

~~Surviving~~ Prevailing in the Cross Examination



What is your goal during cross
examination?

Protect your credibility

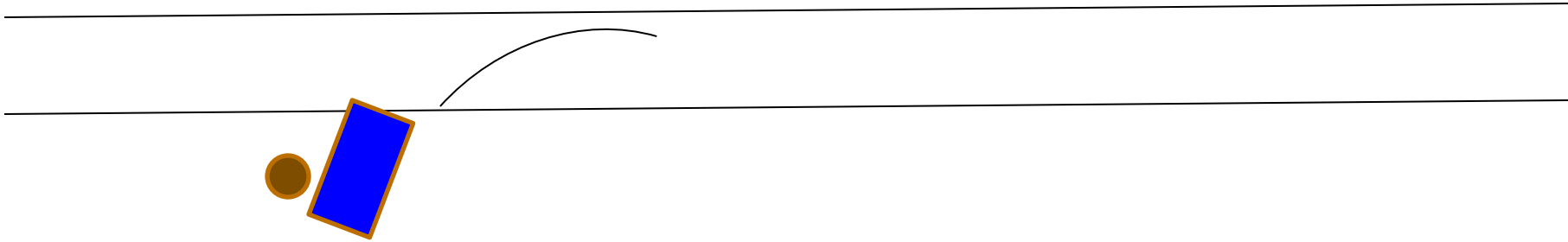
Protect the truth (reality)

What advantage(s)
do you have compared to
the defense attorney ?

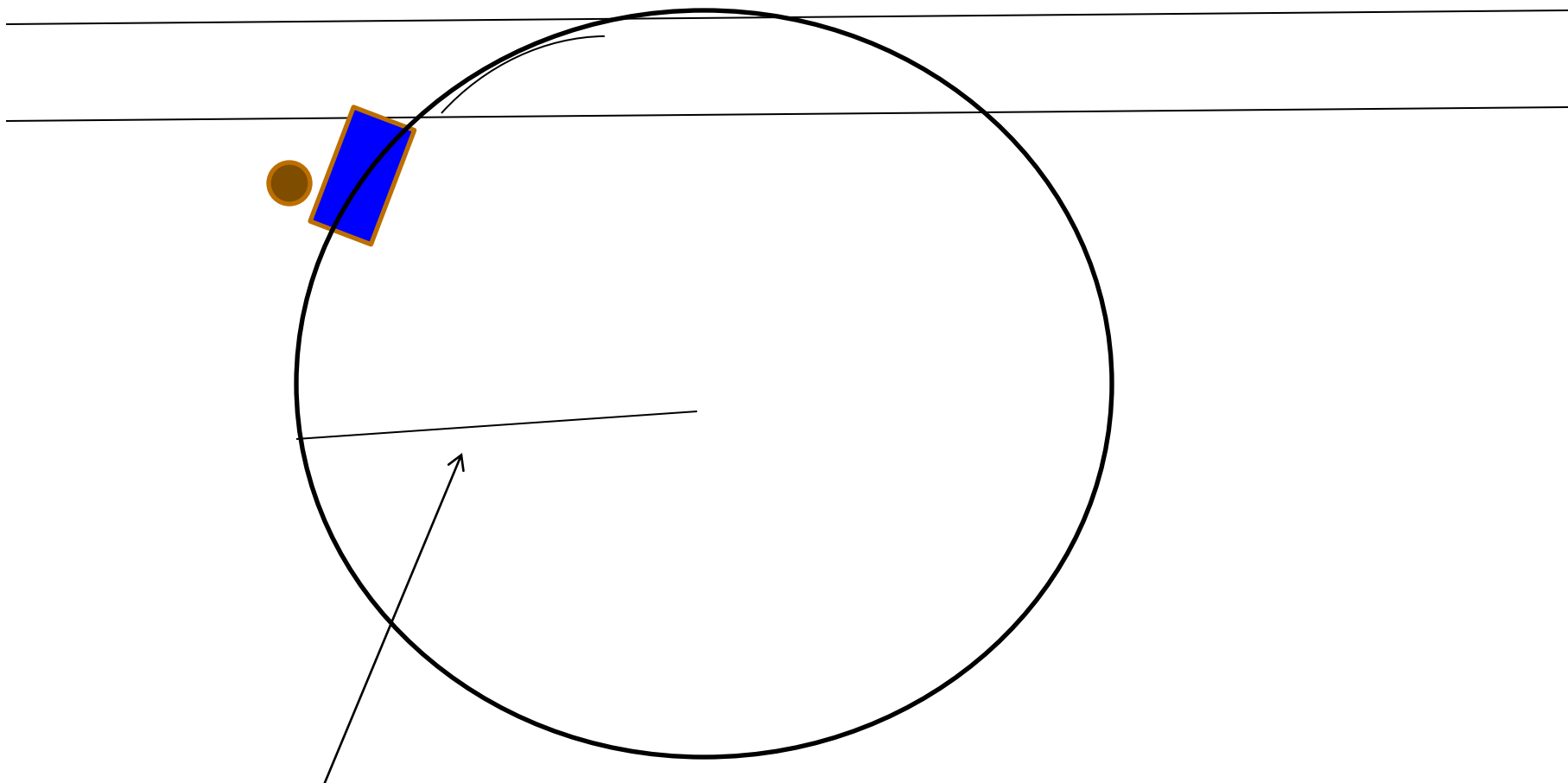
YOU
WERE
THERE!

