

HIGHWAY TO JUSTICE

SUMMER 2013

From The ABA and The National Highway Traffic Safety Administration

UPDATE: UNITED STATES SUPREME COURT DECISION IN MISSOURI V. MCNEELY

*Hon. D. Keith Rutledge (Ret.)
Judicial Outreach Liaison, NHTSA Region 7
Bentonville, AR*

SCOTUS: Dissipation of alcohol in the blood, standing alone, is not an exigent circumstance in every case to justify an exception to the Fourth Amendment warrant requirement.

On April 17, 2013, the United States Supreme Court handed down a decision in the case of *MISSOURI, PETITIONER v. TYLER G. MCNEELY*. In the opinion delivered by Justice Sonia Sotomayor, the Court stated, "The question presented here is whether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases."

Facts of the Case

On October 3, 2010, at 2:08 a.m., a Missouri police officer observed Tyler McNeely driving in excess of the speed limit and crossing the center line. The officer stopped McNeely and noted bloodshot eyes, an odor of alcohol on the breath and slurred speech. Also, McNeely stated to the officer that he had consumed "a couple of beers" at a bar. After performing poorly on a battery of field sobriety tests and refusing the officer's request to submit to a PBT test, McNeely was placed under arrest. While en route to the station, McNeely advised the officer that he would not take a breath test. The officer then proceeded to the hospital and asked McNeely if he would consent to a blood test and explained to him the consequences of refusing the test. McNeely refused consent for the blood test at which time the officer directed a hospital lab technician to take a blood sample. The sample, which was secured at approximately 2:35 a.m., measured McNeely's BAC at 0.154 percent, well above the legal limit of 0.08 percent.

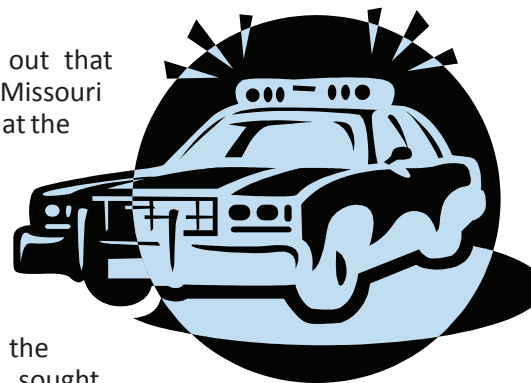
At no time did the officer attempt to obtain a search warrant. McNeely was charged with driving while intoxicated

(DWI) in violation of Missouri statutes. McNeely subsequently moved to suppress the results of the blood test as having been obtained without a warrant in violation of his rights under the Fourth Amendment. The trial court agreed. This case was appealed to the Missouri Supreme Court which affirmed the trial court. The U.S. Supreme Court granted certiorari to hear the case.

Majority Opinion

In an opinion authored by Justice Sotomayor, the Supreme Court affirmed the Missouri Supreme Court. In the decision, the Court quoted the relevant part of the Fourth Amendment as follows: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." Also, it was stated that drawing a blood sample from a defendant suspected of driving while under the influence of alcohol constituted a search that would generally require a warrant. However, in pointing out that the warrant requirement is subject to exceptions, the opinion stated "one well-recognized exception, and the one at issue in this case, applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment."

The opinion pointed out that although the State of Missouri properly recognized that the reasonableness of a warrantless search under the exigency exception must be evaluated based on the totality of the circumstances, the State nevertheless sought



(continued on page 2)

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 submit an article, please send it to the editor, Hon. Earl Penrod, penrod26d01@msn.com with a copy to the staff liaison, Gena Taylor, Taylor@americanbar.org. Please contact Ms. Taylor for editorial guidelines.

The deadline for submission of articles for the Fall, 2013 issue is August 28.

DATES TO REMEMBER

July 4, 2013

Drive Sober or Get Pulled Over



August 16–September 2, 2013

Impaired Driving National Enforcement Crackdown

<http://www.nhtsa.gov/drivesober/>

December 13, 2013–January 1, 2014

Holiday Impaired Driving Campaign

If you are interested in having a State JOL in your state, NHTSA has just published the Guidelines for Creating State Judicial Outreach Liasons on their website.

<http://www.nhtsa.gov/staticfiles/nti/pdf/811783.pdf>

Contact Brian.Chodrow@dot.gov for additional information

UPDATE: UNITED STATES SUPREME COURT DECISION IN MISSOURI V. MCNEELY

(continued from page 1)

a *per se* rule for blood testing in drunk-driving cases, claiming exigent circumstances necessarily exist in such cases because BAC evidence is inherently evanescent.

