

Above and Beyond

by Stephen K. Talpins

Traditionally, training programs and newsletters such as this one focus on legal issues and strategies. However, for my first article, I am going to depart from normal protocol and address a very neglected aspect of our jobs as prosecutors: our moral imperative.

David I. Gilbert is a Senior Trial Counsel with the Miami-Dade County State Attorney's Office. Mr. Gilbert is everything a prosecutor should be: skilled, prepared, honest and compassionate. If you called Mr. Gilbert and asked him about one of his cases by case number, he probably would not be able to answer your question. If you provided him with the defendant's name, that may not help him. However, if you asked him about one of his victims or the victim's next of kin, he could tell you anything and everything you would want to know. Mr. Gilbert does not organize his cases by number or defendant. That is not how he thinks. He organizes his cases by victims and their next of kin because he cares about them.

Unfortunately, the system does not work that way. We live and work in a system that assigns numbers to defendants, charges and victims. A system that focuses on defendants. Defendants who have a right to remain silent. A right to an attorney. A right to a trial. And, if something goes wrong, a right to a "do over." Even, in many cases, if the defendant's own attorney made the mistake!

Can you imagine? Can you imagine what it would be like if we could give our victims and our communities a "do over" and undo the harm the defendant caused? Unfortunately, it does not work that way. *We have to do things right the first time.*

Therefore, it is imperative that we work together to educate and train ourselves as much as possible. When one of us loses a precedent setting hearing, communities across the country may pay for it. Many years ago, a small jurisdiction in Florida lost a hearing concerning the admissibility of the field sobriety tests. As a consequence, the Miami-Dade County State Attorney's Office spent almost \$25,000 conducting a week long Frye hearing re-proving the obvious: the tests work!

At the American Prosecutors Research Institute's National Traffic Law Center (NTLC), we are committed to providing you with the best training and technical assistance possible and to effectively representing you at regional and national meetings. We work closely with the National Highway Traffic Safety Administration (NHTSA) and the National Association of Prosecutor Coordinators (NAPC) to develop and deliver prosecutor training programs, including:

- *Prosecution of Driving While Under the Influence*
- *Prosecuting the Drugged Driver*
- *Lethal Weapon: DUI Homicide*
- *Protecting Lives, Saving Futures*

Our courses incorporate and combine substantive legal theory and skill building sessions to fully prepare students to prosecute complex DUI cases. We also maintain a web site with useful information and links (visit us by going to <http://www.ndaa-apri.org> and clicking on the [NTLC link](#) on the right side of the page), publish monographs, and maintain brief banks, transcripts and expert witness files. Finally, we are available for consultation and technical support.

Please feel free to contact us anytime for help by calling us at (703) 549-4253, e-mailing us at trafficlaw@ndaa-apri.org or mailing us. To maximize our ability to assist you and others, please provide us

The NTLC welcomes new Director Stephen K. Talpins. Mr. Talpins previously served as an Assistant State Attorney in the Miami-Dade County, Florida, State Attorney's Office for twelve (12) years. During the past year, Mr. Talpins also served as the National Highway Traffic Safety Administration-National Association of Prosecutor Coordinators Fellow.

with any transcripts or specialized papers and briefs that you have on any significant issues. Also, please keep us apprised of any potentially precedent setting hearings you have or are aware of. Together, we can give our victims and communities what they deserve: JUSTICE!

Selling the Obvious

by Stephen K. Talpins

Early this year, I visited a world-renowned eye clinic to have laser surgery. I filled out a form that asked what I did for a living. I wrote that I was a prosecutor and turned the form in. Later, I overheard a conversation in the hallway. One person asked, "What's a prosecutor?" The other answered, "You know those lawyers. They're always coming up with new things to call themselves." A doctor entered the room. She asked me if I was a lawyer. I said I was. She sneered, "You're one of the bad guys." I assured her that she was wrong. I told her that I was a prosecutor and that I worked with police. She asked me, "Is that always the case?" I told her "no." She smirked and asked me, "How do you sleep at night?" I was stunned, but managed to respond: "Very well. It's because of people like me that you and your family members can feel safe at night." At first, I was angry. Then I realized that she was not the problem.

