

ANNUAL DRUNK DRIVING DEFENSE SEMINAR

PRESENTED LIVE ONLY

NOVEMBER 18-19, 2009

THE OSTHOFF RESORT
Elkhart Lake, Wisconsin

15 CLE CREDITS (INCLUDES 1.5 ETHICS CREDITS)

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ABOUT THE PROGRAM

The Annual Drunk Driving Defense Seminar is *THE* seminar for all attorneys who practice drunk driving defense. ONLY defense attorneys are admitted and attorneys who belong to a firm that prosecutes traffic matters are not permitted to attend. Having a defense-attorneys-only seminar assures the most open flow of information between presenters and attendees.

This year's seminar will cover a range of topics which are central to the defense attorney's practice. Whether you have tried 50 cases or never had a jury trial, this seminar offers defense attorneys practical tips on improving their practice. A special ethics presentation and a case law update are included. The two-day seminar will give you the opportunity to network with other practitioners and speak informally with the presenters.

As a special feature at the close of Day One, attendees will be invited to an evening social event held at The Paddock Club, Elkhart Lake's hottest new restaurant venue. Don't make dinner plans as you won't leave hungry! Enjoy the evening social event and plan to spend the night at The Osthoff Resort.

PROGRAM SCHEDULE

WEDNESDAY, NOVEMBER 18

8:00 a.m. **Registration/Breakfast**

8:45 a.m. **Welcome/Opening Remarks**
- *Barry Cohen, Seminar Chair*

BASIC TRACK

ADVANCED TRACK

- 9:00 a.m. **GETTING STARTED, PLEADINGS, DISCOVERY, INVESTIGATION**
- Tracey Wood
- 10:40 a.m. BREAK
- 10:55 a.m. **MOTIONS/CHALLENGES/ISSUES REFUSAL HEARING ADMINISTRATIVE SUSPENSION**
- Tracey Wood
- 12:10 p.m. LUNCH (Provided)
- 1:00 p.m. **UNDERSTANDING BREATH & BLOOD TESTING**
- Andrew Mishlove
- 2:40 p.m. BREAK
- 2:55 p.m. **SUCCESSFUL NEGOTIATION STRATEGIES**
- Barry Cohen
- 3:45 p.m. BREAK
- 3:55 p.m. **TRIAL OF AN OWI CASE**
- Barry Cohen
- 4:45 p.m. ADJOURN
- 5:30 p.m. **SOCIAL EVENT, *The Paddock Club***

THURSDAY, NOVEMBER 19

- 8:00 a.m. **Registration/Breakfast**
- 9:00 a.m. **WEAPONS OF CHOICE FOR THE DEFENSE: USING OPEN RECORDS LAW, DOCUMENT SUBPOENAS AND BRADY DEMANDS TO OBTAIN 'SMOKING GUN' EVIDENCE**
- Erik Guenther
- 9:50 a.m. **CASE LAW/LEGISLATIVE UPDATE**
- Sarvan Singh, Jr.
- 10:40 a.m. BREAK

- 10:55 a.m. **ETHICS PRESENTATION**
 - *Waring Fincke*
- 12:10 p.m. LUNCH (Provided)
- 1:10 p.m. **DEFENDING AN OPERATING UNDER INFLUENCE OF DRUGS CHARGE**
 - *Kirk Obear*
- 2:50 p.m. BREAK
- 3:05 p.m. **HOW TO CONVERT LOSS OF AUTOMATIC ADMISSIBILITY OF THE
TEST INTO SUPPRESSION OF EVIDENCE**
 - *Dennis Melowski*
- 4:45 p.m. ADJOURN

PROGRAM MATERIALS

Program materials are exhaustive and prior attendees have described them as being worth the price of the seminar. This year will be no exception. Attendees who register by October 31, 2009, will receive the program materials on CD prior to attending, thereby allowing a pre-seminar review, or if an attendee prefers, the opportunity to print the materials for use without a computer. For attendees without computer capability, printed versions of the program materials will be available (by advance request) at the seminar (\$50.00 additional charge).

