

# 10 EASY TIPS FOR WINNING DWI TRIALS

**Mark Ryan Thiessen**

The Thiessen Law Firm

733 E. 12 ½ Street

Houston, Texas 77008

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

Cell: (832) 654-3058

# 1. JOIN THEIR TRIBE

1. Make You a Promise

2. Tell You About Me



## 2. PRESUMPTION OF INNOCENCE

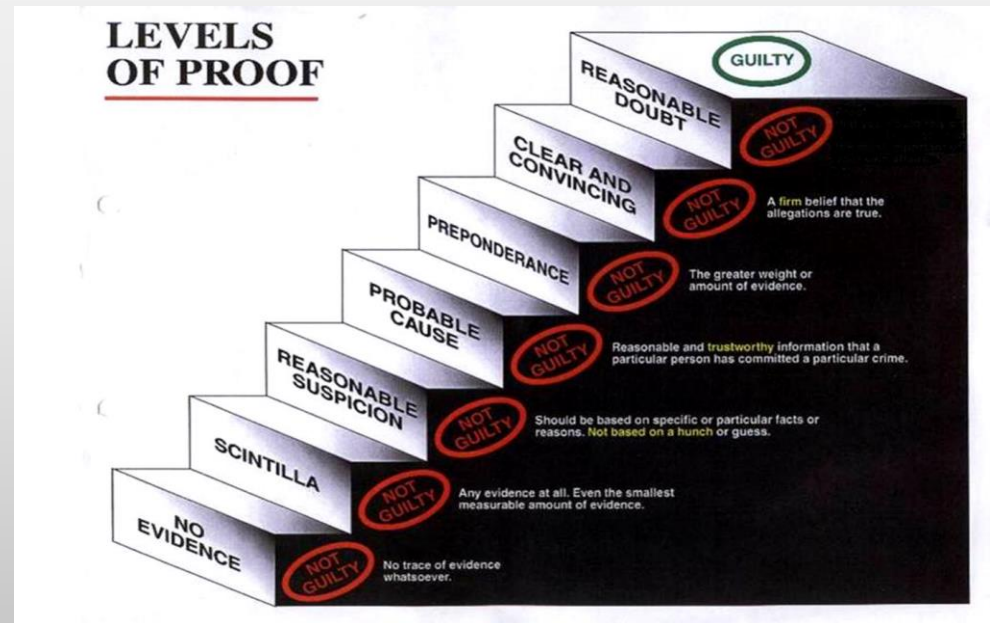
- Innocent Unless Proven Guilty
- 1-----→ 10
- ONLY ONE PRESUMPTION
- Compass takes you Home



# 3. BEYOND A REASONABLE DOUBT

- NCDD Stair Chart

- Beyond
- A
- Reasonable
- Doubt



- Presumption of Innocence

# 4. JURY SERVICE



BE PROUD  
OF  
YOUR VERDICT

# 5. EDUCATE ABOUT SFSTs

- Officer Training
  - 40 hour course,
  - Graded at end,
  - Credit for Correct Answers
- **HGN**
  - Trained by Fellow Police Officers
  - Highly Technical,
  - 88 Types,
  - Doesn't Measure Mental or Physical
  - No Definition of How Far or How Many Jerk
  - HGN Demo

# 5. EDUCATE ABOUT SFSTs

- **WAT**

- 15 Instructions, 1x Given, 1x Demo, 0 Practice, 0 Clues Told
- 2= Failure,
- Injuries can affect
- Each Clue
- Better get a 1 or a 0
- Normal or Abnormal?





# 5. EDUCATE ABOUT SFSTs

- **OLS**

- 13 Instructions, 1x Given, 1x Demo, 0 Practice, 0 Clues Told
- 2= Failure,
- Injuries can affect
- Each Clue
- Better get a 1 or a 0
- Normal or Abnormal

