

Double Jeopardy - State Supreme Courts Rule

Responding to the double jeopardy defense continues to consume the time and efforts of prosecutors across the country. As reported in the Spring 1995 issue of *Between the Lines*, defense attorneys are filing motions to dismiss criminal DUI charges based on the argument that their clients have been punished by having their drivers' licenses revoked or suspended prior to the criminal proceeding.

State supreme courts in two states, Maine and Hawaii have decided cases regarding double jeopardy and ALR. In *State of Maine v. Savard*, And-95-5 and Ken 95-46 (Maine Supreme Ct. June 6, 1995) the Maine Supreme Judicial Court held "any punitive or deterrent purpose served by the suspension of an operator's driver's license following an arrest for OUI is merely incidental to the overriding purpose by the Legislature to provide the public with safe roadways." In Hawaii, although the appellant's license revocation was reversed at the administrative hearing, the court in *State of Hawaii v. Higa*, 1995 Haw. LEXIS 36 (Hawaii Supreme Ct. May 17, 1995) concluded that ALR proceeding "serve[s] legitimate, nonpunitive, and purely remedial functions . . . therefore . . . did not bar subsequent criminal prosecution on the grounds of double jeopardy principles."

While trial courts have ruled on both sides of this issue, all but one state appellate court decision on the double jeopardy decided after the 1994 U.S. Supreme Court decision in *Department of Revenue of Montana v. Kurth Ranch*, has held that administrative license revocation (ALR) does not subject a defendant to double jeopardy when that person is subsequently prosecuted for a criminal DUI offense. The intermediate appellate courts in Arizona, Minnesota, Nebraska and Ohio have also concluded that ALR is not punitive. Many other states have cases pending on the double jeopardy and ALR issue.

The National Traffic Law Center (NTLC) continues to assist prosecutors, judges and law enforcement with responding to this defense. The Center is collecting briefs, memoranda of law, transcripts, orders and opinions in the NTLC Brief Bank in reference to this issue and various traffic safety related subjects. If you would like to review a memorandum of law or a brief in reference to double jeopardy and ALR or want to add your own brief to our brief bank, please contact NTLC. Keep us updated if your state has a pending or recently decided case on this or any issue that you want to share with other prosecutors.

Animation or Simulation

Animation! The very word conjures up images of Disney and Saturday morning cartoons. But computer animation is the latest technique used by accident reconstructionists to transform crash data into demonstrative evidence for visualization of how an accident occurred. The use of computer animation is a relatively recent innovation and has been most widely used in personal injury lawsuits, however, the technique is making its way into the criminal courts. In the Fort Lauderdale case, *State v. Pierce*, No. 92-19316CF10A (Fla 17th Cir. Ct. 1992), the defendant was convicted of vehicular homicide based largely on the persuasive quality of the animation demonstrating the reconstruction's opinion as to how the crash occurred.

Computer animation (technically computer-aided design) consists of a series of still images created on a computer and then recorded in rapid succession onto videotape. When the tape is played, the illusion of movement is created, just as an animated cartoon. Kenneth Padowitz, Broward County Assistant State Attorney, who prosecuted *Pierce*, successfully argued in a pre-trial hearing that the video was simply a compilation of maps and photos that were independently admissible and the tape could be stopped at any point to verify the photos.

Computer animation should not be confused with computer simulation. Computer simulation combines animation with computation to predict possible outcomes. Animation serves to illustrate an expert's opinion of how a crash occurred and may be admitted as demonstrative evidence. In contrast, simulation is the actual creation of evidence. It is essential to keep the distinctions in mind as the techniques have differing evidentiary requirements and purposes. Some of the reported cases from the civil courts have not been clear in distinguishing animation from simulation.

As accident reconstructionists become more proficient in the use of computer-aided design, it will become increasingly important for prosecutors to be prepared to meet the legal challenges to its admissibility. Look for future issues of NDAA's magazine *The Prosecutor* to have more detailed articles on the Pierce case, computer animation and computer simulation.

What Works? DUI Repeat Offenders

Is there any sanction a court can impose that will effectively prevent a DUI offender from becoming a recidivist? Judges and prosecutors struggle with this question daily. Approximately one-third of the DUI offenders that appear in court every day are repeat offenders. Often times cases are processed quickly and you begin to wonder whether the criminal justice system, through its sentencing decisions, is helping to alleviate the problem.

Up until a recent study there was no consistent evidence that DUI remediation programs have any demonstrated success in reducing recidivism. Recidivism in the case of DUI offenders is often the result of an addiction to alcohol. According to the study titled, *A Meta-Analysis of Remedial Interventions With DUI Offenders*, Dr. Elisabeth Wells-Parker and several of her colleagues at Mississippi State University's Social Science Research Center found that remedial DUI programs on the average, produce a 7-9% reduction in DUI recidivism and alcohol-related driving incidents. Which remedial sanctions, such as alcohol treatment, education, psychotherapy, counseling or probation, best address the problems of alcoholic defendants? The research concluded that a combination of education, psychotherapy/counseling and some follow-up such as probation are more effective than any single method of DUI offender intervention. This study, based on an analysis of 215 independent evaluations of DUI remedial programs, supports sentencing procedures that order offenders to undergo screening for alcohol problems before referral to the appropriate remediation programs.

Nationwide Safety Award

Do you know someone committed to traffic safety who you would like to nominate for national recognition? Nationwide Insurance Enterprise is sponsoring the second annual "On Your Side" Highway Safety Award. Individuals or organizations responsible for innovative efforts in developing or implementing safety programs and inventions are eligible for nomination. Last year's winners included Parents Against Tired Truckers (PATT) for its efforts in alerting drivers -particularly truckers - of the dangers of driving while tired; Major Jethro Wallace, North Carolina Highway Patrol for his efforts in the "Click It or Ticket" seatbelt campaign; and Midas International for the "Safe Baby" project.

Nationwide will award \$5,000 to each national "On Your Side" winner. The deadline for this year's nominations is September 30. The company has established the Safety Award Idealine, 800-399-IDEA, to answer questions about the program or to request nomination ballots.

Between the Lines is published quarterly by the **American Prosecutors Research Institute's National Traffic Law Center**. Items may be reprinted if attributed to **APRI's National Traffic Law Center**. Please provide copies to *Between the Lines*. Direct inquiries and news article suggestions to Patricia Gould at 703-549-4253.