

Few drunk driving charges reduced here

By Carolyn DeMarco
staff writer

Don't drink and drive in Oakland County. If you do, you'll need a good attorney who knows the drunk-driving laws.

"Probably 94 percent of all drunk-driving cases are pled," 48th District Judge Bernard Friedman told attorneys attending a recent seminar on defending drunk drivers. "That's a high percentage."

"From a practical standpoint we couldn't try all those cases, but don't be afraid to ask. You never know. Be a good advocate. There's nothing wrong with that. A good lawyer can be a bad advocate."

Familiarizing those lawyers with the laws and their loopholes, was the purpose of the seminar. The program was sponsored by the Young Lawyers Committee of the Oakland Bar Association and conducted by Friedman, attorney and former prosecutor Jerome Fenton of Bushnell, Heizen, and Patton, and attorney John Mills of O'Neill, Shannon and Mills.

IF A CLIENT INSISTS on a trial, Friedman said, "It's important for the system and for you to try the case." But be prepared, he cautions.

Being prepared means knowing the drunk-driving law, the Oakland County prosecutor's policy and the drunk-driving arrest procedure.

The drunk-driving law is the 1982 Michigan statute that defines fines, jail and license action for first, second and third drunk-driving and impaired-driving offenses.

The prosecutor's policy, said former prosecutor Fenton, is a three-page document. "If they (assistant prosecutors) don't follow it, their jobs are gone."

Basically, he said, the policy applies to operating all vehicles, including aircraft and watercraft. In cases originating with county arrests for drunk driving, few reductions in charges are granted.

"There's nothing wrong with pleading (as opposed to trying), when they've got you six ways to Sunday," said Mills, "but you can walk them through and get the best plea. The key to a proper defense is thorough preparation. Start 24 hours before the occurrence. What did they drink? Eat? Visit the scene."

"LOOK FOR A HOLE or wedge. Brooks (prosecutor L. Brooks Patterson) takes all the fun out of it. He's got all the aces. You've got to look for a hole."

"It's tough if you have a Breathalyzer. What if it's not operating, if they fail to produce the test reports within two days? Look for holes. Try to get it suppressed."

When it's time for sentencing, Mills said, "you can do a lot with letters from clergy, parents, counselors. Get your client into treatment right away. Get those AA attendance slips."

Attorneys were advised to tell their clients not to refuse the Breathalyzer test, especially if it's a first offense. Refusal to take the test will result in a restricted license. A second refusal means automatic loss of the license for one year, no restrictions allowed.

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— attorney John Mills

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BREATHALYZER and other field sobriety tests were explained by Oakland County deputies Lou Tyler and Bruce Pearson of the county's Alcohol Enforcement Team, in effect since 1980.

"Anybody can spot a drunk driver," Pearson said. "Tip-offs are improper or wide turns, improper lane use, overreaction with brake lights, speed and disregarding signals."

Pearson said if the AET unit is in the jurisdiction of an "uncooperative judge," they'll follow a drunk driver into other jurisdictions before pulling the driver over.

If there is a possibility of drinking, the driver is invited out of the car and asked to cooperate in a series of simple tests. They include:

- Reciting the alphabet twice.
- Counting backwards from 100 to 85.
- Walking heel-to-toe.
- Standing on one foot.

Where drunkenness is suspected, a preliminary breath test is administered to determine the blood alcohol content. Readings of .07 to .09 are within the impaired driving range. Readings of .10 and above are considered drunk driving.

DRUNK DRIVERS are advised of their rights, placed under arrest and taken to Oakland County Jail. Cars are not impounded by county sheriffs, but left at the side of the road.

A Breathalyzer test is taken with a mobile unit or at the jail, and chemical test rights are read.

"When they say they want to call their attorney," Pearson said, "we're tickled to death. We know they'll be advised to take the (second Breathalyzer) test."

Tyler said only 2 percent of those the AET arrests go to trial and 80 percent of those get some conviction. "I've lost one in five years," he said.

By law the test must be administered shortly after the driver is

stopped, preferably within 15 minutes.

The officers advised all lawyers to get copies of the administrative rules regarding the tests, available through the state. While AET breathalyzer units are regularly inspected for accuracy, individual municipalities are sometimes lax in regulating units.

BLOOD TESTS ARE rarely used instead of breath tests, but can be if the subject wants it. County officers transport drivers

to hospitals or clinics for the test. State police may administer their own.

The average reading for an arrested drunk is .16, Tyler said. "Most are in their teens. If it's over .25, better take a long, hard look at your client. He's into total denial if he thinks he doesn't have a problem. If it's over .12 it's a problem drinker in an occasional way."

"Two beers won't register that much. Most people don't think they're drunk. They've just had a bit too much."

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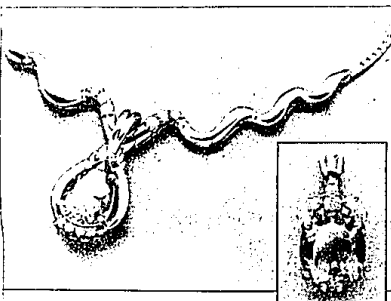
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