HOTEL ACCOMMODATIONS

The Annual Drunk Driving Defense Seminar is being held at The Osthoff Resort in Elkhart Lake, WI. Seminar attendees qualify for special lodging rates of \$99.00 for a standard room or \$139.00 for a two-bedroom suite if reserved not later than October 13, 2009. Book your room directly with The Osthoff Resort at (800) 876-3399. For complete resort information, visit www.osthoff.com.

COMMENTS FROM LAST YEAR'S SEMINAR

“Osthoff was Great.”

“Great spot, great deal on rooms. I like the ability to walk everywhere.”

“Excellent - Relaxing - Beautiful location.”

“Food was very good.”

“Excellent - Plenty of food and drinks.”

“The ‘discussion’ opportunity was great.”

“Having a break after each presenter was great.”

“Great that materials are on a CD.”

“Missed the breath machine BUT the gathering at the Paddock Club was fantastic - food was great, company was better.”

“Great event at the Paddock Club - really enjoyed it.”
“Great - good nuts and bolts.”
“Educational”
“Enjoyed every single one of the presenters.”
“Very inspirational!”
“Very engaging - made me want to go try cases.”
“Excellent motivation.”
“Exceptionally helpful, creative.”
“Very helpful - good discussion.”
“Excellent practice tips.”
“Very straight forward and easy to understand.”
“Great materials.”
“Loved the forms and samples.”
“Love examples and transcripts.”
“This is one of the best seminars I’ve attended in my legal career. Great speakers with excellent practice tips. Every lawyer who represents clients in OWI cases needs to attend this seminar.”
“This was my second year coming to this great seminar. I really enjoyed the inspirational element this year. The social was great and the material and speakers truly outstanding.”
“Good facilitation of discussion by all of the presenters. Discussion enhances the presentation with real situations and fact scenarios. Good broad range of topics.”
“Great job-good topics and speakers. Good food. I’ll be back for sure. Also great materials.”

TUITION WAIVER

If you believe that you are unable to attend the seminar without a tuition reduction or waiver, send your request explaining your circumstances to Barry Cohen, Program Chair, N9661 Willow Road, Elkhart Lake, WI 53020.

CONTACT US

For more information contact Barry Cohen, Program Chair, at barrycohen1@hotmail.com or (920) 565-4225.

ABOUT THE PRESENTERS

Barry S. Cohen has practiced criminal and traffic defense for over 25 years. His firm is located in a converted fieldstone and log horse barn near Elkhart Lake. Before establishing the practice in Elkhart Lake, Mr. Cohen worked for two years in a general practice firm in Osceola and then honed his aggressive defense approach working for several years with the infamous Bill Pangman in Brookfield. He has presented at numerous seminars over the years, and has organized drunk driving defense seminars for more than 20 years. Mr. Cohen has been asked to serve on many special committees of the legislature, Governor, and Department of Transportation, to address drunk driving-related issues. He has served as President of the Criminal Law Section of the State Bar of Wisconsin, and he was a founding member of the Wisconsin Association of Criminal Defense Lawyers, serving on its Board of Directors for many years.

Erik R. Guenther is an attorney with Hurley, Burish & Stanton, S.C., in Madison, Wisconsin. He represents individuals and businesses in criminal inquiries from pre-charging/investigation to trial. He also takes on pardon applications, expungement petitions and post-conviction matters. Finally, he also represents business entities in internal investigations. He is a graduate of Carthage College, *magna cum laude*, where he attended as a Lincoln Scholar, and the University of Wisconsin Law School.

To date, Erik has litigated serious felony matters in 22 of Wisconsin's counties. He has handled cases in both federal districts in Wisconsin and the Seventh Circuit Court of Appeals. He also served as a consultant in constitutional law and trial strategy issues in Michigan (resulting in dismissal of "disorderly house" citations against 94 individuals) and Afghanistan (resulting in acquittals on weapon smuggling charges for four defendants). In conjunction with the ACLU, Erik achieved dismissal of "disorderly house" citations issued to almost 450 individuals in the "Racine rave" case in 2002 and was recognized as the 2003 ACLU "Volunteer Attorney of the Year" for his *pro bono* work on the cases. To avoid a civil rights lawsuit, Racine also agreed to revise the flawed ordinance at issue and to provide training to the Racine Police Department on Fourth Amendment issues.

