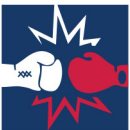


HOW TO CHOOSE A DUI LAWYER

in Virginia



**CUTTING
THROUGH
THE
INTERNET
HYPE**



BOB BATTLE LAW
Going to BATTLE for Your Legal Rights



BY BOB BATTLE, ESQ.

How To Choose a DUI Lawyer in Virginia

BY

Bob Battle, Esq.
Virginia DUI Lawyer

www.BobBattleLaw.com
(804) 673-5600
Fax (888) 743-7228
Bob@BobBattleLaw.com

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*Thank you for requesting and reading
this material. The fact that you have
taken the time to look at this information
shows that you are serious about trying
to win your DUI case. I would be more
than happy to “go to battle” for you at
trial. – Bob Battle*

HOW TO CHOOSE A DUI LAWYER

CUTTING
THROUGH
THE
INTERNET
HYPE

RAVE REVIEWS!

THE VERDICT IS IN FOR DUI LAWYER BOB BATTLE

The results of specific cases reported are not meant to be a prediction or guarantee of any other case since each case consists of factors unique to that case. However, it is an absolute certainty that you cannot prevail on an issue your lawyer fails to recognize and raise on your behalf.

Read on to hear what our Clients Say...

A 30-Year Track Record of Success and Results

“When I was charged with DUI in Fairfax County I searched for a lawyer as if my life depended on it. Certainly my livelihood depended on it. I am a professional and my employment contract stated that I would be fired if my license was ever suspended or restricted. I was shocked when the breath machine blew a .14 and I wanted a lawyer with the expertise to attack this breath machine.

*Bob does not leave Richmond to meet potential clients, but I was more than willing to make the 200+ mile trip to consult with Bob in person. I hired Bob at the conclusion of the consultation and it **was one of the best and most important decisions I have made in my life. Bob proved to be worth every penny of his fee.** Bob developed a new defense based on the replacement “chopper motor” that had been placed in the Intoxilyzer 5000 breath machine used in my case. He was the **first lawyer in the entire state of Virginia to convince a judge to let an expert test this machine.** Just hours before our expert was set to test the machine, the prosecutor offered a plea bargain to the reduced charge of Reckless Driving, with no license suspension. **Thanks to Bob Battle’s expertise and understanding of complex technical issues, my career is saved and I keep a great job instead of being another unemployment statistic.”***

-Client, Fairfax, VA

*"I hired Bob Battle after being involved in an accident and being arrested for DUI 2nd Offense in 5-10 years and Refusal to submit to a blood test. He was well prepared from the first time I met him for a consultation. When we went to court **he was in absolute control with a great plan to defend me so much so I felt the commonwealth attorney was on trial and not me.** He was able to get the refusal dismissed immediately and then continued to fight to have the DUI dismissed as well. He had the commonwealth on its heels so much so the judge asked the Commonwealth if they wanted to plea down to a reckless, when I asked Mr. Battle what we should do he said don't take the plea, and the DUI was also dismissed. **He truly is a fantastic lawyer, and worth every penny and then some.** I could not recommend Bob enough for whatever traffic issues you may have. He **saved my career and put one of the worst times in my life behind me.**"*

-Client, Richmond, VA

*"I was hoping for the best, but I have to admit I am still amazed that you hit a grand slam and **all charges (DUI, Reckless Driving, Aggressive Driving, Underage Possession of Alcohol) were dismissed.** Thanks again."*

-Client's Parent, Assistant U.S. Attorney

*"**Bob was so relentless in grilling the officer, you would think Bob was the one on trial and not me.** The end result – **not guilty of DUI.** I was convinced and it was demonstrated in the course of my case that **this man means business and is "the truth!"**"*

-Client, Senior Information Security
Program Manager/ Engineer

*“Thus, you were making strong arguments attacking every aspect of the government’s case – the proof of a prior conviction, the field tests and the breath result. **The prosecutor conceded the problem with the breath test and allowed me to plead to a first offense DUI with no jail time and an immediate restricted license!***

*You certainly charged more than my first lawyer, but I learned my lesson – you get what you paid for. **Hiring you was the best investment I’ve made in my life!** Thanks again.”*

-Client, Richmond, VA

*“I was referred to Bob Battle through a friend, and over the next few months **he mounted a vigorous – and, most important to me, very honest – defense to the charge. As a result of his thorough investigation and skillful negotiation, the prosecutor was persuaded to drop the DUI charge.***”

-Client, D.C. Attorney

“Prior to seeing how you defended my case, I never realized the great complexity of thorough DUI defense. I believe that your willingness to research and readiness to argue the possible effect of my diabetes on the BAC result convinced the prosecutor to amend the charge and saved me a mandatory 5 day jail sentence.”

