

HIGHWAY TO JUSTICE

WINTER 2014

From The ABA and The National Highway Traffic Safety Administration

HOT TREND: "SMOKING" ALCOHOL

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Inspired by the practice from the Norwegian culture of using vodka in the sauna, in 2009 a Chicago restaurant owner introduced a new wave of alcohol consumption with the Vaportini. In fact, the Vaportini was quickly accepted and remains popular. One month after coming to market the company stopped accepting orders for a time as they could not meet the overwhelming demand. (I understand that they are currently accepting orders.) Another device, called the AWOL (Alcohol With Out Liquid), is a nebulizer that transforms spirits to an inhalable mist. While banned in 24 states, the AWOL appears to be readily available. As one can infer from the plethora of YouTube videos using these and similar products, the inhaling of alcohol is growing in popularity. Inhaling alcohol seems to be embraced by the college age set. But from health, safety, and justice perspectives, this trendy method of consumption is troubling on several fronts. It presents challenges, especially for impaired driving prevention laws and alcohol enforcement laws. One challenge occurs because the person inhaling has no idea of the actual amount of alcohol inhaled and therefore does not know the level of alcohol in the blood. The second is that the inhalation of the alcohol speeds up the effect of the alcohol compared to the drinking and absorption process.

In terms of long term health, the scariest effect of the use of alcohol by inhalation devices could be laying the foundation for alcohol addiction. Robert Swift, of Brown University Medical School, noted that one method to get rats to drink alcohol is to expose them to air mixed with vaporized alcohol. In modeling alcoholism amongst rats, the researchers have found difficulty in getting the animals to drink. The researchers have learned that by having the rats inhale alcohol they can achieve the addiction in 2 or 3 days. "It's a good way to addict animals," said Swift.

A second long term health impact may be cancer. Acetaldehyde inhalation in rats and hamsters results in cancer of the nasal mucosa and the larynx.¹ We do not have any research that indicates inhaled alcohol by humans could not have the same effect.

The use of inhalation devices is one area of alcohol misuse that has had very little human research beyond anecdotal. This is particularly troubling when taken in the context of adolescents experimenting with alcohol as inhaled alcohol seemingly hastens the development of addiction in lab animals. "When you inhale alcohol right into the lung tissue, that gets drawn right into the blood supply immediately, so it's a very rapid onset of the intoxicating effect, and so has obviously very high abuse potential," said Robert Walker of the University of Kentucky Center on Drugs and Alcohol Research (at the time) to the *New York Times*.

As noted earlier, another troubling aspect of the use of these devices to consume alcohol is that it bypasses the phased absorption that occurs through the better understood administration of alcohol by mouth, in other words, drinking. The inhaled alcohol goes directly to the blood from the lungs at a much faster rate than alcohol consumed by drinking. The direct route makes self-monitoring of consumption more difficult and therefore, more difficult for a person to moderate his or her consumption. Both devices make claims of being a "better" way to consume alcohol so that effects wear off faster and are gentler on the body. Neither of these claims is supported by evidence. These devices complicate users' ability to moderate their intake of alcohol. Even more frightening, they come with increased risks as they bypass one of the body's tools to deal with too much alcohol consumption, the ability to vomit the excess alcohol. Because the stomach is completely bypassed, there is no alcohol in the stomach to vomit and no nauseous feeling to deter overconsumption. Not that older people are always wise in their use of alcohol and in knowing when to say when, but these devices are marketed

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Editor's Note

Highway to Justice is a publication of the American Bar Association ("ABA") and the National Highway Traffic Safety Administration ("NHTSA"). The views expressed in *Highway to Justice* are those of the author(s) only and not necessarily those of the ABA, the NHTSA, or the government agencies, courts, universities or law firms with whom the members are affiliated.

We would like to hear from other judges. If you have an article that you would like to share with your colleagues, please feel free to submit it for inclusion in the next edition of *Highway to Justice*.

To submit an article, please send it to the editor, Hon. Earl Penrod, penrod26d01@msn.com with a copy to the staff liaison, Gena. Taylor@americanbar.org. Please contact Ms. Taylor for editorial guidelines.

