



**No Refusal Presentation**

Nuts and Bolts of Conducting a No Refusal

 **Warren Diepraam**  
First Assistant  
Waller County, Texas 

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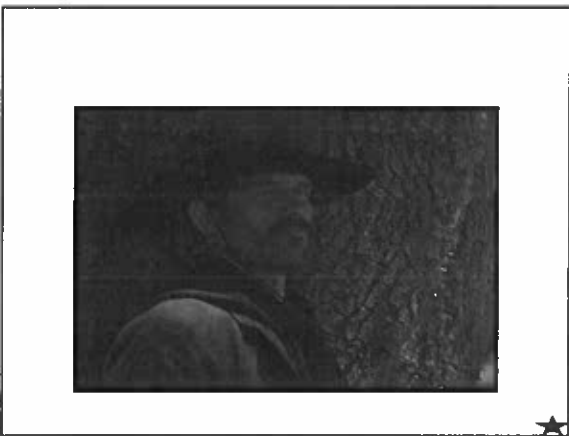
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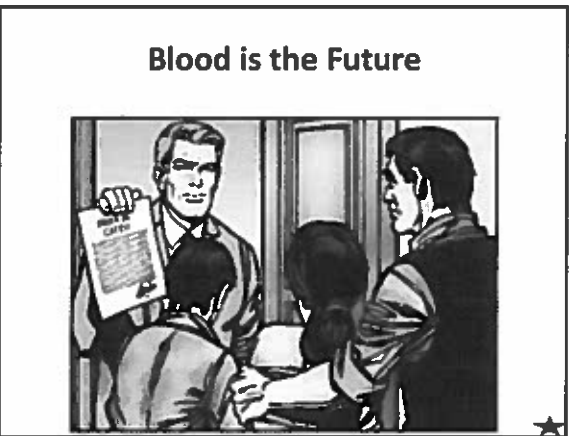
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### Warrants are Legal!



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### 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



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### What is a No Refusal?

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



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### 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




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### 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

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### 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

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WCDA Vehicular Crimes

**NO REFUSAL**

Texas Department of Transportation

### 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 affidavit?

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WCDA Vehicular Crimes

**NO REFUSAL**

Texas Department of Transportation

### Legal Problems Encountered

- \* Are warrants legal for DWI cases?

Get a multitude of opinions...

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WCDA Vehicular Crimes

**NO REFUSAL**

Texas Department of Transportation

### 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...

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### How to Conduct a No Refusal?



[www.nhtsa.gov/no-refusal](http://www.nhtsa.gov/no-refusal)

[www.tdcaa.com/dwi](http://www.tdcaa.com/dwi)

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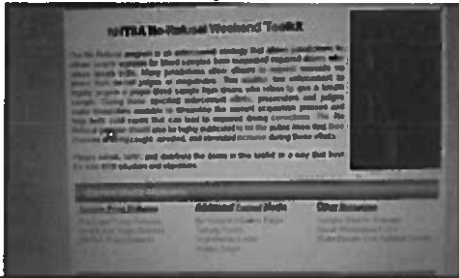
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### How to Conduct a No Refusal?

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### How to Conduct a No Refusal?

New Search Results Offense

Offense:  Location:  Offense Number:  Offense:

OFFENSE INFORMATION

Accepted?	Flag Status	Offense Date and Time
Case #	To	Offense Location
Case #	By	Passport for Traffic Stop
Number	Year	Witness
Number	Year	Offense Description
Case #	Year	
Number	Year	
Number	Year	

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Offense:  Location:  Offense Number:  Offense:

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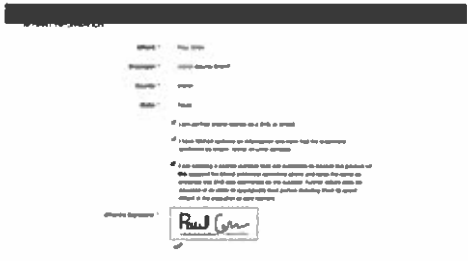
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### How to Conduct a No Refusal?

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WHEREFORE, based upon the affidavit I am presenting a search warrant that will authorize officers of the State Police to search the person of the suspect for the most serious described crime and upon the sworn statement of the officer that the suspect was committed by the suspect. Further, I am, for purposes of an order to suppress any and all evidence seized from the suspect in the execution of said warrant.

