

IN THE COUNTY COURT OF THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: 11-19892MM10A

STATE OF FLORIDA,

Plaintiff,

vs.

ANDREW MARK LISTER,

Defendant.

---

ORIGINAL

DEPOSITION

OF

JAY ZAGER

Broward County Courthouse  
201 Southeast 6th Street, Room 730  
Fort Lauderdale, Florida 33301

July 16th, 2012

3:13 p.m. - 3:46 p.m.

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**APPEARANCES :**

For the Plaintiff:

MILES A. McGRANE, ESQUIRE  
Assistant State Attorney  
201 Southeast 6th Street  
Fort Lauderdale, Florida 33301

For the Defendant:

JEREMY J. KROLL, ESQUIRE  
Bogenschutz, Dutko & Kroll, P.A.  
600 South Andrews Avenue, Suite 500  
Fort Lauderdale, Florida 33301

ALSO PRESENT:

GARRETT M. BERMAN, ESQUIRE  
Post Office Box 32  
Dania Beach, Florida 33004

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	(Exhibit retained by Mr. McGrane)	
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**THEREUPON:**

JAY ZAGER

a witness named in the notice heretofore filed, having been first duly sworn, deposes and says as follows:

DIRECT EXAMINATION

**BY MR. McGRANE:**

**Q.** Mr. Zager, my name is Miles McGrane. I represent the State of Florida in the Andrew Lister case. And based on what defense counsel has provided, you've been listed as a defense expert.

We are here today to take your deposition.

Have you ever had your deposition taken before?

**A.** Yes.

**Q.** So, you know the rules and everything needs to be audible. And if you'd let me finish my question before you answer, I'll extend the same courtesy.

Also, if at any point you don't understand any of my questions, please let me know and I will do my best to rephrase.

**A.** Will do.

**Q.** Can you please state your name for the record?

**A.** It's Jay Zager, Z-a-g-e-r.

**Q.** Mr. Zager, are you currently employed?

**A.** Yes, I am.

**Q.** And who are you employed by?

1           **A.**     I'm self-employed.

2           **Q.**     And what is the name of the company that you are  
3 self-employed by?

4           **A.**     Jay Zager Forensic Consultant, Inc.

5           **Q.**     And how long have you been employed in that  
6 capacity?

7           **A.**     The company was formed about six years ago. I've  
8 been working as an independent consultant since -- Roughly,  
9 since 2003.

10          **Q.**     Prior to being an independent consultant, who were  
11 you employed by?

12          **A.**     Broward County Sheriff's Office.

13          **Q.**     And how long were you employed by the Broward  
14 County Sheriff's Office?

15          **A.**     From 1988 to 2003.

16          **Q.**     And in what capacity were you employed by the  
17 Broward County Sheriff's Office?

18          **A.**     With the Sheriff's Office -- I originally was  
19 employed by the Dania Police Department, just to back up a  
20 little bit. There I was a Booking Officer, as they term it  
21 back there.

22                 Then we were merged with the Sheriff's Office. I was a  
23 civilian employee for a period of time. And then in 1990, I  
24 went to the police academy.

25          **Q.**     And did you graduate the police academy?

1           A.     I did.

2           Q.     And when did you graduate the police academy?

3           A.     In 1991.

4           Q.     So, prior to 1991 you were not a sworn officer  
5 with the Broward County Sheriff's Office; correct?

6           A.     That is correct. Yes.

7           Q.     And you mentioned that you were a CSA prior to  
8 being a sworn officer?

9           A.     CSA, Community Service Aide or officer with the  
10 Broward Sheriff's Office.

11          Q.     And what did you do as a Community Service Aide  
12 for the Broward County Sheriff's Office?

13          A.     Mainly, at that point, with BSO, manned the desk,  
14 answer calls; things of that nature. Not -- Nothing high  
15 priority or anything like that.

16          Q.     After becoming a sworn police officer in 1991,  
17 what were your responsibilities for the Broward County  
18 Sheriff's Office?

19          A.     I was a Deputy Sheriff, responsible for  
20 investigations of crimes; general law enforcement work,  
21 district level.

