

1. There is an unusual rate of mechanical refusals (machine refuses for some reason to provide a reading after the sample is submitted);
2. The machine's ability to judge volume may be in question;
3. A simulation is done with every test that may lead to a depletion question; and

4. As previously mentioned, this particular model does not incorporate a breath temperature gauge, and difference in temperature of a person's breath may influence an alcohol reading plus or minus .012.

The Alco-Test is already in use in Middlesex and Camden counties. By the end of the summer, Morris, Cumberland, Gloucester, Salem and Union counties should be in place with Burlington, Hunterdon, Mercer and Warren counties scheduled to be on line before the end of the year.

By the end of 2006, the entire state should be converted from the breathalyzer to the Alco-Test and, consequently, litigation should be in full swing.

At Azrak & Associates we support law enforcement in protecting the public's safety on the road. Conversely, we are committed to protecting our clients right not to be wrongly accused of DWI. Our attorney's are trained to protect you when this new device is used to revoke your driving privileges.

SEARCH AND SEIZURE - PART I

John A. Snowdon, Jr., Esq.

One of the first areas to be considered in defending an arrest for any criminal accusation or for driving while intoxicated is whether or not the arrest was constitutional. The Fourth Amendment of the United States Constitution requires that arrests, searches and seizures must be founded upon probable cause. The Supreme Court of the United States ruled that the protections of the Fourth Amendment apply to actions of the states through the Fourteenth Amendment. The exclusionary rule further provides that evidence seized by the police in violation of a defendant's Fourth Amendment rights to be free from unreasonable searches and seizures cannot be used against the defendant at a trial. Further, Article I, Paragraph 7 of the New Jersey Constitution, re-establishes this right and, to a certain extent, offers protections against unreasonable searches and seizures

that are even more stringent than those under the Fourth Amendment. While many actions in the Municipal Court are done in a more informal manner than in Superior Court (for instance, there is no jury), the protections of the New Jersey and the United States Constitution still apply. Consequently, any arrest for DWI done without a warrant is subject to attack by the defendant in Municipal Court by way of a motion to suppress evidence. Two important factors need to be considered in such a motion.

First, the State must prove that the initial motor vehicle stop was based on the existence of at least a reasonable suspicion of illegal activity. Frequently, this is testimony by the arresting officer of some peculiarity in the manner in which the defendant was operating the motor vehicle. For instance, if the

officer observes any form of traffic violation such as speeding, failure to stop at a stop sign, or crossing the center line, or observes other indicators of an erratic driving, such as weaving, speeding or some indication of lack of control of the vehicle, he would have satisfied the initial requirement

that there be some reasonable suspicion for the stop.

In some situations, of course, the reasonable suspicion is obvious. For instance, in a situation in which there is some type of motor vehicle collision. Having established a reasonable suspicion to stop the vehicle, the State must then establish that there was probable cause for the officer to affect an arrest, conduct a search incident to the arrest, or to search a motor vehicle for evidence of a crime. Probable cause is usually defined as a "well-grounded suspicion" that a criminal offense has or is being committed. This differs from the lesser standard of the reasonable suspicion to stop which is normally defined as a "reasonable and articulable suspicion" that an offense has been or is being committed, but which is less than that of probable cause. Usually reasonable suspicion is established after a stop, by an officer's initial observations of the driver. For instance, an observation of red or watery eyes, the odor of alcohol on the driver's breath, or confused or incomplete responses to the officer's questions to the driver will suffice to at least proceed further in the investigation.

In our next issue, we will explore the tests conducted by the police, searches without warrants and defenses to the charges.

If you or anyone you know is accused of a crime, DWI or driving offense call us.

"FROM THE MAYOR'S CORNER"

Ira E. Weiner, Esq. - Mayor of Vernon Township

A common misconception among the public is that their local governing body can fix almost any local problem. Many people do not realize that there are different forms of government, and depending on the type of government in your town, the council and mayor have varying levels of authority. In the mayor/council form of government for example, the township manager handles all of the daily operations of the government, and the council is actually prohibited by state law from interfering with his decisions on how to address the day-to-day operations of the town. In the committee form of government, the committee and mayor have a more direct role in decisions that need to be made from day-to-day, but often defer most of the decision making authority to the borough administrator, who is there on a full time basis and is usually more familiar with the particulars of how to resolve problems as they arise. The full time municipal staff is usually better able to help you with whatever situation has arisen, than the mayor or committee.

