

**ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE**

**PRESENTS**

**THE TWENTY-THIRD ANNUAL SEMINAR ON**

**AGGRESSIVE DEFENSE OF THE ACCUSED IMPAIRED DRIVER**

**FACING FORENSIC FANTASY: NO REST FOR THE DEFENSE**

**May 7-8, 2010**

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

*Every year Legislators miss no opportunity to align with law enforcement and get tough on DUI with significant new bills. The Motor Vehicle regulations provide enough sanctions to an accused impaired driver that he/she faces substantial punishment guilty or not. The Police continue to be unregulated blood collectors with tacit approval of the courts. There is an increasing perception that whatever number is reported as a test result is in fact the accused's alcohol concentration. There is little consideration given to the method used to calculate that result, or the degree of accuracy, reliability or confidence involved in the process. To make matters even worse, the tools used by law enforcement to make an arrest determination are passed off as science in the court room. 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. This seminar will concentrate on successful approaches, some new, some tried and true, to confront the onslaught of guilt biased procedures, often passed off as science. It will be a focused and will be filled with extremely useful presentations by some of the best lawyers and experts in the country. This is the one not to be missed.*

Seminar Co-chairs  
Stephen Paul Barnard  
Michael J. Bloom  
Joseph P. St. Louis



# AACJ 23<sup>rd</sup> Annual Aggressive Defense of the Accused Impaired Driver

## *Facing Forensic Fantasy: No Rest for the Defense*

May 7-8, 2010

### Tucson Marriott University Park Hotel

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

**Hotel group rate available until April 13** or sell-out of AACJ's block of rooms: **Single \$109 Suite \$179**

Reservations: (800) 228-9290 - (520) 792-4100 880 E Second Street, Tucson, Arizona 85719

Link to our hotel group reservation page:

<http://www.marriott.com/hotels/travel/tusup?groupCode=aacaaca&app=resvlink&fromDate=5/3/10&toDate=5/10/10>

**Registration form and full payment must be received by Monday, April 26 to avoid late fee (\$75).**

|   |                       |  |
|---|-----------------------|--|
| Private Practice, including Contract Attorney | \$395 Non-Member Rate | <b>\$295 AACJ Member Discount Rate</b> |
| Public Defender, Allied Professional          | \$275 Non-Member Rate | <b>\$200 AACJ Member Discount Rate</b> |
| Law Students                                  | \$100 Non-Member Rate | <b>\$50 AACJ Member Discount Rate</b>  |

**After April 26, add \$75 late fee to all registrations.**

**Cancellation policy: full refund, minus \$25 fee, available until Thursday, April 29. No refunds after April 29, 2010.**

Registration fees include: seminar materials (CD), continental breakfasts, and cash bar cocktail reception. Printed seminar materials are available to attendees for the cost of reproduction. Call office for details.

Power strips for lap tops will be set up in the meeting room.

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

**This seminar provides 11 (AZ) – 11.25 CLE hours which include 1 hour of Ethics.**

Name \_\_\_\_\_ First Name for Badge \_\_\_\_\_

Employer/Firm \_\_\_\_\_ Phone \_\_\_\_\_ AZ Bar # \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_ (A registration confirmation will be sent to this address.)

Registration fee \$ \_\_\_\_\_ (Membership dues must be current to qualify for Member Discount Rate.)

Late fee (\$75) \$ \_\_\_\_\_ If registering after April 26

**TOTAL** \$ \_\_\_\_\_

### **Two ways to register**

1. Online at [www.aacj.org/store](http://www.aacj.org/store) using your credit or debit card
2. Mail this registration form with a check made out to AACJ. Check # \_\_\_\_\_ Amount \$ \_\_\_\_\_

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*AACJ's office will be closed Wednesday, May 5 – Friday, May 7*



