A person with dark hair, wearing a dark coat and carrying a bag, is walking away from the camera down a paved path. The path is lined with large, leafy trees, some of which have yellowing leaves, suggesting autumn. The background shows a grassy area and some buildings in the distance.

# If You Or A Loved One Is The Victim Of Negligence Or A Crime – Which Way Should You Turn?

*prepared by*

Law Office of Ivy Scarborough

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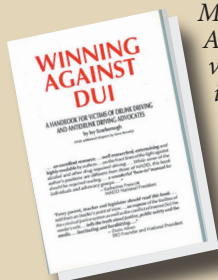
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## For Victims of Vehicular Crashes or Drunk Driving



*Mr. Scarborough's book, WINNING AGAINST DUI, was written to help victims of vehicular crashes especially involving drunk driving. It is useful to anyone involved in any type of vehicular crash. Copies can sometimes be purchased through some MADD chapters. It can also be found in an electronic version on our web site: [www.ivyscarborough.com](http://www.ivyscarborough.com).*

## MADD President Endorsed Mr. Scarborough's Book

*"This is an excellent resource for people concerned about the problem of drunk driving in our nation. It is a well-researched, entertaining and highly readable book by two authors who have obviously been on the front lines of the fight against alcohol and other drug impaired driving....we feel this book should be required reading for anyone trying to effect change in our society. This book is a wonderful how-to manual for individuals and advocacy groups to interact with the legal system, the media and legislative bodies to effect worthwhile social goals."*

—Katherine Prescott, MADD National President

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**SPEED** - TO HANDLE YOUR CASE AS FAST AS CIRCUMSTANCES PERMIT. EVIDENCE CAN BE LOST AND WITNESSES CHOOSE TO NOT “GET INVOLVED” IF THERE ARE DELAYS - WE DO NOT DELAY.

**FACTS** - BECAUSE LAW ENFORCEMENT INVESTIGATIONS ARE RARELY ADEQUATE FOR A CIVIL CASE, IF NECESSARY WE MAKE CERTAIN THAT A THOROUGH AND INDEPENDENT INVESTIGATION OF YOUR CASE IS CONDUCTED UNDER OUR SUPERVISION.

**MOBILIZE** RESOURCES ON YOUR BEHALF – INVESTIGATIVE, MEDICAL PROFESSIONALS, ADVOCACY GROUPS, MEDIA, AND OTHER TRUSTWORTHY LAWYERS ACROSS THE COUNTRY. WE WILL, AS NEEDED, PUT THE TEAM TOGETHER, PLAN THE STRATEGY, AND MAKE CERTAIN THAT THE BEST THAT CAN BE DONE IS DONE ON YOUR BEHALF IN RESOLVING YOUR CASE.



Ivy Scarborough is a lawyer, mediator, and writer from Jackson, Tennessee. His practice focuses on personal injury and wrongful death cases. He responds to calls from clients across the nation and works in affiliation with other lawyers licensed in various states. He travels across the country in representing clients.

Mr. Scarborough has been especially active in representing victims of crime, particularly victims of drunk driving and children who were sexually molested. He has served in various roles for crime victim support groups, particularly MADD (Mothers Against Drunk Driving), and NOVA (National Organization of Victim Assistance).

He has served as legal advisor, media advisor, and public policy liaison for Tennessee MADD and various MADD Chapters. He was a member of the Tennessee state board of MADD and has conducted seminars for MADD on *Dealing With the Legal System*, *Dealing With the Media* and *Legislation*. He has been a lecturer for NOVA and a writer for their national publications.

Mr. Scarborough was an adjunct professor of international studies at Union University in Jackson and continues to serve as a television and print commentator on international and public policy issues. He has been a war correspondent or served on Christian medical missions in eight war zones: Afghanistan, El Salvador, the Nicaraguan-Honduran border, the Middle East, Somalia, Bosnia, Sudan, and Kosovo.

He conducts training for law enforcement agencies and has lectured for the U.S. military at the Defense Information School at Ft. Benjamin Harrison, Indiana and the U.S. Army National Training Center at Ft. Irwin, California, as well as the Tennessee National Guard Headquarters.

Ivy and his wife Ramona live near Jackson.

## WHAT OTHERS SAY

*"Jeff and I wanted you to know how thrilled we have been to have met you and have you handle our case. We hate the circumstances we had to meet under, but we value the advice and wisdom you brought to us at this terrible time. You went way above the call of duty with our case, and we will never forget you for that. Thank you so much for your care and concern that you gave through every moment of our case!"* — Jeff & Heather Smith, Dover, TN [daughter killed by drunk driver]

*"Mr. Scarborough has been priceless to me during this trying time. A drunk illegal immigrant tragically hurt my brother and killed his daughter. My brother will never be the same; he has severe head injuries. I did not know where to turn. Through*

*this lawyer and that lawyer I finally found Mr. Scarborough. Mr. Scarborough made some transitions that may have been “impossible” become possible. His guidance, knowledge, and powerful insight made this easier for my family to handle. I know Mr. Scarborough cannot bring my family back to whole again, but he certainly has made a difference in my life. He has always been there with his reassuring words, his wisdom, his knowledge, and most important his encouragement. May God Bless him and his.” — Susan Derderian, Massachusetts*

