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ROSTER

**NHTSA IN-STATE:  
TENNESSEE –  
DRUGGED DRIVING**

February 28, 2017  
Nashville, TN



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## **NHTSA In-State - Tennessee**

**February 28, 2017 — February 28, 2017**

**Nashville, Tennessee**

### **Faculty**

Peggy Fulton Hora  
Judge (Retired)  
Walnut Creek, CA 94536  
peggyhora@sbcglobal.net



## **NHTSA In-State - Tennessee**

**February 28, 2017 — February 28, 2017**

**Nashville, Tennessee**

**Faculty Biographies**

### **HONORABLE PEGGY FULTON HORA**

Judge Peggy Fulton Hora retired from the California Superior Court after serving 21 years. She had a criminal assignment that included presiding over the Drug Treatment Court. She is a former dean of the B.E. Witkin Judicial College of California and has been on the faculty of the National Judicial College for almost 25 years. Judge Hora is a Senior Judicial Fellow for the National Drug Court Institute and the Global Centre for Drug Treatment Courts. Judge Hora is a global leader in the solution-focused courts movement and has written comprehensively on justice issues. The appellate court and over 100 journals and law reviews have cited her work. She was a 2009-2010 Thinker in Residence appointed by the Premier of South Australia to study and make recommendations on the Australian justice system. She was a visiting scholar at the University of Tasmania School of Law. Her international work includes speaking at conferences worldwide and hands-on training on drug courts in Israel, the United Kingdom, Argentina, Pakistan, Chile, Japan, The Netherlands, Australia and New Zealand. She is a recipient of the Bernard S. Jefferson Judicial Education Award from the California Judges' Association and winner of the Rose Bird Award from California Women Lawyers. She was honored as Woman of the Year by the California legislature. Judge Hora is an alumna of The National Judicial College and joined its faculty in 1993.



## **NHTSA In-State: Tennessee**

**February 28, 2017 — February 28, 2017**  
**Nashville, TN**  
**Staff Biographies**

### **HONORABLE CHAD C. SCHMUCKER, PRESIDENT**

Judge Chad C. Schmucker became the eighth president of The National Judicial College on January 1, 2014. He received his bachelor's degree from the University of Michigan and Juris Doctor from Wayne State University Law School. After graduation from law school, he entered into private practice specializing in personal injury and insurance defense litigation. In 1991, he became a circuit court judge in Michigan. During his 20-year tenure, he assisted in starting four problem-solving courts in Jackson, including felony drugs/alcohol, domestic violence, family dependency, and mental health. As Michigan's state court administrator, he oversaw management of the state's 246 trial courts, implemented a Michigan version of trial court performance measures, and developed a plan for court governance to promote cooperation and efficiency among courts. Judge Schmucker co-chaired the *Council of State Court Administrators/Council of Chief Justices Problem Solving Court Committee*. He was on the Steering Committee of Jackson County New Jail Project from 2002-2003 and on the Executive Board of the Michigan Judges Association where he chaired the Technology Committee from 1998-2001. Judge Schmucker served on the Department of Corrections—Evidence Based Sentencing/COMPAS Committee in 2010, Justice Young's Technology Committee from 2000-2010, Justice Corrigan's Underground Economy Child Committee from 2008-2010, the Criminal Justice Information Systems Advisory Board from 2002-2006, and the Michigan Judicial Institute Education Advisory Board from 2000-2002.

### **JOY D. LYNAR, ESQ., CHIEF ACADEMIC OFFICER**

Joy D. Lyngar joined The National Judicial College as academic director in October 2007 and was promoted to chief academic officer in June 2008. Before joining the NJC, Ms. Lyngar spent 10 years specializing in judicial education at the National Council of Juvenile and Family Court Judges. She most recently served as director of the Juvenile and Family Law Department where she implemented training programs for judicial and multi-disciplinary audiences ranging from 20–1500 participants on topics such as ethics, evidence, juvenile delinquency, and domestic relations. She served as project director for numerous federal grants to produce educational resources for judges and other court service professionals, and to provide direct technical assistance to improve court practice. Prior to her work in national judicial education, Ms. Lyngar practiced law in Canada working in a general practice firm that handled criminal defense, civil litigation, and family law. Ms. Lyngar received her bachelor's degree and Juris Doctor from the University of Saskatchewan. She has given presentations for the National Child Support Enforcement Association, the National Conference on Juvenile Justice, the Association of Family and Conciliation Courts, and the National Juvenile Defender Center. Ms. Lyngar is a member of the National Association of Women Judges, the Association of Family and Conciliation Courts, the National Association of State Judicial Educators, the Association of Fundraising Professionals, and the Professional Association of Diving Instructors.

