volume 2, issue 2

GEORGIA traffic PROSECUTOR

A Publication of the Prosecuting Attorneys' Council of Georgia Traffic Safety Program

···> our mission

The goal of PAC's Traffic Safety Program is to effectively assist and be a resource to our fellow prosecutors in keeping our highways safe by helping to prevent deaths and accidents on the roads in Georgia.

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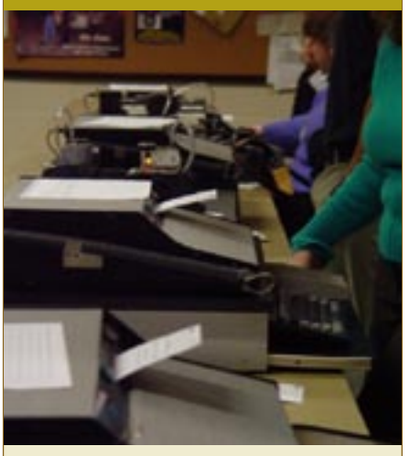

feature article >

You need a chemical test to guarantee a conviction, right?

WRONG. Despite adverse rulings, Georgia prosecutors continue to obtain DUI convictions in cases lacking breath or blood tests. Still, many prosecutors and law enforcement officers are relying too heavily on breath and alcohol testing devices to investigate and prove their DUI cases. Here is how we can get back to basics...

additional features

No Chemical Tests...So What?

By Fay McCormack, Traffic Safety Coordinator, Prosecuting Attorneys' Council of Georgia

The past two years have been challenging for prosecutors and law enforcement officers as Georgia's appellate courts whittled away at the Implied Consent law.

1. Carey Don Cooper was heading eastbound on Atlanta Highway in Barrow County when his pickup truck collided head-on in the westbound lane with the westbound pickup truck driven by Ray Anthony Boles. Emergency medical technicians came to the scene and transported Cooper and Boles to different hospitals before a Georgia State Patrol trooper arrived. The trooper went to the hospital where Boles had been taken with a broken arm and collected a blood sample from Boles pursuant to O.C.G.A. § 40-5-55(a). He then went to the hospital where Cooper had been taken in order to get a blood sample from him. The trooper read Cooper the implied consent notice for suspects age 21 or over, and Cooper agreed to submit to the blood test. Cooper was not under arrest, and the trooper's sole basis for administering the blood test to Cooper was because he believed that O.C.G.A. § 40-5-55 (a) mandated that he do so, inasmuch as Cooper was involved in a traffic accident resulting in serious injuries. The Georgia State Crime Lab determined that Cooper's blood sample tested positive for cocaine, benzoylecgonine, and hydrocodone. The Georgia Supreme Court overturned a key provision of the state's implied consent law which required motorists involved in serious accidents to submit to drug testing or face the loss of driving privileges for a year. The court ruled that the statute "authorizes a search and seizure without probable cause" and violates the state and federal Constitutions. ***Cooper v. State,*** 277 Ga. 282, 587 S.E.2nd 605 (2003).

2. Arriving at an accident scene, a Fayette County police officer saw an overturned truck 200 feet off the side of an embankment with the defendant pinned inside the truck. Injured and in his hospital bed, Bryan Handschuh was read the implied consent notice to which he did not respond and, when the technician came to draw his blood, he refused to cooperate. The officer told him his actions constituted a refusal and arrested him six days later. The Court of Appeals held that even if probable cause to arrest existed, Handschuh's refusal to submit to a blood test should be suppressed because the implied consent warnings were given **before** he was arrested. ***Handschuh v. State,*** 270 Ga. App. 676; 607 S.E.2d 899 (2004).

