

National Traffic Law Center Established

Ever wish there was someone you could call when the defense calls an expert witness in a motor vehicle homicide trial; or when you want to find out if the brief you have to write this weekend about the admissibility of HGN has already been researched?

One resource designed to benefit every prosecutor, law enforcement official, or judge who handles highway safety matters is the newly created National Traffic Law Center (NTLC). The NTLC was created in cooperation with the National Highway Traffic Safety Administration (NHTSA), and is the fifth center established by the American Prosecutors Research Institute (APRI). APRI has acquired a national reputation for its leadership in the areas of child abuse, drug prosecution, and environmental protection. The framework and development of the NTLC will be modeled in some respects after the existing centers. In this first issue of our newsletter we are eager to tell you what the NTLC is all about in hopes that each of you will benefit from the Center.

In its mission to effect a system wide approach to dealing with highway safety matters, the NTLC will place high priority on addressing impaired driving issues. Specific objectives of the NTLC are:

- Establish a national clearinghouse for legal information and research on traffic safety offenses.
- Support and develop training to enhance the skills of prosecutors handling traffic safety offenses.
- Disseminate information through newsletters, journal articles, and publications concerning the effective prosecution and adjudication of traffic safety offenses.

To accomplish these objectives, the NTLC engages in a variety of activities. The NTLC identifies and catalogues statutory and technical material of interest to prosecutors and judges. Whether someone is interested in receiving transcripts of defense experts, reviewing model legislation, or verifying the inclusion of a breathalyzer machine on the NHTSA Conforming Products List, the NTLC is designed to accommodate such requests and much more. Technical assistance is provided in all area of trial preparation and strategies, including techniques to counter technical defenses. The NTLC plans to facilitate and develop a network of prosecutors to assist one another with professional issues that are important to them in and out of the courtroom.

The best way to insure that the National Traffic Law Center meets the needs of prosecutors nationwide is to solicit and use their input. The staff at the NTLC encourages you to call us with your questions and comments today.

Center Staff

The director of the NTLC is Tricia Gould. Ms. Gould is a graduate of Loyola University of Chicago School of Law and is a former assistant district attorney from Massachusetts. Jesselyn McCurdy, staff attorney, is a graduate of Catholic University's Columbus School of Law and worked in the general counsel's office of the Metropolitan Police Department in Washington, D.C. Serving as administrative assistant for the NTLC is Candace Rodriguez, a two year veteran of NDAA and APRI.

Frye v. Federal Rules

When faced with a challenge to the introduction of scientific evidence do you automatically think *Frye* (*Frye v. United States*, 293 F. 1013 (D.C. Cir 1923) hearing? When a defendant claims that the Horizontal Gaze Nystagmus ("HGN") test is inadmissible because it is unreliable; what response should the prosecution have ready to present to the court? A number of states do not follow the *Frye* standard for admission of scientific evidence. However, a majority of the states do have some version of the Federal Rules of Evidence 702 and 703 (Fed. R. Evid. 702 and 703) pertaining to expert witness

opinions. To provide guidance for prosecutors, NTLC has written an article addressing the potential use of these rules in order to admit HGN evidence at trial.

State courts have inconsistently ruled on the admission of evidence regarding HGN tests. Some state courts have held that a police officer's testimony, in reference to nystagmus (i.e. involuntary movement of the eye) as part of a field sobriety test, is admissible as a behavioral observation of the suspect by the officer. Police officers have been permitted to use the results of HGN tests to demonstrate that probable cause was properly established during a traffic stop. Prosecutors in other jurisdictions have been required to establish a foundation for the admission of HGN testimony in a *Frye* hearing, which consists of verifying that HGN has been "general[ly] accept[ed] in the particular field in which it belongs." (*Frye*, 293 F. at 1014).

In states that have rejected or declined to follow *Frye*; Rules 702 and 703 of the Federal Rules of Evidence and their comparable state rules of evidence can provide the means for admitting HGN evidence at trial. The NTLC article also examines the potential impact *Daubert v. Merrell Dow Pharmaceuticals Inc.*, (No. 92-102 (argued 3/30/93) a case recently argued before the United States Supreme Court, may have on admission of scientific evidence and the *Frye* rule. Finally, the article relates all these issues to the admission of Drug Recognition Evaluation ("DRE") evidence, a 12 step test used by law enforcement officers to determine if a person is under the influence of drugs. Presently, some state courts do not admit testimony in reference to DRE for many of the same reasons HGN evidence has been rejected.

If you're interested in receiving a copy of this article, contact Jesselyn McCurdy at (703) 549-4253.

Zero Tolerance

With prom season and graduation time upon us, everyone is concerned about teenagers drinking and driving. The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) has promoted the "Zero Tolerance" policy as a means of deterring young drivers from drinking. Zero Tolerance encourages states to enact laws that (1) establish "illegal per se" offenses if there is any measurable amount of alcohol in the blood, breath, or urine of a driver under age 21; and (2) provide for immediate suspension of the driver's license for a person under the age of 21 who is found to have exceeded the applicable blood alcohol concentration (BAC) limit.

NTLC would like to point out several important facts that underscore the necessity of participating in programs such as "Zero Tolerance" or other policies aimed at reducing drinking among underage drivers.

Facts

- More than 43% of all deaths of 15 to 20 year olds result from motor vehicle crashes. An estimated 47% of these fatalities were in alcohol-related crashes in 1991.
- The alcohol involvement rate for young drivers, based on the total licensed driver population, is about twice that of the over 21 age driver. In 1991, 20% of 15 to 20 year old drivers involved in fatal crashes were intoxicated.
- NHTSA estimates that 931 lives were saved in 1991 by age 21 drinking laws.
- Driver license revocation or suspension has proven to be an effective deterrent in reducing crashes and the reoccurrence of alcohol-related driver offenses in the general population.

States with Zero Tolerance Legislation

Presently, sixteen states have adopted laws which require lower BAC limited for underage drivers; Arizona, Arkansas, California, Georgia, Maine, Maryland, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Rhode Island, Utah, Vermont and Wisconsin. The BAC limits in these

states range from 0.00 to 0.06. Nine states have established lower BAC levels for persons under 21 and six states have set their age restrictions at 18; while North Carolina's reduced BAC limit applies to drivers under 19 years old. Sanctions for violations of Zero Tolerance laws include administrative licensing action, fines, participation in alcohol education programs as well as community service.

Between the Lines is published quarterly by the **American Prosecutors Research Institute's National Traffic Law Center**. Items may be reprinted if attributed to **APRI's National Traffic Law Center**. Please provide copies to *Between the Lines*. Direct inquiries and news article suggestions to Patricia Gould at 703-549-4253.