

**THANK YOU FOR REQUESTING AND READING THIS  
INFORMATION.**

The fact that you have taken the time to request this book shows you are serious about winning your DUI case. I only work with people who want to win their DUI case. I am not the lawyer who "holds" your hand while pleading you guilty.

Bob has more than 30 years practicing law since graduating from William & Mary Law School. Bob routinely practices in Harrisonburg, Rockingham County, Staunton, Waynesboro, Augusta County, Luray, Page County, Woodstock and Shenandoah County. Bob is also a Founding Member of the DUI Defense Lawyers Association (DUIDLA).

**Association members represent the most educated and innovative DUI defense lawyers in the country. The Association's goal is to teach the science of DUI Defense to as many lawyers as are willing to learn. Too long have innocent people been caught up in the Government's net fishing for actual drug or alcohol impaired drivers.**

Bob is co-author of a book on DUI Defense titled, "DUI/DWI Virginia Arrest Survival Guide: The DUI Guilt Myth, Second Edition." A free E-copy of this book is available on his website or you can call 540-433-6906 and request a copy be mailed to you.

Bob is a DOT trained operator of the EC/IR II, the forensic breath alcohol machine used by Virginia. Bob actually has an EC/IR of his own.

**Most lawyers have no idea that significant problems exist with the breath test gadget that generates the most important evidence the state will attempt to use against you: the breath test certificate. Bob does; he owns one.**

Bob has also successfully completed the NHTSA Standardized Field Sobriety Testing Instructor Training. Most officers have only taken the Student Course at the Police Academy.

Bob can properly administer, instruct and grade the Horizontal Gaze Nystagmus, the Walk and Turn and the One Leg Stand and assess if your officer gave such tests properly. Most officers are not able to properly administer, instruct and grade the SFSTs.

Call Bob today at 540-433-6906 or email him at  
Bob@BobKeefer.com

## **PART I**

By ordering and reading this book you have set yourself apart from the mass of persons accused of DUI who fail to learn the TRUTH. **Choosing a Virginia DUI Lawyer** is not well liked among lazy lawyers who charge big fees and then plead you guilty without requiring the state to prove its case.

As a wise man once said: **“You lose 100% of the cases you plead guilty!”**

**I get tired of watching lawyers take fees from clients simply to plead them guilty. Many of those clients have winnable cases but the lawyers are either too lazy or too poorly versed in the intricacies of DUI to see the winning argument.**

## **NO LAWYER LOOKS BAD IN HIS OFFICE**

I will tell you a number of essential criteria that a good DUI lawyer must have. I will also provide you below with the 8 direct questions to ask every potential DUI lawyer. If the lawyer hesitates or waffles in his or her answer or tries to tell you these questions are not important, you should leave the office or hang up the telephone immediately. Your case and your future are too important to waste time talking to an lawyer who will not be direct and honest with you.

**I pride myself on being straight with all my clients; if you want a cheerleader who will ignore the facts and the law I am not the Lawyer for you. My job is not to tell you what you want to hear, but to tell you how things really are!**

## **How to pick a Virginia DUI Lawyer – The 8 Questions you must have answered.**

**1) How many years have you been in practice?** This will tell you a lot about the lawyer's potential experience. You want an lawyer who has been the problems with the Government's case before and knows how to use those problems to gain your acquittal.

Bob Keefer has over 30 Years experience since graduating from William and Mary Law School in 1983 and has handled thousands of cases in his career.

**2) What is the last seminar you attended on DUI defense and when did you attend that seminar?** DUI defense is not a static profession. New defenses arise all the time and your lawyer needs to attend the specialty seminars where such defenses are discussed and explained. Your lawyer also needs to belong to a network of DUI defense lawyers to stay current. The Government shares information among prosecutors; your defense lawyer should do so as well.

Bob Keefer attends at least two DUI seminars a year. These seminars are given all over the country and involve the expense of airfare, hotel and fees for the seminar. Bob thinks being as informed as possible of possible defenses for you is worth the investment in time and money.

**3) Does the lawyer even know the name of the EC/IR II?** A lot of people who claim to understand this breath tester do not even know its name. If the lawyer does not even know the name of the machine he will probably not be able to convince the Court that the evidential breath tester was not accurate in your case.

