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Areas of Expertise:	Alcohol Testing,	Last Update:	5/30/2014

Expert's Background

Arvizu is an "independent" quality assurance consultant from New Mexico. She had previously worked in labs for the Department of Energy (doing environmental testing) and the Navy as a consultant/auditor for their lab testing programs. She has no experience in the fields of forensic testing, but is quite familiar with the "protocols".

Arvizu "reviews" the procedures and protocols of the various fields of forensic cases. She is very "form over substance", and believes everything must be documented in order to be valid. She can always come up with "problems" in the forensic labs regarding deficiencies in the lab protocols or in the forensic procedures. She has claimed to be an expert as a "quality assurance auditor" in the fields of fingerprints (Carlos Plaza and Reaux internet search), DNA (Kiro internet search), toxicology (Mahdi Lawson internet search), gunshot residue (Jones and Stenson, internet search), and lethal injection protocols (Schwab internet search). She also testifies in the area of blood alcohol testing in crime labs. This appears to be the bulk of her practice. As an expert, she criticizes the labs protocols and procedures and claims they are unreliable.

Her testimony about blood testing on the gas chromatograph focuses on 2 separate areas. She always starts with criticism of the labs procedures, protocols and documentation. Then, since she is very familiar with gas chromatograph testing, she can criticize the results of the testing or find "contamination" in the testing results. She will then claim the results are not valid or reliable.

Arvizu holds herself out as expert in quality assurance and quality control of laboratory testing results. Through testimony she will represent herself as an independent quality assurance consultant or laboratory auditor. Arvizu's credentials are suspicious. She will testify that she worked for laboratories that serviced both the U.S. Department of Energy & the U.S. Navy, and more specifically that she ran a laboratory for DOE. That said, Arvizu has not worked in a laboratory since 1982 and has never worked in a toxicology laboratory or conducted blood testing. Nonetheless, she will testify that laboratory quality control methods & best practices transcend individual disciplines. In the case for which she testifies, she is going to find deficiencies in the testing labs and will assert that the lab results cannot be trusted.

Her actual time working for a laboratory dates back to the 1980s where according to her testimony and CV she worked for a Department of Energy lab in Idaho. She then, according to her CV created a consulting company in 1992 called Consolidated Technical Services, Inc., which is her vehicle for providing "consulting services in laboratory assessment, quality assurance and independent reviews." It's under this umbrella that she will testify that she contracted with the Navy and developed its

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laboratory quality assurance standards. According to her testimony, she had a contract with the Navy for four years. She will testify to her extensive experience “auditing” labs, but speaks pretty exclusively of the Navy and the Department of Energy.

A search of her consulting company, produces interesting and suspicious results. She is from New Mexico, and a search of the New Mexico Secretary of State’s website, shows that a corporation, Consolidated Technical Services, Inc., with a date of incorporation of December 11, 1992. Janine Arvizu is listed as the sole agent and President, and lists the same address found on address found on her CV as of 2012. On her CV though she lists herself as, Senior Technical Consultant, but not president, owner. There is a curious notation on the Secretary of State’s website for the corporation’s status - it says Revoked and Beyond Appeal Period. A later citation shows that a Certificate of Revocation was filed on June 16, 2003. A phone call to the New Mexico Secretary of State’s Office shows that the corporation is revoked in the eyes of the state of New Mexico and should not be in operation.

Further, in Arvizu’s testimony she will say that she has conducted audits both nationally and internationally, yet her company does not have a website and a web search produces no notable mentions of the company other than it exists.

Another central piece of Arvizu’s testimony is that she is certified as a Quality Auditor by the American Society of Quality. If you conduct an internet search for the American Society for Quality or go to the website www.asq.org you will find a description of a program to obtain a Quality Auditor Certificate. It appears to be an online degree. In several of Arvizu’s transcripts, the defense attorneys will actually ask if this certification is something where you pay a nominal amount and get certified, which Arvizu will deny. She will testify that there is an exam and has at least once testified that about 30% of the takers fail. A review of the website, establishes that yes, there is an exam, but it appears that you pay a certain amount of money (\$419/\$269 if you are a member), take an online test and then get your certification. To cross Arvizu you may want to utilize the website, or the brochure (titled ASQ - Certified Quality Auditor brochure) to demonstrate that this certification is a very generic certification that describes auditing principles and has nothing specific to do with laboratories, it’s a very general program that according to the literature encompasses the basic principles of auditing.