The Court acknowledged that the alcohol level in a person's blood begins to dissipate once the alcohol is fully absorbed and continues to decline until the alcohol is eliminated and that a significant delay in testing will negatively affect the probative value of the results. However, it was held that it does not necessarily follow from the threatened destruction of evidence caused by a delay that the Court should depart from careful case by case assessment of exigency and adopt the *per se* rule as proposed by the State of Missouri.

Schmerber Revisited

The opinion set forth that “while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, as it did in *Schmerber v. California*, 384 U.S. 757 (1966), it does not do so categorically.” It was pointed out that in the *Schmerber* case, the petitioner had suffered injuries in an automobile accident and was taken to the hospital. While he was there receiving treatment, a police officer arrested him for driving while under the influence of alcohol and ordered a blood test over his objections. In allowing the nonconsensual blood test in *Schmerber*, the Supreme Court held that while the warrant requirement applied generally to searches that intrude into the body, the warrantless blood test ‘in the present case’ was nonetheless permissible because the officer might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened ‘the destruction of evidence.’

In her majority opinion, Justice Sotomayor emphasized that *Schmerber* was decided on the particular circumstances presented in the case, including the fact that time had to be taken to bring the accused to a hospital and to investigate the scene of the accident. As a result of the special facts, there was no time to seek out a magistrate and secure a warrant and it was found to be appropriate for the police to act without a warrant. Justice Sotomayor concludes by acknowledging that there will be some circumstances that will make obtaining a warrant impractical and the dissipation of alcohol from the blood would support an exigency justifying a warrantless blood draw, but each case must be decided on its facts, as was done in *Schmerber*.

Ruling in a Nutshell

In summary, the essential holding in this case is that “when officers in drunk-driving investigations can reasonably obtain a warrant before having a blood sample drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so.” Further, whether sufficient exigencies exist to excuse the absence of a warrant must be determined case by case based on the totality of the circumstances AND the natural dissipation of alcohol in the blood does not establish a *per se* exigency that justifies an exception to the warrant requirement.

DRIVERLESS CARS: THE FUTURE IS NOW

Hon. Peggy Fulton Hora (Ret.)
Judicial Outreach Liaison, NHTSA Region 9
Walnut Creek, CA

It is 2062 in Orbit City. The Jetsons are your next door neighbors. They hop in their flying car, it makes an amazing sound and they take off never touching the road. Set 100 years in the future when it debuted in 1962, the creators of The Jetsons were off about 50 years. California, Nevada and Florida have already passed laws allowing driverless cars and Michigan has a bill working its way through the legislature. It is estimated that we will have viable driverless cars on the roadways in 3-5 years.

Also known as autonomous or personal automated vehicles, these self-driving, robotic cars already exist. The Google Car has logged 300,000 miles and driverless technology is now being installed in newer cars. Of course equipment such as cruise control has been with us for a long time but now there's also auto-assist parking and, in the 2013 Lincoln MKZ and Ford Fusion, "Lane Keeper"¹ is available for the sleepy or distracted drivers to keep them safely within their own lanes. Not to be outdone, Audi premiered "Piloted Driving" at the Consumer Electronics Show in Las Vegas in January. And in the UK, Oxford University just unveiled the car that drives itself with an iPad. As Mark Halper, a contributing editor for *Smart Planet*, pointed out cars are turning into "smartphones on wheels."²

A mining company in Australia has ordered 150 autonomous trucks that will save the conglomerate over \$1.5 million per year on drivers.³

Fewer Crashes

The World Health Organization estimates that 1.2 million people are killed in road crashes every year and 50 million are injured.⁴ These figures are rising as more countries become developed. In a recent TED Talk, Sebastian Thrun, one of Google's founders, explains why his company got into the driverless car business. When he was a young man a very dear friend was killed in a car crash. He sees Google's involvement as a way of preventing driving deaths and says they could be cut by half with Google Car.⁵ In a recent study, the Centers for Disease Control and Prevention said one in 24 people admit that in the past month they've fallen asleep while driving.⁶ Driverless technology prevents a crash caused by the driver's inattention. The consensus is that driverless cars will dramatically reduce human error while driving, improve reaction time and, thus, reduce crash deaths. Because of their capacity to travel more safely, self-driven cars may also allow speed limits to be raised.

Less Traffic

The Toyota Lexus LS uses light detection and ranging technology (LIDAR) as well as stereo cameras that measure the space between cars. Robotic cars are able to increase roadway capacity and reduce congestion because they reduce "safety gaps." This will result in better traffic flow and also, according to Google's Thrun, save 2.4 billion gallons of gasoline a year. Thrun further points out that the 4 billion hours currently wasted in traffic will be regained. An additional benefit would be reduction in traffic enforcement officers who could be fighting crime in different areas. Road rage that causes 15,000 injuries or deaths per year

would also be reduced between two driverless vehicles.⁷

Legal Issues

New technology always brings new legal issues with it. Driverless cars have implications for liability, insurance coverage and impaired driving. One pundit opined that autonomous cars are more of a legal challenge than a technical one.

