



TRANSLATION

Working with Interpreter Cases

Laura Glass Hess, Defender Attorney

There is more to interpreter cases than being able to jump to the front of the line at morning calendar, or having to schedule jail visits in advance to be able to talk to your client. From the moment you receive discovery, to putting your client on the stand at trial, these cases involve unique issues. Throughout this article, I'll refer to Spanish interpretation, since most of our interpreter cases involve Spanish-speaking defendants.

However, these tips apply to interpreters for other languages as well.

BOTCHED MIRANDA WARNINGS

Most police departments have nice little cards with the Miranda advisement printed on them in English and Spanish. All the officers have to do to get the exact wording right is to read off the card. But sometimes officers just get so excited about practicing their substandard Spanish that they decide to

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try to wing it. That's when you get suppression motions granted because officers leave out some critical part of the advisement, or phrase it in a way that is incomprehensible. Remember that Miranda warnings must include the following elements: (1) the right to remain silent; (2) the fact that any statements made can be used against the defendant in a court of law; (3) the right to the presence of an attorney, both before and during questioning; (4) the right to have an attorney provided to the defendant at no cost, prior to any questioning. *State v. Carlson*, 228 Ariz. 343 (2011).

Find someone who speaks Spanish, and have them review the Miranda warnings the officer gave to make sure these critical elements are included in an intelligible manner. If the officer clearly omits or incomprehensibly jumbles an element, you've just kept out your client's confession. There's a lot of case law on this, and courts have found that thoroughness and clarity in giving Miranda warnings are especially important when a defendant is uneducated. *U.S. v. Perez-Lopez*, 348 F.3d 839 (9th Cir. 2003). Send the part of the interview containing the inadequate advisement to Court Interpretation and Translation Services (CITS) so you can include it as an attachment to your motion.

“SPANISH-CERTIFIED” OFFICERS CONDUCTING INTERVIEWS

Most police departments have a process that officers go through to become “Spanish-certified.” During the defense interview, find out if the officer is certified and ask about the process. Ask how he learned Spanish—is he a native speaker, or did he take a few classes and spend a semester in Spain? Even if the officer is certified, levels of competency vary wildly.

If the interview of your client is recorded, have someone who speaks Spanish listen to it. If it's not recorded, bring a Spanish speaker to the police interview, and ask the officer exact-

ly what words he used, what words he would normally use, or how he thinks a certain word/phrase should be translated. We all know it's not good practice to accept the officer's summary of an interview at face value—but this is even more important in interpreter cases. In these cases it's very likely that your client is unfamiliar with the U.S. legal system, his rights, legal terminology, and the consequences of his statements. He is likely to be thoroughly intimidated by the process of an officer interview. This is made even worse if he's struggling to understand an officer whose command of the language is substandard. Even if you don't have enough for a voluntariness motion, you can point out any problems with the interview to explain why your client made those damning statements, and why the jury shouldn't take them at face value.

Pay attention to the specific words that are used around key facts in the statement. For example, I had a case where the “Spanish-certified” officer used the word “pechuga” (commonly used to refer to a chicken breast) instead of the correct “pecho” or “senos” (breast). Her questioning of my client was made even worse by the fact that she was not using the correct subject—so she repeatedly asked my client, “Did I touch the chicken breast?” While this might make a great comedy routine, it's serious when client statements made in response to this kind of incompetent questioning, are used against them later. Get the offending segments translated, use this in a deviation request to argue that your client didn't really confess, and bring up these issues at trial. Look for words that have multiple meanings. Look at the context in which those words were used. Is it possible that your client meant something different than what the officer understood? Is the officer using a false cognate (for example, trying to communicate “molest” by using the Spanish verb “molestar,” which actually means “to bother”)? These mistakes can dramatically change the meaning of the con-

versation.

Witness statements can also be misinterpreted by a “Spanish-certified” officer. Again, check key words. Maybe that witness is not actually saying what the officer thinks she is saying.

INVALID CONSENT

Inept language use by an officer can also be used to invalidate consent. If your client didn't understand that the officer was asking to search the car, or didn't understand the scope of that search, the consent is invalid. Ask the officer exactly what he said to your client, in Spanish. What exactly—what specific words—did your client say in response? Ask where he was standing, what hand motions were made, etc., when this conversation took place. If the officer had your client sign a consent form, did he also read it to your client? Does he know if your client can read? Ask him to read the statement to you, in Spanish. Have a Spanish-speaker listen to make sure it's intelligible.

SHOWING THAT THE OFFICER GOT IT WRONG

At trial or a pre-trial hearing, the State will just ask the “Spanish-certified” officer to recount the defendant's statements, just as if the defendant had made the statements in English. On cross, you need to show what was actually communicated to your client, and what your client actually said. If you have a recording, then you can impeach or refresh an officer's memory with the recording to get out the exact words. If you did an interview and the officer admitted to using a specific word that is wrong, use the interview to impeach. If the officer's language competency is key to an issue that you are challenging in a pre-trial hearing or at trial, don't rely on the officer acknowledging his error. He won't admit his mistake, won't know he made a mistake, or will try to say that he is using some slang that would be commonly understood by your client. Instead, bring in an extra court interpreter. Talk to CITS about the case

and how an interpreter can help you get your point across. You can either have the interpreter present during the testifying officer's testimony, to interpret specific words or phrases; or you can call the interpreter as an expert witness during your case and ask her questions about specific words/phrases that were used by the testifying officer. File a motion for a court interpreter for the hearing, explaining that you can't make your argument, and the court won't be able to understand, without the extra interpreter. This witness interpreter cannot be the same person that is interpreting for your client. Here is how a question might go using the interpreter during the officer's testimony:

Attorney: You said that you asked Mr. Defendant whose car it was. What words exactly, in Spanish, did you use to communicate that?

Cop: De quien de carro.

Interpreter: Whose of car.

Questioning officers about interrogations in another language can be a tedious process. If you have an officer who is determined to shade what your client said to fit it into his theory of the case, you will need to meticulously pick apart the conversation while not putting the jury to sleep. You also have to think very carefully about what exactly each witness can testify to. Be prepared, and do it anyway. Show how confusing, intimidating, and inaccurate the whole interrogation was. Your client's statement is often the most important piece of evidence that will be used against him, so do everything to discredit it.

