

1 STATE OF ILLINOIS )  
 ) SS:  
2 COUNTY OF DU PAGE )

3  
4 IN THE CIRCUIT COURT OF DU PAGE COUNTY  
FOR THE EIGHTEENTH JUDICIAL CIRCUIT OF ILLINOIS

5 THE PEOPLE OF THE STATE )  
OF ILLINOIS, ) ORIGINAL  
6 Plaintiff, )  
7 vs. ) No. 04 DT 2848  
8 KELLY CRAWFORD, )  
9 Defendant. )

10 REPORT OF PROCEEDINGS had  
11 at the hearing of the above-entitled cause  
12 before the Hon. KENNETH TORLUEMKE, recorded on  
13 the DuPage County recording system, DuPage  
14 County, Ill., transcribed by Sandra Gorajczyk,  
15 the 27th day of January, A.D. 2006.  
16

17 PRESENT:

18 MS. LISA MADIGAN, Attorney General for  
the State of Illinois, by  
19 MS. DEBORAH SIMPSON and MR. KHANG TRINH,  
Assistant Attorney Generals; and  
20 MR. MICHAEL O'DONNELL, Assistant State's  
Attorney,

21 appeared on behalf of The People of  
22 the State of Illinois.

23 Sandra Gorajczyk 084-000455  
24 Wheaton, IL 60187

1 PRESENT:

2 MR. DONALD RAMSELL,

3 appeared on behalf of the Defendant.

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(WHEREUPON, the oath was  
duly administered to  
the witness by the  
Clerk.)

THE COURT: All right. Good afternoon sir.  
All right. You may proceed.

J O H N E V A N S

called as a witness on behalf of the People of  
the State of Illinois, having been first duly  
sworn, was examined and testified as follows:

CROSS EXAMINATION

By: Mr. Ramsell

Q Mr. Evans, during your previous  
testimony I believe one of the statements you  
made was with respect to when a machine is out of  
calibration or an instrument -- the EC/IR is out  
of calibration. Do you remember that topic at  
all?

A I remember discussing the topic. I  
can't remember specific questions.

MR. RAMSELL: Okay. Let me try and draw  
you to where I'm trying to arrive at then.

BY MR. RAMSELL:

1 Q There -- you had a -- you were making a  
2 discussion about when a machine falls out of  
3 calibration how -- how it can be re-calibrated,  
4 and my question to you is, if -- let's say if a  
5 machine is certified as accurate on the first day  
6 of the month and then on the last day of the  
7 month the accuracy check shows that the machine  
8 is greater than .01 off of the gas, dry gas  
9 simulator --

10 A Yeah.

11 Q -- what is your opinion about whether  
12 or not that machine was working accurately within  
13 that one month?

14 A I can only say that the beginning of  
15 the period during the -- the original  
16 certification test was carried out, and it was  
17 within the parameters required, it was accurate.

18 I cannot estimate or define when it  
19 went out of calibration. It's -- it's not  
20 possible for me to do that.

21 MR. RAMSELL: Okay.

22 BY MR. RAMSELL:

23 Q Would you at least agree that -- the  
24 fact that something -- that that machine was out

1 of calibration would be a fact that would be of  
2 some value to experts on breath testing?

3 A Um, I think it's -- it's to both  
4 experts and the Court, it would be a statement  
5 that the instrument is -- for whatever reason --  
6 over a period of time is no longer reading  
7 accurately.

8 The reasons why I could not explain any  
9 more than that without examination of the  
10 instrument to determine what had changed.

11 MR. RAMSELL: Okay.

12 BY MR. RAMSELL:

13 Q Well, you're an expert to some degree  
14 on breath testing --

15 A Uh-huh.

16 Q -- instruments; right?

17 A Yes, to a degree.

18 MR. RAMSELL: Okay.

19 BY MR. RAMSELL:

20 Q Would you consider the fact that a  
21 machine has or has not fallen out of calibration  
22 to be something you would want to know if you  
23 were going to testify about the validity of that  
24 instrument's results?

1           A     Certainly.    The accuracy -- the matter  
2 of record of the accuracy of the instrument  
3 through certification tests or whatever method is  
4 -- is of interest to the Court and to the  
5 experts.  It's a reasonable statement.

6           MR. RAMSELL:    Okay.

7 BY MR. RAMSELL:

8           Q     Now, when a calibration or a --  
9 let's -- let's say that -- let's say the machine  
10 is somehow out of calibration and the -- the  
11 qualified person were to perform a  
12 re-calibration, if I could just choose that  
13 word --

14          A     Uh-huh.

15          Q     -- for the sake of argument, the memory  
16 of the EC/IR will record the fact that a  
17 calibration event has occurred?

18          A     Yes.

19          Q     And it -- that would be retrievable  
20 from the internal memory, assuming all other  
21 aspects of the machine are working correctly?

22          A     That's correct.

23          Q     And that would be retrievable through  
24 what I refer to as a Shift F5 function of

1 retrieval?

2 A Correct.

3 MR. RAMSELL: Okay.

4 BY MR. RAMSELL:

5 Q Now, in Illinois the software version  
6 for the Intox EC/IR or versions, if they're in  
7 the plural, that is used for the State of  
8 Illinois program has a mask on function; correct?

9 A There are a mask on -- there are  
10 several masks, if you don't mind me explaining  
11 briefly.

12 Q Well, are you familiar with the phrase  
13 mask on as it would be found in the F-11 --

14 A Yes.

15 Q -- diagnostics?

16 A There's a mask on.

17 Q And one of the functions that the mask  
18 on performs is that if an air blank result was in  
19 fact .003, by having the mask on, the air blank  
20 will still show and print as .000?

21 A Correct.

22 Q Is that a fair statement?

23 A Correct.

24 THE COURT: Mr. Ramsell, if you can just

1 ask him or if I can ask him to define for me what  
2 the mask on is, what it -- it actually is --

3 THE WITNESS: Okay.

4 THE COURT: -- what the function of that  
5 is.

6 THE WITNESS: This -- when you do the air  
7 blank, which is the purging of the system in  
8 between samples prior to a subject sample, prior  
9 to an accuracy check, prior to any sample, the  
10 instrument purges itself from alcohol.

11 And to determine that there's zero  
12 alcohol left in the residual alcohol left in the  
13 system, we carry out what we call a blank sample.

14 We actually draw from within a sample  
15 of the air from within the sample chamber, which  
16 is the infrared chamber and analyze it with a  
17 fuel cell sensor, which is that primary sensor.

18 If that reading is greater than 003,  
19 we abort that accuracy check, that air blank.  
20 We say there's a problem.

21 In fact, what we do is we go back and  
22 re-try three consecutive times, and that's the  
23 air blank.

24 THE COURT: When you say we, this is



1 not --

2 THE WITNESS: The instrument. I'm sorry.

3 THE COURT: Right; okay.

4 THE WITNESS: The instrument will  
5 automatically purge again and say -- and will  
6 take another sample.

7 The -- the -- the design of that is you  
8 have a person with alcohol in their breath.  
9 They may be holding the breath tube and he's  
10 breathing alcohol in the air, and it may be drawn  
11 -- being drawn through the system.

12 And it's -- it's designed to ensure  
13 that there's zero sample in there, but the sample  
14 that the subject then blows out constantly.

15 After three attempts, if they do not  
16 establish that there's zero air in there and when  
17 -- Mr. Ramsell has made the point that we accept  
18 up to 003 as being alcohol free, and the  
19 instrument will then abort the test on an ambient  
20 failure.

21 THE COURT: All right. Thank you,  
22 Mr. Evans. Mr. Ramsell, you may continue.

23 MR. RAMSELL: Thank you.

24 BY MR. RAMSELL:

1 Q The EC/IR software for Illinois also  
2 has a mouth alcohol minimum IR output?

3 A Correct.

4 Q Can you tell the Judge what that means?

5 A The instrument is looking for a minimum  
6 amount of alcohol being in the system before it  
7 starts looking for -- for mouth alcohol.

8 You -- if you've got an insignificant  
9 amount of alcohol in the system, you're below the  
10 legal limit, so the design is there to not look  
11 for mouth alcohol unless there's a significant  
12 measurable amount of alcohol in the system.

13 So we have a minimum threshold of which  
14 the IR sensor must detect before it will say  
15 there's -- there is significant alcohol present.

16 Now we will now look for the mouth  
17 alcohol condition, and it's related to the  
18 infrared sensor, not to the fuel cell sensor.

19 So it -- it actually -- the infrared  
20 sensor monitors the sample that is blown -- being  
21 blown through the system by the subject to ensure  
22 that mouth alcohol is not present, and that's the  
23 primary role for the infrared detector in the  
24 EC/IR system. So it's a minimum threshold.

1                   We're saying that unless this alcohol  
2 level is above this level, we're not going to  
3 look for mouth alcohol.

4           Q       Now, if the change in the ethanol IR  
5 output is less than two AD counts, then no mouth  
6 alcohol will be flagged?

7           A       I'm sorry.

8           Q       Is that a fair statement?

9           A       Could you repeat that again?

10          Q       If the change in the ethanol IR output  
11 is less than two AD counts, A as a letter, D as a  
12 letter --

13          A       That's A to D counts, on all to  
14 digital, but the figure two, that's incorrect.

15          MR. RAMSELL:    Okay.

16          BY MR. RAMSELL:

17          Q       Well, let me read this again --

18          A       Fine.

19          Q       -- so the record is clear.

20          A       Uh-huh.

21          Q       If the change in the ethanol IR output  
22 is less than two A to D counts, then no mouth  
23 alcohol will be flagged.    Is that a correct  
24 statement of how the Illinois EC/IR software is

1 set up?

2 A That's incorrect.

3 Q What would be a correct statement on  
4 that subject?

5 A Um, the -- I'm sorry. I need to get  
6 -- explain again.

7 The IR mouth alcohol detection is based  
8 on several parameters, one of which is that  
9 minimum A to D minimum output.

10 The other one is what we called  
11 variance --

12 Q Okay.

13 A -- which is --

14 Q Just stay with the minimum for a  
15 moment. I'm going to go to variance.

16 A The two A to D is not a figure that I'm  
17 familiar with in any of our systems, one.

18 And if my memory serves me correct and  
19 I have to check on this, the only one I'm aware  
20 of is 2000, which is the variance figure.

21 MR. RAMSELL: All right. Well, let's go  
22 back then.

23 BY MR. RAMSELL:

24 Q Does the Illinois software for the

1 EC/IR have any program -- programming in it that  
2 holds that if the change in the ethanol IR output  
3 is less than a certain amount, then no mouth  
4 alcohol will be flagged?

5 A That's correct. That's what we just  
6 discussed.

7 MS. SIMPSON: Your Honor, I'm going to  
8 object to this line of questioning.

9 When he started asking about the  
10 certifications and the registering, that's  
11 related -- that's to the issue before the Court.

