



Episode 348 - The DUI Racket Revisited

Guest: Warren Redlich

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WOODS: I can't get over you were episode number five. Here we are episode number 348, and I guess it must be a delayed *Tom Woods Show* bump or something because all of a sudden all of what we were talking about in episode five has exploded into the public consciousness thanks in large part to this flyer that you've developed, that you're developing for a number of states, and to this video that's had nearly two and a half million views since I guess just last month. So let's start off with a little bit of background, and then I want to get into what's been going on lately. We're talking about these laws pertaining to driving under the influence, and particularly now we're talking about these DUI checkpoints everybody has to drive through, and they think they have to roll down their window and talk to an officer and the officer can assess whether they are intoxicated or not. Tell me about what your approach to all of this is.

REDLICH: Sure. The standard thing that happens either when you're pulled over or at a checkpoint is the driver, just by reflex or whatever, just rolls down their window without even being asked to roll down their window. Most drivers will just roll it down without even thinking about it. So part of the problem is as a DUI defense lawyer, a DWI defense lawyer, I've seen a lot of people—the start of their arrest begins when the police officer says—the police language is—I detected the strong odor of alcoholic beverage emanating from the vehicle. And then when they speak with the driver, people will routinely speak with the police officer, and the police officer will say, I detected slurred speech. The driver has impaired speech in some way. And so the purpose of this flyer is to prevent those two in particular problems that my clients do that leads them toward getting arrested by not rolling down your window and not speaking at all. And we did—we actually did a bunch of videos before the one that went viral, and they would typically get 3,000 views, maybe 5,000 views. So in our dreams, we'd get 100,000. We're now at 2.5 million on the video, by the way.

WOODS: Wow! So it's going so fast that I checked it just days ago, and I am already behind the times.

REDLICH: It is approaching 2.6 million, and that doesn't count. I know at least one other website, someone posted it on it without the guy's permission, and he just decided he wasn't going to enforce it because he wants more people to see it. So it's on TheBreak.com, and that

video has gotten like 150,000 views. So you add that up, and then there's been a lot of media attention, so easily, three million people have seen it in one way or another.

WOODS: I have got it embedded at tomwoods.com/348 along with all of the information about this episode. We'll talk about your book in a few minutes as well, but I want you to describe for me what we're going to see in this video, because I don't know if it's supposed to be funny, but I thought it was funny.

REDLICH: Sure, so what happens is—and the video I think you embedded is the one from my friend Jeff Grey, the one that's got 2.5 million views. That's one that he did on December 31st. We actually talked that day before he went to the checkpoint. He drives up to the checkpoint, and he does something different from our other videos. He puts his driver's license—he puts the flyer, which says, I remain silent, no searches, I want my lawyer, and has further instructions to the police. He puts his driver's license, registration, insurance, and title in the bag, and he hangs it out the window with a string so the window was closed, but the police officer if he wants cannot only see the documents, but if he wants, he can open up the Ziploc bag and take them out and hold them. So he pulls into the checkpoint, the police officer looks at the bag, he looks closely with his flashlight at what's in the bag, and then he waves the driver on. In other videos that we've done, that's the only time that I know of we've done the Ziploc bag method, and the other times when I did it, other times when Jeff has done it and other people have done it, we simply place the flyer up against the window without hanging out with a bag, and then any documents that are requested, we press those up against the window so the police can see them. So the Ziploc bag wasn't originally the idea, and there are some problems with the Ziploc bag approach, but that may have played a role in the video going viral.

WOODS: What do you say to critics who would say, like, for example, Mothers Against Driving Drunk, believe it or not, is against your flyer because they say—

REDLICH: Yeah, I notice that.

WOODS: Yeah, they say that it will let drunks get away with being drunk, and they would probably say—I want to try to give them the strongest possible argument. I think their strongest possible argument would be we have to balance safety against the likelihood of police abuse. The likelihood of police abuse and the police claiming that you smell of alcohol seems fairly low as compared to the likelihood of getting killed by a drunk driver. So how do you answer that?

