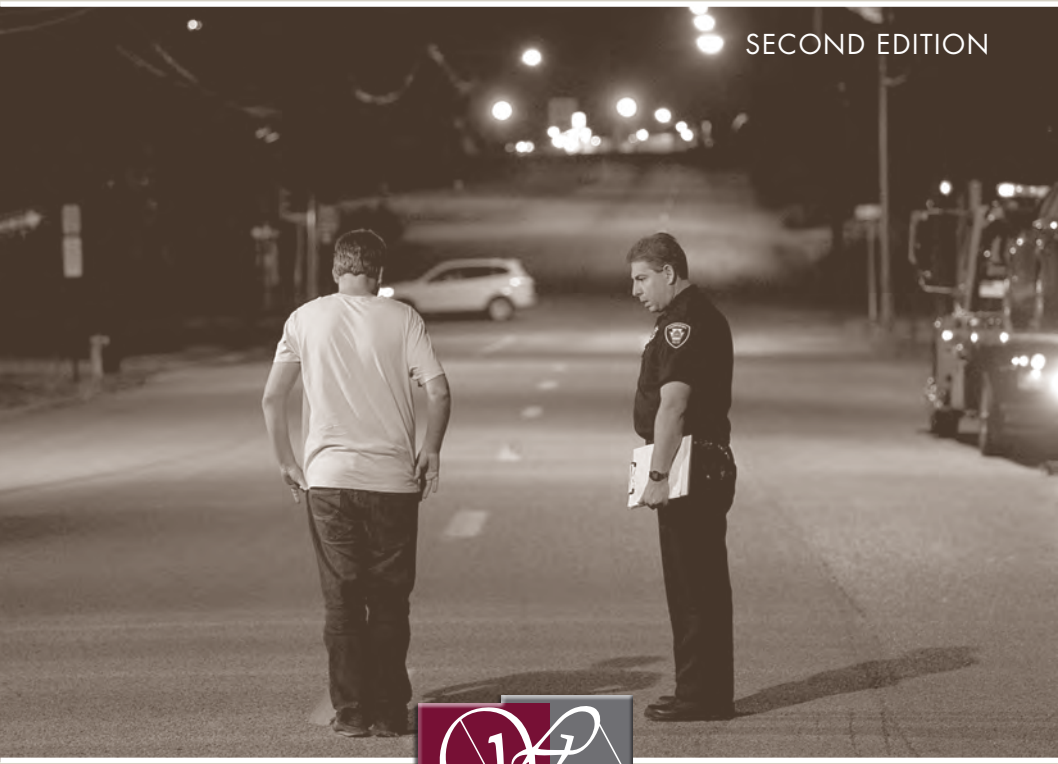
THE GUILT MYTH—*Explained*

DUI DWI
ARREST SURVIVAL GUIDE

SECOND EDITION



T. KEVIN WILSON, ESQ.
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INTRODUCTION

IS THIS BOOK FOR ME?

Yes. This book is for everyone. If you have been charged with a DUI/DWI[1], you need to read this book because it contains valuable information about both the offense of DUI and the various stages of the legal process and it could make a very real difference in your life. But this book is not just for people who have been charged with DUI. This book is a must read for everyone because it contains information that everyone who drives needs to know. Even if you don't drink alcohol, a police officer might still suspect you of driving under the influence and decide to pull you over. In short, this book contains information that is potentially valuable to everyone, but if you have been arrested for driving under the influence—no matter at what stage of the legal process you are—you simply can not afford to put this book down.

WHAT SHOULD I GET OUT OF THIS BOOK?

This book will provide you with a general overview of DUI laws nationwide. You will learn that there are some consistent general concepts of DUI law which are present in every state. However, no

1. Driving Under the Influence (DUI) and Driving While Intoxicated (DWI) are only two common names given for the crime of operating a motor vehicle while intoxicated. From this point forward, we will use the name DUI as a generic label for this crime. While DUI and DWI are the most common, many states have different names for driving under the influence, including DUII (Driving Under the Influence of Intoxicants), OMVI (Operating a Motor Vehicle while Intoxicated), OUI (Operating Under the Influence) and still others. In certain states you can be charged for two separate crimes, a DUI and a DWI, where only one hinges on blood alcohol level.

two states are exactly the same when it comes to DUI law and this book will address some of aspects of DUI law in Virginia as well.

This book contains valuable information about every major step of the DUI legal process. It will tell you some of what you will need to know if you are pulled over by a police officer, if you are arrested, if your case goes to trial, and if the court or the Department of Motor Vehicles considers suspending or revoking your driver's license.

If you are like most people and do not know very much about DUI law, you will learn a great deal from reading this book. However, this book is intended only to be an overview of DUI law, so it does not even attempt to address everything you need to know, and it certainly can not take the place of a hiring a lawyer who is experienced in the specific area of DUI defense to fight for you. The mixture of law, science and medicine makes the defense of DUI cases difficult, and the authors believe it is in large part why so few lawyers are able to do so effectively. Being on the cutting edge of DUI defense requires tremendous dedication and many lawyers simply are not willing to invest the time, money and energy necessary to do so. Finding and hiring an attorney who has the education, training and experience in the specific area of DUI defense is perhaps the single most important thing that you can do after being charged with a DUI. No matter what your situation, if you have been arrested and accused of DUI, you both need and deserve a DUI defense lawyer with the necessary skills, training and experience who will fight for you.

When most people are arrested for a DUI, they know very little about the process and have several questions about what they are going through and how the legal process will unfold. That is why, for

the most part, this book is organized to address the kinds of questions you will probably have along the way. Sometimes knowledge provides empowerment, other times it gives us comfort and peace of mind. If you have been arrested for a DUI, you could probably benefit from both. When you have finished reading this book, if you are more informed, feel more empowered, are better able to play a more active role in fighting for your rights, and feel less anxious about a process you previously did not understand, then this book will have served its purpose.

Whether you think you are guilty or innocent, you deserve the benefit of all the rights and protections to which you are entitled, and an experienced DUI defense attorney will help make sure you get it. But if you know or firmly believe yourself to be innocent, chances are you *are* innocent. Unfortunately, like the countless others who believe they have been falsely arrested for DUI, you must contend with what we call *The DUI Guilt Myth.* According to the Guilt Myth, police never make mistakes and everyone who has been arrested for DUI is guilty of DUI. This is simply not true.

The reality is that officers do make mistakes, and people are mistakenly arrested and wrongfully convicted of DUI. It happens. Since these scenarios are so rarely acknowledged or understood, this book also includes several *Guilt Myth* chapters, which discuss the potential for "false positives." You may even read about the exact scenario that caused you to be arrested and tossed in the back of a police cruiser under false pretenses. But as much useful information as these chapters contain, there are simply too many things that can contribute to a person being falsely accused or improperly convicted of a DUI for us to even attempt to explain them all. Reading this book is a good

start, but it is just scratching the surface of the issues and can not take the place of having an attorney who is experienced and knowledgeable in the specific area of DUI defense protecting your rights and fighting for you.

CHAPTER 1

FACT VS. FICTION— THE TRUTH ABOUT DUI

Driving Under the Influence (DUI) is one of the most common criminal infractions reported, but it is also one of the most misunderstood. Among the public, and even among many attorneys, the truth about DUI is riddled with myth. The unfortunate reality is that many who are accused of DUI do not know their rights, do not hire an experienced DUI defense lawyer, and they receive unfair and unjust penalties—whether they are guilty or not. Before we look at each phase of the DUI process in detail, let us begin by setting the record straight on some common and damaging misconceptions.

MYTH #1: "IF YOU WERE ARRESTED FOR DUI, YOU MUST BE GUILTY."

This is what we call *The DUI Guilt Myth*. Many people assume if a person is arrested, "they must have done *something* wrong." This assumption is especially widespread with DUI and it is a dangerous assumption as it can lead to unjust convictions. No matter what your situation, if you have been accused of DUI, you have every right to the fairness, justice and protection that the American legal system guarantees, including the presumption of innocence.

MYTH #2: "DUI CASES CAN'T BE WON."

Many people hold this mistaken belief and they do not know their rights, so they end up pleading guilty to a DUI charge when they

should have fought the evidence against them. Effectively defending DUI cases is a challenging task, which is precisely why you need to hire a lawyer with the education, training and experience in the specific area of DUI defense to put yourself in the best position to get the best result. The author has tried, and won, DUI cases with blood alcohol concentration (BAC) results as high as 0.29, which is more than three times the legal 0.08 limit.

MYTH #3: "DUI CASES ARE JUST LIKE ANY OTHER CRIMINAL CASE."

This couldn't be further from the truth. DUI law is extremely complex and technical, and it is markedly different from every other area of law. Some people even go so far as to say that there is a DUI exception to the Constitution. For example, in most situations, the Constitution of the United States requires that a police officer must have a "reasonable suspicion" that you are engaged in illegal activity before pulling you over. In layman's terms, this essentially means that an officer must have some concrete reason to believe that a person is breaking the law before they can legally pull that person over. However, this is not true with DUI checkpoints which allow the police stop each and every driver without any reason to suspect or believe that any particular driver has done anything wrong or illegal.

MYTH #4: "A DUI IS A MINOR OFFENSE."

DUI laws get tougher every year. Politicians know that they can gain favor with their constituents by increasing both the number of prosecutions for DUI and the severity of the punishments imposed after conviction. Some police departments provide additional incentives for officers to make DUI arrests by recognizing and rewarding those

with the most DUI convictions. Over the years, a DUI charge has become more and more serious, and in many states the possible punishments include the imposition of a fine and a jail sentence, the suspension or revocation of the privilege to drive, community service work, substance abuse counseling and the installation of a Breathalyzer in one's vehicle. Of course, these punishments or sanctions don't even begin to take into consideration the collateral damage which can flow from a DUI conviction such as possible loss of employment and the ability to earn a living, possible loss of one's home, additional stress on relationships, increased insurance premiums and financial pressures. A DUI is clearly not a minor offense and the effects of a conviction can be felt for many years. The severity of a DUI conviction is yet another reason why it is so crucial that individuals understand the importance of hiring a lawyer experienced in DUI defense to fight for them and make the best out of a bad situation.

MYTH #5: "ONCE YOU HAVE SEEN ONE DUI, YOU HAVE SEEN THEM ALL."

Every DUI case is different. One of the worst mistakes you can make —and a tragically common one—is to assume that your case is just like any other. It is not. The complex combination of law, science and medicine insures that no two cases are exactly alike. Prosecutors generally stick to the same line of questions to prove their case, but a good defense lawyer will know how to point out how your case is different.

MYTH #6: "ANY ATTORNEY CAN EFFECTIVELY HANDLE A DUI CASE."

This is like saying that any doctor can do brain surgery. Like medicine, law is an area where it is impossible for one person to have all the knowledge, training and expertise to handle every kind of case at the highest level. You might know a divorce lawyer, a business lawyer, a domestic relations lawyer, or even a general criminal defense lawyer who you believe is decent, trustworthy and competent in that field—all of which are important traits to look for in an attorney—but these qualities can not make up for a lack of education, training and experience in the specialized and technical field of DUI law. You would not want your brain surgery performed by anyone other than a brain surgeon, and you don't want your DUI case handled by anyone other than an experienced attorney who has been educated and trained for DUI defense.

CHAPTER 2

WHAT ARE THE COSTS OF A DUI ARREST?

If you have been arrested for DUI, you have probably realized that the emotional and financial costs of a DUI arrest are great. Emotionally, there is the shame and embarrassment of being arrested; having to go to court; dealing with the Department of Motor Vehicles (DMV); telling your friends, family, perhaps children, and maybe even your boss; and wondering and worrying about whether you will be judged and viewed differently by others. The emotional and psychological costs of a DUI arrest are different for everyone, but when it comes to the money, everyone is in the same boat.

Even if you decide not to fight the charges against you, your financial well being will still take a big hit. The costs start immediately after the arrest, as your vehicle may be impounded, you may miss work due to being in jail or having your license to drive administratively suspended, and you may even have to post a bond to be released from jail. If convicted, you will have to pay a fine, court costs, and perhaps a penalty and surcharge. If you are sentenced to serve time in jail, and if you are allowed to participate in the Sheriff's work program, it will likely cost money to do so. You may also have to pay a fee if you are allowed to choose, within certain limits, when you serve your jail sentence so that it is the least disruptive to your life. You will likely be ordered to complete a course on alcohol education

for which there will be a fee, and you may be ordered to undergo substance abuse treatment as well, for which there will likely be an additional fee. And, of course, at the end of all of this, you will have to pay the DMV to get your license reinstated.

It does not stop there. Some cases result in the court ordering that you have an Ignition Interlock Device installed in your vehicle(s). An Ignition Interlock Device is basically a breathalyzer that is put in the steering column of your car. You must blow into the unit before starting the vehicle and if it measures a blood alcohol concentration (BAC) above a certain level, the car will not start. Once the vehicle is running, must periodically provide subsequent breath samples to keep the vehicle running. Of course, if this is ordered in your case, in addition to the embarrassment of having a breathalyzer installed in your vehicle(s), you also will have to pay a fee. Essentially you end up renting the equipment, so you may end up paying an initial installation fee followed by a monthly fee during the period of time the equipment is installed.