12 Now he's going into whether this  
13 instrument should have been approved by the  
14 National Board, and it's already been approved by  
15 them --

16 THE COURT: Well, he hasn't --

17 MS. SIMPSON: -- and he's not entitled to  
18 question that.

19 THE COURT: -- asked that question yet,  
20 Miss Simpson. I --

21 MS. SIMPSON: Well, the questions that  
22 he's getting at --

23 MR. RAMSELL: For the --

24 THE COURT: Hold on --

1 MR. RAMSELL: I'm --

2 THE COURT: Don, hold on. Go ahead and  
3 finish the objection.

4 MS. SIMPSON: It appears that what he's  
5 doing is questioning the numbers that the  
6 instrument is set at to make its determinations,  
7 and that is clearly -- goes to whether or not the  
8 instrument itself is doing a proper -- should  
9 have been qualified or should have been approved  
10 by the department.

11 We don't --

12 THE COURT: Well, but --

13 MS. SIMPSON: -- have any control over  
14 this.

15 THE COURT: -- if that's true, then it's  
16 highly relevant, if that's true, and I think  
17 that's -- as you state the objection, calling  
18 into question whether it should even be approved  
19 if it doesn't perform a certain function as  
20 Mr. Evans expects the function to be performed.

21 MS. SIMPSON: But --

22 THE COURT: But one, he hasn't even stated  
23 that in his questions to Mr. Evans, he's --  
24 regarding the particular function, what the

1 threshold is for that -- for that being dealt  
2 with by the machine, so overruled.

3 Do you want -- do you understand the  
4 question, Mr. Evans?

5 THE WITNESS: Yes, I do understand the  
6 question.

7 THE COURT: All right. You may answer the  
8 question.

9 THE WITNESS: I'm happy to answer as long  
10 as the Court wishes me to so --

11 THE COURT: Yes, sir.

12 THE WITNESS: Of course, yes.

13 So I'm sorry, Mr. Ramsell. Could you  
14 repeat your question?

15 THE COURT: Do you remember it or do you  
16 want it read back?

17 THE WITNESS: I think --

18 MR. RAMSELL: I am totally lost. I don't  
19 remember what I asked.

20 THE WITNESS: I -- I think you asked again  
21 is there a minimum ethanol delta required on the  
22 EC/IR 1 in Illinois before it starts looking for  
23 mouth alcohol.

24 MR. RAMSELL: Okay. Yeah.

1 THE WITNESS: I answered that question  
2 already yes.

3 MR. RAMSELL: Let me -- let me ask the  
4 question --

5 THE COURT: That's my recollection as well.  
6 Go ahead.

7 MR. RAMSELL: Thank you for refreshing the  
8 non-witness. All right.

9 BY MR. RAMSELL:

10 Q If there is a change in the ethanol IR  
11 output, is the machine set up to a certain  
12 parameter before mouth alcohol will be flagged?

13 A Yes. That's that minimum threshold,  
14 minimum ethanol delta figure you -- you spoke of  
15 just a few minutes ago.

16 Q So can -- can some mouth alcohol be  
17 introduced into the EC/IR without the machine  
18 aborting the test result?

19 A A very low level of alcohol, but the  
20 design is such that it would be typically below a  
21 050 or even less.

22 MR. RAMSELL: Okay.

23 BY MR. RAMSELL:

24 Q Now -- and this information, these



1 parameters if you will, are available through  
2 accessing the internal programming inside the  
3 device?

4 A We call it the settings.

5 MR. RAMSELL: Right.

6 BY MR. RAMSELL:

7 Q So you would agree with me?

8 A Yes.

9 MR. RAMSELL: Okay.

10 THE COURT: Well, I need to hear him say  
11 yes or no.

12 THE WITNESS: I'm sorry. Yes.

13 THE COURT: Do you --

14 THE WITNESS: We call them the settings.

15 THE COURT: -- agree, right.

16 THE WITNESS: You can access certain  
17 parameters.

18 THE COURT: Right. Okay.

19 BY MR. RAMSELL:

20 Q You told us that there are four  
21 critical temperatures --

22 A Correct.

23 Q -- in the operation of the EC/IR

24 A Uh-huh.

1 Q Do you remember that subject generally?

2 A I do.

3 MR. RAMSELL: All right.

4 BY MR. RAMSELL:

5 Q One of them you mentioned was the  
6 temperature of the fuel cell?

7 A Correct.

8 Q Do you recall that?

9 A Yes.

10 Q And the pre -- the perfect temperature  
11 of the fuel cell would be 36 degrees centigrade?

12 A The range is 35 to 37 with target 36.

13 MR. RAMSELL: Right.

14 BY MR. RAMSELL:

15 Q The fuel cell temperature, if it  
16 dropped to 35 degrees -- excuse me -- in order  
17 for the machine -- the instrument -- I  
18 will gratiate (sic) you with the word instrument.

19 THE WITNESS: Thank you.

20 BY MR. RAMSELL:

21 Q In order for the --

22 MS. SIMPSON: Objection to that comment.

23 MR. RAMSELL: -- instrument to abort --

24 THE COURT: It's sustained. It will be

1 stricken.

2 BY MR. RAMSELL:

3 Q In order for the instrument to tell the  
4 operator that there's a problem with the  
5 temperature of the fuel cell, the instrument  
6 would have -- fuel cell temperature would have to  
7 fall below 35 degrees centigrade?

8 A Correct.

9 Q Is that a fair statement?

10 A Correct.

11 Q And on -- on the opposite end in order  
12 for it to tell an operator that there is a  
13 problem with the temperature of the fuel cell,  
14 the fuel cell temperature would have to exceed 37  
15 degrees centigrade. Is that a fair statement?

16 A That's a fair statement.

17 Q And you also told us that one degree  
18 centigrade variance would affect the true result  
19 by approximately six percent.

20 A I did not say that.

21 Q Is there a recognized scientific  
22 formula that tells us a deviation of a true  
23 breath alcohol result will occur based on a  
24 change of the temperature of the breath?

1 A May I --

2 THE COURT: Yes, sir.

3 THE WITNESS: I need to explain this to

4 Mr. Ramsell's --

5 MR. RAMSELL: I -- my question is very

6 direct.

7 THE COURT: Right.

8 BY MR. RAMSELL:

9 Q You're going to answer my question;

10 right?

11 A I'm answering --

12 THE COURT: Stop.

13 THE WITNESS: Sorry.

14 THE COURT: Both parties stop. First of

15 all, Mr. Evans, proffer your explanation. Then,

16 Mr. Ramsell, if you need further clarification or

17 you want to restate or re-examine the witness,

18 but for the benefit of the Court, I certainly

19 want Mr. Evans to explain to me how he is to

20 answer your question if he has a relevant

21 explanation.

22 So Mr. Evans, explain yourself and then

23 wait for the next question. Okay?

24 THE WITNESS: Mr. Ramsell questioned the

1 one degree centigrade having a six percent change  
2 in alcohol is associated with Henry's Law.

3 And Henry's Law is the law that covers  
4 the -- the relationship between the alcohol in  
5 the blood and then the alcohol in the expired  
6 breath or the alveolar.

7 THE COURT: We talked about this earlier,  
8 though, did we not? Didn't -- I thought --

9 THE WITNESS: We did talk this earlier --

10 THE COURT: Right.

11 THE WITNESS: -- but -- but what is  
12 important and -- and I think this is where the  
13 incorrect assumption has come -- is that that law  
14 covers the human.

15 It relates to a person who is at 37  
16 degrees centigrade is in a cold body temperature,  
17 and if he goes up by one degree, the ethanol  
18 released from the blood into the air will go up  
19 by six percent.

20 It does not relate or have any  
21 relationship of any of the temperatures in the  
22 instrument.

23 The instrument is covered by a  
24 different law, which is the -- the gas law, the

1 generalized gas law.

2           So the six percent per degree  
3 centigrade relates to the human subject's vapor.

4           When it leaves the human and enters the  
5 machine, it is no longer related to that law. Its  
6 value is no longer dominated by that law.

7           It's -- it's a -- it's a -- there are  
8 two separate systems.

9           There's the human system that delivers  
10 a vapor at its mouth to the instrument, and then  
11 there is the instrument system which then takes  
12 and analyzes it.

13           One is covered by Henry's Law. The  
14 other is covered by the gas law, which is why I  
15 can say no, the one percent change in the fuel  
16 cell sensor temperature does not have a six  
17 percent effect --

18           THE COURT:    You mean one degree?

19           THE WITNESS:   Or one degree.

20           THE COURT:    One degree, not one percent?

21           THE WITNESS:   One degree centigrade change  
22 of the fuel cell temperature, does not have a six  
23 percent change of the ethanol value read.

24           THE COURT:    What -- what change if any does

1 it have then, cause the optimum is 36. The  
2 variance is 35 to 37.

3 THE WITNESS: Correct.

4 THE COURT: Right?

5 So if it's not -- if it's not within  
6 that temperature range, the fuel cell, then what  
7 -- what is -- is going to --

8 THE WITNESS: It's --

9 THE COURT: -- happen?

10 THE WITNESS: -- negligible. If I put it  
11 into perspective, it's three degrees over 230  
12 degrees.

13 The temperature relationship is in  
14 absolute degrees calabin, so there's  
15 273 degrees calabin to zero degrees calabin.

16 Then you add to that the 20 degrees  
17 for ambient temperature. So we're talking about  
18 293 degrees ambient temperature.

19 You then have the variation of three  
20 degrees and 290, so those three degrees are  
21 equivalent of somewhat less than one percent or  
22 around one percent. Now, that's the gas law  
23 relationship.

24 In terms of the fuel cell instrument

1     itself, it is -- it is common knowledge that the  
2     temperature coefficient of a fuel cell is stable  
3     over a range of temperatures, typically between  
4     15 and 35 degrees centigrade.

5             THE COURT:   How -- how is a person to know,  
6     either operator or examiner, that the fuel cell  
7     temperature is -- is varying above or below the  
8     optimal amounts?

9             How -- how is that determined?

10            THE WITNESS:   The -- the instrument  
11     determines that, and the heaters which control  
12     those -- there are individual controlled heaters  
13     for the fuel cell for the infrared.

14            They're all part of the system which is  
15     tested and approved by the State and also tested  
16     and approved by the Federal government.

17            THE COURT:   Now, is that going to be stored  
18     in the internal data if the machine makes that  
19     adjustment?

20            THE WITNESS:   The -- the parameters that --  
21     the minimum and maximum operating temperatures  
22     are in the instrument.  They're in the settings.

23            We do actually change them for certain  
24     applications, for certain different instruments,



1 which is why when this question came up  
2 previously -- because I did not have exactly  
3 those figures in mind.

4 I used the word typically, because they  
5 would -- there are no more than typically three  
6 or four degrees operating range over which these  
7 heaters operate.

