

# ACQUITTALS often pays off

## Refusals from 8A

the 14-month period. Of the 138 who were acquitted after refusing, 49 had previously been convicted. Eighteen had two or more convictions.

"DWIs don't teach drunk drivers not to drink and drive," Mecklenburg District Judge Nate Proctor said. "It teaches them not to blow the next time."

## Should refusing be crime?

A task force convened by Gov. Mike Easley is examining how North Carolina could better fight drunken driving.

Task force member Ike Avery, former counsel to the N.C. Highway Patrol, has proposed that the state make it a crime for people to refuse if they have three prior DWI convictions or if they're involved in an accident where people are killed or injured.

In a Mothers Against Drunk Driving survey of refusal rates in 33 states, North Carolina's rate was higher than most.

Eleven states have made it a crime for drivers to decline alcohol tests. Neither of the Carolinas has.

Some highway safety advocates argue that fewer people

would refuse the tests if it were a crime to do so.

In Vermont, only 4 percent of those arrested for drunken driving refused alcohol tests in 2002, according to the Governor's Highway Safety Program. That was the lowest refusal rate in the MADD study.

Those who refuse alcohol tests in Vermont lose their driving privileges for twice as long as those who test over the legal limit. Refusals count as prior DWI offenses, meaning that punishments are harsher if the drivers are convicted again.

"With such harsh penalties for refusal, nobody refuses," said Chuck Satterfield, a spokesman for the Vermont Governor's Highway Safety Program. "So we're able to make it clear what the alcohol level is, and there's less likely to be a second offense or a third offense."

This year, Virginia enacted some of the country's strongest drunken driving laws. Police there can now charge repeat DWI offenders who refuse to take alcohol tests.

## Different views on refusals

When suspects refuse to take alcohol tests, the courts can consider that as incriminating evidence. But statistics suggest that judges across the

state interpret refusals in vastly different ways.

In the judicial district that includes the mountain counties of McDowell and Rutherford, more than 90 percent of those who declined to blow were convicted at trial. In Buncombe County, which includes Asheville, more than 80 percent were found guilty.

But fewer than 15 percent were convicted in Wake County, where Raleigh is located, and in the Eastern North Carolina counties of Carteret, Craven and Pamlico.

In Mecklenburg, conviction rates among judges vary dramatically - from 13 percent to 76 percent - when suspects refuse to blow.

District Judge Phil Howerton, who convicts about half of those who refuse, says he thinks declining the test is "a pretty clear sign that they've been convicted before."

When suspects refuse, Howerton says he's "a little more inclined to look skeptically on any declaration of innocence." But, the judge asks, when they refuse all tests, "what have I got?"

"I've got a guy with red glassy eyes, no bad driving, an odor of alcohol. And nothing else. Now I can't find that guy guilty."

"It seems like every year there's a senseless tragic death because of drunk driving. Those kinds of cases prey on judges' minds."

GUILFORD CHIEF DISTRICT JUDGE JOSEPH TURNER



JEFF SINER - STAFF PHOTO

Guilford County MADD leader Mike Jackson helped publicize DWI conviction rates of the county's judges. Jackson walks past a plaque in memory of victims of drunken drivers.

## Getting MADD helps conviction rate soar

After teen died, new Guilford chapter began scrutinizing judges

BY GARY L. WRIGHT  
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Fifteen years ago, it took death and anger to change the way Guilford County judges treat drunken driving suspects.

In the late 1980s, the county's judges were convicting fewer than 60 percent of the DWI defendants they tried, according to the county's Mothers Against Drunk Driving chapter.

The catalyst for change came on Dec. 1, 1989, when 16-year-old Allison Gannon was killed by a drunken driver with a prior DWI conviction.

Neighbor Mike Jackson left Gannon's funeral determined to do something about the problem. He tried to donate money to Guilford's MADD chapter, but found there was none. So he decided to start one himself.

Soon, he and others were sitting in court in Greensboro and High Point to learn how judges handled DWI cases. They published district judges' DWI conviction rates in a monthly newsletter. Conviction rates climbed.

In subsequent judicial campaigns, MADD members mustered opposition to judges who they believed acquitted too many defendants. Two of those judges lost their re-election bids, Jackson said.

The county's judges have convicted about 90 percent of drunken driving suspects who come to trial - the state's third highest DWI conviction rate, according to an Observer analysis of cases handled from January 2002 through February 2004.

"They're finding people guilty," said Jackson, 57, a blind man who owned a local manufacturing business. "That's all we wanted. They're doing their jobs."

But some critics suggest that Guilford County's DWI conviction rate is padded. Defense lawyers, they say, are pleading clients not guilty even though they know the evidence against their clients is overwhelming and the trials will end in convictions. Sometimes, after entering not guilty pleas, the defense lawyers acknowledge their clients are guilty and don't present any evidence.

Defense lawyers began using the tactic, sources said, to increase the county's conviction rate and protect judges who were under fire from MADD.

Jackson thinks some of that is happening. "It's downright

## Judges' records not easy to track in N.C.

Keeping tabs on judges' records isn't easy. No N.C. agency tracks or publicizes the conviction rates of judges.

The Administrative Office of the Courts in Raleigh has the data to do it. But the agency isn't interested in grading judges, a spokesman says.

"It's not up to us to inform people about judges' records ... to keep score or grade the judges. That's up to the people," says courts spokesman Dick Ellis. "Judges are elected officials. It's up to the people to put them in or take them out."

