

Jonathan D. Cohn

Jonathan D. Cohn is an associate in the law firm of Gerstenzang, O'Hern, Sills & Gerstenzang. He received his Bachelor's Degree from Lafayette College, where he graduated with honors. He is a 2008 cum laude graduate of Albany Law School, where he was selected as a member of the Government and Law Journal. Mr. Cohn was one of a select group to be published as a member of the journal. Mr. Cohn is also a member of the National College for DUI Defense ("NCDD"). Prior to joining the firm, Mr. Cohn was a former Assistant District Attorney in the Rensselaer County District Attorney's Office, who handled all aspects of criminal law. He also gained a thorough understanding of the Criminal Procedure Law and Penal Law as a Law Clerk to Honorable Karen A. Drago, Schenectady County Court Judge.

Since joining the firm, Mr. Cohn has focused his practice on criminal defense – with an emphasis on alcohol related offenses.

Steven B. Epstein



Mr. Epstein is a founding partner in the Firm of Barkett, Marion, Epstein and Kearon, LLP.

Mr. Epstein has extensive experience in the field of criminal defense and has over 21 years of courtroom and trial experience having handled cases ranging from traffic tickets to murder. Mr. Epstein defends people accused of all crimes throughout the New York metropolitan area.

Mr. Epstein has extensive experience in DWI and Vehicular Assault/Homicide defense. He is a Member of the National College for DUI Defense. According to the National College for DUI Defense, The purpose of this program is to identify and acknowledge lawyers who possess an enhanced level of skill and expertise in this field, and to develop and improve the profession's competence in this specialty area." Mr. Epstein has lectured, taught workshops and continuing legal education classes on the subjects of Criminal Law and DWI defense across the New York metropolitan area and upstate New York for many organizations, including but not limited to The Bronx County Bar Association, The Legal Aid Society of the City of New York and The Sullivan County Bar Association. His vast experience and proven track record of success defending individuals accused of DWI related offenses has led to him being relied upon as the principal instructor for The Legal Aid Society of the City of New York in the area of DWI defense since 1998 and he has taught hundreds of attorneys how to handle the DWI case. Mr. Epstein owns and is certified to operate the Intoxilyzer 5000, the device used by police departments throughout the New York Metropolitan area to test motorist's breath for the presence or absence of alcohol in their blood.

Mr. Epstein is a respected litigator who brings enormous energy, and an unmatched determination into every case he works on. His ability in the courtroom produces excellent results for his clients and is the basis for his reputation as a skillful litigator, criminal defense attorney and legal instructor. Mr. Epstein has been an Adjunct

Professor of Law at Pace University School of Law since 1998, where he teaches trial skills.

Mr. Epstein was born and raised on the sidewalks of New York City. He received his B.A. from the State University of New York, College at Oneonta and his J.D. from Pace University School of Law. He graduated with high academic honors from both institutions. Mr. Epstein is admitted as an attorney in New York, Connecticut, as well as before the United States District Courts for the Eastern, Southern and Northern Districts of New York and the United States Supreme Court.

Areas of Practice

- 90% Criminal Defense
- 10% Civil Litigation

Litigation Percentage

- 100% of Practice Devoted to Litigation

Bar Admissions

- New York, 1993
- Connecticut, 1993
- U.S. District Court Southern District of New York, 1997
- U.S. District Court Eastern District of New York, 1997
- U.S. District Court Northern District of New York, 1997
- U.S. Supreme Court, 1998

Education

- **Pace Law School, White Plains, New York**
 - J.D. *cum laude* - 1992
- **State University of New York College at Oneonta, Oneonta, New York**
 - B.S. *cum laude* - 1989
 - Major: Speech Communications

Published Works

- Strategies for Defending DWI Cases in New York, 2011 ed.: Leading Lawyers on Understanding Today's DWI Environment, Constructing a Defense Strategy, and Counseling Clients (Inside the Minds) New Edition, Aspatore, 2011
- "Telling the Story in a DWI Case" Atticus, Vol. 24, No. 4 (New York Association of Criminal Defense Lawyers), Winter , 2013
- Strategies for Defending DWI Cases in New York, (Inside the Minds) New Edition, Aspatore, 2013
- DWI Proposals Cast Too Wide a Net, New York Law Journal, Letters to the Editor, May 29, 2013
- The GERD Defense in a DWI Case, Public Defense Backup Center Report, Volume XXIX, Number 2, June-July 2014(New York State Defenders Association, 2014
- The GERD Defense in a DWI Case, Atticus, Spring 2014, Volume 26, Number 1-New York State Association of Criminal Defense Lawyers, 2014
- Strategies for Defending DWI Cases in New York, 2014 ed.:(Inside the Minds), Aspatore, 2014