3. The Georgia Supreme Court also reversed two vehicular homicide convictions — and a 28-year prison sentence — against a Carroll County man accused of running a stoplight and killing Inez Billingsley, 54, and her 6-year-old grandson, Angelo Sykes. The crash occurred as Billingsley was driving her grandson to school on the morning of Sept. 13, 1999. Steven William Collier tested positive for amphetamine and methamphetamine. Although the defendant first refused the tests, he agreed to them after the police threatened to get a search warrant and to use a catheter to obtain the samples. The court held that the implied consent law, O.C.G.A. § 40-5-55 and § 40-5-67.1(d), prohibited forced testing, even if the investigating officer had the probable cause necessary to support the issuance of a search warrant. Inasmuch as the implied consent law contemplated arrest, the presence of probable cause that the individual was operating a motor vehicle in violation of O.C.G.A. § 40-6-391 was a prerequisite. O.C.G.A § 40-5-67.1(d) clearly prohibited the giving of any chemical

This newsletter is a publication of the Prosecuting Attorneys' Council of Georgia. The "Georgia Traffic Prosecutor" encourages readers to share varying viewpoints on current topics of interest. The views expressed in this publication are those of the authors and not necessarily of the State of Georgia, PACOG or the Council staff. Please send comments, suggestions or articles to Fay McCormack at fmccormack@pacga.org or Patricia Hull at phull@pacga.org.

No Chemical Tests...So What? (continued)

test once the suspect refused to submit to the requested one. ***State v. Collier* S04G1409. April 26, 2005.**

All is not lost however, as the state still has the ability to obtain a chemical test from the medical records by use of a search warrant. ***King v. State,*** 276 Ga. 126, 577 S.E. wd 764 (2003).

Despite the adverse rulings, Georgia prosecutors continue to obtain DUI convictions in cases lacking breath or blood tests. Still, too many prosecutors and law enforcement officers are relying too heavily on breath and alcohol testing devices to investigate and prove their DUI cases. We have to return to proving our DUI cases the old fashioned way – manner of driving, field sobriety tests, demeanor, smell, speech and observant witnesses.

DUI defense advertisements may leave the public with the impression that hiring attorneys will result in acquittal or reduced charges, omitting the fact that DUI defense attorneys lose many more cases than they win. Remember that in courtrooms around the state, numerous guilty pleas to **Driving Under the Influence** (not Reckless Driving) are accepted every day. It is the tough cases that are taken to trial; and, unless a District Attorney or Solicitor General penalizes prosecutors for losing cases, a judge or jury should hear them. Veteran prosecutors are not impressed by boasts of never losing a case. They know that any prosecutor who never experienced an acquittal must have shied away from taking on the tough cases. Furthermore, think of the reputation you want to have as a prosecutor. DUI defense attorneys have much more respect for prosecutors who are not afraid to try cases. Importantly, they know the prosecutors who will cave in and give them whatever they want instead of going to trial. Of course, there are instances where the best you can get from a case is a plea to a reduced charge or at worse, dismissal. However, oftentimes, charges are reduced due to fear of losing, fear of defense attorney, large caseloads, and sometimes fear of displeasure from a judge who, for any number of reasons, does not want to spend time trying "a little misdemeanor."

A paramount reason for trying these cases is the effort of the law enforcement officer who made the case. Recently, the Georgia Governor's Office of Highway Safety hosted two regional meetings of law enforcement officers and prosecutors. The most repeated complaint from officers was that prosecutors were either dismissing or reducing DUI cases to Reckless Driving, often without informing the officers. Each time an automobile is pulled over, an officer's safety is placed on the line. If the officer suspects impairment, it takes hours to perform standardized field sobriety tests(SFST), read implied consent, transport the defendant to obtain chemical tests and finally, transport the arrested to jail and get through the whole booking procedure. Add, more time if you have a difficult or injured driver. Then there is the time expended with writing and filing the report and attending all the court hearings. After all of this, dismissing or reducing the charge to something less than a DUI is a slap in the face of that law enforcement officer.

One obstacle in taking DUI cases to trial is the reluctance of officers to testify in court. Prosecutors should assist these officers by preparing them for trial. Review the facts of the case with the officer and you may obtain new and valuable information that was not included in the report. Encourage your officers to detail in their report the defendant's appearance and behavior – factors that will make your less-safe case. Preview the questions you will ask in direct examination so they will know what to expect. Prepare your officers to deal with the defense attorney's "thorough and sifting cross examination." Get to know your officers and keep them informed about their cases including both favorable and unfavorable dispositions. Officers will become comfortable and confident about testifying if both officer and prosecutors are well-prepared for trial. Officers should also request feedback regarding their performance from the judge, the jury and, of course, the prosecutor.

