



From The ABA and The National Highway Traffic Safety Administration

Winter 2007

## Judge Yvette Diamond Welcomed As New Administrative Law Judicial Fellow

Judge Yvette N. Diamond of the Maryland Office of Administrative Hearings has been selected as the new ABA/NHTSA Administrative Law Judicial Fellow. She replaces Edward Schoenbaum who was recognized by the ABA's Judicial Division and the National Highway Traffic Safety Administration for his leadership, vision as well as his tireless efforts as the editor of the ABA Judicial Division Highway to Justice Newsletter.



### A Background as a Writer and a Producer

Judge Diamond is a graduate of Emory University and the University of Maryland School Of Law. She was in the private practice of law for eleven years and became an administrative law judge with the Maryland Office of Administrative Hearings in February 2000. Judge Diamond hears contested cases from various State agencies including driver licensing cases. Her article entitled "OAH—What's It All About?" was published in the January 2006 issue of the Maryland Bar Journal.

In 2006, Judge Diamond produced "Branded D.U.I.", a dynamic video about the consequences of underage drinking and driving that is targeted to address the interests of high school students. It explores, through the words and thoughts of the young people involved, the impact of drunk-driving arrests upon their lives. Branded D.U.I. was a joint public education project of the Administrative Law Section of the Maryland State Bar Association and the Maryland Office of Administrative Hearings in conjunction with the Maryland Judiciary and Maryland Public Television. It was funded by the Maryland State Department of Education and the Maryland Department of Transportation, Motor Vehicle Administration. The DVD has been widely distributed to every high school, college, and driver's education school in Maryland as well as probation offices and many State agencies. Judge Diamond

has made presentations about young driver safety to high school students throughout the State of Maryland.

### A Full Agenda of Activities Lies Ahead

Judge Diamond is the third recipient of the ABA/NHTSA Administrative Law Judicial Fellowship. She said that she looked forward to her Judicial Fellowship duties which will include being a teacher, writer, consultant, being involved in com-

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## Walk To School Day: A "4E" Judicial Outreach Activity

by Judge Karl Grube

When judges consider taking off their robes and getting involved in community activities, they look for extra-judicial community outreach activities that pass the "4Es Test". To pass the 4Es test a community outreach activity must be easy, effective, economical, and above all ethical. There are many traffic safety-related outreach activities that pass the 4Es test. The annual Walk to School Day is one such activity.

### Why Should You Get Involved?

Why should judges consider traffic safety-related outreach activities? And, why in particular should they consider safety-related activities addressed to young people? The answer is because motor vehicle and pedestrian crashes are the leading cause of both death and serious personal injury for children and young adults ages 4-19. By working with young people to avoid risk taking and by teaching them to use care as pedestrians, passengers, and drivers, lives can be saved and suffering avoided.

### It's a Healthy Exercise in Judicial Outreach

Walk to School Day is a unique traffic safety outreach activity that has been promoted by NHTSA since 1997. It is unique because it not only teaches children pedestrian safety, but it also encourages walking for fitness and to

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## IN THIS EDITION...

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- Understanding Alcohol Ignition Interlocks
- Traffic Case Allocutions
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## ABA's Specialized Court Judges Present North Dakota Traffic Program

Bismarck, North Dakota, was the site of the latest Traffic Court Technology program that was presented through the cooperative efforts of the ABA Judicial Division's National Conference of Specialized Court Judges (NCSCJ). Over 80 North Dakota Municipal Judges attended their annual education program hosted by their state's administrative office of the courts. The program was devoted predominantly to motor vehicle and traffic safety issues and featured course segments specially designed to meet the educational needs of the Municipal Court Judges.

