

SOUND JUDGMENT

Hello Judges

By Judge Rod Ring, (Ret.)

It is time to register for the November 8th OBA/OHSO Fall 2018 Statewide Judicial Education Program. The Hyatt Downtown Tulsa is ready for the Judges' Training and the OBA Annual Meeting. We have a great lineup of speakers and interesting presentations.

The 7 hours of FREE MJCLE are presented through a grant from The National Highway Traffic Safety Administration and the Oklahoma Highway Safety Office in cooperation with the Oklahoma Bar Association. Our goal is to reduce impaired driving in Oklahoma.

As a reminder, if your duty station is more than 60 miles from Tulsa you will be reimbursed for one night in the hotel (either Wednesday or Thursday night) and all judges can be reimbursed for mileage. We will have reimbursement forms for you at the conference.

You do not need to be registered for the OBA Annual Meeting to attend the Judicial Training but will need to register if you would like to attend OBA events.

Below you will find the agenda and links for Judicial Training registration and hotel reservations. We have also added a link for registration for the OBA Annual Meeting.

REGISTRATION LINKS

NHTSA Judicial Training

<https://okbar.inreachce.com/Details/Information/de59ad25-bc5f-4b7c-a17f-2e3e38e927cf>

Hyatt Downtown Tulsa Reservations

<https://book.passkey.com/gt/216184930?gtid=31f3f40702f6329b3583a239cb16dba0>

OBA Annual Meeting

<https://www.okbar.org/annualmeeting/online/>



INTRODUCING OUR OUT-OF-STATE PRESENTERS

HONORABLE TARA A. OSBORN

Judge Osborn is the former Chief Trial Judge of the U.S. Army. In that position, she presided over felony criminal trials to include capital cases, oversaw judicial operations at military installations worldwide, and led all active duty and reserve judges of the Army Trial Judiciary. She retired from the military in 2017 as a colonel, having served over 29 years on active duty, with extensive experience as a prosecutor, litigation attorney, and military judge. Before her appointment to the bench in 2007, she completed a U.S. Army War College fellowship as Special Counsel to the Assistant Attorney General, Civil Division, at the U.S. Department of Justice in Washington, D.C.

A combat veteran of the Persian Gulf War with service in Iraq, her military decorations include the Legion of Merit and the Bronze Star. She also received the U.S. Department of State Superior Honor Award. She holds degrees from the University of South Carolina

INSIDE PAGES

The Pot Breathalyzer Is Here. *Maybe*

As legalization of recreational and medical marijuana continues to expand, police across the country are more concerned than ever about stoned drivers taking to the nation's roads and freeways, endangering lives.

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Legislative Update

SB 1091 - DUI

This bill amends 47 O.S. SS11-902

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(B.A. and J.D.) and the University of Virginia (M.P.A.), and earned a Master of Laws degree from the U.S. Army Judge Advocate General's School, and a professional Certificate of Judicial Development from the National Judicial College. She is the current Chair of the American Bar Association's National Conference of Specialized Court Judges, the 2018 George S. Prugh Distinguished Lecturer in Military Legal History at the U.S. Army Judge Advocate General's School, and is also active in the National Association of Women Judges. Judge Osborn joined the faculty of the National Judicial College in 2018.

HONORABLE WILLIAM G. KELLY

Judge William G. Kelly has served as judge of the 62-B District Court in Kentwood, Michigan since 1979. He is a graduate of the University of Detroit and the University of Detroit School of Law. He has been a faculty member of the Michigan Judicial Institute since 1985. He teaches criminal pretrial issues at the New Judges Seminar.

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JUDICIAL EDUCATION AGENDA

**Hyatt Regency Hotel,
Downtown Tulsa**

**Thursday,
November 8, 2018**

**8:00 – 8:25 a.m.
Registration**

**Sentencing Military Members
in Civilian Courts/Behind the Uniform**

8:30 – 9:20 a.m.

**Honorable Tara A. Osborn
Former Chief Trial Judge of the U.S. Army**

**9:20 – 10:10 a.m.
Colonel Osborn, Continued**

**Evidence Based Sentencing Options
10:20 – 11:10 a.m.**

**Honorable William G. Kelly,
District Court Kentwood, Michigan**

**Technology Available in
Today's OHP Cruisers**

**11:10 a.m. – Noon
Captain Ronnie Hampton, OHP**

**LUNCH on your own
Noon – 2:00 p.m.**

**2:00 – 2:50 p.m.
Judge Kelly, Continued**

**Drug Recognition Expert Program
Standard Field Sobriety Tests**

2:50 – 3:40 p.m.

