

**HORIZONTAL GAZE NYSTAGMUS CASE LAW**  
**BAITY AND BEYOND**  
by  
**PETER J. PEAQUIN**

Although the body of Washington case law regarding horizontal gaze nystagmus (HGN) is limited, many DUI defense practitioners believe that the next significant battle to be fought will be litigation concerning the admittance into evidence of the administration of an HGN test *and* what testimony may be elicited from a witness concerning the interpretation of the results of such testing. The King County Prosecutor's Office fired the opening salvo in a battle that may inevitably lead to Olympia. Just as frustration concerning the suppression of BAC tests fomented in the halls of prosecutors' offices across the state and ultimately resulted in the passage of SHB 3055, the current judicial limitations imposed by upon HGN testimony are under attack in the District Courts.

In *State v. Baity*, 140 Wn.2d 1 (1999), the Washington Supreme Court began its analysis by stating the issue before the Court:

We are asked in this case to determine if a drug recognition protocol, used by trained drug recognition officers to determine if a *suspect's driving is impaired by a drug other than alcohol*, meets the requirements of *Frye v. United States*, [citation omitted], for novel scientific evidence. We hold that the protocol meets the mandate of *Frye*. An officer may testify concerning such drug impairment, *subject to the limitations set forth in this opinion*, upon meeting the requirements of ER 702 and 703 for the admission of expert opinion testimony. [Emphasis added]

The Court described not only the specific additional training that a drug recognition expert (DRE) officer receives, but also focused on the proficiency that the DRE officer must demonstrate as a part of the initial certification, the continued training, and the bi-annual recertification requirements. These points are worthy of mention in a "non-DRE" case, where the patrol officer has not undertaken the same level of training,

demonstrated the required level of proficiency, documented ongoing reliability, and maintained current training.

The Court briefly reviewed national case law concerning the admissibility of HGN testimony:

After careful review of these alternative positions, we agree the underlying scientific basis for HGN testing--an intoxicated person will exhibit nystagmus--is "undisputed, even by those cases and authorities holding the test inadmissible without scientific proof in each case.(holding that a person will show a higher degree of nystagmus at higher levels of intoxication). Even the district court agreed with this proposition, stating:

The evidence presented in this hearing establish [sic] that the following propositions have gained general acceptance in the relevant scientific community: (1) the HGN occurs in conjunction with alcohol consumption, (2) that the onset of HGN and its distinction are strongly correlated to breath alcohol levels, . . . (4) law enforcement officers can be trained to observe these phenomena and administer the test[.] *Baity* at 12.

The Court gave short shrift to the Defense concerns regarding the factors that make HGN testing unreliable. In dismissing concerns regarding “false positives and other physiological causes,”<sup>1</sup> the Court clung to the perceived basis for the test—**“intoxicated people exhibit nystagmus.”** In pronouncing its’ basis for accepting the results of the HGN test, the *Baity* Court demonstrates both flawed logic and a logical disconnect.

“If intoxicated people exhibit nystagmus, then people who exhibit nystagmus must be intoxicated.” represents flawed logic, while the lack of an absolute causal connection between “intoxicated” and “driving impaired by alcohol.” represents a “politically incorrect,” but no less logical disconnect. It is unpopular in this age of **“carnage on the highways”** to state the fact that “not all people who are **intoxicated** have a decreased ability to operate a motor vehicle” and conversely, the lack of

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<sup>1</sup> *Baity*, at 13-14

consumption of alcohol does not increase every person's ability to operate a motor vehicle safely.

The Court appears to abandon the traditional "gate keeper" role, relying upon the DUI Defense attorney to cut through "the smoke and mirrors" and to lay bare the HGN's inadequacies by means of cross-examination. In the Court's mind, all of the deficiencies of the HGN examination go "to the weight of the evidence, rather than its admissibility."<sup>2</sup>

It is of note that the *Baity* Court reached a dramatically different conclusion after it reviewed the same out-of-state cases considered by the Court of Appeals in *State v. Cissne*, 72 Wn.App.677, 680, review denied, 124 Wn.2d 1006 (1994), where the Court of Appeals stated:

We hold that the Frye standard applies to the admission of evidence based upon HGN testing, unless, on remand, the State is able to prove that it rests on scientific principles and uses techniques which are not "novel" and are readily understandable by ordinary.

