

No Math Is The Best Math

by John Kwasnoski

The victim was sitting in the front passenger's seat. His best buddy was driving the car with a BAC of .10. The impact split the telephone pole in half and the car's front end looked like an accordion. The skid marks were so dark the jurors could still see them during a view of the crash scene. It's all pretty straight forward stuff. The jury seems to be with you. Now if only you didn't have to go through all those equations before the jury hears that the speed of the car immediately prior to impact was 87 m.p.h.! The "techno-babble" will surely put them to sleep.

Jurors may be intimidated by theories and numbers and tune-out before your expert gets to the ultimate opinion. The expert, however, can present the speed-from-skid marks testimony (and other opinions based on mathematical reasoning) without showing any equations or calculations. The accuracy of the calculated speed can be described without any math. Leave the writing of numbers and algebraic manipulations for the cross examination.

Here's an example, assuming the witness has already been qualified and the gathering of evidence (skid marks, drag factor) has been described:

Q. Is there an accepted method for determining a minimum vehicle speed from this type of evidence?

Q. Were you ever trained to use this method, or have you used this method in other cases?

Q. Is there a name for the equation you use?

Q. Is the "speed-from-skid-marks" equation widely accepted by police and accident reconstructionists?

Q. What information do you need to use this equation?

Q. Were you able to use the equation in this case?

Q. Based on the speed-from-skid marks equation, do you have an opinion of the speed of the defendant's vehicle in this case?

Q. What is your opinion?

In planning your direct examination keep in mind the jury's limited ability to focus on technical information. In your pre-trial meeting determine exactly what opinions you can expect from your expert and map out a sound foundation. During direct examination ask for the opinions to be stated clearly and concisely. Additional detail can be developed in response to cross examination questions, or in re-direct if needed.

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Prosecuting Vehicular Fatalities

Prosecuting impaired drivers is not easy. Prosecuting impaired drivers who kill is even more difficult. NTLC's *Problems and Possibilities in Prosecuting Vehicular Fatalities* is a comprehensive examination of all the difficult issues involved in vehicular homicide prosecution. *Prosecuting Vehicular Fatalities* includes an overview of criminal homicide law, with particular emphasis on mental state definitions and the effect impairment has on some mental states. *Prosecuting Vehicular Fatalities* also contains an

extensive listing of facts prosecutors should examine before making any charging decision in a vehicular fatality case.

Contact NTLC to order *Problems and Possibilities in Prosecuting Vehicular Fatalities*.

Meeting DUI Defense Challenges: Do SFSTs Test Driving Skills?

The officer has testified in detail about observations of defendant's performance on the standardized field sobriety tests (SFSTs): inability to follow directions, failure to touch heel to toe, onset of nystagmus before 45 degrees, and using the arms for balance. On cross examination, defense counsel asks and the officer agrees that SFSTs, which include the walk and turn, the one-leg stand, and horizontal gaze nystagmus tests, do not directly test a person's ability to drive safely. In closing, defense counsel argues that the jury should ignore the testimony about the SFSTs because there is no proven correlation between performance on the tests and the defendant's driving skills.

If SFSTs do not test driving ability, what is their purpose? SFSTs provide a standard to assist officers in determining impairment. Among other things, SFSTs are designed to help the officer assess a suspect's ability to do multiple, simple tasks simultaneously (divided attention), to comprehend and follow simple instructions (process information), and to maintain physical control. If a driver cannot do these things, the common sense argument is that s/he cannot drive safely.

Since jurors often think of driving as routine, it is important to remind them of the complexity involved. Ask the officer to testify about what types of skills driving requires. For example, a driver needs to be able to see the red light, process the information that s/he needs to stop, judge the distance from the stop light, and apply the brakes while steering to be able to respond in time. In closing, point out the logical connection between impairment and unsafe driving.

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