REDLICH: Well, I completely disagree with the characterization of what's likely and what's not likely. The likelihood of that driver—the alleged drunk driver who gets to the checkpoint killing someone is extremely low, and in my experience as a defense lawyer, the likelihood that a police officer will make up slurred speech and the odor of alcoholic beverage is extremely high. So in a lot of my cases, I have seen cases where a police officer will say he detected the odor of alcoholic beverage, and the person blows a 0.00%. I have seen many cases where on video my client has perfect speech, and they claim speech was slurred. I had a client from Japan who they

claimed his speech was slurred. I have no idea how they would know. I speak Japanese, and I can't tell. But as far as the drunk driver using this method, I think that's difficult. The way this method operates is you need to be silent, patient, and follow instructions, and drunk people are generally not good at remaining silent, being patient, and following instructions. And in fact, my book talks about the field sobriety tests and what the police do at the roadside after they get you out of the car, and two of the things that they look for are whether you are impatient, whether you start their tests before you are supposed to, and whether you follow the instructions they give you. So if somebody is able to follow the instructions on the flyer, and they are able to be patient and wait for the police officer to do what he wants to do, then they are probably going to do well in the police officer's test on the side of the road as well. So I don't see where—I can't say that a drunk person won't get away with it. Of course, that could happen, but that's not really the intent, and I don't think it's likely.

WOODS: I myself have never been through one of these checkpoints. So I actually don't know what is supposed to happen. Let's say I'm a regular guy, I have never heard of Warren Redlich, and I just want to cooperate with law enforcement. What is supposed to happen? I roll down my window, and then what do they do? They are not going to give everybody a breathalyzer. What do they do?

REDLICH: So that's part of the mistakes that people are making about this approach. You are—we do comply with the checkpoint. We do what is supposed to happen in the checkpoint. Most people do more than they are required to do in a checkpoint. So that's the big distinction. What's supposed to happen in a checkpoint—if you ever read, you can contact any police agency that does checkpoints. Typically, you can ask them for what are called guidelines. They are required to have written guidelines, and in most states, there is some kind of open records law where you can request the written guidelines. We have gotten them from several checkpoints in Florida. And the typical instructions to the police officer about how he's supposed to conduct that part of the checkpoint where you pull in and he approaches your window, is he's supposed to approach and say, hi, my name is Officer Johnson from the _____ Police Department. Would you please show me your driver's license? Or may I please see your driver's license? So when you put your license up against the window, he can see it. You have complied with his request. So it may be that they are going to start changing their guidelines and try to make it different, but as far as every guideline I have seen, it always has the police officer ask the driver to let me see your license or please show me your license, and you are doing that. So you are complying.

WOODS: But, of course, just showing your license doesn't establish by any standard whether or not you are driving under the influence. So what do they expect to accomplish? How do they expect to determine that at a checkpoint?

REDLICH: Sure, so what they are hoping for, and what people routinely do, is they roll down their window, and they engage the police officer in conversation, and that is what most people do, and frankly, even—I have represented many clients who have engaged the police in

conversation at a traffic stop, and in the course of doing so, they have admitted things that help them—typically, they will say, yeah, I had couple of beers. The police officer will say, have you had anything to drink tonight? And they will say, yeah, I had a couple of beers. That's not a good thing to say when you're talking to a police officer after you've been pulled over in a checkpoint because if you say, yeah, I had a couple of beers, there's almost a guarantee that conversation is going to go further in a way you don't like, and even lawyers, you know, executives—I have represented surgeons, but even lawyers will tell the police, yeah, I had a couple of beers. I have no idea—did they miss that class in law school? You have the right to remain silent. Why would you tell a cop you had a couple of beers? How is that going to help you?

I don't know why, and so as far as the checkpoint goes or the traffic stop goes, yeah, the police officer expects you to roll down your window. He's hoping to engage you in conversation. But you as an American citizen or as somebody in America, you have the right to remain silent. You have the right to counsel. You have the right to be free from unreasonable search and seizure. And the idea behind the flyer is you put it up in the window so the officer can clearly see it. Don't use darkly tinted windows. Don't try this if you have dark windows. I have a completely clear window on my driver's window. You hold the thing up so the police officer can read it. He looks at it, and you now assert—you're in custody, right? You're not free to go when you're pulled over.