This seems suspicious because even though Arvizu’s lab experience is significantly dated, her education, work background and training as represented in her CV would at least provide some foundation for her testimony. If a person legitimately has that background, some online certificate isn’t going to propel that person into legitimacy.

The premise of Arvizu’s business also seems flawed against the backdrop of how laboratories are checked for quality control issues. Typically, regulated laboratories have certain requirements by the

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states or federal government, to operate and or be certified. It's common that in order to be certified and remain certified, these laboratories are subjected to annual inspections and further, they must participate in proficiency testing. Proficiency testing occurs where a third party laboratory (a reference laboratory) sends samples – samples where the reference laboratory knows that the results are supposed to be—and send them to the testing lab. The testing lab is then required to test the samples and send the results to the reference lab to ensure that the lab is getting the results correct.

Further, to counter testimony like Arvizu's it may be important on the direct exam or on redirect of lab personnel to discuss the known standards or reference assays that are used as quality control checks in the testing of blood samples for alcohol and drugs.

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Cross Examination Outline

Qualifications – Limitations/Shortcomings/Setups/Etc.

- Arivzu has a Bachelor of Science degree from Cal Poly in San Luis Obispo. She was in a Ph.D program through the University of New Mexico, but never received her Ph.D. She will testify that she completed all of the work, but just did not complete her dissertation. [Kirkpatrick \(8/24/07\) Pg. 13, Ln. 17.](#)
- Q: [defense is asking questions about Arivzu's qualifications to testify to her supposed area of expertise as a quality assurance expert] Why don't you give us a little bit of your education working background that'll -- that allows you to do that?
- A: [Okay] I have a BS degree in biochemistry from Cal Poly, and what's called a BD in chemistry from the University of New Mexico. It's an indication that I've completed the coursework in examination in the advance for candidacy for a Ph.D. degree, but did not complete a dissertation.
- Q: And you don't have your PhD.?
A: No. [Colorado v. Dunbar & Poplstein - 2012 \(Motions Hearing\) pp. 21, line 4](#)
- Q: And, uh, you don't have a degree in toxicology?
A: No [Colorado v. Dunbar & Poplstein - 2012 \(Motions Hearing\) pp. 21/line 6](#)

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Q: And you've never tested blood on a regular basis?
A: No. [Colorado v. Dunbar & Poplstein - 2012 \(Motions Hearing\) pp. 22/line 18](#)

Q: And you have no training in forensic alcohol testing?
A: No. [Colorado v. Dunbar & Poplstein - 2012 \(Motions Hearing\) pp. 22/line 18](#)

Q: You have never used a gas matograph* (sic) to test blood for alcohol? *[the question was almost certainly "gas chromatograph"]
[Colorado v. Dunbar & Poplstein - 2012 \(Motions Hearing\) pp. 22/line 18](#)

Q: Ms. Arvizu, how are you employed?
A: I perform independent consulting services in the area of quality assurance. [Kirkpatrick-Motions \(8/24/07\).](#)

Q: [Defense is asking very initial background questions] And Ms. Arvizu, are you employed?
[Marrama-Motion \(6/23/2009\) Pg. 6.](#)

A: I work as an independent contractor
 Q: In what area?
[Marrama-Motion \(6/23/2009\) Pg. 6.](#)

A: As a laboratory quality assurance consultant
 Q: Would you – what is a laboratory quality assurance consultant?
[Marrama-Motion \(6/23/2009\) Pg. 6.](#)

A: I'm an auditor who specializes in the assessment of laboratories and their work product. [She goes on to

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describe this]

- Q: Would give us a little bit or you education background that allows you to be employed in that position?

[Marrama-Motion \(6/23/2009\) Pg. 7, Ln. 9.](#)

A: [Arvizu describes her educational background] I have been certified as a quality auditor by the American Society for Quality for a number of years, which entails passing a certification examination.

- [NOTE: If you conduct an internet search for the American Society for Quality or go to the website www.asq.org you will find a description of a program to obtain a Quality Auditor Certificate. It appears to be an online degree. Yes, there is an exam, but it appears that you pay a certain amount of money, take an online test and then get your certification. To cross Arvizu you may want to utilize the website, or the brochure (titled ASQ - Certified Quality Auditor brochure) to demonstrate that this certification is a very generic certification that describes auditing principles and has nothing to do with lab credentials

- She has not worked in a laboratory since the 1980s.

[Colorado v. Dunbar & Poplstein - 2012 \(Motions Hearing\) pp. 20/line1](#)

Q: And the last time you did lab work was in the 1980's, is that right?

A: Probably, yes, in the 80's. Actually bench work you mean?