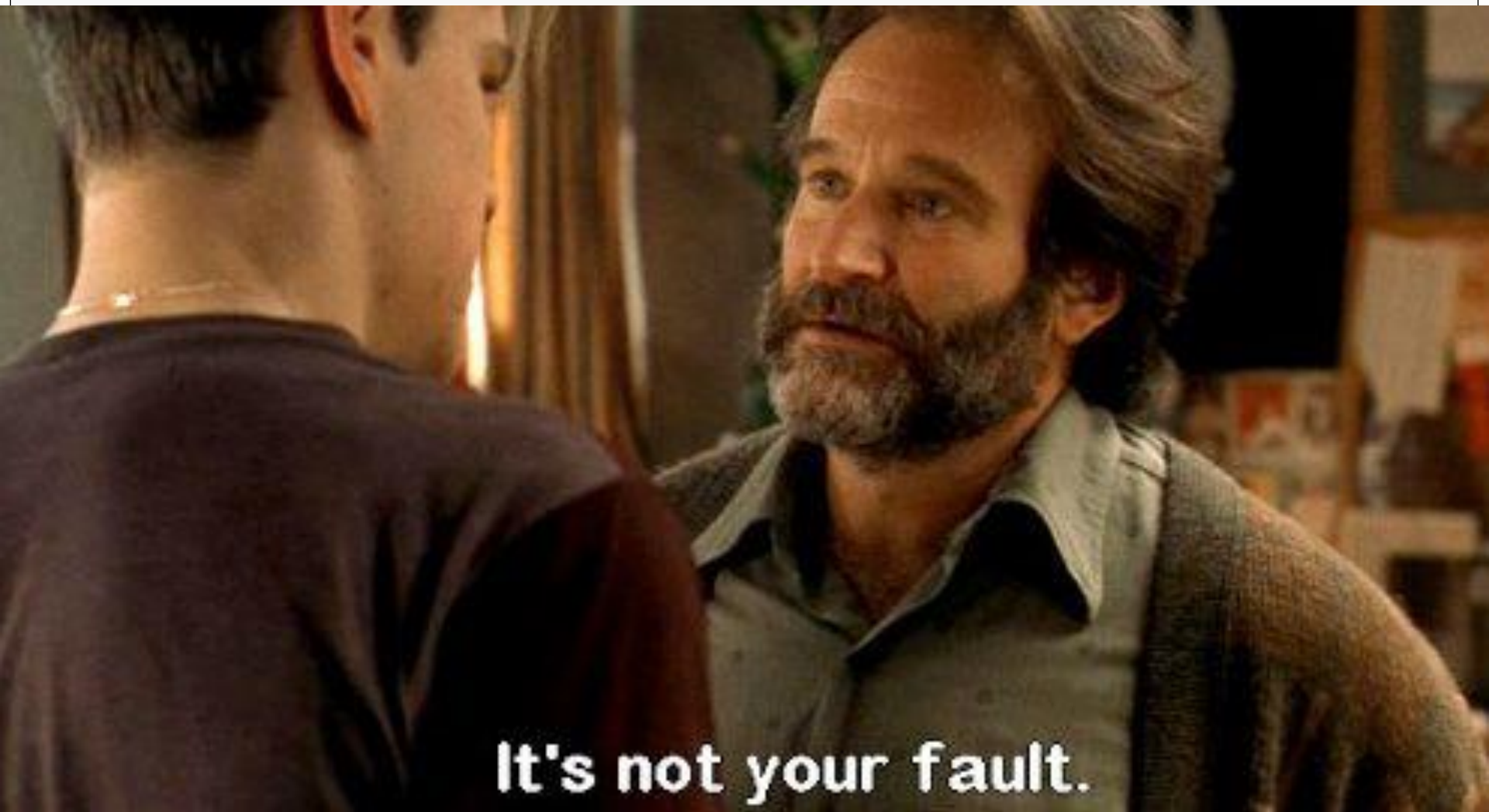


## 6. BREATH TEST – 15 Min. Violation

- 15 Minutes – Line of Sight
- DPS – 21 Minute Video
- Colorado – in the presence of the Machine

## 6. BREATH TEST- 9000

How is this  
possible??



**It's not your fault.**

# TRIAL STATISTICS

- “There is a joke among lawyers about the difference between jury trials in England and the United States: in England, the trial starts once the jury selection ends; in America, the trial is already over.” - <https://www.nytimes.com/1994/11/29/science/study-finds-jurors-often-hear-evidence-with-closed-minds.html>
- “About 80-90 percent of jurors make up their minds about how they are going to vote at the conclusion of opening statements.”

- Opening Statement: Setting the Tone for Trial (2019). Advocate Magazine.

