

Looking at why, how of acquittals

SUNDAY | N.C. judges are acquitting more than a third of drunken driving suspects who test above the state's legal alcohol limit and contest the charges in court.

MONDAY | In Mecklenburg County, DWI conviction rates vary dramatically among the county's judges, from over 80 percent to as low as 40 percent.

TODAY | Drunken driving suspects in North Carolina are discovering a way to improve their odds of getting off: refuse to take alcohol tests. An Observer investigation found that in roughly three quarters of North Carolina's 39 judicial districts, suspects who refuse to take breath alcohol tests are convicted less often than those who submit to the test.

SEARCHING FOR SOLUTIONS

N.C. task force to examine DWIs

BY LIZ CHANDLER
AND AMES ALEXANDER
Staff Writers

In the 1990s, North Carolina won praise for its crack-down on drunken driving.

Tougher laws and enforcement helped reduce the rate of alcohol-related traffic deaths.

Now, a variety of leaders - from Mothers Against Drunk Driving to Gov. Mike Easley - are calling for a closer look at a problem that still kills more than 500 people a year in North Carolina.

"We're just losing too many people - both the folks who are drinking and driving, and the innocent people they're killing," says Darrell Jernigan, who heads the Governor's Highway Safety program.

Easley recently re-established a Governor's Task Force on Driving While Impaired to study the state's efforts and suggest changes. A similar group led Gov. Jim Hunt's fight in the 1990s but disbanded in 2000 as Hunt left office.

Since then, Easley has focused on enforcing the laws enacted under Hunt. He has increased driver checkpoints and drunken driving arrests, staff members say. His efforts won recognition last year from the National Commission Against Drunk Driving.

But in its 2002 report card, MADD gave Easley a "C+" for his efforts to fight drunken driving - a drop from the "A" grade Hunt got in 2000. The N.C. legislature's grade also dropped from an "A" in 2000 to a "C" for the Senate and a "D+" for the House in 2002.

"You cannot sit on your laurels and say 'We have good laws' when there are still so many things to be done," says Cheryl Jones of Charlotte, a national vice president for MADD.

"The perception is that the interest is just not there in the governor's office. There have been no big initiatives with the policy-makers. That's why they got such a low grade."

Easley's new DWI task force got off to a slow start, says safety director Jernigan, but is now ready to work. With its report due in January, the 35-member committee will examine each stage of drunken driving offenses - from arrest, to court, to punishment and treatment.

"There is frustration about what happens after an arrest," says Jernigan, who's on the task force with legislators, prosecutors, police and others. "We've got to get the judges on board to help us convict these people."

In a 26-month period, an Observer study found that N.C. judges acquitted more than one-third of drunken driving suspects who tested over the legal alcohol limit but fought the charges in court.

N.C. House Democratic Leader, Joe Hackney, who co-chairs the task force, says aggressive police patrols and DWI arrests are the best solutions to reduce the toll of drunken driving. He also wants to lower the state's blood alcohol limit from 0.08 to 0.07.

"This is one of those things like domestic violence - an intractable problem," says Hackney. "We need to work on it every time the legislature meets."

The task force will meet Wednesday in Raleigh and hear reports on underage drinking and driving, and treatment for offenders.

Task force member Ike Avery, former attorney for the N.C. Highway Patrol, already has suggestions for the group to consider. Among them:

- Increase the amount of time licenses are automatically revoked. Currently they're revoked for 30 days for drivers who test 0.08 and over. Avery suggests revoking them until the charges are resolved in court.
- Allow the state to revoke licenses when a driver has consumed any alcohol and is at fault in a crash.
- Allow nurses and EMTs to draw blood for analysis from drivers in crashes, at the request of police.
- Abolish judges' authority to grant driving privileges for people convicted of drunken driving, which allows them to drive between work and home. Instead, let the Division of Motor Vehicles decide.

DWI: Sobering Acquittals staff

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DWI: SOBERING Refusing Intoxilyzer

Refusals *from LA*

Charlotte defense lawyer Eben Rawls says when suspects with prior drunken driving convictions call him after being stopped by police, he advises them to refuse all tests and to provide officers nothing but "name, rank and serial number."

"When you've got a sophisticated defendant who learns to refuse the Intoxilyzer, refuse field sobriety tests, and all you have is an odor of alcohol, prosecutors are going to lose that every time," Rawls said.

