and the quality controls implemented by all the lab analysts. This establishes the ways in which the toxicologist ensures reliability of all test results produced in the lab. This line of questioning should describe with detail how a specimen is accepted into the lab and documented in its records. Also, the testimony should describe how a specimen is stored and handled within the lab, what type of alcohol or drug tests are performed on a specimen, as well as the level of analysis provided each sample and how the resulting data is recorded. This detail will help establish the chain of custody of the specimen and help to assure confidence in the results. During this phase of testimony, the prosecutor should consider educating the judge or jury about any potential weakness in his or her case, too. For example, if the defendant's case involves a urine specimen, the toxicologist may be used to educate the trier of fact about why a urine specimen still reveals

valuable information about the defendant's alcohol or drug use even though a blood or breath specimen may be a better specimen. This may help minimize the impact of any argument the defendant may attempt on cross examination.

The prosecutor may want to consider transitioning into the next phase of questioning by asking the toxicologist to explain how alcohol and / or drugs affect the human body. This testimony can later be used to corroborate the defendant's behaviors observed by the arresting police officer at the time of the traffic stop and after. Next, the prosecutor should ask the toxicologist about the details of the specimen in the impaired driving case for which he is testifying. The prosecutor will want to establish how the defendant's specimen was accepted at the lab and how it was handled every step of the way as it was tested, and the specifics of each test performed on it. Next, the prosecutor will want the toxicologist to explain what data he or she reviewed prior to issuing a final toxicology report and why it is important to review it. Last, the prosecutor will want to ask the toxicologist what the toxicology results are in the defendant's case and what they mean. This last step asks for the expert's opinion and is based on all the information reviewed in the case. A prosecutor must be careful to address the area of expertise in the initial witness meeting so that the final question does not ask the witness to exceed his or her area of expertise. A prosecutor should give the below list of questions to the witness and ask the witness to cross out any question that is beyond the scope of his or her expertise.

A toxicology witness can be a critical witness in an impaired driving trial and may provide essential evidence against the defendant. Expert witness testimony may be intimidating for a newer prosecutor. With prior preparation, a newer prosecutor can examine the expert witness as well or better than many experienced prosecutors.

SAMPLE PREDICATE QUESTIONS FOR A TOXICOLOGIST (BLOOD OR URINE)

The best use of any list of questions is preparation. Hopefully the questions included here will assist the prosecutor and toxicologist to prepare for trial. The prosecutor should remain flexible and listen to the toxicologist's responses. When reviewing these questions, it may be helpful for the toxicologist to strike through those questions that do not apply to his or her experience.

Training/Experience

- Please introduce yourself to the members of the jury.
- What is your occupation? (forensic toxicologist)
- What is a forensic toxicologist?
- What does a forensic toxicologist do?
- What is your educational background?
- What training and experience do you have in the field of forensic toxicology?
- What training and experience do you have that enables you to test blood/urine specimens for the presence of drugs?
- How are you currently employed?
- How long have you worked at the lab?
- What are your duties?
- How long have you been a forensic toxicologist?
- Other than blood/urine, what other substances can be tested for drugs?
- How many cases does your laboratory test annually?
- How many blood/urine tests have you run in your career?
- Have you taught in the field of forensic toxicology?
- Have you published any articles in that field?
- Are you the member of any professional organizations? Please name them.
- Why do you belong to the organization(s)?
- Do you attend seminars or conferences related to your field on a regular basis?
- Why do you attend seminars and conferences?
- Have you ever been qualified as an expert in the field of forensic toxicology?
- How many times?
- In what courts have you been qualified as an expert?
- Were they civil or criminal proceedings?
- In what areas of expertise have you been previously qualified?
- Have you been qualified concerning (Blood, Urine, Breath, Oral Fluids)
- How many times? (for the relevant evidence in this trial)

*“At this time the State would like to tender _____
as an expert in the field of forensic toxicology ”*