**4) Do you routinely order the information on the breath tester from DFS?** The only way to determine if the breath tester was functioning properly is to careful review all of its records. The Lawyer ought to already have or be moving quickly to obtain copies of the trouble call log, the analysis log and the maintenance log for the particular breath tester the Government used on you. If he does not then he does not know your machine. If he does not order your particular records, he is not thoroughly evaluating your case.

**5) Do you have an EC/IR?** How can your lawyer adequately represent you when he does not even know the color of the start button?

**6) Have you ever been disciplined by the State Bar?** You do not want a lawyer who has a long disciplinary rap sheet and you deserve to know if your lawyer has been disciplined in the past. If he has been disciplined and you are still interested in retaining him, find out the number of times he was disciplined and the reason for such punishment.

7) **What challenges do you see in my case?** The Lawyer should be able to tell you what challenges he sees in the case and what effect such challenges may have on the ultimate outcome.

8) **What will be the final outcome of my case?** A good lawyer will not promise you a specific result because it is impossible to be certain how a case will turn out. **Any other answer is dishonest and unethical.** A good lawyer can only promise to his or her best job in protecting your interests. No lawyer wins all of his or her cases **but it is a certainty that you cannot win an issue your lawyer fails to recognize or fails to raise at trial.**

**Set out below are some potential defenses to a Virginia DUI. This list is not intended to be exhaustive and such defenses may or may not be available in your case.**

## **POTENTIAL DEFENSES IN VIRGINIA DUI CASE**

### **INVALID STOP**

1) **The arresting officer did not have “reasonable suspicion” to stop you.** The officer must have reasonable suspicion of a criminal or traffic matter to legally stop a vehicle. If the officer did not have reasonable suspicion then the case should be dismissed for that reason. For example, a partially peeling inspection sticker is not a valid basis for a stop.

2) **The basis for the stop was “weaving within the lane.”** Many Virginia lawyers miss this issue entirely. Weaving within the lane is not the same as weaving over the center lane and over the line on the edge of the roadway. Virginia law requires a significant amount of weaving within your lane to justify a stop. With all the large vehicles such as SUVs on the road, could moving a matter of inches in the lane be a reason to stop? You need an lawyer who knows this argument has merit.

3) **Changing lanes without a signal as a basis for a stop.** Many lawyers believe that merely changing lanes without signaling is an offense. Not true. One is only required to signal if there is other traffic nearby. Most DUI arrests occur late at night and very often the police car is the only vehicle even within sight distance of the driver.

4) **Anonymous Tip of possible drunk driver from citizen.** Today almost everyone has a cell phone and more and more suspected drink drivers are being pulled over on the basis of an anonymous 911 call. Virginia law requires that, prior to being legally allowed to stop a car, the officer must obtain sufficient corroborating evidence from the caller to verify the caller’s identification, how the caller obtained the information and what the factual basis is for the caller’s conclusion the suspect is a drunk driver. 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 the arrest.** The burden on the officer is greater to arrest you than it is to stop you. The officer must have reasonable suspicion to stop; however, he must have probable cause to arrest. If a motion to dismiss for lack of probable cause to arrest is made the Court considers all facts gathered by the officer before the arrest; what happened after the arrest: the breath or blood test is not relevant.

**6) Failure to effectively and persuasively respond to the prosecutor's argument that the Government's burden to show a valid arrest is "only" probable cause.** Probable cause is a lesser standard that beyond a reasonable doubt – the standard of proof necessary for the Government to convict. However this is the standard of proof in a civil case; it is not an easy to reach standard like the prosecutors suggest to the Court. The Government must prove from its evidence that it was more likely than not that the accused was driving under the influence.

The Government's burden to prove probable cause by a preponderance of the evidence is a significant burden to meet and your lawyer should remind the Court of that significant burden.

## OFFICER'S OBSERVATIONS OF THE ACCUSED

**7) Odor or alcohol. Alcohol has no odor.** One cannot tell when someone drank from odor; one cannot tell what someone drank from odor; one cannot tell one cannot tell how much one drank from odor. Your lawyer should bring this out on cross examination.

**8) Bloodshot and glassy eyes.** The officer will have to admit that he or she does not know how the Accused's eyes normally appear. Most lawyers do not know that glassy eyes were never seen as a clue by the National Highway Traffic Safety Administration (NHTSA) of intoxication. Most lawyers also do not know that in a 1997 NHTSA study bloodshot eyes were removed from the list of impairment clues since there were so many other possible causes besides excessive alcohol.

