

## Challenges to Field Sobriety Tests

What was your reaction upon seeing defense counsel slam down the National Highway Traffic Safety Administration (NHTSA) training manual on counsel table at the start of trial? Were you wondering how the defense attorney planned to use the manual to defend his/her client charged with an impaired driving offense? If the police officer in the case administered field sobriety tests to the defendant, chances are that defense counsel hopes to expose errors in how the officer explained, demonstrated or recorded observations of the tests, or challenge where the tests were performed. So why the NHTSA manual?

There are a number of field sobriety tests that law enforcement officers administer including the Romberg balance, finger to nose, walk and turn, one-leg stand and horizontal gaze nystagmus (HGN). While all these roadside tests are useful in determining whether a suspect is impaired, only three have been standardized by NHTSA. The walk and turn, one leg stand, as well as HGN were identified by controlled research as the best field tests to determine alcohol impairment. The three tests were standardized by developing practical and effective procedures for police officers to administer the tests. Each test has "standardized" administrative procedures, clues and criterion. NHTSA funded the research and publishes a manual that is available for law enforcement to use when training officers how to conduct the standardized field sobriety tests. The manual outlines all of the standardized elements.

Rather than challenging how a particular test was administered, defense counsel may seek to exclude all testimony in reference to any field sobriety test. Defense attorneys argue two sides of the same issue in their challenges to the admissibility of evidence regarding field sobriety tests. The issue is whether field sobriety tests are "scientific" in nature and therefore subject to meeting the legal standard for admissibility of new or novel scientific evidence under state law.

Defendants have argued that all field sobriety tests are new or novel scientific evidence. One rebuttal to this argument is that field sobriety tests are more analogous to personal behavioral observations. On the other hand, should a court determine that the standardized field sobriety tests are scientific, then the argument can be made that the scientific principles that the field sobriety tests are based on are neither new nor novel and therefore these tests should not have to satisfy the Frye standard.

Other defense attorneys have attacked the field sobriety tests as being unscientific and unreliable and therefore having no valid correlation in determining whether a driver is impaired. If the defense offers an expert to testify that field sobriety tests are unreliable the issues to address are:

- The defense expert's qualifications regarding field sobriety tests. Has the expert conducted research specifically in reference to field sobriety tests?
- Is the defense expert familiar with the NHTSA studies that have been conducted?
- Ask the defense expert about the conditions under which the studies were conducted. Were any of the subjects of the studies actually under the influence of alcohol?
- Who commissioned the studies? Have the studies been reviewed by peer panels or published in any professional journals?

The Southern California Research Institute conducted the studies for NHTSA in reference to field sobriety tests. This research establishes a valid correlation between performance on field sobriety tests and alcohol impairment. According to the Institute's studies the three validated tests are based on scientific principles, but not on any new or novel scientific principles. The studies concluded that if the field sobriety tests are administered properly the tests can be used as valid indicators of a suspect's impairment due to alcohol.

If you are interested in obtaining the NHTSA studies or any other information in reference to field sobriety tests, please contact NTLC.

## Impaired Driving and the Federal Crime Bill

After a long hard-fought political battle, the federal crime bill was signed by President Clinton on Tuesday September 13, 1994. Among the various provisions in the legislation of interest to prosecutors are two sections which address impaired driving. The Drunk Driving Child Protection Act of 1994 amends 18 U.S.C. §13(b) (Suppl. 1994) to include enhanced penalties for persons convicted in accordance with state law for operating a motor vehicle under the influence of drugs or alcohol while on United States special maritime and territorial jurisdictions. Specifically, this Act provides for an additional term of imprisonment not to exceed one (1) year for any offense and enhances penalties for operating under the influence convictions up to 5 years if there is serious bodily injury to a minor or up to 10 years and/or a \$1,000 fine for causing the death of a minor.

This legislation also amends the Omnibus Crime Control and Safe Streets Act of 1968 42 U.S.C. §3751(b) (Suppl. 1994) by authorizing the Bureau of Justice Assistance (BJA) to award grants for "programs for prosecution of driving while intoxicated charges and the enforcement of other laws relating to alcohol use and the operation of motor vehicles." The grant funds shall be used to provide additional personnel, equipment, training, technical assistance and detention and rehabilitation of persons who violate the laws, and to assist the victims of such crimes (other than compensation). For more information on the BJA grant programs contact the National Traffic Law Center at 703-549-4253.

## Impacting DWI Arrests: A Paperwork Intervention

Just how long does it take to process an impaired driving arrest? How many forms does a police officer fill out to complete the necessary paperwork? Does the probability that a police officer will make a DWI arrest decrease due to the paperwork requirements to process the arrest, particularly if it is close to the end of his/her shift?

Two aspects of law enforcement - patrol and paperwork - are often viewed as antagonistic because time officers spend completing paperwork reduces the time they could be actively patrolling in the community. The less time officers spend on the road, the lower the probability of detection, apprehension and arrest of impaired drivers. High police visibility can work as a deterrent to keep impaired drivers from getting behind the wheel of a car.

A pilot project designed to address these issues was conducted with a goal to construct a standardized DWI packet that would minimize the time officers spend completing DWI paperwork. Forms used in every state to document citations, arrests, suspect's rights, field sobriety tests, administrative license revocation and other actions were collected and reviewed. Police, prosecutors, court and motor vehicle personnel were consulted and uniform DWI arrest forms were designed. The forms' design minimizes repetition of information that officers must collect for department files, the courts and the office of motor vehicles. Sheriff departments, city police departments and state police troopers field tested the new forms.

The amount of time spent to complete the requisite forms was defined as the total time from the initial stop to completion of paperwork, minus time spent in travel or lost to interruptions. Therefore, the time factor measured included time spent conducting field sobriety and breath tests. The results of the field tests revealed a significant drop in the amount of time that the uniform forms required compared to forms currently in use. The completion time may be further reduced once the officers have experience in completing the forms.

This project was conducted by Bonnie L. Lewis, Roberta Loupe St. Pierre and Thomas S. Sullenberger of the Department of Sociology, Social Work and Criminal Justice at Southeastern Louisiana University. Funding was provided by the Louisiana Highway Safety Commission. For information on how to obtain the research study and the uniform forms please contact NTLC at 703-549-4253.

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