8 The fuel cell, being the primary  
9 sensor, is quite a tight parameter.

10 THE COURT: All right. Thank you,  
11 Mr. Evans.

12 THE WITNESS: Thank you.

13 THE COURT: Mr. Ramsell, you may continue.

14 MR. RAMSELL: Do you remember my question?  
15 Let me repeat it.

16 BY MR. RAMSELL:

17 Q Is there a scientific principle that  
18 says there's a variance between a true breath  
19 alcohol result and a reported result based on a  
20 change of breath temperature?

21 A Breath temperature, yes.

22 MR. RAMSELL: That's what I asked you before  
23 and the short answer is yes.

24 THE COURT: You --

1 MR. RAMSELL: Move to strike all the other  
2 as non-responsive.

3 THE COURT: -- have to say yes. You have  
4 to say yes again. Right, Mr. Evans?

5 THE WITNESS: Yes.

6 THE COURT: You're agreeing with  
7 Mr. Ramsell. Right.

8 MR. RAMSELL: Okay. And the short answer  
9 -- then I move to strike everything else as  
10 virtually non-responsive and unnecessary to what  
11 I had asked, other than he wanted to make sure  
12 that I didn't mislead you somehow and my --

13 THE COURT: Well, wait, wait --

14 MR. RAMSELL: -- question was perfectly  
15 phrased.

16 THE COURT: -- wait. I don't -- I don't  
17 take it as Mr. Evans trying to make sure that you  
18 or anybody else is misleading me.

19 I take it as his response to my  
20 invitation to tell me, and as the Trier of Fact I  
21 consider it more relevant than you may.

22 Your question is more focused than --  
23 than my desire to know more about the machine in  
24 the context of the discovery request, to find out

1 if there are any -- any factors, one, that are  
2 recorded that affect the accuracy of the machine,  
3 the machine's ability for its designated tasks  
4 and a limited focus question is not going to  
5 always answer that query that the Court may have.

6           So when I ask Mr. Evans to expound on  
7 that information, it is -- it is not responsive  
8 to your question but it's essential for the Court  
9 to differentiate factors that have some validity  
10 that may affect this machine or discoverable  
11 information that is being requested since -- as  
12 Mr. Evans indicated to me -- some of these  
13 functions, if they are performed, will in fact be  
14 on the Shift 5 information.

15           So it's -- it's for purposes moreso  
16 than the Court.

17           So in that context technically the --  
18 the answer is non-responsive, but I find it is  
19 absolutely essential, and in the spirit of this  
20 hearing since this hearing really has taken --  
21 taken, I think, more in the context of a Frye  
22 type hearing on the accuracy of the reliability  
23 of this particular machine, the safeguards, the  
24 proper safeguards that the expert is tendering

1 are built into the machine.

2           The defense's request and questioning  
3 from the expert, much of which he's agreed with,  
4 is there's no harm in having that information,  
5 that he doesn't believe maybe necessarily impact  
6 that other parties may believe by having that  
7 information.

8           But he does not disagree with that, so  
9 to that -- to that extent in terms of the Court  
10 and for the parties request to find out  
11 discoverable information and the relevancy of  
12 that information, the hearing has gone, I think,  
13 quite, quite profoundly into the machine itself,  
14 the absolute function of the machine as testified  
15 to by -- and put in evidence by the -- not only  
16 the defenses expert but by Mr. Evans as well.

17           So those types of objections just  
18 are -- I guess as a guide map to both sides -- if  
19 -- if I do that and if I stop a question or  
20 ask -- ask the expert whether it's Mr. Evans or  
21 anybody else to expound, it's going to be for  
22 that purpose.

23           So the record should reflect that as  
24 well. All right.

1 Mr. Ramsell, next question.

2 MR. RAMSELL: Thank you.

3 BY MR. RAMSELL:

4 Q Are you familiar with the term M/F as  
5 it would relate to an EC/IR?

6 A No; not -- I can't --

7 Q Did the State of Illinois ever in  
8 writing request a software revision to your  
9 company asking that the software be revised to  
10 remove the indication of a term M/F?

11 A Not that I know.

12 MR. RAMSELL: Okay.

13 BY MR. RAMSELL:

14 Q In any of the soft -- in any EC/IR does  
15 the term M/F -- is it ever used to report a type  
16 of malfunction?

17 THE COURT: Well, I think he said he  
18 didn't know what M/F meant and --

19 THE WITNESS: I'm sorry. I'm actually  
20 not familiar with the term M/F.

21 THE COURT: Mr. Evans, come on.

22 THE WITNESS: Sorry.

23 THE COURT: If I say something, wait -- wait  
24 until either Mr. Ramsell or if I ask another

1 question. Do you understand the reference M/F?

2 THE WITNESS: I do not.

3 THE COURT: All right. So then it's not  
4 relevant, Mr. Ramsell, unless he tells me he  
5 understands what you're talking about.

6 MR. RAMSELL: Well, that's why I wanted to  
7 get a blank statement, if I could.

8 BY MR. RAMSELL:

9 Q In any Intox EC/IR have you ever seen  
10 the term M/F used for the purpose of  
11 malfunctions?

12 A I can't remember seeing it.

13 MR. RAMSELL: Okay.

14 BY MR. RAMSELL:

15 Q Now, the -- the internal settings of  
16 the instrument can be obtained through access of  
17 each machine if one has the passwords, et cetera;  
18 right?

19 A Correct.

20 MR. RAMSELL: And you mentioned the four  
21 critical breath temperatures. We've already  
22 talked about the variations set for fuel cell  
23 temperature.

24 BY MR. RAMSELL:

1 Q Is the infrared -- does that also have  
2 a variation set -- setting of 44 degrees  
3 centigrade to as high as 46 degrees centigrade?

4 A Yes.

5 Q And if there's a variation of  
6 temperature for the infrared within that 44 to 46  
7 degree centigrade range, the operator would not  
8 know that the temperature had varied off of 45  
9 degrees. Is that a fair statement?

10 A Correct.

11 Q One of the other critical temperatures  
12 you mentioned was for the breath hose?

13 A Breath tube, yes.

14 Q And is the settings for the EC/IR in  
15 Illinois set for breath hose parameters from 40  
16 degree centigrade to 44 degrees centigrade?

17 A I believe that's correct.

18 Q And if there was a variation of  
19 temperature within the 40 to 44 degree  
20 centigrade, would an operator know?

21 A No.

22 Q And PL, what does that stand for?

23 A Pressure line.

24 Q How --

1           A     It's a pressure line.  It's an internal  
2 heated gas line.

3           MR. RAMSELL:  All right.

4 BY MR. RAMSELL:

5           Q     And again, if there was a variation in  
6 the pressure line temperature from 40 degrees  
7 centigrade to as high as 44 degrees centigrade,  
8 would the operator of that instrument know?

9           A     No.

10          Q     Have I now covered all four of the  
11 critical temperatures?

12          A     Fuel cell, IR, breath tube, pressure  
13 line.

14          Q     Yes?

15          A     That's correct.

16          MR. RAMSELL:  Okay.

17 BY MR. RAMSELL:

18          Q     Now, in Illinois -- well, first off,  
19 what is a slope detector as it relates to an  
20 EC/IR?

21          A     Slope detector --

22          Q     Yes.

23          A     --relates to an EC/IR is a parameter  
24 used uniquely in the United Kingdom version of



1 the EC/IR to determine plateau detection of an  
2 acceptable sample.

3 Q And when the breath has reached a  
4 plateau, what does that term mean when you say  
5 when a breath reaches a plateau?

6 MS. SIMPSON: Objection, that's irrelevant.  
7 He said it's in the United Kingdom, not in the  
8 United States. It has nothing to do with the  
9 instruments here.

10 MR. RAMSELL: Actually, if I can -- I will  
11 -- if you give me three questions, I'm going to  
12 get there.

13 THE COURT: Get where?

14 BY MR. RAMSELL:

15 Q Isn't -- is the slope detector turned  
16 off in Illinois?

17 THE COURT: Okay. Well, I'll let you  
18 ask --

19 MR. RAMSELL: Yes or no?

20 THE WITNESS: Yes.

21 BY MR. RAMSELL:

22 Q Now, tell the Judge what it means when  
23 -- the phrase when a breath reaches a plateau,  
24 what do you mean by that?

1           A     A plateau is when a person is blowing  
2 into an instrument.     It's starts at zero.

3                     We assume it's zero and then as you  
4 blow in, you get in the air, the true deep lung  
5 air where you have the interface between the  
6 blood, the alveoli and the inhaled air, and that  
7 air is the air you want to deliver to the  
8 instrument.

9                     So the profile, you can imagine, rises  
10 with time, rises quite sharply and then as you  
11 get to your true deep lung air, it comes to a --  
12 the slope stops rising and reaches a flat or  
13 plateau area.

14                    It's used in the United Kingdom because  
15 the United Kingdom type approval requires it.

16                    It is not used in America because none  
17 of the -- none of the users of the EC/IR have  
18 specified plateau detection.

19                    They've specified minimum volume,  
20 minimum flow rate.

21           THE COURT:   Well, what's the value of it  
22 then of -- in your opinion -- the slope detector?

23           THE WITNESS:   The slope detector will, if  
24 it's properly set up, it means more calibration.

1                   It's means you put more emphasis on to  
2 the -- on to the infrared system.

3                   It means that you are going to get a  
4 true deep lung air sample, which is typically,  
5 one, the highest, truest sample and two, if you  
6 are doing repeated tests, which in the United  
7 Kingdom they do repeated tests, you'll see less  
8 variation between the two samples.

9 BY MR. RAMSELL:

10           Q       And through accessing the internal  
11 functioning of any individual EC/IR in Illinois,  
12 would one be able to determine whether the slope  
13 detector has been turned on or off?

14           A       The slope detector is disabled in  
15 Illinois. It actually is there but it -- it  
16 will not function.

17           It is not part of the integral film  
18 way. It is actually just a setting, a leftover  
19 from earlier versions.

20           Q       Well, so one could access from the  
21 internal functioning of the EC/IR, one could see  
22 that it would say slope detector off?

23           A       Yeah. Always, yes.

24           Q       And you can find this information out

1 without destroying or affecting the functioning  
2 of the machine? Is that a fair statement?

3 A You can view it, yes.

4 Q And just like the other temperature  
5 settings, you can get those settings without  
6 affecting the machine's performance, wouldn't you  
7 agree?

8 A Yes. You could get it. You'd have  
9 to go there and collect the pass code and get  
10 that -- select that function.

11 MR. RAMSELL: Right.

12 BY MR. RAMSELL:

13 Q In other words, you don't have to  
14 disassemble the machine to obtain --

15 A No.

16 MR. RAMSELL: -- this information? Okay.  
17 I'm almost done Judge.

18 THE COURT: That's fine. Thank you,  
19 Mr. Ramsell.

20 MR. RAMSELL: I'm just going to parcel  
21 through a couple items here.

22 BY MR. RAMSELL:

23 Q And does your company have any -- how  
24 should I say it -- unwillingness to reveal the

1 settings of the instrument that we've just been  
2 talking about?

3 A Our position at the company is that the  
4 settings are -- contain information which would  
5 indicate to other manufacturers or those  
6 knowledgeable in the art, to be able to copy our  
7 designs and we therefore, treat it as quite  
8 confidential.

