



A Visit to the NHTSA Homepage

By Hon. Karl Grube
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Visit the NHTSA Web page (www.nhtsa.gov). What's in it for judges? The answer is some useful information depending on your needs. There's all the neat stuff that you can use to find out about the crash worthiness of that new car, truck or SUV you were contemplating. But you probably want judge-stuff that you can use in adjudicating cases. Well it's there as well, but you have to look for it.

For instance are you interested in how other courts have been handling the admissibility of Horizontal Gaze Nystagmus (HGN) tests? Are the results admissible under *Frye*, *Daubert*, the Federal Rules or some other state evidentiary standards? Type in "HGN" on the NHTSA website search page and voilà. The answers are to be found in *Horizontal Gaze Nystagmus: The Science and the Law, A Resource Guide for Judges, Prosecutors, and Law Enforcement*. It contains case summaries, and discusses admissibility issues such as whether HGN is a scientific test or merely the observation of a physical trait. It also contains appendices with a comprehensive bibliography of references.

Are you interested in innovations in sentencing?

Are you interested in innovations in sentencing impaired driving offenders? Type in "sentencing" and you'll find

almost 200 entries to peruse. They include the descriptive account of the sentencing program used by an Alabama judge that yielded proven results in reducing recidivism. There are also materials that discuss electronic monitoring, ignition interlock programs, and intensive probation supervision. How about handling Juvenile DUI cases? There is a 125 page monograph entitled "Strategies for Success: Combating Juvenile DUI" that includes a special section for judges. "Strategies for Addressing the DWI Offender: 10 Promising Sentencing Practices" is another helpful publication that you will find. It was the result of a "DWI Sentencing Summit" that drew judges and other professional contributors from throughout the Nation.

While you are surfing the NHTSA website, you might want to head over to the judge friendly page of the Enforcement and Justice Services Division. (EJS) The EJS Division anticipates and responds to the needs of judges as well as law enforcement. At EJS, they develop innovative products that both law enforcement and the judiciary can use independently to reduce traffic crashes, deaths, and injuries. It has a list of sites and publications that are worth perusing.

Veritable smorgasbord of materials helps organize community outreach programs.

Speaking of innovative products, are you interested in community outreach programs? NHTSA's website offers a veritable smorgasbord of materials to help organize community outreach programs. Take for instance the materials available in the Buckle Up America/

Operation ABC Mobilization America Buckles Up Children Planner. It includes drop-in articles and letters that can be sent to print and broadcast media or even posted on your web page. The articles are available on diskette or they can be downloaded as electronic files so all that you have to do is personalize the materials and insert your own state's statistics. The cost? There is none, it's free. Check it out at www.nhtsa.gov.

Log on, tune in, and surf the Internet with NHTSA. It's a trip.

From a Little Acorn a Mighty Oak Can Grow

By Hon. Judith Eiler
Judge King County District Court
and Judicial Outreach Liaison

Planting the Acorn

In 1996 when Washington State passed its law doubling fines for speeding in school zones the fiscal note suggested that based on the number of infractions written in the year before the amount of money collected for the doubled amount would be about \$60,000 per year. The first half of the money collected is divided in the same manner as all of the other infractions in Washington. The second half of the money collected goes to the Washington Traffic Safety Commission to use for school zone safety.

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JUDICIAL
DIVISION

Judicial Fellow's Spouse is Appointed Judge

By Hon. Edward J. Schoenbaum
Judicial Fellow – Administrative Law
Springfield, IL

I am honored to pass along this news about Judge J. Michael Kavanaugh, my colleague as Judicial Fellow. I learned this about his wife while in Chicago for the midyear meeting.

Have you ever wondered what it's like to have a judge as your spouse? Probably a little strange, don't you think? Imagine both you and your spouse don the judicial robe each day at work. Well that's exactly what is now happening in his life ever since Governor Bill Richardson of New Mexico, appointed Julie Altwies, his wife, to the bench on the Metropolitan Court in Albuquerque, New Mexico.

Judge Altwies began her new judicial career in December 2005 and will preside over misdemeanor criminal and traffic cases in the busiest court in the state. Judge Kavanaugh, her proud husband, previously served as a judge in this court for 13 years before being appointed to the District Court in 2004 by Governor Richardson.

When asked how she felt to follow in the footsteps of her husband she replied "I love my husband very much, but I have to make my own footsteps." She laughed and then said "To be honest, Michael has been a tremendous help to me and I feel extremely privileged to have such an experienced mentor at my disposal, day or night."

