



RED LIGHT ALERT

Current Events in MSP Toxicology

By: Dr. Michele Glinn
Michigan State Police
Toxicology Lab

You don't see us on CSI, or in the major newspapers. You do see us in court, a lot. Or don't see us there when you want to! What's going on in Toxicology? What do we DO there? Why are we so busy? Here's a synopsis:

Drugs

Old analyses: alcohol and drugs.

How long does it take to get a Toxicology case back? A blood kit sent by first-class mail will usually be received within a week after it leaves the agency. Within another week, the sample will have been analyzed and the report written, reviewed, and mailed – that is, if the analyst isn't in court. The report will then make its way back through the postal system to the prosecutor, arriving around 3 weeks after mailing by the agency. For drug cases, the answer to How Long? is: It Depends On The Drugs. For one drug (say, marijuana), two analyses are needed (a screen and a confirmation). For several compounds, four or more assays may be required. The turnaround time for receiving the drug report could be as little as three weeks after the sample is received, or as many as six weeks. The average turnaround time at present is 35 days, down from an average of 89 days in 1999.

New Analyses: THC in Blood.

On January 1, 2002, the MSP Toxicology lab began analyzing blood for marihuana (THC) content. This change has made it much easier to prove impairment in OUID cases, and has been well-received in the field. It has also resulted in a greater-than-usual increase in caseload, including submissions from many agencies that previously sent samples elsewhere.

Trends in Drug Abuse. A growing problem is the abuse of prescription drugs, especially sedatives, painkillers and muscle relaxants, both old (Valium, Soma, Darvon, codeine) and new (Flexeril, Tramadol, Oxycontin). Many, if not most of these, are controlled substances. However, because a doctor dispensed them, the perception is that they aren't really bad. In some OUID cases, the defense has simply been: "But I Had A Prescription." It is a fact, however, that all of these drugs come with instructions to use caution when operating motor vehicles and warnings about mixing them with other drugs. More education is needed that prescription drugs are just that – drugs - and should be used with caution *and only as directed*.

Sexual Assault Cases. Submissions requesting date-rape drug analyses have increased dramatically. In 2001,

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116 CSC cases were analyzed by MSP Toxicology; that number has already been surpassed in 2002. In the past, a typical GHB case was submitted by a hospital, and date-rape drugs were requested only if the circumstances warranted. Now many hospitals routinely send all their CSC cases to MSP for drug analysis, without regard to circumstances of the assault.

Caseload

Alcohol Cases. The alcohol caseload has increased 6-10% per year for the last several years, and is expected to continue. Approximately 13,000 cases were handled in 2001; 15,000 are projected for 2002.

Drug Cases. The drug caseload has increased an average of 12% per year for the last several years, and this trend is expected to accelerate. Moreover, the percentage of cases requiring the more time-consuming analysis

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*Consult your prosecutor before adopting practices suggested by reports in this newsletter.
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for drugs has increased from 9% of total caseload in 1994 to 18% in 2001. This trend is also expected to continue. Approximately 2,400 drug cases were analyzed in 2001; 2,700 are projected for 2002.

Staff. The ever-increasing workload poses a continuous challenge. The caseload has increased from 1,200 cases/person in 1994 to 2,050 cases/person in 2001.

Court Appearances. With cases come subpoenas. As the caseload per person has almost doubled, so have the numbers of court summons. An in-house poll shows that the average Toxicology scientist receives about 500 subpoenas per year, or about 1 for every 4 cases completed, or an average of 2 per day.

Breath Alcohol. In addition to blood and urine alcohol testing, some 30,000 breath alcohol tests are performed each year in Michigan. Court challenges to the DataMaster are a familiar prosecutorial headache. Dr. Felix Adatsi and I have supported the breath program by providing rebuttal testimony to defense experts, but their time available for this is limited by their other duties. MSP is actively recruiting a Ph.D. toxicologist to support the breath alcohol program full-time.

Problems

Schedule Conflicts. Most analysts have more than one subpoena per day, every day. Most prosecutors are aware of this, and try to work around our schedules. However, the odd situation arises when a court loses patience with analyst unavailability, and things get difficult. Also, it must be considered that when an analyst is in court, s/he cannot be in the lab doing casework. The court availability issue, therefore, runs head-on into the turn-around time issue, with the analyst caught in the middle.

Windshield Time. The MSP Toxicology lab covers the entire state. Some courts are 3 – 4 hours' drive from Lansing. The UP is even further, and MSP planes are not always

available. Travel time can make our lives difficult if a distant court insists on our presence first thing in the morning, or very late in the afternoon, or if we are called when we aren't needed. Everyone has horror stories: some analysts have returned from court at 4 am; others have gone to testify eight or nine times in a row without once getting on the witness stand.

Impairment Issues. A common defense is that despite the presence of (maybe several) drugs and the dictates of common sense, the prosecution cannot prove that the defendant was impaired. The law does not state a level of drug required to prove impairment, and there is not a scientific consensus on what level of THC, or any other drug, is needed to affect driving. A conservative toxicological opinion on this issue would be that if a drug is present, one cannot presume the defendant is not impaired. The defense argues that it means you can't prove he was. Some courts feel that providing drug levels would resolve this issue. Unfortunately, the same argument applies: if there is no consensus on how much marijuana makes you drive badly, the level will simply be disputed by the defense as meaningless.

Solutions

People. Increasing the number of analysts to share casework and court duties is the long-term answer to the problem. In the absence of hiring more staff, alternative solutions must be sought.

Video Testimony. The Lansing Laboratory has video testimony capability. If video were widely adopted, this would ease the court burden considerably by making much more efficient use of analyst time. Analysts could testify on more than one case per day, if testimony was set for prearranged times, easing scheduling dilemmas. "Windshield time" would be eliminated and the analyst would have

more time to devote to casework. Unnecessary trips would be a thing of the past. Defense attorneys would be deprived of the "desperation defense": hoping the witnesses don't show up. Prosecutors in the UP could count on getting the witnesses they need without logistical difficulties.

Levels & Impairment. Legislatively, the law could be clarified on what constitutes "under the influence" of drugs. Several states have adopted zero-tolerance statutes, whereby the presence of any controlled substance is presumed to be evidence of impairment. A similar law in Michigan would hobble impairment challenges. Alternatively, the legislature could specify a level for each drug that is evidence of impairment; however, this is likely to lead to defense challenges about the accuracy of any numbers provided and therefore could actually increase OUID challenges.

Defense Experts. Spurious defense claims as to analytical accuracy make a lot of money for defense experts, and create a great demand for the services of Dr. Adatsi and me. In the vast majority of cases, such claims are without merit and some are downright ridiculous. Prosecutors should be educated on how to handle

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technical challenges from defense experts in the absence of a rebuttal witness. Another possibility (one I'm partial to) would be to clarify the "expert" rules such that one can't be an "expert" on a technique one has never performed or on an instrument one has never used.

Serving the people of the State of Michigan is our purpose. Please help us do all we can to serve them and you.

Dr. Glinn has been at the MSP Crime Lab for the past 3 years and before that she was employed at the State Department of Toxicology in Indiana. She has been a speaker at several TSTP training programs to assist prosecutors in understanding the effects of alcohol and drugs on the human body.