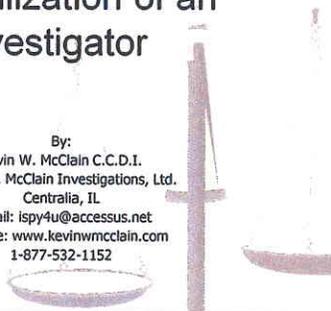
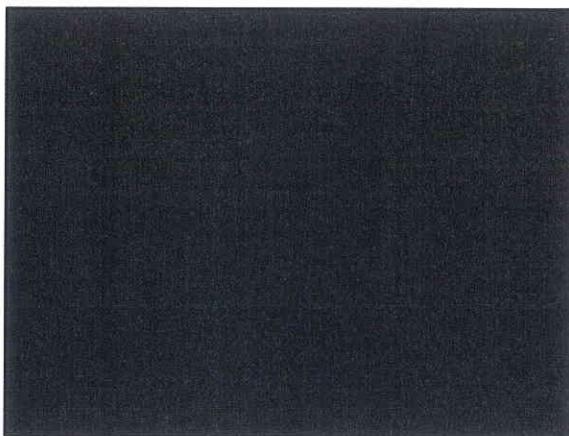


D.U.I – Did U Investigate? The Utilization of an Investigator

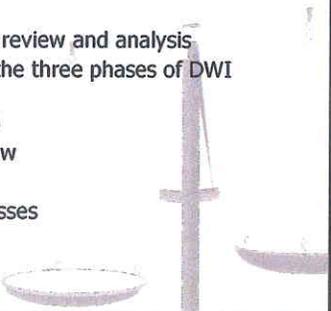
By:
Kevin W. McClain C.C.D.I.
Kevin W. McClain Investigations, Ltd.
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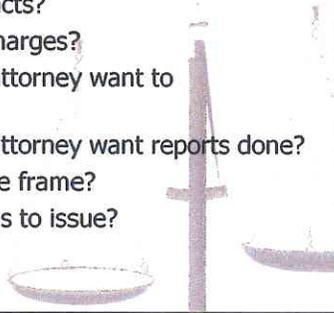
The Component Method To DUI Investigation

- Initial meeting
- Investigative case review and analysis
- Identify issues of the three phases of DWI Detection
- Review traffic stop
- Defendant interview
- Locate witnesses
- Interview of witnesses
- Prepare reports
- Court testimony



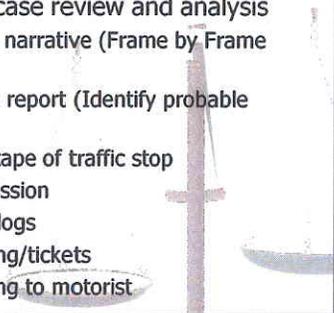
Initial Meeting

- What are the facts?
- What are the charges?
- How does the attorney want to communicate?
- How does the attorney want reports done?
- What is the time frame?
- What subpoenas to issue?



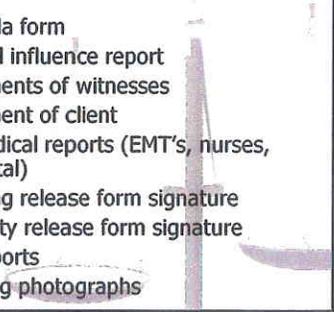
DUI Investigation Case Review & Analysis

2. Investigation case review and analysis
 - A. Review police narrative (Frame by Frame Analysis)
 - B. Review sworn report (Identify probable cause)
 - C. Review videotape of traffic stop
 - D. Police transmission
 - E. Review radio logs
 - F. Review warning/tickets
 - G. Review warning to motorist



D.U.I. Investigation Case Review and Analysis

- H. Review Miranda form
- I. Review alcohol influence report
- J. Review statements of witnesses
- K. Review statement of client
- L. Review all medical reports (EMT's, nurses, doctors, hospital)
- M. Review bonding release form signature
- N. Review property release form signature
- O. Review lab reports
- P. Review booking photographs



**D.U.I. Investigation
Case Review & Analysis**

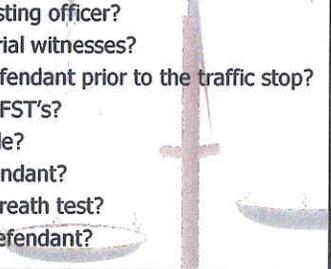
What are we looking for

- Who?
- What?
- Where?
- When?
- Why?
- How?