## Faculty

**JANINE S. ARVIZU (Special Guest)** is a chemist and laboratory quality expert with more than 20 years of technical and program management experience in laboratory operations and management, quality assurance, and interdisciplinary program management. She has developed and managed organizational and programmatic quality programs and has extensive experience in the assessment of laboratory operations and analytical programs. ABD Chemistry, University of New Mexico; B.S. Biochemistry with honors; California Polytechnic State University. She is a Certified Quality Auditor (ASQ #19856) and Trained ISO Lead Auditor (ISO 9000, Guide 25). Janine is Senior Technical Consultant, Consolidated Technical Services, Inc. She provides consulting services in laboratory assessment, quality assurance, and independent reviews. She served as Program Manager for the Navy's analytical QA program that evaluated 70 testing laboratories nationwide, and provided independent technical reviews and quality assessments of major project plans and laboratory results using on-site audits, reviews of quality documentation, and blind proficiency testing. She personally planned and served as Lead Auditor for quality systems audits and technical audits of dozens of testing laboratories and established and managed one of the first full service analytical testing laboratories that handled radiologically contaminated samples for the Department of Energy. These are but a fraction of her accomplishments.

**STEPHEN PAUL BARNARD** is a graduate of the University of Arizona Law School. He limits his practice to the defense of vehicular crimes with emphasis on DUI. He has tried over 900 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 30 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 National College of DUI Defense, 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 2<sup>nd</sup> and 3<sup>rd</sup> 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 (9<sup>th</sup> 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 3<sup>rd</sup> and 4<sup>th</sup> 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.

**JAMES CHARNESKY** - A former high school history teacher, James Charnesky left teaching in 1995 to attend the University of Arizona College of Law. Upon graduating in 1988, he began his career as a criminal defense attorney with the Pima County Public Defender's Office where he worked for over five years primarily defending those accused of DUI and other alcohol related traffic offenses. In 2004, Mr. Charnesky and fellow public defender Ms. Dina Dieglio started their own DUI and criminal defense practice. Mr. Charnesky has been privileged to attend both the Western Trial Advocacy Institute at the University of Wyoming College of Law, and NACDL's National Criminal Defense College at Mercer University School of Law.

**EDWARD F. FITZGERALD (Special Guest)** is a member of the Massachusetts Bar and of the Federal District Courts of Massachusetts and Rhode Island and was admitted to practice before the US Supreme Court in 1980. He practiced as a criminal and civil trial lawyer for more than 30 years, and was admitted *pro hac vice*, in several states to try serious accident and death cases involving alcohol results. With Dr. David "N. Hume, he co-authored, *The Single Chemical, Test for Intoxication: A Challenge to Admissibility*, in the Massachusetts Law Review. It is the seminal article on the problems of retrograde extrapolation and the erroneous interpretation of single test results, re-published in full in a number of textbooks and cited by the courts in cases having a major impact on the DUI law and practice in a number of states. With Dr. Hume, he co-authored *Chemical Tests for Intoxication: What do the Numbers Really Mean?* in Journal of Analytical Chemistry. He is the author of the three-volume text, *Intoxication Test Evidence, 2d Ed*, © 1995-2010 published by Thomson Reuters/WEST, Eagan, MN, annually supplemented. He has regularly been an invited speaker in seminars across the country. His practice is now limited to legal writing and consulting with civil and criminal trial attorneys, usually on serious accident and death cases where reported alcohol values or other forensic science issues are involved, and in which the presentation of conflicting expert testimony is probable. He is presently at work on a new legal/forensic science text as a co-author with Attorney Ted Vosk and Professor Ashley Emery, entitled, *Forensic Metrology: A Primer on Scientific Measurement for Lawyers, Judges, and Criminalists*, due out in the fall of 2010. He is available by phone: 480-699-9334, email: [efitzgerald7@cox.net](mailto:efitzgerald7@cox.net), or web site: [www.edwardffitzgerald.com](http://www.edwardffitzgerald.com).

