

For The Road



Idaho Prosecuting Attorneys Association, Inc.

Sleep Deprivation, Driving and Performance:

By Gary Dawson, PhD

Michael Coleman, Troy Gartner and James Polehinke all had something in common even though they never met and likely did not know each other even existed. But something horrific happened as a result of what each one did in the hours before they became headline news. They were sleep deprived and innocents perished and lives inexorably changed as a result. More about this at the end.

Sleep deprivation or restriction is broadly defined as a lack of adequate sleep. It can be acute or chronic, partial or total. It may be the result of a number of factors, including medical (e.g. sleep apnea), environmental (e.g. shift work), or drug use (licit or illicit). It can be additive with drugs known to produce sedation (e.g. alcohol, narcotics), the circadian nadir which typically occurs in early morning, or the increased sleep drive which begins to build in the afternoon. The consequences of sleep deprivation are well known and include a decline in cognitive functioning (memory/recall impairment, divided attention tasks, decreased vigilance, and sustained attention). When healthy adults receive an average of 5 hours of



sleep per night daytime cognitive performance begins to decline. We now know that narcotics, even at “therapeutic” blood levels contribute to central sleep apnea at night and produce the same effect as sleep deprivation.

Driving simulator testing after sleep deprivation has demonstrated marked impairment of motor skills associated with operating a motor vehicle like that seen with the effects of alcohol. Someone who has been awake for 24 hours has the same impairment as a driver with a BAC of 0.10. The odds of a sleep-related crash double for drivers getting less than 7 hours of sleep and increase exponentially for each additional hour of sleep loss.

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Web Sites

- Idaho TSRP
TSRP-Idaho.org
- Idaho Prosecuting Attorneys Association
www.ipaa.cc
- ITD Office of Highway Safety
itd.idaho.gov/ohs/
- Idaho POST Academy (includes DRE site)
www.idaho-post.org
- National Highway Traffic Safety Administration
www.nhtsa.dot
- National Association of Prosecutor Coordinators
www.napcsite.org
- NDAA/APRI & NTLIC
www.ndaa-apri.org

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IPAA “New Prosecutor’s Course” — Register NOW!

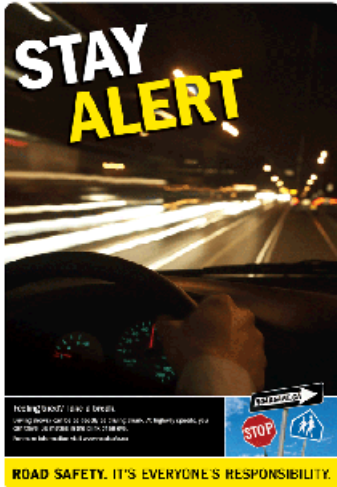
The IPAA is now taking applications for the “New Prosecutor Course” to be held **November 12-16, 2007** at the Idaho POST Academy in Meridian. This will be great training for newly elected, appointed and/or deputy prosecutors covering topics such as the fundamentals of prosecution, duties & responsibilities, proper use of discretion, and much more.

The course will include a full day of trial advocacy skills taught by **Richard Wintory** who is

well known to IPAA members for his “U.S. Supreme Court Update for Trial Dogs” presentations. He has won national recognition for his dynamic training and trial advocacy skills, having lectured at hundreds of prosecutors’ conferences.

Space is limited, so register today! The registration form can be found by visiting www.TSRP-Idaho.org. Mail, fax or email the completed form to the IPAA.

Sleep Deprivation, Driving & Performance: (From Page 1)



“Someone who has been awake for 24 hours has the same impairment as a driver with a BAC of 0.10.”

—Gary Dawson

NHTSA Warning Signs of Drowsy Driving

- Inability to recall the last few miles traveled.
- Having disconnected or wandering thoughts.
- Having difficulty focusing or keeping your eyes open.
- Feeling as though your head is very heavy.
- Drifting from the lane in which you are driving.
- Yawning repeatedly.
- Tailgating other vehicles.
- Missing traffic signs.

The high risk category for sleep deprivation and driving while drowsy includes:

- Young people, especially males under age 26;
- Shift workers increase risk up to 6-fold;
- Long-haul truck drivers;
- Untreated or poorly managed Obstructive Sleep Apnea increase risk up to 7-fold;
- Jet-lag associated with multiple time zones; and
- Identified sleep disorders.

The National Highway Traffic Safety Administration (NHTSA) estimates nearly 100,000 vehicular crashes per year might be related to driver sleepiness. NHTSA further claims 76,000 occupants were injured and 1,500 died as a result. These events tend to be single vehicle crashes that occur early morning, or mid to late afternoon, and involve drivers who are acute or chronically sleep deprived.