We decline the State's invitation to follow those few jurisdictions that have concluded that HGN testing meets the *Frye* standard. The trial court must evaluate, weigh and consider the conflicting evidence before determining whether the test is novel, and if it is novel, whether it is a reliable as an indicator of the probability of impairment or of a specific blood alcohol level. The parties have not brought any of this evidence to the attention of this court or the trial court. *Cissne*, at 686-687.

The *Baity* Court found the DRE protocol and the chart used to classify the behavior patterns associated with seven categories of drugs have scientific elements meriting evaluation under *Frye*. *Baity* appeared to limit the officer's testimony to cases where all twelve steps of the DRE protocol had been undertaken. The language of the decision appears to limit *who* can testify, "the DRE officer, properly certified," and *what* the witness can say, "An officer may not testify in a fashion that casts an aura of

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<sup>2</sup>*Baity*, at 14

scientific certainty to testimony and the officer may not predict the specific level of drugs present in the suspect.”<sup>3</sup>

The next pronouncement on HGN came in *State v. Koch*, 126 Wn. App. 589 (2005); Division II reviewed a case where the District Court had granted the defendant’s motion in liminae to exclude testimony concerning the HGN test to “show specific levels of intoxication.” The Superior Court had held that the trial Court should have granted a mistrial based upon the violation of the motion in liminae. The Court of Appeals reinstated the conviction, relying upon the “harmless error” doctrine:

Here, we have decided that the trial court properly admitted Koch's breath test, which gave results of .147 and .141. A person is guilty of driving under the influence of an intoxicant if he has "within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506" or if the person drives while under the influence of alcohol. RCW 46.61.502(1)(a), (b). In light of the breath test results, Koch cannot show that the toxicologist's testimony about the reliability level of the HGN test at .08 sufficiently prejudiced him such that a new trial is necessary. *Koch* at 598.

The King County Prosecutor’s Office made a recent attempt to admit HGN testimony within the trial context. The State sought a pretrial ruling to allow the admission of evidence concerning HGN, not just to establish *consumption*, but as direct evidence of the defendant’s *impairment*. The District Court’s decision focused on the fact that the Court in *Baity* did not require a *Frye* hearing prior to the admission of the testimony concerning HGN in the context of a DRE exam conducted by a DRE trained officer.

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<sup>3</sup> *Baity*, at 17.

**IN THE KING COUNTY DISTRICT COURT  
STATE OF WASHINGTON**

STATE OF WASHINGTON  
Plaintiff,

vs.

TERRANCE WILLIAMS, et al.,  
Defendant.

No. C0518820

ORDER ON PRETRIAL MOTION  
REGARDING THE ADMISSIBILITY  
OF HGN EVIDENCE TO ESTABLISH  
IMPAIRMENT

**I. Issue**

The State seeks a pretrial ruling allowing the introduction of Horizontal Gaze Nystagmus (HGN) evidence to prove impairment by alcohol in a Driving Under the Influence (DUI) of alcohol prosecution. Specifically, the State requests authorization to admit the testimony of a state toxicologist regarding the results of an HGN test performed by a police officer.

**II. Facts**

The defendant, Terrance Williams, was arrested for DUI on June 15, 2004. As a part of the investigatory process, the State asserts that a Washington State Patrol trooper administered an HGN test. In its pretrial motion, the State indicated that, in addition to the trooper's testimony, it wished to call a state toxicologist who would testify as an expert on the results of the HGN. Rather than accepting the limitation commonly placed upon the State (that a witness may merely testify that an HGN test indicates that the defendant had consumed alcohol), the State requested permission to ask the toxicologist at trial if the HGN test results indicated impairment from alcohol. The defense objected, arguing that Frye v. United States, 293 F. 1013, 34 A.L.R. 145 (1923), required an evidentiary hearing prior to a determination of the admissibility of evidence of this nature.<sup>4</sup> The King County District Court, finding that this was an issue of county-wide significance under LCrR.LJ 8.2(2), assigned the motion to this three judge panel.<sup>5</sup>

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<sup>4</sup> Frye held that "evidence deriving from a scientific theory or principle is admissible only if that theory or principle has achieved general acceptance in the relevant scientific community" State v. Cauthron, 120 Wn.2d 879, 886 (1993)

<sup>5</sup> Several other similarly situated defendants have joined in this motion.