<https://www.advocatemagazine.com/article/2019-january/opening-statement-setting-the-tone-for-trial>

			Calibration Verification	0.079	
11/5/2016 1:03:44 AM	1907000544	DWI			0
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			SUBJECT RESULT	0.007	
			Calibration Verification	0.077	
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			SUBJECT RESULT	0.000	
			Calibration Verification	0.077	
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			Calibration Verification	0.077	
			SUBJECT RESULT	0.239	
			SUBJECT RESULT	0.213	
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			Calibration Verification	0.079	
			SUBJECT RESULT	0.193	
			SUBJECT RESULT	0.169	
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			SUBJECT RESULT	0.172	
			Calibration Verification	0.077	
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			SUBJECT RESULT	0.123	
			Calibration Verification	0.078	
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			SUBJECT RESULT	0.178	
			Calibration Verification	0.078	
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No .02 Agreement

No .02 Agreement

# TEXAS FORENSIC BREATH ALCOHOL ANALYTICAL REPORT

Report Number: 1907000546  
Analytical Instrument: Intoxilyzer 9000  
Serial Number: 90-001907

Date: 11/05/2016  
Location: CEN B HOUSTON  
Technical Supervisor Area: 003

Subject Name: PINEDA-MEJIA, ABEL JUNIOR


Date of Birth: 09/02/1994

### INCOMPLETE TEST: NO 0.020 AGREEMENT

Test stopped by instrument. The subject's breath results differed by more than 0.020 g/210L of each other.

Sequence of Analysis		
Operational System Check	OK	03:51 CDT
Air Blank	0.000	03:51 CDT
Cal Verification	0.077	03:52 CDT
Solution Temp.	34.01°C	
Air Blank	0.000	03:53 CDT
SUBJECT RESULT 1	0.239*	03:53 CDT
Air Blank	0.000	03:54 CDT
Air Blank	0.000	03:54 CDT
Air Blank	0.000	03:56 CDT
SUBJECT RESULT 2	0.213*	03:57 CDT
Air Blank	0.000	03:57 CDT
Operational System Check	OK	03:58 CDT

\*NO 0.020 AGREEMENT

Operator Signature:   
Fifteen minute waiting period completed - YES  
Operator Name: NIETO, ALEJANDRO

Certificate Number: 26661

# TEXAS FORENSIC BREATH ALCOHOL ANALYTICAL REPORT

Report Number: 1907000547  
Analytical Instrument: Intoxilyzer 9000  
Serial Number: 90-001907

Date: 11/05/2016  
Location: CEN B HOUSTON  
Technical Supervisor Area: 003

Subject Name: PINEDA-MEJIA, ABEL JUNIOR


Date of Birth: 09/02/1994

### INCOMPLETE TEST: NO 0.020 AGREEMENT

Test stopped by instrument. The subject's breath results differed by more than 0.020 g/210L of each other.

Sequence of Analysis		
Operational System Check	OK	03:59 CDT
Air Blank	0.000	04:00 CDT
Cal Verification	0.079	04:00 CDT
Solution Temp.	34.01°C	
Air Blank	0.000	04:01 CDT
SUBJECT RESULT 1	0.193*	04:02 CDT
Air Blank	0.000	04:03 CDT
Air Blank	0.000	04:05 CDT
SUBJECT RESULT 2	0.169*	04:06 CDT
Air Blank	0.000	04:07 CDT
Operational System Check	OK	04:07 CDT

\*NO 0.020 AGREEMENT

Operator Signature:   
Fifteen minute waiting period completed - YES  
Operator Name: NIETO, ALEJANDRO

Certificate Number: 26661

# TEXAS FORENSIC BREATH ALCOHOL ANALYTICAL REPORT

Report Number: 1907000548  
Analytical Instrument: Intoxilyzer 9000  
Serial Number: 90-001907

Date: 11/05/2016  
Location: CEN B HOUSTON  
Technical Supervisor Area: 003


Subject Name: PINEDA-MEJIA, ABEL JUNIOR

Date of Birth: 09/02/1994

Subject Result 1: 0.187 g/210 L  
Subject Result 2: 0.172 g/210 L

Sequence of Analysis		
Operational System Check	OK	04:09 CDT
Air Blank	0.000	04:10 CDT
Cal Verification	0.078	04:10 CDT
Solution Temp.	34.01°C	
Air Blank	0.000	04:11 CDT
SUBJECT RESULT 1	0.187	04:12 CDT
Air Blank	0.000	04:13 CDT
Air Blank	0.000	04:15 CDT
SUBJECT RESULT 2	0.172	04:16 CDT
Air Blank	0.000	04:17 CDT
Cal Verification	0.077	04:17 CDT
Solution Temp.	34.01°C	
Air Blank	0.000	04:18 CDT
Operational System Check	OK	04:18 CDT

