

Georgia

Traffic PROSECUTOR

Traffic Safety Program

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Resources

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Training

Protecting Lives,

Saving Futures

September 22-24, 2004

Forsyth, Georgia

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Web sites

Georgia Governor's Office of
Highway Safety:
www.gohs.state.ga.us

National Highway Traffic
Safety Administration:
www.nhtsa.dot

American Prosecutors Research
Institute:

<http://www.ndaa.org/apri/>

CMI, Inc. www.alcoholtest.com

(Intoxilyer manufacturer)

National Association of
Prosecutor Coordinators:
www.napcsite.org

National Traffic Law Center:
www.ndaa.org/apri/programs/traffic/ntlc_home.html

The Accident Reconstruction
Network:
www.accidentreconstruction.com

PAC's New Traffic Safety Program

Statistics compiled by the Georgia Governor's Office of Highway Safety reveal that in 2002, over 1,500 people died in motor vehicle crashes in Georgia; thirty-five percent of those crash deaths were alcohol related. Each year in the United States approximately 17,000 individuals are killed in alcohol-related traffic crashes. Individuals with prior convictions for driving under the influence and drivers with high blood alcohol concentration (BAC) levels are involved too frequently. While states have responded aggressively during the past two decades by enacting hundreds of laws mandating stiffer penalties for driving under the influence, research suggests that repeat and high BAC impaired drivers have found ways to slip through loopholes in the system. Because of system weaknesses, these hardcore DUI offenders can avoid detection, evade arrest and escape prosecution and court-imposed sanctions.

In November 2002, the Criminal Justice Summit on Impaired Driving was convened by the National Highway Traffic Safety

Administration (NHTSA) and the National Criminal Justice Association (NCJA), a Washington, D.C.-based, nonprofit organization representing the states and criminal justice community on crime control and public safety issues. The Summit was held to identify gaps, problems and challenges



January 2004, Prosecuting the Drugged Driver Course at the National Advocacy Center in Columbia, South Carolina. Fay attended as a faculty member. She is on the front row, first right.

in the criminal justice system in the handling of impaired drivers, and to assess solutions and strategies for increasing effectiveness in the enforcement, prosecution and adjudication phases of impaired driving cases.

Recommendations made were aimed at improving the prosecution phase of impaired driving cases. One included the establishment of a state level traffic resource prosecutor in all 50 states, to assist prosecutors by being proactively involved in efforts to reduce DUI

cases, particularly among repeat offenders, and to make DUI prosecution a higher priority in prosecutor offices. Based on these recommendations and with the help of a grant from National Association of Prosecutor Coordinators (NHTSA funded), in November 2002 PAC added a Traffic Safety Resource Prosecutor to its Atlanta staff. Another position was added at the Macon field office in early March 2004. The long term goal of PAC is to have a traffic safety prosecutor in each of its three satellite offices (Macon, Albany, Savannah).

The Traffic Safety Resource Prosecutor's role is to provide

assistance in prosecution of cases involving driving under the influence, vehicular homicides and other serious traffic offenses. Such assistance includes providing legal advice, preparing briefs and other pleadings, acting as associate counsel in cases, and assisting in procuring expert witnesses for district attorneys and solicitors-general. Another important responsibility is the training of prosecutors and law enforcement officers in traffic safety investigations and prosecutions.

NHTSA's Response to DR. WOODFORD

The following is text from a letter reprinted from Garrett Morford, Division Chief, Enforcement and Justices Services Division, NHTSA in response to testimony given by Dr. Woodford regarding his "certification" by NHTSA. Note that the second paragraph reference to "PH.D of the NHTSA undergraduate work" is taken from Dr. Woodford's testimony in State v. Lynn McGarey, 12/2/03, Dawson County, (Transcript p. 24, Line 16). You may obtain a copy of the original letter and transcript by contacting Fay McCormack at PAC.

The National Highway Traffic Safety Administration (NHTSA) and the International Association of Chiefs of Police (IACP) are responsible for the standards and the training curricula for the Standardized Field Sobriety Testing (SFST) Program. A number of years ago the NHTSA provided A Certificate of Completion to law enforcement officers, stating that they had satisfactorily completed the basic SFST and/or SFST instructor training. The NHTSA does not certify law enforcement officers as instructors in any traffic enforcement program area. However, some states have a certification process for SFST trained law enforcement officers.

