

DWI Task Force Meeting Minutes

December 15, 2017

Welcome and introductions

Forums coming up:

Frank Saenz with TxDOT was in attendance. He suggested everyone should go to the Forum in February. The Task Force was handed a Dying to Drive handout regarding that forum. Clay agreed with Frank and said it would be good to have prosecutor representation. They would be able to see what other people are doing.

Frank also brought up the national Life Savers conference in San Antonio (Task Force members received handout for that conference). Clay added that Life Savers is Like the Task Force, but on a national scale and that they need volunteers to help out with the conference. If anyone is interested in volunteering, he said to contact Frank. Jessica volunteered. Clay said it would be good to have prosecutors from the DWI Task Force there.

Discussing FY2019 Grant:

Began by talking about courses we have set for FY2018 (current fiscal year). Kaylene will send a full list to everyone when all are finalized (about 5 outstanding). For this meeting, we'll talk about what other trainings we need/want to do for FY2019. Started talking about deliverables on the TxDOT grant (referred to handout) and talked about TxDOT mail out for TDCAA Publications. Went over books listed on the agenda and when they were last updated. Traffic Stops was not listed on agenda, but Clay talked about it because it was just updated this year (2017). It was then discussed what publications would be worthwhile to send out to prosecutors in later grant years. Allison Tisdale (observing meeting) asked about an updated NHTSA Manual. Clay said to contact David McGarah, SFST Program Manager, to get one because it's part of his project. Clay said we could possibly talk to Texas SFST about putting in their grant a NHTSA Manual mail out to prosecutors. Frank agreed that was the right process and could be done. Clay recommends only having 1 per office. Frank asked if a thumb drive would be better and Jessica said yes. Frank said that they have both (thumb drive and printed manual). Everyone agreed having both would be great for their offices. Jessica then brought up possibly buying in bulk Kwasnoski (little red book) and mailing them out to prosecutors (TxDOT mail out, 1 per office). Clay will talk to Diane about it. Transportation code is good to mail out later in 2018. DWI book needs to be updated with drugs, marijuana section. Allison suggested adding evidence list (order of evidence) for Toxicologist. Clay said we need at least 3 chapters on drugs to make that happen. Clay asked for volunteers on drafting it. Allison, Jessica and Andrew volunteered. Tom Suggested the SFST review that Justin McCants does for TDCAA's online DWI Resource section should also go in the DWI book. Talked about Jessica taking over DWI Case Law Update and if there is anything we need to add or if formatting needed to be changed. Allison suggested marking the recent changes in the DWI Case Law Update somehow so it would be easy to find. Jessica said she will put the newest case at the top of a section.

Jackson said it would be nice to make it searchable. Clay said the online one is, but the PDF can't be. Jackson said he uses Control F and then searches for keywords. Clay said he would check with Doug to see if we can make it easier to search. Clay suggested that everyone let the appellate attorneys in their offices know about Jessica updating the DWI Case Law Updates and they could send her cases ASAP. Jessica agreed with that and added to feel free to send her any new cases they want. Clay then asked what would be helpful to add to our DWI Resource webpage. Allison suggested a regional database of experts. Clay said it's an issue because experts could be great today but not tomorrow. This list would be vouching for them and we don't feel comfortable doing that. If you have defense experts you want info on, send Clay an email and he will send it to Tom Kimball at the National Traffic Law Center. They have a database with a lot of information on a lot of defense experts.

Started talking about TxDOT videos. Won't be able to do the Summit again, but we can keep making training videos. Clay asked for suggestions for topics. Clay received a proposal for a 2 tandem and intermediate voir dire training video. Clay said the sheer scope of trying to film it scares him. Asked for other suggestions. Jo'Shae said her Assistant said that voir dire will be helpful to him. Everyone likes voir dire. Clay said filming a voir dire in its entirety is a bad idea and everyone agrees. 20 minute videos on both 1. Normal use & 2. DWI tough questions would be the best idea. Jessica said that everyone could send Clay examples of the hard/tough questions. Using a couple of prosecutors to do it all or have multiple voices, 3 quarters of everyone here and a few others, and do 5 minutes segments. We would keep the jury all the way through. Everyone agrees. Allison suggested misdemeanor responses and felony responses. Clay said there may be a place for that.

Started talking about training. Clay said the plan is to have Intoxication Manslaughter in 2018 as Advanced Court and have Appellate Course as well. This will be a Non-TxDOT program. 2019 specialized course might be Vehicular Crimes. Reasons are changing our format. It will be unlike baby school and have 3 different tracks going on. Will work a small segment for marijuana in there and then have basic Intoxication Manslaughter and advanced Intoxication Manslaughter. Also add in crash reconstruction somewhere. Clay asked everyone to send him ideas or proposals.

Went back to TxDOT receivables. 12 cases a year, Clay recommended we don't change it. Articles are at 4 a year and 6 total publications, likes the number but wants to know if there's enough DWI stuff in the Prosecutor Magazine. Everyone thinks it's enough. New Investigators get the new investigator book and we should continue that. For Baby school, keep giving them the same books (4 publications). Do they need anything else? Everyone says no. Keep training everyone we can. Outside presentation, we will keep number at 4. Clay actually did 12 last year, but likes to keep it at 4 just in case. Prosecutor trainings, everyone agrees that 1500 is still a good number. Train the Trainer, 25 attendees is a big as we can go. Any other projects you want Clay to do? No other ideas were shared.