Erik has been recognized as a top litigator by In Business magazine and repeatedly by peers in the *Wisconsin Super Lawyers*® survey. He was profiled in the 2007 *Wisconsin Super Lawyers*® magazine in an article titled "Peer Recognition: How Erik Guenther Gets Juries to Sympathize with Clients Accused of Sexual Assault."

Last year, the *Wisconsin State Journal* profiled Erik in a front-page story, describing him as a "rising star in the state legal establishment and already a teacher in cutting-edge legal issues and a civil liberties expert."

In 2007 - 2008, Erik's passion for the rule of law and individual rights took him to Afghanistan. He served as the Defense Mentor for the U.S. State Department funded Justice Sector Support Program, training Afghan defense lawyers. He was recognized as the Dane County Criminal Defense Bar Association "Warrior of the Year" for his service.

He is the current president of the American Civil Liberties Union of Wisconsin (ACLU-WI) board and is a past chair of the State Bar of Wisconsin Individual Rights and Responsibilities Section. He serves, by appointment, on the State Bar Legislative Oversight Committee.

Waring R. Fincke defends citizens accused of criminal conduct statewide in both State and Federal Courts. He has also defended lawyers in criminal and disciplinary cases. Waring was chair of WACDL's Lawyers Assistance Strike Force and Criminal Justice/Ethics Committee for more than 20 years.

Waring graduated from the University of Wisconsin-Madison Law School in 1975. After clerking for a Federal Judge, he spent the rest of his career defending our Liberty from the power of the State. He has thought about the ethics of practicing criminal law for way too long.

Chad A. Lanning founded the Lanning Law Offices, LLC in 2006 after defending drunk driving cases for over 8 years with Melowski, Obear & Cohen, S.C. and working for Reinhart Boerner Van Deuren S.C. His practice is now limited to traffic and criminal defense at both the trial and appellate levels. Recently, Attorney Lanning convinced the Court of Appeals to grant a felony drunk driver a new trial because the courthouse doors were locked during the defendant's case-in-chief. *See State v. Vanness*, 2007 WI App 195.

Attorney Lanning has lectured on many traffic topics and is a continuing contributor to the State Bar Traffic Law and Practice Manual. Further, he is the only lawyer twice selected as a Wisconsin *SuperLawyer Rising Star* in the practice area of drunk driving defense.

Attorney Lanning has served on the Board of Directors of the State Bar of Wisconsin, Young Lawyers Division, was elected to the office of Vice-Chair of the American Bar Association, Law Student Division and has served on numerous committees at both the state and national levels. Attorney Lanning is a member of the National Association of Criminal Defense Lawyers and the Wisconsin Association of Criminal Defense Lawyers.

Dennis M. Melowski's practice is exclusively limited to the defense of serious alcohol-related traffic offenses. Since graduating from Marquette University Law School in 1993, Mr. Melowski's superb record of success has earned him the reputation as one of the top DWI defense lawyers in the State of Wisconsin. In his 13 years of practice, Mr. Melowski has had more than 300 drunk driving cases amended or dismissed, including more than 60 complete acquittals in jury trials.

Mr. Melowski has also handled several landmark DWI cases, including three cases argued before the Wisconsin Supreme Court. In one of those cases, his argument convinced the court to completely change the law with respect to repeat drunk driving offenders.

Mr. Melowski's excellence in the field of DWI defense has earned him substantial recognition in the legal community. As a result of a statewide survey of Wisconsin attorneys, Mr. Melowski was named a Wisconsin SuperLawyer® by Law & Politics and *Milwaukee Magazine* in 2005, 2006, and 2007 – the only three-time designee in the field of drunk driving defense. In fact, in each of these years, Melowski, Obear & Cohen S.C. was the only law firm in the state to have attorneys named as SuperLawyers® in the practice area of DWI defense.

Mr. Melowski's success has made him a featured speaker at legal seminars in Wisconsin and throughout the United States, helping educate other lawyers in the field of DWI defense. He is a frequently sought out source of advice and strategy by lawyers around the state. The State Bar of Wisconsin has also utilized Mr. Melowski's expertise in authoring changes and updates to the State Bar Traffic Law and Practice manual, considered to be the definitive treatise on traffic law in the State of Wisconsin.