## **NHTSA In-State: Tennessee**

**February 28, 2017 — February 28, 2017**  
**Nashville, TN**  
**Staff Biographies**

**KATHERYN YETTER, J.D., ACADEMIC DIRECTOR**

Katheryn Yetter became academic director for The National Judicial College in July 2012. Before joining the NJC, she was senior attorney for the National Council of Juvenile and Family Court Judges. In this capacity, she managed the day-to-day operations of over \$1M in federally grant-funded projects designed to improve the justice system's response to child protection, custody, and visitation-related matters. Ms. Yetter was also a policy analyst for the Oregon Judicial Department in the areas of juvenile, criminal, and family law, providing staff support to the State Family Advisory Committee Subcommittee on Domestic Violence and the Juvenile Court Improvement Project Advisory Committee. Ms. Yetter co-authored the publication "A Judicial Guide to Child Safety in Custody Cases," the first national comprehensive tool for judicial decision making in custody and visitation cases when domestic violence is a factor. Some of her other publications include "Moving Beyond 'Failure to Protect'" in West Virginia (2010), "Judicial Decision Making in Custody and Visitation Cases" (2008), "Responding to Allegations of Parental Alienation Syndrome" (2008), and "Data Warehouse 'JOIN's' Oregon's Court and Agency Systems" (2006). She has written curricula and given presentations on behalf of the National Center for State Courts, the California Administrative Office of Courts, the Oregon Judicial Department, the Nevada Bar Association, the Battered Women's Justice Project, and Futures Without Violence, among others. She is a member of the Oregon State Bar and the American Bar Association, and is a graduate of Willamette University College of Law and the University of Oregon.





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AT THE NATIONAL JUDICIAL COLLEGE

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# Acknowledgement

This course was made possible under a grant from the **National Highway Traffic Safety Administration (NHTSA)**. Points of view herein are those of the instructors and do not necessarily represent the official position or policies of the National Highway Traffic Safety Administration. The National Judicial College is most grateful for this expression of support for judicial education and the improvement of justice in our country.



## FACULTY & COURSE EVALUATIONS

***NHTSA IN-STATE: TENNESSEE***

**FEBRUARY 28, 2017**

**NASHVILLE, TN**

Your views about the sessions in which you have participated will materially assist us in improving future programs. Please rate each of the following statements by selecting the numerical value that best reflects your opinion relating to each statement. Your answers will be kept confidential and used by The National Judicial College for academic purposes only.

-- Joy Lyngar, Chief Academic Officer

### EVALUATE THE INDIVIDUAL PRESENTATIONS

***HON. PEGGY FULTON HORA***

#### 1. DRUGGED DRIVING

	Strongly Disagree			Neutral			Strongly Agree	
The presenter demonstrated expert knowledge of the subject matter or skill.	①	②	③	④	⑤	⑥	⑦	
The presenter was effective, clear, and enthusiastic.	①	②	③	④	⑤	⑥	⑦	
The presenter's methods of presentation held my interest.	①	②	③	④	⑤	⑥	⑦	
The presenter managed class time well.	①	②	③	④	⑤	⑥	⑦	
The instructional materials were beneficial in learning the topic.	①	②	③	④	⑤	⑥	⑦	
	Low						High	
<b>Overall Faculty Score</b>	①	②	③	④	⑤	⑥	⑦	

**Comments:**

## **FACULTY & COURSE EVALUATIONS**

***NHTSA IN-STATE: TENNESSEE***

**FEBRUARY 28, 2017**

**NASHVILLE, TN**

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## FACULTY & COURSE EVALUATIONS