SIXTH AMENDMENT ISSUES

What if your client was interviewed by an officer who did not speak Spanish, but used another officer, or even another witness, to interpret the interrogation? Can the officer then testify as to what your client said, even though he only understood the statements as they were interpreted? Police "interpreters" can raise 6th Amendment Confrontation clause issues, since this strips

away your right to show how faulty the interpretation was. You can't question the officer about the words used by the "interpreter," since the officer doesn't understand the language. If the State tries to bring in the officer but not the interpreter, object on 6th Amendment grounds and ask for a hearing outside the presence of the jury.

The rule in the 9th Circuit is that if an interpreter is acting merely as a "conduit" of language, then the interpreted statements can be attributed to the defendant directly, thereby eliminating the 6th Amendment problem. *U.S. v. Nazemian*, 948 F.2d 522 (9th Cir 1991)¹. Whether the interpreter is acting as a conduit is determined by weighing four factors: (1) which party provided the interpreter (2) whether the interpreter had a motive to mislead or distort (3) the interpreter's qualifications and language skill (4) whether actions taken subsequent to the conversation were consistent with the statements as translated. *U.S. v. Garcia*, 16 F.3d 341, 342 (9th Cir. 1994). The *Nazemian* approach continues to be followed, although its continued viability in the face of *Crawford* has been questioned.²

Bizarrely, courts have found that the fact that the interpreter is a police officer, working for the same entity as the arresting officer, does not mean that she has a motive to mislead or distort. *U.S. v. Romo-Chavez*, 681 F.3d 955(9th Cir. 2012). So you're going to have to try to establish that this particular officer had a motive to mislead with this translation. There is a stronger argument that the officer interpreter is not a conduit if they are actually directing the questions, or asking their own questions instead of merely translating what the main officer says.

VOIR DIRE

If you are going to trial with a client who needs an interpreter, keep in

mind that throughout the entire trial, your client will be wearing a headset and have an interpreter sitting behind or beside him. It will be obvious to the jury that your client does not speak English. If he testifies, every question will be passed through the conduit of an interpreter. If you have people in the jury pool who think that "this is 'America and everyone should speak English,'" then you want to know that. Point out that your client is using an interpreter. Ask if they will treat him differently because of this. Ask if there's anyone who thinks that taxpayer money shouldn't be spent on providing interpreters.

TIPS FOR WORKING EFFECTIVELY WITH THE INTERPRETER

The interpreter who is assisting your client during trial will do simultaneous interpretation—that is, she will (amazingly!) interpret the words just a split second after they are uttered by the speaker. However, during both pre-trial interviews of witnesses, and on the stand, translation will be consecutive. In other words, the interpreter will (1) listen to the question of the attorney (2) translate it to the witness (3) listen to the witness' statement (4) translate it back into English. That's two extra steps that aren't present when both attorney and witness are speaking the same language. Figure that any interview or testimony will take at least twice as long as a non-interpreter matter.

Context is extremely important in interpretation. Often, the same language varies by region. For example, the Spanish spoken in Spain is different than that spoken in Puerto Rico, which is different than Mexico. Vocabulary between countries varies greatly, as do slang terms. Even within the same country, the same word can have different meanings depending on the context. For this reason, interpreters like to have as much information about the case as possible. Giving them the infor-

You will have to meticulously pick apart the conversation while not putting the jury to sleep.

mation they ask for ahead of time—expert’s reports, pleas, a summary of the case, etc.—will help them provide the most accurate interpretation. If a particular word is important to your client’s statements, try to find out if that word could have a different meaning. The court interpreters are fantastic resources.

If you or the State request translation and transcription of a witness’ interview, be prepared to wait. These are extremely time-consuming, and CITS always has a months-long waiting list. Let CITS know the priority of the transcription/translations that you are requesting. If all that you need is a translation of a few sentences to use in a

motion, that will be much quicker.

WORTH THE WORK

Interpreter cases can be time-consuming, and the clients are among the most vulnerable you will represent. However, the interpretation process and the fact that law enforcement is often not prepared to interact with someone speaking another language means that there are often issues you can use to your client’s advantage.

ENDNOTES

- 1 This view is not uniform across circuits. The 11th Circuit came to the opposite conclusion, finding that allowing a CBP agent to testify about the defendant’s statements

that the agent only understood through an interpreter violated the Confrontation clause of the 6th Amendment. *U.S. v. Charles*, 722 F.3d 1319 (11th Cir. 2013).

- 2 “We recognize that there is some tension between the *Nazemian* analysis and the Supreme Court’s recent approach to the Confrontation Clause.” *U.S. v. Orm Hieng*, 679 F.3d 1131 (9th Cir. 2012). However, the Court went on to conclude that *Crawford* is not incompatible with *Nazemian*, and applied the *Nazemian* factors to find that the interpreter was a conduit.

NEW FACES

The New Capital Representation Resource Attorney

Karen Emerson, Defender Attorney Supervisor

The Maricopa County Public Defender’s Office is pleased to announce our inaugural Capital Representation Resource Attorney, John Canby. John has over 15 years of experience defending clients against the death penalty. He is a long-standing board member of the Arizona Justice Project and Arizona Capital Representation Project, serves as Chair of the Maricopa County Capital Contract Review Committee, and is a past President and long-time board member of AACJ. John is an esteemed trial practitioner, a valued mentor, and an expert in the nuances of capital defense.

While serving as the Capital Representation Resource Attorney, John will be tasked with, among other duties, assisting capital defense teams in preparing for and conducting voir dire, providing consultation services in all areas relevant to capital defense work, providing Rule 6.8 required association with capital teams who have not previously tried a capital case to completion, conducting training programs for capital defense practitioners, and assist-

ing in the development and litigation of issues arising from the systemic injustices of death penalty prosecution.

The efforts of the Capital Representation Resource Attorney will move the Public Defender’s Office further to the forefront of death penalty litigation. As the ABA asserted more than a decade ago, “the responsibilities of defense counsel in a death penalty case are uniquely demanding, both in the knowledge that counsel must possess and in the skills he or she must master... the responsibilities thrust upon defense counsel in a capital case carry with them psychological and emotional pressures unknown elsewhere in the law.” It is in this context that the Public Defender’s Office seeks to enrich the capabilities of our Capital Defense Unit by ensuring that the best and brightest criminal defense lawyers, at all levels of experience, are able to avail themselves of the knowledge, skill, and wisdom that can be obtained only through a career dedicated to fervent toil in the trenches of capital trial practice. Due to the extraordinary and irrevocable nature



of the death penalty, it is incumbent on our Office to provide a commensurate level of representation by engaging in extraordinary efforts on behalf of the accused. The Public Defender’s Office is excited to have this opportunity, through the Capital Representation Resource Attorney, to enhance our efforts in meeting this most solemn mandate.

