

Texas DWI Survival Guide

■ ■ ■ A Citizen's Protection Manual

Stephen Hamilton

Bruce Edge

John Hunsucker.



TEXAS DWI SURVIVAL GUIDE

A Citizen's Protection Manual
Second Edition

Stephen Hamilton, J.D.

Member, Texas Bar

**Bruce Edge, J.D., &
John Hunsucker, J.D.**

Members, Oklahoma Bar

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Dedication

To my Dad who always had faith in me, even when I did not.

Stephen Hamilton

You guided me to become a better man and your memory still guides me—Love you Dad.

Bruce Edge

To my children, Reigan, Riley and Jake, you continue to amaze me every single day and make me realize I am the luckiest man alive.

Love, Daddy

To my wife Lauri, I love you says it all.

John Hunsucker

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HOW CAN YOU DEFEND DRUNK DRIVERS?

“Those People” are always the folks you could never imagine defending until one day the government says you or your child are “those people.”

STEPHEN HAMILTON

A “legal technicality” is a precious Constitutional guarantee when it is your freedom, reputation, driver's license and insurance rates that are on the line.

BRUCE EDGE

Often remarks are made indicating that ‘drunk drivers’ should just be locked up and that it takes a slimy lawyer to try to get them off. That reaction is understandable from a purely emotional standpoint but let’s dig a little deeper. The reason we have courts is to determine if the laws are being followed and to administer justice. It is the foundation of our nation. The police officer has a job - he arrests people who are suspected of committing crimes. At that point, the district attorney (DA) assumes responsibility. The DA’s job is to determine if charges should be filed and to prosecute the case. If we stopped there, we would have a form of kangaroo court, but we do not.

The person accused is entitled by law to have his day in court. The defense attorney is responsible for providing balance by fighting the overwhelming power of the government. There will be a judge who is supposed

to be neutral—a referee in effect. Then we have a jury composed of his “peers.” That is, the jury should represent people in the community who are similar to the accused person.

With these players in place, each has a job to do. The prosecutor wants to convict, and the defense attorney must protect his client. The defense attorney demands that all laws and all procedures are followed. The evidence will be tested. Our Founding Fathers felt it was extremely important that innocent people not be convicted, and this concern led to the formation of our current judicial system.

Without the objection of the defense attorney, illegal evidence could be introduced. Without the defense attorney, illegal interrogation by the police would be rampant. Without the defense attorney, police could arrest on just a hunch. Without the defense attorney, illegal home searches could take place—you get the idea. The defense attorney, by doing his job, is defending the rights of EVERY citizen in the United States. He is standing for justice, and you cannot have justice only for a certain group of people. Just as our laws are meant to apply equally to all people, justice is meant to apply equally to all people.

The next time you say—

“I have a right to speak freely,”

“I can read what I want,”

“My home cannot be searched without a warrant,”

“I can worship in any manner I choose,”—

realize that daily, defense attorneys are helping to protect these rights for you and for your family.

If you still question this logic, the following poem explains it most eloquently:

*When the Nazis came for the communists,
I remained silent;
I was not a communist.*

*When they locked up the social democrats,
I remained silent;
I was not a social democrat.*

*When they came for the trade unionists,
I did not speak out;
I was not a trade unionist.*

*When they came for the Jews,
I did not speak out;
I was not a Jew.*

*When they came for me,
There was no one left to speak out.*

PASTOR MARTIN NIEMOLLER

NOTES

WHAT IS THIS BOOK ABOUT AND WHY SHOULD I READ IT?

Justice cannot be for one side alone,
but must be for both.

ELEANOR ROOSEVELT

DWI has become a political crime, and even though advocacy groups will not admit it, we are quickly moving towards a zero tolerance for alcohol. At one point, the legal limit for driving after drinking was .15 grams of alcohol per 210 liters of blood. Then concerned parties got together, and with no empirical research, decided that .10 was a more proper level. This was the number for years and then at the insistence of activist groups, the federal government became involved. It is like a camel poking his nose under a tent: before long, the camel takes over the tent.

Using the same method of blackmail as when seat belt laws became mandatory, the federal government set a deadline and told the States they must reduce the level for DWI to .08 or they would lose their federal highway money. There were no new empirical studies, just tremendous political pressure from advocacy groups, and it became law. Now every state has capitulated, and .08

is the law of the land. In Texas, the range of punishment for a DWI conviction can be as little as three (3) days in jail up to life in prison. That is not a misprint: as of 2009 Texas had over 100 prisoners doing life on a DWI conviction.

Recent national media campaigns say, “You drink, you drive, you go to jail,” and “Buzzed driving is drunk driving.” Although your tax dollars pay for these ads and they become ingrained in people’s minds, it is not a correct statement of the law. It is a form of brainwashing and jury manipulation. If a lie is repeated often enough without being challenged, it is accepted as being true.

Regretfully, the police have become indoctrinated by these campaigns, and if you are stopped for any reason while driving and have an odor of an alcoholic beverage on your breath or in your car, the odds are that you will go to jail. This is NOT what the law states, but it is the reality of the world in which we now live. In fact, the head of the International Association of Chiefs of Police (IACP) has been quoted saying if you are stopped and smell of alcohol, you will be arrested!!! Arrested for smelling like alcohol! This is a perverse injustice, but you may be forced to argue the point in court.

Knowing the risk you face, it is in your best interest to have a good understanding of the law in Texas as it applies to DWI, DUI, intoxication assault, and intoxication manslaughter. This is not a legal treatise and should not be relied upon as legal authority. This book is purposely written in everyday language so you can

quickly use the information in a practical manner and make informed decisions.

A word of caution if we may: this is not intended as a do-it-yourself manual. There is just enough information contained to allow you to be dangerous to yourself. As they would say on television, “*Don’t try this at home.*” There is no substitute for having a competent, trained DWI attorney representing you if you are charged with an alcohol offense.

As you will see in the next pages, I have invested countless hours traveling throughout the United States to train in every aspect of DWI defense. I have invested well over \$100,000 in this training and continue to invest in my training each year. As such, I generally am on the leading edge of DWI defense in Texas.

Relax and enjoy what is ahead. It is written in a style that allows you to move to selected chapters that are of the most interest to you. You do not have to read the entire book to benefit from its contents although I hope you will.

Happy reading!

Stephen Hamilton
Bruce Edge
John Hunsucker

NOTES

DOES THE GUYS WHO WROTE THIS BOOK KNOW WHAT THEY ARE TALKING ABOUT?

Meet the Authors

It is not the critic who counts,
not the man that points out how the strong man stumbled,
or where the doer of deeds could have done them better.

The credit belongs to the man
who is actually in the arena;
whose face is marred by dust and sweat and blood;
who strives valiantly,
who errs and comes short again and again;
who knows the great enthusiasms,
the great devotions, and spends himself
in a worthy cause.

Who at best, knows in the end
the triumph of high achievement;
and who, at worst, at least fails while daring greatly,
so that his place shall never be with those
cold and timid souls who know neither victory nor defeat.

THEODORE ROOSEVELT

“Protecting the Lord’s children who have fallen short of perfection from the wrath of those who believe they have attained it.” **STU KINARD**

STEPHEN HAMILTON



Texas Attorney Stephen Hamilton is Board Certified in Criminal Law by the Texas Board of Legal Specialization. Overall in Texas less one percent of all lawyers who practice criminal law are board certified in criminal law. Stephen is trained under the National Highway Safety Administration (NHTSA) guidelines to administer the Standardized Field Sobriety Tests (SFST) and has completed training as an Instructor of the SFST's. He has completed the training as a Breath Test Operator of the Intoxilyzer 5000 breath test machine (the

same machine used in Texas for court room breath tests). He has also completed training as a Breath Test Instructor and Maintenance Technician of the unit.

Stephen owns two (2) Intoxilyzer units (the same units that Texas uses for evidentiary breath tests). He owns a portable breath test machine and the same field sobriety testing manuals used by law enforcement officers. He is a member of the National College for DUI Defense, National Association of Criminal Defense Attorneys, the Texas Criminal Defense Lawyer's Association and several regional associations.

Stephen has attended the Robert F. Borkenstien course on Alcohol and Highway Safety, Testing, Research and Legislation taught at Indiana University. This is the same course the prosecutor's Intoxilyzer expert attended. In addition, Stephen has completed the Blood Testing Gas Chromatograph training in Chicago. This school covers the operation and use of the machine that Texas uses to test a person's blood for alcohol and or drugs.

Stephen has trained other lawyers in Texas and throughout the United States on how to be a better DWI attorney. He has tried cases from parking tickets to Felony Murder and has successfully resolved DWIs from a first offense to a habitual DWI (that type of case that the punishment range could result in life in prison). He wins cases through motions, negotiations, trials and appeals.

BRUCE EDGE



Tulsa lawyer, Bruce Edge is 1 of less than 50 attorneys in the United States who are Board Certified in DWI Defense according to the American Bar Association guidelines. Bruce considers his law firm to be a boutique practice—that is, he limits his practice to DWI Defense and limits the number of cases he accepts; allowing him to put more time and effort into each case. Not only does he devote extra time to his cases, he devotes a tremendous amount of time to study and training on the issues related to alcohol offenses.

Bruce and John are the first and only two Oklahoma DWI lawyers to ever be selected as a Super Lawyer. This recognition is limited to the top 5% of

attorneys in the state. This recognition is based on a survey of every attorney in the state as well as an exhaustive background check of training and cases handled by the attorney.

Bruce is trained under the National Highway Safety Administration (NHTSA) guidelines to administer the Standardized Field Sobriety Tests (SFST) and is an Instructor of the SFST's. He is certified by the Oklahoma Board of Tests (BOT) and the U.S. Department of Transportation (DOT) to administer the breath test on the Intoxilyzer 5000 - the only approved machine in Oklahoma - and he is a Maintenance Specialist for the machine. He also has been trained to administer tests on the Intoxilyzer 8000—the newest model breath machine. In fact, Bruce and John own the only two Intoxilyzer 8000s held by attorneys in Oklahoma. There are only 6 attorneys in the U.S. who have one of these machines. Mr. Edge is formally trained as a DRE (Drug Recognition Expert) which deals with people who are charged with driving under the influence of drugs—illegal as well as legally obtained drugs. Mr. Edge recently completed an extensive study involving blood tests, laboratory procedures and protocols. Bruce owns the largest collection of Intoxilyzer breath testing machines and alcohol simulators of any attorney in Oklahoma.

More important than training, Bruce knows how to win. With winning trial experience involving alcohol blood test and alcohol death cases, he knows that once he accepts a case, he has accepted the responsibility for his

clients' future. It is a heavy responsibility and a responsibility he takes personally.

Mr. Edge is sought out by other attorneys throughout the United States to instruct them regarding DWI defense including a recent session with the National College for DWI Defense held at Harvard University. Additionally, other attorneys request that Bruce serve as an Expert Witness for their difficult cases.

Bruce's passions are his work, collecting and consuming fine wines, cooking, travel and adrenaline pumping experiences such as race car driving, open cockpit flying, skydiving, bobsledding and shark diving. He is a consummate golfer who can break par—on the first nine.

JOHN HUNSUCKER



Never give in—never, never, never, never,
in nothing great or small, large or petty,
never give in except to convictions of honour
and good sense. Never yield to force; never
yield to the apparently overwhelming might
of the enemy.

WINSTON CHURCHILL

Located in Oklahoma City, Oklahoma, Mr. Hunsucker is the lead attorney with the Hunsucker DWI Defense Firm. John's practice is focused exclusively on DWI defense. He handles over 200 DWI cases a year

ranging from first time offenders to DWI felony murder cases.

John is certified by the National Highway Traffic Safety Administration in the administration of the Standardized Field Sobriety Tests (SFST). Certified as an Instructor of the SFST's, John has taught the SFST course to attorneys from numerous states. In 2004, John was one of the first attorneys in Oklahoma to receive formal Drug Recognition Evaluation (DRE) training (and is still only one of a few attorneys in Oklahoma to have this training).

Additionally, John teaches, participates and/or attends almost all national, regional and local DWI seminars and is frequently called upon to teach DWI seminars by various groups including the Oklahoma Bar Association, Oklahoma Municipal Judges Association, and the Oklahoma Criminal Defense Lawyers Association.

John is certified as an Operator and Maintenance Specialist of the Intoxilyzer 5000 and is also certified as an Operator of Oklahoma's newest machine, the brand new Intoxilyzer 8000. John is one of only six attorneys in the country that actually owns the Intoxilyzer 8000 and has instructed attorneys in the United States and Canada on the use and problems of the machine. Additionally, John has completed several advance forensic blood collection and analysis course.

Nationally recognized, John has consulted on or tried DWI/DWI cases in the States of Oklahoma, Texas,

Massachusetts, California, and Connecticut. Being considered Oklahoma's leading DWI attorney, other attorneys frequently refer their difficult DWI cases to John or retain his services as co-counsel. John and Bruce are the first and only DWI attorneys in Oklahoma to be selected by their peers as Texas SuperLawyers every year since its inception in Oklahoma. Only the top 5% of Oklahoma lawyers are selected for their dedication to their field and excellence in representing their clients.

John has been featured as a legal expert nationally on CourtTV's *Open Court* with Lisa Bloom and CourtTV's *In Session* with Ashleigh Banfield. Locally, John has been featured on KTOK radio, Channel 4 News, Channel 5 News, and quoted in *The Daily Oklahoman* for his extensive knowledge of DWI law.

John is a Director on the Board of the Oklahoma Criminal Defense Lawyer's Association is also a member of the National Association of Criminal Defense Lawyers, a Fellow with the Litigation Counsel of America, and a Member of the National College of DWI Defense.

As a result of John's dogged desire to win, he has accumulated a highly successful track record of acquittals, dismissals and reductions to non alcohol related offenses. Most recently, John was able to obtain a complete dismissal of a felony DWI for an Oklahoma Correctional Officer after showing the police lacked probable cause for the stop. Mr. Hunsucker's last jury returned a not guilty verdict in 13 minutes.

John lives in Oklahoma City with his wife Lauri and their three beautiful children, Reigan, Riley, and Jake. In his free time, he enjoys time with his family, margaritas, Jimmy Buffett music, traveling, and playing with his Great Danes.

THE COPS SAID I DIDN'T HAVE THE RIGHT TO TALK TO AN ATTORNEY

*Your Constitutional Rights
Do Not Apply to a DWI*

You can only protect your liberties in this world by
protecting the other man's freedom.

You can only be free
if I am free.

CLARENCE DARROW

The Declaration of Independence begins “*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.*”

The Constitution does not reserve or limit any of our rights because of a specific criminal charge. That means that someone accused of murder is entitled to the same rights as someone accused of writing a bad check. These rights apply to YOU as a citizen, not to a specific charge. This is the way it is “supposed to be,” but in the real world, IT IS NOT TRUE.

