

## ACQUITTALS

## enough to convict

DWI from 8A

whether they're going to win them or not," she said.

Hamilton recalled what she sometimes tells DWI suspects before she acquits them: "I strongly suspect you were driving while impaired. But based on the evidence I've heard I can't find you guilty beyond a reasonable doubt."

Judges say they occasionally have reasonable doubts about things other than the Intoxilyzer reading - whether, for instance, there were adequate reasons for police to stop or arrest the driver.

Paul Gessner was a Raleigh cop and prosecutor before becoming a Wake district judge about eight years ago. His conviction rate was about 15 percent in more than 100 trials, according to state data. More than 50 of the defendants he acquitted tested over the limit.

"I look at the total package - the driving, the police officer's observations and the field sobriety tests," Gessner said.

"I'm not just letting people go. I'm acquitting people when the state can't prove its case."

He said Wake County prosecutors dismiss few DWI charges, bringing their strong and weak cases to court. The prosecutors dismissed about 10 percent of the DWI charges brought during the 26-month period. Statewide, the dismissal rate was 13 percent.

Overall, when Wake's DWI statistics are looked at another way - the percentage of DWI charges that end in guilty pleas or convictions - the county is still below the state average but closer to it.

Statewide, about 74 percent of those who are charged with DWI and blow over the legal limit are convicted or plead guilty. In Wake County, it's about 70 percent. The other 30 percent includes cases that were dismissed or ended in not guilty verdicts.

But when DWI suspects plead not guilty and go to trial, Wake's conviction rate is the state's second lowest.

Wake County District Attorney Colon Willoughby said he finds it hard to believe the N.C. Administrative Office of the Courts' numbers on the results of DWI trials in his county. His staff doesn't keep such statistics, he said.

"I would have expected over a 50 percent conviction rate," Willoughby said. "Our judges are good solid judges."

He believes the suspects prosecutors take to court are breaking the law. He thinks judges sometimes acquit suspects even though his prosecutors have proved their cases.

Stephen Morgart, who heads Wake County's MADD chapter, expressed shock at the low conviction rate.

"That conviction rate is horrible," Morgart said. "If people knew this, they wouldn't vote for these judges."

## Convictions vary by county

DWI justice can change when you cross county lines.

Judges in counties that permit countywide alcohol sales generally convict a lower percentage of drunken drivers than judges in counties that don't, statistics show. And judges in the state's most populous counties tend to convict a lower percentage than judges in surrounding counties.

Town of Davidson police Sgt. Ronnie Messer said some officers there wait until suspects cross from Mecklenburg into Iredell County before

## FORMER WINGATE PROFESSOR



JEFF SINER - STAFF PHOTO

Doctors thought Geoff Whitehead (with a photo of himself after the accident) might always be in a wheelchair after a drunken driver hit him. Today he walks, though with a limp.

## Biker's scars legacy of a drunken driver

MONROE — Geoff Whitehead says he always wore a helmet and chose lightly traveled roads when he pedaled across the Union County countryside.

He doesn't remember seeing a Chevy pickup weaving behind him, one late afternoon in October 2000. Another driver did. She called 911: "I think he might be drinking."

The pickup veered, hit Whitehead and threw him about 100 feet, court records show. Airlifted to a Charlotte hospital, he had fractured bones everywhere: ribs, pelvis, knee, ankle, wrist, fingers. The worst was his broken lower back.

A Highway Patrol trooper arrested the pickup's driver. The 50-year-old had traveled a few hundred feet farther and hit a truck, court records show. His alcohol level registered 0.30 percent, nearly four times the legal limit. He pleaded guilty in July 2001 and was sentenced to 30 days in jail and about \$3,700 in restitution and fines.

He had been charged with drunken driving before, but got off. Two years earlier, he had driven off a road, according to an incident report. His alcohol level was 0.28 percent. He said he was driving, the report says. But his lawyer argued that statement couldn't be used in court. A judge found him not guilty.

Whitehead, now 39, spent almost three months in a hospital and in rehab. He had three surgeries. A former Wingate University music professor, he often warned students against drinking and driving. "It's not much different from running around with a gun, shooting," he says. — LISA HAMMERSLY MUNN

stopping them, hoping to improve odds for a conviction.

Judges in the district that includes Iredell convict more than 75 percent of those who go to trial after testing at 0.08 or above. About 60 percent are convicted in Mecklenburg.

Defense lawyer George Laughrun, who wins more DWI acquittals than any other Charlotte lawyer, often tells his clients they may be in trouble if they've been arrested outside Mecklenburg County.

One of Laughrun's clients was arrested on DWI charges three times last year - twice in Mecklenburg, once in Iredell. The man was acquitted both times in Mecklenburg, then pleaded guilty in Iredell.