In more than 300,000 road miles there have been no crashes attributable to the Google Car.⁸ One was hit from behind and another was involved in a crash that was not its fault. How will attorneys approach a car crash case? Will they bring a lawsuit against a driverless car occupant (formerly known as the other driver) knowing that technology will probably beat them? How will insurance be affected? Is there such a thing as impaired driving in a driverless car? Will it matter if the occupant is under age, over age, blind, distracted or alcohol or other drug impaired?

How will juries be affected by these issues? A recent World Economic Forum audience was asked: "Would the citizens of your country accept some level of fatalities in accidents caused by 'technology failure' attributed to a centrally controlled system, in exchange for fewer overall transportation fatalities provided by reduced human error?" Only 46 percent said yes, while 54 percent said no. The jury may have to determine liability based on the driverless car's technology-assisted "driving" rather than the driving skills of an individual. How much time will it take and will experts be necessary to explain the technology to juries?

Blogger Jon Bruner posed an interesting question. Imagine driving in a residential neighborhood and suddenly a ball bounces in front of the car. An experienced driver knows that a child often follows. But will a driverless car anticipate that? Can the driverless automaker be sued for not programming that into the car? If driverless cars prove to be safer than traditional cars, is there liability for not having one? Bruner says, "[A] human driver who crashes into a driverless car will find it nearly impossible to show he's not at fault."

It is natural that both wariness and skepticism accompany the idea of driverless cars but we all accept autopilot on commercial airliners. As we experience this new technology, there is no doubt, based on its many benefits, that it will be embraced by most. What we must do is start to anticipate the legal issues that will follow.

- 1 <http://autos.yahoo.com/blogs/motoramic/2013-lincoln-mkz-drives-itself-motoramic-tv-163320831.html>
- 2 <http://www.smartplanet.com/blog/bulletin/why-google-wants-us-all-in-driverless-cars/14169>
- 3 <http://www.usatoday.com/story/tech/2013/04/06/driverless-cars-full-throttle/2058637/>
- 4 <http://www.who.int/mediacentre/factsheets/fs358/en/index.html>
- 5 http://www.ted.com/talks/sebastian_thrun_google_s_driverless_car.html
- 6 <http://www.usatoday.com/story/news/nation/2013/01/03/cdc-sleeping-driving/1807373/>
- 7 <https://www.aaafoundation.org/sites/default/files/RoadRageBrochure.pdf>
- 8 <http://www.nytimes.com/2010/10/10/science/10google.html?pagewanted=all&r=0>

LEGISLATION ON DRIVER'S LICENSES FOR ILLEGAL IMMIGRANTS PRESENTS ADMINISTRATIVE CHALLENGES TO THE STATES¹

*Marc Christopher Loro, Former Judicial Fellow
Senior Legal Advisor, Department of Administrative
Hearings, Office of the Secretary of State, State of Illinois
Springfield, IL*

There is a movement ongoing across the country to provide driving privileges and licenses to illegal immigrants. This article will give an overview of those efforts, examine in some detail one state's legislation on the subject, and discuss the administrative challenges confronting states which take this extraordinary step. Further, a template will be offered for states considering similar legislation to alert the states to potential challenges and to provide suggestions on how to meet those challenges.

It appears that this movement began in the State of New York around 2007, when Governor Eliot Spitzer proposed that illegal immigrants be allowed to obtain a driver's license with a valid foreign passport. That effort failed but, since that time, several states have enacted similar provisions.² The author of this article found that, by early 2012, seven states allowed illegal immigrants to get driver's licenses: Hawaii, Maine, Michigan, New Mexico, Oregon, Utah and Washington.³ However, research by Mr. Michael Csere, Legislative Fellow with the Connecticut Office of Legislative Research, showed otherwise. He listed several states which passed, then repealed illegal immigrants driver's licensing states, as follows (the year of repeal is in parentheses): Hawaii (2010), Maryland (2009), Maine (2008), Michigan (2008), Oregon (2008), Tennessee (2006), California (2003).⁴

He found that these changes have been initiated by both the legislative and executive branches. Among the reasons cited were:

1. compliance with the federal REAL ID Act;
2. response to high-profile identity fraud cases;
3. concern about being a magnet for illegal immigrants from surrounding states;
4. concern about immigrants taking jobs from U.S. citizens;
5. consistency with other states; and
6. political pressure.⁵