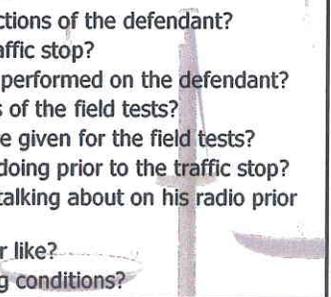
WHO?

- Who arrested the defendant?
- Who was present at the traffic stop?
- Who was with the defendant prior to the traffic stop?
- Who trained the arresting officer?
- Who are the adversarial witnesses?
- Who observed the defendant prior to the traffic stop?
- Who conducted the SFST's?
- Who towed the vehicle?
- Who booked the defendant?
- Who conducted the breath test?
- Who bailed out the defendant?



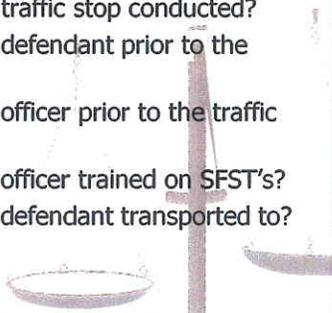
WHAT?

- What was the probable cause?
- What were the officer's first words when he approached the vehicle?
- What were the first actions of the defendant?
- What time was the traffic stop?
- What field tests were performed on the defendant?
- What were the results of the field tests?
- What instructions were given for the field tests?
- What was the officer doing prior to the traffic stop?
- What was the officer talking about on his radio prior to the traffic stop?
- What was the weather like?
- What were the lighting conditions?



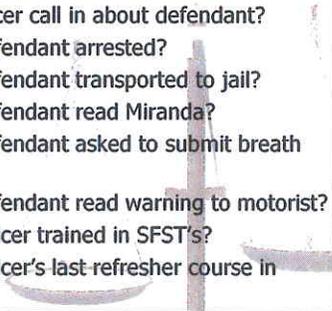
WHERE?

- Where was the traffic stop conducted?
- Where was the defendant prior to the traffic stop?
- Where was the officer prior to the traffic stop?
- Where was the officer trained on SFST's?
- Where was the defendant transported to?



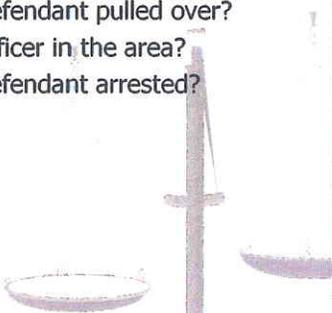
WHEN?

- When did the traffic stop happen?
- When did the officer call in about defendant?
- When was the defendant arrested?
- When was the defendant transported to jail?
- When was the defendant read Miranda?
- When was the defendant asked to submit breath test?
- When was the defendant read warning to motorist?
- When was the officer trained in SFST's?
- When was the officer's last refresher course in SFST's?



WHY?

- Why was the defendant pulled over?
- Why was the officer in the area?
- Why was the defendant arrested?



HOW?

- How did the defendant stop?
- How did the defendant answer questions?
- How did the officer instruct the defendant?
- How did the officer perform the field tests?
- How was the defendant transported?
- How was the defendant arrested?
- How was the defendant informed of his rights?
- How did the defendant perform the field tests?