When you're in a checkpoint, until they tell you you're free to go, you're not free to go. You're in some form of custody. When you assert your right to remain silent and your right to counsel, if you've been arrested and you assert those rights, they cannot ask you any questions. They absolutely cannot. You have asserted your right to an attorney. They can't ask you anything without letting you get your attorney, and most police know that, but for some reason, they think in this context it's different, and it's not. You always have the right to remain silent, and you always have the right to your attorney. So this puts the police officer in a situation where—the situation where their bosses hate—where the police chief doesn't want them to do this. Police chiefs and sheriffs do not want their deputies and officers to think. They want them to do routine things that don't require them to think, and this forces the police officer to think outside the box, and most cops are actually pretty good at that outside-the-box thinking, but some of them aren't, and that's kind of the idea. Make the police officer think.

WOODS: Your flyer clearly confuses the police officers in the video because it's got precedents for every single bullet point that it's making about why you are behaving the way you are—why you are, in fact, cooperating and not being obstructionist, and you go on and list, and you say, by the way, if you were to require me to do the following things, that would be a violation. Well, actually this is—there is somebody who did a spin on your flyer, but the point is that I am sure your average police officer is not familiar with these various legal precedents and these case names, and so they just took one look at it and thought, well, I guess we better just let this guy through.

REDLICH: The flyer was actually designed for a traffic stop where you've been pulled over for speeding. You've been pulled over or something, and the idea is the officer walks up to the window and it's like, oh, no, what do I got now? What do I do with this? And a reasonably smart police officer—there are some that aren't smart enough to think of this, but the vast majority of police officers, I think, will respond to this by saying, okay, I don't know what section 322.15 is, and I am not sure whether he's right or wrong. I better call my sergeant. And he goes on his radio and he calls his sergeant, and he says, sergeant, what's 322.15 And sergeant is going to be like, what's going on? Why are you asking me that? What do you mean? Why are you asking me that question? And so the officer then explains the situation, and the sergeant being usually smarter than the average officer and wiser—it's really about wisdom rather than smart, but the sergeant typically being wiser than the average officer will say, you know what? Just let this guy go. We'll get the next guy. There's plenty of fish in the sea. We don't want the trouble that this could mean.

And I have talked with police officers about this approach and how they should handle it. I am actually working on a training document for police. I have been contacted by police officers and even by an attorney who advises police on how to deal with this, and you know, what they don't—there's things that police officers don't want, and you've seen YouTube videos where police officers end up being the bad guy, and those videos go viral and that police officer is now miserable because his name is known by thousands, if not millions of people, and his department is getting phone calls, and he's getting emails and letters of who knows what. He doesn't want to be the bad guy in the YouTube video that goes viral.

So here's the thing that's great about that video that went viral: No one knows the names of the officers involved. I don't even know the names of the officers involved. I don't even know what department. There's an officer who waves the driver on who does most of the encounter. I don't even know what department he was in. I got what's called the after action report from that checkpoint, and I know there were two police agencies involved—the county sheriff and Florida Highway Patrol, but I don't even know which department that guy was in. If you're a police officer, and video goes viral, you do not want your name associated with it. If you're the department, you don't want your department associated with it. You want that to go away like nobody talks about you. You want them to talk about anything but you.

WOODS: Yeah, now, I can see that being the response that I want to play it safe in the age of YouTube. There are a million people we could pull over, and so we don't have to deal with this crackpot if we don't want to. We can pull over the next guy. On the other hand, you can imagine some officer's response would be: I am going to show this uppity jerk a thing or two for giving me a hassle.

