

**Winning Isn't Everything: It's  
the Only Thing!**

Tactics and strategies regarding  
discovery, motion practice and jury trial  
preparation designed to win DUI cases

**William Maze**  
Maze Legal Group, PC

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**LEARNING WHAT YOU  
NEED TO KNOW TO WIN  
DUI CASES**

FOIA  
BOOKS  
INTERNET  
SEMINARS  
ORGANIZATIONS

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**FOIA:  
Freedom of Information Act**

**FOIA EVERYTHING!!!**  
Michigan State Police breath  
manuals, FSTs manuals, procedures  
in DUI cases, inventory procedures

**STUDY THESE MATERIALS!**

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**BOOKS!!!**  
**YES YOU CAN!**  
A wealth of materials is available through books and you can actually learn a lot about DUI defense by reading books on drunk driving defense. Who would have guessed?!?

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**SEMINARS**  
Breath testing seminars  
Blood testing seminars  
SFST seminars  
CDAM Trial college  
NCDC in Macon GA  
Gerry Spence's Trial Lawyers College

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**INTERNET and ORGANIZATIONS**  
CDAM  
SADO  
National College for DUI Defense



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## GETTING WHAT YOU NEED TO WIN DUI CASES

### DISCOVERY:

Ascertaining something  
previously unknown or  
unrecognized.



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## DISCOVERY?

“[W]e wish to inform the bench and  
bar that MCR 6.201 applies only to  
criminal felony cases.”

--Administrative Order of the  
Michigan Supreme Court No. 1999-3

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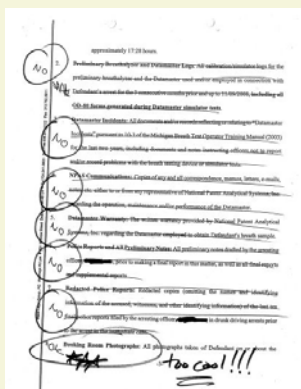
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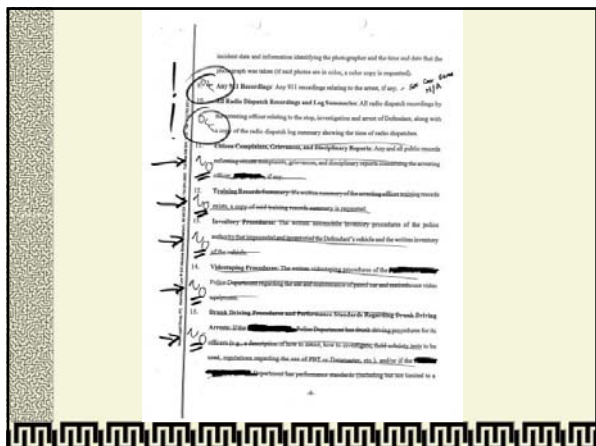
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Presentation by William Maze  
of the Maze Legal Group  
www.Michigan-Drunk-Driving.com



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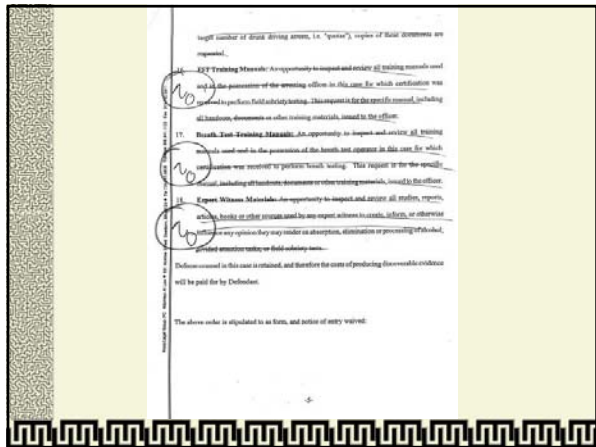
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A.O. No.1999-3

**RECIPROCAL or MUTUAL**  
**DISCOVERY IS BARRED.**

**BRADY v MARYLAND**

373 US 83 (1963)

As explained in *Brady* and subsequent cases, *Brady*'s holding rests on three underlying Due Process principles. First, it is "unfair" for the government to withhold from the accused exculpatory evidence that is in the government's possession. *Brady*, 373 U.S. at 87. Second, the government's disclosure of exculpatory evidence to the accused is necessary to "protect the innocent from erroneous conviction." *California v Trombetta*, 467 U.S. 479, 485 (1984). And third, disclosure of exculpatory evidence reflects that the government's interest in a criminal prosecution "is not that it shall win a case, but that justice shall be done." *Kyles v Whitley*, 514 U.S. 419, 439 (1995) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

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## DISCOVERY and CONFRONTATION

The Confrontation Clause of the Sixth Amendment guarantees the right of an accused in a criminal prosecution to be confronted with the witnesses against him. The right of confrontation, which is secured for defendants in state as well as federal criminal proceedings means more than being allowed to confront the witness physically. Indeed, the main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination. *Delaware v Van Arsdall*, 475 U.S. 673, 678 (1986)

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## Subpoenas

Can you ethically use a subpoena to obtain access to exculpatory materials?

Cf. MCR 6.001(D), MCR 6.201  
MRPC 3.1

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## Subpoenas

ABA Model Rule 3.1 notes:

*The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.*

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**FOIA**  
**The 800 lb gorilla**



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**FOIA Denials MCL 15.243**

- interfere with law enforcement proceedings
- unwarranted invasion of personal privacy
- disclose law enforcement investigative techniques
- disclose operational instructions for LEOs
- reveal the contents of staff manuals provided for law enforcement

My favorite one:  
Circumvent the discovery process



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**FOIA Denials MCL 15.243**  
**SUE THE BASTARDS!**

Cities and police departments have an affirmative statutory duty under the FOIA act to separate exempt material from that which is nonexempt.

See, Evening News Assn. v Troy, 417 Mich 481 (1983).



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## FILING MOTIONS TO WIN DUI CASES

Generic motions regarding:

- Stop and Seizure
- Arrest decision
- Chemical testing

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## BURDEN OF PROOF



*“Mr. Maze, it’s your motion, so you have the burden of proof.”*

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## STOP OR ARREST: “Officer, did you have a warrant?”

A warrantless search is unreasonable per se and violates the Michigan Constitution unless shown to be within an exception to this rule. *People v Reed*, 393 Mich 342 (1975).

Searches and seizures conducted without a warrant are unreasonable per se. *People v. Borchard-Ruhland*, 460 Mich. 278 (1999); *People v. Champion*, 452 Mich. 92 (1996)

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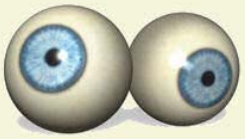
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**HGN Testing**  
(Horizontal Gaze Nystagmus)

Admissible if:

- 1) the test was properly performed and
- 2) that the officer administering the test was qualified to perform it.



People v Berger, 217 Mich App 213 (1996)

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**Burden regarding breath or blood: It was done wrong.**

**MRE 104(a):** Preliminary questions concerning . . . the admissibility of evidence shall be determined by the court . . . In making its determination it is not bound by the Rules of Evidence except those with respect to privileges.



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**MRE 104(d)**

Testimony by accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

**FRE 104 Notes:** The limitation upon cross-examination is designed to encourage participation by the accused in the determination of preliminary matters. He may testify concerning them without exposing himself to cross-examination generally.

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## MRE 104

Proponent of evidence must prove admissibility by a **preponderance of the evidence** standard. *Bourjaily v United States*, 483 U.S. 171 (1987)

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## BURDEN OF PROOF

*Gilbert v Daimler Chrysler Corporation*, 470 Mich 749: "It is well-established that the proponent of evidence 'bears the burden of establishing relevance and admissibility.' *People v Crawford*, 458 Mich. 376, 388 n 6 (1998) (describing this rule as "**basic hornbook law**")."



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## IMPORTANT FRE NOTE!!!

Where preliminary and ultimate determinations involve the same question, the Trial Judge who admits the evidence should not inform the jury that she has found the admissibility requirement in the proponent's favor. To do so would improperly influence the jury's decision on the ultimate determination. This would be especially problematic in criminal cases where evidence is offered against the defendant; in that situation, the jury decides the ultimate question by a beyond a reasonable doubt standard of proof, whereas the Trial Judge decides the preliminary question by a preponderance of the evidence standard. See *United States v. Tracy*, 12 F.3d 1186 (2d Cir. 1993) (error for the Trial Judge to tell the jury that the government had proved the existence of a conspiracy to the Court's satisfaction, so that coconspirator hearsay was admissible against the defendants).

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**TRIAL PREP DESIGNED TO  
WIN DUI CASES**

- Reviewing the Case
- Motions in Limine
  - Stipulations
- Using Experts

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**Reviewing the Case**

- Reasons for traffic stop (*Whren*)
- Evidence of impairment vs. sobriety
  - Chemical test evidence
  - Client's drinking pattern
    - Alcohol Charts
  - Client's medical conditions

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**Medical Stuff**

- GERD
- Diabetes
- Tongue ring / retainer / dentures
- Adkins diet
- Chemicals in the workplace
- Albuterol inhaler / COPD
- Gastric bypass

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## Review the time lines

- Time of the stop
- Time of the arrest
- Time to the police station
- Time of the "start observation"
- Time of the breath test

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## Review the FOIA Materials

- Compare report to video
- Carefully watch the station video
- Review the Datamaster / PBT logs
- Review the prior reports for patterns
- Listen to the radio / 911 tapes

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## VISIT THE SCENE



- Visit the scene
- Visit the scene  
and
- Visit the scene!!!

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## Motions in Limine

*Creativity is key:*

- Motion to Permit Attorney Voir Dire
- Motion Regarding Voir Dire Questions
- Motion for Special Jury Instructions
- Motion Regarding Sequestration
- Motion to Preclude Prosecutorial Misconduct
- Motion to Exclude Hearsay Documents

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## Stipulations

This is a real quote:  
"And Mr. Maze  
hasn't agreed to  
stipulate to anything  
your Honor."



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## We don't need no stinkin' stipulations

You only stipulate to  
things ***IF AND ONLY IF***  
it will help your case.

- Datamaster logs
- Blood draw nurse
- Toxicology report
- Breath test results



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## List of Experts



**Field Sobriety Test Experts**

**Breath Test Experts**

**Blood Test Experts**

THINK OUTSIDE THE BOX:

Lawyers, Dentists, Optometrists,  
Chiropractor, Mechanics, Video technicians

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Thank you and good hunting!



**“Never, never, never, never give up.”**

-- Winston Churchill

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**Attacking and Defending Drunk Driving Tests**, Donald J. Bartell & Anne D. Imobersteg, James Publishing Inc.

