

HIGHWAY TO JUSTICE

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HIDDEN DANGERS IN COMMERCIAL DRIVERS' LICENSE ENFORCEMENT CASES

*By Honorable John David Kennedy (Ret.)
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All of us involved in the enforcement or adjudication of traffic safety laws regularly see cases involving infractions of a particular state's laws or rules governing commercial drivers and commercial driver's licenses (CDL's). While there is a comprehensive federal-state scheme to properly license commercial truck drivers and trucking company operators, and to keep unsafe ones off our roads and highways, these cases can easily become the less well enforced "tail" which takes a back seat to state criminal law charges, a situation that can and occasionally does lead to disastrous consequences.

By way of background, there are approximately 4 million commercial drivers' license holders in the United States, of which more than 2 million operate tractor-trailers or other heavy trucks. Nearly 6% of all full-time jobs in the country are in the trucking industry. Trucking moves 71% of all freight in America, and there were more than 84 billion miles traveled by tractor-trailer trucks in 2018. At the same time, tractor-trailer trucks were involved in crashes resulting in 5,096 fatalities or 13.9 % of the total of 2018's 36,560 fatalities.

The Federal-State Regulatory Scheme

In February 1887, Congress passed the Interstate Commerce Act, which created the Interstate Commerce Commission (ICC) and applied the Constitution's Commerce Clause to regulating interstate transportation, specifically railroad rates. The ICC's role expanded as commerce grew, and in 1935, Congress passed the Motor Carrier Act, which extended ICC authority to include interstate bus lines and trucking as common carriers.

During the 1990's the ICC regulatory structure came under increasing criticism and Congress "deregulated" interstate commerce. The Motor Carrier Safety Improvement Act of 1999 established the structure for modern federal regulation of the trucking industry. The Federal Motor Carrier Safety Administration (FMCSA) was established in 2000

within the Department of Transportation as the agency with primary jurisdiction. In general, regulatory authority was divided between FMCSA and the states, with FMCSA taking primary responsibility for regulation of trucking firms ("operators") and setting vehicle standards, and states having primary responsibility for licensure and regulation of drivers.

A Tale of Two Stories

Two stories illustrate the real-world issues CDL cases present. The first, from my own experience as a trial judge in Maine, and the second, "a worst-case" example from our neighboring state of New Hampshire.

My Experiences:

Prior to retiring from the Maine District Court in 2013, I served in the Judicial Branch in a number of positions, including as a District Court Judge, a Magistrate, a Regional Court Administrator and as chair of the Judicial Branch's Court Technology Committee. In the latter role gained much of experience with the various computer systems utilized by the courts, the State Police, District Attorney's Offices, and local law enforcement agencies, and how these agencies effectively or ineffectively exchanged information. While significant progress has been made in the interim, as of 2013 each agency maintained its own separate systems. The limited exchange of data that occurred was the result of "hand crafting" particular bridges to exchange data between fundamentally different systems. Along with many other things, the State's overall enforcement of CDL offenses was operating without the benefit of a fully integrated system.

In Maine, unless there is an associated criminal charge, CDL cases were commonly litigated together with civil violations and traffic offenses. On the trial date the presiding judge would take the bench with a docket of about 100 cases and a "blue sheet" for each one showing only the skeletal elements of the case, i.e., the date of the citation, the defendant and arresting officer's name, the statutory section, its short title, and little else. Depending on location, the cases might be prosecuted by the local District Attorney, by a "Court Officer" designated by the local police

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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. Neil E. Axel at neilaxel49@gmail.com with a copy to the staff liaison, kennedy.green@americanbar.org. Please contact Ms. Green for editorial guidelines.

The deadline for submission of articles for the Summer issue is May 26, 2021.

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agency, or by the arresting officer only. There were a few private defense attorneys who seemed to specialize in CDL cases, and their typical practice was to show up in court, see if the arresting officer was there, and if not, to ask for a dismissal. If the arresting officer was present, counsel would enter a no-contest or guilty plea by a written authorization, and then ask for 60 or 90 days to pay the fine. Of course, if the fine was never paid, the police and DA were unaware. The Court Clerk's office would send a routine suspension notice of the Defendant's license to the state's Bureau of Motor Vehicles, and many of these fines would go unpaid.

After a while, it dawned on me just how vulnerable this enforcement system was to abuse, and I refused to accept these pleas by authorization unless either a) the driver was physically present or b) the attorney had full payment of the fine and surcharges that day. I would instead set the case for trial, to which the attorney would object. I was assured by these attorneys that "*the defendant will absolutely pay, your Honor, because if not, his CDL will get suspended*". (The attorney could get the case off the trial list by submitting payment to supplement the written plea). Fortunately, I stopped buying that particular argument, but it was not until I had retired as a Judge and became Maine's Judicial Outreach Liaison that I became aware of just how unlikely that payment could be.