Q. Yeah.

A. Yes.

Q. It was over 30 years ago?

A. Yes. Well, yeah. It depends on when in the 80's, I guess.

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- Has never worked in a forensic lab

Q: Have you ever worked in a forensic lab?

A: I've never worked in a forensic lab. I've worked in laboratories that did analytical work, that may have been introduced in Court, but that was not their primary arena of practice.

Colorado v. Dunbar & Poplstein - 2012 (Motions Hearing) pp. 21/line 17

- Audit Experience

Q: and what type of facilities in your experience have you been responsible for examining?

A: I've audited labs primarily on behalf of federal agencies, so for the Department of Energy in the National Laboratory Complex and the Navy, both commercial and governmental laboratories throughout the country.

[Atkins \(2/1/08\) Pg. 5, Ln. 18.](#)

- Q: And what is - what is your relevant employment history in this area?

A: I -- when I left graduate school I went to work for an operating contractor for the National Laboratory Complex, Department of Energy. And I established and managed a full service analytical testing laboratory. And while I worked for the Department of Energy they were in the process of coming up to speed in the quality assurance field. And I got involved in a lot of inner agency quality assurance initiatives involving the Department of Energy, Department of Defense, Environmental Protection Agency and establishing quality programs for testing laboratories across all the disciplines.

[Atkins \(2/1/08\) Pg. 5, Ln. 18.](#)

- Q: And do you have any professional certifications?

A: I am certified as a quality auditor by the American Society

[Gomez-Paz-Motion \(8/18/11\) Vol. 2, Pg. 57, Ln. 5.](#)

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for Quality and have been formally trained in the assessment of laboratory quality systems. [Based on the brochure and the website information concerning the American Society for Quality and the course curriculum for the Quality Auditor Program This is a Fabrication]

- “no training in forensic alcohol testing...never done forensic alcohol testing” [Patrou \(12/3/07\) pg. 121.](#)
- “none of her experience involved forensic alcohol labs” [Patrou \(12/3/07\) pg. 123.](#)
- “never worked in a forensic lab” [Marrama-Motion \(6/23/2009\) Pg. 75.](#)
- “Never tested blood on a regular basis” [Marrama-Motion \(6/23/2009\) Pg. 77.](#)
- “never done a GC for blood (alcohol) ” [Kirkpatrick \(8/28/07\) Pg. 15.](#)
- “none of her prior analyses (on a GC) was done in a forensic setting” [Kirkpatrick \(8/28/07\) Pg. 12.](#)
- but see** : “So you know how to test blood for alcohol?” “ I can test darn near anything.” [Patrou \(12/3/07\) pg. 8.](#)
- “Testified as an expert since 2000” [Kirkpatrick \(8/28/07\) Pg. 15.](#)
- “Last time done lab work? either 1982 or she says some in 1991.” [Kirkpatrick \(8/28/07\) Pg. 3.](#)
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BIAS – Always works for defense/paid by them/ etc.

- “Never testified for the prosecution” [Atkins \(2/1/08\) Pg. 221.](#)
- “Only work for defense attorneys” [Patrou \(12/3/07\) pg. 125.](#)
- “All of her (expert) testimony is for criminal defendants” [Atkins \(2/1/08\) Pg. 221.](#)
- “Co-authored article for Champion (criminal defense magazine) [Kirkpatrick \(8/28/07\) Pg. 14.](#)
- “Lectures for the NACDL (National Association of Criminal Defense Attorneys)” (pull up all conferences and articles on internet) [Kirkpatrick \(8/28/07\) Pg. 14.](#)
- “All your forensic work has been for the defense.” [Kirkpatrick \(8/28/07\).](#)
- “Charges \$150/ hour” (but she can’t tell you how many hours worked) [Kirkpatrick \(8/28/07\) Pg. 15.](#)
- “Not retest the defendants blood sample (or review other lab that did) (her job is not to find out the truth- it is to criticize the prosecution lab) [Marrama-Motion \(6/23/2009\) Pg. 85.](#)
- “Your testimony is just attacking the lab procedures...yes” [Marrama-Motion \(6/23/2009\) Pg. 86.](#)
- Q (From Defense Attorney): Okay. And you’ve testified for the Government in these cases?
A: (Arvizu): Um, no I’ve always testified in criminal cases for the defense. [Colorado V. Dunbar & Poplstein - 2012 \(Motions Hearing\) Pp. 20/Line 1](#)
- In Dunbar defense, after the prosecutor's Voir Dire, Is attempting to bolster Arvizu's qualifications and is asking as to why she is qualified to testify about quality assurance & [In Colorado V. Dunbar & Poplstein - 2012 \(Motions](#)