*“Before I chose your firm, I interviewed 6 or 7 attorneys who were highly recommended. I chose you because from our one conversation I felt as if I were speaking with a friend. Even though I live in Florida and Wyoming and your office is in Tennessee, I never had a doubt I could stand back and allow you to handle my case with integrity and wisdom. You patiently and caringly escorted me through a process I knew nothing about. Each time I called with a question or concern it was you who called back as if I were your only client. You soothed the anger I felt as a victim.” —Paula Sharpe, Jackson Hole, Wyoming*

*“Ivy represented my Mom and Grandmother after they had been hit by a drunk driver. No question was too trivial for Ivy. He patiently described every step of the legal process. More importantly, he gave us emotional support that we really needed. I will always be grateful.” — Jamie Lattanzi, Jamestown, TN*

*“Ivy is a person of very high moral character. His professional way of handling our car crash with a drunk driver has left our family very grateful. We also feel that we have a lasting friendship with these fine people.” — Larry and Peggy Guthrie, Allardt, TN*

*“...we would like to think of it as divine intervention. We had on several occasions seen Mr. Scarborough on the news discussing many topics and current events. You only have to listen to him one time to know that he possesses knowledge, wisdom, professionalism, is dedicated to his beliefs, has compassion for the human race and is a very articulate speaker. How many times has a problematic situation arisen in your community or nationwide or even for that matter world-wide and you find yourself saying, “Someone should do something about that!”*

***We all need a sense of peace and security, especially in the wake of trauma or tragedy.***

***We do everything we can to help.***



Well, we have found an individual that can take the job on and who will score a success – Ivy Scarborough. This individual will leave an impression on you for a lifetime.” — Bob & Margie Simko

“After losing our 2 year old son, we were in need of a lawyer who could help with more than the monetary aspect of our case, and we were blessed to have you to help us. You came with a whole heart and your kindness and guidance gave us the strength to see beyond our immediate pain. The illegal status of the drunk driver did not cause you to waver or hesitate to extend your help to us. We are most thankful that when challenges arose you stood firm by our side.” — Keisuke & Lyn Tsuji [son killed by drunk illegal alien]

“Ivy represented my son in an auto crash case where another party was not willing to accept responsibility. Ivy handled the case in a very professional and caring manner with a high standard of ethics.” —Dr. Charles Pratt, Kenton, TN

“There is nothing halfway about this man. He does everything 100%.” —Lt. Col. Gil Ferguson, USAF Retired [Wrongful death of son]

“The strength of his advice is the fact that Mr. Scarborough has had actual experience in so many situations.” — J. Griggs, Ripley, TN

“What a tremendous difference Ivy made in our case. His confidence, stature, and boldness in the courtroom, as well as his compassion for his clients, are exemplary. Without question, being a lawyer isn’t just a job to Ivy.” —Rev. Curtis Howard, Jackson, TN

“I’m grateful for the day when I looked again into all the information from MADD and found your pamphlet. Without that contact information, and your help and guidance, the story of my children and their deaths would have a different ending, for sure. Ivy, I hope you know what your nearly constant presence has meant to me. You answered the hard questions in the very beginning of this struggle, and always had a good word of advice for me when I was way past my wits end. Thank you...again, and again, and again.” —Dani Forbes, Columbia, South Carolina [children killed by drunk illegal alien in NC]

“After our daughter Amanda’s death [in a drunk driving crash], a friend called to console us. He mentioned the help he had gotten from Ivy Scarborough following his son’s death at the hands of a drunk driver. I had no idea how timely this was going to be, nor how utterly helpful Ivy would be, even from the first few words of consolation he offered. He would become to us --and me especially--not only a very experienced attorney, but a true friend, sympathetic counselor, and ever-wise guide and strategist through the maze we found ourselves dropped into. Ivy has fought (and won) this fight many times and in many states. He is making a positive difference in the culture, through winning judgments, addressing the media and helping advocate for better laws and enforcement.” —Dave Brandt, Ellison Bay, Wisconsin

# QUESTIONS & ANSWERS

All information herein is of a general nature and should not be relied on in lieu of specific legal advice from a lawyer. Every case is different and all relevant facts must be taken into account before decisions are made. Relying on general information without seeking legal counsel is likely to do harm to your interests.

## Glossary:

~**Victim:** the specific individual or individuals hurt due to the criminal or negligent acts of another.

~**Survivor:** the family member or loved one of someone killed due to the criminal or negligent acts of another.

Both “victim” and “victim/survivor” as well as the term “plaintiff” are all used interchangeably herein to refer to the individual or individuals who have a legal claim or “right of action” against a wrongdoer.

~**Perpetrator or defendant:** the individual who committed the negligent or criminal act, and also anyone who may have aided or abetted their conduct.

It should be noted that some cases fall within one or more topical areas. For example, a case involving an illegal alien who causes a crash when driving a commercial vehicle while intoxicated, falls into at least three areas addressed herein: *the legal system, drunk driving, vehicular crashes, and crashes with commercial trucks*. Therefore, the reader should examine each topic area to determine if it applies to his or her situation.]