Test Complete 11/05/2016

Operator Signature:   
Fifteen minute waiting period completed - YES  
Operator Name: NIETO, ALEJANDRO

Certificate Number: 26661

# TEXAS FORENSIC BREATH ALCOHOL ANALYTICAL REPORT

Report Number: 1907000597  
 Analytical Instrument: Intoxilyzer 9000  
 Serial Number: 90-001907

Date: 11/20/2016  
 Location: CEN B HOUSTON  
 Technical Supervisor Area: 003

Subject Name: PEREZ, ARIEXIS MICHAEL

Date of Birth: 02/27/1991

## INCOMPLETE TEST: UNACCEPTABLE SAMPLE

Test stopped by instrument. The subject delivered an unacceptable breath sample.

Sequence of Analysis		
Operational System Check	OK	03:28 CST
Air Blank	0.000	03:28 CST
Cal Verification	0.075	03:29 CST
Solution Temp.	34.01°C	
Air Blank	0.000	03:30 CST
SUBJECT RESULT 1	0.161*	03:31 CST
Air Blank	0.000	03:32 CST
Operational System Check	OK	03:32 CST
*UNACCEPTABLE SAMPLE		

Operator Signature: 

Fifteen minute waiting period completed - YES  
 Operator Name: DOWLEARN, TONY

Certificate Number: 25602

# TEXAS FORENSIC BREATH ALCOHOL ANALYTICAL REPORT

Report Number: 1907000598  
 Analytical Instrument: Intoxilyzer 9000  
 Serial Number: 90-001907

Date: 11/20/2016  
 Location: CEN B HOUSTON  
 Technical Supervisor Area: 003

Subject Name: PEREZ, ARIEXIS MICHAEL

Date of Birth: 02/27/1991

Subject Result 1: 0.146 g/210 L

Subject Result 2: 0.131 g/210 L

Sequence of Analysis		
Operational System Check	OK	03:35 CST
Air Blank	0.000	03:36 CST
Cal Verification	0.078	03:36 CST
Solution Temp.	34.01°C	
Air Blank	0.000	03:37 CST
SUBJECT RESULT 1	0.146	03:37 CST
Air Blank	0.000	03:38 CST
Air Blank	0.000	03:40 CST
SUBJECT RESULT 2	0.131	03:40 CST
Air Blank	0.000	03:41 CST
Cal Verification	0.078	03:41 CST
Solution Temp.	34.00°C	
Air Blank	0.000	03:42 CST
Operational System Check	OK	03:42 CST
Test Complete 11/20/2016		

Operator Signature: 