Mr. Csere notes that "Proponents of licensing undocumented immigrants to drive argue that it promotes road safety, reduces unlicensed drivers, and allows these immigrants to work and support their families." Opponents argue that licensing undocumented immigrant drivers leads to fraud and security concerns, and encourages employment of undocumented immigrants over documented immigrants and U.S. citizens."⁶ In Illinois, the measure was promoted as a traffic/public safety measure, but it was apparent that the impetus for the change of heart experienced by political leaders and several legislators was most definitely

political.⁷

In addition to the states cited above, I found that legislation has been passed, is pending, or is being contemplated in the following states/jurisdictions: Colorado, Connecticut, District of Columbia, Maryland, Illinois and Oregon.⁸

In the statutes that have been enacted, the state legislatures have given varying degrees of discretion and direction on how they should be implemented. (See Mr. Csere's white paper and the citations in footnote 6.) Illinois and Oregon require the most from applicants, in terms of proof of identity and the driver's license application and issuance process. Regardless, all jurisdictions face certain issues in the initial stages as well as the day-to-day long-term administration of these special driving privileges. We will now discuss how Illinois is implementing its statute and the challenges being confronted.

The Illinois legislation amended §6-105.1 of the Illinois Vehicle Code (Temporary visitor's driver's license)(TVDL); which authorizes the Illinois Secretary of State to issue a TVDL to foreign nationals who (i) reside in Illinois, (ii) are ineligible to obtain a social security number, and (iii) present documentation, issued by United States Citizenship and Immigration Services, authorizing the person's presence in the U.S.⁹

The legislation added a new subsection (a-5), which sets forth the criteria for obtaining a TVDL. It allows the Secretary of State to issue a TVDL to an applicant who: (i) has resided in Illinois for at least one year, (ii) is ineligible to obtain a social security number, and (iii) is unable to present documentation issued by the U. S. Citizenship and Immigration Services authorizing the person's presence in this country. It also requires the applicant to submit a valid unexpired passport from the applicant's country of citizenship or a valid unexpired "consular identification document" (hereinafter, a CID), as defined in Consular Identification Document Act, issued by a consulate of the country of citizenship.¹⁰ No doubt, therefore, that there will be a great deal of activity at foreign consulates in Chicago.¹¹

Subsection (b) is amended to provide that the TVDL issued to illegal immigrants is only valid for 3 years, which is consistent with the restrictions on the regular TVDL. A new subsection (b-5) specifies that the TVDL may not be accepted as proof of the holder's identity, and that this restriction shall be stamped on the face of the TVDL in capital letters.¹² However, it is not clear from the legislation how this restriction would be enforced or what the consequence would be if someone or some business accepted the TVDL as proof.

A new subsection (a-10) provides that illegal immigrants who are under the age of 18 at the time of their application for a TVDL are subject to the graduated driver's license provisions of §§6-107 and 6-108 of the Illinois Vehicle Code.¹³ And the

(continued on page 5)

LEGISLATION ON DRIVER'S LICENSES FOR ILLEGAL IMMIGRANTS

(continued from page 4)

new subsection (d) specifies that anyone issued a TVDL is subject to all of the provisions in the IVC and the rules of the Secretary of State, including the mandatory insurance requirements of the IVC. This should mean, therefore, that the TVDL is subject to suspension and revocation for violations of the IVC.¹⁴

Subsection (c) of the current statute provides that the Secretary “shall adopt rules for implementing this Section, including rules regarding the design and content of the temporary visitor’s driver’s license.” The bill amends this subsection by adding the following minimum requirements for a revised rule:

- establishing criteria for proof of identification and residency of an individual applying under subsection (a-5);
- designating acceptable evidence that an applicant is not eligible for a social security number; and
- regarding the issuance of temporary visitor’s instruction permits.

A new § (d-5) provides that a TVDL “is invalid if the holder is unable to provide proof of liability insurance as required by § 7-601 of this Code upon the request of a law enforcement officer, in which case the holder commits a violation of § 6-101 of this Code.” This language is somewhat superfluous, as the mandatory insurance statute already gives the police the authority to ask for proof of insurance. See §7-602 of the IVC. But the fact that the failure to produce proof of insurance also invalidates the TVDL and subjects the offender to a conviction for driving without a valid license may serve as a deterrent to those who would obtain the insurance and present it when they apply for the TVDL, but then cancel it after receiving the TVDL.¹⁵

A new subsection (e) provides that the TVDLs “shall be issued from a central location after the Secretary of State has verified the information provided by the applicant.” This means, therefore, that unlike the regular driver’s license, which is issued by the driver’s license facility based upon the applicant’s sworn statements made in the application, the applicants for the TVDLs will not be driving immediately. Note, however, that this is consistent with the current process for issuing the regular TVDL.¹⁶

Finally a new subsection (f) creates a special fund in the State treasury, to be known as the “Driver Services Administration Fund”. All of the fees collected for the issuance of TVDLs shall be deposited into the fund, and these funds shall, “subject to appropriation,” be used by the Secretary of State to pay for the costs related to the issuance of the TVDLs, “and other operational costs, including personnel, facilities, computer programming, and data transmission.”