The deadline for submission of articles for the Spring, 2014 issue is February 26, 2014.

DATES TO REMEMBER

February 2
Super Bowl XLVIII



March 17
St. Patrick's Day



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targeting a younger, more inexperienced consumer of alcohol. With less experience in alcohol use and with a device that limits their ability to monitor their own level of use, the target market is less able to safely use these devices. Some troubling side effects are more likely to occur; such effects are higher incidences of alcohol poisoning and impaired driving. The younger user does not have the experience or ability to determine the person's level of intoxication.

The makers of the AWOL device, which bills itself as "The Ultimate Party Toy," assert additional and rather dubious claims about not giving hangovers or eliminating the calories from consuming alcohol. Obviously, the advertising does not make any mention of the known risks, let alone other potential risks which may be revealed by more research about the use of these devices.

"You're still consuming alcohol, so there are still some risks, but a Vaportini is essentially another distillation, so what you're getting is purer than what you put in," Julie Palmer, the maker of the Vaportini said. "And it also doesn't irritate your stomach or esophagus the way traditional consumption would." Again, these marketing claims seem to target younger and more inexperienced users of alcohol. Some states banned the AWOL device before it was even marketed in their state. The market bans were supported by lobbying pressure from Distilled Spirits Council of the United States (DISCUS) as well as individual distillers. While 24 states have passed an outright ban on the AWOL device, the Vaportini has no specific statutory bans against its manufacture or use. Nonetheless, the general statutory language in some states may make the sale illegal in those states because the distillation of a spirits is a highly regulated activity.

Certainly not the least of the worries accompanying these products is the physiological effect of inhaling alcohol directly to the lungs. There is a significant amount of research, while not specific to alcohol, on inhalation and lung damage. It would seem that alcohol inhalation will dry the lungs predisposing one to bronchial infections and pneumonia and pneumonitis, an inflammation of the lung. One can only imagine the effects the inhalation of alcoholic beverages could have on those with Chronic Obstructive Pulmonary Disease (COPD) or asthma. In fact, it is apparent that alcohol intoxication and its problems could pale in comparison to the actual physiological damage from inhalation to one's body.

It is clear that all phases of society that work with the negative effects of alcohol misuse - from prevention to law enforcement, to prosecution, to adjudication and to treatment - must stay ahead of the technology of alcohol consumption. The current trend of smoking alcohol has major risks that come with it. The inhalation method's extreme ability to addict users to alcohol is cause enough to discourage alcohol inhalation. Alcohol consumed through drinking and passing through the digestive system is less addictive, easier to monitor, and supplies the somewhat unpleasant but protective factor of being able to vomit. Judges will want to continue to monitor alcohol use trends and research about those trends to inform their work with alcohol related offenses such as impaired driving.

1. Seitz, H.K., M.D., and Becker, P., M.D. "Alcohol Metabolism and Cancer Risk" at <http://pubs.niaaa.nih.gov/publications/arh301/38-47.htm> (last viewed 11/12/2013).

TRAFFIC RESOURCE CENTER FOR JUDGES

Greg Hurley
Senior Knowledge Management Analyst National Center
for State Courts

Over the past few decades traffic cases, and more specifically impaired driving cases, have become increasingly complex. Judges hearing traffic cases are confronted with new methods for detecting impaired drivers, new interpretations of the U.S. and state constitutions as well as keeping up with frequent changes to statutes which prohibit certain driving behaviors. In order to make the best decisions possible for each case, judges need to be aware of these changes as soon as they occur. There are also new technologies that have become available for use post conviction which have been proven to help reduce recidivism. Judges hearing traffic cases need to be familiar with these technologies, whether or not they are currently in use in their jurisdiction. Additionally, from a national perspective, not all judges that hear traffic cases have had formal legal training from a law school.

In recognition of these issues, the Traffic Resource Center for Judges was created in 2011. It is a cooperative effort between the Department of Transportation and the National Center for State Courts (NCSC) to establish a resource for judges, court administrators, court clerks, and other court staff on issues related to traffic adjudication. It is a clearinghouse of information, as well as a training and technical assistance resource to improve court decision-making in traffic cases. The Resource Center places an emphasis on resources for cases involving impaired driving, drugged driving and distracted driving.

