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STATE-OF-THE-ART CLIENT INTERVIEW FORM

By John A. Tarantino

The initial client interview may take place in a variety of circumstances. For example, the "interview" may take place within a matter of just a few minutes, if the client calls in the middle of the night from the police station indicating that he or she has been arrested for driving under the influence of alcohol or drugs and asks your advice in determining whether to submit to a chemical test.

The initial interview may take place at the police station, if you are fortunate enough to be able to meet with, and interview, the client face-to-face prior to the administration of the chemical test result.

Or, finally, the initial interview may take place in your office after the client has been arrested; after the client has taken the field sobriety tests; after the client has been questioned at length by the police; after the client has been given a chemical test (or has refused to take the chemical test); after the client has been videotaped, and after the client has been arraigned.

In most cases the initial interview occurs after many things have already happened to the client, and many decisions have been made by the client that can dramatically affect the outcome of the trial.

The initial interview that takes place in your office must be in-depth, well planned and carefully thought out. However, it must also be designed in a way to put the client at ease, to help to gain the client's confidence and to get the client in a position to talk about what happened, so that sufficient information can be obtained not only about the facts of what occurred, but possibly why the arrest happened, whether the client is in need of alcohol or drug counseling, whether there are medical or psychological conditions that need to be addressed, and, for purposes of the trial, what kinds of defenses may be applicable, and, finally, whether the client should testify.

In my practice, I continually revise the various forms, checklists and sample materials that I use to defend against driving under the influence and implied consent charges. One of the forms that needs constant revision is the Initial Client Interview Form.

It is important to keep that form up to date, to reflect changes in the law, procedure, or practice -- and more importantly, to make sure that it includes, and takes note of, issues that arise, and must be addressed in modern day drunk driving defense practice.

I have learned that a form which worked ten, seven, five, three, or even one year ago may not necessarily still be the right form for current use in drunk driving defense cases.

Drunk driving defense forms, however, must be treated as forms and cannot substitute for thorough analysis, preparation and personal approach to the defense of drunk driving cases.

When properly used, the forms can help to insure that sufficient information is obtained during that crucial initial interview to help insure that the drunk driving defense will begin on a positive and professional note.

NOTE: There are two schools of thought on how to handle the initial interview in the attorney's office. One school teaches that the attorney should fill out the form while he or she asks the pertinent questions of the client.

The second school of thought, which I prefer, is to have the form filled out by an associate or legal assistant so that when the defense attorney initially meets with the client he or she has already had an opportunity to review the contents of the form and can ask appropriate follow-up questions and can probe deeper with respect to the information contained in the form.

Also, it can be very productive for the defense attorney to ask the client's permission to videotape the initial interview. Videotap-

ing, coupled with the completed client interview form, can help the defense attorney alleviate a great deal of note taking during his or her initial session with the client.

Rather, the defense attorney can focus on important follow-up questions, analysis, client confidence building, and a general "sizing up" of the client to determine how best to proceed with the defense.

On pages 3-12 is the current "state-of-the-art" form that I use in my drunk driving defense practice.

CONCLUSION

Although it is unfortunate that a Client Interview Form cannot help to create facts that will assist in the defense of a drunk driving case, it can help to insure that the facts that do exist can be obtained, marshalled into a cohesive defense theory, and used creatively and effectively to obtain the best possible result for the client.

This form is designed to accomplish those goals; and it is hoped that you will use it as a model, where appropriate, or adapt it and modify it to suit the particular needs of your practice.

EVALUATING THE ACCURACY OF ROADSIDE SOBRIETY TESTS: A POLICE VIEW

By Rick Swope

During the past 20 years I have read, studied, tested and taught nearly every roadside test imaginable. During my years as a police officer, I arrested approximately one thousand drunk drivers, many in my early years without the benefit of any standardized testing of any kind.

