

IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY
STATE OF FLORIDA

CASE NO. 95-279-CF

STATE OF FLORIDA
plaintiff

vs.

WILLIAM OTIS WRIGHT
defendant

STATEMENT OF: RICK SWOPE

DATE: October 10, 1995

TIME: 10:35 a.m.

PLACE: Office of the State Attorney
201 S.E. 6th Street
Fort Lauderdale, FL. 33303

FOR THE STATE:

Ed Taylor
Assistant State Attorney
Office of the State Attorney
2101 15th. Avenue
Vero Beach, FL. 32960-3430

21 AGN 96.
FOR THE DEFENDANT:

Michael H. Bloom, Esquire
2699 South Bayshore Drive
Suite 600-C
Miami, FL. 33133



1 Mr. Taylor: Okay today's date is October the 10th.,
 2 1995. This is case of State of Florida versus William Otis
 3 Wright, case number 95-279-CF-A, Indian River County. This
 4 will be the deposition of Mr. Rick A. Swope, who's been listed
 5 a witness for the defense in the case. Ah--this deposition is
 6 being conducted in the State Attorney's Office Broward County,
 7 Fort Lauderdale, Florida. It is now 10:35 a.m. The
 8 deposition was scheduled to begin at 10:00 a.m. Ah--the
 9 witness did arrive at 10:00 a.m., however the defense attorney
 10 Michael, Michael Bloom has yet to arrive, so ah--we are going
 11 to go ahead and begin without, without ah--Mr. Bloom's
 12 presence. I've discussed this with the witness and, and he
 13 has no objections. Is that correct Mr. Swope? You have, you
 14 have no objections in beginning without Mr. Bloom being
 15 present?

16 Deponent: Correct.

17 Mr. Taylor: Okay. Would you raise your right hand,
 18 please? Do you solemnly swear the testimony you are about to
 19 give shall be the truth, the whole truth and nothing but the
 20 truth, so help you God?

21 Deponent: I do.

22 Q: Would you state your name and occupation, please for
 23 the record?

24 A. My name is Rick Swope, S-W-O-P-E. I'm self employed
 25 and I do primarily accident reconstruction and that's about

1 ninety percent of my business. The other ten percent deals
2 with consulting in D.U.I. cases.

3 Q. Have you been retained to work in this case, State of
4 Florida versus William Otis Wright?

5 A. Yes.

6 Q. And who, who did retain you?

7 A. Ah--Michael Bloom.

8 Q. Okay. You said ten percent of your work is D.U.I.
9 consultation?

10 A. Yes.

11 Q. And is that--your understanding is that you've been
12 retained as an expert in that area for this case?

13 A. It's my understanding at this time, yes.

14 Q. Have you been asked to do any accident reconstruction
15 in this case?

16 A. I, I don't recall if we've discussed that or not. I
17 think there is an accident in this case. Ah--but at this
18 point all Mr. Bloom has asked me to do is look at the blood
19 alcohol level at this point.

20 Q. Okay.

21 A. Um--if he--I, I haven't been provided with any
22 materials yet to analyze an accident.

23 Q. So it is your understanding then that you have been
24 retained to ah--assist him in a D.U.I. defense?

25 A. Yes.

1 Q. Okay. What is your charge for that?

2 A. I charge a hundred dollars per hour for any work I
3 perform on the file. Ah--I charge forty cents a mile for any
4 mileage and I charge a hundred and fifty dollars an hour for
5 Court.

6 Q. How long have you been in this type of work?

7 A. Since 1974.

8 Q. And I've got your curriculum B-Tie (Phonetic) here.
9 Would you just briefly go over your qualifications?

10 A. Ah--I guess I'll just stick to the D.U.I., since
11 that's what we're talking about. I became a Police Officer in
12 1974, I was first qualified on a breath machine in 1974 in the
13 State of Kansas. Ah--I became a Breath Tech and I have been a
14 Breath Tech every since. I'm still certified in the State of
15 Florida. I still hold a valid permit with FDLE, ah--which is
16 current. I was a Police Officer for fifteen years. I been an
17 Instructor in the State of Florida since 1985. What I've been
18 instructing in the field of, of breath and field sobriety
19 testing. Ah--I also was involved with the initial ah--
20 experimentation, so to speak with the Intoxilyzer 5000 when it
21 was brought into Florida. Ah--I was present during blood and
22 breath correlations on that machine and also on the 4011.
23 I've been present during approximately--for approximately five
24 hundred individuals that were dosed with alcohol and their
25 breath, or blood was taken at some point and analyzed after

1 that.