**Defending Drinking Drivers**, Patrick T. Barone, James Publishing Inc.

**Drinking/Driving Law Letter**, Nichols & Whited, Thomson-West Publishing Co.

**Drinking/Driving Litigation: Criminal and Civil**, Nichols & Whited, Thomson-West Publishing

**Drunk Driving Defense**, Taylor & Oberman, Aspen Law & Business

**DWI Journal: Law & Science**, Whitaker Newsletters, Inc., 313 South Avenue, P.O. Box 192, Fanwood, NJ 07023

**DWI Detection and Standardized Field Sobriety Testing**, National Highway Traffic Safety Administration

**Handling Drunk Driving Cases**, Edward L. Fiandach, Thomson-West Publishing Co.

**Innovative DUI Trial Tools**, Bruce Kapsack, James Publishing Inc.

**Intoxication Test Evidence**, 2d Ed. (1995), Edward F. Fitzgerald, Thomson-West Publishing Co.

**Medical-Legal Aspects of Alcohol**, James C. Garriott, editor, Lawyers & Judges Publishing Co.

**Medical-Legal Aspects of Abused Substances**, Marcelline Burns & Thomas E. Page, editors, Lawyers & Judges Publishing Co.

## REQUEST FOR PUBLIC RECORDS MICHIGAN FREEDOM OF INFORMATION ACT

(Print or Type Your Request)

TO BE COMPLETED BY REQUESTOR		METHOD OF ACCESS TO RECORD			
NAME OF PERSON MAKING REQUEST		<input type="checkbox"/> MAIL TO REQUESTER <input type="checkbox"/> MAIL TO (If Different Than Requester)			
COMPANY REPRESENTING		STREET ADDRESS			
STREET ADDRESS		CITY			
CITY		STATE	ZIP CODE		
STATE	ZIP CODE	<input type="checkbox"/> INSPECT COPIES AT (MSP LOCATION)			
PHONE NUMBER	DATE	SIGNATURE OF REQUESTOR			
YOUR CLIENT OR INSURED		<b>STATE POLICE WORK UNIT USE ONLY</b>			
YOUR FILE NUMBER		OFFICIAL RECEIVING REQUEST			
<b>TYPE OF REPORT REQUESTED</b>		WORK UNIT	DATE RECEIVED		
		<b>ACTION TAKEN</b>			
<input type="checkbox"/> INCIDENT REPORT    NUMBER _____  <input type="checkbox"/> UD-10 TRAFFIC CRASH REPORT (Traffic Crash Reports are available on our website at <a href="http://www.michigan.gov/msp">www.michigan.gov/msp</a> and clicking on TCPS.) The cost for providing this record is \$10.00.  <input type="checkbox"/> CRIMINAL HISTORY RECORD (Michigan Criminal History records are available by visiting our website at <a href="http://www.michigan.gov/msp">www.michigan.gov/msp</a> and clicking on ICHAT.) The cost for providing this record is \$10.00.  <input type="checkbox"/> PHOTOS  <input type="checkbox"/> OTHER		<input type="checkbox"/> DOCUMENT PROVIDED AT WORK SITE  <input type="checkbox"/> COPY OF REQUESTED RECORD TO FOI UNIT  <input type="checkbox"/> REQUESTED RECORDS UNAVAILABLE AT WORK SITE REQUEST FORWARDED TO FOI UNIT  <input type="checkbox"/> OTHER			
		<b>SUPERVISING OFFICER'S RECOMMENDATIONS</b>			
		NAME REFERRED TO IN RECORD		<input type="checkbox"/> RELEASE <input type="checkbox"/> EXEMPT/DENY (Attach RI-109)	
		SID NUMBER	FBI NUMBER	SIGNATURE _____ DATE _____ DISTRICT/POST/SECTION/UNIT	
		DATE OF BIRTH	DRIVER LICENSE NUMBER		
SOCIAL SECURITY NUMBER* (voluntary)	SEX				
PRISON NUMBER (If Any)	MAILING ADDRESS:				
DATE OF EVENT (Month/Day/Year)	MICHIGAN DEPARTMENT OF STATE POLICE CRIMINAL JUSTICE INFORMATION CENTER FREEDOM OF INFORMATION UNIT 106 W. ALLEGAN STREET LANSING, MI 48933				
LOCATION OF EVENT (Street/City/Zip)					
SPECIFIC EVENT TO WHICH RECORD REFERS					

AUTHORITY: 1976 PA 442  
COMPLIANCE: VOLUNTARY

\* This information is confidential. Disclosure of confidential information is protected by the Federal Privacy Act.



# MAZE LEGAL GROUP, PC

MICHIGAN'S PREMIER DRUNK DRIVING DEFENSE FIRM

831 MONROE STREET

DEARBORN, MICHIGAN 48124

TELEPHONE (313) 792-8800

FACSIMILE (313) 792-8811

WWW.OWIDENSELAW.COM  
WWW.MICHIGAN-DRUNK-DRIVING.COM

September 30, 2009

City of Secrets Police Department  
123 Main  
Somewhere, MI 48000

**Re:** CITY OF SECRETS vs. UNJUSTLY ACCUSED  
\_\_ District Court Case No. 09-\_\_\_\_\_ Ticket No. 09 \_\_\_\_\_

## FREEDOM OF INFORMATION ACT REQUEST

I am hereby making the following information request pursuant to the Michigan Freedom of Information Act, MCL 15.231 et. seq. Please provide copies of all of the following documents within your department's files, or any governmental subdivision therein:

- 1) **Patrol car videos and accompanying audio:** From the squad car of the arresting officer, G. Smiley, and any other videos known to exist in other police vehicles or from any other source, showing all observations of my driving and other behavior leading up to the traffic stop, and all field sobriety tests, preliminary breath tests and the arrest on December 31, 1999, from approximately 23:55 hours through 23:59 hours;
- 2) **Datamaster observation video and accompanying audio:** any and all video and audio recordings of me at least 20 minutes prior to and during administration of the Datamaster (Instrument # 934567) on December 31, 1999, at approximately 01:23 hours, along with any other videos recorded of me while at the police station;
- 3) **Preliminary Breathalyzer and Datamaster Logs:** All calibration/simulator logs for the preliminary breathalyzer and the Datamaster used and/or employed in connection with my arrest for the 3 consecutive months prior and up to December 31, 1999, **including all OD-80 forms generated during Datamaster simulator tests;**
- 4) **Datamaster Incidents:** All documents and/or records reflecting or relating to "Datamaster Incidents" pursuant to 10-3 of the Michigan Breath Test Operator Training Manual (2003) for the last two years;
- 5) **NPAS Communications:** Copies of any and all correspondence, memos, letters, e-mails, notes, etc. either to or from any representative of National Patent Analytical Systems, Inc. regarding the operation, maintenance and/or performance of the Datamaster;
- 6) **Datamaster Warranty:** The written warranty provided by National Patent Analytical Systems, Inc. regarding the Datamaster employed to obtain my breath sample;
- 7) **Police Reports and All Preliminary Notes:** All preliminary notes drafted by the arresting officer, G. Smiley, prior to making a final report in this matter, as well as all final reports and supplemental reports;
- 8) **Redacted Police Reports:** Redacted copies (omitting the names and identifying information of the accused, witnesses, and other identifying information) of the last ten final police reports filed by the arresting officer, G. Smiley, in drunk driving arrests prior to my arrest;
- 9) **Booking Room Photographs:** All photographs taken of me on or about the incident date and information identifying the photographer and the time and date that the photograph was taken (if said photos are in color, a color copy is requested);



- 10) **Any 911 Recordings:** Any 911 recordings relating to the arrest, if any;
- 11) **All Radio Dispatch Recordings and Log Summaries:** All radio dispatch recordings by the arresting officer relating to the stop, investigation and arrest, along with a copy of the radio dispatch log summary showing the time of radio dispatches;
- 12) **Citizen Complaints, Grievances, and Disciplinary Reports:** Any and all public records reflecting citizen complaints, grievances, and disciplinary reports concerning the arresting officer, G. Smiley, if any;
- 13) **Training Records Summary:** If a written summary of the arresting officer training records exists, a copy of said training records summary is requested;
- 14) **Inventory Procedures:** The written automobile inventory procedures of the police authority that impounded and inventoried my vehicle and the written inventory of the vehicle;
- 15) **Videotaping Procedures:** The written videotaping procedures of the City of Secrets Police Department regarding the use and maintenance of patrol car and stationhouse video equipment;
- 16) **Drunk Driving Procedures and Performance Standards Regarding Drunk Driving Arrests:** If the City of Secrets Police Department has drunk driving procedures for its officers (e.g., a description of how to detect, how to investigate, field sobriety tests to be used, regulations regarding the use of PBT or Datamaster, etc.), and/or if the City of Secrets Police Department has performance standards (including but not limited to a target number of drunk driving arrests, i.e. "quotas"), copies of these documents are requested;
- 17) **FST Training Manuals:** An opportunity to inspect and review all training manuals used and in the possession of the arresting officer in this case for which certification was received to perform field sobriety testing. This request is for the specific manual, including all handouts, documents or other training materials, issued to the officer.
- 18) **Breath Test Training Manuals:** An opportunity to inspect and review all training manuals used and in the possession of the breath test operator in this case for which certification was received to perform breath testing. This request is for the specific manual, including all handouts, documents or other training materials, issued to the officer.

If you have any questions or concerns, please contact my attorney, Mr. William Maze. Once these materials have been compiled, please forward those documents along with an invoice to my attorney.

Yours truly,

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UNJUSTLY ACCUSED

STATE OF MICHIGAN  
IN THE DISTRICT COURT FOR THE \_\_ JUDICIAL DISTRICT

CITY OF SECRETS

Plaintiff,

Ticket No. 09 \_\_\_\_\_

vs.

Case No. 09- \_\_\_\_\_

UNJUSTLY ACCUSED

Defendant.