Judge Kavanaugh said, "I have to admit, it's a little too weird to wake up every morning and find that you're in bed with a judge! The phrase 'Good morning Your Honor' takes on a whole new meaning in our house." According to Judge Kavanaugh, the appointment of his spouse by the governor was not an easy decision. "Governor Richardson appointed Julie even though he gained nothing

politically from it, having appointed me to the District Court just over a year ago. He appointed Julie because her background and credentials were simply outstanding. If anything, me being her husband wasn't a plus. She got the appointment in spite of being married to me."

Judge Altwies graduated from the University of New Mexico School of Law in 1984 as did Judge Kavanaugh, although they didn't know each other very well during law school. Years later they would try cases against each other, she as a prosecutor and he as a defense attorney.

In 1991 he was appointed to the bench and in 2001 they married. She served as the Deputy District Attorney in charge of the Violent Crimes Division in the Second Judicial District Attorney's Office, Bernalillo County, New Mexico, for 7 years and would handle numerous high-profile cases including several death penalty cases. She has received numerous awards including the New Mexico District Attorney's Association Prosecutor of the Year, MADD Prosecutor of the Year, and has been honored by police organizations and victim's rights organizations.

Under New Mexico's judicial appointment process, Judge Altwies, a Democrat, will have to run in the 2006 election cycle and can be challenged by candidates from all parties, and if she is elected by the voters will only have to run for retention every four years, without having to face a challenger.

2006 JUDICIAL DIVISION TRAFFIC COURT PROGRAM

October 11, 2006–October 12, 2006

Charleston, South Carolina

Topics covered this year include: Ethical Issues and the Role of the Judge, Speed Check Evidence, Issues related to Photo Enforcement, Search and Seizure, Defendants Rights, Innovative Sentencing Practices, Cultural Impacts on Rehabilitation, and Alcohol in the Human Body. The program is being co-hosted by the Charleston School of Law.

From a Little Acorn

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Growing into a Tree

Last year the Washington Traffic Safety Commission collected \$1.2 Million dollars for school zone safety from infractions for speeding in school zones. The plan for the money is to install lighted signs advising motorists of the school zone outside every elementary school and every middle school in the entire state. Each school will have a sign with lights powered by a solar cell that will be controlled by a computer in the school to activate them. The schools can have the warning lights on for the school zone in the morning and afternoon, or change them if students are out early, or if school starts late due to weather. The signs can be lighted if there are before and after school activities or evening events where children are present.

Our Mighty Oak is protecting 1,000s of Children

Currently, there are four or five different kinds of school zone signage used in Washington. The doubling moneys will allow all of the elementary and middle schools to have the same type of signage so that the public will not have any confusion as to when the school zone speed laws are in effect. This helps in the prosecution of school zone violations. It will aid the judiciary in having only one set of signs rather than the multiplicity of signs that often lead to confusion in testimony. It will continue to keep our youngest students safe as they attend school.

The Program will be held at The Embassy Suites Historic District, 337 Meeting Street, Charleston, SC 29403. Rooms are being held for this event at the Embassy Suites at a rate of \$169.00 a night. Make your reservation directly with the Hotel at 1-888-448-7829 by September 18, 2006. Refer to the ABA Judicial Division Traffic Court Program.

For more information call 1-800-238-2667 ext. 6716.

Judge Larry Sage of Sparks, Nevada becomes Judicial Outreach Liaison

The American Bar Association Judicial Division National Conference of Specialized Court Judges (NCSCJ) has selected Judge Larry Sage of Sparks, Nevada to serve as the first Judicial Outreach Liaison (JOL) to the states of Arizona, California, Hawaii, Nevada, and the Pacific Territories of Guam, North Marianas and American Samoa. The ABA and NHTSA have created the JOL program to serve as an outreach effort, to educate and to mobilize efforts within the community and the judicial profession to maximize traffic safety programs and improve traffic jurisprudence.



Judge Sage has a Bachelor of Arts from the University of California (Berkeley, 1968); Juris Doctor from the Univ. of Calif., Hastings College of Law (San Francisco, 1975); and graduated from the U.S. Army Command & General Staff College. He has a Professional Development Certificate from the National Judicial College and both the Distinguished and Outstanding Jurist Educational Awards from the Nevada Supreme Court.