Our courts have continuously found ways to limit the Constitution and limit the rights of people accused of DWI. You will find the following statements difficult to believe, but they are true:

- If you are arrested for DWI, the officer will IMMEDIATELY seize your driver's license and will not return it. This is a form of punishment, and you have not even had an opportunity to talk with a lawyer, see a judge, or post bail. You ARE PRESUMED GUILTY even though the Constitution guarantees that you are to be presumed innocent unless proven otherwise—**A DWI LIMITATION.**
- You have the right to contest the revocation of your driver's license. If you win the hearing to save your license, you may think that's it. "I have heard of double jeopardy." Well, you still can lose your license from an adverse ruling in the criminal court—**A DWI LIMITATION.**
- Prior to arresting you, the officer will ask you questions about where you have been, what you had to drink, how much, when, and so on. He will not read your Miranda rights to you even though he will continue to question you. He will ask you all these questions even though you are a suspect in a DWI investigation. You have watched TV and know this is wrong—not for DWIs. The Court again has found—**A DWI LIMITATION.**

- If you are arrested and taken to jail for DWI, you should feel confident that you will be allowed to talk with an attorney prior to questioning or being asked to give incriminating evidence against yourself. This is true in all crimes *except* DWI. Again—**A DWI LIMITATION.**
- If you are arrested and refuse to take a breath test, Texas state law says that your refusal can be admitted to a jury, and the prosecutor can argue that you refused because you knew you were intoxicated. But—what about the 5th Amendment saying, “I have the right to remain silent and it cannot be used against me?” Again—**A DWI LIMITATION.**
- If you are driving and are stopped for say a tail light being out, then questioned about drinking, you might easily think, “Wait, you have to have a reason to question me, this is not legal.” If they were looking for drugs, or stopping you for any other crime, you would be correct, but not if it is a DWI stop—**A DWI LIMITATION.**
- In most cases, if the government knowingly destroys evidence, that evidence cannot be used against you. In a DWI case, you are asked to take a breath test. The machine is capable of preserving the sample of your breath for additional testing. The Government, for monetary reasons and knowing there will be no punishment for destroying that evidence, has chosen not to maintain the sample, yet they are allowed to

introduce it as evidence—A **DWI LIMITATION**.

- If you have a couple of quick drinks and are stopped within 5-10 minutes after leaving your house or a meeting, you may not be affected by the alcohol yet—but you still may be requested to take a breath test and even though the State of Texas government lawyers can't prove you were over the legal limit when you were driving, that is close enough for government work. It can be used against you and show a much higher alcohol level than what you had while you were actually driving. In effect, you will be guilty of being capable of committing a crime even though you were not intoxicated when stopped—A **DWI LIMITATION**.
- A man's home is his castle! We have heard this many times and you know the Constitution says the government must have a search warrant to enter your home, even for a murder investigation. A recent California case allowed the police to enter a home for a misdemeanor DWI investigation without a warrant. This was based on a neighbor's tip; that is, the police did not even see the person driving. They just entered the home without a warrant. Surely, this would not be allowed. Sorry—A **DWI LIMITATION**.
- You have heard of double jeopardy. The government will start two proceedings after a DWI arrest—an administrative proceeding and a

criminal proceeding. You will be required to respond to both, and a loss at either could result in you losing your right to drive. That's right; the government gets two chances to take away your license—**A DWI LIMITATION.**

- The Constitution requires a warrant before evidence can be forcefully taken. In certain parts of Texas, if you are stopped, asked to submit to a breath test and refuse (remember the 5th Amendment and your right not to incriminate yourself), a “Batmobile” will be called to the scene, you will be strapped down, and a police officer will take your blood on the spot. Yes, this is happening in America because we have—**A DWI LIMITATION.**
- You can be convicted of DWI even if your driving was not impaired. The law has what we call a “per se” provision. That means if the machine says you are .08 or more, you are presumed guilty, even if your driving was not affected. The government will not have to show your driving was impaired, just that a machine reached a certain number. You just thought you had a right to be presumed INNOCENT—**A DWI LIMITATION.**
- The Constitution guarantees an accused the right to face the accuser in court before a jury. This is the Right of Confrontation. In DWI cases, the accuser is most often a machine that makes mathematical conversions to calculate a number.

This mathematical conversion is secret because the manufacturer considers it “proprietary.” Math is generally considered to be an absolute and no one owns it, but in DWI cases, you will not know the method used to compute your number because it is the proprietary property of the manufacturer—**A DWI LIMITATION.**

You get the idea. DWI has become a social crime, and no politician will speak against the charge or means of applying penalties if he wishes to remain in office. We also continue to move away from the problem—intoxicated drivers. The limits are lower, and you can be convicted for a number that has no relationship to your driving abilities.

None of this addresses the repeat offenders who are heavily intoxicated, but it does move towards a new form of prohibition in our country. One state has lowered the number to .04 for repeat offenders, and it is easy to envision a nationwide move to lower the number to .04 for all drivers. In addition, DWIs are the “cash cow” for the court system. Court costs for a first time DWI are higher than for a felony drug possession. Numerous reasons exist as to why your case is being placed on a “fast track.” Many powerful forces are striving to increase the number of DWI convictions throughout the nation—all the more reason you need an experienced **DWI ATTORNEY.**

IT'S A SIMPLE DWI! WHAT'S THE BIG DEAL?!

Hidden Costs of a DWI

We must remember that any oppression,
any injustice, any hatred,
is a wedge designed to attack our civilization.

FRANKLIN D. ROOSEVELT

Being arrested for driving while intoxicated (DWI) in Texas can intensely impact your life and the lives of those around you about whom you love and care. Jail time, loss of your driver's license, unbearable automobile insurance premiums, loss of your job, eviction from housing, and bad credit ratings are but a few of the problems that can result from a DWI.

Just because the officers took your driver's license, your world has changed. The following are a few of the many things you can no longer do although you have NOT been convicted of any crime or EVEN appeared in court:

- Cash a check
- Open a bank account
- Buy car insurance
- Rent a car
- Rent a hotel room

- Enter a federal building
- Board an airplane
- Obtain certain jobs

Have you had a friend, co-worker, or even worse, an attorney, tell you a DWI is no big deal? Heaven forbid that they say you may be able to save money and just plea it yourself! “The worst that will happen is you will go to DWI school and pay a fine,” a person might say.

Sound familiar?

STOP—BE CAREFUL! Even in a small good-old-boy county, there are many *hidden costs*. The following is a list of potential costs associated with a DWI:

- Serve a sentence of up to LIFE in prison
- Pay up to a \$10,000 fine
- Do mandatory community service up to 600 hours (over 2 months of work hours)
- Complete mandatory in-patient treatment at a state prison substance abuse program that can take 12 to 18 months with periodic testing at your expense (in the tens of thousands of dollars)
- Have electronic monitoring for you and/or your car
- Potentially be fired from your present job
- Have your credit rating downgraded
- Suffer employment loss if your insurance provider will not allow you to drive a

- company vehicle with a conviction. (Your boss will have no choice—you will be fired.)
- Lose your driver's license for up to 2 years (MUST APPEAL THIS WITHIN 15 DAYS OR IT IS TOO LATE)
 - Suffer lifetime loss of a commercial driver's license (CDL) (15 DAYS to appeal)
 - Lifetime inability to obtain a Commercial Driver's License (CDL) (15 DAYS to appeal)
 - Lose your pilot's License (15 DAYS to appeal and various other reporting requirements)
 - Lose you right to vote
 - Suffer criminal penalties if you own a gun
 - Endure a potential auto insurance increase of thousands of \$\$\$ each year for years to come
 - Potentially be prevented from entering foreign countries, including Canada
 - Potentially be evicted from many rental units, and others may refuse to allow you to move in
 - Suffer future job loss due to a conviction
 - Have life insurance policies denied or cancelled or suffer an increased premium.

These are only the most common hidden costs of a DWI. Your record will be under scrutiny for years to come and other negative issues caused by a conviction can easily exist.

In other words, there is no such thing as a “Simple DWI.” The costs are extreme, and you may continue to pay for years to come.

NOTES

5 BIG LIES ABOUT DWIs

But They Sound So True

Whether you think you can or
whether you think you can't—
you're right.
Henry Ford

Many people—attorneys and judges included—have a completely wrong attitude towards a DWI charge. They are trapped by believing many common LIES about DWI. Such LIES can lead to malpractice by the attorney and dire consequences for the client who suffers due to the lawyer's lack of knowledge. The LIES surrounding DWI are:

1st LIE: A DWI Is a "Simple" Charge

Let me ask:

- Is it “simple” to lose your job?
- Is it “simple” to not be able to drive?
- Is it “simple” to be unable to travel to other countries?
- Is it “simple” to not be able to rent an apartment?
- Is it “simple” to be banned for life from having a commercial driver's license?

- Is it “simple” to go to jail?
- Is it “simple” to have a damaged credit rating?
- Is it “simple” to have your insurance increased by thousands of dollars for years to come?

This is just the start of some of the hidden costs of a DWI. This is a charge that keeps on “giving.” It follows you for years, possibly even for your lifetime. There is nothing “simple” about these types of penalties you can suffer from a ‘simple’ DWI.

Regretfully, far too many untrained attorneys think of DWIs as “simple” and advise their clients to quickly enter a plea. A trained, competent DWI lawyer can help you understand the dangers you face and can protect you.

2nd LIE: A DWI Case Is the Same As Any Other Criminal Case

If the consequences were not so serious, this LIE would be humorous. Recently, a judge said, “A *DWI case is one of the most difficult cases to try, more difficult than most murder cases.*” In many areas, the courts handle DWI cases differently from other offenses. For example, in a murder case, the defense lawyer will order an independent analysis of ballistics tests, blood splatter patterns, fingerprints, and other physical evidence. This is not true in drunk driving cases. Texas law does not require an officer taking a breath test to capture some of the breath so it can be analyzed independently at a later date, even though the machines can seal samples at a minimal cost. The United States Supreme Court has said

that it is perfectly acceptable that such critical evidence is destroyed.

In the judicial system, DWIs are “special.” Yes, different rules apply to a DWI case. In a run of the mill criminal case such as murder or drugs, you would be allowed to view and test the evidence against you. If blood was involved, you could also have it tested. In most DWIs, the evidence consists of a breath test which produces a number printed on a piece of paper. That’s it – your ability to drive all depends on a number from a computer-generated batch!

Attorneys who are not extensively trained in DWI defense or even worse, the ones who just want to earn a quick buck, do not know how to protect their clients. These attorneys could face malpractice from mishandling such cases, but even more disturbing, their clients are the ones who will suffer for years to come.

3rd LIE: If You Were Arrested, You Must Be Guilty

You certainly don’t want an attorney representing you who starts off thinking you are guilty. An attorney should believe in his client and devote himself to defending his client.

This is perhaps the most troubling LIE because so many attorneys and individuals believe an arrest is proof of guilt. Since this mindset can eliminate objectivity, an attorney who believes you’re guilty has no business representing a person accused of drunk driving.

The evidence in most drunk driving cases is a breath test, not a blood test. A skillful attorney can be successful in exposing the problems with such a test. Because of their lack of sophistication and reliability, most scientists would not trust the results of a breath test machine as a basis for research or investigation. Both the accuracy and reliability of these machines are subject to challenge.

The breath machine is just the low bid machine purchase in a government contract. There are a number of ways to attack a machine test. This is not a scientific instrument, yet the state wants to treat it as such. Reliability, accuracy, administration and training errors are just a few factors that can skew results.

Extensive training and study by an attorney is necessary to challenge this test. Attempting to defend a DWI case without this training and knowledge could expose the attorney to a malpractice charge and leave the defendant to suffer the consequences.

4th LIE: You Can't Win a Texas DWI Case

Oh my goodness, we have allowed ourselves to be brainwashed into believing this lie! It is outrageous to think that a person would actually pay a lawyer who believes this lie. With this attitude, you might as well just plead guilty and save the fee.

An experienced DWI lawyer will start preparing for trial from the very first meeting. He will investigate and subpoena every piece of evidence available. The

lawyer will often fight extensively through motions and other procedural maneuvers. No client should automatically be advised to plead guilty because an attorney who is not properly trained believes that these cases are difficult or impossible to win.

Many lawyers will push a guilty plea without having done any investigation of the case. The client may have told the attorney he could not afford to fight the case. This is common, but did the attorney tell the client the hidden and long-term costs of a conviction and did the attorney explain the defenses to the charge so the client could make an informed, intelligent decision? Many times the client will realize that the long-term cost of accepting a quick guilty plea is greater than the cost of fighting—that is, if the options are fully explained by a competent attorney.

5th LIE: DWI Is a Minor Offense

The stigma of a conviction can cause tremendous stress and fear. Many drivers whose licenses are suspended continue driving to keep a job and provide for their families. By doing so, they live in fear of being stopped, caught, and jailed for driving with a suspended license. Most of those convicted also suffer financially and socially. In most states, a DWI conviction is permanently on a driving record. Only those justly convicted should have to endure these emotional, financial, and psychological hardships.

It is not a crime to have a drink and drive. Convictions for drunk driving should only occur when a

person's blood alcohol level exceeds the arbitrary numerical standard set by the State, or when it is proven that a person's bad driving is connected to an impaired state due to a high blood alcohol level. Usually, the drivers do not know if they have been properly represented or if the State's case was valid and based on a legal stop. A qualified DWI attorney is needed to investigate the case thoroughly and recommend the best alternative.

You have a right to inquire about the training your potential attorney has received. You should be sure that the lawyer has spent substantial time training specifically in the field of DWI.

A TEXAS DWI FELONY CONVICTION

Professions That Will Be Closed To You

Your soul is oftentimes a battlefield, upon which your
reason and your judgment
wage war against your passion and your appetite
KAHLIL GIBRAN

A Texas DWI felony or any Texas felony conviction can have life-altering consequences. The most obvious is that you can face up to life in the state prison. Even if you avoid prison, many employers will be reluctant to hire you, many rights the normal citizen enjoys may be curtailed, and numerous professions may be closed to you. The following is a list of rights and professions that will probably no longer be available to you:

- The armed services will not accept you. (This may even be true with a misdemeanor.)
- Security clearance for many federal and state facilities may not be possible.
- You cannot vote.
- You cannot sit on a jury.
- You cannot run for public office.

- You must give a DNA sample that will be placed in law enforcement data banks.
- You cannot possess a firearm for any purpose under federal law.
- You can possibly be prohibited from having a driver's license.
- You may never be able to become a corporate director.
- You may not be a bank officer
- You may be prohibited from being an executor or administrator of an estate.
- You cannot be in the insurance business.
- You may face prosecution for denying you are a convicted felon under certain circumstances
- You cannot be a vehicle inspector.
- You cannot be a police officer.
- You cannot be a law enforcement officer, county jailer, or public security officer.
- You cannot run for public office.
- You may be excluded from obtaining federal student financial aid.
- You cannot be a liquor dealer

Other exclusions for state and federal jobs can be found at:

<http://www.americanbar.org/content/dam/aba/migrated/cecs/internalexile.authcheckdam.pdf>

ROADMAP TO TEXAS COURTS

Administrative Hearing vs. Criminal Case
County Courts vs. District Courts

I have lived my life, and I have fought my battles,
not against the weak and the poor—
anybody can do that—
but against power, against injustice, against oppression,
and I have asked no odds from them, and I never shall.
CLARENCE S. DARROW

Administrative vs. Criminal

In every DWI case, there are actually two separate proceedings or cases involved. The first case deals with the criminal proceeding. This will take place in the criminal courts, and the proceedings will be conducted either in the state district court, the county court, or the county court-at-law where you were arrested. This is the portion of the DWI case where the state or county authorities are trying to take away your liberty and possibly, in some circumstances, place you in jail for up to life. The criminal portion drives itself in that the court will set mandatory court dates and notify the defendant when he must appear. This will happen regardless of any action taken by the defendant.

The second case resulting from a DWI arrest is the administrative proceeding. The State of Texas will suspend your license for a minimum of six months and possibly up to two years if you refused to submit to a chemical test for intoxicants. If you submitted and the test showed a blood or breath alcohol level of .08 or more, the suspension time is 90 days. If you have had a prior suspension within the last 10 years, then the Department of Public Safety will seek an “enhanced suspension” of one year. The suspension is automatic and begins forty-one days after you are served notice of the revocation. This notice is usually given at the jail when you were arrested. The notice is contained on the officer’s “Notice of Suspension and Temporary Driver Permit” paperwork.

The only way to prevent this automatic license suspension is to request an administrative hearing within 15 days of the service of notice. If this hearing is not requested within the 15 days, there is not anything that can be done to prevent license suspension. Once the hearing is requested, it will put on hold any revocation action until the hearing is held and a ruling is made. The actual proceedings of the Department of Public Safety and appellate rights are covered separately.

