FUNDAMENTALS OF TRIAL ADVOCACY COURSE

September 19-23, 2016
Phoenix, Arizona

DUI BLOOD ANALYSIS ISSUES

Presented by:

BETH BARNES
Traffic Safety Resource Person
Assistant Phoenix City Prosecutor
Phoenix, Arizona
&
ERIN BOONE
DPS Criminalist

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
1951 West Camelback Road, Suite 202
Phoenix, Arizona 85015

ELIZABETH ORTIZ
EXECUTIVE DIRECTOR

DUI Blood Analysis

Beth Barnes, Phx City Prse Office
AZ GOHS Traffic Safety Resource Prosecutor
beth.barnes@phoenix.gov

Erin Boone, DPS Crime Lab
Criminalist
(602) 223-2251
eboone@azalpa.gov

Blood Alcohol Analysis

General Alcohol

Absorption, Elimination, and Distribution
Impairment/Intoxication
Tolerance
Officer Tools – Driving Cues and SFSTs

Blood Alcohol

Blood Draw
Property and Evidence
Notes
Analysis
Quality Assurance

Alcohol

Common Types

NAME	FORMULA	BOILING POINT	USES	TOXICITY AND METABOLITES
Methanol	CH_3-OH	64.5°C / 148.1°F	Denaturant Solvent Paint Remover Fuel	≈ 75ML Formic Acid
Ethanol	CH_3CH_2-OH	78.3°C / 172.9°F	Beverage Solvent Medicinal Vehicle Fuel	≈ 400-500ML Acetaldehyde (Acetic Acid)
Isopropanol	CH_3-CH(OH)-CH_3	82.3°C / 180.1°F	Denaturant Antiseptic	≈ 250ML Acetone
Ethylene Glycol	CH_2-OH / CH_2-OH	198°C / 388.4°F	Coolant Solvent	≈ 100ML Oxalic Acid

Absorption

How does it enter the body?

Oral Consumption

Injection

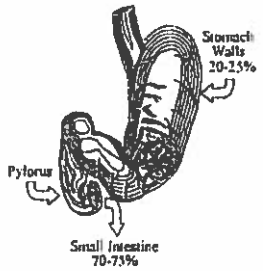
Inhalation

Through the skin

Enema

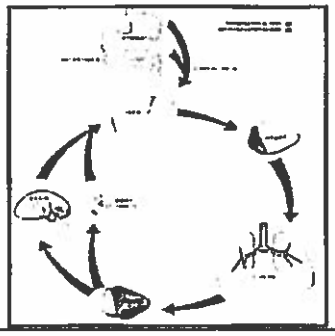
Absorption

How does ethanol enter the body?



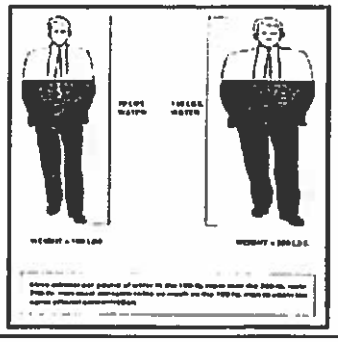
Distribution

How does ethanol move around in the body?



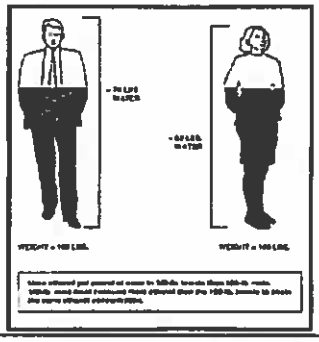
Distribution

Ethanol Concentration vs. Water Content



Distribution

Ethanol Concentration vs. Water Content



Per Drink Calculation

<u>Widmark Formula</u>

A = PRC

A = Alcohol (amount and concentration)
P = Weight
R = Widmark Number (water content)
C = BAC

Elimination

How does ethanol leave the body?