9 There's a lot of intellectual property  
10 gone into the design of the instrument, EC/IR  
11 instrument and the -- the information contained  
12 therein one, would be of great interest to our  
13 competitors; two, is of no use to anybody other  
14 than those people who attended maintenance  
15 schools and being taught at Intoximeters of the  
16 theory of design, principles of the sensors and  
17 of the way the circuitry is designed and the  
18 software is structured to go about it.

19 So one, we would object on the  
20 principles it's confidential and commercially  
21 confidential.

22 Two, we have a huge investment in it  
23 and three, there is nobody we know of that --  
24 outside Intoximeters and the design engineers --

1 who could make much of that information without  
2 true training.

3 Q Well, then let me just walk through  
4 a -- a limited number of settings.

5 A Uh-huh.

6 Q Do you feel that your company has any  
7 confidentiality on whether the mask on function  
8 is on or off?

9 A I --

10 Q Do you have any protection against  
11 somebody knowing that?

12 MS. SIMPSON: Objection, your Honor. This  
13 was asked and answered before when we went  
14 through --

15 MR. RAMSELL: No. It was other things.

16 THE COURT: No. He's -- he's going into a  
17 different area, but I'm going to sustain the  
18 objection.

19 If the questions are going to be like  
20 target area questions of what he considers to be  
21 proprietary information, one, I think Mr. Evans  
22 is going to be in a position of trying to  
23 compromise himself by agreeing or not disagreeing  
24 on selective questions that you have.

1                   I'm much more interested to know since  
2 he stated that -- especially as to the internal  
3 settings and such, that there's proprietary  
4 information -- much more interested in knowing  
5 the type of questions you have, how does that  
6 affect the operation of the machine, not -- not  
7 the information that it's -- it's actually  
8 storing but how -- how is that requested  
9 information affecting the operation and  
10 reliability of this particular machine?

11           MR. RAMSELL:   I'll re-call my experts for  
12 that purpose, Judge, if necessary.

13                   I don't -- this is not my witness.  
14 I'm not vouching for him.

15           THE COURT:   Well, here.

16           MR. RAMSELL:   I thought -- I thought --

17           THE COURT:   No; I'm not saying that you  
18 are.   Well, give me a proffer.   You say a  
19 limited number of questions.

20                   Run through a proffer of that so the  
21 witness can hear it, and I can hear it and then  
22 I'll decide whether or not --

23           MR. RAMSELL:   Well, no; I'm not --

24           THE COURT:   -- to have him answer.

1 MR. RAMSELL: I respect that. Judge,  
2 I'll give you a proffer without this witness  
3 here.

4 THE COURT: That's fine.

5 MR. RAMSELL: But I'm not -- I -- I will  
6 not start talking in front of this witness about  
7 what my experts might say.

8 THE COURT: Well, I mean -- well, you  
9 shouldn't say you will not. You will if I order  
10 you.

11 MR. RAMSELL: Well, I am --

12 THE COURT: Stop, stop. You will if I  
13 order you to, but I respect -- I respect your  
14 reluctance to do that.

15 But don't tenor the question with I  
16 will or I will not do this or I will or will not  
17 do that because --

18 MR. RAMSELL: Well, I won't voluntarily.

19 THE COURT: Well, that's -- that's a better  
20 way of phrasing; I won't voluntarily unless I'm  
21 ordered to.

22 But I'll -- I'll excuse Mr. Evans from  
23 the courtroom and listen to your limited -- you  
24 know -- questions.



1                   You say they're limited, so I assume  
2 there's not that many; right?

3           MR. RAMSELL:   Honestly, I was just going  
4 through -- after -- after they did their direct,  
5 you asked him -- you know -- do you have a  
6 problem with this information being divulged.  
7 I think he said that was the crux of this.

8           THE COURT:   Well, he's -- he's stating to  
9 me that some of it is proprietary --

10          MR. RAMSELL:   Right.

11          THE COURT:   -- here.

12          MR. RAMSELL:   So --

13          THE COURT:   I'm going to allow you --  
14 Mr. Ramsell, I'll allow you to question  
15 Mr. Evans.

16                   If -- if -- if you hear the question  
17 and you believe you have a concern discussing  
18 that because of a proprietary or other  
19 confidential areas, then tell me before you  
20 answer it.   Okay.

21                   So why don't you go through the list  
22 that you want --

23          MR. RAMSELL:   Right.

24          THE COURT:   -- and then -- and I'll be able

1 to respond. Go ahead.

2 BY MR. RAMSELL:

3 Q Do you -- do you have an issue with the  
4 -- with revealing to any person that your minimum  
5 and maximum fuel cell temperatures are 35 degrees  
6 to 37 degree centigrade?

7 A I'm sorry. Is that a question or  
8 statement?

9 Q That's a question.

10 A In context of all the other settings,  
11 that would allow a person to interpret how we use  
12 our fuel cell.

13 There are three other manufacturers of  
14 fuel cells in this business that I know of. I  
15 worked for one of the other leading ones.

16 I know that information would be of  
17 great interest to me.

18 Q What parameters you accept for your  
19 errors is proprietary on the temperature of the  
20 fuel cell?

21 I mean, because you told the Judge  
22 that, when the Attorney General asked you  
23 answered the question without any hesitation.

24 A If I take that with all the

1 settings --

2 MR. RAMSELL: I'm just -- this setting.

3 THE COURT: Here. Let's -- so that I'm  
4 following.

5 Mr. Evans, I mean, let's not -- it's  
6 not confidential information that the setting  
7 tolerance is 35 to 37 degrees, is it?

8 I mean, isn't that -- isn't that like  
9 available in any manual, for operators manually  
10 or technicians --

11 THE WITNESS: No. It's not in the  
12 technical -- it's only trained in -- this data  
13 and the information that is contained within what  
14 Mr. Ramsell is referring to, the F-11 --

15 THE COURT: Okay. All right.

16 THE WITNESS: -- is something that we go  
17 over with the technicians who have been through a  
18 40 hour training course at Intoximeters.

19 THE COURT: Now, when you say technicians,  
20 are you referring to technicians at -- at your  
21 company, not field -- unless they are sent out by  
22 the company?

23 THE WITNESS: They -- the ISP breath  
24 alcohol technicians would have come to

1 Intoximeters and would have been trained to that  
2 level, and they would have been trained to  
3 understand these because they need to, as -- as  
4 technicians on the instrument.

5 THE COURT: All right. Next question,  
6 Mr. Ramsell.

7 BY MR. RAMSELL:

8 Q Actually my question was, why are you  
9 having a problem -- why are you saying there's a  
10 problem revealing that the minimum and maximum  
11 fuel cell temperatures 35 degrees to 37 degrees  
12 centigrade when you offered that when the State  
13 -- when the Attorney General asked you that  
14 question, just that fuel cell temperature?

15 A You asked why, because one item is not  
16 really harmful.

17 All the items or a cumulative number of  
18 those items in my opinion could lead somebody to  
19 come to some decisions on how we have designed  
20 our system.

21 MR. RAMSELL: Okay.

22 BY MR. RAMSELL:

23 Q Do you have any proprietary interest  
24 that your infrared temperature settings are 44

1 degree centigrade to 46 degree centigrade, cause  
2 you offered that on direct?

3 A As an isolated item, no problem.

4 Q Do you have any problem with the breath  
5 hose temperature parameter settings of 40 degrees  
6 to 44 degree centigrade being stated in open  
7 court?

8 A As I said, as an isolated item, there's  
9 no issue.

10 Q How about the temperature for  
11 the PL?

12 A Same.

13 Q And how about whether the mask on  
14 function is operating or not?

15 A That's actually a common issue with all  
16 manufacturers. They all have the mask.

17 Q How about the -- how about the settings  
18 for when mouth alcohol -- when mouth alcohol will  
19 be flagged?

20 A That I would prefer not to be general  
21 knowledge.

22 THE COURT: If I can, one other question  
23 Mr. Evans.

24 THE WITNESS: Uh-huh.

1 THE COURT: Now, all the information you're  
2 talking about in your response to Mr. Ramsell's  
3 temperature questions, would not that information  
4 be or would it be discoverable in the  
5 certification papers like submitted to the  
6 government?

7 I mean, couldn't a person get that from  
8 the government? I mean --

9 A The Federal government doesn't require  
10 that -- that level of information.

11 THE COURT: It does not?

12 THE WITNESS: No.

13 THE COURT: All right.

14 THE WITNESS: And we give them an operating  
15 manual, supervisory manual and a general  
16 description which is just a bit more in depth  
17 knowledge.

18 We would not give complete technical  
19 information --

20 THE COURT: All right.

21 THE WITNESS: -- on the function of the  
22 instrument. But may I just add one thing?

23 THE COURT: Yes, sir.

24 THE WITNESS: The reason that those --

1 those temperatures are not -- whilst the  
2 propriety is not particularly harmful from my  
3 perspective, just because I know that each and  
4 every other manufacturer for those set assemblies  
5 have a similar setting.

6 I have worked for three of the major  
7 companies in my time, and I've been the design  
8 manager in one of those roles, and I know that  
9 those are the same sort of settings that the  
10 5000, the CMI is set at.

11 I know there's a similar parameter for  
12 the Drager Evidential device.

13 And I know there's a similar parameter  
14 on the Datamaster device, all well known  
15 instruments used widely in America; throughout  
16 the world, actually.

17 So those -- whilst they're not  
18 particularly harmful, if you drill down deeper  
19 into it --

20 THE COURT: Well, I think that's what  
21 Mr. Ramsell is doing --

22 THE WITNESS: -- you come to a point --

23 THE COURT: -- are we not, Mr. Ramsell?  
24 Drilling deeper?

1 MR. RAMSELL: Well, that's when my first  
2 poorly worded --

3 THE COURT: And that's not a criticism.

4 MR. RAMSELL: No; my first poorly worded  
5 question was, do you have a problem revealing the  
6 setting, and he was --

7 THE COURT: Right.

8 MR. RAMSELL: -- you know, they could build  
9 the whole machine or whatever.

10 THE COURT: Let me ask --

11 MR. RAMSELL: That's why I've cut it down  
12 to sub-standard.

13 THE COURT: Let me ask -- let me ask you  
14 this, Mr. Evans.

15 You make a point in response to  
16 Mr. Ramsell of certain requested temperatures,  
17 such as the breath tube and the PL and such and  
18 isolated is not being particularly compromising,  
19 but in context with other information, what --  
20 what -- can you give me an example of what --  
21 what it is that you're concerned about when you  
22 say that -- information in context with what.

23 THE WITNESS: Well, Mr. Ramsell just asked  
24 last -- one of the last questions or maybe the



1 last question, the settings for the mouth alcohol  
2 detection.

3 Many manufacturers use infrared -- the  
4 infrared device to detect mouth alcohol.

5 I would like to know my competitors'  
6 settings, because it might give me some idea how  
7 I might improve my settings and vice versa.

