

SOUND JUDGMENT

SUMMER! Hello Judges

By Judge Rod Ring, (Ret.)

Summer is just around the corner, and I hope everyone can find some time to unwind and relax. A judicial career can be hard on both the judge and the judge's family. There is naturally some isolation that comes with relaxation time because of the constant obligation to abide by the ethical rules of judicial conduct. There is also the difficulty of finding time to get away from the courthouse for more than a few days. I hope everyone, especially new judges, can build a supportive network to allow you to plan vacations. I was always lucky to have the judges of the 21st judicial district who covered dockets during absences and encouraged each other to take time away. I think my most productive time was the week before and the week after a vacation.

At the end of March, I attended the Regional/State Judicial Outreach Liaison Conference in Louisville, Kentucky. I learned about best practices and the scientific foundation for sentencing and probation for impaired drivers. I was able to learn from other judges doing the same work and compare programs. There are only twelve states with JOL programs, and I think Oklahoma's is among the best. I connected with speakers who I hope to bring to



Oklahoma for our judicial training that will be offered during the Oklahoma Bar Association Annual Meeting in November. Remember that our NHTSA/OHSO grant reimburses mileage, per diem, and hotel for qualifying judges to attend the training.

Our next training will be during the July Judicial Conference on July 19th from 10:00 a.m. until noon. Kevin Behrens, Director of the Board of Tests for Alcohol and Drug Influence

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will be our featured presenter. He will help us understand the latest technology and science in the field of impaired driving. The Board is an independent state agency dedicated to enhancing public safety. Kevin and his staff work to increase understanding of testing programs among prosecutors, defense lawyers, and judges. I have spent some time during the last year with Kevin and his staff and am fascinated with their work. I hope you will plan on attending.

Finding the Elusive Drinking 'Brake'

Neuroscience News - February 22, 2019

Summary: Researchers have uncovered a mechanism in the BNST that senses the negative effects of alcohol and modulates the urge to drink. The study reports that when this mechanism doesn't function correctly, we lose the ability to recognize that we have had enough to drink. Source: UC Santa Barbara.

Why can some people stop drinking and others can't?

It's a common scene in bars and clubs: messy, falling-down drunk, slurring and incoherent, precariously close to catastrophe ... and asking the bartender for another shot.

For the majority of us who imbibe, there is a certain point at which we stop pounding the

drinks, and many reasons we do so. Maybe we sense that we're close to our limit, or we notice we don't feel as well — physically and emotionally — as we did a couple of glasses ago. And sometimes the sedative effects of the alcohol just take over. But for a certain subset

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of people, nothing — not the risk of losing control or the threat of nausea and dizziness — is enough to put the brakes on their drinking.

UC Santa Barbara neuroscientist Karen Szumlinski, who investigates binge drinking and the repeated stress of overdrinking on the brain, suggests a neurobiological mechanism might underpin this behavior. She and her team have uncovered a mechanism in a small brain structure called the bed nucleus of the stria terminalis (BNST) that helps sense alcohol's negative effects and modulates the urge to drink. When it doesn't function properly, however, we lose the ability to perceive when we've had enough — or, perhaps, one too many — and we continue to drink.

"If a little bit of intoxication is making you nervous, the BNST is doing its job," said Szumlinski, a co-author of a paper that appears in *The Journal of Neuroscience*.

An adaptive response to limit alcohol consumption

The urge for us to do virtually anything comes from signals that loop in and around our brains in areas that govern our perceptions, emotions and desires. These in turn connect to our motor functions and create behaviors. This process involves a complex set of signaling pathways, involving many neurotransmitters, as well as their associated proteins and receptors. Those examined in

this study are specific to an area of the brain highly implicated in the interface between anxiety and motivation — the BNST, which is connected to, among other things, both the amygdala (which modulates fear and anxiety), and the nucleus accumbens (reward, aversion, motivation).

In previous studies, the researchers found that binge drinking elevates several aspects of signaling through the excitatory neurotransmitter glutamate in both the amygdala and the nucleus accumbens. Using a variety of experimental approaches, they also showed that this increased glutamate signaling drove excessive drinking. Along with the BNST, these regions form a subcircuit in the brain known as the extended amygdala.