The Administrative and Policy Challenges

Illinois’ Public Act 97-1157 poses several administrative and policy challenges to the Office of the Secretary of State. For instance, applicants for a TVDL will make an appointment to submit their application to specified driver’s license facilities so that the facilities taking the applications will not be inundated with crowds of TVDL applicants. The documentation that the applicant submits, as required in subsection (a-5) detailed

above, will be sent to a central location, where its authenticity will be verified.¹⁷ A photograph of the applicant will be taken and run through the SOS facial recognition system. This will be done for the purpose of determining whether the applicant has already been issued a driver’s license, perhaps under a different name and/or with false or fraudulent identification documents. If approved, the applicant will be sent their TVDL in the mail. Unlike the regular driver’s license which is bordered in red, the TVDL will be bordered in purple.

Note that one should not assume that the consular identification document required by subsection (a-5) will be easy to obtain.¹⁸ It requires several documents to obtain a CID, and the CID must meet several security requirements. This fact may reduce the number of applicants, at least in the short term. Another factor that may reduce the initial number of applicants is their suspicion that the application process will be used as a pretext for locating and deporting them from the United States. I submit that, once the illegal immigrant community realizes that this is not the case, the number of applicants will increase substantially.

Another administrative challenge will be the processing of denials of the TVDL. The Secretary of State rulemaking on this subject will most likely provide for some type of review or hearing process to contest these denials, possibly putting severe pressure on a hearings system which is already under significant pressure. Another question is whether the driver’s license facilities accepting the application will be able to turn an applicant away because the Secretary of State personnel believe that the documentation is insufficient, and whether those applicants will be granted some form of appeal or review process.

Another issue is what will be done with those applicants determined by the facial recognition system or the verification of documents process to have been previously issued a driver’s license based upon false or fraudulent documents or false statements made on the application. The Secretary of State is authorized to suspend or revoke the driving privileges of any person who makes “a false statement or knowingly concealed a material fact or has used false information or identification in any application for a license, identification card, or permit.”¹⁹ Will illegal immigrants who are caught with a phony driver’s license start their legal driving career with a suspension of their driving privileges, or will the Secretary of State extend some kind of amnesty to these offenders?

There are many illegal immigrants who have already established driving records in Illinois by driving illegally and whose privileges are currently revoked for offenses such as driving under the influence. They must be encouraged to engage in the hearing process for the reinstatement of those privileges before they will be eligible to apply for a TVDL. This means an additional population of offender/petitioners will be taxing the Secretary of State hearing process. Many of these petitioners will need translators in order for the hearing to be meaningful and effective. States must address who will provide and fund translators and how translating testimony may slow down the hearing process. If the State separates petitioners who need

LEGISLATION ON DRIVER'S LICENSES FOR ILLEGAL IMMIGRANTS

(continued from page 5)

translators from the rest of the hearing population, a solution is to schedule them on different days, and/or at different locations.

Finally, will those States that do not issue driving privileges to illegal immigrants recognize a driver's license issued to an illegal immigrant when the immigrant drives in the non-issuing State? Most of the States in the Union are members of the Driver License Compact, which provides for the "reciprocal recognition of licenses to drive and eligibility therefor," but the compact makes no mention of driver's licenses issued to illegal immigrants.²⁰ The compact also provides for the reciprocal reporting of traffic offenses to member States. If a State refuses to recognize another State's illegal immigrant driver's license, and convicts the illegal immigrant of driving without a valid license, will the issuing State recognize and honor the conviction?²¹

The licensing of illegal immigrants marks a significant change in traffic and administrative law, and will have wide-ranging legal, cultural and societal impacts, some of which may not be foreseeable. States that embark on this journey should do so carefully and thoughtfully.

1 The statements made and views expressed here are not intended to represent the position of the Office of the Secretary of State. Acknowledgement and gratitude is owed to Mr. Michael Csere, a Legislative Fellow with the Connecticut Office of Legislative Research, whose recent white paper on the subject was extremely helpful, and to Mr. Greg Hurley, the Senior Knowledge Management Analyst with the National Center for State Courts, who found the paper for me. This article elaborates on my article published in the Illinois State Bar Association Administrative Law Section Council Newsletter earlier this year: "Legislation on driver's licenses for illegal immigrants presents administrative challenges to the Secretary of State's Office", Vol. 42, No. 8 (March 2013).