The following are a few examples from the many cases that were won without breath and blood tests. In ***Bravo v. State,*** 249 Ga. App 433; 548 S.E.2d (2001), the defendant refused the officer's request for both field sobriety and chemical tests. What sealed that case for the jury was the testimony of two persons who happened to be at the precinct when the defendant was brought in. One was an experienced officer who was able to testify regarding his experience in identifying impairment. Defendant also refused the chemical tests in the Fayette County case of ***Johnson v. State,*** 249 Ga. App. 29; 546 S.E. 2d 922 (2001). The officer's testimony that the defendant's speech was slurred was not supported by a videotape of the stop, but the officer also testified that the defendant had bloodshot eyes, dilated pupils and a flushed face. The Court ruled that the refusal of the tests was admissible circumstantial evidence of intoxication. It also held that, (where there was evidence that he had been drinking) evidence as to a defendant's manner of driving could be taken into account for the purpose of determining if the driving showed him to be so affected by an intoxicant that he drove less safely than he might have if he were sober. In a case out of the Cherokee County Solicitor's office, the defendant was found guilty although she refused to take both the field sobriety and the chemical tests. ***Long v. State,*** 271 Ga. App. 565; 610 S.E.2nd 74 (2004). Your most effective witness may be a civilian who had an opportunity to observe the defendant. Proper case preparation and investigation will help identify these additional witnesses.

Although the Court of Appeals reversed convictions in ***Bowen v. State***, 235Ga. App. 900, 510 S.E.2d 873 (1999) and ***Shaheed v. State,*** 270 Ga. App. 709, 607 S.E.2nd 897 (2004), it is noteworthy that absence of chemical tests did not prohibit the prosecutor from convincing the fact finders that the defendant was guilty of driving under the influence.

In some instances, the chemical test is suppressed or was refused, but field sobriety tests remain:

> ***Jurors will not rely on evidence they do not understand. It is imperative that you establish the SFST'S utility during your case in chief. Have the SFST officer explain what the tests are and how they measure impairment. Emphasize that the officer did not "make up" the tests; the tests are standardized, systematic and used by police departments around the country.***
>
> ***Elicit testimony about the officer's training and experience with the tests. In cross examination, defense counsel likely will assertthat the tests are so hard that sober people fail them routinely. Counter this by asking how often the officer administers these tests, how many people pass them, and how people who fail them perform on subsequent breath tests.***
>
> *--APRI Special Topics Series, "Basic Trial Techniques for Prosecutors" (May 2005)*

Prosecutors are welcomed at the SFST classes at the Georgia Public Safety Training Center. Individual law enforcement agencies in each jurisdiction also put on these classes. If you are not able to attend SFST classes, acquire a copy of the Student Manual on Standard Field Sobriety Testing and study it, so you will be better able to respond when defense attorneys use the information in this manual to attack the officer's testimony. Prepare to respond to the defense by studying transcripts of trials in which they appeared. Do the same with defense experts. Whenever you get a chance, observe other prosecutors trying DUI cases.

The Prosecuting Attorneys' Council has applied for a grant to jointly train prosecutors and law enforcement officers in traffic safety investigation and prosecution. Participate in these courses and take advantage of training offered by the National Advocacy Center in Columbia, South Carolina. The courses specifically related to DUI and vehicular homicide prosecution are, ***Prosecuting the Drugged Driver*** and ***Lethal Weapon.*** If you are accepted, the college will pay your expenditures including traveling.

Statistics from the Governor's Office of Highway safety show that alcohol is involved in 1 out of every 5 crash deaths in Georgia. The legislature has responded by enacting laws mandating stiff penalties. Law enforcement officers are recognizing impaired drivers, arresting them and removing them from our roads. The citizens of this state and the victims of impaired driving deserve nothing less than competent and effective prosecution of the **crime** of Driving Under the Influence.