2 Q. How many people again?

3 A. Approximately five hundred.

4 Q. Five hundred.

5 A. I've also been present, or have participated in
6 approximately forty to fifty individuals where their blood has
7 been drawn and matched against their breath test.

8 Q. Okay.

9 A. Ah--and I've read all the literature. I go to
10 seminars put on by ah--experts in the field. And I was
11 present during testing numerous times at the Broward Medical
12 Examiner's Office where blood had been taken from an
13 individual involved in accidents. Ah--some of them the
14 drinking patterns were known, others they weren't. And I
15 would work with the Toxicologist at that time and try to
16 establish what the B.A.C. level was. And I teach it for the
17 State of Florida.

18 Q. Okay, where do you teach?

19 A. I teach at Broward County Community College. That's
20 my primary area that I'm an adjunct. I have taught in about
21 twenty Counties in the State of Florida, Palm Beach, Dade,
22 Monroe County, Duval ah--Sarasota.

23 Q. And you teach, you teach breath alcohol?

24 A. Well I--what I do is I teach--I don't sign the permit
25 myself. The only permit that I can sign is Field Sobriety

1 Testing. The permit for Breath Testing will be signed off by
2 an instructor that does that full time for the State. I just
3 teach the class and then it would be signed off.

4 Q. Okay, so you, you actually teach and certify someone
5 for Field Sobriety Tests?

6 A. Yes, that's, that's primarily what I do as far as the
7 teaching goes. The--or for the State, I should say. When I
8 teach breath testing they're always--that's always spoke
9 between me and other individuals.

10 Q. Okay.

11 A. And that, that's just for a reason, because I just
12 don't have the time to teach 40 hour classes--or 8 hour
13 classes.

14 Q. Okay. Let me make sure this thing is taping, hold
15 on. (Off the record; on the record.) Okay, it is taping and
16 we're, we're back on. Ah--do you actually teach any classes
17 on, on Retrograde Extrapolation?

18 A. Well when you say do I teach classes. There are--
19 there is no specific class that I'm aware of anywhere in the
20 State that teaches Retrograde Extrapolation as far as the
21 class goes. We teach it in class--

22 Q. Okay.

23 A. --as a setting. Ah--and we take the experiments that
24 we have conducted and the experiments other experts have
25 conducted and show students ah--things as burn off rate, how

1 fluid will effect a reading up or down. Ah--why, why two
2 tests are taken rather than one ah--those kind of things.

3 Q. But you do teach that?

4 A. Oh absolutely, sure.

5 Q. You do teach Retrograde Extrapolation as part of your
6 breath, D.U.I. class?

7 A. Yes, but it's not something that the students have
8 to pass as, as part of their requirement for the course.
9 That's just taught--Retrograde Extrapolation is taught as a
10 means that students can, can know how individuals with a blood
11 alcohol level can be estimated at certain points and times and
12 we certainly don't try to make anybody an expert in that. We
13 just show 'em the way that it's done.

14 Q. Now have you ever testified to Retrograde
15 Extrapolation as an expert witness?

16 A. Yes.

17 Q. Approximately how many times?

18 A. Oh, probably forty five to fifty.

19 Q. And give me a percentage State, Defense?

20 A. Well normally it would be for--and my percentage
21 would of been probably about eighty percent for the State,
22 because I, I've testified--I've only been testifying for the
23 Defense since I haven't been a Police Officer anymore, for the
24 last five years. So before that when I testified it was many
25 times for the State, maybe even more than that.