**9) Slurred speech.** Again the officer will have to admit that he does not know how the Accused normally sounds. On cross examination the lawyer should ask the officer whether he understood what the Accused was saying. Then the officer should be asked whether the Accused was slurring every word or just some words.

## **FIELD SOBRIETY TESTS**

**10) Failure to make a blanket objection to all field sobriety tests.** The officer does not know how the Accused would normally perform on these roadside exercises. He is only assuming that any perceived errors were caused by alcohol. Moreover, these “tests” were not designed to detect impairment. Instead, their function is to prognosticate whether someone exceeds the .08 blood alcohol level; nothing more.

**11) Failure to object to referring to these as “field sobriety tests” in a jury trial.** This name gives the road side exercises more credibility than they deserve, especially to a jury.

**12) The standardized field sobriety tests are inaccurate.** NHTSA approved three tests: Horizontal Gaze Nystagmus (HGN), Walk and Turn & One Leg Stand. The Government determined that the Horizontal Gaze Nystagmus and the Walk and Turn together were only 80% likely to be correct that the Accused’s BAC was .08 or better. An 80 is not a good grade.

**13) Failure to determine if the Accused is an appropriate candidate for these roadside exercises.** HGN has at least 38 causes other than alcohol. Among those are caffeine, cold remedies, nicotine from cigarettes and the flue. A good lawyer always checks his clients to determine if they have nystagmus from one of these other causes. Certain eye problems or injuries also make HGN inappropriate. If the Accused is 50 or more pounds overweight, over 60 years old, or has physical impairments that affect their ability to balance, he or she is not an appropriate candidate for these exercises.

**14) Failure to point out the location where the exercises were given.** Most of the time these exercises occur on the side of the road. Many such locations are uneven and are covered by debris. NHTSA requires that the Walk and Turn & the One Leg Stand be performed on a smooth, level surface.

**15) The Horizontal Gaze Nystagmus is not a scientifically valid test under roadside conditions.** When medical doctors conduct this testing they do so in well light areas employing medical equipment that holds the patient’s head still and clearly lists the angles. The officer, for one test, must determine whether he detects the onset of nystagmus prior to 45%. It is almost impossible without be accurate on the angle. The Government should be required to present expert testimony to link nystagmus with BAC levels.

**16) The non-standard tests are invalid.** The ABCs, finger touch, nose touch and counting are not valid tests even under the Government’s testing. Your Lawyer should object to them.

## **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.** Many lawyers give up because the Virginia Court of Appeals allowed a PBT result to be used in a motion to dismiss. What those lawyers fail to realize is that the PBT has been maintained as required by the PBT's manufacturer and that the administrative rules have been followed.

**18) Failure to obtain maintenance records for the EC/IR.** Machines are not perfect. Machines are not "magic boxes". All machines break down. Any problems with the breath tester around the time of the Accused's test could cause the test or even the case to be thrown out.

**19) Failure to argue that the BAC at the time of the driving was below .08.** The blood alcohol level is not constant in the Accused. It rises as it is absorbed by the body; it falls as it is processed by the body. Your lawyer needs to know how this works so he can show that while the Accused's BAC might have been .08 or better at the time of testing it was below .08 at the time of driving. Many uneducated lawyers don't even bother to figure that out. Bob Keefer won a .14 BAC by breath tester case where the Accused had an accident shortly after drinking. The Court, assisted by a Toxicologist hired by Bob Keefer, determined that the Accused's BAC at the time of driving was .06 at most.

**20) Failure to spot multiple issues in the case.** Often the Accused is involved in a single car accident the officer did not observe. In order for the breath or blood test to be admissible the Accused must be arrested within 3 hours of operating the vehicle on a public highway. The Officer may also not have seen the Accused in the driver's seat so he needs to establish that he was the driver at all. The Officer must also establish that the Accused did not drink after the accident. Something he often cannot do unless the Accused tells him. Often the Accused is taken to a hospital and very often the hospital does not follow the rules to obtain a proper blood sample. Your lawyer needs to explore all of these issues.

**I could go on but my point is not to exhaustively list all possible DUI Defenses – that would take thousands and thousands of pages – but instead to point out to you that you need ... and deserve competent, educated, thorough counsel to guide you and your defense through the intricate world of DUI Defense.**