

Your Expert Witness “On A Budget”: The Importance of Using An Expert

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LOCATION

Location..Location..Location



BUDGET CUTS

I hope we get to see the new invisible 12gauge shotgun

Why do we emphasize the role of experts,
particularly in DUI defense?

Our cases are loaded up with science.

Our Goals for Today

- (1) How to conserve your client's resources
(and how to get the job done when there is
no money)
- (2) How to prepare your client for expert
witness expenses
- (3) How to identify appropriate expert
witnesses

Limiting Your Client's Expenses

This really means “knowing your stuff.”

Limiting Your Client's Expenses

Getting the Foundation You Need

(1) Standardized Field Sobriety Testing Procedures (Exhibit A)

(2) Breath Testing Operator Manuals (Exhibit B)

(3) Garriott's Medicolegal Aspects of Alcohol

Limiting Your Client's Expenses

Open Records Requests:

Make them a regular part of your practice.

Limiting Your Client's Expenses

Open Records Requests

Officers - Training and Disciplinary Records

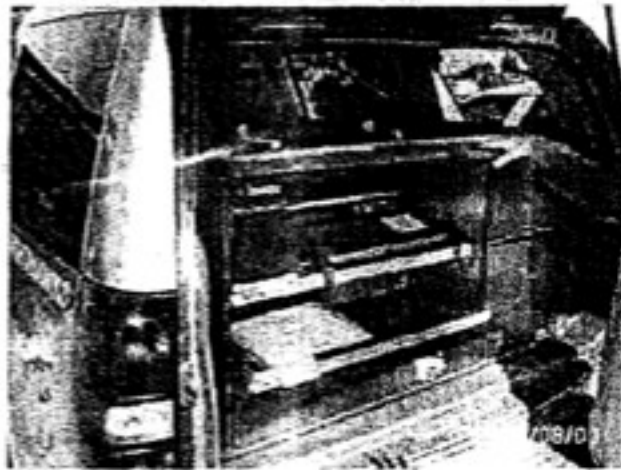
Georgia Peace Officers Standards and Training Council
P.O. Box 349
Clarkdale, GA 30111

Chemical Tests - Your Test and Testing in General -

See, Exhibits C - E

The Tahoe Intox - See, Exhibit F

(BAT) Trailer, this type of vehicle posed several logistical difficulties for the Nighthawk Unit because of its large size and poor maneuverability. After consultation with CMI, the Nighthawk Unit set out to develop a more compact mobile testing environment that still preserved the testing integrity necessary



for evidential breath testing. The new GSP Nighthawk mobile unit is a modified Chevy Tahoe equipped with a specially designed shelving unit housing the Intoxilyzer 5000 mounted under the rear lift gate of the vehicle. The Intoxilyzer 5000 was transferred to the completed mobile unit in 2010. The use of this unit requires that the subject stand at the back of the Tahoe with the lift gate raised in order to provide a breath sample for testing.

Site Requirements:

Power Supply: CMI specifies that the Intoxilyzer 5000 should operate with an electrical power supply of 117V AC +/-10%. The Tahoe has been equipped with a Sunforce DC to AC power inverter capable of delivering 120V at 60Hz. The inverter is equipped with a voltage monitor that displays the current voltage as well as a remote control on/off switch. The inverter's power delivery was verified using a Fluke 87 RMS Multimeter. The inverter's digital display showed a voltage of 121V when the measured voltage registered 119.9V AC. The delivered voltage did not vary by more than 1V AC over a one minute observation period, with the vehicle in full operation and the instrument in analysis mode.





Limiting Your Client's Expenses

Use Motions to Limit the Need for Experts

You absolutely need a court reporter.

\$200

OR

\$2000

Limiting Your Client's Expenses

Use Motions to Limit the Need for Experts



Exclusion of Unfavorable Evidence:

A motion to suppress or motion in limine is your opportunity to change the facts of the case.

Limiting Your Client's Expenses

Use Motions to Limit the Need for Experts

Creating a Trial Advantage: Locking Their
Testimony In

The most common use of motions to suppress is develop a trial
advantage.

Be creative to make the testimony you need relevant in motions

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Limiting Your Client's Expenses

Cost-Effective Alternatives to Standard Uses of Experts

Consider a consultation

Explore alternative sources of experts

Recognize when an expert will hurt more than help

Limiting Your Client's Expenses

Timing the retainer of an expert -
Later but not the last minute

Do not be afraid to negotiate and peak their
interest

Preparing Our Clients for Expert Expenses

Start early

Be clear that you probably cannot do it alone

Identify a budget and potential experts early on

Identifying the Appropriate Expert

Recognizing the Type of Expert That May Be Helpful

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(1) The “Double Refusal” Case

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(2) Submission to Field Sobriety Tests, Refusal of Chemical Test

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(3) Submission to Field Sobriety Tests and Chemical Test

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Identifying the Appropriate Expert

What part of the State's case will the expert attack?



-V-



Identifying the Appropriate Expert

The Hybrid Expert

v.

The Specialist

There is a place for both, but the decision needs to be consciously made.

Identifying the Appropriate Expert

The Hybrid Expert

For example, field sobriety expert and breath test expert

Deviations from standardized protocol in the administration of
FSTs

Failure to properly administer breath test

Disadvantage: What if the FSTs were administered correctly?

Identifying the Appropriate Expert

The Specialist

Technical expertise in a very defined area

Advantages: They never appear to be a “jack of all trades”

Disadvantage: We have to deal with the rest of the evidence, including corroboration

If you think that I can ever help you, don't
hesitate to call or e-mail me:

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