### A Long and Productive Day of Teaching

It was a long day for NCSCJ faculty members Col. Linda Strite Murnane, USAF ret., and Judge Karl Grube. Beginning at 7:45 a.m. with a program overview and ending at 5:15 pm, Linda and Karl teamed up to present a total of 7 hours of instruction with time out for lunch. Their topics included: The Search and Seizure of Motor Vehicles, Their Occupants and Contents, Elder Law Driving Issues, Sentencing Motor Vehicle Law Offenders, A Sentencing Workshop, A DWI Mock Trial, and Deciding Infraction Cases Using the Deductive Reasoning Process. Each of their topics was specially designed for the judges

and incorporated North Dakota statutory and case law. Other topics included Commercial Motor Vehicle laws and Alcohol Pharmacology, which were tracked sessions presented by local authorities.

Program supervisor Lee Ann Barnhardt, of the North Dakota Administrative Office of the Courts, stated that she was very satisfied with the program. She remarked that a cursory review of the evaluations, indicated that the judges gave high marks to the presenters, the materials, and the subject matter that was presented. She expressed the hope that further programs, for both Municipal and District Court judges, could be presented in cooperation with the NCSCJ.

### Custom Made Traffic Court Technology Courses

The Judicial Division's NCSCJ makes the Traffic Court Technology curriculum and its nationally recognized faculty available to states and their judicial educators. Working with State Judicial Educators Traffic Court Technology curricula can be custom designed to meet the education needs of judges of all jurisdictions. Thus far programs have been presented to satisfied audiences in Utah, Washington, Rhode Island, Georgia, Kentucky, Hawaii, Indiana, Arkansas, and Texas. Information concerning how a Traffic Court Technology program can be designed and brought to your state can be obtained by contacting: Elizabeth Strouthides, ABA Judicial Division, 321 N. Clark St, Chicago, IL 60610, Phone: (312) 988-6259, Fax: (312) 988.5709

## ABA/NHTSA Faculty Helps Arkansas Judges Hone Their Judicial Skills

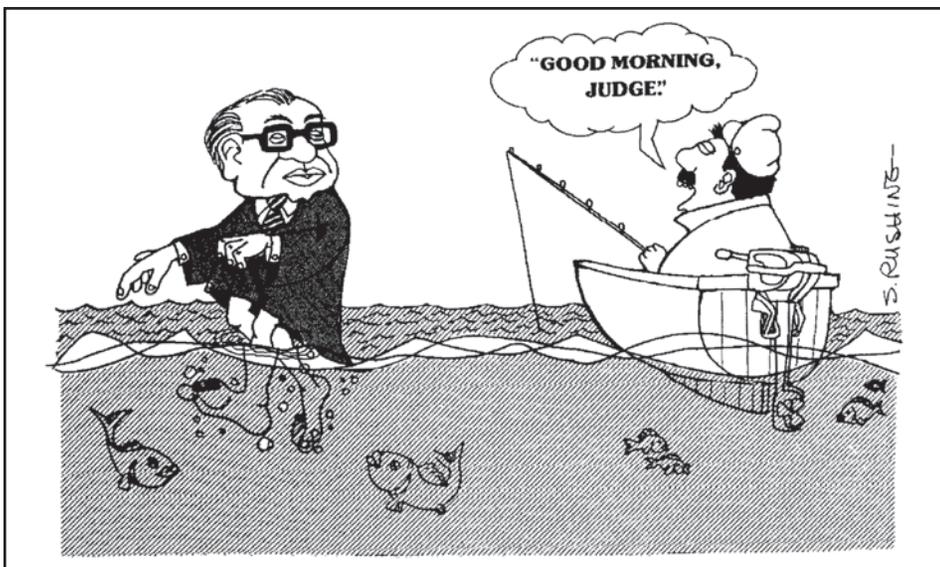
by Judge Robert Pirraglia

September brought me to Springdale, Arkansas, just next door to the beautifully situated University of Arkansas in Fayetteville. My mission was to coordinate a team of Specialized Court Judges recruited to present a comprehensive traffic issue-related education program to Arkansas judges. Working with their state judicial educators, a curriculum was selected that included resolving evidentiary issues in traffic cases, the legality of searches and seizures of motor vehicles, their occupants and contents; creating and using DUI/Drug Courts to address hardcore offenders, dealing effectively with the media, and ethical issues in campaign speech and materials. My team of seasoned judicial educators from the ABAs National Conference of Specialized Court Judges were assembled and ready to go. They included Judges Karl Grube, Michael Kavanaugh, Steve Smith, Karl Penrod, Mike Witte and, of course, me.

