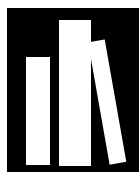


INNOVATIVE DUI TRIAL TOOLS

Bruce Kapsack



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ABOUT THE AUTHOR

Bruce Steven Kapsack is the senior partner of Kapsack & Bair, LLP, an AV rated firm practicing exclusively in DUI/DWI defense. He received his Bachelor of Arts in Interdisciplinary Studies from Plymouth State College and his Juris Doctorate from American University. After graduation from law school, Mr. Kapsack was hired by the Bronx Public Defender where he rapidly rose to the position of Senior Trial Attorney. During the five years he was there, he became one of the top trial attorneys in that office.

After moving to California and opening his own practice, Mr. Kapsack became the Senior Attorney for the Office of Citizen Complaints, the San Francisco Police Department's Internal Affairs Office. His success there resulted in a Commendation from the Board of Supervisors upon his departure.

As a Pioneer in the field of DUI/DWI defense, Mr. Kapsack has accomplished many firsts. He is:

- The first attorney in California to take and pass the American Bar Association's Board Certification exam for DUI Specialization.
- The first attorney in California to become an Instructor of Standardized Field Sobriety Tests (SFSTs) under the guidelines of the International Association of Chiefs of Police (IACP) and the National Highway Traffic Safety Administration.
- The first attorney in California to qualify as a DRE under Drug Ensic Systems.
- The first and only attorney in California to own and operate the Draeger 7410 and 7110 breath machines.
- The first attorney in California to own, operate and use in court an Intoxilyzer 5000 breath machine.
- The first and only attorney in California to depose Dr. Marceline Burns, the person responsible for the establishment of standardized field sobriety tests.
- One of the first attorneys to be trained as a user and maintenance technician of the Alco-Sensor IV hand-held roadside breath machine.

In addition to these milestones, Mr. Kapsack has been a consultant on a number of seminal cases throughout California and the United States, including *State v. Dahood* (New Hampshire) and *People v. Chun* (New Jersey). He has worked or lectured with virtually every major expert in the DWI/DUI arena, such as:

- Dr. A.W. Jones – the foremost expert in DUI.
- Dr. Kurt Dubowski – the foremost prosecution breath expert.
- Dr. Richard Jensen – the foremost defense breath expert.
- Dr. Michael Hlastalla – the foremost pulmonary expert.
- Dr. Fran Gengo – a noted pharmacologist.
- Dr. Al Staubus – a noted pharmacologist.
- Dr. John Churchill – New Zealand's top breath expert.
- John Fusto – owner of the Datamaster Corporation.
- Hansulei Ryser – inventor of the Draeger breath machine.
- Norm Forte – California's top roadside breath expert.
- Dr. Marceline Burns – developer of standardized field sobriety tests.

Mr. Kapsack has written extensively about DUI/DWI defense. He contributed to *California Drunk Driving Laws* by Ed Kuwatch (James Publishing) and wrote the yearly supplements from 2003 to 2007 for *California Drunk Driving Defense* by Lawrence Taylor (Thomson-West Publishing), the two seminal works in the field in California. He writes a regular update on California DUI for the Public Defenders and has written for DUI/DWI publications in other states including New York, Nebraska, Ohio and nationally for *The Champion* magazine.

When he is not defending clients, Mr. Kapsack teaches other attorneys the keys to successful DUI/DWI defense. His lectures for the State Bar of California and for the California Public Defenders are among the best-attended programs offered by those organizations and they are videotaped and used for continuing education and training.

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DEDICATION

*To my parents who got me started in life;
To Marvin Miller who got me started in law;
To Hudson Bair who got me started in this practice;
To Charlie Sifers who got me started in writing and lecturing;
To my wife, who keeps me going in all.*

ACKNOWLEDGEMENTS

It is customary in this part of a book to thank all the positive influences in one's life and all who helped with the project. That is an impossible task; therefore, let me thank those who helped bring this book about.

For the science that was forced into my head, I have Dr. Richard Jensen, Mary McMurray, Dr. Fran Gengo, and Dr. Al Staubus to thank. But no one was more helpful than the late Anne ImObersteg. Anne was a friend of mine for many years and never tired of odd-hour phone calls to discuss theoretical aspects of DUI science, no matter how bizarre. As an expert in court, she was one of the best and one of the friendliest to the jurors. We all miss her.

Thorough knowledge of Field Sobriety Tests is a must for anyone practicing in this field. No one, in my opinion, does a better job in teaching FSTs or testifying on the subject than Bob LaPier.

After 20 years of practice, how can I possibly identify which lawyers, among the hundreds I have known, to thank for their contributions to my own skills? Can anyone in our field remember where the inspiration for a new idea came from? Was it a conversation over beer with DUI Mike? A late night phone call with the Sifers boys? Perhaps it was an overheard conversation between two colleagues who did not make their identities known? Who knows? As much as I could, throughout the text, I have given credit where credit was due and known. Even then, I may not have credited the originator of the idea, but rather simply the person from whom I stole it. The payback will be in my offering the information in this book to others.

Certain attorneys have made more of a contribution to my legal acumen, such as it is, than others and I would like to mention them here. Marvin Miller of Virginia is one of the best attorneys many of us know. When I was a law student, he taught me the most important lesson any attorney can learn. "The only reason the law is against me is that I haven't argued it yet," was a mantra he repeated ad nauseam.

Charles Sifers, Troy McKinney, Gary Trichter, Larry Taylor, Steve Oberman, Tim Huey, and Ken Elner—from late nights to early mornings, kicks in the butt to slaps on the back, good times to bad, laughs to tears, each of you knows what you have done to get me here, and I thank you.

Jeff Sifers has done more than any other in helping me put this book together. Jeff is a unique person whom I have watched grow. From a self-taught expert on breath machines and FSTs, to a lawyer, to a force to be reckoned with, Jeff has amazed me. If he only had some grey hair to soften his demeanor, no jury would be safe. His skill with Power Point is evident throughout this book.

As a public defender, I worked with some amazing attorneys. Underpaid, overworked, and never appreciated, they did it for the pure love of criminal defense. As a group, we decided that there was no case we could not try, no case we could not win, and therefore no case we would not take. This spirit carries through with me today. It is what allows any trial attorney to stand in front of a jury and tell them the client is completely innocent, even when the evidence seems quite to the contrary. We do so with such zeal and with such a convincing nature that in the words of one of my former clients "He almost has ME convinced I wasn't there."

Finally, to my two partners, Hudson (that's business partner) and Jo (life partner)—why try to say what words cannot?

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