In the basic SFST training program, law enforcement officers are trained in the proper administration of the SFSTs. In the SFST instructor training program, officers are taught teaching techniques. They also practice-teach using the SFST curriculum. Therefore, there are only two levels of training – basic SFST and instructor training. NHTSA does not

designate instructors or SFST officers as having a "PH.D. of the NHTSA undergraduate work."

The NHTSA and the Department of Health and Human Services (HHS) does not have a certification for alcohol and drug testing. The Department of Transportation has promulgated formal rules that require a series of alcohol and drug testing of employees in safety sensitive positions in all modes of transportation. Rules governing alcohol and drug testing are harmonized across different Federal transportation agencies. The role of the Medical Review Officer in the transportation workplace-testing program is limited to the drug-testing program administered by the Secretary of Transportation. The role of the Medical Review Officer is to review employee's drug test results generated by an HHS-approved laboratory and report his findings to the employer. Only licensed physicians (i.e., M.D. or D.O.) are eligible to serve as Medical Review Officers.

NHTSA's only involvement in this workplace-testing program is to identify acceptable alcohol measurement devices that are used for alcohol screening and confirmation. NHTSA publishes Conforming Products Lists of approved breath testing devices.

If you have any additional questions, please feel free to contact Garret Morford or Sandy Richardson of my staff.

Protecting Lives, Saving Futures

The *Protecting Lives, Saving Futures* training is tentatively set for September 22-24, 2004 at the Georgia Public Safety Training Center (GPSTC) in Forsyth. Georgia is one of only 10 states designated by the National Highway Transportation Safety Administration (NHTSA) to be a recipient of this training program. A grant from the Georgia Governor's Office of Highway Safety will fund the course, which will jointly train rural law enforcement officers and prosecutors in the detection, apprehension and prosecution of intoxicated and impaired drivers. The "team" approach to learning allows each

profession to learn the challenges and difficulties the other faces in traffic safety cases. Police officers will gain a better understanding as to what evidence prosecutors must introduce at trial, and prosecutors will learn to ask more probing and purposeful questions in pretrial proceedings, as well as at trial in the courtroom. The class size will be limited to 40-45 participants from rural Georgia. Only local "teams" of prosecutors and law enforcement officers will be allowed to register. Application forms will be available in April.

About **two** out of every **five** Americans will be involved in an alcohol-related crash at some time in their lives, and many of them will be innocent victims. There is no such thing as a drunk driving accident. Virtually all crashes involving alcohol could have been avoided if the impaired person were sober.

- NHTSA

After "Cooper"

Since the Georgia Supreme Courts decision in *Cooper v. State*, 277 Ga. 282; 587 S.E. 2d 605 (2003), some officers are unsure how to handle DUI cases where there was an accident involving serious injuries or fatalities. It is important to inform your officers that the Implied Consent Statute (O.C.G.A. §40-5-55) was not struck down. It was constitutionally "cleaned up."

Cooper was involved in a collision with another vehicle and both drivers were taken to the hospital. The trooper investigating the accident observed gouges in the road consistent with a head-on collision. The trooper went to the hospital and read Cooper the implied consent notice and he agreed to submit to a blood test. Cooper was not under arrest and the trooper's sole basis for administering the test was because he believed that the Implied Consent statute mandated that he do so because of Cooper's involvement in a

traffic accident resulting in serious injuries. Coopers blood tested positive for cocaine, benzoylecgonine and hydrocodone.

The Supreme Court of Georgia excluded the tests based on the constitutional protection against unreasonable searches and seizures. The Court pointed out that while the State's interest in guarding the welfare and safety of its citizens from the perils caused by intoxicated drivers is beyond dispute, it is clear that the primary purpose of O.C.G.A. §40-5-55 is to gather evidence for criminal prosecution. No matter how important this purpose may be, it does not create a special need to depart from the Fourth Amendment's requirement of **probable cause**.

So, now we have to go back to basics: Make your on-the-scene investigation and proceed to the medical facility. If the driver is conscious

and able to speak, you should try to ascertain the cause of the impact. In so doing, you would apply your training and experience to make a determination whether alcohol or drugs may be involved in the incident. You may observe bloody eyes, slurred speech, or other indicators of DUI. Once you have probable cause to believe that the driver is impaired by drugs or alcohol, you place him under arrest, read the implied consent and, if he consents, administer breath test or proceed to have his blood drawn and tested in the usual way. On the other hand, if you cannot develop **probable cause**, you could attempt to gain consent outside of the implied consent statute by obtaining voluntary consent to draw the blood without advising the person of the Implied Consent warnings. This consent must be obtained in the same manner as consent to search is obtained in any other criminal case.