In the late 1970s and early 1980s, police departments and police officers were becoming aware of standardized tests to use in detecting impaired drivers. In the mid-1980s,

(continued on page 13)

CLIENT INTERVIEW FORM

Date:

File No.:

Interviewer:

BACKGROUND DATA

Client Name (include any nicknames, aliases, and any other names by which you may have been known):

Client's Height: Weight:

Home Address and Telephone:

Business Address, Telephone, and Fax Number:

Date and Place of Birth:

Educational Background:

Armed Forces Service (include nature of discharge):

Marital Status:

Names and Ages of Children (if any):

EMPLOYMENT HISTORY

Name of Employer:

Address of Employer:

Dates of Employment:

Job Description:

Name of Employer:

Address of Employer:

Dates of Employment:

Job Description:

Name of Employer:

Address of Employer:

Dates of Employment:

Job Description:

Name of Employer:

Address of Employer:

Dates of Employment:

Job Description:

DRIVING/MOTOR VEHICLE DATA

List all Driver's Licenses:

Name of Insurance Carrier (include policy number if known):

List all Moving Violations in the Last Three Years (include dates and disposition):

Make and Model of Vehicle Driven at Time of Arrest:

Owner of Vehicle:

List any Defects, Problems, or Anything Unusual With Respect to the Vehicle:

Provide Information Where Vehicle Was Purchased and Where Vehicle Was Normally Serviced (include name, address and telephone number of dealer, mechanic, body shop, etc.):

Automobile Dealer Name, Address and Telephone Number:

Mechanic Name, Address and Telephone Number:

Body Shop Name, Address and Telephone Number:

ACTIVITIES BEFORE THE ARREST/INCIDENT

Describe in detail what you did from the time you awoke on the morning preceding the arrest/incident through the time period immediately before the arrest/incident. Include the following information:

Description of Meals:

Breakfast:

Lunch:

Dinner:

Snacks:

Medications Taken (Prescription and Nonprescription) (include type, nature, dosage):

Alcoholic Beverages Consumed (include type, alcoholic content, if known, amount and relevant time periods):

Description of Activities During Day:

Description of Anything Unusual that Happened During the Day:

Description of How You Felt Generally During the Day:

Names, Addresses and Telephone Numbers of any Witnesses to any of the above:

THE ARREST/INCIDENT

Time, Place and Date:

Location (include as much specifics as possible, including lighting condition):

Description of Weather:

Describe in Detail the Facts Leading to the Stop or Arrest:

ARRESTING OFFICER

Names or Badge Numbers of Officers Involved in Stop and Arrest:

Name/Badge Number:

Name/Badge Number:

Name/Badge Number:

Do you recall any conversations that you had with the officer who stopped you? If so, provide details:

Do you recall whether you were advised of any rights? If so, provide details:

Were you asked to read or review any documents? If so, what do you remember about them?

Were you asked to provide any written or recorded statements? If so, did you agree? Provide details of any statements given:

Were you asked to submit to field sobriety tests? (Examples: walk the line heel-to-toe; one leg standing; picking up coins; recitation of alphabet; tongue twisters; etc.) Provide details as to each test:

walk the line heel-to-toe:

one leg stand:

picking up coins:

recitation of alphabet:

tongue twisters:

other:

Were you administered a horizontal gaze nystagmus (HGN) test? This is a test where the officer uses a pen, pencil, stick or finger, asking you to watch that object as he places it in front of your face and then moves it from side to side. If so, provide details:

horizontal gaze nystagmus test:

Were you administered a roadside breath test, i.e., a preliminary breath test (PBT)? If so, did you agree to take the test and what were the results?

Provide any other details and information you recall about the conditions under which any testing was done (road conditions, clothing worn, lighting, directions given, etc.):

Do you know whether you were videotaped at roadside? If so, provide details:

Names, addresses and telephone numbers of any witnesses to above:

EVENTS AT STATION

Were you asked to submit to a chemical test? If so, were you read any rights prior to the request for the test? Did you agree to take the test or did you refuse? Explain your actions in detail: If you agreed to submit to a test, what kind of test did you take (breath, blood or urine)? Who made the choice as to which test was taken?

If you took a chemical test, where was the test taken and what were the results?

If you refused to take a test, why did you refuse and what happened as a result? Did you change your mind regarding refusal and ask to take a chemical test? If so, what happened?

Were you asked to perform any coordination tests in the station? If so, provide details:
walk the line heel-to-toe:

one leg stand:

picking up coins:

recitation of alphabet:

tongue twisters:

other:

Did you provide any written or recorded statements at the station? If so, provide details:

Were you videotaped at the station? If so, provide details:

Names, addresses and telephone numbers of any witnesses to any of the above:

Provide any other information you recall about what occurred at the station (include whether you were given the opportunity to use a telephone, to contact an attorney, to contact a physician to arrange for an independent chemical test, and the like):

use a telephone:

contact an attorney:

contact a physician:

arrange for independent chemical test:

other:

MEDICAL CONDITION/INJURY

Describe your general health:

Describe any particular medical condition that you may have (include problems with eyesight, hearing, balance, coordination, surgery, back or leg problems, high blood pressure, dizziness, nausea, heart conditions and the like):

eyesight:

hearing:

balance:

coordination:

surgery:

back or leg problems:

high blood pressure:

dizziness:

nausea:

heart conditions:

other:

Do you wear dentures or use denture adhesives?* If so, explain:

Do you wear braces, other orthodontics, or use a retainer?*** If so, explain:

Do you take any aspirin or ibuprofen?*** If so, explain or provide details:

Name, address and telephone number of any physician or health care provider:

*See Tarantino, "Dentures and Denture Adhesives: A Possible Defense to Breath Test Results," 7 DWI Journal: Law & Science 10 (Oct. 1992).

**Like above, may retain alcohol or be considered "foreign objects" in the mouth.

***See Tarantino, "Aspirin, Ibuprofen and Alcohol: Do Their Combinations Affect Ethanol Concentration and Elimination Rates?" 7 DWI Journal: Law & Science 11 (Nov. 1992).

PRIOR ARRESTS, CONVICTIONS

Provide all prior arrests for any crime, misdemeanor or felony (include dates and dispositions):

PRIOR DRUNK DRIVING/IMPLIED CONSENT PROCEEDINGS

Provide details of any prior drunk driving arrest for your conviction in any jurisdiction. Specify the date, the jurisdiction and the nature of any disposition:

Provide details of any prior implied consent hearings in any jurisdiction. Include date, disposition and jurisdiction:

Are you currently on probation or parole for any offense? If so, provide details:

ALCOHOL/DRUG COUNSELING

Have you ever undergone alcohol or drug counseling? If so, provide details:

Name, address and telephone number of counselor or health care provider:

Do you believe that you have an alcohol or a drug problem? Would you like assistance in obtaining counseling, or in-patient care?

CLIENT EXPECTATIONS

Explain what you want to happen as a result of this representation:

Explain what you believe that your attorney should do to bring about this result:

Explain what you will agree to do to help bring about this result:

ATTORNEY'S NOTES AND COMMENTS:

Sobriety Tests *(continued from page 2)*

most police recruits were being taught that standardized tests studied and adopted by the National Highway Traffic and Safety Administration were the proper tests to use.

As police officers became trained and certified in these tests, many went on to become instructors, who would, in turn, pass on and teach other officers the three tests recommended by NHTSA. These tests consist of the Horizontal Gaze Nystagmus Test, the Walk and Turn Test, and the One Leg Stand Test.

Over the past several years, police agencies and police academies have been teaching these standardized tests. Recently, however, states such as Florida have begun to add additional field sobriety tests, with no scientific basis whatsoever to back up and affirm these tests. Tests such as the finger to nose, alphabet test, and others have been officially added to those tests recommended by NHTSA.

This first article in the series will concentrate on the roadside test. Many of you may wonder what more could possibly be said about a simple roadside test that virtually anyone can perform and anyone can explain. This last statement is the reason for this article.

The standardized tests are in general taught to police officers and recruits in a twenty one-and-a-half hour class recommended by NHTSA. Many departments or police academies add on additional time to cover items that are specific to their jurisdictions.

Are the tests simple, reliable and easy to understand and perform like the literature and police officers state? Or are the tests difficult to perform, understand and comprehend?

Three years ago, I left the police department to enter private practice, primarily as an accident reconstructionist. As a result of my

background and training, I was contacted to assist in defending drunken driving cases.

After arresting and prosecuting drunk drivers for a substantial number of years, my first thoughts centered on the fact that I would be unable to testify for the defense.

However, I started to talk to defense attorneys and sat in on a number of DUI trials, specifically watching the officer's testimony dealing with the basis for his arrest, which generally focused on the roadside sobriety test.

I began to look at the area of roadside testing in a new light, and wanted to know exactly how hard the tests actually were, if in fact they were difficult at all. I had used these tests for years to arrest and prosecute suspects, and wanted to substantiate or, alternatively, disprove the difficulty in performing these tests.

I concluded that the best way to validate my theory regarding these tests would be to test persons with very little knowledge of the roadside tests. Police recruits were chosen.

The average police recruit is intelligent, athletic, and willing to follow instructions to the letter. In preparing to evaluate how an individual performs a test, we must realize that the vast majority of those drivers stopped for weaving, running stop signs, driving over curbs, etc., and who are eventually arrested for DUI have never been given or performed a roadside test.