-Client, Attorney, Richmond, VA

*“I have used Bob Battle two times over the past 4 years and he “battled” to have the case dismissed in one instance, and the other reduced to Reckless Driving from a DUI. **He is very seasoned in his profession and knows how the***

laws work – I would recommend Bob Battle to anyone who is facing DUI/DWI charges, as the penalties can not only be stiff, but expensive. Best money I ever spent being able to put away the legal issues after Bob Battle **made them surrender!**”

-Client, Henrico, VA

“I will never forget your cross examination of the trooper about his testimony that, on one of his ‘tests,’ I counted backwards from 46 to 32 instead of stopping at 34. You asked him if he was aware of any scientific studies relating counting 2 extra numbers to alcohol intoxication. He indicated that he was. From there you pummeled him with questions proving that he had lied and finally the judge said he had heard enough. **While granting your motion to dismiss my DUI charge, the judge told the trooper that there were already two lawyers arguing the case and it was not the trooper’s job to be the third lawyer!**”

-Client, Fairfax, VA

“Your efforts on my behalf led to the **reduction of my 2nd DUI AND a Refusal charge to Reckless Driving – a far better outcome than I could have ever hoped for.** Even when the prosecutor offered a plea of a DUI 1st, you went back to the table and negotiated the lesser Reckless Driving charge. **Because of your efforts one of the most stressful periods in my life is over and my life is back on track.** I can’t thank you enough and I will strongly recommend that anyone in a similar situation give you a call to discuss your representation.”

-Client, Spotsylvania, VA

*"I had a low life, overweight, ignorant, Stafford County cop try to take advantage of my friend and I. **Big B** took this cop's twisted story and made him choke on it. Bob caught him up in several lies and gave the judge no choice but to find me 'Not Guilty.'* Bob Battle, don't let his size fool you. *He has a bite to fear. He brought justice to the table. Thanks Bob!"*

-Client, Stafford, VA

"...Virginia's premier DUI defense attorney."

-Ben Glass, Esq., BenGlassLaw.com, Fairfax, VA

*"Thanks for your advice on my client's case. **You are a Jedi Master of DUI Defense.**"*

-Andrew Simpson, Esq., Alexandria, VA

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PART 1

CONGRATULATIONS!

By ordering and reading this book you have separated yourself from all those other DUI defendants who will make the critical, potentially life-altering choice of choosing an attorney without knowing the TRUTH. *“How to Choose a DUI Attorney”* is extremely unpopular among lazy lawyers who charge huge fees and then, plead their clients guilty – without putting up a fight. These lawyers are referred to as *“Dump Truck DUI Lawyers”* by members of the national DUI lawyers groups! The **good news** today is that through the Internet, individuals charged

with DUI and any other offenses have access to a tremendous amount of information. However, the bad news is they are also bombarded with more hype!

NO LAWYER LOOKS BAD ON A WEBSITE!

I will give you a number of essential criteria that your attorney must have and tell you the direct questions that you should ask any potential DUI attorney. If that attorney waffles even the least bit about these questions or tries to tell you that they are not important, you should immediately get up and walk out of his or her office or hang up the phone, because your case is far too serious to be wasting your time talking to someone who will not be completely straightforward with you.

I pride myself in giving a no BS approach to all my clients and just about 100% of my former clients would tell you that I have told them:

“My job is not to tell you what you want to hear, but to tell you how things really are!”

HOW TO PICK A DUI ATTORNEY—THE 10 QUESTIONS YOU MUST ASK OF ANY LAWYER TO FIND THE BEST LAWYER FOR YOUR CASE

The most important thing to remember when speaking with a potential lawyer is not to be afraid to ask questions. The best and most qualified lawyers will welcome your questions and they will take it as a sign that you have done your homework.

Remember that when you are interviewing an attorney, the attorney is also interviewing you to see if he or she wants to take your case. A good lawyer would rather represent a truly prepared client, a client who is committed to getting the best legal representation available.

Here are the **10 questions** you should ask and demand straight answers to in order to make an informed choice of who will represent you.

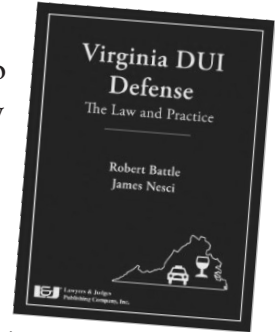
1 “How much experience do you have representing persons who are charged with DUI?”

This will tell you much about the attorney’s actual experience. But, also ask what types of cases they have done all those years. Lawyers can get listed on DUI lawyer directories, lawyer referral services, or in online or phone directories as “DUI lawyers” with no experience whatsoever. Also, I see more and more attorneys who have had their particular niche slow down or dry up completely who are trying to develop a traffic practice to increase their firm’s income.

Bob Battle has been practicing law for over 30 years and has been exclusively a trial lawyer for that entire time. He has handled thousands of DUI cases in his career. There is no substitute for experience, period!

You should leave the attorney’s office confident that you have spoken to someone who has real expertise, experience and a proven track record in DUI law. **Bob Battle “wrote the book” on DUI Defense in Virginia. DUI law is too**

complex to be trusted to someone who “dabbles in DUI defense.” That is why Bob Battle wrote Part 2 of this book titled “20 Ways Lawyers who are ‘Asleep at the Wheel’ of Your Virginia DUI Trial can LOSE Winnable Cases!”



2 “Have you been hired to write books on Virginia DUI Defense?”

Bob Battle “wrote the book” on DUI Defense in Virginia!

