

Arizona Attorneys for Criminal Justice

presents

The Twenty-First Annual Seminar on Aggressive Defense of the Accused Impaired Driver

PROVING INNOCENCE: THE DEFENSE'S NEW BURDEN

This is the one seminar not to be missed!!

Every year, legislators miss no opportunity to align with law enforcement and "get tough" on DUI with significant new bills that increase the penalties faced by an accused and infringe upon the rights of all Arizona citizens. This year promises to be the worst one yet. The Police continue to be unregulated blood collectors with tacit approval of the courts. The Supreme Court's goal of expedited processing of DUI cases will be implemented by all lower courts. This has and will continue to result in changes to the criminal rules as they pertain to DUI cases. There is an increasing reliance on machine readings as proof beyond reproach, leaving the defense with the burden of proving the client innocent or taking a conviction. The consequence of these changes amounts to an all-out assault on our most prized constitutional protections. As a defense attorney, you are the last hope for one accused of a criminal offense allegedly involving the use of alcohol and or drugs and driving. It is now more important than ever for the defense bar to be prepared to face these new, police-biased areas of law. This seminar will concentrate on successful approaches, some new, some tried and true, to confront the onslaught of guilt biased legislation and procedures. It will be focused and filled with extremely useful presentations by some of the best lawyers and experts in the country.

May 2-3, 2008

***Marriott University Park Hotel
Tucson, Arizona***

Seminar Co-chairs:
Stephen Paul Barnard
Michael J. Bloom

This seminar has been approved by the National College of DUI Defense (NCDD)

PROGRAM SCHEDULE

Friday, May 2

- 7:30 - 8:15 a.m. Seminar Check-in and Continental Breakfast
- 8:15 - 8:30 **OPENING REMARKS**.....Stephen Paul Barnard, Michael J. Bloom
- 8:30 - 10:30 **LEGISLATION, CASES and RULES:**
- The Legislature: At it Again?**
The toughest laws in the country, tourism be damned.....**Gary Kula**
- 2008 New Case Review**.....**Clifford Girard**
- But It's My First Offense!**
Statutory & Collateral Consequences.....**Dan Furlong**
- 10:30-10:45 Break
- 10:45 - 11:45 **THE SOURCE CODE CRISES****James Nesci**
- 11:45 - 1:00 p.m. Lunch *On Your Own*
- 1:00 - 2:15 **BLOOD, BREATH AND OTHER BODILY SUBSTANCES**
You think things are bad now? Look what's coming**A.W. Jones**
Linkoping, Sweden
- 2:15 - 2:30 Break
- 2:30 - 4:00 **BLOOD TESTS** *So Easy Even a Cave Man Can Do It*
.....**Joseph St. Louis, Chester Flaxmayer**
- 4:00 - 5:00 **THE ULTIMATE TRIAL TACTIC** *Pre-Trial Interviews*
.....**Michael J. Bloom**
- 5:00 - 6:30 **COCKTAIL RECEPTION** *Meet the faculty*

Saturday, May 3

- 7:30 - 8:15 a.m. Continental Breakfast
- 8: 15 - 9:15 **PRE TRIAL MOTIONS** *You Can't Win Without Them*
.....**Stephen Paul Barnard**
- 9:15 - 10:15 **FIELD SOBRIETY** *Making Roadside Gyration Work in Your Favor*
.....**Steve Jones; Boston, MA**
- 10:15 - 10:30 Break
- 10:30 - 11:30 **THE RIGHT WAY TO CLOSE** *PowerPoint for Power Points*
..... **Melanie Beauchamp**
- 11:30 - 12:30 **WHEN A DUI IS IN THE BIG COURT** *From Child Abuse to 2nd Degree*
..... **Stephen Paul Barnard, Steve Jones, Joseph St. Louis**

Total CLE hours: 10.75

Speakers and speaker times are subject to change.
The final agenda will be in your seminar packet at the seminar registration table.

Arizona Attorneys for Criminal Justice
21st Annual Aggressive Defense of the Accused Impaired Driver
Tucson Marriott University Park Hotel
May 2-3, 2008

Poised at the main gate of the University of Arizona, Marriott University Park is the ideal hotel for business or pleasure. Tucson's vibrant social and cultural neighborhood with over 30 restaurants and shopping is just steps from the front door.

Deadline for the AACJ Hotel Group Rate is Friday, April 11.

