

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

IN THE MATTER OF
STATE OF FLORIDA,
Plaintiff,
v.
MICHAEL RUMPH,
Defendant.

CASE NO.: 250416W

EXCERPT OF TESTIMONY OF RICK SWOPE, WITNESS

The above-entitled cause came on for hearing pursuant to Notice before the Honorable Beth Bloom, Judge of the above-styled court at the Richard E. Gerstein Justice Building, Courtroom 6-8, Miami, Florida 33125, on Thursday, February 13, 2003, commencing at 3:51 p.m.

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APPEARANCES:

BETH BLOOM
CIRCUIT COURT JUDGE
Criminal Division
1351 N.W. 12th Street
Miami, Florida 33125
(305) 548-5400

On Behalf of Plaintiff:

ANDREA WOLFSON, ATTORNEY
175 N.W. 1st Avenue
Miami, Florida 33128

On Behalf of the Defendant:

ED O'DONNELL, ATTORNEY

I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>Rick Swope:</u>					
(Mr. O'Donnell)	5	--	102	--	--
(Ms. Wolfson)	--	46	--	112	22

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>State</u>			
1(i)	87	--	--
1(j)	93	--	--
<u>Defense</u>			
P	102	107	--

P R O C E E D I N G S

(3:51 p.m.)

1
2
3 JUDGE BLOOM: All right, then this is the
4 Defense's next witness?

5 MR. O'DONNELL: It is, your Honor.

6 JUDGE BLOOM: All right, sir, if you will come
7 forward. Remain standing and raise your right hand,
8 and the Clerk will place you under oath.

9 Whereupon,

10 RICK SWOPE,

11 having been first duly sworn, was examined and testified as
12 follow:

D I R E C T E X A M I N A T I O N

13
14 BY MR. O'DONNELL:

15 Q Sir, would you kindly tell the members of this
16 jury your name and your profession?

17 A Hi, my name is Rick Swope. I do primarily
18 accident reconstruction. That is the majority of my
19 business. I also do some consulting, and teaching, and
20 lecturing on field sobriety exercises, and also on breath
21 testing devices and breath testing machines.

22 Q What were you asked to do in this case?

23 A I was asked to look at the case, and to comment to
24 you on what I thought about the breath reading, and also the
25 field sobriety exercises, like the way they were conducted,

1 or how they were conducted; those types of things.

2 Q Okay. Would you please, before we get into the, I
3 guess we would call it the meat of your testimony, tell the
4 members of the jury your background and training, where you
5 worked before starting your own business?

6 A Well, I was a police officer for 15 years. The
7 last six years I was an officer I was with the Broward
8 County Sheriff's Office in Fort Lauderdale.

9 For four of those six years I was the
10 Administrator Coordinator of the DUI Task Force and Traffic
11 Homicide Unit.

12 I taught for ten years at the Broward County
13 Police Academy, and I also did some teaching at the Dade and
14 Palm Beach Police Academies, and some other universities
15 around the State of Florida.

16 I have done some teaching for the University of
17 North Florida in Jacksonville. I did some teaching for the
18 University at Louisville.

19 I did their, it is called Accident and Death
20 Investigation Program. I have taught over 4,000 police
21 officers during that ten years.

22 I am certified by NHTSA in field sobriety
23 exercises. I have written several articles on breath
24 testing.

25 I have been working with breath testing in one

1 form or another since 1974, and obviously, the machines have
2 changed over the years to where each machine, used in this
3 case was an Intoxilyzer 5000, I have been working with that
4 since 1985.

5 I left police work in 1990 to go into private
6 practice, and do some private work. I did primarily
7 accident reconstruction for the first couple of years, which
8 is what I do now, actually, but I do some breath consulting
9 as well.

10 I have taught around the country. I taught at
11 Harvard Law School every Thursday. I taught the Florida
12 Bar, and did a lot of classes for legal organizations,
13 defense seminars where they do breath testing and those
14 types of things.

15 I have done studies on the Intoxilyzer series
16 machine. I published a couple of articles on it, and I have
17 worked with individuals and taught about the machine
18 nationwide around the country.

19 I have taught in virtually every major city in the
20 country. Although my business is primarily focused on
21 accident reconstruction, I do some breath testing work as
22 well.