Metabolism (liver)

Excretion (urine)

Evaporation (breath)

Elimination

Metabolism

Rate at which ethanol is oxidized varies from one person to another

Elimination rates range from 0.010% to 0.030% per hour

Average rate of elimination is 0.018% per hour

Retrograde Calculation

Used if chemical test is outside two hours from the time of driving

Argument does not apply to (A)(1) or (A)(3)

State may retrograde readings to any time within two hours of driving/APC for per se statutes

O'Neill v. Superior Court, (Konkelfritz, RPI), 187 Ariz. 440 (App. 1996); *State v. Claybrook*, 193 Ariz. 588 (App. 1998).

Retrograde Calculation

Practice pointer – be sure to disclose the forensic scientist you will call and his/her opinion re: retrograde.

State v. Roque, 213 Ariz. 193 (2006).

Retrograde Calculation

<u>Information Needed</u>

Drinking and eating history over past hour
Time of test
Test result
Time of driving

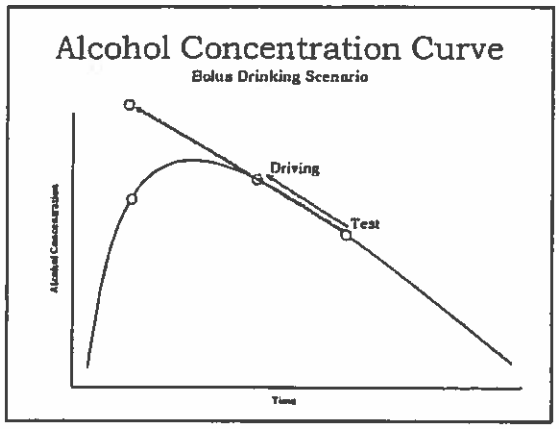
Retrograde Calculation

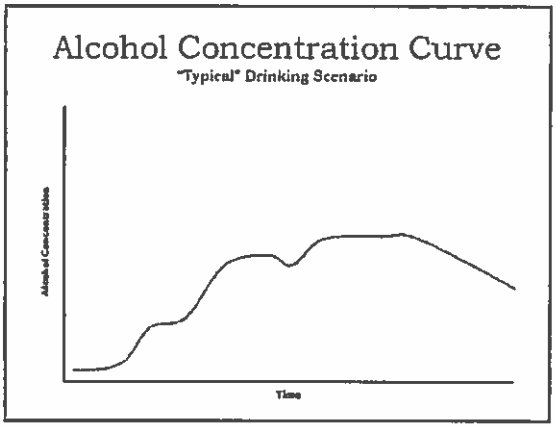
How to Get Your Test Within Two Hours - Retrograde Extrapolation

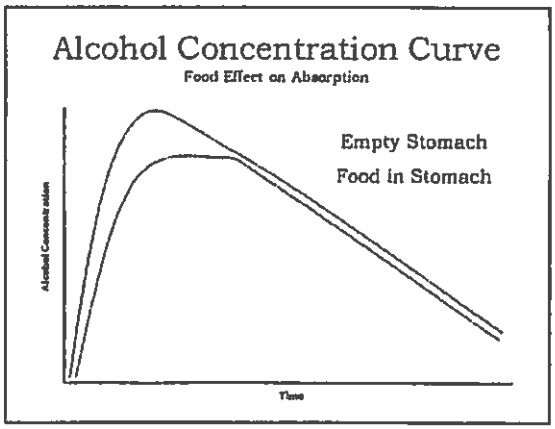
Given certain information, can you calculate the alcohol concentration at a time earlier than the test? (Yes)

What information do you need?

Assuming _____(fill in the facts from your case) would you please calculate the defendant's alcohol concentration at _____ (time of driving or a point within the 2 hr window)?