- Showing you what has previously been marked as State’s Exhibit ____ [urine/blood report] for identification, do you recognize it?
- How do you recognize it? (bears signature)
- Whose toxicology result does this contain?
- Why did you test the sample of this defendant?
- I am showing you what has been marked as State’s Exhibit Number _____ for identification purposes. (blood/urine kit and defendant’s blood/urine samples) Do you recognize it?
- How?
- Whose sample is this?
- How do you know?
- How did that exhibit come in to your possession?
- How was it packaged and marked?
- Was it in a sealed container?
- Was the seal intact?
- Can you describe its condition when you received it?
- Was there any evidence of tampering?
- When the sealed sample was received, was it identified in any way by the lab?
- How was it identified?
- Where do you store the kits prior to testing?
- Was this sample stored in that area?
- How do you know?
- Is the lab a secured environment?
- What security features does the lab maintain?
- Does the lab have limited access?
- Without discussing the results of the testing, what if anything was done with the blood/urine sample when you received it at the lab?
- Was the sample continuously in the care, custody and control of your lab?
- How do you know that?
- What do you do with the blood/urine kit after you test it?
- Was there a leftover sample for the defendant to do his own testing? (only ask if known)
- What is the next step in the testing procedure? (a lab report is prepared)
- Was a lab report generated for the sample of the defendant, _____?

Testing

- What is the testing procedure used to analyze this sample?
- Can you describe how it works?
- What procedure do you follow when you test a blood sample?
- Is the testing procedure accurate and reliable?
- Do you use any controls during your analysis?

- What controls do you use?
- Why do you use controls?
- How do the controls work?
- Is this testing procedure generally accepted in the scientific community?
- What is considered the best testing method in forensic urine drug testing? Why is this so?
- Is this the same method used in toxicology labs throughout the nation?
- Was the instrument reading accurately and reliably during the analysis of this sample?
- How do you know?
- Blood: Was the defendant's blood clotted or congealed when you ran the sample?
- Blood: How could you tell?
- Blood: Why does it matter whether the defendant's blood was clotted or congealed?
- What did you do with the sample when you were finished?
- From the time you opened the blood kit until the time you tested the samples were the defendant's blood samples in your care custody and control?
- Is State's exhibit number _____ for identification in substantially the same condition as when you finished sealing it after performing the tests?

Move blood/urine kit into evidence

Business Record Predicate

- Turning your attention back to State's Exhibit ____ for identification, was this document made at or near the time of the test?
- Was it made in the ordinary course of the lab's business?
- Are these reports usually kept in the ordinary course of your business?
- Is it a copy or the original?
- Is it a true and accurate copy?

Move lab report into evidence

- Showing you what has been marked as State's Exhibit _____ (lab report), did you review all aspects of the testing of this sample before signing the report?
- What were the results of the laboratory analysis of the defendant's blood/urine sample?

Alcohol

- What does _____ (blood test result) mean?
- What is the legal limit for blood alcohol level?
- What signs and symptoms does alcohol produce in the body?
- At what levels does alcohol begin to produce these effects?
- Have you participated in drinking experiments, sometimes referred to as wet labs?
- Have you read studies from organizations like the American Medical Association concerning the effects of alcohol?
- Is the per se limit established by state law consistent with the study of alcohol in the field of medicine?

- Is it higher or lower?
- If “normal faculties” are defined as the ability to see, hear, walk, talk, make judgments, drive an automobile, etc. and do the many mental and physical acts of daily life, can alcohol, at _____ (blood test result) impair a person’s normal faculties?