23 Q What is the name of your business?

24 A It is called Swope Reconstructions.

25 Q Okay. Would you tell the members of the jury your

1 educational background?

2 A Yes, I have a Bachelor degree in Criminal Justice
3 from St. Thomas University. I have a Master of Science
4 degree in Technology and Engineering from the University of
5 Miami.

6 I am currently working on the Ph.D. or doctorate
7 program in Engineering Management, and I am about a third of
8 the way through.

9 Q And where is that?

10 A That is California Coast University. I have been
11 working with some different agencies there in doing it.
12 Also, I have a permit to teach from the National Highway and
13 Traffic Safety Administration.

14 Q What is that? Does that have, what is the name of
15 it, an acronym name?

16 A NHTSA.

17 Q NHTSA?

18 A Right.

19 Q What is that? What is NHTSA?

20 A Well, NHTSA is a branch of the government, the
21 Department of Transportation, and this basically governs
22 anything to do with motor vehicles or traffic rules and
23 regulations.

24 They also work on, you know, designing roadways,
25 those types of things, to make sure that the lines you see

1 on the roadway have to be a certain width, they have to be a
2 certain color, that traffic signals all function basically
3 the same in all fifty states, those kinds of things.

4 It is a regulatory agency, and they also oversee a
5 lot of things involved in criminal justice and standards of
6 training in most states.

7 They also certify the field sobriety exercises
8 that I have taught in all fifty states. Although they
9 really don't certify breath testing machines per se, they
10 regulate what types of machines should be used, and they
11 make recommendations to the states on how the machine should
12 be used, what types of machines they should buy.

13 They also check the products as to, you know, how
14 should they be regulated, and what things are good and bad,
15 and those types of things for the machines.

16 Q Let's stop right there just for a moment. You
17 mentioned that you were asked to get involved in this case.
18 Who asked you?

19 A You did.

20 Q Okay. Now did I just ask you to do me a favor?

21 A No.

22 Q Okay. Did I hire you?

23 A Yes. Well, you initially, because there is a
24 retainer.

25 Q Okay.

1 A So I look at the case, and if I think I can help,
2 I tell you. If I don't, I send you the case back.

3 Q Okay. Does the retainer guarantee what you are
4 going to testify to?

5 A No. The retainer is non-refundable, and I keep
6 the retainer regardless of what kind of information I have.
7 Primarily, most of the cases I don't really keep. I only
8 keep a small percentage of the cases.

9 Q And in this particular case, tell the members of
10 the jury how much on Mr. Rumph's behalf I paid you to review
11 the documents and the evidence in this case?

12 A You paid me a \$750 retainer, which is non-
13 refundable. I bill all work at \$150 per hour, and I bill
14 \$200 per hour for court in this type of case.

15 Reconstruction matters, I go up to \$250 an hour,
16 depending on exactly what type of engineering activities are
17 needed.

18 Q Well, we are not going to get into any
19 reconstruction here. In any event, we paid you, Mr. Rumph,
20 I paid you on Mr. Rumph's behalf \$750?

21 A Right.

22 Q And you are here in court. Are you going to
23 resubmit another bill after this case concludes, whichever
24 way it concludes?

25 A Yes, my office will submit a bill probably around

1 next week or so.

2 Q Okay. Again, the agreement that we will now pay
3 you something, actually, that you come to court and testify,
4 does that guarantee a result?

5 A No.

6 Q Has your testimony been bought?

7 A No.

8 Q You mentioned that you review cases, and the great
9 majority you don't take; is that right?

10 A That is right. I only take probably about, I
11 think about, last year I took about seven percent of the
12 cases I was asked to review. This year, only a couple so
13 far.

14 Q Now this may sound like a silly question, because
15 you have stated some things here, are you familiar with
16 breath testing?

17 A Yes.

18 Q Okay, and just as to that specific breath testing,
19 focus in for the members of the jury and tell them how you
20 got started in that area, and where you are now today with
21 it.

22 A Well, I initially was in the United States Army.
23 I was in the Military Police, and the initial, I went into
24 the service in, actually, July of 1974, so it has been a
25 while ago.

1 I went to, I was transferred to Fort Riley,
2 Kansas, and I was there basically the entire term as a
3 Military Police Officer.

4 I learned breath testing at that point, and I was
5 certified by the Kansas Highway Patrol. The reason was, was
6 that we had some people on the post that consumed alcohol
7 and those kind of things, so they wanted us to know how to
8 handle that and do the testing.