District Court vs. County Court

In Texas, your driving while intoxicated charge can be prosecuted either in the state district court, the county court, or the county courts-at-law. If the DWI is a first or second offense (without any children in the

vehicle) and nobody is hurt, then the case will be a misdemeanor DWI. A first offense is a Class B misdemeanor, and a second offense (meaning you have a prior DWI conviction) is a Class A misdemeanor. If there is a chemical test result of a .15 or above, then a first offense DWI is punished as a Class A misdemeanor. It is known as the new DWI extreme charge. All of these misdemeanor DWIs are filed in either the county court-at-law or the statutory county court. If the county court was established by statute, then it is called a county court-at-law. If, on the other hand, the court was established by the Texas Constitution, then it is called a county court. Each county has a county court; if the legislature set up additional courts, then they are called county courts-at-law.

If the DWI is a felony either because it is a third offense charged (first if with a child) or because the case involved an accident with bodily injury or death then the case is filed in the district court. In order to charge a person with a felony DWI (again, unless a child is in the car under 15), the prosecutor must show that that person was also twice convicted of a DWI.

NOTES

HALT! CHECK WITH THE BORDER GUARD

You Can No Longer Travel to Canada

The death-knell of the republic had rung
as soon as the active power became lodged
in the hands of those who sought,
not to do justice to all citizens, rich and poor alike,
but to stand for one special class and
for its interests as opposed to the interest of others.

THEODORE ROOSEVELT

Although most citizens of the United States may freely travel in and out of Canada without any difficulties, those convicted of certain crimes may be denied entry to Canada because such persons are considered Members of Inadmissible Classes. Canada considers driving under the influence of alcohol an extremely serious offense. Other crimes include, but are not limited to, dangerous driving, shoplifting, unauthorized possession of a firearm or illegal substances.

If the person seeking admission to Canada was convicted outside Canada and at least five years has elapsed since the end of the custodial portion (if any) of

the sentence imposed, he may apply for a Minister's Approval of Rehabilitation. If granted, the Minister's Approval will permanently remove inadmissibility resulting from the conviction. The term "custodial portion" means the period of time that you are in jail or in the custody of the state. This can include probation if the sentence was such that you were in the custody of the state and the jail time was suspended. If less than five years has elapsed since the end of the custodial portion of the sentence, then the person seeking entry may apply for a Temporary Resident Permit if the person is only seeking entry for a single or limited period. Before either the Approval of Rehabilitation or the Temporary Resident Permit is granted, the Canadian government will consider how old the convictions are, the number of offenses on the applicant's record, the applicant's standing in the community, probation reports, and the applicant's purpose for entering Canada.

The Canadian government may require a police certificate or a record check from each place the applicant has lived for the previous ten years or since the applicant turned eighteen. Other documents that may be required include court records, probation reports, copies of the statute the applicant was convicted of violating and three reference letters from persons of standing in the community. Additionally, the Canadian government may require the applicant to write a statement of circumstances that surrounded the events leading to the applicant's conviction.

Persons with DWI convictions are advised to apply well in advance of their travel plans. The Canadian

government is similar to any other bureaucracy in that it does not move quickly. Applications can be made at any of the Canadian Visa offices in the United States. These include the Canadian Consulate General in Buffalo, New York; New York City, New York; Detroit, Michigan; Los Angeles, California; and Seattle, Washington. Before visiting any one of these locations, visit their web site to confirm hours of operation, required documentation, processing times, as well as any other instructions. Application forms may also be obtained from the above locations.

Although the authors have heard of persons who would be considered members of inadmissible classes gaining entry into Canada without going through the above procedures, the authors have heard of just as many being denied entry at the border. It is better to take the time to obtain the necessary approvals than be told at the airport in Canada that you must immediately buy a ticket home without ever leaving the airport.

NOTES

I NEED A TICKET TO RIDE

What About My Driver's License?

A life spent making mistakes is not only more honorable,
but more useful than a life spent doing nothing.

GEORGE BERNARD SHAW

An arrest for Driving While Intoxicated (DWI) also carries civil consequences for the person charged. This is separate from the criminal case in which the district attorney's office is attempting to obtain a conviction, monetary fines, and possibly jail time. Immediately after an arrest for DWI the Texas Department of Public Safety will start civil administrative proceedings against you to suspend your Texas driving privileges.

The Texas Department of Public Safety (DPS) can only suspend or revoke your Texas driver's license or Texas driving privileges. If you possess an out of state driver's license, please see the following subsection entitled "Out of State Licenses." If you possess a commercial driver's license (CDL), please refer to Chapter 10 "COMMERCIAL DRIVER'S LICENSE." If this DWI is your first or if you have not had a revocation within the last 10 years, then the Department of Public Safety will attempt to suspend your driving privileges for

180 days if you “refused” to give a sample and 90 days if you gave a sample and the results were .08 or above. Under Texas law, this suspension cannot be modified. In other words, the Administrative Judge who hears your driver’s license case can make a negative finding of no suspension or an affirmative finding for the statutory required period of suspension. The administrative judge has no ability to “probate” the suspension or reduce the suspension time.

If you have had a prior suspension or revocation within the previous ten years, then the Department of Public Safety will attempt to suspend your driver’s license for a period of one year for a .08 or above test and two years for a “refusal.”

In Texas, if you lose your license, you might be eligible to get an “Essential Needs License” or “Occupational Driver License” permit. This is a modified license that is restricted in several aspects. In order to get the Essential Needs License, you must have an SR-22 (high risk insurance policy) as well as be restricted to certain times and locations you can drive. You may also be required to install an ignition interlock device and wait a certain amount of time (often called a “hard suspension”) before you can obtain the Essential Needs License.

After the suspension period, in order to get your license reinstated, you must pay a “reinstatement fee” to the Texas Department of Public Safety.

Interlock Restricted License

In Texas, the law allows the court to order that you put a device in your vehicle—any and all vehicles that you drive—that will not allow the vehicle to start if you have consumed alcohol. There are several times when this device is mandatory. First, if you have been arrested for a DWI and have a prior DWI conviction, then the Court or magistrate can order the interlock as a condition of bond. This means that even though you have not been convicted of the current DWI, you still have to place the device in your car while the case is pending.

If you are convicted of a DWI and have a prior DWI conviction, then you will be required to have an interlock installed in your vehicle as a condition of probation. The law requires the interlock be installed for at least 50% of the time of probation. Some courts require the interlock for the entire period of probation. If you provided a breath or blood sample that resulted in a .15 score or higher, you will be required to have an interlock installed.

Finally, many courts are requiring an interlock as a condition of an Essential Needs License on a second suspension.

If you drive your employer's vehicle, your employer will be required to place an ignition interlock device on any employer-owned vehicles driven by you. This requirement can be avoided if your employer requests that the device not be installed on your

employer's vehicles. This request must be made in writing on the employer's letterhead and must be notarized.

If you are self employed or own any part of the company or corporation for which you work, the exception for not installing the ignition interlock device in situations when the employer objects does not apply. The exception does not apply in cases in which the employer is a relative.

Preventing the Suspension

The suspension of your driving privileges can be prevented by challenging the suspension. To challenge the suspension, it is necessary to request an administrative hearing within 15 days of being served notice of the suspension or revocation. This notice is usually given when the person is arrested. The notice is contained in the "Notice of Suspension and Temporary Driver Permit" form. The Notice of Suspension is given to you after you refuse to be tested or you are tested and the result is over the legal limit. In cases of blood tests, the notice is sent to you at the address the Department has on file (usually the same address that is on your license).

The notice resulting from a blood test is sent after the Department receives notice from the police agency that your blood tested over the legal limit for alcohol. Interestingly, there is no administrative suspension for a positive drug result. Currently, the only way for the Department of Public Safety to suspend your license is

either a refusal to take the chemical test or an alcohol result of .08 or greater.

After the Department receives a request for an administrative hearing, the Department will place the suspension on hold until the hearing is held. During this time, you will have the same driving privileges you had before your license was taken, including commercial driving privileges. After the Department receives a timely request for an administrative hearing, the Department will set the date for the administrative hearing to take place within approximately 60-120 days.

It is not necessary for you to appear at the administrative hearing if your attorney appears on your behalf. If no one appears on the licensee's behalf, the suspension will be upheld, and the suspension will begin at a date certain set by the Department. If the arresting officer fails to appear, then the suspension is generally set aside for lack of a necessary witness. This assumes that your attorney issued a subpoena for the arresting officer and complied with the technical rules of making the officer appear.

If all the parties appear, then the Administrative Law Judge will hear the issues and make a determination or ruling usually within 2-3 days. This ruling will be sent by mail. The issues at the administrative hearing are whether the arresting officer or officers had probable cause to stop you, had probable cause to arrest you, and you were either properly warned and refused to take a chemical test or you took the test and provided a result .08 or greater.

The burden of proof is on the police officer, and the standard of proof is by a preponderance of the evidence. Preponderance of the evidence means it is more likely than not that you were driving under the influence (any detectable amount of alcohol by a person under 21 or operating a motor vehicle while intoxicated). This is a lesser standard of proof than the criminal standard of proof beyond a reasonable doubt.

Unfortunately, there are attorneys who tell their clients not to bother with the administrative hearing because they cannot be won. This is malpractice in the authors' opinion. Although the deck is stacked against you in this hearing, winning is not impossible. You never know what will happen, and if you don't try you certainly cannot win. Any attorney that advises you not to request the hearing and challenge the revocation should be avoided at all costs. The administrative hearing is the opportunity to cross-examine the officer under oath to discover the weaknesses or strengths of the government's case against you. Not challenging the revocation and cross-examining the officer at the hearing is the equivalent of not reading the police reports.

If your license was suspended or revoked when you were arrested, it is still very important that you request the administrative hearing. A new suspension will add to your license suspension time. Also, in cases of possible repeat offenses, you may be looking at jail time in the criminal case and thus, it is imperative to have this additional opportunity to cross-examine the officer under oath.

County Court/District Court Appeals

If the administrative law judge suspends your license, you can appeal to the county court at law in the county of your arrest. If the county court judge is not an attorney (as is allowed in Texas in what is known as constitutional county courts, mostly in smaller counties), then the Department of Public Safety can transfer the case to the district court in that county.

The appeal must be filed within thirty days of the administrative decision. If the suspension is a first time suspension, then filing the appeal can stay your suspension for 90 days. This means that once the appeal is filed and notice is received by Department of Public Safety in Austin, you can drive again legally for a maximum of 90 days. If the county/district court rules in your favor on the appeal within the 90 days, then you can drive legally. If the court either rules against you or has not made a decision by the 90th day, then the suspension becomes effective again.

The Court will hear the matter on a set date; however the appeal is not a “do over.” In fact, the law requires the appellate court to uphold the statute if there is any evidence that would support the suspension.

Out-of-State Licenses

If you possess a driver’s license from another state, then Texas can only suspend or revoke your Texas driving privileges. Most states belong to the Interstate Driver’s License Compact. This compact requires all

member states to report driving convictions or departmental actions to the licensee's home state. The home state is the state that issued the licensee's license.

Once the home state is notified, it may take action against your license. If the home state takes action, it will send notice to you at the address the home state has on file. This notice will usually advise you of the home state's action. The notice may or may not have the licensee's appellate rights listed. Once this notice is received, you should immediately contact a lawyer in your home state to explore ways to prevent license suspension. The authors are able to refer our clients to other qualified DWI attorneys with whom we have taught or trained at the national or international level.

Each state handles license suspensions differently. If the suspension in Texas is the result of not successfully challenging the suspension at the administrative level, then the suspension is an administrative suspension. If the suspension in Texas is based on a conviction for DWI, the suspension is a conviction suspension. This is an important distinction because some states will not suspend your license based on an administrative suspension from Texas. Most states will suspend your driver's license if you are convicted of DWI.

For example, if you have a Kansas license and are arrested for DWI and you are not successful in challenging the administrative suspension at the Department of Public Safety, Texas will suspend your Texas driving privileges; however, if you negotiate a plea bargain for a deferred sentence in the criminal case that

results in the DWI criminal case being dismissed, Kansas will not suspend your license because it requires a conviction before it will suspend a Kansas license for an out-of-state DWI.

You will not be able to drive in Texas until the suspension period ends and you complete the reinstatement process. If you need to drive in the State of Texas during the suspension, you might be eligible for an Essential Needs License as previously discussed.

NOTES

I HAVE A COMMERCIAL DRIVER'S LICENSE

Can I Still Work?

We make a living by what we get,
But we make a life by what we give.

WINSTON CHURCHILL

In recent years, the federal government has taken steps to ensure uniform requirements for Commercial Driver's Licenses (CDL) throughout the United States. By threatening to withhold federal highway money from the States, the federal government is forcing the States to pass new laws or amend current laws to toughen penalties for commercial drivers. Texas has conceded to this pressure and amended Texas' laws concerning commercial drivers with almost identical conformance with the federal regulations.

The Department of Public Safety will suspend your CDL for a period of one year if you are driving a commercial vehicle with a blood or breath alcohol level of .04 or more. If you refuse to take a chemical test while driving a commercial vehicle, your CDL will be suspended for one year.

Your CDL will be suspended if you are operating any motor vehicle while intoxicated by alcohol or any other intoxicating substances or combination thereof. This means if you are driving your personal vehicle and receive a DWI, the State will suspend your CDL for one year.

If you are driving a commercial vehicle that requires a placard for hazardous material and your CDL is suspended for the reasons outlined in the previous two paragraphs, the suspension period is increased to three years. If it is your second conviction for DWI, your CDL will be **banned for life**.

The Department of Public Safety will suspend your CDL for 60 days if you receive a second conviction within a three-year period for a serious traffic offense while operating a commercial vehicle. If it is your third conviction within a three-year period, the suspension will be for 120 days and is consecutive to any other suspensions for serious traffic offenses.

A serious traffic offense includes speeding 15 miles per hour or more over the limit, reckless driving, erratic or unsafe lane changes, following too closely, and not possessing your CDL or proper endorsements. These violations must have occurred in a commercial vehicle.

You are thinking: “No big deal. It’s my first one so I can get an Essential Needs License.” Not true. Texas only provides for an Essential Needs License on Class C (operator’s) driving privileges. There is no statutory or legal avenue to get an Essential Needs

License for your CDL in Texas. If you are convicted of DWI and have a CDL, you will not be able to work for one year or perhaps your lifetime if your job requires a CDL.

If you are arrested for a DWI even in your personal vehicle, you can see how important it is to contest your driver's license hearing. By requesting a hearing within the first 15 days after your notice of suspension, you can legally continue to drive a commercial vehicle. If we lose the ALR hearing, we can appeal.

If your CDL is suspended administratively, we go to trial on your DWI, and we get a NOT GUILTY, your CDL privileges are reinstated. This is one reason to hire a DWI trial attorney. If your occupation and employment are on the line, you may very well want to try the DWI.

One last point of distinction: even though your CDL is banned for a year or life, the operator's or Class C portion of your license will only be suspended for the same amount of time as a person without a CDL. If the suspension of your Class C portion is 180 days, you can get an Essential Needs License for your Class C operator's license.

As you can see, your livelihood is at stake. A conviction for DWI can have a lifetime effect on your ability to make a living. Most lawyers do not understand the complexities of the requirements for a CDL. It is important to speak with skilled lawyers who understand

the challenges involved in fighting to try to keep you CDL.

DON'T GET GROUNDED OR GO DOWN WITH THE BOAT!

*Big Brother is Watching Pilots
and Merchant Marines*

No loss by flood and lightning, no destruction of cities
and temples by hostile forces of nature, has deprived man
of so many noble lives and impulses
as those which his intolerance has destroyed.