DEPENDENCY

Dealing with Parallel Proceedings

What About my Client's Kids? What Criminal Defense Attorneys Should be Doing When a Client Has a Parallel Dependency Proceeding.

Christine Jones, Defender Attorney



The severance of parental rights is a very real consequence for parents facing criminal charges that involve their children. Routinely, when there is an allegation of criminal conduct and the child is the victim, the Department of Child Safety (DCS) will launch an investigation. These proceedings can involve just the victim child, or all of the client's children, even those who are not victims in the criminal case. While in more serious cases (such as egregious child abuse or sexual abuse) severance should be expected, in less serious cases there is a high probability that the parent and child will be reunified. This becomes tricky, because in some cases, a client may already have been working with a dependency defense attorney for months before the file ever hits the desk of a criminal attorney. There is the potential for a well-intentioned criminal defense attorney to unwittingly do damage to the dependency case. In other words, what may seem like a fantastic plea deal for your client from a criminal perspective could, without certain language, create confusion between courts, prolong the reunification process, and in rare circumstances create the more devastating life-long impact for the client of losing their child. The Victim's Bill of Rights also presents a challenge when the Juvenile Court

has ordered a parent to communicate with the child, but the child is a victim in the criminal case. Discussing the issue of parallel dependency proceedings with the client early in the case can help alleviate the potential for parental severance, as can reaching out to the dependency attorney (with the client's permission). It is also imperative to recognize common, recurring issues and avoid them.

REUNIFICATION TIMELINES

The timelines are relatively quick to sever parental rights, and can be impacted by a client's custody status and ability to have regular visits with their child. The time-in-care severance grounds are located in the Arizona Revised Statutes.¹ The timeline can be as short as 6 months for children younger than 3, and between 12 and 15 months for older children.² Missing scheduled visits, court-ordered therapy, or drug tests could do damage to the dependency case. For a client sitting in custody, maintaining visits could be difficult if not impossible. A motion to modify release conditions can mean the difference between reunification and severance. If it appears as though a lengthy time in custody is unavoidable, the client may want to consider alternative contact methods such as letters or

phone calls.

BATTLES OF THE COURT ORDERS

The huge caveat to instructing your client to have contact with their children is when there is a court order forbidding your client from having contact with the victim. Some courts will go so far as to forbid contact with all minors, even those who are not the victim of a criminal case. To complicate things further, the client may already have an order in place from the Juvenile Court directing them to have contact with the victim and their other children in order to facilitate the reunification process. To balance these competing court orders, the criminal defense attorney should file a motion to modify release conditions to allow contact with the child or children. A.R.S. § 8-202 (2014)³The Juvenile Court order takes precedence in this scenario, and the Superior Court may not impose a contradictory order.⁴ The argument that can be used in a motion (in conjunction with the statute), is that the Juvenile Court is tasked with the reunification of parent and child, and is therefore in the best position to make determinations about contact. If the client is in custody, ask for an order for their release and allowing them contact with the child, or at least an order allowing

the client to contact the child from jail. An argument to supplement the statute can be made based on case law. In *Don L. v. Arizona Department of Economic Security*, the court found that the legislature had given the juvenile court system exclusive jurisdiction involving the termination of parental rights.⁵ Release conditions that contradict a court order from the Juvenile Court therefore infringe on another court's jurisdiction.⁶

LANGUAGE IN PLEA AGREEMENTS

The language in a plea agreement could also impact a client's ability to reunify with their child. DCS will look at the factual basis in a criminal plea, and a criminal defense attorney should work with the dependency attorney

(with the client's permission) to help craft a factual basis that does not damage the dependency case. Another frequent issue occurs when a plea contains domestic violence terms. Unfortunately, the domestic violence terms leave victim contact in the hands of the probation department, which has policies forbidding victim contact for at least a certain period of time. The best practice is to ask the county attorney to drop the requirement of domestic violence terms. County attorneys seem reluctant to do this, however, so the plea should include the language "with domestic violence terms or pursuant to an order by the Department of Child Safety or the Juvenile Court." This should

take the discretion out of the hands of the probation department in terms of victim contact.

Finally, if the client is willing, send a copy of the plea agreement with notes on sentencing to the dependency attorney, as the minute entry can take weeks to hit the docket.

ENDNOTES

- 1 ARIZ. REV. STAT.8-533 § (B)(8)(a)-(c) (2014)
- 2 *Id.*
- 3 REV. STAT. § 8-202 (2014)
- 4 In *Don L. v. Arizona Department of Economic Security*, 193 Ariz. 556, 558, 975 P.2d 146, 148 (App. 1998)
- 5 *Id.*

PRACTICE POINTERS

Prior Felonies and Voir Dire

Mikel Steinfield, Defender Attorney

I've always believed that jurors want to hear what our clients have to say. Jurors want our clients to testify. Jurors hold it against our clients when our clients don't testify. Even jurors who say they understand and agree with the principles of law encompassed by the presumption of innocence and allocation of the burden of proof want to hear from our clients.

But we often counsel a client against testifying because the client has a prior conviction. We don't want the jury to convict our client because she is a bad person or has a history. Like many other issues, though, voir dire may be an appropriate time to discuss your client's past.

When we have horrible facts, traumatic photographs, or an absent defendant, we know it can be beneficial to discuss the issue during voir dire. We draw the sting on unpleasant facts and ask the jury how the facts will impact them. We show the upsetting photographs and ask the jury if they will be too moved by them. We note our client is not present and ask the jury if that will weigh



Name	ORANGE Thomas		L.P. No.	1355/31
Aliases				
Born	1907	Trade	Labourer	Comp. Fresh
Build	prop.	Eyes	brown	Ht. 5'5" Hair brown
Marks	Scar rt. eyebrow, left wrist & knee.			
Peculiarities				
M.O. etc.	Shop and Warehousebreaker. Larceny.			

in their consideration. Even when jurors have personal experiences similar to the charged offense, we ask how they will be able to cope with the facts. Can we do the same thing with priors?