Disaster in New Hampshire: The Case of Volodymyr Zhukovskyy

At about 6:00 p.m. on June 29, 2019, Volodymyr Zhukovskyy, a 23-year-old Ukrainian immigrant licensed and residing in Massachusetts, was driving a commercial motor vehicle (a pick-up truck pulling a flatbed trailer designed to carry automobiles) owned by Westfield Transportation of Westfield, Massachusetts. He was driving westbound on U.S. Route 2, a two lane non-divided highway near Randolph, New Hampshire. A crash occurred, in which 15 eastbound travelling motorcyclists were involved resulting in 7 fatalities and serious injuries to 3 more of the motorcyclists. The victims were members of the JarHeads Motorcycle Club, a group of retired U.S. Marines from throughout New England.

Zhukovskyy was charged with 7 counts of criminal negligent homicide, DUI, and a number of related offenses. The State of New Hampshire alleges that Zhukovskyy was intoxicated at the time of the crash¹, and that he was later found to have traces of fentanyl, cocaine, and heroin in his system. Federal authorities have also charged Westfield Transportation with falsification of a number of required records, including ones directly related to this case, and others.

In addition, Zhukovskyy and Westfield Transportation have been sued civilly in Federal Court, and Westfield's insurer has put its policy limits of \$1,000,000 "on the table" towards settlement. Just as this article was being written, new Federal charges in Massachusetts were also filed against Westfield Transportation.

Although the research for this article draws on the findings contained in a report dated December 10, 2020 from the National Transportation Safety Board², it is important to note that as all of these court cases are pending, the assertions in this article about these events should be treated as allegations and not as adjudicated facts. Any remaining observations and recommendations are the author's personal opinions and conclusions, and not those of any agency. The various Defendants, through their attorneys, have denied the accuracy of much of what follows, and they remain entitled to the presumption of innocence. In particular, Zhukovskyy's attorney has filed a motion for bail review, currently pending, asserting that the operator of the lead motorcycle, rather than Zhukovskyy, initially caused the accident.

While the facts remain to be proven in the various court cases, subsequent investigations by the NTSB, DOT's Inspector General, and a number of media outlets have pointed out the following systemic failures:

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- Zhukovskyy had a history of criminal convictions prior to his application for a CDL, which if disclosed, should have been disqualifying.
- Zhukovskyy had multiple criminal convictions and motor vehicle violations suspensions after receiving his CDL in Massachusetts. According to one report³ these included a recent incident in Baytown, Texas, where Zhukovskyy allegedly flipped an 18-wheeler, claiming to police that a car cut him off. Baytown police had also arrested him four months earlier, when at 1 a.m., Zhukovskyy was sitting at a Denny's counter "talking to himself and acting strange." Police searched him and found a crack pipe, and charged him with possession of drug paraphernalia. If these incidents were reported or known they should have been disqualifying.
- Westfield had "a history of repeated and serious violations" of Federal Motor Carrier Safety Administration rules; FMCSA found more than two dozen violations by the company. Among other things, the company is accused of making fraudulent or intentionally false entries on inspection and maintenance records, and a manager is alleged to have admitted the company had lied to investigators about some of the driver logs that were reviewed.
- Westfield appears to have hired Zhukovskyy without appropriate due diligence.
- Massachusetts' Registry of Motor Vehicles did not appropriately process the Connecticut DMV's notice of Zhukovskyy's driver's license suspension in that state, along with "tens of thousands" of similar suspension notices from other states.

The NTSB issued its final report on December 10, 2020⁴ and summarized the probable causes for the crash as follows:

The National Transportation Safety Board determines that the probable cause of the Randolph, New Hampshire, crash was the pickup truck driver's crossing the centerline and encroaching into the oncoming lane of travel, which occurred because of his impairment from use of multiple drugs. Contributing to the crash was Westfield Transport's substantial disregard for and egregious noncompliance with safety regulations. Also contributing was the failure of the Massachusetts Registry of Motor Vehicles to revoke the pickup truck driver's Massachusetts driver's license when notified of his loss of driving privileges in another state.

As the NTSB Board Chairman Robert Sumwalt said:

"There were multiple failures on multiple levels of the system, the system that is supposed to provide a safety net to protect us when we're out on our nation's roadways. Unfortunately, that safety net had multiple holes in it." He also observed that: "The deeper we dig into this thing, the more problems we see. "This was not just a Massachusetts issue. We found problems with Rhode Island, and New Hampshire, and I suspect that it's not just limited to New England. This is a systemic issue."