Frame by Frame Analysis

On the above date at approximately 2329 hours, I (Deputy Smith #109) was patrolling IL Rt. 24 eastbound near the area of 625 E. I observed a vehicle (black Ford truck) in front of me traveling at approximately 45 mph and also noticed the vehicle to be swerving as it crossed the center line several times, as well as the white lines several times. I then noted the vehicle to have IL registration 9973K as I then activated my patrol vehicle's overhead lights and informed dispatch of my location and stop. The vehicle then slowed down to approximately 25 mph, and continued to travel east for approximately 0.5 miles as I then activated my vehicle's siren resulting in the vehicle to finally pull to the side of the road. I then exited my patrol vehicle and made contact with the driver and sole occupant of the vehicle. After identifying myself and the reason for the stop, I requested his driver's license of which he provided me with identifying himself as Steve A. Jones. While conversing with Mr. Jones, I could smell a strong odor of an alcoholic beverage coming from inside of the vehicle, noticed Mr. Jones' eyes to be bloodshot and glassy, and noticed him to be talking with extremely slurred speech. I returned to my squad car and requested dispatch to run Mr. Jones' information at which they informed me he was clear and valid. I then returned to Mr. Jones' vehicle and asked him if he would perform some field sobriety tests of which he stated he would and exited the vehicle.

Frame by Frame Analysis

On the above date at approximately 2329 hours, I (Deputy Smith #109) was patrolling IL Rt. 24 eastbound near the area of 625 E. **{Where was deputy prior to this? What does this location look like?}** I observed a vehicle (black Ford truck) in front of me traveling at approximately 45 mph and also noticed the vehicle to be swerving as it crossed the center line several times, as well as the white lines several times. **{When did deputy first observe vehicle? Where did deputy first observe vehicle? How far did deputy follow vehicle? How did deputy determine speed? If radar, what type? What was deputy's training? When was radar calibrated? When was radar tuned? What are the maintenance records of radar? When and where did deputy activate radar? Where did vehicle cross center line? How many times did defendant cross center line? Where did vehicle cross white line? How many times did defendant cross white line?}** I then noted the vehicle to have IL registration 9973K as I then activated my patrol vehicle's overhead lights and informed dispatch of my location and stop. **{How long did deputy follow before activating overhead lights? What did deputy say to dispatch?}**

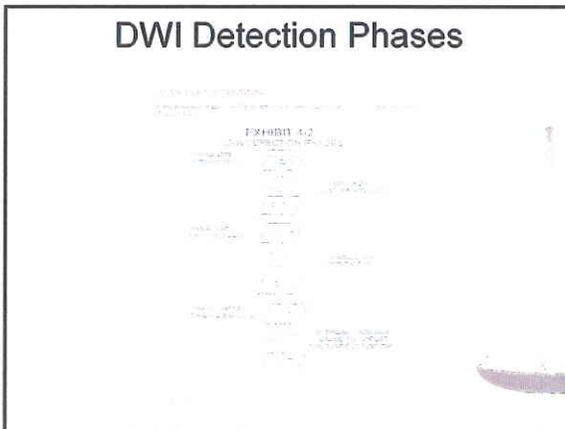
Frame by Frame Analysis

The vehicle then slowed down to approximately 25 mph, and continued to travel east for approximately 0.5 miles as I then activated my vehicle's siren resulting in the vehicle to finally pull to the side of the road. **{How did deputy determine distance? What was the roadway like? How long did deputy activate the siren? What driving actions did the defendant do? How did the defendant pull over and park? What was the final stopped position of the defendant's vehicle?}** I then exited my patrol vehicle and made contact with the driver and sole occupant of the vehicle and after identifying myself and the reason for the stop requested his driver's license of which he provided me with identifying himself as Steve A. Jones. **{How did driver respond when deputy approached? What did deputy indicate the reason for the stop was? Did driver have his seatbelt on? (note: no reference to this in report) Was defendant's vehicle still running when deputy approached? Did deputy have to ask for defendant to roll down window? Defendant apparently was able to retrieve his driver's license with no problems. Did deputy request registration and insurance card? Was it provided? Any problems locating them by defendant?}**