In 2012, Bob Battle was chosen by the prestigious Lawyers and Judges Publishing company to write a text book style book titled *Virginia DUI Defense: The Law and Practice*. One Virginia DUI lawyer has called this book *The Bible of DUI Defense in Virginia* and prominent defense lawyer Peter Greenspun of Fairfax, VA, has had his associates study the book when they told him they were interested in handling DUI cases. Defending DUI allegations at the highest level is an extremely complex and sophisticated blend of forensic science, a thorough understanding of Field Sobriety Testing, Breath Machines and Blood Analysis combined with the ability to successfully cross-examine the police officer and experts. Bob Battle is fond of saying, “*Top notch DUI defense is a lot more Mr. Spock than Captain Kirk!*”

3 “Who in the office will actually be handling the case and what are their qualifications?”

This is **the most important question** that you must ask. The lawyer that you might be speaking with may not

actually be the person who does the work on your case or who will be your lawyer at trial.

When you demand to know who is going to be your lawyer, the lawyer may respond that their firm uses a “team approach.” They may tell you that all their lawyers discuss your case. This is just another way of giving you the runaround. You should ask them why the attorney who is going to court feels inexperienced on specific issues dealing with your case and requires the assistance of other lawyers from the firm.

These firms who talk about their “team approach” will try to convince you to believe that anyone on the team is as good as the “hotshot partner.” To use a sports analogy, you should respond by saying, “Well, **Stacey King** and **Jack Haley** were both teammates of **Michael Jordan**. If you were a coach, would you be just as comfortable in centering your team around Stacey King and Jack Haley or would you rather have Michael Jordan?”

Better yet, when you start getting these evasive, slick types of answers, you should hang up the phone or walk out of the office of this law firm. You may look at their website and see phrases like, “All of our lawyers usually have some involvement in your case,” this means that their hotshot partner has no intention of going to court unless the TV cameras are there and he can walk in and get his grill on TV representing the celebrity client. The reality in these firms is that the hotshot partner is rarely if ever going to court anymore. The response of these firms when potential

clients ask who will be representing them in court at trial is that the hotshot partner trains these younger lawyers so that they are just as good as Mr. Hotshot. Oh really?! To use another sports analogy, you should respond to these firms by saying, “If you were a baseball coach, who would you rather have pitching for you in the World Series – **Roger Clemens** or someone who attended Roger Clemens’ baseball camp?” If this other lawyer is so good, why isn’t he working for himself?

The issue is quite simple – do you want a lawyer who will treat you as a valued client or who treats you as a commodity? Bob Battle **GUARANTEES** that he will do **ALL** of the work on your case, and will be the lawyer in court with you at trial.

4 What is the lawyer’s rating for legal ability and ethics?

- **Martindale-Hubbell AV Rating – You may notice that Bob Battle mentions on his website that he is “AV Rated.” This is the highest rating a lawyer can achieve for legal ability and ethical standards. These ratings are based on confidential peer reviews of judges and fellow lawyers.**

(NOTE: These ratings are not some poll from a random magazine of the “best/supercalifragilisticexpialidocious lawyers” that happen to subscribe to the magazine and send out emails to other law firms telling them if they vote for their lawyers, their lawyers will vote for them. Sounds like a junior high school election, not an unbiased selection of the top lawyers. The truth is that most of the votes cast in a magazine poll are by people who have not only never seen the other lawyer in action in court, but have never even met the lawyer and wouldn’t recognize him if he were sitting next to him!)

MARTINDALE-HUBBELL LEGAL ABILITY RATINGS

Legal Ability Ratings take into consideration the standard of professional ability in the area where the lawyer practices, the lawyer's expertise, and other professional qualifications. If a lawyer's practice is limited or specialized, Peer Review Ratings are based on performance in those specific fields of law.

- Legal Ability Ratings are:

C Good to High

B High to Very High

A Very High to Preeminent – a lawyer may be rated as high as 5.0 for legal ability. Bob Battle has a “Preeminent 5.0 out of 5 rating.”

According to Martindale-Hubbell, an “AV Peer Review Rating” — *“shows that a lawyer has reached the height of professional excellence. He or she has usually practiced law for many years, and is recognized for the highest levels of skill and integrity.”*

If a lawyer does not mention prominently in their advertising that they are “AV Rated” it is probably because they are not!

- **Avvo Rating – The newer of the national lawyer review websites is Avvo.com. Avvo rates lawyers on a scale of 1 to 10.0. In 2009, Bob Battle was the first DUI lawyer in the Richmond, VA area to be rated “Superb 10.0 out of 10” by Avvo.**

If a lawyer does not mention prominently in their advertising that they are a 10.0 on Avvo it is probably because they are not!

5 “Are you a former prosecutor and, if so, where were you a prosecutor?”

If a lawyer does not mention prominently in their advertising that they are a former prosecutor it is probably because they are not!

Watch out for the phrasing used in the ads!

If a law firm advertises that they have “former prosecutors” or “former prosecutor help available” the obvious and important question that you need to ask is “Is this former prosecutor going to be representing me in court?” The firm may be sending their newest and lowest paid associate to represent you while all the “former prosecutor” does is walk to the bank and deposit your check for a huge legal fee!

It is also important to ask your potential lawyer **where** they were a prosecutor. **All former prosecutor jobs are not created equal.** For example, some prosecutor’s jobs are not even full-time jobs and they do not handle any felony matters at all. Some prosecutor’s offices are not as busy as other offices. **Bob Battle is a former Fairfax County Assistant Commonwealth’s Attorney.** (Since Virginia is a “Commonwealth,” the prosecutors are referred to as Commonwealth’s Attorneys and not “district attorneys.” The district attorneys or “D.A.’s” that you see on TV are doing the exact same job as a Virginia Commonwealth’s Attorney.)