2 Pamela Cohn. "This House would give illegal immigrants drivers licenses." idebate.org. 20 February 2012. Hereinafter referred to as "Debates". See <http://idebate.org/debatabase/debates/society/house-would-give-illegal-immigrants-drivers-licenses>. For another overview of this issue and developments, see the online article by Joseph DeAvila, "Weighing Ids for Illegal Immigrants" focusing on developments in Connecticut and recently published at: <http://online.wsj.com/article/SB10001424127887324266904578458883135748940.html>.

3 *Id.*

4 See <http://www.cga.ct.gov/2013/rpt/2013-R-0194.htm>. Hereinafter cited as "Csere white paper".

5 *Id.*

6 *Id.*

7 See, for example: "Illinois officials push for illegal immigrant licenses", Jacksonville (Ill.) *Journal Courier*, 21 November 2012; and "Driver's licenses for immigrants?", Carbondale (Ill.) *The Southern Illinoisian*, 25 November 2012. For the legislative history, which details the lightning speed with which of the Illinois statute, see "Legislation on driver's licenses for illegal immigrants presents administrative challenges to the Secretary of State's Office", Vol. 42, No. 8 of the ISBA Administrative Law Section Council newsletter (March 2013).

8 In Colorado, see Senate Bill 13-251, currently pending; for Connecticut, see "Connecticut Legislators Back Driver's Licenses for Illegal Immigrants",

<http://newyork.cbslocal.com/2013/04/30/connecticut-legislators-back-drivers-licenses-for-illegal-immigrants/>. This article was posted on 30 April 2013. For the District of Columbia, see "Illegal immigrants could apply for D.C. driver's licenses under Gray proposal", at http://articles.washingtonpost.com/2013-05-01/local/38947917_1_illegal-immigrants-regular-licenses-residency. This article was posted on 1 May 2013. For Maryland, see the Maryland Highway Safety Act of 2013 (House Bill 789), approved by the Governor on 2 May 2013; for Illinois, see Public Act 97-1157, effective 28 November 2013; and for Oregon, see SB 833, signed by the Governor on 1 May 2013.

9 See 625 ILCS 5/6-105.1.

10 See 5 ILCS 230/5.

11 For example, an internet search for Mexican consulates lists one in Chicago (300 N. Michigan Ave., 2nd Fl., 60651; Tel: (312) 855-1380 and Fax: (312) 855-9257) and one in Indianapolis, Indiana. But none in St. Louis, Missouri, and Wisconsin. See <http://www.mexonline.com/consulate.htm>.

12 This restriction also applies to the regular TVDL. See the rules of the Secretary of State at 92 Ill. Adm. Code §1030.11--Procedure for Obtaining a Driver's License/Temporary Visitor's Driver's License--subsection (m).

13 See 625 ILCS 5/6-107 and 108.

14 Oddly enough, this provision does not apply to the regular TVDL. The current statute, in its entirety, states as follows:

Sec. 6-105.1. Temporary visitor's driver's license. (a) The Secretary of State may issue a temporary visitor's driver's license to a foreign national who (i) resides in this State, (ii) is ineligible to obtain a social security number, and (iii) presents to the Secretary documentation, issued by United States Citizenship and Immigration Services, authorizing the person's presence in this country. (b) A temporary visitor's driver's license is valid for 3 years, or for the period of time the individual is authorized to remain in this country, whichever ends sooner. (c) The Secretary shall adopt rules for implementing this Section, including rules regarding the design and content of the temporary visitor's driver's license.

15 While a violation of §6-101 is a petty offense, the consequences of driving without a valid license and without insurance can be quite severe. See §6-101(e). Furthermore, driving without a valid license subjects the offender to a suspension or revocation of driving privileges. See the rules of the Secretary of State at 92 Ill. Admin. Code, §1040.25--Suspension or Revocation for Driving Without a Valid Driver's License.

16 See 92 Ill. Adm. Code §1030.11(p).

17 This process is also consistent with the regular TVDL. Again, see 92 Ill. Adm. Code §1030.11(p).

18 See the Consular Identification Document Act at 5 ILCS 230 *et seq.* Section 5 of the Act defines a consular identification document as follows: Sec. 5. Definition. As used in this Act, "consular identification document" means an official identification card issued by a foreign government that meets all of the following requirements:

(1) The consular identification document is issued through the foreign government's consular offices for the purpose of identifying a foreign national who is living outside of that nation.

(2) The foreign government requires an individual to provide the following to obtain the consular identification document: (A) proof of nationality; (B) proof of identity; and (C) proof of residence in the consular district.

(3) The foreign government includes the following security features in the consular identification document: (A) a unique identification number; (B) an optically variable feature such as a hologram or color-shifting inks; (C) an ultraviolet image; (D) encoded information; (E)

LEGISLATION ON DRIVER'S LICENSES FOR ILLEGAL IMMIGRANTS

(continued from page 6)

machine readable technology; (F) micro printing; (G) secure laminate; and (H) integrated photograph and signature.