What Can Be Done?

The NTSB report makes 20 specific recommendations for systemic improvements.⁵ Based on my experience both as a former Judge and a former civil litigator, it seems to me that there are a number of critical changes and improvements that are necessary

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Dates to Remember

April 5 – 12
U Drive. U Text. U Pay.



April 20
Drug-Impaired Driving Campaign



May
National Youth Traffic Safety Month
Motorcycle Safety Awareness Month
National Bicycle Safety Month

May 1
National Heatstroke Prevention Day



May 17 – June 6
Click It or Ticket



June 21
National Ride to Work Day



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in order to significantly improve the oversight of commercial drivers and improve highway safety.

First of all, it is clear that the existing federal-state scheme for regulation of Commercial Driver Licenses was designed for an age in which public records were compiled on paper and transmitted by “snail mail”. While there is a third-party electronic system for exchange of information (the Commercial Driver’s License Information System “CDLIS”) which states are required to use, it is an add-on. Based on the Zhukovskyy case and the resulting NTSB investigation one must conclude that the existing systems are insufficient, and the overall regulatory system has not meaningfully evolved as technology has.⁶

Second, the system essentially relies on self-reporting by both applicants for CDL’s and by the operators of motor transportation companies.⁷ While it is not supposed to happen, the “word on the street” is that some commercial drivers continue to have CDL’s from multiple states, perhaps based on false ID’s. If there are checks and balances such as random audits of a sample of driver’s criminal and traffic histories or company records to assess truthfulness or compliance, they are not discernable from the public record.

While states have to be the primary “*guardians of the gates*” in terms of issuance and renewal of CDL’s, and of ordinary license suspensions, I suggest that there needs to be a federally maintained CDL registry that, at a bare minimum, includes:

1. Registration of criminal convictions and motor vehicle violations to verify self-reporting of application data across state lines.
2. Upgrade or replacement of CDLIS to ensure same day exchange of critical information between multiple states when suspensions or adjudications take place in one state, and verification of receipt, and appropriate action by an actual human.
3. Imposition of quick and meaningful administrative sanctions against operators who continue to employ poor drivers, including “cease operation” orders; and significant penalties enforced for fraud and failures to exercise due diligence about their drivers.
4. Processing of CDL violations as non-priority civil infractions, and law enforcement agencies and enforcement agencies and prosecutors should be in the possessive prosecutors access to the proposed national registry to check CDL violations of any type against national records.
5. Amendments to State CDL statutes to provide that CDL licenses are immediately suspended upon conviction for specified qualifying offenses.
6. Federal laws to provide that a state suspension immediately triggers a suspension of all CDL licenses until the particular state offense is cleared by the driver’s serving the imposed sentence or suspension, and all related fines are cleared by payment.

7. Federal laws that require once a CDL is active, that any adjudication of a criminal drug offense should trigger an immediate suspension of a CDL in any state.
8. Recognizing that we live in an imperfect world, and that some information will always be inaccurate, there needs to be a mechanism for a quick temporary reinstatement upon a reasonable showing that the above actions are due to misidentification or mistake.
9. Increased levels of minimum insurance coverage requirements for commercial vehicle operators “record sweeps” run by insurance companies to monitor CDL insureds, and their compliance, or non-compliance, with reporting requirements.
10. Amendments to insurance laws to provide insurers the ability to quickly suspend coverage where their sweeps show that reporting fraud has occurred.

Finally, this is not rocket science. By analogy, one can look at the FAA’s systems to ensure that both civilian and commercial pilots are appropriately regulated, and that anything likely to present a safety risk triggers immediate and usually effective actions. Similarly, a rapid background check system now exists for verification of the self-reporting made by an applicant to purchase a firearm from a federal firearms dealer. While not perfect, that system is far better than no system, and a modified version of it customized to provide similar centralized verification of CDL’s is well within the competence of multiple government agencies.

Second, while I have focused on the Zhukovskyy case as an extreme example of multiple systemic failures, it is far from unique. I know of similar cases that have been presented as examples at Lifesavers and other conferences, and we regularly see news reports of tractor-trailer crashes where the combination of weight and momentum of these vehicles cause multiple fatalities and horrifying other injuries.

As a society, we certainly can, and must do better than maintaining the status quo.