There is also a cost when your license is taken away. In many states your license is immediately administratively suspended when you are arrested. Some states may allow you to have a temporary license during this period which would permit you to continue to drive legally for limited purposes. However, other states do not allow any such temporary license and you are not allowed to drive a motor vehicle at all during the period of administrative suspension. If you are like most people, you will probably still need to get around during this time, whether it is to and from work, school, or day care for your children, the grocery store, the bank, and so forth. Although you will

not have to pay for gas if you aren't driving, public transportation is rarely free and taxi cabs get very expensive very quickly.

If you are ultimately convicted of a DUI, your license will likely be suspended again by the court or DMV and you will be right back in the same situation of either having your ability to drive significantly limited or not being able to drive at all. Some states may allow you to apply for a temporary license or a restricted license, but other states do not. If you are allowed to apply for a limited license, there are often fees associated with such licenses and the reasons for which you will be able to legally drive will be significantly limited—which may impact your ability to maintain employment, earn a living and provide for yourself and your family. If you continue to drive while your license is suspended and are caught, you will be charged with additional offenses which may result in additional fines, court costs, jail sentences, and license suspensions.

Another cost will be your insurance rates. After the court or the DMV suspends your license, you will need to have a certain kind of insurance before you can get your license back. If you can find an insurance company that provides it—not all do—this type of insurance is usually significantly more expensive, as you would probably guess. And since this kind of insurance is a tell tale sign of a DUI conviction, some insurance companies will simply refuse to insure you in the future.

CHAPTER 3

"HOW DO I AVOID BEING STOPPED BY THE POLICE?"

There are preventative steps you can take to avoid being pulled over by the police in the first place. Many of these steps will help you avoid making the driving mistakes that might cause a police officer to think you are impaired and decide to pull you over.

DON'T DRINK AND DRIVE

The only way to be absolutely positive that you will not be stopped and arrested for DUI is to never drink and drive. If you plan on drinking then simply don't drive. Take a taxi, have a designated driver or make arrangements to stay somewhere for the night. The most expensive taxi fare or hotel room pales in comparison to what an arrest for DUI will cost you.

KNOW THE VEHICLE

If you are at all uncomfortable or unfamiliar with the vehicle you are driving, you are much more likely to make mistakes or drive erratically. And if you are not driving well, you are more likely to get stopped by a police officer.

If you are driving a vehicle you are not used to—a friend's vehicle, a vehicle you just bought, a rented vehicle, or a vehicle you have not driven in some time—it is important that you take a moment to

remind yourself where everything is before you start to drive: emergency brake, gear shift, turn signals, windshield wipers, headlights, high beams, and so on. Also make sure that the seat, steering wheel and mirrors are adjusted properly for you.

CHECK THE LIGHTS AND STICKERS

Take a moment to make sure all the head lights, tail lights, turn signals, etc. are in working order and that the registration, inspection and county stickers are current. Police officers often use a minor vehicle infraction like broken taillights or expired tags as a reason to stop a vehicle. Things like broken taillights are especially likely to get you pulled over at night when they can be easily seen.

KNOW WHERE YOU ARE GOING

Before you start driving, make sure you know where you are going, how to get there, and how to get back home. Getting lost and searching for the right place to turn will often lead to frustration and cause erratic driving.

KNOW WHERE NOT TO GO—AVOID SOBRIETY CHECKPOINTS[2]

Keep alert to sobriety checkpoints, especially during holiday periods. While the police may be legally required to notify the public of where and when the checkpoints will be, you may not have gotten the information in time. Before you go out, check the newspapers or websites of your local area.

2. You should find out whether your state conducts Sobriety Checkpoints. Though most states have them, some have made them illegal.

FOCUS ON DRIVING

Avoid searching for a cigarette, talking on the phone, sending text messages, fiddling with the radio, arguing with your passengers, etc. while driving. These are all distractions which take your attention off of what is important—how you are driving.

KNOW YOUR RIGHTS

If the unfortunate occurs and you are stopped, know your rights and what to expect when you are pulled over. This book will provide some of this information for you.

CHAPTER 4

"I'VE BEEN PULLED OVER BY THE POLICE— WHAT SHOULD I KNOW?"

If you are driving and you see flashing lights behind you, remember that the officer is already collecting evidence against you. Be aware of how you conduct yourself and how you interact with the police officer because everything you do and say may be included in a police report, including the reason that the officer pulled you over in the first place, how long it took for you to pull over and whether you did so safely.

"WHY HAVE I BEEN PULLED OVER?"— REASONABLE SUSPICION & PROBABLE CAUSE

The first thing that you may wonder is why you have been stopped. In most situations, for a police officer to legally pull you over, the officer must have a "reasonable suspicion" that you were breaking the law. There are many things that give a police officer the necessary "reasonable suspicion" to pull you over, and some of the most common reasons given in DUI cases are listed below.

- Crossing lane markings
- Swerving
- Making a wide turn

- Making an illegal turn
- Weaving in your lane
- Braking frequently
- Nearly hitting an object or another car
- Driving more than 10 mph below speed limit
- Not using turn signals
- Driving with headlights off
- Accelerating or decelerating too quickly
- Improper stopping
- Inappropriate turn signals
- Following too closely

Of course, just because a police officer pulled you over for the way you were driving does not necessarily mean that you were driving under the influence. As we will see, although providing a non-alcohol related explanation for your driving may not help while you are on the road with the officer, it may be crucial in a license suspension hearing, if there is one, and in a criminal case if you are charged with a DUI.

While you may feel that what the officer is doing is unfair, unreasonable, or even illegal, it is never a good idea to argue with or insult

the officer. It will certainly make the experience a bit more unpleasant, and could even lead to you being arrested when you otherwise wouldn't have been. And remember, all the negative things you say and do will be included in the written report, shared with the prosecuting attorney and perhaps even told to the judge or jury.

"I'VE BEEN PULLED OVER—WHAT SHOULD I DO?"

Once you are stopped, the officer will approach your vehicle to talk with you. The officer will likely first ask you to provide your drivers license, registration and proof of insurance. Although refusing to identify yourself is not a crime in some states, if you do not promptly provide the documents the officer has requested, the officer will likely search your vehicle and look in any location within the passenger compartment where the drivers license or vehicle registration may be. If this is something you want to avoid, be sure to have your license and registration in a location where you can obtain it immediately so the officer does not have this as a reason to search your car.

If an officer suspects that you may be driving while intoxicated, the officer will conduct an investigation, during which the officer will be looking for evidence of possible impairment. From the moment the officer first makes contact with you the officer will be looking for anything that suggests impairment from drugs or alcohol. If the officer believes that the investigation revealed evidence establishing probable cause to believe you were driving while under the influence (DUI), you will be arrested. Some of the traditional indicators of possible intoxication that officers look for are:

1. Odor of alcohol

2. Bloodshot or watery eyes

3. Slurred speech

4. Flushed face complexion

5. Lack of coordination/fumbling to find your license

6. Non-responsive answers to questions

7. Lack of awareness of location, time of day, etc.

At some point the officer will probably ask you if you have consumed any alcoholic beverages. It is perfectly within your legal rights to politely refuse to answer any or all questions the officer asks, and often times not answering any questions is the smartest decision as well. The officer might still decide there is enough evidence to arrest you, but simply refusing to answer the officer's questions is not reason enough. However, the downside of refusing to answer the officer's questions is that you will look suspicious and irritate the officer, which is why, if you have not had anything to drink, it may be wise to simply answer the officer's questions.

But no matter how you answer, if the officer still suspects that you were driving under the influence, he will ask you to exit your vehicle.

"I'VE BEEN ASKED TO GET OUT OF THE CAR—DO I HAVE TO?"

If you have been stopped and the officer asks you to get out of the car, you must do so or you will be arrested. If the officer pats you down, do not physically resist, although you can legally say that you

do not consent to being searched, or "patted down." The officer may then ask to search your vehicle. You have the absolute legal right to say no. The officer can not arrest you simply for refusing consent to search your vehicle. In some limited cases, however, your car can be searched without your permission, and without a warrant, as long as the police officer has probable cause to believe that you have committed a crime. Even if you think that what the officer is doing is illegal, do not physically resist. If a court decides that an officer illegally obtained evidence against you, it will not be used at trial. You should know that if an officer asks you to get out of the car, it is likely because the officer suspects you are impaired and is going to ask you to take field sobriety tests or submit to a breath test.

"I'VE BEEN ASKED TO TAKE FIELD SOBRIETY TESTS—WHAT DO I DO?"

"Field Sobriety Tests" (FSTs) are exercises designed to evaluate your motor skills and coordination, as well as your mental attention and ability to process information in order to help an officer determine if you are impaired. You have the legal right to refuse to perform field sobriety tests, although a court may believe that you refused the tests because you believed you were impaired and would fail. A good way to refuse taking field sobriety tests—or anything that a police officer asks you to do—is to say, "I'd like to speak to an attorney first."

If you think you want to perform the field sobriety tests because you think you will pass them, think again because unless you do absolutely everything perfectly, the officer will conclude you failed the test. Unlike other tests you've taken, you don't "pass" with an A- or B+: you either score 100% or you "fail." If you agree to attempt field sobriety tests, the officer will probably ask you to do some,

and perhaps all, of the following five exercises. Remember to follow instructions completely and to not start until the officer specifically tells you to start.

1. HORIZONTAL GAZE NYSTAGMUS

In this exercise the officer is looking at what your eyes are doing. The officer will be looking to see if your eyes are jerking as they follow an object from side to side which is approximately twelve to fifteen inches from your nose, as this may suggest alcohol impairment. You will "fail" this test if the officer sees your eyes trembling or jerking.

2. STANDING ON ONE LEG & OTHER BALANCE EXERCISES

These tests are designed to measure your balance, sometimes while your mental attention is focused on something else. One possibility is that the officer will instruct you to place your hands at your side, extend one foot so that it is approximately six inches off the ground and count by thousands ("one, one thousand, two, one thousand,...") for a specified period of time. You may also be asked to pick up an object off the ground. The officer will be looking to see if you begin too early, count incorrectly, lose your balance, raise your arms, fall over or display poor coordination.

3. WALK AND TURN

In this test, you probably will be asked to keep your hands at your side and walk a certain number of steps along a line touching your heel to your toe, turn in a specified manner, and walk a certain number of heel-to-toe steps back toward where you started. You will "fail" this test if you begin too early, step off the line, raise your arms from your side, lose your balance, turn incorrectly, take the wrong

number of steps, fail to count each step aloud or fail to touch your heel to your toe on each step.

4. FINGER TO NOSE

This test involves standing erect with your feet together, eyes closed and arms extended to your sides, then touching your left or right index finger to the tip of your nose on command. You will "fail" this test if you begin too early, have trouble maintaining your balance, miss the tip of your nose, use the wrong hand or show any sign of muscle tremors.

5. THE RHOMBERG BALANCE TEST

In this test, the officer will instruct you to stand erect, close your eyes, tilt your head back and estimate how long it takes for thirty seconds to pass. The officer will be looking for any muscle spasms or tremors, swaying, and to see whether alcohol might have slowed down your perception of time.

"DID I PASS THE FIELD SOBRIETY TESTS?"

Whether you pass or fail is based totally on the officer's personal observations and impressions. Remember, at this stage these tests are entirely subjective—they do not conclusively determine whether you are under the influence or not. Remember, you were probably asked to take field sobriety tests because the officer suspected you were impaired. At this point the decision to arrest you has probably already been made.

Of course, there are a number of factors that can influence how you perform on these so called field sobriety tests that have nothing to do with alcohol or being drunk. Environmental conditions such

as how even the pavement is, whether it is gravel or concrete, the volume of traffic passing by (which will likely slow down to stare at you), the amount of lighting available, and the weather (you could be shaking because you are cold, not intoxicated, for example)—can impact how you perform. In addition, your physical condition may impact your performance. We all have different degrees of physical dexterity and whether you are overweight, elderly, or have physical impairments with your limbs, back, or eyes can affect your performance. Even the type of shoes you are wearing might be a factor. Finally, you are probably *very* nervous, humiliated, angry, scared and tired, all of which will have an impact your level of dexterity and ability to recall and follow instructions. Interestingly, studies show that sober people "fail" these tests as well.

No matter which field sobriety tests you may have taken, and no matter how well you think you did, the officer will say you failed them. An experienced defense attorney who has been trained on field sobriety testing will know how to ensure that you are not convicted simply because of the police officer's personal observations and opinions. In the next chapter we will take a closer look at field sobriety tests and their questionable validity as measures of intoxication and impairment.