8 So I know they have a temperature  
9 control on the infrared on the 5000, a very  
10 commonly used device.

11 I know that -- well, I used to work for  
12 them and I knew -- my memory of the original  
13 settings -- I do believe they've improved them  
14 significantly in the last 10 years since I worked  
15 with that company.

16 Yes; I would dearly love to know  
17 exactly what that is, and I meet the engineering  
18 manager on a regular basis trying to get  
19 information.

20 THE COURT: All right. Thank you.  
21 Mr. Ramsell?

22 MR. RAMSELL: Just a couple more questions.

23 We -- you've been shown what has been  
24 referred to here as Mary McMurray Exhibit No. 5.

1                   And Judge, for the record Miss McMurray  
2                   commented on it, and then it was used in direct  
3                   by the Attorney General with this witness.

4                   THE COURT:    All right.

5                   MR. RAMSELL:    So may I approach?

6                   THE COURT:    That's No. 5?

7                   MR. RAMSELL:    Yes.

8                   And I'll give you a second there to  
9                   just kind of see if -- I'm showing you Exhibit  
10                  No. 5 for the record.

11                  THE WITNESS:   Okay.

12                  BY MR. RAMSELL:

13                  Q     If you remember seeing that before --

14                  A     Yes, I believe so.

15                  THE COURT:    Are you familiar with the  
16                  document, Mr. Evans?

17                  THE WITNESS:   Yes; I'm familiar with the  
18                  document.

19                  MR. RAMSELL:   Oh, okay.

20                  THE WITNESS:   I'm sorry.

21                  THE COURT:    I could see nobody was doing  
22                  anything.

23                  THE WITNESS:   Yes.

24                  BY MR. RAMSELL:

1 Q You were asked generally --

2 A Uh-huh.

3 Q -- to review this, and this would be a  
4 printout gathering the internal memory of a  
5 particular instrument with the dates April 1st of  
6 '04 to June 15th of '05 being the parameters on  
7 the dates?

8 A Correct, yes.

9 Q And this would -- this information  
10 would also be something that would be retrievable  
11 perhaps in different form but the same data could  
12 be retrievable through a Shift F5 function if you  
13 create all the parameters on that --

14 A Correct, yes.

15 MR. RAMSELL: Okay. Great.

16 BY MR. RAMSELL:

17 Q And you pointed out that there was a --  
18 on page -- what we'll call Page 3.

19 A Uh-huh.

20 Q Page 3 there's a set of data entries,  
21 if you will, which you were able to interpret as  
22 being probably some work done at the manufacturer  
23 where they were running through a variety of  
24 different solutions, dry gas simulators at a

1 variety of different levels. Do you recall that  
2 generally?

3 A Yeah. Yes, yes.

4 MR. RAMSELL: Okay.

5 BY MR. RAMSELL:

6 Q And -- and generally speaking, because  
7 it appeared a technician was just checking  
8 certain parameters of the machine, you did not  
9 see that as really establishing any problem with  
10 the functioning of the machine; probably more  
11 supportive that it was working correct at that  
12 time; right?

13 A Yes.

14 MR. RAMSELL: Okay. Great.

15 BY MR. RAMSELL:

16 Q Now -- and that -- because you've had  
17 the luxury of being here when Miss McMurray  
18 testified as well?

19 A No; I was not here when Miss McMurray  
20 testified.

21 Q But you were allowed to learn some of  
22 her testimony, because we don't have any bars on  
23 that. We let everybody listen to everybody else.

24 MS. SIMPSON: Objection, your Honor. We

1 didn't discuss any of Miss McMurray's --

2 MR. RAMSELL: Okay. Great.

3 MS. SIMPSON: -- testimony with this  
4 witness, and he was not present when she  
5 testified.

6 MR. RAMSELL: Objection -- the objection is  
7 I can't ask?

8 THE COURT: Well, it's not really an  
9 objection, because he's not saying that he did.  
10 He's just saying that the opportunity was there  
11 and that he's --

12 MR. RAMSELL: All right.

13 THE COURT: -- so it's not really -- I  
14 don't consider it really an objection either,  
15 Mr. Ramsell, but it will be noted, but I don't  
16 consider it as such.

17 Have you had -- have you had the  
18 benefit of any transcripts --

19 THE WITNESS: No, I haven't.

20 THE COURT: -- of any prior testimony  
21 of --

22 THE WITNESS: No.

23 THE COURT: -- Miss McMurray?

24 THE WITNESS: No. I was present when

1 Mr. Hanson was here. I -- I think that might  
2 have been the first time I came to the court.

3 THE COURT: Okay.

4 THE WITNESS: But I didn't give testimony  
5 at that time.

6 THE COURT: Sure. Okay.

7 THE WITNESS: Yes. Please, go ahead.

8 MR. RAMSELL: All right.

9 BY MR. RAMSELL:

10 Q So -- but what I'd like to address  
11 here, if I might, is information that's contained  
12 on Page 4 --

13 A Uh-huh.

14 Q -- of Exhibit 5, most particularly the  
15 circumstances or events from January 18th of 2005  
16 and I'm using my finger --

17 A Yeah.

18 Q -- to point out the date.

19 A Yes. I see it, yes.

20 Q And it appears at 8:54 a.m. an accuracy  
21 check was performed.

22 A Uh-huh.

23 Q Yes?

24 A Correct.

1 Q By a person named Todd Savage?

2 A Correct.

3 MR. RAMSELL: Ask -- I'd ask the State  
4 whether they're willing to stipulate that  
5 Mr. Savage is an Illinois State Police breath  
6 inspector. Debbie?

7 MS. SIMPSON: Judge, I don't know.

8 I don't know all the inspectors, so I'd  
9 have to check with Miss Easum to find out if --

10 THE COURT: Okay. Well, why don't you  
11 check with her?

12 MS. SIMPSON: Judge, we agree that  
13 Mr. Savage is a code employee of the Illinois  
14 State Police.

15 THE COURT: A what?

16 MS. SIMPSON: A code. He's not a sworn  
17 officer. He is a --

18 MR. RAMSELL: I asked to stipulate whether  
19 he's a breath alcohol inspector.

20 MS. SIMPSON: Right. He is a breath  
21 alcohol inspector. He's a code employee,  
22 not a --

23 THE COURT: Okay. No; that's fine.  
24 That's still -- that's I believe all that

1 Mr. Ramsell --  
2 MR. RAMSELL: All right.  
3 THE COURT: All right. The record will  
4 reflect the stipulation then.  
5 MR. RAMSELL: Thank you.  
6 BY MR. RAMSELL:  
7 Q And Todd Savage performed that accuracy  
8 check of January 18th?  
9 A Uh-huh.  
10 MR. RAMSELL: I'm sorry. Hold on a  
11 minute. I have juxtaposed a few things.  
12 BY MR. RAMSELL:  
13 Q January 18, 2005, 2:45 p.m. Todd Savage  
14 performed an accuracy check. Is that what this  
15 data --  
16 A That's what it says.  
17 MR. RAMSELL: -- suggests?  
18 BY MR. RAMSELL:  
19 Q At that time a set solenoid error  
20 occurred. Am I reading that accurately?  
21 A That's correct.  
22 MR. RAMSELL: Okay.  
23 BY MR. RAMSELL:  
24 Q Then five minutes later, January 18th,



1 2005 at 2:50 p.m. Todd Savage performed another  
2 accuracy check; correct?

3 A Correct.

4 MR. RAMSELL: Okay.

5 BY MR. RAMSELL:

6 Q What does set solenoid error mean?

7 A The set solenoid is a solenoid that  
8 re-sets the fuel cell sampling system after a  
9 sample has been taken.

10 Q How -- how would -- how would that  
11 error have occurred?

12 A The -- the mechanism can sometimes  
13 stick or when the solenoid is actuated, it -- it  
14 doesn't have enough electrical energy -- I'm  
15 sorry -- imagine a lever that has gone down into  
16 that position. You want to set it back in that  
17 position.

18 We have a solenoid here, which  
19 energizes, an electrical energized coil, and it  
20 hits it so it sets the system back into the ready  
21 position.

22 What happened here is that after the  
23 sample is taken, the set solenoid analyzed the  
24 microprocessing instruction, re-set the system.

1           A set solenoid can stick, in which case  
2 it hardly moves or may not have enough energy to  
3 push it into the -- into the correct position  
4 where it latches.

5           And that's -- would result in a set  
6 solenoid error.

7           MR. RAMSELL: All right. Thank you.

8 BY MR. RAMSELL:

9           Q Now, on March 17th of 2005 an accuracy  
10 check was also performed?

11          A I think -- did you not want to mention  
12 the next one that --

13          Q No.

14          A I'm sorry. Okay.

15          MR. RAMSELL: Don't try to do my questions,  
16 and I won't try to do your answers.

17          THE WITNESS: All right, then.

18          MR. RAMSELL: Okay.

19          THE COURT: Is this like a private dialogue  
20 between the two of you and --

21          MR. RAMSELL: We're getting very close --

22          THE COURT: -- what he expects you're going  
23 to ask and what your response is expected,

24 Mr. Ramsell?

1 MR. RAMSELL: Right.

2 THE COURT: I guess, Miss Simpson and other  
3 parties and myself are not privy to that private  
4 kind of conversation.

5 MR. RAMSELL: Okay.

6 THE COURT: Try not -- try not to do that.

7 MR. RAMSELL: Yes, your Honor.

8 THE COURT: All right.

9 THE WITNESS: Sorry.

10 MR. RAMSELL: I'm just going to move ahead.  
11 I'm going to go to Page 5, same document.

12 BY MR. RAMSELL:

13 Q Todd Savage performed an accuracy check  
14 on April 21st of 2005 at 1:34 p.m --

15 A Uh-huh.

16 Q -- according to this data. Is that a  
17 fair statement?

18 A That's correct.

19 Q And at that time he used a 416902G dry  
20 gas simulator according to this data; is that a  
21 fair statement?

22 A According to that data, yes.

23 Q The results he got at that time  
24 was .10?

1           A     Uh-huh.

2           Q     Yes?

3           A     Sorry.  Yes.

4           Q     Which then he -- four minutes later

5 performed a calibration on the instrument?

6           A     Correct.

7           Q     To bring it down to a .08; correct?

8           A     Yes.

9           Q     And then ran a subsequent accuracy

10 check that came back .08?

11          A     Correct.

12          MR. RAMSELL:  Okay.

13 BY MR. RAMSELL:

14          Q     Miss McMurray said -- well, you

15 mentioned earlier that if a machine was out of

16 tolerance that -- whether a calibration occurred

17 would be a fact you'd want to know or not know?

18          A     Correct.

19          MR. RAMSELL:  All right.

20 BY MR. RAMSELL:

21          Q     And so did Miss McMurray.  Would you

22 agree with her on that issue?

23          MS. SIMPSON:  Objection, Judge.  He didn't

24 hear Miss McMurray's testimony.  He's not read

1 her testimony.