Fifteen minute waiting period completed - YES  
 Operator Name: DOWLEARN, TONY

Certificate Number: 25602

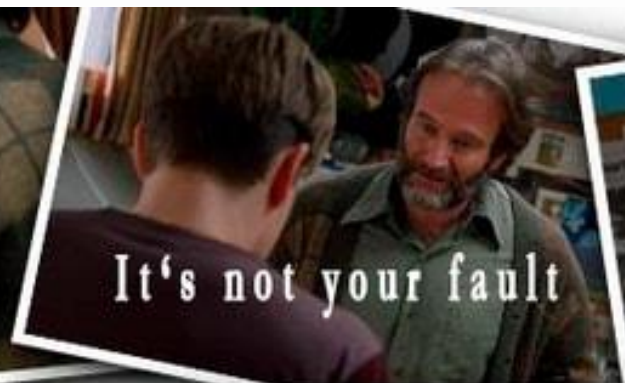


# TRIAL STATISTICS

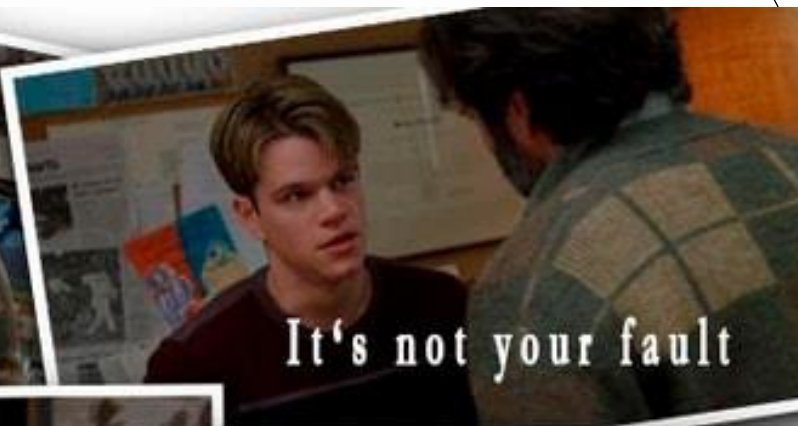
- “These jurors decide on a version of events based on a preliminary story they find convincing, often at the time of the opening arguments, which then colors their interpretation of the evidence so much that they seize on whatever fits their verdict and discount the rest.” - NYT



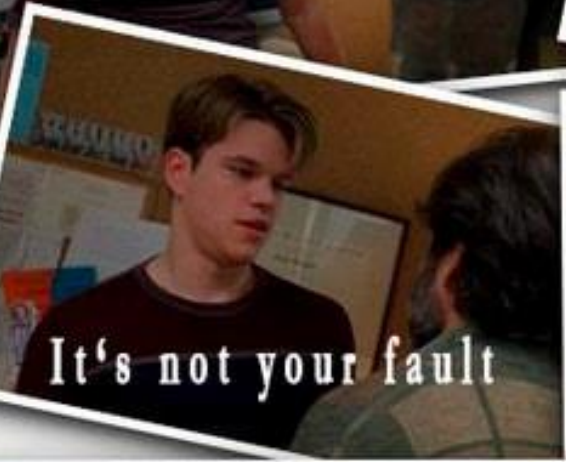
It's not your fault



It's not your fault



It's not your fault



It's not your fault



It's not your fault



It's not your fault



# 7. RETROGRADE

- Ask the analyst or State before
- *Veliz v. State*, 474 S.W.3d 354 (Tex. App.—Houston [14th] 2015).  
(Roe and Grecco)
  - 2 beers/ .081 Blood / Time of Stop / Blood Draw 3.5 hours later
  - NO first, last, or food
  - *Mata* / failed to prove reliability by C&C
- Absorbing AT TIME OF DRIVING?

bladder over only a brief period. For this reason, one can generally make no statement about the alcohol concentration in the organism at the moment of the test.

As the urine alcohol is a diffusion product, it is obvious that the alcohol concentration of the urine cannot be higher than the maximum

**Of this method for forensic purposes, though, has certain problems.**

**\* From the theoretical viewpoint it must be emphasized that from the air analysis one can primarily calculate the alcohol content of the lung**

**capillaries. As long as absorption from the intestine continues, this can be considerably higher than the alcohol content in the blood of the major circulation and also in the blood flowing to the brain. As one does not know, in the practical case, whether absorption from the intestine is ended or not — it is very often a case of large amounts of alcohol, perhaps consumed during several hours of drinking — one is always faced with the possibility that air analysis will give excessively high values, giving a false picture of the degree of alcoholic influence and of the amount consumed.**