A Conviction Without Tests

By Terry Brown Walker
Assistant Solicitor-General, Fulton

Alewine v. State of Georgia, Court of Appeals of Georgia, A05A078 (2005), involves the appeal of defendant, Ralph Alewine, from a conviction of driving under the influence – less safe charge. Represented by William "Bubba" Head, the defendant alleged insufficient evidence for a conviction because there were no field sobriety evaluations, alco-sensor or intoxilyzer 5000 results. The evidence presented showed that on May 5, 2001, Fulton County Police Officer D. Lapides observed the defendant switching lanes and not using a turn signal while traveling north on Roswell Road. in Fulton County, Georgia. While traveling behind the defendant, Officer Lapides observed the defendant merge into the right turning lane forcing the officer to brake suddenly to avoid a collision. The defendant was observed swerving twice over the solid line. After activating his emergency equipment and coming in contact with the defendant, Officer Lapides noticed that the defendant smelled strongly of alcohol and had glazed eyes. Also, the defendant speech was slurred and abrasive. The officer asked the defendant to step to the rear of his vehicle and noticed the defendant refused to comply and used his vehicle to steady himself. Finally, the defendant refused to submit to a state test of his breath. The Georgia Court of Appeals found no reversible error.

My preparation for this case can be divided into four categories: 1). **Case evaluation, 2). Fact and legal analysis; 3). Officer preparation; and, 4). Self-preparation.** When evaluating the case, I am looking at the case's strengths and weaknesses. In this particular situation, I did not necessarily think the absence of field sobriety evaluations was damaging because I knew it would not be an issue during the officer's cross-examination. I realized that this case centered on the credibility of the officer. Because I previously worked with Officer Lapides, I felt comfortable with his court room demeanor and straight forward recitation of the facts. It did not hurt that he is a drug recognition expert who was comfortable testifying.

To prepare the officer for trial, I explained to him that he should anticipate attacks for the lack of field sobriety evaluations and to have a cogent reason for there not being any. Also, he would have to specifically explain the circumstances around the defendant's refusal of the state test of his breath. Finally, I reassured him that I would be paying close attention during the trial and would redirect any facts that seemed unclear or damaging.

For my own mental preparation, I intimately acquainted myself with the facts of the case carefully analyzing the facts for nuances and logic. From this analysis, I would develop the credible theme for the case. Next, I researched the law and all relevant legal issues apparent in the case. I prepared a response for likely objections and motions. The last step of my preparation included a good night's rest the day before the trial. The appropriate rest would allow me to think quickly and clearly and remain calm during the course of the trial. On the day of the trial, I executed my plan.

···> fact:

Drivers aged 21 to 24 years old were most likely to be intoxicated (BAC of 0.08 g/dl or greater) in fatal crashes in 2003. Thirty-two percent of drivers ages 21 to 35 years old involved in fatal crashes were intoxicated, followed by ages 25 to 34 (27%) and 25 to 44 (24%). Drivers over the age of 70 were least likely to be intoxicated–only 5%.

- Statistics courtesy MADD

Kudos to PAC Intern Linda Fleming

Kudos to Linda Fleming, a Prosecuting Attorneys' Council intern in the Dublin Judicial Circuit. She obtained convictions in the case of *State v. Lloyd* on charges of Driving Under the Influence (per se and less safe) and Driving With Suspended license. This was a bench trial which took place on June 23, 2005 before Chief Judge H. Gibbs Flanders, Jr. The defendant was found guilty on all three (3) counts.

District Attorney, Craig Fraser and his staff are commended for providing the opportunity and training for Linda.

2005 Traffic Legislation

O.C.G.A. § 40-8-73: Motor vehicles; window tint restrictions; provisions
Modifies current law regarding window tinting on personal vehicles. Prohibits operating a motor vehicle with light transmission reducing material affixed to the windshields and side windows that reduces light transmission to 32%, plus or minus 3%, or increases light reflection to more than 20%. Exempts the following: Adjustable sun visors, stickers or decals displayed in a five inch square on the driver's side or a seven inch square elsewhere; any transparent item that is not red or amber in color placed in the uppermost six inches of the windshield; and, any federal, state, or local sticker which is required to by law to be placed in the windshield, or to the rear windshield or side windows not to the left or right of the driver of a multipurpose passenger vehicle, school bus, public transportation vehicle, church van, limousine, law enforcement vehicle, or any other vehicle the windows of which have been tinted before factory delivery in accordance with federal law. Also prohibits the installation of such tinting material as above described. The DMV is permitted to issue an exemption to a person whose medical needs require that he be shielded by the sun provided he presents the written attestation to the medical need of a licensed physician. Misdemeanor. Effective May 2, 2005. **HB 20**