2 THE COURT: Well, he doesn't have to  
3 hear it --

4 MS. SIMPSON: He can't comment on it.

5 THE COURT: You understand the question.  
6 Overruled. Do you understand the question,  
7 Mr. Evans?

8 THE WITNESS: Yes. It's --

9 THE COURT: All right.

10 THE WITNESS: -- a record of calibration  
11 and accuracy check, which is that.

12 MR. RAMSELL: All right. Okay.

13 Now, I have a letter authored by you  
14 December 11 of 2000 to a Mr. Larry Etkorn  
15 of the Illinois State Police.

16 BY MR. RAMSELL:

17 Q My first question is, do you know who  
18 Larry Etkorn is?

19 A Yes.

20 Q At -- in the year 2000, was he the  
21 Chief of the Illinois State Police breath testing  
22 section?

23 A That's my understanding, yes.

24 Q And you worked with him --

1 A Yes.

2 Q -- in that regard?

3 A Yes.

4 Q And I'm going to show you this letter  
5 you sent by E-mail and the second page has John  
6 Evans as the author?

7 A Uh-huh, yes, sir.

8 Q I ask you, is this your letter to Larry  
9 Etzkorn?

10 A Correct.

11 MR. RAMSELL: Okay.

12 BY MR. RAMSELL:

13 Q And it was regarding changes that -- to  
14 the functioning of the software, the EC/IR  
15 including the Shift F5 funciton; correct?

16 A Correct, yes.

17 Q And according to your letter here, you  
18 modified the EC/IR software for Illinois for  
19 several issues, including the State Police's  
20 request to change the designation of the Shift F5  
21 function from repair log to service log. Have I  
22 read that accurately?

23 A That's what it says, yes.

24 Q Because before that it would have been

1 called the repair log, the Shift F5 -- one of the  
2 Shift F5 functions; right?  
3 A Yes.  
4 MR. RAMSELL: Okay.  
5 BY MR. RAMSELL:  
6 Q And you also changed at their request  
7 the order of asking in the Shift F5?  
8 A Yes.  
9 Q Right?  
10 A Uh-huh.  
11 Q Yes?  
12 A Yes. Sorry; yes.  
13 Q So that it's -- now the order that was  
14 changed, it now would print all certification,  
15 all service logs, all subject tests, all quick  
16 tests, all accuracy checks, all calibrations?  
17 A That's --  
18 Q Am I reading that accurately?  
19 A That's what it says there.  
20 Q And one of the things of course besides  
21 changing the order, it would not say all repair  
22 logs. It would say the word, all service logs?  
23 A That's what Larry asked for.  
24 Q Right.

1 A He was --

2 Q See No. 6 of the changes --

3 A Yes.

4 Q -- you itemize?

5 A Uh-huh.

6 Q It says here, change repair log to

7 service log and remove all references to M/F.

8 Do you see where I'm reading from?

9 A Yes, I do.

10 Q You authored this letter?

11 A Yes; six years ago.

12 Q How is it you don't know what M/F is if

13 you authored that letter?

14 A I said I couldn't remember it.

15 Q Okay.

16 A I wasn't --

17 Q Does that refresh your recollection?

18 A Yes, it does. Now I see it in

19 context.

20 Q M/F meant malfunction, didn't it?

21 A Correct.

22 Q And you removed all references in the

23 Intox EC/IR from the State of Illinois to the

24 term M/F? Isn't that what you did at the



1 request of the Illinois State Police?

2 A Correct.

3 MR. RAMSELL: Okay.

4 BY MR. RAMSELL:

5 Q Did you also re-set the interfering  
6 substance base ratio after the first standard  
7 sample of a certification test? Do you recall  
8 doing that independently?

9 A I -- you have the luxury of the  
10 letter --

11 Q Okay.

12 A -- in front of you.

13 Q You don't recall it independently?

14 A No. I don't independently  
15 remember M/F.

16 Q At the request of the Illinois State  
17 Police, did you re-set the interfering substance  
18 base ratio?

19 A Yes; correct.

20 Q What does -- what does that mean,  
21 interfering substance? Let's break down the  
22 words. What does interfering substance --

23 A Interfering substance is a substance  
24 that may be on the breath or the subject sample

1 that may be non-ethanol, which may cause a  
2 variation in reading.

3 MR. RAMSELL: Okay.

4 BY MR. RAMSELL:

5 Q What is the -- what's -- what does  
6 interfering substance base ratio refer to?

7 A It's a setting that sets a threshold  
8 for the detection of interfering substance.

9 Q So would it be fair to say that some  
10 amount of an interfering substance could be  
11 introduced in the breath sample without the  
12 machine letting the operator know and the amount  
13 of -- when it would tell an operator would be  
14 what you're calling a base ratio? Is that a  
15 fair statement?

16 Do you remember my question?

17 A I'm sorry. I'm trying to remember --

18 Q Right.

19 A -- in perspective what was asked six --  
20 six years ago, and I'm trying to get in my mind  
21 the context in which this was asked for.

22 MR. RAMSELL: Okay. Well, let -- just  
23 listen to my question and let me remove the  
24 document then.

1 THE WITNESS: Uh-huh.

2 MR. RAMSELL: I'll make it real easy  
3 for you.

4 BY MR. RAMSELL:

5 Q The interfering base -- interfering  
6 substance base ratio is the parameter, if you  
7 will, as to when the machine will notify the  
8 operator of interfering substances. Is that a  
9 fair statement?

10 A That refers to it but --

11 MR. RAMSELL: Okay.

12 BY MR. RAMSELL:

13 Q And you changed the parameter  
14 so-to-speak, you changed when the bell or the  
15 whistle or the error would -- the machine would  
16 tell the operator of such an event; right?

17 A Correct.

18 Q Which way did you change it?

19 A I have no memory of that. I -- I  
20 actually -- may I just add -- I think that that  
21 is -- that was superseded by a further change  
22 where interfering substance is not a setting on  
23 the instrument.

24 Q Now, did you also change the

1 interfering substance base ratio after the first  
2 standard calibration test would be performed?

3 A In the context of that letter, yes.

4 MR. RAMSELL: Okay.

5 BY MR. RAMSELL:

6 Q And so when you're doing a calibration  
7 test, what did you change about the setting as to  
8 when the interfering substance bell error code  
9 would go off?

10 A I don't remember.

11 MR. RAMSELL: Okay.

12 BY MR. RAMSELL:

13 Q Did you change the manner in which the  
14 I/R error message would display at the request of  
15 the Illinois State Police?

16 A May --

17 Q Do you recall independently?

18 A I don't recall independently.

19 Q I/R refers to the word infrared?

20 A Yes, that's correct.

21 Q And what impact does an error on  
22 infrared have on the functioning or validity of a  
23 breath test?

24 A It would -- an error with the I/R would

1 mean -- and again, without --

2 Q Would that change the functioning of  
3 the mouth alcohol detection?

4 A It would.

5 Q Okay.

6 A But --

7 Q Now, were these changes made after the  
8 federal government had placed the EC/IR on to the  
9 conforming products list?

10 A Correct.

11 Q And have you submitted this instrument  
12 back to the Federal government for approval on  
13 the conforming products list in -- with the  
14 software in the condition --

15 A No, I haven't.

16 Q -- in which the Illinois State Police  
17 have now --

18 A The company has not.

19 MR. RAMSELL: Now, this is just kind of a  
20 yes or no, so we can be very careful here for a  
21 moment.

22 Are you familiar with any issue in  
23 Illinois regarding possible certification dates  
24 -- let me rephrase this.

1 BY MR. RAMSELL:

2 Q Are you in any way familiar with the  
3 possibility of an inspector not certifying EC/IR  
4 instruments in accordance with Illinois protocol?

5 A Yes.

6 MR. RAMSELL: Okay.

7 BY MR. RAMSELL:

8 Q Are you familiar with whether or not  
9 the use of the Shift F5 functions was employed in  
10 order to investigate that possibility?

11 A No, no.

12 Q Would the use of the Shift F5 functions  
13 be one means by which a person could determine  
14 whether a machine was certified on the same date  
15 that a ticket proclaims it having been certified  
16 on?

17 A Yes.

18 MR. RAMSELL: Okay.

19 BY MR. RAMSELL:

20 Q How long does it to take download a 400  
21 record memory database into a laptop using a  
22 serial cable?

23 MS. SIMPSON: Objection, irrelevant.

24 THE COURT: I didn't hear the whole part of

1 the question.

2 MS. SIMPSON: It's also been --

3 THE COURT: Would you repeat the question?

4 BY MR. RAMSELL:

5 Q How long does it take to download a 400  
6 record memory database from an EC/IR into a  
7 laptop using a serial cable?

8 THE COURT: Sustained. We've heard a lot  
9 of information --

10 MR. RAMSELL: Okay.

11 That's all the questions I have of this  
12 witness.

13 THE COURT: Miss Simpson?

14 MS. SIMPSON: Thank you, your Honor.

15 REDIRECT EXAMINATION

16 By: Mr. Ramsell

17 Q Mr. Evans, the series of changes that  
18 counsel is just showing you letters regarding --

19 A Yes.

20 Q Were those changes -- do they in any  
21 way affect the basic operation of the instrument?

22 A No.

23 Q What -- what affect would they have had  
24 on the instrument and the way that it operates?

1           A     It's six years ago, so I have to say --  
2     I have to be careful.

3                     Most of those changes related to words  
4     which appeared on the display or a printout.

5                     Mr. Ramsell raised one -- the IR  
6     threshold, which confuses me because I don't  
7     believe it's switched on.     It's not an issue  
8     in ISP, but no, there's nothing there that  
9     affects the fundamental design and operation of  
10    the instrument as it was approved by the Federal  
11    government.

12           Q     When the instrument was submitted to  
13    the Federal government for approval, was there  
14    any indication -- as far as the software was  
15    concerned, what type of software was used?

16           A     It would have been generic software.  
17    Every state uses a variation of software.

18                     Primarily they'll use it to -- because  
19    they have different sets of data they want to  
20    enter, social security number in some cases,  
21    ethnicity in another case, date of birth or age,  
22    that will vary and some would want interfering  
23    substance switched on or off.

24                     By the way, in -- in my confusion with



1 the interfering substance question has arisen  
2 because I know that for Federal approval,  
3 interfering substance is not an issue, is not  
4 tested, and it's not turned on and neither is  
5 mouth alcohol.

6 Mouth alcohol is not part of the  
7 Federal approval process. It's an additional  
8 feature offered by the manufacturers.

9 Q And what affect does turning those two  
10 indicators off have on the instrument or on the  
11 testing?

12 A Well, the changes there in that letter  
13 were defined by Larry Etzkorn, then head of the  
14 department and as a result of his requirements  
15 within the ISP and his determination of how he  
16 wanted those features to function --

17 MR. RAMSELL: Well, Judge, I have to  
18 object. He's testifying on behalf of Larry  
19 Etzkorn, the way he's phrasing it.

