

Practicing While Not Intoxicated: Specializing in DWI/DUI

[by Cary J. Griffith]

Graduate from law school, pass the bar, and you are qualified to practice law. That means you can accept just about anything that comes through the door. From antitrust to wills and estates, from civil to criminal to regulatory-technically, if you have a law degree and a license, you can accept the legal work. But should you?

"I made the mistake of taking up wills and estate law as soon as I graduated from law school," comments Victor W. Carmody, Jr., a solo practitioner from Jackson, MS. "Then I went up against a local attorney who knew more about that area of law than I ever would." It was an educational experience. What did Mr. Carmody glean from the lesson? "Get into an area of law you like and stick with it," he opines. Learn everything you can about it, and keep learning.

That was 25 years ago. Today, Victor Carmody is one of the nation's premier practitioners of DWI/DUI law. That's shorthand for driving while intoxicated or driving under the influence. All of Carmody's cases involve DWI/DUI (or just DUI) offenses, and he's more than happy with his specialty.

The vast majority of law school graduates won't choose to specialize in DUI law. But given the state of the practice, many should reconsider. First of all, DUI offenses are the most commonly committed crimes in the U.S. In 2003, the American Bar Association (ABA) recognized DUI Defense Law as a legal practice specialty area. Almost as important, according to the website of the National College for DUI Defense, Inc. (NCDD), in August 2004, the ABA awarded its Certificate of Accreditation to the Board Certification Program of the NCDD. But according to Carmody, there are "probably not 20 people around the country who are Board certified." Why? Board certification is new, and it's not easy. Some attorneys consider DUI practice boring and repetitive. Others believe DUI defenses are limited. But the truth is there's much more to DUI law than meets the eye

and several reasons more practitioners are seriously considering specializing in this area of expertise.

Who Practices DUI Law and Why

Four of the top reasons lawyers cultivate a DUI practice are background, first cases, preference, and location. Perhaps one of the largest reasons lawyers stick with DUI is success, both financial and professional.

Before Carmody was a lawyer he was a police officer. As an officer, Carmody participated in a number of law enforcement activities that progressively brought him closer to DUI offenses. He learned the DUI process first-hand, when states across America were just beginning to implement tough DUI legislation and methods for testing drivers for alcohol impairment were being developed.

Charles L. Sifers practices law in Oklahoma City. Almost all of his practice is devoted to DUI law. Like Carmody, Sifers' pre-attorney background involved "alcohol education course training, prior [work as a] police officer, [and] prior work in the alcoholism and drug addiction field."

Perhaps one of the simplest reasons lawyers begin working on DUI cases is sometimes they're the first to come through the door. Because DUI offenses are the most frequently committed crimes in the U.S., the statistical probability that most lawyers will in the life of their practice-encounter a DUI case is high.

Some lawyers are introduced to the legal

specialty because of a wider interest in trials, the courtroom, and criminal defense. "I knew that I wanted to be in a courtroom litigating," comments Maury Beaulier, a partner with Hellmuth and Johnson in Eden Prairie, MN. Now almost all of Beaulier's current practice is devoted to DUI cases.

"I planned to be a litigator because of my interest in trial law," comments Jeffrey Pollock, a solo practitioner in Pittsburgh whose practice includes DUI work. "I got a lot of court appointments in the late '80s and [throughout the] '90s in the criminal defense field." In some instances, it's more than background, first cases, or preference that dictates whether or not someone decides to become a DUI attorney. While DUI offenses are the crimes most often committed in America, where they are committed can be as important.

"In a rural area like Abilene, you could not make a living just handling a certain type of case," comments Randy Wilson, a Texas practitioner. Wilson estimates one quarter of his caseload is devoted to DUI cases. Wilson's DUI practice is limited because of the size of the city in which he practices. "In a metropolitan area, I have several friends that handle just one type of criminal case," explains Wilson, "whether it be DWI or white-collar crime... There are more people, and therefore, the client base is potentially much larger." Location definitely makes a difference; however, Wilson is also quick to point out that "I would get very bored just handling one particular type of case all the time."

Practicing DUI

While on the surface, litigating the same type of case day in and day out appears repetitive and potentially boring, many DUI attorneys don't share Wilson's perspective. Whether or not you become bored with a legal specialty like DUI law depends upon personal preference and perspective as well as how you practice.

For starters, DUI law is constantly changing. Practicing DUI law, observes Beaulier, "requires a great deal of detailed analysis of police reports since the laws surrounding DWI have evolved consistently to make fighting such prosecutions increasingly difficult." Beaulier and others believe the DUI laws continue to become more complex with "prohibited blood-alcohol concentrations dropping while penalties for DWI offenses [are] increasing." The preceding issues mean that attorneys interested in specializing in DUI need to be aware that "it is an area that changes almost daily and requires that the attorney remain current on trends and challenges in the law."

Carmody acknowledges that lawyers who inquire about specializing in DUI law always ask about the boredom. But the truth is all his DUI cases are "the same, and they're all different." He admits, "There are common threads that run through all of them," but he also asserts each of them has enough nuance so none of them are the same.