Judge Sage practiced law for ten years in private law practice, ten years in public practice and criminal prosecution and the last twelve years as an elected Municipal Court Judge. He initiated Nevada's first limited jurisdiction Alcohol & Other Drug (AOD) Court and, Nevada's first Native American victim impact panel.

He is a member of the California and Nevada State Bars, serves on the Executive Committee of the National Conference of Specialized Court Judges of the ABA, and serves as an adjunct faculty member of The National Judicial College (since 1998), where he has instructed judges from numerous States and 35 foreign nations.

Involuntary inducted (drafted) from law school in 1968, he's a retired Infantry

Colonel (USAR), awarded the United States of America's Legion of Merit and Meritorious Service Medals (w/bronze oak leaf cluster) and was inducted into the U.S. Army Officer Candidate School, Hall of Fame.

The purpose of the Regional Judicial Outreach Liaison is to use the foundation built by the Judicial Fellowship program, so NHTSA and the ABA can focus their outreach efforts to target one or more regions of the country to educate and mobilize support for NHTSA's traffic safety activities. This will assist in meeting NHTSA's goal of reducing the annual highway traffic fatality rate to no more than 1.0 deaths per 100 million vehicle miles of travel by 2008 and will improve judicial community outreach and promote confidence and trust in the judiciary.

The ABA Judicial Division works to improve the quality of justice provided in American courts and to make the judicial system more understandable, accessible and affordable. Judicial Division committees address such issues as judicial outreach, judicial independence, judicial ethics and judicial education.

Judge Sage responded when told he was selected:

I am pleased, honored and humbled to be selected to serve both the citizens and my judicial profession in the Western Region of the National Highway Traffic Safety Administration. As a Municipal Judge, I have seen the damage and carnage of vehicle crashes and traffic cases, almost daily. I hope to assist in improving liaison, ideas, information flow and the saving of lives within the justice system components, especially the courts. I will seek to do the right things, the right way, for the right reasons and constantly strive to improve.

Clickit or Ticket
Mobilization
May 22-June 4, 2006

Kentucky Judges Go to Class on Traffic Issues

L exington, Kentucky—March 27th through the 29th, 2005. The Kentucky Administrative Office of the Courts will host the 2006 Kentucky Conference on Traffic Safety at the Embassy Suites hotel. The gathering of Kentucky's District Court Judges will be underwritten, in part, through a grant from the National Highway Safety Administration (NHTSA) through the Kentucky's Governor's Highway Safety Office.

The Conference will bring together Kentucky's District Judges for a three day program that will focus on:

- The adjudication of complex DUI issues,
- Promising practices in adjudicating hardcore drunk driving,
- Commercial motor vehicles and DUI, Pretrial monitoring and risk assessment in DUI cases, and
- Judicial Leadership in underage drinking driving cases.

Presenters will include Judges Karl Grube of Florida and Robert Pirraglia of Rhode Island who will discuss ethical issues in the context of judges involved in community outreach programs involving traffic safety.

Participants will be immersed in an interactive DUI Mock Trial in which they will be called upon to rule upon and resolve issues and objections as they are presented during the "stop action" mock DUI trial. Kentucky District Court Judges Shan Embry, Vanessa Dickson, and Tom Lively will portray the roles of the arresting officer, prosecutor, and defense attorney. The participants will make use of the "responder system" remote control units to register their decisions on the issues and objections that are presented during the mock DUI trial.

The Conference on Traffic Safety will present judges with a balanced and engaging program that will provide them with information and skills enabling them to resolve the ever more complex issues facing judges in motor vehicle cases.

Pedestrian Crosswalk Sting Operation

By Hon. Larry G. Sage
Western Region Judicial Outreach Liaison
Sparks, NV

Traffic enforcement officers recently conducted a crosswalk sting operation in Sparks, Nevada. They issued 74 traffic citations for the traffic misdemeanor of "Failure to Yield to a Pedestrian" in a marked crosswalk over a 6 hour period. The operation involved utilizing the Sparks Police Department chaplain, and others, as the pedestrian and resulted in the issuance of 25 citations per two hour period on three separate days.

At a sentencing on one such citation, the driver argued that he was only going 25 M.P.H. and couldn't stop in time after he saw the pedestrian due to the sun. He was from California, where the school zone speed limit is 25 M.P.H., and failed to notice the crosswalk road markings, the Nevada school zone posted speed limit of 15 M.P.H., nor did he see the flashing yellow lights, two at the entrance of the school zone and one at the exit, all facing in his direction.

