

THE DWI NEWSLETTER

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THE TEXAS CENTER FOR
THE JUDICIARY *and*
THE TEXAS DEPARTMENT
OF TRANSPORTATION



Summer 2014 Newsletter

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IN THIS ISSUE



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In the Summer 2014 Edition of the DWI Newsletter, the "Report from the Texas Traffic Safety Grant Program" addresses the recent activities engaged in by [Judge Laura Weiser](#), Judicial Resource Liaison, and Ms. Holly Doran, TxDOT Program Director, on behalf of the Program.

"Upcoming Programs" lists upcoming impaired driving education available through the Texas Center.

The "Education Spotlight" focuses on July's DWI Conference for DWI Court Teams.

Judge Liza Rodriguez, Bexar County Court at Law #8, details her experience in "Reflections of a First Year DWI Court Judge."

Judge Kelly Case, 9th Judicial District Court, Montgomery County, presents the second installment in the science for judges series with his article, "The Dating Game."

"In the News" provides a link to recent news articles involving impaired driving issues from sources local, statewide, national and international.

We are continuously adding to the [Texas Judges' DWI Resource Website](#) with news articles and upcoming educational opportunities. We hope you find information in this Newsletter interesting and helpful.

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REPORT FROM THE TEXAS TRAFFIC SAFETY GRANT PROGRAM

Judge Laura A. Weiser, TxDOT Judicial Resource Liaison



Springtime was a busy time for the program. The DWI court team training was held in March in San Marcos, Texas. This training concentrated on training new DWI courts as well as new members of existing DWI courts with a focus on the 10 guiding principles of DWI Courts. Many thanks to Judge Randy Gray for allowing the attendees to view his staffing and DWI Court session.

The end of April found Judge Weiser in Nashville, TN for the 2014 Lifesavers Conference. The Lifesavers Conference brings together a unique combination of public health and safety professionals, researchers, volunteers, and practitioners who are committed to sharing best practices, research, and policy initiatives in a variety of areas relating to traffic safety including impaired driving.

In May, Holly and Judge Weiser attended the 2014 Texas Traffic Safety Conference in San Antonio. The conference offered a wide range of traffic safety topics including impaired driving. These topics focus on a common goal: significant and permanent reductions in the deaths and injuries on the streets and highways in Texas.

Judge Weiser also travelled to Norman, OK to speak at the Statewide Judicial Education Program on the subject of sentencing considerations with hard core DWI defendants and to Baltimore, MD to participate in a panel discussion regarding increasing participation in interlock usage at the Association of Ignition Interlock Program Administrators conference.

Holly and Judge Weiser also attended the National Association of Drug Court Professionals 25th Annual Conference in Anaheim, CA. NADCP presented topics on every aspect of problem solving courts, including what issues to watch for now and what issues the future may bring. Holly and Judge Weiser have also been working with the Texas Impaired Driving Task Force to review and update the Texas Impaired Driving Plan.

We look forward to continuing to provide technical assistance and information to the judges of Texas on issues involving impaired driving.

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UPCOMING PROGRAMS

The Traffic Safety Grant is excited to present impaired driving education at the following conferences:



DWI Conference for DWI Court Teams

(for all members of DWI Court teams)

July 10-11, 2014

Radisson, Austin

The DWI Conference provides an ideal forum for DWI Court teams to share information and explore best practices in an effort to reduce the number of impaired driving crashes and fatalities in Texas.

For more details or to register, click [here](#).



DWI Summit South Texas

(for judges)

August 1, 2014 | 10:00 a.m. - 3:00 p.m.

Embassy Suites McAllen

Once again we are delighted to partner with the Texas Association of Counties to the DWI Summit. The agenda includes blood warrants, pre-trial issues, pro se litigants and occupational licenses.

For more details or to register, click [here](#).

Annual Judicial Education Conference

(for judges)

September 7-10, 2014

Omni, Ft. Worth

The TxDOT Traffic Safety Grant will sponsor three one-hour impaired driving sessions. Registration to open soon.

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EDUCATION SPOTLIGHT: DWI CONFERENCE FOR DWI COURT TEAMS

The 2014 DWI Conference for DWI Court Teams will take place July 10 – July 11, 2014 (with a special session for DWI Court judges on the evening of July 9) at the Radisson Downtown Austin. For more details about the conference or to register, please visit the conference website [here](#). This year's conference will also provide an opportunity to highlight accomplishments with the spotlight on success initiative.



Spotlight on Success

Do you know a DWI Court that has been extraordinarily successful in implementing the DWI Court Guiding Principles? Nominate them for recognition at the DWI Conference.

Self nominations are welcome. Please complete the [nomination form](#) and return it to [Holly Doran](#) by June 27, 2014.