REDLICH: Sure, and here's the problem for that. Number one, we're right. We're right on the law, and you don't know—if you're that officer, are you prepared to be in federal court facing a lawsuit? Because that's what's likely to happen. Your case is going to get thrown out if you do it wrong. You're very likely—let's say you're a police officer, and you decide: I am going to order

them out of their car. Now, my advice to people who use this is that if the police officer gives a clearly stated order, you should comply. If he says, I am ordering you to roll down your window, at that point, you probably should roll down your window. If you're looking to make a great YouTube video, then let him smash it in. All right? But if you're that police officer and you smash in that window, you are going to get sued and you are going to lose. There's a case pending right now in New Orleans where a police officer who smashed in a window: He had much better reasons for smashing in the window than you'll have at a checkpoint or a traffic stop in the kind of case we're talking about—this flyer. And the police officer moved to dismiss the case saying, I had proper reason for smashing in the window, and the judge said, no, that was excessive force. You didn't need to smash in the window. You do not want to face an excessive lawsuit in federal court. You do not want to get disciplined by your department. You don't want to be a celebrity in a YouTube video for the wrong reasons. Let them go, and also, there's another issue here. You took an oath to uphold the Constitution. This driver has asserted his constitutional rights. Are you going to respect your oath and the constitutional rights of that person as the person has asserted those rights? Look, if you have a really good reason why you are doing what you're doing, okay, but it better be really good.

WOODS: But let's suppose I am pulled over for something where clearly there is no suspicion of DUI. It's just, you know, I am going 70, and the limit is 50 or something like that. There's a chance I could talk my way out of it. Whereas if I just put this thing on the window, well, I mean, I don't know. As you say, maybe they'll just go away. How do I roll the dice on that?

REDLICH: My feeling is if it's a Wednesday afternoon, and at 3:00 in the afternoon, not a time when people are typically drinking, and you think you were going 12 over the limit, and it helps if you're white—I'm sorry; I think there is some bias in police agencies—and you get pulled over, and you figure it's probably speeding, and if you have a nice conversation with the officer, he might give you a break. I have done this myself. I have gotten breaks. You've got to judge that situation. But if it's Friday or Saturday night, it's 11:00 at night, you've had a couple of glasses of wine at dinner four hours ago. You do not want to have that conversation with that officer, and the cost of ticket is going to be nothing compared to what could happen if that encounter goes wrong. So it's a matter of figuring out—everybody has to make judgment calls. The police officer gives an order. You have to make a judgment call. Am I going to follow the order? Am I going to make them smash in the window or dare them to smash in the window? Everybody has those judgment calls they have to make, and that's an important distinction.

I wanted to mention this in the course of the conversation. It's important to distinguish between a request and an order. If the police officer says, sir, would you please roll down your window? That's a request. If the police officer says, roll down your window. That's probably an order. If he says, roll down your window or else I'm going to smash it in, that's really an order. But you want to be clear, and you want to be recording this conversation with your cellphone, smartphone, dash-cam, whatever. You want to have a recording of this because that police officer is going to say later that you voluntarily rolled down your window, and you want to be

ready to show, no, no, no. That was not voluntary. That was an order, and then he's got to justify why he gave the order. That's an important distinction. You don't roll down the window without being asked, and you do not roll down the window on a mere request. You have said at the bottom of the flyer, I will comply with clearly stated lawful orders. If he gives an order to roll down your window, if he gives an order to step out of the car, as long as it's clear that it was an order, now your lawyer is prepared to show—to challenge that police in court as to why he gave that order. That's the idea.

WOODS: Tell me about what the press has been like. Who has been reporting on this? Of course, I saw Judge Napolitano came out in support of your flyer and what you're doing, but it's been in all kinds of mainstream outlets. It's been on AlterNet on the Left. Has the response been overall positive? Has the media been fair? How do you assess it?

REDLICH: Yeah, I would say the media has been very fair. The one experience that was not fair was Inside Edition called me. One of the early national media contacts was from Inside Edition, and they interviewed me, and it was very clear in the interview that the reporter was trying to get me to be the bad guy, and I just stuck by my guns. The purpose of this is to protect innocent people. No, I don't think drunks can get away with this. And he kept asking me, don't you think it's reckless to put this in the hands of drunk drivers? And then they ended up not airing the interview because they didn't get what they wanted. But overall, I would say the media response has been very good. It started with some local media. Initially, the video went viral because a website called TheBlaze.com did an article on it, and that's what, I think, spiked the video. And then I would get a contact here, a contact there, and then the Associated Press called and did what I thought was very fair coverage, not overwhelmingly positive, but so it was fair. And that article ran in the *Washington Post*, and the *Washington Post* probably has the best version of that article. It ran on news.yahoo.com, and it was actually on the Yahoo home page.