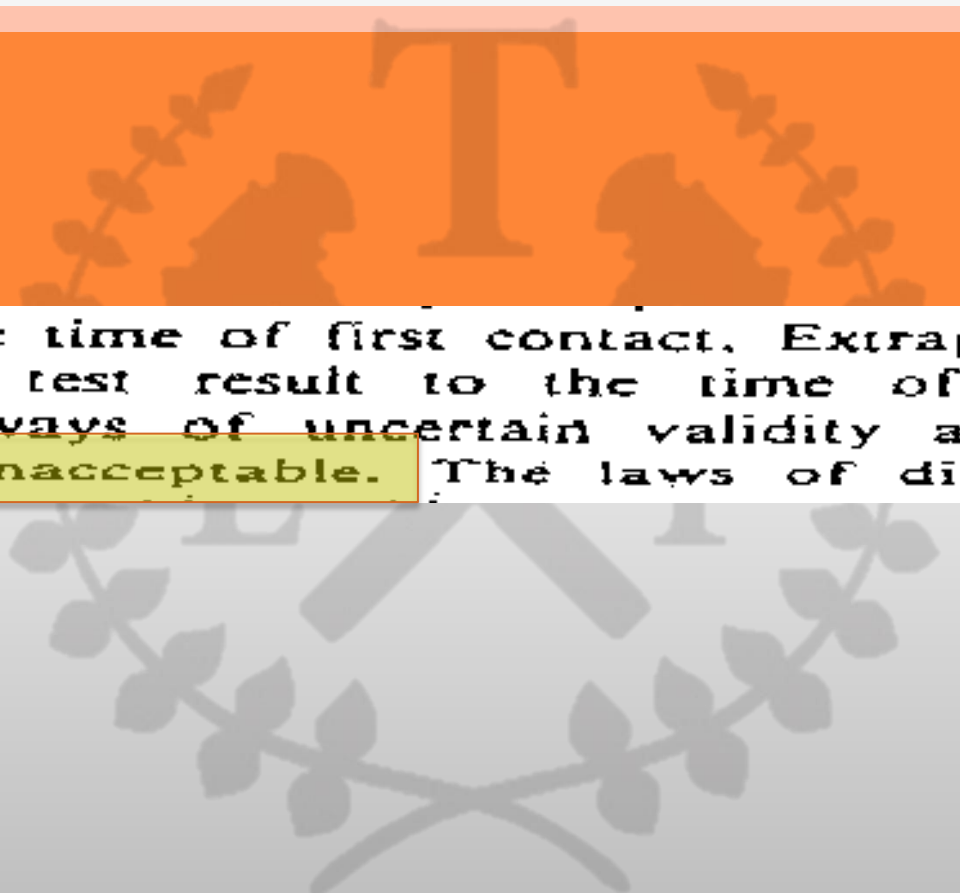
... values are highly unreliable when this precaution was not taken in the determination.

In the study of urine from intoxicated persons, it is also difficult in most cases, for obvious reasons, to obtain urine that has collected in the

(1) During correction of this work, the excellent monograph by M. H. Rehmund appeared: "Forensic medical experience and problems in automobile accidents." The work reports clearly on the importance of blood alcohol determinations in auto accident cases. The author's results, supported by more than a thousand analyses, completely agree in principle with those presented here.

subject. This runs into problems with unmanageable persons; that is, in cases where a differential diagnosis between intoxication and psychosis may be important. This method is also unusable in accidents that have caused unconsciousness or death. It cannot be used in ... With respect to methodology, it must also be ... acetonemia due to diabetes or inanition can cause substa ... distribution coefficient between blood and air is about ... than the corresponding coefficient for ethyl alcohol. Th ... of acetone in the blood causes a six-fold larger error for ... for blood samples.

curves, the following conclusions can be reached. **First,** not all blood and breath alcohol curves follow the Widmark pattern, nor is the elimination phase necessarily linear. **Second,** alcohol absorption is not always complete within 60 to 90 min, as often claimed. **Third,** the peak alcohol concentration cannot be validly predicted or established in an individual instance without frequent and timely measurement of alcohol concentrations. **Fourth,** it is not possible to establish whether an individual is in the absorption or elimination phase, or to establish the mean overall rate of alcohol elimination from the blood or breath, from the results of two consecutive blood or breath alcohol measurements, however timed. **Fifth,** significantly large short-term fluctuations occur in some subjects and result in marked positive and negative departures from the alcohol concentration trend line. **Sixth,** short-term, marked oscillation of the blood or breath alcohol concentration can occur at various points of the curve, resulting in repeated excursions of the alcohol concentration above and below a given concentration (such as 80 or 100 mg/dl) within a few minutes or for hours. **Finally,** no forensically valid forward or backward extrapolation of blood or breath alcohol concentrations is ordinarily possible in a given subject and occasion solely on the basis of time and individual analysis results.



feasible at the time of first contact. Extrapolation of a later alcohol test result to the time of the alleged offense is always of uncertain validity and therefore forensically unacceptable. The laws of different jurisd-

0.09-0.25	Excitement	Emotional instability; decreased inhibitions Loss of critical judgment Impairment of memory and comprehension Decreased sensory response; increased reaction time Some muscular incoordination
0.18-0.30	Confusion	Disorientation, mental confusion; dizziness Exaggerated emotional states (fear, anger, grief, etc.) Disturbance of sensation (diplopia, etc.) and of perception of color, form, motion, dimensions Decreased pain sense

Table 4 correlates BACs with alcoholic influence and the corresponding clinical signs and symptoms. Great caution should be exercised in correlating BACs with presumed alcohol dosage, and speculative

retrograde extrapolation of an experimentally determined BAC to an earlier time should be avoided because of its many pitfalls.\*

*Handwritten note:* No D.F.I. or H.P.E.