Fairfax County is **one of the busiest prosecutor’s offices in the country.** When Bob Battle was considering a job offer to join the Fairfax County Commonwealth’s Attorney’s office, he spoke with Jim Clark, a former Alexandria

Commonwealth's Attorney, who pointed out that, "*A year in Fairfax is equivalent to three years in Alexandria in terms of experience.*" Clark also pointed out the incredible advantage of working for and being mentored by **Bob Horan, the legendary chief prosecutor in Fairfax County.** The award for the Outstanding Prosecutor of the Year in Virginia is named after Bob Horan, an incredible and well deserved honor for an active prosecutor.

In four years under Horan's tutelage, Bob Battle had over 50 jury trials and thousands of non-jury trials; much more trial experience than most lawyers have in their entire careers.

6 Are you a member of the National College for DUI Defense or DUI Defense Lawyers Association?

Many of the most dedicated and successful DUI defense lawyers and expert witnesses in the country are members of the National College for DUI Defense ("NCDD") and/or DUI Defense Lawyers Association ("DDLA"). Bob Battle's plaque from the NDCC states that he "is hereby recognized as a criminal defense attorney **dedicated to the defense of citizens accused of driving under the influence.**" Many lawyers have not even heard of this organization which speaks volumes about any claims they may make about being dedicated to being a top DUI lawyer. The number of lawyers in the Richmond area who are members can be counted on one hand. Furthermore, the NCDD offers the most advanced legal seminars at locations all over the country. Bob Battle regularly attends to obtain the latest

training on all aspects of DUI defense. He can count on 1 finger the number of other area lawyers who are members that he has seen at these conferences. In 2014, Bob Battle was named as a **Founding Member of the DDLA**.

7 “Have you ever been disciplined by the State Bar?”

You do not want a lawyer with a long disciplinary rap sheet and you deserve to know if your lawyer has been disciplined in the past.

8 “What are all the potential legal costs, including investigators, experts and the like?”

The lawyer should be honest with you about what your case might cost. You want to be secure that the lawyer is not luring you in with promises of unrealistically low fees and costs.

- Bob Battle charges a **flat fee** for his legal representation
- Bob Battle does **not** charge extra money for a 2nd DUI

BEWARE – Any lawyer who charges more for a 2nd DUI because “it requires more work,” is either misleading you or is not an experienced DUI lawyer.

- Bob Battle is the only lawyer in Virginia to offer a **GUARANTEE** of FREE representation on a bench trial appeal from the General District Court to Circuit Court

As **Virginia Personal Injury lawyer Ben Glass** stated in an unsolicited post on his law blog detailing **why he feels Bob Battle is Virginia’s premier DUI defense attorney**, “A

*word of warning: if you are looking for the cheapest DUI attorney in Virginia, and are shopping on price – don't waste your time. **Frankly, hiring a DUI lawyer based on price is only one step more stupid than representing yourself in these cases.***

9 “How many cases have you taken to jury trial?”

This is a crucial question and one which “separates the men from the boys” in DUI defense.

Your case might need to go to trial in order to get the outcome you deserve and it is imperative that your attorney have a significant amount of jury trial experience.

If you are speaking with a potential lawyer who tells you that his amount of jury experience is not relevant because you do not really want a jury trial on your Virginia DUI, you are being misled and you are speaking to someone who doesn't have much or any jury trial experience.

The fact of the matter is that, in **Virginia, the prosecutor has as much right to demand a jury trial on an appeal to Circuit Court on a DUI as the defendant does.** In some jurisdictions, such as Arlington, Virginia, the prosecutor demands a jury trial on all DUI appeals.

Experience before juries and success in jury trials is a benchmark separating the best trial lawyers from the rest of the pack of lawyers. **Bob Battle has had over 100 jury trials in his career.** Battle has even secured **jury acquittals** for clients in cases as serious as **felony alcohol-related manslaughters and 4th DUI charges.**

10 “What challenges do you see in my case and what will be the final outcome of my case?”

The lawyer should be able to explain to you what he or she sees as the challenges you face and what they could mean for the ultimate result.

A good attorney will not promise you a specific result, because it is always impossible to be certain how a case will turn out. Any other answer is dishonest and unethical. A good attorney can only promise to do his or her best job in defending you. No lawyer wins all their cases but it is a certainty that **you can’t win an issue your lawyer fails to recognize and raise at trial.** (That’s why *Part 2* of this book reveals *“20 Ways Lawyers who are ‘Asleep at the Wheel’ of Your Virginia DUI Trial can LOSE Winnable Cases!”*)

When you look for a potential defense attorney, tell him or her everything that you think is relevant, and then some. Something that you dismissed as a minor detail might make all the difference in your case. Most importantly, be honest. You have nothing to fear. Except in rare cases, if you are talking to an attorney face to face, even before he or she has decided to take your case, you already enjoy attorney-client privilege. This means that nothing you say could ever be used against you. If you ever have any doubt that your communication with the attorney is “privileged,” you should simply ask.