MAZE LEGAL GROUP, PC

William J. Maze (P56406)

Attorneys for Defendant

831 Monroe Street

Dearborn, Michigan 48124

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Cell: (734) 740-1900

Fax: (313) 792-8811

Hope N. U. Plead

Attorney for Plaintiff

587 Ninth Plain

Hell, MI 48000

Tel: (000) 000-0000

Fax: (111) 111-1111

**DEMAND FOR PRESERVATION AND PRODUCTION OF EXCULPATORY MATERIALS,  
INCLUDING VIDEO TAPES, PBT AND DATAMASTER LOGS AND OTHER  
DISCOVERABLE MATERIALS**

PLEASE TAKE NOTICE that Defendant, UNJUSTLY ACCUSED, hereby demands the preservation and production of the following, which are believed to contain exculpatory materials:

1. Any and all video tapes relating to the observation, arrest and chemical testing of Defendant, including:
  - a. **Patrol car videos and accompanying audio:** From the squad car of the arresting officer, G. Smiley, showing all observations of Defendant's driving and other behavior leading up to the traffic stop, and all field sobriety tests, preliminary breath tests and the arrest on December 31, 1999, from approximately 23:55 hours through 23:59 hours;
  - b. **Datamaster observation video and accompanying audio:** any and all video and audio recordings of Defendant at least 20 minutes prior to and during administration of the Datamaster (Instrument # 934567) on December 31, 1999, at approximately 01:23 hours.
2. A copy of the chemical test results consistent with and pursuant to 257.625a(8).

3. **Preliminary Breathalyzer and Datamaster Logs:** All calibration/simulator logs for the preliminary breathalyzer and the Datamaster used and/or employed in connection with Defendant's arrest for the 3 consecutive months prior and up to December 31, 1999, **including all OD-80 forms generated during Datamaster simulator tests.**
4. **Datamaster Incidents:** All documents and/or records reflecting or relating to "Datamaster Incidents" pursuant to 10-3 of the Michigan Breath Test Operator Training Manual (2003) for the last two years, including documents and notes instructing officers not to report and/or record problems with the breath testing device or simulator tests.
5. **NPAS Communications:** Copies of any and all correspondence, memos, letters, e-mails, notes, etc. either to or from any representative of National Patent Analytical Systems, Inc. regarding the operation, maintenance and/or performance of the Datamaster.
6. **Datamaster Warranty:** The written warranty provided by National Patent Analytical Systems, Inc. regarding the Datamaster employed to obtain Defendant's breath sample.
7. **Police Reports and All Preliminary Notes:** All preliminary notes drafted by the arresting officer, G. Smiley, prior to making a final report in this matter, as well as all final reports and supplemental reports.
8. **Redacted Police Reports:** Redacted copies (omitting the names and identifying information of the accused, witnesses, and other identifying information) of the last ten final police reports filed by the arresting officer, G. Smiley, in drunk driving arrests prior to the arrest in the immediate case.
9. **Booking Room Photographs:** All photographs taken of Defendant on or about the incident date and information identifying the photographer and the time and date that the photograph was taken (if said photos are in color, a color copy is requested).
10. **Any 911 Recordings:** Any 911 recordings relating to the arrest, if any.

11. **All Radio Dispatch Recordings and Log Summaries:** All radio dispatch recordings by the arresting officer relating to the stop, investigation and arrest of Defendant, along with a copy of the radio dispatch log summary showing the time of radio dispatches.
12. **Citizen Complaints, Grievances, and Disciplinary Reports:** Any and all public records reflecting citizen complaints, grievances, and disciplinary reports concerning the arresting officer, G. Smiley, if any.
13. **Training Records Summary:** If a written summary of the arresting officer training records exists, a copy of said training records summary is requested.
14. **Inventory Procedures:** The written automobile inventory procedures of the police authority that impounded and inventoried the Defendant's vehicle and the written inventory of the vehicle.
15. **Videotaping Procedures:** The written videotaping procedures of the City of Secrets Police Department regarding the use and maintenance of patrol car and stationhouse video equipment.
16. **Drunk Driving Procedures and Performance Standards Regarding Drunk Driving Arrests:** If the City of Secrets Police Department has drunk driving procedures for its officers (e.g., a description of how to detect, how to investigate, field sobriety tests to be used, regulations regarding the use of PBT or Datamaster, etc.), and/or if the City of Secrets Police Department has performance standards (including but not limited to a target number of drunk driving arrests, i.e. "quotas"), copies of these documents are requested.
17. **FST Training Manuals:** An opportunity to inspect and review all training manuals used and in the possession of the arresting officer in this case for which certification was received to perform field sobriety testing. This request is for the specific manual, including all handouts, documents or other training materials, issued to the officer.
18. **Breath Test Training Manuals:** An opportunity to inspect and review all training manuals used and in the possession of the breath test operator in this case for which certification was received

to perform breath testing. This request is for the specific manual, including all handouts, documents or other training materials, issued to the officer.

19. **Expert Witness Materials:** An opportunity to inspect and review all studies, reports, articles, books or other sources used by any expert witness to create, inform, or otherwise influence any opinion they may render on absorption, elimination or processing of alcohol; divided attention tasks; or field sobriety tests.
20. Consistent with the provisions of Administrative Order 1999-3, which overruled *People v Sheldon*, 234 Mich App 68; 592 NW2d 121 (1999), notice is given that reciprocal discovery is not available in misdemeanor cases, and Defendant objects to any discovery request from the prosecuting attorney in this action. See also, MCL 767.94a, *People v Phillips*, 468 Mich 583; 663 NW2d 463 (2003); *People v Nickerson*, 2007 Mich. App. LEXIS 666 (Unpublished Mich Ct App March 13, 2007).

Dated: September 30, 2009

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William J. Maze  
Attorneys for Defendant  
831 Monroe Street  
Dearborn, MI 48124  
(313) 792-8800

<b>STATE OF MICHIGAN</b> _____ <b>JUDICIAL DISTRICT</b> <b>JUDICIAL CIRCUIT</b> <b>COUNTY PROBATE</b>	<b>SUBPOENA</b> <b>Order to Appear</b>	<b>Case No. 09-</b> _____ <b>Ticket No. 09</b> _____ <b>Hon.</b> _____
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Court Address Court telephone no.

District Court 123 Main St. Secrets, MI 48000	
Plaintiff(s) Petitioner(s) <b>CITY OF SECRETS</b>	
___ Civil <u>X</u> Criminal	

V

Defendant(s) Respondent(s) <b>UNJUSTLY ACCUSED</b>
Charge <b>OWI</b>

In the Name of the People of the State of Michigan. TO:

**Captain Strother Martin**  
 Chief of Police  
 City of Secrets Police Department  
 123 Main  
 Somewhere, MI 48000

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

**YOU ARE ORDERED** to appear personally at the time and place stated below:  
 You may be required to appear from time to time and day to day until you are excused.

1. <u>X</u> The court address above    ___ Other:		
Day 2.	Date	Time

**YOU ARE ALSO ORDERED to:**

X 4. Produce the following items:

**SEE ATTACHED "DEMAND FOR PRESERVATION AND PRODUCTION"**

X 9.

Person requesting subpoena <b>William J. Maze</b>	Telephone no. <b>(313) 792-8800</b>	
Address <b>831 Monroe Street</b>		
City <b>Dearborn</b>	State <b>MI</b>	Zip <b>48124</b>



**FAILURE TO OBEY THE COMMANDS OF THE SUBPOENA OR APPEAR AT THE STATED TIME AND PLACE MAY SUBJECT YOU TO PENALTY FOR CONTEMPT OF COURT.**

\_\_\_\_\_  
 Date                      Judge/Clerk/Attorney                      Bar no.

Court use only ___ Served    ___ Not Served <b>SUBPOENA</b>
---

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR WAYNE COUNTY

**UNJUSTLY ACCUSED**

**Plaintiff,**

**vs.**

**Case No. 09-**

**CZ**

**CITY OF SECRETS**

**Defendant.**



**MAZE LEGAL GROUP, PC**

William J. Maze (P56406)

Attorneys for Plaintiff

831 Monroe Street

Dearborn, Michigan 48124

Tel: (313) 792-8800

Cell: (734) 740-1900

Fax: (313) 792-8811

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**COMPLAINT**

There is no pending or resolved civil action arising out of  
the transaction or occurrence alleged in the complaint.

NOW COMES the Plaintiff, UNJUSTLY ACCUSED, by and through attorneys, the MAZE LEGAL GROUP, PC, and for the Complaint against Defendant, CITY OF SECRETS, states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. That Plaintiff, UNJUSTLY ACCUSED, is a person residing in Somewhere, Michigan, and is not serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.
2. That Defendant, CITY OF SECRETS, is a public body of the State of Michigan.
3. That Plaintiff seeks production of particular documents, public records and writings under the Michigan Freedom of Information Act, Public Act 442 of 1976.
4. That jurisdiction is proper based upon the nature of the claims raised herein.
5. That this Court has jurisdiction over this action pursuant to Public Act 442 of 1976, MCLA 15.231 et seq., commonly known as the Freedom of Information Act (herein the Act).

6. That venue is proper in this case based upon the Defendant's presence within the venue.

**CAUSE OF ACTION**

7. That Defendant is a public body under MCL 15.232(d).

8. That it is the public policy of this State that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees.

9. That Plaintiff, by facsimile and first class mail, on {DATE OF REQUEST}, requested access to certain information pursuant to the Freedom of Information Act.

10. That the Defendant received the request on the following business day per MCL 15.235(1).

11. That a copy of the request is attached hereto as Exhibit 1.

12. That the requested documents detailed in Exhibit 1 are part of the "public record" under MCL 15.232(e) as they are "prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

13. That the requested documents are writings as defined under MCL 15.232(h).

14. That the requested documents are not exempt from disclosure under section 13 of the Act.

15. That Plaintiff, pursuant to the Freedom of Information Act, is entitled to the release of all non-exempt records and writings requested within five (5) working days from the date of the request.

16. That Defendant denied the request and/or refused to produce the requested records and writings.

17. That, pursuant to the Freedom of Information Act, failure to respond and/or produce constitutes a public body's final determination to deny the request.

18. That no valid reason or exemption exists for failing to disclose the documents, public records and



writings.

19. That Plaintiff is entitled to the requested documents detained in the FOIA directed at the Defendant.
20. That Plaintiff is entitled to, and requests, damages pursuant to the Act.
21. That Plaintiff is entitled to, and requests, costs and attorney fees incurred in this action pursuant to the Act.

WHEREFORE, Plaintiff, UNJUSTLY ACCUSED, requests that this Court enter Judgment against Defendant, CITY OF SECRETS, ordering:

- A. That the Defendant be compelled to provide Plaintiff with the requested information, and allow Plaintiff to inspect all portions of the requested information;
- B. That the Defendant arbitrarily and capriciously violated the Freedom of Information Act, and awarding Plaintiff \$500.00 in punitive damages for Defendant's failure to comply with the Freedom of Information Act, plus attorney's fees, costs, and disbursements in this action as provided by law;
- C. That this matter be expedited as provided by law; and,
- D. That such additional relief as may be deemed just and proper be granted to Plaintiff.