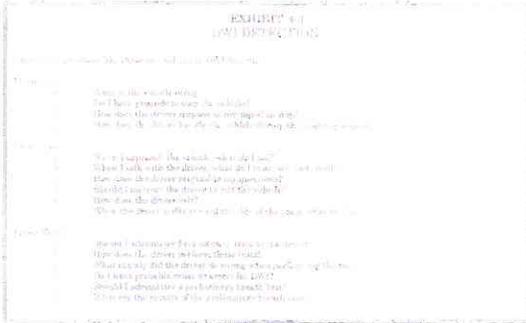
Frame by Frame Analysis

While conversing with Mr. Jones, I could smell a strong odor of an alcoholic beverage coming from inside of the vehicle, noticed Mr. Jones' eyes to be bloodshot and glassy, and noticed him to be talking with extremely slurred speech. **{What was the deputy conversing about? How long did the deputy converse? Where specifically did deputy notice smell? Where had Mr. Jones been? Where does Mr. Jones work? What does the deputy mean by glassy? What does the deputy mean by extremely slurred speech? Has the deputy ever spoken to Mr. Jones before? What are Mr. Jones' normal speech patterns?}** I returned to my squad car and requested dispatch to run Mr. Jones' information of which they informed me he was clear and valid. **{What did deputy say to dispatch? Police Transmissions?}** I then returned to Mr. Jones' vehicle and asked him if he would perform some field sobriety tests of which he stated he would and exited the vehicle. **{What specific words were stated by the deputy? How did defendant exit the vehicle? What were defendant's actions? Was he able to exit with no difficulty? How was defendant's balance and coordination? What location was the defendant at?}**

DWI Detection Phases

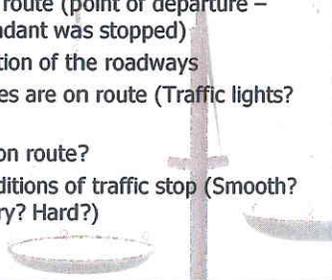


DWI Detection Phases



Traffic Stop

- Inspect the driving route (posted speed limits)
- Videotape driving route (point of departure – point where defendant was stopped)
- What is the condition of the roadways
- What traffic devices are on route (Traffic lights? Stop signs?)
- Any construction on route?
- What are the conditions of traffic stop (Smooth? Level? Non-slippery? Hard?)



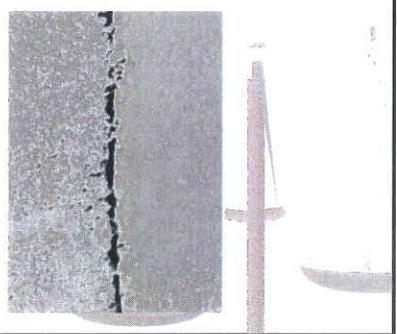
D.U.I. SITE INSPECTION



D.U.I. SITE INSPECTION

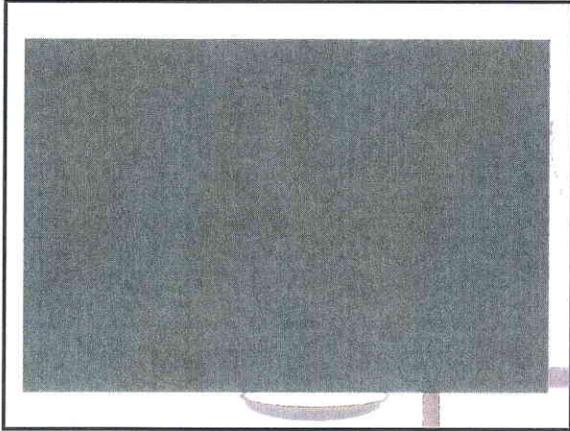


D.U.I. SITE INSPECTION



Traffic Stop

- What are the lighting conditions like? (auxiliary lighting)
- Inspect traffic stop location (day & night)
- Videotape and photograph traffic stop location
- What are traffic patterns like at the time of stop? (wind waves)
- What was weather like at time of stop?
- Photograph client's vehicle
- Photograph of other vehicle's