PRELIMINARY BREATH TESTS

The other test that you may be asked to take is a preliminary breath test (PBT). Just like the field sobriety tests, in some states you have the legal right to refuse to take a PBT. However, if an officer believes you are impaired and you refuse the PBT, you are still going to be arrested.

Based on the amount of alcohol in your breath the PBT estimates the amount of alcohol in your blood, which is what determines whether you are "above the legal limit." In most states a roadside breath test is not considered scientifically accurate, so it can not be used as evidence against you at trial. However, it can often be used as evidence to support probable cause for arrest and at a DMV hearing, which some states have to determine whether your license should be suspended. We will scrutinize the reliability of these tests in the next chapter.

"DID I SAY TOO MUCH?"—INCRIMINATING STATEMENTS OR ACTIONS

One of the most common mistakes that people make when pulled over by a police officer is saying too much. It is important to remember that *everything* you say and do from the point you are approached by the officer until you are released from custody can be included in a police report and used against you at trial. You should provide any documentation requested by the officer, but you do not have to answer any questions.

Once you are arrested, the officer is then required to "read you your rights" if the officer wishes to continue to ask you questions. These *Miranda* warnings—which most of us know from movies and television—advise individuals of their constitutional rights to remain silent, to not answer questions that would incriminate them and to have a lawyer present before answering any questions. If the officer does not read you your *Miranda* rights, statements that you make from that point on may be excluded from your trial.

Although some people are aware that they have the right to remain silent and not answer questions after they are arrested, many people do not know that even before they are arrested they have the same right to remain silent and refuse to answer questions that might incriminate them. The rights that are listed in the *Miranda* advisory are rights that we always have, not just when we are arrested.

CHAPTER 5

"THE GUILT MYTH"—FIELD SOBRIETY TESTS, SLURRED SPEECH AND ROADSIDE BREATH TESTS

There are a number of reasons that police officers give for arresting someone for a DUI. Three of the most common reasons are (1) "failed" field sobriety tests, (2) slurred speech and (3) a PBT result which is above the legal limit. In this chapter we will examine each of these things in more detail and show that, contrary to what is commonly assumed, they are far from infallible indicators of intoxication.

FIELD SOBRIETY TESTS

Remember from the last chapter that by the time an officer asks you to perform field sobriety tests, the decision to arrest you may have already been made. At this point, despite what the officer says, the officer is looking for evidence that you are intoxicated to build a case against you. As we all know, when we look for something we tend to "find" it everywhere, and if an officer believes you are impaired, the officer is more likely to conclude that everything you do wrong is the result of alcohol impairment. This is simply a fact of human psychology, and police officers are only human after all. However, this introduces bias into a process that ideally should be objective.

In spite of this bias, we still hope officers have been trained to objectively interpret a subject's performance on field sobriety tests, and reliably predict whether a person is impaired based upon the subjects performance of field sobriety tests—and this is precisely what most people think. Most people assume that if an officer says that someone failed a field sobriety test the person was almost certainly drunk. This assumption is understandable given the stereotypical DUI scenario that most people have in their mind: someone who, when asked to walk a line, wobbled along before falling flat on his face. Even if we concede that reality does not always fit the stereotype, we still want to believe that police officers should be able to tell—maybe not 100 percent of the time, but at least most of the time—whether a person is drunk or not based on their performance on these field sobriety tests.

Unfortunately, this is just not the case. Two researchers from Clemson University decided to do an experiment to see how good police officers were at distinguishing someone who is under the legal limit from someone who is too drunk to drive, based entirely on watching them perform field sobriety tests.[3] Fourteen local police officers were shown videotapes of 21 subjects taking six common field sobriety tests and were asked to decide which were too intoxicated to drive. On average, the police officers determined that 46 percent of the subjects were legally intoxicated.

So how did these trained police officers do? Not well, considering that not a single subject had consumed any alcohol. None. The BAC of every subject was 0.00 percent. This is a particularly disturbing result because if these people were pulled over, nearly half of them

3. Cole and Nowaczyk. "Field Sobriety Tests: Are they Designed for Failure?" *Perceptual and Motor Skills Journal.* 79 (1994): 99-104.

would have been improperly arrested based on the performance on the field sobriety tests.

In addition to performing field sobriety tests, the subjects in this study also performed a number of "normal abilities" tests, including counting from 1 to 10, walking normally, and reciting personal information (such as their Social Security number, drivers license number, date of birth, home address and phone number). The police officers—who judged 46 percent of the subjects to be intoxicated from watching them perform FSTs—determined that only 15 percent of the subjects were intoxicated when watching them perform these "normal abilities" tests. The moral of the story is this: **compared to "normal" activities, field sobriety tests had the effect of making people appear drunk to police officers.**

Study illustrated field sobriety tests are not necessarily reliable indicators of impairment since the field sobriety tests indicated completely sober people were impaired. Would more training help? Can anybody make fairly reliable judgments based on field sobriety tests? Surely these tests have a sound basis in science. Right?

Wrong again. Field sobriety tests have little to no scientific basis. Here is a quick history of modern field sobriety testing. In the late 1970s the federal government gave a grant to a research group called the Southern California Research Institute (SCRI) to come up with a procedure for administering field sobriety tests that was more reliable than the ones being used at the time. The tests that the group eventually came up with, by their own admission, were still far from perfect. The data showed that roughly half of the subjects tested would have been arrested, despite their BAC being under the legal

limit. Unsatisfied with these results, the federal government gave SCRI another crack at it. In 1981 they came up with some better data. This time only approximately 30 percent of the subjects would have been falsely arrested.

In 1981, SCRI published a report claiming that the barely passable 32 percent false arrest rate has been brought down to a confidence-inspiring 9 percent. Is this because these tests have been refined and "standardized" with established guidelines for administration and interpretation? While this is certainly what they claim, a careful examination of the actual studies that yielded these results paints a very different picture. A few researchers obtained their data and experimental design through the Freedom of Information Act and made a startling discovery.[4] What they found was that a large proportion of the subjects had blood alcohol levels so far over the legal limit that their performance on FSTs was nearly irrelevant.

While it might sound unfair or exaggerated, the legitimate scientific studies on field sobriety tests point towards an unsettling conclusion: field sobriety tests are not only unscientific and unreliable, but, in the way they are actually used on our roads, are designed to make people fail.

You yourself may have been a victim of an officer's inability to interpret your performance on field sobriety tests, as well as the lack of sound science behind these tests. If you are fairly certain, or completely certain, that you were not driving with a BAC above the legal limit, but you still "failed" field sobriety tests, then this is precisely what happened to you. The best thing you can do is to

4. Hlastala, Polissar and Oberman. "Statistical Evaluation of Standardized Field Sobriety Tests." *Journal of Forensic Sciences.* 50(3) (2005).

find an attorney who knows the truth behind these tests. Some of the most dedicated DUI Defense lawyers have actually completed the National Highway Traffic Safety Administration (NHTSA)/ International Association of Chiefs of Police (IACP) curriculum on the Standardized Field Sobriety Tests. **When searching for a lawyer to handle a DUI case, you should insist that the lawyer you hire has completed the NHTSA/IACP curriculum on Standardized Field Sobriety Tests.**

SLURRED SPEECH

There is also a good chance that, in addition to testifying that you "failed" field sobriety tests, the officer will testify that your speech was slurred. Slurred speech is one of those commonly accepted indicators of intoxication. But is it really true? Is slurred speech a reliable indicator of intoxication?

Yes and no. "Yes" in the limited sense that intoxication is indeed a cause of slurred speech. If someone has been drinking heavily, it can affect the person's manner of speech. And if someone who does not usually speak with a slur is slurring his or her speech it is reasonable to conclude the person may have been drinking. Research has indeed shown that most people can differentiate between sober and intoxicated speech when listening to recordings of people talking.

However, this does not mean that it is possible to judge, with a high degree of reliability, that a person is above the legal limit simply based on listening to them talk. Remember, driving after drinking alcohol is not against the law—unless your blood alcohol concentration is above a certain limit or you are impaired. So let us put the question a different way.

Can a person accurately distinguish between someone who is too drunk to drive versus someone who consumed alcohol but can nonetheless drive legally, simply based on how they talk? The answer is decidedly "No." Studies have shown that even experts in speech analysis are not much better than the average person, or the average police officer for that matter, at making this kind of judgment. It is true that both experts and non-experts can usually tell a person who has been drinking heavily from someone who has not, but neither can consistently determine the relative amount of alcohol a person has consumed.

The other problem with using speech as an indicator of intoxication is that alcohol is not the only thing that causes one to slur. The most common of these other potential causes of slurred speech, and the most likely to lead a police officer to make an unfair assumption, is stress. Stress can have a number of different effects on speech, such as a higher pitch, stuttering, and, yes, slurring. And as we all know, being pulled over is always a stressful experience. When we are extremely preoccupied with saying the right thing—as we are when talking to a police officer—we often can not seem to form a normal English sentence, much less speak eloquently.

THE ROADSIDE BREATH TEST

I know what you're thinking—if the machine says I'm over the limit, it must be true, right? Wrong. The portable breath test, or PBT, which is used on the roadside, and the somewhat more sophisticated breath-testing machine at the police station, are both subject to error. Both of these machines share a significant weakness because they work the same basic way—by attempting to measure the amount of

alcohol in the breath and then using that measurement to estimate the amount of alcohol in the blood.

One important factor that can influence the result of both of these tests is the breathing pattern. One study showed that holding your breath for 30 seconds before blowing into the breathalyzer increases the result a whopping 15.7 percent. Hyperventilating for 20 seconds, on the other hand, decreases it by 10.6 percent.[5]

Another way in which breathing pattern can affect the results of a breathalyzer test has to do with what part of the breath sample was measured by the machine. In other words, different parts of the exhalation will give different blood alcohol readings. The first part of the breath, made up of air from the top of your lungs, has less alcohol in it that the last part of the breath, which comes from the bottom of the lungs.

Unfortunately, many police officers know this so they artificially manipulate the result by giving the subject instructions like "Blow hard! Keep going!", even though the machine has received a sufficient breath sample. Following these instructions insures the result of the test will be higher. It is staggering to consider how many artificially inflated breathalyzer results have been obtained—and how many people have been convicted as a result—because of these instructions and the ability to manipulate the result.

5. "How Breathing Techniques Can Influence the Results of Breath-Alcohol Analyses." *Medical Science and the Law.* 22(4) (1982): 275

CHAPTER 6

"I'VE BEEN STOPPED AT A SOBRIETY CHECKPOINT HOW DOES THIS WORK?"

While most DUI stops are made by individual officers on the road, there may be times when you encounter a sobriety checkpoint—also known as a roadblock. Every state has specific rules that govern how sobriety checkpoints are set up and conducted. One such rule is that many states require the location of the checkpoints be announced to the public before they are set up, commonly in newspapers and on the internet. There is nothing wrong with learning where the checkpoints will be in order to avoid them. That is your legal right.

Another important thing to know is that not all cars are stopped at every roadblock. The decision as to which vehicles will be stopped is made in advance (every vehicle, every 3rd vehicle, etc.), not by how people look or drive. Finally, checkpoints must minimize the average time each motorist is detained. This means that the officer cannot ask you to step out of your car or ask to you to take any tests unless there are noticeable signs of impairment—erratic driving, the smell of alcohol on the breath, slurred speech, glassy eyes, etc. If you do not show any of these signs, you should be allowed to drive on. If the officer does decide that you display signs of impairment, you will be directed to a separate area for further "investigation." From this point forward, it is no different than being pulled over by a police officer and you should be aware that everything you say and do will be used to build a case against you.

CHAPTER 7

"I'VE BEEN ARRESTED AND TAKEN TO THE POLICE STATION—WHAT HAPPENS NOW?"

You have been arrested. If you were alone, or if everyone with you had also been drinking, your car was probably impounded and towed away. You are scared, embarrassed and upset. You are wondering what your friends, family, significant other, boss, co-workers, etc. are going to say. You are wondering how this arrest is going to impact your life. Your stress level is very high. Remember, until the time comes when you are released from custody you are still under observation and anything you say or do can be used against you later.

The best thing you can do is to be cooperative and *pay attention*—both to what you are told to do and what you are asked to do. The police are gathering valuable evidence, and in order to be able to use it at trial, the police must follow very specific rules and procedures. Obviously, since any attorney you retain will not have been with you during this process, it is up to you to pay attention to every detail so that you can later provide the information about the processes and procedures followed to your lawyer. This information could make the difference in the outcome of your case.

The primary reason why you were taken to the police station—besides the required paperwork, fingerprinting, etc.—is for you to take a more "scientific" test to estimate your breath/blood alcohol level which can be used as evidence in court. As we discussed, many

states do not allow the use of the roadside preliminary breath test (PBT) at trial. Since law enforcement officers generally assume that getting the breath test completed sooner will result in a higher BAC, the testing procedure is almost always the first order of business once you arrive at the police station.

"CAN I REFUSE TO TAKE A BREATH, BLOOD OR URINE TEST?"