22          Q.     Did you have any time where you came into contact  
23 with either the Intoxilyzer 5000 or the Intoxilyzer 8000?

24          A.     Yes, I did.

25          Q.     Okay. And what is the extent of your experience

1 with the Intoxilyzer 8000?

2           **A.**     The 8000? Originally, I was given access to one  
3 early on, before it was an approved instrument even from the  
4 standpoint of the National Traffic Highway Safety  
5 Administration. And at some other point, I attended the -- I  
6 went to the factory, CMI's factory and was exposed to it  
7 there, as well.

8           **Q.**     Would that have been in 2003?

9           **A.**     That's correct.

10          **Q.**     And you also left the employment of the Broward  
11 Sheriff's Office in 2003; correct?

12          **A.**     Well, I did. When I said that's correct, with  
13 2003, is when I -- I believe that might have been the year I  
14 went to the factory and actually sat down for a class. But,  
15 I had the -- I had the machine before that; sometime before  
16 that, maybe a year or two, where I actually had possession of  
17 one. You might call it a beta model, at that point.

18          **Q.**     But, that was prior to it actually being put into  
19 use; correct?

20          **A.**     I don't think any states had it in use, at that  
21 point. I think we -- That is correct.

22          **Q.**     And you've been retained as an expert witness on  
23 behalf of Mr. Lister; is that correct?

24          **A.**     Correct.

25          **Q.**     When were you retained by defense counsel for this

1 case?

2 A. Sometime last year.

3 Q. And were you provided with any documents by  
4 defense counsel for review?

5 A. I was.

6 Q. And what documents, with specificity, did you  
7 review in this matter?

8 A. Just the standard discovery.

9 Q. And by standard discovery?

10 A. By that I mean, the State's discovery of the  
11 police reports. I reviewed supplemental reports and also  
12 some FDLE documents, as well.

13 Q. So, you reviewed the Probable Cause Affidavit?

14 A. That is correct.

15 Q. You reviewed supplemental reports attached to the  
16 Probable Cause Affidavit; is that correct?

17 A. Yes.

18 Q. Did you review the Alcohol Influence Report?

19 A. I have to see a copy of it to see what we're  
20 talking about exactly.

21 Q. Did you bring the documents that you reviewed?

22 A. I did. I did. I do have those. Let me see the  
23 title of it just to make sure.

24 I do not have a report that's entitled, Alcohol  
25 Influence Report on it.



1 Q. And what you're going through, that stack of  
2 paper, that is the entire -- all of the documents that you  
3 reviewed prior to today in this case?

4 A. Well, I'm certain that I reviewed more. But,  
5 these are, at least, the ones that I have copies of.

6 MR. McGRANE: Okay. We'll let you use those for  
7 deposition. But, afterwards, we'll take a copy and  
8 we'll attach it as State's Composite 1.

9 (State's Exhibit 1 marked for identification.)

10 BY MR. McGRANE:

11 Q. And also, sir, I've been provided --

12 A. I'll just have to have --

13 Q. Yes, sir?

14 A. -- Mr. Kroll, go through these just to make sure  
15 there's nothing that -- I see other paperwork involved here  
16 that may be more private or work product.

17 Q. Well, it's been disclosed to you; correct?

18 A. Well, there's e-mails in here. So, --

19 MR. McGRANE: Mr. Kroll and I will have that  
20 conversation after.

21 THE WITNESS: Sure.

22 BY MR. McGRANE:

23 Q. Also, Mr. Kroll's office provided us with this  
24 early this afternoon. Is this a true and correct copy of  
25 your current Curriculum Vitae?

1           **A.**     This is the one I -- It appears to be the one I  
2 sent over today.

3           **Q.**     Are there any additions you need to make to that?

4           **A.**     Not that I can think of at this point.

5           **MR. McGRANE:**   Okay. We will attach this as  
6 State's 2.

7           (State's Exhibit 2 marked for identification.)