YOU TESTIFY
FIRST

THE DEFENSE
ATTY MAY HAVE
BEEN MISLED
BY HIS/HER
EXPERT



VEHICLE YAWS OFF ROAD,
STRIKES A TREE



RADIUS

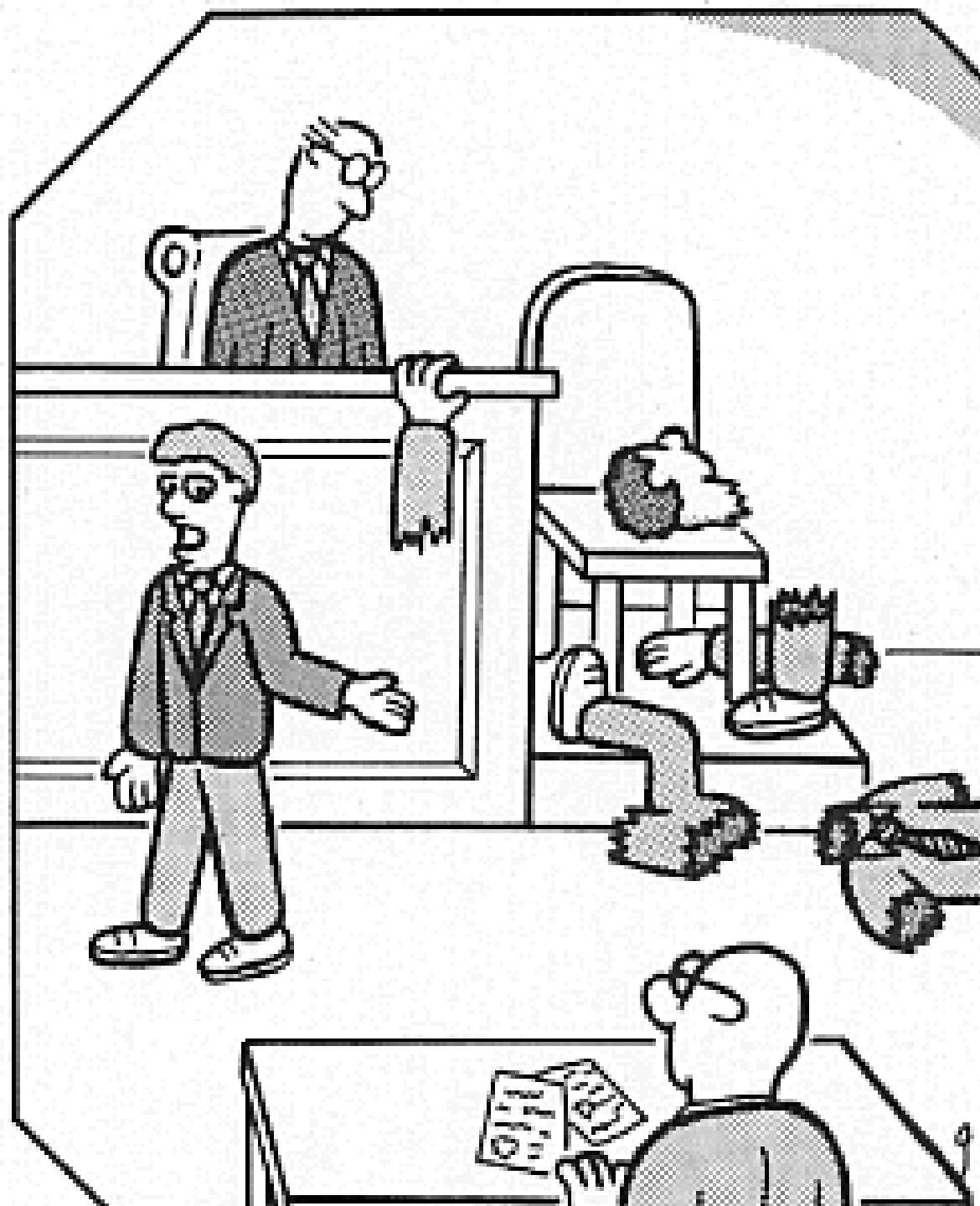
DEFENSE EXPERT'S REPORT:

“The evidence used by police to determine speed included only 30 ft of the tire mark, which was assumed to be part of a circle having a total circumference of 2100 ft;

As such less than 2% of the evidence was used by police.

“An error of as little as 4 inches in the middle ordinate would produce a significant error in the speed estimate.”

The cross
examiner's
dream.