9 I did that for three years I was in the military.
10 I left the military and went to work in my hometown, in
11 Monroe, Michigan. I worked with breath testing there for
12 about six-and-a-half years.

13 I then came to Florida in 1984, to the Broward
14 Sheriff's Office in July of 1984. I became certified in the
15 State of Florida on six different machines.

16 At the time they had six different machines that
17 were in use, and after I was in the Department about four or
18 five months, I was already in the Traffic Unit, and I was
19 asked with another individual named Dave Fries, I was asked
20 to evaluate a machine that the State was considering
21 purchasing, and that was an Intoxilyzer 5000 series.

22 I got to go to the factory school, the factory and
23 school are in Colorado, so I went out there at the time.
24 That is where I learned a little bit about the machine.
25 Subsequently, the machine was used by Florida.

1 Q And is that the same machine that was used in this
2 case?

3 A Yes, it was.

4 Q So you are familiar with that machine?

5 A Very familiar.

6 Q Okay. Do you own one?

7 A I have part-ownership in two different machines,
8 and I also maintain the machines for private persons or
9 private industries.

10 Florida International University has a machine.
11 They have a couple of machines, and I maintain them for the
12 program that they were working on in the past.

13 I think they are wrapping the program up now, but
14 I maintained the machines for their use.

15 Q Okay. While with the - while you were a law
16 enforcement officer you were certified to do breath testing,
17 correct?

18 A Yes, right.

19 Q Are you still certified to do breath testing?

20 A Well, not by the State, no. I mean you have to be
21 a police officer to be certified.

22 Q Okay, are you any longer, you are no longer a
23 police officer, I take it?

24 A Right, I left in 1990.

25 Q Correct, and when police officers leave law

1 enforcement, are they required to give up their certificate
2 for breath testing?

3 A Yes, they do. As soon as their certificate
4 expires, that is it.

5 Q So correct me if I am wrong, only law enforcement
6 personnel can hold FDLE permits; is that correct?

7 A That is correct.

8 Q As to breath testing, why don't you tell the
9 members of the jury what classes you have taken in breath
10 testing alone.

11 A Well, I have taken all the classes that were put
12 on in the State of Florida when I was an officer, which
13 usually was a forty-hour course, and there was an additional
14 forty-hour course when this machine came on line.

15 There were yearly, what was called
16 re-qualifications. I don't recall if they were eight hours
17 or 16 at the time.

18 I just don't recall, but we had to get recertified
19 every year on the machines. In fact, I kept my permit for
20 five years after I left police work.

21 At that time we were allowed to keep our permits,
22 and I went through re-qualification every year, but they
23 changed the rule on that and I had to surrender my permit in
24 '95.

25 I have also taken courses put on by Dr. Jensen.

1 Q Who is Dr. Jensen?

2 A He is a toxicologist, or forensic, person in
3 Minnesota, Minneapolis, I believe, and he puts on courses
4 around the country, as he had for 15 years, involving breath
5 testing machines and breath testing instruments.

6 In fact, I was asked by him several years ago to
7 assist him in some studies and teaching, which I actually
8 did. I went around the country and talked with him and his
9 group.

10 I had also taken repair schools from the
11 manufacturers, and taken one school in the state for
12 manufacturing and repairs.

13 I have taken probably another one hundred hours of
14 just seminars by, I believe, Dr. Gordon Stein. I took a
15 couple of seminars from him over a period of years.

16 It was at the seminar that Curt Kabowski spoke at,
17 and just then basically --

18 Q Who is that?

19 A Curt Kabowski worked with the federal government
20 for like, I believe, seven or eight years on testing breath
21 testing machines for the federal government.

22 I think he is charge of Oklahoma's breath testing
23 program, although I am not sure of the state. I think it is
24 Oklahoma.

25 He is a pretty noted author, and I would say that

1 if you pull up breath testing, you pretty much see Curt
2 Kabowski's name everywhere.

3 Q Okay. Although you have touched on this when I
4 asked you about what classes you have taken, et cetera, now
5 as I understand, you have taught breath testing?

6 A Yes.

7 Q Where?

8 A Well, initially I assisted in teaching breath
9 testing in the State of Florida. In Florida, a breath test
10 operator that teaches breath testing and actually signs
11 permits must be certified by the Florida Department of Law
12 Enforcement to teach in that specific area.