### **III. Analysis**

The HGN is a test involving a stimulus, usually a pen, used to detect nystagmus in the subject's eyes. "Nystagmus is the involuntary oscillation of the eyeballs, which results from the body's attempt to maintain orientation and balance. HGN is the inability of the eyes to maintain visual fixation as they turn from side to side or move from center focus to the point of maximum deviation at the side." State v. Baity, 140 Wash.2d 1,7, 991 P.2d 1151 (2000), n3; citing State v. Cissne, 72 Wn. App. 677, 680, 865 P.2d 564 (citing Stedman's Medical Dictionary, 971 (5th ed. 1982)), review denied, 124 Wn.2d 1006, 877 P.2d 1288 (1994). The HGN test is based on six "clues" (three for each eye) that refer to (1) lack of smooth tracking (smooth pursuit of the eyes), (2) distinct nystagmus at maximum deviation (endpoint nystagmus), and (3) the onset of nystagmus prior to forty-five degrees away from center (angle of onset).<sup>6</sup>

In 2000, when the Supreme Court decided State v. Baity, *supra*. it was asked to decide "if a drug recognition protocol, used by trained drug recognition officers to determine if a suspect's driving is impaired by a drug other than alcohol, meets the requirements of Frye...for novel scientific evidence." *Id.*, at 3. Since Baity, the requirements for the admission of HGN evidence for drugs other than alcohol by an officer trained as a Drug Recognition Expert (DRE) have been fairly clear. The defendant's case and the other cases before this panel, however, concern the admissibility of HGN tests for the determination of impairment by alcohol alone. While this is an issue of much lower complexity than that faced in Baity, it has, because of the structure of the Baity decision, generated much greater debate.

The Baity decision itself is replete with references to the HGN; references which the defense claims are either dicta or which limit a witnesses HGN testimony to evidence of alcohol consumption only. A thorough reading of Baity, however, reveals that the Supreme Court held that the use of the HGN test for the determination of impairment by

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<sup>6</sup> Use of Horizontal Gaze Nystagmus as Part of Roadside Sobriety Testing, 63 Am. J. of Optometry & Physiological Optics 467, 469 (1985); National Highway Traffic Safety Adm., U.S. Dep't of Transp., DWI Detection and Standardized Field Sobriety Testing Student Manual VIII, 5-8 (2000).

alcohol is admissible without the need for a Frye hearing. Although the overarching issue in Baity was the admissibility of evidence from the DRE program as a whole, the Baity court was also asked to determine whether the HGN test- as specifically used for the detection of alcohol - required a Frye hearing. The Baity court indicated that it would consider this issue with the following statement:

“Additionally, the State moved to admit testimony regarding the use of the horizontal gaze nystagmus (HGN) test, both for *the detection of alcohol* and for the detection of drugs. Baity moved to suppress all DRE evidence, *including the HGN test*, on the basis that the DRE program and protocol constitute novel scientific evidence subject to the Frye test for admissibility.”

Id., at 7; (emphasis supplied). The Baity opinion later notes that the trial court “ruled HGN meets Frye to alcohol,” and the Baity court itself ultimately reached the same conclusion. Id., at 9.

The Baity court was also necessarily required to determine whether the HGN, as part of the DRE protocol, met the requirements of Frye. The Baity opinion stated that the HGN “test is performed in the same manner, regardless of whether the officer is testing for alcohol impairment or drug impairment” Id., at 13.

Consider as well the process the Baity court used to reach its conclusion regarding the DRE program. The Court divided its Frye review of the DRE protocol into two parts: (1) a review of HGN, including its use both for alcohol and for the 7 categories of drugs for which DRE’s are trained, and (2) a review of the DRE 12-step protocol.<sup>7</sup> The first part of this two step DRE equation was deemed most scientifically novel “(T)he principal step of the protocol that qualifies as novel scientific evidence is the assertion that persons who have ingested certain drugs evidence nystagmus” Id., at 11. In its Frye analysis, the Baity court did not restrict itself to the record below, but also considered “available literature, and the cases of other jurisdictions” Id.