## THE BASICS - WHAT TO DO IF YOU OR A LOVED ONE BECOMES A VICTIM

### 1) What are the most important steps a victim or victim's family members should take after becoming the victim of a crime or of someone's negligence?

Three are critically important:

~**First**, immediately report the incident to the appropriate authorities – do not delay.

~**Second**, promptly find and retain an experienced and trustworthy *civil* attorney to represent you – taking care to check the lawyer's background, experience and reputation first.

~**Third**, seek help from an appropriate group. [For example, a victim of any illegal alien crime, including those mentioned below, should contact VOIAC (Victims of Illegal Alien Crime) [see back cover for information], a victim of a drunk driver should contact MADD (Mothers Against Drunk Driving), a victim of rape or sexual abuse should contact RAINN (Rape, Abuse & Incest National Network), victims of crime generally may contact NOVA (National Organization of Victims Assistance) [**Contact information for all of these will be found on the back of this booklet.**].

### 2) What can these groups do for a victim/survivor?

Advocacy or support groups can provide guidance and support that a victim/survivor could not obtain readily elsewhere. Contacting a victim's group like VOIAC or MADD should be done immediately. In the stress, anxiety and even grief that follow these tragedies, a victim/survivor may make rash decisions that are contrary to his or her best interests, or the victim/survivor may fail to take important action that

should be taken promptly. These groups can help the victim/survivor avoid these mistakes.

### **3) When a crime has been committed, why does a victim/survivor need his/her own lawyer – won't the D.A. (i.e., district attorney – also called prosecutor) be the victim/survivor's lawyer?**

As explained in another answer (below) the D.A. represents the state, not the victim/survivor. The D.A. cannot help the victim/survivor with a civil claim for money damages. A victim/survivor should hire an experienced civil lawyer as promptly as possible. This accomplishes several things. First, the burden of concern about the legal proceeding shifts to the lawyer's shoulders where it can be best served, relieving the victim/survivor and family of much worry. Second, this makes it possible for a conscientious lawyer to move quickly to thoroughly investigate the incident (whether a negligent or a criminal act) and the defendant. (*Speed is extremely important.*) Third, as we will discuss further on, victims are often dismayed to find that the D.A. does not display the concern or diligence that justice would dictate.

## **FINDING A LAWYER – WHAT KIND? WHERE DO YOU LOOK? WHO?**

### **4) What kind of civil lawyer is needed for the victim/survivor?**

A civil lawyer who represents the victim/survivor should have experience in representing victim/survivors of the form of negligence or crime which took place. He/she should also be willing – with no excuses or exceptions - to help a victim/survivor in four ways:

~ **First**, to conduct a thorough and independent investigation. Some lawyers just file a lawsuit and rely on “discovery” (defined below) to “investigate”. This is poor practice and will reduce the prospects for obtaining all possible evidence. It will also likely slow down the resolution of the case.

~ **Second**, to pursue the civil claim for damages to provide as much financial support as possible for the victim/survivor.

~ **Third**, to assist the victim/survivor in making certain there is a vigorous criminal prosecution.

~ **Fourth**, have the experience and willingness to work with the media if needed to bring attention to the case or the cause. A good victim/survivor's lawyer will have the skill and credibility to pursue all four objectives - and the *willingness*. If a lawyer is inexperienced in any, this will mean s/he cannot be of maximum help to the victim/survivor. Likewise, if s/he neglects any, this can be a significant disservice to the victim/survivor.

### **5) In searching for a lawyer to represent me what should I look for?**

There are at least three attributes to evaluate.

~ **First**, the lawyer must have a reputation for absolute integrity. Unfortunately, this is not as easy to determine as one would hope. But only a lawyer who is known for his/her honesty is likely to serve you well, or, for that matter, can even be trusted.



~**Second**, the lawyer must have extensive experience and a proven record in the area of your need. Personal injury and wrongful death lawyers (these terms are most often used in legal parlance to describe this general area) are fairly common, but not all have the same level of competence or experience. Furthermore, a lawyer may have extensive experience in one area (vehicular crashes for example) but little experience in another (such as sexual offenses, products liability, medical malpractice, etc.).

~**Third**, the lawyer must have a demonstrated record of diligence. No matter what his level of experience, a lawyer will only frustrate a client – and perhaps do harm to his or her case – if he is slow, unresponsive, puts the case off, or places it far down a list of his priorities. Only lawyers who have a reputation for “seizing the bull by the horns” and moving the investigation and claim quickly should be considered.

**6) Must a victim/survivor only retain a lawyer who is in the immediate area where the negligence or crime occurred or where the victim/survivor lives?**

This is not necessary. If the lawyer is willing to travel to where the victim/survivor lives or where the crash occurred there will be no problem. It is more important to focus on his experience and reputation than on his location. If the lawyer selected is outside the state where the incident occurred he can also choose a lawyer from that state to assist him if necessary. Under this arrangement – called “associating” - the two lawyers share the single fee. In some cases this can be better since the victim/survivor obtains two lawyers’ skills for the price of one. One lawyer may have expertise the other lacks.