1 Q. Okay, and since you left the law enforcement
2 approximately how many times have you testified for the State?

3 A. In just Retrograde Extrapolation?

4 Q. Right.

5 A. None.

6 Q. None?

7 A. No.

8 Q. So all of your, all of your testimony has been
9 involved in criminal defense work, regarding Retrograde
10 Extrapolation?

11 A. Yes. How, however I guess the way that I would kind
12 of interject that, would be when you say when I testified for
13 the State, or for the Defense on Retrograde the, the way that,
14 that I testify is, is that obviously if you ask me a question
15 I answer it. So in other words I'm, I'm being paid by the
16 Defense to be there, but if you ask me a question and I--and
17 it, and it works to your benefit I guess you could say that
18 I'm--

19 Q. Well, yea.

20 A. --just answering either party.

21 Q. Right, you're gonna tell the truth. We, we expect
22 that, but my point is you've been hired--

23 A. Yes.

24 Q. --every time you've testified as a civilian or
25 Retrograde Extrapolation you've been hired to do so by the

1 defense?

2 A. Yes.

3 Q. Okay. When ah--when did you first get contacted in
4 this case?

5 A. Well I was contacted sometime in August by Mr. Bloom
6 ah--and I wasn't really official retained until September
7 1st., to, to my knowledge.

8 Q. Did he provide you with any information when he first
9 contacted you?

10 A. Well ah--as far as written information, no.

11 Q. Okay. What type of information did--oral
12 communication did you receive?

13 A. Ah--I was notified that he had a client by the name
14 of Mr. Wright that had been involved in some kind of an
15 incident. I believe it was an accident, but I'm not quite
16 sure right now. And he indicated that there was a blood
17 sample that had been taken sometime after the accident and he
18 also indicated that there was two breath samples that were
19 taken even farther, much farther in time about three to four
20 hours after the original accident occurred.

21 Q. Did he give you the, the numbers at that time?

22 A. I don't recall at that time if we discussed the
23 numbers or not. I, I do know that he indicated that the blood
24 reading was a 1.0.

25 Q. Okay.

1 A. But I don't think he talked to me about the breath
2 readings at that time.

3 Q. Okay. Did you do anything--how much, how much time
4 have you put into the case so far, excluding today's
5 deposition?

6 A. Ah--probably an hour and that's just reading the depo
7 of your expert.

8 Q. So basically all you've done so far in this case is
9 read the depo of Bob Parsons?

10 A. Yes and then I, I put some numbers together based on
11 that information.

12 Q. Okay, we'll get to those numbers in a minute. Ah--
13 today's--I did say, or today's date is the 10th. of October.
14 This accident occurred in March, I believe March 12th. Let's
15 see, or March 29th. of 1995. Between March 29th. of 1990--95
16 and today's date is the only thing you've received the--is the
17 deposition--

18 A. Yes sir.

19 Q. --of, of ah--Mr. Parsons?

20 A. Yes sir.

21 Q. You've received no Police Reports?

22 A. No sir.

23 Q. Have you had any contact at all with the defendant,
24 Mr. Wright?

25 A. No sir.

1 Q. So other than--alright, you were contacted in, in
2 August by Mr. Bloom. When, when again were you contacted?

3 A. Sometime in August. I'm not sure what date. I
4 don't, I don't have that date down. I know that I ah--
5 officially was retained by him on September 1st.

6 Q. What does that mean when you say you're officially
7 retained?

8 A. Well that means that I, that ah--he informed me on
9 that date that he was going to definitely use me.

10 Q. Okay.

11 A. Or that he had listed me, or something.

12 Q. Okay. Tell me what you've done in this case so far.

13 A. I have read the deposition of Mr. ah--Robert Parsons
14 and I put together two pages, well they're not complete pages,
15 but I just put together two pages of notes based on the
16 depositions of, deposition of Mr. Parsons. Ah--and my
17 conversation with Mr. Bloom and that's it.

