

# 10 DWI TRIAL SILVER BULLETS

**Mark Ryan Thiessen**

The Thiessen Law Firm

1221 Studewood

Houston, Texas 77008

[mark@thetexasattorney.com](mailto:mark@thetexasattorney.com)

Cell: (832) 654-3058

# 1. Be Real, Be YOU

- If you're trying a case on the facts, you'll lose every time.
- Show them yours and they'll show you theirs.



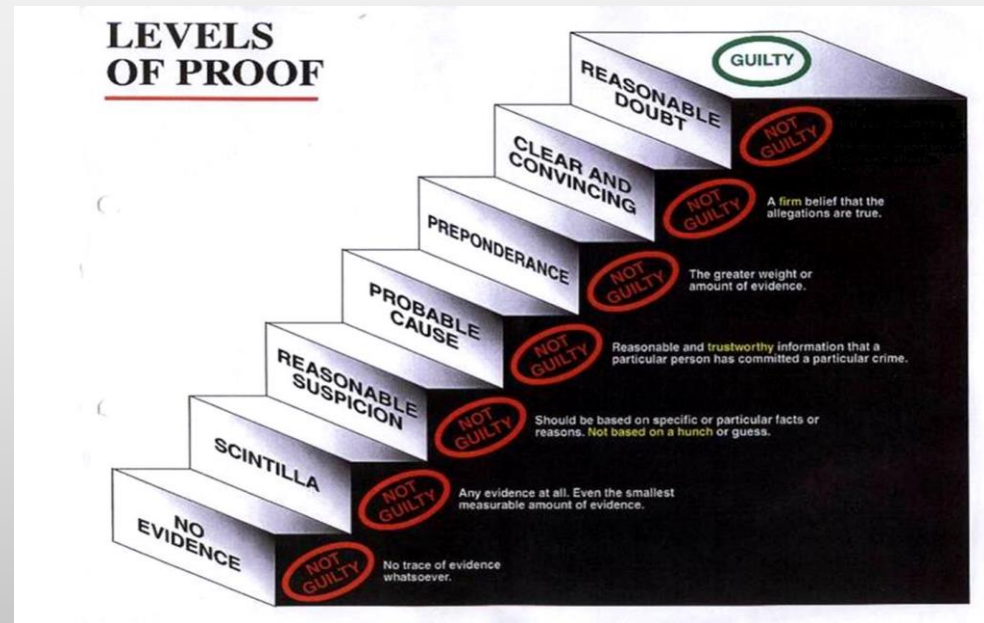
## 2. Presumption of Innocence

- Innocent Until Proven Guilty
- Where there's smoke, there's fire!
- ONLY ONE PRESUMPTION
- Compass takes you Home



# 3. Beyond A Reasonable Doubt

- NCDD Stair Chart
- Beyond
- A
- Reasonable
- Doubt
- Presumption of Innocence



# 4. The Rest of The Story

- “The Evidence Will Show”
- Client Testify?
- Family, Military, Injuries, Awards, Religion
- **80-90%** Jurors have decided.... NOT GUILTY
  - Johnson, James; Jury Arguments, Winning Techniques; Michigan Bar Journal, page 36 (March 2011).

## 5. Right Out of The Gate

- If he blew a 0.000, would you let him go home?
  - Yes, hit it later
  - No, no way out

# 6. SFSTs Are Easy....To Fail

- Officer Training
  - 40 hour course, Graded at end, Credit for Correct Answers
- **HGN**
  - Highly Technical, 88 Types, Doesn't Measure Mental or Physical
  - HGN Demo



- **WAT**
  - 15 Instructions, 1x Given, 1x Demo, 0 Practice, 0 Clues Told
  - 2= Failure, Injuries can affect
  - Each Clue
- **OLS**
  - 13 Instructions, 1x Given, 1x Demo, 0 Practice, 0 Clues Told
  - 2= Failure, Injuries can affect
  - Each Clue