***NHTSA IN-STATE: TENNESSEE***

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### EVALUATE THE COURSE

	Strongly Disagree		Neutral			Strongly Agree
<b>1. Overall the course was a worthwhile learning experience.</b>	①	②	③	④	⑤	⑥ ⑦
<b>Comments:</b>						
	Strongly Disagree		Neutral			Strongly Agree
<b>2. The information or skills presented met my needs.</b>	①	②	③	④	⑤	⑥ ⑦
<b>3. The length of the course was appropriate.</b>	①	②	③	④	⑤	⑥ ⑦
<b>4. The format of the course was conducive to learning.</b>	①	②	③	④	⑤	⑥ ⑦
<b>5. The environment was conducive to learning.</b>	①	②	③	④	⑤	⑥ ⑦

## FACULTY & COURSE EVALUATIONS

***NHTSA IN-STATE: TENNESSEE***

**FEBRUARY 28, 2017**

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**6. What do you consider to be the most important thing(s) you learned from the course?**

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**7. Evaluate the COURSE OBJECTIVES as to how successfully they were accomplished.**

**After this course you should be able to:**

	*Strongly Disagree		Neutral			Strongly Agree	
Objective 1 – Articulate the effects drugs have on driving.	①	②	③	④	⑤	⑥	⑦
Objective 2 – Describe the emerging trends with regard to new drugs.	①	②	③	④	⑤	⑥	⑦
Objective 3 – Anticipate problems in court proceedings.	①	②	③	④	⑤	⑥	⑦
Objective 4 – Rule on unique legal issues in drugged driving cases.	①	②	③	④	⑤	⑥	⑦

\*If you indicated that you *disagree* or *strongly disagree* with any of the above objective statements, please use the space provided below to explain your response(s):

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**8. Please indicate any topics which should be:**

## FACULTY & COURSE EVALUATIONS

***NHTSA IN-STATE: TENNESSEE***

**FEBRUARY 28, 2017**

**NASHVILLE, TN**

Added	◆
	◆
	◆
Lengthened	◆
	◆
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Shortened	◆
	◆
	◆
Deleted	◆
	◆
	◆

**Comments:**

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9. NJC constantly endeavors to promote equality and impartiality in our courses. Please check the appropriate box below. Diversity issues (e.g., gender, race, culture, sexual orientation, religion, disability) were:

## FACULTY & COURSE EVALUATIONS

***NHTSA IN-STATE: TENNESSEE***

**FEBRUARY 28, 2017**

**NASHVILLE, TN**

- ☐ Not relevant to topics
- ☐ Relevant to topics and addressed adequately
- ☐ Relevant to topics but not addressed adequately

**Comments:**

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**10.** *We like to include NJC participants' actual words in our promotional materials. Please provide your full name if you allow permission for the NJC to use your comments.*

**Would you allow us to use your comments with your name in our NJC literature?**

☐ Yes ☐ No

**Name** (please print): \_\_\_\_\_



## FACULTY & COURSE EVALUATIONS

***NHTSA IN-STATE: TENNESSEE***

**FEBRUARY 28, 2017**

**NASHVILLE, TN**

### ABOUT THE NATIONAL JUDICIAL COLLEGE

1. Please comment on the professionalism and courtesy of *The National Judicial College* staff (not faculty) with whom you had contact.

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2. Are there any courses or publications you would like NJC to offer?

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# THE NATIONAL JUDICIAL COLLEGE

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## DRUGGED DRIVING

## DIVIDER 1

Hon. Peggy Fulton Hora

### OBJECTIVES:

After this session you will be able to:

1. Articulate the effects drugs have on driving;
2. Describe the emerging trends with regard to new drugs;
3. Anticipate problems in court proceedings; and
4. Rule on unique legal issues in drugged driving cases.

### REQUIRED READING:

### PAGE

1. Peggy Fulton Hora, *Drugged Driving* (February 2017) [NJC PowerPoint] .....1



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DRUGGED DRIVING

Hon. Peggy Fulton Hora  
Judge of the Superior Court of  
California (Ret.)

Tennessee Mid-Winter General Sessions  
Judges Conference  
Feb. 28, 2017



THE NATIONAL  
JUDICIAL COLLEGE

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I'll have a  
Café-Mocha-  
Vodka-Valium-  
Latte to go,  
please.

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## LEARNING OBJECTIVES

At the conclusion of this session, you will be able to:

- ❖ Articulate the effects drugs have on driving;
- ❖ Describe the emerging trends with regard to new drugs;
- ❖ Anticipate problems in court proceedings; and,
- ❖ Rule on unique legal issues in drugged driving cases.