### From the 4<sup>th</sup> Amendment to DUI/Drug Courts and the Media

Judges Penrod and Grube presented an update of their Motor Vehicle Search and Seizure program that they presented to the Arkansas judges last year. It included updates using the latest U.S. Supreme Court and Arkansas appellate court decisions. Judges Witte and Kavanaugh gave a candid and informative insight into how the drug court model can be used to reduce recidivism in alcohol and drug-related driving violation cases. Their candid presentation explored the practical issues of the time and money that must be invested in setting up and operating drug courts as well as the rewards to be gained from the successful operation of these programs. Judge Smith helped the participants understand how to make quicker and more accurate decisions on traffic-related evidentiary issues. Using the case study method, the audience practiced resolving

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# A Crash Course in Understanding Alcohol Ignition Interlocks

by Robyn Robertson, Ward Vanlaar,  
and Herb Simpson  
Traffic Injury Research Foundation  
Ottawa, Canada.

An alcohol ignition interlock device (IID) is a sophisticated breath-testing device that is connected to the ignition system of a vehicle. When the device detects a pre-set level of alcohol in a breath sample provided, presumably by the driver, it prevents the vehicle from being started by blocking electrical power to the starter. Sound research demonstrating the effectiveness of IIDs in preventing impaired individuals from driving a vehicle has been amassed—research has consistently found reductions in recidivism of 45-90%. The technology is very advanced and has overcome problems associated with circumvention. The device also provides extensive records of such things as attempts to start and failures to do so. The characteristics of IIDs are flexible, so they can be tailored to accommodate a broad range of jurisdictional requirements. Most states now have implemented enabling legislation as well as an interlock program.

## Judges Lack Knowledge Concerning IID's

Despite these advances there has been limited growth in interlock programs. Less than 10% of the 1.5 million impaired drivers arrested annually have such a device installed on their vehicle. One reason that participation rates in interlock programs in most jurisdictions are low is that most criminal justice professionals have limited opportunities to acquire knowledge about these sophisticated devices and are even not well-informed about programs operating in their own jurisdictions. To address this need, the Traffic Injury Research Foundation (TIRF) has recently completed an educational primer for judges entitled "Ignition Interlocks: From Research To Practice", under funding from Alcohol Countermeasure Systems, Inc. This brief, easy-to-read, educational piece provides an overview of the state of knowledge about ignition interlocks.

## IID Technology:

Contemporary interlock devices use highly reliable fuel cell technology—the same technology used in preliminary breath-testing devices and the majority of evidential breath testing devices and passive sensors. They are alcohol-specific and have greater stability, meaning they require calibration checks less frequently (60-90 days).

Most devices have extensive anti-circumvention features including: sealed wiring, a datalogger that records all events and usage of the vehicle with a time/date stamp, technology to detect non-human breath samples, and a running retest which requires subsequent breath tests while the vehicle is in use.

Devices have a range of programmable features that can be tailored to jurisdictional requirements (e.g., BAC threshold for lockout of the vehicle, a lockout period following a positive BAC reading, a pull-over notice following a missed or failed breath test, language settings, early recall for specified violations, emergency override).

## IID Research:

Research shows that interlocks reduce recidivism by 45-90%. Reductions in recidivism occur among first-offenders and repeat offenders.

This research has undergone extensive peer-review. Studies have involved a range of organizational characteristics, populations, time periods and study designs, attesting to the veracity of the results.

The main limitation associated with interlock research is self-selection (offenders volunteer to participate). However, this limitation was largely overcome in one random assignment study in Maryland that yielded similar reductions in recidivism.

When the interlock device is removed from the vehicle, recidivism rates generally return to pre-interlock recidivism rates, demonstrating that the device is effective in preventing drinking and driving *while* it is installed. At the same time, it is clear that long term behavior modification may require extended use and/or treatment.