20 MS. SIMPSON: Judge, he's testifying to his  
21 understanding of the letters based on something  
22 that occurred six years ago.

23 I think he's entitled to explain to the  
24 Court --

1 THE COURT: Well, why don't -- why don't we  
2 do this?

3 THE WITNESS: Sorry.

4 THE COURT: I think it gets more -- gets  
5 more to the inquiry that both parties have and if  
6 not, I'll let you re-examine.

7 Mr. Evans, the changes that are  
8 various, changes that are requested in software  
9 programming by the respective parties or agencies  
10 using these machines, such as the State's and  
11 such, is it fair to say that these are requests  
12 that are conditioned by very specific desires of  
13 the State agencies and not recommended changes by  
14 the manufacturer as it relates to the accuracy of  
15 the machine?

16 THE WITNESS: Correct.

17 THE COURT: Would that be a fair statement?

18 THE WITNESS: That's a correct statement.

19 THE COURT: So if a person like Mr. Etzkorn  
20 or for whatever their reason comes to you and  
21 says, we want changes and they may have reasons  
22 that are not -- not related to the accuracy of  
23 this machine, that ask you to re-program this  
24 machine, is that a rare instance?

1                   That is something you have seen before  
2 I take it?

3           THE WITNESS:    Yes; many times.

4           THE COURT:    Not only in Illinois but in  
5 other states?

6           THE WITNESS:    Oh, absolutely.

7           THE COURT:    All right.

8                   And -- and if a party wishes, based on  
9 their prior experience with the data -- again  
10 whatever the reasons are, and I assume that  
11 they're mostly individualized and  
12 particularized -- the types of requests, the  
13 changes that we are hearing about -- again I'll  
14 restate that -- are not ones as a result of like  
15 recalls by the company or memorandums to the  
16 operators saying, you should make the following  
17 changes?

18           THE WITNESS:    No, no.

19           THE COURT:    Would that be a fair statement?

20           THE WITNESS:    That's -- that's correct.

21           THE COURT:    Have you done that in the  
22 last -- to your recollection in the last --  
23 say -- six or seven years where you actually had  
24 such a problem with the machine where you

1 notified by memorandum various agencies and  
2 states that they needed to make software  
3 changes --

4 THE WITNESS: No.

5 THE COURT: -- because --

6 THE WITNESS: No.

7 THE COURT: You have not. Does that kind  
8 of answer that for both --

9 MS. SIMPSON: Most of it.

10 THE COURT: And I'm assuming that.

11 I mean, and -- and you know, we want to  
12 be candid and I think both sides are, and I'm  
13 sure Mr. Evans is also being candid.

14 It's not your particular focus on why  
15 -- why I want to change the software. I mean,  
16 it could be for whatever reason; is that right  
17 and --

18 THE WITNESS: Oh, yes. It's -- and I --  
19 excuse me if I smile a bit -- we have been  
20 through --

21 THE COURT: Smile at them.

22 THE WITNESS: Okay. Larry Etzkorn --

23 THE COURT: I mean, at the whole audience,  
24 Mr. Ramsell, not at you, but everybody. Go

1 ahead.

2 THE WITNESS: Larry Etzkorn had gone  
3 through a series of changes, and my company was  
4 getting exasperated, and so I was told to write  
5 that letter and get Larry to sign off on those  
6 changes cause we were fed up with the changes.

7 Because each change takes time to  
8 implement and then a very long time to test, and  
9 the whole effort of that was to draw to the  
10 attention of Larry that please Larry, stop  
11 changing things for us, because we want you to  
12 close this project cause I'm tying up resources.

13 So now I remember that I was instructed  
14 by the president of the company, John, get Larry  
15 to sign off on it, and that's why I remember that  
16 particular statement.

17 THE COURT: All right. Next question,  
18 Miss Simpson?

19 BY MR. SIMPSON:

20 Q With respect to the mouth alcohol  
21 function --

22 A Uh-huh -- correct. Sorry, yes.

23 MS. SIMPSON: Okay.

24 BY MS. SIMPSON:

1 Q What happens if the instrument  
2 registers mouth alcohol?

3 A It aborts the test.

4 Q In the Federal version you don't have  
5 to have a protection for mouth alcohol?

6 A No.

7 Q So in the -- the version of the  
8 instrument that's approved, if someone had mouth  
9 alcohol, the test would still register?

10 A Correct.

11 Q So by adding mouth -- mouth alcohol in,  
12 we're filtering out possible interference; is  
13 that correct?

14 A Correct, correct.

15 Q With respect to the F functions that  
16 you were talking about with Mr. Ramsell and  
17 especially with the deleting information, can you  
18 go into the instrument and delete one specific  
19 test and leave everything else in the memory?

20 A No.

21 Q Can you go into the instrument and  
22 delete a time period of tests --

23 A No.

24 Q -- and leave some before and some

1 after?

2 A No.

3 Q In order to delete information is it an  
4 all or nothing?

5 A It's all or nothing. It's what we  
6 call the F12 function, where you erase the  
7 database and you clear all tests from the  
8 database.

9 Q When you clear all the tests, do you  
10 clear -- can you go in and just clear all the  
11 subject tests and leave all the accuracy checks  
12 in there?

13 A No. It's all data.

14 Q All data?

15 A No selectivity at all.

16 MS. SIMPSON: Okay.

17 BY MS. SIMPSON:

18 Q As far as, though, going in on the  
19 Shift F5's and printing, you can't print all  
20 data. You have to print it subject by subject;  
21 is that correct?

22 A Yes; by category.

23 Q Or category by category?

24 A Category of tests, yes.

1 Q You were talking on cross examination  
2 about a mask function. What is the mask  
3 function?

4 A The mask is a cutoff point for which  
5 you say this is insignificant.

6 Imagine the instrument is tested by the  
7 Federal government to plus or minus five percent,  
8 so that at .100 breath alcohol level, it's 105 to  
9 95.

10 At zero they don't carry out a test,  
11 and that's true from -- in any instrument or any  
12 sensor, sensor instrument.

13 You have what is called noise, which is  
14 basically insignificant signals, and what we're  
15 saying with a blank mask is that any signal from  
16 that sensor up to and including three is  
17 insignificant, and we're calling it zero.

18 Q So that would mean that it would give  
19 it a clear reading --

20 A A zero reading.

21 Q -- at zero or 003 --

22 A Yes.

23 Q -- in between there?

24 A All instruments I've worked on and all



1 manufacturers I've worked with have very similar  
2 masks for the same reason.

3 Q And does -- is the mask only on that  
4 particular or are there masks for each of the  
5 readings that you told us about?

6 A This is a blank mask for what we call  
7 the blank test, that -- when we purge the system  
8 and then there's another mask on the breath test  
9 sample, and typically that mask is 005.

10 Q So anything below 005 it wouldn't  
11 print? It would show no alcohol?

12 A Correct.

13 Q And if it registered over 005, that's  
14 when it will start to --

15 A You'll see 006 on the printout and  
16 above.

17 Q So that doesn't affect the accuracy  
18 then of the test, the subject test --

19 A No.

20 Q -- for an accuracy check?

21 A In no way.

22 MS. SIMPSON: You mentioned something about  
23 F11 functions.

24 BY MS. SIMPSON:

1 Q What were the -- what are the F11  
2 functions?

3 A F11 is a function on the instrument  
4 whereby pressing the F11 key on the keyboard and  
5 then a password, you can set out some of the  
6 instrument settings.

7 Q Which is --

8 A It's a list of instrument settings.

9 MS. SIMPSON: Okay.

10 BY MS. SIMPSON:

11 Q And are -- does the memory record at  
12 every test what the -- what those instrument  
13 settings were?

14 A Well, those settings don't vary from  
15 test to test. Basically they are -- they are  
16 just that. They're the settings that the  
17 instrument runs on.

18 As we discussed earlier, the  
19 instruments are set to keep the temperature of  
20 the fuel cell between 35 and 37 degrees.

21 THE COURT: Well, those are the ones that  
22 are inspected at the certification?

23 THE WITNESS: Yes.

24 THE COURT: The checkpoints, right? The

1 settings --

2 THE WITNESS: Yes.

3 THE COURT: -- to see what the variances  
4 are about?

5 THE WITNESS: I believe they are. I can't  
6 speak to exactly what Illinois does but they're  
7 accessible --

8 THE COURT: Right.

9 THE WITNESS: -- to a trained technician,  
10 because the password that they have access to  
11 will allow access to that printout.

12 THE COURT: All right. Okay. Thank you.

13 MS. SIMPSON: We've been talking about  
14 operators and technicians.

15 BY MS. SIMPSON:

16 Q What's the difference between an  
17 operator and a technician?

18 A A breath alcohol technician ISP has  
19 been trained by the manufacturers' Intoximeters  
20 at Intoximeters on a comprehensive maintenance  
21 school course in which we cover all aspects of  
22 the design, function, calibration, fault finding  
23 of the instrument, includes the sensor  
24 technology, the microprocessor technology, the

1 disassembly of the instrument, re-assembly of the  
2 instrument and calibration of the different  
3 sensors within it.

4           An operator is a person, a uniformed  
5 officer I assume, who has been trained by ISP at  
6 its training school to operate the instrument or  
7 subject test sequence.

8           Q     But they're not able to make any  
9 changes or go in with any codes and make any  
10 changes on the settings of the instrument; is  
11 that correct?

12           A     That's correct.

13           Q     So when -- when you're talking about  
14 people being able to go in and make changes, it's  
15 only the technicians that can do that, not the  
16 operators?

17           A     Yes.

18           Q     You were talking about the slope  
19 detector or the plateau?

20           A     Yes.

21           Q     You said that you get the -- with the  
22 slope detector on, you get the highest, truest  
23 sample. What did you mean by that?

24           A     No.

1 THE COURT: Here. The slope detector  
2 determines that -- the amount of air --

3 THE WITNESS: That's --

4 THE COURT: -- at that plateau level.

5 THE WITNESS: Yes; that's right.

6 THE COURT: It shows you that you're  
7 getting deep lung air.

8 THE WITNESS: If it's switched on.

9 THE COURT: If it's switched on.

10 THE WITNESS: That's right.

11 THE COURT: That's what it's designed to  
12 show if it reaches that plateau.

13 THE WITNESS: That's correct.

14 THE COURT: All right. I mean --

15 BY MS. SIMPSON:

16 Q What effect does turning it off do?

17 THE COURT: Nothing.

18 THE WITNESS: It has no affect because  
19 the --

20 THE COURT: I heard that. No. England  
21 uses it and the U.S. doesn't.

22 THE WITNESS: That's correct.

23 THE COURT: And so it's irrelevant here.

24 Any jurisdiction you know in the United

1 States that use it, off the top of your head? I  
2 understand you might not know for sure.

3 THE WITNESS: Not with our instrument.

4 I believe other manufacturers'  
5 instruments may use it --

6 THE COURT: All right.

7 THE WITNESS: -- but I'm not certain.

8 THE COURT: And are you -- you reference in  
9 England that's because of the tube tests that  
10 are -- that are --

11 THE WITNESS: Primarily for that reason.

12 THE COURT: So they're comparing along with  
13 the test results the slope.

14 THE WITNESS: The forensic scientists and  
15 the courts --

16 THE COURT: Right. No; okay. I'm -- so  
17 I'm following. Thanks. Go ahead, Miss Simpson.

18 MS. SIMPSON: May I have a moment, Judge?

19 THE COURT: Sure.

20 MS. SIMPSON: No further questions, your  
21 Honor.

22 THE COURT: Any follow up, Mr. Ramsell?

23 MR. RAMSELL: Just a very, very couple.

24 Very limited.

1 THE COURT: Yes, sir.

2 RECROSS EXAMINATION

3 By: Mr. Ramsell

4 Q If the slope detector is used to  
5 determine when to obtain the truest deep lung  
6 alveolar sample, then how would it be that  
7 turning it off doesn't affect the ability to  
8 obtain the truest sample.