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## IN A NUTSHELL

- 22.5% test positive for drugs weekend nights; 22.4% weekend days
- Of those tested, about 40% of people fatally injured tested positive for drugs other than alcohol



NHTSA Roadside Survey  
2013-14/FARS 2014

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## SELF-REPORTED BEHAVIOR – THE NATIONAL SURVEY ON DRUG USE AND HEALTH (NSDUH) (2014)

- 11.1% reported they drove after drinking alcohol (down from 15.3% in 2002)
- 18.9% of 21-25-year-olds reported they drove after drinking (down from 29.9% in 2002 – sharpest decline)
- 27.7 million Americans age 16 or older reported they drove after drinking alcohol
- 10.1 million Americans reported they drove after taking drugs
- 5.9 million they drove after taking a combination of drugs and alcohol

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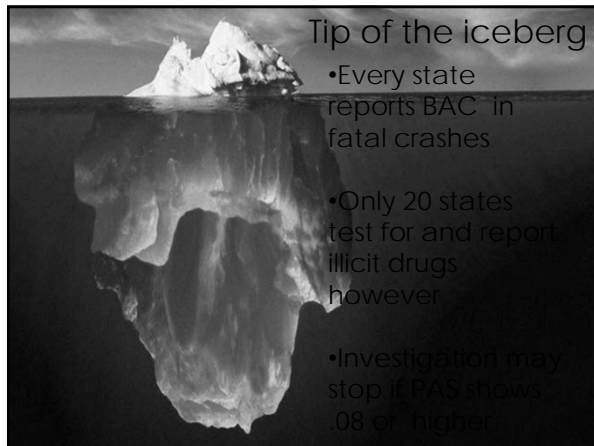
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### Tip of the iceberg

- Every state reports BAC in fatal crashes
- Only 20 states test for and report illicit drugs however
- Investigation may stop if PAS shows .08 or higher

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### DATA: PROBLEM SIZE AND CHARACTERISTICS

- **FARS 2015, dead drivers, known test results**
  - 41% with drugs; just under 1/3 of these were marijuana
  - 31% with alcohol (any BAC)
- **NHTSA roadside survey 2013-14**
  - 22.5% with drugs weekend days; 22.4% weekend nights
  - 13% with marijuana on weekend nights
  - 8% with alcohol on weekend nights; 1.5% with BAC .08 or above
- **Self-Report Survey (NSDUH)**
  - About 20% of young adults age 18-25 and about 6% of adults age 26+ use illegal drugs or marijuana at least monthly
- **Needed: good data on drug involvement in crashes**

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### EMERGING DRUG TRENDS

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## “N-BOMB”

- Synthetic hallucinogens (25I-NBOMe, 25C-NBOMe, and 25B-NBOMe)
- Legal substitutes for LSD or mescaline but stronger
- Also called “legal acid,” “smiles,” or “25I”
- Powders, liquids, soaked into blotter paper (like LSD) or laced on something edible
- Can cause seizures, heart attack or arrested breathing, and death

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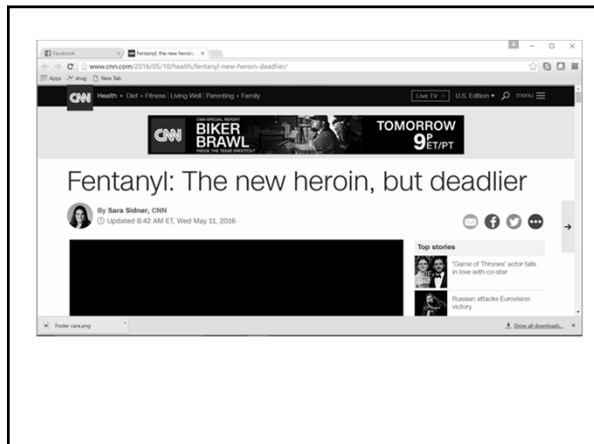
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### WHAT IS PINK?