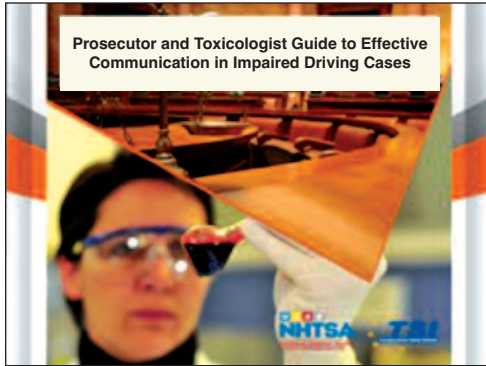
Drug

- Are you familiar with the drug _____?
- How are you familiar with the drug _____?
- Is it a controlled substance?
- Is it a drug that causes psychomotor impairment?
- Is it a substance that causes psychomotor impairment?
- What does the term psychomotor impairment mean?
- Are controlled substances and other drugs and substances divided into categories?
- What is the purpose of these categories? (signs and symptoms)
- What signs and symptoms does the drug _____ produce in the body?
- What category does the drug or substance _____ fall into?
- If “normal faculties” are defined as the ability to see, hear, walk, talk, make judgments, drive an automobile, etc. and do the many mental and physical acts of daily life, can the drug _____ impair a person’s normal faculties?
- Are you familiar with the term “psychoactive”?
- What does it mean?
- How long would ____ drug be “psychoactive” in a person’s system?
- Can you determine how much _____ was in the defendant’s sample?
- Does that have any impact on whether a person is impaired?
- Are safety precautions commonly included with prescriptions for the type of drug in this sample?
- Why?
- Are you familiar with the safety precautions given with the drug in this sample?
- What precautions are given by a pharmacist to a patient who receives this drug?
- What does the term “cutoff” mean?
- Why is that important in reporting your test results?
- What is the minimum level set by the laboratory for a positive finding for this drug?
- What is the purpose of setting a minimum or cut off level for testing of this drug?

If multiple drugs in system

- What other drugs did the defendant have in his system?
- Are you familiar with the terms “additive and synergistic”?
- What does additive mean?
- What does synergistic mean?
- Would the combination of the drugs in this case have an additive or synergistic effect? effect?
- How would the combination of the drugs in this sample change a person’s normal faculties?
- Do drugs of the type in this sample taken in combination have a more serious effect on the brain?

- Do drugs of the type in this sample taken in combination cause psychomotor impairment?
- What does psychomotor impairment mean?
- Are safety precautions commonly included with prescriptions for the types of drugs in this sample?
- Why?



NHTSA recently published a new course called the “Prosecutor and Toxicologist Guide to Effective Communication in Impaired Driving Cases.” Prosecutors and toxicologists can contact their state TSRP with a request to attend this new course.

NATIONAL TRAFFIC LAW CENTER’S 2018 COMMERCIAL MOTOR VEHICLE VIOLATIONS CONFERENCE

By Romana Lavalas, Senior Attorney, NTLC

In June, the National Traffic Law Center (NTLC) held its fifth regional Commercial Driver’s License (CDL) Safety Course entitled, “Commercial Motor Vehicle Violations: Enforcement, Prosecution, and Reporting,” at the Los Angeles Police Department (LAPD) Ahmanson Recruit Training Center in Los Angeles, California. California is part of the Federal Motor Carrier Safety Administration’s (FMCSA) Western Service Center region.

NTLC is committed to improving the quality of justice in traffic safety adjudications by increasing the awareness of highway safety issues through the provision of legal and technical assistance, reference services, and training. According to FMCSA analysis, California ranked as having one of the highest number of fatalities involving large trucks. With this in mind, NTLC held this annual introductory Commercial Motor

Vehicle (CMV) course in Los Angeles to raise awareness of the importance of CMV-related issues and to improve the skill set of the police officers who enforce CMV violations, prosecutors responsible for the adjudications of CDL holders, and judges in this area of the country.

The conference NTLC conducted in Cincinnati, Ohio, last year spanned 1½ days. Attendees at the Cincinnati course indicated the material was too dense to digest over a 1½ day period. Consequently, NTLC expanded the Los Angeles training an additional day, allowing faculty more time to explain the material and attendees more time to absorb it. Eighty-eight people, not including faculty, FMCSA representatives, and NTLC staff attended the LA conference from twenty states including: Alabama, Arizona, California, Colorado, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Michigan, Missouri, Mississippi, Montana, New York, Oklahoma,

Oregon, South Carolina, Tennessee, Texas, and Washington.

Day One of the conference began with an introduction to Commercial Driver's Licenses. This segment was designed to convey the specialized curriculum that potential CMV drivers are required to master before being issued a CDL. Obtaining a CDL requires not only a knowledge test (similar to an application for a passenger motor vehicle driver's license), but a skills test taken in a "representative vehicle." For example, in order to obtain a license that allows the driver to operate a commercial vehicle that requires air

CMV prosecutor, a judge whose docket included CMV cases, and a CMV law enforcement officer. One of the most significant topics dealt with the ethical considerations prosecutors face when dealing with the plea bargaining of CDL or CMV cases.