8 **BY MR. McGRANE:**

9           **Q.**     Did you review any of the inspection data, whether  
10 it be the agency inspection, in order to testify today or  
11 give your deposition today?

12          **A.**     Yes.

13          **Q.**     Did you review any DVDs from the scene of the  
14 accident?

15          **A.**     I did not.

16          **Q.**     Is there anything else we haven't discussed that  
17 you reviewed in order to give any opinions today?

18          **A.**     Not that I can recall.

19          **Q.**     Okay. If you think of anything, please let me  
20 know.

21          **A.**     Certainly.

22          **Q.**     After reviewing all of the information, have you  
23 reached any opinions in this matter?

24          **A.**     Yes.

25          **Q.**     Are those opinions final at this time?

1           **A.**     They are.

2           **Q.**     And what are your opinions? We'll go into each  
3 one. But, if you could give me, basically, the opinions that  
4 you've reached and, obviously, we'll discuss them more.

5           **A.**     Well, my opinion was that the Intoxilyzer 8000  
6 used in this case was not in compliance with the FDLE rules.

7           **Q.**     Is that the only opinion that you are giving in  
8 this matter?

9           **A.**     I believe so, at this point.

10          **Q.**     Are you giving any opinions as to ailments that  
11 the defendant may have suffered at the time?

12          **A.**     I'm here about the rules; about that issue, at  
13 this point.

14          **Q.**     So, you'll be -- As we sit here today -- And you  
15 said your opinions are final at this time?

16          **A.**     At this point, yes.

17          **Q.**     You're not being offered to provide any expert  
18 opinion in the area of diabetes or how that may affect a  
19 intoxilyzer?

20          **A.**     I haven't been asked to give that opinion, the  
21 medical opinion of that, at this point.

22          **Q.**     Do you believe you're qualified to give that  
23 opinion?

24          **A.**     I can speak about the issues of the impact. But,  
25 I'm not a medical doctor. Certainly not.

1 Q. So, you have no medical training; is that correct?

2 A. I'm not a medical doctor; correct.

3 Q. Since you started to become a -- How did you  
4 phrase it, independent -- How do you phrase your current  
5 occupation now?

6 A. A consultant.

7 Q. An independent consultant. Have you ever  
8 testified for the State of Florida as an independent  
9 consultant?

10 A. I've been called back for cases. However, those  
11 were sort of carry over cases. Either I was a fact witness  
12 or left over expert witness. It's been a number of years.

13 Q. How many times have you been retained by a defense  
14 attorney as an independent consultant?

15 A. As an independent consultant on a case where --

16 Q. Where you were giving expert opinions on behalf of  
17 the defendant?

18 A. Well, not every case I provide expert opinions.  
19 So, there's many more cases where I'm retained to review.

20 Q. And how many times have you been retained by a  
21 defense attorney since you left BSO in 2003?

22 A. I don't have a number to give you. I'd have to --

23 Q. An estimation would be fine.

24 A. I'd have to estimate. I would be purely a guess.  
25 Several hundred.

1           Q.    How many times have you been retained by  
2 Mr. Kroll?

3           A.    In total, I would estimate, on DUI cases, probably  
4 a half a dozen times.

5           Q.    Other than the case we sit here today on, which is  
6 Andrew Lister, are you currently retained as an expert  
7 witness on any other of Mr. Kroll's cases?

8           A.    I have other cases; but, I'm uncertain whether or  
9 not I've been disclosed as an expert on those cases for the  
10 State.

11          Q.    How many current cases are you actively retained  
12 on?

13          A.    As far as with Mr. Kroll?

14          Q.    Yes. I'm not asking you for the names of the  
15 defendants.

16          A.    I understand.

17          Q.    I'm just asking you the number.

18          A.    I understand. I understand what you're asking.

19                I don't know the status of those cases. So, the answer  
20 would, probably, be three. If it would be zero, then it  
21 means that those cases have more than likely resolved  
22 themselves, other than this case then.

23          Q.    Do you charge for your services?

24          A.    I do.

25          Q.    And what is your current fee schedule?

1           **A.**     My fee schedule for local cases, I charge \$1,000  
2 to do the case work up, a \$1,000 for an appearance fee per  
3 occasion that I'm needed and I do not charge any local  
4 mileage or anything like that because I live in the area.