Representative Cases

- *People v. Stephen Lopresti(attorney acquitted of felony charges after trial despite .18 BAC reading and car accident), IND. 1828-2007 (Bronx Supreme 2011)*
- *People v. Urena(prosecutor charged with DWI acquitted after trial of all charges), 2012NY002290 (2012)*
- *People v. Steven Zalewski(Obtained acquittal for an attorney despite an accident and a .18 BAC reading, 2011NA002314 (Nassau County District Court 2014)*
- *People v. Juan Arteaga(Obtained acquittal for a NYC bus driver facing the loss of his career), 2013NY052904 (NYC Criminal Court 2014)*
- *People v. Charles Stasky(Obtained dismissal of boating while intoxicated charges after winning suppression hearing), 2012NA019995 (Nassa County District Court 2014)*

Classes/Seminars

- Cross to Kill: Cross of the Breathalyzer Technician, New York Association of Criminal Defense Lawyers , 2013 - Present
- Second Annual Man vs. Machine Seminar: Attacking Portable Breath Tests
- Jury Selection in the DWI Case, Bronx County Bar Association
- Cross Examination of the Intoxilyzer 5000EN Operator, Nassau County Criminal Court Bar Association
- First Annual Man vs. Machine: The Intoxilyzer 5000en, The Legal Aid Society of New York
- The Defense of the DWI Case , The Legal Aid Society of New York, 1998 - Present
- Cross Examination of the DWI Breath Technician, Bronx County Bar Association
- Defending DWI Refusal Hearings, Bronx County Bar Association
- Leandra's Law Update, Bronx County Bar Association
- Cross Examination of the DWI Breath Technician , Assigned Counsel Plan First Dept.
- Update on DWI Defense, Sullivan County Bar Association
- Update on DWI Defense, Bronx County Bar Association
- How to Try Your First DWI Case, Korean-American Lawyers Association of Greater New York
- Third Annual Man vs. Machine: The Breath Test Case on Trial, Cadwalader, Wickersham & Taft, NY, NY. July 10, 2014
- Advanced Issues in Breath Testing, Nassau County Legal Aid Society-July 9, 2014
- The Intoxilizer 5000 on Trial, Nassau Academy of Law-October 10 and 15, 2013

Honors and Awards

- 10 Year Service Award - Pace Law School, 1999 - 2009

Professional Associations and Memberships

- National Association of Criminal Defense Lawyers, Member, 1998 - Present
- New York State Defenders Association, Member, 1998 - Present
- National College for DWI Defense, Member, 2009 - Present

- Bronx County Bar Association, Member, 1998 - Present

Past Employment Positions

- The Law Offices of Steven Epstein, Attorney-in-Charge, 1997 - 2011
- The Legal Aid Society of the City of New York, Staff Attorney, 1992 - 1997

Pro Bono Activities

- Executive Vice President and General Counsel to the East Meadow Soccer Club, 2000 - Present

Ancillary Businesses

- Adjunct Professor of Law, Pace Law School - Trial Practice, 1999 - Present

Fraternities/Sororities

- Iota Tau Kappa

Edward L. Fiandach, Esq.

In 1976, nationally renowned Rochester New York DWI trial expert, Edward L. Fiandach, presented his first paper on Driving While Intoxicated. Since then he's given over 100 [lectures](#) on DWI, became New York's first [Board Certified DWI Specialist](#), authored [two sets of books on DWI](#),

established a firm that tries more DWI cases than any firm in the State of New York and has written more [articles](#) on New York DWI than any attorney in the world. His monthly DWI newsletter, [The New York DWI Bulletin](#), is the only statewide publication of its kind and for twelve years has been continuously used by lawyers, prosecutors and judges across the state. His annually supplemented DWI treatises, [New York Driving While Intoxicated, 2d](#) and [Handling Drunk Driving Cases 2d](#), both two volume, nationally distributed texts, are widely acclaimed as the most authoritative publications of their kind. His DWI articles have been published nationally in *The Magistrate*, *The Public Defense Backup Report*, *The Daily Record*, *Rochester Democrat & Chronicle*, *Times Union*, *Criminal Justice Journal* and *The Automobile Liability Newsletter*, *The Champion* and numerous state and local bar association publications in New York and elsewhere.