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quality control. She then describes why she can testify to Quality Assurance without training in the specific discipline -

Hearing) Alcohol
Blood Testing &
Toxicology. To Get
A Better Context
Begin Reading At Pp.
24/Line 24]

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Lack of Personal Knowledge – Not on scene/Info from defendant

- While holding herself as a quality control/assurance expert, she will admit that she doesn't actually go in and inspect laboratories. Instead, she will testify that she conducts "data" audits which are based on reviewing lab records instead of an actual on-sight inspection.
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Alcohol Testing Result

- Even though there were contaminants in the GC results, “Nothing should affect the results of either the internal standard or the ethanol.” “Correct” [Kirkpatrick \(8/28/07\) Pg. 69.](#)
- Even though there were disturbances in the baseline of the GC “ They do not affect the results –either the internal standard of the ethanol” “Correct” [Kirkpatrick \(8/28/07\) Pg. 76.](#)
- In fact” it is really hard to do volatile analyses and control the contamination.” (Great question: In fact, it is not unusual to find contamination when doing volatile analysis?) [Kirkpatrick \(8/28/07\) Pg. 78.](#)
- “Spikes (in the chromatogram) are not in the areas that affected either the ethanol or internal standard?” “correct” [Kirkpatrick \(8/28/07\) Pg. 91.](#)
- “Neither of the peaks would interfere with either the ethanol or the internal standard?” “Correct” [Kirkpatrick \(8/28/07\) Pg. 94.](#)
- She recognizes the problems of the GC results/chronograms saying “noise on baseline, negative peaks, and peaks after time” [Kirkpatrick \(8/28/07\) Pg. 96.](#)
- However, these did “not interfere with the ethanol or the internal standard” [Kirkpatrick \(8/28/07\) Pg. 97.](#)
- None of the peaks would interfere with either the ethanol or the internal standard” [Kirkpatrick \(8/28/07\) Pg. 97.](#)
- “The peaks that are sufficiently removed to be able to be resolved do not directly interfere with the quantification of the ethanol.” [Kirkpatrick \(8/28/07\) Pg. 102.](#)
- But see her avoid saying the results of the test are accurate “ discussion of precision v accuracy [Kirkpatrick \(8/28/07\) Pg. 36-37.](#)

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- “Never seen a volatile show up in an area of interest where you expect to see alcohol show up”

[Patrou \(12/3/07\) pg. 128.](#)

- “In this case it didn’t affect the calibration (of the GC) you are just concerned with the presence of other materials.”
136 (again trying to make a big deal about contamination) so follow up with “But isn’t it very hard to do volatile analysis without contamination/” from the Kirkpatrick case page 78.

[Patrou \(12/3/07\) 136.](#)

[Kirkpatrick \(7/8/08\) Pg. 78.](#)

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Procedural or Protocol Deficiencies

- “The standard operating procedures of the lab is like a scientific recipe. And it should provide sufficient detail so that another operator could perform the method precisely the same way.” [Marrama-Motion \(6/23/2009\) Pg. 22-23.](#)
- “Lab records do not reflect who prepared the calibrator (solution). This is a significant deficiency [Kirkpatrick \(8/24/07\) Pg. 41.](#)
- “In the lab, their practices are such that it (contamination) can happen. Did it happen? I don’t know” [Patrou \(12/3/07\) pg. 19.](#)
- Calibrators _“the traceability of records is incomplete” (so she will not say the calibrators are accurate) [Patrou \(12/3/07\) pg. 28.](#)
- “Air quality in the lab (or the lack of circulation) can cause ambient contamination.” [Patrou \(12/3/07\) pg. 39.](#)
- “Cross contamination (can occur) in the refrigerator storage” [Patrou \(12/3/07\) pg. 40.](#)
- There should be “separate refrigerators for the unknowns and the control samples to prevent contamination (but if she was concerned about contamination between the unknown samples, wouldn’t she have to have a separate refrigerator for each sample???) [Marrama-Motion \(6/23/2009\) Pg. 84.](#)
- When there was “unexplained” toluene in a test sample, she opined, “ they don’t know whether any ethanol that is present is from the original source or from contamination (even though there was no indication of alcohol contamination in this case) [Patrou \(12/3/07\) pg. 95.](#)
- “Best practice is to run a blank between each unknown (sample)” [Patrou \(12/3/07\) pg. 42.](#)

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- Regarding the actual test results: Arvizu can read the chromatograph and go through the test results. She understands the peaks and spikes etc of the GC, and will use this to her advantage
- In her direct exam, she makes broad commentaries: for example she says she has seen ambient contamination in labs. (but does not say it was in this case or in this particular lab, or even with alcohol.)
- She also states that a sample is “contaminated” and therefore not a valid test. (she does not say that the test results for the alcohol were invalid or inaccurate.)