"So in the amygdala the increased glutamate signaling is going to possibly generate negative emotions, and maybe you start feeling depressed or anxious, and then that will translate to a higher motivation to drink coming out of the nucleus accumbens," Szumlinski said. Alcoholism — addiction in general — is a shifting target that moves between the motivation toward the "feel-good" effects of the drug and motivation to avoid the unpleasant withdrawal symptoms or to simply feel normal again after the dependency has been established.

The researchers initially presumed that because the BNST is connected to both structures, the function of high glutamate signaling in the BNST is similar to that of

the nucleus accumbens and the amygdala. But instead they found it contains a "brake" mechanism, an adaptive response to limit alcohol consumption. And pumping that pedal is a scaffolding protein called Homer2.

As it turns out, Homer2's effects on the amygdala and nucleus accumbens are opposite to those in the BNST.

"When we manipulated Homer2 (in mouse models) — when we knocked it down in the amygdala or the accumbens — the animals stopped binge drinking," Szumlinski said. When they reduced the expression of Homer2 in the BNST, however, the animals binge drank more. And according to Szumlinski, a lot more.

"We know that the ability of Homer2 to interact with the glutamate receptors (mGlu5) can be regulated in a number of ways," she continued. "And so we wanted to know: What other part(s) of the signaling pathway is interacting with Homer2, and how might that be contributing to the brake process in the BNST?"

They found their answer in an enzyme. Extracellular signal-regulated kinase (ERK, for short) is another of the usual suspects in the realm of addictive disorders. In a mouse model that carried a mutation in its mGlu5 receptors resulting in their inability to be activated by ERK, the researchers found that the mutation had an unexpectedly significant im-

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HOW TO DRINK RESPONSIBLY

BEFORE

★
BE 21
OR OLDER

★
Learn how alcohol affects
YOU AS AN INDIVIDUAL

★
PLAN A SAFE WAY HOME
BEFORE YOU GO OUT

★
Know medications and drugs
ACT DIFFERENTLY
when mixed
= WITH ALCOHOL =

DURING

★
EAT A FULL MEAL
AND DRINK WATER OFTEN

★
KIDS ARE BASICALLY LITTLE OVERLORDS
who watch your every move, so keep that in mind while you're enjoying yourself

★
Don't give friends a hard time
if they choose not to drink this time (or ever)

★
STICK TO A STANDARD POUR

★
UNDERSTAND ALCOHOL AFFECTS MEN AND WOMEN DIFFERENTLY

★
IF YOU'RE HOSTING,
SERVE **NON-ALCOHOLIC**
FOOD & DRINKS, TOO
AND DON'T OVER-SERVE YOUR GUESTS

★
PACE YOURSELF

AFTER

★
STICK TO THE PLAN
you made before the festivities began,

AND
GET HOME SAFELY

★
KNOW THAT
ONLY TIME

will lower your BAC
once the drinking stops

NOT
coffee, a cold shower,
or three large pizzas.

★
YOUR BAC
can continue to rise
FOR UP TO 30 MINUTES
after you stop drinking before
it starts to come down



Responsibility.org/VirtualBar

FREE TRAINING FOR JUDGES



Mark your calendar! The National Judicial College is offering a free 50-minute webcast for Oklahoma Judges on December 11, 2019.

Ethically Handling Commercial Drivers in Criminal & Traffic Courts

After this course, participants will be able to:

- Identify applicable Federal and state CDL/CMV laws;
- Determine what constitutes “masking;”
- Discover the unique definition of a “conviction” under CDL/CMV laws;
- Recognize the legal, financial and social consequences of failures to enforce CDL/CMV laws;
- Detect the ethical implications of mishandling CDL/CMV cases;
- Apply recent expungement laws to holders of commercial driver licenses; and
- Develop ethical and efficient procedures for the handling of CDL/CMV cases in your court.

For more information and to enroll contact the National Judicial College at: <https://www.judges.org/ethicallyhandling-commercial-drivers-incriminal-traffic-courts/>

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pact on alcohol preference and consumption.

“Based on the available biochemical information at the time we started testing the mGlu5 mutant mice, we predicted a minimal impact on any behavior,” Szumlinski said. The receptor still worked, it just wasn’t sensitive to ERK, she explained. “But there was a huge impact on drinking behavior in a direction opposite to what we predicted.” The mutant mice instead exhibited strong preferences for environments in which they experienced the effects of high-dose alcohol (doses that normal mice find aversive) and the mice consumed large amounts of high-dose alcohol under a number of different drinking procedures.