Day one ended with breakout groups divided by regional jurisdictions, discussing how to tackle the problems related to Masking in their own regions and a group discussion exchanging ideas between jurisdictions. FMCSA concluded day one with a question and answer session including an explanation of its public database, the safety

One of the most significant topics dealt with the ethical considerations prosecutors face when dealing with the plea bargaining of CDL or CMV cases.

brakes, the student must take the skills test in a vehicle with air brakes. Similarly, if a student driver desires to obtain an endorsement to operate a school bus, then that student must, in addition to passing a knowledge and skills test, also pass a specialized test to obtain a school bus endorsement. While recitation of these painstaking requirements can be perceived as dull, they are meant to underscore the fact that CDL holders are a rigorously trained, highly skilled group of professional drivers who should be held to that high standard. The driver's license presentation was followed by a session on Masking, and the importance of ensuring that citations issued at the roadside continue to be recorded on a CDL holder's driving record.

In addition, for the first time, NTLC hosted a CMV panel discussion. This session, which was reported by attendees to be one of the conference's most popular sessions, provided a candid discussion about the challenges of CMV enforcement between those charged with implementing the CDL and CMV regulations. This exposed attendees to the perspectives of a

management system (SMS). SMS "is an automated system that quantifies the on-road safety performance of motor carriers so that FMCSA can identify unsafe carriers, prioritize them for intervention, and monitor if a motor carrier's safety and compliance problem is improving." This system may be helpful to prosecutors (and the public) who want to identify motor carriers and their operators who have a track record of dangerous performance.

Day Two began with a presentation from the National Center for State Courts (NCSC). NCSC is also an FMCSA grantee. NCSC educates judges and court personnel about CDL regulations. NCSC presented the findings from its study of Masking in the State of Indiana. Not surprisingly, one of its key findings was that the plea-bargaining process is at the heart of the Masking problem, particularly because prosecutors and judges are often unaware of the prohibition on Masking. Once educated, prosecutors and judges are in the best position to combat Masking by preventing prohibited dispositions from being entered in favor of CDL holders.

Crash reconstructionist Michael Seruga and Motor Carrier Safety Specialist Timur Nazikoglu provided an in-depth case study about the highly preventable crash of a motor coach in San Bernardino, California. In the facts presented, the CMV driver had ample opportunity to prevent a tragic collision that injured 34 and claimed the lives of 8 people. In the instant case, the CMV driver repeatedly failed to stop the trip despite becoming increasingly aware that the motor coach's brakes were failing. The poignant segment was a reminder about how both motor carriers and CDL holders have a joint responsibility to operate responsibly on the roadways.

The case study segment was followed by a

Attendees were surprised to observe the length of time and the level of detail required to conduct a thorough Level I Inspection.

presentation from a member of FMCSA's legal division, Elizabeth Earleywine. During this session, Ms. Earleywine highlighted the role FMCSA plays in holding carriers and drivers accountable for unsafe behavior. She emphasized the role that the partnership between FMCSA, law enforcement, prosecutors, and the courts plays in "Keeping Unsafe Trucks Off the Road," the title of her presentation.

Day two ended with the highlight of the conference. The LAPD's CMV unit conducted a live "Level I Inspection" of a commercial motor vehicle, in this case, its own flatbed tow truck. A CMV supervisor explained the process to the crowd, while a second inspector maneuvered over, around, and under the truck itself. Attendees were surprised to observe the length of time and the level of detail required to conduct a thorough Level I Inspection (there are a total of seven CMV inspection levels). Participants gained a deeper understanding of the actual time and work required to write just one CMV ticket on an

inspection report. This exercise helped demonstrate why many CMV enforcement officers are frustrated with prosecutors and judges who summarily dismiss citations issued due to a mere lack of understanding about CMV regulations.

Day Three of the conference began with a moving presentation from Truckers Against Trafficking. Guido Hajeneus reminded the group that the trucking community is by and large a law-abiding segment of society. He relayed the stories of Human Trafficking survivors as well as the stories of the hero truckers who rescued them.

