



From The ABA and The National Highway Traffic Safety Administration

Summer 2007

## Lifesavers Conference Welcomes NHTSA Judicial Fellows and Liaisons

By Hon. Karl Grube, Judicial Outreach Liaison

Four NHTSA Judicial Fellows and Liaisons were presenters at the 25th Annual Lifesavers Conference this past March in Chicago. "Lifesavers" is the nation's largest conference on highway safety issues and priorities. Judicial Fellows Yvette Diamond and Kent Lawrence joined Judicial Outreach Liaisons Larry Sage and Karl Grube in presenting an interactive workshop entitled "You Be The Judge: Significant Traffic Law Issues."

### Getting the Audience Involved

In their presentation, the NHTSA Fellows and Liaisons acted out five actual courtroom scenarios that depicted legal, evidentiary, and ethical issues for members of the audience to contemplate and resolve as if they were the judge. The audience was provided with materials that functioned as their "court file" just as a judge would have sitting on the bench. The audience was then divided into four working groups with each selecting a spokesperson to deliver the consensus answer to the issues raised in the scenarios. The debate was lively.

Among the issues that the audience struggled with was a situation where a prosecutor asked a judge to accept a plea to an equipment law violation instead of a more serious speeding violation that would adversely affect a truck driver's commercial driver's license. The audience was informed that there was no probable cause to support the equipment violation and that the plea had been worked out by the prosecutor and defense counsel "for the convenience of the court." Should a judge accept a plea to a charge for which there was no probable cause? Should a judge question the legal basis for a plea of convenience? There was a split opinion among the audience groups. After a spirited discussion, the presenters informed the audience that the Iowa Supreme Court had condemned this practice as being illegal and unethical.

ing. There was also a sketch that highlighted considerations in sentencing a chronic DUI offender. Finally, there was a scenario in which the audience was asked to fashion an appropriate sanction against an individual's driver's license for a DUI and for violating an alcohol restriction. In each situation, the audience had the opportunity to step into the shoes of a judge and understand the issues that judges must consider in making decisions.

### Respect for Those who Strive to Save Lives

The 2007 Lifesavers conference offered the 1000 plus attendees more than 70 panels and programs with over 250 presenters. The exhibition halls provided the opportunity to gather firsthand knowledge about products, services, and support organizations involved with



Another scenario involved an individual who, while driving under the influence, struck and killed a pedestrian. The prosecutor reduced the charge to reckless driv-

ing. highway safety. Judges Diamond, Lawrence, Sage, and Grube express their thanks to the NHTSA and its Enforcement and Justice Services Division for the opportunity to participate. All agreed that they left the 2007 Lifesavers conference with a renewed respect for the dedication of all those who devote themselves to saving lives on our streets and highways.

## IN THIS EDITION...

- Ignition Interlocks in Perspective: No Magic Bullet, But an Important Piece of the Puzzle
- Annapolis "Schools in the Court" Program Celebrates 7th Anniversary
- There Ought to be a Medal
- Assessing and Fulfilling the Educational Needs of Traffic Court Judges

**JUDICIAL**  
DIVISION

# Ignition Interlocks in Perspective: No Magic Bullet, But an Important Piece of the Puzzle

By Hon. Harvey J. Hoffman, 56th District Court, Charlotte, Michigan

In its July 2006 publication, "Ignition Interlocks from Research to Practice, A Primer for Judges," the Traffic Injury Research Foundation ("TIRF") concluded that the use of ignition interlocks significantly reduce DUI recidivism while the devices are on the offender's vehicle. However, TIRF also found that once the interlocks have been removed, recidivism rates among program participants eventually return to levels comparable to offenders who did not participate in the interlock program. Given the TIRF findings as to ignition interlocks, policy makers must consider how best to use these devices in efforts to reduce recidivism among repeat and high blood alcohol level offenders. These offenders pose a substantial risk to public safety and are much more likely to be full blown alcoholics than average motorists.

Alcoholism is a chronic, relapsing brain disease. Alcohol dominates the lives of alcoholics. Alcoholics structure their lives to maintain a safe supply of alcohol and to minimize interference from the non-alcohol using world. Ignition interlocks do not, by themselves, address the underlying addiction of the interlock using alcoholics. It is, therefore, not surprising that once the interlocks come off, the alcohol offenses return.