CUT THROUGH THE BS!

Now that you are armed with the 10 questions you must ask and the reasons they are important, you will be able to cut

through and recognize some of the Internet hype and BS.

For example, one lawyer even mentions in his website advertising that he has a background in “**science.**” What you are supposed to infer from this is that this gives him a greater knowledge of the breath machines used in Virginia. **What a bunch of bull!** Just because this guy spent some time in college dissecting a few rats or heating things under a Bunsen burner, doesn’t qualify him the least bit to be an expert on the Intoximeter EC/IR II manufactured by Intoximeters, Inc. in St. Louis, Missouri. Plus, a lawyer cannot be a witness at trial. When a client needs an expert at trial, they need to hire a TOXICOLOGIST, not some lawyer who won the Blue Ribbon at the junior high Science Fair!

Beware the national DUI websites – the “Lawyer Directories”

If you do an Internet search, you will notice that there are quite a few national DUI sites. These sites purport to list DUI “expert” attorneys from all over the country. **The only requirement for the vast majority of these websites in selecting an attorney to be listed is that the attorney has a credit card to pay the fee to be on this website!**

Let’s look at some **specific examples of why you should avoid Lawyer Directories:**

In a website search of “Richmond Virginia DUI lawyers,” the website for www.totalduilawyers.com uses the slogan “**find local DUI lawyers.**” So, how does this service operate? Well, when you call the number on the website, do you speak to a “local Richmond Virginia DUI lawyer?” No. Do you speak to a

DUI lawyer? No! Do you speak to a lawyer? No! Do you want to know who you speak to? You speak with a business person in Chicago who will take your information down and relay it to a lawyer who pays their service for this referral. This company gets \$90 for every “lead” that they pass on to the attorney. So, is your information passed on to a “local Richmond DUI attorney?” No! It is passed on to a lawyer in Manassas Virginia. Manassas is 100 miles north of Richmond Virginia. Does this lawyer then make the hundred mile trip to Richmond to represent you? Bob Battle has never seen this lawyer in any of the Richmond-area courts. So, what is he doing with your phone call? He is referring your case to another lawyer, presumably so he can collect a “referral fee” from that lawyer. This whole process reminds me of the **old lawyer joke**: “It was so cold last week I saw a lawyer with his hands in his own pockets.” If you contact this company, two different people have their “hands in your pockets” before you even potentially get referred to a lawyer in the Richmond, Virginia area whom you know nothing about. (Note: it is permissible for a lawyer to ask for and receive a referral fee. My issue is not with the attorney, but the misleading ad of the lawyer directory.)

Another example is a national DUI lawyer directory website called “**DUI Defenders**” at www.dui1.com. This is an exact quote from the **actual postcard that they send out to DUI lawyers soliciting them to pay money to be listed on their site**:

- DUI Defendants are Average People, Scared, with no Criminal Record and lots of Money
- Most cases are Pled without a Trial

- Enter the most lucrative area of criminal Defense practice

This postcard is not exactly recruiting lawyers who are hard working or concerned with anything other than pleading you guilty and charging you a huge fee! In the National College of DUI Defense Lawyers these lawyers are referred to as **“Dump Truck” DUI lawyers** – they have no skill set, do not prepare for trial and do nothing more than show up with you at court and plead you guilty.

Finally, here is the most egregious example of a DUI Directory using a blatantly unethical internet ad. The DUI service www.DUILaws.com states in their internet ad, “Want your Virginia DUI Dismissed?” This is not only false and blatantly misleading, but it is unethical.

Needless to say, Bob Battle refuses to have his name associated with any of these lawyer directory websites listed above.

PART 2

20 WAYS LAWYERS WHO ARE “ASLEEP AT THE WHEEL” OF YOUR VIRGINIA DUI TRIAL CAN LOSE WINNABLE CASES!

There is one certainty at a DUI trial – the DUI defendant cannot prevail on an issue his lawyer fails to recognize and raise!

INTRODUCTION

Back in 1986, when I first started working as a prosecutor in Fairfax County, Virginia, I was puzzled by the response I received from my more experienced colleagues when I would ask them a question about a legal issue. They would inevitably respond to my question on this legal issue by asking me two questions: “Who is the police officer? Who is the defense attorney?” Four years later, when a younger assistant prosecutor would approach me with a question about a legal issue from one of their cases, I found myself responding the exact same way by asking them who were the police officer and defense attorney for that particular case. The reason for this response is simple. **Any experienced prosecutor knows that some of the police officers are knuckleheads and that some of the defense attorneys are clueless!**

My purpose in writing this e-book is not to list every possible defense to a DUI or even most of the defenses that could arise on a given case. My purpose is to demonstrate that there are an incredible number of potential defenses in a DUI case from a factual, technical, and legal standpoint.

The aggressive defense of a DUI charge can give rise to more potential legal defenses and technical defenses than most murder trials. The Virginia DUI law section of the Virginia Code is over 40 pages long. Furthermore, the law is constantly changing – increasing penalties and making it easier for the prosecutor to convict those charged with DUI. Trial courts and appellate courts are regularly issuing opinions on a wide variety of DUI issues.

The following are a list of potential issues in a DUI case that could lead to your charge being dismissed or the suppression of evidence regarding the results of field sobriety tests or breath tests.