He also owns and is factory trained on [a BAC DataMaster](#) and has conducted replicate DWI testing to demonstrate the effects mouth alcohol at [lectures](#) and for [the media](#).

In **July of 2005** at a program conducted at Harvard Law School, Mr. Fiandach was honored by being named the [Dean of The National College for DUI Defense](#). **This puts him at the top of the nation's DWI lawyers.**

He is the first DWI attorney in the State of New York to ever be approved as a [Board Certified DWI specialist](#) by the American Bar Association and the only one in the Buffalo, Rochester, Utica, Syracuse, Binghamton and Watertown area. He is also rated "AV" by the nationally recognized Martindale-Hubble™ lawyer rating system. This is the highest rating a lawyer can receive. This puts him in the top 5 percent of all American lawyers.

Mr. Fiandach is frequently used as a source of DWI information by such prestigious news outlets as *The New York Times*, *The New York Daily News*, CNN, the Associated Press, ABC, *The Harrisburg Patriot*, *Lawyer's Weekly* and others. He has been a featured "Speaking Out" columnist in the *Rochester Democrat & Chronicle* on eleven occasions. He is a frequent guest of local television and is regularly interviewed by all local media as an expert on DWI and alcohol related issues. He is also [a frequent guest on television, radio and internet talk shows](#).

A dynamic speaker, Ed Fiandach has lectured on DWI nationwide for groups such as the National College for DUI Defense, the Kansas Association of Criminal Defense Lawyers, the Georgia Institute of Legal Education, New York State Bar Association, the New York State Magistrates Association, the New York State Association of Criminal Defense Lawyers, Lorman Legal Education, the Erie County Bar Association, and numerous other professional organizations. He is a regent and founding member of the National College for DUI Defense. He has taught the subject of DWI to New York State Judges on

behalf of the New York State Office of Court Administration. He owns and is a factory trained operator of the BAC DataMaster.

Mr. Fiandach is also an **adjunct professor of Constitutional Law and Criminal Procedure** at the prestigious [University of Rochester](#). He teaches a course on Criminal Procedure and Constitutional Law to almost 100 upper classpersons.

Over the years Mr. Fiandach has consistently demonstrated that he is a force to be reckoned with in the face of incompetence or injustice. In 2001, for instance he was instrumental in exposing the incompetent and unjust practices of the Monroe County District Attorney's Office in the prosecution of felonies. Ignoring what was at times intense opposition from the local media, Mr. Fiandach called for the resignation of then District Attorney Howard R. Relin. Simultaneously, he petitioned then Governor George A. Pataki to launch an investigation into the disappearance of more than five thousand felony cases.

Although that two year investigation fell short of calling for Mr. Relin's resignation, it nonetheless [acceded to many of Mr. Fiandach's complaints](#). Thereafter, Mr. Relin chose not to seek reelection.

Since he obtained a reversal in a murder appeal he argued after being admitted for only two months (see, *People v. Egan* (4th Dept. 1980) 72 AD2d 239, 424 NYS2d 546, Mr. Fiandach's career has been one of outstanding accomplishments and legal victories.

In 1989, for instance, Mr. Fiandach's investigation disclosed a witness to "lot switching" in the manufacture of DWI Breathalyzer® ampoules. His Rochester hearings were the basis upon which the New York City Criminal Court suppressed Breathalyzer® tests in *People v. Serrano*, 142 Misc2d 1087. His 1991 appellate victory in *People v. Uruburu*, [169 AD2d 20](#), reversed the order of the Monroe County Court (Wisner, J., presiding) and mandated suppression in an untold number of DWI cases statewide (see e.g., *People v. Sperber* 199 AD2d 725).

In 1991, Lawyers Cooperative Publishing (now West Group) published Mr. Fiandach's first book, *New York DWI*. It instantly became the standard for serious DWI publications in the State of New York.

Also in 1991, he began writing his popular column in the Rochester Daily Record, "New York DWI." It ran until 1994 and consisted of over 150 weekly articles on DWI issues.

In 1992, in a televised DWI case that WROC TV 8 recently characterized as "one of the most high profile cases in the 1990's," Ed became the only attorney in the State of New York to obtain a verdict of "Not Guilty" for a client tried for Murder as the result of DWI. His client was alleged at trial to have driven 11 miles in the wrong direction with a .18 BAC on an interstate highway.