O.C.G.A. § 40-5-2: Drivers' licenses; information available to insurers; extend pilot program
Creates pilot program for supplying rating information to insurers to last 12 months. Results of this pilot program will be reported to the Office of Budget and Planning. Unless that office determines that the pilot program is unsuccessful, the program will continue on a year to year basis. Effective May 2, 2005. **HB 151**

O.C.G.A. § 40-3-20: Motor vehicles; certificate of title
New subsection (d) prohibits the state from accepting an application for a certificate of title for a vehicle purchased outside the state unless the applicant shows by valid bill of sale or contract of purchase or other documents satisfactory to the commissioner that state and local sales and use tax has been paid or not due. If not paid, the local tag agent must return the unprocessed application to the applicant to inform him or her of the requirements of this section. Effective January 1, 2006. **HB 364**

Code Sections 40-2-38; 40-2-39; 40-2-153; 43-47-2; 43-47-8: Motor vehicles; new and used dealers; temporary license plates; amend provisions
Dealers of new and used motor vehicles may provide temporary plates; however those plates must contain the vehicle identification

number, the year, make, and model of the vehicle. Such temporary plates will have to meet certain specifications designed to prevent alterations, including having a holographic security image. Distributors and manufacturers of holographic strips are required to register with the Department. Provides for certain requirements and prohibitions with regard to Dealer plates and sets forth procedures to be followed in the event such a plate is lost or stolen. Provides certain rules with regard to temporary cites for motor vehicle dealers, and adds a provision that dealers will not be prohibited from selling motor vehicles off site if the site is an established place of business. Allows the commissioner to suspend the license of any dealer who is found to have violated this code section more than once and provides for criminal penalties for such violations. Effective July 1, 2005. **HB 455**

HB 501 – Various Code Sections: Department of Driver Services; create as successor to Department of Motor Vehicle Safety Changes the Department of Motor Vehicle Safety to the Department of Driver Services. The new Department of Driver Services assumes some of the duties formerly had by the Department of Motor Vehicle Safety; however, other duties are transferred to other agencies. The Department of Driver Services is also responsible for administering Alcohol Risk Reduction programs, formerly administered by the Department of Human Resources, for persons under the age of 21 who are convicted of alcohol related offenses. Other responsibilities of the Department of Motor Vehicle Safety as well as other state Departments are allocated to the new Department of Driver Safety. Effective July 1, 2005.

Code Sections 40-5-2, 40-5-28, 40-5-100, 40-5-171: Driver's licenses; Destruction of certain fingerprint records, Non-U.S. Citizen Identification
This legislation provides for the destruction of fingerprints records obtained from applicants for driver's licenses, ID cards. The department must make available for public inspection a list of all persons to whom fingerprint records were provided. Fingerprint images stored electronically on existing driver's licenses will be destroyed upon application for a renewal of the license. A new code section 40-5-21.1 is inserted to provide that when an applicant presents valid documentary evidence of lawful presence in the U.S., that person may be issued a temporary license which is valid only during the person's authorized stay in the U.S. Licenses issued to persons by a state on or after 07/01/06 which is issued to persons not lawfully present in the U.S. may not be accepted as evidence of legal presence in the U.S. The department cannot require a submission or otherwise obtain from applicants any fingerprints or biological identifying information, such as DNA or retinal scan, but not including photo by any means upon application. Excludes fingerprints from identification cards and identification cards for persons with disabilities. Effective July 1, 2006. **HB 577**

O.C.G.A. § 40-2-6.1: Use of material covering license plates
Article 1, Chapter 2, Title 40 is amended to insert § 40-2-6.1, which provides that any person who willfully covers any license plate with plastic, other material, or any part of his or her body in order to prevent or impede the ability of surveillance equipment to clearly photograph or otherwise obtain a clear image of the license plate is guilty of a misdemeanor and shall be punished by a fine not to exceed $1,000.00. Effective July 1, 2005 **SB 93**