5           **Q.**     So, just so I understand. For the initial work up  
6 it's \$1,000; that's reviewing of the documents and  
7 formulating your opinion; correct?

8           **A.**     That is correct.

9           **Q.**     And your appearance fee? So, any time you appear  
10 for in-court testimony it's \$1,000?

11          **A.**     Yes, sir.

12          **Q.**     Portal to portal?

13          **A.**     Correct.

14          **Q.**     In this case, do you currently know how much  
15 you've billed Mr. Kroll?

16          **A.**     \$2,000.

17          **Q.**     And that's going to be the total amount of money  
18 that you make on this case, correct?

19          **A.**     I don't know. If it requires an additional day or  
20 some other proceeding, it may go over that. But, at this  
21 point, that's what I've been paid.

22          **Q.**     Okay. What is your experience with the agency  
23 inspection procedures for the Intoxilyzer 8000?

24          **A.**     Well, I have reviewed the inspection procedures.  
25 I'm very familiar with them. They're the same type of

1 inspection procedures which we use for the 5000. So, in that  
2 regard, I have a familiarity with them.

3 Q. When you worked for BSO, did you ever complete an  
4 agency inspection on the Intoxilyzer 8000?

5 A. Not an official one. Not one where it was for the  
6 purposes of evidential testing. But, only in so far as to  
7 check the machines that I had -- the machine, I had one --  
8 for some testing that I had done on that particular device.

9 Q. And as you stated earlier, that machine was, as  
10 you called it, a beta version; correct?

11 A. It was a -- Not DOT approved, at that point in  
12 time. None of them were. So, I guess all of them were a  
13 sub-degree, yes.

14 Q. As we sit here today, do you know if any changes  
15 were made to the Intoxilyzer 8000 between the beta version,  
16 that you, as you said, had in your possession and the ones  
17 that are currently in use today?

18 A. Outwards changes. Some small modifications to the  
19 device. But, as far as the analytical functions, not to my  
20 knowledge.

21 Q. Okay. Based on your knowledge, please go through  
22 how to do an agency inspection on the Intoxilyzer 8000?

23 A. I would need the -- I would rather just follow the  
24 procedure, the form; just follow that along. It's a very  
25 simple one.

1           **MR. McGRANE:** Okay.

2           **MR. KROLL:** Is there something that would aid you  
3 in answering that question?

4           **THE WITNESS:** Just the procedure. I would just  
5 read it directly into the record, if --

6           **MR. McGRANE:** Well, after Mr. Kroll hands you it,  
7 if it's a true and correct understanding of yours,  
8 based on the procedure, then we can just attach it, if  
9 you want to adopt it.

10           **THE WITNESS:** Okay. That will save a lot of  
11 speaking.

12           **MR. KROLL:** Are you referring to Form 39?

13           **THE WITNESS:** Form 39, yes. Thank you.

14 **BY MR. McGRANE:**

15           **Q.** Is that the form that you would follow in  
16 conducting an agency inspection on the Intoxilyzer 8000?

17           **A.** It is if I was in that capacity. That's correct.

18           **MR. McGRANE:** We'll attach Form 39 as State's 3.

19           (State's Exhibit 3 marked for identification.)

20 **BY MR. McGRANE:**

21           **Q.** Now, you stated that based on the documents  
22 reviewed you came to the conclusion and it's your opinion  
23 that the Intoxilyzer 8000 in this case was not in compliance;  
24 is that correct?

25           **A.** I'm sorry. Could you say that again?



1           Q.     You stated earlier, that the opinion you've  
2 reached in this matter was that the Intoxilyzer 8000 that was  
3 use was not in compliance; is that correct?