1. <https://www.courts.state.nh.us/caseinfo/pdf/Zhukovskyy/index.htm> See, “Indictments” dated October 18, 2019. As of his writing, the case is still pending while having been delayed for a number of reasons, including multiple pre-trial motions and COVID-19-related trial constraints.
2. <https://data.nts.gov/Docket?NTSBNumber=HWY19MH010>.
3. <https://www.bostonherald.com/2019/06/25/head-of-mass-rmv-erin-deveney-resigns-over-tragic-nh-fatal-crash-case/>
4. See, <https://www.nts.gov/investigations/AccidentReports/Reports/HAR2004.pdf>
5. *Id.* at 63-65.
6. There is at least one commercial system for “CDLIS-Plus” information that provides some of the functionality the author recommends; however, neither states nor operators are required to use this system. See: <https://www.hireright.com/transportation/solutions/driving-records/commercial-drivers-license-information-system-plus-cdlis>
7. Each year, when I renew my vehicle registration, I have to certify that my license is not under suspension, and that I do not have to file a supplemental proof of insurance certificate (Maine BMV-SR-22). Having never been in a position to know, I have no idea if that statement is ever affirmatively verified by BMV.

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MONTANA SUPREME COURT UPHOLDS *PER SE* DRUG-IMPAIRED DRIVING LAW

By Honorable Neil Edward Axel
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Today's impaired driver is very different from the impaired driver of decades ago. With the increase in the use and acceptance of drugs in our communities, we are facing a new type of impaired driver—the drug-impaired driver, and the polydrug-impaired driver. A recent 2020 report from the Foundation for Advancing Alcohol Responsibility noted that

[w]ith the prevalence of prescription medications as well as increased access to both medicinal and recreational cannabis, there is legitimate concern that more individuals will drive under the influence of drugs or a combination of substances. Based on recent data from states like Washington and Colorado, it is becoming apparent that many impaired drivers are on the roadways under the influence of multiple substances which dramatically increases crash risk.¹

The trial of drug-impaired driving cases though has become increasingly more complex than alcohol-impaired driving cases in that there is greater reliance on scientific evidence, drug recognition expert testimony, and blood and breath testing. Additionally, the rapid dissipation of drugs from the bloodstream has often led to the absence of evidence that one's impairment was due to the use of drugs. In response to this, a number of States have enacted *per se* or zero tolerance drug-impaired driving statutes to eliminate the need for proof of impairment at the trial of a drug-impaired driver.

While *per se* statutes make it illegal to drive with amounts of specified drugs in the body that exceed the legislatively set limits, zero tolerance statutes make it illegal to drive with any measurable amount of specified drugs in the body. Sixteen states have zero tolerance laws while 5 states have *per se* laws in effect for one or more drugs. These statutes, while similar to the *per se* statutes in use for alcohol-impaired driving for more than 20 years, differ in that the science that supports a correlation between blood *alcohol* level and impairment does not support a correlation between levels of *drugs* in the blood and impairment. Although efforts have been undertaken to develop tests to identify levels of drugs that correlate to impairment, those efforts have not been successful. As was aptly noted:

The development of impairment standards for drugs similar to the .08 *per se* standard for alcohol has failed, not for want of trying and not for want of serious research. This is because no standard relationship between blood levels of a drug or drug metabolites and impairment has been established.²

Montana is one of the numerous states to have enacted a *per se* drug-impaired driving statute, and on December 15, 2020, in the case of *State v. Jensen*,³ the Montana Supreme Court addressed the lack of supporting science and upheld a challenge to the constitutionality of that statute.

Jensen was charged and convicted of drug-impaired driving under a statute enacted in 2013 that makes it unlawful for any person to drive a motor vehicle “while the person’s delta-9-tetrahydrocannabinol level, excluding metabolites, as shown by analysis of the person’s blood, is 5 ng/ml or more.”⁴ At trial and on appeal, Jensen contended that Montana’s *per se* law violates the substantive due process and equal protection guarantees of State and Federal constitutions. Jensen argued that the five nanogram limit does not correlate with impairment, has no scientific basis and discriminates against routine marijuana users who may have more than that amount in their blood even when they haven’t used recently and are not impaired.