AACJ Group Rate: \$124 single/double	Hotel Reservations:	888-236-2427 or 520-792-4100
\$179 suite	Hotel Address:	880 E. Second Street, Tucson
Group Code: AACAACA	Web:	www.marriott.com

To qualify for the Standard Registration Rate, full payment must be received in AACJ's office by **Wednesday, April 16.**

Due to space limitations, we strongly recommend registering early. **No refunds after Friday, April 25.**

Seminar Registration Fees

	Standard Registration (through 4/16/08)	Late Registration (after 4/16/08)
AACJ Members: Private Practice, including Contract Attorney	\$250	\$320
AACJ Members: Public Defender, Allied Professional	\$200	\$270
Non-Members: Private Practice, including Contract Attorney	\$375	\$445
Non-Members: Public Defender, Allied Professional	\$275	\$345
Law Students	\$100	\$125

Registration fees include: seminar and materials, continental breakfasts and cash bar cocktail reception. All seminar materials will be on CD. Accommodations have been made for lap top power strips in the meeting room.

A registration form is required for all registrants. No phone registration is available.

Online registration is fast and easy: www.aacj.org/store/cart.php

Name _____ Badge first name _____
Employer/Firm (if applicable) _____
Address _____ City _____ State _____ Zip _____
Email address for registration confirmation _____
Phone _____ AZ Bar # _____

We prefer payment by check to keep our costs down!

- Check: Amount _____ Check # _____
- Credit Card: Visa MasterCard

Name on Card _____ Amount _____ Expiration Date _____
Card Number _____ - _____ - _____ Security Code _____
Signature _____

AACJ's office will be closed April 30-May 2, 2008.

Send registration to: Arizona Attorneys for Criminal Justice	Phone: 480-812-1700
2340 West Ray Road, Ste 1	Fax: 480-812-1736
Chandler, AZ 85224-3516	

Seminar Speakers

STEPHEN PAUL BARNARD - A graduate of the University of Arizona Law School. He limits his practice to the defense of vehicular crimes with emphases on DUI. He has tried over 800 jury trials involving Driving Under the Influence of alcohol or drugs (as a defense attorney), including second degree murder by vehicle. A former prosecutor, he is a member of NDAA (it pays to know the enemy!), National Association of Criminal Defense Lawyers; National College DUI Defense; ATLA; and ABA. He is on the Board of Governors for Arizona Attorneys for Criminal Justice and headed the DUI committee. An AV rated lawyer, he was chief counsel on 28 published, precedent setting DUI cases in Arizona. These cases helped establish the right to counsel prior to taking a chemical test; the right to strike judges in lower courts; and the enforcement of the right to obtain independent evidence in DUI cases. Stephen has been at the forefront of several monumental challenges to the use of pseudo scientific evidence in DUI cases. From the use of blood testing without regulation *State v Cammack*, to the RBT IV challenges, *State v. Sanchez*. He has participated on the faculty of seminars for the State Bar of Arizona, Oregon Trial Lawyers Assoc, Arizona Public Defenders Association, Pima County Bar Association, Arizona State University, Maricopa County Public Defenders Office, Maricopa County Bar Association, the 2nd and 3rd DUI Judicial Conferences, The Arizona Defense Bar (Civil) and is the Co-founder of the AACJ Aggressive Defense seminar.

MICHAEL J. BLOOM - is a graduate of the University of Illinois (1970) and Loyola University School of Law (1976). He was a Pima County Public Defender from 1977 until 1983 and has been in private practice with emphasis on litigation and criminal defense since 1983. Mr. Bloom's practice includes DUI and vehicular offenses. Mr. Bloom has handled numerous high profile vehicular homicide offenses in southern Arizona. (*State v. Marissa Rodriguez*; *State v. John Rosengren*). In 1994, Mr. Bloom was the Trial Lawyer of the Year for the American Trial Lawyers for Public Justice as a result of his work in uncovering the acknowledged policy of the Tucson Police Department to interrogate suspects in violation of their request for counsel. See, *Cooper v. Dupnik*, 963 F.2d 1220 (9th Cir. 1992). Mr. Bloom has participated in numerous challenges to the manner in which DUI's are investigated in Arizona, including the challenge to the RBT, resulting in the invalidation of 14,000 breath test results. See also, *State v. Fields*, 196 Ariz. 580, 2 P.3d 670 (Div. 2 1999). He has participated on the faculty for the 3rd and 4th DUI Judicial Conferences, seminars for The State Bar, Pima County Bar, Arizona State Alumni Association and AACJ. He is a former Board of Governors member and co-founder of the AACJ Aggressive Defense Seminar.

MELANIE BEAUCHAMP is the owner and principal of Beauchamp Law Office, P.C., which has been serving clients in the Phoenix metro area for over ten years. Ms. Beauchamp has appeared in federal, state, justice and city courts. The Firm practices DUI, personal injury, misdemeanor criminal defense, felony criminal defense, juvenile defense and civil litigation. Prior to establishing Beauchamp Law Office, Ms. Beauchamp served as a law clerk for Justice James Moeller and Justice Ruth McGregor of the Arizona Supreme Court. Ms. Beauchamp obtained her Law Degree from the University of Virginia. She earned a Master's in Economics from George Mason University and a Bachelor of Arts with honors, from York University in Toronto, Canada. Professional affiliations include membership in Arizona Attorney's for Criminal Justice, the Arizona Trial Lawyer's Association and Arizona Women Lawyer's Association.

