

TACA 2015 Fall Conference
Montgomery, Texas

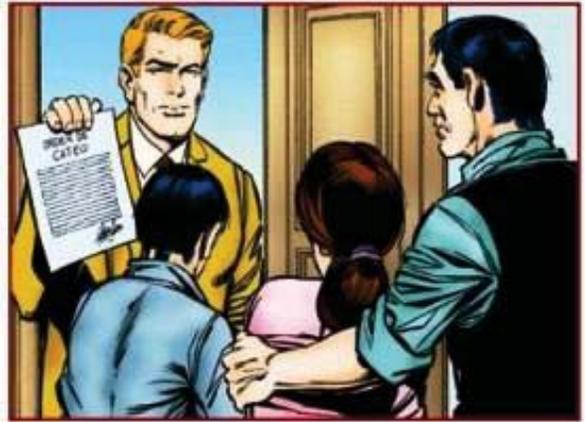
No Refusal Presentation

Nuts and Bolts of Conducting a
No Refusal

Warren Diepraam

First Assistant
Waller County, Texas

Blood is the Future



Warrants are Legal!



What is a No Refusal?

- In most states, a suspect may not have the right to refuse due to implied consent laws
- However, in almost as many states, the suspect has the ability to refuse a breath or blood test
- Some states criminalize refusals and others take blood anyway; but most do not, leaving the prosecutor to handle a case with no scientific evidence



What is a No Refusal?

- No Refusal is a process designed to bring many groups together to ensure that scientific evidence is expeditiously collected in almost all impaired driving arrests
- Evidence is obtained via consent, implied consent, and search warrants



What is a No Refusal?

- IT IS NOT WHAT YOU THINK IT IS....



What is a No Refusal?

- It is not just using warrants
 - It is a controlled process or one stop cop shop
- OK, it can be just using warrants
- Its about putting in place a system that makes it easier for cops
- Its about getting inculpatory AND exculpatory evidence
- Better evidence for prosecutors and judges
- Word gets out to the public and....
- ...that saves lives and money

The History of No Refusal

- In 1966, the US Supreme Court in Schmerber v. California decided that blood can reasonably be taken in DWI cases
- In 1995, 2 Arizona DPS troopers got certified in phlebotomy
- In 2002, a Texas police officer used a search warrant to obtain blood in a DWI case
- In 2006, the No Refusal moniker and program were created
- In 2007, No Refusal spreads to Louisiana, Missouri, Illinois, and other states
- In 2009, first No Refusal grants are awarded (TXDOT)
- In 2010, the US DOT and NHTSA endorse No Refusal
- In 2011, the GHSA, NTSB, Century Council, and MADD endorse No Refusal
- In 2013, the US Supreme Court decides that warrants are the gold standard for DWI enforcement in Missouri v. McNeely



Legal Problems Encountered

* Are warrants legal for DWI cases?

Get a multitude of opinions....



Legal Problems Encountered

* Are warrants legal for DWI cases?

*What about the Implied Consent prohibition on forced blood draws?

* Are electronic warrants acceptable?

* Does the magistrate have to swear in the affiant?



Legal Problems Encountered

*What about my state's Implied Consent prohibition on forced blood draws?

It totally depends on whom you ask....

Google Beeman vs State of Texas Search Warrant....

How to Conduct a No Refusal?



www.nhtsa.gov/no-refusal

www.tdcaa.com/dwi

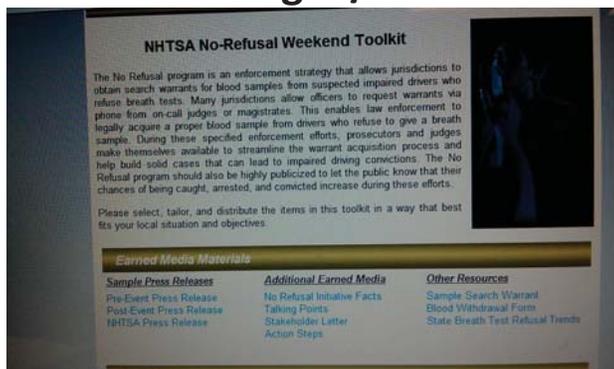
How to Conduct a No Refusal?