Also in 1992, Mr. Fiandach founded NYDWI.COM (now Fiandach.com) the internet's most complete source for information on New York DWI.

In 1993, he founded [the New York DWI Bulletin](#) as a monthly DWI publication for lawyers. Since then it has become *the* source of up-to-date DWI information for lawyers and judges across the state.

In 1994, Mr. Fiandach's 1400 page two volume treatise, [New York DWI 2d](#) was published by West Group.

His 1995 case, [Pringle v. Wolfe, 164 Misc2d 733](#), was the first Supreme Court decision to declare DWI §1193 (2) (e) (7) unconstitutional. Further litigating the matter through the United States Supreme Court, the ultimate decision significantly weakened the power of the State to take a motorist's license simply because he or she had .08% of alcohol or greater in the blood.

Also in 1995, West Group published Mr. Fiandach's second DWI book, [Handling Drunk Driving Cases 2d](#). This two volume set on the trial, law and science of DWI cases is used by lawyers from coast to coast.

In 1996, Mr. Fiandach became the first New York attorney to be factory trained on the BAC DataMaster. Mr. Fiandach received his certification at a course offered by National Patent Analytical Systems in Mansfield Ohio.

In 1997, Mr. Fiandach was hired to do a DWI appeal for an individual who had been sentenced to *15 years to life* for DWI. The decision in [People v. Donhauser, \(1998\) 255 AD 2d 933, 683 NYS 2d 357](#), represented the *only* successful appeal of such a sentence in the State of New York.

Also in 1997, in the only DWI ranking of its kind, the Rochester *Democrat and Chronicle* compared Rochester's top DWI lawyers and found Ed Fiandach's clients to be the least likely to be convicted of DWI. Comparing figures, the paper noted that his clients ". . . were convicted of the top count only 13% of the time," the lowest of all lawyers examined.

In July of 2002, Mr. Fiandach challenged the way DataMaster breath testing machines were calibrated. At the DWI hearings in *People v. Rowley*, Mr. Fiandach made the New York State Department of Criminal Justice Services admit, for the first time, that they do not calibrate these DWI test machines; they only *verify manufacturer calibration*.

In December of 2002, Mr. Fiandach was the author of an Op-Ed piece in the Rochester *Democrat and Chronicle* which explored the effectiveness of .08 as a *per se* blood/breath DWI alcohol limitation. *The next day*, in an editorial, the Rochester *Democrat and Chronicle* adopted in substance his position.

In 2003 Mr. Fiandach won an unprecedented DWI sentencing appeal. This time he won the appeal of six time convicted drunk driver Brian Beckwith who received the longest sentence ever handed out to a drunk driver in the state of New York. In a 1999 proceeding that was praised statewide by Mothers Against Drunk Drivers, the 37 year old motorist, who was **not** represented by Fiandach & Fiandach at trial, was sentenced to *sixteen years to life for DWI*. As a result of Mr. Fiandach's successful representation, the Appellate Division Fourth Department overturned this draconian sentence ([People v. Beckwith, 309 A.D.2d 1253, 767 N.Y.S.2d 713](#)).

On June 6, 2003, Mr. Fiandach gave his *100th DWI lecture* to a lawyers group. The place was New York City and the lecture was entitled "Strategies in Blood Testing." It was given for the New York State Bar Association's annual "Big Apple DWI Seminar."

In 2004, Mr. Fiandach was named the Assistant Dean of the National College for DUI Defense. This is the second highest position of the nation's leading leading and only ABA recognized DWI defense organization.

In 2005, he was named the Editor of the Journal of the National College for DUI Defense. This is the national publication of the National College for DUI Defense and the only publication of its kind.

In 2006, Ed celebrated the birth of his son, Will, and was named Dean of the National College of DUI Defense. This made him the head of the nation's most prestigious certification and educational body for DUI attorneys.

In 2007, he was named to New York's Best Lawyers and Super Lawyers, which along with his superlative Martindale Hubble rating places him in the top 1% of American lawyers.