CHESTER FLAXMAYER - for seven years was the chief criminalist for the DPS breath testing program, specializing in the area of forensic breath and blood alcohol. He has testified as an expert witness more than 400 times in criminal cases including *State v. White* (subtractive retrograde) *State v. Alday* *State v. Harrison* (reliability of silica gel), *State v. Cannon* (HGN unable to corroborate breath test), and *State v. Sanchez*, (unreliability of the RBT-IV). Chester is a DHS/factory trained certified instructor for the Intoxilyzer 5000 and has trained operators, quality assurance specialists, instructors, and analysts. For years he taught the principles and specifics of retrograde extrapolation to officers, attorneys and other criminalists. He currently heads Forensic Alcohol & Technology to provide his services on a statewide basis.

DANIEL FURLONG - is a sole practitioner whose practice includes a significant amount of private DUI defense. He has been practicing law in Prescott, Arizona for 25 years. Born in 1954 and raised on a family farm in Iowa with five brothers and one sister, Mr. Furlong attended one room country schools for part of his elementary education. Dan earned his J.D. degree from Arizona State University in 1981. During law school he did an internship with the Mesa City Prosecutors office where he personally prosecuted DUI jury trials. Upon graduation from law school he moved to Prescott. He was on the old Yavapai County court-appointed indigent defense rotation list for several years, which involved appointed misdemeanor and felony cases, including a first degree murder trial. He also held a part-time public defendant contract with Yavapai County from 1990 to 2005, with primary responsibilities for the Justice Courts. Mr. Furlong took the first deposition of a DPS crime lab employee who, when confronted with his own fax correspondence, reluctantly changed his testimony and admitted the crime lab was deleting failed intoxilyzer calibrations, leading to the ADAMS data dump litigation. He, along with Marc Hammond, was instrumental in convincing the Yavapai County Attorney and Sheriff's Offices to re-connect the Yavapai County intoxilyzer 8000s to COBRA. even though Mr. Furlong had used COBRA and the testimony of Chester Flaxmayer to suppress breath tests on the intoxilyzer 5000. He is currently involved in intoxilyzer 8000 computer source code motions in Prescott with Curtis Rau who has associated as co-counsel. He is the author of the [Arizona DUI Drivers License Flowchart](#). He co-authored [Arizona Misdemeanor DUI Consequences](#) with attorney James Lerch.

W. CLIFFORD GIRARD is in private practice in Phoenix and is a contract attorney for the City of Phoenix Public Defender. He is a 1969 graduate of the University of Arizona Law School, member of the State Bar of Arizona, U.S. Dist Court and Ninth Circuit Court of Appeals. A member of AACJ, his practice concentrates heavily in the Defense of the Accused Impaired Driver. Most recently he has been involved in the science and technology of the Intoxilyzer 5000 breath test device used throughout Arizona. He has been

counsel on motions directed to the functionality and tolerance limitations of that machine including the now infamous (to prosecutors) "Air Blank" motions. He is an outspoken critic of the procedures and practices of the Phoenix Crime Lab, and has written motions, memorandum and papers on the IR 5000 and Phoenix Crime Lab used by defense attorneys though out the state. He was lead counsel on the now famous *State v. Meza* case where crime lab shenanigans and "data dumping" were exposed, leading to the dismissal or compromise of 100's of cases. He heads a "watch dog" committee that challenges new attempts to compromise Due Process in DUI cases. His nick name, "Bull Dog" serves him well. When Cliff's on the case, the opposition immediately gets a head ache.

ALAN WAYNE JONES, B.S. c, Ph.D., D.S. c.(Special Guest) - works at the National Laboratory of Forensic Toxicology, University Hospital, Linkoping, Sweden, where he heads the Alcohol Toxicology Section (Laboratory). In addition to his duties in forensic toxicology, Dr. Jones is an adjunct professor in Experimental Alcohol Research at the university of Health Sciences, which is also located in Linkoping. Dr. Jones' PhD degree was awarded in 1974 for a thesis entitled "Equilibrium Partition Studies of Alcohol in Biological Fluids." More recently (1993) Dr. Jones was awarded the senior doctorate degree from the University of Wales (Doctor of Science, DS c) for his many published works in the field of experimental alcohol research and toxicology. Dr Jones is the author or co-author of 270 scientific articles, reviews and book chapters, most of which have appeared in peer-reviewed journals. Dr. Jones has served as an expert witness in trials concerning forensic toxicology especially driving under the influence of alcohol and other drugs in Sweden, USA, Great Britain, Norway, Denmark and Ireland. Dr. Jones is a fellow of the American Academy of Forensic Sciences and belongs to a number of other prominent professional organizations including Royal Society of Medicine (fellow), The International Association of Forensic Toxicologist (TIAFT), International Association of Chemical Testing (IACT) as well as being an elected member of the International Council on Alcohol, Drugs and Traffic Safety (ICADTS) and the US National Safety Council Committee on Alcohol and Other Drugs. He serves on the editorial boards of 6 international journals devoted to biomedical alcohol research, forensic science, toxicology and legal medicine. Dr. Jones received the International Widmark Award in 1997, the Rolla N. Harger Award from the American Academy of Forensic Sciences in 2002. and the Robert F. Borkenstein award from the U.S. National Safety Council, Committee on Alcohol and other Drugs in 2004.