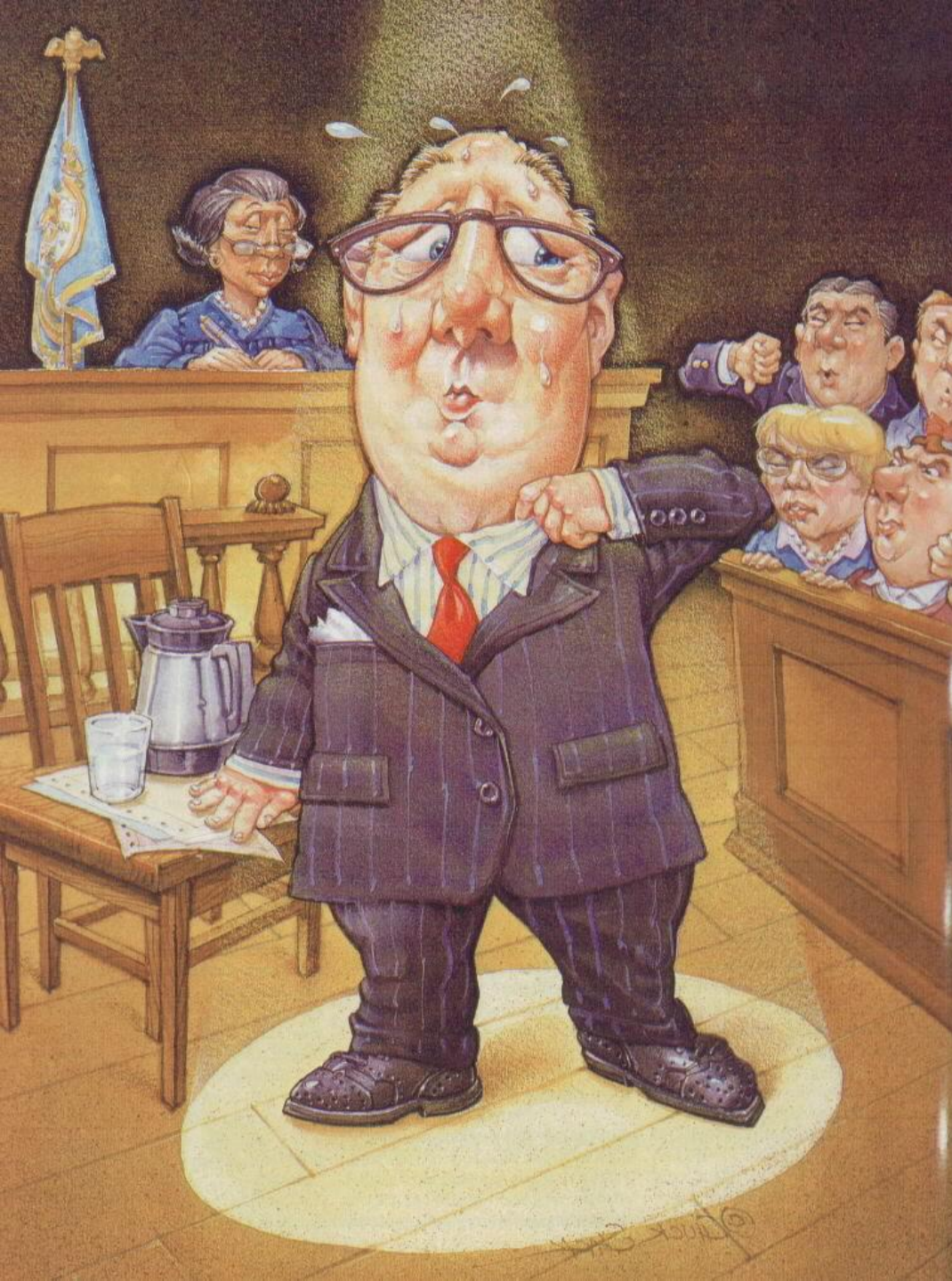


Purposes of a cross examination:

to hurt the State's case

to help the defense case

“to arm the defense attorney
for closing argument”



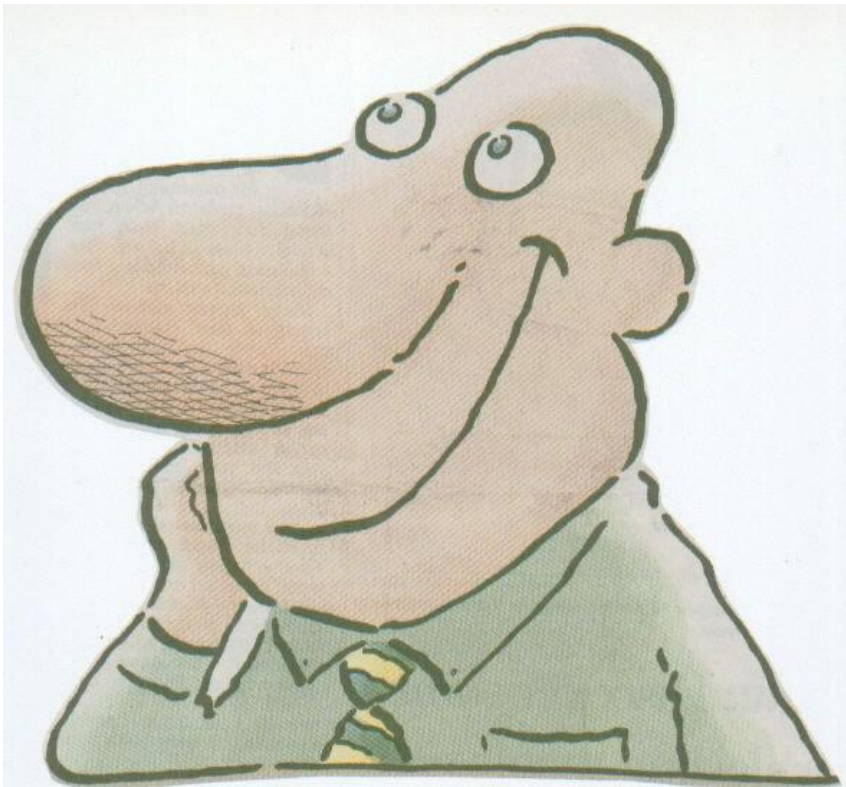
Why the defense
attorney
FEARS
the police witness

- Your testimony can convict
- You have control of time, truth
- The defense attorney must force you to change the picture in your mind's eye
- You may be more competent as a witness than s/he is as an examiner

WHEN DOES CROSS
EXAMINATION START ?