In a recent appeal I handled, *State v. Rivera*, [1 CA-CR 14-0048](#) (Memo. 2015), the prosecutor took just such a step.¹ The victim and a witness had each gotten juvenile adjudications. The Court was going to allow impeachment on the adjudication. During voir dire, the prosecutor advised the jury they would hear the victim and her brother got into trouble with juvenile court and had an adjudication. The prosecutor asked if the jury would find the witnesses “less believable because of an unrelated juvenile case.” The prosecutor conceded the adjudication could be considered when weighing credibility, but asked if any jurors would “not believe their testimony straight off the bat because they got into some trouble?”

The Court of Appeals found this line of questioning did not seek to stakeout the jurors; the questions did not “ask a juror to speculate or precommit to how that juror might vote based on any particular facts.” Rather, “[t]he questions simply sought to determine whether the jurors could keep an open mind when listening to and weighing the witnesses’ testimony knowing the witness had gotten into some unrelated trouble

with the law.”

This line of questions can stand as a model for what would be appropriate in our cases. Just as in *Rivera*, we would often have a Rule 609 ruling ahead of time. *Rivera* can even provide impetus to obtain such a ruling ahead of time because of the need to conduct voir dire on the defendant’s prior convictions.

Applying the rationale in *Rivera* to voir dire regarding a defendant’s prior convictions is not a step too far. The Missouri Court of Appeals, just this year, addressed a similar issue in the context of post-conviction relief proceedings. *Christian v. State*, 455 S.W.3d 523 (Mo.App. 2015). In *Christian*, the defense attorney knew of the defendant’s prior convictions and knew the defendant intended to testify. But, because of a “brain cramp,” the defense attorney forgot to question the jury about whether the jurors would improperly consider the defendant’s prior convictions as evidence of guilt. The post-conviction court found the defense attorney’s performance was deficient. The Court of Appeals did not disturb this finding on appeal. Instead, the Court of Appeals found the defendant had not demonstrated he was prejudiced by the deficient performance.

Like most issues, however, this has to be a sound judgment call. If you are not sure your client will testify, it may

be better not to disclose her prior convictions during voir dire. If you think there is additional evidence or a different argument that may cause the trial court to reconsider its 609 ruling, it may be preferable to avoid the topic, and thereby avoid invited error.² But if you and your client believe the best chance to win is with your client’s testimony and your client has a prior conviction, you should consider discussing the priors during voir dire. Even if you don’t get any jurors to admit they would improperly consider the evidence, you will have successfully drawn the sting at an even earlier stage of the trial and ensured the jury has essentially promised they would not improperly consider the prior convictions as evidence of guilt.

ENDNOTES

- 1 That *Rivera* is unpublished is no longer of concern. Supreme Court Rule 111 now allows for citation to memorandum decisions issued after January 1, 2015, as persuasive, although non-binding, authority.
- 2 See *State v. Johnson*, 901 S.W.2d 60 (Mo. 1995) (mistrial not appropriate where trial court admitted a prior conviction, defense conducted voir dire on the topic, defense later presented additional evidence and urged reconsideration, and trial court changed its ruling).

Remand and Conquer

Steve McCarthy and Karen Vandergaw, Defender Attorneys

Error at the trial level can also be challenged at the grand jury level if the harm is the same.

MANNER OF DEATH

During the grand jury proceeding in a murder case, the grand jurors were told the medical examiner’s opinion that the manner of death was a homicide. We filed a motion to remand based on *State v. Sosnowicz*, 229 Ariz. 90, 97 (App. 2012). In *Sosnowicz*, the appellate court held that the medical examiner’s testi-

mony, during trial, that the manner of death was a homicide was error.

We cross examined the ME during the evidentiary hearing on our remand motion. We were able to show that the ME’s finding as to the manner of death is not a legal conclusion, rather, it is a medical opinion. The ME is not qualified to state whether the homicide was first degree murder, second degree, or manslaughter. The ME will opine that the manner of death is homicide whenever it appears that one person took the

life of another, even if the homicide was legally justifiable. The ME reaches that medical opinion after reading police reports and hospital records, speaking with the lead detective, and conferring with the Office of the Medical Examiner’s own investigators. In other words, the ME’s opinion as to manner of death is based, in part, on a massive amount of hearsay.

We argued that when the prosecutor presented the ME’s opinion as to manner of death to the grand jury, what the

grand jurors heard was that an expert reached the legal conclusion that the defendant committed a homicide. Logically, the grand jury then found probable cause that he committed murder.

The judge granted the defense motion for remand.

PROHIBITED POSSESSOR STATUS

During the grand jury presentation in a murder and misconduct involving weapons case, the prosecutor told the grand jurors that the defendant is an illegal immigrant felon. We filed a motion to remand based on *State v. Burns*, 237 Ariz. 1 (2015).

In *Burns*, the defendant was also charged with misconduct involving weapons and murder. Prior to trial, the defendant moved to sever the charges. The trial court denied the motion. At trial, the defendant was found guilty on all counts. The Arizona Supreme Court held that failure to sever the MIW charge was an abuse of discretion. The Court noted that trying the MIW charge with the other charges

permitted the jury to hear that the defendant was a felon.

At the grand jury level, the harm is the same. Once the grand jurors are informed that the defendant is a felon, or in the case of the defendant, an illegal immigrant felon, prejudice seems certain.

The *Burns*' Court emphasized that the State should avoid the risk of reversal by refraining from joining charges that require proof of a defendant's prior convictions. It seems odd to conclude that *Burns* stands for the proposition that the State should continue to join such charges at the grand jury level, and that it is up to the defense to file a motion to sever.

In this case, the motion to remand was denied, and the court of appeals denied special action jurisdiction.