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<sup>7</sup> In its Frye analysis of the DRE program, the Baity court considered a review of the 12-step DRE protocol undertaken by the Minnesota Supreme Court and a Florida appellate court and noted that these jurisdictions also divided the 12 step protocol into two portions, (1) a review of the HGN and, (2) a review of the “general portion” of the 12-step protocol Id., at 15-16.

Thus, prior to reaching its decision on the admissibility of the HGN, the Baity court considered decisions from the states of North Dakota, Arkansas, Ohio, California and Arizona. In each of these cases the issue was the admissibility of an HGN test performed by a law enforcement officer - without any indication that the officer was trained as a DRE. Furthermore, each case involved an HGN test used solely to determine impairment by alcohol - without any evidence of other drug use. The Baity court's decision with regard to HGN tests used to determine impairment by alcohol is clearly articulated.

“After careful review of” the cases from the above states, “we agree the underlying scientific basis for HGN testing--an intoxicated person will exhibit nystagmus—is ‘undisputed, even by those cases and authorities holding the test inadmissible without scientific proof in each case.’” See *State v. Superior Court*, 149 Ariz. 269, 718 P.2d 171, 177, 60 A.L.R.4th 1103 (1986) (holding that a person will show a higher degree of nystagmus at higher levels of intoxication). Even the district court agreed with this proposition, stating the evidence presented in this hearing establish [sic] that the following propositions have gained general acceptance in the relevant scientific community: (1) the HGN occurs in conjunction with alcohol consumption, (2) that the onset of HGN and its distinction are strongly correlated to breath alcohol levels, . . . - (4) law enforcement officers can be trained to observe these phenomena and administer the test[.]”

Baity, 140 Wash.2d at 12- 13.

The defendant argues, however, that even if Baity allows admission of the HGN test, its admission is limited to the determination of whether or not an individual has consumed alcohol. However, when the Baity court referenced the use of the HGN test for the detection of driving under the influence of alcohol, it indicated that the test was used to determine “intoxication.” *Id.*, at 12-14.<sup>8</sup>

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<sup>8</sup> In fact, the Baity court links the HGN test and the ability to determine “intoxication” four distinct times in the opinion:

(1) “(A)n intoxicated person will exhibit nystagmus...” *Id.*, at 12; (2) “In fact, the NHTSA recommends the HGN test as one of several field sobriety tests to help officers determine whether a driver is intoxicated.” *Id.* at 13; (3) “As the Supreme Court in North Dakota succinctly noted: [the DRE], ‘based upon his training in these principles, observes the objective physical manifestations of intoxication...’” *Id.*; (4) “However, none of those factors undercut the basis of the test—that intoxicated people exhibit nystagmus” *Id.*, at 14.

A properly administered HGN test, therefore, is admissible to show that an individual was impaired by alcohol. A witness testifying concerning the results of an HGN test, however, may not go beyond testimony of impairment to the recitation of a specific level of intoxication. *Id.*, at 17; State v Koch, 126 Wn. App. 589, 597 (2005). Nor may the witness “testify in a fashion that casts an aura of scientific certainty to the testimony.” Baity. *Id.*

The State need not prove a level of impairment to establish that a defendant drove under the influence of alcohol. In Washington, a defendant may be convicted of Driving Under the Influence of alcohol by one or both of the following ways:

1. Proof that the person had, “within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person’s breath or blood;” or
2. Proof that the person drove a vehicle while “under the influence of or affected by intoxicating liquor or any drug.”<sup>9</sup>

RCW 46.61.502(1). Thus, the State need only prove a level of impairment under the first prong. Under the second prong, if the other elements of a DUI prosecution are satisfied, even a minimal level of impairment is sufficient to allow a jury to find a defendant guilty:

“The phrase ‘under the influence of intoxicating liquor’ . . . , has been defined as any influence which lessens in any appreciable degree the ability of the accused to handle his automobile.”<sup>10</sup>

State v. Hurd, 5 Wn.2d 308, 315 (Wash. 1940); citing Smith v. Baker, 14 Cal. App. (2d) 10; Luellen v. State, 64 Okla. Crim. 382. In the context of a DUI prosecution, the words “under the influence of” and “affected by” have the same legal meaning.<sup>11</sup> State v. Hurd, *supra*, at 316.