Day three included a presentation about the consequences of felony convictions on CDLs and the Drug Recognition Expert (DRE) program's

place in CMV enforcement. NTLC Director Thomas Kimball explained the relevant disqualification provisions of the federal regulations that apply to CDL holders who commit felonies using motor vehicles. LAPD Officer Sardar, a DRE Instructor, treated attendees who may have been unfamiliar with the DRE Program, first conceived in Los Angeles, to an overview of the DRE program. Attendees were also educated about the use of DREs at weigh stations as a tool to combat impaired driving among CMV drivers.

Finally, the conference concluded with the personal perspectives of LAPD CMV enforcement officers who are at the forefront of CMV traffic enforcement. They explained their first-hand experiences with dangerous drivers, poorly maintained trucks, and interactions with impaired CMV operators. Their testimonies reminded us of a truism we in traffic safety often forget: every citation issued that is properly prosecuted, adjudicated and reported is an opportunity to save a life.

STATE SUPREME COURT DECISIONS

Reading Between the Lines

By Tiffany Watson, Staff Attorney, NTLC

In the field of traffic safety, the same issues tend to arise in trials across the country. Issues determined in two states, whether they are adjacent or distant, are sometimes resolved in the same way, opposite ways, and often somewhere in between. To keep prosecutors, law enforcement officers, judges, and other traffic safety partners informed, here are a few notable decisions of various State Supreme Courts.

NEBRASKA

State v. Hatfield, 2018 Neb. LEXIS 108; 300 Neb. 152 (2018).

Facts & Procedural Posture:

In December 2014, two deputies stopped the defendant's vehicle after their radar detected that the defendant was speeding. *State v. Hatfield*, 2018 Neb. LEXIS 108, 3; 300 Neb. 152 (2018). Upon contacting the defendant, the officers noticed he was slow to respond and did not make eye contact. *Id.* Both officers detected an odor of alcohol coming from the defendant's vehicle, however, they could not determine if the odor was from the defendant or his passengers. *Id.* The defendant subsequently admitted that he drank alcohol that night. *Id.* at 4. The defendant showed signs of impairment during SFSTs. *Id.* One of the officers arrested the defendant and took him to have his blood drawn. *Id.* Before the blood draw, the officer read the defendant the "Post Arrest Chemical Test Advisement" form. *Id.* The form advised the defendant that "he was under arrest for DUI, that he was required by law to submit to a chemical test of his blood for alcohol content, and that refusal to submit to the test was a separate

criminal charge." *Id.* The defendant signed the form. *Id.* The blood test confirmed the presence of alcohol in the defendant's blood. *Id.*

The State charged the defendant with DUI, a jury convicted him, and he was sentenced by the court. *Id.* During the defendant's appeal, the United States Supreme court issued the *Birchfield* opinion. *Id.* at 5. The defendant requested that the court consider the *Birchfield* ruling in deciding his appeal. *Id.* The court agreed and found the defendant's warrantless blood draw unlawful, based on *Birchfield*. *Id.* at 5. The court reversed the conviction and remanded for a new trial. *Id.* The State appealed. *Id.*

Issue #1:

Whether the district court erred by vacating the defendant's DUI conviction without considering whether his blood draw was voluntary or whether the good faith exception to the exclusionary rule applied?

Analysis:

Following precedent, the Court found that the good faith exception "applies to warrantless pre-*Birchfield* blood draws..." *State v. Hatfield*, 2018 Neb. LEXIS at 8. The Court reasoned, "[w]e adhere to our reasoning in *Hoerle*. Here, as in *Hoerle*, the blood draw was obtained in accordance with our implied consent statute, which was not clearly unconstitutional at the time of [the defendant's] December 2014 arrest." *Id.*

State v. Petsch, 2018 Neb. LEXIS 119; 300 Neb. 401 (2018).