STEVE JONES (Special Guest) - has successfully defended over 500 OUI cases. He is the managing partner of the firm of Jones & Milligan. Mr. Jones is a former prosecutor and is now a nationally recognized defense attorney. He has appeared on the Today Show, MSNBC, Inside Edition the Discovery Channel and in court a few times as well. Certain high profile cases of Mr. Jones have been carried on both the local and network news. Over the past 6 years, he has chaired the Massachusetts CLE seminars on Drunk Driving and he lectures nationally for both the National College for DUI Defense and NACDL. Mr. Jones also lectures on the subject of courtroom testimony at the FBI Academy. His practice is concentrated in the defense of individuals charged with Operating under the Influence (OUI, DUI, DWI) and related matters. Mr. Jones was elected Regent of the National College for DUI Defense in 2003.

GARY KULA is the Executive Director of the Phoenix Public Defender Contract Program. He attended the University of Kentucky and Arizona State University as an undergraduate and received his law degree from the Northern Illinois University College of Law in 1985. He practiced in Illinois for four years and was sworn into the Arizona Bar in 1989. He served as a Trial Attorney and Extern Supervisor for 5 years with the Maricopa County Public Defender's Office before opening his own DUI defense solo practice in 1994. He closed up shop to serve as the Assistant Director of the Phoenix Public Defender Contract Administration Office for one year before becoming Director of the program in 1997.

JAMES NESCI - is a graduate of the University of Arizona College of Law and has been a solo practitioner since January 1st, 1995 in Tucson, Arizona. He is an honorably discharged veteran of the U.S. Navy. In 2000 Mr. Nesci became a Sustaining Member of the National College for DUI Defense and in the Summer of 2001 he was officially Board Certified by the NCDD. His practice is devoted entirely to criminal defense. Mr. Nesci often defends cases well into the .30 blood-alcohol range. He has caught more than one police officer lying during cross-examination and some police officers have even refused to grant pretrial interviews to him without a prosecutor or their own counsel present. He was one of the lead attorneys on the RBT-IV breath-testing issue in Southern Arizona which resulted in the suppression of breath tests in over 3,000 cases and the removal of the RBT-IV from the streets of Arizona. In addition to many Arizona Seminars, Mr. Nesci has lectured at several national seminars including the National College for DUI Defense 2001 Summer Session, the NACDL DWI Means Defend With Ingenuity Seminar in Las Vegas, New York State Bar Association's 2nd Annual Big Apple DUI Seminar, and the Nevada Bar Association's "Killer Cross" Seminar. He has taught seminars on the subjects of cross-examination, trial tactics, field sobriety testing, blood alcohol calculations, and breath testing. He is a frequent guest of the John C. Scott radio program on KTKT 990 A.M. in Tucson. The *Tucson Weekly* has named Mr. Nesci "King of the DUI Defense" (December 19, 2002).

JOSEPH P. ST. LOUIS Joe's work has lead directly to the Tucson Police Crime Laboratory changing the manner in which it conducts blood alcohol tests, and most recently to the Pima County Attorney's Office changing the manner in which it conducts Grand Jury presentations in felony DUI cases. Joe is certified as a Specialist in Criminal Law by the State Bar. He served as president of AACJ, 2006. He is the past chairperson of the Arizona State Bar's Membership Assistance Committee, and is a member of the State Bar's Criminal Jury Instruction Committee. He has tried over 100 cases to juries and has argued cases before the Arizona Court of Appeals, the Arizona Supreme Court and the Ninth Circuit Court of Appeals. In 2004 he obtained life sentences in two death penalty cases tried to juries, including Pima County's first case in which the jury decided both the guilt and penalty phases. He has successfully argued that his clients should be granted directed verdicts of acquittal in tow other first degree murder cases and persuaded the Arizona Supreme Court to strike down a portion of a statute *State v. Getz*.