The statistics for Western Region pedestrian injuries and death, mostly in a crosswalk, are staggering:

- 1994-02—According to NHTSA, Nevada's per-capita pedestrian death rate had been among the 10 highest in the nation during this period. Nevada has the highest pedestrian death rate (67) in the nation in 1999 and the 5th worst pedestrian death rate for 2002. During this same period, Hawaii reports between 30-45% of their pedestrian deaths involve pedestrians in a crosswalk.
- 2001—Los Angeles had 43% of their fatal traffic collisions involve vehicle vs. pedestrian, most within crosswalks. Nationally, the fatality rate per 100 million miles traveled in 2001 was .75 for public transit drivers, 1.3 for drivers and passengers, and an unforgivable 20.1 for pedestrians. Source: *Surface Transportation Policy Project, November 2004* by Michelle Ernst.
- 2002—Clark County (Las Vegas), Nevada had 728 pedestrians injured by

vehicles. Hawaii reports 19% of pedestrian deaths involve pedestrians in crosswalks.

- 2003—Reno Police report that accidents involving pedestrians account for more than half the traffic fatalities in the city. Hawaii ranks 5th in the nation in per capita pedestrian deaths and 1st in terms of the percentage of all fatal accidents that involve pedestrians.
- 2004—The Traffic Safety Facts publication reports 4,641 pedestrians killed by vehicles nationally and 68,000 pedestrians injured.
- 2005—In another sting operation, North Las Vegas Police issued more than 440 tickets to drivers who didn't stop for pedestrians in marked crosswalks; Clark County, Nevada had 50 pedestrian deaths, five children, and more than 697 pedestrians injured.
- 2006—Clark County has 18 pedestrian deaths and more than 250 pedestrian injured, so far this year.

I had the distinction of being blasted in a newspaper editorial for my traffic misdemeanor citation sentence in a crosswalk case. It involved a driver who struck and killed a disabled person, in her motorized wheelchair, while in a crosswalk escorting her child to school because of "...limited visibility due to the sun." Nevada had no Misdemeanor Manslaughter statute at that time and the driver was given and pled to a "Failure to Yield to Pedestrian" misdemeanor citation. The newspaper editor expected, and argued for, a fine—a fine exactly the same as a simple "Failure to Yield" misdemeanor citation not involving accident, injury or death. They viewed the tragedy as simply an unavoidable accident due to the sun.

I sentenced the driver to the maximum allowable 6 month sentence and delayed imposition sufficiently for the Sheriff to arrange residential home confinement with an electronic ankle device for him, so he could keep his job. I wrote a response to the editor stating that this driver, and millions of other drivers just like him, knew when the sun was going to be a problem during the day and in the area he lived and drove for years. This driver, and millions of other drivers just like him, is extremely familiar with the crosswalk locations in his neighborhood and town, where he has lived and driven for years and years, and

yet he (and millions of drivers like him) simply failed to:

- Leave cheap sunglasses in their vehicles and use them to save a life;
- Use vehicle visors to save a life;
- Tint a top portion of their windshield, as allowed by law, to save a life;
- Leave a hat with a visor in their vehicle and use it to save a life;
- Drive a different route without crosswalks, during visibility hours affected by sunlight, to save a life;
- Use their hand to shield the sunlight to save a life;
- Put the driving off till the visibility impairing sunlight has passed;
- Drive especially slow in known crosswalk areas and do any combinations of the above; or
- Simply, just drive slower in known crosswalk areas, period, to save a life.

All of these following sentencing options are subject to the application of a number of factors, aggravating and mitigating, and their appropriate balance. I noted the statutory misdemeanor penalty range granted by the legislature for this misdemeanor offense and stated on the record that, depending upon other factors (i.e., driving record, case facts, etc.), it is reasonable to infer that the legislature gave a broad penalty range as it may have anticipated:

- A traffic misdemeanor citation, without an accident, may be a fine only.
- A traffic misdemeanor citation involving a property damage accident may be a suspended jail sentence to maintain jurisdiction to affect court ordered victim restitution.
- A traffic misdemeanor citation involving a personal injury accident may be a suspended jail sentence, with a short portion to be actually served, to affect driving behavior modification, administer appropriate community punishment, and to maintain jurisdiction to affect court ordered victim restitution.
- A traffic misdemeanor citation involving a death accident may justify the maximum sentence that the legislature provided by law.