0.35-0.50	Coma	marked muscular incoordination; inability to stand or walk Vomiting; incontinence of urine and feces Impaired consciousness; sleep or stupor
0.45+	Death	Complete unconsciousness; coma; anesthesia Depressed or abolished reflexes Subnormal temperature Incontinence of urine and feces Embarrassment of circulation and respiration Possible death Death from respiratory paralysis

## ETHANOL AND DRIVING PERFORMANCE

The relationship between alcohol and driving has been studied and analyzed for decades. From both epidemiological studies (surveys of accident data) and controlled studies of alcohol and driving skills, it has been clearly shown that ethyl alcohol impairs a person's driving performance.



## THE CENTRAL NERVOUS SYSTEM



The central nervous system (CNS) is the site where alcohol exerts its effects. The CNS is composed of the brain and the spinal cord and is responsible for transmitting nerve impulses to the various muscles and organs of the body. Ethanol acts as a *depressant* on the CNS, not as a stimulant.

It is not the alcohol in the peripheral areas of the body which impairs a person's coordination, but the alcohol concentration in the CNS

Judgment *The first effect of alcohol is the impairment of judgment.* Since the site of action for ethanol is the brain it follows that mental faculties are affected before physical faculties. Judgment is a general name given to various decision-making aspects of human behavior.

action for ethanol is the brain it follows that mental faculties are affected before physical faculties. Judgment is a general name given to various decision-making aspects of human behavior.

Alcohol affects the brain in reverse order of how the brain develops. So the higher levels for brain function such as judgment, logic, and reason are affected first, and the lower involuntary functions, such as respiration and digestion, are affected last.

Alcohol depresses learned social and cultural inhibitions. Consumption of alcohol also results in an impairment of self-evaluation. Self-evaluation is the ability of an individual to judge his own behavior or performance. Alcohol has the ability to create a feeling of euphoria or a sense of well being. Because of this artificial sense of well being, combined with an increase in the pain threshold, an intoxicated individual may ignore minor or even serious injuries. Another aspect of judgment affected by alcohol is risk assessment. Intoxicated individuals will take greater risks than when sober.



**WAS MR. SMITH  
INTOXICATED AT THE  
TIME OF DRIVING?**

**“I DON’T KNOW” -Aubel**

↑ ↓ ↔

% ?

# RETROGRADE EXTRAPOLATION

FACTS

STATE SAYS ↑

STEPHEN SAYS ↓

1<sup>st</sup> DRINK

5pm / 0.000 / Beer

5pm / 0.000 / Beer

ATE

8pm Chicken

8pm Chicken

= 18+ Beers

LAST DRINK

12am / /6<sup>th</sup> Beer

12am/ 6<sup>th</sup> Beer = 0-.02

STOP TIME

230am / 0.227  
~~1237~~ beers in system  
 at time of draw

230am / 0.000

BLOOD DRAW

~~230am~~ // 0.187

430am / 0.187

WHAT DOES HE LOOK LIKE ON  
THE VIDEO??

DOES HE LOOK LIKE A **0.227** OR  
A **0.000**??

# 8. 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**

# 9. PICTURES OF DEATH

- Who would be bothered by seeing pictures of serious bodily injury?
- STIPULATE TO SERIOUS BODILY INJURY
- Now, what is the purpose of the pictures of injuries?