By way of background, after spending the day “hanging out and smoking marijuana at [a] friend’s house” Jensen decided to drive to the local Subway for food. On his way back

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from Subway, he collided with a motorcycle, killing the driver of the motorcycle. Jensen was arrested and consented to a blood draw that showed 19 nanograms per milliliter of THC in his bloodstream.⁵

Jensen moved to dismiss the *per se* charge, and at an evidentiary hearing, Jensen presented expert testimony that the latest research on marijuana (1) found no correlation between the level of THC in the bloodstream and impairment, and (2) that the 5 nanogram limit does not accurately represent a level of impairment:

Dr. Lantz explained it was not possible to determine how impaired a person is by the active THC level in the bloodstream. . . . Dr. Lantz concluded using a 5 nanogram per milliliter level of THC standard to trigger a *per se* violation was scientifically unsupported.⁶

Following the evidentiary hearing, the trial acknowledged that

the scientific community has so far struggled with finding an accurate and scientifically sound method of *measuring* level of impairment through THC levels but *per se* or zero tolerance laws send a message that there is a public safety concern about the practice of drug use and driving, and set an objective standard for what constitutes the offense.⁷

Thereupon, the trial court found the statute to be a reasonable, rational and effective means of accomplishing the objective of curtailing the use of THC either before or during one's use of a motor vehicle.

On appeal, the Montana Supreme Court noted that in order to prevail on a facial challenge to the statute, it was incumbent upon Jensen to show that

“no set of circumstances exists under which the [challenged statute] would be valid, i.e., that the law is unconstitutional in all of its applications” or that the statute lacks any “plainly legitimate sweep (citations omitted).”⁸

The Court concluded that Jensen had failed to meet this burden. Citing earlier caselaw, the Court noted that substantive due process bars arbitrary governmental actions and serves as a check on oppressive governmental action. Where a fundamental right is not implicated, the court held that the test is one of reasonableness in relation to the State's power to legislate. In this instance though, the “State has a compelling interest in keeping unsafe, drug-impaired drivers off the road.”⁹

Although the Legislature could have made a more scientifically based policy choice, the Court commented that is best left to the legislature and not the basis for a judicial declaration of unconstitutionality. In the words of Justice Gustafson, writing for a unanimous court:

Our role is not to second guess the prudence of a legislative decision. While THC concentration in the blood may not directly correlate to the level of impairment experienced by the marijuana user, it does indicate prior marijuana use, and Jensen does not dispute marijuana has psychoactive effects on the user, which do cause temporary impairment. As the District Court explained, “[t]he legislature has the responsibility to pass

laws that provide for the general welfare notwithstanding the absence of a perfect measuring method.” The 5 nanogram per milliliter limit is not irrational, especially given that driving is a privilege, not a right, and the compelling interest of the State in preventing drug-impaired driving (citations omitted).¹⁰

An interesting conflict may arise in States that have enacted both a *per se* statute and a medical marijuana law that allows certain individuals to possess and use medical marijuana. In this instance, courts may be called upon to reconcile the legislative intent in enacting a law that prohibits one from operating a motor vehicle with any amount of marijuana in their system and a law that permits certain individuals to lawfully use marijuana for medical purposes. Given the current state of the science as noted above, it is possible for one to lawfully use medical marijuana and then operate a motor vehicle days later and be charged and convicted for operating under the influence of marijuana even though the operator is neither cognitively nor physiologically impaired by marijuana. A number of states have addressed this issue.

In *People v. Koon*,¹¹ for example, the Supreme Court of Michigan reconciled the two statutes by holding that in the case of a registered medical marijuana patient, the state could not simply rely upon the zero-tolerance impaired driving statute and would need to prove impairment in order to convict for a zero tolerance offense. Taking a somewhat different approach, in *Dobson v. McClennen*,¹² the Supreme Court of Arizona placed the burden on the medical marijuana cardholder to show that marijuana or the metabolite present was in a concentration insufficient to cause impairment.

As with issues of legalization of marijuana and other drugs, what is clear from the Montana Supreme Court decision and other decisions upholding *per se* and zero tolerance statutes, the decision as to *per se* limits and where to draw the line is best left to the legislative branch of government.

1. A Guide to DUI Pretrial Services: Key Components & Best Practice Recommendations (Responsibility.org 2020) to be found at https://www.responsibility.org/wp-content/uploads/2020/12/FAAR_4104-Pre-Trial-Services-Guide_V3.pdf.
2. DuPont, R.L., Voas, R.B., Walsh, J.M., et al. (2012). The need for drugged driving *per se* laws: a commentary, *Traffic Injury Prevention* 13(1), 31-42.
3. 477 P.3d 335 (MT 2020).
4. Montana Code Annotated § 61-8-411.
5. THC is the major psychoactive component found in marijuana.
6. 477 P.3d at 338.
7. *Id.*
8. *Id.* at 339.
9. *Id.* at 340.
10. *Id.* Montana is not alone in upholding the constitutionality of *per se* or zero tolerance statutes, and appellate decisions in numerous states have similarly done so. See e.g. *State v. Phillips*, 178 Az. 368 (1994); *State ex rel. Montgomery v. Harris*, 237 Az. 98(2014); *People v. Fate*, 159 Ill.2d 267 (1994); *Bennett v. State*, 801 N.E.2d 170 (IN 2003); *State v. Childs*, 898 N.W.2d 177 (IA 2017); *Williams v. State*, 118 Nev. 536 (2002); *State v. Schulz*, 2015 Ohio 2252 (2015); *Commonwealth v. Etchison*, 2017 Pa. 26 (2007); *State v. Liedtke*, 362 Wis.2d 1 (2015).
11. 494 Mich. 1 (2013).
12. 238 Ariz. 389 (2015).