**7) Does it matter if the civil lawyer also represents criminal defendants in his practice?**

A view shared by many victims advocacy groups is that a victim should only hire a lawyer who does not represent criminal defendants. Some lawyers play both sides of this fence. They represent victim/survivors and perpetrator/defendants. Though lawyers’ ethical rules permit this, it says little for the lawyer’s commitment to the cause of victim/survivors. Furthermore, a victim/survivor’s lawyer will likely have more credibility with the D.A., a jury, and the media, if he does not also defend perpetrator/defendants.

**8) How are civil lawyers paid?**

Usually, civil lawyers in personal injury or wrongful death cases are paid on what is known as a contingency fee. This means the lawyer gets a percentage of whatever money he recovers for the victim/survivor. Typically, this is one third but can go as high as fifty percent depending on the circumstances of the case. If the lawyer does not recover any money for the victim/survivor, the lawyer will not be paid. However, the victim/survivor will still be responsible for his lawyer’s expenses.

**9) Is hiring a lawyer through a written agreement a good idea?**

Yes, for both the victim/survivor’s and the lawyer’s protection, every term of their agreement should be put in writing.

**10) If the victim/survivor finds that his lawyer is not doing a good job, can he fire him and hire another?**

Yes. A client has an absolute right to fire his lawyer and switch to another, though he may still have to pay the lawyer's expenses.

**11) Can a victim/survivor settle his/her own claim without having to hire a lawyer?**

Yes, in some cases – involving minor injuries - this can be done. But these cases are few. Handling your own legal case is somewhat akin to your handling your own medical care. Were a victim/survivor simply to settle his own claim without having an experienced lawyer represent him and investigate the entire background, the victim may be at great risk of missing some benefits or money damages to which he may be entitled.

Furthermore, once the victim signs a release – which an insurance company will require before they pay any money to a victim – this will end all prospects for recovering any other money. There are many questions which can be answered only through thorough investigations. If those questions are not answered, any settlement a victim agrees to may be contrary to his own interests. For example, an insurance company adjuster may offer a victim/survivor \$100,000 if the victim/survivor will sign a release. Yet there may be much more coverage available, of which the victim/survivor knows nothing, or the defendant may have assets unknown to the victim/survivor. Once the victim/survivor signs a release, however, s/he can no longer sue the defendant or make a claim against the insurance company even if s/he learns later that there was more coverage, more assets, or that s/he was entitled to more damages.

There is another reason for not trying to handle one's own case: No one thinks clearly or objectively after a trauma or crisis. A victim/survivor experiences intense emotions: confusion, fear, grief and frustration. This is why any victim/survivor should seek the help of an experienced civil attorney and a support group.

**URGENT! – INVESTIGATE  
THOROUGHLY AND QUICKLY**

**12) Why is there urgency about investigating quickly after a victim is hurt or killed due to a negligent or criminal act?**

Investigations are critically important first steps to civil legal claims or filing lawsuits - and doubly important when criminal conduct occurred. Delays in investigation can mean evidence may be missed that otherwise might have been learned had the investigation been prompt. Witnesses may be forgetful or decide to not "get involved". Investigations are also essential preparation for advocacy action. Knowledge truly is power and having access to facts that may be unknown to the public can give an advocate much greater leverage to influence public thinking. We always hope that a victim will call us soon after the incident so we can begin an investigation quickly.

**13) Isn't the law enforcement investigation enough?**

No. Law enforcement investigations focus only on any crime committed. They do not focus on many critical questions (a few are listed below). In any event, some law enforcement

agencies are overworked and understaffed and do not do thorough investigations.

#### **14) What should be the focus of an investigation?**

A thorough and complete investigation will focus on finding witnesses and evidence that will prove the defendant is liable to the victim/survivor. But the specific objectives of this search are complex and far too numerous to list here. They include making photographs, locating witnesses, researching the defendant's prior criminal record, his place of employment and where a drunk or drugged driver got his alcohol or drugs. This incomplete list illustrates how complicated the investigation is. The important point is knowing what to look for, how to search, where to look, how to document what is found, and how best to use the information. These are critical skills developed only through extensive training and experience. Retired FBI agents tend to make excellent private investigators. We frequently use retired agents for investigations in different states in which we have represented victim/plaintiffs.

### **WHEN CAN I SUE? HOW CAN I SUE?**

#### **15) What is the difference between a tort and a crime and why is that difference important?**

A tort is a *civil* wrong committed against an individual, whereas a crime is a wrong deemed to be committed not only against an individual but also against society or the government. A wrongful act may be *both* a tort and a crime. For example, if an individual drinks at a bar then gets into a vehicle, drives a short distance and strikes another car, killing or injuring its occupants, then both a tort and a crime have been committed. Crimes which have been committed are driving under the influence of an intoxicant, reckless driving, vehicular assault, and vehicular homicide. But the drunk driver has also committed a tort against any individual in the other car who was injured or killed. Anyone who is the victim of a tort has the right to sue the person who committed the act. This would mean that crimes such as murder, rape, robbery, assault, drunk driving, sexual abuse of children, etc., are all torts, and the individuals harmed (or their surviving family members) can sue the perpetrator. Simultaneously, the state can prosecute the defendant/perpetrator for the crime.