In 2002, one of Rawls' clients was driving on Billy Graham Parkway even though his license had been revoked for three prior DWI convictions. A Charlotte-Mecklenburg police officer stopped him after seeing his car cross the center line, and noted several signs of impairment: The driver almost fell while getting out of the car; he staggered; his speech was slurred.

The driver said he'd had two beers, but refused to take field sobriety tests or to blow into the Intoxilyzer, police said.

"You got nothing," Rawls recalled telling the prosecutor before the trial.

"When you've got a sophisticated defendant who learns to refuse the Intoxilyzer, refuse field sobriety tests, and all you have is an odor of alcohol, prosecutors are going to lose that every time."

CHARLOTTE DEFENSE LAWYER EBEN RAWLS

The defense lawyer, while cross-examining the police officer during last summer's trial, also suggested that his client might have stumbled from the car because he had a bad knee.

The Mecklenburg judge found Rawls' client not guilty.

Pineville police officer Bill Wright says letting off DWI suspects who won't take the tests sends a dangerous message: "Refuse sobriety tests. Refuse (breath tests). And it will

be dismissed. And people are learning that."

Each month in North Carolina, an average of nearly 900 DWI suspects - or about 18 percent of those arrested - refuse breath or blood alcohol tests, the Observer found. In South Carolina, 32 percent of those arrested on drunken driving charges refuse the tests, according to the S.C. State Law Enforcement Division.

Across North Carolina,

when suspects plead not guilty after declining alcohol tests, about 57 percent who go to trial are convicted. For those who agree to be tested, the conviction rate is about 62 percent.

Drivers sometimes refuse to blow into the Intoxilyzer when they think they'll test over the legal alcohol limit - 0.08 or more.

Police ask many drivers they stop to blow into a hand-held alcohol detection device called an Alco-Sensor, which gives readings that are not admissible in court. Some drivers, after seeing those readings, refuse to blow into the Intoxilyzer, which provides the official results used in court.

That deprives prosecutors of what is often their best evidence.

Judges and defense lawyers say drivers who are repeatedly arrested learn their odds may improve if they refuse. Suspects know they'll face stiffer penalties if they're convicted more than once. They can be jailed, fined up to \$4,000 and lose their licenses for good if they're repeatedly convicted.

In Mecklenburg, more than a third of the suspects found not guilty after refusing alcohol tests had prior DWI convictions, the Observer found in

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TIME AND EXPERIENCE

Veteran defense attorneys often have edge against young prosecutors

BY AMES ALEXANDER
AND GARY L. WRIGHT
Staff Writers

On the desk of his Charlotte law office, George Laughrun keeps a paperweight with a telling inscription: "A good lawyer knows the law. A great lawyer knows the judge."

Laughrun won more than 70 DWI acquittals last year - more than any other defense lawyer in Charlotte.

A courtroom veteran with 24 years of experience, Laughrun defended some of Charlotte's most notorious criminals before focusing on the lucrative practice of defending DWI suspects.

He meticulously prepares each case, reviewing videotapes of police stops to see how his clients performed on sobriety tests and checking documents to make sure police didn't make mistakes.

And he knows which judges are most receptive to which defense arguments.

On most days, Laughrun, 48, squares off against young prosecutors with far less experience and time to prepare their cases.

