

Credibility "Coupons" for the Witness

by John Kwasnoski and Patricia Gould

In many vehicular fatality cases the jurors' decision rests heavily on the credibility of the police investigator or reconstructionist. The defense goal is to take some small part of the testimony and create reasonable doubt. Therefore, be sure to take advantage of the intrinsic credibility of the state's witness who:

- was physically at the scene and collected the evidence
- observed the final rest position(s) of the vehicle(s)
- spoke with the defendant first and noted signs of impairment
- interviewed witnesses within hours of the crash

In addition, there are areas of testimony that are nearly cross examination-proof, that enhance credibility and afford the officer an opportunity to testify in a conversational manner to the jurors. Ask your witness to:

- describe the measuring equipment (e.g. a rolling wheel or drag sled)
- describe how a measurement was made, or the fact that multiple measurements were made to ensure certainty
- describe how the vehicle created the tire marks that were observed
- describe how s/he walked the scene looking for road defects or other factors that might have caused the crash
- explain terms of art or special vocabulary being used during testimony

These areas of testimony are like "credibility coupons" that the witness can use as much as needed. In every case there are examples of investigative procedures that show professionalism, fairness and compliance with standard departmental policy. In a case where the officer is offering an opinion, it may more effective to devote 80% of the testimony to establish credibility and only 20% to the details of the opinion.

By taking the time during witness preparation to develop these areas, you establish and highlight the witness' credibility, and make the witness' ultimate opinion even more persuasive.

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Share the Wealth

The National Traffic Law Center's brief bank and professional reference directory are up and running. The brief bank currently consists of motions, memos, and transcripts addressing various issues including breath test instruments, drug recognition experts, horizontal gaze nystagmus, field sobriety tests, vehicular homicide, and crash reconstruction. The professional reference directory contains information on state and defense witnesses including resumes, curriculum vitae, publications, and contact numbers of any prosecutors familiar with the witness.

The information these services provide are priceless in a busy prosecutor's office and have already proven extremely helpful to prosecutors. NTLC needs your assistance in acquiring additional transcripts and information on witnesses, and motions and briefs on impaired driving issues. A quick look around your office would probably turn up some documents that could benefit a prosecutor in another state. Please send any pertinent materials to the National Traffic Law Center, 99 Canal Center Plaza, Suite

510, Alexandria, Virginia 22314. NTLC will pay for reasonable copying and shipping fees incurred in sending these documents.

Protecting Lives, Saving Futures

The National Traffic Law Center has begun working on a new project entitled *Protecting Lives, Saving Futures*. The purpose of this project is to create a model curriculum to jointly train prosecutors and police officers in the detection, apprehension and prosecution of impaired drivers. The training will include instruction on impairment due to drugs other than alcohol and youthful offenders.

This program has two unique qualities. First, experts in the fields of toxicology, optometry, prosecution and law enforcement will design and develop the curriculum together. Second, prosecutors and police officers will be trained together in the same classroom by the experts in their respective disciplines. This joint training approach will allow all the involved disciplines to learn from each other inside a classroom rather than outside a courtroom five minutes before trial. The training is the first of its kind to be developed nationally and will be adaptable to all local jurisdictions. We will keep you updated on its progress.

Expert Witnesses

Funds are available through the National Association of Prosecutor Coordinators to cover expenses for expert witnesses in cases involving the admissibility of horizontal gaze nystagmus, drug recognition evaluation and classification, and other issues. The case must be considered to have the potential to positively affect state case law in the area of highway safety. For further information, please contact your state prosecutor coordinator or Lisa Conino, Program Manager, NAPC/NHTSA Cooperative Agreement at 919-733-3484

Sidebar

The admissibility of images from digital cameras is being challenged in various jurisdictions. The National Traffic Law Center has conducted preliminary research on this issue and we are looking for examples to use in an upcoming article. If you have handled challenges to digital cameras, e-mail NTLC's staff attorney at trafflaw@ndaa-apri.org or call (703) 519-1692.

Arresting Developments

Roseburg, Oregon Jerome Quinten Pinedo was riding his lawn mower on a public street when stopped by two sheriff's deputies. The deputies smelled beer on his breath and a subsequent breath test showed a BAC of .15. The jury's cutting verdict found Pinedo guilty of driving under the influence of intoxicants and driving on a suspended license.

Parma, Ohio Dwight Childs pled no contest to charges of vehicular homicide and running a red light in the death of his 2-month-old son, Jacob. The baby was strapped into a rear-facing car seat in the front and suffered massive head injuries when the passenger air bag in Childs' truck deployed after a collision. The Ford truck was equipped with an air bag on/off switch and several posted warnings. For failing to switch off the air bag, Judge Kenneth Spanagel sentenced Childs to spend two 12-hour days in jail, the day of his son's birthday and the anniversary of the crash.

St. Albans, Vermont Arnold R. Gardner's license had been suspended for life when he drove across the center line and almost hit an oncoming car. This near miss became his 17th DWI conviction. Judge Michael Kupersmith sentenced Gardner under Vermont's habitual offender statute to four years to life in prison with all but four years suspended.

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