

## WHAT IS SANTA BRINGING OHIO THIS YEAR?

By: Rob Caesario and Jon Saia

Word is out that Santa may bring the Ohio Department of Health (ODH) a \$6.4 million present in the form of over 500 breath alcohol testing instruments called the Intoxilyzer 8000. Although the Intoxilyzer 8000's are on Santa's list, it doesn't mean that ODH is going to find them under the tree this year. ODH may not have made the "Good List" this year. Santa is considering a few things before deciding: 1) Santa has elves right here in Ohio that manufacture an instrument very similar to the 8000 called the Datamaster dmt – The Ohio elves would be left without any work while the elves in Kentucky will be overworked; 2) ODH is requesting these instruments without going through the normal state bidding process for government purchases; 3) CMI President, Toby Hall and the current Ohio Chief of the Bureau of Alcohol and Drug Testing, Dean Ward, have been friends for many years; 4) Although the federal government's standards do not require the instrument to be equipped with a handle; Ohio's do. The 8000 has a handle, the DataMaster dmt does not; Dean Ward set the specification requirements for the instrument to be purchased for Ohio.

ODH argues that the 8000 purchase is necessary since it has a handle that makes it portable so it will be easier to place in patrol cars. First and foremost, "dmt" is an acronym for DataMaster Transportable." Second, ODH is only purchasing enough instruments to leave at the police stations, not to place one in every cruiser. The dmt is less expensive than the 8000 and testing has shown that it is a more reliable instrument.

CMI is entwined in protracted litigation in Arizona, Florida and Minnesota, costing those state governments hundreds of thousands of dollars and resulting in the dismissals of hundreds (and soon to be thousands) of drunk driving cases. The litigation and dismissals are a direct result of the 8000's inaccuracy and CMI's refusal to turn over its source code, as ordered, which tells how the instrument functions.

Another wonderful feature of the 8000 is that it gives the officer more discretion over the result of the test. The harder and longer the officer can get the subject to blow into the 8000, the higher the result. That means more experienced officers will have the ability to manipulate the test to get up to a 25% higher result. ODH and CMI see Ohio as a great place to establish the 8000 since the Ohio Supreme Court, in 1984, ruled that the general reliability of breath alcohol testing devices cannot be contested. The 8000 makes that issue ripe for review.

Unless Santa knows something the rest of us do not, the 8000 may be one present the citizens of Ohio do not want to see under their tree this Christmas.

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### Tap Into This...

If you had purchased \$1000 of Nortel stock one year ago, it would now be worth \$49.00.

With Enron, you would have \$16.50 left of the original \$1000.

With WorldCom, you would have less than \$5.00 left.

If you had purchased \$1000 of Delta Air Lines stock you would have \$49.00 left.

If you had purchased United Airlines, you would have nothing left.

But, if you had purchased \$1000 worth of beer one year ago, drank all the beer, then turned in the cans for the aluminum recycling refund you would have \$214.00.

Based on the above, the best current investment advice is to drink heavily and recycle.

This is called the 401-Keg Plan.



## For the Bar... OVI Case Law Update

The failure to introduce evidence of NHTSA Standards according to the DWI Detection and Standardized Field Sobriety Testing Manual must result in the suppression of evidence concerning these tests. *State v. Brown*, Ohio App. 2d Dist. 2008-Ohio-5160.

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## Who's On Tap...

Dominic L. Mango joined The Law Offices of Saia & Piatt, Inc. in 2001, focusing his practice in Delaware, and surrounding counties, defending individuals accused of drunk driving. Mr. Mango has successfully defended numerous OVI cases in court and jury trials, often including evidence of breath or chemical tests indicating an alcohol level over the legal limit.

Mr. Mango is certified by The National Highway Traffic Safety Administration (NHTSA) and the International Association of Chiefs of Police (IACP) in the Administration of Standardized Field Sobriety Tests as well as certification from the National Patent Analytical Systems, Inc. in the operation, diagnostic verification and calibration of the BAC Datamaster Breath Alcohol Testing Instrument.

As a result of his knowledge and experience handling OVI cases, Mr. Mango has often been a speaker at seminars for OVI practitioners.



*Dominic L. Mango*

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