#### **16) What is the difference between a civil lawsuit and the criminal prosecution against the defendant?**

The criminal prosecution is handled by the D.A., who represents only the state and not the victim/survivor. The criminal prosecution is designed to punish the defendant for violations of the criminal law such as drunk driving, vehicular homicide, rape, assault, etc. The civil claim (which may become a lawsuit) is handled by the victim/survivor's own lawyer, often in a separate court, with different laws applying. The victim/survivor or his family needs a private *civil* lawyer to represent them in their *civil* claim for money *damages* against the perpetrator/defendant - or anyone else who may be liable for the victim/survivor's harm.

#### **17) Can a victim sue a criminal for a criminal act committed against the victim or his loved one?**

Yes, victims of crime have the right to sue the criminals who harmed them – even if the defendant was found not guilty at a criminal trial. A classic illustration of this was the O.J. Simpson criminal trial which resulted in a not guilty verdict. But the families of the victims did not give up. They sued Simpson in a civil trial and won their case – on the same set of facts! We do not often hear of civil lawsuits against criminals because criminals are typically “judgment proof” - a lawyer’s term which means they have no money or assets to take if a lawsuit is successful. However, an experienced and hard working lawyer might investigate and learn that someone else is also liable for the victim’s injury or loss. For example, a drunk driver may not have assets or insurance to pay for the injury or deaths he causes, but a bar or nightclub which provided him with the alcohol might also be liable. Likewise if someone commits a civil or criminal wrong – whether a vehicular crash or a criminal act such as rape or assault – while they are on the job, their employer may also be liable. Furthermore, a motel or other commercial entity may be liable for a rape, assault or murder because of lax security which failed to protect those on the premises. For this reason, each case should be examined closely.

### **18) Are there torts that are not also crimes?**

Yes, there are many wrongful or negligent acts which are not criminal in nature but which make the perpetrator civilly liable to the injured person. Some examples - a motel or other business might be liable for failure to provide adequate security which resulted in a rape, assault or murder; an employer may have been negligent in hiring or supervising a perpetrator/defendant; a defective product, such as a vehicle, tire, toy, medical item, medicine, lawn mower, child car seat, etc., can cause injury which becomes the basis for a lawsuit against the manufacturer and retailer; medical malpractice can result in civil liability.

### **19) Can the victim/survivor avoid a lawsuit and still achieve a settlement?**

Yes, in some cases – and this should be done if possible. But it will be possible only if the victim/survivor’s lawyer has done the thorough investigation described above and has done the hard work of properly preparing the victim/survivor’s case *in detail*. Many times this is not done – the lawyer simply files the lawsuit.

### **20) Why not just immediately file the lawsuit and sue the defendant?**

Sometimes the facts dictate this should be done. However, this is often not in the victim/survivor’s interests because filing a lawsuit brings certain factors into play: First, the legal system moves ponderously slowly – resolving the case will usually take longer. Second, the victim/survivor will have to endure not only a long, drawn out lawsuit, but also having to answer “interrogatories” (defined below) and give “depositions” (also defined below) as well as other tedious, intrusive and stressful steps. We make it a policy to try to avoid getting our clients into a lawsuit unless there is some sound reason for doing so. Usually – though not always - a victim/survivor is better off if his lawyer can avoid getting bogged down in a lawsuit.

**21) Who may sue if a family member or loved one is killed in a crash, or by criminal conduct, or by some other incident for which there is civil liability?**

Typically, the surviving spouse has this right, or the surviving children if there is no spouse. But the lawsuit is often brought in the name of the estate of the deceased.

## **VEHICULAR CRASHES DRUNK DRIVING**

**22) What is a “crash” or “accident” report?**

This report, filed by investigating officers setting out their initial findings about a vehicular crash, is kept on file at the law enforcement agency’s offices and can usually be obtained for a small fee. This is typically the first step in investigating a vehicular crash.

**23) What is BAC?**

Blood alcohol concentration. If an investigation of a drunk driving crash is handled as it should be, investigating law enforcement officers will arrange for a BAC test to be done when they suspect alcohol was involved. Unfortunately, sometimes these tests are not conducted promptly after the crash. The body assimilates approximately 0.02 of alcohol every hour. Therefore, a drunk driver could have had blood alcohol as high as 0.20 at the time of the crash, yet only show .08 BAC if the test is given 6 hours later.

**24) What about drugs?**

Sometimes this is overlooked in investigations of vehicular crashes. We sometimes take steps to arrange for private testing of the blood alcohol sample of the defendant drunk or drugged driver. *In one case, we were able to prove that our client’s wife was killed by a commercial truck driver who was not only drinking but also using cocaine.*

**25) What is a “dram shop” action?**

A bar, nightclub, or restaurant that sold alcohol to a drunk driver – or a private individual who provided alcohol at a party, etc. - prior to the crash may be liable also. These cases are often difficult to prove but very important to investigate. Similarly, sources of drugs should be investigated as well.