INSIGHT:

CROSS EXAMINATION
IS ***NOT PERSONAL***



Rule 11

YOUR CREDIBILITY IS YOUR
BEST SHIELD DURING
CROSS EXAMINATION.

"Nobody can take away
your credibility - you
have to give it away."

WAYS TO LOSE CREDIBILITY:

- BE EVASIVE – “disclosers/withholders”
- HAVE “ATTITUDE” – cocky, combative
- SHOW BIAS – “fudging” the facts
- BE A JERK
- GET ANGRY



**DEMEANOR
WHEN ATTACKED**

Levels of recollection :

things you know for sure.

things you don't know at all.

impressions, generalizations, estimates

- BRACKETS WON'T BOX YOU IN
 - 40-50 FEET v. 45 FEET
 - APPROX. 20 MINUTES
v. 20 MINUTES EXACTLY

If you don't remember...
say so!

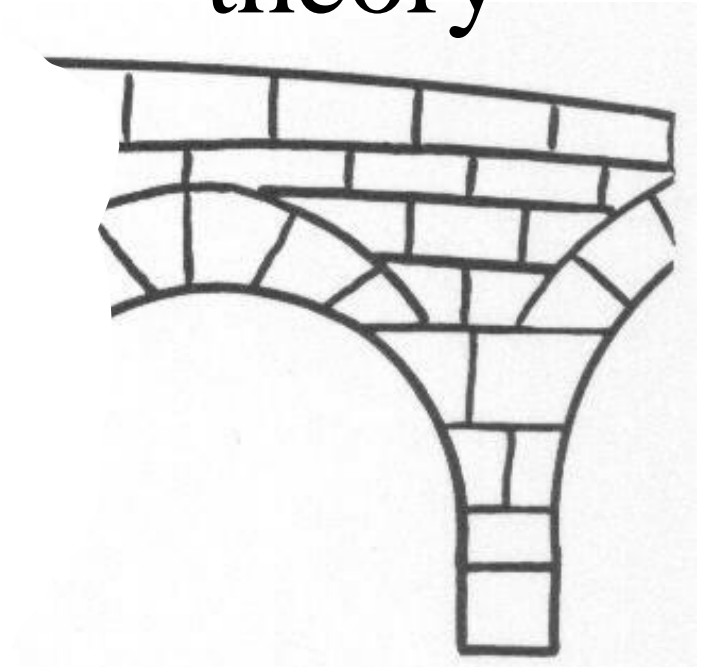
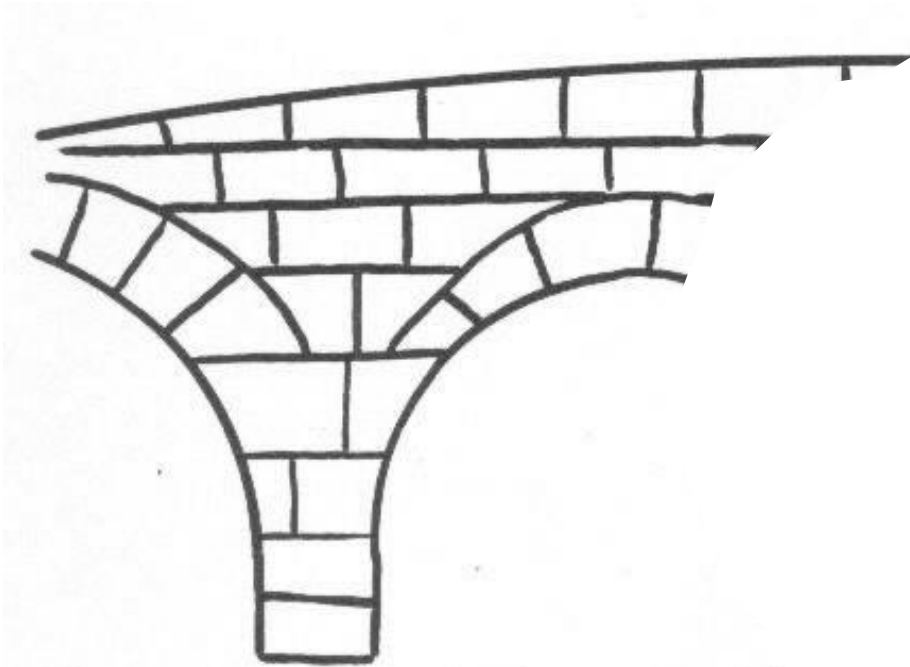
Rule 12

FILTER YOUR ANSWER
THROUGH YOUR
“MIND’S EYE”