9 A The requirement of the ISP has a  
10 minimum volume of 1.5 liters and that's the only  
11 requirement. We --

12 Q I understand.

13 A -- the manufacturer supplied that.

14 Q If the slope detector is the  
15 function --

16 THE COURT: Well, here. Aren't you  
17 asking him --

18 MR. RAMSELL: -- that's used to obtain the  
19 truest sample --

20 THE COURT: -- why don't you ask him an  
21 opinion question?

22 Do you have an opinion yourself since  
23 you're familiar with the machine that it should  
24 or should not -- that every machine should or

1 should not have the slope projection.

2                   Isn't that kind of what you really want  
3 to ask him?

4           MR. RAMSELL:    No.

5           THE COURT:    And he says no, it doesn't.

6                   What is it you want to ask him?    I'm  
7 not sure then.

8           MR. RAMSELL:    Well, he said that the slope  
9 detector doesn't really change anything, and I'm  
10 trying to figure out how that makes sense.

11          THE COURT:    All right.    Okay.

12          MR. RAMSELL:    If it -- it does something,  
13 how does turning it off now?

14          THE COURT:    Fine, fine.    Fair enough.  
15 All right.    Do you understand that, Mr. Evans?

16          THE WITNESS:    I think I understand but --

17          MR. RAMSELL:    Okay.    Let me under rephrase  
18 it then so that you're following.    Let me be the  
19 lawyer and phrase it.

20          MS. SIMPSON:    Objection, your Honor.    This  
21 is --

22          THE COURT:    All right.    We don't like  
23 these self paradizing --

24          MR. RAMSELL:    Let me ask --



1 THE COURT: -- comments, Mr. Ramsell.

2 I mean, I have missed that I will admit  
3 but not in the context here today so --

4 BY MR. RAMSELL:

5 Q Does turning off the slope --

6 THE COURT: No. First -- the first thing  
7 you ought to do, you ought to really apologize to  
8 the witness. That's not the way to treat the  
9 witness.

10 MR. RAMSELL: I'm sorry. I can't hear you.

11 THE COURT: That's not the way to treat a  
12 witness, any witness by asking questions  
13 sarcastically and injecting your personal --  
14 personal commentary along with it. You ought  
15 to -- you ought to apologize to him.

16 MR. RAMSELL: For saying let me be the  
17 lawyer?

18 THE COURT: Yes, sir.

19 MR. RAMSELL: I'm sorry.

20 THE COURT: And for --

21 MR. RAMSELL: May I propose questions --

22 THE COURT: Yes.

23 MR. RAMSELL: -- before the witness offers  
24 answers?

1 THE COURT: Yes, sir.

2 MR. RAMSELL: Thank you.

3 BY MR. RAMSELL:

4 Q Does turning off the slope detector  
5 affect the EC/IR's ability to determine when it  
6 can take the truest deep lung breath sample?  
7 Yes or no?

8 A I can't answer yes or no. I'd have to  
9 make an explanation.

10 Q What's the difference between having  
11 the slope detector on and the slope detector off  
12 when attempting to obtain the truest deep lung  
13 breath sample?

14 A It is of no consequence whatsoever on  
15 that instrument which has never had a slope  
16 detector from within it. I explained earlier.

17 The setting is a -- is a leftover. It  
18 has never been a function or feature available on  
19 the ISP instruments nor on any instrument that I  
20 am aware of in North America, so it's irrelevant.

21 You're asking a rhetorical question,  
22 because it is only being used in one area of the  
23 world that I know of and if you want to talk  
24 about British breath analysis, I'm very expert on

1 that, too.

2 Q From a scientific standpoint, forget  
3 about requirements of the world, from a  
4 scientific standpoint, the theoretical operating  
5 of this machine, what affect does turning on or  
6 off the slope detector have on this instrument's  
7 ability to obtain the truest deep lung breath  
8 sample?

9 A If it were available, which it is not,  
10 it would result in a higher reading, which would  
11 be closer to the true breath alcohol reading.

12 MR. RAMSELL: Okay.

13 And you also mentioned about the change  
14 of the software and the effect of its approval  
15 with the National Highway Traffic Safety  
16 Administration, so the next few are just on that  
17 subject.

18 THE WITNESS: Uh-huh. Yes, sorry.

19 MR. RAMSELL: California has a -- is it  
20 called a California DOT model?

21 Do you know -- let me rephrase that.  
22 Forget about that entirely for a moment.

23 BY MR. RAMSELL:

24 Q The interfering substances, doesn't

1 NHTSA use an acetone test when they're  
2 determining whether -- doesn't NHTSA have an  
3 acetone test when they're doing their Federal  
4 testing protocol for whether to list a  
5 breathalyzer on the conforming product list?

6 A For infrared based instruments, yes.

7 MR. RAMSELL: Okay.

8 BY MR. RAMSELL:

9 Q Now -- now, does your machine have  
10 infrared? Yes or no?

11 A (No answer.)

12 MR. RAMSELL: The answer is yes; I know  
13 this.

14 THE COURT: Well, I know it, too, so why  
15 are we asking it?

16 MR. RAMSELL: Okay. Again --

17 THE COURT: Stop, stop.

18 MR. RAMSELL: Just because he struggles --

19 THE COURT: Stop, stop, and I'll strike  
20 cause he struggles, because I think it's kind  
21 of a --

22 MR. RAMSELL: And a --

23 THE COURT: Stop a second. I'm not done.

24 I mean, you say he struggles. There's

1 a bit of, I think, straining between the examiner  
2 and the witness, and I wouldn't characterize it  
3 as struggle as much as an expression of  
4 frustration with some of the questions and some  
5 of them are repetitive and some of them are  
6 highly selective as to machines that maybe the  
7 witness is familiar with but have no real bearing  
8 in Illinois, because he's testified repeatedly  
9 that none of -- none of the Illinois machines --  
10 for example, has the slope projector detector on  
11 it.

12                   And in his opinion it is -- he's  
13 already stated it, and I believe -- I believe his  
14 testimony to be candid, that in the pentultimate  
15 alcohol level, it might be better to have it.

16                   And I'm taking notice of that because  
17 that's some of the information that is being  
18 proffered by the witness.

19                   If we look at it rhetorically or  
20 theoretically, which is in parts what some of  
21 these questions are directing, that in his  
22 opinion -- and you can ask him -- I'm not going  
23 to state it, but it may be of some preference or  
24 may not that an Illinois machine has it.

1           It is clear to me, unless it's going to  
2 be proffered by either side, that the machine  
3 that Illinois uses is -- is subject to the  
4 specifications and legal requirements that are  
5 required for the machine and for it's acceptance  
6 and that's the machine calibration and -- and  
7 functions that are offered by the manufacturer to  
8 Illinois.

9           It doesn't mean that these other  
10 functions have no value, because it's clear that  
11 they do, and the witness I think agrees with you,  
12 Mr. Ramsell, that yeah, they have -- they have a  
13 value, and if we're searching for the  
14 penultimate breath sample, that it might -- it  
15 might be more attained by having this extra  
16 function, but it's not necessary for determining  
17 its limited purpose in Illinois and which is an  
18 approved purpose, and the changes that have been  
19 requested by Illinois, at least so far to me,  
20 have nothing to do with them being submitted to  
21 being re-conformed, because they're not changing  
22 the function of -- of the machine.

23           They're changing the specific functions  
24 or deletions or adjustments of functions as

1 dictated by the -- by the user.

2                   And it doesn't -- it is not clear to me  
3 that because those changes are made that it has  
4 anything to do about them being conforming or  
5 non-conforming merely because of changes that  
6 have been requested by the State Police.

7                   Now, did everything I just say -- is  
8 that -- are you in agreement or not in agreement  
9 with, Mr. Evans?

10                  THE WITNESS:    Yes, I agree.

11                  THE COURT:    All right.  So I mean --

12                  MR. RAMSELL:   All right.

13                  THE COURT:    -- I don't know what else --  
14 why -- what other directions that we're going, so  
15 go ahead.

16                  MR. RAMSELL:   I understand.

17                  So because their witness has now said  
18 that --

19                  THE COURT:    No; we're not -- we're not  
20 dialoging.

21                  MR. RAMSELL:   Okay.

22                  THE COURT:    I've made my statements.  You  
23 ask another question.

24                  MR. RAMSELL:   That's what I'm testing.

1 THE COURT: No. Ask another question.

2 MR. RAMSELL: All right. I'm testing that  
3 issue.

4 THE COURT: Ask another question.

5 MR. RAMSELL: All right.

6 BY MR. RAMSELL:

7 Q Does your Intox EC/IR have to go  
8 through any -- any interfering substance testing  
9 under the Federal protocol before it can be  
10 placed on the conforming products list by NHTSA?

11 A There is an exclusion in the NHTSA  
12 requirements that instruments based on fuel cell  
13 technology -- and the EC/IR is based on the  
14 primary sensor which is fuel cell technology --  
15 do not require the acetone testing.

16 MR. RAMSELL: I'm not asking what's  
17 required.

18 BY MR. RAMSELL:

19 Q I'm asking, does it undergo interfering  
20 substance testing by NHTSA?

21 A No.

22 Q Did it?

23 A No.

24 Q It did not?



1 THE COURT: He said no.

2 MR. RAMSELL: Okay. I have no other  
3 questions.

4 THE COURT: Miss Simpson, do you have  
5 any --

6 MS. SIMPSON: Nothing further, your Honor.

7 THE COURT: All right. Thank you,  
8 Mr. Evans.

9 THE WITNESS: Thank you, Judge.

10 (WHEREUPON, the witness  
11 was excused.)

12 MR. RAMSELL: Your Honor, I have no  
13 intention of recalling this witness or calling  
14 this witness, if that means anything to his  
15 ability to leave.

16 THE COURT: Sure.

17 MS. SIMPSON: It doesn't.

18 THE COURT: No. I appreciate it as well  
19 I'm sure Mr. Evans. The next witness is going  
20 to be -- off-the-record.

21

22

23

24