**26) What is accident reconstruction?**

A trained expert (i.e., accident reconstructionist) attempts to determine (i.e., “reconstruct”) exactly what happened in a vehicular crash through extensive use of measurements and photographs. If there was a death in the crash, usually a law enforcement agency will send a trained reconstructionist to do this. However, an experienced and diligent victim/survivor’s civil lawyer will also consider whether a *private* accident reconstructionist should be hired.

**27) Can someone who was injured as a passenger in a vehicle driven by a defendant who caused the crash due to negligence or drunk driving sue for damages?**

Yes, in many cases a victim/survivor who was a passenger

can make a claim for civil damages against the drunk or negligent driver who was driving the vehicle in which they were riding.

**28) Are crashes involving *commercial vehicles* handled the same way as other vehicular crashes?**

The negligence of a commercial truck driver should be investigated even more closely, and the case handled somewhat differently from other forms of vehicular crashes, simply because the laws that pertain to the operation of commercial vehicles are significantly more stringent.

**29) Will my own auto insurance help pay my damages if I am struck by a negligent or drunk driver?**

Yes, it can, but only if you have the right coverage and in sufficient amounts. Every state in the U.S. is either a “no-fault” or “non no-fault” insurance state. If the crash occurs in a no-fault state all costs are covered by the policy of each individual involved. Though this system is supposed to be less likely to trigger a lawsuit, some insurance companies may not pay as they should and filing suit becomes necessary. If the crash occurred in a non no-fault state, the defendant’s own insurance must pay the victim or his survivors for the damages. However, if the defendant had no insurance (and our cases show this is true about 60% of the time for drunk drivers) the victim/survivor’s only hope of getting money damages will be in receiving benefits under the uninsured/underinsured motorist (UM) provisions of his own policy.

**30) How much money is usually available in auto insurance benefits?**

Whether under liability coverage or uninsured and underinsured coverage (UM), benefits may range from as low as \$25,000 to half a million. The majority are in the \$25,000 to \$100,000 range. Many states only require a minimum of \$25,000 per person/\$50,000 per crash in liability coverage. Unfortunately, probably the majority of drivers only purchase minimum liability coverage and minimal UM coverage.

**31) How much liability automobile insurance should a driver or vehicle owner have?**

Liability insurance is the insurance which covers you in the event you are at fault. In today’s world of expensive medical treatments and other high costs no one should have less than \$100,000/300,000 in liability coverage (meaning \$100,000 per person injured and a total of \$300,000 for each crash) and even this is inadequate. It is far better to have at least \$500,000 in liability coverage.

**32) How much uninsured and underinsured motorist coverage should a driver or vehicle owner have?**

This is one of the most valuable – and often neglected – forms of insurance coverage. There are many uninsured or underinsured drivers on American highways. This is especially true of illegal aliens and repeat offender drunk drivers. For your protection, you should have a bare minimum of \$100/300,000 coverage (which works like the liability insurance described above) or, better yet, a minimum of \$500,000.



## SEXUAL ASSAULT & CHILD SEXUAL ABUSE

### **33) What should I do if I, a loved one, or my child is the victim of some form of sexual assault or sexual abuse?**

Report the crime immediately and immediately take the victim for a medical examination. Having represented innumerable victims of sex crimes, particularly children, I have learned that failures to act immediately in *both* these respects are two of the most common reasons for failures of either the criminal prosecutions of the perpetrator or the civil cases against others who might otherwise have been liable. Failure to document the crime through medical examinations and rape kits, or failure to report the crime immediately to authorities can make it difficult or impossible to take successful legal action either criminally or civilly.

### **34) If I or my child is the victim of sexual assault or sexual abuse; can I sue the perpetrator?**

Yes. However, as mentioned, criminals often have no assets. But a diligent lawyer will investigate thoroughly to determine whether other individuals or entities might be liable as well. For example, when a child is molested by a school teacher during school hours or on school grounds, the school itself may be liable. (*We have been successful with these types of cases.*) Similarly, if a rapist or sexual abuser commits these crimes while on the job his employer may be liable. If murder, rape or assault occurs at a hotel, motel, retail establishment or other public place, the owners of the premises may be liable because of lax security or other reasons that made it possible for the perpetrator to commit his crimes. There are many considerations in such cases and only an experienced and diligent lawyer can determine what is feasible.

## PRODUCT CAUSED INJURIES

### **35) If I was injured or my loved one was killed by a product or item, how can we make a claim for compensation or damages?**

Lawyers call these “product liability” cases and they include a broad array of ways that people may be hurt or killed, including defects in vehicles, child car seats, foods, medicines, tools, clothing, toys, tires, and every conceivable type of item which could be purchased or used. (*We have been involved in products liability claims concerning vehicles, child car seats, food, etc.*) These cases are particularly difficult to prove so it is very important that you do the following: a) promptly retain a lawyer with experience in this field (see questions above regarding lawyer searches); b) if you have control over the product that caused the injury or death make sure you keep it in a location where it cannot be harmed or tampered with; and c) if you do not have control of that product make sure you know where it can be found.