“So it really showed that something’s going on when you drink alcohol,” she said of this brake in the BNST. “You’re activating this enzyme ERK, which would normally phosphorylate the mGlu5 receptor, and help Homer2 bind better. All of this together serves as a brake to reduce or at least curb your alcohol consumption. But if any kink happens in that little bit of signaling there, you lose the brakes. Your brake line has been cut, and now you exhibit uncontrolled drinking behavior.”

Flying in the face of accepted notions

While all that is occurring in brain behaviorally, tampering with the BNST also seems to shut down or interfere with the typical aversive feedback that would normally prompt the drinker to stop — perhaps the nausea, dizziness, lack of control. Interestingly, Szumlinski added, messing with ERK-mGlu5 signaling also makes an animal overtly more drunk: compared to normal mice, the mGlu5 mutants studied lost their motor coordination on low doses of alcohol and they remained asleep longer when administered higher alcohol doses. Typical mice find increased alcohol sensitivity aversive. However, the mGlu5 mutants are falling-over drunk to observers, but they seem to interpret their situation as just fine.

It’s a jump to link the behavior of drunk lab mice and drunk people, noted Szumlinski, but there are connections that can be made in the array of complex brain processes that drive alcoholism.

“How we perceive how drunk we are is going to influence our subsequent drinking,” Szumlinski said. “Although their behavior is telling us they are completely intoxicated, maybe they don’t feel hammered. Or maybe when they’re feeling drunk, they don’t perceive that as a bad thing. Their awareness of their intoxicated state does not line up with

their high-dose alcohol preference or their drinking behavior. And so presumably that might have something to do with BNST glutamate function.”

These results fly in the face of the widely accepted notion that one’s sensitivity to alcohol dictates their likelihood of drinking, Szumlinski said.

“There’s a lot of literature, including lots of human data, that says if you are more sensitive to the intoxicating effects of alcohol, you are less likely to drink,” Szumlinski said. “We see this is in the genetic literature with people who have the various different enzyme mutations. Examples of these sensitivities are demonstrated in, among other reactions, the flushing, headaches or nasal congestion that happens for some people when they consume alcohol.

“This study says you can be incredibly sensitive to the intoxicating effects of alcohol, but that doesn’t necessarily feed back on you the way it should,” she continued. “And, presumably, the ability of that intoxication to signal to your body: ‘Hey, stop drinking,’ is somehow regulated by the BNST. The big questions now are: What is the identity of the neural circuit containing the BNST that allows the brakes to engage and how do ‘bad BNST brakes’ relate to Alcohol Use Disorder in the human condition?”

About this neuroscience research article

Research on this study was conducted also by Tod E. Kippin, Rianne R. Campbell, Racquel D. Domingo, Amy R. Williams, Melissa G. Wroten, Hadley A. McGregor, Ryan S. Waltermire, Daniel I. Greentree, Scott P. Goulding, Andrew B. Thompson, Kaziya M. Lee, Sema G. Quadir, C. Leonardo Jimenez Chavez, Michael A. Coelho and Adam T. Gould at UC Santa Barbara. Georg von Jonquieres and Matthias Klugmann of University of New South Wales; and Paul F. Worley of Johns Hopkins University School of Medicine also contributed research to this study.

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Original Research: Abstract for “Increased alcohol-drinking induced by manipulations of mGlu5 phosphorylation within the bed nucleus of the stria terminalis” by Rianne R. Campbell, Racquel D. Domingo, Amy R. Williams, Melissa G. Wroten, Hadley A. McGregor, Ryan S. Waltermire, Daniel I. Greentree, Scott P. Goulding, Andrew B. Thompson, Kaziya M. Lee, Sema G. Quadir, C. Leonardo Jimenez Chavez, Michael A. Coelho, Adam T. Gould, Georg von Jonquieres, Matthias Klugmann, Paul F. Worley, Tod E. Kippin and Karen K. Szumlinski in *Journal of Neuroscience*. Published February 8 2019. doi:10.1523/JNEUROSCI.1909-18.2018

UC Santa Barbara (2019, February 22). Finding the Elusive Drinking ‘Brake’. *NeuroscienceNews*. Retrieved February 22, 2019 from <http://neurosciencenews.com/drinking-brake-10801/>

Social Threat Learning Influences Decisions

Neuroscience News February 15, 2019

From Judge Ring: Those of us who took drivers education in high school in the 60's will never forget the gruesome car accident films we were required to watch. We knew they were a scare tactic but couldn't take our eyes off of them. Some of us also sat through a victims' impact type program featuring young people who had bad experiences with drinking and driving. Many of you have ordered defendants to attend a VIP as a condition of probation. Did you ever wonder if these programs work or are they just another expensive hoop for them to jump through? I know I did. Now a study released in February 2019 says this type of "social learning" can change behavior.