The significant reductions in recidivism found in the research are evidence that few offenders drive an alternate vehicle to avoid the interlock. If offenders regularly

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# Traffic Case Allocations

by Judge Larry Sage

Too many times I have overheard people mumbling and muttering that they had a traffic ticket and pled 'guilty' or 'no contest' even though they are TOTALLY INNOCENT! I've heard this repeatedly, in both private practice and as a prosecutor. When I inquire as to why they entered their plea of either guilty or no contest, they tell me that they did so because it was a matter of convenience; they didn't have the time to return to court again for a trial.

As a prosecutor, I only allowed pleas when a defendant would allocate to the charge. As a defense attorney, I noted that my clients entering pleas of convenience, due to work or other time constraints, were very often repeat traffic offenders and repeat clients. Often their recidivism involved the exact same traffic offenses! It was as if they failed to recognize their driving errors and were repeating the same driving pattern that led to their ticket or accident. My clients failed to have a true "learning experience" in traffic court.

## A New Approach to Those Who Plead for The Sake of Convenience

Upon assuming the bench, I applied a technique that I had both practiced on two sides of a court case (prosecution/defense) and observed being applied by a wiser and more experienced jurist. She, this very wise judge, would ask the defendants after their plea to explain their driving conduct/pattern which led to their citation/ticket or accident, or both. Then, prior to sentencing, she asked each defendant if there was something different they could have done to prevent their described driving pattern, the citation and/or the crash. She called it "traffic case allocation" and her stated purpose was to be sure that everyone who left her courtroom knew of options they could have pursued to prevent a recurrence of the same driving conduct/pattern and to thus learn, how to prevent a return to court.

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# 2006 ABA Traffic Court Program Draws Large Audience in Charleston, SC

by Hon. Karen Arnold-Burger  
Chair, Committee on Traffic Court Program  
Overland Park, KS

Over 100 participants attended the 2006 Traffic Court Seminar in Charleston, South Carolina, October 11-13. The weather was beautiful and the warm southern hospitality was abundant.

## Presentations By Seasoned Faculty

The newly established Charleston School of Law partnered with the Traffic Court Program Committee in presenting the seminar and also hosted a reception for the attendees at the school. Dean Richard Gershon opened the seminar with a presentation on judicial ethics. Other presenters included the always popular, Judge Fred Rodgers, Gilpin County, Colorado, who updated the participants on constitutional law concerning search and seizure and 4<sup>th</sup> and 5<sup>th</sup> Amendment rights by song and slides. Following his presentation, Judge Rodgers himself was serenaded by the Traffic Court Program Executive Committee as part of their recognition of him as the former Chair of the Committee. In addition to being the former chair, he has taught in the program for over 16 years. To the surprise of Judge Rodgers, the Committee treated the participants to the original recording of 38 *Slug* as performed by The Three Clicks, the group that made it a top 40 hit in 1959 with one click by the name of Fred Rodgers.

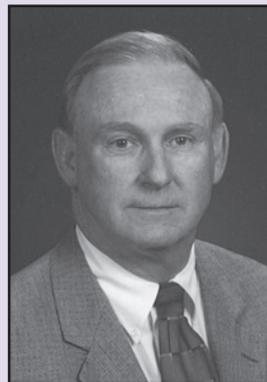
## A Wide Array of Program Segments and Topics

Dr. David Fisher, Professor Emeritus of Engineering, Michigan State University, a nationally recognized expert on the science behind speed check instruments, made a presentation, followed by a review of the law concerning the various speed check methods by the Honorable Karen Arnold-Burger, Overland Park, Kansas. Dr.