INVALID STOP

1 The arresting officer did not have “reasonable suspicion” for the stop.

The United States Supreme Court has held that an officer must have a reasonable suspicion of a criminal or traffic offense to stop the vehicle. If the officer did not have a reasonable suspicion, then the remedy is that the DUI charge must be dismissed. Just recently, Bob Battle has reported on a Virginia decision that held that a partially peeling inspection sticker was not a valid basis for a stop and an Ohio decision that said driving “too slow” was not a valid basis either.

2 The basis for the stop was “weaving within the lane.”

This is an issue which many lawyers miss, because they have not carefully read the Virginia appellate decision on this issue. Some states, such as Louisiana, have held that weaving within the lane is never enough to stop a vehicle. A subsequent Virginia case stated that the officer’s testimony in that case which included observing the vehicle weave within its lane a number of times over a short distance was sufficient. However, this case still does not preclude the argument that if the weaving occurred over a greater distance and was less frequent that it was not a sufficient

reason for the stop. Today, with all the large SUVs on the road, what an officer describes as weaving within the lane, could merely be a matter of observing the vehicle move a matter of inches from the middle of the lane.

3 Changing lanes without a signal as the basis for a stop.

Many lawyers believe that in Virginia changing lanes without signaling is a traffic violation in and of itself. **However, that is not what the statute reads.** One is only required to signal if there is other traffic nearby. Most DUIs occur very late at night and very often the police officer is the only other vehicle anywhere near the vicinity of the driver.

4 Anonymous tip of drunk driving from citizen.

In this day and age where everyone has a mobile phone, more and more suspected drunk drivers are being pulled over based on a 911 call from a citizen. Virginia law requires that, prior to being able to pull a vehicle over, the officer must obtain sufficient corroborating evidence from a caller to verify who the caller is, how they obtained their knowledge and what this knowledge is that leads them to conclude that someone is driving while intoxicated. **If the officer does not obtain sufficient corroboration, the stop is invalid and the charge must be dismissed.**

INVALID ARREST DEFENSES

5 The officer did not have probable cause to make an arrest.

The major difference between “challenges to the arrest”

and “challenges to the stop” is the burden of proof on the police officer. Whereas, a stop is justified by a reasonable suspicion, officers must have greater proof to arrest; they must have probable cause. This does not mean that all the evidence used to justify the stop becomes irrelevant. On the contrary, that evidence, along with everything else the officer observed **prior** to making an arrest is relevant to the court’s determination of probable cause. However, when a motion to dismiss based on a lack of probable cause is made, the judge will not consider any evidence obtained **after** the decision to make an arrest was made – for example, the breath or blood test results.

6 Failure to effectively and persuasively respond to prosecutor’s argument that their burden to show a valid arrest is “only” probable cause.

The officer must have “probable cause” to arrest someone for driving under the influence. This is a lesser standard than “proof beyond a reasonable doubt” at trial. However, this is the same standard of proof as in a civil trial. In response to many prosecutors’ arguments that the standard is “only” probable cause, Bob Battle has successfully pointed out to the judge that he or she must consider that, if this were a civil case and the prosecution presented the evidence that they did of everything leading to the arrest, the judge would have to find that the Commonwealth proved that it was more likely than not that the accused was driving under the influence.

The point is that many lawyers do not argue effectively that, although the burden of proof is lesser than proof beyond a reasonable doubt, the Commonwealth's burden to prove an arrest by a preponderance of the evidence is a significant burden to meet. Again, if there is no probable cause for the arrest, the charge must be dismissed.

OFFICER'S OBSERVATIONS OF DEFENDANT

Many lawyers do not respond to the officer's testimony concerning their general observations of the driver – for example that they had an odor of alcohol, their eyes were bloodshot, their speech was slurred, etc.

7 Odor of alcohol.

Alcohol has no odor! At trial, when the officer is questioned on cross examination of whether the smell was from beer or wine or mixed drink, it is clear that they have no independent recollection of what they smelled.

8 Bloodshot and glassy eyes.

The officer will have to admit that they do not know what your client's eyes normally look like. They will have to admit that they don't know how long a client had been awake that day or what sort of eyestrain they may have experienced during the day. If a photo was taken of your client by the officer or at the jail, try to take a look at it to see if the eyes look normal in the picture. Also, at trial, sometimes the client's eyes will look bloodshot and it is a not a waiver of the Fifth Amendment right to remain silent by having the

officer observe the client's eyes at trial and testify that they are bloodshot. *(Of course the lawyer should only try this if they have first made sure that their client showed up sober for their trial!)*

9 Slurred speech.

Again, the officer will have to admit that they do not know your client's normal speech pattern. The officers have forms which have checkmarks to fill in for these observations and field sobriety test results. On **cross examination**, it is often clear that the **officer has no independent recollection** other than what was checked on this form. Thus, an effective way to attack testimony about slurred speech is to ask the officer whether he understood what the client was saying. Then the officer should be asked whether the client slurred every word or just some words. Very often, the only slurring was the client rapidly saying the letters LMNOP while doing the alphabet.

FIELD SOBRIETY TESTS

10 Failure to make blanket objection to all field sobriety tests.

The officer does not know how your client would perform on these tests completely sober, so they are **not relevant**. When they were designed, the tests were only intended to be used in the determination of whether to arrest the individual and not as substantive evidence at trial.