The passage of New York's tough new [Leandra's Law](#) in 2010 created several new offenses and significantly raised the penalties for those convicted of alcohol related operating offenses. One aspect was elevation to the level of a felony those who have been arrested with a child aged 16 or under in the vehicle. On December 7th, 2010, in Steuben County, Mr. Fiandach obtained what may have been the first not guilty verdict in such a case. Leandra's Law also added a strict requirement for the installation of an ignition interlock device (IID) in the vehicles of those convicted of alcohol related crimes. Mr. Fiandach has been very active in fighting every aspect of this law, including motions seeking a declaration that the law is unconstitutional.

Over the years, his DWI clients have included doctors, nurses, airline and professional pilots, physicians assistants, lawyers, judges, professional musicians, professional athletes, priests, military personnel, politicians, police chiefs, fireman, bus drivers commercial drivers, CEO's, teachers, college administrators, professors, models, actors and actresses.

He owns and has also been trained *by the manufacturer* as an Operator of the National Patent Analytical System "DataMaster", the breath testing device in widest use in New York State.

When he's not with a client, in court or lecturing, Ed enjoys bicycling, Civil War history, skiing, cooking and most of all spending time with his wife and son (Jillian & Will) and their two dogs.

Joseph Gerstenzang

Joseph Gerstenzang is an associate at the law firm of Gerstenzang, O'Hern, Sills & Gerstenzang. He received his Bachelor's Degree from Boston University. He is a 2011 magna cum laude graduate of Albany Law School, where he served as a Senior Editor of the Albany Law Review. During Law School, Joseph interned at the District Attorney's Offices in Rensselaer, Albany and Schenectady counties.

Since joining the firm, Joseph's practice has focused on the defense of driving while intoxicated cases.

Peter Gerstenzang



Peter Gerstenzang is the senior partner in the Albany law firm of Gerstenzang, O'Hern, Sills & Gerstenzang. He is a 1970 graduate of Albany Law School. He is one of only three lawyers in New York State who have been Board Certified as specialists in DUI Defense Law by the National College for DUI Defense ("NCDD"). The NCDD is the only organization accredited by the American Bar Association to certify attorneys as specialists in DUI law.* His practice focuses on Criminal Defense with an emphasis on DWI cases and Vehicular Crimes. In addition, Mr. Gerstenzang is listed as a top DWI attorney in the following publications: *The Best Lawyers in America*®, *The New York Area's Best Lawyers*®, and *New York Super Lawyers*® Upstate Edition 2014. He is listed as one of the "Top 25 Hudson Valley Super Lawyers 2010" regardless of category.

Mr. Gerstenzang commenced his legal career as a prosecutor for the United States Army in the Republic of Vietnam. From 1972 to 1975, he was an Assistant District Attorney for the County of Albany. Certified as a breath test operator, he taught at the New York State Police Academy in their Breath Test Training Program for 12 years. Mr. Gerstenzang currently serves as the Dean of the National College for DUI Defense, which holds an annual seminar in Cambridge, Massachusetts on the campus of Harvard Law School. He previously served on NCDD's Board of Regents from 2003 to 2013, and as Assistant Dean in 2012-2013. His book, ***Handling the DWI Case in New York***, published annually by Thomson/West, is considered a standard reference for the defense of Driving While Intoxicated cases.

Mr. Gerstenzang is a regular lecturer for the New York State Bar Association (Chair, Big Apple Program held annually in May, in New York City, and Chair, Representing a DWI Defendant in New York from Arraignment to Disposition, September – October, 2010); the National Association of Criminal Defense Lawyers/ National College for DUI Defense (Annual DUI Seminar, Las Vegas, Nevada 2012); the New York State Association of Criminal Defense Lawyers; the New York State Defenders Association; Albany County Bar Association; the New York State Magistrates Association; the San Diego Public Defenders Office; and Impaired Driving Specialists, LLC, Atlanta, Georgia; Delaware County Bar Association; Columbia County Magistrates Association; Suffolk County Bar Association; Suffolk County Magistrates Association; Westchester County Court Clerks Association; and Suffolk County Court Clerks Association. Mr. Gerstenzang teaches for various law enforcement, defense and judicial associations. In addition, he has lectured for the New York State Office of Court Administration Judges Training Program.

Thomas J. O'Hern, Albany, NY

Tom is a partner in the Albany firm of Gerstenzang, O'Hern, Hickey & Gerstenzang. His practice focuses primarily on the defense of Driving While Intoxicated Cases. Tom is a life member of the New York State Association of Criminal Defense Attorneys. He is a regular speaker for the New York State Bar Association and the New York State Association of Criminal Defense Lawyers.