Do you have a team member that goes above and beyond the call of duty? Nominate them to be recognized at the DWI Conference. You may nominate team members in the following categories:

- | | |
|------------------|-------------------------------|
| Judge | Treatment Provider |
| Prosecutor | Community Supervision Officer |
| Defense Attorney | Law Enforcement |
| Evaluator | Program Coordinator |

Please complete the nomination form [here](#) and return it to [Holly Doran](#) by June 27.

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REFLECTIONS OF A FIRST YEAR DWI COURT JUDGE

Judge Liza Rodriguez, Bexar County Court at Law



In 1998 as I began my career as a young prosecutor I had much to learn about the criminal justice system. Having never set foot in a criminal courtroom, I had no idea what occurred on a daily basis in criminal courtrooms all over the great state of Texas. To that point in my life, the only actual criminal trial that I had observed in any way were glimpses of the OJ Simpson trial which I watched while on break from studying for my bar exam. It was probably for this reason that I remember vividly at the end of my first jury trial (which ironically was a DWI 2d) when the judge sentenced the Defendant to “one year in the county jail,” I was stunned. Having been so far removed from such a thing, I found it difficult to comprehend that this very non-descript young man who had been stopped on his way back from the beach, doing something that people do all the

time, would be spending the next year of his life in the county jail. From that day on, I began to understand that DWI offenders were rampant in Bexar County and no amount of trials, plea bargaining, or jail sentences changed a thing.

After six months I was assigned to Judge Al Alonso in County Court #1. In passing conversation Judge Alonso mentioned something about Drug Courts and that the majority of our crime is caused by persons under the influence of drugs or alcohol. I listened politely, but knew that intoxication was not a defense under the law, so I wasn't quite sure of the relevance. After spending about a year in the misdemeanor courts dealing with DWI cases on a daily basis, I became somewhat unfazed by the impact they had on the court system and our community. For me, each day was just another day in court where far too many people chose to get behind the wheel after having had too much to drink. After being promoted to felony court, I was actually assigned to Bexar County's DWI Task Force, a unit of three attorneys which operated under one Chief and handled every felony DWI case in the County, including Intoxication Assaults and Manslaughters. No small task for a County of our size with a DWI problem to match. Day after day, week after week for almost a year I reviewed DWI cases for grand jury indictment, ran between three to four District Courts conferring, pleading and trying felony DWIs. Never really pausing to consider the reason behind the staggering numbers, or how these types of cases affect so many people, or why anyone would commit such a senseless crime over and over. After my stint on the DWI Task Force, I continued my time at the District Attorney's office handling a plethora of felony cases involving Aggravated Robberies, Theft, Drugs, Assaults, Murder, and the list went on and on. I'm a little embarrassed to say that I didn't focus too much, if at

all, on the root cause of the majority of these crimes. Judge Alonso's words echo in my mind clear as a bell, most of the cases I dealt with were rooted in drugs, alcohol, mental illness, or a combination thereof.

Fast forward some 13 years and I am now a sitting County Court Judge attending one of my very first conferences in Galveston, Texas. It is titled "Evidence Based Sentencing." What can this possibly mean? I'm curious, so I decide to attend. It was at this conference that I heard from the Honorable John Creuzot about how we, as judges need to make sure that our sentencing makes sense. Well, if someone commits a crime, they must be punished, right? That makes sense, doesn't it? What else is there to consider? Apparently, a lot. We took a short "quiz" at the beginning of the conference to see what our knowledge was relative to effective sentencing. Of the 10 or so questions posed, I'm not ashamed to say I answered a little more than half correctly. Without having any real training in sentencing, per se, I somehow was able to figure out which sentencing methods were not considered effective. I guess the Drug Court seed was already planted in me, and I believe it is already planted in most of us. Sentencing needs to make sense. It needs to be based in some rational basis resulting in a fair and just outcome overall. Very shortly after that conference my interest in the Drug Court model was piqued. I was fortunate in being able to attend the National Drug Court Conference in Washington D.C. in 2011 and there was no turning back. As one of the speakers stated at that very conference, anyone who understands Drug Courts will support Drug Courts. Witnessing the "Parade of Transformation" literally caused a transformation of sorts in me. I didn't know how I was going to be involved, but I knew that I wanted a piece of this. I wanted to be a part of a growing community that is tired of the traditional sentencing model that drains public resources and has never been shown to work, and instead utilize an alternative that results in transforming lives in ways never before possible in the criminal justice system.

My first year on the bench I had the privilege of being asked to participate as a DWI Curriculum Committee member for the Texas Center for the Judiciary and it was as a Committee member that I was introduced to DWI Courts. My colleagues on the committee were exceptionally knowledgeable, obviously committed to making DWI Courts work in their respective communities, and extremely gracious in sharing any and all information they had to help other start-up, or improve their existing DWI Courts. I soaked up as much information as possible about DWI Courts during these committee meetings and knew early on that I had to make this happen in my county. In fact, I was puzzled as to why a county of our size wouldn't already have a stand-alone DWI Court in existence. Now perhaps I understand. Two years I planned and lobbied and collaborated and worried and hoped and finally on April 23rd, 2013 the Commissioners Court of Bexar County passed a resolution approving our application for Federal Grant funds to establish Bexar County's first stand- alone DWI Court. There are many, many things I learned thru the experience of establishing a "specialty court," but there really aren't enough pages in this newsletter to discuss them all!