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William J. Maze (P56406)  
Attorney for Plaintiff  
831 Monroe Street  
Dearborn, MI 48124  
(313) 792-8800

Dated: September 30, 2009



**FRANK LAWRENCE, JR., Plaintiff-Appellant, v CITY OF TROY, Defendant-Appellee.**

**No. 289509**

**COURT OF APPEALS OF MICHIGAN**

*2009 Mich. App. LEXIS 1398*

**June 23, 2009, Decided**

**NOTICE:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**PRIOR HISTORY:** [\*1]

Oakland Circuit Court. LC No. 2008-095176-CZ.

**JUDGES:** Before: Borrello, P.J., and Meter and Stephens, JJ.

**OPINION**

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting summary disposition for defendant in this action under the Freedom of Information Act (FOIA), *MCL 15.231 et seq.* For the reasons set forth in this opinion, we reverse and remand for further proceedings.

Plaintiff filed a FOIA request stemming from a traffic citation issued to his brother, Thomas John Lawrence, for failing to provide proof of insurance and failing to change the address on his driver's license. Plaintiff sent a FOIA request to the Troy Police Department requesting the following information:

1. The full name of the officer who issued citation # 733389. Please also include the full name of the second officer who was at the scene;

2. Any and all voice or video recordings of the time directly before, during, and after the citation was issued. This should include, but not be limited to, any voice or video records taken of Thomas Lawrence, as well as any voice or video records depicting one or both of the two officers described in # 1 above, directly before, during, and after the citation was issued;

3. Any [\*2] and all radio, cellular or text transmissions between the two officers described in # 1 above, directly before, during, and after the citation was issued. This should include, but not limited to [sic], any radio transmissions to the Troy Police Station;

4. Any records indicating that one or both of the officers described in # 1 above, between 6:00pm and 7:00pm, accessed or attempted to access information from a database operated by the Michigan Secretary of State as to whether Thomas Lawrence or his vehicle had valid insurance;

5. Any and all records that indicate whether one or both of the officers described in # 1 above are subject to any guidelines, goals, or expectations as to how many traffic citations they must issue in a given period (i.e., a quota);

6. Any and all records relating to whether one or both of the officers described in # 1 have ever been subject to any discipline or disciplinary proceedings for misconduct, misfeasance and/or malfeasance, including whether the officer(s) has ever been sued for official misconduct (i.e., civil rights claims under *42 U.S.C. § 1983*). [FOIA Request.]

Two days later, on October 6, 2008, defendant denied plaintiff's request, stating:

The City [\*3] of Troy Police Department has recently received your Freedom of Information Act request. Since that request is for reports or information related to a criminal charge or a civil infraction (traffic ticket) pending

with the City of Troy, your letter should be directed to either the Troy City Attorney's Office or the Oakland County Prosecutor's Office, depending on which of those offices is prosecuting the matter.

We are denying your FOIA request as exempt under *MCLA 15.243(1)(D)*....

Shortly thereafter, plaintiff filed this action alleging that defendant improperly denied his FOIA request. Plaintiff filed a motion for summary disposition arguing that he was entitled to disclosure of the requested information. Defendant requested summary disposition in its favor under *MCR 2.116(I)(2)*. On December 1, 2008, the trial court denied summary disposition for plaintiff and granted summary disposition for defendant without hearing oral argument. The trial court opined that plaintiff's request appears to be an attempt to circumvent the discovery preclusion in civil infraction actions set forth in *MCR 2.302(A)(3)*. [\*4] The trial court further opined that the information sought is otherwise exempt, stating:

*MCL 15.243(1)(b)* provides an exemption for investigating records compiled for law enforcement purposes, to the extent that disclosure as a public record interferes with law enforcement proceedings and would constitute an unwarranted invasion of personal privacy. Here, the information sought implicates personal information of officers and witnesses, and police investigation techniques and guidelines. Accordingly, Plaintiff is not entitled to damages based on his claim of "arbitrary and capricious" acts.

Therefore, the trial court granted summary disposition for defendant pursuant to *MCR 2.116(I)(2)*.

Plaintiff argues that the trial court erred by granting summary disposition for defendant under *MCR 2.116(I)(2)*. A "trial court properly grants summary disposition to the opposing party under *MCR 2.116(I)(2)* if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law." *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000). Further, in FOIA cases, this Court reviews de novo a trial court's legal determinations and reviews for clear [\*5] error a trial court's factual findings supporting the court's decision. *Herald Co, Inc v Eastern Michigan Univ Bd of Regents*, 475 Mich 463, 471-472; 719 NW2d 19 (2006). This Court must defer to the trial

court's factual findings unless it is left with a definite and firm conviction that a mistake was made. *Id. at 472*. Finally, when reviewing a decision within the trial court's discretion, this Court must affirm unless the decision falls outside the principled range of outcomes. *Id.*

*MCL 15.231(2)* articulates the purpose of the FOIA. That provision states:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

"Michigan courts have interpreted the policy of the FOIA as one of full disclosure of public records unless a legislatively created exemption expressly allows a state agency to avoid its duty to disclose the information." [\*6] *Messenger, supra* at 531. Exemptions to disclosure under *MCL 15.243* of the FOIA are narrowly construed, and the party seeking to invoke an exemption has the burden of demonstrating its applicability. *Taylor v Lansing Bd of Water & Light*, 272 Mich App 200, 204-205; 725 NW2d 84 (2006); *Messenger, supra* at 532. "Whether requested information fits within an exemption from disclosure under FOIA is a mixed question of fact and law[.]" *Taylor, supra* at 205.

Plaintiff argues that the trial court essentially relied on the exemption under *MCL 15.243(1)(v)* in granting summary disposition for defendant. He contends that this exemption is inapplicable because plaintiff and defendant are not involved in any other litigation and this Court in *Taylor, supra*, rejected the notion that this provision prohibits a person from obtaining information by proxy. *MCL 15.243(1)(v)* provides:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

\* \* \*

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

Plaintiff correctly contends that this exemption is inapplicable because, under the plain language of *MCL*

15.243(1)(v), [\*7] plaintiff is not seeking information regarding a civil action in which plaintiff and defendant are parties. Plaintiff also correctly argues that *Taylor, supra*, does not preclude him from seeking information regarding a civil action between defendant and plaintiff's brother. In *Taylor, supra at 206-207*, this Court held that a literal interpretation of *MCL 15.243(1)(v)* allows "a party to obtain information by proxy that he or she would otherwise not be entitled to receive through FOIA[.]" Therefore, *MCL 15.243(1)(v)* would not prohibit plaintiff from obtaining information from defendant through a FOIA request that the provision would prohibit plaintiff's brother from obtaining himself. <sup>1</sup>

1 We express no opinion regarding whether a civil infraction action constitutes a "civil action" within the meaning of *MCL 15.243(1)(v)*.

Despite the foregoing, the trial court did not rely on *MCL 15.243(1)(v)* in granting summary disposition for defendant and defendant did not rely on that exemption in denying plaintiff's request. Rather, the trial court relied in part on *MCR 2.302(A)(3)*, which pertains to discovery in civil infraction actions. The trial court opined that plaintiff's request was an attempt [\*8] to circumvent the discovery preclusion in civil infraction actions enunciated in that court rule. *MCR 2.302(A)* provides:

**(A) Availability of Discovery.**

(1) After commencement of an action, parties may obtain discovery by any means provided in subchapter 2.300 of these rules.

(2) In actions in the district court, no discovery is permitted before entry of judgment except by leave of the court or on the stipulation of all parties. A motion for discovery may not be filed unless the discovery sought has previously been requested and refused.

(3) Notwithstanding the provisions of this or any other rule, *discovery is not permitted* in actions in the small claims division of the district court or *in civil infraction actions*. [Emphasis added.]

In *Central Michigan Univ Supervisory-Technical Ass'n MEA/NEA v Central Michigan Univ Bd of Trustees*, 223 Mich App 727, 730; 567 NW2d 696 (1997), this Court held that the "FOIA does not conflict with the court rules governing discovery, nor does it supplement or displace them." *Taylor, supra at 205*, citing *Central Michigan*. That case involved whether the plaintiff could seek information under the FOIA when it had already

filed suit against the defendants. <sup>2</sup> *Central Michigan, supra at 729*. [\*9] This Court opined that there existed no conflict between the court rules and the FOIA and the fact that a party may obtain information through discovery does not forfeit that party's right to obtain the same information through the FOIA. *Id. at 730*. In a concurring opinion, Judge Holbrook opined that "the discovery rules and the FOIA represent 'two independent schemes for obtaining information[.]'" *Id. at 731* (HOLBROOK, JR., J., concurring).

2 The FOIA was amended by 1996 PA 553, effective March 31, 1997, to add the exemption currently listed under *MCL 15.243(1)(v)*. This Court decided *Central Michigan* under the preamendment version of the FOIA.

Accordingly, under the above authority, even though *MCR 2.302(A)(3)* precludes discovery in civil infraction actions, a party may nevertheless seek information related to such actions under the FOIA unless the FOIA specifically exempts the information sought from disclosure. The trial court thus erred by determining that plaintiff's FOIA request was properly denied because the information sought was not obtainable through discovery pursuant to *MCR 2.302(A)(3)*.

Defendant argues that it relied on *MCL 15.243(1)(d)* in conjunction with *MCL 600.223* and [\*10] *MCR 2.302(A)(3)* to deny plaintiff's FOIA request. *MCL 15.243(1)(d)* provides:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

\*\*\*

(d) Records or information specifically described and exempted from disclosure by statute.

*MCL 600.223* grants our Supreme Court "authority to promulgate and amend general rules governing practices and procedure in the supreme court and all other courts of record[.]" Defendant apparently contends that because *MCL 600.223* authorized the Supreme Court to create the discovery preclusion articulated in *MCR 2.302(A)(3)*, records pertaining to civil infraction actions constitute "[r]ecords or information specifically described and exempted from disclosure by statute" as provided in *MCL 15.243(1)(d)*. However, the mere fact that *MCL 600.223* grants the Supreme Court authority to promulgate rules does not mean that the discovery preclusion in *MCR 2.302(A)(3)* "exempt[s] from disclosure by statute" information regarding civil infraction actions. Thus, defendant's argument, while creative, lacks legal merit.

Plaintiff next argues that the exemption under *MCL 15.243(1)(a)* is inapplicable because the requested information [\*11] does not threaten any privacy interest.

*MCL 15.243(1)(a)* provides:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

According to the language of the statute, the privacy exemption consists of two elements: (1) the information sought must be of a "personal nature," and (2) the disclosure of the information must amount to "a clearly unwarranted invasion of an individual's privacy." *Michigan Federation of Teachers & School Related Personnel, AFT, AFL-CIO v Univ of Michigan*, 481 Mich 657, 675; 753 NW2d 28 (2008).

