

## "It was the Car's Fault"

by John Kwasnoski

There are several ways to defeat a mechanical failure defense, unless it is a legitimate one. A statement by the driver that there was no apparent problem with the vehicle prior to the collision is a good starting point. Repair and/or maintenance records for the vehicle showing no mechanical problem are helpful. The most valuable evidence, however, is the inspection by a qualified mechanical inspector. In choosing this expert, it should be recognized that a crash reconstructionist is not typically trained or experienced in conducting this type of inspection. A vehicle inspector, on the other hand, should be well versed in how various mechanical systems affect handling, stopping ability, acceleration, etc., knowledge that is usually beyond the scope of the mechanic who just diagnoses and repairs problems with vehicles. A detailed inspection report can be completed that will show the trier of fact that a thorough inspection has eliminated any mechanical failure as a possible cause of the collision.

Two common mechanical failure defenses are:

- Sudden acceleration caused by motor mount failure. The motor mounts attach the car's engine to the chassis. When the motor is running it wants to twist and lift off the chassis. If a motor mount actually breaks, the engine lifts up and could pull on the accelerator cable, creating the same effect as if the accelerator pedal were depressed. If it is determined that the broken motor mount was a result of impact due to the crash, and not due to mechanical failure, the sudden acceleration defense is defeated.
- Antilock brakes' (ABS) electronics failure results in loss of braking. When the ABS electronics fail, the brakes revert to conventional braking mode in most cases, with little or no loss of braking. Therefore, the vehicle inspector would look for signs of excessive wear, malfunctioning of the mechanical calipers that apply pressure to disc brakes, and do a complete check of the ABS system in the same manner as he would a conventional braking system. Upon finding no failure or defect to the ABS brakes, they would be ruled out as a cause of the crash. Note: Conventional brakes produce longer stopping distances than antilock brake systems on wet surfaces, and this may be a legitimate consideration for the reconstructionist.

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

### Horizontal Gaze Nystagmus: The Science and the Law

Are you frustrated by your inability to convince your court to accept horizontal gaze nystagmus (HGN) evidence in impaired driving cases? Do you wish you knew what questions to ask police officers and expert witnesses in court? Are you able to counter defense arguments regarding HGN?

NTLC's new publication, *Horizontal Gaze Nystagmus - The Science and the Law: A Resource Guide for Judges, Prosecutors, and Law Enforcement*, will assist you in gaining a basic understanding of HGN, its correlation to alcohol and certain other drugs, other types of nystagmus, the HGN test's scientific reliability, its admissibility in other jurisdictions and the purposes for which it may be introduced. Contact NTLC at (phone) 703-549-4253 or (fax) 703-836-3195 to order a free copy of this 41-page guide.

### Don't Miss This Great Opportunity ...

#### Lethal Weapon: DUI Homicide Trial Advocacy Course

*"This course is absolutely necessary for any prosecutor who tries DUI homicides!"*

*"Who would have thought learning about physics, crash reconstruction and toxicology would be so much fun?"*

*"The most beneficial thing about this course for a prosecutor is learning scientific theory and learning how to explain these theories to a layman."*

*"I would recommend this course to anyone. I was able to find mistakes made by my own expert and correct them prior to trial."*

These are just a few of the comments shared by prosecutors who have attended a **Lethal Weapon: DUI Homicide** course conducted by APRI's National Traffic Law Center. **Lethal Weapon** is designed for experienced prosecutors who want to increase their understanding of the technical evidence required to prove guilt in cases involving vehicular fatalities, and at the same time, improve their trial skills. The four and a half day course includes:

- Participation in mock trial exercises using actual expert witnesses.
- Individual critiques by experienced faculty on courtroom skills.
- Assistance in how to develop more complete witness examinations, compose more persuasive arguments and deliver dynamic presentations.
- Strategies to counter common defenses.

Substantive presentations cover, among others:

- Crash reconstruction methodologies.
- Kinematics of vehicles and occupants.
- Retrograde extrapolation of blood alcohol content.
- The role of the prosecutor at the scene, including immunity issues.

**The Lethal Weapon: DUI Homicide** course originally scheduled for March 30-April 3, 1998, has been rescheduled to October 26-30, 1998 in the Washington metropolitan area. For further information contact the NTLC at 703-549-4253.

## ASK DOCTOR TOX

**Q:** If a toxicology report indicates that a certain amount of a drug was found in a person's system, can you translate that amount to a corresponding level of impairment, similar to saying a BAC reading of .10 equals impairment?

**A:** No, an amount of drug quantified in the blood cannot be equated to a particular level of impairment in the same manner that blood ethanol concentration can. All drugs do not share the same characteristics as ethanol and therefore generalizations cannot be made from the ethanol model to other drugs that may impair driving skills. What a toxicologist can testify to are the medical reasons for use of the drug, precautions, adverse reactions, interactions with other drugs and whether the impairment exhibited is consistent with the particular drug detected. Additionally, the toxicologist can differentiate between therapeutic and toxic concentrations and the difference in effect.

Dr. Teri Stockham will answer questions submitted by our readers. Dr. Stockham, formerly the Chief Toxicologist for the Broward County Medical Examiners Lab in Fort Lauderdale, Florida, is now a full-time consultant. Please submit questions in writing to NTLC, 99 Canal Center Plaza, Suite 510, Alexandria, VA, 22314 or fax: 703-836-3195.

## Arresting Developments

**Hackensack, New Jersey** - A woman who was severely injured in a crash caused by an impaired driver, sued for damages seven years later when she gave birth to a baby born with deformities. Her womb was deformed due to multiple pelvic fractures causing the child to be born with severe facial injuries. The appellate court held the impaired driver owed no duty to the subsequently conceived child.

**Concord, New Hampshire** - A Snowmobile Safety Awareness Program was established this winter in an effort to curb drinking and driving by snowmobilers. Sobriety checkpoints are used throughout the season on public ways where trails intersect roadways and in public parking areas. The program is in response to ten deaths recorded on snowmobile trails last year, nine of which were alcohol related.

**Hillsboro, Ohio** - A judge ordered a man with 18 DUI convictions to live within walking distance of a liquor store or bar. Since the sentence, the man has moved from the county to within city limits. "It's my hope that he'll walk to get his beer and wine rather than drive," said Judge John Hapner.

*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.