*Paul G...*  
Affiant

Subscribed and sworn to before me on Sunday, March 15, 2015, by an official authorized to administer and authorize the oath pursuant to TLE, RCW 200A 0300 0300 0300

*David Smith*  
Peace Officer / Notary / Judge of a court  
David Smith Officer  
Officer's Peace Number 67 00

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THE STATE OF TEXAS §  
COUNTY OF WALLER §

**AFFIDAVIT FOR SEARCH WARRANT AND INVESTIGATION**

**I. AFFIANT**

The undersigned Affiant, a peace officer under the laws of the State of Texas, and after his being duly sworn, he has made the following statements and declarations:

My name is Paul G... I am a peace officer employed by the State Police. I have successfully completed the state-mandated requirements to become a peace officer and have successfully completed various other training in the field of general operations, including Standardized Field Sobriety Tests, Narcotics 101/121, and other state-mandated activities. I have never been disciplined 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

a. I am certified and/or trained in the collection of drug samples or hazardous drivers through the observation of a Drug Recognition Exam (DRE) or through the Advanced Roadside Impaired Driving Examination (ARIDE) program.

b. I have formed opinions on intoxication on many occasions and have had my opinions confirmed by breath, blood, or urine samples that were administered after I performed my law enforcement duties relating to the operation of motorized vehicles.

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## How to Conduct a No Refusal?

- Go to [www.mynorefusal.com](http://www.mynorefusal.com)

### I. SUSPECT & CRIME

#### A. The suspected person ("suspect") is described as follows:

Name:	Clay Adams				
State DLID #: TA 24667125					
Race:	White	Sex:	Male	DOB:	3/17/1984
Hair:	Black	Weight:	200 lbs	Hair Color:	grey

#### B. The suspect is presently in the custody of a law enforcement agency here in Walker County, Tennessee, as listed above, which will present the suspect to facilitate the sampling.

#### 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 Walker County, Tennessee, 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. SWET CONDUCTED WHICH INDICATED IMPAIRMENT TO ME

#### • HORIZONTAL GAZE NYSIABUS (Horizontal HGN)

The suspect was first qualified as a candidate by observing the suspect's eyes for equal tracking, no hunting, nystagmus, and equal pupil size. The suspect was also qualified as a candidate for the test by the investigator.

HGN: If all three clues indicate impairment to me:  
I observed the following 3 clues

Lack of smooth pursuit of both left and right eyes.

Equal and sustained nystagmus at maximum deviation of both left and right eyes.

Onset of nystagmus prior to 45 degrees at both left and right eyes.

Verbal Response:  Yes  No Subject refused evaluation:  Yes  No

Other Remarks:

I have been my training and experience that Horizontal Gaze Nystagmus is caused by the introduction of a Central Nervous System Depressant, Intoxicant, or Disturbance Agent into the suspect's body.

#### • WALK AND TURN TEST (Penetration 1047)

WAT: If all three clues indicate impairment to me:  
I observed the following 3 clues




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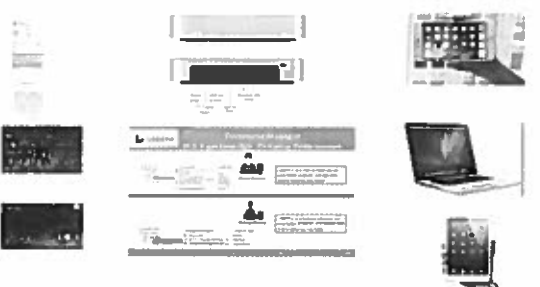
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### Staffing a Full No Refusal

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



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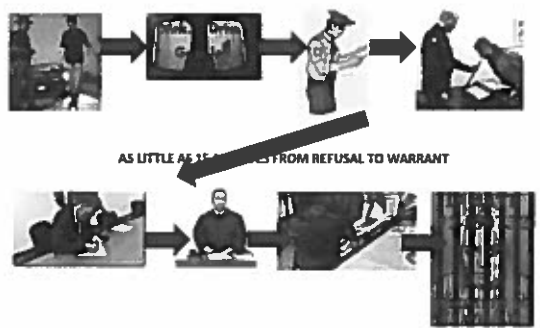
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### No Refusal Timeline



AS LITTLE AS 15 MINUTES FROM REFUSAL TO WARRANT

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### No Refusal IS High Visibility



The first image shows a group of officers standing together. The second image is a sign that reads 'BLOOD WORK' and 'MONTGOMERY COUNTY'. The third image is a sign that reads 'CHECKPOINT AHEAD'. The fourth image shows officers at a checkpoint with a sign that reads 'MONTGOMERY COUNTY' and 'CHECKPOINT'.

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### 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



The image shows a group of police officers standing in a line, possibly at a checkpoint or during a training exercise.

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### Mobile No Refusal

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



The image shows a police car with 'POLICE' written on the side, parked in a dark area.

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