13 They even have all kinds of assistant instructors
14 and those kinds of things. I would actually assist in those
15 classes.

16 I taught breath testing around the country for, as
17 I had indicated, with Dr. Jensen and also some other
18 organizations that asked me to teach and assist.

19 Q What type, tell the members of the jury what type
20 of instruction you did at the request of law enforcement?

21 A Well, depending on the particular area, some would
22 be re-qualification classes, meaning that each student at
23 the time, and I don't know if it is the same, but I believe
24 that each time a student is re-qualified as an officer, they
25 have to run fifty tests on a simulator.

1 All of the machines that are used in training
2 would either be checked by myself or another individual
3 named David Frys or Joe Barbedo, would certify and make sure
4 that those machines were actually working, so to speak, and
5 oversee all of the tests that were run by the students, so
6 if a student had to run fifty tests, if you had forty
7 students in a class and you ran that class twenty times a
8 year or 15 times a year, that are a lot of breath tests that
9 you oversee.

10 Plus, you have to do your own re-qualifications,
11 and you have to make sure that the equipment is working, and
12 you have to make sure, again, at the time the solutions were
13 made by myself.

14 I prepared the alcohol solutions. Now the
15 officers are given a premixed vial where you just stuff it
16 in the simulator and you go.

17 But at the time everything was free mixed. In
18 other words, I had to mix everything and prepare it for the
19 officers.

20 So I don't know how many tests. I probably saw
21 thousands and thousands and thousands.

22 Q Now referring to this Intoxilyzer 5000 machine,
23 have you ever performed maintenance on it?

24 A Sure, absolutely.

25 Q How many times do you think?

1 A Again, probably in the neighborhood of a couple
2 thousand by now, maybe more.

3 Q Have you ever repaired one of these machines when
4 they broke?

5 A Yes, absolutely.

6 Q How many times have you done that?

7 A Well, again, in testing sometimes the machine
8 breaks ten or 12 times. Little things have to be repaired
9 sometimes on the machine, but I repair most things on the
10 machine, with the exception of like the infrared light or
11 things like that. So again, hundreds of times.

12 Q How did you learn how to repair one of these
13 machines?

14 A I learned initially from the factory. The factory
15 representative, I went to the factory and took the tour, and
16 they told me how to repair the machines.

17 I had to go to the factory because the initial
18 batch of machines that we, when I say we, the Sheriff's
19 Office, received and I could not get them working.

20 They kept failing, and I went to different areas
21 of the state, and theirs seemed to be working and ours kept
22 failing, so I had to go to the factory to find out exactly
23 what --

24 MS. WOLFSON: Your Honor, I am going to object as
25 to non-responsive at this time.

1 JUDGE BLOOM: Your objection is sustained.

2 BY MR. O'DONNELL:

3 Q What factory are we talking about?

4 A CMI, the manufacturer of the machine.

5 Q Okay. What does CMI stand for?

6 A I forget actually. I don't even know what it
7 stands for.

8 Q Okay.

9 A CMI something or other.

10 Q But they make the Intoxilyzer 5000?

11 A Right.

12 Q Do they make anything else?

13 A Well, now they do. They are actually involved in
14 the radar guns and those sort of things.

15 Q How many police officers do you think you have
16 taught over the years again, and testing?

17 A At least 4,000.

18 Q Now have you ever had occasion to prepare training
19 outlines for the State of Florida and others?

20 A Yes.

21 Q All right. What training outlines have you
22 prepared for the State of Florida in this area?

23 A Well, I have prepared or looked at probably
24 hundreds. Each time a class was given, that class must be
25 approved by the Florida Department of Law Enforcement or our

1 Criminal Justice Standards Training Unit.

2 So each time you do a class, although there may be
3 very few changes on the outline, you have to send it in and
4 make sure it is approved, and that you are giving the right
5 training to the police officers.

6 If you do a new course you have to write the whole
7 training outline, you know, as to what they are going to do,
8 and each minute of their time has to be taken care of and
9 then --

10 Q Now you have mentioned that you have done an awful
11 lot of work for both the State of Florida and other states;
12 is that accurate?