Perhaps one of the larger reasons more attorneys don't practice DUI law is due to the law. "Many practitioners, particularly new practitioners, become frustrated with the increasing difficulty to defend such cases," observes Beaulier. He and other DUI practitioners point to laws that have evolved to make prosecutions easier. In the beginning the law required that a driver's conduct must be affected by the driver's alcohol consumption. Then the law evolved by creating blood-alcohol-content (BAC) limits.

In response, DUI lawyers have had to change

their methods of defense. With regard to prohibited blood-alcohol amounts, attorneys challenged the charges based on when the tests were administered. "As a direct result," comments Beaulier, "the laws again evolved to create a charge that makes it illegal to test for a prohibited alcohol concentration within two hours of driving." Legislators also changed the definition of what constitutes operating a motor vehicle. In some jurisdictions, even a responsible driver who pulls over and sleeps in the backseat of his/her car may be considered to be operating a vehicle.

The preceding fuels some attorneys' sense of purpose. As Pollock notes, "Once a case gets in the legal system, a good lawyer is needed to separate the cases that should be plead out from those that have meritorious procedural and or substantive defenses. And because we live in an overzealous society, where the Patriot Act is as overly aggressive--as are many DUI laws--then we have to be careful that innocent people aren't overly punished."

Given the evolving complexity of the law, Beaulier advises neophyte practitioners to become educated and proceed with care. "I think newer practitioners view the laws as daunting and rarely explore the myriad of defenses that exist, too often opting instead for poor plea agreements."

If you decide to specialize in DUI law, how can you cultivate the specialty? And what resources exist for you to learn more about it?

What Constitutes Legal Specialty?

According to Pollock, "In Pennsylvania, no one is allowed to say they're a specialist unless they practice in admiralty law or patent law." The Pennsylvania regulation is designed to "prevent lawyers from bragging inappropriately," explains Pollock. A lawyer in Pennsylvania can say, for example, he/she concentrates his/her practice in a particular area of law.

Pollock's comments illustrate an important nuance. If you are a practicing DWI/DUI attorney or are contemplating adding this area of criminal defense to your other areas of legal expertise, you may not be able to use the term specialty to describe your practice. While it's a fine point, it's important. Understanding this nuance requires understanding the American Bar Association's perspective on legal specialties and comprehending your particular state's laws on the subject.

According to the American Bar Association, "[A] lawyer who is a certified specialist has been recognized by an independent professional certifying organization as having an enhanced level of skill and expertise, as well as substantial involvement in an established legal specialty. These organizations require a lawyer to demonstrate special training, experience, and knowledge to insure that the lawyer's recognition as a certified specialist is meaningful and reliable." (Your Lawyer and Specialist Certification - abanet.org).

According to the NCDD's website, the "NCDD is the only organization in the country accredited to certify lawyers in the DUI Defense Law specialty practice area. ABA accreditation carries with it automatic certification in the specialty area in 16 of the United States."

What's it take to become certified? Plenty. Even if your particular state isn't one of the 16 that recognizes the NCDD certification and you're contemplating specializing in DWI/DUI, you should definitely consider working through the NCDD process. The multi-step certification process involves the following:

- An attorney must complete 36 hours of college-approved CLE (Continuing Legal Education) in the field of DWI defense.
- The applicant must then submit reference forms from judges and lawyers intimately familiar with the applicant's abilities.
- The applicant must then demonstrate, in writing, actual trial experience involving at least 60 matters.
- The applicant must then submit a memo-



randum of law limited to five pages, prepared by the applicant, which addresses a DUI issue as directed by the Certification Committee.

- The applicant must then pass a written examination as well as an oral examination based upon the applicant's memorandum of law.

Resources

DWI/DUI resources abound. Perhaps one of the easiest, quickest ways to learn more about this legal specialty is the Internet. Navigate to your favorite Internet search engine and enter DWI or DUI or "Driving While Intoxicated," to name only a few possible keywords and phrases, and plan to spend some time surfing. Some of the top locations include chat rooms; legal directories for DWI attorneys by state, city, or for the entire country; resource sites; DWI blogs; and a whole lot more. These sites will tell you everything from what you should do if you find yourself in a potentially difficult situation to what you can expect as a penalty for a first-time offender—at least in your region. They can also help you locate relevant specialists and learn just about everything you wanted to know about this area of the law.

While the Internet is quick, easy, and manageable, it's not your only resource. National, state, and local bar associations often have referral services that can put you in touch with DWI specialists. Bar associations also offer courses expressly for the purpose of addressing DWI legal specifics.

There is also the NCDD, whose mission is to improve criminal defense for DUI/DWI and to disseminate information to the public about DUI/DWI defense law as a legal specialty.

"If you want to really be good at your craft, you can't have the time to be so in every area of law," notes Sifers. Sifers is one of a handful of attorneys who have chosen to specialize in DUI defense. Given recent developments, the

evolving state of DUI law, recognition by the ABA, and the growing number of attorneys who see specialization as a way to differentiate themselves from their peers, expect the ranks of DUI attorneys to increase.