Complying with "Cooper":

- Make your on-the-scene investigation and proceed to the medical facility.
- Make a determination whether alcohol or drugs may be involved in the incident.
- Once you have probable cause to believe that the driver is impaired by drug/alcohol, you place him under arrest, read the implied consent notice, and, if he consents, proceed to have his blood drawn and tested in the usual way; or
- If you cannot develop probable cause, attempt to get voluntary consent in the same manner as in any other criminal case.

District Attorneys and Solicitors-General Meet With State Patrol SCRT

On Friday, February 6, 2004, a delegation of nineteen District Attorneys, Solicitors-General, investigators and PAC staff met for two hours with the Georgia State Patrol (GSP) Specialized Collision Reconstruction Team (SCRT) at the Georgia Public Safety Training Center (GPSTC) in Forsyth, Georgia. Representing the GSP were Lt. Col. Arthur White and Major F. M. Taylor from Special Operations, the SCRT commander, Lt. Ken Peterman, and all five

SCRT supervisors. The meeting was arranged by Ms. Terry Long, Deputy General Counsel at GSP.

A number of issues were addressed, two being most important: the timeliness of SCRT investigative reports and timely notifications to prosecutors of fatal crashes and open investigations. The group learned that Colonel Ellis recently instituted a new GSP policy that instructs SCRT personnel to notify prosecutors on the "next available business day"

whenever "prosecution is evident." The policy also requires "real-time" notifications to prosecutors who have previously indicated a desire to respond to crash scenes. To facilitate initial contacts and coordination between prosecution offices and SCRT teams, following the meeting PAC shared the SCRT telephone contact list with the District Attorneys and Solicitors-General.

Alcohol involvement is still the single greatest factor in motor vehicle deaths and injuries.

Only about 5% of all crashes involve the use of alcohol, but 38% of fatal crashes.



Prosecuting Attorneys' Council

of Georgia

104 Marietta Street, Suite 400

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Georgia Traffic Prosecutor Newsletter

Mission Statement: Our goal is to effectively assist and be a resource to our fellow prosecutors in keeping our highways safe by helping to prevent deaths and accidents on the roads in Georgia.

1st Issue of PAC's Georgia Traffic Prosecutor Newsletter

Welcome! This is the first issue of *Georgia Traffic Prosecutor*. This newsletter will address a variety of matters affecting prosecution of traffic-related cases, and will be available to prosecutors and others involved in traffic safety. Upcoming issues will provide information on a variety of matters, such as ideas for presenting a DUI/Vehicular Homicide case, new strategies being used by the DUI defense bar, case law alerts and other traffic related matters. If you have suggestions or comments, please contact Fay McCormack or Patricia Hull at PAC.



Fay McCormack

Traffic Safety Coordinator

Atlanta

Fay McCormack attended law school at the University of the West Indies and Emory Law School. After nearly 18 years with the Fulton County Solicitor General's office, she came to PAC in September 2003 to take the position of Traffic Safety Coordinator.

Many in the prosecuting and law enforcement community know Ms. McCormack as a faculty member/instructor for many prosecutor training courses both in Georgia and at the National Advocacy Center in Columbia.



Patricia Hull

Traffic Safety Prosecutor

Macon

Patricia Hull is a graduate from Georgia State University College of Law. She began her career as an ASG with Cobb County, and then became an ADA with the Cobb Judicial Circuit. She joined the PAC staff as a Traffic Safety Prosecutor in March, 2004.

After almost 6 years of prosecuting murderers and other violent offenders, she has now turned her focus to equipping prosecutors and law enforcement officers with the necessary tools to effectively prosecute vehicular homicide, serious injury and DUI offenders.

This newsletter is a publication of the Prosecuting Attorneys' Council of Georgia. The *Georgia Traffic Prosecutor* encourages readers to share varying viewpoints on current topics of interest. The views expressed in this publication are those of the authors and not necessarily of the State of Georgia, PACOG or the Council staff. Please send comments, suggestions or articles to Fay McCormack at fay.mccormack@pac.state.ga.us.