18 Q. Okay. And I, I'd like to get copies of those notes
19 ah--after, after the deposition.

20 A. Sure.

21 Q. But we'll go through it at this point and time. Ah--
22 do you know Bob Parsons at all?

23 A. No.

24 Q. You, you never met him never?

25 A. Well not, not that I recall. I mean we may have met

1 at a seminar, or something, but I don't certainly recall him.

2 Q. Let's, let's go through your conclusions based upon
3 what ah--you read. Assuming everything you did,
4 (Indiscernible) the Parsons' deposition is true.

5 A. Okay.

6 Q. My main concern is were you able to determine the
7 blood alcohol level in Mr. Wright at the time of the accident,
8 which was approximately six o'clock, or approximately 6:10 in
9 the evening of March 29th. of 1995? I guess the question is
10 can, can you determine that? And if the answer is yes, could
11 you tell me how you determined that?

12 A. Well that's like a yes, but it's a broad yes. There
13 would be like an A and B for that.

14 Q. Okay.

15 A. And, and the A would be is that, in reading the
16 deposition of Mr. Parsons I looked at the information he
17 provided in his, in his deposition. Ah--based on the
18 information he has in his deposition as to the questions that
19 were asked him ah--as to being post absorptive, or when he
20 drank prior to the accident ah--basically his numbers come out
21 the same as mine would be.

22 Q. Okay.

23 A. Ah--there might be a little bit of difference as to
24 absorption rate. Um--he's using an absorption fa--weight to
25 be absorbed of up to an hour and I'm using up to a hundred and

1 fourteen minutes, which is about an hour--almost and hour
2 longer and I'm using that based on Doctor Dubowski, Curt
3 Dubowski's papers from 89 to present.

4 Q. What is, what is the significance of that? What's
5 the difference between the hour and the two hours?

6 A. Well the significance is, is since we have--at least
7 from my information, since we have an accident that occurred
8 approximately at six o'clock to 6:10 ah--we have a blood draw
9 that was taken at approximately 7:40, I believe. Let me just
10 check. 7:40 blood was drawn. Ah--so assuming that we have
11 roughly an hour to an hour and forty minutes after the
12 accident ah--the issue is going to be; Was his blood alcohol
13 level above an 0-8 at the time of the accident? Or was it
14 below at the time of an accident--at the time of the accident?
15 And, and again I'm using, just right now I'm using this six
16 o'clock figure. Neither Mr. Parsons, nor myself know exactly
17 how much Mr. Wright drank, but we do know that--at least it's
18 my assumption Mr. Wright had nothing to drink from the time of
19 the accident on. I'm not assuming that he drank anything
20 after the police arrived on the scene. I'm also making an
21 assumption in speaking with Mr. Bloom that Mr. Wright had his
22 last drink between 5:30 and 6:00. In using that information
23 along with the absorption phase of thirty to a hundred and
24 fourteen minutes. I'm also using a reading on the
25 Intoxilyzer, which was taken at 9:16 and 9:19 of .067 and

1 .075. So making the assumption--and I'm giving you my
2 assumptions right now. Making the assumption that Mr. Wright
3 had his last drink in between 5:30 and 6:00 before the
4 accident occurred, the assumption that the alcohol was gonna
5 be absorbed on Dubowski's curb, which I just gave you and that
6 the blood was taken at 7:40 p.m. That the blood was accurate,
7 which I, I have no indication it isn't.

8 Q. Right.

9 A. And that Mr. Wright has the average--and that his
10 weight, weight is a hundred and seventy five pounds, in that
11 range. I think your expert gave that range of one seventy
12 five. And using the standard burn off rate, which is the same
13 as what your expert used of a .015 percent per hour, we have a
14 three hour period from the time of the accident till the time
15 of the Intoxilyzer. And I know we have a few minutes either
16 way, but I used a three hour period. If I use that
17 information strictly on a--as I gave it to you, working back
18 with the Widmark formula and the Extrapolation Formula, the
19 same thing your expert used. I would have Mr. Wright's
20 reading at 9:16 at a .066 and he blew a .067. which is a
21 thousands of a percent different.