- U-47700 is a synthetic opioid 700% more potent than heroin
- Schedule I in Nov. 2016

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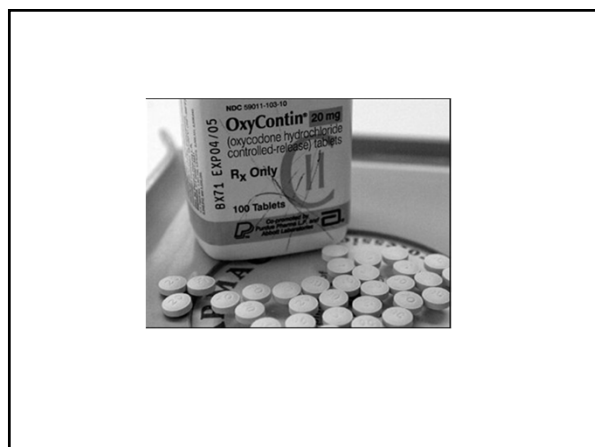
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## Drug enforcement agencies, health pros see increased use of heroin

By Emma Wittman  
ewittman@gainesvilletimes.com  
POSTED: December 7, 2013 11:47 p.m.



**SAFETYVILLE** Jose Galaviz holds his graduation certificate from Hall County Drug Court 10 years ago. It hangs on his apartment wall with evidence of his other successes. Galaviz now counsels addicts and teaches defensive driving.

**View Larger**

View More » 123

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Heroin arrests by the M... Agency Marijuana

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## HOW DRUGS AFFECT DRIVING

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### PRESENCE OF A DRUG ≠ IMPAIRMENT

- Some drugs or metabolites may remain in the body for days or weeks after initial impairment has dissipated.
- Individuals differ considerably in the rate of absorption, distribution, action, and elimination of drugs.
- Some people are more sensitive to the effects of drugs, particularly first-time or infrequent users.
- Wide ranges of drug concentrations in different individuals produce similar levels of impairment in experimental situations.

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### BEHAVIORAL DOMAINS RELEVANT TO DRIVING

1. Alertness and arousal
2. Attention and processing speed
3. Reaction time and psychomotor functions
4. Sensory-perceptual functions
5. Executive functions

NHTSA (2009)

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## HOW DOES MJ AFFECT DRIVING?



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## MORE TEENS DRIVING AFTER USING MARIJUANA

- 34.9% of 12<sup>th</sup> graders had used marijuana during the year prior to the survey
- 28% of high school seniors said they had ridden in a car in the previous two weeks with a driver who had used drugs or alcohol, or said they had driven after using drugs or alcohol themselves

Monitoring the Future 2015

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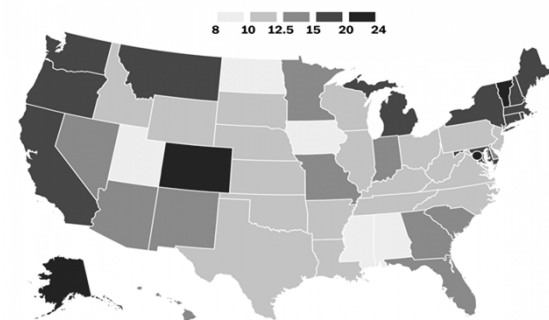
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## Marijuana nation 2016

% of residents age 12 or older using marijuana in the past year



WAPO.ST/WONKBLOG

Source: National Survey on Drug Use and Health

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## SCIENCE: MARIJUANA AND DRIVING

### • Marijuana and impairment

- Marijuana impairs motor skills and cognitive functions including vigilance, distance perception, coordination, divided attention, and reaction time – in experimental studies.

### • Marijuana and crash risk

- Studies show increase in crash risk anywhere from 0% to 200%.
- No scientific consensus.

### • Measuring marijuana in the body

- THC concentrations drop to 20% of peak 30 minutes after smoking, while impairment lasts for hours.
- Marijuana metabolites can be detected weeks after smoking.
- Contrast with alcohol: BAC  $\approx$  impairment  $\approx$  crash risk.

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## PROBLEM WITH TESTING FOR MARIJUANA

- THC is fat soluble and moves from blood to brain.
- Can still be in brain after gone from blood
- THC clears blood in a couple of hours for naïve users but they can still be high
- Heavy smokers may have constant moderate level in blood even when not high

Marilyn Huestis, NIDA

Chen, Angus, "Why is it so Hard to Test Whether Drivers are Stoned?," NPR (Feb. 9, 2016)

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## Ethanol in the Body

### Absorption phase:

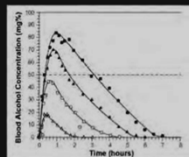
- Peak levels are reached in about 30 - 60 minutes.
- Absorption is delayed by food in the stomach.