***A Guide to DUI Pretrial Services: Key Components and Best Practice.* Published by Responsibility.org (2020)**

This guide focuses on how pretrial services fit within the larger DUI system and highlights various pretrial programs currently implemented across the country. The guide serves as a best practice guide for the implementation of pretrial services and pretrial programming for impaired drivers as a means to achieve better overall outcomes.

A copy may be found at: https://www.responsibility.org/wp-content/uploads/2020/12/FAAR_4104-Pre-Trial-Services-Guide_V3.pdf

***The Science Bench Book for Judges, 2nd Edition.* Written by the National Judicial College and the Justice Speakers Institute (2020)**

The National Judicial College (NJC) and the Justice Speakers Institute, LLC (JSI) have released the Second Edition of its online publication, *Science Bench Book for Judges*, funded by the State Justice Institute (SJI). This publication serves as a resource for all trial judges to assist them in their role as evidentiary gatekeepers in the area of scientific evidence.

A copy may be found at: <http://justicespeakersinstitute.com/wp-content/uploads/2021/01/Science-Bench-Book-2nd-Ed.pdf>

***Constitutional Issues in Impaired Driving Cases.* Published by the National Traffic Law Center (2021)**

With support from the National Highway Traffic Safety Administration, the National Traffic Law Center's monograph addresses many of the issues most commonly faced in impaired driving cases involving the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

A copy may be found at: <http://ndaa.org/wp-content/uploads/Constitutional-Law-Issues-in-Impaired-Driving-Cases-Jan-2021.pdf>

Update to Special Reports on Traffic Safety During the COVID-19 Public Health Emergency: Third Quarter Data, Traffic Safety Facts: Research Note (DOT HS 813 069) (NHTSA January 2021)

In an effort to gain greater understanding of changes in potentially dangerous driving behaviors, this Research Note provides an update on traffic safety during the COVID-19 public health emergency. The Research Note is based upon a series of workshops conducted with national partners, State highway safety professionals and researchers, and is a follow-up to reports issued by NHTSA in October 2020.

This Research Note and other highway safety information may be accessed at: <https://crashstats.nhtsa.dot.gov/>

Alcohol-Impaired Driving & COVID-19 in the United States: Results from the 2020 TIRF USA Road Safety Monitor (2020)

This fact sheet published by the Traffic Injury Research Foundation USA, Inc. (TIRF USA), in partnership with TIRF in Canada summarizes its sixth annual survey on alcohol-impaired driving. A total of 1,501 drivers in the U.S. completed an online survey in September 2020. This fact sheet summarizes key findings regarding the prevalence of alcohol-impaired driving, and reasons for engaging in this behavior and characteristics of these drivers and compares its results to data from previous years. In response to the COVID-19 pandemic, this fact sheet also describes the effects of the pandemic on risky driving behaviors.

A copy may be found at: <https://tirf.us/wp-content/uploads/2021/01/US-RSM-2020-Alcohol-Impaired-Driving-COVID-19-in-the-United-States-8.pdf>

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Introducing: *The Tribal Traffic Safety Bulletin*

The American Bar Association Judicial Division's Judicial Outreach Liaison and Judicial Fellows Program is producing a new publication: *The Tribal Traffic Safety Bulletin*. This newsletter will be shared twice a year, and will feature pieces written by Judicial Outreach Liaisons, Judicial Fellows, judges, and other program stakeholders. The newsletter will be focusing on highway safety matters in native lands. The Judicial Outreach Liaison and Judicial Fellows program is producing this newsletter because of the increased interest in impaired driving, seatbelt use, and motor carrier safety issues on native lands. We are excited to share this new way for our team to communicate news and other information our valued partners and stakeholders on this topic.

If you are interested in being on the listserv, please reach out to Project Manager, Kennedy Breanne Green at kennedy.green@americanbar.org.

Be on the lookout for our first edition, to be published in early Spring 2021.

VALUABLE RESOURCES continued from page 7

Principles of an Effective Criminal Justice Response to the Challenges and Needs of Drug-Involved Individuals (2012)

Although published in 2012, this monograph outlines a set of operating guidelines that define highly-successful system-level responses to address the needs of drug involved individuals. This publication contains sections about: the ten principles of an effective criminal justice response; risk, needs, and evidence-based responses; and moving from aspirational to operational.