Also at issue is the intent of the “sleepy” driver. While the graveyard shift worker could arguably be the “victim” of “involuntary” sleep deprivation, he is still at risk. Add to this even a minimal amount of alcohol or depressant drugs, and the two actions and subsequent impairment becomes additive.

The driver who is “voluntarily” sleep deprived (i.e. long haul trucker) has induced a state of impairment upon themselves that is no different than the “involuntary” subject. In the event the sleep deprivation is drug-induced (e.g. amphetamine), the individual may be alert during the acute phase of drug effect but as the stimulant effect is lost it becomes increasingly difficult for the abuser to maintain wakefulness. This resultant impairment from the combined circumstances is greater than that seen with sleep deprivation alone.

And as I promised in the beginning, the details of why this is important:

Late in the morning of July 20, 1997, 20 year old Maggie McDonnell was hit head-on and killed by a car driven by Michael Coleman. Coleman admitted he had been awake for 30 hours prior to the accident (using cocaine) and fell asleep at the wheel. The first trial ended with a “hung” jury. The second found him not guilty of vehicular homicide but guilty of reck-

less driving. He was fined \$200 and no jail time. This was the impetus for the passage of “Maggies Law” in New Jersey that criminalized driving while fatigued and causing a fatal crash.

At about 4 pm on August 1, 2006, thirty-one year old Viola Kinnaman was traveling south on Idaho HW 95 near Moscow with her 4 children when Troy Gartner fell asleep at the wheel, crossed over the centerline and struck her car head-on. Kinnaman was killed instantly. The children received injuries but survived. Gartner was treated and released. He admitted to not getting enough sleep the night before and the use of marijuana 18 hrs prior to the accident. Gartner was found guilty of vehicular manslaughter in part based upon testimony that established three important facts. Sleep restriction from the night before combined with the known persistence of the effects of marijuana for up to 24 hours after use and the mid-afternoon time created an “additive effect” circumstance that set the stage for the crash.

Early in the morning of August 27, 2006, James Polehinke was the First Officer, and sole survivor, of Comair Flight 5191 when it crashed on take off from a small airport in Kentucky. Investigation revealed a “perfect storm” of factors leading to the crash that resulted in the loss of 49 souls. The pilot Jeff Clay, Polehinke, and the air traffic controller had schedules over the previous 24 hours that resulted in sleep deprivation for each. The air traffic controller was probably the most severely effected. He failed to notice the plane had taxied to the wrong runway (it was closed and unlit), was unaware or did not respond to the crash for 45 seconds, and did not help the rescue crews locate the crash site. In the 30 minutes prior to the crash, Polehinke was heard yawning and twice gave the wrong flight number. Polehinke and Clay started their shift by getting on the wrong plane.

More information on sleep and driving can be found at <http://www.nhtsa.dot.gov/>.

****Dr. Dawson can be contacted through Jared Olson, Idaho’s TSRP.**

Breath Taking News — Reminder Regarding .20 Solution

In January 2007, *For The Road* announced a new SOP requiring a 0.20 simulator solution check for the breath testing instruments used in Idaho. See www.tsrp-idaho.org/resources/For_The_Road_Jan_2007.pdf. This new procedure went into effect on January 1, 2007. Evidently, there are still agencies failing to run a 0.20 simulator solution check. Contact your Breath Testing Specialists (BTS) to ensure the proper standards are being followed.



Idaho's Labor Day Crackdown Is A Success!

Impaired driving is one of America's deadliest crimes and alcohol-related traffic deaths are at an all time high since 1997. Data for 2006 says that alcohol-related traffic fatalities in the country are up to 17,602 for 2006 versus 17,590 for 2005, representing a .1 percent increase. However, with overall fatalities down, this is an increase in the overall percentage of alcohol related fatalities. In Idaho, just over 41% of the 267 traffic fatalities in 2006 were the result of an impaired driving collision.

That is why Idaho agencies stepped up their impaired driving patrols from August 24 through September 3, 2007. Approximately 30 agencies and every region of the Idaho State Police participated in the Labor Day Crackdown with the Idaho Transportation Department. The preliminary report from ITD-OHS includes 9,743 Idaho drivers were contacted,

200 DUI arrests, 383 seat belt citations, 41 child safety seat citations, 120 felony arrests, 7 stolen vehicles recovered, 61 fugitives apprehended, 333 drivers with a suspended license, 697 uninsured motorists, 2174 speeding citations, 54 reckless driving citations/arrests, 141 drug arrests and 117 underage alcohol citations/arrests.