## MEDICAL & PSYCHOLOGICAL TREATMENT AND EVALUATION

### **36) How important is the medical and psychological treatment and evaluation of a victim/survivor?**

The quality and thoroughness of medical care for a surviving victim/survivor of negligence or crime is critical for their

physical well-being and also their civil claim against the defendant. No shortcuts or delays should be taken here. A diligent victim/survivor's lawyer will try to determine quickly whether medical care has been adequate - and perhaps facilitate further evaluation and treatment. Injuries are sometimes misdiagnosed or missed. Similarly, there is almost always an emotional injury - especially when someone has been victimized by a criminal - and evaluation and treatment of this emotional injury should be a high priority as well.

### **MONEY DAMAGES - TO HOW MUCH IS THE VICTIM OR HIS FAMILY ENTITLED?**

#### **37) What are the possible “damages” to which a victim/survivor might be entitled?**

A victim/survivor is entitled to medical and/or funeral expenses, property loss, income loss, pain and suffering, loss of consortium (harm done to the marital relationship due to the victim's injury or death) and usually punitive damages (damages given to punish the defendant). Sometimes a governmental entity may also be partially responsible such as a city, county, or state government and have to pay damages as well.

#### **38) How can I know how much I am entitled to for my injuries or the death of a loved one?**

That is far too complicated to answer briefly, and can be done only on a case by case basis. Only an experienced lawyer will know how to assess the “value” of your claim (i.e., how much in money damages you may be entitled to). There are many components to this assessment: lost wages, medical expenses, permanent disability, pain and suffering, permanent scarring or disfigurement, emotional distress and loss of consortium with your spouse.

#### **39) Are there other possible sources of compensation for a victim/survivor?**

All states have crime victim compensation laws to reimburse crime victims for some losses, but only if other civil and insurance benefits are not available. Unfortunately, these funds typically don't provide nearly enough benefits to cover most victims' losses. Usually the D.A.'s office will assist a victim in filing for these benefits. Another possible option is restitution, which means money that the criminal court may order the defendant to pay the victim/survivor if the defendant is convicted. It is not a very promising option for the victim/survivor, however, since it usually takes months or years and often defendants do not have assets with which to pay. Restitution should be used extensively and in all states, but the reality is that it is rarely of much benefit to a victim/survivor.

#### **40) If the defendant is convicted in a criminal trial does this mean the victim/survivor will automatically be paid damages?**

No. A conviction will likely help the victim/survivor in his

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civil claim for damages, but does not automatically mean the victim/survivor will receive money damages. The reverse is also true: just because the victim/survivor successfully obtains civil money damages from the defendant does not mean the defendant will be convicted of the crime. O.J. Simpson was acquitted in the criminal case but lost the civil case against him for damages.

## THE LEGAL SYSTEM

### **41) Is there any reason a victim/survivor should be concerned about how the legal system will handle his civil case or the criminal prosecution of the defendant?**

Yes, do not assume the justice system will be just. Grave injustices occur every day in the American legal system – and some are the result of acts or failures of officials in the legal system itself. This is an often hidden second tragedy that sometimes follows in the wake of a criminal or negligent act. Disillusionment may set in when the victim/survivor discovers that many times our justice system fails to provide what its name implies. This is another reason why the abilities, experience and diligence of the victim/survivor's lawyer are so important. Similarly, the abilities, determination, and experience of an advocate with an advocacy group can make a big difference in the outcome. Some advocates are passive and nonconfrontational. The truly effective advocate will be assertive and bold – as well as wise about what to say, when to say it, where to say it and how to say it.

### **42) What can the victim/survivor's civil lawyer do to make certain there is a vigorous criminal prosecution?**

Though a civil lawyer representing the victim/survivor cannot order a D.A. to do anything, his attentiveness to the D.A.'s conduct of the case will often ensure that the D.A. is more diligent. This is why the victim/survivor's lawyer should also have experience in working with the media. Nothing ensures diligence on the part of public officials like having their actions (or failures) brought to the attention of the public. Finally, if the civil lawyer conducts his own investigation, he can sometimes help the D.A. by locating new evidence.

### **43) What typically happens in the early stages of a criminal prosecution?**

Initially the suspected defendant is charged with a crime (e.g., DUI - driving under the influence, DWI - driving while intoxicated, reckless driving, vehicular assault, vehicular homicide, rape, assault, or some other related charge). These charges are taken before a grand jury which must determine whether the evidence is sufficient to show "probable cause" to try the defendant. Usually, the grand jury will return what is known as a "true bill" or "indictment" meaning the defendant will be tried. At arraignment the defendant pleads guilty or not guilty. Often, a bond is set at this stage.

### **44) What happens between this time and through trial?**

The D.A. and defense lawyer representing the defendant search for evidence to support their opposing positions in the case. Unfortunately, the ponderous slowness of the legal system begins to tell. Usually "continuances" or delays will be

requested by the defense or by the D.A. This will likely delay trial for months if not a year (or years). Victim/survivors are often shocked and deeply frustrated when they realize how slowly the legal system operates. Most cases do not go to trial but are concluded by a “plea bargain”, an agreement between the D.A. and the defense attorney that the defendant will plead guilty in return for a lesser sentence. If the victim/survivor’s civil attorney is doing his job properly, he will let the D.A. know that he and his client want to be informed of all plea bargain negotiations. If a plea bargain is rejected by the judge – which is relatively rare – the case will go to trial. Once convicted, the defendant will later be sentenced. Here too, a victim/survivor’s civil lawyer should make sure the victim/survivor’s voice is heard. Sometimes this is done through a “victim impact statement” submitted to the D.A. for presentation to the judge.