**Sgt. David Roberts,
OKCPD, D.R.E State Coordinator**

**3:50 – 4:40 p.m.
Sgt. Roberts, Continued**

**4:40 – 5:00 p.m.
Wrap-up/Evaluations/Travel Claims**

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Judge Kelly has taught several other courses for the Michigan Judicial Institute and for various organizations. He is very active in judicial associations in Michigan and nationally and has served as Chair of the National Conference of the Special Court Judges of the ABA, Chair of the Traffic Court Program of the ABA Judicial Division, President of the Michigan District Judges Association, and as Chair of the Judicial Conference of the State Bar of Michigan. He also served as a member of the Board of Directors of the National Center for State Courts. In addition, he edited the Judicial Division Record of the Judicial Division of the ABA for four years. Judge Kelly is an alumnus of The National Judicial College and joined its faculty in 2001. He served on The National Judicial College Faculty Council representing Special Courts.

OUR HOME-GROWN OKLAHOMA PRESENTERS

**Captain Ronnie Hampton,
Oklahoma Highway Patrol**

Captain Ronnie Hampton began his law enforcement career in 1988 with the Bryan County Sheriff's Office in Durant. In 1991, Captain Hampton was hired as a Police Officer with the Durant Police Department where he served in patrol and traffic, focusing on impaired driving violations and advanced collision investigations. In 1997, Captain Hampton was accepted into the 49th Oklahoma Highway Patrol Academy graduating with the cadet academic award.

Captain Hampton served as a traffic trooper assigned to Troop E patrolling in Bryan, Marshall, Choctaw, and Pushmataha counties until he was assigned to the OHP Investigations Division in 2004. Hampton promoted within the Investigations Division to Lieutenant and Captain conducting and overseeing investigations in the following disciplines: trooper involved shooting, internal affairs, vehicle-related homicides, auto theft, and identity theft.

As the OHP Tactical Team Commander, Hampton was responsible for on-scene tactical operations when the OHP Tactical Team was requested to assist municipal, county, state, and federal law enforcement agencies with high-risk warrant service and barricaded person situations.

In 2008, Hampton was assigned to oversee the OHP's Training Division responsible for the in-service training of all sworn personnel and served as the Commandant of the OHP Patrol Academy. Hampton has served as the Troop Commander in Troop E and Troop F. In

addition to his current assignment with Troop F based in Ardmore he also oversees the OHP's Drug Recognition Expert Program and serves as the OHP's Traffic Homicide Program Commander. In his current assignment, Captain Hampton supervises the Futures, Capabilities, and Plans Division at the Oklahoma Department of Public Safety.

Sgt. David Roberts,

Drug Recognition Expert State Coordinator, Oklahoma; Fatality Collision Investigator, Oklahoma City Police Department

David is a fourteen-year veteran of the Oklahoma City Police Department. He started his law enforcement career in the United States Coast Guard serving over 21 years and currently holds the rank of Lieutenant Commander. Throughout his career with the United States Coast Guard he has worked in law enforcement, investigations, and logistics. My law enforcement career ranged from basic narcotics interdiction to the Law Enforcement Chief for greater Houston/Galveston area.

Throughout Roberts career as an Oklahoma City Police Officer he has investigated over 1200 collisions and has assisted an additional 700-900. Since 2013, Roberts has been assigned as a fatality collision investigator in the Signal 30 Unit, having investigated over 300 serious injury and fatality collisions in that time. He is currently responsible for fatality collisions, serious injury collisions, injury and non-injury collisions, and collisions involving city owned equipment.

Sgt. Roberts is also State Coordinator for the Drug Recognition Expert Program for the State of Oklahoma, having been part of the D.R.E. Program since 2006 and completing over 100 evaluations. Roberts served as the lead instructor for the Standardized Field Sobriety Test Course, Drug Recognition Expert Course, Drug Recognition Expert Instructor Course, Basic Collision Investigation Course, Radar/Lidar Course, Radar/Lidar Instructor Course, and Advanced Roadside Impaired Driving Enforcement.

In 2018 he became a certified part 107 unmanned aircraft pilot through the Federal Aviation Administration, currently using several different types of UAV's to photograph and build collision scenes. He is proficient in Pix4D and FARO Reality which is used to build 3D models. These 3D models are very realistic and are a great way to show collision events.

Certified to image and interpret airbag control modules, electronic control modules, electronic data recorders, and power-train control modules, he has imaged and/or interpreted over 100 reports generated by those systems. Being able to properly interpret the data generated by these reports is crucial.

The Pot Breathalyzer Is Here. *Maybe*

By Eric Westervelt, NPR
Reprinted with permission

As legalization of recreational and medical marijuana continues to expand, police across the country are more concerned than ever about stoned drivers taking to the nation's roads and freeways, endangering lives. With few accurate roadside tools to detect pot impairment, police today have to rely largely on field sobriety tests developed to fight drunk driving or old-fashioned observation, which can be foiled with Visine or breath mints.

