

## Mind-Mapping with Jurors: Closing Argument Technique

A challenge to all prosecutors is how to make DUIs visual. According to the National Highway Traffic Safety Administration (NHTSA) in studies on passive vs. active learning, people remember only:

- 20% of what they hear,
- 50% of what they hear & see,
- 90% of what they say & do.

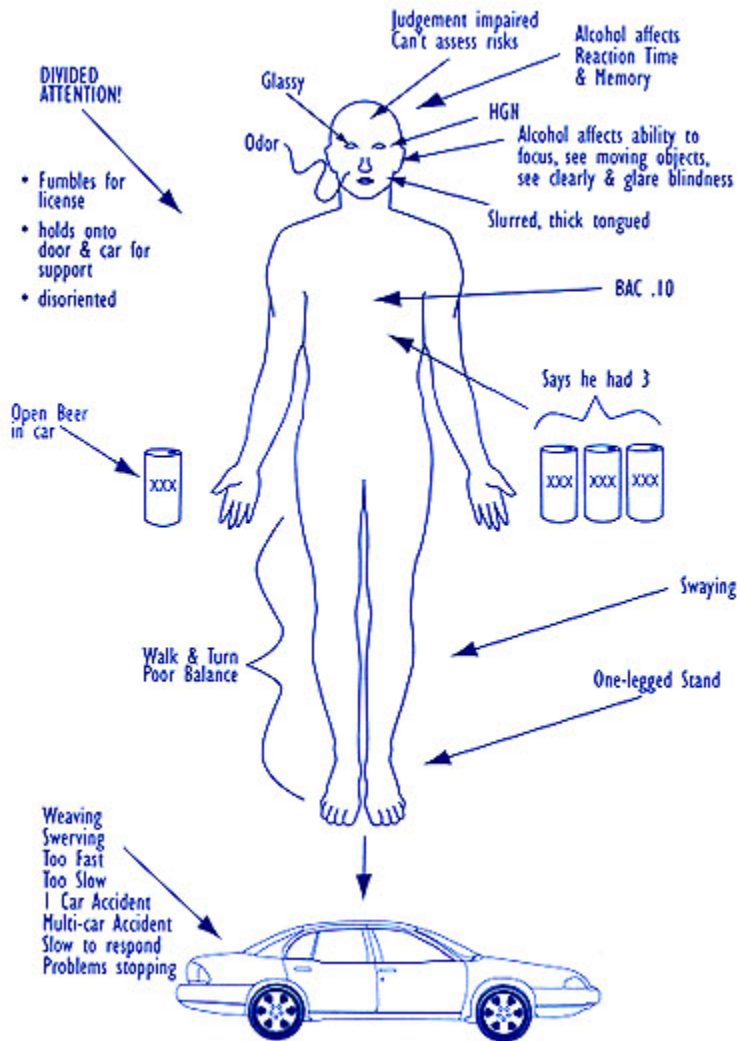
And that goes for jurors too. A great tool to increase jury retention in closing argument is mind-mapping—that terrific brain-storming tool where a problem is put in the center and all ideas spoke out from it (a non-hierarchical form of outlining).

After a defense close focusing on a police officer's performance in writing reports, administering SFSTs and collecting evidence, this visual aid returns the trial's focus to where it belongs—the conduct of the defendant.

To mind-map a case with the jury, put a sketch of the defendant in the center of the board and spoke out all the evidence of impairment from trial. Draw a picture of his brain and talk about what jurors' common sense tells them about how alcohol affects judgment and divided attention skills. Draw voice bubbles from his mouth and show how he has "talked out of both sides of his mouth" in his various accounts of how much he drank.

Now, there should be plenty of ink on the board, and the jury's entire focus is on the defendant. Draw an arrow down to a picture of a car and discuss how a person in this condition drives—and how, in fact, he drove that day.

### Closing Argument Visual Aid



[Click here to download graphic](#)

Sprinkle the close with plenty of Socratic-like, rhetorical questions, and the jury will feel like they got to mind-map the case with you. Better yet, the jury goes to deliberate with the visual image of this “human land mine floating on your roads” stuck in their heads.