Whatever the form of government, however, people often assume their town officials have the ability to solve every municipal problem, when, in fact, the role of government is often quite limited. A common situation is when a neighbor is doing construction work on his property, which is causing water to run off on to another's property. Although there are ordinances in place in most towns setting forth the manner in which any work is to be done on property, unless the offending neighbor has violated any of those ordinances or the conditions of any building permit, there is virtually nothing the town can do unless the condition caused is so severe as to be deemed a health or safety hazard. Many of the issues that arise between neighbors are private in nature and must be settled privately, either through settlement and discussion between the parties, or through litigation. The township is not the arbiter of every dispute between its citizens and only steps in when its ordinances are not being followed, or someone has created a situation which is hazardous to the public's health and safety.

The lesson to be learned is that before you become angry with your town for not acting, be sure that what you are requesting comes within the ambit of the town's authority. If indeed the town is responsible, but is not acting to resolve your complaint, you may wish to engage an attorney who is knowledgeable in municipal law. You will find that your representatives are often much more responsive when you are represented. The attorney can communicate your needs to the officials, attend Mayor and Council or Board meetings. Most council meetings are reported in the newspaper and most elected officials want to try to help their citizens. Obviously, if you cannot get the relief you seek from your public officials either because they are not able to help or just refuse, your ultimate alternative is to seek redress in the courts. Most of them time however, if your attorney is firm and committed to your position, most towns will usually try to either fix the problem or at least intercede between you and your neighbor to try to facilitate some acceptable compromise.

CRITERIA FOR ESTABLISHING HISTORIC PLACES

Peter V. McArthur, Esq.

If you have ever wondered what might or might not be considered historic in the State of New Jersey, you might be pleasantly surprised as the Regulations governing the same are quite broad. This determination is made by the Commissioner of Environmental Protection with the assistance of the State of New Jersey Historic Preservation Officer. The procedure for registration in the New Jersey Historic Register are integrated with the National Register of Historic Places Program as administered by the National Park Service so it is quite possible that a successful applicant could have two historic designations with essentially one application. This article explores the criteria that will be considered by the Commissioner for a

successful application. Initially, districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials workmanship, 1) are associated with events that have made a significant contribution to the broad patterns of our history; or 2) are associated with the lives of persons significant in our past; or 3) embody distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or 4) that have yielded or likely to yield information important to history or prehistory. Accordingly, cemeteries, birthplaces,

graves of historical figures, properties owned by religious institutions, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved historical significance even in the last 50 years may qualify for registry in the State and Historic registers under certain circumstances.

We here at Azrak and Associates would be able to guide you through the complicated application process to reach your goal of significant historical designation. The next article in this series will outline the application process.

627 NEWARK POMPTON TURNPIKE
POMPTON PLAINS, NJ 07444
TEL: (973) 839-9062
FAX: (973) 839-2743

E-MAIL: LAWYERS@AZRAKLAW.COM
WEBSITE: WWW.AZRAKLAW.COM

AZRAK & ASSOCIATES, L.L.C.

We're On the Web!
AZRAKLAW.COM



AZRAK & ASSOCIATES L.L.C.

A T T O R N E Y S A T L A W

May, 2005

627 NEWARK POMPTON TNPk.
POMPTON PLAINS, NJ 07444
TEL: (973) 839-9062
FAX: (973) 839-2743
E-MAIL:
LAWYERS@AZRAKLAW.COM
WEBSITE:
WWW.AZRAKLAW.COM

Contributors:

Fredric F. Azrak, Esq.
Ira E. Weiner, Esq.
Peter V. McArthur, Esq.
John A. Snowdon, Jr. Esq.
Charles E. Murray, III, Esq.

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SPRING ISSUE

Fredric F. Azrak, Esq

Spring brings a renewed interest in us all to organize and clean those things in our house, car and garage that have lain dormant during the winter. Interestingly, we tend to take care of our house and car more than the important issues in our life - protecting family and ourselves.

Legal issues, unless emergent are not put in priority. Below are common areas that we should consider and review:

- Do you own a business? If so, do you have your corporation documents in order: corporate book, buy-sell/shareholders agreement
- Have you reviewed your estate plan with us within one year? Tax laws have changed.
- Do you have parents that require Elder Law Planning?
- Are you a homeowner that is expanding your house - don't overlook the need to review builder's contracts. It's too late when there is a problem.
- Are you thinking of buying and selling a home or vacation home?

We at Azrak & Associates are here to assist you in those areas. We encourage clients to plan ahead. It allows you to control your life and avoid problems which only "clutter" our lives.

Review your legal needs this Spring - then enjoy your Summer.

ESTATE PLANNING EXEMPTIONS HAVE CHANGED! - NEW JERSEY ESTATE TAX

Fredric F. Azrak, Esq.