Summary: Study reveals social learning via oral communication or video can affect human behavior and decision making just as strongly as personal experience. The findings shed light on why people may sometimes make irrational decisions. **Source:** Karolinska Institute.

Learning what is dangerous by watching a video or being told (known as social learning) has just as strong an effect on our decision-making as first-hand experience of danger, researchers at Karolinska Institutet in Sweden report. The results of the study, which is published in the journal PNAS (Proceedings of the National Academy of Sciences), can help to explain why we take irrational decisions.

It is easy nowadays to be exposed to unpleasant and threatening information, with accidents, terrorist attacks and natural disasters appearing, for instance, on TV, digital news sources and social media. Previous research has shown that individuals who have long exposure to news reports of a terrorist attack can develop psychological problems as serious as those afflicting people who experienced it first-hand. However, just how our actual behaviour is affected by such indirect learning of danger has remained unknown.

This has now been laboratory tested in a study conducted by researchers at Karolinska Institutet, University of Amsterdam and University of Zurich. The study shows that threat learning via video or orally can affect human behaviour just as strongly as personal experience.



In the study, three groups of participants, totalling 120 individuals, initially learnt which of two neutral images was "dangerous". The first group learnt through direct experience of an electric shock, the second by watching a film of someone receiving electric shock when looking at the image, and the third by being given oral instructions on which image to associate with an electric shock. In other words, the participants in the social learning groups (observation and oral instruction) suffered no actual physical discomfort.

The participants were then asked to repeatedly choose between the two images. Their choice could result in an electric shock, their task being to receive as few shocks as possible.

For half of the participants, the choice of image that was "dangerous" during the first part of the experiment entailed the highest risk of electric shock. This meant that their previous learning was relevant to their decisions. For the other half, the choice of image that was not "dangerous" in the initial stage entailed the highest risk of shock. This meant

that their previous learning was wrong.

What the researchers found was indirect social learning (watching a film and oral information) had just as strong an effect on the participants' decisions as learning by first-hand experience. Participants who had learnt that a certain image was "dangerous" continued to avoid it, even though their choice resulted more often in an electric shock.

"The study suggests that these social ways of obtaining information can strongly influence our decision-making, even to our own detriment," says lead author Björn Lindström, researcher at Amsterdam University and the Department of Clinical Neuroscience, Karolinska Institute.

"The results can help us understand why people behave irrationally," says research group leader Andreas Olsson, senior lecturer at the Department of Clinical Neuroscience, Karolinska Institutet. "They indicate that it can depend on something we've learnt by watching a video clip or listening to a rumour that's misleading for the environment in which we find ourselves."

The researchers also used computational models to show that the two types of social learning influence behaviour through different learning mechanisms, possibly reflecting differences in underlying brain systems. Brain activity was not measured in the study, however.

About this neuroscience research article

Funding: The study was financed by the Knut and Alice Wallenberg Foundation, the Bank of Sweden Tercentenary Foundation, the European Research Council, the Swedish Research Council for Health, Working Life and Welfare (Forte), the Swedish Research Council and the Swiss National Science Foundation.

Source: [Karolinska Institute](https://www.karolinska.se)

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Image Source: NeuroscienceNews.com image is in the public domain.

Original Research: Open access research for "Social threat learning transfers to decision making in humans" by Björn Lindström, Armita Golkar, Simon Jangard, Philippe N. Tobler, and Andreas Olsson in PNAS. Published February 13 2019.

doi:10.1073/pnas.1810180116

Judging the Judges:

With all due respect, *of course*



By Marcel Strigberger
Posted January 31, 2019
www.abajournal.com

Can judges get nasty and difficult? I have been retired from my litigation practice in Greater Toronto for about two years now. I am therefore in a good position to answer that question with all confidence and security, and above all without fear of repercussions.

What can we say about judges, according to them all fairness and due process? First, they all start off as lawyers, which is a good thing. However, the lawyers expect the judges to remember those days of long stressful hours slugging it out in the trenches and in front of not so nice judges, which is not a good thing. The problem is some judges, not all of course, develop a severe case of “judgitis,” which in short is Greek for “Move over Louis XIV, I’m on the bench now.”