HELEN KELLER

Aircraft pilots and boat captains have a huge responsibility—they are accountable for the safety of large masses of human lives on a daily basis. One error in judgment can cause the loss of an untold number of lives. As such, the United States government and the licensing agencies responsible for overseeing these professions have very rigorous requirements for reporting alcohol-related arrests and/or convictions.

These reporting requirements are mandatory in certain situations whether or not the arrest and/or conviction are job-related. The Federal Aviation Administration (FAA), for example, does not care whether a DWI conviction occurred during the middle of a pilot's 30-day vacation. It must still be reported. Moreover, the FAA does not care if the pilot was even

aware of the reporting requirement. The failure to report may cause a more severe punishment than would have been received if reported. At a minimum, FFA will begin a formal investigation.

The other reporting requirement occurs when renewing your annual Medical Certificate. Block 18v requires disclosure of “(1) any arrest(s) and/or conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) a history of any arrests and/or conviction(s) and/or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges or which resulted in attendance at an education or a rehabilitation program.”

Arrest, Conviction, and/or Administrative Action History — See Instructions Page	
Yes	No
☒	☐
History of (1) any arrest(s) and/or conviction(s) involving driving while intoxicated by, while impaired by, or while under the influence of alcohol or a drug; or (2) history of any arrest(s), and/or conviction(s), and/or administrative action(s) involving an offense(s) which resulted in the denial, suspension, cancellation, or revocation of driving privileges or which resulted in attendance at an educational or a rehabilitation program.	

If the pilot attends counseling, this counseling may have to be disclosed in block 19 of the application “Visits to Health Professional within Last Three Years.” These visits include visits to “clinical social workers or substance abuse specialist for treatment, examination, or medical/mental evaluation.” **FAA Form 8500-8.**

Other than these disclosures/reporting on the Medical Certificate, the reporting requirement to FAA Security is triggered when an airman receives a conviction for DWI or possession of any illegal narcotic drug, depressants, stimulants, or marijuana. (14 CFR 61.15) Also, the reporting requirement is triggered by

any suspension of an airman's driver's license that is related to the operation of a motor vehicle while intoxicated, impaired by, or under the influence of alcohol or a drug.

The reporting must be made in writing by way of the Notification Letter to the FAA within sixty days of the conviction or motor vehicle action. It must contain certain information about the offense, so it is vital to retain the services of an experienced DWI attorney to guide you through this process.

Failure to comply with the reporting requirements is grounds for denial of any application for certificate, rating, or authorization issued for a date of one year from the date of the conviction or motor vehicle action or suspension or revocation of any certificate, rating, or authorization issued.

Merchant mariners are licensed and governed by the United States Coast Guard. There are no regulatory requirements that a mariner report a DWI conviction immediately to the Coast Guard; however, there are two ways for the Coast Guard to discover a DWI conviction or refusal to submit to a chemical test. First, it must be disclosed on an application for a new credential or renewal of a credential. The Regional Exam Center will also check each applicant with the National Driver Register, which will reveal any refusals or convictions.

If the DWI conviction or refusal is discovered through the application procedure, the Regional Exam Center will decide if a further assessment period is

needed to monitor the applicant's character and suitability to hold the credential for which he is applying. The Regional Exam Center will look at several factors including the age and number of the convictions, the severity of the crimes, any rehabilitation completed by the applicant, evidence of sobriety in the form of reference letters, and the status of the applicant's driver's license. The Regional Exam Center supervisor will then make a determination whether to assign a further assessment period, approve the application, or deny the application. This decision may be appealed but the appeal must be valid and supported by evidence.

The second way for the Coast Guard to discover a mariner's refusal to take a chemical test or DWI conviction is a report to the Coast Guard through third-party sources. The Coast Guard does not proactively look for convictions, but they are obligated to investigate any reports of convictions involving a credentialed mariner. It does not matter whether the report is made anonymously.

If the investigation confirms the mariner refused to take a chemical test or had a DWI conviction, the Coast Guard investigators have several options. The investigator can look at the age and number of the convictions, post-rehabilitative measures taken, and the severity and circumstances of the conviction or refusal, and may make a decision not to take any action. The investigator can issue a Letter of Warning, or more severely, file a complaint against the mariner to pursue action against the mariner's credentials.

The investigators will generally discuss the circumstances of the conviction or refusal and any rehabilitative measures completed before filing a complaint. If a complaint is filed, the mariner and his counsel will have an opportunity to appear and be heard before the Administrative Law Judge. Before the administrative hearing, the mariner's counsel and the Coast Guard's counsel have the opportunity to resolve the case through a settlement agreement. The Administrative Law Judge must approve any settlement agreement.

Although the settlement agreements are based on the complexities and merits of each individual case, the settlement agreement will usually require the mariner to be screened by a medical professional and ordered to complete some type of rehabilitation. The mariner's credentials may or may not be suspended for a timeframe to allow completion of rehabilitation and to ensure that the incident was an isolated occurrence.

One point of caution, federal law considers intentionally making a fake or fraudulent statement or representations in any matter within the jurisdiction of any department or agency of the United States a federal crime punishable by not more than five years in a federal penitentiary and/or not more than \$250,000 fine for an individual or not more than \$500,000 fine for an organization.

A DWI conviction for a commercial or military pilot or Merchant Mariner can mean the end of his career. This is an extremely harsh outcome in a legal system where equity should play a part in determining an

appropriate punishment for someone. As such, it is reasonable, and should be expected, to approach the district attorney to discuss other possible outcomes in situations in which a one-time mistake can have life-long repercussions.

WHAT ABOUT MY RECORD?

A DWI Arrest Gives You Three Records

It is inaccurate to say that I hate everything.
I am strongly in favor of common sense, common
honestly and common decency.
This makes me forever ineligible for public office.

H. L. MENCKEN

People will often ask, “Can you clear my record when this is over?” At first, the question seems simple and lends itself to a simple yes or no answer. Regretfully, as in most areas of the law, the correct answer is *IT DEPENDS*.

Before we talk about clearing your “record,” you should know that a DWI arrest creates **THREE** separate records:

1. An arrest record that is maintained by the Texas Department of Public Safety (DPS).
2. Due to the action the officer created when he took your license, you now have a driving record, and if quick action is not taken, you will have a *permanent* record of

your license being suspended for an alcohol offense.

3. The most commonly considered record is your court record. The court record remains forever if there is a conviction of the DWI or if the case is “pleaded down.” In other words in some DWI cases the DA will agree to reduce the DWI charge to something else such as a “reckless driving” or “obstruction of a highway.” If the DWI case is dismissed with no plea down or if you are found Not Guilty of the DWI then your arrest and court record can be expunged. In addition, if you go to trial on the DWI and are found Not Guilty then any suspension of your driver’s license will be removed from your driving record as well.

Your driving record can be cleared only by requesting a hearing within 15 days of your arrest and winning that hearing—either at the administrative hearing, at the county or district court appeal, or by an appeal to the Court of Appeals or the Texas Supreme Court.

An arrest record can be expunged in certain specific instances as discussed above. There is another option in some cases called a Motion for Nondisclosure. The rules and requirements are tricky. First, you must receive a deferred adjudication in the case. A deferred basically means you entered a plea of guilty, the court

found enough evidence to find you guilty but withheld finding you guilty, and the court placed you on deferred. If you successfully complete your probation or are discharged early from the probation, then in certain cases you can file a motion for Nondisclosure (MND). The MND differs from an expunction in that the court record is “sealed” and not removed from your criminal history. Only certain entities can see the action when your background is checked.

There are several issues with the MND. First, the final disposition of the case must be a deferred adjudication. In Texas since 1984 a DWI cannot be deferred. In 2011 the legislature considered a DWI “deferred” bill but it did not pass and is not the law. In reality the bill was not much of a deferred as it would not allow for a MND even after completing the probation. Second, if you are “eligible” for a MND there are time limits or waiting periods depending on what type of case the final charge became. For example if the DWI was reduced to a reckless driving, your attorney could file for a MND immediately after you are released from probation; however, if the case was modified from a DWI to an obstruction of a roadway, there is a two (2) year waiting period before you can apply for a MND.

Another concern with a Motion for Nondisclosure is who exactly will still be able to discover the charge on your criminal record. These days many employers run background checks for employment.

A criminal justice agency may disclose criminal history record information that is the subject of an order

of nondisclosure to the following noncriminal justice agencies or entities only:

- (1) State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) Texas Medical Board;
- (4) Texas School for the Blind and Visually Impaired;
- (5) Board of Law Examiners;
- (6) State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) Texas School for the Deaf;
- (9) Department of Family and Protective Services;
- (10) Texas Youth Commission;
- (11) Department of Assistive and Rehabilitative Services;
- (12) Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;
- (13) Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district;
- (18) Texas Juvenile Probation Commission;
- (19) Securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, or the credit union commissioner;
- (20) Texas State Board of Public Accountancy;
- (21) Texas Department of Licensing and Regulation;

- (22) Health and Human Services Commission;
- (23) Department of Aging and Disability Services;
- (24) Texas Education Agency; and
- (25) Texas Department of Insurance.

You should know that it is possible to clear your record but there are many variables that may make it difficult to clear all three records. The facts of each case are different, and the results may vary. A competent, qualified DWI attorney who knows the minute details of these issues can guide and help you.

NOTES

THEY MADE ME PERFORM LIKE A CIRCUS MONKEY

*Are Standardized Field Sobriety Tests
Designed For Failure?*

Policemen so cherish their status as keepers of the peace
and protectors of the public that
they have occasionally been known
to beat to death those citizens or groups
who question that status.

DAVID MAMET

The National Highway Traffic Safety Administration (NHTSA) has set out the guidelines for the three standardized field sobriety tests (SFSTs). The three tests are the Horizontal Gaze Nystagmus test (HGN), the Walk-and-Turn test (WAT), and the One Leg Stand test (OLS). The other tests, including touching your nose or reciting the alphabet, have no valid studies to support them.

Field sobriety tests are psychophysical tests used to assess whether a person has reached a .08 alcohol concentration. The police officer is trained to start psychophysical tests as soon as the officer makes contact with you, the driver. For example, the officer will ask for your driver's license and insurance at the same time.

This divided attention task requires the driver to mentally process (a mind task) the request for two different items while retrieving the requested items (a body task). The three most significant psychophysical tests are the three scientifically validated structured tests known as the Standardized Field Sobriety Tests.

Horizontal Gaze Nystagmus

The Horizontal Gaze Nystagmus test is considered the most accurate of the field sobriety tests by the National Highway Traffic Safety Administration. This test is not admissible in Texas to show any specific level of alcohol concentration. There are six total clues. If four or more clues are evident, the Horizontal Gaze Nystagmus test is allegedly 77% accurate in detecting a person with a blood alcohol level in excess of 0.10. Later “studies” attempt to push up the accuracy level; however, there are real issues with these studies. The officer will be looking for three separate, specific clues in each eye. There are a total of six clues.

Nystagmus is defined as an involuntary jerking of the eyes. It is not something the person being tested will notice during the administration of the test. Involuntary jerking of the eyes will become more noticeable as a person’s blood alcohol level rises.

The officer is supposed to use a small stimulus to move back and forth in front of your eyes. There should be two sets of passes for each clue for a total of six passes in the testing stage.

Before starting the testing phase of the test, the officer is supposed to have you remove any glasses you are wearing. Then, the officer will make two passes using a small stimulus to check for equal tracking of the pupils. If your pupils do not track equally, there may be a medical problem. The officer is also supposed to check your pupils to ensure they are the same size.

The officer will make two passes each looking for lack of smooth pursuit, checking for distinct and sustained nystagmus at maximum deviation, and checking for onset of nystagmus prior to forty-five degrees.

The last step of this test is to check for Vertical Gaze Nystagmus. The officer will hold the stimulus in the center and raise the stimulus straight up to maximum elevation to see if nystagmus is present. If Vertical Gaze Nystagmus is present, it is believed to be an indicator of high levels of alcohol or the presence of other drugs. At the publishing of this book, Vertical Gaze Nystagmus is not admissible in a Texas DWI trial.

There are several problems with the Horizontal Gaze Nystagmus test from the defense point of view. There are many other causes of nystagmus other than alcohol. If the officer places the driver in a position where the driver has strobe lights, rotating lights, or rapidly moving traffic in close proximity, the driver may have optokinetic nystagmus. Certain drugs like seizure medication will cause nystagmus. Nystagmus can result from pathological disorders ranging from brain tumors or brain damage to inner ear problems. In addition, there

are many other things that can cause nystagmus. The officer is not trained in these areas. Basically, if the officer sees nystagmus he or she will assume that the nystagmus was caused by alcohol.

The officer that is administering the test has made an initial judgment the driver could be intoxicated, and he is the sole judge of the test results. By starting with the mindset that the driver is intoxicated, it is more likely the officer will misread the clues because he is expecting those clues to be present. The clues are compromised if the officer deviates from the standardized procedures.

Walk-and-Turn Test

The second standardized field sobriety test is a divided attention test called the Walk-and-Turn test. Initially, the officer will have you assume a heel to toe position by instructing you to place your left foot on a line and place your right foot on the line with the heel of your right foot against the toe of your left foot. You will be told to keep your arms at your side and not to start the test until instructed to do so. The officer is to demonstrate this instructional stance while he is instructing you, the driver, how to stand. After these instructions are given, you will be asked if you understand the instructions so far.

The officer will tell you after he gives the command to start, you are to take nine steps touching heel to toe, after the ninth step, turn by making a series of small steps, and then take nine heel to toe steps back. The officer is to demonstrate.

The eight clues the officer will be looking for are: failing to keep your balance while listening to instructions, starting the test before instructed to begin, failing to touch your heel to your toe, stepping off the line, using your arms for balance, making an improper turn, and taking more or fewer than nine steps in either direction.

NHTSA requires a designated straight line and a reasonably dry, hard, level, nonslippery surface for the administration of this test. The officer should ensure that there is adequate room for you to take all nine steps. If you are wearing shoes with heels more than two inches high, you should be given the option of removing your shoes. According to the original research, persons with back or leg problems, middle ear problems, as well as persons over the age of 65, have had difficulty performing this test.

The original research indicates that if you have two or more clues on this test or fail to complete the test, you have a 68% chance of having a BAC in excess of 0.10. If you have four or more clues on the Horizontal Gaze Nystagmus test and two or more clues on the Walk and Turn test, there is an 80% chance of having a BAC in excess of 0.10.

Before these percentages are accepted as accurate, you should know the tests were performed in ideal, well-lit indoor conditions. The majority of the people tested were over 0.15, making the arrest decision easier and only well trained, experienced officers were used. The deck was stacked, and the tests were slanted to yield the

result desired rather than a true evaluation of the test validity.

One-Leg Stand

The third standardized field sobriety test is the One-Leg Stand. This is also a divided attention task requiring you to process verbal instructions while completing physical exercises. The test requires a reasonably dry, hard, level, and nonslippery surface for the administration of the test. The officer will be looking for four different clues. If two or more clues are present or you fail to complete the test, the original research indicates there is a 65% chance you have a blood alcohol level over 0.10.

The officer will start the test by telling you to stand with your hands by your side and your feet together. The officer will then instruct you to begin by raising one leg, either leg, six inches off the ground keeping the foot parallel to the ground. While keeping both of your legs straight and your hands by your side, count out loud one thousand one, one thousand two, one thousand three until told to stop after approximately 30 seconds. You will be instructed to begin.

The officer will be looking for four clues. The clues are recorded if you sway while balancing, use your arms for balance, hop in order to maintain your balance, or put your foot down before being instructed to do so.

Similar to the Walk-and-Turn test, drivers with heels in excess of two inches should be given the option of removing their shoes. Drivers over the age of 65 will have difficulty with this test. Drivers with back, leg, or middle ear problems will also have difficulty. Another distinction is that drivers who are overweight by 50 or more pounds will have difficulty.