Information is of a "personal nature" if it involves intimate, embarrassing, private, or confidential details of a person's life according to the moral standards and customs of the community. *Id.* at 676; *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 282; 713 NW2d 28 (2005). Further, "[d]etermining whether the disclosure of such information would constitute a clearly unwarranted invasion of privacy requires a court to balance the public interest in disclosure against [\*12] the interest the Legislature intended the exemption to protect." *Id.* "The only relevant public interest is the extent to which disclosure would serve the core purpose of the FOIA, which is to facilitate citizens' ability to be informed about the decisions and priorities of their government." *Id.* "This interest is best served through information about the workings of government or information concerning whether a public body is performing its core function." *Id.*

Defendant failed to provide any evidence, other than perfunctory assertions that plaintiff's FOIA request sought intimate, embarrassing, private, or confidential information. Defendant asserts that the information sought would interfere with law enforcement proceedings and constitute an unwarranted invasion of privacy based on their belief that the information sought pertained to personal information of police officers and witnesses. Review of the request reveals that plaintiff requested information regarding a traffic stop and citation, whether the police officers involved are subject to a citation "quota," and whether the officers had ever been subject to any disciplinary proceedings or sued for official misconduct. The information [\*13] sought regarding the

officers pertains to their public employment and the information requested regarding plaintiff's brother pertains solely to his public traffic stop and civil infraction. The request does not seek intimate, embarrassing, confidential, or private details concerning the lives of plaintiff's brother or the police officers.

In addition, disclosure of the requested information would not amount to "a clearly unwarranted invasion of an individual's privacy." *Univ of Michigan, supra* at 675. Disclosure would serve the core purpose of the FOIA. As this Court has recognized, "[t]his interest is best served through information about the workings of government or information concerning whether a public body is performing its core function." *Detroit Free Press, supra* at 282. Plaintiff seeks information regarding what transpired immediately before, during, and after two Troy police officers stopped plaintiff's brother's vehicle and issued him a citation. The officers' reasons for stopping the vehicle, what occurred during the traffic stop, and any communications amongst the officers and the Troy Police Department shed light on the inner workings of the Troy Police Department and [\*14] whether the department is fulfilling its duties to the public. Moreover, whether the officers accessed a Michigan Secretary of State database, whether they are subject to a citation "quota," and whether they have ever been subject to any disciplinary action or sued for official misconduct is indicative of whether Troy Police Department is performing its core function. As stated in *MCL 15.231(2)*, "all persons . . . are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees[.]" Therefore, disclosure of the information sought would not constitute a clearly unwarranted invasion of an individual's privacy and is not exempt under *MCL 15.243(1)(a)*.

Plaintiff also argues that the trial court erroneously determined that the information sought is exempt under *MCL 15.243(1)(b)*. That statute provides:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

\* \* \*

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement [\*15] proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted

invasion of personal privacy.

(iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(v) Disclose law enforcement investigative techniques or procedures.

(vi) Endanger the life or physical safety of law enforcement personnel.

The information that plaintiff sought cannot fairly be characterized as "[i]nvestigating records compiled for law enforcement purposes," as stated in *MCL 15.243(1)(b)*. For example, plaintiff requested the full names of the police officers, records indicating whether the officers were subject to a citation "quota," records indicating whether the officers accessed a Michigan Secretary of State database to determine whether the vehicle was insured, records pertaining to whether either of the officers has ever been subject to any discipline, a disciplinary proceeding, or sued for official misconduct, and voice, video, text, radio, or cellular transmissions or recordings [\*16] that occurred immediately before, during, and after the traffic stop. Narrowly construing the exemption listed under *MCL 15.243(1)(b)*, as required pursuant to *Taylor, supra* at 204-205, and *Messenger, supra* at 532, this information simply does not constitute investigating records compiled for law enforcement purposes. Therefore, defendant has not met its burden of demonstrating that the exemption under *MCL 15.243(1)(b)* is applicable, and the trial court erred by relying on this exemption in granting summary disposition for defendant.

Defendant contends that *MCL 15.243(1)(s)* provides an alternative basis for denying plaintiff's FOIA request. That provision states, in relevant part:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

\* \* \*

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

\* \* \*

(v) Disclose operational instructions

for law enforcement officers or agents.

(vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.

(vii) Endanger the life [\*17] or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

\* \* \*

(ix) Disclose personnel records of law enforcement agencies.

Defendant argues that the full names of the police officers are exempt under subsection (vii) because disclosure of the officers' full names would endanger their safety. Defendant also contends that any records indicating whether the officers are subject to guidelines, goals, or expectations regarding how many traffic citations they must issue within a certain time period is exempt under subsections (v) and (vi). Defendant further asserts that the disciplinary records of the officers are exempt from disclosure under subsection (ix). We note that Michigan courts have recognized that a law enforcement agency's records regarding internal investigations fall within the personnel records exemption under subsection (ix). *Kent Co Deputy Sheriffs Ass'n v Kent Co Sheriff*, 463 Mich 353, 365-367; 616 NW2d 677 (2000); *Herald Co, Inc v Kent Co Sheriff's Dep't*, 261 Mich App 32, 37-38; 680 NW2d 529 (2004).

The information sought in paragraphs one, five, and six of [\*18] plaintiff's FOIA request arguably falls under the exemptions on which defendant relies. "Once particular records qualify under a listed exemption for law enforcement agency records, the remaining inquiry is whether 'the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.'" *Kent Co Deputy Sheriffs Ass'n, supra*, 463 Mich at 365, quoting *Kent Co Deputy Sheriffs Ass'n v Kent Co Sheriff*, 238 Mich App 310, 331-332; 605 NW2d 363 (1999). The public body has the burden of proving that a particular record is exempt under the public-interest balancing test. *Landry v City of Dearborn*, 259 Mich App 416, 420; 674 NW2d 697 (2003).

In its brief on appeal, defendant fails to advance any argument regarding why the public interest favors nondisclosure of the records under *MCL 15.243(1)(s)*. Defendant simply fails to properly address this issue. Because we conclude that the trial court erroneously granted summary disposition for defendant based on different exemptions, and failed to address defendant's

argument regarding the applicability of *MCL 15.243(1)(s)*, we remand this case to the trial court to determine whether "the public interest in disclosure [\*19] outweighs the public interest in nondisclosure in the particular instance" with respect to the information that plaintiff requested in paragraphs one, five, and six of his FOIA request.

Plaintiff next argues that he is entitled to reasonable fees, costs and disbursements pursuant to *MCL 15.240(6)* and punitive damages pursuant to *MCL 15.240(7)*. We review for an abuse of discretion a trial court's decision regarding an award of attorney fees to a prevailing party under the FOIA. *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 647; 591 NW2d 393 (1998). Further, we review for clear error a trial court's findings regarding whether a defendant acted arbitrarily and capriciously with respect to *MCL 15.240(7)*. *Meredith Corp v City of Flint*, 256 Mich App 703, 717; 671 NW2d 101 (2003).

*MCL 15.240(6)* provides:

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, [\*20] and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

Thus, "[t]he first criterion for an award of attorney fees in litigation under the FOIA is that a party 'prevails' in its assertion of the right to inspect, copy, or receive a copy of all or a portion of a public record." *Local Area Watch v City of Grand Rapids*, 262 Mich App 136, 149; 683 NW2d 745 (2004). Further, "whether to award plaintiff reasonable attorney fees, costs, and disbursements when a party only partially prevails under the FOIA is entrusted to the sound discretion of the trial court." *Id.* at 151.

We direct the trial court to address on remand whether plaintiff is entitled to attorney fees, costs, and disbursements. Until the trial court reaches a decision on remand, it cannot be determined whether plaintiff is a prevailing party requiring an award of reasonable attorney fees, costs, and disbursements under *MCL 15.240(6)*. We note that even if the trial court determines on remand that the information sought in paragraphs one, five, and six of plaintiff's FOIA request is exempt from disclosure, plaintiff nevertheless partially prevailed in his

FOIA action and an [\*21] award of reasonable fees, costs, and disbursements would be within the trial court's discretion pursuant to *MCL 15.240(6)*. *Local Area Watch*, *supra* at 151.

Plaintiff also argues that he is entitled to punitive damages pursuant to *MCL 15.240(7)* because defendant's denial of his FOIA request was arbitrary and capricious. *MCL 15.240(7)* provides:

If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$ 500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Punitive damages in a FOIA case "may be assessed only if the court orders disclosure of a public record." *Michigan Council of Trout Unlimited v Dep't of Military Affairs*, 213 Mich App 203, 221; 539 NW2d 745 (1995). Further, [\*22] "[e]ven if defendant's refusal to disclose or provide the requested materials was a statutory violation, it was not necessarily arbitrary or capricious if defendant's decision to act was based on consideration of principles or circumstances and was reasonable, rather than whimsical." *Meredith Corp*, *supra* at 717 (quotation marks and citations omitted).

Here, the trial court denied plaintiff's request for punitive damages under *MCL 15.240(7)* based on its erroneous determination that the information sought by plaintiff is not discoverable pursuant to *MCR 2.302(A)(3)* and its erroneous conclusion that the information is exempt from disclosure under *MCL 15.243(1)(b)*. Because we are reversing the trial court's determination with respect to paragraphs two, three, and four of plaintiff's FOIA request and have directed the trial court to determine on remand whether the information sought in paragraphs one, five, and six is exempt, we direct the trial court to address this issue on remand as well.

Plaintiff also argued that defendant waived its right to assert any FOIA exemptions in defense of this action by failing to assert them in its first responsive pleading. Plaintiff further contends that [\*23] defendant waived its affirmative defenses by failing to "state the facts

constituting" such defenses within the meaning of *MCR 2.111(F)(3)*. Although plaintiff asserted these arguments below, the trial court failed to address them. Consequently they are not properly before this Court. *Polkton Charter Twp v Pellegrum*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Considering our resolution of plaintiff's other arguments we decline to address this issue. Also in consideration of our resolution of the above issues, we need not address plaintiff's argument that the trial court denied him his right to due process by failing to provide him an opportunity to respond to the arguments that defendant raised in its response to plaintiff's motion for summary disposition. Courts should not address constitutional issues when a case can be

decided on nonconstitutional grounds. *J & J Constr Co v Bricklayers & Allied Craftsmen, Local 1*, 468 Mich 722, 734; 664 NW2d 728 (2003), *People v Riley*, 465 Mich 442, 447; 636 NW2d 514 (2001).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Stephen L. Borrello

/s/ Patrick M. Meter

/s/ Cynthia D. Stephens



### **Rule: 3.1 Meritorious Claims and Contentions**

**A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous. A lawyer may offer a good-faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may so defend the proceeding as to require that every element of the case be established.**

*Comment:* The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also has a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person. Likewise, the action is frivolous if the lawyer is unable either to make a good-faith argument on the merits of the action taken or to support the action taken by a good-faith argument for an extension, modification, or reversal of existing law.