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# Kent Lawrence Named NHTSA/NCSCJ Judicial Fellow

Judge Kent Lawrence has been the elected Judge of the State Court of Athens-Clarke County since November, 1985. Prior to assuming that position, he worked as a patrol officer, special investigator with the District Attorney's office, a countywide drug task force officer, Chief of Police, and a prosecuting attorney. In 1992, he was appointed by former Governor Zell Miller to the Statewide DUI Task Force. He served two years on the twenty-four member State Judicial Council which evaluates policies for court administration and recom-



mends improvements in the state's judicial system. He served as a member of the Board of Trustees for the Institute of Continuing Judicial Education of Georgia from 1995-2002. Judge Lawrence implemented the first DUI/Drug Court in Georgia in February, 2001. He currently serves on both the Statewide Drug Court Advisory Committee for the Administrative Office of the Courts and the Judicial Council Standing Committee on Drug Courts. In 2005, he was the recipient of the Governor's Office of Highway Safety Director's Award in recognition and dedication to the highest standards of excellence in promoting public safety in Georgia. He has been a facilitator for DUI/Drug Court teams around the country. He

recently was elected to serve on the National Association of Drug Court Professionals board beginning in June, 2006. He has served as President of the Council of State Court Judges of Georgia and is an active member of the State Bar of Georgia and the Western Judicial Circuit Bar Association. Judge Lawrence has both a Bachelor and Master's Degree in Education from the University of Georgia, and received a Juris Doctorate Degree from Woodrow Wilson College of Law in 1978. On November 7, 2006, Judge Lawrence was elected without opposition to serve a sixth four (4) year term to begin on January 1, 2007.

# Judge Yvette Diamond

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munity outreach activities, and being a spokesperson and a liaison to the administrative law judiciary of our nation.

She stated that she felt confident that she would be able to balance her fellowship duties with her ethical responsibilities and professional duties as an administrative law judge. She will work closely with the Judicial Fellows and Regional Judicial Outreach Liaisons to accomplish specified milestones as agreed upon by the ABA, the National Conference of Administrative Law Judges and NHTSA. The Conferences of the ABA's Judicial Division join in welcoming Judge Diamond as the newest ABA/NHTSA Administrative Law Judicial Fellow.



# ABA/NHTSA Faculty

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admissibility issues regarding Standardized Field Sobriety Tests (SFSTs), Portable Breath Testing Devices (PBTs) and other scientific-based evidence.

After exploring criminal law and evidence issues at length, Judge Grube and I changed the pace with our presentation exploring the ethical considerations involved in judicial speech and expression. The ethical constraints that apply to judicial campaigns were illustrated and discussed in light of recent ethics opinions and appellate case law. Using video clips of judges being confronted by the media, I led our audience through a discussion of how to deal with the media emphasizing how judges can handle difficult situations when they or their court system are "the story".

## Making a positive difference

I was proud to be part of the Arkansas program and to work with my colleagues from the ABA's National Conference of Specialized Court Judges. Every judge that I know, who has truly longed to serve in the judiciary, has done so because he or she wanted to make a positive difference in their jurisdiction. Being afforded the opportunity to teach across our Nation has given me and my colleagues the opportunity to do just that. For that we are thankful and we are thankful for the financial support that NHTSA makes available to states to help them educate judges who handle traffic court cases. We look forward to continuing our programs and meeting more of the dedicated judges, like those in Arkansas, who are dedicated to maintaining and improving their judicial skills.

# A Crash Course

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selected to drive a non-interlocked vehicle, reductions in recidivism would be much smaller or non-existent.

Research shows that elevated BAC readings and early-morning high BAC readings (captured by the datalogger) are the best predictors of future recidivism.

## IID Facts:

The goal of the interlock device is incapacitation—offenders are unable to drink and drive while the interlock is installed. However, ignition interlocks alone will not result in behavior change; when combined with treatment, these devices hold promise for such outcomes.

Legislation in most jurisdictions does not require the offender to own the vehicle on which the interlock is installed.

Up to 75% of suspended or revoked drivers continue to drive anyway. Having an interlock ensures they are driving sober.

Interlocks permit offenders to remain in the community, fulfill family and employment obligations, and participate in treatment. These devices are less expensive than incarceration or house arrest, and more effective than license suspensions.

Driving an interlock-equipped vehicle is less of an inconvenience to family members than incarceration or a suspended/revoked license. Research suggests that there are positive benefits for family life when offenders are on an interlock.

On average, ignition interlocks cost approximately \$2.50/day—about the cost of one drink.