Given their newly acquired judicial wings, this is not totally surprising. They have the power to incarcerate felons, financially enrich or destroy litigants, and even stop presidents and prime ministers in their tracks. I wish to discuss the nature of the position as well as the pet peeves the lawyers endure when the judge takes himself or herself too seriously.

A Superior Court justice once told me

over lunch (yes, judges do eat) after being on the bench a few months that his job was the greatest job without having to work. It’s easy to see why.

First, a judge does not have to look for business. I doubt you’ll ever see a highway billboard reading, “Robbed a bank? Before coming to court, ask for Judge Bill W. Langley. No fees payable.”

Then there is the shipload of respect accorded a judge. In England, judges are addressed as “My Lord.” Barristers will quickly learn to utter the phrase, “Yes, My Lord.” This will be followed by, “Can I continue my argument, Your Lordship?” A female justice is addressed as “My Lady.” You get the picture.

Until a few years ago in Canada, we also used this regal nomenclature, but we found it a bit too pompous, so we switched to “Your Honour.” In the U.S. I guess that would be “Your Honor.” We still like our extra “u” in these parts. I understand as well that some American judges can be addressed as “Judge.” Don’t try that in Canada. The judge will see red, redder than an RCMP tunic.

In Quebec the salutation is even more regal. A high court judge is addressed as “Monseigneurie.” Upon entering the courtroom, you almost expect his or her announcement to be heralded by a platoon of flags and trumpets.

And when judges enter the courtroom, all rise before him. We never get that type of show of respect anywhere, not even when we enter a Walmart.

In addition to the respect they are accorded, members of the judiciary enjoy incredible perks. Here they get eight weeks of vacation per year. How many lawyers do we know who even approximate this figure? More so, how many do we know who even on a one-week vacation don’t interrupt their respite by keeping in touch with their office? A lawyer on the beach shouting orders to his office on a cellphone is as common as a sea shell. But noisier.

Perhaps the greatest perk is the ability to slip up and make wrong decisions. A judge blows it and the appellate court can correct the error. Even then, the judge is accorded

respect as our Notices of Appeal in stating the grounds of appeal will read something like, “1. The learned judge erred in not excluding the psychiatric evidence of Dr. Marvin Berman, who is actually a dermatologist.”

Slip up a couple of times in the business world, and management gives you a pink slip. I doubt the contents of the pink slip contain the word “learned.”

But “judgitis” can get to the judges’ heads and they can get nasty. I have seen judges who are sticklers for the garb the lawyers sport. There was one who insisted that male lawyers appearing before him wore either black or gray pants. If some unsuspecting lawyer appeared in brown pants, Justice X would immediately interrupt him saying, “I can’t hear you.” The poor lout wouldn’t even know the problem was the colour (extra “u” here too) of his pants. He would just crank up his voice a few decibels. Before long, some colleague would whisper to him that it is not his voice that is the pariah, but rather his pants colour Justice X actually used to stand down the case. (I call him him X, as I still fear him and I don’t want to have to apply to the witness protection program.)

Then there is the critic judge, who manages to obliterate the client’s confidence in his lawyer. I witnessed an instance where a newbie lawyer was cross-examining a police officer in a driving under the influence case. The officer never mentioned smelling alcohol on the man’s breath, but sure enough the potential Perry Mason asked the cop that question. The judge, known for his rudeness to lawyers, interrupted saying, “Counsel, you are doing a great job of convicting your client.” He may as well have said, “Honey, I just shrunk your lawyer.”

Many other judges are polite, but over-demanding, forgetting what it was like back in practice. I have experienced time and time again judges who, as they announce the lunch break, will say something like, “Mr. Strigberger, I would like some law on that hearsay issue. I suggest you go to the library

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Sentencing: Where One Size Does Not Fit All

By Judge Neil Edward Axel

The role of the trial judge in the 21st Century has evolved and is significantly different than the role served by our predecessors in the previous century. Generally, judges are called upon to manage caseloads, adjudicate cases, safeguard individual rights, and hold offenders accountable. Today, particularly in cases involving drugs and alcohol, courts are working toward better solutions and better outcomes through evidence-based sentencing practices, in which judges seek additional information to help them make more informed decisions.

