

Prosecuting the Pedestrian Fatality

By John Kwasnoski

When a vehicle strikes a pedestrian the forensic evidence is much more subtle than a two vehicle collision, and may require special investigative skills to satisfactorily reconstruct the crash. Establishing the point of impact is often critical to a determination of operator negligence or culpability, and should be a primary focus of the investigation. Other key areas of investigation include:

- vehicle examination for transfers of blood, fabric, hair, tissue, etc., and vehicle damage;
- final resting position of pedestrian, tire marks on roadway, drag factor;
- motion, direction and walking speed of pedestrian prior to impact;
- measurements and location of abrasions, bruises and related injuries and body dimensions of the pedestrian;
- complete documentation of injuries in medical examiner's report and by photographs;
- evidence of erratic vehicle motion e.g., guard rail impacts and tire prints off the paved surface.

In addition, documentation of factors affecting visibility may provide critical evidence at trial. A thorough investigator should:

- document weather conditions, lighting, posted speed limit and other traffic controls;
- secure pedestrian clothing to demonstrate conspicuity of pedestrian;
- secure headlights or other lamps that are broken on the vehicle.

The visibility afforded by headlights may reveal that the operator was "driving beyond his/her headlights," i.e., the vehicle stopping distance is greater than the illumination afforded by the headlights. An operator's expectations and alertness, associated with perception-reaction time, may be the subject of debate by human factors experts.

Perhaps more than any other type of case, proof of causation in pedestrian cases is established by meticulous investigative action in the hours immediately following the crash.

John Kwasnoski, a professor of forensic physics at Western New England College in Springfield, Massachusetts, reconstructs crashes and offers expert testimony.

Prosecutor Training

If you answer "yes" to even one of the following questions, it's time to get out from behind the desk, away from the courtroom, and invest your time in training:

- Are you unclear why some field sobriety tests are "standardized" and other aren't?
- Do you need to find out what a drug recognition evaluation is and when you would want one in your case?
- Are you baffled by equations accident reconstructionists use to arrive at an opinion?
- Do you wish you better understood your toxicologist's testimony to enable you to conduct a more effective redirect examination?
- Do you want to brush-up on your trial skills and receive feedback from other prosecutors?

In cooperation with the National Highway Traffic Safety Administration (NHTSA) and the National Association of Prosecutor Coordinators (NAPC), NTLC works with state prosecutors to present three trial advocacy courses focusing on specific impaired driving issues. Prosecution of Driving While Under the Influence focuses primarily on developing courtroom skills of the new prosecutor, and generally includes presentations on DUI detection, the standardized field sobriety tests, and the pharmacology of alcohol

and chemical testing. Each participant receives a case scenario and prepares a mock trial. The trial exercises are video-taped and each prosecutor receives a critique of the "live" performance and an opportunity to review the video tape with an instructor. Throughout the course, participants receive feedback on courtroom skills and specific suggestions for composing more persuasive and dynamic presentations.

Prosecuting the Drugged Driver assists prosecutors who handle impaired driving cases involving drugs other than alcohol through the use of a drug recognition evaluation (DRE). This course provides an overview of the DRE program, including the training an officer receives to become a certified drug recognition expert, how drug impairment is detected, and the role of toxicology in proving a drugged driving case. By becoming familiar with the DRE program, a prosecutor will learn how to qualify a drug recognition officer as an expert in drug impairment. Similar to the alcohol trial advocacy course, participants conduct a mock trial where each presentation is critiqued and videotaped.

The newest course, **Lethal Weapon: DUI Homicide**, is designed specifically for the experienced prosecutor. The course covers accident reconstruction methodology, kinematics and dynamics of vehicles and occupants, technical investigation of crashes, and forensic toxicology. The mock trial portion involves working with qualified accident reconstructionists and toxicologists to improve direct and cross examination skills.

Prosecutors are welcome to attend courses in any state on a space available basis. If you are interested in attending any of the above courses, contact NTLC or your state prosecutor coordinator for specific details and registration information.

Railroad Rights-Of-Way

The days of imagining a railroad track as a quaint place to take an afternoon stroll are over. The reason? Trespassers are the second leading cause of death in the railroad industry. Every year over 1,000 people are killed or maimed for life. So if a trespassing case crosses your desk, don't allow yourself to fall into the same mindset that you plead with jurors in impaired driving cases to cast aside, i.e., "There go I but for the grace of God." Instead prepare yourself to inform the court that trespassers:

- pose a danger to themselves and others (It can take more than a mile for a train to stop.)
- cause interruptions and delays for customers
- create a staggering economic loss to the railroad industry

Trespassers are often engaged in other illegal activity which may otherwise go unnoticed. In May 1996, the Federal Railway Administration (FRA) will complete model state legislation on trespassing and vandalism of railroad property. For more information contact NTLC.

Available Resources

A Guide To Sentencing DUI Offenders: Designed for judges and prosecutors, this 20 page document identifies the most effective combination of sanctions and treatment for various offenders. The *Guide* is based on published research and contains four sections:

- Sentencing
- Specific Sanctions and Remedies
- Rehabilitation Options for Offenders Sentenced to Treatment
- Compliance and Reporting

A full reference section is included. The *Guide* was jointly produced by the National Highway Traffic Safety Administration and the National Institute on Alcohol Abuse and Alcoholism. To obtain a copy contact NTLC at 703-549-4253.

Traffic Safety Magazine: The National Safety Council is offering a free one-year introductory subscription to its bimonthly publication that provides in-depth coverage of highway safety's three E's: Enforcement, Education and Engineering. To order your subscription contact John Jackson, Editor at 708-775-2278.

Company News

If you have called NTLC over the past three years, chances are you spoke with Jesselyn McCurdy. In her position as staff attorney, Jesselyn assisted numerous prosecutors by researching case law supporting the admissibility of HGN, locating knowledgeable and articulate experts, finding research studies concerning the effectiveness of sobriety checkpoints, and much more. Jesselyn recently left NTLC for another position in the legal profession. We will miss Jesselyn's enthusiasm and spirit, and wish her well.

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