

Miranda and DRE

At what point during a Drug Recognition Expert (DRE) evaluation should a defendant be advised of his or her *Miranda* rights? Is it even necessary? In a typical driving under the influence of alcohol case, a police officer informs an arrested suspect of *Miranda* prior to conducting any type of custodial interrogation. So if the arresting officer has already given *Miranda*, does the DRE need to remirandize the suspect? And if so, when?

The DRE evaluation is a 12-step systematic and standardized process which an officer conducts to determine whether a driver's impairment is consistent with drug use and what specific category of drugs the person ingested. The evaluation is usually conducted after the suspect has been arrested and removed from the road (most likely in the police station). The tenth step of the DRE process requires the DRE to conduct a structured interview of the suspect including questions about drug usage. In jurisdictions where the arresting officer has mirandized the defendant prior to the DRE evaluation, prosecutors should determine whether it is necessary for the DRE to re-mirandize a suspect: a) at the start of the 12-step evaluation, b) before the interview in step ten, or c) not at all.

It should be noted that one of the first questions contained on the standardized DRE reporting form is whether the suspect has been given a *Miranda* warning. Defense may argue that inclusion of this question on the form serves as a reminder to the DRE and indicates the state recognizes the suspect is being subjected to custodial interrogation during the DRE evaluation. Consequently, if the suspect was not advised of *Miranda*, any statements the suspect made should be suppressed.

Admissibility of statements made by the suspect during the interview often assists the state in proving its case. In the event the statements are suppressed, the state may be able to rely on those statements for impeachment purposes or as a basis for the DRE's opinion regarding the suspect's impairment. This will vary by state.

Until case law decisions specifically address these issues in your jurisdiction, it may be helpful to ascertain how courts in your state have decided issues such as giving *Miranda* rights before administering standardized field sobriety tests or breath tests.

Identifying the Operator

by John Kwasnoski

Proof of operation is often under-investigated at the time of a crash, only to become a troublesome challenge at trial. Although operator identification may be established through eyewitness observations of the collision or from statements made by the suspected operator to medical or law enforcement personnel, do not overlook forensic proof of who was driving. For example:

- blood, tissue and hair transfers to the vehicle interior
- injury match-ups to vehicle interior damage
- brake pedal or accelerator marks on suspect's shoes
- knee injuries from contact with dashboard components
- safety belt abrasions on occupants
- pattern injury from contact with steering wheel
- injuries from windshield or side window glass
- seat position as it relates to height of occupants

Five means of obtaining evidence to prove operation include: 1) securing statements from anyone who assisted or removed the occupants from the vehicle; 2) prompt forensic processing of the vehicle; 3) preservation and laboratory analysis of trace evidence; 4) detailed documentation and photography of abrasions, bruises, lacerations and related injuries of all vehicle occupants; and 5) extensive photography of the vehicle interior.

Reconstructing the movements of vehicle occupants during the collision with point-by-point matching of injuries, transfers and body motions can be most convincing to a jury but requires thorough investigation at the scene.

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

Revisions to DUI Training Curriculum for Police

Due to increasing concerns about civil liability, some law enforcement agencies have been unable to conduct "wet" workshops as part of the impaired driving curriculum. A "wet" workshop is where volunteers come to the training site, drink alcoholic beverages under police supervision, and then have officers practice administering field sobriety and breath tests to the volunteers to determine impairment.

In response to the liability concerns, the International Association of Chiefs of Police (IACP) and the National Highway Traffic Safety Administration (NHTSA) have developed a video training segment to replace live drinking sessions. Rather than training officer by having them administer standardized field sobriety tests (SFSTs) to impaired subjects, the trainees would watch demonstrations on video of impaired persons performing the SFSTs. While both IACP and NHTSA recognize the "wet" workshops as the optimal means of providing hand-on experience in SFST training, police agencies can choose to substitute either of two acceptable alternatives; Option 1 - one video session and one live workshop or Option 2 - two video sessions without a live workshop.

The use of video training, particularly if there are no "wet" workshops, raises issues for which prosecutors need to prepare. Newly trained officers may be particularly vulnerable on cross-examination if all training on impaired subjects was through the use of a video. This would be particularly true where the officer has had very few impaired driving arrests. Be aware of every opportunity to bolster the credibility of the officer's observations by including information on direct about the officer's field training and other assignments which have increased his or her exposure to impaired citizens.

In jurisdictions where discovery is at issue in DUI cases, the videos may become discoverable by the defense. The defense could attempt to put the videos "on trial" either through a defense expert or simply by playing portions of the tape and demonstrating that the members of the jury are not now experts in detecting impaired drivers merely by viewing a video.

The videos will be made available for officer training in early 1996, therefore, cases involving the use of the video training are several months away. Prosecutors should determine whether their agencies plan to use the videos, and if so, should view the tapes. Further, prosecutors will need to establish whether the arresting officer was initially trained or recertified through the use of the tapes either in conjunction with or as a substitute for the live workshops.

Drowsy Defendants

A close second to the classic "two-beer" defense is, "I wasn't drunk, I was just tired." This handy defense attempts to explain away a driver's weaving on the road, red eyes and unkempt appearance. Next time you encounter the "drowsy defendant" turn his/her explanation into what it really is: proof of impairment. While a fatigued driver may have symptoms similar to a person under the influence of alcohol, being tired can be an equally dangerous form of impairment. Similar to consuming too much alcohol or driving too fast; sleeping too little and then getting behind the wheel may constitute criminal negligence. A combination of any of these factors often creates a fatal outcome.

Next time you listen to a defendant trying to appeal to the jury's sympathetic side with tales of working double shifts and long commutes, plan to highlight the effect fatigue has on motor skills, perception-reaction time, judgement, etc. The defendant has to admit that driving when tired is not safe. And if the officer's testimony indicated the defendant had an odor of an alcoholic beverage, get the defendant to agree that sensible people do not drink alcohol to stay awake.

Second Annual Impaired Driver Training Conference

From May 12-14, 1996, the Drug Recognition Expert (DRE) Section of the International Association of Chiefs of Police (IACP) will host its 2nd annual DRE, Drugs, Alcohol and Impaired Driving Training Conference at the Ritz-Carlton in Aspen, Colorado.

After an exceptional turnout at last year's conference, the IACP expects an even larger draw this year. Leading experts in the field of DUI and DUI drug enforcement will highlight the speaking agenda. Presentations will benefit prosecutors, law enforcement, toxicologists, and alcohol program coordinators. A mock DUI/DRE trial is planned to aid prosecutors.

Pre-registration-fees are \$125 for IACP DRE members, \$150 for non-members. To register call IACP at 800-THE-IACP, ext. 220. For additional information contact Chuck Peltier, IACP, ext. 224.

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