Every state has specific rules and regulations concerning the obligation to submit to a breath, blood or urine test and the consequences for refusing to do so which will either result in some immediate sanction or put you in the position of suffering some additional sanction in the future.. However, a good general rule is that in most situations the law requires motorists to submit to a test of one form or another. There are situations where you could refuse all tests, but these situations are unusual. In some states, if you have already given a sample that provided a valid result, you may be able to refuse to take a second test. However, if the officer suspects that you are under the influence of a drug or other substance which a breath test would not detect, then you may be required to submit to a blood or urine test. Similarly, if you have a physical disability or condition which renders you incapable of providing a breath sample, you will most likely be required to submit to another form of testing.

Aside from these special circumstances, refusing to be tested can have severe consequences. Most states have an "Implied Consent" law of some sort which says that under certain circumstances by driving in that state you have already consented to be tested. Going back on your "implied consent" by refusing to submit to a test will, or could, trigger sanctions which may include suspension of the

privilege to drive. In some states, your refusal to submit to testing can also be a damaging piece of evidence in your DUI trial. Interestingly, refusing to submit to testing may strengthen your DUI defense by limiting the evidence to be used against you. It is up to you to weigh the potential negative consequences of refusing to submit to a test against the possibility of a test result that registers above the legal limit, or is so high that it triggers enhances punishments.

When the officer asks you to provide a breath sample, you may be read a form advising you of your rights and the consequences of taking or refusing to take a test. If the officer does not accurately communicate your rights—if the officer misleads you, misinforms you, exaggerates the consequences of refusing to take the test or makes any threats or inducements to take the test—a judge may decide to throw out the result of the test. So *pay attention* to what you hear so you can accurately discuss it with your lawyer.

"WHAT KIND OF TEST SHOULD I TAKE—BLOOD, BREATH OR URINE?"

Although you probably will not be given a choice between three types of tests, you may be given a choice between two. However, many states don't give you a choice at all. The most accurate and reliable method of analysis is the blood test and the least accurate and reliable is urinalysis. This means that, if you are fairly certain you are below the legal limit, you may want to ask for a blood test, if available, to prove it. If, on the other hand, you believe it is likely that your blood alcohol is above the legal limit, the urinalysis test would be the most easily attacked in court.

"WHAT DO I NEED TO KNOW ABOUT THE BREATH TEST?"

The breath test is the most common test that people are asked to take once they have been arrested for DUI. However, breath testing machines rely on assumptions and averages, only provide estimates, are highly susceptible to error, and occasionally provide completely inaccurate results. Just because the machine says something, doesn't make it true. Some of the best DUI defense lawyers have sought out and completed specialized training focused on the various breath testing machines in order to learn about them. Others have gone even further and completed certification courses to be certified as an Operator of the various breath testing machines. Still others have gone so far as to purchase their own breath testing machines in order to become intimately familiar with how they work—and don't work.

Much like insisting that the lawyer you hire to handle a DUI case has completed the NHTSA/IACP curriculum on Standardized Field Sobriety Testing, it seems wise to look for a DUI defense lawyer who has completed several courses specific to the various forms of testing, who has completed at least one course to be certified as an Operator of the machine used in your jurisdiction, and ideally, one who actually owns some breath testing machines.

Many different things can contribute to the breath test result being unreliable, and a skilled DUI defense lawyer may be able to persuade the judge to throw out the breath test results. Below is a short list of some of the factors that can make a breath test unreliable. We will examine each of these factors in detail in the next chapter.

- Calibration of the Machine

- Residual Alcohol in the Mouth
- Belching, Hiccupping or Vomiting Prior to a Test
- Breath Temperature
- How Fast Your Body Eliminates the Alcohol
- Other Chemical Compounds in Your Mouth

"WHAT ABOUT A LAWYER?"

You should ask to see a lawyer as soon as you arrive at the police station, if you have not already done so. You are under arrest and anything you say might be used against you, so you should not say anything without a lawyer present or until you have talked to a lawyer.

Within a reasonable time after your arrest or booking at the jail, you may have the right to make a local phone call to a lawyer, bail bondsman and/or relative or other person. Many people call friends and family in an attempt to make arrangements to be released. You should know that often these phone calls are recorded. If you call a lawyer, the police can not listen to the call or any other communication made to your lawyer. Remember, you are still under observation and your words and actions can still be noted in a police report and used against you later, so your call should be discreet and made in such a way that you cannot be overheard by any other person. Pay attention to your surroundings when you make the call and notice if the police or anyone else can overhear the conversation.

"WHEN WILL I BE RELEASED?"

Before you are released, the police will contact a judge or magistrate who will decide whether you will be released without bail, with bail or kept in custody. Many factors are considered when making this decision, including why you were pulled over, how you performed on FSTs, how cooperative you were, your attitude and demeanor, your breath test results, your ties to the community such as family and employment, and your history and involvement with the court system, if any. If enough of these and other factors are favorable, you may be released without bail and simply given paperwork telling you when you must appear in court date and where the Court is located. This is called being released "on your own recognizance."

If the judge or magistrate decides to set a bail amount, you will be given additional paperwork and you will not be released until the bail has been posted. You can either have someone post the entire amount or you can utilize the services of a bondsman to assist you with your release.

If the judge or magistrate decides to hold you without setting bail, you should be taken before a judge on the next available court day. The judge will decide whether to set bail or leave it as it is. Much like when the initial bail decision was made, the judge will consider several factors when making this decision, including the charges filed against you, your living arrangements, your employment, your family considerations, prior criminal record, probation status, and any other reasons why you should or should not be released. If the judge does not set a bail, or if the bail amount set is too high, your DUI defense lawyer can make a formal request to the court to have your bail conditions changed.

CHAPTER 8

"THE GUILT MYTH"—BREATHALYZERS

The most common method of analysis used to estimate blood alcohol concentration in DUI cases is the breath test. However, many things can impact the reliability of a breath test, and undermine the confidence in the result. Since a large part of DUI defense is challenging the results of breath testing machines, in order to be most effective, DUI defense lawyers must be familiar with the mechanisms, processes, and principles of the various breath testing machines. Without this education and training they will not understand the issues presented in a case, much less be able to educate a prosecuting attorney, judge or jury about the weaknesses of breath testing or persuade them that the result in a particular case is unreliable. As previously mentioned, in addition to regularly attending conferences devoted to DUI defense, some truly dedicated DUI defense lawyers have even gone so far as to purchase their own breath testing machines in order to learn as much as possible about how they work—and more importantly, when and why they don't work.

CALIBRATION OF THE MACHINE

The machine must be accurately calibrated. If it is not, there is no reason to believe that the result is an accurate result.

RESIDUAL ALCOHOL IN THE MOUTH

Simply stated, in a DUI case the goal is to determine the amount of ethyl alcohol in the blood, because once alcohol in the bloodstream reaches the brain it causes impairment. Breath alcohol testing rests on the belief that the amount of alcohol in the blood can be accurately estimated from the amount of alcohol in the breath. Breath test machines are designed to measure the alcohol in your deep lung air (lung alcohol), but residual alcohol in the mouth (mouth alcohol) can result in a falsely elevated and inaccurate reading. Breathalyzers do not always distinguish between alcohol in the mouth and alcohol in the lungs. If the "mouth alcohol" is combined with the "lung alcohol" it will create a falsely elevated breath test result. In addition, if there is any substance in the mouth which can absorb alcohol, such as food particles or chewing tobacco, it may cause a falsely elevated breath test result.

BELCHING, HICCUPPING OR VOMITING PRIOR TO A TEST

Time is the most important factor here. A person should not be tested for a period of time after belching, hiccupping or vomiting, as this can contaminate the mouth with residual alcohol from the stomach and possibly cause a falsely elevated and inaccurate breath test result. In most states there is a rule or regulation stating that there should be an observation period (generally 15-20 minutes) to make sure that the breath sample isn't contaminated in this fashion. The officer is required to constantly observe the subject to ensure they did not belch, hiccup or vomit within the specified time prior to taking the test. If the officer fails to follow the observation requirements the results of the test may be called into question.

THE TEMPERATURE OF YOUR BREATH

Breath temperatures differ. In fact, breath temperature fluctuates throughout the day. However, breath testing machines are programmed to ignore this fact and assume everyone has a certain breath temperature. Breath alcohol testing assumes the subject's breath is 34 degrees centigrade, and if your breath temperature is actually higher, then the breath test result will be falsely elevated and inaccurate. Studies have shown that the real average breath temperature for people who have been arrested on a DUI is closer to 35.5 degrees, with some as high as 37 degrees. Therefore, many breath test results are artificially inflated simply because of the temperature of the breath of the person arrested. There is at least one breath testing machine that measures breath temperature, and in order to be fair to the accused, lowers the test result if it finds the breath temperature was elevated. Interestingly,, most states do not use this machine.

HAVE YOU ABSORBED ALL OF THE ALCOHOL CONSUMED?

Breath testing also relies on the assumption that all of the alcohol consumed has been absorbed into the blood. If the subject is still absorbing alcohol into the bloodstream when given a breath test, the breath test result will over-estimate the amount of alcohol in the blood. This means that if a blood sample were drawn at the same time the breath test were given, the blood sample would reveal a BAC lower than that suggested by the artificially inflated breath test result. Studies show that in some circumstances the absorption of alcohol into the blood can last as long as 2 hours from the last drink.

OTHER CHEMICAL COMPOUNDS IN YOUR MOUTH

Strictly speaking, the breath test does not detect alcohol (ethyl alcohol, or ethanol)—it detects part of the alcohol molecule called the methyl group. The significance of this fact is that this methyl group is found in things other than ethyl alcohol and the breathalyzer will sometimes mistakenly identify the methyl group in other compounds as ethanol. If any of these compounds are present, it can result in an inflated and inaccurate breath test result. It's sort of like when we see someone we think we know because they have characteristics which look familiar, but as it turns out we don't know them at all."

CHAPTER 9

"I NEED TO CHOOSE A LAWYER—WHAT QUESTIONS SHOULD I ASK?"

So now you have been released and you are wondering what to do next. **Hire an experienced DUI defense lawyer.** Do not wait. Now is the time to find a lawyer who can guide you through the complex and ever changing field of DUI law. The process of preparing your case—the investigation, the motions to suppress evidence, the gathering and analysis of the evidence, and more—needs to get started right away.

It is difficult to pick a lawyer, not only because there are so many out there, but also because—since you are not a lawyer yourself—you do not know what a good one looks like. Many consumers just like you fall prey to myths and misconceptions about lawyers and they wind up selecting an attorney who is not qualified to most effectively handle their case and meet their needs. Here are a few of the most common myths.

MYTH #1: "ALL LAWYERS HAVE THE SAME EXPERIENCE."

We already touched on this myth in Chapter 1 but it is worth mentioning again. Saying every lawyer is the same is like saying every doctor is the same, or every baseball player is the same, or every photographer is the same. It simply isn't true. People are unique. Even if a lawyer has been in practice for decades, and even if he or

she has a fantastic resume, and even if he or she has argued cases before the Supreme Court, it does not tell you anything about his or her ability to effectively defend a DUI case. There is no substitute for education, training and experience gained through years of defending clients who have been accused of DUI. Beware of lawyers who dabble in DUI defense. Find a lawyer who *focuses* on DUI defense. Remember, you don't want your pediatrician, no matter how brilliant he or she may be, doing your brain surgery, and you don't want a lawyer without DUI specific education, training and experience handling your DUI.

MYTH #2: "IF A LAWYER ADVERTISES THAT HE TAKES DUI CASES IT IS BECAUSE HE HAS EXPERIENCE IN DUI LAW."

This myth is similar to the first, but it is different in an important way. Let's assume you understand how important it is that your attorney has experience in DUI law, can you assume that since an attorney is willing to take your DUI case he or she has the necessary experience to do the job most effectively? No, you should not. As a consumer, you know that advertising is often misleading. This is no less true when it comes to advertising for lawyers. Just because a lawyer advertises or indicates that he or she will handle a certain type of case, it does not mean the lawyer has the education, training and experience necessary to do the job most effectively.

MYTH #3: "THE STATE BAR DETERMINES WHETHER A LAWYER CAN ADVERTISE AS A DUI LAWYER."

Although alarming, this is simply not true. **Any lawyer can claim to be a DUI defense lawyer.** It is up to you as the consumer to do your homework, educate yourself, interview the lawyer, ask tough ques-

tions and figure out whether the lawyer is truly dedicated to DUI defense or just a lawyer who is willing to take your case.

MYTH #4: "ALL LAWYERS WILL TAKE MY CASE TO TRIAL."

As strange as this may seem, many lawyers are not committed to taking your case to trial to go to get the best outcome for you. Other lawyers are willing to take the case to trial, but lack the knowledge, training and experience to even understand the subtle and complex issues in a DUI case. Some lawyers simply want to take your money and do as little work as possible. Some lawyers won't take a case to trial because they fear irritating the prosecutor and judge they work with every day. An experienced and dedicated DUI defense lawyer who is trained on field sobriety testing and understands breath alcohol testing will be better able to identify possible issues in your case and put you in the best position to get the best outcome.