Alcohol Concentration Curve
Bolus Drinking Scenario
Driving
Test
Alcohol Concentration
Time


Alcohol Concentration Curve
"Typical" Drinking Scenario
Alcohol Concentration
Time


Alcohol Concentration Curve
Food Effect on Absorption
Empty Stomach
Food in Stomach
Alcohol Concentration
Time

Impairment
vs. Intoxication

Impairment - based upon measurable changes in an individual's performance of a specific task, such as operating a motor vehicle

Intoxication - advanced state of impairment in which gross physical signs of the effects of alcohol are apparent

Impairment

COGNITIVE	SENSORY	MOTOR FUNCTION
Judgment impaired	Near to far vision	Fine muscle control
Sense of caution diminished	Visual acuity	Speech
Drivers often become aggressive risk takers, impulsive	Glare resistance	Balance
Lack self-criticism	Glare recovery	Coordination
Attribute to themselves many qualities which they do not possess	Binocular vision	Walking
Brain's ability to integrate information becomes impaired	Reaction time to optical and acoustical stimuli	Horizontal gaze nystagmus (HGN)
Thoughts clouded	Complex coordination tasks	
Loss of finer grades of attention, observation and comprehension		
Increase of errors and omissions		
Impairment of short-term memory		

Tolerance

Two Types of Tolerance

Metabolic

Functional

Despite tolerance, all people are still impaired to operate a motor vehicle at 0.08 AC

Tolerance
Metabolic

Tolerance that results in a more rapid elimination of alcohol from the body

Innate – genetics and constitution

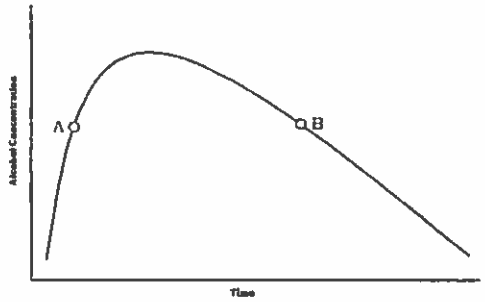
Exposure dependent – Microsomal Ethanol Oxidizing System (MEOS)

Tolerance
Functional

Tolerance that develops when brain functions adapt to compensate for the disruption in both behavior and bodily functions

Acute – impairment is greater when measured soon after alcohol is consumed than when measured later in the drinking session

Tolerance
Acute



Tolerance

Functional

Chronic – some impairing factors of alcohol are lessened by the central nervous system's response to many drinking sessions

Officer Tools

Driving Cues

Failure to maintain lane position
- weaving, straddling lane line, turning to wide, drifting in lane

Speed / Braking problems
- stops short at intersection, not maintaining constant speed, driving ten or more miles below speed limit

Vigilance
- slow to respond to respond to traffic signal, driving without headlights on, wrong way on street, failure to signal

Judgment
- tailgating, unsafe lane change, jerky to fast turn, odd behavior in car

Officer Tools

Driving Cues

Validation - NHTSA performed three field studies that encompassed more than 12,000 stops

Any one cue = 35% likelihood over 0.08%
Any two cues = 50% likelihood over 0.08%

Weaving = 65% likelihood over 0.08%
Driving on wrong side of road = 70% likelihood over 0.08%

Officer Tools

Standardized Field Sobriety Tests (SFSTs)

History

NHTSA sponsored three studies to arrive at the current battery of three SFSTs

Psychophysical Tests For DWI Arrest, California (1977)

Development and Field Test Of Psychophysical Tests For DWI Arrest, California (1981)

Field Evaluation Of A Behavioral Battery For DWI, Maryland, D.C., V.A. N.C. (1983)

Officer Tools

Standardized Field Sobriety Tests (SFSTs)

History

Three additional studies standardized the tests, finalized grading, and proved correlation to BAC

Colorado ,1995 (234 acceptable subjects) SCRI
163 arrests out of 175 arrests were correct (93%)

Florida 1997 (256 acceptable Subjects) SCRI
197 arrests out of 206 arrests were correct (95%)

San Diego, 1998 (234 acceptable subjects) Anacapa
210 arrests out of 234 arrests were correct (90%)

Officer Tools

Standardized Field Sobriety Tests (SFSTs)

Horizontal Gaze Nystagmus (HGN)