Therefore, it is important that test subjects be persons who had never before performed field tests. After the first time, the test results become suspect, and the ability to accurately evaluate these tests are impossible.

Additionally, it is important to find and locate individuals who have never performed these tests for additional research. This presents a problem: there is an ever diminishing number of subjects because you can only use them once for a true evaluation.

In teaching police recruits the standardized field sobriety tests, the entire class leaves the classroom and exits to the parking lot of the police academy to perform these tests. The class is split in half -- two to a group. One recruit explains the test to the other recruit, who is acting as a suspect, just as if he were actually on the street making a real live traffic stop.

In each class that I have instructed, approximately 30% to 35% of the students have stated that they had difficulty performing the test the first time, some groups as high as 50%. I teach my students to practice explaining and performing these tests in the event they are asked in court to demonstrate the tests to the judge and jury.

What does this mean, if anything, to the police officer, the suspect and the courts in determining the outcome of a DUI case? Does this mean that roadside tests in and of themselves are not reliable?

First, we must concede that the instructions are rather cumbersome, confusing and verbose. For example, the instructor's manual for the walk and turn test has over thirteen pages of instructions to give the students, not counting the various other charts and pages throughout the book that refer to this one test.

Most officers make few DUI arrests each year. The exception are those officers assigned to traffic units or specialty units that nightly make DUI arrests.

Officers who testify in DUI cases are not properly prepared for the cross examinations of competent defense attorneys. These officers have forgotten how properly to explain and score the tests and how to demonstrate and evaluate the tests accurately.

Officers must be prepared to endure a lengthy cross examination and to demonstrate and show the jury how the test batteries are scored and evaluated. Officers must know and constantly read the student manuals in order to keep abreast of any changes and to familiarize themselves with the instructions.

If this is not done, then the defendant stands a very good chance of beating the DUI charge.

But what about the tests? Are they accurate and do they assist the officer in making and evaluating the subject at roadside? If not, what is the officer on the street to use and how is he or she to evaluate the suspect?

These questions are always asked, yet rarely answered.

Officers or instructors must evaluate not so much the actual field sobriety tests, but the suspects or students, respectively. From our first day in the police academy, we are aware that alcohol immediately impairs an individual's judgment. Unfortunately, there is very little we can do to test this "judgment" at a roadside stop.

It would be extraordinarily helpful if we could have a driving course nearby so suspects could maneuver through this course and show the officer that their ability to operate a vehicle was not impaired by alcohol.

However, for practical reasons, this simple scenario is not possible. This leaves officers little choice but to rely on field sobriety tests with officers hoping to ascertain, through physical tests, whether an individual's normal faculties are impaired.

All tests used by officers will always be challenged. This fact cannot be changed; therefore, it should be accepted that the tests used at roadside should be the tests that have been scientifically evaluated, not tests that some individual in an office has invented, with no idea as to what officers face on the street and in a courtroom situation.

The three tests that NHTSA recommends be used are scientifically-evaluated and tested. Although these tests have shortcomings, as will any test, they nevertheless can be valuable in DUI prosecutions. When demonstrated, presented and evaluated properly, they are indeed an indicator that an individual may be under the influence of an alcoholic beverage.

The importance in training officers properly as to the proper techniques of road-sides cannot be stressed enough. As an instructor, I can only do my best in getting these points across to students. The rest is up to them.

Future articles will focus on the proper techniques to evaluate and conduct roadside sobriety tests. The tools are present, but the question is: Are the officers equipped to use them?

Rick Swope's police career began with the U.S. Army and encompasses six-and-a-half years with the Monroe (Mich.) Police Department. In 1984, Mr. Swope joined the Broward County Sheriff's Office and three months later joined the traffic division working primarily in the areas of DUI enforcement and traffic homicide investigation/reconstruction. During this time, Deputy Swope arrested a career high 267 drunken drivers during a twelve month period.

Mr. Swope attended a forty hour course on field sobriety testing, a twenty-one hour course on field sobriety testing given by the Institute of Police Technology and Management, and two forty hour instructor courses for DUI given by NHTSA and IPTM.

Mr. Swope was then selected as an adjunct instructor for the University of North Florida in Jacksonville, and has taught at the Broward Criminal Justice Institute in Ft. Lauderdale as the lead DUI instructor since 1985. Mr. Swope also teaches for the Southern Police Institute in Louisville, Ky., and consults with both the State Attorney's Office and Public Defender's Offices in Florida.