Defendant Interview

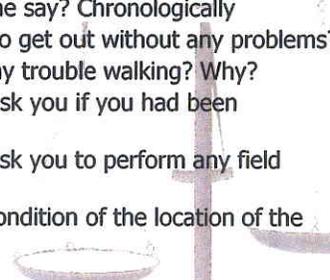
- Obtain all physical description information (i.e. age, height, weight, clothes wearing, shoes, shirt, jacket, hat, employment, exposure to fumes at home or work)
- Obtain all medical and other conditions respecting (eyes, face, lungs & breathing, stomach & intestines, balance & coordination, injuries, disabilities, medications & times)
- Driving record (any previous drunk driving charges? Previous suspensions or prohibitions from driving?)
- Automobile accidents?
- What offenses are you charged with?

Defendant Interview

- Did the police see you driving?
- Where did you come from?
- Where were you going?
- Anything unusual about your driving? Why?
- How did the police stop you?
- Have you driven this route before?
- How did the police approach you?
- Did police have video camera at the scene?
- Was anyone else in the car? Where? Had they been drinking?
- Was there any alcoholic beverages open in the vehicle?

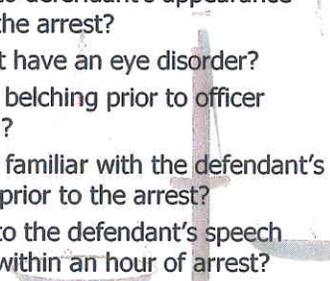
Defendant Interview

- What did the officer ask you to do? What words specifically did he say? Chronologically
- Were you able to get out without any problems?
- Did you have any trouble walking? Why?
- Did the officer ask you if you had been drinking?
- Did the officer ask you to perform any field sobriety tests?
- What was the condition of the location of the stop?



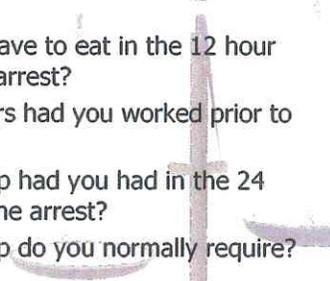
Defendant Interview

- Any witnesses to defendant's appearance within hour of the arrest?
- Does defendant have an eye disorder?
- Was defendant belching prior to officer smelling breath?
- Was the officer familiar with the defendant's normal speech prior to the arrest?
- Any witnesses to the defendant's speech characteristics within an hour of arrest?



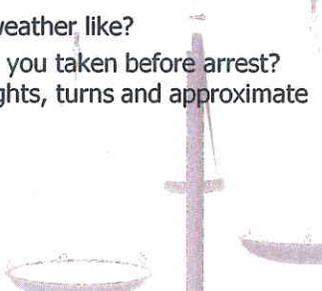
Defendant Interview

- When did you start drinking? Where? Who was with you?
- What did you have to eat in the 12 hour period prior to arrest?
- How many hours had you worked prior to the arrest?
- How much sleep had you had in the 24 hours prior to the arrest?
- How much sleep do you normally require?



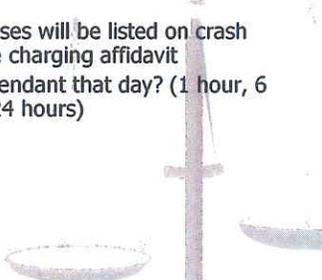
Defendant Interview

- What is the mechanical condition of your vehicle?
- What was the weather like?
- What route had you taken before arrest? (stops, traffic lights, turns and approximate distance)



