

Wednesday, November 26, 2008

The junk science of breath testing: All the more unfavorable to black people and women?

Image from National Institute of Standards & Technology. Perhaps Connecticut DWI defense lawyer James O. Ruane overstates the matter by calling the Intoxilyzer 5000 KKK in a box. Certainly, breath testing for blood alcohol content is an oppressive junk science system that is perpetuated by court rulings that stand logic, truth, and the Constitution on their heads. Ruane makes the case for why the Intoxilyzer 5000 is more likely to give a falsely high BAC reading for black people. Ruane's expert witness Dr. Michael Hlastala says the same problem affects women who take the test. Thanks to Gideon for posting on this issue. Jay Ruane graciously e-mailed me his memorandum of law in this case, giving the green light for me to upload the filing. His legal memorandum references an attachment containing testimony of expert witness Hlastala. I did not receive that attachment. The memorandum addresses Dr. Hlastala's previous testimony as follows: "Dr. Hlastala has testified in Connecticut that the Intoxilyzer 5000 is biased against African Americans in that the lung capacity of the African American male is approximately 3% smaller than the Caucasian. This testimony is attached hereto as Exhibit A. Because of the physiologically smaller capacity an African American arrestee must expel a greater fraction of his lung capacity, the Intoxilyzer 5000 results are inflated by a factor of 3%. Moreover, the issue of racial bias rises to the fore in the use of the Intoxilyzer 5000. Dr. Hlastala opined that the distorting effect based on race was 3%. (T2B, p37) While at first sight this might appear to be de minimis, State should not countenance racial discrimination in any degree whatsoever." The foregoing use of the phrase "de minimis" raises all sorts of questions, which hopefully will be answered in favor of the defense. Jon Katz.

Posted by Jon Katz in Drunk driving/DWI/DUI at 00:00