(4) The consular identification document includes the following data: (A) the name and address of the individual to whom it is issued; (B) the date of issuance; (C) the date of expiration; (D) the name of the issuing consulate; and (E) an identification number. The consular identification document must include an English translation of the data fields.

(5) The issuing consulate has filed with the Department of State Police a copy of the issuing consulate's consular identification document and a certification of the procedures that are used to satisfy the requirements of paragraphs (2) and (3).

19 See §§6-106--Application for license or instruction permit—and 6-206(a)9 of the IVC--Discretionary authority to suspend or revoke license or permit; Right to a hearing. See also, the rules of the Secretary of State at 92 Ill. Admin. Code §1040.32--Suspension or Revocation of Driver's Licenses, Permits or Identification Cards Used Fraudulently.

20 See, for example, the Driver License Compact in the Illinois Vehicle Code, at 625 ILCS 5/6-601 *et seq.*

21 See 625 ILCS 5/6-702.

NHTSA ANNOUNCES JUDICIAL OUTREACH LIAISON FOR REGION 4



The American Bar Association and the National Highway Traffic Safety Administration announce that the Hon. J. Mark Hayes, II, has been selected as Judicial Outreach Liaison for NHTSA Region 4, which includes Tennessee, Alabama, Georgia, South Carolina, and Florida. In addition to his work within those states, he will partner with State Judicial Outreach Liaisons Judge Kent Lawrence (Georgia) and Judge Karl Grube (Florida).

Judge Hayes serves as a South Carolina Circuit Judge. He is a native of and continues to reside in his hometown of Spartanburg,

South Carolina. He performed his undergraduate studies at Wofford College and earned his Juris Doctorate from the University of South Carolina.

Prior to taking the bench in May 2003, he was in private practice 18 years and a partner in his law firm. While in private practice he developed a special interest with issues related to education and was recognized by the South Carolina School Board for his contribution to public education.

After taking the bench, he attended the National Judicial College in Reno, Nevada. He is a member of the ABA's Judicial Division and a member of the National Conference of State Trial Judges (NCSTJ). He has served as the past Chair and Vice-Chair of the NCSTJ's committee on Fair and Impartial Courts.

In 2011, the Spartanburg County Bar Association honored Judge Hayes with the Justice Claude A. Taylor Distinguished Service Award primarily for his development of circuit and statewide annual high school Law Day Essay Contest.

CONTACT INFORMATION

To learn more about programs offered by NHTSA, please contact one of the following:

Judicial Fellow: Hon. Earl Penrod:
penrod26d01@msn.com

Judicial Outreach Liaisons:

Hon. Neil Edward Axel, Judicial Outreach Liaison, Region 3 (North Carolina, Virginia, Kentucky, West Virginia, Maryland, Delaware, District of Columbia):
NeilAxel49@gmail.com

Hon. J. Mark Hayes, II, Judicial Outreach Liaison, Region 4 (Tennessee, Alabama, Georgia, South Carolina, Florida):
mhayesj@sccourts.org

Hon. Phyllis McMillen, Judicial Outreach Liaison, Region 5 (Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio):
mcmillen008@gmail.com

Hon. Keith Rutledge, Judicial Outreach Liaison, Region 7 (Arkansas, Missouri, Kansas, Nebraska, Iowa):
dkrutledge@sbcglobal.net

Hon. Mary A. Celeste, Judicial Outreach Liaison, Region 8 (Nevada, Utah, Wyoming, Colorado, North Dakota, South Dakota):
attcel@aol.com

Hon. Peggy Hora, Judicial Outreach Liaison, Region 9 (Arizona, California, Pacific Territories):
peggyhora@sbcglobal.net

Hon. Mary Jane Knisely, Judicial Outreach Liaison, Region 10 (Montana, Idaho, Oregon, Washington, Alaska):
maryjaneknisely@gmail.com

State Judicial Outreach Liaisons:

Delaware: Mr. Timothy Hubbard:
Timothy.Hubbard@state.de.us

Florida: Hon. Karl Grube: kgrube@jud6.org

Georgia: Hon. Kent Lawrence:
klawrence@gohs.ga.gov

Indiana: Hon. Linda Chezem:
lchezem@aol.com

Michigan: Hon. Patrick Bowler:
pcbowler@gmail.com

Montana: Hon. Audrey Barger:
Audrey@audreybarger.com

Pennsylvania: Hon. Michael Barrassé:
mbarrassé@gmail.com

Texas: Hon. Linda Weiser:
lweiser@yourhonor.com

Washington: Hon. Scott Bergstedt: scott@bergstedtlaw.com

STATE JUDICIAL OUTREACH LIAISONS SELECTED

NHTSA continues to expand its efforts to reach out to judicial officers to make them aware of opportunities and information about impaired driving.

