

## CROSS EXAMINATION OF MR. SWOPE

- Mr. Swope, you own a company correct?
- Approximately how much money did your company earn last year?
- Could you please estimate how much of that money was earned testifying in DUI cases such as this?
- How many times have you testified for this attorney?
- You are being paid by the defense today, aren't you?
- You were at one point employed by the Broward Sheriff's Office, correct?
- Would you say you earn more money now testifying as a defense witness than you did as a BSO deputy?
- When you worked with BSO, you had a permit to administer the breath test?
- You are not currently permitted to administer a breath test, are you?
- So you do not need to be in compliance with FDLE rules, correct?
- Do you run your own tests with an intoxilyzer?
- So you have one at your office?
- Is that instrument maintained and scrutinized by FDLE?
- So You are not under FDLE's scrutiny when you run your own tests?

### MOUTH ALCOHOL

- Isn't it true that mouth alcohol can be eliminated rather quickly?
- Isn't it true that prior to administering the breath test, the breath technician does an air blank for 30 seconds?
- And there is a two minute waiting period between each breath that a defendant gives?
- Isn't it true that mouth alcohol would then be eliminated between each breath sample?
- Isn't it true that there are various safeguards to detect mouth alcohol?
- Isn't it true that the 20 minute observation period is a safeguard?
- And isn't the "slope Detector" a safeguard?
- And the fact that the two breath samples must be within 0.02 of one another—isn't that a safeguard?
- Blood draws are not required in Florida, correct?
- So breath tests are the acceptable method of measure a persons alcohol level?

### PARTITION RATIO

- Let's discuss the partition ratio... The average person's partition ratio is is 2300 to 1, correct?
- That includes around 98 to 99 percent of the population, correct?
- The intoxilyzer is set to read 2100 to 1, correct?
- So in fact the intoxilyzer actually gives people a break because the breath is going to be higher than what the instrument reads because the average person has a partition ration of 2300 to 1 but the intoxilyzer uses 2100 to 1 as an average?

### 0.02 DIFFERENTIAL

- Isn't it true that FDLE has adopted a tolerance of .005 in the breath results?
- Did you review the documents in this case?
- The breath results in this case were a \_\_\_\_\_ and a \_\_\_\_\_, correct?
- There was no indication that the breath instrument failed in any way?
- There are no indications that anything in the environment caused a faulty reading?
- Mouth alcohol was not detected was it?
- So they are within the .005 tolerance, correct?
- And this would be in compliance with FDLE regulation, correct?
- And isn't true that FDLE no where in its rules which are promulgated by the State of Florida require a 0.02 tolerance?
- What is your reason for the 0.02 tolerance again?
- Isn't it true that Florida does not require a blood test?
- Therefore, we do not need to convert this to a blood reading?
- That is because breath tests are acceptable in the State of Florida?
- You have reviewed the breath inspection documents in this case, correct?
- This intoxilyzer was in compliance with FDLE regulations on \_\_\_\_\_, wasn't it?