Involuntary jerking of the eyes

4 of 6 clues = 88% total accuracy (average)
(Your officer is likely better)

6 Clues (3 in each eye)
Lack of smooth pursuit
Nystagmus at maximum deviation
Onset of nystagmus before 45 degrees

Officer Tools

Standardized Field Sobriety Tests (SFSTs)

Walk and Turn

2 of 8 clues = 79% total accuracy (average)

8 Clues

Loses balance during instructions
Starts before the instructions are finished
Stops while walking
Does not touch heel to toe
Steps out of line
Uses arms to balance
Improper turn
Incorrect number of steps

Officer Tools

Standardized Field Sobriety Tests (SFSTs)

One Leg Stand

2 of 4 clues = 83% total accuracy (average)

4 Clues

The suspect sways while balancing
Subject uses his arms to balance
Subject hops while balancing
Subject puts foot down

Blood Alcohol Analysis

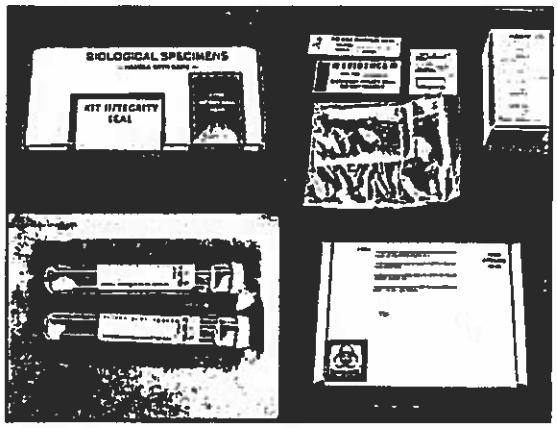
Phlebotomy Blood Draw Kits

NIK, Lynn Peavey, and Tri-Tec

Outer box
Inner box
2 vacuntainer tubes (grey top)
- Preservative - sodium fluoride
- Anticoagulant - potassium oxalate
- Vacuum dated for freshness

1 non-alcoholic swab
- Iodine
- Benzalkonium chloride

Butterfly needle
Evidence seals



Blood Alcohol Analysis

Property and Evidence

Agency Request For Scientific Examination

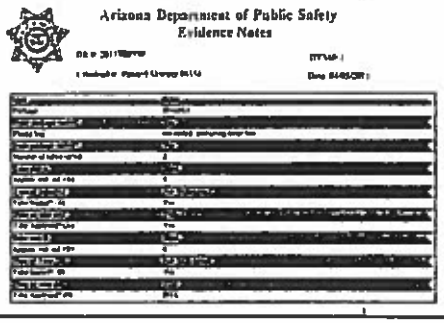
Chain of Custody

Requests disseminated to appropriate unit

Refrigerates blood in walk in cooler

Blood Alcohol Analysis

Evidence Notes


Arizona Department of Public Safety
Evidence Notes

Blood Alcohol Analysis
Evidence Opening

Notes
One sample open at a time
Seals – evidence tape (not air tight)
Number of tubes
Name
Anything else

Blood Alcohol Analysis
Evidence Opening

Ensure homogeneity of sample
Rock the blood baby
Vortex
Tissue Grinder
Ensures homogeneity of sample

Blood Alcohol Analysis
Pipet Samples

One open at a time
Conical cup
250 Microliters
2 mls of internal standard
Crimp

Blood Alcohol Analysis

Internal Standard Method

Peak	Rt	Area	g/100 mL
Ethanol	1.316	266100	0.2101
n-Propanol	2.479	220407	

Peak	Rt	Area	g/100 mL
Ethanol	1.315	257279	0.2118
n-Propanol	2.480	211521	

Blood Alcohol Analysis

Internal Standard Method

Area Counts	Area Counts
Ethanol - 266100	Ethanol - 257279
n-propanol - 220407	n-propanol - 211521
Ratio	**Ratio**
266100/220407 = 1.20	257279/211521 = 1.21