- Go to www.mynorefusal.com



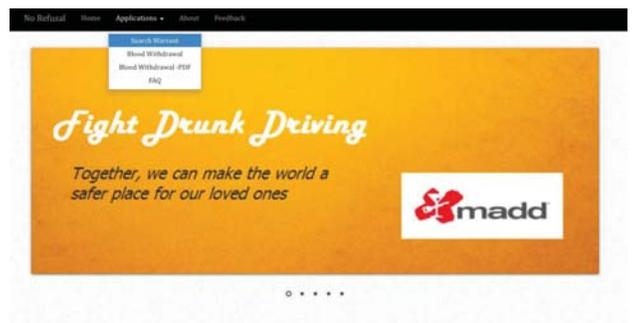
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How to Conduct a No Refusal?

No Refusal Home Applications + About Feedback

New Search Warrant Affidavit

Offense Evidence SFSTs Other Factors Affiant

OFFENSE INFORMATION

Suspect: *	Clay Abbot	Offense Date and Time: *	
State & DL #: *	TX 54567123	Offense Location: *	
DOB: *	3/17/1955	Reasons for Traffic Stop:	
Gender: *	Male	Witness:	
Race: *	White	Witness Statement:	
Hair Color: *	grey		
Height: *	6'03		
Weight (lbs): *	200.00		

March 2015

Su	Mo	Tu	We	Th	Fr	Sa
22	23	24	25	26	27	28
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4

Sunday, March 15, 2015

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No Refusal Home Applications + About Feedback

EVIDENCE

Odor: *	Select...	Types of Alcoholic Beverages:	
Face Appearance: *		Open Containers (inside vehicle):	
Speech: *		Other Indications of Mental Impairment:	
Attitude: *		Suspect Statement:	
Balance/Walking: *		Other Evidence of Drug Use:	
Drinking period (time):			
Drinking Location:			

Next Prev

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New Search Warrant Affidavit

Offense Evidence SFSTs Other Factors Affiant

OFFENSE INFORMATION

Suspect: *	Clay Abbot	Offense Date and Time: *	March 17, 2015 1:00 AM
State & DL #: *	TX 54567123	Offense Location: *	6500 Travis, Houston Texas
DOB: *	3/17/1955	Reasons for Traffic Stop:	speeding and running a red light
Gender: *	Male	Witness:	Ted Fox
Race: *	White	Witness Statement:	He was driving like a man and almost killed me when I had a green light
Hair Color: *	grey		
Height: *	6'03		
Weight (lbs): *	200.00		

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No Refusal Home Applications + About Feedback

EVIDENCE

Odor: *	Strong	Types of Alcoholic Beverages:	
Face Appearance: *	Flushed / Glassy Eyes	Open Containers (inside vehicle):	
Speech: *		Other Indications of Mental Impairment:	
Attitude: *	Clammy-mouthed	Suspect Statement:	
Balance/Walking: *	Stunned	Other Evidence of Drug Use:	
Drinking period (time):	Confused		
Drinking Location:	Slurred		
	Accent		
	Other		

Next Prev

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How to Conduct a No Refusal?

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The screenshot shows the 'New Search Warrant Affidavit' form. The 'STANDARDIZED FIELD SOBRIETY TEST (SFST)' section includes the following items:

- Horizontal Gaze Nystagmus (HGN) if
- Walk-and-Turn (WAT)
- Lack of smooth pursuit Both Eyes
- Sustained nystagmus at maximum deviation Both Eyes
- Onset of nystagmus prior to 45 degrees Both Eyes
- Vertical Nystagmus if Yes
- Subject Swayed Excessively if Yes
- Other Comments:

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The screenshot shows the 'AFFIDANT INFORMATION' form. The fields are:

- Affiant:
- Employer:
- County:
- State:

Checkboxes:

- I am certified and/or trained as a DRE or ARIDE
- I have formed opinions on intoxication and have had my suspicions confirmed by breath, blood, or urine samples
- I am seeking a search warrant that will authorize to search the person of the suspect for blood evidence described above and seize the same as evidence that DWI was committed by the suspect. Further Affiant asks for issuance of an order to appropriate third parties directing them to assist Affiant in the execution of said warrant.