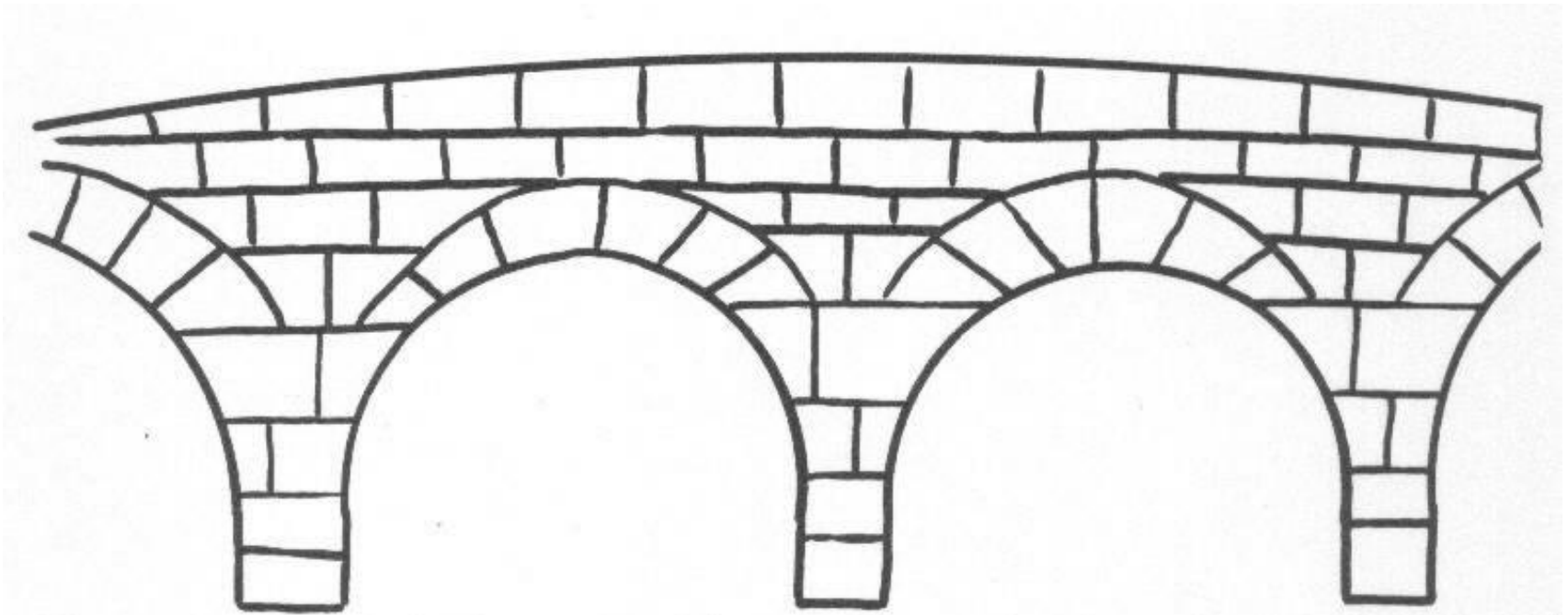
State's
case



defense
theory



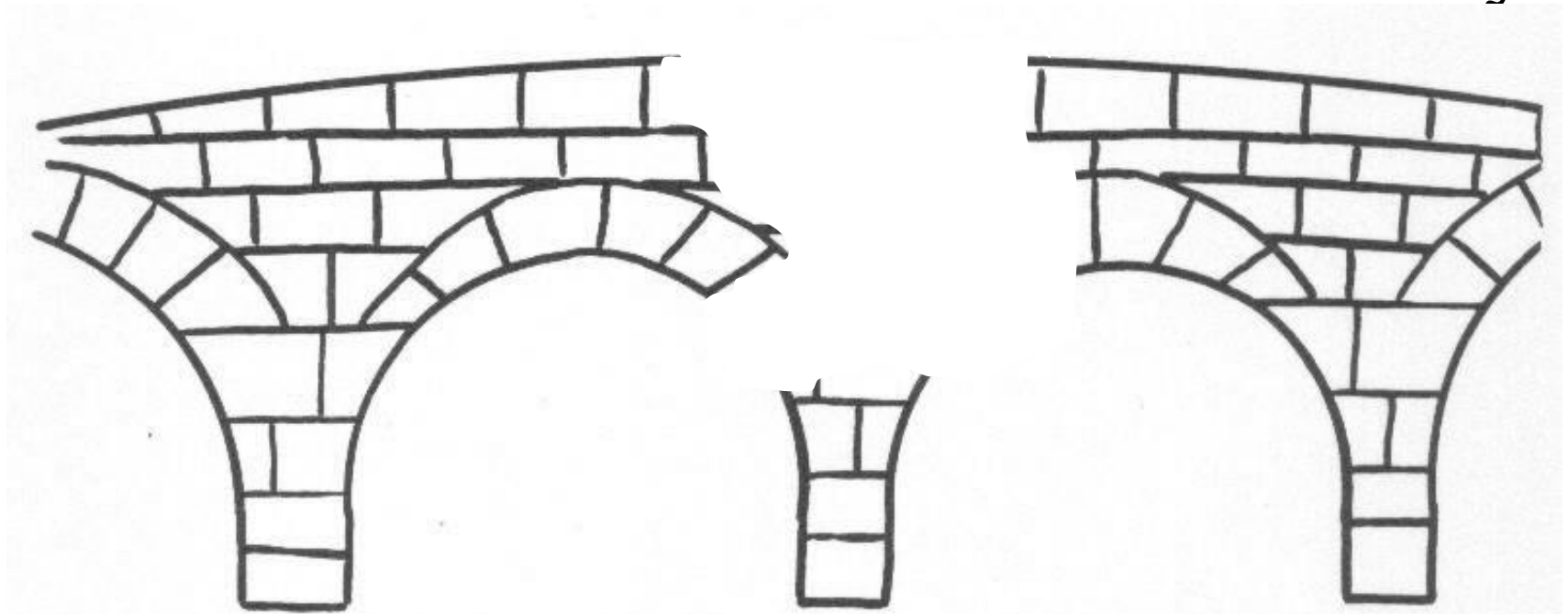
The defense attorney must use your words to build the bridge.



State's
case



Defense
theory



The defense builds one brick at a time.