Facts & Procedural Posture:

An officer observed the defendant driving an

SUV with an expired license plate. *State v. Petsch*, 2018 Neb. LEXIS 119, 4; 300 Neb. 401 (2018). While following the SUV, the officer activated the lights and sirens on his patrol vehicle, however, the defendant continued to drive and make turns. *Id.* The defendant drove for over 45 seconds with the officer following behind with flashing lights turned on the patrol vehicle. *Id.* at 5. The officer eventually approached the defendant while stopped. *Id.* The defendant exited the SUV and was handcuffed without incident. *Id.* The officer placed the defendant in the back of his patrol car. *Id.* at 6. The defendant refused to participate in SFSTs and refused to consent to a search of his vehicle. *Id.* The officer left the defendant alone in the patrol vehicle, and after returning to the patrol vehicle he “immediately detected a strong odor of alcoholic beverage.” *Id.* Additionally, the officer later testified that the defendant seemed “impaired,” had a “slowed response,” and had a “little bit of a problem walking.” *Id.* During a later search of the defendant’s vehicle, the officer found a cup that “contained a ‘strong alcoholic beverage,’” and “one empty 50-milliliter bottle and two unopened 50-milliliter bottles of ‘Jack Daniel’s Tennessee Honey’ whiskey.” *Id.* A chemical test of the defendant’s blood confirmed the presence of alcohol. *Id.* at 7.

The defendant filed a motion to suppress all evidence. *Id.* The county court denied the motion to suppress and the defendant was found guilty. *Id.* at 8. The district court affirmed the defendant’s conviction. *Id.* The defendant appealed to the supreme court. *Id.*

Issue #1:

Did law enforcement have probable cause to arrest the defendant based upon the defendant’s flight?

Analysis:

The Court found “probable cause to support [the defendant’s] arrest for operating a motor vehicle to avoid arrest.” *Id.* at 13. The Court

reasoned, “[the officer] referenced in his testimony that [the defendant] ‘just took off from me,’ as support for his decision to place [the defendant] in handcuffs.” *Id.* Moreover, “[a] reasonable officer could have believed that [the defendant] was operating a ‘motor vehicle to flee in such vehicle in an effort to avoid arrest or citation’” *Id.*

Issue #2:

Did law enforcement have probable cause to arrest the defendant for DUI?

Analysis:

The Court held that, “given the totality of [the] circumstances, probable cause existed to support the DUI arrest.” *Id.* at 16. The Court reasoned that though many indicia of DUI were not present, the strong odor of alcohol, apparent confusion and slowed reaction time, are chief considerations. *Id.* at 15.

NORTH DAKOTA

State v. Ngale, 2018 N.D. LEXIS 167; 2018 ND 172 (2018).

Facts & Procedural Posture:

A volunteer reserve deputy for the county’s sheriff’s office noticed a running vehicle in a ditch. *State v. Ngale*, 2018 N.D. LEXIS 167, 1; 2018 ND 172 (2018). The officer stopped to help, and upon speaking with the driver, the officer noticed a strong odor of alcohol. *Id.* at 2. The officer also noticed that the defendant had trouble keeping his balance, and the defendant admitted to recently consuming alcohol. *Id.* The officer administered three SFSTs, and the defendant showed signs of impairment. *Id.* The officer also administered a preliminary breath test, which indicated the presence of alcohol in the defendant’s blood. *Id.* The officer arrested the defendant and transported him to the county jail. *Id.* the defendant refused to submit to a chemical test of his blood. *Id.*

The defendant filed a motion to suppress all evidence. *Id.* at 3. The district court denied the defendant’s motion. *Id.* The defendant entered a guilty plea but reserved the right to appeal the court’s denial of the motion. *Id.*

Issue #1:

Whether the arresting officer had the authority to investigate and arrest the defendant?

Analysis:

The Court found that “[t]he evidence supports the district court’s findings.” *Id.* at 12. The Court reasoned, “[e]vidence established [the officer] is a ‘reserve officer’ . . . , and therefore he is exempt from statutory licensing requirements.” *Id.* Thus, the officer “had authority to investigate and arrest [the defendant].” *Id.* Further, “the arrest was supported by probable cause.” *Id.*

Traffic Safety Resource Prosecutor NEWS

Welcome to the new TSRPs!