[Kirkpatrick \(8/24/07\) Pg. 68.](#)

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Misc

- "I am an analytical chemist. The results are what they are".
(then why won't you say they are accurate???) [Kirkpatrick \(8/28/07\) Pg. 123.](#)
- "I commonly review lab results for defense attorneys which she says look good." (oh yeah. Which cases?) (She makes broad statements about seeing contamination in the past in her lab reviews.) ."Never seen documentation of alcohol contamination in this lab." (This was a great question) [Patrou \(12/2/07\) Pg. 128.](#)
- "I think everybody who's been through a science class knows that if you didn't write it down, you didn't do it." [Marrama-Motion \(6/23/2009\) Pg. 15.](#)
- "Important to document your work product" [Marrama-Motion \(6/23/2009\) Pg. 15.](#)
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Data Audits

- Arvizu will testify that she conducts data audits, which are paper/record reviews of a laboratory's quality assurance/control methods.

Colorado v. Dunbar & poplstein - 2012 (motions hearing) pp. 30/line 1

A: (the following is a redacted answer to defense questions about the data audit process) [t]here were three 3 things that I look at when I, when I do a data quality assessment: sample integrity, method validity and reliable performance.

- Background notes: Arvizu will talk about method validation which is the process by which a laboratory can assure that its results are accurate. It is common that laboratories that conduct forensic alcohol testing are regulated by the state and subject to inspection and certification requirements. In all likelihood, that lab will have to participate in proficiency testing. Proficiency testing is where a reference laboratory (an unassociated lab) will send samples (which have a known value) to the testing laboratory which must test the samples and report the results to the reference lab, who can then say whether the reported results fall within an acceptable range of scientific reliability. To counter Arvizu's testimony, a prosecutor may want to formulate questions for laboratory witnesses that address proficiency testing and how the lab can say with scientific certainty that their results are accurate. Further, in many states it is common practice for law enforcement to draw two vials of blood. Some states provide that the defense may obtain one of the vials preserved for retesting. Most likely, the defense will have not obligation to disclose the results of the retesting to the prosecution, and such information may be considered privileged. The reality is that if the retesting results were favorable to them (i.e., a significant disparity) they would disclose you to nonetheless, in the circumstance where the defense is challenging the integrity of the testing lab's

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results, it may tactically advantageous to cross-examine the witness as to the existence and the results of the second sample. Because this information may be considered privileged, you may have to file a motion in limine and get a court's ruling before broaching this line of testimony. In support of your argument for the admission

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Publications

Q: have you published in this field?

A: I actually authored the quality standard that the navy used as the basis for its determination as whether or not to use a given laboratory. [this is worthy of a follow up FOIA request to the navy]

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Investigate

- Arvizu represents her credentials for having worked for or worked for labs that did business with the U.S. department of energy and navy, but never cites specifics. Someone may want to file a freedom of information act (FOIA) request on these agencies (understanding her history goes back to the 1980s) to see what can be gleaned about what her job/assignments/position were back then.

[Kirkpatrick \(8/24/07\) Pg. 21.](#)

Q: at some point you part ways with the department of energy lab in Idaho?

A: yes.

Q: where do you go?

A: I started my own consulting firm, doing quality assurance consulting. And that was the environment when I bid on and was awarded a contract to run the navy's national laboratory quality assurance program . . .

Note: Arvizu testifies that she worked this navy contract for four years and then moved on to doing independent consulting which what she has done ever since.

- Arvizu purports that one of her qualifications to conduct inspections or audits of laboratories is that she has a certification as a certified quality auditor from the American society of quality. [Investigate: What is the American Society of Quality]
- She then goes on say, beginning on page 23, line 24 that after receiving certification, she then started conducting inspections and audits for doe and the navy, including the Lawrence Berkeley lab.

[Kirkpatrick \(8/27/07\), Pg. 23.](#)

[Kirkpatrick \(8/27/07\), Pg. 23, Ln. 24.](#)

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Q. Okay. The federal government hires you and pays you to go in and inspect laboratories?

A. Yes.

Investigate her claims with a FOIA request to the navy.