The NCSC is an independent, nonprofit court improvement organization founded in 1971 at the urging of Chief Justice of the Supreme Court Warren E. Burger. He envisioned NCSC as a clearinghouse for research information and comparative data to support improvement in judicial administration in state courts. The NCSC is currently headquartered in Williamsburg, VA, with satellite offices in Denver, CO, Arlington, VA, and Washington, DC. The Traffic Resource Center for Judges needed to be neutral, in that the information it provides when taken as a whole is balanced, neither favoring the prosecution or the defense. The NCSC provided an ideal organizational setting for the Traffic Resource Center for Judges as its mission dovetails well with the goals of the Resource Center.

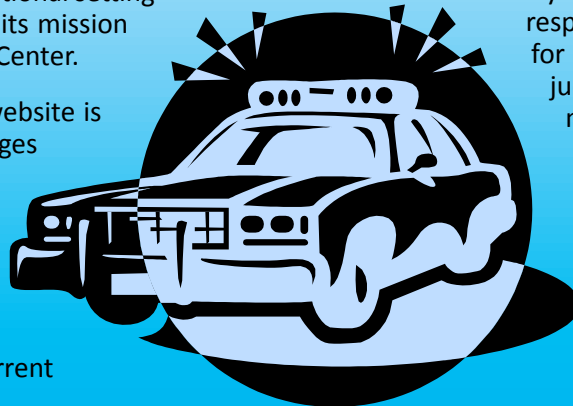
The purpose of the Traffic Resource Center website is to provide a useful, ready reference for judges new to the bench or recently assigned to traffic cases, who may need quick access to accurate and timely information. Experienced judges and court staff will also find the web site a useful resource for reference materials on specialized traffic issues, evidence-based practices, current technology and constitutional issues.

Judges, court personnel and others can access the Resource Center in several different ways, and all services are free for the requestor. They can access the website at <http://home.trafficresourcecenter.org/> or by searching "Traffic Resource Center for Judges" using any of the major search engines online. Once in the website, they will see that information is broken down into two major categories, impaired driving and all other traffic related issues. They can also request additional assistance by either using the online form on the website or calling one of the staff members listed below. The Resource Center receives a wide variety of requests from the court community that may be as simple as locating a particular statute to more complex questions that involve extensive research. Judges that are planning to speak or write on traffic related issues may find the Resource Center particularly useful. The majority of the staff of the Resource Center are lawyers and all staff have access to Lexis, which makes the Resource Center a powerful tool for the court community.

Another feature of the Resource Center is our monthly newsletter *Judging Traffic*. The newsletter is emailed on the third Wednesday of each month. Each edition of the newsletter contains 5-6 brief articles which direct readers to cases, statutory changes, studies, reports or news items which will be of interest to judges who hear traffic cases. With each story, a link to the source is provided so that readers may learn more about the issue presented. Anyone interested in subscribing to *Judging Traffic* may do so at <http://www.ncsc.org/newsletters> or may send an email to a staff member below.

This Resource Center encourages users to help make it a more vibrant tool for the judicial community. Users are encouraged to email information they have located, training materials they developed including PowerPoint slides delivered at meetings or anything else they feel is relevant. Provided these materials are not subject to copyright restrictions, they will be included on the Resource Center. In the future, the Resource Center plans to continue to develop its online presence and newsletter. We also plan to include a series of video clips of experienced judges speaking about specific traffic related issues and possible resolutions to those issues.

A key service of the Resource Center is to respond in a timely manner to requests for information and assistance from judges, the court community, the media, and the public. If you have a request for technical assistance, or a comment or suggestion, please contact us at: ghurley@ncsc.org or dsmith@ncsc.org or 1-800-616-6164.