Nevada

Shannon Bryant is a Deputy District Attorney with the Washoe County District Attorney’s Office. He has over 11 years of prosecution experience, including approximately 4 years as an Assistant United States Attorney. As a federal prosecutor, he prosecuted online child exploitation cases and violent crimes in Indian Country, and also acted as the Tribal Liaison for the Department of Justice to the 27 Native American tribes in Nevada. Shannon has prosecuted all levels of criminal offenses, from the most serious murders to traffic offenses, in both state and federal courts. While at the U.S. Attorney’s Office, Shannon also regularly trained state, federal, and tribal law enforcement personnel in various aspects of criminal investigation, including, but not limited to, search and seizure,

suspect interviews, crime scene management, report writing, and on-scene state vs. federal jurisdiction decisions. Prior to becoming a prosecutor, Shannon clerked and was a criminal division staff attorney at the Supreme Court of Nevada. He then spent several years practicing in civil litigation for two established law firms in the state as well as building his own successful law practice. Shannon is a graduate of Gonzaga University School of Law and the University of Maryland at College Park, and is a proud veteran of the United States Marine Corps.

New Mexico

Ashley A. Schweizer is a life-long resident of New Mexico and began her career working in the Internal Affairs Unit of the Bernalillo County Sheriff’s Department. She worked as an Assistant City Attorney and for the District Attorney’s Office and, most recently, she has accepted the

position of Traffic Safety Resource Prosecutor with the New Mexico Office of the Attorney General. She has a passion for crime fighting and is committed to bettering the outcome of criminal prosecutions in New Mexico. In her spare time, she loves CrossFit and adventures with her two little ones.

Ihsan U. Ahmed began working at the New Mexico Attorney General's office in May of 2018. His main responsibilities include training prosecutors and law enforcement, serving as a DWI resource for state agencies, and prosecuting cases when assistance is requested by a local prosecutor or when the local prosecutor is conflicted out. Prior to the AG's Office, Ihsan handled impaired driving-related cases ranging from first offense DWI to vehicular homicide as a prosecutor for the First Judicial District Attorney's Office. He was additionally responsible for the felony DWI intake, presented several cases to grand jury, and conducted preliminary hearings. Prior to becoming a prosecutor, Ihsan worked at a Dallas criminal defense firm handling mainly misdemeanor cases. He graduated in May of 2014 from South Texas College of Law located in Houston, Texas and is licensed to practice in both New Mexico and Texas.

Vermont

Stacy Graczyk became a TSRP for the Vermont Department of State's Attorneys & Sheriffs in July 2018.

She began working as a Deputy State's Attorney in the Department in 2012. Throughout her tenure, she has been responsible for prosecuting a broad range of criminal matters, both felony and misdemeanor, as well as representing the State in civil DUI suspension proceedings, in Family Court CHINS cases and delinquency proceedings. She has also handled post-conviction relief matters and defended appeals in the Vermont

Supreme Court. Prior to this work, Stacy worked for over eight years representing indigent inmates in New York state custody through individual advocacy, and state and federal civil litigation as a Staff Attorney at Prisoners' Legal Services of New York. She handled matters relating to the conditions of confinement such as disciplinary hearings, medical/mental health care, excessive force, and sentence calculations. Stacy received her Juris Doctor with a concentration in Law and Social Justice at the University at Buffalo Law School in 2001 and her Bachelor of Science in Sociology with a Minor in Criminal Justice in 1997.

Washington

Anastasiya E. Krotoff joins the team of Washington TSRPs. She is a Deputy Prosecuting Attorney for Spokane County and was previously assigned to the DUI Repeat Offenders Program Grant through the Washington Association of Prosecuting Attorneys. While assigned to the Repeat Offenders Program, she handled felony DUI and vehicular assault cases. She has also prosecuted numerous DUIs and other traffic offenses in district court, as well as overseen the Intensive Supervision Therapeutic Court for repeat DUI offenders. As a result, she has extensive experience in prosecuting chronic DUI offenders and other traffic-related felony offenses, in addition to superior court procedure. Anastasiya earned bachelor's degrees in Government and International Affairs from Eastern Washington University. She received her law degree from Willamette College of Law in Salem, OR, where she was the editor-in-chief of Willamette Law Online and completed an externship with Spokane County Superior Court Judge Annette S. Plese. In her free time, she enjoys drinking coffee, spending time with her daughter, and tackling home improvement projects with her husband.

Mark Your
CALENDAR
for these Training Dates

CONNECTICUT

October 17, 2018

Drager certification and recertification training for law enforcement at the State lab to include a TSRP presentation on the legal environment for breath test cases.