O.C.G.A. § 40-2-41.1: License Plates; issued in or before 1970; authentic; authorize display
An authentic historical Georgia license plate is one issued in or before 1970 and originally required in or before 1970. The computer information system applicable to the registration of these plates shall be installed no later than Jan. 1, 2006. Effective July 1, 2005. **SB 117**

Code Sections: 32-1-3; 32-6-26, 32-6-51, 32-6-71, 32-6-241 to 32-6-245, 32-10-1: Highways; dimensions/weight of vehicles/loads; signs
Various changes made with respect to highways and vehicle loads. **SB 160**

Code Sections 1-4-15, 40-2-60.1, 40-2-68, 40-2-74, 40-2-74.1, 40-2-84, 40-2-86.10 to 40-2-86.15: License Plates; (NASCAR) logo; support Governor's Highway Safety Program

October 8th is designated as Bill Elliott Day in Georgia.

Special license plates proposals are to be governed by the legislative process when the resulting revenue is to be directed to any recipient other than the general fund of the state treasury. There is also a two year application period for special license plates; the department is not required to continue manufacturing special license plates when active registration falls below 500 at any time during this two year period, however current registrants may renew their plate; there is an exception that special license plates will not be issued when it affects public safety; and generally describes the layout requirements for special license plates. The commissioner has the discretion to apply the provisions of this section to any special license plate provided for by any other law in existence on or becoming effective on January 1, 2006. The surviving spouse of a deceased Medal of Honor recipient may retain the special license plates available for recipient and continue to display the plates on their vehicle. **SB 168**

O.C.G.A. § 40-8-90: Emergency Vehicles Equipment; restrictions to use blue lights
No person, firm, or corporation shall operate a vehicle equipped with or containing a device capable of producing blue lights, with the exception of federal, state or local law enforcement vehicles, vehicles with a permit granted by a state agency, or antique, hobby and special interest vehicles under certain conditions. An exception exists for any elected sheriff who is using a personal vehicle in law enforcement activity, pursuant to an agreement between the sheriff and the county governing authority. Violation is a misdemeanor. Any person who uses a vehicle equipped with blue lights in the commission of a felony is subject to a fine of not less than $1,000 or not less than one year imprisonment. Effective July 1, 2005. **SB 178**

Code Sections: 15-21-170 to 15-21-178, 15-21-179 to 15-21-181, 15-6-95, 40-5-22, 40-5-24, 40-5-26: Joshua's Law; create Georgia Driver's Education Commission
Establishes the Georgia Driver's Education Commission. Fines or bond payments for traffic violations must include an additional penalty of 5% of the original fine, to be repealed June 30, 2008 unless extended; and provides who shall assess and collect the additional fines and appropriated to programs for driver education and training. Raises the minimum age for a Class M and Class D driver's license to 17. A license cannot be issued unless the person is at least 16 and has completed a driver training school in addition to 40 hours of experience; a person is at least 17 and has 40 hours of experience, unless all other requirements are met and the person has been issued an out of state license. **SB 226**

Code Section: 40-5-23, 40-5-150: Driver's Licenses; Class C; change definition or commercial/noncommercial
Amends the definitions of noncommercial classes of motor vehicles for which operators may be licensed, specifically Classes A-D, M and P. Also adds a new definition of Class C vehicles. Effective July 1, 2005. **SB 273**

>Special thanks to PAC interns Amy Jett and Jessica Preston for their contributions to this article.

···> fact:

The speed of alcohol absorption affects the rate at which one becomes drunk. Unlike foods, alcohol does not have to be slowly digested. The average person metabolizes alcohol at the rate of one drink per hour. As a person drinks faster than the alcohol can be eliminated, the drug accumulates in the body, resulting in higher and higher levels of alcohol in the body.