That has left police, courts, public health advocates and recreational marijuana users themselves frustrated. Nine states and the District of Columbia have legalized recreational marijuana and 30 states and D.C. have legalized medical pot.

Now one California company claims it has made a major breakthrough in creating what some thought of as a unicorn: a marijuana breathalyzer.

"We are trying to make the establishment of impairment around marijuana rational and to balance fairness and safety," says Hound Labs CEO Mike Lynn in his downtown Oakland, Calif., office.

In a freshly pressed dress shirt and short hair, it's clear Lynn is no stoner inventor with a pipe dream. The former venture capitalist is a practicing emergency room trauma physician in Oakland and an active SWAT team deputy reserve sheriff for Alameda County, California. He knows first-hand the devastating effects drugged and drunk driving can have.

He picks up a small plastic box. "This is a disposable cartridge. And there's a whole bunch of science in this cartridge," Lynn says as he slips it into the device about the size of a large mobile phone. A small plastic tube sticks out of one end.

He starts to blow into the tube for the required thirty seconds.

Indicator bars start to show whether the machine detects any THC in his breath. THC is the psychoactive component in pot that gets you high. Hound Labs says its device can accurately detect whether a person has smoked pot in the last two hours, a window many consider the peak impairment time frame.

"When you find THC in breath, you can be



pretty darn sure that somebody smoked pot in the last couple of hours," Lynn says.

"And we don't want to have people driving during that time period or, frankly, at a work site in a construction zone."

Lynn then slides the cartridge into a small base station the size of a laptop, used to protect against cold or hot extremes. The breathalyzer needs a consistent temperature to have consistent results.



The device also doubles as an alcohol breathalyzer, giving police an easy-to-use roadside for both intoxicants. About four minutes later, the results are in.

Negative. No THC or alcohol in Lynn's system.

For law enforcement, Lynn says, "really the key is objective data at the roadside, just like we have for alcohol."

Tools now on the market to determine marijuana test blood, saliva or urine [and] can

take days for a result. More importantly, they can't really tell whether a person has smoked a half hour ago or eight days ago. THC dissolves in fat so it can stay in your body up to a month after use.

But Lynn claims the company has overcome the technical and scientific hurdles and can accurately measure THC in breath molecules in parts per trillion. That's "kind of like putting together more than a dozen Olympic size swimming pools and saying, 'Hey, go find those 10 specific drops of water and in those 10 pools put together.' It is it is ridiculous how little [THC] there is" in breath.

Alcohol impairment is measured in parts per thousand. "THC is something like a billion times less concentrated than alcohol. That's why it hasn't been done before because it's really hard. It's taken us five years to overcome those scientific obstacles."

The machine detects THC's mere presence in the breath, but it cannot calculate the amount of THC consumed. Police are trying to figure out who is potentially impaired, Lynn says, compared to "somebody who smoked maybe yesterday or a few days ago and is not impaired. They're not in the business of arresting people that are not impaired when it comes to marijuana. That makes no sense at all."

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A few police departments plan to start testing Hound Labs' breathalyzer this fall. "They're interested in it providing objective data for them at the roadside," says Lynn. "That's really the key, objective data at the roadside — just like we have for alcohol."

What constitutes impairment?

There's still no agreement on what amount or level of THC in breath, blood or saliva constitutes functional impairment.

So far only seven states, including Washington and Montana, have set legal guidelines as to how much THC in the system makes you dangerous behind the wheel. Yet some scientists are skeptical, saying those limits aren't really backed by hard science.

In the rest of the country, courts, police and scientists haven't been able to agree on which THC level constitutes functional impairment.

Studies on marijuana and driving, post-legalization, have been mixed.

One survey by the National Highway Traffic Safety Administration showed that, while marijuana users are more likely to be involved in crashes, that risk may be in part because of demographics. Pot users are also more likely to be young men, a group

already at high risk for car wrecks.

Drugged driving incidents have risen steadily over the last decade plus, paralleling the nation's opioid abuse crisis and decriminalization of pot.

The Governor's Highway Safety Association raised the alarm in a recent report saying State Highway Safety Officers now rate drug-impaired driving "equal to or more important than driving while impaired by alcohol." In Colorado, one analysis of highway safety after pot legalization showed that the number of drivers involved in fatal crashes who tested positive for marijuana is up significantly.

And in Washington state, where recreational pot is legal, a study from April of this year showed that of drivers in fatal crashes who were tested for intoxicants — 61 percent were positive for alcohol and or drugs in their system. Research by the Center for Injury Epidemiology and Prevention at Columbia University showed that half of young drivers, age 16 to 25, who died in car crashes were under the influence of alcohol, marijuana or both.