Texas DWI Field Sobriety Tests and the Shell game

Remember the shell game? The operator has three shells and places a pea under one shell. He then moves them around quickly and bets are placed on which shell the pea resides. Of course, part of the “game” is the operator moves or palms the pea, so really the pea does not exist under any of the shells. That is similar to these “Standardized Field Sobriety Tests” in Texas. To be DWI in Texas you must be intoxicated. Texas defines intoxication in one of three ways.

*Loss of one’s **normal** use of his or her mental faculties;*

*Loss of one’s **normal** use of his or her physical faculties; and/or*

Having an alcohol concentration of .08 or above.

The three field sobriety tests (HGN, WAT, & OLS) have absolutely no relationship to whether a person has lost the normal use of his or her mental or physical faculties. These “tests” as discussed above only have a potential relationship to whether the person is a .08 or

above. Yet almost every arresting officer in Texas will testify that based upon the results of these three “tests,” the officer has probable cause to arrest the person because they had lost the normal use of mental or physical faculties.

Let’s follow up on the analogy to the shell game. There is not a simple scientific peer- reviewed study in Texas that equates clues on the HGN, WAT, or OLS to the legal definition of intoxication that a person has lost their normal mental or physical faculties. There is not **any** data that supports that testimony, yet the officer is allowed to freely testify that the clues on these tests tell the officer that the accused is intoxicated because they have lost their normal use. Imagine if you, in any employment, made such a wild claim. You would expect somebody to challenge you, right? You would expect somebody to say, “Show me the data! Show me the studies that back up your allegation!”

Conclusion

The police officers are taught the procedure to administer the tests in a controlled environment generally as part of their full academy training. It is only a small portion of their training as law enforcement and many of the details may be lost in the bulk of material. The manual is very clear that if the officer deviates from the standardized manner, the validity of the test is compromised.

This is why it is important for your attorney to request, preserve, and review any and all videotapes

available. Although this seems like common sense, some attorneys do not do this because they think DWI cases are easy. They are easy if all the attorney does is plead the case without working the case.

In a perfect setting, field sobriety tests may have some validity, but from the authors' experience, their use in the field by officers is unfair to the drivers. They test normal abilities by having you perform abnormal exercises. The officer giving the test already thinks you are intoxicated—why else would he ask for the test? This officer who basically has his mind made up is the sole judge and interpreter of how you perform the tests. In Texas, these tests are strictly voluntary. As such, it is the authors' opinion that a driver should never submit to any form of roadside sobriety testing.

NOTES

GIZMO, MACHINE, or INSTRUMENT?

Is an Intoxilyzer 5000 Breath Test Accurate?

How seldom a fact is accurately stated;
How almost invariably when a story has passed through
the mind of a third person it becomes...
little better that a falsehood;
even though the narrator
is the most truth-seeking person in existence.
NATHANIEL HAWTHORNE

Many people, including lawyers, will look at a breath test result and say, “Oh, you scored a high number, so you’ll be convicted.” THIS DOES NOT HAVE TO BE TRUE, but it does show a total lack of understanding of the testing process and procedures. We have trained extensively, understand how the machines work and what problems can occur in them, and understand how to fight for you.

Your lawyer’s knowledge in this area of DWI litigation often is the difference between a conviction and being found NOT GUILTY.

**HOW ACCURATE ARE THE CHEMICAL
TESTING PROCEDURES?**

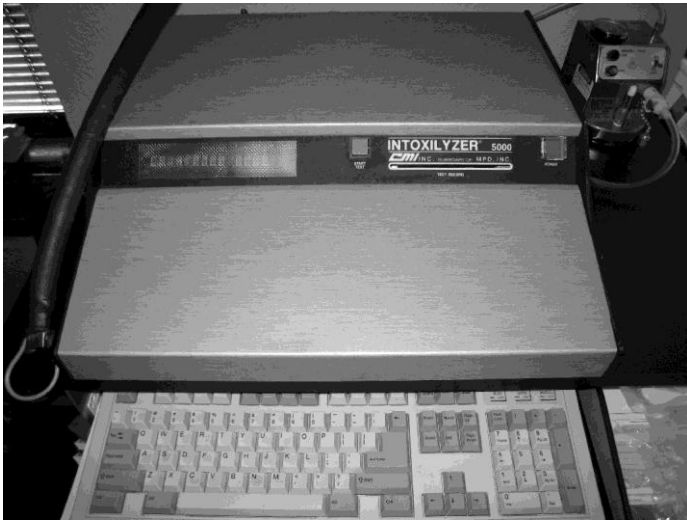
- Texas law provides that a suspect can be tested by blood, breath or both.
- Blood testing is generally considered to be the most reliable and accurate method; however, this is the least desirable for the police because it is more expensive and time consuming. Additionally, blood testing would allow you to have a second test performed on your blood sample by your own expert.
- Breath testing is more convenient, cheaper and is not subject to retesting. The machine is capable of preserving a sample. The law allows retesting of any saved sample, but since it costs about \$2 to retain the sample, no agency is willing to spend the money or subject itself to being rechecked.

To be clear, the police use the cheapest, most convenient, non-testable, scientifically debated chemical test when your freedom is on the line.

How is breath testing done?

- Texas uses a machine called the Intoxilyzer (often called the Intoxiliar because of its inaccuracies).
- The Intoxilyzer 5000 costs about \$7,500. Some models have been in service for 15 or more years.

- The Intoxilyzer 5000 is simply a computer based on very old technology. The brain of this thing is a Z-80 microprocessor, which was introduced in 1975, more than 30 years ago. Remember the “Radio Shack” TRS-80? Its processor was the Z-80.



CMI Intoxilyzer 5000

- The machine works on the theory of infrared spectrometry (IR), which is the absorption of infrared light. There is a light bulb at one end of the breath cylinder and at the other end is a filter wheel with three filters. As you blow into the tube, the theory is that alcohol will absorb the light rays and not show up on the filter wheel.
- The amount of breath actually measured is very small (only 81 cc) and must be converted

to a number we will understand. The conversion the machine makes would be similar to taking a paper towel tube and increasing it to the size of a 55-gallon drum. Any error in the testing will be exaggerated by that amount.

- Stephen owns two Intoxilyzer 5000 units. It is believed he is the only attorney in West Texas to own two units. He is certified as an Intoxilyzer 5000 operator as well as a maintenance technician. In addition, he is qualified as an instructor on the Intoxilyzer 5000 as well.

How reliable is the breath test?

- *Close enough for government work!* In Texas, you will be given two tests and those tests must be within .02 of each other. If your first test was .08, an acceptable second test could range from .06 (not intoxicated) to .10. This is a range of 50%, and yet they tout the machines as being scientifically accurate. Would you accept such a variance from a thermometer, speedometer, medical test or toaster? Obviously not, but our state finds this “scientifically reliable” and acceptable when dealing with a person’s liberty.
- *What are they hiding?* Neither the State nor the manufacturer of the machine will allow

anyone other than law enforcement to test the machine for its accuracy and reliability. For a procedure to be accepted as accurate and reliable in the scientific community, it must be open and available for the scientific community to test and retest the procedure. This is not permitted with the Intoxiliar.

- $2+2=5$. Is this government math? The number produced by the machine comes from a mathematical formula in the machine. The manufacturer will not divulge this formula, claiming it is “proprietary.” At this point, neither the government nor the courts are willing to divulge the secret formula that is used to determine your test value. Literally, you could go to jail based on a secret formula!!
- *Why don't they save a sample when your freedom is on the line?* A sample of your breath could be saved for retesting for about \$2, but the State chooses not to save it. The courts have said they should save evidence, but if it is not saved, that's okay.
- A few of the many other issues that can affect the accuracy of a breath test are:
 1. Power surges;
 2. Cell phones;
 3. Body temperature;
 4. Breath temperature;

5. Machine temperature;
6. Simulator solution temperature;
7. Radio frequencies;
8. Mouth contaminates (smokeless tobacco, dentures, denture adhesives, mints, lip balm, etc.);
9. Physical problems;
10. Exposure to certain chemicals;
11. Diabetes;
12. Esophageal hernia;
13. Heartburn;
14. Liver disease;
15. Certain diet;
16. Disease of the lungs;
17. Periodontal (gum) disease;
18. Faulty bridge work;
19. Gastric reflux disease;
20. Fever;
21. Pre-menstrual/pre-menstruation
22. Heart disease;
23. Airbags;
24. Certain medications;
25. Machine malfunctions;
26. Improper maintenance; and
27. Improper training.

The defense of a DWI case requires specialized knowledge about physics, chemistry, biology, anatomy, toxicology, and pharmacology, and how these scientific disciplines interrelate.

Chemical testing for blood alcohol levels assumes that the subject is a:

**Normal,
Healthy,
Average Person.**

People are not the same and everyone's body does not react in the same manner. Common sense tells you this is true, yet the Government will prosecute you as if you are identical to the "average person" in the state. Payton Manning averaged 357 yards per game last year, but there was not a single game in which he threw for 357 yards. This is the same with the test. They are designed around an "average person," but you are never tested to see if your body is responding in an "average" manner.

Female Issues

Social Issues

Men account for an overwhelming majority of those arrested for DWI; however, the percentage of female arrestees has increased rapidly in the last two decades. Several social and psychological factors account for the growing number of women accused of DWI.

Law enforcement officers' attitudes towards women have changed over the past few decades. It was once more likely for an officer to ensure that a female drunk driver got home safely rather than put her in a jail cell.

There is no doubt that the changing role of women in American society has played its part as well. More women are in the workforce and are subjected to the same stress as men. These changing lifestyles leave women, like men, in situations that are more conducive to DWI arrests.

Gender/Test Bias

While the above issues are factors, the most pressing issue is test bias. Studies have shown that women tend to score higher on breath testing machines. This is because the machines are set for an average male's lung capacity. This is inherently unfair to women and should be addressed by your lawyer.

Alcohol also affects women differently than men because women metabolize alcohol more slowly. Women have less of the ADH enzyme. This causes a larger proportion of the ingested alcohol to reach the blood system prior to being converted to acetate. Also, women may experience fluctuations in hormone levels during their menstrual cycle that can affect the rate of alcohol metabolism. This may make a woman more susceptible to elevated blood alcohol concentrations at different points in the cycle.

Due to many things that an expert DWI lawyer will know, a woman of the same size and drinking the same amount as a man will often show a higher BAC reading. Men and women's bodies are not the same, but the machine used by the police assumes they are. You

should consult a DWI attorney who is capable of protecting you from this bias.

NOTES

NEEDLES, NEEDLES, NEEDLES

Blood Test Issues

In matters of style, swim with the current;
in matters of principle, stand like a rock.
THOMAS JEFFERSON

Texas has approved two chemical tests to determine a person's alcohol level. The first approved test is a breath chemical test analyzed by the Intoxilyzer 5000. The Intoxilyzer is discussed in detail in Chapter 14, "GIZMO, MACHINE, or INSTRUMENT?" The second approved method is blood testing.

Most states, including Texas, have Implied Consent laws. In layman's terms, that means when you are driving a car on a public roadway, it is assumed that you have given consent to having a chemical test performed if you are suspected of driving under the influence of alcohol or other intoxicating substance. As the driver, you have the right to refuse the test, but refusing the test results in an administrative suspension of your driving privileges. This suspension can be challenged in the same manner as a suspension for a

chemical test result showing an over the legal limit of .08 breath/blood alcohol level for persons over 21. For persons, under 21 if there is a detectable amount of alcohol up to .079 the suspension is 60 days on a first offense.

The choice of whether a breath chemical test on an Intoxilyzer or a blood test is administered remains with the arresting officer. The officer must follow certain guidelines established by Texas statutes or the Texas Department of Public Safety. First, in order to request a test, the arresting officer must have a valid arrest. The officer must inform you of your rights as afforded by Texas' Implied Consent law. These rights, however, do not include a notice that you do have a right under the law to request an additional blood test if you submit to a breath test.

If the driver is involved in an accident and death or serious bodily injury results, the police officer can require a forced blood draw. The officer can also require a mandatory blood test in two other areas. First, if the officer has "credible information" that the driver has been twice previously convicted for a DWI and refuses to take a breath sample, the officer can force a mandatory blood test. In addition, if the driver is arrested for a DWI and there is a child in the vehicle under the age of 15, Texas law allows for a mandatory blood test if the driver refuses a breath test. In either of the above cases it is important to evaluate all the information the officer had when he required the mandatory blood test. Did the driver actually have two prior DWI convictions? Did the officer do any due diligence to verify that what the police

dispatch reported? Were the prior allegations reduced to non-DWI convictions? Did the officer know that information when he required the mandatory blood test? These are just a few of the areas your attorney should review in order to attempt to contest the mandatory blood test.

If a blood test is required or if consent is given, the officer will use a blood kit provided by the Texas Department of Public Safety. This is a standard blood withdrawal kit that is completely self-contained. The kit is provided to the medical personnel withdrawing the blood samples. Contained in the kit is one (1) vacutainer (vial) that contains an anticoagulant and a preservative. These kits are not tested to make sure the preservative is in the proper amount. In fact, when the blood is tested, the preservative is not tested.

The officer will direct a nurse, doctor, or other approved medical personnel to withdraw the blood samples in the officer's presence. It should be noted that at this time, an EMS worker is specifically disqualified as an approved medical personnel. After the blood sample is taken, the vial must be inverted at least 4 times so the blood sample will be thoroughly mixed with the preservative and the anticoagulant.

The blood sample will be given to the police officer who will seal and repackage the vial into the blood kit. The officer will seal the package and will take custody of the sealed kit for delivery to the proper laboratory for analysis. The officer is responsible for

preserving the samples until delivered to the state-approved forensic lab for testing. The officer should refrigerate the blood kit if the officer is not able to deliver the blood kit to the lab within 24 hours. This is important because the blood can ferment if left exposed to heat for too long. This is especially important in hot Texas summers.

Blood Kit



If fermentation occurs, it will cause an increased blood alcohol level in the blood sample. Similarly, if the blood sample has been contaminated, an increased blood alcohol level can result. If the anticoagulant and/or preservative in the vial are defective or not properly mixed, an increased blood level can result. These are just three examples of how the blood alcohol level reported would be rendered incorrect and falsely increased.

The DPS Crime Lab Accreditation Program was created on September 1, 2003 in Government Code Section 411.0205. A laboratory or other entity (public or private) conducting forensic analysis of physical evidence must be accredited by DPS in order for that laboratory's evidence or testimony to be admissible in a criminal case.

The currently approved DPS labs are found at:

http://www.txdps.state.tx.us/CrimeLaboratory/documents/List_Texas_LabsAccredited.pdf for a Texas lab and, http://www.txdps.state.tx.us/CrimeLaboratory/documents/List_NonTexas_LabsAccredited.pdf for labs located outside of Texas.

If a chemical blood test is completed on the driver, the driver is entitled to request a separate independent analysis. One of the problems is that after the blood is tested often times the DPS lab returns the blood vial to the arresting agency. The blood is then simply stored in the crime room storage area. Most of the time, the blood is not refrigerated.

The driver isn't allowed to just show up and pick up the sample from the lab; rather, the defendant's attorney must request a court order requiring any remaining blood be sent to the lab of choice of the defendant.

This independent test allows the opportunity to double-check and confirm the work of the State's laboratory; however, if there is an increased blood level due to human error in procedure, the error quite possibly

affected all the samples. For example, if the officer left the blood kit containing the vials of blood in his trunk for three days in July before transporting it to the State's lab, fermentation could occur in all four vials causing falsely increased blood alcohol levels.