On May 3rd, 2013 I called my first DWI Court docket. It was truly a memorable day for me and all those who worked so hard to make it happen. We started with six participants in the courtroom that day. Today as we come up on the first year anniversary of our first docket we have 36 participants of which two who will be graduating on May 2nd, almost one year to the date of our first docket. The last year has been filled with many challenges and we are constantly trying to fine tune our court processes to ensure that we give each participant the best chance at succeeding and moving on to live a sober, productive

life. As a judge, I cannot think of anything more rewarding than what I do when I preside over DWI Court. I am blessed and honored to have the opportunity.

More information about the Bexar County DWI Court can be found on their website [here](#).

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THE DATING GAME

Judge Kelly W. Case, 9th Judicial District Court, Montgomery County



Most judges are familiar with the fact that a blood vial has an expiration date. Usually, these dates are covered up by evidence tape and are difficult to determine, but upon careful examination, the expiration date can be located. BD Vacutainers is the manufacturer for the vials in blood kits used here in Texas. BD Vacutainer tubes have an expiration date that is set by the last day of the noted month and the year. For example, a tube with an expiration date of 01/2014 would be set to expire on January 31, 2014.

However, the blood kits that are used in Texas, contain additional expiration dates, and these do not always match the date on the vial!

The povidone patch used to clean the area where the blood draw will be taken, has another, potentially different, expiration date. This date is completely separate and not associated with the date on the vacutainer tube. If the swab expiration date were prior to the vacutainer expiration date, this could be an exculpatory issue. It is important to note that the date contained on the povidone patch wrapper can be completely different from the vacutainer tubes and this date should be noted in the nurse's report. Preferably, the swab packaging will be retained as a piece of evidence, which it most certainly is, in a blood alcohol case. Throwing away this valuable evidence is negligent at best and criminal at worst as it is the only proof of the expiration date of the povidone patch. New Texas discovery rules going into effect January 1, 2014 make it clear that exculpatory evidence **MUST** be disclosed to the defense. This has been the law of the land since 1963 when the United States Supreme Court decided the landmark decision in *Brady v. Maryland*, 373 U.S 83 (1963).

Finally, the kit itself contains an expiration date on the outside of the box. Once again, this expiration date has no connection whatsoever to the other two (2) expiration dates already noted and may in fact expire in a completely different year!

So, instead of one (1) expiration date, we really have three (3) that must be considered.

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IN THE NEWS



Treating Bexar's DWI plague

(San Antonio Express-News, 04/19/2014)

SAN ANTONIO — Bexar County's drinking-and-driving problem stands out even in Texas, the state with the highest rate of alcohol-related crash fatalities, and especially during Fiesta, when law enforcement and state agencies clamp down.

DUI laws could be complicated by SCOTUS ruling

(ABA Journal, 04/18/2014)

In December 2012, Emily Sue Falkenstein of Renton, Wash., drove into a marked crosswalk where wheelchair-bound Gregory Ramirez, 48, was crossing with his 6-year-old niece in his lap. The crash broke his leg and his wheelchair, and it left the girl with bruises and scrapes, according to court papers.

Suspicious of Drug Courts? Don't Be. A judge's perspective.

by Judge Donald Dowd

(Texas Bar Journal, April 2014)

Drug Courts are a murky concept to many criminal defense attorneys who are naturally suspicious and reluctant to advise a client to enter a program that exists outside the realm of "normal" criminal courts tightly governed by the Texas Code of Criminal Procedure, Texas Penal Code, and other statutes.



El Paso County DWI program receives national recognition

(KFOX El Paso, 03/25/2014)

EL PASO, Texas -- The El Paso County DWI Drug Court Intervention and Treatment Program is one of only four drug courts in the country to be named a National Academy Court. The award means the program could receive more funding at the state and federal level to put more offenders through the program.

Read the press release [here](#).

Court declines to erase DWI arrest records

(Austin American-Statesman, 03/20/2014)

Clarifying when arrest records can be erased, the 3rd Court of Appeals in Austin ruled Thursday that a man was not entitled to expunge his driving while intoxicated arrest in Williamson County even though he was convicted of a different, though related, offense.

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CONTACT US

This newsletter has been provided by the Texas Center for the Judiciary pursuant to a grant from TxDOT. If you have suggestions for items to be included in this Newsletter or wish to be removed from the Newsletter mailing list, please contact:

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The DWI Listserv is now open to all judges handling DWI cases. If you would like to be added to the Listserv please send an email to hollyd@yourhonor.com

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