Our message is simple. If we catch you driving impaired, we will arrest you, and we will prosecute you. No exceptions. No excuses. Far too many people still don't understand that alcohol, drugs and driving just don't mix. Impaired driving is no accident—nor is it a victimless crime. The senseless act of impaired driving is killing someone almost every 32 minutes with devastating effects on every family. Too many lives are being lost so we will continue to be out in force to stop it!

Top Ten Tips for Trial Lawyers

1. Let no one out-prepare you.
2. Never make it personal.
3. Try the case you have, not the case you wish you had.
4. You must be convinced before you can be convincing.
5. Do what you said you were going to do, when you said you were going to do it, how you said you'd do it.
6. Have two forms of proof for every essential element.
7. Don't expect your opponent to overlook anything.
8. Never expect that the case will settle.
9. Don't carry past losses with you to the next trial.
10. No case is worth your reputation.

Elliott Wilcox publishes *Trial Tips Newsletter*, a free weekly e-zine for trial lawyers that reveals simple, effective, and persuasive techniques to help you win more trials, guaranteed. Sign up today for your free special report: "How to Become the Best Trial Lawyer in Your Courthouse – The Top Ten Tips for Trial Lawyers," at www.TrialTheater.com.



Case Law Update:

State v. Gomez (Ct.App.2007): Defendant challenges the length and scope of an investigatory detention in a traffic stop. He also contends the mere presence of a gun case did not give probable cause to search his vehicle and open the gun case. The Court of Appeals held the investigatory detention was not unreasonably extended and the officers had probable cause to seize and open a gun case that was observed by the back-up officer.

First, the Court states the 16-second extension of the traffic stop was permissible because (1) the officer suspected Gomez was under the influence of some intoxicant; (2) during the 16-second extension, the officer was checking to make sure the citation paperwork was signed and in order; and (3) the back-up officer had every right to visually inspect the vehicle for concealed weapons and contraband.

The officer had originally stopped Gomez for speeding and on the initial encounter noticed Gomez's eyes were red and he was speaking with a rapid, broken speech pattern. Note, the defen-

dant did not smell of alcohol, but based on the observations of the officer, the Court said the officer was justified in asking further questions unrelated to the stop and check for additional signs of intoxication.

Second, the Court found there was probable cause to search the vehicle when the back-up officer spotted a gun case on the floor underneath the driver's seat, within reaching distance of Gomez. Probable cause was based on the following: (1) the officer was aware of Gomez's status as felon, because Gomez volunteered he had recently been released from prison; (2) the officer knew Gomez had a combative history and weapons violations due to a dispatch alert; (3) he observed Gomez's nervous behavior when mentioning the gun case; and (4) heard Gomez's implicit admission of wrongful possession when Gomez said he would beat the charge because he had done so before. These objective facts supported a strong presumption the defendant was a felon in unlawful possession of a firearm. Therefore, under the well-recognized automobile exception to the warrant requirement the officers had probable cause to search the vehicle and all the containers within the vehicle which could contain a firearm.



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Idaho Transportation Department

**WE ARE ON THE WEB!!
WWW.TSRP-IDAHO.ORG**

UPCOMING TRAININGS & CONFERENCES NOTICE

- Idaho Alcohol Law Enforcement Training — October 19, 2007, Twin Falls.
- Idaho Alcohol Law Enforcement Training — October 23, 2007, Coeur d' Alene.
- IPAA New Prosecutor Course — November 12-16, 2007, Meridian @ POST.
- 2007 NAPC Winter Conference — December 10-13, 2007, Nashville, TN.
- 2008 IPAA Winter Conference — February 6-8, 2008, Boise.

Last Call:

Halloween is here! Part of the festivities includes educating our children on how to protect themselves while trick-or-treating. In Pocatello, I lived near a neighbor that attracted bus loads of kids due to the distribution of king size candy bars. Unfortunately, an impaired driver struck one of these candy seeking children. Every year NHTSA provides a promotional planner to warn the public of these dangers. The planner includes messaging and templates that you may choose from to support your impaired driving initiatives surrounding Halloween. These materials carry the tagline, "Don't let Halloween turn into a nightmare," a reference to both the spirit of Halloween and the possibility of arrest or crashes due to impaired driving. I have localized these materials for your use and placed them on my website at www.TSRP-Idaho.org under the "Press Releases" tab. Please select, tailor and distribute these materials in a way that best fits your local situation. Download the news releases, plug in your own name and send it out to the media. This is free publicity for your prosecutor's office and reminds the public of the dangers of impaired driving. Feel free to contact me if you need the addresses handing out the candy bars. — Jared

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