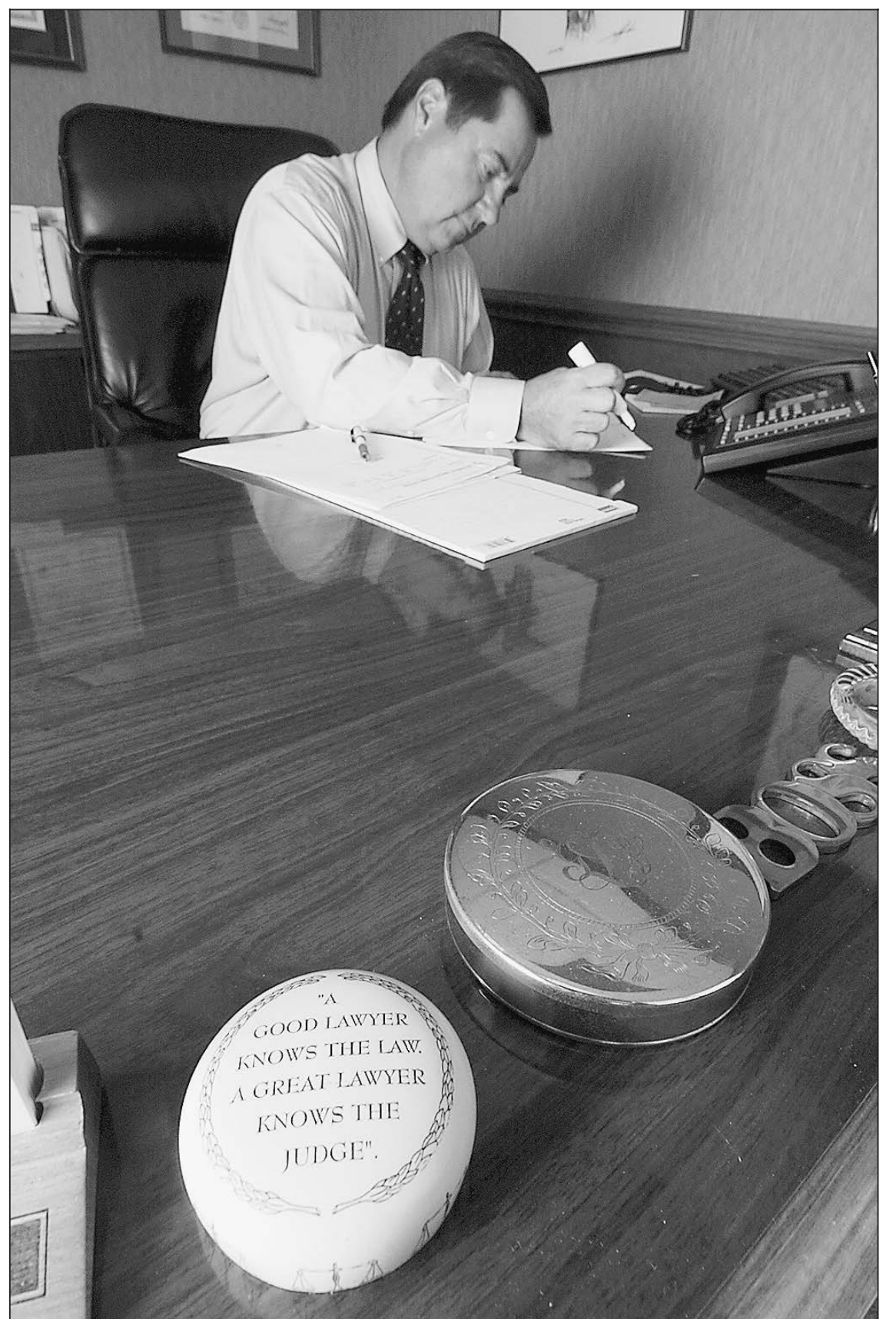
In the courtrooms where DWI cases are fought, defense lawyers often outgun prosecutors. Some of Charlotte's best and most experienced defense lawyers represent people charged with DWI. They typically spend 4 to 10 hours on each case.

The prosecutors who handle DWI cases, on the other hand, tend to be the least experienced in the district attorney's office. And in counties like Mecklenburg, those prosecutors typically handle hundreds of cases each day, so they rarely have more than five minutes to prepare for a DWI trial.

Laughrun said that's "a huge advantage" for defense lawyers.

"Most of the time prosecutors find out about the evidence in a case while the officer is testifying," Laughrun said. "They just don't have the manpower to prepare for all these DWI trials."

But the prosecutors are sharp



LAYNE BAILEY - STAFF PHOTO

Charlotte attorney George Laughrun gets more drunken driving suspects acquitted than any other lawyer in Mecklenburg County.

and learn quickly, lawyers and judges say. They often try more DWI cases in a week than some defense lawyers do in a year.

"They're not in this for the money," Laughrun said. "They want to win and make a difference."

Mecklenburg Deputy District Attorney Bart Menser said: "It is true that experienced defense attorneys pull out their bags of tricks each time they see a new prosecutor."

"Experienced lawyers may pick the pocket of a new assistant dis-

trict attorney one time by relying on some obscure statute or by springing a surprise, but it seldom happens twice."

But young prosecutors often conduct their trials by reading from a prepared list of questions

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