

## CROSS EXAM PROJECT

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### Background

Ex-military, ex-Broward County Sheriff's Department. Fired or allowed to resign as part of a formal settlement of lawsuit arising out of an internal affairs investigation of his outside work activities that were a conflict of interest with his duties on the Department.

### Subject Matter

Accident Reconstruction (90%)

DUI (10%)

Field Sobriety Tests

Intoxilyzer

### Education

B.S. St. Thomas University in Miami in Criminal Justice

M.S. at University of Miami in Industrial Engineering and Management

Note: He is not an electrical engineer. His M.S. is basically a management degree.

### Qualifications

Military MP (retired or discharged in 1977). MP Academy training in Georgia

Monroe, Michigan PD 1979-1984

Broward County Sheriff's Department 1984-1990

DUI Task Force

Road Officer 1.5 years;

Task Force Administrator for 3.5 years;

### Training

Breath Test Technician

BT Machine Maintenance

Assisted/participated in the studies by the State of Florida to select the intoxilyzer. Studies involved doing breath tests on arrested subjects and on subjects given measured amounts of alcohol. He and another officer ran the tests, collected the data, wrote it on a form and turned it in.

### Private Practice

Started his private consulting firm 1987 while still a deputy sheriff.

“Left” the Broward County Sheriff’s Department by “resignation” in order to go into his own “private practice”.

IntoxilyzerTesting

Has done private studies on intoxilyzers owned by prominent DUI defense firms. Studies consist of “blowing up” the instrument with various chemicals introduced through the breath test tube and then checking the results. Also, has done studies based on “wet labs” where defense attorney subjects drink measured amounts of alcohol and then do breath testing. One such study was done in Atlanta at the end of the day of their seminar. No results, data or conclusions have ever been prepared or published, but he has testified about the results of his study in several Florida courts.

Also claims to have done blood:breath ratio studies where he’s given individuals measured amounts of alcohol and then done breath tests and sent them to a state lab for blood testing and received the results back. He simply either observed or assisted in giving the tests and collecting the data. He’s never analyzed it or made any conclusions or published any conclusions or results much less had any studies and conclusions reviewed by recognized scientists in the sense of “peer review”.

### Publications

Articles for DUI Law & Science Journal

Claims to have written several articles for this journal which is a DUI defense lawyer publication by Richard Essen. It is not subject to peer review or any scientific review. It has been reprinted in other similar journals. He claims the same articles as separate, individual articles he’s published each time. In reality, he’s only been published twice. One of the articles might have been on field sobriety testing and the other on the intoxilyzer, but it is unclear that

these were his article because they don't appear under his "byline" in the DUI Law and Science Journal.

Chapters in a Mitchie Corp Book on Accident Reconstruction

### Testimony

Kierst, March 16, 1995

Declared an "expert" and allowed to testify only as to SFST

Not permitted to testify as an "expert" on the intoxilyzer

Ciriago, August 22, 1996

Zigarac, December 1, 1997

Hatfield, October 19, 1998

Bowling, November 5, 1998

Beuthin, March 23, 1999

Not permitted to testify as "expert" on intoxilyzer.

### Subject Matter and Claims

#### Standardized Field Sobriety Testing

#### Intoxilyzer

Machine is "accurate" but not "reliable". Machine is accurate in that it will detect alcohol but it is not "reliable" because the numerical value/result is not always right. Ciriago, Zigarac.

Length of Blow into the machine affects the numerical result. Harder the blow, the higher the result. Lighter the blow or interruptions in it can make result lower.

Printout with 3 different numerical results or "readings" used by him to show that the instrument isn't reliable because it gave 3 different readings that were different on 3 different samples. Concludes that this has to do with the quality of the blow and demonstrates that the length of the blow and difference in the tests (though within acceptable testing parameters show that there is mouth alcohol or other problem with the instrument that demonstrates that the intoxilyzer isn't "reliable".

Deep lung air produces higher bac results. Duh, that's why we want the deep lung alveolar air.

Because the body changes rapidly and the partition ration is 2100:1 is an average, the intoxilyzer gives an unreliable result because there are some people who will be different from 2100:1 or the individual could be varying his breath. Result could vary by 50%

Simulator Solutions

Slope detector and mouth alcohol

Coughing could introduce mouth alcohol and contaminate the test on the intoxilyzer.

Extrapolation. Ciriago and Bowling

Meaning of accuracy, reliability and precision.

Admitted the test was in compliance with Florida law.

Instrument not properly maintained so doesn't function properly

Intoxilyzer results not reliable because Florida administrative rules for giving the test not followed. Hatfield

Qualifications and training. All his depositions go into detail on this.