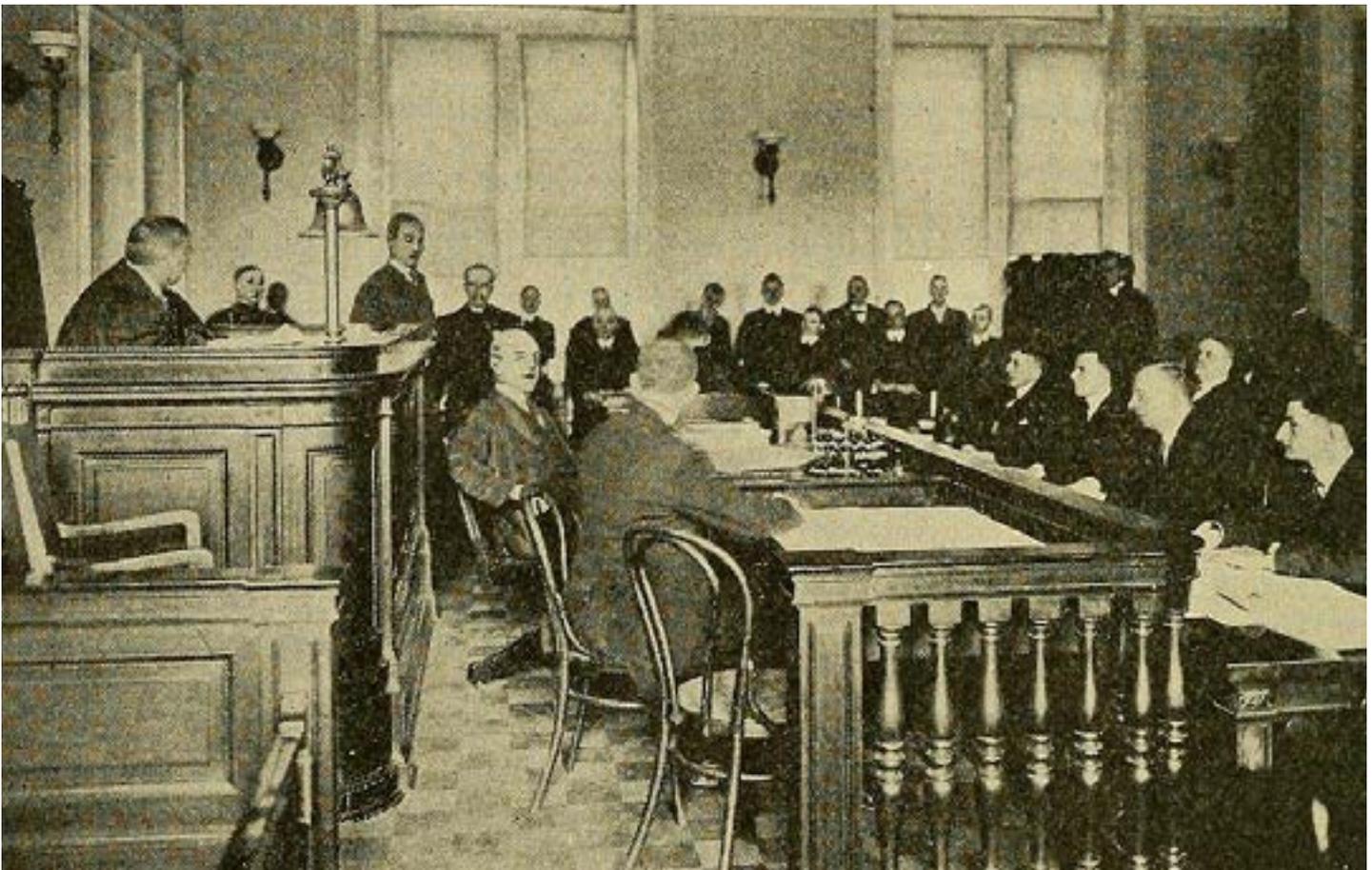
CONCLUSION

Both *Burns* and *Sosnowicz* deal with error that occurred at trial, that is applicable to the grand jury presentation. The State is sure to argue that a prob-

able cause hearing is dissimilar from a trial. One counterpoint is that due to the absence of defense counsel during the grand jury proceeding, the prosecutor's duty to conduct a fair proceeding is heightened. *Maretick v. Jarrett*, 204 Ariz. 194, 197 (2003).

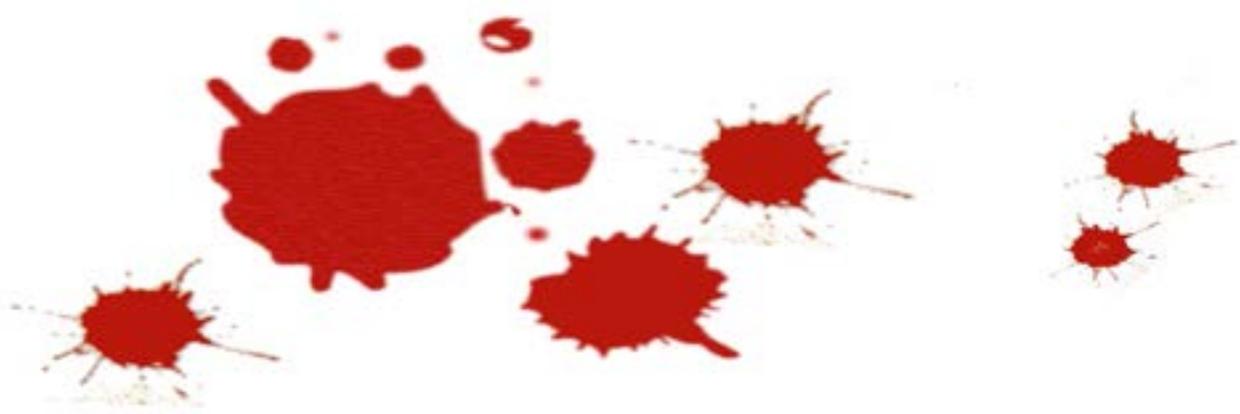
PRACTICE POINTERS

- Don't talk yourself out of remand motions. Yes, the same charges will likely come back if you win, but it is our job to protect people's rights and ensure defendants are treated fairly at all stages.
- Argue that the prosecutor has a heightened duty due to the absence of the defendant and defense counsel during the grand jury proceeding.
- Ask for an evidentiary hearing.



Blood Spatter

Bryan A. Garner



blood spatter; blood splatter.

Although one is tempted to call the semantic differences a bloody mess, let's be more sanguine. A *spatter* is an accidental sprinkling or slight splash of liquid. A *splatter* is a patch or spot of color splashed onto a surface. The first word connotes small or light drops or a small number of them, while the other suggests heavier or more numerous drops. Most legal (and medical) writers, however, usually ignore these differences. *Blood spatter*, which is preferred in AmE and BrE alike, has been used since the 18th century to indicate the presence of drops of blood at a crime scene.