## A Two-Pronged Approach

The use of ignition interlocks provides a period of relative safety, when DUI recidivism rates are low. If the goal is to provide something other than a short term answer to the problem of repeat DUI and high BAC offenders, the interlock period should be used to mount a comprehensive attack on alcoholism and focus on providing treatment for these offenders.

One would think that a marriage between interlocks and the courts, especially the DUI courts which target the addictions of alcoholic DUI offenders, would be a match made in heaven. The 350 plus DUI courts in the country require demanding treatment, frequent testing and regular appearances before a judge to monitor compliance. However many judges are not confident in the efficacy of ignition interlocks. Early semiconductor interlock technology was found to cause false positives. Some judges raise driver recognition issues, questioning whether proofs are adequate as to who is making a dirty interlock blow. Many judges feel that it is wiser to monitor the individual alcoholic offender than to monitor the use of one specific vehicle.

## Current Interlock Technology Provides More Sophisticated Monitoring

Recent improvements in interlock technology may help secure judicial support for interlocks. Fuel cell based interlocks have largely eliminated the problem of false positives. The new photo-based driver recognition systems provide an actual picture of the person blowing into the interlock device. Furthermore, this new photo identification technology may end debate as to whether it is best to monitor the individual or the vehicle because both the individual and the vehicle may be monitored with one device. With randomized requirements to blow into the photo-based interlock, combined with the detailed information now held in the interlock data loggers, an interlock can be used by the courts to closely monitor the individual, while immobilizing the vehicle on a dirty blow.

The other critical issue is that while Congress, legislators and regulators may enact statutes and regulations requiring offenders to use interlocks, as a practical matter, it is difficult to ensure that drivers, especially high risk offenders, actually use ignition interlocks. In New Mexico, the state with the most aggressive interlock program in the country, only 35 per cent of those required to use ignition interlocks actually have the devices installed in their vehicles. As a result, this has increased the ever grow-

ing portion of the driving public that is driving illegally, being neither licensed nor insured. Congress recognized this problem by including in the SAFETEA-LU transportation bill, language that allows the states to grant restricted licenses to high BAC offenders, if an interlock is installed. The restricted license interlock legislation is designed to increase the use of interlocks while facilitating the offenders needs to drive for work, school, and alcohol treatment. Recommendations have been made to further amend SAFETEA-LU to allow a similar approach for repeat DUI offenders, so as to increase interlock use and treatment in another critical part of the target population.

With the new, emerging technology, ignition interlocks can become a broadly accepted, important tool in the fight against repeat DUI and high BAC offenders. They cannot be expected to be a magic bullet, in and of themselves. However, when combined with a comprehensive and demanding treatment/accountability model, like the DUI courts, there is great potential to reduce recidivism.

## Editor's Note

*Highway to Justice* is a publication of the American Bar Association ("ABA") and the National Highway Traffic Safety Administration ("NHTSA"). The views expressed in *Highway to Justice* are those of the author(s) only and not necessarily those of the ABA, the NHTSA, or the government agencies, courts, universities or law firms with whom the members are affiliated.

We would like to hear from other judges. If you have an article that you would like to share with your colleagues, please feel free to submit it for inclusion in the next edition of *Highway to Justice*. To do so, please forward the article to Hon. Yvette N. Diamond, Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD 21031, or via e-mail: [ydiamond@oah.state.md.us](mailto:ydiamond@oah.state.md.us)

# Annapolis "Schools in the Court" Program Celebrates 7th Anniversary

By Hon. Yvette N. Diamond, Judicial Fellow (Maryland)

"Schools in the Court," a judicial outreach program for high school students in Annapolis, Maryland, is celebrating its seventh anniversary. Under the guidance of Judge Vincent A. Mulieri of the Anne Arundel County District Court, the initiative has blossomed into a top notch educational program for teens. Twice a year, Judge Mulieri brings approximately 100 juniors and seniors from area high schools into his courtroom to see firsthand the consequences of making poor choices. His program is filmed and broadcast multiple times over a period of several weeks on the Anne Arundel County Public Schools cable channel enabling it to reach a wide audience well beyond the courtroom.