MYTH #5: "ALL LAWYERS CARRY MALPRACTICE INSURANCE."

All lawyers are not required to carry Malpractice Insurance. This means if your lawyer does not carry this coverage and makes a mistake, you may be out of luck. Before hiring a DUI defense lawyer, you should ask whether the lawyer is insured.

MYTH #6: "CALLING A LAWYER REFERRAL SERVICE IS THE WAY TO FIND A COMPETENT LAWYER."

Lawyer Referral Services are a nice idea, but generally speaking, anyone who pays the required fee can be listed as a DUI defense lawyer. Lawyer Referral Services will put you in contact with a lawyer,

but this does not mean that the lawyer is qualified or experienced in a particular field.

MYTH #7: "DUI CASES ARE JUST LIKE ANY OTHER CRIMINAL CASE SO ANY LAWYER SHOULD BE ABLE TO DO A GOOD JOB"

It should be clear to you by now that DUI cases are extremely complex and require a lawyer to have extensive education, training and experience specific to DUI to be most effective. DUI defense is a highly specialized niche of the criminal and traffic law, and it is this confluence of law, science and medicine that makes the effective defense of a DUI case a difficult and challenging endeavor.

You may want to speak with a number of attorneys or law firms before deciding which will represent you. This sort of initial consultation is sometimes done free of charge; however, some of the more specialized lawyers change a fee for initial consultations. In some firms, the lawyers do not speak with clients until after they have been hired. In this situation, the initial consultation will be with someone else in the firm, which allows the attorney to spend the maximum amount of time working for his or her actual clients. The most important thing to remember when speaking with a potential lawyer, or someone from his or her firm, is not to be afraid to *ask questions*. The best and most qualified law firms will welcome your questions and they will take it as a sign that you have done your homework. Remember, when you are interviewing an attorney or a law firm, they are also interviewing you to see if they want to take your case. A good lawyer appreciates a truly prepared client because it is an indication that the client understands the seriousness of the situation and is committed to getting the best legal representation available.

Here are a few questions you may want to ask in order to make an informed choice of who will represent you.

1. **How many years have you been in practice and what kinds of cases have you handled over the course of your career?**

   This will tell you something about the attorney's potential experience. Let's face it, experience counts. Rookies just typically aren't as successful as seasoned veterans. You probably want a lawyer with many years of experience focusing on DUI defense.

2. **How much experience do you have defending DUI cases? How long have you been defending DUI cases? How many DUI cases do you handle a year?**

   You should leave the attorney's office confident that you have spoken to someone who has real expertise and experience in DUI law. Lawyers who are truly dedicated to DUI defense may handle hundreds of DUI cases every year.

3. **Do you have any experience handling a case like mine?**

   You do not want a lawyer who sees your case as a new experience that he or she would like to try. You want someone who has seen similar issues before and has the experience necessary to do the best possible job for you.

4. **Are you a member of the National College for DUI Defense (NCDD)?**

   Many of the most dedicated and successful DUI defense lawyers are members of the National College for DUI Defense, and membership in NCDD is at least an indication that the lawyer is knowledgeable about DUI defense. Many lawyers have never even heard of the organization, which should tell you something about their level of dedication to DUI defense. I recommend you check the membership directory on the NCDD website prior to asking the lawyer about membership, to be sure the lawyer is being truthful with you.

5. **How many *national* conferences (not the local or state bar seminars) devoted specifically to DUI Defense have you attended in the last 5 years? When was the most recent one?**

   This will give you some indication as to their level of dedication to DUI defense. Many lawyers claim to be DUI defense lawyers, but don't actually put any effort into learning the intricacies of DUI defense. If the lawyer has attended at least one national conference every year you may feel some confidence in knowing that the lawyer is willing to spend the money and invest the time to remain on the cutting edge of DUI defense. Again, in order to ensure the lawyer is being truthful with you, you should ask to see the certificates of attendance and the materials.

6. Have you completed the NHTSA/IACP curriculum on Standardized Field Sobriety Testing? If yes, when?

Field Sobriety Tests are an important part of DUI prosecutions. It seems obvious that in order to be most effective when challenging the evidence regarding Field Sobriety Tests at trial, the attorney needs to have been trained on them. Again, ask to see the certificate of attendance and the materials.

7. Have you completed any training courses devoted to breath alcohol testing? When? Are you certified as an Operator on any breath testing machines? Which ones?

The breath test is the single most powerful piece of evidence in the majority of DUI prosecutions. Just as with Field Sobriety Test evidence, how are lawyers going to effectively challenge breath test results if they don't even understand the issues because they haven't completed training to be an Operator of the machine? Again, ask to see the certificates of attendance and the materials. Don't just let them tell you they know how the machine works. Everyone thinks they know how it works until they complete the training and realize how little they knew. I have completed numerous courses to be certified to run at least 5 different breath-alcohol testing machines and I continue to learn every time.

8. How many cases have you taken to trial? What was the highest BAC in a case which you took to trial and got a not guilty verdict?

Your case might need to go to trial in order to get the outcome you deserve, and if so, it is imperative that your attorney have trial

experience. Some lawyers who claim to be DUI defense lawyers have never had a DUI case actually result in a not guilty verdict. You want a lawyer who is not afraid to take a case to trial, and who has been successful in getting *not guilty* verdicts at trial. I have obtained Not Guilty verdicts in cases with blood alcohol concentrations as high as 0.29—more than three and one-half times the legal limit.

9. Who in the office will actually be handling the case and what are their qualifications?

Some attorneys work with a team and many law firms have multiple attorneys. The lawyer that you are speaking with may not be the person who appears with you in court. Make sure your case isn't going to be passed off to someone who lacks the necessary education, training and experience.

10. Are you covered by a legal malpractice insurance policy?

Your attorney should have malpractice insurance. Malpractice insurance is just as much insurance for you as it is for your lawyer.

11. Have you ever been disciplined by the State Bar?

Your lawyer's professional reputation is important. You do not want a lawyer with a disciplinary rap sheet from being in trouble with the state bar.

12. What are the potential legal costs, including investigators, experts, etc.?

The lawyer should be honest with you about what your case might cost. You want to be secure that the lawyer is not luring you in with promises of unrealistically low fees and costs.

13. How will you keep me informed about my case?

You must feel comfortable with the law firm's commitment to communicate with you. You should know how you will be kept informed of developments in your case.

14. What will be the final outcome of my case?

An honest attorney will not promise you a specific result in your case. It is always impossible to be certain how a case will turn out so making promises or guarantees is dishonest and unethical. All good trial lawyers have won cases they expected to lose, and lost cases they expected to win. An attorney can only promise to do his or her best in defending you. If any lawyer makes a promise about the outcome of your case, ask the lawyer to put it in writing. If the lawyer actually does so, send it to the state bar—and hire a different lawyer.

As a seasoned DUI defense attorney, I believe that in order to put yourself in the best position to get the best result, the lawyer you hire to handle your DUI case should have ***extensive and specialized education, training and experience in the specific field of DUI defense.*** Specifically, I would exclude any lawyer who does not at a minimum, meet the following criteria, (1) completion of the NHTSA

curriculum on Standardized Field Sobriety Testing (2) completion of certification programs for various breath testing machines used (3) membership in the National College for DUI Defense and (4) attendance at a minimum of one national NCDD sponsored conference every year.

When you have found the DUI defense attorney you want to represent you, make sure you tell the lawyer or the firm representative everything that you think is relevant, and then some. Something that you dismiss as a minor detail might make all the difference in the outcome of your case. Most importantly, be honest. You want your lawyer to be fully informed and fully prepared. You do not want your lawyer to be surprised because you chose to, or forgot to, mention a particular detail.

Now that you have found a DUI defense lawyer with the necessary education, training and experience, paid a substantial amount of money to hire the lawyer, and entrusted your case to the lawyer, you should rest assured that you are well prepared for the next phase of the process: the trial.

CHAPTER 10

"MY CASE IS GOING TO TRIAL— HOW DO I PREPARE?"

You do not need to know everything about the trial process and how to argue your case—that is the attorney's job. This chapter is simply meant to help you understand the basic trial process and a few of the types of arguments that may work in your favor.

ARRAIGNMENT

The process begins with what is called an arraignment. The arraignment is typically the first scheduled court hearing and it is administrative in nature. The purposes of the arraignment are generally to provide you notice of the charges against you, advise you of your right to counsel, and to schedule further proceedings. Sometimes you will be asked to enter a plea, which should be Not Guilty. Some courts will require you to actually appear in court for the arraignment, but other courts do not if you have hired counsel to represent you. Sometimes an experienced DUI defense lawyer can handle this process without you there, and sometimes it can be handled by phone, letter or fax so that neither you nor the lawyer actually have to appear in court.

PRE-TRIAL MOTIONS

After your arraignment, the process of gathering and evaluating the evidence in your case will continue. After your attorney reviews the

information received, the next step is to consider whether your case is appropriate for the filing of pre-trial motions. A motion is simply a document that your attorney files on your behalf with the court asking the court (i.e. the judge) to take a particular action. A hearing is generally scheduled and the opposing lawyers will present their arguments to the judge as to why the motion (request) should be granted or denied. There are several different types of motions, each with a different goal. Filing pre-trial motions should always be considered because in the right case filing successful pre-trial motions can help you and your attorney to shape the trial process in a way that benefits your case.

MOTION TO SUPPRESS: Prosecutors begin preparing the case against you by collecting all the evidence that supports the claim that you were breaking the law. However, just because they have a particular piece of evidence does not mean that they are necessarily able to use it at trial. There are strict legal rules that determine whether a piece of evidence can be used at trial and an important part of being an effective defense lawyer is being able to recognize when those rules may prevent a piece of evidence from being used.

A Motion to Suppress asks the court to "suppress" or exclude certain evidence from a trial because it was obtained improperly or illegally by the police. For example, in the right case a lawyer might ask the court to exclude all of the evidence collected after a traffic stop was initiated because the officer did not have a good enough reason to stop the vehicle in the first place. Remember, with the exception of roadblocks, police have to have a good reason to believe you are breaking the law before they can pull you over. In most cases, the officer's justification for pulling you over must be something he actually

saw. An anonymous tip, for example, might not be enough. If the court agrees that the officer didn't have a good enough reason to pull you over in the first place and the Motion to Suppress is granted, all of the evidence that was discovered after the officer pulled you over (which is nearly everything) would be suppressed.

In a DUI case the scientific test result is generally the most powerful piece of evidence against the accused, so in the right circumstances a Motion to Suppress might be filed asking the court to exclude a breath test result for one reason or another. Recall the discussion in Chapter 6 about the various factors that can make the tests unreliable. If granted and the breath test result can not be used, the prosecution's case is much weaker.

DISCOVERY MOTION: Discovery motions ask the court to order the prosecution to reveal certain evidence. Discovery is based on the idea that the defense is entitled to know at least some of the evidence that will be used by the government at trial, but the extent of the information that is shared varies greatly from state to state. In some places, the prosecuting attorney will simply agree to provide the information, making a Discovery Motion unnecessary. In these places, there is an informal discovery process that happens between the prosecution and the defense, without the judge getting involved. The information your attorney will receive in this informal discovery process varies significantly depending on the state and locality, but it may include things like the names and addresses of prosecution witnesses, statements made by you, relevant evidence seized or obtained as part of the investigation, results of scientific tests, and all written or recorded statements of witnesses whom the prosecutor intends to call to testify if there is a trial. In other places, discovery

is very formal, and the prosecution will share only the information that is absolutely required to be shared.

MOTION TO STRIKE PRIOR DUI CONVICTIONS: In some states, lawyers may file motions asking that prior DUI convictions not be considered when deciding a sentence. As you might expect, the penalty generally increases with each additional DUI conviction.

PITCHESS MOTION: In some cases, this motion may be used to gain access to an arresting officer's personnel file to determine if the officer has received any prior complaints regarding his conduct. Remember that police officers must follow very strict guidelines when obtaining evidence. The arresting officer's personnel file may be used to show that, because the officer has a history of misconduct, it is more likely that you were not properly treated. And, if so, it may provide a basis to suppress some of the evidence against you. Complaints that you might look for in an officer's personnel file include racial bias, excessive force, false arrest, planting evidence, discrimination, harassment, or criminal conduct.

However, there must be a reason to file the motion. Something must have happened that led you to and your attorney to believe that the officer's past conduct should be called into question. The motion must provide a specific fact so the judge can decide if there is sufficient reason to look into the officer's past.

In the appropriate case, filing successful pretrial motions can have a positive impact on the outcome of your case.