4           A.     That's correct.

5           Q.     Why do you believe the Intoxilyzer 8000 was not in  
6 compliance?

7           A.     Well, it didn't pass its inspection with regard to  
8 interferent detection.

9           Q.     Do you know how many inspections were done on this  
10 machine?

11          A.     There were a total of three inspections.  And --  
12 Let me just refer to my copies here.  I'm referring  
13 specifically to the agency inspection, which is dated  
14 8/26/2011, with the acetone detection, interferent detection.

15          Q.     Could you please provide the instrument number?

16          A.     In this case it's 80-001056.

17          Q.     And you're talking about the 8/26/2011.  What time  
18 was that test conducted?

19          A.     This one was dated on -- Excuse me.  The time was  
20 0520 hours.

21          Q.     Okay.  And you say that the interferent detect was  
22 not detected; correct?

23          A.     That is correct.

24          Q.     Was another agency inspection done?

25          A.     Well, another sequence was done.  There was a

1 total of six analyses that were preformed. Each one of those  
2 didn't catch the interferent detect.

3 Q. Now, in the remarks section, is anything written  
4 on that test?

5 A. Correct. Yes, there is.

6 Q. And what does the remarks sections say?

7 A. Reading from it, it says no interferent detected,  
8 aborted, non-compliance.

9 Q. Do you know when the test was aborted?

10 A. Well, the time would have been at the 0520 hours.

11 Q. So, it was aborted at 0520?

12 A. Correct.

13 Q. How long does it take to do an entire agency  
14 inspection?

15 A. Typically -- From the point where you have to warm  
16 up the simulators or just sitting around once everything is  
17 ready to go?

18 Q. From the start of the inspection to completion?

19 A. From the state of the inspection, once everything  
20 is warmed up, it should take roughly about a half an hour.

21 Q. So, the 0520 time would be the start of the  
22 inspection; correct?

23 A. My understanding is that's the completion time,  
24 the last time that an event occurred.

25 Q. In the sequence of diagnostic checks that are run

1 when is the interferent detect test done? Is it the first  
2 test? The middle test? The last test?

3 A. It's done after -- I'm just referring back to this  
4 Form 29, once again. The interferent test is done after an  
5 alcohol free test and before the .050 test is performed.

6 Q. So, based on your testimony, it was aborted prior  
7 -- right after the interferent detect test was done; correct?

8 A. That is correct.

9 Q. So, all of the other tests on Form 39 that are  
10 supposed to be done, the machine never did because it was  
11 aborted prior to; correct?

12 A. That is correct.

13 Q. So, again, we're only focusing on the interferent  
14 detect test; correct?

15 A. That's correct.

16 Q. And again, just so we're clear, based on the test  
17 that was done on the twenty-sixth day of August, 2011 at  
18 5:20, why do you believe that this test was not in  
19 compliance?

20 A. Well, because when a test is taken out -- When two  
21 tests occur that don't comply that's the point when the  
22 instrument should be removed from service.

23 Q. And where are the two tests that did not comply,  
24 sir?

25 A. Those would be -- Just referring to the -- I need

1 to take a break. I have to take a break. My foot is -- If  
2 we could go off the record for a second.

3 Q. I understand. There is a question pending. I'd  
4 just like to finish your answer before we take a break and  
5 then I'll be more than happy --

6 A. What was the question, again.

7 Q. The question is -- I'm asking you, what two tests  
8 did you say that this failed?

9 A. This is the -- Let me finish this up. Again, I'm  
10 referring to the inspection from 8/26.

11 Q. And where are the two tests that you said had  
12 failed?

13 A. The detection tests.

14 Q. The interferent detect tests?

15 A. Correct.

16 Q. Where it has no?

17 A. Which has zero, zero, zero. That should indicate  
18 interferent or INT.

19 Q. But, as you just testified, didn't you say the  
20 operation was aborted after the first interferent detect  
21 test?

22 A. It was aborted after the two.

23 MR. KROLL: Hold on. Could we take a time out for  
24 a second?

25 MR. McGRANE: We can take a break.

1 (Brief recess was held.)

2 **MR. McGRANE:** Mr. Kroll and I have had a  
3 discussion outside and based on a lot of extenuating  
4 circumstances, we believe it would be best to re-set  
5 the deposition at this time and just stop it here.