Blood Alcohol Analysis

Report

Blood Alcohol Analysis
Discovery

"Standard Disclosure"
Scientific Analysis Report
Analyst Notes
Chromatograms for subject's sample
Chain-of-custody
Run summary of Quality Assurance

"Control Packet"
Everything included in Standard Disclosure
Chromatograms for Quality Assurance

Blood Alcohol Analysis
How to Admit Blood Alcohol Results

Sample Collection

Establish: when, where & by whom sample was collected

Defense may stipulate

Blood Alcohol Analysis
How to Admit Blood Alcohol Results

Chain of Custody

Prove sample tested at the lab is the defendant's sample
- What was sample collected in
- How was it labeled
- Protocols
- Photo

Defense may stipulate to part or all of chain

Blood Alcohol Analysis

How to Admit Blood Alcohol Results

Chain of Custody

Challenges to the chain of custody go to the weight, not the admissibility of evidence

The defendant must make some showing that the evidence has been tampered with

State v. Morales, 170 Ariz. 360 (App. 1991)

Rule 702
5 Portions of the Rule

- "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:"
  - #1 must qualify witness as an expert
  - Thoroughly qualify your witness

5 Portions of Rule 702 #2

- "a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue"
  - Blood testing embraces scientific, technical & other specialized knowledge
  - So just relevance

5 Portions of Rule 702 #3

- b) The testimony is based on sufficient facts or data
  - Factual basis for opinion
    - Have expert explain basis for opinion
  - Can the opinion, reasoning or method be properly applied to the facts in issue?
  - What did they do? How did they do it?

5 Portions of Rule 702 #4

- c) The testimony is the product of reliable principles and methods
  - This is similar to *Frye* (accepted in relevant scientific community) – Lay the *Deason* foundation +
  - Quality assurance
  - Method - Gas Chromatography is reliable & has been tested
    - Studies
    - By manufacturer
    - Lab validation

5 Portions of Rule 702 #5

- d) the expert has reliably applied the principles and methods to the facts of the case.
  - Case specific
  - Did this witness do it correctly
    - Focus is on principles & methodology
  - The accepted technique was properly applied and the results accurately recorded

Daubert !

(Rule 702)

- Qualify witness as an expert
- Chain of custody (prove it was defendant's blood)
- What method was used
- Establish scientific reliability
- What did he/she do?
- Emphasize quality assurance/reliability

Blood Alcohol Analysis

How to Admit Blood Alcohol Results

Deason/Daubert

Establish general acceptance of underlying science (i.e. Infrared Spectrophotometry, Gas Chromatography or Mass Spectrometry).

Is the method used accepted in the relevant scientific community as a valid method for breath/blood/urine testing?

Blood Alcohol Analysis

How to Admit Blood Alcohol Results

Deason/Daubert

Based on a review of the procedure used in analyzing the sample, the test results, and records:

- The accepted technique was properly used
- The readings are an accurate measurement and recording of the defendant's alcohol concentration (or the presence of drugs)
- The test results would be accepted in the relevant scientific community as valid test results (legally not required but judge may)

Blood Alcohol Analysis

Headspace Gas Chromatography

Measures alcohol content in the air above the blood

Standard in the scientific community for blood alcohol analysis

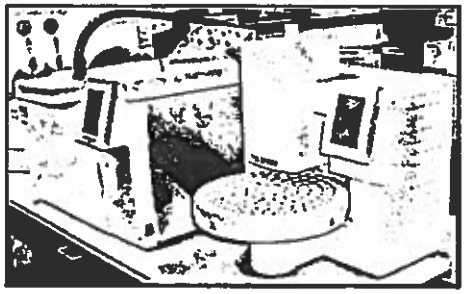
Blood Alcohol Analysis

Henry's Law

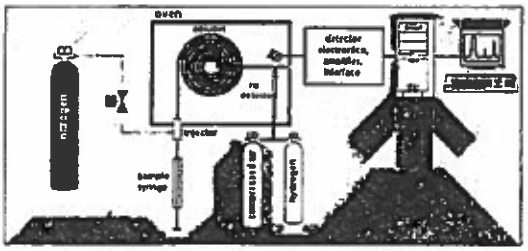
In a closed system, the concentration of a volatile substance above a fluid is proportional to the concentration of that substance in the fluid at equilibrium

