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ARCH C. MCCOLL, III  
S. MICHAEL MCCOLLOCH

May 7, 2008

**Re: Winning a criminal DWI case through (1) two pre-trial “depositions;”  
(2) use of a toxicologist/biokinesiologist; (3) using a former FBI instructor  
for investigator**

Dear Fellow Attorney:

Most criminal defense attorneys do not take advantage of the two opportunities to depose the arresting officer, namely, in the hearing to suspend the driver’s license and during a Motion to Suppress Evidence flowing from the arrest, based on a lack of probable cause to charge the offense of DWI.

An investigator should accompany the client in retracing the route and reviewing all the relevant driving and pre-arrest facts on the night of the arrest. That retracing should be done at or near the same time of day or night as the arrest was made. Photographs of the surface of the street or sidewalk used by the officer to direct the client to take the field sobriety tests often show cracks, unevenness, subtle slopes, etc.

The tape recorded transcript from the driver’s license hearing can be given to a court reporter for certification or a reporter can be secured in person. That, together with a later Motion based on lack of probable cause, not for the stop, but for the full custodial arrest, allows for a more complete pre-trial record of the relevant events. Without at least one of these hearings, a criminal defense lawyer is going to trial “blind” in a DWI case.

Finally, a toxicologist/biokinesiologist who can watch the videotape of the client on the night of the arrest and testify whether there are sufficient “clues” of intoxication based on the National Highway Traffic Safety Administration’s field sobriety test can be very helpful in establishing reasonable doubt and getting an acquittal.

My website is [www.mcmclaw.com](http://www.mcmclaw.com).

Cordially,

Arch C. McColl, III

ACM/gap