PRE-TRIAL CONFERENCE

A pre-trial conference is an opportunity for the prosecutor and your attorney to discuss the evidence in the case and explore the various options to resolve your case without a trial. In some places the pretrial conference is held well in advance of the trial date, and in other places it is held on the trial date. In most cases, the prosecuting attorney will make an offer as to how to resolve the case without a trial, and your attorney will discuss the offer with you. You can decide to accept the offer, reject the offer and make a counter offer, or reject the offer and proceed to trial. If you choose to accept the prosecuting attorney's offer, or if through a series of counter offers an agreement is eventually reached, the case can probably be resolved at this stage. If not, then your case will proceed to trial, either later that day or on some future date.

TRIAL

The United States Constitution guarantees each criminal defendant the right to a speedy and public trial, but does not say specifically what is meant by "speedy." However, many states have established specific guidelines regarding the time within which a case has to be brought to trial. Although the specific guidelines vary from state to state, if you are in jail awaiting trial, the government will have to bring your case to trial sooner than a case involving someone who is not in jail. If your lawyer needs more time to prepare your case, continue the investigation or file motions, he or she can request that these time limits be extended. However, this decision to delay the trial is ultimately up to you: only you can waive your right to a speedy trial.

Trials are either jury trials or bench trials. In jury trials, a judge presides over the trial but a jury determines whether the case has

been proven beyond a reasonable doubt, and the jury may have involvement in determining the sentence to be imposed as well. The number of members on the jury will vary from state to state and may even depend on whether the trial is a misdemeanor trial or a felony trial.

In bench trials, there is no jury, so the judge determines whether the case was proven beyond a reasonable doubt, and if so, the punishment to be imposed.

Trials are where witnesses, including the officer or officers who observed you from the time you were stopped until you were released from jail, will answer questions and tell what happened to the judge and/or jury. You may also testify if, after discussing it with your lawyer, you decide it is a good idea. You can also call other people to testify on your behalf.

VOIR DIRE: The process of selecting a jury from a larger pool of potential jurors is called "voir dire." Both lawyers want to choose jurors who will be most sympathetic to their case. In voir dire, potential jurors are questioned by the lawyers and the judge about things designed to reveal bias. If an obvious bias is revealed and the court concludes a potential juror can not be fair, the person is released and a new person takes that person's place on the panel of potential jurors. Each side is then allowed to "challenge," or reject, a certain number of potential jurors, without having to provide a reason, and the jurors that are left make up the jury for the case. This process is rooted in the belief that if both sides are allowed to strike potential jurors they believe are biased against them the remaining jurors will make up a fairly balanced jury.

OPENING STATEMENTS: Once the jury is selected, or if the trial is a bench trial and there is no jury at all, trials will typically begin with an Opening Statement from each lawyer. Although there are many ways to use the Opening Statement, generally speaking, counsel use the Opening Statement to provide an overview of the facts of the case from their perspective, while starting the process of educating and persuading the judge or jury. Essentially, it's the first opportunity to put the facts in the most favorable light and present your side of the story.

PRESENTATION OF EVIDENCE: After Opening Statements are finished, each side may call witnesses to testify and the other side will have an opportunity to cross-examine the witnesses. The prosecution always goes first because the burden of proof rests upon the prosecution. Remember, because of the presumption of innocence, at the start of the trial you are "not guilty", you remain "not guilty" throughout the proceedings and the verdict at the end of the trial must be "not guilty" unless the prosecution persuades the judge or jury of your guilt beyond a reasonable doubt.

CLOSING ARGUMENTS: After all the evidence has been presented and all witnesses have testified, both sides will present a Closing Argument. Closing Arguments are when the lawyers review the evidence presented at trial and argue what the evidence proves, or fails to prove, in an attempt to persuade the judge or jury.

JURY DELIBERATIONS: In a jury trial, prior to beginning deliberations the jury is given instructions of law telling them what the relevant law is in order to assist them with their deliberations. The jury will then retire to a deliberation room where they will discuss the

facts and the law and explore the possibility of reaching a verdict. Once the jury has finished deliberating, all that is left is for them to present their verdict.

EXPERT WITNESS TESTIMONY: In many cases an expert witness could be helpful and your lawyer may ask you to agree to pay for an expert witness to assist with your case. Experts can be used to testify about the chemical tests, field sobriety tests, accident reconstruction and many other issues. Expert witness fees typically are not included in the fee you paid to hire the attorney, so you must agree to pay the fees necessary to have an expert witness assist you with your case. Of course, the fees associated with expert witnesses vary significantly depending on the expert selected, the distance required to travel, the complexity of the issues involved, etc.

CHEMICAL TESTS: Experts are often times used to discuss the various fundamental weaknesses of breath testing, blood testing and urine testing and how those weaknesses create a potential for error. This is the dirty side of alcohol testing that prosecutors and some judges seem to not want to know about or talk about. For example, your lawyer may want to use an expert witness to discuss: the dangers presented by a breath testing device with chronic problems/failures; the various things that can cause falsely elevated breath test results; the fact that breath testing machines give false positive readings because they improperly identify substances as ethanol; the fact that breath testing machines make certain assumptions about temperature and partition ratio that are admittedly inaccurate for some of the population and will unfairly elevate a breath test reading for those people, etc. These are just a few of the many things about breath testing alone that should cause courts concern when asked to

accept a breath test result as accurate—and we haven't even touched on blood or urine testing. There are far more potential causes for error in alcohol screening tests than could ever be discussed in a work such as this, but DUI defense lawyers with specialized education, training and experience specific to DUI defense are better able to identify these issues and, in the appropriate circumstances, suggest you utilize an expert witnesses to put yourself in the best position to get the best result.

FIELD SOBRIETY TESTS: Field sobriety tests may or may not be considered "scientific" by a court, but you may be able to lessen the impact of testimony about your performance on field sobriety tests if you use an expert witness to show that the tests were not properly administered by the officer. If you performed reasonably well on the exercises, displaying good balance, coordination, attention and reasoning, an expert witness may even be able to use your performance to support the opinion that you were not under the influence at the time of driving. If you showed signs of physical impairment but did not show signs of mental impairment, the expert can testify that the physical impairment was probably due to something other than alcohol, because studies show that alcohol always affects your mind before your body, causing mental impairment before physical impairment. And remember the Clemson study which shows sober people "fail" standardized field sobriety tests.

ALCOHOL LEVEL AT TIME OF DRIVING VS. AT TIME OF TESTING: A person's blood alcohol concentration is always changing. This is important because in some states it is illegal to be "over the limit" at the time of driving and in other states it is illegal to be "over the limit" at the time of testing. Virginia is a time-of-driving state. Many

people assume that if a person had a BAC which was over the limit at the time of the test, they must have also been over the limit when they were driving. Simply stated, this can never be known from a single breath test. Experts can be called to rebut this assumption in certain cases because BAC could actually be rising, which means it is higher at the time of the test than it was at the time of driving. Since this is an extremely technical area, an expert is essential to explain it to the judge or jury to raise reasonable doubt as to whether the person was over the legal limit at the time of driving.

ACCIDENT RECONSTRUCTION: If there was an accident before the arrest, an expert in the field of accident reconstruction may be used to reconstruct the events of the accident based on facts in the case. The accident reconstruction expert may be able testify regarding the mechanics of the accident, and may be able to give his or her opinion regarding whether or not the accident was the fault of the allegedly impaired driver, the other party, or would have been unavoidable regardless of impairment.

CHAPTER 11

"THE GUILT MYTH"— "PROOF" IN THE DUI TRIAL

At trial, one of the most important pieces of evidence against a motorist will be the result of the breath test that that the motorist took at the police station. However, even if we ignore the numerous possible causes of error and assume for the sake of argument that the result of the test is accurate, when a motorist takes a chemical test at the police station, the only thing the result of the test actually addresses is the motorist's blood alcohol concentration at the time of the test. It provides absolutely no information about the suspect's blood alcohol concentration at the time of driving.

So how can you know whether or not a person was above the legal limit an hour or two before taking the test? Although it is impossible to actually know what someone's blood alcohol concentration was hours earlier, the process known as "retrograde extrapolation" can be used to provide a rough estimate—if enough information is known. However, in order to utilize retrograde extrapolation, certain assumptions have to be made.

After someone drinks alcohol, it is absorbed into the blood stream and the body starts breaking down the alcohol so that it can be eliminated from the body. The rate at which people metabolize and eliminate alcohol varies from person to person, and one assumption involved in retrograde extrapolation is that the subject involved

metabolizes and eliminates alcohol at the average rate. But what if your metabolism is different from the "average person"? Studies have shown that it is relatively common for a person's metabolism to vary substantially from the average, and for every one of those persons, the assumption of average rates of absorption, distribution and elimination render the retrograde extrapolation calculations questionable, and perhaps meaningless.

Let's look at the fallacy of relying on averages in another setting. Picture a room with 10 people in it, ranging in height and weight from 5'0" tall and 100 pounds to 7'0" tall and 300 pounds, with an average height and weight of 6'0"tall and 200 pounds. We all understand that the clothes made for the "average" 6'0" tall and 200 pound person will not fit the 5'0" tall and 100 pound person or the 7'0" tall and 300 pound person. In fact, the clothes made for the "average" person may not fit any of the 10 people appropriately. The same is true with making assumptions based on average metabolism rates—they may be "averages", but they just don't fit real people.

Not only does "retrograde extrapolation" assume that everyone's metabolism is the same, it also assumes that the arrestee's BAC is always lower at the police station than it was at the time of driving. Like most assumptions, this is simply not always accurate. Although it may be true, it may also be false. In many cases, one's BAC is higher at the time of testing that it was at the time of driving, and it is impossible to know whether a person's BAC was higher at the time of driving or testing from a single test.

Furthermore, in order to provide a remotely accurate estimation of blood alcohol concentration, a breath test must be taken after

all the alcohol consumed by a person has been absorbed into the blood stream because during the "absorptive phase," a breath test can significantly overestimate the amount of alcohol in the person's blood. Of course, waiting for all the alcohol to be absorbed prior to testing will result in a breath test result which is higher than the person's BAC was at the time of driving.

In response to these difficult issues of proof, many states have tried to simplify matters by changing the wording of DUI laws and passing laws governing how chemical tests must be interpreted. Some states have eliminated the question of BAC at the time of driving by passing laws which simply say it is illegal to have a certain BAC within a certain time frame of driving. In other states where statutes still require proof of BAC *at the time of driving*, courts have disregarded the wording of the statute by not requiring any evidence of BAC at the time of driving, and have ignored science and reality concerning the fact that BAC changes constantly over time.

The first problem with these laws and court rulings is that they are based on an untruth. Your BAC is constantly changing as your body absorbs and eliminates alcohol, so it is extremely unlikely that your BAC will be the same at the police station as it was when you were driving.

The second problem with these laws and court rulings is that they seem to shift the burden of proof to the defendant. In our legal system, the prosecution has the burden of proof. In other words, a suspect is presumed innocent unless the prosecution can prove the offense was committed beyond a reasonable doubt. But with increasing political pressure to convict those accused of DUI, more

and more legislatures and courts are willing to pass and interpret laws regarding how to interpret chemical test results in DUI cases in a way which seems to facilitate prosecution by shifting the burden to the defense. If you were arrested for drunk driving and your test result registered above the legal limit, it is essentially up to you to prove that the result is inaccurate.

These kinds of laws have been ultimately responsible for countless DUI convictions all across the United States. It is imperative that you get a DUI defense attorney with the necessary education, training and experience to represent you, level the playing field and help prevent you from being the next victim of a system seemingly designed to facilitate prosecution.

CHAPTER 12

"WHAT DO I NEED TO KNOW ABOUT THE LAW IN MY STATE?" —DUI LAW IN VIRGINIA

DIFFERENCES IN DUI LAW IN VIRGINIA FROM OTHER STATES

Virginia legal system for DUI offenses has several notable differences from other states. Although this work does not attempt or intend to be a comprehensive overview, some of the major differences will be outlined below.

DWI AND DUI ARE THE SAME IN VIRGINIA

In some states there is a difference between DWI, "driving while intoxicated" and DUI, "driving under the influence," and often driving while intoxicated is a more serious offense than driving under the influence. Some states also have an offense such as operating while impaired (OWI), operating under the influence (OUI) or operating while ability impaired (OWAI). In Virginia, there is no difference between the terms DUI and DWI. Virginia Code Section 18.2-266 makes it illegal to drive while intoxicated or under the influence of alcohol and/or drugs so the terms are interchangeable in Virginia.

The Virginia defines intoxicated as follows: "'**Intoxicated**' means a condition in which a person has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular

movement, general appearance or behavior." The terms "impaired", "intoxicated" and "under the influence" are used interchangeably herein.

BLOOD ALCOHOL CONCENTRATION ("BAC") RELATES TO BAC WHILE DRIVING

Another difference from many other states is that the Virginia statute prohibits driving with a certain blood/breath alcohol content ("BAC"), so Virginia looks to the BAC ***while driving***. Some other states base their legal limit on the BAC at the *time of the taking of the breath or blood sample.* The distinction is that Virginia motorists should be able to present evidence that the BAC while driving was lower than the BAC at the time of the subsequent blood or breath test.