22 Q. Okay.

23 A. That's, that pretty dang close. I mean that's like
24 right on the ball. So that would--if, if all of that
25 information is correct that would put Mr. Wright's reading at

1 six o'clock and I--and again I'm telling you that we have a
2 few ~~minutes~~ either way, ten, fifteen minutes either way--of a
3 .071 to a .091 and that's going to depend on the following
4 factors. Eating, the amounts of alcohol that he actually
5 consumed. When the alcohol was taken, or--and when his last
6 drink was.

7 Q. Okay. So, so far all you have, basically is, is what
8 the last--when the last drink was?

9 A. Yes. And I used all the other information that Mr.
10 Parsons used.

11 Q. Okay. Do you have any indication at this point what
12 his eating pattern was?

13 A. No.

14 Q. And what difference would it make what his eating
15 pattern was?

16 A. Well that could effect the rate of absorption into
17 his bloodstream. In other words, you know I agree with your
18 expert where he said, "Obviously if he had food in his stomach
19 it would take a little bit longer to absorb into his system."

20 Q. Now absorbing that, that means leaving the system?
21 Or getting into the system?

22 A. Getting into the system.

23 Q. So he would, he would get drunk slower if he had a
24 full stomach?

25 A. Yes.

1 Q. Okay. And once again you have no indication of when
2 he last ate, or what he ate?

3 A. Well not at this time. I, I, asked for that--

4 Q. Do you expect to get that?

5 A. Well I asked for that information and you know I--the
6 same stuff I just gave you, the, the ah--how much he drank,
7 ah--the amount of alcohol, his eating patterns, when he
8 started and when he stopped. Those things would--if I had
9 that information I would--and I've asked for that.

10 Q. Uh--huh.

11 A. If I get that information I can narrow down the time
12 frame for you and the blood alcohol level and looking at the
13 figures between your expert and, and what I did it will
14 probably be very, very close. The only thing we'll differ on
15 is the absorption time. Other than that we should be--if you
16 take that absorption time out and we narrow it down to an hour
17 to an hour and a half, we'll probably be within a thousands of
18 a percent of each other. I would assume.

19 Q. Now ah--Bob Parsons I believe state in his
20 deposition that he believed the time--at the time of the
21 accident that Mr. Wright had above a .10?

22 A. Yes he did.

23 Q. How can you explain the difference between your
24 conclusion and his?

25 A. Well actually the questioned weren't asked of him. I

1 probably would of asked him a few other questions, you know
2 such as--I, I don't know what he was assuming on that because
3 it's my understanding that to back track it to the .067, so
4 actually he would have to be higher. In other words; your
5 expert made the assumption that he would of been higher than
6 the .106 at the time of the accident, but using the standard
7 burn off rate if he would of been higher, such as a 1-1, or a
8 1-2, or a 1-3, which is what--I think Mr. Parsons used a 1-3
9 to a 1-4.

10 Q. Uh--huh.

11 A. If, if that was correct and using the burn off rate,
12 which I gave you and which is in the material I gave you of a
13 .015 then at the time of the breath reading he would be
14 probably an 0-9 to a 1-0, so it doesn't figure that way. If I
15 had a second reading--in other words if there were two blood
16 samples taken then I could narrow that frame down for you and
17 find out if he's going up and down. But right now all we have
18 is one blood draw, at least that I'm aware of and we have two
19 Intoxilyzer readings taking about an hour and a half after the
20 blood draw. So all I took was the 106 and I took the .015
21 percent per hour ah--coming off that and that gives me the
22 066.

23 Q. The, the--coming off to your .105 percent. Is that
24 Widmark, or is that ah--what's the other doctors name
25 Dubowski?

1 A. Well, well it's Dubowski and Widmark.

2 Q. Dubowski; okay.

3 A. But the, but the time curves--the time curves are
4 just a little bit different.

5 Q. Now you narrowed it down to a .01--071 and .091.

6 A. Right.

7 Q. Can you be more specific?

8 A. No.

9 Q. Why not?

10 A. I just can't.

11 Q. That's just two tenth's--two thousands, or whatever?

12 A. Right. ~~That's~~ just it--I just can't be any more
13 specific than that. It could be, it could be a little bit
14 high, like I said. Which I gave you the high, which is the 0-
15 9 and I gave what I thought to be the low at 0-7. Now could
16 it be a little bit either way? Sure.