## Inspiration from Judge Michael Martone

Judge Mulieri credits Judge Michael Martone of Troy, Michigan, for giving him the idea for the program. While traveling in California in 2000, Judge Mulieri read an article in the *Los Angeles Times* about a program in which Judge Martone took his courtroom into the high schools. Upon returning home, Judge Mulieri contacted Judge Martone to find out more about his "Courts in the Schools/Critical Life Choices" program. In that program, Judge Martone conducts DUI sentencing hearings in the schools followed by an interactive substance abuse awareness lecture. Judge Martone was extremely helpful to Judge Mulieri and even traveled to Annapolis to address the students at one of the first sessions of "Schools in the Court."

## Bringing Students into the Courtroom

While Judge Martone takes his courtroom into the schools, Judge Mulieri brings the students into his courtroom. He presents a multifaceted program where the students have the opportunity to watch actual District Court trials, listen to speakers, and watch a video. Upon arrival, the students are greeted by Judge Mulieri and by the Hon. Ben Clyburn, Chief Judge of the District Court of Maryland. Then, the students observe three or four trials where the issues before the court are likely to include drunk-driving, shoplifting, assault and battery, drug possession, violations of probation, and/or driving on a suspended license. During the trials, students see the reality of the courtroom experience and the consequences of poor decisions as defendants are handcuffed and receive dispositions that include jail sentences, probation, and community service.

After the District Court trials, the students hear from a variety of speakers who share insight into the consequences of bad decisions from their niche in the criminal justice process. Those speakers include a probation agent who explains the requirements and cost of being on probation. A police officer from the traffic safety division tells the students that the three most important things that will best insure their safety in a vehicle are, "wear a seatbelt, don't speed, and don't drink and drive." A prosecutor drives home the traffic safety message by reminding students about crashes that occurred at intersections near their schools and in their

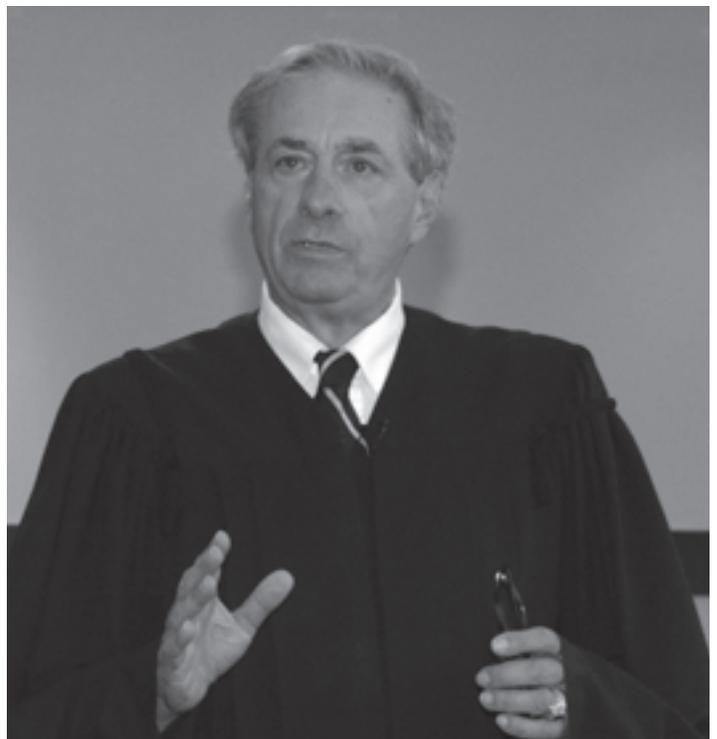
neighborhoods.

Speakers also address administrative, medical, and emotional consequences of poor decision-making. An administrative law judge tells teens how a DUI and other driving infractions may result in suspension, revocation, or restriction of their newly acquired driving privilege. A representative of Mothers Against Drunk Driving ("MADD") vividly describes how her brother was killed in a drunk driving crash and the impact it has had on her family. At the most recent session of "Schools in the Court," a nurse from the University of Maryland Shock Trauma Center shared stories of patients who were seriously injured and disfigured in traffic crashes resulting from DUIs and reckless driving, and the lengthy and difficult recovery and rehabilitation process. She also showed the students a gripping video of a father speaking at the bedside of his son who was in a coma as a result of a DUI.