### Defense CVs: Term of Confusion

In many impaired driving cases, the defense calls former law enforcement officers to the stand as “NHTSA Certified” experts in standardized field sobriety tests (SFSTs). These paid defense experts routinely inform jurors that they have been “NHTSA Certified” and that based on their certification and training the officer in this case administered the tests incorrectly.

What prosecutors need to remember is that NHTSA does not certify anyone as experts in SFSTs & DREs. At the most, the defense expert took a training course based on NHTSA curriculum (perhaps, they even taught the curriculum), and they may have received a piece of paper certifying that they completed a training course that was presented by their academy, police department or a law enforcement association. (Many officers are certified by the International Association of Chiefs of Police.)

But, what’s important for juries to understand is that none of these turncoat witnesses has a stamp of approval from the federal government on their abilities to administer or train SFSTs & DREs. NHTSA certifies the curriculum—not the people.

**Prosecution Witness Tip:** Confusion about this certification is also prevalent among prosecution witnesses. Make sure your own witnesses understand the nature of their own certifications before they testify.

### Quote of the Summer

“[D]riving a vehicle after using drugs often results in serious injury or death. As a [N]ation, we must continue to develop methods for keeping impaired drivers off the road, and Drug Recognition Expert (DRE) training is an important step in achieving this goal.”

President George W. Bush,  
In a June 2002 letter presented by ONDCP Associate Deputy Director John Horton  
to the 8th Annual Drug, Alcohol and Impaired Driving Conference in Plano, Texas.

### Jury Selection: Using Juror Schadenfreude To Your Advantage

*“Schadenfreude: Pleasure derived from the misfortunes of others.”*  
*American Heritage Dictionary*

Consider leaving people on the jury who have been convicted of DUI. As long as potential jurors say in voir dire that they were treated fairly, learned something positive from the experience and have only one prior offense, they are almost always a safe bet.

Human nature dictates that if a juror served 48 hours in jail for DUI, he wants to make sure this defendant does his time; the juror’s guilty pleasure at the ill fate of the defendant works to the prosecution’s advantage. And, this technique works. In one trial, a prosecutor had as many as four jurors with prior DUI convictions and won a guilty verdict. The best part is the defense attorneys look at you like you are crazy—right up until the time you convict their client.

Also, use this type of jury selection as an opportunity to plant seeds. Rarely will a potential juror with a prior DUI tell a courtroom of strangers that nothing positive came out of the experience. Most will agree that in the end the experience had a positive impact on their lives. (Be sure your inquiry is made with close-ended questions.) Now, the seed is planted with the jury: Yeah, convictions can be a good thing,

and if the prosecutor shows me proof beyond a reasonable doubt, we can have a positive impact on the defendant's life by finding him guilty.

### **NHTSA Facts**

- Children who have outgrown child safety seats (i.e., 40 lbs.) should be properly restrained in booster seats until they are at least eight years old or 4'9" tall.
- States with open container laws have fewer alcohol-involved crashes, and conversely, alcohol-involved fatal crashes are higher in states without open container laws. *Traffic Tech June 2002*.
- States with the highest number of Traffic Fatalities in 2000: Texas, California, Florida, Georgia, Pennsylvania, North Carolina, New York, Illinois, Michigan, Ohio. For a list of the Top 10, visit the National Traffic Law Center's Web page on <http://www.ndaa-apri.org/apri/programs/traffic/index.html>.

### **Calendar of Events**

**August 14, 2002:** *How Drugs Affect Driving for law enforcement personnel, prosecutors & toxicologists.* One day seminar from the State of Connecticut's Division of Criminal Justice and the Department of Transportation's Division of Highway Safety.

**October 9–11, 2002:** *58th Annual National Traffic Court Seminar at the National Judicial College on the University of Nevada, Reno Campus.* To register call the Committee on Traffic Court Programs, ABA Judicial Division, at 800-238-2667, ext. 5700.