Blood Alcohol Analysis

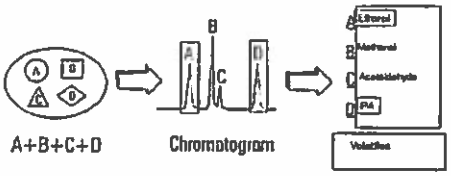
PerkinElmer Clarus 500 w/ Turbomatrix HS 110



Blood Alcohol Analysis
Chromatography



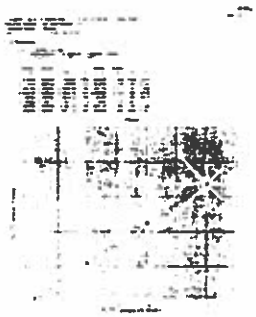
Blood Alcohol Analysis
Chromatography



Blood Alcohol Analysis
Quality Assurance

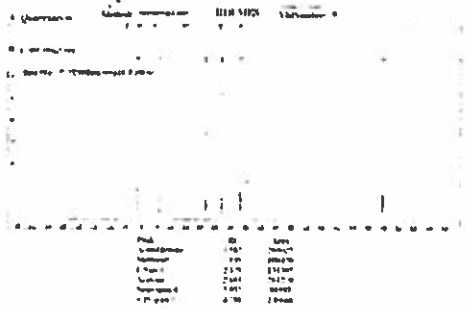
Calibration Curve

NIST Traceable Calibration - .01 .10 .20 .30



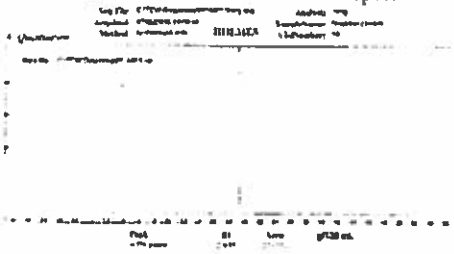
Mix Standard

Separation of Common Volatiles



Negative

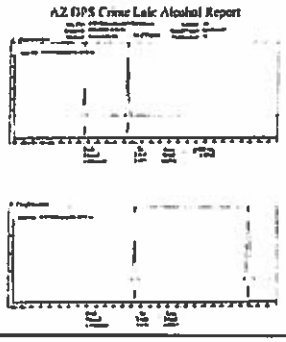
AZ DPS Crime Lab: Alcohol Report



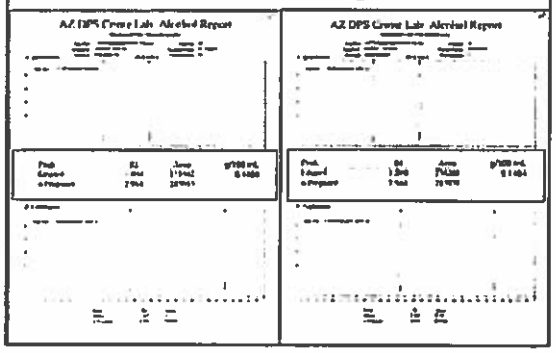
Controls

Aqueous and Whole Blood

AZ DPS Crime Lab Alcohol Report



Cases Run in Duplicate



Verification Standards

Same as Calibration Standards

Analyzed at the end of run

Verifies pipettor and calibration stability

Blood Alcohol Analysis

Batch

Blood Alcohol General Sequence Guide

Vial #	Vial Type	Vial #	Vial Type	Vial #	Vial Type	Vial #	Vial Type
1	[illegible]	26	[illegible]	51	[illegible]	76	[illegible]
2	[illegible]	27	[illegible]	52	[illegible]	77	[illegible]
3	[illegible]	28	[illegible]	53	High Vial Control 3	78	[illegible]
4	[illegible]	29	[illegible]	54	[illegible]	79	[illegible]
5	[illegible]	30	[illegible]	55	[illegible]	80	[illegible]
6	[illegible]	31	[illegible]	56	[illegible]	81	[illegible]
7	[illegible]	32	[illegible]	57	[illegible]	82	[illegible]
8	[illegible]	33	[illegible]	58	[illegible]	83	[illegible]
9	[illegible]	34	[illegible]	59	[illegible]	84	[illegible]
10	[illegible]	35	High Vial Control 2	60	[illegible]	85	[illegible]
11	[illegible]	36	[illegible]	61	[illegible]	86	[illegible]
12	[illegible]	37	[illegible]	62	[illegible]	87	[illegible]
13	[illegible]	38	[illegible]	63	[illegible]	88	Low Vial Control 5
14	[illegible]	39	[illegible]	64	[illegible]	89	[illegible]
15	[illegible]	40	[illegible]	65	[illegible]	90	[illegible]
16	Low Vial Control 1	41	[illegible]	66	[illegible]	91	[illegible]
17	High Vial Control 1	42	[illegible]	67	[illegible]	92	[illegible]
18	[illegible]	43	[illegible]	68	[illegible]	93	[illegible]
19	[illegible]	44	[illegible]	69	Low Vial Control 4	94	[illegible]