Texas law requires that the blood be tested on a gas chromatographer. These machines are expensive and the test sequence to determine the blood alcohol level is time consuming. Due to the expense and time of using these machines, hospitals do not use the gas chromatography method to analyze for blood analysis. The hospital's concern when taking a blood sample to analyze for alcohol or drugs is to determine if these substances are in the patient's system. The hospitals want to know this information before administering any drugs that may react adversely with possible intoxicants already in the patient's blood.



Gas Chromatographer

The hospital's concern is speed and not necessarily accuracy of alcohol or drug levels. The analytical methods used by the hospitals routinely render alcohol or drug levels at 20-30% higher than the more accurate score rendered by gas chromatography method. There is also a much higher possibility of contamination because steps to prevent possible contamination are not used. With these increased risks of false reporting, it is not surprising that these blood alcohol reports do not meet the basic scientific requirements required to be admissible in court.

A blood test result over the legal limit, even a high result, is not the nail in the coffin. Skilled attorneys can successfully challenge the test when they understand how gas chromatography works, have visited forensic labs, have researched, and understand the standard operating procedure and legal requirements for withdrawing and analyzing blood samples. If the challenge is successful, the blood result will not be admitted and the jury will never know a blood sample was taken. A suppression of the blood test can result from many different challenges, including but not limited to, issues with chain of custody, fermentation, expired equipment, expired certifications, and faulty equipment or maintenance.

Attorney Hamilton has attended a week long gas chromatography school. In this class DWI attorneys are instructed in the classroom theory that underlies chromatography (both liquid and gas chromatography) in general and the specific theories that allow for headspace

analysis and how Flame Ionization Detector, UV-DAD and Mass Spectrometry (EI and EC based) work. DWI attorneys receive practical hands-on training in area areas that concern a Texas DWI blood test case.¹

¹ Attorney Hamilton has attended a week long gas chromatography school. In this class DWI attorneys are instructed in the classroom theory that underlies chromatography (both liquid and gas chromatography) in general and the specific theories that allow for headspace analysis and how Flame Ionization Detector, UV-DAD and Mass Spectrometry (EI and EC based) work. DWI attorneys receive practical hands-on training in area areas that concern a Texas DWI blood test case.

WHAT DO THEY HAVE TO PROVE TO LOCK ME UP?

Elements of the Crime

I have always found that mercy
bears richer fruits than strict justice.

ABRAHAM LINCOLN

At the end of a jury trial, the jury is told what elements the Government must have prove in order for a person to be convicted of the offense charged. These elements are contained in what is commonly referred to as a jury charge.

The instructions include the elements for most of the major driving alcohol-related crimes. At the end of a trial the court will prepare a jury charge. Both the prosecution and the defense are allowed to ask the court to add or delete certain areas of the jury charge based upon the issues at trial. For example, if the court includes something in the charge to which the defense attorney objects, this maybe an area that can be raised on appeal if the defendant is convicted.

Most readers of this book will have been charged

themselves or had a family member charged with the crime of DWI. The elements of DWI are that a person is: (1) operating (2) a motor vehicle (3) in a public place (4) while intoxicated.

The Texas Court of Criminal Appeals and/or the Texas Legislature have defined, either by statutes or case decisions, several of the terms used in a jury charge. A motor vehicle has been defined as “every vehicle in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

“Operating” is not defined. It is fairly vague and leaves a lot of room for interpretation. There is case law in Texas that states a person can be in actual physical control of a motor vehicle even if he is sleeping or passed out behind the wheel of the car.

Another crime being charged more often is Intoxication Assault. This crime requires the State to prove the defendant: (1) caused an accident (2) resulting in serious bodily injury to another person (3) while driving a motor vehicle (4) in a public place (5) while intoxicated.²

Remember that the State must prove beyond a reasonable doubt each element of the crime being charged. DWI-trained attorneys like your authors will

² This statute also addresses operation of aircraft or watercraft, not just motor vehicles. Even operation or assembly of an amusement park ride is covered under this statute.

look at each element of the charge and will force the State to prove each and every element of the charge before you are found guilty. If the State is not able to prove any one of the elements, the charge can be dismissed or you will be found *not* guilty.

NOTES

ROW, ROW, ROW YOUR BOAT

Boating and Alcohol

Giving money and power to government is like giving
whiskey and car keys to teenage boys.

P.J. O'ROURKE

Many people enjoy boating and having an adult beverage: that is not illegal; however, operating a boat while intoxicated is illegal. The laws for Boating While Intoxicated are very similar to DWI.

First, the per se threshold for BWI is the same as a DWI, .08

Second, a BWI carries the same driver license suspension issues as a DWI.

Third, a BWI charge results in the same range of punishment as a DWI.

Fourth, breath/blood testing follows the same procedures as with a DWI.

Fifth, you can be charged for “operating” the vessel if you operate it. Although operation is not defined just as discussed in the Chapter 16, law enforcement will watch to see if anybody drinking ever steers the boat or holds the steering wheel.

Sixth, if anybody is hurt or killed the driver of the boat can be charged with the same crimes that the driver of a car can be charged. In other words, the statutes of Intoxicated Assault and Intoxicated Manslaughter apply in a Boating While Intoxicated case.

One thing is different, however, in a BWI than in a DWI. In a DWI case the law enforcement officer that stops you in your car or truck needs a legal reason to make the stop. In other words, for a non-commercial vehicle there must be a justifiable reason for the stop. This is not true for a BWI. Law enforcement on the water is allowed to stop your boat or vessel any time with no legal reason to conduct safety checks of the vessel.

MY DOCTOR PRESCRIBED THIS CUTE LITTLE PILL AND I WENT TO JAIL

*Driving Under the Influence of Drugs—
Illegal and Prescription*

My reading of history convinces me that
most bad government
results from too much government.

THOMAS JEFFERSON

The law in Texas allows for prosecution if you are intoxicated by the introduction of alcohol, drugs, dangerous drugs or a combination. The most common item is alcohol but many drugs can produce a form of impairment. Illegal drugs such as marijuana, crack cocaine, and PCP are a few of the 6 main categories for which a police officer will be looking. Included in the 6 classifications of impairing drugs are many prescription medications, one of the most common being narcotic analgesics. Valium, Zanax and Loritab are but a few of other commonly prescribed drugs which people may legally possess with a valid prescription from their

physician yet still result in an arrest if they are driving while intoxicated.³

Credible studies have not been done to support the position that DRE exams have any scientific basis of reliability. Very few officers are trained in drug recognition evaluation, and the trained ones often will ignore the procedures and just make a guess. This results in an arrest but it also opens the door for a vigorous defense by properly trained DWI attorneys with DRE training.

³ There is a program designed through the Department of Transportation to train officers to be Drug Recognition Experts (DRE). Mr. Hamilton has taken extensive training in the field of Drug Recognition Experts. Once an officer on the street suspects drug impairment, there is a 12-step evaluation procedure that is undertaken to determine if an arrest is warranted.

HOW BAD WILL IT HURT?

Legal Penalties

Good resolutions are simply checks
that men draw on a bank
where they have no account.

OSCAR WILDE

Several different crimes in Texas deal with drinking and driving. The most common is driving while intoxicated by alcohol or drugs. This crime is commonly referred to as DWI.

To prove that you were intoxicated by alcohol or drugs, the State must show that you lost the normal use of mental or physical faculties. In other words, you were incapable of safely driving or operating a motor vehicle due to the intoxicating substance; however, in Texas, if you consent to a chemical test (breath or blood) and it shows a breath or blood alcohol level of .08 grams per 210 milliliters, then you are presumed to be intoxicated. The State must still prove that you were a .08 at the time of driving to prove you were intoxicated.

Although the car must be operational, it is not necessary that the vehicle be able to move. For example, a vehicle that has high centered or stuck on a curb and the

tires just spin would be sufficient for DWI if the other elements of the crime are also proven.

A motor vehicle is defined as a vehicle with tires that is powered by a combustible engine. It does not matter if the vehicle has a license plate or is eligible to get a license plate. The term motor vehicle does not include implements of husbandry. Implements of husbandry are vehicles used in farming. For example, a tractor would be an implement of husbandry.

An interesting distinction that the authors have seen is when a person is arrested for DWI on a four-wheeler. If the four-wheeler is equipped with hay bale racks or other farm equipment, then it could be considered an implement of husbandry; however, if the four-wheeler is a racing four-wheeler, it falls under the definition of a motor vehicle for purposes of DWI.

DWI PENALTIES

DWI 1ST OFFENSE

The punishment range for a first offense DWI is as little as 3 days and as much as 180 days in the county jail. In addition you can be fined up to \$2,000. You can also be required as a condition of probation to attend alcohol offender programs and victim impact panels, take mandatory alcohol assessments, and complete all recommended treatments.

DWI 2ND OFFENSE

If you have a prior conviction for DWI (or Boating While Intoxicated or Flying While Intoxicated) conviction at any time in the past then the new DWI will be charged as a Class A misdemeanor. As of 2007 there are no longer any time restrictions to the use of older DWI convictions as enhancements. So a valid DWI conviction of 20 years ago can be used enhance a new DWI conviction. The punishment range of a DWI 2nd is a minimum of 30 days in jail up to 365 days and up to a \$4,000.00 fine. If probation is granted there is a minimum amount of “shock jail time.” This is time in jail that a person must spend as a result of the DWI conviction. This ranges from 3 to 30 days in jail. In addition, the driver’s license is suspended under the statute for one year. Just as in a first offense DWI, a person on probation for a DWI 2nd will be required to attend various counseling classes during probation. Typically these classes are more advanced and longer than those for a first time offense.

FELONY 3RD OR MORE DWI

If you have two prior DWI (or BWI/FWI convictions or one prior intoxicated manslaughter conviction) then the new DWI will be charged as a Third Degree felony. The punishment range for a third degree is not less than 2 years and not more than 10 years in prison and up to a \$10,000.00 fine. If you don’t have a prior felony conviction then you are eligible for probation. Being eligible does not mean that the DA will offer the probation. If you do get probation on a felony

DWI it can be up to 10 years of probation with mandatory jail time as a condition of the probation. As with the misdemeanor DWIs there are lots of terms of probation that can include ankle alcohol monitors, reporting to probation on a weekly instead of monthly basis, AA meetings, specialized alcohol counseling, suspension of the driver license for up to 2 years and various other conditions.

ENHANCED FELONY DWI PUNISHMENTS

If you have a felony DWI and have previously been convicted of any other felony (other than certain state jail felonies), then you may be subject to enhanced sentences. For example, if you have a prior felony for which you went to prison, the range of punishment on the new felony DWI is increased from 2-10 years in prison to 2-20 years in prison. If you have two prior felonies for which you went to prison (and those two were not concurrent), then you may be subject to the habitual statute that raises the punishment to a minimum of 25 years in prison to 99 years or life in prison. As discussed above, a DWI conviction in this situation could lead to a life sentence in prison.

FIRST TIME DWI WITH CHILD UNDER 15 IN THE CAR IS A FELONY IN TEXAS

If you are arrested for a DWI, even a first offense DWI in Texas, and you have a child under the age of 15 in the car with you, then the case will be a felony offense. This is a state jail felony in which the range of punishment is a minimum of 180 days up to 2 years in a

state jail facility. As with the above offenses, if probation is granted, various conditions can apply.

INTOXICATED ASSAULT

If while driving while intoxicated you cause an accident in which another person was injured you might be subject to being charged with the third degree felony offense of Intoxicated Assault. The injury must be to another person must be “serious bodily injury,” which is defined in the Texas Penal Code as “injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.” The range of punishment is 2-10 years in prison. If a person is given probation, the minimum amount of shock jail time is 30 days. This means that even if granted probation the person convicted of the Intoxicated Assault charge will have to spend from 30 to 180 days in jail. The terms of probation are similar to those previously discussed. The law also requires a one-year driver’s license suspension. Under some circumstances, you may be eligible for an Occupational Driver License.

INTOXICATED MANSLAUGHTER

If while driving while intoxicated you cause an accident in which another person dies you can be charged with Intoxicated Manslaughter. This is a second degree felony with a range of punishment of 2 to 20 years in prison. If the person who dies is law enforcement, then it is a first degree felony with a range of punishment of not less than 5 years and not more than 99 years or life in

prison. If probation is granted, many terms will apply and you will do a minimum of 120 days in jail as a condition of the probation. One area to always review in an Intoxicated Manslaughter charge is was the other driver also at fault. Texas law requires that to be guilty of Intoxicated Manslaughter, not only must the driver be DWI, but the other driver or person did not contribute to the death. For example, if there is a wreck and one driver is DWI, and the other driver, now deceased, was also intoxicated, there is a good argument that the person charged with Intoxicated Manslaughter is not guilty of the felony offense. He or she might be guilty of a misdemeanor DWI but would not be guilty of the felony Intoxicated Manslaughter charge.

DUIM—DRIVING UNDER THE INFLUENCE BY A MINOR

There is an additional statute that only applies to drivers under the age of 21. Texas holds underage drivers to a higher standard. A minor for the purpose of this statute is anybody who has not reached the age of 21. If a minor has a “detectable amount of alcohol in his or her system” and is operating a motor vehicle, they can be charged with a DUIM. Only a minor can be charged with a DUIM.

A DUIM does not carry jail time. It is a Class C misdemeanor so the maximum fine is \$500. Court costs and community service hours are also involved. If you are convicted of a DUIM, your driver license can also be suspended. Unlike the DWI statutes, a minor can get a deferred adjudication on a DUIM. Deferred adjudication

means if the probation is lived out then there is no conviction on the person's record. The arrest will still show, but it will show that the DUIM has been dismissed.

Another benefit is also available to a minor who gets a DUIM. If the minor does not get another conviction or deferred adjudication for another DUIM or any other alcohol-related offense such as a MIP (minor in possession), MIC (minor in consumption) or PI (public intoxication), then at the age of 21, the DUIM can be expunged. This means that even the arrest can be removed from the record.

CAUTION: This statute does not prevent the State from charging a person under the age of 21 with a regular DWI if you have a breath or blood alcohol level greater than .08 or you have lost the normal use of the mental or physical faculties. The police officer and prosecutor will determine if the charge is filed as an Under 21 DUIM or the more severe DWI statute.

AGGRAVATED DWI

As of September 1 2011, if your breath or blood alcohol level is greater than .15 grams per 2100 milliliters, the punishment level for a Class B first time DWI is enhanced. The law reads that upon conviction if it is shown that breath or blood level **AT THE TIME OF THE TEST** is a .15 or above, then the offense is a Class A misdemeanor.

This is a new law, and it is unclear how it will be applied as the author sees two possible challenges to this

law. First, the enhancement moves the punishment to a Class A, but the general Class A punishment is from 0 to 365 days in jail and or up to a \$4,000 fine. This means that a person with a .149 breath test would be subject to a Class B with a minimum of 3 days in jail, and a person with a .150 would be subject to no minimum days in jail (this is assuming no probation). The other issue is the statute says “at the time of the test,” and the law for a DWI in Texas addresses at the time of driving.

INTERLOCK OR DEEP LUNG DEVICES

In certain cases a person either convicted or charged with a DWI will be required to place a deep lung device or interlock device in their vehicle. The purpose of this unit is to prevent a person from driving if they have a pre-set limit of alcohol in their system. Below is a chart of what cases require an interlock.

OFFENSE	ON BOND	CONVICTION
DWI 1 ST	NO	NO
DWI 1 st under 21 at time of arrest	NO	YES
DWI 1 ST with breath/blood test .15 or above	NO	YES
DWI 2 ND	YES	YES
DWI FELONY	YES	YES
INTOXICATED ASSAULT OR MANSLAUGHTER	YES	YES

A DWI charge carries significant penalties and loss of liberty. It is very important for anybody who is charged with DWI or DWI-related crimes to immediately consult and retain a highly qualified DWI attorney.

NOTES

COMMON POLICE MISTAKES

And How They Can Help You

Liberty may be endangered by the abuse of liberty
but also by the abuse of power.