In addition to his drunk driving defense practice, Mr. Melowski has, in the past, defended a select number of criminal cases with a high degree of success. Several of these cases attracted substantial media attention, including his winning the only acquittal of three defendants charged in connection with the murder of a Manitowoc police officer, and another complete acquittal of a client facing more than 40 years in prison for attempted homicide and a variety of other charges.

Mr. Melowski enjoys spending his leisure time with his wife Maggie and their two children, Molly and Luke. An accomplished endurance athlete, Mr. Melowski has twice qualified and competed in the Ironman Triathlon World Championship in Kailua-Kona, Hawaii. He is also a three-time USA Triathlon All-American.

Andrew Mishlove is recognized as an attorney of pre-eminent expertise and experience in drunken driving defense. He is board certified as a drunken driving defense specialist by the National College for DUI Defense, accredited by the American Bar Association. He has been a participant at the National College for DUI Defense presented at the Harvard Law School seven times; and he has been an instructor in that program four times. Mr. Mishlove is a past chairman of the Criminal Law Section of the State Bar of Wisconsin and editor of the Wisconsin Criminal Law News. He has been a presenter and program chair for many national and local continuing legal education seminars; and he recently gave a presentation on trial evidence before the 2009 NCDD Winter convention in the Bahamas. He is certified in National Highway Traffic Safety Administration Standardized Field Sobriety Testing. Mr. Mishlove was recently named to a seat on the Drunken Driving Defense Committee of the National Association of Criminal Defense Lawyers.

Kirk B. Obear is the owner and sole proprietor of Kirk Obear, Attorney at Law, a firm exclusively practicing in the areas of criminal defense and military law. Prior to opening his own firm, he was a shareholder in Melowski, Obear & Cohen, S.C.. Before moving to Wisconsin, Mr. Obear was a member of the United States Air Force for over 10 years. He enlisted in the United States Air Force in 1986, and was trained as an imagery production specialist at Lowry AFB, Colorado. He was then stationed at Seymour-Johnson AFB, North Carolina, where he became the NCOIC of Personnel at the Armament Recording Program Laboratory. In 1990, he graduated from Mount Olive College, *summa cum laude*, with a Bachelor of Science in Psychology. During Operation DESERT STORM, Sergeant Obear was deployed to Al Kharj, Saudi Arabia to document Air Operations as part of the Joint Services Combat Camera Team.

In 1991, Sergeant Obear separated from active duty to attend law school. In 1994, Mr. Obear received his law degree from the University at Buffalo School of Law, and then re-entered active duty as an officer in the United States Air Force. While stationed at Scott AFB, Illinois, Captain Obear served as Chief of the Labor Law Division, Chief of the Claims Division, and Chief of Military Justice in the Office of the Staff Judge Advocate. His primary responsibility was prosecuting military defendants on behalf of the United States. In 1996, he received an appointment as Special Assistant United States Attorney for the Southern District of Illinois. In 1997, Captain Obear was selected to attend Criminal Advocacy School at the Attorney General's Institute in Washington D.C.. He was subsequently assigned as Area Defense Counsel, Peterson Air Force Base, Colorado, where he was responsible for representing military defendants stationed in Greenland, Australia, and military installations throughout Colorado. He continued defending military clients until April of 1999, when he left active-duty to join the Law Offices of Barry S. Cohen. In 2008, he opened his own firm and his practice is currently exclusive in the representation of defendants facing criminal charges in state and federal court.

Mr. Obear's military awards include the John Levitow Award, the National Defense Service Medal, the Kuwait Liberation Medal (Govt of Kuwait), the Kuwait Liberation Medal (Kingdom of Saudi Arabia), the Outstanding Unit Award (x2) w/ Valor Device, the Southwest Asia Medal w/ 2 Campaign Devices, the Air Force Commendation Medal (x2), and the Meritorious Service Medal. He is currently admitted to practice before the Court of Appeals for the Armed Forces, the Air Force Court of Criminal Appeals, the United States District Court for the Southern District of Illinois, the United States District Courts for the Eastern and Western Districts of Wisconsin, the United States Court of Appeals for the 7th Circuit, and the Supreme Court of the United States.