## Firsthand Stories from Young Drivers who Caused Fatal Crashes

By far, the most compelling speakers at "Schools in the Court" are young offenders who caused fatalities while driving under the influence. They share their experiences with the students in an attempt to discourage them from making the same poor choices. These young offenders speak frankly about their actions and bluntly tell the teens how powerless they felt being confined in jail. In particular, they tell of their guilt and remorse for taking a life, and how difficult it is to go on with your own life knowing that you have killed someone. While the young offenders are speaking, the students are transfixed upon them. According to Judge Mulieri, "the kids really relate to the young offenders. It has tremendous impact for them to hear from other young people who have caused fatalities."

Judge Mulieri found two of the offenders' experiences to be particularly tragic. In one case, a young man who had been drinking was driving with his best friend in the passenger seat. They



crashed into a tree, the vehicle caught fire, and his friend burned to death. The young driver was prosecuted for killing his friend. In another case, a young woman who had been drinking failed to stop at a stop sign, and struck and killed a pedestrian. The young woman had recently been a bridesmaid in a friend's wedding. The pedestrian she killed was her friend's uncle. The young woman was also prosecuted for the DUI-related fatality and served time in a state prison, rather than a county jail. She tried to commit suicide by slitting her wrists on several occasions. At the end of her remarks, the young woman implored the teens not to drive drunk. She said, "I am begging you, don't do this, you don't want to be in my shoes."

On April 4, 2007, Judge Mulieri celebrated 16 years on the bench and intentionally scheduled a "Schools in the Court" program for that date. "I couldn't think of a better way to spend the day than to show young people that there are consequences to their choices," said Judge Mulieri. He will be retiring in June 2007 but "Schools in the Court" will continue under the supervision of Anne Arundel County District Court Judge J. Michael Wachs. According to Judge Mulieri, "We have a terrific program going and I feel good about handing it over. I would like to see more judges do similar programs for the schools in their counties." He has found "Schools in the Court" to be a very gratifying experience. In Judge Mulieri's words, "At the end of the program, students have thanked me and said it was the best field trip they have ever taken. It doesn't get much better than that."

## There Ought to be a Medal

By COL (ret.) Larry Sage, LOM  
ABA / NHTSA Judicial Outreach Liaison

In the armed forces, we give a medal for saving lives, even if acting in a civilian capacity (off duty) or for saving the life of a civilian in peace time. In the United States Army, it is called the Soldier's Medal and the award criteria reads: "Heroism not involving actual conflict with an armed enemy of the United States." It is a blue ribbon, with thirteen red and white vertical stripes down the center of the ribbon, and a bronze medal depicting a wing-expanded eagle. A military organization (unit) may also be awarded a ribbon entitling all current and future members of that unit to wear the ribbon, depending on whether it is a Presidential, Meritorious or Valorous Unit Citation. When wearing civilian clothing, this medal or award may be acknowledged by wearing a lapel pin of the award.

### Traffic Safety Heroes

But there are other unrecognized heroes among us! These individuals are true champions, committing acts of heroism over time and during their professional duties that go unrecognized but for their personal knowledge that they save lives on a daily basis. As one of the ABA's NHTSA Judicial Outreach Liaisons, I have been fortunate to work with these heroes. I am referring to the dedicated professionals who promote highway safety and save lives—thousands of lives daily. These heroes are the women and men of NHTSA, the Governor's Highway Safety Offices, and the State Offices of Traffic Safety or Traffic Safety Bureaus. They are also the uniformed police officers, firefighters, and paramedics. I have seen them work and save lives everyday. My knowledge of their heroism is not limited to personal, working observations in numerous states; it includes judicial observations and my own experience in a car crash last year. In the crash, the 16 year old who drove into my lane and crashed into me, his juvenile passenger, the adult driver of the second vehicle he struck, and I, all survived due to safety belt use, thanks to the efforts of lifesaving traffic heroes.