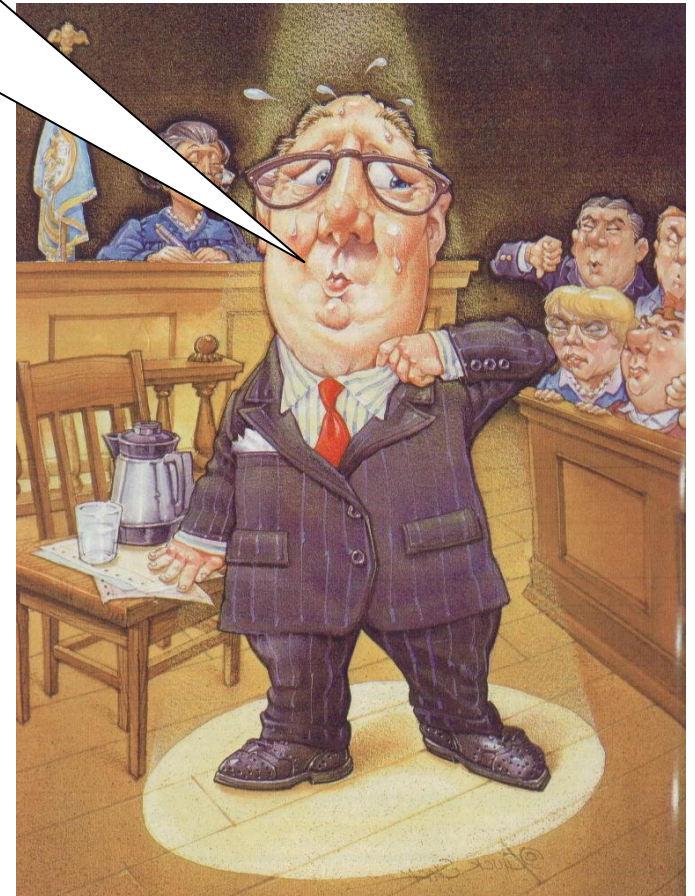
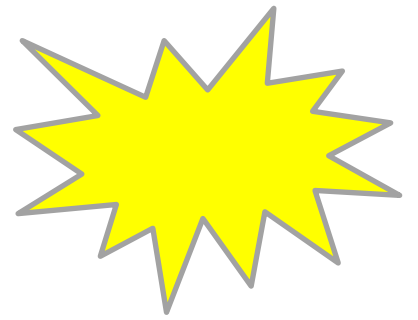
*YOUR ANSWER IS EITHER
A BRICK OR A SPONGE*





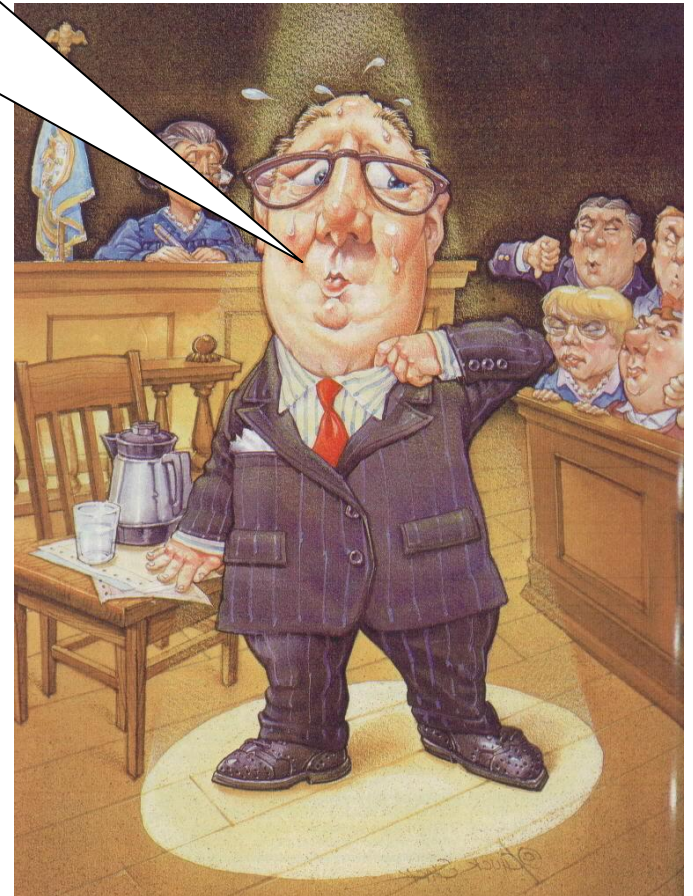
If your answer
is a sponge, the
defense attorney
cannot continue.

WHAT DO I DO NOW ?



WHAT DO I DO NOW ?

ARGUE



WHAT DO I DO NOW ?