But to what extent and how long marijuana affects driving response, judgment and skill is not yet fully known. And what role, if any, THC played in those car crashes is unclear. "We need more research to establish the dose-response relationship between THC level and crash risk," says epidemiologist

Guohua Li, who directs the Columbia center and conducted that study.

Li, who calls drugged driving "a silent epidemic," says that additional research is vital because "there's a widespread misconception that it's OK and [it's] safe to drive after smoking pot. And the public — especially teenage drivers — are not well aware of some of the hazards of drugs such as marijuana on driving."

A major study underway on driving impairment at University of California San Diego's Center for Medicinal Cannabis Research is scheduled to wrap up next year.

"We are not only looking at how impaired a driver is at different levels of smoking, but also how long that impairment lasts," the study's lead author, Thomas Marcotte, recently told Member Station KQED.

Other groups, including the National Institute of Standards and Technology in Boulder, Colo., are working on creating standards for a marijuana DUI detection test.

Police eager for help

Police in a handful of cities, including Boston, are set to partner with Hound Labs to start field testing their weed breathalyzer this fall. The company hopes to have a product

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ready to sell to law enforcement and industry by early next year.

"It's going to be a major issue in our city as more and more motorists drive after the legalization of recreational pot," Boston's Police Commissioner, William Evans, told NPR in an email. He says the department would soon test Hound Labs' breathalyzer.

Evans, who retires this week, added, "I opposed the legalization, now we need tools to combat its ill effects. These instruments by Hound Labs and others are going to become necessary."

But while police departments are optimistic, they're taking a wait and see approach.

"We'd like to get to point where there's a little more courtroom acceptance and a little more acceptance in Pot Breathalyzer [in] the scientific community," says Kevin Davis, assistant chief of the California Highway Patrol Enforcement and Planning Division.

Davis says while these breathalyzer devices hold promise, his agency's questions about courtroom admissibility and liability will, for now, keep the CHP on the sidelines of beta testing such devices. "We're obviously very excited about the prospect of having a tool like that in our officers' hands," Davis says, "assuming we can identify the best ways of when and how it should be used, and how it will be admitted in court, and things of that nature."

For now, he says, the CHP will rely mostly on roadside sobriety tests by officers to make an initial determination on impairment.

Davis says the CHP plans to train up more officers to detect drugged drivers under its Advanced Roadside Impaired Driving Enforcement program. It's a 16-hour classroom course followed by field work to learn how to conduct cognitive tests and detect physical signs of impairment by marijuana or other drugs. The agency also offers a more in-depth

Drug Recognition Expert (DRE) course to train officers on how to detect and deter drugged driving.

Breathalyzer race

A few other companies are developing a pot breathalyzer, including the Canadian-based firm Cannabix Technologies.

"One of these guys is going to do it," says David Downs, the California Bureau Chief for the cannabis news site, Leafly, and an industry expert. "It's just a question of who and how adaptable it is for the side of the road, in the middle of the night, in a blizzard. And a lot of these other conditions that police officers face."

Downs says Hound Labs may be in the lead and "stands a good shot at in terms of their technology being able to positively detect active THC in the breath within an impairment window. It's a big thumbs up or thumbs down signal police can use and a real big evolution over things like the Drager 5000, which are these active THC oral swabs that can have more variance and more false positives," he says.

Downs, who's been on the cannabis beat for nearly a decade and published several books on the topic, says drugged-driving laws clearly haven't kept pace with the cannabis revolution. Many in the industry, as well as consumers, would like to see more states where pot is legal settle on a science-based cut-off limit for THC level impairment.

This Material was prepared in cooperation with The National Highway Traffic Safety Administration and the Oklahoma Highway Safety Office. All Articles printed herein are intended for educational use only.

SJEP Staff:

Judge Rod Ring (Ret.)
Judicial Outreach Liaison
405.246.5023
joloklahoma@gmail.com

Susan Damron
Project Director
Director of Educational Programs,
Oklahoma Bar Association
405.416.7028
SusanD@okbar.org

Gary Berger
Layout & Design
CLE Production Specialist,
Oklahoma Bar Association
GaryB@okbar.org



Legislative Update

By Trent Baggett,
Executive Coordinator, District Attorneys Council

SB 1091 - DUI

This bill amends 47 O.S. SS11-902 by removing some wording related to repeat offenders that suggested that the District

Attorney has to seek enhancement. The wording was removed to address an interpretation of the feds that resulted in the State of Oklahoma being penalized 10% of some federal highway funding (approximately \$12M).

Effective Date: November 1, 2018