Providing a sufficient breath sample is an issue for a very small number of offenders. Most devices can be adjusted to accept a reduced breath volume.

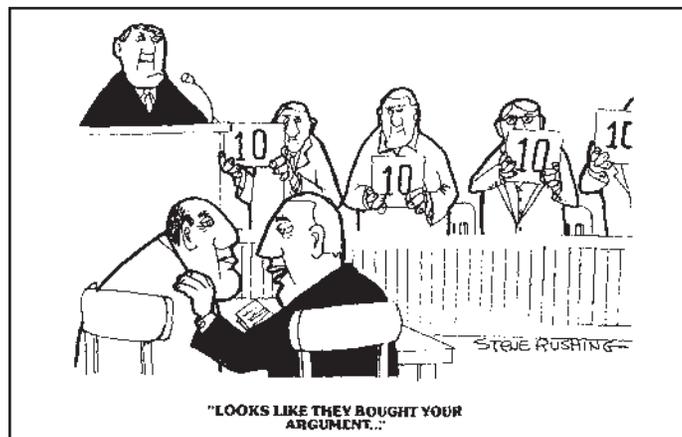
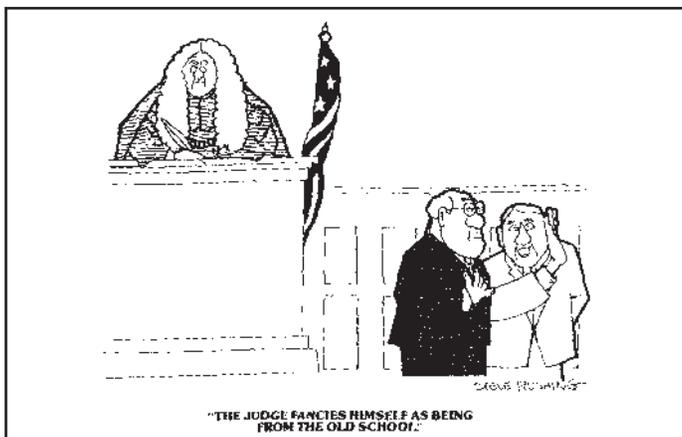
Mouth alcohol (e.g., from mouth wash) can result in a positive reading in a limited number of cases. Similar to an evidential breath testing device, waiting 15 minutes or rinsing the mouth with water will clear mouth alcohol and permit the driver to start the vehicle, provided their BAC is below the pre-set level.

Many offenders fail to install an ignition interlock, despite a court order to do so. Ordering a certificate of installation as a condition of probation can ensure offenders install the device.

## For Further Information about IIDs

Further details can be found in the TIRF educational primer "Ignition Interlocks: From Research to Practice". Of note, several representatives from the judicial community graciously reviewed and provided input on the educational primer to ensure that it meets the needs of judges and is user-friendly. Copies of this primer can be obtained through TIRF ([www.tirf.ca](http://www.tirf.ca)); or toll-free from the U.S. at 877.238.5235). Plans are also underway to produce state-specific information packages for each jurisdiction which can be included in the primer.

In addition to this primer, TIRF has created an international inventory of interlock programs that is posted on its website ([www.tirf.ca](http://www.tirf.ca)). This inventory contains program information from the United States, Canada, Australia, and Europe, legislative references for these jurisdictions, program contacts, research references, and proceedings from 6 international symposia on ignition interlocks hosted by TIRF.



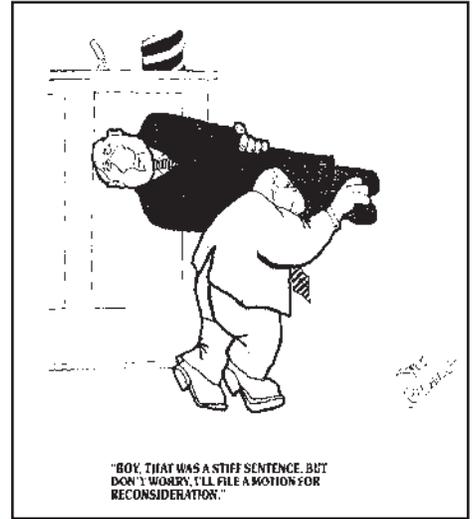
## Traffic Case Allocations

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### What Did You Do to Get Here?