Thoughts and Issues you Should Consider:

- YOU MUST BE PREPARED TO SHELTER ASSETS IN ORDER TO MINIMIZE THE NEW JERSEY ESTATE TAX WHICH EXEMPTS ONLY \$675,000.00 OF YOUR ESTATE.
- FEDERAL ESTATE TAX EXEMPTIONS WILL CHANGE AT THE END OF THIS YEAR AND MAY EFFECT YOUR ESTATE PLAN.
- THROUGH PLANNING AND KNOWLEDGE OF THE TAX LAWS FAMILIES ARE ABLE TO SHELTER AND PASS TO THEIR CHILDREN AND GRANDCHILDREN ASSETS THAT NORMALLY WOULD BE GIVEN TO THE FEDERAL AND STATE GOVERNMENT.
- PROPER ESTATE PLANNING WILL ELEMINTATE THE SCHIAVO/QUILAN ISSUES AND PROVIDE FAMILY MEMBERS WITH LIVING WILLS WHEN TRAGIC CIRCUMSTANCES AFFECT YOUR SPOUSE OR LOVED ONES.
- IF YOUR ESTATE PLANNING HAS NOT BEEN REVIEWED WITHIN THE LAST YEAR YOU SHOULD KNOW THAT LAWS ARE CHANGING AND A CONFERENCE COULD HELP YOU SAVE THOUSANDS OF DOLLARS.
- ARE YOU AWARE THAT WHEN YOU GIFT MONEY TO CHILDREN, RELATIVES OR ANYONE, THAT THERE CAN BE SERIOUS TAX IMPLICATIONS. REMEMBER, THE PERSON WHO GIVES THE GIFT PAYS THE TAX.
- OUR FIRM CAN PREPARE FOR YOU A PLAN WHICH WILL MAXIMIZE MAINTAINING YOUR HARD EARNED MONEY AND MINIMIZE YOUR TAXES TO THE GOVERNMENT.

PRESS RELEASE

FREDRIC F. AZRAK GIVES LECTURES AND SEMINARS-AND IS QUOTED IN NEWS ARTICLES REGARDING LIVING WILLS AND MEDICAL POWERS OF ATTORNEYS.

- NOW, MORE THAN EVER THIS IS A TOPIC THAT SHOULD BE DISCUSSED WITH OUR FIRM. IN LIGHT OF THE TERRI SCHIAVO FAMILY ISSUES, WHY LET FAMILY MEMBERS ANGONIZE OVER THESE DECISIONS. YOU CAN RESOLVE COMPLICATED ISSUES SIMPLY BY CALLING OUR OFFICE.
- THE GOVERNOR OF NEW JERSEY HAS RECOGNIZED THE IMPORTANCE OF LONG-TERM CARE INSURANCE. GOVERNOR RICHARD CODEY HAS SENT LETTERS AND INFORMATION REGARDING LONG-TERM CARE PLANNING.

AZRAK & ASSOCIATES CAN GUIDE YOU IN THIS AREA AND GIVE THE NECESSARY REFERRALS TO A HEALTH CARE REPRESENTATIVE AND AGENT WHO CAN GIVE YOU MORE DETAILS AND QUOTE ON THIS TYPE OF INSURANCE.

If you would like to receive newsletter issues, informative flyers, and other data prepared by Azrak & Associates, L.L.C., please call us at 973-839-9062 or e-mail us at lawyers@azraklaw.com with your business or personal e-mail address. Feel free to include areas of particular interest to you.

COMING SOON TO A COUNTY NEAR YOU... THE ALCO-TEST 7110 NKIII-C

Charles E. Murray, III, Esq.

New Device to Measure Alcohol Levels

The State of New Jersey is finally throwing the antiquated Breathalyzer on the rubbish heap, and implementing new technology in the test for blood-alcohol levels for drivers suspected of intoxication.

Ironically, however, the specific technology chosen has not reached widespread acceptance in this country or, indeed, the world. In fact, this particular device, the Alco-Test 7110, is only used in Germany and Alabama. Moreover, these other two vicinages both incorporate a breath temperature gauge; an

option that New Jersey has decided to pass on.

What does this mean for the average citizen arrested on a DWI charge?

After years and years of litigation, New Jersey attorneys hashed and rehashed most of the possible challenges to reliability regarding the old Breathalyzer. There came a point over a decade ago that the New Jersey Supreme Court ruled, as a matter of law, that no legal challenges could be made to the reliability of the Breathalyzer.

If properly maintained, the results were, as a matter of law, deemed conclusive.

The results of the Alco-Test 7110, have not been subject to such scrutiny, and the results of such tests can be challenged on any number of grounds in the courts of this state. With such new technology, it is impossible to even start to predict how many different aspects of the test might lead to dismissals, however, some early indications show that the following may be areas ripe to explore: