

## UPCOMING TRAININGS & CONFERENCES

NDA A is making its National Courses available virtually in light of health and safety concerns over COVID-19. Check out a full list of NDA A's virtual learning sessions at [▶ ndaa.org/training-courses/](https://ndaa.org/training-courses/).

**NDA A's Mastering Masking Digital Course/ On Demand Training (CLE Available)**  
[▶ ndaa.org/training/mastering-masking-2/](https://ndaa.org/training/mastering-masking-2/)

**NDA A's Human Trafficking and the Impact on Commercial Driver's Licenses/On Demand Training**  
[▶ ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/](https://ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/)

**NDA A's Prosecuting DUI Cases Online Course/ On Demand Training (CLE Available)**  
[▶ ndaa.org/training/prosecuting-dui-cases/](https://ndaa.org/training/prosecuting-dui-cases/)

**Prosecuting Gangs in Juvenile Court Part I: Investigations (Live Webinar) (CLE available)**  
December 1, 2021 @ 3:00 p.m. EDT

**Forensic Evidence Course (CLE available)**  
December 6-9, 2021, New Orleans, LA

**Prosecuting Gangs in Juvenile Court Part II: Courtroom Practice (Live Webinar) (CLE available)**  
December 8, 2021 @ 3:00 p.m. EDT

## RESOURCES

**Impaired Driving Resources**  
[▶ ndaa.org/programs/ntl/](https://ndaa.org/programs/ntl/)

**CDL-Related Resources**  
[▶ ndaa.org/programs/ntl/commercial-drivers-license/](https://ndaa.org/programs/ntl/commercial-drivers-license/)

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# The Importance of Judicial Recognition of Cases Involving Commercial Drivers Licenses

*By Hon. Gary A. Graber*

On an almost daily basis, individuals share the highway with others, either as a driver or passenger. Virtually everyone has read about some horrific traffic collision, or unsafe act by another, in a wide variety of vehicles, including commercial motor vehicles. In the worst-case scenario, these situations result in death or serious injury. At best, these situations result in traffic or criminal citations issued against the driver and, ultimately, must be adjudicated in a court of law. Members of the judiciary presiding over these cases must obtain specific commercial driver's license (CDL) related education to understand and effectively oversee the administration of these offenses. This ensures drivers are accountable for their actions, convictions are properly recorded, and dangerous

drivers removed from the road. As a member of the New York State judiciary for over 30 years, I am uniquely positioned to understand that the need for CDL-relevant education and training for the judiciary is imperative, especially as the number of CDL holders operating on our roadways continues to increase.

## A Historical Perspective of the Judiciary's Involvement with CDLs and CMVs

To understand where the CDL judicial training program is going, it is important to know how it began. During the 1990s, a pilot program known as the Commercial Vehicle Enforcement Judicial Outreach Program (CVEJOP) was created in the state of New York. The project began as a partnership project between the Federal Highway Administration (FHA), the New York State Police (NYSP), and the New York Department of Motor Vehicles (NYDMV). As Staff Inspector David McBath of the NYSP, and Judge W. Meyers of the NYSDMV said:

*"Initially, in the 1980s a form of this training was created by NYSP members in response to the NY State Magistrate Court Clerk Association's numerous requests for NYSP members to speak to them about Transportation Law tickets. FHA provided the grant money to acquire education materials and equipment to establish and conduct a pilot judicial outreach training program in NY."<sup>1</sup>*

This series of regional trainings proved to be very successful; over time, however, other additional judicial educational programs developed which resulted in a decrease in CVEJOP training opportunities. As law enforcement increased roadside inspections and other traffic enforcement of commercial motor vehicles (CMV) nationwide, judges once again found themselves without an adequate resource to learn about commercial driver's licenses (CDL) and CMVs. A lack of resources and training on the state and Federal CDL regulations similarly adversely affected both prosecutors and defense counsel in their efforts to handle these cases.

Created more than a half-century ago at the recommendation of a U.S. Supreme Court justice, The National Judicial College (NJC) remains the only educational institution in the United States that teaches courtroom skills to judges of all types from all over the country, Indian Country and abroad.<sup>2</sup>

The categories of judges served by this nonprofit and nonpartisan institution, based in Reno, Nevada, since 1964, decide more than 95 percent of the cases in the United States.<sup>3</sup> Early in 2003, the NJC conducted a Commercial Driver's License Faculty Development Course. This course was funded through a grant from the Federal Motor Carrier Safety Administration (FMCSA). Judicial students learned about the FMCSA regulations and how they were adopted by individual states. This was also, for many of the judicial students, the first time learning of the concept of the "masking"<sup>4</sup> and all the license implications if masking occurred. To complete the training, judicial participants made presentations in their home state about CDLs and reported back to the NJC about how the training was received and what other CDL-related resources the judges needed.

It took some time for states to recognize the importance of CDL regulations and adjudicate CDL-related cases properly. Most judges disposed of these cases in the same way as other traffic cases with little distinction made between CDL and non-CDL cases, frustrating the promotion of highway safety messaging. It seemed that this message was slow to gain any kind of increased attention in the judiciary. Additionally, judicial training and education programs were limited in scope. Due to judicial ethical obligations, collaboration between stakeholders was rarely pursued as a means to address masking and other CDL-related issues.

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<sup>1</sup> "Elevating the Education of the CDL in New York State", *The Docket*, January 2013.

<sup>2</sup> [www.judges.org/about/](http://www.judges.org/about/), accessed November 18, 2021.

<sup>3</sup> *Id.*

<sup>4</sup> 49 C.F.R. §384.226: Prohibition on Masking convictions. Under this regulation, "the State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a commercial learner's permit (CLP) or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State."