13 A Yes.

14 Q Regarding breath testing?

15 A Yes.

16 Q How about independent organizations?

17 A Yes.

18 Q Why don't you tell the jury what you do for the
19 private sector.

20 A Well, I have been asked to evaluate machines in
21 private industry. Actually a newspaper organization had a
22 machine at one time.

23 Florida International University had a machine. A
24 soft drink manufacturer had a machine. There are some other
25 organizations that had machines like this that they would

1 test their employees periodically, and I would actually go
2 in, and make sure that the employees weren't coming to work
3 drunk, and those kind of things.

4 I would test them, or they would test them and if
5 they had problems, sometimes I would have to go in and
6 justify and vouch for the machine -- Or something like that.

7 Q And you mentioned that you published articles in
8 the area of breath testing; is that accurate?

9 A Yes.

10 Q About how many times have you been published?

11 A Well, I published two articles specifically,
12 actually three, but one specifically dealt with the device
13 on the machine. The other two articles kind of talked about
14 breath testing as a whole.

15 Q Okay. So you have been published specifically in
16 the area of the Intoxilyzer 5000; is that correct?

17 A Yes.

18 Q And have you done any experiments or studies
19 involving field sobriety testing?

20 A Yes.

21 Q Okay. Now as to the Intoxilyzer 5000, do you
22 understand how it works?

23 A Yes.

24 Q Okay. Do you understand the inner workings of it?

25 A Yes.

1 MR. O'DONNELL: I would tender this Witness at
2 this time, your Honor, as an expert in the field of
3 breath testing and the Intoxilyzer 5000.

4 JUDGE BLOOM: Any objection?

5 MS. WOLFSON: Permission to voir dire?

6 JUDGE BLOOM: You may.

7 VOIR DIRE EXAMINATION

8 BY MS. WOLFSON:

9 Q Good afternoon, Mr. Swope.

10 A Good afternoon, ma'am.

11 Q You testified that you had an extensive experience
12 as a police officer up until approximately 1990?

13 A Yes, ma'am.

14 Q And prior to that, you have a Bachelor of Science
15 in Criminal Justice?

16 A I believe it is a B.A.

17 Q A B.A.?

18 A Right.

19 Q Okay, and a Master of Science in Engineering?

20 A Well, it is an MOT program. It is a dual degree
21 program. Half is engineering and half is managerial.

22 Q Okay, and certainly the engineering aspect of it
23 would be useful in the accident reconstruction world?

24 A Sure, absolutely. It is industrial, yes.

25 Q But you have had no biology background?

1 A No, I am not a chemist at all.

2 Q No biochemistry?

3 A No, and I don't intend to be.

4 Q No pharmacodynamic or pharmacokinetics?

5 A I am not a pharmacist, no. I have had nothing to
6 do with pharmacology, no.

7 Q Okay. Nothing in the field of forensic
8 toxicology?

9 A That would be correct.

10 Q Okay, and in your time at the Broward Sheriff's
11 Office you stated that you were part of the DUI Task Force
12 for approximately four to six years?

13 A For six years. I was the Administrative
14 Coordinator for four years.

15 Q Okay, and in your time as a police officer you
16 were trained doing field sobriety exercises and operating a
17 breath testing instrument?

18 A Yes, ma'am.

19 Q Okay, and wouldn't you agree that if administered
20 properly and maintenance properly, breath testing is
21 accurate and reliable?

22 MR. O'DONNELL: Judge, this isn't voir dire.

23 JUDGE BLOOM: The objection would be sustained.

24 BY MS. WOLFSON:

25 Q You mentioned that you have published several

1 articles, two articles, possibly three?

2 A No, I indicated that I published three, but one
3 specifically dealt with a device on the machine that I was
4 actually dealing with.

5 Q Okay. However, those articles are not peer
6 reviewed in the scientific community?

7 A Well, one was peer reviewed.

8 Q Peer reviewed by defense experts?

9 A Well, no, I don't know anything about defense
10 experts. They were peer reviewed. They were sent out. The
11 journal that I wrote for is a law and science journal.

12 There happened to be defense attorneys on the
13 Board, but it was not peer reviewed by them.

14 Q And who was it peer reviewed by?

15 A I don't know who would be on the list.

16 Q Okay.

17 A I am not sure.

18 Q Certainly not scientifically peer reviewed?

19 A I don't know what you mean by scientifically.
20 They go to people that do the same thing that I do, that
21 knowing the machine, the intoxilyzer, and that's the people
22 that you want reviewing it, so.