One of the things about the story, why the media kept covering it, and I think covered it fairly to an extent, was the response was very positive for readers. When you're in the media like that, you look for engagement. You look for people to comment. You look for people to share. TheBlaze.com article was shared 23,000 times, which is good for us, but it's also good for TheBlaze.com that people are sharing their article. The Yahoo news story had 3,600 comments when a typical Yahoo news story might get 100 comments. So it's really engaging the audience and people are responding to it.

After the Associated Press story, CBS This Morning called, and they came to my house and we did an interview that they aired in the morning, and it ended up being the featured story, the number one story on CBSNews.com that day, and, again, it generated a lot of response from viewers and readers. And then, I am trying to remember, there was another one, I think, but I did FOX News and Huff Post Live the same day. So I was being hated—I like to say I get hated on the Left and the Right at the same time, but no, the response—even the anchors I thought—was on FOX and Friends in the morning. It was on FOX News three or four times that day,

including the Napolitano mention that you talked about, and I would say that Shepard Smith seemed very positive about it—very good response.

I think the issue underlying it is there is two groups of people out there that are responding to this. There is the Mothers Against Drunk Driving people who think it's evil, and there is the people who hate checkpoints, which I think is the majority of the population. Even my mother-in-law, who doesn't drink, hates checkpoints. Why are they stopping me? I didn't do anything wrong. They should leave us alone. I think that's a very common response a lot of people have, and the distinction—of course, I think the people who hate checkpoints are right. I think that the mistake that people are commonly making who are critical of this—the factual distinction with the way I see the world and the way they see the world, and I am confident I am right, of course, is they simply do not believe that innocent people get arrested or they don't care that innocent people get arrested. They are completely uninterested in the consequences for an innocent person who goes through this process. They don't realize the thousands of dollars it will cost them. They don't realize what it means to have your mugshot posted on the Internet. Your neighbors think you are a drunk now.

Here in Florida, you can get arrested. When the police officer decides to take you to the station to have you blow on the real machine—the supposedly reliable machine that's not really. When they take you up there, it's over. You are going to be charged in Florida. You can blow a 0.00%, and I have seen this. They will still file the charge in court. Your mugshot will still go on the Internet, even though you blew a complete 0%. Your case may get dismissed. I saw one where the case didn't even get dismissed right away. It's still pending. But that's astonishing, and people simply cannot accept or they—like I said, Mothers Against Drunk Driving doesn't mind if innocent people get arrested. It furthers their mission. Their goal is to deter drunk driving, and if innocent people get arrested and convicted, it furthers their deterrence purpose. So I have never once seen any indication that Mothers Against Drunk Driving is interested in safeguards to protect innocent people from drunk driving arrests. They just don't care. It furthers—they want innocent people arrested.

WOODS: The flyer that you are picturing that we see in that video is tailored to Florida law, and I understand that you have prepared some flyers for maybe a dozen or so states and more are in process. People can find these at FairDUI.org, and sign up for your mailing list to be informed when more come out and when you have additional activities. I want to finish up by giving you a chance to talk about the topic we devoted our previous conversation to, which is your book *Fair DUI*. We'll link to the previous episode, we'll link to the book—everything we've talked about at tomwoods.com/348. But give us your 60-second pitch for the book.

REDLICH: Sure, it's got great reviews on Amazon—31 reviews now—4.8 stars, I think, 4.7 stars. It's written for regular people, as opposed to a lot of law books that are written for lawyers. And it takes you through from the moment before you get in your car through after arrests, and it just talks about the process in a way that regular people can understand. And it sheds light on some things. It talks about these issues in a way that I think other people don't talk about

them—practical ways to avoid drinking and driving. Chapter 2 talks about not having a single drink and driving a car and practical ways to make sure you do that. And then the last chapter talks about better ways to make the roads safer than what we're doing now, because what we're doing now does not work. We can do a much better job of making our roads safer and saving lives than what we're doing with these crazy DUI laws that we have.