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<sup>9</sup> The state may also attempt to prove that the person was “under the combined influence of or affected by intoxicating liquor and any drug” RCW 46.61.502(1)(c).

<sup>10</sup> This language appears in the Washington Pattern Instructions as WPIC 92.10:

“A person is under the influence of or affected by the use of [intoxicating liquor] [or] [drugs] if the person’s ability to drive a motor vehicle is lessened in any appreciable degree.

<sup>11</sup> At oral argument the parties spent considerable time discussing the meaning of the term “impairment.” Ballentine’s Law Dictionary, 3rd Edition, defines “impair” as follows, “to make worse; to diminish in quality, value, excellence, or strength; to deteriorate;” while Black’s Law Dictionary (5th Ed., 1979), defines the word in a similar manner to

The defendants assert, however, that State v. Koch, supra, limits the use of HGN testimony regarding alcohol to a statement that an individual had consumed alcohol. Indeed, Koch includes two sentences which appear to indicate that the Baity court limited the use of the HGN to an indication that alcohol was present.<sup>12</sup> \*9 The scope of the HGN issue addressed in Koch, however, was limited to whether the HGN test could be used to determine “specific levels of intoxication.” *Id.*, at 593. The statements in Koch, therefore, limiting the use of the HGN test to an indication of alcohol consumption only, are dicta. Moreover, as has already been stated, while the Baity Court did not allow testimony regarding specific levels of impairment, it expressly approved the HGN test to show impairment by alcohol.

The Baity decision ends with a discussion of ER 702<sup>13</sup> and its relationship to the admissibility of DRE testimony. The Court’s discussion concerning DRE testimony applies equally to the admissibility of HGN testimony.

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weaken, to make worse, to lessen in power, diminish, or relax, or otherwise affect in an injurious manner.” The Hurd court quoted three definitions of the word “affect.”

“Bouvier’s Law Dictionary defines ‘affect’ in the following language:

‘To lay hold of; to act upon, impress or *influence*. It is often used in the sense of acting injuriously upon persons and things.’ (Italics ours.)

Ballentine’s Law Dictionary says:

‘The word - sometimes means to act upon; to *influence*, but it is more frequently used in the sense of weakening, debilitating; acting injuriously upon persons and things.’ (Italic ours.)

Blacks Law Dictionary (3rd ed., 1933), gives the following definition:

‘To act upon; *influence*; change; enlarge or abridge: often used in the sense of acting injuriously upon persons and things.’ (Italic ours.)”

Hurd, supra at 315. Thus the word “impaired” and the terms “under the influence of” and “affected by” also have the same meaning. Evidence that a person was “under the influence of or affected by intoxicating liquor” is not proof of a “level” of impairment as argued by the defendant. The Baity court stated that “an officer may not predict a specific level of drugs present in a suspect” State v. Baity, 140 Wash.2d at 17. Under the “affected by” prong of RCW 46.61.502, the State need not prove a defendant had an alcohol concentration of 0.08 or higher instead the State need only prove the defendant was “under the influence of or affected by” alcohol, The decision in Hurd stands for the proposition that even a small effect or impairment caused by alcohol will be enough to satisfy the second prong of RCW 46.61.502

<sup>12</sup> The two references to the Baity decision in State v. Koch, supra, are as follows:

“The court ruled that under State v. Baity, testimony on the HGN test was admissible to show the presence of alcohol but not a specific level of intoxication.” State v. Koch, 126 Wn. App. at 593; and,

“The district court correctly ruled that under State v. Baity, a witness may testify that an HGN test can show the presence of alcohol but not the specific levels of intoxicants.” *Id.*, at 597 (Citations omitted).

<sup>13</sup> “ If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” ER 702.

“Finally, the DRE evidence must also satisfy the predicate two-part inquiry under ER 702--whether the witness qualifies as an expert, and whether the testimony would be helpful to the trier of fact--before the evidence is admissible. A proper foundation for DRE testimony would include a description of the DRE’s training, education, and experience in administering the test, together with a showing that the test was properly administered. Practical experience may be sufficient to qualify a witness as an expert.”