WHITHER NOW? JUDICIAL EDUCATION FOR TRAFFIC JUDGES: A PRACTITIONER'S PERSPECTIVE

Melody Luetkehans, Esq.
National Judicial College

One third of traffic judges feel they do not receive adequate education on the traffic issues they see daily in their courts. What can we do to reduce this percentage? In 2010, the National Judicial College surveyed over 2,500 judges across the nation who handle traffic cases.¹ The survey's purpose was to ascertain what education traffic judges felt they needed and to identify the best platform (face-to-face, internet, video, etc.) for the delivery of that education. Of the judges answering, 94% said they had educational opportunities available to them through their state court systems under the auspices of their State Judicial Educator. Most of these programs offered traffic sessions. However, a third said they do not receive adequate training on relevant traffic issues.²

As a judicial educator for many years and specifically handling traffic programs, I have had the opportunity to design, develop and facilitate the presentation of traffic programs nationwide using all delivery platforms. I have been to over 40 states and I have worked with the best judicial instructors and program providers (many of whom contribute articles to this newsletter). I have coordinated classes and programs with all the major judicial education providers such as the ABA, NCDC, and NCSC.³ I know firsthand how dedicated these individuals are in their efforts to provide relevant, timely, accurate, and yes-entertaining, judicial traffic education. Consequently, this statistic surprised me.

We should be concerned that judges perceive there is insufficient education on traffic issues when there is a plethora of relevant educational opportunities. Somewhere along the way this information is not reaching the judges that need and want it. To that end, we need to provide answers to the proverbial who, what, when, where, and how.

Briefly, to answer the "who", there are a variety of judicial education providers for traffic programs: government, non-profit, and some for-profit entities. Addressing the "what", there are programs for every topic the traffic judge sees from camera speeding tickets to cases where defendants have co-occurring substance abuse

and mental disorders.⁴ The "when" includes programs offered from 50-minute online webcasts to 4-day intensive classroom instruction. A judge may pick and choose which format best suits any schedule. "Where" can the judge find these traffic programs? This is our most pressing challenge. Though programs are ubiquitous with an extensive array of delivery platforms, there is no single place a judge can access to see what is being offered. Finally, "how" can the judge fund this education? Funding sources vary but judicial traffic education can be accessed for a relatively small cost, or free in many instances. Often, funding can be layered from several sources.

With this bounty of programs, how is it that judges do not know about these opportunities?

The problem is lack of coordination. Two things need to happen on a national level. First, there needs to be synchronization between education providers regarding their program offerings. This would be a multi-tiered effort with ultimately, a single gateway allowing the individual judge to access this smorgasbord of program offerings. Second, there needs to be a concerted outreach effort to reach the judge with this information. Obviously, there are political and logistical hurdles that such efforts entail, but if everyone's goal is to provide meaningful traffic education to the nation's judges, this is achievable.

Fortunately, NHTSA is capable of spearheading this coordination. NHTSA, through its grants, is the single most important entity providing for the dissemination of traffic information to our nation's judges. NHTSA's financial commitment acknowledges the importance of the judge in combatting traffic deaths and injury. Through its leadership backed by its financial support, it can compel change. The trick, if you will, is to bring the education providers together with a single charge to coordinate their programs and unify their outreach efforts.

NHTSA continues to work toward requiring a national dialog amongst its grant recipients in order to forge the way toward ensuring each traffic judge has the information he or she needs to make the decisions that will ultimately create safer roads for all of us.

1. The National Judicial College, *Limited Jurisdiction Judges: Educational Needs and Opportunities*, report funded by NHTSA, 2011.
2. The National Judicial College, *supra* note 1, 93.7% of respondents received their judicial education from their state judicial system, however 29.1% felt the education was inadequate.
3. NCDC-National Center for DWI Courts and NCSC-National Center for State Courts.
4. 89% of the survey participants felt they needed more education on impaired driving cases.