Buttons:

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- Vertical Nystagmus if Yes
- Subject Swayed Excessively if Yes
- Other Comments:

Other fields:

- Chalk Observed:
- Other Comments:

How to Conduct a No Refusal?

- Go to www.mynorefusal.com

The screenshot shows the 'AFFIDANT INFORMATION' form filled out with the following information:

- Affiant:
- Employer:
- County:
- State:

Checkboxes:

- I am certified and/or trained as a DRE or ARIDE
- I have formed opinions on intoxication and have had my suspicions confirmed by breath, blood, or urine samples
- I am seeking a search warrant that will authorize to search the person of the suspect for blood evidence described above and seize the same as evidence that DWI was committed by the suspect. Further Affiant asks for issuance of an order to appropriate third parties directing them to assist Affiant in the execution of said warrant.

Affiant's Signature:

How to Conduct a No Refusal?

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the suspect for blood evidence described above and seize the same as evidence that DWI was committed by the suspect. Further Affiant asks for issuance of an order to appropriate third parties directing them to assist Affiant in the execution of said warrant.

Affiant's Signature: *Paul Gries*

Oath Taker's Name & Title: _____

Oath Taker's Signature: _____

Submit Form Print

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THE STATE OF TEXAS §
 COUNTY OF WALLER §

AFFIDAVIT FOR SEARCH WARRANT AND MAGISTRATION

I. AFFIANT

The undersigned Affiant, a peace officer under the laws of the State of Texas, and after first being duly sworn, on oath makes the following statements and accusations:

My name is Paul Gries. I am a peace officer employed by Waller County Sheriff. I have successfully completed the State-mandated requirements to become a peace officer and have successfully completed courses and/or training in the fields of alcohol detection, including Standardized Field Sobriety Tests, hereafter SFSTs, and intoxication-related offenses. I have seen intoxicated persons in the past and, during the course of my employment, I have observed numerous people who are under the influence of alcohol or other substances and:

- I am certified and/or trained in the detection of drug impaired or intoxicated drivers through my classification as a Drug Recognition Expert (DRE) or through the Advanced Roadside Impaired Driving Enforcement (ARIDE) programs.
- I have formed opinions on intoxication on many occasions and have had my suspicions confirmed by breath, blood, or urine samples that were administered after I performed my law enforcement duties relating to the detection of intoxicated drivers.

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WHEREFORE, based upon this affidavit I am seeking a search warrant that will authorize Affiant or Affiant's agent to search the person of the suspect for the blood evidence described above and seize the same as evidence that DWI was committed by the suspect. Further Affiant asks for issuance of an order to appropriate third parties directing them to assist Affiant in the execution of said warrant.

Paul Gries

Affiant

Subscribed and sworn to before me on Sunday, March 15, 2015, by an official authorized to administer and authorize this oath pursuant to TEX. GOV'T CODE §602.002.

David Smith

Peace Officer / Notary / Judge (if in person)

David Smith Officer
 Official's Printed Name & Title

How to Conduct a No Refusal?

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II. SUSPECT & CRIME

A. The suspected person ["suspect"] is described as follows:

Name: Clay Abbot		
State DL/ID #: TX 54567123		
Race: White	Sex: Male	DOB: 3/17/1955
Height: 6'03"	Weight: 200 lbs	Hair Color: grey

- B. The suspect is presently in the custody of a law enforcement agency here in Waller County, Texas, as listed above, which will present the suspect to execute the warrant;
- C. I believe the suspect possesses and is concealing human blood, which constitutes evidence that the suspect committed the offense of Driving While Intoxicated;
- D. I have good reason to believe that on March 17, 2015, the suspect did then and there operate a motor vehicle in a public place in Waller County, Texas, while intoxicated by not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, or a combination thereof, into the suspect's body.