### Distribution phase:

- Rapid: ~30 - 60 minutes
- Water soluble

### Metabolism/Elimination rates:

- Relatively constant
  - (0.015 % hr<sup>-1</sup>)
- Faster for experienced drinkers
  - (0.020 % hr<sup>-1</sup>)



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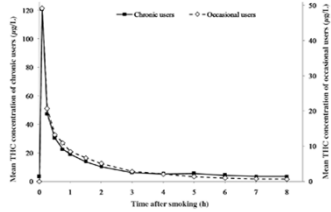
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## THC DISSIPATION



Comparison of Cannabinoid Pharmacokinetic Properties in Occasional and Heavy Users Smoking a Marijuana or Placebo (Jardines et al., 2008).<sup>1</sup> (Adapted from G. Berman, et al., 2008; J. Berman, et al., 2008; J. Berman, et al., 2008; J. Berman, et al., 2008)

## MARIJUANA STUDIES, CONT.

A meta-analysis of approximately 60 experimental studies—including laboratory, driving simulator, and on-road experiments—found that **behavioral and cognitive skills** related to driving performance were impaired with increasing THC blood levels

<sup>1</sup>Drugged driving, NIDA Infocasts, (2010)



## MARIJUANA STUDIES, CONT.

- Evidence from both real and simulated driving studies indicates that marijuana can negatively affect a driver's attentiveness, perception of time and speed, and ability to draw on information obtained from past experiences

\* Drugged driving," NIDA Infofacts, (2010)

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## MARIJUANA STUDIES, CONT.

- Research shows that impairment increases significantly when marijuana use is combined with alcohol
- Studies have found that many drivers who test positive for alcohol also test positive for THC, making it clear that drinking and drugged driving are often linked behaviors

\* Drugged driving," NIDA Infofacts, (2010)

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$$1 + 1 = 3$$



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### MARIJUANA STUDIES, CONT.

- A study of over 3,000 fatally injured drivers showed that when marijuana was present in the blood of the driver, he or she was much more likely to be at fault for the accident.
- The higher the THC concentration, the more likely the driver was to be culpable

\*Drugged driving,\* NIDA Infofacts, (2010)

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### MARIJUANA STUDIES, CONT.

- Driving after smoking marijuana almost doubles the risk of being in a serious or fatal crash.
- NIDA says an easy-to-use roadside saliva test that can determine recent marijuana use — as opposed to long-ago pot use — is in final testing stages and will be ready for police use soon.
- 16 states have a statute that permits roadside saliva testing. Already in use in Victoria, Australia and other locations.

\*Stoned driving epidemic puts wrinkle in Marijuana debate,\* AP (Mar. 18, 2012)

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### MARIJUANA STUDIES, CONT.

- Eight of the nine studies found drivers who use marijuana are significantly more likely than people who don't use marijuana to be involved in motor vehicle crashes.
- MJ users more than 2X more likely to be involved in a crash
- "Marijuana Use By Drivers Linked With Increased Risk of Motor Vehicle Crashes," Join Together, Oct. 7, 2011

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### "RECENT USE"?

- A recent study found that among chronic cannabis users, performance on driving related tasks was affected as much as three weeks after drug use was stopped.

Psychomotor Function in Chronic Daily Cannabis Smokers during Sustained Abstinence  
(2013) Wendy M. Bosker, Erin L. Karschner, Dayong Lee, Robert S. Goodwin, Jussi Hirvonen,  
Robert B. Innis, Eef L. Theunissen, Kim P. C. Kuypers, Marilyn A. Huestis, Johannes G.  
Ramaekers. PLOS ONE 10.1371/journal.pone.0053127

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### TRUE OR FALSE?

- Marijuana is the most common illicit drug in DWID cases.
- TRUE

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## THE FUTURE IN THE TRUMP ERA



Attorney General nominee Jeff Sessions

"Good people don't smoke marijuana."

La Franiere, Sharon and Matt Apuzzo, "Bonding by Bucking the Establishment," *The New York Times* (Jan. 9, 2017), p. 1

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### 1. WHAT DO YOU THINK?

Does it make a difference whether MJ is "prescribed," i.e., "medical" in a DWID case?

- a. Yes      b. No

What about federal law?

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### 2. WHAT DO YOU THINK?