E.g.:

- “There was a *blood spatter* 10 x 4 inches on the headboard, about 6 inches from where the head lay.” O.J. Brown, *A Case of Double Homicide*, 140 *Boston Med. & Surg. J.* 301,

302 (1899).

- “There was *blood spatter* throughout the basement.” *State v. Rosales*, 998 A.2d 459, 461 (N.J. 2010).
- “Jessica said defendant came to her apartment after midnight the night of the Cross murder with ‘*blood splatters*, little specks of blood’ on his chest and left arm.” *People v. Alexander*, 235 P.3d 873, 895 (Cal. 2010).

At least one writer has asserted an additional reason to prefer *spatter*: “‘Blood *spatter*’ should not be confused with ‘blood *splatter*.’ *Spatter* means to scatter (a liquid) in drops or small splashes; *splatter* has no forensic meaning.” James E. Girard, *Criminalistics: Forensic Science and Crime* 38 (2007).

Blood splatter, rare until the 1990s, is now about half as common as *spatter*, even among experts—e.g.:

- “[A criminalist] explained that blood

‘smears’ result from contact with a bloody object, in contrast to blood ‘*splatter*,’ which is caused by the deposit of airborne blood droplets.” *People v. Lewis*, 210 P.3d 1119, 1132 (Cal. 2009).

- “Baden said the killer should have *blood splatter* on his clothes, while Spitz said the killer could have left the scene clean of blood due to the killer’s position during the attacks.” John J. Miletich et al., *An Introduction to the Work of a Medical Examiner* 26 (2010).

- “Stone testified there were *blood splatters* on the headboard and computer monitor in Dorff’s bedroom, both of which were approximately two and a half feet from Dorff’s head.” *Tweed v. State*, 779 N.W.2d 667, 669 (N.D. 2010).

You can sign up for Garner’s free Usage Tip of the Day and read archived tips at <http://www.lawprose.org/blog/>. Garner’s *Modern American Usage* can be purchased at bookstores or by calling the Oxford University Press at: 800-451-7556.

Editors’ Note: Bryan A. Garner is a best selling legal author with more than a dozen titles to his credit, including *A Dictionary of Modern Legal Usage*, *The Winning Brief*, *A Dictionary of Modern American Usage*, and *Legal Writing in Plain English*. The selection above is an excerpt from Garner’s “Usage Tip of the Day” e-mail service and is reprinted with his permission.

TRIAL RESULTS

Jury and Bench Trial Results

June 2015-October 2015

Indigent Representation

Public Defender's Office – Trial Division

Closed	Team	Judge	Case No, and Charges	Counts	Result
GROUP 1					
6/11/2015	Turner Rankin	Coury	2014-140916-001 Agg Aslt-Deadly Wpn/Dang Inst, F3	1	Jury Trial Guilty as Charged
6/12/2015	Corral Rankin	Gates	2014-156515-001 Burglary 3 rd Deg-Unlaw Entry, F4 Burglary Possess Tools, F6	1 1	Jury Trial Guilty as Charged
6/24/2015	Forner Leazotte	Granville	2011-12576-001 Narc Drug-Obtain Illegally, F3	7	Jury Trial Not Guilty
6/26/2015	Doak	Steinle	2014-149701-001 Dangerous Drug Violation, F4 Marijuana-Possess/Use, F6	1 1	Jury Trial Guilty -Lesser/Fewer
6/29/2015	Forner Tomaiko	Mulleneaux	2014-106600-001 Threat-Intimidate, F3 Resisting Arrest, F6 Dangerous Drug Violation, F4 Obstruction-Refuse True Name, M2 Street Gang, F3 Threat-Intimidate, F6 Drug Paraphernalia Violation, F6	1 1 1 1 1 1 1	Jury Trial Guilty -Lesser/Fewer
7/9/2015	Saldivar Tomaiko	McCoy	2014-106804-001 Burglary 2 nd Degree, F3 Traffick Stolen Prop 2 nd Deg, F3 Fradulent Use of Credit Card, F6	2 3 1	Jury Trial Guilty -Lesser/Fewer
7/10/2015	Jackson Torres	Welty	2010-048445-001 Murder 1 st Degree, F1 Aggravated Assault, F3	1 1	Jury Trial Guilty as Charged
7/14/2015	Blum Cole	Passamonte	2013-002710-001 Fraudulent Schemes/Artifices, F3 Computer Tampering, F5 Forgery, F4 Theft by Extortion, F4	1 1 1 5	Jury Trial Guilty as Charged
8/5/2015	Forner Tomaiko	Gordon	2014-142812-001 Agg Aslt-Adult on Minor, F6	1	Jury Trial Not Guilty
8/27/2015	Blum Leyba	Ditsworth	2014-005222-001 Arson of Structure/Property, F4	4	Bench Trial Guilty but Insane

Public Defender's Office – Trial Division

Closed	Team	Judge	Case No, and Charges	Counts	Result
GROUP 2					
6/1/2015	Podsiadlik	Kreamer	2015-001463-001 Tamp W/Phy Evid-Destroy/Alter, F6	1	Jury Trial Not Guilty
7/13/2015	Whitaker Munoz	Otis	2014-006029-001 Taking Identity of Another, F4	2	Jury Trial Not Guilty
7/17/2015	Goodman Munoz	Svoboda	2014-117720-001 Aggravated Assault, F4 Resisting Arrest, F6	2 1	Jury Trial Guilty as Charged
7/21/2015	Nadimi Leazotte	Rummage	2014-150035-001 Marijuana Violation, F6 Misconduct Involving Weapons, M1	1 1	Jury Trial Guilty -Lesser/Fewer
7/29/2015	Podsiadlik Leazotte	Ireland	2014-150131-001 Indecent Exposure, F6	1	Bench Trial Not Guilty
8/24/2015	Couturier Munoz	Newell	2015-104419-001 Agg Aslt-Officer, F5 Resist Arrest-Physical Force, F6	1 1	Jury Trial Not Guilty
GROUP 3					
6/1/2015	Alkhatib	Nothwehr	2014-145746-001 Marijuana Possess/Use, F6	1	Bench Trial Guilty -Lesser/Fewer
7/9/2015	Alkhatib Spears Tomaiko	MiWller	2014-157037-001 Dangerous Drug Poss/Use, F6	2	Jury Trial Not Guilty
7/16/2015	Henager Alkhatib Hales	Vandenberg	2013-419345-001 Aggravated Assault, F6	2	Jury Trial Not Guilty
7/16/2015	Brady Tomaiko	Newcomb	2014-005744-001 Prisoner Poss/Make Contraband, F5 Tamp W/Phy Evid-Destroy/Alter, M1	1 1	Jury Trial Guilty as Charged
8/5/2015	Alkhatib	Coury	2013-449652-01 Dangerous Drug Violation, F4 Drug Paraphernalia Possess/Use, F4	1 1	Jury Trial Guilty as Charged
GROUP 4					
7/7/2015	Melcher Verdugo	Brotherton	2014-103527-001 Marijuana-Possess/Use, F6	1	Bench Trial Guilty- Lesser/Fewer
7/28/2015	Perkins Gilchrist Wishart	Rummage	2014-154458-001 Forgery-W/Written Instrument, F4	2	Jury Trial Not Guilty
7/28/2015	Melcher Verdugo Kunz	Newcomb	2015-100557-01 Dangerous Drug-Poss/Use, F4	1	Jury Trial Guilty as Charged