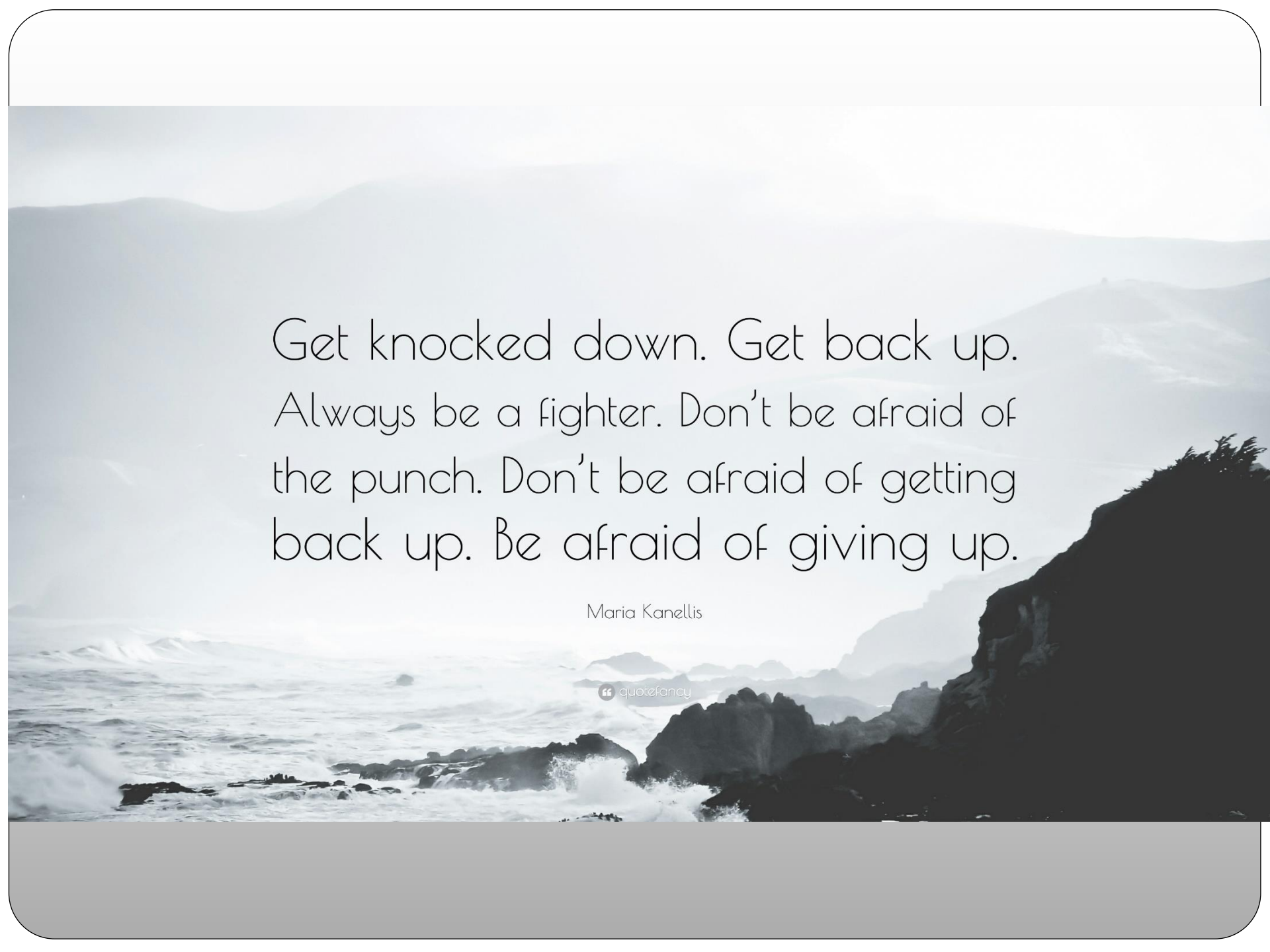
# 10. MIRANDA

- “They never read me my Miranda rights...”
- And then you Mirandized my client?
- Closing: They EVER even Mirandized him!

# 11. (PUNISHMENT)

- 1. Not Intent/ No Malice/ Not a Bad Guy
- 2. Live in a Glass House
- 3. We Go Home – He is 100% Going to Jail
- 4. Prison/ Cage/ Animals - Rehab
  - “Prison is for people you are SCARED of;  
Probation is for people you are ANGRY with.”
- 5. Worst Nightmare





Get knocked down. Get back up.  
Always be a fighter. Don't be afraid of  
the punch. Don't be afraid of getting  
back up. Be afraid of giving up.

Maria Kanellis

quote fancy

# BE A FIGHTER!

**You can beat  
me down a  
thousand  
times, but I will  
always get back  
up, and don't  
you forget that.**