Is there any legal difference between driving impairment caused by alcohol verses marijuana?

- a. Yes      b. No

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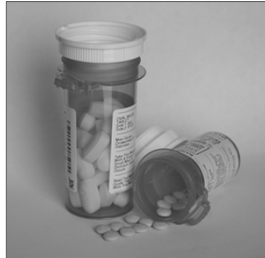
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## RX AND O-T-C DRUGS

- Driving impairment can also be caused by prescription and over-the-counter drugs



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## DRUGGED DRIVING

- Illicit use of Rx pain medication is second only to marijuana as the most commonly used illicit drug on a college campus now.
- Young women were more likely than young men to use Rx medication but young men were more likely to divert their prescriptions to contemporaries.



McCabe, SE, *et al.*, "Illicit use of prescription pain medication among college students," *Drug and Alcohol Dependence*, 77:37-47, 2005

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## 3. WHAT DO YOU THINK?

A person impaired by Xanax (Alprazolam) will appear similar to one intoxicated by alcohol?

True

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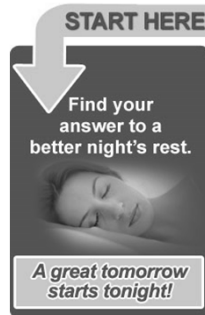
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## "SLEEP AIDS"

Nearly 3 in 10 American women use some kind of sleep aid at least a few nights a week according to the National Sleep Foundation



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## ANTIDEPRESSANTS

ABILIFY, CYMBALTA, ELAVIL, PAXIL, ZOLOFT

- Use up 400% in two decades
- 11% of people over 23 are using
- Third most common drug for 18-44 year olds

Pratt, Laura A., et al., "Antidepressant Use in Persons Aged 12 and Over in the United States, 2005-2008," NCHS Data Brief No. 76 (Oct. 2011)

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#### 4. WHAT DO YOU THINK?

"Drug" determines attitudes

Is there an attitudinal difference (by the judge or the jury) between driving impaired by prescribed medication vs. methamphetamine?

- a. Yes      b. No

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#### "DO NOT OPERATE HEAVY EQUIPMENT"



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- "I'll be dead — and so will lots of other people — from old age, before we know the impairment levels [for marijuana and other drugs]."
- Gil Kerlikowske

"Stoned driving epidemic puts wrinkle in Marijuana debate," Associated Press (Mar. 19, 2010)



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## UNIQUE LEGAL ISSUES

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## TABLE EXERCISE



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## DISCUSS THE FOLLOWING:

1. What's different between "drunk" driving, drugged driving or a combo in terms of case management?
2. How might alcohol impaired driving and drugged driving witnesses be different?
3. Will jury voir dire be different?
4. Draft conditions of OR/bond release in a drugged driving case that are different from an alcohol impaired driving case.
5. Note any treatment differences you may want to order.

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### INITIAL STOP

- What are the signs of impairment?
- Use of horizontal gaze nystagmus (HGN)?
- Physical evidence, e.g., open container, joint in ashtray

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### ODOR OF MARIJUANA

- *People v. Allen*, 873 N.E.2d 30 (2007) – Where Arresting officer claimed defendant had breath which smelled like burnt cannabis, but stated it was impossible to tell whether defendant had any amount of cannabis in his breath or blood, and only other evidence was the admission that driver had smoked cannabis the night before, evidence was not sufficient to convict. Statute does not criminalize having breath that smelled like burnt cannabis. State needed some evidence that defendant had at least some cannabis in his breath, urine, or blood.

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### OPPOSITE CONCLUSION

- *People v. Briseno*, 799 N.E.2d 359 (2003) -- Evidence is sufficient to support conviction for DUI of cannabis if police officer detected odor of cannabis on defendant's breath and in defendant's car, and defendant admitted smoking cannabis before operating his motor vehicle.

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### AND YET ANOTHER

- *PEOPLE v. DIAZ* (June 30, 2011)

- Where arresting officer smelled strong odor of cannabis on defendant's breath shortly after defendant's vehicle was stopped at a traffic safety check and defendant admitted to having smoked cannabis several hours earlier, there was sufficient evidence to find defendant guilty of driving a vehicle while there was any amount of cannabis in his breath.