Under Virginia's Implied Consent law, by driving on the highways of Virginia you have already given your "consent" to a breath or blood test if you are arrested for DUI within 3 hours of driving. If the result of the test is .08 or above, there are significant effects in the prosecution of one's case.

Virginia DUI law can be broken down into two different types of offenses: (1) driving with a prohibited amount of a substance (either alcohol or specific drugs) in your body, and (2) driving while under the influence of alcohol and/or drugs. Since most DUI cases involve alcohol, this work will focus on alcohol based DUIs.

The Per Se DUI Question: How much of the substance (alcohol or drugs) was in your body at the time of driving? The first type of DUI, which deals with the quantity of a substance in your body at the time of driving, is known as the "per se" law, and has nothing

to do with **intoxication or impairment. Under Virginia law it is illegal to drive with prohibited amounts of substances in your body whether or not you are intoxicated, impaired or under the influence of the substances.** The offense is driving with the prohibited amount of the substance in your body, and the offense is proven by scientific evidence—either a breath or blood test. In DUI cases involving alcohol in Virginia, the "per se" limit is 0.08. However, since Virginia law deals with the amount of the substance in the body at the time of driving, and not at the time of testing, even if your test result shows a BAC of .08 or more, you still have the ability to present expert testimony that your BAC was in fact less than .08 while driving.

The Common Law DUI Question: Were you impaired by the substance (alcohol or drugs) at the time of driving? The second type of DUI, which deals the degree to which you are impaired by alcohol or drugs, is not dependent upon a test result. It is illegal to drive while under the influence of alcohol and/or drugs, without regard to the amount in your body. In these cases, a breath result is just one of the many pieces of evidence in the trial used to prove impairment. Although the statute says that if the BAC is 0.08 or above, there is a "presumption" of intoxication, the Virginia Court of Appeals ruled in 2007 that such presumptions are an unconstitutional infringement upon the presumption of innocence, and went on to rule that courts must interpret the words "shall be presumed" to mean "may be inferred." Thus, in this type of DUI prosecution, the judge or jury **may infer** (but is no longer **required to presume**) that someone is intoxicated, if the prosecutor proves that the person had a BAC of 0.08 or more while driving. Again, the accused may present evidence that in fact his actual BAC while driving was below

a 0.08, or that the results should not be given much weight because of issues with the machine or manner of testing. If the defendant is able to do this and persuade the court that the BAC was actually less than .08 at the time of driving, then the judge may not make any inference based on the breath result.

RIGHT TO NEW TRIAL ON APPEAL TO CIRCUIT COURT-TRIAL DE NOVO

In Virginia, most DUI cases involving adult motorists are heard in the General District Court. Jury trials are not available in the General District Court, so all of these cases are heard by judges. I know what you're thinking: Doesn't the United States Constitution guarantee a criminal defendant the right to a jury trial? Yes.

Under Virginia law, anyone convicted in General District Court has a right to appeal the case to the Circuit Court and have a new trial—known as a "trial de novo." As soon as the appeal to the Circuit Court is noted, the conviction of the General District Court is vacated and the client is in the exact same position they were in prior to the first trial (i.e. they are presumed to be innocent and have not been convicted of DUI). I like to say it is just like the "do over" from when we were kids, or to use a golf analogy, Virginia allows defendants a "Mulligan."

THE TRIAL COURTS RULE ON FINES, JAIL TIME AND LICENSE SUSPENSION ISSUES

In many states, DUI cases run on two separate tracks and lead to two separate hearings: a criminal trial in a court in front of a judge who determines whether someone is guilty and what fine and/or jail sentence to impose, and an administrative license hearing in front

of that state's motor vehicle licensing agency, which determines the impact on the accused's license/privilege to drive. However, in Virginia there is not a separate administrative hearing with the Department of Motor Vehicles—everything is handled by the court. In Virginia, if you are convicted of a DUI, the law requires your license/privilege to drive in Virginia to be suspended for a specific period of time which varies based on whether it is a first offense, second offense, third offense, etc. In some cases, Virginia judges have the authority to grant you a Restricted License allowing you to drive for work, school, alcohol education classes and certain medical and family reasons. However, in many cases courts refuse to grant a Restricted License for one reason or another.

CHAPTER 13

VIRGINIA DUI PENALTIES ADMINISTRATIVE LICENSE SUSPENSION (ALS)

In Virginia, an arrest for DUI often triggers an automatic Administrative License Suspension (ALS). The length of the ALS depends on whether the arrest is for a first, second or subsequent offense. Since there must be both an arrest for DUI and either a qualifying breath test or an arrest for Refusal, there is no ALS in DUI cases where the chemical test is a blood test or where the breath test is below the required limit.

Virginia law does not allow restricted licenses to be granted during the ALS. Therefore, the accused is prohibiting from driving at all—for any reason—during the ALS.

FIRST OFFENSE: If the arrest is for a first offense DUI, your driver's license will be automatically suspended for seven days.

SECOND OFFENSE: If the arrest is for a DUI committed within 10 years of another DUI for which you were convicted, your driver's license will be automatically suspended for 60 days or until you go to trial, which ever comes first.

THIRD OFFENSE: If the arrest is for a DUI committed within 10 years of two prior DUI offenses for which you were convicted,

your driver's license will be automatically suspended until you go to trial.

Motorists who have been arrested for DUI and who have had an Administrative License Suspension imposed, may challenge the ALS at any time during the period of suspension. The grounds to make such a challenge are limited, and an experienced DUI defense lawyer can assist with pursuing such a challenge.

ADDITIONAL PENALTIES TRIGGERED BY CONVICTION

In addition to the Administrative License Suspension imposed at the time of the arrest, if you are convicted of a DUI in Virginia, additional sanctions will be imposed by the court. Depending on the circumstances of the case, these sanctions can include, among other things: payment of a fine and court costs, imposition of a jail sentence, an additional suspension of your license or privilege to drive in Virginia, installation of an Ignition Interlock Device in your vehicle, completion of substance abuse education and treatment, random testing for alcohol and drugs, completion of public and community service work, attendance at a Victim Impact Panel, and participation in DUI Court.

Under Virginia law, there are certain mandatory punishments which must be imposed in certain cases, depending on the BAC and whether the offense is a first, second, third, etc. offense. The following section will address some of the mandatory punishments in Virginia.

FIRST OFFENSES—MANDATORY PENALTIES

A first offense of DUI in Virginia is a Class 1 misdemeanor criminal offense for which the punishment range includes a fine of up to $2,500 and a jail sentence of up to 12 months.

The mandatory punishments include:

1) **BAC < 0.15**

   - no mandatory minimum jail sentence
   - $250 - $2,500 fine

2) **BAC 0.15 to 0.20**

   - 5 day mandatory minimum jail sentence
   - $250 - $2,500 fine

3) **BAC > 0.20**

   - 10 day mandatory minimum jail sentence
   - $250 - $2,500 fine

4) **If transporting a passenger 17 years of age or younger**

   - additional $500 - $1,000 fine
   - additional 5 day mandatory minimum jail sentence

LICENSE SUSPENSION AND IGNITION INTERLOCK DEVICE. If convicted of a first offense DUI in Virginia, your license/privilege to drive in Virginia will be suspended for 1 year. Offenders are immediately eligible to be issued a Restricted Operator's License (ROL) allowing driving for limited purposes, but in many situations courts will not grant an ROL until after a period of time has passed or until you have done certain things. In addition, the installation of an Ignition Interlock Device is required in all cases involving a BAC of 0.15 or higher.

SECOND OFFENSE—MANDATORY PENALTIES

A second offense of DUI in Virginia committed within 10 years of a prior offense of DUI is a Class 1 misdemeanor criminal offense for which the punishment range includes a fine of up to $2,500 and a jail sentence of up to 12 months. The mandatory punishments include:

1) **Committed within 5 to 10 years from a prior offense**

   - $500 - $2,500 fine
   - 10 day mandatory minimum jail sentence
   - Additional 10 day mandatory jail sentence if BAC .015 - 0.20
   - Additional 20 day mandatory jail sentence if BAC > 0.20

2) **Committed within less than 5 years from a prior offense**

   - $500 - $2,500 fine

- 20 day mandatory minimum jail sentence
- Additional 10 day mandatory jail sentence if the BAC was 0.15 - 0.20
- Additional 20 day mandatory jail sentence if the BAC was > 0.20

3) **If transporting a passenger 17 years of age or younger**

- additional $500 - $1,000 fine
- additional 5 day mandatory minimum jail sentence

LICENSE SUSPENSION AND IGNITION INTERLOCK DEVICE. If convicted of a second offense DUI in Virginia, your license or privilege to drive in Virginia will be suspended for 3 years. Offenders are not eligible to be issued a Restricted Operator's License (ROL) until after a period of time has passed as set forth below. In addition, the installation of an Ignition Interlock Device is required in all cases involving conviction of a second offense DUI.

- 2nd conviction within 5 years - eligible for ROL after 1 year.
- 2nd conviction within 5-10 years - eligible for ROL after 4 months.

THIRD OFFENSE—MANDATORY PENALTIES

A third offense of DUI in Virginia committed within 10 years of 2 prior offenses of DUI is a Class 6 felony criminal offense for which the punishment range includes imprisonment for 1 to 5 years , or a fine of up to $2,500 and/or a jail sentence of up to 12 months. The mandatory punishments for a third offense DUI are set out below.

1) **3 offenses committed within 5 years**

   - 6 month mandatory minimum jail sentence
   - $1,000 mandatory minimum fine

2) **3 offenses committed within 10 years, but not within 5 years**

   - 90 day mandatory minimum jail sentence
   - $1,000 mandatory minimum fine

3) **If transporting a passenger 17 years of age or younger**

   - additional $500 - $1,000 fine
   - additional 5 day mandatory minimum jail sentence

LICENSE SUSPENSION AND IGNITION INTERLOCK DEVICE. If convicted in Virginia of a third or subsequent offense DUI within 10 years, your license/privilege to drive in Virginia will be revoked indefinitely. Offenders are not eligible to be issued an ROL until three years have passed, and in order to receive one the offender must go

through a special process designed to ensure that the offender is not dependent upon alcohol and does not present a danger on the roadways. In addition, the installation of an Ignition Interlock Device is required in all cases involving conviction of a third offense DUI.

FOURTH OFFENSE IN 10 YEARS—MANDATORY PENALTIES

A fourth offense of DUI in Virginia committed within 10 years of 3 prior offenses of DUI is also a Class 6 felony criminal offense for which the punishment range includes imprisonment for 1 to 5 years and a $1,000 fine. The mandatory punishments for a fourth offense DUI are set out below.

1.) **4 Offenses committed within 10 years**

- 1 year is a mandatory minimum period of imprisonment
- $1,000 mandatory minimum fine

2) **If transporting a passenger 17 years of age or younger**

- additional $500 - $1,000 fine
- additional 5 day mandatory minimum jail sentence

LICENSE SUSPENSION AND IGNITION INTERLOCK DEVICE. If convicted of a fourth or subsequent offense DUI in Virginia, one's license/privilege to drive in Virginia will be revoked indefinitely. As with third offenses, offenders have to wait at least three years and go through a special process in order to obtain an ROL.

TRANSPORTING CHILDREN WHILE UNDER THE INFLUENCE

Conviction of any DUI offense involving a juvenile passenger (age 17 or younger) in the vehicle at the time of the offense carries an additional mandatory five-day jail term and an additional fine of at least $500 and up to $1,000.

MULTIPLE OFFENDERS AND THE TRAUMA CENTER FUND

Virginia also requires anyone has been previously been convicted of DUI/DWI in any state to pay $50 to the Trauma Center Fund to subsidize the cost of emergency medical care to accident victims in alcohol or drug use car crashes.

VIRGINIA ALCOHOL SAFETY ACTION PROGRAM (VASAP)

If convicted of a DUI offense under Va. §18.2-266 (DUI/DWI statute) or Va. §46.2-341.24 (DUI/DWI involving a commercial motor vehicle), Virginia law requires enrollment in, and successful completion of, Virginia's Alcohol Safety Action Program (VASAP) or a similar program before one can ever have the license/privilege to drive reinstated in Virginia. This course costs a few hundred dollars and it is an education and treatment program that focuses on substance abuse and driving, substance abuse and health, and self-evaluation of potential for substance abuse. The length of required participation in the program depends on the facts and circumstances of the case.

IGNITION INTERLOCK PROGRAM

Virginia law requires that everyone convicted of a DUI with a BAC of 0.15 or higher, and everyone convicted of a second or subsequent DUI regardless of the BAC, have an Ignition Interlock Device system installed. This system records the driver's BAC via breath test each time the car is started. If it detects a BAC over a certain limit the vehicle will not start. The system also requires the driver to continue to provide breath samples periodically while driving.