Public Defender's Office – Trial Division

Closed	Team	Judge	Case No, and Charges	Counts	Result
8/3/2015	Becker Fune Verdugo Kunz Menendez	Padilla	2014-001663-001 Narc Drug-Transp and/or Sell, F2	1	Jury Trial Guilty as Charged
8/14/2015	Manberg Gilchrist Kunz	O'Connor	2013-001961-001 Kidnap, F2 Aggravated Assault, F3 Burglary 1 st Degree, F3 Sexual Assault, F2 Armed Robbery, F2	1 1 1 1 1	Jury Trial Guilty- Lesser/Fewer
GROUP 5					
6/2/2015	Glass-Hess Chavaria	Newcomb	2015-000928-001 Burglary 2 nd Degree, F3 Agg Aslt-Enter Residence, F6 Agg Aslt-Victim Bound/Restr, F6 Crim Tresp 1 st Deg-Res Struct, F6	1 1 1 1	Jury Trial Not Guilty
7/6/2015	Culbert Langlais Taylor	Nothwehr	2014-126178-001 Agg Aslt DV-Impede Breathing, F4 Assault Intent/Reckless/Injure, M1 Disorderly Conduct Fighting, M1	1 1 1	Jury Trial Guilty as Charged
7/9/2015	Champagne Thompson	Gentry	2013-458979-001 Dangerous Drug Violation, F4 Drug Paraphernalia Violation, F6	1 1	Jury Trial Guilty -Lesser/Fewer
7/17/2015	Beatty Romani	Gass	2010-007672-001 Sexual Conduct with Minor, F2	6	Jury Trial Guilty- Lesser/Fewer
8/26/2015	Champagne	Newcomb	2014-141888-001 Dangerous Drug Violation. F4	1	Jury Trial Guilty as Charged
8/28/2015	Glass-Hess Romani	Newell	2015-103476-001 Child/Vul Adult Abuse-Intent, F4	1	Jury Trial Guilty as Charged
GROUP 6					
6/2/2015	Hermes Sain	Kiley	2013-446784-001 Marijuana Violation, F6	1	Bench Trial Guilty -Lesser/Fewer
7/9/2015	Reyes-Petroff	Otis	2014-200596-001 Unlawful Discharge of Firearm, F6	1	Jury Trial Guilty as Charged
7/17/2015	Reyes-Petroff Godinez	Bernstein	2014-135299-001 Narcotic Drug Possess/Use, F4 Poss Wpn by Prohib Person, F4	1 1	Jury Trial Guilty as Charged
7/17/2015	Reyes-Petroff Godinez Costanzo	Kemp	2014-103497-001 Dangerous Drug Violation, F4	1	Jury Trial Guilty as Charged
7/17/2015	Reyes-Petroff Sheperd Godinez Costanzo	Kemp	2014-107052-001 Aggravated Assault, F2 Disorderly Conduct, M1 Criminal Damage, M2	1 1 1	Jury Trial Guilty as Charged

Public Defender's Office – Trial Division

Closed	Team	Judge	Case No, and Charges	Counts	Result
7/23/2015	Taradash Sain	Mroz	2014-161382-001 Agg Aslt-Deadly Wpn/Dang Inst, F3 Poss Wpn by Prohib Person, F4	1 1	Jury Trial Guilty- Lesser/Fewer
8/4/2015	Guenther Clesceri	Richter	2014-156787-001 Dangerous Drug Poss/Use, F4	1	Jury Trial Guilty as Charged

SPECIALTY COURT GROUP

6/5/2015	Knowles Jackson Leazotte	Mahoney	2013-004409-001 Arson of Structure/Property, F4 Theft, F6	1 1	Jury Trial Guilty as Charged
7/22/2015	Hintze Rock Verdugo Batie	Fink	2013-452368-001 Agg Taking ID-Person/Entity, F3	1	Jury Trial Not Guilty
7/24/2015	Schachar Prasetio	Kiley	2012-149563-001 Narcotic Drug Possess for Sale, F2 Drug Paraphernalia-Possess/Use, F2 Marijuana Possess/Use, F6	2 2 1	Jury Trial Guilty as Charged

TRAINING

6/1/2015	Roth	Williams	TR2014-135799-001 Extreme DUI-BAC .15-.20, M1 DUI W/BAC of .08 or More, M Liquor/Drugs/Vapors/Combo, M Exceed Limit by 20/45 MPH, M	1 1 1 1	Jury Trial Guilty- Lesser/Fewer
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VEHICULAR

6/10/2015	Conter Decker	Donofrio	2014-134202-001 Agg DUI-LIC Susp/Rev for DUI, F4 Agg DUI BAC .08-Passngr Undr 15, F6	2 2	Jury Trial Guilty as Charged
6/15/2015	Conter	Kaiser	2014-125003-001 Agg DUI-LIC Susp/Rev for DUI, F4 Stay/Accid/Attend Veh, M2	2 1	Jury Trial Guilty- Lesser/Fewer
6/30/2015	Baker Jarrell	Ireland	2014-132341-001 Aggravated DUI, F4	2	Jury Trial Guilty- Lesser/Fewer
7/10/2015	Baker	Van Wie	2014-147959-001 Agg DUI-LIC Susp/Rev for DUI, F4	2	Jury Trial Guilty- Lesser/Fewer
8/7/2015	Conter King	Newell	2014-128866-001 Aggravated DUI-Interlock, F4	2	Jury Trial Guilty as Charged
8/14/2015	Baker	Kaiser	2014-005844-001 Agg DUI-LIC Susp/Rev for DUI, F4	2	Jury Trial Guilty as Charged