ARGUE

***REPEAT THE
QUESTION***

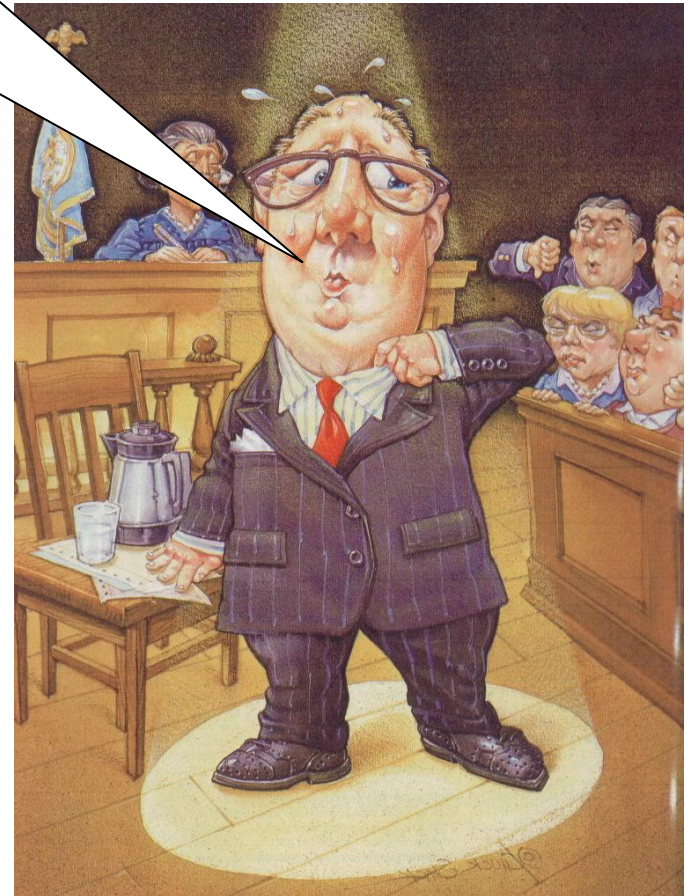


WHAT DO I DO NOW ?

ARGUE

***REPEAT THE
QUESTION***

***ASK THE JUDGE
TO HELP***



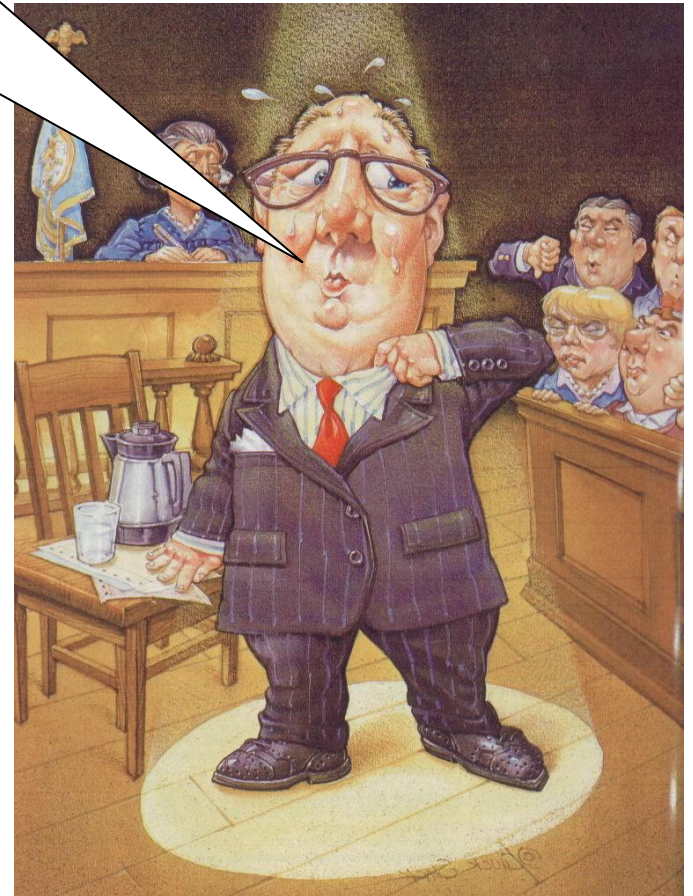
WHAT DO I DO NOW ?

ARGUE

***REPEAT THE
QUESTION***

***ASK THE JUDGE
TO HELP***

***GIVE UP, AND
MOVE ON***



CROSS EXAM STRATEGIES AND TACTICS

An orange diamond-shaped sign with a black border, tilted at a 45-degree angle. The word "CAUTION" is written in bold, black, sans-serif capital letters in the center.

CAUTION

Dangerous situation
ahead

concession-based
(affirmative)
cross examination

The affirmative cross may make you feel like you are helping the defendant, because ...

YOU ARE!

The defense attorney selects facts
that you must affirm.

He/she asks you to agree

If you don't, the question will be
repeated until you do.

In the meantime you will be
hurting your credibility.

In the end, you will concede,
anyway.

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Making concessions
makes you more credible.

The background is a collage of three images. On the left, a close-up of a judge's gavel. In the center, a statue of Lady Justice holding scales. On the right, a person in a suit and tie. The text "MAKING CONCESSIONS" is overlaid in the center.

MAKING CONCESSIONS

Your direct testimony was so
powerful and persuasive...

Your direct testimony was so
powerful and persuasive...

don't diminish it by being a

WTHHOLDER!

“If you stated in your report that you did not see my client stumble, as you testified here today, would that help refresh your memory. ”

beware of a question that starts
with the word

IF

IF = *hypothetical*

Q. You testified that you used the CSY formula to calculate my client's speed. Correct?

Q. Now if my client's vehicle struck a pothole that caused the loss of traction, that would invalidate the use of the CSY formula, wouldn't it?



the attorney uses a document,

The attorney may ask you to
acknowledge that the treatise is
“authoritative”.

FRE 803 Exceptions to the Hearsay Rule

18B if the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

It can be authoritative, but you don't have to agree with everything it says.

ask to see it.



LOOK AT IT CAREFULLY

BEWARE OF
HIGHLIGHTED PORTIONS

ASK PERMISSION TO
READ MORE OF IT.

(If necessary)

You calculate speed using the speed-from-skid equation.