So, after every plea in a traffic case warranting a sentence, and before the sentence, I, too, now ask the defendant "What did you do to get here in court?" And, like the wise mentor I had observed, I always inquire "What could you have done differently, under the same circumstances, to avoid your ticket or prevent that crash?" This seems to work in three

ways. One, many drivers really do know and acknowledge their driving errors and they depart court, facing reality, without the innocence protestations. Secondly, those who are revolving door recidivists can be targeted for special attention such as supervision or traffic school. Lastly those who wait to be called and sit there listening; they too can learn. They learn from those who have preceded them as they share their learning experiences.



## Walk to School Day

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reduce obesity. Recent statistics reveal that 13% of American children ages 6-11 were overweight. Additionally Walk to School Day helps communities focus on the need to develop safe well-maintained sidewalks and monitored traffic zones near schools.

### Judicial Involvement Can Insure a Big Turnout

Each year the first week in October is International Walk to School Week. During the week, communities throughout our Nation select one day as Walk to School Day. It is an ideal occasion for

judges who preside in traffic and juvenile courts to become involved. The presence of a judge together with members of law enforcement, teachers, parents, and other community leaders, can focus attention on safety as well as promoting fitness. On the Florida's Suncoast (St. Petersburg, Bradenton, and Sarasota) Walk to School day has become an annual community activity with growing participation each year. This year, on October 4<sup>th</sup>, over 7,500 parents, teachers, and other supporters, including judges, turned out at sites throughout the cities to walk to school. It was the most successful event to date with 33 schools participating.

### They are Waiting to Hear from You

Walk to School Day passes the 4Es test. Make plans for 2007 to join in. Information can be obtained through the NHTSA website at [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov) by using the NHTSA search engine. For direct contact with volunteer coordinators and for information concerning next year's event you can also visit the Walk to School Website: [www.walktoschool.org/](http://www.walktoschool.org/) or the Safe Kids coalition website at: [www.safekids.org](http://www.safekids.org). There are coalition coordinators waiting to hear from you. Walk to School is an outreach activity that is good for your profession, good for your career and most importantly good for your community and our children. Let's make 2007 the best year ever.

## 2006 ABA Traffic Court Program

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Robert Forney, Clinical Associate Professor of Pathology, Medical College of Ohio and an internationally recognized expert on the effects of alcohol in the human body gave a fascinating lecture on the topic. Other presenters included William Tower, Baltimore Maryland, an expert on drug recognition evidence; Hon. Grace Sease, Immigration Judge, discussing the immigration consequences of traffic convictions; Hon. Judith Eiler, King County, Washington, on judicial activism; Michelle Fields, Insurance Institute for Highway

Safety, on legal issues surrounding photo enforcement techniques; and Hon. Peter Shoon, Jr., Ft. Collins, Colorado on treatment options available when sentencing alcohol and drug offenders. Break out sessions gave judges the opportunity to discuss the application of the materials presented in their own courtrooms.

Participant evaluations ranked every speaker and topic as "above average" with most scoring over 4.5 on a 5.0 scale.

### Looking Forward to 2007 and Seattle, Washington

The Committee is already busy planning the 2007 Traffic Court Program, October 10-12. It will be held in Seattle, Washington at the new William H. Gates

Hall, which houses the University of Washington School of Law. Several new topics will be presented, along with a mock DUI trial. As you would expect from any facility closely associated with William Gate's famous son, the school is probably one of the most technologically advanced in the country, Whether you are watching the fish being thrown at the Pike Place Market, seeing the city from a view on top of the Space Needle, touring the Washington wine country or taking in the breathtaking views of the Olympic and Cascade Mountains from Puget Sound, Seattle is always a popular destination for business and pleasure. Mark your calendars and meet us in Seattle in 2007!