6 Mr. Kroll has said that he will speak to Judge  
7 Diaz to re-set the motion. So, we do have time to get  
8 this deposition done prior to the hearing on that  
9 motion.

10 Obviously, I'm not going to order the transcript  
11 at this time. So, we don't have to go through the read  
12 or waive at this point.

13 However, you are afforded that right.

14 **MR. BERMAN:** You might want to.

15 **MR. McGRANE:** Yes, I'll order it. So it's stream-  
16 lined for next time.

17 You do have the right to read or waive the  
18 deposition.

19 **THE WITNESS:** Read.

20 **MR. McGRANE:** You'll read?

21 **THE COURT REPORTER:** Contact number?

22 **THE WITNESS:** 954-709-0033.

23 (Thereupon, the deposition was adjourned.)  
24  
25

CERTIFICATE

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THE STATE OF FLORIDA)

COUNTY OF BROWARD)

I, ROBERT STOVER, a Court Reporter, do hereby certify that I was authorized to and did report the deposition of JAY ZAGER, a witness called in the above-styled cause, that the witness was first duly sworn by me; that a review of the transcript was requested; and that the transcript is a true and complete record of my notes.

I further certify that I am not an attorney or counsel for any of the parties, nor related to any of the parties, nor financially interested in the action.

Dated this the 27th day of July, 2012



ROBERT STOVER

COURT REPORTER

NBR/IMG

ERRATA SHEET

RECORD CHANGES HERE - DO NOT WRITE ON THE TRANSCRIPT

State of Florida vs. Andrew Mark Lister

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Under penalties of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.

(Date)

JAY ZAGER

**Jay H. Zager**  
10638 NW 69 Ave  
Parkland, FL 33076  
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16 years Breath Alcohol Testing experience.  
15 years law enforcement agency experience

**Jay Zager, Forensic DUI Breath Alcohol / Field Sobriety Testing (SFST),  
Forensic Impaired Driving Consultant, 2003-present**

**Employment**

**Broward County Sheriff's Office Fort Lauderdale, Florida.** (Retired.2003) 1988 to 2003 Law Enforcement Officer./ Deputy Sheriff  
1996-2003 Assigned as the coordinator of the Breath Alcohol Testing Program. Certified as an expert witness in breath alcohol testing and human alcohol performance testing. Testified in over 1000 DUI Criminal Trials and Administrative Hearings in State and Federal courts.  
DUI Task Force Member

**Training,  
Education  
& Experience**

**Drager Alcohol Ignition Interlock Factory Training:** Drager Safety Inc. 2011  
**Drager 7110 MKIII-C Factory Training:** Drager Safety Inc. 2011  
**EC/IR II Training:** Conducted by factory certified Intoximeters instructor, 2010  
**Data Master Factory Training:** National Patent Analytical Systems, 2007  
**EC/IR Training:** Training conducted by factory certified Intoximeters instructor, 2006  
**CMI Intoxilyzer 8000 Factory Training:** Intoxilyzer Inc., 2003

**Florida Department of Law Enforcement Breath Alcohol Testing program IPTM**  
Breath Alcohol Instrumentation Committee Member.  
Approved the Intoxilyzer 8000 as Florida's next breath alcohol testing instrument, 2002

**Co-Chair Florida DOT's Ignition Interlock Program.** Made recommendations for implementing Florida State laws and equipment usage criteria for ignition interlock program, 2002

**Broward County Comm. on Alcoholism, Active board member, 2002-present**

**Florida Department of Law Enforcement Breath Alcohol Testing Program's Curriculum Design Committee Member.** Designed new breath alcohol testing program training manual for use throughout the State of Florida, 2000  
Florida Department of Law Enforcement Breath Alcohol Testing Program IPTM Alcohol Rules Committee Member, 1999

**Florida Department of Law Enforcement Breath Alcohol Testing Program.** State certified Breath Alcohol Testing Instructor, 1998