17 Q. Now is there anything that could change your opinion
18 as far as your ability to pin point it even more?

19 A. Well, yea if I had the information that I gave you.

20 Q. Which is his food intake?

21 A. Right. If I had that information. If I knew the
22 amount of alcohol consumed and when it--when he began, when he
23 stopped. That would assist. That could narrow it down some
24 more. Ah--I haven't seen any maintenance records on your
25 Intoxilyzer, so I don't know--I'm assuming that the reading is

1 correct, ah--I but I don't know what type of instrument was
2 used. I assume that it's a 5000, cause that's approved in the
3 state. The only one approved. But ah--if the, if the 067, or
4 075 readings are off at all ah--because the machine is not
5 working properly, or there's something wrong that month with
6 the maintenance then that would effect my opinion as well.

7 Q. How important were those other figures to you, the
8 Intoxilyzer figures?

9 A. Well when you say important, I, I guess every, every
10 information is important. Ah--I relied on it as being
11 accurate, that particular reading. Ah--it just so happened in
12 this case that by having those--I, I usually don't have
13 Intoxilyzer readings with blood. It just so happens that in
14 this case the two readings that I used matched almost
15 precisely the elimination time of the 106 down to the 067
16 level.

17 Q. So when do you believe that he peaked? When, when
18 was his highest blood alcohol level?

19 A. Well what I used as a peak. I used the 106 as peak.

20 Q. Okay.

21 A. And that's using the time curve of Dubowski from
22 thirty to a hundred and fourteen minutes, and it's just a
23 little bit outside of that. It's about ah--maybe six or seven
24 minutes outside of the hundred and fourteen, but it's kind of
25 close to call.

1 Q. Okay, so you don't really know how--you would say
2 that was as high, as high as he got?

3 A. Well I can't say--yea. I, I can't say anything
4 different. I can only say that, that to me is an accurate
5 reading. The 106 I have no dispute with that reading, but
6 there's nobody who can tell you if it's higher or not. And I,
7 and I am not gonna make the assumption that it's just higher.
8 I can only use what I have.

9 Q. Okay. What--how long did it--these, these are some
10 basic questions here. Let's say I drink a beer.

11 A. Okay.

12 Q. One beer. When, when is it going--when am I going to
13 peak?

14 A. Well you can peak anywhere and if you have an empty
15 stomach ah--it, it could enter your system in as much as
16 fifteen minutes. It could take as long as a hundred and
17 fourteen minutes. The average--and, and that's rare. What
18 I'm saying is the hundred and fourteen minutes is rare. The
19 fifteen minutes is rare also. So in other words you could
20 fall in there and be maybe--if you drank a beer right now,
21 thirty minutes from now you would probably peak. And that's
22 just an average. The average person would do that, but if
23 for some reason your metabolism is slow, or fast it's going to
24 change your rate.

25 Q. Now doesn't alcohol some--have somewhat of an

1 immediate affect on one? I don't drink much, but when I do
2 drink a beer or something, I can swallow it and I can feel
3 something.

4 A. Yea, but you should not feel the effects so to speak
5 for a least fifteen minutes. In other words your judgement
6 should not become impaired. You're vision should not become
7 impaired, cause it hasn't yet entered your blood stream. It's
8 in your breath and it's your stomach. but it hasn't entered
9 your blood stream. So you should have no immediate effect,
10 effect. You shouldn't.

11 Q. But you can feel it?

12 A. Oh sure.

13 Q. Do you have any idea what it would--how much Mr.
14 Wright would have to drink, in other words to get a .106 blood
15 alcohol level?

16 A. Yea, I looked at that and I, and I thought I wrote it
17 down, but I think it was--maybe I did write it down, hang on.
18 I know it was four to five ounces of alcohol. I remember
19 that, that he would need.