## **The ABA Model Rules of Professional Conduct**

### **Rule: 3.1 Meritorious Claims and Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

#### **Comment:**

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

### **Rule: 3.8 Special Responsibilities of a Prosecutor**

**The prosecutor in a criminal case shall:**

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;**
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;**
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;**
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and**
- (e) exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.**

*Comment:* A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate. Cf. Rule 3.3(d), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor, and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

Paragraph (c) does not apply to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

In paragraphs (b) and (e), this rule imposes on a prosecutor an obligation to make reasonable efforts and to take reasonable care to assure that a defendant's rights are protected. Of course, not all of the individuals who might encroach upon those rights are under the control of the prosecutor. The prosecutor cannot be held responsible for the actions of persons over whom the prosecutor does not exercise authority. The prosecutor's obligation is discharged if the prosecutor has taken reasonable and appropriate steps to assure that the defendant's rights are protected.

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## **Expert Witnesses for DUI/DWI Cases**

1. Mary McMurray. Blue Mounds, WI. Chemistry degree. Previously worked for Wisconsin State Patrol on Intoxilyzer 5000 as instructor and maintenance tech. Extensive experience with BAC Datamaster, Intoximeter EC-IR and Draeger 7410 & 7110. Expert on preliminary breath testing devices. Expert on software applications for breath instruments. Also former SFST instructor in 1980s and early 1990s. *Mary's* e-mail: [ethosinc@aol.com](mailto:ethosinc@aol.com) and home phone: 608-437-5344; cell: 608-772-1055.
2. Jay Zager of Ft. Lauderdale, FL. Ex-cop in Broward County. Medical retirement after 15 years. CMI factory trained on BOTH the Intoxilyzer 8000 and 5000. Repair technician approved by factory. Also, NHTSA SFST Instructor. E-mail: [JayHZager@aol.com](mailto:JayHZager@aol.com). Phone: 954-341-9774; FAX (954) 752-9788.
3. Robert (Bob) LaPier, (208) 754-4632, (800) 257-4643, SFST Instructor. Ex-cop who has trained thousands of cops on SFSTs. DRE instructor. Accident reconstruction. Intoxilyzer 5000 maintenance and instructor certified. [www.LaPier.com](http://www.LaPier.com).
4. Steve Rubenzer, Houston, TX; E-Mail: [srubenzer@houston.rr.com](mailto:srubenzer@houston.rr.com); website is [www.SteveRubenzerPhD.com](http://www.SteveRubenzerPhD.com); 11914 Astoria, Suite 490, Houston, TX 77089; Ph: 281-481-5715, Fax: 281-922-5903. Bachelors of Science, Psychology, University of Wisconsin, Oshkosh, 1981; Master of Science, Clinical Psychology, University of Houston, 1984; Doctor of Philosophy, Clinical Psychology, University of Houston, 1990; Licensed Psychologist in Texas since 1992. SFST Instructor, plus has taken special courses on eye movements at the University of Houston College of Optometry that enable him to testify about HGN and similar eye movements. ABPP Diplomate in Forensic Psychology (one of 220 in USA), American Board of Professional Psychology.
5. Walden, Platt & Associates – Bryan, TX - Two Master Police Trainers (Troy Walden and Lance Platt) with Ph.D. degrees; retired from police work as NHTSA & IACP DRE and SFST trainers of the trainers; also handle in-depth police investigation and analysis of DUI/DWI case files and are available for testimony in court proceedings. [www.waldenplatt.com](http://www.waldenplatt.com). (979) 822-3060; fax: (979) 822-3061. [troy@waldenplatt.com](mailto:troy@waldenplatt.com) or [lance@waldenplatt.com](mailto:lance@waldenplatt.com). Supervise SFST Student and Instructor Courses across the USA.
6. Bob Awtrey – LaGrange, Georgia; Accident Reconstruction Specialist, 706-645-1643 or 706-773-5250 [cell]; 706-663-4081 [fax]; 706-663-4018 [home] (former mathematics teacher and then 20 years with Georgia state patrol; taught reconstruction for Georgia officers in statewide program). Website address: [www.southeasternsafetyassociates.com](http://www.southeasternsafetyassociates.com); E-mail: [bawtrey@bellsouth.net](mailto:bawtrey@bellsouth.net)
7. Stefan Rose, MD, Physician trained in General Psychiatry, Clinical Pathology and Forensic Toxicology, 10130 Northlake Blvd., Suite 214, #300, West Palm Beach, FL 33412, 561-795-4452, fax 561-795-4768, pager 800-555-6449; [toxdoc1@bellsouth.net](mailto:toxdoc1@bellsouth.net); expertise in drugs, especially cocaine, plus expert on Intoxilyzer 5000, drug dog expert.

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8. David Stafford, Ph.D. Memphis, TN; Toxicologist (formerly with University of Tennessee Medical School over 30 years, now retired); Breath, Blood, Urine, SFST. Drugs, alcohol, arson investigation. Call at home 901-726-4876.
9. Pat Demers, Retired Pharmacist and Masters in Forensic Science. Formerly ran crime lab in Massachusetts. Currently resides in Maine. Phone 207-636-2908; Cell 207-459-0981; E-mail [pmdemers@earthlink.net](mailto:pmdemers@earthlink.net); 124 10th Street, Acton, ME 04001 (207) 636-7840
10. Rick Swope – Davie, FL- SFSTs, Accident Reconstruction, Engineer - 8211 SW 28 Street, Davie, FL 33328 Office: (954) 476-7640; Fax: 954-476-9224 . Masters Degree, Engineering; ex-cop and ex-DUI task force officer. SFST Master Instructor. [swprcn@aol.com](mailto:swprcn@aol.com); [www.swoperecon.com](http://www.swoperecon.com).
11. Edward F. Fitzgerald, JD, Mesa, AZ; wrote book on Intoxication Test Evidence, 480-699-9334; 480-688-0831, general information on breath test principles and blood/urine testing. E-mail at: [ed@edwardffitzgerald.com](mailto:ed@edwardffitzgerald.com). [www.edwardffitzgerald.com](http://www.edwardffitzgerald.com).
12. Dr. Michael Hlastala, Ph.D., breath testing device expert, Professor of Lung Physiology and Biophysics and of Medicine, Seattle, Washington, (206) 543-3166; fax: (206) 685-8673; voice message (206)-685-8436; [mphlastala@comcast.net](mailto:mphlastala@comcast.net); home: (425) 742-7811 (425) 280-7319 (cell). Practicing since 1969, with over 350 published articles or books. [www.mphlastala.com](http://www.mphlastala.com).
13. Dr. James Woodford, Ph.D., Chemistry, Chattanooga, TN; [jameswoodford@comcast.net](mailto:jameswoodford@comcast.net) or [woodford@mindspring.com](mailto:woodford@mindspring.com), 423-821-1146 or 423-432-2606 (cell); breath, blood, urine, drugs or alcohol. Also, attended my first SFST student course in 1994. <http://www.mindspring.com/~woodford>
14. Harvey Cohen, Ph.D, C.I.H., Cambridge Technical Associates, PO Box 920113, Needham, MA 02492, (781) 449-4335, fax# (781) 449-1539, Co-Author of Harvey M. Cohen & Joseph B. Green, *APPREHENDING AND PROSECUTING THE DRUNK DRIVER* (Matthew Bender 2002). [harveycohen@alum.mit.edu](mailto:harveycohen@alum.mit.edu).
15. Dr. Robert Middleberg, Pharm. D., Ph.D., 3701 Welsh Road, Willow Grove, PA, 215-657-4900; fax: 215-657-2972. Intoxilyzer 5000; pharmacology issues, toxicology. He currently directs the Forensic Toxicology unit of National Medical Services, as well as serving as a laboratory director. He previously served as the Director of Expert Services for NMS, and coordinated medico-legal issues for courts, attorneys, etc.
16. Charles E. Smith, DUI Consultant, Ex-cop (23 years) with Factory Maintenance and Repair Training by CMi (40 hours); over 30 years of O-T-J training; SFST Instructor; DRE Instructor; plus has been court qualified to do retrograde work as a toxicologist in Florida (from job training, not educational degrees). SFST Instructor Training in 1983, plus has taught DRE course; 772-286-5761 & 772-286-6732 (fax); [duiexpt@bellsouth.net](mailto:duiexpt@bellsouth.net).

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17. Francis Gengo, Pharm.D, Ph.D., Pharmacology; Toxicology; 64 Dan Troy Dr., Williamsville, NY 14221-3550, (716) 634-0915. See web information at [http://www.dent institute.com/document\\_26\\_4.html](http://www.dent institute.com/document_26_4.html). Dr. Gengo currently serves as an Associate Professor of Pharmacy and Neurology and a Clinical Assistant Professor of Neurosurgery at the SUNYAB School of Medicine.
18. Steven W. Rickard, Accident Reconstruction Expert & Animation of Accidents, Prior PA State Trooper with over 30 years total experience; 1644 Whitley Drive, Harrisburg, PA 17111, (717) 540-3451 or 3457.
19. William C. Fischer, Endicott, NY, 607-785-5766; fax: 607-748-8404, Accident Reconstruction and Vehicle Fault Expert.
20. David Sweeney, Conway, SC; Pharmacokinetics, Pharmacology, Infrared Breath Testing (BAC Datamaster and basic issues for Intoxilyzer 5000); effects of EITHER alcohol or drugs-- prescribed and non-prescribed (contraband) – 843-241-3108 (cell); 843-347-0352 (work); 843-365-7201 (home). E-mail: [davenorm1945@aol.com](mailto:davenorm1945@aol.com)
21. Tony Corroto, 17 years of police work with Atlanta PD – Master Instructor of Instructors in BOTH SFSTs and DREs – Oversaw breath test program & ran over 10,000 Intoxilyzer 5000 breath tests – Web site: <http://www.duiexpertwitness.com>; E-mail: [tcorroto@comcast.net](mailto:tcorroto@comcast.net); Phone: (404) 906-2153; Fax: (770) 693-9852.
22. Lawrence Masten, Ph.D in Toxicology, Board Certified in Toxicology; 873 West Bay Drive, 186, Largo, FL 33770, 727-595-6575; fax: 727-595-0785; toll free: 866-329-9262; [lwten@sprintmail.com](mailto:lwten@sprintmail.com). Handles collection, transport, storage, and analysis of legal and hospital blood for BACs & the interpretation of BACs and factors that affect BAC readings and/or blood/urine drug levels. 33 years experience.
23. Dominick A. Labianca, Ph.D., Department of Chemistry, Brooklyn College of The City University of New York, Brooklyn, NY 11210; 718-951-5458 or home: 516-489-3247. Expert in blood, urine, proper testing, conversion from serum to whole blood.
24. Dr. Alfred E. Staubus, Pharm.D., Ph.D., (614) 451-1406 (phone), (614) 451-1407 (fax) (Alcohol and drug issues; blood, breath or urine testing). E-mail: [staubus.2@osu.edu](mailto:staubus.2@osu.edu). 1015 Kenway Court, Columbus, OH 43220.
25. Dr. David Schneider, Pharm D., BA in Biology; Practicing Pharmacologist for 30+ years, Royal Oak, MI; 313-577-1579; fax: 810-545-2475
26. William Giguere; B.S. in Zoology, with minors in chemistry and political science; grad studies in marine biology; masters in secondary education to teach biological and physical sciences; graduate studies in toxicology, pulmonary functioning and respiratory therapy and in alcohol studies; presently works at Park-Gilman Clinics, Inc. Burlingame, CA 94010; 650-259-7564 or fax: 650-259-7952.
27. David (Dave) Fries – Live Oak, FL; Intoxilyzer 5000, SFST Field Testing (Instructor) - 386-344-1770 cell; 386-658-3464 work; 386-658-2687 fax; [fries@alltel.net](mailto:fries@alltel.net). Ex-cop with extensive experience on the Intoxilyzer 5000.