Continue talking about training. We are doing Rolling Stoned: Investigating and Prosecuting the Drugged Driving (Drugged Driving) and Effective Courtroom Testimony (ECT) this year. Clay wants to go into year 2 with it, maybe with revisions. Do you like the more specialized issues?

Jessica doesn't think we need to get rid of ECT, maybe just not do it every year. Grant said a course on the science of HGN because getting a lot of new officers that are not getting samples on DWI 1sts. Clay said he has taught it in years past and has a PowerPoint for that. Kelsey said a training video on HGN would be very helpful. Seems some basic courses are good to work into training programs in years to come. Could market these basic courses as refreshers. It was also suggested to do topics on Search and Seizure: Don't get your evidence Suppressed. Would include instruction on how to do an in car video and/or body cam video, how and when to do a custodial statement or a non-custodial statement, language you should use in your report, marijuana and finish with HGN. Maybe add in Breath and Blood. Will figure out how to market. Will probably continue Drugged Driving, take ECT out and do the Basic DWI course we just talked about. Allison said market as Defending Against the Defense. Started looking at the outline in handout (proposed crash reconstruction course). Would be a TTI project. Had Sean elaborate since he met with TTI regarding this training outline. Sean said once John (TTI) is done adding in things, Sean will have his Harris County people go through it to see if it is worth it and if it needs to be a statewide or not. Andrew said he would bring some of his prosecutors as well to observe the training. Clay asked if it would be something the bigger divisions would want to go to on a regular basis. Jessica said yes. Clay said because it's regional he thinks that it starts as a regional thing and then goes beyond that (bigger places). Would be a good training for a TTI Program. Clay said he could help. Jim Burris – Toxicologist Expert (independent), David Pearson – Crash Reconstruction Expert, Don Egdorf DRE.

Lab section of agenda:

Why is Austin the only place we have a toxicology lab was discussed. Every single substance they test requires that a toxicologist be trained/certified on that substance. Out of 17 toxicologists, if one person is out that day/week, there is someone else there that can test for anything. To help with delays from losing a chemist or being short one, they are going to take everything in fired/quitting chemist's que and will contract a private lab to do the testing. The Private lab will do testing in Texas and has to be certified by DPS. DPS pays for travel for people who will test your drugs. You have to make the travel arrangements, but contact DPS for them to pay. To make things move faster, 1. Put in Waiver of Further Testing and 2. If you have two counties needing blooded tested at one time, talk amongst yourselves to solve the problem of who gets to go first. The task force and toxicology section agreed to increase communication.

Clay related that continuing education for prosecutors will include the Toxicology Section and that he will be continuing to make presentations to Toxicologist.

Lunch break

Breath and blood testing – Mike Jennings, APD DWI Detective, joins discussion regarding Breath Search Warrants. The Lab came to APD saying they are back-logged due to APD running their no refusal program a lot and wanted to know if there was anything that can be done to stop the amount of blood samples coming to them and if he could stop no refusal, he said no. Defense attorney websites are saying 60 to 70% of the time to let defendant give blood. Is there a way you can get the warrant for breath and/or blood and tell the defendant we have the search

warrant for both? Tell them you can take a breath sample, but if you mess around and don't give me a sample, then we have the right to take a blood sample. Mike said they would have to change their warrants wording a little bit. He also said could test it with his unit at APD, but he thinks it would help to get a breath sample since defendants would rather give a breath sample over a blood sample if they have to choose one or the other. It would help the lab out by taking and sending fewer blood samples. Allison said language would have to be either breath or blood sample. Mike said somehow write it in that the officer gets to choose which sample to keep/take. Language needs to be worked on, but could work. If it does, Clay wants to have someone from the office that is using them write an article to get this practice out. Jessica said that she would rather have blood than breath as a prosecutor. Mike said they can't get blood on every stop because it's too expensive. Allison said in Travis County, they would rather have breath over blood. Different in every county. Mike said the other problem with that is for example Travis County/Austin is getting Motions for Speedy Trial filed and granted before the blood can be tested. Clay asked about small areas that would be problematic that need to be written about and published in the prosecutor. Clay would like to keep a watch on what prosecutor offices do when a lab person makes a mistake (Thomas said having a big problem with that at their DPS lab). Thomas said they are making a list of things they need to know about and sending it to DPS regarding the labs and are waiting for reply.

Talked about double warrant, one to get the blood and then needing one to test it (cited Corpus case). Some people use a Grand Jury subpoena to get blood from the hospital, but most are using a search warrant. Waylon brought up IVE technology. Sean says they already use it through a company. Authors for an article were solicited. Justin McCants and Thomas Ashworth will do a *Brady* discovery laboratories article for Prosecutor Magazine and TDCOA will present the topic at the Forensic evidence school.

Interlock: Jena Prescott, TTI

Went through questionnaire with everyone and recorded the responses. Turned in questionnaires that everyone filled out to Jena. Written responses attached to these minutes. Everyone thinks that compliance based monitoring would be a good idea. Tom said he would like to see the 50% language go away and leave it up to the discretion of the prosecutor of how much of their probation time they have to keep it on. Jena said that if someone has violations within a certain amount of time before the time expires, the interlock stays on longer. It was suggested to have cameras take the picture of the offender blowing into the device or random pictures being taken.

Closing