WE are the problem. We need to do a better job "selling ourselves." When the public misperceives our role, we cannot do our jobs effectively. Witnesses do not trust us, and jurors are loathe to convict. While the ethical rules limit our ability to comment on specific cases, nothing stops us from keeping the public informed about how we serve it.

Think about it. We should have no difficulty selling ourselves to the public. We are ministers of justice; we are responsible for the public's safety. We fight for truth, not victory. We do far more on far less than anyone could reasonably expect, or even hope for. We may make an occasional mistake, but we do a thousand things right for every error we make. The vast majority of us (and our support personnel) work long hours for far less than we could make in the private sector. Why? Because we understand that prosecution is more than a job. It is a calling. We can and must be proud of what we do. The people in our communities need to understand how lucky they are and how important our jobs are. Sometimes we need to remind them!

Victim groups can and should be an important ally in this crusade. Their pain is real, their messages persuasive. Victim advocates can say and do things no politician or prosecutor could without fear of reprisal. In Miami-Dade County, Florida, the State Attorney's Office (SAO) forged a close relationship with the local Mothers Against Drunk Driving (MADD) chapter. MADD facilitates the SAO's relationship with DUI victims and the community in a number of ways. For example, MADD helps prosecutors work with victims and helps victims understand the prosecutors' roles and obligations in court. More significantly, MADD publicizes and explains how prosecutors and law enforcement officers prioritize DUI cases. Thirty years ago, the community treated driving under the influence of alcohol or drugs no differently than a civil infraction. That is a scary situation, considering that approximately 30 percent of all Americans can expect to be involved in an alcohol or drug related crash during their lifetimes. Today, virtually everyone recognizes the crime's inherent danger courtesy of MADD's educational campaign. MADD helps the community prioritize DUI issues by "putting a face" on otherwise bland numbers through creative media outputs and other measures.

The importance of the SAO-MADD connection cannot be overstated. In October 2002, an appellate court issued a ruling that effectively excluded urine test results in DUI cases. The court's ruling was unexpected. Fortunately, pre-existing, long-standing relationships between prosecutors, victim groups and the community's most safety conscious legislators allowed for an expeditious response. A mere four months after the ruling, State Representative J.C. Planas, a former State prosecutor, and several other House members proposed a bill to rectify the problem. In April 2003, the House passed the bill. The Senate quickly passed a similar proposal and the Governor signed the new law in May 2003. In a matter of months, the public safety community procured legislation that would have taken prosecutors years to obtain without the other parties' cooperation and assistance.

In August 2004, NHTSA released the 2003 crash

As prosecutors we face steep emotional hurdles and challenges that are almost impossible to describe. We see horrors that no one ever should. We handle an inordinate number of cases with limited staff and meager resources. In Miami-Dade County, Florida, where I served for 12 years, a mere *three hundred* prosecutors and *seven hundred* support staff¹ protect a community of almost two million people. Even more impressive, *twenty-six* prosecutors and *eleven* support staff protect approximately *one million* people in Fairfax County, Virginia. Those are not misprints.

We operate in a system that is stretched so thin that we are lucky to get more than an hour to conduct voir dire. How many companies make hiring decisions in an hour? Are our choices any less important? We encounter jurors who think there never is enough evidence. Jurors whose mistaken beliefs are reinforced by television shows that suggest crimes are solved in 30 to 60 minutes and that we cannot prove our cases without forensic evidence.

Still, we do our jobs fairly, honestly and justly. We must never forget why we prosecute and how important we are to the welfare of our communities. We should take whatever steps are necessary to ensure the public understands and appreciates the role we play in the criminal JUSTICE system.

statistics. You may obtain a copy of the report at <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/PPT/2003AARRelease.pdf>.

According to the report:

- There were 6,289,000 car crashes in 2003
- 42,643 people were killed
- Approximately 2,889,000 people were injured
- 17,013 people were killed in alcohol related crashes
- Approximately 275,000 people were injured in alcohol related crashes.

¹ Support staff personnel often deal with even more aggravation than we do for even less pay. We must never forget that we could never do our jobs effectively without their assistance.