Legal Defender's Office – Trial Division

Closed	Team	Judge	Case No. and Charges	Counts	Result
6/3/2015	Kinthead Santiago	Cohn	2014-001000-001 Armed Robbery, F2	1	Jury Trial Guilty as Charged
6/12/2015	Abernethy	Kiley	2014-125490-001 Narcotic Drug-Possess For Sale, F2	1	Jury Trial Guilty as Charged
6/12/2015	Abernethy Haimovitz	Kiley	2014-000394-001 Narc Drug-Transp and/or Sell, F2	1	Jury Trial Guilty as Charged
6/29/2015	Kinthead	Kreamer	2014-133443-001 Burglary 3rd Deg-Unlaw Entry, F4	1	Jury Trial Guilty as Charged
7/17/2015	Campbell Carson	Sanders	2013-449134-001 Marijuana Violation, F6	1	Bench Trial Guilty -Lesser/Fewer

Legal Advocate's Office – Trial Division

Closed	Team	Judge	Case No. and Charges	Counts	Result
6/10/2015	Woods Stapley	Myers	2012-136840-001 Dangerous Drug Violation, F4 Drug Paraphernalia Possess/Use, F6	1 1	Jury Trial Guilty as Charged
7/23/2015	Rose Garcia	Viola	2014-001629-001 Murder 1 st Degree, F1	1	Jury Trial Guilty as Charged

Legal Advocate's Office – Dependency

Last Day of Trial	Team	Judge	Case Number and Type	Result
6/4/2015	Vera Elwood	Martin	JD30098 Dependency Trial	Granted
6/4/2015	Vera Elwood	Overholt	JD30098 Dependency Trial	Granted

SEX CRIMES DEFENSE COLLEGE

PRESENTED BY

JERALD SCHRECK
JENNIFER ROCK
MCPD ATTORNEYS

JANUARY 6, 2016–JANUARY 8, 2016

SPONSORED BY MARICOPA COUNTY PUBLIC DEFENDER

Sessions are free to all PD, OLD, OLA, FPD and OPA agencies.

City and Contract Counsel: Registration Fee is \$150.00

Private Counsel: Registration Fee is \$300.00

Please make checks payable to MCPD.

If you are not a MCPD employee and would like to register,
please contact Omar Molina, Training Coordinator
via email at molinal@mail.maricopa.gov

The Maricopa County Offices of the Public Defender, Legal Defender, Legal Advocate, and Office of the Federal Public Defender – Capital Habeas Unit present:

The Fight For Life Death Penalty Conference 2015

Hyatt Regency Phoenix
122 North Second Street
Phoenix, AZ 85004

Wednesday, Dec. 2 at 12:30 pm – Friday, Dec. 4 at 12:15 pm

Maricopa County Indigent Defense (PD, OPA, OLA, LD) employees register through the Online Learning Center. All others contact molinal@mail.maricopa.gov to request a registration packet. This Seminar is limited to the capital defense community and intended for defense team members with capital cases.

Maricopa County Public Defender

Attorney Training Series

This training program is designed to develop attorney skills, including basic criminal defense, pretrial practice, and trial advocacy.

The Attorney Training Series is primarily designed for defender attorneys practicing in Maricopa County; however, the topics and techniques are applicable to attorneys practicing in other counties.

All Attorney Training is open to the defense community. There is no fee for Public Defense Offices.

There is a \$250 fee per multi-day course for Contract Counsel and a \$500 fee per for Private Counsel.

These courses are offered several times each year. We recommend (but do not require) students take courses in this order: Intro to Defense, Pretrial Practice, and Trial Skills. Each course starts at 1:00pm on the first day and ends at 2:00pm on the last day to allow time to travel to and from Phoenix. There are usually about twenty students in each course. Classes are taught by experienced defense attorneys. Materials are provided electronically, so please bring a laptop and/or thumb drive, as well as your statute book.

If you would like specific course agendas or would like to register, please contact Omar Molina, Training Coordinator at molinal@mail.maricopa.gov. If you have questions about the content of the program, please contact Stephanie Conlon, Training Director, at conlons@mail.maricopa.gov.

Attorney Training #1: Introduction to Criminal Defense

January 11 - 15, 2016

This lecture format course introduces the basics of criminal defense practice. Topics include: Professionalism, Modifying Release Conditions, Continuances, Preliminary Hearings, Grand Jury, Trebus and Bashir, Client Communication, File Documentation, Prior Felonies, Negotiation and Written Deviation Requests, Explaining Plea Offers, Victims' Rights, Sentencing Charts: First Time Offenders, Repeat Offenders and Enhancements, Preparing for Sentencing, Presentence Reports, Spotting Mental Health Issues and Gathering Documentation, Motions to Determine Competency, Guilty Except Insane, Drug Possession Cases, Immigration and Collateral Consequences, Intro to DUI, Probation, and Restitution.

Attorney Training #2: Pretrial Practice

February 8 - 12, 2016

This lecture format course focuses on improving pretrial skills and motion practice in order to achieve a favorable settlement or work up the case for trial. Topics include: Making the Record for Appeal, Pre and Post Accusation Delay, Insufficiency of the Indictment, Special Actions, Severance and Joinder, Remands, Competency Hearings, Requesting Specific Discovery, Miranda and Voluntariness, Suppression, Other Acts, Identification and Dessureault, Daubert and Experts, Interviews, Subpoenas, Victim's Rights, Defending the Gang Case, Settlement Conference Memoranda, Proportionality Arguments, and Useful Cases in Criminal Law.

Attorney Training #3: Trial Skills

March 14 - 18, 2016

This interactive course takes a hypothetical case to trial to give new attorneys a chance to practice trial advocacy techniques. Topics include: Developing a Theme and Theory, 609 and 404b Hearings, Motions in Limine, Jury Selection, Opening Statement, Direct and Cross Examination, Refreshing Recollection, Impeachment, Motive and Bias, Evidence, Jury Instructions, Closing Argument, Trial on Priors, and Aggravation Hearing.

*for*The Defense

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Delivering America's Promise of Justice for All

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