**IV. SFST: YOUR GATEWAY TO TRIAL**

**A. The Skinny on SFSTs.** Want to know how to win a DUI trial? Learn the SFSTs. What are the SFSTs? Yes, yes, they're the "standardized field sobriety tests." But they are more than standing alongside the road with one foot out. ALL Washington law enforcement is trained to analyze DUIs this way:

(1) Vehicle in Motion

(2) Personal Contact

(3) Pre-Arrest Screening, which includes the actual field

sobriety tests.

This pattern will give you absolute dominion over the courtroom in DUI, and in other types of cases as well. Here's why:

**THE MAGIC OF TRIAL IS TO TURN TRAINING, EXPERIENCE AND OBSERVATION INTO EVIDENCE**

He who knows the magic of evidence wins. What is the magic of evidence?

**THE MAGIC OF EVIDENCE IS TO TRANSFER THE OFFICER'S BRAIN INTO THE JURY'S CRANIUM**

Once you understand how to lay the groundwork with SFSTs at trial, you've single-handedly accomplished the following:

(1) Your direct examination will be crisp, clear, and comprehensive, speeding impressively toward TARGET;

(2) You will train the jury in how the officer thinks, which will help them follow the sequence of evidence;

(3) You will have established the credentials of your witness for purposes of establishing his or her expertise, which will support whatever opinions you wish to offer into evidence;

(4) You will have laid the primary foundation necessary for technical evidence: the BAC or DRE or whatever;

(5) You have established a fall-back position in case the BAC or other item of evidence fails you;

(6) You will have sent the message back to the troops in law enforcement that this prosecutor "knows what she's doing" which, in turn, inspires them to try a little harder when they're making that 3 a.m. stop; and

(7) You will have established at least 50% of TARGET.

Think my #7 claim is exaggerated? Check it out: the SFST is your Gateway to all four types of DUI prosecution:

I. DUI with BAC;

II. DUI without BAC;

III. Drugged DUI *with* tox;

IV. Drugged DUI *without* tox.

SFST is the one protocol ALL FOUR TYPES of DUIs have in common. If you get this protocol down, almost everything that comes after will be icing on the cake. Understanding the SFST will help you and the officer walk your way through the DUI as it was meant to be processed, whereas if one of you is attempting to operate off the psychic fumes of the other, both of you will be missing things. I guarantee you, once you get the SFST down, 50 percent or more of your DUI is done. And there's a bonus: understand how to properly examine a police officer and you will smoke the opposition.

That may sound too easy, but if you think about it, it makes sense: knowing what to ask about the steps leading up to the SFST procedure, as we'll outline it shortly, is, in fact, your basic DUI case, so even when the SFSTs aren't conducted for whatever reason, knowing how to lead up to that stage in your questioning gets most of your DUI prosecuted for you.

Even in cases where the SFSTs were not conducted, the arrest process leading up to the SFSTs can be used by you in the same way. In the DWI Detection and Standardized Field Sobriety Testing Student Manual, the DUI arrest is given the following order: (1) **Vehicle in Motion**; (2) **Personal Contact**; and (3) **Pre-Arrest Screening**. As you read down the lists given below, mentally compose questions for direct examination. If you have time, write out your own questions for one of your cases, and see how quickly you can fill up two to three note pages with good, solid questions, illustrating how much detailed testimony can be developed from 15 minutes of investigative work. Your purpose is to establish: (1) training, experience, duties; (2) knowledge of facts; (3) observations; (4) tests and procedures; and (5) basis for conclusions.

**B. The Science of SFSTs.** For us as prosecutors there's no real "science" of SFSTs. What there is is statistical data -- lots of statistical data -- showing that, as a result of administering several simple tests, the trained observer can tell whether someone is intoxicated. So be careful how you throw the word "science" about: the science you and I are talking about in the immediate context is primarily statistical science, used in the arena of immediate, personal observation. Yes, there were laboratory studies conducted over many years which demonstrated the reliability and efficacy of the three basic tests, the Horizontal Gaze Nystagmus (HGN), the Walk-and-Turn (WAT), and the One-Leg Stand (OLS) -- science that was recognized by our supreme court in **State v. Baity**, 140 Wn.2d 1, 991 P .2d 1151 (2000) 42,

But the tests we're talking about in trial are not laboratory tests. We're talking statistical results based upon both laboratory and field studies, and most importantly, we're talking the individual experience and observations of the arresting officer. In effect, your officer is a field expert after he or she has been properly trained in how to administer the SFSTs. The more field experience he has, the more expert he becomes.

1. Tests, Not Regulations. Where do SFSTs come from? SFSTs are the fruit of three separate studies funded by the National Highway Safety Administration (NHTSA). And no, NHTSA tests, studies and publications are NOT Washington's standards! Washington, last time I checked, was a sovereign state under the United States Constitution. It wouldn't matter how much money NHTSA spent at various universities across the country, it can't force Washington to adopt study findings as law. What Washington can do, if it wishes, is reap the benefits of the studies that were done in the enforcement of our own standards, and that's what we've done: our State Patrol and local law enforcement agencies have chosen to use the Field Sobriety Tests, as they are now "standardized", so don't let a defense lawyer try to ratchet these tests up to legal "standards." They're tests, not regulations". In fact, many officers individually choose to use additional sobriety tests, such as the alphabet test, or the finger dexterity test, regardless of whether NHTSA recommends them or not, so the emphasis is still on your officer who is, after all is said and done, your field expert.

2. The Three Tests. The standard battery of field sobriety tests consists of the (1) HGN (Horizontal Gaze Nystagmus), (2) THE WAT (Walk and Turn), AND (3) THE OLS (One Leg Stand).

One of the great resources available to you is APRI's Traffic Resource Center. If, for example, you wanted to read up on HGN, you could go to <http://www.ndaa­apri.org/aprilprograms/traffic/legal_issues_resources.html>

3. The Three Studies. Studies for today's SFSTs have actually been going on for many years, but what we call SFSTs came from three studies: (a) Colorado, 1995; (b) Florida, 1997; and (c) San Diego, 1998.

a. Colorado: Correct arrest decisions were

made 93% of the time, based on a three-test

battery (RGN, WAT, OLS).

b. Florida. Correct arrest decisions made 95%

of the time.

c. San Diego. This study was specifically

geared to test the feasibility of arresting people

at .08, using the three basic tests. It was

determined that correct arrest decisions were

made 91 % of the time.

4. Accuracy and Reliability. As pointed out in the literature, the fact that officers knew when to release a suspect is a further indication of the reliability of the SFSTs. If only 7-9% of arrestees were erroneously detained, that means SFSTs are also a preventative of improper arrest. In that respect, they are a highly accurate indicator of impairment.