WELCOME TO OUR NEW NHTSA LIAISON— Dr. Linda Fisher-Lewis



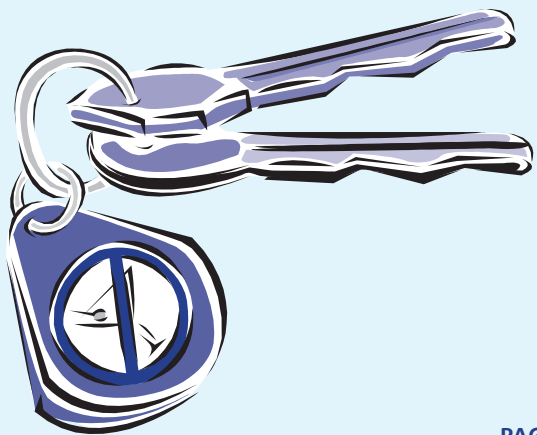
Dr. Linda Fisher-Lewis began her traffic safety career as a law enforcement officer in Oregon. After nearly 20 years, Linda retired as an Operations Lieutenant. As a law enforcement officer, Linda's focus was on the prevention and apprehension of impaired drivers. During her career she was a very active DUII Officer, Drug Recognition Expert (DRE), SFST and DRE instructor, as well as a field training officer teaching other officers the importance of DUII detection and apprehension, up to and through prosecution. After retiring, she went to work for the Oregon State Board

of nursing where she managed the investigations unit, investigating nurses who violated the nurse practice act either through nursing practice or criminal activity. During this time she worked on legislation for regulation and monitoring of those physicians, dentists, psychiatrists and nurses that had addiction issues with alcohol and drugs.

In 2010 Linda went to work for the Oregon Department of Transportation (ODOT) Traffic Safety Division, serving as the Impaired Driving Program Manager for the State and legislative staff to the Governor's Advisory Committee on DUII. In this position, Linda developed innovative pilot projects, to move law enforcement forward in the prevention of impaired driving due to alcohol and other drugs. Linda met with legislators and provided testimony on new laws ranging from ignition interlocks (IID) through any impairing substance. Oregon now requires IID's for all DUII drivers, and this includes first time offenders. Linda worked with the Judicial Outreach program for the state providing legislative updates, law changes and over all information to all the Judges in the State.

In July, 2013 Linda went to work for the National Highway Traffic Safety Administration (NHTSA) as a highway safety specialist in the area of impaired driving. Linda's area of expertise continues to be alcohol and other drug impaired driving and the legislative process. Linda's current grants include State Judicial Liaisons, the Judicial Fellows, National Center for State Courts, Judicial Education, and the National Parks.

Aside from Linda's work with the impaired driving program and the criminal justice system, she teaches at 4 different universities. Her courses range from political science and criminal justice administration to organizational behavior. Linda holds a Doctorate in Organizational Leadership with an emphasis on motivation and ethics. She has a Masters in Organizational Administration with an emphasis on change management and strategic planning.



CONTACT INFORMATION

To learn more about programs offered by NHTSA, please contact one of the following:

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Judicial Outreach Liaisons:

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UPCOMING PROGRAMS ON TRAFFIC SAFETY

The American Bar Association National Conference of Specialized Court Judges will host the 2014 Traffic Court Seminar in Chicago, IL April 9-11, 2014. Complete details including agenda, presenters, and registration information can be found at www.ambar.org/2014TrafficSeminar or contact Gena.Taylor@americanbar.org.

The National Judicial College has scheduled these programs :

- Drugged Driving Essentials May 14-16, 2014 in Reno, NV
- Traffic Issues in the 21st Century October 6-9, 2014, in Reno, NV

For further information see www.judges.org or contact Irene Hart at ihart@judges.org.

A number of webinars are being scheduled by both the ABA and the National Judicial College for 2014. Check our websites for announcements!



THANK YOU

Our thanks go to **Brian Chodrow** who has served as the NHTSA Technical Representative for the Judicial Outreach Liaison/Fellow program for several years. Brian has moved to another area in NHTSA, and we all wish him well in his new endeavors and thank him for his dedication and service which has helped us all make the program a success.

We also extend our thanks to **Judge Keith Rutledge** who has served as Judicial Outreach Liaison for NHTSA Region 7 (Arkansas, Missouri, Iowa, Kansas, Nebraska) since 2010. Judge Rutledge wishes to spend more time with his family in retirement. Our best to him!