11 Failure to object to referring to tests as "field sobriety tests" at jury trial.

It doesn't matter if the case is tried by a judge, but allowing

these tests be referred to as “sobriety” tests before a jury are giving them more credibility than they deserve.

12 Standardized field sobriety testing is inaccurate.

The National Highway Traffic Safety Administration (NHTSA) developed the three tests that make up the standardized sobriety tests: the walk and turn test, one leg stand test and horizontal gaze nystagmus test. The government’s own testing only showed the one leg stand to be able to correctly predict a BAC of .10% or higher in 65% of those tested.

13 Failure to object to admissibility of walk and turn and one leg stand tests when a client is 50 or more pounds overweight, over 60 years old, or has any physical impairment that affects their ability to balance.

The NHTSA manual explicitly states that anyone falling in these categories should **not** even be given these tests.

14 Failure to point out the location where these tests were given.

Most of the time, these tests are done on the shoulder of the highway or road. All highway shoulders are banked and not level to allow water to run off the highway. All highway shoulders have rocks and debris. If the officer is unwilling to concede that the shoulder was banked on cross-examination, this often causes the judge to view his entire testimony with skepticism.

15 The Horizontal Gaze Nystagmus (HGN) test is not a scientifically valid test.

The “follow the pen with your eyes test” actually has a very complicated name – the Horizontal Gaze Nystagmus (“HGN”) test. This test purportedly measures the involuntary jerking of the eye when a person is impaired by alcohol. According to NHTSA, normal, sober people have a nystagmus at high peripheral angles (i.e. when they are looking to the extreme left or right). However, the studies seem to show that those who are impaired by alcohol have exaggerated jerkings that can be observed at less extreme angles, such as 45°. In conducting this test, the officer tells an accused to keep his or her head still and follow a pen that the officer waves horizontally across each eye. The officer looks for three indicators of impairment: (1) the eye cannot smoothly follow the pen; (2) there is distinct jerking at maximum deviation, and (3) the jerking’s angle of onset is within 45° of center. If and officer can identify 4 or more clues, then the officer can conclude that the accused is probably impaired. **Since this is a scientific test, Virginia law provides that the prosecution has the burden to establish its admissibility.** Even if the judge allows the officer to testify that he observed a lack of smooth pursuit by your client in following the pen, a jerking at maximum deviation, has a jerking of the eyes prior to a 45° angle, the lawyers should still object to the officer concluding that alcohol caused those reactions without expert witness testimony.

Bob Battle has found in his 30 years of DUI trial experience that a lot of officers cannot even pronounce “nystagmus,” most cannot define a nystagmus, and he has yet to find one officer who can testify how the alcohol travels through the body after consumption and causes this involuntary jerking of the eyes! There are many factors which have been known to cause nystagmus other than alcohol. Some of these factors exist in the overwhelming majority of DUI cases. For example, lack of sleep, caffeine and cold remedies can cause nystagmus. Also, how can an officer accurately tell a 45° angle? The officer almost always testifies that the client is unsteady on their feet and swaying, yet, miraculously, when they are being given the HGN test they remain absolutely still – no swaying, no movement of the head in any direction!

16 The non-standardized field sobriety tests are invalid.

Neither the federal government nor medical science considers the finger to nose test, ABC’s, or counting backwards as a valid sobriety tests. The “**Testimonials**” section of **Bob Battle’s website** includes a testimonial from a client commenting on Bob Battle’s cross examination of a trooper who was caught lying and stated that he was aware of scientific tests relating counting backwards to alcohol intoxication. **Like a referee stopping a boxing match, the judge stopped Bob Battle’s blistering cross-examination and dismissed the case and told the officer that he did not need “a third lawyer” in his courtroom!**

BREATH AND BLOOD TESTS

17 Failure to object to admissibility of the preliminary breath test (PBT) at a motion to dismiss for lack of probable cause to arrest.

The PBT is simply a hand-held breath test. The Virginia Code provides that it is not admissible in “any prosecution” for DUI. However, the Virginia Court of Appeals has ruled that a pretrial motion is not a “prosecution.”

Bob Battle constantly sees lawyers conceding the admissibility of the PBT in their lack of probable cause argument, or, worse, failing to raise the issue of lack of probable cause to arrest because their client’s PBT was above a .08. The Court of Appeals decision **did not** set forth an evidentiary exception to the basic rules of evidence – that the burden of proof for the admissibility of the scientific evidence was on the prosecution. **Again, Bob Battle has yet to see an officer who can testify to the manufacturer of their PBT and whether the Virginia administrative agency rules governing the maintenance of these devices have been followed.**

18 Failure to obtain maintenance records for the Intoximeter EC/IR II.

The breath machine used in Virginia is just that – a machine. In fact, it is the cheapest machine on the market. Machines break or malfunction. It is essential for any thorough lawyer to obtain these records in every DUI case. Any problem with the breath machine could lead to the suppression of the breath result, the trial, or, in some instances, the dismissal of the entire case.

19 Failure to argue that the BAC at the time of the driving was below .08.

This argument is known as the “**relation back**” argument. The breath test result is rebuttable. An expert can in some cases testify that based on the time the alcohol was consumed, that the actual BAC **while driving** was below .08.