- Statistics courtesy MADD

Baste & Broil: A Cross Examination Strategy

By John Bobo, Director of Office of Drug & Alcohol Policy & Compliance, United States Department of Transportation

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Thanks to Perry and Matlock re-runs, jurors have an unrealistic expectation of what happens during cross examination of witnesses. While prosecutors would love to see witnesses leap up and scream, "Yes, yes, I did it, I drove drunk and was wrong," that has never happened in a courtroom outside a Hollywood soundstage. Yet, many prosecutors still feel the pressure of jurors' expectations, so how can prosecutors be effective in cross examination? How can prosecutors pave the road towards closing arguments with all the points they need to make?

PREPARE

Is it reasonable that someone would lie to avoid going to jail? You bet. So anticipate defenses, the single best question to ask yourself is: What is the lie going to be? Then, ask yourself, what can I do to make that lie unreasonable? Remember, the burden of proof is beyond a reasonable doubt. Showing that defense claims are unreasonable is the single best technique in shooting down their claims.

CONTROL WITNESSES

Getting loud or cutting the witness off only makes you look bad and gains sympathy for the witness, so be polite, firm and always appear fair using witness control techniques such as:

* Repeating the question
* Entering into an agreement with the witness that you will ask questions and he will answer them
* Asking if the witness heard the question
* Requesting the judge instruct the witness to answer the question
* Having the witness repeat the question
* Letting the witness run until finished
* Asking the answer to be stricken as non-responsive
* Providing the answer yourself

TECHNIQUES OF THE LAST RESORT

* "I'm sorry. I must have confused you. Let me ask the question again . . ."
* "Are you through? Anything else you want to say before you answer my question?"
* Pause. Look at the jury. Ask the question again.
* You swore an oath to tell us the truth. If the truth is yes, can't you tell us yes?"

YOUR STRATEGY

There are as many approaches to cross examination as there are prosecutors, but for impaired driving cases, try the consensus based crossed followed by impeachment. Consensus based cross is where you build consensus with a witness before you turn to impeachment. In other words, you get the witness to agree with you on every element and fact that you can to bolster the credibility of your case and reduce areas of dispute. The effect is three-fold: 1) it focuses the trial, 2) it takes advantage of witnesses when they are most helpful, and 3) the door is opened occasionally when witnesses give information they didn't realize was damaging.

TWO STEP PROCESS

Make a list of the points you wish to make on cross that support your theory of the case. Arrange them with the questions that the witness will agree with on top. Then draw a line where the questions get nasty, listing all your questions for impeachment below. Thinking of cross as a two-step exercise of "nice and nasty" is helpful. While you should always be courteous in both portions of your cross, this categorizing of questions helps maximize your performance. Remember the first step is the proactive portion of cross-examination, where you speak through the witness. Impeachment is the reactive part of cross where you discredit the witness and his testimony. You baste; then broil.

····> alcohol & the impaired driver

ALCOHOL IS SOCIETY'S OLDEST, LEGAL AND MOST POPULAR DRUG.

A standard drink is defined as 12 ounces of beer, 5 ounces of wine, or 1.5 ounces of 72-proof distilled spirits, all of which contain the same amount of alcohol–about .54 ounces.

Beer is the drink most commonly consumed by people stopped for alcohol-impaired driving or involved in alcohol-related crashes.

Alcohol-related fatalities are caused primarily by the consumption of beer (80 percent) followed by liquor/wine (20 percent).

Beer is the drink of choice in most cases of heavy drinking, binge drinking, drunk driving and underage drinking.

- Statistics courtesy MADD

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····> fact:

Drunk driving is the nation's most frequently committed violent crime,

killing someone every 31 minutes.

Because drunk driving is so prevalent, about three in every ten Americans will be involved in an alcohol-related crash at some time in their lives. In 2003, an estimated 17,013 people died in alcohol-related traffic crashes in the USA. These deaths constituted 40 percent of the nation's 42, 643 total traffic fatalities.

-Statistics courtesy MADD

The "Georgia Traffic Prosecutor" addresses a variety of matters affecting prosecution of traffic-related cases and is available to prosecutors and others involved in traffic safety. Upcoming issues will provide information on a variety of matters, such as ideas for presenting a DUI/Vehicular Homicide case, new strategies being used by the DUI defense bar, case law alerts and other traffic related matters. If you have suggestions or comments, please contact Fay McCormack or Patricia Hull at PAC.