State v. Baity, supra at 18 (Citations omitted). Prior to the admission of HGN testimony, therefore, the State must establish a witness’s expertise (knowledge, skill, experience, training, or education).<sup>14</sup> The State must also introduce evidence sufficient to convince the trial court that the HGN test was properly administered. The State may attempt to meet these two requirements either exclusively through an officer or through the combination of the testimony of an officer and a state toxicologist.<sup>15</sup>

#### **IV. Conclusion**

The defense objection to the admissibility of HGN evidence on the wounds that the HGN test used to determine impairment from alcohol does not meet the Frye standard, is denied. The Supreme Court has previously found that HGN tests used to determine impairment by alcohol are generally accepted in the scientific community and, therefore, we hold that the State may move to introduce HGN tests without the need for a Frye evidentiary hearing. The testimony of a state toxicologist regarding the results of an HGN test is admissible if the witness and the witness’s testimony meet the requirements of ER 702 and ER 703.

Dated this 7th day of April 2006.

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<sup>14</sup> Testimony regarding alcohol impairment is not limited only to a witness trained as a DRE. The Baity court only applied this limitation to the admission of evidence of impairment from drugs. “The DRE officer, properly qualified, may express an opinion that a suspect’s behavior and physical attributes are or are not consistent with the behavioral and physical signs associated with certain categories of drugs.” Id.

<sup>15</sup> If the State seeks the testimony from the state toxicologist to establish that the test was properly administered and that the defendant was impaired, it will have to elicit testimony sufficient to establish the way in which the state toxicologist obtained this information. (Pursuant to ER 703, “The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.”) An “expert becomes acquainted with this information either (a) by listening to the testimony of the witness, or (b) by listening to counsel’s summary of the testimony in the form of a hypothetical question.” 5D Karl B. Tegland, Courtroom Handbook on Washington Evidence ch.5, at 349 (2005); citing Carter v. Massey-Ferguson, Inc., 716 F.2d 344 (5th Cir. 1983).

Judge David A. Steiner

Judge Douglas J. Smith

I do not agree with the result reached by the majority and accordingly, dissent.

Judge Mark Eide

In drawing distinctions between an HGN examination in the context of a DRE examination and in the context of a DUI prosecution, several factors that *should have been* examined and discussed by the courts in *Baity* and *Williams* were apparently either not considered or were omitted:

- (1) To whom is the evidence regarding the HGN examination being provided (judge or jury)?
- (2) What is the purpose of offering the evidence?
  - (a) support officer's basis for probable cause to arrest;
  - (b) probable cause to believe that driver is under the influence of a drug other than alcohol;
  - (c) establish the reasonableness of the officer's request that the driver provide a blood sample;
  - (d) evidence that the driver had consumed alcohol;
  - (e) evidence that the driver's ability to operate a motor vehicle is impaired as a result of the consumption of alcohol;
  - (f) evidence that the driver has an alcohol level that is above certain level.
- (3) In what context is the evidence being offered?
  - (a) pretrial hearing out of the presence of the jury concerning a preliminary matter;
  - (b) in trial to the trier of fact as direct evidence of violation the "per se" prong of the statute;
  - (c) in trial to the trier of fact as direct evidence of violation the "appreciably affected" prong of the statute;
  - (d) in trial to the trier of fact as direct evidence of violation the per se prong of the statute when used in conjunction with results of a properly admitted breath or blood test ;
  - (e) in trial to the trier of fact as rebuttal evidence of violation the per se prong of the statute when used in conjunction with results of a properly admitted breath or blood test;

These issues raise more questions than the courts have given us direction. One consequence of the critical eye now focused on the Washington State Toxicology Department employees as a result extensive litigation brought by Mr. Vosk et al. is the limitations that may place on “expert” testimony. The King County Prosecutor’s Office and the King County District Court Judges will at some point revisit the actions and procedures concerning the admission of breath tests. I do not anticipate that the issue of the admission of HGN evidence for proof of “impairment” will come to the forefront until after the King County District Court three judge panel addresses the actions of the new Washington State Toxicologist.

Of recent development is a *Frye* hearing conducted at the direction of the Illinois Supreme Court. The hearing included testimony from six “experts” and the admission of over 30 scientific articles concerning HGN. Although a final decision by that Court is not anticipated until the fall of 2008, the information contained in the materials presented to the Court may prove to be helpful in the battles to come in this state.