**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.

**ALEX HEVERI** is an appeals attorney with the Legal Defender's Office, where she has been employed for 18 years. Before her appeal's position, Alex handled all of the DUI cases assigned to the Legal Defender's Office for 8 years, wherein she litigated every issue imaginable. During that time, she learned that the state will do everything and anything to obtain a conviction against DUI clients, and the best defense is knowledge and the use of it.

**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. 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. He is now a Regent of the National College. When not hawking his books, 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 (who hasn't) and some police officers have even refused to grant pretrial interviews to him without a prosecutor or their own counsel present. He claims to have been 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). He is a board member and on the faculty of the National College for DUI Defense.

**CRAIG PENROD** has practiced criminal defense for over 30 years and is a member of the Arizona State, Maricopa County, State of Nevada and American Bar Associations, American, Arizona and Nevada Trial Lawyers Associations, Arizona Attorneys for Criminal Justice and the NACDL. Craig is licensed to practice in state and federal courts in both Arizona and Nevada, is a member of the National College for DUI Defense and has been certified by the Arizona State Bar Association as a Criminal Law Specialist. Craig is AV-rated® by Martindale-Hubbell, listed in the *Bar Register of Preeminent Lawyers* and has been selected to Southwest Super Lawyers for the last three consecutive years. Craig is often retained to testify as an expert on DUI defense issues. His practice has been limited exclusively to DUI and criminal defense for the last 20 years.

**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*.

**MARK STOLTMAN** was employed in the toxicology section of the Phoenix Crime Laboratory for two and a half years as a Forensic Scientist. His duties included analyzing blood and urine for the presence of drugs, blood alcohol determination, and maintaining the breath testing instruments for the city of Phoenix. He has a bachelor's degree in bio-medical science, a master's degree in forensic science and a doctorate in chiropractic medicine with certifications in physiotherapy and radiology. He has taught police officers on the operation of the breath testing devices, the pharmacology of alcohol, and affects of drugs at Drug Recognition Expert (DRE) training. He is AZDPS & CMI certified as an operator, QAS, and Instructor for the Intoxilyzer 5000, 5000 EN and 8000. He has also received training on HGN and SFST's. Mr. Stoltman is an associate member of the California Association for Toxicologist and a member of the International Association for Chemical Testing. He completed his Master's thesis on the DRE program in Phoenix Arizona, published a case study in the Society of Forensic Toxicologists quarterly publication and was a contributor for *Intoxication Test Evidence 2<sup>nd</sup> Edition*. Mr. Stoltman is a self employed Forensic Scientist in Arizona specializing in human performance toxicology. He has previously been employed as a chiropractic physician, a research scientist for the USDA, and a pharmaceutical technician.

**TED VOSK (special guest)** is a legal and science writer, a criminal defense attorney, and a legal/forensic consultant, who has written, broadcast, presented and taught around the country on topics ranging from string theory to the doctrine of constitutional separation of powers. He has been part of the most significant DUI cases in Washington State over the past decade including *City of Seattle v. Clark-Munoz*, *Devine v. Dept. of Licensing*, *City of Firecrest v. Jensen*, *Butler v. Kato*, *City of Seattle v. Ludvigsen*, *City of Seattle v. Winebrenner* and led the fight against substandard and unethical practices in the State's Toxicology Lab which resulted in the suppression of breath tests around the State, continuing and for over two-years in some jurisdictions. He has been published in multiple treatises on DUI law and legal periodicals including *The Champion*, and is currently authoring a text on Forensic Metrology for CRC Press. Mr. Vosk is a member of the American Academy of Forensic Sciences and Mensa. He was named a Super Lawyers Rising Star in 2005 by Washington Law and Politics Magazine and received the President's Award from the Washington Association of Criminal Defense Lawyers and the Certificate of Distinction from the Washington Foundation for Criminal Justice for his results fighting substandard scientific practices in the Washington State Toxicology Lab. Mr. Vosk graduated with honors in mathematics and theoretical physics from Eastern Michigan University before entering the graduate program in physics at Cornell University. He earned his J.D. at Harvard Law School. Ted lives in Washington with his wife Kris.