## Creating Bridges Instead of Silos in the CDL World

Great strides have been made to increase awareness of the state and federal CDL regulations. The FMCSA provides funding to numerous traffic safety stakeholders to increase training and education for judges, law enforcement, and prosecutors with the objective of reducing crashes, saving lives on our highways, and supporting the “One Driver, One License, One Record” mission.<sup>5</sup> Stakeholders provide resources and support and include the National District Attorneys Association (NDAA), Commercial Vehicle Safety Alliance (CVSA), National Center for State Courts (NCSC), American Association of Motor Vehicle Administrators (AAMVA) and the National Judicial College (NJC). Rather than try to solve the problem individually, these organizations collaborate to craft curricula and other materials to “fill in the gaps” that may have existed by the partners working separately. The created resources are available for free and provided on the stakeholders’ websites.

The collection and analysis of crash and driving incident data has also increased which enables stakeholders to identify risky driving behaviors of CDL holders. Increased implementation of regulations for trucking companies to identify driver and company responsibilities, as well as trainings for employees, require drivers meet medical qualifications, operational safety, and understand the impact of drug and alcohol use. This information provides the proper licensing requirements, company responsibilities, and the knowledge that safe CMV operation does not end with the CDL road test.

Another significant new resource for CDL stakeholders is a program developed by the State of Kentucky. The Kentucky CDL Advisory Committee<sup>6</sup> brings all CDL stakeholders together for regular meetings to discuss current events and issues connected to the world of commercial licenses and vehicles. The Kentucky CDL Outreach Project<sup>7</sup> provides the education and outreach to support the mission. All states should consider similar programs to timely identify potential weaknesses within their geographical boundaries, share information, and save lives on the roads. This is an efficient way for the states to focus on their CDL/CMV educational needs as well as continue to provide the necessary judicial education needed in today’s world.

As judges, our goal is to see justice accomplished and that includes protecting our fellow citizens by preventing crashes and saving lives.

### “But he has a CDL!”

There are negative driver’s license ramifications following a conviction for a CDL holder, including the possibility of losing the license. In turn, without a CDL license, a trucker may not be able to perform his job duties and, as a result, lose his income. Despite increased awareness about the dangers of and prohibition against masking, there is still a popular refrain from defense attorneys in courtrooms across the United States: “But he has a CDL!” Masking (see *Footnote 4*) continues to be a concern for all of us. Post-Covid driver shortages will only exacerbate this issue. Courts play an important role in recognizing the concern of CDL issues and masking. When a court fails to consider dispositions that recognize recordable convictions, the court diminishes the trust and confidence of the public. With the judiciary’s increased knowledge of this subject, the occasional plea bargain must be rejected to avoid masking. This rejection is not only the legally proper action, but it also serves to educate the public. In addition, increased training for court staff to better recognize identifiers on citations assists in appropriate reporting of convictions to the State Driver License Authority (SDLA).

<sup>5</sup> “One Driver, One License, Once Record” refers to 49 CFR § 383.21, the single license requirement that no person who operates a commercial motor vehicle shall at any time have more than one driver’s license.

<sup>6</sup> “The Kentucky CDL Advisory Committee and the Kentucky CDL Outreach Project, Fostering Communication Between Traffic Safety Partners to Save Lives on Our Roadways,” National Traffic Law Center, *Between the Lines*, September 2021, [BTL-Vol-29-No9-Sept-2021-KY-CDL-Advisory-Comm-Outreach-Project.pdf](#) (ndaa.org).

<sup>7</sup> *Id.*

A CDL holder has responsibilities that extend to more than the operation of commercial motor vehicles, so courts and staff should recognize the masking implications involved in a non-CMV case. Masking of a violation committed by a CDL holder in a non-commercial vehicle is also prohibited by the federal regulations. Therefore, every CDL holder should be identified prior to hearing the case regardless of the type of vehicle driven.

As judges, our goal is to see justice is accomplished and that includes protecting our fellow citizens by preventing crashes and saving lives. Everyone using the roads and highways want to arrive safely. The lives we save may be those closest to us. Understanding the masking prohibition and vigilant attention to our professional duties is critical. Having knowledge of the past can guide us in creating a better world moving forward and will allow CDL stakeholders to work together to make our highways safer.

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### About the Author

**Justice Gary A. Graber** has served as the town justice for the Town of Darien, New York, since January 1980. He is a past member of the Town and Village Court Education Curriculum Committee and has taught criminal and administrative courses for the New York State Judicial Institute and the New York State Office of Court Administration. Justice Graber continues to be very active in the development and training of topics relating to commercial driver's licenses and commercial motor vehicles, including the development of sentencing charts which assist the New York courts in properly disposing cases that involve commercial motor vehicle equipment violations. As an alumnus and faculty member of the National Judicial College since 2008, he continually instructs judicial personnel both in their home states and virtually on all matters related to the commercial driver's license. Several years ago, he was appointed by the Hon. Gail Prudenti, Chief Administrative Judge for the State of New York, to sit as a member of the New York State Advisory Committee on Local Courts and is also an honorary member of the New York State Magistrates Court Clerks Association. He is a past president of the Genesee County Magistrates Association and has been a member of the New York State Magistrates Association for over 41 years, serving as a past president, vice president and director in that association. He has received many awards, including the Leadership Award from the Genesee County Magistrates, the 2005 Magistrate of the Year Award, the 2006 Criminal Justice Award from Genesee County Alcohol and Substance Abuse, the 2006 Leadership Genesee Outstanding Alumnus Award, and the 2013 Kevin E. Quinlan Award for Excellence in Traffic Safety.