Voters must rely on advocacy groups, such as Mothers Against Drunk Driving, or go to individual courtrooms to track how a judge is handling DWI cases, says Ellis. A judge who is convicting too many or too few can also be detected, he said, when prosecutors, defense attorneys or other judges complain.

The Observer used the courts' data to calculate the DWI conviction rates of N.C. judges for this series of articles. At least one state publishes a similar report to help citizens scrutinize judges' performance.

The New Mexico Administrative Office of the Courts compiles statistics on DWI convictions and acquittals for each judge, and makes the data available on the Web. — LIZ CHANDLER AND AMES ALEXANDER

## ON THEIR SIDE



JEFF SINER - STAFF PHOTO

Lawyer Linda Klein aggressively defends her DWI suspects. Klein was badly injured in a 1981 wreck involving a driver she says had been drinking. Klein's hip was broken and she still walks with a limp.

"The prosecutor's job is to seek justice. My job is to win the case if it's winnable."

CHARLOTTE DEFENSE LAWYER LINDA KLEIN, WHO HANDLED MORE THAN 100 DWI CASES LAST YEAR

## Defense from 8A

when police officers testify.

In Cumberland County, some inexperienced prosecutors don't deviate from that list, and fail to ask key questions, according to Fayetteville police officer Matthew Dow.

"Often times, I'm on the stand, and I think, 'Are you going to ask me the obvious question here?' And often times, they don't," said Dow, who has conducted hundreds of DWI arrests and now helps train officers.

## Adept at finding holes

Veteran defense lawyers, who are typically paid between \$750 and several thousand dollars per case, are quick to find and exploit holes in the prosecution's cases.

In one recent trial in Mecklenburg County, a state trooper testified that the defendant had to reach for the wall to keep his balance during a field sobriety test. On another test, the suspect

touched his nose with the wrong finger. The suspect said he'd had three beers before driving, the officer noted. And he refused to take a breath alcohol test.

The trial was dominated by 54-year-old defense attorney Eben Rawls, who is among Charlotte's most successful lawyers in obtaining DWI acquittals.

Cross-examining the officer, Rawls elicited facts to help his client: The man said he had an injured leg. He had recited the alphabet properly. He had been polite to the officer.

Rawls, who has practiced law for 26 years, told the judge that it's not illegal to drink and drive - only to drink to the point of impairment.

Judge Hugh Lewis found the defendant not guilty.

"I have to deal with the evidence I've got here," Lewis said.

In DWI cases, defense lawyers know that the stakes for their clients are high.

"The prosecutor's job is to seek justice," said defense lawyer Linda Klein, who handled more

than 100 DWI cases last year and was one of the more successful lawyers in winning acquittals. "My job is to win the case if it's winnable."

Klein, 50, puts on a vigorous defense for her clients. Afterward, she said, she often chews them out.

"I tell them, 'I'm happy I won your case. But you're lucky you didn't kill yourself or someone else. You still had way too much to drink to be driving.'"

In 1981, Klein was traveling on a two-lane road in Rutherfordton when a driver who she said had been drinking hit her car head-on. Her hip was broken in many places, and she now has an artificial hip, an artificial knee and almost constant pain. At times over the years, she has had to rely on crutches or a cane.

After Klein has won a DWI acquittal, she often lectures her client.

"I tell them, 'You're going to have to look at this cane and understand the consequences of drinking and driving.'"

said. "They're not afraid to find people not guilty."

He said there have been some "absolutely horrible deaths" from drunken driving in Guilford County.

"It seems like every year there's a senseless tragic death because of drunk driving. Those kinds of cases prey on judges' minds," Turner said. "They don't want to be the judge who finds someone not guilty and then that person goes out and drinks and drives and commits one of these fatalities."

During the 26-month period, Guilford judges acquitted fewer than 130 DWI suspects - the least among the state's large urban counties. Mecklenburg County has less than twice Guilford's population, but acquitted more than four times as many DWI suspects.

Guilford District Judge William Daisy, who has served on the bench for more than two decades, is confident the county has one of the state's highest conviction rates.

Daisy tried more than 130 DWI defendants during the 26-month period and convicted all but two of them. Guilford's judges, he says, are serious about DWI.

"I attribute a lot of it to the influence of MADD and the general sentiment of citizens up here," Daisy says. "Our community is not going to tolerate drunk driving."

dishonest," he said. "It makes me mad as hell. They're padding the books to fool the public."

Even so, Jackson says there's no question the county's judges have gotten far tougher on DWI suspects since the early 1990s.

Some Guilford judges acknowledge that defense lawyers are still entering not guilty pleas in unwinnable cases. But the tactic, the judges said, accounts for only a small number of the county's DWI convictions.

There are lots of legitimate reasons for DWI suspects to plead not guilty even if the incriminating evidence is overwhelming. If DWI suspects involved in accidents plead guilty, that can be used against them in a civil lawsuit over the wreck. If they plead not guilty and are convicted, the guilty verdict can't be used against them.

Guilford Chief District Judge Joseph Turner said lawyers started using the tactic to take the heat off judges.

"The lawyers resented that MADD was attacking judges," Turner said. "This was one way to relieve that pressure."

Defense lawyers may still be pleading clients not guilty in unwinnable cases, Turner said, but in nowhere near the numbers of the early 1990s.

"I don't think judges here are running scared," Turner