Mr. Obear is a life member of the National Association of Criminal Defense Lawyers (NACDL) and serves as the Director of Legislative Affairs for the Wisconsin Association of Criminal Defense Lawyers (WACDL). He has been a board member of WACDL since 2003. In 2005, Mr. Obear was elected President of WACDL for a two year term. In both 2007 and 2008, he listed in Wisconsin Super Lawyers, a distinction reserved for only the top 5% of attorneys in the state. In April 2009, Mr. Obear was nominated to the Board of Directors for NACDL.

Michael E. Rudolph is a founding member of the Wisconsin Association of Criminal Defense Lawyers and is recognized as one of the best OWI lawyers in Wisconsin. He has been a lecturer on OWI and criminal defense for PESI, Lorman, Public Defenders, Young Lawyers and the State Bar. Mr. Rudolph is a member of the Drunk Driving Roundtable. He has been voted by his peers Best of the Bar in the Fox Valley in the categories of drunk driving, drugs and criminal defense. He has received WACDL's Hanson award for winning a homicide trial.

John Schiro is a partner at the Schiro & Zarzynski law firm. Attorney Schiro has been practicing law since 1980 and exclusively practices criminal and traffic defense. He has conducted hundreds of jury trials in counties throughout the State of Wisconsin, including over one hundred jury trials specifically for drunken driving and OWI-related cases. He is a frequent lecturer on drunken driving issues. Attorney Schiro is a member of the National Association of Criminal Defense Lawyers, as well as the Wisconsin Association of Criminal Defense Lawyers.

Sarvan Singh, Jr. is an associate with Melowski & Associates L.L.C., a law firm focusing solely on criminal and traffic defense. After receiving his undergraduate degree from San Francisco State University, he worked for the U.S. Senate prior to attending law school at Marquette University. Singh first started practicing criminal defense with the Wisconsin State Public Defender's Office before leaving to join the Law Offices of Barry S. Cohen, where he worked for two years prior to joining Melowski and Associates.

Michele A. Tjader of Tjader Law, Inc. is located in Madison and practices statewide in the areas of criminal and traffic defense.

Michael C. Witt is in private practice in Jefferson, Wisconsin. Earning an Associate Degree in Biology in 1980, he worked in blue collar/technical positions at the University of Wisconsin Hospital and Clinics, and the University of Wisconsin Biochemistry Department. After enlisting in the Army Reserve, he then resumed study at the University of Wisconsin for degrees in History and History of Science and Law.

In addition to being trained in the administration of the NHTSA Standardized Field Sobriety Test battery, and completing the NHTSA Faculty Development Workshops at the National Judicial College, Attorney Witt has lectured on aspects of handling scientific evidence in the context of OWI cases. In February of 2003, he was accepted as a provisional member of the American Academy of Forensic Sciences.

Serving on the board of Directors of the Wisconsin Association of Criminal Defense Lawyers, Attorney Witt is also a member of the State Bar of Wisconsin, the Jefferson County Bar Association, the American Bar Association, and the National Association of Criminal Defense Lawyers. He is admitted to practice before all state and federal courts in the State of Wisconsin, as well as the 7th Circuit U.S. Court of Appeals and the United States Supreme Court.

Tracey A. Wood is a shareholder with the Madison, Wisconsin criminal defense firm of Van Wagner & Wood, S.C. She is the president of the Wisconsin Association of Criminal Defense Lawyers and is a past president of the Dane County Criminal Defense Lawyers Association. Tracey was also Wisconsin's first attorney appointed to the board of regents for the National College for DUI Defense (as well as the first female lawyer and youngest member ever to serve on the board). Tracey was Wisconsin's first attorney certified as a standardized field sobriety test instructor. She is a contributing author of "Drunk Driving Defense" by Lawrence Taylor and Steven Oberman and is currently writing "Wisconsin Dui Defense: The Law & Practice" along with attorney James Nesci out of Arizona. She is a frequent speaker at and organizer of national seminars related to the defense of drunk driving cases.