Having presided over hundreds of crash citation cases in traffic court, I learned that numerous defendants and victims were alive to appear in court due to the efforts of these heroes. The defendants and crash victims survived due to safety devices, measures, and programs designed, implemented, and enforced by these champions of highway safety. Child restraints and safety belts are lifesaving safety devices. Railings, crosswalk markings, road designs, shoulders, traffic control devices, and signs are fundamental tools to insure roadway safety. DUI checkpoints, enforced speed limits, stepped-up traffic patrols, DUI saturation patrols, and additional DUI probation officers are essential enforcement programs. Other invaluable initiatives include teen driver programs, driver's education programs, DUI Courts in the Schools programs, and other student outreach programs. Many of these advances were made possible through grant monies from NHTSA to programs initiated, designed and administered by these champions who tirelessly work to promote traffic safety. All of these heroes are dedicated professionals seeking to save lives. Indeed, their successful efforts are documented daily.

Between 2004 and 2005, nationwide, safety belt use increased, child restraint use increased, speeding-related fatalities decreased, alcohol-related fatalities decreased, the percentage of drivers involved in fatal crashes with a BAC (blood alcohol content) of .08 or greater decreased, fatalities and fatality rate per 100 million vehicle miles traveled (VMT) in crashes involving a driver or motorcycle driver with a BAC of .08 or greater decreased, the alcohol-related fatality rate per 100 million VMT decreased, and alcohol-related fatalities in individuals between the ages of 0–20 decreased. These statistics are documented in the NHTSA-National Center for Statistics and Analysis *Quick Facts* for 2005.

*continued on page 6*

# Assessing and Fulfilling the Educational Needs of Traffic Court Judges

By Judge Karl Grube, Judicial Outreach Liaison

I have long had the privilege of being involved with educating judges who preside in those lower tier, limited jurisdiction courts that we often refer to as "the people's courts." Chief among these so called "people's courts" are our nation's traffic courts. My experience with judges who preside in "traffic" is that they are sometimes overlooked when it comes to the specialized education and training needed to address the legal and evidentiary issues that confront them daily. Those who fund judicial education, but who are not themselves experienced judicial educators, may believe that the issues and cases that confront traffic court judges are simple and require little if any training to be competently adjudicated. This misperception may be perpetuated by the fact that in a number of states, traffic court judges work part-time and are not lawyers.

## Traffic Courts Address Technologically and Constitutionally Sophisticated Issues

Some equate traffic court with speeding and red light cases, and question how much education is really necessary to handle such cases. This perception unfortunately overlooks the reality that traffic court cases routinely involve issues that are technologically complex and involve critical constitutional issues of search and seizure, confession admissibility, and the law of arrest. Those judges who handle impaired driving cases, in particular, are routinely confronted with medically and technologically sophisticated evidentiary issues such as retrograde extrapolation, blood alcohol pharmacology, blood/breath partition ratios, infrared spectrometry, horizontal gaze nystagmus, passive alcohol sensors, and the admissibility of testimony of drug recognition experts. Even those supposedly simple speeding and red light cases now involve complexities related to electronically monitored intersections, photo radar, laser speed detection, and the myriad of defenses in radar and Vascar enforcement cases.

## Traffic Court Judges' Needs Assessments and the Survey Approach

What kind of judicial education and training do judges who handle motor vehicle cases need? What are the cutting edge issues that confront them? Being a judge who routinely presides in traffic cases and having had the privilege of designing and teaching traffic law courses for the National Judicial College, I have some thoughts on these subjects. First and foremost, to fulfill the education needs of traffic court judges, I believe that one needs to survey the judges who preside in those courts. Rather than asking what they would like to learn about, experienced judicial educators know that the key to curriculum design is to ask what are the problems and issues that confront these judges. The result of such a needs assessment will often yield distinct differences based on rural vs. urban court venues, whether the responding judge is an attorney, and whether jury trials are routinely accorded to defendants. Such differences may indicate a need for education program segments that are divided into tracks

or that use discussion groups to separate judges according to their jurisdiction or bar status.