A copy may be found at: <https://www.judges.org/wp-content/uploads/2020/03/DIO-monograph0113.pdf>

WELCOME TO THE ABA JUDICIAL OUTREACH LIAISON PROGRAM!



Judge Kerry W. Meyer—ABA State Judicial Outreach Liaison—Minnesota

Hennepin County District Court—Minneapolis, Minnesota

Judge Meyer graduated from Alma College in Alma, Michigan then attended and graduated from the University of Minnesota Law School. She worked as an Assistant Hennepin County Attorney for about 15 years. She prosecuted juvenile delinquencies and adult felony crimes, specializing at various times in gang, sexual assault, child abuse and property crimes. She was appointed to the district (trial) court in 2006. She has presided over a variety of case types including DWI, Veterans and Mental Health Treatment Courts. She presided over the Hennepin County DWI Court when it was a National Academy Court. She is currently on the Person Felony Team and serves as the Assistant Chief of the 63-judge District Court.



Judge Scott E. Pearson—ABA Region 8 Judicial Outreach Liaison (Colorado, Nevada, North Dakota, South Dakota, Utah, Wyoming)

Reno Justice Court—Reno, Nevada

Judge Scott Pearson was elected to his current position on the bench in November of 2010. During his tenure Judge Pearson has championed many improvements designed to serve the community in an equitable and just manner by increasing access to justice, efficiency and accountability in the courts and providing a pathway to success for the court participants. Within months of taking the bench he was presiding over the largest misdemeanor treatment court in the state. In 2013 Judge Pearson created the first Community Court in Nevada which provides a diversion program allowing qualifying participants to have their case dismissed and sealed after completing a rehabilitation program. Judge Pearson has also created special court dockets to help younger members of our community engaged in the sex trades and those addicted to heroin as well as DUI and Domestic Battery programs. In 2015 he was part of the team that brought the Sober 24 program to the County and with it a new level of structure and support for those most in need. In 2015 Judge Pearson was also named Politician of the Year by the Human Services Network for his humanitarian programs in the community. Since taking the bench, Judge Pearson has also received one of the highest performance and retention scores in the biannual judicial rating survey conducted by the Washoe County Bar Association.

DON'T FORGET

Resources for responding to the COVID-19 pandemic:

- **Sample set of Frequently Asked Questions (FAQs) guidance by Substance Abuse and Mental Health Services Administration (SAMHSA) on COVID-19 and Opioid treatment Programs**
<https://www.samhsa.gov/sites/default/files/sample-otp-covid-19-faqs.pdf>
- **SAMHSA's COVID-9 Guidance for Opioid Treatment Programs**
<https://www.samhsa.gov/medication-assisted-treatment>
- **Drug Enforcement Administration's Guideline on Use of Telemedicine While Providing Medication Assisted Treatment (MAT)**
<https://www.samhsa.gov/sites/default/files/sample-otp-covid-19-faqs.pdf>
- **Up-to-Date Information for the Substance Use Disorder Treatment field from SAMHSA**
<https://www.samhsa.gov/>
- **Centers for Disease Control and Prevention**
<https://www.cdc.gov/>

Valuable resources for traffic court judges can be found at:

- **National Highway Traffic Safety Administration**
www.nhsta.gov/risky-driving
- **American Bar Association/Judicial Division/NCSCJ**
www.americanbar.org/groups/judicial/conferences/specialized-court_judges/NHTSA.html
- **Highway to Justice - Archives**
www.americanbar.org/groups/judicial/publications/judicial_division_record_home/highway-to-justice/
- **National Judicial College**
www.judges.org
- **Governors Highway Safety Association: Alcohol Impaired Driving**
www.ghsa.org/issues/alcohol-impaired-driving
- **AAA Foundation for Traffic Safety**
www.aaafoundation.org/
- **National Center for State Courts**
home.trafficresourcecenter.org/
- **National Center for DWI Courts**
<https://www.dwicourts.org/>



THE 2021 NATIONAL TRAFFIC ACADEMY

May 19-20, 2021
Virtual

Traffic courts affect more citizens than any other court. That's why every year, the National Conference of Specialized Court Judges provides traffic court judges, judicial officers, prosecutors, and defense attorneys with first-rate educational programs and resources to help improve their court operations.

The 2021 National Traffic Academy continues this tradition.

Save the Date, May 19-20, to join judges and traffic court personnel from around the country virtually to discuss the latest developments in traffic court law.