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4. SFSTs CONDUCTED WHICH INDICATED IMPAIRMENT TO ME:

* HORIZONTAL GAZE NYSTAGMUS (hereafter HGN):

The suspect was first qualified as a candidate by checking the suspect's eyes for equal tracking, no resting nystagmus, and equal pupil size. The suspect was also qualified as a candidate for the test by my investigation.

HGN: (4 or more clues indicates impairment to me)

I observed the following 6 clues:

Lack of smooth pursuit in both left and right eyes,

Distinct and sustained nystagmus at maximum deviation in both left and right eyes,

Onset of nystagmus prior to 45 degrees in both left and right eyes,

Vertical Nystagmus: Yes No Subject swayed excessively: Yes No

Other comments:

I know from my training and experience that Horizontal Gaze Nystagmus is caused by the introduction of a Central Nervous System Depressant, Inhalant, or Dissociative Anesthetic into the subject's body.

* WALK AND TURN TEST (hereafter WAT):

WAT: (2 or more clues indicates impairment to me)

I observed the following 2 clues:

Clue 1: Suspect swayed excessively.

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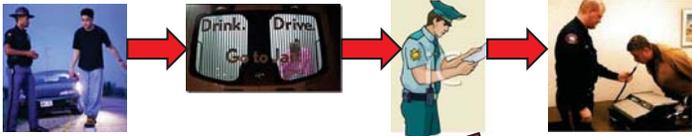


Staffing a Full No Refusal

- Phlebotomist
- Prosecutor
- Judge
- Police officer
 - SFST and DRE Instructor
- Jail personnel
- MADD or other victim/police advocate
- Probation and Pre-Trial Monitoring



No Refusal Timeline



AS LITTLE AS 15 MINUTES FROM REFUSAL TO WARRANT



No Refusal Lite

- DA Rides With Officers
 - Fort Bend County, Texas
 - Your own personal prosecutor
 - Be cautious not to become a witness
 - Show concern for officer's time



No Refusal IS High Visibility



Mobile No Refusal

- DART or District Attorney Response Team
 - Nurse, Investigator, and Prosecutor
 - Go to the scene of the stop
 - Tablet/Electronic Search Warrants



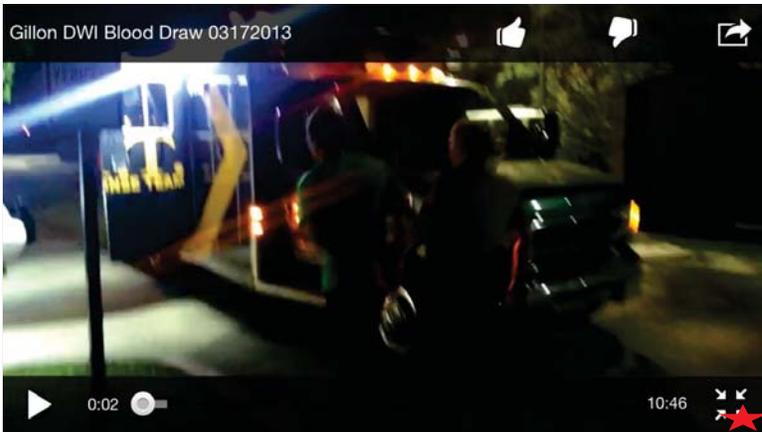
Mobile No Refusal



Mobile No Refusal



Mobile No Refusal



Mobile No Refusal



Mobile No Refusal



Action Steps

- Ensure communication lines are working
 - Some prefer faxes while others email
- Secure and sanitize facility
 - Try a medical director or EMT supervisor
- Documentation and warrants need to be maintained
- Press releases (before, during, and after)

Action Steps

- Get interested parties together
- Find volunteers: judges, prosecutors, nurses..
- Find host facility and agency
- Prepare equipment
 - Purchase or “borrow”
- Inspect facility and equipment
 - Should be secure and capable of cleansing

Post Event Planning

- Compile all warrants
- Compile all statistics
- Send out a press release
- Follow cases through court system
 - Attention needs to be given to these cases



Questions at the end

w.diepraam@wallercounty.us