"I always tell folks, 'You're in a different world in a smaller county. They're more law-and-order oriented,'" Laughrun said.

Some judges and experts say community values - such as the public's tolerance for alcohol and its views about punishing criminals - help shape the way judges decide cases. After all, they said, judges are elected officials, too.

"Judges take an oath to follow the law, and I think they mean it, but they also want to keep their jobs," said Jim Drennan, of UNC Chapel Hill's Institute of Government. "And

following the law and keeping their jobs sometimes are in tension with each other."

## 'Highly reliable instruments'

North Carolina's drunken driving law is simple.

Drivers commit the offense, the law says, if they drive while physically or mentally impaired, or if they have an alcohol concentration of 0.08 percent or more.

If a police officer had cause to stop and arrest a driver, an Intoxilyzer reading of 0.08 or above is enough for a conviction, national experts say.

"These are highly reliable instruments. If the stop was good and they failed the chemical test, I really don't think you need any more," said Michele Fields, counsel for the Insurance Institute for Highway Safety, in Arlington, Va., and an expert on DWI laws.

The readings on an Intoxilyzer, which costs \$6,000 and is about the size of a VCR, are accurate to within 0.003, its manufacturer says. Generally, if the Intoxilyzer errs at all, it's in the defendant's favor, according to Patrick Harding, a Wisconsin toxicologist who has studied the instrument's accuracy.

Suspects blow into the instrument after they're arrested. That's usually an hour

or more after the traffic stop, time enough for the alcohol level to drop.

"There are lots of safeguards to ensure you're not falsely accusing the defendant," said Jim Frank, a researcher with the National Highway Traffic Safety Administration.

Charlotte lawyer Fountain Odom, a former state senator who helped write the current law, said lawmakers expected Intoxilyzer readings of 0.08 or more would almost always be enough to convict. The machine, not judges, should determine whether a defendant has reached 0.08, Odom said.

"A reading of .08 is sufficient for a conviction," he said. "It would take some pretty strong evidence to the contrary to allow a judge to say, 'I think there is a reasonable doubt here.'"

The N.C. Supreme Court has ruled that when tests are properly administered and show alcohol levels above the limit, that's enough to prove the driver was impaired.

Chief Justice Lake said judges shouldn't acquit DWI suspects simply because they have a general distrust of the Intoxilyzer. Judges should consider the Intoxilyzer's reading accurate, Lake said, unless defense lawyers have presented convincing evidence that the instrument was not operating properly.

"The decision to convict or not to convict has to be based on the evidence before the judge, not on any preconceived suspicions about the accuracy of the Intoxilyzer," Lake said.

Raleigh police Sgt. Timothy Tomczak remembers asking a judge why he acquitted a defendant who had registered 0.09 after staggering out of his car during a traffic stop.

"The judge said it was his job to sit in judgment," Tomczak said. "He said he didn't think the suspect was impaired, and it was his decision."

Instead of requiring prosecutors to prove either an alcohol level of 0.08 or other evidence of impairment as the law states, Tomczak says, some judges require both.

"The judges are legislating from the bench," he said. "That's the real problem."

Many N.C. judges with high conviction rates say they bank on the machine.

Judge Laura Bridges is one of six judges in Henderson, McDowell, Polk, Rutherford and Transylvania counties where the overall conviction rate for all DWI trials is about 97 percent. That's the highest of any district in the state.

Bridges presided over more than 200 drunken driving trials in the 26 months the Observer studied. She convicted all but one suspect. "If you are .08, our statute says you are impaired," she said.

In Cabarrus County, just east of Charlotte, few DWI suspects get a break in court. About eight of every 10 who go to trial after blowing over the legal limit are convicted.

That's partly because prosecutors are well-trained, and police prepare their cases well, says County District Attorney Roxann Vaneekhoven. There's also something else, she says.

"Our judges are following the law."

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## REPORTING METHOD

## How we did this investigation

To compile information for these stories on N.C. DWI trials, Observer reporters watched trials, conducted more than a hundred interviews, examined thousands of court documents and analyzed computerized court records and alcohol test results.

The court cases are those that began with a charge of driving while impaired - the state's most common drinking-and-driving charge - and ended with the court taking final action between January 2002 and February 2004.

Basic information on these almost 147,000 cases came from computer files obtained from the N.C. Administrative Office of the Courts.

About a third of those cases are closed before they reach a judge or get a verdict. These include dismissals.

Of the more than 98,000 cases that do end in a verdict, about 84 percent involved defendants who pleaded guilty.

The DWI trial stories focus on the almost 16,000 contested cases that are tried before a judge and end with a verdict.