20 Q. That would be--

21 A. Here it is right here. A hundred and seventy five
22 pound individual would need about four to five ounces of
23 alcohol to reach a .10 and that would be basically within
24 maybe a two to three hour time frame.

25 Q. Okay. And that would be how many beers, four?

1 A. That would be four to five, right.

2 Q. Four to five; okay.

3 A. Or four to five mix drinks, depending on what he had.

4 Q. Okay.

5 Deponent: Hi Mike, how are you doing?

6 Mr. Taylor: I guess now at ten after eleven, ah--Michael
7 Bloom, Attorney for the defendant has now--is, is now part of
8 the record with us here. I believe I was asking you about ah--
9 the number of drinks that he had to achieve, or had to drink
10 in other to reach that level. And you said about four or five
11 ounces?

12 A. Yes sir.

13 Q. Okay. And how many beers would that be?

14 A. That would be four to five.

15 Q. Four to five twelve ounce beers?

16 A. Twelve ounce beers, yes sir.

17 Q. Are you an expert on impairment as well?

18 A. Well I don't know what you consider--I mean ah--I, I
19 don't think--I don't know anybody that's been qualified as
20 being an expert on impairment. I, I have talked hundreds of
21 times in court about what Police Officers view as impairment.
22 Ah--about what alcohol levels how they show impairment, such
23 as you know slurred speech, blood, bloodshot, watery eyes,
24 those kind of things. Ah--normal faculties being impaired.
25 The ability to walk and talk, but--

1 Q. Well do you believe there's a correlation between
2 the, the blood alcohol level versus physical appearance?

3 A. Most of the time, yes.

4 Q. And ah--by your analysis to this case so far do you
5 have an opinion on, on whether or not Mr. Wright was impaired
6 at the time of the accident?

7 A. I don't have an opinion on that at this time.

8 Q. And why is that?

9 A. Well I don't have any other materials other than what
10 I've listed for you at this time.

11 Q. Okay. Let's go back and explain--explain to me once
12 again the difference between the Dubowski--

13 A. Dubowski.

14 Q. Dubowski; let me write--how do you spell that D--

15 A. Ah--D-U-B-O-W-S-K-I.

16 Q. S-K-I-, okay. Dubowski and Widmark. What is the
17 difference between those two philosophies? Widmark is W-I-D?

18 A. Yea. Well Widmark is a formula I think has been out
19 since the late forties and early fifties. Ah--that formula
20 ah--basically deals with all averages and most of Dubow--I
21 should say, I'm sorry. Most of Widmark's studies were all
22 done on individuals who were actually sober, or else were
23 intoxicated, or very impaired, or, or sober and those studies
24 were done on people that were not going up and down.

25 Dubowski's studies were done on individuals over long periods

1 of times, such individuals were completely sober and would
2 drink one beer, two beers, five beers, ten beers, whatever it
3 was and he would take blood readings from them as they went up
4 and as they went down. So Dubowski's work was more in
5 correlating the difference between individuals as they drank.
6 Where Widmark did it on sober individuals and people who were
7 already drunk. So there was no correlation between--in other
8 words if I drank two beers and you drank two beers, one of us
9 may act drunk and the other one may not. And that's what
10 Dubowski wanted to know. Is why you can drink two beers and I
11 can't.

12 Q. Okay and Dubowski's absorption rate was anywhere
13 from--what's the range?

14 A. Well his, his range goes from thirty minutes to the
15 outside of a hundred and fourteen and he say's give or take--
16 his statement is "A few minutes either way."

17 Q. Okay. And what do those numbers mean?

18 A. Well those numbers means that ah--give you an
19 example; is if I drank one beer right now it could take me
20 thirty minutes it could be totally absorbed into my blood
21 system. Or it could be as long as a hundred and fourteen
22 minutes before that beer is totally absorbed in.

23 Q. Okay and how is that different from Widmark's
24 formula?

25 A. Well Widmark is just making the assumption that