JAMES MADISON

Numerous policies, procedures, and laws govern the actions of the police. Mistakes, misunderstandings, or errors from the initial contact to the final booking may help in winning your DWI.

Improper Stops

TIPS OR ANONYMOUS CALLS - For most DWI cases, an officer cannot stop you based solely on an anonymous call. The officer must observe an actual violation of the law before the stop is legal.

MISTAKE OF LAW - Even if the officer has the best intentions, a stop based on a mistake of law is an illegal stop.

WEAVING IN LANE - This observation alone is not a proper basis to stop a driver. No car drives

completely straight. There are various reasons a driver may drift or weave within a lane.

STOPPING WRONG CAR - Just as an officer must see an actual violation, the officer must be able to clearly identify the car stopped and identify why it was stopped.

STOPPING FOR A HUNCH OR JUST FELT LIKE IT - Rarely will an officer admit this was the reason for a stop. Almost every officer knows this is an illegal stop, and any resulting evidence will be excluded.

Improper Arrest

BAD SFST - The roadside gymnastic tests are a tool used to make an arrest decision. The tests have specific rules and observations. If they are not followed, then any conclusion would be improper.

WEATHER - Weather can affect observations of driving and performance on SFSTs. Failure to consider this factor can affect credibility.

MEDICAL/PHYSICAL CONDITIONS - Numerous medical and physical conditions can affect a person's roadside behavior and performance. These issues should be considered and factored into an officer's arrest decision. For instance, there is documented court testimony of at least 38 causes for HGN (the condition being tested during the pen/eye test) unrelated to alcohol. Included causes are stress, caffeine, flu, strep, measles, hypertension, lack of sleep, and fatigue, to name a few.

ILLEGAL EXTENSION OF STOP - Once an officer has completed the reason for the initial stop, he should terminate the contact and allow you to leave. For instance, if you are stopped for speeding, you should receive a ticket and be allowed to leave unless there is a clearly articulated reason to extend the detention.

PRIVATE PROPERTY- A DWI arrest is not normally proper if you are on private property that is not open to the public.

VIDEOS DON'T SUPPORT ARREST REPORT- Many agencies use videos. You have probably watched *Cops* on TV. When the videos are available, they may not support the arrest decision or may show facts different from what is in the police report.

Improper Blood Test

PROPER REQUEST - There are specific reasons under the law for requesting and taking a blood test. If these are not followed, the test may be excluded.

STATUTORY REQUIREMENTS - There are specific procedures that must be followed in performing a blood test.

LAB MISTAKES - Most often a blood test is not tested by a human. Many samples are loaded in a machine; it runs overnight and prints out multiple reports in the morning. This is open to many human and mechanical mistakes.



Sample tray loaded with one testing batch of blood samples.

Improper Breath Test

BREATH TESTING RULES - A specific agency, the Scientific Director for the Department of Public Safety, sets the rules governing all breath testing in the State of Texas. Failure to follow the rules will result in the exclusion of the test from court evidence.

CERTIFICATION - The operator of the machine must be certified, and the certification must be renewed annually.

CERTIFICATION OF MACHINE - The machine must be certified, and periodic maintenance must be performed on it.

INTERFERENTS - There are numerous chemical and physical items that can interfere with a proper test, which can result in false readings.

MACHINE NOT CALIBRATED - If a machine is not properly calibrated, it will result in false or unverifiable readings.

MACHINE MALFUNCTION - This machine is 1980s technology. Numerous parts of the machine may not be working, yet the machine will still generate a BAC reading.

PROCEDURES NOT FOLLOWED - Specific procedures must be followed before a proper test can be administered.

Procedural Mistakes

MIRANDIZE/READ YOUR RIGHTS - Although the law will not require a reading of your Miranda Rights, if the officer continues to question you after your arrest, many statements may be excludable.

WITNESS APPEARANCE - If a witness was responsible for your initial stop or other key element, the witness will also have to appear at key points in the case.

INCONSISTENT STATEMENTS BY COP - If the cop gives different stories in his report from later testimony, his credibility is called into question.

EXPERT WITNESS - We have experts who often can analyze reports, breath tests, and video footage to help determine if the arrest was proper and the facts are correctly presented.

ABSORPTIVE STAGE - It is a medical fact that during the early stages of drinking, you will show an artificial “peak” while absorbing the alcohol. This means that during the early stages of absorbing alcohol—before it is fully absorbed into your system—you will yield an artificially high BAC.

I'M A SMART COOKIE; I DON'T NEED AN ATTORNEY

Do I?

If you want to be free, there is but one way,
It is to guarantee an equally full measure of liberty
to all your neighbors.
There is no other way.
CARL SCHULTZ

If you haven't read Chapter 4, "IT'S A SIMPLE DWI! WHAT'S THE BIG DEAL?!", read it and then return to this page. Ask yourself, "Am I willing to pay this price?" Then ask, "Do I feel my future is worth the investment of hiring a top-flight DWI attorney?"

Now read Chapter 14, "GIZMO, MACHINE or INSTRUMENT?" along with Chapter 15, "NEEDLES, NEEDLES, NEEDLES." If you have read these chapters, ask yourself one more question, "Even though I may be an intelligent person, do I really think I have the skill and experience in what is possibly my only time in a court room to outsmart the police officer and prosecuting attorney who do this for a living every single day?"

CAUTION:

Far too often, I will receive a phone call from someone who says, “I think I will just go talk to the judge or the prosecutor myself.” REALLY??? Let’s think about this—they have arrested you and have filed criminal charges against you. Does that sound like a friendly shoulder to lean on? THINK—we call them PROSECUTORS for a reason. They make their living PROSECUTING people. *Do you really think they have your best interests at heart?* Of course not! They are concerned with CONVICTIONS.

The judge will not talk with you; he is supposed to be an impartial party who stands between your defense attorney and the prosecutor. If you plead guilty, the judge can sentence you to jail with no explanation. And please, please do not turn to a friendly police officer for help. Hasn’t he helped you enough by putting you in this position? Cops may be familiar with the statutes, but that doesn’t mean they know how to use them to protect you. They often do not understand the hidden costs, deadlines, or court procedures that are so important to your future.

OK, YOU CONVINCED ME. WHERE IS THE CHEAPEST ATTORNEY?

Parachutes, Brain Surgeons, and DWI Attorneys

Security is mostly a superstition.
It does not exist in nature.
Life is either a daring adventure or nothing.
HELEN KELLER

Beware of bargains when choosing a parachute, a brain surgeon, and a DWI attorney. These are not areas where your first thought should be “where can I get the best deal.” You need quality and excellence. Just as with the parachute and surgeon, when choosing a DWI attorney, you need protection, strength, and dependability. You deserve the best defenses.

*Why do prices vary so much between attorneys?
It's just a DWI?*

Let me ask you, how much does a car cost?

Before you could give an answer you would need to know if it is a new car or a used car. Is it a compact, a high performance sports car, or an ultra luxury car? How

many miles are on it? What is the maintenance record? And much, much more.

One car may be a compact with no air conditioning; it's burning oil and running on one donut, tire and the fuel line is clogged so it just stops at times. It may or may not get you where you are going but if you do finally arrive, you will be worn out, sweaty, and late.

Another car may have perfect temperature control; it runs smoothly with great suspension. All systems work perfectly, and you will arrive at your destination early, relaxed, and in a good mood.

It would be unfair and misleading to compare the two cars on price alone.

There are two main ways a lawyer can attract new business. For some, it is through cheap fees. For others it is through exceptional skills, training, and reputation. Regretfully, you do not find cheap and highly-skilled together. Why?

- It costs more if an attorney limits the number of cases accepted, to allow more attention to each case that is handled.
- It costs more if an attorney has specialized, detailed training that applies to a specific case.
- It costs more if an attorney specializes in a specific type case, thus limiting income potential.

- It costs more if an attorney is constantly updating his skills and knowledge necessary to protect you.

BUT, *it actually costs LESS if the attorney can properly protect you.* You will have to decide—do you want to cut costs and gamble on poor results? Don't you deserve an investment in yourself and your future by having a skilled attorney who gives personalized attention to your needs?

NOTES

ONLY 2 CASES OF BEER AND THEY SAID I WAS DRUNK

How to Estimate Your Blood Alcohol Level

When I was younger, I could remember anything,
whether it had happened or not.

MARK TWAIN

You can estimate the percent of alcohol in the blood by the number of drinks in relation to body weight. You should remember that this is just an estimate. Many factors such as food consumption, prior exposure to alcohol, medical issue, gender biases, and time of consumption can change the calculations up or down. To make an estimate:

1. Count your drinks (1 drink *equals* 1 ounce of 100-proof liquor, one five - ounce glass of table wine or one 12-ounce bottle of regular beer).
2. Use the following chart for the number of drinks and opposite body weight to find the percent of blood alcohol listed.

	DRINKS											
Body weight	1	2	3	4	5	6	7	8	9	10	11	12
100 lb.	.038	.075	.113	.150	.188	.225	.263	.300	.338	.375	.413	.450
110 lb.	.034	.066	.103	.137	.172	.207	.241	.275	.309	.344	.379	.412
120 lb.	.031	.063	.094	.125	.156	.188	.219	.250	.281	.313	.344	.375
130 lb.	.029	.058	.087	.116	.145	.174	.203	.232	.261	.290	.320	.348
140 lb.	.027	.054	.080	.107	.134	.161	.188	.214	.241	.268	.295	.321
150 lb.	.025	.050	.075	.100	.125	.151	.176	.201	.226	.251	.276	.301
160 lb.	.023	.047	.070	.094	.117	.141	.164	.188	.211	.234	.258	.281
170 lb.	.022	.045	.066	.088	.110	.132	.155	.178	.200	.221	.244	.265
180 lb.	.021	.042	.063	.083	.104	.125	.146	.167	.188	.208	.229	.250
190 lb.	.020	.040	.059	.079	.099	.119	.138	.158	.179	.198	.217	.237
200 lb.	.019	.038	.056	.075	.094	.113	.131	.150	.169	.188	.206	.225
210 lb.	.018	.036	.053	.071	.090	.107	.125	.143	.161	.179	.197	.215
220 lb.	.017	.034	.051	.068	.085	.102	.119	.136	.153	.170	.188	.205
230 lb.	.016	.032	.049	.065	.081	.098	.115	.130	.147	.163	.180	.196
240 lb.	.016	.031	.047	.063	.078	.094	.109	.125	.141	.156	.172	.188

3. Subtract from this number the percent of alcohol "burned up" during the time elapsed since your first drink. This figure is .015% per hour. (Example: 180 lb. man has 8 drinks in 4 hours / .167% minus (.015x4) = .107 %)

BEFORE 6 BEERS



AFTER 6 BEERS

NOTES

THE 7 DEADLY SINS FOR A TEXAS DWI

And How to Avoid Them

We as people are neither as good
as our finest moment in life,
nor as bad as our least flattering moment.
All in all, and for the most part,
We all generally fall somewhere in the middle.

BRUCE EDGE

The seven deadly sins you can commit when dealing with a DWI case in Texas are:

- THINKING IT IS A “SIMPLE” DWI. A “simple” DWI does not exist. A conviction on this charge will follow you for the rest of your life. The additional insurance charges alone could cost you thousands of dollars. You may lose numerous job opportunities, be denied housing, lose a pilot’s license, and be prevented from traveling to foreign countries. There are many hidden costs you will experience from a conviction (see Chapter 4).
- THINKING ALL ATTORNEYS ARE THE SAME. *They are NOT.* DWI defense is a complex field involving physical, mental, emotional, scientific, technical, and factual issues that are unique to each

case. Timing can be very important to the success of your case. Defenses must be raised at the right time or you will lose them, and evidence must be gathered quickly. You should seek out the best qualified attorney who specializes in this area of practice. A quality DWI attorney will limit the number of cases he (or his firm) accepts each year, assuring the client of personalized attention to their case.

- **NOT REQUESTING AN ADMINISTRATIVE HEARING TO PROTECT YOUR DRIVER'S LICENSE.** An attorney has only 15 DAYS from your arrest to request a hearing for you; this is the ONLY way to protect your driver's license. If an attorney doesn't tell you about this hearing or says you can't win this hearing, that attorney is either not competent to represent you or is taking short cuts at your expense.
- **HIRING A LAWYER WHO HAS THE LOWEST FEE.** The lowest fee may mean the least qualified and the least amount of time spent on your case. This kind of lawyer may take the easy way out and settle for the first offer the Government makes so he can quickly move on to another low fee case. His concern is quantity not quality. You get sold out when the legal issues of your case are ignored in an effort to make a quick fee. The low fee most likely will cost you more in hidden costs (see Chapter 4) before you are finished. Be careful of bargains with brain surgeons, parachutes, and DWI defense attorneys.

- **QUICKLY ACCEPTING A SETTLEMENT FROM THE PROSECUTOR.** The first offer is not a deal. An attorney who takes the first offer is trying to get rid of your case with the least amount of work. You never get to raise legal issues or make the State prove its case. This is not legal defense—this is a dump truck lawyer (see Chapter 24).
- **DRIVING AFTER YOUR LICENSE HAS BEEN TAKEN AWAY.** This is an arrestable offense and can make it more difficult to represent your DWI case as well as cause an increased suspension period.
- **NOT PROTECTING YOUR CONSTITUTIONAL RIGHTS.** An experienced DWI attorney will recognize the issues unique to your case and will have the experience to protect you. This includes challenging the legality of the reason you were stopped and your removal from the car, the legality of any test given to you, the propriety of any field test given to you, the validity of your arrest itself, the legality of any breath test request, and the procedures of the administration of any breath/blood test.

NOTES

DUMP TRUCK LAWYERS

Don't Get Dumped by an Unconcerned Lawyer

A judge is a law student
who marks his own examination papers.

H. L. MENCKEN

“Dump Truck” is what attorneys call other lawyers who only want to dump their clients by quickly pleading them guilty instead of offering a vigorous defense. Unfortunately, these attorneys are numerous, and they can be spotted in several ways.

Warning signs of a “Dump Truck” lawyer are any attorney who:

- Quickly leads the conversation into a discussion about plea bargaining as the primary focus (unless there are complications with the case which can only be discovered after reviewing the facts of your case).
- Promises to get it all taken care of quickly with no appearance by you. One such attorney advertises “No court appearances, No time off work.” You cannot fight the charges

that way. Not surprisingly, his ad also says “low cost.”

- Promises *low cost* and *quality representation*. These are two traits that you do not find at the same time. If the attorney is primarily selling himself as a low fee alternative, it means he is either not as well qualified or he will spend little to no time preparing the case. Far too often, both happen in DWI cases.
- Quotes a low fee over the phone after a very short conversation. He has already decided he will just go through the motions necessary to plead your case. You should reasonably spend 1 to 1 ½ hours with a reasonable qualified attorney before deciding to hire him. Initial consultations should be free.
- Meets you for the first time at court and wants money to be there. This is not representing you. He doesn't even KNOW WHO YOU ARE OR WHAT YOUR CASE INVOLVES! Your first meeting should be in an office and it should be a detailed investigation into the case. Only then can the lawyer give an initial evaluation and advise you properly about the next stages that your case should take.
- Operates his or her firm with no office staff and meets you at a restaurant or law library because he has no actual office. It takes a great deal of preparation to properly defend a

DWI case, and a lawyer should have staff members to assist not only the lawyer, but you when you call with a question. Who answers their phones when they are in court? Even worse, do you want your lawyer leaving the courtroom during your case to take a cell phone call?

You should be assured that the attorney and his staff are capable, willing, and ready to TAKE YOUR CASE TO TRIAL. In any discussion of your case, you deserve to be represented from a position of strength rather than weakness.

NOTES

LAWYERS ALL LOOK THE SAME TO ME

*Questions You Should Ask
Before Hiring a DWI Lawyer*

The nose of the bulldog has been slanted backwards
So that he can breathe without letting go.