Instead of simply making sentencing decisions based upon a plea agreement or the arguments of the prosecution and defense, judges often look for additional information so that they can make a sentencing decision that will not only hold the offender accountable but also help ensure that the offense is not repeated.

One well-known expert in the area of traffic safety, David Wallace, once said, "Every judge understands that with more information about an offender's circumstances, a sentence can be better tailored to the person to ensure he or she doesn't repeat the offense." Essentially, one size does not fit all when it comes to sentencing traffic offenders.

Rehabilitation and treatment of the impaired driving offender has taken a larger role in sentencing than in the previous century, a role that has broad public support according to a 2006 survey conducted by Princeton Survey Research Associates for the National Center for State Courts. In that survey, 77 percent of respondents supported

spending tax dollars on training for offenders instead of prisons, and 66 percent wanted judges to take a leading role in improving the sentencing system.

Evidence-based sentencing practices can include the use of validated risk and needs assessments, individualized treatment plans, DWI Treatment Courts, tailored sentences, and ongoing post-sentencing judicial supervision.

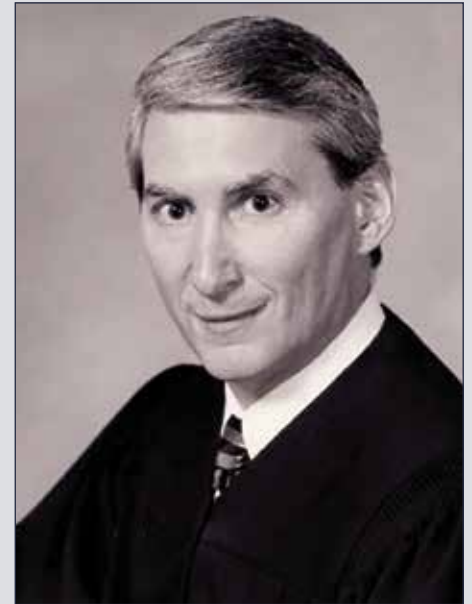
The trial judge of the 21st century now has the support and tools to address the particular addiction and dependency issues that bring so many offenders before our courts. Courts must use these resources, seek out additional resources, and use individual sentences.

Research has demonstrated that the use of evidence-based sentencing practices improves outcomes, changes behavior, and reduces recidivism. As noted by the Supreme Judicial Court of Massachusetts in the case of *Commonwealth v. Eldred*, 480 Mass. 90 (2018):

This individualized approach in probation fosters an environment that enables and encourages recovery, while recognizing that relapse is part of recovery.

The success of probation as a correctional tool depends on judges having the flexibility at sentencing to tailor probation conditions to the circumstances of the individual defendant and the crime that he [or she] committed.

Judge Axel has served on the District Court of Maryland for 21 years, and currently sits as a Senior Judge throughout the state. He is the American Bar Association Judicial Fellow for traffic safety issues.



"Today, courts are working toward better solutions and better outcomes through evidence-based sentencing."

Save the Date

July 19, 2019

Oklahoma Summer Judicial Conference

10 a.m. - Noon

Watch for registration information coming soon from the AOC.

Scientific, Technical and Legal Aspects of Breath and Blood Testing in Impaired Driving

Presented by: State of Oklahoma Board of Tests for Alcohol and Drug Influence
Kevin Behrens, JD, *Director*
Joshua Smith, *Breath Alcohol Testing Program Administrator*
Vince Barnard, *Training Program Administrator*

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and find a few cases.” This judge no doubt ascribes to a scientific theory that lawyers don’t have to eat. At least he does not add insult to injury by adding the phrase “bon appetit.” That judge who had a problem with the brown pants might.

Another pet peeve is those judges who don’t respect our time. I am not only talking about the judges who start court late. I am referring to the judges who have no concept of case time management. The court docket list will be cluttered with motions. There is only time to deal with maybe four or five,

but the judge will not excuse the lawyers in numbers six to 11, forcing them to hang around. Either the judge doesn’t care, or he or she is a strong believer in magic. It wreaks havoc for your day when your case lands into the hands of Judge Houdini.

I hope some judges read this missive and perhaps identify with some of the revelations and make life easier for the members of the bar. If this applies to you, please be considerate, Your Honour, My Lord, Judge or however you wish that I address you.

Marcel Strigberger, after 40-plus years of practicing civil litigation, closed his law office and decided to continue to pursue his writing and speaking passions.

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