## What are the Issues; What are the Problems?

When surveying judges who handle motor vehicle cases, it is often preferable to have them rank issues or problems that confront them rather than describe the issue or problem in their own words. The ranking process utilizes a list of possible and probable issues or problems from which those surveyed are asked to select the top 5 or 10 to be designated in order of importance. The ranking process also provides space for those surveyed to describe and list other issues or problems that they believe are important. The following list contains examples of potential problem areas and issues that routinely confront traffic court judges, particularly those who handle impaired driving cases.

- How to supervise defendants without a government funded probation service
- How to avoid being reversed by an appellate court
- Designing forms and writing orders and judgments
- Ethical judicial community outreach activities
- The admissibility of field sobriety tests
- Technology advances: SCRAM, GPS, ignition interlocks, and more
- Issuing search warrants to draw blood in breath test refusal cases
- New federal and state appellate decisions that impact traffic cases
- The judge's role in plea bargaining and sentencing
- Evidentiary issues including relevance, admissibility, materiality, judicial notice, and expert testimony
- Drivers license records admissibility and accessibility
- Zero tolerance laws and juvenile traffic offenses
- Rural courts and their special issues and needs
- Sentencing impaired drivers effectively
- Understanding blood alcohol pharmacology and toxicology
- Collecting fines and providing for restitution, using collection courts
- Handling motions regarding the operation and maintenance of breath testing equipment
- The role of the judge and the professional in treating addiction
- Ruling on motions to suppress involving search and seizure issues
- Dealing with law enforcement and lay witnesses who fail to appear
- Roadblocks and sobriety check points
- Motions to compel and matters related to discovery issues
- Dealing with commercial motor vehicle ("CMV") issues and cases
- Identification and other issues in cases involving electronically monitored intersections and photo radar.
- Issues involving the maintenance and testing of speed measurement devices

- The function and appropriateness of ignition interlock devices
- The function, design and implementation of DUI/drug courts
- How to deal effectively with suspended, revoked, or unlicensed drivers

The survey process can also be utilized when educational needs are being determined through the use of education committees such as those that often function in conjunction with judges associations or conferences. When curriculum decisions are being made through the use of such committees, it is important that those involved in the survey process be the same judges who routinely preside in the types of cases for which issues and problems are to be identified.

### The National Conference of Specialized Court Judges Stands Ready to Help

Once the needs of traffic court judges have been identified, it may be helpful and productive to contact the American Bar Association's National Conference of Specialized Court judges ("NCSCJ"). This ABA Judicial Division conference represents our nation's limited and specialized court judges. It offers traffic court programs and curricula as well as a cadre of nationally recognized presenters to fulfill the educational needs of judges who handle motor vehicle cases. The NCSCJ has successfully cooperated with state judicial educators to design and present highly acclaimed traffic court programs in states including Arkansas, Georgia, Indiana, Texas, Michigan, Rhode Island, Kentucky, Utah and Washington. Information con-

cerning available assistance and sample curricula may be obtained by contacting Judge Earl Penrod, Chair of the NCSCJ Traffic Court Committee at [egpenrod@gibsoncounty.net](mailto:egpenrod@gibsoncounty.net).

Those who preside over the people's courts are truly special. The NCSCJ stands ready to assist judicial educators and judicial organizations in fulfilling those educational needs.



## There Ought to be a Medal

*(continued from page 2)*

### Recognizing "Lifesavers"

These results show that our heroes are saving lives. Perhaps that is one of the reasons that their annual meeting is called "LIFESAVERS." But they have no unit award, no organizational citation to wear

on their lapel. Through their collective work, they have saved thousands of lives in the past and are working to save lives in the future. They deserve a unit lifesavers medal or organizational lifesavers citation to wear on their lapels!

I hereby challenge the appropriate authorities to initiate an organizational citation, a unit award if you will, to be presented to these professional members serving in organizations that save civilian (citizens) lives by the hundreds of thousands

and go unrecognized. The written citation, presented to each organizational member, should include a lapel pin to reflect the lifesavers citation/medal. This would enable the public to recognize these civilian lifesavers, just as we do our military heroes. These lifesavers are true American heroes saving American lives, as well as multiple nationalities of travelers on our roadways and highways, and . . . they ought to get a medal!