They are pleased to announce the following State JOLs.

Delaware:

The Delaware Administrative Office of the Courts announces that Timothy Hubbard has recently accepted the position of State Judicial Outreach Liaison (JOL) for Delaware. The position is funded by a grant through the National Highway Traffic Safety Administration.

Mr. Hubbard comes to Delaware with over 15 years of experience with the Westtown East Goshen Police Department in Pennsylvania. He has a B.S. in Legal Studies from American Military University and has extensive experience in DUI enforcement and education efforts. He served as the lead instructor for the DUI portion of a Citizens Police Academy and has trained police officers in DUI enforcement and other highway safety initiatives. In his capacity as State JOL, Mr. Hubbard will be assisting the Delaware Court of Common Pleas in planning and implementing a DUI Court as well as pursuing ongoing efforts to develop highway safety education initiatives for the Delaware Judiciary and the public.

Indiana:

Linda Chezem has been appointed Judicial Outreach Liaison for the Indiana Highway Traffic Safety Office. Judge Chezem's work is focused on public health law for youth and families and legal issues in alcohol research. She currently serves on the National Advisory Council on Alcohol Abuse and Alcoholism, National Institutes of Health, Bethesda, Maryland. She also consults with the U.S. Department of Justice, and Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention on the program for Enforcing Underage Drinking Laws.

Chezem holds an appointment as Professor in Purdue University's School of Agriculture and an adjunct appointment with the Indiana Alcohol Research Center, Indiana University School of Medicine where she works on legal issues in agriculture and animal production.

Judge Chezem graduated from Indiana State University and the Indiana University (Bloomington) School of Law. After 4 years in private practice, she was consecutively appointed to the Lawrence County Court, the Lawrence Circuit Court, and the Indiana Court of Appeals for a total of 22 years' service. She was the first woman appointed to a Circuit Court bench in Indiana and the second woman to serve on the Indiana Court of Appeals.

Michigan:

Judge Patrick C. Bowler, retired, has been selected as the first State of Michigan Judicial Outreach Liaison to provide training and technical assistance to Michigan trial courts and other State officials regarding impaired driving and other traffic issues.

Judge Bowler, was elected and served as a Judge with the 61st District Court in Grand Rapids, Michigan, for twenty-four years. Judge Bowler previously served as Director of the Kent County, Michigan, Office of the Defender and as an Adjunct Professor

of Law at Michigan State University Law School and Cooley Law School teaching criminal law and procedure courses.

In 1998 Judge Bowler instituted a Drug Treatment Court Program for felons and misdemeanants in Kent County, Michigan, and served as the Drug Treatment Court Judge until his retirement in 2008. He also founded and presided over a Sobriety Court Program directed at multiple-offender misdemeanor and felony drunk drivers, as well as a Hispanic Sobriety Court.

Judge Bowler presently serves on the faculty of the National Drug Court Institute. He has represented the State of Michigan on the Congress of State Drug Court Associations and as a consultant to the Department of Justice, Bureau of Justice Assistance. He is a past president of the Michigan Association of Drug Court Professionals and continues to serve on the Board of Directors. He was appointed by the Michigan Legislature to serve on the State Drug Treatment Court Advisory Committee where he served as Chair of the Committee.

Texas:

Judge Laura Weiser has been named the Judicial Resource Liaison for the Texas Center for the Judiciary. She retired from Victoria County Court at Law No. 1 after more than 22 years of service.

The Judicial Resource Liaison provides Texas judges with up-to-date information and training regarding laws concerning impaired driving, license suspension, breath interlock devices and other alcohol monitoring technologies, courtroom evidence and the sentencing and supervising of offenders. This position is funded by a Traffic Safety Grant from the Texas Department of Public Safety.

Judge Weiser is a member of the Texas Judicial Foundation, the Judicial Advisory Board for the Texas Association for Court Administration, the Long Range Planning Committee for the Texas Center for the Judiciary, the Juvenile Justice Committee for the Judicial Section of the State Bar of Texas, and the Advisory Board of the Police Academy at Victoria College. She is Past Chair of the Judicial Section of the State Bar of Texas and the Texas Center for the Judiciary.

WEBINARS

NHTSA and the ABA will once again be presenting a series of webinars on traffic safety issues. The topics and dates are:

July 25—Toxicology and Evidentiary Issues in Impaired Driving Cases

August 22—The Fourth Amendment in Impaired Driving and Other Motor Vehicle Offenses: Supreme Court Case Law Review and Update.

October 16—Sentencing Considerations and Options in Impaired Driving Cases

For more information and to register:
<http://www.americanbar.org/groups/cle/partners/judicial.html>
or contact Gena.Taylor@americanbar.org