

## 911 Anonymous Tips

Americans are arming their vehicles with car phones. Drivers purchase cellular phones for a variety of needs from being able to make business calls while commuting to providing a safety tool in case of a road emergency. Whatever the initial reason for purchasing a car phone, many people are also using their cellular service to assist law enforcement officers by informing them of actual or potential traffic violators. In some states, billboards and road signs encourage motorists to place a call, free of charge, that will be automatically connected to the state police or highway patrol. Often the information relayed to police officers about suspected impaired drivers is given anonymously. If the officer locates and detains an individual based on the anonymous tip, the anonymity of the caller may give rise to defense challenges concerning the validity of the stop.

To determine whether information about a weaving car provided by an anonymous motorist is sufficient to support a traffic stop, most courts scrutinize the circumstances and reliability factors similar to any case involving an anonymous tip. In the case of a suspected impaired driver, courts have noted that it is important for the police officer to:

- Corroborate information obtained from an anonymous source before detaining the suspect. (e.g. license plate number or color of car)
- Observe the behavior described by the anonymous tipster prior to making the traffic stop. (e.g. weaving, erratic moves or speed of travel)

Police officers are put in a difficult position when faced with the decision whether to make a stop when the information is both anonymous and incomplete. Nevertheless, failure to make the stop may pose the threat of serious injury or death to others on the highway. Prosecutors and police can benefit by working together to establish a protocol for dispatchers to use when handling an anonymous call. A protocol can assist in securing as much identifying information as possible, thereby providing the police with multiple variables from which to make a positive identification of a reported car.

## Saliva Alcohol Testing

Presently, DWI/DUI preliminary test instruments, which assist in establishing probable cause, measure alcohol content based on a sample of a person's breath. The National Highway Traffic Safety Administration (NHTSA) has expanded the list of products approved by the agency for detecting the presence of alcohol, to include devices that test body fluids, such as saliva. Preliminary test devices assist in detection of alcohol in individuals who do not exhibit obvious signs of being under the influence. Screening devices also provide an additional means of detecting low levels of alcohol and promote the enforcement of state "zero tolerance" laws, which make it illegal for youth to drive with any or small amounts of alcohol in their systems.

A single-use disposable saliva-alcohol test device has been developed, primarily for medical use but with potential for use by law enforcement. This device is designed to measure saliva alcohol concentration as an estimate of a person's actual blood alcohol concentration (BAC). The device resembles a thermometer and reads the saliva-alcohol content taken from a cotton swab.

Testing of the saliva-alcohol instrument has been conducted by NHTSA in accordance with the model specifications. The first list of conforming products was published in the Federal Register last December. To obtain a list of these products contact NTLC or see 59 Fed. Reg. 61, 923 (Dec. 2, 1994) and 59 Fed. Reg. 65, 128 (Dec. 16, 1994).

## DUI Offenders On The Road

If the following scenario applies to your jurisdiction, please contact the National Traffic Law Center. A significant number of warrants for defendants who failed to appear in court on impaired driving charges sit in file cabinets and are never served. Unbeknown to some prosecuting attorneys, there may be

outrageously high numbers of DUI offenders who after arrest have never shown up for court and who are never counted in the total number of DUI offenders. Prosecuting attorneys take pride in maintaining high conviction rates in DUI cases. Conviction rates, however, are often tabulated by counting the number of cases that result in convictions out of the total number of adjudicated cases. Some jurisdictions may have thousands of impaired drivers out on the road who pay no consequences for their actions. Unfortunately, this issue is highlighted when one of these DUI offenders kills someone and it is discovered that there are outstanding warrants for previous DUI or other traffic related offenses.

The National Traffic Law Center is involved in assessing the scope of this problem in jurisdictions of all sizes. Please contact the NTLC if you have this situation in your jurisdiction.

## Nichols V. United States

### Issue: Use of Prior Uncounseled Misdemeanors to Enhance Punishment

Can a prosecutor use a prior uncounseled misdemeanor guilty plea to a DUI charge to enhance a defendant's punishment for a subsequent offense? During the 1994 term, the United States Supreme Court articulated a clear ruling on the use of prior uncounseled misdemeanor convictions. In *Nichols v. United States*, 114 S.Ct. 1921 (1994) the Court directly overruled an earlier splintered decision in *Baldasar v. Illinois*, 446 U.S. 222 (1980). The *Nichols* ruling:

- held that a prior valid uncounseled misdemeanor conviction may be used to enhance the punishment for a subsequent conviction, even though that sentence entails imprisonment.
- stressed that a defendant charged with a misdemeanor has no constitutional right to counsel where no sentence of imprisonment is imposed.
- supported the notion that a prior uncounseled conviction is valid when under sentencing guidelines there is a potential term of imprisonment for a misdemeanor conviction, but no time is served.
- enabled use of a prior uncounseled misdemeanor conviction to convert a misdemeanor to a felony under some state recidivist statutes.

The *Nichols* Court rejected the argument that a defendant in a misdemeanor conviction is entitled to a warning that this conviction might be used for future enhancement purposes. Noting that many misdemeanor convictions are decided in courts of no record, thereby precluding proof that the warning was given, the Court found it impractical to require such warnings.

## Rail Crossings

Have you ever been on a police ride-along and observed a DUI suspect's driving and watched field sobriety tests administered? Afterwards, did you have a new appreciation of the danger impaired drivers cause on the road? A similar type of ride-along program has been developed by the highway and rail safety organization, Operation Lifesaver, Inc. The "Officer on the Train" program, however, gives judges, prosecutors and police officers the opportunity to ride with the conductor of a train and witness first hand the numerous violations that occur and the risks that drivers and pedestrians take when crossing highway-rail intersections.

Trespass is second only to highway-rail collisions as a cause of death in the railroad industry. In 1993, more than 500 people were killed because of trespassing. Operation Lifesaver, Inc., a cooperative effort among federal, state and local highway and rail safety organizations, effectively addresses the problem of rail-crossing traffic violations through public information and educational programs. The Federal Railroad Administration and the National Highway Traffic Safety Administration are partners in increasing enforcement of traffic laws at rail crossings.

If you have any questions in reference to highway-rail crossing issues such as collisions or criminal trespass, contact NTLC at the number below.

*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.