**NHTSA SFST DWI Instructor Certification Course, IPTM:** Univ. of North Florida, 1998

**CMI Factory Training for Intoxilyzer 5000.** Factory certified in Operation Repair and Instruction, 1997

**Intoximeter Inc. –** Factory certified as an instructor / operator. 1997

**Florida Department of Transportation's Community Traffic Safety Team Member.** Implemented measures to save lives by reducing alcohol related traffic crashes, 1997

**Florida Department of Law Enforcement Breath Alcohol Testing Program.**  
Certified in Intoxilyzer repairs, 1997

**Guth Laboratories Certification.** Operation and repair of the Guth Alcohol testing simulator – Factory Training, 1997

**Indiana University "Borkenstein Course",** Tests for BAC in Highway Safety Programs:  
Supervision and Expert Testimony Certification, 1997



**Florida Department of Law Enforcement Breath Alcohol Testing Program.**  
Certified as a breath test operator and Intoxilyzer inspector, 1996

**Nova University: Fort Lauderdale, Florida,** Paralegal with advanced studies in litigation and advocacy, 1992

NHTSA SFST DWI Practitioner Course, 1991

#### Continuing Education

**CMI, Inc. Factory Sponsored Intoxilyzer 5000 Users Group Meeting**  
1997, 1998, 1999, 2000, 2001

**(IACT) International Association for Chemical Testers Meetings**  
2000,2003,2004,2005,2007, 2010, 2011

NHTSA DWI Instructor's Updates, 2003, 2005, 2008

#### Papers

**A Brief Walk in the Shoes of a Convicted Drunk Driver:**  
An Overview of Florida's Ignition Interlock Program: Presented at IACT Annual Meeting; Halifax Nova Scotia, 2000

**Hit Me With Your Best Shot: Lack of effect on forensic breath alcohol test post recent facial dosing with capsicum based pepper spray.**  
Presented at the American Academy Of Forensic Sciences Annual Meeting. Seattle, Washington, 2001

**Life Behind The Wheel At .609% BAC:** Case studies of acutely impaired drinking drivers. Presented at IACT Annual Meeting; Austin, TX, 2002

**Lack of Effect of Blood in the Oral Cavity on Forensic Breath Alcohol Tests:**  
Presented at the International Committee on Alcohol, Drugs and Traffic Safety (ICADATS) Meeting Montreal, Canada 2002

**Lack of Effect of Over-the-Counter Oral Care Strips on a Forensic Breath Alcohol Testing Device:** (ICADATS) Meeting Glasgow, Scotland 2004

#### Lectures

**Nova Southeastern School of Law:** Forensic Alcohol Evidence and SFSTs  
1999, 2000,2001,2002,2003

**Broward County, Florida High Schools:** Dangers of drinking and driving  
1996,1997,1998,1999,2000,2001,2002,2003,2004

**Intoxilyzer 8000 Operators Course -** Tunica, Mississippi; New Orleans, LA

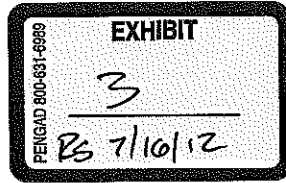
**Florida State BAR CLE Approved Intoxilyzer & SFST Overview Course**

**New Challenges in Handling DUI Cases:** American Bar Association (ABA) Section on Science and Technology Law – National ABA DUI Seminar