WINSTON CHURCHILL

The following are qualifications your attorney should possess if they are serious about properly defending your case and are passionate about defending citizens accused of DWI:

1. Are you Board Certified in Criminal Law by the Texas Board of Legal Specialization? Only about 1% of all lawyers in Texas are Board Certified.
2. Have you attended the Harvard Law School DWI Trial College conducted by the National College for DWI Defense?
3. Have you instructed other attorneys on a national, regional, or state level?

4. Have you completed training to administer the standardized field sobriety tests?
5. Have you completed training as an INSTRUCTOR of standardized field sobriety tests?
6. Have you completed the training as a breath test operator of the Intoxilyzer 5000 machine, the same machine used in Texas for evidential breath tests?
7. Have you completed the training as a breath test maintenance technician of the Intoxilyzer 5000 machine, the same machine used in Texas for evidential breath tests?
8. Have you completed the training as a Breath Test Instructor of the Intoxilyzer 5000 machine? (The same machine used in Texas for evidential breath tests?)
9. Do you own the field sobriety testing manuals that law enforcement officers use?
10. Does your office own any portable breath test machines?
11. Do you own a working and functioning Intoxilyzer 5000 to use in your client's case? How many?

12. Have you attended the annual DWI seminar conducted by the National Association of Criminal Defense Lawyers? What is the most recent course?
13. Do you have instant access to the most experienced DWI Attorneys and experts in the nation?
14. Are you DRE (Drug Recognition Expert) trained?
15. Do you have successful trial experience in DWI defenses?
16. Do you have successful experience in fighting DWI blood tests?
17. Have you had specialized training and participated in lab testing to understand blood testing?
18. Do you limit the number of new cases you will take each month?
19. Do the press and television call you for your insight and opinions involving DWI?
20. Are you a member of the National College for DWI Defense?
21. Have you attended the Robert F. Borkenstein course on alcohol and highway safety, testing, and research taught at Indiana University? (This

is the same course the prosecutor's Intoxilyzer expert attended. This training enables the attorney to better contest any Intoxilyzer evidence the prosecutor attempts to introduce.)

22. Do other attorneys nationwide ask you to teach them about DWI?
23. Do other criminal defense attorneys refer their "tough" cases to you?
24. Is your practice limited to DWI defense and other criminal cases?

I HAVE TO BLOW START MY CAR?

Ignition Interlock Devices and SCRAM

Experience is the name
everyone gives to their mistakes.

OSCAR WILDE

As the result of pressure from lobbying groups, the federal government has increased the pressure on the states to take measures to ensure repeat offenders do not drink and drive and in some cases, consume alcohol at all. Similar to the same methods used to force the states to lower the legal limit from .10 to .08 and increase the legal drinking age to 21, the federal government threatens to withhold highway money unless the states change their state laws to reflect the demands of the federal government.

Ignition Interlock

The most widely used method to prevent drunk drivers from re-offending is requiring the installation of an ignition interlock device. We call this device the “blow and go.” Several companies offer these devices that are all essentially the same device. These companies include Smart Start and Guardian Interlock.

An ignition interlock is basically a portable, bare-bones breathalyzer; however, it does not have the same screening filters to keep out other interferents like the bigger machines used by law enforcement agencies.

The device attaches to your vehicle under the dash near the driver's right leg. It is installed directly into the ignition system of your vehicle. According to the manufacturers, the devices do not cause any permanent damage to your vehicle. The devices are small with an approximate size of 3.5 inches by 6 inches. This box will have a blow tube on one end and a cord similar to a telephone cord on the other end extending under the dash.



In order to start your vehicle, you will have to blow into the ignition interlock device. If any alcohol is detected in your breath, your car won't start. "Hmmm . . . I'll just have my sober friend blow and I'll be off." Nice thinking, but usually you will have to blow again after you drive a while. The only way around this would be to take your friend that hasn't consumed any alcohol with you.

Texas requires the installation of a blow and go for all subsequent DWI convictions as a term of probation. This means if you have ever been previously

convicted of a DWI and pleaded to a DWI 2nd (Class A Misdemeanor) or a felony DWI, you must put the blow and go in your car for at least 50% of the probation time.

In addition, if you are ARRESTED on a subsequent DWI 2nd or felony, as a CONDITION OF BAIL you have to install an interlock in your vehicle. If you have a DWI 1st with a breath test or blood test of .15 or above, even on a 1st conviction, you have to have the interlock installed. If you are under 21 and convicted of a DWI, you guessed it! You have to have the interlock installed.

If your license has been suspended from an administrative action and you want to get an occupational driver's license, you may have to install the blow and go. Because the occupational license must be approved by the district attorney (or county attorney) in the county you seek the license, often times if your license has been suspended in the past for a DWI, the DA will require the interlock as a condition of the restricted license.

The Court may also order the installation of an ignition interlock device for a specified time frame as a condition of probation. The Court does not have the power to reinstate driving privileges if you are under a valid one year or three year license suspension.

The use of ignition interlocks is excessive in some situations. For example, the device only detects alcohol, but Texas requires the installation of the device even when your suspension is the result of driving under the influence of prescription medicine. Toyota has recently

announced the introduction of vehicles that have what amounts to an ignition interlock built into the car so it will not start if you have any alcohol in your system.

SCRAM

Another alcohol detecting device starting to be used more and more is the SCRAM ankle monitor. The SCRAM device is an ankle monitor similar to a global position monitor used by some states and the federal government for persons under house arrest. Think of Martha Stewart serving her house arrest on her multimillion dollar farm. This monitor communicates through a modem connected to a monitoring station that alerts the authorities if alcohol is detected.



The SCRAM device uses the same technology and chemistry used in the breathalyzer. This technology is called a fuel cell. It samples or tests the constant perspiration coming from your skin for traces of alcohol.

There are several problems with fuel cell devices. They are not specific to ethyl alcohol and can produce false positives. At least one study has shown these types of transdermal alcohol measuring devices do not meet the basic scientific evidence requirements to be admitted in court. More and more courts are ordering these devices for people on bond or probation if they have continued issues with alcohol.

WHERE DID THE MONEY GO?

Bail and Bond Issues

In the end, we will not remember
the words of our enemies,
But the silence of our friends.
MARTIN LUTHER KING, JR.

In Texas, the right to bail is guaranteed by the Texas Constitution; however, the Constitution doesn't say how much bail should be. In certain circumstances, bail can be denied altogether.

The denial of bail is not usually an issue in DWI cases unless an accident is involved resulting in a death and the state charges the DWI as a capital murder case, or a person charged with DWI continues to be arrested for new DWI charges while other charges are pending. In these situations, bail is still possible but the attorney must be able to present a plan to the court that guarantees the safety of the community. Usually, it will involve treatment and monitoring by an ankle monitor, SCRAM, ignition interlock device, and/or pretrial release programs.

If a person is on probation and gets a new charge, the prosecutor will file a Motion to Revoke Probation on the case. If the person is on misdemeanor probation an attorney can usually get a bond set for the revocation action. If the citizen is on a felony DWI, it is likely that

the court will not (and under Texas law is not required) to set a bond for the felony Application to Revoke Probation. If this is the case it is possible the citizen on felony DWI probation will remain in jail until the revocation action is completed.

A police officer may arrest a person without a warrant for crimes committed in his presence. In the alternative, an officer may arrest a person when there has been a warrant issued for the person's arrest. If a warrant has been issued, the issuing judge sets a bond amount when signing the warrant. In DWI cases, the arrest is usually the result of the officer witnessing the alleged crime occurring.

In these cases, a judge is usually not immediately available to set bond. As such, some counties have a set bond schedule they use. Many counties in Texas do not use set bonds on DWI arrests. This is because the magistrate must order an interlock on second offenses.

In cases where the person has posted bond based on the charges alleged by the arresting officer, the bond amount may increase or decrease when charges are filed by the prosecutor's office. The police officers are not attorneys and do not prosecute cases. As such, they will often either add too many charges or undercharge the defendant. After the arrest, the officer will complete his report and will forward that report to the prosecutor's office. A prosecuting attorney will then make a decision as to the appropriate charges based upon the evidence presented to him.

GLOSSARY OF COMMON TERMS

Administrative License Revocation (ALR): The law that allows the prompt suspension of the license of drivers charged with Driving While Intoxicated (DWI) when a driver has a BAC above the prescribed legal limit, or if a driver refuses to take a blood or breath test. Under these circumstances your driver's license may be suspended before adjudication of the DWI charge.

Aggravated DWI: A NEW LAW EFFECTIVE 9/1/11 when the BAC is .15 or greater at the time of the test. In this case the punishment of a first offense DWI is enhanced to a Class A misdemeanor punishment of up to a year in jail and up to a \$4,000 fine. There is some debate on the legality of this law in Texas. This law will likely be challenged through the courts.

BAC: Short for "blood alcohol concentration." BAC refers to the amount of alcohol in your bloodstream and is measured in percentages. BAC can be measured by breath, blood, or urine testing and is often used by law enforcement to determine whether or not a motorist is "legally drunk." Texas has adopted BAC laws that make it illegal to drive with a BAC at or above 0.08.

Breathalyzer: A generic term for a machine used by law enforcement to measure the BAC of suspected drunk

drivers. In Texas the designated machine is an Intoxilyzer 5000.

BWI: Short for Boating While Intoxicated. A BWI is treated just like a DWI for driver's license issues, jail and probation terms, and punishment enhancement issues.

Chemical Test: As it relates to DWI, a test of the alcohol or drug concentration in a person's blood. An Intoxilyzer, blood analysis, or urinalysis can be used as chemical tests for alcohol. If other drugs are suspected, a blood test or urine test is used.

CDL: Short for Commercial Driver's License. This is a special driver's license for vehicles used in commerce.

Commercial Vehicle: A vehicle driven for business purposes. The punishment for a DWI by a person who holds a CDL is more severe than for a non-CDL holder.

Community Service: Uncompensated work performed for a governmental agency or a non-profit agency. Community service may be a mandatory part of your sentencing. Once ordered by the court, it cannot be bought out by switching the hours owed for a higher fine.

D/A Assessment: Drug and Alcohol Assessment. A statutory requirement required when a plea is entered for a DWI. This is normally a one-hour evaluation, which will look for abuse problems and formulate a plan of action to deal with any problems. Any recommendations in the assessment will become requirements by DPS before reinstating your license if it is suspended.

Additionally, the recommendations will become requirements of the court for any probation that may be offered.

DPS: Department of Public Safety. In Texas, this is the agency responsible for issuing and administering your driver's license.

DWI School: DWI schools are typically drug and alcohol education programs designed to help you realize the dangers of drinking and driving and to hopefully ensure you are not a repeat offender. In Texas, DWI schools are licensed by the state. The cost of the school is set by the state.

DWI: Driving While Intoxicated. This can be from two sources. The per se law says you are DWI if you have a BAC of .08 or greater. You can also be found guilty of DWI if a jury determines you lost the normal use of your mental or physical faculties based on the evidence.

DWLI: Driving While License Invalid. If you do not have a valid license and choose to drive, you can be arrested.

DUIM: Driving Under the Influence by a Minor. A lesser alcohol offense for a minor that means while the minor is not intoxicated, he or she did have a detectable amount of alcohol in his or her system when operating a motor vehicle.

Essential Needs License: A restricted license a court might grant that would allow a person with a suspended

license to operate a motor vehicle for essential household duties, to get to and from work and school and other limited situations.

Felony: A serious crime, such as murder, rape, or burglary, for which a stricter sentence is given than for a misdemeanor. A third offense (with two prior DWI convictions) in Texas can be treated as a felony. Also, if there has been a death or serious bodily injury as a result of the DWI, it will be classified as a felony, depending upon the prosecutor and the situation. Finally, even a first offense DWI, if a child 15 or under is in the car, it will be a felony.

Ignition Interlock Device: An in-car alcohol breath screening device that prevents a vehicle from starting if it detects a blood alcohol concentration (BAC) over a pre-set limit of .02. The device is located inside the vehicle near the driver's seat and is connected to the automobile's ignition system.

Implied Consent Law: The law governing your consent to be tested. If you have a Texas driver's license you have, by implication, consented to allow the officer to have your blood alcohol concentration measured if you are arrested for DWI. You may refuse to take the test, but a license suspension may result.

License Revocation: Revoked driving privileges. A license revocation means your driving privileges have been cancelled. You will need to reapply for a driver's license after a designated length of time.

License Suspension: Suspended driving privileges. A license suspension means you may not drive for the period of your suspension. Driving privileges are administered by the Department of Public Safety.

Misdemeanor: A crime less serious than a felony. The maximum jail punishment on a misdemeanor is one year in the county jail.

Open Container Law: Law governing open alcohol containers in a vehicle. It is illegal to have an open container of alcohol in your vehicle.

Probation: When all or part of the required jail time is suspended in exchange for good behavior. Jail time may be reinstated if it is found that the terms of probation are being violated. Examples of violations would be another arrest, driving under suspension, or driving without the interlock device installed.

Provisional (or Restricted) License: See Essential Needs License.

Sobriety Checkpoints: A system where law enforcement agencies select a particular location for a particular time period and systematically stop vehicles (for example, every third car) to investigate drivers for possible DWI. If any evidence of intoxication is noted, a detailed investigation ensues. Currently Texas law does not allow for sobriety checkpoints; however, other types of checkpoints (such as those designed to check for valid driver's license) are allowed.

VIP: Victim Impact Panel. A meeting that usually lasts about 3 hours consisting of victims, victims' friends, or victims' families of drunk driving accidents. Attendance at one of these meeting is a standard requirement of a DWI conviction.

Work Permit: A common term and a misconception. People think they can apply for a work permit if their driver's license is suspended for a DWI. That is not true. There is no such thing as a "work permit" in Texas. See Essential Needs License above for what is available.

Zero Tolerance BAC: Allowable blood alcohol content for minors. The law refers to this as "any measurable or detectable amount."

YOU SEE RED AND BLUE FLASHING LIGHTS BEHIND
YOU-----YOU'VE HAD A DRINK OR TWO---

Or worse.....

YOU HAVE BEEN HANDCUFFED, STUFFED IN A CRUISER, MUG SHOT
TAKEN, FINGERPRINTED, AND MAY BE EVEN EATEN JAIL FOOD.

WHAT DO YOU DO NOW?

IF YOU, A FRIEND, OR A LOVED ONE EVER HAS A DRINK AND
THEN DRIVES, YOU NEED TO READ THIS BOOK.

KNOW YOUR RIGHTS, PROTECT YOUR ABILITY TO DRIVE, AND
AVOID HIDDEN COSTS THAT MAY FOLLOW YOU FOR YEARS.

DWI IS A SERIOUS ISSUE; POLITICAL PRESSURES ARE RESULTING IN
UNSUSPECTING EVERYDAY CITIZENS BEING SWEEPED UP IN THIS
NEW FORM OF PROHIBITION.

MAKE NO MISTAKE; THE OBJECTIVE IS TO PUNISH EVERY DRIVER
WHO GETS BEHIND THE WHEEL AFTER HAVING ONLY ONE DRINK.

STEPHEN HAMILTON, BRUCE EDGE, AND JOHN
HUNSUCKER ARE EXPERIENCED DWI TRIAL
ATTORNEYS WHO DESIGNED THIS BOOK TO HELP
PROTECT THE AVERAGE CITIZEN FROM OVER
ZEALOUS DWI LAW ENFORCEMENT

For your FREE consultation with the authors of this book, contact:

Stephen Hamilton **1-806-794-0394**

Bruce Edge **1-918-582-6333**

John Hunsucker **1-405-231-5600**

West Texas

Tulsa Area & Eastern Oklahoma

OKC Area & Western Oklahoma