#### **45) What are “statutes of limitation”?**

Laws in every state require that a civil lawsuit must be brought within a given period of time. Otherwise the right will be lost. Most often these statutes are 1, 2 or 3 years. This is another reason why a victim/survivor should not delay about getting help from an experienced civil lawyer. Legal rights can be lost if a victim, loved one or family member does not act promptly. *(In one case, we successfully represented four 11 year old girls who were molested by a school teacher. However, their parents failed to come to us early enough that we could file suit on their behalf as well. Fortunately, because the girls were still minors, we were able to at least file suit on the children’s behalf.)*

#### **46) What is “discovery”? a deposition? an interrogatory?**

Discovery is the process used during a civil lawsuit which permits each side to learn what the other side knows through interrogatories, depositions, motions to produce documents and records, and other methods of probing - a very tedious and time-consuming process that usually takes months at a minimum to complete. A deposition is verbal testimony, usually given in the law office of either lawyer, which a court reporter records under oath. It may also be videotaped. Interrogatory is just an unduly formal word for “question”. Interrogatories will usually be presented in writing by each side to the other with the expectation that they will be answered fully and truthfully.

### **TAKING A STAND ADVOCACY AND GOING TO THE MEDIA**

#### **47) Should a victim/survivor consider going to the media with his case?**

This is always an option but should be done with the help of a lawyer who is very experienced in dealing with the media. Most lawyers are not experienced in this way and could actually do harm to a victim’s cause. Advocacy groups can also be of great help in this regard. Nothing has an impact on the public’s thinking as much as seeing the tragedy of a victim or their family from the victim/survivor’s perspective. *(In my book Winning Against DUI I tell the stories of how this positive effect occurred in some cases we handled.)* A victim’s willingness to go before the media can also help groups like

MADD bring about changes in the law and public policy. However, a victim/survivor is under no obligation to speak publicly about his or her case. This is solely a matter of choice.

## **TAKING CARE OF YOURSELF AND YOUR LOVED ONES**

**48) I am afraid to report the crime against me or my loved one, and I am afraid to take civil action against the perpetrator. What should I do?**

A wise man once said, "Never give counsel to your fears". He did not mean to be reckless but never make important decisions based on fear. Your and your family's best protection will be in reaching out to law enforcement, an advocacy group, a capable lawyer and, sometimes, the media. Being intimidated will only work against you. The wrongdoer wins three ways: first in victimizing you, second in depriving you of what you are entitled to under the law, and, third, causing you not to take action that might save others from becoming victims. Don't be intimidated. Get help and fight!

**49) What else can victims/survivors do to help themselves?**

Victims/survivors and their loved ones should consider seeking psychological counseling for their emotional trauma and spiritual counseling for the bitterness they may feel. Victims/survivors of crime in particular are susceptible to damaging emotions. Having represented many victims of drunk or drugged driving, and sexual abuse I have learned that these victims must often deal with the knowledge they would not be victims/survivors were it not for the reckless or irresponsible choices of people in authority and the failures of our government to protect the American people. **Thirty years of practicing law have taught me that most negligent or criminal conduct could have been prevented. Often the failure of government officials or public agencies is an underlying and indirect cause of the victimization of tens of thousands of innocent people.** There is greater anger, frustration, and perhaps a desire for vengeance, when victims or their survivors begin to recognize these hard realities. Though anger is certainly justified, harboring long-term resentment is self-destructive to the victim/survivor. In effect the victim/survivor is permitting the defendant to continue to do even greater harm to him and his family. The victims/survivors I have represented who recovered best were those who turned to faith, and who eventually forgave, but who simultaneously began to speak out through groups. The choice to get involved in the cause and help others is very therapeutic. The combination of faith and prayer, a desire eventually to forgive, and the willingness to speak out in order to help others is powerful.

[Everything addressed in these questions and answers pertaining to vehicular crashes, especially involving drunk driving, is covered in greater depth in Mr. Scarborough's book, *Winning Against DUI*, which can be read at [www.ivyscarborough.com](http://www.ivyscarborough.com).]

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### **RAINN**

**(Rape, Abuse & Incest National Network)**

**[www.rainn.org](http://www.rainn.org)**

**800-656-4673**

### **NOVA**

**(National Organization of Victim Assistance)**

**1-800-879-6682**

### **MADD**

**(Mothers Against Drunk Driving)**

**MADD National: 1-800-GET-MADD**

Alabama.....	800-635-0722	Missouri.....	816-254-5200
Alaska .....	907-562-6890	Mississippi.....	601-939-0233
Arizona .....	800-553-6233	Nebraska .....	800-444-6233
Arkansas.....	501-376-6100	New Jersey .....	800-448-6233
California .....	800-426-6233	New Mexico .....	800-522-6233
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