

## Breath Test Challenges: The Next Generation

Defense challenges to the breath test are not new. Many people are familiar with claims of radio interference, mouth alcohol, and burping. Some other less common challenges, however, may come as a surprise to the unsuspecting prosecutor.

### **Breath test machines are inherently inaccurate, even white bread causes a false reading.**

Where did this "white bread defense" come from? An attorney in Alabama decided to introduce various substances into a breath sample to find out if any of the substances would affect a breath reading. The substances included M & M's, Doritos, lemon juice, and white bread. To view his article, you can go to <http://www.al-drunkdrivinglawyer.com/pubsarticles/bread.htm>.

As you read this article, you may notice that the substances were still in the mouth when the sample was given. Most, if not all, law enforcement agencies require a waiting period before testing which eliminates this defense.

### **The defendant has a tongue piercing and this piercing affected the BAC reading.**

Yes, times do change. This defense is gaining in popularity and there is a study that counters this challenge. Dr. Barry Logan conducted a study on the effects of tongue piercing on a breath test. He used a DataMaster machine and found that the 15 minutes waiting period prior to the test ensured no effect from residual mouth alcohol even with the oral jewelry left in place.

## New NTLC Director

We would like to welcome the new Director of the National Traffic Law Center, Todd F. Sanders. Prior to joining the NTLC, Mr. Sanders worked as a Senior Assistant Commonwealth's Attorney in Fairfax County, Virginia. Mr. Sanders spent a majority of his time trying major felonies, including vehicular homicide cases. He also served on Fairfax County's Oversight Committee on Drinking and Driving. A prosecutor for over eight years, he has tried hundreds of driving while impaired cases and worked closely with law enforcement in implementing strategies to more effectively prosecute the impaired driver. Mr. Sanders received his law degree in 1989 from the T.C. Williams School of Law, University of Richmond, where he served as a member of the Law Review.

## You Drink & Drive. You Lose

In December, 1999, the National Highway Traffic Safety Administration unveiled the "You Drink & Drive. You Lose," impaired driving prevention campaign. The goal is to reduce alcohol-related fatalities from a 1998 figure of 15,935 to no more than 11,000 per year by 2005. To reach this goal, NHTSA has taken a proactive role by:

- partnering with the media to raise awareness of the deadly consequences of impaired driving,
- building and expanding partnerships among local and state organizations,
- creating community support for law enforcement's efforts, and
- encouraging the enforcement of existing laws through active enforcement programs.

NHTSA also provides assistance to state and local law enforcement agencies in planning and publicizing sobriety checkpoints and saturation patrols. This assistance will undoubtedly result in more impaired driving arrests being made. Prosecutors need to be aware of their local law enforcement's increased efforts to apprehend the impaired driver and be prepared when these cases come up for trial. For information on NHTSA's campaign and an online kit to assist in the planning and publicizing of sobriety checkpoints and saturation patrols, go to [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov). To obtain a copy of a state-by-state breakdown of the current status of sobriety checkpoints, please fax your request to the NTLC at (703) 836-3195.

## Prosecuting The Drugged Driver

*Prosecuting the Drugged Driver* is a comprehensive manual written by prosecutors, DREs, and toxicologists. The contents include an overview of the drug-impaired driving problem, drug categories, signs and symptoms of drug

influence and the role of the DRE and the toxicologist in establishing impairment in these cases. Trial issues specifically relating to drugged driving cases are addressed. The appendix contains predicate questions, case law summaries on the admissibility of DRE evidence, research studies and much more.

The development and distribution of the Drugged Driver manual is made possible by funding from the Department of Transportation's National Highway Traffic Safety Administration. To order your free manual, please fax requests to the National Traffic Law Center at 703-836-3195.

### **Arresting Developments**

**Pasadena, California** Lisa Welchert was pulled over for driving too slowly in traffic. An officer took her keys and walked back to his car to fill out some paperwork. During this time, Ms. Welchert pulled out a spare key and raced off. Within a mile, she crashed into another car killing the driver and injuring the two passengers. Testimony at her trial showed her BAC to be between .38 and .42. Ms. Welchert was sentenced to 13 years in prison for gross vehicular manslaughter.

**Howard County, Maryland** First-time DUI offenders get more than just the usual sentence in Judge Louis Becker's courtroom. Along with community service, alcohol treatment, etc., an offender in front of Judge Becker is ordered to read "Under the Influence" by Dr. James R. Milam and prepare a 1500 word essay. The essay must highlight the key points of the book and relate personal observations and experiences. "I just feel a broader responsibility to add some knowledge and hopefully reduce recidivism," explains Judge Becker.

**Nashville, Tennessee** After having a few drinks, a blind man took his friend's car out for a spin and crashed into a tree. Herbert Council, believing he knew the roads well enough to drive with the help of his passenger, suffered minor injuries. Troopers, failing to see the humor in Mr. Council's actions, charged him with DUI. The Rutherford County Court ordered him to pay \$513 in fines.

*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 Todd Sanders at 703-519-1617 or e-mail him at [todd.sanders@ndaa-apri.org](mailto:todd.sanders@ndaa-apri.org).