Questions?
Julianna Peacock
julianna.peacock@americanbar.org
ambar.org/jdncscj

THE ABA JUDICIAL OUTREACH LIAISON (JOL) PROGRAM

The JOL program began in 1998 as part of the ABA Judicial Division's outreach efforts to provide trial judges with access to current and evidence-based practices that would assist them in their work on the bench. The program consists of two National Judicial Fellows and Regional and State Judicial Outreach Liaisons (JOLs) throughout the country. Judicial Fellows and JOLs are active or retired judges who work to improve the administration of justice in impaired driving and other traffic safety matters through education, communication, community outreach activities and collegial and ethical collaboration with judges, and traffic safety stakeholders, locally, regionally, and nationally.

While remaining independent and impartial, the JOLs and Judicial Fellows serve as a resource for the judiciary and other members of the highway safety community. This assistance takes the form of peer-to-peer judicial education, court case interpretations, guidance, and acting as a liaison between the judiciary and the highway safety community. The JOLs and Judicial Fellows help supplement and

support on-going efforts by judicial educators around the country to provide essential information to judges in a number of important areas including evidence-based sentencing practices for at-risk populations, DUI Treatment Courts, and reliable substance use and mental health assessments.

Through the work of the American Bar Association JOL Program, judges throughout the country can gain a broader foundational understanding of the issues that they face in handling their fast-paced traffic-related dockets.

Currently 32 active and retired judges serve as JOLs and Judicial Fellows around the country, covering 47 of the 50 States, the District of Columbia, Native Nations, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the North Mariana Islands.

This program is supported by a grant from the National Highway Traffic Safety Administration.

UPCOMING ABA AND NJC COURSES



AMERICAN **BAR** ASSOCIATION
Judicial Division



THE NATIONAL
JUDICIAL COLLEGE

Est. 1963

May 12, 2021 at 12:00 p.m. Eastern

Wellness Wednesday: Secondary Traumatization in the Judiciary and How to Deal with It

Judges who work in criminal and civil courts are exposed to people who have been traumatized and stories of trauma on a daily basis. Often these people and stories take a psychological toll on the people who hear them. As a result, they may become depressed, irritable, angry, tired, and anxious. When these experiences become continuous rather than occasional, secondary traumatization may result. This presentation will describe the primary symptoms and behaviors associated with secondary traumatization. It will also provide specific tools to help judges engage in self-care so that they can successfully continue to engage in the important work they do rather than burn out.

[Register here](#)

May 25, 2021 all 10:00 a.m. – 4:00 p.m. Eastern

Marijuana Impaired Driving Cases: What Judges Need to Know

Unlike alcohol-impaired driving, marijuana-impaired driving has no bright line test for impairment. These cases require a judge to utilize a variety of judicial tools to effectively adjudicate these cases. This workshop will discuss the trends and challenges presented in marijuana-impaired driving cases, Fourth Amendment issues specific to marijuana-impaired driving, the science and toxicology specific to marijuana impairment, and considerations, including options used around the country that help reduce recidivism, when sentencing the marijuana-impaired driver.

On-Demand Programs

Judicial Wellness and Coping in COVID-19

This program was an interview-style conversation on judicial wellness strategies and challenges between Judge Robert S. Anchondo, the

ABA Region 6 Judicial Outreach Liaison, and Dr. Brian L. Meyer, Ph.D. a Clinical Psychologist, and the Psychology Program Manager for the Community-Based Outpatient Clinics of the Central Virginia Veterans Affairs Health Care System.

[View here](#)

Gavel Talks Podcast: What can spending three minutes with a defendant do to reduce recidivism?

ABA Region 6 Judicial Outreach Liaison, Judge Robert Anchondo and ABA Region 10 Judicial Outreach Liaison, Judge Mary Jane Knisely discuss how some simple techniques used in treatment courts can also be used by judges who do not preside over a treatment court.

[Listen here](#)

Racial & Identity Profiling in Traffic Stops

This program focuses on how data can lead to solutions to limit racial and identity profiling and what the courts can do in these efforts. ABA California State Judicial Outreach Liaison, Judge Rogelio Flores, Professor Rafael Gutierrez, and Retired Lieutenant Charles Jordan of California Highway Patrol serve as faculty.

[View here](#)

Gavel Talks Podcast: Justice for Vets—Why a Veterans Court Makes Sense and How to Get One Started

In this extended Gavel Talks episode, ABA Region 10 Judicial Outreach Liaison, Judge Mary Jane Knisely, gives a front-line perspective of the benefits of a Veterans Court and how to get one started in your community.

[Listen here](#)