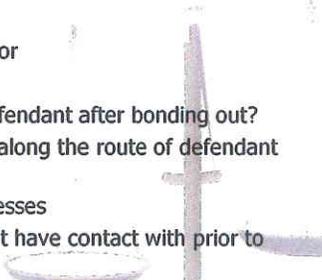
Locate Witnesses

- Obtain list of witnesses from police reports and defendant
- Adversarial witnesses will be listed on crash reports and/or the charging affidavit
- Who was with defendant that day? (1 hour, 6 hours, 12 hours, 24 hours)
- Bartender
- Waitresses
- Host
- Co-workers
- Employers



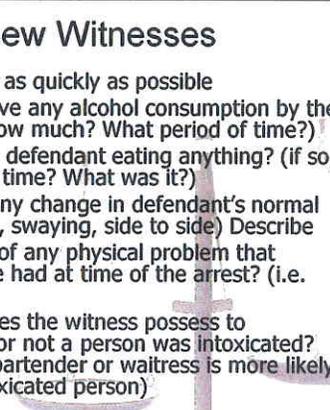
Locate Witnesses

- EMT's
- Paramedics
- Tow Truck Operator
- Booking Officer
- Who picked up defendant after bonding out?
- Who was present along the route of defendant prior to arrest?
- Advertise for witnesses
- Who did defendant have contact with prior to arrest?



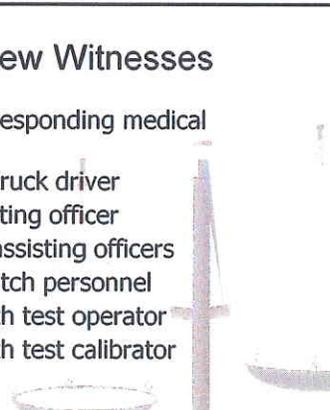
Interview Witnesses

- Interview witnesses as quickly as possible
- Did witnesses observe any alcohol consumption by the defendant? (if so, how much? What period of time?)
- Did witness observe defendant eating anything? (if so, over what period of time? What was it?)
- Did witness notice any change in defendant's normal gait? (i.e. stumbling, swaying, side to side) Describe
- Was witness aware of any physical problem that defendant may have had at time of the arrest? (i.e. prior knee surgery)
- What experience does the witness possess to determine whether or not a person was intoxicated? (i.e. a professional bartender or waitress is more likely to recognize an intoxicated person)



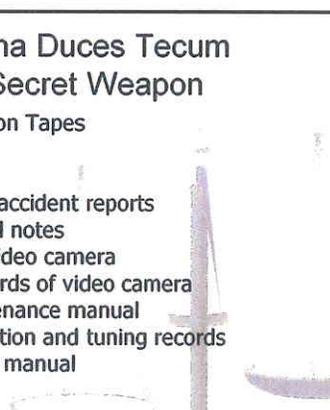
Interview Witnesses

- Interview any responding medical personnel
- Interview tow truck driver
- Interview arresting officer
- Interview any assisting officers
- Interview dispatch personnel
- Interview breath test operator
- Interview breath test calibrator



**Subpoena Duces Tecum
Your Secret Weapon**

- Police Transmission Tapes
- 911 calls
- Radio logs
- Police arrest and accident reports
- Officer rough field notes
- Police on board video camera
- Maintenance records of video camera
- Radar gun maintenance manual
- Radar gun calibration and tuning records
- PBT maintenance manual
- PBT accuracy log



**Subpoena Duces Tecum
Your Secret Weapon**

- Cell phone records
- Officer's sworn report
- Arresting officer's reports in other DUI arrests
- Booking photographs/slips/room video
- Assisting officer's report
- Warning tickets
- Warning to motorists
- Miranda form
- Evidence receipts

**Subpoena Duces Tecum
Your Secret Weapon**

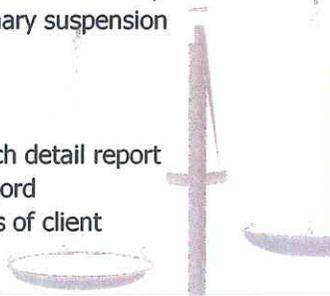
- EMT and Paramedics reports
- Ambulance reports
- Arrest tickets
- Doctors/nurses' notes
- List of witnesses and address
- List of officers
- Any video or photographs
- Oral and written statements of client
- Oral and written statement of witnesses