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28. Kenneth Glaza, K & R's Recording Studio, Inc., <http://www.knr.net/>, V:(248)557-8276  
F:(248)557-0441, forensic audio or video enhancement or filtering, plus other  
engineering services. See vita: <http://www.knr.net/vita2.htm>
29. Bill Taylor – Standardized and Non-Standardized Field Testing and Intoxilyzer 5000-  
770-534-1501. E-mail: [taylorbm@aol.com](mailto:taylorbm@aol.com). Ex-cop (27+ years) who has trained in  
excess of 3000 instructors and students on SFSTs. Retired Police Captain, in charge of  
the DUI task force. Formerly headed up State of Georgia original training on NHTSA  
SFSTs & alcohol/drug training for 3 years, after retirement as cop in 1991.
30. Dr. Terry Martinez, Toxicologic Associates Inc., 6614 Clayton Road, #107 Richmond  
Heights, Mo 63117; Ph: (618)- 345-0786; (618) 367-8700; ext. 1404. Holds Ph.D. in  
Pharmacology. He is also an expert on methamphetamine manufacture cases.
31. Jerry W. Bush, MD, medical degree, University of Alabama; B.S. in Pharmacy, Auburn  
University (1<sup>st</sup> in Class); Board Certified in Internal Medicine; background in  
pharmaceutical research; certified independent medical examiner; presently in private  
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32. Gil Snowden, Brick, NJ; [snowden@home.com](mailto:snowden@home.com); Phone: 732-458-4014; fax: 732-458-  
3449; former New Jersey State Police Breath Test Coordinator/Instructor and DWI/SFST  
instructor, now expert for breath testing and SFSTs.
33. Mike McDermott, Forensic Audio & Tape Expert, Great Falls, VA; 703-757-0103; fax:  
703-757-0262; E-mail: [mike@mcldtd.com](mailto:mike@mcldtd.com).
34. Dr. David Benjamin, Ph. D., [www.DoctorBenjamin.com](http://www.DoctorBenjamin.com); 77 Florence Street, Suite 107,  
Chestnut Hill, MA 02467, Telephone: 617-969-1393, Fax: 617-969-4285. Alcohol or  
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35. Joe Citron, MD, JD (board-certified ophthalmologist for 30+ years), Atlanta, GA – HGN  
guru (from both medical standpoint and SFST training) and other SFSTs (certified); Intox  
5000 (factory certified instructor); medical testimony such as symptoms that mimic  
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1100 or 404-784-5297. **e-mail:** [joecitron@aol.com](mailto:joecitron@aol.com)
36. Dr. Richard Saferstein, Ph.D., 20 Forrest Court, Mount Laurel, NJ 08054, (856) 234-  
7134 voice, (856) 778-4841 fax. Ph.D. in Chemistry. Noted author of books on Forensic  
Science. Former Chief Chemist for the State of New Jersey.
37. Stan Alari, Radar and Laser Expert, 412 North Pacific Coast Hwy #237, Laguna Beach  
CA 92651, 1- 877- SOX RADAR Cell: 562- 682- 5372 Fax: 760- 406- 6222  
[stanley.alari@verizon.net](mailto:stanley.alari@verizon.net). Stanley Alari & Associates. <http://www.stantheradarman.com/>
38. Joseph William Huff, Ph.D. in Physiology from Medical College of Georgia, Masters in  
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Mathematics from West Georgia College, 118 Lyle Way, Carrollton, GA 30117, CEO,  
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834-8611; fax: 770-832-1028; [josephhuff@netzero.net](mailto:josephhuff@netzero.net). Previously worked as Assistant Professor teaching Ophthalmology at the Bethesda Eye Institute.

39. Dr. Spurgeon Cole, Ph.D., Psychology (formerly with Clemson University); Expert in Psychophysical Testing protocol and devastating witness regarding the lack of scientific method in implementation of SFSTs and "Validation Studies"; 1040 McNutt Crossing, Bogart, GA 30622, (864) 710-1293 (cell), 706-208-8167 (home), [cspurg@bellsouth.net](mailto:cspurg@bellsouth.net)
40. Dr. Ronald Nowaczyk, Ph.D., received BA from Northwestern University, MA and Ph.D. Miami University (Ohio), Associate Vice Chancellor for Economic and Community Development, Head of Department, Professor of Psychology, Office of Economic and Community Development, 300 E. First Street, 301 Willis Building, East Carolina University, Greenville, NC 27858; Phone: (252) 328-6650 ext. 231, Fax: (252) 328-4356, email address: [nowaczykr@mail.ecu.edu](mailto:nowaczykr@mail.ecu.edu)
41. Gil Sapir, Forensic Science Consultant, undergrad degree in Microbiology and Biology, Colorado State University, Master of Science in Criminalistics, University of Illinois-Chicago; JD degree, Chicago-Kent College of Law; extensive publications and law review articles on breath testing deficiencies and SFST unreliability; has taken factory training on most breath testing devices, including EC-IR, DataMaster, Intoximeter 3000. SFST trained. [gsapir@interaccess.com](mailto:gsapir@interaccess.com); P.O. Box 6950, Chicago, IL 60680; 312-458-0665.
42. Ron Lloyd, Villa Rica, GA; former Georgia State Trooper for 13 years; NHTSA SFST Instructor; DRE Instructor; Top Instructor in Georgia when he departed to be a private investigator and expert in DUI cases; Intoxilyzer 5000 operator trained (as a cop), but not a factory "technician". (770) 463-8823 Business; (770) 463-8813 Fax; (404) 822-4003 cell; 12 North Alexander Creek Road, Newnan, GA 30263. E-mail: [duiinva@aol.com](mailto:duiinva@aol.com)
43. James Johnson, Polygraph Expert, Former Chief Polygrapher for U. S. Air Force (Europe), 11 Deerwood Drive, Litchfield, NH 03052-8004, 603-424-6365
44. Lonny E. Horowitz, MD – Was an EMT prior to attending medical school; worked for 4 years during residency and internship in trauma units in NY and NJ area; can provide expert testimony about symptoms of traumatic head injury mimicking alcohol intoxication; also expert in diabetes, hypoglycemia and high protein diet issues for breath test interference defense. No training on breath testing devices, but can explain how ketone conversion to isopropyl alcohol may be misread by an infrared device as ethyl alcohol. 770-393-3438. Woodstock, GA location. [dietmd@bariatrics.com](mailto:dietmd@bariatrics.com)
45. Forensic Gait Analysis Group, Two podiatrists [Dr. Clark D. Miller and Dr. Paul N. Greenberg] provide medical and scientific review of DUI-DWI suspects regarding foot function and "gait" analysis. Use computer technology to quantitatively measure and analyze gait patterns for purposes of refuting police claims of impairment as shown through field sobriety testing procedures. 212-794-2060 (NY) or 973-379-4965 (NJ). [www.forensicgait.com](http://www.forensicgait.com) and E-mail at: [Forensic.Gait@verizon.net](mailto:Forensic.Gait@verizon.net) .



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46. Ronald Henson, Ph.D. Peoria, IL (309) 360-5614; website: [www.beron.us](http://www.beron.us) P.O. Box 10706, Peoria, IL 61612-0706. Ph.D. (Dissertation: Workplace Drug & Alcohol Testing), M.P.A., B.S. Ex-police officer and previously worked for State of Illinois as an Instructor for Breath, Blood, and Urine Alcohol Testing and SFSTs. Expert experience with the Intoximeter EC/IR, Intoximeter 3000, AlcoSensor Models III & RBT IV, Intoxilyzer 5000 & 4011s, BAC Verifier, BAC DataMaster, portable breath test devices, and related physiology and pharmacology principles associated with alcohol testing.
47. *Dr. Sarah Kerrigan, Ph.D., Forensic Toxicologist. A Scotland Yard training toxicologist whose specialty is drugs that impair*, Dr. Kerrigan received her BS in Chemistry/Analytical Chemistry and Toxicology and her Ph.D. in Chemistry in the field of drugs of abuse testing. Mailing Address: *P.O. Box 7429, Houston TX 77248-7429; Office: 713 868 2440; Cell: 713 817 2229; E-mail: [sarah.kerrigan@earthlink.net](mailto:sarah.kerrigan@earthlink.net)*
48. Dr. Gerald P. Simpson, Ph.D., 846 Woodlawn Dr, Thousand Oaks, CA 91360, home number is 805-495-3652.
49. Jan Semenoff, a factory certified instructor for the Intoxilyzer 5000, and a former Canadian police officer. E-mail: [info@itd2.com](mailto:info@itd2.com); Web site: <http://www.itd2.com>; offers breath training course for Intoxilyzer 5000.
50. J. Robert Zettl, Forensic Toxicologist (Bachelor of Science in Bacteriology with minor in Physical Chemistry; Masters in Public Administration), (Intoxilyzer 5000, blood tests; urine tests) Littleton, CO, Voice/cell 720-363-9900; Fax 303-795-1654; Home 303-795-9271; [JRZETTL1@msn.com](mailto:JRZETTL1@msn.com); formerly with State of Colorado Alcohol Program for over 25 years.
51. JoAnn Samson, Ph.D., Toxicologist/Physiologist, NHTSA Certified Instructor, Breath, Blood and Urine Expert, 17 Princeton Street, Concord, NH 03301, (603) 229-0073; Fax: (603) 224-6933, [jsamson1126@aol.com](mailto:jsamson1126@aol.com) [Former State Toxicologist]
52. Thomas E. Workman, Esq., - Patent Attorney with 30+ years in high-level computer software, firmware and hardware development; understands "Source Code" issues and can analyze code and can testify about flaws in programs running breath computers; [www.computers-forensic-expert.com](http://www.computers-forensic-expert.com). 41 Harrison Street, Taunton, MA 02780; 508-822-7777; Fax: 508-824-2420; E-mail: [tom@computers-forensic-expert.com](mailto:tom@computers-forensic-expert.com).
53. Wanda Marley, RN, BSN, CRNA, MS, PhD., Fort Collins, CO. Worked as emergency room and intensive care nurse, then certified registered nurse anesthetist (CRNA) in operating room for total of 16 years. Trained at Mayo Clinic in anesthesia, and got a masters degree at the University of Kansas, which stressed primarily pharmacology and toxicology. Taught physiology and pharmacology at Colorado State University for 7 years, after earning a doctoral degree there, in physiology. Worked for 19 months as Senior Scientist at Rocky Mountain Instrumental Laboratory, then opened medical-legal consulting business. Testifies on DUI and DUID cases; particularly when the client has some medical problem or takes prescription meds which contribute some degree of psychomotor impairment. Website: [www.rockymedleg.com](http://www.rockymedleg.com); E-mail:

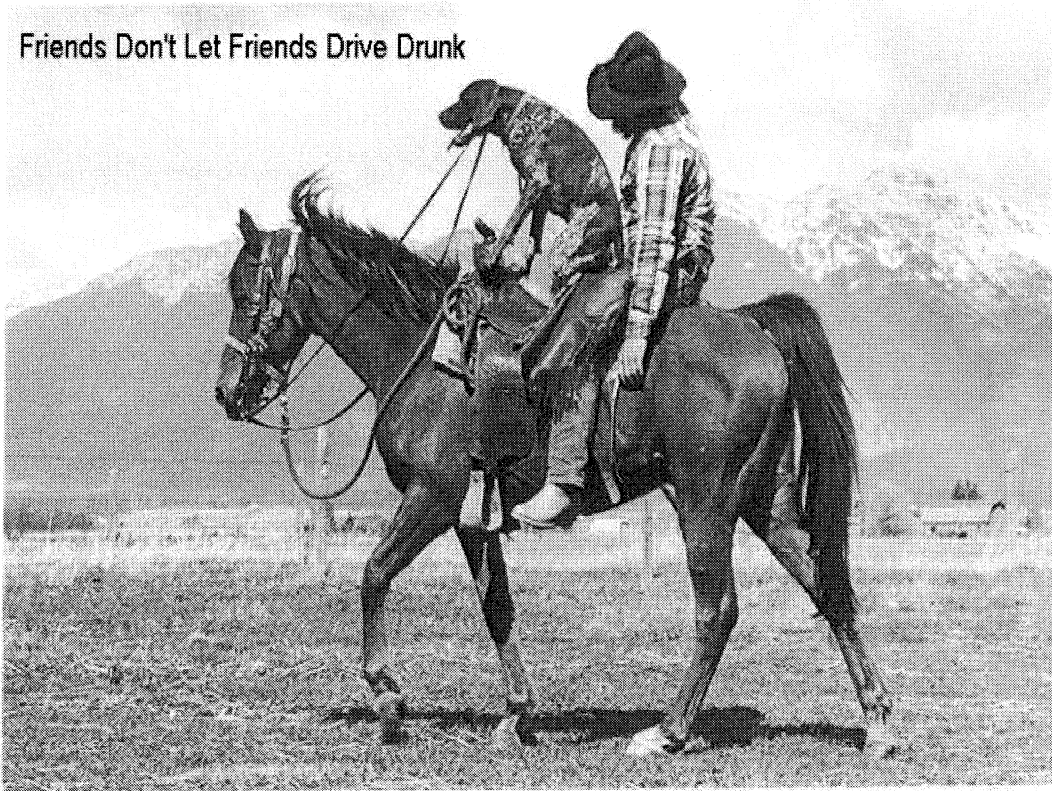
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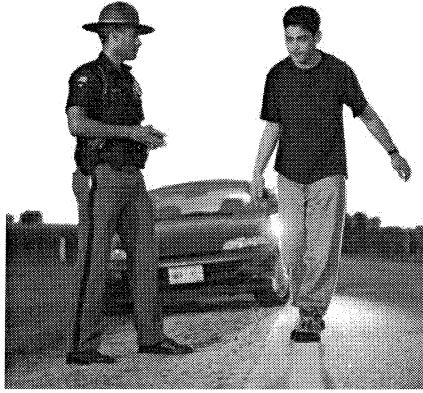
[medleg@cowisp.net](mailto:medleg@cowisp.net); Phone: (970) 224-4587; Fax: (970) 224-1194

54. Gary Lage, Ph.D, Toxicologist; can handle alcohol or drugs with blood tests, pharmacology issues; ToxLogics, Inc., 22 Bernard Street, Ewing, NJ 08628; (606) 883-9077; FAX: 609-883-9044; E-Mail: [glage@comcast.net](mailto:glage@comcast.net); Website: [www.rtctox.com/lage.htm](http://www.rtctox.com/lage.htm)

55. John Woodward, Utica Toxicology Services, 737 3<sup>rd</sup> Avenue, #E, Chula Vista, CA 91910, has been an expert for state in more than 2500 cases prior to moving over to independent lab work in criminal and civil cases. Phone: 619-420-8388; Fax: 619-420-4128; E-mail: [Utica@cts.com](mailto:Utica@cts.com)

Friends Don't Let Friends Drive Drunk





**Tony Corroto Enterprises, LLC and the Maze Legal Group, PC Present:**

**DUI DETECTION & STANDARDIZED FIELD SOBRIETY TESTS PRACTITIONER COURSE  
THURSDAY DECEMBER 3 - FRIDAY DECEMBER 4, 2009**

Participants will receive the same training law enforcement officers receive throughout the nation in the most up to date National Highway Traffic Safety Administration's DUI detection and SFST course. Participants will learn the NHTSA's recommended standardized field sobriety testing process. Topics will include the proper procedures for administering and interpreting the Horizontal Gaze Nystagmus, Walk and Turn, and One Leg Stand examinations. An alcohol workshop will be conducted where participants will be able to administer the SFSTs on volunteers with BACs from 0.00 to 0.15. Participants will receive a DUI/SFST student manual, a CD-Rom containing the student manual and various studies, and a certificate of course completion.

**Fee: \$750.00**

**Dates & Location: December 3-4, 2009, Romulus, Michigan**

**Payment due no later than November 9, 2009**

**About the Instructor:**

Tony Corroto was a Senior Police Officer with the Atlanta Police Department for over seventeen years spending fourteen of those assigned to the DUI Task Force. He specializes as a Standardized Field Sobriety Testing (SFST) and Drug Recognition Expert (DRE) instructor. He is an instructor for the National Highway Traffic Safety Administration (NHTSA) and has taught DUI and DWI enforcement at the Atlanta Police Academy and the Georgia Public Safety Training Center. Mr. Corroto is an "on call" expert witness for the State of Georgia. Tony has been recognized as an expert witness on over 2,300 DUI cases for the City of Atlanta in one year alone. Over the past eight years he has been listed on over 10,000 DUI cases as an "on call" expert witness. He made over 2,700 arrests for persons driving under the influence while working for the City of Atlanta's DUI Task Force. Now in the private sector he provides DRE/SFST consulting and nationwide expert witness testimony in DUI and DWI cases.

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 Yes! I want to attend.

No, I cannot attend but keep me informed of upcoming training events.

Name \_\_\_\_\_ Firm Name \_\_\_\_\_

Address \_\_\_\_\_ Suite No. \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

Please return this form to: Tony Corroto Enterprises, LLC  
2029 McLain Road  
Acworth, Georgia 30101-4448

Phone: (404) 906-2153

Fax: (770) 693-9852

## ADDITIONAL ONLINE RESOURCES

- National College for DUI Defense <http://www.NCDD.com>
- Larry Taylor's DUI Blog <http://www.duiblog.com/>
- PAAM Traffic Safety <http://www.paamtrafficsafety.com/www/>  
Keeping tabs on the opposition!
- OWIDefenseLaw.com [http://www.owidenselaw.com/Field\\_Sobriety\\_Tests.html](http://www.owidenselaw.com/Field_Sobriety_Tests.html)  
My own site, with copies of the various field sobriety test validation studies.
- Washington State Patrol <http://breathtest.wsp.wa.gov/>  
Some really great resources. We should have this in Michigan!
- National Patent Analytic Systems <http://www.npas.com/>  
Manufacturer of the BAC Datamaster and the new DMT Datamaster
- Michael P. Hlastla, PhD <http://www.mphlastala.com/issues.htm>  
Twenty-six different articles written by one of the leading breath test experts in the nation.
- Steve Rubenzer, PhD <http://www.steverubenzerphd.com/SFST.asp>  
The Psychometrics and Science of the Standardized Field Sobriety Tests
- Dr. Greg Kane <http://fieldsobrietytest.info/>  
I don't know this person, but what a great website regarding field sobriety tests!
- Rocky Mountain Instrumental Labs <http://www.rockylab.com/>  
Dr. Robert K. Lantz is originally from the Detroit area and runs a top notch lab.
- AIT Laboratories <http://www.aitlabs.com/>  
A lot closer to home, AIT personnel testified for the defense in *People v Derror*.
- BAC-Tracker Software <http://www.bac-tracker.com/>  
Advanced software for calculating bodily alcohol content.
- The Borkenstein Course <http://borkensteincourse.org/alcohol.html>  
Indiana University. If I suspect you are a defense lawyer, don't bother applying. Crash course for our state laboratory analysts to become "experts."
- Physician's Desk Reference <https://www.pdrbookstore.com/>  
Extremely helpful in drugged driving cases.
- Drug Recognition Expert page <http://www.lacity.org/LAPD/traffic/dre/>  
The DRE program started at the LAPD, and their page has useful (albeit dated) information and links.
- Patrick McManus <http://www.patrickfmcmanus.com/>  
Because it can't all be about work. My favorite author!
- Stone IPA <http://www.stonebrew.com/tasting/ipa/>  
My favorite beer. Just in case you were wondering.