



**TRIAL SKILLS WORKSHOP:
Advocacy Strategies & Skills To Maximize Use Of Experts**

**Administrative Office Of The U.S. Courts
Defender Services Office Training Division**

**Hotel Republic San Diego
421 W B St, San Diego, CA 92101
April 7-9, 2022**

Draft Agenda

Thursday, April 7, 2022

7:30 - 8:30 a.m. Registration - Continental Breakfast

8:30 - 8:45 a.m. Introduction and Welcoming Remarks
Lisa Lunt, Attorney Advisor, Training Division, Defender Services Office, Washington, DC

8:45 - 10:00 a.m. PLENARY SESSION: The Art of Becoming the Expert on Experts
John C. Ellis, Jr., Attorney at Law, San Diego, CA

The first part of this plenary presentation is an overview of the guiding principles we will utilize throughout this workshop: “Expert i.C.P.R.”. These four principles will help you effectively select, prep, and examine experts for litigation in any area of science and technology. The second part of this presentation will outline techniques you will need to create theme-based cross-examinations and story-rich direct examinations.

10:00 - 10:15 a.m. Break

10:15 - 11:15 a.m. PLENARY SESSION: Not So Simple Minds: Experts, Education and Effectiveness in Defending Clients Living with Mental Illness
TBA

Identifying clients living with mental illness and developing the ability to work together effectively impacts every aspect of a case. This session will focus on recognizing signs of mental illness, learning to communicate with empathy and respect, and gathering information and records from a client and others that will best allow the creation of a persuasive theory of the case. It will also cover identifying whether to consult with an expert and if so, what type to retain, in

considering issues like competency, the insanity defense, Sell hearings and diminished capacity.

11:15 a.m. -
12:30 p.m.

WORKSHOP SESSION 1: Fact-busting, Interviewing Skills, and Records Collection

Participants will meet with their small group facilitators to brainstorm or fact-bust the model case problem, sharpen interview skills in order to plant the seeds for strong relationships with clients, and identify necessary records to gather and experts to retain.

12:30 - 1:45 p.m.

**Lunch – Bonus Session for CJA Attorneys*
Vouch for Your Voucher**

Susan Lin, *Partner, Kairys, Rudovsky, Messing, Feinberg & Lin, Philadelphia, PA*,
Jessie backup

This session is primarily for CJA attorneys and will focus on the court rules and best practices for submitting expert requests to the court. This session will also cover how to write persuasive expert requests that the court will honor and fund, and how to educate the court about your theory of the case in your ex-parte submissions.

*(Details to come about obtaining a box lunch for this session.)

1:45 - 3:30 p.m.

WORKSHOP SESSION 2: Development of Themes and Theories

Each small group will develop a theory of the model case and supporting themes, all of which are necessary to effectively organize a case and tell a persuasive defense story.

3:30 - 3:45 p.m.

Break

3:45 - 5:30 p.m.

WORKSHOP SESSION 3: Screening, Interviewing and Qualifying Expert Witnesses

This session will focus on interviewing experts to make sure that your theory and supporting science match, i.e., you have the right expert for your diagnosis and case objective. Participants will also learn how to qualify their experts in court.

5:30 p.m.

Adjourn for the Day

Friday, April 8, 2022

- 7:30 - 8:30 a.m. Continental Breakfast**
- 8:30 - 9:30 a.m. PLENARY SESSION: Can I Get This In? When and How to Use Evidence Rules to Effectively Support Your Case Theory**
Kasha Castillo, *Executive Director (Acting), Federal Defenders of San Diego, Inc., San Diego, California*
- This session will explore the evidence rules to make sure that your expert is qualified and that any source documents, reports, or other diagnostic tools get admitted into court. The focus of this session will be on the following rules of evidence: FRE 104(a), 401, 402, 403, 404(b), 702, 703, 704, 705, 706, 901, 902, 903 & 1101(d)(1).
- 9:30 - 9:45 a.m. Break**
- 9:45 - 11:15 a.m. WORKSHOP SESSION 4: Evidentiary Arguments**
Participants will work through evidentiary problems and take turns doing the defense and counter-argument(s).
- 11:15 a.m. - 12:30 p.m. PLENARY SESSION: Cross-Examining a Forensic Examiner: Preparation, Foundations, and Technique**
Jennifer Friedman, *Deputy Federal Public Defender, Capital Habeas Unit, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA*
- Cross-examining a government forensic science expert is often one of the most challenging aspects of a criminal case. This session will focus on preparation and strategies for effectively cross-examining a forensic witness and for presenting the defense narrative through your cross-examination.
- 12:30 - 1:45 p.m. Lunch - On Your Own**
- 1:45 - 2:15 p.m. DEMO: Cross-Examination of Government Expert**
TBA
- 2:15 - 3:15 p.m. WORKSHOP SESSION 5: Cross-Examination of a Government Expert**
In this session, we will focus on the chapter method of crossing a government expert by identifying known areas of weakness that usually fall into several broad categories. Participants will develop crosses on particular types of challenges (i.e. Insufficient Expertise, Insufficient Scientific Validation, Bias, etc.).
- 3:15 - 3:30 p.m. Break**
- 3:30 - 5:15 p.m. WORKSHOP SESSION 5 (continued): Cross-Examination of a Government Expert**
- 5:15 p.m. Adjourn for the Day**

Saturday, April 9, 2022

7:30 - 8:30 a.m. Continental Breakfast

8:30 - 9:15 a.m. PLENARY SESSION: Preparation and Direct Examination of Defense Experts

Norma Aguilar, *Supervising Trial Attorney, Federal Defenders of San Diego, San Diego, California*

Direct examination provides another opportunity to advance the theory of the case and defense story. This session will address techniques for preparing the witness, practicing direct and cross, and preparing for obvious questions. It will also cover how to persuasively present the witness's testimony in the courtroom, including the use of chapters, detailed facts, keeping the focus on the witness, and effective organization and transitions.

9:15 - 9:30 a.m. DEMO: Direct Examination of a Defense Expert

TBA

9:30 - 9:45 a.m. Break

9:45 - 11:45 a.m. WORKSHOP SESSION 6: Preparing a Defense Expert and Conducting Direct Examination

11:45 a.m. - PLENARY SESSION: Expert Ethics - Whose Choice?

12:45 p.m. Callie Steele, *Senior Litigator, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA*

This session will explore the testifying role and non-testifying role of experts. We will focus on the ethical implications of disclosing expert reports and disclosing expert consultation, we will discuss the ethical dilemmas related to using experts and we will discuss lawyer-directed vs. client-directed decision making when mental disease or defect is present.

12:45 p.m. Closing Remarks / Adjournment