• This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 239(e)(1)

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### LAW AND MOTION/PRE-TRIAL/ VOIR DIRE

- Suppression issues
- Motions in limine
- Voir dire issues (reluctance with marijuana; prejudice about other illicit drugs?)

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### JURY ATTITUDE

- Might the drug effect the verdict?
- Methamphetamine, heroin, marijuana vs. O-T-C drugs?
- "The CSI effect" – How much science does a jury want to convict?

See: *Court Review* Vol. 47, No. 1-2 (2011)

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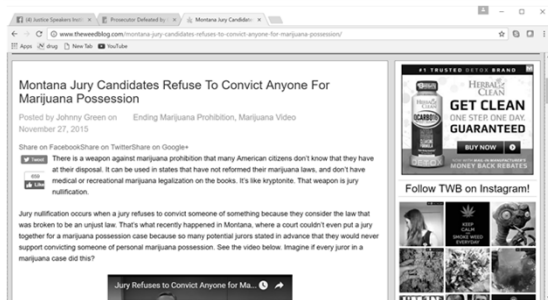
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## JURY NULLIFICATION



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## ADMISSIBILITY

- Daubert /Frye scientific validity of test or device utilized. (HGN,U/A or other testing device)
- SFSTs in drug cases
  - 1) Australian study: SFSTs may be "moderately accurate for marijuana"
  - 2) "Mildly sensitive" to impairment from cannabis
  - 3) 4 SFSTs have 96.7% accuracy rate in predicting THC impairment (300+ individuals in each arm) Huestis, NIDA

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## EXPERT WITNESS

- *People v. Shelton*, 708 N.E.2d 815 (1999) – In order for police officer's opinion testimony regarding drug impairment to be admissible, the officer must have more than "limited training" in detecting drug use.

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### LAY WITNESS

- May a lay witness with sufficient “experience” testify as to whether or not D was “loaded” on marijuana?



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### EXPERT TESTIMONY

- *Commonwealth v. Griffith* 613 Pa. 171 (2011): Expert testimony is not mandatory in all prosecutions for driving under the influence of a drug to prove that amount of a controlled substance found in a defendant’s blood or urine caused the driving impairment, even if drug is a prescription drug or a combination of drugs.

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### OHIO SUPREME COURT

- The testimony of an experienced police officer that a defendant appeared to be under the influence of pain medication can support an operating a vehicle under the influence (OVI) conviction.
- The officer’s experience is sufficient to prove impaired driving when the effects of the drug – in this instance hydrocodone – are sufficiently well-known
- Officer was not qualified as an expert
- *State v. Richardson*, Slip Op.No.2016-Ohio-8448

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## TERMS OF PROBATION

## SCREENING/ASSESSMENT DWI

- **Alcohol and Other Drug Screening**
  - New assessment tools:
    - CARS: Computerized Assessment and Referral System** Cambridge Health Alliance
    - IDA: Impaired Driving Assessment**  
American Probation and Parole Association
- **RANT (DWI)** Treatment Research Institute, Philadelphia PA

## TREAT ALCOHOL AND OTHER DRUGS DIFFERENTLY?

- DWI alcohol and DWI drugs
- Separate tracks in DWI Court?
- Different conditions of probation?
- Different treatment tracks?
- Attitude differences between alcohol, illicit drugs and OTC or prescription medication?

### 5. WHAT DO YOU THINK?

What are we sentencing?

- a. Alcohol or other drug use
- b. Impaired driving

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### \$64,000 QUESTION

- Do we want to stop the drinking?
- Do we want to stop the drug use?
- Do we want to stop the driving?
- Do we only want to stop the driving while impaired?
  
- Different strategies apply to each.

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NATIONAL JUDICIAL COLLEGE  
WWW.JUDGES.ORG



May 8 – 11, 2017

Impaired Driving Case Essentials

May 17 – 19, 2017

Drugs in America Today: What Every Judge Needs to Know

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## NOTES:

[illegible]



## NOTES:

[illegible]



## NOTES:

[illegible]



## NOTES:

This image shows a full page of blank, lined paper. It features approximately 20 evenly spaced horizontal black lines across its entire width, providing a guide for handwriting or typing. The paper itself is a clean, off-white color.



## NOTES:

This image shows a full page of blank white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page, providing a guide for writing. There are no margins, text, or other markings on the paper.





## NOTES:

[illegible]



## NOTES:

[illegible]



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