23 Q You testified that you taught breath testing,
24 correct?

25 A I assisted teaching breath testing with the police

1 officers, was the question. I also indicated that I had
2 taught at private practices.

3 Q And that is for the employment purposes,
4 employment breath testing so the people don't come to work
5 intoxicated?

6 A Well, right. Well, operational procedures on the
7 machine, and also other attorneys, those kind of things.

8 Q Okay, and during your time that you have worked
9 with breath testing consistently?

10 A Yes, ma'am.

11 Q So that means you are training the actual
12 operators on the use of the breath testing instrument?

13 A Mostly. There would be some maintenance involved,
14 but mostly the operators, yes.

15 Q And maintenance as well, training officers in
16 maintaining the instrument?

17 A Sure.

18 Q Okay, and that would be monthly or annual
19 maintenance?

20 A Well, it tended to be monthly. The State has
21 their own person to do the annual, so I wouldn't teach
22 students to do the annual.

23 Q That being said, is it not true that you would
24 agree that breath testing is reliable if done properly?

25 MR. O'DONNELL: Judge, the same objection. That

1 is out of voir dire.

2 JUDGE BLOOM: The objection is sustained.

3 MS. WOLFSON: May we go sidebar?

4 JUDGE BLOOM: There is no need to go sidebar. You
5 are voir diring for the qualifications. The objection
6 is sustained.

7 BY MS. WOLFSON:

8 Q With respect to breath testing and alcohol
9 metabolism, you have no training?

10 A Well, I have some, but again, what the State has
11 taught me or what I have learned in the field, and practice,
12 and those kind of things, but again I am not trying to tell
13 you I am a toxicologist, nor would I tell the jury that.

14 Q Certainly, and I am not stating that at all. You
15 would not be able to testify to anything beyond the
16 operation of the intoxilyzer?

17 A Well, I don't know what you are referring to, what
18 I am going to be asked. I have testified for the State and
19 private practice as to someone's, how much alcohol it would
20 take to reach a certain level, the Widmark formula, and that
21 is fine, but as far as, you know, a blood or a fluid
22 analysis, I would never try to testify about that.

23 But if the question was asked on a particular
24 reading how much somebody had, I think I could testify to
25 that, but.

1 Q Testify to that based on no scientific background
2 whatsoever?

3 A Well, when you say background, that is what I was
4 taught by the State. The State teaches their officers and
5 provides them with information in evaluating DUI subjects
6 and as to what they may have in their system.

7 Q Certainly, but you agreed previously that you have
8 no background as far as pharmacodynamics or forensic
9 toxicology?

10 A Well, again, I agree with you on that.

11 Q Right.

12 A One hundred percent.

13 Q Correct, and you are not a member of any of the
14 organizations that deal with forensic toxicology?

15 A Toxicology, no.

16 Q Or alcohol metabolism?

17 A No, I don't know that --

18 Q Meaning how alcohol affects the body.

19 A No, I don't know if there are any organizations
20 like that, but I am not a member.

21 Q Okay.

22 MS. WOLFSON: One moment, Judge. I have no
23 further questions at this point, your Honor.

24 THE WITNESS: Thank you, ma'am.

25 DIRECT EXAMINATION (continued)

1 BY MR. O'DONNELL:

2 Q Sir, have you testified and been accepted as an
3 expert in, of course, the State of Florida and other states,
4 as an expert witness in the field of breath testing and the
5 Intoxilyzer 5000?

6 A Probably over 700 times.

7 Q And have you testified for the State and the
8 defense?

9 A Sure, absolutely.

10 MR. O'DONNELL: I would tender as an expert in
11 these fields, your Honor.

12 JUDGE BLOOM: Any objection.

13 MS. WOLFSON: Just a specification on the field;
14 that is where my objection is.

15 MR. O'DONNELL: I tendered him as an expert in the
16 field of breath testings and the Intoxilyzer 5000.

17 MS. WOLFSON: All right.

18 BY MR. O'DONNELL:

19 Q Now as to the Intoxilyzer 5000 that you have been
20 dealing with since its conception.

21 A Right.

22 Q Are there any problems with it?

23 A Yes, there are some, sure.

24 Q Would you tell the members of the jury what those
25 problems are?