20	[illegible]	45	[illegible]	70	[illegible]	95	[illegible]
21	[illegible]	46	[illegible]	71	[illegible]	96	[illegible]
22	[illegible]	47	[illegible]	72	[illegible]	97	[illegible]
23	[illegible]	48	[illegible]	73	[illegible]	98	[illegible]
24	[illegible]	49	Low Vial Control 3	74	[illegible]	99	[illegible]
25	[illegible]	50	[illegible]	75	[illegible]	100	High Vial Control 4
26	[illegible]	51	[illegible]	76	[illegible]	101	Low Vial Control 6
27	[illegible]	52	[illegible]	77	[illegible]	102	[illegible]
28	[illegible]	53	[illegible]	78	[illegible]	103	[illegible]
29	[illegible]	54	[illegible]	79	[illegible]	104	[illegible]
30	[illegible]	55	[illegible]	80	High Vial Control 5	105	[illegible]
31	[illegible]	56	[illegible]	81	[illegible]	106	[illegible]
32	[illegible]	57	[illegible]	82	[illegible]	107	[illegible]
33	[illegible]	58	[illegible]	83	[illegible]	108	Blank Out Vial

Quality Assurance

Review

Technical Review

Administrative Review

Responding to Defense Foundational Objections

If in Doubt
Weight not admissibility

All the State is required to do is lay the basic foundation. Any remaining issues go to the weight, not the admissibility, of the evidence.

State v. Plew, 155 Ariz. 44 (1987); *State v. Superior Court (Weant, RPI)*, 172 Ariz. 153 (App. 1992).

Battle of the Experts

Disagreements between expert witnesses go to weight, not the admissibility. *State v. Velasco*, (*Alday*, RPI), 165 Ariz. 480, 486, (1990).

Where there is a lack of unanimity in scientific community on accuracy of a breath test, "the scientific disagreement affects only the weight and not the admissibility of evidence." *State v. Olivas*, 77 Ariz. 118 (1954).

Your Criminalist and You

Can do drink calculations

"One beer" How big would that be?

Retrogrades

Effect of alcohol on humans

Explain issues with the Intox

Rebut defense expert's testimony

Questions?

Jon Tew, DPS Crime Lab
Supervising Criminalist
(602) 223-2760
jtew@azdps.gov

Erin Boone, DPS Crime Lab
Technical Leader
(602) 223-2281
eboone@azdps.gov

Beth Barnes, Phx City Pros Office
AZ GOHS Traffic Safety Resource Prosecutor
beth.barnes@phoenix.gov