20 Failure to spot multiple issues that arise in DUI accident cases.

Quite often, a client charged with DUI has been involved in a single car accident that the officer did not observe. Very often, the officer is unable to prove that your client was driving or that he had not been consuming alcohol after getting into the accident and exiting the vehicle. By statute, the officer must arrest the suspect within three hours of the driving behavior. If you have been drinking and are involved in a single car accident, it is absolutely crucial that you exercise your right to remain silent. Furthermore, if the alleged drunk driver is injured, often a blood test is taken at the hospital. Rarely do the hospitals follow the statutory requirements and these hospital blood tests can be kept out of evidence at trial.

I could keep going on and on (I haven't even talked about roadblock issues, the invalid “partition ratio” used by the breath machine, and the Constitutionality of “presumptions”) but I believe I have made my point and convinced you that aggressive, effective and thorough DUI defense is a very complicated area of the law and you need an expert to ensure that any and all possible defenses on your behalf are raised!

VIRGINIA DUI PENALTY CHART

Offense	Blood Alcohol Level	Jail or Prison Sentence	Fine	Vehicle Interlock 18.2 – 270.1	License Suspension 46.2 – 391	Vehicle Forfeiture
1 st Offense	.08 or greater (or under influence of alcohol, drugs or both)	Class 1 Misdemeanor – up to 12 mos. Jail & \$2,500 fine	\$250 mandatory minimum fine	6 mos to 1 year	12 mos by court	No
	0.15 to 0.20	Additional 5 day mandatory minimum				
	Greater than 0.20	Additional 10 day mandatory minimum				
2 nd Offense within 5 Years	.08 or greater (or under influence of alcohol, drugs or both)	1 month to 1 year in jail. Mandatory minimum 20 days				
	0.15 to 0.20	Additional mandatory minimum 10 days				
	Greater than 0.20	Additional 20 day mandatory minimum				
2 nd Offense within 5 to 10 Years	.08 or greater (or under influence of alcohol, drugs or both)	Minimum confinement not less than one month. Mandatory minimum 10 days.	\$500 mandatory minimum fine	6 mos to 1 year	3 years by DMV	No
	0.15 to 0.20	Additional mandatory minimum 10 days				
	Greater than 0.20	Additional mandatory minimum 20 days				
3 or more Offenses within 5 Years	n/a	Class 6 felony- up to 5 yrs. imprisonment. Mandatory minimum 6 mos.	\$1000 mandatory minimum fine		10 years by DMV. Reinstate after 3 to 5 years.	Yes
3 or more Offenses within 5 to 10 Years	n/a	Class 6 felony. Mandatory minimum 90 days				
4 th Offense within 10 Years	n/a	Class 6 felony. Mandatory minimum 1 year, plus probation for same term as license suspension not to exceed 3 years.				
Transporting minor while under the influence	n/a	Additional 5 days mandatory minimum	Additional fine \$500 to \$1000	n/a		

Call Bob Battle today at (804) 673-5600 or email him at Bob@BobBattleLaw.com.

CUTTING THROUGH THE INTERNET HYPE

How To Choose a DUI Lawyer in Virginia

This controversial consumer guide from Former Prosecutor Bob Battle reveals the TRUTH about Lawyer website hype and B.S.! If you have a pending DUI in Virginia, this is the book that gives you the critical information you need to choose the right lawyer – we GUARANTEE this book will not waste your time.

This book will reveal:

- 10 Questions you must ask of any lawyer
- How to avoid hiring a “Dump Truck” DUI Lawyer (i.e. does no work on your case & pleads everyone guilty!)
- 20 Mistakes Lawyers make that lose WINNABLE cases for their clients

ABOUT BOB BATTLE



Richmond, Virginia DUI Lawyer Bob Battle has gained national fame for his success in DUI defense. His winning defense of numerous pro athletes has made him the “first round draft choice” of Virginia DUI defendants. He wrote the book on Virginia DUI defense. His textbook “Virginia DUI Defense: The Law and Practice” has been called “the Bible” by one Virginia DUI lawyer. In addition, Bob is a highly sought out seminar lecturer, teaching other lawyers all facets of DUI defense: Technical (“Attacking Field Sobriety Testing”);

Procedural (“Defending DUI cases in Federal Court”); and Tactical (“Winning Your Trial with Style: Teaching Lawyers the Untaught Art of Persuasion”— soon to be made into a book). A former Fairfax prosecutor and federal law clerk, Bob Battle, has achieved the highest rating a lawyer can receive for Legal Ability and Ethics.

Call Bob today at (804) 673-5600 or email him at Bob@BobBattleLaw.com

A 30-YEAR TRACK RECORD OF SUCCESS AND RESULTS

“When we went to court, Bob was in absolute control with a great plan to defend me so much, I felt the commonwealth attorney was on trial and not me. He was able to get the Refusal dismissed immediately and continued to fight to have the DUI dismissed as well. He saved my career.” – Client, Richmond, VA

“I was hoping for the best, but I have to admit I am still amazed that you hit a grand slam and all charges (DUI, Reckless Driving, Aggressive Driving, Fail to Maintain Proper Control and Underage Possession of Alcohol) were dismissed.” – Client’s Parent, Assistant U.S. Attorney

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