**Subpoena Duces Tecum
Your Secret Weapon**

- Training manual for arresting officer
- Training certificates in SFST's for arresting officer
- Refresher training certificates for arresting officer
- Arresting officer's disciplinary file
- Arresting officer's daily report and logs
- Bonding release form signature
- Property release form signature
- Alcohol influence report form
- Lab reports, identify location of laboratory
- Adapted version of police departments 10-code

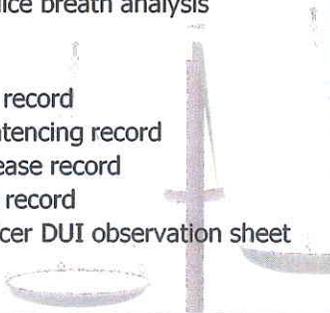
Subpoena Duces Tecum Your Secret Weapon

- Each Illinois citation and complaint
- Notice of summary suspension
- Bail bond
- Offense report
- Arrest report
- Incident dispatch detail report
- Subject test record
- Medical Records of client



Subpoena Duces Tecum Your Secret Weapon

- Illinois State Police breath analysis instrument log
- Tow report
- Defendant's jail record
- Defendant's sentencing record
- Defendant's release record
- Inmate account record
- Correctional officer DUI observation sheet
- Arrest card



Rider to Subpoena Exhibit A

EXHIBIT A

RIDER TO SUBPOENA

THIS RIDER TO SUBPOENA IS A PART OF THE SUBPOENA AND IS TO BE FILED WITH THE SUBPOENA. IT IS TO BE SERVED ON THE PERSONS AND ENTITIES NAMED IN THE SUBPOENA AND IS TO BE RETURNED TO THE COURT WITH THE SUBPOENA. IT IS TO BE FILED WITH THE SUBPOENA AND IS TO BE SERVED ON THE PERSONS AND ENTITIES NAMED IN THE SUBPOENA AND IS TO BE RETURNED TO THE COURT WITH THE SUBPOENA.

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FYI's on DUI's

- Review videotape after arrest of client (sometimes the officer leaves on audio and video and you can hear the client carrying on an intelligent conversation, citing phone numbers, addresses, names without any slurring of words)
- Review police transmissions - listen for comments prior to traffic stop, during and after
- Review radio logs - compare time stamps to narrative. Can help develop timeline of events. (How much time on SFST's, PBT, Tow Call, etc.)

FYI's on DUI's

- Review warning/tickets - another source of information giving you date, time, type of arrest, weather, type of police unit involved. (compare to narrative, look at weather)
- Review Miranda form - what time was it read? Compare client's handwriting to driver's license signature.
- Review alcohol influence report form - Clothing? Shoes? Heels? Location of SFST's - what is its description? Client's actions - polite, cooperative, ability to understand instructions. What boxes aren't checked are just as important. Is client able to answer question? Date? Time? Direction of travel? Etc.

FYI's on DUI's

- Review SFST's, does officer's SFST assessment on his narrative compare with the clues he observed.
- Review statement of witnesses, what do they know, when were they interviewed?
- Review statement of client, what is their series of facts
- Review all medical reports, look at notes, narrative timeframe of events. What isn't in reports can be just as important.
- Review bonding release form signature, compare signature to drivers license

FYI's on DUI's

- Review property release form signature, compare property to clothes and shoes client had. Compare signature to drivers license.
- Review lab reports – chain of custody, calculations, where, when, who, what?
- Review booking photographs – is client's photograph consistent with officer's report (i.e. bloodshot, glassy eyes, disheveled clothing, flushed face)
- Send DUI Kit preservation letter
- Send blood preservation letter
- Video route driven and/or accident site

References

- Taylor, Lawrence and Oberman, Steven. Drunk Driving Defense. New York, NY:Aspen Publisher. 2006