# 7. Breath Test – 15 Min. Violation

- 15 Minutes – Line of Sight
- DPS – 21 Minute Video



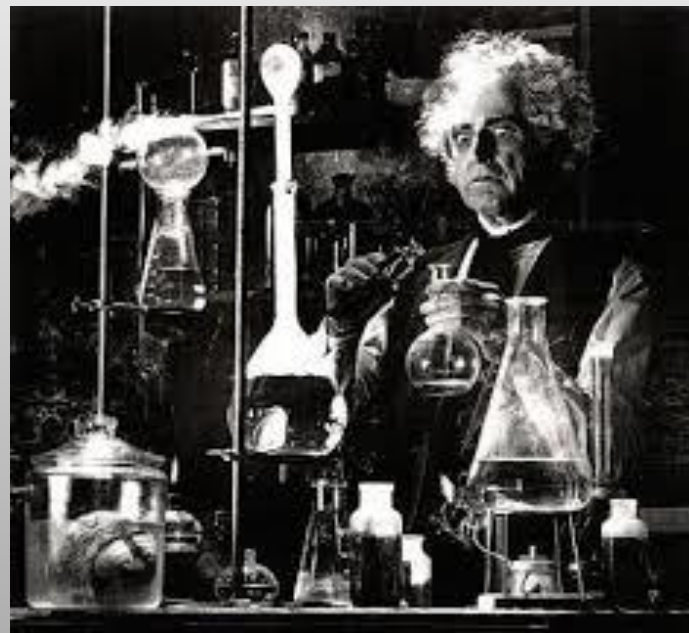
# 8. Breath Test – Walking It Down

- 0.02 Breath Samples
- 0.01 Reference Sample Solution
- 0.009 Truncation
- 34 +/- 0.2° Celsius
- 8.62% high for every one degree Celsius
  - 98.6° F = 37° C



# 9. Blood – *McNeely* & *Bullcoming*

- *Missouri v. McNeely*
  - Totality of the Circumstances
  - Exigency – Not metabolization or dissipation
  - *Clay v. State*, 382 S.W.3d 465 (Tex.App.—Waco 2012), review granted, (June 27, 2012).
  
- *Bullcoming v. New Mexico*
  - Analyst that tested
    - Preparation of Sample
    - Mixing Vials



# 10. Disconnect Defense

- High Blood Test (0.15 and higher)  
+
- Good Video Performance  
=
- Indisputable Conflict
  - Alleged blood alcohol science
  - Common sense theme of believing what you see.
  - e.g. a DISCONNECT

# DISCONNECT In A Nutshell

- Systematically weaved reasonable doubt through every aspect of intoxication
- **Indisputable Conflict = Reasonable Doubt**
  - Innocent Man, Insufficient Evidence, Indisputable Conflict
- Use Demonstrations
  - Green, Green, Red
  - Hypothetical Machine
  - Pictures with ridiculous stats
- DISCONNECT: good video, no loss of mental or physical faculties, never urinated, all about the ridiculously high number, either the machine defies science or there is a problem
- Constitutional Duty to Find Defendant **NOT GUILTY**

# Breath

v.

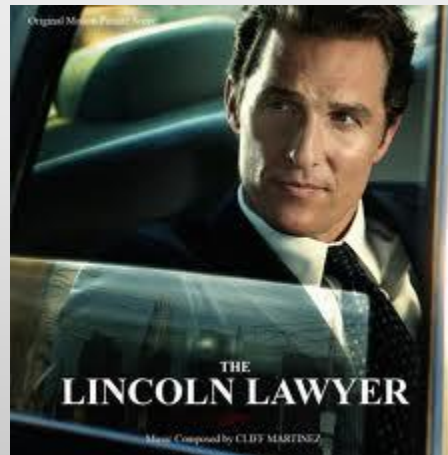
# Blood

- (1) 20% acceptable range of error;
- (2) self checking for accuracy;
- (3) no warranty for merchantability or accuracy;
- (4) recalled in multiple states;
- (5) newer model available;
- (6) citizen cannot purchase from manufacturer;
- (7) manufacturer refuses to provide source code;
- (8) not available for independent scientific testing;
- (9) destroys the only direct evidence of sobriety/intoxication when the State had the ability to save that evidence;
- (10) operator has no idea how the machine works;
- (11) “scientist,” who does, rarely checks it in person;
- (12) any inconsistencies or strange occurrences found in test records; etc...

- (1) contamination in the blood draw room;
- (2) expired materials;
- (3) improper site cleansing;
- (4) improper blood draw technique;
- (5) mishandling of the evidence;
- (6) break in the chain of custody;
- (7) human error in the laboratory;
- (8) pipette problems;
- (9) sample expiration, contamination, or other problems;
- (10) contamination in the injector port, y-splitter, columns, flame ionization detector;
- (11) source code issue;
- (12) sloppy chromatography;
- (13) 0.000

# 11. Storytelling Closing

- Be Genuine
- Elicit a Human Reaction
- **RIGHTEOUS INDIGNATION!**



# QUESTIONS???



**THIESSEN**  
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**AGGRESSIVE CRIMINAL DEFENSE**