**Mastering Scientific Evidence**  
Invited Guest Lecturer in Forensic Alcohol Testing 2004, 2005, 2006, 2011

**NCDD – Summer Session held at Harvard Law School:** Cambridge, MA.  
Invited Guest Lecturer

# Florida Department of Law Enforcement Alcohol Testing Program



## AGENCY INSPECTION PROCEDURES – INTOXILYZER 8000

1. Prepare at least two simulators for use and allow them to warm up for at least thirty minutes prior to the first analysis. When changing solutions, allow the new solution to warm up for at least ten minutes after the heater light turns off for the first time. Ensure that each simulator maintains an air leak resistant seal and an operational temperature of 34 C (+/- 0.2 C).
2. Only distilled or deionized water must be used for the Alcohol Free Test and the Interferent Detect Test. Class A glassware must be used when measuring solutions.
3. Only approved and non-expired alcohol reference solution and non-expired dry gas standard from an approved source must be used during the applicable portions of the inspection.
4. Press ESC twice to access the main menu. Enter Agency Inspector last name, first name and middle initial at USER prompts. Press the 2 key to access the Agency Inspector menu. Enter password. Scroll to Inspection Test and press ENTER. Enter Agency Inspector last name, first name and middle initial at INSPECTOR prompts.
5. All results are reported to three decimal places in g/210L. The result must be 0.000 for each air blank. The instrument will abort the inspection process if the air blank result is not 0.000. If any test is out of compliance the instrument will prompt the Agency Inspector to REPEAT (Y/N) the test. Each test may only be repeated once. If a test must be repeated, the REASON must be entered when prompted and recorded in the Remarks section of FDLE/ATP Form 40 Agency Inspection Report – Intoxilyzer 8000.
  - Verify DATE. Adjust if necessary. Press ENTER. Verify TIME. Adjust if necessary. Press ENTER.
  - DIAGNOSTIC CHECK (Pre-Inspection). Press ENTER. The result must be OK for each diagnostic check. If any diagnostic check result is not OK, the instrument will abort the inspection process.
  - NUMBER OF SIMULATORS USED. Enter the number of simulators used during the inspection.
  - ALCOHOL FREE SUBJECT/MOUTH ALCOHOL TEST. Press ENTER. When PROVIDE SAMPLE NOW is displayed, introduce an alcohol-free breath sample into the instrument. The result must be 0.000. Rinse mouth with mouth alcohol solution. When PROVIDE SAMPLE NOW is again displayed introduce a breath sample into the instrument. The result must be SLOPE NOT MET.
  - ALCOHOL FREE TEST. Attach a simulator containing 500 mL distilled or deionized water to the instrument. Press ENTER. Conduct three (3) analyses. The result must be 0.000 for each analysis.
  - INTERFERENT DETECT TEST. Attach a simulator containing 3 mL of acetone stock solution and 500 mL distilled or deionized water to the instrument. Press ENTER. Conduct three (3) analyses. The result must be INTERFERENT DETECT for each analysis.
  - 0.05 g/210L TEST. Attach a simulator containing 0.05 g/210L alcohol reference solution to the instrument. Press ENTER. Enter the lot number and expiration date of the alcohol reference solution used. Conduct three (3) analyses. The result of each analysis must be within the acceptable range.
  - 0.08 g/210L TEST. Attach a simulator containing 0.08 g/210L alcohol reference solution to the instrument. Press ENTER. Enter the lot number and expiration date of the alcohol reference solution used. Conduct three (3) analyses. The result of each analysis must be within the acceptable range.
  - 0.20 g/210L TEST. Attach a simulator containing 0.20 g/210L alcohol reference solution to the instrument. Press ENTER. Enter the lot number and expiration date of the alcohol reference solution used. Conduct three (3) analyses. The result of each analysis must be within the acceptable range.
  - 0.08 g/210L DRY GAS STANDARD TEST. Attach a cylinder containing 0.08 g/210L dry gas standard to the instrument. Press ENTER. Enter the lot number and expiration date of the dry gas standard used. Conduct three (3) analyses. The result of each analysis must be within the acceptable range.
  - DIAGNOSTIC CHECK (Post-Inspection). Press ENTER. The result must be OK for each diagnostic check. If any diagnostic check result is not OK, the instrument will abort the inspection process.
  - REVIEW REMARKS. Enter Y/N.
  - IN COMPLIANCE. Enter Y/N to state whether the instrument complies or does not comply with the requirements of Chapter 11D-8, FAC. If the instrument does not comply with Chapter 11D-8, FAC, remove the instrument from service and notify the Department Inspector.
6. The results of the Agency Inspection must be recorded on FDLE/ATP Form 40 Agency Inspection Report – Intoxilyzer 8000.
7. For regulatory and administrative purposes only, the results of the agency inspection must be made electronically available to the Department within five (5) days of completing the inspection.