The Observer also obtained computer records of alcohol test results from the N.C. Department of Health and Human Services. These results were matched against the court case data to identify more than 9,500 contested DWI cases in which a defendant had tested over the legal limit - 0.08 percent or more.

In this matching, the Observer also found that in about 18 percent of all cases, the defendant had refused to take an alcohol test. Refusals accounted for almost a quarter of contested cases.

Matching failed to find alcohol test information for about 13 percent of contested cases. The Observer examined verdict patterns for these cases to ensure they could not adversely affect reported statistics. This included a survey of selected court cases in seven counties.

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## 'I wish I was dead - not him'

## Brother from 1A

"I think the court system is sending the message it's OK to drink and drive," said Debbie O'Quinn, who heads the Cumberland County chapter of Mothers Against Drunk Driving and whose daughter was injured by a drunken driver in 1988. "More families are going to be devastated by injury and death."

In 2000, Barron was charged with driving while impaired. Tests showed his alcohol level was twice the legal limit, but the case was dismissed. Prosecutors in Cumberland County dismiss more than 30 percent of DWI cases - one of the highest dismissal rates in the state.

Three months later, Barron was again charged after he was pulled over by a Fayetteville police officer who saw him crossing the white line. He registered 0.09 percent on the Intoxilyzer.

Cumberland County Judge Ed Donaldson found Barron not guilty.

During the 26 months ending in February 2004, Donaldson tried nearly 700 DWI defendants and acquitted about 500. No other N.C. judge tried or acquitted that many. His conviction rate on all DWI trials - less than 30 percent - is among the lowest in the state among judges who regularly hear DWI cases. At least 330 of those Donaldson acquitted tested over the legal limit.

Donaldson said he doesn't remember Barron's case. He said he doesn't concern himself with statistics, but does what he thinks is right. He says he's often skeptical about Intoxilyzer results and that he's seen cases where the machine has malfunctioned.

Donaldson, formerly a prosecutor and a defense lawyer who represented many DWI suspects, says he tells prosecutors not to rely on alcohol tests. "Try your case as though it doesn't exist," he tells them.

## A boom, a smell of alcohol

Barron, now 25, says he'd been guzzling so much beer he doesn't remember the crash

that killed his brother.

Aaron Long remembers. Then 17, he was driving home on the same two-lane road that night after playing pool at a friend's house in Hope Mills, just south of Fayetteville.

He remembers seeing a car cross the no-passing lines, whip by him and begin fishtailing. He heard a boom, then saw the car's tail lights go out. The Honda broke apart after slamming into trees.

Long saw beer bottles scattered around the wreckage and noticed an overwhelming smell of alcohol. He says he saw Barron wedged between the steering wheel and the door, and his brother, Dewayne, bloody and unconscious.

"If he had hit me," Long said, "I would have been dead."

Dewayne Barron, 22, died hours later. He left behind an infant son.

Robert Barron's alcohol level was 0.21, according to a blood test. He pleaded guilty to involuntary manslaughter and was sentenced to at least 20 months in prison. He'll likely get out in September.

Barron said he and his brother drank for hours before the crash. "It was the alcohol making all the decisions that night."

He says his brother was his best friend.

"I wish I was dead - not him," he said.

Barron said when his brother's son, Isaiah, now 2, grows up, he wants to be the one to tell him what happened to his father.

"That's my responsibility," he said.

When he leaves prison, Barron says he hopes to talk to children about the dangers of drinking and driving.

"Nobody should drink and drive," he said. "It took losing my brother for me to know that."



Long says, "I would have been dead," if Barron had hit him.

## JAIL

At the jail, suspects are asked to blow into an Intoxilyzer, designed to measure their alcohol level. They blow twice. The lower reading is used. Suspects can refuse to blow. If they refuse, their license will be taken away for a year.

## LAWYERS

Later, defense lawyers often will meet with officers at the courthouse to learn about the evidence. They'll review videotapes of field sobriety tests, and examine paperwork to see if it's properly filled out.

## COURT

Prosecutors sometimes dismiss cases if officers fail to show up to testify in court. They also dismiss some cases because of problems with evidence, such as a lack of eyewitnesses to an accident.

Suspects can plead guilty or go to trial.

## CASE COUNT

Prosecutors handled nearly 150,000 DWI cases in North Carolina from January 2002 through February 2004. Here's what happened to them:

About 48,500 were dismissed or not prosecuted.

About 82,500 defendants pleaded guilty.

About 16,000 pleaded not guilty and went to trial.

Of those tried, about 6,400 were found not guilty.

Of those not guilty, more than 3,500 had tested over the legal alcohol limit.