CHAPTER 13

8 SECRETS YOUR PROSECUTOR DOESN'T WANT YOU TO KNOW ABOUT YOUR VIRGINIA DUI

1. IF EVERYONE INSISTS ON THEIR CONSTITUTIONAL RIGHT TO HAVE A TRIAL, THE PROSECUTOR WILL BE IN COURT ALL DAY.

The next time you are in court, look around and see how many people are there, and pay attention to how many of those people plead guilty. Trials take time and if all of those people who plead guilty chose to have a trial instead, it would keep the prosecutor there much longer.

2. IN SOME CASES, THE MANDATORY MINIMUM SENTENCES FOR DUI ARE SO HARSH THAT A DEFENDANT IN A DUI TRIAL RISKS VERY LITTLE BY GOING TO TRIAL.

When considering whether to accept or reject an offer from the prosecuting attorney, many clients ask if a judge will penalize them by imposing a harsher sentence if they reject the offer from the prosecuting attorney, choose to assert their right to have a trial and end up being convicted. Although of course, there are never any guarantees, the Virginia General Assembly has now raised the mandatory minimum sentences for DUI cases to such a high level that in many cases if you decide to go to trial and are convicted you may not receive a sentence that is any worse than a person who pleads guilty.

3. THE PROSECUTOR DOESN'T WANT TO BE THERE.

Few people take a job at a prosecutor's office because they have fantasized about prosecuting cases in traffic court. Most prosecutors would rather be prosecuting felony cases than handling a traffic court docket. Furthermore, in addition to your case, the prosecutor probably has several other cases with defense attorneys on the traffic court docket that day which the prosecutor must either resolve by agreement or take to trial. Often times, prosecutors want to finish the traffic court docket as quickly as possible so they can move on to doing the countless other things they'd rather be doing such as talking about the weekend, going to lunch, golfing, running errands or maybe even working on those felony cases.

4. THE PROSECUTOR MAY BE UNPREPARED.

In many jurisdictions in Virginia, prosecutors do not look into traffic cases in advance of the court date. Most of my clients are shocked when I tell them that it is frequently impossible for me to contact a prosecutor and discuss their case prior to the court date because the prosecutors do not look into the cases ahead of time. In many jurisdictions, if someone shows up at court without an attorney, the prosecutor does not even get involved in the prosecution of the case. Thus, in these jurisdictions people attempting to represent themselves won't even get an opportunity to discuss a possible plea bargain with the prosecutor, because the prosecutor will not speak to them. In some jurisdictions, such as Virginia Beach, there is generally not a prosecutor for any traffic case, not even a DUI.

5. THE POLICE OFFICER MAY BE UNPREPARED.

Your case is just one of an entire docket full of cases that the officer has on that date. It is not unusual for an officer to have 5 to 10 DUI cases on one date in addition to dozens of other traffic tickets. The officer often has little, if any, recollection of your arrest. This becomes apparent time and time again in court when I object to an officer testifying by reading from his notes and, after my objection is sustained by the judge, the officer clearly has no independent recollection of the arrest.

6. MOST PROSECUTORS KNOW VERY LITTLE ABOUT THE SCIENCE (OR LACK THEREOF) BEHIND FIELD SOBRIETY TESTING.

At no time during law school does the professor ever say, "Today we're going to learn about standardized field sobriety testing." To learn about the development and reliability of field sobriety testing, prosecutors would have to take the initiative to seek out courses on field sobriety testing, convince their boss to pay for it and then set aside the time to attend these courses. However, this may be a situation where ignorance is bliss. In most instances, knowledge about the development and reliability of field sobriety tests might actually hurt the prosecutor's cases because it could prevent them from making some of the arguments that I routinely hear prosecutors make while trying to persuade a judge/jury to give more weight to these tests than they were ever intended to have. For example, the three standardized field sobriety tests were only intended to be a tool to help identify persons with a BAC of 0.10 or above, yet I routinely hear prosecutors argue that an accused must have had a BAC of 0.15 or more given the performance on field sobriety tests.

7. THE POLICE OFFICER DID NOT FOLLOW PROPER PROCEDURES FOR THE FIELD SOBRIETY TESTS.

When police officers are trained on the proper administration of the standardized field sobriety tests, they should be taught the required standards and procedures as set forth by the National Highway Traffic Safety Administration ("NHTSA"). **In fact, the NHTSA manual says that failing to administer the tests precisely as set out in the manual compromises the validity of the tests.** I don't know whether officers are poorly trained, forget their training or choose to ignore their training, but in all my years of experience I have never seen a case where the testimony of the officer regarding the administration of the standardized field sobriety tests revealed that the tests were administered as set forth in the manual.

For example, on the Horizontal Gaze Nystagmus (HGN) test—the one where police ask the subject to follow a pen or other stimulus with the eyes—the manual says that in order to administer this test the subject must keep his head perfectly still. However, officers routinely testify that the suspect was swaying and unsteady on his feet, which if true, means the test should have never have been given in the first place. There are countless other examples of officers straying from the standardized procedures, which their own manual says compromises the validity of the tests. I would be willing to bet that if you were given the standardized field sobriety tests the officer did not follow NHTSA's required instructions and procedures.

8. BREATH TESTING EQUIPMENT IS INACCURATE.

The breath testing machine is just that—a machine. The machine uses an assumption to calculate the amount of alcohol in a person's blood based on the amount of alcohol that is released into a person's

breath. The ratio can vary from approximately 1100:1 to approximately 3200:1. However, the machine uses a standard ratio of about 2100:1. If your ratio is down around 1100:1, the machine will give a reading that is falsely elevated. On the other hand, if your ratio is up near 3200:1, it will give a reading that is falsely low. Remember the discussion of breath temperature. Breath temperature affected breath alcohol results so it is an important factor in breath alcohol testing. Instead of using a machine that measure breath temperature and corrects the test result to be fair to the accused, Virginia uses a machine that just assumes a certain breath temperature. Think back to that earlier discussion about the 10 people ranging from 5'0" tall and 100 pounds, to 7'0" tall and 300 pounds, with an average of 6'0" and 200 pounds and how the clothes for a 6'0" tall 200 pound person wouldn't fit anyone else. I don't think anyone would argue that it would be scientifically reliable, or even fair, to pretend those 10 people are all 6'0" tall and weigh 200 pounds and treat them all the same—but that is exactly what the breath testing machine used in Virginia does.

CHAPTER 14

FEEDBACK FROM FORMER CLIENTS

Clients constantly ask me how their case is going to turn out, so I am constantly explaining that I can not answer that question. In addition to the fact that lawyers just aren't allowed to guarantee results, the result of any case simply can not be known in advance. Every case is different. Every client is different. Every set of facts and circumstances is different. The testimony at every trial is different. The outcome of every case depends on the specifics of that particular case.

Clients often then ask what my record is. I can usually help them understand that the act of categorizing the outcome of any particular case as "win" or a "loss" is a subjective exercise which depends on one's perspective, and that trials are not like sporting events where wins and losses are clearly defined. For example, if a client is charged with a type of DUI which carries a mandatory jail sentence, and the case is resolved in such a way that the client was found guilty of a DUI, but not a DUI that carries the mandatory jail sentence—some may consider that a "loss" since the client was still convicted, while others would consider that a "win" since the client avoided the mandatory jail sentence.

Occasionally, a client will ask me if most of my clients are pleased with the outcome of their case. Although I certainly can not read minds, what I can say is that the feedback I receive from clients

indicates the overwhelming majority of my clients recognize the work which was put into their case, appreciate the personal attention they received and are extremely happy they hired me to help them through this difficult time. Below are a few of the comments my firm has received.

Kevin,

Thanks for a great job. You were a true professional throughout my entire case, and I would not hesitate to use you again in any future legal matter. Thanks!

Hi Kevin,

I wanted to let you know how much I appreciated the way you handled my case the other day. I thought you were really great! Just a note of thanks – Best Regards!

Kevin,

Can't thank you enough for all your help! Have now finished ASAP and fully realize the "break" you negotiated! Who ever said "Boo on lawyers?" Have a joyous Christmas and prosperous New Year!

Mr. Wilson,

Thank you for taking my case and for the outcome. Your hard work and diligence is appreciated.

Mr. Wilson,

Thank you very much for representing me on my DUI case. I was very satisfied with your counsel. If I ever find myself or any of my friends in legal trouble I will definitely send them your way. Thanks once again.

Hi Kevin,

I just wanted to thank you for everything you've done for me in my case. You're an excellent lawyer and I will definitely recommend you to others. Thanks again.

Dear Kevin,

Just a quick note of Thanks for a brilliant job done. Kindest Regards.

Hi Kevin,

Thanks again for all your good help today. I am very grateful and remain your VERY satisfied client. If you need a reference, please have them call me.

Kevin and Melissa,

I want to thank both of you, from the bottom of my heart, for the way in which my case was handled and how incredibly well it turned out. I am, quite frankly, amazed that I am not in jail right now and can still get behind the wheel of my car. I know I kept

your inbox quite busy, Melissa, and I, once again, apologize for sending you a non-stop flood of emails. I really do appreciate your patience with me.

I also want you to know, Kevin, that... I do, very truly, appreciate the hard work by both you and Melissa that was put into my case and I could not have asked for a better outcome.

I truly believe that, by hiring you, I made the right choice. Thank you, once again, for all of your hard work and for how well my case was handled.

Good Afternoon Ms. Mercer,

"I wanted to thank all of you for your wonderful and professional help throughout the course of my case. Without your support and legal assistance I know things would have been much more difficult. Melissa was fabulous on all fronts, and I truly appreciate her continued assistance and patience with all of my questions. I thank you, Ms. Mercer, for being so kind and reassuring during the initial conversations. Mr. Wilson was a great help in guiding the decision making from a legal perspective as well as being understanding to my personal beliefs and morals in our meeting on the court date."

Hello Melissa,

"I am indeed very pleased with both the outcome of my case and the level of professional service provided by your firm. If I should have any additional questions or concerns I will not hesitate to

contact you, however, I do not foresee any further difficulties arising from this matter. All the best to Mr. Kevin Wilson and yourself."

Melissa,

"I am very pleased with the outcome of my case. I had not received even a speeding ticket in the few years I'd been driving, so finding myself suddenly about to lose my ability to drive for a year and possibly serve jail time was overwhelming. I had numerous anxieties about the possible consequences, but Mr. Wilson helped me reach the best possible outcome. Thank you for keeping me aware of what was occurring on a regular basis, I never felt like you were out of reach. I have gained valuable knowledge of the intricacies of the DUI process that I hopefully never have to use again. Thank you and Mr. Wilson for representing me."

Mr. Wilson,

"I wanted to express my sincere thanks for all that you have done. Your professionalism, persistence, and fairness made a very unpleasant situation much, much better. I can't thank you enough. My thanks to you will take the form of straighten out my life and making better choices. I recognize my disease and will need to pursue a life-long gurney of recovery."

CONCLUSION

Being arrested for DUI is probably going to make you feel overwhelmed and at the mercy of a court system, police system and legal system that you do not understand. With the police and the prosecutor trying to convict you, you might even think that it is useless to fight the charges against you and that there just isn't anything anyone can do to help. This is simply not true.

The goals of this book are to shed some light on what you are going through so that you can feel more comfortable, have a better understanding, and feel more in charge of this potentially overwhelming ordeal, and to help you find a qualified DUI defense attorney who will fight to ensure that your rights are protected and that justice is done. When it comes to your case, justice means demanding that the police office follow proper procedure, that only legally admissible evidence be presented at your trial, and that you are not convicted on the basis of anyone's opinion or prejudice.

Regardless of the particular facts of your case, you deserve to have a lawyer who understands what you are up against, and who can put you in the best position for success because that lawyer has the necessary education, training and years of experience helping others just like you fight the *DUI Guilt Myth*. Remember, a chance to fight for your rights is not simply what you deserve—it's the law.

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DUIDWI ARREST SURVIVAL GUIDE

When charged with a DUI, the deck is stacked against you. Laws are written and interpreted in favor of the prosecution so much that some commentators talk about the "DUI exception to the U.S. Constitution." In writing this book, Virginia DUI Lawyers T. Kevin Wilson and Bob Battle are attempting to dispel the notion that DUI charges are unwinnable. It is their belief that knowing your rights is the first step toward protecting those rights!

YOU HAVE QUESTIONS ABOUT YOUR VIRGINIA DUI:

1. How do I choose a lawyer?
2. Are there ways to attack roadside "sobriety tests?"
3. Are there ways to attack the breath test machine?
4. Do I have to go to jail?
5. Will I lose my license?

THIS CONSUMER GUIDE HAS ANSWERS!

Virginia DUI Lawyer T. Kevin Wilson has successfully defended thousands of clients just like you who have been accused of DUI. In addition to his successful law practice, Kevin served as a police academy Legal Instructor for more than 11 years, has acted as a Special Prosecutor at the request of the Commonwealth's Attorney, and has appeared on television as a DUI Legal Analyst. Kevin's extraordinary and extensive education, training and experience in the complex and technical field of DUI defense has clients from all across Virginia seeking his assistance. This book is intended to provide valuable information to people facing the nightmare of a Virginia DUI.

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