Case Law at a Glance

OKLAHOMA

Motorist may cure refusal to submit to chemical test.

Baldwin v. State, ex rel Dept. of Public Safety
 ___ P.2d, ___ 1993 WL 89708 (Okla. 1993).

The motorist, Baldwin, was arrested for operating a motor vehicle under the influence of alcohol. While Baldwin was in the patrol car at the scene of the accident, the trooper advised him of the test requirements and consequences of refusal to take a breath test under the implied consent law.

Baldwin initially refused, but within a 10-minute period, and after he was taken to the Lincoln County Jail where the test would be given, Baldwin told the trooper that he was willing to take the test. However, the trooper refused, and after an administrative hearing, the Department of Public Safety revoked Baldwin's driver's license.

The district court, on appeal, vacated the order of suspension and reinstated the driving privileges. The court of appeals reversed and remanded with instruction to deny Baldwin's petition. An appeal to the Oklahoma Supreme Court followed.

On appeal, the court found that because Baldwin, almost immediately after being transported to the location of the breath test machine, agreed to take the test, the officer was neither delayed in performing his duties nor required to wait to determine if Baldwin would change his mind.

The officer testified that if the test had been administered when Baldwin requested it, the test would have remained valid, and the enforcement officers would not have been inconvenienced by allowing the motorist to change his mind when he arrived at the place where the test would be conducted.

As a result, the court held that a motorist has not refused a test mandated by the implied consent law if the assent is timely and given unequivocally.

> LITIGATION TIPS

The court adopted the five-element test for timeliness provided by the Supreme Court of Kansas in *Standish v. Dept. of Revenue, Motor Veh. Div.*, 235 Kan. 900, 683 P.2d 1276, 1280 (1984). The court held that to

be effective, the subsequent consent must be made:

(1) within a very short and reasonable time after the prior first refusal;

(2) when a test administered upon the subsequent consent would still be accurate;

(3) when testing equipment is still readily available;

(4) when honoring the request will result in no substantial inconvenience or expense to the police; and

(5) when the individual requesting the test has been in the custody of the arresting officer and under observation for the whole time since arrest.

The court rejected rigid views, such as that taken by Schroeder v. Dept. of Motor Vehicles, 772 P.2d 1278 (Nev. 1989), which held that a subsequent request to take a chemical sobriety test does not vitiate a prior refusal.

The court also discussed the various jurisdictions' approaches to the issue of whether an initial refusal can be cured. What is important about Baldwin is the fact that the court was persuaded that when the facts of cases arising in all of the jurisdictions are examined, there is little authority for an inflexible rule.

Rather, the kinds of factors as adopted in Baldwin, and as stated in Standish, make sense.

GEORGIA

Police officer's refusal to wait half-hour to allow defendant to arrange for independent blood test was unreasonable.

Brady v. City of Lawrenceville,
425 S.E.2d 404 (Ga. App. 1993)

Defendant was arrested for driving under the influence of alcohol. After the

defendant's arrest, a breath test was performed at the police station, and, pursuant to statute and a rights advisory, the defendant asked to have an independent test, but also expressed concern that he needed financial assistance to make arrangements for a blood test.

He requested that he be allowed to call his father to meet him at the hospital so that sufficient financial arrangements could be arranged for the blood test. The police officer refused this request to call from the jail, but told the defendant that he could call from the hospital.

After arriving at the hospital, the defendant called his father, who told the officers that it would take him approximately 30-45 minutes to get to the hospital. The officers stated that this was too long a period to wait and, therefore, no independent test was performed.

The defendant was convicted of driving under the influence of alcohol. On appeal, the defendant challenged the court's denial of his motion to suppress the State's test result as a result of the officer's failure to afford him the opportunity to have an independent chemical test as required by statute, OCGA 40-06-392(a)(3).

That statute provides in pertinent part that a justifiable failure or inability to obtain an additional test shall not preclude the admission of evidence of a test given by the police. See State v. Buffington, 189 Ga. App. 800, 377 S.E.2d 548.

Here, the court, on appeal, determined that the failure of the police to allow the defendant an opportunity to obtain an additional chemical test was not justifiable under the circumstances and as a result, the evidence of the State's test should have been suppressed. Therefore, the conviction was reversed.

> LITIGATION TIPS

In Buffington, the Georgia court had pre-