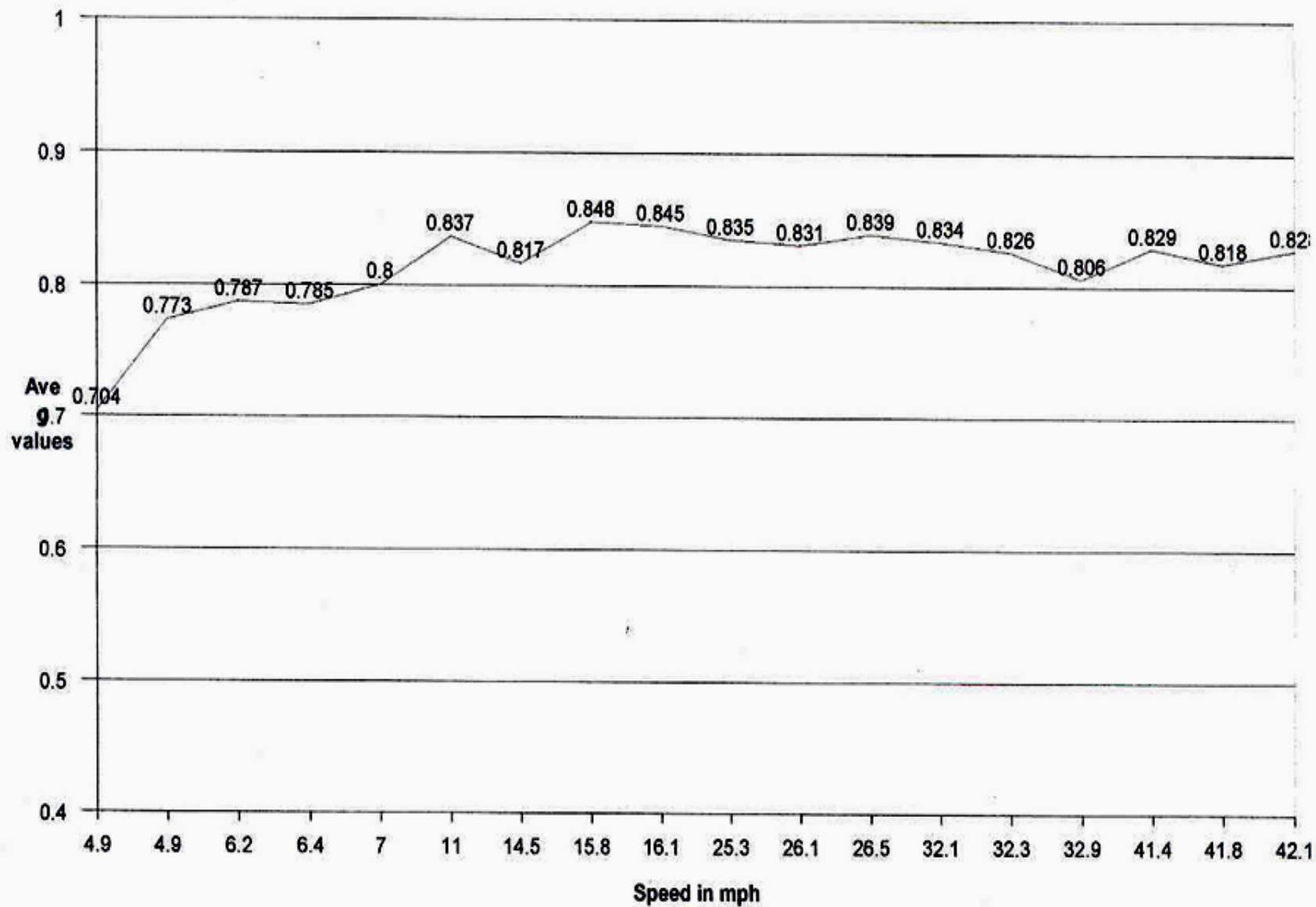
If you get a speed > 30 mph,
do you recalculate the speed
using a lower drag factor?

Defense attorney asks you to
authenticate a drag factor chart.

COEFFICIENTS OF FRICTION OF VARIOUS ROAD

DESCRIPTION OF ROAD SURFACE	DRY				Less than 30 mph
	Less than 30 mph		More than 30 mph		
	From	To	From	To	
PORTLAND CEMENT					
New, Sharp	.80	1.20	.70	1.00	.50
Traveled	.60	.80	.60	.75	.45
Traffic Polished	.55	.75	.50	.65	.45
ASPHALT or TAR					
New, Sharp	.80	1.20	.65	1.00	.50
Travelled	.60	.80	.55	.70	.45
Traffic Polished	.55	.75	.45	.65	.45
Excess Tar	.50	.60	.35	.60	.30
GRAVEL					
Packed, Oiled	.55	.85	.50	.80	.40

Ave g Values vs Speed





Is this the version of the manual
that you were trained on, most
recently, etc.?

Rule 13

YOU HAVE THE RIGHT TO
SEE ANY DOCUMENT THAT
IS BEING USED TO IMPEACH
YOU!

I need a volunteer.

Interrupting your answer:



INTERPOSING THE COURT REPORTER

be careful not to hurt
your credibility



DEF ATTY APPEALS TO THE
JUDGE FOR HELP

listen carefully

**YOU SHOULD EXPECT
THAT EVERYTHING
YOU DID OR DIDN'T DO**

**WILL COME OUT
AT TRIAL**



Remember:

**BEING A WITNESS
IS NOT A GAME !**

Be sure your credibility is intact when you
step down from the witness stand !