November 8, 2018

(Tentative; pending final approval) Joint law enforcement full-day training using social media to assist in prosecuting vehicular crimes as well as prosecuting drugged driving crimes (Jim Camp and Idaho TSRP Jared Olson).

November 28-29, 2018

New England Drug Courts Annual Conference, North Hampton, MA

December 10-11, 2018

AAA sponsored DRE and Prosecutor joint training CT, PA, and NY

FLORIDA

October 3, 2018

LEO Basic Trial Prep training, Daytona Beach, FL

October 9, 2018

LEO Basic Trial Prep training, Winter Haven, FL

October 23, 2018

LEO Basic Trial Prep, Havana, FL

ILLINOIS

October 15-16, 2018

Impaired Driving Conference

MAINE

October 21, 2018

Impaired Driving Investigation Review, sponsored by the Maine Highway Safety Office, covers all the elements of an OUI Investigation from stop to report. This will also be open to all Maine law enforcement and prosecutors. Primary focus will be on cannabis impairment as recreational sales begin.

OHIO

October 11, 2018

Prosecuting the Drugged Driver

MY TIME AT THE NTLC

By Tom Kimball, Director, NTLC

As announced last month, NTLC Director Tom Kimball is moving back to Tennessee. Effective Monday, October 15, Tom will begin serving as an NTLC Senior Advisor in a parttime role.

It seems like it was a very short time ago that I became the Director of the National Traffic Law Center (NTLC) at the National District Attorneys Association (NDAA). At the same time, it also seems like a very long time ago that I became the Director of the NTLC. It is unusual that contradictory statements can be so true. Let me try to clarify.

It was 20 months ago that I came to the NDAA in Arlington, Virginia and accepted the Director position for the NTLC. Over the course of a thirty-six-year career, 20 months is a very small amount of time. I left my farm and family back in Tennessee and agreed to begin the new role on a Monday after retiring in Tennessee the previous Friday. On my second day on the job, I ran a conference for NTLC that had been planned by my predecessor, a conference that I had no historical knowledge about, let alone knowledge of the logistics behind the planning.

My immediate need after that conference was to fill positions that had been empty for a long time, which entailed reviewing a lot of applications, reaching out to references, discussing attributes of various candidates, interviewing prospects and discussing short- and long-term goals with grantors. We were able to hire three attorneys: Tiffany Watson, Jeanine Howard and Romana Lavalas. We did that hiring while Kim Brown and Sam Pellegrino worked with me to update numerous compilations of law, write the *Between the Lines* newsletter and represent America's prosecutors at various traffic safety conferences. We were even able to add Pete

Grady to our team as a part-time attorney to help with writing projects and educating prosecutors across the country on a variety of traffic safety issues.

For the last year, the NTLC has been fully staffed and a very busy place. It has been a place of productivity with new compilations, monographs, training courses, webinars, videos, grant applications, articles for partner organizations and speaking engagements. America's prosecutors have been represented at numerous meetings and conferences, a prospective that is sometimes overlooked or underrepresented. New Traffic Safety Resource Prosecutors (TSRPs) have been welcomed and supported. Our efforts to fulfill grant requirements for the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA) have been rewarding in many ways. If our efforts helped prosecutors and law enforcement officers be more effective, then all the effort has been worth it. Effective prosecutors and officers save lives, which is the greatest of all rewards. I even received pay for doing this work that I love.

For family reasons, I have decided to leave my position as Director of the NTLC and return to Tennessee. I have accepted a part-time position as a Senior Advisor to continue the work that never ends, and I remain dedicated to the effort to save lives on our roadways in every way possible. I will miss being in the D.C. area and collaborating with my co-workers, but it is the right time for me to go. It feels like I have been here for a very long time. I hope that I have left some meaningful direction and that many more lives will be saved due to the hard work of the good people at the NTLC. I am looking forward to working as a Senior Advisor. I already have the senior part of that description down pat. It should be fun.

NTLC has begun its search for a new Director. The job announcement can be found on our website at <https://ndaa.org/director-national-traffic-law-center/>. This position is located at the National District Attorneys Association headquarters in Arlington, VA. The deadline for application submission is Friday, October 5th.