

National Traffic Law Center

The National Traffic Law Center (NTLC) is designed to assist prosecutors and judges who handle traffic safety matters, particularly impaired driving offenses. The services of the NTLC provide prosecutors and judges with the most recent developments in the field concerning caselaw summaries, legislative updates, and research findings. The National Traffic Law Center is the newest of the five programs established by the American Prosecutors Research Institute (APRI), the research, technical assistance and program affiliate of the National District Attorneys Association (NDAA). The NTLC was created in cooperation with and funded by the National Highway Traffic Safety Administration (NHTSA).

A primary function of the NTLC is to serve as a clearinghouse to collect, catalogue, and distribute legal and technical information. When faced with inquiries from community groups about getting impaired drivers off the road, prosecuting attorneys can, for example, obtain the research and statistics concerning the effectiveness of administrative license revocation, ignition interlock systems, and sobriety checkpoints. Likewise, prosecutors who face challenges to breathalyzer machines, blood tests, accident reconstruction, horizontal gaze nystagmus, and other evidence can contact the NTLC for assistance with technical or caselaw research. In addition, the NTLC tracks national legislative changes and can provide research to supplement specific state proposals. In its mission to provide the most thorough and helpful materials available, the NTLC facilitates the direct exchange of information among professionals in the field to prevent duplication of effort while assisting prosecutors to connect with others who have dealt with similar issues.

The NTLC works very closely with NHTSA to develop and facilitate prosecutor training programs. Currently NTLC and NHTSA present two trial advocacy training programs: "prosecution of Driving While Under the Influence," and "Prosecuting the Drugged Driver." Both programs incorporate substantive presentations by faculty with skill-building sessions where participants actually prosecute "cases." The participants are critiqued and videotaped to assist in improving their trial skills.

In large part, the success of the NTLC will depend on making sure that the center continues to meet the needs of prosecutors and judges concerning impaired driving cases. To accomplish its mission, the staff of the NTLC encourages you to contact us with your questions, ideas, and comments.

The Supreme Court's Double Take on Double Jeopardy

Double jeopardy is a legal issue that prosecutors frequently confront. The *Blockburger v. United States*, 284 U.S. 299 (1932) decision bars two prosecutions arising from the same criminal act or transaction under two criminal statutes, unless each state requires proof of an additional element that the other does not. The Supreme Court expanded the *Blockburger* test in *Grady v. Corbin*, 495 U.S. 508 (1990). According to *Grady*, a subsequent prosecution can be denied on double jeopardy grounds, even after it passes the *Blockburger* test, if "to establish an essential element of an offense charged in that prosecution, the government will prove conduct that constitutes an offense for which the defendant has already been prosecuted." Just three years after announcing the *Grady* decision, the Supreme Court has overruled its broad interpretation of the Double Jeopardy Clause in *Grady*. In *United States v. Dixon*, an opinion handed down June 28, 1993, the court returns to the traditional *Blockburger* analysis.

Before *Grady*, the *Blockburger* test was often cited as the standard used to determine whether a subsequent prosecution was barred by the Double Jeopardy Clause of the Fifth Amendment. *Grady* shifted the focus to the conduct the state uses to prove the offense, rather than the elements of each offense. In *Dixon*, the Court rejected the application of double jeopardy to the "same conduct" rule enunciated in *Grady* indicating it "lack[ed] constitutional roots...[and was] wholly inconsistent with earlier Supreme Court precedent and with the clear commonlaw understanding of double jeopardy."

Dixon involved two respondents. The first, Alvin Dixon, was arrested for second-degree murder and released prior to trial. A condition of his release was that he not "commit any criminal offenses" and if he did he could be prosecuted for contempt of court. Prior to his trial on the murder charge, Dixon was arrested and indicted for possession of cocaine with intent to distribute. Dixon was found guilty of

criminal contempt for violation of his pre-trial release. Subsequently, the trial court granted Dixon's motion to dismiss the cocaine indictment on double jeopardy grounds.

The second respondent, Michael Foster, had a civil protection order (CPO) placed against him by his estranged wife based on Foster's alleged past abusive behavior. The CPO prohibited Foster from molesting, assaulting, threatening or physically abusing his wife. In an eight-month period Foster's wife filed motions to have Foster held in contempt of the CPO based on a number of alleged incidents. Counsel for Foster's wife prosecuted the action and the trial court found Foster guilty of four counts of criminal contempt stemming from the violation of the CPO. The United States Attorney's Office obtained indictments for threatening to injure another and assault with intent to kill for conduct deriving from several of the incidents which Foster had previously been found guilty of criminal contempt. Foster filed a motion to dismiss the charges based on a violation of his Fifth Amendment rights and the trial court denied the motion.

The two cases were consolidated on appeal by the District of Columbia Court of Appeals which found both subsequent prosecutions were barred under Grady. The Supreme Court affirmed in part, reversed in part and remanded the District of Columbia Court of Appeals' decision. In overruling the Grady decision the Court acknowledged that the Grady rule caused confusion and that it has become "compellingly clear: the case was a mistake."

Often misdemeanors and felonies arise out of the same alcohol-related crash or fatality. It is important for prosecutors to recognize that in accordance with Dixon, if a defendant has been prosecuted for a misdemeanor, it does not necessarily preclude trying the same defendant for a felony that occurred during the same incident.

Youth

Youth, ages 16-20, are involved in fatal alcohol-related crashes at a much higher rate than drivers in any other age group in this country. At the same time, the actual number of impaired driving arrests for this age group is much lower than would be expected. Nationally, young people are arrested much less frequently for impaired driving offenses in spite of the frequency of their involvement in alcohol-related crashes.

In a report prepared by the National Highway Traffic Safety Administration, several reasons for the low arrest rates as well as obstacles to enforcement among persons under age 21 are identified. Young drivers tend to do most of their drinking on the weekends, especially in the evening hours. Drinking is usually done in large groups on Friday and Saturday nights, and occurs during the same hours that all other police services are in greatest demand. It is more likely that youth will gather to drink in isolated locations, rather than public establishments. As a result, youth impaired drivers do not tend to travel on the main highways where DUI officers routinely patrol. Consequently, unless police departments have added DUI patrols, officers are unlikely to direct their time to the detection of impaired youth. Once detected, it is not unusual for the processing time of a juvenile arrestee by the police to be significantly longer than for an adult because of parental notification requirements and the requirement for separate detention facilities for juveniles.

Alcohol affects youth differently than adults and can result in different behaviors. The traditional psychomotor cues generally detected in the older driver may not be as apparent in the younger driver. Small amounts of alcohol can significantly impair a young person's cognitive abilities causing them to exhibit poor judgement and drive impulsively and aggressively. Young drivers are involved in more crashes with less alcohol than older drivers. Unfortunately, in jurisdictions that have not enacted lower BAC limits for young drivers, the government may decline to prosecute the case in which the BAC is below the presumptive limit, usually 0.10.

Recommendations have been proposed to establish a provisional license system that would require young drivers to demonstrate safe driving for a specified time period before receiving full licensure. Other measure that focus on decreasing crashes involving young drivers are the imposition of nighttime driving restrictions and the immediate license suspension and any under-age 21 driver with any amount of alcohol in his/her blood. The communities that have implemented special youth strategies to deter and detect underage drinking and driving have required strong cooperative efforts among juvenile authorities,

prosecutors and judges. Law enforcement's efforts must be coordinated with the courts to guarantee standardized consequences for youth who consume alcohol illegally and risk their own lives and the lives of others when they drink and drive.

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